

A Medical Slander Case in 1831



By

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IN *The Canada Lancet* of January, 1913, appears an account of a medical slander case in Upper Canada in 1827. It was tried before Mr. Justice James Buchanan Macaulay, who was himself the son of a medical man.

Four years afterwards in the same Court House at Niagara, before a different judge, another medical slander case came on for trial, which is of some interest,—perhaps more to the legal than to the medical profession.

Dr. Raymond received from the Governor a licence to practise, November 13th, 1825. As no record appears of his passing the examination of the Medical Board, it is probable that he was otherwise qualified, either by holding a diploma from a British institution or otherwise under the Act of 1827, 8 George IV., c. 3.

Dr. Truman Raymond was the sixth in lineal descent from William Raymond, who came to Little Harbour, New Hampshire, in 1630, as "steward," *i.e.*, agent for "The Company of Laconia," a colonizing and trading company formed by Sir Fernando Gorges and Capt. John Mason, of London, grantees of all the land between the Merrimac and Sagadahoc Rivers.

Truman Raymond was born in 1783 in the United States and emigrated to Canada: he first settled at Fort Wellington where he married Elizabeth Dulmage, daughter of Major John Dulmage, U.E.L., and Sophia Heck (a relative of Barbara Heck). During the war of 1812 he was surgeon of the forces at Gananoque; shortly afterwards he removed to Niagara, and later, in 1840, to St. Catharines. He died at Welland (Merrittsville), in 1861, and his remains lie in the Fonhill Cemetery, about four miles northwest of that town.

At the time of this action he was living at Niagara and had a large practice throughout the district, including the neighbouring towns.

His son, Lorenzo Dulmage Raymond, was for many years County Crown Attorney at Welland, and two of the sons of this Crown officer are prominent members of the Bar of Ontario, W. B. Raymond, of Toronto, and Lt.-Col. L. C. Raymond, of Welland.

He was in June, 1831, called on to attend one John Cain, at Armstrong, near Niagara. He found him suffering from an abscess in the knee, which the doctor treated properly. But the patient had a much

more serious trouble, which was diagnosed as pleurisy, and there is no reason to doubt the accuracy of the diagnosis. The doctor "bled copiously," which was "usual in most cases." John Wesley had recommended a glass of tar-water taken warm every hour, which was at least harmless, while the "Yarb doctor," Samuel Thomson, prescribed tea of mayweed or summer savory, or a sweetened infusion of horehound leaves, equally innocuous. But with the regular profession then and for long after, the great panacea was bleeding.

The patient grew worse and his brother, in whose care he was, became dissatisfied with the medical man. He had no hesitation in saying openly that "the d—d old scoundrel might just as well take a pistol and blow his brains out as murder him by inches"—"if he dies, I shall always think he murdered him." The doctor himself was full of hope, and did not think there was any necessity to send for another medical man, and for a time refused to do so. But the friends were insistent and at length Dr. Lafferty was sent for.

Dr. Lafferty was one of the best-known men at the time in the district; born in New Jersey, the son of the Attorney-General of that Province, he became an army surgeon. Taking to wife in 1800, a half-breed Indian woman, he settled down to practise his profession at Drummondville. Without much medical learning, he was of great natural ability and sound common sense. He became a member of the Legislature in 1828 for Lincoln and was defeated in 1834 by only one vote. He died in 1842, aged 65. "A fine old gentleman of the old Canadian school," and skilled in the old way, he had no use for new-fangled methods or instruments, and could never be brought to see the advantage of the stethoscope (which he called the "telescope").

Dr. Lafferty could not at that stage say whether Dr. Raymond's treatment had been proper, but he administered purgatives to the patient then *in extremis*. This treatment gave some relief, but there was no hope, and the unfortunate man died.

The brother was very violent; he told Dr. Raymond that he was not fit to practise, he was an impostor, an old woman, he knew nothing and should not impose himself, being so ignorant, upon the public. This kind of talk the angry brother repeated to several and at length Dr. Raymond brought an action against him for slander.

The case came on for trial at Niagara, September 17th, 1831, before Chief Justice John Beverley Robinson (not yet a baronet or even a C.B.) The facts above detailed were clearly proven and it looked as though nothing could save the defendant. But in those days the law and practice were full of traps for the unwary, and often a litigant with an honest and unanswerable case failed by reason of some slip of his at-

torney. We have changed all that and now it is impossible for anyone to lose an honest case through the mistake of his lawyer in reducing his claim to writing.

In those days what is now called the "Statement of Claim" was called the "Declaration." It contained a statement of what the plaintiff claimed, and had to be headed or entitled in some "Term of Court." This was intended to indicate the time when, or at least before which, the wrongs complained of were committed. The declaration was always to be entitled after the time when the cause of action was stated to have accrued. Moreover, if the heading were "General," i.e., "Trinity Term," "Michaelmas Term," etc., this was read as the first day of term, and the cause of action was therefore alleged as accruing on or before the first day of the term. If it was intended to allege the cause of action as accruing during the term, the declaration had to be entitled of a subsequent day in that term, and not of the term generally. All this learning may be read in the classic pages of Tidd (Uriah Heep's favorite author) 8th edition, Vol. I., p. 428, and is now as dead as Julius Caesar.

The declaration in Dr. Raymond's case was entitled "Trinity Term, I. William IV." Trinity Term began that year (1831) on June 20th, accordingly the wrongs were by the "General" heading alleged to have been committed on or before June 20th. But the evidence disclosed that the words were uttered later, none of them before June 26th, and the plaintiff was "non-suited." He could pay the costs, amend his pleading and bring his action down for trial again, but it does not appear that he did so. He might also sue his lawyer for negligence and would almost certainly have succeeded.

A defect that was fatal in those days, a judge at the present would sweep aside with a contemptuous smile. Law has made in the eighty years almost as great strides as medicine. And it is pleasant to know that all the great advances made in either science have been made by those active in their profession.
