

GEORGE SMITH HOLMESTED.

AN APPRECIATION.

With the death of Mr. George S. Holmested, K.C., whose lamented demise was noticed in the February number of the REVIEW, at page 145, there passed away perhaps the most familiar figure at Osgoode Hall for more than half a century. By his death the Courts of the Province, the legal profession of Ontario and the public have lost a learned and efficient officer.

He was born on the 15th March, 1841, within sound of the famous Bow Bells, at 40 Bedford Row, Holborn. In 1857 he accompanied his father to Toronto. His father was Arthur Holmested, an English solicitor, whose family had lived at Braintree, Essex County, for many generations, several of his ancestors belonging to the medical profession.

Upon his arrival in Toronto Arthur Holmested obtained employment as clerk in the office of the Registrar of the Court of Chancery, and in 1868 he was appointed by the Judges as the first Clerk of Records and Writs of that Court. He held that office until his resignation in 1880. It was said of him at the time of his death that "he was an excellent officer and by his strict attention to his duties and courteous demeanor he won the respect and confidence of all those with whom he came in contact."

The son faithfully followed in his father's footsteps. Their combined term of service covers a period of no less than seventy years in the history of Osgoode Hall. During that time seventy-one Judges have dispensed justice in the Superior Courts of Ontario.

George S. Holmested began the study of law in the office of Mr. John Hector, K.C., two of his fellow students being Sir William Mulock, Chief Justice of Ontario, and the late R. T. Walkem, K.C., who practised in Kingston for many years and was Chancellor of the Diocese of Ontario.

After being called to the Bar in 1865, he practised law for some years in Napanee and Toronto. He appeared for the defendant in the case of *Davey v. Cartwright*,¹ trespass for seizing and taking as a distress for rent, a mare exempt as plaintiff's troop horse, as an

¹ (1869) 20 U.C.C.P. 1.

officer of Militia. The jury found for the plaintiff. In Easter Term McKenzie, Q.C., obtained a rule nisi to enter a verdict for defendant on leave reserved. Holmested shewed cause in Michaelmas Term, when the case was heard before the Court of Common Pleas. Hagarty, C.J., Gwynne and Galt., JJ., and the jury's verdict stood.

Mr. Holmested was appointed by Sir Oliver Mowat Referee in Chambers in the Court of Chancery on 16th December, 1872, when he entered upon his duties. Until the fusion took place in 1881 under the Ontario Judicature Act, the Common Law Courts of Queen's Bench and Common Pleas and the Court of Chancery flourished side by side at Osgoode Hall.

Trained under the strict regime of the great Judges of the past, Mr. Holmested discharged with meticulous accuracy the functions of the important offices which he occupied—Registrar of the Chancery Division, Referee and Inspector of Titles, Senior Registrar and Accountant of the Supreme Court of Judicature. Chief Justice Falconbridge once remarked that of all the officers of the Courts of Ontario Mr. Holmested most nearly resembled officials occupying similar positions in the English Law Courts.

In 1920 he was appointed Registrar in Bankruptcy by Chief Justice Sir William Meredith, and he held this position until his death.

Until his retirement in 1923 he was Senior Registrar of the Supreme Court and was the author of several works extremely useful to both Bench and Bar. He was the joint author, with Mr. Thomas Langton, an able lawyer, of the "Ontario Judicature Act and Rules," which passed through four editions, that monument of patient industry. By it he will be remembered longest by the profession, to whom it has been an invaluable guide in ascertaining the practice of the Courts, upon which he was an outstanding authority.

He was much interested in ecclesiastical law, of which he was a close student, and about which he often wrote. He was a valued contributor to the *Canadian Monthly*, *Canada Law Journal*, and *CANADIAN BAR REVIEW*.

He was abstemious in his habits and a constant walker, walking four times a day from his house on St. Albans St., via Queen's Park and University Avenue, to Osgoode Hall. He much enjoyed playing a game of golf, which he took up in his later years.

His work was always characterized by extreme precision and accuracy. Amusing stories are told of the way in which he settled Orders and judgments of the Court. There were very few practitioners who ever succeeded in having a judgment settled by him without considerable revision.

The writer is indebted to Miss V. L. Parsons, of the Ontario Bar, for the following pen portrait of Mr. Holmested: "A small, old man, round-featured and pink-cheeked, seated at a wide desk, unperturbed, apart, seemingly unaware of the lawyers and students crowding the narrow room or of anything but the document in the outstretched hand on his left,—an order—and it will be wrong of course, and for a moment it is surveyed a little wearily. There have been many such. Then with neither ire nor pity, word by word, phrase by phrase, in fine script it is corrected, interlined, altered, re-arranged, rewritten. True, there are forms and precedents and doubtless there have been other orders, very similar, but an exacting mistress is the law, of infinite variety. No slavish copy will serve her needs. Word and phrase must bend to fact and circumstance and sentence follow sentence with inevitable sequence. Clarity, brevity, simplicity! He writes 'and having writ, moves on—nor all thy tears wash out a word of it.'"

While exercising judicial functions, Mr. Holmested was as industrious in other spheres. Volume 6 of the Ontario Practice Reports contains many learned judgments of his on points of practice. He was not always upheld on appeal. His judgment in *Fraser v. Home Insurance Co.*,² on the production of documents by a party having a joint interest in them with a stranger to the suit, may be referred to as an example of a well-reasoned judicial deliverance. In later years, as Registrar in Bankruptcy, he took a considerable part in settling the practice. Many of his judgments are noted in vol. 19 and subsequent volumes of the *Ontario Weekly Notes*, and in the Canadian Bankruptcy Reports. *Re Andrew Motherwell of Canada Ltd.*,³ affirmed by Mr. Justice Orde,⁴ dealing with the nature and extent of a solicitor's lien for costs before assignment, may be mentioned.

He was of literary tastes, a man of culture and versatility. He frequently amused himself by writing verses and acrostics. The writer has had an opportunity of examining a number of pen and

² (1873) 6 P.R. 45.

³ (1901) 20 O.W.N. 306.

⁴ 21 O.W.N. 108.

ink sketches made by him of Judges and members of the Bar, many of which are well worthy of preservation. He had a quiet sense of humour and frequently wrote to the public press. At the time of his death he had nearly completed an article on companionate marriage, which he heartily abhorred.

He was a patriotic and ardent lover of the British Empire and a devoted member of the Church of England. His widow—daughter of the late Rev. A. F. Atkinson, D.D., formerly Rector of St. Catharines, Ont.—and a son and daughter survive him.

Toronto,

ANGUS MACMURCHY.

Mr. Henry O'Brien, K.C., Editor of the *Canada Law Journal*, which, as our readers are aware, was in recent years merged in and succeeded by the CANADIAN BAR REVIEW, desires to thank the present organ of the legal profession in Canada for this opportunity of expressing his grateful remembrance of Mr. Holmsted's kindly interest in that journal in its endeavour in those days to be of use to the Bar. His wise advice, so often asked and as often given and acted on, his large store of information on legal subjects, as also his practical suggestions, were always at its service; whilst occasional articles contributed to its pages were most valuable and gladly read and appreciated by the profession. His sympathetic interest in all worthy objects will long be remembered.
