A Red-letter Day in a Brilliant and Successful Career.

SOMETHING OF THE CHIEF JUSTICE AND HIS ANCESTORS.

The History of the Supreme Bench New Brunswick Told by Mr. J. W. Lawrence, Supplemented by Pen-Portraits of Its Present Occupants

On the 13th October, 1838, half a century ago, Francis A. H. Straton, John C. Allen and John M. Johnson were admitted attornies. The bench and crown officers at that time were :-

Chief Justice—Hon. Ward Chipman.
Puisne Judges—Wm. Botsford, James
Carter, Robert Parker.

Attorney General—Charles J. Peters. Solicitor General—George F. Street. Advocate General-John Simcoe Saund-

Clerk of the Crown-Geo. F. S. Berton. Clerk of the Pleas-George Shore. Clerk of the Circuits and Clerk of Crown on Circuits-Wm. Tyng Peters.

#### Hon. Isaac Allen,

the grandfather of John Campbell Allen, was born in New Jersey in 1741. He was educated for the bar, and practiced in Philadelphia and Trenton. In 1769, he married Sarah Campbell, of Philadelphia. Through



JUSTICE PALMER.

the nevolution Mr. Allon was lieutenantcolonel of the 2nd Battalion New Jersey volunteers. He had a valuable property in Pennsylvania which he forfeited, consequent on taking part on the side of the crown. Col. Allen was ordered by the council of Pennsylvania to surrender, and take his trial for treason, or stand attainted and his estate forfeited.

Col. Allen, at the close of the war, with his family and five servants, went to Wilmot, N. S., receiving from the British government £300 stg. per annum, a lieutenantcolonel's half-pay.

## Appointed to a Seat on the Bench.

On the organization of New Brunswick, 1784, Col. Allen was appointed one of the four judges of the supreme court and one of the twelve councillors. Col. Allen drew two lots at Parr Town, on Prince William street, between King and Princess streets, and sold them after the removal of the seat of government to Fredericton, to Thomas Horsfield, for £5 each lot. Col. Allen obtained a grant of 2,000 acres on the St. John river, seven miles above Fredericton. Within the grant was an old Indian settlement, called Aukpaque, meaning the beginning of swift water. He also obtained a grant of an island opposite, called "Isle of Sauvage," or Savage island, containing 220 acres. His residence was a quarter of a mile above the Indian settlement, and there he lived to his death, October, 1806. The residence of Chief Justice Ludlow was at Springhill, one mile nearer Fredericton.

The First Trial at Fredericton.

In May, 1786, David Nelson and William Harboard, two disbanded soldiers, living in the parish of Queensbury, 25 miles above Fredericton, were arrested for shooting an Indian, Pierre Bonwah. They were examined May 24, before Hon. Isaac Allen and Hon. Edward Winslow, two justices of the peace, in accordance with a statute passed in the reign of Queen Mary, requiring the justices to take the examination of the prisoner, but he was not sworn and was not compelled to make any statement. If the prisoner made a voluntary statement, it could be used as evidence against him.

The Statement of Nelson.

Last Saturday, the sun about half an hour high, my comrade, William Harboard, and I went to the river to catch some fish. After being there a little while, I heard dogs by the house after our hogs. I dropped my pole and ran to the house for my firelock. When just above the house, I found two dogs gnawing one of my hogs, which they had killed. When the dogs saw me they ran, and I fired at them. I spoke to William Harboard, and asked him to fire, which he did, and killed one of the dogs. I then desired Harboard to go

THE JUBILEE OF THE CHIEF I then said. The hogs must be taken into a boat; whoever owns the hoat must have a boat; whoever owns the boat must have Nova Scotia, covering the whole ground. the hogs." We then went to the shore, and discovered some Indians about a quarter And the Manner in Which the

Bar Recognizes It.

Why october 13, 1888, Is

and discovered some Indians about a quarter of a mile up the river. We beckoned to them to come to, and called on them to stop. He answered, "No, you have killed my dog." I repeated to him to stop, and said, "You have got my hogs." He then pushed away across the river, which confirmed us in the opinion, that the hogs were in the canoe. William Harboard then said "Let us fire over his head may then said, "Let us fire over his head, may be he will hear the balls and come to," on which both fired, but without any design or intention of killing or wounding the persons in the canoe. I then loaded and fired the second shot for the same purpose. We then went again in search of the hogs, and found all but one, which we supposed was in the canoe.

The Statement of Harboard

was substantially the same. The occurrence caused great excitement, not only among the Indians, but also among the white settlers, as the following letter of Col. Winslow to Ward Chipman, at St. John

FREDERICTON, May, 1786.

My Dear Chipman: The enclosed letter to the governor, with | thing the examinations therein, will explain to you a transaction, which has been the source of great concern to our friend Col. Allen and myself. You will peruse the papers, seal the letter to the governor and present it, and I expect of you, that you will on our behalf urge the absolute necessity of the attendance of the chief justice. The Indians on the one hand are clamorous for an instant decision. The multitude (I mean the people of the county) cannot reconcile themselves to the idea, that two men of fair characters, should be sacrificed to satisfy the barbarous claims of a set of savages.

In this situation, you will naturally sup-pose, that we have had an arduous task to keep them quiet. We have assured both parties that the men shall be tried quickly, and if guilty, they will be punished.

We have told them the chief justice must attend, and that he will set off as soon as

he receives the information from us. For fear of accident, I wish when you deliver the governor's letter, that you would if necessary, suggest the peculiar situation of Col. Allen. The whole corps of Indians are encamped around his house, and their rudeness has already distressed his family and made them unhappy. He had lately made a compact with them for a lot of land and they think they have a right to call on him whenever they please. This event has increased their familiarity, and I believe if they had the idea that he possessed the authority to decide in the present case, they would press him to a peremptory decision, and if it was not agreeable to them they might render the situation of the family uncomfortable. I am not apt you know to anticipate evils, but I really believe the Indians would be troublesome on such an occasion. These considerations induce me to write thus ardently; that the chief justice will come, and that he come immediately; impress them strongly on the governor.

And now Chip, let me tell you once more, that I think, you should come to this country on some public occasion; can a better opportunity offer than the present? The prosecution is a matter of national expectation on one side, and of great concern on the other. Either the attorney or solicitor general ought to attend. It will gratify your friends exceedingly if you will attend, Col. Allen authorises me to tell you, he has business of some importance to engage you in. His gown and bands at your house. His coat and waistcoat at Judge Putnams. Pray don't forget them, he is very anxious

In haste, yours, EDW. WINSLOW. about them. WARD CHIPMAN, Esq.

## The Trial.

The court of over and terminor opened at Fredericton, June 13, 1786, with Chief Justice Ludlow and Judge Allen on the

The prisoners, Nelson and Harboard, were indicted for killing the Indian, and severally pleaded not guilty. Ward Chipman, as clerk of the crown on the circuits, conducted the prosecution. The prisoners were not defended by counsel, it not being the practice at that time to allow counsel for capital offences, except to argue questions of law. Only three witnesses were examined, one of them, Edward Winslow, who had assisted in taking the examination of the prisoners. No Indian was called though the squaw of Bonwah was with her husband in the canoe when he was shot. The prisoners were found guilty of murder, and sentenced by the chief justice to be hanged on the 23rd of the month, nine days after the opening of the court, and one month after the commission of the offence.

Nelson was executed, but Harboard pardoned, as appears from the following from Jonathan Sewell to Ward Chipman, in whose office at St. John he was a student:

FREDERICTON, July 6, 1786. Dear Sir: Poor Harboard has been out of his senses. When they told him he was reprieved, he replied that he had suffered what was more than death, and was perfectly indifferent about his execution. He is now at liberty

and has returned to his former habitation. Parson Beardsley did not think proper to attend the unfortunate Nelson the day of his exit, although he was, as you remember, particularly requested.

Yours truly, JON. SEWELL, Junr.

The Slavery Test Case.

In February, 1800, the question of slavery in New Brunswick was before the full court at Fredericton, Chief Justice Ludlow, Judges Allen, Upham and Saunders.

Counsel for the Master. Counsel for the Slave Ward Chipman, Jonathan Bliss, Samuel Denny Street. Thomas Wetmore, John Murray Bliss,

Charles J. Peters, William Botsford. The speech of Jonathan Bliss was divided into 32 divisions. Ward Chipman's covered 80 pages of foolscap. Both

The question came before the court, on the return to a writ of habeas corpus, issued to Caleb Jones, directing him to bring into court Nancy, a colored woman in his possession, and whom he claimed the right to hold as a slave.

The bench divided. Chief Justice Ludlow and Judge Upham, supported the master's claim to the slave. Judge Allen and Judge Saunders, held against the sufficiency of the return to the habeas corpus. As the court was equally divided, no judgment was entered, and the master took back his slave. From that time slavery was practically at an end in New Brunswick.

#### Two Challenges and a Duel.

At the close of the trial, Stair Agnew, M. P. P., a slave owner, whose residence was at the mouth of the Nashwaak, opposite Fredericton, to Judge Allen, challenge Murry Bliss, to fight consequence of somesaid during the argument. judge

Chipman and Chief Justice Blowers, of the Provincial Militia, and on the abolition of that office, 1839, Col. Allen was gazetted Quarter Master General.

> In April, 1845, Sir William Colebrook appointed Col. Allen, with the late James A. Maclauchlan, a commission for settling the claims to land in the Madawaska settlement, under the fourth article of the treaty of Washington, 1842, known as the Ashburton treaty, which fixed the boundary line between Maine and New Brunswick. They were engaged from April to December 1845, and again from May, till October, 1847, settling the claims and laying off the various allotments, on the British side of the river, from the Grand Falls, to the river St. Francis, and on the Madawaska river and other tributaries of the St. John. Upon the report of the commissioners, grants were issued, to the persons who had established their claims.

Sir William Colebrook in 1845, appointed Col. Allen to a seat in the executive council. Col. Allen died at the old homestead, Aukpaque, April 29, 1875, in his 91st year. His sister, Miss Francis Allen, the last of the second generation, died at Fredericton, declined, an act at January 6, 1879, in her 92nd year.



CHIEF JUSTICE ALLEN.

that time greatly more courageous than to

of the counsel for the slave, fought. They, with their seconds, were indicted. The trial stood over, and the indictment was ultimately quashed for some irregularity.

his slaves, one a girl born in the East Indies, bought from the master of a ship in New York. After obtaining her freedom, she married a man named Leck, who had been in Col. Allen's regiment. Some of her descendants have been in the Allen family to this day.

## Death of Hon. Isaac Allen.

Oct. 12, 1806, Judge Allen died at his residence, Opa-que, in his 66th year, the second of the bench of 1784. On the death of Judge Allen, Hon. Gabriel G. Ludlow, then president and commander-inchief, sent the following communication to the colonial office:

FREDERICTON, N. B., Feb. 9, 1807.

I have the honor to transmit for His Majesty's consideration the enclosed list of His Majesty's council, and to report the having assisted Mr. Kerr for several years. death of Isaac Allen, Esq., late a member of the council, and one of the judges of the supreme court of judicature in this province, which happened on the 12th of October last.

As the appointment of the judges from among the gentlemen of the bar in the province would contribute to keep alive the zeal and attachment of this colony to His Majesty's government, I should have thought it my duty to suggest, on this occasion, the expediency of proposing for His Majesty's consideration, to place Mr. Bliss, the present attorney-general, on the bench, and to appoint Mr. Chipman, the solicitor-general, to succeed him in the former office. But I have reason to think that neither of these gentlemen would wish to take the vacant seat with a salary limited to £300 stg. I therefore beg leave to recommend William Botstord, Esq., a barrister of good character in the province, as a fit person to fill this vacancy in the supreme court.

I have the honor to be G. G. LUDLOW. Right Hon. WM. WYNDHAM.

The appointment made by the British

government was A Great Surprise.

While the selection was made in the province, it was of one who was never admitted to the bar, or wore a lawyer's gown. To the vacant seat, the Hon. Edward Winslow was appointed. For the office he was indebted to the influence of Governor Carleton, then in England, whose special favorites | McPherson, board of works; Francis Mcin New Brunswick were, Jonathan Odell, Phelim, postmaster general; John C. Allen, Ward Chipman and Edward Winslow.

Judge Allen had two brothers and a sister. The latter died at Fredericton, in 1835, aged 91 years.

At Wilmot, N.S., his son John was born, June 27, 1784. For many years he was one of the judges of the inferior court of common pleas for York, and for 35 years continuously one of the representatives of the governor dissolved the house. Though that county. In the war of 1812, Mr. Allen | the members of the government were all reheld a commission as captain in the New elected, the general result of the election Brunswick Fencibles, commanded by Gen. Coffin. In 1823, with the rank of Colonel, ly resigned and their predecessors returned with me and see if the other hogs were man's covered 80 pages of foolscap. Both Coffin. In 1823, with the rank of Colonel, ly resigned a missing. We went, but could not find any. are extant, also four letters between Ward he was appointed Inspecting Field Officer of to power.

fielder, particularly strong upon balls well, after a somewhat tedlous illness. . I the dogs can't read. Eb. Mr. Lycenal

Hon. John Campbell Allen, D. C. L.

son of Hon. John Allen, and grandson of Stair Agnew and S. Denny Street, one | Hon. Isaac Allen, was born at Kingsclear, York county, Oct. 1, 1817. He received his education at the Fredericton Grammar school. His education for the bar was acquired in the office of Hon. John Simcoe After the trial, Judge Allen manumitted | Saunders. Today, half a century ago, Mr. Allen was admitted an attorney, and Oct. 15, 1840, a barrister of the Supreme court of New Brunswick.

> At the formation, 1838, of the New Brunswick Regiment of Artillery, Mr. Allen received a second lieutenant's commission. His promotion was rapid, for in 1841, he was gazetted adjutant of the regiment, with the rank of captain, and his commissions never have been cancelled. In 1842, Mr. Allen was appointed by Sir William Colebrook one of his provincial aide-de-camps.

In 1840 Mr. Allen was appointed register of the court of probates for York, also clerk of the court of marriage and divorce. On the retirement, in 1839, of D. S. Kerr from the reportership of the decisions of the Supreme court, Mr. Allen succeeded him,

## Mayor and Representative.

In 1852, Mr. Allen was elected mayor of Fredericton, being the second mayor after the incorporation of the city. He held the office three years. In 1851, the Partelow-Street government appointed him clerk of the executive council, an office he held till 1856, when he was elected to the seat vacant by the death of James Taylor, one of the members for York.

At the close of the session, May, 1856, Hon. J. H. T. Manners-Sutton, contrary to the advice of his council, dissolved the House of Assembly to take the sense of the constituencies on the Prohibitory law, which had come in force Jan. 1 preceding. The council thereupon resigned, and the governor called upon John H. Gray to form a new government. He submitted the names of several gentlemen which were approved. They went to the people and were all elected. The legislature met immediately after and the vote in the house on the question of the dissolution was 23 for the government, and 17 against. The Prohibitory act was repealed by a vote of 37 to 3.

The members of the new government were: John H. Gray, attorney general; R. D. Wilmot, provincial secretary; John Montgomery, surveyor general; Charles solicitor general; E. B. Chandler and R. L. Hazen without office.

The session of 1857 was a most exciting and stormy one, consequent on three of the former supporters of the government going into opposition, leaving the government dependent on the vote of the speaker. Hon. Chas. Simonds. At the close of the session, was adverse to them, when they immediate-

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In 1860, Hon. J. H. T. Manners-Sutton offered Mr. Allen the appointment of Queen's counsel which he declined.

Mr. Allen Speaker of the House. Consequent on the resignation of John M. Johnson of the speakership of the house, Mr. Allen at the opening of the seschair. The honor was the greater from being one of the opposition members. The government's candidate was Charles Fisher. Mr. Allen held the office till the dissolution in January, 1865, when the government went to the country in support of the union of the provinces. G. L. Hatheway left the government, and with Albert J. Smith, one of its supporters, strongly opposed the proposed union. The government was defeated and the governor, Hon. Arthur H. Gordon, called to his council Albert J. Smith, president of the council; John C. Allen, attorney general; A. H. Gillmore, provincial secretary; G. L. Hatheway, chairman board of works; Bliss Botsford, surveyor general; Wm. H. Odell, postmaster general; R. D. Wilmot, T. W. Anglin and R. Hutchinson without office.

#### Delegation to England.

Hon. A. J. Smith and Attorney-General Allen, in accordance with a resolution of the house, of June 7, 1865, went to England as delegates against the proposed union. On their return, they presented the following to the governor:

We left for England the 20th June, and arrived there on the 3rd of July last. Shortly after our arrival, we waited on the Right Hon. Mr. Cardwell, Her Majesty's principal secretary for the colonies, and announced to him the object of our mission. We subsequently had several interviews with him, at which we presented in detail objections to the scheme of the proposed union of the provinces, and in the terms of the resolution authorizing our appointment, informed him of the views of the house of assembly and people of the province on the subject. Mr. Cardwell admitted the force of many of the objec tions, but stated that the policy of the Imperial government was in favor of the union of the colonies.

## The Four Judicial Epochs.

The first epoch was in 1808, when Judge Upham died, followed by the death of Chief Justice Ludlow, the last of the bench of 1784. Their early associates were James Putnam and Isaac Allen. For the chief justiceship Attorney-General Blis and Solicitor-General Chipman were claim ants. The former was successful, and the latter got the judgeship. The salaries o the judges that year were increased from £300 to £500 stg., with £700 to the chie justice. This was accomplished through Judge Upham's (grandfather of C. W Weldon) mission to England, where he died, on the eve of his return to New Brunswick.

The second epoch was in 1834, the jubilee year of the first appointments to the bench of the supreme court.

Dispatch from the Lieutenant-Governor FREDERICTON, N. B., May 26, 1834.

I regret to have to announce to you the death of Chief Justice Saunders, at this place, on the morning of the 24th instant. Enclosed I have the honor to submit to you an application from Attorney-General Peters for the vacant office, also from the senior and junior puisne judges of the supreme court, Mr. Justice Bhiss and Mr. Ward Chipman. Having determined in an

appointment of this importance, demanding qualifications of a high and peculiar order, to abstain from recommending either of the claimants as best qualified to succeed I have only to observe that my knowledge and experience of all the candidates, whose claims are now before you, afford me the very satisfactory assurance that, whichever Majesty may be pleased will prove a fit and worthy successor to the

judicial bench of New Brunswick.

I have, etc., etc., ARCH. CAMPBELL.

Right Hon. E. G. STANLEY, Colonial office.

Attorney-General Peters claimed th chief justiceship in virtue of his office. Another ground was: he was the father of 21 children. The point was significant, from one of his rivals, Ward Chipman. having "none to speak with his enemies in the gate."

Should the attorney-general get the chief justiceship, his office would be vacated.

Should it go to one of the judges there would be a vacancy on the bench. For whichever became vacant there were three applicants, Robert Parker, John Simcoe Saunders and E. B. Chandler. As the chief justiceship was given to Ward Chipman, the vacancy fell to the bench, yet sion, 1863, was elected to the speaker's neither of the applicants won the prize. The first intelligence as to the disposition of the puisne judgeship was the tollowing:

James Carter, jr., one of the aldermen for Portsmouth, has been appointed one of the puisne judges of New Brunswick .-London Morning Herald, July 30, 1834.



Judge Bliss was in his grave, before either of the appointments was known in

New Brunswick.

The Bar Remonstrate. A meeting of the bar was held at the court house Fredericton, Oct. 22, 1834, with Attorney General Peters in the chair. Claiming that appointments to the bench, should be made from the provincial bar, to this, they received the asurance, that all future appointments would be from the bar

of the province. To the vacancy by the death of Judge Bliss, Solicitor General Robert Parker was

appointed. The third epoch was, in 1851, consequent on the resignation of Chief Justice Chipman, when Judge Carter was recommended by Sir Edmund Head, and confirmed by the British government. The vacancy in the puisne judgeship was given to Attorney-General Wilmot. The movements and counter movements, connected with the bench of 1851, began in 1848, on the death of Attorney-General Peters, and were consummated in 1854, by the overthrow of the

The fourth epoch was in 1865, the most eventful year in the judicial history of New

Attorney-General Allen on the Bench.

The term of his attorney-generalship was the shortest in New Brunswick. He was appointed in April, 1865, and resigned in September following.

In July, Sir James Carter resigned the office of chief justice, and on the 21st of September, Judge Parker was appointed and Attorney-General Allen received the vacant judgeship.

Chief Justice Parker lived only one month, and Judge Ritchie was placed at the head of the judiciary of the province. The vacant judgeship was given to Hon. John W. Weldon, son-in-law of Judge Upham, one of the bench of 1784.

Never did it fall to a government, whose tenure of office was little over a year to appoint two attorney generals and have so many judicial prizes at its disposal, two judgeships and two chief-justiceships. These were the last judicial appointments by the crown in New Brunswick.

In 1866, Judge Allen was appointed vice-president of the court of governor and divorce, for the trial of divorce cases.

In 1875, on the appointment of Chief-Justice Ritchie to the supreme court of Canada, Judge Allen received the chiefjusticeship. Of the attorney-generals of New Brunswick, Jonathan Bliss and John C. Allen, alone attained to the office of chief-

(Continued on Sixth Page.)