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A NEW YORK ATTORNEY-GENERAL IN OLDEN TIMES¹

TWO and a quarter centuries ago, when New York was still "His Majesty's Colony of New York," in 1700, to be exact, the King, William III of England, was in need of an Attorney-General and Advocate-General for his Colony. Sampson Shelton Broughton, a member of the Bar of England, a barrister of long standing in the Middle Temple, and one who enjoyed a good reputation with his brethren, then as now, somewhat hypercritical, was chosen, nominally by the King, in fact, by the Administration. He came to New York, and filled his honourable offices with credit and efficiency for some six years and until his death in 1706.

His son, also named Sampson, who had studied in his father's chambers in London, had been called to the Bar in the Middle Temple, and when his father went to America, he accompanied him. Later, when his father died, he solicited the appointment. His petition was successful, and he received letters mandatory to the Governor, Lorn Cornbury, to admit him to the vacant offices. Cornbury, who was of an arbitrary nature, liked to be surrounded by his own chosen friends, and did not obey: saying that there were many actions pending in the Supreme Court of the Colony in which his Majesty was suing, and that it would be impossible in the short time before they came on for trial, to instruct the young barrister sufficiently, he, August 22nd, 1706, informed the council that he thought it proper to defer the issue of the patent to him until after the sittings of that court. He had appointed Mr. Bickley, who, it is said, was not even a barrister, to act as attorney-general; and he said that that person would conduct the litigation.² No real objection could be taken to this course, if the alleged reason were the real one; but it became evident that the Governor was not ingenious in his excuses. The court sat and rose; but the patent did not issue to Broughton.

After waiting till patience had ceased to be a virtue, Broughton made a formal application to Cornbury for his patent: Cornbury said that he had written to one of the principal secretaries of state at Westminster in reference to the matter and was awaiting an answer. It is almost certain that this was false—at all events, no such dispatch was ever received by the Home Administration. Broughton had, himself, a short time before sent in a petition to the Queen (Anne)

¹ This paper embodies a letter to the editor from the Honourable William Renwick Riddell, LL.D., D.C.L., etc., Justice of Appeal, Ontario, Canada.

² It is not to be thought that there was any looseness in the English Colonies at that time in respect of the Practitioners of Law. June 23, 1711, Thomas MacNamara of Annapolis, Maryland, petitioned her Majesty because on his killing a man by Chance Medley, *per incuriam*, he had been branded on the hand and deprived of his practice as an attorney; the Privy Council ordered his reinstatement by the Maryland courts. 1 Acts, P. C., Colonial Series, 653, 4.

—of course, in fact, to the Privy Council—asking for relief; but for some reason, that does not appear, it was not dealt with. The office being open the next year, John Rayner petitioned for the office; and both petitions were referred to the Board of Trade, the standing committee of the Privy Council which dealt with Colonial matters, and much the same as the present Judicial Committee of the Privy Council. Rayner was in good standing in his profession; he accompanied his petition with a paper signed by eight of the justices of the Courts of Record at Westminster Hall, certifying that they believed him to be not only well affected toward the Government but also well qualified in his profession to serve the Queen as Judge or Attorney-General in any of the Colonies. Sir Edward Northey, Attorney-General, had on the younger Broughton's original application, certified to his capacity and learning.

The whole matter was referred to the Board of Trade and that body went into the case carefully. In their report, July 11th, 1708, the board cast aside the excuse now advanced for the Governor, namely, that young Broughton had never received any regular letters mandatory, as the Commissioners of Trade and Plantations had not previously made any report of his ability to fill the office in question—this was but a bare pretext, as the board pointed out that, while the established practice was to have such a report, the appointment was wholly in the Crown, and the Sovereign could legally and effectually act without that or any other report.

Another objection to Broughton set up by Rayner was that Cornbury had declined to give his *imprimatur* to the appointment because of the inability of Broughton to discharge the duties of the office: the Record of the Proceedings in Council at New York were referred to, to show the reason advanced at the time.

The board distinctly disapproved of the conduct of the Governor; nevertheless, they added a significant clause: "Nevertheless, if Your Majesty shall be Graciously disposed to Gratify the Petitioner, Rayner, by a Grant of the said Office of Attorney-General (his Qualifications for the Discharge of that Trust appearing very fully by the Annexed Certifycate) Wee have no Objections to the said Rayner's receiving the benefit of such Your Majesty's Royall Favour."

Accordingly, John Rayner received his letters mandatory for a patent as Attorney-General as well as Advocate-General (the latter entitling him to represent the Crown in the Vice-Admiralty Court); he came to New York, was sworn in and assumed the duties of the two offices.

But his troubles were not over: his salary as Advocate-General was paid only till Lady Day (March 25th, 1709); then the collector, saying that there was no general revenue raised for the purpose, refused to pay the salary of the Judge of the Vice-Admiralty Court (Roger Mompesson, who had been a member of the Council since

1706), of the Advocate-General (John Rayner) and of the Register (Robert Robinson) without an order from the Home Authorities. The three officials made a representation to the Privy Council, and their application was, June 24th, 1713, referred to the Lord Treasurer. It is to be hoped that the application was successful.

WILLIAM RENWICK RIDDELL.

Osgoode Hall,
Toronto,
November 2nd, 1931.