

OLD PROVINCE TALES

UPPER CANADA



RIDDELL

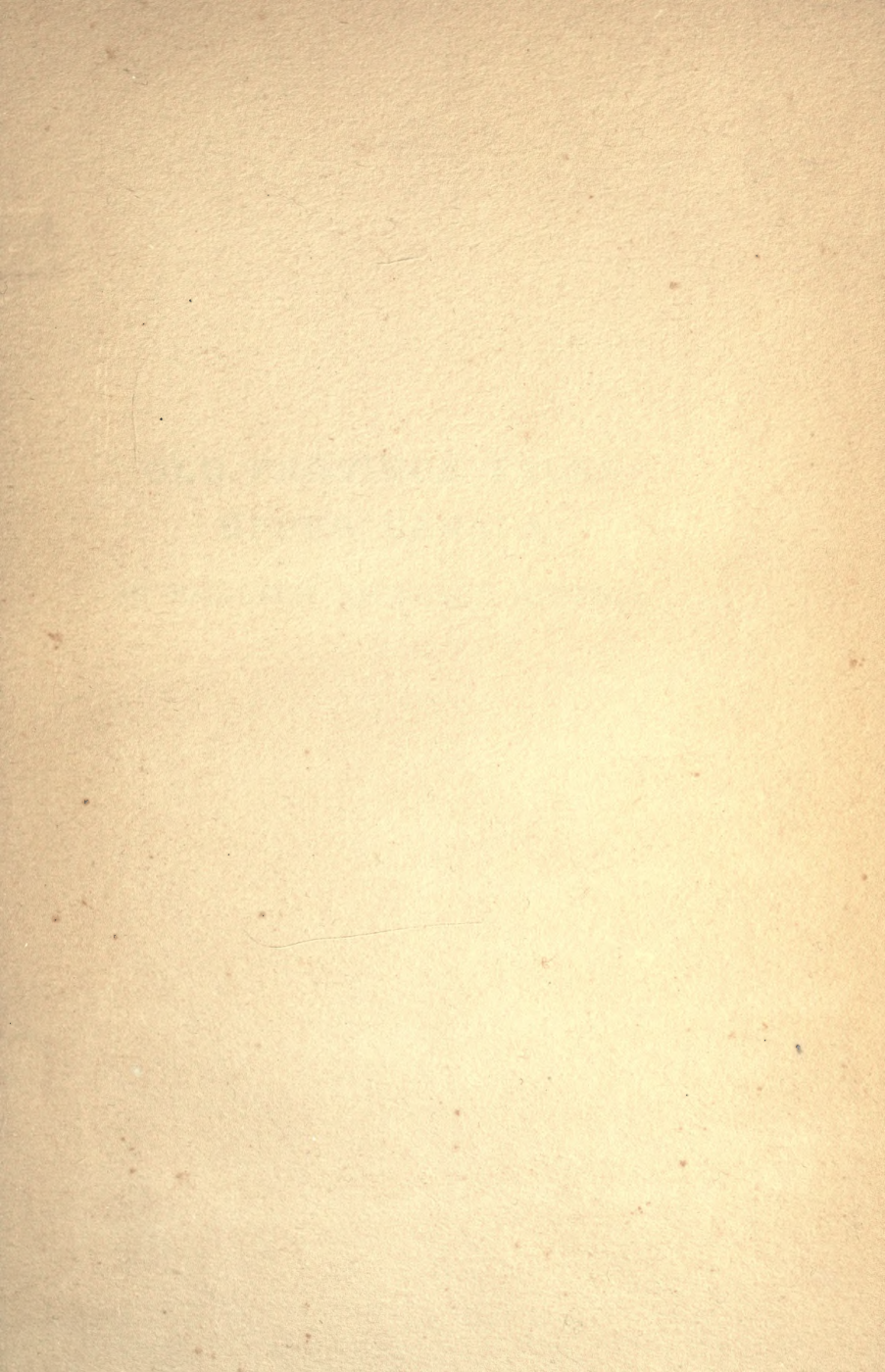


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To the Honourable
Wallace Kestitt, K.C., &c.,
in memory of our long
and warm friendship
and our quondam
Partnership ever
harmonious and
pleasant

from William Rowick Riddell
Esq. Good Hall, February 9, 1921

Those friends thou hast, and their adoption tried,
Grapple them to thy soul with hoops of steel



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BY WILLIAM RENWICK RIDDELL

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WILLIAM RENWICK RIDDELL



TORONTO
GLASGOW, BROOK & COMPANY

1920

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CHAPTER I

THE CAPTIVE LOYALISTS¹

IN the Old Dominion, the Province of Virginia,² in the latter part of the eighteenth century, lived René La Force with his wife and family. He was happy in his family; his wife Agnes was a true helpmeet, and his children were obedient and helpful. While many of his neighbours were strong Continentalists and ardently desired full Home Rule for the Colonies, La Force was loyal to his king and his flag. Never hesitating to express his views, he became most unpopular in the community; he was unjustly treated; heavy fines were laid upon him, and he was subjected to many and increasing annoyances.

At length in 1776, when the Colonies declared their independence, he made up his mind to withdraw from a society which was uncongenial—a society composed of those whom he considered traitors and rebels, and who certainly were Republicans who had

forsworn the allegiance into which they had been born, to establish a new nation and live under a new flag.

La Force was a man of considerable property, owning many slaves, male and female, and a large herd of cattle, with other property. He gathered his family around him, and in true patriarchal fashion journeyed with wife and children, slaves and herds towards the West, where the wilderness of Kentucky offered him an asylum from the persecution of his former friends. When they had arrived at the end of civilization and settlement, they stayed their march for a rest, intending to renew it on the morrow. In the evening two of the sons went to kill a fat ox for food, taking with them their rifles. A shot from one rifle sufficed to kill the beast; the other rifle was laid down carelessly by the main tent while its owner helped to skin and prepare the ox. After nightfall, when the young man had retired to rest in his tent, he remembered that he had left his rifle lying on the ground. He went out and picked it up: in groping around in the dark among the tent cords, he accidentally discharged his weapon. His father had retired; and unfortunately the bullet found its billet in his body, mortally

wounding him. This unhappy accident delayed their progress; but after a short time, staying but to bury the unhappy father, the survivors took their way westward into the wilderness, and came to a halt at a place estimated by them to be about two hundred miles from any settlement of the recreant Colonists.

Here they picked out a piece of ground for a small fortress, surrounded it with palisades as a defence against the Indians, and built within the stockade huts for themselves and the slaves. They thought themselves safe from molestation from any but Indians, and had little fear of them, for there seemed enough room for all. They cleared land, cultivated it, and were making the wilderness bloom as the rose, living entirely within themselves without neighbours and without communication with the rest of the world. But their settlement was in the favourite hunting-ground of the Indians; and the Red Men complained of them and others to the representative of the Great Father, King George, at Detroit.

Many excursions were being made at this time from Detroit by small detachments of British troops, each of them accompanied by

a more or less numerous band of Indian allies ; the Revolutionary War was raging in all its virulence, and American settlers were everywhere harried by the royal troops and their allies, just as the Loyalists were harried by the Continentalists. As far west as the Mississippi, through all the Ohio district, the hinterland of the Atlantic Colonies, the Republicans had here and there blockhouses, fortifications of more or less size and strength : they had also some regular and many irregular troops in this wild region. A raid from Detroit, besides threatening these scattered posts, afforded a convenient opportunity of striking at the rear of the larger and more formidable armies to the east.

One of the most active and efficient officers in the British service was Henry Bird,³ a captain in the 8th Foot, an engineer of great skill, and no mean tactician, who had come from Niagara in 1778 with a detachment of fifty men. In the spring of 1779 he was so anxious to proceed against the enemy that he kept urging Henry Hamilton,⁴ the commandant and lieutenant-governor of Detroit, to allow him to go with a few volunteers against the revolted Virginians—both those in what is now Virginia and also and primarily those

in its western hinterland. Just at that time, too, a large body of American troops was threatening the loyal Indians; and they were complaining of the neglect of the lieutenant-governor to protect them. Both Bird and the Indians were pressing and insistent, and at length Hamilton yielded to their importunity; notwithstanding the weakness of his garrison, he allowed Bird to go in command of a small detachment of troops with a number of volunteers. He also sent considerable ammunition with him for the Indian allies. Many Ottawas and Chippewas joined the expedition, and it set off for the south. Although by no means so large or so important a force as that commanded by Bird in 1780, this was no contemptible little army either in numbers or in personnel.

In 1778 there arrived at Detroit from Fort Pitt (Pittsburgh) Simon Girty, Alexander M'Kee and Matthew Elliott, who had escaped from the rebels and made their way to loyal British territory to offer themselves to the service of the crown.

Simon Girty,⁵ born in Pennsylvania in 1741 of an Irish father and an English mother, was at the age of fifteen taken prisoner by the Indians with his mother and brothers.

He lived with the Senecas for three years, when he was set free. For a time he seemed to favour the Revolutionary party, but finally made up his mind to join the other. He was a hardy, brave, and indefatigable border warrior, whose name has suffered from his taking the losing side. Like some others he has been blackened by partisan writers: 'renegade,' 'fiend,' 'worse than Indian cruelty,' etc. etc., are freely used in connection with his name, but he seems to have been no worse and no better than the other Indian fighters, many of whom have received fulsome eulogies. Later on he is said to have been the last man to leave Detroit when it was given up to the Americans in 1796. Thereafter he lived near Amherstburg, where he died in 1818.

Alexander M'Kee was a native of eastern Pennsylvania. He became a justice of the peace and deputy Indian agent at Fort Pitt, and was carrying on a large and lucrative business there when the Revolutionary troubles began. He took the Loyalist side and was imprisoned in 1777 by General Hand of the American forces at Pittsburg. Released on parole, he was threatened with imprisonment again, and he made his escape with Girty and Elliott.

Arrived at Detroit, he offered his services to the commandant, and was appointed interpreter and captain in the Indian service. He took part in almost every operation of the loyal forces till the end of the war. In 1788 he was made a judge of the Court of Common Pleas for the District of Hesse, but declined to act. He died in 1799. His descendants are still prominent and respected members of society in and near Windsor.

Matthew Elliott was an Irishman who emigrated to America. He took up his residence in Pennsylvania and early engaged in the Indian trade with headquarters at Fort Pitt. He was a Loyalist, but in trading with the Indians he was overtaken in 1776 near the present Dresden, Ohio, by a party of Wyandots, and his goods were confiscated by them. He made his way to Detroit with his servant, and was there arrested in March 1777 as a spy by Hamilton and sent to Quebec as a prisoner; but next year he was released on parole and went back to Fort Pitt by way of New York. He left for Detroit with Girty and M'Kee in March 1778. Arrived at Detroit, he took an active part on the Loyalist side during the whole course of the war. He was made superintendent of Indian Affairs and

received full recognition for his very valuable services. He lived to fight in the War of 1812, commanding a body of Indians at Miami Rapids, October-November 1812, and taking part in other battles. He seems to have died in 1814.

These three joined Bird's expedition, as did Captain Graham, a captain in the Indian Department, whose influence over the Indians was very great. There was also in Detroit at the time a French Canadian who had become a loyal British subject—Duperon Baby. Baby was born in 1738 and became a merchant in Detroit of great enterprise and considerable success. At the time of the conquest in 1759-60 he was at Fort Pitt: he refused at first to change his allegiance, but after assisting Major Gladwin in the defence of Detroit against Pontiac, and after the final cession of Canada in 1763, he took the oath of allegiance to King George, and thereafter was most active in his new allegiance. He became an interpreter and captain in the Indian Department, and was a prominent and trusted official as well as a successful fur trader. He also after the war was made a judge of the Court of Common Pleas; but he declined to act, on the ground of ignorance

of law and his large business connection. He died at Sandwich in 1789.

Baby joined Bird's expedition, together with a M. Le Duc. (Contemporary writers sometimes call him Le Deuke, but French orthography puzzles illiterate—and some literate—Englishmen even to this day.)

Frederick Fisher, an interpreter of the Indian Department, could not resist the temptation to take part in the adventure—he survived till 1810—and it is probable that there were many other volunteers, whose names have not been handed down.

On June 25, 1779, after the little La Force colony had enjoyed three years of Arcadian simplicity, there appeared before the stockade a body of British soldiers and Indians, a detachment of Bird's force, and demanded surrender. We are not told whether Mrs La Force asserted her loyalty at that time; if so, it was in vain; the small garrison surrendered on the promise of being taken in safety to Detroit.⁶

The Indians were apt to get out of hand, and the prisoners with many others were hurried to Detroit, some hundreds of miles away. At Detroit the slaves were divided among their captors: Simon Girty took

Scipio ; M. Le Duc, Tim and Ishener ; Captain Graham, Stephen ; Captain Elliott, Joseph and Keggy ; M. Baby, Job ; Mr Fisher, Hannah ; Captain M'Kee, Candis ; while the Indians took Bess, Grace, Rachel, and Patrick. The other—the white—captives were sent to Montreal by boat and land ; and there they were driven into the Provost Prison like cattle into a pound.

Fortunately, on their way to the prison, marching along the open street under charge of an armed party, they were met by William Dummer Powell, then a practising barrister and attorney in the city. On his making inquiry from the non-commissioned officer commanding the escort, he was informed that they were prisoners of war taken in the Kentucky country and brought into Detroit by a detachment of the garrison there.

Powell at once brought the matter to the attention of Sir Frederick Haldimand, at that time governor, and had Mrs La Force sign a petition (still extant). Haldimand issued peremptory orders to the commandant⁷ at Detroit to search for the slaves of Mrs La Force and send them to Montreal to their mistress. Detroit, however, was too far distant from headquarters, communication

was too difficult, interests prompting to disobedience of Haldimand's order too strong for the order to be effective. The Detroit commandant temporized, and after repetition of the order he stated that the slaves could not be produced. Poor Agnes La Force never saw any of them again.⁸

NOTES TO CHAPTER I

¹ Many of the facts of this paper are taken from a manuscript of Chief Justice William Dummer Powell. He has fallen into error in a few particulars. I have found not only in this but in other matters that his memory is not wholly to be relied upon. Where his statements are not contradicted by (substantially) contemporary documents, I have adopted them; where I have departed from them, I have given the reason for such departure. For particulars as to Powell, see note 1, chap. iii, p. 41 *post*.

² Powell makes La Force a resident of North Carolina; but the petition of Mrs La Force, still extant, states that she is the 'widow of René La Force, late of Virginia.' This petition is reprinted from the Haldimand Papers (in the Canadian Archives) and in the *Michigan Pioneer and Historical Collections*, vol. xix, p. 494; it purports to have been delivered January 6, 1780.

³ For Captain Henry Bird, see *Michigan Pioneer and Historical Collections*; references will be found in the Index volumes. He afterwards was made chief engineer at Detroit and planned Fort Amherstburg. After most strenuous and successful public service on this continent he joined the 54th Regiment in Ireland and assisted in quelling the rebellion there. After the suppression of this rebellion he immediately embarked for foreign service and joined the expedition to Egypt

under Sir Ralph Abercromby. He died on that expedition in 1801, after a service of thirty-seven years.

For his active and zealous services with the Indians through the whole of the Revolutionary War from 1775 to 1783, he was highly esteemed by his superiors; but, as in the case of too many others, his merits were forgotten and he was not treated with generosity or even plain justice in his dealings with the authorities.

⁴ Hamilton first appears in the history of this continent in 1777 as governor of Detroit. The following year he captured Vincennes, whose commander Helm was taken prisoner with a small force of defenders. The well-known American commander, George Rogers Clark, shortly afterwards besieged the fort; and Hamilton was in his turn forced to surrender. He was treated by Clark with much barbarity, and on Jefferson's order was sent handcuffed to Williamsburg, where his treatment was still worse. Probably as an effect of a letter from Governor Haldimand to Washington, Hamilton was paroled; and he got to England in 1781. He was made lieutenant-governor of Quebec in 1784, filling that position a little less than a year. He was a man of no great capacity and but little judgment, although perfectly honest and sincerely desirous of doing his duty.

⁵ A full and accurate account of the Girtys, including Simon 'the Renegade,' is given in a work which is very scarce (a copy is in 'The Riddell Canadian Library' at Osgoode Hall, Toronto), *History of the Girtys*, by Consul Willshire Butterfield (Cincinnati, Robert Clarke and Co., 1890). Mr Butterfield, while by no means eulogistic of Simon Girty, is scrupulously fair to him, and thus is an almost unique exception to the most of American writers who mention him.

⁶ Powell, who makes La Force take with him his sons-in-law and sons' wives, says that 'they had no sooner surrendered . . . than her sons and sons-in-law had to resort to arms to resist the insults of the Indians to their wives and slaves. Several lives were lost. . . .' This is, I think, quite incredible. Mrs La Force does not mention anything of the kind, though she speaks

of her five children. From the fact that Powell seems to connect this incident with the document mentioned in note 8 *post*, and other suggestions, I think his memory plays him false here and that he has confused this incident with the capture of several forts in 1780 (one of them called Martin's), when the Indians did act in the shameful manner described by Powell. See, for example, *Michigan Pioneer and Historical Collections*, vol. xix, pp. 538, 539.

⁷ This was Major Arent De Peyster, who after the capture of Henry Hamilton took over the command of 'Detroit and its dependencies' from the temporary control of Captain Lernoult—the Moravians describe De Peyster as 'of generally happy memory.'

⁸ To show how captured slaves were disposed of, Powell gives us the copy of a document which came before him in his court. It reads thus:

'Detroit, May 14, 1784.

'I Henry Bird do declare that the wench Esther became my property in consequence of an article of Capitulation of Martin's Fort, whereby the Inhabitants and Defenders agreed to deliver up their Blacks, moveables and Arms to the Indians as their property on Condition that their Persons should be safely conducted to Detroit: which article was punctuly complied with and fulfilled by the Captors. The said Esther became my property by Consent and permission of the Indian Chiefs.

(Signed) H. Bird, Captain.

Present and Witness to the
Capitulation.

(Signed) A. M'Kee, D.A.
Indian Affairs.'

'I do hereby make over and give my Right and Property in the said Wench and her male Child to William Lee in consideration of having cleared for me sixteen acres of land.

(Signed) H. Bird, Captain.'

CHAPTER II

THE FIRST ATTORNEY-GENERAL

THE beautiful town on the left bank of the *embouchure* of the Niagara into Lake Ontario which is now called Niagara-on-the-Lake was the first capital of the province of Upper Canada. The hamlet had been called West Niagara, Butlersburg (some manuscripts read Butlersbury), Loyal Village, Nassau, Niagara ; but Simcoe, the first lieutenant-governor of the new province, upon his arrival there in 1792 gave it the name of Newark, from Newark, New Jersey, which he had known well when in command of the Queen's Rangers during the Revolutionary War.

Thither in November 1792 came a traveller, versed in English law if not a barrister. One day he found himself in the primitive but ceremonious Trial Court at the capital ; and we have his contemporary account.¹ He tells us that, presuming on the ignorance of court and jury, 'an advocate from England of

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some authority ' insinuated to the jury whom he was addressing that if they found against his client ' he would bring a writ of attain against them '—the writ of attain being effete and dead as Julius Caesar. This advocate was John White, the first attorney-general of the province.

John White was the eldest son of Thomas White of Cork: he received the ordinary education of a gentleman and was able to write with elegance and precision. The well-known lawyer Samuel Shepherd (afterwards Sir Samuel), who refused the chief-justice-ship of two courts, married White's sister (whom Scott pronounced ' fine and fidgety '); and that seems to have determined White's choice of a profession.

He was entered of Gray's Inn in 1780 and was called to the Bar about 1785, apparently by the Inner Temple.² He then went to Jamaica and practised law for a time with no great success; returning to England, he went to live in Wales with his wife and family, intending to take holy orders. But Shepherd knew Osgoode, the English barrister who in 1791 was appointed the first chief justice of Upper Canada; and he made earnest application to him for a position in the new province

for his brother-in-law. Osgoode had no power himself to appoint, but on the strength of Shepherd's recommendation he wrote to Evan Nepean³ to ask the secretary of state to appoint White as attorney-general of Upper Canada. This was done, and White received the appointment asked for, at a salary of '£300 per annum with a possibility of some small addition from other tenable appointments.'

Setting sail from England with the chief justice and Peter Russell⁴ in the spring, he arrived at the Banks early in May 1792; at Quebec June 2; and at Montreal some time later in June. Thence, on foot and by boat, he journeyed to Kingston, where the governor was temporarily resident. The chief justice arrived at Kingston at the same time, the last day of June 1792.

William Dummer Powell, the 'first judge' at Detroit, was at that time holding the Court of Oyer and Terminer or Criminal Assizes at Kingston. With him as marshal of assize or clerk of the court was Walter Roe,⁵ the only duly admitted lawyer in Upper Canada till that time. Then and for many years thereafter the judge who presided at the Criminal Assizes had the 'patronage' of his court.

Roe was a friend of Powell's and had a very active practice in his court at L'Assomption, now Sandwich; Powell accordingly appointed him to the office of marshal of assize, petty but rather lucrative.

White adopted the system already in vogue in Canada, and took upon himself the prosecution of all crown cases. When a solicitor-general was appointed in 1797, the two divided the cases and the fees between them, the office of Crown Counsel at the assizes being one of those 'tenable appointments' for which White had stipulated. Nor was there any objection on any score to this course: till the other day, the attorney-general of England increased his official income by fees for legal business conducted for the crown.

White procured from Roe the coroner's inquisitions (one concerning an Indian) and conducted the prosecutions; he notes with dismay that all were acquitted.⁶ He complained to La Rochefoucault⁷ three years after that there was not a district in Upper Canada in which one or more persons had not been tried for murder and all acquitted, though the evidence was strong against them. Upper Canada was, for a decade or so, more free than law-abiding, and drunken-

ness was 'a very common vice in this country.'

At the instance, or at least with the approval of the governor, White was nominated for the House of Assembly as the member for Leeds and Frontenac. For a time he feared that the 'Town of Elizabeth in the County of Leeds,' being very populous, might defeat him by putting up a local candidate, but that fear proved groundless, and, although one Grogan was said to have secured forty-five votes and to be determined to stand, White was elected by acclamation. 'After which,' he says, 'they dragged me about in a chair to the diversion of the mobile⁸ and my inconvenience.' However, he gave them 'two barrels of porter and bread and cheese.'

During his stay in Kingston there arrived at that town Prince Edward Augustus, the fourth son of King George III, afterwards Duke of Kent and Strathearn, whose only title to fame is the fact that he was the father of Queen Victoria. He will not be wholly forgotten in this province so long as the rich and beautiful county of Prince Edward, Ontario, called after him by Simcoe, continues to bear its time-honoured name.

The governor left Kingston and went to

Niagara toward the end of July, and White followed him early in September in the *Onondaga*,⁹ an armed government vessel of twelve guns and eighty tons burden—a square-rigged, two-masted schooner, as well known in Upper Canada at that time as the *Great Eastern* was later in England. Simcoe received him most hospitably and gave him the use of his marquee for a dwelling. White at once got into active private practice and frequently appeared in the courts.

At that time there was no Court of King's Bench, but each of the four Districts (Lunenburg, Mecklenburg, Nassau, and Hesse) of which the province consisted had its own Court of Common Pleas, three of them presided over by lay judges, the fourth by only one judge. Powell was the only lawyer of the ten, and he sat at L'Assomption (now Sandwich) in and for the District of Hesse. White had the contempt for the judges which a barrister and an Englishman might be expected at that day to have for a layman sitting on a judge's bench, and a colonial at that. He does not seem to have been very successful; his health was precarious and his temper not always under control—a failing pardonable in a martyr to the gout and what

we now call neuritis.⁶ He took his full share of legislative labour—the statutes of the first parliament of Upper Canada are a model of clearness and conciseness: but he had the same contempt for his fellow-members of the Assembly as for the lay judges.

Newark was a gay little provincial capital, and White was not the least active member of society. Nor was this society one to be despised—the governor, stately but kindly; Mrs Simcoe, ‘*femme de trente-six ans . . . timide . . . obligeante et bonne*,’ as La Rochefoucault tells us;⁷ the aides-de-camp and army officers both of Newark and of Fort Niagara across the river, still held by Britain; the civil officers of the administration with their wives and families, some of the best blood of England; as well as a very superior group of United Empire Loyalists, many of whom had risked their lives, and all of whom had left home, friends, and property, that they might keep their faith and live under the old flag. Amongst the civil officers was Major John Small, who came from England as clerk of the Executive Council and was later (in 1806) appointed clerk of the Crown and Pleas. Small came from Cirencester, England, and belonged to a good county

family with high connections: he was tall and finely built, with a pleasant but somewhat reserved manner. Any reserve in his manner was more than made up for by the vivacity of his wife. Fair, rather *petite*, she had a charming presence and somewhat less than the demureness then the mark of the well-bred woman.

Within a few months White became very intimate with the Smalls. They dine together at his house or theirs, play whist together, they stay a week at a time with him, he escorts the lady to dinner and home from dinner when the husband is sick, notwithstanding the *procellae domesticae* which threaten now and then. He notes in his diary 'a little coquetry' on the part of the lady, but there is nothing to indicate anything but a Platonic friendship.

Faithfully performing the duties of his office and supplementing his salary by the practice of his profession, White continued to live in Newark till the capital was changed (1797) to York (originally and now Toronto) — Simcoe gave the name York to the nascent settlement in 1793, in honour of the Duke of York, son of George III, then lately making his mark as general in the Low Countries.

During his residence in Newark, White took part with nine other lawyers in a meeting at Wilson's Hotel, Newark, July 17, 1797, when the Law Society of Upper Canada was formed, membership in which has ever since been required of every practitioner in the courts of the province. *Floreat aeterna.*

He also saw to it that he did not miss his share in the 'grab' for public lands in which every one of official standing, cleric or lay, military or civil, participated at the time. He got 1200 acres in Scarboro' township in 1796, in 1797 he added to this, 100 acres in the township of York, and the following year, 200 acres more in the same township; his wife, Marianne, got altogether 1000 acres, a daughter 100 acres, and two sons 300 acres each (and also each a lot in the town of York)—3200 acres for one family.¹⁰ But there was abundance of land for all comers. On the lot he acquired in 1797, *i.e.* Park Lot No. 4, township of York, which was just outside the town, and is the land east of Sherbourne Street, running from King Street to Bloor Street, White built a residence and set out a garden, and there he lived for the remainder of his life. In York he continued the course of life begun at Newark: but something

occurred to mar his friendship for the Smalls. The gossip of the provincial capital then and for long after blamed the woman, but the precise reason has not been recorded in any existing document.

Whatever the cause—and probably White's wretched health had as much to do with it as anything else—he ventured, early in the year 1800, to speak lightly of Mrs Small. When this came to the ears of Major Small, there was but one course for him to pursue—according to the code of honour of the times, any other course would brand him as a coward and unfit to associate with gentlemen. He acted as a man of honour needs must: he called upon White for a retraction and an apology. White refused, and Small challenged him. Not six months before White had had a controversy with Captain Fitzgerald of the Queen's Rangers. He had Captain Fitzgerald bound over in the King's Bench to keep the peace.¹¹ But he could not pursue the same course with Small: a challenge to fight a duel must be accepted or he must be 'niddering.'

Early in the morning of January 3, 1800, the two quondam friends met in a grove behind the Parliament Buildings on Palace

(now Front) Street at the foot of the present Berkeley Street; White received a wound from a pistol bullet and died a few days afterwards. He was buried in his summer-house, 'a small octagon building erected on the rear of his park lot,' near the present Bloor Street. In 1871 his bones were disturbed by labourers digging sand for building purposes; the late Clarke Gamble, Esq., K.C., long the Nestor of our Bar, reverently gathered them and with pious care reinterred them in St James' Cemetery.

Small was tried at the assizes at York, January 29, on a charge of murder, before Mr Justice Allcock and a jury. But the duel was a fair one, and, as Chief Justice Robinson said, in an equally celebrated duel case thirty years later, 'juries have not been known to convict when all was fair'¹²—and Small went free.

Whether from the fatal termination of the duel of which she was the occasion, or for other reasons now impossible to ascertain, Mrs Small was ever afterwards looked at askance by York society.¹³ Even the favour of the lieutenant-governor was sufficient only to cause her to be tolerated. But small societies such as York had in those days

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are proverbially censorious, and Mrs Small's beauty and vivacity undoubtedly aroused jealousy. It may, however, be affirmed with confidence that there was no ground for charging her with immorality or wrongdoing.

Major Small was always respected. Six years after this time he became clerk of the Crown and Pleas, and survived till 1832 with credit to himself and benefit to his country.

NOTES TO CHAPTER II

¹ 'Canadian Letters | Description of a Tour thro' the Provinces of | Lower and Upper Canada in the Course | of the Years 1792 and '93. . . . C. A. Marchand | Printer to the Antiquarian and Numismatic Society | 40 Jacques Cartier Square Montreal | 1912.' This is a reprint from *The Canadian Antiquarian and Numismatic Journal*, vol. ix, 3rd Series, July-October, 1912. The origin of the manuscript is not clear, but it bears strong internal evidence of reliability. The author must have been a man of good education, and if not a barrister, at least with considerable knowledge of English law.

² That he was called to the Bar about 1785 appears from a letter of Osgoode's to Nepean, August 13, 1791, of which a copy exists in the Dominion Archives. Gray's Inn has no record of White being called there, but the record exists of his being entered April 12, 1780. At the Inner Temple the records show that John White was called to the Bar there in November 1785: it is almost certain that it was the same person who entered of Gray's Inn five years before, and therefore our John White.

³ Evan Nepean was the well-known secretary of the Admiralty, 'a hard-working official.' Born in 1751, he became successively a clerk in the Navy, a purser, secretary to an admiral, and under-secretary of state, commissioner of the Privy Seal, under-secretary of war and secretary of the Admiralty. Created a baronet in 1802, he became chief secretary for Ireland in 1804, and the same year a lord of the Admiralty.

⁴ Afterwards Administrator of the Government in Upper Canada. He was very fond of official position, and more so of the emoluments attached thereto. Powell complains bitterly of his procuring commissions as a temporary justice of the Court of King's Bench: and even before the King's Bench was instituted Russell was accustomed to be made commissioner to hold Courts of Oyer and Terminer and General Gaol Delivery—what we now call Criminal Assizes. The traveller already mentioned has this to say of him: 'I was at Niagara when Mr Peter Russell, Judge, Receiver-General and an Englishman delivered his maiden charge to a jury. Never did I more regret the being unacquainted with the Art of Stenography. Posterity would not then have had to regret it as a desideratum. In England, a charge is a cool business, in Canada it occasionally rises to peculiar animation.' But, as the traveller later says: 'Men of sense will not expect to find in a new colony the same regularity in the administration of justice as at home . . . will not look for the learning of an English judge in a Canadian one. . . .'

⁵ Walter Roe, the son of a resident of London, England, a man of some means. Dissatisfied with his mother marrying again after the death of his father, Walter left home and went to sea. After sailing for some years, he attracted the attention of a captain for his intelligence and ability, and on their arrival at Montreal he persuaded him to study law. He was admitted to practise in 1789; and he at once went to Detroit and practised in the Court of Common Pleas at Sandwich. He was formally called to the Bar of Upper Canada at the first meeting of the Law Society, and after the cession of Detroit came to Sandwich

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to live. Further particulars of Walter Roe will be found in my *Legal Profession in Upper Canada in Early Times*, chap. xxxv, pp. 168 sqq.

⁶ White's Diary, still extant but unpublished, in the possession of Miss Helen M. Merrill of Toronto, furnishes this and some other information.

⁷ The Duc de la Rochefoucault-Liancourt travelled in Upper Canada in 1795. A translation of his volume on the journey is now being published by the Archives Department of Ontario, with notes, etc., by myself.

⁸ 'Mobile' is of course the original of our 'mob.'

⁹ See Mr John Ross Robertson's *Diary of Mrs Simcoe* for an account of this vessel and a drawing of it.

¹⁰ From particulars kindly furnished by the Department of Crown Lands, Toronto.

¹¹ See my *Legal Profession in Upper Canada in Early Times*, chap. xxvii, pp. 151 sqq., for particulars of these circumstances.

¹² On the trial at Brockville in 1833 of Mr John Wilson (afterwards Mr Justice John Wilson of the Court of Common Pleas) for killing Robert Lyon in a duel near Perth, U.C., see *post*, chap. vi, p. 110.

¹³ Letters of the Powell family shortly after this time contain references to the attempt to ostracize Mrs Small.

CHAPTER III

THE CANADIAN 'PIRATE'

WILLIAM DUMMER POWELL, the 'first judge'¹ at Detroit and afterwards chief justice of Upper Canada, had four sons more or less known to fame—John, the eldest, who was afterwards called the 'Saviour of Toronto,' having warned the sleeping city of the approach of the rebels in 1837; William Dummer, who was one of the ten lawyers who met in Wilson's Hotel, Newark, July 17, 1797, to organize the Law Society of Upper Canada, still a power in the land, and whose marriage is one of the romances, as his death is one of the tragedies, of early Upper Canada²; Grant, a medical man of note, who served through the War of 1812; and Jeremiah, to whom some give the name of 'Pirate,' with what justice we shall see.³

Born in Montreal in 1784, Jeremiah was educated under his father's eye: he went with the rest of the family to Detroit when in

1788 his father was appointed 'first judge' of the District of Hesse.⁴ A manuscript account of the journey (which took twenty-nine days) by his aunt Anne Powell is still in existence: it will be found in chapter *v post*. A few years later the beautiful picture was often seen of the father being rowed on the river at Detroit by his four sons, the recollection of which was particularly pleasing to a noble friend in England in after years.

Jeremiah was sent to England, where he completed his education under the roof of his mother's brother at Norwich. We find his father in January 1799 writing to Lord Dorchester⁵ that his son, whom he had left at school to qualify him for a more humble profession, had been so roused by the military spirit of the nation, that he had abandoned his studies to enrol himself in a volunteer corps. He asked for Dorchester's influence to place Jeremiah in the Royal Military Academy at Woolwich, that he might take his chances in the Artillery or Engineers.

This project came to nothing, and shortly afterwards—in 1801—the young man returned to this continent. He was placed by his father in the counting-house of Lenox and

Maitland in New York, where he remained three years.

He then (1804) went to Haiti on a venture of his own, and there entered into a new arrangement. His friend R. B. Forbes, a member of the firm Grant, Forbes and Co., was at that time in Port au Prince. The negro governor-general, afterwards Emperor Dessalines, gave Forbes such assurances of protection that he made up his mind to establish a house of commerce in the island. Forbes suggested to Powell to take an interest in the scheme; and the result was that Powell, who had expected to clear about three thousand dollars by his private venture and return to New York, was induced to form a partnership with one Windsor, who had come out with him in the *Sampson* from New York.

The new firm, Windsor and Powell, was to be a commission house at Port au Prince to sell goods consigned to them by Grant, Forbes and Co. Although both father and mother strongly disapproved of the scheme (the father wrote him a sharp letter, still extant, and his mother hastened to New York to meet him when he was expected to return, that she might urge him to give up the West Indies altogether), there is nothing to indicate that

he might not have been very successful in making money, had it not been for circumstances for which he was not responsible and which he could not foresee.

A considerable proportion of the goods consigned to the new firm consisted of military ornaments, epaulets, sword-knots, lace, etc., all invoiced as gold. These to the amount of three thousand dollars were sold to Dessalines, both vendors and purchasers believing them to be gold. Two days after the purchase the governor-general left St Marc (where the sale took place), and upon his return, six or eight weeks after, he refused to pay for the articles, alleging them to be 'false gold.' The commission firm had a test made of the goods complained of and they turned out to be brass gilt; but they made another effort to get payment from Dessalines. His answer is worth giving *verbatim* :

Feb. 1805.

Je Serai bien aise de vous faire voir la nature de Galons et autres Epaulettes que vous m'avez vendu, que Je croyois de l'or, mais que se trouve faux et qui n'est autre chose que de cuivre doré. Je suis fâché, Messieurs, que vous receviez de pareil drogues pour venir me les vendre

pour du bon. Je n'ai pas marchandé avec vous, c'est pourquoi Je me trouve diablement puni. Quant vous viendrez, Mons. Powell a Saint Marc, Je vous les ferai voir.

Powell had no difficulty in understanding the letter ; but though he went to the American continent in May 1805, he returned to Haiti in August of the same year, rather ridiculing the idea of personal danger, taking the precaution, nevertheless, of executing in the presence of his uncle George Murray, of New York, at that place, a conveyance of his land in Burford, Upper Canada, to his mother and sisters.

Dessalines had become emperor and had lost all self-control ; naturally cruel and armed with absolute power, he committed the horrible deeds which have condemned him to perpetual infamy. The young Canadian did not escape his memory, the innocent misrepresentation of the articles sold him was made a crime, and he did not hesitate to threaten death as the punishment for deceiving an autocrat.

Just at this juncture, and on February 18, 1806, there arrived at Jacmel, a port on the

south coast of Haiti, the ship *Leander*, having on board Miranda and his expedition for Venezuela. It had left New York February 2.

Francisco Antonio Gabriel Miranda, generally known as Francisco de Miranda, was born in Venezuela about 1752; he served for a time in the Spanish army, but was suspected of treason. He lived in England for a time and received a pension from the king; he expected assistance there in severing Venezuela from Spain, and there can be no doubt that his aspirations were rather encouraged. At length, after living in England for seven years, he left that country and came to the United States in 1805.

It would seem that the government of the United States was not wholly ignorant of his project, but took no part in it. He, through friends, procured a ship, *Leander*, loaded it with military stores, induced a large number of men in New York⁶ to embark with him, concealing, however, his object from most of them; and set sail for Jacmel, arriving at that port, as we have seen, in February 1806. The intention was to free Venezuela from the Spanish yoke.

The handsome young Canadian attracted the attention of Miranda, who represented

(not without some foundation for the assertion) that Britain approved of his project. Moreover, he held out before the eyes of the young merchant an alluring prospect of profitable trade when the South American colony should be free. Threatened on the one hand by the black emperor, flattered on the other by the hope of serving his country and the expectation of pecuniary advantage, it is not to be wondered at that the seduction of Miranda proved effective. Colonel Thomas Louis in Miranda's force had a brother Jacob, who was then in command of the ship *Emperor*, consigned to Windsor and Powell; the colonel had agreed to accompany Miranda with his brother and his ship. The two brothers took great part in persuading Powell to join the expedition, and it was agreed that he should receive a colonel's commission—but Miranda would not give him a higher rank than that of major. Powell thus joined the expedition⁷ and received a commission as major in the revolutionary forces, and the promise of promotion to the rank of colonel in the first regiment of cavalry that should be raised after the landing of the expedition in Venezuela. This appointment excited the jealousy of some of the 'Army'—it was,

however, due to the military experience which Powell had ; slight as that was, it was greater than that of most of Miranda's curious host.

The expedition sailed from Jacmel, March 27, 1806, Miranda having acquired two small schooners in addition to the *Leander*. After remaining for a few days at the island of Aruba, they set sail for Venezuela. The Spaniards had received warning of the proposed invasion, and were ready ; when the 'patriots' attempted to land near Porto Cavello, April 28, two Spanish coastguard vessels attacked the schooners in which were Powell and some others, very inefficiently armed ; Miranda, who had a yellow streak in him, leaving his fellows in the lurch, fled with the larger ship *Leander* and so escaped.

The lot of those in the schooner was most unhappy. After a gallant resistance they were all made prisoners, bound and taken to Porto Cavello. They were speedily tried and found guilty of piracy, rebellion, and murder ; ten were sentenced to death by hanging, thirteen to ten years' imprisonment at Porto Rico, sixteen (or perhaps nineteen) to eight years at Boca Chica near Cartagena, and fifteen to ten years at Omoa in Nicaragua ;

three who were mere boys were reserved for the king's pleasure. Powell had had the presence of mind, when he saw capture inevitable, to destroy his commission; his youth and his apparently subordinate position saved his life; and he was one of those sentenced to imprisonment at Omoa. Those sentenced to death were hanged and beheaded the following day, and their heads exposed on poles: Powell and some others were sent to Boca Chica on their way to Omoa.

The news came to Mr Justice Powell in July. Mr George Murray wrote from New York to John Powell, the judge's eldest son, at Niagara, who transmitted the news without delay to his father in York. The latter at once took steps to procure his son's release; his efforts were successful (how, we shall see in the next chapter).

In the meantime the unfortunate Jeremiah remained a prisoner in the fortress at Cartagena, to which place he was taken on the way to Omoa. Many letters passed between him and his father and his uncle George Murray, the latter of whom kept him well supplied with money, and also informed him as to the progress of the efforts for his release. Murray was also in constant correspondence

with his sister, Mrs Powell, to whom he transmitted her son's letters.

The young man had planned an escape, when at length, October 29, 1807, the news arrived that he was to be set free. He had been treated rather well for a convict, having been allowed to walk about the city wearing a small iron ring around one of his legs, the money supplied him standing him in good stead.

The sloop in which he finally came to New York had been fitted out at the expense of his uncle George Murray. He arrived in New York early in the year, and came home to his father's house in February 1808; Mr Justice Powell himself, who had reached home only late in October of the previous year, met his son at Niagara.

While the judge was in England he used such influence with Sir James Cockburn, who was to go out as governor of Curaçao, that he received an assurance that Jeremiah would be appointed interpreter to the courts in that island, with a salary of £2000. The letter containing the assurance was shown to Jeremiah shortly after his arrival in York; as soon as his health was fairly restored he became restless under the inaction, and on

March 8, 1808, set off again in the pursuit of fortune. His mother, who gives a harrowing account of his state of health, opposed his leaving Canada, but without success.

He went to Halifax to take a man-of-war for Barbados, thence to Curaçao. By reason of the delay, the expected place (almost a sinecure) had been filled, and Powell had on his arrival to look about him for a livelihood. He found that his house in Haiti had been rifled by Dessalines a few hours after he had made his escape; and all his efforts to obtain assistance from his former associates proved vain. His uncle Murray had spent nearly £3000 in alleviating his condition when a captive and in procuring his escape from the South American colony. He could see no prospect of opening business in Curaçao or Venezuela, and determined to sail for England.

Miranda had escaped and had made his way to England, where he was again taken into favour by the British government. His pension and that of his secretary were renewed, and he was living in good repute in society. Mr Justice Powell in July wrote to his brother-in-law, Captain Robert Browne of Norwich, husband of Mrs Powell's sister; and Browne went to see Miranda. (It may be of

interest to note that a letter from York, Upper Canada, sent January 19, arrived at Norwich, England, May 30; another sent from York, July 28, arrived at Norwich September 18.) The result was not encouraging; but before Jeremiah could be communicated with, he had made up his mind to make an appeal in person to Miranda for assistance. He sailed from Curaçao for London by the ship *Alexander*: neither ship nor passenger was ever heard of again: it is supposed that the ship foundered and all on board perished—possibly, however, they were the prey of pirates or unscrupulous privateers.

The fate of Miranda was even more tragic. Again invading Venezuela, he met with considerable success: he became Dictator in his native land; but at length surrendering to the Spaniards, he passed the rest of his life in wretched captivity at Cadiz, and died in chains and misery in 1816.

One circumstance connected with the imprisonment of Powell may be noticed for its romantic interest. During his captivity at Cartagena—for he never got as far as Omoa—he carved a set of chessmen. He brought them with him to New York, and during his

stay there on his way home he presented them to his *fiancée*, Miss Eliza Bard, daughter of Dr Samuel Bard, a prominent physician who organized a medical college, afterwards the Medical Faculty of King's College (Columbia University). Some of his poetry to the young lady—no worse and no better than the average of such effusions—is still preserved. She afterwards married President M'Vickar; and the chessmen were at her death, in 1840, given to the mother of the lost Jeremiah—she, born in 1755, survived till 1849. They are still in existence as a memorial of an extraordinary incident.

Of the unfortunate captives, some died in prison, a few escaped, and more died in attempting to escape. Powell was released, as we have seen, in 1807. In May 1808 two others, Ingersoll and Moore, were released at the instance of the British government as British subjects, though it is quite certain that Ingersoll was an American citizen; it is reasonably certain that his case was taken up by Britain at the request of his own government. In 1810 most of the others were released at the instance of a merchant of Cartagena.

Some have not hesitated to call Miranda a

pirate. So he was in international law, but no more so than was William of Orange; and Powell has been called a 'wild scapegrace,' although the voluminous correspondence, including letters to, from, and about him, still extant, indicate that he was an honest, capable merchant of correct habits and principles. And if he was a pirate, so was Bentinck.

Jeremiah Powell was strong and well built, though not very tall; he was handsome and had a most winning and attractive personality. An officer in Miranda's service describes him thus: 'Major Powell . . . is no small acquisition. Though not . . . extensively versed in the military art, he has all the requisite qualifications for becoming a good officer and is full of military ambition. He has been well educated and possesses abilities much beyond mediocrity, with the most amiable manner.'⁸

NOTES TO CHAPTER III

¹ William Dummer Powell was born 1755 in Boston, Massachusetts, the eldest son of John Powell (a navy contractor) and Janet Grant, of a well-known and aristocratic Scottish family, whose father, Suetonius Grant, had renounced his right to a baronetcy and was living in the colony of Rhode Island as a merchant.

William Dummer Powell was educated in part in his native city, in part in England at Tunbridge, Kent, and in part in Holland, where he acquired the French and Dutch languages. On his return to Massachusetts he devoted himself to travel during the summer and the study of law during the winter. When the troubles between the mother country and the American Colonies became acute he, along with his father, took the Loyalist side. He was a volunteer in the siege of Boston which followed the 'Boston Tea-Party.' One of the consignees of the tea thrown into Boston harbour in 1773 was Isaac Winslow Clarke, who afterwards married Anne, sister of William Dummer Powell, and passed the latter years of his life in Montreal.

Powell in 1775 married a young English girl, Anne Murray, daughter of Dr John Murray of Norwich, England, then on a visit to her aunt, Mrs Inman, at Boston. By reason of the bride's loss of health in the colony the young couple sailed for England with General Gage. There Powell applied himself in earnest to the study of law, and in 1779 came to Canada to practise his profession. After a successful career at the Bar in Montreal he was in 1789 made judge of the Court of Common Pleas for the District of Hesse, *i.e.* all that part of Canada west of Long Point, Lake Erie. The court had been established in 1788 and three judges appointed, all laymen. They declined to act, and asked for a lawyer to be made judge; accordingly Powell was, in 1789, appointed 'first judge,' to act alone, but with the powers of three judges. When the Court of King's Bench was established in 1794, Powell became a puisne justice of that court. He became chief justice in 1815, resigned in 1825 with a pension, and died in 1834.

He was a voluminous writer. I have a copy of many of his manuscripts and have drawn on them very freely.

² His mother, in a Bible presented by her father, Dr John Murray, to her children, has noted the birth of each of her children and the death of some of them. Opposite the name of William Dummer is entered in her handwriting, 'Born 15th February 1778'—'died Sept. 29th, 1803, under circumstances

aggravating the anguish of his unfortunate mother, and is buried in the Presbyterian burying-ground at Stamford, Dorchester.'

³ In addition to their sons John, William Dummer, Grant, and Jeremiah, Mr Justice and Mrs Powell had four daughters: Anne, who died in infancy; Anne, whose tragic fate is described in chapter ix; Elizabeth, who died unmarried, and Mary Boyles, who married Samuel Peters Jarvis. There was also another son, Thomas William, who, being sent to school at Kingston, was drowned there at the age of ten. His mother notes concerning him: 'Born 25th October 1794'—'Died June 16th, 1804—after fourteen days' absence from his sorrowing mother who lived to lament and mourn this severe dispensation of Providence. The remains of this dear child are deposited in the Church Yard at Kingston by those of the Children of the Honble Richard Cartwright' (who were drowned at the same time).

⁴ The court sat at L'Assomption, now Sandwich, as Detroit was by the Treaty of 1783 territory of the United States, but the judge lived in Detroit, which remained in British possession till 1796, after Jay's Treaty.

⁵ Sir Guy Carleton.

⁶ Many of them, it is said, were butchers and butchers' apprentices. The destination (at least the first destination) was generally thought to be New Orleans.

⁷ From contemporary accounts, it would appear that for a long time both Miranda and Powell believed that Windsor, Powell's partner, would also join the expedition; but at the last moment prudence prevailed.

⁸ There are several accounts of Jeremiah Powell and more of Miranda. An interesting but not wholly reliable account is given in a small work in 'The Riddell Canadian Library,' Osgoode Hall, *Miranda's Expedition (Revolution South America)*, Boston, Oliver and Munro, 1808, 8vo, p. 300. This purports to be a series of letters written at the time by an American, an officer in the expedition, but it bears internal evidence of being of later

composition. Of Miranda, James Jeffrey Roche, in *The Story of the Filibusters* (London, 1891), writes thus :

Among the ardent friends of liberty who rallied around the flag of the Directory (in France) was Don Francisco Miranda, a native of Venezuela, of which province his grandfather had been governor. He was well-educated, and owned a large private fortune. On account of his revolutionary sentiments he was forced to fly his native country and the military service of Spain, in which he had gained the rank of colonel. The bulk of his property was made forfeit. With what he could save from the wreck he fled to the United States in 1783. He afterwards visited several European countries. The French revolution found him in Russia, whence he at once set out to offer his sword to the Directory. He held a command under Dumourier in the Holland campaign of 1793, in which he won a brave name but no serviceable laurels. The campaign was a failure. Dumourier deserted the cause, and Miranda was arrested and tried for treason. Although undoubtedly innocent, his political intrigues had aroused against him powerful enemies who procured his banishment from France. He removed to England, a country whose ministry he interested in his life-long scheme for the revolution of his native land. New York was chosen as the point of departure. With bills of exchange on London he bought there the ship *Leander*, with a formidable armament. On the 2nd of February 1805, the first filibustering expedition from the United States, consisting of about two hundred men, 'some of them gentlemen and persons of good standing in society, though mostly of crooked fortunes,' set sail for Venezuela on a crusade of liberty. When eleven days at sea they were brought to by H. B. M. ship *Cleopatra*, and nineteen of the adventurers were imprisoned in the ungracious fashion of the British navy of the period. The *Leander* was detained, notwithstanding her American clearance, until General Miranda produced some private papers, at sight of which the British captain not only allowed her to proceed unmolested, but also gave her a 'protection paper,' forbidding all other English cruisers to detain or search her. Apart from the *Leander's* questionable mission, this remarkable permit to travel on the high seas throws a striking light upon the construction of international law at the beginning of the nineteenth century.

Miranda received material aid and comfort from Admiral Cochrane, commanding the British squadron on the West

India station, but although his force was swelled by two small vessels it was, from its first advent on the Spanish Main, a wretched failure. Differences among the invaders, aggravated by the wayward temper of the leader, together with a total apathy or active hostility on the part of the very Venezuelans whom the filibusters had come so far to deliver, brought all their fond hopes to nought. Such of the adventurers as were not captured by the Spaniards surrendered to an English frigate and were carried to the West Indies, whence they made the best of their way home.

What sympathy, if any, was given to the undertaking by the administration of President Jefferson it is hard to determine. Miranda always claimed to have been in the confidence of the American Government, as he undoubtedly was in that of Great Britain. It is certain that the people of the United States already looked with brotherly feelings upon the misgoverned peoples of Spanish America. Some of the leaders were tried before the United States courts upon their return, but, defended with burning eloquence by Thomas Addis Emmett, himself an exiled patriot, they were promptly acquitted.

Failing in his attempt to free Venezuela from without, Miranda returned to the country in December 1810 and was favourably received by the semi-independent colonial government. Obtaining a seat in the republican congress, he soon rose to the vice-presidency of that body, and organised a more formidable scheme of revolution. On the 5th of July 1811 he signed the act of independence, and was appointed commander-in-chief of the forces. On his staff was Simon Bolivar, who was destined to play a more fortunate part than that of his chief in the destinies of South America. For a time Miranda was successful in the field, but reverses were soon followed by treachery, and when, in pursuance of the authority of Congress, he signed the treaty of Victoria, restoring Venezuela to Spanish rule on July 25th, 1812, he was denounced as a traitor by his fellow revolutionists, who, with little consistency, delivered him up to the enemy in whose interest they pretended he had acted. His after fate sufficiently establishes his innocence of treason to the revolutionary cause. The Spaniards sent him a prisoner to Cadiz, where he lingered for four years, dying in a dungeon, with a chain around his neck.

Of all his deeds fame has preserved but one enduring memento, his name, carved with those of the other great soldiers of the Directory, on the Arc de Triomphe in Paris.

Quite the best account of Miranda is given by Dr Robertson in the *Transactions* of the American Historical Society for 1907. Miranda is frequently mentioned in the Haldimand Papers. Sir Frederick Haldimand seems to have been on rather familiar terms with him in London.

The facts of Jeremiah's career, business, and fate appear in MSS., letters (many of them in the Toronto Public Reference Library) and statements, most of them in the chief justice's handwriting.

CHAPTER IV

A JOURNEY TO SPAIN

THE terrible news of the capture of Jeremiah Powell by the Spaniards, accompanied by the statement that he had been condemned to death, reached his father in York through a letter from his brother-in-law, George Murray¹ of New York to John Powell, the judge's eldest son. Mrs Powell and her daughters were at that time in New York expecting to meet the unfortunate son and brother on his arrival from Haiti; Murray could not keep the fatal news from them, and most serious consequences to the health of the mother were to be feared.

The judge at once secured leave of absence from Alexander Grant,² the administrator of the government, and took the *Toronto Yacht*³ for Niagara. He had been assigned as assize judge and had appointed his son John his marshal of assize⁴: at Niagara he arranged his circuit and forthwith sailed for Kingston, where he arrived in twenty-four hours.

Crossing the river he engaged the driver of a 'tin-wagon' to drive him to Utica. This took four days: then he went on the stage to Ballston Springs, where his son Dr Grant Powell was resident physician: thence to Albany, to meet the sloop which was bringing Mrs Powell and her daughters up the Hudson from New York.

Waiting six long and weary days at Albany, the anxious father made such inquiries as convinced him that the young man's life might yet be saved, and by strong exertion, even his liberty. He brought his family to Niagara—even in August and with a special stage it took six days to go from Albany to Niagara: he left them with his son John and at once came back to York.⁵

Raising money to an amount that kept him straitened for the rest of his life, he applied to the new lieutenant-governor, Francis Gore,⁶ for six months' leave of absence after his circuit; and this was cheerfully granted. Completing his circuit in October at Cornwall, he crossed the river to St Regis, and thence went by horse and boat to Plattsburgh, then to Burlington, Vt., then by stage to Boston, where he hoped to receive assistance from an old acquaintance, Don Juan Stoughton,

Spanish consul at Boston. But Don Juan had no influence and could only recommend his old friend to apply to his brother, Don Tomaso Stoughton at New York. Don Tomaso told him in plain terms that the only hope of saving his son was to obtain the influence of the Marquis de Yrujo, the Spanish ambassador to the United States. By this time it had been ascertained that Jeremiah had escaped the death penalty and had been sentenced to ten years' slavery at Omoa.

Procuring strong letters to Yrujo, Powell went to see him at Philadelphia; but all that Yrujo could do was to give a letter to Vasconcelos, the governor of Venezuela, asking as a personal favour that the prisoner should be sent to Porto Rico till the pleasure of the king of Spain should be known. The ambassador said that nothing more could be done in America, but that anything might be expected from the humanity and liberality of his sovereign if he were solicited in person. Powell determined to seek mercy for his son at the fountain-head. He embarked at New York for England and arrived, January 7, 1807, at Deal, after a rough voyage of thirty days. Through Canterbury he travelled to London, where he found a new complication

which threatened to be fatal. Napoleon had declared all British subjects within his territories and those of his allies to be prisoners of war. It was therefore impossible to procure a passport for Madrid.

Powell renewed his acquaintance with a Spanish merchant, and through him received a recommendation from the Spanish Transport Board. He also through a brother-in-law⁷ obtained letters to the king of Spain from the celebrated Dr Jenner (the discoverer of vaccination). Through a friend, Major Robertson,⁸ he was brought into communication with the Duke of Kent, son of King George III, and father of Queen Victoria: he could do nothing himself, but introduced Powell to his brother the Duke of Sussex and to the Duke of Orleans, his guest. These two dukes gave him all the assistance in their power.

The Earl of Selkirk, not long afterwards to be one of the judge's bitterest critics, was at that time in London. Powell had entertained him at his house in York: Selkirk was not unmindful of the kindness and more than reciprocated by introducing him to Lord Holland,⁹ who gave him a letter to the Prince of the Peace,¹⁰ then all-powerful in Spain, and

also a letter to the papal nuncios at Lisbon and Madrid.

James Monroe, afterwards president of the United States—he of 'Monroe Doctrine' fame—was at that time American minister at the Court of St James. Powell applied to him and he promised to make the Canadian the bearer of a dispatch to the American minister at Madrid, which might perhaps serve to procure him a passport from the Spanish ambassador in Lisbon: but of course Monroe said he could not give him a certificate of American nationality.

However, another and an effective means soon offered. During the years of war the communication between Spain and her American colonies was very precarious. The governor of Mexico had laid up an accumulation of official correspondence for his home government for several years, awaiting a safe means of transmitting it to Madrid. At length he entrusted it to a Spanish frigate which was taking to Spain silver from Cartagena. The frigate was captured by a British privateer and the correspondence was sent to London. The secretary of state determined to send it to Madrid, and employed a young Spanish American, Don Pedro de Landecherry, re-

cently arrived from Lima, to take the papers to their destination. At the request of the Duke of Sussex, Powell was joined in the commission, and thereby his free entrance into Spain was apparently assured. The two oddly matched envoys left London by mail-coach for Falmouth, with nine packages of dispatches ; embarking at Falmouth on a packet, they arrived at Lisbon on the tenth day.

Powell seems to have had the faculty of making friends on all occasions. (He did not always retain them, however.) One of their fellow-passengers on the packet was a Mr Buller,¹¹ who was well acquainted with Lord Strangford, the British ambassador at Lisbon ; and Buller took pains to further Powell's interest with Lord Strangford.¹²

But all influence seemed unavailing with the Spanish ambassador, who declared his utter inability to grant a passport to a British subject under any circumstances. However, at last he said that he was about to dispatch a courier who would return in about ten days ; and through him he would represent Powell's case at Madrid, and possibly be able to overcome the prohibition. Powell was seriously alarmed ; Landecherry had the dispatches, and Powell feared that he might go

on without him or deliver the dispatches to the Spanish ambassador at Lisbon. He bethought himself of the letter from Lord Holland to the papal nuncio and went to see that dignitary. The old courtier, nearly allied to the royal family of Portugal, received the harassed Canadian most courteously, spoke in the highest terms of Lord and Lady Holland and the English nation, and promised the active assistance of himself and his brother nuncio at Madrid, Gravina.¹³ He ended by inviting Powell for next day at two o'clock p.m. 'if he could trust himself among so many clergymen to eat his soup,' adding that he was assured that he would wish him joy of having conquered the difficulty over the passport.

Powell went home to his lodgings happy in the conviction that his troubles were near their end. He tells us that he and his friends 'adjourned in the evening to the opera, the principal entertainment of which I could not well appreciate—the Orchestra seemed to me numerous and excellent, the singers indifferent, the dancing disgusting from the excessive nudity of the females'—but we must not forget that he came from Boston. The following day he dined with the nuncio and 'his

family' (consisting of five or six ecclesiastics), a bishop, and two laymen of learning, both from Rome. The nuncio's reception was gracious in the extreme. He cordially congratulated the visitor on the removal of all difficulty concerning the passport, and gave him the place of honour, above even the bishop.

Next day the passport was forthcoming and Powell was formally made a joint sharer with Landecherry in the care and carriage of the royal dispatches. After a most gracious reception by Lord Strangford, who drank a bumper of Burgundy to his success, Powell retired to rest, thoroughly satisfied with the day's successes. The next step was to procure transportation: a 'Coche de Cordilleras'¹⁴ was hired on the promise that the travellers would be put down in Madrid in seven and a half days for three hundred dollars. The promise was more than fulfilled—on the seventh day Madrid was reached. On inquiry it was found that the court was at Aranjuez; next morning the dispatches were delivered there, and Powell at once prepared a petition to the king. This, with Dr Jenner's letter and that from Lord Holland, was handed to the Prince of the Peace, who received it most graciously; and the very same

evening the father had the joy of hearing that an order had been signed for the immediate release of his son.

A few days afterwards an under-secretary waited on Powell at his hotel, and gave him the royal decree for the unconditional pardon of Jeremiah, and at the same time a command to the governor of Venezuela to receive the father with hospitality if he saw fit to come to that province for his son. This speed, quite unusual in Spain (perhaps elsewhere as well), was probably due to the arrival of Gravina, the papal nuncio, who came from Toledo expressly to urge immediate release.

After a short stay in Madrid, where he received 'the most flattering attentions from the great courtiers and dames,' Powell set off for Lisbon, arriving there the ninth day, just too late to take the packet for England which had dropped down the river that very day. However, he hired a boat and caught up the packet (the *Walsingham*), which carried him to England.

Arrived in London, he communicated his success to the lords of the Admiralty, and they at once dispatched an order to the admiral at Jamaica, to send a man-of-war to Venezuela with the order for release and to

receive the prisoner and carry him to England if he so desired. But Powell preferred another course: he sailed to America, visited the Spanish ambassador Yrujo, and obtained from him a licence for a fast sailing sloop to proceed to Cartagena with the dispatches. The sloop was sent at the expense of George Murray; it received the unfortunate Jeremiah and brought him to New York, from which place he came overland to York to be restored to health in the bosom of his family.

This journey to save his son lasted from July 1806 till October 1807: it impoverished Powell and subjected him to all kinds of inconveniences; but he never complained of loss or inconvenience, thinking all well repaid by the result—his son who was thought dead was alive again, if only for a few months.¹⁵

NOTES TO CHAPTER IV

¹ Murray seems to have acted throughout with the zeal of a devoted kinsman; he spent a large sum of his own money, some of which was never repaid, and it is to be feared that he did not receive that meed of gratitude and praise which his devotion called for. The correspondence is still in existence, some of it not too pleasant reading.

² Alexander Grant, 'Commodore' Grant, was chosen, September 1805, by the Council to be administrator of the govern-

ment of Upper Canada on the death of Lieutenant-Governor Peter Hunter in the previous month ; and he continued to act as administrator until the arrival of Francis Gore as lieutenant-governor in August 1806. He was a Scotsman of Invernessshire, at first a midshipman, then an officer in a Highland regiment ; he took part in Amherst's expedition to Lake Champlain in 1759 ; he was employed in one of the boats built by Amherst at Ticonderoga and afterwards was placed in command of the lake fleet in Lakes Erie and Huron. He survived till 1813.

³ The *Toronto Yacht* was built in 1799 in the Humber by Joseph Dennis, an American : it is said that she was the first vessel built at York. The *Upper Canada Gazette* of Saturday, September 14, 1799, says : 'The Toronto yacht, Capt. Baker, will in the course of a few days be ready to make her first trip. She is one of the handsomest vessels of her size that ever swam upon the Ontario . . . and . . . bids fair to be one of the swiftest sailing vessels. She is admirably calculated for the reception of passengers and . . . reflects great honour' on her builder. Her tonnage is unknown ; but it could not have been more than fifty tons. See Mr Ross Robertson's valuable *Landmarks of Toronto*, vol. iii, pp. 304, 305.

⁴ Until very recently the assize judge had the petty patronage of appointing the clerk of the Nisi Prius Court, called the Marshal of Assize. The office was of no great importance, but the fees which it brought in were not to be despised in olden days. At the present time in the county towns the local registrar or his deputy performs the duties of marshal of assize.

⁵ From York to New York in those days the route was generally to Niagara or Queenston, thence across the river and eastward by stage to Albany, thence by boat to New York.

⁶ Francis Gore was born in Kent, 1767, of an aristocratic family. At the age of eighteen he entered the Army, in which he saw some active service. He became lieutenant-governor of Upper Canada in 1806. In this capacity he had much difficulty with a set of men who opposed him and his government in

almost everything. Mr Justice Thorpe, deserting his post to go to England, he dismissed; Wyatt, the surveyor-general, he also dismissed. Wyatt afterwards sued him in England for libel committed in what the reporter calls the 'Island' of Upper Canada, and got a verdict. Of his other opponents, Joseph Willcocks, the sheriff at York, became a deserter in the War of 1812, and was killed in battle wearing the uniform of an American colonel; William Weekes, a lawyer, was killed in a duel by his brother lawyer, William Dickson (see *post*, chapter vi, p. 98). Gore did perhaps as well as any one could under all the circumstances, but he came in for unbounded criticism and vituperation. His correspondence with William Dummer Powell after his return to England exhibits him in a better light than do some historical writers. He died in 1852.

⁷ This was Mr Charles Murray, a friend of Dr Jenner's. Dr Jenner had already, through his influence with Napoleon, obtained the release of a prisoner for whom the government had pleaded in vain.

⁸ From Major Robertson he received a letter to General Maitland, the governor of Grenada; to Maitland, Powell sent a statement of his son's case and £300 to defray the expense of taking the young man to Porto Rico, if that were found practicable.

⁹ Henry Richard Vassall Fox, third Lord Holland, born 1773, educated under the eye of his uncle, Charles James Fox, travelled much on the Continent, lived with his wife in Spain, chiefly at Madrid, 1802-5; he died in 1840. Lady Holland's *Journal*, 1791-1811, in two volumes, and her *Spanish Journal* are still worth reading.

¹⁰ Don Manuel Godoy, Duque de Alcudia, 'Prince of the Peace,' was born of a poor but noble family, 1767. He joined the Royal Bodyguard at the age of seventeen, and soon attracted the attention of Queen Maria Luisa, who induced her brainless husband, Charles IV, to heap favours, honours, and dignities upon him. He became prime minister in 1792, and in 1795 took a prominent part in arranging the peace with France, whence he

derived his title, 'Prince of the Peace.' Removed from office in 1798, he was reinstated in 1799, and remained in power till 1808, when he was forced to leave the country. In 1797 he married the king's niece; it is possible that the contemporary scandal is true and that he had a wife then living. His latter years were spent in Rome and Paris—he died in 1851.

¹¹ Buller was the son of a rich merchant in London, formerly resident in Bristol. It is not improbable that he was Charles Buller of the revenue department of the East India Company's service, who was the father of Charles Buller, the well-known Liberal politician who accompanied Lord Durham upon his visit to Canada after the Rebellion of 1837-38, and had some part in drawing up the famous Report.

¹² This was Percy Clinton Sydney Smythe, sixth Viscount Strangford and first Baron Penhurst, Byron's

'Hibernian Strangford with thine eyes of blue
And boasted locks of red or auburn hue.'

Born 1780, educated at Trinity College, Dublin, he was in 1802 made Secretary of Legation and in 1806 nominated Minister Plenipotentiary at the Portuguese Court. He remained in that position till December of the following year. He was afterwards minister to Sweden, and died in 1855.

¹³ This could not have been Carlos, Duque de Gravina, the well-known Spanish admiral, who is said by Lady Holland to have been the only Italian beloved by the Spaniards. He died of wounds received at the battle of Trafalgar, where he commanded the Spanish fleet. As the admiral was born in Palermo it is not unlikely that the nuncio was some relation of his.

¹⁴ A special build of coach for mountain travel, extra strong and light.

¹⁵ The particulars of this voyage are taken from a MS. in Powell's handwriting, the accuracy of which may be relied upon. (Some of the information concerning the Spanish ambassador to the United States I owe to my friend Hon. George W. Wickersham, formerly attorney-general of the

United States.) There are a number of printed reports of Powell's voyage to Spain, all of which are more or less inaccurate.

In *The Story of the Filibusters* by James Jeffrey Roche (London, 1891) the following account is given :

Of the prisoners taken, ten were hanged ; some fifty others were condemned to terms of imprisonment varying from eight to ten years. Among the latter were Major Jeremiah Powell, whose father visited Spain in a vain effort to procure his release. Returning, in despair, by way of London, he bethought him of a novel expedient. It was that of getting a letter of introduction to the Spanish monarch from the great Doctor Jenner. Armed with this he returned to Madrid and presented himself before the Court. The student of Spanish, and notably of Spanish-American history, will find few instances of generous or tender instinct in its bloody annals. Let it be written, as a bright line on the dark page of Spanish cruelty, that the appeal of humanity's benefactor was not made in vain. Major Powell was at once set free. The conquest of deadly pestilence was hardly a greater victory than that won over the heart of a merciless despot. Two half-pay officers of the British army, an ex-colonel of the United States service, a chevalier of the Austrian Empire, and several adventurous young men of good families in the United States, formed the circle from which Miranda chose his officers. Among the latter was a youth named Smith, grandson of President Adams. It was rumoured that he was among the prisoners taken at Caracas. The Spanish Minister at Washington, the Marquis de Casa Yrujo, fancying that he saw a good chance of serving his government, and, at the same time, getting credit for a humane act, wrote to a friend of young Smith's father at New York, offering to interest himself on behalf of the prisoner, who otherwise would probably be condemned to die with his companions. Respect for the exalted character of Mr Adams, he said, prompted this step, but he must nevertheless stipulate that Colonel Smith should impart to him full and complete information about the plans of Miranda, and a list of the Spanish subjects who were concerned in them. The father, yet ignorant of the fact that his son was not among the unfortunate prisoners, at once replied, thanking the noble Marquis for the interest he had shown, but adding with a dignity and fortitude worthy a Roman : 'Do me the favour, my friend, to inform the Marquis, that were I

in my son's place, I would not comply with his proposals to save my life; and I will not cast so great an indignity on that son, my family, and myself, as to shelter him under the shield of disgrace.'

The following is an extract from *Foreign Reminiscences* by Henry Richard, Lord Holland, 2nd edition, 1851. Speaking of Godoy, 'Prince of the Peace,' he says, pp. 135-7:

Our interviews were mere interchanges of civility. But a transaction of no importance to the public, but of great importance to the parties concerned, took place between us, and he not only behaved with great courtesy to me, but shewed both humanity and magnanimity. A young English gentleman of the name of Powell had, before the war between England and Spain, engaged either with General Miranda, or some other South American adventurer, in an expedition to liberate the Spanish colonies. He was taken. By law his life was forfeited, but he was condemned by a sentence nearly equivalent to perpetual imprisonment in the unwholesome fortress of Omoa. His father, Chief Justice of Canada, on hearing the said tidings, hastened to England. Unfortunately, hostilities had commenced under circumstances calculated to exasperate the Government and people of Spain. The Chief Justice was, however, determined to try the efficacy of a personal application to alleviate the sufferings of his son, by a change of prison, since he despaired of obtaining his release. Having procured passports, he proceeded to Spain, furnished with a letter of introduction to the Prince of Peace from me, to whom he applied as recently arrived from thence, and not involved in the angry feelings or discussions which had led to the rupture between the two countries. The Prince received him at Aranjuez, and immediately on reading the letter, and hearing the story, bade the anxious father remain till he had seen the King, and left the room for that purpose without ceremony or delay. He soon returned with an order, not for the change of prison, but for the immediate liberation of the young man. Nor was he satisfied with this act of humanity, but added with a smile of benevolence, that a parent who had come so far to render a service to his child would like probably to be the bearer of good intelligence himself, and accordingly he furnished him with a passport and permission to sail in a Spanish frigate then preparing to leave Cadiz for the West Indies.

In The Life of the Rev. Joseph Blanco White Written by Him-

self, London, 1845, in vol. ii, at pp. 195-6, is found a letter from Lord Holland to Blanco White, dated London, March 4, 1836, in which much the same language is used, the only difference (except mere verbal differences such as 'though' for 'but,' 'that' for 'this,' etc.) being

- before 'engaged either' are found the words 'in 1804.'
 ,, 'calculated to exasperate' is found 'singularly.'
 instead of 'arrived from thence': 'returned (in the Spring of 1805) from thence.'
 ,, of 'had led to the rupture': 'had preceded and followed the rupture.'
 ,, of 'received him at Aranjuez': 'received him at the palace of Aranjuez.'
 ,, of 'an order, not for the change': 'an order duly signed, not for the change.'
 ,, of 'would like probably': 'would like.'

It may be of interest to give the route followed by Mr Justice Powell from Lisbon to Madrid. I give it in his own words:

At eleven, we embarked below the Exchange for Aldeia Gallega and slept the night at Vendas Novas where there is a low building called a Pallace for the accommodation of the Court on its way to Villa Viciosa. The next day we proceeded through Montemor, Arrayolos and Venda de Ducque to Estremos where we slept. On the following day we breakfasted at Algaranes, dined at Elvas. I visited Don Jose Benta and deposited Madame Doyenhaussen's letters for Brother and proceeded to sleep at Badajos in Spain. From Elvas to Badajos the road was indifferent, enlivened however by Plantations of the Vine and Olive, and the view of the Town which is situated upon an Eminence.

The route in Spain is not given, but no doubt it was the usual course—across from Badajoz to Cáceres, thence by Puenta del Arzobispo and Talavera to Madrid. The route followed by Powell in Portugal and to Badajoz, we know was followed by Lord and Lady Holland; and from Lady Holland's *Spanish Journal* we know the usual route in Spain.

The traveller at the present time going from Lisbon to Madrid on the Madrid-Badajoz-Lisbon line would follow substantially

the same course. He would cross the Tagus a little below Aldeia Gallega to Barrêiro, then by rail through Vendas Novas, Casa Branca Evora (a little south-east of Montemor and south of Arrayolos), Venda de Duque, Estremos and Elvas to Badajoz —Algaranes is too insignificant to appear on any map. He would then depart from the original route, go east to Merida, and then northerly to the railway junction near Cáceres, instead of taking the coach route by Albuquerque farther west. From the junction to Madrid the railroad keeps very close to the old coach route.

Villa Viciosa is usually and properly spelled Villa Viçosa.

Countess Doyenhaussen was the sister of Marquis D'Alorno and mother of the Duchess de Alliaga (Aliaga or Ega), 'a daughter of the House of Berwick, the brutally treated favourite of Don Diego Godoy (created Duque de Almovodar del Campo), brother of the Prince of the Peace' (Lady Holland's *Spanish Journal*, pp. 117, 198). The Countess Doyenhaussen was living in London; Powell was introduced to her by Colonel D'Allègre de Saint Tronc, who had been in Canada with Count de Puisaye and had known the judge and his son Jeremiah there. She gave Powell a letter to her daughter, who was *ambassadrice de famille* from the prince-regent of Portugal to his brother-in-law, the king of Spain. She seems also to have given him a letter to Don José Benta. I have not been able to discover anything about this gentleman: he is not mentioned by the Hollands or elsewhere by Powell.

CHAPTER V

A JOURNEY FROM MONTREAL TO DETROIT

WHEN William Dummer Powell was in 1789 appointed 'first judge' for the District of Hesse, *i.e.* all Canada west of Long Point, Lake Erie, there was no road cut through what is now the province of Ontario, and it was necessary to take the water route. He was at the time living in Montreal with his wife and family—four sons and two daughters; there also lived with him his eldest and favourite sister, Anne,¹ a young, vivacious woman of handsome person and no little literary ability. In her letters still extant she writes in a lively and entertaining style, and her light chaff of her somewhat ponderous brother is very amusing.

All these were to accompany him to Detroit, the place of his future residence; for although the territory on the right bank of the international waters was by the Treaty of 1783 to belong to the United States, Britain would

not give up Detroit and a number of other forts until the new republic should implement its promises in other respects; and it was not till August 1796 that Detroit was abandoned by the British under Jay's Treaty of 1794.

Anne Powell was beloved by Isaac Winslow Clarke,² who was also from Boston, a United Empire Loyalist who had given up all, that he might keep his faith and live under the old flag. He had been one of the consignees of the tea which was thrown into Boston harbour by the rebel faction, and had ultimately made his residence in Montreal. To complete the story of Anne Powell's life, it may be said that after living for a short time at Detroit with her brother, she returned to Montreal and married her lover. After an all too short life she died in 1792. But that was still in the future: now she was to adventure the far distant West. She determined to keep a journal of her voyage, and afterwards she reduced her notes and recollections to systematic form. The result of her literary efforts still exists. It is beautifully written, clear and legible, certainly the production of a well-educated and intelligent woman; it has suffered some loss in the lapse of a cen-

ture and a quarter, but all that remains is quite clear and plain. Her story, with the original orthography, etc., is as follows :

‘When I talk’d of keeping a journal from Montreal to Detroit I was not aware of the difficulties attending the journey. I expected it would be tedious, and thought writing would be a very pleasant employment, and so it might have proved had it been practicable but the opportunities of writing were so few that I found it would be impossible to keep a journal with any degree of regularity, so left it wholly alone and trusted to my memory (which never deserved such a compliment) for recollecting whatever was worth communication.

‘We left Montreal on the 11th of May with a large party of our friends who paid us the compliment of seeing us the first Stage where we took a farewell dinner and all the party except Mr Clarke left us. It was a melancholy parting here. I was the person least interested in it, and partook of it more from sympathy than any real sorrow I felt, all whom I was much attach’d to were going with me, but on those occasions crying is catching and I took the infection. Yet I

felt melancholy, for tho' I had no particular friendships, I had received many civilities from the people of Montreal and I felt a general regret at bidding them adieu. Mr Clarke stole off in the morning before we were up, but an honest German Lad, whom my brother had discharged, followed us to Lachine and cost me a tear at parting though I cannot say exactly from what sentiment it flow'd; with his eyes full of tears he came into the room and kiss'd all the Children round, then, dashing away his tears, he attempted to thank his Master for past kindnesses, but the poor fellow's voice failed he caught my Brother's hand and held it to his lips, he cast a look at my sister and me, I suppose he saw encouragement in our faces for he took our extended hands, dropped a tear on each and, with blessings, that, I am convinced, flowed from his heart bade us adieu.

'We now went to our Boats; one was fitted up with an awning to protect us from the weather and held the family and bedding. It was well filled, eighteen persons in all, so you may suppose we had not much room; as it happened that was of no consequence, it was cold on the Water and were glad to sit

close. This mode of travelling is very tedious for we were obliged to keep close along shore and go on very slowly. The first night we stopt at the house of a Habitan, who turn'd out with his family to give us the best room, where we spread our Beds and slept in peace. I entertained myself with looking at the Canadian Family who were eating their supper, saying their prayers and conversing all at the same time. The next day we reach'd a part of the River where the boats are obliged to be unloaded and taken through a Lock, the Rapids being too strong to pass ; these were the first *Rapids*, of any consequence, I had ever seen. Perhaps you do not understand what I mean by a Rapid : it is where the water runs with swiftness over large rocks, every one of which forms a Cascade, and the river here is all a bed of Rocks. There is no describing the grandeur of the water when thrown into this kind of agitation ; the Sea after a Tempest is smooth to it. We breakfasted at the house of a man who keeps the Lock and dispatched Mr Smith with a message to a Mr Dennie who lived at the distance of a few miles, and with whom we had promis'd to dine. I believe I have never mentioned Mr S. before ; as he is to

be our fellow traveller I will now tell you who he is. Mr S. was a Clerk of my Brother's, a sensible, well disposed young man who lost his Parents early and was cheated of his little fortune by his Guardian. When my Brother gave up business he had no further occasion for a clerk and Mr S. saw himself without friends or protection, he preferred following the fortune of his only friend to being left at Montreal, and readily embraced an offer of making one of our party to Detroit. As soon as Mr Dennie heard of our arrival a Calash was dispatched for the Ladies, a saddle horse for Mr P. and a waggon for the children and servants. Mrs P. was unwilling to trust the little girls out of her sight, so we each took one on our Laps, but went only a little way when the Calash broke down. Fortunately none of us were hurt; my Brother had rode on and we were a good deal perplexed what to do. I proposed getting into the Waggon, but my Sister would trust neither herself nor the infant in it; there was no other alternative than walking and letting the servants carry the Baby till the man could go home for another Calash. The sun was hot and the road dusty; one carriage, to me, was just the same as another, so up I mounted

and a very pleasant ride I had with a fine view of the Country. Mrs P. was heartily fatigued before the Calash met her. The hospitable welcome and the good dinner we got at Mr D.'s set all to rights. In the evening we went on ten miles further to a public house where we were tormented with Fleas and Dirt. We then resolved not to stop at another Inn if we could possibly meet with any other accommodation. My Brother had travelled the road before and knew the people and the distances from one house to another. This part of the Country has been settled since the Peace ; it was granted to the Troops raised in America, during the War. We went from a Col^l to a Captⁿ, from a Captⁿ to a Major. They have most of them built good houses, and with the assistance of their half pay, live very comfortably and increase and multiply at a great rate. We pass'd one night at the house of a Captⁿ Duncan, whose Wife I had often heard mention'd by my sister and whose story I commiserated before I saw her person. She is one of the loveliest young women I ever saw, both in person and manners, is now only nineteen and has been 5 years married to a Man who is old disagreeable and vicious, but

he was suppos'd to be rich and her friends absolutely forced her to marry him. I never heard of such a series of cruelty being practiced on any poor creature in my life both before and after her marriage. The disgust I felt towards him is now settled into a fixed aversion which can never change for it is founded on principle. After the sacrifice was made her friends had the mortification of finding themselves deceived in his circumstances; so far from being rich he was deeply in debt, and had nothing to live upon but his half-pay and his new lands which were then in a state of Nature. There, however he brought her, and there she lived in a hut without society, and almost without the necessaries of life, 'till he built a house, which he has done upon so large a scale that it will never be finish'd. My sister had been strongly attach'd to Mrs D. when she was quite a child and is much beloved by her. I felt myself very much interested for this sweet young woman and should have great pleasure in hearing her Tyrant was dead, the only means by which she can be released. I, at that moment thought with pleasure of a circumstance that has often mortified me, the slightness of my own constitution which

will never leave me long to struggle under any great misfortune ; a good flow of spirits buoys me up above the common vexations of life ; few people, I believe, bear them with more temper—but an evil too great for the strength of my mind would soon send me to the grave.

The night following that which we pass'd at Captⁿ D.'s we reach'd the house of an old servant of Mrs Powell's ; the children were delighted to see her and I was well pleased with an opportunity of observing a new scene of domestic life. Nancy, it seems, had married a disbanded Soldier who had a small lot of land where they immediately went to live and cultivated it with so much success that in a few years they were offer'd, in exchange, a Farm twice its Size to which they were just removed, and were obliged to live some time in a small temporary log house which consisted of only one room, in which was a very neat Bed where a lovely infant of 3 months old lay crowing and laughing by itself. A large Loom was on one side, on the other all the necessary utensils for a family, everything perfectly clean. Nancy went to the door and brought in two more fine children and presented them to her old mistress. We asked her if she was happy,

she said, 'Yes, perfectly so'; she work'd hard, but it was for herself and her children. Her husband took care of the Farm and she of the family, and at their leisure hours she wove Cloth, and he made and mended shoes for their neighbors for which they were well paid, and every year they expected to do better and better.

Small as this place was we chose to stay all night, so, while Mrs P. was giving orders for arranging the Beds my Brother and I walk'd out to enjoy a very fine evening. The bank of the River was very high and woody, the Moon shone bright through the trees; some Indians were on the river taking Fish with Harpoons, a mode of fishing I had never seen before. They make large fires in their Canoes which attract the Fish to the surface of the water, when they can see by the light of the fire to strike them. The number of fires moving on the water had a pretty and singular effect. When we return'd to the house we found the whole floor cover'd with Beds. The Man and Woman of the house, with their three children, had retired to their own and left us to manage as we pleased. A Blanket was hung before my mattress which I drew aside to see how the rest were accommodated.

My Brother and Sister, myself, five children and two Maid-servants, made up the groupe ; a blazing fire (not in the Chimney for there was none but in one side of the Room which was open at the top to let the smoke out, and gave us a free current of air) shew'd every object distinctly. I was in a humour to be easily diverted and found a thousand things to laugh at ; it struck me as very like a party of strolling Players. At night we always drest a dinner for the next day, so when we were disposed to eat it the cloth was laid in the Boat, and the Table served with as much decency as could be expected. If we could be contented with cold provisions, not so our Sailors ; they went on shore and boil'd their pot, smoked their Pipes etc. One day we happen'd to anchor by a small Island where the Bank was so steep the men had some difficulty in climbing it. I finish'd my dinner before the rest of the family and felt an inclination to walk ; I took one of the maids and made one of the men help us up. We strolled to the other side of the Island, and when we turn'd round saw the whole of the ground cover'd with fire. The wind blew fresh and the dried leaves had spread it from where the people were cooking. We had no

alternative, so were obliged to make the best of our way. I believe we took very few steps for neither of us had our shoes burnt through. The weather was now so fine that we ventured to sleep out, and I liked it so well that I regretted we had ever gone into a house—it is the pleasantest vagabond life you can imagine. We stopt before sunset when a large fire was instantly made and Tea etc. prepared. While we were taking it the Men erected a tent; the sails of the Boats served for the Top, with Blankets fastened round the sides; in a few minutes they made a place large enough to spread all our Beds in, where we slept with as much comfort as I ever did in any chamber in my life. It was our own faults if we did not chuse a fine situation to encamp. You can scarcely conceive a more beautiful scene than was one night exhibited; the men had piled up Boughs of Trees for a Fire before our tent 'till they had made a noble Bon-fire. In the course of the evening it spread more than half a mile; the ground was cover'd with dry leaves that burnt like so many lamps, with the fire running up bushes and trees, the whole represented the most beautiful illumination you can possibly form an idea of. The

children were all in extacies, running about like so many Savages, and our Sailors were encamped near enough for us to hear them singing and laughing. We had heard, just before we left Montreal, of his Majesty's recovery, so, if you please, you may set down all this as rejoicing on that account, tho' I doubt whether it once occur'd to our minds, yet we are very loyal people. On the tenth day we reach'd Kingston. It is a small new Town and stands in a beautiful Bay at the foot of Lake Ontario. The moment we reached a wharf a number of people came down to welcome us. A Gentleman in his hurry to hand out the Ladies brushed one of the Children into the lake; he was instantly taken out, but that did not save his Mother from a severe fright. We went to the house of a Mr Forsyth, a bachelor, who very politely begg'd we would consider it our own. Here we staid 3 days and then sail'd with a fair wind for Niagara. At Kingston we were overtaken by two officers, one going to Niagara, the other to Detroit. Mr Meredyth had been introduced to us at Montreal; Mr Suckling was a stranger. They both express'd themselves pleased with joining our party and preferr'd the offer my Brother made them,

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to cross the Lake in a Vessel appointed for him, to waiting for another where they would be much less crowded. My Brother had also given a package to another young man and to Captⁿ Harrow, who commands a ship on Lake Erie. We were fifteen in a small Cabin where there were only 4 births. When the Beds were put down at night everyone remained in the spot they had taken for there was no moving but by general consent. One night after we were all laid down and began to be composed, Mrs P. saw one of the maids standing where she had made the childrens' Bed, and asked her why she staid there. The poor girl, who speaks indifferent English, answer'd, "I am *quazed*, Ma'am." Sure enough she was wedged in beyond a possibility of getting out without assistance. I heard a laugh amongst the gentlemen, who were divided from us by a Blanket partition. I suppose they were quazed too. Lake Ontario is 200 miles over; we were four days crossing it. We were certainly a very good humor'd set of people for no one complained or seem'd rejoiced to arrive at Niagara. The Fort is by no means pleasantly situated; it is built close upon the Lake which gains upon it so fast that in a few years more they must

be overflowed. There, however, we pass'd some days very agreeably at the house of a Mr Hamilton,³ a sensible, worthy and agreeable man. Mrs H. is an amiable sweet little woman; I regretted very much she did not live at Detroit instead of Niagara. We received the most polite attention from Col^l Hunter, the commanding Officer, and all his Officers Lord Edw^d Fitzgerald⁴ had been some time at Niagara before us, and was making excursions amongst the Indians, of whose society he seems particularly fond. Joseph Brant,⁵ a celebrated Indian chief lives in that neighborhood. L^d Edward had spent some days at his house and seemed charmed with his visit. Brant return'd to Niagara with his Lord^p. He was the first, and indeed, the only Savage I ever dined at Table with. As the party was very large he was at too great a distance for me to hear him converse, and I was by no means pleased with his looks. These people pay great reverence to rank! with them it is only obtained by merit. They attended L^d Edward from the house of one Chief to that of another and entertain'd him with dancing, which is the greatest compliment they can pay. Short as our stay was at Niagara we made so many agreeable

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acquaintances we were sorry to leave them. Several gentlemen offer'd to escort us to Fort Erie, which made the journey very chearful. Mr Hamilton, Mr Humphreys, of the Engineers, Mr Robertson of the 60th and Mr Meredyth, with Captⁿ Harrow, Mr Smith and my Brother went in the Boat with us to the Landing which is 8 miles from the Fort. There the River becomes impassable, and all the baggage is drawn up a steep Hill in a Cradle, a Machine I never saw before. We walked up the Hill and were conducted to a good garden with an Arbour in it, where we found a Cloth laid for dinner, which was provided for us by the Officers of the Post. After dinner we were to get into Fort Sloser, 7 miles, by any means we could. Two Calashes were procured, in one of them my Brother drove my sister and Mr Humphreys me in the other. Mr M. got a horse and the rest of the gentlemen made use of their feet. The road was good and the weather delightful, our ride would have been charming only the horses were so bad, they could hardly crawl. I never breathe freely when a horse seems tired ; I always feel as if I was committing a crime in riding it. Mr H., who is a humane man, gave up the point of whipping the poor Devil

on out of respect to Captⁿ Watson, to whom the horse had once belonged, a circumstance that increased my compunction, for all men living, W. is the most compassionate and in the condition the Animal was would as soon have attempted to carry as to ride him. It was not to be borne, so we took one of the horses from the Cart the children and servants were in, and made the best of our way after the rest of the party. The afternoon was wearing away, and this was the only opportunity we should have of seeing the Falls. All our party collected about half a mile above the Falls, and walked down to them. I was in raptures all the way; the Falls I had heard of for ever but no one had ever mentioned the Rapids. For half a mile the River comes pouring down over immense Rocks, some of them forming cascades 30 or 40 feet high; the Banks are cover'd with wood as are a number of Islands, some of them very high out of the Water. One in the centre of the River runs out into a point and seems to divide the Fall, which would otherwise be quite across the River, into the form of a Crescent. I believe no mind can form an idea of the immensity of the Body of Water or the rapidity with which it hurries down;

of the height you may, which is 180 feet. The water loses all appearance of a liquid long before it reaches the bottom, and the spray rises like light summer clouds; when the rays of the sun are refracted they form innumerable Rainbows, but the Sun was not in a situation to show this effect when we were there. One thing I could get no one to explain to me, which is, the stillness of the river at the bottom of the Fall; it is smooth as a lake for half a mile, deep and narrow, the banks very high, with trees hanging over them. I was never before sensible of the full power of scenery, nor did I suppose the eye could carry to the mind such strong emotions of pleasure, wonder and solemnity. For a time every other impression was erased from my memory. Had I been left to myself I am convinced I should not have thought of moving whilst there was light to distinguish objects. With reluctance I at last attended to the proposal of going on, determining, however, in my own mind, that when I returned I would be mistress of my time and stay here a day or two at least. As Fort Sloser was only at the distance of a pleasant walk, we all chose to go on foot. We were received there by Mr Foster of the 60th, one

of the most elegant young men I ever saw. Here we were extremely well accommodated, and much pleased with the house and gardens. I never saw a situation where retirement wore so many charms. The next day we went in a Batteau to Fort Erie. When we arrived there we found the Commanding Officer, Mr Boyd, was gone in a party with L^d Edward and Mr Brisbane to the other side of the River where the Indians were holding a Council. The Gentlemen all returned in the even^g and seemd so much pleased with their entertainment, that when they proposed our going over with them the next day we very readily agreed to it. I thought it a peculiar piece of good fortune having an opportunity of seeing a number of the most respectable of these people collected together. We reachd the spot before the Council was met, and as we went to it passd several of the Chiefs at their toilets. They sat upon the ground with the most profound gravity, dressing themselves by a small Looking-glass, for they are very exact in fixing on their ornaments, and not a little whimsical. I am told that one of these fellows will be an hour or two painting his face and when anyone else would think it sufficiently horrible some

new conceit will strike him ; he will rub it all off and begin again. The women dress with more simplicity, at least all I have seen, but at this meeting there were not many of the fair sex, only some old Squaws who sat in Council, and a few young ones to dress their provisions ; for these great men, like those of our world, like to regale themselves with a good dinner after spending their lungs for the good of their country. Some women we saw employ'd in taking small Fry out of the River in a Basket. A gentⁿ of our party took the Basket from one of them, and attempted to take the fish as she did, but failing, they laughed so heartily at his want of dexterity. One young Squaw sat in a tent weaving a kind of worsted garters intermixed with Beads. I suppose she was a Lady of distinction, for her ears were bored in four different places with earrings in them all. She would not speak English but seem'd to understand what we said to her. A gentⁿ introduced Mrs P. and me to her as White Squaws, begging she would go on with her work as we wish'd to see how it was done. She compl'd immediately with great dignity, taking no more notice of us than if we were Posts, a proof of her good breeding. We

then went up a steep Bank to a very beautiful spot ; the tall Trees were in full leaf and the ground was cover'd with wild flowers. We were seated on a Log in the centre where we could see all that pass'd.

'Upwards of 200 Chiefs soon assembled and seated in proper order. They were the delegates of Six Nations. Each Tribe formed a Circle under the shade of a Tree, their faces towards each other ; they never changed their places but sat or lay on the grass as they liked. The Speaker of each Tribe stood with his back against the tree. The old women walk'd one by one with great solemnity and seated themselves behind the men. They were wholly cover'd with their blankets and sought not by the effect of ornaments either to attract or frighten the other sex, for I cannot determine whether the men mean to make themselves charming or horrible by the pains they take with their persons. On seeing this respectable band of Matrons I was struck with the different opinions of mankind, in England, when a man grows infirm and his talents are obscured by age, the Wits decide upon his character by calling him 'an old woman,' on the banks of Lake Erie a woman becomes respectable as she grows old,

and I suppose the best compliment you can pay a young Hero is saying he is AS WISE AS AN OLD WOMAN, a good trait of savage understanding. These ladies preserve a modest silence in the debates (I fear they are not like the women of other Countries) but nothing is determined without their advice and approbation. I was very much struck with the figures of these Indians as they approach'd us. They are remarkably tall and finely made and walk with a degree of grace and dignity that you can have no idea of. I declare our Beaus look'd quite insignificant by them. One man call'd to mind some of Homer's finest heroes. One of the gentlemen told me he was a chief of great distinction, but he spoke English, and if I pleased he should be introduced to me.⁶ I had some curiosity to see how a Chief of the Six Nations would pay his Compliments, but little expected the elegance with which he address'd me. The Prince of Wales does not bow with more grace than Captain David ; he spoke English with propriety and return'd all the compliments that were paid him with ease and politeness. As he was not only the handsomest but best drest man I saw, I will endeavour to describe him. His person is tall and

fine as it is possible to imagine, his features regular and handsome, with a countenance of much softness, his complexion not disagreeably dark, and I really believe he washes his face, as it appear'd perfectly clean without paint. His hair was all shaved off except a little on the top of his head to fasten his ornaments to ; the head and ears painted a bright glowing red ; round his features was fastened a fillet of highly polished and ornamented silver ; from the left Temple hung two long straps of black velvet, covered with silver, beads and broches ; on the top of his head was fixed a long white Fox-tail feather, which bow'd to the wind as did a black one in each ear ; a pair of immense earrings that hung below his shoulders completed his head-dress which I assure you was not unbecoming, tho' I must confess, somewhat fantastical. His dress was a shirt of color'd calico, the neck and shoulders cover'd with silver broches, placed so thick as to have the appearance of a very rich net ; his sleeves much like those that Ladies wore when I left England, fastened about the Arm with a broad bracelet of silver, highly polish'd and engraved with the Arms of England ; four smaller bracelets of the same kind about his wrists and arms ; round

his waist was fixed a large Scarf of a very dark colored stuff lined with scarlet, which fell almost to his knees. One part of it he generally drew over his left arm, which had a very graceful effect when he moved ; his Legs were cover'd with blue cloth made to fit neatly with an ornamented garter bound below the knee. I know not what kind of a Being your imagination will represent to you, but I sincerely declare that, alltogether, Captⁿ David made the finest appearance I ever saw in my life. Do not suppose they were all dress'd in the same taste ; their clothes are not all cut to the same pattern like the Beaus of England, every Indian dresses according to his own fancy, and you see no two alike ; their faces are differently painted ; some of them wear their hair cut in a strange manner ; others shave it entirely off. One old man diverted me extremely ; he was drest in a Scarlet Coat, richly embroider'd, that must have been made at least half a century, with a waistcoat of the same that reach'd half way down his thighs ; no Shirt or Breeches, but blue cloth Stockings. As he strolled about more than the rest, I conclude he was particularly pleased with himself. They told me he was a Chief of dis-

tion. We only staid to hear two speakers. They spoke with great gravity and no action, making frequently long pauses for a hum of applause. Lord Edward, Mr Brisbane and Mr Meredyth remained with them all night and were entertained with Dancing, an amusement not calculated for women to see. We were detained several days in Niagara by a contrary wind. On the 4th of June, when we were drinking the King's health, like good and loyal subjects, the wind changed, and we were hurried on board. We were better accommodated than when we cross'd Lake Ontario, for the weather was so fine that the gentⁿ all slept upon deck. Lake Erie is 280 miles over. We were five days on our passage. The River Detroit divides Lake Erie from Lake Sinclair, which is again divided by a small river from Lake Huron. The Head of Lake Erie and the entrance into the River Detroit is uncommonly beautiful. Whilst we were sailing up the river a perverse Storm of rain and thunder drove us all into the Cabin, and gave us a thorough wetting afterwards when we went on shore.

' The Fort lies about half way up the River, which is 18 Miles in length. In drawing the lines between the British and American pos-

sessions the Fort was left within their lines. A new Town ⁷ is now to be built on the other side of the river where the Courts are held, and where my Brother must of course reside. As soon as our vessel anchored several gentlemen came on board; they had agreed upon a House for us, till my Brother could meet with one that would suit him. So we found ourselves at home immediately. We were several weeks at the Fort which gave us an opportunity of making a little acquaintance with the inhabitants. The Ladies visited us in full dress tho' the weather was boiling hot. What do you think of walking about when the Thermometer is above 90? It was as high as 96 the morning we were returning our visits. Mrs P. and I spent the chief part of our time in our Chamber with no other covering than a Slip and underpetticoat. We found all the people extremely civil and obliging. In point of society we could not expect much; it depends altogether on the Military, an agreeable Regiment makes the place gay. The 65th which we found there on our arrival was a Corps that would improve almost any Society.⁸ The loss of it has made the place extremely flat and sets the present Reg^t in a disadvantageous

light, which it cannot bear. While we staid in the Fort several parties were made for us, one very agreeable one by the 65th, to an Island a little way up the River. Our party was divided into five boats, one held the music ; in each of the others were two Ladies and as many gentlemen as it could hold. Lord Edward and his friend arrived just time enough to join us. They went round the Lake by land to see some Indian settlements, and were highly pleased with their jaunt. Lord Edw^d speaks in raptures of the Indian hospitality. He told me one instance of it which is so refined that it would reflect honor on the most polish'd people. By some means or other the gentlemen lost their provisions and were entirely without Bread in a place where they could get none. Some Indians travelling with them had one loaf which they offer'd his Ld.ship, but he would not accept it. The Indians gave them to understand that they were used to do without it and so it was of less consequence to them ; the gentlemen still refused. The Indians then disappear'd but left the loaf of bread in the road where the travellers must pass and were seen no more. Our party at the Island proved very pleasant, which those kind of parties

seldom do ; the day was fine, the company chearful and the Band delightful. We walk'd some time in a shady part of the Island, then were led to a Bower where the Table was spread for dinner. Everything here is on a grand scale ; do not suppose we dined in a little English arbour ; this was made of Forest Trees ; they grew in a Circle and it was closed by filling up the spaces with small Trees and Bushes, which, being fresh cut, you could not see where they were put together and the Bower was the whole height of the Trees, tho' closed quite to the top. The Band was placed without and play'd while we were at Dinner. We were hurried home in the evening by the appearance of a Thunder Storm. It was the most beautiful sight I ever remember to have seen. The Clouds were collected about the setting sun and the forked Lightning was darting in a thousand directions from it. You can form no Idea from anything you have seen of what the Lightning is in this Country ; these Lakes, I believe, are the nurseries of Thunder-Storms, what you see are only stragglers that lose their strength before they reach you. I had the pleasure of being on the Water in one and getting very completely wet. My Clothes

were so heavy when I got out of the boat, I could scarcely walk. We were a very large company going up on what is commonly called a party of pleasure. Most of the Ladies were wet as myself. We could get no dry clothes so were obliged to get our own dried as well as we could. A pretty set of figures we were when we met to dance, which, on those occasions, is customary before dinner. I had resolved against it for the day was very warm, the party large and the room small. I was prevail'd upon to alter my mind by their assuring me that exercise would prevent my feeling any ill effects from my wetting, and I found it so.'

[The remainder of the manuscript is fragmentary.]

NOTES TO CHAPTER V

¹ Anne Powell was the eldest daughter of John Powell and Janet Grant. This John Powell was the son of another John Powell and Anne Dummer; Janet Grant was the daughter of Suetonius Grant of Rhode Island, and sister of Sir Alexander Grant. See chapter ix *post*.

² Isaac Winslow Clarke, born in 1748, was the son of Richard Clarke, a leading merchant of Boston, Massachusetts, who, as agent for the East India Company, was one of the consignees of the tea thrown into the sea at the celebrated 'Boston Tea-Party.'

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December 1773. Isaac was a partner in his father's business: both were Loyalists, and were accordingly obnoxious to the stronger party. The father took refuge in England with his son-in-law, John Singleton Copley, the celebrated painter and father of Lord Lyndhurst; he had married Susannah Farnum Clarke, Richard Clarke's daughter, in 1769. The son, Isaac Winslow Clarke, attempting to collect at Plymouth certain debts owing the firm, was mobbed and narrowly escaped with his life. He joined his father in England, where he remained for a short time, and then was appointed to the Commissariat Department in Canada. He was an officer of indefatigable zeal, and thoroughly reliable; his services during the War of 1812-14 were invaluable if unpretentious. He died at sea on his way to England in 1824, having then the rank of Deputy Commissary General—leaving one son, for many years private secretary to his cousin Lord Lyndhurst, and two daughters, one of whom married Hon. Charles R. Ogden, at one time attorney-general of Lower Canada, and afterwards attorney-general of the Isle of Man (a victim to his own enthusiastic loyalty during the Papineau troubles); the other daughter married William F. Coffin, historian of the War of 1812.

³ Robert Hamilton, who in July 1792 became a legislative councillor in the new province of Upper Canada. During all his long life he was a man of great influence and usefulness. He did not always see eye to eye with Simcoe, who did not hesitate to call him a Republican (putting Hon. Richard Cartwright in the same category), but there is nothing in his life indicating that he deserved this epithet—at that time rather blacker than 'murderer.'

⁴ Lord Edward Fitzgerald was one of the seventeen children of James Fitzgerald, first Duke of Leinster, and was born in 1763. He joined the army and made some reputation for military skill and more for bravery. He was fond of the North American Indian, and was made a chief of the Bear tribe at Detroit. He went down the Mississippi to New Orleans, and being refused admission to Mexico, returned to Ireland. The French Revolu-

tion aroused his enthusiasm, and he was cashiered for taking part in a revolutionary banquet. This dismissal, coupled with other causes, made him a conspirator. He joined the United Irishmen and refused again to be a candidate for Parliament. He was a prominent leader in the Rebellion of '98, was apprehended the following year, and shortly afterwards died in prison of a wound received at the time of his capture. His wife, Pamela, is variously said to have been a native of Newfoundland, and the daughter of Égalité, Duke of Orleans, and Madame de Genlis.

Joseph Brant (Thayendanega), a Mohawk Indian born on the banks of the Ohio about 1742 when his parents were on a hunting expedition, their home being at the Canajoharie Castle. His father dying when Joseph was young, his mother married an Indian whose Christian name was Barnet or Bernard contracted to Brandt or Brant. Joseph took this name, which was spelled both ways, but the usual and correct spelling is 'Brant.'

He was sent to a school at Lebanon, Conn. (the original of Dartmouth College) by Sir William Johnson and became a devout Christian. He took an active part in the Revolutionary War. Campbell's calumny of him in 'Gertrude of Wyoming,' 'the monster Brant,' was conclusively disproved and Campbell apologized most handsomely for his mistake—but Brant did lead his Indians in some incursions of less note, and was not wholly destitute of the sternness of the Red Man.

He came to Canada a leader of the Six Nations, and continued to the end of his life to be a devoted adherent to British rule—a myth (not yet dead) to the contrary among certain Americans notwithstanding.

He visited England in 1786 and was received with great distinction. He died in 1807.

A very full account of his life has been written by Col. William L. Stone, a work readily available (see next note). Much inaccuracy has been exhibited by some Canadian writers, *e.g.* he is made a hereditary chief, which he was not; he is represented as fighting in the War of 1812, which, indeed, his son did, etc.

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etc. Brantford is called after him. His sister Molly was Sir William Johnson's 'Indian wife,' and bore him many children.

⁶ This chief was perhaps Red Jacket, Yau-go-ya-wat-haw or Sage-ye-wal-ha, no firm friend of the British; he is said by Stone in his *Life of Joseph Brant*, New York, 1838, vol. ii, p. 41, to have been 'not a chief by birth, but had made himself such by his cunning. He was artful, eloquent and ambitious.' By availing himself of the superstitions of his people he became a chief of the Senecas. 'Brant always on all suitable occasions pronounced him a coward—the greatest coward of his race. He used to say that Red Jacket was always valiant for fight with his tongue; but that although by his eloquence he persuaded many warriors to fight, he was ever careful not to get into personal danger himself, . . . that having sent others upon the war path, he would turn to and steal and kill their cows for his own use.' His temporarily successful intrigue later on and during the time of war to displace Joseph Brant from his leadership of the Six Nations is well known.

⁷ This was to be at L'Assomption (now Sandwich); but Powell resided at Detroit until he was made, in July 1794, a justice of the newly created Court of King's Bench. He then removed to Newark (Niagara), and later on to York (Toronto), where he died in 1834.

⁸ British troops occupied Detroit till 1796, when they withdrew under the provisions of Jay's Treaty of 1794.

CHAPTER VI

DUELLING

OUR predecessors in this province kept up the customs of the countries from which they came; and in all of these the duel was an 'institution.' Absurd as the custom now seems to us, until three-quarters of a century ago no gentleman was sure of being able to escape mortal combat—the code of honour was long as binding on all with any pretensions to gentility as it is now in Prussian army circles.

The duel never was lawful in Upper Canada; but that did not prevent its prevalence; to break the law against duelling was as venial an offence as is now fishing out of season; and not to fight a duel when the code demanded it, meant disgrace quite as deep and as lasting as being caught cheating at cards.

The civil law of England was formally introduced into Upper Canada in 1792;¹ the criminal law of England had always been in

force in all Canada from the time of the Conquest in 1759-60. By the law of England, and therefore of Canada, a deliberate duel was unlawful—as Blackstone sententiously puts it: ‘where both parties meet avowedly with an intent to murder, thinking it their duty as gentlemen, and claiming as their right to wanton with their own lives and those of their fellow creatures, without any warrant or authority from any power either divine or human, but in direct contradiction to the laws of God and man . . . the law has justly fixed the crime and punishment of murder on them and on their seconds also.’ And such was the law laid down by Sir Matthew Hale, ‘as correct, as learned and as humane a judge as ever graced a bench of justice.’

While this was undoubtedly the law, it was in our early days not applied very vigorously. There was the ‘unwritten law’ that if the duel was fair in all respects, the survivor and seconds should not be convicted. Accordingly, although the law was always laid down accurately by the presiding judge, the crown counsel, if the duel was a fair one, never pressed for a conviction; and the jury knew what was expected of them.

We have already spoken of one duel,² that

in 1800 between Attorney-General John White and Major John Small, where Gooderham and Worts' Distillery now stands ; and shall have occasion to speak of another, that in 1812, between Acting Attorney-General John Macdonell and Dr William Warren Baldwin, treasurer of the Law Society of Upper Canada, on the 'Island.' We shall here speak of some others.

Early on the morning of October 10, 1806, William Weekes and William Dickson, both prominent lawyers, met behind a bastion of old Fort Niagara on the American side, and Weekes received a pistol wound so severe that he died the same evening. Weekes was an Irishman who late in the eighteenth century came to New York, where he was a student under the notorious Aaron Burr. Making his way to York, Upper Canada, he was called to the Bar in 1799,³ and at once obtained a good practice. He joined the well-known judge, Thorpe, in his opposition to the Government of the day and was elected a member of the House of Assembly. Mr Justice Thorpe presiding at the Court of Assize and Nisi Prius at Niagara (Newark), Weekes in an address as counsel made a vicious attack on the Government without

objection from the Bench—indeed, it seems to have been expected by the judge that such an inflammatory address would be made.⁴ Weekes was followed by Dickson, who made as virulent an attack on Weekes as Weekes had made on the Government. Nothing came of this for a few days ; but Weekes and the judge spent a night together in a neighbouring tavern, and they seem then and there to have developed a plan for the humiliation of Dickson. Weekes was a bachelor without encumbrances ; Dickson had a wife and a large family of small children ; he was moreover a canny Scot ; and the conspirators thought he would decline a challenge. Accordingly a challenge was sent ; and somewhat to Weekes's dismay it was promptly accepted, with the result we have seen.

Weekes was buried at Niagara : the administration of his very considerable estate was one of the scandals of that early time and was the occasion of one of the earliest private Acts in the history of Upper Canada.

Dickson became a member of the Legislative Council and a man of considerable influence in public affairs ; he is best known from the part he played in the prosecution—and persecution—of Gourlay. Of course

Dickson was not prosecuted for his part in the duel, the crime (?) not being committed in Upper Canada.⁵

The next duel probably caused more stir at the time, and afterwards, than any other similar event in the early history of the province.⁶

In 1815 Mr Samuel Peters Jarvis went from York to Quebec with his youngest sister to place her there in a boarding-school. At the request of Mrs Thomas Ridout, her mother, he also took along Miss Ridout, who was to be placed at the same school. On arriving at Quebec he called upon Miss Ridout's brother, Mr Thomas G. Ridout, an officer in the Commissariat Department, who took the young girls under his protection; Ridout was to pay Miss Jarvis's accounts and draw upon her brother for the amount. The following year Mrs Ridout visited Quebec, and through some misunderstanding came to think that her son had been obliged to pay for Miss Jarvis's support without reimbursement by Jarvis. She told this to some people and it came to Jarvis's ears. Jarvis wrote to her husband, who was surveyor-general of the province, demanding a contradiction of the story; he handed the letter to his son George

(afterwards Treasurer of the Law Society), who at once wrote to Jarvis, saying, 'for any imaginary injury received from any part of my family, I am ready to answer.' Jarvis demanded an apology or 'meet me with your friend Saturday morning next seven o'clock at the Five Mile Meadow opposite Brown's Point.' Ridout accepted 'the terms contained in the latter part of your letter if it be possible to reach the appointed place within the period limited.' Accident prevented this duel; another meeting was arranged; but the Reverend Dr Strachan (afterwards the first Anglican Bishop of Toronto), a friend of both parties, succeeded in bringing about an amicable settlement. On November 16, 1816, both signed a document whereby Jarvis withdrew the letter to the surveyor-general, the elder Ridout; and it was agreed that 'a letter shall be immediately written to the Surveyor-General requesting him to give complete contradiction to the reports circulated by Mrs Ridout to the prejudice of Mr Jarvis, which it is understood the Surveyor-General is to give.' This was done, and the trouble blew over for the time.

The hard feelings between the families

were not, however, abated. In the following year John Ridout, a student in the law office of his brother George and not quite of age, was conducting a lawsuit against Jarvis's father, and Jarvis was trying to settle the action. On one occasion Jarvis ordered Ridout out of his office; ⁷ a few days thereafter the two men met in the street; Ridout struck Jarvis several times with a stick and shattered the bones of his right hand. Jarvis knocked him down with a blow from his left, and the fight continued until the parties were separated by Captain FitzGibbon ⁸ and Dr Horne. ⁹ A few days afterwards Mr James E. Small ¹⁰ waited on Jarvis on behalf of Ridout. Jarvis promptly accepted the challenge, and at daylight next morning went with his second, Mr Henry John Boulton, ¹¹ and met Ridout and his second, Small, at Chief Justice Elmsley's barn, not far from the north-west corner of Yonge Street and College Street, Toronto. After waiting at the barn until a shower was over, the principals were placed eight yards apart; it was agreed that the signal should be 'one, two, three, fire,' but that on no account was either party to raise his pistol till the word 'fire.' Mr. Small pronounced 'one,' and was in the act of pro-

nouncing 'two' when Ridout raised his pistol and fired at Jarvis; Ridout then left the ground in a direction away from Jarvis. Whether the irregularity of premature fire was due to nervousness (as is likely) or not, Jarvis insisted to the end of his life that it was a deliberate attempt at foul play. Ridout was rebuked by his second and directed to take his place. He said, 'Yes, I will, but give me another pistol'; a loaded pistol was given him, but after a conference between the seconds, taken away later, as 'Jarvis was entitled to his shot.' The second pronounced the signal agreed upon and Jarvis fired. Ridout fell, was carried into Chief Justice Elmsley's barn, and there died in a very short time.

The pistols used on this occasion are in the possession of Æmilius Jarvis, Esq., of Toronto, grandson of the surviving principal. They are long and heavy, carry a large bullet, and are most deadly weapons.

Jarvis was arrested the same day and taken to prison, where he remained till the October assizes at York. He was arraigned at York, the attorney-general, D'Arcy Boulton, receiving permission to retire from the case as his son had been concerned in the matter as second. The solicitor-general, John Bever-

ley Robinson, was absent; and the judge himself examined the witnesses. The jury found a verdict of 'not guilty' after a few minutes' consideration, although the charge 'was anything but indulgent to the prisoner and was so considered by most of the persons present in Court.' Small and Boulton, who had been indicted as accessories, were present, and as a matter of course discharged on the verdict acquitting the principal being pronounced.

The unhappy mother whose unguarded words were the beginning of the troubles between the families—'the beginning of strife is as when one letteth out water'—never forgave either principal or second for her son's death; for years she used to wait after the morning service at the door of St James' Cathedral until Boulton came out, and would then solemnly curse him for his part in what she called the murder of her son.¹²

The other duel¹³ to be mentioned here was fought in 1833; it is often, but inaccurately, called the last duel in Upper Canada.

About the time of the Jarvis-Ridout duel, there came to the township of North Sherbrooke (in Lanark county) a number of immigrants generally called the 'Radical Settlers.'

One of them, poor but prominent and influential, was Ebenezer Wilson, who had been a mill-superintendent in Scotland. His eldest son by a second marriage was John Wilson, born in Scotland in 1809, and emigrating with his father.

Young Wilson, when teaching a small school, was brought to the attention of James Boulton,¹⁴ a practising attorney in Perth, who made him his student, took him into his house, allowing him to pay for his board, etc., by teaching Boulton's little child. Another student, Robert Lyon, who had been admitted on the books of the Law Society a year earlier than Wilson, was in the office of Mr Thomas Maybee Radenhurst, also in practice in the same town.

Bytown¹⁵ (now Ottawa) at that time was small but of growing importance and had a good deal of legal business. That part of the country had not yet been set off as a District and all the courts were held at Perth; the Perth lawyers mentioned had branch offices in Bytown and occasionally sent their older clerks to attend to them.

The two young men, Wilson and Lyon, were together in Bytown in 1833, when one day Lyon spoke disparagingly of a young lady¹⁶

of most estimable qualities and high character who was a member of the household of a Mr Ackland in Perth. Wilson informed Mr Ackland of this statement in a letter; Ackland mentioned it to several persons, and it came at length to the ears of another young lady of whom Lyon was *épris*. This young lady, on his return to Perth, treated Lyon coolly, and at length told him what she had heard. Lyon met Wilson, demanded an explanation; and as Wilson was explaining Lyon knocked him down, calling him a lying scoundrel. On the advice of his friends and much against his own inclination, Wilson challenged Lyon. Wilson's second was Simon F. Robertson, another law student and a fellow-student of Lyon's; Lyon's second was a relative of his, Henry Le Lievre.

On the following day, June 13, 1833, the parties met in a ploughed field on the right bank of the river Tay under a large elm-tree, a few feet beyond the dividing line of the Districts. It was raining hard and both missed on the first fire (though Lyon was said to be a crack shot); and Wilson was ready, indeed anxious, to allow the matter then to rest. Le Lievre, however, insisted on another shot. On the second exchange of shots Lyon

fell, mortally wounded, and died in a few minutes on the ground. Le Lievre fled, never returning; but Wilson and Robertson gave themselves up to the officers of the law. Le Lievre was much the oldest of the party; Lyon was not twenty and Wilson and Robertson were but a few years older.

The duel had been fought in the Johnstown District, though all parties resided in the Bathurst District; the two young men were accordingly tried at the ensuing assizes at Brockville in August 1833. At that time, and until 1841, those accused of felony were not allowed to defend by counsel; the young law students defended themselves and were acquitted.

The presiding judge was Chief Justice Robinson, whose notebook is preserved at Osgoode Hall. It is noteworthy that it was proposed to ask the first juror whether he had expressed or did entertain opinions unfavourable to the prisoners. The question was now allowed; our law does not permit such a practice. It is very rarely that in our courts it is even suggested, though the proceeding is very common, indeed almost universal, in many of the States of the Union.

The proceedings at the trial are a perfect

example of the course taken in such cases—the presiding judge allowing a mass of testimony to be given explaining the circumstances out of which the duel had arisen, what was said and done by each party, etc. etc., everything which would show that the prisoner did not wantonly seek a duel; although he carefully notes (and no doubt said at the time) that ‘it is not evidence.’

At the trial it was proved that Wilson detested duelling, but that on being knocked down by the taller, heavier, and more powerful Lyon, he felt himself bound to send a challenge in order ‘to maintain his standing in society.’ His master, James Boulton, testified that Wilson was very sensitive as to what was thought to be ‘his humble origin’—he was the son of a poor farmer—that consequently he ‘felt it the more necessary to be tenacious of his character and scrupulous about preserving it from taint . . . than if he had been of a higher walk; he would have risked all this and treated it with contempt.’ Several witnesses swore that, had Wilson not challenged, he would have been exposed to be contemptuously treated by his young companions and others—which gives us a vivid view of society at that time. It seems to

have been arranged that Wilson should 'explain away the effect of his letter' and Lyon should apologize; but apparently Lyon subsequently refused to implement this agreement.

It is impossible not to recognize from the evidence that Le Lievre was the real author of the mischief. He had been very attentive to the maligned young lady, but she had given him his *congé* and received the addresses of Wilson. When Lyon received the challenge, he stated that he had said what he had to Wilson, only to tease him, and had not supposed that he would take it seriously. He had asked a Mr Muir to act as his second, but Muir refused, and he took Le Lievre; then the meeting being postponed until the evening, Lyon refused to carry out the arrangement which had been made, and the parties met about 6 p.m.

After the first exchange of shots, Dr Hamilton went forward to the seconds and desired to bring about a reconciliation. Le Lievre at once said a reconciliation was impossible. Dr Hamilton then desired to speak with Lyon, but Le Lievre said he could not until the pistols were loaded. Notwithstanding this, he spoke to both principals; Wilson

seemed very desirous of settling, but Lyon said it was impossible.¹⁷

The chief justice warned the jury against being led away by their feelings. He then defined with perfect legal accuracy the nature of the offence charged and the criminality of the duel, but he inserted the significant sentences: 'The practice of private combat has its immediate origin in high example, even of Kings. Juries have not been known to convict when all was fair,¹⁸ yielding to the practices of Society . . . that sometimes no one being present the fact could not be proved at whose hands the party fell, . . . at other (times) they may have felt it difficult to infer that malice aforethought essential to murder.' He dealt with the facts of the duel and then with the antecedent facts 'not as legal evidence but as the only palliative the prisoners could offer and was usually heard.' After congratulating the prisoners on being 'so capable of defending themselves' when they were prevented by law from addressing the jury by counsel, he added, 'Wilson was of humble origin and saw his prospects blasted if he submitted to the degradation and was impelled by the usages of Society and the slights he had partially felt or foresaw to

adopt the only alternative which men of honour thought open to him . . . he to the last relied upon an amicable adjustment and went out determined not to fire at deceased and did so at last in a state of nervousness.' It is no great wonder that the jury took the very broad hint and followed the example of other juries who, finding 'all was fair,' refused to convict. The chief justice notes that 'the jury was but a short time in consultation.'

Wilson subsequently married the young lady, who was amiable and accomplished; not the faintest suspicion was ever breathed against her except the jesting remark of young Lyon made to tease his comrade and not expected or intended to be taken seriously.

Wilson was called to the Bar in 1835, and was at once sent by Boulton to conduct a branch office in Niagara; but in a very short time he removed to London, where he obtained a very large practice. After serving in the Rebellion as captain of militia, he became a member of the House of Assembly, and afterwards in 1863 was elected to the Legislative Council. He did not take his seat in the Council, as he was in that year appointed to the Bench of the Court of Common Pleas as

a puisne judge. He survived until 1869, never, it is said, ceasing to deplore the unhappy fate of his boyhood's friend, Lyon, and his own part in it.

There have been many other duels in this province, but none of the notoriety of those which have been detailed; and the particulars cannot now be obtained. For example, the well-known Colonel John Prince (of Sandwich, who on the capture of four Sympathizers in 1838 'ordered them to be shot and it was done accordingly') was a noted duellist, having several meetings to his credit. And in the forties two medical men had a hostile encounter at Bond Head, Upper Canada, Dr Stewart, late of Kingston, being one of them and Dr Mulock the other.¹⁹

NOTES TO CHAPTER VI

¹ By the very first Act passed by the first parliament in Upper Canada.

² See chapter ii, p. 23 *ante*: chapter viii, p. 138 *post*.

³ He was the first to be called regularly to the Bar by the Law Society of Upper Canada, having been a student at law when the Law Society came into existence in 1797.

⁴ It was observed at the time that there were several persons not accustomed to frequent the courts who were that day

accommodated with a seat beside the presiding judge on the Bench.

⁵ Curiously enough, Weekes and Dickson were great friends: in the early part of this year, March 5, 1806, Dickson was made a 'bencher' or governor of the Law Society on the motion of Weekes. They were, moreover, of the same stripe of politics, Weekes being by far the more outspoken.

Dickson lived to take an active part in the War of 1812. He was taken prisoner and sent to Greenbush, New York, but was subsequently released on parole. When he was a prisoner of war a charge was made against him of having murdered Weekes, and an attempt was made to hold him on that charge. It was, however, decided that he as a prisoner of war could not be held on this criminal charge, in no way appertaining to the war.

Dickson bought the township of Dumfries in 1816 for about a dollar per acre. Born in Dumfries, Scotland, in 1769, he came to Niagara in 1792. But he did not at once come into prominence; it was only in 1815 that he was called to the Legislative Council. Gourlay calls him a 'jumble brain,' but he was of good business capacity, 'an enterprising Scotsman,' and he achieved considerable wealth.

⁶ Most of the facts leading up to this duel appear in contemporary manuscripts in the Toronto Public Library. Some, however, of these, as well as the facts of the duel itself, are to be found in a pamphlet published by Jarvis at the time of the prosecution of Francis Collins in 1828.

⁷ Jarvis claimed that Ridout was unbearably offensive and even insulting—there was no third party present, and we have not Ridout's side of the story. No one, however, has ever doubted Jarvis's integrity and sense of honour.

⁸ One of the heroes of the War of 1812-14, an Irishman who died a 'Poor Knight of Windsor.' Many of his descendants still live in Canada.

⁹ Robert Charles Horne, an Englishman and a member of the
O.P.T.:U.C.

Royal College of Surgeons, was an army surgeon in the War of 1812-14. When his regiment, the Glengarry Light Infantry, disbanded at the close of the war, he came to York (Toronto). It is not quite certain whether he engaged in general practice, but he was made surgeon of the North York Militia. He was appointed a member of the Upper Canada Medical Board to examine candidates for licence to practise medicine. At different times he was editor and publisher of the *Upper Canada Gazette*, King's Printer, and cashier of the Bank of Upper Canada. A strong Tory, his house was burned by the Radicals in the short-lived Rebellion of 1837-38. He died in 1845.

¹⁰ Son of Major John Small, and afterwards Treasurer of the Law Society of Upper Canada.

¹¹ Afterwards solicitor-general of Upper Canada, and chief justice of Newfoundland. He was a son of Attorney-General (afterwards Mr Justice) Boulton.

¹² This information I owe to Sir Glenholme Falconbridge, chief justice of the King's Bench.

¹³ Many myths have arisen about the Wilson-Lyon duel; the present account is largely derived from the chief justice's notes (still preserved at Osgoode Hall) of the trial of Wilson and Robertson, indicted for murder. Several other sources of unquestionable reliability have been made use of, and it is believed that the accuracy of the account here given can be depended on.

¹⁴ Boulton was a man of some prominence in the profession; he afterwards removed from Perth to Niagara, where he practised for some time.

¹⁵ Called after Colonel By, the British engineer, who built the Rideau Canal from Ottawa to Kingston.

¹⁶ She was Miss Elizabeth Hughes, the daughter of the Rev. David H. Hughes, a Unitarian minister, at one time headmaster of a classical and mathematical school at Kingsbridge, Devon, England, and afterwards pastor in charge of Vicarage St Chapel, Yeovil, Somerset. He came with his children, Elizabeth and David John, to Canada in 1832, and

died of cholera at Coteau, on his way to the Perth settlement. Mr Gideon Ackland, with whom the Hughes family were acquainted, and whose wife kept a school in Perth, took the orphans into his home in that town. Ackland was then a law student; he was admitted an attorney 1836, and was called to the Bar 1837; he later practised in St Thomas. Miss Hughes became a teacher in Mrs Ackland's school in Perth. The boy, who was only twelve, was adopted by Ackland, and after working for a time as 'Printer's Devil' he studied law under Wilson (then become his brother-in-law), was admitted and called 1842. After a successful practice he became judge of the County Court of the County of Elgin, at St Thomas, in 1853: retiring in 1903 after half a century of faithful service, he lived in honour until his death, April 14, 1915.

According to the recollection of Mr Cromwell, who was an inmate of Ebenezer Wilson's house in 1833, and who has reduced his recollection to writing (now in the Dominion Archives), John Wilson was at the time engaged to another young lady. However that may be, he afterwards married Miss Hughes, and she survived him, dying in Toronto in 1904.

¹⁷ While it is certain that the fatal result of this duel was due to Le Lievre, he acted strictly according to rule.

In the code settled by the Gentlemen Delegates of Tipperary, Galway, Mayo, Sligo, and Roscommon at the Clonmell Summer Assizes, 1775, generally agreed to and followed throughout Ireland and in substance elsewhere, Rule 5 reads as follows:

'As a blow is strictly prohibited under any circumstances amongst gentlemen, no verbal apology can be received for such an insult: the alternatives therefore are—first the offender handing a cane to the injured party, to be used on his own person, at the same time begging pardon; second, firing on until one or both are disabled; or thirdly, exchanging three shots, and then asking pardon, without the proffer of the cane.'

Lyon had not, of course, taken the first alternative, and the firing must necessarily proceed, if the code was to be adhered to.

See *Personal Sketches of His Own Times*, by Sir Jonah Barrington, 1830, vol. ii, pp. 16, 17.

¹⁸ This reminds one of the charge of Chief Justice Fletcher of the Court of Common Pleas of Ireland, when, in the second decade of the nineteenth century, he presided over the trial of one Fenton for the murder of Major Hillas, whom he had killed in a duel: 'Gentlemen, it is my business to lay down the law to you, and I will. The law says the killing a man in a duel is murder, and I am bound to tell you it is murder; therefore in the discharge of my duty, I tell you so; but I tell you at the same time, a fairer duel than this, I never heard of in the whole *course* of my life.'

¹⁹ In the diary of the late Rev. Dr Henry Scadding, under date May 23, 1838, is the following: 'May 23. A gloom thrown over everyone by the intelligence of the death of the well known and much beloved Major Wade [Warde] of the Royal Regt. at Montreal. He was shot dead in a duel with one Sweeney, a volunteer officer. The affair arose from some silly altercation at a party the evening before. When will fools cease from folly?' (*Transactions of the Women's Canadian Historical Society of Toronto*, No. 6 (1906), p. 20.)

CHAPTER VII

THE TRAGEDY OF THE 'SPEEDY'

IN the early part of the last century there were living in York two young men, Aikens Moody Farewell and his brother William.¹ They were born in Connecticut and had come with their mother, a widow, to Niagara. There she married a sergeant in the Queen's Rangers, and the family removed to York, when the capital was changed from Newark to that place.

In 1804 the two young men paddled along the north shore of the lake to the bay east of the present Oshawa Harbour, and there purchased several hundreds of acres of land. But farming in those days was by no means so lucrative as at present; the market was constricted, and export difficult and uncertain.

Accordingly, the Farewells embarked in the trade in which there was no such thing as a limited market: the supply was uncertain, but Europe ever called for more and more

furs. The Mississauga Indians roamed that part of the province north of Lake Ontario ; and from the extreme northern limit of the province to an undefined line running substantially parallel with but removed some distance north of Lake Ontario, was the Mississauga territory. For example, Simcoe, in his proclamation dividing the province into counties, made the boundary of some of them ' the southern boundary of a tract of land belonging to the Mississague Indians.' The Indians did indeed roam over the land down to the lake, and sometimes brought their furs to the front ; but the wise trader went to them and did not wait for them to come to him.

The Farewells formed a trading camp on Washburne Island in Lake Scugog. One day in 1804 they paddled down the lake from their camp to inform the Indians that they had come to trade, leaving their servant, John Sharp, behind in charge of the camp. On their return they found Sharp dead, with his head battered in, and their goods had disappeared. They buried the corpse and followed the trail, which they found : on their way to the lake they were informed by a settler that he had heard a Mississauga named

Ogetonecut boasting of the way he had killed the white man. Ogetonecut's brother, Whistling Duck, had been killed by a white man, one Cozens, a short time before, and Ogetonecut killed the first white man he could.² The Farewells followed the trail to what is now 'the Island' (but was then a peninsula) opposite Toronto, where they found a camp of Mississaugas. They had Ogetonecut arrested. The Indians at first appeared to be about to offer resistance, but the chief ordered the prisoner to go with the white men.

He was placed in the Home District gaol in York—'a squat unpainted wooden building with hipped roof concealed from persons passing in the street by a tall cedar stockade,'³ standing on the south side of King Street a little east of Yonge Street.

Then the question arose where he was to be tried.

Dorchester in 1788 divided the territory afterwards Upper Canada into four Districts, one of which, Nassau, extended from the river Trent to Long Point on Lake Erie. This the parliament of Upper Canada in 1792 named the Home District. But in 1798, parliament, by an Act which received the royal assent January 1, 1800, divided up this

enormous District, forming two Districts, one of which retained the name of 'Home District,' and consisted of the counties of York, Simcoe, Northumberland, and Durham. Had that District remained unchanged there would have been no difficulty. A prisoner had to be tried in the District in which his crime was said to have been committed; and the town of York, being in the county of York, was then in the same District as Lake Scugog. But the same statute provided that as soon as Northumberland and Durham could make it appear that they had a thousand inhabitants they might be set off by themselves into a new and separate District, to be called the Newcastle District. This they did before many years elapsed, and they were in 1802 separated from the rest of the Home District in a new District, the Newcastle District.

Northumberland at that time included everything to the north of the present Northumberland as far as the Mississauga country: Durham was in the same case. There being no settlers in the rear of Durham or in what is now Victoria, the precise location of the western line of the rear of Durham county was not known. By the Proclamation of Simcoe, 1792, Durham was bounded

on the west by a line running north sixteen degrees west from the 'westernmost point of Long Beach.' To the west of that line was the county of York, the present county of Ontario⁴ not being in existence.

It was necessary to run the line: Major Wilmot did so, and it was found that the place where Sharp was murdered was in Durham county and therefore in the Newcastle, not the Home, District. The prisoner could not be tried at York, but must be sent for trial to the other District.

When the legislature authorized the formation of the Newcastle District, it directed by the same statute that a gaol and court-house should be erected for the District in some fit and convenient place within the town of Newcastle. This was not the present Newcastle in the county of Durham, but a piece of land laid out on Presqu'isle Point (near the present Brighton). This town of Newcastle was of some importance for a time; it had court-house, gaol, warehouse, dockyard, harbour, etc. etc., and as late as the War of 1812 it had considerable shipping trade. At the present time there is nothing to indicate that a town had ever been there. To get from York to Newcastle one might take the

Danforth road, built a few years before this by Asa Danforth, an American; but already on this road some of the bridges were gone, unable to stand the spring freshets with their ice. In many places the highway had not been cleared of stumps, and even timber was to be found here and there. Nevertheless, *faute de mieux*, men went to and fro on horseback on this road; it was not yet the time for carriages, and no Canadian ever walked when he could ride. The broad waters of the lake offered another means of passage—by schooner: no steamboats had yet replaced the primitive sailing vessel.

Two lawyers of prominence had arranged to ride together to the assize town, William Weekes⁵ and Robert Isaac Dey Gray, the young solicitor-general; but the judge was fond of Gray, and persuaded him to go by schooner with him. The Provincial Marine boasted a schooner called the *Speedy*, Captain Paxton, and she was ordered by the government to take the judge (Mr Justice Cochrane) and the prisoner to the assize town. The captain objected,⁶ saying that the *Speedy* was not seaworthy; but the authorities did not listen to his protest. Accordingly, Sunday evening, October 7, 1804, the ill-fated boat

set sail, having on board Mr Justice Cochrane, Solicitor-General Gray, Mr Angus Macdonell (a prominent member of the Bar, who had been clerk of the Legislative Assembly, and was at this time member for the constituency of Durham, Simcoe and the East Riding of York); John Anderson,⁷ a student at law of but a year's standing; John Fisk, the high constable of York; two interpreters, George Cowan and James Ruggles; John Stegman, a surveyor; Mr Jacob Herchmer, a York merchant; the Indian prisoner, and possibly (but not certainly) some of the witnesses.

The schooner put in at Oshawa and took on board some Indian witnesses. The two Farewells and Elias Lockwood (the settler who had heard the Indian boast of his deed) were also to take the *Speedy* opposite Port Oshawa; but after waiting for a time for her arrival and finding the wind favourable, they raised a sail on their birch-bark canoe and sailed for Newcastle. They had almost reached Presqu'isle when they were overtaken by the schooner; but they did not board her, as they had business at the Carrying Place (Consecon). A fearful storm sprang up; the three men in the canoe were almost lost, but at length reached the shore. The

schooner was never seen again: nothing from her ever came to land except possibly a hen-coop and a water-barrel, and there is doubt even as to that. 'Commission day'⁸ came at the assizes, but the judge not arriving, the court was adjourned, and the next day and the next, for over a week. At length even that hope which hopes against hope was extinguished and the court held no session.

The story⁹ is still believed by the older residents of the neighbourhood of Presqu'isle that in the early part of the year the lake captain, who was in charge of the court-house and gaol at Newcastle, Captain Selleck, discovered a rock off the coast, just below the surface of the water, which he had never seen before; that he drew the attention to it of Captain Paxton next time the *Speedy* arrived at Newcastle; that the two examined and measured the rock, finding it some forty feet in diameter, and rising sheer in a depth of fifty fathoms; and that Paxton assured Selleck that on his arrival at Niagara he would report the discovery, so as to have the charts amended and all mariners warned. The story is that after the loss of the *Speedy*, Captain Selleck and others tried to find the rock, but that after a most diligent search,

continuing more than one day, no rock could be found ; and it is certain that no such rock has been seen at any subsequent time to this day. It was thought to have been a large boulder loose at the bottom, that the *Speedy* struck it and that it rolled over, taking the schooner with it. No record exists of any report being made by Paxton of the rock. There is no contemporary record of anything of the kind, and it is probable that the story of the mysterious rock is a myth. It sounds like a story to tell to the Marines, but any one is at liberty to believe it who sees fit to do so.

About ten years ago a human skeleton was found by some campers on Washburne Island ; from the position in which they were found, it is believed that the bones were those of John Sharp, murdered by the Indians.¹⁰

Mr Justice Cochrane was of Nova Scotian birth, son of the speaker of the House of Assembly, and called to the Bar at Lincoln's Inn. He became chief justice of Prince Edward Island, from which position, after some trouble with the government of the island, he was appointed a judge of the Court of King's Bench in Upper Canada after less than two years' service. In Upper Canada he was on the Bench a little over a year. His

death, at the age of thirty-one, made way for the appointment of the notorious Judge Thorpe, who succeeded him.

Gray was the first solicitor-general of Upper Canada, a young man of much promise, the son of a major in the British service. He received a licence to practise in 1794, was made solicitor-general in 1797, and in the same year assisted in launching the Law Society of Upper Canada. A member of the second House of Assembly, he did yeoman's service in opposing the introduction of slaves into this province.¹¹ By his will he set free his slaves, amongst them John Baker, his body servant, to whom he devised a township lot for his support. John was rather given to drink, and had the habit of enlisting when drunk. His new master, Mr Justice Powell, bought him off several times, but after an express warning declined at length to interfere. He remained in the army and was present at the battle of Waterloo: he lived till 1871, the last survivor of those who had been slaves in Canada.

Angus Macdonell¹² was the son of a Highland gentleman who came to the province of New York at the invitation of Sir William Johnson. All his relations of fighting age

took part in the Revolutionary War on the Loyalist side. Coming to Canada Angus received a licence to practise law in 1794, being then clerk of the House of Assembly, which he continued to be till 1801: he then became member of the House. He had a very large practice and was very successful as a counsel.

NOTES TO CHAPTER VII

¹ For the story of the Farewells see Colonel Farewell's interesting volume, '*County of Ontario*, by J. E. Farewell, LL.B., K.C., Whitby, Gazette-Chronicle Press, 1907,' pp. 19 sqq.

² In the *Recollections of Mary Warren Breckenridge* (sister of William Warren Baldwin), 'written by her daughter, Maria Murney, from her mother's own words in 1859,' a story is given of the summer when 'the flights of pigeons were remarkable . . . they used actually to darken the air.'

In Clarke township, where the future Mrs Breckenridge was living with her father, Robert Baldwin, and the rest of the family, 'an Indian encampment was near . . . one Sunday he (*i.e.* Robert Baldwin) had gone to see his neighbour Mr Cozens when . . . several Indians came bringing furs and asking for whiskey. My mother and aunt refused them. They became urgent and insolent. . . . Some of the Indians were intoxicated before they came to the house and their threats were awful.' After some time the women, who handled the savages with great skill and coolness, were relieved to see Mr Baldwin returning. 'He brought Mr Cozens with him. No sooner did the Indians see him than one man drew his knife and showed it to my mother (then Mary Warren Baldwin) saying, "Cozens kill my brother, I kill Cozens." Then Mr Baldwin to divert that idea was obliged to get them the whiskey—nothing else

probably saved their lives.' *Transactions* (No. 11) of the Women's Canadian Historical Society of Toronto (1911-12), p. 20. It is probable that this truculent Indian was Ogetonecut, who afterwards found a watery grave in Lake Ontario.

³ This is the description given by Dr Henry Scadding in his *Toronto of Old*, pp. 98, 99.

⁴ Simcoe laid off a County of Ontario in his proclamation of 1792, but that consisted of the islands on the northern side of Lake Ontario.

⁵ As to William Weekes see chapter vi, p. 98 *ante*.

⁶ A petition dated at York, Upper Canada, November 12, 1827, by Thomas Paxton (son of Captain Paxton), for the grant to him of Fighting Island in the Detroit river, reads thus :

To the King's Most excellent Majesty, etc. etc. etc., the humble petition of Thomas Paxton, one of your Majesty's most dutiful and loyal subjects, of your Majesty's Province of Upper Canada in North America, second eldest son of Captain Thomas Paxton, who was most unfortunately drowned by the loss of His late Majesty's schooner the *Speedy*, on Lake Ontario in the said Province—sheweth—that your petitioner's father faithfully and honorably served your Majesty's late father, of glorious memory, for a period of thirty-five years in various parts of the world.

That for a few years prior to his unfortunate death he had served in the Command of His late Majesty's Schooner the *Speedy*, belonging to what was then termed the Provincial Navy on Lake Ontario—and at that time under the control of the Lieutenant Governor of the Province.

That in the fall of the year 1804 your petitioner's father was directed by the then Governor of this Province, Lieut.-General Hunter, to embark the judges and officers of the Court going on the circuit to open the Assizes in the District of Newcastle, against which he remonstrated, alleging the utter unworthiness of the vessel to go to sea.

That being peremptorily ordered by General Hunter to proceed, he embarked the Court and proceeded on his voyage as directed ; but from the time of his leaving the port of York no tidings were ever heard of the vessel, or her passengers and crew who must all undoubtedly have perished with the vessel, which is supposed to have foundered. . . .

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⁷ John Anderson, articled to Walter Butler Wilkinson, was admitted of the Law Society of Upper Canada as a student, Hilary Term 43 Geo. III, 1803, as No. 24 on the Law Society's Roll of Members.

It is of melancholy interest to note that he was the first student at law to be enrolled a member of the Law Society who was not afterwards called to the Bar.

⁸ In the olden times the judges who presided over the assize courts were given formal written commissions empowering them to hold these courts: the 'Commission day' was the first day of the assizes, so called because at the opening of the court the commission was 'opened' and formally read. It was thought rather *infra dignitatem* to do anything else on that day. Those days of pomp and leisure have all gone by; our modern judges carry no commission and the first day of the assizes is not uncommonly the busiest.

⁹ This most interesting story will be found at length in a sketch by the late I. M. Wellington, Esq., of Brighton, which appeared in the *Brighton Ensign* in January and February 1895, and was reprinted by the Ontario Historical Society in their *Records* for 1904, vol. v, pp. 61 sqq.

¹⁰ Farewell's *County of Ontario*, p. 21.

¹¹ This province abolished future slavery in 1793, the first British country to do so, and being preceded in the whole world by Denmark only, and that by but a few months. In 1798 Christopher Robinson, M.P. (the father of Chief Justice Robinson), and Edward Jessup, M.P., U.E.L., introduced a bill to allow immigrants to bring in their slaves; this, Gray and a few others fought against, but it carried in the Assembly. In the Council it received the three months' hoist, and never since has it been proposed that this province should suffer the curse of slavery. Further particulars concerning Gray will be found in my *Legal Profession in Upper Canada*, pp. 154 sqq.

¹² He is sometimes confused with his brother, Alexander Macdonell, who was sheriff at the time of the Home District and

afterwards became manager for Lord Selkirk of his settlement at Baldoon near Lake St Clair.

There was another Angus Macdonell (Aberchalder), a kinsman, who is mentioned by La Rochefoucault in his *Travels* as Customs Officer at Oswego in 1795. The two are sometimes not unnaturally confused; it may be added that the latter may be a brother of John Macdonell, speaker of the first House of Assembly.

Further particulars of Macdonell will be found in my *Legal Profession in Upper Canada*, pp. 157 sqq. See also chapter viii, p. 134 *post*.

It appears that he was to defend the Indian prisoner at Newcastle.

CHAPTER VIII

BROCK'S AIDE-DE-CAMP

ON the last day of the year 1799 arrived at Kingston, Upper Canada, a young man who was destined to take a great part in the new province, both in church and state.

A Scotsman (if it be lawful to call an Aberdonian a Scotsman), he became an ardent member of the Church of England; born of a Dissenting father, brought up by a mother in another Dissenting communion, he became the strongest advocate for a state church, and ever looked upon Dissenters with suspicion. But he was firm in what he considered his duty, he swerved neither to right nor to left in his aim to carry out what he believed to be just, he was open in his views and policy, and ready to face the whole world for his cause, sometimes not caring even for the law.

Such was John Strachan, the first Anglican bishop of Toronto. This was, however, far

in the future when the young Aberdonian came to Kingston, December 31, 1799.

He had been induced to come to Upper Canada by promises which proved illusory. A master of arts of King's College, Aberdeen, and a post-graduate student in theology there, he was engaged as a parish school-master at Kettle when an offer, which had been refused by the famous Dr Chalmers and another of less note, was made to him to become principal of an academy to be instituted by the government of the province. All his travelling expenses were to be paid and he was to have a salary of eighty pounds per annum on reaching his post—an irresistible lure to the young Aberdonian just of age.

But Simcoe, the first lieutenant-governor, had returned home; the academy scheme,¹ Simcoe's own, had gone by the board before the end of the year; and when Strachan reached Kingston it was to find his hopes blasted and his future depending on his own exertions. He was no coward or weakling; he did not sit down helpless and melancholy. He looked about him and secured a place as tutor in the household of the Honourable Richard Cartwright,² a member of the Legislative Council and a man of great influence,

thoroughly deserved. Next year, 1800, he opened a private school at Kingston and shortly thereafter took orders in the Church of England, whose creed and usages were practically identical with those of his father's Church, the Episcopal Church of Scotland. In 1803 he was appointed rector of the church at Cornwall: he removed thither and shortly afterwards he opened a school at that place, carrying it on without detriment to the duties of his sacred office. These schools were the most celebrated schools in Canada; and they turned out men who made their mark in every sphere of life—very few, indeed, of those who guided the destinies of the province at a time shortly after the date of which we are speaking, but passed through the hands of John Strachan at his school at Kingston or that at Cornwall.

One day there came to the school at Kingston a bright and handsome lad, John Macdonell by name. He was of a far-famed clan which has been ever foremost in patriotic service, and which to this day continues to furnish gallant soldiers and able administrators. Born in 1785 at Greenfield, Glengarry, Scotland, he came with his family to Canada in 1792. His father was Alexander Macdonell of Green-

field, his mother the sister of John Macdonell, the speaker of the first House of Assembly in Upper Canada, of Hugh Macdonell, a member for Glengarry in the same House, and of Chichester Macdonell, who after gallant service for the crown in the revolutionary wars, served under Sir John Moore in Spain and died on service in India. The lad Macdonell was not tall, but he was strong, athletic, and finely built.

The schools kept by John Strachan were open to all sons of gentlemen. The teacher was a High Churchman and a Tory, but no suspicion of religious proselytism was ever whispered of him—Roman Catholic, Anglican, and Presbyterian were equally welcomed and equally free to hold the creed of their parents.

Macdonell was a good student, and by the time he was eighteen he was fitted to take up his chosen profession, law. His kinsman Angus Macdonell³ was a lawyer in active practice in York. He was one of the ten lawyers who formed the Law Society in 1797, and in 1801 was elected member of the House of Assembly for Durham, Simcoe and the East Riding of York. He had also attained to the leadership of the profession, for he was Treasurer (*i.e.* president, for the Society re-

tained the old English terminology⁴) of the Law Society of Upper Canada. To him in 1803 came the young Highlander to be articled; and by him 'John Macdonell of York, Gentleman' was admitted on the books of the Law Society as a student in 'Easter Term George III.'

The meeting of the Benchers which saw Macdonell entered as a student saw Dr William Warren Baldwin called to the Bar: neither barrister nor student could possibly foresee their future relations or their hostile encounter nine years later.

Angus Macdonell, as we have seen, perished in the *Speedy* in 1804; but John continued his studies (it does not appear under what master) and was 'called' to the Bar in Trinity Term, 48 George III, *i.e.* 1808. He remained in York, and at once obtained a large and lucrative practice. But these were anxious times: the United States government threatened and threatened again; the War Hawks of the South and West were a strong and insistent party; Henry Clay was a power and his hatred for Britain was only equalled by his ability; the mother country had Napoleon on her hands, and was fighting the battles of the world for freedom. Young

Macdonell was true to his blood : he believed a conflict was inevitable and prepared for it ; he joined the militia and received a commission in that force.

Neither arms nor the toga has ever so fully occupied the mind of man as to exclude the soft passion of love ; and Macdonell was no exception. The belle of the little provincial capital of the time was Mary Boyles Jarvis, the fourth daughter and eighth child of William Dummer Powell, puisne justice of the Court of King's Bench, one of the fairest in a society of fair women. She was not only beautiful, but also spirited, having the disposition of her ancestress, Anne Dummer.

When William Dummer, lieutenant-governor of Massachusetts—he of Dummer's War fame—came home from England early in the eighteenth century, he brought with him as secretary a gay young man of Welsh descent, a Cavalier and a High Churchman, John Powell by name. Dummer had a sister Anne, 'a little woman of very dignified presence and manner and sober conversation,' 'a proud Presbyterian who had disdained many offers.' Powell made a bet one day in his club that he would marry her, and he won his bet. Her eldest son was also called John,

and this John Powell's eldest child was William Dummer Powell.⁵

Mary Powell was wooed and won by the young Highlander, second in manly beauty only to John Beverley Robinson, the handsomest man of his day in York. True, the lady was a Church of England woman, while Macdonell was a devout Catholic: but love which laughs at locksmiths readily overcame difference of creed.

It is on record ⁶ that Mary Powell was wont to treat her lover with the cruelty and feigned indifference which the romances of the day required of all *fiancées*; but there is no room to doubt her deep affection for him.

Macdonell became *persona grata* with Lieutenant-Governor Gore, and upon Serjeant Firth, the attorney-general, deserting his post, Macdonell was appointed (acting) attorney-general in his place. This was in September 1811; but before confirmation was received from the home authorities he had gone to a hero's death at Queenston.

In his conduct of the business of attorney-general, Macdonell did not at all times exhibit very great regard for the feelings of others—few very busy and very ardent counsel do. He was particularly irritating to Dr William

Warren Baldwin,⁷ the treasurer of the Law Society, a stately Irishman from Cork, who after graduating in medicine at Edinburgh had been made a lawyer under an Act of Parliament in Upper Canada, and so became one of the 'heaven-born lawyers' of contemporary satire. Baldwin had been a friend of Firth's and resented Firth's being deprived of his office and Macdonell's appointment; and both in court and out of it, he and Macdonell, while still 'learned friends,' had many passages at arms. One day in April 1812, in the Assize Court at York, Macdonell put on the cap-sheaf to his offences: he used language so wanton and ungentlemanly, that, in Baldwin's opinion, there was nothing for it but a recourse to arms. Baldwin sent a challenge by his friend Thomas Taylor,⁸ afterwards to become a barrister, and the first law reporter in the province, and to die as District Judge at Hamilton, but then a lieutenant in the 41st Foot. The challenge was accepted. Macdonell chose as his second Duncan Cameron,⁹ a man of high standing socially and otherwise and churchwarden of St James'. Macdonell and Cameron crossed the bay in a sleigh; Baldwin and Taylor on foot, stopping at the blockhouse on Gibraltar

(Hanlan's) Point for Baldwin to make his will. Macdonell refused to fire; Baldwin then fired aside.¹⁰ The seconds suggested an accommodation; the principals agreed and shook hands, and came home wholly unreconciled.

Stern days were in sight. Madison had long threatened war against Great Britain. Dr Baldwin says of the war in advance, 'A more unprovoked, immoral and impious war was never engaged in than this the Americans are threatening us with,'¹¹ and considers it due to 'the brawling Jacobinical and damnable disposition of the American Government.' Be that as it may, the long-expected storm broke: war was declared June 18, 1812, but the news reached Montreal only about July 7, and General Prevost at once notified General Isaac Brock, the administrator of Upper Canada. Brock appointed Macdonell (now a lieutenant-colonel and member of the House of Assembly for Glengarry) his aide-de-camp, and he accompanied his general through the arduous campaign which followed. There is no need to detail here the victory over the braggart Hull at Detroit, or the difficulties of the march thither and the return. Let us hasten to the glorious battle in which general

and aide-de-camp alike gave life for king and country, and earned the eternal gratitude of Canadians, who are proud to be Canadians and British. On the night of October 12, 1812, Brock sat late at Fort George, writing letters to the officers commanding the different posts along the river Niagara. Early next morning the Americans began crossing the river, and word reached the general about daybreak: he at once galloped to the scene. Rallying his troops, who were giving way before the tremendous pressure, and leading them on, Brock fell, calling out the command, it is said, 'Push on, brave York Volunteers!' His aide-de-camp was neither laggard nor dismayed. Mounted, he cheered on his men to revenge their general; in a shower of bullets both rider and horse were struck, the rider was mortally wounded, the horse killed. Macdonell as he fell called to his friend Lieutenant McLean,¹² 'Help me, Archie!' McLean was himself wounded and could give no help; Captain Cameron, Macdonell's close friend and former second, attempted to save him and almost miraculously escaped injury. He succeeded in carrying off the sorely wounded hero to a neighbouring house. Dr Grant Powell, brother of his *fiancée*, attended the

dying man. John Powell, another brother, sent the poor girl an affecting account of Macdonell's last hours, which I have before me as I write: 'he was dreadfully wounded and . . . suffered great pain . . . he was wounded in three different places, in the head, through the body and one of his wrists besides being trampled by his Horse . . . your brother [*i.e.* Dr Grant Powell] saw him . . . he knew your brother and gave his hand and pressed it . . . he died on Wednesday (Oct. 14th) at 12 o'clock, and the moment before he expired he desired the servant to lift him up, he was sensible to the last moment . . . he looked quite natural . . . poor fellow I sincerely regret him. I always felt a friendship for him because I knew his superior worth, he has left few of his age that possess that purity of mind that he did.' A touching tribute from one who knew him well. Macdonell's name deserves to be linked with the names of our heroes of the present who on the plains of France and Flanders have laid down their lives as truly for Canada as he at Queenston Heights more than a century ago.

The grief of the stricken Mary Powell is described in letters written by her mother

at the time and still extant. The poor girl seems to have exaggerated the importance of her caprices and want of consideration toward her devoted lover, and to have felt a keen sense of remorse.

But the healing power of time is ever active. Not long afterwards she listened to the prayers of Samuel Peters Jarvis, an old friend of her deceased lover. They were married and their descendants are of the most respected people of the province. But among the treasures which she guarded all her life was a volume of poetry presented to her by John Macdonell, and bearing his autograph in his unmistakable copperplate chirography.¹³

By his will he left his *fiancée* a choice between £100 (\$400) and a lot of land, north of King Street and between Yonge Street and Church Street in York, now worth millions. But everybody then had land: the Powells were land poor; the judge had been obliged to mortgage his land to raise money for his journey to Spain to rescue his son Jeremiah; taxes came high (as when did they not?); and Mary Powell took the money.

The hero aide-de-camp sleeps with the hero general under the monument on Queens-ton Heights, close to the spot where he fell.

His memory will never wholly die so long as fearless bravery and devotion to duty are dear to Canadians.

NOTES TO CHAPTER VIII

¹ The problem of education in Upper Canada had not been wholly overlooked, but the education of the masses had not been as yet even mooted. I transcribe here certain remarks of my own made in an address before the Ontario Educational Association at Toronto, April 26, 1916 :

'The Parliament of Upper Canada had carefully provided for law courts, law and juries, gaols and court-houses, militia, excise and tavern licences, weights and measures, the value of coins, tolls to be taken by millers, municipal officers, assessment and taxes (for taxes, like death, are inevitable), roads and statute labour, the registration of deeds and other instruments of title, wages for legislators, the practice of law and of medicine.

'It had even provided—the first British country to do so, the second in all the world—for the abolition of slavery. But it had not provided for the abolition of illiteracy; it had provided bounties for the destruction of bears and wolves, none for the destruction of ignorance, a worse enemy than any wild beast of the forest; horned cattle, horses, sheep and swine were not allowed to run at large, but the child was, so far as any public provision was made for him.

'To us in this democratic age the perusal of the correspondence, etc., dealing with the aspirations as to education of those in authority in the early days of Upper Canada, leaves a bad taste in the mouth. Most, if not all, had in view Grammar Schools, "a provision for the education of the rising generation who must take their due lead in society," "that the rising generation may be brought up competently learned and properly imbued with religion and loyalty."

'There was from the beginning an effort on the part of the

rulers to establish at public expense what we should call secondary schools, and a University—the common school for the common child was as little thought of as in England—and there was also from the beginning a more or less quiet resistance to this scheme, although the objectors do not seem to have formulated their proposals definitely.

‘In one case only was any poor child provided for by legislation. In the same year that Strachan arrived in Canada, the legislature enacted a law directing that children orphaned or abandoned should be apprenticed by two magistrates until they should be of the age of twenty-one if male, eighteen if female. (Every one will at once think of *Oliver Twist*.)

‘In that state of affairs private schools were opened in various parts of the province, of various degrees of excellence, and with various curricula. Those interested will find a reasonably full account in Dr Hodgins’s *Documentary History of Education in Upper Canada*, in the first volume (now rare) of that interesting and valuable series.

‘As with schools, so with school books; there were few of any kind and none prescribed.’

In that address I described somewhat fully a text-book in arithmetic written by Strachan. This is exceedingly rare—the only copy I have seen is in the Toronto Public Library. It is entitled: *A Concise Introduction to Practical Arithmetic; For the use of Schools By the Rev. John Strachan Rector of Cornwall, Upper Canada Montreal Printed by Nahum Mower 1809.*

² The grandfather of Sir Richard Cartwright, James S. Cartwright, K.C. (both deceased), and of John R. Cartwright, K.C., deputy attorney-general. He was one of the judges of the Court of Common Pleas for the district of Mecklenburg (Kingston) 1789-94, a merchant of great enterprise and a member of the Legislative Council.

³ Angus Macdonell who perished in the *Speedy* disaster. See chapter vii, p. 123 *ante*.

⁴ See, for example, Herbert’s *Antiquities of the Inns of Court*

and *Chancery*, 1804, p. 228: 'The office of Treasurer is of considerable importance. . . . He is the Supreme Officer of the whole Society and has the regulation of its concerns. He admits gentlemen into the Society,' etc.

⁵ From the MSS. of Chief Justice Powell.

⁶ This appears from a letter written by her mother at the time, referred to later in the text.

⁷ William Warren Baldwin was the third son of Robert Baldwin of Knockmore, near Carrigoline, County Cork, a gentleman of independent means, who in 1798 came to Upper Canada, leaving his native country by reason of its troubled condition due to the 'United Irishmen' movement. 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.

Robert Baldwin had lost his wife, who died giving birth to her sixteenth child. He left the Cove of Cork, Ireland, in 1797 with two sons and four daughters. After three weeks out their ship was driven back by very severe weather; a second attempt carried the vessel into another heavy gale. The captain desired to take his ship to Lisbon, claiming to be a Bonaparte man, but the passengers forced him to land them in Falmouth. The Irish emigrants remained in Cornwall for seven months. The delay cost Baldwin the grant of a township in Upper Canada which he expected and perhaps had been promised him. In the summer of 1798 they set sail in the *Grantham*, a twenty-gun ship which sailed with a convoy of many others. They arrived in Halifax after a favourable passage, thence they proceeded to New York, arriving there in June 1798, thence up the Hudson and the Mohawk, etc., to Oswego, thence to York (Toronto). Baldwin found that grants of such a large quantity of land as he had expected had

been prohibited by a recent order-in-council ; so he bought land in the township of Clarke, a new township in the county of Durham, and there he settled on what was called after him Baldwin's Creek, now Wilmot's Creek, noted for its salmon.

He was made a justice of the peace—no small honour in those primitive days—and when the Newcastle District was created, in 1802, he took a very active part as magistrate at the quarter-sessions and otherwise.

The son was entitled under the Provincial Act of 1795 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.' 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. 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 time in its short history there were not enough lawyers ; and the legislature, by the Act of 1803, 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 persons 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 he should consider, from their probity, education, and condition in life, fit and proper to practise law. Dr 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 1803.

A handsome man, of fine presence and easy manners, fluent and

ready-witted, well educated, and knowing even a little of law, he soon had a large and flourishing practice. Appointed a Bencher in 1807, he became Treasurer in 1811.

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, but he did not go with Mackenzie all the way, drawing the line at rebellion. It is perhaps not impossible that he would have joined the rebels 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, 1811-15, 1820-21, 1824-1828, 1832-36; 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 openly to fight a duel, admittedly a crime, which in a fatal case would be considered murder.

⁸ For an account of Taylor, see my address before the Dominion Bar Association, June 1916, '*The First Law Reporter in Upper Canada and his Reports.*'

⁹ 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 year, did not prevent him from acting as a second in a duel. He was a captain in the York Volunteers, and provincial secretary.

¹⁰ 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 is 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; therefore *children's play* must be dishonourable on one side or the other, and is accordingly prohibited.'—Barrington's *Personal Sketches*, vol. ii, 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.

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

¹¹ Many will be inclined to agree in this opinion—but 'a more unprovoked, immoral and impious' war broke out a hundred and two years after Baldwin's letter; and a General Mercer, a Major Charles Moss, and many another gallant heart have been stilled for ever, defending the right as did Macdonell on Queenston Heights.

¹² Afterwards Chief Justice McLean.

¹³ Now in the possession of her grandson, Æmilius Jarvis, Esq., of Toronto.

CHAPTER IX

THE TRAGEDY OF ANNE POWELL

ANNE POWELL was the sixth child and second daughter of Mr Justice Powell (her elder sister, also named Anne, died in infancy). She was born March 10, 1787, as appears by the Register of Baptisms, etc., of the parish of Montreal. She was educated in part in Canada, but mainly in England, and was undoubtedly of a high grade of intelligence: her correspondence exhibits considerable literary talent and a sound education.¹ She was a very handsome woman, though perhaps not as beautiful as her younger sister Mary; her manner was captivating and she was a good conversationist. But she was self-willed, impatient of restraint, and had a hearty contempt for mere conventionality. The rigid formality of the official society of York was irksome to her, and she resented with spirit 'Mrs Grundy's' strictures upon her conduct; moreover, she was not too regardful of the feelings of her own people.

In 1822 Chief Justice Powell was in England; and his daughter made up her mind that she would make a visit to that country also. It happened that a gentleman of high official position in York, the handsomest man of his day, had been appointed by the government to proceed to England as commissioner on behalf of the province in connection with the troubles about revenue between Upper and Lower Canada.² Anne Powell's determination to go to England just at this time unfortunately awakened the suspicions of her mother, who seems to have been inclined to doubt her own people and to place the worst construction on their acts—a trait which, descending to at least one of her children,³ caused that child great pecuniary loss. A scandal which had been whispered in society in the provincial capital came to her mind—this was that Anne had been engaged in a flirtation with the official. It should be said at once that neither then nor at any subsequent time was there ever a breath of suspicion against the virtue of either; and not even after Anne's tragic death did any of the Powell family or connection accuse that gentleman of aught but 'an idle and insincere speech.'

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Anne had asked this gentleman to allow her to travel to England with him and his wife, but from a decent regard for the proprieties he had refused. The mother expostulated with her daughter, and told her plainly that her proposed journey would be taken by society generally as proof of her infatuation. This angered the young woman, and she said that since such things were said of her she would go now no matter what happened. Dr Strachan (not yet Bishop) was sent for—the confidant of most of the official set at that time, of all of those of the Anglican communion. He reasoned with the angry young lady, and finally apparently persuaded her to give up her plan; her baggage, which was all packed for the voyage, was locked up by her brother, Dr Grant Powell; and all fear of scandal seemed over.

In the morning, however, it was found that she had fled, and was on her way by sleigh to Kingston. She seems to have so far effected her purpose that she joined the official and his wife; at all events, her mother writes that she stayed at the same houses and ‘boasts she was always considered the Lady of the party.’ The three travelled together to New York—the official and his wife sailed from New York,

but Miss Powell did not accompany them. They arrived safe in England in March. She took a later ship, the packet *Albion*, of 500 tons burden. The *Albion* was not a new ship, but 'she was one of the most thought-of ships that ever sailed, and the Captain (Williams) as much so, both as a well behaved man and a good seaman.' Dr Scadding, in his *Toronto of Old*, p. 57, says: 'A family party from York had embarked in the packet of the preceding month and were . . . safe in London on the 22nd of March. The disastrous fate of the lady above named was thus rendered the more distressing to friends and relatives as she was present in New York when that packet sailed, but for some obscure reason she did not desire to embark therein along with her more fortunate fellow townfolk.' The contemporary documents indicate the reason—there can be little doubt that she did not desire to carry her independence and contempt of public talk and suspicion so far as to do what could be considered an actual impropriety. She was a woman of thirty-five and was quite competent to look after herself.

The ship *Albion* encountered heavy weather and was in great distress for several days,

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during which Anne Powell showed great fortitude and courage, encouraging the men and taking her turn at the pumps with them—(it is a family tradition that she is the heroine of the sailor song 'Polly Powell was her name'). All was in vain. A contemporary account in the *Cork Southern Reporter* reads :

The *Albion*, whose loss at Garrettstown Bay we first mentioned in our paper of Tuesday, was one of the finest class of ships between Liverpool and New York, and was 500 tons burden. We have since learned some further particulars, by which it appears that her loss was attended with circumstances of a peculiarly affecting nature. She had lived out the tremendous gale of the entire day on Sunday, and Captain Williams consoled the passengers, at eight o'clock in the evening, with the hope of being able to reach Liverpool on the day but one after, which cheering expectation induced almost all of the passengers, particularly the females, to retire to rest. In some short time, however, a violent squall came on, which in a moment carried away the masts, and, there being no possibility of

disengaging them from the rigging, encumbered the hull so that she became unmanageable, and drifted at the mercy of the waves, till the light house of the Old Head was discovered, the wreck still nearing in; when the Captain told the sad news to the passengers, that there was no longer any hope; and, soon after she struck. From thenceforward all was distress and confusion. The vessel soon after went to pieces, and, of the crew and passengers, only six of the former and nine of the latter were saved.

This tragedy took place at the Head of Kinsale on the south coast of Ireland. Local tradition ⁴ tells that Anne Powell was seen from the shore, standing in the stern of the ship, her hair streaming in the wind, holding in her hand a purse which she seemed to be offering to any one who should save her life. Various attempts were made to establish communication with the vessel, but in vain. The ship came near the shore, Anne Powell was knocked down by a huge wave and washed overboard, and was seen no more alive. Her body was cast on shore on the estate of Thomas Rochfort,⁵ and

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received Christian burial in consecrated ground at the church at Garretstown near by. A brooch found on her bosom was sent to her relatives in Canada, and it is still preserved, a melancholy memorial of her terrible fate.

The chief justice had intended to return to Canada, but he learned from his wife by letter that his daughter was coming to England; the circumstances, however, were not wholly disclosed to him, the wife feeling herself, as she says, 'justified in concealing what would inflict on him unavailing distress.' He thereupon determined to take the advice of his brother-in-law and await her in England; he took comfortable lodgings for her in London, and meant to do all in his power 'to make her happy and respectable'—and then the news came.

He made full inquiry of the owners of the packet and the survivors of the crew, and commissioned the erection of a tombstone over his unhappy daughter's grave, and a marble tablet to her memory within the church. He was somewhat consoled by learning that his daughter was fully aware of her coming doom and was prepared for it.

In Templetrine parish church there is still

a marble tablet, and in the churchyard a tombstone, to the memory of the ill-fated woman.⁶ The tablet is of white marble with a shelf on which is an urn of the same material, the whole bordered by or resting on black marble. It bears the inscription :

ANNA POWELL, Spinster
 was a passenger in the Ship 'Albion' (wrecked
 on this coast on the 22nd April, 1822)
 and perished with many others,
 but her body was recovered from the sea, received
 from the charity of strangers Christian burial in
 the cemetery of this Church ; in grateful memory
 whereof this marble is inscribed by

W. D. P.

The tombstone is a flat limestone slab resting on supports of limestone about eight inches high. The supporting stone on one side has sunk, so that the slab rests at an angle instead of being horizontal, and it lies only upon the edge of the opposite support. It bears the following inscription :

ANNA POWELL, Spinster
 Daughter of
 William Dummer
 and Anne Powell
 of York in Upper Canada
 Born 1787, Deceased 1822

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NOTES TO CHAPTER IX

¹ Many of her letters are to be found amongst the Powell MSS. in the Toronto Public Library.

² Much of the goods imported into Upper Canada came by way of the St Lawrence through Lower Canada. A duty was imposed by Lower Canada on practically all imports; and an arrangement was made by the two provinces (first in 1793) whereby Upper Canada agreed to refrain from imposing duties upon goods coming into Upper from Lower Canada, and the two provinces were to divide the income from the Lower Canadian duties. An inspector was stationed at Coteau du Lac to check the imports. Several commissions were appointed to settle the proportion each province was to receive, but at length, in 1819, the arrangement came to an end. Lower Canada went on collecting duties just the same; a new commission failed to adjust the amount to which Upper Canada was entitled, and the Upper Canadian parliament sent a commission to England in 1821 to have the matter arranged by the home authorities. This was the errand of John Beverley Robinson, 'the handsomest man of his day,' to England at this time. It may be added that the dispute was never satisfactorily settled, not even on the union of the two provinces in 1841-42.

³ Mary Boyles Jarvis. The story is curious, but it cannot be gone into here.

⁴ The Rev. J. N. Whitley, rector of Templetrine parish, Kilbrittain, Co. Cork, Ireland, writes me as follows:

'Garretstown Beach (and Cliffs) is situated in this Parish, and is about two miles from the Churchyard. The *Albion* struck on a rock, still called the "Albion Rock," some distance from the shore, and was then driven in close to the cliffs at the west side of Garretstown Strand. As the result of enquiries I learned that in the latter position a woman was seen standing in the stern of the vessel. Her hair was streaming in the wind, and she had one hand raised aloft with a purse "of gold" which she offered to anyone who could save her life. (Whether her voice

could be heard, or whether the offer could be understood by her motions, I could not find out so far.) Various attempts were made to set up communication by ropes between shore and ship without success. And in a very short time after the latter came close to the shore the woman was knocked down by a wave and swept overboard, and was no more seen until her body was recovered when it was identified as that of Miss Anne Powell. The foregoing is the account practically word for word as given to me by a son of one of those who saw the event.'

⁵ The Garretstown estate is now held by a descendant of the Rochfort who owned it at the time of the wreck—M. H. Franks, Esq., D.L.

⁶ This information I also owe to the Rev. Mr Whitley, to whom I offer here my thanks for his prompt and courteous answers to the inquiries of a perfect stranger who had no claims on his kindness.

CHAPTER X

THE EARL OF SELKIRK

THOMAS DOUGLAS, the fifth Earl of Selkirk, was by common consent 'an amiable, honourable and intelligent man.' Born in 1771, he was educated at the University of Edinburgh; while still a young man he took a deep interest in social questions, and having his attention called to the unhappy conditions existing in the Highlands of Scotland, he determined to effect emigration on a large scale from those districts. It is possible that he had his attention directed to this continent by Count Andriani of Milan,¹ who had been in America in 1790-91.

He formed settlements in Prince Edward Island and at Baldoon, near Lake St Clair, in the county of Kent, Upper Canada; but he had wider views. Purchasing a large amount of the shares of the Hudson's Bay Company, he obtained from that company (against the protest of some of the minority shareholders)

a grant in fee of about 100,000 square miles in the Red River country, now Manitoba. Lawyers differ as to the validity of this grant ; but the question is wholly immaterial now, and I do not enter into it—that Selkirk believed that the company had the right to grant him this land, and had done so legally, is certain.

Troubles arose when his immigrants made their appearance upon this territory, due in great part to the rival North-West Company, who did not desire an agricultural community at this point. This was a fur-trading company, not in reality a corporation, but rather what we should now call a syndicate. It was an active competitor of the Hudson's Bay Company; and conflicts between the servants of the companies were by no means uncommon. These were sometimes fatal, for Governor Semple and others were killed by Indians accompanied and led by servants of the North-West Company.

The North-West Company had a large and important station and fort at Fort William,² and to that fort were brought some of the Selkirk colonists. This was but the climax—in the previous year, 1815, many of the colonists had left, worn out by the incessant

aggression and terrorism on the part of the North-West Company and by the difficulties of a new country.

Lord Selkirk was not wholly unaware of the state of affairs; and on his arrival in Canada in the autumn of 1815 he heard of the dispersal of his people during the previous summer. He was determined to resist the North-West Company, and applied to Sir Gordon Drummond, lieutenant-governor of Upper Canada, for military aid. This was refused; a previous application to Lord Bathurst, the secretary of state, had had no better success. He therefore determined to act alone: he hired a number of disbanded soldiers of the De Meuron regiment, was commissioned a justice of the peace for Upper Canada and the Indian Territory, and set out for the West by way of York (Toronto) and the Georgian Bay. On his way to Fort William he learned of the massacre of Semple and his men; he requested magistrates to accompany him—Messrs Asken of Drummond Island and Ermatinger of Sault Ste Marie are named—they declined, and he proceeded on his own responsibility.

Arriving at Fort William, he issued warrants as justice of the peace against certain of the

North-West Company partners and servants, and caused them to be arrested. Afterwards he took possession of the fort and the property there—furs, guns, etc. This act the chief justice at Quebec subsequently characterized as, 'speaking most mildly, a forcible entry and a forcible seizure.' A number of the prisoners were sent east for trial, and some were unfortunately drowned; his enemies always insisted that this was due to Selkirk's forcing twenty-one prisoners to embark in a canoe considerably under the usual size, which could not safely carry more than fifteen.

The prisoners were directed to be taken to the common gaol at Sandwich; on reaching York, which they must pass on the way, the governor ordered them to be taken to Kingston, where the chief justice (William Dummer Powell) and attorney-general (D'Arcy Boulton) were attending the assizes. An examination of the warrants showed that the offences were alleged to have been committed in the Indian Territory; and accordingly the prisoners were sent on to Montreal. There they were admitted to bail, and we have now no further concern with the subsequent proceedings in that matter.

But the officials of the North-West Company were not satisfied to allow matters to remain thus. They made application to some of the judges in York for a warrant against Selkirk and his men; but the judges could, it is said, see no ground for a charge of felony. Application was then made to François Baby, J.P., of Sandwich. Two of the servants of the company, Vandersluys and M'Tavish, swore to an information charging the earl and a number of others with having feloniously stolen, taken, and carried away eighty-three fusils, the property of the company. The magistrate issued a warrant to William Handes, the sheriff of the Western District, for the apprehension of the Earl of Selkirk and nine others, 'if they shall be found within the District . . . to answer His Majesty for a Felony which they, it is alleged, have committed.'

Another warrant for riot (which was issued by Dr Mitchell, J.P., of Drummond Island) the earl had treated with contempt. He claimed that it had been 'obtained from a drunken and superannuated magistrate in Upper Canada after the Judges of the Province to whom application had been made on the part of the North West Company had

refused to grant it,' and his 'notorious habits of intemperance rendered it in the highest degree probable that his signature had been obtained surreptitiously.' This was certainly a novel justification for defying a warrant: it has never been repeated so far as can be found in the reports, and it is rather to be wondered at that one who was himself a justice of the peace should advance it.

The warrant for felony was placed in the hands of William Smith, deputy sheriff of the Western District; he was also given a writ of restitution ordering the restoration of Fort William to the North-West Company. Armed with these he made his way from Sandwich to Fort William and arrived there March 19, 1817. He produced his writ of restitution to Selkirk, but Selkirk refused to comply. Thereupon he arrested the earl and some of the others on his warrant for felony; his lordship pushed him out of doors, and afterwards kept him in close custody at the fort under a military guard.

Selkirk released Smith only in May 1817, when he himself left Fort William with his forces for Red River. He had no thought of finally evading justice; indeed, it is more than likely that had it not been most incon-

venient to deliver himself up in the spring of 1817, he would have returned with the deputy sheriff.

After pacifying his people at Kildonan in the Red River country Selkirk made his way down the Mississippi to St Louis, across to Washington, thence northward to New York, and by the Hudson river to Albany, then across the state of New York to Upper Canada.

(So far facts have been stated upon which there is no dispute; hereafter there are in some matters contradictions, but generally these arise from differing points of view. The main facts are clear; and in case of conflict the two stories will be given.³)

Arriving in York in January 1818, Selkirk called upon the chief justice. They had known each other for a long time, and on his first visit to York the earl had frequently visited and dined with the judge; he had also subsequently in England, on Powell's visit to obtain his son Jeremiah's release, acquired claims to the personal gratitude and attention of Powell. Selkirk offered to surrender himself and to give bail for his appearance to answer the charges against him. The chief justice refused to interfere, as there was no charge or complaint regularly before him;

and he explicitly stated to the earl that he would not bail one charged with an escape from an arrest for a felony. Selkirk says that the chief justice advised him to retire with his friends to the United States: Powell denies this, and says what happened was this: 'When I learned from his Lordship that in order to surrender himself to me at York, he had made a vast and dangerous detour through the inhabited Territory of the United States, I did express regret that his Lordship had not remained there until the period for meeting his Trial at Sandwich,' and he adds, 'The presence of Mr Baby, the Senior Executive Councillor of the Province, from a few minutes after his Lordship's arrival until his departure, would seem to guarantee that I did not gratuitously commit myself to censure either as a Knave or Fool.' It seems likely that there was a misunderstanding between the judge and the layman.

The earl accepted the chief justice's invitation to dinner. The chief justice sent a message to the attorney-general, D'Arcy Boulton, that Lord Selkirk was with him and desired to wait upon him (Boulton). The following day Selkirk called upon Boulton and was informed that he had received in-

structions from the secretary of state in England to institute criminal proceedings against him. It was arranged that Selkirk should surrender to the magistrate who issued the warrant, M. François Baby, at Sandwich ; and Selkirk proceeded to Sandwich accordingly, accompanied or followed by the son of the attorney-general, Mr Henry John Boulton (afterwards chief justice of Newfoundland), who was acting solicitor-general in the absence of John Beverley Robinson in England. Mr Boulton conducted the prosecution before the magistrates on the preliminary inquiry. The charge of felony, *i.e.* of stealing the guns, failed, and Boulton then proceeded on the charge for riot upon which a warrant had been issued by Dr Mitchell, J.P. On this Selkirk was committed for trial, as well as on a further charge then laid of resisting arrest, and another of assault upon William Smith for which a bill had been found at the quarter-sessions. Dr Allan, his physician and secretary, was joined with him in some of these charges and Captain Matthey in others.

Selkirk then went to Lower Canada and presented himself in the Court of King's Bench at Montreal to answer other charges.

The court held it had no jurisdiction; but required renewed bail for Selkirk's appearance to answer the same charges before a special Court of Oyer and Terminer⁴ in Upper Canada.

The assizes came on at Sandwich in September 1818, Chief Justice Powell presiding. Much bitter complaint was then and afterwards made by the earl that his treatment at this court was illegal; it may be said at once that there is no foundation for the charge.⁵ As not infrequently happens, the accused made a mistake himself in the law, and charged the court with a perversion of the law because the judge did not agree with him. Selkirk, indeed, afterwards boasted that he contradicted the chief justice openly in court.

John Beverley Robinson had become attorney-general upon the elevation of D'Arcy Boulton to the Bench, and he first laid a bill against Selkirk and certain of his men for resistance to legal process in the case of the warrant issued by Dr Mitchell, J.P. This the Grand Jury, after a short deliberation, ignored. Then, against the advice of the chief justice, the attorney-general, instead of proceeding against the accused on the

charges for which he had been bound over by the magistrates in the preceding January, determined to lay a charge of conspiracy to injure and destroy the trade of the North-West Company. This bill the Grand Jury did not dispose of—the court rose and it dropped.

The troubles of Lord Selkirk were not over. It seems that he had such friends in the Western District that there would be difficulty in procuring a bill from a Grand Jury of that District; and if a bill were found, there would be difficulty in procuring a conviction. Selkirk suggests that the attorney-general had a private retainer from the North-West Company, but it is more probable that his conduct throughout was in consequence of express instructions of the home authorities to prosecute Selkirk for his actions at Fort William. At the assizes at York, February 1819, a bill of indictment was found against Selkirk and some nineteen others for conspiracy; but he had gone to England and the trial was not proceeded with.

The proceedings in the case of those sent down by Selkirk from Fort William for trial must now be noticed. One, De Reinhard,

was convicted of murder in Quebec in May 1818; but he was not executed, there being doubts as to the jurisdiction of the court. Another, M'Lellan, was acquitted of the same charge in Quebec in June 1818. It was thought in the case of others that 'justice could be more conveniently administered' in Upper Canada, and application was made to the governor-in-chief, Sir John Coape Sherbrooke, to direct the removal of these cases to Upper Canada. He consulted the home authorities, and they agreed that he should do so; and this was done.

At the assizes at York in October 1818, before Chief Justice Powell, Justices Campbell and Boulton, and their associates, indictments were found against four persons as principals,⁶ four as accessories before and ten as accessories after the fact of the murder of Governor Semple. A bill for arson was found against three persons, while an indictment against three for shooting at Miles Macdonell, one against another person, an accessory before the fact, and a third against still another person for robbery were ignored. On following days, indictments were found against three persons for maliciously shooting at Miles Macdonell and others, against four

persons as principals, four as accessories before and ten as accessories after the fact of the murder of Alexander M'Lennan, a third against still another person for robbery. During the same assize another bill was found against three persons as principals, and five as accessories before and after the fact, for stealing nine pieces of cannon belonging to Lord Selkirk.

Two of those charged with the murder of Semple, François F. Boucher and Paul Brown, were then put on trial, all the three judges and also William Allan, J.P., being on the Bench. The prosecution was conducted by Attorney-General Robinson and Solicitor-General Henry John Boulton, the defence by Samuel Sherwood, his brother Levius P. Sherwood, and Dr W. W. Baldwin. A report from shorthand notes is still extant; and a perusal of the proceedings makes it plain that the prosecution was pressed with earnestness and vigour, and that both prosecution and defence were brilliant examples of forensic skill and legal learning. The Bench also shows up well, and the whole trial was a model of propriety and fairness; an occasional outbreak between the eminent counsel, and an occasional complaint from the chief

justice of lack of progress, add a human interest to the whole and indicate the tension upon all concerned.

There was no doubt that the prisoners had been with and formed part of the band which killed Semple; and the defence was that Semple had met that band with an armed force, that he had begun the firing, and that the shots which killed him were in self-defence. The chief justice charged the jury that if they found that Semple began the affray and the shots which killed him were in self-defence, they should acquit; but if not, they should convict Boucher; that in any event there was no evidence against Brown. The jury found a verdict of Not Guilty.

The next day Paul Brown was acquitted of a charge of stealing a blanket and gun. The following day six persons accused as accessories demanded their trial, as they had the legal right to do, and they also were acquitted. In this case the chief justice charged the jury much as in the first case, and Mr Justice Boulton also charged the jury. His charge was strongly in favour of the prisoners.

A few days later, before the chief justice and Mr Justice Boulton, two persons, Cooper and Bennerman, were placed on trial for

stealing Selkirk's cannon. It was set up for the defence that the prisoners and others who were Selkirk's colonists had removed the cannon to prevent them being used, as was intended, to stop the discontented settlers from removing to Upper Canada. Mr Justice Boulton charged the jury most impartially, and the jury promptly acquitted.

At the same assizes on the civil side, the chief justice himself presided; his brethren had sat with him on the criminal side by reason of the importance and novelty of the cases to be tried.

William Smith, the deputy sheriff from Sandwich, had brought an action for false imprisonment against Lord Selkirk; and that case came on for trial before the chief justice and a jury. Evidence was called on both sides, and the jury found for the plaintiff with damages fixed at £500.

Daniel M'Kenzie, a retired partner of the North-West Company, had also sued Lord Selkirk for false imprisonment. He was said by one of the witnesses to have been 'the weakest man of the Company from habitual Indulgence in Intoxicants'; but that did not prevent the jury from finding a verdict in his favour for £1500.

Lord Selkirk had been expected in York at the assizes, and the attorney-general had asked on Friday, October 23, for delay till the following Monday, as he understood that Selkirk would arrive on the Saturday or Sunday, and 'as the Earl of Selkirk was deeply interested in the result of these accusations, and had given a great deal of attention to the investigation, he did not wish in the absence of his Lordship to put these men on their trial.' The cases proceeded on Monday, October 26, in the absence of the private prosecutor—he left Montreal, indeed, at that time in the direction of Upper Canada and was confidently expected there; but he turned off to the left and proceeded to England by way of New York, and never set foot in Canada again.

He petitioned the Prince Regent and parliament that the whole matter might be investigated and his rights vindicated, but without successful result. A volume of correspondence between his friend Halkett and Lord Bathurst in his behalf is well known.

The most serious charges were made by him, and have been made since by his admirers, against the administration of justice in Upper Canada. A late writer says: 'Justice was

undoubtedly perverted in Upper Canada in the most shameless way'; and this kind of charge has been widely believed. I have gone through with care the contemporary and other accounts of the transactions, and say with perfect confidence that there is not a shadow of evidence to support the charge of perversion of justice in Upper Canada.

The two persons who are accused are the chief justice and the attorney-general; whatever the merits of the controversy in the Red River country, neither of these had anything to do with it. Lord Selkirk with an armed force of soldiers took forcible possession of Fort William; he was the first wrongdoer in territory over which the Upper Canada courts had jurisdiction. His mistake in sending those whom he accused of crime in the Indian Territory to Sandwich, was corrected by the chief justice. The proceedings at Sandwich at the assizes have already been detailed; the only thing that Selkirk could possibly complain of there was that a bill was laid for conspiracy. This was laid by instructions from the home authorities, who at that time considered themselves to be, and were, responsible for all British territories. There was no perversion of justice, and the

only irregularity was that of the friends of Selkirk on the Grand Jury illegally hearing witnesses on his behalf.

Those who were accused by Selkirk and who came before the Upper Canada courts were prosecuted with vigour, and no fault can be found with the rulings of the judges. As the chief justice is the person most assailed, it should be mentioned that the opinions of all the judges on matters of law agreed, and that of the charges to the jury that of Mr Justice Boulton was much more favourable to the accused than that of his chief. No complaint has ever been made against the courts in the civil trials.

As the attorney-general was rather an imperial than a provincial officer, and was responsible to the authorities at Westminster, it may not be improper to say that 'the temper and judgment with which he . . . conducted himself during the whole of these long and difficult proceedings . . . received the entire approbation' of the home government.

The fact is that while Selkirk was ardently desirous of doing good to his fellow-countrymen, an honest patriot and philanthropist, he made the mistake of taking the law into his own hands, he set his knowledge of law

against that of those who were trained in the science, and he put himself frequently in the wrong. Perhaps he did as well as most could have done in the difficult circumstances in which he was placed, and certainly there was much wrong done him ; but there is no justification for his monstrous charges against those entrusted with the administration of justice in Upper Canada, or for his suspicion of improper motives in all their acts.

It seems fairly certain that he was a favourite in the Western District, but rather in disfavour in the Home District. It is not unlikely that had the cases been tried at Sandwich instead of at York he might have had greater luck. But these are the fortunes of war and litigation ; and juries are proverbially uncertain.⁷

He died at Pau in the south of France in 1820.

NOTES TO CHAPTER X

¹ Count Andriani (or Andreani) of Milan is mentioned by the Duc de la Rochefoucault as travelling in the interior of this continent in 1791. He seems to have pursued his researches under the auspices of the British Government ; but apparently his *Journal*, spoken of by La Rochefoucault, was never published. He is mentioned by Colonel Humphreys, Washington's aide-de-camp, in a letter to Washington, October 31, 1790, as

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writing 'things monstrously absurd and ill-founded'; there are several references to him by Americans about the same time. A full discussion of Andriani is attempted in note 44 of my edition of *La Rochefoucault's Travels in Canada in 1795* (now in the press).

Chester Martin, in his *Lord Selkirk's Work in Canada*, published 1916, is the only person, so far as I know, who suggests that Selkirk was influenced by Andriani (p. 17).

² Fort William was built by the North-West Company at the mouth of the Kaministiquia river (rediscovered by Roderick M'Kenzie in 1798) to take the place of Grand Portage, the former rendezvous of the fur traders, which was found to be in the territory of the United States. Begun in 1801, it was completed in 1804, and named Fort William in 1807, after William M'Gillivray, one of the governors of the company.

³ The account given by the earl is to be found in his printed writings; that by the chief justice, in his MSS.

⁴ A Court of Oyer and Terminer is a court for the trial of criminal charges for which indictments have been found in that court. A Court of General Gaol Delivery is a court for the trial of all persons in custody on a criminal charge and still untried, who are in the common gaol at the place at which the court is to sit. Our Criminal Assizes are courts of both kinds; and there are now no commissioners of Oyer and Terminer or of Gaol Delivery.

⁵ An examination of the proceedings will satisfy any lawyer that everything was done properly and according to the well-established practice of the court, except one irregularity for which Selkirk's friends were themselves responsible and which did him no harm—the Grand Jury, at the instance of Selkirk's friends, heard witnesses for the accused, which was improper. The judge, however, was not aware of the fact till afterwards.

⁶ A principal is one who perpetrates the act or is present aiding and abetting; an accessory before the fact is one who is not present at the commission of the criminal act, but who aids, counsels, or procures it; an accessory after the fact is one who,

knowing a crime to have been committed, assists the criminal to elude justice.

⁷ There is a large mass of material concerning these Selkirk trials. The quarrel between him and the North-West Company was bitter and it divided public opinion in Upper Canada and in Lower Canada. Charges and recriminations of the worst kind were made by both parties, and even yet it seems impossible for most writers to consider the facts dispassionately. The facts, however, are fairly clear, and it is rather the inference to be drawn from the facts that is troublesome.

CHAPTER XI

SOME NON-BRITISH IMMIGRANTS

WHILE the greater part of the early immigration into Upper Canada was from British stock, either the American United Empire Loyalist or the immigrant direct from the British Isles, this was by no means universally the case.

The Duke de la Rochefoucault-Liancourt,¹ who travelled through the United States and Upper Canada in 1795-96-97, tells us that he found at Asylum,² on the right bank of the Susquehanna, MM. Talon and de Noailles, who had come from England with more hope than real resources, and who had been able to buy two hundred thousand acres of land and to populate them. They had joined in their projects some inhabitants of San Domingo who had escaped massacre³ and who had been wise and lucky enough to save some of their fortune. There came also some from Old France, M. de Blacons, deputy in the Constituent Assembly for Dauphiné, who had

after leaving France married Mlle de Maulde, canoness of the chapter of Bourbourg. They kept a store at Asylum with their partner, M. Colin, formerly Abbé de Sévigny, Archdeacon of Toul and a member of the Grand Council. There, too, were M. de Montulé, formerly a cavalry captain, married to a San Domingo lady, M. de Bec-de-Lièvre, formerly a canon, but now a storekeeper, and many former priests and officers in the army or navy.

Amongst them was Du Petit-Thouars, an officer of the French Navy, who had some years before led an expedition in search of the unfortunate navigator, La Pérouse, who had been last heard of at Botany Bay in 1788. The search was in vain (and indeed no trace was found of La Pérouse, but in 1826 wreckage of his ships was discovered). Du Petit-Thouars was detained by the Portuguese governor of the island, Fernando de Noronha, and sent to Portugal with his crew. Making his escape from that country, he came to America, where he lived free and happy, 'sans aucune fortune et sans aucun besoin.' But, tiring of the uneventful life, he returned to France, obtained the command of a ship of the line, and perished on that ever-memorable

1st of August when Nelson conquered at the Nile (1798).⁴

These were all republicans; they had all renounced their allegiance to their king, and most had been false to their religion.

But all the brave and adventurous of France had not been recreant to crown and creed; some, like the United Empire Loyalists, had kept their faith and fought that their old flag might still wave over their native land. Their heroic valour was as unsuccessful as that of the American loyalists: and many left France, now no longer the France of their birth and early manhood. Amongst these was Joseph-Geneviève, Comte de Puisaye,⁵ born at Mortague in France in 1754, of a noble family. Destined for the Church, he was educated with the career of a priest in view; but at the age of eighteen he entered the army as a lieutenant, and soon he became a colonel in the Swiss Household Guards.

He was a representative for his native province in the Constituent Assembly, and there exhibited the principles upon which he ever acted, both then and to the end of his life. He was a monarchist, but believed in limited and constitutional monarchy. Soon it was apparent that there was no room in

France for any opponent of the Republic: and after an unsuccessful but gallant struggle for the king in Brittany, he left France and went to London. He then turned his mind to Canada: and with the approval of the Imperial authorities, and accompanied by Royalist friends (amongst them Laurent Quetton, who under the name of Quetton St George became prominent in the early business world of Upper Canada) and subordinates, he set sail for this new land on the *Betsy* from Portsmouth. After a voyage of three months Quebec was reached, from which the party journeyed to Montreal, some by boat, some by land.

But Upper Canada was the country toward which they were bent: and they set off for Kingston by land to Lachine, thence by the universally employed flat-bottomed *bateaux*.

Kindly received by the authorities at Kingston, De Puisaye left his party there, and with only one companion set sail for York, the capital of the province. There he was successful, for the Council set off 'the Townships of Uxbridge, Gwillimbury, a Township in the rear of Whitby not yet named and the ungranted part of Whitchurch' for the

new colony. Moreover, there were appropriated for a town for them some twenty-two lots in Yonge Street of two hundred acres each in a choice situation. The new settlement was to be called Windham.

During the winter some of those left behind at Kingston arrived at York and began to clear the land, build houses, etc. We are told that by the middle of February 'there were eighteen houses at Windham with the outside finished, and before long a church and a parsonage were added.'

More settlers came in the spring: all toiled, but some found the hardships too great and abandoned the enterprise. The government of Upper Canada did all possible to aid the embryo settlement by supplying food, tools, building material, seed, etc., but no government help can make a practical farmer out of a soft-handed aristocrat. De Puisaye was not satisfied with the extent of the land placed at his disposal. He made the acquaintance of the well-known Joseph Brant, and through him endeavoured to obtain a large tract of land occupied and claimed by the Mississauga Indians at the head of Lake Ontario. In this he failed, as the government declined to approve the scheme. Going

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on to Niagara, De Puisaye bought a fine farm about three miles above the town, and there built a mansion which in itself and its surroundings and in its furnishings was long one of the marvels of the province. He afterwards returned to England, and died there in 1827, having received little advantage from his expenditure in Upper Canada, which, considering the times and the relative value of money, may fairly be called very great.

His colony in Windham languished. The work was hard, and such as the settlers were unaccustomed to, and they left the land as soon as possible. Some went back to France, some into trade, until at length there was scarce a trace of the French colony. This attempt at settlement by French loyalists has had no permanent effect on the province.

Another non-British colony was led by a South German, William Berczy. Born in Saxony in 1747 (or the following year), he at an early age was taken with the remainder of the family by the father to Vienna, where his uncle was minister for the House of Brunswick, and where his father obtained a position in the diplomatic service.

He was educated at the universities of Leipsic and Jena with a view to his becoming

an officer of the civil government; but his tastes did not run in that direction. After several years of travel he came to England (1790), and was shortly thereafter employed by an emigration society to obtain German settlers for a block of land they had in Genesee county in the state of New York. Berczy at once went to Germany and procured about sixty German families, and with them set sail from Hamburg in 1792, landing in Philadelphia after a long and tedious voyage. Then came the problem how to reach the place of proposed settlement. Berczy was a man of great energy and driving force; he had a road many miles long cut through the primeval forest, and before winter set in had the satisfaction of landing all his colonists in their intended home, 'Captain Williamson's Demesne,' or the 'Pulteney Settlement,' as it was called.⁶ But he and Captain Williamson, the chief agent of the association, could not agree, and Berczy determined to remove his colony elsewhere.

Simcoe, the first lieutenant-governor of Upper Canada, had issued a most alluring proclamation offering land to all *bona fide* settlers on most advantageous terms, and Berczy determined to try the new province.

He went to Newark and made an arrangement with Governor Simcoe to bring his New York settlers to Upper Canada ; he also agreed to procure further immigrants from Germany.

The township of Markham in the county of York, not far from the new town of York, was selected for the colony ; and thither Berczy brought between sixty and seventy families from the Genesee settlement.

It was not difficult to persuade the Germans to change their place of residence. The scheme of the New York settlement was on the ' Patroon system,' in which those who worked the land could be only tenants—a system which was the curse of New York and of Prince Edward Island as similar systems were of Ireland and Quebec : the Upper Canada plan contemplated every farmer owning his own land.

But the facilities for getting to Markham were by no means ample : the same band, however, who cut their way to the Genesee country did the same in this province. Yonge Street, which had been laid out, was opened ; a wagon track was built from York to Markham, and the cavalcade started for the future home (1794). We read that the boxes of the wagons were built of closely fitting boards

well caulked and waterproof so that they could be used as boats. In this way the immigrants crossed the Don (then a much more important stream than at present) and many other streams. The first settlement was on the banks of the Nen river, which we now call the Rouge. Berczy built saw-mills and grist-mills; and the settlers with true German industry and thoroughness proceeded with their settlement duties.

Their leader had very great difficulty in respect to the title of the lands which had been promised him. Simcoe went to England, and his successors do not seem to have been as liberal as he towards real settlers, although it is not on record that those in government circles had difficulty in obtaining land to hold.

Berczy went to England to press his claims, and after many months had the satisfaction of feeling that he had been successful; but he did not succeed on his return in moving the provincial authorities and never obtained the grants he expected. After heart-breaking efforts, wholly fruitless, he went to Montreal, where he supported himself by painting, for which he had a talent—there he contracted an illness from which he died in New York in 1813.

But the German colonists remained. They

were real farmers ; they made the wilderness blossom as the rose and established a settlement which to the present day has been as creditable to them as advantageous to the province. Nearly all of them were, as nearly all of the de Puisaye immigrants were not, men accustomed to hard work on the soil. This settlement has been permanent and has made its mark in the province, unlike the French settlement, of which not a trace remains.

NOTES TO CHAPTER XI

¹ François Alexandre Frédéric de la Rochefoucault-Liancourt, born 1747, died 1827 ; a member of the States-General in 1789, he was president of the National Assembly ; a friend of the king, he tried without success to save him. He travelled in America 1795-99, and, returning to France, busied himself with philanthropic schemes. His *Travels in the United States and Canada* is a well-known and frequently quoted work. An edition of vol. ii containing his travels in Upper Canada is now in the press, published by the Archives Department of Ontario : this edition contains many notes by Sir David William Smith, Bart., and by myself.

² Asylum is still a post village in the township of Asylum, Bradford county, Pennsylvania, near the right bank of the Susquehanna, and about ten miles south-east of Towanda. Its population is under one thousand.

³ The terrible occurrences in San Domingo are still a horror not eclipsed even by what has occurred in Europe during the past two years. Haiti became French in 1697, was called

Sainte Dominique, and was very prosperous when the French Revolution broke out in 1789, the population being of three classes, whites, free coloured people (mostly mulattoes), and negro slaves. The National Convention gave the mulattoes civil rights (theretofore restricted to the whites), but on the petition of the whites revoked this gift. In 1791 the slaves revolted, the mulattoes made common cause with them, and for several years there was a period of perpetual warfare in which both sides were guilty of the most diabolical acts of cruelty. Many of the wealthier of the inhabitants left the island and sought homes elsewhere, thereby escaping the massacre in 1804 by Dessalines, when he became governor for life.

⁴ The particulars of the French immigrants in Pennsylvania are given in La Rochefoucault's *Travels*, vol. i, pp. 151 sqq. (first French edition), vol. i, pp. 86 sqq. (first English edition, 4to). Of course the return by Du Petit-Thouars to France and his death took place after La Rochefoucault's visit. The circumstances that he became captain of the *Tonnant*, Admiral Bruey's flagship, and was killed at the battle of the Nile, are stated in a letter from Simcoe to La Rochefoucault's London publisher, dated from Wolford Lodge, June 25, 1799. See my edition of *La Rochefoucault's Travels* referred to in note 1 *supra*.

⁵ Most of the facts of De Puisaye's career in Upper Canada will be found detailed in one of the University of Toronto Studies, *A Colony of Emigrés in Canada, 1798-1816*, by Lucy Elizabeth Textor, Ph.D., sometime Fellow in History in Yale University. The Archives Department at Ottawa has much material on the subject, and occasional references are to be found in contemporary correspondence; but my researches, pursued independently, have not added anything of moment to the very exhaustive as well as accurate account given by Dr Textor (of which I avail myself to the full in this chapter).

⁶ Captain Charles Williamson was the general agent at Philadelphia of the association. He gave La Rochefoucault a very bad account of Berczy's character; Berczy and he were never reconciled.

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Sir William Pulteney, afterwards Earl of Bath, one of the most distinguished of parliamentary orators and a bitter enemy of Sir Robert Walpole, was the

‘ Billy of all Bob’s foes
The wittiest in verse and prose ’

of contemporary satire. He failed to unhorse Walpole and was himself removed from the Privy Council. In 1746 he was head of the ‘ Short-lived Ministry ’ which lasted but two days. He had forfeited all his great reputation in the estimation of the public by accepting a peerage in 1742. Sir Charles Hanbury Williams, the well-known wit, affixed to the earl’s residence, Bath House, Piccadilly, the bitter epigram :

‘ Here, *dead to fame, lives* patriot Will ; his Grave, a Lordly-seat,
His Title proves his Epitaph ; his Robes, his winding-sheet.’

He amassed great wealth and acquired very large estates, but the death of his only son in 1763 broke his heart ; he died in the following year, when the peerage for which he had lost all his influence with the people of England became extinct.

He was the chief proprietor of the Society, and the settlement in Genesee county was often called by his name.

CHAPTER XII

THE 'PATRIOT' GENERALS'

WILLIAM LYON MACKENZIE, after the disastrous failure of his attempt to capture Toronto in December 1837, made his way to the United States. He formed an encampment on Navy Island in the Niagara river, to which some few real patriots made their way; but there were also some like those who went to the Cave of Adullam: 'every one that was in distress and every one that was in debt and every one that was discontented gathered themselves unto him, and he became a captain over them.' Mackenzie made glowing promises to those who would assist in obtaining independence for Upper Canada—to be implemented when Upper Canada became independent—three hundred acres of land to every volunteer and \$100 cash in addition.

The choice of Navy Island as headquarters for the motley array—they called themselves the 'Patriot' Army, and some of them were

patriots in fact, but many were patriots for revenue only—was due to Thomas Jefferson Sutherland, an American of Scottish descent then living in Buffalo, who was made second in command under Van Rensselaer. He was much more enthusiastic than Mackenzie himself in drumming up recruits, and his showy street displays called down on him the rebuke of the suffering, ardent Mackenzie.

Sutherland was of no very high type. Theller,² his comrade and fellow brigadier-general, calls him 'a plumed popinjay and blustering Bobadil,' whose subsequent conduct 'was but an exposure of imbecility, indecision, avarice, meanness, treachery, and cowardice; he had neither firmness nor fortitude, he had neither skill nor daring.' He was, however, of somewhat imposing personal appearance, and was gifted with a copious flow of words, which some considered eloquence.

In common with most of his countrymen, he believed that Canadians were groaning under the iron heel of monarchical tyranny and that three-fourths of them were disposed to try an appeal to arms to establish political independence. He describes himself as 'an ardent admirer of democratic institutions and an enthusiastic advocate of political freedom,'

and he entertained 'the desire to obtain the . . . applause which might . . . accrue to . . . the agents in the establishment of another independent republic on the continent of America.' While by no means of the influence, capacity, or military experience of Van Rensselaer,³ he could and generally did keep sober, which is more than can be said of his chief.

Some five or six hundred men ultimately were mustered on the island, and there they formed a camp covered by the flag of independence with its two stars symbolical of the two Canadas.

Sutherland was always in evidence; when not at the camp, he was working for Canadian independence elsewhere. He learned in Buffalo an extraordinary story that the Canadian authorities were sending a negro cook to poison all his gallant band, and he warned his forces accordingly.

In Detroit at the same time there was a similar movement in favour of the Patriots; and toward the end of the year Sutherland was sent by Van Rensselaer to assist—perhaps to lead—that movement. He went by way of Cleveland, where he picked up a number of recruits from Ohio; and on January 8 he

arrived at the Detroit river on a small steam-boat called the *Erie*. At Gibraltar he found a number of Patriots and some boats, among them the schooner *Anne*, loaded with cannon and muskets. He produced his credentials, and claimed the command of the force of about five hundred strong. A council of war was called, and though his demand was resisted for a considerable time, it was finally decided to acknowledge the Navy Island authorities and give Sutherland—now a brigadier-general—the direction of affairs, at all events until the island of Bois Blanc should be taken.

Next morning Sutherland busied himself in the field of oratory. It was the anniversary of the battle of New Orleans; and he addressed the multitude, alluding to that glorious day and the glorious cause in which they were engaged, and he wound up 'with the poetic declaration that the God of Battles was smiling in the sunbeams, the sure harbinger of success.' And indeed so He was; Sutherland's mistake lay in not determining on which side success was to lie.

Boats put off to attack Bois Blanc; the schooner *Anne* was mismanaged and drifted into the lake, but she was brought about to

assist in the attack. But the island was abandoned by the British, and nothing came of the enterprise.

Sutherland, with his headquarters in a log shanty, and his men gathered about fires near by, passed a cold night in their encampment. Next morning he passed over to the deserted island, but the *Anne* was taken with all on board by the British, who, Theller tells us, actually shot 'with the manifest cruel determination of sacrificing life.'

Probably it was this extraordinary determination on the part of the opposing soldiers which influenced Sutherland the next day to abandon Bois Blanc and relinquish his command. He had found time, however, during the day to issue a proclamation inviting the patriotic inhabitants of Upper Canada to rally round his standard. 'You are called upon by the voice of your bleeding country to join the Patriot forces and free your land from tyranny. Hordes of worthless parasites of the British Crown are quartered upon you to devour your substance; to outrage your rights; to let loose upon your defenceless wives and daughters a brutal soldiery.' Possibly Sutherland believed all that, but certainly the Canadians did not.

He went to Detroit and was arrested ; but, being released, he tried to organize another expedition of his own, issuing a new proclamation for that purpose. His efforts failed, and he resigned all military command, advertising in a Detroit newspaper the fact that he had retired from the Patriot cause. This did not seem to convince the Patriots that he had really left them ; so he called a public meeting in Detroit about February 18, 1838, when he made a formal statement that he had resigned his command and would have nothing further to do with the Canadian revolutionists.

A couple of days afterwards he set out for Buffalo, his residence, but at Monroe, a small village about forty miles from Detroit, he was robbed of money, papers, and baggage. Returning to Detroit, he learned that the thieves had been seen fleeing towards Sandusky ; and on March 4 he set off across the ice from Gibraltar for Sandusky, with one companion only, a lad of sixteen or seventeen years. They were unarmed except for two old useless swords, the property of the general. Unfortunately for him, the well-known Colonel Prince was that day driving in a sleigh with Prideaux Girty⁴ and Mr Haggerty along the

shore of Lake Erie, returning from Gosfield. About 4.30 p.m. Prince caught sight of the two men on the ice. He made up his mind that they were spies—he had a great eye for ‘Sympathizers’—and made chase with Haggerty and some men whom they had met in the meantime. Prince had a gun, and the travellers made no difficulty about surrendering. Prince brought the prisoners to Fort Malden (Amherstburg), overruling the suggestion made by one of the party that Sutherland should be executed on the spot. Colonel Maitland was in command at Fort Malden; he decided to send the prisoners down to Toronto.

Sutherland was the first to be sent for trial by Sir Francis Bond Head; and he came before the court-martial the day succeeding his arrival at the capital. The court was composed of Colonel Jarvis (president), Colonel Kingsmill, Lieutenant-Colonels Carthew and Brown, Majors Gurnett and Dewson, and Captains (John) Powell and Fry, with Colonel FitzGibbon as judge advocate.

Prince and Girty gave evidence as to his capture, and others as to his bearing arms at Navy Island. Judgment was delayed for

some time, but at length he was convicted and sentenced to transportation for life.

From an examination of the evidence, it is rather to be inferred that the capture was not in Canadian territory; the evidence, however, is very conflicting. The inexperience of the president led to many irregularities, and though there can be no doubt that the prisoner had been in arms against Her Majesty, it cannot be said that he had a fair trial. He cross-examined the witnesses with some skill, but called no witnesses on his own behalf; he is said to have had the advice and assistance of George Ridout and others in the conduct of his defence.

While lying in prison, awaiting the judgment of the court, he is said to have offered the lieutenant-governor to give full information concerning the rebels, but Sir Francis declined to interfere. It is certain that, losing hope, he attempted suicide by opening his veins with a knife he had borrowed from one of the guards on the pretext that he wanted to make a pen. His wound was staunched and he was nursed back to health, so that he might be banished to a living death in Van Diemen's Land, regularly and *secundum artem*. It was many days before he fully recovered.

Sir George Arthur, the new lieutenant-governor, and his advisers were in no small difficulty in respect to Sutherland. His trial was irregular, as they knew, and there was more than doubt whether he had not been arrested within American territory. They finally sent him to Quebec with other convicts. Theller says Sutherland was a coward, and therefore refused to join in a plot of the prisoners to release themselves on the boat on the way to Kingston. The prisoners were kept in the fort at Kingston for a night and then sent on to Montreal and Quebec, arriving in Quebec on June 10,⁵ and all lodged in the Citadel to await Her Majesty's pleasure.

On the boat from Montreal to Quebec, the captain, who was an ardent Loyalist, refused to allow his cabin to be polluted by the presence of any 'Yankee brigand'—this was on the orders of the owners, John Torrance and Company—so the prisoners were all packed in the hold. Sutherland seems to have defended his conduct in a spirited manner; he had the 'gift of the gab' largely developed, and liked to talk.

More than a month afterwards he was notified that his case had been referred to the Home authorities, and in the course of a

few days after this notice he was informed that the Home government had directed his discharge on account of the irregularities at his trial, but that he must give security not again to enter Her Majesty's dominions. He was removed the same day to another room in the Citadel, which he occupied by himself, and after some time was informed that the pardon signed by Sir George Arthur was irregular, and had to be returned for correction.

Tired of waiting, he wrote to Sir George asking to be informed of the form and amount of the security required, and saying that if security was to be exacted from him, he would try to procure it. He was informed that his own bail and two sureties in \$2000 each would be taken as assurance that in a fixed number of days he would not be in any part of Her Majesty's dominions, his own bail to be taken in Quebec, that of the sureties in Toronto. He tried his best to find sureties, but not unnaturally failed. He offered to pledge himself in any manner that might be prescribed ; but was told that his word was valueless and that other security must be given. One of his comrades is said to have remarked that sureties would run no risk, for an ox-team

could not draw Sutherland within sight of Canada again if he once got out of it.

On October 16 Theller and a number of his companions made their escape from the Citadel; Sutherland was removed to the 'black hole' for safety, and kept there five weeks. Some months after he was sent to Upper Canada and unconditionally released. He made his way to the United States, and his subsequent career does not concern us.

Theller finds no words too opprobrious to apply to his brother general: 'Coward,' 'traitor,' whose 'lying . . . vanity and assumption of importance, as well as his playing the special spy upon us, and the betrayal of our secrets at Toronto, made all men despise him.' We do not know Sutherland's opinion of Theller, but no one can read Theller's book without suspecting him also of 'lying, vanity, and assumption of importance.'

Theller, who has been mentioned more than once, was a much more interesting character than Sutherland, and of a distinctly higher type. Edward Alexander Theller was born in Coleraine, County Kerry, Ireland, January 13, 1804, of a good family; he received a good education and distinguished himself as a linguist; even as a youth

he became proficient in French and Spanish, an accomplishment that was to stand him in good stead in later life. At a rather early age he came to the United States, but retained to the end his love for his native land and (what he considered a necessary corollary) his hatred for England and all things English.

When the time came for him to elect his allegiance, he became an American citizen, formally forswearing all allegiance to the king in whose dominions he had been born. About 1824 he came to Montreal, where he studied medicine. A fellow-student was Dr Chénier, who was to become a prominent leader in the Rebellion in Lower Canada, and to die in battle at the church at St Eustache. Some say that Theller was for a time a member of a free-love community in New York State.

Theller practised medicine for a time in Montreal, and also carried on a drug store in partnership with a Dr Willson, after whose death he married his widow, Ann Pratt, a lady of some means, the daughter of an English gentleman. He seems to have been convinced of his success as a medical man, especially in treating cholera.

His residence in Lower Canada increased rather than diminished his hatred of Britain ;

and in 1832 he removed from under the British flag, settling in Detroit, which had been visited by an epidemic of cholera. Both in that year and in 1834, in another epidemic of cholera, he did good service as a physician.

A man of much energy, he prospered financially, and in a few years he was the owner of a wholesale grocery store and also of a drug store; he was as well a physician in active practice in partnership successively with Dr Lewis F. Starkey and Dr Fay. He became one of the most prominent supporters in Detroit of the 'Patriot' cause; and when an invasion of Upper Canada was planned in the winter of 1837-38 he was chosen as brigadier-general to command the first brigade of French and Irish troops to be raised in Canada. The 'Sympathizers' were firmly convinced that it only required a force of invaders to appear, to cause the Canadians to rise *en masse* against the supposed tyranny of Britain. Theller, indeed, continued to believe that excepting the Orangemen ('the vile Orange faction') and the Family Compact, there were very few loyal Canadians. He writes: 'Nor did I meet during all my stay in Canada with but two Roman Catholic Irishmen who were loyal or wished well to the

British Government.' He seems never to have heard of the Irish Roman Catholics of Peterborough, who marched from that place to Toronto in the depth of winter to offer their services to the governor.

Theller was determined not to violate the laws of the United States by taking any part in levying a force or joining one in the United States. Taking advice from the United States district attorney, he considered that joining out of the United States an expedition which had come from there, even though it might have been previously and unlawfully set on foot within the jurisdiction of the United States, was perfectly legal and did not violate the American statutes. Accordingly, upon the day agreed upon for a rising opposite Detroit, he crossed over to Canada in a ferry boat and landed at Windsor.

The 'rising' did not rise, and after a wordy encounter with the redoubtable Colonel Prince, Theller returned to Detroit. This was not the first time that these two met, nor was it to be the last. Theller had previously been the cause of the arrest of Prince in Detroit for a debt alleged to be owing to an Irish servant for wages; and the men were bitter enemies. Prince he

describes as 'dark and mysterious, cruel and vindictive, plausible but to deceive, he spared neither money, nor time, nor art to crush the spirit of reform and blight the hopes of the friends of Canadian independence'—Prince in turn describes Theller as a 'd—d piratical scoundrel.'

Probably each would have felt complimented by the attack of the other. Whatever Prince's faults, he was an ardent lover of British connection, and hated the thought of Canadian independence; while Theller would certainly not desire Prince's goodwill or encomium.

An invasion was then planned from Gibraltar, about twenty miles below Detroit, and Theller made his way thither, still determined not to join the force or take any part in its operations except beyond the legal jurisdiction of the United States; so far, however, as his 'advice was of service it was freely tendered and accepted'; this he calls being 'nicely scrupulous about the law,' but many a man has been hanged for less.

He crossed over from Gibraltar in a small boat into British waters and took command of the stolen schooner *Anne*. The following day, January 9, 1838, when discharging

a cannon with which the *Anne* was armed, he received a blow on the head from the recoiling gun that felled him to the deck and threw him down the hatchway into the hold. Before he could recover himself, the *Anne* had been captured by the Canadian militia. Stunned and senseless, Theller was dragged out by the victors, and upon partial recovery he found himself and his comrades under the charge of Lieutenant Baby. He was taken to the hospital, and when enjoying a refreshing and invigorating sleep was awakened by a kick on the ribs from his ancient enemy Colonel Prince, who ordered him to be tied and taken to Fort Malden.

Next day, tied two and two and thrown into the bottom of a wagon, Theller and his captive comrades were sent off to Toronto, accompanied by a strong guard of soldiers and a dozen of the St Thomas volunteer cavalry riding alongside and going ahead as scouts. The officer in charge of the escort was found to be an old acquaintance of Theller's, Dr Breakenridge, who had studied his profession in Detroit in the office of Dr Fay, Theller's former partner. But Breakenridge was 'the son of an old revolutionary Tory,' and 'was well worthy of his sire'; and

'this most ungrateful wretch,' although Theller had 'for months saved him from literally starving,' treated the prisoners even worse than his instructions from Prince warranted.

After a tedious journey of five days they reached London, an 'apparently flourishing village . . . on the River Thames.' Ten days in the London gaol passed before an order came for Theller and some others to be taken to Toronto; on this journey the prisoners were not tied.

The cavalcade passed through Brantford and Hamilton, and at length arrived at Toronto. The last words Theller heard before passing through the prison doors came from a 'decent-looking man': 'Bad luck to your impudent face, you bloody Yankee! I hope I may never see you come out of that place until the morning you are to be hung.'

On March 24, 1838, he was presented with a copy of an indictment for treason, and on April 6 was called to trial. Mr Hagerman (the attorney-general) and Mr Sherwood prosecuted, and the sole defence was that Theller was not a British subject but an American citizen. The crown admitted that he was a naturalized American citizen, but

claimed that 'once a subject always a subject,' and that he was still a British subject. The facts were proved, and the jury speedily gave their verdict: 'If the prisoner is a British subject he is guilty of Treason.' Theller and some American writers preposterously contended that this was a verdict of acquittal; but by the law of England (then and until 1870) and by the law of Upper Canada, the prisoner was a British subject; and he was rightly convicted. Mr J. E. Small, one of the leaders of the Bar and sometime treasurer of the Law Society, assisted Theller in his defence and remained his staunch friend. Theller describes Hagerman—'Handsome Kit' (who was afterwards a justice of the Court of King's Bench)—as 'a large man with an unmeaning, bloated countenance; his nose had been broken, but whether in a midnight brawl or not I cannot say, but it gave a hideous and disgusting look to his face'; Sherwood was a 'sprout of revolutionary Toryism,' Chief Justice Robinson guilty of 'strange perversion,' the jury 'all a packed jury of tories,' the law 'unjust, tyrannical and barbarous.'

On April 10 he was called up for sentence; the sentence was, of course, that he should be

drawn to the place of execution on a hurdle and hanged a fortnight thereafter, and that his body should be given to the surgeons for dissection. Sir George Arthur, however, determined to reserve his case for Her Majesty's pleasure by reason of the great legal questions involved. Theller, it is true, and those who accept his statements as gospel, say that his reprieve was due to a fear that the Irish troops would mutiny if an Irishman were executed while the sentence of General Sutherland, an American, was commuted—*credat Judaeus Apella*.

On St George's Day, Theller's faithful wife, left behind at Detroit, came to Toronto from Lewiston by the American steamer *Oneida* and made her way to the gaol, while friends who were to present a new petition to Sir George Arthur were hastening to Government House. They soon brought the good news that those whom the prisoner calls 'the tyrant and his minions of the perjured wool-sack and the Council' respited him from immediate death. It was currently reported that on a former petition the Council was equally divided, two for reprieve and two opposed, 'a bloodthirsty old Scotsman, Allen or Billy Allen as he was called, . . . was

decidedly for hanging and quartering and could not be persuaded to yield a jot . . . one of the Council, the Honourable Mr Draper (Solicitor-General) being absent on the London circuit.' However that may be, the second petition was successful. Orders came to remove Theller and others, twenty-five in all, to Fort Henry, Kingston. Escorted by a guard of negro volunteers, the unfortunates, chained two and two, were taken by Sheriff Jarvis to the steamer *Commodore Barry* and huddled in the after part of the boat, closely penned in and still in chains.

A plot to take possession of the steamer and run her into Sackett's Harbour came to nothing, owing, Theller says, to Sutherland's cowardice. After remaining in Fort Henry overnight, Theller and the other nine American prisoners 'were again placed under our sable escort and marched . . . to a boat,' to be taken through the Rideau Canal to Lower Canada. Changing boats at Bytown (Ottawa), they made their way down the river to 'Granville' (Grenville); then marched across about fifteen miles to Carillon and embarked on another boat, which took them to Lachine.

From Lachine they went by barge to Montreal and were incarcerated in the new

gaol. Theller gives an interesting account of the conduct of the crowd who watched their march from the river to St Paul's Street, and from there to the new market and thence to the gaol: 'The most abusive epithets against ourselves and country were made use of; such as d—d Yankees, sympathizers, pumpkin-eaters, wooden nutmegs.'

The stay in Montreal was short; the prisoners were taken by boat to Quebec. They were put in the hold of the vessel, as the owners, John Torrance and Company, had given orders that the cabins were not to be polluted by the presence of any Yankee brigand. Touching at Three Rivers, a copy of Lord Durham's Proclamation was procured. Theller did not think anything would come of it in the existing miserable state of Canada. At Quebec they were lodged in the Citadel. An order came to send Theller to England, but in October he managed to effect his escape with several others. After he had been concealed in Quebec for a short time, friends took him, along with Colonel Dodge, across the river and finally across the line.

They then went to Augusta, Maine, sailed thence by the steamer *Vanderbilt* for Boston and thence to New York, where they met

William Lyon Mackenzie and several Patriots who had just arrived from exile in Bermuda.

Theller attended and addressed meetings with Mackenzie in New York, Philadelphia, Washington, and Baltimore in favour of the Canadian rebels, but the news from Canada was discouraging, and sick at heart he took his way homeward by the great western route, the national road. Crossing the state of Ohio to Cleveland, he took the stage for home, travelling day and night to prevent if possible the utter folly of a proposed invasion of Western Canada from Detroit. He arrived in Detroit December 4, 1838, too late to check the invasion which had already begun, and which resulted so disastrously for many of the invaders.

In 1841 he published a book in two volumes, *Canada in 1837-38*, which contains a history of the Rebellion and especially his own part therein. It contains a good deal of 'fine writing,' much gasconading, much evidence of hatred of Britain, but little of value historically or otherwise.

The cholera was raging in Buffalo in that year, 1841, and thither Dr Theller went and resumed the practice of medicine. In 1849, hearing that there was in Panama an epidemic

of yellow fever, he made his way to that city. He was met there in 1857 by Mr Kingsford, who in his *History of Canada* gives an account of the meeting. He was at the time keeping the Cocoa Grove Hotel in the suburbs, a most beautiful spot.

He went from Panama to San Francisco, where he started and edited *The Public Ledger* and afterwards *The Evening Argus*. He died at Hornitos, Mariposa county, California, May 30, 1859, in his fifty-sixth year. One of his sons, who was in the United States Army, was killed by the Nez Percés in 1877; the other two both lived in San Francisco; his only daughter married F. X. Cicott of Detroit and died in 1865 (her husband was then sheriff of the county), leaving a number of children.

Theller was 'plump, full-figured, black-haired, with blue eyes, straight well-formed nose and high forehead, and about five feet six inches in height'; he believed himself to be like Napoleon both in person and in genius, with a magnetic tongue, 'an Irish enthusiast for anything opposed to Great Britain, a native born Fenian.' So say those who knew him; but withal he was a kindly soul, with an open heart and a hand ever ready to help the unfortunate.

These two generals were exceedingly fortunate. Sutherland would undoubtedly have gone to Van Diemen's Land and Theller have been hanged but for the doubt in the one case as to the place of capture and as to the regularity of the trial, and in the other case as to the advisability of bringing to an acute issue the legal status of one who, British born, had become a naturalized American citizen. Moreover, it is quite manifest that the Home authorities were distinctly more cautious and less bloodthirsty than the Canadians, who would not hesitate to hang or shoot any Patriot or Sympathizer.

NOTES TO CHAPTER XII

¹ Most of the facts of this chapter are from the writings of the generals themselves. 'A | Letter | To Her Majesty | the British Queen | with Letters to | Lord Durham, Lord Glenelg, and Sir | George Arthur. | . . . By Th. Jefferson Sutherland | Albany | Printed by C. Van Benthuyzen | 1841.' 12mo, pp. 168. 1 volume only. This is rather rare; a copy is in "The Riddell Canadian Library," at Osgoode Hall, Toronto.

'Canada | in 1837-38 | . . . By E. A. Theller | Brigadier-General in the Canadian Republican Service | . . . In two volumes | Philadelphia | Henry F. Annors | New York. J. & H. G. Langley | 1841.' Two volumes, 12mo. Vol. i has pp. 264; vol. ii pp. 316. This is quite common, and is to be found in many public libraries. There are three copies at Osgoode Hall.

² There was very great jealousy between these two generals;

each affected to despise the other and his pretensions to military skill.

³ Van Rensselaer was the commander-in-chief of the Canadian army at Navy Island. He was a man of considerable capacity, but much addicted to drink. Gourlay expostulated with him on his taking part in a military enterprise against a friendly country. Whether for that or some other reason, Van Rensselaer attempted no mischief against Canada.

⁴ Prideaux Girty was the youngest son of the noted Simon Girty (as to whom see chapter i, pp. 5, 6 *ante*), and was born in October 1797 in the county of Essex, Upper Canada. He was named after his father's friend, Lieutenant Prideaux Selby of the Fifth Foot. Prideaux Girty lived most of his life in his native county: he was a resident of Colchester, and a man of some influence. On the death of King William IV the parliament of Upper Canada was dissolved, and Prideaux Girty and Colonel John Prince were elected members of the House of Assembly. He was a major during the Mackenzie Rebellion, and served with credit throughout the troubles under Colonel Prince. He died in Ohio, January 1853.—Butterfield's *History of the Girtys*, pp. 304, 305, 329, 400.

⁵ The Rev. Dr Henry Scadding in his Diary at Quebec has the following under dates June 10 and 11, 1838:

'June 10. Trinity Sunday. . . . A sultry day. The prisoners, Theller and Sutherland, brought here to-day from Toronto on their way to New South Wales. The crowds assembled at the wharf followed them up to the prison with whoops and huzzas. This sounded unfeeling, but the arrival of the prisoners here has been the only outward and visible sign of the rebellion that the good people of Quebec have witnessed, and so their enthusiasm is excusable.

'June 11. Sheriff Jarvis dined here. He escorted the State prisoners down from Toronto.'—*Transactions of the Women's Canadian Historical Society of Toronto*, No. 6 (1906), pp. 23, 24.

It was in July of the same year that Dr Scadding came to Toronto.—No. 6 (1906), pp. 23, 24.

CHAPTER XIII

THE BAD LUCK OF ESTHER PHELPS¹

THE Six Nation Indians, including the Mohawks, were, as a rule, faithful allies of King George III during the American Revolution and before. No small part was played in the policy of these tribes by the celebrated Sir William Johnson,² Bart., who after the death of his lawful wife formed a connection with Molly Brant, the sister of the celebrated Joseph Brant.³ A delightful story is told of the young and charming Indian girl winning the heart of the white man by leaping upon the back of a spirited steed and galloping past, her long black hair streaming in the wind. He cherished her till his mysterious death in 1774, and she bore him many stalwart sons and beautiful daughters. The marriage between the two was not unlike the morganatic marriage at one time much in vogue among the German princelings, and still not wholly unknown—the status of the

woman was not dishonourable, but the children did not succeed to their father's estate.

The loyalty of these Indians to British rule resulted in most of them coming to Canada on the establishment of the new Republic. By direction of the home government, Sir Frederick Haldimand, 'Captain General and Commander in Chief of the Province of Quebec and Territories depending thereon, etc. etc.,' in October 1784 did 'authorize and permit the Mohawk Nation and such others of the Six Nation Indians as may wish to settle in that quarter, to take possession of and settle upon the banks of the river commonly known as the Ouse or Grand River running into Lake Erie, allotting to them for that purpose six miles deep from each side of the river . . . which them and their posterity are to enjoy for ever.' (The king of course is above grammar—*supra grammaticam*.) This is often called a treaty; but it is not a treaty in any accurate sense of the term. The Mohawks and others went into possession of some of this splendid territory, and there their descendants are still to be found.

A Mohawk maiden rejoicing in the name of Esther captured the fancy of a white man, a

schoolmaster called Epaphrus Lord Phelps; and he married her. Three children were born to them, who were an object of concern to the tribe, as was their mother. Accordingly, in 1804, Captain Joseph Brant, principal chief and agent for the Six Nations, made a lease for 999 years of one thousand acres of land on the Grand river, part of the Indians' lands, to Phelps for a provision for his wife Esther and her three children. Whence the schoolmaster derived his name, 'Epaphrus,' I cannot tell. It may be but the name of the dear fellow-servant of whom Paul speaks so lovingly in his letter to the Colossians. Paul's friend, it is true, was called Epaphras; but orthography has not always been carefully observed, even in proper names. It may, however, be that the perfectly good, if late, Greek adjective, 'epaphros' ('covered with foam'), was adopted as a name.

Marriage of a white with an Indian woman was not in those days very uncommon; although the more usual union was that of 'Indian marriage,' such as Sir William Johnson's with Molly Brant, sister of the great war-chief.

Troublesome times were in store for the

pair. The United States declared war in 1812. We are accustomed to think and talk as if the inhabitants of Canada then were, to a man, enthusiastically loyal; but that is far from the truth. No one can read the history of those times, the dispatches, the legislation, without becoming aware that no inconsiderable element of the population was in some instances openly, in more secretly, in favour of the invader. Many were denounced to the authorities and were obliged to flee for their lives; some were imprisoned. The Term Books of the King's Bench are full of cases of suspects being brought before the court on *habeas corpus*; some to be released because there was no real ground of suspicion, some to be remanded that the attorney-general might lay a bill of indictment against them for high treason. It is of record that in July 1813 there were twelve persons discharged from custody in one day, Lieutenant-Colonel Battersby commanding His Majesty's forces at the port of York 'having no charge against them.'

According to English law, which was also the law of Upper Canada,⁴ when a man was convicted of high treason and sentenced to death, his land went to the king; but to

be convicted and sentenced the man had to be caught and brought into court; and a shorter and more certain method was desired in the case of those who had made their escape from the province. In 1814 the legislature of Upper Canada passed an Act which declared that all persons who had land within the province, and who had withdrawn or should withdraw to the United States without a licence from the governor, should be taken to be aliens born, and incapable of holding lands within the province. The Act further provided that the governor might appoint commissioners to inquire by the oath of twelve men and make a return to the Court of King's Bench of all such persons as should so withdraw to the United States without a licence, and of their lands; and when the inquisition should be justified (*i.e.* approved) the king should forthwith become the owner of the lands so found. It is to be borne in mind that at that time no alien could own land in Upper Canada.

Epaphrus 'withdrew' to the United States about June 1812—no doubt for very good reasons, as we find an indictment for high treason returned against him at a court held at Ancaster not long after. Ancaster was then, and for some time before, the most

important village between York (Toronto) and Newark (Niagara); and, next after these two places and Kingston, was the most important place in Upper Canada. There the courts sat: it had many fine private residences and considerable trade, but its distance from the head of navigation soon proved its ruin; Hamilton took its place and Ancaster was deserted.

Phelps did not stand alone; no less than forty-three others were, at the same time, in the same predicament. The indictment was brought up into the Court of King's Bench by order made in November 1814; next term, January 1815, the names of the indicted were called, and proclamation was made; this was repeated in July of the same year, and a writ of *exigent* was issued against each. This had the effect of outlawing any one who did not appear. Phelps did not appear, no doubt having a regard for his neck and perfectly justified in his fear: Canadian justice has never been lenient in cases of treason, as the fate of M'Lane, of Von Shultz and his companions, of Lount and Matthews, and of the Detroit raiders can certify.

Then came the question of the land of

those who were thus disposed of ; what land they had must be determined. Abraham Nelles was appointed a commissioner for that purpose, a man of good United Empire Loyalist stock, and of importance in the community. He called a jury to meet at the township of Grimsby in January 1818 to inquire into the case of Phelps. The jury, whose foreman was William Nelles, on January 28, 1818, found that when Phelps had committed high treason and left the country, June 1, 1813, and when he became outlawed, he was seized of the unexpired term of the lease for 999 years in the thousand acres we have spoken of. Thereupon the commissioner took possession of the land for the king.

Later on in the same year the legislature gave all persons claiming an interest in land forfeited to the crown, the right to make a claim before the commissioners within a limited time : the commissioners were to pass upon the validity of the claim, with an appeal to the Court of King's Bench from their decision. Besides this, the Act of 1814 had given to any one interested in any land declared to be forfeited one year from the establishment of peace with the United States

to dispute the inquisition. Peace was established December 1814 by the Treaty of Ghent.

Esther had not taken advantage of the right under either statute to dispute the forfeiture of the land, and the time went past for making claim. But she had powerful friends; and in 1821 she by statute was given six months from the passing of the Act to make her claim. Samuel Hull, of the Township of Aldborough, was also favoured in the same way by the Act—but that is another story.

Esther made her claim in the Court of King's Bench; and the whole story was there told of her marriage and her babies, the Mohawk Nation and their land on the Grand River, Brant's deed to her husband and its purpose, Phelps's treason and the inquisition by a jury under Commissioner Abraham Nelles. She had the best counsel available, William Warren Baldwin,⁵ a man of acute mind and great legal learning, who stood at the very head of the Bar, having no superiors and very few equals. (He was the father of Robert Baldwin, even more celebrated than his father.) The crown was represented by Solicitor-General Henry John Boulton, son of the Hon. D'Arcy Boulton, one of the judges of the King's Bench. The

son was afterwards chief justice of Newfoundland; but he returned to Upper Canada and died in this province. He also was subtle and adroit, with a good fund of legal knowledge which he well knew how to utilize to the utmost.

The court was composed of Justices Campbell and Boulton—the chief justice, William Dummer Powell, being absent. Campbell was a Scotsman who became a private soldier in a Highland regiment; taken prisoner at Yorktown, he left the Army in 1783, went to Nova Scotia and studied law. He was called to the Bar and became attorney-general of Cape Breton; he was nominated a judge of the King's Bench of Upper Canada in 1811. Becoming chief justice in 1825, he died in Toronto nine years thereafter—he was the first of the chief justices to be knighted, an honour now almost as of course. D'Arcy Boulton was an Englishman: he came out in 1797; and after remaining for about ten years in Augusta township, he came to York. He received a special licence to practise law in 1803, and became an active practitioner. He was created solicitor-general in 1805; and while on his way to England he was, in 1810, cap-

tured by a French privateer. Remaining in a French prison till the short peace of 1814, he in that year came home and was appointed attorney-general. Made a judge in 1818, he resigned in 1825, dying a few years thereafter in Toronto.

Dr Baldwin argued that the Indians were a distinct though a feudatory people, quoting learnedly from Vattel and other writers, that the 'treaty' made with the Indians was binding, and therefore the woman could not properly be an alien; and as the land had in reality been granted to Phelps in trust for his wife, she should be allowed to hold it. The solicitor-general took the ground, which has ever since been held good law, that the Indians are bound by the common law and have no rights higher than those of other people in respect of land, for they were and are, like the whites, subjects of His Majesty: they might indeed not have so great a right in their lands as Englishmen had, but they could in no case have a greater right. He then pointed out that the Indian woman was on her own showing 'a foreigner, and consequently no more entitled to hold lands than a "frenchman" or any other foreigner'—the husband's allegiance fixes that of the wife.

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The court held with the solicitor-general, and Esther did not get her land. No doubt she was looked after by her kinsfolk, but the court could do nothing for her.

In the United States there has been, from time to time, question as to the legal status of Indians and Indian land; in this province there never has been any doubt that all the land, Indian or otherwise, is the king's, and that Indians are subjects in the same way as others—there are no troublesome subtleties in Canadian law, in that regard, at least.

Now that 'a "frenchman" or any other foreigner' is capable of holding land in Ontario, it is possible the decision would be different; but that the Court of King's Bench was right in 1823 in deciding as it did, there can be no doubt.⁶

NOTES TO CHAPTER XIII

¹ The facts of the marriage of Esther Phelps and her fight for the land granted to her husband are taken from the official law report, Taylor's *Reports of Cases Decided in the Court of King's Bench of Upper Canada*, pp. 47 sqq.

² There are several lives of Sir William Johnson; most, if not all, have the story of his Indian wife, Molly Brant.

William Johnson was born at Warrenton, County Down, Ireland, in 1715, and came to America in 1738, settling in the

Mohawk Valley, New York. He had one son (afterwards Sir John) and two daughters by his first wife. He formed a connection with Molly Brant about 1748. Made a baronet in 1755, he served the crown faithfully till his death in 1774. His Indian wife survived till 1796, ever true to her first love. She did not give up the manners and costume of her tribe, but her daughters were noted not only for their beauty but also for their gracefulness and their knowledge of the accomplishments of the whites. One became the wife of Dr Robert Kerr, an eminent surgeon of Niagara; another the wife of Ensign Lemoine of the 24th Foot; a third of Captain Farley of the 16th Foot; another of John Ferguson of the Indian Department; and a fifth of Captain Earle of the Provincial Navy.

³ The life of Joseph Brant has been written in great detail by Colonel W. L. Stone. He speaks of the mystery surrounding the death of Sir William Johnson. As to Brant, see note 5, p. 94 *ante*.

Sir William's son, Sir John, was spoken of by his unlettered admirers as 'Knight and Baronite'; he was knighted during his father's lifetime, and succeeded to the baronetcy.

⁴ The law in what is now Ontario, and for a long time was Upper Canada, had been since 1774 the French-Canadian law. The parliament of Upper Canada was authorized by the Constitutional Act of 1791 to change the law, and at its first session the first parliament by its first Act introduced the Common Law of England in civil matters (1792).

⁵ As to Dr Baldwin, see chapters ii and viii *ante*, especially note 7, pp. 145-147.

⁶ Some doggerel has been written about this poor woman:

'As the husband is, the wife is—
Thou art mated to a Yankee,
An "Amurrican" by status
With thy rights plays hanky-panky.'

This is not much worse than many rhymes with which the grave and reverend signiors of Bar and Bench are wont to lighten their labours.

CHAPTER XIV

THE BANISHED BRITON

IN April 1817 a Scotsman¹ farming in Wiltshire on part of the estate of the Duke of Somerset left his farm, intending to visit Canada and the United States, and to return to wife and family within six months. He was fated to remain in Canada for more than two years, to become, almost in spite of himself, a political agitator, to be banished from the new province of Upper Canada, under pain of death as a felon if he should return, and, notwithstanding the law and the threat, to return to be a thorn in the side of friend and foe for many long years.

Such was Robert Gourlay—or, as at the age of fifty-five he styled himself, Robert Fleming Gourlay²—the 'Banished Briton,' whose name can never be forgotten by those acquainted with the early history, political and economic, of Upper Canada. Born in Fifeshire, Scotland, of an ancient Scottish stock,

his father a Writer to the Signet³ who had retired to farm life, Robert received a sound education, finishing up at the universities of St Andrews and of Edinburgh.⁴ He had decided to devote himself to agriculture, and his studies at the latter university were chiefly along the line of scientific farming as it was understood in those days.

Marrying and settling down to farm in his native county, he soon displayed the faults of temper and judgment which proved so baneful to him in after life. He quarrelled with the local magnate, the Earl of Kellie, for a trivial reason hardly understandable by a person of sense ; and partly for that reason, partly on account of his health, and partly for other reasons, he went to the south of England, where he rented a farm from the Duke of Somerset. Through his silly refusal to execute a formal lease he got into a lawsuit with the duke—a Chancery suit—and this kept him in hot water for many years.

His wife had some four hundred odd acres of land in Dereham township, Oxford county, in Upper Canada ;⁵ he had himself bought as much ; and he made up his mind that he would come to the province and see what could be done with the land. He arrived in

Upper Canada in June 1817, visited the Perth settlement on the Rideau, and came to Queenston to the house of a relative, Mr Clark.

There he had the experience which every traveller of the time complains of—he was 'eaten alive' by mosquitoes.⁶ Most escaped serious injury from this cause, however annoying the experience, but Gourlay was of a highly nervous temperament,⁷ the exasperation of these pests—the outlaws of creation—made him seriously ill, and he was confined to bed for two months. Thereby the whole course of his life was changed—in fact, the course of history in Upper Canada was changed, at least in certain particulars.

Gourlay was not able to carry out his projected trip to the West, to Illinois, etc., and to return to his English farm; he therefore determined to remain in Upper Canada for a time. He had it in mind even before arriving in Canada to publish a statistical account of the province; and with that end in view, in October 1817, he sent a number of questions to the various parts of the country. One of these queries unfortunately was: 'What in your opinion retards the improvement of your township in particular or the Province in general, and what would most contribute

to the same ? ' At that time much of the land of the province was in the hands of those in high places ; they did not improve it, but held it for a rise. The ordinary farmer had to pay for the roads, etc., which increased the value of the land of the idle landholder ; and much dissatisfaction was the result. There were other grievances in respect of the land grants, too, which contributed to the dissatisfaction.

There can be little doubt of the perfect good faith of Gourlay in these inquiries : I think there is none. But the rulers at that time were a kind of Prussian ' *Obrigkeit* '—they were, they thought, born to rule and could not brook complaint. The question I have quoted at length excited the suspicion of the most powerful man of his day in the province, the Rev. Dr Strachan, a member of the Council and a man of great importance. No one else seems to have scented treason in the innocent inquiry.⁸

Gourlay also printed in the *Niagara Spectator* an Address to the Freeholders of Upper Canada, equally innocent but equally suspected. To his utter amazement he heard of Dr Strachan's objections ; but instead of striving to allay the suspicions, with his usual

wrong-headedness he made a personal attack on Dr Strachan in the press. Not satisfied with this, he issued a second Address, which was an open attack on the Government, and proceeded to insult Dr Strachan⁹ and the Governor. Much newspaper controversy followed. Gourlay again made up his mind to go back to England, but changed it once more and determined to stay and become a newspaper editor.

He made a progress through the eastern part of the province, success and failure meeting him in turn: there was a tempest of recrimination by and against him.¹⁰ At length the Government determined to prosecute him for seditious libel contained in one of his addresses. He was triumphantly acquitted by juries at Kingston and Brockville; but his triumph was short-lived.

In 1804 the legislature, alarmed at the number of Americans, mostly republicans, and Irishmen,¹¹ many of them rebels, coming into the province, passed one of the most extraordinary pieces of legislation this or any other country ever saw. Expressly passed 'to protect His Majesty's subjects of the Province from the insidious attempts or designs of evil minded and seditious persons,' it authorized

members of the Legislative and Executive Councils and some other persons to cause to be arrested any person who had not been an inhabitant of the province for six months, or who had not taken the oath of allegiance, if they suspected him of endeavouring to alienate the minds of His Majesty's subjects from his person or government. When the suspect was brought before those causing the arrest, he must give full and complete satisfaction as to his innocence or they might order him to leave the province. If he omitted to do so, he might be imprisoned and formally tried for his refusal. If convicted on the trial he was to be banished, under penalty of death if he returned. It need not be pointed out what a tremendous power was thus placed in the hands of legislative and executive councillors, subject to no kind of supervision or regulation by the courts.

This statute, when it was passed, was considered necessary by the best minds in the province. The Honourable Richard Cartwright, for example, speaks of it with approval and states convincingly the causes calling for its enactment; and indeed it is not in principle different from that which gives the Minister at Ottawa power to send from the

Dominion, immigrants of whom he disapproves. But there was no need in Gourlay's time to call the stringent provisions of this extraordinary Act into force; Upper Canada was loyal and the agitation was mainly in respect of the land policy.

Just at the time of Gourlay's activity the local parliament passed another Act, at the instance of the governor, Sir Peregrine Maitland, an old officer of the Duke of Wellington's command. This forbade meetings such as Gourlay had been holding. A statute so high-handed and opposed to the principles of British liberty naturally excited the indignation of many, although parliament seems to have accepted it without question. When Gourlay heard of it, he broke out into poetry—

Gagg'd—Gagg'd, by Jingo.

Dear sweet Canada! thou art gagg'd at last.
A babe of mighty Wellington, come o'er the sea,
Has, with thy own foul fingers, gagged thee.

Pleased with the success this doggerel met with among his first hearers, he wrote and published another Address, headed with the above lines and urging meetings to protest against the Act, to see that the representatives in the next parliament should be of the right stripe, etc. etc., an address which in

these days we should consider perfectly legitimate and unobjectionable, differing in principle not at all from addresses against Free Trade or the National Policy.

But this was the cap-sheaf to Gourlay's iniquities in the eyes of the official class. A warrant was issued for his arrest by two legislative councillors at Niagara. He did not prove that he had been an 'inhabitant' of Upper Canada for six months, as indeed he had not been (as the word 'inhabitant' was interpreted at that time in the courts of law); nor did he prove that he had taken the oath of allegiance, for he had not done so (so far as appears). But he then, as always, contended that the Act did not apply to him: his contention in this respect is plainly absurd: the Act was intended for those who had come into the province without having as yet become 'inhabitants' and having taken the oath of allegiance.

Gourlay did not attempt to prove his innocence of the charge against him; it was impossible for him to prove that he had not been trying to alienate the minds of Canadians from the government. The councillors, after a short deliberation, made an order for him to leave the province. He refused, and

was committed to gaol at Niagara, to wait for the assizes. He applied for release under a writ of *habeas corpus*; but that relief was forbidden by the law as it then stood; and after a mid-winter journey round the head of the lake to and from York, he went back to his cell in Niagara.

His confinement was shamefully rigorous. Cold in winter, the gaol was oppressively hot and stifling in summer; and at length Gourlay's mind gave way to a certain degree. His total misapprehension of his position was not, however, due to this circumstance; he never could be made fully to understand that the offence for which he was to be tried was his disobeying the order of the councillors to leave the province. He prepared a defence against the charge of sedition; but it is quite manifest that he had and could have no defence against the charge of disobedience against the order. After nearly eight months of confinement his trial came on at the Assize Court at Niagara. There could be only one result: he was found guilty and ordered to leave the province.¹²

He obeyed without delay and soon made his way to England. He found his home in Wiltshire broken up by foolish management

during his absence, and his wife and family returned to Scotland; and he went thither. He was determined to make the righting of his wrongs his object and occupation, if necessary for the rest of his life. He flooded the Imperial parliament with petitions complaining of his treatment; he persistently wrote to men who he thought might assist him (quarrelling with most of them, it may be said), and at length struck Henry (afterwards Lord) Brougham¹³ with a horse-whip in the Lobby of the House of Commons. Imprisoned for this and on suspicion of insanity, he refused for nearly three years to allow his friends to bail him out, preferring to be a martyr for principle, although the principle he supposed he was suffering for was (and is) invisible to every eye but his own.

Failing of success in England, he determined to return to Upper Canada. For a time in England he had thrown himself upon the rates and worked as a pauper, although he had means and friends always ready and willing to give him money for all his needs. On his arrival at New York in February 1835 he sent a formal notice to the lieutenant-governor, Sir John Colborne, protesting against his treatment sixteen years before,

and added: 'I shall think myself justified at any time to enter the Province there by force of arms to recover my property, maintain my rights and avenge my wrongs.' He fortunately did not follow this by an immediate entry into the province, or he would probably have been arrested as a traitor or a madman.

He went to Ohio, refused to take part in William Lyon Mackenzie's movement, and was of some assistance to the government of Upper Canada during the short-lived Rebellion of 1837-38. From that time on, sometimes in Canada, sometimes in the United States, sometimes in Scotland, he pestered the legislature of Upper Canada with petitions, addresses, etc., concerning his treatment and demands for redress. His case became the football of party.¹⁴ Parliament was always willing to deal generously with him, but he insisted upon a confession that he had been illegally treated. This he secured once from the House of Assembly, but it was so palpably absurd that it was rejected by the other House and never repeated. Of a pension of £50 per annum he accepted only one and refused the subsequent instalments: a full pardon made him furious, but it was

granted nevertheless. His request to address the House in person was granted, but the address proved a dismal failure. He ran for parliament and was signally defeated. A second marriage resulted in unhappiness, and the old man of fourscore years and more left the province—and finally—for his native land, where he died in 1863, at the age of eighty-five, with his spirit unbroken and his sublime confidence in his own infallibility wholly unshaken.

He adopted the title 'Neptunian' ¹⁵ when he took ship for this continent in 1833, claiming to be no longer a subject of King William, but of Neptune; at the same time he adopted the middle name 'Fleming.' Some years after he became 'The Banished Briton,' under which name he covered reams of paper. He invented the apothegm 'Man is a Recording Animal' and lived up to it. Many of his pages are instructive, more are interesting, while some are amusing and some painful.

A man of much native ability and undaunted energy, without fear, well educated and of good presence and striking personality, being six feet two inches in height and finely formed, he lacked but a sense of proportion, common sense, to be a useful citizen if not a

really great man. His prosecution, strictly legal as it was,¹⁶ was a disgrace to those who set it on foot, whether the local councillors Dickson and Claus, or, as is suspected, those powerful in the government at York. No better example can be found of the danger of trusting to unskilled hands, irresponsible power removed from the supervision of the law and the courts.

NOTES TO CHAPTER XIV

¹ In the *Transactions* of the Ontario Historical Society for the year 1916 will be found a *Life of Gourlay*, written by myself, the facts of which are taken from his own writings. A full reference to documents, etc., is there given, and I would refer all who are interested in this extraordinary man to consult that publication and the authorities referred to. (Nearly all will be found either in 'The Riddell Canadian Library' at Osgoode Hall or in the Toronto Public Library.)

² He took the name 'Fleming' as a middle name, after his mother's death and in her honour, Fleming being her family name.

³ The Writer to the Signet in Scottish law corresponds not remotely to our Solicitor.

⁴ He did not take a degree from either university.

⁵ She was a widow, and apparently received this land from the estate of her deceased husband.

⁶ For example, John Howison, a surgeon in the East India Company's service, who spent some two years and a half in Upper Canada in the second decade of the nineteenth century, and who has left us a most entertainingly written account of his impressions of the country and its people, tells us the following experience when staying for a night in Glengarry with the Highlanders:

The evening being far advanced, I was obliged to resolve upon remaining with them all night. After listening for a couple of hours to Gaelic, I followed the landlord to my bedroom; but the moment he opened the door, a cloud of mosquitoes and other insects settled upon the candle and extinguished it. He made signs that I should remain a few moments in the dark; but I followed him downstairs and firmly declined paying another visit to the apartment intended for me, as it seemed to be already occupied.

⁷ The temperament of Gourlay is shown by his firm belief that he went without sleep for five months at a time.

⁸ This appears from a book purporting to be written by his brother, James Strachan of Aberdeen, who visited him in 1819, but quite certainly the book was almost if not quite wholly Dr Strachan's own production.

For some account of Dr Strachan, see chapter ii, p. 131 *ante*.

⁹ That Gourlay looked upon Dr Strachan as an inferior, a fool and a scoundrel, is perfectly clear: that Strachan honestly regarded Gourlay as a dangerous agitator is equally certain. It was then, as from the times of the first governor, Simcoe, to the present it has been, the favourite plan of a certain kind of politician desiring to throw discredit on political opponents to charge them with being disloyal to Canada and British connection and desirous of annexation to the United States. Gourlay did not escape this calumny, though there was no man more loyal.

¹⁰ The conflict was not always confined to wordy encounter; more than once in his life Gourlay had to defend himself from personal physical attack; at least once during this visit to eastern Upper Canada he had to fight to preserve himself from serious physical injury.

¹¹ Many who had been implicated in the United Irishman movement in the last decade of the eighteenth century came from Ireland to Upper Canada for safety; most of the Americans came attracted by the lure of free land.

¹² There has been much fine writing about this trial, but it was, after all, a commonplace affair. The burst of maniac laughter,

for example, detailed by some writers has no basis in fact. Any account of anything at all political about that time must be read with great caution.

¹³ Gourlay's feeling against Brougham (which he treasured for the remainder of his life) had as its ostensible basis the fact that Brougham had not presented to the House of Commons with proper emphasis a petition which Gourlay had entrusted to him. If Gourlay was not quite insane—and that depends on the definition of insanity—he was for a time in England perilously near insanity.

¹⁴ He did not see eye to eye with the Reformers who championed his cause—for example, he scoffed at Responsible Government, the slogan of the Reformers for many years. But then Gourlay did not believe in anything unless it was advanced by himself.

¹⁵ He published many numbers of a periodical which he called *The Neptunian*, which gives an account of most of his life, and is still interesting and amusing reading. A complete set (believed to be unique) is in 'The Riddell Canadian Library' at Osgoode Hall.

¹⁶ Like the proceedings against the Earl of Selkirk, these proceedings are generally represented as illegal, a charge wholly unfounded. However shameful and uncalled for, the whole proceedings against Gourlay were strictly in accordance with law.

CHAPTER XV

THE EARLY LIFE OF ONE CANADIAN PIONEER

MUCH, though by no means enough, has been written concerning the earliest pioneers of Upper Canada, the United Empire Loyalists, and their early life and training, which fitted them for the arduous task of opening up a new country. But comparatively little has been said of those who came later, whose work was equally important, if less spectacular. One of these was Edward George O'Brien,¹ who had been an officer in both branches of the Imperial service, and who took up land in the township of Oro, in the midst of a settlement in great measure of officers like himself.

The father of Edward George O'Brien was a captain in the Royal Artillery and adjutant, having, on account of services rendered in the West Indies, been allowed to retire on full pay; and at the time of his son's birth, January 8, 1799, he resided at Woolwich.

Captain O'Brien had some property at Cratloe near Limerick, to which he moved when the lad was three years old. The family did not remain long at Cratloe, but removed to Cooldarah or Coolderry in King's County near the town of Birr; there the captain joined a troop of yeomanry.

Lord Beresford, who was in command of the forces in that part of the country, having returned from his Egyptian campaign, was a very intimate friend of Captain O'Brien's and often visited at his house. To the end of his life Edward O'Brien spoke of a childish episode when he was not six years old. He put on Beresford's cocked hat, and, taking his sword for a horse, galloped around the lawn with his brother Lucius, who had taken his father's cavalry helmet and sabre for the same purposes.

Captain O'Brien was appointed ordnance paymaster on the fortifications at Cork, and removed to that city. There the lad was taught to manage a boat by his father, who was a most skilful boatman; but his education was chiefly in the hands of one Curtin, and 'a better master than Curtin, boys never had,' says his enthusiastic pupil half a century afterwards.

The family took up a permanent residence at the Retreat, beautifully situated on the steep side of the Hill, east of the Cove of Cork, now Queenstown Harbour. This was the place at which in those days collected for convoys the merchant fleets for India, the Mediterranean, and America, and most of the transports with reinforcements for the Duke of Wellington in Spain.

The faithful teacher was settled on Spike Island, and taught his pupils, seven or eight in all—the sons of the army and naval officers at the Cove—mathematics, practical as well as theoretical, French, a little Latin and even Greek—‘We were taught habitually to do everything as well as possible, and whatever we did know, to know accurately.’ And surely no better training could be given to any youth.

Officer of the king as Captain O’Brien was, he did not scruple to smuggle in for his own use an occasional quarter-cask or two of Madeira; and the son tells with much gusto of one occasion when he assisted in landing from the *Fortune* wine which had been brought from Madeira by Captain Vansittart (afterwards Admiral Vansittart of Woodstock, Upper Canada).

In 1810 the boy went as a midshipman in the *Sybelle*, a 38-gun frigate, Captain Clotworthy Upton. On his first cruise began his 'acquaintance with Jonathan, and a most unmitigated lot of liars they were, never by any chance could we get a word of truth from any of them; their log-books were generally false, but . . . each man would swear to them.'

From overwork and insufficient as well as bad food, the boy's health and strength gave way, and he was invalided home—'a puny delicate lad, moping with incipient liver complaint, timid and inert.' A short time at home under a mother's care restored his health and vigour, and towards the end of 1812 he joined as signal-midshipman the *Doris*, a 36-gun frigate fitting out at Plymouth for China and India, commanded by Captain Robert O'Brien, his father's cousin (afterwards in Canada as Admiral O'Brien).

The *Doris* joined the outbound fleet composed of several line-of-battle ships and heavy frigates with a large number of smaller men-of-war. The ships to be convoyed ranged from the first-class Indiaman of 1400 tons down to the small Mediterranean fruit carrier of 60 tons. O'Brien's

first duty every morning was to count the fleet from the masthead of his ship.

The difficulties of navigation in those days find illustration in the fact that O'Brien, who, owing to the exigencies of the service and the state of the weather, was left behind by his vessel at Teneriffe, could not regain her till she arrived at the Macao Roads. A fast whaler picked him up along with others, with nothing more than the clothes he stood in, and these in rags. Thus, as he says, 'without a penny in my pocket I went on my first voyage to the far east on board a vessel bound to the far west.' Transferred from the whaler to a China ship, the *Warley*, he took every opportunity of self-improvement, receiving instructions from the second mate, an excellent draughtsman. At Madras the midshipman was treated with the utmost kindness by a resident, and was fitted out with new clothes, etc. ; he there met Sir Samuel Hood, the well-known admiral, and generally was 'laid in clover.'

He left the *Warley* at Penang and went on board the *Phoenic* frigate, on which the captain took him into his own cabin. At Penang he took an interest in the 'Malays, the Proas, and their Piracy and their trade';

marvelled at the Malays knocking about the Chinese, 'whom they thought no more of murdering than of killing a dog, sometimes even cutting them up into pieces with their creeses.' 'They are excellent tailors and brilliant washerwomen, essentially slow but very accurate, in all their dealings small cheats.'

Sailing among the innumerable islands in the Canton estuary, a midshipman, Dawson Maguire (afterwards an admiral), who had landed to seek water, was captured by a body of Chinese. The alarm being given, the Chinese were themselves captured by the ship's crew along with the half-dead midshipman. The captured Chinese were at once demanded by the viceroy at Canton for execution, as he said; but Captain O'Brien refused to give them up, as he was bound to put a stop to attacks of this character, and he more than suspected the viceroy. He said he would hang them himself and fixed a day for the execution. Bribery, threats, and cajolery on the part of the Macao viceroy and the Hong merchants were all tried, and all tried in vain. Everything was prepared, a tarpaulin was spread on the after-hatchway grating on the quarter-deck, covered

with sawdust, and the butcher's block placed on it. The ugliest man in the ship (and notoriously the kindest and best-natured), the old yeoman of the gunner's storeroom, stepped forward clad in the butcher's smock-frock stained with blood (a sheep had been killed that morning), and armed with the butcher's cleaver, which he most ostentatiously began to whet with the huge copper key of the magazine. Several stately and superb mandarins, who had been sent by the viceroy to make a last effort for mercy, were conducted with much ceremony to the place of execution. When all was ready, the first lieutenant, on behalf of the whole crew, begged for clemency for the culprits; to this request the captain graciously acceded, but insisted on giving them something to remember—and he drew the attention of the Cantonese particularly to what it was.

They were triced up in succession amid screeching and yelling and received a round dozen from the boatswain's mates; 'evidently a more serious affair than hanging . . . cutting their heads off by comparison a trifling matter.'

O'Brien mentions two other instances as showing contempt of death and the effect of

a punishment which would entail disgrace. The first was in Calcutta, when certain Dacoits were to be executed. They pulled the rope around their necks themselves and acted as their own executioners—this was thought to be a great triumph by their caste. The next lot were differently treated: the common hangman bound them and fixed the noose, and their bodies were carried to burial by Pariahs, thus defiling them and depriving them of Paradise—this was effective.

The other is a very curious circumstance. When O'Brien was quartered in Nassau in the Bahama Islands in 1817 or 1818, a superstition spread among the negroes on the island of Guanahana (Cat Island) that any one flinging himself off a certain rock or point of land into the sea, which was at that point very deep, would come to life a great hero and a prince in his own land. Many slaves were lost in this way, when Mr Williams, the owner, determined to put a stop to the practice. This he did by recovering the corpse of the next suicide, burying the body, and sticking up the head on the top of a high pole.

When off Canton, O'Brien took part in several conflicts with American ships, some

unproductive: but one captain gave him as his share £230 of prize money. Some men of the crew, having been taken prisoner by the Americans, were by them handed over to the Chinese. Captain O'Brien demanded them, and threatened that if they were not delivered by a certain day he would land his crew and burn Canton—rather a large threat, 230 or 250 men in broad daylight to burn a city of two million—'that he would have done it, there is no doubt.' On the day appointed everything was ready to take the ship up to Canton and land, and the order had actually been given 'Up Anchor,' every boy and man at his station, when the men were seen approaching in small 'snake-boats.' They were taken on board and heartily damned for spoiling the trip to Canton.

One very interesting episode is noted which reminds us that 'blood is thicker than water.' An American ship scaling her guns had not taken care to see that they were all unshotted; one killed a Chinaman; the viceroy demanded the man who had fired the unlucky shot to be handed over for punishment, promising a fair trial. The American consul was in a quandary; the American seamen refused to

allow one of themselves to be given up, and the British agreed to stand by them, notwithstanding the state of war between the nations.

When a half-caste Portuguese boy was given up as the man who fired the shot, the captains of the British merchantmen urged the American consul to demand an open trial, and offered to go up in such force as should compel fair play. The consul procrastinated and negotiated, with the result that the poor boy was set up against a door and strangled.

After cruising off Canton for two years, the ship was ordered to India; O'Brien was sent home in the *Malacca* frigate, as the severe work and the unhealthy waters of the Canton Bay had begun to tell on him. While lying at Point De Galle in Ceylon, he saw the destruction by fire of the Indiaman *Bengal* of 800 tons. He reached Portsmouth immediately after the battle of Waterloo, June 1815, and went at once to his home at Cork. There he was patched up in a medical way and went to school again.

The war now being over, the prospect of advancement in the navy became very slim. His uncle, Colonel George Callender of Craig-

forth, through his influence with an old friend, Sir James Stewart, colonel of the 2nd Dragoons, Scots Greys, procured him a commission as cornet in that body. This was more pleasant than profitable; his prize money would about fit him out with uniform, etc., but it would cost £200 to £300 per annum to support his rank. Accordingly, after being disappointed in a staff position in the Rifle Brigade (because the gallant general ran away with an old apple woman), he exchanged into the 58th Foot under orders for Jamaica. In the regiment he had an uncle, a captain—Major O'Brien, his father's youngest brother.

The regiment embarked at Cork in the autumn of 1816 and arrived at Kingston, Jamaica, in good time, and joined the command of Major-General O'Meara, 'a queer old cove,' and very absent-minded, who was soon succeeded by Major-General Conran, 'a strict disciplinarian and savage-tempered,' a curse to those who 'expected rest and quietness in a West India station.' Of General Conran a story is told. On the way out he had quarrelled with a civilian, who had challenged him to a duel; they landed with their seconds at Barbados to fight it out. Placed on the field, the seconds made the usual

preliminary inquiries, 'Are you ready?' the civilian answered 'Yes,' but the general, taking off his hat and apologizing for the interference, said, 'Scarcely, I think. If the gentleman will look on the ground, he will see that the ball has dropped from his pistol and is lying at his feet.'² Of course after this there could be no fighting.

At this point the very interesting narrative stops. We know from other sources that O'Brien left the army and came to Canada about 1828.³

He was a very useful settler; ⁴ he became a magistrate, and took a great part in all the movements for the betterment of the people. A strong Anglican, he was without bigotry towards the members of other churches, while he took an active part in the affairs of his own. While not a prohibitionist, he was a convinced temperance man,⁵ having been confirmed in his opinions by the sight of ravages wrought amongst his neighbours and friends by strong drink. He was also active in municipal matters, and generally he showed himself a worthy citizen of a free country.

Much of his firmness of character and vigour of intellect can reasonably be traced to his early training, and it may be said with every

confidence that such a boyhood and youth would conduce to the making of a man fit to meet any emergency and to play a great part in any community.⁶

NOTES TO CHAPTER XV

¹ Most of the facts concerning O'Brien have been obtained from a manuscript in his handwriting which his son, Henry O'Brien, Esq., K.C., was good enough to let me see.

Edward George O'Brien is thus described by one who knew him well: 'In height about 5 f. 11 in. Strong handsome face, Roman nose, and piercing Blue Eyes. Nervous temperament. Very active and alert. Generous and impulsive. Quick to think and act characteristic of Irishmen, and added to these the decision of character and a somewhat dictatorial manner the result of early training under men who fought with Nelson and Wellington and learned from them.'

² This will recall to some an incident related by Justin M'Carthy, in his *History of Ireland*, of William Smith O'Brien, the well-known Irish patriot, Colonel O'Brien's cousin. On one of the several occasions when he was called upon, according to the custom of that day, to uphold his honour at the end of a pistol, just before the handkerchief dropped, he said, 'Stop! the gentleman opposite to me has dropped the cap off the nipple of his pistol.' In those days percussion caps were used, and his opponent's pistol could not have gone off when the order to fire was given; but the Irishman wanted no advantage.

³ The (York) *Courier* of Saturday, May 15, 1830, contains the following announcement:

'On Thursday, 13th May at the New Church, Thornhill, by the Rev. Charles Matthews, A.M., Edward G. O'Brien, Esquire, H.P. British Army, to Mary Sophia, second daughter of the late Revd. Edmund Gapper of Carlton, Somerset, England.'

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⁴ The people of the present day know little or nothing of the hardships of the early settlers. The story of how the present village of 'Shanty Bay' (five miles east of Barrie, the county town of Simcoe) obtained its name is as follows :

Mr O'Brien, when he went to the north shore of Lake Simcoe to take up his grant of land, arrived one winter night on the south shore of Kempenfeldt Bay with his wife and child a few months old. The next morning he crossed on the ice with a party of axemen from Glengarry, and a sleigh load of supplies, to the north shore. They went a few hundred yards into the bush, and by nightfall had a clearing made and three log shanties built, one for the family, one for the men, and one for the kitchen. Mrs O'Brien, who had arrived about two years before from an English parsonage, relates in her diary that there being no cradles available she improvised one by wrapping up the baby in blankets and depositing him on the top of a snow-drift, which seemed to please him. It also agreed with him, for he lived and died a stalwart man of eighty-four, in the house built by his father near the three shanties.

⁵ O'Brien, placed in charge of the settlement of half-pay officers around Lake Simcoe with headquarters at Shanty Bay, finding that drinking habits had become too prevalent, felt it his duty to call the attention of his brother officers to the subject, and asked their aid to 'pull up.' This was resented by some of them, and an old naval friend, who was asked to give his assistance by agreeing to take nothing before his mid-day meal, declined to make any such promise. The new temperance advocate thereupon told him that he would not be offered any hospitality of that sort when he called at 'The Woods' (the name of O'Brien's residence), to which his peppery friend replied that he would expect his glass of brandy and water as usual. On his next visit, however, he was not offered it; on a return visit he offered Colonel O'Brien the usual beverage, but the latter refused to take it. This was in those days an insult, and produced high words between the two old sailors, and resulted in a challenge being sent to the colonel to fight it out in the old-fashioned way. As the latter, however, was chairman of the

quarter-sessions and occupied a position of responsibility, he expressed his regret that he was unable to indulge in a pastime which was not new to him, and which under other circumstances he would have been pleased to accept,—and so the matter dropped.

Prohibitionists would, perhaps, be pleased to learn that the family of not one of those half-pay officers remained on the shores of Lake Simcoe except O'Brien's; they still live in the house built by their ancestor.

His sons are well known—the late Colonel O'Brien of Shanty Bay, for long a member of parliament, who called no man master; Henry O'Brien, Esq., K. C., of Toronto; and the artist, the late Lucius R. O'Brien. I owe much of the material in these notes to Mr Henry O'Brien's kindness.

The memory of this public-spirited settler and his wife is preserved by a brass plate in the church at Shanty Bay, Ontario—the inscription reads:

' In loving remembrance of

EDWARD GEORGE O'BRIEN.

Born January 8th, 1799; died September 8th, 1875.

Who having served his country by sea and land, became in 1890
founder of the Settlement and Mission of Shanty Bay.

And of MARY SOPHIA his wife.

Born June 29th, 1799; died October 14th, 1875.

Loving and Beloved; a Mother in Israel.'

CHAPTER XVI

THE BALDOON MYSTERY

THUS far we have been on the perfectly safe ground furnished by unimpeachable documents: but no collection of Old Province Tales would be complete without some reference to our solitary piece of folk-lore. The soil of Upper Canada did not lend itself to the luxurious growth of myth and mystery. The very few French settlers on the left bank of the Detroit river had indeed their *loup-garou* and other marvels in common with their French-Canadian brethren of the lower province, but the newcomer, the United Empire Loyalist, while he had given up much for the sentiment of loyalty to king and flag, had a keen eye nevertheless to the main chance. He had come to the new land determined to make a living, and if possible wealth for himself and his family, and was too busy carrying out his design to have time or inclination to trouble himself about wonders. Those who came afterwards from the old

land were of the same hard-headed kind; they in most cases paid down their own hard-earned money to procure a passage to the new country, and on their arrival found enough to do to keep their head above water. It may be confidently said that no immigrant people who paid for their own transportation ever evolved a myth or framed a bit of folklore. These are produced only in that stage of human progress which is generally called the patriarchal: whenever the stage of individuality is reached, the mythopœic faculty atrophies and dies.

There were, however, immigrants to Upper Canada who were not independent adventurers, and who were still largely in the patriarchal state. Amongst them, and perhaps the most striking example, were the settlers at Baldoon. Lord Selkirk,¹ a Scottish nobleman, was shocked at the misery of many of the Highland people and determined to relieve at least some of the unhappy ones by bringing them across the Atlantic. He thought first of the fertile land in the great North-West then given up to the trapper, but difficulties were thrown in his way, and he determined upon taking his colony to the east coast of Prince Edward Island, which

had been deserted by the former French inhabitants. In 1803 about eight hundred colonists from the Highlands of Scotland were placed on this delightful island. Selkirk, however, had larger views : he came to Upper Canada, carrying with him instructions from Hobart² to the lieutenant-governor of Upper Canada, to grant Selkirk twelve hundred acres of land and also an additional two hundred acres for each family he might induce to settle in the province. Selkirk picked out a section in the townships of Dover and Chatham in the present county of Kent near Lake St Clair : and there he brought some twenty families from Prince Edward Island and called the new settlement 'Baldoon.'³ He induced Alexander Macdonell, the sheriff of the Home District, to become the manager of the new settlement, and had high hopes of its future. But the situation was unwholesome : marshes separated it from other parts of the province ; swamp fever and malaria did their deadly work, and men and beasts died in alarming numbers. Yet the colony continued to eke out an existence, though to add to its afflictions it was plundered by the American invaders in the War of 1812.⁴

It was among these people and their neighbours that the strange marvels arose which constitute the 'Baldoon Mystery,' the only bit of folk-lore of which the province can boast. The story⁵ begins with a party of young girls in 1829 gathered in a barn to pick and prepare straw for making straw hats. The barn was of logs and, like most buildings of the kind, had above its main floor a ceiling of poles, forming a loft open at the ends and floored with the poles. In the midst of their girlish chatter and glee the workers were startled by the fall amongst them of one of the poles, but fortunately without injury to any. This might have been considered a mere accident; but suddenly another and another fell without any discoverable cause. The frightened girls fled to the house, but hardly had they taken up household duties there than a crash of glass was heard from the window and a bullet dropped on the floor at their feet. This was followed by another and another, and the girls fled to the house of a neighbour, John M'Donald.

Thereafter John M'Donald and his house were the objects of supernatural manifestations—'the slow steady tramp of men march-

ing backwards and forwards with measured hollow tread' was heard passing the house night after night; bullets were thrown almost daily through the windows, and the barricade of inch-thick boards which M'Donald set up at each window proved ineffective; the bullets bored holes in the glass, but passed through the boards without leaving a trace of their passage. Then stones came through in the same mysterious way. All the neighbourhood was alarmed: none could explain the extraordinary occurrences; and one rollicking young fellow who made merry over the disturbances, and 'declared himself perfectly able to combat all the ghostly trickeries he could encounter in that house,' was appalled in the middle of his boasting by being struck by a stone which dashed through the window almost before the words had crossed his lips. Terrified, he picked up the stone and threw it into the river: but in a few moments it fell at his feet in the room.

The mysteries took such strange fantastic shapes
That men would laugh e'en through falling tears.

A cradle in which an infant was lying suddenly began to rock so violently that the babe was nearly thrown out, and it took the combined

strength of M'Donald and a neighbour to hold the cradle still until the anxious mother could snatch her child to her arms. Dishes would rise from the table, the fire utensils would clash on the earth, and even the kettle would throw off its lid and dash itself on the floor; chairs and tables became alive and apparently sentient, knives were thrown without hands, soap became a projectile; a favourite dog, given by Mrs M'Donald a porridge-pot to lick, was belaboured by the ladle, which flew out of the pot of its own accord; leaden sinkers, elaborately removed from M'Donald's seine by unseen hands, were thrown into his house; guns went off without cause and money disappeared and reappeared; a 'pint cup of water that stood on the table rose from its place and went round the room through the air, and coming back emptied itself on the floor.'

But all these manifestations were trifles compared with what was to follow. Balls of fire began to float through the air and set fire to the house; fires would break out in every room without apparent cause; flax clothing, etc., would flame out in spontaneous combustion, and at length the dwelling was consumed, the unfortunate M'Donald saving

not even his clothes. Taking refuge with his brother-in-law, he did not escape persecution; the same manifestations (except the fire phenomena) at once appeared in that place. When he removed to M'Donald's father's house the tramping was renewed, bullets broke the windows, stones from the river were thrown into the house. And here, too, calamity happened—oxen dropped dead in the field, horses died in their stalls, hogs sickened and died, and even the poultry shared the same fate. Investigations made by officers were fruitless, and M'Donald went back in sorrow to his own place—in vain, for he and his men one day saw a bundle of sticks fly through the air and, falling on the barn, set fire to it. This fire was extinguished, but other fires followed, and on the third day the barn was burned with all the grain.

A schoolmaster who had read much on the subject of witchcraft endeavoured to exorcize the evil spirit by commanding it in the name of the Trinity to leave and by nailing up a horseshoe; but all in vain. The only result was that the benevolent teacher was himself prosecuted and tried at Sandwich for witchcraft; but the 'spirits' continued to act as before. A Roman Catholic priest and an Indian medi-

cine-man were equally unsuccessful, and M'Donald's case seemed hopeless.

But a Methodist itinerant came with the news of 'a doctor who had a daughter gifted with second sight and the mystical power of stone reading.' Elder and farmer made their way—often beset with threatening voices and other fearful sounds—to the doctor's residence, eighty miles and more distant. They were hospitably received by the physician, who introduced them to his daughter, a striking-looking girl of fifteen, fragile and with an eerie and far-away expression. She spoke of her magic stone which her father had picked up in the fields and which some called the moonstone; and after some persuasion she agreed to look into the stone for them, though that involved great physical prostration and much mental agony. She informed M'Donald that one of his outbuildings was burned but two hours before—and this on his return he found to be true. But of much greater importance was the information she gave of the author of all the mischief—a stray goose which M'Donald had once seen in his flock and had attempted in vain to shoot. The girl said, 'No bullet of lead would ever harm a feather of that bird . . . in that bird is the

destroyer of your peace. . . .’ And she added, ‘ Mould a bullet of solid silver and fire at the bird : if you wound it, your enemy will be wounded in some corresponding part of the body.’

Joyfully M‘Donald made his way home, moulded his silver bullet, and made inquiry about the goose. This he found to be well known to his children : it had a dark head, almost black, had two long dark feathers in each wing, and was noticeable for making a perpetual noise and for its continual restlessness. Soon the bird was discovered, the gun aimed and fired, and the bird, with a cry like that of a human being in agony, struggled away through the reeds with a broken wing. The doctor’s daughter had spoken of a long low log-house : M‘Donald was not in doubt of her meaning—there was a long low log-house near to his farm, inhabited by an old woman and her family who had tried without success to buy M‘Donald’s land from him. Thence through the long reeds he made his way ; and there he found an old woman with a broken arm resting on her chair. ‘ When she saw him she shrank back, and John M‘Donald knew that the silver bullet had found its billet.’ The manifestations ceased

and peace thereafter reigned supreme: but the old woman suffered intense pain from her injuries till death came to her relief.⁶

NOTES TO CHAPTER XVI

¹ See chapter x, p. 159 *ante* concerning Lord Selkirk.

² Robert Hobart (fourth Earl of Buckingham), secretary of state for the Colonial and War Departments in the Addington administration, 1801-4; he was also in Pitt's ministry, but resigned in 1805 with Sidmouth over the Melville affair.

³ Any good map of the county of Kent will show the 'Baldoon Settlement' occupying the north-east border of the township of Dover, and running from near the city of Chatham north-westerly to the river Sydenham. The local tradition is that the name was originally 'Belledoon,' but it is probable that it was called after the river in Wigtownshire, the scene of Sir Walter Scott's *Bride of Lammermoor*; we are told in the Preface to that novel that 'the Right Worshipful Sir David Dunbar, Knight Baronet' of Baldoon (in the seventeenth century), was an ancestor of the Selkirk family.

⁴ The contrast between the noble objects announced in Hull's magniloquent proclamation and the conduct of more than one of the American armies is startling—the destruction of Niagara and Fort Dover, the pillaging of many places, were like the acts of buccaneers or the Landsknechts of the Middle Ages rather than of civilized soldiery. However the burning of the Capitol at Washington may be reprobated, it must be remembered that it was explicitly in retaliation for the vandalism of the American troops in Upper Canada.

Alexander Macdonell was the brother of Angus Macdonell, drowned in the *Speedy* disaster, as related in chapter vii, p. 126 *ante*.

⁵ Most of the material for the story is from a brochure: *The* |

THE BALDOON MYSTERY 269

Balloon | Mystery | . . . Weird and Startling | Published at Wallaceburg, Ont., by W. Colwell. Copyrighted. 8vo, pp. 60, with illustrations of the Haunted House, etc. Mr Colwell has been good enough to permit me to use any material in his publication, for which kindness I offer him my thanks. The work contains a narrative and copies of statements made by apparently credible and disinterested witnesses.

⁶ The phenomena in most part are like those mentioned by Sir Walter Scott in his notes to *Woodstock*; where they are not invented (or at least grossly exaggerated) they were probably due to the mischievous malice of two young men and one daughter, children of the old woman in the 'long low log-house.' The second sight and 'moonstone' gazing are almost certainly without solid foundation in fact; we are not told the name or residence of the doctor, and no particulars are given whereby he or his daughter can be traced.

Shooting a witch with a silver bullet is trite wherever the English language is spoken and in many other places: and that the witch shall suffer in the part of the body in which her counterfeit is wounded is inevitable.

It must be said that there are on record many cases in which such marvels as were said to have been manifested at Balloon have been solemnly attested under oath in court; and many old women have been proved by the strongest of evidence, their own admission, to be witches.

I may be permitted to quote certain words of my own in an address before the Academy of Medicine, Toronto, November 7, 1916, on 'The Law and the Doctor' (*Dominion Medical Monthly*, December 1916, note 1): 'The conception of the inexorability of the laws of nature is essentially modern. It has not yet made its way everywhere, but most of the opposition to its full acceptance is concerning the past, not the present. In medicine in the amulet days, the laws of nature were considered modifiable by human—and diabolical—means.

'It is often said that all such matters are questions of evidence; but that is not wholly true. A few centuries ago, the favoured one could, by reciting some incantation, call to his assistance a

legion of angels, good, bad, or indifferent. Aladdin could, by rubbing his lamp, call the all-powerful genie to his service. Who would believe such things now? In the old law not long ago many a poor old woman suffered death—a legal murder—because legal evidence proved she was a witch, and God had said, "Thou shalt not suffer a witch to live." Now, if fifty witnesses swore they saw an old woman ride a broomstick through the sky, no judge would allow the matter to go to a jury, and no jury would convict.

'It is not simply a question of evidence—the whole manner of looking upon nature has suffered a revolution.'

Prosecutions for witchcraft were for long the reproach of English jurisprudence. While even in very early days we find witchcraft looked upon with horror and fulminated against in the laws of Edward and Guthrun, Ethelred and Canute, it was not rigorously persecuted till after it was placed by the Church under the head of heresies. Pope Innocent VIII in 1488 launched his celebrated Bull against witches, calling the nations of Europe to the rescue of the Church of Christ. In 1541 and 1551 laws were passed in England against witchcraft: some had been executed for sorcery even before these statutes, but it was the Act of 1562 which caused the greatest number of prosecutions for this offence. The Reformation did not put an end to this delusion in England, but rather increased the number of trials—as, indeed, was the case also in Scotland. James I was notorious for witch hunting, and during the reigns of his son and grandsons the persecutions raged with great virulence. It was computed that during the sittings of the Long Parliament three thousand witches were executed in England, and from 1600 to 1680 not fewer than five hundred annually—forty thousand in all of public executions for this wholly imaginary crime. The last persons hanged for witchcraft in England were, it is said, Mrs Mary Hicks and her daughter Elizabeth (hardly eleven years of age), who confessed to having sold their souls to the devil, and to having raised a storm at sea by which a certain ship nearly foundered. This they accomplished, according to their own confession, by taking off their stockings and making a lather of soap. They were publicly hanged at Huntingdon, Saturday, July 17, 1716.

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The custom of testing whether an accused person was a witch by tying hands and feet together and 'dowsing' three times in a pond or river lingered on in remote villages and half-civilized communities for a long time; if the unfortunate person sank he or she was innocent, if floated, guilty of witchcraft.

Of course the faculty of seeing the occult still exists, especially in childhood. For example, as I write there comes to me a work by William Butler Yeats, the Irish poet (*Reveries over Childhood and Youth*, Macmillan). He tells us his recollection of a childhood which seems to have been wholesome and natural. 'Though it was all years ago, what I am going to tell now must be accurate, for no great while ago she wrote out her unprompted memory of it all and it was the same as mine. She was sitting under an old-fashioned mirror reading and I was reading in another part of the room. Suddenly I heard a sound as if somebody was throwing a shower of peas at the mirror. I got her to go into the next room and rap with her knuckles on the other side of the wall to see if the sound could come from there, and while I was alone a great thump came close to my head upon the wainscot and on a different wall of the room. Later in the day a servant heard a heavy footstep going through the empty house, and that night, when I and my two cousins went for a walk, she saw the ground under some trees all in a blaze of light. I saw nothing, but presently we crossed the river and went along its edge where, they say, there was a village destroyed, I think in the wars of the seventeenth century, and near an old graveyard. Suddenly we all saw light moving over the river where there is a great rush of waters. It was like a very brilliant torch. A moment later the girl saw a man coming towards us who disappeared in the water. I kept asking myself if I could be deceived. Perhaps after all, though it seemed impossible, somebody was walking in the water with a torch. But we could see a small light low down on Knock-na-rea seven miles off, and it began to move upward over the mountain slope. I timed it on my watch and in five minutes it reached the summit, and I, who had often climbed the mountain, knew that no human footstep was so speedy.'

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