

# A FORGOTTEN CHIEF JUSTICE OF NOVA SCOTIA

J. E. A. MACLEOD, K. C.

**I**N a paper on the Honourable Jonathan Belcher, first Chief Justice of Nova Scotia, read before the Nova Scotia Historical Society and published in the Society's Transactions, the author gave a list of the Chief Justices of the Province and stated that very little was known of the four following Belcher. To Thomas Andrew Lumisden Strange, the fifth Chief Justice, there are no references in books relating to Nova Scotia to which I have had access, except notices of his appointment and resignation in Haliburton's *Nova Scotia*, and two or three references of a similar nature in Aikin's *History of Halifax City*. While Strange, probably owing to his short tenure of the office of Chief Justice, does not seem to have impressed his name upon the early records of the Province, he is, by reason of his family connections and of his own career, one of the most interesting of the officials of Nova Scotia in colonial days.

He was born in 1756, the son of Robert Strange,— afterwards Sir Robert,—the greatest British classical engraver. Robert Strange was a native of Kirkwall, Orkneys, Scotland, who after some experience as a sailor began the study of law in the office of his elder brother in Edinburgh. His tastes ran in the direction of art, rather than of law, and his brother finding some sketches in his desk submitted them to Richard Cooper, an artist and engraver of Edinburgh, with the result that Strange abandoned his legal studies and was bound as Cooper's apprentice.

In 1744 he fell in love with Isabella Lumisden, the daughter of William Lumisden who had been "out" with the Pretender in 1715, granddaughter of Bishop Lumisden and sister of Andrew Lumisden, a law agent at Edinburgh whom Strange had probably known in his law student days. When the Young Pretender landed in 1745, Isabella Lumisden, in whom zeal for the White Rose burned high, made it a condition of her engagement to Strange that he should go out with the Prince. He accordingly joined the Jacobite army and served the cause both with his sword and with his graver. He fought at Prestonpans and Falkirk, and, while the army was rest-

ing at Inverness, engraved a very popular portrait of the Prince, together with plates for an issue of paper money of small denominations for use with the Army. The tragedy of Culloden prevented these plates being used, and Strange as well as Andrew Lumisden—who had been the Prince's private secretary and treasurer of the army—was forced to go into hiding. Lumisden escaped to Edinburgh disguised as a groom with a lady riding on a pillion behind him, and later journeyed to London as a teacher in the company of an officer who had come to Scotland for the purpose of citing witnesses for the treason trials arising out of the rebellion. From there he escaped to France and was shortly afterwards appointed private secretary to the Pretender. After the Pretender's death he held the same office with Charles Edward until he was dismissed for interfering with the Prince's attending an oratorio while intoxicated. Lumisden was included in the Act of Attainder, but was many years later pardoned and allowed to return to England. Strange hid for a time in the Highlands and afterwards in Edinburgh. Once in Edinburgh he was seen going into the Lumisden residence and was followed by a party of soldiers. Miss Lumisden was sitting singing and sewing. Raising her hooped skirt, she concealed Strange underneath and continued singing her Jacobite song until the soldiers had given up their fruitless search.

Strange and Isabella were married clandestinely in 1747, and after the amnesty went to London. From there Strange went to France, carrying with him to the Jacobites in exile the Seal of the Pretender, which had been left behind after Culloden. He studied in France for the next three years and then returned to London, where he resided, practising his profession, for the next ten years. At the end of that time he again went to the Continent, this time to Italy, leaving his wife and children in London. He left England in bad repute with the reigning family. Allan Ramsay had painted the portraits of the Prince of Wales, afterwards George III, and his favourite, Lord Bute, and asked Strange to engrave them. Strange refused, giving as his reason that he had made his plans to go to Italy and had unfinished work which he must complete in the meantime. The Prince then repeated the request and Strange still refused. His refusal was attributed to his Jacobite leanings; he continued out of favour for many years and was continually thwarted in his profession by acts which he attributed to the royal resentment, though he was guilty of no overt conduct which would show that he still maintained the treasonable sentiments of his youth. There could be no doubt about the sentiments of Isabella Strange, whose feelings were always strong and emphatically expressed. In her

correspondence with her brother at Rome she continually sends her duty to the Stuarts and dedicates her sons to their service. She even went the length of substituting the name of James III for that of the reigning sovereign in her book of prayer.

During the next fifteen years, for the first five of which Strange was on the Continent working at his art and winning honours from Continental art societies, the Strange family lived in London. The wife led a busy life during her husband's absence, bringing up her family, selling her husband's engravings, reading and corresponding with her husband and brother. The Stranges were very intimate during that time with that most interesting family, the Burneys, and are frequently mentioned in Fanny Burney's *Early Journal and Letters*. In a letter of April, 1774, she writes thus of the future Chief Justice:

"Last night Andrew Strange drank tea here. He is the second son and is now at Oxford. He is a very pretty young man."

Of Mrs. Strange Fanny writes:

"Mrs. Strange has more good qualities joined to great talents than almost any woman I know."

Sir Robert Strange finally came into his own, both with the British public and with Royalty. He was knighted in 1787 by George III., who on the occasion humourously alluded to his reputed Jacobite sentiments, asking if he objected to being knighted by the Elector of Hanover. He had long been famous on the Continent, and had had the honour of having his portrait painted on a ceiling of the print room in the Vatican. In addition to his work as an engraver Strange imported many pictures into England, and is credited with having had a great influence in improving the national taste in art. Dennistoun, his biographer, says of him:

"Sir Robert Strange has long enjoyed a European reputation; yet the excellence of his works is no adequate index of his merit. From his native Orkneys to the Land's End, his engravings brought within the reach of all men the best works of great painters. These engravings, offered at the same prices as the trash which preceded them in the market, gradually obtained a large circulation and became the first important step towards a general amelioration of the English taste in the fine arts. He boldly ventured the moderate capital at his disposal in importing a superior class of pictures for the home market, and by descriptive catalogues of these and his own works he did much to instruct the public."

Sir Robert Strange died in 1792 while his son was Chief Justice of Nova Scotia.

Thomas Andrew Lumisden Strange was the second son and third child of Sir Robert and Isabella Strange. His elder sister, Mary Bruce Strange, who died young,—on the day of Dr. Johnson's death,—was the only member of the family to inherit their father's artistic ability and, in addition to engraving, wrote in prose and verse. From the references to her in Fanny Burney's *Early Diary*, she appears to have been an amiable and attractive girl. The eldest son, James Charles Stuart Strange, godson of the Pretender, oddly enough also comes into early Canadian history. He was an officer in the service of the East India Company, which then had the monopoly of trade on the Pacific, and made an expedition to Nootka Sound on the British Columbia coast, writing an account of his voyage and of the natives. The third son, Robert Montagu, was a general officer in the Madras service. A younger sister, Isabella Katherine, died a spinster at the age of ninety. Her nieces tell of her that, though she was past forty-five at her mother's death, she had never sat down in the presence of the latter until asked to do so. When she handled the engravings of her father she reverently stood. It was a saying in the family that her death was caused by her being induced to lie down on a sofa for the first time in her life.

The future Chief Justice of Nova Scotia went from Westminster School to Christ Church College, Oxford, matriculating in 1774 and graduating B. A. in 1778. He obtained his M. A. from Oxford in 1782. During his school and college career his chief rival was Charles Abbot, later Speaker of the House of Commons and afterwards created first Baron Colchester. Entering Lincoln's Inn as a law student in 1776, he was called to the Bar in 1785. After only four years at the Bar, Strange was appointed Chief Justice of Nova Scotia in 1789. It is stated that as a law student he received much help from the great Lord Mansfield, who was a friend of his mother's and who himself had continually to meet the charge of Jacobite leanings in his younger days. Probably this friendship accounts for his appointment to a judicial position—though only a colonial one—at the early age of thirty-three years and after only four years at the Bar. Strange's appointment came after a stormy period in the history of the Nova Scotia judiciary. In 1788 two members of the Bar, whose names had been struck from the roll, brought before the Assembly charges of maladministration against Deschamps, the Chief Justice, and Mr. Justice Brenton. The Assembly passed an address on the subject to the Governor, who referred the matter to the Council. The Council, without hearing evidence, decided that the charges were unfounded, which

precipitated one of the frequent disputes between the Assembly and Council as to their respective powers. The Judges were subsequently cleared by the Privy Council. To what extent Chief Justice Deschamps's retirement was connected with these charges I have been unable to find out from the material at my disposal, but Haliburton states under date of August 18, 1788, that a mandamus was received to swear in Jeremiah Pemberton as Chief Justice. Pemberton had come to America as one of the Commissioners to fix the compensation payable to the Loyalists, and held the office of Chief Justice for only about a year, when he was succeeded by Strange.

During his short term of office as Chief Justice Strange was at least once absent on leave, as Aikins mentions that an address was given him by the Bar in the autumn of 1790, on the occasion of his leaving for England. In June, 1792, he first sat on the Council, of which the Chief Justice was then invariably a member. Haliburton states that he resigned as Chief Justice of Nova Scotia in 1797, on his promotion to Bombay (*sic*) and Aikins also dates his resignation in 1797. The *Dictionary of National Biography* gives his appointment to Madras as occurring in 1798. The truth probably is that he resigned from the Nova Scotia Court in anticipation of his Madras appointment which was not actually made till the following year. Before going out he was knighted in March, 1798. At that time justice was administered in the Presidency of Madras by the Court of the Mayor and Aldermen of the City. This Court was notoriously corrupt, and Strange was sent out for the purpose of improving matters. He was Recorder and President of the Court, and soon rectified matters by practically constituting *himself* the Court. In 1800 a Supreme Court was created of which Strange was made Chief Justice. During his tenure of this office he gave a good account of himself both as a jurist and as a man of affairs. In 1801, when there was fear of a French invasion from Egypt, two volunteer battalions were raised, one of which was commanded by the Governor, Lord Clive, son of the great Clive, and the other by Strange, who showed much zeal in drilling his battalion every morning before the opening of his Court. In 1809 there was an alarming revolt of the army officers in the Presidency, occasioned by the parsimonious regulations of the Governor, Sir G. H. Barlow. In charging the Grand Jury Strange pointed out the responsibility of the officers if the revolt resulted in bloodshed, and his charge was credited with having a great deal to do with inducing the officers to return to their duty. For his services on this occasion he was recommended for a baronetcy by the Governor and by Lord Minto,



the Viceroy, but owing to a change in the Home Government the baronetcy was not given him.

In 1817 Strange resigned and returned to England, where he lived in retirement till his death at St. Leonard's in 1841. In 1818 he was created a D. C. L. at Oxford. During his term as Chief Justice of Madras he had rendered great service to Indian Jurisprudence by preparing and publishing *Notes of Cases* decided during his judgeship, and, after his retirement he published his great work *Elements of Hindu Law*. This was long the standard book on the subject and ran through four editions, the last being published twenty-three years after his death.

He was twice married and left a numerous family, two of whom were thought worthy of having their biographies included in the *Dictionary of National Biography*. These were his eldest son, Thomas Lumisden, an Indian judge and writer on religious subjects, and his fifth son, Alexander, an eminent surveyor and astronomer, who had a long and distinguished scientific career in India and England, dying in 1876. Another son, James Newburgh, became an admiral. Four of his children were still living in 1889, a century after his appointment as Chief Justice of Nova Scotia.

Strange had the distinction of having his portrait painted by three successive presidents of the Royal Academy, upon the order and at the expense of his admirers in his several fields of labour. Sir Benjamin West, who had been a friend of his father in the days of Sir Robert Strange's quarrels with the Academy, painted his portrait for the Nova Scotia Government or Bar, and it hung in the Legislative Council Chamber at Halifax until recently moved to the Court House. Sir Thomas Lawrence painted a portrait which hangs in the Banqueting Hall at Madras. A third portrait, painted by Sir Martin Archer Shee, is in the great hall of his alma mater, Christ Church College, Oxford.