

Memorial Essay to Sir James Albert Manning Aikins, K.C.¹

HUGH AMOS ROBSON

THE HONOURABLE SIR JAMES ALBERT MANNING AIKINS, K.C.

THE LAWYER IN ACTION

As is now well known the late Sir James Aikins commenced his long professional career at Winnipeg in 1879. He had qualified in Ontario, having been a student with Honourable Matthew Crooks Cameron and Messrs. Mowat, McLennan and Downey. Things in Manitoba were just opening up at the time of Mr. Aikins' advent and the promise of the great West was beginning to look somewhat certain. Manitoba was then but a miniature province and the immense West known as the North West Territories was still little more than the rich field of the hunter and trader. But with the great railway in prospect and an immense flow of settlement coming in there were many things for capable and active men to do. The transition from a slightly organized condition to one which soon followed that of Ontario was largely due to the sound judgment of the pioneers. Mr. Aikins was at an early date given the representation at Winnipeg of the Department of Justice. The Dominion had important matters in the West; particularly in the North West Territories, over which huge but as yet sparsely settled area, it was in full legislative and executive control. Manitoba had a very capable Bench and Bar early in its history. Law Reports begin from 1875 to 1883 in cases *tempore* Wood. The official series edited by Mr. Ewart begin with 1884. Mr. Aikins' name is found in the reports soon after his arrival. Shortly after settling in

¹ The following is a verbatim transcription of an essay from Chief Justice Hugh Robson in memorial to Sir James Albert Manning Aikins, a prominent Canadian Lawyer and partial namesake of the law firm MLT Aikins. For access through HeinOnline, see H A Robson, "The Honourable Sir James Albert Manning Aikins, K.C." (1929) 7:4 Can Bar Rev 266.

Manitoba Mr. Aikins had entrusted to him by Ottawa the task of reporting on a question affecting the administration of justice in the Territories. The Courts of the Territories were then presided over by Stipendiary Magistrates and there were of course Justices of the Peace, the latter being in large extent officers of the North West Mounted Police. Appeals from the Stipendiary Magistrates' Courts of the Territories were taken to the Court of Queen's Bench en banc. There was an appeal to that Court from the verdict and sentence in the case of Louis Riel tried at Regina in August, 1885. Points of law were taken on the evidence and as to the constitutionality of the Stipendiary Magistrates' Court in such a case. The Court was constituted by a Stipendiary Magistrate, Honourable Hugh Richardson, a Justice of the Peace sitting with him, Mr. Henry Le Jeune, and there was a jury of six, the statutory number at that time. On the appeal the defendant was represented by Mr. Charles (now Sir Charles) Fitzpatrick, Mr. François Lemieux and Mr. J.S. Ewart, K.C. The Crown case was in the hands of Mr. B.B. Osler, Mr. Christopher Robinson and Mr. Aikins (see 2 M.R. 302). Possibly this was the occasion of the first meeting of the present Sir François Lemieux and Sir James Aikins. It has been one of the pleasant things to younger lawyers to observe the very close friendship which existed between these two eminent and courteous seniors.

After the events of '85 the air was cleared and the Territories began to settle down more rapidly, and steps were taken towards advancement in Government. The practice of law was an open field. The first attempt at regulation of the profession was a simple ordinance prescribing the qualification of those entitled to be enrolled as advocates. An attempt was made locally to limit the right of audience in the Courts to residents of the Territories. Mr. Aikins was then solicitor in charge of the Canadian Pacific Railway's Legal Department on the operating side from Port Arthur to the Pacific Coast. He had a thorough knowledge of railway law and high talent in advocacy, and he knew his own capacity. But most of all he had a self-sacrificing devotion to his client. He would always prefer to go himself. He would have plenty of help but he never took the risk of a thing going wrong for want of personal attention. Sir William Van Horne, a master of men, once said he had never in his experience known a man more zealous for his employer's interests than was Mr. Aikins. This was in the trying times of the C.P.R. when both courage and ability, combined with wisdom, were required from all who carried its burdens. At the time referred to Mr. Aikins wanted to be assured of access to the Territorial Supreme Court, and naturally was aroused by the proposal to limit the rights of audience to residents. He had an old friend in Mr. D.L. Scott

of Regina (later a Judge of the Supreme Court of the North West Territories and Chief Justice of Alberta). Mr. Scott, Mr. Aikins, and the present Chief Justice Perdue had been boys together at Brampton. Mr. Aikins came to Regina to talk the matter over with Mr. Scott. Mr. Scott, with characteristic dry humour, referred to a Manitoba attempt to hinder Ontario barristers from entering Manitoba from which Mr. Scott had suffered. Eventually the matter was compromised by dropping the idea of exclusion but substituting a tariff provision that non-resident advocates should not tax costs. Mr. Aikins' visits to the Territories were frequent in those days. There was incessant trouble from prairie fires and the railway engines were blamed for them. Damage actions and prosecutions under the Prairie Fires Ordinance were common. The killing of horses and cattle at large on the railway was also productive of litigation. These cases were not ordinary questions of fact. The effect of local Ordinances on a Dominion railway was often up for consideration and some nice constitutional points appeared. A famous case of another type at the time was *Walters & Baker v C.P.R.* (1 Territories Law Reports page 88). The plaintiffs were well known traders and Batoche (whose store was appropriated by the insurgents in the rebellion). Goods for them had been unloaded at Qu'Appelle Station. The station was destroyed by fire and the question was whether the Company still held them as carriers or had become warehousemen. It was always an interesting session of the Court en banc when Mr. Aikins attended. He had some seniority and Judge Richardson, the presiding Judge, used to call on him first for motions, but Mr. Aikins invariably asked that His Lordship "go through the local Bar." Precedence at the Bar was of greater interest than it is now apparently. The famous case of the three Queen's Counsel was a topic of conversation among the juniors, perhaps the seniors too. Mr. Aikins, Mr. Howell (later C.J.M.) and Mr. Ewart had been called to the Bar of Manitoba in that order. They had been members of the Ontario Bar in this order, Mr. Ewart, Mr. Howell, Mr. Aikins. Dominion patents to these gentlemen were all dated 3rd November, 1884. They were recorded and gazetted in varying orders. In the court of King's Bench Mr. Aikins being called on to move, Mr. Howell (by arrangement) claimed precedence and Mr. Ewart's claim was also brought to the attention of the Court (8 M.R. 155). The opinion of the Court was rendered by Taylor C.J., that the precedence was in the following order: Mr. Aikins, Mr. Ewart, Mr. Howell. The solution was found in the order of the respective dates on which the learned gentlemen had been called to the Bar of Manitoba. No question seems to have been raised as to the effect of a

Dominion patent in a Provincial Court, but if it had, evidently the result would have been the same.

The Fall of 1887 saw some exciting political litigation in Manitoba. It was the Manitoba Disallowance question. The Provincial Legislature had chartered a railway to build south from Winnipeg to the boundary. This was contrary to the CPR Charter, so the Manitoba Act was disallowed by Federal authority. But the Provincial work nevertheless proceeded and two actions resulted. First was *Browning v Ryan* (4 MR 486), in which application was made to Wallbridge, C.J., for an injunction to restrain the defendants, the contractors, from proceeding with the work across the plaintiff's land. Mr. Aikins, Mr. Biggs, Mr. Ewart, Mr. Bain and Mr. Culver were for the plaintiff. Counsel for the defendants included Mr. Howell, Mr. Hagel, Mr. Munson and Mr. G. W. Allan. This case failed because the plaintiff was a puppet plaintiff for the C.P.R. Then immediately followed *Attorney-General (Can.) v Ryan* (5 M.R. 81). This was an information for an interlocutory injunction to restrain the defendants from touching on Dominion lands. It also raised the objection that the Provincial railway statute had been disallowed. The interim injunction was granted by Killam, J. The arguments and judgments, both very learned, are reported at length and are storehouses of legal information. The trouble was ultimately removed by re-arrangements between the Dominion Government and the C.P.R.

Mr. Aikins came to Regina on one occasion to conduct a strenuous fight on behalf of his old acquaintance Peter McCarthy, K.C. of Calgary. The contest involved some solicitor and client transaction and created widespread interest. Mr. Jeremiah Travis (who had been for a short while a Stipendiary Magistrate) acted for the client and carried on his side of the controversy with great animation. Mr. Aikins was assisted by Mr. Horace Harvey, now Chief Justice of Alberta. My recollection is that there was some exaggeration about the attack. The charges were not sustained.

In 1900 Mr. Aikins was asked by the Manitoba Government to draft the Act that got the name *the Macdonald Act*, the Honourable Hugh John Macdonald being the Attorney-General of Manitoba, by whom it was initiated. The effort was to produce a Provincial liquor law, of a prohibitory character, that would stand up. Mr. Aikins threw untold energy into that undertaking. His research exhausted the field. The Act came under the scrutiny of the King's Bench, Manitoba, en banc (13 M.R. 239). Mr. Aikins' extensive argument is there reported. That Court decided against the Act, but it was sustained in the Judicial Committee ([1902] AC 73). There was great complaint among Mr.

Aikins' legal friends that he was not invited to go to London on the argument, but great satisfaction ultimately that his work had stood the test. A Provincial Act attempting anything near prohibition was, up till then, looked on as impossible. The weakness as to importation was not overlooked by the draftsman, but his idea was to go as far as the Provincial scope would permit, and the Judicial Committee sanctioned the attempt.

Every lawyer has some favourite case that he looks back upon with satisfaction. Mr. Aikins had a favourite in the case of the *CPR v Winnipeg* (30 SCR 558). It involved a question as to the extent of a certain tax exemption granted to the Company as an inducement to place works and terminals in Winnipeg. Was taxation by the Municipality for school purposes excluded by the exemption? The Manitoba Court said it was not, but the judgment was reversed. Mr. Aikins rarely showed emotion at any result, but this time he was really gratified, and congratulatory telegrams passed between him and Mr. Shaughnessy. There was, I think, more "law" in those days than at present. The three Q.C.'s above named were very prominent, and several others might be named whose names are still fresh in our minds, as for instance, Mr. Isaac Campbell, Mr. Mulock, and the late Mr. J. Stewart Tupper. Well-known names such as Mr. C.P. Wilson, Mr. F.H. Phippen, Mr. A.J. Andrews, Mr. Isaac Pitblado, and Mr. T.G. Mathers were all becoming prominent; but it is impossible to mention all such, and I am likely forgetting some who should be mentioned also. It was worth a long day's journey to hear Mr. Ewart's logical presentations. Mr. Howell was unexcelled in our sphere as a *nisi prius* Counsel, easily adapting himself to any variety of subject. Mr. Aikins was penetrating, keen and resourceful. Contests between Mr. Howell and Mr. Aikins were frequent and at times exciting for the onlooker, though these gentlemen personally preserved the good nature which is required of counsel of high standing.

One of the best argued cases I ever knew of was the case of *Cass et al v Couture et al* (14 M.R. 458). It was at the period of Winnipeg's greatest building expansion, when a large number of very large buildings were being erected. A group of contractors, who had many large building contracts, procured the local brick manufacturers to contract to sell them their whole output. The contractors outside of the group would get little brick, so the idea arose, rightly or wrongly, that the purpose of the brick agreement was to confine the contracting field to the group of builders in the arrangement. An interlocutory injunction was sought to enjoin the brick manufacturers from selling to others than the group to whom they had so agreed to sell their output. By

arrangement, the injunction application was at once removed into the Court en banc. Mr. Ewart led for the plaintiff and Mr. Aikins for the defendants. The report gives no indication at all of the extent of the work on both sides in preparing for evidence and argument of the case. The subject of the interlocutory injunction was thoroughly exhausted. *Lumley v Wagner*, and its illustrious line, came in for much discussion. The imminence of irreparable injury and damages as an alternative to injunction were treated at great length and with much learning. The Court declined to grant the interlocutory injunction.

There was also a series of injunction cases a little later than the brick cases (*Patton v Pioneer Navigation and Sand Company*, 16 M.R. 435). These were tried before Macdonald, J. (now C.J.K.B. Manitoba). Armstrong's Point in the City of Winnipeg contains many handsome residences. The Assiniboine River skirts the Point. Deposits of sand were found in its bed. The defendants placed a dredge there and proceeded to remove the sand. They asserted a Dominion Government license to remove sand from the bed of what they said was a navigable river. They contended that the river brought down and precipitated the sand, and that therefore under their license they could remove it. The trial lasted about six weeks. The well known authorities were exhaustively discussed. The plaintiffs got their injunction.

An illustration of the spirit of contest of those days is found in *Roblin v Jackson* (13 M.R. 328). That was only a County Court appeal on a question of rights in case of the admixture of the grain of different owners. It came before the Queen's Bench en banc, and was twice argued after as much research as if a season's crop had been involved. The parties to the action were, I believe, political opponents. Mr. Aikins acted for the well known plaintiff, and succeeded in the appeal.

The variety of Mr. Aikins' work was without limit. Any subject that was not a common one he would immediately master. There were in the early days extradition applications, quasi criminal matter, libel prosecutions, and torts of infinite variety were frequent. One could go at length through many notable cases involving more particularly commercial law of vendor and purchaser, land titles or mortgage transactions. The railway provided much in the way of employer's liability for injuries questions. The fellow-servant doctrine and *volenti non fit injuria* were still going strong. Those were different days to the present, when more generous laws have removed much contested work from a railway lawyer's sphere. It was not often that Mr. Aikins was "caught." I certainly can remember only one instance. It was at Calgary before the jury

system had been improved. The action was against the railway company for damages for ejecting a non-paying passenger other than at a station or near a dwelling-house. The provision of the N.W.T. Act was for a jury of six. A panel of twelve was summoned. There was no provision for challenge in civil cases. In our case one juror had been accepted. The next man called, being a man who had a grievance against the company, Mr. Aikins asked that he stand aside. The plaintiff let four more go in, and then with five in the box asked the rest to stand aside. There was no provision for talesman. By the Act the jury had to start over again, and Mr. Aikins' objectee, being the first in order of those now standing aside, compulsorily filled the sixth place. Mr. Aikins learned that under that crude system there was really no such a thing as a challenge. Verdict for plaintiff.

Expropriation and compensation became a heavy branch of Mr. Aikins' activities, especially when the various railway terminal extensions were undertaken. The work which was started in 1904, resulting in the completion of the present magnificent C.P.R. station and hotel, subways and elevated grade were all, as to the legal provision, in Mr. Aikins' care. He had keen business acumen and knew land values. It can be safely said that his client never paid too much. Mr. Aikins always had the care of many important private investments, an example of which was the Brassey farm at Indian Head. As time came for the relinquishment of active counsel work, he stepped into business responsibilities as counsel and director of financial concerns; but this merely changed the nature of his work. His diligence and keenness never abated. His political service and varied public and philanthropic interests are beyond the scope of these lines, and are, in fact, so well known that repetition is unnecessary. They have their interesting side, and incidentally touch on other agreeable personalities who would also be included in a more intimate sketch.

Mr. Aikins was a Bencher of the Law Society continuously from 1880 till his death, and had in his time filled the offices of President, Treasurer and Secretary. At first hesitant about the Law School idea, he soon became a strong supporter of that effort towards legal education here. Mr. Aikins delivered the address at the formal opening of our Law School in 1914.

There were no great emoluments for the lawyers in Mr. Aikins' active days. Any who accumulated anything got it by foresight in investment. Mr. Aikins was weak in the matter of charging. Young counsel were often let off with a nominal charge, seriously made as if it were a real bill. Since Sir James' death, I have heard of several instances of this. No one need suppress the fact that a hard worker himself, Mr. Aikins was hard on his juniors. He was even hard on

those who merely brought him a brief. While these things are remembered, also there are none to say they were not benefited by the drilling and by what at the time looked like severity.

Mr. Aikins attracted many students and young lawyers, and from his firm a large number of now prominent Judges and lawyers went forth to enter other firms or settle elsewhere. Some of these are now very prominent in the Canadian Bar Association. To mention names would really take too much space, and the risk of omitting some makes reference to any inadvisable. There should always be remembered, however, when Mr. Aikins' name is used, the name of Mr. W.H. Culver, his early partner and intimate friend. Mr. Culver was a most kind and agreeable personality, and an infallible lawyer. His untimely death at an early age caused great sorrow. He was very active in general practice, and in fact was in great demand. The consciousness of having such a reserve force as Mr. Culver must have materially sustained Mr. Aikins in carrying his weighty responsibilities of that time. Old friends of the days long gone will remember the firm's accountant and Mr. Aikins' business man, namely, Mr. A.J. Long. "A. J." was part of the institution, and his vigilance over financial matters was proverbial.

Mr. Aikins was very fortunate in having very superior and capable lady secretaries, and latterly in his many affairs and public interests had got around him a group of excellent young practitioners. Of Mr. Coleman's contribution, always tactfully made, every lawyer is aware.

In latter years there had been a growing calm. The strong currents subsided and the stream broadened as it reached the sea. At last final repose had come. The body lay in state in the Legislative Chamber, where Sir James had for two terms of office so worthily represented the Crown. And there were unbounded evidences of respect. There were present many of those who had been within Mr. Aikins' sphere of work during the restless, impatient days. To those it was not the lying-in-state or the imposing ceremonies or the reverent throng that made the impression. It was the fact that there, in the midst of it all, lay the last of "Mr. Aikins."

H.A. ROBSON
Winnipeg, April 6th, 1929