

London, England

012
94
273L



PHOTOFILE ENVELOPES
MIN pH 8.5

THE LONDON LAWYER.

A BIOGRAPHICAL SKETCH

OF

ELIAS HARDY,

Counsellor-at-Law at Saint John, N. B.,

A. D. 1784-1798,

WITH

SOME ACCOUNT OF THE INCIDENTS
IN WHICH HE FIGURED.

BY

W. O. Raymond
REV. W. O. RAYMOND, M. A.,

President of the New Brunswick Historical Society.

1894.

LD

F5012

1894

The EDITH and LORNE PIERCE
COLLECTION *of* CANADIANA



Queen's University at Kingston

"THE LONDON LAWYER."

Among those who figured conspicuously in public life during the early days of Saint John and of whom our local historians have preserved little more than the names, few were qualified by natural endowments to attain greater distinction than Elias Hardy. His death at a comparatively early period, coupled with the fact that no descendants remained in the province to hand down to future generations the story of their ancestor's life and services, will serve in a measure to account for the fact that as far as he is concerned our provincial annals are almost a blank.

It is difficult with the scanty materials available, to give more than an outline of the life of the subject of this sketch, but enough remains to show that St. John in all its history, possessed few men of greater promise. As a lawyer Elias Hardy would have made his mark in his profession in any age or community. The public estimate of his ability is sufficiently indicated by the fact that from the time of the establishment of the courts in the province until Hardy's death in the year 1798, his services were in constant requisition, and he was retained as counsel in nearly all the leading cases. He was frequently pitted against such able lawyers as Jonathan Bliss, Ward Chipman and Thomas Wetmore, in all instances pleading the cause of his clients with marked ability and success. In addition to his talents as a sound counsel, he possessed oratorical gifts of a high order, and was particularly effective before a jury.

Tradition has it that as an all round lawyer Elias Hardy, among his contemporaries, knew no peer. The student will find abundant evidence of his industry and ability amongst the voluminous records of the court of chancery.

Elias Hardy was the son of a non-conformist clergyman. He was born at Farnham, in the county of Surrey, England, in the year 1744; was educated for the bar and admitted an attorney and solicitor in the courts at Westminster Hall. The confinement incident to this branch of the profession proved uncongenial to one of his active temperament, and seemed, moreover, to afford a limited field for

the exercise of his talents. He accordingly removed in early manhood to "the King's Provinces in America," to enter upon the more pleasing duties of counsellor-at-law. Unfortunately for his prospects the disputes then existing between the old American colonies and the mother country culminated, shortly after his arrival, in the revolutionary war. He resided in New York during nearly the whole of this eventful period, engaging as opportunity offered in the practice of his profession. It does not appear that he held any official position during the war. The first occasion of which I have been able to find any record in which he played a prominent part in public affairs was at the time of the evacuation of New York in the summer of 1783, when he figured as one of the leaders of the opposition to the scheme of Col. Abijah Willard and his associates for securing extensive land grants in Nova Scotia. The associates referred to, numbering 55 in all, submitted a memorial to Sir Guy Carleton, in which they represented that their positions in society had been very respectable and that previous to the revolution they had possessed much influence in their several communities. Having lost nearly all they possessed, they now intended to remove to Nova Scotia, and desired that the same grants of land allowed in the case of field officers of the army might pass to each of them, and that if possible the lands should be conveyed free from quit-rents and other incumbrances.

The lands desired by the "55" petitioners were supposed to include the best and most available locations along the St. John river, these lands being then, of course, included within the bounds of Nova Scotia.

When the terms of the petition were understood, there was much excitement not unmixed with indignation, on the part of the general body of Loyalists remaining in New York, and a copy of the obnoxious memorial forwarded to the settlers at the mouth of the river St. John, caused an equal degree of dissatisfaction in that locality.

To counteract the design of Abijah Willard and his associates, a public

meeting was held on Friday, the 8th day of August, at Roubelet's tavern in New York. The sentiments of those assembled were voiced by Samuel Hake, Elias Hardy and others, and a committee consisting of the gentlemen named with Capt. Henry Law and Tertullus Dickenson, was appointed to prepare a memorial for presentation to Sir Guy Carleton relative to the matter. The following notice in the columns of an old New York paper is of special interest in this connexion:—

NEW YORK, Friday, August 8th, 1783.

The gentlemen who attended this afternoon at the meeting of the Loyalists at Roubelet's Tavern are hereby informed that the memorial to the commander-in-chief will be left at the same place for their signatures at 10 o'clock tomorrow morning.

N. B. It is earnestly requested, that all persons who propose settling in Nova Scotia will call and peruse the said memorial and sign it should it meet their approbation.

The response to the invitation was hearty and immediate and when the document was presented to Sir Guy Carleton it bore a formidable array of signatures. The style of composition in the memorial affords strong ground for assuming it to have been in a large measure the production of Hardy, who wielded the pen of a ready writer. The memorial is quite too interesting from a historic standpoint to be passed by. It is therefore inserted in full:—

To His Excellency, Sir Guy Carleton, Knight of the Most Honorable Order of the Bath, General and Commander in Chief, &c., &c.:—

The memorial of the subscribers humbly sheweth: That your memorialists having been deprived of very valuable landed estates and considerable personal properties without the lincs, and being also obliged to abandon their possessions in this city, on account of their loyalty to their sovereign, and attachment to the British constitution, and seeing no prospect of their being reinstated, had determined to remove with their families and settle in his majesty's province of Nova Scotia, on the terms which they understood were held out equally to all his majesty's persecuted subjects.

That your memorialists are much alarmed at an application which they are informed 55 persons have joined in to your excellency, soliciting a recommendation for tracts of land in that province, amounting together to 275,000 acres; and that they have dispatched agents to survey the unlocated lands, and select the most fertile spots and desirable situations.

That chagrined as your memorialists are at the manner in which the late contest has been terminated and disappointed as they find themselves, being left to the emity of their enemies on the dubious recommendation of their leaders, they yet hoped to find an asylum under British protection, little suspecting there could be found amongst fellow sufferers, persons ungenerous enough to attempt engrossing to themselves so disproportionate a share of what government

has allotted for their common benefit, and so different from the original proposals.

That your memorialists apprehend some misrepresentations have been used to procure such extraordinary recommendations, the applications for which have been most studiously concealed, until now they boast its being too late to prevent the effect. Nor does it lessen your memorialists surprise to observe, that the persons concerned (several of whom are said to be going to Britain) are most of them in easy circumstances, and with some exceptions, more distinguished by the repeated favors of government than by either the greatness of their sufferings, or the importance of their services.

That your memorialists cannot but regard the grants in question, if carried into effect, as amounting nearly to a total exclusion of themselves and families, who, if they become settlers, must either content themselves with barren or remote lands or submit to be tenants to those, most of whom they consider as their superiors in nothing but deeper art and keener policy. Thus circumstanced,

Your memorialists humbly implore redress from your excellency, and that inquiry be made into their respective losses, services, situations and sufferings; and if your memorialists should be found equally entitled to the favor and protection of government with the former applicants, that they may be all put upon an equal footing; but should those that first applied be found, on a fair and candid inquiry more deserving than your memorialists, then your memorialists humbly request that the locating of their extensive grants may at least be postponed until your memorialists have taken up some small portions as may be allotted to them.

And your memorialists as in duty bound will ever pray, &c.

The closing paragraph of the above memorial reveals the distress to which the unfortunate Loyalists had been reduced by the ungenerous conduct of their fellows. In the community at the mouth of the river St. John there was general uneasiness and apprehension. Vague and alarming rumors filled the air, followed by hostile demonstrations against the government of Nova Scotia. Murdoch in his History of Nova Scotia confesses his inability to understand the ground of this hostility, but a few moments consideration will throw light upon the subject. There were at this time some thousands of Loyalists encamped at the mouth of the St. John river all anxiously awaiting some definite information with regard to their lands. These lands had been promised them in the king's name ere they left New York. The hope of speedily establishing themselves in new homes on British soil was the beacon star that led them northward and eastward. But landed in the Acadian wilderness they found no adequate preparations had been made for their coming. Congregated in huts and tents on the rocky hillsides weeks and months passed by in which preparations should have been

made for the coming winter, and still they remained in helpless inactivity because of the vexatious delay in allotting the lands. Doubtless the old serjeant was the spokesman of a large number of his fellows when he addressed to Edward Winslow the words "We like the country only give us some place we can call our own." The imperfect and uncertain means of communication with the authorities at Halifax served to increase the anxiety and perplexity of the poor victims of hope deferred. They were in no position to appreciate the difficulties which beset Governor Parr and his council in their desperate endeavors to provide not only for the immediate wants of the thousands so unexpectedly thrown upon their hands but also for their speedy settlement in some 30 or 40 different and widely separated localities. Still making all due allowance for the exigencies of the times it would appear that the Loyalists at St. John had substantial grounds for irritation. When Capt. John Munro made his tour of the St. John river valley in the summer of 1783 as agent for the proprietors of the Canada Company's lands in the townships of Burton, Sunbury, and Newtown, he may have been perfectly right in saying, "It will be the ruin of the Refugees so many settling at Fort Howe, * * they would have done better had they gone into the woods." Colonel Morse in his well known report on Nova Scotia in the year 1784 may have been equally correct in saying that "it was much to be lamented the great exertions displayed by the Loyalists in building astonishing towns at Port Roseway and at the mouth of the river St. John had not been more profitably directed in cultivating their lands." The real trouble was they had no lands to cultivate. Many who came to the river St. John with the intention of becoming farmers were obliged to content themselves with a lot 40 by 100 feet in the town of Parr, and to build thereon a shelter for the coming winter. The following season some of these removed to lands allotted them in the interior of the country, others remained as permanent settlers at St. John, and others again discouraged by the outlook abandoned the country.

When the news of the attempt of the "fifty-five" associates to procure for themselves 275,000 acres of the best unappropriated lands on the St. John river arrived at Parr Town, mutterings, as of a coming storm, were heard. In their indignation the Loyalists assumed that

they were the victims both of deliberate neglect on the part of the Nova Scotia authorities and also of the cupidity of a small aristocratic clique of self-seekers in their own ranks, with whose designs Governor Parr was believed to be in sympathy. The hostile demonstrations which now broke out the governor vainly attempted to remedy by removing the ring leaders across the Bay of Fundy. The governor's presence and personal influence might have done something to restore tranquility at the town which was named in his honor but it does not appear that he ever visited that portion of his province that lay north of the peninsula.

At this time an agreement was signed by 400 individuals to remove from St. John to Passamaquoddy where it was believed some good lands were still available.

The firmness and decision of Sir Guy Carleton did much to dispel the anxiety of the Loyalists at New York, for when Elias Hardy and his friends waited upon him with their memorial, they met with a most favorable reception. His excellency informed them that from information received within the last few days, he had reason to believe that no one person would obtain a larger grant of lands in Nova Scotia than 1,000 acres. That the power of issuing patents for lands there resided solely in the governor, to whom he would immediately forward their memorial, which he apprehended would arrive before patents could be made out for the tract of land mentioned in it. It was his excellency's opinion no person should be allowed to take up lands in Nova Scotia but those who meant to reside there until the Loyalists were first served. In dismissing the committee Sir Guy assured them he would do everything in his power for the memorialists and believed that they would have no cause to complain.

One is surprised to find among the famous "fifty-five" petitioners the names of men who were afterwards closely and honorably identified with the early history of New Brunswick and Nova Scotia. In some instances, doubtless, their names were appended to the petition without a full understanding of all that it involved. Among the signers were: William Campbell, for 20 years mayor of the city of St. John; Bartholemew Crannell, first clerk of the St. John common council; Ward Chipman first recorder of St. John, afterwards judge of the supreme court and at the time of his decease, administrator

of the government of the province; William Wanton, first collector of customs at St. John; Abijah Willard and Christopher Billopp, members of His Majesty's executive council for the province; James Peters, agent for the settlement of the Loyalists and for many years a member for Queens county; Harry Peters and Colin Campbell, members for Queens and Charlotte counties respectively; Thomas Knox, deputy commissary to the disbanded troops and Loyalist settlers on the St. John, and subsequently province agent in London; Col. E. G. Lutwyche, province agent in London, A. D., 1808-1815; Thos Horsfield, an old St. John magistrate and first warden of Trinity church; John Sayre, agent for the settlement of the Loyalists and afterwards first rector of Maugeville; George Panton, first rector of Shelburne, and Charles Inglis, first bishop of Nova Scotia.

The serious difficulties which arose in procuring lands for the Loyalists who had chosen the St. John river as their place of settlement, were instrumental in bringing Elias Hardy to St. John.

Large tracts of land had in former years been taken up along the St. John and its tributaries, also at Passamaquoddy and on the Petitcodiac, by a few individuals, many of whom were non-residents, and had made little or no attempt to comply with the conditions of their grants. To obtain these lands the only method was by a tedious process in the court of escheats. The delay occasioned by existing circumstances was one of the prime causes of the clamor for a division of the province. The inhabitants north of the isthms of Chignecto, contended not without reason, that a legislature in which they were practically unrepresented, and law courts that were 100 miles and more away, were of no service in securing the immediate redress of their grievances. As an illustration of the satisfaction with which the people of New Brunswick regarded the establishment of law courts in the province it may be mentioned, Benjamin Marston, first sheriff of Northumberland, and a cousin of Judge Edward Winslow, writes in his diary under date February 1st, 1785: "The supreme court of judicature opened this day for ye first time. The chief justice gave a very judicious, sensible charge to the grand jury. The advantage of a dernier resort for justice in all civil and criminal cases will be very

great to the people of this new province. They will find a mighty odds between having Justice traveling regularly about them and being obliged to cross the Bay of Fundy and travel 130 miles to Halifax."

The establishment of the province of New Brunswick was hailed with extravagant delight by its inhabitants and the motto, "spem reduxit," chosen for the great seal of the province, had a double significance to its founders. The arrival of Governor Carleton, in October, 1784, was the occasion of a display of unbounded enthusiasm, the secret of which lay quite as much in the animus felt towards their late Nova Scotia rulers as in their attachment to the honored name of Carleton. The new governor was addressed by the inhabitants who called themselves "a number of oppressed and insulted Loyalists," adding that they were formerly freemen and again hoped to be under his auspices.

The clamor for lands however still continued and complaints against the agents appointed to superintend the settlement of the loyalists were not infrequent. The more turbulent spirits boldly asserted that the agents did not exert themselves as they should to obtain lands necessary for their accommodation. Smarting at the injustice they had received from their fellow countrymen who had confiscated their lands and banished them from their old homes they claimed that the lands of all the old inhabitants on the St. John river who had sided with the Americans during the revolutionary war should be forfeited for their benefit. The same claim was advanced as regards lands on which the old inhabitants had settled as squatters, and to which they had no title but possession. What intensified the feeling over this matter was the fact that certain lots which were in possession of the "old inhabitants" on the river St. John were by Governor Parr's order numbered and drawn in the usual manner by the loyalists. Afterwards when they attempted to take possession trouble ensued.

When the agents for the loyalists were in Halifax they laid the matter before the governor, who then gave directions that the improvements should be valued and paid for by those who had drawn them. After the division of the province the New Brunswick government decided (mainly I believe on the advice of Ward Chipman) to adopt the same line of policy. This is apparent from the following letter:—

PARR TOWN, 2d May, 1785.

Gentlemen,—As no grant has yet been made of the lots numbers 19, 20 and 21 in Gagetown, which you claim by draft, I am directed to inform you that unless you pay the first settlers and occupants of these lots for their improvements agreeable to the valuation made by Thomas Hart, Samuel Upton and John Hart, that you will not obtain any grant of the same, but that grants will be made to the persons who respectively settled the same and now claim payment for those improvements, Messrs. John Black, John Willing, Zachariah Roberts, Peter Shults, and Leonard Slip.

I am, etc.,

WARD CHIPMAN, Att'y Gen'l.

But in addition to the lands in the possession of the old inhabitants there were large tracts in the possession either of companies or of individuals. Elias Hardy was engaged to inquire into the validity of these grants and to ascertain whether they were liable to forfeiture. Governor Carleton on his arrival interested himself in the matter and in January 1785, Ward Chipman, then Attorney General of the Province, was desired by the governor to "collect the best information he could procure concerning all such grants of lands as may be supposed liable to forfeiture." In reply Chipman wrote the Hon. Jonathan Odell, provincial secretary: "Agreeable to the directions I received from his excellency I applied to Mr. Hardy for such information as he could furnish me with respecting any grants supposed to be escheatable and have received from him the following list."

The list furnished by Hardy included a large number of extensive grants on the St. John river and elsewhere. The grounds on which he urged escheat were in some cases misrepresentation, in others non-performance of the conditions of the grants. As regards the first of these Hardy claimed that in many cases the grants included many more than the number of acres specified, and he therefore alleged misrepresentation, either in the application or in the survey. As regards the second point he claimed the forfeiture of the grants for non fulfilment of the conditions on which they were made, which required that a certain portion of the lands must be cleared, enclosed and cultivated, that a certain number of settlers must be established thereon with houses and cattle, that a certain number of acres were to be sown with hemp, etc., etc.

Ward Chipman's letter, above referred to, is of great interest but is rather long for insertion in this paper. In it he takes up seriatim the grants which Hardy claimed as liable to forfeiture and in every instance save one argues that it is not advisable to take any active proceedings. The letter indeed is not without a certain suggestiveness that the attorney general of the province for reasons best known to himself did not desire to exert himself on this occasion. However it incidentally appears from his letter that there were several cases in which the proceedings instituted by Elias Hardy had resulted favorably.

In addition to his services in procuring lands for the accommodation of the loyalists, Mr. Hardy was employed by government in connexion with the claims of the loyalists to compensation for their losses incurred through of the American revolution. His public services however did not prevent his building up an excellent private practice in his profession. He was admitted an attorney at the bar of New Brunswick on the occasion of the first opening of the supreme court at St. John in February, 1785. His first influential client seems to have been William Davidson of Miramichi. Mr. Davidson, as is well known, was the first permanent English settler on the north shore where he established himself in 1763, and where he soon became an extensive lumberman and land owner. In addition to his property at Miramichi Mr. Davidson was interested in lands on the St. John river. In consequence of some conflicting claims regarding this property Elias Hardy was retained by Wm. Davidson about 1785 in certain suits instituted against James Simonds and others. The question in dispute eventually got into the chancery court and it was some years before it was finally settled. Mr. Hardy's connexion with the suit proved of substantial benefit to him in more ways than one. It secured for him a ready election to the first house of assembly, (of which more anon), it established his reputation and led to his being subsequently retained by James Simonds in a suit which he instituted against his old business colleagues William Hazen, Leonard Jarvis and James White.

The apparent lukewarmness of the provincial government in promoting the escheat of lands granted before the American revolution had much to do with the strong party feeling developed in the first provincial election. Concerning

this first election a few words may now be spoken.

The feeling which animated a certain portion of the population in consequence of the great delay in allotting lands did not readily subside. Governor Carleton on his arrival at St. John was received with unbounded enthusiasm, but the conduct of the agents was still viewed with suspicion. Nor did the members appointed to positions in his majesty's council and in the first provincial government command the universal approval of the public. Abijah Willard, Ward Chipman and others had been of the famous "fifty-five," and their appointment was distasteful to some of the new settlers.

In the Royal Gazette and Nova Scotia Intelligencer, published at St. John, Sept. 9, 1784, is an interesting prospectus issued by one David Melville of a history he purposed to have printed by subscription, which would supply an accurate account of the settlement of his majesty's exiled Loyalists on the north side of the Bay of Fundy. In his prospectus Mr. Melville states that amongst other subjects he will discuss "The many disputes between the inhabitants and their agents, so called, concerning escheatable land;" "The resolutions of the governor and the opposite resolutions of his council;" "The ruin this settlement has already suffered, is now suffering, and is likely to suffer hereafter, from the delays of locating the lands, etc." The writer was not evidently a man of much education, but he represented quite an element in the community, and one which made its influence felt in the first election campaign held in the city of St. John.

The candidates at this election on the government side were Jonathan Bliss, Ward Chipman, Christopher Billopp, William Pagan, John McGeorge and Stephen Hoyt. (The place of the latter gentleman on the ticket was afterwards taken by Stanton Hazard). On the opposition side the candidates were Tertullus Dickenson, Richard Lightfoot, Richard Bonsall, Peter Grim, John Boggs and Alexander Reid.

The franchise was as broad and democratic as it could well be made. The sheriff, Wm. S. Oliver, announced in the Royal Gazette, under date October 18, 1785: "All males of full age, inhabitants of the city and county, that have resided three months therein are entitled to their votes on this occasion."

There were several independent candidates, but the issue eventually resolved

itself into a contest between the government and the opposition tickets. A variety of issues intensified the feeling. It was in a measure a contest between the aristocracy and democracy of the day. It was also in some measure a contest of Upper Cove versus Lower Cove. In regard to the political questions at issue, the government ticket in the main endorsed the conduct of the agents of the Loyalists, whilst the opposition demanded that a strict enquiry should be made into the conduct of these officials. The columns of Christopher Sower's Royal Gazette were filled with long communications from the belligerent parties on either side. A writer who signs himself "The Lower Cove," claims that the first act of the assembly should be the impeachment of the agents for their fraudulent conduct. In reply to the strictures of his opponents, Attorney General Bliss stated that the courts were always open with powers competent to the trial of all crimes and engaged on his part to give due attention to any person who would now come forth with a specific charge against the agents of any crime demanding a public prosecution. That if a representation as talked of should be made to the king, complaining of the conduct of the agents as a public grievance, all that could be expected would be an order to the attorney general to institute a prosecution and that he was now ready to do this without such order upon an accusation being made on sufficient grounds of any particular crime.

It is curious to note that on the government ticket were two of the famous "fifty-five" petitioners, viz: Christopher Billopp and Ward Chipman, and that the leader of the opposition was Tertullus Dickenson, one of the committee of four who waited on Sir Guy Carleton with the memorial in opposition to the claims of the "fifty-five." An attempt seems also to have been made to secure the services of Samuel Hake, another member of the committee. One of his friends in a letter which appeared in the Royal Gazette of Nov. 1st, 1785, recommends him as "a gentleman whose judicious and spirited exertions in favor of the Loyalists both in New York and England have already procured him general applause and admiration and entitled him to the gratitude of every good subject in this province." Samuel Hake, the correspondent, adds is hourly expected here as his majesty's commissary of stores and provisions.

An attempt was also made to enlist the

services of Elias Hardy. but that gentleman wisely declined identifying himself with either party, particularly as the way was open for him to obtain a seat in the assembly without the doubtful chances of election in St. John. He accordingly published the following card:

MR. HARDY returns his thanks to such of his friends as have been pleased to declare their intention of voting for him at the election as a representative for this city and county; but begs they will not reserve their votes, as he does not propose offering himself as a candidate.

St. John, October 17, 1785.

He was thus able to stand aloof from the riotous proceedings which characterized the first St. John election. His own return to the house as a member for Northumberland was secured by the influence of his client, Wm. Davidson, of Miramichi. This incident was not particularly agreeable to Chipman and his friends, who professed to have a poor opinion of Hardy's abilities, and were disposed to frown upon his pretensions. The following brief record of the election in Northumberland is taken from the diary of Benjamin Marston, first sheriff of the county, and a warm personal friend of Ward Chipman:—

Wednesday, Nov. 2, 1785—Posted up advertisements for a meeting of the county to elect two members for the general assembly—one at G. Brown's, one at Wilson's tavern, one at McLean's store, one at Negayack, one at Reid's store, and one at Alex. Henderson's.

* * * * *

Thursday, Nov. 17—Today held an election for two members in the general assembly. Wm. Davidson, an inhabitant of the river, an ignorant, cunning fellow (sic), but who has great influence over the people here, many of them holding land under him, and many others being in his employ was chosen for one and by the same influence Elias Hardy, an attorney of no great reputation in his profession, an inhabitant of the city of St. John, was chosen for the other. This will disappoint some of my friends who hoped that George Leonard, Esq., and Capt. Stanton Hazard would have obtained the election. But 'twas impossible. They were unknown here and we who proposed a recommendation for them were but strangers. 'Tis therefore no wonder we did not succeed against an artful man who had an influence and knew how to use it."

The election at St. John began on Monday, the 7th day of November, and the poll was held from day to day at

different places in the city and county, the voting continuing throughout the week. The first two days the election proceeded quietly, but on the evening of the third day a tremendous riot occurred at the Mallard house, corner King and German streets, in which the Lower Cove faction was the attacking party. A number were injured on both sides, and it was found necessary to call out the troops stationed at Fort Howe to support the civic authorities. Several arrests were made, one of the opposition candidates being included in the number. At the trial, in May following, three of the rioters were found guilty and punished by fine and imprisonment.

After the close of the polls the result of the election was in dispute, both of the contending parties claiming a majority. Sheriff Oliver, however, declared the choice of the electorate to have fallen upon Messrs. Bliss, Chipman, Bilopp, Pagan, Hazard and McGeorge. The opposition did not acquiesce without a struggle; a protest was entered, complaining of an undue election, and the matter came before the house of assembly, which confirmed the election of the government candidates. This decision was not accepted by some of the malcontents, who drew up and signed a petition to Governor Carleton specifying their grievances and calling upon his excellency to dissolve the house. This petition, as appears from a copy now in possession of the writer, is a curious document; the sentences in many cases decidedly ungrammatical, and mistakes in spelling neither few nor far between. It was the production evidently of a man of decided views but of limited education. It bears the signatures of 174 individuals, the majority of whom belonged to the Lower Cove. Very few of the signers were prominent citizens. The petitioners assert that since their arrival at St. John they have been the victims of "a most oppressive tyranny," which had been patiently borne "under the firm persuasion of being relieved from their bondage upon his excellency's arrival." Commenting on the proceedings at the recent election, they say:—

"We have publicly seen British subjects confined in irons, carried into a garrison and there examined under the authority of a military guard; and prosecutions still hanging over their heads for supposed offences. One of our legal representatives (i.e., in the assembly) confined in a sentry-box at the discretion of a private soldier—the military introduced and unnecessarily and unlawfully

patrolling the streets during an election to the terror and alarm of the peaceable, inoffensive inhabitants—crown officers neglecting and refusing to discharge their duty—the freedom of election violated by corrupt and undue influence in the most public manner—the returning officer behaving with the most unconstitutional and unprecedented conduct—irreligion and immorality, instead of being punished, incouraged both by precept and example—the house of assembly declaring the election for this city and county to have fallen upon Jonathan Bliss, Ward Chipman, Christopher Billopp, William Pagan, Stanton Hazard and John McGeorge whom they have admitted and sworn in as members for this city and county notwithstanding Turtullus Dickenson, Ritchard Lightfoot, Ritchard Bonsall, Petter Grim, John Boggs and Alexander Reid were chosen by a decided majority, according to your excellency's own regulations."

The petitioners appealed to the governor for a dissolution of the house, which, they add, "will give his majesty's affectionate people an opportunity of manifesting their zeal for the constitution by a nomination of men who will regard the honor of the crown and support the rights of the people." The petition concludes with the somewhat defiant words: "As we by no means think we are represented in the present house of assembly, we can on no account conceive ourselves bound by any laws made by them so unconstitutionally composed."

Governor Carleton declined to interfere in the matter. Indeed, as a constitutional ruler, he would not have been justified in so doing, in view of the fact that Attorney General Bliss and his colleagues had been returned by the sheriff as duly elected, and that the house of assembly, after due consideration of the protest entered against the election, had confirmed the sheriff's return.

In his speech at the opening of the first house of assembly at St. John, January 3rd, 1786, the governor refers to the great necessity of "discouraging all factions and party distinctions, and caucating the utmost harmony and good will between the newly arrived Loyalists and those of his majesty's subjects formerly resident in the province." There cannot be the slightest doubt of the governor's wisdom in the advice here tendered both as regards the necessity of discouraging the factious spirit

which had shown itself in the ranks of the Loyalists themselves, and also as to the desirability of cultivating friendly relations between the Loyalists and the old inhabitants of the country. True the latter had not always been the most loyal subjects of old King George and many of them during the revolutionary war had shown more than an inclination to side with the majority of their New England neighbors, but to have banished these old settlers from the St. John river, and to have confiscated their lands on this account, would have been an act of short-sighted folly, equal to that of which the American people were guilty, when by edicts of banishment and acts of confiscation they drove out the Loyalists from their old homes to build up a rival nation at their very doors.

The riotous proceedings which characterized the first St. John election, will, perhaps, shock the tender susceptibilities of those good people who are wont to suppose that the loyal founders of New Brunswick were an ideal class of men, and free from all ignoble passions. The fact is otherwise, and in the interests of historic accuracy we may as well admit it. True, the general character of the Loyalists stands high, and will bear a more than favorable comparison with that of their enemies in the revolutionary war. As a body they displayed admirable self-sacrifice and devotion to duty, but in their ranks were many whose reputation is not unstained. At a time when common misfortune should have united one and all in the effort to advance their mutual welfare the spirit of selfishness and of jealousy and suspicion were by no means wanting. When the old province of Nova Scotia was divided and the new province established there ensued, on the part of many of the more educated and aristocratic class, an undignified scramble for office. Amongst the disbanded soldiery and uneducated class of the community a spirit of discontent prevailed, combined with disrespect for lawfully constituted authority, and in many instances a tendency to intemperate habits.

Elias Hardy, to his honor be it said, showed no disposition to ally himself with either of the classes just mentioned. He was not a persistent office seeker nor did he on the other hand encourage the spirit of insubordination. When the city of St. John was incorporated in 1785 its first civic officers were specified in the charter, namely, Col. Gabriel G. Ludlow, mayor. Ward Chipman, recorder;

George Leonard, chamberlain; Bartholemew Crannell, common clerk. It appears from a letter written by Edward Winslow, under date Halifax, January 13th, 1785, to Ward Chipman that the position of clerk of the common council was offered to Mr. Hardy, but was declined by him. Colonel Winslow, in his characteristic style expresses his emphatic approval of the selection of Col. Ludlow as mayor, and adds: "I have never been an enthusiast for towns and cities, but I declare that if this event takes place in all its parts, and Mr. Hardy is induced to accept the other appointment, I shall expect to see Halifax evacuated by the most respectable of its inhabitants and Shelburne totally eclipsed and that immediately."

On the death of Bartholemew Crannell in 1790, Elias Hardy succeeded him as clerk of the common council and clerk of the sessions, retaining the offices till his decease in 1798. He also filled the offices of surrogate for the city and county of St. John and of clerk in the court of chancery.

As clerk of the common council his services were particularly valuable in connexion with much of the early civic legislation; for years nearly all the acts and by-laws connected with the government of the city were draughted by his hand. On the 15th April, 1797, Hardy received the sum of £80 from the council as a compensation for his past services. A correspondent of the *St. John Gazette* refers to this as an extraordinary donation and asks whether "the repast on Tuesday was a stipulated condition of the grant" We may, however, conclude that as the anonymous communication was placed among the advertisements and marked "paid for," the writers opinion was not considered of much importance and that the grant was simply what it professed to be, a tangible recognition on the part of the council of efficient services rendered by a civic officer.

Elias Hardy represented the county of Northumberland until the dissolution of the first house of assembly in 1792. In the ensuing general election his fellow-citizens showed their confidence in him by electing him one of the representatives of the city and county of St. John. After the expiration of the term of the second house of assembly he was again pressed to become a candidate, but declined nomination presumably on the ground of ill health.

As a member of the legislature his

services were useful and important. As a worker he was industrious and painstaking and in debate his eloquence and ability soon secured for him a foremost position.

Apart from his civic and legislative duties Mr. Hardy's time was fully occupied by the duties incident to his profession. Amongst the many important cases with which he was connected was that of Benedict Arnold versus Munson Hoyt. The action was brought by General Arnold against his former business partner for slander, Hoyt having accused Arnold of setting fire to their store in Lower Cove, which, with its contents, was entirely consumed, and on which the general had shortly before effected insurance to the amount of £5,000. The case was tried before Judge Allen at the September court in 1790. General Arnold claimed damages to the amount of £5,000—the jury awarded him but 20 shillings, which was regarded as practically a verdict for the defendant. In the trial Attorney General Bliss and Solicitor General Chipman were retained on behalf of the plaintiff, whilst Mr. Hoyt retained Elias Hardy. The *St. John* public apparently had no very exalted opinion of the general's integrity, and their sympathies were with the defendant.

Another celebrated case, in which Mr. Hardy was retained, and which proved a lucrative one for the lawyers employed, was that of James Simonds versus William Hazen, Leonard Jarvis and James White. The case was the outcome of business transactions between the parties, extending over a period of 20 years, a large amount of property being at stake. The case was of so intricate a character that in one form or another it was before the courts for about 25 years. Ward Chipman was retained to look after the interests of his father-in-law, William Hazen, with whom Leonard Jarvis and James White were associated in the suit, and for whom Chipman also acted. James Simonds on his part retained Elias Hardy, of whose ability he had had some practical experience as counsel for his opponent in the case of Simonds versus Davidson.

The proceedings in the Chancery suit were protracted and the documents connected therewith exceedingly voluminous. The first bill of complaint against Simonds was filed by Chipman as attorney for Hazen and Jarvis, July 19th, 1791. It is a formidable roll of parchment comprising 12,000 words. The answer of Simonds, filed by Hardy Feb.

3, 1792, contains about 5,800 words. But this is not all: on Nov. 17th, 1794, Hardy filed the cross bill of Simonds against Hazen, Jarvis and White, containing 17,000 words, written on a roll of paper 20 inches wide and 20 feet 6 inches in length. Not to be outdone, Ward Chipman responded to this with an answer on behalf of his clients of 19,600 words, which he filed with the clerk in chancery, May 26th, 1795.

The proceedings of this old chancery suit are preserved in the record office in Fredericton. The law student will find much information in them concerning the mode of procedure pursued in the early days of the province, and will derive from their study some idea of the abilities of the men who were giants in their profession in their generation. To the student of local history these records are of even greater interest, from the fact that they throw a flood of light upon the history of St. John during the 20 years' period which preceded the landing of the Loyalists.

Enough has now been written to show the position occupied in public life by the subject of this sketch. Concerning his character in private life, all that I have been able to gather is contained in the brief obituary notice in the Royal Gazette of January 1st, 1799, in which Christopher Sower says:—

"Elias Hardy formed but few friendships, but in these he was always sincere, and the brilliancy of his wit and good humor made him the life of every circle of which he formed a part. He has left a wife and four children to lament the loss of an affectionate husband and indulgent parent."

The wife of Elias Hardy was Emma, daughter of Peter Huggeford, M. D. During the revolutionary war her father, Dr. Huggeford, was surgeon in the Loyal American Regiment raised by Colonel Beverley Robinson of New York, and of which Rev. John Beardsley was chaplain. In the settlement of Parr Town the surgeon and the chaplain drew lots side by side on Charlotte street opposite the south-west corner of King square. Several of the officers of this loyalist regiment were prominent citizens of St. John in the early days. Among the number were the Honorable John

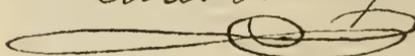
Robinson, who was mayor of the city at the time of his death in 1828. and John Ward who died in 1846 at the patriarchal age of 92, being at that time the oldest half-pay officer in the British service. Soon after his daughter's marriage Dr. Huggeford returned to New York where he was living in 1800.

Elias Hardy was not a grantee of Parr Town. His house was built on lot 417, on the south side of King street about half way between Charlotte and Germain streets, and was a well known landmark. Mr. Hardy in the year 1795 purchased one half of this lot from the Rev. John Beardsley for the small sum of 10 shillings, the other half he procured from another party. His widow in the year 1804 sold one half of the lot to William Melick for £15, and in 1820 the other half to Robert W. Crookshank & Co. for £100.

Some years after her husband's decease Mrs. Hardy, with her children, returned to New York where her father and other relatives were living. The death of Elias Hardy, in the 54th year of his age, took place at his residence, King street, on Christmas day, 1798, "after a long illness which he bore with the greatest fortitude." Three days later his mortal body was laid at rest in the old grave yard in the presence of a large number of St. John's leading citizens. Not even the simplest headstone marks his resting place, indeed the exact spot is today unknown. Friends and kindred returned to the land of their birth, but the old Loyalist sleeps beneath his country's flag, and the city of the Loyalists retains within her bounds the ashes of one of the most distinguished of her founders.

The writer of this paper deems it an honor to have gathered the fragments which tell—albeit imperfectly—the life-story of the son of the non-conformist minister of Farnham, and to lay this humble chaplet on his nameless grave.

Elias Hardy.



CAT. NO.
AFM 710

PHOTOFILE ENVELOPE
MIN pH 8.5

