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Fiction as Fact and Legend as History: The Significance of the Irish-Canadian Novel *The Yellow Briar* and Its Author John Mitchell to the History of the Ontario Legal Profession*

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Abstract:

The Irish-Canadian lawyer John Mitchell had an unexpected effect on the history of the Ontario legal profession and vice-versa with his 1933 novel *The Yellow Briar: A Story of the Irish on the Canadian Countryside*. Elements drawn from the profession were incorporated into the novel. The significance of the novel to the profession exemplifies a relationship that may develop between the history of the profession and the persons and works that conserve or promote it. The Yellow Briar, which promoted and influenced the history of the profession, resulted in the profession incorporating Mitchell and his novel within its history as subjects of lawyer lore. Mitchell and his novel were consequently afforded a place in history arguably greater than what they otherwise might have attained.

Keywords: Ontario History, Ontario Lawyers, Ontario Methodism, Osgoode Hall, Toronto Landmarks

1. The Yellow Briar *and its Author*

John Wendell Mitchell (1880-1951), a Canadian lawyer who practiced law in the Province of Ontario, made an interesting contribution to Canadian history, to the history of Irish-Canadian literature, and to the history of the Ontario legal profession with his 1933 novel *The Yellow Briar: A Story of the Irish on the Canadian Countryside* (Slater 1933). With respect to Mitchell's qualifications as a lawyer, members of legal professions outside of Ontario are reminded that the Ontario regulator of barristers assumed full jurisdiction over solicitors in 1857, resulting in all Ontario lawyers being qualified as barristers and

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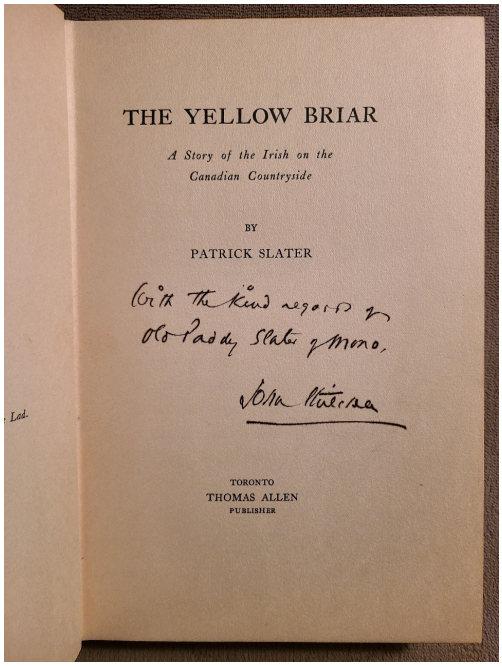
solicitors from that time onward. Although specialists in Canadian and Irish-Canadian literature and literary history have taken an interest in *The Yellow Briar*, it may be fairly argued that the novel and its author remain largely unknown to the majority of the Canadian public. Most importantly, the affinity that the Ontario legal profession has demonstrated for the novel since its inception has resulted in the novel and its author being afforded a place in history arguably greater than what they otherwise might have attained.

With the cooperation of the Toronto publisher Thomas Allen, Mitchell, an Irish-Canadian Methodist, authored *The Yellow Briar* not in his name, but in the name of Patrick "Paddy" Slater, a fictitious Irish-Catholic immigrant in nineteenth-century Ontario whom Mitchell created as the protagonist of the novel. The completed work accordingly was presented to the public as the historical autobiography of Slater documented in manuscript form in 1924 while he was still living and published in book form in 1933 after he had died. Mitchell was known to have autographed copies of the book with his own name including a message to the reader conveying "kind regards" on behalf of the deceased Slater (Figures 1 and 2). The success of the novel did not abate after the public eventually discovered the truth that Slater never existed. As putative author and protagonist, the Slater character became a literary device for affording Mitchell additional storytelling flexibility and creativity when crafting *The Yellow Briar*[1].


THE YELLOW BRIAR

A Story of the Irish on the Canadian Countryside

BY

PATRICK SLATER

With the kind regards of
Old Paddy Slater of Mono,

John Mitchell

TORONTO
THOMAS ALLEN
PUBLISHER

Fig. 1 – First printing of the first edition of *The Yellow Briar* from November 1933 featuring a signed presentation by John Mitchell, image by Jeffrey M. Minicucci showing material from Slater (1933) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci

[1] For example, see generally Kenneally 2005.

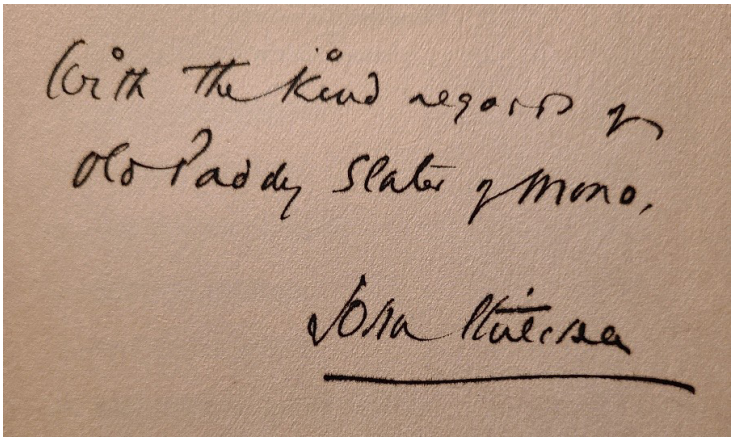


Fig. 2 – Detail of the signed presentation by John Mitchell: "With the kind regards of old Paddy Slater of Mono. John Mitchell" from the first printing of the first edition of The Yellow Briar from November 1933, image by Jeffrey M. Minicucci showing material from Slater (1933) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci

A significant aspect of the plot is the interplay between Irish-Catholic Slater and the Irish Methodists in whose midst he finds himself in the rural Ontario town of Mono. Represented in the novel are the political cleavages and the sectarian, cultural and ethnic tensions that existed during the age in which the action of the novel takes place. *The Yellow Briar* encompasses moments of optimism, sentimentality, courage, poignancy, tragedy, bigotry and racism.

Mitchell's protagonist is deeply affected, but not afflicted, by the memories of long ago. Twenty years before the Irish dramatist Samuel Beckett published the novel *The Unnamable* (1958 [1953]), it could be argued that his tragicomic mantra "I can't go on, I'll go on" was essentially at the heart of Slater's responses to the sufferings that are described in *The Yellow Briar*. The "patches of crimson" (Slater 1933, 253) revealed in the ruddy autumn foliage of the sugar maple, which Slater equates with the spear wound in the crucified Christ and the associated themes of sacrifice, redemption and renewal, arguably also suggest the traces of the Celtic fire from youth that has continued to kindle within Slater as he has aged[2]. His faith and hope compel him onward as he and his generation lay the foundations for a future replete with opportunities that they have secured at great cost for the next generation, casting away the possibility of an empty future of only embers and ashes. Slater pays tribute to the nineteenth-century nation builders of Canada as he invokes the elegiac words *Ave Atque Vale* (hail and farewell) of the ancient Roman poet Gaius Valerius Catullus typically reserved for celebrating the passing of heroes or persons of great standing (*ibidem*).

2. The Yellow Briar *and Its Significance to the Ontario Legal Profession*

Mitchell enhanced the content of *The Yellow Briar*; the depth of its characters, and the plausibility of its historical authenticity in various ways including appealing to the history and lore of

[2] Contrast with the fate of the character Krapp in Beckett's play *Krapp's Last Tape* (Beckett 1959).

the Ontario legal profession. His creative decision to make references to the profession ultimately proved to be consequential to the history of the profession. As a lawyer, Mitchell was doubtlessly aware that readers of his novel who were Canadian lawyers would react with great interest to his theme of early Canadian nation building specifically within the context of the nineteenth-century legal and constitutional struggles to construct and shape the Canadian polity. Many of the key nation builders were members of the early Ontario legal profession, some of whom are regarded as historical luminaries of the profession, while others are additionally distinguished as founding fathers of the nation. How many persons nowadays are aware that Canadians owe their system of responsible, parliamentary government and the foundations of Canadian democracy primarily to the herculean exertions of one early nineteenth-century Irish-Canadian lawyer, Robert Baldwin (1804-1858)? The novel touched multiple generations of twentieth-century Ontario lawyers and resonated especially strongly with those whose lives had crossed the end of the nineteenth century into the first decades of the twentieth century. Many Irish-Canadian lawyers who had expressed a particular appreciation for the novel had evidenced a heartfelt sentimentality perhaps typified by characteristics attributed to the Honourable Mr. Justice John Bowlby (1926-1989), a judge of what was then known as the Ontario High Court of Justice who had previously served during his career at the bar as head of the Ontario legal profession from 1980 to 1983: "Bowlby was the sort of Irishman whose eyes filled with tears at the first bar of 'Danny Boy'. He loved a drink, a laugh, and a practical joke. He stood fast by his friends and his colleagues" (Batten 2005, 81).

Of particular importance to the profession is the passage contained in Chapter II "The Tavern Tyrone" that discusses the world-famous, ornate Victorian-era cast iron fence (Figures 3, 4, 5) that surrounds Osgoode Hall, the headquarters of the profession in the province and the location of the appellate courts in Toronto (Figure 6). The fence, manufactured in Toronto using moulds from Glasgow, Scotland and completed in 1868 (Honsberger 2004, 194-195), has been acknowledged as an exceptional Canadian work, having been famously characterized in its "quality of design and craftsmanship" (Arthur 1969, 148) as the equal of the fragment from St. Paul's Cathedral in London, England designed by Sir Christopher Wren (1632-1723), which surrounds the memorial cairn of the architect and philanthropist John George Howard (1803-1890) in High Park in Toronto (*ibidem*).

Fig. 3 – Outer view of a section of the fence surrounding Osgoode Hall, image by Jeffrey M. Minicucci

Fig. 4 – Inner view of a section of the fence surrounding Osgoode Hall, image by Jeffrey M. Minicucci

Fig. 5 – Ornate details in the gates of the Osgoode Hall fence, image by Jeffrey M. Minicucci

Fig. 6 – Centre block of Osgoode Hall showing the iconic main entrance and the Great Library above it, image by Jeffrey M. Minicucci

The material in *The Yellow Briar* pertaining to the Osgoode Hall fence invokes the nostalgic, but probably doubtful, legend that the specialized gates incorporated into the design of the fence were created for the purpose of obstructing cows that wandered about the area during the nineteenth century. The gates, which form a kind of zigzag entrance maze, have been variously referred to since their creation as cattle guards, kissing gates, or cow gates (Figures 7, 8, 9, 10). The legend did not originate with Mitchell, but he certainly popularized it, introduced new elements to it, and materially affected how the Ontario legal profession and Torontonians understand the origins of the fence. It can be reasonably argued that the history and mythology of the fence, including the enduring sentimentality that attaches to it, would have been different had Mitchell not published his novel. His account of the fence also influenced the research of early twentieth-century Ontario historians, including, for example, the distinguished, popular historian Edwin C. Guillet (1898-1975), who appeared to have accepted as fact Mitchell's explanation as presented through the character Slater in *The Yellow Briar* of the origin of the design of the gates of the Osgoode Hall fence (Guillet 1934, facing 319). In his recollections of events from 1847, Slater asserts that the cows belonged to John Trueman, who owned the Tyrone, a public house that was located in Toronto on

Queen Street West opposite Osgoode Hall. Trueman and his tavern and inn actually existed[3]. He was one of several Freemasons who convened a meeting at the Tyrone on 27 December 1845 to organize what would become King Solomon's Lodge, No. 22, G.R.C., A.F.A.M., which was formally established in 1847 pursuant to a warrant issued by the Grand Lodge of Ireland (Spry 1868, 7-8). In *The Yellow Briar*, Slater, despite being Catholic and therefore obliged by longstanding papal edict to view Freemasonry as incompatible with Catholicism, declares his approval of the ethics of the Craft. He opines that secular and religious fraternal groups serve a valid function in society and may even be a necessity, while also conceding that such groups historically tended to "keep asunder Canadians who otherwise might more freely break the bread of patriotism at a common board and offer up to a land of freedom the full measure of their united and sincere devotion" (1933, 38). Slater recalls how, as a boy in 1847, he and other children held a mock Freemason's meeting in the Trueman stable after one of them, young Jack Trueman, the son of John Trueman, overheard the first meeting of King Solomon's Lodge at the Tyrone (1933, 39). John Ross Robertson (1841-1918), the writer *par excellence* on Toronto history and a grand master of the Grand Lodge of Canada even provided basic ground floor and upper floor plans of the Tyrone in the second volume of his 1899 tome *The History of Freemasonry in Canada*, which underwent an important reprinting in 1900 (Robertson 1899, 619-624). The Tyrone was ultimately demolished in 1935 (Anonymous 1935). The famous passage in *The Yellow Briar* concerning the Osgoode Hall fence and the Trueman cows is as follows:

> What appealed strongly to my young mind about the Trueman place was a narrow alleyway to the east of the tavern, leading back to a stable in the rear where two cows and pigeons were kept. I liked the job of chivying the cows along Queen Street to a pasture field to the west. One evening the cows got in the way of the carriage of His Lordship, the Chief Justice, and I got a wicked cut from the coachman's whip. All Trueman's cows were breachy by nature; and for years they were headstrong in the notion that a cow-path should be made across the field in front of Osgoode Hall. The heavy and formidable iron fence along Queen Street stands to this day in front of the law courts as a memorial to John Trueman's cows. The law, they say, is tender in its treatment of established customs and ancient ways. For generations, the Bench and Bar of Ontario have continued to sidle and dodge themselves into the precincts of Osgoode Hall through curious stock-yard openings that were specially designed in Europe to keep out Trueman's cows (Slater 1933, 28-29).

The chief justice of Canada West in 1847 was none other than Sir John Beverley Robinson (1791-1863), one of the most eminent personages in the province at that time. He had previously been one of the most prominent members of the province's oligarchy while serving as attorney general and the de facto head of the government in the provincial legislative assembly. Robinson had not yet been knighted in 1847. He was created a Companion of the Order of the Bath in 1850 and First Baronet, of Toronto in 1854. Contrary to the implications of the coachman's harsh response towards Slater in *The Yellow Briar*, it was not in Robinson's character to prompt anyone to intentionally whip a person, whether an adult or a minor, out of the path of his carriage.

[3] For contrasting views of the site in 1847 and 1934, see Guillet 1934, facing 319; 1954, 165.

Fig. 7 – Outer view of one of the gates in the Osgoode Hall fence, image by Jeffrey M. Minicucci

Fig. 8 – Inner view of one of the gates in the Osgoode Hall fence, image by Jeffrey M. Minicucci

Fig. 9 – Lateral view of one of the gates in the Osgoode Hall fence, image by Jeffrey M. Minicucci

Fig. 10 – Outer view of one of the gates in the east section of the Osgoode Hall fence, image by Jeffrey M. Minicucci

It has been argued that a false idea is a real fact[4]. Popular belief in Mitchell's tale that John Trueman's cows were responsible for the origin of the gates in the Osgoode Hall fence created the fact that the public and members of the Ontario legal profession have conserved the tale and propagated it as undisputed history. The modern theory that has been advocated in opposition to Mitchell's account is that the entrance maze gates in the Osgoode Hall fence were Victorian architectural fashion originally designed to facilitate crowd control or riot control to safeguard the courts and the regulator of the legal profession within and had nothing to do with controlling livestock (Honsberger 2004, 31). Acceptance of Mitchell's account nonetheless endures, with some believing it to be true and others conserving it out of sentimentality. In the subtle blending of truth and fiction that *The Yellow Briar* represents, the irony inherent in Mitchell's literary deception is contained within the text: John Trueman is Mitchell's true man amongst fictional characters of the author's invention. Mitchell proffers his real-life man, with a retinue of cows, to promote a fiction told within the pages of Mitchell's world of *The Yellow Briar*. The cow-gate fiction was one of several fictions mixed with elements of fact that the author implemented in his novel in his effort to deceive the public into believing that a work of historical fiction was a work of historical fact. Perhaps if art is truth, might not one of the merits of *The Yellow Briar*, as a work of literary art, be its revelation of truths that are beyond historical facts?[5]

The Law Society of Ontario has been the independent regulator of the legal profession in the province since 17 July 1797. At that time, the province was known as Upper Canada and was one of the British North American provinces, none of which were federated. The Society was then known as the Law Society of Upper Canada. The Society, which was the first statutorily-empowered, self-governing bar in the British Empire (in accordance with the statute *An Act for better regulating the Practice of the Law*, 1797, 37 Geo. III, c. 13, (U.C.) promulgated by the legislature of Upper Canada)[6] held a small exhibition from 2012 to 2017 at Osgoode Hall: *Fact or Fiction: Deciphering the Fence at Osgoode Hall*, where a first printing of the first edition of *The Yellow Briar* was on display, opened to the pages that mention the fence and its cow gates (Figure 11). A descriptive card placed below the book stated "Slater, Patrick. *The Yellow Briar* Toronto: Thomas Allen, 1933". As an appropriate added accent, a small toy of a Holstein cow was humorously placed next to the book. The exhibition showcased descriptive panels, multiple artifacts, including discarded components of the fence, a simplified scale model of the fence, a video, and a section where visitors could post handwritten notes on tags articulating their feelings and impressions with respect to the fence. Referring to *The Yellow Briar*, one of the pertinent questions posed in the Law Society's exhibition was "Did the myth begin with a book?".

The Osgoode Hall fence has survived multiple attempts made by developers, politicians, bureaucrats, and iconoclasts to substantially alter it or remove it. Honsberger (2004) canvassed the history of such attempts up to 2004. The mythology and mystique of the fence, evidently influenced by Mitchell's novel, have been material to efforts to preserve and protect the fence. In 2022, Metrolinx, a Crown agency of the Government of Ontario which manages and in-

[4] The aphorism "a false idea is a real fact" is typically attributed to the French prime minister Edgar Faure (1908-1988) and to the French political theorist Raymond Aron (1905-1983).

[5] The aphorism "art is truth" is typically attributed to the German philosopher Martin Heidegger (1889-1976) from Heidegger 1960 [1950].

[6] Members of legal professions outside of Ontario are reminded that the head of the Law Society of Ontario is referred to as the treasurer. The board of directors of the Law Society are known as benchers, who assemble in convocation.

tegrates road and public transport in the Greater Toronto and Hamilton Area, expropriated land at Osgoode Hall for the purpose of constructing public transit infrastructure including a new Osgoode subway station entrance. The project involved removing 11 mature trees from the grounds of Osgoode Hall, with the intention of planting new trees at the conclusion of the construction, and permanently redesigning a part of the fence by temporarily removing it and placing it along new boundaries at the Osgoode Hall site. There was significant concern that the renovated and newly constructed public transit structures would drastically alter and negatively affect the appearance of the grounds surrounding Osgoode Hall. In the case *Law Society of Ontario v. Metrolinx* 2023 ONSC 1169, the Law Society of Ontario unsuccessfully applied to the Ontario Superior Court of Justice for an interlocutory injunction to prevent Metrolinx from continuing with the project pending the resolution of administrative action involving Toronto City Council. The project moved forward.

Fig. 11 – Copy of *The Yellow Briar* on display in the 2012-2017 Law Society of Ontario exhibition at Osgoode Hall *Fact or Fiction: Deciphering the Fence at Osgoode Hall*, image copyright © Law Society of Ontario, used with permission

In another reference to the Ontario legal profession contained in Chapter II of *The Yellow Briar*, Slater speaks of Sir W. Glenholme Falconbridge (1846-1920), who served as the last chief justice of the Court of King's Bench from 1900 until his death (Loudon 1932, 199-200). Slater mentions Falconbridge's notorious interests in fishing and in translating the works of ancient Roman poets, including Catullus (Slater 1933, 29-30). Falconbridge was a member of a family steeped in the law, including in-laws from the greatly respected Moss

family of lawyers and judges. Falconbridge's son, the legal scholar John Delatre Falconbridge (1875-1968), became an innovator of legal education in Ontario and one of the greatest deans of Osgoode Hall Law School.

It could be argued that there are places within the text of *The Yellow Briar* where the face of John Mitchell inadvertently appears from behind the mask of Patrick Slater. This is arguably most evident in passages where aspects of the Ontario legal profession are discussed or where Slater makes references to basic legal concepts or where he shows evidence of classical knowledge, especially an understanding of Latin, the language of specialized legal terminology. It could be argued that the apparent problem is resolved if the reader accepts Slater as an intelligent, observant, thoughtful and literate autodidact whose knowledge derives from experience accumulated over many decades. The voice of Mitchell is most strongly, and possibly even intentionally, heard in the editorial footnotes, where he ostensibly poses as the uncredited editor of the 1924 manuscript of Slater's life, which forms the basis of the published book in 1933. Moreover, the content of the footnotes arguably evidences that it was a lawyer who composed them. Mitchell's use of editorial footnotes in *The Yellow Briar* was an additional means to convince his readers of the authenticity of the work as the autobiography of Slater (Kenneally 2005, 61).

Maintaining tradition historically has been important to the Law Society of Ontario because tradition has been counted as one of the features that define the Ontario bar as a self-governing profession (Wright 1991, 441-443). Although Upper Canada existed from 1791 to 1841, was subsequently redesignated as Canada West of the United Province of Canada from 1841 to 1867, and was renamed the Province of Ontario on 1 July 1867 when the country (Dominion) of Canada was created on that date, the Society continued to respect tradition by steadfastly referring to itself as the Law Society of Upper Canada until the Society amended its name in 2018. The Society's longstanding practice of recording and preserving its traditions has always been a motivating factor in efforts to safeguard the Society's historical treasures, including the famous fence and Osgoode Hall, itself. The Society even opened a small museum to showcase some of its artifacts in May, 1988, but it was eventually discontinued. The museum was said to have been "the first museum in North America dedicated to the history of the legal profession" (Schaeffer 1991, 407). One of the first twentieth-century publications to significantly assemble and prominently discuss the traditions and lore of the Ontario legal profession was a sentimental favourite of the profession *Osgoode Hall: Reminiscences of the Bench and Bar* by James Cleland Hamilton (1836-1907) in 1904. George A. Johnston (1892-1993), chief librarian of the Law Society from 1939 to 1965, authored two early pamphlets in 1947 and 1955 in which he included commentary on Toronto lawyer lore: *The Law Society of Upper Canada* 1797-1947 (1947), and *Osgoode Hall Lore* (1955). Other memorable works on the history of the Ontario legal profession, which have also discussed lawyer lore have been published. Citing the incipient loss of traditional methods of interaction among lawyers, the Honourable Mr. Justice John de Pencier Wright (1940-2020) expressed his concerns in 1991 "[u]nhappily, the mechanisms for the transmission of 'lawyer's lore' seems [sic] to be wasting away" (443).

It could be argued that certain aspects of *The Yellow Briar* constitute expressions of the traditions and lore of the Ontario legal profession and that these aspects, in turn, have accounted for the profession's ongoing interest in conserving the novel and the history of its author. Similarly, for example, the Honourable Mr. Justice William Renwick Riddell (1852-1945), a justice of the Court of Appeal for Ontario from 1925 until his death, was one of the greatest chroniclers of the early history of the Ontario legal profession, having published a significant number of papers and books on the subject. The sheer volume of his scholarly production and the breadth and scope of his research resulted in the profession recognizing him as an impor-

tant part of its history and promoting his own history within the profession. In addition to his scholarly interests, he was known for his eccentricities as a judge (Moore 2014). An editorial footnote contained in *The Yellow Briar* refers to the Riddell Canadian Library, which is a sizeable collection of books stored at Osgoode Hall that were previously owned by Justice Riddell, primarily on subjects falling within the scope of Canadiana (Slater 1933, 71). Because of its location, the collection is mainly known only to Ontario lawyers, judges and legal academics. More particularly, it is typically the case that only those members of the Ontario legal profession who are aware of the history of Justice Riddell know of the existence of the collection (McCormick 1972, 64-67). Attentive readers of *The Yellow Briar* in 1933 consequently could have deduced that it was more likely than not that a lawyer had composed the footnotes, even if they had believed that the novel had been an historical autobiography authored by Slater.

3. The Downfall of John Mitchell in Relation to the History of the Ontario Legal Profession

Toronto was a troubled city when *The Yellow Briar* had been published in 1933. In addition to being mired in the misery of the Great Depression, the city had been traumatized by the Christie Pits Riot, the worst riot in Canadian history, on 16 August 1933. Pro-Nazi hooligans displaying swastikas terrorized a local Jewish baseball team playing in the Christie Pits public park. Italians came to the aid of the Jews, but the antisemites had their own reinforcements. A brawl ensued involving thousands of people and many serious injuries. Fortunately, there were no fatalities[7]. Mitchell endured his own misfortune against the backdrop of such troublous times. Within two years following the publication of *The Yellow Briar*, Mitchell suffered a tragic downfall in relation to the practice of law. Where the novel became especially important to the history of the Ontario legal profession in relation to the Osgoode Hall fence, the case of Mitchell's downfall became infamous in the history of the profession as an urban legend and as a practice management and professional responsibility lesson for generations of lawyers on the importance of properly handling client funds held in trust. Although publication of *The Yellow Briar* did not permanently discontinue following the negative circumstances that overtook its author, the fame that initially had been accorded to the novel receded and it did not attain the status of a ubiquitous classic in Canadian literature. The Ontario legal profession, however, continued to preserve the memory of *The Yellow Briar* and Mitchell. This proved to be crucial to the ongoing survival of the novel and the remembrance of its author.

It could be argued that the Ontario legal profession has historically viewed Mitchell with a mixture of respect and dismay: respect because of his reported intellect, talent, rectitude, and gallantry in the face of adversity. Dismay because every lawyer who has ever heard the story of Mitchell's downfall has almost certainly been dismayed at the lamentable circumstances in which Mitchell placed himself and the ruinous consequences that followed. Mitchell reportedly became burdened by guilt precipitating from an obsessive belief that he had misappropriated client funds and he resolved to publicly accuse himself of financial wrongdoing and turn himself over to police. Mitchell alleged that the amount of money at issue was over $20,000, which was a sizeable quantum in 1935 (Honsberger 1968, 35). The extent to which Mitchell's religious beliefs, morals and values might in any way have contributed to his decision to turn himself over to the authorities and publicly confess his transgressions is beyond the scope of this article, but merits further investigation. It could be argued that Mitchell's use of the pseudonym Patrick

[7] for a complete account of the Christie Pits Riot see Levitt, Shaffir 1987.

Slater may have had the unexpected, ostensible effect of insulating *The Yellow Briar* from the professional misconduct that was associated with the name of John Mitchell. This argument, however, is doubtful. The public had already come to associate Slater with Mitchell and the use of the name Slater did not prevent any of the works that Mitchell subsequently published under that name from failing to attain widespread popularity, longevity or profitability.

The disciplinary decision that the Law Society made with respect to Mitchell's misconduct was virtually inevitable and doubtlessly would be no different if made today. Disbarment, being a revocation of the license to practice law, is an ultimate penalty that the regulator may impose upon a lawyer for professional misconduct and essentially constitutes a dishonourable discharge from the profession. The criminal trial and conviction of John Mitchell by the court and his professional disbarment by the regulator for his mingling of client trust monies with his own funds nonetheless did not culminate in a *damnatio memoriae* against Mitchell. Ontario lawyers, including the regulator, instead of resorting to the overbroad and brutal expedient of purging Mitchell from the collective memory of the profession, denounced Mitchell's professional wrongdoing while, at the same time, sustaining the approval of his record of accomplishments, the most prominent of which was his beloved novel *The Yellow Briar*. The influence of the novel on the history of the Ontario legal profession appeared to have irrevocably bound Mitchell and the profession to each other.

One might wonder if the reported responses of Mitchell's friends, colleagues, creditors, the public and the courts would in any way be different if the identical set of circumstances were to occur today. Although the various published sources appear to have been unanimous in alleging that no one knew Mitchell in a personal or otherwise in-depth manner, it was reported that Ontario lawyers; faculty at Victoria College in the University of Toronto; members of the arts and letters communities; and others who knew Mitchell professionally or reputationally responded by offering him financial and moral assistance. The magistrate who tried him and the prosecutor apparently minimized his crime during the proceedings. Seemingly prefiguring some aspects of the finale of the 1946 American feature film *It's a Wonderful Life* directed by Frank Capra, his creditors reportedly held a party for him after he was released from jail (Honsberger 1968, 35-36). The "comrades-in-arms" psychology of the early twentieth century Ontario legal profession with its quasi-fraternal structure and concomitant reverence for tradition and military service might account for why some expressions of sympathy that had been extended to Mitchell characterized him with words more descriptive of a soldier who had fallen in battle than an accused who had been found guilty of financial wrongdoing (35).

It is arguable that approval from the Methodist community in Toronto may have been implicit in the support that Mitchell received from Victoria College in the University of Toronto. Victoria College was not only his alma mater, it was also the traditionally Methodist college in the University of Toronto. Mitchell's apparent sympathy in favour of Ontario Freemasonry in *The Yellow Briar* potentially raises the peripheral question of whether any Freemasons had expressed reciprocal support for Mitchell during the time of his criminal trial and disbarment. If at least one or more of Mitchell's supporters may have happened to have been members of the Craft, it would be interesting to ascertain whether their support had represented a coordinated Masonic goodwill response to assist Mitchell.

4. The Ontario Legal Profession and Its Accounts of The Yellow Briar

The Ontario legal profession memorably expressed its interest in the history of Mitchell and *The Yellow Briar* in three accounts contained in the vintage *Law Society of Upper Canada Gazette*,

a delightful trade periodical that the Law Society published from 1967 to 1995. Unfortunately, none of the three published accounts in the *Gazette* were supported by any citations of primary or secondary sources. As a trade periodical, the *Gazette* sometimes featured content that was written in the manner of a newspaper or magazine article without citations of source literature.

The first of the *Gazette* accounts "The tragic career of John Mitchell" was originally published in September 1968 by John D. Honsberger (1923-) a Law Society medal recipient and the founder and sole editor of the vintage version of the *Gazette* (1968). Honsberger's account mistakenly stated that *The Yellow Briar* was first published in 1934 (1968, 34). Because the first printing of the novel had been published only two months prior to the end of 1933 with the second printing issued in January 1934, it is possible, on casual inspection, to mistakenly assume that copies of the book from 1934 had been the first ever published (Figure 12). The error may be exacerbated by a lack of awareness of the design features that distinguished the first printing of the novel from subsequent printings. According to Honsberger, Mitchell apparently directed the publisher to produce the novel in large, bold type for the benefit of elderly readers with suboptimal vision (1968, 34-35). But in the first printing of the first edition of the novel and in subsequent printings of the first edition, the font arguably is not especially large or bold, however there is ample spacing between each line of text (Figure 13). Honsberger mentioned that Mitchell practised law in downtown Toronto in the Temple Building, which was a beautiful twelve-storey Romanesque Revival structure, built in 1896 and demolished in 1970 (34). Its address was 62-76 Richmond Street West on the northwest corner of Bay Street and Richmond Street in Toronto's financial district (McKelvey, McKelvey 1984, 116-117). Several impressive Romanesque Revival buildings in Toronto fortunately have been spared demolition over the years and continue to exist. Although Honsberger stated that *The Yellow Briar* is a story of "the early Irish Catholic and Scottish Presbyterian settlers in the beautiful Mono Mills district" (1968, 34) the novel fundamentally concerns Slater's relationship as a young man with an Irish Methodist family in Mono. In support of the argument that *The Yellow Briar* was never relegated to absolute obscurity, Honsberger maintained "[s]ince it was published, *The Yellow Briar* has had a steady sale" (1968, 35). He also noted that "[i]n 1949 it was a selection of The Reprint Society of Canada" (*ibidem*) and that the book was available in a paperback edition at the time of his writing in 1968. He slightly misstated the title of Mitchell's final book *The Settlement of York County* (*ibidem*).

It appears that some of the content of Honsberger's account was drawn from an obituary article "[a]n Outworn Heart: Author Who Jailed Self In Spite of Crown Dies" which appeared in the Toronto newspaper *The Globe and Mail* in 1951 (List 1951) and from the Patrick Slater Memorial Fund public notice, which was known to have appeared in *The Globe and Mail* in 1952 (Anonymous 1952). Honsberger movingly outlined the circumstances of Mitchell's downfall and quoted the self-incriminating letter that Mitchell wrote to authorities in 1935 (1968, 35-36). Honsberger argued that Mitchell's wrongdoing "was more from his incompetence as a bookkeeper than from any attempt at theft" (1968, 35). He referred to "the maze of contradictions and scanty records" (*ibidem*) and the fact that "only two persons whose claims were small could be found to testify against him" (*ibidem*).

Honsberger discussed the aftermath of Mitchell's death from illness in 1951, including commentary by the literary nationalist and critic William Arthur Deacon (1890-1977) (*ibidem*) and the memorial work that was undertaken by the first head of the Canadian Broadcasting Corporation Leonard W. Brockington (1888-1966); the editor, literary critic and historian Lorne Pierce (1890-1961), the journalist John Chancellor Boylen (1884-1969), and R. B. Bond, the trustee of the Patrick Slater Memorial Fund. The climax of Honsberger's account was the royal

visit to Canada from 8 October 1951 to 12 November 1951 of the future Queen Elizabeth II and Prince Philip where the concluding sentence of Mitchell's novel was incorporated into a radio address to the royal couple: "[h]ere's to the worn-out hearts of those who saw a nation built, and to the proud, fun-loving young hearts that have it in their keeping" (Honsberger 1968, 36-37).

The second of the *Gazette* accounts "Letters: The tragic career of John Mitchell" was originally published in December 1968 in the form of a letter to the editor by Arthur Kelly, a reader of the *Gazette*, who apparently had some first-hand knowledge of Mitchell (1968). Kelly offered his opinions on the geographical locations that inspired the action in *The Yellow Briar*. He identified Mono as being located on the head waters of the Humber River in Ontario and opined that the house that Mitchell occupied was not the Yellow Briar farm in the novel, but "was a short distance north and west of the Village of Inglewood, while Yellow Briar [was] understood to have been slightly east of Mono Mills, which is at the junction of No. 9 highway and the Airport Road (the sixth line east of Hurontario Street, in the Township of Caledon)" (42).

The third of the *Gazette* accounts "John Mitchell (Patrick Slater) 1881-1951" was contained in an article "The contribution to Canadian life by members of the Law Society" that appeared in a special, red hardcover stand-alone commemorative edition of the *Gazette* published in December 1972 that presented the history of the Law Society from 1797 to 1972 (Sedgwick 1972). The account, by Joseph Sedgwick (1898-1981), who briefly served as head of the Law Society from 1962 to 1963[8], began with a statement that Mitchell was born in 1881, however there has been some historical confusion concerning the year of Mitchell's birth (1880, 1881 or 1882?) (1972, 98). Such confusion potentially has been further complicated by the additional error of publishers conflating the name of the character Patrick Slater (born in the early 1800s and died on a date in between 1924 and 1933) with the dates of birth and death of John Mitchell. An example is the 2009 edition of *The Yellow Briar* published by Dundurn Press Limited where the problem appears on the page of the book that lists the Library and Archives Canada Cataloguing in Publication data.

Sedgwick notably referred to the 1970 MacMillan of Canada edition of The Yellow Briar and its important introductory essay by Dorothy Bishop on the life of Mitchell (Slater 1970 [1933]). There was some minor confusion where Sedgwick suggested that *The Yellow Briar* is "the only book by which [Mitchell] is remembered" while simultaneously appearing to infer that Mitchell had published literally only "one book" (1972, 98). In their respective *Gazette* contributions, Honsberger and Sedgwick ironically both made errors, although very minor, when quoting the final sentence of *The Yellow Briar*: Honsberger and Sedgwick each omitted a hyphen and Sedgwick also omitted a word and two commas. (Honsberger 1968, 37; Sedgwick 1972, 98).

Sedgwick quoted a short excerpt from Mitchell's 1935 letter of confession and commented briefly on Mitchell's crime: "[u]nfortunately, he mixed his client's money with his own; there were no complaints lodged against him, but his conscience troubled him […]" (*ibidem*). Emphasizing the tragedy of Mitchell's impecunious state as a recluse during the years after his downfall, Sedgwick poignantly asserted that Mitchell's total assets at death amounted to exactly $18.75. Sedgwick had apparently seen Mitchell often during the time that Mitchell had practiced law, but he never came to know him personally. Sedgwick was moved to poetry in his personal recollections of Mitchell and *The Yellow Briar*, invoking the spirit of a stanza from the William Wordsworth work *Thoughts Suggested the Day Following, on the Banks of the Nith, Near the Poet's Residence*, which is a component of the work *Memorials of A Tour in Scotland, 1803*.

[8] For a brief summary of the career of Joseph Sedgwick, see Batten 2005, 8-9.

Rather than quoting the actual verses, Sedgwick appeared to have paraphrased them in what appear to be four verses of his own invention. He may have simply erred in his recollection of the verses, of which there are six, and which are quoted as follows:

> Sweet Mercy! to the gates of Heaven
> This minstrel lead, his sins forgiven;
> The rueful conflict, the heart riven
> With vain endeavour,
> And memory of earth's bitter leaven,
> Effaced forever. (Wordsworth 1854, 239)

Sedgwick wrote the following:

> Sweet Saviour, at the gate of Heaven
> This miscreant take, his sin's forgiven;
> And memory of Earth's bitter leaven,
> Effaced for aye. (Sedgwick 1972, 98)

The Law Society subsequently gathered together all three of the *Gazette* accounts pertaining to Mitchell and *The Yellow Briar* and included them in a double-sized September-December 1991 issue of the *Gazette* that commemorated the 25th anniversary of the founding of the periodical (Honsberger 1991 [1968]; Kelly 1991 [1968]; Sedgwick 1991 [1972]). As a testament to the enduring connection between the Ontario legal profession and *The Yellow Briar* and Mitchell, the Law Society has briefly discussed the novel and its author on its website in an online article *Ontario Lawyer-Writers* where the Society asserted "[p]erhaps the most well-known Ontario lawyer/writer was John Wendell Mitchell". It is arguable that the Ontario legal profession can justifiably claim a majority of the responsibility for the remembrance of *The Yellow Briar* and John Mitchell in Canadian history. The profession has done its part to ensure that neither shall be forgotten.

5. Commentary on the First and Subsequent Editions of The Yellow Briar

The first printing of *The Yellow Briar* in 1933 featured a dust jacket with the title and a floral design all in gold colour (Figure 14). The title on the front cover and spine was also in gold (Figure 15). The publisher's use of gold colour in the first printing of the first edition does not appear to be a widely known fact, and copies of the first printing possibly may be rare. Significant amendments were made to the design of the first edition when the publisher issued the second printing in January 1934 and began issuing further printings thereafter. All gold colour was changed to yellow. The top edge of the text block, which had been coloured yellow in the first printing, remained so. An illustrated map was added on the front and back endpapers that depicted an area surrounding Lake Ontario in 1851 (Figure 16). The endpapers were blank in the first printing. Finally, to enhance the deception that the novel and its characters were non-fiction, a nineteenth-century photograph was added on the inside flap of the dust jacket purporting to depict one of the female characters in the novel when she was six years old[9]. The first printing had no such photograph.

The history of John Mitchell has been recounted over the years in introductions contained

[9] For details on the photograph, see Gnarowski 2009, 10, 13.

in republished editions of *The Yellow Briar*. The 1970 MacMillan of Canada edition of the novel included an introduction with an important biographical account of Mitchell by Dorothy Bishop (Slater 1970 [1933]). The Mitchell Church Preservation Community Group issued a 1994 special printing of the MacMillan edition limited to 500 copies commemorating the 126th year and 1994 Heritage Designation Celebration of the Wesleyan Methodist Mitchell Church in the Town of Mono, Ontario (Slater 1994 [1933]). Mitchell's ancestors donated the land on which the church stands. The most readily available edition, published in 2009 by Dundurn Press Limited as a part of their Voyageur Classics series of Canadian literature, contains an introduction by Michael Gnarowski (Slater 2009 [1933]).

Mitchell published five books in total. His first book was *The Kingdom of America, the Canadian Creed* published in 1930. Following *The Yellow Briar* and his legal troubles, he published in 1937 a Patrick Slater book of poetry *The Water Drinker*. In 1938 came another Patrick Slater novel *Robert Harding: A Story of Every Day Life*. At the time of his death in 1951, Mitchell was writing an historical work on early Toronto *The Settlement of York County* (1951). The manuscript was partially rewritten by its editor and published. Because the year of publication was not indicated in the book, various sources have attributed a publication date of either 1950, 1951 or 1952. The manuscript is held in the collections of the University of Toronto Thomas Fisher Rare Book Library (1951).

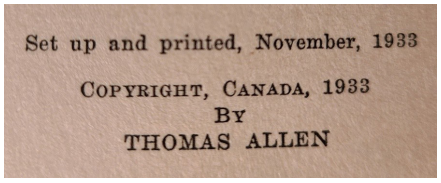
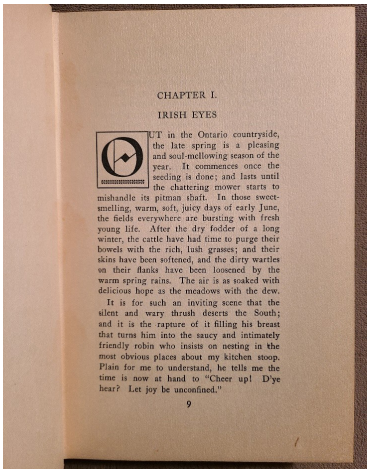


Fig. 12 – Publication date of the first printing of the first edition of *The Yellow Briar* from November 1933, image by Jeffrey M. Minicucci showing material from Slater (1933) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci


CHAPTER I.

IRISH EYES

OUT in the Ontario countryside, the late spring is a pleasing and soul-mellowing season of the year. It commences once the seeding is done; and lasts until the chattering mower starts to mishandle its pitman shaft. In those sweet-smelling, warm, soft, juicy days of early June, the fields everywhere are bursting with fresh young life. After the dry fodder of a long winter, the cattle have had time to purge their bowels with the rich, lush grasses; and their skins have been softened, and the dirty wartles on their flanks have been loosened by the warm spring rains. The air is as soaked with delicious hope as the meadows with the dew.

It is for such an inviting scene that the silent and wary thrush deserts the South; and it is the rapture of it filling his breast that turns him into the saucy and intimately friendly robin who insists on nesting in the most obvious places about my kitchen stoop. Plain for me to understand, he tells me the time is now at hand to "Cheer up! D'ye hear? Let joy be unconfined."

9

Fig. 13 – First printing of the first edition of *The Yellow Briar* showing the size of the font and the spacing between the lines of text reportedly for the benefit of elderly readers with suboptimal vision, image by Jeffrey M. Minicucci

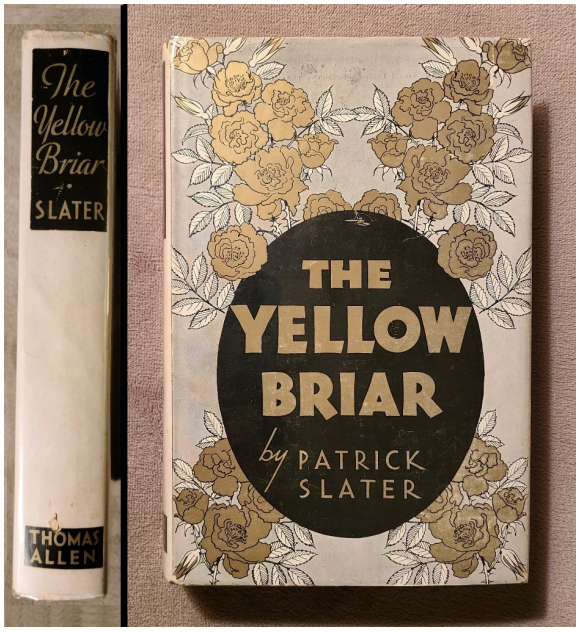


Fig. 14 – First printing of the first edition of *The Yellow Briar* from November 1933 with the gold lettering and gold floral design on the dust jacket, image by Jeffrey M. Minicucci showing material from Slater (1933) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci

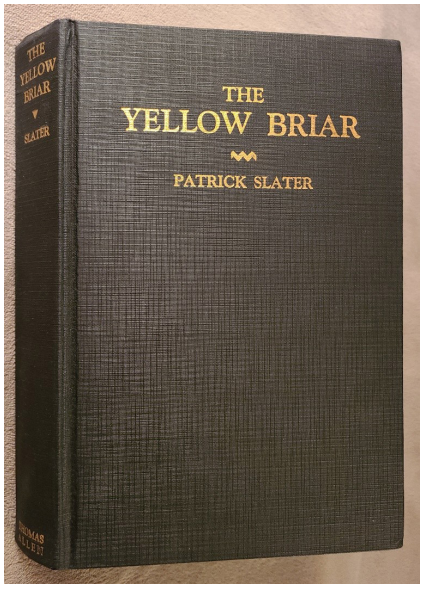


Fig. 15 – First printing of the first edition of *The Yellow Briar* from November 1933 with the gold lettering on the front cover and spine, image by Jeffrey M. Minicucci showing material from Slater (1933) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci

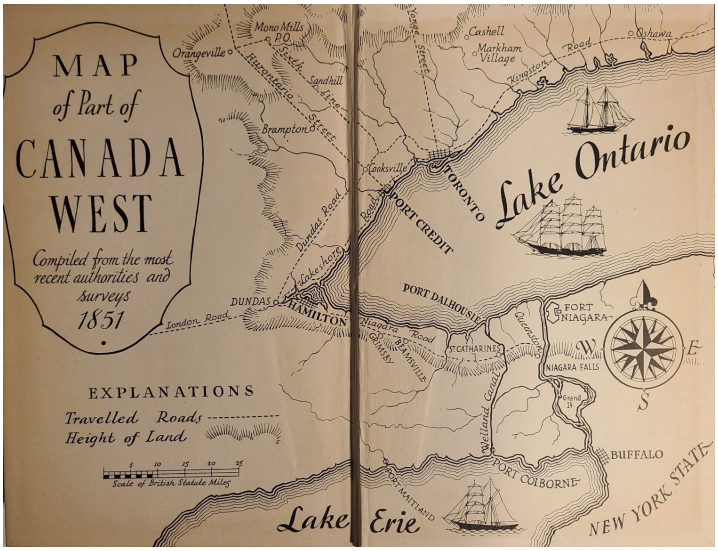


Fig. 16 – Third printing of the first edition of The Yellow Briar from March 1934 with a map of Canada West in 1851 printed on the front and back endpapers, image by Jeffrey M. Minicucci showing material from Slater (1934 [1933]) that was originally copyright © Thomas Allen 1933 but which is now honestly believed to be in the public domain in accordance with applicable law, the book shown is from the private collection of Jeffrey M. Minicucci

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