

**THE RIGHT HONOURABLE CHARLES J. DOHERTY.**

## AN APPRECIATION.

I must go back to my school days to find the origin of my life-long friendship for "Charlie Doherty," as we then called him. He was a student, one class ahead of my own, at St. Mary's College in Montreal. My earliest recollections of him centre around what, for us, was the greatest day of the college year, the day of the distribution of prizes which preceded the long vacation. And our wonder always was how Charlie Doherty could manage to carry all the books awarded to him for proficiency in his studies. I have still a vision of him, struggling to maintain the unstable balance of a pile of books which reached to his chin, and climbing again to the stage of the Academic Hall to receive more. And when a last book proved to be the proverbial last straw, and the unwieldy pile tumbled to the floor, we boys applauded with all our boyish might.

It was only natural, therefore, that Charlie Doherty should have been one of our College heroes. It was natural also that we predicted that great things were in store for him when he left College and went to McGill University to study law. To our boyish imagination that was the sure road to success, for we then believed that the Bar leads to everything. The profession of the law had an almost irresistible attraction for us, and all of my graduating class went to the Bar.

If my memory serves me right he cut off one year of his college course to gain a year in his legal studies at McGill. There he was two years ahead of me, as well as nearly two years my senior at the Bar. In his graduating year at the University, he came out first with Mr. J. N. Greenshields (still with us), and the Faculty had to provide for them two gold medals, the Elizabeth Torrance Gold Medal for General Proficiency in law.

\* \* The reader will pardon me if I begin, by old but still vivid memories of by-gone days, what is not intended to be a mere biographical sketch of "Judge Doherty"—that is another name which stuck to him—but rather an appreciation of his career and character, which may encourage ambitious young men just placing their feet on the first rungs of the ladder of life. Moreover, the salient events of such a biography may be stated in very few words. He was called to the Bar in January, 1877, and served in the North-West Rebellion of 1885 as Captain of one of the companies of the

65th Rifle Regiment of Montreal. He was appointed a puisne judge of the Superior Court of the Province of Quebec in 1891. He held this office for fifteen years when he resigned and in 1906 returned to the Bar. In 1908, he was elected to Parliament for St. Ann's Division, Montreal, and appointed Minister of Justice in the Borden Government in 1911. Before receiving that appointment he had been one of the professors of Civil Law at McGill. He served as Minister of Justice for nearly ten years, becoming in 1920, an Imperial Privy Councillor. He then retired from public life and returned to the Bar. He died on July 28th, 1931.

\* \* Apart from the preliminary years of preparation, and his first fourteen years of practice at the Montreal Bar, the career of the Right Honourable Mr. Doherty may be divided into two periods: his service as a judge of the Superior Court at Montreal, and his ten years of political life as member of Parliament and Minister of Justice. The closing years of his life were devoted to professional counsel work at the Montreal Bar, during which time he was heard several times before the Supreme Court of Canada, and the Judicial Committee of the Privy Council.

\* \* Of the two periods I have mentioned, the first is the one I know best, for I practised at His Lordship's bar. With the second period, I can deal only according to common repute. I will therefore speak mainly of Mr. Doherty as a judge.

Before I come to his contribution to the science of jurisprudence, however, I may be permitted to say that the characteristic of mind which struck me most in the subject of this sketch, is what I may call his judicial temperament, and in that regard, as well as in many others, he closely resembled the late Sir John Thompson. I do not think that, even at the Bar, he could help seeing both sides of a case. Very often he used to discuss with me the ethical problem referred to in that delightful address of Maître Payen, the *Bâtonnier* of the Paris Bar, which the *CANADIAN BAR REVIEW* published in its September number (Vol. 9, p. 490). The problem is this. Can a lawyer defend a civil case (there can be no question in a criminal case) when, in his inner conscienciousness, he has serious doubts whether his client is right? The proper answer to this problem is of course that given by Maître Payen, and we all know that in very many cases the real merits and the proper solution of the controversy can only be discovered when the judge renders his judgment after hearing both parties, and in a rare case perhaps not even then. My reference, however, to this problem, is because it suggests, in the discussions I have mentioned, the working of a judicial bent of mind.

The judicial temperament, which is akin to, but probably distinguishable from, what the French call "le sens critique" or better still "le sens légal," is undoubtedly a gift of the gods. In the opinion of some (I certainly think otherwise) it is a weakness for an advocate, but it is an admirable qualification for a judge. The legal sense or instinct—the French expression is difficult to translate—is an intuition, rather than a rule learned in the books, of the correct answer to a legal problem, and that is why I have said it is a gift of the gods, something like the gift of poetry—*nascitur poeta*.

I may seem to have digressed, but all the time I am dealing with the subject of this sketch, for I make bold to say he was born a judge, and he remained a judge during his parliamentary career. His judgments are terse, closely reasoned, and above all things perfectly lucid. The intricacy of a legal puzzle, I think, rather attracted him. He would not cut the gordian knot, he would unravel it. But for the fear of lengthening this article, I could easily have selected, among his reported judgments, many examples of his manner of dealing with cases, for they all bear the impress of his keen, analytical and critical mind. That, however, was the finished product. In its preparation he pondered long, and hesitated often, but his decision, when rendered, bore little trace of the effort. I remember the appreciation he once gave me of a brother judge: "He never doubts," he said, "nevertheless he is generally right." And perhaps he wished he himself had no doubts. But he triumphed over these doubts, and that is what chiefly matters.

What I can testify to, is that when Mr. Justice Doherty left the Bench, he carried away with him the unanimous esteem and regret of the Bar. But fortune had other things in store for him.

\* \* I do not feel qualified to express an opinion on Mr. Doherty's career in Parliament. What I do not doubt is that his judicial temperament found there ample opportunities for usefulness, as was the case, several years before, with Sir John Thompson, whose career in Parliament followed his term of service on the Bench. Another illustrious example was Sir Oliver Mowat. In the first years Mr. Doherty found himself a member of the Opposition but such was the reputation he achieved, that his choice as Minister of Justice, three years later, met with universal approval. The statute book testifies to his influence over legislation. It is needless to add that the advent of the Great War, and the necessity of enacting measures of an exceptional character, rendered particularly arduous the duties of the chief legal adviser of the Crown in Parliament. I think it is fair to state that, in the parliamentary

sphere, Mr. Doherty added to the reputation he had acquired on the Bench. During this second period of his public life, he went to Paris to take part in the negotiations leading up to the Versailles Treaty of Peace. If he kept a diary there, or if he left a memoir dealing with the momentous issues discussed during the elaboration of the articles of peace which he signed with the late Mr. Arthur Sifton on behalf of Canada, it is to be hoped that, at an opportune time, such materials for the history of the world may be given to the public.

\* \* While Mr. Doherty was Minister of Justice he took an active part in the foundation of the Canadian Bar Association of which he became the first Honorary President. All of the original members will remember the first meeting at Ottawa where the Constitution was adopted. There had been a long discussion over the first article which now reads:

Article I. This Association shall be known as "The Canadian Bar Association." Its objects shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective provinces, uphold the honour of the profession of law and encourage cordial intercourse among the members of the Canadian Bar.

The subject of "uniformity of legislation" was a delicate topic for the members from Quebec. That province is naturally greatly attached to its civil law, codified in the early sixties, and which goes back to the old *Coutume de Paris* and further still to the venerable structure of the Roman Law. We felt that "uniformity of legislation" might possibly be considered as implying a uniform system of common law in all the provinces, and if so it would be difficult to obtain the co-operation of the legal profession in Quebec. On the other hand we were convinced that our friends from the other provinces had no sinister designs on the civil law of Quebec. The whole question was to find a formula which would be acceptable everywhere. We struggled long and hard to discover this form of expression, and among the representatives of Quebec were such men as Eugene Lafleur and R. C. Smith. At last the Minister of Justice proposed to amend the draft article by adding thereto the qualification: "so far as consistent with the preservation of the basic systems of law in the respective provinces." This ingenious suggestion saved the day, and it also saved the Association. I think that in these times when the Association has become one of our greatest Canadian institutions, it should not be forgotten how much of that success is due to the subject of this article.

\* \* I have little to add to this sketch, which of necessity is fragmentary and incomplete, but that little must be consecrated to the modest and amiable personality whose loss we mourn. Of a reserved, some might think of a cold disposition, Mr. Doherty had a warmth of affection in friendship which is a delightful memory for those who were privileged to earn his regard. He knew how to unbend. This was especially noticeable when he was seen in his happy home, in the midst of his family, where he was at his best. His wit was brilliant and when put to the test his repartees were most effective. Seldom, however, did they leave a sting behind them. Many stories current at the Bar attest his ready wit, and it is to be hoped that they may be preserved among the chronicles of the Courts in Quebec. I think I can vouch for the latitude and longitude story, for in the course of a long and tedious jury trial concerning Portland cement, *Lyall v. The Glen Falls Portland Cement Co.*, presided over by Mr. Justice Doherty, the observation of the learned Judge was in answer to an application of mine for a little more latitude in the trial of a very difficult case. Such flashes of humour were like rays of sunshine penetrating even into the dismal precincts of a Court room.

These, however, were the lighter touches and the personal traits which, while they did not detract from but rather enhanced the admiration which we felt for the learned Judge, endeared him to us all. His sterling qualities as a lawyer, a legislator and a judge are now a matter of history. We will think of him as a good, a conscientious and a christian gentleman. No greater tribute could be rendered to his memory.

P. B. MIGNAULT.

Montreal.

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