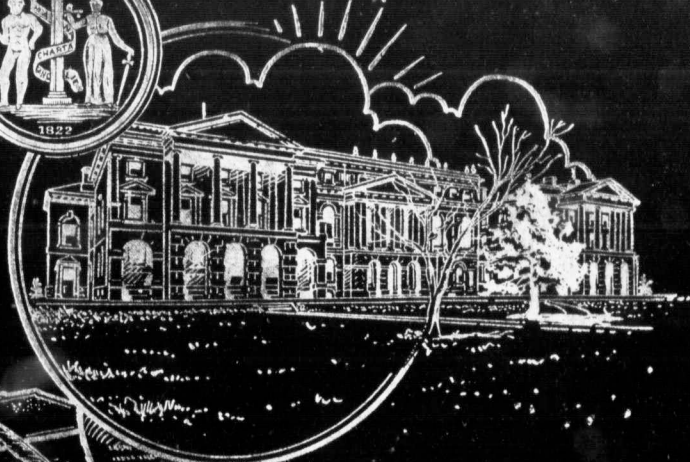


# OSGOODE HALL REMINISCENCES

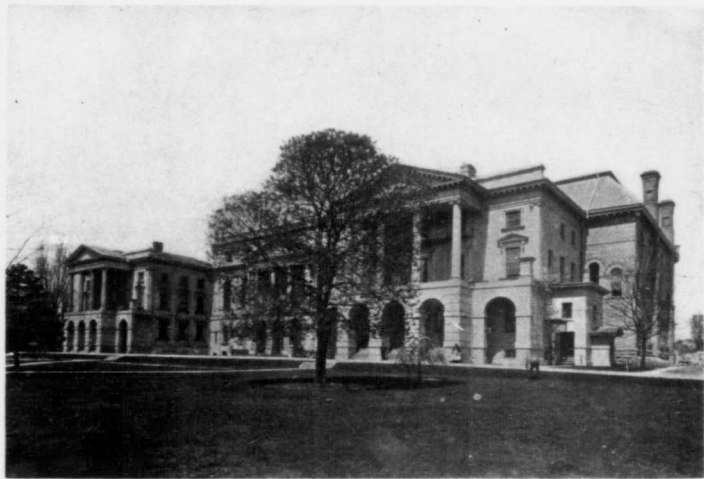


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**BENCH  
AND  
BAR**

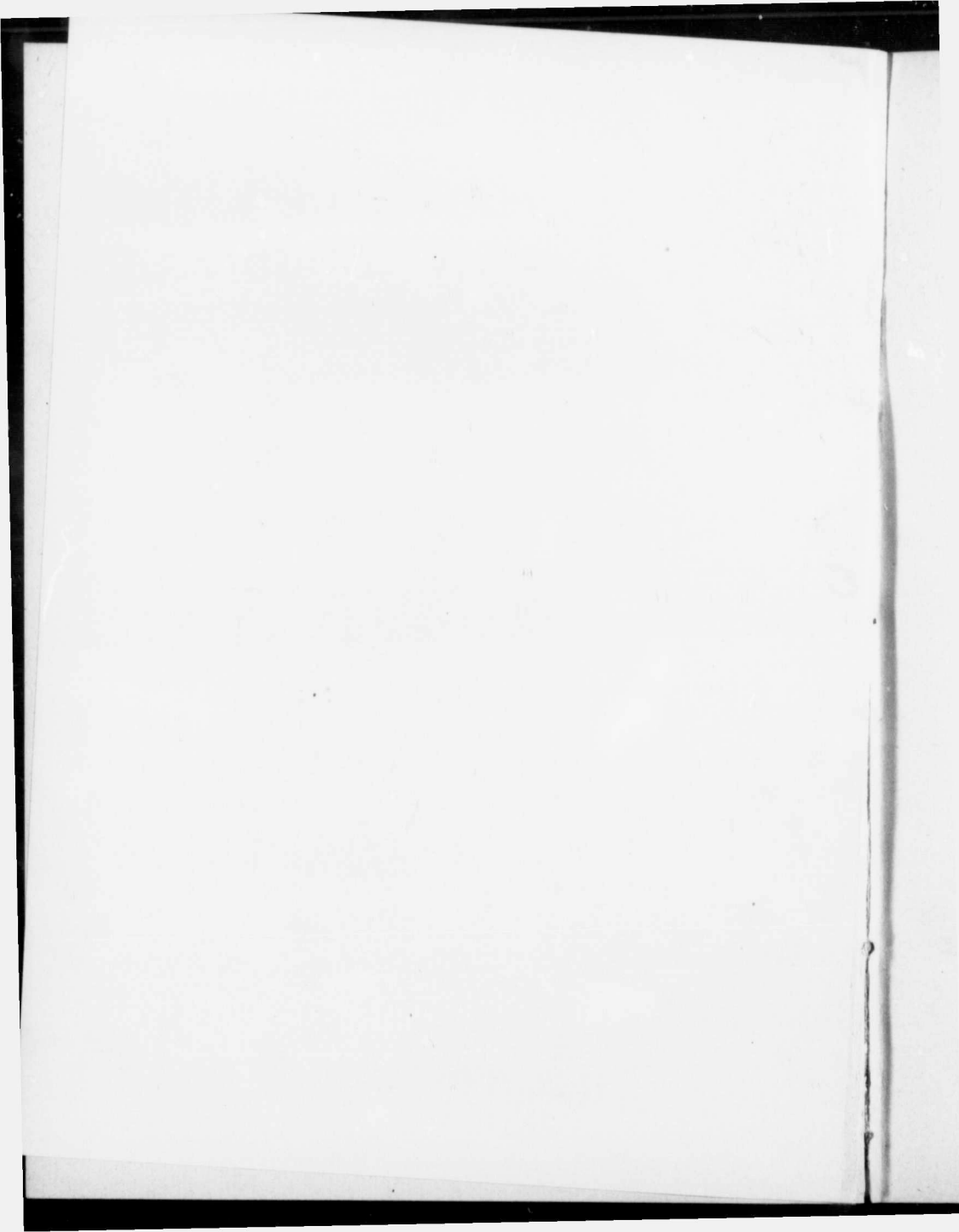
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OSGOODE HALL



OSGOODE HALL

REMINISCENCES

... OF THE ...

BENCH AND BAR

... BY ...

JAMES CLELAND HAMILTON

A MEMBER OF THE TORONTO BAR

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*WITH ILLUSTRATIONS*

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TO THE PLEASANT MEMORY OF  
HUGH NELSON GWYNNE  
AND HIS FRIENDS  
THE INVENTOR AND THE STEWARD

---

"SCRIBERE JUSSIT AMOR."—*Ovid*





## CONTENTS.

---

### ERRATUM.

---

	PAGE.
Mr. Justice Ferguson, Mr. Justice Meredith; Chief Justice Draper and Sir George Burton.....	68
Sir John Boyd, Chancellor; Mr. Justice Robertson, Sir John Hagarty and Chief Justice Spragge.....	72

---

of Chief Justice Osgoode, his career, tablets in his memory, and of Attorney-General McDonell, Thomas B. Phillips Stewart, W. A. Reeve, Q. C. The Law School and other portraits. The Libraries, how formed. Early donors to the library. The Advocates' Society and its young members .....5-24

### CHAPTER III.

*The Secretary and his friend the Inventor*—A classical chapter. The Gwynnes; Hugh Nelson Gwynne. How he conducted examinations. The Law Society in his day. Poetical allusions, wit and by-play at the Hall. "Horace Canadianizing" by Dr. Scadding. Mr. Isaac Buchanan lauds Sir George Cartier. Doctor McCaul's Scholarship. Mr. Brown's "nice dinner." Court Reporters, how qualified. The Secretary's Sabine Farm. Simon the Inventor. How he worked and how he passed away. Pleasant Reminiscences of the City Treasurer and others. ....25-35



## CONTENTS.

### CHAPTER I.

*Osgoode Hall*.—Jack Cade's orders. The *Spectator's* views as to the Inns of Court. Dr. W. W. Baldwin—His Commission. Hon. Robert Baldwin. The Building of the Hall. Its Architecture, Pictures and Library, Queen's Books .....1-4

### CHAPTER II.

*The Law Society of Upper Canada*.—Cradle of the Judges. How it arose. Act of 1822. The Benchers, Officers, Law School, Principals and Lecturers, Trinity University Lecturers at the Hall. Address to the Editor of *Leith's Blackstone*. County Law Libraries, how aided by the Society. The New Digest. Canadian Law Library in England. Admission of Women to Practice. Ownership and Management of the Hall and grounds by the Government and the Law Society described. Law Stamps, the amount sold in 1902, \$54,177. Architects of Osgoode Hall. Seal of the Society. Paintings by the Artist, George T. Berthon. His father, the French painter, and some of his works. Chief Justice Macaulay's portrait and character. Later Artists. Portrait of Chief Justice Osgoode, his career, tablets in his memory, and of Attorney-General McDonell, Thomas B. Phillips Stewart, W. A. Reeve, Q. C. The Law School and other portraits. The Libraries, how formed. Early donors to the library. The Advocates' Society and its young members .....5-24

### CHAPTER III.

*The Secretary and his friend the Inventor*.—A classical chapter. The Gwynnes; Hugh Nelson Gwynne. How he conducted examinations. The Law Society in his day. Poetical allusions, wit and by-play at the Hall. "Horace Canadianizing" by Dr. Scadding. Mr. Isaac Buchanan lauds Sir George Cartier. Doctor McCaul's Scholarship. Mr. Brown's "nice dinner." Court Reporters, how qualified. The Secretary's Sabine Farm. Simon the Inventor. How he worked and how he passed away. Pleasant Reminiscences of the City Treasurer and others. ....25-35

## CHAPTER IV.

*John Molloy, the Steward.*—His early history as a traveller. The *Royal William*. Mr. Molloy's loyal address in Quebec. He masters the French language. His position as Steward and aide to the Secretary. His wit and wisdom. Definition of "Esquire." His meetings and correspondence with the Duke of Wellington, Daniel O'Connell and other great men. Note as to the *Royal William* .....36-42

## CHAPTER V.

*Incidents connected with the Hall and its Records.*—Occupation by Red Coats. "Big Charlie." John B. Robinson's career. A Jolly Dinner. Lawyers officers in a coloured Company. Colonel Hill. Walter McKenzie. W. B. Campbell. Theodore Cook. Colonel John Prince. Gala Times at the Hall. Banquet in honor of the Lower Canada Bar in 1850. The Prince's Ball in 1860. Note as to it. The Banquet in honour of Sir John Robinson, C.J., in 1862. His funeral in 1863. Hon. John White, first Attorney-General, fell in a duel—other duels of Lawyers and of Colonel Arthur Rankin. Solicitor-General Gray. Sir George Cartier's Examination. Curious docket, entries and sentences. The first capital execution in Toronto was for forgery in 1800. Burning on the hand; The Stocks; "Benefit of Clergy;" The Pillory used. Horse stealing treated more severely than manslaughter. Funeral of Trinity Term, John Doe and Richard Doe banished. Masters and other old officers. Good fellowship at the Hall. Ancient customs. "Abiit" Banishment. Treason, how punished in Canada. Case of Daniel McLane. Captain Quid. Strange devices. Horace forgotten. David Burns, John Small, Charles C. Small, Laurence Heyden and M. B. Jackson, Clerks of the Crown. Alexander Grant; Masters-in-Chancery and in Chambers, Registrars and other officers, Sir Thomas Taylor, Mr. Thos. Hodgins, Mr. Holmested, Mr. Stephens Mr. Dalton, Mr. McAndrew, Mr. J. S. Cartwright, Mr. Thom, Mr. McNamara, Mr. Arnoldi, Mr. W. Willeocks Baldwin and Dr. McMahan; Court Criers. Alexander Macdonell, Andrew Norton Buell, Robert John Turner, Walter C. Crofton, his sentimental disposition and literary taste.....43-68

## CHAPTER VI.

*Judicial and other Instances.*—Judges of the Courts when Sir John Robinson was Chief Justice and William Hume Blake, Chancellor, Court of Chancery established. Robert Sympson Jameson, the first Vice-Chancellor. Thomas Moore sings of Toronto in 1804. Mrs. Jameson's literary gifts.

Judges and leading men in 1837. Other Chancery Judges. Removal of Court from Kingston; John Rumsey's poem on that event; Chancellor VanKoughnet, Chief Justice Draper. The Burley Extradition. Story of the Lake Erie Raid. Result as to its leaders,—John Y. Beall and Bennett Burley. How this affected President Lincoln and his assassin. How a Chief Justice outlived the officers of an Insurance Company, which refused to "take his life." His short municipal career. Hon. John Sandfield Macdonald and his cabinet. Why Donald C. Fraser got his Highlanders' support and beat Sir Charles Tupper. Colonel John Prince and Sir Allan N. McNab and their careers. Distinguished professional families. Lawyers as Members of Parliament, Crown officers and mayors. Culture of our Judges; their connection with the Canadian Institute. Veteran members of the Bar; long service of Superior Court Judges, also of Judges of County Courts. Senator Gowan, Judge W. Elliot of Middlesex, Judge Hughes of Elgin County, Hon. Sir Oliver Mowat, Clarke Gamble, K.C., David B. Read, K.C., Æmilius Irving, K.C., Goldwin Smith, D.C.L., Dr. Larratt W. Smith, K.C., Charles Durand. Judicial Interludes. Interesting Sallies from Bench and Bar. The game of Poker. Ebony wit in Court. Powell, C. J., and the German foreman. Judge Sullivan's pleasant wit. "Assignment of a moustache;" "Judges of A size." "The Tribunal of last resort." Chief Justice Armour's Picture. Interview between him and Hagarty, C.J. Lament of a Reporter in the Dog days. How to pronounce Paresis. "Reminiscences of B. B. Osler, Q.C., and Dalton McCarthy, Q.C. "A respectable heathen." Judge Joseph Curran Morrison. How John A. "knocked him into a cocked hat." Other incidents apochryphal or amusing. Counsel refers to papers lost in Lord George Gordon's Riot. Dr. Walter Henry visits Toronto in 1833. Reference by him to Chief Justices Robinson and Campbell. Dr. Henry's love of nature; Chief Justice Wood in Manitoba. A half-breed jury. Thomas Moss, C.J.O. His career discussed with reference to General Alexander Hamilton and R. A. Harrison, C.J. .... 69-106

## CHAPTER VII.

*Osgoode in Scarlet, Green, and Khaki.*—Ranulfus de Granville and Sir Matthew Hale would follow Mars. Former Colonial Judges Soldiers; among them Chiefs Robinson, McLean, Draper and Spragge. Oliver Mowat an ensign. Mr. Hagarty, Mr. Esten, Mr. Adam Wilson and Mr. John Wilson, soldiers. Lieut.-Governor Crawford a colonel. Attorney-General Gibson and other lawyers now colonels. Rifle Companies in the Universities. Osgoode men join them. Trinity and University Companies formed. How officered; lawyers in them. They become Nos. 8 and 9 Companies of Q. O. R. Hon. Adam Crooks an ensign, Major Denison and Major Goodwin. The Ridgeway affair, who

represented the Bar, and who were wounded there. Its importance. A colonel with tender feet. The ballad of Chevy Chase quoted. The Riel Rebellion, members of the Queen's Own who then went West. The Victoria Rifles or 6th Company. The Garrison Artillery. The Tenth Royals or Royal Grenadiers. Governor-General's Body Guard, dating from June, 1822. Reference to historic places and persons .....107-118

## CHAPTER VIII.

*Gowns, Bags, Wigs and Aethiops in Aulis.*—Early dress of the Common Law Judges not adopted by other Courts. Perukes, hair powder and queues; High style in British Columbia. An Irish Barrister's wig in Toronto. Bands and Chokers; customs in the Privy Council; in Supreme Court at Ottawa. An astonished Manitoba half-breed. How Bench and Bar of Boston were arrayed in 1761. The titles "Lord," "Monseigneur" and "Your Honour" in Province of Quebec. How Judges in the Hall pictures are habited. Fashions in "Toronto of old." "Sergeant Buz-fuz." The "Flower of the Profession" and the "Sunflower" of our Bar. Members of the Bar as Mayors of Toronto sustained dignity by fine dress. King's Counsel, how appointed and habited. How brave Sir Oliver slew the innocents after due consideration. *The Coloured Man and Canadian Law.* Solicitor-General Gray and his slave Simon Baker perish in the *Speedy*, with which Judge Cochrane and others were also lost. The unfortunate Government Schooners. Coloured men members of the Bar. A slave marriage declared invalid. The *John Anderson* case, its effect in England, The English Court sends a "habeas corpus" to Toronto. Imperial Act passed in 1862. ....119-135

## CHAPTER IX.

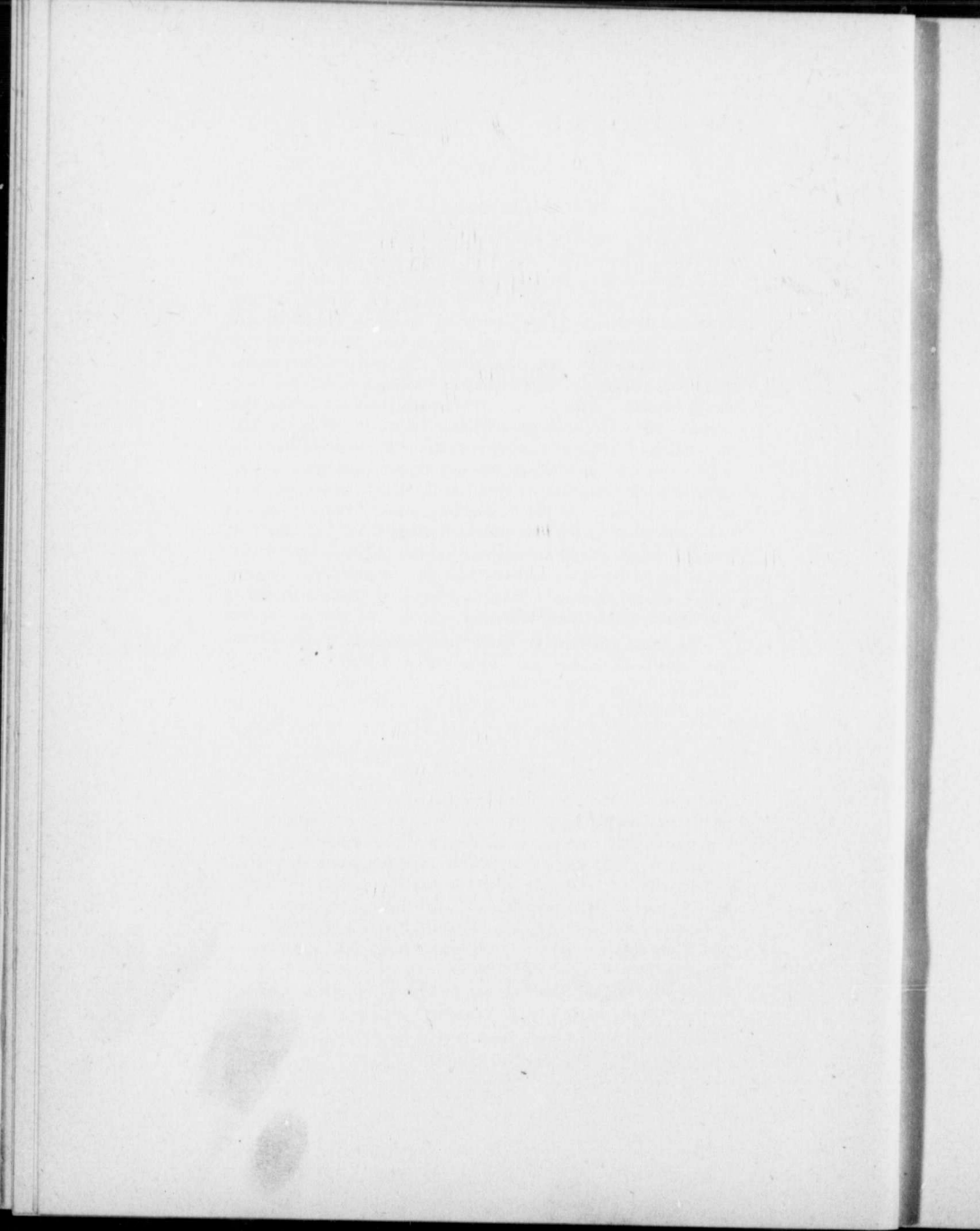
*The Law Society and the Unversity.*—Early instructors in Upper Canada, Dr. Strachan, Dr. Spragge, Mr. Gale, Dr. Howe, Samuel Armour, Dr. Phillips and others. No cribs permitted by students. Early Judges, well educated and accomplished men. Chief Justice Osgoode, Chancellor Blake as a lecturer, Mr. Hagarty as a poet, and others referred to. Mr. W. T. White's address before the Canadian Club. Views favoring a high standard of education. Requirements of the Society, Lecturers, Fees, Nest Egg. Contributions from students. The Profession and the Government. University's Political Science Course, its curriculum weakened in deference to the Law Society. Distinguished Professors, Judge Proudfoot and Hon. David Mills. Law Departments in other Canadian Universities. How a strong faculty might be formed. ....136-146

## CHAPTER X.

*An Upper Canada Law Office.*—The Baldwins founders of the Profession. Their office. Robert B. Sullivan, Adam Wilson, John Hector, Larratt W. Smith, Later partners, Students, Toronto before 1860, Bloor Street, The Block houses. Castle Frank, Governor Simcoe and Captain McKenzie Drumsdale, the Cayleys and Mr. Jackson, Mr. Edward Nanton, the Rosedale Mæcenas. Changes in practice. The gay Scrivener. The Speaking tube used as a chimney. The troublesome turkeys. The Ontario Literary Society. Foster and Rattray, Nicholas F. Davin, the "Headless Rooster," The *Poker* and the *Grumbler* "poke in a little fun." Criticisms of public men and their schemes. Sir John Macdonald, Sir George Cartier, D'Arcy McGee, Hon. George Brown, J. Hillyard Cameron and others. Interest in the University, prize men in 1858. The Canadian Institute, Characteristics of the partners. Office incidents. Lost treasure found in the vault. Disraeli preferred to Gladstone. Centre of City and Political Life. Colonel Dunn, V.C. How he rode at Balaclava in the "Six Hundred." Parkdale laid out. The 100th Regiment and its Toronto Officers. Captain John McIntyre. Francis Assikinack, "a warrior of the Odahwabs," Dr. Christopher Widmer. Other interesting citizens. Washington Wallace and his claims. *The Queen v. Felloices*. The "Double Shuffle" suits. Conclusion .....147-173

Appendix A—Officials at Osgoode Hall. Appendix B—Names of Judges from 1792 to the present time. Public high estimation of the Judiciary. Appendix C—Law Society Medallists. Appendix D—Osgoode Literary and Legal Society .....175-186





## ILLUSTRATIONS.

	PAGE.
Osgoode Hall as now appearing.....	1
Dr. W. W. Baldwin's commission, April 5th, 1803....	6
The Hall prior to 1857, from drawing made by Hopkins, Lawford and Nelson. The proposed arcade in front of the Central building was not executed.....	16
Plan of the Hall Grounds, by Messrs. Burke & Horwood	18
Mr. Hugh Gwynne's Farmhouse, from photo' by John Ellis .....	24
Simon's Cove. Photo' by Ellis.....	32
The Chancery Division: Sir John Alexander Boyd, K.C.M.G., and Hon. Messrs. Thomas Ferguson, Thomas Robertson and Richard M. Meredith.....	72
Mr. Æmilius Irving, K.C., Treasurer.....	88
The late B. B. Osler, K.C., and Dalton McCarthy, K.C., Sir Charles Hibbert Tupper, K.C., and E. F. B. Johnston, K.C.....	94
Hon. Thomas Moss and Hon. Charles Moss, Chief Jus- tices of Ontario .....	104
Mr. Christopher Robinson, K.C.....	112
Hon. William G. Falconbridge, C. J., Q. B. Division, in purple robe, and Hon. Sir William Meredith, C. J., C. P. Division .....	118
Mr. Matthew Wilson, K.C., in attire used before Judicial Committee of Privy Council .....	121

	PAGE.
Chief Justice Sir Adam Wilson, Mr. Justice John Douglas Armour (formerly Chief Justice of Ontario), in scarlet and ermine robe of the Canadian Supreme Court, from portrait, by Mr. E. Wyly Grier.....	124
Hon. W. Proudfoot, and Dr. Larratt W. Smith, K.C....	136
Baldwin's Office Chairs, and Vice-Chancellor Esten's gun, from photo' by J. Ellis .....	146
Hon. Featherston Osler of Court of Appeal, and Mr. Adolphus Williams, K.C., attired as a member of the Bar of British Columbia .....	160
Hon. Sir William B. Richards, first Chief Justice of Canada, and Hon. Christopher S. Patterson of the Supreme Court .....	170

## CHAPTER I.

### THE HALL.

Moreover, to give justice ready eyes,  
Kings here and there in provinces remote  
Should to establish proper courts devise.—*Lord Brooke.*

“The first thing we do, let’s kill all the lawyers,” was the sage advice of Dick the Butcher to Jack Cade as they marched towards old London in the reign of good King Henry VI.

Cade took the advice in cruel earnest, ordered the poor Clerk of Chatham, who fell into his hands, to be summarily dealt with, and said to his followers, “Now go some of you and pull down the Savoy, others to the Inns of Court, down with them all” . . . “away, burn all the records of the realm.”<sup>1</sup>

Such demonstrations of the populace have, in various times and lands, resulted in the demolition of temples of the gods and homes of art and civilization, of which a ready instance is the destruction of the Canadian Parliament buildings by a Montreal mob in 1849, when the Provincial archives and fine library were reduced to ashes.

It is pleasant to find that other views as to the temples of Minerva and her votaries have been expressed by the more enlightened.

The Spectator, nearly two hundred years ago, wrote, “I have ever regarded our inns of court as nurseries of statesmen and law-givers, which makes me often frequent that part of the town with much pleasure.”

---

<sup>1</sup> King Henry VI., 2nd part. Scenes 6 and 7.

It is assumed that some such feelings fill the breasts of our citizens as they approach the Hall on Queen Street. It nestles in a lawn with trees and flowers, and on the north side of the grounds is the great Armoury, representing strength and protection. The Hall is the home of the Chief Courts of Ontario and the depository of judicial records from the earliest days of Provincial history. The shades of well known Canadians, venerated for learning and patriotic service, rise before us as we look upon the Hall, see the portraits on its walls, and traverse its tiled floors, handsome library, many court rooms and offices.

The east wing was first erected under the direction of Dr. W. W. Baldwin. It is one hundred years since Dr. Baldwin was selected as a fit and proper person to be called to the Bar of the nascent Province. He had for some time practised medicine in Toronto. Parliament had enacted that the Governor might "under his hand and seal appoint so many of His Majesty's liege subjects, not exceeding six, as from their probity, education and condition in life, he should deem fit and proper to practise the profession of the law."

The commission appointing Dr. Baldwin recited that Henry Alcock, Esquire, Chief Justice, had certified that the Court of King's Bench was satisfied, etc., and so the Doctor became a barrister and attorney, "to all intents and purposes," on the 5th day of April, 1803.

In 1845 the western wing of the Hall was erected and united with the eastern by a building with a low dome.

In 1857 the dome was removed, the central building reconstructed, the area (of Caën stone, brought from Normandy) and present library were put up, as explained in our next chapter.

The Honourable Robert Baldwin was at this time the Treasurer, as the Chairman of the Benchers, or governing body,

is called. Mr. Adam Wilson, afterwards Sir Adam and Chief Justice, was the leading spirit in the extensive improvements then made. He feared that the Legislature would divide the Province into judicial districts, decentralizing the chief courts, as in the Province of Quebec, and hoped that the construction of an appropriate and costly home or Temple of Justice here, would counteract such a movement, and in this he succeeded. Sir Adam, long after this, related with amusement how alarmed the careful Treasurer was as he came to him with large cheques to sign, exceeding sometimes the balance in bank. "Never mind that," Mr. Wilson would say in the gentle voice we remember so well, "let us get the roof on before the House meets and all will be well," and so the fine building was pushed on to completion. The northern extension, in which the Court of Appeal with its library and Judges' quarters are, and the eastern addition for accommodation of the Law School, were of late date.

The Hall has a frontage facing Queen Street of about 300 feet. It is two-storied, of Roman classical architecture in which the Ionic order prevails; the main building is divided into three parts, or a central portion with flanking wings; the lower story or ground floor is of rustic stone work in which the Roman arch is used for entrances; on the first floor the central part has six fluted Ionic columns, the wings have each four such columns, all surmounted with a pediment, the central part has an attic story with cornice and parapet. The window heads on ground floor have consuls and classical cornices. The first floor windows have consuls supporting the pediments. The rotunda is built of Caën stone with columns having plain shafts and ornate Ionic caps. The wall surface is divided into panels with pilasters having moulded classical caps. The rotunda is lighted by a stained glass sky-light, divided by enriched plaster ribs, and floored with coloured tiles.

A handsome stone staircase leads on either side to the upper area of the rotunda, on the south side of which is the entrance to the main library, opposite which is the Court of Appeal, on the right the King's Bench, and on the left or west side, the Common Pleas Court.

The pictures of Chief Justices and Chancellors are mostly on the walls of this area and in the library, which is a high arched apartment one hundred and twelve feet long, forty feet wide, and whose roof is about forty feet from the floor. It has tables in centre, and rows of stacks replete with leather-bound law books on either side. A fine room or annex, entered from the west of the main library, contains reports of the United States Courts and proceedings of the British House of Commons. In galleries of the main library is a fair collection of books of an historical and general character. The number of volumes in this library and annex is about 30,000, valued at \$125,000. In addition to this the Court of Appeal and the High Court Judges have each a considerable library for ready reference.

A case in the Benchers' parlour holds four highly valued volumes, given by the late Queen to the Society. They are bound in fine leather and are entitled, first, "The Prince Consort," inscribed, "Presented to the Library of Osgoode Hall, Toronto, in memory of her great and good husband by his broken-hearted widow, 1864, Victoria Reg." The second book is "Leaves from the Journal of our Life in the Highlands, March, 1868." The third, "The Early Years of the Prince Consort," also March, 1868. The fourth, "More Leaves from the Journal of our Life in the Highlands," August, 1884. In each book is Her Majesty's autograph.

In a store-room are bound volumes of the London Times from 1805 to the present time, and an index of the same from 1860 back to 1815, which is in process of completion.

## CHAPTER II.

### THE LAW SOCIETY OF UPPER CANADA.

*Notandi sunt tibi mores.—Ars Poet.*

Mr. D. B. Read, K.C., has styled the Law Society the cradle in which the Judges were nurtured. He shews that the Bar of Ontario is, in some respects, the offspring of the Bar of Quebec as it existed prior to 1791.

An ordinance passed in 1785 provided that no barrister, solicitor or proctor, if not previously called or admitted, should practise, unless articulated for five years to an advocate or attorney practising in some court of civil jurisdiction within some part of His Majesty's Dominion.

This ordinance held good until the Upper Canada Legislature, in 1792, enacted that, in all matters of controversy or civil rights, resort should be had to the laws of England as the rule of decision, which thenceforth took the place of the French law.

The Legislature was soon convinced of the necessity of having lawyers sufficiently skilled in British jurisprudence; and on the 9th July, 1794, passed the Act referred to authorizing the Governor to license advocates and attorneys in the Province, not exceeding six in number.

William Dickson, D'Arcy Boulton, John Powell and William Elliott were at the same time as William Warren Baldwin, admitted by Lieutenant-Governor Peter Hunter.

It does not appear why these gentlemen chose this mode of entering the profession rather than through the doors of the Law Society, then established and having certain powers.



The inception of the Law Society was under an Act passed 9th July, 1797, by which gentlemen practising at the Colonial Bar were authorized to form themselves into a society, "as well for the purpose of establishing order among themselves as for the purpose of securing to the Province and the profession of a learned and honourable body, to assist their fellow students as occasion may require, and to support and maintain the constitution of the said Province."

Then followed a meeting of practitioners at the Capital of the Province, now called Niagara, then Newark, as appears by the following minute:—

Newark, July 17, 1797.

In obedience to the direction of an Act passed this session in the Parliament of the Province, the following gentlemen assembled in Wilson's Hotel, at 11 o'clock in the forenoon of the above day:—John White, A.G., Angus Macdonell, Christopher Robinson, William D. Powell, Nicholas Hagerman, Robert D. Gray, S.G., James Clark, Allan McLean, Alexander Stewart, R. C. Beardsley.

Mr. Christopher Robinson was father of the future Chief Justice, Mr. Powell became Chief of the Queen's Bench. Mr. Hagerman was father of Judge Christopher A. Hagerman.

By the Act of 1822, 2 Geo. IV., c. 5, "The Treasurers and Benchers of the Law Society" were formally incorporated; and under these and other statutes the Society has continued to be governed by a board of Benchers in like manner as the Law Societies of England. Under Revised Statutes of Ontario, c. 172, 1897, the Benchers are, exclusive of ex-officio members, elected by the Bar, the ex-officio consisting of the Attorney-General of the Dominion for the time being, if a member of the Bar of Ontario, and all members of the Bar of Ontario who now hold,



Upper Canada

To all to whom these Presents shall come Greeting

Whereas by an Act passed on the Parliament of this Province in this present year one thousand eight hundred and three entitled "An Act to authorize the Governor Lieutenant Governor or Person administering the Government of this Province to license Practitioners in the Law" it is enacted that from and after the passing of that Act it should and ought to be lawful to and for the Governor Lieutenant Governor or Person administering the Government of this Province to authorize by License under his hand and seal such and so many of His Majesty's High Subjects not residing in the whole or from their Public Education and Conditions in Life to be admitted to practice the Profession of the Law in the Province as in and by that Act is contained a Power that before any person should apply to the said Governor Lieutenant Governor or person administering the Government of this Province for such License such person should apply to the Judges of His Majesty's Court of King's Bench and should procure from that Court a Certificate under the hand of the Chief Justice or in his Absence of the Senior Justice of the said Court that such Court was satisfied of the Ability and Fidelity of the said Person applying to be admitted to practice as a Barrister and Attorney in the said Province.

And Whereas William Warren Baldwin of the Town of York in this Province Esquire has obtained a Certificate under the hand of Henry Alcock Esquire Chief Justice of the said Province that the said Court of King's Bench and Attorney in the Province do give Notice that I Peter Hercules Esquire Lieutenant Governor of the said Province and Lieutenant General Commanding His Majesty's Forces in Upper and Lower Canada having taken into my Consideration the Petition Declaration and Certificate in Life of the said William Warren Baldwin and having been a full and proper person to Practice the Profession of the Law in the Province Do by virtue and in exercise of the Power so vested in me and by the said Chief Justice of the Law under my hand and Seal License him the said William Warren Baldwin to practice the Profession of the Law in the Province as a Barrister and Attorney as fully to all intents and purposes as under and by Statute in that behalf made and the my License be can or may further be made. Witness under my hand and that at some of York the fifth day of April in the year of our Lord one thousand eight hundred and three and in the thirty third year of His Majesty's said Majesty's reign.

By His Excellency's Command,  
James Munro

P. Hercules Esq.



or have at any time held, the office of Attorney-General of the Dominion or of Ontario, or of Attorney or Solicitor-General of the former Province of Upper Canada, and any retired Judge of the Superior Courts of Law or Equity of Ontario; also, under the Act of 1900, every person who has for seven consecutive years held the office of Treasurer of the Society. The elected members, thirty in number, are chosen by ballot, for a term of five years, by the members of the Bar, in manner prescribed by the Act. Vacancies during the term are filled by the remaining Benchers. On the first day of Easter term annually, the Benchers appoint one of their body to be Treasurer, who is the president of the Society. The Benchers sit in convocation during the terms, but by the Act just referred to, power is given to "abolish terms" and fix by ordinary almanac dates, the times and seasons for doing any act or giving any notice. The thirty elective members are chosen by closed voting papers. The present Bench is composed of the following gentlemen:—A. B. Aylesworth, the loyal son of Osgoode and Varsity, heading the elective list alphabetically.

Ex-officio members—Hon. Charles Fitzpatrick, K.C., Minister of Justice; Hon. J. M. Gibson, K.C., Attorney-General for Ontario; Hon. Edward Blake, K.C.; Hon. Samuel Hume Blake, K.C.; Hon. Sir Charles H. Tupper, K.C.; and Aemilius Irving, K.C.

Elected to hold office until first day of Easter Term, 1906:—Allen Bristol Aylesworth, K.C., Toronto; Walter Barwick, K.C., Toronto; Richard Bayly, K.C., London; Alexander Bruce, K.C., Hamilton; Francis Henry Chrysler, K.C., Ottawa; Alfred Henry Clarke, Windsor; James Joseph Foy, K.C., Toronto; George Christie Gibbons, K.C., London; James Morrison Glenn, St. Thomas; Donald Guthrie, K.C., Guelph; William Drummond Hogg, K.C., Ottawa; John Hoskin, K.C., Toronto;

John Idington, K.C., Stratford; William Kerr, K.C., Cobourg; Zebulon Aiton Lash, K.C., Toronto; George Lynch-Staunton, K.C., Hamilton; Samuel George McKay, Woodstock; Donald Ban Maclellan, K.C., Cornwall; William David McPherson, Toronto; William Renwick Riddell, K.C., Toronto; Charles Henry Ritchie, K.C., Toronto; Christopher Robinson, K.C., Toronto; George Fergusson Shepley, K.C. Toronto; Henry Hatton Strathy, K.C., Barrie; Daniel E. Thompson, K.C., Toronto; Richard Thomas Walkem, K.C., Kingston; George Hughes Watson, K.C., Toronto; William Robert White, K.C., Pembroke; Matthew Wilson, K.C., Chatham.

James M. Cawdell, who had been an officer in the army, was Secretary and Librarian for some years before Mr. Gwynne. He published for a short time the *Rose Harp*, a magazine of light reading in prose and verse, most of which was written by himself. He died in 1842. Thomas Hill was steward before John Molloy, and Richard Brown, an old soldier, was for some years assistant librarian. Mr. James Hutchison Esten, barrister, son of the late Vice-Chancellor, was assistant to Mr. H. N. Gwynne for some months, and on his decease in December, 1872, was appointed secretary and sub-treasurer, which office he filled satisfactorily until his decease in 1892, a period of more than twenty years. The offices of secretary and librarian were separately manned. The present officers of the Society and Law School are:—Treasurer, Aemilius Irving, K.C.; Secretary and Sub-Treasurer, Herbert Macbeth; Librarian, W. G. Eakins; Assistant Librarian, J. J. Daley; Editor of Law Reports, James F. Smith, K.C.; Reporters, High Court, E. B. Brown, G. F. Harman, G. A. Boomer, A. H. F. Lefroy; Court of Appeal, R. S. Cassels; Practice Cases, T. T. Rolph.

Former reporters include Thomas Taylor, appointed 1823, and later, Simon E. Washburn, but activity in the work was first shewn by William Henry Draper, appointed in 1829. He

was followed by Henry Sherwood, 1837; John Hillyard Cameron, 1840; James Lukin Robinson, 1846; Christopher Robinson, 1856; Henry C. W. Wethey, 1872; Salter J. VanKoughnet, 1878; all in the Queen's Bench. In the Common Pleas, Edward C. Jones, 1850, and S. J. VanKoughnet, 1864. Alexander Grant was appointed reporter of the Court of Chancery in 1845 and of the Court of Appeal in 1861. Among others not now on the rota, were the late Charles W. Cooper, Henry O'Brien and two gentlemen who are now in Winnipeg, James Stewart Tupper and Judge William E. Perdue. Mr. Thomas Hodgins, K.C., collected and reported a volume of election cases. James Lukin, afterwards Sir James, Robinson's work is comprised in volumes 2 to 5 inclusive, of the old series, and volumes 3 to 13 Queen's Bench reports. He and Mr. R. A. Harrison, afterwards Chief Justice, were the authors of Harrison and Robinson's Digest, embracing decisions dating from 1823 to 1851. Mr. Christopher Robinson and the late Frank J. Joseph took up the work from the same period to one thirty years later in their digest of 1880.

Among those who held the office of Treasurer we find Mr. John White, the first Attorney-General, and Mr. Dey Gray, the first Solicitor-General of Upper Canada, Chief Justices Scott, Macaulay, Robinson, Draper and Spragge, and Vice-Chancellor Jameson, whose talented wife, in her "Summer Rambles and Winter Studies," charmingly delineated Canadian scenes and customs of threescore years and more gone by.

There are also on this honoured list several others who became Judges; others such as the Baldwins, father and son, eminent in the political arena. Other gentlemen who devoted valuable time and ability to the Society, did not happen to reach the highest position in convocation, such were Sir Adam Wilson, Sir M. C. Cameron and Hon. J. D. Armour, C.J., Hon. Chris-

topher Salmon Patterson, John Roaf, Q.C., a partner of Sir Oliver Mowat, Henry Eccles, Q.C., Dr. Daniel McMichael, Q.C., Hon. Adam Crooks and Dr. Larratt W. Smith, K.C. There were but 22 Treasurers in more than one hundred years, although the office is elective annually. The present Treasurer has held the position for ten years.

The Judges of the Supreme Court of Judicature for Ontario are visitors of the Law Society, and to them appeal may be made from the Benchers' decisions. The Judges now are, The Chief Justice of Ontario, Hon. Charles Moss and the Honourable Justices of Appeal, F. Osler, James MacLennan, J. T. Garrow and J. J. MacLaren. The Chancellor, Hon. Sir John A. Boyd, the Chief Justice Queen's Bench Division, Hon. W. G. Falconbridge, Hon. Sir W. R. Meredith, Chief of the Common Pleas Division, and the Honourable Justices Thomas Ferguson, Thomas Robertson, Hugh McMahan, W. P. R. Street, Richard M. Meredith, Byron M. Britton and J. V. Teetzel. A late enactment made provision to constitute the Exchequer Division of the High Court with a Chief and two Justices. Messrs. John Idington, LL.B., K.C., and Frank A. Anglin, K.C., have been appointed such Justices, and the early appointment of a Chief is expected. This will make the number of Ontario Superior Court Judges seventeen.

*Law School.* — Principal — N. W. Hoyles, LL.D., K.C.; Lecturers, E. D. Armour, K.C., A. H. Marsh, LL.B., K.C., John King, M.A., K.C., McG. Young, B.A.; Examiners, Goodwin Gibson, M.A., J. A. C. Cameron, LL.B., H. E. Rose, LL.B., W. N. Tilley.

Some of the most distinguished jurists in early days lectured to the students. Sir Henry Strong taught of equity jurisprudence before he became Vice-Chancellor, then Judge,

and finally Chief Justice of Canada. His custom was to sit while lecturing. So also did Mr. John T. Anderson, Q.C., who practised as a common law counsel, and lectured in a lucid manner, being a master of case law.

Mr. Alexander Leith, Q.C., taught the law of real property and embodied the substance of his lectures in his well known book, "Leith's Blackstone." Mr. Anderson and Mr. Leith retired to England some years ago, and died there.

The Devolution of Estates Act made a marked change in the laws as to real property, but not so radical as was at first anticipated. One who had sat at the feet of our Gamaliel then addressed him thus,—as the "Editor of Leith's Blackstone":

There was a man of great renown, a learned man was he,  
Who many pages did indite about the simple fee,  
And when he'd written all he knew, and put it in a book,  
He went away across the sea, on other lands to look,  
And while he wandered far away this Act the light first saw,  
And quite upset the simple fee and killed the heir-at-law.  
And when that learned man came back, he thought he'd try again  
About the law of simple fee to argue and explain;  
But when he came to ponder o'er the clauses of this Act,  
He straightway to his lodgings went and his portmanteau packed;  
And never more has he been seen from that day until this,  
And searching for the heir-at-law 'tis my belief he is.<sup>1</sup>

Mr. Adam Crooks, who became a member of the Mowat Ministry, Mr. Thomas Moss, afterwards Chief Justice of Ontario and the present Chief Justice, his brother, were favourite teachers.

In addition to the lecturers on the rota the Law School is sometimes favoured with addresses by Judges and others, among whom in the session of 1902-3 were Sir Frederick Pollock, Sir John Boyd, the Chancellor, Chief Justice Moss and Sir William Meredith, G. F. Shepley, K.C., and A. B. Aylesworth, K.C.

<sup>1</sup> Can. L. Journal, 29, 345.



By arrangement between the Law Society and Trinity College, lectures were delivered during the years 1854 and 1855 by Mr. Hagarty (who soon after went on the Bench), Mr. J. Hillyard Cameron and Mr. Philip VanKoughnet. Mr. Adam Wilson and Dr. Connor also assisted.

These discourses were given in the room of the west wing now divided and used by the two taxing officers.

The lectures of Messrs. VanKoughnet and Cameron especially are said to have indicated original thought and been particularly interesting, while all were instructive.

Those who attended and passed an examination at Trinity received the degree of B.C.L., which was sometimes followed by the doctorate.

Reference has been made to the "Lives of Judges," one of five valuable works by the learned and venerable David B. Read, K.C. He was for twenty-seven years a Bencher, was a lecturer for a long period and was appointed historian of the York County Law Association. His works are replete with interesting data, many being from his extended personal experience.

The Treasurers of the Society since its formation and the periods during which they held office are as follows:—

John White, from Trinity Term, 1797, to Trinity Term, 1798; Robert I. D. Grey, from Trinity Term, 1798, to Easter Term, 1801; Angus Macdonell, from Easter Term, 1801, to Easter Term, 1805; Thomas Scott, from Easter Term, 1805, to Hilary Term, 1806; D'Arcy Boulton, (1stly) from Hilary Term, 1806, to Michaelmas Term, 1811; (2ndly) from Michaelmas Term, 1815, to Easter Term, 1818; William W. Baldwin, (1stly) from Michaelmas Term, 1811, to Michaelmas Term, 1815; (2ndly) from Michaelmas Term, 1820, to Michaelmas Term, 1821; (3rdly) from Michaelmas Term, 1824, to Hilary

Term, 1828; (4thly) from Hilary Term, 1832, to Hilary Term, 1836; Sir John Beverley Robinson, (1stly) from Easter Term, 1818, to Michaelmas Term, 1819; (2ndly) from Michaelmas Term, 1821, to Michaelmas Term, 1822; (3rdly) from Hilary Term, 1828, to Michaelmas Term, 1829; Henry John Boulton, (1stly) from Michaelmas Term, 1819, to Michaelmas Term, 1820; (2ndly) from Michaelmas Term, 1822, to Michaelmas Term, 1824; (3rdly) from Michaelmas Term, 1846, to Michaelmas Term, 1847; George Ridout, from Michaelmas Term, 1829, to Hilary Term, 1832; Robert B. Sullivan, from Hilary Term, 1836, to Michaelmas Term, 1836; Robert Sympson Jameson, (1stly) from Michaelmas Term, 1836, to Michaelmas Term, 1841; (2ndly) from Michaelmas Term, 1845, to Michaelmas Term, 1846; L. Peters Sherwood, from Michaelmas Term, 1841, to Michaelmas Term, 1843; William Henry Draper, from Michaelmas Term, 1843, to Michaelmas Term, 1845; Robert Baldwin, (1stly) from Michaelmas Term, 1847, to Michaelmas Term, 1848; (2ndly) from Michaelmas Term, 1850, to Hilary Term, 1859; James E. Small, from Michaelmas Term, 1848, to Michaelmas Term, 1849; Robert Easton Burns, from Michaelmas Term, 1849, to Hilary Term, 1850; John Godfrey Spragge, from Hilary Term, 1850, to Michaelmas Term, 1850; Sir James B. Macaulay, from Hilary Term, 1859, to Michaelmas Term, 1859; John Hillyard Cameron, from Michaelmas Term, 1859, to Michaelmas Term, 1876; Stephen Richards, elected Michaelmas Term, 1876, and re-elected until 1879; Edward Blake, from 1879 to 1893; Aemilius Irving, elected in 1893.

*County Law Libraries.*—The practitioners in any county are authorized to form a Library Association which secures quarters, necessary attendance and books for the use of Judges and members.

These bodies receive aid from the Law Society in proportion to the sum contributed by the members as fees. Twenty-five associations receive such grants, the farthest west being Rat Portage in the Rainy River District. The aggregate amount so disbursed in 1902 by the Society was \$5,305.62.

*The New Digest.*—The Society's editor and staff of reporters have for some time been engaged in preparing a complete digest of cases reported in the Provincial courts from 1823 to 1901, and cases in the Supreme and Exchequer Courts of Canada and in the Judicial Committee of the Privy Council affecting the Province, etc. This is a large but useful undertaking. The burden of expense has been assumed by the publishers.

*Canadian Law Library in England.*—In 1897 a law library for the use of Canadians in London was started, the Dominion and Ontario Governments each giving a set of statutes. The Law Society then gave a set of the Provincial Court Reports. The sum of \$350 was handsomely contributed by fourteen leading Canadian law firms or individuals to secure the English Reports. The Dominion Government grants \$250 a year towards maintenance. The library is at No. 17 Victoria St., S.W.

*Admission of Women.*—The Benchers were no more in favour of the admission of ladies to the profession than were the English Inns of Court who still reject their advances. Acts were passed by the Local Legislature in 55th and 58th years of Her late Majesty's reign, the substance of which is in the Revised Statutes, chapter 172, viz.:—"The Benchers may in their discretion make rules providing for the admission of women to practise as barristers-at-law and solicitors." The rules made pursuant to the statute prescribed terms and fees similar to those applicable to the other sex, to which is added:—"Every woman appearing before convocation upon the occasion of her being admitted to

practise as aforesaid, shall appear in a barrister's gown worn over a black dress, white necktie, with head uncovered."

Only one lady has so far taken advantage of these provisions: Miss Clara Brett Martin, M.A., who practises in Toronto, and has lately been elected a member of the Toronto Board of Education.

The Hall was constructed when the Courts were several entities, each with its set of officers in separate apartments.

The present intention is to have one supreme tribunal with two divisions, the High Court and Court of Appeal. The Registrar and other officers have to accommodate themselves as best they may, to the original premises which necessitate loss of time to those doing business, and probably a larger clerical staff than would be needed were the architectural arrangements modernized.

Those who have the clue find the offices of the Hall scattered about like the possessions of the tribe of Dan.

To the stranger the Hall is a bewildering maze. I once found wandering among the Caën pillars in the corridor, a good fellow who, in his palmy days had worked and spent for the party, and now had in his hand a commission to an office of whose duties and place he knew nothing. The gentle barnacle was as much puzzled and perplexed as was the Persian Jami's simple Arab when he came "From the solitary desert up to Bagdad."<sup>1</sup>

Offices only indirectly associated with the Courts are found opening from the central area, being those of the Master of Titles, the learned Master being John Galloway Scott, K.C., and of the Inspector of Legal Offices and Surrogate Clerk. In a dim nook is the room where the profession disburses many thousands of dollars each year for the red or green stamps in which

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<sup>1</sup> From *Salaman and Absal*.

official fees must be paid. This is a heavy and unjustifiable tax first on the solicitors and then on the people who are so unfortunate as to fall into litigation.<sup>1</sup>

The site on which the Hall rests, being six acres, was purchased from Hon. John B. Robinson, afterwards Chief Justice, for £1,000 early in 1828. In June of that year convocation directed plans to be obtained for a structure to cost not more than £3,000, and this was the origin of the first building soon afterwards erected under direction of Dr. W. W. Baldwin as Treasurer.

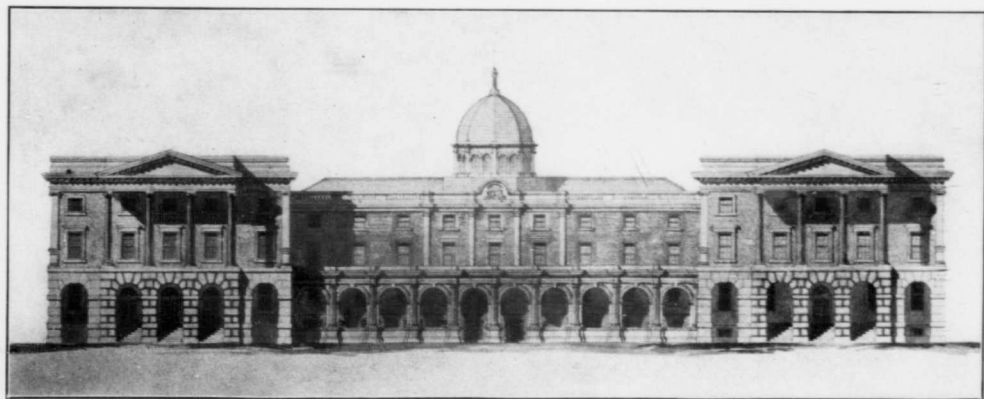
Dr. Baldwin engaged Messrs. Hopkins, Lawford & Nelson, architects of Montreal, to prepare plans for the east wing, which was begun in 1829, but not ready for occupation until 1832, when the Benchers met in it on the 6th of February. The cost was £3,350. Mr. John Ritchie was the builder and Mr. John Ewart seems to have superintended the work.

In 1844 a like structure was begun, and completed in two years, as the west wing, and this was connected with the east wing by a building with a small dome. The same architects were employed and their very artistic drawings are in possession of the present architects of the Society.

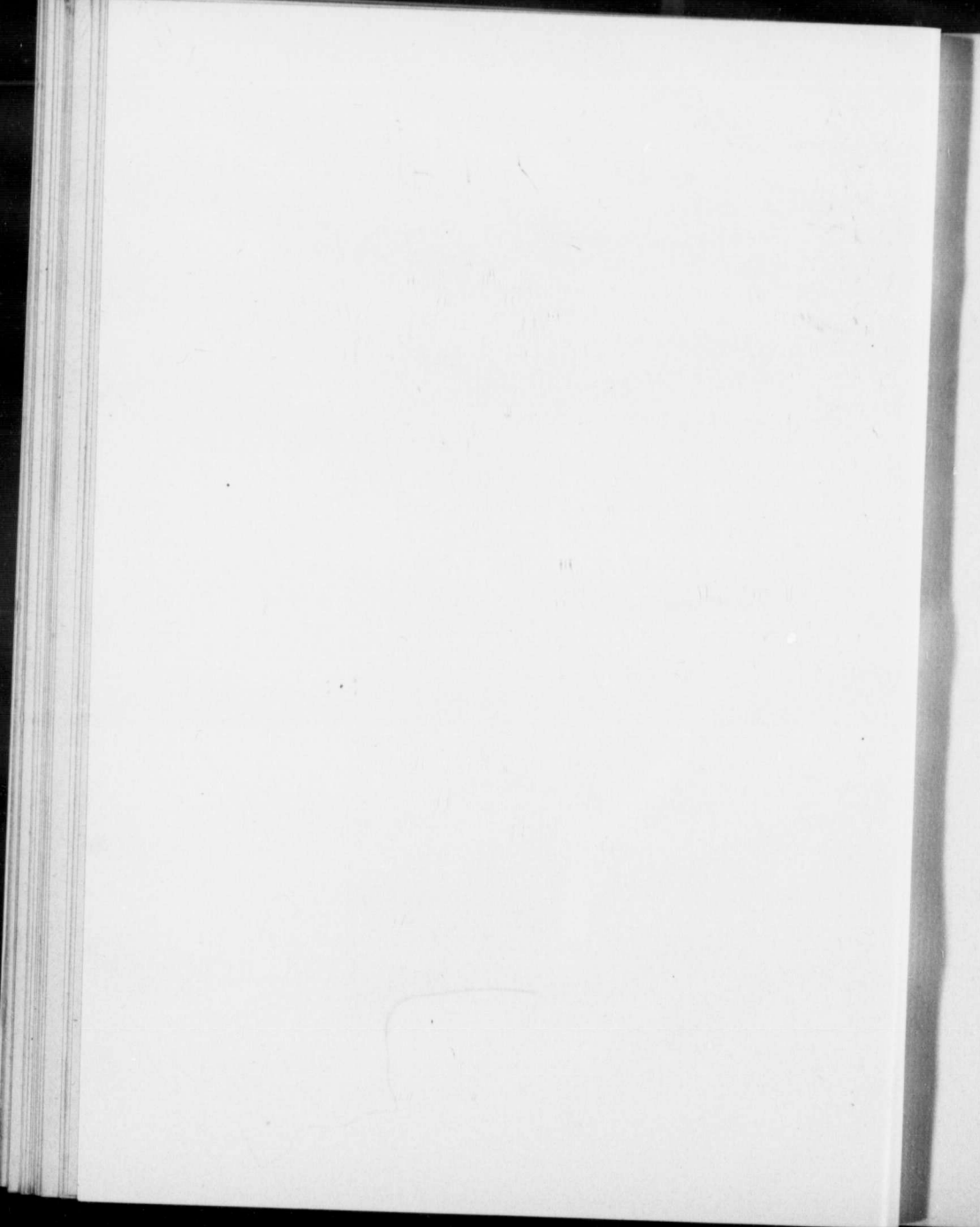
Mr. Kivas Tully, C.E., remembers that Mr. Lane, an English architect then in Toronto, was in some way engaged at this time, perhaps by the Montreal firm. His name does not appear on the plans. Mr. Joseph Sheard, afterwards Mayor of Toronto, was consulted as to some alterations in 1852.

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<sup>1</sup> *Law Stamps.*—The Act introducing stamps and making payment by them compulsory was passed June 30th, 1864, and applied to Upper and Lower Canada. The receipts from this source in Ontario in 1902 were \$54,177, of which \$18,162 came from Osgoode Hall and \$3,240 from the distributor at the City Hall, the balance from other counties.



OSGOODE HALL PRIOR TO 1857.



In 1857 the central building was removed and the present library, area, Queen's Bench and Common Pleas Court Rooms, were erected under the direction of Messrs. Cumberland and Storm, the eminent Toronto architects, who were at the same time designing and erecting the University building.

Mr. Cumberland having retired, Mr. W. G. Storm built the Convocation Hall and quarters of the Court of Appeal Judges, also the Law School, which is less tasteful in design than the other parts of the structure. Since his decease in 1892, Messrs. Burke & Horwood designed the fine western annex to the main library and later improvements in the east wing in connection with the Benchers' entrance and hall.

In 1846 the Society made agreement with the Provincial Government to provide proper accommodation for the Superior Courts of Law and Equity at the seat of the Society and received \$24,000 for so doing.

Under several subsequent bargains the Government has taken charge of the greater part of the buildings, the Law Society having control of the east wing, the main library and its annexes.

The plan given shews the arrangement of the ground and buildings.

A substantial iron and brick fence in front and at sides and brick in rear surrounds the grounds, which form a square, are tastefully laid out and well kept. A sward at the west of the Hall is appropriated as a tennis court for members of the Society, but golf on suburban fields and aquatic sports have of late had more attraction for them. In the spring, beds of hyacinths and tulips adorn the lawn, the offspring of six thousand bulbs, and these are followed by geraniums and other summer flowers.



In the grounds are many beautiful shade trees, some of which surround the square in summer with a green fringe, but the horse-chestnut, with its heavy foliage, is too prevalent.

At the north-west corner is the caretaker's house, and beyond that appear the Armouries with their massive walls and towers.

The seal of the Law Society is a shield which bears an upright Doric pillar, the ancient emblem of Apollo Defender. Resting on this classical support is a Canadian beaver, from whose mouth a scroll flies inscribed "Magna Charta Angliae." To the left is a standing figure of Justice robed, her eyes blind-folded, with scales in right hand and drawn sword in left. Strength, Hercules with his club, occupies the right centre.

This device may be seen in the middle of the fine stained-glass window of the Convocation Hall, and stands out in colours from the ceramic floor of the Benchers' entrance hall.

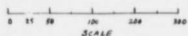
A series of oil paintings in the library, upper central area, Practice Court and Benchers' quarters, represent Chief Justices from Hon. William Osgoode, first holder of the office, to Hon. Charles Moss, now Chief Justice of Ontario.

There are also portraits of the Baldwins, Hon. J. Hill-yard Cameron, and other representative Benchers and officers. Most of these were by the brush of the late George Theodore Berthon, a skillful artist and amiable man, who came to Toronto in 1841. His genius was inherited from his eminent father, René Theodore Berthon, who painted the first Napoleon and many other notable Frenchmen. His studio was visited by Lady Morgan, and is referred to in her Diary; his life and works are also treated of in Scribner's Encyclopedia of Painters and Paintings.

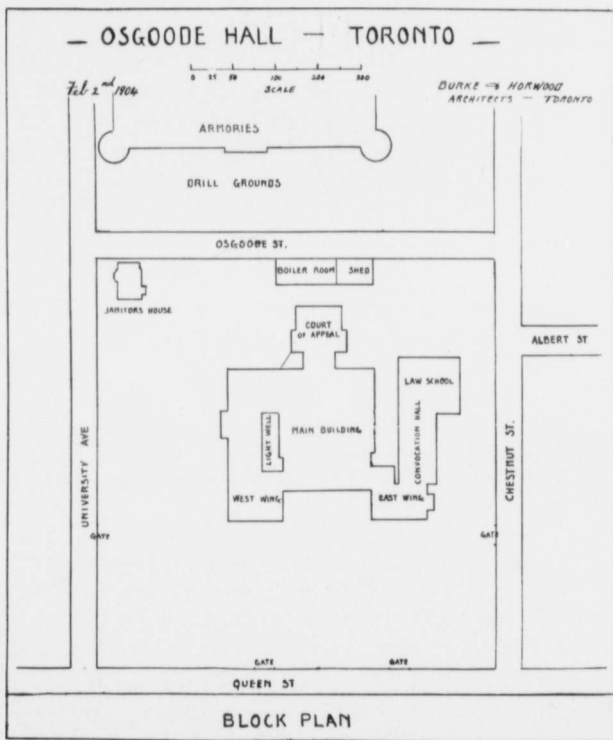
George Theodore Berthon, good old Frenchman, with winning smile and retiring manner, will be remembered as

— OSGOODE HALL — TORONTO —

Feb 2<sup>nd</sup> 1904



BURKE & HORNWOOD  
ARCHITECTS — TORONTO



BLOCK PLAN

OSGOODE HALL—BLOCK PLAN



long as his fine works hang on these walls. He was a favourite with Secretary Gwynne and the old Benchers and Judges. What a treat it was, when invited to his studio, to see his brush deftly place figure and feature on the canvas! Then, speaking with a gentle Gallic accent, he shewed us some interesting studies, among them his father's Napoleon and a representation of a dramatic scene, founded on the legend of Queen Elizabeth upbraiding the Countess of Nottingham for her conduct in regard to the Earl of Essex and the Queen's ring, an ambitious work which Mr. Berthon left unfinished.<sup>1</sup>

He had store of tales to tell of former days and of the men his father or he had helped to make immortal. These incidents come back to us as we look on his artistic productions. There are many other excellent men who honoured the Bench, but did not attain the highest position, whose faces we would gladly see in these corridors. What honesty of purpose is shewn in the standing portrait of Sir James B. Macaulay, first Chief of the Common Pleas! Born at Niagara in Governor Simcoe's time, young Macaulay was a soldier in the war of 1812, fought

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<sup>1</sup> George Theodore Berthon was born in Vienna in 1806 during a visit of his parents to that city. Soon after the son's birth they returned to Paris, where the elder Berthon was patronized by many eminent persons, including Napoleon I. About 1840 the son went to England where he painted among others Abdul Aziz. He had previously visited various capitals on the Continent to perfect himself in his art. Next year he came to Canada. Many of his canvases are hung on the walls of the Senate lobbies at Ottawa and at Government House, Toronto. A picture of his youngest daughter with pet dog, sent by the Ontario Government to the Centennial Exhibition at Philadelphia in 1876, took the gold medal.

Valued works from his brush are possessed by the Canadian Institute and other societies and by many citizens.

He is said to have considered the portrait of Chief Justice Robinson his masterpiece.

He died January 18th, 1892, in his 86th year, being the senior member of the Canadian Society of Artists.

gallantly at Ogdensburg, Lundy's Lane and Fort Erie, and received a colonel's commission. He was on the retired list when we first knew the Hall, but was ready to "lend a hand" when needed. He worked assiduously for many months at a revision of the Statutes, refusing other remuneration than his well earned pension. He was also then commissioned to the Court of Appeal and sat in convocation with the Benchers, being Treasurer in 1859, after the decease of Mr. R. Baldwin. We have seen Sir James patiently hearing and reasoning with students in chambers, and, to solve a doubtful point, going from his chair to the library and with them there referring to precedents. Such confidence was placed in him as that animating the old Boeotians who, when their famous Judge was taken from earth, declared him to be still his people's arbiter in the Shades. As to other portraits in the Hall, E. Wyly Grier painted Chief Justices Meredith and Falconbridge, also Treasurer Irving and Mr. Robert G. Dalton, who served as Clerk of the Court and then as Master in Chambers. A. Dickson Patterson painted Chief Justices Campbell and Burton and Mr. Stephen Richards. The portrait of the present Chief Moss is by J. W. L. Forster. A brass tablet in memory of Chief Justice Osgoode is in the upper Bencher's hall. He was born in England in 1754, seems to have been educated at Harrow and Oxford and was called to the Bar at Lincoln's Inn in 1779. He became Chief Justice of Upper Canada July 29, 1792, and presided in Courts at Newark, Kingston, Cornwall and elsewhere in the young Province. He was also Speaker of the Legislative Council and Chief Adviser of Governor Simcoe.

In his charge to a grand jury the Chief Justice advocated the abolition of slavery.

He had found many blacks, and a few Panis, already in servitude at Niagara and elsewhere. The U. E. Loyalist, Colonel Matthew Elliott, had in 1784 brought over half a hundred negroes

to his estate at Amherstburg, and the proud Mohawk chief Brant boasted of his slaves, and was attended on his journeys and at table by two of them, called Patton and Simon Ganseville. Tyendinegah lived surrounded with slaves and retainers in barbarous magnificence at Burlington.

The Macaulay family at Kingston had also brought black slaves with them. Knowing of these, the Chief Justice felt that the mischief and immorality attending the estate of servitude were not compensated by gain of the ruling race in having such servants, and was led to a discussion of the matter with Governor Simcoe, when he found that he had his hearty sympathy.

Osgoode then drew the Act passed by the Niagara, or Newark, Parliament in 1793, which forbade the further introduction of slaves, and provided that the children of slaves born thereafter should be free on attaining twenty-five.

Our first Chief Justice seems to have been a man of pure life, good parts, and fine disposition, who felt much the rude strain of early Provincial life. He left the Province before Toronto was known as the capital and became Chief Justice of Lower Canada, February, 24, 1794, where he remained until 1801, when he resigned and returned to his native land, having served in Canada about nine years.

The tablet is inscribed thus:—"William Osgoode, M.A. (Oxon) who, when the Province of Upper Canada was organized in 1792, became its first Chief Justice and was afterwards Chief Justice of Lower Canada, died 17 January, 1824, aged 70, and was buried at the Church of St. Mary, Harrow on the Hill, England."

Near this is a like plate, bearing the inscription under the MacDonell crest and motto, "Per mare per terras," "John MacDonell, Attorney-General for Upper Canada, who fell in the

battle of Queenston 13th October, 1812, aged 27 years. He was Lieutenant-Colonel Canadian militia and Military Secretary to Major-General Sir Isaac Brock and fought at Detroit (medal)." He was the last of three bright spirits connected with the profession in the young Province who met violent deaths each in a different form, the other being Attorney-General White in a duel, and Solicitor-General Gray in the waves of Lake Ontario.

The Law School at the east end of the Hall has a large meeting room, several class rooms and a small library.

In the students' reading room is a brass tablet erected by the Society "in memory of Thomas Brown Phillips Stewart, Barrister-at-Law who, by his last will, devoted his property to the advancement of Students-at-Law, born at Keenanville, August 7, 1858, died at Toronto, February 2, 1892." Mr. Phillips Stewart was a young man of culture and education. He published a volume of poems in 1887. The income from his legacy of about \$7,500 is applied to increase the law students' library.

There is also an oil portrait of the late William Albert Reeve, M.A., Q.C., first principal of the Law School, 1889-1894. Framed together in the librarians' office off the main library are two fine miniatures representing Governor Simcoe and Chief Justice Osgoode, given to the Society by their learned admirer, as appears by the legend beneath them:—"Legavit Henricus Seadding, D.D., A.D. 1901."

The valuable libraries at the Hall had their origin early in the last century partly by gift from gentlemen interested in the profession.

In a book styled "Registry of Donations to the Society" a record is preserved of such gifts. The Hon. Thomas Scott, formerly Chief Justice, gave eight volumes of manuscript precedents in pleadings; Dr. W. W. Baldwin is credited with 41 volumes, embracing history, poetry, biography and law. Mr.

Robert Baldwin, on three occasions in 1833, is donor not only of law books, but of a family bible, a prayer-book, Goldsmith's works and Warburton's sermons and finally of six metal casts of the Society's armorial bearings and the wooden model from which they were cut. Other donors were Simon Washburn, Chief Justice Robinson, George S. Boulton, James Edward Small, Admiral Augustus Baldwin, Hon. Archibald McLean, William Dummer Powell and Sir William Campbell, also Dr. Dunlop, who gave works on medical jurisprudence.

*The Advocates' Society.*—Half-a-dozen neatly kept books in manuscript now held by the Law Society contain a record of the proceedings of an admirable club or debating society, maintained by the students, dating back to 1820 and called the Advocates' Society. Its affairs were conducted with parliamentary form and dignity.

By an ordinance of this Society passed in 1821, it was provided that the rank of each officer and member respectively should be: The Bencher; The Keeper of the Great Seal; The Treasurer; The Advocate; The Prothonotary; the Senior Student, and lastly the Junior Students according to their standing.

In Michaelmas term, 1822, Robert Baldwin signs as Treasurer; in November, 1823, he is styled "The right trusty Robert Baldwin, Keeper of the Seal." In the same year he was Vice-Bencher.

In Trinity term, 1823, there were admitted as members among others, Donald Bethune, David W. Smith, James Boulton, John Lyons, Richard Cartwright Robinson, Daniel Sullivan, who was brother of Judge Sullivan but died young, Horace Ridout, George S. Jarvis, George Boswell, David L. Fairfield, afterwards Judge of the Prince Edward County Court, Charles Richardson and John Fennings Taylor all of York, James Hunter Samson of Kingston, Marcus F. Whitehead, Port Hope.

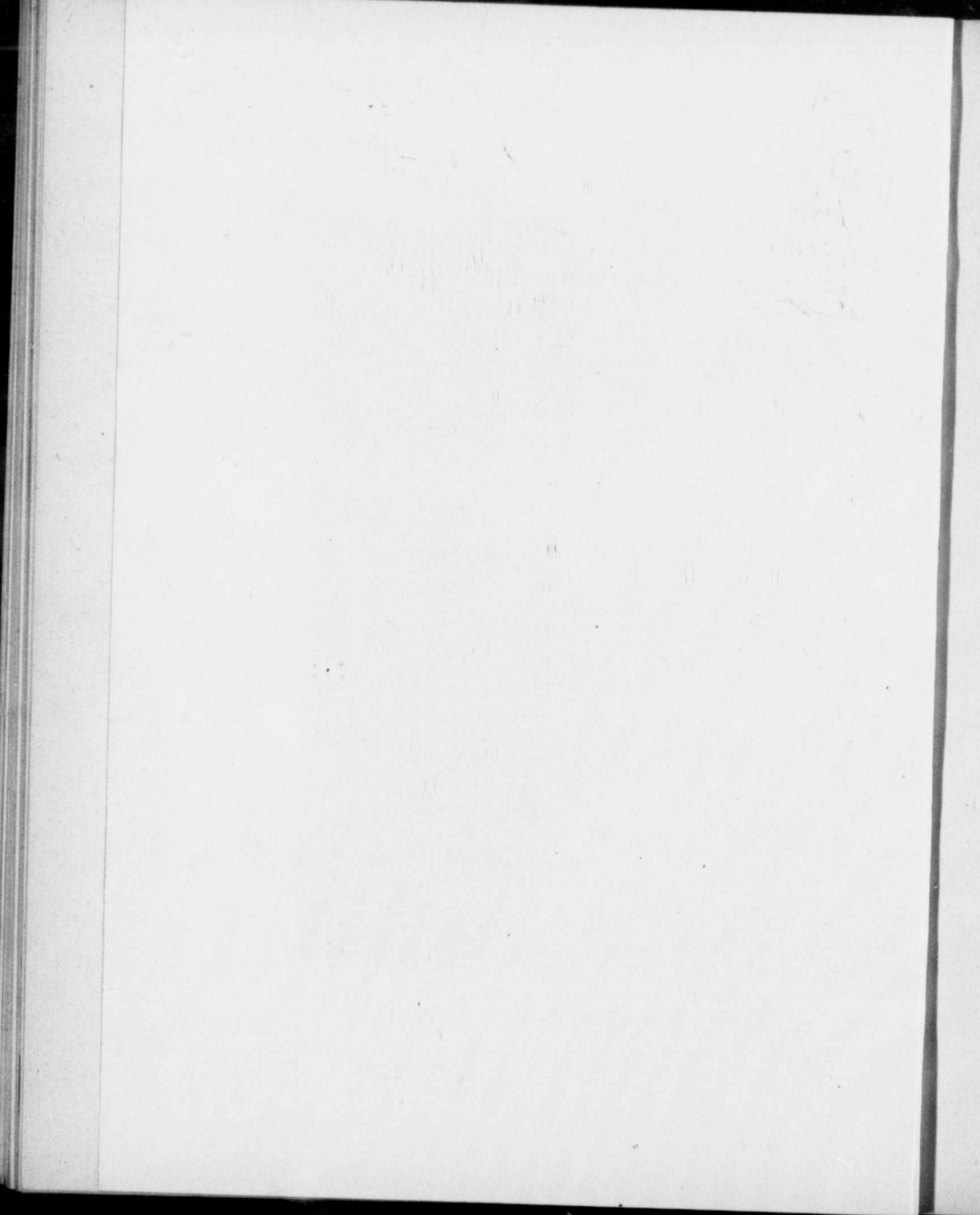


In 1823 Alexander Chewett was Bencher, John Cartwright was Treasurer, Robert B. Sullivan, Solicitor, and William A. Campbell, Prothonotary. Mr. Chewett, the youthful Bencher, delivered a learned address, which may be read in Mr. Read's "Lives of the Judges."

Many of these young men became well known in Canadian history and it is interesting to find them here as fledgings learning the use of the powers by which they were to attain places in the land.



MR. H. N. GWYNNE'S HOUSE.



## CHAPTER III.

### THE SECRETARY AND HIS FRIEND THE INVENTOR. A CLASSICAL CHAPTER.

*Heu! domus antiqua!*

*Quam dispari dominaris domino!—Horace.*

Three members of the old Irish family of Gwynne were long well known in Canadian professional circles.

John Wellington Gwynne, son of Rev. William Gwynne, D.D., of Dublin, was, from the 12th of November, 1868, to the 14th of January, 1879, a Judge of the Common Pleas; he was then transferred to the Supreme Court at Ottawa where he passed away but a few months since full of years and of honour. His brother, Dr. Gwynne, came to Toronto with him and practised here for many years successfully. He was professor of anatomy and kindred subjects in the University in the forties. His skill, happiness of expression and progressive spirit made him deservedly esteemed.

Hugh Nelson Gwynne, another brother, was a scholar of Trinity College, Dublin, and for a time a master in Upper Canada College.

In 1840 he became Secretary and Librarian of the Law Society and so continued for thirty-two years. He was also sub-treasurer and examiner of the students under the direction of the Benchers.

Mr. Gwynne was of more than medium stature, his fine head crowned with snow-white hair, which protruded from under a russet wig. He was clean shaven, observant, and ready in reply

and repartee. A bachelor, with high treble voice, wearing a gown when on duty, he was the lion in the way of applicants for admission to the Society and, during the age in which he held sway, the most notable character of the Hall. Two books of the Odes of Horace and the like quantity of Euclid's problems were on the bill, and happy was the man who had the mastery of the 47th proposition of the first book, could safely pass the "Ass's Bridge" and render the immortal bard's verses with due meaning and scansion.<sup>1</sup>

On hearing a false quantity the examiner would visibly shudder in his seat. The ordeal was passed before a black-board in the presence of a Committee of Benchers and it was wonderful how confusedly circles and triangles became involved before Q. E. D. was reached. Many recall even now the trepidation with which they regarded his fateful coming from the solemn Benchers' presence, with paper in hand from which, after some tantalizing by-play, he read the names of the successful, and invited the unfortunate to kindly call again,—next term.

His wit spared none, but fell as the Bard of Avon says of the dew. On seeing a student, who had twice appeared unsuccessfully again approach, with notice and fee in hand, he cried:—"We greet again a dear familiar face."

To a member of the Bar who was much interested in church formalities, he said:—"Pray tell me, for you should know,

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<sup>1</sup>The Law Society's order of Easter Term, 1865, found in C. L. Journal I., 120, included for admission examination, a play of Euripides, 12 books of the Iliad, Horace, Salust, Euclid or Legendre, Hind's Algebra, Trigonometry, Statics and Dynamics, Astronomy, Moral Philosophy, Logic and Rhetoric, and such works in Ancient and Modern History as the candidates may have read.

This ambitious programme was much modified within a few months and reduced in practice to the odes of Horace, Euclid, and the ordinary branches of English education.

how many angels can dance on the point of a needle?" To a candidate who was struggling with lettered figures on the black-board, he gave the caution, "Now sir, pray mind your P's and Q's."

He asked another what monument the poet referred to in the Ode "Exegi monumentum." "I suppose it was one of the Egyptian Pyramids," said the youth to the examiner's horror.

But this genius was eclipsed by one who rendered these words and the two following:—"I have eaten a monument more lasting than brass," and to him the Secretary said: "You will have to take until next term to digest the monument."

In Easter term 1864, Mr. Frederick W. Cumberland, who, with Mr. Storm as architect, had almost rebuilt the hall six years before, applied for admission as a student. The chairman politely asked Mr. Cumberland to choose his ode and he read *Exegi Monumentum*, which was considered appropriate to the occasion. Mr. Cumberland, though he passed with credit, did not proceed further in his law course. He was a man of affairs, and became President of the Northern Railway Company.

In 1850, Mr. S. having with some hesitancy read the short ode in the first book in which the Styx was referred to, a Bencher asked where was the river Styx? This posed S., but he made a shot at it saying, "In Italy, sir." "In what part of Italy?" persisted Mr. Bencher. "In the States of the Church, sir."

The innocent connection of one of the rivers of Hades with the realm of His Holiness, along with the perplexed look of poor S., highly amused the learned party. The Secretary relieved his feelings by calling out to his aide, "What do you think of that, Molloy?"

A second year student being required to state in what circumstances money would be reclaimed when paid under mis-

take of the law, found himself at sea and replied, "The only case of recovering money paid under error or ignorance of the law, with which I am acquainted, will be the return of my fees by the Law Society if I do not pass this examination."

Coming to the door of the students' examination room, dangling his keys and with Mr. Molloy by his side, he eyed the applicants critically and said,—“A pretty good pluck to-day, Molloy, a pretty big pluck, there are lots of them!”

One who anxiously asked the Secretary if his application, proof of service under articles and other papers were correct, received for answer, “I have taken several objections, any one of which should prove fatal, but,” after a pause and twinkle of the dark eyes, “the Benchers won't back me up.”

He was amused when a polite student thanked him for kind treatment during his “little go” or entrance examination, calling to Mr. R. A. Harrison, Q.C., then passing, he said, “Here's a good joke, M. actually thanks me for not plucking him.”

He declared that another youth had a truly fanciful genius, when he found in an ode of the third book a reference to Daniel in the den of his shaggy friends (“*Includam Danaen.*”)

The candidate had also to compose a short thesis from a classical motto. A venerable member of the Toronto bar remembers that he was called on to read “*Exegi monumentum,*” and wrote from the legend “*Nil mortalibus arduum est.*”

While the original words are sometimes forgotten the sentiment is often present. A “learned brother” says he read the short ode expressing detestation of Persian pomp, and for motto had a line from that in which divine honours are promised to Julius Caesar, provided he gives up his rumoured intention of removing the Roman capital to Troy, and refrain from rebuilding

that unlucky city; which odes, it is needless to say, are in the first and third books.<sup>1</sup>

A gentleman who sits within the bar, smiled as he admitted that it fell to him to declare that a certain Roman matron was more fair than her fair daughter. (Ode 16, book 1.)

Another King's Counsel remembers that the motto for his thesis was the famous sentence, "Dulcé et decorum est pro patria mori," and he was called on to construe Ode 9, book 1.

This is a beautiful description of a winter scene, such as was common sixty years ago, and may still be met, on the banks of Lake Ontario. Calling to his friend Thaliarchus, Horace, asks him to look out and see how Soracté, the Sabine hill, stands white with snow, how the woods scarce contain its weight and the rivers lie still in the sharp frost. But he cries joyously, "pile billets on the hearth, bring out the four year old Sabine wine and leave the rest to the gods."

Dr. Scadding, our Canadian scholar, who, equally with Mr. Gwynne, was a lover of Horace and Virgil, found this, and other odes of these poets, to well apply in their description, to the scenes of early days on our Don and Humber.

Snow is now an unusual visitant in Italy, but it was not so in the time of Horace, when the climate was more like that of South-Western Ontario.

In "Horace Canadianizing" the doctor writes, "The language of the poet, when he narrates the well known

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<sup>1</sup> Lucan's account of Caesar's visit to the site of Troy and the grave of Hector confirms this rumour. Here he found the whole of Pergamus covered with brambles, even the ruins were gone, and Caesar standing by the grave of Hector invoked the ancient deities and said, "I will restore the people, the Ausonians will gratefully return to the Phrygians their walls, and a Roman Pergamus shall arise." *Pharsalia Cap. IX.*



"incident of his childhood, instantly received colour and interpretation from one's boyish recollections. Even his slight touches in regard to scenery and natural phenomena, near by or afar off, were realized in one's own mind in a similar manner.

"Here, in the valley of the Don were gigantic elms, basswood (the linden), buttonwood (the plane), and butternut trees, and in swampy places hemlock, spruce and cedar trees, rugged and grey with age." "In winter the solidly frozen stream." "Wild flowers were plentiful in their season."

The hungry cry of wolves was heard through the forests at night, where are now the streets and gardens of Toronto.

Dr. Scadding's father perished through the accidental falling of a tree on his Don farm. All such incidents the doctor finds related in these fine Roman odes, and applies them to our land.

Many of the young men came from Upper Canada College to Osgoode Hall and had seen an inscription from Horace on its seal,

*"Imperi porrecta majestas  
Custodé rerum Caesaré."*

And those who received books for prizes read another Horatian passage inscribed in them. Mr. Gwynne, it will be remembered, had in his early years taught in the college, and doubtless had something to do in the instilling of its classical tastes. Dr. McCaul was editor of a scholarly edition of Horace's works.

Dr. Scadding shews how Horace supplied mottoes for various public seals used in the Dominion.

When Mr. Isaac Buchanan, on the fall of the MacDonald-Cartier ministry in 1858, delivered in Parliament in Toronto a

eulogy on the last named statesman, he aptly applied to Sir George and his career the words of the ode beginning "Justum ac tenacem propositi virum."

When indicating dissent, a favourite expression of the Secretary was, "That, sir, is not according to Moses."

Nothing was so sure to settle the fate of a student adversely as any attempt to flatter or influence the high spirited examiner.

On one occasion Mr. Gwynne visited D—ville and, walking up with an inhabitant from the boat, told the following incident:—

"This is D—ville. Mr. Brown lives here. He came up to see me once at Osgoode Hall, on the subject of a little Horace and Euclid, you know. Nice man Mr. Brown, very nice man. Mr. Brown gave an oyster supper the night before. Nice man, Mr. Brown. Oyster supper and champagne. Asked me to the supper. Nice man, Mr. Brown. Went to the supper, oysters were good and champagne was good. I ate the oysters and drank his champagne. Very nice man, Mr. Brown—(Pause)—plucked him next morning."

Court reporters had then to be approved by the Judges, and some Judges had relations not averse to office, so the Secretary asked, "How nearly related to one of their Lordships must a candidate be to qualify for a reportership?"

To a young barrister recently married he handed "McPherson on Infancy," saying, "This, sir, is the book you should study."

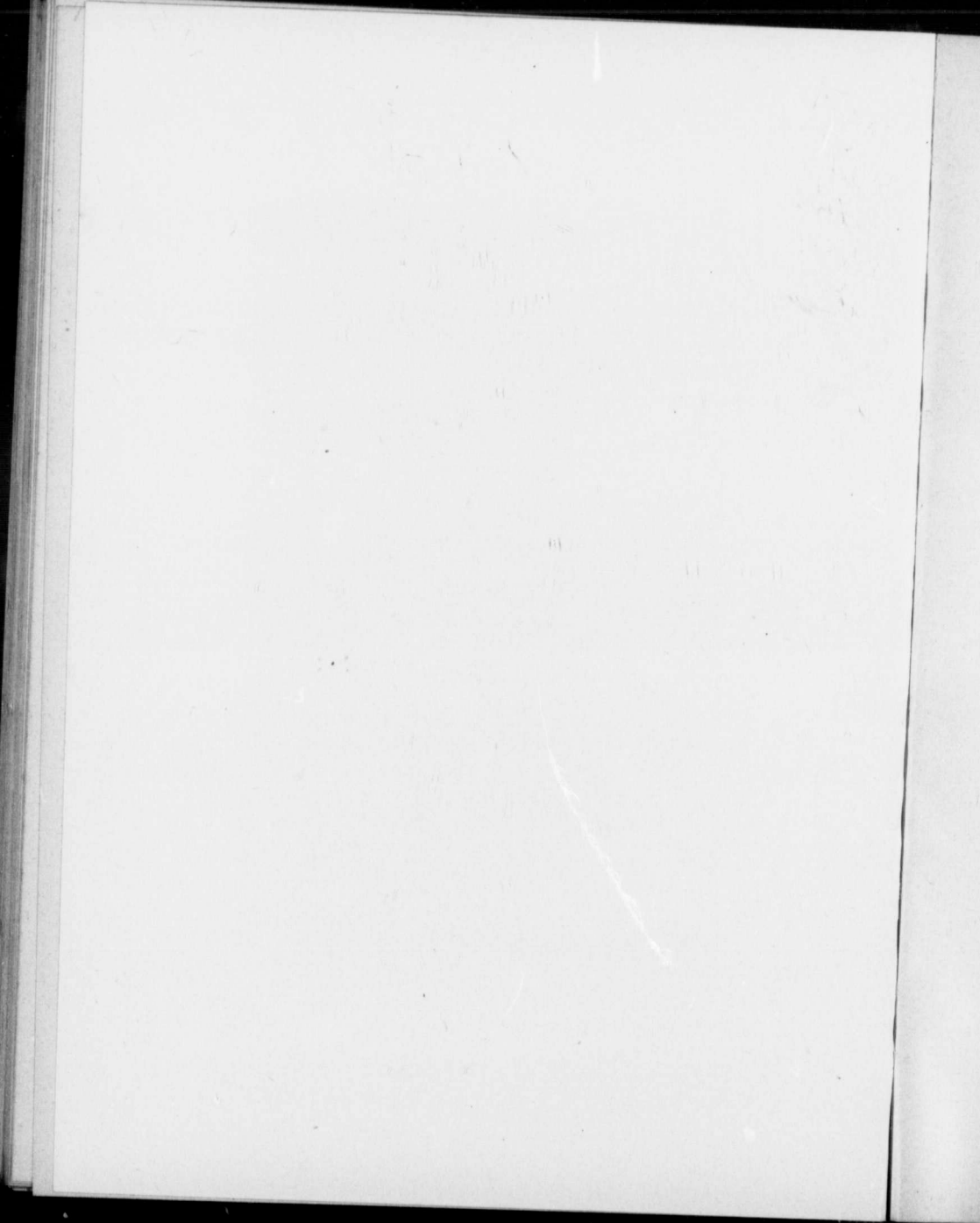
The Secretary had bachelor quarters in the east wing of the hall where he sometimes entertained his friends.

But, like his favourite poet, he, too, had his Sabine farm, and in summer vacation it was his chief pleasure to drive westward some six miles from the city along the lake shore, and enjoy the

comfortable farm house and shady groves on lot number four, Broken Front concession of Etobicoke. Above his coat as he drove, was the ample well-known pilot cape. There were an orchard, great barns and cattle. Thomas Jackson, an honest yeoman, worked the farm, and he and his good wife made the Secretary comfortable. After his decease, Jackson bought, and still lives on the farm, and seems to prosper on its good clay soil. They found the sage happy and sometimes jovial in this quiet retreat, and well thought of by the neighbours, who still speak of him with warm regard. The place has now become suburban and adjoins the grounds of the Mimico Asylum on the east, with tram-cars running on the road in front. A water-course crosses the south end of the lot transversely, falling into the lake at a bay forty yards wide between clay banks on a shale foundation. Here a few stones mark the site of the former little cottage of the Secretary's old friend, George Henry Simon, the inventor; it had but two rooms and an attic. Mr. Simon, whose name was pronounced Seemon, stood six feet in height, was at this time erect, athletic, with full beard and long curly hair. He spoke with a marked German accent. His object in life was to develop into practical utility cherished ideas as to motive power. With his own hands he put up the humble abode in this pretty nook, for which he agreed to pay a shilling rent each year, but the shilling was returned as soon as paid both by Mr. Gwynne and Mr. Jackson. He had a supply of tools, wire and lumber, and here the hermit artisan worked and pondered from month to month. He was an artful turner and worker in metal, and his models were well made. He sold articles from his lathe to Angus Dallas, the Toronto vendor of woodenware. He built a boat without nails or other iron. It was fully fifty feet long, and was made of separate blocks pegged together. It was said to be of sixty-five tons burthen,



SIMON'S COVE.



and lay beside the stream ready to be launched and propelled by the motor, when the latter developed activity through the two powers of nature, which Simon claimed would work together for him, but he shrewdly declined to be more explicit. He and Mr. Gwynne had both active, inquiring minds, and seemed to be attracted by perhaps the bond of their different geniuses. They were without family cares and on very friendly terms. They discussed dynamics and classics, history and philosophy; and of all philosophers Simon declared that Confucius was the wisest and the best, while the Secretary smiled, and, as the limpid stream passed by, murmured a verse of his favourite poet in honour of the Apulian fountain:—

"O Fons Bandusiae, splendor vitro."

Thus from time to time, they conversed together, now on grave themes, anon in merry strains to the music of the waves and the robin's evening song, as they mused by the little cove sheltered by the fine grove of pines through which streamed rays of the setting sun.

More frequently they sat in the orchard, each with his philosophical friend, a "churchwarden," or long clay pipe aglow, on one of the stout wooden benches still to be seen near the farm house. They were led by simple tastes to the sunshine, and among the trees and flowers, where they lingered until the dew drops reflected the evening star. Lives so passed are likely to wear well.

Other congenial friends often joined such pleasant seances, among them Mr. Alexander Grant, the Registrar, and Mr. Berthon, the artist. In those good times the kettle was always on the hob and the punch bowl soon forthcoming.

Through fear of giving away the secret of his invention, Mr. Simon generally refused entrance to his cabin. Exception was sometimes made in favour of young friends. One of these,

who has long since ceased to be a boy, looks back with pleasure to happy visits when the inventor admitted him to his rude sanctuary and treated him to carraway-seed biscuits, made by his hands. Then, with the cabin for a dressing-room, they entered the water of the beautiful lake, where the big man taught the lad to swim. That happy pupil remembers well how like a gamboling lion his good friend looked, his head and shoulders above the waves and long curly hair floating free.

Another young man, who had many a pleasant hour at the cove, is now Treasurer of Toronto. He found the inventor a very interesting and friendly person, so much regarded by the neighbouring farmers that he was sometimes chosen arbiter in their disputes. Mr. Simon was from Heidelberg, born in 1807, and lived until 1894, was active in mind and body, of simple and temperate habits, able to converse in French, German and English, and generally well informed. He called his boat "The Myth." Thompson, Smith & Co., the Toronto lumber merchants, offered \$2,000 for it, but his price was double that; he preferred to retain it for trial of the invention which would, he declared, work a revolution in dynamics; and so the years slipped by.

Mr. Gwynne passed away at his Osgoode Hall Chambers in December, 1872, in the room now used as the Secretary's office.

Many hundreds of students had come under his eye; all capable of so doing were impressed with his quick wit and scholarly attainments. The dullard and the unprepared felt the spur, but not a lasting sting. None doubted his impartiality, not a few had reason to acknowledge his kindness.

Mr. Simon, like an alchemist of old, continued assiduously to plan, study and work at his lonely task. His cove was very still but for the clip of his hammer, the occasional low of

a cow or cry of the sea-gull and the Aeolian play of the breeze through the pines. He had three models ready for the patent offices, but decay had entered his boat, and it was falling to pieces by the bed of the stream.

One winter morning neighbours were attracted by a conflagration, and found poor Simon sitting on a chair, half clad, his long grey hair tossed by the chill breeze, as he sadly witnessed the ruin of the cabin, with his lathe, tools, models, books and plans. He had striven to save, burned his hands and then suffered from cold and exhaustion. Good friends carried him gently to his old neighbour's house and anxiously strove to relieve him, but his age was four score and seven, and he was unable to rally. He left enough to pay for his funeral, to which the neighbours came in large concourse, and was laid to rest in the Church of England cemetery at Mimico.

Now some one moralizes: A life thrown away! The labours and hopes of years a little heap of ashes! Yet, who can say whether, if not anchored in this quiet haven, with its free air, cooling waters, and friendly, but not obtrusive neighbours, the bark of this clever but eccentric man, here so patient, and soothed in the enjoyment of nature's better elements, would not have been tossed about and wrecked on one of life's many reefs?

Those who then saw him say that next day's sun fell on a strong, placid face, from which the cares and puzzles of years seemed to have passed away. As they told the tale, the words of Gloster to King Lear were suggested:—

"A ruined piece of nature, this great world  
Shall so wear out to nought!"

While of the scientific experiments no more is known, it seems that forces such as Mr. Simon sought to develop now move the tram-cars, which so often pass in front of the fair place long enjoyed by these rare souls, the Secretary and his friend the Inventor.



## CHAPTER IV.

### JOHN MOLLOY, THE STEWARD.

He was a shrewd philosopher,—  
He knew what's what, and that's as high  
As metaphysic wit can fly.—*Hudibras.*

Mr. Molloy first saw the light in King's County, Ireland, and died in Toronto August 30th, 1878, in his eighty-sixth year, leaving sons and daughters. He was in the employ of the Law Society from 1840 until within two years of his decease.

He was a great traveller, came to St. John's, Newfoundland, in 1834, but soon removed to Quebec, where he became interested in his fellow-religionists of Irish origin who were struggling to build a church, but had little sympathy from the French element. With letters of introduction to good people of Great Britain and France, and in pursuance of his cherished object, he went abroad seeking financial aid. He kept a diary, now in possession of his son-in-law, Mr. Matthew O'Connor, and from it we learn that he sailed from Quebec for England, September 11th, 1835, left London for France, June 25th, 1836, and Boulogne for London, March 30th, 1837, returning to Quebec, May 15th, 1837. His efforts had much to do with the building, in that old Canadian city, of St. Patrick's Church, which is now under charge of the Redemptorist Fathers.

Mr. Molloy was steward of the "Royal William,"<sup>1</sup> a steamer built at the Island of Orleans for the Halifax trade.

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<sup>1</sup>The *Royal William*, Captain McDougall, sailed from Quebec, August 5th, 1833, and crossed the Atlantic entirely by steam power. In honour of this a brass tablet was, at the suggestion of the Canadian Institute, placed in the corridor leading to the Library of Parliament at Ottawa in 1894.

It was found to be too large for that purpose, taken to England, and was the first vessel to cross the Atlantic entirely by steam power. He joined the Second Battalion of Provincial Militia at Quebec on 1st November, 1837, and became Sergeant in Captain Power's Company. He was a firm Royalist and active in opposing the schemes of Mr. Papineau.

Mr. Davin, in his book, "The Irishman in Canada," shews that Mr. Molloy rendered a "distinguished and noble service" at this time. Sir James Stuart sent for him and asked him to "address his countrymen and urge them to strengthen the volunteers." But Molloy was modest, and answered, "Sir James, this is no time for joking; you would not ask a man of my humble rank of life to take a prominent part at such an hour." Sir James replied, "Molloy, you are the man we want." Accordingly he attended a large meeting of his countrymen and addressed them in an inimitable way. His speech was in part as follows:—

"When I arrived in Canada more than thirteen years ago, a total stranger, before I was three days in Quebec, my ears became familiar with expressions which are insults to you. But notwithstanding such expressions of the French-Canadians, from English and Scotch I met with the greatest kindness. By George, one day I dined with an Englishman, and we had roast beef of Old England and French pudding, and the next day I dined with a Scotchman, and we had equally good fare.

"If my countrymen would travel other countries as I did and see constitutional principles, see the despotism of France and Spain; the contempt in which the poor man is held by the German aristocrat, and the tyranny of Russia, they would come back to the British Isles, from whose escutcheon I hope the stains of tyranny and the blots of penal enactment will soon be wiped away, and they would say, 'Oh, British Isles! we love

you with all your faults.' I now take upon myself to assert boldly, that Pompey never entered Jerusalem with greater hate and determination to uproot the Jews, than the present clique are to exterminate us from this country."

Notwithstanding historical allusions which the scholar would not make and which are in some respects at fault, how effective is the rhetoric!

"But," he went on, "they never will do this. They would drive Englishmen, Scotchmen and Irishmen out if they could. Well, let me remind you that united we stand and divided we fall, or as somebody before me has expressed it in a nobler manner:—

"United and happy at liberty's shrine,  
May the rose and the thistle long flourish and twine,  
Round the sprig of shillalah  
And shamrock so green."

Copies of the speech were struck off and circulated in thousands over the Province of Lower Canada, and it had a great effect.

Molloy left Quebec for Toronto May 28th, arriving June 17th, 1838, and in February, 1839, was engaged as "issuer" in the commissariat office at Toronto. His employment at Osgoode Hall as Steward began about the same time as Mr. Gwynne became Secretary, but continued for six years longer. His apartments were in the comfortable basement of the east wing which the students styled "Molloy's Hades." During his stay in Quebec he had mastered the French language, and was able, when at Boulogne, to cicerone a party of his fellow-countrymen who needed such aid. He was not at first sure how the Quebec dialect would pass, but found that the natives fully understood him. The Archbishop of Paris also complimented him on his facile use of this tongue. He records in his diary a low estimate

of the character of the ordinary Frenchman, but refers with pleasure to instances of superior high-minded persons of that nation whom he met. His intelligence and knowledge of the world well fitted Mr. Molloy for the position he so long occupied at the Hall. Students and others found him affable and ready to give useful hints and information. He wore a gown when on duty, was the Secretary's right hand, was as popular with the lordly Benchers, and claimed the credit of aiding some diffident candidates in passing the ordeal. He would say to one of the rulers in confidence, "Now, don't be too hard on Mr. A., he won't do much harm anyway." He met his match in his distinguished and witty countryman, Judge Hagarty, afterwards Sir John, C.J., when he applied for his aid in securing an increase in salary:—

"More pay, is it, you ask, Molloy? I'll tell you what we'll do; when you die we'll give you a good funeral."

"Thank you kindly, but that will not meet the case; I have already followed thirteen of your Lordships, to the place from which they never come back," was the ready reply.

In the early years of his service the number of students applying for admission was comparatively small. In the 'fifties many began to flock in, law seeming to have great attraction for the young Canadian.

Mr. Molloy related the amusing effect of this on his chief, when more than a score appeared on the list. Mr. Gwynne said, "This will never do, a stop must be put to it." But when twice that number threatened to invade the profession in one term, he cried, "The country is going mad, Molloy, it's time we quit."

A student, whose father was on the Commission of the Peace, in making out his form of application, filled the printed blank with "son of A. B., Esquire," and, on presenting this to

Mr. Gwynne, was asked what Esquire meant, and replied, "A magistrate, sir."

Mr. Gwynne was evidently not satisfied with this explanation, and called out, "Molloy! What is an Esquire?"

"I think an Esquire is a gentleman with at least five hundred a year and nothing to do but to spend it," said the steward.

"I believe you're right, Molloy," replied the Secretary.

The excellent luncheon facilities now at the Hall are of modern date, but Mr. Molloy had on hand in his Hades crackers, cheese and bottled beer, when called for. The Benchers had, however, their well earned repast, and there were occasions when the services of the coloured gentleman from Washington were called in, and then jolly big Mistah Beverly Randolph Snow was often amusingly greeted and the occasion of harmless puns, such as "Here comes the black Republican with the white name." And, when a Cockney drayman delivered a keg of "hale" for Mr. Snow, Mr. Molloy said, "Where did it fall? and where do you hale from, my good man?"

Before resigning his position, Mr. Molloy gave to the Law Society for safe keeping a curious and interesting collection of papers, including letters he had received from distinguished persons. First among these is the discharge of Sergeant John Molloy, of 21st April, 1838, signed by Colonel Baird, under which is written a certificate of Captain W. Power, as to the zeal, loyalty and high character of his sergeant. Sir Dominick Daly gives a very complimentary letter, dated Quebec, 30th May, 1836. Many notes followed, all written in the third person in the usual manner acknowledging communications. On none of these is any postal stamp. A few were in envelopes, but most of the letters were folded, addressed on back and sealed in wax

with writer's crest. In one we rejoiced to find an invitation to dinner: "Lord F. L. Gerton requests the honour of Mr. Molloy's company at dinner on Wednesday next. An answer will oblige. Cleveland Square, 16 March, 1836." Another note is in the large script of the Iron Duke:

"The Duke of Wellington presents his compliments to Mr. Molloy and has received his note. The Duke expects that Mr. Molloy will state on what subject it is that he wishes to converse with him. He begs to remind Mr. Molloy that he is not in political office. Lincoln, March 20, 1836."

Mr. Molloy related that he had an interesting meeting with the Duke, who declared that he was kept busy with the troubles of officers and their families, who, when they got into scrapes, or money fell short, all came to him as the father of the army. Mr. Molloy was less pleased with the reception given him by Daniel O'Connell, who shewed little sympathy with his Quebec countrymen. O'Connell had subscribed a small sum, which did not satisfy our practical missionary who urged for more generosity, as this from one in his high position would have good effect on others. O'Connell did not take the hint kindly; he put on his hat, turned to his newspaper and said, "Good morning, Mr. Molloy."

There are similar autograph notes from Lord Landsdowne, Lord Ripon, the Marquis of Downshire, the Duke of Northumberland, Lord Acheson, Lord Stanley, Lord Melbourne, Lord Grey, Lord Grenville. Lord John Russell replies through Charles Gore, his secretary. Sir Herbert Taylor writes from Windsor Castle, March 6, 1836, that he had had the honour to submit Mr. Molloy's note to the King and to refer it by His Majesty's commands for consideration of the Colonial Secretary of State.

There are also formal notes from Sir Robert Peel, from Mr. Maule, who became Lord Panmure, and from Lord Roden. We find also the autographs of two gallant Waterloo Brigadiers, Sir Hussey Vivian and Sir James Kempt, appointing dates to meet Mr. Molloy. Mr. Poulett Thomson, who was soon to become our Governor and to receive the title of Baron of Sydenham, in Kent, and of Toronto, in Canada, answered by his secretary, Mr. John Conroy, of Kensington Place, was the only correspondent without a title.

With the above is Mr. Molloy's French passport of 26th September, 1836. "Au Nom du Roi."

## CHAPTER V.

### INCIDENTS CONNECTED WITH THE HALL AND ITS RECORDS.

*Aevo rarissima nostro simplicitas.—Ovid.*

The Osgoode mills of the gods do not always grind. July and August, and from the day before Christmas until 6th of January, are set apart as vacations in which pleadings are not to be filed and only necessary work is to be done.

This palace of Minerva was several times taken possession of by the votaries of another deity.

After the troublous times of '37, officers of the 93rd Highlanders were quartered in the east wing, in 1838, and again in 1843. Some of their men occupied rooms in the central part of the building. They had a band stand in front of the Hall on the lawn, then a somewhat marshy piece of ground, and here the citizens flocked in summer evenings attracted by the music and the red coats. There is still an archway at No. 99 King Street west, which was in modern times known as the entrance to a theatre called Royal Lyceum, but when the 93rd Regiment was here, this was the opening to a paved court extending to Wellington Street, and, about this court the rest of the regiment were housed, and on it they were paraded and drilled to the sound of fife and drum. The 43rd Regiment of Foot had quarters, some at the Hall and some in Niagara, in 1838, and were succeeded by a Company of the 32nd Foot, whose band had "Big Charlie" as beater of the great drum. Big Charlie was a burly negro, a professional fencing master and boxer, and taught the manly art to young Canadians, among whom was Mr.



J. B. Robinson, then a sturdy youth, who lived to represent Toronto as Mayor, and M. P., and the Province as Lieutenant-Governor. The lessons were given, as he related, at the old Parliament buildings or at the residence of the Chief Justice. Big Charlie had a neat little English woman for wife. He left with his regiment, and died in Ireland. This regiment took ship at Quebec for England, June 12th, 1841.

Mr. Robinson, not long since, told the writer of a jolly dinner in the Hall, where he was the officers' guest. When the decanters and glasses were on the table one of the gay party wagered that our athletic young townsman could not clear it at a bound. Robinson rose, went to the side wall, and, with a step and a jump vaulted over the table and all upon it.

Mr. Robinson was not a mere carpet knight or gay companion. He was lieutenant in a coloured company of fifty men, attached to the Queen's Light Infantry Regiment. This company was raised in Toronto and stationed successively at Niagara, Chatham and Windsor. Colonel Hill was in command. Of the captains one was Walter McKenzie, an old soldier of tall and fine presence, who became Clerk of the County Court of York, another was William B. Campbell, Clerk of Assize of the same county. The ensign of the company was Theodore Cook, who took to the sea and became Commodore of the Cunard Line of steamers. All the officers were white men and well known citizens of Toronto. When stationed at Chatham and Windsor, Lieutenant Robinson often met Colonel John Prince, of whose soldierly qualities he spoke in high terms. He warmly defended Prince from historical aspersions charging cruelty, said that he met the invaders, who were intent on murder, in a way they did not expect, routed and killed twenty-one, and executed five others taken in the act. Colonel Prince was, he said, a fine specimen

of an Englishman, of rare ability as an orator, fearless and skilful as a soldier. He is more fully referred to hereafter.

*Dinner to the Lower Canada Bar.*—An event of some interest to the profession took place in consequence of the seat of Government being changed from Montreal to Toronto.

The Montreal Parliament Buildings having been destroyed by the mob in 1849, a Parliamentary Committee reported on the facts and an address to Lord Elgin, the Governor, was voted May 19th of that year, recommending that "after the present session, Your Excellency will be pleased to convene the Parliament alternately at Toronto and Quebec, during periods not exceeding four years at each place." In the Parliamentary journal of May 14, 1850, is given the Governor-General's speech on opening Parliament in Toronto, in which it was stated that "he had considered the important subject . . . and deemed it, after full deliberation, advisable to give effect to the prayer "of that Address by summoning you to meet at this place."

During the first Session, which lasted until the tenth of August, a large number of members of the Bar of Lower Canada were present as Legislators or as officials of the Government.

It was thought that the tendering of a banquet by Toronto lawyers to those of the sister Province would be a pleasing tribute, and so the event proved.

A dinner was arranged to be given in the Hall Library in July, 1850. The invitation was heartily responded to by the learned gentlemen from the Lower Province. Mr. John Godfrey Spragge, Treasurer of the Society, presided. He was supported by Chief Justice Robinson, who spoke in the dignified and courteous manner for which he was noted. Mr. Hagarty, then a leading member of the Toronto Bar, was also there.

The Hon. Robert Baldwin, then Attorney-General for Upper Canada, was especially gratified by having beside him his

patriotic co-labourer, Louis Hypolite La Fontaine. Mr. Aemilius Irving was also gratified at thus meeting and honouring La Fontaine, as he had inherited a feeling akin to veneration for him from his worthy father, the late Hon. Jacob Aemilius Irving, who had strongly supported the Baldwin-La Fontaine Ministry in Parliament.

Messrs. Baldwin and La Fontaine had loyally and harmoniously worked together in Council and Legislature for ten years and soon each was to retire to private life. Mr. La Fontaine, after four years had passed, became Sir Louis and Chief Justice of his Province. His biographer, Mr. Dent, says of these two excellent men, "Their mutual relations were marked by an almost chivalrous courtesy and respect. After they ceased to take part in the struggles with which their names are identified, they continued to think and speak of each other with an enthusiasm which was not generally supposed to belong to the nature of either."

Mr. La Fontaine's address was felicitous. The polite vivacity of the French advocates aided in giving an enthusiasm to the occasion still remembered with pleasure.

Louis Joseph Papineau, the famous French Canadian leader in the movement for reform, was present and spoke eloquently. Mr. Irving, now the Treasurer, who had but a few months before been called to the Bar, recalls the event with much interest and remembers that he here first met Mr. George Etienne Cartier, afterwards a Baronet and colleague of Sir John Macdonald.

It is recorded with some pride that a harmonious and loyal spirit was manifested by all, and this pleasant meeting did its part in removing political and international asperities.

The ball given in the Hall in honour of the present King, then Prince of Wales, in 1860, and a fine "At Home" at the

opening of Convocation Hall some twenty years ago, were gay functions. The annual dance or "At Home" of the Osgoode Legal and Literary Society is always a pleasant social affair. A memorable event was the banquet on June 19, 1862, in the library, in honour of Sir John Robinson, on his retirement from the Chief Justiceship of the Queen's Bench. Previous to this, at a meeting of the members of the Bar of Upper Canada, resolutions were passed congratulating Sir John on his appointment to the Presidency of the Court of Appeal, and Hon. Archibald McLean on his elevation to the Chief Justiceship, the Hon. P. M. VanKoughnet on becoming Chancellor, and Hon. J. C. Morrison on his appointment as a Judge of the Common Pleas.

An address was also presented to Hon. Wm. Hume Blake on the occasion of his retiring from the office of Chancellor. The addresses were read by Henry Eccles, Q.C., Treasurer, in presence of all the Judges and the Bar.

More than two hundred guests were present at the above banquet, representing the Legislature, the Church, the Military, the Universities and the Profession. The reporter relates that the galleries were filled with the fair sex, the viands were of the choicest and the wines were good. The legal men were in their robes. The band of the 30th Regiment played. Major-General Napier and Colonel Dunn, V.C., responded for the Army, Dr. McCaul and Dr. Ryerson for the Education Department. Mr. Eccles was chairman. Mr. Kirkpatrick and Mr. D. Bethune were vice-chairmen.

Bishop Strachan, a hale veteran of more than four score, was present, and was thanked by Sir John for the training bestowed on his early years. In his address the Chief reviewed the events relating to the Courts, his fellow Judges and the Bar, in the thirty-three years which had passed since his appointment.

There was much feeling exhibited alike by the retiring Judge and many of the members of the Bar present. The Chief was no ordinary man; his career had been long and brilliant. His life was one of purity and high endeavour. His activities in military and scientific matters are referred to elsewhere in this volume. Sir John concluded his address by expressing the regret he felt at leaving a Court in which the whole of his active life had been passed, and continued, "But this regret has been softened by the pleasure of seeing my oldest surviving colleague honoured by being placed at the head of the Court, as a just tribute to the ability and integrity which have marked his long course of judicial services. The duties, which it will give me pleasure to continue to discharge in the Court of Error and Appeal, will associate me, as in time past, with my brethren of the Bench and Bar, as long as I may be blest with health sufficient for the performance. And may God grant that all may bear in mind the account which we must one day render for the time and talents committed to our charge."

And then Sir John sat down amid the plaudits of his fellow-Judges, Benchers, Queen's Counsel, other Barristers and guests. But that was a gay and memorable night under the vaulted roof of the beautiful library, decked with flowers and echoing with music and merry jest. The Chief did not wait to see it through, but his fine features looked down from the frame over the great fireplace.

Steward Molloy was behind the scenes, and with him, to fill the flowing bowl, Beverley Snow and others of his smiling tribe and caste in apron clad.

They seemed to take their cue from the horns of plenty depicted on the large stained window of the room. It is said that the Secretary came up from his den, and his quondam pupils gaily drank his very good health.

"Lawyers, I suppose, were children once," said Elia, as he looked on the grave Benchers of the Inner Temple, and so he might have said of that Osgoode party of two score years ago.<sup>1</sup>

"Perplex no more with Human or Divine,  
To-morrow's tangle to the winds resign."

If some counsel were not in time to rise in their places as their Lordships took the bench on the postprandial day, or if their briefs were only half read, good Chancellor VanKoughnet and Judge Morrison were not fault-finders. The wheel of law, which is fate, resumes its motion with ever changing interest. The fountain plays and streams carrying joy or sadness pass through the land.

Seven months go by, and again the Profession, with the Judges and the Court staff, meet to honour the Chief, in the area of the Hall, now draped in gloom, whence he is borne through a great concourse of sorrowing citizens to his last resting place.

Of late years fuller powers have been vested in the Benchers as to the admission of gentlemen from the British and

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<sup>1</sup> On the occasion of the ball in honour of the Prince, the exterior of the Hall was brilliantly marked by rows of many gas jets. The interior was similarly illuminated and otherwise decorated.

Sir Adam Wilson was then Mayor of Toronto and exercised his functions to general satisfaction at receptions of a public character and another ball given by the citizens. One September morning the Prince, the Duke of Newcastle and Earl of St. Germain's visited the Hall and were received by the Benchers, Mr. J. Hillyard Cameron, the Treasurer, presenting the address, when the Prince became an honorary member of the Society. Mr. John Crawford, a Bencher who was afterwards Lieut.-Governor of the Province, was mainly responsible for the arrangements of the ball in the evening. It is reported that H. R. H. danced with Mrs. Crawford, Miss Boulton, Miss Widder, Miss Robinson, Miss McCaul, Miss Draper, Miss Powell of Niagara and Miss McNab, daughter of Sir Allan McNab, who became Countess of Albemarle (*Prince of Wales Tour*) 1860, p. 167).

Colonial Bars, and for the entering of students who have obtained university degrees. Humorous instances are related in regard to such cases under the old regime.

When Mr. Cartier, afterwards Sir George Cartier, was Attorney-General of Lower Canada, he faced the Bench by invitation in Hilary term, 1866. Mr. Hillyard Cameron in the chair said, "Mr. Cartier, you are experienced in the laws of both Provinces, pray, say which system you prefer."

"I consider that a code or system formed of the best parts of each would be the better," was the eminently satisfactory reply of that bright Canadian, who will be remembered as a statesman of the reconstruction days and the writer of the popular chanson, "O Canada, Mon Pays."

The Chairman in Convocation addressed a well read young man, whose family he knew, with the question, "Pray tell us, Mr. C., are your worthy parents well?" "Very well indeed, I thank you," was the reply. "Gentlemen, you see that Mr. C. is well qualified," so he made his bow and signed the roll.

The first Attorney-General of the Province, Mr. John White, (his name is number one on the muster roll of Barristers carefully preserved in the safe of the Society) was appointed to the office 29th July, 1792, and his name appears regularly in the Court records until the month of January, 1800, when he fell on the field of honour in a duel with Mr. John Small, Clerk of the Executive Council, fought with pistols on the third day of that year, and which Dr. Scadding states "took place in a pleasant grove at the back of the Parliament building, between what is now King Street and the water's edge." This was at the foot of the present Parliament Street. He was buried near a small octagonal building, his private office or study, surrounded with the forest on the rear of his park lot, perhaps a mile to the north of

the Parliament buildings. Mr. John Ross, an ancient undertaker, told the writer in the sixties that he had known the spot but that it was no longer marked. In 1871 the remains were found by workmen and removed to St. James' cemetery. Mr. John Small was indicted and tried for causing the death of Mr. White before Judge Alcock, and found "not guilty," 20th January, 1800. The foreman was Mr. William Jarvis. The *Constellation*, a Niagara newspaper of January 11, 1800, gave an account of this unhappy event, stating, "We are unwilling to attribute to either the Attorney-General or Mr. Small any improprieties, or to say on whom the blame lies. The loss is great; as a professional man, the Attorney-General was eminent, as a friend, sincere, and in whatever relation he stood, highly esteemed, an honest and upright man, a friend to the poor, and dies universally lamented."

Another unfortunate affair, under the cruel code, was the duel in which William Weeks fell on October 10, 1806, by the pistol of William Dickson, of Niagara, on the American side of the Falls. Mr. Weeks was a barrister and member of Parliament for the United Counties of York, Durham and Simcoe. Mr. Dickson was also a member of the profession and, in 1815, was appointed to the Legislative Council.

On July 12, 1817, an encounter, also with pistols, took place in Toronto in which George, son of Surveyor-General Ridout, fell before Samuel Jarvis. The seconds were Henry John Boulton and James E. Small, eminent members of the Bar. Mr. Jarvis was tried and acquitted. Manuscripts in possession of the Toronto Public Library shew that this affair was conducted according to the recognized code to which gentlemen were then subject, when trifles or misunderstanding too often brought about a hostile meeting.



While in the duels mentioned, members of the profession were engaged, many Colonial gentlemen in other walks of life were similarly involved. The brave Colonel Arthur Rankin, who sat in the old Canadian Parliament and in the first Dominion House of Commons, in all fourteen years, as member for Essex, was in six such affairs, but finished his career, March 13, 1893, in his bed at the good old age of 77 years. He was for a time angered at Sir John Macdonald and would like to have had his seventh fight with him, but Sir John avoided personal encounter and they became in time very good friends.

Colonel Jas. Gray, father of the Solicitor-General, was appointed Sheriff of Stormont on the 2nd November, 1792. There is an entry of Mr. Gray's name in the Criminal Docket, 11th February, 1800, in the case of *The King v. Van Zante*, "Mr. R. J. D. Gray, acting Attorney-General, appeared and moved in Court for sentence. The prisoner had been found guilty of manslaughter, but produced His Majesty's pardon and was discharged."

In looking over the record of the criminal docket of the various districts into which Upper Canada was then divided, viz.,—The Home, The Midland, The Eastern, The Western, and the Mecklenburg districts, we find some startling entries reminding us of customs now unknown to our Courts, and commonly ascribed to the dark days of our British forefathers. Instances of such barbarous sentences are given in Dr. Scadding's "Toronto of Old," and in Read's "Lives of the Judges."

In 1799, August 26, two persons, Vansickler and his wife, being found guilty of larceny, were sentenced by Judge Powell and the executive seems to have acted promptly. The entry is "Judgment was passed that they be severally burned on the hand which was then executed." Shortly before this, Michael Whaling was for larceny sentenced to the pillory three several times, and

one McCarthy for grand larceny was condemned to be burned on the hand. On January 22nd, 1800, Humphry Sullivan was sentenced to "be hanged by the neck till dead" for forgery. He was the first to suffer capital execution in Toronto. Black Peter, said to have been an Indian, was in October, 1806, found guilty of assault with intent to ravish, and received from Judge Powell the following prescription for his troublesome disorder: "Imprisonment for three months, to be put into the pillory at the end of the first month for one hour, at the expiration of the third month to pay a fine of £2 and to remain in prison till paid."

James Campbell for using "seditious words" was, in September, 1804, sentenced to be imprisoned six months, and during his imprisonment, to stand twice in the pillory.

Judge Alcock dispensed speedy justice to John Connor and Joseph Countryman, found guilty of murder and sentenced September 8th, 1803, "to be hung till dead on Saturday next, and afterwards to be hung in chains."

Our Police Magistrate now often relieves himself and the City of troublesome characters by taking their promise to leave the country; this is but a modified form of the sentence inflicted on thieves and vagabonds, who were in the early years of last century sometimes banished from the Province and required to leave forthwith. Witness the case of Richard Smith, found guilty of stealing, 27th September, 1804, to value of £15, sentenced to banishment for life, and Jacob La France the next month for a like offence received the same sentence. The following sentence, if carried out, must have furnished amusement for the boys and idlers. On January 31, 1804, Elizabeth Ellis, found guilty of being a nuisance was, by Alcock, C.J., sentenced "to be imprisoned six months in the common gaol for the Home District, and to stand in the pillory twice during the said imprisonment in two different market days, opposite the market

house, in the town of York in the said District, for the space of two hours each time."

Nor are we without a practical illustration of that famous feature of our old criminal jurisprudence, "Benefit of Clergy." On 14th September, 1804, Richard Rogers and Abraham Lynes were found guilty of larceny. The record proceeds:—"The prisoners prayed their clergy, on examination, no proof appearing of their having had it before, it is granted, sentence, banished the Province for ten years, and to depart from it in three days."

The strange manner in which crimes were then graded and punishments meted out will be seen from the following record made on the same day as the above:

Joseph Colville; crime, horse stealing; sentence, death.

Joseph Jeffries; crime, manslaughter; sentence banishment, 7 years.

Joseph Germain; crime, larceny; sentence, imprisonment for 14 days.

Soon after the above a person, guilty of attempting to persuade a soldier to desert, was sentenced to be publicly whipped, and Sylvia Hanna was, in October, 1807, banished for seven years for horse stealing.

In *Rex v. McWinney*, the prisoner was, on 10th September, 1803, found guilty of murder and sentenced "To be taken to the gaol whence you came and from thence to the place of execution on Monday, 18th October next, there to be hung by the neck until dead, and your body to be dissected and anatomized."

Such severity was not confined to this Province. Chief Justice Osgoode left Toronto to occupy the like position in Lower Canada in February, 1794. The trial of David McLane for high treason soon after came before a special court in which he presided and had four other Judges as associates at Montreal. The evidence shewed conspiracy with Genet, French Minister at Washington, to overthrow British rule. The jury found McLane guilty. The case is reported in *Garneau* and in *Read's Lives*.

The Chief Justice explained the law as to treason very fully and fairly. The prisoner in addressing the jury said, "I feel gratitude that I have been indulged in everything reasonable. I thank the Court for the indulgence to me." The sentence was similar to that above related, and it is stated that the executioner held up the poor man's head to the public view and proclaimed, "Behold the head of a traitor!"

The last instance of the use of the stocks as a punishment in this Province was, it seems, in case of a virago who, by abusive loquacity, so annoyed William Lyon McKenzie, when Mayor of Toronto, and sitting as a magistrate, that he is reported to have ordered her to be so dealt with in the year 1834.

In those days a lady would have had as little chance of a hearing at the Bar in Toronto as a black man before Chief Justice Taney at Washington. Now all that is changed by our gallant Legislature. We may soon expect to see Jack Ketch making way for the dynamo with its death-dealing embrace and short shrift.

There were originally four Terms of Court which, under the old procedure, were important in limiting the times for Judicial Sittings and taking many proceedings. These were Hilary, Easter, Trinity and Michaelmas Terms. It was thought advisable to do away with one of them, which was done by an Act passed when Lord Monck was Governor-General. This led to an amusing jeu d'esprit ascribed to the late Mr. George Draper, who was afterwards Judge of the Frontenac County Court.

## OBITUARY NOTICE.

"Died, on 15th August last, at Ottawa, *Trinity Term*, Esq., in the fullness of years.

"It may not be generally known that the ancestors of this venerable and respected member of the Law Society owed their

celebrity in life to the monks of old, whilst their unhappy descendant, who emigrated to this country in the year 1792, owes his untimely end to a Monck of the present day, who accomplished his purpose by a deliberate act, we will not say of unparalleled atrocity, but the next thing to it, viz., an Act of Parliament.

“His faculties were unimpaired to the last, and he was as legally hazy as ever he was in his life. After breathing a short prayer for the amendment of Sec. 18 of 29 Vict., if possible, he departed this life to join in legal hallelujahs with his demised friends, John Doe and Richard Roe, who perished some years ago of the same complaint. His remains were conveyed to Toronto in a Grand Trunk, and the procession is expected to start from Osgoode Hall at twelve o'clock on the first paper day of next Term. The following will be, as nearly as can be gleaned, the order of the procession, with the names of the different individuals who are to figure promiscuously.” After this followed the representation of a coffin “Cepi Corpus” enrolled in parchment, tied up with red tape, and docketed. The pall-bearers and chief mourners were named by various witty titles, with allusions mostly now obsolete. Among these was “The Librarian in a Good Temper and new Wig.” The change did not affect the Law Society, which still adheres to the four terms.

Among the subjects of the King who were banished the Province, were the once notorious John Doe and Richard Roe, whose names figured in many ejections and who are referred to in the foregoing. They were hale and hearty yeomen, who sturdily held their own and supported the administration, but country conveyancers and local pettyfogs found them hard to deal with, complained of the trouble they caused them and said they must go, so they were themselves ejected by the Common Law Procedure Act.

*Masters and Administrative Officials.*—It would be a curious inquiry to learn why some offices exist and the mode of appointment. These are points probably quite as difficult of solution in some other departments as in that of the law.

In early days a certain "family compact" had the credit of claiming good positions for their scions, who, like the second clerk of the Crown, took care of a good thing when it was once secured. They felt the practical truth of Hosea Bigelow's lines :

"It is something like a fulfilling of prophesies,

"When all the first families have all the first offices."

Personal fitness, though not tested and certified by any examiner, recommended many, family or other interest nominated others and put them in their seats.

It is remarkable that a politician, in office for a year or two, may leave his name and lineage or those of his friends and dependents, in a score or more who may be found enjoying official sunshine for the remainder of their lives at the expense of long suffering people.

Under our Provincial system pensions are not provided for retiring ministers of the Crown, but in the patronage so held is as valuable a gift, and one which may prove more onerous to the country. The matter is one for the serious consideration of the publicist.

The roster of Masters, Registrars, Clerks and others of both genders employed in the Hall contains fully thirty persons. These do not include the seventeen Judges, nor the lecturers, examiners and others connected with the Law School who would together number as many more.

Up to the time of the passing of the Act of 2nd March, 1877 (40 Vict. cap. 7), the Judges and chief officers had a say in the nomination of subordinates; since that sweeping enactment

all receive their appointments direct from a paternal government to hold during good behaviour; which includes a reverent attitude towards the party in power.

The Hall became thenceforth a "Pool of Bethesda," over which the Attorney-General, for the time being, became the guardian angel, but his visits have been infrequent, as he has been generally more concerned with the muddier pool in the Queen's Park.

The good fellowship and longevity of the habitues of this quiet place were of old noted as physiological phenomena. The Hall was fairly well lighted and ventilated. It was only when safe doors were ajar that one got a whiff of old parchments, sealing wax and Hades. The gain or loss of life, limb or fortune, the stories of suitors and their vicissitudes related in judicial proceedings, had no effect on officials. The fateful papers were in due course numbered, docketed and filed away; so each day passed, and as the clock pointed to 4 p.m. and earlier in vacation, these loyal servants shook the office dust from their coats, brushed their hats, left other peoples' cares and troubles in the pigeon holes and passed to their several haunts or homes.

He who of old absented himself for an age, on returning, met the same genial faces, preparing processes, filing papers, and erasing stamps, a few crow feet around their eyes and a scattering of snow on their hair, but otherwise unchanged.

There was a legend that, when the time came, there was no sorrowful leave-taking; each as called filed his last paper, closed his minute book, entered a vault which had a trap door of which one chosen by lot held the key. When opened the next morning, the vault had no occupant, a peculiar sulphurous odour only remaining. The Clerk next in precedence wrote, *Abiit!* and took the absentee's place. It was also alleged that the figure of Justice in the King's Bench Court-room shed a visible tear on

each such occasion and that, on the appointment of any officer, through favour devoid of merit, the lion in the gilded coat of royal arms there erected, roared gently but perceptibly, and the horn of the unicorn was ominously lowered. It is said that Attorneys-General have wisely avoided this Court of His Majesty since the horn manifested such patriotic zeal, and appear by deputy.

Fortunately for the historian, only superior Courts are housed at the Hall, otherwise he would have to relate many curious customs, among others of that cadiculum without a cad, whose registrar, like Miru, Goddess of the Polynesian Hades, had a dreadful oven, in which were cremated the bodies of those who had in life sought by subterfuge to evade payment of succession duty. Such evasion was regarded as petty treason.

While in one part of the good Province citizens gazed in wonder at the court without a cad, it is well reported that there existed, for half a decade or more, during the same epoch, not so long ago, a strange tribunal without a clerk or registrar. An automatic device taxed costs, erased stamps, and issued processes as required.

One Captain Quid managed the machine, and its mode of working was known only to this astute and privileged person who ever evaded enquiry and answered queries of the curious with the question, "What do you propose to do about it?"<sup>1</sup> The Legislature desired a commission of salaried officials to enquire

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<sup>1</sup> Search in *Curiae Canadenses*, and other ancient records, reveals that this worthy was a pleasant and safe man to meet in the day time, that he was the confidant and alter ego of the High Functionary who of old ruled here, one Sir John Giveaway, and that the Captain received his cognomen from the first word of his favourite Latin sentence used in answering unwelcome interrogators "*Quid tibi negotii esse possit.*"

Captain Quid may be sometimes found at another Hall, and the headless body working automatically.



into the mechanism, and find whether other public business might not also be done by the self-operating crank, but no fees, beyond the good salaries enjoyed, had been provided. Horace's old maxim "pro patria mori" had become obsolete, or not been as yet revived by Mr. Secretary Gwynne, so it proved to be impracticable to obtain commissioners.

Some of the good people of the land were dull, eaters of the Canadian lotus; others were interested in the worthy Captain Quid, and in his profits or casual advantages; those who took the trouble to ponder at all on the matter between their smokes, were mesmerized by the cunning Captain's charms or, in a trustful simple way, amused at the smart working of the machine.

"As lookers-on feel most delight,  
That least perceive the juggler's sleight."

The disappearance of old Court officials was no more mysterious than the manner of their coming. Some of the most ancient were said to have received their offices as deodands or by inheritance; others under fiat from a concealed power of which there was superstitious dread. Some of these modes ended with the abolishment of primogeniture, the last is said to be still active. Most of the venerable customs alluded to passed away with the pillory and ducking stool. It is by some affirmed that they were among the mysteries into which the uninitiated are forbidden to enter.

The first Clerk of the Crown known to history was David Burns, who had been a Navy Surgeon. He died in 1806, apparently lamented, as Dr. Scadding, in "Toronto of Old," gives a copy of elegiac verses to his memory which appeared in the Gazette and Oracle.

The second Clerk of the Court was John Small, who had been Major in the Regiment of Glostershire militia, commanded by the Earl of Berkely. On the constitution of the Province in

1791, Small was appointed Clerk of the Executive Council of Upper Canada, and on the third of January, 1800, fought the unfortunate duel with Attorney-General White. On the decease of Mr. Burns, he obtained the office of Clerk of the Crown and Pleas of the King's Bench, which office he held for nineteen years. In February, 1822, he petitioned Earl Bathurst, Secretary for the Colonies, alleging his faithful service and age of 76 years as reason for retirement, but asked that his son Charles Coxwell, then discharging the duties, might be appointed in his place. Some pleasant correspondence ensued; the Major himself, despite his years, went and interviewed Lord Bathurst and others in power, and yet the order did not issue. He returned and sent his son instead. Now Charles Coxwell Small was of the stamp and presence which went to make up what Queen Elizabeth looked for in her court officers, a "personable man," and there were fine and influential ladies in the Georgian court who loyally followed the precepts of the maiden Queen. He made his plea, he looked and danced his best, and so our handsome young Canadian gained his suit or office, but did not omit, before taking ship, to thank his fair patronesses most politely, and in a style worthy of Lord Chesterfield, for their kind interest and favour, as fully appears by the correspondence in possession of his descendants in Toronto. The letters patent issued to him are dated August 10, 1825, in the sixth year of the Fourth George; they are under the Provincial seal and hand of Sir Peregrine Maitland, but, as the correspondence shews, at the instance and direction of the Home authorities.

Mr. Charles C. Small held the position until his death, 17th March, 1864, nearly thirty-nine years. He was an excellent officer and good citizen. For many years his lower limbs were paralyzed and he was wheeled to and from the Hall in a chair.

Meantime the Court of Common Pleas had been created, of which Lawrence Heyden was the Clerk, and he was transferred to the like position in the Senior Court, which he filled until his decease, June 20, 1868.

Mr. Heyden was a man of kindly feeling, assiduous in duty, of the Baldwin stamp and related to that family. He was succeeded in the Common Pleas by Mansel B. Jackson, who still adorns the office, and has so served his Queen, King and country for fully as long as did Mr. C. C. Small.

Among other employees in the Queen's Bench, were W. H. Coxwell, taxing officer, and Thomas Coxwell, docketing clerk, John Dempsey and Robert Stanton, issuer of writs. John Small, now collector of Customs at Toronto, was taxing officer from 1865 to 1882.

In the Chancery department A. H. Holmsted was for many years the Clerk of Records, and had for assistant, Thomas Gray; the registrar's clerk was the jovial John Black.

Charles Fitzgibbon was Surrogate Clerk for about ten years. He was son of Colonel Fitzgibbon, famed in the war of 1812. He had a happy disposition which made him a favourite.

William Beverley Heward, a nephew of Chief Justice Robinson, was Clerk in Chambers for many years. Fulford Arnoldi has held that office since 1870.

James Alexander was the Judge's messenger. He came from England in the entourage of Sir George Arthur. Donald Sutherland, an old soldier, was for several years similarly engaged in the west wing where Mr. Oliver was usher and sat in the court room while in session.

Alexander Grant was the genial Registrar of the Court of Chancery from its establishment in Toronto until June, 1874, when he was transferred to a like position in the Court of Appeal,

which he held until his decease, December 15, 1898, in his 86th year. He had also, as Accountant, charge of monies paid into the Court, but could carry in his pocket the book containing the record of them. Now the Supreme Court has half-a-dozen of employees in this branch and charge of some hundreds of thousands of dollars of clients' monies, while fifty great tomes are filled with their accounts and records.

The Senior Registrar is still styled Accountant, and he and the Registrar of the Court of Appeal sign all cheques. B. W. Murray is chief of the office staff. He is an able arithmetician and author of an elaborate work on interest tables. Mr. Grant was also the industrious reporter of the Court of Appeal, and more than thirty volumes are known by his name. He was called to the Bar in July, 1836, the same year in which Sir John A. Macdonald and the venerable Charles Durand were called.

Thomas Wardlaw Taylor, who had practised in company with Geo. M. Rae and others, was the first to fill the office of Judge's Secretary, his duty being to hear applications in matters of practice and other defined cases, report to a Chancery Judge and make order in his name. His appointment was on September 5, 1866. From this office was developed that of Referee, later called Master in Chambers, when the officer made orders in his own name, subject to appeal. Mr. Taylor became Master in Ordinary September 16, 1872, which position he filled until he became a Judge of the Manitoba Queen's Bench, where he rose to be its Chief, was knighted and has retired with an honourable record. The present Chancellor, Sir John Boyd, was Master in Ordinary from October 31, 1870, until Mr. Taylor's appointment to that office. Mr. Taylor was succeeded by Thomas Hodgins, K.C., who had been M.P.P. for Elgin, and is known in literary circles. He holds the office along with that of Judge in Admiralty, lately conferred by the Dominion Government.

George S. Holmested took office as Referee in December, 1872. He afterwards became Registrar of the Chancery Division and is now Senior Registrar of the High Court. It would be interesting to know how many decrees and judgments have passed through his hands. He is a King's Counsel and author of useful text books.

Richard Porter Stephens was appointed Referee in April, 1876. Cases decided by him are reported in the seventh volume of the Practice Reports. On Mr. Stephens retiring, Mr. Dalton, as Master in Chambers, disposed of matters in all divisions.

Robert Gladstone Dalton, Q.C., first entered the service as Clerk of the Crown in February, 1870, and held office for twenty-two years. Mr. Dalton was well read in law, even tempered, liberal but shrewd, firm in his convictions, yet so gentle in manner that he never gave offence. In former times every slip in practice was visited with costs and annoyance more than the occasion demanded. A broader view and more common sense mode of doing business were inculcated and in vogue while Mr. Dalton was Master and since his time. John Winchester succeeded Mr. Dalton as Master in Chambers, and when he became Judge of the County of York in April, 1903, John Cartwright, K.C., who had been a Registrar, was appointed Master.

George Hemmings, a reputable member of the Bar, was for a time Chancery Taxing Officer. Samuel Clarke then did duty for some years along with John Thom, who is the senior in this office, having held it since 1880. Bills representing many hundreds of thousands of dollars have passed with merry despatch under his smiling scrutiny.

John A. McAndrew, who begun his public career as M. P.P. for Renfrew, was the second taxing officer for some years, and is now Registrar of the Court of Appeal. G. M. Lee succeeded him until he became Clerk of the Weekly Court. M. J.

Macnamara reigns here in his stead. Mr. Thom and Mr. McAndrew are alumni in arts of the University and of Osgoode Hall.

The Master in Ordinary is well supported by his Chief Clerk, Neil McLean. A. F. McLean has occupied a like position in the Registrar's Department for many years. They are scions of the old Scotch family from the Isle of Mull, that came as U. E. Loyalists and settled at Cornwall, of which Chief Justice Archibald McLean and Colonel Alexander McLean, father of these gentlemen, were distinguished members. Colonel McLean was at the taking of Ogdensburg and wounded in the fight.

When the plan of paying Court charges by stamps instead of cash was instituted in 1864, William Willecocks Baldwin, elder son of Hon. Robert Baldwin, was appointed distributor and held the office until his decease, when Dr. James McMahan, the present incumbent, was appointed. Sir James Lukin Robinson, who inherited the title from his father, the Chief Justice, was for some years Surrogate Clerk.

James Browne was crier of the Queen's Bench until he resigned in 1848, when Andrew Fleming was appointed on the recommendation of Chief Justice Robinson. James Rolls succeeded him. His successors and other present Court and Hall officials appear in the appendix. Mr. Arthur Jarvis, Deputy Sheriff, has represented the executive at the sittings of the Courts for forty years.

Many were interested, and not a few felt regret, on hearing that Alexander MacDonell of Osgoode Hall, "Uncle Alick," as the genial old man was generally styled, had passed away on December 14, 1903, in his 84th year. Thus was removed one of the few remaining links connecting the present generation with that of Simcoe, Osgoode and the young Attorney-General who fell with General Brock. His father of the same name was Speaker of the Legislative Assembly of Upper Canada which met

at Newark, October 15, 1792, the Speaker being member for Glengarry. He was the first Sheriff of the Home District which embraced the County of York and a further tract of land long since set apart as separate counties. Mr. MacDonell was a native of Toronto. He was admitted as solicitor in Hilary term, 1844, called to the Bar the next year and practised in the city. He became an official of the Hall nearly two score years ago and served in various offices. For several years his name figured as Clerk of the Process on the Court Writs. He was a kind and charitable man and efficient officer.

Andrew Norton Buell was for several years Master in Ordinary, a painstaking and obliging man. He was the "father of the Bar," having been admitted in 1821. As the work of his office increased, Robert J. Turner was appointed an additional Master, under the title of Accountant. He was famous as an equity pleader under Vice-Chancellor Jameson and his successors, and was brother of the Lord Justice Turner. Mr. Turner's clerk, William C. Crofton, was from Dublin, a scholarly man who had seen better days. He sometimes fretted under the masterful Accountant, but they understood each other, the tiff would pass, and then it was a sight for the gods to see the two old men nodding and smiling to each other over their spectacles as they helped themselves from Mr. Turner's mull. At the noon hour Crofton's lunch would soon be despatched and he might be found in the library absorbed in a mathematical problem, or more often in a Greek or old English classic. A beautiful passage from a Greek tragedian which he shewed me still lingers in my mind, one of mournful character.<sup>1</sup> The big Englishman with his store of

<sup>1</sup> The sentiment of the Greek Poet is embodied in Shelley's *Skylark*.

"We look before and after,  
And pine for what is not;  
Our sincerest laughter  
With some pain is fraught;  
Our sweetest songs are those that tell of saddest things."

legal lore and strong florid features, and the well read meagre clerk of half his weight were a strangely mated pair. Pax ambobus! A manuscript common-place book, the companion for many years of Mr. Crofton, is before me. It contains choice selections in prose and verse and some of his own composition, which prove him to have been a man of sentimental disposition and cultivated mind.

One article is an interesting account of an Irish wake which he attended when a lad. There are original notes on the first Reform Bill, on poetry, music, female character, love, the length of the reigns of the Popes, the "Cat as the sign of the Moon," painters and paintings, a pious soliloquy on Death, a Hindu address to the deity Geeta, greater than Brahma, and other classical subjects. He criticizes Milton thus: "It is curious that in 41 Latin verses Milton falls into no less than 23 mistakes, for in 19 he uses the spondee and in 4 instances the anapaest in the fifth place before the final spondee. This liberty is allowed in Greek scansion, but never in Latin." In another article Crofton copies the lines from Hudibras:—

"Kelly did all his feats upon  
The Devil's looking-glass, a stone."

and gives an interesting account of the famous "angelical stone" which Dr. Dee declared had been brought to him by a heavenly visitant, on which stone various shapes and figures were seen as on a looking-glass or a pedestal. Crofton remarks in a vein of sad humour: "This is not a bit more singular than the credit some of our old women doctors ascribe to the eye stone. People say we grow wiser every day. God furnish proof before I die, that I may know in how learned an age I live."

There is an interesting note as to the Crofton coat of arms; Hugh de Crofton appears in the Domesday Book for Leicestershire as lord of a manor, Croft meaning that, or a farm. The



arms are described with the remark:—"Antiquitas sine re vilior alga est," which, being translated into English, means, "Royal blood is less valuable than ditch-water when a man is dry." At the end headed "Conclusion," is a review of the writer's life written from the heart: "It is sweet," he says, "to look back on the past, though I have tasted too freely from the bitter cup of reality ever to place confidence in the promised sunshine of to-morrow."  
. . . . "Yet I am not discontented; for the blessings I enjoy I offer to the Almighty the tribute, not of verbose but of sincere and heartfelt thanks, conscious that He who has given me health, strength and talent will look upon my foibles or vices (call them what you may) with a kind and merciful eye. Thus far He has been a shield from the tongue of the liar and slanderer." "I have seen much of this world's vices and follies, and have mixed in all kinds of society—my walk has been a chequered one, now in the castles of the great, amid the pomp of magnificence, and now in the cottages of the poor."—"I have enjoyed pleasures and the sweet quiet of domestic life, and when the dread sister shall, in obedience to fate, nip the thread of life, I shall yield my spirit to its Giver with only one regret, that I have done no one act by which I will be remembered."

Crofton then recommends young men to keep a note-book and to trust to its pages their best thoughts and records of their daily lives. "I have now done," he writes. "My next note-book will, I hope, be better, and in the meantime I trust you will find some amusement from this which is placed in your hands."

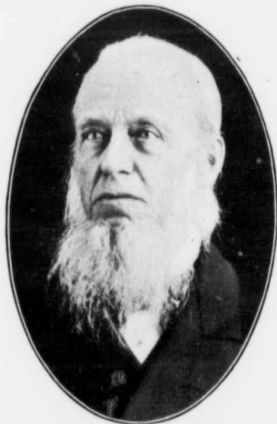
On the last page is written, "A literary gentleman on his death-bed gave orders to have the following short but comprehensive epitaph placed on his tomb-stone—'Finis.'"



MR. JUSTICE FERGUSON.



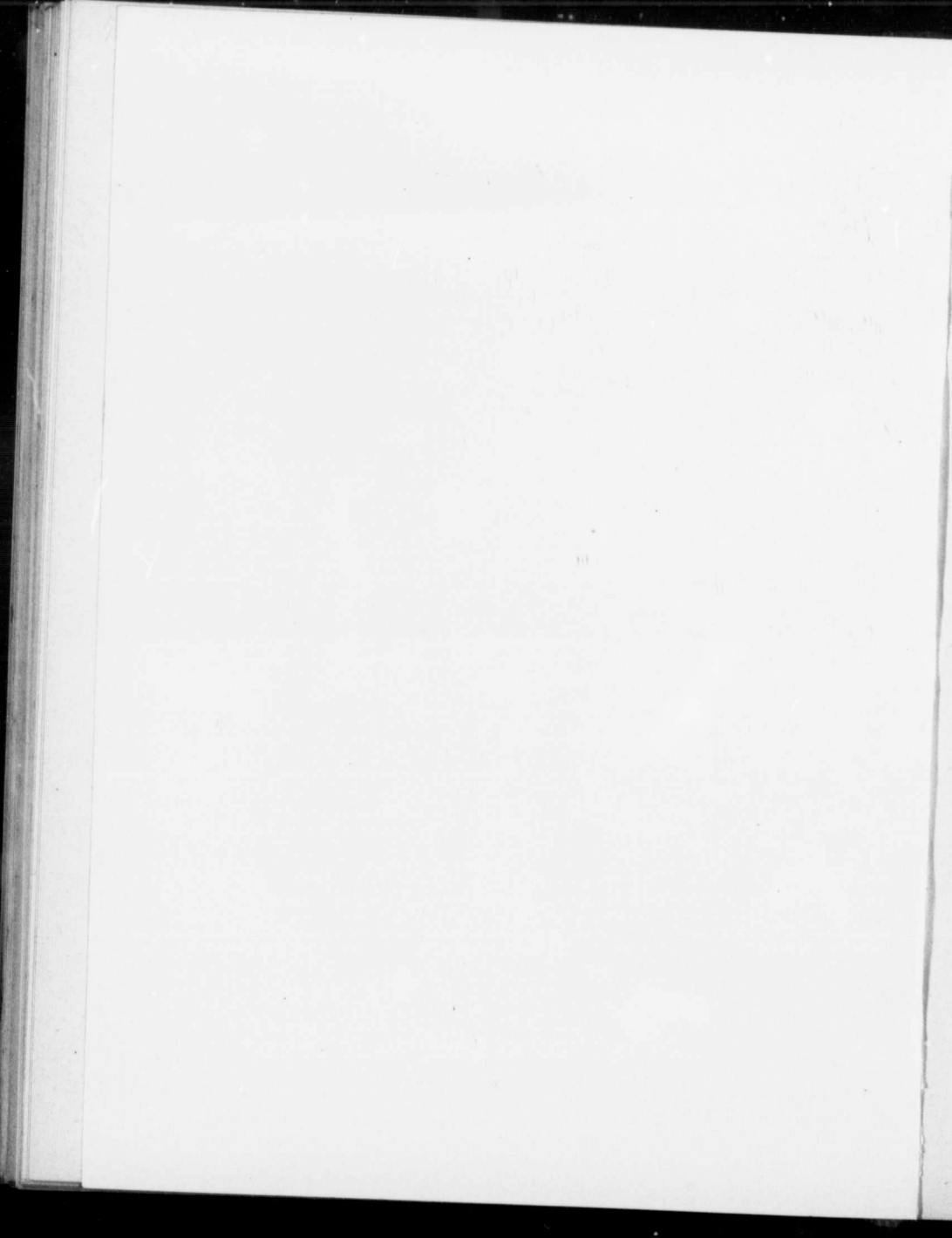
MR. JUSTICE MEREDITH.



CHIEF JUSTICE DRAPER.



CHIEF JUSTICE SIR GEORGE BURTON.



## CHAPTER VI.

### JUDICIAL AND OTHER INSTANCES.

"Some good, some bad, some neither one nor tother!"

*"Ride si sapiis!"—Martial.*

At the time when the Queen's Bench was presided over by Sir John Robinson, with Justices McLean and Burns, a venerable trio, the Court of Chancery had as its Chief William Hume Blake, whose general appearance and genius were continued in his elder son.

Beside him were James Christie Palmer Esten, skilled in his art and gentle in disposition, and John Godfrey Spragge, who long outlived his colleagues and worthily rose to be Chief Justice of Ontario.

The first Equity Court in Upper Canada was established by the Legislature in the fourth year of William IV., and in this the Governor of the Province was Chancellor, and was aided by a Judge called Vice-Chancellor, which office was held by Mr. Jameson. By Act of 1849, 12 Victoria, cap. 64, the appointment of a Chancellor and two Vice-Chancellors was authorized.

Robert Sympson Jameson was in some respects a remarkable person. A barrister of the Middle Temple, admitted in 1818, he was a reporter in the Court of Lord Eldon, who became his patron. He was a friend of Coleridge and Southey, fond of music and the fine arts, as Mr. Read, who knew him, declares. He was of good presence and winning address, as appears by his portrait in the hall of the Toronto St. George's Society, of which he was president. In 1829 he was appointed to a Judgeship in Dominica, which he resigned after nearly four

years' service, returned to England, and soon came to Toronto, where he was admitted to our Bar and became Attorney-General through Home influence, June 21, 1833. He had, following the English practice, Mr. William Keele, a solicitor, for his clerk. This gentleman gave his name to a street in the suburb, Toronto Junction, where he lived and accumulated property. Mr. Jameson sat in the Provincial Parliament as member for Leeds until his appointment as Vice-Chancellor, March 23, 1837. He had been Treasurer of the Law Society for several years. When the more complete Court was established, Mr. Jameson became Senior Vice-Chancellor, the Junior being Mr. Esten, whose learning and skill fully equalled Jameson's, and who, with the Chancellor and others soon to be mentioned, had appeared as counsel before him.

The old form of practice was in vogue with bill, subpoena, answer, replication, demurrer and interrogatories, and any precedent of Lord Eldon had great weight on Mr. Jameson's mind.

In the decisions of the Court over which Chancellor Blake presided as reported in Mr. Grant's first volume, Messrs. Adam Wilson, R. J. Turner, Phillip VanKoughnet, George Morphy, R. Cooper, C. W. Cooper, Oliver Mowat, R. E. Burns, Strong, Macara, Dr. Connor, Alexander McDonald, and a few other lights of the Equity Bar, are named as counsel. Jameson, V.-C., appears as sitting in twenty-one cases, in twenty of which he is reported as "concurring in the views expressed by His Lordship the Chancellor." In only one does he give a written judgment, and attached to this is the note, "The Chancellor was concerned in this case while at the Bar."

The Vice-Chancellor died at Toronto in 1854, and Mr. Sprague succeeded him. Jameson Avenue, in the west part of the city, passes through a block of land which he owned. He lived after his appointment for seventeen years, except a few

months, a lonely, studious life; and yet he had across the sea a wife of spotless fame, who shed a lustre on his adopted country and his name.

In 1804 Thomas Moore viewed and sang of Niagara. He had then taken ship and, from his vessel, ere he passed down to St. Anne, where he wrote his boat song, he saw the giant oaks and pines that stood on Scarboro' Heights. Addressing Lady Rawdon, wife of his patron, he wrote of the place:—

“Where the blue hills of old Toronto shed  
Their evening shadows o'er Ontario's bed.”

And here thirty-three years after, a lady of similar talents and attainments, Anna, the Irish wife of the first Vice-Chancellor, came to join her husband. She was daughter of Bromwell Murphy, an artist, and already known as an author. She observed the blue birds, the woodpeckers, the robins and the flocks of wild geese that flew over the little town, and describes them in her dainty writing. When she wearied of the town's monotony, good William Campbell, Clerk of Assize, who lived then with his family at Niagara, took his grey horses and sleigh and gallantly drove her to see the Falls in January. He was son of Chief Justice Campbell, and held his office for many years. She describes the rude hostelries and the great woods, the aurora borealis dancing before her, Niagara and the rapids,

“Leaping like Bacchanals from rock to rock  
Flinging the frantic Thyrsus wild and high.”

She read Schiller and Goethe, quoted Tasso and Paracelsus. It is in the writings of Mrs. Jameson that we get the best account of Colonel Talbot and his settlement,<sup>1</sup> of

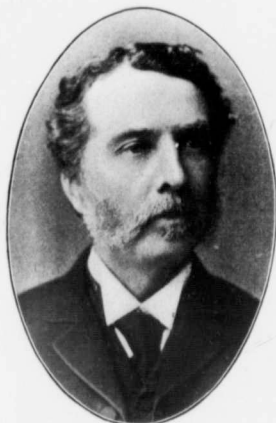
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<sup>1</sup> Mrs. Jameson in “Summer Rambles, II., 186,” and Davin in “The Irishman in Canada,” p. 116, both give the famous story of Dick Talbot's reply to Louis XIV. “Non, Sire, mais mon père y était,” assuming that it was then original; but Bacon in his *Apothegms* shews that this same answer was given by a young Roman to Caesar Augustus; a curious over-sight in such scholars as Mrs. Jameson and Davin.

Michilimacinac, and Schoolcraft, the Indian scholar and delineator; of the Sault Ste. Marie and Manitoulin, with their wild red inhabitants, as they were in the good year when the Victorian reign began. Coming back to the little capital, she tells of some of the craft, "Hagerman, the Solicitor-General, a Tory in politics, a man of great ability and good nature." "Draper, the member for Toronto, a clever, active minded man and a fluent speaker." "McNab, the member for Wentworth, also an able and influential man of large property." "Mr. Prince, member for Sandwich, a gentleman educated at the English bar, and of very superior attainments, liberal, though not revolutionary in principle." "On the opposite side Dr. Rolph, the cleverest man and most eloquent speaker." Mr. Sullivan is also named.

At the prorogation of Parliament Chief Justice Robinson sat at the right of the throne. "He has," she writes, "a fine head and acute features, and the most pleasing, insinuating voice I ever heard."

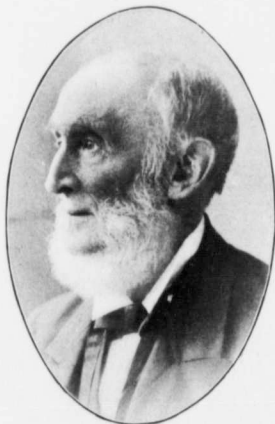
Colonel Fitzgibbon was Mrs. Jameson's *preux chevalier* of bravery and loyalty, a man of fine impulses, and he is more than once described in her "Winter Studies." This was the lady who came to join her husband. They lived for some months in a house he built on Brock Street, within sight of the bay, where they entertained liberally during the season, but their tempers were unsuited to each other, so they parted in September, 1837. She returned to England, lived until March, 1860, to continue the literary pursuits which have caused her to be ranked among the great women of her age. The Province, which she saw amid rude surroundings in its struggling infancy, is described by her graphic pen, and in the artistic drawings made on her western trip, now in possession of Dr. Bain of the Toronto Public Library.



SIR JOHN BOYD, CHANCELLOR.



MR. JUSTICE ROBERTSON.

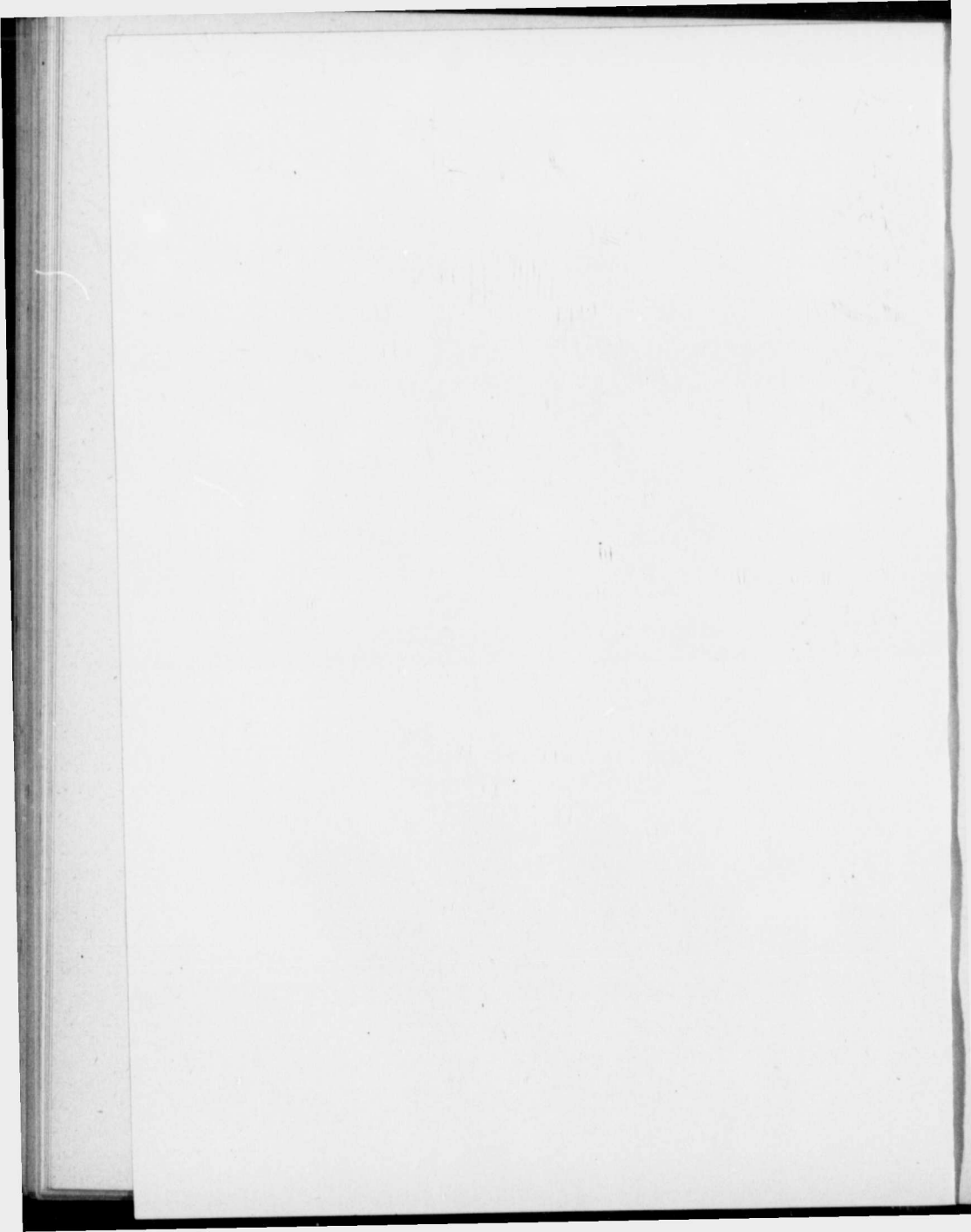


CHIEF JUSTICE SIR JOHN HAGARTY.



CHIEF JUSTICE SPRAGGE.





The Court of Chancery, as originally constituted, was for a short time domiciled in Kingston. Dr. Scadding in his "Toronto of Old," reproduces a curious production in rhyme, written in 1843 by Mr. John Rumsey, an English barrister, then in Upper Canada. Referring to the removal of the Court, along with the local Government, to Toronto, the minstrel sang:—

"Dreary and sad was Frontenac;  
The duke ne'er made a clearer sack,  
Than when the Edict to be gone  
Issued from the Vice-regal Throne.  
Exeunt omnes, helter skelter:  
To Little York again for shelter:  
Little no longer; York the new  
Of imports such can boast but few:  
A goodly freight, without all brag,  
When comes, 'mongst others, Master Spragge,  
And skilful Turner, versed in pleading,  
The Kingston exiles gently leading."

Mr. Rumsey's poem described the several Canadian law courts, covered 127 octavo pages, and was published by H. & W. Rowsell, who for years were printers of the law reports. The poet thus addresses our city as the seat of judicial learning:—

"Favoured Toronto, thine the pride,  
That Judges o'er thy Courts preside.  
Endowed with wisdom, skill and worth  
To spread stern justice o'er the earth,  
May such long flourish, till to men  
Astrea comes from Heaven again."

As a motto to the portion of his poem treating of Upper Canada, Mr. Rumsey places a line from Virgil, "Gensque virum truncis et duro robore nata," which Dr. Scadding remarks, "may be a compliment or not."

Chancellor Blake was, through ill health, forced to retire from the Chancery bench after about twelve years service, in the sixty-second year of his age, but sat occasionally in the Court of

Appeal until his decease in 1870. He and Mr. Esten were called to the Bar in Hilary term, 1835. Mr. Vice-Chancellor Spragge, soon after the decease of Chancellor VanKoughnet, addressed the Bar feelingly with reference to these three excellent men, concluding:—"They were all of them men of whom this Court may well feel proud, and I am sure that their memory will be held in high respect by the Court and by the country that they ably and faithfully served."

Philip Michael Matthew Scott VanKoughnet was of New York Knickerbocker and U. E. Loyalist descent, and was the second Chancellor of Upper Canada, holding that office from 19th March, 1862, to December, 1869. None exceeded him in courtesy and in quickness of conception. He had formerly been Commissioner of Crown Lands, which fact was amusingly brought out in a trial,<sup>1</sup> in which Stevens, the plaintiff, sought to set aside a patent of land for which he had bargained, but which had, through a clerk's oversight, been conveyed to Cook. One of the exhibits was an angry letter from the plaintiff to the department in which he declared that no good could be expected from a department presided over by a "dunder-headed Dutchman." No one was more amused at this than the late Commissioner, nor did he as Judge hesitate to cancel the patent in favour of the plain-speaking plaintiff.

In an action known as that of the "Lady and the Lion," a travelling showman claimed the sole right by agreement, to exhibit on the public highway a fair woman and the king of beasts resting side by side on a moving van. An injunction was granted by the Chancellor, and the showman sent a ticket to admit his Lordship and family. This fell into the hands of John Black, the Registrar's clerk, and, when he passed into the

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<sup>1</sup> Stevens v. Cook, 10 Chancery, 410.

tent with a troop of his young friends, the showman exclaimed, "What a fine family the Chancellor has!"

Chief Justice Draper struck us as the most cultured and dignified of the old Common Pleas Judges. He could turn a point nicely and keep the Bar from roaming in the wilderness. To a verbose counsel, who began his motion in an ejection case by informing the Court that it was merely a personal action, Judge Draper said in the gentle voice, which had gained for him the sobriquet, "Sweet William," "There are some things of which this Court may be assumed to have knowledge; please proceed to the merits of the case."

On one occasion, at the Assizes in Toronto, a witness with broad brim hat, who looked a little like a Quaker, but turned out to be a horse trader, went into the box to testify. The clerk of the Court, misled by his appearance, asked him if he affirmed or swore, to which the man replied:—"I don't give a d— which." The learned Chief Justice, with a twinkle in his eye, but a perfectly grave face, leaned over to the clerk and said, "Mr. Campbell, the witness swears."

Judge Draper was an earnest advocate of the extension of Canada to the Pacific coast, and went to St. James as a Canadian delegate to promote the scheme. He was fearless in denouncing and opposing any aggression on Canadian soil and rights. His address to the Toronto Grand Jury, 19th March, 1866, in view of the Fenian raids, is a fine specimen of judicial eloquence, and ends thus:—"There can be but one reception for the invaders, a stern and pitiless opposition to repel the aggression, striking for Queen and country, for lands and liberty, for wives and children, and may God defend our rights."<sup>1</sup>

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<sup>1</sup> Can. Law Journal, II., N.S., p. 89.

The Burley Extradition.—Chief Justice Draper's sagacity was conspicuous in the extradition case of Bennett Burley, on September 20th, 1864. This young Scot, an ardent sympathizer with the South in its struggle, along with Captain John Yates Beall, a brave Virginian, went on board, at Detroit, a fine passenger steamboat, the *Philo Parsons*, which plied between that city and Buffalo on Lake Erie. At Amherstburg twenty others took passage; these were rough men and had no baggage but a large trunk tied with cords, and they did not appear to recognize Captain Beall or his gay Scottish friend.

Walter Ashley, the purser, supposed they were American citizens, who were keeping out of the way of the "draft" or conscription, during the time of the civil war.

The vessel with its gay party passed, under a pleasant sky, by headlands and islands shining with orchards and vines. It entered the waters where, on September 10th, 1812, the brave lake fight was waged between Captain Barclay and Commodore Perry.

All was gaiety on board, the rough men below kept in view their roped trunk, smoked their pipes, played quoits and told yarns. In the cabin the gallant, with the Scotch cap, according to the purser's evidence, joined in songs, and turned music at the piano for a young lady; when within four miles of Sandusky, an astonishing event took place, the young Scot slipped from the cabin and conferred with Captain Beall.

At a signal the trunk was opened, and twenty men stood ready with drawn swords and pistols. Beall advanced to the pilot house and called to Nicholls, the man in charge of the wheel, "I am a Confederate officer, I seize this boat and take you prisoner. Submit, or here are the tools to enforce obedience." Burley made himself conspicuous also. Mr. Ashley, who is now

a Detroit merchant, was very much astonished when the pleasant young man with the Scotch cap, levelled a revolver at his head and said, "Get into that cabin or you are a dead man," and affirms, "He commenced counting one, two, three, and at the end of the count, I was in the ladies' cabin." The vessel was so, without bloodshed, captured and headed for Middle Bass Island. The money in the purser's hands was taken.

The passengers, eighty in all, were disembarked on this island. A small vessel, the *Island Queen*, came, unsuspecting danger, to the wharf, and was seized and afterwards sunk. With the Confederate flag flying, the *Philo Parsons* steamed out in the evening until the lights of the U. S. guardship *Michigan* were seen in Sandusky Bay. Its engineer and some others were privy to the plot and signal rockets were expected, but none appeared, and the crew became alarmed.

The plan was to seize the *Michigan*, then advance on Johnson's Island, release the Confederates there, more than two thousand in number, and with both vessels armed, Lake Erie and its cities would have been at the mercy of Captain Beall and his party.

The crew insisted on abandoning the attempt. Beall eloquently upbraided them for chicken-heartedness, but without avail. Nicholls, the wheelsman, in his evidence, says :—"Order was given to put the ship about, and we steered direct for the mouth of the Detroit River, and got there before day." The vessel was beached, the crew discharged, and each man made for shelter.

Captain Beall escaped for a time, but was arrested at Niagara for a later daring attempt, was tried by court-martial, under order of General Dix, and ended his eventful career on the gallows. President Lincoln was strongly urged to interfere with

the sentence, but refused. This angered Beall's friend, John Wilkes Booth, to madness. We know the rest.

Booth was a passionate Southerner. He and his people had suffered and lost much in the war. He had visited Montreal, and there met Confederate States conspirators, and knew the plans which led to the Lake Erie and St. Alban's raids.

Burley was arrested for his part on the Philo Parsons and brought before Recorder Duggan in Toronto, when the matter was removed to Osgoode Hall before the Chief Justice, who decided to anticipate the possibility of judicial interference, such as had aided John Anderson.

The Chief was free from false sympathy with illegal aggression. He requested three brother Judges to sit with him, and the case was fully discussed before a Court in which were Draper, C.J., Richards, C.J., and Judges Hagarty and J. Wilson. There was a spirited and interesting defence, the prisoner's great advocate, M. C. Cameron, Q.C., claiming that his acts were justifiable under the code of war. Burley was duly extradited. The four Judges mentioned were a majority of the common law bench, so there was no judicial interference.

Good luck followed the brave young Scot; an Ohio jury disagreed at his trial. He soon escaped from gaol, came back to Toronto, made his way across the sea, has been, not with sword, but with pen, in many an interesting conflict since, and is best known as Bennett Burleigh, special correspondent during the Boer and other British wars.

Chief Justice Hagarty, when a young man, made application for insurance on his life, but was refused, yet was able to boast that he had outlived the doctor and all the officers of the insurance company. An English specialist, whom he later consulted, asked if he took an active interest in public affairs, and

being answered in the affirmative said his life depended on that and would be supported by regular activity of the brain, and such was the happy result, through his years, four score and two. The Chief was careful and temperate in his diet and habits, but not a total abstainer. The only municipal office he held was that of Alderman in 1847. It is to be hoped that the present fathers are more regardful of polite usages than he found those of that year. He very soon sent in his resignation, declaring that the City Council was no place for a gentleman.

The Honourable John Sandfield Macdonald had also the misfortune to have weak lungs, but was of different temperament, liked to move among the people, especially his Highlanders of Glengarry, of whom he was a born leader. With care he reached a good span of life, was in Parliament more than thirty years, was Speaker in 1852, and Premier in 1867, in the first Ontario House. He was tall, spare of frame, and alert. His favourite attire included tweed trousers, coloured vest and frilled shirt front. He was a careful administrator, without the breadth and boldness of conception of his more famous namesake. Like him he enjoyed a witticism though it might sometimes savour of broad humour. He joked at the peculiarities of his colleagues and himself, saying once when they were about him, "What a curious lot we are, a sort of one-horse concern; here is Wood with but one arm, Cameron with one foot, and I with one lung." Edmund Burke Wood hailed from Brantford, near which is an Iroquois reserve. His great voice gained for him from his red neighbours the sobriquet of "Big Thunder." He was the second Chief Justice of Manitoba, and will be again referred to. Matthew Crooks Cameron became Chief of the Ontario Common Pleas Division, and was knighted.

The Gaelic was Macdonald's native tongue, and his constituents were as clannish as the electors of the Nova Scotian



constituency of Sir Charles Tupper, who, when addressing them on one occasion was opposed by Mr. Donald C. Fraser. The latter had the privilege of the ancient tongue, and could not be answered by Sir Charles, who, on complaining of the advantage so taken by his opponent, was met with the unanswerable argument that one unskilled in the language of Eden should not aspire to be Prime Minister of Canada.

Colonel John Prince and Sir Allan Napier McNab were two remarkable men, members of the Upper Canada Bar and Legislature. Prince was admitted in Michaelmas term, 1838, and became Queen's Counsel in 1852. He was in command at Windsor during the troubles of 1837, and dealt stern justice to some desperate characters who crossed the border and committed murder and rapine. Five of these men, being caught red-handed, were by the Colonel ordered to be shot, and, as he expressed it, "They were shot accordingly." Attorney-General Hagerman declared that the Colonel had acted lawfully. Lord Brougham said of this in the British Parliament that "the Attorney-General's opinion was the grossest outrage ever put upon paper." His Lordship was in opposition and inclined to criticize. Local critics branded Colonel Prince as "a murderer and a coward," which roused the gallant officer to anger. He insisted on apology being made, and when Mr. Wood, of Windsor, refused amends, challenged him. At the second fire Mr. Wood was wounded in the jaw and after this the Colonel's critics were less outspoken.

At Prince's demand a court-martial as to his military conduct was held, at which a British officer, Sir Richard Airey, presided. The court sat for three days and entirely acquitted the Colonel. He was a strong loyalist and partisan, and was a member of the Legislature at Montreal when the measure of amnesty was passed in 1849. McKenzie had then been for some years the last exile, and now returned and ventured to visit the

parliamentary library. The Colonel seeing him at once went up, demanded to see the ticket of the member by whom he had been admitted and threatened to eject McKenzie. John Sandfield Macdonald hearing of this, called on McKenzie, and formally introduced the Reformer to the library. When his Highland constituents complained of his civilities to a late rebel, he answered: "Do you think I would see an Englishman kick a Scotchman and not interfere." Colonel Prince afterwards explained his rude conduct, saying he "had acted on the impulse of the moment."

In 1858 McKenzie and Prince were members of Parliament, but in different Chambers.

The Governor, Sir Edmund Head, was a scholarly and upright man, but not very popular. As he was driving away after proroguing Parliament, the Colonel, a large, conspicuous figure, who stood on the steps, waved his hat and called for three cheers for His Excellency, which were given with only moderate warmth.

Prince was, not long after, appointed Judge of the Algoma District, which office he filled acceptably, but he will be known to posterity as the Colonel rather than the Judge.

Albert Prince, son of the Colonel, was member of the Legislative Assembly, and an accomplished member of the Bar, and lived until 1874. Another son, Captain William Prince, was for several years Chief Constable of Toronto and later Governor of the Central Prison. Colonel Prince died at the Sault, and at his desire was buried on a small island near that town.

The author of "Toronto of Old" gives an amusing account of the early days and forbears of Sir Allan McNab, summing up thus:—"Successively sailor and soldier, and in both

capacities engaged in perilous service; a lawyer, a legislator in both Houses; Speaker twice in the popular Assembly; once Prime Minister; knighted for gallantry and appointed an aide-de-camp to the Queen; dignified with a baronetcy and by the marriage of a daughter with the son of a nobleman, the career of Allan Napier McNab can not fail to arrest the attention of the future investigator of Canadian history."

The family were soldiers by heredity. Sir Allan's father belonged to the 42nd Regiment or Black Watch; his grandfather, Robert McNab, owned a small place at the head of Loch Erne called "Dundurn," which name was given to Sir Allan's homestead at Hamilton. His name appears first on the books of the Law Society as student in Trinity term, 1816. He was called to the Bar in Michaelmas term, 1826, and was elected Bencher in Hilary term, 1835.

Mr. Fennings Taylor says of Sir Allan:—

"His battles and the gout,  
Had knocked his hull about."

He left Canada, lived for some months at Brighton, and there sought a seat in the Imperial Parliament, but not succeeding, returned and was, in 1860, elected to the Legislative Council for the Western Division in place of Colonel Prince, who had gone to his Judgeship at Sault Ste. Marie.

Sir Allan was born in Niagara. His deeds of bravery are matters of history. He was more versed in politics and public affairs than in legal technicalities. He had a taste for wood carving, and is said in his younger days to have prepared many door panels for houses in York. Previous to his call to the Bar he had lived in Toronto, but he now removed to the city of Hamilton. He was knighted in 1838. Sir F. B. Head declared that this empty honour was inadequate, that "while the rebel was

forgiven, the patriot was forgotten." Sir Allan was made a Baronet of the United Kingdom in 1858. He died at Hamilton, August 8th, 1862, at the age of sixty-four.

It is an interesting question how far mental powers and capabilities are inherited. In the Province of Quebec the seigniorial and other old families are often known by the position and culture of their scions, as they are found in the professions and paths of literature. In this younger Province some families have been similarly distinguished. Three of Sir John Robinson's sons attained high positions, one in his own profession, one in politics, and another in the British army. Sir James Lukin Robinson, the eldest, was for a time a court reporter, and later held office as Surrogate Clerk.

The first Chancellor of Upper Canada left two sons of wide reputation. In another family we find two brothers filling consecutively the highest judicial positions. Another has two brothers now on the High Court Bench.

A Canadian family even more remarkable is that which has one son a Judge of the highest Provincial tribunal, another a physician of eminence, a third of note in financial circles and member of the Dominion Parliament, while the fourth was famous in the forum and a leader of the Bar.

It will also be a matter of interest to see how far our newer families, who have prospered, will follow the laudable examples shewn in Quebec and in the United States as promoters and supporters of charitable, and especially of educational schemes of the Province.

A seat in Parliament has often proved a stepping stone to the judicial bench. Being "a defeated candidate" was found by others to call for kind consideration of the party in power.

Three of the members of the Supreme Court of Ontario sat in legislatures at Ottawa or Toronto. In the Ontario House, 1904, fourteen of the ninety-six representatives, including four ministers of the Crown, are members of the Law Society. It is represented in the House of Commons by twenty-one members, two being in the Dominion Cabinet, the Postmaster-General and Senator Scott. In the Imperial Parliament the Hall has, since 1892, had its former able Treasurer, the Hon. Edward Blake, K.C., member for South Longford.

Of the nine Lieutenant-Governors of Ontario who have held vice-regal state since confederation, six, including the present incumbent, were members of the Bar. Chief Justice Spragge, Sir John Hagarty and the present Chief Justice of Ontario at various times acted as Administrators during temporary absence or disability of Lieutenant-Governors.

Of the thirty-six mayors or presidents of the City Council of Toronto, sixteen, including the present mayor, were members of the Bar. Mr. R. B. Sullivan, afterwards Judge, was the first lawyer mayor, succeeding William Lyon McKenzie, who held office in 1834 when the City was incorporated.

It is well known that the University of Toronto and other institutions of learning have, since their initiation, found able supporters and directors among the members of the Bench and Bar. Chancellor Blake, Judges Burns and Morrison, Hon. Edward Blake and Chief Justice Meredith have held the office of Chancellor, while that of Vice-Chancellor has been filled by Hon. James Patton, Hon. Adam Crooks, Dr. L. W. Smith, Sir William Mulock and Chief Justices Thomas Moss and Charles Moss. Worthy examples were given by some of the accomplished Governors and Lieutenant-Governors of the Province.

The records of the Canadian Institute prove the broad culture of such professional members.

In 1858 Sir Edmund Walker Head contributed, among other learned papers, an historical and critical account of the Temple of Serapis, which was reviewed by Doctor Daniel Wilson. Sir John Robinson, C.J., was President of the Institute for two successive years, commencing with the spring of 1853. Chief Justice Draper succeeded him, holding office for two seasons. He was a good linguist and generally well read. In his inaugural as President for the second time, he addressed the Institute on "The importance of the Toronto Observatory,"<sup>1</sup> stating that already 100,000 observations had been taken there. Chief Justice Hagarty presided for one year. Sir Oliver Mowat, when Vice-Chancellor, was President for two years, 1864-65. Chancellor Van-Koughnet was a life member from January, 1854. Hon. J. Hilliard Cameron and Hon. S. B. Harrison, Judge of the County of York, were also enrolled. The late Judge Proudfoot and Sir John Boyd were members and contributors to the proceedings. The Hon. Robert Baldwin's name appears in the early records of the Institute. On April 3, 1853, at an important meeting of members and distinguished visitors, he spoke of himself as "a lover of science, although he could have no pretensions to be a scientific man." He was thanked for his exertions, when lately Attorney-General, in obtaining a charter for the Institute.

It was through the countenance given to the literati and scientists of the nascent Province by the distinguished jurists and men of affairs named, that the Institute rose from being a local Society and assumed a national character.

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<sup>1</sup> The presidential address of Sir J. B. Robinson is in vol. III., 153; that of C. J. Hagarty, vol. VII., N.S., 1; C.J. Draper's in vol. II., 82, and VIII., N.S., 97; Vice-Chancellor Mowat's in vol. for 1865.

In volume IV., 1858, is a poem of five cantos by an undergraduate of Varsity, which had taken the Vice-Chancellor's prize:—Subject, *The Atlantic Telegraph*. Poet, J. A. Boyd.

Dr. Baldwin's day preceded the origin of this Society, but he was the first President of the Toronto Mechanics' Institute.

*Veteran Members of the Bar.*—The longevity attained by some of the Superior Court Judges of the Province, has been referred to. Sir John Robinson, who lived seventy-two years, was for thirty-three years Chief Justice. Sir Henry Strong was as long on the Bench, as Vice-Chancellor, Judge, or Chief Justice. Mr. Justice Gwynne, at the age of 88, had also served the like period. If Chief Justice Spragge's judicial service were counted from his appointment as Master, June 20, 1837, until his decease, April 20, 1884, at the age of 78 years, it would exceed the above by thirteen years. Chief Justice McLean was on the bench from March 23, 1837, until 1868, and lived 74 years. Chief Justice Campbell also lived to the same age, but was on the bench only about eighteen years. Chief Justice Draper lived seventy-six years and held judicial office from June 12, 1847, until 1877. Sir John Hagarty from February 5, 1856, until his resignation in 1897, and lived eighty-two years. Chief Justice Armour presided in our Courts from November 30, 1877, until his promotion to the Supreme Court, November 21, 1902, twenty-five years thereafter. Sir John Boyd, who is President of the High Court, has been Chancellor nearly as long, that is, from May 3, 1881. It is hoped that long life may continue to accompany good service as heretofore.

Reference will now be made to three gentlemen, yet with us, who have served in County Courts and each attained happily an enviable and honourable age.

James Robert Gowan was born in Ireland, December 22, 1815, was educated in Canada and admitted to the Bar Michaelmas term, 1839, practised in Toronto until January, 1843, when he became Judge of the District, now County of Simcoe. His

usefulness was not confined to his county, as he served on several important commissions, aided Sir James Macaulay in the consolidating of the Statute Law, and, in 1871, was along with Sir Adam Wilson and other High Court Judges, a Commissioner to inquire into the constitution of the Courts. He was active in educational and other matters of public interest and importance, and was one of the founders of and a frequent contributor to the Canada Law Journal. He served on the Bench for forty-one years, when he retired to accept a Senatorship. He became, before this, a Queen's Counsel, and LL.D. of Queen's University, and in 1893 was honoured with the rank of Companion of the Order of St. Michael and St. George. Senator Gowan was very highly regarded by the late Right Hon. Sir John Macdonald, and was styled by Mr. Davin, "one of the noblest and most interesting figures in our political life."

Judge William Elliot, who retired from the Judgeship of Middlesex County, February 1, 1904, was a native of Newcastle-on-Tyne, born in June, 1817, and had completed thirty-five years of honourable service. He was admitted to the Bar in Trinity Term, 1852, and is entitled to a pension equal to his salary.

Judge David John Hughes, of Elgin County, also now retired, having been Judge at St. Thomas since September 29, 1853. He is also an Englishman, born May 7th, 1820, at Kingsbridge, and was called to the Bar in Michaelmas term, 1842. His father was Head Master of the classical and mathematical school at Kingsbridge, where his education was begun, and continued at the District Grammar School, London, Ontario. His strong individuality was impressed on the Talbot settlement as it grew into a beautiful and orderly land of farms, towns and villages. Judge Hughes is known throughout the Province by the interest he has taken in matters of good government and benevolence. He, at various times and places, held assizes for Judges of the Superior



Courts when they required a substitute. The formal leave taking of the County Council by the venerable Judge was an interesting, even pathetic, historical event. There were among the members some whose fathers and grandfathers had similar relations with his Honour during the last half century.

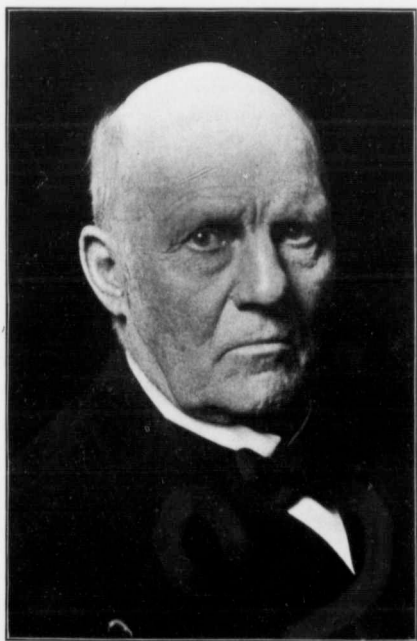
Several well known members of the Toronto Bar attained patriarchal age.

The Hon. Sir Oliver Mowat ranks first in honours among the Nestors. When he passed away April 19, 1903, he was eighty-three years old, and, since his call in Trinity term, 1841, had been a barrister, Judge, or Crown officer for a period nearly equal to two ordinary generations. His history is interwoven with that of the development of the Province.

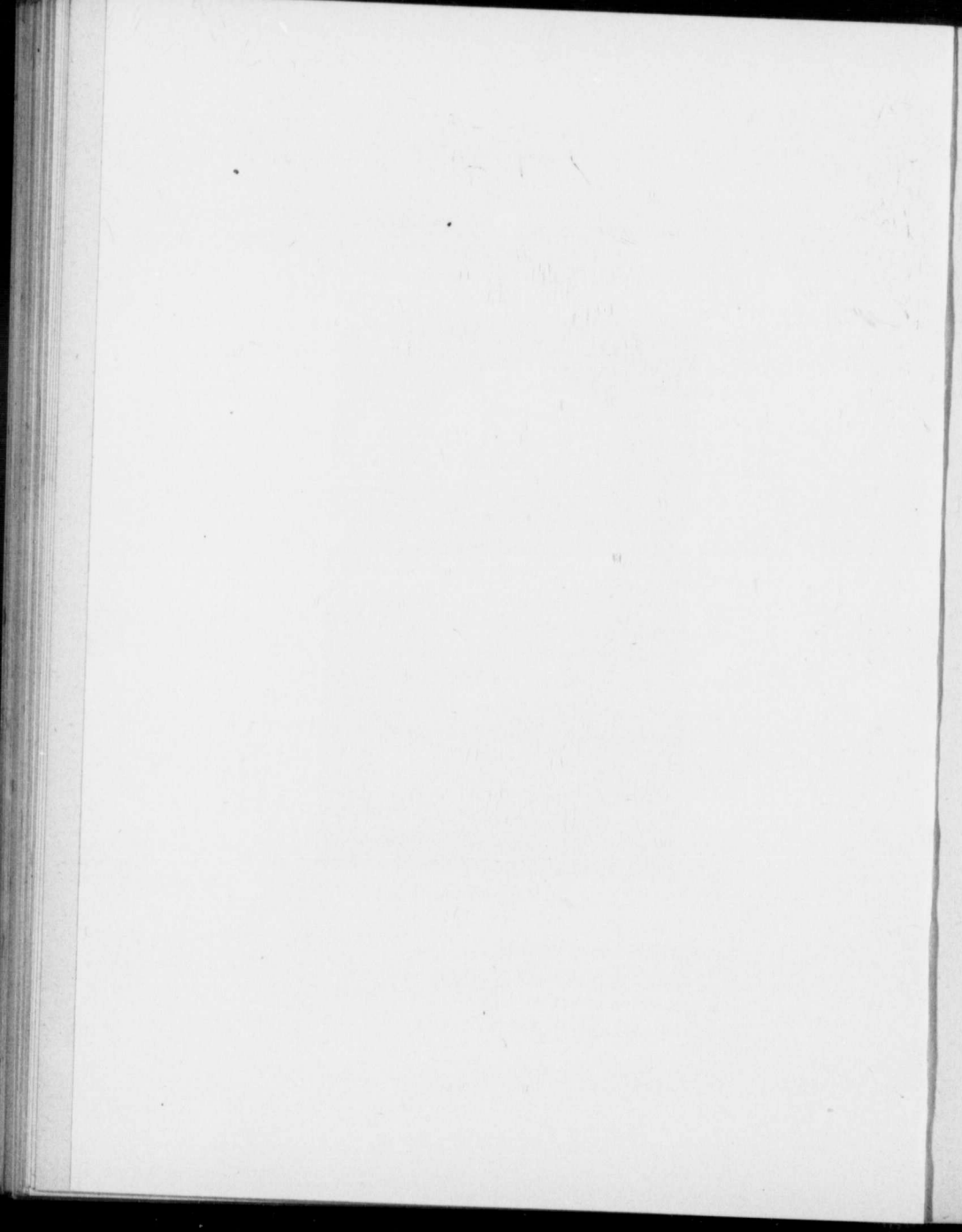
Joseph Clarke Gamble, K.C., was, at his decease, November 23rd, 1902, the oldest lawyer in actual practice in Ontario. He was known from his childhood as Clarke Gamble, was of U. E. Loyalist stock, born in 1808, in Kingston, and called to the Bar in Trinity term, 1832, as Number 149 on the roll of barristers, became a Bencher in 1840, and Queen's Counsel in 1867. He drew the Charter of the British America Assurance Company in 1833, and was its solicitor until his decease, nearly seventy years. He was solicitor for the City of Toronto for some years, was a promoter of the Toronto and Huron Railway Company in 1845, and led an active and honourable life.

David Breakenridge Read, K.C., the veteran Bencher and historian, has been referred to in Chapter II. He was admitted to the bar in Easter term, 1845, passed his eightieth birthday in June, 1903, and died May 11, 1904. He held commission as Ensign dated September 10, 1856, and as Queen's Counsel from December 23, 1858.

Mr. Aemilius Irving, K.C., should also be mentioned on the favoured list of octogenarian members of the Bar. Born in



MR. JEMILIUS IRVING, K.C., TREASURER.



Leamington, England, 1823, he was called to the Bar in Michaelmas term, 1849, created a Queen's Counsel by Lord Monck, 1863, elected a Bencher 1874, and re-elected until, by Act of 1900, he became a Bencher for life and has been chosen by his fellow Benchers Treasurer of the Society for ten successive years. Mr. Irving was a member for the City of Hamilton in the Dominion Parliament from 1874 to 1878. He is distinguished as a sound lawyer with a strong personality. He has on many occasions acted on Royal Commissions and as Counsel for the Ontario Government before Canadian Courts and the Judicial Committee of the Privy Council.

Goldwin Smith, D.C.L.—It is not generally known that Toronto's distinguished scholar, critic, and historian is a member of the Bar, and though his Hall was not that of Osgoode, but Lincoln's Inn, we place him on the list of professional veterans. Goldwin Smith is of the same age as Mr. Treasurer Irving. Born in 1823, he was called to the English Bar in 1847. He has been present, as a guest, at professional social functions, and has spoken of English, French and Canadian lawyers in his characteristic and instructive manner. His historical and journalistic work has had a beneficial effect on the press and thought of the City of his adoption.

Dr. Larratt William Smith, K.C., has passed his eightieth milestone, having first seen the light in Devonshire, England, November 29, 1820. He was called in 1843, was for a short time Clerk of the former Court of Error and Appeal, but soon returned to practice, which he followed in Toronto for more than fifty years. Among other multifarious duties, he served for several years as a Bencher. He was a Senator and twice Vice-Chancellor of Toronto University and President of the Astronomical Society.

Mr. Charles Durand is no doubt the oldest living barrister on the roll. His life dates from April 9, 1811, when he was born in the then village of Hamilton. Though in the nineties, he is yet a hale and hearty man, but has ceased to practise. His book of "Reminiscences," published in 1897, deals with many interesting events. He was called to the Bar in Hilary term, 1836, and came from Hamilton to Toronto on the fourth of December of the next year, but found no Courts sitting, the Judges being under arms in the market place. Mr. Durand claims that he was always loyal; but unfortunately his friendship with McKenzie and some of his followers caused his arrest and trial for complicity with them before Chief Justice Robinson and Judge Hagerman. He was found guilty and sentenced, but soon pardoned. He has the rare distinction of being the only member of the Bar who has lived for three score years after passing so strange an ordeal, and of being able now to write, in an interesting and even kindly manner, from his actual experience in those angry days. He practised for a time in Hamilton, but later during many years in Toronto. In his book he scores Sir Allan McNab as "a persecuting tool of the Tories," and ascribes his own ill usage to his influence. Sir Allan's friend and admirer, Sir Francis Bond Head, is pronounced a weak and vacillating person. Mr. Durand also condemns the power assumed by the Provincial Government, of appointing Magistrates, Sheriffs, County Attornies, Osgoode Hall and other officials, and would substitute for it a system which would vest in, or return to, the people and local councils such powers; but as to this it is but right to refer those interested to the learned author's work. When referring to the many Judges whom he knew, Mr. Durand does not bow down and exhibit that regard for the past that is so common, but declares, "Some say our modern Judges are not comparable with such men as Draper, Sullivan and Hagerman.

This is all nonsense. They are superior in what lawyers generally like, courtesy, the milk of human kindness, and shall I say, brotherliness?"

*Judicial Interludes.*—It is said that High Court Judges of late years are not as mirthful as their lordships were of yore, and that the dignity of the Bench and character of the Bar aim at a higher standard; yet there are no wittier sallies recorded than some of recent years, and a pleasantry to relieve the tedium of long debate is as welcome now as ever before.

Mr. Justice Ferguson listened patiently to long arguments on insignificant points, but finally said: "It appears to me that some matters which come before this Court occupy its time in a ratio inverse to their importance. I suppose if it could be conceived that an argument could take place about nothing at all, it would last forever."

On another occasion he asked: "Is there any possible way by which one can complicate the simple proposition that two and two make four?" "Yes, my Lord," replied a gentleman of the Bar, "they sometimes make twenty-two."

In trying a case at Chatham, where coloured men abound, an old ebony witness spoke in a husky voice. Another learned Judge bore this for a time and then said, "Witness, I wish you would speak more clearly, your utterance is so thick I can hardly understand a word you say." "Well, boss," said the old man, "when folks gets as old as me and you, they don't find it so easy to do der hollerin very plain, d'ye see, boss?"

Another Court scene in Chatham: Magistrate, addressing old coloured man, "Well, Senex, here you are again, as usual; what am I to do with you, Senex, what am I to do?" Senex, meekly, "I dunno, y'oh Wo'ship, reckon it's a pretty hard case, but I hope y'oh Wo'ship won't hold me 'sponsible for y'oh Wo'ship's ignorance."

Here also a coloured witness being asked if he knew the reputation of a neighbour of like complexion, replied: "I don't know nuffin agin him, Jedge, but if I war a chicken I'd roost high when he was a hangin' round."

Dr. Scadding relates that Chief Justice Powell had a humorous way occasionally of indicating by a shake of the head, a series of little nods, or movements of the eye or eye-brow, his estimate of an *outré* hypothesis, or an *ad captandum* argument. This was very disconcerting to the advocate who saw his efforts thus, to some extent, neutralized before the jury.

Another worthy Judge had, in his later years, a drooping eye-lid, which caused a prisoner, when found guilty, to lament:—"Sure I knew how it would be when I saw the ould Judge wink to the jury when me lawyer was talking."

Peter Ernest, from the German settlement at Markham, when foreman of a jury, made a struggling bilingual preface to a verdict with so many strange expressions that Chief Justice Powell threatened to commit him for swearing. Peter managed to make it known that half the jury were for "guilty," and half for "not guilty." "That is," queried the Judge, "you would have the prisoner half hanged, or the half of him hanged." "Dat would be as your Lordship bleases," replied the polite foreman.

On the hearing of an appeal in *Neelon v. Toronto*, the junior counsel cited some cases, on which the Court commented in a questioning manner. "Why, my Lord, we were suckled on these authorities," came the response from the ready junior. His senior counsel leaned over towards a colleague and said in a Court whisper, "I wish it to be understood that I was not of that litter."

It is not every one who is favoured with an inside view of that sacred thing, a Judge's note-book.

Interesting personal matters or suggestions are sometimes entered there, not for eyes profane. A Judge said to a reporter who asked the privilege:—"Yes, you may look at my notes, but if you find opposite the name of a witness such a remark as 'this man wants watching,' you will not report that."

After hearing the evidence in a slander suit, the only entry made by Judge Draper was, "The plaintiff says the defendant turned his back upon him and slandered him to his face."

In Mr. W. H. Blake's "Humours of Bench and Bar,"<sup>1</sup> we are told of a gentleman who had occupied some hours in his client's interests as he fondly believed, and was chagrined not a little on happening to see in the Judge's book the following brief epitome after his name, "Vox et practerea nihil."

Once when the old Court of Error and Appeal, composed of the Chiefs and other Judges, was sitting, a learned counsel, who was in the habit of shouting and arguing in a loud and pompous tone, was pleading. One of the Chiefs said sotto voce to a brother Judge, "Do you think Mr. Blank is sound?" "O, yes," was the ready reply, "I think he is all sound."

"It is assumed," says the same relator, "that the terminology of Poker is a part of the common wisdom of mankind, though perhaps the Bench would refuse to take judicial knowledge of the fact that 'three of a kind beats two pair.'"

A case relating to the moving of a building from one place to another, was before a certain appellate Court, a member of which questioned the counsel: "You say, Mr. ———, that this house was raised?" "Yes, my Lord." "Now, Mr. ———,

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<sup>1</sup> Canadian Magazine, Dec. 1893, vol. II., 164.

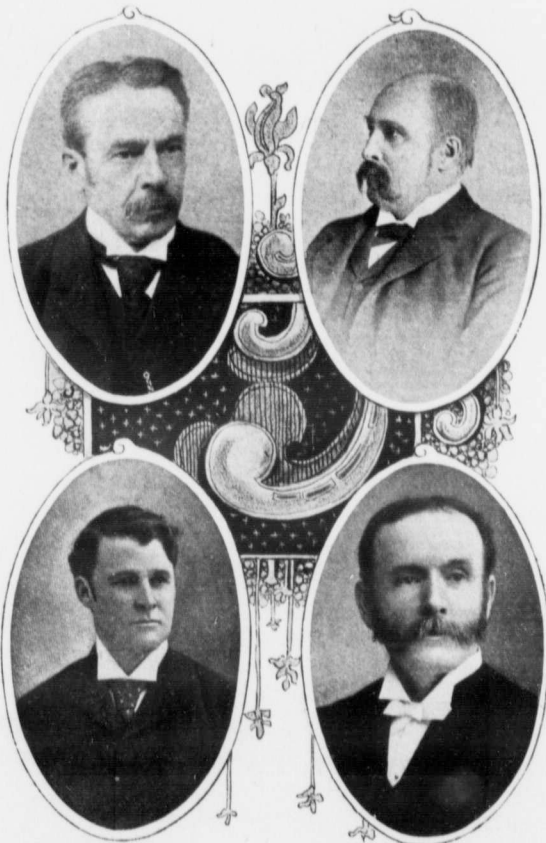


on what was it raised?" "On four jacks, my Lord." Between questioner and questioned passed one gleam of sympathetic intelligence, but otherwise the Bench and Bar were unmoved.

Robert Baldwin Sullivan was a member of the Baldwin-Lafontaine Government, and, when a rupture occurred, ably defended his liberal principles against those of Sir Charles Metcalfe and his champion, Doctor Egerton Ryerson. His letters in the Examiner were under the nom de plume of "Legion." The Doctor signed himself "Leonidas." The Judge, also, as a lecturer in 1847, advanced new and broad ideas as to the future of Canada and its great west, then generally considered a mere hunting ground without importance. He also composed excellent verses which were published over the signature "Cinna." In Mr. Read's "Lives of the Judges," two fine specimens are given of date 1833, entitled "The Emigrant Ship," and "On Woman." Judge Sullivan died at the early age of 51. He is represented by three grandsons, members of the Toronto Junior Bar. Those who remember him, say he had a kindly vein of humour.

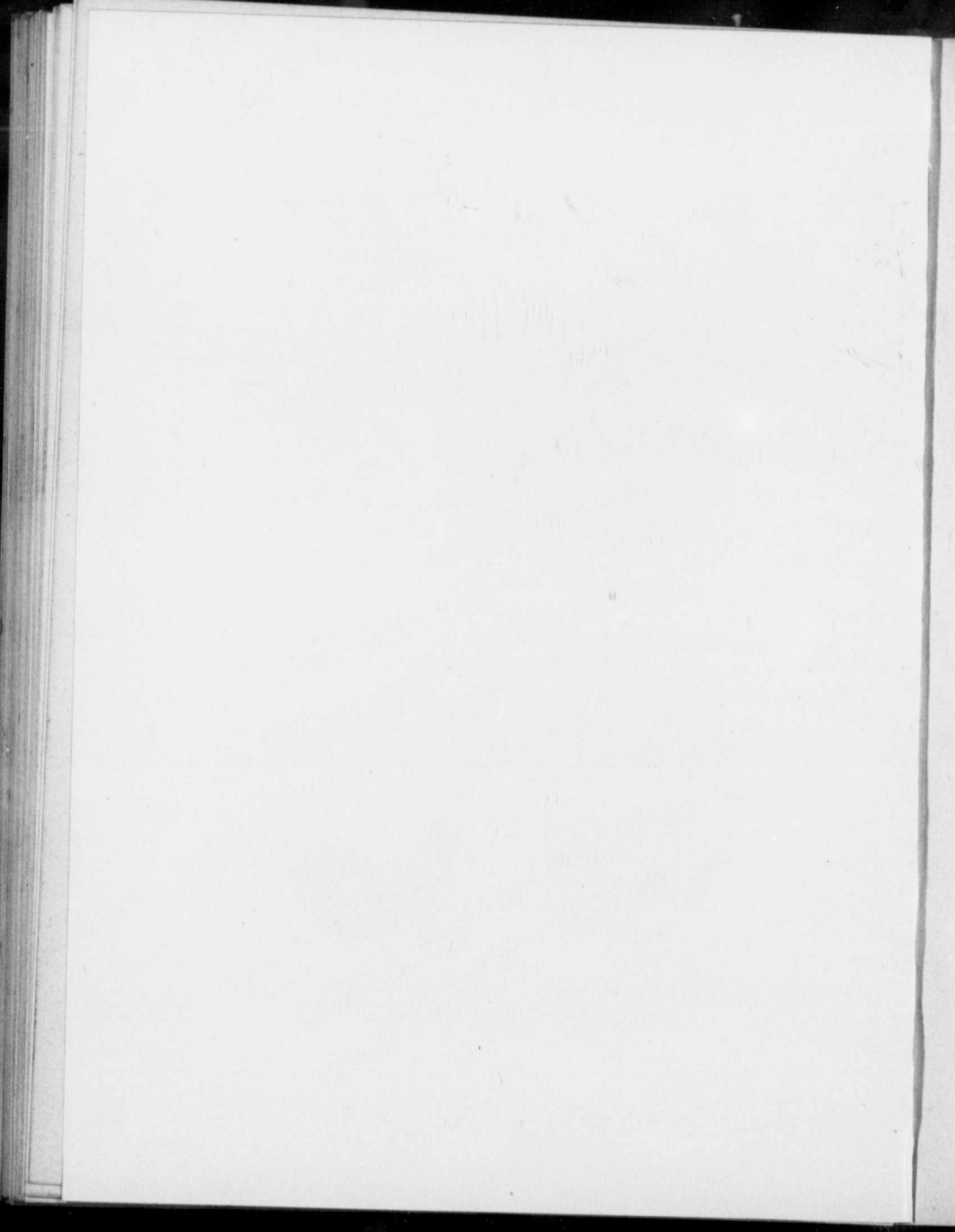
When imprisonment for debt was common, the incarcerated defendant was not liberated until he answered interrogatories as to the state of his worldly affairs. This was done in a case before Judge Sullivan, when Mr. S. M. J. for the plaintiff asked that defendant be examined viva voce, declaring that he is a man of pleasure who wears a great moustache, has a fine gun, goes shooting for pastime and could pay if he exerted himself. "Then," replied his Lordship, "as to bringing so formidable a character with his gun before me, I naturally hesitate; but you can have order for assignment of the moustache and that should suit you to a hair."

Two score years ago Judge Hagarty, tall and slim, and Judge Richards, of ample proportions, are reported to have met



DALTON McCARTHY, K.O.  
SIR CHARLES H. TUPPER, K.C.

B. B. OSLER, K.O.  
E. F. B. JOHNSTON, K.O.



together at the rolling mills near the Don, then attracting many visitors. Looking at the flattened metal as it came out, Judge Hagarty said, "Brother Richards, what kind of Judges would we be if we were put through there?" "Judges of A-size, I suppose," was the reply.

A High Court Judge who indulged in an occasional joke on the Court, which sometimes reversed his rulings, was passing through the library with an armful of books. "I see you are going to read up the law," said a friend. "Oh, no," replied Mr. Justice A., "these are only reports of my uncle's of the Court of Appeal."

The late Chief Justices of Ontario and of the Queen's Bench admired each other's ability and wit, but when their judgments clashed there were sometimes amusing remarks, in one of which the latter was styled mirthfully "the offensive Armour of the Queen's Bench." This gentleman is represented in his Hall picture, standing, with stern features. Chief Justice Hagarty was looking at it as the original happened to pass. "I know what you were thinking of when that was taken, Brother Armour," said the head of the Court of Appeal. "I await your learned opinion," said the other Chief. "I don't care a fig for the Court of Appeal," was the merry reply.

In an action arising from a dispute between two branches of the same church, Mr. B. B. Osler, K.C., appeared at the Cobourg Assizes for one of the parties. On the jury being sworn, Judge Armour remarked that it seemed unfortunate that good people could not settle their disputes out of Court. "If they can't agree, why not refer the matter to a respectable heathen." Mr. Osler—"My Lord, that is just what I was about to propose; with my learned friend's permission, I ask your Lordship to dismiss the jury and try the case yourself."

On one occasion Mr. Osler, a prince among cross-examiners, had a witness in charge who made what the learned counsel thought an extravagant statement. The conversation then ran as follows:—Q.—“Now, you say that there were twenty, don't you think there might have been thirty? A.—Well, there might have been. Q.—What would you say to forty? A.—Can't say as to forty. Q.—Come now, couldn't you stretch a point and make it fifty?” The answer to this question closed the examination:—“Look here, guvner, this here business ain't no bloomin' auction, is it?”

In a criminal action in which conspiracy was charged, verdict was given in favour of the Crown; on motion for a new trial January 10, 1894, the following is reported by one present:—

Ferguson, J.—

“This indictment is long and as heavy as lead;  
Its author by this time must surely be dead.”

B. B. Osler, Q.C., in reply:—

“The indictment is long I frankly confess,  
That it is no longer your stars you may bless;  
To make the web strong and without any flaws,  
It was needful to stretch out the law's longest clause;  
To catch these great rascals I own I did strive,  
And am thankful to say, I'm still quite alive.”

The following lines are the lament of a worthy court reporter at 90 Fahr.:—

IN THE DOG DAYS.

“A Court in the Dog Days is really too bad;  
In heat so infernal can justice be had?  
The warmth of his feelings must bias the Judge,  
And learning prevail nothing more than mere fudge.  
The most conscientious and able reporter  
Sees his notes growing short, as his temper grows shorter.”

The Registrar, though an as (per) piring wag,  
 Finds his usual irrelevant brilliancy flag;  
 While Counsel sit gasping to catch a faint breeze,  
 But their only relief is to double their fees."

Great Jove himself is said to have nodded, and a Judge of high repute may be excused for a slip in prosody.

In a case involving the mental capacity of a testator, one of the Judges pronounced the word paresis with the accent on the first syllable. This grated on the tympanum of one of his brethren, who sent the following quatrain along the row of presiding Judges:—

"This word of yours pár-esis  
 Our nice ear harrasses;  
 You will ease us and please us  
 By saying par-é-sis."

Which elicited the following reply:—

"Suspend your judgment' now puts in  
 A voice inspired by Hugo Gwynne;  
*Epsilon* short we here must scan  
 And *Par* find long in lexicon."

A small gentleman addressed the Court, when Judge Draper presided, with stentorian voice. Leaning towards the counsel, the Chief said in bland tones:—"Mr. B——, may I suggest that, though Justice may be blind, she is not deaf."

The Court of Appeal was once delayed for a few minutes by the tardy arrival of a learned counsel who was known to be in the Hall. When he entered, Hagarty, C.J., remarked that he feared attention in another Court then sitting had been the cause of the waiting. "I regret very much that I could not appear for the moment," said the K.C., "but this is, as your Lordships know, the tribunal of last resort in the Province."

When the same gentleman had concluded his argument for the City of Toronto in the action known as that of the "Bob-tail cars," another Chief remarked to him, "I assume you rest

your case on the statutes." "Entirely so," said the city's representative.

"Have you not omitted one important enactment?" said the Chief.

"Indeed?" said the K.C.

"I refer to the Act respecting Short Forms of Conveyances," said the Chief with a smile.

Dalton McCarthy, Q.C., was a bright, busy, and much sought after man from the time, in 1876, when he entered Parliament as member for Cardwell, until his untimely decease in 1899. When not actually engaged in Parliament, he had briefs in many Courts. In the case of *Harris v. Wright*, in Appeal, being retained for the plaintiff, he had only time to glance at his brief when he was called from another Court, and arrived as Mr. Moss, the opposing counsel, was sitting down. Mr. McCarthy addressed the Court with his usual spirit, but, to the plaintiff's solicitor's chagrin, and the amusement of the Bench, argued on the wrong side. The solicitor, in an energetic whisper, explained the error. Mr. McCarthy then boldly returned the Court's smile and said, "Such are no doubt the arguments used by my learned friend, which I propose to refute," and this he proceeded to do.

Administration of the law by their Honours of the County Court is sometimes subject of amusing comment. They are local officials and dispense justice, each in his own way, and in his own court house, except when holding Division Courts, which are also within his county. The mental horizon was alleged to be consequently limited. When an Act providing for an interchange of counties among these Judges was passed, it was suggested that it would be hard on the people to send them Judges of whose law they were ignorant.

Many other such passages of wit and humour float about as professional legends. The above may suffice and not surfeit.

So let us avoid the charge of Sir John Falstaff addressed to the Chief Justice: "It was always yet the trick of our English nation, if they have a good thing, to make it too common."<sup>1</sup>

Joseph Curran Morrison was born in the Green Isle in 1816, but was a member of St. Andrew's Society. He was one of the law firm of Blake, Morrison & Connor, all the members of which became Judges. He had studied in the office of Simon Washburn, and was admitted to the bar in 1839. He was a particular friend of Sir John Macdonald, and for a time a Minister of the Crown under him. He also supported Sir Francis Hincks.

Mr. Morrison was appointed Judge of the Common Pleas, March 19th, 1862. He was notified of this by his friend, the witty Premier, in a message reading: "My dear Joe, I have knocked you into a cocked hat!" In August, 1863, Mr. Morrison was transferred to the Queen's Bench, and in November, 1877, went as Judge to the Court of Appeal. He died December 6, 1885. He was noted as a pleasant companion, and had a host of friends. One sent him, when he was at the Bar, a fine wild turkey which he exhibited at his office to various acquaintances, some of whom were not averse to a practical joke. He lived at Woodlawn, a rural place on Yonge Street, north of the city, formerly occupied by Chancellor Blake, and, when ready to return in the evening and take home the bird, was surprised to find that it had flown away.

Mr. Morrison received an invitation for dinner next day from his friend, a jovial medical man, when the piece de resistance was his turkey, which the host said had been sent him by an unknown friend.

The Judge had a taste for art and floriculture, which made his home interesting and attractive.

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<sup>1</sup>Henry IV. 11, 1, 2.



Part of Woodlawn was enclosed as a small park in which a few deer roamed. Boys of a well-known Toronto family were elated at finding two fawns roaming wild on the Don flats, of which they soon made venison. A haunch was sent to a good church functionary, who celebrated the event with a dinner, to which was invited his friend of Woodlawn. The hunt and its incidents were discussed over the venison, and the genial Judge smiled as he again found that he had contributed the chief dish of the feast.

Chief Justice Hagarty, discussing, in his amusing way, the merits of certain deliverances in the Court of Appeal, once remarked in effect that the judgments for which he was able to give the least reason were sometimes most satisfactory to his own mind. Judge Morrison, hearing this, dutifully said, "I quite concur with the learned Chief Justice and have had the same experience." In the argument of a much contested case, a decision of Lord Mansfield was referred to and had an important bearing. Mr. Bruce, Q.C., stated that he was informed that the facts were not properly set out in the report, and proposed to obtain a copy of the pleadings and proceedings. He subsequently told the Court that his efforts had resulted in finding that these had been destroyed when Lord Mansfield's house was burned in the Lord George Gordon riots. The case was being taken to a higher appellate Court when a new text book came from England, in which the main point in issue was treated adversely to the appellants' contention, and this influenced them to abandon the contest.<sup>1</sup>

<sup>1</sup>Ryan v. Bank of Montreal, 12 O. R. 39, XIV., Appeal 533. Lord Mansfield's house was burned in his 76th year, June 6th, 1780. See verses by Cowper ending:—

"The lawless herd with fury blind,  
Have done him cruel wrong;  
The flowers are gone; but still we find  
The honey on his tongue."

Two of our Chief Justices are pleasantly referred to by Dr. Walter Henry, surgeon of the 66th Regiment, who spent part of the year 1833 in Toronto. The first was the then Chief, who was also Speaker of the Upper House; "In the Legislative Council, Chief Justice Robinson shone conspicuously as an orator and a highly talented man. He is moreover most pleasing and gentlemanly in private society, a man who would distinguish himself anywhere, and might in England aspire to the woolsack."<sup>1</sup>

Sir William Campbell, the late Chief Justice, was then enjoying his pension, but old and in feeble health; he was the first of our Judges to receive the honour of knighthood. He was born in 1758, went from Scotland as a soldier in a Highland regiment during the trouble between King George and George Washington, was taken prisoner on the surrender of Lord Cornwallis in 1781, then settled and studied law in Nova Scotia, practising in Cape Breton, was there Attorney-General, was, in 1811 appointed Judge of our Queen's Bench and, in 1825, became Chief Justice. He lived on Duke Street, in a brick mansion, facing Frederick Street, still existing, and occupied by a manufactory, of which a view is given in Robertson's Landmarks of Toronto. The bright army surgeon, who had seen much of the world, was impressed with the high character and fine disposition of his patient, but says, "His nights were restless, his appetite began to fail, and he could only relish tit bits." Medicine lost its power, so the doctor took his gun and went hunting for snipe on what is now Toronto Island. "Here were," he relates, "a number of pools and marshes, frequented by these little birds, and here I used to cross over and pick up the Chief Justice's panacea. On this delicate food the poor old gentleman was supported for a couple of months, but the frost set in, the snipe flew away, and Sir William died."

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<sup>1</sup> *Trifles from my Portfolio*; London, 1830, vol. II., 115.

Chief Justice Campbell's funeral was large and, at the same time, was that of Mr. R. Mount, a member of the Legislature. Archdeacon, afterwards Bishop, Strachan preached the oration or sermon in the old St. James' Church.

It is stated that there were twenty inhabitants of the town present whose united ages exceeded 1,450 years.

The following passage from Dr. Henry's book might have been penned by the authoress of "Summer Rambles," who was in Toronto three years later:—"It is a matter of regret that the early poets were ignorant of the humming birds. How delicately Shakespeare would have handled them, arraying them perhaps in a band with Ariel as their leader, ethereal enough even for Oberon and Titania." The pleasure which Dr. Henry found in our woods and gardens was later expressed by George Murray in his verses entitled "To a Humming Bird in a Garden:"

"Blithe playmate of the summer-time,  
Admiringly I greet thee;  
Born in old England's misty clime,  
I scarcely hoped to meet thee."

Edmund Burke Wood was called to the Upper Canada Bar in Trinity term, 1848. He was in public life, as member of the Assembly or House of Commons, and Minister of the Crown, from July, 1867, until appointed Chief Justice of Manitoba, March 11th, 1874.

The first important argument before his Court in Winnipeg was on plea to the jurisdiction in the case of the Crown against Lepine for complicity with Riel in the murder of Scott, which was decided in favour of the Crown against the opinion of several well-known counsel. This judgment was sustained by the Imperial law officers. The trial lasted two weeks, and well tested the Chief's judicial powers.

He was of the strong fibre then called for in the young Province, where rude elements were in conflict with the march of civilization.

In 1876 fifteen Americans crossed the boundary from Montana to the North-West Territories in search of their horses which they claimed had been stolen by Indians. A battle ensued, in which a number of red men were killed, but no white man was hurt.

After the affair the Americans returned to Montana. The Canadian Government had them arrested and applied for their extradition, but failed. Shortly after this, three of the Americans were caught on the Canadian side, and brought to Winnipeg to stand trial for murder. They were defended by S. C. Biggs, K.C., who was nephew to the Chief Justice.

Mr. Biggs, on the trial, challenged peremptorily, or for cause, every white jurymen. The result was that the panel was composed entirely of half-breeds, a very impressible jury. Chief Justice Wood, who presided, was much annoyed, and gave vent to his feelings, as the trial proceeded. The case for the Crown lasted six days. The evidence was given in no less than seven languages and dialects.

When the defence opened, Biggs called, as the first witness, the Hon. James McKay, known in the Province as the "King of the Half-breeds." The Chief Justice immediately demanded, in no uncertain voice, why counsel had called Mr. McKay, who, he asserted, knew nothing of the case. Biggs was taken by surprise, but in a moment answered, "My Lord, I propose to shew by this witness that the Indians who were killed were savages, and that they fell in warfare, and that this was not murder but in self-protection."

His Lordship looked at his learned kinsman for a moment and then thundered out, "Why, sir, your own ancestors were savages only two or three generations ago."

Mr. Biggs immediately replied, "True, true, my Lord, I claim the same ancestry with yourself, only one generation farther removed."

His Lordship scarcely enjoyed the personal application, but the Bar did, and he said, "Go on, sir, go on."

The prisoners were acquitted.

Thomas Moss.—The life of a man is to be measured not by years, but by his achievements. It was said of the famous American Federalist:—

"Formed for all parts, in all alike he shewed  
A various power, a genius unconfined,  
In converse bright, judicious in debate,  
In private amiable, in public great."

And yet Alexander Hamilton fell at the age of forty-seven.

Thomas Moss is admitted to have been a man of like versatile gifts, who would have been distinguished in any company.

While William Henry Draper, C.B., was Chief of the Court of Appeal, the highest Provincial tribunal, the Chief of the Queen's Bench was, by an accident of the law, styled Chief Justice of Ontario. This continued until the death of Robert Alexander Harrison, November 1, 1878. Though then only in his forty-fifth year, he had secured wonderful professional success.

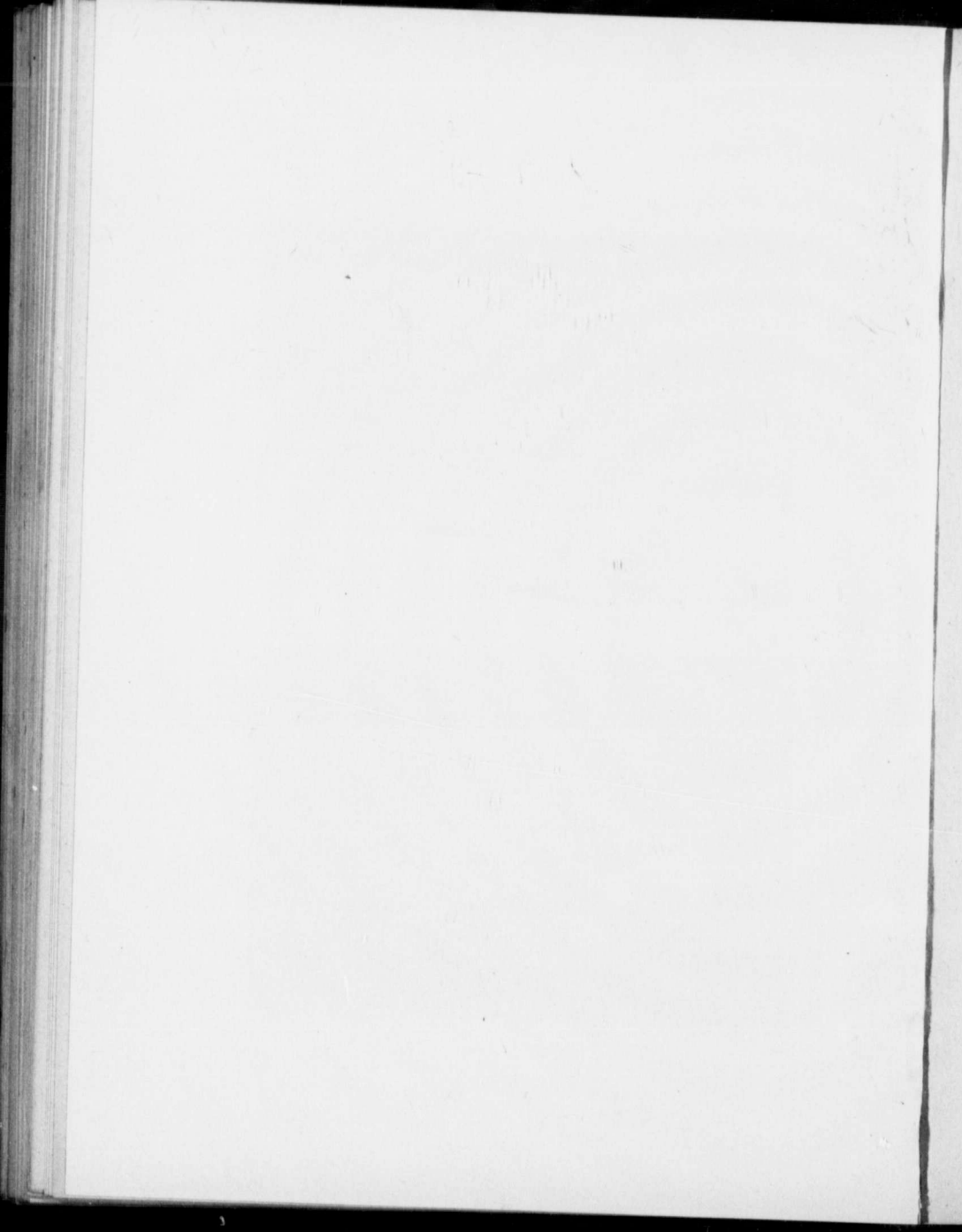
From the 8th of October, 1875, Chief Justice Draper had Mr. Moss as a colleague who, after two years, succeeded to the Chief Justiceship. He adorned the office until his untimely death, on the 4th of January, 1881, he being then of about the same age as Chief Justice Harrison at his decease.



CHIEF JUSTICE CHARLES MOSS.



CHIEF JUSTICE THOMAS MOSS.



The author of "The Irishman in Canada" finds no character more attractive than that of Thomas Moss. Mr. Read, in his *Lives*, as he sketches his brilliant but brief career, "feels a poignant sorrow for the loss of so many friends." . . . "It is not, however," he writes, "within the compass of the work I have in hand to compose an elegy; even had I the ability to make elegiac verse or poetic measure, I would not indulge the sentiment. This is a prosaic, not a poetic age. It is well to conform to the condition of things as we find them."

In his school and university Moss was always *primus*, carrying off many prizes and medals. At Osgoode Hall he was successively Examiner, Lecturer and Bencher. He was devoted to his alma mater, and was twice elected Vice-Chancellor, while Edward Blake was the Chancellor. At the Bar he soon won his way and generally had a sheaf of briefs. He was twice elected to the Dominion Parliament by the citizens of Toronto, among whom his boyhood had been spent. The high character and cultivation of other Canadian Judges are referred to in this volume, but none of them will have a more lasting fame, or be more dear to the intelligent Canadian, than Thomas Moss.

On the day following his decease, Mr. Justice Burton, sitting in the Court over which the late Chief had presided, paid a touching tribute to his memory, saying in part, "His loss is too recent, and my appreciation of it too keen to permit me to make more than a passing reference to his personal and social qualities. . . . I wish I had the command of language to do justice to his many virtues and his great intellectual gifts. But I yield to none of his numerous friends in admiration of his character and in tender and affectionate regard for his memory."

Chief Justice Moss will be remembered by the Bar through his judicial utterances in the Court reports. They are



remarkable for their clearness and felicity of diction. He was too busy a man to contribute much to general literature, but it is understood that, in his student days, certain periodicals in Toronto were sometimes favoured by him.<sup>1</sup>

His addresses in Parliament were admired as efforts worthy of his genius. He was felicitous at social gatherings, when wit flowed over the walnuts and the wine. At a dinner to the Marquis of Lorne by the Toronto Club, the Chief Justice was chairman and made an excellent address. This gave rise to a happy compliment from a classical member of the Bar, a guest at the banquet, who, after some aid from *Ars Poetica*, ended with the punning application of a legal maxim, "Mos pro lege."

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<sup>1</sup> See references to the *Grumbler* and *Poker* in chapter X.

## CHAPTER VII.

### OSGOODE IN SCARLET, GREEN AND KHAKI.

*"Form, Riflemen, Form!"*

Lord Campbell relates of Ranulfus de Granville, Chief Justiciar under King Henry II., who is known as the "father of English jurisprudence," that he was equally distinguished as a lawyer, a statesman and a soldier, that he was a good classical scholar and initiated in all the mysteries of the feudal law.

Sir Matthew Hale, when a law student about the year 1625, resolved to be a soldier, he would "trail a pike" under the Prince of Orange. His relations tried to persuade him from following Mars, but the future great Judge replied gaily:—

"Tell me not of issue male,  
Of simple fee and special tale  
Of feoffments, judgments, bills of sale  
And leases:  
Can you discourse of hand grenadoes  
Of sally ports and ambuscadoes,  
Of counter scarps and palisadoes  
And trenches?"

We find the like characteristics exhibited, and the bravery and military skill shewn by Colonel Prince and Sir Allan McNab, equalled by many of our former learned Judges who, when the trumpet sounded, were always ready to exchange the sombre gown for scarlet or green tunic. The present occupants of High Court benches have lived in a happy era, and been men of peace.

Archibald McLean was with Brock at Queenston Heights, and, when the young Attorney-General McDonell fell there, he cried to the future Chief, "Archie, help me." McLean was then

also severely wounded, but lived to take part in the later struggle at Lundy's Lane, and when that was over, studied law under Dr. Baldwin.

Chief Justice Robinson was at the capture of Detroit by Brock in 1812, and drew up the terms of General Hull's surrender. He was also at Queenston Heights; was active in the troubles of 1837, and his son of the same name, the future Lieutenant-Governor, on the 7th of December, rode out on Yonge Street with Sir Francis Bond Head to meet the rebels, and, soon after, became lieutenant in a company of loyal coloured men.<sup>1</sup>

Few who saw the dignified bearing and heard the modulated tones of William Henry Draper when on the Bench, knew that he had been aide-de-camp to Governor Sir George Arthur, and, in 1838, a colonel of militia; nor had they seen the fine features of Colonel John Godfrey Spragge, lit up with heroic ardour, as he rode ten years later before his battalion at Toronto, only resigning his command when he went to sit beside Chancellor Blake.

Chief Justice Hagarty, at the time of threatened rebellion, did "sentry go" in front of the Bank of Upper Canada, and Vice-Chancellor Esten marched with the Governor to Montgomery's, carrying a gun.

Sir Oliver Mowat, when a youth, served in the Kingston battalion, and related that he, as an ensign, carried the colours at the inauguration of Brock's monument.

Mr. Robert Baldwin and Sir Adam Wilson had commissions in the militia. Chief Justice Macaulay was a brave soldier, as stated in chapter II.

The late Mr. Justice John Wilson was active in suppressing the rebellion of 1837, when he was Captain of a company raised

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<sup>1</sup> As to this Company, see Chapter V.

in London. He became Colonel of the Second Battalion Sedentary Militia, and when he retired, an order appeared in the Canada Gazette in which the Commander-in-Chief expressed "the sense he entertained of the value of Lieut.-Colonel Wilson's services in the militia of the Province for the last five and twenty years."

The Hon. John Willoughby Crawford, who was a Bencher, partner of Judges Sherwood and Hagarty in business, member of Parliament, and when he died, May 13th, 1875, Lieutenant-Governor of Ontario, was lieutenant-colonel of the Fifth Battalion of Militia.

Reference to the militia list of the Dominion shews that alumni of Osgoode Hall hold many honourable appointments in the service, among them being the Deputy Adjutant-General, Colonel B. H. Vidal, the Attorney-General, Hon. J. M. Gibson, K.C., LL.D.; Lieutenant-Colonels George T. Denison, LL.B.; W. E. O'Brien, J. B. Rankin, K.C., John E. Farewell, K.C., LL.B.; W. E. Hodgins, M.A.; E. B. Edwards, K.C., LL.B.; William N. Ponton, M.A., and many others of various ranks.

Our wise authorities, recognizing an affinity between the two professions, have placed the great armouries in close proximity to Osgoode Hall.

The history of rifle corps at Toronto has many matters of interest to members of the Law Society. When war was threatened with the United States in connection with the Oregon boundary in 1846, Mr. Read relates that Mr. Esten and he volunteered and used to meet nightly for drill in St. Lawrence Hall. "Mr. Esten was," he states, "his right hand man. We had some difficulty in forming fours, but ultimately succeeded." The future Vice-Chancellor found the old Queen Bess gun borne by him at Gallows' Hill, in 1837, too large for his moderate figure, and now carried a more suitable rifle made for his use.

The gun, which he had made, is a smooth-bore, with bayonet, the barrel, thirty-three inches long, and percussion lock. It weighs nine pounds, and was made by Ashfield, of Toronto. This well preserved weapon is shewn in an illustration along with the more ancient Baldwin office chairs. Lord Aberdeen arranged the Oregon dispute by accepting the 49th parallel as the boundary.

In the year 1860 the Imperial Parliament encouraged the formation of volunteer rifle corps, when the movement was taken up enthusiastically. Cambridge University has the credit of enrolling the first company. Early in 1861 Trinity University at Toronto formed its corps, the uniform being like that of Cambridge, grey with scarlet facings. The first captain was Robert B. Denison, under whose zeal and energy high efficiency was attained.

Thomas H. Ince was captain in 1863 and 1864, Livius P. Sherwood the next two years, and Salter M. Jarvis then for three years. Bruce Harman and George A. MacKenzie subsequently down to 1875.

Among members of the legal profession on the roster were Judge John A. Ardagh, W. P. Atkinson, Geo. F. Harman, James Henderson, Elmes Henderson, Saulter J. VanKoughnet, George McKenzie, Lieutenant J. H. G. Hagarty, Rusk Harris, Beverley Jones, A. P. Poussette and George M. Rae.

The Queen's Own Rifles of Canada were organized March 14, 1862, when the corps became No. 8 Company of that regiment and soon abandoned the grey and assumed the dark green uniform of the regiment.

When the land was aroused to apprehension by the Trent affair in November, 1861, a call was made for University men to meet at Convocation Hall, and, among those who responded were Mr. Edward Blake and a goodly number of other graduates,

then members of the Bar or students at law. Peace was secured by the giving up of Mason and Slidell, but this movement resulted in the formation of the company, which became No. 9 of the Q. O. R., afterwards styled K Company, which for a time was divided into two, called I and K Companies.

The first officers were Professor Croft, Captain; Professor Cherriman, Lieutenant, and Adam Crooks as Ensign, representing the Bar. There was no "Devil's Own" in the Province, members of the profession joining cordially with the colleges in manner stated.

The University Company at first wore grey, but, when incorporated with the Q. O. R., also adopted the dark green.

The Captains, after Professor Croft, were Professors Cherriman, Ellis, VanderSmussen and Baker, and George Acheson, now Colonel of the 29th Regiment, Joseph M. Delamere, E. F. Gunther, Harry Green, Dr. Theodore Coleman and Robert Rennie. Mr. Robert Reford, now of Montreal, was captain of one of the other companies for three years, from April, 1863.

Sometimes a sergeant from the barracks was drill master, but oftener the fine old Waterloo soldier Henry Goodwin, who might have been seen as a corporal twenty-five years before, training Irish lads in front of the Belfast Royal Academical Institution. He came to Canada in 1850, and was known throughout the land as a master of drill and gymnastics. He inspired all with military ardour.

The University company practised shooting in the first Rosedale ravine, between Huntley and Sherbourne Streets. Among the crack shots were Sergeant Gibson, now Attorney-General, and Private Hodgins, now Master in Ordinary. The march out was often along College Street to the vacant space then found at Spadina Avenue, where drill took place. It was curious to note

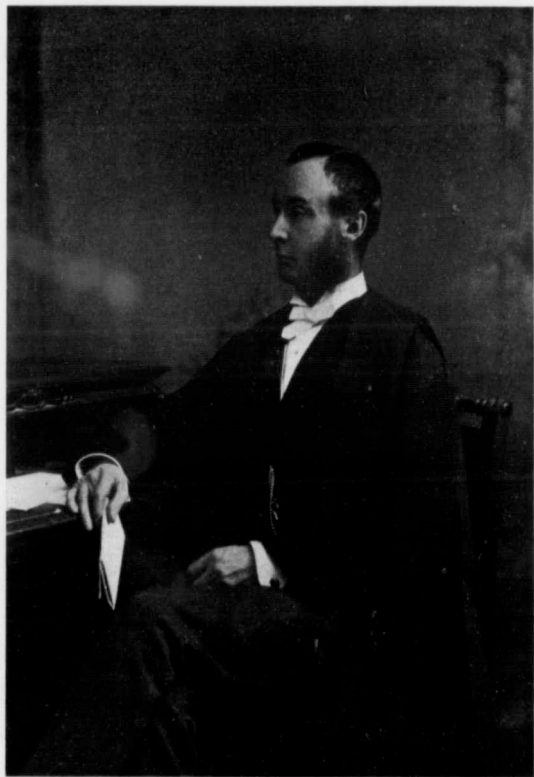
the difficulty which some found in mastering tactics and getting beyond the goose step and out of the awkward squad. An officer, who in a few years wore silk, could never raise his sword properly to the salute. No one was more enthusiastic than the worthy Professor of History and English Literature, his long hair protruding under his shako as he moved in step among juvenile recruits.

In an official organization of the Q. O. R., of November 21, 1862, a battalion was constituted of ten companies, the two referred to being included as Trinity College Company, No. 8, Major R. B. Denison, and University Company, No. 9, Capt. H. Croft. A band was organized under Mr. A. Maul, and, in January, 1863, Thomas H. Ince became Captain of the battalion vice R. B. Denison appointed Brigade Major. Captain Henry Goodwin was the first Adjutant.

A battalion order of May 1, 1863, directs men to parade with tunics and shakos, sergeants with rifles, officers in undress uniforms and forage caps, and wearing swords. On the 19th of that month, the habit of wearing shirt collars on parade, indulged by some, is reprehended, and the "commanding officer trusts that for the credit of the battalion the practice will in future be discontinued."

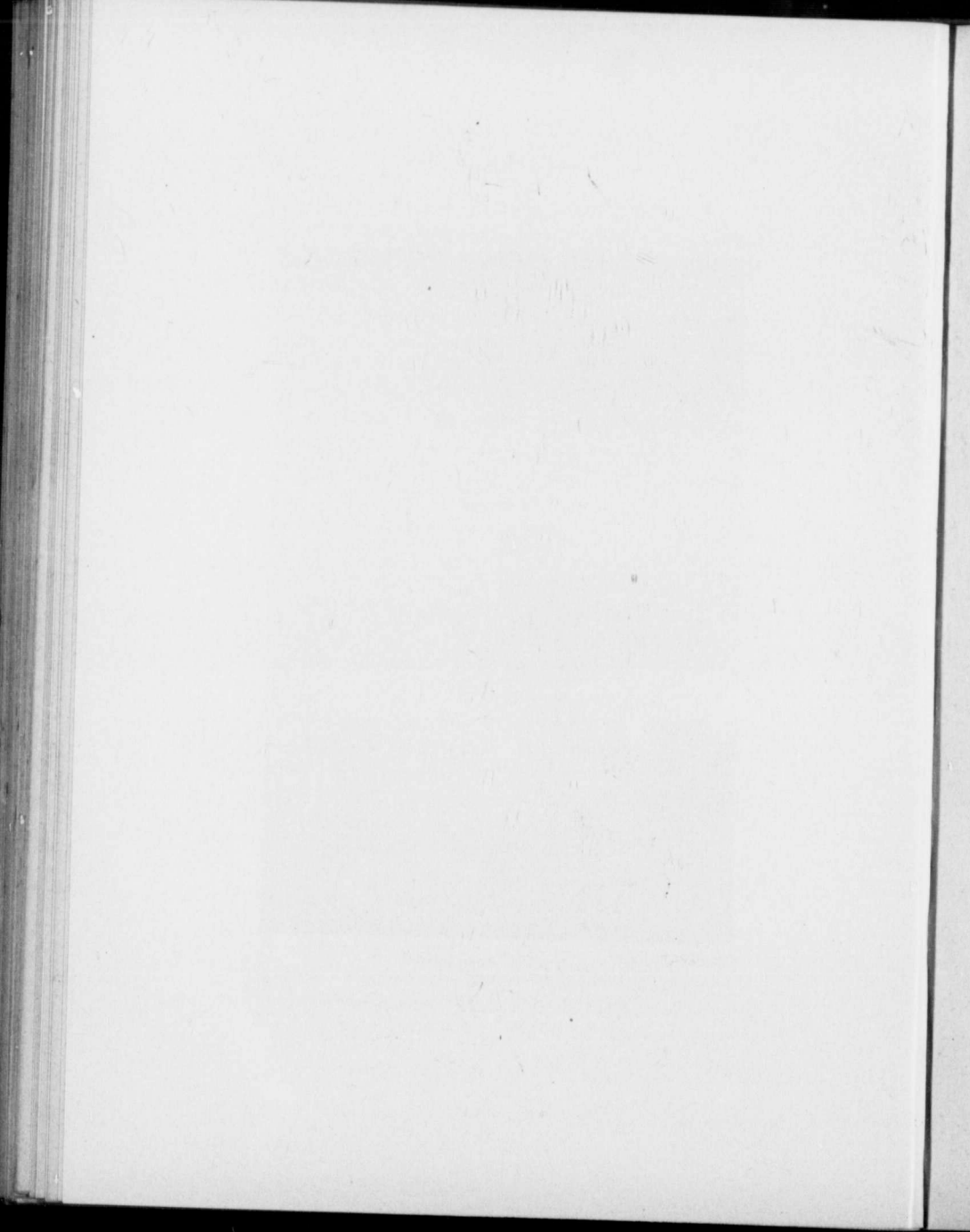
"The year 1866," writes the chronicler, "was a stirring one for Canada, and especially for the Queen's Own."

The air was full of Fenian boasts and threats, and the executive of the Republic winked at their preparations for invading Canada. Major-General Napier, commanding in Canada West, gave orders to meet and drill, as an invasion was feared in March. Trouble was anticipated on the 17th of that month, St. Patrick's Day, and the battalion, 39 officers and 666 men, was mustered and kept under arms, but no outbreak arose.



CHRISTOPHER ROBINSON, K.G.





The first and second days of June were memorable in Toronto annals. On the first the main body of the battalion, 356 strong, embarked in the morning on the steamer *City of Toronto*, for Port Dalhousie; the remainder of the battalion followed by the evening boat. The affair at Ridgeway took place next day. The Queen's Own marched at the head of the column of Canadian troops. "The action at Ridgeway was not," says the historian, "perhaps a battle of the first class. The numbers engaged were small, and the butcher's bill light . . . but it was one of the most decisive battles ever fought on Canadian soil, nevertheless, for though the immediate result of the action was the retirement of the Canadian troops, the ultimate result was the speedy withdrawal of the army of Fenians from the soil of Canada."

Trinity company was actively employed during the engagement in skirmishing order on the extreme left, while the University company was on the right.

There would probably not have been so many casualties, but that "some one had blundered." A few horsemen were mistaken for cavalry, and the men were ordered to form a square, a good mark for Fenian bullets. The result is part of the country's history. She was full well satisfied with the action of her young defenders, and has given the survivors medals in honour of the event. Trinity Company escaped unwounded; four of University Company felt Fenian missiles, three of them being members of the Law Society, Privates R. E. Kingsford, E. G. Patterson, and W. H. VanderSmussen (law student). Other members of the Bar at this engagement were Corporal T. D. Delamere and Privates E. H. Smythe, T. M. Grover, H. M. Deroche, William Watt and Arthur Williams. Others who left for the scene of action under Major Croft and Lieutenant Cherriman, but did not

actually take part in the engagement, were Sergeant R. R. Baldwin and Privates Walter G. Cassels, J. E. Farewell, James Loudon, now President of the University, John A. Paterson, C. E. Ryerson (afterwards Captain), Charles B. Jackes, William Mulock (now Sir William), George A. Radenhurst, of Barrie, James E. Robertson. A monument to seven of the Q. O. R. who lost their lives at this time is in the Queen's Park.

The battalion was armed with old Enfield muzzle-loading rifles and bayonets, which were discarded in favour of Spencer repeating rifles in February, 1867, but these were exchanged six months later for long Snider Enfields.

It was with many a matter of lasting regret when they could not go to the front at the bugle call. An incident occurred in the House of Assembly after the Ridgeway affair. A worthy colonel from the brave north country had excused himself on account of suffering from sore feet. An honourable member referring to this quoted from the old ballad of Chevy Chase:—

For Witherington needs must I wail,  
As one in doleful dumps;  
For when his legs were smitten off,  
He fought upon his stumps.

It would have been pleasant had this challenge received as witty a reply, on the contrary it ruffled the feathers of the gallant law maker.

Wm. B. McMurrich was a member of the Victoria Rifles, a company formed after the Trent affair, which became amalgamated with the Q. O. R. as No. 6 Company. Lewis W. Ord was Captain. Their uniform was also at first grey with red trimmings, and a bunch of cock's feathers set in the shako. In 1835 Mr. McMurrich was in active service for three months at Stanley Barracks, as Captain of the battery of Garrison Artillery, and was then Commandant there.

When the Riel rebellion of 1870 broke out, Hugh John Macdonald, son of the late Premier and a member of the Ontario Bar, was an ensign in the second battalion and accompanied it to Manitoba. He became a captain in the historic 90th Regiment. Herbert M. Mowat served first in the Prince of Wales Own Rifles and then in the Q. O. R., retiring with rank of Captain. Thomas Langton retired with rank as Lieutenant. Major M. S. Mercer is still in service. Captain William Roaf and Lieutenants Walter Barwick, Henry O'Brien, William H. Blake and Sergeant-Major James F. Smith, members of the Toronto Bar, were active officers of this regiment.

During the summer of 1877, G. Company was organized with R. Heber Bowes, Captain, and W. E. Hodgins, Lieutenant. The decade before the second half-breed rising had in it little practical service. On March 27th, 1885, came the rude awakening at Duck Lake, and the Queen's Own was the first corps called on; 250 men from it were asked for, but 23 more managed to join the party. Among the members of the Bar who served on this more distant field were Lieutenants H. Brock, E. W. H. Blake, E. F. Gunther and R. S. Cassels, Sergeant Henry W. Mickle, Corporal H. B. Cronyn, and Privates A. D. Crooks and A. J. Boyd.

In the late Boer war twenty-seven men from the strength of the Queen's Own were taken in addition to those who enlisted as members of other corps. Among those who then left their practice and donned the khaki were Captain Rybert K. Barker, who returned with medal and clasps, Captain A. J. Boyd, who had also an honourable career on the veldt, but fell a victim to fever, and F. T. D. Hector, who returned in safety.

The Tenth, or Royal Grenadier Regiment, was organized March 14th, 1862. Its active service was mainly in June, 1866, when it was at Fort Erie and elsewhere on the Niagara Frontier,

and in the North-West, at Cut Knife Creek and Batoche, where it served from March 30th to May 12th, 1885. The First Lieutenant-Colonel was Frederick William Cumberland, one of the accomplished architects of Osgoode Hall. Lawyers were not so much in evidence in this regiment as in the Q. O. R., but we find that John Bruce was lately its Lieutenant-Colonel, Thomas Taylor Rolph was Major, the late N. G. Bigelow, paymaster, George Anthony Boomer, Frederick B. Cumberland and George W. Allan, Captains, and Don M. Howard, Lieutenant, at various dates. Captain John G. Ridout had returned from the 100th Regiment and the Staff College in 1865 and served in the Second Company, Administrative Battalion, at Laprairie during O'Neil's threatened attack of that year. He joined the Tenth Royals when they went to Fort Erie, and after the main body of the Fenians had recrossed the river, he was active in making prisoners, among whom was Father McMahan. These braves were subsequently tried at Toronto and some of them served the Queen in the Kingston penitentiary.

The Governor-General's Body Guard is a Dragoon Corps, dating from 1822, in whose organization the late Colonel George Taylor Denison, of Bellevue, and his son of the same name, a lawyer by profession, took a leading part, and in which many of the name have since figured. The troop was independent and self-supporting until December, 1855, when it was gazetted into the active militia. Among its commanders were the late Frederick C. Denison, C.M.G., and M.P. for Toronto, also the present Police Magistrate, a distinguished alumnus of Osgoode and Varsity; Clarence A. Denison, the late Colonel, and Major Cockburn, V.C., who won his decoration on the veldt, also Major George T. Denison, the fourth of the name, and Captain M. C. Cameron, members of the Bar. The 48th Highland Regiment dates from

October, 1891, only, and has for Major, Donald M. Robertson of the same profession.<sup>1</sup>

The Toronto Light Horse Regiment, organized April 1st, 1903, has a medical man in command, associated with him being two members of the Bar, Captains D. L. McCarthy and John H. Moss.

The commanding officers of these regiments now, 1904, naming the corps according to official seniority, are, of the Governor-General's Body Guard, Hamilton Merritt, who recently returned from service in Africa; of the Toronto Light Horse, Major Peters; of the Queen's Own Rifles, Lieutenant-Colonel H. M. Pellatt; of the Royal Grenadiers, Lieutenant-Colonel G. A. Stimson, and of the 48th Highlanders, William C. Maedonald.

And now, with permission, the writer would rise to remark that he much fears that, in this necessarily limited relation, some hero's name may be omitted or gallant deed slighted. He has before him the precedent of Judge Sullivan, and would avoid facing angry guns. He humbly offers, however, on proof of any such omission, to submit to banishment from the Hall, without benefit of clergy, during all the next Long Vacation.

He will hie away to Fort Erie and count the dints made by Fenian bullets in ancient houses there, then to Port Arthur and, from a well remembered cottage on the hillside, look down on the sleeping Manito of Thunder Cape, and go over the story of Wolsley's campaign, as related there, soon after the event, in the gentle tones of Simon James Dawson. At Winnipeg he will

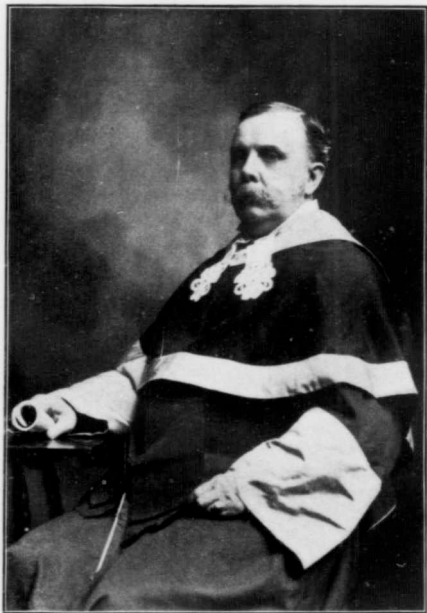
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<sup>1</sup> Reference has been made in preparing this account to "The Queen's Own Rifles of Canada, 1901," by Capt. E. J. Chambers; "Trinity College Rifle Company," by Captain S. Bruce Harman, in *Trinity University Review*, Oct., 1890; and "University of Toronto Fasti, 1850-1887;" also to "Champion's History of the 10th Royals and Royal Grenadiers, 1806."

visit the historic spots where brave John Schultz and the enthusiastic Consul Taylor were our cicerones; then pass by Selkirk on the Red River to the cabin where I-and-wah-wah, that venerable Cree warrior, the red counterpart of Sir John Macdonald in face and figure, told us of cruel Sioux massacres and of his loyal ancestors. Treking farther west, we would see how the white man took up his burden, and our brave fellows bore their knapsacks, we would learn how Riel planned and Dumont led, where the great Crowfoot held his tribe in check with firm hand, where Poundmaker and Big Bear encamped, visit Cut Knife Creek and Batoche, walk in the old buffalo trails, hear the bark of the prairie dog, the whirr of the grouse, the cry of the wild duck, the call of the song sparrow, and look on the great prairie sun as he sinks to his golden bed in an opal and emerald sky.<sup>1</sup>

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<sup>1</sup> As to I-and-wah-wah, Crowfoot, the Blackfoot chief, and Assikinack, see "Famous Algonquins," in *Semi-Centennial Vol. Can. Institute Transactions*, 1899, 285.

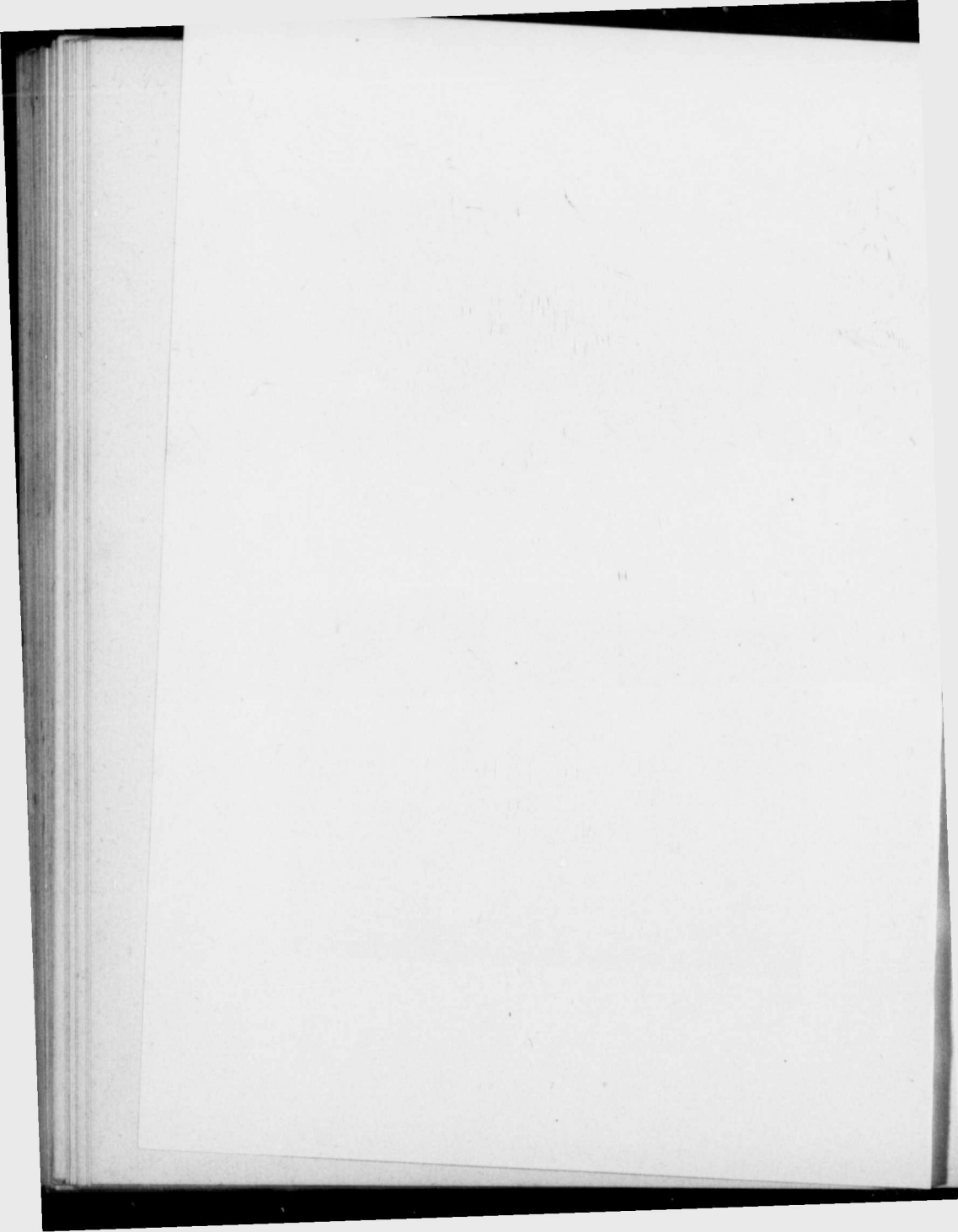


CHIEF JUSTICE FALCONBRIDGE.



CHIEF JUSTICE MEREDITH.





## CHAPTER VIII.

### GOWNS, WIGS, BAGS AND AETHIOPS IN AULIS.

"But none that see how here we sit  
Would judge us over-grown with wit."—*Hudibras*.

In the portrait of Chief Justice Sir John Robinson, at the west end of the main library, he is sitting robed in black silk and ermine, and his is the only figure so arrayed in the Hall. Dr. Scadding writes of this, "his finely cut Reginald Heber features are well delineated."

For some years the Common Law Judges, when sitting in banc, had purple silk robes with capes and ample sleeves, which were set off with a lighter shade of the same colour. This dress was tasteful and appropriate. It is shewn at the Hall only in Mr. Berthon's fine picture of Chief Justice Harrison, and is seen in that here given of Chief Justice Falconbridge, and will, it is hoped, again come into fashion and judicial favour. It is said to have been introduced by Judge Draper about 1856, and to have been fashioned after the dress of the English Judges' brothers in the law, the sergeants. The Chancellor and Vice-Chancellors did not adopt this style, which was discarded a score of years ago on the consolidation of the Courts, and now all their Lordships, when on duty, wear black silk, white bands or white "chokers." If we look below the belt, it will be seen that the ordinary black garb is used in most of the pictures, but five wore knee breeches, silk stockings, and buckled shoes.

Some officials of Governor Simcoe's time may have brought perukes with them, but the fashion had then been generally

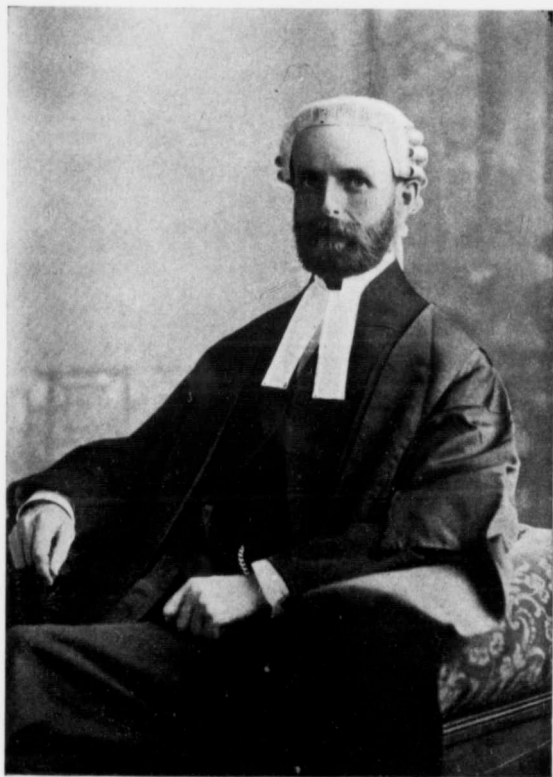
superseded by the queue and hair powder.<sup>1</sup> Colonel Coffin, in his book on the war of 1812, asserts that a scratch wig taken by the Americans from the Parliament Buildings, probably the property of Mr. Speaker, was mistaken for a scalp by those rude invaders, unskilled in the arts of European society. The judicial wig has not been in vogue here nor in the more eastern Provinces of Canada, since the Hall was founded, but may be seen on learned Judges and counsel in British Columbia, many of them scions of Osgoode. Prior to July 20, 1871, that Province was a Crown Colony, and imported its Judges and their paraphernalia direct from the mother land. The dignity of the Bench is there very assertive, transcending that of the Canadian Supreme Court. It takes more than the tailor to array with judicial costume in the Province by the Pacific, and yet the \$50 required to buy a wig would secure a dozen useful text books, and the brain would be cooler.

It was a fine spectacle, conducive to high education, when on the opening of the Assizes in a young town, Mr. Justice was seen, escorted by the High Sheriff wearing sword and official attire, his Lordship in gown of scarlet and ermine, with bands, wig, cocked hat, knee breeches, silk stockings and shoe buckles. But alas, for this iconoclastic age! must all the gorgeous array, this ancient pageantry, disappear, and like the wampum and brave feathers of the Crees, be known only through historic portraits and in legends of the past?

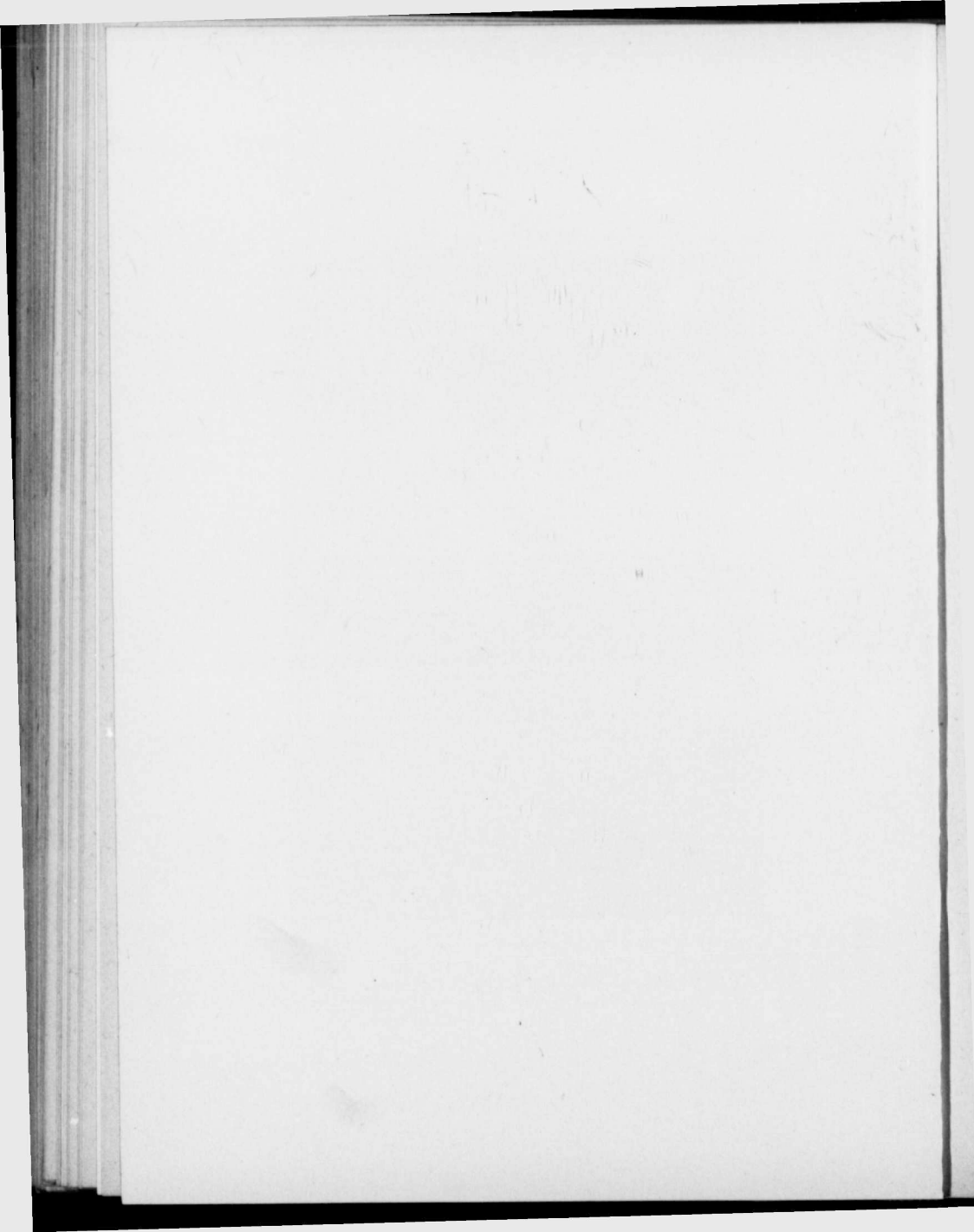
When Mr. Joseph Martin came from the prairies of Manitoba and became Attorney-General of British Columbia, he boldly refused to conform to the fashion and don the regulation head gear. He even, by legislation, made its use by the profession

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<sup>1</sup> Mr. White, tutor of Sir Oliver Mowat, when a boy at Kingston, is shewn with powdered hair tied behind.—*Can. Magazine*, 1893, p. 587.



MR. MATTHEW WILSON, K.O.



optional. The County Court Judges of the Province have not aspired to this head dress. The Chief Justice meets the changing state of opinion by sitting uncovered in single Court, and with wig in banc. The profane aver that soon only the bald-headed will be so attired.

An Irish barrister brought such a head dress from Dublin Four-Courts, and aired it with more boldness than discretion in the Toronto Court House four decades ago. He was subjected to many practical jokes, in one of which the wig disappeared for ever.

When Canadian counsel have the good fortune to go before the Judicial Committee of the Imperial Privy Council, the distinguished members of that body sit around a table in a plain room, about whose sides are law books on shelves, and they are without gown or wig; but the Colonial barrister has to secure both gown and hirsute head dress for the occasion. One eminent Canadian Judge did not object to the gown but drew the line at the white falling bands and wore the democratic choker. When he was called to the Supreme Court he had to array himself in the red robe with its ermine-trimmed cape, used there on opening days and state occasions. It is said to have been suggested by the worthy Lord Dufferin, when Viceroy, to give dignity and effect.

As one sees the six high luminaries, so arrayed, moving to their allotted places, he is reminded of the expression of the astenished half-breed at the opening by Governor Archibald, of the first Manitoba Parliament. He stood in homespun and moccasins as His Honour, in glorious array, passed towards his seat in the little Legislative Council; then our untutored native threw up his beaver-skin chapeau and cried, "Tiens! Ce n'est pas un homme; c'est un faisan doré!" It is said that wigs were also discussed by the Court in camera at Ottawa, but they decided, by a majority vote, that the red robe was sufficient for all purposes.

In Flanders' Life of John Rutledge, a description is given of a Bench in Boston in 1761. "In this chamber were seated five Judges, all in their new fresh robes of scarlet English cloth, in their broad bands and immense judicial wigs." The barristers of Boston were then seen "in their gowns, bands and tye-wigs, their dress more solemn and pompous than that of the Roman Senate when the Gauls broke in upon them."

In English colonies the title of "Lord" was generally given to Superior Court Judges as also to bishops, while "Mon Seigneur," which is near in meaning to "My Lord," was used in addressing a Church dignitary. In the Province of Quebec, "Your Honour" or "Votre Honneur" was for two centuries held sufficient in addressing the Bench, but in the autumn of 1901, the Judges of the Superior Courts there expressed the opinion that it was *infra dig.* to be so styled, while the higher sounding title was bestowed in the English-speaking Provinces. They therefore recommended the Bar to adopt this term of address. It was assumed that they would, with Gallic politeness, at once concur, but it was soon apparent that the suggestion was not entirely pleasing to the French advocates, some of whom argued that the term "Lord" is foreign to their customs and language, one specifically given to English peers, and that the title inherited from France is historically and nationally correct and honourable. A gentleman, being required by the Court of Appeals in Quebec to use the word, concluded his argument in English rather than translate the expression "Your Lordships."<sup>1</sup>

The Court gravely overruled all objections and made order that Counsel should so address it. The dutiful Bar now say "My Luds" and avoid the penalties of a species of "lèse majesté," pertaining to the dignity of these high tribunals, while

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<sup>1</sup> See discussion in *Revue Legale* of 1901, p. 385.

all wonder what will happen when the Bench learns that, in the junior Province, wigs grace many learned crowns as the barristers bow to their reverend bewigged Lordships.

It was reported that a learned Judge in Montreal whose hearing was becoming dull, decreed that, for the sake of clearer enunciation, no advocate should wear an overhanging moustache while addressing the Bench, but this seems mythical.

The use of the cocked hat on opening assizes and like occasions is common. Linen, with ruffles at breast and wrists, is then good style, but any adornment in shape of "frills" has hitherto been regarded with only amusing appreciation in these Provinces.

A black cap covers the judicial head in giving sentence. The Sheriff receives the Judge when he comes to the assizes, and keeps order there. He is expected to sport a cocked hat with sword by his side, and, when there are no prisoners to be tried, he presents to the Judge a pair of white gloves in token of that happy state of affairs. None of the Hall pictures shew either peruke or queue; some have bands and some chokers.

Dr. Scadding, our best authority as to "Toronto of Old," declares that the well known pictures, the "Signing the Declaration of Independence" by Turnbull, and Huntingdon's "Republican Court of Washington," exhibit to the eye the outward and visible presentment of the prominent actors in the affairs of the central portion of the Northern Continent a century ago. The Doctor refers to two founders of Upper Canada families, Mr. John Small, Clerk of the Crown, and Mr. Thomas Ridout, Surveyor-General, as fine typical representatives of the group, retaining the usual costume of the antique style. "Doctor Baldwin, Mr. Samuel Ridout, Colonel Fitzgibbon and Mr. McNab, Senior, Sir Allan's father, were similarly habited as they gathered each Sunday in the old wooden church of St. James."

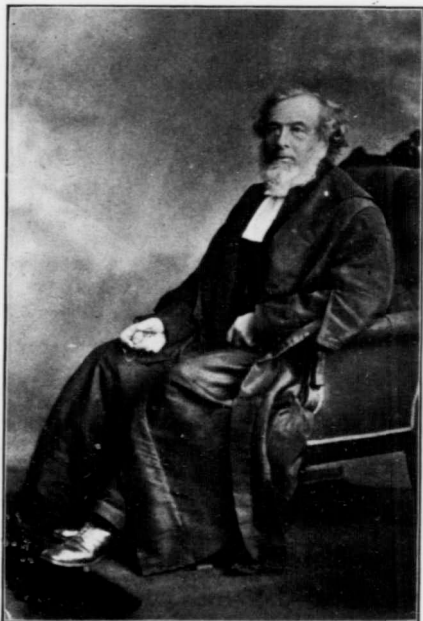


The portrait of Dr. Baldwin at the Hall, wearing an overcoat, and in somewhat antique costume, was from the brush of Mr. Hamel, an excellent artist and a friend of the Baldwin family.

"Mr. Stephen Jarvis retained to the last the ancient fashion of tying the hair in a queue." He was Registrar of the Province, and his cousin, William Jarvis, was its Secretary in the days of the first Governors.

Among younger men was Mr. Simon Washburn, "a bulky and prosperous barrister, afterwards Clerk of the Peace, who was the first, perhaps, in these parts to carry a glass adroitly in the eye," in the manner, it is presumed, affected by the present Mr. Chamberlain. This peculiarity did not escape notice and comment. Sir Allan McNab, then a gay youth, riding through town, saw Washburn on King Street eyeing him through his monocle. McNab at once raised one of his stirrups, applied it to his eye as a lens of large diameter, and so boldly returned the gaze to the amusement of the bystanders. The Hon. J. Hillyard Cameron will be remembered as a dexterous user of the monocle.

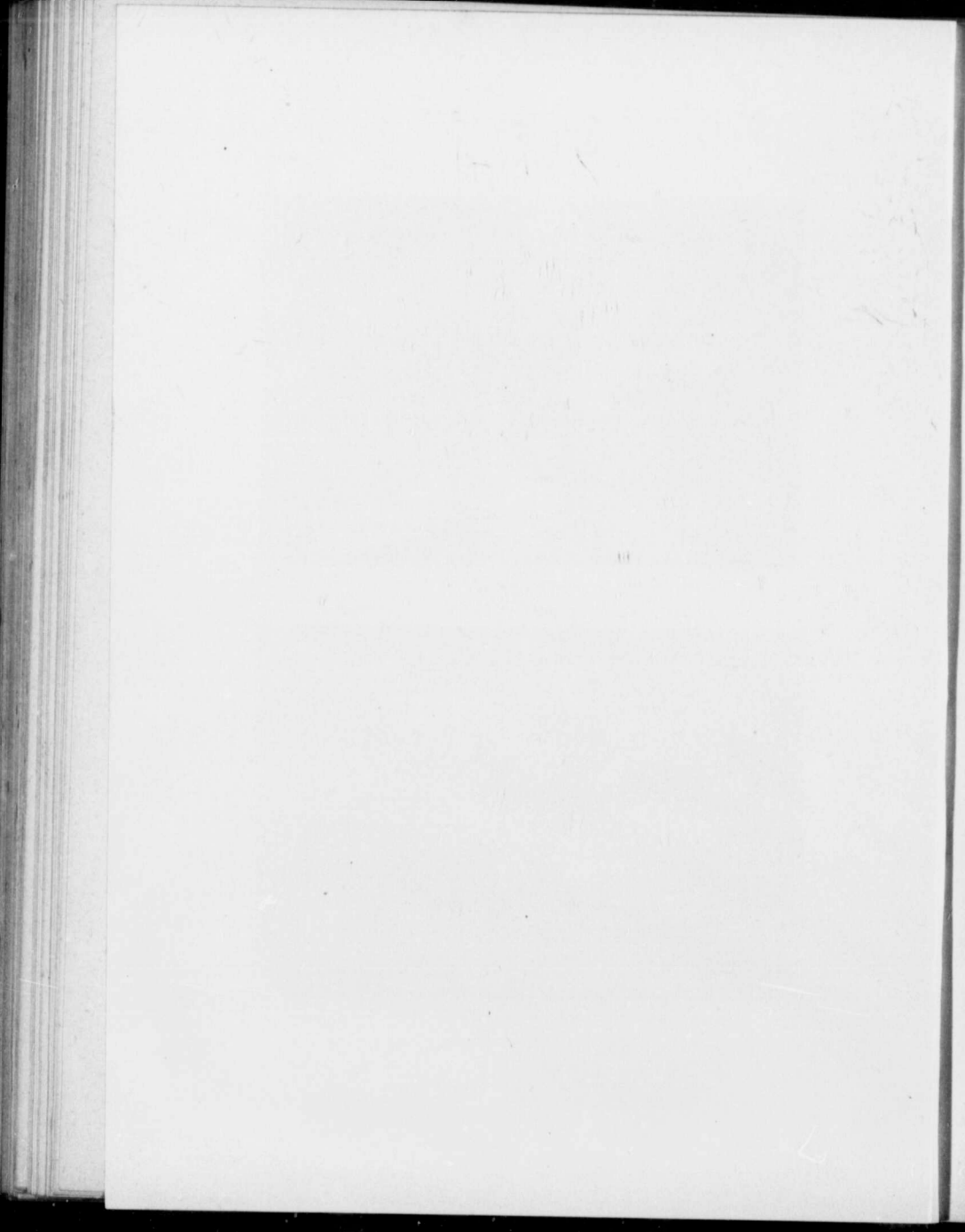
An old inhabitant remembers to have seen Mr. Washburn and his worthy wife, a very comfortable appearing pair, riding through the little city on horseback, and that the nick-name "Sergeant Buz-fuz," was then attached to Mr. Washburn. As this famous character, the original Buz-fuz, was introduced to the public in 1837, it may be assumed that the time of the ride was soon thereafter, and that the "Sketches by Boz" were familiar to Toronto people. Such names generally originate through some marked characteristic or accident, and when given, often attach to the person for life. Mr. D——, a later professional worthy, whose hair was of the warmest hue, acquired his sobriquet through the merry sally of a friend. Being at an assize town with a witty companion, Mr. H——, from Toronto,



CHIEF JUSTICE SIR ADAM WILSON.



MR. JUSTICE ARMOUR.



who became a Judge, D— introduced a gentleman to H—, adding politely, "He is considered to be the flower of the profession." "Allow me to return the compliment," said H—, with a bow, "and inform you that our friend is the sunflower of our Bar."

Mr. R. J. Turner was a noted snuff-taker. Visitors to the office of the Sheriff of the County of York, before its division, and of the City of Toronto since, have for three score years found a well filled jar on the counter from which all are welcome to take a pinch of the fragrant powder.

Many members of the Bar have, as is shewn in this narrative, made their marks in municipal as well as Provincial councils. Three of them at least endeavoured, by costume, to add dignity to the office. In 1845 William Henry Boulton was elected Mayor of Toronto, and ordered a gorgeous robe of scarlet, trimmed with ermine, which must have resembled the robes of the Justices of the Supreme Court at Ottawa. Clad in his magnificent gown, Mr. Boulton used to drive down from the Grange to the City Hall and preside over the deliberations of the Council. When, in 1847, Mr. Boulton finished his three years of service as Mayor, his successor, George Gurnett, afterwards Police Magistrate, occupied the throne in his work-a-day toggerery.

Lady Elgin laid the first sod on the building of the Northern Railway, October 15, 1851, when the Mayor of Toronto officiated in approved costume of cocked hat, knee breeches, silk hose and sword.

He was afterwards defendant in the famous suit, *City of Toronto v. Bowes*, in which Messrs. Oliver Mowat and Philip Van-Koughnet established their fame as equity Counsel.

To D. B. Read, Q.C., who was Mayor in 1857, is due the introduction of the Queen's Counsel uniform and the top hat;

and funny top hats they were, straight up and down pipes, with the brim at right angles to the crown. The newspapers of those days geyed Mr. Read a little, but he manfully stuck to his guns, and his successors followed his example. Mr. Read was the first to wear this dress at the City Hall, but before this for many years the Mayors had appeared in evening costume. Hon. Henry Sherwood, who was Mayor in 1842, and the two succeeding years, wore scarlet robes which were not, however, as elaborate as those of Mayor Boulton.

In 1864, Francis H. Metcalfe being Mayor, there was held in London, England, a great gathering of British and Colonial Mayors. "Old Squaretoes," as Mr. Metcalfe was called, attended, and in order that he might impress the other chief magistrates with a sense of the City's importance, purchased in London a regulation English Mayor's outfit with Mayoralty chain of office and cocked hat. When he returned to Toronto he wore his costume at one Council meeting, but after that it was returned to the cases in which it had journeyed across the sea. The old inhabitant remembers warm evenings before Mayor Boulton's day, when the Council sat in shirt sleeves in the stuffy chamber under the democratic mayoralty of George Munro. Sherwood, when presiding, insisted that, if he sweltered in his red robe, the Councilmen should keep their coats on.

The distinction between the branches of the profession, inherited from the mother land, has been almost entirely effaced here, but there are yet a few solicitors who are not barristers. While there were separate Courts, he who practised in common law was an attorney, while the solicitor devoted himself to equity or chancery practice. The proctor engaged in maritime or ecclesiastical tribunals. Now the solicitor has superseded, and his functions embrace also those formerly of the attorney and proctor, and few lawyers in Ontario refuse business in any branch of the

profession. Yet it should be remembered that the gentleman in the gown who addresses the Court is a barrister, while he, whether the same person or not, who takes instructions and draws pleadings, wills, and other papers in his office or elsewhere out of the Judges' presence, is the solicitor. The position reminds one of Dr. Jekyll and Mr. Hyde.

While entrance to the profession must be through the portals of the Law Society, the title of King's Counsel, when a King's name attests court writs, and Queen's Counsel, when a Queen reigns, is bestowed on favoured barristers by the Government of the Dominion or of the Province. This is done without reference to the Bench or Bar. A number of such appointments generally appears after each general election. Active gentlemen of the winning party appear in the happy position of the early bird. There are always some surprises then, which remind one of the distich:—

“There was a Roman emperor  
Who made his horse a Senator.”<sup>1</sup>

When Sir Oliver Mowat became Minister of Justice, in 1896, he found a large list of Q. C.'s proposed by the late Government, but unfortunately for the gentlemen named, not yet gazetted. The incoming Minister was the gentlest and wisest of men who ever wore a Crown Minister's uniform. He eyed that long list critically. He took it into his most serious consideration. Next day he shewed it to Sir Wilfrid; the bland Premier smiled and hummed “A Bytown c'est un joli place,” a stave from a popular melody. Sir Oliver was making up his mind; he wished to avoid a cruel act and yet, as he pondered, the old adage ending with “ruat coelum,” insisted on coming up. He called on the Governor-General, told him of his doubts, was encouraged when his

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<sup>1</sup> See Verses, Canada Law Journal, vol. 38, p. 520; vol. 37, p. 256.

Excellency admitted that the list was, perhaps, under the circumstances, a little premature; not quite desirable. Then came the sacrifice of the Innocents. The good Sir Oliver lifted his now ruthless pen; the list was cancelled.

Among others whom the honour seemed to fit, in the late Provincial appointments, were several prominent officials, members of the Society, who had served long and with credit.

In addition to putting K. C. on his card, the King's Counsel must hie to the tailor, order a black coat and vest of the proper cut, a silk gown and red bag. When next in Court and so arrayed, he hands his patent to the Registrar, who shews it to the Judge. His Lordship smiles and says, "Mr. K. C., allow me to congratulate you, be kind enough to take a seat within the Bar."

The ordinary or outer barrister wears black clothes, a stuff gown and "choker" and carries a blue or black brief bag. His Lordship, the Judge, sports a green bag. He is a "Lordship" only in the Court, leaving that he is "Mr. Justice."

The coloured man has been connected with the law, as appears by the records at Osgoode Hall, from the early day when the town, as Little York, enjoyed the luxuries of a town pump, a whipping post and pillory. The Court House block extended from King Street to Adelaide Street, between Church Street and the present Toronto Street. Black Joe, a notable character who had been a regimental drummer, administered the lash in the case of two culprits; the sheriff stood by keeping count of strokes; the elder of the unfortunates bore the punishment bravely, encouraging the negro to strike with force. The other, a young man, for a while imitated his stoical companion, but was soon forced to evince by cries the torture endured.

Solicitor-General Gray had his gay young body-servant, or slave, Simon Baker, to carry his brief bag. Master and slave per-

ished together in the ill-fated schooner "Speedy." With them were Judge Thomas Cochrane, Sheriff Angus McDonell, Captain Paxton and others, 39 in all. They embarked on a stormy day, the 7th October, 1804, for Presqu' isle, taking with them Ogetonicut, an Indian, to be put on his trial for the murder of John Sharp, a white man. As the crime was committed in the Newcastle district, the trial was to take place there. White, red and black men sank together and, it is said, their remains were never found. Judge Cochrane came of a distinguished family, was appointed Chief Justice of Prince Edward Island in 1801, and promoted to the Upper Canada Queen's Bench in 1803, when about 30 years of age.

The Government had two schooners called "The King's vessels," built at Kingston in General Hunter's time, the "Speedy" and another which sailed with soldiers on board and had the like fate, being never seen again. It is said the use of unseasoned timber caused the misfortunes.

The loss of the "Speedy" was the saddest calamity in the early history of Upper Canada. As none survived to tell the tale, we can only conjecture that, in the stormy night when off Presqu' isle harbour, the poorly built vessel was suddenly overwhelmed. The brave captain, the able young Judge, and the Solicitor-General, with the Sheriff, John Fisk, high constable, and Mr. Anderson, a law student, the witnesses and crew, who had dutifully dared the peril, manfully met the same fate as the stoical Ogetonicut, the gay black boy and two poor children who were passengers.

An account of the affair appeared in the *Niagara Gazette* of November 3, 1804, of which a copy may be found in "Toronto of Old," and in an article by Mr. C. C. James in the fifth volume of the Ontario Historical Society.



It is stated that nine widows and many orphans were left in the little town to mourn the loss of husbands or parents. Search in the records at the Hall fails to find trace of the information and proceedings in the case.

The character of the young Solicitor-General was attractive, and some remarks as to him, mainly taken from the mouth of his old servant, may be of interest.

Robert Isaac Dey Gray was the first Solicitor-General, and second on the roll of Benchers; we know more of him than of Attorney-General White. His father, James Gray, a Highlander, was a captain in the "Black Watch," the 42nd Regiment, and retiring after the British took Havana in 1762, he lived for a time in New York State, where he was Major in the King's Royal Regiment, but on the separation of the United Colonies from the motherland, he abandoned valuable possessions and settled in the then village of Cornwall, where he became sheriff, and was known as Colonel Gray. His son Robert was evidently a bright and amiable lad and was probably a pupil in the law office of Mr. Jacob Farrand. He was member for Stormont in the Legislative Assembly. He became Solicitor-General March 21, 1797, and lived then on the north side of Wellington Street, Toronto. In his family Mr. Gray had a coloured slave woman, Dorinda Baker, and her children, among whom were John and Simon.

By his will, made August 27th, 1803, the Solicitor-General manumits his "faithful black servant Dorinda," and gives her and her children their freedom. He left to John and Simon each two hundred acres of land and made provision for the maintenance of the family.

Other generous acts of the Solicitor-General, for which he had the gratitude of humble dependents, were related to the writer by the late Judge Jacob Farrand Pringle, of Cornwall, a connection of the Farrand and Gray families. Governor Simcoe, Chief

Justice Osgoode and Mr. Gray seem to have been equally inspired with kindness towards the lowly, and abhorrence of slavery. John Baker survived the other members of the family, living until January 17th, 1871, when he died in Cornwall at a patriarchal age. He had drawn a small pension for fifty-seven years. The writer met the old man in August, 1868. He was a dark mulatto of amiable countenance, suffering from old age and rheumatism, and not loath to lay aside the wood-saw, and tell the story of his life. He had, when a boy, lived at Gray's Creek with Mr. Farrand, who on his journeys rode like a Tartar, followed by his black boy with his master's valise strapped to his back.

"Young Gray was," John Baker said, "the only child of the Colonel, and went to Parliament several years running. The Colonel was strict and sharp, put deerskin shirts and jackets on me and gave me many good whippings. Simon was older than me and was Solisary (sic) Gray's body-servant. I lived two years in Toronto, or little York, in a large white house north of the boat landing. The people were proud and grand then. Simon was dressed finer than his master, with a beaver hat and gold watch. Governor Hunter ordered the party to go to the trial in the 'Speedy.' He was a severe old man, and wore leather breeches. In one pocket he carried tobacco, in the other snuff, and it would fall over his fine ruffled shirt-front,—fine, no mistake, and silver buckles to his shoes. Solisary Gray, when he went off last, told me to look after the place. They started between four and five in the evening, and we heard of the loss next morning from the brig 'Toronto.' There were then in Toronto about twenty houses. After that I went to Judge Powell's. A recruiting agent came along and I 'listed. Judge Powell 'paid the smart' for me seven times. I said 'thank you, sir,' and 'listed again. I served three years in New Brunswick. Colonel Drummond was Colonel there, he who was at Fort Erie.

"Colonel Moody was Lieut.-Colonel, being the Moody who was shot on Yonge Street in 1837. I was at the Lundy Lane fight and wounded there, then at Waterloo and fought under Colonel Halkett. I saw Napoleon, Wellington, Brock and many great men in my time. We came back to Canada and got our discharges. I was a wild, foolish boy. The Lord will be with us all by and by, I hope. Good-bye."

The old man smiled as he saw our sympathetic interest, and thought of the old days and the people of whom he was the survivor.

He was no doubt the last of the four or five hundred Africans who had been Canadian slaves, Quebec being his birthplace. He was a reminder of still earlier times, as he stated that, while his mother was a Guinea negress, his father was, he believed, a Hessian, one of the hirelings who were sent by petty German Princes to fight his American battles for King George.

In the Cornwall graveyard, connected with the English Church, is the family tomb of the Grays and their connections. This is a piece of land about 20 feet square, surrounded by a stone fence. On a wooden slab, erected against this on the outside, the following inscription was visible in 1868, and may no doubt still be seen:

"Herein are interred Colonel James Gray, died 11th May, 1795, aged 64.

"Mrs. Elizabeth Gray, died 14th February, 1800; aged 63.

"Jacob Farrand, Esq., died 11th May, 1803, aged 29 years and 6 months.

"And John L. Farrand, Esq., died 29th June, 1814, aged 30 years and 4 months.

"This memorial is erected by Cath. Valentine."

When the Judges and their wives went to dine with Governor Peter Russell at Russell Abbey, his residence on Palace Street, the door was opened by a coloured boy, Jupiter. Amy Pompadour, a turbaned negress, waited on the ladies, and Black Peggy cooked the dinner. All these were slaves of the Governor. In 1806 he advertised two of these chattels for sale—"Peggy at \$140, Jupiter at \$200, one-fourth less for ready money." Amy Pompadour seems to have been more regarded, and was in time given by Miss Russell to Mrs. Denison. These were "slaves for life," and their status was not affected by the Act of 1793, but they would have been freed by the Imperial Act in 1834, in any case. These events were before the Hall was founded. During the rebellion, a brave, lately from Virginia, was mounted on guard before the Hall. The pass-word was "Nelson." An inebriate proceeded with difficulty homeward along Queen, then Lot, Street, which all know passes in front of the Hall, and as he advanced unsteadily our Moor in red challenged him, "Who come dar?" "A friend," hiccoughed the citizen. "Advance den to de pint ob de bayonet and gib de Nelson, or I'll shoot you, suah." "Nelson," said the aroused pedestrian. "Den pass on de Nelson," said the sable guard.

Big Charlie, the fencing master and drummer of the 32nd regiment, has been referred to. The Benchers had sometimes for caterer about this time, Beverley Randolph Snow, whose name belied his complexion. He hailed from Washington, where he had been a restaurateur, and often spoke of Daniel Webster, Henry Clay, Calhoun and other distinguished statesmen whom he had entertained in the American Capital.

It is but right to mention that, in later years, several coloured men have passed the Law Society examinations and practised with credit in the Province.

Two important cases affecting the status of coloured people were decided at Osgoode Hall. In *Harris v. Cooper*, in 1871, the Court of Queen's Bench ruled against the validity of a slave marriage contracted in 1825 in Virginia. The Chief Justice, Sir Adam Wilson, said: "I regret that we should be obliged to rest our decision on the recognition of slavery and on its bad code."<sup>1</sup>

The John Anderson habeas corpus case was of international importance, and is so well known that it need only be stated that it was decided in 1860, Chief Justice Robinson and Mr. Justice Burns finding against the fugitive, and Mr. Justice McLean in his favour. The question on the evidence was whether Anderson had or had not killed his pursuer, a Mr. Diggs, in self-defence, when Diggs threw himself in the slave's way as he fled from bondage in Missouri. Judge McLean became for the time the idol of the coloured people and their sympathizers, through his declaration that Anderson had struck only in defence of his liberty and was justified, though the death of Diggs was the consequence. Another Court, the Common Pleas, discharged Anderson on a technicality, and he at once made off to tell his story to Lord Shaftesbury and in Exeter Hall. He was personally uninteresting, and soon fell out of sight.<sup>2</sup>

Meantime, and before the releasing judgment of the Common Pleas was given, Mr. Edwin James, Q.C., the very persuasive advocate of the English Anti-slavery Society, moved the Court of Queen's Bench at Westminster for a habeas corpus. Thereupon Lord Chief Justice Cockburn and his associates, apparently in a moment of weakness, ordered the writ to issue to the Sheriff and Gaoler of our good County of York, directing

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<sup>1</sup> *Harris v. Cooper*, 31 U.C.R. 182.

<sup>2</sup> *In re Anderson*, 20 U.C.R. 124, and 11 U.C. C. P. 9.

them to produce the prisoner before their august Court at Westminster, that it might inquire *as* to the cause of his detention. This writ was actually received by Mr. F. W. Jarvis, the Sheriff, who shewed it as a curiosity. He made return "non est inventus," but no doubt added, "he is not lost but gone before," knowing that his late coloured charge had smilingly bidden Canada farewell and was on his way to report in person. This occurrence was discussed in the Imperial Parliament and an Act was passed, in 1862, which forbids the future issue in England of the writ of habeas corpus to any colony where there are established Courts with authority to issue such process.<sup>1</sup>

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<sup>1</sup> Imperial Act, 25 & 26 Vic. chapter XX.

## CHAPTER IX.

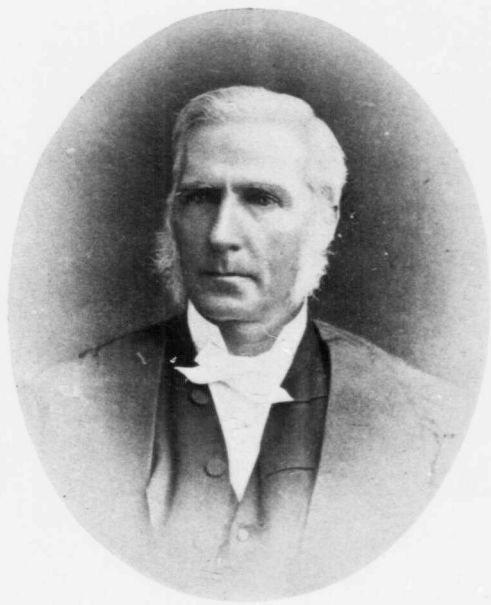
### THE LAW SCHOOL AND THE UNIVERSITY.

Glance at the wheeling orb of change  
And greet it with a kindly smile.—*Tennyson.*

It would be of interest to discover how many of our former Judges and Benchers had received a classical education. The young Province was blessed with efficient educators in the persons of Dr. Strachan and Mr. Spragge, father of the future Chief Justice, and Master of the Central School in Toronto; and later Mr. Gale of Gale's Institute, the precursor of Knox College, Dr. Howe, of the Grammar School, and several other competent scholars, whose mode of training was on the lines of the English and Scottish grammar schools. Dr. Scadding mentions, among early teachers here, Mr. Samuel Armour, an alumnus of Glasgow, who would not tolerate the use of cribs, and himself sewed up the English translation in the only copy of Eutropius available. He was succeeded by Dr. Phillips from Cambridge, who used the Eton Latin and Greek grammars, and extracts from Graeca Minóra were translated by the Toronto boys of those days, not into English, but into Latin. "The Latin translation, line for line, at the end of Clarke's Homer, as also the Ordo in the Delphin classics, were held to be mischievous aids." Dr. Phillips had, as assistant, George Anthony Barber, a man of fine presence and devoted to cricket. He was to be seen until the seventies instructing young Canadians, and umpiring his favourite game in good old English fashion. While Chief Justice Osgoode was an M.A. of Oxford, and Chief Justice Campbell, Judge Cochrane and other early Judges of Upper Canada had received their training in the home

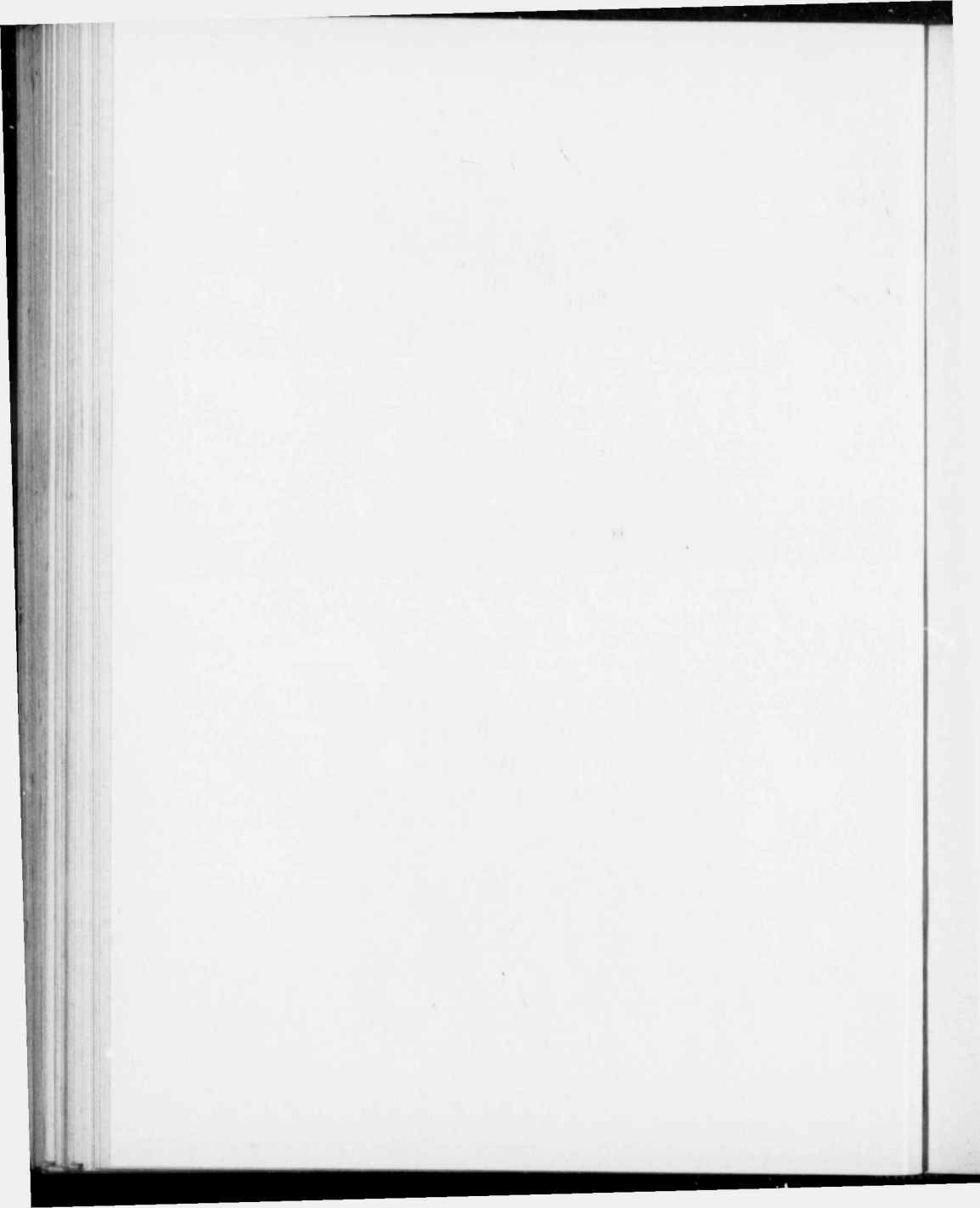


DR. LARRATT W. SMITH.



MR. JUSTICE PROUDFOOT.





land, Chief Justices Robinson, Macaulay, McLean, Draper, Richards and Spragge had the advantage of Canadian education under fine scholars such as those named, and if the curriculum was not as extensive in its scope as in modern academies, it may have made up for that in its accuracy and thorough mental gymnastics. Sir John Macdonald and Sir Oliver Mowat had similar training at Kingston under Mr. Jennings, Rev. Mr. Cruickshank and Mr. White, and only received University degrees, *honoris causa*, late in life, and when leaders in the land. Chief Justice Hagarty and Chancellor Blake were educated at Trinity College, Dublin, and the latter was Professor of Law in Toronto University. He lectured in a room in the old Parliament Buildings. Mr. Read, in his "Lives," mentions Mr. Blake's lectures in 1845: "He used to commence at eight o'clock in the morning. It was one of my greatest delights to attend and listen to these lectures." Native wit and literary acquirements marked Chief Justice Hagarty. The author of "The Irishman in Canada" declares that Mr. Hagarty contributed poems to Dr. McCaul's annual, the "Maple Leaf," which Shelley would not have blushed to acknowledge. He refers to that entitled "The Sea, The Sea," the Cry of Xenophon's Ten Thousand, and reproduces the lines on "The Funeral of Napoleon."<sup>1</sup> Mr. Hagarty has been referred to as a lecturer on law in connection with Trinity College.

When Mr. Gwynne came to Osgoode Hall he found the ground not unprepared for the flowers of Horatian and Virgilian culture. It may be gathered that most of the distinguished old Canadians mentioned would have sought college halls, if available in their time.

The importance of a University education, as distinguished from a technical training, was lately discussed before the Can-

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<sup>1</sup> The Irishman in Canada, by Davin, p. 606. The bright career of that son of 'Varsity, Thomas Moss, is referred to in the same chapter, No. XIII.

adian Club by Mr. W. T. White, a graduate of the Provincial University and Medallist of the Law Society, who is, however, a business man. From his address the following is taken:—

“Let it be admitted that there are many graduates to whom the college training has been a positive damage. The fact remains that for the best students, for the “plus men” as they have been called, for those of great natural capacity and sincere love of learning, no course of training yet devised by man is quite the equal of a University course in arts, under proper instructors, for enlightening the mind, strengthening its faculties, and developing its powers. Such an education, conscientiously pursued, teaches to think with precision and with power and confers the great boon of concentration and right method so essential in dealing with the practical and difficult problems of after life. The positive knowledge acquired is large and cannot fail to exercise a broadening and liberalizing influence upon those who receive it. History, literature, metaphysics, all cultivate, expand and refine the human mind. It is from the Arts course that you get, or are most likely to get, your great teachers, preachers, lawyers, doctors. Can we dispense with the highest intellectual training of our Judges, charged with the administration of the laws affecting the security of person and property? Statistics shew that the greatest percentage of successes in the medical profession, in proportion to their number, has been made by men who took an Arts course preliminary to their medical studies, and this is as we should expect. Great statesmen are born, not made, but the University should be a good finisher of raw material. I have no doubt that when our Universities are properly organized, and we do our whole duty toward them, and when the strain for decent livelihood is not so tense as at present, and men can afford to give their time and thought to the State, that our statesmen and great political orators will be largely drawn from college graduates. It is so

in Great Britain, and it is so in the United States. Who can estimate the influence of Oxford in the public counsels of Great Britain or the part played by University education in developing the mind and character of the Greater New England statesmen? And why should it not be so? For, as has been said by one of its greatest masters, oratory is not of the tongue alone, as if it were a sword sharpened upon a whetstone or hammered upon an anvil, but is only attained by zeal and toil and knowledge manifold, so that he who has the most knowledge, if he have also the gift of expression, will be the most eloquent, and eloquence is the most necessary gift in a statesman under our system of popular government. The greatest orator in Canada to-day, whose peer scarcely exists among the English-speaking race in all the grace of finished expression, this French-Canadian Premier of ours, in the last analysis is a lover of books and learning, and what a power is his."

A pleasing feeling of zealous affection for the studies of philology and metaphysics is shewn in a late address of a distinguished Canadian clergyman, who "regretted that the culture which resulted from a study of the humanities was almost unknown now, lost in the passion for utilitarianism. Education did not," he said, "consist in knowing many specialties, nor was a collection of machine shops in the Queen's Park a true University."

The contest between the humanities and utilitarianism has become a live issue in the highest educational circles, as appears from late utterances of the University College Council.

The following resolution from its proceedings of April 1st, 1904, requires no comment:

"Resolved, that the substitution of science for language training proposed in the 'draft regulations' for the High school courses for Public school teachers is contrary to the best interests of education in the Province, and cannot be defended upon sound educational grounds.

"This Council wishes to emphasize the fact that the University is part and parcel of the educational system of the Province, the repository of the highest knowledge, and the final arbiter of matters connected with education. The University therefore has a right to demand, and it does demand, that in framing any courses of secondary education, whether for teachers or for any other class in the community, the University authorities shall be consulted; and that no regulations shall be adopted that do not defer to the opinion of those authorities as to what right culture is, or that make it more difficult for the youth of the Province to seek in the halls of the University that knowledge and culture which it is its main function to impart."

In considering the history of the Law Society it has been seen that it stands at the gateway to guard the public from mischief at the hands of unqualified persons who would be practitioners. This is done by requiring in the candidates certain attainments and character and affording educational facilities.

It is proposed now to consider shortly the modern educational features of the Law Society and contrast them with some of the Provincial University.

Students who would attain admission to practice, have to attend lectures conducted by a learned faculty, composed of the principal and three lecturers under the direction of the Society, whose salaries amount to \$11,000 a year. The examiners of students form another body at a further expenditure. Since the Society was organized 5,531 students have been entered on the books and 3,658 barristers have been admitted, of whom 1,750 are now practising in the Province.

It will not be without interest to regard this moving company for a moment. Each barrister and student has his number on the rolls of the Society. The above figures relate to the end of last Hilary term. At the same period in 1868, Mr. Gwynne, then Secretary, stated that the number of the then last barrister called was 1,057, and that of the last student 2,062.

Remembering that the initiative stage took generally five years (except in cases of University graduates, when the period of

probation is shortened to three), and making due allowance for the young gentlemen now entering as students and forming part of the above 5,531, and for many whom death may have cut off in their career—and I fear the proportion of those gay and pleasure-seeking fellows so called away has been large—however it may now be, there still remains between the number of the latest student and the latest barrister a very large margin. May this not be thus in part accounted for? The ambition which in boyhood fired many an aspirant, who thought it a fine thing to be a lawyer, gradually evaporated as he learned more of the sterner labours and duties before him, or more exactly weighed and appreciated his mental qualifications, and wisely turned his attention to some of the other many useful and honourable callings always open to the willing and deserving in our happy Province.

Many of those who actually passed the final stages, were “called” or “admitted,” disappeared from the active ranks and for like reasons.

Among those who took the course for educational purposes and who, instead of waiting for clients, or donning a gown, entered upon other occupations, are honour men and medallists who find the training of the Law School an excellent preparation for business or official life.

In an address of Dr. N. W. Hoyles, K.C., Principal of the School, delivered at Buffalo, N. Y., before the American Bar Association in 1899, it is shewn that the Osgoode school was established in 1889; attendance at its lectures is required by every candidate for the Bar during three terms, or sessions of seven months each. There was also formerly required attendance at sittings of the Courts during four terms, but this condition has long since been dispensed with. There are still in the Queen's Bench and Common Pleas Court rooms, the shelves on which

rested the books in which students of former days signed their names daily as required.

The cost to each student is about \$300, being \$50 on admission as student, \$160 for call to the Bar. There are also the Law School charges, \$75, or \$25 for each of the three years. In addition to lectures on Common Law, Contracts, Practice, and the ordinary line of subjects which every lawyer must know, we find on the list jurisprudence and international and constitutional history and law.

Before passing to consider another institution, we may state that the coffers of the Society are yearly filled by a forced contribution of \$17 from each practising lawyer, for which he receives the Court reports and has, when in Toronto, access to the excellent law library.

The income of the Society amounts to fully \$50,000 per annum, was \$53,700 in 1902, and even more in some former years. It appears by a report of February 12, 1892,<sup>1</sup> that the Society had then \$90,000 invested in bonds and other securities, and no doubt the savings of this corporation now amount to a considerably larger sum. Would it be improper to ask whether a lessening of the fees may not be expected, in favour of members of the Bar?

The Provincial Government owns or controls the greater part of the grounds and buildings, as has been shewn, and is a good contributor towards supply of fuel, salaries of engineer, firemen, caretaker and maintenance, the bill footed by the general public for 1903 being \$11,450, in addition to the regular schedule of salaries of officers and employees.

Passing half a mile north, the inquirer may find, on searching in the University, another school, one of whose pro-

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<sup>1</sup> See report in *Can. Law Journal*, vol. 28, p. 442.

fessed objects is the teaching of certain branches only of the science of law. It is named the Political Science Course, and was initiated some years ago as a compromise between the regular arts course and a cry for inquiry into the science of government, general and municipal.

Its curriculum is weakened by its nearness to and an apparent fear of encroaching on the ground of its neighbour at Osgoode Hall. While the Law Society enjoys affluence, the University is pinched and unable to make ends meet.

The University law course of thirty years ago required a very considerable knowledge of classics and general literature, and its degree indicated good standing in arts as well as law.

From a return made in session of 1903 to an enquiry by a member of the Legislative Assembly, it appears that the number of students in this department is not increasing, being:—

In 1900 and 1901 .....	154
In 1901 and 1902 .....	145
In 1902 and 1903 .....	136

There are three professors and one lecturer at salaries of \$3,200, \$750, \$1,500 and \$1,000, making \$6,450, which is about equal to the sum paid to the principal and one lecturer of the Law Society.

It is proper to refer to two distinguished members of the staff who lately passed away. The Honourable William Proudfoot was professor of Roman law in the University. Mr. Proudfoot was born in Scotland in 1823, but resided in Hamilton until 30th May, 1874, when he became Vice-Chancellor. No Judge in this Province excelled him in the mastery of Roman law and literature connected therewith, including the French Code, and early Canadian history. His application of the principles of juris-



prudence derived from Roman law was skillful and interesting in practice. He was able to break a lance in controversy with Sir Edward Fry and Professor Holland, and to hold his own. He retired from the Bench in 1890 because of increasing deafness, but was glad to devote himself to the duties of the professorship, to which he had been before appointed, and to those of chairman of the Library Committee of the Law Society, of which he was ex-officio Bencher. He filled these two positions for several pleasant and useful years. He died at Hamilton, August 4, 1903.

A learned member of the Toronto Bar pleads earnestly in a late number of the University Magazine for the establishment of a chair of International Law. The time is appropriate, since the Premier of Canada has suggested that Canada should have power to make treaties with other nations. The Hon. David Mills was professor of International and Constitutional Law from 1888 to 1898, at the University.

The degree of Bachelor of Arts may be taken, and graduates may proceed to the further degree of LL.B. or Ph.D. The latter degree does not, in America at any rate, generally indicate broad or profound culture. Under the old course possessors of the LL.B. degree had, as addendum to it, the right after a few years and on writing a thesis, to go up for LL.D., but the Senate in their wisdom and without exception, declared that this honour is to be given only *honoris causa*; consequently no graduate, however deserving, need expect the red hood, but through favour.

The exclusion of alumni, who had, as was considered, a vested right to enter for the higher degree in due course, before the Senate's resolution was passed, seems of doubtful legality. Many of the noted politicians of Canada are Doctors in Law of

this University. The lectures delivered in the Law School avail for University examinations. The Law Society, with practical wisdom, appoints its lecturers for a definite period of a few years, a plan which the University might well consider as a mode of keeping the staff up to growing requirements and modern ideas.

If we turn to other Provinces, we find regular law courses incorporated in their University systems. In New Brunswick such a course is an adjunct of King's College, Windsor. In Nova Scotia there is the Law School of Dalhousie University; and, in Quebec, there are faculties of law in McGill and Laval, which Dr. Hoyles says, serve all the purposes of separate schools. In McGill there are eight professors and three lecturers; the course, as at Osgoode Hall, extends over three years of seven months' sessions. The course is of like duration in Laval and King's College, and, in each of these institutions, are twelve or more professors or lecturers, among whom are found many eminent members of the Bar. It is not necessary nor intended to reflect on the attainments of any member of the staff of the institutions in Toronto. The fact that the attendance in the Osgoode School is compulsory gives its lecturers a decided advantage over the other, we can scarcely say rival concern, since half its life is gone, when the grave subjects treated by Dr. Hoyles and his staff are excluded from their curriculum. It seems also arguable that, at least until the attainment of the LL.B. degree be made sufficient to admit to the Bar (after perhaps a year's practice in a solicitor's office), the Law Society must retain its board of examiners.

The professions of medicine and surgery have such a system of procedure and examinations under their act of incorporation. But why not unite with the University in the teaching department? The combined salaries would make a sum of \$17,450, representing a capital of \$400,000. The growth of the University in its physical science departments since confederation has been

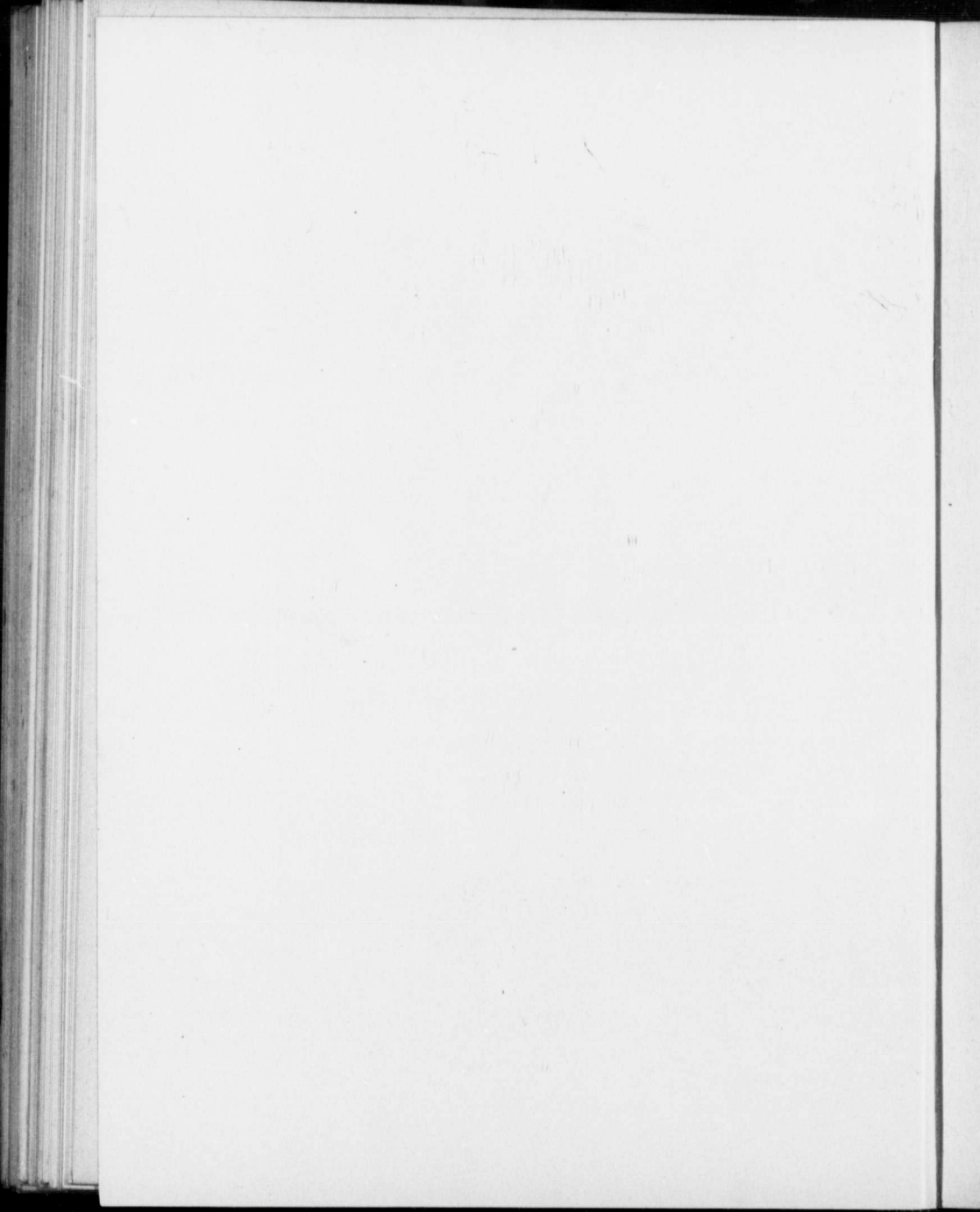
commendable, but can the same be said as to its development in regard to the science of law? A law school in the Queen's Park, on a broad basis, would go far to make the Provincial institution a real University, a seat of general learning and culture. It would soon rival not only any in the older Provinces, but even the well known Universities in the United States, where the principles and practice of the law in all its branches are ably expounded. The Inns of Court in England have law schools such as ours, but are, it is reported, moving in one instance at least, to form a connection with the University of London. Veneration for old institutions, in even Great Britain, is seen retiring before modern ideas and requirements. Toronto University was modelled on that of London, and should follow the like instincts.

The practice of eating dinners, as a means of entrance to the Bar, is varied in Toronto, where only the Benchers have free commons. The University stands quite as much in favour with the intelligent public as the Law Society, but the public demand that its work be efficient and of ample scope.

Some tenacity from personal motives and professional habits may be expected from the members of the Society and others interested. The practice in the other Provinces, the examples set in the United States and the welfare of our University, which must be made complete, fully answer all objections.



BALDWIN OFFICE CHAIRS AND VICE-CHANCELLOR ESTEN'S GUN.



## CHAPTER X.

### AN UPPER CANADA LAW OFFICE.

"And wrote my dream as morning broke,  
To please the gray-haired boys."—*Holmes.*

Osgoode Hall might with propriety have borne the name of its real founders, the Baldwins. They did not seek for judicial positions, but were satisfied to do their part in establishing the profession, of which they were leaders, and to be known as honourable men in public and private life. Mr. Davin wrote of Mr. Robert Baldwin:—"The truth is exemplified in the happiest manner in the family motto, 'Nec timide, nec temere.'"

Dr. Baldwin aspired to found a family who would inherit his large landed estate. This was much added to under the will of Miss Elizabeth Russell, sister of his old friend, the Honourable Peter Russell, for a time Administrator of the Province, who bequeathed her property to Dr. Baldwin.

Mr. Robert Baldwin became convinced of the unfitness of the law of primogeniture for Canada, and was mainly instrumental in passing the Act which removed that custom and allowed all the children of persons dying intestate to inherit equally.

Dr. Baldwin laid out through his land the wide avenue leading from the waters of the bay to the bluff, which geologists say was the "Iroquois Beach," or northern boundary of the ancient Lake Ontario. Here was the modest home in which Robert Baldwin lived and where he died. The whole city and bay could be viewed from it. This place and the avenue were called Spadina, an Indian word signifying a rising ground. An-

other son of Dr. Baldwin, who bore his names, William Warren, called his place Mashquoteh, which readers of Hiawatha will recognize as meaning the meadow. The Upper Canada College grounds occupy now part of this property.<sup>1</sup> The Baldwins were, in common with most practitioners in the Province, solicitors as well as counsel, and their office was the workshop in which they mainly laboured. It may not be without interest to look in and see how it was conducted for the first half century or more of the city's existence.

The place for many years used by Dr. Baldwin and Robert Baldwin, though not their first office, was the brick house, No. 5 King Street West, originally a private dwelling of three stories. The firm's box in the post office, from earliest days until letter delivery was fully introduced, was number one. The Doctor practised law alone for a time, and was equally at home in the calling of his first choice, administering to bodily ailments. Among his students was his brilliant kinsman, Robert Baldwin Sullivan, and in time business was done in the name of Baldwin and Sullivan. Dr. Baldwin died in 1844. Mr. Sullivan went on the Queen's Bench, September 15, 1848.

A bright young man, small of stature and gentle in address, had come from Edinburgh and entered the office in 1834. He was most studious and industrious, and won the confidence of all. Events made way for him. He was called in 1839, and the firm's name became in time, Baldwin & Wilson, Robert Baldwin and Adam Wilson, the young Scot, being the partners. Another change was on the retirement of Mr. Robert Baldwin, now in active politics, when Mr. Wilson was joined by Mr. Larratt W. Smith, now D.C.L., K.C. Mr. John Hector was Mr. Wilson's

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<sup>1</sup> Spadina is properly Ish-pa-de-nah. Mashquoteh is Mash-ko-da, both from the Ojibway.

partner in the Chancery department. Mr. Hector became also a special examiner, Q.C., and Bencher. In 1856 Mr. Smith had severed his connection, and Christopher Salmon, Patterson and James Beaty (the latter having been a student of Mr. Wilson), entered and made the firm Wilson, Patterson & Beaty. Mr. Baldwin retained a room on the first floor, and occasionally looked in, until his decease, October 9, 1858. On the ground floor was the reception room, around which were the students' well-inked and carved desks. Next was Mr. Beaty's room, and beyond that, in what had been the kitchen of the old house, sat over his ledger Mr. Wilson's worthy elder brother Andrew, who, until his decease in 1864, was bookkeeper of the successive firms. He had received a legal education and been admitted as a solicitor, or writer to the signet, in Edinburgh. Stairs led up to the library and rooms of the senior members. An arm chair used by both the Baldwins from the beginning of the century, and a similar chair from the library, are still preserved. A photo of these, along with Vice-Chancellor Esten's gun, is presented. Admission to the office was sought by many parents and guardians for their sons and wards, and it was a favour to receive an articulated clerk without fee, as much as £120 sterling having been paid with the indenture.

The office became the nursery of many bright lads afterwards known as law-makers, judges, journalists and holders of responsible positions. Among these may be named Lewis Wallbridge, who became Chief Justice of Manitoba; Judges Rose and Lount, the late genial Ira Lewis of Goderich, and Edward Martin, of Hamilton; Charles Rykert, Judge Benson, Ward H. Bowlby and John W. Bowlby, William Alexander Foster and William Jordan Rattray, of brilliant literary gifts; and later Judge Joseph E. McDougall, of Toronto, Judge F. W. Johnston, of the Soo, John E. Farewell, of Whitby, Thomas Dixon, of Walkerton, also



William N. Ponton, of Belleville, and Hon. James A. Lougheed, of Calgary.

An interesting person, since well known in political circles, spent a year in the office about 1879, Nicholas Flood Davin, afterwards M.P., Q.C., an accomplished journalist and classical scholar. He was then a barrister, but was "putting in time" for admittance as a solicitor. He prepared briefs, and sometimes appeared as second counsel. His conversation was interesting, as his knowledge and experience were varied. Genius can shew itself in various positions. The most amusing case in which Mr. Davin then appeared was in the police court. Some fakirs exhibited a "headless rooster," the poor bird having, probably by accident, lost half his brains but being yet able to walk and crow. Mr. Davin defended the showmen when charged with cruelty. His address was naive and charming in its historic and philosophic references and poetical effusion. But the feathered subject suddenly clapped his wings, crowed his last crow, and the case was over.

The work of the office was of a varied character. In addition to attention to those who called personally, there were estates to manage.

Many more applications had to be made at Osgoode Hall, during the progress of suits, than has been the case since the jurisdiction of local officers has been enlarged, and each Assize town has possessed a fair law library. Every morning there were motions in Chambers, and on set days, applications in Court in matters sent up from county towns and villages. Modern appliances were then unknown. There was no telephone, no elevator, no typewriter or fair lady clerks; all papers had to be copied by hand. As each student entered he was directed to a printed decalogue, or set of rules, in the hope that he would guide his course with this as a *vadé mecum*. In early days, before Law

Society lectures were established, heads of the office used to read law with the students.

Many of the young men were industrious, but it is hoped that the recording angel omitted to put down in his fateful ledger some of the things that happened at No. 5. The front window had its attractions with its moving panorama. On a fine afternoon every new bonnet was admired, and he was happy who got a glance from fair eyes beneath. Officers from the garrison, soldiers with their little canes, the Governor with an aide or perhaps one of the Judges, Lady Head in her sleigh with bear skin robes, were seen. There were many a whim and repartee—a pun from tall L., a sly joke from little Mac., or a witticism from R. There was much good humour which sometimes effervesced among the half score of young men here meeting, and there were incidents which are still the source of amusement.

When work pressed, W., a Cockney scrivener, was called in to engross important papers, and when the partners were out of the way, it was this lively gentleman's delight to stand up among the applauding students and render in fine style the cries of London street vendors.

A tin tube communicated from the reception room to Mr. Baldwin's sanctuary above it. A country client, while waiting for Mr. Wilson, asked leave to smoke his pipe. "You are quite welcome," answered one of the gay blades, "but just sit by that pipe and smoke up it." The unwonted invasion soon brought down the senior partner, who saw the good farmer contentedly puffing away at the mouth of the tube; but no student was in sight, each had suddenly found that he had a notice to serve or a paper to file.

One autumn day Mr. Baldwin received a letter from Richmond Hill asking advice. The case stated was as to a flock

of a neighbour's turkeys that insisted in perching each night on a fence common to the two properties, often gobbling lustily, and disturbing the house of the complainant, who felt aggrieved and sought to know his legal remedy.

Mr. Baldwin instructed a clerk to answer that really he could not advise on so insignificant a matter. Then came the indignant reply, saying that the facts could be proved by "Bob and the boys," that, though humble, he was honest, and should be protected and told what his rights were.

The correspondence, to and fro, was kept up until Thanksgiving Day removed the cause. It leaked out that the letters were all written in the office, and the imaginary case put was what a student sadly addicted to punning characterized as a "fowl" conspiracy to test the temper of the amiable chief.

Toronto then knew nought of electric or other street cars or of asphalt. The city was bounded on the east by the Don. Broad fields with spreading elms, maples and beeches were where Parkdale and Rosedale now are. Sherbourne street, north of Mr. Ridout's, now Hon. George Cox's residence, was a sandy lane, and where it met Bloor Street was an old two-story octagonal block house, of hewn logs, built about 1810, and remaining until 1860. There was a similar rude fort on Bloor Street West.

At this time Captain Walter McKenzie, clerk of the County Court, occupied with his house, orchard and vineyard the place overlooking the Don where Governor Simcoe had his primitive summer cottage, named Castle Frank in honour of his son who fell in action at Badajoz. The approach to Castle Frank was by an avenue winding from the head of Parliament Street through a wooded valley.

Next to this was Drumsnab, the picturesque abode of the Hon. William Cayley, a distinguished member of the Bar, and of

his brothers, Messrs. John and Frank Cayley. The last named was a gentleman of leisure and artistic taste, who adorned the walls and doors of the principal room with scenes from Faust and Don Quixote drawn in fresco.

Mr. M. B. Jackson, the senior official at the Hall, subsequently became the owner of and still occupies Drumsnab. Adjoining this on the north was the little farm of that cultivated man and pleasant companion, Mr. Edward Nanton, whose memory is held dear by many an old lawyer. His modest house of one story, with its conservatory and gardens, has disappeared. He had deep affection for this rural spot, with its tall oaks, shining beeches, fir trees, elms and maples. He lived his bachelor life among books and paintings, the house fragrant with perfume of flowers, birds and squirrels flitting among the leaves, the Don glinting, a Canadian Aufidus, in the valley.

Here, among the flowers of the conservatory, or in summer on a grassy knoll overlooking the little river, it was Mr. Nanton's pleasure, on Saturday and Sunday afternoons, for a quarter of a century, to welcome his many visitors with a kind word and a smile on his aristocratic features. Judges, Benchers, Crown Ministers, College dons, railway and bank magnates, were to be seen among the guests, and it was quite the proper thing to invite the stranger of repute to take a walk or drive and call on the Rosedale Maecenas.

Men of diverse tastes and pursuits, some of whose names were known beyond the Province, thus met in pleasant converse, when the political outlook, the last good book, brilliant essay or bon môt were discussed.

In his younger days Mr. Nanton had lived with his father on Pilgrim's Farm on Yonge Street, named by its later owner Mr. James Beaty, Glen Grove farm. He then set the fashion, with

suits from London tailors. Now he eschewed such finery, wore tweeds with spotless woolen underclothes, soft hat and most serviceable shoes.

Mr. Nanton entered Eton as the young Goldwin Smith was completing his course in that famous school. He retained the taste of a gentleman of the old school for the classics. When a younger friend, once walking with him, mischievously expressed a doubt as to whether the mother or the daughter were pronounced the more beautiful in Horace's ode, Mr. Nanton at once declared in favour of the Roman matron, and very soon sent his friend a courteous note verifying his assertion by reference to the passage.

Mr. Nanton died in 1885, in his sixtieth year.

While the house with the pleasant conservatory has gone, the knoll or point is still marked as in days of happy memory. Nine tall pines surrounding it, and a Laurentian boulder at its north side, suggest a Druid Temple. We last sat there on a hazy day in May, squirrels played and birds sang in the budding branches as their forebears had done before the gentle master of the place. Some rain drops fell and a bow in the sky, iridescent, beautiful, hopeful, was over us spanning from the lake to the northern woods.

The Ontario Literary Society, which met in a Temperance Street basement room, was a weekly attraction. It was said of this Society that it included in its membership the flower and promise of Western Canada. Foster and Rattray were pitted in debate there against Daniel Spry of the Post Office, who became an inspector, and brilliant men of other law offices, of whom Thomas Moss and Robert Sullivan were the brightest. Mr. R. A. Harrison was sometimes the grave chairman. Foster's picture hangs in the National Club, and his name is connected with that of the

brave Sir John Schultz and other men who, forty years and more ago, had dreams of a greater Canada.<sup>1</sup>

The story of Foster's life is told in a volume published in 1890 entitled "Canada First, a memorial of the late W. A. Foster."

In this is an elegiac poem by Charles Mair, which begins,—

"And he is gone who led the few  
Forecasters of a nation fair:  
That gentle spirit, strong and true  
As ever breathed Canadian air."

James David Edgar, then a law student, took part in the proceedings of the Ontario Literary Society and became its President.

Mr. Edgar had a courteous and winning manner and was well posted in history and French. He was called to the Bar in Michaelmas Term, 1864, and made his mark in his profession, as also in politics and literature, becoming a member of Parliament, First Commoner and a Knight. His works in prose and verse have received high and deserved commendation from such men as Mr. Frechette and the late Sir Edwin Arnold, author of "The Light of Asia."

William Rattray was as patriotic, was a critical observer, with a facile pen. He had not the patient application required for success in law, and did not proceed to call. He lived to write a history of The Scot in British North America.

Proceedings in the University interested most of the office habitues, especially as they concerned young men they knew, and some of the students managed, in addition to office work, to take

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<sup>1</sup> William A. Foster, William Lount (Judge), George T. Denison (Magistrate), and Thomas Moss (Chief Justice), were admitted to the Bar in Michaelmas term 1861. John A. Boyd (Chancellor), in that term 1863.

the University law course, which did not call for attendance at lectures.

In 1858 W. H. C. Kerr figured largely in languages and Latin verse. He was, when at the Bar, credited as the compiler of the "Ross Bible" for use in schools. J. A. Boyd received prizes in English prose and verse and modern languages. J. M. Gibson, J. L. McDougall and J. E. Farewell were prize men. D. Ormiston and R. Sullivan took doubles in Latin and Greek and in mathematics. W. R. Meredith got a scholarship in law. T. Moss, B.A., and T. Hodgins, B.A., took their M.A. degrees. W. H. Bowlby took the gold medal with his LL.B. C. E. English was admitted to a degree and got the silver medal, these last two being students in the office referred to, as also was Farewell.

There were at this time two witty sheets published in Toronto, "The Grumbler," a Canadian Punch, the other and shorter lived, "The Poker," and it was an open secret that many of the bright passages in those little papers came from Rattray and others of the young men named. Mr. R. A. Harrison was interested in "The Poker," and Mr. Erastus Wiman in one of these publications. In them were amusing skits in prose and verse, well written criticisms, and remarks on public men and events. The second number of "The Poker" says:

"We have an idea:—

That while engaged in stirring coke  
And clearing off the Clear Grit smoke  
The Poker may by way of joke,  
Poke in a little fun."

In The Poker's "Coming Men, a New Drama," we find as personae, Hon. John Ross, L. H. Holton, A. T. Galt, Hon. J. A. Macdonald and other statesmen of the day. Mr. Galt asks Mr. McGee, "What do you think of the Federative Union ideas, Mr. McGee?" D'Arcy answers, "I think that no one in Canada, besides myself, understands the subject, or indeed any other subject

of national importance. You seem to have some glimmerings of light, and I dare say you could comprehend the whole case if you were willing to learn," etc.

Some of "The Grumbler's" criticisms of public men and their writings had a marked effect. A reverend gentleman, in reply to Hon. George Brown's attacks, issued a pamphlet which is thus in part reviewed:—"In the first place his sentences are fearfully long and complicated. He begins with one idea, and 30 or 40 lines afterwards, finishes with another. He opens with a protest against separate schools, and ends his sentence with a description of McGee's intended visit to Ireland. On page 95 is a sentence 40 lines long; on page 15, one 26 lines long; on page 65, one 28 lines long, and on page 89 he actually begins a sentence which extends over 52 lines. Conjunctions which couple nothing, relatives whose antecedents no one can discover, bewilder the reader on every page."

A Canadian Institute paper, assumed to be read by a well known scientist of the day, is taken off in a so-called synopsis:—"The Chairman read a paper on the 'Phenomenon of the Sea.' The sea is composed of salt and water, if the lecturer might be allowed the expression. But how the salt and water came together was a matter of dispute. Whether the water came to the salt, or the salt to the water, or whether both met half way, was an open question. He had crossed the sea himself, and had seen it in storm and in calm; and he had often spent days in examining the curious effect which a storm had upon a ship. At times the waves rolled very high, and immediately afterwards sank very low, and invariably the ship rose and sank with the waves. He could not account for this in any other manner than that there must be an India rubber bed at the bottom of the Atlantic, which the weight of the ship, pressing on the water and the water on the India rubber, would cause to sink, while its elastic nature would



immediately give it an upward tendency, which in its turn it would impart to the sea, thus producing what are commonly called waves. With these remarks he would resume his seat.”<sup>1</sup>

On Christmas Eve, 1858, the Macdonald-Cartier party were in a disturbed state. The Premier was represented by “The Grumbler” as seeing the dread Philippi approaching, and earnestly seeking for measures to occupy Parliament and gain confidence. He asks his colleagues:—

“What’s to be done? We have no English acts  
To copy; no more Procedure acts or County Court,  
The Usury fight is o’er, nor would it aught avail,  
That we should touch again the Aboriginal Indians,  
Or any of those last resorts we keep in store,  
Against the stormy day. E’en Cartier has failed,  
The eternal judicature bills come in no more,  
And nought seems left us save ‘give up the ship,’  
But say, my Sicotte of the Public Works,  
My only colleague burdened with much brains,  
What’s left us now?”

Sicotte.—“My Kingston chum, Ulysses of the gang,  
Deem me not churlish; if I were to hang,  
I could not give a hint, not one, indeed,  
One faintest glimmer in this darkest need.”

Mr. Cartier had been at Windsor Castle and was reported as much flattered by the royal attention shewn him, which marked his reply:

Cartier.—If you listen vera patiently,  
I tink I tell ze way mon chere ami,  
Ven I was at ze Windsor wid ze Queen,  
Such one beeg tall reception ne’er has been  
Before or since, etc.

Macdonald.—Dry’up, old Windsor; at it once again,  
Pity royal favours make such fools of men.

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<sup>1</sup> The Canadian Institute has in its proceedings no paper such as is caricatured by this witty reviewer, but in 1857 and 1858, the names of several of the distinguished persons referred to in this narrative appear.

The following lines express sentiments which some political critic may find to fit more modern occasions:—

## THE FRANCHISE.

The day draws near,  
When fun and beer  
Will flow in jolly plenty,—  
When for a vote,  
They tip a note,  
A five, a ten, or twenty.

There's neighbour Jones,  
He made no bones  
To hint about his taxes,  
No sooner said  
Than they were paid,  
Thus honesty relaxes.

This freeborn right,  
For which we fight,  
This franchise for the masses:  
Is all a hoax  
To gammon folks,  
And make them greater asses.

Now what have we  
For liberty—  
Immunity for rowdies;  
For Truth a snare—  
For rogues a care,  
Protection for their dowdies.

George Brown comes in for many lively sallies. He and McGee appear together in a song, to the air of Young Lochinvar. The following lines are taken from "The Poker":—

"Oh! Brown and McGee, what will they not do,  
With their hosts of supporters all loyal and true.  
Just wait a few days, and then we shall see  
The fruits of the union of Brown and McGee."

"Come darlint," quoth D'Arcy, "just you come along,  
I'll steer the ship for you, we'll never go wrong;  
Lave your happiness, jewel, and fortune to me,  
They'll be in safe keeping with D'Arcy McGee."

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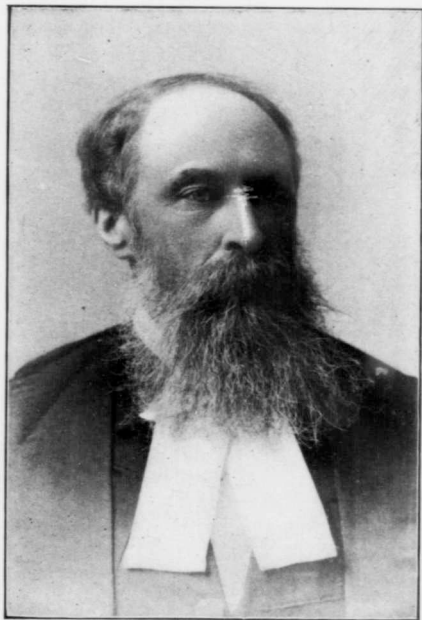
"Every hill, every dale, every rock, every tree,  
Shall tell of the union of Brown and McGee."

Mr. J. Hillyard Cameron, a candidate for Parliament, in 1858, had a somewhat lofty mode of address which is touched on in a parody of his letter to the electors. "I go against all vulgaw people, such—aw—as Mistaw Brown, and aw, I belong to the aristocwacy. I go in for stopping election frauds, and thus shutting the stable-door when the quadruped has absquatulated, but Fellowes and Co. must not be touched, etc." This referred to the Russell election case then pending in which Mr. Fellowes figured. He was a barrister and a bencher.

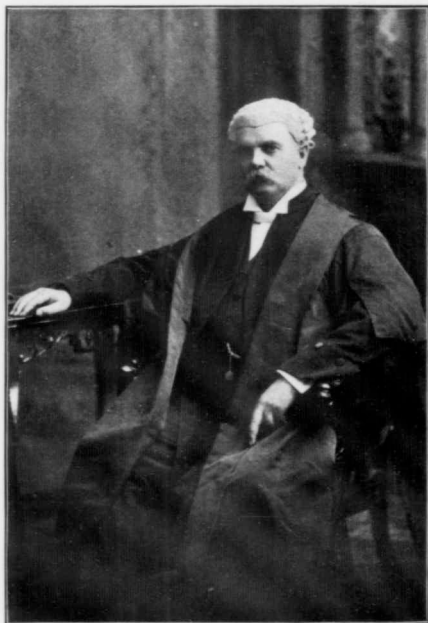
The French members of the House, then meeting in Toronto, were often subjects of "The Grumbler's" pen. One, called Benjamin, brought in a bill to increase the legal rate of interest in certain cases, and then, "Jean Baptiste had a little fun on his own account; hour after hour, until half-past three in the morning, was the talk kept up to the delight of Langévin, Cauchon and Chapais." On Mr. Cimon's desk was then found, it is said, this poem in broken English:

"Audiable with Benjamin, the skinflint, the ruthless,  
Down with the fripon that would ruin us all,  
Arrachez his grinders, and leave him quite toothless  
Comme les vieux roix Anglais the Jews used to maul.

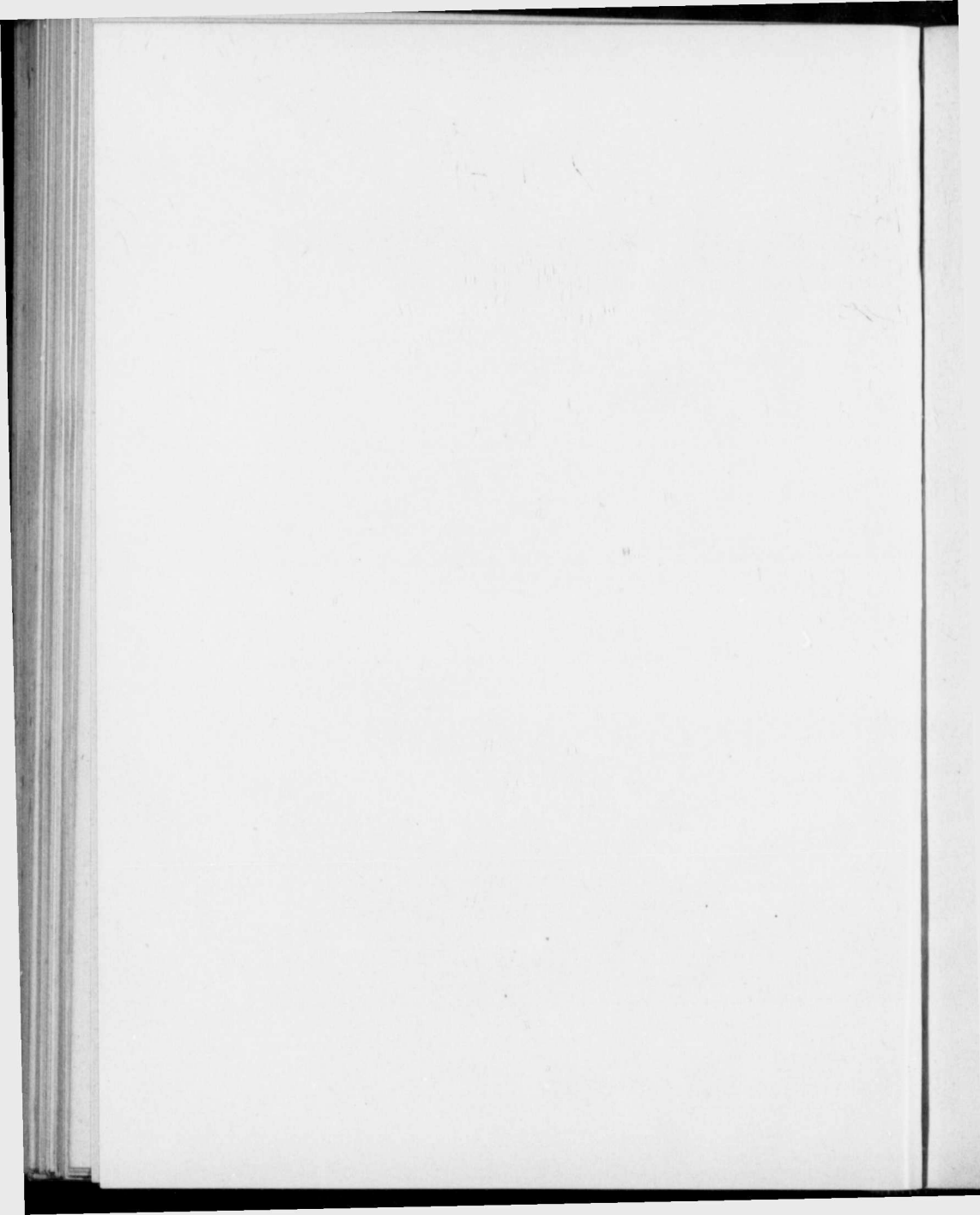
"Qui! peste ventrebleu, sacrebleu! mille tonnerres!!  
C'est une grande bother this shocking canaille,  
If he's not to be slain for his grease like a bear,  
He should be egorge for his skin to make turtle-pie.



MR. JUSTICE OSLER.



MR. ADOLPHUS WILLIAMS, K.C.



“So vive la bagatelle, jump about helter-skelter,  
We'll keep le vieux buzzard as long as we can;  
Laissez le dissolver in the heat and the swelter,  
And leave him at last just where he began!”

Returning to the learned heads of the firm; one of the members was generally in politics, Mr. Wilson became Mayor of Toronto, where his industry made a marked improvement in civic affairs. He entered Parliament, was soon a Crown Minister and when he retired from the Bench, was Chief Justice and a Knight. He took an interest in science, was a distinguished supporter of the Toronto Astronomical Society, now the Royal Astronomical Society of Canada, and gave it a telescope and valuable books. Mr. R. Baldwin was long a member of the older Society, the Canadian Institute. Dr. Larratt Smith, the sole surviving partner of Mr. Wilson, who also knew Mr. Baldwin intimately, speaking lately, said:—“Robert Baldwin was conservative and simple in his tastes, a delightful man; he could not get angry. Adam Wilson was never known to speak other than gently, however annoying the circumstances.” This may remind us of Elia's description of one of the old Benchers of the Inner Temple:—“You could not ruffle Samuel Salt.”

Mr. Wilson's home, always a pleasant and hospitable place, was on Spadina Crescent. The house has lately been removed to Russell Street near by, where his life-long companion resides. When Mr. Wilson was in practice this place stood alone with its garden and shrubbery. He was to be seen in the evenings, especially in vacation, working vigorously in his garden.

Mr. Wilson admired the wild grace of Muskoka, and at one time owned some islands and points there. He had a considerable property on the lake shore, east of Toronto, and on this he, and friends who joined in the enterprise, founded the rural

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<sup>1</sup> From *Grumbler* of Aug. 14th, 1858.

suburb of Balmy Beach. He and Lady Wilson were among the founders of Grace Hospital. He was sensitively averse to any appearance of vanity or coarseness. He appreciated the efforts of those who strove to do right and met reverses without a grumble. He was well read in general literature and had always been observant. He spoke interestingly of the Baldwins, Sir Louis Lafontaine, Sir George Cartier, the Honourable Sandfield Macdonald and Sir John Macdonald. From him I learned of probably the last negro slaves in the Province, a boy called Hank, and a girl, Sukey, who belonged to Mrs. O'Reilly, mother of the late Miles O'Reilly, Q.C., well known as a lawyer and Master in Chancery in the City of Hamilton. They were seen at the O'Reilly homestead shortly before August, 1834, when slavery was abolished in the British possessions by the Imperial Act.

After a hard day's work in the Court, the Judge used to find relief in a quiet game of solitaire. He lived until December 29, 1891.<sup>1</sup>

When at the Bar, Mr. Wilson took an interest in the militia, and held commission as Captain. Dr. Larratt Smith is Senior Major on the retired list.<sup>2</sup>

One of the interesting incidents in Mr. Wilson's career, when a Judge of the Queen's Bench, was that arising in the Wilkinson libel action. Articles from the pen of the Hon. George Brown appeared in issues of the *Globe* newspaper of the eighth and fourteenth July, 1876. These were racy criticisms of the judgment of Mr. Justice Wilson and of proceedings of

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<sup>1</sup> For obituary of Sir A. Wilson, see *Can. Law Journal*, 28, 3; and for same of Judge Patterson, *Can. Law Journal*, 29, 500.

<sup>2</sup> Larratt W. Smith was gazetted captain in 1840, became senior major in Sixth Battalion at Toronto in 1856 and passed the Military School in 1864. John Godfrey Spragge was colonel of the sixth Battalion until made Vice-Chancellor, Dec. 20th, 1850, when "cedebant arma togae."

leading men of Canada, among them Sir John Macdonald, Sir George Cartier, Sir Hugh Allan and Hon. Mr. Langevin. Mr. Dalton McCarthy obtained a rule of the Court calling on Mr. Brown to shew cause why he should not be committed for contempt. Mr. Brown answered by an affidavit as strongly impregnated with party and personal feeling as his article had been, and himself argued the case in open court in a very unabashed manner. Judge Wilson did not sit on the hearing and the matter was disposed of by Chief Justice Harrison and Judge Morrison. The Chief delivered a learned judgment of twenty-four pages, and was for committing the bold editor. Mr. Justice Morrison was content to state his opinion in half the space. He disagreed with the head of the Court and the rule was discharged. The case occupies one hundred and twenty-seven pages of the forty-first volume of the Court Reports and discloses many curious matters of the political history of the time.

Of the later partners, Mr. Patterson ranked high as a counsel, and often acted as arbitrator in important matters referred to him by the Court or by individuals. He was a Queen's Counsel by appointment of both Dominion and Provincial Governments, was for some years an Elective Bencher, was interested in charities, and an active trustee of the Toronto General Hospital.

He avoided politics, Provincial and municipal. The Court of Appeal, with four Judges, was created; a patent from Ottawa came to him and, in June, 1874, he passed to a seat on that Bench from which, in time, he was transferred to a like position in the Supreme Court at Ottawa, which he filled until his decease, July 24, 1893.

Judge Patterson was a son of Mr. John Patterson, merchant of Belfast, Ireland, but was born when his parents were in London. Mr. John Patterson was a man of literary tastes, though not known as an author.



James Sheridan Knowles, the dramatist, was, in the early years of the last century, befriended by him, and did Mr. Patter-son the honour to dedicate his fine tragedy "Caius Gracchus" to him in November, 1823, using the words, "At your suggestion I wrote this tragedy, and to you I dedicate it, with best wishes for your happiness and that of your family."

Mr. Beaty became Mayor of the City, a Queen's Counsel, a D. C. L. of Trinity, a member of the Dominion Parliament, and was interested in many enterprises. He died March 15, 1899.

An incident may be related. A worthy client of Baldwin and Wilson died leaving a widow and a little girl of two years. The widow soon followed her husband and the child was taken charge of by relations. When she in time had her home in another Province, a strong box, which had lain in the safe for about thirty years, was opened and found to contain a goodly assortment of family jewelry and plate. All surrounded the strange jetsam wondering, while one unrolled from the soft papers in which they were enveloped, numerous articles, gold, silver and gems, now brought to light from their quiet hiding place. Sir Adam, who had retired from the Bench, happened just then to call at the office. He joined in the examination and was rejoiced to recognize the property of his former client. He had, he said, often been puzzled to know what had become of the box, and thought it had been sent to a bank for safe keeping and lost when it failed and was wound up. It was a pleasant surprise when the heiress, in her distant home, soon after received the family treasure.

Sir Adam preferred Disraeli to Gladstone. He was an admirer and personal friend of Sir John Macdonald, though not of his party when in public life. Sir Adam was more than once

offered the honour of Knighthood but declined, until Sir John urged him to accept as due to the position he had so long held.

The office was a centre of professional and political life. Oliver Mowat, Dr. Connor, with his fine features and white hair, and other leading Liberals, often went up the stairs. Sir Francis Hincks was in and out until he became Governor of British Guiana. The old Knight, Sir Allan McNab, rotund and handsome, who carried a cane and limped somewhat, was an occasional visitor. Dr. Christopher Widmer was a physician of the old school and a client with large property. He was of small but active frame, wore a tightly fitting coat with large cravat and well poised hat. He was quick, brusque, rather deaf, and brooked no delay, so, when he called, any clerk whom he approached stood at once to attention. His temper was:—

"Like a lusty winter,  
Frosty but kindly."

The doctor had seen service as a staff cavalry surgeon during campaigning on the Peninsula, and had there contracted an unfortunate habit of speech, and when aroused, still gave way to it.

Relating a warm discussion, which had taken place between two reverend gentlemen, he unconsciously made each of the good churchmen, whose conversation was always irreproachable, adorn and punctuate his sentences with round oaths and strange expletives in a manner that both shocked and amused his hearers.

Dr. Widmer's portrait may be seen in the Toronto General Hospital, to which he was for many years attached professionally.

Mr. James Beaty, Senior, proprietor of the *Leader* newspaper, and of the "York roads," some miles of highways leading into the City, from which he gathered goodly tolls, was a remarkable and enterprising man and an important client.

\* The office managed the extensive estate of the late Hon. John Henry Dunn, formerly Receiver-General of Canada. He was father of Alexander Roberts Dunn, who rode as Lieutenant in the famous Balaclava charge of the "Six Hundred." He was an Upper Canada College boy and had received the Victoria Cross for bravery in action. He "came of age," under his father's will, at 25 years, and then visited Toronto, when the citizens presented him with a sword. He was a tall, handsome young man, and regarded money as made to be spent. The 100th Regiment was then being formed in Canada, of which he became Major, and afterwards Colonel by purchase. To procure the means for this necessitated the conversion into cash of some of his Canadian properties, which included a good slice of that part of Toronto known as Parkdale, through which pass the streets, now lined with many pleasant homes and called by the names of Dunn, Wilson, Beaty and Dowling, the last being the name of Colonel Dunn's sister, Charlotte, the wife of Colonel Dowling.

We were, in common with many citizens, interested in several other young officers, some of them scions of Upper Canada College, who received commissions in the 100th Regiment. Of these was Charles J. Clarke, who had been a student in Baldwin & Wilson's office, and was now a captain. He ended his days in Australia. Another Captain, John Clarke, subsequently became husband of a Toronto heiress, Doctor Widmer's eldest daughter. John Gibbs Ridout, son of the Cashier, had distinguished himself in his college course, was now an ensign and soon took first rank in the military Staff College, with much credit to his Canadian training. He was with the regiment when stationed at Gibraltar, and served in Canada in 1866, as related in Chapter VII. T. H. Baldwin, an ensign, was son of Colonel Connel J. Baldwin, who had served in the Peninsular war and now lived in Toronto, and was often in the office. He gained promotion in the service but died

young in Ireland. Charles A. Boulton was Lieutenant and became musketry instructor. His name was familiar during the Riel rebellion in Manitoba. He became a Canadian Senator.

Alexander Roberts Dunn was born in 1833, within gunshot of Osgoode Hall, his father's house being on the south side of Queen Street, west of Peter Street, which was subsequently occupied by Chief Justice McLean. At the time of the Balaclava charge he was Lieutenant in the 11th Hussars, stood six feet three, and was a skillful and fearless swordsman.

Lord Cardigan stated that the time occupied from the movement of the brigade to its reforming on the same ground did not exceed twenty minutes, the distance passed over was one mile and a quarter, at the lowest calculation, and, in that space of time, three hundred men who had gone into action were wounded or missing and three hundred horses were put hors de combat. Of the six hundred and seventy men who had gone into action only one hundred and ninety-five were mounted when the brigade reformed, and twenty-four officers were killed or wounded. He gives eight minutes for the advance, as many for the retreat, and four, or but one-fifteenth part of an hour, for fighting. When passing through this terrible scene, young Dunn rushed on some Russian lancers who had Sergeant Bently at odds, cut them down, then dashing off, saved Sergeant Bond and Trooper Levitt. A painting representing Dunn thus bravely engaged is in a corridor of the Toronto Legislative building.

Kinglake, the historian of the Crimean war, states that the Victoria Cross, placed by Her Majesty at the disposal of the Regiment, was by vote unanimously awarded to Lieutenant Dunn, the only cavalry officer who attained that distinction on that glorious occasion, which has become renowned both in history and in song.

The writer, a student of the office, was sent to Quebec in July, 1858, with accounts and other papers for Major Dunn, who

had gone before to join his new regiment, and there saw the recruits embarking. They were a curious lot, dressed in red coats of old style, having evidently been long in storage, the waists coming up to near the arm-pits. Colonel Dunn, desiring active service, was transferred to another regiment and was with General Napier, known as Lord Napier of Magdala, in India and Abyssinia. This most gallant young Canadian met a melancholy death in Abyssinia, about ten years after leaving Quebec with the 100th or Canadian Regiment. He had gone out hunting and was found dead beside his gun. A Court of inquiry was held whose finding still left the sad event in mystery.<sup>1</sup>

Colonel G. A. Sweny, now of Toronto, was a member of the Court.

Mr. Thomas Clark Street, of Niagara, was an executor of Hon. J. H. Dunn's will, as was Mr. Wilson, and they often met. Mr. Street was admitted to the Bar in 1838, and was now a bright business man, one of whose arms was crooked. He was among those who had been in Toronto market at a public meeting in July, 1834, when the gallery fell and his arm was broken. Many others suffered in this catastrophe. Colonel Fitzgibbon's

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<sup>1</sup> An army comrade thus wrote:—"Every soldier in the regiment misses Colonel Dunn, he was a friend, and felt to be such, to every one of them. The regiment will never have so universally esteemed a commander again. We all feel that. . . . He was buried in uniform as he had often expressed a wish to me to that effect. Every officer in the camp attended the funeral, and of course the whole of his own regiment, in which there was not a dry eye, as all stood around the grave of their dead comrade. He has been buried in a piece of ground near which our camp now stands, at the foot of a small hill covered with shrubbery and many wild flowers. We have had railings put around, and a stone is to be placed there with the inscription: In memory of A. R. Dunn, V.C., Colonel 33rd Regiment, who died at Senafé on 25th January, 1868, aged 34 years and 7 months."

son, George, was killed. The Colonel, Mr. Thomas Ridout and Mr. Turner were injured.

Captain John McIntyre, of Fort William, then an outpost of civilization, was an interesting client with hearty, weather-beaten countenance. He entered the Hudson Bay Company service when a youth and was in his later years Indian Superintendent for a large region north of Lake Superior. He was versed in the Algonquin language and legends and in the history of the stirring days of Lord Selkirk. He had a picturesque home on the banks of the Kaministiquia where it was interesting to see him, like an old Chieftain, surrounded with his red retainers.

Francis Assikinack passed the office daily to his desk in the Indian office under Mr. W. R. Bartlett. He was a rare character, quite as interesting in his modest way to the thoughtful as young Dunn of the "Six Hundred," a tall youth of lithe figure, good features, black hair and piercing dark eye, small hands and feet. He was of proud native descent, with blood of Tecumseh in his veins, and was a "warrior of the Odahwahs." His father was the brave Chief Baptiste Assikinack (the Blackbird) of the Manitoulin Islands, a loyal and historic man of the Ottawa nation. Francis had been brought to Upper Canada College in 1840, being then a lad of sixteen and speaking only his native tongue. He soon mastered English, took a good place in his Greek and other classes, having as competitors the young Adam Crooks, J. J. Kingsmill and Norman Bethune, afterwards well known in the land. He was agile and distanced most of his competitors in racing, rifle shooting and other exercises. He could hit a bird on the wing with his arrow. He was retiring and generally reticent, but would relate to his friends the history of his people, as they came from the South and settled on the Georgian Bay, and his dark eye flashed as he told of their prowess. He was induced to contribute to the Canadian Institute several papers on

his nation's language, legends, traditions and warlike customs, which were commended by Sir Daniel Wilson, and are still referred to as learned and valuable additions to linguistic lore.<sup>1</sup> From the College, Francis went to the office of the Indian department, August 10, 1849, then at Cobourg, but soon removed to Toronto, as interpreter and clerk. It is needless to say that his origin, talents and demeanour made him a favourite, and all sorrowed when it was said that illness had seized on this remarkable young man. He returned to his beautiful island home and was laid to rest at Wikwemikong in November, 1863.

Mr. Thomas Gibbs Ridout, cashier of the old Bank of Upper Canada, was a co-executor with Messrs. Wilson and Street, and many a time did I take him accounts and cheques to sign. He was a man of large frame and voice, but withal kindly and a valued citizen.

A client, called Washington Wallace, was the plaintiff in several actions which caused some good farmers in County Waterloo much anxiety. His father had owned a tract of land there, had left Canada about the time of the troubles of 1837, and died in the Republic. He was, by commission, adjudged a rebel, his lands declared forfeited and sold again by the Government to those who had since improved them. Mr. Wallace by his suits, traversed the finding and, as heir of his father, sought to eject the present holders. The matter was so important that application was made, on behalf of the plaintiff, for a trial at Bar before the full Court. This was refused and two of the cases were brought to trial in the usual way at Berlin. The title of the honest yeomen was not disturbed, Wallace being non-suited. So much did the farmers dread further dispute that it became a

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<sup>1</sup> Canadian Institute Journal, Nov., 1858, and January, 1860. "Famous Algonquins." Transactions of same, LV, 302. "The Georgian Bay," Chapter V.

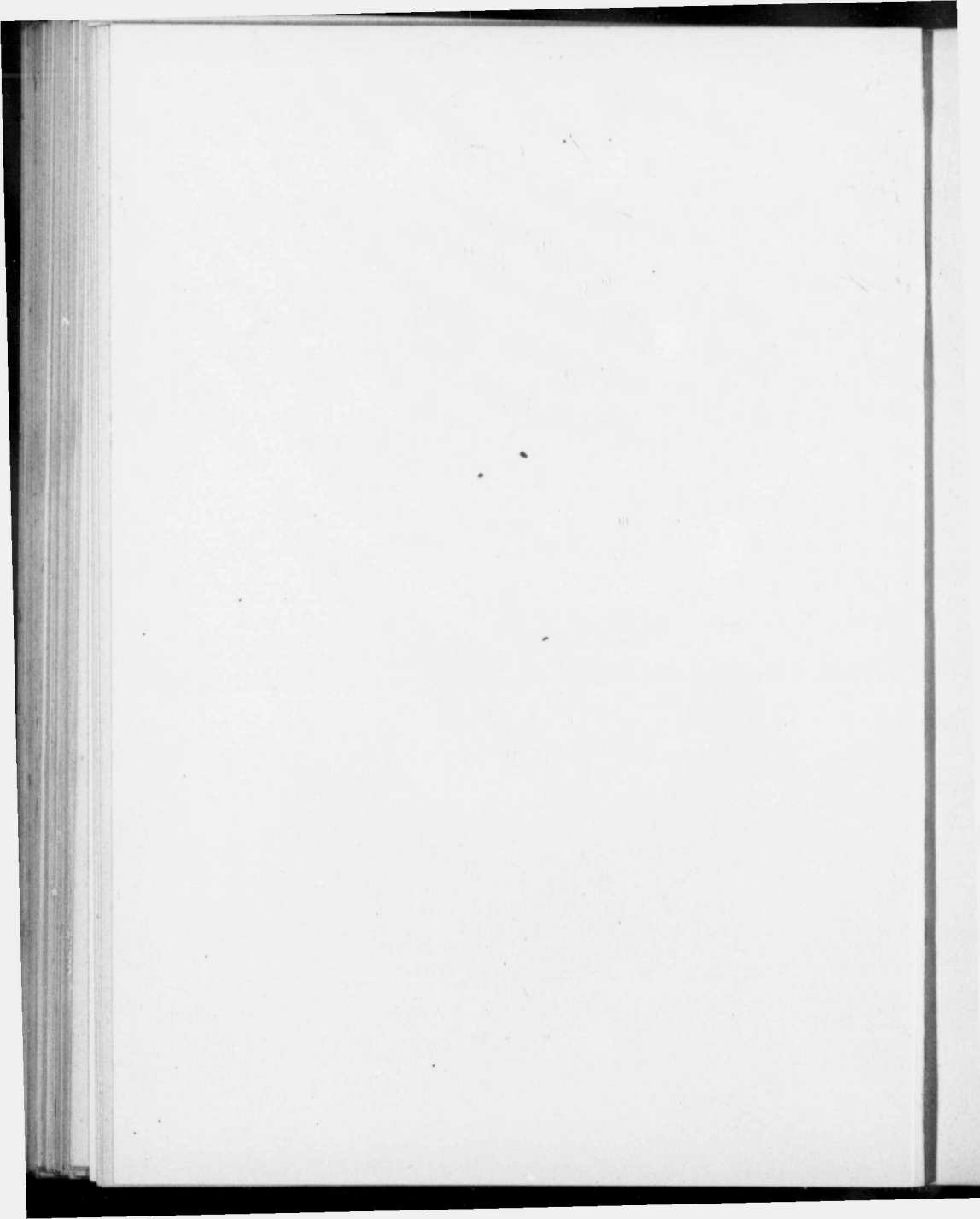


CHIEF JUSTICE SIR W. B. RICHARDS.



MR. JUSTICE PATTERSON.





political matter, Parliament was appealed to and, by an Act, confirmed the title, after which Mr. Washington Wallace was no longer seen in Toronto.

By direction of the legislature, the important action of *The Queen v. Fellowes* and others was brought to punish participators in corrupt election manoeuvres at the Parliamentary election for County of Russell, in 1857. The action was by the Crown on the information of the Attorney-General. The trial took place before Judge Richards and a jury at L'Orignal, Messrs. Wilson and Patterson appearing for the prosecution. Wholesale impersonation was proved. Mr. Fellowes and three others were declared guilty. Application for a new trial was made before the full Court of Queen's Bench at Osgoode Hall, which sat in the old Chancery Court, now the barristers' cloak room, as rebuilding of the centre part of the Hall was going on; after full argument, a day was set for giving judgment. At the time stated, the defendants being present in custody, Chief Justice Robinson pronounced the finding of the Court which sustained the verdict. The Chief then called on Judge McLean, as the senior puisné Judge, to sentence the prisoners, which he then proceeded to do, terms of imprisonment and a cash fine being meted to each. It was indeed an impressive occasion.<sup>1</sup>

An important dispute arose as to the division of the estate of Dr. Widmer, which developed into the suit of *Clarke v. Hawke*. The trial was long. Briefs were held by Messrs. Edward Blake, S. H. Strong, now Sir Henry, Adam Crooks, J. Hillyard Cameron and other distinguished counsel. The relief sought by the plaintiff was decreed.

Alexander McLeod, of Niagara, who was concerned in the sending of the "Caroline" over the Falls, was a client, a plain

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<sup>1</sup> *The Queen v. Fellowes* and others, 19 U. C. R. 58.

business man, who looked after the interests of a neighbour of some means, but weak intellect, who was a ward in Chancery.

A more curious case in lunacy was that of a man who imagined that the Ku-Klux Klan were pursuing him. He would stand by a telegraph pole and declare that he heard the members of this dangerous organization plotting against him. Speaking in solemn, earnest tones at the inquiry, he told his weird story, all of which Vice-Chancellor Mowat heard with kindly patience, then declared him lunatic and appointed a committee to manage his estate.

The actions against Hon. John A. Macdonald, Hon. Sidney Smith and other Ministers of the Crown, after the so-called "Double Shuffle," were also conducted by the senior partners of the old office. The papers were long and the pleadings included joinders, surrejoinders, rebutters and surrebutters. The actions were in fact claims for statutory penalties by a gentleman who thus used his status as a citizen, and whose politics were more apparent than were his property or means of paying costs. The matter is historical, and it will be remembered that the Court on demurrer held that the Ministers charged were within the law, and in again assuming office, after Mr. Brown's failure to form a Government, were not liable to a penalty for sitting in Parliament without re-election.

Thus ends our sauntering and musing about the attractive Hall and old offices.

These were memorable days when the 'phone did not disturb our contemplation of Blackstone, when the Poker poked its fun and the Grumbler growled its wise saws, when we read Tenyson's "Charge of the Light Brigade" and rose to greet its hero, when McNab and Prince, McKenzie, McLeod and other historic characters were daily met.

Then Gwynne's last jest was regarded with more interest than Doctor McCaul's elegant translations of old inscriptions, which were gaining him scholarly renown.

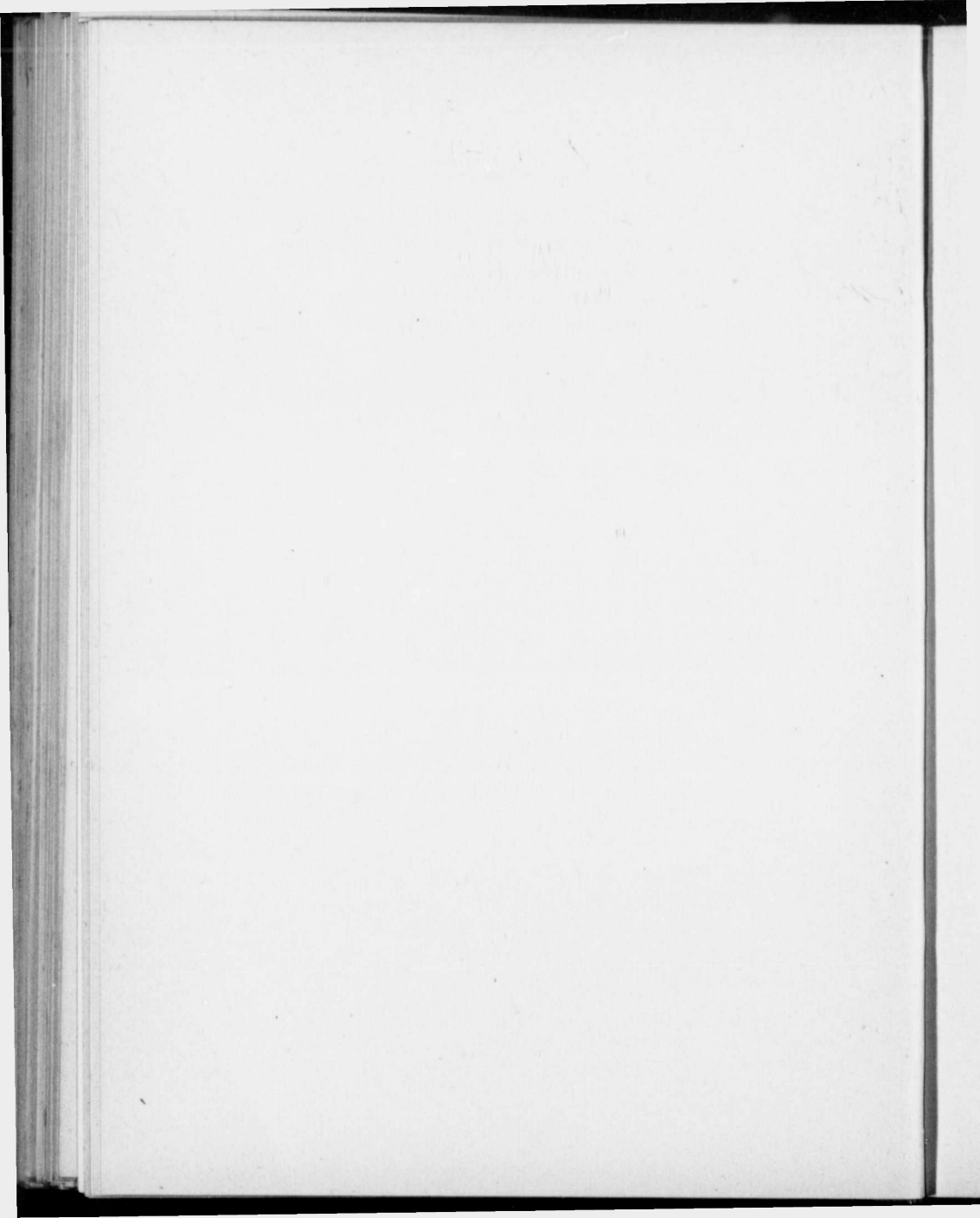
One merry fellow hummed a college song or bright air caught up at the Royal Lyceum; another came in with the last bon-mot of D'Arcy McGee or gay story of John A.

It is pleasant to hope that there are some in the land who will remember many of the incidents referred to, and perhaps find some interest in this short relation.

The writer would say with Felawship in the old play:—

“ In fayth, Everyman, farewell now at the ende;

For you I wyll remembre that partynge is mournynge.”



## APPENDIX A.

### OFFICIALS OF OSGOOD HALL.

The names of the present Benchers and officers of the Law Society are given in Chapter II. The others here found are:

Court of Appeal—Registrar—John A. McAndrew. Assistant Registrar—Charles S. Grant. Usher—Eli Oliver.

High Court—Official Guardian—F. W. Harcourt. Senior Registrar—G. S. Holmsted, K.C. Junior Registrar—A. F. McLean. Clerk Weekly Court—G. M. Lee.

Central Office—Clerk of Crown and Pleas—M. B. Jackson. Clerk of Records and Writs—E. Harley. Judgment Clerk—Alex MacGregor. Clerks—A. J. Elliott, R. F. Killaly, M. B. Black, F. W. Scott. Clerk in Registrar's Office—C. O. Strange. Clerk Non-Jury Court—A. Y. Blain.

Official Referees (Ex-Officio)—The Master in Ordinary, the Registrars, the Accountant, the Inspector of Titles, and the Referee of Titles.

Clerk of Assize—High Court of Justice—G. B. Nicol.

Master's Office—Master in Ordinary of the Supreme Court—Thomas Hodgins, K.C. Chief Clerk and Official Referee—N. McLean. Clerk—A. E. Bastedo.

Master in Chambers—J. S. Cartwright, K.C. Clerks—F. Arnoldi, C. Bell, Miss A. B. G. Cull.

Accountant's Office — Accountant, George S. Holmsted. Assistant Accountant—Benjamin W. Murray. Clerks—Lawrence Boyd, C. Gilbert, George T. Leonard, Miss M. Buchan, Philip Boyd.

Taxing Officers—J. H. Thom, M. J. MacNamara.

Inspector of Public Offices—James W. Mallon. Clerk—  
Captain Forsyth Grant.

Surrogate Clerk for Ontario and Clerk of the Process—  
C. J. McCabe. Clerks—W. S. Anderson, Miss B. Reade.

Clerk Commissioners Devises Court—W. McTavish.

Law Stamp Distributor—Dr. McMahon.

Inspector and Referee of Titles at Toronto—G. S. Holm-  
sted, K.C.

Master of Titles, under Land Titles or Torrens Act—J. G.  
Scott, K.C. Clerks—H. D. Sinclair, H. C. Russell.

Judges' Stenographers—W. Walter Perry, W. M. Winter-  
berry.

Criers and Ushers—Robert Lawson, R. A. Walker.

Messenger—James Gorrie.

## APPENDIX B.

### THE JUDICIARY.

*The Chief Justices and Chancellors of Upper Canada and Ontario, with dates of their appointment.*

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#### KING'S BENCH OR QUEEN'S BENCH.

Now King's Bench Division of the High Court.

Hon. William Osgoode .....	July 29, 1792
" John Elmsley .....	Nov. 21, 1796
" Henry Alcock .....	Oct. 7, 1802
" Thomas Scott .....	Aug. 6, 1806
" William Dummer Powell .....	Oct. 1, 1816
" Sir William Campbell .....	Dec. 8, 1825
" Sir John Beverley Robinson, Bart. C.B. ....	July 13, 1829
" Archibald McLean .....	March 18, 1862
" William Henry Draper, C.B. ....	July 22, 1863
" Sir William Buell Richards .....	Nov. 12, 1868
" Robert Alexander Harrison .....	Oct. 8, 1875
" Sir John Hawkins Hagarty .....	Nov. 13, 1878
" Sir Adam Wilson .....	May 6, 1884
" John Douglas Armour .....	Nov. 15, 1887
" William G. Falconbridge .....	July 3, 1900

The three Chiefs first named became successively Chief Justices of Lower Canada: Chief Justice Osgoode on February 24, 1794; Chief Justice Elmsley, October 13, 1802, and Chief Justice Alcock in July, 1805.



## CHANCELLORS.

Hon. William Hume Blake	Sept. 29, 1849
“ Philip M. S. Van Koughnet	March 19, 1862
“ John Godfrey Spragge	Dec. 27, 1869
“ Sir John Alexander Boyd, K.C.M.G.	May 3, 1881

## CHIEFS, COMMON PLEAS.

Hon. Sir James Buchanan Macaulay	Dec. 15, 1849
“ William Henry Draper, C.B.	Feby. 5, 1856
“ Sir William Buell Richards	July 27, 1863
“ Sir John Hawkins Hagarty	Nov. 12, 1868
“ Sir Adam Wilson	Nov. 13, 1878
“ Sir Matthew Crooks Cameron	May 13, 1884
“ Sir Thomas Galt	Nov. 7, 1887
“ Sir William R. Meredith	Oct. 5, 1894

## CHIEFS, COURT OF APPEAL.

Formerly of Error and Appeal.

Hon. Sir John B. Robinson, Bart., C.B.	March 18, 1862
“ Archibald McLean	July 22, 1863
“ William Henry Draper, C.B.	Oct. 20, 1868
“ Thomas Moss	Nov. 30, 1877
“ John Godfrey Spragge	May 2, 1881
“ Sir John Hawkins Hagarty	May 6, 1884
“ Sir George W. Burton	April 24, 1897
“ John Douglas Armour	July 2, 1900
“ Charles Moss	Nov. 21, 1902

## FORMER JUDGES AND VICE-CHANCELLORS,

Who did not become Chiefs or Heads of Courts or go to the  
Supreme Court of Canada.

Hon. Thomas Cochrane	June 25, 1803
“ Robert Thorpe	July 24, 1805

Hon. D'Arcy Boulton .....	Feby. 12, 1818
" Levius P. Sherwood .....	Oct. 17, 1825
" John Walpole Willis .....	Sept. 26, 1827
" Robert Sympson Jameson, V.C.....	March 23, 1837
" Jonas Jones .....	March 23, 1837
" Christopher Alex. Hagerman .....	Feby. 15, 1840
" Robert Baldwin Sullivan .....	Sept. 15, 1848
" James C. P. Esten, V.C.....	Sept. 29, 1849
" Robert Easton Burns .....	Jany. 21, 1850
" Joseph Curran Morrison.....	March 19, 1862
" Skeffington Connor .....	Jany. 31, 1863
" John Wilson .....	July 22, 1863
" Sir Oliver Mowat, V.C.....	Nov. 14, 1864
" Samuel Hume Blake, V.C.....	Dec. 2, 1872
" William Proudfoot, V.C. ....	May 30, 1874
" John Edward Rose .....	Dec. 4, 1883
" John O'Connor .....	Sept. 11, 1884
" James Frederick Lister .....	June 21, 1898
" William Lount .....	June 30, 1901

The following members of the Ontario Judiciary were appointed to Ontario Courts as stated and promoted to the Supreme Court of Canada:—

Hon. Sir William Buell Richards, Judge C. P., June 22, 1853; C. J. C. P., July 22, 1863; C. J. Q. B., Nov. 12, 1868; C. J. of Canada, Oct. 8, 1875.

Hon. Sir Samuel Henry Strong, Vice-Chancellor, Dec. 27, 1869; Judge Court of Appeal, May 27, 1874; Judge Supreme Court, Oct. 8, 1875, and Chief Justice of Canada, Dec. 13, 1892. He is also a Right Honourable member of the Judicial Committee of the Imperial Privy Council.

Hon. John Wellington Gwynne, Judge C. P., Nov. 12, 1868; Supreme Court, January 14, 1879.

Hon. Christopher Salmon Patterson, Judge Court of Appeal, June 6, 1874; Supreme Court, Oct. 27, 1888.

Hon. John Douglas Armour, Judge Q. B., Nov. 30, 1877; C. J. Q. B., Nov. 15, 1887; C. J. Appeal, July 2, 1900; Judge Supreme Court, Nov. 21, 1902.

The two following gentlemen were appointed from the Ontario Bar direct to the Supreme Court of Canada:—

Hon. David Mills, February 8, 1902; Hon. Wallace Nesbitt, May 16, 1903; Hon. Albert Clement Killam, called to Ontario Bar Hilary term, 1877, became Judge and Chief Justice Manitoba, appointed to Supreme Court, August 8, 1903.

The names of the present Superior Court Judges of Ontario are given as visitors of the Law Society in Chapter II.

Judge Idington, on his appointment to the Bench, ceased to be a Bencher. His place and that of the late Mr. Edward Martin will be soon filled by Convocation. Mr. Justice Robertson is said to have resigned and will become a Bencher *ex officio*.

The President of the High Court of Justice is that one of the Presidents or Chiefs of the King's Bench, Chancery, Common Pleas and Exchequer Divisions, who, for the time being, is first in seniority of appointment and is now the Chancellor. Sir John Boyd, K.C.M.G. The Chief of the Court of Appeal is styled The Chief Justice of Ontario, and has precedence over all other Provincial Judges. He is President of the Supreme Court of Ontario, which is formed of all the divisions of the High Court and the Court of Appeal. The puisne Judges of the High Court and Court of Appeal rank next after the Chiefs, according to the order of their appointment. The Chief of the Supreme Court at Ottawa is styled Chief Justice of Canada, and is now the Right Hon. Sir Henri E. Taschereau, as he has also been appointed a member of the Imperial Privy Council.

The high estimation in which the judicial character is held in Canada was well referred to by Mr. Justice Britton in his inaugural address in the Queen's Bench Division, October 9, 1901:—"There have been between fifty and sixty Judges of the Superior Courts appointed since 1791, and in thinking of the line of illustrious men who have filled the office, I see how much they have done for this Province, so that the name of the Bench is synonymous with integrity and ability." He concluded, "As Judges in the past have aimed to protect us in all our rights, and to so administer the laws of the Dominion and Province that the people respect these laws, so there has grown up to-day such a regard for the law and its administration as I do not think exists in any other country."

Local Judges—The County Court Judges, who are local Judges of the High Court, number forty-five, and they are also Surrogates, except in the County of Ontario, where Mr. G. Y. Smith is Surrogate. To the above must be added twenty-two junior Judges, making in all sixty-eight.

## APPENDIX C.

### LAW SOCIETY MEDALLISTS.

Before the Law School was initiated scholarships were granted each term, on the first and second years' intermediate examinations, of the several values of \$100, \$60 and \$40.

Since the School was established, these scholarships have been, for the first year, \$100; for the second, \$60; and for the third, \$40; the awards being made only once a year.

The Society also gave scholarships to successful students, one at close of each of the four years' course, of the respective values of \$120, \$160, \$200 and \$240.

It is impossible to state, as we would wish, the names of those so honoured. It will not be invidious to mention the present Chief Justice of Ontario, who secured a scholarship in each of his years, and the Senior Registrar of the High Court, who took more than one.

In 1881 the awarding of such prizes on the final examination was discontinued and medals of gold, silver and bronze took their place under rule now number 181, as follows:—Of the candidates called with Honours, the first three shall be entitled to medals, on the following conditions:—

The First.—If he has passed both intermediate examinations with Honours, to a Gold Medal, otherwise to a Silver Medal.

The Second.—If he has passed both intermediate examinations with Honours, to a Silver Medal, otherwise to a Bronze Medal.

The Third.—If he has passed both intermediate examinations with Honours, to a Bronze Medal.

The following is a list of Medallists from 1881, some of whom also took scholarships:—

- 1881 Gold Medal, W. F. W. Dickson, J. H. M. Campbell;  
*Silver* Medal, J. A. Allan, George Bell;  
*Bronze* Medal, W. Nesbitt.
- 1882 Gold Medal, E. Taylour English; *Silver* Medal, G. Lynch-Staunton, Adam Johnston, J. D. Cameron, C. W. Oliver.
- 1883 Gold Medal, W. R. Riddell, C. L. Mahony, and George Kappele; *Silver* Medal, P. D. Crerar.
- 1884 Gold Medal, J. Bicknell, D. K. J. McKinnon; *Silver*, — Carruthers and A. Burwash; *Bronze*, A. Mills.
- 1885 Gold Medal, D. M. McIntyre.
- 1886 Gold Medal, J. M. Clark.
- 1888 Gold Medal, R. J. McLaughlin and W. F. Johnston;  
*Silver*, W. Mundell and F. A. Anglin.
- 1889 Gold Medal, M. H. Ludwig; *Silver*, J. G. Kerr; *Bronze*, James Ross.
- 1890, Gold Medal, A. W. Anglin, E. B. Ryckman and T. D. Law; *Silver*, C. E. Burkholder, J. H. Denton, J. B. Holden, and W. H. Hunter; *Bronze*, C. W. Kerr and A. C. Boyce.
- 1891 Gold Medal, W. Wright and N. Simpson; *Silver*, N. W. Rowell; *Bronze*, Shirley Denison and J. J. Warren.
- 1892 *Silver* Medal, J. Edgar Jeffery and J. H. Rodd; *Bronze*, J. H. Moss.
- 1893 Gold Medal, J. C. Haight; *Silver*, D. R. Tate; *Bronze*, W. E. Woodruff.

- 1894 Gold Medal, W. N. Tilley; *Silver*, W. Gow; *Bronze*, J. R. Logan.
- 1895 Gold Medal, S. Price; *Silver*, D. I. Grant; *Bronze*, V. A. Sinclair.
- 1896 Gold Medal, H. E. Sampson.
- 1897 Gold Medal, A. M. Stewart; *Silver*, A. Boyd Thompson; *Bronze*, C. S. Macinnes.
- 1898 Gold Medal, L. F. Stephens; *Silver*, W. J. O'Neil; *Bronze*, M. W. Griffin.
- 1899 Gold Medal, W. T. White; *Silver*, D. Donaghy; *Bronze*, A. R. Clute.
- 1900 Gold Medal, J. A. Wilson; *Silver*, J. H. Hunter; *Bronze*, A. E. McNab.
- 1901 Silver Medal, G. A. Stiles; *Bronze*, O. M. Biggar and J. A. Peel.
- 1902 Gold Medal, F. W. Halliday; *Silver*, N. G. Guthrie; *Bronze*, G. E. Taylor.
- 1903 Gold Medal, R. A. Paterson; *Silver*, Arthur J. Thomson; *Bronze*, J. G. Gibson.
- 1904 Gold Medal, G. M. Clark; *Silver*, A. D. George.

The medals have on one side the arms of the Law Society; on the other the date of award and name of the donee.

## APPENDIX D.

### OSGOODE LITERARY AND LEGAL SOCIETY.

Various associations and means for oratorical and other training of the students have existed since that styled the Advocates' Society referred to in Chapter 11.

Mr. T. W. Taylor, now Sir Thomas, and other chosen members of the profession in turns presided at debates. The learned Lecturers, Mr. Leith and Mr. Anderson, in the sixties often took the chair in students' moot courts when legal problems were stated, argued and decided.

The Osgoode Literary and Legal Society was established in 1876. Its seal is similar to that of the Law Society, but has around its margin the appropriate legend, "Vita sine literis mors est."

The young members passed many lively, interesting and instructive evenings together, with less formality than was in vogue in the conduct of the first similar society. The debates covered a variety of subjects. Mock trials sometimes took their place. Interludes were filled with an account of a canoe trip on the Miramichi or in Algonquin Park, a discussion of the Henry George theory, the Monroe doctrine or Reciprocity, an essay or a song. The Glee Club rendered *Halli Hallo* or *Solomon Levi*, with instrumental accompaniment and chorus of members.

There were public occasions when Osgoode invited friends and had its gay At-Home. A team from Varsity or Trinity contested in debate with chosen members of this Society. There



were also songs, music and recitations by noted artists. The second part of the programme was reserved for waltzes, lancers and polkas, when "all went merry as a marriage bell."

There was sometimes a lively stir at the annual election of officers, resulting in a scrimmage, reminding of Varsity days. A mock parliament was a feature when Mr. McDougall presided. Constituencies were jerrymandered and elections contested.

Among early Presidents were John S. Ewart and Isaac Campbell, now in Winnipeg, A. B. Aylesworth, Joseph E. McDougall, George T. Blackstock and Wallace Nesbitt.

The Presidents of the Society since 1889 were successively William M. Douglas, Douglas Armour, George Kappele, M. H. Ludwig, R. A. Grant, R. O. McCullough, Leighton G. McCarthy, W. A. Lamport, A. C. Macdonell, John H. Moss, W. D. McPherson, Theodore A. Hunt, and D. L. McCarthy.

Among the officers elected each year was a Critic who passed judgment on the modus operandi. Nicholas Flood Davin filled this office in fine style when Mr. Ewart presided.

Judge Cameron was chairman at a debate in February, 1883, when Mr. McDougall was President; C. L. Mahony and W. L. Haight, Vice-Presidents; W. J. Wallace, Treasurer, and W. R. Riddell, Critic.

## INDEX OF NAMES AND SUBJECTS.

	PAGE.
Advocates' Society and its Young Members.....	23
Ancient Customs .....	54, 60
Anglin, Hon. F. A., Justice .....	10
Architecture and Architects of the Hall.....	16
Armour, Hon. J. D., C. J. ....	177, 180
Artists of the Law Society .....	18, 20, 124
Assikinack, Francis, Warrior of the Odahwahs.....	169
Astronomical Society, Royal, of Canada .....	161
Baker, John, slave of Solicitor-General Gray.....	131
Baldwin, Hon. Robert .....	43, 147
Baldwin, Hon. William Warren .....	2, 16, 147
Baldwin, W. Willcocks .....	65
Ball in honour of Prince of Wales .....	(note) 49
Beall, John, Confederate Captain .....	76
Beaty, James, of the "Leader" .....	165
Beaty, James, Junior, Q.C. ....	164
Benchers, Names of, How Elected .....	7
Berthon, George T., The Artist .....	18
Biggs, S. C., and his Half-breed Jury .....	103
Blake, Hon. Edward .....	13, 83
Blake, Hon. W. H., Chancellor .....	69, 137, 178
Blake, Hon. S. H., Vice-Chancellor .....	179
Blake, W. H. ....	93
Boyd, Sir John .....	10, 156, 178
British Columbia, The Bar of.....	120

	PAGE.
Britton, Hon. B. M. ....	10, 180
Buell, A. N., Master in Chancery .....	66
Burley, Bennett, in the Lake Erie Raid .....	76
Burns, David, first Clerk of the Crown .....	60
Buzfuz, Sergeant .....	124
Cade, Jack, Would Kill all the Lawyers .....	1
Cameron, Hon. J. Hillyard .....	13, 160
Cameron, Hon. Sir M. C. ....	178
Campbell, Sir William, C. J. ....	101, 137
Campbell, William, Clerk of Court .....	71
Canadian Institute, Legal Members of .....	85
Cartier, Sir George E. ....	50, 158
Cayley, Hon. W., and Brothers .....	152
Chancellors of Upper Canada and Ontario .....	178
Chancellors and Vice-Chancellors of University .....	84
Chancery, Court of .....	73
Charley, Big, the Drummer .....	133
Cherriman, Professor, Captain in Q. O. R. ....	111
Clergy, Benefit of, Claimed .....	54
Costumes in Court .....	119
Cradle of the Judges, Osgoode Hall .....	5
Crawford, Hon. John W. ....	49, 109
Criers of Court .....	65
Croft, Professor, as Captain .....	111
Crofton, Walter C. ....	66
Crooks, Hon. Adam .....	11, 111
Culture of Early Lawyers and Judges .....	137
Cumberland, Col. Fred. W. ....	27, 116
Cumberland & Storm, Architects .....	16
Curiae Canadenses, poem .....	73

	PAGE.
Dalton, Robert G., Q.C., Master .....	64
Davin, Nicholas Flood, Q.C. ....	150, 186
Delamere, T. D., in the Q. O. R. ....	113
Denison, Colonel F. C. ....	116
Denison, Colonel George T. ....	116
Denison, Colonel Robert B. ....	112
Digests of Law Cases .....	9, 14
Dinner to H. N. Gwynne .....	31
Dinner to Sir John Robinson .....	47
Dinner to Bar of Lower Canada .....	45
Draper, Hon. W. H., C. B. ....	72, 97, 178
Duels in Upper Canada .....	50
Dunn, Colonel A. R., V.C. ....	167
Durand, Charles, His Career .....	90
Edgar, Sir James D. ....	155
"Esquire"—Defined by J. Molloy .....	40
Esten, J. C., Vice-Chancellor .....	149
Esten, J. Hutchison, Secretary .....	8
Examinations, How Conducted by Mr. Gwynne .....	25
Falconbridge, Hon. W. G., C. J. ....	10
Families, Distinguished Professionally .....	83
Farewell, J. E., Student and Soldier .....	109, 156
Feet, a Colonel Troubled with Tender .....	114
Fenians, How met at Ridgeway .....	113
Ferguson, Hon. Thomas .....	10, 91
Fitzgibbon, Colonel James .....	62, 72
Foster, W. A., LL.B., Q.C. ....	155
Franchise, The, Verses from "The Grumbler" .....	159
Gala Times at Osgoode .....	44
Galt, Hon. A. T., in "Grumbler" .....	156

	PAGE.
Galt, Hon. Sir Thomas, C. J. ....	178
Gamble, Joseph Clarke, K.C. ....	88
Garrow, Hon. J. T. ....	10
Gibson, Hon. J. M., K.C. ....	7, 109, 156
Goodwin, Major Henry, Drill Master ....	111
Gowan, Hon. Judge and Senator ....	86
Grant, Alexander, Registrar ....	62
Gray, Hon. R. J. D., Solicitor-General ....	12, 127
"Grumbler" and "Poker"—Toronto Periodicals ....	156
Gunther, E. F., in Q. O. R. ....	111
Gun of Vice-Chancellor Esten. ....	109
Gwynne, Hugh Nelson, the Secretary ....	26
Gwynne, Hon. J. W., Judge ....	25, 179
Hagarty, Hon. Sir John H., C. J. ....	39, 78, 97, 100, 108, 178
Hale, Sir Matthew, as a Soldier ....	107
Harman, Bruce and George ....	110
Harrison, Hon. R. A., Chief Justice ....	28, 177
Head, Sir E. W., Governor ....	81, 85
Head, Sir F. B., Governor ....	90
Henderson, James and Elmes, at Ridgeway ....	110
Henry, Dr. Walter, in Toronto in 1833. ....	101
Heyden, Laurence, Clerk of Court ....	62
Highland Regiment, The 48th ....	117
Hodgins, Thomas, K.C., Master ....	63, 111
Holmested, George S., Registrar ....	64, 175
"Horace Canadianizing"—Dr. Scadding ....	29
Hoyles, Dr. N. W., Principal of Law School ....	10, 141
Humming Birds in Canada ....	102
Idington, Hon. Justice John ....	10

## Interludes, Judicial:

How long an argument about nothing might last— When 2 and 2 make more than 4—Ebony humour in Court—The German Foreman—The Irishman's Lament—Judge's Note Books—"Vox et preterea nihil" —Assignment of a Moustache—Judges of A Size—Justice Blind but not Deaf—"Short Forms of Conveyances" —Hagarty, C.J., admires the Portrait of Armour, C.J.—Reference to a Respectable Heathen— "No Blooming Auction"—A long Indictment; Verses— "In the Dog Days." How to pronounce Paresis—Mr. McCarthy on the wrong Side—Peculiar Law of County Court Judges .....	91, 100
Irving, Æmelius, K.C., Treasurer .....	13, 88
Jackson, M. B. ....	153, 175
Jameson, Vice-Chancellor, and his Famous Wife .....	71
Johnston, Frederick W., Judge .....	149
Judges—Former Judge of Superior Courts .....	177
Judges—Present Judges of Superior Courts .....	10, 180
King's Counsel, How Appointed .....	127
Kingsford, R. E., at Ridgeway .....	113
Laurier, Sir Wilfrid, and Sir Oliver .....	127, 139
La Fontaine, Hon. Sir Louis Hypolite .....	46
Law Society of Upper Canada .....	5
Law Office, Old, in Toronto .....	147
Law School and Lecturers at the Hall .....	10, 141
Law School at Toronto University .....	143
Law School at Trinity University .....	143
Law Stamps .....	65
Leith, Alexander, Q.C. ....	11

	PAGE.
Libraries at the Hall and at London .....	414
Literary and Legal Society .....	185
Loudon, James, President, in Q. O. R. ....	114
Lower Canada Lawyers dined at the Hall in 1850 .....	45
Mansfield, Lord, and the Gordon Riots .....	100
Masters and other Legal Officials .....	57, 175
Mayors of Toronto, Members of the Bar .....	84
Medallists of the Law Society, Appendix D. ....	183
Meredith, Hon. Sir William R. ....	10, 178
Meredith, Hon. Richard M. ....	10
Mills, Hon. David .....	183
Molloy, John, the Steward .....	36
Morrison, Hon. J. C. ....	99, 179
Moss, Hon. Charles, C. J. ....	178
Moss, Hon. Thomas, C. J. ....	104, 178
Moustache, The, in Court .....	94, 123
Mowat, Hon. Sir Oliver .....	88, 108, 127
Mowat, Herbert M., in Q. O. R. ....	115
Mulock, Sir William, in Q. O. R. and University .....	84, 114
Macaulay, Hon. Sir James, C. J. ....	19, 178
Macdonald, Right Hon. Sir John A. ....	99, 170
Macdonald, Hon. Hugh John .....	115
Macdonald, Hon. John Sandfield .....	79
Macdonell, Hon. John, Attorney-General .....	21
Macdonell, Alexander, of Osgoode Hall .....	65
MacLennan, Hon. James .....	10
McCarthy, Dalton, Q.C. ....	98
McCaul, Dr. John .....	30, 173
McDougall, Judge, Joseph E. ....	149
McGee, Hon. D'Arcy .....	159

	PAGE.
McKenzie, W. Lyon .....	80
McKenzie, Walter, Captain .....	153
McLaren, Hon. J. J. ....	10
McMahon, Hon. Hugh .....	10
McLean, Hon. Archibald, C. J. ....	65, 177
McLean, Neil and A. F. ....	65
McMurrich, W. B., Captain .....	114
McNab, Sir Allan .....	80, 90
Nanton, Edward .....	153
Negroes at the Hall and in Court—Big Charlie, Beverley R. Snow, John Anderson .....	91, 133
O'Brien, Henry and W. E., in Q. O. R. ....	9, 109
O'Connell, Daniel, and John Molloy .....	41
Officers of the Law Courts .....	175
Office of the Baldwins, Sullivan and Wilson .....	147
Osgoode Hall described .....	3
Osgoode, Hon. William, C. J. ....	21, 177
Osler, Britton B., Q. C. ....	95, 96
Osler, Hon. Featherston .....	10, 160
Papineau, Louis Joseph, at the Hall .....	46
Paresis—How to Pronounce .....	97
Parliament at Toronto .....	45, 158
Patterson, Hon. Christopher Salmon .....	10, 149, 180
Pellatt, H. M., Colonel of Q. O. R. ....	117
Pillory, The, Used in Toronto .....	53
Poker—The Game of .....	93
Poker The, periodical .....	156
Portraits and Tablets at the Hall .....	18, 22, 124
Powell, Hon. W. D., Chief Justice .....	92, 177



	PAGE.
Prince, John, Colonel and Judge . . . . .	80, 172
Prince, Albert and William, his Sons . . . . .	81
Proudfoot, Hon. W., Judge and Professor . . . . .	143, 179
Quebec Judges, Orders as to Procedure . . . . .	122
Queen's and King's Counsel, How Created . . . . .	127
Queen's Counsel, How Sir Oliver slew the Innocents . . . . .	128
Queen's Own Rifles, Legal Members of . . . . .	112
Quid, Captain, His Ancient Functions . . . . .	59
Rankin, Col. Arthur, as a Duelist . . . . .	52
Ratray, Wm. Jordan . . . . .	155
Read, David B., K.C., Historian . . . . .	12, 88
Reford, Robert, Captain in Q. O. R. . . . .	110
Regiments Quartered in Osgoode Hall . . . . .	43
Legal Members in: Queen's Own, Tenth Royals, Body Guard, Highlanders, Light Horse . . . . .	110, 115, 117
Registrars and other Court Officers . . . . .	63, 68
Riel, Louis, Legal Men who Opposed . . . . .	115
Reporters of Court Proceedings . . . . .	8
Richards, Sir W. B., C. J. . . . .	179
Ridout, T. G., the Cashier . . . . .	170
Ridout, John G., Captain . . . . .	116, 167
Roaf, John, Q. C., Benchet . . . . .	10
Roaf, William, in Q. O. R. . . . .	115
Robertson, Hon. Thomas . . . . .	10, 180
Robinson, Hon. Sir John B., C. J. . . . .	13, 48, 108, 177
Robinson, Hon. John Beverley, Lieut-Governor . . . . .	44
Robinson, Hon. Christopher, Q.C. . . . .	8, 9
Rolph, Hon. Dr. John . . . . .	72
Rolph, Thos. T., Major . . . . .	116
"Royal William," Steam Vessel . . . . .	36

## INDEX.

195

	PAGE.
Rumsey, John, Poet .....	73
Scadding, Dr. Henry, Historian .....	29
Scholarships and Medals, Names of Medallists .....	183
Schultz, Hon. Sir J. C. ....118,	155
Scott, John G., Q. C., Master .....	176
Seal of the Law Society .....	18
Secretaries of the Law Society .....	8, 25
Sentences, Curious Old .....	53
Simon, George H., the Inventor .....	32
Slaves in Canada .....	21, 131
Small, John and Charles Coxwell .....	61
Smith, Dr. Goldwin .....	89
Smith, James F., Editor .....	8
Smith, Dr. Larratt W. ....89,	161
Societies, Literary and Legal .....	23, 185
Soldiers Quartered at the Hall—See Regiments. ....	43
Spadina Avenue and the Baldwins. . . . .	148
“Spectator, The,” quoted .....	1
“Speedy,” Loss of that Vessel .....	129
Spragge, Hon. John G., Chief Justice .....	13, 45, 108, 178
Stocks, The, in Toronto .....	55
Street, Thomas Clark .....	168
Street, Hon. W. P. R. ....	10
Strong, Right Hon. Sir S. H., C. J. C. ....	179
Students-at-Law, How Examined .....	25
Students of Baldwin & Wilson .....	150
Sullivan, Hon. R. B., Mayor and Judge .....	84, 94, 148
Talbot, Colonel Thomas .....	71
Taschereau, Right Hon. Sir H. E., C. J. C. ....	180
Taylor, Sir Thomas W., Master and C. J. ....	63

	PAGE.
Teachers, Early in, Upper Canada .....	136
Teetzel, Hon. J. V. ....	10
Treasurers of the Law Society .....	12
Trials, Records of Interesting .....	171
Trinity Term, Funeral of .....	55
Turner, Robert John, Barrister and Master .....	66, 125
University of Toronto and Law Society .....	84, 144
University Rifle Company .....	111
University, Trinity, Law Lecturers .....	12
University, Trinity, Rifle Company .....	110
VanKoughnet, Hon. P. M. S., Chancellor .....	74, 178
Veterans of the Bar in Ontario:	
Senator Gowan, Judges Elliot and Hughes, David B. Read, K.C., Æmilius Irving, K.C., Dr. Larratt W. Smith, Charles Durand, and others .....	86, 90
Victoria, Queen, Her Books at the Hall .....	4
Wallace, Washington, His Troublesome Suits .....	170
Wallbridge, Hon. Lewis .....	149
Wellington, Duke of, and John Molloy .....	41
White, Hon. John, Attorney-General, Falls in a Duel .....	50
White, W. T., Address on Education .....	138, 183
Widmer, Hon. Dr. Christopher .....	165
Wigs, Worn in Canadian Courts .....	119
Wilson, Hon. Sir Adam .....	3, 161, 177
Wit and Humour in Court .....	75, 91, 100
Wit and Humour in Convocation .....	50
Women, How Admitted to Practice .....	14
Wood, Hon. E. B., C. J. ....	102

