

REMINISCENCES OF THE NOVA SCOTIA JUDICIARY

THE HON. B. RUSSELL

MY earliest recollections of the Supreme Court go back to a date shortly after the retirement of the late Mr. Justice Bliss, of whose personality and career the late Sir Charles Townsend gave *The Historical Society* an exceedingly interesting account in his altogether adequate and satisfactory study several years ago. All that I actually remember about Judge Bliss is that I heard the late Hiram Blanchard pronouncing a eulogy upon him in the House of Assembly shortly after his death. The Chief Justice at that date was the late Sir William Young. On his right hand ordinarily sat Mr. Justice Dodd, father of the late Judge Dodd, of the County Court for Cape Breton. At his left was the late Mr. Justice DesBarres (grandson of Governor DesBarres), whose son was Registrar of the Vice-Admiralty Court while it existed, afterwards of the Exchequer Court at Halifax, and died at the residence of his daughter Mrs. J. Leslie Jennison in Calgary only a few years ago. These positions were reversed on the occasions not very frequent, as I remember them, when the late James W. Johnston, judge in equity, sat as a member of the court *in banco*. A tablet to commemorate the virtues of this grand old man has been very properly placed on the portals of the office on Hollis Street where the many years of his busy professional life were spent. The junior member of the court as I first knew it was Lewis Morris Wilkins, appointed, as I read on the opening page of Mr. Oldright's first volume of reports, on the 14th day of August, 1856. My memory does not carry me back to the date of his appointment, but no one who ever saw him on the Supreme Court bench, or anywhere else for the matter of that, could ever by any possibility forget him. There are many reasons why a literary artist would select him, in preference to any other member of the court, as the subject of a sketch. But as I make no pretensions in that sort, I shall adopt the more logical and prosaic order, and begin with the official head of the court.

CHIEF JUSTICE YOUNG

The first thing that would have struck one, if he should ever have had the opportunity to see the judges of that day in a group,

would have been that their chief was in physical proportions by far the smallest of the company. Nor would the Chief Justice have the satisfaction, in such a group, of consoling himself with the witty reflection of Oliver Wendell Holmes. It is related that this genial philosopher, physician, scholar and poet was once appointed to serve on a committee with a company of associates all of them more than six feet in height. One of the members of the committee remarked to Dr. Holmes that he must be feeling a little ill-at-ease in a company of associates so much taller than himself. "Yes, indeed," was the happy reply, "I do feel somewhat strange. I feel like a sixpenny bit among a lot of pennies."

It always seemed to me that Sir William, so far from being content with the physical proportions that had been allotted to him by nature, rather resented the thought that his head should be on a lower level than those of his associates, and for this reason his chair was always piled up with a mountain of cushions that compensated for the disadvantage in this respect under which he laboured. The nature of the provisions, if any, made at the nethermost extremity, it never occurred to me to conjecture.

The first time that I ever saw him was on the occasion of a Dalhousie Convocation, in the old building at the end of the Grand Parade where the City Hall now stands. He had, if I mistake not, delivered the opening address as President of the Board of Governors; but if he had anything particular to say on that occasion, it has left no existing trace whatever upon my memory. What I do remember is the left-handed compliment that he received in the course of some remarks by the late Joseph Howe. Mr. Howe, when addressing the assembled students, took care to remind them that they could not all be Chief Justices like his honourable and distinguished friend. Some of them would be this, that or the other, and it would be no disgrace if some of them turned out to be honest, self-respecting farmers. And in this connection he made a highly appreciative reference to Sir William's distinguished father, the celebrated Agricola, "who was" said the orator, "an abler man than any of his boys," a compliment which a dutiful son could not possibly resent, but which it is highly improbable that even the most dutiful of sons could accept with unmingled satisfaction.

As the official head of the court, he was an exceedingly industrious and methodical Chief Justice. I have no doubt that he could at any time have produced at five minutes notice a written memorandum of any motion he had ever heard, or of any decision that he had ever given throughout his long career as Chief Justice

of the province. While I write these notes, there is lying before me a buff-coloured note-book of arguments numbered "39." I have no idea how it came into my possession, and it may happen to be a very fortunate circumstance that I find it quite impossible to remember where it came from or by what circuitous route it may have arrived at its present resting place. In the curious chirography for which he was noted, it is entitled on the cover as follows:

CHIEF JUSTICE YOUNG'S
MINUTES OF ARGUMENTS
DECEMBER TERM, 1878.

Sat 10th Dec. 1878, till 31st March, 1879, 96 week days,
with four adjournments for preparing judgments and holidays.

Delivered 63 written judgments December term, 1879.

Sat 9th Dec. till 5th April, 1880, 118 days—104 week days,
with adjournments.

109 cases disposed of and argued, 59 new and old remanets,
Admiralty cases heard, fol. 84.

On the inside of the back cover a carefully ruled sheet of paper is pasted, which is entitled:

Programme for Dec. term, 1878.

Assuming that the court will sit 54 days, including Equity hearings, motions and delivery of judgments, these are equivalent to 9 periods of six each consecutively.

This programme then divides the projected work of the term among the five members of the court, in such manner as to provide for a quorum of four for every day of the anticipated nine weeks of the term. Nothing could be more regular or systematic. A college curriculum or a railroad time-table could not be more definite or precise. Glancing through the pages, one will find that every point made by counsel is noted, and every case cited in the course of the argument is recorded, with the book and page, as neatly as his very peculiar hand-writing would permit, and as carefully as if it were being prepared for the press. He was certainly a laborious and pains-taking and most methodical Chief Justice, setting an example in this respect which was not too closely followed by his immediate successor, and is not likely to be surpassed by any future occupant of that distinguished position.

It must not be imagined that the actual proceedings of the court were always as smooth and regular as the written record of its deliberations and decisions. The late Israel Tarte used to be quoted as saying that the members of the cabinet fought like cats and dogs. It is not to be wondered at if the fierce rivalries of the professional and political life in which Sir William and his associates

had been engaged had left some wounds which were still unhealed. I have heard it repeated in my boyhood, as part of the current gossip of those days, that his great professional and political rival, Mr. Johnston, who continued to practise at the bar for some years after the elevation of Sir William to the bench, found it very difficult to address him as "my Lord." The resentments and jealousies arising from such conflicts do not always die away entirely, even after the contending gladiators have reached the Elysian fields of the judicial bench. It is greatly to the credit of human nature, however, that they seldom if ever display themselves to the general public, and are never allowed to interfere with the regular and frictionless movements of the machinery of justice. At the Bar the case is different. It is not to be looked for that the fierce contentions of professional life and the laudable and fervid zeal of opposing counsel in the interests of their clients should never culminate in scenes more exciting to the participants than edifying to the beholders. One such stormy scene in which the late Chief Justice, successor to Sir William Young, was an actor, evoked from Mr. Justice Wilkins by way of gentle rebuke a happy quotation from Lord Chesterfield's advice to his son: "Observe, my son, the gentlemen of the court, how politely they differ, and how civilly they hate."

In the days before the establishment of the Supreme Court of Canada, the decision of our own Supreme Court, largely determined by the active intellect and prodigious industry of the Chief Justice, was a practical finality. I can well remember the first occasion on which a reversal of one of its decisions came down from Ottawa. The result of the appeal was not generally known, and was certainly not known to any member of the court. The counsel concerned in the case was somewhat of a wag, and had mischievously prompted his opponent to cite the decision of Sir William Young's court as an authority bearing on the cause then under discussion. "That case," said the opposing counsel, "has been reversed at Ottawa." "Revursst," exclaimed Sir William, "we have never hurrd of its revurrssal!" Thereupon the order of the Supreme Court of Canada was handed up to the court, and was read by the astonished Chief. "Shorrt and sweet," said he, "cost somebody a hundred pounds."

But even before the establishment of the Supreme Court of Canada, a courageous suitor could appeal in a proper case to the Privy Council. One such appeal was so interesting in its character and so dramatic in its incidents that it deserves a more detailed narration. The late Thomas J. Wallace was an exceedingly able

lawyer, but he could not always "hit it off" with the Chief Justice, and, rightly or wrongly, he conceived that he could not get fair play from the court. Smarting under this impression, he addressed a letter to the Chief Justice, which will be found by any interested reader in the first volume of Mr. Oldright's reports, at page 655. No court that ever sat could permit such a letter to be addressed to one of its members with impunity, and an order was accordingly served upon Mr. Wallace calling on him to show cause why he should not be "suspended from practice as an attorney and barrister until he should make a suitable apology to be read in open court for such his contempt." Of course the rule was, after solemn argument, made absolute, and Mr. Wallace was suspended from practice. But Mr. Wallace was not the sort of man to take this blow, as Joseph Chamberlain would in his day have said, "lying down." He entered an appeal to the Privy Council, and the result of it was that while the Privy Council could not commend the conduct of the appellant, neither could they approve of the order of the court. It seems that the offence Mr. Wallace committed had been committed in his personal capacity, while the punishment that had been administered to him had been administered in his professional capacity. "A nice distinction," said Mr. Dorion. "Aye," said I, "but not more nice than just!" (But that's another story. See Thomas F. Morrison's speech in the legislature, describing his interview with the Minister of Justice at Ottawa on the claims of the province of Nova Scotia upon the Dominion exchequer).

Mr. Wallace contrived a very dramatic method of announcing to the court the success of his appeal. He arranged with Mr. Martyn Nutting, who then discharged the duties of prothonotary, to be ready in court on motion day with the order of the Privy Council reversing the decision of the Supreme Court of Nova Scotia. When his turn to be called was reached, he arose, uninvited, it goes without saying, to make a motion in one of his causes, when the following dialogue ensued:

The Chief Justice: Misther Wallace, we cannot hearr you!

Mr. Wallace, (assuming the air of surprise and injured innocence which those who knew him will easily recall): Why, my Lord, can your Lordship not hear me?

The Chief Justice: Misther Wallace, you are trifling with the court. You know very well why we cannot hearr you.

Mr. Wallace: No, my Lord, I do not know any reason why your Lordship cannot hear me.

The Chief Justice: You well know that you have been silenced in this court.

Mr. Wallace: Oh, is it that? That order has been reversed by the Privy Council. Mr. Nutting, hand me that paper. . . . (Mr. Nutting produces a huge official envelope and hands it up to the court at Mr. Wallace's request. The Chief Justice reads it and passes it to his associates).

The Chief Justice: We will retire a moment.

And so they retire, one after another, in solemn and dignified procession to the robing-room, whence after a brief consultation they return and resume their accustomed places on the bench.

The Chief Justice: Well, Mистер Wallace, we will hear you.

It is no part of my undertaking to offer any estimate of the merits or value of Sir William's contribution to the jurisprudence of the country. I should not like to present such an estimate without a more thorough reading than I have given to the decisions reported by my predecessor, Mr. Oldright. It was the fashion of the Bar that practised in his court, in the days when I was court reporter, to speak slightingly of his legal knowledge and judicial work, and to compare him to his disadvantage with some of his associates and predecessors. Perhaps his attention was too much distracted by the calls of political life to leave him the time and leisure to become a thorough jurist. It is quite possible that his legal learning was not as profound and thorough as it would have been, had he begun earlier in life and pursued his professional studies free from the distractions of a political career.

I began this sketch of him with a Convocation at Dalhousie College, and I cannot close it more fittingly than with a reference to the great and well-remembered services which he rendered to that institution. The history of the university could not be written without assigning to him a large place in its record. He was the constant friend of the university. He stood by its cradle, and it might well strew flowers upon his grave. It never had a truer friend, and few of its friends have rendered it greater or more enduring benefits. He was a thrifty Scot. Like Kalander in Sidney's *Arcadia*, he knew that "provision is the foundation of hospitality, and thrift the fuel of magnificence." I remember one of his addresses in which he advised his young hearers never to spend more than two-thirds of their annual income. I fancy his own margin of safety was very much in excess of this minimum. Certainly he was thrifty to very good purpose. His accumulations enabled him to contribute generously towards the construction

of the building in which the Faculty of Law is now housed, and thus ensure the success which has made it possible for the institution to look hopefully forward to the great expansion it now enjoys. But it is not Dalhousie alone which has reason to remember him kindly. He was deeply interested in everything that made for the welfare of the public. Point Pleasant Park and the Public Gardens alike present reminders of his public spirit and helpful interest. While these institutions endure, he cannot be forgotten.

MR. JUSTICE JOHNSTONE

My earliest recollection of the late Judge Johnston dates back to the years when he was the proprietor of Mount Amelia, which was then a large estate of many acres, but has since been divided up into a number of holdings any one of which is large enough to make forty or fifty ordinary town lots. The judge took a very great interest in his property, planting thorns and cedars which still flourish, and a number of seedlings that have since become magnificent oaks of which he thought almost as much as of his children. I have often heard an old farmer since deceased, who was afterwards an occupant of the property, describe the interest with which the old judge watched the growth of his trees of which he could tell the year, month, and day of planting. The house was standing until a few years ago, and was one of the most comfortable and convenient in the town. It would indeed have done anyone's heart good to note the material and workmanship that entered into its structure. It has since been taken down to make room for the residence of Mr. Covert.

But all this, while it throws light upon the character of the proprietor, is perhaps a little remote from the chief purpose of this paper. It seems to me that when a boy I must have seen the late judge every day of my life. The image is so clear and distinct. He was not then a judge, and must have been a member of the House of Assembly. His tall and dignified form conveyed an impression of great distinction, and I can remember that he always walked with a slight stoop of the shoulders, with his hands folded behind his back, and that he seemed to be ever deeply absorbed in thought. I have often regretted that I never heard him speak in the House of Assembly. His impassioned eloquence is one of the traditions of the House, and it must have been a treat to listen to him from the gallery. But still greater must have been the pleasure of hearing him in one of those great forensic efforts in a field in which he had few equals and no superior. Once only did I ever hear his voice, except from the bench of the Supreme Court. It

was the occasion of a lecture in the old Mechanics Institute of Dartmouth, which, after doing duty for many years as a public school, has in more recent times been transformed into the town hall. It must have been, as I have said, the occasion of one of the Institute lectures, for he was moving or seconding a vote of thanks, and I can remember well the deep rich tones of his clearly resonant voice, and the graceful turn of the few sentences he spoke. All else has faded out and gone; the lecturer and the lecture have been alike forgotten; but the few gracious words of the orator, his pose, his voice, his manner are as well remembered as if I had heard them the day before yesterday. To my childish fancy he seemed to be something a little more than merely human, and I believe he was one of the political idols of my father's house. I can well recall, after one of his exciting campaigns in the county of Annapolis, the long procession of carriages that seemed for ever to be climbing the hill towards the mountain home of the conquering hero where there were great goings-on.

"His great fires up the chimney roared," and the night was given to festivity in celebration of the victory. Then there came a time when something dark and malign seemed to come over the scene. That was when Mr. Somebody "crosst the flure." The idol was shattered, and opprobrious epithets were bandied, and the popular Protestant bigotry found vent in dubbing him with the nickname, Romo-Johnston. All this I did not understand, but the account of those days and events has all been so admirably and so lovingly written by the Rev. Dr. Saunders that it would be almost an impertinence were I to attempt to retell the story.

My next picture will present him as a judge of the Supreme Court. He ought to have been Chief Justice, but accidents must happen. The old Chief Justice, Sir Brenton Haliburton, was like Charles the Second, so unconscionable a time a-dying that he did not leave the scene until the Government that could have and would have made Mr. Johnstone Chief Justice had passed along with the late Chief Justice, and so it happened that the late Sir Brenton Haliburton was succeeded by Sir William Young, and James W. Johnstone had to plead before his rival. A few years passed quickly away, and the wheel of fortune brought the Conservatives into power again, when the new office of Judge in Equity was created, and Mr. Johnstone became the first judge to bear that title. I can see him now in his little court room off the prothonotary's office, smaller than the court-room of the stipendiary magistrate, and not half so commodious, where I have heard long and difficult arguments between counsel like the late Hiram Blanchard and

John W. Ritchie whose brief of law would frequently consist of two or three cases scribbled on the back of an old envelope. He had so much in his head that he did not require a very elaborate brief, which reminds me of an incident in the judicial career of the late Chief Justice Weatherbe. He was about to hold circuit at Port Hood, when the crier called on him to learn whether he should carry his books to court for him. "I have no books for you" replied the Chief. The answer surprised the crier, who informed him that the judge who had held the last court in Port Hood had so many books that he was obliged to take them to court in a wheelbarrow. "Yes, I daresay," said Chief Justice Weatherbe. "He carried his law in a wheelbarrow, but I carry mine in my head."

Whether as Judge in Equity or as Judge of the Supreme Court *in banco*, he was, it should go without saying, an ornament to the bench. But perhaps the very qualifications that made him so effective as an advocate detracted from the merit of his performances when he was a judge. Give him his brief, and he would know how to get the most of it, to identify himself for the moment with his client, to see with his client's eyes and hear with his client's ears, to know no interests for the time being, other than those he was retained to advocate. There need be no nice balancing of the *pros* and *cons*, and there was no necessity therefore of a judgment to be passed upon the lawfulness of the position for which he was contending. His business in his advocacy, and his sole business, was to say the best that could be said for the interests entrusted to his keeping. But when he became a judge all this dramatic faculty, if such we may call it, must go for nothing. He must balance argument against argument, weigh witness against witness, unravel the tangled skein of interlacing evidence, and seek to extract the silver thread of genuine truth from the base and bewildering imitations with which it had been implicated by the perjuries of witnesses and the artifices of ingenious counsel. With what laborious industry he addressed himself to such tasks may be seen in the reports of Mr. Oldright.

Mr. Justice Johnstone did not always know his own mind. As a judge he could always see both sides of a question, and he could not easily make up his mind which was the right one. His conscience was not at rest until his intellect was completely satisfied as to the soundness of his conclusions. On one occasion when he was sitting in the court *in banco*, on appeal from one of his own decisions, he came to the conclusion that the decision under appeal was erroneous. Mr. Justice Ritchie, then an associate Justice, who afterwards succeeded him as Judge in Equity, considered that

the first decision was correct and ought not to be reversed, saying with his finely chiselled lips, and in his very precise and sententious manner, but with perfect good nature and politeness, "This is one of the cases, I think, in which second thoughts are not the best." An involved and tangled-up question of fact, depending upon a careful analysis of a vast mass of evidence, had no terrors for him. It seemed almost to have a sort of fascination for his intellect, so much so that in one of the reports will be found a case in which he examined at great length the evidence of a cloud of witnesses, at the obvious cost of immense and protracted labour, only to come to the conclusion that it really did not matter which set of witnesses was to be believed, as the question of law could be decided in only one way, no matter how the question of facts should be determined.

He was a frightfully bad pen-man. Among some old manuscripts that have come down to me, there is a legal opinion written in his own hand, probably before I was born, for the trustees of schools or some such officials of the town of Dartmouth. It must have puzzled the worthy gentlemen for whom it was prepared to make head or tail of it, but I presume that it was either preceded or supplemented by oral explanations of which the writing served only as a souvenir. On one occasion, when a judgment delivered by him as Judge in Equity was under review, the counsel who was arguing the appeal was unable to read the manuscript, and passed it up to his Lordship for his interpretation,—a task which he very prudently declined, saying he had not written it for his own perusal. The judgment, therefore, had to proceed on the basis of conjecture as to the meaning of the hieroglyphics.

I cannot better close this hasty and imperfect sketch than with a reference to a speech delivered by the learned judge, when a member of the legislature on the occasion of a resolution that a sword should be presented to Sir John Inglis. I should like to quote the whole of it, for it is very brief. But the wretched manner in which the reports of the House of Assembly were edited in those old days makes it impossible for me to turn up the report in the time at my disposal, and I must rely upon my memory for his peroration in which, referring to the gallant soldiers who had fallen in the struggle in which their brave general had been engaged, he spoke of them as "noble men who knew, though they learned it not from the classic page, *Dulce et decorum est pro patria mori.*"

MR. JUSTICE DODD

I have said that Mr. Justice Dodd sat at the right of the Chief Justice when the Judge in Equity was not present. I find my

recollections of him exceedingly scanty, and I think he must have retired very soon after I entered upon my duties as assistant to Mr. Oldright. He was afflicted with the infirmity of deafness, which is a serious handicap to a judge, and the skill of the inventor had not at that date supplied any artificial means of overcoming the difficulty. It may have been the fact of this infirmity that led to his retirement, but I really have no information on the subject, and those who wish to know the facts must consult other authorities. Mr. Dodd was a member of the legislature in the fierce and stormy days of the struggle between the governors and their parliaments, before the constitutional position of either was quite fully established and understood. It is not astonishing, therefore, that he figures in one of Joe Howe's political pasquinades, or at least a pasquinade which appeared in Joe Howe's paper *The Nova Scotian*, and was quoted with great delight by Mr. Howe in one of his humorous speeches in the House. What justification there may have been for the character of pliancy which is there attributed to Mr. Dodd, is a question which would require treatment at the hands of others better versed than I can profess to be in the history of those eventful days.

A glance at Mr. Justice Chisholm's volumes on Joseph Howe is enough to show that Mr. Dodd as a member of the House and afterwards as member of the Executive and Attorney-General of the province, took a very prominent part in the government of the country, and I should judge, even if it were only from Mr. Howe's own criticisms of him as a politician, that he must have been a very well read lawyer. "In turning to the speech of the Attorney-General," he says, "I regret that the lateness of the hour and the length of time I have already occupied will prevent me from bestowing upon it that attention which the position of the speaker, rather than anything in the speech itself, may seem to claim at my hands." The critic then follows these introductory remarks with some observations indicating that Mr. Dodd had given such assiduous attention to his professional studies that he knew too little about the system of government which it was his business to assist in administering. This hint so conveyed is in full accord with what I can remember of professional opinion concerning him in the days when I was his reporter. It may well be that Mr. Dodd's assiduity in the study of law made his political career a secondary consideration; that while the professional status of his political Chief, Sir William Young, may have suffered as has already been suggested from the activities of his commercial and political life, he himself, too, as a statesman may have suffered

in like manner from his devotion to his professional studies. No man can serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other. And the law is not even presented to us, in the familiar and much quoted proverb, merely as a tyrannical master. The tyranny of a master would be sufficiently exacting; but when our old and classic authorities wish to impress us with an adequate sense of the demand made upon us for our exclusive devotion, they picture to us not only the demands of a tyrannical master, (that would not be sufficiently impressive), she must be a mistress, and an exacting and jealous mistress too.

I have only one reminiscence of Mr. Justice Dodd, and that comes to me at second hand. The story is founded upon his Lordship's assumed unfamiliarity with the sacred scriptures. Mr. James, who was afterwards a Judge of the Supreme Court, succeeding Mr. Justice Ritchie as Judge in Equity, was on one occasion arguing a case in which two old friends had become estranged from each other through some business differences. His own knowledge of the scriptures was like that of Timothy; he had known them from a child, and he could find no better way of presenting the former relations of the parties than by citing the case of David and Jonathan. "Mr. James," enquired the Judge, "where do you find that case reported?"

MR. JUSTICE DESBARRES

Mr. Justice DesBarres was, as already stated, the grandson of Governor DesBarres, who figures somewhat largely in the pages of Murdoch's *History of Nova Scotia*. He is remembered, perhaps better than any other member of the court, a man of the highest honour and of incorruptible judicial integrity, one of the most kind hearted and considerate judges that ever had a seat on the judicial bench. If he was not himself a humorist, he was certainly the cause of humour in others. I think he was the occasion of a greater number of interesting scenes in court, of one kind and another, than any other judge who ever presided there.

Judge Henry had a reminiscence of him which has always seemed to me very amusing. In the old days, long before the cars were ferried across the Strait of Canso on a steamer, long before there was a steamer at all on the Strait or any car to be ferried over, it was necessary to cross in an open boat. Forrestal, a ferryman of great fame, was conveying the judge across the Strait. I think it was the late Judge Henry who accompanied him, and they were returning from circuit court, some-

where on the Island of Cape Breton. The fog was very thick, and the air was very cold, and the skies were dark and threatening. The winds were uncertain and the currents of the Strait were, as they still are, always more or less bewildering to the uninitiated. So the company was very silent, and the learned judge gloomy and apprehensive. At last a welcome sound came over the waters which, however, was audible to no ears other than the highly trained organs of the ferryman. It was the piping of the frogs which, though it may not have proclaimed the proximity, at least indicated the direction of the land. The information was communicated to the unhappy passengers and gave great comfort to one of them, the subject of my sketch, whose apprehension and relief concurred in his wise counsel to the ferryman; "Forrestal, steer for the frogs."

One of the most amusing trials that I ever witnessed was that of a breach of promise case tried before his lordship, in which the lady was suing a farmer from Lunenburg for breaking her heart by deserting her in favour of a later object of his affections. The case was defended by Sir Robert Weatherbe, who was assisted by the late William Garvie. Mr. Garvie, as everybody who remembers him well knows, was an exceedingly brilliant speaker, and he had been assigned to make the closing speech on behalf of the defendant. But his brilliancy this time very greatly outshone his discretion. He could not resist the temptation to make fun of his unfortunate client, at whose expense he had the court and jury in roars of laughter, describing him in one part of his address as "this gay Lunenburg Lothario." He spoke an hour and a half, and it was the comment of his senior and leader that every half-hour he spoke added some hundreds of dollars to the verdict against his client. The judge in summing up did not arouse much sympathy for the defendant by his reference to him as "this poor unfortunate Dutchman", and the result was a very handsome verdict for the injured plaintiff. I listened to the speech of Mr. Garvie with such wonder at its amazing cleverness and brilliancy, and such envy of the oratorical ability of the advocate, that I must confess I really did not stop to reflect until afterwards how ill-judged and untimely it was as a piece of professional advocacy.

I remember another occasion when the learned judge was trying a cause with a jury, of which the late Stephen Seldon, editor of *The Christian Messenger*, was foreman. The day was warm, the court-house was crowded, and the counsel harangued with unusual prolixity and pertinacity. Jurymen grew weary and

the foreman fell asleep. How long he had been sleeping before the vigilant eye of the presiding judge discovered the fact, I should not like to say on oath. First his Lordship cocked his head on one side, bending eagerly forward, then he cocked it on the other side bending still further forward, paused a moment or two, and followed up with still further inspection as if to make sure before committing himself to a judgment upon the unfortunate foreman. At length he broke out in a tone of deep solemnity and astonishment:

"Mr. Foreman, you are asleep."

Heavens, what a commotion! The neighbouring juryman punched the foreman in the ribs, while the eyes of all present were centred upon the jury-box, and the unfortunate and bewildered foreman suddenly awoke, rubbed his eyes and gradually became aware of his position. Pulling himself together as best he could, he began to apologize, explaining that he had been working on his paper all night and was unfortunately overcome by the bad air of the court-room, the warmth of the day, etc., etc., until the deep strong, merciful voice of the judge broke in upon his apologies with a magnanimous exculpation:

"Mr. Foreman, Mr. Foreman, don't say another word. The everlasting wrangling of these gentlemen is enough to put anyone to sleep."

Here, owing to the limits of space in *The Dalhousie Review*, I suspend these reminiscences of the Judiciary. On another occasion I may be permitted to continue them.