

EDWARD LUDLOW WETMORE

When the Supreme Court of the North West Territories was established, Sir John A. Macdonald persuaded Hon. E. L. Wetmore to leave New Brunswick and come west and take one of the new judgeships. There were five altogether, and three were to be filled by the promotion of stipendiary magistrates. The first sitting of the new Court opened in June 1887. It was a long way from Fredericton to Moosomin, and if it was represented to Mr. Wetmore that in accepting the appointment he was putting the country under obligation to him, he must have realized on arrival that that high satisfaction was about all there was in it. Moosomin was the centre of a large Judicial District, but it was not the capital of the Territories. Regina was. There were no County Courts and a Judge of the Supreme Court had to travel a lot by stage or public conveyance, and he had to dispose of all varieties of judicial business. There was volume, but, as a general thing, no great substance at first in the litigation. That, however, improved, and — as it built up — Justice Wetmore was one of the most important contributors to the jurisprudence that resulted and one who blessed the country with an administration of justice that ensured respect for obligations, fair trial of all causes, and effective treatment of malefactors. There were other able lawyers who took part in those creative times. Their names at once come to mind and they would all agree with this appraisal. Judge Wetmore demanded and got respect for his Court. He was stern and exacting, but had strong common sense and a quality of mercy which, after a conviction, surprised and, for the greater part, gratified the interested public.

Of course all the counsel in the Territories came before Judge Wetmore in the Court *en banc* at Regina and later also at Calgary. There was a good local bar at Moosomin which owed a lot to the Judge. The present Chief Justice Brown of the K.B. in Saskatchewan was one of these. Once when coming with him out of his office I asked him: "Don't you lock your door?" He replied: "No, this is Judge Wetmore's town."

Judge Wetmore had had a long and active experience in legal, political and municipal life in New Brunswick. His breadth of experience came to be particularly useful in the formative stages of the Territories and the new Province of Saskatchewan. His judgments appear in the various law reports from the commencement in 1887 till he retired from the office

of Chief Justice of Saskatchewan in 1912, — a period of over 25 years. He had been on a Commission to revise the ordinances; also a Commission to inquire into certain charges regarding school books in the Territories; then, later, Chairman of the Commission to revise the statutes of Saskatchewan.

A significant indication by the Executive of the confidence reposed by the public of the Territories in Judge Wetmore, was his appointment by the Federal Government as Royal Commissioner to investigate and report on serious charges made against Commissioner Herchmer's administration of the vital North West Mounted Police Force. The attack was commenced by the redoubtable Nicholas Flood Davin in Parliament. It was bitter. There was public agitation over the matter at the time, and there was danger of destroying the high confidence of the people in the force. High though the conflict raged, the fact that the matter had been placed in Judge Wetmore's hands was a calming influence. After many witnesses had been heard at different places, nothing but certain harshness of discipline was judicially found. Commissioner Herchmer kept his post and the public mind was at rest.

At the time of Judge Wetmore's arrival in the Territories violent crime was prevalent. It is all changed now. In Judge Wetmore's judicial district there had been three murders of settlers and the Commissioner of the N.W.M.P. reported that there was an attempt to attach discredit to the Force for the failure to make arrests. Two French half-breeds were suspected of the murder of Hector McLeish near Indian Head. These men, after great police skill and diligence, were found in Montana and were extradited and brought back and placed before Judge Wetmore and a jury at Wolseley. Conviction resulted and the two were executed. There do not seem to have been arrests in the other instances. In that vast country disappearance was easy. The fate of the two convicted men was an example which compelled a new attitude towards life and the law. This trial took place in Judge Wetmore's first year of office and was apparently his first criminal trial of a serious nature.

Several years after this there was another crime committed in Eastern Assiniboia. This time it was Italians that were involved. There had wandered across the plains from the west three Italians. Whether they were together all the time is not certain, but eventually they met and proceeded in company. One was a knife-grinder; the others were itinerant musicians of

the hand-organ type. They had a huge performing bear with them, whether originally white or cinnamon it was hard to tell. The men played and sang and the bear "performed", and so money was thrown into the cap. Probably the knife-grinder made more money than the others. His dead body was found near Grenfell in the railway ditch; he had been murdered. Suspicion attached to the two musicians, and they were arrested in Winnipeg two days after the discovery of the body. They were charged with murder. The trial was at Grenfell before Judge Wetmore and a jury. There were a great number of witnesses and the evidence was wholly circumstantial. The men were ably defended by Mr. R. Rimmer later D.C. Judge but the verdict was guilty. The prisoners had given evidence under the recent law enabling accused to testify. Judge Wetmore said it was a good law for the vindication of innocent persons. He also was generous in praise of the skill and diligence of the police officers who had been detailed to the investigation. Before the day of execution one prisoner confessed. He was hanged. The sentence of his companion was commuted to imprisonment for life.

I remember a trial at Yorkton a few years after the Doukhobors arrived. They had got started farming and the younger ones had made progress. (A farmer told me the young Doukhobors he employed kept his horses in better shape than any other variety of employee did.) The older men had not lost their fanaticism and six of them burned a self-binder belonging to the sect. (They said it was a sin to work horses.) They were charged and tried before Judge Wetmore. The Crown witnesses were the young Doukhobors. The defendants were not defended by counsel and each man was going to address the jury. Those that spoke started with the Black Sea and it all had to be interpreted. We that were waiting were in a bad way, but Judge Wetmore was letter-writing. He could keep track of the proceedings all the same. The third man had got nicely on his way when suddenly the Judge clamped down and said to the jury: "Gentlemen, have you had enough of this?" A shout: "Yes." Then the Judge took the verdict and informed the prisoners just how things stood with them and sentenced them to three years' imprisonment in the penitentiary.

Not to extend the list of interesting cases before Judge Wetmore unduly, reference can be made to one of quite a different type, but a type in which the police were very much concerned. It arose from the death of a farm boy who had been

adopted or taken in for training, after the Barnardo pattern. There were many satisfactory masters who gave immigrant boys good treatment, but there were exceptions, and these at times came to the attention of the police. Sometimes it was cruelty; more often neglect. In the case before Judge Wetmore the master was charged with neglect of his boy causing death; in a word — manslaughter. The boy had been compelled to sleep in a stable and had been severely frost-bitten. He was taken in from there, but no personal attention was given him and he died. The accused master elected trial by Judge Wetmore sitting alone. Judge Wetmore convicted, but reserved the case for the opinion of the Appellate Court. The Court affirmed the conviction. The sentence was an example of the moderation of a stern judge. Judge Wetmore sentenced the man to thirty days' imprisonment. The desired example had been set and the police welcomed the conviction. Judge Wetmore always insisted on a fair trial, even for the worst type, but when a conviction resulted his sentences were a terror to evil doers.

Another instance of this wise moderation after conviction may be given. An honest young Englishman who came to the country to take up land and become a Canadian farmer found himself in the criminal dock. He had applied for cancellation of an abandoned homestead. He had declared that there were no buildings. The cancellation was made and the young man got the entry. A neighbour had had an eye on the place for his son, but had not acted to secure it. Unfortunately there was a dilapidated shanty on the land. So the neighbour laid an information for what was called perjury. A jury possessed of common sense would have considered that the first thing a new man would have to do would be to remove the eyesore. But they found the accused immigrant guilty. Judge Wetmore was noted for his abhorrence of perjury in any form. He said his usual sentence was three years' imprisonment. But in this case a fine would do, and the fine was twenty dollars.

One of the rare occasions on which a judgment of Judge Wetmore was reversed was a case in which he convicted a man of theft of a railway grain car. It arose out of our grain marketing conditions and was one of many new problems. It was at a time when, in face of a large crop, grain cars were scarce and farmers seized upon and loaded empty cars whenever and however available. The offender in this case had, in a way, taken hold of a car and loaded it for shipment. But according to the system of allotting cars an order book was kept. By it

another farmer had gained a prior right. Judge Wetmore held that the latter had a special interest in the car and that the accused had unlawfully deprived him of it. This looked sensible and would have been wholesome warning to grain growers to follow the legally authorized practice and not to play tricks on their neighbours. It was typical of the insistence of Judge Wetmore on honesty of conduct. But the Appellate Court considered that the railway company could have given the injured man any car at all and the allottee had no special right in that particular one, and they set aside the conviction. So the Judge was technically wrong. Correction of the law no doubt followed and such a loop-hole would not likely be found again.

The new country produced circumstances not experienced elsewhere, but the judges nevertheless had to solve judicial problems on the standard principles of the common law. By way of illustration, the new and simple system of registration and guarantee of titles, known as the Torrens System, gave much scope for interpretation and application to cases of land law. Mr. Justice Wetmore contributed greatly by his keen and studious temper to the jurisprudence which emerged on the prairies on this subject. His master mind made the approach to new problems easy and their solution satisfactory.

Judge Wetmore was in all aspects a satisfactory man. He was rigidly upright, but was not puritanic. A devoted Anglican, he lived as if this life led to another. Yet he was manly, and not a person prone to turn the other cheek. While on one of those actually painful stage-coach trips in winter from Saskatoon to Battleford, the party stopped for the night at a half-way house, The Judge and other passengers had to lie on the floor, doing for themselves the best way they could with buffalo robes. A coarse fellow opened the door and the icy wind swept in over the floor. The heavy-booted intruder added noise and began to cut capers. Judge Wetmore was first on his feet. His language was very forceful. Though the smaller man, he literally threw the hoodlum out of the shack. In the small country hotels patrons are apt to become very disturbing as the night wears on. Once at Yorkton Judge Wetmore had retired. There was but one stair; a drunken guest made his way up very noisily and at the landing was very blasphemous. A friend of mine, a big man, could not stand it and came out, grabbed the fellow by the neck and threw him down the stair and returned to his room. My friend was afraid of rebuke as he entered the dining-room next morning. Judge Wetmore was at his usual place at the head of the far table.

Silence for a moment, and Judge Wetmore asked the company "Who threw that man down the stair last night?" My friend thought confession the better course. "I did, sir", he said. To his surprise and relief Judge Wetmore said: "You did perfectly right"; at least that was the effect of it. Of course that is rather muscular Christianity, but the Judge was consistent. He was active in the Church Courts and was especially an admirer of that charming English gentleman Bishop Burne. It is hardly wrong to relate that Judge and Bishop had a discussion about stakes in Whist. The Bishop thought any stake wrong, and the Judge thought the Bishop's argument, on moral grounds, very strong. But the Judge presented his view, which was characteristic: "Everything must be done in earnest and if you don't impose a small stake your players may become careless and spoil the game for those who mean business whatever they do".

Judge Wetmore had been leader of the Conservative opposition in New Brunswick. While punctiliously correct in his judicial life, he very properly thought it was not required of a Judge that he should wholly deprive himself of an interest in Imperial political questions. He was particularly impressed at the time with Joseph Chamberlain's famous Imperial Preference speech. He had secured a copy; "secured" is the word. He knocked at my door early one morning, not yet fully dressed, handed me the paper, saying: "Read that, that'll make your hair curl."

Judge Wetmore insisted that papers be properly drawn and clean; he would reject them for what appeared to others to be trifles. On the Bench he was not talkative; he was very firm and very decided in his views, but willing to listen, and insisted on propriety of conduct in Court. On one occasion a young woman of plain but good appearance was in the witness box, and the cross-examination began with a question whether the witness did not belong to the Salvation Army. But the question was never answered. Judge Wetmore burst into a denunciation of the offending lawyer for what was intended to be a belittling question. It was all over in a moment, but that incident would let the whole court-room audience, in a new country of mixed peoples, know how other people's religious views were to be treated. There may have been other instances of this kind, but as it is a timely topic I will mention one of which I know of another Judge. The late Chief Justice Dubuc was a quiet man and a devout Roman Catholic. He was very quiet on the Bench. I had a Jewish witness in the box and my opponent cast a slur on the

witness' religion. I never heard Chief Justice Dubuc raise his voice before or since, but at that moment he was as another man. This time the Jews had it made clear to them that in our Courts they were the same as the rest of us.

But to return just for a moment to Judge Wetmore's sticking for form. The higher the counsel the more insistent he was. At an early stage of the Court *en banc*, Mr. Aikins, Q.C., proceeded to move the Court. His vest was wrong. Judge Wetmore sat back: "I object to any counsel appearing in this Court not properly attired." The uniformly perfect Mr. Aikins explained that the omission was due wholly to an accident and, having apologized, was allowed to proceed. These two became great friends and mutual admirers.

Judge Wetmore was a strong friend of the legal profession. He expected almost perfection from it, but always maintained its dignity and saw that it did so itself. At one of the Commissions to revise the Ordinances, he came upon a clause in the new Legal Profession Ordinance which enacted that the proposed Law Society should not exact a fee of over \$100.00 for admission as an advocate. One might reasonably say the Judge snorted: "Some d——d farmer with his head full of hayseed put that in there." I was acting as clerk and had to explain that the Legal Profession Bill was not popular in the Assembly as it made the profession a closed corporation, and Mr. Haultain admitted the obnoxious stipulation as a concession to ease the Bill's passage. .

Mr. Justice Wetmore became Chief Justice of Saskatchewan in 1907 to the great satisfaction of not only the bench and bar, but of the whole population. The appointment was by Sir Wilfred Laurier and so was thoroughly non-partison, which added to the general approval. In the same year he was elected Chancellor of the University of Saskatchewan. The nomination was headed by the Minister of Education, the second name being that of Mr. F. W. G. Haultain, and followed by a long list of influential persons. There were no other nominations. That it was not merely a formal matter for the Chief Justice is unnecessary to say. He was always cautious and sound, and his advice was freely sought and followed. He was Chancellor for ten years. During his last illness the University conferred on him its highest degree, Doctor of Civil Laws. A scholarship was established commemorating his name.

The Chief Justice retired in 1912, ultimately going to live in Victoria.

Just a word about another aspect of this fine gentleman. The last time I saw him was on a vessel sailing from Seattle to Victoria. He was sitting on one of the hatches. It was a warm day. With him were his young grandsons. The ex-Chief Justice and Chancellor seemed more happy presiding over that company than I had seen him anywhere else. He had a model home and ever in that cast a great influence. A shock was felt all over the territory when his beloved wife was killed by a spirited team that ran away.

The name of Wetmore will never be forgotten in our Great West.

Winnipeg.

H. A. ROBSON.