

THE FIRST JUVENILE COURT JUDGE:

HON. T. MAYNE DALY, K.C.†

JUDGE ROY ST. GEORGE STUBBS*

On May 21, 1908, a bill was given second reading in the Canadian Senate that was designed to give a new deal to children who stray on to the wrong side of the law. It proposed to establish a separate jurisdiction for alleged young offenders — to remove them from the general criminal jurisdiction and to deal with them on a basis which took into account the diminished sense of responsibility which goes with lack of years and experience. Its keynote was the rehabilitation, not the punishment, of young offenders against the law. It was to direct its attention not to doing something to a child because of what he has done, but to doing something for a child because of what he is and needs.¹ As someone put it: the object of the juvenile justice system is to make a juvenile's first unlawful act his last.

This is not to suggest that the bill before the Senate provided machinery designed to keep a juvenile from making his first misstep. To achieve that purpose it would have been necessary to raise the general level of society — to stamp out poverty, ill health (both mental and physical), drunkenness, unemployment and other attendant social ills. This, of course, is a tall order and its accomplishment is still far off; but, certainly, it is not as far off as it was in 1908.

This epoch-making bill was introduced by Senator Beique, a Montreal lawyer. Speaking in support of his bill, the Hon. Senator explained that the principle of the bill was embodied in its preamble, which reads: "Whereas it is expedient that youthful offenders should [not] be classed or dealt with as ordinary criminals, the welfare of the community demanding that they should on the contrary be guarded against association with crime and criminals, and should be subjected to such wise care, treatment and control as will tend to check their evil tendencies and to strengthen their better instincts."²

"The measure," he said, "is intended to apply and extend the principle of the probation of offenders, as it was enacted in England as early as 1807."³ "[I]t is unquestionable," he continued, "that the principle of the probation officer or of the probation law, as applied in England many years ago, as applied in this country many years ago also, and especially the principle of probation officers, persons whose duty it will be to take care of these children, to follow them, to ascertain as to whether they attend school, whether they associate with persons of bad character or not, and adopting means of protecting them throughout their younger years, that a law of that kind cannot fail to have very beneficial results."⁴

† An address to the Manitoba Historical Society and the Assiniboine Historical Society.

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1. E. Waite, "How Far Can Court Procedures Be Socialized Without Impairing Individual Rights?" (1921), 12 J. Crim. L., C. & P.S. 340, as quoted in Francis A. Allen, *The Borderland of Criminal Justice* (1964) 17.

2. *Debates of the Senate of the Dominion of Canada 1907-08*, v.II, 975.

3. *Id.*, at 971.

4. *Id.*, at 975.

Hon. Senator Coffey, a publisher in London, Ontario, gave eloquent support to the bill. "It pleases me beyond measure," he said, "to note the warmth with which this movement to reclaim the wayward youth of our country has been received in every part of the Dominion."⁵ He had some wise words to say on two important aspects of the proposed legislation. First, he urged strongly that juvenile courts should not be under the same roof as ordinary adult courts. "Call it by what name you will," he said, "the Children's Court, to the wayward boy, remains the police court so long as the same roof covers both." And second, he urged that juvenile courts be staffed by specially selected judges. He contended, with old-fashioned eloquence:

Nor is it advisable that the police magistrate should in all cases be empowered to adjudicate upon the crimes charged to the young. While some of these men are by nature and acquirements well equipped for work of this character it is nevertheless a fact that many are quite unfit for the handling of cases of criminality amongst the young. They have pinned their faith to methods of the harsh order. To them kindness is almost an unknown quantity . . . In the appointment of juvenile court judges . . . it were difficult to undervalue the importance of keeping out of mind all considerations save those of entire fitness for the position. No matter what standing the applicant may hold in the community — no matter how persistently and how ardently his friends may sue for his appointment as juvenile court judge, it were but a crime to fill out a parchment for him unless he possessed a well balanced mind and a warm, sympathetic nature — firm where needs be, but ever recognizing in the little waif before him a child of nature who has wandered from the path of rectitude but who should be directed homeward to the ideal once again.⁶

In supporting the bill, Hon. Senator Lougheed drew attention to the melancholy fact that Canada was not in the vanguard of juvenile law reform:

I say advisedly that the people of Canada are behind other progressive nations in their legislation upon this particular question. The people of the United States are very much in advance of this country in dealing with juvenile criminal legislation, and the same remark applies to England, France, Germany and other European states, which have shown very much more progressive thought in this direction than we in Canada have done.⁷

Perhaps his explanation of why Canada lagged behind other countries is the true one.

We seem to be so immersed, so absorbed in the material development of our country, in the developing of our resources, in the building of railways, in the conduct of party strife, that we are very apt to overlook entirely the moral obligations which fall upon us as a government and its administrators.⁸

Hon. Senator Kerr struck a sound note in his support of the bill.

There is this to be said about the matter; there are always in a community like ours many who are averse to what you may call radical changes in the way of removing or relieving from the consequences of their faults those who are guilty of crime, and who fail to see that there is a different method of treatment to be

5. *Ibid.*

6. *Id.*, at 976.

7. *Id.*, at 980.

8. *Ibid.*

measured out to the young offender, whose misfortune has been that he has been brought up in an environment not the best, in a home more or less surrounded by crime or immorality, or perhaps has had no home at all.⁹

Senator Beique's bill was finally passed in the Senate in June, 1908, and was sent to the House of Commons. In the Commons, it was sponsored by A.B. Aylesworth, Minister of Justice in the administration of Sir Wilfrid Laurier. "The general effect of this Bill," he explained, "I think I may summarize by saying that it is intended to obviate the necessity for children, when accused of crime, being tried before the ordinary tribunals."¹⁰ The bill met with no serious opposition in the Commons. On July 8, 1908, it was reported, read for the third time and passed. It was assented to on July 20, and went on to the statute books as *The Juvenile Delinquents Act*, 1908.

The Juvenile Delinquents Act provides that no juvenile may be convicted of a crime, but must be found to be in a state of delinquency, and having been so found, shall be dealt with as "a misdirected and misguided child, and one needing aid, encouragement, help and assistance."¹¹ If it has not always been the open gateway for a new deal for children, a rainbow of hope to the young who break the law, it can be confidently affirmed that it did bring about a great improvement in the law.

The *Act* provided that it could not be put into force in any province, or in any portion of a province, except after the passing of a provincial law establishing a Juvenile Court.¹² In line with this provision, Manitoba took the first steps to bring the new law into operation. The *Act* was brought into force in the City of Winnipeg on January 22, 1909.¹³

Thomas Mayne Daly, Police Magistrate in Winnipeg, was appointed the first Juvenile Court Judge in Canada. There could not have been a better choice. To borrow Senator Coffey's words, Daly was a man who possessed "a well balanced mind, and a warm, sympathetic nature."¹⁴ His philosophy was consistent with the specific goals of the new juvenile justice system.

Judge Ben Lindsey of Denver, Colorado, the judicial maverick whose concern was children and who believed that the law should be bent a little that justice may be done, is the most widely known Juvenile Court Judge of all time; at least, in the English-speaking world. In his biography of Lindsey, Charles Larsen recalls that a friend of the Judge said to Mrs. Lindsey that in the event of a biography being written on the life and career of her husband, "if it were to be credible, (it) must admit his faults and mistakes and not merely portray him 'as a plaster saint'." "What were his faults, what were his mistakes?" queried Mrs. Lindsey. "I never knew either."¹⁵ Such wifely reverence is refreshing in this day and age, when women (not all of them by any means) are seeking to relegate men to the status enjoyed by drones in the bee-hive.

9. *Id.*, at 981.

10. *Debates of the House of Commons of the Dominion of Canada 1907-08*, v.VII, 12399.

11. *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, ss. 3(2), 38.

12. *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 42.

13. (1909), 42 Can. Gaz., No. 39, at 2693.

14. *Supra* n. 6.

15. C. Larsen, *The Good Fight: The Life and Times of Ben B. Bradley* (1972) viii.

Daly's Life and Career

In dealing with Daly's life and career, I have no desire to make him out to be a plaster saint. But on the other hand, although, I hope, my critical faculty shall not be slumbering, I shall not put the emphasis on his faults and mistakes. That he had faults, that he did make mistakes, is not to be doubted. Was he not a practical politician in a robust political age? Was he not a very human, human being? There is a suggestive sentence in a book by G.F. Barker, which reads, in part: "Then opponents of Dominion Conservative policies decided that Manitobans were 'willing to remain serfs' when a man like Brandon's T. Mayne Daly was re-elected by 'tactics pretty well known'."¹⁶

Thomas Mayne Daly was born in Stratford, Canada West, on August 16, 1852, the son of Thomas Mayne Daly and Helen McLaren (Ferguson) Daly. His paternal grandfather, J.C.W. Daly, had been the first Mayor of Stratford. His father, a contractor in a good way of business, was also Mayor of Stratford; and, in the course of a distinguished political career, a member of the Legislative Assembly of the Province of Canada and a member of the Canadian House of Commons.

Daly was educated at local schools in Stratford and at Upper Canada College, Toronto. He read law in the office of Timothy Blair Pardee, of Sarnia, and was called to the Bar of Upper Canada, in Michaelmas term, on November 21, 1876. He practised law in Stratford from 1876 until 1881. In 1880, he made his first foray into politics, winning a seat on the Town Council of Stratford.

In 1881 he was seized with an attack of wanderlust. Distant places were calling and he answered the call. His plans were uncertain. In St. Paul, Minnesota, he met James J. Hill, the railway and transportation magnate, who had been born in a log cabin, seven miles east of Guelph, Ontario. Hill advised him to seek his future in Winnipeg. He travelled to Winnipeg but did not rest there. He went 140 miles further west, to Brandon, travelling up the Assiniboine River by flatboat. He arrived in Brandon, then a tent town, on the Canadian Pacific Railway, on July 18, 1881. His intention was to hang out his shingle as a lawyer. But he ran into a snag. He could not get called to the Bar of Manitoba without serving a period of articles. He articulated to Arthur Wellington Ross, senior member of the firm of Ross, Killam and Haggart. He was admitted as a solicitor on June 8, 1882, and on February 14, 1884, sponsored by A.C. Killam, later a Queen's Bench Judge, he was called to the Bar.

This hurdle passed, he formed a partnership in Brandon with George R. Caldwell, who later held Cabinet rank in the Government of Sir Rodmond P. Roblin. Times were free and easy in Brandon and there was not a great deal of legal work. Daly kept himself busy as a promoter and real estate broker.

In 1925, an old-timer of Brandon, Beecham Trotter, published a book, in which he wrote:

16. G. Barker, *Brandon: A City, 1881-1961* (1977) 25.

One doubts whether there ever was a new-born community in which law and the gospel had so much free course to run and be glorified as Brandon was in the eighteen eighties Judge W.A. MacDonald of the Supreme Court of British Columbia, has named for me seven lawyers whose number he completed when he arrived in Brandon on June 16, 1882 The senior was Thomas Mayne Daly, Irish, of course, politician, equally of course; and the first mayor of the city . . . Mayne Daly was gentlemanly after the old school, a fluent, even an eloquent speaker liked by everybody.¹⁷

In the political game, the batting average of the seven Brandon lawyers — of whom Trotter writes — W.A. MacDonald, Daly, George Caldwell, H.E. Henderson, P.C.A. Henderson, Arthur Sifton and Clifford Sifton — was high. Three of them, Daly and the two Sifton brothers, became Dominion Cabinet Ministers, and Caldwell served in a provincial Cabinet.

A native of Daly's home county, the late R.B. MacInnes, K.C., of Winnipeg, who knew him in the flesh, contributed a fine article on Daly to *The Stratford Beacon-Herald* of September 15, 1938, in which he quotes from Trotter with approval, and adds this comment of his own on Daly's gifts as a speaker.

It may also be said that the speech was flavoured with that delightful gift of wit which is so natural to those of Irish strain, that he enjoyed jovial companionship and that he possessed the knack of telling an amusing story — albeit sometimes rather Rabelaisian, superlatively well.

In 1882, Daly was elected the first Mayor of Brandon, then a town of 3,000 people. No salary was attached to this office but, at the end of his term, he was voted an honorarium of \$400.00. In 1883, he was defeated in his bid for re-election, but — the next year — he again won election as Mayor. At the end of his second term in office, he was voted another honorarium, which he refused, for the bloom had gone off the great western boom and the spectres of poverty and unemployment stalked abroad.

As Mayor, Daly, with the help of his council, organized a police force — and a fire department; built gravel roads — and wooden sidewalks — in the business and principal residential areas of the town; and levied the first tax assessment to get the funds to pay for these services. During his last years in Brandon, Daly lived in a gracious, three-storey, brick home on Eighteenth Street. After his departure, this home became known as the Maples — and was operated as a hostel for neglected children by the Children's Aid Society of Western Manitoba. Today, thanks to the initiative and hard work of a public-spirited and historically-minded group of Brandon citizens, Daly's old home has been opened to the public as the Daly Home Museum.¹⁸

Enlisting under the Conservative standard, Daly contested the seat for the constituency of Selkirk in the Dominion election of 1887. He carried the day against his Liberal opponent, J.A. Christie. In the federal election of 1891, he defeated Hon. Joseph Martin ('Fighting Joe' in the literal as well as the figurative sense) by 453 votes.

17. B. Trotter, *A Horseman and the West* (1925) 185-87.

18. *Brandon Sun*, Sept. 19, 1973.

On October 17, 1892, he became the first federal Cabinet Minister from Manitoba. On that day, he was sworn in as Minister of the Interior and Superintendent of Indian Affairs in the administration of Sir John Abbott, Canada's third Prime Minister. He succeeded Hon. Edgar Dewdney, who resigned from the Cabinet to become Lieutenant-Governor of British Columbia.

Abbott resigned as Prime Minister on November 25, 1892. He was followed in office by Sir John Thompson, whom Sir John A. Macdonald considered to be "the greatest discovery of my life." Daly's Cabinet rank was confirmed by the new Prime Minister. When Thompson died suddenly in England, on December 14, 1894, while on a visit to be sworn in by Queen Victoria as a member of the Privy Council, he was followed as Prime Minister by Sir Mackenzie Bowell, perhaps the weakest first minister Canada has ever had. Daly kept his Cabinet rank in Bowell's Government. The ship of state under Bowell entered rough water. Seven of his Ministers (Daly was not among them) resigned and he was forced out of office to let Sir Charles Tupper take over the helm.

Daly was not invited into Tupper's Cabinet. His portfolio was given to the Old Chieftain's son — Hugh John Macdonald. Disappointed by this turn of events, he refused to be a candidate in the election of 1896.

As a member of Parliament and a Cabinet Minister, Daly led a busy life. In a letter to His Grace, Archbishop Langevin of St. Boniface, (February 26, 1876) he confessed: "I am busily engaged every minute of my time and scarcely am let alone long enough to eat my meals."¹⁹

He also led a useful life. He travelled thousands of miles in search of first-hand information, visiting homesteaders on their farms and Indians on their reservations. He sought to find settlers who could adjust to existing conditions to fill up the empty prairies of Western Canada. He sought them in the British Isles and in the over-crowded countries of Europe. Nor did he neglect one important source of supply. In November, 1895, he announced that in the past three years, 12,000 settlers had come to the Canadian northwest from the United States.²⁰

Daly's personal appearance was impressive. He was a big, burly, good-natured man, of great personal charm and warmth, with an erect carriage, a military bearing and a handlebar moustache which would have been a credit to a sergeant-major of a regiment of the line. He had large gifts for being friendly. He never took himself too seriously and always found time to exercise his ever-active sense of humour. He bore a striking resemblance to Paddy Nolan, the colourful criminal lawyer who enlivened the Calgary legal scene for a generation. They were frequently mistaken for each other. When Daly was Minister of the Interior, as I have said elsewhere, he was once approached by an irate farmer who asked him why he was not attending to his lawsuit. Realizing that the farmer had mistaken him for Nolan, Daly thought that he saw an opening for some fun, so he replied, "Well, that cer-

19. This letter, as well as others to and from Daly, hereinafter quoted, was brought to my attention by Mr. Lionel Dorge, author and historian, of St. Boniface, Manitoba. The letters are in the Archives of the Archbishopric of St. Boniface.

20. *Stratford Beacon Herald*, Sept. 15, 1938.

tainly was a pretty rank case of yours and we weren't very favourably impressed either with you or the amount of money you sent. We are not in the law business for the good of our health, so you had better come through with some more money if you want such a case as that attended to." A few days later Nolan received a letter from the farmer pleading with him to carry on with the case. A cheque for a substantial amount accompanied the letter. At first Nolan could not make head nor tail of the matter but he finally put two and two together, and waited his turn to even the score with Daly. He did not have long to wait. Shortly afterwards he was tackled by an angry homesteader in Lethbridge, who asked him when in the name of all things holy he was going to get his patent for his homestead. "Do you think," replied Nolan, "that we are running the Department of the Interior for the good of our health? If you want your patent you will have to dip down in your pocket and grease our paw. Get busy and send us something worthwhile and then we can consider your patent, but till then, there will be nothing moving." Properly humbled, the homesteader went his way. A few days later, Nolan received a telegram from Daly saying, "You had better cut it out; the Department is getting a bad name."²¹

Manitoba Schools Question

The most controversial issue that engaged the Parliament of Canada during Daly's tenure as a member of the House of Commons was the Manitoba Schools question. The *British North America Act, 1867*, guaranteed separate schools to Ontario and Quebec. Manitoba entered Confederation, under the provisions of the *Manitoba Act, 1870*. The framers of this *Act* did not doubt that it gave the same guarantee of separate schools to the new province as the *B.N.A. Act* had given to the two older provinces. As the English-speaking population of Manitoba increased by leaps and bounds and the French-speaking population remained static, an uneasy situation began to develop. D'Alton McCarthy, M.P. for Toronto, was given a banquet by the Orange Lodge of Portage la Prairie in August, 1889. At this banquet he made a fiery speech in which he thundered that it was high time for Manitobans to make their province British in fact and in name. Attorney-General 'Fighting Joe' Martin added his voice to McCarthy's. They both advocated the abolition of separate state-supported schools and of the French language as an official language. The seeds they spread fell on fertile ground. In 1890, the Manitoba Legislature passed the *Public Schools Act*,²² which repealed all existing school legislation and established a system of non-secretarian schools. The Catholics challenged this *Act* in the courts but lost the legal battle in the court of last resort. The Privy Council upheld the validity of the *Act* on grounds that do not make an overwhelming appeal to reason.²³

John S. Ewart, the brilliant constitutional lawyer who had represented the Catholics, continued the fight. Section 22(2) of the *Manitoba Act* declared that an appeal shall lie to the Governor-General in Council from

21. R. St. George Stubbs, *Lawyers and Laymen of Western Canada* (1939) 171-72.

22. *Public Schools Act*, S.M. 1890, c. 38.

23. *City of Winnipeg v. Barrett*, [1892] A.C. 445. (P.C.).

any act of the Legislature affecting any right or privilege of a minority in relation to education. Ewart appealed to the Governor-General in Council to disallow the *Public Schools Act* of 1890. A reference was made to the Supreme Court of Canada. This court ruled that the Governor-General in Council had no power to grant the relief sought by the Catholics. This decision was overruled by the Privy Council which held that the Governor-General in Council did have the power to make remedial orders for the relief of the Roman Catholics of Manitoba.²⁴

Ottawa then passed the ball to Manitoba. It issued an order directing the Government of Manitoba to restore to the Catholics the right to have their own separate state-supported schools. Speaking for Manitoba, Hon. Thomas Greenway, the Premier, said nothing doing. The ball was thus back in the Ottawa Court. The Prime Minister, Sir Mackenzie Bowell, introduced into the Commons a Remedial Bill to restore their separate schools to the Catholics.

Before debate on this Bill had finished, Bowell had been replaced in office by Sir Charles Tupper. The strongest opponent of the Bill was Sir Wilfrid Laurier, leader of the Liberals in the House of Commons. Laurier rested his case on the ground of provincial rights. So strenuous was the opposition to the Remedial Bill that the Government was forced to withdraw it.

On January 21, 1896, Daly made a fighting speech from the floor of the House of Commons in support of Bowell's Remedial Bill. He made it clear where he stood in the matter. If justice be the plea, he contended, the road to justice lies ahead — straight ahead. He said:

Now it occurs to me that the school question is this: The highest court in the Empire has decided that the minority of Manitoba have been deprived of certain constitutional rights, and, this being the case, these rights should be restored, independent of any party or political considerations. Has this question been viewed from anything other than party or political considerations? It seems to me it has not. I think I can prove to this House and to those who are listening to me that in the course of this trouble, from 1890 up to the present time, members, particularly those of the Liberal party, have been acting more from political motives than a desire to restore to the minority the rights that were said to be theirs by the judgment of the Privy Council. I take it that when the judgment came from the Judicial Committee of the Privy Council, the highest court in the land, it was the bounden duty of the government of Manitoba, to accept that decision, to act magnanimously and restore those rights to the minority.²⁵

For his part in the debate, Daly received a word of appreciation from Archbishop Langevin of St. Boniface. In thanking him for his letter, Daly wrote:

I consider that, in delivering that speech, I was only doing my duty, and speaking in accordance with my honest convictions of what was right, just and constitutional under all the circumstances of that important question. I have met both our good friends, Mr. Ewart and Father Lacombe, since they have arrived in Ottawa, and I am quite certain that, as stated in your letter, these gentlemen are well apprised of the present situation of this question, and the real nature of the claims of the minority.

24. *Brophy v. A-G, Manitoba*, [1895] A.C. 202. (P.C.).

25. *Debates of the House of Commons of the Dominion of Canada 1896*, v.1, 371.

Daly's Personal Letters

A man's personal letters (not his official correspondence) are sometimes a good index of his personality, to the essential hidden quality of his mind. Not many of Daly's personal letters are available. Fortunately, there are several in the Archives of the Archbishopric of St. Boniface. As these letters give the reader a glimpse of the man who held the pen, as they reveal something of the essence of Daly the man — the man who stood behind Daly the judge — I quote from two of them.

The first was written at Ottawa, on June 25, 1894, to Rev. Father Langevin, Bishop's Palace, St. Boniface, following the death of that great statesman of the Catholic Church, Archbishop Tache. It reads in part:

My dear Father Langevin,

It was with feelings of sadness and pain that myself and many others in Ottawa received the news of the death of His Grace, Archbishop Tache. Although I could not claim the honour and pleasure of that close and constant intimacy with him which yourself and others enjoyed yet I felt as if I had lost a warm personal friend. Truly he was one who stood high in the esteem and affection of people in every part of the dominion — one who was justly and universally admired for his noble and loveable qualities as a man, his graces and virtues as a Christian and his worth and influence as a friend of the Church and of Canada — one, in short, whose death causes a blank which cannot be filled by another.

The second letter was written on March 6, 1895, following Father Langevin's appointment as successor in office to Archbishop Tache. It reads in part:

My dear Lord Archbishop,

I may be a little late in doing so, but I cannot let the opportunity pass of tendering to Your Grace my most sincere and cordial congratulations on your appointment to the Archbishopric of St. Boniface

I must say that ever since the vacancy occurred I have looked forward with hope and pleasure to the occasion when I would see you filling the position you now occupy; and certain am I that no one among the prominent Clergy of your Church better deserved or more worthily earned the position and honor which Your Grace has attained. My earnest desire is that you may long be spared to fill the sphere of usefulness and influence which you have always occupied with such great acceptance to the people of our Western country.

At this same time, several letters passed between Daly and Ewart on the separate schools question. Because of the light they throw on these two men, and on several of the leading players in the drama, I cite portions of three of these letters.

This is Ewart to Daly — the date February 6, 1895:

. . . I beg to say that I am not yet in a position to make any very well defined suggestion as to the nature of the remedial legislation which my clients desire to have passed. Generally it would be in the line no doubt of the restoration of most of the privileges which they enjoyed prior to the year 1890, more particularly for release from contribution to schools of which they can make no use, and the right to tax themselves and to share in the public grant with the view to obtaining the funds necessary for the conduct of their own schools. This mainly is the financial aspect of the question, but the Roman Catholics would particularly desire that the teaching of religion in their own schools should not be prohibited.

Here is Daly to Ewart, writing on April 13, 1895:

The controversy which you have been carrying on in the Winnipeg newspapers has afforded me a considerable amount of amusement. It is astonishing what a splendid faculty Dr. Bryce has of always sticking his foot in it. You seem to have worsted the clerical gentlemen all around, and I hope they will come to the conclusion that it is better for them to stick to their vocation, and not dabble in matters political . . . In my opinion Greenway has a great deal to gain by taking a reasonable view in this matter in coming to terms. By meeting the reasonable demands of our R.C. friends I think he will make himself solid all over Canada both with the Roman Catholics and Protestants, and it is to be hoped that he will now recognize the difference between a statesman and a politician. I have no doubt that there is a division in his Government, and that, personally, Greenway is inclined to do what is right; but the overmastering desire of his Attorney-General to stand well with the public may outweigh Greenway's better sense; but Mr. Sifton, like many other flower that has sprung up, will soon wither and fade away, particularly if he persists in the line of conduct he is pursuing in this important matter. I think he will receive some good solid advice from Sir Oliver Mowat and other leading Liberals while he is in Toronto, and East, and will go home a wiser young man, imbued with principles that have hitherto been foreign to his political attitude.

Finally, this is Ewart to Daly, writing on February 6, 1896, after Daly had spoken in favour of the Remedial Bill.

I have to thank you very much for the copies of your speech on the address. It evidently was listened to with a good deal of care, and many of the facts in it were evidently thought to be of importance if one may judge from the enquiries made by Mr. Davies and others for dates, and so on. I think anyone hearing or reading the speech must be convinced that not only has your Government treated Greenway with all leniency, but that he is standing out stubbornly against all opinion of Catholics as well as Protestants.

Sir Charles Tupper was Prime Minister of Canada for only three months in 1896, from the day when he took over from Bowell, until the day his Government was defeated at the polls by the Liberals under Laurier. When he did not take Daly into his Cabinet, to soften the blow, he sent him on a mission to England and France to reorganize government policy on immigration. While in England Daly was a delegate to the Third Commercial Congress held in London, in 1896.

When he returned home from his travels, he had another attack of wanderlust. In a witty speech at Brandon, Sir John A. Macdonald said, "I am told that some in this new country are not content, but you know, ladies and gentlemen, some of us will not be content in heaven if we hear of a place farther west."²⁶ Daly had heard of a place farther west. He answered another summons at his door. In 1896 a rise in the price of silver on the world's market was prompting a mining boom in British Columbia. Daly settled in the mushrooming town of Rossland in that province.

Margaret A. Ormsby writes:

In its first years, Rossland had as colourful a floating population of Americans, 'Cousin Jacks' (Cornishmen), Irish, Croats, and Scandinavians as ever graced the camps of Idaho and Colorado. For these flamboyant and roistering prospec-

26. *Supra* n. 17, at 174.

27. M. Ormsby, *British Columbia: A History* (1958) 315-16.

tors, claim-jumpers and stock-manipulators, Sourdough Alley provided every kind of entertainment: prize fights in theatres, Keno tables in gaming houses; boa-feathered dance-hall girls; bars; orchestras and bands which played around the clock.²⁷

Daly found himself right at home in this frontier environment. He was called to the bar of British Columbia in 1897. In the same year, he was appointed a Police Commissioner in Rossland. In this office he set about cleaning up the more unsavoury elements in life as it was lived on Sourdough Alley. But as the years passed, the novelty of a frontier mining town wore thin. He left Rossland in 1902 to take up residence and to follow his profession in Winnipeg.

In Winnipeg, Daly established the law firm of Daly, Crichton, McClure and Cohen and soon built up a flourishing legal practice. He continued active in Conservative political circles. On January 4, 1904, he was appointed Police Magistrate for the City of Winnipeg by the Roblin administration, in succession to G.W. Baker, who had been dismissed from office the previous month. He continued the practice of law while serving as Police Magistrate.

One case in which he was involved as counsel, a case having political overtones, was a minor *cause celebre*. In 1906, Premier Scott of Saskatchewan sued J.K. McInnis, proprietor of the *Regina Standard*, for criminal libel. In an article which had appeared in his paper on the eve of an election in Saskatchewan — an election which was won by the Liberals under Scott's leadership — McInnis charged that Scott had offered him \$10,000 to transfer the allegiance of his paper from the Conservative to the Liberal side. All counsel in the legal battle were from Winnipeg. H.M. Howell, K.C., and N.F. Hagel, K.C., appeared for Scott; and Daly and F.H. Phippen for McInnis. Scott carried the day. Commenting on the verdict, the *Manitoba Free Press* said: "It was Mr. Scott's life for the last fifteen years in Regina that really won his case for him; his testimony was backed by a character that had been tested and was known by the community to be sterling."²⁸

In 1908, Daly's political friends persuaded him to resign from the bench to contest Brandon Constituency in the Dominion election against Clifford Sifton. Politics were taken seriously in those days and both candidates fought strenuous, no-holds-barred campaigns. Sifton won the election, but by a narrow margin. When the votes were tallied he had 3,565 and Daly 3,496.

After the election, Daly was reappointed City Police Court Magistrate.

A Superior Judge

Let me draw a distinction. Daly was a judge of an inferior court. He was not an inferior judge. Indeed, he was a superior judge, with a superior knowledge of law and a superior judicial instinct. Had things fallen out differently in the political field, he might have graced the bench of a superior court in this province. As an ex-cabinet minister, he had the inside track for

such an appointment. There was talk at one stage of a member of the Supreme Court of Canada resigning. Hon. A.C. Killam was to get his appointment and Daly was to replace Mr. Justice Killam on the Court of Queen's Bench in Manitoba. But things did not work out that way. The Supreme Court Judge decided not to resign.²⁹

In the act of judging, a judge himself is judged. Daly always passed the test. On the bench, he was the soul of modesty, with a modest estimate of his own worth. He did not belong to the tribe against which Samuel Butler took satirical aim:

Authority intoxicates;
And makes mere sots of magistrates;
The fumes of it invade the brain,
And make men giddy, proud and vain.

He was kind — but not soft-hearted. He could hand out severe sentences but in doing so he was directly in step with his times, when severe sentences were regarded much more highly than they are today, except by those few who still think Queen Victoria is on the throne. He never overlooked the obligation that a judge owes to fairness and justice. He was sympathetic with those who had been dealt poor hands in the lottery of life; he was understanding to those who made their first misstep; he was impatient with those who kept stumbling against the same stone. His judgments were always well-seasoned with common-sense. If he was a little blind to the frailties to which mortal flesh is heir, he set himself firmly against all manifestations of cruelty or violence. As a judge, and praise can go no higher, he had many of the admirable qualities of that admirable man who followed him in judicial office — Sir Hugh John Macdonald. And he was built much higher in legal learning than Sir Hugh John.

He lived in a simpler age, before the days when men became flies in the seamless web of modern living. He belonged to a generation who were readers and thinkers, not listeners and lookers as we are today. In his time, reading, home entertainments and political meetings held the place in society now occupied by movies, spectator sports and television. He believed in the strenuous life — in working his passage through this earthly journey. He never wanted the palm without the dust. When he became a judge, he took Bacon's advice to Justice Hatton — he continued the studying of his books and did not spend on upon the old stock. His temperament was in tune with work. He gave the profession the fruits of his industry in a book which he published shortly before his death. This book, *Canadian Criminal Procedure*, went through several editions before it was superceded. If I may sound a personal note, when I entered law nearly half a century ago, lawyers — who had problems in criminal law — were wont to ask, "What has Daly to say about it?"

Magistrate Daly knew that the legal universe is not self-contained, that there are many legal problems which are also social problems and as such are beyond the grasp of the hand of the law. When sitting in police court, he

29. *Supra* n. 20.

often had children of tender years brought before him charged with law-breaking. He deplored the unsatisfactory state of the law as it related to children. In dealing with a child who had broken the law, only two courses were open to him. He could send the child to an adult institution, in effect, a post-graduate school for crime. Experience had taught him that by locking up a child, whose problem was that he needed help and guidance and proper supervision, the child could be converted into an open and avowed enemy of society determined to follow a life of crime. The second course open to Daly was to release the child on a suspended sentence which simply meant that the child returned to the same home environment, which, in many cases, had contributed to, if not actively promoted, his unlawful conduct.

But Daly was an optimist. He had faith in the future. He knew that the law must reflect the fundamental values on which civilized living depends, that it is bound to alter with the general progress of society and social knowledge. He knew also that the law in Canada was lagging behind contemporary opinion; and as it was time for a change, a change would come inevitably. He had not been long on the bench before he saw definite signs that a new wind was blowing.

A New Deal for Children

W.L. Scott, an Ottawa lawyer with an active social conscience, was to write, in the first article which explains in depth the purpose and philosophy of the new juvenile justice system:

Probation has been in voluntary operation in Ottawa since the 1st of August, 1906, and in Montreal since the first of January, 1908, and has worked wonders in both of these places. In Ottawa in the first complete year of probation, out of 240 delinquent children dealt with, only three had to be sent to Industrial Schools; and some remarkable cases are reported of the reform through the agency of the probation officers of even older boys who had already proceeded some distance on the road to a criminal career.³⁰

But to go back a little: Ontario may claim to be the leader in striving to give children a new deal in the courts. The Ontario Legislature put on the statute books, in 1888, an *Act* which provided for separate hearings for alleged juvenile offenders.³¹ The person most responsible for this reform was J.J. Kelso, Superintendent of Dependent and Neglected Children for the Province of Ontario. But the authority of a provincial Legislature was limited. It could only pass laws which related to offences against provincial statutes. It could not reach the root of the problem. Under the *B.N.A. Act* the law relating to crime is the concern of the Parliament of Canada. What was needed was legislation at the federal level. As we have seen, such legislation was in the stocks.

According to Police Magistrate George T. Denison,³² a Children's Court was instituted in Toronto in 1892. It was held in a small room in the lower part of the City Hall. Only those immediately interested in the case being tried were allowed in the courtroom. Representatives of the

30. W. Scott, "The Juvenile Delinquent Act" (1908), 28 Can. L. Times & Rev. 892, at 898.

31. *An Act for the Protection and Reformation of Neglected Children*, S.O. 1888, c. 40.

32. G. Denison, *Recollections of a Police Magistrate* (1920).

Children's Aid Society and the St. Vincent de Paul Society were always present. The press was not admitted. "If I felt that punishment was necessary, I would send the child to the Children's Aid Society, or the Roman Catholic School for children, for a few days," explained Magistrate Denison, "and give the culprits a scolding, and warn them to behave themselves in the future."³³ He makes no mention of probation and the fact that he uses the word 'punishment' in his explanation of the operation of a Children's Court suggests, perhaps, that he was not up to date in his approach to children who go astray of the law. For one trained in the common law, which, over the centuries, has broadened down from precedent to precedent, he seems to have been a strange sort of magistrate. In witness, he makes this strange statement: "I never follow precedents unless they agree with my view. The men practising in my court have known for years that there was no use quoting precedents to me."³⁴

Daly pinned his faith on probation as the means of ensuring that a child's first legal misstep should be his last. He was convinced that all most children needed to keep them on the right side of the law was an intelligent form of supervision. He found a useful ally in the Hon. Colin H. Campbell, who became Attorney-General in the administration of Sir Rodmond P. Roblin in 1900, and served in that capacity until 1911.

In their history of the legal profession in Manitoba, Dale and Lee Gibson make the claim that Campbell "created the first Juvenile Court in Canada."³⁵ Campbell took great pride in this accomplishment. In a letter to his son, written from Naples, on December 2, 1913, where he had gone in the hope of restoring his failing health, he tells him that he would like most to be remembered in his public life for his part in promoting a new deal for children in the Courts. Campbell was a storm centre of controversy in the political life of Manitoba. His letter to his son reveals a phase of his personality that was not generally known — in particular, not to his political opponents. It is such a beautiful letter, such a remarkable self-revealing message from a father to his young son, that I cannot resist the temptation to quote freely from it, particularly as it is germane to my theme. It runs, in part, as follows:

My dear Boy:

As you know, Dady's [sic] birthday is on Christmas day — a day that brought Peace and Good Will to Earth. I want to write you a letter for Christmas on an incident in my own life, and into which you came as an inspiration. In this incident Daddy would like you when you grow up to always remember, and to think of it as that which gave me more real pleasure in my public life and that which I would most like to be remembered by in my public life, because it was based on the lasting and essential things of life — that which abides when all else has passed away. Daddy always loved little boys, and tried to enter into their joys and sorrows, and sympathize with them in their struggles.

I had long thought that we were very unwise in dealing with little boys and girls for errors of judgment and harmless escapades, forgetting all the time that they were guided a great deal by their instincts, and that they were not fully capable of exercising a mature judgment — Many a little boy has been injured

33. *Id.*, at 254.

34. *Id.*, at 9.

35. D. and L. Gibson, *Substantial Justice* (1972) 193.

for life by being dragged to a Police Court for doing something which in a more fortunate boy would go unnoticed. The little chaps did not deserve to go to jail — and have the bitter recollection of having entered such a place — the dark blot in memory remaining with them — and I believe — never effaced from their memory.

Well — one day before your sister came you were very fond of fruit — which Mother kept on the side board, and Mother issued an admonition that you were not to take any more — the fruit looked so tempting that you could not resist and took some. Mother carefully reprimanded and remonstrated and took you upstairs — gently reproving you for your roguish action. Well, the same afternoon Daddy was in his office — the Bank of Hamilton Office — not his present Office — where he had a good view of Main St., and looking down he saw a great big policeman dragging a boy older than you — taking him to the police station — where he would be brought before the Police Magistrate after remaining overnight associating there with bad men and women and getting his young mind poisoned and heart embittered — On enquiry I found that the boy was passing in front of one of the very tempting fruit stalls, and with similar instincts that you had, took some fruit. Of course he did wrong, but it was the act of a child that deserved treatment in a more kindly way — I could not but feel deeply for the way that boy and other children were treated who had done something technically wrong — but whose hearts were in reality full of goodness if properly directed, and that more often the parents were more to blame than the child. I resolved then to try and get a Juvenile Court for dealing with children established in Winnipeg, and after some considerable time I had this established under the law, and the Hon. T.M. Daly became the first judge of the first Juvenile Court in Canada, it has been followed by many others and marked a new era for dealing with children.

You will read of the good work it has accomplished already and the good work it will continue to do, and many a child, and their Fathers and Mothers will rejoice that their child has no more to be dragged by a policeman to a Police Court, but is taken quietly and gently to his own home to his parents, and they are told to come to the Juvenile Home in the morning, here — the Father and Mother — the judge and the child — talk the matter over, the Probation Office has in the meantime looked into the act complained of, and the child's [sic] surroundings at home and his companions — and the most tender and fatherly advice is given.

In this way of doing, hundreds of children are made better, and their homes are made better, and child life is made an inspiration for better things. Daddy would like you to remember these things, and some day when I get stronger I will write more about it so that you will know what compensates me more than anything else for the stress and strain in my position as Attorney-General for Manitoba.³⁶

Hon. Colin H. Campbell, as Attorney-General of Manitoba, was responsible for Daly's appointment as Juvenile Court Judge. He had always had Daly in mind for this position. When the *Juvenile Delinquents Act* went on the statute books, he immediately set about the establishment of a Juvenile Court in Winnipeg in order that the *Act* could be proclaimed in accordance with its provisions and there could be special trials and detention facilities for children. As I have already stated the *Act* was brought into force in Winnipeg on January 22, 1909. It was not extended to Manitoba as a whole until 1925.

The New Court in Operation

Daly set about his new duties with enthusiasm. He sat for the first time in Juvenile Court on February 5, 1909. The *Manitoba Free Press* of the next day reported:

36. Colin H. Campbell Collection, Correspondence 1913-14, Provincial Archives of Manitoba.

In the dining room of a dwelling at 226 Simcoe Street the first Juvenile Court in the Dominion of Canada was held yesterday afternoon, with T. Mayne Daly presiding as judge. (The premises at 226 Simcoe Street were operated by the Salvation Army as a hostel for neglected children.) It was the humble beginning of what according to general belief, is destined to be a wide-spread Dominion movement, and four little girls who had run away from home, all of them under 16 years of age, were the first to be tried under the new Canadian juvenile delinquent law. Besides Judge Daly there were present Inspector Newton of the (Winnipeg) police department; F.J. Billiarde, superintendent of neglected children (for the Manitoba Government); Jacob Kwiatowsky, who was present to interpret the language of the children; Staff Captain McAmmond of the Salvation Army, who is superintendent of the home, and his wife, who is matron.

The four little girls told Daly a tall tale. They said they were from Brandon. Their homes were in fact in Winnipeg. Their parents were notified that they were before the court and they were handed over to the care of Mr. Billiarde until a thorough investigation could be made.

Thus the first Juvenile Court in Canada got under way. Before it had been operating for a year, it moved from the humble home on Simcoe Street to a new three-storey brick building on the site of Grace Hospital. This hospital had been built recently by the Salvation Army. The new building consisted of a court room, a school room and living accommodation for 22 children and the necessary staff and instructors.

To eliminate any thought of confinement the court room was furnished as a dining room and was used as such. Girls occupied the second storey of the building and boys the third. As a precaution against escape, all inmates had to hang their clothes at bedtime on the outside of the doors of their rooms and these doors were locked for the night.

Reporting on the first year's operations of the court, Judge Daly, in explaining the purpose of the *Juvenile Delinquents Act*, said there were three outstanding features of this *Act*: First, the Detention Home; second, the Probation Officer; and third, the Juvenile Court itself.³⁷ He explained:

Instead of children being taken to the Police Station, and locked up in cells, they are taken to the Detention Home, where everything is so homelike and unprison-like, that the child is not terrorized and frightened half to death. Instead of being locked up in cells — or ward rooms they are put into comfortable bedrooms, first being scrubbed and cleansed. And, judging from appearances, some of those who have been brought to our Detention Home have had the first bath they have ever taken since they were born. Fancy the difference in the feeling of a child who has had a bath and been put in clean clothes and had wholesome food given to it, and then been put into a clean bed, as compared with the old regime when the child was locked up in a prison cell, unwashed and with only a rough bed to lie on, and fed on prison fare, and in these strange and, to its childish mind, awful surroundings left to sob itself to sleep! The influence for the betterment of the child must surely be with our present mode of treatment.

During the Court's inaugural year, he reported he had sent eight boys to the Industrial Home at Portage la Prairie. He claimed that all the other boys, with but a few backsliders, had been so impressed and influenced by the treatment they had received from the Court that they had mended their wayward ways.

37. *A Treatise on the Winnipeg Juvenile Detention Home* (undated) (Published by Salvation Army Printing House; copy in Manitoba Provincial Library).

He gave great praise to the probation staff, in particular, to Billiarde, the Chief Probation Officer, and to Staff-Captain McAmmond, his chief assistant. Children found in a state of delinquency were ordered to report to the Judge personally or to a Probation Officer at a stated time every Saturday. The Probation Officer visited the children's homes, talked with their parents and reported to the Court on the home surroundings. If steps were needed to reform the parents they endeavoured to take these steps. The Probation Officers wore every-day civilian clothes. In most cases they were welcomed in the homes. Most parents were genuinely interested in the welfare of their children. "The underlying and all-important feature of the system," Daly stated, "is to keep in touch with the boy or girl, and to have first-hand knowledge of their home surroundings."

He concluded his first report on a hopeful note: "I can safely say that the Juvenile Court has so far realized that which those interested expected of it. We have reached the boy and the girl, and the parents, and the homes in a way, and also exercised an influence that we have never been able to do before."

Two Salvation Army Officers — Staff Captain McAmmond and Staff Captain Broster — with whom Daly worked closely in the Juvenile Court, once offered a composite picture of him in action as a judge. He was formidable enough to create an atmosphere. They explained that he sat twice a week, on Mondays and Tuesdays, in Juvenile Court, which he did not run as a court in the ordinary sense. His Court was simply the place where he met young offenders and talked things over with them. Hundreds of boys and girls were led by him back on to the proper paths and began to lead useful, law-abiding lives. "It was the grandest thing in the world," McAmmond said, "to see him handle a headstrong boy who had got into trouble. He never used two of them alike. He seemed to be able to tell at a glance just how to take every one of them. Some he was severe with, others he joked with, but he was kind to every one of them and every one of them loved him." He would put his arm around a little fellow who had stolen a bicycle and cry with him as the boy told him the story of his misdeed. Children seemed to trust him instinctively and would talk to him just as freely as they would to their friends. His work did not stop in the Court. He visited the homes of the children who appeared before him to see if there was anything he could do for the parents to help them with their problems of raising their children.³⁸

On the principle that a stream cannot rise above its source, Daly felt strongly that the home is the first line of defence in the battle against delinquency. His work on the bench convinced him that a bad example on the part of parents, that, in Senator Kerr's words, "environments not the best, in a home more or less surrounded by crime or immorality,"³⁹ can stunt the natural development of character in a child. As that free-wheeling, All-American delinquent, Huck Finn, in his causal, colloquial way, admitted: "I knowed very well that I had done wrong, and I see it wasn't no use for

38. *Manitoba Free Press*, June 26, 1911, at 16, col. 4.

39. *Supra* n. 9.

me to try to learn to do right; a body that don't get started right when he's little ain't got no show — when the pinch comes there ain't nothing to back him up and keep him to his work, and so he gets beat.”

Best Interests of the Child

In summary, Daly had the germ of the system in him. He accepted wholeheartedly the philosophy on which the juvenile court is founded, which may be expressed in one sentence: “The ultimate question in a juvenile proceeding is not one of ‘guilt’ or ‘innocence’ but rather one of determining what is in the best interests of the child.” Daly knew the importance of using imagination and understanding when a child comes before the court for the first time.

Tolstoy once said that “the seeds of crime are in each of us.” Fortunately, in the great majority of cases, the seeds of crime do not find the kind of soil in which they can flourish. But, in a day and age when we are hedged about with so many prohibitions and restrictions, the child who does not make some minor infraction of the law is the very rare exception. All children who do break the law do not get caught. And those who do not get caught are the lucky ones; for, if a child who does get caught is dealt with in an unimaginative way, he may get started on a career of crime that will carry him through life. I shall illustrate this theme by quoting a passage from the autobiography of a man who was one of the sturdiest pillars of society that our country has ever known:

There were, however, Congregationalists, with whom the Presbyterians were on the most friendly terms. This was doubtless due to the fact that the minister's wife had been a Congregationalist. The younger generation, however, bore towards the Congregationalists a feeling of rivalry that amounted almost to contempt. The Congregational church was a small wooden structure, unpainted and without a steeple. Its windows had little square panes like those of the school. It was altogether contemptible. Its very name was contemptible: it was known as the Little Church. And there it stood right across the road from the new Presbyterian church, grand with steeple and proper church windows and everything.

My brother and I, passing by the Little Church one day, paused to look at it. Its mere existence was an affront to our church. Unprotected the square panes of the Little Church glowed in the sunlight. Denominational zeal suddenly flamed up in my heart. By an evil chance a number of perfectly smooth stones lay in the dust at my feet. The temptation proved irresistible. I picked up a stone and flung it at a window. The stone crashed through one of the square panes. My brother with shocked but delighted admiration rocked with laughter. Excited with the success of my own daring achievement and stimulated by his glee, I sent a second stone smashing through the window. Not to be outdone, my brother tried a shot, with perfect success. The thing became a contest of skill and daring. When most of the panes were shattered a sudden conviction of the enormity of our offense dawned upon us. We dashed off homeward filled with a feeling of mingled pride and terror, but also with a dread of doom. We were undoubtedly possessed of the devil. Nothing that I can think of could be a finer testimony both to the high esteem and affection in which our parents were held by the Congregational community and to the spirit of Christian forbearance shown by the members of the Little Church than the fact that the windows were quietly repaired without a word of complaint to the parents of the offenders.⁴⁰

40. R. Connor, *Postscript to Adventure: The Autobiography of Ralph Connor* (1938) 27.

These words were written by Rev. Charles William Gordon, pastor of St. Stephen's Church, Winnipeg, for nearly half a century, chaplain with the Canadian Forces overseas during World War I, who, under the name Ralph Connor, wrote more than 20 best-selling novels which made his name a household word in every corner of the civilized world.

Can it be doubted that if he had been brought before a punitive-minded magistrate, one who, in Senator Coffey's words,⁴¹ had pinned his faith to methods of the harsh order, for the crime of mischief and dealt with in the way that children were dealt with at the time (he was writing of the 1870's), his brilliant career and his good works for his fellowman may have died in the bud?

Social Vice in Winnipeg

In the *Manitoba Free Press* for November 12, 1910, headlines proclaimed: "Rev. Dr. Shearer Assails Winnipeg — Says it is worst city in Canada in connection with Social Vice." Rev. Dr. Shearer was Secretary of the Moral and Social Reform Council of Canada. In launching his attack against social conditions in Winnipeg, he asserted that: "They have the rottenest condition of things in Winnipeg in connection with the question of social vice to be found in any city in Canada." He laid the responsibility for this alleged condition upon the police officials of Winnipeg, who were not above suspicion of profit. He alleged that houses of ill fame paid protection of \$400 yearly. "This money," he said, "must go somewhere. It is generally believed in Winnipeg that the whole criminal business is founded on graft, but naturally any man hesitates to name the grafters."

Serious charges such as these could not be allowed to go unchallenged. The Provincial Government appointed a Royal Commission to investigate them. Mr. Justice H.A. Robson, the sole commissioner, held his first sitting on November 23, 1910. T.A. Hunt appeared as counsel for the City of Winnipeg, R.M. Dennistoun for the Police Commission, the Police Chief (John C. McRae) and the Police Force. The Moral and Social Reform Committee was represented by J.A.M. Aikins, K.C., A.N. McPherson and J.B. Coyne.

Rev. Dr. Shearer appeared before the Commission and it soon became apparent that he had been speaking very loosely, without giving minimum attention to the facts. Daly, who had come in for much criticism from the Rev. gentleman, cross-examined him and made this fact abundantly clear.

"Did you make any enquiries of me?" he asked.

"No," was the answer.

"Are you aware that I am the judge of the Juvenile Court?"

"Only when I read your evidence."

"You are not aware of the class of girls and boys I have to deal with in that court?"

"No."⁴²

41. *Supra* n. 6.

42. Proceedings of Commission on Social Vice in Winnipeg (1911) 544-45 (Unpublished documents in Manitoba Provincial Library).

A Children's Home had existed in Winnipeg for two years but Shearer, exercising the prerogative of the arm-chair expert, had never visited it.

Prostitution was a social evil which gave Daly great concern. He reported to the Police Commission on several occasions that it was on the increase in Winnipeg. In 1904, a resolution has been passed by the Board of Police Commissioners which abolished an area of segregation for prostitutes. Between 1904 and 1909, when this resolution was repealed, Daly convicted more than 400 women of prostitution.

In giving evidence before Mr. Justice Robson, he stated that between 1904 and 1909 prostitution was scattered all over Winnipeg.

There were 73 different houses, all through the city . . . cankered sores, doing harm wherever they were, and speaking from memory, I think they were located on thirty different streets of the city At this time, I was constantly face to face with the fact that numbers of young girls were being brought before me, either in the police court, when they were over 17 years of age, or in the juvenile court, and these girls were taken from immoral surroundings in houses and blocks and other places through the city, and on investigation everyone of these girls were [sic] found to be immoral. Their ages ran from 13 years of age to 15, some of them were diseased⁴³

His evidence before the Royal Commission made it plain that he took a realistic view of the world's oldest profession:

Of course, we must understand that the social evil cannot be suppressed. It has been in existence from time immemorial. What I was wrestling with in my own mind was how it would be best to minimize this evil We had tried for five continuous years to drive it out. Instead of driving it out, it seemed to be on the increase. To my knowledge many of the women that were brought before me were escorted to the train and given 24 hours to leave the city, and it would look one week as if there was a decrease of four or five but they would come back again, or someone else would take their places.⁴⁴

In suggesting how best to minimize the evil, he drew upon his experience as a Police Commissioner in Rossland, B.C., which for a time was a wide open town.

I had occasion to remove the houses of ill-fame from the very centre of the city on Lincoln Street, and the chief of police was given instructions to find another place for these people. They were given two months in which to move and they were given a less conspicuous position, and they are there today, I presume. The result was that we overcame a tremendous amount of evil So the idea here was to minimize the evil. Instead of having these festering sores all over the city, to have one open wound in one locality and then gradually close it up by degrees; adopt the same principle as is followed with small-pox — isolate these people. I prefer the word 'isolation' to 'segregation.'⁴⁵

On January 11, 1911, Mr. Justice Robson released his report as Royal Commissioner. He held, in effect, that while there was smoke there was no fire; there was, in fact, not even much smoke. He found that the Rev. gentleman's charges as to vice in Winnipeg were not true, that there was no corruption on the part of police officials, and that no one paid for police protection in this city.

43. *Id.*, at 330-31.

44. *Id.*, at 333.

45. *Id.*, at 335.

Fitting Memorials

Just as Daly had campaigned for a separate court for children, so he campaigned for a separate hospital for them. His efforts, and the efforts of his co-workers in this field, were finally crowned. The Children's Hospital of Winnipeg was opened on February 6, 1909. It was located on a well-chosen site on Beaconsfield Street, on the banks of the Red River. At the opening ceremonies, Daly gave a declaration of his faith, stating categorically that there is no work that brings such ultimate satisfaction to a man, or a woman, as the work he, or she, does for the betterment of the lot of children in life.⁴⁶ When he died, it was said that "a fitting memorial is the new Children's Hospital for those existence the late (Judge) Daly was largely responsible."⁴⁷

Another memorial to Daly is the Winnipeg street that bears his name. In 1913, the name of this street was changed from John to Daly in recognition of his many useful services to the community.

Daly knew that to be a credit to his profession the lawyer must believe in something higher than self-interest, and his public career had its roots in that faith. In addition to his work on the bench and in politics, his community services included yeoman work on behalf of the Children's Aid, the Y.M.C.A. and the Salvation Army. In religion, he was an Anglican, a staunch member of St. Luke's Church, serving as a church warden and a delegate to the synods. For many years, he served the Law Society of Manitoba as a bencher, both in Brandon and in Winnipeg. He was a member of the executive of St. John's College. In his youthful days, he served in the volunteer militia. In sport, he gave his time and affection to cricket. When his playing days were over, he served as president of the Western Canada Cricket Association.

On June 23, 1911, Daly was sitting with his family on the verandah of his home at 901 Dorchester Avenue in Winnipeg when suddenly he was seized with a violent pain. The pain did not abate, and soon he was dead from an internal hemorrhage. He was in his sixtieth year. He was survived by his wife, Margaret Annabelle, daughter of P.R. Jarvis, who had shared his life since their marriage in Stratford on June 4, 1879; and two sons Harold, a stock-broker in Vancouver, and Kenneth, a member of the Winnipeg law firm of Machray, Sharpe and Dennistoun.⁴⁸

When death claimed him, Daly was just reaching full throttle as a juvenile court judge. His loss was a definite blow to the community; indeed, to the country at large. He was a valiant soldier in the ranks of those who fought for a new deal, a square deal, for children, and as such was sadly missed by those who continued the good work. By his exertions in many fields, he won an honourable place for himself in the history of the Canadian West.

46. *Winnipeg Telegram*, Feb. 8, 1909, at 4, col. 3.

47. Manitoba Library Association, *Pioneers and Early Citizens of Manitoba* (1971) 63.

48. *Manitoba Free Press*, June 26, 1911, at 13, col. 1.

