HON. HORACE THOMAS McGUIRE
OF SASKATCHEWAN AND THE YUKON

This Ontario barrister was one of the two gentlemen from outside the North West Territories who were appointed to the Supreme Court of the Territories on the founding of that court in 1887. The other was Mr. Justice Wetmore, whom we mentioned under his name. Prior to that time there had been a simple but satisfactory form of prairie judicial administration in the hands of stipendary magistrates. Three of these latter were lawyers with the necessary status for judges and they were carried on as Justices of the new court. They were Judges Richardson, Macleod and Rouleau. The first two were Upper Canada men; Judge Rouleau had gone to the Territories from Quebec.

Judge McGuire had practised at Kingston; he had been appointed Queen's Counsel by Dominion patent some years before his judicial appointment. There was some scoffing at the Q.C. list in which he was included, but from his written judgments anyone would think his appointment had merit.

It can only have been a spirit of adventure that led this gentleman to leave the romantic Cataraqui and the St. Lawrence for the banks or the North Saskatchewan and also to leave what would seem, to a person with a knowledge of his capacity and address, to have been a certainty of good professional revenues in that province. (Salaries of the prairie judges then were $4,000 per annum.) Judge McGuire, as we called him, was a fine looking man; tall and of a pleasant face, with a fine beard. He was a genial man. From the quality of his judgments one can see that he must have been an able counsel. However, having been assigned to the Judicial District of Saskatchewan, he moved to Prince Albert. There he conducted the usual single-judge civil and criminal business. The Court at first met twice a year *en banc* at Regina for appeals and usual appellate or supervisory judicial work. To all appearances the judge enjoyed that appellate work. It gave his bright wit an opportunity, though he did not force it at any time. The glint caused a smile and it was always a relief.

Justices Wetmore and McGuire were at each end of the Bench. The former had precedence of appointment. And anyway they led the discussions. They were the "end-men.". How were the end-men going? That was the question.

There were of course sets of rules to be drawn for the new Court of Appeals, cases stated by magistrates, controverted

elections, legislative and municipal, and winding-up proceedings. It can be taken as correct that Judge McGuire, as a proficient writer and a man of general legal experience, did much of that work.

Justices of the Peace had exercised office there from a very early date. As settlement increased there was much summary justice work and naturally laymen had to be appointed magistrates. They were appointed in considerable numbers. Certain higher police officers were Justices by statute. In time appeals (the same as to Quarter Sessions) came before the Supreme Court Judges. Applications for review on *certiorari* were frequent and there were stated cases on questions of law. While Judge McGuire missed nothing, he took hold of this branch of business in particular.

The conditions impressed themselves on the Judge so that he set about producing an instructional Hand-book for Magistrates. It was a clear and readable little work and of real value in helping magistrates to avoid the risk of technical error which so often beset a summary jurisdiction, particularly where experienced guidance was not available. Judge McGuire dedicated the hand-book to His Honour Joseph Royal, Lieutenant-Governor of the Territories, "as a humble tribute to the honourable position attained by him as a lawyer, lawmaker and administrator of the laws." Governor Royal, is referred to in my sketch of Sir Frederick Haultain. Judge McGuire, it may be said, held certain sentiments in common with Hon. Joseph Royal. The Governor would have said similar nice things about the Judge.

The first reported *certiorari* motion in the Court *en banc* was by Arthur O'Kell, who sought to set aside a conviction under the Liquor Law of the Territories on the ground that there was no evidence that the liquor in question was intoxicating. The judgment was delivered by Mr. Justice McGuire who, after referring to the fact that there was some evidence on which the magistrates could find as they did, said that in any event as the charge was within the magistrates' jurisdiction their finding was conclusive and not open to review. He referred to cases in 19 and 33 L.J. But it comes to one's recollection that this idea came out much later in *R.* v. *Nat Bell Co.*

A serious question was coming to the fore in the Territories whether in a prosecution by the N.W.M.P. Force the Bench should with propriety consist of or include officers of the Force. The subject was in fact mentioned and the practice criticized in Parliament. But in the sparse conditions of population it was

unavoidable and the remedy came with increase of population. The Judges could be depended on to be very watchful for abuses.

I think a word might be said about Judge McGuire's companionable nature and a very homely instance given. The bicycle was beginning to come into use on the prairies. In dry weather prairie trails could be very enjoyable; in wet, quite otherwise. But there were enough good to justify the "safety" wheel and it was popular. Judge McGuire was an enthusiast. He caused no surprise when during a sittings in Regina he came in to a meeting of young bicyclists in the back of a furniture shop and joined in the proceedings. He was promptly elected honorary President of a newly-formed bicycling association.

Judge McGuire grieved that there were not law libraries available and he kept the matter before the authorities.

The Judge's repartee was notorious. In a cattle stealing case tried before him, a witness, referring to certain cattle, said "The cattle were C's cattle." The Judge remarked, "You mean they had C's brand on them." To which the witness replied, "Yes." This interjection by the Judge was proper as a matter of keeping the testimony within its exact limits, but unfortunately "C" was a politician of a class and the Judge's purpose was misunderstood.

I think Judge McGuire really could not help it, but he perpetrated a joke in the full Court on one occasion and it was out before he had given it a thought. Good old Judge Richardson, the Presiding Judge (there was no C.J.) liked to put in an oar now and again but was a bit ponderous. There was an appeal in an interpleader issue and counsel was addressing the Court. "Suppose Mr. ———" (said Judge Richardson) "the sheriff were to seize something, an elephant for instance, no matter what value———" Like a shot there came from McGuire J., "Oh, that would depend on what was in its trunk." It was a pleasant relief on a dreary morning.

Judge McGuire had an aptness of literary quotation that gave his remarks on the Bench an added interest. A person would listen with a certain expectation for either the quotations or the *bons mots*. An example of quotation came in a discussion of the word 'subject' in relation to executions in a section of the Territories Real Property Act. For an analogy the Judge quoted,—"*Most subject is the fattest soil to weeds.*" (Hen. IV., Act IV., Sc. IV.). It did not clarify the matter much but it was interesting.

I have already remarked that there were able counsel in the early days in the Territories. Often cases came before

the Court *en banc* from Calgary. One was about a stack of oats and raised a question as to the validity of an affidavit of *bona fides* on a bill of sale. The affidavit of the bargainee, Bannerman, read: "against *the* creditors" instead of "against *any* creditors" as prescribed by the ordinance. An execution creditor, Emerson, contended that the bill of sale was void as against him. Mr. E. P. Davis, at the time of Calgary, even then well known for his astuteness, appeared for the execution creditor. The Court however decided against him and sustained the bill of sale. The main judgment was delivered by McGuire, J.; it was a painstaking discussion. But the Judge could not resist the temptation to be a little playful with Mr. Davis and he inserted the following:

> The learned Counsel endeavoured to show by syllogistic illustrations that the use of the words "the creditors" entirely changed the meaning of the affidavit, overlooking the fact that in cases of universal negatives the logicians say that both subject and predicate are distributed. I do not know that Mr. Bannerman is a logician, or if so, to what school he belongs; whether to an Ancient or a Modern School; whether he is to be classed as an Aristotelian, an Epicurean, or a Heraclitic-Protagorean; whether his mind is of the Rhetorico-Sophistical, or Spenozistic-Metaphysical, or simply Transcendental-Aesthetic order; or is he, like so many in these Territories, a lover of *Bacon?* The evidence does not enlighten us on any of these points nor do I think the omission material. The power of being able to 'divide a hair 'twixt South and South-West side,' may be interesting to sophistical rhetoricians who have leisure and taste for such subtleties. I do not think we should avoid a bill of sale by reason of the possibilities suggested here."

Judge McGuire later said he expected the editor would surely leave that passage out of the official reports.

In 1897 the Yukon gold rush grew fast. The Yukon was part of the North West Territories but till then comparatively inactive. The Ottawa Government established judicial machinery in August 1897 for what was known as the Yukon Judicial District and Mr. Justice McGuire was assigned thereto, with his residence within the limits of the district; so the Judge started the Court which became the Territorial Court of the Yukon Territory. But it was one thing to be assigned to the Yukon Judicial District and quite another to get there. The Mounted Police, however, took charge of that for Judge McGuire. I omit reference to the overland route to Dawson or the fascinating preparations for that great police exploratory experiment. Its main revelation was the stout hearts of the men that tackled it. The ocean and river route via Vancouver or Victoria and Skagway was *the* route in official use. There were official parties frequently going in and the Superintendent Commanding reported to Ottawa going

out to meet the Judge and bringing him and his party in. There were other gentlemen of like type, mostly administrative officers. It was October and forty degrees below zero. The Yukon River was becoming clogged with big ice. It was the winter of the north. There was nothing for it but to shelter the river-boat and erect winter quarters and they all set to work with a will,—judge and all. The Superintendent of Police said they were a fine lot and that Judge McGuire distinguished himself as a workman.

It is said that the first indictable offense charge in the Yukon was one of theft of $8000.00 in gold but that Judge McGuire directed acquittal for want of evidence of crime. There were some murder cases and many criminal cases of a minor character. There was nothing as yet to show the civil business that was to develop. The character of the community must have palled on Judge McGuire. On September 14-15, 1898, there were 67 convictions of women of being "inmates" and 67 of men for vagrancy, whatever that omnibus term meant.

No doubt it was thought that there would be much litigation arising out of the discoveries and developments. It is said that lawyers came in great numbers. But it soon became clear that the slow, tedious methods of settling land titles' disputes would not do for Yukon conditions. It was an early instance of the necessity for an administrative board with speedy, summary and final powers of adjudication. As far as one can see, the conditions brought discontent and the remedy followed the nature adopted elsewhere; e.g., The Gold Commissioner and The Mining Board. There would always be some civil litigation and the judicial system of course carried on. But Judge McGuire did not remain long in the Territory. He returned to Saskatchewan in September, 1898.

Later on the N.W.T. Act had been amended to provide that the office of Presiding Judge should cease and that a Chief Justice of the Court should be appointed. Mr. Justice McGuire, though the Junior Judge, was appointed Chief Justice and so Mr. Justice Richardson, in the capacity of Presiding Judge, was superseded. This was on 18th February, 1902. Judge McGuire's official residence was changed from Prince Albert to Calgary in April 1902. This promotion created an uncomfortable situation on the Bench. Less than a year later, i.e., on 2nd February, 1903, Chief Justice McGuire resigned. Next day Mr. A. L. Sifton was appointed Chief Justice of the North West Territories. And so, from public life, Chief Justice McGuire withdrew. I have

only been dealing with him as Judge and I do not know with any exactness what his later professional movements were, but it was reported, legal literature was to be his object thereafter.

It would have pleased practitioners if Judge McGuire had remained on, for he was as an acquaintance pleasant and entertaining and as a Judge actually restful; it was never necessary to labor a point or to use a sledge-hammer to drive an argument home. His grasp was quick and thorough.

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