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The Historical Courts of Ontario in the Nineteenth-Century, Mock-Heroic Poem, *Curiae Canadenses*

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I. A Most Remarkable Poem...

In 1843, the English barrister John Rumsey published a remarkable poem *Curiae Canadenses* (*The Canadian Law Courts*), which discusses the structure, composition and jurisdictions of the early to mid-nineteenth-century courts that existed in what are presently known as the Canadian provinces of Ontario and Quebec. The poem, which also presents a rich assortment of legal and historical miscellany, historically appears to have had greater relevance and sentimental value for members of the Ontario legal profession ostensibly because of the traditional connection between the bar of Ontario and its British heritage.

Rumsey infused the poem with aspects of the satirical, and ostentatiously turned to Latin, publishing *Curiae Canadenses* under the pseudonym Plinius Secundus, a nom de plume based on Gaius Plinius Secundus, the ancient Roman naturalist and military commander known in English as Pliny the Elder. His nephew, Pliny the Younger, famously recorded the volcanic destruction of Pompeii in 79 AD, at which time the Elder tragically died while attempting to rescue people near the Neapolitan community of Castellammare di Stabia. It is arguable that Rumsey also may have been influenced by the pseudonym H. Scriblerus Secundus contrived by the eighteenth-century novelist and dramatist Henry Fielding in connection with the Scriblerus Club, a group of satirists that included Jonathan Swift and Alexander Pope among its members.

Curiae Canadenses was originally published as a book of around 126 pages with astoundingly copious notes and supplementary materials for the purpose of educating the reader on the legal and historical details alluded to in the work. The poem consists of around 2,800 words and 479 lines, but spans 40 pages because of the massive scope of the footnotes. The rest of the book consists entirely of a voluminous appendix and preface.

II. Historical Context

It is important to understand *Curiae Canadenses* in the context of its times. The subject matter of the poem was in a dynamic state of transition: the country of Canada did not exist in 1843, and the lands known as British North America and its provinces were non-federated British colonial possessions. Some of the colonies were quite ancient. Newfoundland, for example, had been founded in 1610.¹ Two provinces, Upper Canada and Lower Canada, had been created in 1791 and the form of their representative, but not responsible, governments had been established by the *Constitutional Act* of 1791. The British subsequently promulgated the *Act of Union* of 1841, uniting Upper Canada (renamed Canada West) and Lower Canada (renamed Canada East) to form the United Province of Canada. This is the political entity that comprises the setting and the subject matter of *Curiae Canadenses*.

The amalgamated province proved difficult to govern for various reasons. Conflicts between the English and French nationalities complicated matters, particularly in Canada East. Subsequent to his review of the societal conditions in what was then known as Lower Canada, John George Lambton, the First Earl of Durham, famously observed in his 1839 *Report* on the economic, social, educational, legal, political and governmental problems in British North America: "I expected to find a contest between a government and a people: I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races..." (8). Struggles to replace the vestiges of colonial oligarchical government with a fully-implemented system of responsible government and to neutralize the stagnating influences of the old political order continued unabated. Politicians argued for and against reforming the machinery of government and the courts. Responsible government was fully achieved by 1848. Finally, on 1 July 1867, the United Province of Canada became reconstituted as the provinces of Ontario and Quebec as they united with other British North American provinces in a confederation to form the Dominion of Canada under the terms of the *Constitution Act* of 1867. A country had been born that combined traditional loyalty to the British Crown with a democratic system of responsible, parliamentary government.

Aspects of nineteenth-century British loyalism and monarchism that pervade *Curiae Canadenses* were also present in contemporary works by poets including, for example, William Kirby, the politically conservative English-Canadian poet, novelist and journalist who published *The U.E.: A Tale of Upper Canada*. This epic poem, which Kirby wrote in 1846 and published in 1859, contains numerous classical allusions and is structured

in twelve cantos. As in *Curiae Canadenses*, Kirby's poem addresses matters pertaining to Upper and Lower Canada, but in a different tone and form. The journey of the pioneer settler from Britain to Upper Canada is expressed in heroic terms. The struggles and accomplishments of those who built and defended the province are glorified. An incipient Canadian nationalism is apparent within the framework of the imperial nationalism associated with the connection with the mother country. The Upper Canadian Rebellion of 1837 and its aftermath are depicted as a monumental battle of good versus evil, where the outcome affirms and vindicates the moral righteousness of those who chose loyalty to the British Crown (Bentley 225-47; Kirby, ed. Bentley; Pierce 122-37).

Many Upper Canadian supporters of early nineteenth-century counter-revolutionary political conservatism typically found themselves voluntarily or involuntarily labelled as Tories. Advocates of responsible government and other progressive reforms were generally known as Reformers. Various radicals and hardliners populated the extremes of the political spectrum. The content of *Curiae Canadenses* suggests that Rumsey was almost certainly politically conservative. The fraternal organization known as the Orange Order, which fostered a militant culture of British loyalism, monarchism and Protestantism, represented an historically relevant manifestation of conservatism that strongly influenced the social, cultural and political fabric of Toronto from the 1850s until the 1950s. See Smyth, *Toronto, the Belfast of Canada: The Orange Order and the Shaping of Municipal Culture* for an account of the history of the Orange Order in Toronto.

Kirby arguably appeared to have perceived himself as a kind of last best hope for the survival of pre-confederation Tory loyalist ideals in Ontario. By the time of his death in 1906, he had ironically become one of the last of the prominent, antechronical Tories in the province. His tone was entirely serious in *The U.E.: A Tale of Upper Canada* in contrast to Rumsey's more humorous presentation in *Curiae Canadenses*.

Although Rumsey concealed his identity behind a pseudonym, he plainly disclosed his reasons for writing the poem (1-3). Intrigued as a lawyer and as a legal historian by the evolving caselaw, legislation and legal institutions in the United Province of Canada, he sought to compile and document his research in an educational and readable compendium for the benefit of the public. The complexity and apparent immensity of the subject that lay before him led him to venture beyond technical, descriptive issues of the law into matters falling within the scope of government, geography, history, antiquity, culture and even romance. From the moment

Rumsey first put pen to paper in wrestling with this veritable Leviathan of a topic, he potentially prefigured sentiments that the American author Herman Melville would subsequently express in 1851:

One often hears of writers that rise and swell with their subject, though it may seem but an ordinary one. How, then, with me, writing of this Leviathan? Unconsciously my chirography expands into placard capitals. Give me a condor's quill! Give me Vesuvius' crater for an inkstand! Friends, hold my arms! For in the mere act of penning my thoughts of this Leviathan, they weary me, and make me faint with their outreaching comprehensiveness of sweep...with all the revolving panoramas of empire on earth, and throughout the whole universe, not excluding its suburbs. Such, and so magnifying, is the virtue of a large and liberal theme! We expand to its bulk. To produce a mighty book, you must choose a mighty theme. (*Moby Dick* 506-507)

Rumsey explains how he came to express himself poetically. Although the structure of the poem may recall the epic styles of Virgil, Horace and Homer, the iambic tetrameter pattern evidences the comic mode of Swift, who had been influenced by the mock-heroic, Hudibrastic style of the seventeenth-century poet Samuel Butler. Rumsey specifically cites a later precedent: "The recollection of Mr. Anstey's amusing description of Courts, and their proceedings..."(1). This is a reference to *The Pleader's Guide, A Didactic Poem in Two Books* first published in 1796 under the pseudonym John Surrebutter. The English poet Christopher Anstey, and his son John Anstey, an English barrister, arguably may have collaborated in tandem to produce the completed work, although some sources, possibly in error, appeared to have attributed authorship solely to Christopher ("Curiae Canadenses" 212; *Toronto of Old* 315) or, alternatively, solely to John. Rumsey also mentions "Mr. Anstey" and content from *The Pleader's Guide* at the beginning of the section of *Curiae Canadenses* dealing with Lower Canada (5). Referring to himself in the third person, Rumsey also reveals:

...the British couplet, so famous for its authority to weak memories,

Thirty days hath September,
April, June, and November,

suggested to him, as the least labor to the menemonic [sic] faculties, to record, on a kind of Poetic Tablet, the Judicial Institutions of the West [the United Province of Canada]. The precedent, seemed to require no high effort for success; he ventured therefore to mount the untried steed. (1)

Rumsey offers as examples several members of the legal profession in Britain who composed poetical verses in their professional writings. He even suggests “that that among the earliest nations of the earth, the Laws themselves had been promulgated in stanzas, without the oft-cited words, ‘Be it further enacted’” (1-2).

It could be argued that structuring *Curiae Canadenses* as a mock-heroic poem may not have been without potential risk with respect to the United Province of Canada. Courts, judges, the processes of the law, and the majesty of the law were arguably challenging subjects for discussion in a satirical, literary work because of traditional expectations that such subjects generally were to be treated with formal deference and even reverence in colonial, conservative Canadian frontier society. Upper Canadian history is replete with examples of the adverse fates of writers, particularly radical journalists, who were presumed to have mocked local judges, legal processes and legal outcomes. It is consequently important to appreciate Rumsey’s disciplined use of humour and to distinguish that the tone, form and structure of the poem do not purport to discredit its subject matter.

Rumsey confronted an arguably monolithic subject and used wit to produce an enjoyable and instructional reading experience. He suggests that “There is an elasticity in the Law, which admits to its votaries, the grave and the gay.” He further argues:

The work lays claim to no merit, but that of labor, in the collection of the materials out of which it has arisen: this has been considerable, though only for a shanty, until some able artificer raises the less rude, but embellished and useful structure. The Author would, at all times, deprecate the trifling with solemn subjects; humour, however, where it is exhibited, is not always the index of principle or feeling:

Non semper idem floribus est honos
Vernis, neque uno Luna rubens nitet
Vultu.²

HOR. ODE XI (Rumsey 2-3)

Whatever Rumsey’s ultimate views on the matter may have been, it could be argued that his appeal to satirical ostentation in the poem strategically conveys a comic message of gentlemanly self-deprecation, which operates to defeat presumptions of arrogant pretention and promotes the accessibility of the subject matter. The exhaustive, researched content of the supplementary materials and the demonstration of the technical skills and

competence necessary to craft a satirical poem confirm Rumsey's commitment to honouring and respecting his choice of topic.

III. *Curiae Canadenses*: The Courts of Upper Canada or Canada West

The section of *Curiae Canadenses* dealing with the western half of the United Province of Canada, which would one day become Ontario, begins with a review of the divisions of the colony from its earliest days when it was then known as the province of Upper Canada. As a potential insight into Rumsey's character and mindset, he refers to the region not as Canada West, but as Upper Canada, as some traditionalists still preferred to do.

After canvassing the original districts of Upper Canada, which were renamed the Midland, Eastern, Home, and Western districts in 1792, Rumsey outlines the overall form and structure of the courts. A Court of Common Pleas was initially established but replaced by the Court of King's Bench as a high court for the province. This court was, of course, renamed Queen's Bench following the accession of Queen Victoria in 1837. Another Court of Common Pleas existed from 1849 to 1881 with a jurisdiction concurrent with the Court of Queen's Bench. Its purpose was to alleviate the significant caseload that otherwise would have unduly burdened Queen's Bench. The reference to "Osgoode's Benches" denotes Osgoode Hall, the headquarters of the Ontario legal profession and the location of the appellate courts in Toronto. See Honsberger, *Osgoode Hall: An Illustrated History* for a history of the building. The courts of the province were reorganized throughout the years, substantially from 1990 to 1999. See Riddell, *The Courts of the Province of Upper Canada or Ontario* for a history of the early courts of the province.

The "regular volley of *Reports*" from "legal forts" is, of course, a play on words with respect to the discharge from a cannon and the published compilations of judicial opinions of cases decided by the courts. Rumsey discusses law reports in section II of the appendix to the poem, including a burlesque of an old English report (51-56). For an infamous, twentieth-century example of a satire on Canadian law reports, see *Regina v. Ojibway*, a fictitious Ontario-based case created by Hart Pomerantz and S. Breslin and published in *Criminal Law Quarterly* in 1965.

The reporter at the time of Rumsey's writing was John Hillyard Cameron, a young lawyer who became a politician and eventually grand master of the Orange Order. While serving as head of the Ontario legal profession, he set an unforgettable example of professional excellence in 1868 during the trial of the murderer of Thomas D'Arcy McGee, a Father of Confederation. Publicly castigated for acting as defence counsel for the accused,

Cameron argued that a person charged with a crime should have recourse to competent, unimpeded legal representation (Spaight 66).

These legal seats of divers ranks,
Have limit to St. Laurent's banks;
But all beyond, down to Detroit,
Becomes new ground for fresh exploit.
The scene of action now surveyed,
Is UPPER CANADA, where 'twas said
In *four divisions* 'twould be found,
From Eastern to the Western bound;
Of German names, for sake of Founder,
Which, for more clearness, follow under:
Mecklenburgh first, then *Luneberg* second,
Nassau and *Hesse* t'others were reckoned.
A COMMON PLEAS was there erected,
Where Subject's Rights should be protected.
Then a QUEEN'S BENCH forthwith arose,
The Suitor's injuries to dispose,
With a Chief Judge and Puisnes four,
At every Term to ope the door:
Four times a year, beginning Monday,
And always ending next to Sunday;
Cum BANCO SITTINGS for Judgments, Pleadings,
To be digested after readings;
And as *Mortolium nemo sapit*, –
APPEAL COURT then the RECORD *capit*,
Where great and gravest heads do meet,
To make the Law still more complete.
Then skill and science to acquire,
Experience and forensic fire,
A PRACTICE COURT behold appended,
That Forms and Rules may be amended.
Now, too, is heard from legal forts
A regular volley of *Reports*;
After command from Osgoode's Benches,
And charge from Chiefs in open Trenches.
Thrice happy soil, where, without measure,
Enjoyment may flow o'er with pleasure! (21-24)

Beginning with the might and magnificence of the St. Lawrence River and Niagara Falls, Rumsey lists various districts in Canada West in a protracted series of stanzas. First there were four, and then came many more, until

“Bewildered we lose all sensation”. He appears to cast his “Vice-roys...Governors” and other “Illustrious names, of noble Stock” in the role of “fledgling pharaohs in an uncouth land” (to borrow an analogy from the Canadian author Margaret Laurence (3)) as they partition and reorganize the land, in ever-increasing complexity, in accordance with British legal, political and social structures.

After referencing the steeple of the Cathedral Church of St. James in Toronto, Rumsey reminds the reader that the city, “Tho’ late attach’d to British Crown”, is nonetheless a place of great antiquity as he evokes the history of the aboriginal peoples that originally inhabited the area:

For SARATOGA, or its drinks,
The WHIRLPOOL, or NIAGARA’S brinks,
Or CALEDONIA’S far-famed Springs,
Or the ten hundred sparkling RINGS
That deck St. Lawrence, mighty river,
Guarding its spangled tide for ever,
The Judge, from toil may well relieve,
Until his wonted strength retrieve. –
Arrangements new their Worships make
In DISTRICTS such as Viceroy’s take;
Boundless the land with such excisions,
Yesterday four, were the, divisions;
But these again as times explore,
Double, and treble, aye, and more;
Bewildered we lose all sensation,
Before we reach our destination.
New Governors hew out Districts *Twenty*
With patronage to office, plenty.
This goodly number, well to know
For Sheriffs, or their Bums to go
When *Capias*, or *fi fa’s* been sent; –
No Writ to have, “*non est invent,*” –
Read on, and you shall understand
These new Divisions of the Land:
The MIDLAND District first claims pity,
There lies the Governor’s proud city,
But whether for short time or long
Puzzles conjecture, right or wrong.
LONDON, they say, sometimes HOCHLAGA,
(Alpha’s not nearer to Omega,)
Have the best claim to be the seat
Where Courts and Palaces should meet.

But all agree, the young, and old,
The rich, the poor, the warm, the cold.
The meek-eyed maid, the matron bold,
The wisest, the like truth unfold,
Far distant lands, yea all! not some,
Admit the truth, there's none like HOME.
Nor is there earthly situation
So perfect fitted for the station
Of making Canada a people,
As where you spy St. James's steeple.
By slightest knowledge 'twill be seen,
That brave TORONTO'S always been
A place of note, and high renown,
Tho' late attach'd to British Crown:
If its antiquity be doubted,
Indian Records you've never routed;
For if you had, you there would learn,
In Adam's days, the fires did burn,
Round which the Indian tribes would meet
Their laws to make, and men to eat.
Then view again the country back,
Its Port, and Harbour, and the Lac,
Its Public Halls, for Law, and Learning,
The thousand hearths with fires all burning,
And hosts of men the money turning:
Bold is the man, of great defiance,
With brains to lead in close alliance,
Who by the word, or in the letter,
Can say Toronto has its better.
Between St. Lawrence, and River Grande,
EASTERN, OTTAWA, JOHNSTOWN stand;
And BATHURST, and DALHOUSIE too,
As District Judges well do know.
Near to the Bay of Quinte's found,
What now you call "PRINCE EDWARD" ground:
And brave and gallant Picton's fame,
Gives to its Capital, his name.
VICTORIA next, we can't conceal,
Its Court's found sitting at Belleville:
NIAGARA too, though not the Falls,
Six times a year a *Prefect*, calls:
NEWCASTLE, COLBORNE, WELLINGTON, BROCK,
Illustrious names, of noble Stock:
HURON distinguished by its Lake,

Where Manatoulin spirits wake:
SIMCOE, and TALBOT, WESTERN, GORE;
And last comes LONDON, and no more. (25-33)

Rumsey outlines the jurisdictions of the District Courts and their sessions:

Judges arise in all we're told
To *Forty Pounds*, they're now so bold
Judgment to give, at certain meetings
Held close upon the Sessions greetings:
At one, and all, Courts also sit,
The *Ten Pound* causes to befit
Every two months; no longer bide
These Jurists, ere they do decide.
To keep good order, peace uphold,
To license Inns, and cure the scold,
Benches of Justices appear
In Petit, or *Four times* a year:
While thousand Squires send forth their thunders,
Clerks taking care, they make no blunders. (33-35)

We are subsequently presented with stanzas invoking comparisons with the Sherriff's Tourn in England. Rumsey provides an explanation on the form and scope of this county court in his footnotes, including the process by which a defendant could be outlawed for failing to appear. See Derriman, *Pageantry of the Law* for a fascinating overview of the traditions and regalia of the legal profession and the courts in England and Wales, including the Sherriff's Court.

The wampum belt, used by some Canadian aboriginal peoples to mark treaties and covenants, is mentioned within the context of the recording of what Rumsey characterizes as "important transactions" (36n42). Images of wampum belts appear in a stained-glass window at Osgoode Hall.

In Gothic Hall, no Summons horn
Assembles to the *Sheriff's Tourn*
The County Suitor, who complains
Of wrongs the *Vicinage* sustains:
No *County Court*, the Shillings Forty
Awards to the successful Party;
Nor obstinate defendants' names
In open Hall "outlawed" proclaims. –
No Baron here, of ancient blood
Tracing its fountain to the flood;

For, vain of such to seek the trace
 Where modern Courts now hold their place;
 Nor *wampum belt*, nor wigwam Hall,
 Nor armed Knight, nor Seneschal;
 But Sessions bench, with solemn sounds
 The outlaws destiny resounds. (35-36)

In his presentation of the municipal jurisdiction, Rumsey mentions Henry Sherwood, a member of Toronto's politically conservative Tory elite. A popular mayor of the city, Sherwood was infamous for having participated in 1826 in the vandalism of the printing shop of William Lyon Mackenzie, the radical politician, newspaper editor, and first mayor of Toronto (Rumsey 36n44; Russell 36-39). See Raible, *Muddy York Mud: Scandal & Scurriosity in Upper Canada* for an investigation of the potential causes of what became popularly known as the Types Riot. The Toronto court mentioned in the poem was a panel composed of the mayor and aldermen who adjudicated matters falling within the scope of their jurisdiction:

TORONTO has a Court, tis said,
 SHERWOOD, the Mayor, is now the head,
 With COURT OF ALDERMEN, to judge
 All wicked cheats, prevent all fudge;
 Four times a-year, to punish sinners,
 Justice to grant, and eat good dinners. (36-37)

The Probate and Surrogate jurisdiction concerned matters in estates and wills:

The next of kin are not forgot,
 When mortals by the common lot
 From all this world's good things are taken,
 And friends and relations are forsaken;
 The PROBATE COURT, anon dispenses
 Deceased's goods and consequences:
 And if on Probate you can't wait,
 There lies the DISTRICT SURROGATE. (37)

The Boundary Commission adjudicated matters involving property boundaries. The Heir and Devisee Commission was empowered to clarify titles to land in relation to claims made by heirs, devisees and assignees of Crown lands:

A BOUNDARY COURT, comes now to aid,
So soon as the *Commission's* prayed,-
Land-marks to give, on lots, concessions,
And Lines to keep, clear of suppressions.

And, for all HEIRS and DEVISEES
Of *Royal Bounty* made *Grantees*, –
Their claims or Titles, if neglected,
Must quick at KINGSTON be inspected. (37-38)

Rumsey introduces the Court of Chancery, a court of equity headed by a vice chancellor, who, at the time of Rumsey's writing, was Robert Symptom Jameson, a lawyer and politician affected by personal problems including a failed marriage. He and his estranged wife, Anna Brownell Murphy-Jameson, were educated and cultured enthusiasts of literature and fine art. His childhood friend had been Hartley Coleridge, son of Samuel Taylor Coleridge. Anna moved in influential social circles, counting Lady Byron and Otilie von Goethe, the daughter-in-law of Johann Wolfgang von Goethe, as friends. Anna published several works, including the renowned 1838 travel book *Winter Studies and Summer Rambles in Canada*, in which she acknowledged the Upper Canadian legal profession only to the extent of mentioning some of its prominent members. She refrained from discussing Osgoode Hall, one of the most important buildings in Toronto at the time. She also negatively characterized the city as a factious colonial backwater in contrast to the cultured cities of Europe. She did, however, appear to appreciate that the people of Upper Canada wanted and deserved a better form of local government. Like Rumsey, Anna was also greatly interested in the aboriginal peoples whom she encountered in Canada. See Blackwell, "Robert Symptom Jameson" (100-103) and Walker, *Sketches of Old Toronto* (162-190) for concise and informative biographies of Robert and Anna Jameson.

Legal practitioners who appeared before the Court of Chancery were qualified as solicitors. The provincial legislature empowered the Law Society of Upper Canada, the independent, self-governing regulator of the Ontario legal profession,³ to assume full jurisdiction over solicitors in addition to barristers in 1857 (Riddell, *The Legal Profession* 20-23; Riddell, *The Bar* 97-98). Thenceforth, all solicitors became subject to certification and licensing by the Law Society before being admitted by the courts. All Ontario lawyers are consequently barristers and solicitors to the present day. Rumsey explains the purpose and scope of Chancery and reminds the reader that the term ORATOR "is the technical description of

the plaintiff in Chancery proceedings.” (39n50). He lists the various matters and issues pertaining to the equity jurisdiction.

The Court of Chancery is often historically associated with the name of Robert Baldwin, the great Reformer, statesman, and innovator of Canadian responsible government from Canada West. He famously joined his friend and counterpart from Canada East, Louis-Hippolyte Lafontaine, to form the first ministry in the province to govern in accordance with the principles of responsible government. Baldwin resigned his administration of the government of the United Province of Canada in 1851 out of a sense of honour and duty because of his support for the unpopular Court of Chancery. But Baldwin had accomplished the herculean feat of planting the seeds of responsible government that would eventually bear fruit in the form of the Canadian nation and Canadian democracy. Baldwin died in 1858 (Cross 333-35).

Now CHANCERY last, not least, appear
Thy Justice pure as chrystal clear:
Here, all confiding owners may
Compel the TRUSTEE to repay
Monies mispropriate; lands restore,
Though sliely held by *Fraud* before;
And else, what e'er *deceit* has taken,
And the just use thereof forsaken.
No damages will now suffice,
The thing *itself* must be the prize
Quickly to ORATOR restored,
If just the case he has implored.
Here, too, the tie of loving Friend,
Bound to a *Partner*, has an end;
Tho' close the bond, their Gordian Knot
Decretal Order will uncut;
Set all at liberty, make free
As air, or the Mississippi.
No lengthen'd Bill, complex accounts,
Tho' lost in number or amounts,
Can 'scape the rigid MASTER'S eye
When once the ORDER'S given to pry.

If ACCIDENT or mistake arise,
None dares the Chancellor's act despise;
All blunders prompt his Honour sees,
And rectifies quickly by DECREES.

Poor helpless babes, infants in teens,
'Gainst wrongs their weakness can't defend,
Have now impenetrable screens,
By gift of Guardians or of Friend.
And Idiots' melancholy fate,
Nor less the Lunatic's sad state,
(The precious gift of reason gone,
And left to stand, or fall alone),
Here find relief, support, redress,
This Court, such specially doth bless. (38-40)

Rumsey pauses to praise Toronto and the judges of the superior courts (40, fn. 52). Chief Justice Sir John Beverley Robinson, the most renowned and politically conservative of the group, embodied the principles of Upper Canadian Toryism. He was a dignified traditionalist and supporter of the British imperial connection. Not surprisingly, William Kirby dedicated *The U.E.: A Tale of Upper Canada* to Robinson (4). Robinson was apparently known for his poetical abilities during his school days and he remained interested in poetry throughout his life (Bethune 26). He had even wooed his wife with his amateur poetry during their courtship (Jarvis 140-41; Robinson 121-23). One of his sons, Sir Charles Walker Robinson, stated that "Pope, Goldsmith, Campbell, and Scott were favourites. Shakespeare he read frequently, and upon his circuits he generally took with him either Virgil or Horace" (405).

When Oxford conferred a doctor of civil law degree upon Robinson in 1855, he received the honour alongside sixteen other distinguished persons including the great poet laureate Alfred, Lord Tennyson, whom Robinson described in unflattering terms as disheveled. Because Robinson apparently equated an unkempt appearance with intellectual or moral inferiority, the significance of receiving honours alongside Tennyson arguably may have been lost on him (Brode 263). Perhaps it could be argued that Robinson's reaction to Tennyson seemed ironic in view of Robinson's evident appreciation for literature and poetry and his correspondence with Kirby, who, in turn, engaged in pleasant correspondence with Tennyson in the years following Robinson's death (Pierce 211-35). In his 1904 biography of his father, Sir Charles Walker Robinson quoted his father's detailed account of the conferring of the doctoral degree, but he interestingly omitted his father's negative description of Tennyson (387-88).

In 1846, the Viennese-Canadian artist George Theodore Berthon painted a large, iconic portrait of Sir John Beverley Robinson measuring approximately 137 cm (4.5 ft) in width by 259 cm (8.5 ft) in height, which

hangs above the enormous fireplace in the Great Library in Osgoode Hall (Honsberger, “The Portraits of the Society” 331). It was reportedly the first portrait that the Law Society of Upper Canada was known to have displayed in commemoration of one of its members. On 20 June 1846, Robert Jameson, acting in his capacity at the time as head of the Law Society, presented a letter addressed to him to the Society’s governing body. The letter stated that a number of lawyers had commissioned the Robinson portrait and they wished the Society to accept and display it in Osgoode Hall (Riddell, *The Legal Profession* 125).

Favour’d TORONTO, thine the pride,
That JUDGES o’er thy Courts preside,
Endow’d with wisdom, skill, and worth,
To spread stern Justice o’er the earth.
May such long flourish, ’till to men
ASTREA comes from Heaven again. (Rumsey 40)

We plunge headlong into the controversy of William Lyon Mackenzie’s Upper Canadian Rebellion of 1837 and the ensuing Patriot War of 1838 to 1842. We also encounter Louis-Joseph Papineau, the leader of the insurrections in Lower Canada. Mackenzie’s failed coup d’état embodied the radical approach to confronting the problems associated with colonial oligarchical government. Rumsey evidences his political conservatism, openly proclaiming his disdain for Mackenzie and Papineau. Rumsey also refers to the 1838 Battle of the Windmill, where Upper Canadian pro-government forces defeated insurgents from the United States who invaded Upper Canada in support of Mackenzie’s revolution. Crediting “a profound scholar and kind friend, not only for much interesting information connected with the Canadian Rebellion, but for the whole of the note on that subject” (3), Rumsey promises to be an impartial chronicler of historical facts:

We seek to give umbrage to no one; but have every where endeavoured to observe that strict impartiality which is indispensable to true history: and shall be glad to retract any misstatements we may happen to have admitted, undesignedly, on being convinced of our error... (84)

The “note on that subject” appearing as section IV in the appendix to the poem contains historical inaccuracies and biases, which arguably appear to suggest that the author of the section may have been adversely affected in his impartial reporting by access to a comparatively limited range of pri-

mary source materials. In addition, at the time of Rumsey's writing, Mackenzie was considered a fugitive from British justice living in the United States. All was not yet forgiven. Contrast Rumsey's account of the Rebellion of 1837 and the Patriot War with, for example, Guillet's account in *The Lives and Times of the Patriots*.

By the time Rumsey published *Curiae Canadenses* in 1843, Hugh Murray had published his 1840 work *An Historical and Descriptive Account of British America* in which he discussed the Rebellion of 1837 and the Patriot War. Sir Richard Bonnycastle also published critical accounts of Mackenzie's actions in his 1841 work *The Canadas in 1841*. In 1846, Bonnycastle further discussed the rebellion in *Canada and the Canadians*. Although both authors described the rebellion in a manner consistent with the content and tone of section IV of Rumsey's appendix, it is difficult to determine whether either of them had assisted Rumsey. The characterization of Rumsey's anonymous consultant as a "profound scholar" arguably may appear to suggest the Reverend Henry Scadding, however Scadding never claimed to have assisted Rumsey. He was also only thirty years old in 1843, and consequently, not yet the seasoned, "profound scholar" that he eventually became.

Anon MACKENZIE'S maddening zeal,
With fires such as false patriots feel,
Unsheathes the steel, and gives the word
To raise the fratricidal sword.
Colleagued with him, stern PAPINEAU
Contrives the simultaneous blow;
They shrink not, till with flame unblest,
Fiercely blaze out, both East and West:
And fiery musquets' deafening roars,
Are heard throughout our hapless shores.

But soon the din of war is past,
Tranquillity returns at last;
Yet not till WINDMILL-POINT attests
The hate of our unbidden guests.
There dauntless once, the undying dead,
Have sternly won their gory bed;
And countless tearful eyes deplore
The unflinching hearts those heroes bore;
For their's the unrelenting strife
That neither spared, nor spake for, life.

Now Peace restored, and Discord o'er,
The volleying thunders cease to roar:
And Canada the near and far
Emerges from the din of war. (41)

A general state of disapproval existed when the legislature of the United Province of Canada and the Court of Chancery were required to move to the city of Kingston following the *Act of Union* of 1841. Rumsey's use of the name Frontenac is an early reference to Kingston and the Comte de Frontenac who established a fort in that area during the French regime in the seventeenth century (42n54-55). Rumsey suggests, with his typical wit and irony, that the sense of frustration and confusion that the French forces must have felt at being obliged "to be gone" from the area must have paled in comparison to the reaction of the Canadian government at being obliged to depart Kingston and resettle in yet another city.

Rumsey could not have predicted how frustrating it would become to establish a capital city for the United Province of Canada. The capital of the united province moved between Kingston, Toronto, Montreal, Quebec City, and Ottawa, before finally settling in Ottawa, which eventually became the capital of the country of Canada.

Rumsey's mention of YORK refers to Toronto, which had been known as the town of York from 1793 to 1834. "TORONTO'S spire-clad plain" is based on Toronto's early reputation as "A City of Churches" (Guillet *Toronto* 369-88). Rumsey also mentions John Godfrey Spragge, the Master of the Court of Chancery, who became a distinguished jurist and ultimately chief justice of Ontario (Read, *Lives of the Judges* 299-313; Read, *Lieutenant-Governors* 228; Rumsey 43n6). In addition, Rumsey refers to Robert J. Turner, a Toronto lawyer remembered as "a skillful Equity Draughtsman and Solicitor in Chancery" (43):

The Provinces erewhile divided,
In Legislative Hall united,
Like bride and bridegroom, meet to kiss
At KINGSTON the metropolis.
From fair TORONTO'S spire-clad plain,
The Court Vice-regal, and its train

Of Lawyers, Benchers, Pleaders, all
To Kingston drag their Judgment Hall.
Yet here, the Law perplexed, distrest,
And wandering Justice knew no rest:
Her Practice cramped, and out of place,

Poor CHANCERY felt but ill at ease:
Backward again the vagrant strays,
The stony roads and wooden ways
Of old TORONTO to regain, –
Ne'er may she quit that soil again.

Dreary and sad was Frontenac
Thy Duke ne'er made a clearer sack,
Than when the Edict to be gone,
Issued from the Vice-regal Throne.

Exeunt omnes, helter skelter
To LITTLE YORK again for shelter:
Little no longer, YORK the NEW
Of imports such, can boast but few;
A goodly freight, without all brag,
When comes, 'mongst others, MASTER SPRAGGE,
And skilful TURNER, versed in pleading,
The Kingston exiles gently leading. (41-43)

The review of Upper Canada or Canada West ends with a farewell to the principal players in this act of Rumsey's drama. His use of the term Lawyer's Hall (24n27) was a colloquial, popular reference to Osgoode Hall:

Farewell TORONTO! of great glory,
Of valour too, in modern story;
Farewell to Courts, to Lawyer's Hall,
To Justice seats, both great and small;
Farewell ATTORNIES, SPECIAL PLEADERS,
EQUITY DRAFTSMEN, and their Readers.
Canadian Laws, and Suits, to song
Of future Bard, henceforth belong. (44)

The poem concludes with a challenge to the reader:

We seek not for this humble strain
The Poet's meed of praise to gain;
Yet tell, Oh! tell me, who may be,
This Poet, Lord of minstrelsy?
'Tis he with soul divinely fired!
'Tis he with holiest zeal inspired!

'Tis he who wins a deathless fame! –
Give him the glory of the name. (44)

IV. Historical References to *Curiae Canadenses*

The *Canada Law Journal* reviewed *Curiae Canadenses* and published excerpts in 1874 (“*Curiae Canadenses*” 211-15) and 1878 (“*Osgoode Hall*” 317-19). Excerpts from the poem have also been famously quoted in various books throughout the years, the most famous of which are the 1952 work *The Honourable Society of Osgoode Hall* by Charles H. A. Armstrong and Eric R. Arthur (9, 33-37) and the 1873 magnum opus *Toronto of Old* by the Reverend Henry Scadding (*Toronto of Old* 314-15). Scadding paid particular attention to Rumsey’s researching and writing skills and poetical technique. His recommendation that law libraries should stock copies of *Curiae Canadenses* obviously needed to be balanced against the practical consideration that the title evidently had been out of print for thirty years!

The author must have been an experienced compiler, analyst and legal index maker. In the text of the work, Christopher Anstey’s poetical “*Pleader’s Guide*” is taken as a model. As a motto to the portion of his poem that treats of Upper Canada he places the line of Virgil, “*Gens que virum truncis et duro robore nata*”⁴ which may be a compliment or not... The typography and paper are admirable. The *Curiae*, in a jacket of fair calf, should be given a place on the shelves of our Canadian law libraries (*Toronto of Old* 315).

Important references to the poem, including this commentary, were unfortunately omitted from the more readily available 1966 abridged edition of *Toronto of Old* edited by Frederick H. Armstrong (*Toronto of Old*, Ed. Armstrong 234). Scadding was reportedly the first person known to have revealed Rumsey’s identity as the poet behind *Curiae Canadenses*. In an 1877 publication on the noms de plume of thirty-one Canadian authors, Scadding again discussed Rumsey and excerpts from the poem, noting that “The writer adopts the Hudibrastic style” used for satirical poetical compositions (*Canadian Noms-de-Plume* 51-52).

In *Toronto of Old*, Scadding did not disclose the basis for his certainty that Rumsey was the author of *Curiae Canadenses*. How did Scadding come to possess such particular information concerning a poem published anonymously thirty years prior, which many people had either forgotten or never heard of? According to the 1874 *Canada Law Journal* article on *Curiae Canadenses*, the Ontario legal profession had not been aware of the existence of the poem until the publication of *Toronto of Old*. The editors

of the 1874 article apparently could not even locate any copies of the poem despite considerable searching. The only obtainable copy reportedly came from Scadding, himself (“*Curiae Canadenses*” 213), which the *Canada Law Journal* affectionately described in 1878 as “a musty old volume of limited dimensions” which they had “unearthed for the benefit of our readers” in 1874 (“Osgoode Hall” 317). It appears evident that had Scadding not been knowledgeable on *Curiae Canadenses* and its author, the poem arguably might have been relegated to permanent obscurity and, more importantly, awareness of its author might have been irretrievably lost to history. Scadding’s importance in renewing interest in the poem decades after it had been published cannot be overstated. The editorial decision to remove all mention of Rumsey and almost all references to *Curiae Canadenses* from the 1966 abridged edition of *Toronto of Old* accordingly could be viewed as a significant error.

A brief excerpt from the poem is quoted in the classic 1888 biographical work *The Lives of the Judges of Upper Canada and Ontario, from 1791 to the Present Time* by David Breakenridge Read (*Lives of the Judges* 305). The regulator of the Ontario legal profession traditionally has presented Read’s book as a gift and prize volume (Moore 175). The section of the poem dealing with the removal from Kingston of the Court of Chancery and the legislature of the United Province of Canada is discussed in *Osgoode Hall: Reminiscences of the Bench and Bar* by James Cleland Hamilton (73). This 1904 work historically has been a sentimental favourite of many Ontario lawyers. The Quebec content of *Curiae Canadenses* is critically discussed in the 2006 work *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* by Donald Fyson. Inter alia, Fyson argued why the poem “is not even a footnote in Quebec legal history” (354-63).

The poem is cited as a source for historical data in several works, including the late nineteenth and early twentieth-century epic series *Robertson’s Landmarks of Toronto* by John Ross Robertson (34-36); the renowned 1964 architectural work *Toronto: No Mean City* by Eric R. Arthur (91-92); and the comprehensive 2002 historical work *The University of Toronto: A History* by Martin Friedland (14).

Mary Lu MacDonald argued in her 1992 work *Literature and Society in the Canadas, 1817-1850* that *Curiae Canadenses* was intended for use as a school textbook where rhyme would have served as a mnemonic aid for students (81). Notwithstanding Rumsey’s introductory comments on the effectiveness of mnemonic aids (1) and the question of whether *Curiae Canadenses* ideally would have been feasible or practicable for that pur-

pose, it is beyond question that the poem is informative for students of Canadian poetry, Canadian history, and Canadian legal history. *Curiae Canadenses* remains a delightful and entertaining work, particularly for members of the Ontario legal profession.

Acknowledgments

The author dedicates this article to his mother, Elaine, an elementary school teacher, who introduced him to poetry at a very young age. The author offers his sincere appreciation to the staff at *Canadian Poetry*, especially D. M. R. Bentley, Editor, who handled the manuscript and to two anonymous referees, who each reviewed it. All offered extremely helpful recommendations and advice on improving the manuscript.

Notes

1. See Bannister for an analysis of the early, legal history and culture of Newfoundland.
2. "The same glory does not always remain to the vernal flowers, nor does the ruddy moon shine with one continued aspect." (Horace, "Ode XI. To Quintius Hirpinus", l. 9-11).
3. The Law Society of Upper Canada, established on 17 July 1797 pursuant to *An Act for better regulating the Practice of the Law* promulgated by the Upper Canadian legislature, holds the distinction of being the first statutorily empowered, self-governing bar in the British Empire. The regulator was renamed the Law Society of Ontario on 1 January 2018.
4. "A race of men sprung from the trunks of trees and hard oak." (Virgil, "Aeneid" VIII, l. 315, 443).

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