

SIR JOHN THOMPSON

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Halifax

Three Nova Scotians have held the office of Prime Minister of Canada. Two of these, Thompson and Borden, were members of the Nova Scotia Bar, the third was Tupper, by profession a medical doctor. This short article on the work of Thompson is intended to describe him as a lawyer and not to make more than incidental reference to his more strictly political activities. It will however be found in his case that he was pre-eminently a lawyer and that, to a greater degree than in the case of most public men, he won his way to high office by his ability to present controversial matters with convincing clearness.

To speak briefly of his early life, John Sparrow David Thompson was born at Halifax, Nova Scotia, on November 10th, 1844, the son and youngest child of John Sparrow Thompson, a native of Waterford, Ireland, and his wife Charlotte Pottinger, who was probably born at Pictou and whose people came from the Orkney Islands. It was from the father who was a man of education that young Thompson received most of his early training, but he also attended the Halifax public schools and the Free Church Academy.

His legal education began at an early age for at fifteen he was articled to Henry P. Pryor, Q.C., a barrister of prominence who was for many years Stipendiary Magistrate for the City of Halifax. He was not much different from other students for the only story that has come down from his office days is to the effect that Pryor once said to him in a moment of annoyance, "Thompson, you will never be able to earn your salt".

He was admitted to the Bar of Nova Scotia on July 25th, 1865. He had learned stenography during the years of his clerkship and was for a time employed to report the debates of the House of Assembly, his chief being John George Bourinot, afterwards Sir John Bourinot, clerk of the House of Commons and author of books on constitutional and parliamentary law. The warmest controversy in the Assembly in the years before and after 1867 was confederation of the provinces, and the reporting of these debates was a good introduction to the British North America Act which was to engage Thompson's attention in the course of a few years.

In the years following his admission to the Bar, he took an active part in the city's municipal life, being an alderman from

1872 to 1877 and chairman of the School Board for one year. From 1869 to 1873 inclusive he was secretary of the Nova Scotia Barristers' Society. A few months after his admission to the Bar he was engaged and received some prominence as defence counsel in the case of the *Queen v. Dowsey*, a negro charged with murder. This case was a sensational one, widely discussed at the time, and the facts may be found in 6 Nova Scotia Reports at page 93. The Attorney-General, W. A. Henry, K.C., afterwards a Judge of the Supreme Court of Canada, and the Solicitor General, John W. Ritchie, afterwards Equity Judge, appeared for the Crown. During the next few years Thompson was engaged in several cases of importance, some of which are reported in the Nova Scotia Reports from Volume 6 to Volume 11.

In the cases reported in Geldert and Oxley N.S. Reports, the names of counsel are not always given and the first reported appearance of Thompson in the Appeal Court is in *Mader v. Jones*, 10 N.S.R. 82. In this case he was associated with Meagher on the winning side against Rigby — all afterwards judges. The matter involved was a quantity of "Gulf Herring Split No. 1". This was in August 1875. Perhaps the first important case in which he appears as counsel was *Woodworth v. Troop*, 11 N.S.R. 84, where he was associated with James McDonald, Q.C., afterwards Chief Justice of Nova Scotia.

In 1877 he was retained as counsel with R. H. Dana by the United States Government in the hearing before the Fishery Commission which sat at Halifax in that year to settle questions arising out of the Washington Treaty between Great Britain and the United States. In the same year he was a candidate for the House of Assembly at a by-election in the County of Antigonish. One of the charges made against him in a newspaper was that he had been disloyal in accepting a retainer from a foreign country. This was apparently not taken very seriously. As a matter of fact, it cut both ways for it was also regarded as a tribute to his ability that the United States used his services. He was elected after a close contest. He was again elected at the general election in 1878, an election at which the Hill government was defeated. Following the resignation of that government, Simon H. Holmes became Premier and Thompson, Attorney General, and the government which held office for four years is usually known as the Holmes-Thompson government.

The Attorney-General of that day personally appeared in any important case for the Crown and conducted the prosecution

of the more serious criminal cases. Thompson was therefore frequently before the Supreme Court both in trials and appeals. While his name appears many times, there seem to be no reported cases which have now sufficient interest to be recalled in this connection.

In the work of legislation, his term as Attorney-General was not unfruitful. In 1879 was passed the County Incorporation Act which organized municipal corporations and abolished the administration of "Sessions of the Peace". The system then established has continued until the present time. In the same year were passed an act improving the procedure in the Supreme Court, a Companies Winding-up Act and a Mechanic's Lien Act. The Acts of 1881 provided for a Law Faculty at Dalhousie University, in which Thompson took a great interest. He was afterwards, while a judge, a lecturer in the subject of Evidence at Dalhousie, in which subject his lectures were of unusual interest and were attended by members of the bar as well as by students.

In 1882 there was an accumulation of business in the Supreme Court not disposed of. Some of the provisions of the Act which enabled the Court to act when some of its members were absent were afterwards incorporated in the Judicature Act, 1884.

On May 25th, 1882, Holmes was appointed Prothonotary of the Supreme Court and Thompson became Premier of Nova Scotia. In the general election of June 13th his government was defeated and he resigned his office on July 24th, 1882. On the same day he was appointed a Judge of the Supreme Court of Nova Scotia. Samuel G. Rigby, K.C., had been appointed a few months before and it was generally conceded that the two junior judges were the ablest members of the court. Unfortunately for the court the terms of both these judges were short. Thompson resigned in 1885 and Rigby died the following year. When Thompson was appointed to the bench he had been senior member of the firm of Thompson, Graham & Tupper and on his appointment Mr. Borden, later Sir Robert Borden, joined the firm, which became Graham, Tupper & Borden. During the years in which Thompson was a judge, the Appeal Court dealt with all kinds of cases and he wrote his full share of the judgments, which indicate both legal knowledge and careful study. The roads and bridges of that day appear to have been in a very bad state and several cases of actions for damages reached the Appeal Court. *Walker v. City of Halifax*, 16 N.S.R. 371, was brought by a bus owner who claimed against the City for allowing dangerous accumulations of snow and ice. *McQuarrie v. Mun. of*

St. Mary's, 17 N.S.R. 493, was an action for injuries to a horseback rider who went through a hole in a bridge; *Grant v. New Glasgow*, 18 N.S.R. 87, involved a defective sidewalk. The court in these cases took a view that was afterwards held to be erroneous in a Nova Scotia case which went to the Privy Council, *Pictou County v. Geldert*, [1893] A. C. 593. Thompson's view was more moderate than that of some of the judges, holding that the liability depended upon negligence, *Wilson v. Colchester*, 18 N.S.R. 552. His term on the bench was short. In 1885 some changes in Sir John Macdonald's Cabinet were necessary. Of these the only one which concerns us here is the portfolio of Justice. The Riel question was threatening the government with destruction. Riel was a *metis* who had for the second time raised rebellion in the West and had been charged with treason, convicted and executed at Regina on November 16th, 1885. Efforts had been made to have him pardoned or the sentence commuted and a bitter racial and sectarian feud put Ontario and Quebec in hostile camps. A new party was formed in Quebec and the members of the Government from that province were denounced by their brethren as "traitors to their country". Quite as bitter was the language used in Orange lodges and papers in Ontario.

To meet the inevitable attack, Sir John Macdonald had to have a lawyer able to meet the liberal leader, Edward Blake, the acknowledged leader of the bar, as well as the onslaught of the Quebec orators.

It was in these circumstances that Thompson was persuaded to accept the portfolio of Justice. He was no doubt suggested to Sir John Macdonald by John F. Stairs, M.P., and J. J. Stewart, editor of the Halifax Herald, although Sir John afterwards took to himself the credit of having "discovered" him.

It would be impossible in a short article to describe in detail the debate in the House of Commons when the Riel matter came up. The attack upon the government came with the greatest fierceness from the Quebec members and it was not known exactly what line Blake would take. Blake undoubtedly underestimated Thompson and when his attack was upon many different grounds, some stronger and some weaker, he left the way open in most cases for the answer. The points made were that Riel was a political prisoner and therefore should not have been hanged, that his trial was unfair and that he was insane.

The reply met Blake firmly on his own ground of logic and was for that reason more astonishing to Thompson's friends, many of whom had feared that no one could successfully answer the great master of legal argument, Blake.

Thompson first asserted that Parliament was in no sense a Court of Appeal in criminal cases, pointing out the evil results which would follow if that should be the case. He then defended the court and met the contention that it was in any way inferior and again pointed out the evil results which would follow if a special court were to be set up for special prisoners. As to the contention that Riel was a political offender, an argument which had been used by several speakers, he cited numerous instances where such offenders had been hanged. He maintained that overt acts of rebellion accompanied by violence were the highest crime known to the law and quoted Lord Bramwell as saying: "Treason is worse than murder, because it involves the taking of many lives". He also dealt convincingly with the matter of insanity and ended with the statement that it was absolutely necessary for the Government to show to the Indians and others in the Northwest that it had power both to protect and punish.

Probably never in Canada did one speech, and that a maiden speech, so undoubtedly establish the reputation of a speaker. He had met the greatest lawyer of the day on his own ground and had been the victor. Moreover, Thompson's reputation never diminished. From that day to the day of his death, he was regarded as in the front rank as a parliamentary debater.

In 1887 Thompson accompanied Sir Charles Tupper to Washington as legal adviser to the plenipotentiaries in negotiations concerning the Fisheries dispute. For his services in this connection he received a Knighthood the following year.

The Riel question did not end the racial and sectarian troubles which beset the Macdonald government and its Minister of Justice. In 1888 the Mercier Government passed a bill in the Quebec Legislature settling an old question in regard to lands at one time owned by the Jesuit Order. The lands had passed to the Crown but it had been argued for many years that compensation should be made to the former owners. That the money should go to the Jesuit Order was a matter of controversy for other Roman Catholic bodies in Quebec also claimed it. The bill provided that \$60,000 should go to the Protestant Committee of Public Instruction and that the balance should go to such Roman Catholic bodies as should be settled by the Pope. The mention of the Pope in the preamble to the bill and his place as arbiter were sufficient to raise a great clamor for disallowance in ultra-Protestant circles. The Government refused to disallow the bill on the ground that it was peculiarly a matter within the power of the Provincial Legislature and Thompson's defence was, from

the standpoint of logic and law, complete. In fact, Castell Hopkins relates that Edward Blake crossed the floor and congratulated him upon his brilliant effort.¹ In the result his view was endorsed by a majority of 188 to 13. From a political standpoint, the victory was probably not so complete. Argument and logic seldom conquer prejudice and racial and sectarian agitations do not easily disappear.

During the busy years of 1891 and 1892 Thompson found time to carry through Parliament what will no doubt be his most enduring monument. A consolidation and revision of the Criminal Law had been advocated for a long time both in this country and in England. In England a commission had produced a draft which was never enacted. In Canada a draft based upon that of the English Commission was prepared and between the sessions of 1890 and 1891 referred to judges and legal organizations who made suggestions. In the session 1892 it was referred to a committee of the most distinguished lawyers of the House and Senate. It was here that Thompson's genius was most apparent. He was able to reconcile conflicting views and to produce a statute which has, with amendments from time to time, well served the courts and people of Canada. Whatever difference of opinion there was at the time, there are few today who would wish to go back to the days when the criminal law was to be found in numberless statutes.

On November 23rd, 1892, following the retirement of Sir John Abbott, Sir John Thompson became Prime Minister. His tenure of office was short. In October 1894 he left Canada for England to be sworn in as a member of the Imperial Privy Council. He had been warned that the heavy burden of office had impaired his health, but his physicians expressed hope that a rest would restore him. In the month of November he visited the cities of France and Italy, including Rome.

On December 11th he attended at Windsor Castle and was sworn in a member of the Privy Council and a few minutes after he had a sudden fainting attack while at dinner in the castle and expired in a room adjoining the Council Chamber.

The Imperial Government arranged to have his body conveyed to Halifax in the warship "Blenheim" where he was buried after a state funeral at St. Mary's Cathedral amid the universal mourning of all Canadians. Shocking to his fellow citizens it was that this son of Nova Scotia, who in a comparatively short lifetime had risen from a humble home to the position of Prime

¹ Castell Hopkins: *Life of Thompson*, p. 135.

Minister of Canada and member of the Queen's Imperial Council, should be struck down at the very moment of his attainment. An elegy written by Lewis Morris has the following appropriate words:

"Dead at the crest, the crown
And blossom of his fortunes, this strong son
Of our great realm sank down
Beneath the load of honours scarcely won."

Portraits of Sir John Thompson hang in the Province Building at Halifax and in the Chamber of the Supreme Court where he once presided; a bust by the noted Canadian artist Hebert, a gift of Lady Thompson, stands in the vestibule of the Law Courts in that city. These testify to the admiration of his native province for the first Prime Minister from Nova Scotia. But the memorials which cannot be consumed by moth or rust are contained in the body of the Criminal Code and in the opinions on matters under the British North America Act which will be found in Hodgins' volume of the correspondence of Ministers of Justice on Dominion and provincial legislation.²

LABOUR ON LAWYERS

While this Congress has officially placed its views more fully before the responsible authorities in the Department of Labour, we do wish to be recorded as strongly requesting that Section 42 of the Industrial Disputes Act be embodied in the Dominion Regulations [to take the place of Order in Council P.C. 1003 of 1944], reading as follows:

'No counsel or solicitor shall be entitled to appear or be heard before the Board except with the consent of the parties to the dispute and notwithstanding such consent the Board may decline to allow counsel or solicitors to appear.'

This was one of the best features in the Industrial Disputes Investigation Act and in operation over many years proved its value. Hence we desire its retention. (From a Memorandum of the Trades and Labour Congress of Canada presented to the Ministers of the Dominion Cabinet on March 28th, 1947)

² Correspondence, Reports of the Ministers of Justice and Orders in Council upon the subject of Dominion and Provincial Legislation: 1867-1896 (Ottawa, 1896).