

## WILLIAM FIRTH

*The Third Attorney-General of Upper Canada,  
1807-1811.*

BY THE HONOURABLE MR. JUSTICE RIDDELL.

(*Concluded.*)

A little later in the same year, Firth applied to Castlereagh for a Chief Justiceship; Allcock, who had been Chief Justice of Upper Canada, and then Chief Justice at Quebec, died of a "malignant fever;" the custom was to offer the Chief Justiceship at Quebec to the Chief Justice of Upper Canada; and Firth did not wish "to contravene the prior claim of Mr. Scott, Chief Justice of Upper Canada," but asked for that Chief Justiceship which should finally become vacant. He set out with some particularity and a little ostentation his "idoneity" and his claims: and procured a letter of recommendation from Gore with whom he had not yet fallen out.<sup>24</sup> The application was unsuccessful: Scott preferred to remain in Upper Canada,<sup>25</sup> and Jonathan Sewell, the Attorney-General, received the Quebec appointment.

<sup>24</sup> Firth's letter to Lord Castlereagh from York, April 4, 1808. Can. Arch. Q. 311, 2, p. 428. Gore's letter to Castlereagh of same date, Can. Arch. Q. 311, 1, p. 133—he says: "Since he came into this Province he has acted as a man of honour and a gentleman and I believe him firmly attached to the Laws and Constitution of England." but Firth's first account for fees had not yet been presented. April 3, 1808, Gore wrote to Cooke, Can. Arch. Q. 311, p. 65—"The Attorney-General is pushing hard to be made a Chief Justice. He had been with me about six months. I believe him to be a very honest and a very capable man. I am no judge of his professional abilities. Should you promote Mr. Firth, Lord Castlereagh has a situation of £1,500 a year to give away. Do not misconceive me: I do not presume to recommend Mr. Firth—I only speak of him as I think he merits."

<sup>25</sup> Scott wrote to Gore, March 26, 1808. Can. Arch. Q. 311, 1, 57. that he had heard of Allcock's death, that when he was appointed Attorney-General of Upper Canada he had been told by Under-Secretary King, by direction of the Duke of Portland, that he might expect to succeed to the Chief Justiceship of Upper Canada, and also to the Chief Justiceship of Lower Canada; but although the latter was superior in emolument, he preferred to remain in Upper Canada, as he could not express himself in French with any degree

In 1810, the Legislature again troubled Firth—this time, however, he had the Solicitor-General on his side. There was much dissatisfaction throughout the Province with the fees allowed Court officers and practitioners by the Judges of the Court of King's Bench under the Act of 1804<sup>26</sup>—on motion of David McGregor Rogers, the House of Assembly requested the Judges to lay before the House the table of fees fixed under the Statute: February 26, they complied with this request and it appeared that the same fees were allowed in Upper Canada as in England, in York as in Westminster. Thereupon a Bill was introduced fixing the fees to be taken in the King's Bench and was finally passed unanimously, March 6, on which day it was sent up to the Legislative Council: returned without amendment, March 8, it was assented to March 12, and became law.<sup>27</sup> This reintroduced the fee bill laid down in 1794 in the Statute creating the Court of King's Bench.

One would have thought the Act innocent enough, but the Law Officers of the Crown at York took alarm.

They joined in a solemn protest to the Privy Council against the Statute as

“by totally extinguishing the jurisdiction of the Court . . . as to the regulation of profes-

of propriety, he was totally unacquainted with the laws of Lower Canada and was too old to learn. It is about certain that Gore had informed Firth of this determination before Firth's letter to Castlereagh.

<sup>26</sup> (1804) 44 Geo. III. c. 3 (U.C.), gave the Court of King's Bench full jurisdiction over fees, “to be taken by any Clerk of the Crown, Council (sic) Attorney, Sheriff, Officer or other person” in respect of business in the King's Bench. The vacancy on the Bench caused by the death of Mr. Justice Cochran induced the Judges to lay over all but pressing matters, and it was not until April 19, 1806, after the arrival of Mr. Justice Thorpe, that Powell and he passed a *Regula Generalis* on the subject—it reads thus:

“It is ordered that in future the quantum of costs on all proceedings in the Court be governed by the rule of allowance in Westminster Hall, and that the practice of this said Court do conform in all possible respects to that laid down in Tidd and Sellon.” See Term Book, Easter Term, 46 Geo. III., April 19, 1806.

<sup>27</sup> (1810) 50 Geo. III. c. 2 (U.C.), repeating the Act of 1804 and reinstating the fees prescribed by the original jurisdiction Act of 1794. The proceedings in the House will be found in 8 Ont. Arch. Rep. (1911) pp. 323-4: 332, 339, 340, 353-4, 356-7; in the Council in 6 Ont. Arch. Rep. (1909).

sional fees of its own Court it thereby materially lowers its dignity and lessens the respectability of the Bar by making it completely subject to the casual and disorderly mandates of a popular Assembly."

### Complaining of the reduction of the costs

"it is our clear and candid opinion that the regulation . . . owes its rise to an insidious spirit of republicanism which seeks to reduce all orders of men to a level and to put the man of Science on a footing with the labourer—a spirit which the inhabitants of the colony from their perpetual intercourse and connection with a neighbouring country are but too apt to imbibe . . . the Bill in question is one . . . materially encroaching on the just prerogatives of the King by lessening and restricting the power and authority of the Judges of this Court . . . many minor objections exist which might be urged to demonstrate the inexpediency, crudeness, injustice and total inefficiency of the Act . . . but . . . a paramount and decisive objection to the Act is that it appears to us to be a species of innovation (borrowed from the popular institutions of a neighbouring state) directly levelling the King's Prerogative curtailing the power, authority and rightful jurisdiction of the Supreme Court . . . by vesting a capricious control over the King's Supreme Court in a fluctuating body to marshal out according to the capricious whim of the moment the precise compensation for professional fees for services of which they must be ignorant of the labour and extent of—in truth leaving such prescribed jurisdiction uncontrollably in the partial hands of the suitors themselves."

All this was terrible enough; but worse things must be said of the infamous Bill.

"We are also of opinion that the prescribed allowance of Ten Shillings on each Brief of Counsel instead of being *quiddam honorarium* to a Barrister is a reproach to the bestower but more

a dishonour to the Receiver and in whatever light considered is insulting and repugnant to the feelings of any professional gentleman who has had the education of a scholar and a lawyer or passed thro the Academic Walks of an English University or Inns of Court as introductory to the severe studies of Westminster Hall."

*Videlicet* William Firth—

The Judges came in for rebuke for not advising the Lieutenant-Governor to reserve the Bill for the Royal pleasure. And this precious stuff was signed officially by Attorney-General and Solicitor-General<sup>28</sup> and sent by Firth to Lord Liverpool, Lord Eldon (the Lord Chancellor) and Lord Ellenborough (the Lord Chief Justice). He was not satisfied with this; in a private letter to the Secretary of State he earnestly requests him to read the "formal and decided opinion of the Solicitor-General and" himself, that he might see the "danger justly to be apprehended from such vulgar republican innovations . . . the King's Prerogative . . . manifestly shaken . . . the Act so pregnant with evil and mischief to the Kingly Government."<sup>29</sup> Affecting to be upholding the dignity of the Court he cannot refrain from attacking the judges for approving such an Act, "I should hope the first instance of any of the King's Supreme Court voluntarily resigning up its own authority and jurisdiction." And all in vain.

In the same year occurred a famous proceeding at law which excited Firth's ire against the Judges—the

<sup>28</sup> This protest is to be found in the Canadian Archives Q. 313, 2, pp. 555. The Act of 1794 made a Table of Fees, one item being "Fee with Brief in matters under £30, 10s. (His Majesty's Attorney-General to receive one-third more). SS. 37, 38. In England a barrister cannot sue for fees, fees being *quiddam honorarium*; in this Province he always could sue for the fees prescribed by Statute. *Baldwin v. Montgomery* (1843) 1 U. C. C. R. 283; cf. *McDougall v. Campbell* (1877), 41 U. C. R. 322; 14 C. L. J. 213; *Armour v. Kilmer*, 28 O. R. 618.

<sup>29</sup> Private letter Firth to Liverpool, York, May 7, 1810, Can. Arch. Q. 318, 2, p. 527: the formal opinion seems to be dated July 20, 1810, but the true date is probably March 20, 1810, the obnoxious Statute having been assented to March 12, 1810.

story has never before, so far as I know, been told consecutively. In 1795 the Legislature provided a "Register Office" for each County and Riding and the appointment of a "Register"—the word "Register" is comparatively new<sup>30</sup>—a person of "sufficient integrity and ability" to each office with a provision for filling any vacancy "by death, forfeiture, or surrender" of a Register and for forfeiture of office for neglect or fraud.<sup>31</sup> There was no provision for forfeiture for any other cause. David McGregor Rogers, a Member of the House of Assembly, was appointed Register for Northumberland and Durham at Cobourg (Hamilton, as it was then called). In the Session of 1808, Rogers with two other members of the House, generally acted with Willcocks, a notorious malcontent, and formed a kind of opposition. Willcocks was gaoled by the House for a libel, and the other three continued in factious opposition; at length, March 5, 1808, they left the House without leave when the Speaker was about to put the School Bill to the third reading, and so left the House without a Quorum—they openly said that they would not

<sup>30</sup> See Vesey, "Decline of the English Language," p. 82, 1841, Registrar is a "novelty—recently, within the memory of persons now living introduced"—Murray, New English Dictionary *sub voc* "Registrar."

The word "Register" was used of the Clerk of the Vice Admiralty Court, and of the Clerk of the Prerogative Court at Quebec; the Quebec Ordinance of March 9, 1780, 20 George III. c. 3, gives the fees payable to the "Register" of the Vice Admiralty and to the "Register" of the Prerogative Court."

When the registration of deeds, etc., was provided for in the new Province of Quebec by the Ordinance of November 6, 1764, the documents were to be left with the "Register or Deputy Register": and when (as has been said) in Upper Canada the Statute of 1795, 35 George III. c. 5, was passed for the same purpose, "Register Offices" were established and "Registers" were provided for to attend to the duty of registering. It was in 1829 (I think) that the "Registrar" was first heard of—10 Geo. IV. c. 8—certainly the Act of 1818, 58 Geo. III. c. 8, speaks of the "Register or his Deputy," and the Act of 1828, 9 Geo. IV. of "The Register."

When in 1793 by the Upper Canada Act, 33 Geo. III. c. 8, a Court of Probate was erected to take the place of the former Prerogative Court, the officer appointed was a "Register," and it was not till long after that he became a "Registrar." See 38 Can. Law T. (May, 1918), pp. 292, 293.

<sup>31</sup> (1795) 35 Geo. III. c. 5, ss. 1, 3, 10 (U.C.)—this remained unrepealed until 1846, 9 Vic. c. 34, s. 1 (Can.).

return unless and until the majority should come round to their view and did not appear again that Session. Gore promptly deprived Willcocks of his Shrievalty and appointed Thomas Ward to succeed Rogers. Rogers refused to vacate his office or to give up the books to Ward, and Firth moved the Court of King's Bench for a mandamus to compel him to do so. He had every right to such a writ if the wording of Rogers' commission was right—it read “during pleasure,” but Rogers contended that this was an illegal and inoperative term not justified by the Statute. The Court, Scott, C.J., and Powell, J., ordered a mandamus nisi to issue, but after elaborate argument on two occasions by both Law Officers of the Crown and Rogers in person, the same Court held that a peremptory mandamus should not issue.<sup>32</sup>

Firth and Boulton both expressed their anger and indignation at the decision, and Gore was wholly justified in saying of them that they had been taking very improper means to injure the reputation of the judges in public opinion.<sup>33</sup> Firth wrote officially to Liverpool setting out the arguments he and Boulton had advanced, hoped that the injurious decision would be reversed as it was clearly against law, for affairs were not going on in the Province for the advancement of the King's honour or interest or “to the comfort and substantial benefit of true born Englishmen,” etc., etc.<sup>34</sup>

Gore asked the Secretary of State to obtain the opinion of the Imperial Law Officers; he did so, and they agreed with the Colonial Court.<sup>35</sup>

Another matter gave Firth a reputation for grasp-

<sup>32</sup> *Mandamus Nisi*, November 18, 1808, First argument and Enlargement till next Term, January 4, 1809. Second Argument July 10, 1809. Judgment, July 15, 1809. See the K. B. Term Books.

<sup>33</sup> Gore to Liverpool, September 25, 1810, Can. Arch. Q. 313. 2, pp. 498, 499.

<sup>34</sup> Firth to Liverpool, May 7, 1810, Can. Arch. Q. 331, 2, p. 527.

<sup>35</sup> The opinion of Sir Vicary Gibbs, Attorney-General and Sir Thomas Plumer, Solicitor-General, given from Lincoln's Inn, March 15, 1810, will be found, Can. Arch. Q. 313, 2, p. 518.

ing at fees—he refused to allow anyone to lay a Bill before a Grand Jury without his sanction, and demanded a fee of two guineas for putting his name on the Bill. This was brought to the attention of Mr. Justice Powell by David McGregor Rogers at the Spring Assizes at Newcastle (on Presqu'isle, near the present Brighton), the District Town of the District of Newcastle; Powell consulted the Chief Justice and with his approval complained to the Governor—recommending a new system upon which our present County Crown Attorney system to some extent was founded.<sup>36</sup> Before any change could be made, Firth was across the ocean; and the proposed reform was forgotten.

On one occasion at least the Governor acted most arbitrarily with the Attorney-General; in the summer of 1810 he had arranged to go the Eastern Circuit where there was a greater pressure of business than usual—seven informations for smuggling, two against Justices of the Peace for illegal performance of the marriage ceremony, indictments against coiners, burglary, larcenies of the King's stores, etc., the Crown Business being many times that on the Western Circuit, where were only three criminal charges in all; moreover Firth had left many remanets the previous Assize and was retained in the chief of the new causes, while he had not a single brief on the Western Circuit—his claim to select his own circuit as a matter of right was properly disallowed, but the peremptory order to take the Western Circuit was inexcusable. Firth rightly complained that this was taking away the daily bread of himself and his innocent family.<sup>37</sup>

Firth complained also that General Isaac Brock by

<sup>36</sup> Powell's letter to Gore, York, March 6, 1811, Can. Arch. Q. 316, p. 123, enclosed in Gore's letter to Liverpool, April 11, 1812, Can. Arch. Q. 316, p. 93, Firth acted in accordance with the Canadian practice, not with the English practice; and he certainly had less than justice from Governor or Bench. The Fort George trouble is spoken of in several of his letters written in England upon his return.

<sup>37</sup> See his protest to Gore, York, August 16, 1810, Can. Arch. Q. 318, 1, p. 288.

General Order expressed his belief in the innocence of Dr. Lee, an Army Surgeon, who had been accused at Fort George by a woman of the murder of an infant. Firth thought that the investigation by the civil authorities including himself was thereby improperly interfered with—the whole matter is obscure and is not worth extended investigation.

The die was cast. Firth had finally shaken the dust of Canada, that "barbarous country," off his feet and gone to England for justice. Some of his household goods had been disposed of in the summer by private sale.<sup>35</sup> But much of his household effects and his fine library were left behind as well as his real estate. These he placed in the hands of Dr. William Warren Baldwin, Treasurer of the Law Society of Upper Canada, to pay his many and pressing debts. Baldwin advertised the library and household goods

<sup>35</sup> There are several references to Firth in the Ridout Papers, which may here be transcribed. The sale of his household goods is referred to in the first extract.

In a letter from Thomas Ridout to his son, dated York, U.C., July 31, 1811, it is said: "Mr. Firth is about to return to England with his family. He applied to the Governor for leave of absence, but as he did not obtain it, he had it seems made up his mind to surrender his appointment, and a sale of all his effects is to commence on the 12th proximo."

Thomas G. Ridout, the son, thinks "Mr. Firth will repent leaving Canada, where, if he had remained a few months longer, the Governor would have left him without a master," and he is "very much surprised at Mr. Firth's coming to England from such an appointment."

Firth is said, in a letter dated at York, September 11, 1811, to be going "away from here in a day or two . . . for Quebec"; and in another, October 19, 1811, to have gone, leaving vacant the office of Attorney-General, but "John McDonald is appointed Attorney-General for the time being, in the room of Mr. Firth." By December 18, Firth is in England and Thomas G. Ridout says: "In what a foolish manner did he leave you when his enemy the Governor, whom he wished to avoid, cleared out about the same time."

He "was completely dismissed from all employment under the Government—entirely from his own representation of the Governor's conduct, in which he called the Governor villain, tyrant, rascal, hound, etc."—without the Governor interfering in the least. (That is how the Governor (Gore) told the story, at least.)

By May, 1812, "Mr. Firth is . . . practising in his native town of Norwich. The mayor and corporation must have been delighted at the return of so amiable a man." I fear that this part of Thomas G. Ridout's letter is "wrote sarkastik": many praised Firth's learning, none his amiability.



early in 1812 and succeeded in disposing of most<sup>39</sup>—the real estate was not realized on for several years.<sup>40</sup>

Firth took with him his whole family, now consisting of his wife and two infant daughters.<sup>41</sup>

<sup>39</sup>In the *York Gazette*, Wednesday, 15, 1812 — (see Robertson's "Landmarks of Toronto, vol. 3, p. 281)—the goods were to be sold by private sale at Firth's house every Saturday during the sitting of the Provincial Legislature from 11 to 3. The library was an "Elegant and Extensive Collection of Books," and offered "ample gratification to his Historian, the Politician, the Divine, the Poet, the Lawyer, the Merchant, and the Novelist; there is also a rich collection of all the most celebrated Greek and Latin Classics" —all books left unsold were to be sent to Lower Canada in the spring.

<sup>40</sup>Firth says that he built a house at an expense of £1,750, and that this, June, 1816, was "now occupied by the Government as the Parliament House for the two Legislative Bodies." (Letter to Earl Bathurst, from Norwich, June 19, 1816, *Can. Arch. Q.* 321, p. 102), and he fears a removal of the Capital to Kingston then in contemplation, resulting in a loss of £1,200. It is known that after the destruction by fire of the first Parliament Buildings by the American Troops in 1813, the first Session, that of 1814, was held in Jordan's Hotel, King Street East, and the following three or four in a house at the north-west corner of Market (now Wellington) and York Streets. This was on lot 9 on the north side of Market Street, which had been granted to Hon. Robert Hamilton; and Robertson ("Landmarks of Toronto," vol. 3, p. 318) says the building was "a roughcast commodious cottage on the north-east (a misprint for north-west. see Robertson's "Landmarks of Toronto," p. 94), corner of Wellington and York Streets." He says also that the building was erected by the Honourable Robert Hamilton (1806). Robertson's "Landmarks of Toronto," p. 94—apparently a mistake. Chief Justice Draper occupied the dwelling, 1840-1855; it is now No. 116 Wellington Street. Hon. George Markland was living there in 1820. The matter is not of sufficient importance to examine minutely: it may be said, however, that this lot was said to be occupied in 1807 by the "Estate of Mr. Justice Cochrane," ("Landmarks of Toronto," vol. 5, p. 551), and nothing is more likely than that Firth took over the property from the Judge's estate. What land he owned he bought at \$100 per acre and upwards (*Can. Arch. Q.* 313, 2, 527). Firth himself in 1807 is entered as the occupant of five lots on Simcoe Place, which was bounded by Graves (now Simcoe), Market (now Wellington) and John Streets—the old Parliament Buildings Square, also of six lots on Russell Square, the old Upper Canada College Square ("Landmarks," etc., vol. 5).

<sup>41</sup>Mrs. Firth's maiden name was Anne—she is said to have been a handsome and imposing woman—it, perhaps, would be well to take *cum grano salis* the statement in the *York Gazette* of December 23, 1807, where, speaking of the York Assembly, the reporter says: "We understand that Mrs. Firth, the amiable Lady of the Attorney-General, lately arrived, was a distinguished figure," "Landmarks, etc.," vol. 6, p. 351; Scadding's "Toronto of Old," p. 336; but there are many hints in contemporary private letters complimentary to her appearance and manner.

The daughters were Lucy Rosalind Proctor, baptized at St. Mark's Church, Niagara (then the Murray Bay for York Society),

While he did not intend to return to Canada except, perhaps, in triumph, he was greatly incensed at Gore appointing John Macdonell as Acting Attorney-General, "an inexperienced youth fresh from the desk of an Upper Canada Attorney . . . to fill the high position of Attorney-General of a British Province,"<sup>42</sup> but was himself notified not to return to Canada.<sup>43</sup>

He had gone back to Norwich, where he practised as a local Counsel; he petitioned the House of Commons and deluged the Secretary of State with complaints of his treatment by Gore, who was "unreasonable and unjust," "boisterous and unruly . . . capricious yet violent in his resentment," who "may talk of his loyalty, but it is ill proved by trampling on the English and putting down the King's friends," in his "steady and uniform persecution of the English," "uncommonly severe and coercive," with a "systematic establishment of spies," "violating the sanctity of the Post Office;" in the Executive Council and Board of Audit who "like the arbitrary tribunal of Rhodamanthus described by the poet, habet durissima regna castigatque dolos, subigitque fateri," who act only "on their own wayward will, casual caprice and arbitrary view," and to whom he certainly does

June 18, 1809 (Ont. Hist. Soc. Trans. vol. 3, p. 26), and Euphrosyne Helen, baptized at St. James, York, November 25, 1810 ("Landmarks, etc." (vol. 3, p. 379).

In his extraordinary petition to the House of Commons, June 24, 1816 (mentioned later in the text), he says that Gore for the "mere purpose of discomfort and annoyance" to him, denied him "the assistance and service of private soldiers from the Garrison at a time when no other servants were to be procured . . . and that your Petitioner was thereby for a considerable length of time reduced to the necessity of performing all the Drudgery and menial offices of the House without any the least assistance, except that insufficient help which a wife with the care of two infant children in Arms could casually afford." Can. Arch. Q. 321, p. 142.

I have not found that he had any other children, but have not made exhaustive inquiry.

<sup>42</sup> Letter Firth to Robert Peel, Norwich, April 24, 1812, Can. Arch. Q. 316, p. 155.

<sup>43</sup> See draft letter to Gore, Downing Street, April 13, 1812, Can. Arch. Q. 316, p. 136. Macdonell's appointment was confirmed and Gore's action approved of—Can. Arch. Q. 316, pp. 136-143. Firth received half pay for the time after the appointment of Macdonell, September 28, 1811, until he received formal notice of his dismissal, April, 1812.

"impute bad motives" in their "unjust and violent acts," their "inward motives and secret springs of action." Chief Justice Scott, who now suspends or allows fees without any cause than that of "*Sic volo, hoc jubeo, sit pro ratione voluntas*," dealing with "open and unveiled partiality" against him "whatever side he was engaged on," and betraying the King's prerogative; Mr. Justice Powell with all the Chief Justice's faults, "*horresco referens*, deciding against the Crown," "an avowed contemner of our jurisprudence, a despiser of learning and all ancient and venerable institutions, a public mocker on the Bench of what he terms in scorn 'the Blackletter nonsense of Westminster Hall,' " the Inspector-General McGill "continuing and suspending fees *ad libitum*;" while he, the "Englishman," "Westminster Hall man, gentleman and scholar," the "true born Englishman" with the "education of a scholar and a gentleman . . . brought up in an English University and . . . an English Inn of Court, no novus homo or mere founding of fortune," but with "probity and true English worth;" the "faithful officer of the Crown," "a man of liberal education . . . leaving friends and so blessed a country for this barbarous land," "a good lawyer . . . of firm, steady, intrepid, vigorous character," who would at the cost of his life "defend the English Constitution free and inviolate of all American principles of innovation and popular encroachment," "devoted to the honour and welfare of his country," after "twelve years sedulous application to" law, and "five years devotion to the service of my Sovereign and the State and the faithful performance of the duties of my office" was "sacrificed (I swear by the Great God) purely to my loyalty and fidelity to my Sovereign," "because I served my Sovereign with truth, honour and fidelity," by "these and their unworthy hirelings pursued to ruin," "visited with all sorts of oppression and persecution," "every possible indignity," "every annoyance which could be devised or practised," "stigmatised

with being an opposer of the Government on account of the conscientious and faithful discharge of his public duty as Attorney-General, and his private duty as a man and a Christian," while "even His Majesty's interests have been sacrificed."<sup>44</sup>

He felt hurt in being left "in the private station of an obscure individual instead of rendering more efficient service in an official station."

When Scott was about to retire from the Chief Justiceship of Upper Canada, Firth asked for the position (or indeed any position); when it was refused him and Powell was made Chief Justice, Firth protested that he had

"by no means personally desired that situation; the truth is, I knew Mr. Powell was coming over and did for months before he arrived with Mr. Scott's resignation in his pocket and backed by Mr. Gore's recommendation; and it was to save the colony from so great a calamity as that which it seems has in an ill omened hour overtaken them, that I offered the sacrifice of myself to restore the colony to its proper tone by the firm and unbiased administration of the Public Justice."

But with Sewell and Monk in Lower Canada and Powell in Upper Canada "the die is now cast as to the administration of Justice in both the Canadas as all the three Chief Justiceships are filled up by Americans!! Excidat illa dies, etc., for . . . I deny that an American born and bred can have the genuine feel-

<sup>44</sup>For all this, and more of the same kind. see Can. Arch. Q. 313, 2, p. 527; Q. 316, p. 52; Q. 321, pp. 102, 142, 176, 214. The description of the vale of Rhadamanthus is of course taken from Vergil, Aeneid, Bk. 6, vv. 566, 567.

"This harshest of rules holds the Gnosian Rhadamanthus and he tries and punishes frauds, he subjects the accused to the rack." The crime of C. J. Scott is that of the Roman lady who sent her slave to the cross—when expostulated with that the man had not been convicted of crime, she said:

"O demens, ita servus homo est? Nil fecerit. esto,  
Hoc volo, sic jubeo, sit pro ratione voluntas."

"You driveller, so a slave is a man, is he? He didn't do anything, didn't he? All right, he didn't then—I wish it, that is my order, my wish is reason enough."

See Juvenal, Satires VII., vv. 219-223.

ings of reverence for our venerable institutions which Englishmen have, nor their sacred regard for our ancient establishment, either in Church or State.<sup>45</sup>

In 1816, he figured in a matter which is of great interest to lawyers: Wyatt, the Surveyor-General, cashiered by Gore, brought an action against Gore for libel, wrongful suspension from office and false representations to the Home Authorities. At the trial to prove the publication of the alleged libel Firth was called as a witness to prove the delivery to him by Gore of a pamphlet which had been published containing allegations against Wyatt of a grave character; on objection taken, it was held by Sir Vicary Gibbs, C.J., that as the delivery to the Attorney-General by Gore of the pamphlet was not "for any official purpose, instruction or advice," the evidence was admissible and the act a publication. Gore always resented the conduct of Firth, contending that the pamphlet was, as Firth knew, to obtain his official opinion as to the proper course to pursue,<sup>46</sup> and he never forgave him.

<sup>45</sup> Letter Firth to Bathurst, Norwich, October 8, 1816, Can. Arch. Q. 321. pp. 102, 142. The lament "*Excidat illa dies, etc.*," is of course Statius' well known verses:

"*Excidat illa dies aevo, nec postera credant  
Saecula . . .*" Stat. S.V. 288.

"May this day be blotted out of the record of time and may future ages know it not . . ." Future ages did know and approve, notwithstanding Attorney-General Firth.

<sup>46</sup> See the report, *Wyatt v. Gore* (1816), Holt, N.P., 299, the Reporter (not Chief Justice, but) Francis Ludlow Holt, calls Upper Canada an "Island," p. 301. It is perhaps with reference to this circumstance of Firth giving evidence against him that Gore alludes in his letter to Powell of June 5, 1819, mentioned in note 47, *infra*.

But Gore quite wrongly and without a tittle of evidence to support his suspicion, always after his quarrel thought that Firth was connected with Thorpe, Wyatt, Willcocks, and all the Governor's other opponents and critics.

"Your friend Firth, I understand, is in great pecuniary distress . . . sorely does the poor Devil repent his lending himself to others." July 10, 1819.

"Your friend Firth has applied to Lord Sidmouth to be made a Commissioner of the Insolvent Court—his conduct has been such as to insure a refusal." October 9, 1820.

"Mr. Amyott tells me Serjt. Firth is at a very low ebb, parted with his chambers, his books, etc., etc., and I could have added long since with his honesty. His friends are applying to Lord

He continued to practise in Norwich with no great success; he became a Serjeant-at-law in 1816; and appears from time to time in correspondence between Canadians and those in England.<sup>47</sup> He was more Royalist than the King, more of a Churchman than the Bishop of Norwich, Henry Bathurst, Lord Bathurst's "venerable relative," who saw no danger in allowing Dissenters to be members of Corporations and the like.<sup>48</sup>

But he failed of political preferment and finished his life in obscurity.

Firth had a facile pen and an easy and effective style; he was a good classical scholar, his quotations are apt and frequent, his knowledge of law was more than respectable, his loyalty undoubted, but he was a misfit, he was arrogant and oversensitive; he received some wrong, but most of his misfortunes were of his own making, and yet it is but plain justice to this misunderstood and misunderstanding, misrepresented and misrepresenting, unjustly treated and unjustly treating, man, to say that it was not *auri sacra fames* but *res angusta domi*, not sordid greed but dire need which drove him to questionable methods of increasing his emolument.

Sidmouth to make him a Police Magistrate, and have had the modesty to request of me in case I am refer'd to, to speak favourably of him. I told them I thought I went very far in promising that if I heard of the Government intending to make such an appointment, I would not step forward to stop it, but if referred to, I must speak the truth."

"We have seen that the Ridout Letters speak of him occasionally: in the correspondence now in the Toronto Reference Library between Gore (in England) and Powell, C.J., his name occasionally crops up, e.g., Powell, January 5, 1819, writes:

"Your late Attorney-General I really know nothing about—he has been writing a great lot of stuff and at Downing Street he is called a second Thorpe"—while Gore writes, May 10, 1819: "Firth is in distress and returned to Norwich." June 5, 1819, is another letter.

<sup>48</sup> See Can. Arch. Q. 321, p. 176, and the "Political Creed," do, do p. 321, p. 214; also do, do, p. 142.

WILLIAM RENWICK RIDDELL.

Osgoode Hall,

Toronto, April 2, 1923.