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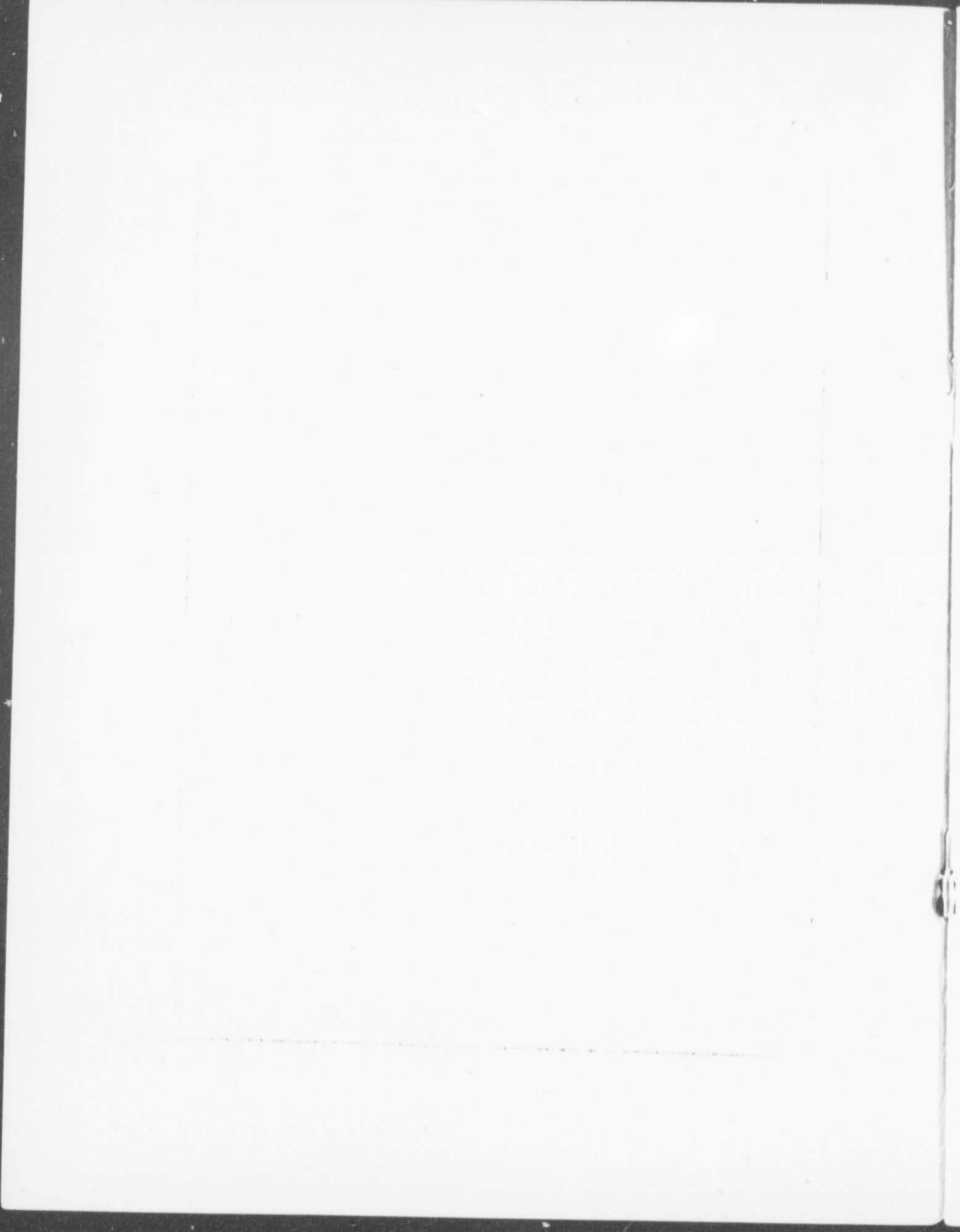
INCIDENTS IN THE LIFE  
OF THE LATE  
CHIEF JUSTICE

ARCHIBALD McLEAN

SEVEN YEARS PRESIDENT OF  
ST. ANDREW'S SOCIETY  
TORONTO



*By*  
A. McLEAN MACDONELL, K.C.



*Incidents in the Life of the late Chief Justice  
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THE HON. Archibald McLean, the subject of my remarks this evening, was a Highland Scotsman by descent but a native of our own province of Ontario. His parents immigrated to this country, from Scotland, not long after the Battle of Culloden, in 1746, where their sturdy ancestors had wielded the sword in the cause of the Stuarts and in support of the principles of the Jacobites. It is only natural, then, that it should frequently have been said of the late Chief Justice that he had in him all the characteristics of a Highland Scotsman. He would certainly, in the present day, be considered as having had an eventful career. The conditions of life in Canada the latter part of the eighteenth century and in the early years of the nineteenth, the war of 1812, and the rebellion of 1837, were well calculated to furnish a suitable background for a man of so much character, individuality, and loyalty to this country.

Archibald McLean was the son of Colonel, the Hon. Neil McLean, of St. Andrews, Upper Canada, a little village situated about four miles north of Cornwall, not far from the confines of the County of Glengarry. The father, Neil McLean, was born at Mingarry in the Island of Mull, Scotland. At an early age Neil McLean obtained a Lieutenantancy in the Royal Highland Emigrants (84th Regiment), which was embodied in

Nova Scotia and the Eastern American Colonies; McLean came to this country to take up his commission. In 1796 he became a captain in the Royal Canadian Volunteers, serving in Montreal, Quebec and York (Toronto) as Volunteer Officer. When the Regiment disbanded he settled at St. Andrews. Besides his military activities, Neil McLean took a keen interest in municipal and legislative affairs. He was called to the Legislative Council of Upper Canada in 1815.

He married Isabella, the youngest daughter of John Macdonell of Leek, by whom he had three sons and five daughters. The sons were John, the eldest; Archibald, the second and the subject of this sketch, born at St. Andrews on April 5th, 1791, and Alexander, the youngest, who, I may say, was my mother's father.

Archibald and his two brothers received their early education at Dr. Strachan's school in Cornwall. Dr. Strachan, afterwards the well-known Bishop Strachan, taught the first school of importance in Upper Canada, attracting pupils from all parts of the Province. He had, therefore, the honour of educating and in no small measure moulding the characters of, many boys who afterwards took an active part in the affairs of this country, among whom, in addition to the McLeans, may be mentioned Chief Justice Sir John Beverley Robinson, Chief Justice Macauley and many others.

At sixteen years of age, Archibald McLean considered he had acquired sufficient knowledge to warrant him in striking out for himself in pursuit of the purpose he had formed, namely, a study of the law. To carry out this purpose he proceeded to York (now

Toronto), and in the Trinity Term of 1808 was entered a Student of the Law in the books of the Law Society. On being admitted, he immediately entered the office of Mr. Firth, then Attorney-General, where he continued his studies until the outbreak of the war in 1812. By this time Mr. Firth had gone out of office and been succeeded by the Honourable John Macdonell (Greenfield), who was appointed Attorney-General, November 28th, 1811. It will thus be seen that the student McLean and the Attorney-General Macdonell were naturally brought in very close relationship. Besides, McLean, through his mother, was a blood relation of Macdonell. They had also both been reared and educated in the eastern end of the Province.

With the outbreak of war in 1812 Archibald McLean did not hesitate to answer his country's call and when the Third York Militia was ordered to the Front, McLean was given a commission in that Regiment. He was present at the capture of Detroit, August 6th, 1812. It was on the 13th of October that year that General Van Rensselaer's army, under Brig.-Gen. Wadsworth, effected a landing at the village of Queenston (opposite Lewiston), and made an attack on the small handful of British troops stationed there, young McLean among them. Attorney-General Macdonell by this time had been appointed Provincial Aide-de-Camp, and was in attendance on Major General Sir Isaac Brock. The incident no doubt is fresh in your memories. On the morning of the 13th, before daylight, the American troops attempted to force a passage of the river at Queenston; the attempt was for some time successfully resisted and several boats were either

disabled or sunk by the fire from a one-gun battery of the British on Queenston Heights, and from a masked battery about a mile below the heights. The Americans profited by past history, however. Following the example of that Highland force which, led by the immortal Wolfe, climbed to the plains of Abraham by what was considered an impossible course, and so contributed largely to the taking of Quebec, a considerable force of Americans effected a landing some distance up the river by a path which had long been considered impassable and had, therefore, been left unguarded. In this way they succeeded in gaining the summit of the mountain and, in the skirmish which followed, carried the battery there and turned the right of the British position, compelling our men to retire, with considerable loss. History has recorded that the flank companies of the York Militia, to which Lieutenant McLean was attached, distinguished themselves greatly in their encounter with the opposing forces on this memorable morning, for Auchinleck, in his description of the first attempt to drive the Americans from the heights on this eventful day on which the noble General Brock and his brave Aide-de-Camp (Attorney-General) Colonel Macdonell both lost their lives in defence of the Province, thus outlines the engagement:

“On retiring to the north end of the village on the Niagara road, our (the British) little band was met by Colonel Brock, attended by his A.D.C., Major Clegg and Colonel Macdonell. He was loudly cheered as he cried: ‘Follow me boys’, and led us at a pretty smart trot toward the mountain. Checking his horse to a walk, he said: ‘Take breath, boys, we shall

want it in a few minutes.' Another cheer was the hearty response both from regulars and militia. At that time the top of the mountain and a great portion of the side was thickly covered with trees and was now occupied by American riflemen. On arriving at the foot of the mountain where the road diverges to St. Davids, General Brock dismounted and, waving his sword, climbed over a high stone wall, followed by his troops; placing himself at the head of the light company of the 49th he led the way up the mountain at double quick time, and in the very teeth of a sharp fire from the enemy's riflemen, and ere long he was singled out by one of them who, coming forward took deliberate aim and fired; several of the men noticed the action and fired—but too late—and our gallant General fell on his left side, within a few feet of where I stood. Running up to him, I enquired: 'Are you much hurt, sir?' He placed his hand on his breast, but made no reply and sunk down.

"The 49th now raised a shout 'Revenge the General' and regulars and militia, led by Colonel Macdonell, pressed forward, anxious to revenge the fall of their beloved leader and literally drove a superior force up the mountain side to a considerable distance beyond the summit. The flank companies of the York Militia under Captains Cameron and Heward, and Lieutenants Robinson, McLean and Stanton, besides many others whose names I forget, eminently distinguished themselves on this occasion. At this juncture the enemy was reinforced by fresh troops, and after a severe struggle, in which Colonel Macdonell, Captains Dennis and Williams, and most of the officers were either killed or wounded, we were overpowered by numbers

and forced to retreat, as the enemy had outflanked us and had nearly succeeded in gaining our rear."

It appears that following almost immediately upon the shot that killed General Brock, Colonel Macdonell received the wound from which he afterwards died. The Colonel called out to Lieutenant McLean: "Archie, help me." But McLean had also received a gunshot from which, happily, he recovered, though, owing to delay in extracting the bullet, his life was for a time despaired of and it was several months before he could return to his duty.

When the Americans made their attack on York on April 27th, 1813, Lieutenant McLean was there and it was he who carried the colours of the 3rd York Militia to a place of safety, burying them in the woods behind McGill's house, the site where the Metropolitan Church now stands. E. M. Chadwick, Esq., K.C., in his "Ontarian Genealogist and Family Historian", gives an interesting account of the circumstance attending the burial of the colours of the York Militia, particulars of which were furnished by Archibald McLean's son:

"Respecting the colours of the York Militia, we have all at different times heard my father narrate the circumstances, but he died thirty-four years ago, and it must be nearly forty-five years since I heard him speak on the subject, so that we can easily have forgotten things that he mentioned. My impression is that he was not with his regiment when the Americans made the attack. He was brought over after Queenston, wounded, and was a long time regaining his health and strength. After being wounded at Queenston he crawled from the field to the village,



where his wound was hurriedly dressed. The next day he rode to Niagara on the limber of the gun that bore General Brock's remains, then by schooner to Toronto, where he nearly died, and was several months very ill, so that I judge he was just about convalescent when the American attack came. My recollection is that he told me that while the action was going on he crossed the Garrison Creek, I think about the head of Adelaide Street, but of this I am not certain. How he got the colours I have no recollection, but I remember his saying that he tore them off the staff and wrapped them round him under his clothing, and that he made his way to the McGill residence. My sisters remember him saying that while there an alarm was given that the enemy was approaching, that he went out through the back door of the house, retreated into the woods and there buried the colours. They also remember his stating to them that he asked Bishop Strachan's advice as to whether he was bound by the capitulation, and that the Bishop said 'no', that he had not either surrendered or been taken prisoner and advised him to make the best of his way to Kingston, which he did, with a horse lent him by some one at the McGill house."

York being now in the hands of the Americans, the Lieutenant, as noted above, made good his escape and reported himself at Kingston. We next find him at the Battle of Lundy's Lane. He was made prisoner at this battle, was detained for a time in close confinement and did not obtain his final release until the end of the war. After the Declaration of Peace, he was offered, but refused, a commission in the British regular army.

I may mention here that Col. Neil McLean, the father, when the War of 1812 broke out, was given command of the Stormont Militia and other troops in the Eastern district. Thus he was in command at the Chrysler's farm engagement. His sons, John and Alexander, also had obtained commissions and took part in the battle of Chrysler's Farm and in the taking of Ogdensburg.

Having thus traced Archibald McLean's military career, let us now return to his civil occupation. As seen, he had lost his old master. Still determined, however, to pursue his legal studies, he entered the office of Dr. Baldwin, father of the Hon. Robert Baldwin, finished his legal studies with him and was called to the Bar in 1815, Easter Term, 55 George III. He then returned at once to Cornwall, where he had received his early education, opened an office there and continued to practise his profession in that town to the year 1837.

During this period, from 1816 to 1837, Mr. McLean had a very considerable legal business. The counties around Cornwall were populated mostly by Highland Scots and, if there be any truth in the clannishness of the Highlanders, we may be sure that McLean the barrister was in just as high favour with his countrymen as was McLean the soldier, fighting side by side with them in defence of the Province.

It may be interesting to mention that Archibald McLean, early in his career, became interested in the work of Scots societies. As nearly as 1819 he became Secretary in what I think was the first Scots society in the Province of Ontario, or, as it was then called, Upper Canada. The Rt. Rev. Bishop Macdonell,

whose whole life was spent in the service of his countrymen, rightly judging that the establishment of a Highland Society, would be a very material benefit to Scotsmen in this country, solicited and obtained from the Highland Society of London, of which he was a member, a commission to establish a branch in Canada. As the result of a subsequent meeting a Society was formed under the name The Highland Society of Canada with the following officers:

President, Sir Peregrine Maitland, K.C.B., etc.; Vice-Presidents, Rev. Alexander Macdonell, Lieutenant-Colonel Donald Greenfield Macdonell (brother of Attorney-General Macdonell, and my grandfather); Colonel the Hon. Neil McLean; Treasurer, Alexander Fraser, Esq.; Secretary, Archibald McLean, Esq.; Directors, Roderick McLeod, Alexander McLean (brother of Archibald McLean and my mother's father), Alexander Wilkinson.

Archibald McLean was at all times a man who recognized his duty as a citizen and took a keen interest in all public affairs. In 1820 he was elected Member of Parliament to represent the County of Stormont in the Legislative Assembly of the Province. He retained, throughout, the confidence of the electors and continued to represent Stormont in Parliament down to the time of his elevation to the Bench. While a member on the floor of the House he was a strong adherent of the Tory party, generally acting with Attorney-General Robinson, the Leader of the House. He was twice elected Speaker.

In 1837 he removed from Cornwall to Toronto, arriving at that place about a month before the outbreak of the Rebellion. Both Colonel Fitzgibbon and

McLean were well acquainted with the dissatisfaction existing regarding the state of affairs in the country and fully appreciated the situation. Colonel Fitzgibbon especially was called a croaker on this subject, the people of Toronto, generally, scouting the idea that they had anything to fear, though rebellion, at the time, was at their very doors.

Archibald McLean, too, openly expressed his fears that there would be a breaking out of the slumbering fires of revolution. Some good citizens charged him with too much concern in this matter, to which he replied: "I am afraid we shall be caught napping." He was right—there was not a soldier in town when William Lyon Mackenzie assembled his forces at Montgomery's Tavern on the confines of Toronto.

On the night of the uprising, in December, when the city bells rang out the alarm, Archibald McLean was one of the first to respond to the call of arms. Immediately the alarm was sounded he and his son John took their horses and, going to the Old Fort, got out artillery harness and, limbering up a twelve-pounder, drove to the City Hall, where the "Loyalists" were assembled. As they drove up, the word was passed "Here come the rebels" and a hundred guns were levelled. Fortunately they were recognized by Chief Justice Robinson, who told the men who the new arrivals were. In the attack on Montgomery's Hill Mr. McLean, now with the rank of Colonel, commanded the left wing. The "rebels" were speedily dispersed and the leaders taken prisoners.

Mr. McLean was first appointed to the Bench on the 23rd March, 1837, when he received his patent as Judge of the King's Bench and it certainly cannot be

said that the service he had rendered his sovereign and country did not entitle him, to this mark of favor. In the year 1850 (19th of January), Judge McLean exchanged his place in the Queen's Bench for a Puisne Judgeship of the recently formed Common Pleas Court. From a junior Judge of the Queen's Bench he thus became a senior Judge in the Common Pleas under a new head—Chief Justice Macauley.

On the 5th of February, 1856, however, he exchanged back again, taking his place now as Senior of the Court of Queen's Bench, under his old chief, Sir John Robinson. On the 18th of March, 1862, he was appointed Chief Justice of that Court, the Queen's Bench, and later to the Presidency of the Court of Appeal.

The Chief Justice died on the 24th of October, 1865, in the 75th year of his age. At the request of the Law Society, and of the legal profession generally, his funeral was a public one. In commenting on his death the *Upper Canada Law Journal* wrote as follows:

“The manner of the late president of the Court of Appeal (Chief Justice McLean had been made President of the Court of Appeal on the 22nd of July, 1863, a short time before his death), upon the Bench was dignified and courteous; unsuspecting and utterly devoid of anything mean or petty in his own character, his conduct to others was always what he expected from them. The profession generally, the young student as well as the old practitioners will long remember his courtesy and forbearance in Chambers and on the Bench, others will think of him as an agreeable and entertaining companion and a true

friend, while others will call to mind the stately form of the old judge as he approached and entered St. Andrew's Church where he was a constant and devout attendant, rain or sunshine, until his last illness which terminated in death. Archibald McLean was a man of remarkable and commanding presence, tall, straight, and well formed in person, with a pleasant, handsome face and a kind and courteous manner, he looked and was every inch a man and a gentleman. He belonged to a race most of whom have now passed away, the giants of early history of Canada. He was one of the most brave, honest, enduring, steadfast men sent by Providence to lay the foundation of a country's greatness. The funeral proceeded to the Necropolis where, amidst the sorrow of all who knew him, were deposited the mortal remains of Honourable Archibald McLean, the brave soldier, the upright judge, and the Christian gentleman."



