

ALPHEUS TODD.

"Hi! Barton, come over here and shake hands with the son of Alpheus Todd."

Anyone present in the Library of Parliament one morning in the summer of 1902 might have heard these words spoken in a loud tone by Sir John Forrest, Premier of West Australia, to Sir Edward Barton, Prime Minister of the First Australian Commonwealth. These gentlemen were returning home by way of Canada from the Coronation of King Edward and the Colonial Conference, and were guests of the Earl of Minto, the Governor-General. Then, turning to the latter, he said, "You know wherever the British flag flies, every government, every member and every minister is under the deepest obligation to Todd."

The course of instruction for lawyers in most of the provinces of Canada includes some teaching on the subject of the Canadian Constitution and Parliamentary Government, but although a majority of the members of the House of Commons belong to the legal profession, so little was known of the subject of this memoir, that an effort made by me a few years ago, which had the strong support of the then Speaker, failed to obtain a small vote in the estimates to procure the erection of a tablet in the Library of Parliament, the scene of his labours for so many years, which would commemorate the services of this humble civil servant who, as a writer, has a recognized place with such men as Hallam and Sir Erskine May.

A further effort, supported by the present Speaker, it is gratifying to say, has been successful, and now \$1,000.00 is available for a small memorial, in memory of one who has conferred lustre and renown on his native land as well as upon himself.

A German translation of his *Parliamentary Government* in England appeared in 1869 and one in Italian in 1884. It is only possible to quote a few of the numerous laudatory references made to it. The *Edinburgh Review* said:

"It is a remarkable circumstance that we should be indebted to a resident in a distant colony for one of the most useful and complete books which has ever appeared on the practical operation of the British constitution."

The Westminster Gazette said:

"It is the most complete treatise . . . as to the limits

and extent of the Royal prerogative and on the theory and practice of Parliamentary privilege."

Gairdner, one of the highest authorities on the subject in England, said, in *The Academy*:

"Here we have the powers of each separate element in the constitution carefully examined by the light of an exhaustive historical survey. No case appears to have escaped the author's notice, which is in any way material to the rights and prerogative of the Crown, the liberties of either Houses of Parliament or the responsibility of public departments."

I have before me some of the correspondence between him and members of the various Governments of Canada which shew clearly how valuable his services were. The Honourable William McDougall, in a letter to Colonel Todd in 1889, says:

"His book on Parliamentary Government in the British Colonies I found a constant help in my public discussions and private studies. It is not only an admirable compendium of the principles and practice of colonial administration under the British Crown, but, as far as I know, the only book of the kind as yet available to the political student. His industry and the breadth and accuracy of his information and the instantaneity of his memory were a constant surprise to me. And yet there is one trait, one memory that none of us can ever forget, his gentle, unassuming, patient manner towards those who approached him. French or English, Grit or Tory, Government or Opposition, were alike to him when in quest of information. He always seemed anxious to send the enquirer away fully equipped for the argument he desired to make, giving him the authorities, *pro* and *con.*, without obtruding opinions of his own."

I have before me a note to Mr. Todd from Sir Alexander Campbell, Minister of Justice, in the Macdonald Government from 1881 to 1885, in which he says:

"Your suggestion of last night seemed to me infinitely better than anything I can draft this morning. It would be a favour for which I should be very grateful, if you would send me a draft of the resolution you would suggest. I send you the papers brought down, and my draft merely that you may see that I have been trying."

On another slip I find a memorandum from the Speaker, as follows:

"Mr. Todd will please to collect as many instances as he can find of the Speaker on an equality of votes voting in the negative on a motion to *introduce* a bill or other measure."

And on the back of the paper in Mr. Todd's handwriting are references and quotations from the Commons Journals of England of the 2nd April, 1821, with other cases in 1771, 1759, 1847, 1838, and, finally, one in 1841.

Lord Lorne, formerly Governor-General of Canada, in a letter from Kensington, in 1887, to Colonel Todd, amongst other things says:

"I shall never forget his anxious, patriotic and conscientious caution in talking over constitutional questions. I found in him a most rare union of utter disinterestedness, with clear and impartial and yet deeply held convictions. His constitutional writings will live as a record of what may prove a development of democratic institutions superior to the development at home. Whatever the hidden future may bring, people will turn to what he has said as a light and guidance in the very intricate problem contained in the evolution of popular government."

I have two additional letters from Lord Lorne which may interest the reader:

"Private.

Government House, Ottawa.

26th April, 1881.

Dear Mr. Todd,—

I desired to speak to you yesterday at the Library on a subject which I could more easily talk over with you, than mention in a letter. The request that I wished to make was that you will allow me to recommend your name, (with that of one other distinguished Canadian only) for the Companionship of the St. Michael and St. George Order.

No one is more conscious than I that this will not represent what is justly regarded as your very distinguished position not only among Canadians, but among literary men at large.

Your acceptance will, however, enable me to mark Her Majesty's appreciation of your valuable work as an author, and would give me the greatest pleasure. Believe me, Yours truly,

LORNE."

"Kensington, Feb. 26, 1884.

My dear Captain Todd,—

Alas that we should have again to mourn with you so heavy a loss. My thoughts have been constantly with you since I heard of your dear father's 'Home-going.' The terrible suddenness with which he was called away must have been a great additional trial to you. It was only on the 29th December last that he was so good as

to write me a letter in reference to some papers I had sent to him, and I cherish much this and other memorials of him, for his opinion was one on which one could so thoroughly rely that I had on several occasions asked for his opinion. Canada has lost one of her greatest sons.

Believe me, Yours truly,

LORNE."

A review of the valuable services he gave to His Excellency the Governor-General—Lord Dufferin—at the time of the Pacific Scandal, 1873, will be of interest.

Mr. Huntington, a member of the House of Commons, charged that a corrupt bargain had been made between members of the Government and Sir Hugh Allen by which in consideration of a large sum of money being advanced for the purpose of obtaining the return of these members and their supporters at the ensuing general election, Sir Hugh Allen and his friends should receive a contract for the construction of the Canadian Pacific Railway, and asked for the appointment of a Committee of Inquiry. At the instance of the Government this motion was refused, but later Sir John A. Macdonald moved for the appointment of a Royal Commission to inquire into the charges. Parliament adjourned until the 13th August to receive the Committee's report. It had been commonly understood that Parliament was to meet merely to receive an act upon the report of the Committee of Investigation, but the Committee had been unable to proceed with the inquiry owing to the fact that it had no power to take evidence under oath. When the House met the Opposition was in full force and demanded that Parliament should proceed with the investigation, whereas the Ministry desired prorogation, and feeling was so high that some of the more extreme members went so far as to insist that the Governor-General should be called upon to dismiss his members without further ado. At this juncture the Governor-General had to decide upon his powers and duties and wrote the following letter to Mr. Todd:

"*Private.*

Montreal, Aug. 16th, 1873.

My dear Todd,—

Please let me have a Memorandum from you on this point.

The Prime Minister takes the pleasure of the Governor-General as to the date of prorogation and is authorized by him to announce that date to the House. No objection is taken. An adjournment follows as in the present case and the distance to which members have retired to their several homes precludes communication with them.

Query supposing the Government should wish to alter the date of prorogation, could it do so?

Would it be competent for a member unable to attend to enter a protest against the House proceeding to business under these circumstances?

Does he possess any remedy or means of rendering his protest effectual?

What is the shortest period allowed by law between prorogation and the re-assembly of Parliament?

Who regulates the assembly of Parliament in the case of any emergency?

I am giving you a deal of trouble, but it is a great comfort to be able to refer to such an authority.

I hope you did not disapprove of my reply to the address of the members. A good many links were wanting, but I am in hopes no unsound thing was put in.

Yours sincerely,

DUFFERIN."

"*Private.*

Citadel, Quebec.

Sept. 15th, 1873.

My dear Todd,—

You have already been kind enough to favour me with the observations which occurred to you in regard to Prorogation.

By this time you will have seen the various criticisms and objections which have been evoked by the issue of the Commission. If it is not trespassing too much upon your time, might I ask you to let me have a confidential memo. containing your reflections on this subject.

Yours sincerely,

DUFFERIN."

"*Private.*

Citadel, Quebec.

Sept. 30th, 1873.

My dear Todd,—

Many thanks for your second letter, which, like its predecessor, had added much to my Constitutional lore.

Apart from the question of the constitutionality of the Commission—which we will leave aside for the present—I was sensible from the outset of the extreme importance of requiring it to sink its judicial in its inquisitorial character, and preventing it from appearing to anticipate the ultimate verdict of the House of Commons. It is in this direction I imagine the suggestions in your last letter point, and I am happy to think that at all events your high authority so far countenances the view I have taken.

Did you see Mr. Blake's suggestion about the constitution of what he called a 'Parliamentary Commission,' i.e., a Commission appointed by Act of Parliament? Would that be a feasible plan?

Yours sincerely

DUFFERIN."

We have the best evidence of the advice given him—although we have not his letters in reply—in Todd's *Parliamentary Government in the British Colonies*, 2nd edition, pages 642 and 643, where he says:—

"During a period of extraordinary popular excitement, he (Lord Dufferin) held the balance between the contending parties with strict impartiality. Although the question at issue was one of local concern, he did not therefore conclude that he had no authority to determine it. The honour of his ministers and the credit of the country were at stake, and it behooved him to be satisfied that none but men of honour and of personal integrity should fill the place of his constitutional advisers, and should wield the authority of the Crown. But he would not hastily assume corruption until it should be proved to exist. He therefore resolved, in the first instance, to leave to Parliament to ascertain the truth or error of the charges, before he pronounced judgment upon the question. And when the Parliamentary inquiry temporarily failed upon technical grounds, he promoted and encouraged immediate investigation by means of a Royal Commission, not with intent to withdraw the case from the ultimate cognisance and control of the House of Commons, but to enable him to obtain from his Ministers in open court those explanations in regard to their conduct which circumstances had rendered necessary, and upon which he had a right to insist.

Throughout all these painful and embarrassing events Lord Dufferin never lost sight of the fact that he possessed reserved powers, amply sufficient for the occasion, whatever might be his final convictions upon the merits of the case. 'Of course,' he said, in writing to the Secretary of State, 'it was always open to me to have dismissed my Ministers, and to have taken my chance of Parliament approving my conduct, but I did not feel myself warranted in hazarding such a step on the data before me.'

In reply to this dispatch, Lord Kimberley says: "I agree with your Lordship in the satisfaction which you express that the result arrived at has been reached by a strict application of constitutional principles, and by the regular working of the machinery of a free Parliament; and I have much pleasure in conveying to you Her

Majesty's entire approval of the manner in which you have acted in circumstances of no ordinary difficulty."

In the official biography of Lord Dufferin, by Sir Alfred Lyall, very naturally all the credit is given to Lord Dufferin personally for his conduct in these trying circumstances. Todd's name nowhere appears in this biography.

I have also before me a letter written by the Consul-General of Japan to Colonel Todd, in which he says:

"Prince Ito says that though the late Dr. Todd was not directly asked for suggestions, his books, particularly the History of English Parliament, were constantly consulted by the committee which were composing the written constitution of Japan, and greatly influenced its formation, and that when the political parties of Japan were endeavouring to establish practices and proceedings of the new parliament, the books referred to were found to be invaluable references. It may be safely stated, therefore, that through his books Dr. Todd contributed largely towards the organization of the parliamentary government of Japan."

I may close these references by citing from the *London Spectator*, 29th September, 1923, an article entitled: "The Right to Advise a Dissolution."

After traversing the question, the writer points out the error Prime Minister Baldwin committed after he felt he could not be responsible for the government of the country without Tariff reform; that he should have handed in his resignation to the King without advice as to a successor, so that choice of a new leader could have been made from the largest party in the House and the Conservative cause saved till the end of the legal term of Parliament. "For authorities," he says, "one has only to refer to Sir William Anson, Mr. J. A. R. Marriott, and especially Todd in his *Parliamentary History of England*."

That the hand of Dr. Todd is to be found in the framing and drafting of the Quebec resolutions and the B. N. A. Act, I have no doubt, but can find little direct evidence to support my conclusion.

He published the first volume of his work in 1866 with material which should naturally have appeared in volume two, because of the negotiations then pending towards Confederation. He says in the preface to the second volume, as follows:—

"The publication of the earlier volume was, in fact, undertaken sooner than I had originally contemplated from a desire to place it in the hands of prominent men in Canada before the constitution of

the new Dominion should be enforced, trusting that it might be helpful in the settlement of various political questions which were likely to arise at that juncture."

No one can study his works without being impressed by their lucidity, purity of diction, and felicity, as well as dignity of expression. I will only quote the beginning of his general introduction:

"The Government of England is conducted in conformity with certain traditional maxims, which limit the exercise of all political powers therein. These maxims are, for the most part, unwritten and conventional. They have never been declared in any formal charter or statute, but have developed, in the course of centuries, side by side with the written law. They embody the matured experience of successive generations of statesmen in the conduct of public affairs, and are known as the precepts of the constitution.

The principle of a constitutional or parliamentary government is essentially different from either that of a republic or of a despotism. A constitutional king is not responsible to the people, but he is bound by the laws; he is not free to govern as he pleases, but must rule in conformity to the recognized usages of the constitution, and in subjection to its fundamental precepts, which regulate and define the rights and privileges of all classes and estates in the realm."

His official life can be shortly stated: In 1834 he was employed on the staff of the House of Assembly of Upper Canada, and in 1836 became assistant librarian to the House. Upon the union of the two provinces of Canada in 1841 he was made assistant librarian to the Legislative Assembly and became principal librarian in 1854. In 1856 he was sent to England to spend £10,000 on books for the library. After the provinces of Canada were federated he was appointed librarian of the Parliamentary Library, an office he retained up to the time of his death in 1886. In 1881 he received the honorary degree of L.L.D. from Queen's University, and was made a C.M.G. by Her Majesty, Queen Victoria.

He had a strong bent towards Biblical and theological study, and in 1837 he entered the ministry of the newly-constituted Catholic Apostolic Church and devoted to it a large portion of his time, with great earnestness, up to the time of his death.

He lived a placid, gentle and almost cloistered life. His memory will be cherished in Canada so long as high mental attainments continue to be valued, and while the great constitutional principles upon which British liberty is based remain in the ascendant in our country.

E. R. CAMERON.