

THE DISTRICT COURT OF SOUTHERN ALBERTA

THE HONOURABLE H. S. PATTERSON*

This may sound as though I am reading the honour roll on a memorial tablet and, in a sense, that is just what I am doing. It is also an attempt to mention, not particularly in chronological sequence and certainly not in order of importance, prominence, benevolence or otherwise those Judges who, through the years, have served on what initially in 1907 was the District Court of Southern Alberta. Since the recent amalgamation of the District Court of Northern Alberta and the District Court of Southern Alberta there have been many who have come from the north and served partly in the south. I am confining my comments to those of the amalgamated District Court who have lived and served primarily in the south.

This is not a task I shoulder easily. I have not been a chronologer of the court and I have made no attempt to read old files. Most of the dates and statistics are contained in a table prepared a good many years ago by the late Justice Alan J. Cullen who, I assure you, could have done this job eminently better than I.

Midnight on June 30th was not the first occasion on which certain District Court Judges found themselves "elevated". I use the quotation marks advisedly because the current euphemism is "merged" and I urge you not to forget this seemingly unimportant change of wording.

Beginning historically by referring to an Order in Council of 1907, one of Alberta's first District Court Judges, Charles R. Mitchell, had an unusual career. He was appointed in November, 1907, with other Judges as "Resident Judges" in southern Alberta. His residence was designated as Medicine Hat and Calgary and for three years, before his first retirement to enter, or perhaps "re-enter", politics temporarily, he was Resident Judge in both centres. Not a bad effort in 1907 I would say but I must admit that the train service between the two points was better then than the train or air service has often been since. This, however, was not the only piece of fancy footwork achieved by the learned Judge because sixteen years after leaving the District Court he returned, this time as a Justice of Appeal and sat in this capacity for ten years before becoming Chief Justice of the Trial Division in 1936. This position he held until 1943 when he retired after thirty-five years as either a Judge or a Politician. Some of his contemporaries might be forgiven for saying that for some of these years he managed to perform these incompatible functions simultaneously.

Another outstandingly successful District Court Judge was the late Clinton J. Ford. He started on the District Court of Southern Alberta in May of 1942 and in April, 1945, went to the Trial Division, in 1950 to the Court of Appeal and in 1957 to Chief Justice of Alberta which position he held until his retirement at age seventy-five in 1961. His daughter, Helen, an early woman graduate in law from the University of Alberta, received

* This is an excerpt from the remarks delivered by Mr. Justice Patterson at the closing ceremonies of the District Court of Alberta held in Calgary on June 29, 1979.

the Chief Justice's gold medal. It was, of course, before Ford's term as Chief Justice but I knew them both well enough to realize how proud they were of each other.

W. A. (Billy) Macdonald started on the District Court of Southern Alberta in 1926 and went to the Trial Division six years later and to the Court of Appeal in 1944 and for some time before retirement was the senior Justice of Appeal other than the Chief Justice whose health was failing and so Macdonald was, in many ways, the de facto Chief Justice of Alberta for several years before his retirement in 1957. Macdonald had a formidable Cape Breton Island visage which terrorized the members of the bar who did not see beyond it but he was one of the most gentle persons we have ever known. His retirement completed an uninterrupted career as a Judge through thirty-one years ending the longest judicial career of anyone who began his service on the District Court of Southern Alberta.

The District Court of Southern Alberta cannot forget John Howard Sissons, appointed in 1946 in Lethbridge. He was made Chief Judge of the District Court of Southern Alberta in December of 1950 and in September of 1955 was made the first Justice of the Territorial Court of the Northwest Territories, a position he relished in spite of a significant physical disability which he simply never acknowledged. Jack Sissons always was a gadfly on the hide of the bureaucrat but at no time did he enjoy life as he did when he was quarrelling with Ottawa about their treatment of the native people of the north. His autobiography, "Judge of the Far North", is an accurate account of this man's determination to bring a tempered version of white man's justice to the Northwest Territories. This he did by travelling by dogteam, by float plane and by aircraft equipped with skis taking him into the most remote parts of northern Canada. In this way he made a real contribution to our national life, just before the beginning of the frantic development in that great part of our land. He was too ill shortly before his death to attend the convocation ceremony at the University of Lethbridge when he was awarded a Degree of Doctor Laws. The lesson is obvious and we all know it but how often we leave until too late the recognition of people who deserve to be honoured.

Hugh C. Farthing began a distinguished judicial career with an appointment to the District Court of Southern Alberta in 1958. He went to the Trial Division of the Supreme Court in April of 1960, creating the vacancy on the District Court which I was fortunate enough to fill.

Another Southerner who began his career on the District Court of Southern Alberta was Alan J. Cullen to whom I have already referred. Cullen was first appointed in 1964. He served a few years with us and then became a member of the Trial Division which he was at the time of his far-too-early death four or five years ago. He had a sense of humour which was typically Irish and a generosity that his friends will never forget. He once bought me a package of ten starched collars in Edmonton and enclosed a card reading: "Dear Henry: May these never impede the progress of a strong drop downward or a kind word upward". For years Cullen wrote a personal letter of contratulations and encouragement to each and every student after he or she was admitted to the bar in Calgary.

Another one-time member of the District Court who made it the hard way was Frank Quigley. Quigley was appointed to the office of Police

Magistrate as Provincial Judges were then designated in March of 1958. After ten years' service as a Magistrate, he took the office of Master of Chambers in the Supreme Court which he held until February of 1970 when he joined the District Court of Southern Alberta. He was elevated in November of 1974 to the Trial Division of the Supreme Court where he now sits.

This, in a way, brings me to the end of the list of those of the District Court of Southern Alberta who have "made it" without having to live long enough or wait long enough for the implementation of the Act to incorporate the Court of Queen's Bench but among the others there are many whose names must not be forgotten.

With Mitchell on the first appointment list in 1907 was Roland Winter, first to serve in Lethbridge and to move to Calgary in 1913. He was known for his ready wit but also for his classical scholarship and a precise legal knowledge in Surrogate matters which served the Calgary bar until his retirement in 1926. With Mitchell and Winter in that original 1907 Order in Council was A. A. Carpenter who started out in MacLeod, now Fort MacLeod, moving to Calgary in 1910. He left us in 1915 to go to the Board of Public Utility Commissioners. Carpenter was replaced in MacLeod in 1910 by Judge Crawford, father of George Crawford, Q.C. now prominent in Calgary. Southern Alberta did not get much mileage out of Judge Crawford as he moved to Edmonton in 1913. He was replaced in MacLeod by E. P. McNeill who moved to Calgary in 1920 and who retired here in 1940.

At this time Resident Judges were still the order of the day and in Lethbridge we had Judge Jackson from 1913 to 1944; in Medicine Hat, Judge Greene from 1915 to 1936; in Hanna, Judge J. D. Reginald Stewart from 1919 to 1931 and in MacLeod we had, beginning in 1921, Judge Angus M. MacDonald.

In Calgary from 1915 to 1920 we had Judge Leslie J. Jennison and later, very briefly in Lethbridge for only nine months, Judge L. E. Fairbairn who was accidentally killed in 1946 by a fall from a horse. In 1940, Judge John W. McDonald was appointed to the District Court of Southern Alberta and in 1944 was appointed Chief Judge. Chief Judge McDonald died in 1950. His son, John A. S. McDonald, Q.C., and his grandson, Bruce McDonald, are prominent in the practice in Calgary today.

At about this time Judge Roy Edmanson was appointed to serve first in Lethbridge and later to move to Calgary in 1945 where he served until his retirement in late 1960.

Succeeding Chief Judge J. W. McDonald in 1950, Judge Manley Edwards was appointed in Calgary and served until his death in September, 1962. In October, 1945, Judge Luke H. Stack was appointed to the District Court in Calgary where he served until his retirement after a short extension to January 1958.

At this point I begin to enter upon the period when the District Court Judges of Southern Alberta were either friends or colleagues of mine and in referring to Judge Stack I will never forget the evening of his retirement when he was honoured by the Calgary Bar. The main speaker was the late Chief Justice of Alberta, Clinton J. Ford, and in his oration he said of Stack, with great sincerity, "and he was a *just* Judge". I recall that instantly there was a spontaneous standing ovation and the ceiling of the

ballroom in the Palliser Hotel was nearly brought down by a thundering applause. It was long before my own appointment to the court but I could not help reflect, as I have many times since, that it does not come to many men to finish their careers as universally beloved by their brother Judges and by the bar. Judging is not a popularity contest. Somebody loses every case but it must have been a wonderful experience for Luke Stack to realize that night how many friends he had at the end of his illustrious career. One of his sons, Ed Stack, is a Provincial Judge in Edmonton.

When Stack retired in 1958 he was succeeded by Hugh C. Farthing whom I have already mentioned. But Farthing deserves more than just a passing mention. He was a World War I veteran and had been badly gassed. His whole life was an example of a man's dedication to his country, his church and his profession.

From 1958 we were blessed by an increase in the numbers of the District Court of Southern Alberta and Arthur Beaumont, then from Lethbridge, was appointed to fill the vacancy on the enlarged court. Arthur had been a Police Magistrate in Lethbridge and had shown himself to be so independent of the Social Credit Government when it came to power that they promptly removed him from office as a Magistrate. In my own early service on the District Court I turned frequently to Arthur for the sage advice that a young and inexperienced Judge must have and I never came away empty-handed. Once when I was discussing the problem of sentence with him and was telling him that I was having difficulty arriving at what I considered to be a proper penalty, he looked me in the eye with a twinkle and said, "Ah, lad, sentencing is easy. All you do is think of a number and divide by two".

Beaumont was Irish to the core and fittingly he died on St. Patrick's Day. He had been sick only a short time and that morning he received in the mail scores of Paddy Day greeting cards and letters. After reading his mail, he got up to go to the doctor's and simply dropped. On no other day of the year would he have been so conscious of his many friends.

In 1945 Elmer Feir was appointed to the District Court of Southern Alberta after Sissons went to the Northwest Territories. Then, as now, the Lethbridge members of the District Court travelled regularly to MacLeod, Claresholm, Medicine Hat and the Crows Nest Pass.

Particularly in Medicine Hat and Lethbridge, a significant number of Supreme Court cases were tried by consent before Chief Judge E. B. Feir who was always available.

William Sellar was appointed in October, 1967, and sworn in at the first sittings of a court in this building. He was a big man in every way, had been a football player and a fine athlete. He had an outstanding military career in the R.C.A.F. as a Flying Control Officer in England and Canada with Bomber and Coastal Commands. He was suffering from rheumatoid arthritis when he was appointed and in spite of the most heroic battle he succumbed in 1968 after a fall in an elevator which fractured a vertebra in his neck. Sellar enjoyed being a Judge. He loved the job and the young people he dealt with. He suffered terribly but never lost his sunny disposition and generous way.

Ted Tavender is, fortunately, still with us although not on the bench. He was appointed in 1961 and served until retiring at age seventy-five, last July. No one believed he had reached that age. As we know, he has full

possession of all his faculties and worked to the last day. For seventeen years we had offices next door to each other and were in and out seeing each other on a daily basis. He determined from the start to tidy up the Surrogate practice in Calgary and we all learned a great deal from his efforts on that project. He had been a partner of Farthing's and each of them had been Chancellor of the Anglican Diocese. This was a source of great amusement to Tavender's friend, Cullen, who, at the time of an agitation to ordain women in the Anglican Priesthood presented Tavender with a parcel labelled, "The latest in Anglican Vestments". When unwrapped, it turned out to be a brassiere.

It had not been my intention to mention anyone still serving on the District Court but one exception must be made for Louis Sherman Turcotte of Lethbridge. Turcotte was appointed in 1955 when Sissons went to the Northwest Territories. On the retirement of Elmer Feir he became Chief Judge of the District Court of Southern Alberta in October, 1969, and when the two District Courts were amalgamated he was appointed Associate Chief Judge. His public service record is imposing. He has been a school trustee, an alderman and, for years was mayor of the City of Lethbridge and Chancellor of the University of Lethbridge. He and Elmer Feir were together in the Lethbridge Court House for over fourteen years and were a mighty pair.

That brings us up to date as it were. Since 1907 in the area covered and not counting those of us who merge at midnight tonight there have been a total of twenty-six men who have served for periods running from thirty-one years in the case of W. A. Macdonald to nine months for poor Fairbairn.

We know that it has been and still is a good court and at times an unusually fine one. It brings to the Court of Queen's Bench two brilliant and attractive women. The Trial Division Judges are expecting this to be a pleasant experience. Although some of the Trial Division may have opposed merger they have always been ready to accept this aspect of the project.