

SOME LEGAL LEGENDS

THE HONOURABLE W. G. MORROW*

One of the most colourful of the earlier Alberta Judges was Judge Noel who used to travel about the jurisdiction in horse and buggy or democrat. On one occasion he had just completed a criminal case at a small town near Edmonton and for the return trip offered defence counsel a ride back. As they rode towards Edmonton, the lawyer, disappointed at having his man convicted, finally got up enough nerve to ask the judge how he could possibly have reached such an unjust and improbable verdict. The Judge's answer: "I figured he had to be guilty or he wouldn't have had the best criminal lawyer in Edmonton."

On another occasion, apparently, as he was preparing to leave the Court room after having sentenced the accused to six months' imprisonment, perhaps to reassure the prisoner, he remarked: "And if I had been sure you were guilty I would have given you a year."

A man was charged with theft of a pig. In early days livestock was often the subject of litigation. Judge Noel had just dismissed the charge although the Crown Attorney was certain there should have been a conviction. His answer: "But he was such a little pig."

Justice Tom Tweedie of the Supreme Court Trial Division was not only a bachelor but one of the stoutest men I have ever met. He was so fat that I doubt if he could ever have looked down and been able to see his feet. It was a sight to behold to watch the judge work himself up the Court House stairs, puffing as he went. He was particularly worth watching in the summer if he happened to be dressed in his brown-checked suit topped off with straw floater hat.

Wallace used to tell a story of a criminal trial that had taken place at Wetaskiwin. The accused had been found guilty and sent away for several years. His wife, mother of six or so children, apparently got hold of the judge and the two had quite a heated discussion. After she had left, His Lordship summoned the Crown Prosecutor to his chambers and in an irate mood, chastized the prosecutor for persuading him to give such a stiff sentence. The prosecutor reminded him of the man's terrible record whereupon Tweedie is supposed to have said: "Well damn it then the least you should do is come back and cry with me." The two then proceeded to engage in a crying jag while eating peanuts in the shell. Peanuts were apparently a passion of Justice Tweedie's and the caretaker often found the floor of his chambers completely covered by peanut shells after a long court session.

On one occasion, having just become a lawyer, I was asked to attend at the Court House and seek out a judge for an emergency application for a decree nisi. Apparently our client was dying, at that very moment the report was that he was being given a blood transfusion, hopefully to keep him alive until his divorce was complete so as to keep his wife from inheriting his money. It was court vacation and Justice Tweedie, then

* Presently with the Court of Appeal of Alberta.

engaged in a speedy criminal trial, was the only judge available. I waited my opportunity and finally in good time he heard my application and granted the decree. In the hurry, however, I had not had time to type out the formal order. I rushed back, had it typed, and was back to court well in time to catch the judge as he trundled off the bench. I approached him and sought his signature when to my surprise he patted his not unsubstantial tummy and said: "When I go off the bench to lunch I do not like to be disturbed." I apologized and retreated.

Well before resumption time I was back at the Court House and as Justice Tweedie came up to the Courtroom to go in I once again approached him. This time he brushed right past me with the remark: "When I am going on the bench in the afternoon I like to have my pipe."

Tweedie was of Irish extraction from New Brunswick. But I have a little Irish in me too. This was too much. I threw all caution to the winds and went into the Court Room and proceeded to sit on the bench just inside the railing—the bench reserved for lawyers. I sat there looking, or perhaps glaring would be a better word, at the Judge as the trial went on. The trial took almost two hours and during that time Justice Tweedie kept glaring back and forth from counsel to witness to me and back. His face kept getting redder and redder. A more uncomfortable or embarrassed man you never saw. As he adjourned he intructed the clerk to direct Mr. Morrow to his chambers. By now I didn't know what to expect but I had invited it.

As I came in to his chambers he told me to sit down. He then proceeded to say the following or similar words: "You know we Judges like to test the mettle of you young fellows." That was all there was to it. I got my order signed. But never again was I tested. He was always good to me and when a short while later I said good bye, as I was leaving to join the Navy, he went out of his way to tell me how the Tweedies were a big clan in the Maritimes and that he knew how young fellows especialy sailors sometimes got into trouble. If this ever happened I was to call on him or his Maritime kinfolk. I am sure he meant it.

This was my last meeting with the "ton of justice" as we referred to him. On my return he had died.

Before leaving him as a subject, though, there are two other events that I should recount.

George L. Parney was practicing law in association with my father at the time I was articulated. He had a good legal mind but was not always diplomatic when presenting a case. I had done the briefing for him in a habeas corpus case. In due course it came up before Justice Tweedie with Mr. Dmytro Yanda, Q.C. making the application for an accused. Parney represented the Crown. Yanda made an excellent presentation, not in law, but in a manner calculated to evoke the sympathy of a Judge, certainly of one known to be as sympathetic as Tweedie. In the result the Judge got carried away and declared himself before he had heard our side. Then came Parney's turn. Unfortunately he did not seem to care about the Judge's discomfiture as he began to see the law was the opposite to what he had agreed to when Yanda was on his feet. Parney kept twisting the knife. Finally the Judge reared back in his chair and in a voice that sounded like a roar he said: "This court refuses to be bullied by counsel any further." At this point there was complete silence in the Courtroom. What

would Parney say? His reply: "My Lord I have my instructions to present the Crown's argument and I intend to so continue." Further silence and then the Judge: "Proceed." In the end I can report that our side won but not for the correct reasons and the Judge made the unprecedented direction that the Crown pay Mr. Yanda's costs in any event.

During my earlier years of practice Justice Frank Ford was a member of the Court of Appeal and one of its soundest legal minds. His reputation, however, good on law, was also that of a rather inflexible man. To put it another way the Lord Chancellor's foot was very short when it came to equity rather than law. Well on one occasion I ran into a crisis just before Christmas. A widow with three small children came to me for help. Her husband had left her a fixed amount of cash or insurance, something like \$15,000.00. She of course couldn't support herself and family on the interest so the Public Trustee, quite properly, agreed to advance her a monthly allowance from capital. In no time this would have the effect of reducing the estate to nothing. My client felt she could keep the estate intact if the money could be used to buy a rooming house — she had one picked out. The estate (in those days property was cheap) money would just buy it, she and the children would have a home, and the extra rooms would bring in enough revenue to support all of them. There was only one hitch. There was no real authority in the statute governing the Public Trustee to permit such an arrangement. Lloyd Gardner, our Public Trustee, a very humane and understanding person said he didn't think he had the authority, but he wouldn't oppose me if I wanted to try to persuade a judge to give an order authorizing the arrangement. She had to have the order right away to get the right house. To my horror I could only find Justice Frank Ford. It was a few days before Christmas. There was nothing to do but make my application. In fairness to Lloyd Gardner I had to admit to the Judge that the law was not clear — in fact his Lordship was quick to spot it himself. He told me to return the next morning. Well, with a sinking heart, I attended on his Lordship in his chambers next morning and found he and his wife sitting there together. To my surprise he granted the order. Then with a big smile, Mrs. Ford spoke up: "Bill I just told Frank he couldn't turn down that poor woman and children before Christmas." But there was a catch. The Judge then said to me: "Bill, I have made your client's Christmas now you must help with mine. I have no car and my Christmas cheer is in a box at the liquor store. Do you mind picking it up and taking it to my house." Fair exchange. His Lordship had his Christmas cheer in time.

Before leaving Justice Frank Ford who was unquestionably one of Alberta's most learned Judges of the time I should say that he was always considered to be the expert on Court protocol. Anytime one had a problem, say on how to set up the head table at a law banquet or such thing, you could always call on Frank Ford and his advice willingly given was correct and good.

Bud Edgar was a lawyer who had great promise and was very popular with Judges and lawyers alike. Unfortunately he was lost while flying in a small plane to the Grey Cup one snowy November. Shortly before his death, over a cup of coffee, he told me of the fun he was having with Judge C. E. Gariepy of the District Court. Apparently he had argued a case at Wetaskiwin before the Judge and then had offered to drive him back. S.

H. McCuaig, Q.C. had been the opposing lawyer and had won. Eventually as they drove along the forty miles or so back to Edmonton Bud finally got up enough courage to say to the Judge that with respect he felt the Judge had erred. The reply: "Now here young man. Don't be too impatient. Your turn will come."

Well by coincidence the same lawyers were opposite each other at Wetaskiwin a month later, and, yes, the Judge was Gariepy, and Edgar won. This time as they drove back the Judge remarked: "Well I told you, you would win next time." Of course the Judge called it on the merits but such little stories enrich the coffee club conversation.

In my first years of practice I had many applications and cases before Chief Judge Dubuc. The Chief Judge was son of former Chief Justice Dubuc of Manitoba. Apparently Parney had crossed swords with Judge Dubuc some years earlier so was more or less avoiding appearances in his Court. Or at least this is what the Judge felt.

Well anyway, I had been making all of Mr. Parney's applications before Dubuc for him. One day like a bolt out of the blue the Judge called me into his chambers and said: "Bill, I granted your application this morning because it was you. But you tell Mr. Parney I am on to him. Any more of those borderline cases and he had better make them himself." I had no reply.

Judge Dubuc, as was the case with so many of the judges, went out of his way to teach young fellows like myself. And I like to think that I took advantage of the instruction — worth far more than anything that you can get from law books.

On one occasion I was asking for an order for sale of goods under seizure. My legal position was clear and I had a pile of law books to prove it. But my opponent had all the sympathy and equities going with him. In the end I lost. My chagrin must have shown. Dubuc called me in and said: "Mr. Morrow, sometimes we Judges have to go around the law to do Justice." He was so right. It is this approach, followed I suspect and hope, by most judges that helps keep our Justice system working even if it may sometimes frustrate our legal scholars.

On the same theme, there was a case before Dubuc, wherein the Edmonton Hospital Board was seeking to garnishee the wages of a young girl, the only one apparently able to earn money in a large family. She had told the judge how her father was dying with cancer and although the hospital bill was admitted, if her money went for the account, her mother, and younger brothers and sisters would have nothing to eat. Mr. Williams for the plaintiff carefully explained that the law made her equally liable to pay her father's account. The Judge asked him to show where the law said so. Williams obligingly handed the Judge his copy of the statute. The Chief Judge read it, returned the book, and said: "Yes, that is the law. Action dismissed."

Justice McBride was one of our more studious Judges, apparently determined to as much as possible deliver perfect judgments. He was a hard working student but as so often is the case, a bit inflexible, allowing the law to rule his heart. I had no real complaint, however, as in general we seemed to get along. But there are many stories that can be told about him.

One is how Chief Justice O'Connor is reported to have remarked from the Bench during a sittings of the Appeal Court. That Court had finally reversed one of McBride's judgments and apparently they had overheard his boasts that he had not been upset yet. The Chief Justice's remark: "Well we finally bugged the virgin on that one." I don't think the remark was intended to be heard beyond the Bench but that was one of, if not the only, advantage a Queen's Counsel had, he was as a member of the inner bar, able to hear some of the chatter as between the Judges.

Quite a common type of case that used to come on in District Court was real estate commission claims. On one occasion I argued strenuously for my real estate client but to no avail. The action had come on before Judge H. B. Fraser, a rather down to earth judge who relied more on the common sense than on the common law. Later he jokingly told me that he sensed my disappointment but he said: "You know Bill, your client was a crook. Now perhaps the other fellow was but I didn't know it." Well, you can't win all of them.

Another time, still in front of the same judge, but at Viking, I had taken my new bride with me to see how her husband could perform. While the case went on, Genny sat towards the back. She was wearing a particularly attractive dress and hat—a carryover from her honeymoon attire I suspect. Anyway after the trial we all ended up having lunch with the Judge and for the first time he learned she was Mrs. Morrow. To her amusement he remarked on how disappointed he was. As he put it, he could hardly wait until the first case, which involved bulls and heifers, was over, in anticipation of some juicy divorce case in which she would play the star role.

Back to Chief Justice O'Connor. On an appeal I had been so angry at the verdict obtained from Chief Justice Howson in a case concerning royalties that I had inserted in my factum words to the effect that the reasoning of the learned trial judge was completely incompetent. Somehow or other these offensive words were left in the final draft and to my consternation were there to be read by the members of the Appeal Court. Well, at the noon adjournment, as was often his manner, O'Connor slipped in to the barrister's room where my opponent Abe Miller and I were busy disrobing. The Chief Justice didn't speak to me, but in a voice sure to be heard by me, he went on somewhat in the following manner.

"Abe, what is it the American attorneys say: 'irrelevant, inadmissible' and what's the other word?" Abe's reply: "incompetent, My Lord." "Ah yes," was the reply, "that's the phrase Bill used of the learned Chief Justice."

I have already referred to Justice Boyd McBride. One of his most irritating mannerisms was to butt in or take over cross-examination, often at "the" critical time. On one occasion a witness was being cross-examined by the expert Neil D. MacLean, Q.C. McBride cut in just when he should not have. A few minutes later when he desisted, after having apparently ruined what MacLean was attempting, he turned back to defence counsel with the remark: "Any comment Mr. MacLean?" MacLean's reply: "I don't know, My Lord, I wasn't paying any attention."

Justice, later Chief Justice C. C. McLaurin was undoubtedly our speediest judge. He was one of the best in law but to win, counsel had to be brief and to the point. I well remember one occasion when I was in his

chambers opposing a matter, knowing full well that he was not sympathetic to my proposition. With one hand he was stroking the ever present cigar, with the other he was patting his cocker spaniel, a frequent visitor to his chambers. Knowing my problem I blurted out my argument in rapid fire manner but to no avail. The spaniel apparently overruled me.

On one occasion after an abortive attempt to attack a speeding conviction by certiorari before McLaurin, the judge's remarks to counsel were to the effect: "Don't come to me with sob stories like this. That's what rear mirrors are for — your client's not supposed to get caught." Knowing how fast he was able to make the trip to Edmonton from Calgary we all roared. Obviously he had a good rear view mirror.

Many a time I have heard Chief Justice McLaurin, remark in chambers to some new or inexperienced lawyer: "I'll grant you that order if you really want it, but I have a feeling it is wrong. Remember it's the lawyer the disappointed client will sue, not the judge."

One of the most humorous of our trial Judges was Justice J. Cairns (later an Appeal Court Judge). He never missed a chance to crack a good one, although, sometimes I wonder if the client always appreciated it.

On one occasion in chambers, after he had listened intently to Frank Newson and myself presenting serious but opposing arguments, he shocked us by remarking from the bench: "Well, gentlemen, I have to toss the coin one way or another. Application dismissed." I couldn't make out what my client's remarks were as we walked out but it was perhaps just as well.

In divorce court one afternoon, with the Courtroom full of solicitors and their respective clients his reply to one lawyer, who explained that his client was an atheist and would not take the oath, was: "Well, we'll probably hear the truth for the first time."

On another occasion, this time in criminal court, a man stood charged with sodomy, the unwitting victim being a pig, the offence having taken place at a local packing plant. When the accused evoked surprise that someone had found him out, the Judge quipped: "The pig squealed on you."

One of our Judges was a never-ending source of peculiar happenings. This was Chief Justice W. R. Howson, one time Chief Justice of the Trial Division. I hardly ever had a case or chambers application before him that didn't end up in heated argument. Peculiarly enough, though, despite it all, we seemed to get along. It just required endurance and the ability to absorb sarcasm from the bench — eventually you got what you wanted. I well remember one occasion when I applied in his chambers for an order for service *ex juris*. There was nothing untoward in my material and I was using a form of Order that so far I knew had been in standard use by our firm and other law firms for years. The Judge made me redraft the order in a completely different form and then signed it. Well, next week I had a similar application. Not expecting Howson to be in chambers again and being convinced that his form was not proper, I attended in chambers with the old type of order. To my surprise it was the Chief Justice again. I went ahead anyway, and he granted my application. When I handed in my order for signature he looked it over very carefully, and then turning to the other lawyers in chambers said: "Now there's the proper way to draft an order for service *ex juris*." I could barely stagger outside in my sur-

prise, followed, as you might expect by about a dozen students and young lawyers all asking to see my magic papers. All I could do is show them the form everyone was using.

On one occasion I had taken an appeal to the Appellate Division from a chambers judge on a question involving the practice to be followed respecting the cancellation of a mortgage from a title. A short while after this a poor old Indian from Wabesca came in to my office. He had a duplicate certificate of title in another man's name along with a letter signed by that man, whose signature was witnessed. The letter purported to transfer or convey the land to my client. He explained that the persons who had signed were all dead, that he was not going to live very long, that the title was to his little cabin and he wanted it to go to his son. He went on to say he had gone to other lawyers but they had sent him to me. This seemed peculiar until I found he had no money. Well I thought it would be a good exercise for my law student, at that time, Bob Day. On my suggestion he prepared an affidavit to be sworn by our client and then went down to chambers, not to ask for an order, but, merely to ask instructions, as had been laid down by the Appeal Court. The chambers Judge was Chief Justice Howson and apparently he was in rare form. Hardly had Day got his words out when the Chief Justice told him that he didn't like principals sending their students down on crazy applications like this one and would he tell Bill Morrow to come to his chambers forthwith. Well poor Bob Day, as you might expect, was shattered. He ran back to the office with his tale of woe. I proceeded to the Judge's chambers and proceeded to ask for instructions. I also explained I was doing it as a charity matter. The Judge said that was not the way I should handle it suggesting, almost, that I was attempting to defraud someone of his property. I referred him to the Court of Appeal Judgment and his answer was: "Well go to them then." My reply, by now quite heated, "You my Lord are now seized with the matter and I will apply to you." I have never come so close to striking a Judge as I did that day as we faced each other and as he abused me with the type of unflattering English he could use with a flare. But I didn't completely lose my cool, as they say, but left, determined to appeal. I had hardly gotten to my desk at the office, however, when Howson called me to come back. So back I went. This time, however, as I entered, he asked me to sit down, and then he proceeded as follows:

Bill, I guess the truth of the matter is, I'm nothing but a cranky old bastard. You go back and draft an order giving that poor old Indian his title and I'll sign it.

It left me speechless as this was even more than I had been seeking. You can rest assured I didn't waste any time drafting the requisite order and getting back to have it signed. About three days later the Chief Justice was taken to hospital with a heart attack so I was better able to understand his behaviour.

A somewhat similar exchange took place between us in chambers one morning when I was applying to him for an order for sale under the Mechanics' Lien Act. As the matter was a little out of the ordinary and the Judge was negative I referred him to an article on the subject which confirmed what I was submitting. It was an article on Mechanics' Liens published in the Alberta Quarterly. The author was Stan Ross who was somewhat of an expert on the subject. Howson wasn't impressed but told me to make my application to Stan Ross if I wanted such an order.

Wallace Mason told what to me was a good one on Howson. Apparently one day he called Wallace into his chambers and explained to him that he had heard that there was some judge on his Court that the lawyers were avoiding and he wanted to know who it was as he felt he had a duty to look into such matters. Mason asked him if he really wanted the truth and the reply was affirmative. So he got the truth. It was he. When Howson asked why, Wallace is reputed to have told him: "Life is too short, the young lawyers see no reason to take abuse every time they are in court so they go to other judges."