



SKETCH OF THE LIFE

OF THE LATE

LT.-COL. WILLIAM EDWARD O'BRIEN, LL.B.,

BARRISTER-AT-LAW.

(Taken from the Canada Law Journal, February, 1915.)

A notable Canadian passed from the scene when William Edward O'Brien died at his residence "The Woods," Shanty Bay, Lake Simcoe, on December 22nd, 1914, in his 84th year. By his death the country lost an able statesman, the profession of law a keen legal writer, the militia an active upholder and efficient soldier, and the Empire an ardent Imperialist and a devoted citizen.

Mr. O'Brien was the eldest son of a retired naval and military officer, Col. E. G. O'Brien; his mother being a daughter of Rev. Edmund Gapper, Rector of Charlineh, Somersetshire, England. He was born near Thornhill on March 10th, 1831. About that time his father was placed in charge of a settlement of half-pay officers and others on the shores of Lake Simcoe; afterwards being Chairman of the Quarter Sessions, and Colonel of the Simcoe militia, leading them to Toronto at the time of the Rebellion of 1836-7.

In the winter of 1831 Colonel E. G. O'Brien, with his wife and child, one year old, took up his grant of land on the north shore of Lake Simcoe, crossing the lake on the ice with a party of axemen, who, before night, cleared a sufficient space for and erected three shanties to house the party. This gave the name to the settlement. Under such stern and unusual circumstances W. E. O'Brien began his career. The other members of the family consisted of his brothers, Lucius Richard O'Brien, first President of the Royal Canadian Academy, Henry O'Brien, K.C., of Toronto, and three sisters. His wife, daughter of the late Col. Loring, and his only child, Mrs. Verner Wilson, survive him.

There being no educational advantages in Simcoe in those days Colonel E. G. O'Brien moved to Toronto with his family; and W. E. O'Brien was educated at Upper Canada College. He

then entered the field of journalism, being editor of a daily paper called *The Atlas*, and subsequently one of the editors of *The Colonist*, the Conservative organ of that day. Whilst so engaged he made time to read for his LL.B. degree at Toronto University, which he received in 1861. He then took up the study of the law and was called to the Bar in 1864. He practiced in Barrie for a short time, but his taste for country life took him to his father's old place at Shanty Bay, where he spent the rest of his life. He did not, however, abandon his literary pursuits, and many articles which appeared in the public press on subjects of constitutional law, the defence of the Empire and Imperial subjects were from his pen. Many of these and others of legal interest have appeared from time to time in this JOURNAL. His writings shew a literary style and diction of high order, an exact knowledge and judicial and fair treatment of any subject dealt with.

Early in life, coming of a fighting stock, he became interested in the volunteer movement. He was made captain of the Barrie Rifle Company, which afterwards became part of the 35th Battalion, known as the "Simcoe Foresters," and he was largely instrumental in the formation of that corps. He became its Lt.-Colonel in 1882 in succession to Lt.-Col. McKenzie and so remained until 1897, when he retired, becoming its Honorary Colonel. In the North-West Rebellion of 1885 he was placed in command of a provisional battalion taken from the "York Rangers" and "Simcoe Foresters." During this period he was in Qu'Appelle, and was specially mentioned for bravery and tact in dealing with hostile Indians then on the point of rising. In his book "Soldiering in Canada," Lt.-Col. Geo. T. Denison, speaking of this incident, says "Col. O'Brien went alone with an interpreter (to the Indian Camp), leaving his sword and pistol behind. He reasoned with the Indians and succeeded in arranging all satisfactorily and probably prevented an Indian outbreak. It was found out afterwards that the Indians, suspecting treachery, were ambushed all about the house in which the conference was held, in order to defend their chiefs. The act of Col. O'Brien was one of the finest things done by any officer in the North-West. It required the highest courage both physical and moral. . . . The Canadian militia should be proud of him." Besides the Fenian Raid and the North-West Rebellion medals, Col. O'Brien held the General Service medal and elasp.

In 1897 he was present, by invitation, as the guest of the

British Government, at Queen Victoria's Diamond Jubilee, as one of the representatives of the Canadian militia. In 1901 he was appointed Canadian Commissioner at the Glasgow Exhibition.

His entrance into political life was in 1878, when he unsuccessfully contested, in the Conservative interest, the District of Muskoka and Parry Sound, for the House of Commons. In 1882, however, he was elected for the same constituency, for which he continuously sat until 1896, when, owing to his break with his party hereafter alluded to, he necessarily ran as an independent candidate, but being bitterly opposed by the machine politicians there he was defeated by a small majority. From that day he seldom appeared in politics, though his interest in the welfare of his country remained unabated.

One of the best remembered incidents in the Parliamentary history of this country was the resolution asking for the disallowance of the Jesuit Estate Act of the Quebec Legislature. This matter, it may be noted, was first brought to the attention of the public in this JOURNAL, in several articles from the pen of Col. O'Brien. These articles were entitled, "The history and mischiefs of the Quebec Jesuit Estate Act" and "The Constitutionality of the Quebec Jesuit Estate Act." These may be found, ante vol. 25, at pages 69, 76 and 130, where the subject was fully explained and luminously treated.

The leading figure in the debate in the House of Commons and in the agitation caused thereby throughout the country, was "The man from Shanty Bay," as he was then often called. He moved the famous resolution, so well known in those days, the fight being continued in the House by the eloquence and force of the late D'Alton McCarthy, M.P., and others. Principal Caven, of Knox College, and other prominent citizens who led the Equal Rights movement, supported the action of the "Noble Thirteen," as they were called, who alone in the House dared to stand out against all political parties to oppose a measure which their conscience rejected as unconstitutional and unjust. The *Toronto Globe* thus refers to the incident:—

"The greatest day in Col. O'Brien's life was Tuesday, March 26, 1889, when in the House of Commons he moved as an amendment to the motion to go into supply:—

"That an address be presented to the Governor-General setting forth that this House regards the power of disallow-

ing the acts of legislation' of the Legislative Assemblies of the Province of Quebec vested in his Excellency in Council as a prerogative essential to the existence of the Dominion; that this great power, while it should never be wantonly exercised, should be fearlessly used for the protection of the fundamental principles of the constitution and for safeguarding the general interests of the people; that in the opinion of this House the passage by the Legislature of the Province of Quebec of an Act entitled "An Act respecting the settlement of the Jesuit estates" is beyond the power of that Legislature; firstly, because it endows from public funds a religious organization, thereby violating the unwritten, but undoubted, constitutional principle of the complete separation of Church and State, and of absolute equality of all denominations before the law; secondly, because it recognizes the usurpation of right by foreign authority—his Holiness the Pope of Rome—in declaring his consent necessary to empower the Provincial Legislature to dispose of a portion of the public domain, and also because the Act is made to depend on his will, and the appropriation of the grant thereby made is subject to the control of the same authority; and, thirdly, because the Society of Jesus is a secret and politico-religious body, the expulsion of which from every Christian community wherein it has had a footing was rendered necessary by its intolerant and mischievous intermeddling with the functions of the civil government.

"Therefore, this House prays that his Excellency will be graciously pleased to disallow the Act."

"The force of character necessary to the presentation of this amendment before a hostile House is illustrated in the Parliamentary report of the day in the *Globe* that 'there was not the faintest murmur of applause as Mr. O'Brien resumed his seat. His speech had been received in dead silence.'

"In the closing passages of this speech Col. O'Brien declared that he and those who stood with him were resolved 'that this Dominion must remain British and nothing else, and that no foreign power, authority or jurisdiction, civil or religious, shall be allowed to exercise powers which interfere with that declaration.'"

The *Toronto Mail* of that date said:—

“Colonel O’Brien has acquitted himself well. His resolution in amendment to the motion of supply pronounces the Jesuit Acts unconstitutional, first, because the endowment of the Order is a departure from the principle of religious equality and at variance with the view that there should be no connection between Church and State in Canada which was set forth by the Legislature forty years ago; secondly, because by the Act of endowment a foreign potentate is authorized to interfere in our domestic affairs; and, lastly, because the incorporation and endowment of this Order, which has been expelled from many European countries for various high offences, is contrary to public policy. Col. O’Brien supported these propositions in a clear and forcible speech, which will be read with great interest. His arguments on the question of public policy are, in our opinion, unanswerable, as is also his contention that the payment of the Jesuit claim was in direct contravention of the act of the King of Britain in escheating their derelict estates, which act the Legislature had over and over again confirmed, although it required no confirmation. Col. O’Brien deserves the thanks of the community for the manly and independent course he has pursued. He has set an example to the other Ontario members which it is to be hoped, for their own sake, they will follow.”

The *Telegram* thus referred to the same incident: “He did more than any other man to acquaint Ottawa with the rare virtue of Parliamentary independence.”

Recently the *Mail and Empire* said: “During the fourteen years of his career in the House of Commons no member commanded a greater measure of respect from his colleagues on both sides of the House, and from those holding a different faith, than did Col. O’Brien. It was felt by all that his opposition was based not on prejudice or opportunism, but on a firm belief that, in taking the course he did, he was serving the best interests of the country.”

The protest which arose resulted in the “Equal Rights” movement, which stirred the Dominion from end to end and aroused the conscience of the people as nothing has done from the time of Confederation up to the present war.

In 1896 Mr. O’Brien supported D’Alton McCarthy in his opposition to the Manitoba Remedial School Bill, by which Sir Charles Tupper’s Government sought to coerce Manitoba into

the restoration of separate schools. Mr. O'Brien and Mr. McCarthy were read out of the party by the Conservative leader, thus depriving him of his two most independent followers, and who were among the most useful members in the House.

Many notices of the late legislator have recently appeared in the public press. It seems fitting that some of these should be quoted, illustrating, as they do, the regard in which he was held by all shades of politics. It also seems more suitable that, owing to his close association with the personnel of this JOURNAL that the thoughts of others should be given rather than our own.

Of him the *Toronto News* said: "Independent, honest, public-spirited and of high integrity, he was as good a type of public man as ever sat in a Canadian Parliament."

The *Toronto Star*, referring to his death, said: "Col. O'Brien was a Canadian of a good type. Born in the forest of Simcoe he may be fairly classed with the pioneers, the men who loved Canada and had faith in Canada when it was small and obscure. In the House of Commons at Ottawa he won a reputation for genuine, sturdy independence. When he differed from his party he seemed to do so because he was constrained by his honesty or sense of fair play. He never became a popular hero, though he might have been one if he had chosen to advertise himself. His independence made him rather a lonely figure at Ottawa. Popular feeling against the Jesuit Estates Act was stronger than the Parliamentary vote would indicate. But Col. O'Brien never attempted to make capital out of the popular feeling. He voted with the thirteen because he thought it was right; and he would have cast his solitary vote against all the rest of the House with the same firmness and with the same modesty. He was an Imperial Federationist when the movement was regarded as a fad. He sought no prominence when the movement became popular. He was an early advocate of a British preference, to be effected by a reduction of the Canadian tariff, and although a Conservative he was not an ardent protectionist. But the important thing is not the nature of the views which he held, but the manner in which he held them; his civic courage and his strong sense of public duty, his unselfishness and his indifference to praise or blame."

The *Toronto Globe* said that "during his entire Parliamentary career of unceasing and strenuous party strife, he never lost a personal friend or made a personal enemy, and never forfeited

either the affection of his friends or respect of his opponents. A cultured gentleman, he always sought to maintain the dignity of the House, and his bearing and language were frequently a severe rebuke to those who did not maintain his own high ideals of personal and official conduct." And again, "He was a fine exemplar of those very qualities which have moved Britons to stake their all rather than break their pledged word to little Belgium. Canadians like William O'Brien maintain in this new world the highest traditions of the old. He was an honourable and courageous man, and he bore himself through life with the quiet dignity of a gentleman. To him was given the privilege of living up to the high standard so pithily expressed in the noble words of George Herbert, that good divine of the old Church O'Brien loved and served so well:—

Lie not, but let thy heart be true to God,
Thy mouth to it, thy actions to them both.' "

The funeral took place from "The Woods," Shanty Bay, on December 26th. His old regiment desired that it should be a military funeral, and this was carried out with the soldierly precision of that fine corps. Among the clergymen who took part in the service was the Ven. Archdeacon Cody, of Toronto, who referred to the deceased as "one who, by patient doing of great things, has helped to make the history of our Dominion, and will be seen in the future, even more than in the present, to be one of Canada's outstanding citizens. During the time he was a member of the Dominion Parliament friend and foe alike learned to respect, admire and like him. No one for a moment thought he had any private end to serve. William O'Brien was a man without fear. What his conscience said, that was his conviction. He feared not the frown, neither was he swayed by the fawning of men. He represented a noble type of public servant. His name will go down to fame in Canadian history as one who stood against all the blandishments that could be brought to bear on him; as one who withstood the attacks and criticisms of both friends and foes, because he defended those great principles of religious liberty which had been won in the past at the cost of blood and sacrifice. He was no opportunist in politics or in daily life, but a man of conviction, a man of magnanimity, who could forgive; a man of sympathy, a man who knew that the true foundation of national greatness lay in the character of the citizens."