

1/Cont.

3/1917?

DN. 168

2/ANOTHER DUEL
IN EARLY UPPER CANADA

BY

THE HONOURABLE MR. JUSTICE RIDDELL



ANOTHER DUEL IN EARLY UPPER CANADA

In April, 1812, a duel took place on "The Island" which did not, indeed, achieve so much notoriety as those mentioned in the former article,¹ but which from the prominence of the principals deserves notice. They were William Warren Baldwin, Treasurer of the Law Society of Upper Canada, and John Macdonell, Attorney-General of the Province.

Baldwin was the third son of Robert Baldwin of Knockmore, near Carrigoline, County Cork, a gentleman of independent means, who in 1798 or 1799 came to Upper Canada, leaving his native county by reason of its troubled condition due to the rebellion of 1798. Many "United Irishmen" left Ireland about the same time; but there never was a whisper against the loyalty of Robert Baldwin and his family in Ireland.

William Warren Baldwin had already taken his degree in Medicine in the University of Edinburgh and had been in practice as a physician in Cork and its vicinity; but he determined to accompany his father to the new country. He was then about twenty-four, having been born in 1775.

The family settled in the Township of Clarke in the County of Durham, on what was then called Baldwin's Creek, now Wilmot's Creek, famed for its salmon. The father acquired very considerable land in Clarke Township and was made a Justice of the Peace—no small honour in those primitive days. When the Newcastle District was created²—in 1802—he took a very active part as Magistrate at the Quarter Sessions and otherwise.

¹ See "The Duel in Early Upper Canada" (1915), 35 C. L. T., pp. 726 *sqq.*

² See "The First Years of the Quarter Sessions in and for the Newcastle District" (1913), 33 C. L. T. pp. 465 *sqq.*

The son was entitled under the Provincial Act 35 Geo. III., ch. 1,³ to practise medicine by virtue of his Edinburgh degree and his Irish experience, and it is said that he endeavoured to make a living by his profession in Clarke. In those days the settlers were few, poor and healthy; and most of them when sick relied upon fireside remedies or the "Yarb Doctor."⁴ He failed to obtain a medical practice, from no fault of his own; and he determined to change his profession.

Coming to York (Toronto) in 1802, he advertised his establishment of a Classical School for boys—advertising to teach twelve boys Writing, Reading, Classics and Arithmetic, terms eight guineas per annum, one guinea and one cord of wood to be supplied by each boy on the opening of the school.⁵ I have not been able to discover what success the school had, if any, or even whether it was ever opened.

A curious state of affairs was at the time existing in the Province. For the second time⁶ in its short history there were not enough lawyers; and the Legislature, by the Act of 1803, 43 Geo. III. ch. 3, reciting that "great inconvenience has arisen and is now experienced by His Majesty's Subjects in several parts of this Province from want of a sufficient number of persons⁷ duly authorized to practise the profession of the law, justice will in many cases be with great difficulty administered," proceeded to authorize the Governor to appoint not more than six gentlemen whom

³ See "The Medical Profession in Ontario, a Legal and Historical Sketch;" *Can. Journal of Medicine & Surgery* for September, 1911.

⁴ See "The Pharmacopœia of a Botanical Physician;" *Proceedings of the Botanical Society of Edinburgh*, Vol. 26. part 3, pp. 226 sqq. (November 13th, 1913).

⁵ See Dr. Scadding's "Toronto of Old," p. 348.

⁶ The first time was in 1794, when the Legislature authorized the Governor to grant a licence to not more than sixteen persons to practise law (1794), 34 Geo. III., ch. 4. A full account of this and other legislation is given in my work on the Legal Profession and the Law Society, recently published by the Law Society of Upper Canada.

⁷ There had been some twenty-four already called to the Bar, most of them in active practice; and the necessity for the appointment of more is not now apparent.

he should consider, from their probity, education and condition in life, fit and proper to practise law. Doctor William Warren Baldwin was one of the five favoured ones; he received a Licence, produced it to the Law Society, and was called to the Bar in Easter Term 43 Geo. III., 1803, Number 25 on the Roll.

A handsome man, of fine presence and easy manner, fluent and ready-witted, well educated and knowing even a little law, he soon had a large and flourishing practice. Appointed a Bencher in 1807, he became Treasurer in 1811.

John Macdonell was of the Greenfield branch of the Clan, and son of Alexander Macdonell; he was born at Greenfield, Glengarry, Scotland, in 1785, and came with his family to Canada in 1792. Educated at the celebrated school at Cornwall taught by John Strachan, afterwards the first Anglican Bishop of Toronto, he was admitted to the Books of the Law Society the same term as Dr. Baldwin, Easter Term, 43 Geo. III., April 6th, 1803. He was called five years afterwards, *i.e.*, in Trinity Term, 48 Geo. III., 1808. While not very tall, he was strikingly handsome. With a good knowledge of law, he made his way at the Bar, and, November 28th, 1811, he was made Attorney-General of the Province by General (afterwards Sir) Isaac Brock, on the departure for England of the former Attorney-General Firth.

At the time the Governor (Gore) and some of his officials, Firth among them, had been at strife, Baldwin took the part (in a subordinate way) of Firth, with whom he continued friendly and with whom he kept up a correspondence after Firth's withdrawal to England.

The appointment of Macdonell as Attorney-General was exceedingly distasteful to Dr. Baldwin; and there were many passages at arms between him and Macdonell in the Courts and out of them. At length, at the Court of Assize held at York in April, 1812, Macdonell used language which Baldwin thought so wanton and ungentlemanly, that he appealed to the

ATAAO

presiding judge, Chief Justice Thomas Scott. The Chief Justice apparently disapproved of the language employed, but nevertheless the Attorney-General repeated the words twice in the course of his address without notice or rebuke by the Chief Justice.

Baldwin was deeply incensed, and took the course which at that time offered the proper remedy to an insulted gentleman.

His friend Thomas Taylor,⁸ who had been admitted but not yet called at the Middle Temple, and was Lieutenant in the 41st Regiment, happened to be in Court when the incident occurred. Baldwin at once communicated to him his determination to call Macdonell to account. Taylor endeavoured to dissuade him, but in vain; and, seeing that Baldwin was resolved, he admitted that he had right on his side and agreed to act for him.

Baldwin without delay wrote a letter to Macdonell stating the offensive words and demanding an explanation. Taylor presented this the same evening. Macdonell seemed astonished, said he did not think he had said anything which required an apology, and concluded by stating that a friend would call on Mr.⁹ Taylor with an answer.

Mr. Duncan Cameron¹⁰ waited on Taylor, regretted that Baldwin should have been so peremptory in

⁸ Afterwards, in Hilary Term, 59 Geo. III., 1819, called to our Bar; next year, Easter Term, 1 Geo. IV., made a Bencher, he became our first law reporter, his volumes, Taylor's Reports, being issued in 1828. The first edition is rare; that commonly used is the second edition, published by Henry Rowell in 1862. See a full account of this and other reports in my Early History of the Legal Profession. In an address before the Dominion Bar Association (June, 1916), which is to be published by the Association, I have given an extended account of Taylor's life and work. Baldwin was in error in describing him as "called at Lincoln's Inn."

⁹ Then, and for long after, the strict etiquette was observed everywhere as it is now among those who value propriety in language of calling an officer under the grade of Captain, "Mr.," not Lieutenant (whether Left or Low-tenant) or Ensign.

¹⁰ Afterwards a member of the Legislative Council. He was very active in projects of a public nature, especially in the building of a Church for the Parish of St. James; he was a pew-holder in the Church — "St. James Cathedral." His high standing socially and otherwise even though coupled with his churchwardenship during that

demanding an explanation, as otherwise the misunderstanding might have been amicably settled, but said that as things were, Macdonell could not now think of making an apology. Taylor said that Baldwin was determined to have an apology or to fight; and nothing remained but to fix weapon, time and place. Macdonell's duties as Attorney-General—the Attorney-General and Solicitor-General at that time conducted in person all Crown business—necessitated delay till after the Assizes; but the Court ended in a couple of days, and Cameron called on Taylor to say that Macdonell would wait on the Island (then a peninsula) at 6 o'clock the following day.

Macdonell and Cameron crossed the bay in a sleigh—it was April—Baldwin and Taylor on foot, stopping at the Blockhouse¹¹ for Baldwin to execute his will.

Arrived on the ground, the principals were placed back to back, and directed on the first word to face about, on the second to fire—of course the pistol was the weapon.

On the first words the combatants faced each other; the word "fire" followed; but Baldwin noticed that Macdonell stood with his arm down by his side, not raised to aim. He demanded an explanation, and Cameron said: "He waits your fire." Thereupon Baldwin fired aside.¹² Cameron and Macdonell proposed

year, did not prevent him from acting as a second in a duel. He was a Captain in the York Volunteers, and Provincial Secretary. A warm friend of Macdonell, when the latter fell at Queenston Heights he attempted to save him, exposing himself to a shower of bullets which he miraculously escaped. He succeeded in carrying his friend off the field. See Sketches of Glengarry in Upper Canada, by J. A. Macdonell, K.C., p. 199 n. (2).

¹¹ Probably the Blockhouse on Gibraltar Point (now Hanlan's) which was not demolished till 1818. Robertson's "Landmarks of Toronto," 3rd series, 311, 336; cf. Dr. Scadding's "Toronto of Old," 357.

¹² This course was not regular. At the Clonmell Assizes in 1775 the Gentlemen Delegates of Tipperary, Galway, Mayo, Sligo and Roscommon had settled the code for duelling and points of honour, which was adopted for all Ireland, and does not differ materially from the English Code. Rule 13 is specific: "No dumb shooting or firing in the air admissible in any case. The challenger ought not to have challenged without receiving offence; and the challenged ought, if he gave offence, to have made an apology before he came on the ground;

shaking hands; Cameron, lamenting that matters had been brought to an extremity so suddenly without an opportunity for explanation and conciliation, said that his principal had come to the ground with the determination to receive Baldwin's fire only. Baldwin took this as an acknowledgment of error, as he had a right to do. The parties shook hands, and the affair ended. Macdonell resented the course taken by Baldwin and did not return his ceremonious call after the duel; and the two barristers were never reconciled.

Perhaps time would have softened the feelings of resentment; but a few months later the wretched and fratricidal war of 1812-14 broke out.¹³ Macdonell, who had a Lieutenant-Colonel's Commission in the Militia, was appointed Provincial Aide-de-Camp by Brock, accompanied him to Detroit, and took part in the capture of that place. In October, 1812, he and his general both met a hero's death at the Battle of Queenston Heights.¹⁴

therefore *children's play* must be dishonourable on one side or the other, and is accordingly prohibited:" Barrington's Personal Sketches, Vol. 2, p. 19. The regular course would have been first to exchange fires, rule 7, and then reconciliation would be in order. But where one party had so injured the other that an apology could not be an atonement, it was not unusual for the guilty party to take his opponent's fire, as was done in a duel more than a quarter of a century later on the Island by Mr. (Lieutenant) Grogan, who had taken away the wife of John Stuart, a grand-daughter of Chief Justice Powell. See the Statutes of Upper Canada, 1840, 3 Vic. ch. 72.

¹³As early as April, 1812, war was expected in York, from what Baldwin calls "the brawling, Jacobinical and damnable disposition of the American Government"—and some may even yet (or at least might till the summer of 1914), think that he has justification for his statement that "a more unprovoked, immoral and impious war was never engaged in than this the Americans are threatening us with." But even with war imminent, "business as usual" and duels must be attended to.

¹⁴Macdonell had been engaged to Mary Boyles Powell, daughter of Chief Justice Powell and aunt of Elizabeth Van Rensselaer Stuart, referred to in note 12. Several letters to her and her mother from her brother John Powell and his friend Samuel Peters Jarvis are extant, which describe Macdonell's suffering. By his will Macdonell left his fiancée a choice between £100 and a lot of land north of King Street between Yonge and Church Street, York (Toronto). She took the money. The land is now worth probably \$10,000,000, but was then of little value, taxes came heavy, and the family was land poor. She afterwards married Samuel Peters Jarvis; her descendants are amongst the most respected people of the Province.



Dr. Baldwin survived till 1844, held in the highest esteem by all, except possibly for a time before, during and after the Rebellion. Always an advocate of Responsible Government, he became involved in the schemes of Mackenzie and the Radicals. He did not go with Mackenzie all the way, drawing the line at rebellion. It is perhaps not impossible that he would have joined them had they been successful, but, as it was, he took no part in the armed rising. It cannot, however, be said that he was successful in banishing the suspicions of all.

He was Treasurer of the Law Society 1811-1815; 1820-1821; 1824-1828; 1832-1836: he superintended the building of Osgoode Hall, and was a most active member of Convocation.

It is at least interesting to know that about a hundred years ago it was considered "the thing" for the highest law officer of the Crown the official head of the Bar, and the head of the Law Society,¹⁵ openly to fight a duel, admittedly a crime, which in a fatal case would be considered murder.¹⁶

WILLIAM RENWICK RIDDELL.

¹⁵ In a letter to Hon. Robert Baldwin, February 13th, 1849, J. E. Small, Treasurer of the Law Society, speaks of Dr. Baldwin thus: "One of the oldest and most respected members of the Profession and who might with much truth be styled the father of the Society in Upper Canada." June 4th, 1850, J. G. Spragge, Treasurer (afterwards Chancellor and Chief Justice of Ontario), writing to Hon. Robert Baldwin, speaks thus: "The long honoured Treasurer, whom we regarded not only as Treasurer of the Law Society, but in some sort as a Father of the Profession of which we were most of us junior members."

¹⁶ Most of the facts of this duel are derived from a letter from Dr. Baldwin to Serjt, Firth, dated April 22nd, 1812, now in the Ontario Archives.

Dr. Baldwin is said to have had at least one other duel—equally innocuous—arising from a dispute between him and other counsel at *nisi prius*. I have not been able to verify this by a contemporary account, and I think it an error. Col. John Prince, of Sandwich, also a member of the Bar, is credited with a number of duels, but I can find no contemporary account of any of them. Our Bar has always had its complement of fighters.