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The First Law Reporter in Upper Canada and his Reports



BY

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With the Compliments of

WILLIAM RENWICK RIDDELL.



THOMAS TAYLOR



WILLIAM RENWICK RIDDELL



The First Law Reporter in Upper Canada and his Reports.

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In "The Legal Profession in Upper Canada in its Early Periods,"¹ just published by the Law Society of Upper Canada, some account is given of the law reporters in this province, and of their reports. The scheme of that work did not call for any statement of minute particulars concerning either reporters or reports.

It is the purpose of this paper to go more into detail concerning the first of these.

In 1823, the legislature by the Statute, 4 Geo. IV., c. 3, authorized the Governor or person administering the government of the province to appoint a reporter to report the decisions of the Court of King's Bench—there was as yet no Court of Chancery or of Common Pleas. He was to submit to the judges² a fair report of all decisions, which they were to sign in open Court, and then this became the authentic report of all such decisions.

¹ "The Legal Profession in Upper Canada in its Early Periods" by William Renwick Riddell, LL.D./Fellow Royal Historical Society, etc./Justice of the Supreme Court of Ontario. "I hold every man a debtor to his profession/Bacon; 'The Elements of the Common Law:' Preface/Toronto/Published by the Law Society of Upper Canada 1916." Svo. cloth, pp. vii + 194.

² The Judges of the Court of King's Bench at the time were William Dummer Powell, Chief Justice, and D'Arcy Boulton and William Campbell, Puisne Justices. They were still occasionally styled "His Honour," but generally "His Lordship." It may perhaps be remarked that the Vice-Chancellor in the original Court of Chancery, erected in 1837 under 7 Wm. IV., c. 2 (Robert Symptom Jameson) was also addressed "Your Honour" not "Your Lordship"; but when the new Court of Chancery was formed under the Act of 1849, 12 Viet., c. 63, with three Judges, the style became uniformly, "Your Lordship." Jameson was also solemnly decided by Convocation not to be a "Judge," so as to vacate his seat as Benchet by (and he was Treasurer for a long time after) his elevation to the Vice-Chancellorship.

The reporter was paid in two ways: he received an annual salary of \$400, and he was allowed to sell reports for his own benefit. The salary was provided for by each attorney being obliged to pay a certain fee on taking out his annual certificate to practise; thus initiating the plan still followed, of making the profession pay for reporting the decisions of the Courts. There was, however, no provision for supplying the lawyers with copies of the reports as is now the case, and those who wanted copies had to pay for them.

The first reporter was Thomas Taylor,³ whose reports are still extant and occasionally referred to in our Courts. Thomas Taylor came of a Wiltshire family; his father, also Thomas Taylor, was a prominent London banker and shipowner, resident in St. Pancras when his son Thomas was born in 1778. The son entered the Army; and when in Ireland as a subaltern he married Eliza Bell, daughter of Dr. Bell of Newry, Ireland, then a very young girl.

The birth of a daughter caused Taylor to consider how he was to support wife and family.

Nelson had achieved his victory at Copenhagen, the Anglophile Alexander had become Czar of Russia, Abercrombie had conquered in Egypt, Pitt had resigned and the peace-seeking ministry of Addington had succeeded. Preliminaries of peace had been entered into, and everything spoke of a long peace with Napoleon and France. No career seemed to be open in the Army, and Taylor determined to join the profession of the law; he was admitted of the Middle Temple, November 1st, 1802, and began to eat his way to the Bar.

³ I have known persons otherwise well-informed confuse this Thomas Taylor with Thomas Wardlaw Taylor the Master in Chancery who became Chief Justice of Manitoba and was knighted, and who is still living but now retired. (His book on Equity Jurisprudence is still useful). The two Thomas Taylors were not at all related; the earlier was an Englishman, the present a Scot. Possibly the fact that both lived part of their lives in Hamilton has had something to do with the confusion.

But Napoleon, become Consul for life, became more and more arrogant; he interfered in the affairs of all Europe; and it became manifest even to the self-deceived Addington that Napoleon aspired to continental supremacy.

War was in the air; Taylor, "from the necessity of my being in some military service at present and from the hope that soon I may reap some future advantage from it," abandoned the Temple and rejoined the Army. By November, 1803, we find him stationed at Niton, Isle of Wight, "a dreary solitary station at the back of the island, opposite to the French Coast, with a subaltern and a doctor mate,"⁴ watching for Napoleon's invasion. He had left his wife and little daughter Jane in London.

The sea power of Britain was again supreme, all fear of invasion passed away when the British fleet asserted its power, and toward the end of 1804 there was at least a lull in military proceedings. Taylor now sought Oxford; he was matriculated at St. Edmund Hall in that University, February 8th, 1805.

Although it is the family tradition that he took high honours at the University, it seems certain that he did not graduate.⁵

⁴From a letter written by Taylor from Niton, 19th November, 1803, to his wife's sisters, Mary and Sally, now in the possession of his granddaughter Mrs. Williams, wife of the Rev'd Daniel Williams of Storm Lake, Iowa. Niton is a small village (and parish) at the very south of the Isle of Wight near St. Catharine's Point, and about four miles west of Ventnor. The village has now only a few hundred inhabitants and must have been of little importance in Taylor's time; but it was admirably fitted for a watch tower from which to watch for a fleet from France.

⁵I have consulted Foster's Alumni Oxonienses and have been favoured with communications from the Vice-Chancellor of the University of Oxford; and there can be no doubt that Taylor did not graduate. The Register of the University has been (I am informed by the Vice-Chancellor) carefully kept from the time of the Restoration, and it is scarcely possible that a mistake has been made in Taylor's case. Foster in his Alumni Oxonienses (which I am assured by the same authority is wholly reliable) has the following entry concerning Taylor, Vol. II, p. 1396, ll. 31-33: "Taylor, Thomas s. Thomas, of St. Pancras, Middlesex, Arm. St. Edmund Hall Matric. 8 Feb., 1805, aged 27; bar-at-law, Middle Temple, 1817." "Arm." is the contraction for "armiger," i.e., esquire, or one entitled to bear heraldic arms.

The family tradition I have from Mr. Hamilton MacCarthy of Ottawa, the well-known sculptor, who is a grandson of Taylor.

When and for what reason he left the University does not appear, nor when he again joined the Army, but it is certain that he obtained a commission in the 41st Regiment (1st Battalion) and came to Canada as an Ensign. The regiment had been despatched from Cork in 1799 for Canada, and Taylor joined it with a draft from England consisting of Ensign MacIntyre and himself with two hundred and ten rank and file, in the summer of 1809.⁶

The headquarters of the Regiment, Colonel Procter⁷ commanding, was at Fort George, but during that autumn the Regiment was removed to Montreal, returning to Upper Canada in September, 1811. The headquarters were again fixed at Fort George, but there were detachments at Amherstburgh, Fort Erie, Chippewa, Queenston (Queenstown⁸ it was then generally called) and York; and Taylor was stationed with the detachment at the last mentioned place. York was of course the capital of the province and the seat of the Courts. While the regiment was in Montreal, Taylor gained his step in rank, becoming a lieutenant, December 13th, 1810.

He seems always to have retained a hankering for the Courts. He made friends with Dr. William Warren Baldwin,⁹ one of the leaders of the

⁶ Much of the information concerning the 41st Regiment is from a work in the Toronto Reference Library: "A/History of the Services/of the/41st (the Welch) Regiment/(now 1st Battalion the Welch Regiment)/From its Formation in 1719 to 1825/by/Lieutenant and Adjutant D. A. N. Lomax/1st Battalion, The Welch Regiment/Devoport/Printed by Hiorus & Miller, Army Printers and Stationers/107 Fore Street and 'Ye Caxton Press,' Granby Street/1899." Svo., cloth, pp. xiv. + 407. This regiment began as Col. Edward Fielding's Regiment of Invalids from out-pensioners of Chelsea Hospital in 1719, 10 companies. For a time it had only garrison service but in December, 1787, it became a marching regiment. When Taylor joined it, it was of one Battalion only, but in August, 1812, a second Battalion was ordered to be formed at Winchester. Taylor was then in Upper Canada.

⁷ This was the Colonel Procter who suffered defeat at Moravia town.

⁸ On the Regimental Colours of the 41st Regiment appear Detroit, Miami, Queenstown and Niagara, as well as Candahar, Alma, Inkerman and Sevastopol.

⁹ Born near Cork, Ireland, graduated in Medicine at the University of Edinburgh in 1797, practised for a short time in his native land and came with his father to Upper Canada near the end of the eighteenth century, settling in Clarke Township near Bowmanville on Baldwin's

Upper Canada Bar, an Irishman who had graduated in medicine at the University of Edinburgh in 1797, and who, after trying to make a living from his profession, in Clarke Township (near Bowmanville) and from teaching in York, had received a licence to practise law under the Act of 1803 (43 Geo. III., c. 3, U.C.) thereby becoming one of the "Heaven-born Lawyers" of contemporary jibe.¹⁰

In April, 1812, Taylor was present in Court when the young (acting) Attorney-General of Upper Canada, John Macdonell (who a few months afterwards was to meet the death of a hero and patriot on the bloody heights of Queenston) used language which Baldwin considered grossly insulting, and it was to Taylor, as his second, that Baldwin entrusted his challenge to a duel. It is to the credit of the soldier that he endeavoured to dissuade the barrister from sending a challenge, but his efforts were in vain. The lawyer combatants met a few days later at the island (then a peninsula) in York harbour; Macdonell took Baldwin's fire (thereby acknowledging wrong-doing); and a hollow reconciliation followed—Taylor insisting that the principals should shake hands.¹¹

(now Wilmot's) Creek; he came to Toronto to open a school, was called to the Bar under the Special Act of 1803, and became an active and prominent member of the Profession. He was for many years Benchet and Treasurer, and had much to do with making the Law Society what it is. He was the father of Robert Baldwin, and so the grandfather of the rapidly disappearing "Baldwin Reformers"—*valde defendi*.

¹⁰ There were five in all who received a licence under this Act: Dr. Baldwin, William Dickson of Niagara, D'Arcy Boulton, of Augusta (afterwards Justice of the Court of King's Bench), John Powell of York (son of Chief Justice Powell), and William Elliott of Sandwich—all called by the Law Society, Hilary Term 1803. See "Legal Profession in Upper Canada, etc.," p. 15, p. 31, n. 27.

¹¹ The facts of this duel, which created no little stir in its time and is referred to by contemporary writers, are taken from a letter of Dr. Baldwin's to his friend Firth, dated York, 22nd April, 1822, now in the Ontario Archives. Serjeant William Firth came from England to Upper Canada in 1807 as Attorney-General of the Province. A vacancy occurring a few months after his arrival, in the Chief Justiceship of Lower Canada, he applied for it, but the celebrated Jonathan Sewell received the appointment. Firth became discontented with his perquisites, and fell out with Gore, the Lieutenant-Governor; and in 1811 he left for England without permission. Thereupon Gore filled the position by the appointment of John Macdonell, and Firth never returned to Canada. The disputes between Gore and some of his officers form a somewhat amusing—and unsavoury as amusing—episode in our early history.

Sterner work lay just ahead. The United States at length made its long threatened declaration of war, and every man was needed. Brock sent most of the 41st Regiment—which he described as “an uncommonly fine regiment, but with few exceptions badly officered”¹²—under Colonel Procter to Amherstburgh. Other detachments of the same regiment were, as we have seen, at Chippewa, Fort Erie and Queenston Heights. A part remained at Fort George. Taylor is not mentioned in any of the operations in 1812, except that it is said that he was not at Detroit on the surrender of Hull.¹³ From a number of small circumstances, none conclusive and indeed not conclusive in their totality, it seems probable that Taylor was with the Fort George detachment and remained at that post. On March 1st, 1813, he was appointed Fort Major, vice Campbell, deceased¹⁴—“poor old Major Campbell was buried yesterday (December 3, 1812), he was fairly worried and died of cold and anxiety.”¹⁵

¹² Letter from Brock to his Brothers, dated “Lake Ontario, September 3, 1812.” Cruikshank’s Documentary History of the Campaign upon the Niagara Frontier in the year 1812; Part III., p. 234. In a letter to Savery Brock, dated “Fort George, September 18, 1812.” Brock says: “The 41st is an uncommonly fine regiment but wretchedly officered.” (Cruikshank, Part III., p. 278). Col. Baynes, in a letter to Brock, “Quebec, March 10, 1812.” had spoken of “The 41st, composed of uncommonly fine young fellows and in very good order.”

¹³ In a letter to John Askin dated “Dundass Mills, June 8th, 1813.” Charles Askin says (speaking of the Battle of Stoney Creek), “Mr. Taylor of the 41st severely wounded (not the Mr. Taylor who was at Amherstburg).” Cruikshank, Part VI., p. 197. There was another Lieutenant Taylor in the 41st Regiment, George Taylor, who became Lieutenant August 10th, 1812, and who was superseded in 1815; it was he who was at Amherstburg, not Thomas Taylor.

¹⁴ General Order “Edward Baynes, A.G.N.A.” dated “Headquarters, Niagara, 1st March, 1813.” Cruikshank, Part V., p. 84.

Col. George Taylor Denison has been good enough to give me the following note on the position of Fort Major (my own military experience is limited, and knowledge of such matters does not come by nature like reading and writing):

“A Fort Major is much the same in a Fort, as a Brigade Major in a Brigade or a Town Major in a town. They are generally of the rank of Captain, or Major. If the Fort Major is under the rank of Captain he ranks next after the Captains in the garrison in which they are serving; if of the rank of Captain, then above the other captains.”

¹⁵ Letter to William Dummer Powell from Brigade Major Evans (?) Fort George, 4th December, 1812. Cruikshank, Part V. p. 18.

In May, 1813, Fort George was attacked by the American troops coming from their triumph at York and from Sackett's Harbour. When the order was given to evacuate the Fort, May 27, 1813, Taylor took an active part in spiking the guns and blowing up the magazine, he being one of the last to leave the fort.¹⁶

His next serious engagement nearly proved fatal to him, for at the extraordinary battle at Stoney Creek, June 5th, 1813, he was seriously wounded, with one

¹⁶Fort George was afterwards abandoned by the Americans, who, retreating, burnt not only the Fort—which was a perfectly legitimate act of warfare—but also the unfortified and civilian Town of Niagara, which was a disgraceful act of vandalism, and so gross a breach of all the laws of war that the commander, Colonel McClure, was publicly reprimanded by the American authorities. It was in retaliation for the burning of Niagara, York, etc., that the British forces burnt Washington—a fact omitted or slurred over by most American historians.

Mrs. Taylor, who was living in Niagara, was rendered homeless by the brutality of the American commander. Some of her experiences are related in an article in the Toronto Globe, April 6th, 1907, "The Wilderness, one of Niagara's Historic Houses," by Jean Earle Geeson. I give the substance of the account:—

Mrs. Taylor and her four children had fled for refuge to "The Wilderness," the residence of Colonel William Claus, where the house now stands just across the road from the officers' headquarters of the camping ground for Military District, Number 2, at Niagara-on-the-Lake. The family of Colonel Claus made their escape from the advancing American troops, but Mrs. Taylor was not so fortunate. She was seized by the Americans and pinned against the wall while they searched and plundered the house—it is supposed that they expected to find the money entrusted to Colonel Claus by the Indians (he being Indian Agent).

Mrs. Taylor commanded them to desist, but they threatened to run her through with the bayonet. She defied them, and said she would complain to their commanding officer.

Not finding the expected booty, they burned the house without providing any shelter for their prisoner. She cleaned out an old root-house on the premises and roofed it over with the assistance of her two little sons, aged six and eight respectively. There the family lived for some time; but one day it was found by a cannon ball, and they abandoned it, removing elsewhere. The root-house is now used as a mushroom bed; it is in the bank on the west side of the enclosure, and was and is known as the "Pit."

This courageous lady lived till 1833. Her remains lie by St. Marks Church, Niagara-on-the-Lake. An old gray stone in the north-east corner of the church tells the simple story: "In memory of Mrs. E. Taylor, wife of Thos. Taylor, Esq., of Hamilton, Gore District, who departed this life 6th June, 1833, age 46." Niagara Historical Society's Publications, number 19, "Inscriptions and Graves in the Niagara Peninsula," by Janet Carnochan, p. 28. Miss Carnochan adds: "forty took refuge in an old dugout when the town (Niagara) was burned (by the retreating American troops) and lived there for the winter." It is satisfactory to know that Colonel McClure, the American commander guilty of the barbarity of burning the peaceful town, was cashiered for his act—not decorated.

arm broken in two places, the other in one, while a bullet, after traversing regimental papers and a small Latin Testament, buried itself in his breast. When convalescent, he refused a pension, and said he was ready to serve King and country. As soon as he recovered he rejoined his regiment, and with it sailed from Quebec for England, June 24th, 1815, too late to share in the glories of the campaign of Waterloo.

Peace was declared, Napoleon sent to St. Helena and the army establishment was largely reduced. Taylor was placed on half-pay, May 1st, 1817.

He then turned to the old love and was called to the Bar by the Middle Temple, June 20th, 1817. The next year he took out his certificate of call,¹⁷ presented it to the Court of King's Bench at York in Hilary Term, 59 Geo. III., Friday, January 8th, 1819, and was admitted as an attorney;¹⁸ the next day, on the same

¹⁷ The original certificate is in the possession of Mr. Hamilton MacCarthy; I subjoin here a copy which may be found of interest.

MIDDLE } These are to certify that Thomas Taylor, the eldest
 TEMPLE } son of Thomas Taylor of Bayswater in the County of
 Middlesex, Esquire, was specially admitted of The Honorable Society of the Middle Temple on the First day of November one thousand eight hundred and two, called to the Degree of the Utter Bar on the twentieth day of June, one thousand eight hundred and seventeen and published on the twenty-first day of the same month and year and that he hath paid all duties which were owing by him to this Society and the officers thereunto belonging. In testimony whereof I have hereunto set my Hand and the Seal of the said Society this fifth day of August in the fifty-eighth year of the Reign of our Sovereign Lord George Third by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and eighteen.

Witness:

(Sd.) Willis (?)
 Clerk to Sub. Treasr.

(Sd.)

An. W. Hart (?) Treas.
 (L.S.
 Red Wax)

Bayswater is that part of London to the north and north-west of Kensington Gardens (Hyde Park).

¹⁸ The entry in the Term Book of the Court of King's Bench is incomplete—it reads thus: "Friday 8th January, 1819, Hilary Term 59 Geo. 3rd, Taylor Esqre., produced." The remainder of the page (Term Book No. 7) is left blank, no doubt to be filled up with particulars later, but this the Clerk neglected to do. Taylor is No. 45 in the first column of the 3rd skin of the Roll of Attorneys in the King's Bench, signing January, 1819; he is No. 29 on the King's Bench Roll of Barristers, January, 1819.

certificate, he was called to the Bar of this province by the Law Society of Upper Canada.¹⁹

His acquaintance with the Niagara District perhaps accounts for his being retained in the following term by Bartimus Ferguson, Editor of the Niagara Spectator. So far as the records show, Ferguson was Taylor's first client. The unfortunate editor had allowed to be published in his paper, one of the letters of the celebrated Robert Gourlay.²⁰ This the legislature considered a libel on the members and on the Government, and the Attorney-General, John Beverley Robinson, promptly filed an *ex officio* information against him. Ferguson was arrested a hundred miles from home, on the Talbot Road, where he was visiting—the obnoxious article had appeared in his absence from Niagara. He was carried to York (Toronto),

¹⁹The following appears in the Law Society's minutes: "At a meeting of the Law Society holden on Saturday the last day of Hilary Term 59th Geo. 3rd. in the Court House, at which were present the Attorney-General (John Beverley Robinson); the Solicitor-General (Henry John Boulton); D'Arcy Boulton, Esquire (i.e., D'Arcy Boulton the younger, son of Mr. Justice D'Arcy Boulton).

"Thomas Taylor, Esquire, a Barrister of the Honourable Society of the Middle Temple and now of Niagara, Esquire, having in this Term on producing to the Court of King's Bench a certificate of his admission at the English Bar and satisfied the Judges of his good character and conduct as the Act directs, he was duly admitted to practise in this Province and took the oaths in open Court, whereupon he presents himself to the Society to be admitted as a Member thereof and he is admitted accordingly, remaining answerable to the Society for the established fees.

"Jan'y, 16th, 1819.

"Jno. B. Robinson, Atty.-Genl.

"H. J. Boulton.

"D. Boulton, Junr."

He is No. 88 on the Members' Roll; No. 54 on the Barristers' Roll of the Law Society.

At an adjourned meeting of the Benchers of the Law Society, held at the chambers of the Solicitor-General (Henry John Boulton), on the first Saturday in Easter Term, 1st Geo. IV. (1820); Present, the Attorney-General (John Beverley Robinson), the Solicitor-General (Henry John Boulton) and W. W. Baldwin, Esq., Thomas Taylor and five others were appointed Benchers. Taylor is No. 34 on the Benchers' Roll.

²⁰Ferguson says that he had been informed by some one in authority that he might safely insert such letters in his journal so long as he gave the name of the writer. Gourlay, who was then in gaol at Niagara, and who could not be persuaded that he did not know more law than all the Judges and lawyers in the Province, begged Ferguson to allow him (Gourlay) to conduct his defence. Ferguson wisely preferred to retain Taylor, and Taylor wisely advised his client to plead guilty.

committed for trial at Niagara and taken there by the sheriff. He had the sense to reject the silly advice of the over-confident Gourlay to allow him to defend him; he retained Taylor, but the case was hopeless in law, and conviction certain.

After conviction, Taylor obtained affidavits showing the good faith and good character of his client; but Ferguson had offended the authorities and the Court was merciless. The atrocious sentence was passed that Ferguson, in addition to paying \$200 fine, should be imprisoned for eighteen months and stand an hour in the pillory.²¹ It is some satisfaction to know that on the unfortunate man making (on the advice of Taylor) an humble submission, part of this outrageous sentence was remitted.

But a position of greater security soon opened up for the budding barrister. Before the birth of the province and in 1788, Sir Guy Carleton, Lord Dorchester, had formed that part of Canada from the Trent River to Long Point, Lake Erie, into a district which he called Nassau, with its own Court of Common Pleas

²¹ The following are the entries in the Term Book:—
Friday, 5th November, 1819, Mich. Term, 60 Geo. 3rd.

President:

His Honor, the Chief Justice,
Mr. Justice Campbell and Boulton.

The King v. Bartimus Ferguson	}	Mr. Taylor moved to read affidavits in favor of the Prisoner which were read, and his counsel, Mr. Taylor, heard. The Attorney-General answered. The information read, the prisoner ordered to be brought up on Monday next to receive the sentence of the Court.
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Monday, 8th November, 1819, Michs. Term, 60 Geo. 3rd.

"The King vs. "Bartimus Ferguson	}	The Sentence of the Court is that you Bartimus Ferguson do pay a fine of Fifty Pounds, Provincial Currency. That you be imprisoned in the Common Gaol of Niagara
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for the space of Eighteen calendar months to be computed from this date; that in course of the first of these months you do stand in the Public Pillory one hour between the hours of ten o'clock in the forenoon and two o'clock in the afternoon; and that at the expiration of the said imprisonment, You give security for your good behaviour for the Term of Seven Years, yourself in the sum of Five Hundred Pounds and Two Sureties, Two Hundred and Fifty pounds each, and that you further remain in gaol until the said fine be paid and security given."

See an Article "Some Early Legislation and Legislators in Upper Canada," 33 Canadian Law Times (1913), at p. 190 (n).

and its own judges, sheriff, etc., etc.²² The first Parliament of Upper Canada in its first session changed the name from "District of Nassau" to "The Home District," and ordered a gaol and Court House to be built in the Town of Newark (Niagara-on-the-Lake).²³ In 1794 the old Courts of Common Pleas disappeared when the Court of King's Bench was instituted; but a new Court, the District Court, was established for each District, with limited jurisdiction.²⁴

The capital of the province was removed from Niagara to York (Toronto), and in 1798 a redistribution took place of the Districts, so that the Counties of Northumberland, Durham, York and Simcoe became the Home District, and Lincoln and Haldimand the District of Niagara, including what afterwards became Wentworth County.²⁵

But settlement began to make its way at the head of the lake, Hamilton made its appearance, and in 1816 the legislature set off a district for that part of the country, which was to be called the District of Gore, viz., the Township of Trafalgar, Nelson, Beverly, Flamborough, E. & W., that part of the Indian Reserve north of Dundas Street, certain blocks on the Grand River and reserved lands in the rear of Blenheim and Blandford (all these then in York Co.), and Binbrook, Saltfleet, Glanford, Barton and Ancaster (in Lincoln) and a small part of Haldimand. A gaol and Court House were to be built on lot 14, concession 3, of the Township of Barton, "to be called the Town of Hamilton;" and until they should be built the Quarter Sessions was to set some place for holding the Court.²⁶

²² As to this Court of Common Pleas and others of the same kind, their origin, practice, &c., see two articles "The Early Courts of the Province," 35 Canadian Law Times (1915), 879, 964.

²³ (1792), 32 Geo. III., c. 8, ss. 4, 7, 8, 12.

²⁴ (1794), 34 Geo. III., c. 2 and c. 3.

²⁵ (1798), 38 Geo. III., c. 5 (assented to by proclamation January 1st, 1800).

²⁶ (1816), 56 Geo. III., c. 19.

This Act instituted a District Court for the new District, composed as it was of the Counties of Wentworth and Halton, also formed by the Act. Taylor was appointed Judge of the District Court of the District of Gore in November, 1819, and took up his residence in the nascent town of Hamilton; he was the first lawyer-judge of this Court, his predecessor, Richard Hall, having been a layman.

The position of Judge of the District Court did not prevent his engaging in general law practice, and we have it from himself that he had a good share of practice in the King's Bench.²⁷

He describes himself as living in a very pleasant and plentiful part of the country, and though money was scarce (when was it not?) living very comfortably.²⁷ As District Judge he received about £30 (\$120) per annum; as Colonel of the Militia (for he was appointed Colonel of the Gore Militia) nothing "but to treat the officers and buy swords, red coats, etc., for the boys (his sons Thomas and Robert); one of whom is a Lieutenant and the other an Ensign," the Militia being "except in point of feeding and cloathing . . . something like Falstaff's men, not much organized."²⁸

In 1823 he was appointed official Reporter for the Court of King's Bench, which he expected to net him about £70 (\$280) a year, and with an increasing family he continued to "live in a sort of plentiful poverty." It was necessary for him to come to York in Term Time as a reporter, but that did not interfere either with his judicial duties or with his law practice.²⁸

Hamilton continued to grow. By 1831, it had "become what would be called in England a very pretty country village, about one hundred and fifty houses";²⁹

²⁷ In a letter dated "Hamilton, District of Gore, Upper Canada, 25th March, 1822," to his sister M. O. Taylor at Edinburgh (Scotland).

²⁸ In a letter addressed as above, from Hamilton, November 2nd, 1823.

²⁹ See Taylor's letter addressed to Miss M. O. Taylor, Chirnley House, Park Hill, Derby Road, Nottingham, England. I remember about the first of the 70's much indignation being felt in Cobourg at Morley Punshon comparing that town to an "English Village."

in 1833 he describes his office as "a small building painted yellow with two rooms in it, in the village. My house is about three-quarters of a mile off, very pleasantly situated in six acres of land upon a small hill . . . we have twenty-five acres about a mile and a half off, where we occasionally make hay and cut wood." He had also other land,—“two hundred acres of very fine land upon Lake Simcoe, pretty valuable, three hundred in Caledon, worth about a pound an acre.” His house built by him after his return from England was worth £450 (\$1,800), and he had plenty of law business “in this town, where we have four lawyers, including myself, all making a pretty good living, several doctors, six or eight taverns, an elegant stone Court House, about twenty shops . . . No church, but a Methodist congregation; the Episcopal clergyman preaches in the Court House. We have a District school, a common school and a ladies’ school, three newspapers, and one small publication for poems, stories, etc., called the Casket.” No wonder that he said “we are quite a genteel society here in a small way.”³⁰

He filled the judicial position with honour and to the satisfaction of all until his death in December, 1838. He was buried with military honours in the family burying ground of George Hamilton, Upper John Street, since become city park property; no monument has ever been erected to his memory.

A Bencher of the Law Society from 1820 till his death, he was fairly active for several years, but did not attend any meetings after 1832. It is a matter of regret that want of recognition of their value by the profession caused him to discontinue the issue of Reports of Cases in the King’s Bench.

Taylor had three sons and seven daughters, who grew to maturity—five children, it is said, died in infancy.

³⁰ Letter to “My dear Sisters and Children,” dated from “Hamilton, District of Gore, Upper Canada, 2nd Feby., 1832.” (addressed to Miss M. O. Taylor, Chirnley House, Derby Road by Nottingham, England). The children were his two daughters, Sarah and Mary Octavia.

Thomas Horatio, the eldest son (born Trafalgar year), was admitted to the Law Society Easter Term, 5 Geo. IV. 1824 (No. 145) and called Trinity Term, 11 Geo. IV., 1830 (No. 139); he practised in Toronto. He had for a time a small office in a one-storey building near the corner of Church and King Streets.

The second son, Robert William, was admitted Trinity Term, 1 and 2 Wm. IV., June 27th, 1831 (No. 236). He was not called to the Bar, but was admitted an attorney in the Court of King's Bench, June 27th, 1833 (No. 152 on the Attorneys' Roll). He practised at Hamilton. Both these sons died at Hamilton within a short time of each other (1840), unmarried and comparatively young.

George Henry, the third son, had a large farm a few miles west of Ancaster. He married Robina, daughter of Captain William Sibbald (Royal Scots), of Haddington, Scotland. He left five daughters.

Of the daughters of Judge Taylor, Jane, the eldest, died unmarried in 1831; Sarah married Hamilton MacCarthy, a sculptor of note, and became the mother of his more celebrated son, Hamilton MacCarthy, R.C.A., our own sculptor and artist. Mary died unmarried. Sarah and Mary had been left in England with Taylor's mother and sisters for their education on Taylor's return to Canada in 1818, and they never again came to this continent. Isabella was born at sea. The charming story is told that the baby not being expected to live, the sailors offered their ration of rum that the child's body might be saved for burial on land. Fortunately the baby survived, and Isabella Taylor lived to the great age of eighty-eight years. Dying a spinster, she lies buried beside St. George's Church, Tapleystown, Saltfleet, after living a life devoted to the Church, the sick and the suffering.

Ellen Octavia married her cousin Robert William Taylor, son of Colonel Robert William Taylor (brother of the Judge), who was killed at the battle of Waterloo. They left a family of eight children (seven

others died in infancy), two sons (of whom one is still living), and six daughters (four of whom still survive), and all but one of whom were married.

The next daughter of Judge Taylor, Eliza, married the Revd. Dr. Thomas Hodgkins, of Guelph, left two daughters, both in the United States, and one son, Thomas, a barrister, who died in his twenty-sixth year.

Charlotte never married; she died in her 60th year, about fifteen years ago. An invalid, she was tenderly cared for by her sister Isabella, who, as we have seen, also died unmarried.

Mrs. Eliza Taylor, wife of the Judge, as we have seen, died June 6th, 1833, aged 46, and lies in the burial ground of St. Mark's Church at Niagara. An old grey stone set up to her memory still stands after more than eighty years of storm and shine.²¹

I add here a beautiful tribute to Judge Taylor by a granddaughter, with which I have been favoured:

“My grandfather when he came to Hamilton built a house opposite Christ Church, James Street (afterwards the Cathedral), on a beautiful slope facing the mountain and surrounded by maples and elms, with a living stream of water running through the grounds.

“It was his custom to walk down to the emigrant sheds and send the men to his garden and orchard and the women to his house, to get a chance to wash their clothes and learn from his daughters to make and mend; many a dress for the young women being cut from bolts of blue and white linen bleached on Irish turf and sent out by his father-in-law, Dr. Bell.

“Milk for the children, buns, fruit from his garden, went daily to the emigrants.

²¹The details concerning Taylor's descendants I owe to several of them, Mr. Hamilton MacCarthy, R.C.A., Mr. Thomas B. Taylor of Watford (both grandsons) and others. It may be added that in addition to his brother, Col. Robert William Taylor, killed at Waterloo, Judge Taylor had another brother, Charles, who was in that battle and was reported missing, never being heard of again. There was another brother, George, in the Navy; also a sister, Mary, who died in middle life, and another, Sarah, who lived to the age of 96. The sisters are buried at Brompton, London, England.

"One time when the sheds were being cleaned, he had the occupants in his grounds all day, making a picnic for them; big tubs and hot water being the preliminary exercises thereto. The old Judge asked a blessing, the first 'grace before meat' they heard in a new land.

"It was his custom to rise very early.

"The first sound his children would hear was his singing Latin hymns, 'Dies Irae,' 'Stabat Mater,' and Addison's hymn 'The Spacious Firmament on High.'

"The first Sunday School in Hamilton was held in his dining room, and the first Sunday School picnic was held in his grounds."

He was a good son, a faithful and devoted brother and husband, a tender and loving father, a gallant soldier, an erudite lawyer, a competent reporter, a just and faithful Judge and an admirable citizen. He was a scholar, a Christian and a gentleman. May his memory be ever green among Canadians, whose land he loved and for it fought and suffered. Surely the least we can do is to raise some suitable memorial to a Canadian like Judge Thomas Taylor.

The soldier Judge rested from his labours and his works do follow him.³² We shall now examine such of them as appeared in print.

³² Before entering upon an examination of his Reports it may be well to note the cases in which he is recorded as appearing.

" Wednesday, 3rd November, 1819, Michs. Term, 60 Geo. 3d.

Wilson v. Irish	}	Motion for a rule to show cause why the defendants should not be discharged out of custody upon finding Common Bail, the Plaintiff not having gone to trial in three Terms after Declaration delivered.
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On motion of Mr. Thomas Taylor, of counsel for Defendant."

Monday, 8th November, 1819, Michs. Term, 60 Geo. 3d., Taylor obtained the release of an unfortunate debtor, William Fish, as the plaintiff had omitted to keep up the weekly payment of five shillings (\$1.00).

In *Doe dem, Griffin v. Roe* (1825), *Tay.* 203, he moved on behalf of the real defendant to set aside a judgment which had been signed against the casual ejector. This judgment was regular according to the existing Rules of the Court of King's Bench in England, but not according to the Rules appearing in the last edition of *Tidd's Practice*, published in 1817. The practitioner in the Canadian Court had no means of knowing the existing Rules in England, and always went to *Tidd* for authority. Although the new Rules had been ordered by the Court of

The "Reports" were issued after each term, Hilary, Easter, Trinity and Michaelmas; Hilary Term beginning the third Monday in January, Easter Term, Monday next after April 16th, Trinity Term, the third Monday in July, and Michaelmas Term, the first Monday in October, and all terms ending on the Saturday of the week in which they began.³³

Each number of the Reports was bound in a blue-grey paper cover, octavo size; and there were altogether seventeen numbers; two in 1823 (after Trinity and Michaelmas Terms), four in each of the years 1824, 1825, and 1826, and three in 1827 (Michaelmas Term for this year not being reported).³⁴

There was, as has been said, no provision at that time for furnishing copies gratis to the members of the profession; every attorney had to pay a fee each year to form a fund for the reporter's salary, but for that he got nothing but the consciousness of "doing his bit" for the public good—if he wanted the Reports he had to pay for them. There were not many lawyers in those days: in 1823, we see by Fothergill's Almanac³⁵ "there were 45 barristers and 17 attor-

King's Bench in England in Easter Term, 2 Geo. IV. (1822), and the Upper Canadian Court had by its rules adopted the English Rules, the Court thought it not reasonable that Rules which the profession could not be expected to know should govern, and directed that Tidd's Practice of "the edition of 1817 should be considered as that which regulated the practice of the Court."

In *Doe dem Griffin v. Lee* (1825), *Tay.* 235, he obtained leave for the landlord to defend an ejection action, even without an affidavit that he was landlord.

In *Applegarth v. Rhymal* (1827), *Tay.* 427, he obtained a new trial for the plaintiff in a water privilege case from the Gore District.

"Rhymal" is of course "Rymal," a name well known in Wentworth County. "Joe Rymal" was one of the parliamentary celebrities of early Confederation times.

³³The Terms were fixed by Statute, beginning with the Court of King's Bench Act of 1794, 34 Geo. III. c. 2.

³⁴I am obliged to the Librarian of the Toronto Reference Library for an opportunity of studying such numbers as are in that Library; I know of no others now in existence.

³⁵The/York/Almanac/and/Royal Calendar/of Upper Canada /for the year/1824/ . . . York, U.C./Published by and for Charles Fothergill, Esq.,/Printer to the King's Most Excellent Majesty/ . . ." The second part of this is entitled "A/Sketch/of the present State/of/Canada/ Drawn up expressly for this work/by/Charles Fothergill,/1823" and is

neys" (who were not barristers); no great change took place in the year.

Accordingly, there was no extensive demand for the new work. Taylor apparently expected some members of the general public to buy, but law is dry and uninteresting, and it does not appear that many even of the somewhat numerous magistrates became purchasers.³⁶

Subscribers, moreover, had to call for their numbers at the office of the Treasurer of the Law Society (Dr. William Warren Baldwin); Osgoode Hall had not yet been built, although it was in contemplation, and the office of the Treasurer was the place where the business of the Law Society was transacted. Postage was almost prohibitory in those days; it cost for a single letter 4½d. (7½ cents) for any distance not exceeding 60 miles; 7d. (about 12 cents) from 60 to 100 miles, and 9d. (15 cents) from 100 to 200 miles.³⁷

In the Public Library at Toronto are six of these numbers, which were once the property of Dr. William Warren Baldwin. I do not know that there are any others extant; and it may be of interest to describe these relics of the olden times. The bound volume containing these and the eleven other numbers purports to be issued in 1828, and to be printed by John Carey, King Street, York, U.C. There are two copies of this volume in the Osgoode Hall General Library, one formerly the property of Chief Justice McLean, and the other the gift of Taylor himself; a second edition with different paging, and omitting the dedi-

sometimes put first. In some instances a pasted label is to be found "Upper Canada Gazette Office/York," and the date given is 1822. The volume in either form is rare. Fothergill lived for a time at Port Hope and had dealings with the celebrated Robert Gourlay, against whom he turned when Gourlay got into disrepute with the governing caste.

³⁶ I count in Fothergill's *Almanac* 438 names of magistrates, exclusive of Judges and Members of Parliament—the population at that time, including "Indians, Army, Navy and Strangers," was estimated at 188,500.

³⁷ See Fothergill's *Almanac*.

ation and preface, was published by Henry Rowsell, Toronto, in 1862.

The following is a description of the six numbers which have survived. In the first on the first page of the cover we read:

“No. 1/Cases/Argued and Determined/in the Court of King’s Bench/at York/ in Trinity Term/ 4th Geo. IV./Advertisement/Address to the Profession/The establishment of a Reporter by Legislative/Authority is certainly an important circumstance in/the progress of the jurisprudence of a country . . .” Then follows the opinion that “the appointment will be a useful one to the Public as well as to the Profession.” Sir James Burrow²⁸ is then mentioned and his remarks as to the difficulties of a Law Reporter are referred to, to give colour to the request for indulgence on the part of readers.

On the reverse of the cover the address is continued, the Judges are thanked for their personal kindness and professional condescension and the hope expressed that the Reporter’s performance of the duties of his office may in some degree, however small, contribute to raise the profession “to that eminence to which we all confidently hope it will arrive in this Colony.” In that event, says the Reporter, “I shall have the satisfaction of reflecting that I have discharged a small portion of that debt which Sir Edward Coke, and after him Sir William Jones, tells us we owe to our profession.”²⁹ It is proposed to publish the reports in parts in the vacation next following the terms in which the decisions have been authenticated

²⁸ This is Sir James Burrow, who issued his “Reports of Cases in the Court of King’s Bench since the death of Lord Raymond” in 1777, 4 vols. quarto. The edition generally in common use is the octavo of Clarke and Butterworth. In his Preface, Burrow asks and answers the questions, “why he should publish at all,” “why he began with Lord Raymond’s death,” “why he postponed part of his work” and “why he published without a licence.”

²⁹ Bacon says: “I hold every man a debtor to his profession” (Preface to “The Elements of the Common Law”); I do not know to what language of Coke and Jones, Taylor alludes; perhaps some of my hearers can inform me.

by the Judges.⁴⁶ Some minor cases will be reported for the sake of members of the profession who reside at a great distance from the Capital, and others, which involving little disquisition, may be thought well adapted for the perusal of a population whom a desire for information in a country where so few publications are presented to the public, may induce to read these decisions of our Superior Court.”

The address, which covers a page and a half, 8vo., is dated “York, 1st February, 1824,” and signed “Thomas Taylor.”

After a half-title “Cases/Argued and Determined/in the Court of King’s Bench/ at York, etc., etc.,” follows the full title page “Cases/Argued and Determined/in the Court of King’s Bench/at/York, Upper Canada/in/Trinity Term/in the fourth year of the reign of Geo. IV./No. 1/Judges/The Hon. W. D. Powell, Chief Justice/The Hon. William Campbell/The Hon. D’Arcy Boulton/John B. Robinson, Esq., Attorney-General/Henry J. Boulton, Esq., Solicitor-General/By Thomas Taylor, Esq./Printed by Charles Fothergill at the U.C. Gazette Office/York/1824.”

Then the part continues as on the pp. 5 to 43 of the bound copy of the first edition now in the Osgoode Hall Library; the equivalent of pp. 9 to 39 in the second edition.

In Part II. the outside and the inside title pages are identical: “Cases/Argued and Determined/in the Court of King’s Bench/at York/Upper Canada/in/Michaelmas Term/in the fourth year of the reign of Geo. IV./No. 11/Judges/The Hon. W. D. Powell, Chief Justice/The Hon. William Campbell/The Hon. D’Arcy Boulton/John B. Robinson, Esq., Attorney General/Henry J. Boulton, Esq., Solicitor-General/By Thomas Taylor, Esq./Printed by John Carey/ York/1824.”

⁴⁶This of course refers to the statutory provision that the Judges must sign the Reports in open Court.

The paging begins afresh as though it were a new and independent work—the printed matter being pp. 5 to 46, the last four containing the General Rules of Court published this Term.⁴¹ This paging is, of course, retained in the bound copy (first edition) as the bound copy consists of the parts as issued. In the second edition the material will be found on pp. 40 to 69 inclusive.

Part III. is like Part II. with outside and inside title pages, substituting "Hilary" for "Michaelmas;" "Fourth and fifth years" for "fourth year" and "No III" for "No. II."

The paging begins with p. 85 and runs to p. 154; of course, the mistake had been discovered of making a new paging in Part II., and Part III. was paged to follow the correct sequence. In one of the volumes in the Library, Part II. is repaged in ink for the first few pages—probably by Taylor himself—so as to make the paging consecutive after Part I.

The contents of this part appear in pp. 85 to 154 of the first edition and pp. 70 to 122 of the second.

Part IV. is also a replica of Part II., outside and inside covers, substituting "Easter" for "Michaelmas" and "fifth" for "fourth" (p. 154 being duplicated from Part III.). The pages run from p. 154 to p. 175 as in the first edition, and pp. 123 to 138 of the second.

The financial troubles of the Reporter had already begun, as is made plainly to appear on the last page of the cover: after the Table of Cases appears a notice: "Those Gentlemen of the profession who take in these Reports are requested to pay the amount of their subscription (being for four numbers) at the Treasurer's Office of the Law Society, where also they may receive any numbers they may want. The Reporter

⁴¹These rules are well worth reading by those who see a falling away in our Courts from the "good old ways." Officers of the Court will be interested to know that in those days during vacation the offices had to be open from 9 a.m. till 3 p.m.

has incurred a charge for printing of near £50—the amount of subscriptions received not exceeding £10. In future the numbers will be regularly forwarded as published to those members of the profession who do not reside in York.” No doubt this delivery would be by the “Common Carrier,” the stage coach proprietor.

Part V. is also like Part II., outside and inside title pages, substituting “Trinity” for “Michaelmas” and “fifth” for “fourth.”

The paging runs from p. 176 to p. 220: on the outside title page appears the name “W. W. Baldwin, Esq.” (not in Baldwin’s handwriting), and in Taylor’s copy, presented to the Law Society, on p. 220 at the end of the case *Markland et al. v. Bartlet*, appears the interlineation written in ink (not by Baldwin) “Rule absolute for non-suit.” This Part is pp. 176 to 220 of the first edition (the interlineation on p. 220 not appearing), and pp. 139 to 171 of the second (also without the interlineation).

Part VI is the same, substituting “fifth” for “fourth” and “1825” for “1824.” This has Baldwin’s unmistakable autograph on the outside title page. The paging runs from p. 224 to p. 243, as in the first edition, corresponding to p. 172 to p. 186 of the second. Each part has a table of the cases reported therein, on the last page of the cover.

The notice printed in Part IV. was not effective to save the Reporter from actual loss. We find him in Michaelmas Term, 1827 (November 17), stating in Convocation that he had sustained a loss in printing the Reports; but he failed to induce his fellow Benchers to cause him to be reimbursed for his outlay.⁴² However, he printed no more numbers. He collected the seventeen already issued into a volume with the title page, “Reports/of/Cases/Argued and Determined/in the/Court of King’s Bench/in/York, Upper

⁴² See “Legal Profession in Upper Canada,” p. 108.

Canada/commencing in Trinity Term in the fourth year of the/Reign of George IV., and ending in Trinity Term/in the eighth year of Geo. IV./by Thomas Taylor, Esq./of the Middle Temple, Barrister-at-law/ (he adds in ink in his presentation copy, " and of Osgoode Hall, U.C.") Volume 1/*Tamen in pretio est*/ York, U.C./Printed by John Carey, King Street." (Carey had in fact printed all but the first number). A dedication is added to Sir Peregrine Maitland, Lieutenant-Governor, and a preface of seven pages which gives some account of the constitution of the Province and the Court, with its former and present Judges, as well as of the inferior Courts. Of course, both dedication and preface disappear in the second edition.

Taylor also added a "Table of Cases reported," and at the end a complete Digest or "Index to the Principal Matters" of 5 and 32 pages respectively. His diligence did not extend to a "Table of Cases Cited."

WILLIAM RENWICK RIDDELL.