

SIR WALTER CASSELS.

BY THE HONOURABLE MR. JUSTICE MIGNAULT.

The late Sir Walter Cassels died in Ottawa on Thursday morning, the 1st of March, 1923, having completed almost to the hour the fifteenth year of his service on the Exchequer Court Bench, to which he was appointed on the 2nd of March, 1908.

I met him for the first time in Montreal in September, 1905. He had gone there to try before the late Mr. Justice Burbridge of the Exchequer Court two patent cases: *Copeland-Chatterson Co. v. Hatton* and *Copeland-Chatterson Co. v. Paquette* (10 Can. Exch. Repts. 224, 410). With Mr. Perron, K.C., now Bâtonnier of the Montreal Bar, I represented the defendants, while Mr. Cassels, as he then was, appeared for the plaintiffs with Mr. Raney, now Attorney-General of Ontario, and the trial was a long and hotly contested one. It was my good fortune while at the Bar that not infrequently I made lifelong friends among my opponents, and the keener the struggle, the greater often became the mutual sympathy which grew out of the din of battle. Mr. Cassels was then one of the leaders of the Ontario Bar, also an acknowledged authority on patent law, and I must confess that I had some misgivings as to the result of the encounter. In the event, however, honours were evenly balanced, for Mr. Cassels succeeded in one of the cases and I in the other. But the most important consequence to me of this chance meeting was that I felt I had won a new friend, which was far better than any forensic success. From that day until I saw him for the last time, Sir Walter Cassels—who soon after the judgments in our cases succeeded Mr. Justice Burbridge on the Exchequer Court—always extended to me his kindly consideration and warm friendship, and he was among the first to greet me when in my turn I came to Ottawa to take a seat on the Supreme Court Bench.

Perhaps I may be pardoned for making this personal reference. My excuse is that reminiscences of this kind are natural when we bid a last farewell to a revered friend. Memory then brings back to our minds, often with singular vividness, the happy days of the past, gone forever, it is true, but not forgotten.

In a way, Sir Walter Cassels belonged to the two oldest provinces of the Dominion, for he was born in the city of Quebec and he received his university education in Toronto University. He was called to the Bar at Osgoode Hall in 1869, and went on the Bench after thirty-nine years of very active practice at the Bar. At his death he was President of the Exchequer Court, and by virtue of a recent amendment of the Supreme Court Act, he was at times called upon to act as an *ad hoc* judge in the Supreme Court of Canada.

It thus became my privilege on several occasions to be associated with Sir Walter Cassels in the hearing of appeals before the Supreme Court. I may say without affectation that I derived the greatest benefit from this association. Sir Walter had the happy faculty of illustrating his point by apt examples, and his mind was a well-stocked store-house of precedent and legal lore. I always admired his quick perception, his openness of mind and especially his habit of brushing aside technicalities and irrelevant details so as to focus his attention on the vital point which alone matters for the decision of most of the cases which are brought before the courts.

It is especially true of judges, even more than of other men, that they are to be judged by the work they have done. They take a share, often a most important one, in the building up of the law, in the construction of statutes and in the co-ordination of that great body of jurisprudence whence are derived the legal principles which govern the relations of citizens with each other and with the State to which they belong. It is not for me to speak of Sir Walter Cassels' contribution to the science of jurisprudence during his occu-

pancy of a seat on the Exchequer Court Bench. His Court was of comparatively recent creation when he was called upon to preside over it. It has grown with the country, its scope and jurisdiction have greatly increased, and after fifteen years Sir Walter Cassels leaves it in a truly commanding position among the Courts of this Dominion.

The arbitration between the Canadian Government and the Grand Trunk Railway Company and allied interests over the acquisition of the lines of the latter by the Government, was probably the last case of outstanding importance with which Sir Walter Cassels, who was selected as umpire by both parties, was connected. The proceedings were unusually lengthy and no doubt imposed a severe tax on the learned Judge's strength. I refer to this case merely because his selection as umpire shews to what extent Sir Walter enjoyed the confidence of his fellow-citizens.

I have hitherto spoken of Sir Walter Cassels as a Judge, but I must not forget to say a few words of his qualities as a man. Emphatically a gentleman in all that the word imports, he belonged to what, conventionally at least, is termed the old school. His courtesy was all the more charming because it was so natural. He was a delightful talker and had a great fund of anecdote and a rare sense of humour. I could sum it all up by saying that he was intensely human, and that made him keen in sympathy and quick to respond to emotion. His cheerfulness and his almost youthful vigour and spirits always impressed me. I never heard him complain when I called on him after he was forced to remain indoors and to suspend his active work. In fact, I doubt whether he entirely stopped working and reading until near the end, for he loved to discuss cases and books, and so buoyant was he in disposition that the last time I saw him, about two months before his death, he fully expected to return to his judicial duties in a very short time.

Another trait of Sir Walter Cassels' character was his love of children. He was devoted to his grand-

children and loved to speak of them. He came once to my room in the Supreme Court to tell me about some letters they had written him, and which he had faithfully answered. He seemed to understand the child's mind, and that, I think, showed his great versatility. In a word, he had fully mastered what Victor Hugo called *l'art d'être grand-père*, and I am not sure that it is the easiest of the arts to practice, although unquestionably it is one of the most amiable.

It seems difficult to realize that a man who was so truly loveable has gone forever from amongst us. Forever, perhaps, is not a word which we should use if we have the blessed gift of Faith. Not the least of the mysteries of life is the mystery of its ending. And does it really end? I cannot help thinking of the beautiful words which, in the Church to which I belong, are chanted in the Preface of the Mass for the Dead. *Vita mutatur, non tollitur*. Life is changed, not taken away. But it is not for me to dwell on these mysteries of the hereafter, nor would this be the time or place. Perhaps I may at least say that the dead have still a message for the living, the lesson of the lives they have lived, the example they have given to us all. And it seems to me that Sir Walter Cassels will still live among us by the memory of his laborious and unselfish life. We will be all the better for having known him and for not forgetting him now that his task is done.
