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Superior Court Judge a Convicted Criminal Libeller, A

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A SUPERIOR COURT JUDGE, A CONVICTED CRIMINAL LIBELLER

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Today we read of a Superior Court judge who is trying a murder case in a certain state, having, himself, been the other day acquitted of murder—he said that he "simply had to shoot." So, too, we know of a gentleman who became the chief justice of Newfoundland, who having been acquitted of being an accessary to murder—he had been the second in a fatal duel, in which in old Toronto a prominent barrister had slain an equally prominent law student—and when the principal had been acquitted, of course, he as a supposed accessary, had to be acquitted also—"no crime, no accessory" is good law. After this acquittal, I say, he was indicted for murder, of which he was undoubtedly guilty in law; but the jury did not convict. This did not prevent him becoming a judge *pro tem.* in Upper Canada, and a chief justice in Newfoundland.

But I have never heard on this Continent, where we do so many queer things, of a Superior Court judge being convicted of criminal libel; and we have to go to old England for such a thing.

I am not referring, either, to the evil times—for erring judges, at least—of the Plantagenets or of Charles I; but within the Nineteenth Century, when the Parliamentary title to the Crown was well recognized, and the Hanoverian Line was firmly seated on the Throne.

The offender was not an English judge, but hailed from that most distressful country across the Channel; and his name was Robert Johnson, his position, Justice of the Court of Common Pleas in Ireland.

Johnson was a man of prominence before the Union, of which he heartily approved; he had been a member of the last Parliament of Ireland before the Union; and had supported Castlereagh in the measure for which he has been heartily cursed by generations of Irishmen, who look upon his suicide as a just retribution for his treason to his country. Almost immediately after the Union, Johnson was made a judge of the Court of Common Pleas at Dublin; his conduct in that position has never been adversely criticized, it was creditable in every respect. The only expression of opinion by which

[1]Justice of Appeal, Toronto, Ont.; Assoc. Editor of this Journal.

he is now remembered is really not to be credited to him but to Chief Justice Fletcher of the Court of Common Pleas of Ireland on the trial of one Fenton for the murder of Major Hillas whom he had slain in a duel: "Gentlemen, it is my duty to lay down the law to you, and I will. The law says the killing of a man in a duel is murder, and I am bound to tell you it is murder; therefore in the discharge of my duty, I tell you so; but at the same time, a fairer duel than this I never heard of in the whole *coorse* of my life." This is not wholly unlike the charge of the Chief Justice of Upper Canada, (Sir) John Beverley Robinson, on the trial at Brockville, Upper Canada, in 1833 of the young law student, John Wilson, afterwards to become a judge of the Court of Common Pleas in Upper Canada, for the slaying of another young law student in a duel: "Juries have not been known to convict when all was fair."[2]

For some reason, Mr. Justice Johnson became dissatisfied with the administration in Dublin, and in an evil moment be committed to paper, language that was offensively derogatory to the Earl of Hardwicke (the Lord Lieutenant) to Lord Redesdale, the Lord Chancellor, and to Mr. Justice Osborne, puisné justice of the Court of King's Bench, as well as to certain inferior officials. This would have done no harm if he had kept it to himself; but with what could only have been an intention to make trouble for the government at Westminster as well as at Dublin, he sent it anonymously to William Cobbett in London, who was then (as generally) annoying the government by attacks in his famous *political Register*. Cobbett promptly published the contribution; and was in 1804 convicted of libel for doing so. Nor was this all; he was sued by Plunkett, the Solicitor-General of Ireland, in the Court of King's Bench at Westminster, and a verdict of £500 was given against him by a jury after only twenty minutes' retirement.

Then the authorities determined to proceed against the author, who, of course, was the person really responsible. It was not thought advisable to prosecute in Ireland—Irishmen were then as often largely "agin" the gover'ment"; and advantage was taken of a statute passed with quite a different object, that of (1804) 44 George III, cap. 92, being an "Act to render more easy the apprehending and bringing to trial offenders escaping from one part of the United Kingdom to the other . . ." A warrant was issued signed by the Chief Justice, Lord Ellenborough at Westminster, given to an officer who took it to

[2]See my article, *"The Duel in Early Upper Canada,"* Journal of the American Institute of Criminal Law and Criminology, Vol. 6 (July, 1915), pp. 165 sqq.

Dublin, where it was endorsed by J. Bell, J. P., of the County of Dublin—this was the first time the Act mentioned was put in force.

The officers of the law went to the residence of Mr. Justice Johnson, about two miles from Dublin, and informed him that he was under arrest. The justice was seriously ill, having suffered what appears to have been a paralytic stroke. He was able, however, to take refuge in the house of the Chief Justice of the Court of King's Bench in Dublin and claim his protection. Lord Chief Justice Downes directed the issue of a writ of habeas corpus, returnable *instanter,* and called to his assistance all the judges (except Osborne, of course, as he was personally interested). Three of the judges thought that the statute did not apply and that Johnson should be discharged; three thought that it did apply and that he should be remanded into custody, while two declined to give any opinion. The Chief Justice thereupon referred the matter to the Court of King's Bench; and after long and learned—not to say impassioned—argument, the Chief Justice and Mr. Justice Daly agreed that the warrant was valid, while Mr. Justice Day was of the contrary opinion. Counsel for Johnson, among them the celebrated Curran, were not content, and took out another writ of habeas corpus returnable in the Court of Exchequer. In that Court, Lord Yelverton, Lord Chief Baron, and Maclelland and George, BB., were of opinion adverse to Johnson while Smith, B., held the contrary.

Brought to England, the justice was placed on his trial at the bar of the Court of King's Bench at Westminster in June, 1805; a demurrer was filed and overruled; and the actual trial began November, 1805. Splendidly defended as he was, and before a scrupulously fair court, Ellenborough, C. J., Grose, Lawrence and Le Blanc, JJ., he was convicted; and there can be no doubt of the justice of the verdict.

But the dictates of humanity were listened to by the government; it was recognized that the unfortunate article owed its origin to the justice's ill-health; and in Trinity Term, 1806, a *nolle prosequi* was entered by the Attorney-General, Sir Arthur Pigott; and, to the credit of the administration, be it said, Mr. Justice Johnson was allowed to retire on a pension.

Should any lawyer wish to know more of this interesting case, let him consult the thrilling pages of 29 *Howell's State Trials,* coll. 81, *sqq.,* or Volume 6 of the Osgoode Hall Collection of Trials in pamphlet form.