

## THE FIRST CHIEF JUSTICE OF CAPE BRETON RICHARD GIBBONS

The Island of Cape Breton is part of the Province of Nova Scotia but between the years 1784 and 1820 it formed a separate colony. It had its own Lt.-Governor, its own Court and its own Chief Justice. The seat of government was Sydney, which was little more, at that time, than a military post and the experiment in government was not a great success. The First Chief Justice, however, was a colourful character whose life and rather tragic death make an interesting story.

Gibbons came to Cape Breton from Halifax, where he had been engaged in the practice of law. He is listed as Nova Scotia's fourth attorney-general. The family is said to have come to Halifax from Virginia. Gibbons' father who was Coroner and Collector, was also named Richard, a name which continued in the family for at least six generations and is still found among some of their descendants who live in Cape Breton. Gibbons Sr. died at Halifax on November 29th, 1774. Richard Jr. probably studied law in England. He had a high opinion of his own ability and by his will directed that his son be educated at The Temple in London if there were sufficient funds.

Richard Gibbons represented Barrington in the Assembly in 1771. This was no doubt the son. He was certainly a lawyer in Halifax in 1769 for his name appears in the list of subscribers to Calcott's book on Masonry with the appendages of Jr. and Esq.

In 1775 Legge was Governor of Nova Scotia and was at variance with several of the officials. He was especially critical of Attorney-General Nesbit and his favourable opinion of Gibbons probably arose from Gibbons' active opposition to the officials. Gibbons was also a captain in the Loyal Nova Scotia Volunteers, a body raised by Legge, a fact which Legge mentions in his recommendation of Gibbons as Solicitor-General in 1777.

Lawyers were not popular in Nova Scotia at that time for in that year we find a resolution of the Assembly addressed to the King in which they asked to be delivered from "the oppression of practitioners in the law" and in which they recommended "that no native of the province may ever be appointed a Governor or Lieutenant-Governor and that the judges be appointed in England and may not be natives of the province." They trace "the present unhappy disorders in America" to the want of a regulation of this kind.

Gibbons became Solicitor-General in 1777 and Attorney-General on December 29th, 1781. His opinion of others and inferentially his opinion of himself may be gathered from a letter written by him to Col. J. F. W. Desbarres then in London. The letter was written on New Year's 1782, just two days after his appointment as Attorney-General: "In short ignorance and partiality, except in the office of the Chief Justice are as prevalent in this country as formerly. Apropos, the Chief Justice is embarked for New York en route to England. He is professionally my friend, although he appears to be tainted with national attachments, which with some Irish recommendations has induced him to procure one Unick (who was associated with the Rebels in attacking Port Cumberland), to be appointed Solicitor-General in my place." "Unick" is, of course, R. J. Uniacke, and the Chief Justice referred to is Bryan Finucane, who was an Irish lawyer.

Governor Parr who succeeded Legge found great fault with Gibbons' fees. There were at this time large grants of land being made to Loyalists. These were in most cases made to considerable numbers of individuals in one document often covering large areas to be divided later by agreement or survey. Gibbons as Attorney-General was required to place his fiat on all grants and there was a customary fee of six shillings and nine pence. Gibbons claimed to be entitled to this fee for every person named in the grant.

We find the Governor reporting on June 14th, 1784, that Gibbons had refused to sign his fiat to the grants unless for six shillings and nine pence per person even when there were three hundred names on one grant and that he further persisted in charging the whole fee instead of half for every grant of a house lot "which in some cases amounted to 1300 and 2800 and would have been a considerable expense." Parr settled the matter by signing the grant without the Attorney-General's signature. It appears that there was an order that only one-half the usual fees were to be charged to Loyalists but Gibbons ignored the order.

His term as Attorney-General did not last long after this report. Cape Breton was about to be constituted a separate province and Col. Desbarres its first Lieut.-Governor. Desbarres was a constant friend of Gibbons and that friendship continued to the end of Gibbons' life, or at any rate to the time of executing the last of his wills. Desbarres no doubt would be glad to have Gibbons as Chief Justice and Parr would be glad to see him transfer his talents to the new province.

The appointment of Gibbons as Chief Justice of Cape Breton took place on December 24th, 1784. Col. Desbarres was at the same time appointed its first Lieut.-Governor. The party went to Louisburg for the winter but Col. Desbarres, who had an accurate knowledge of the coast obtained from his own surveys, selected Spanish Bay as the new capital, giving to the harbour and the city, which was to come later, the name of Sydney in honor of the President of the Board of Trade.

The first sittings of the Court were held at Sydney on August 17th, 1785 and the first case tried was a prosecution of Joseph Winters for theft. On November 11th, 1785 the Chief Justice drew up the Rules of Court. The last rule reads as follows: "It is ordered that Public Justice shall suffer no delay. That on the plea side the forms of Process observed in the Court of Kings Bench at Westminster Hall shall be observed and followed until the Court shall further order and adapt them to the circumstances of this Island. 11th November 1785, (sgd.) R. Gibbons".

Desbarres had been appointed Governor of Cape Breton as a reward for his services military at Louisburg and Quebec, surveying of the Coast for years, and superintending construction at Halifax, but it was a poor reward. The Governor and Military authorities quarrelled constantly and the quarrelling did not cease with the first officials. It continued as long as Cape Breton was a separate province. Desbarres was anxious to make a town out of the wilderness. The military party were satisfied that it should be a military post. Desbarres, however, probably overstepped the limits of his powers and both he and Gibbons were the subjects of charges. In the summer of 1786 Gibbons went to London to explain matters relating to the settlement and to refute charges made against himself and Desbarres. The last codicil to his will signed at Cape Breton on June 1st, 1786 states that he is "shortly about to sail for England." He spent the winter in England and apparently was not successful in refuting the charges, at any rate against the Governor, as the British Government sent out MacCarmick as acting Lieut. - Governor until the investigation could be concluded. MacCarmick arrived in Sydney on October 7th, 1787 but Desbarres was still there and did not vacate Government House until October 12th on which date MacCarmick assumed office. Gibbons had also returned to Sydney sailing from Poole in Dorsetshire about the latter part of June or the first of July 1787. He was allowed to resume his office of Chief

Justice but it was not long before he came into conflict with Lieut.-Governor MacCarmick.

In March 1788 he was suspended and the office put into commission, the commission being Abraham Cuyler, William Smith and Edward Boisseau, the first named being a leader of the anti-Desbarres faction. Gibbons was accused of using the Grand Jury as a means of attacking the Government and of intriguing with the "Friendly Society" to have a body of militia under his control. During the next three years the factions continued their quarrels. Cuyler was suspended from the office of secretary and replaced by Crawley (Sept. 7, 1789). The British Government ordered his restoration by letter of June 30th, 1790 but in October, Cuyler resigned all offices, published a pamphlet against the Governor, and announced his intention of leaving the Island for Montreal.

In December of 1790, Gibbons is again in London praying to be heard in his defence and finally on June 7th, 1791, the Secretary of State (Grenville) sends MacCarmick an order in council to restore Gibbons to all his offices, Chief Justice, President and Member of Council, a committee of the Council having considered his conduct, but recommended his restoration for general good character. MacCarmick on Sept. 1, 1791 acknowledges receipt of the order and expresses himself happy in the establishment of harmony. Gibbons, however, does not appear to have got back to Cape Breton again. In December 15th, 1793, he writes from Falmouth, saying that he had sailed on Oct. 4th but his ship had been driven back by stress of weather. He asks for relief from expenses.

Sometime during the next year he again set sail with most disastrous results. He and his wife and son were captured by the French and taken to prison in France. On Dec. 2nd, 1794, a memorial is received at the Colonial Office from Gibbons dated at Nantes, May 22nd, 1794, asking for relief and release from prison in France. He never was released but died in the French prison.

On January 1, 1796, Archibald Dodd writes from Sydney in regard to the distress of the family of the late Chief Justice who had died in a French prison, "having been captured with his family at sea". Dodd, who had married Gibbons' daughter Susannah, indicates that his own appointment as Chief Justice would enable him to assist the family. There is also a letter from Ingram Ball dated May 25th, 1796 seeking the vacant office and in which he states that Gibbons' death occurred in November 1794.

Gibbons' will is on file in the Court of Probate at Halifax. There is no petition or other accompanying papers. The will is marked "Received and filed Oct. 20th, 1798". The will consists of a first will and several codicils. The first is dated Nov. 11, 1781, at Halifax. It leaves his estate to his wife for life and afterwards to his son, Richard Collier Bernard Marshall Desbarres Gibbons.

He leaves among other things to his daughter, also named Susannah, a watch, some books including Fordyce's "Sermons to Young Women". To his son his library and some other books including Lord Chesterfield's Letters. He also directs that if there is sufficient money his son is to be educated at the Temple, London. Executors Susannah Shepherd Gibbons, Wm. Allan and J. F. W. Desbarres.

The second document is dated October 25th, 1784. It sets out that he has received a grant of land on the Shubenacadie River with John Marshall and has purchased land in Halifax. He directs the disposition thereof: "This codicil being also wrote with my own hand". It may be observed that the time of his obtaining the grant is apparently within the term of his Attorney-Generalship.

The third document is dated June 13th, 1785 and makes some changes in the executors, as Desbarres has been appointed Governor of Cape Breton.

The fourth document is dated at Cape Breton June 1st, 1786 and sets out that he is "shortly about to sail for England", and that he has received a licence of occupation of lands in Cape Breton and desires that this be made available to his heirs. He appoints as executors Jonathon Stearns, Daniel Wood, Jr. and his wife.

These large grants or licences to lands which Gibbons received first in Nova Scotia when he was Attorney-General and later in Cape Breton when he was Chief Justice would appear to be the subject of adverse comment but they do not seem to have been a matter involved in the charges, perhaps because the others were also getting large grants of lands. In regard to the actual charges, as we have seen, Gibbons was exonerated by the British Government principally on account of his general good character. He seems to have been a man of good legal capacity but apparently overanxious to further his personal ends. The charges against him were probably the result of his friendship with Desbarres, to whom he continued to give unbounded admiration. In his will of 1781 he refers

to him as follows in appointing him executor: "And my dear friend Joseph Ferdinand Willet Desbarres, Esquire, if he will please to take that trouble." "I give and bequeath to my said friend Desbarres any one of my books which he may choose as a memorial of me and as I have nothing else worthy of his acceptance, therefore can only request him to accept of my last and sincere and affectionate acknowledgments of friendship, gratitude and thanks."

The posts of Chief Justice and Governor seem to have turned the heads of the recipients Gibbons and Desbarres. A sidelight which perhaps gives us a key to the lack of judgment shown by the actions of Desbarres and Gibbons is contained in a letter of Chief Justice Strange to John King, Undersecretary of State, in reporting the vacancy in the office caused by the death of Gibbons. Strange was Chief Justice of Nova Scotia (and afterwards of Calcutta) and looked down upon Chief Justices and Governors who held their state functions without proper paraphernalia.

Under date Aug. 29th, 1795, Strange C.J. writes to the undersecretary, after reporting Gibbons' death and the vacancy in Cape Breton: "When Desbarres and Gibbons first went there it was diverting to strangers to observe these adepts in the art of sinking in Government. Upon the arrival of an officer in the army whom it was thought proper to entertain, the Etat Major were collected in something like an old barn ill covered. At dinner every third word with Gibbons was 'your Excellency' who in his turn not to be behind in the salutations, addressed him 'My Lord Chief Justice'. 'I have the honor to drink your Lordship's health' or 'I have the honor to thank your Lordship'. I can scarcely bring myself to apply the title of Chief Justice to such places which I have always thought ought not to exist as separate governments."

Time has cast oblivion over the life and tragic death of Gibbons and an estimate of his work cannot now be made with accuracy. Probably his great admiration for Desbarres who was a man of ability but who lacked judgment as an administrator, and the rather foolish attempt in the case of both to unduly magnify their offices was a cause of the difficulties in which both found themselves in Cape Breton.

Gibbons; however, appears to have been a good lawyer and certainly was a great deal better Chief Justice than some of those who followed him in the Court at Cape Breton.

Cape Breton was re-annexed to Nova Scotia in 1820 by Royal Proclamation. Some of the inhabitants of the Island

petitioned the King in Council complaining that it was illegal to so re-annex Cape Breton without an act of Parliament or the consent of the people affected. The result of this petition will be found in 5 Moore P.C. at 259. Since that time the Strait of Canso has been the only separation between the Island and the Mainland and it is said that they are soon to build a bridge over that.

JOHN DOULL.

Halifax.