

NOVA SCOTIA'S BLACKSTONE.

The purpose of this article is to mark the centenary of an unique work; *An Epitome of the Laws of Nova Scotia*, by Beamish Murdoch, printed at Halifax by Joseph Howe, 1832-33.

Elsewhere I have written of the intellectual awakening of Nova Scotia in the period between the War of 1812 and the trial of Howe for criminal libel in 1835. It was a period when schools, colleges, newspapers, magazines, and clubs were being founded and were embarking with energy upon their varied pursuits. It was a period when the local legislature was examining critically every department of church and state and was busy with reform legislation. These spacious days produced a digest of all the laws that had been made by the legislature during the seventy years of its existence; and they also revealed the fact that local talent in Nova Scotia was both conscious of its opportunities and alert to the work of others in the English-speaking world.

Murdoch, whose work is commemorated herein, was entirely a product of Nova Scotia. He was a grandson of Rev. James Murdoch, a Presbyterian minister, who came to Nova Scotia, from the north of Ireland, in 1766, and for twenty-three years served his pioneer and scattered flocks with fidelity and zeal. His maternal grandfather, Thomas Beamish, was also a public-spirited citizen, who acted as port warden for Halifax in the later days of the American Revolution. His father, Andrew Murdoch, learned business with his maternal grandfather, Malachi Salter and later embarked upon a financial career of his own. After the death of his father-in-law, Thomas Beamish, he became involved in an expensive lawsuit and spent seven years in prison for debt. Because of this his son, Beamish, had to be supported and educated by a maiden aunt; and his father's experiences in prison no doubt motivated and informed his first legal effort, an *Essay on the mischievous tendency of imprisoning for debt*, (Halifax, 1831).

Beamish Murdoch was born at Halifax in 1800. He was admitted to the Bar in 1822. From 1826 to 1830 he represented Halifax in the House of Assembly. For several years he was editor of the *Acadian Recorder*; and, in 1849, he was chosen to deliver an oration on the centenary of the founding of Halifax. In the decade 1850 to 1860 he was Recorder for the City; and during the next seven years he was occupied with his *History of Nova Scotia*, which appeared in three

volumes, 1865-67. He died at Lunenburg in 1876 and was buried in the family plot of Senator Kaulbach.

Though Murdoch was a lawyer by profession and for several years a successful practitioner at the Bar, his tastes were essentially literary and historical. It was as a scholar and a gentleman that he impressed his contemporaries. One of these writing in the *Acadian Recorder* of October 11, 1863, under the pseudonym of Max, gives a very sympathetic view of Murdoch in contrast to other lawyers of his day. He describes him as, not tall, with a finely moulded head, considerably bald, soft hazel eyes, a kindly intelligent face, and a mouth that has "a peculiar twist while listening." Capable of conversing volubly yet quietly, eager to talk of the present as well as the past, he is courteous to a fault and willing to impart information without fee. "He is, I believe," continues Max, "a pretty sound and well-read lawyer. He has epitomized the laws of this province, and his book has done good service to others if not to himself. He is not unfrequently in the court, but always with an easy smile and a quiet voice and the demeanour of a gentleman."

"What I like him for is that he seems to have followed the law more for the love of its science and its literature, and not to amass wealth or climb into the petty places which our politicians have to bestow. I like him moreover because he clings to the past. He is one of the few who have come out of the olden time with the fine aroma and sense of honour which belonged to it. The grasping, avaricious, sordid desires which burn the noble sentiments out of some lawyers' natures seem not to have sunk into his grain. He has brought something of what is well worth preserving out of the past generation of lawyers to diffuse among the aspiring limbs of to-day."

When this character sketch of Murdoch was written he was sixty-three years of age; but, when he completed his epitome of the laws of Nova Scotia, he was only thirty-two. The *Epitome*, then, is remarkable not only for its early appearance in Nova Scotia but also for the youthfulness of its author. It is remarkable, too that another youthful Nova Scotian, Joseph Howe, twenty-eight years of age, who had already lost heavily on the patriotic venture of publishing Haliburton's history of his native province, should have undertaken to print a work with such a limited market as an epitome of the laws of a single province. But all three youths reflected the spirit of the new age; and, because of this, our generation of Canadians owes a heavy debt of gratitude to the two authors Haliburton and Murdoch and to the publisher Howe.

The prospectus of the *Epitome* appeared in the *Novascotian* of February 24th, 1831. It was to be published by subscription, in four volumes, at eight shillings per volume, half-bound, or six shillings and sixpence, in boards. The first volume was to be put in press as soon as subscriptions would ensure the expenses of publication. Agents for receiving subscriptions were named in Halifax, Windsor, Pictou, Truro, Sydney, Annapolis, Kentville and Lunenburg. This advertisement appeared consistently in the *Novascotian* until the first volume was issued on April 21, 1832. On May 3rd, three columns of editorial space in the *Novascotian* were given up to extracts from this volume. On July 19th, the second volume was promised soon and the subscription agency was extended to St. John, Quebec and Montreal. This volume appeared in October; and, on November 1st, five columns of extracts were published in the *Novascotian*. On December 6th, volume three was promised in a few weeks. It was published during the last week of March; and extracts from it appeared in the *Novascotian* of May 22, 1833, with the note that the legislative reviews had left no room for these extracts from a volume that had been before the public for some weeks. The completion of the fourth volume was referred to in the *Novascotian* of August 1st; and a conditional promise was made for a fifth volume, comprising local laws, although the original prospectus had offered only four volumes and the subscribers had already received "100 pages more than was promised." Apparently both author and printer found the burden of a fifth volume too heavy. At any rate it was not published.

What interest was shown in this notable undertaking by Upper and Lower Canada I have been unable to discover; but the first volume was favourably received in New Brunswick and reviewed at length by a competent critic in the *St. John Courier*. Extracts of this review were copied in the September number of the *Halifax Monthly Magazine* and extend over seven pages. Half of this review deals with the *Epitome* as showing Murdoch to be both "a lawyer and a man of genius," the other half is devoted to an examination of his style, which the reviewer pronounces very well suited to his general design, but rather lacking in precision, "in laying down a definition." But on the whole the reviewer has nothing but praise for the work and expresses the opinion that it will be of great and lasting utility to the Province of Nova Scotia—a boon to Justices of the Peace and Legislators, for whom it makes technical language plain, and to students for whom "it will probably take precedence of Blackstone's *Commentaries*, and greatly assist their labours."

Differing somewhat from the prospectus, the *Epitome* finally appeared in four volumes of five books. Broadly speaking these five books comprise: the laws of government, public and private; the laws of real and personal property; civil courts and procedure; equity jurisdiction; and criminal jurisdiction. Volume five, which was still-born, was to have given an analysis of all the provincial statutes which were confined in their operation to particular towns or counties.

The preface to the first volume is an illuminating commentary on both the arduous nature of the task and the sources of the author's inspiration. This inspiration came from Blackstone's *Commentaries* on English law and Kent's, *Commentaries* on American law, together with the practical needs of a legal practitioner. The provincial statutes had been revised to 1826; but many acts had been passed since that date; and, despite Chief Justice Marshall's small index to these laws, it was difficult to discover which laws had been repealed and which still remained in force. Likewise, it was not easy to discover what provincial acts and customs had altered the English laws or what English acts still remained in force in Nova Scotia. These difficulties, that confronted all of the legal profession, suggested to Murdoch, "the usefulness of a work in humble imitation of the *Commentaries of Blackstone*, retaining such English law as we have adopted, and adding under each head or chapter the substance of provincial enactments that belonged to it." He modestly adds in the spirit of both the scholar and the patriot: "The employment and improvement of mind, and the interest he has felt during these three years in this pursuit, are in themselves no small reward for his labour; and if its usefulness will bear any proportion to the exertion bestowed on it, he will have no cause to regret the occupation of so many solitary hours."

In his introductory chapter Murdoch devotes a section to "the study of the law," on which he writes with warmth and vigour. He describes the obstacles met with by the student and the forbidding aspects of a law library, with its law-French and law-Latin, that tend to make his nerves "twitch with involuntary shrinking from the barbarous aspect of these Sibylline leaves." "The motley and tasteless jargon," he continues, "the obsolete dialect, the antiquated questions and rules, the puzzling contractions of the early Gothic type, and the mouldering dust, that unite in presenting impediments to the enquirer, seem to throw an impenetrable veil over the original features of our jurisprudence." But, "after some years of preparatory study are passed, (and passed not unpleasantly to an enquiring

mind) the apparent mystery and confusion vanishes, and at length in the piles of ancient and modern law-writings, that he once viewed as a chaotic heap of incongruous and often absurd materials, to all appearance inextricably jumbled, he now perceives the repository of the ideas and experience of ages upon ages, collected originally from time to time, by men of learning and judgment—arranged so well as to afford great facilities for investigation—and illuminated by the genius and powerful understanding of many a celebrated name of no inferior grade of intellect.”

He points out that in Nova Scotia the lawyer's business embraces all phases of law. That he may have to perform all the functions that in England are performed by Counsellor and Attorney, Barrister, Special Pleader, the Equity lawyer, the Civil lawyer and the Conveyancer. He recommends a university education for the student, and he deplors the haste with which many young men are hurried from the schools into an attorney's office, and thence into practice, without having had time to acquire a general education or to form a taste for general literature. At the same time he warns the student that the very best education cannot bestow intelligence or talents. They are gifts of God. But, other things being equal, the educated lawyer will find culture, illumination, and humanity in science and literature. He concludes the section by drawing up a course of study for legal students, a course that would require four years to complete; and he lays down rules for forming correct and regular habits of reading.

All this was valuable at a time when there was no law school in Canada and fifty years before Dean Weldon commenced his monumental labours at Dalhousie.

Of the work as a whole both his contemporaries and lawyers of the present day speak with respect. The editor of the *Halifax Monthly Magazine* assured his readers that a clear and well-written abridgment and commentary of the laws would prove useful to every class of the community. This was a modest estimate. The editor of the *Novascotian* commended Murdoch for devoting his leisure hours to the composition of a work that, while benefitting his country, could not fail “to elevate the character of its author.” Both these prophecies have been fulfilled.

It is true that the work has become less important, through the passing of time and the continuous stream of statutes that has flowed from the legislature. It is true also that works of a special nature have been written on phases of Nova Scotian law and jurisdiction and that law schools have been organized to pilot students

through the mazes of their subject. But the fact remains that no single writer, before or since Murdoch, attempted an epitome of all the laws of Nova Scotia or of any other Canadian province. Murdoch therefore stands as a pioneer in the field of rendering provincial laws intelligible to the general community; and he speaks to us out of the leisure and faith of the last century with haunting importunity. He will always remain of interest to the historian of Nova Scotia in general and of Nova Scotian law in particular. Moreover, he and his work stand as evidence of that intellectual awakening of Nova Scotia which marked the period between the War of 1812 and the Age of Howe.

D. C. HARVEY.

Halifax.
