

## NEW BRUNSWICK'S FIRST CHIEF JUSTICE

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The first Chief Justice of New Brunswick, George Duncan Ludlow, has remained an obscure figure. He was born in 1734 in New York City where his grandfather, Gabriel Ludlow, had emigrated from Castle Cavy, England, in 1694. He was a direct descendant of General Ludlow, a parliamentarian and a commander under Oliver Cromwell during the English Rebellion in the days of Charles I.

George Duncan Ludlow first pursued pharmaceutical chemistry, but he wearied of it and turned to the study of law. Friends predicted his certain failure at the bar as a consequence of sickness, but those who attended his first trial marvelled at the skill with which he argued his case. He then enjoyed a rapid rise to prominence at the bar of New York.

Before his appointment to the New York judiciary in 1769, Mr. Ludlow married Frances Duncan, the daughter of Thomas Duncan, a New York merchant. They had three children, two of whom became prominent in New Brunswick life. Their son, George, was for a time a partner in the legal firm of Ludlow, Fraser and Robinson in Saint John. A daughter, Elizabeth, married the Hon. John Robinson, who at various times was Mayor of Saint John, Provincial Treasurer and a member of the Governor's Council.

In 1768 Mr. Ludlow was afforded a seat in the Governor's Council. The following year Governor Colden appointed him to the Supreme Court of New York where he served until an unfortunate incident precipitated his resignation. In 1778 Chief Justice Horsmander of New York died and it was fully expected that Judge Ludlow would fill the vacancy, but a member of the Bar, William Smith, received the honour. This was the same William Smith, incidentally, who in 1784 became Chief Justice of Lower Canada.

But Judge Ludlow was very highly regarded and as a conciliatory measure in July, 1780, Governor Robinson of New York appointed him Master of the Rolls and Superintendent of Police of Long Island, which together gave him a remuneration far in excess of what he would have enjoyed as Chief Justice. At this time a large trade was carried on between New York City and the New England provinces. Licenses were required to permit participation in the trade. The many casual profits were divided among Governor Robinson, Lieutenant Governor Elliott and Judge Ludlow.

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This last appointment, it will be noted, was made after the beginning of the American Revolutionary War in which Judge Ludlow was vitally concerned. Thus in 1778 his house at Hempstead, Long Island, was plundered. He himself escaped being made prisoner only by climbing upon the roof through the scuttle and hiding behind the chimney.

During the war, on April 21st, 1780, the King approved of George Duncan Ludlow as one of a Board which conducted and managed a "plan found for employing the zeal of His Majesty's faithful subjects in North America in annoying the Sea Coasts of the revolted Provinces, and distressing their Trade".

On the evacuation of the British from New York at the close of the American Revolutionary War in the fall of 1783, Judge Ludlow sailed for England. His property on Long Island was confiscated to the state.

With the end of the Revolutionary War, Britain had to make provisions for the large number of loyalists who had fled to the remaining American colonies. Among the steps taken was the establishment in 1784 of the Province of New Brunswick which had theretofore formed part of Nova Scotia. Among other powers, Thomas Carleton, who was appointed Governor General of all the British North American provinces, was empowered to create a Supreme Court of Judicature for the new province. In 1784, at the age of fifty, Judge Ludlow was appointed Chief Justice of New Brunswick, three puisne judges, James Putnam, Isaac Allen and Josiah Upham, being appointed at the same time.

At the inception of the province the laws in force were the common law and statute laws prevailing in England in so far as they were applicable to the conditions and circumstances existing in New Brunswick. The Supreme Court was given all the powers that the Courts of the King's Bench, Common Pleas and Exchequer possessed in England, but jurisdiction in Equity was vested in the Lieutenant Governor of the Province as Chancellor. This meant that the Supreme Court of New Brunswick had jurisdiction over both civil and criminal matters. From its decisions there was an appeal to the Judicial Committee of the Privy Council.

Provisions were made for the formation of a Legislative Assembly representative of the people whose bills were approved by the Governor's Council, subject to the overriding power of the Governor. The original members of the Governor's Council, or King's Council, as it was sometimes called, were nominated in the Sovereign's instructions to the new Governor and included Chief Justice Ludlow and the entire judiciary. The Council consisted of twelve members and exercised executive and legislative functions. It met to advise the Governor and to assist in the transaction of business. Once a year while the House of Assembly was

in session, the Council convened as a branch of the Legislature to revise all bills passed by the House of Assembly and to send down bills to the House which had originated and had been passed at the Council meetings.

Chief Justice Ludlow arrived in Saint John in November of 1784. He originally resided in Carleton, now West Saint John, but when the seat of government was moved to Fredericton in 1788, the Chief Justice acquired fifteen hundred acres of land five miles above the capital on the Saint John River and named it Spring Hill, after the estate of a former Governor of New York, Governor Colden.

The Supreme Court sittings first opened on February 1, 1785, in Parr Town (now Saint John). On circuit the judges often travelled to backwoods' settlements, riding on horseback over roads that were little more than wood paths and game trails.

An examination of a few of the cases coming before the court at this time affords an interesting commentary on the times. The first serious crime tried before New Brunswick's Chief Justice was recorded on February 4th, 1785. A negro woman, Nancy Mozely, allegedly murdered her husband with a pitchfork. The jury returned a manslaughter verdict. The ancient privilege of claiming exemption by pleading benefit of clergy was invoked. Thereupon the accused was branded in open court with the letter "M" in the brawn of her left thumb and discharged. Four years later, in 1789, a bill was passed abolishing this semi-barbarous practice and substituting a fine and whipping. But this was not the only way in which the criminal law was harsh. As in England, the number of offences for which the death penalty could be inflicted was astonishingly large. They included burglary, highway robbery and grand robbery. One writer remarked: "Thus was the usual Anglo Saxon desire to exemplify the advanced state of civilization which the province had attained by hanging somebody, satisfied."

Slaves accompanied many of the Loyalists to New Brunswick, and on February 18th, 1800, a test case was heard before the full court to determine the legality of slavery. A writ of Habeas Corpus issued by Judge Isaac Allen required a master, Caleb Jones, to bring one of his slaves before the Court. The Chief Justice and Judge Upham decided that the laws of New Brunswick did not make slavery illegal. The other two judges of the Court decided that since slavery could not exist in England, its existence in the province was therefore illegal. The case gave rise to considerable public opinion against slavery and the institution ceased to exist in the province a short time afterwards.

Judge Ludlow was not the only one of his family to play a distinguished part in the early development of the province. His brother, Gabriel G. Ludlow, became the first Mayor of Saint John and he too served on the first Governor's Council. He was also New Brunswick's first Judge of Vice-Admiralty, and as administrator in the absence of Governor Carleton from the province in 1803, was the first resident to exercise the functions of President of the Council and Commander in Chief in the province.

On November 13th, 1808, the Hon. George Duncan Ludlow passed away at the age of seventy-four. He had served for twenty-four years as Chief Justice and as a member of the Governor's Council. In addition, between 1786 and 1804 he served on the Board of Commissioners that supervised the education of Indians, and he was a participant in efforts to establish King's College (now the University of New Brunswick) in Fredericton.