The "Colored Barrister": The Short Life and Tragic Death of James Robinson Johnston, 1876-1915

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The mortal remains of James Robinson Johnston, Nova Scotia's first Black lawyer, lie buried in the family plot at Camp Hill Cemetery in Halifax. The gravestone epigraphy records that he was a Good Templar, a Freemason and an Oddfellow; his Dalhousie University degrees (one of them inaccurately); and the fact that he died a mere nine days short of his thirty-ninth birthday. “Gone but not forgotten” reads the epitaph, much less ironically now—in view of the fact that the recently established Chair in Black Canadian Studies at his alma mater has been named in Johnston's honour—than it ever could have done during the previous seventy-five years following his death.1 Johnston’s funeral, on Sunday afternoon, 7 March 1915, was the largest Halifax had witnessed since that of Prime Minister Sir John S. D. Thompson twenty years before. So great was the popular feeling in the community that as many as 10,000 people, Blacks and whites together, attended. Johnston’s body lay in state in Cornwallis Street Baptist Church, where three generations of his family had worshipped and his maternal grandfather had pastored. Among the platform guests were Edwin D. King, K.C., dean of the practising bar (and a trustee of the church), representing the Nova Scotia Barristers’ Society, and the Rev. Dr. John Forrest, who had been president of Dalhousie University when Johnston was a student there. Telegrams were read from Prime Minister Sir Robert Borden, who had been president of the Barristers’ Society when Johnston was admitted to the bar, and from the Rev. Dr. William Harvey Goler, president of Livingstone College, Salisbury, North Carolina. (Goler was a native Halifax Black who had become a leading African Methodist Episcopal Zion clergyman in the

1. The establishment of the Chair was announced in June 1991.
United States, who frequently revisited the city of his birth, and who also was a member of Johnston's masonic lodge.) The casket was so burdened with floral tributes that it took three carriages to convey them to the cemetery. James R. Johnston, the most prominent and influential Afro-Nova Scotian of his time, was also the only member of the Nova Scotia bar ever to have been murdered. How did such a man meet with such a fate?

Compared with the tributes and formal expressions of grief rendered during the burial service, however, the eulogy which the expatriate American pastor of Cornwallis Street, the Rev. Moses Puryear, delivered at the memorial service in the evening was a strained exercise in rationalization. The late Mr. Johnston, he said, "was handicapped by the present condition of civilization and, being a colored man, was not credited for all he was worth, and that very fact forced him into a gro[o]ve that militated against him and his struggle against his environment led him to his untimely end." That was, at best, to muddy a very clear-cut issue; Johnston's premature death was not an episode in race relations. Yet almost immediately after it occurred, and within the Black community itself, Johnston's killing began to be trivialized through innuendo or passed over in conspiratorial silence. The fact that he was murdered in cold blood in the dining-room of his own home, by his wife's brother, was afterwards distorted by euphemisms no less craven than the behaviour of his killer. Only very recently—as recently as the publication in 1991 of Volume II of Bridgal Pachai's chronicle of the "survival of Nova Scotia's Blacks"—has the scandal of Johnston's death begun to be confronted by historians of the Black community in Nova Scotia. To paraphrase a recent biography of the assassinated Irish revolutionary leader, Michael Collins, it is a perversion of Johnston's significance to Afro-Nova Scotian history that the circumstances of his death, important though they are, should have come almost to overshadow the significance of his life. Three-quarters of a century later, Johnston's 'recognition factor' remains far less than that of community cultural icons such as

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3. Ibid.
Richard Preston, William Hall, Sam Langford and Portia White. Previous to George Elliott Clarke’s recently published anthology of ‘Africadian’ literature, moreover, no collective biography of distinguished Afro-Nova Scotians has ever included Johnston. In an effort to redress the imbalance, therefore, I shall narrate the circumstances of Johnston’s premature, sudden and violent death in a manner which should make clear once and for all why the significance of his life was overshadowed by it in the collective memory of Afro-Nova Scotians.

The murder of Lawyer Johnston was destructive not so much of the respectability for which the Halifax Black elite in the late Victorian era had striven successfully, as of the self-respect of the whole community. It produced consternation among whites, and reinforced negative racial stereotypes which distorted even the judicial view of the case. If the Black community could not preserve the life of their own chief of men, a member of the learned professions whom the white establishment accepted as an equal, what indeed was to become of them? If, as Judith Fingard argues in her study of ‘race and respectability’, the emergence of a Black elite in late Victorian Halifax is to be explained in terms of the quest for respectability, then the phenomenon of Lawyer Johnston represents its apotheosis. Refugee slaves and small shopkeepers in the first generation produced artisans in the second, and a lawyer in the third. But Johnston’s career was unique and exceptional—he was neither a recent immigrant nor did he have to emigrate (like Goler) in order to achieve success and distinction elsewhere—it was not normative. As the recipient and beneficiary of the patronage of wealthy and influential white individuals, his dramatic success paradoxically coincided with the decline after 1900 in the fortunes of the Black élite, which in him had attained its zenith. Nevertheless, he was the exception which proves the rule postulated by

6. G. E. Clarke, *Fire on the Water. An Anthology of Black Nova Scotian Writing [Volume One]* (Lawrencetown Beach, N. S., 1991), at 82. For an example of conspicuous omission, or at least selective coverage, see J. N. Grant, *Black Nova Scotians* (Halifax, 1980), at 38ff. Writing of the late 1940s, when Lawyer Johnston’s widow and all four of his brothers were living, a graduate student in sociology commented, “All Nova Scotian Negroes know of William Hall, son of a slave and the first Canadian to win the Victoria Cross; they are proud of the international singing fame of Portia White” (C. R. Brookbank, “Afro-Canadian Communities in Halifax County, Nova Scotia. A Preliminary Sociological Survey” [MA Thesis, University of Toronto, 1949], at 8). One wonders whether they knew, or would have been equally proud of James R. Johnston, grandson of a refugee slave and the third Afro-Canadian to become a barrister. Perhaps Lawyer Johnston did not live long enough. Or perhaps lawyers are less prepossessing than military men, athletes or performing artists.

7. J. Fingard, “Race and Respectability in Victorian Halifax,” in (1992) 20*Journal of Imperial and Commonwealth History* [169]-195. (I am grateful to Dr. Fingard for permitting me to read and quote from this article in manuscript.)
Fingard as to “the nature of black community leadership which established the material basis for respectability”; the most materially successful leadership candidate among the younger generation of the Black élite becoming in due course the community’s paramount leader. Correspondingly, those “racist attitudes of the Jim Crow variety [which] effectively thwarted black aspirations” were given greater impetus by the virtual extinction of Lawyer Johnston’s memory within the community. Although the classical Roman model of the *damnatio memoriae* is applicable to the evidence provided by Johnston’s posthumous history, I shall attempt to show that the penalty suited the sin of *hubris* better than the crime of *maiestas*. The penalty attaching to the latter, however, was the more easily imposed and continued in that Johnston left no biological or psychological heir. His name was not perpetuated even within his own family, much less the community; his example was not emulated; and—until the creation of Dalhousie’s eponymous professorial chair—his name was not inscribed elsewhere than his own gravestone.

At the conclusion of her lecture to the Royal Nova Scotia Historical Society on the North End City Mission, Judith Fingard challenged her audience to pose the awkward question of how a Christian organization could have allowed its premises to be used for the purpose of conducting a racially segregated school. The question I should like to pose, and attempt to answer, in the course of this study of race leadership is whether the Black community’s response to Lawyer Johnston’s death would have been different had he been killed by a white person in a racially motivated attack. That would have suited Rev. Puryear’s aetiology especially well. Then Johnston would have been a martyr in death as he had been a hero in life. As it happened, however, the tragic event had no political or socio-cultural symbolic value; it was instead a monumental embarrassment. When the shock and grief subsided, their place was taken by shame and guilt, which have persisted subconsciously in the collective memory to the present day—conspicuously among older members of the community, who were acquainted in their youth or young adulthood with Lawyer Johnston’s contemporaries.

This article attempts to apply Judith Fingard’s paradigm of Afro-Nova Scotian perceptions of élite leadership in late nineteenth-century Halifax to the early twentieth-century career of James R. Johnston, by focusing...
on three issues: (1) the formative influences, such as his family’s standing within the community and white patronage, which provided Johnston with access to unique educational and professional opportunities; (2) the force of personality and intellect, together with the leverage of the legal profession, which was the engine driving his paramount leadership; and (3) the continuing trauma of his murder, which induced an almost total loss of communal memory regarding Johnston’s distinguished public life.

“Lawyer Johnston,” as he was known to his contemporaries both within and without the Black community, was a second-generation native Nova Scotian. His paternal grandparents, John and Clarissa, were almost certainly among the Refugee Blacks who emigrated from Georgia, Maryland, Virginia and the city of Washington in the aftermath of the War of 1812 and settled in Nova Scotia. Family tradition holds that John Johnston came from Virginia. There is only one person of that name on the return of American Refugee Blacks received into Nova Scotia; his age is given as forty-six in 1815. The name John Johnson, moreover, appears on the so-called “Halifax List” as a slave claimed by one Maria Hutt of Virginia. John Johnston’s presumed second wife, Clarissa, whose maiden name is indicated by circumstantial evidence to have been Robinson, was born in Liberty Co., Georgia, in 1799. There were two refugee slaves of that forename listed as being in the possession of British forces in the state of Georgia in March 1815. It seems probable that John Johnston and Clarissa were among the 115 refugees numbered on the return of 30 December 1816 as having remained in the town of Halifax,

12. Information from Noel H. Johnston [nephew of Lawyer Johnston], East Preston.
14. “Slaves on Halifax list ...” (ibid.).
15. Acadian Recorder (Halifax), 20 Apr. 1881, p. 3 col. 5.
settling eventually in the North Suburbs. These immigrants formed the nucleus of the Black enclave in Halifax’s old north end, an oasis which has had a continuous existence ever since but which, unlike the shorter-lived community of Africville—whither most of the scholarly and popular interest has been directed—was a quartier, not a ghetto. Although the original community is usually identified with its later westward expansion towards Creighton and Maynard Streets, settlement began on Gottingen Street before either of these thoroughfares was laid out, and was concentrated in the area bounded by Gerrish Street on the north, Cornwallis on the south, Maitland on the east and Gottingen on the west. The earliest period of settlement culminated in the foundation of the African [now Cornwallis Street] Baptist Church in 1832. Four years later the African School was established by white philanthropists on Gottingen Street, “in the Centre of the Colored Population.”

John Johnston, who was described as a “trader” in his son William’s marriage record, by the early 1830s was not only a freeholder but also a landlord. His tenant on Maitland Street was a Mrs. Robinson, perhaps his mother-in-law. The Johnston residence and place of business was located at what became 131 Gottingen Street, on the block between Prince William [Duke of Clarence] and Gerrish Streets (“Clarence Square”), where the former Canada Post Corporation building now stands. The property was assessed at £175 in 1834, and remained in the Johnston family until 1917. The activities of small shopkeepers such as John Johnston, and a fortiori his much longer-lived widow Clarissa—a Black matriarch—enable the supposed late Victorian phenomenon of “the aspirant Black middle class” to be retrojected at least half a century, to the immigrant generation.

17. J. S. Martell, comp., Immigration to and Emigration from Nova Scotia 1815-1838 [PANS Publication No. 6] (Halifax, 1942), at 37. In Mar. 1815 the figure stood at 336 (T. B. Akins, History of Halifax City [Collections of the Nova Scotia Historical Society, Vol. 8 (1895)], at 170). In 1817 the figure had risen to 745 (RG 1, vol. 445, doc. 4 [PANS])—a sextuple increase over the Dec. 1816 figure. (The demographics of the immigrant refugee Black population of the town of Halifax have yet to be quantitatively analysed.)


19. RG 32 “M” (HX), 1876, file 37, PANS; transcribed in Fergusson: supra, note 11, at 104. Among the original sponsors of this foundation were the rector of Saint Paul’s Church and Lady Maitland (consort of the lieutenant-governor), after whom the street was named.

20. RG 32 “M” (HX), 1876, file 37, PANS; RG 35 “A”, vols. 2, 3 (Town of Halifax assessment records, 1830-1836), PANS.

21. The property was the subject of litigation stemming directly from Lawyer Johnston’s death: infra, note 123.

22. P. Girard, “ ‘His whole life was one of continual warfare’: John Thomas Bulmer, Lawyer, Librarian and Social Reformer” (1990), 13 Dalhousie L. J. 376, at 390.
By 1838 Clarissa Johnston was a widow with four children, a boy and a girl under six and a boy and a girl over fourteen. She subsequently remarried; her second husband being John Smith, a shopkeeper, who also predeceased her. Until the end of her life—she died in 1881 in her 82nd year—Clarissa maintained the grocery-cum-variety store which had been established by her first husband. Her son William, probably the youngest of the family, was a shoemaker. A successful artisan and retailer of footwear—Judith Fingard identifies him as a member “of the aristocracy of labour noted for its middle-class, respectable goals”—he invested in real estate and eventually owned the properties on the east side of Gerrish Lane, as well as 154 Creighton Street and one vacant lot on Oxford Street and Columbus Street, respectively. His marriage, moreover, to a daughter of the Rev. James Thomas, the Welsh Baptist clergyman who had succeeded Richard Preston as pastor of the African Baptist Church and Moderator of the Association, greatly enhanced his standing in church and community. As deacon, an original incorporator and long-time trustee of “the mother church”—not to mention son-in-law of Rev. Thomas—William Johnston became a venerable patriarch, setting an example of élite lay leadership in church and community which would be most conspicuously emulated by his eldest son. The first of the five sons of William Johnston and Elizabeth Ann Thomas was born at 5 Gerrish Court [Lane] in Halifax on 12 March 1876. The significance of the forenames “James Robinson” can hardly be explained otherwise than that the future lawyer was called after his maternal grandfather, Rev. James Thomas, and his paternal grandmother Clarissa [Robinson].

The year 1876 was an inauspicious one in which to be born for Nova Scotia’s second indigenous Black university graduate. The Board of
School Commissioners of the City of Halifax, at the connivance of their recently appointed Supervisor, Dr. Benjamin Curren, took advantage of a loophole in the Education Act to segregate the free public schools and establish separate and unequal institutions for Black children. Such was the milieu in which James R. Johnston commenced his education in 1882 at Maynard Street, where he was a consistent prize-winner until transferring to Albro Street School in 1887. A few years earlier the Commissioners had provided that any Black pupil who passed an examination on the subjects of Grade Seven would be admitted to the common schools. The examination was conducted by the Supervisor in person, who commented in his report for the year ending 31 October 1887 that Maynard Street “has sent to Albro St. school one of its best pupils.”

Johnston spent about one-and-a-half years at Albro Street before proceeding to the high school, which in 1884 had been opened by the Commissioners to any Black male student who passed the entrance examination. On graduating from the Academy in 1892, aged sixteen, Johnston matriculated at Dalhousie University; he was the first native Afro-Nova Scotian to do so. Writing in 1949, the Rev. W. P. Oliver stated that

[d]uring the 135 years of their settlement here, there is a record of only nine Negro university graduates, and of these nine only three can really be called direct descendants of the early settlers, for one was born in the United States and brought here for his education, while the remaining five were children of West African [sic: Indian] families who came to this country after 1900. It might be well to observe that the three described as direct descendants of the early settlers were educated in urban mixed schools and all three were in close contact with white culture, in that the education of two of them was sponsored by wealthy white individuals while the third was practically born on a University campus.

Dr. Oliver was referring to Edwin Howard Borden, James R. Johnston, and of course to himself as being a native of Wolfville, the home of Acadia University, of which – like Borden – he was a graduate. It would indeed be a significant discovery to learn the identity of those “wealthy white individuals” who financed James R. Johnston’s university education.

29. Commissioners’ Report [1876], at 23. On this subject generally, see Fingard (supra, note 7), at 22ff.; Girard (supra, note 22), at 388-89, 400-05; and Pachai (supra, note 4), at 81ff.
30. Halifax Board of School Commissioners. Minutes of meetings: Vol. 7 at 200, 28 Feb. 1884 (mfm. at PANS).
31. [Halifax Board of School] Commissioners’ Report [1887], at 31.
32. Supra, note 30. (This provision was entrenched by the amending Act, S.N.S. [1885] 48 Vic., c. 51, which converted the high school into the Halifax County Academy.)
Johnston matriculated by certificate; he did not write the first-year matriculation examination. He also chose to follow not the Bachelor of Arts course but the Bachelor of Letters, which emphasized modern European languages rather than classics. Some notion of the mischievous figure which Johnston cut as an undergraduate may be got from the rather irreverent sketch of him which appeared in the student newspaper after graduation in the spring of 1896:

Jimmie Johns[ton] loved notoriety and got it. He didn't aspire for classes, however, so in that field alone he missed his desire; but to this Halifax youth their phenomenal scarceness was perhaps a fame in itself. Jimmie had a silvery voice and a laugh that bubbled often and long upon the ears of the straining pluggers in the Arts library. He has entered upon the study of law and his fellows have offered a reward to any genius who has inventive powers enough to devise some means which may be successful in fixing Jimmie’s attention upon one thing and one person for a brief period per day. Long may he live to be the chosen pleader for his race in the police court of the city.

Johnston entered the Faculty of Law as a “general student” at the session 1894-95. The fact that he attempted to combine the junior and senior years of his Arts degree with the general and first-year undergraduate course in the Faculty of Law may explain why he did not distinguish himself academically. The academic year 1896-97 also found him serving as secretary-treasurer of the Sodales Debating Club. In March 1897 he commenced articling with Frank Weldon Russell, junior in the father-and-son law firm of Russell & Russell, whose senior partner, Benjamin, was Professor and Secretary of the Faculty of Law. In April 1898, the month of his graduation from Law School, Johnston participated in mock trials in the basement of Cornwallis Street Baptist Church, their purpose being not only to inure the community to the prospect of having a Black lawyer to represent Black people, but also to prepare himself for law practice by gaining experience of courtroom

34. It corresponded nominally to Oxford University’s “B. Litt.” [Baccalaureus Litterarum], which is an undergraduate research degree.
37. Dalhousie University Calendar, 1897-98, at 105.
38. RG 39 "M" box 23 folder 6, PANS (bar admission file). F. W. Russell (b. 1873), who graduated LL.B. from Dalhousie in 1893 and LL.M. from Cornell in 1895, was the best educated and most scholarly younger member of the Nova Scotia bar. He was no sooner called than he succeeded his father as joint Reporter to the Supreme Court, which post he held from 1895 until 1910. He emigrated to Alberta, where he was admitted to the bar in 1911 and practised until 1929.
39. Morning Chronicle (Halifax), 15 Apr. 1898, p. 6; Evening Mail (Halifax), 21 Apr. 1898, p. 1. (I am grateful to Judith Fingard for sharing these references with me.)
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ambience and procedure. The twenty-five-member Dalhousie Law School graduating class of 1898 was the largest there had ever been, and was important for its sheer size. "James Robinson Johnston . . .," wrote the Dalhousie Gazette, half in fun whole in earnest,

was no unimportant member of this important class. His beaming face was always welcome amongst us. He had a particular fondness for the fair sex and in consequence always took a prominent part in the College "At Homes". Jimmie still shows a longing for Dalhousie, and he is taking the lectures in Procedure with us again. He will, we understand, put out his shingle in Halifax. He deserves great credit for the admirable way he has overcome obstacles to obtain a thorough preparation for the bar, and no doubt his untiring efforts will secure for him a prominent place in the future of our country. 40

It is possible that Johnston failed the examination on Procedure at his first attempt, because one of the documents in his bar admission file states that he had passed all the examinations required for the degree of Bachelor of Laws, including the examination in procedure. Johnston's three-year period of articled clerkship expired in March 1900. Four months later, on 18 July, he signed the roll and took the oath. The order for admission was moved, as was customary, by the President of the Society, Robert L. Borden, MP for Halifax and shortly to become leader of the federal Conservative Party. 41 "I was formally admitted to the Bar on Wednesday the 18th which was a red letter day in my life," Johnston wrote to his closest friend, the Reverend Wellington N. States two weeks later, "and now I am a full fledged practising Barrister." 42

As near as can be ascertained, James R. Johnston was but the third native Afro-Canadian to be admitted to the bar. His predecessors were Abraham Beverly Walker in New Brunswick in 1882, and Delos Rogest Davis in Ontario in 1886. 43 Although Philip Girard, in his study of the legal profession of Nova Scotia from 1850 to 1910, rightly observes that


41. Lawcourts, Halifax [Prothonotary]: "Supreme Court (Western Court-). Proceedings Book. Beginning May 13th 1898" at 398 [18 July 1900]. Five other barristers were admitted that day.

42. Letter, J. R. Johnston to W. N. States, 30 July 1900: private archives, courtesy the late Coulter B. States.

43. For Walker and Davis, see Dictionary of Canadian Biography, Vols. XIII and XIV [both forthcoming], respectively. Preceding Walkermay have been two African-American attorneys, Robert Sutherland, who was admitted to the bar of Ontario in 1855, and Joshua Howard, who commenced practice in Victoria in 1858.
"[w]e do not yet know enough about ethnicity and the legal profession to generalize," the origins of the debate in Nova Scotia go back as far as 1832, more than a decade before the first Black was admitted to practise law in the United States. Writing in a leader in *The Novascotian*, entitled "A Black Article," Editor Joseph Howe posed the following rhetorical question:

Then there is the Bar—how can you keep them from the Bar? The easiest thing in the world while they are poor—but wait till they get rich. Should the hon. Mr. Preston, of Preston—or the hon. Mr. Williams, of Beech Hill, owning a Share in the Bank—two Whalers—six Sealers, and five West Indiamen, wish to have his son brought up in the Law, could there not be found, in the whole range of the Profession, an Attorney who for a few hundreds would do the needful? Get one black Gentleman admitted, and the business would be done—he would of course get plenty to do, for the coloured population would certainly patronize him, and as he would be prevailed upon to educate the sons of all his particular friends, we should soon have the Bar shining in alternate black and white, like the surface of a chequer board, or an Egyptian pavement.

Underneath Howe’s jocular paternalism and prejudicial idiom lay the assumption that the evolution of the Black proto-bourgeoisie would inevitably result in their breaching the learned professions—a view which subsequent events confirmed, although Howe stood decades ahead of his time. His prognostications were ultimately realized, however far Nova Scotia may have lagged behind the United States—and even New Brunswick and Ontario—in that regard, thanks to progressive members of the emergent Black élite, such as William Johnston, who had not yet been born when Howe was writing. Johnston avenged himself on racist reactionaries such as Dr. Curren, by placing his eldest son not only in the Academy and then the University but also in the legal profession, where he would best be able to serve the civic and educational interests of his community. Without the influential patronage of “wealthy white individuals,” nevertheless, James R. Johnston’s achievement might not have been possible. In Ontario, Davis, a schoolteacher, could find no lawyer with whom to article; special legislation was required to enable him first to be admitted as a solicitor and then called as a barrister. He went on to establish a successful law practice, culminating in 1910 in his appointment

45. *The Novascotian* (Halifax), 27 June 1832, p. [201]. Howe’s editorial was probably intended to commemorate the organization of the African Baptist Church in Halifax, which had been officially founded on 14 Apr. 1832: F. S. Boyd Jr., “Preston, Richard,” in (1985) 8 *DCB* at 969.
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as King's Counsel, the first Afro-Canadian lawyer to be so honoured. In New Brunswick, Walker, who returned to his native province with a Bachelor of Laws degree from the National University in Washington, D.C., articled with a prominent Saint John barrister, but had difficulty establishing a law practice and failed utterly in his quest to be appointed a Q.C. If, in Girard’s words, “Nova Scotia’s first Black lawyer was admitted to the bar in 1900 without a major row,” that was perhaps because he was not the pioneer. Though Davis and Johnston both died in 1915, and Walker predeceased them in 1909, the colour line in the legal profession had been breached by Walker some eighteen years before Johnston’s arrival on the scene. Walker and Davis, who were near contemporaries, comprised the first generation of Black lawyers; the professional difficulties they encountered—Davis with entry, Walker with practice and standing—distinguished them from each other and a fortiori from Johnston, who was of the second generation and a beneficiary of the first.

Johnston commenced his practice in the office of John Thomas Bulmer, who seems to have taken up the young law graduate as a junior associate or solicitor even before the termination of his official clerkship with Russell. Bulmer was an outspoken advocate of Black educational rights, who had taken a forward role in the campaign against segregated schools in the early 1880s, and who was probably “the only lawyer in Halifax to represent Blacks in non-criminal contexts.” On Bulmer’s dying intestate in February 1901, Johnston witnessed the administrator’s bond and took over both the practice and the premises at 197 Hollis Street, opposite Province House. The fulsome obituary of Bulmer appearing in the minutes of the annual general meeting of the African Baptist Association records that, when he had given Johnston a place in his office, “he was met at the door of the Province building by one of those Mr. Nobodys, who said to him that was the worst step he ever made. He replied: ‘O consistency! thou art a jewel’.” In 1908 Johnston moved to a better address, so to speak, 58 Bedford Row in the heart of legal Halifax, a building which he shared with George Ritchie.

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49. Girard, *supra*, note 44.
52. *Minutes of the Forty-Seventh Annual Session of the African Baptist Association ... 1900 [1901]*, at 17.
53. Ritchie, a Harvard LL.B., had been a student at the Dalhousie Law School in its first year of operation, and was a lecturer in the Faculty of Law during Johnston’s time there.
As the first Black lawyer in Nova Scotia, Johnston could not establish his credibility in the legal profession until he had become the lawyer for Blacks. With this end in view, he enlisted the aid of his friend, Rev. States, then stationed in Granville Ferry, to help him become better known among Blacks outside Halifax County, the largest concentration being in Annapolis and Digby. Johnston was prepared to travel, not only through the province but also outside it in order to accomplish his goal, and within months of his admission to the bar he had embarked on a business trip to the United States, which took him to Boston, Norwich (Connecticut) and New York. As early as 1901, Johnston was acting as solicitor for the Halifax lodge of the Brotherhood of Railway Trainmen, one of the “Big Four” rail unions and the largest in the pre-World War I period. Johnston also specialized in the field of military law, in which he became a conspicuously successful practitioner, defending soldiers accused of court martial offences. The range of his military clientele and the identity of some of his individual clients can be inferred from the printed list of donors of floral tributes at his funeral. In addition to routine solicitorial...
work such as estate administration and conveyancing, Johnston represented Blacks in civil actions. When clients from the poorer Black settlements in rural Halifax County, such as Preston—whence his maternal grandmother had come, and towards the inhabitants of which he assumed a strongly paternalistic attitude—were unable to pay his fees, Johnston would accept mortgages on their property in lieu of payment. At different times Johnston employed two of his four brothers, William Robinson and Frederick Charles, as clerks in his office. He also acquired a law library appraised at $500 at his death; perhaps it was essentially that of his patron, Bulmer, who had befriended him and given him a place in his office, and who was reputed to have had one of the best private collections of law books in the country.

Lawyer Johnston’s finest hour was *R. v. Murphy*, his first and only capital case, in which as counsel for the accused he turned the virtual certainty of conviction into a hung jury at the first trial, and an acquittal at the second. Early Sunday morning, 8 March 1914, in her home at 25 Bilby Street, Mrs. Margaret Brown, a widow aged sixty-four, was mortally wounded by several sledge-hammer blows to the head. It was the first murder to have been committed in Halifax for about twelve years. There were no witnesses to the crime, but the police arrested on suspicion and then charged with murder the common-law husband of Mrs. Brown’s granddaughter. James Murphy, aged about twenty-five, was an Irish Catholic native of Glasgow who had emigrated six years previously. He was employed as a rivet-driver at the Halifax Shipyards, and was not only a heavy drinker but also severely hearing impaired. Murphy was thus in no position to retain legal counsel; Johnston, who lived but a block away, on Macara Street, must have volunteered his services gratuitously at the last moment. The preliminary hearing before the stipendiary magistrate began on 12 March and went on for five days. The crown prosecutor did

57. “He [Johnston] took great pleasure in going around the Green Market on Saturday mornings to look over the people of Preston, whom he always spoke of as ‘My People’”: DeCosta, *supra*, note 27.
58. *Supra*, note 12. The oral tradition can in this instance be documented through the Halifax County Deeds, from the index to which it is clear that Lawyer Johnston was careful to have such instruments executed in favour of his wife and registered in her name.
59. Family tradition, over and against the evidence of McAlpine’s *Halifax City Directory*, maintains that it was Clarence Harvey (see *infra*) who clerked in his brother’s office.
61. RG 39 “C” (HX), box 700, file R-228; Clarke, *supra*, note 6. Unless otherwise indicated, the account which follows is based on contemporary Halifax newspapers, especially the *Daily Echo* and the *Evening Mail*, which reported the case in detail. A snapshot of Lawyer Johnston in court costume appeared on the front page of the *Mail* on 1 Apr. 1914; the last known photograph of him, it reveals that his hair had turned grey.
not oppose Johnston’s request for a limited adjournment in order to procure evidence, but his application for a remand of eight days, the maximum continuance allowed by law, was not granted. As the spring criminal sittings of the Supreme Court were about to begin, Johnston was apprehensive because he was not yet prepared to conclude the preliminary examination. He argued that the accused was not on trial for a common assault, but for his life, and that he should therefore have every possible chance. A jury might be influenced by the press reports. The crown prosecutor disagreed, however, and Johnston was overruled. Notwithstanding that the crown case against Murphy was entirely circumstantial, the defence had no evidence to offer and the accused was committed for trial. When the matter came before the grand jury, they returned an indictment for murder.

The two-day trial, which opened before Mr. Justice James Johnston Ritchie—the most recent appointee to the bench—on 30 March, was given over to the testimony of crown witnesses, sixteen of whom were called. The defence neither called any witnesses nor offered any evidence on behalf of the accused, but relied on rigorous cross-examination. Johnston objected to the crown’s chief witness, Annie Brown, a semi-literate young woman barely out of her teens, on the grounds that she was Murphy’s wife and therefore could not give evidence against her husband. Johnston was again overruled, however, because the couple were not legally married—despite the fact that Brown had had two children by Murphy. Johnston countered by subjecting the witness to a “lengthy and skilful” cross-examination. Having joined issue with the crown, Johnston asked the jury to render their verdict on the crown’s evidence alone. In his summation, which lasted over ninety minutes, Johnston boldly asserted that he could positively prove that Murphy was innocent. The newspapers were unanimous in their praise of Johnston’s “eloquent and masterful address”; even Judge Ritchie, in his charge to the jury, complimented Johnston on his tour de force. The trial judge was nevertheless concerned enough about the affect which Johnston’s rhetorical brilliance might have on the jury to caution them that statements such as ‘the road from the dock to the scaffold led by way of the jury box’ must on no account influence their verdict. “Before proceeding any further,” Judge Ritchie instructed the jury,

I want to make some remarks regarding the address of the counsel for the defense. This was a decidedly clever, ingenious and well delivered argument and reflects great credit on the counsel, but it is my duty to make some criticisms on it. He appealed to you to restore this man to his children and send him back to be a good citizen. This man’s plight is undoubtedly pathetic, but that is not a matter for your consideration. You have nothing whatever to do with that, you must confine your attention to determining
whether he is innocent or guilty. I do not think it necessary to say anything in reference to the references to ‘possible judicial murder’, and other similar terms used by the counsel for the defense, nor do I criticize the counsel for using them. He has to fight with whatever weapons come into his hands, to fully discharge his duty to his client.\textsuperscript{62}

The jury deliberated for almost six hours, after which the foreman told the judge that they were hopelessly deadlocked. As neither the crown prosecutor nor counsel for the defence wished to proceed with a new trial immediately, Murphy was remanded in custody until the autumn criminal sittings of the Supreme Court. The crown witnesses were bound over to reappear. The second trial opened on 14 October before Mr. Justice Arthur Drysdale, and proceeded similarly to the first. After Johnston had spoken for an hour and a half, "and made a splendid address," the jury took two hours to bring in a verdict of Not Guilty. Referring to the case after Johnston’s death, W. J. O’Hearn, K.C., the future County Court judge, who had often been professionally engaged both with and against Johnston, commented, “His able defence without remuneration and against all odds of the man Murphy recently tried for murder will always serve as a tribute to his brilliancy and generosity.”\textsuperscript{63}

It was not Johnston’s forensic brilliance or general success at the bar, however, but his accelerated rise to prominence within the African Baptist Church hierarchy which, in the decade before World War I, gradually established him as the paramount leader of the Afro-Nova Scotians. By 1914 Johnston had been Clerk of the African Baptist Association of Nova Scotia for seven years, and an officer of Cornwallis Street Baptist Church, the “mother church” of the Association, for ten years before that.\textsuperscript{64} In 1911, when the Act of Incorporation was amended, he had replaced his late father as a member of the board of trustees.\textsuperscript{65} The year of Johnston’s baptism has not been established, but by 1895, in his nineteenth year, he was already serving as clerk of the local church,\textsuperscript{66} a post which he retained until succeeding Peter E. McKerrow—husband of his mother’s sister—as Secretary of the Association in 1907. It is not certain when Johnston first attended the annual meeting of the Association as a delegate, but it was probably 1898, when he acted as sessional treasurer and also made a presentation advocating the general introduction...
of the Baptist Young People’s Union. Johnston was its founder and first president at Cornwallis Street, where he also filled the important post of Superintendent of the Sunday School. At the annual meeting of the Association in 1899, Johnston started the idea of a Field Missionary who would itinerate among the member churches, especially those which were pastorless or labouring under special difficulties. Johnston epitomized the brilliant young man in a hurry; he did not suffer gladly his intellectual inferiors among the older generation. Writing confidentially in July 1900 to his friend Rev. States, to whom he intended the post of Field Missionary to go, Johnston stated, “It is of no earthly use at this Enlightened time of the world’s history to put in charge of the field some of the ignorant fossils we have in our Association: that is if we ever look for ourselves as a people to ever amount to anything.” Elsewhere in the same letter, referring to the powers that were in the Association, among whom he would have had to include both his own father and particularly McKerrow, Johnston stated,

I suppose one has to use policy with them but I don’t think it is policy to station Ministers of the Gospel where they will do more harm than good. Of course I am mindful of the fact that some of our veterans have been Standard bearers for many years, perhaps before either of us was born, and I think some provision ought to be made for them but I don’t think that we ought simply out of sympathy for them to place them in positions for which they are entirely incompetent.

As early as 1903 Johnston was chairman of the Mission Board of the Association, moreover, and in 1907 he was elected the only non-clerical member of the newly-constituted African Baptist Auxiliary Home Mission Board.

In 1908 Johnston, as Secretary, proposed in his annual report to the Association the “establishment of a preparatory Agricultural and Industrial Institution along lines similar to Booker T. Washington’s school at

67. Johnston’s activities are traceable chiefly through the published Minutes of the annual sessions of the African Baptist Association (ABA). The most extensive set existing outside private ownership is in the Atlantic Baptist Historical Collection, Acadia University Archives. (I am grateful to Frank Stanley Boyd, Jr. for allowing me to peruse his photocopies of several years of Minutes not available elsewhere.)
68. Johnston to States, 30 July 1900, supra, note 42.
69. Ibid.
70. Minutes of the Fifty-Fourth Annual Session of the African Baptist Association ... 1907 [1908], at 5.
Johnston strongly pressed the necessity of urging Black young people "through the province to accept the present opportunities offered them of obtaining an education." He seems to have shared Washington's belief that the best interests of Black people would be served through education rather than political action, and also his emphasis on industrial no less than academic education. Progress was slow, and Johnston did not live to see his dream fulfilled in quite the way he had anticipated. In September 1914 the Association resolved to "endorse by moral and financial aid the proposed Institution to be known as the Industrial School of Nova Scotia for Colored Children." This was incorporated as the Nova Scotia Home for Colored Children by Act of the Legislature in April 1915, the month following Johnston's death. Although Johnston served but a fraction of McKerrow's thirty-year tenure as Clerk, he had, in the words of Pearleen Oliver, "placed the Executive of the Association on a working basis, calling the leaders together in Halifax for planning and re-organization of the program."

Of only slightly less importance to Johnston's role as a race leader than his activism in the church was his involvement in fraternal organizations such as the Good Templars, the Freemasons and the Oddfellows. The popularity of secret societies was at its zenith in the late Victorian era, and the élite leadership of the Black community wore membership in such organizations as badges of respectability. The all-Black Union Lodge, affiliated with the Grand Lodge of Nova Scotia (Ancient, Free and Accepted Masons), came into existence in Halifax's north end in 1856. The only known photograph of Peter McKerrow, moreover—"an enthusiastic Freemason"—shows him in the regalia of the Independent Order of Good Templars, which was the first international temperance organization. The African Baptist Association formally endorsed the temperance platform, and prominent lay leaders such as William Johnston

71. Minutes of the Fifty-Fifth Annual Session of the African Baptist Association . . . 1908 [1909], at 4; cf. Winks, supra, note 48, at 348. It was doubtless thanks to the initiative of Lawyer Johnston that Booker T. Washington had been invited—and apparently accepted the invitation—to attend the "Afro-Canadian emancipation celebration," which took place in Halifax in July 1904 to mark the quinquagenary of the African Baptist Association: letter, Rev. B. B. B. Johnson [pastor of Cornwallis Street Baptist Church] to W. Laurier, 18 Apr. 1904, in Laurier Papers, MG 26 G at 84611, NA (mfm. at PANS). As it turned out, however, Washington did not attend.
72. Ibid.
73. Oliver, supra, note 64, loc. cit.
75. Oliver, supra, note 64, loc. cit.
76. Fingard, supra, note 7, at 5; Oliver, supra, note 33, at 295.
were zealous temperance advocates. It may possibly have been McKerrow who introduced Johnston to the Order, in which by July 1900 he had become District Chief Templar, the highest official in Halifax County.\(^7\)

The Oddfellows were a ‘friendly society’—less exclusive than the Freemasons whom they closely resembled—and enjoyed immense popularity among Halifax Blacks. By September 1902, Johnston was acting as permanent secretary of Loyal Wilberforce Lodge in the Independent Order of Oddfellows, Manchester Unity. He subsequently became Deputy Grand Master for the Acadia District.\(^7\)

The very use of the name “Wilberforce” in the title of the lodge suggests an abolitionist inspiration. It speaks volumes for Johnston’s connection with the Order that the Manchester Unity Oddfellows headed his funeral procession.

Johnston’s connection with Union Lodge, of which Peter McKerrow was Past Master, began in 1904.\(^7\)

Johnston himself was Master of the lodge during the jubilee year 1906-07. In this capacity he represented Union on the Executive Committee for the Masonic Fair, which was held in Halifax in the autumn of 1906 to raise money for the establishment of a Masonic Home.\(^8\)

Writing in his fiftieth-anniversary commemorative history of the lodge, of which he was then Secretary, McKerrow observed of his wife’s quicksilver nephew, who had only just succeeded as Worshipful Master,

> Brother J. R. Johnston, a young man in full bloom of health... enters upon his duties at once with many characteristics in marked contrast to those of his predecessors who have had the pleasure of sitting in the oriental chair as Master of the Lodge.

> The resolute, aggressive and enthusiastic nature of our young Master should infuse increased energy among the younger members of the Lodge, conceiving himself called upon to lead in a high[er] and loft[ier] scale of Masonic atmosphere [than] ever before attained.\(^8\)

Unfortunately, Union Lodge did not long survive Johnston. Procedural irregularities were discovered and its charter was suspended by the Grand Lodge in April 1915 and forfeited in June 1916. Johnston’s sudden death

\(^{77}\) Supra, note 42. Johnston, nevertheless, in his masonic eulogy of McKerrow, delivered on 21 Jan. 1907, stated, “Although personally a Member of the family to which he was connected by Marriage, and having also been identified with him for many years in other organizations, I must say that I never really knew the Man as he was until April last...”: Minute-book of Union Lodge [21 Jan. 1907] at 331, MG 20, vol. 2218, File 1, PANS.

\(^{78}\) Halifax Herald, 4 Mar. 1915, p. 2.

\(^{79}\) MG 20, vol. 2012, file 2; vol. 2130, file 34 [records of Union Lodge, No. 18, A.F. & A.M.], PANS.

\(^{80}\) Masonic Fair... (Halifax, 1906) [promotional pamphlet], at 3.

\(^{81}\) [P. E. McKerrow], A Few Scattering Webs of Memory in the Semi-Centennial [sic!] History of Union Lodge, No. 18, R. N. S., A. F. & A. M. (Halifax, 1906), at 4.
may even have indirectly contributed to its closure. Aubrey McKerrow, whom Johnston had nominated to succeed his father Peter as Secretary of the Lodge, was being investigated by a committee of the Grand Lodge, and in reply to the charge that no minutes had been recorded since the December 1914 meeting, offered as an excuse his mental condition caused by the tragic death of Brother J. R. Johnston, who was his cousin. The committee appointed to investigate the affairs of Union Lodge were of the opinion that Brother McKerrow was “incapable and not fitted for the position of Secretary.” In November 1914 Johnston had warned “Mac” of the dangers he was facing and offered to do everything in his power to help, but to no avail.

The third aspect of Johnston’s role as a community leader was politics. The school segregation crisis of 1883-84 had placed Halifax Blacks firmly on the side of the Conservative Party, but Johnston was heir to a wider tradition of Black political conservatism in the Maritime provinces. As early as 1878, for example, Abraham Beverly Walker, who four years later would become the first Afro-Canadian lawyer, organized the Blacks of Saint John into a political association. For the next eighteen years he was successful in marshalling the ethnic vote en bloc for the Conservative Party. As a lawyer and protégé of Robert Borden, Johnston was the man on whom the party would have depended to deliver the Black vote in Halifax County. Given his oratorical skills, moreover, he was much in demand as a public speaker on political platforms. Provincially, the Conservative Party was insignificant; not one Conservative MLA was returned in Halifax County in the four general elections between 1897 and 1911. Federally, the party’s fortunes in 1900 were also at a low ebb. The general election of 7 November 1900 saw fifteen Liberals returned against five Conservatives; even Sir Charles Tupper, the party leader, lost his seat. “Regarding the Elections,” Johnston wrote to Rev. States, “the results have made me feel very sick. We did very well in our County but what was the matter with Annapolis? To think that Nova Scotia should

82. Proceedings of the M. W. Grand Lodge. Ancient, Free and Accepted Masons of Nova Scotia [1915], at 37; [1916], at 84-87.
83. Letter, J. R. Johnston to A. D. McKerrow, 18 Nov. 1915 [sic: 1914]. The colophon to this office copy, which was found interleaved in the minute-book of the Lodge, supra, note 79, provides a clue as to the identity of James R. Johnston’s legal secretary: “BR” probably stood for Miss Blanche Robinson, a stenographer at the Probate Court.
85. Ibid.
join hands with that French gang of pirates is too shocking." Johnston’s passionate conviction is easy enough to understand when one considers that W. S. Fielding, the Liberal politician and doctrinaire segregationist who, as Premier and MLA for Halifax County, bore the heaviest responsibility for perpetuating the arbitrarily-imposed ‘color line’ in Halifax city schools sixteen years before, had subsequently become Minister of Finance in the Laurier cabinet.

Throughout his brief public career, Johnston was a prominent and enthusiastic worker on behalf of the Conservative Party. An obituarist described him as “the Conservative leader of his people.” The centre of Johnston’s activity was the A. B. C. Conservative Club, Ward 6—a founded in 1908 and incorporated by Act of the Legislature in 1909. The club’s acronym signified the electoral machine of Adam Brown Crosby, formerly alderman, mayor and failed provincial candidate, who at the federal election of 1908 joined party leader Robert Borden in ejecting Halifax’s two Liberal MPs. Crosby himself was rejected by the voters in 1911, but the organization which he had built up continued to flourish. Johnston was serving as a member of the executive committee of the Club at the time of his death. Had he lived but a few weeks longer, Johnston might himself have embarked on a career in municipal politics. There was talk of his standing as aldermanic candidate for Ward 6, wherein he resided and which included Africville, in April’s civic election. His victory would have been a realistic possibility—Ward 6 was one of only three wards in which there were contested elections, and only four aldermen of the outgoing Council retained their seats—in which case the Black community of Halifax would not have had to wait nearly sixty years before placing one of their own on the City Council.

Consideration of Johnston’s personal life has been thus far postponed, because it was domestic tensions which culminated in his murder. What evidence there is suggests that Johnston was amorous in his attitude.

87. Halifax fell fifteen votes short of returning two Conservatives, whereas Annapolis gave the Liberal candidate a 150-vote majority over the incumbent Conservative: Canadian Parliamentary Guide [1901] at 130, 147. Conservative Party fortunes were to reach their nadir at the federal election of 1904, when not even Johnston’s campaigning was sufficient to retain the Black vote in Halifax. The Liberals managed to carry Johnston’s own Ward 5, where nearly fifty per cent of the city’s Black population resided: Canada. Sessional Papers, vol. 39 [1905], fasc. 14, paper no. 37 ("Return of the Tenth General Election ..."), at 271-72.
88. DeCosta, supra, note 27.
89. Halifax Herald, 29 Apr. 1915, p. 1. It is unlikely that Johnston would have declined the invitation to stand, as his father had done nearly twenty years before: Fingard, supra, note 7, at 15. One of the new aldermen elected in 1915 to represent Ward 6 was William I. Hubley, who had been an incorporator of the A. B. C. Club.
towards women, and that his thirteen-year marriage was unhappy. His quaint and rather droll philosophy of married love is nicely summed up in a letter to Rev. States of December 1900:

Bah! but I wouldn’t think of marrying for money; would you? It is so much nicer sitting by a fireplace in a room which serves as kitchen, pantry, dining room, parlor, bedroom and cellar all in one with one chair between the two of you and both eating out of one plate first because there are no more plates and second because if there were there wouldn’t be anything to put on them. That is love: now isn’t marrying for money foolish alongside of that? But a contemplation of this subject is I guess as disinteresting to you as it is to me: both of us prefer single blessedness to double cussedness.  

Johnston’s condition of blissful bachelorhood persisted until 1902, by which time apparently his law practice was well enough established to enable him to support a wife. His bride was the twenty-two-year-old daughter of “mechanic” George Allen, Janie [or Jenny] May, whose conspicuous, light-skinned beauty is still recollected by family members who knew her. The wedding took place on 26 February at the bride’s parents’ home in Windsor Junction, and was performed by Rev. States. It was very much a family affair—the witnesses were the bride’s sister, Bessie, and her fiancé George Jones; the bride’s younger brother, Harry, aged thirteen, also attended. Johnston, who had a volatile temper, was not always to see eye-to-eye with his wife and in-laws. Under the pressure of cross-examination by counsel for the defence at her brother’s second trial for murder, Johnston’s widow recalled that he “would have his own way about things and if we got into an argument I had to be careful what I said.” Perhaps there would have been less scope for disaffection between husband and wife had not the only child of the marriage died in infancy.

In 1908 Mr. and Mrs. Johnston moved to their final place of residence, 25 Macara Street—now 5559—on the northeast corner of Macara and Isleville. The property had been obtained through the good offices of Johnston’s fellow barrister, George Ritchie, who was settling the estate of the previous owner, his late law partner John Menger. It was located in a lower middle-class white neighbourhood, just a block away from

90. Supra, note 86.
91. RG 32 “M” (HX), 1902, file 70, PANS.
92. Unidentified Halifax newspaper clipping, supra, note 55; perhaps Acadian Recorder, 26 Feb. 1902, p. 3.
93. RG 13, vol. 1526, file CC 208 (capital case file of Harry Allen), NA.
94. George Henry [Harry] Stanton Johnston was born 2 Feb. 1911 and died 15 Feb. 1912 of meningitis: Acadian Recorder (Halifax), 15 Feb. 1912, p. 3. The significance of the child’s forenames has yet to be determined.
Stadacona, where Johnston frequently appeared as an advocate. Towards the end of October 1914, the couple were joined by Mrs. Johnston’s younger brother, Harry, who boarded with them while working for a few months at the Exhibition Grounds, where Johnston had used his considerable influence in military circles to procure jobs both for Harry and for his brother George Burton (“Bert”).

A quarryman and foundry furnaceman by trade, Harry Allen was also the unlicensed owner of a .22-calibre, self-cocking revolver which he kept loaded most of the time. Mr. and Mrs. Johnston returned home about the first week of February 1915 after “an extended pleasure trip” to Washington, Philadelphia and Baltimore. During the couple’s absence, Harry Allen had invited his girlfriend, Inez Hagan, to call on him at home. These unchaperoned visits were strongly disapproved of by Mrs. Johnston, when she found out about them, and occasioned a sharp exchange between brother and sister, in which Johnston had to intervene on his wife’s behalf. The situation was complicated by the fact that Miss Hagan had terminated a relationship with one of Johnston’s brothers in order to take up with Harry Allen. Johnston retaliated by having Miss Hagan sent home to Liverpool, from where she wrote plaintive love letters to Harry Allen, three of which were found on him when he was arrested, and were later submitted as exhibit evidence at the preliminary hearing and subsequent trials.

The dispute over Miss Hagan, and his having been laid off from the Exhibition Grounds two days before, were probably the reasons why Harry Allen packed his bags, intending to take the train back home to Windsor Junction on Tuesday, 2 March. For some reason, however, he delayed his departure. On the morning of the murder he put the loaded revolver in his pocket, together with a few cartridges, then left the house and did not come back to stay until about five in the afternoon. Johnston himself arrived about six. On his way home from the office he had met Aubrey McKerrow, who later described him as being in high spirits, and invited McKerrow to the lecture which he was to give the following evening at Cornwallis Street Baptist Church concerning his recent visit to the United States. Mrs. Johnston herself, under re-examination by the crown prosecutor at the second trial, also agreed that her husband was in good humour that night. Once inside the house, Johnston sat down at the

96. Unless otherwise indicated, what follows is a conflation of testimony given at Harry Allen’s preliminary hearing and two subsequent trials, with contemporary Halifax newspaper accounts: supra, note 93; RG 39 “C” (HX), box 700, file R-254 (R. v. Allen); RG 39 “C” (HX), box 589, file B-1058 (R. v. Allen); RG 39 “A”, vol. 51 (R. v. Harry Allen), PANS.

97. The letters were dated Liverpool, 22 and 28 Feb. and 1 Mar. 1915; the last was postmarked Halifax.
The "Colored Barrister" table reading the *Acadian Recorder* and playing solitaire, while his wife prepared the evening meal—"tea" or "supper" as it was alternately called in working-class households. The meal passed off without incident, Harry Allen leaving the table first while Johnston chatted to his wife about his day's work at the office. Their conversation was interrupted by the doorbell announcing the arrival of clients on business. Johnston went out to meet them and spoke to them in the hall. Their identities are not known—probably only Johnston himself knew who they were—and they did not voluntarily come forward later. The police did not think to read the name on the summons which was afterwards found lying on the dining-room table, together with the playing-cards and the evening paper half torn in two. While Johnston was seated on the hall rack talking to his clients, his wife's sister and sister-in-law, respectively, Bessie Jones and Emma Allen, arrived for a visit. Johnston let them in and they went through to the kitchen at the back of the house, where Mrs. Johnston and her brother were. Johnston himself, meanwhile, the other visitors having left, returned to the dining-room. Allen, who had been sitting in the kitchen, went upstairs when the two women arrived, but then came back downstairs, allegedly to get his pipe. He went through the kitchen into the dining-room to which Johnston had returned. Nothing further was heard until the report of two shots in quick succession and the voice of Johnston exclaiming, "My God, Harry, don't shoot me"—or words to that effect. It is not clear whether seconds or minutes elapsed between when Allen entered the room and when the shots were fired. Although Johnston was sitting at the head of the dining-room table, diagonally across from the kitchen door through which Harry Allen entered the room, it does seem probable that he was caught off-guard and virtually ambushed, while immersed in his newspaper.

What follows is a reconstruction based on the transcripts of Harry Allen's evidence given at his first trial, in March, and the second, in October; he did not testify at the preliminary hearing, so where the two reports conflict, the first in order of time has been preferred. Allen's testimony is crucial because the perpetrator of the crime was also the only surviving eye-witness. Allen had a bottle of rum in his bedroom, and had been drinking considerably that day and the day before. When he entered the dining-room, where he clearly was neither expected nor welcome,

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98. *Supra*, note 96. The original typewritten transcript of testimony given at the first trial has been lost; it was ordered printed for use at the appeal, nevertheless, and has survived in that form. The second trial transcript went to Ottawa in support of the recommendation for executive clemency, and now forms part of Harry Allen's capital case file in the Department of Justice fonds at the National Archives (*supra*, note 93).
Johnston stuck out his tongue at him. Allen replied by thumbing his nose, at which Johnston exclaimed, “Is that so?”; then sprang up and came at his brother-in-law with a chair. Allen fired two shots and then two more—one missed its target completely; three of them struck Johnston in the head. Although perhaps not yet mortally wounded, Johnston was bleeding profusely; copious bloodstains were later found in the dining-room and along the route which he followed pursuing his assailant out of the house. Allen rather improbably testified that Johnston had somehow got hold of the gun and was pointing it at him. “You started this,” Johnston was alleged to have said as they were coming out of the house, “and by God I will end it.” As they grappled for control of the weapon, moving eastward down the street towards the front steps of Number 23 [now 5557], a short distance away, Johnston was apparently holding his own until Allen managed to throw him down and fire a shot full in his face. The revolver, in order to have inflicted this mortal wound, a large wound in the mouth, must have been fired at point-blank range, almost touching the victim’s lips—if not actually shoved into his mouth. The shot which struck him, moreover, was fired at such close range that Johnston sustained powder burns. He died almost instantly of trauma, due to compound fracture of the skull and contusions and laceration of the brain. Not realizing that he was already dead, Harry Allen had his hands around Johnston’s throat trying to strangle him, until he was forcibly separated from the corpse by a neighbour whom he then punched. Allen voluntarily stopped the fight himself, however, and went briefly back into the house before leaving the scene of the crime. He took the fifteen-minute walk to Richmond Station, where he intended to catch the 8:40 express to Windsor Junction. His revolver was left behind, lying in a pool of blood near Johnston’s head; five of the seven chambers were empty.

When the first two shots were fired, the women ran out of the house; Mrs. Johnston, whose first thought had been that Harry was shooting J. R., went into Number 23 alongside and the door was shut and locked behind her. She nevertheless heard her husband cry, “Jen, Jen, don’t leave me” [or, “My God, Jennie, save me”]. The police and medical assistance were telephoned for. By the time Dr. James R. Corston arrived, shortly after 7:30, a crowd had gathered. Having satisfied himself that Johnston was dead, Corston went to collect the Medical Examiner, Dr. William D. Finn. Dr. Finn knew Johnston well; his younger brother, Robert, then MLA for Halifax County, also belonged to the Dalhousie Law School graduating class of 1898. It was Dr. Finn to whom Harry Allen gave himself up when, for reasons which were not clarified at either trial, he returned to the scene of the crime. He was handed over to the City Detective, Frank Hanrahan, who had arrived in the meantime, and was
arrested, taken to the police station and charged. Dr. Finn supervised the removal of the body to Snow’s Funeral Home, where he performed an autopsy later that night.\textsuperscript{99} Under the circumstances, Dr. Finn had no alternative but to order a magisterial inquiry. Harry Allen was arraigned in the police court before Stipendiary Magistrate George H. Fielding the following morning, and, at the request of the crown prosecutor, remanded for a preliminary hearing.

The murder of Lawyer Johnston was front-page news in the Halifax papers; even the European war had to make way for it.\textsuperscript{100} The Nova Scotia Barristers’ Society met in special session on Friday, 5 March, to pass a resolution of appreciation and condolence. It was moved by Mr. Justice Benjamin Russell of the Supreme Court, in whose firm Johnston had articulated, and seconded by William Alexander Henry, K.C. The latter gave an “elegant address” which was rendered verbatim in Saturday morning’s \textit{Herald}, as giving a “correct estimate of the deceased” [see Appendix]. Tributes were also offered by Crown Prosecutor Alfred G. Morrison, George Ritchie and R. E. Finn, MLA. It was further resolved that members of the Society attend the funeral in a body and wear the customary mourning for one month.\textsuperscript{101}

Before the preliminary hearing commenced, on Monday, 8 March, Mrs. Johnston retained James Terrell on behalf of her brother, who had been unrepresented at his arraignment. Terrell, an English solicitor of some ten years’ standing when he was admitted to the bar of Nova Scotia in 1904 and who was thus junior to Johnston in precedence, was a commercial law practitioner who had recently begun to specialize in criminal law and civil jury actions.\textsuperscript{102} The two barristers were keen professional rivals in the field of military law, especially after the outbreak of war in August 1914, when Terrell was frequently engaged as counsel in courts martial. That Terrell had been envious of Johnston’s success, and was invincibly prejudiced against his memory, is apparent from a letter which he wrote after Allen’s second trial and conviction:

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\textit{Morning Chronicle} (Halifax), 3 Jan. 1921, p. 2.
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\textsuperscript{99} RG 41 “D” box 82, files 1419, 1420, PANS.
\textsuperscript{100} If \textit{R. v. Murphy} of the previous year is any guide, then the most sophisticated and graphic coverage was given in the \textit{Daily Echo}. It speaks volumes that Rev. States’s scrapbook cuttings (\textit{supra}, note 55) on the subject were taken chiefly from that newspaper, which even featured an extremely rare contemporary photograph of Mrs. Johnston. It is most regrettable, therefore, that virtually no issues of the \textit{Echo} for 1915 are extant either in the original or in microform.
\textsuperscript{101} Halifax Herald, 6 Mar. 1915, p. 2.
\textsuperscript{102} Morning Chronicle (Halifax), 3 Jan. 1921, p. 2.
The deceased was an exceedingly popular man in Halifax and more especially because I understand, he was the only colored Barrister in Canada.\textsuperscript{103} Until after his decease, nothing was known of his private life, but upon investigation it appeared that in private he was of a very violent disposition and used to strike and swear at his wife, the prisoner's sister, in a most heartless and disagreeable manner. At the time he was killed the papers here were continually eulogising the deceased and referring to the accused as 'the self-confessed murderer'.\textsuperscript{104}

Clearly the defence of the accused was to be based on the prosecution of the victim's character—a variation on the hoary theme of blaming the victim of the crime in order to exculpate the perpetrator of it.

The inquiry proper began on 11 March and continued for less than two hours, an unusually short length of time where such a serious crime was charged.\textsuperscript{105} The witnesses included Dr. Finn; Frederick W. Christie, a civil engineer and surveyor who visited 25 Macara Street two days after the murder and made a survey and detailed plan of the house;\textsuperscript{106} Janie Johnston; Emma Allen; Bessie Jones; Edward Toone, the neighbour who pulled Harry Allen away from Johnston's body; Messrs. Conrad, McGillivray and Murray, all of whom lived in the vicinity and had seen or heard something on the evening of 3 March; and Frank Hanrahan, the City Detective. Dr. Corston did not testify, nor was Miss Hagan summoned from Liverpool, although her three love letters to Harry Allen were submitted in evidence. The large crowd which had assembled were disappointed when the order to clear the court was given shortly before Mrs. Johnston took the witness stand. The crown prosecutor informed the court that she had requested that her testimony be given \textit{in camera}. Counsel for the prisoner did not object, so the court-room was cleared. After the crown had presented its evidence, James Terrell on behalf of the prisoner said they had nothing to say and that they would reserve the defence. The case was adjourned until the 13th, when Stipendiary Fielding formally committed the prisoner for trial.

\textsuperscript{103} This was not in fact the case. Delos Rogest Davis, K.C., who died the month after Johnston, had been succeeded in practice by his son Frederick Homer Alphonso Davis (1871-1926), who was called to the bar of Ontario a few months before Johnston in Nova Scotia. It would be instructive to compare the career of Davis fils, who eventually became town solicitor of Amherstburg, Ontario, with that of Johnston.

\textsuperscript{104} Terrell to Minister of Justice, 13 Nov. 1915: \textit{supra}, note 93.

\textsuperscript{105} The transcript of testimony given at the preliminary hearing is in the Supreme Court criminal case file ('R' series): \textit{supra}, note 96.

\textsuperscript{106} The plan, signed and dated 10 Mar. 1915, was drawn to the large scale of 0.25 inch equals 1.0 foot. This document, which is all the more important in view of the fact that the photographic evidence appears not to have survived, is in the Supreme Court appeal file ('B' series): \textit{supra}, note 96. The building itself is still standing, although much altered interiorly. It today houses the office of 'B I W Canada Inc. Consulting Services.'
The spring criminal session of the Supreme Court opened on 16 March, Mr. Justice James Wilberforce Longley, the long-time former Liberal attorney-general, presiding. In his address to the Grand Jury the following day, the judge stated that

he had another case to present to the Grand Jury, which was of grave and important interest. At the last term of the court and many previous ones, James R. Johnston, barrister, was to be seen and heard in several important cases.

This term, however, he was not present, as he had been murdered by one Harry Allen. After going briefly over the depositions, His Lordship remarked that it was lamentable that such an appalling crime had been committed in Halifax. There was no question about finding a true bill, as the accused admits that he shot Mr. Johnston. The case was simply one of murder, pure and simple, and he directed the jury to find an indictment for that crime.

Judge Longley’s deeply-felt but ill-advised remarks were extremely prejudicial to the accused. Little wonder that James Terrell would afterwards complain to the federal Minister of Justice that his client did not have a fair trial. The Grand Jury returned an indictment for murder, as instructed, and Harry Allen was arraigned in court on 19 March. The strategy of the defence was suggested by his plea of guilty on the grounds of self-defence, in other words justifiable homicide or manslaughter, which the court ruled was a plea of not guilty of murder. The plea was curious, to say the least, a conditional guilty plea being unknown to criminal law.

The trial commenced on 25 March, three weeks and one day after Allen had shot and killed his brother-in-law, and lasted but one day. Having begun about 10:00 am and ended at 4:20 pm, notwithstanding a seventy-five-minute adjournment for lunch, it was one of the quickest murder trials ever to have taken place in Nova Scotia. Only witnesses and officers were allowed to enter the court-room. The crown witnesses were the same ten who had given evidence at the preliminary hearing, the eleventh being Dr. Corston. The only witness for the defence was the accused himself. Terrell’s cross-examination of Mrs. Johnston, however, effectively transformed her from a witness for the prosecution into a witness for the defence. Terrell’s strategy was to establish the credibility of Allen’s defence of non-culpable homicide by demonstrating that Johnston, in his relations with his wife, had been guilty of the sort of behaviour which might have suddenly or unreasonably provoked his brother-in-law. To achieve his purpose, Terrell had to get Mrs. Johnston to testify under oath.

that her late husband had physically abused her. Counsel having thus led the witness, the evidence obtained was gratuitous and should have been objected to by the crown; it was not. It should have been ruled inadmissible by the judge; it was not. The victim was not on trial, but the damage done to Johnston’s reputation would be incalculable. The effects of this exercise in posthumous character assassination reverberate to this day.

Corroborative to Terrell’s cross-examination of Mrs. Johnston, in which he put into her mouth the supposition that her brother did not like her husband striking her, and led her to admit that she used to try to conceal the fact of such abuse from her brother, was his direct examination of the accused as the sole witness for the defence. Despite a vigorous cross-examination by crown prosecutor Alfred G. Morrison, Harry Allen’s evidence, when compounded with that of his sister, succeeded in making credible the case for self-defence.

In his closing address, counsel for the prisoner played the race card by alleging that “Colored people as a rule are ... very hot and quick tempered”—which tells us nothing about the degree of culpability in the killing of Johnston, but much about the psychopathology of James Terrell. “You all knew Johnston as a hard, clean fighter as a lawyer,” said Terrell. “But he had a great fault—an ungentlemanly temper.” For his part, the crown prosecutor asked the jury to discredit the self-defence theory. “I submit to you,” he said of Allen’s version of events, “no such thing took place as the prisoner said.” If the defendant had intended only to maim and not to kill, the shots would not all have struck the victim’s head. In his charge to the jury, Judge Longley stated that all the evidence pointed in the direction of the verdict of murder. He too criticized the self-defence theory, and cast doubt on the credibility of Mrs. Johnston as a trumped-up character witness against her late husband. Most significantly for future developments, however, although the judge distinguished among the three possible verdicts which the jury might bring in, namely murder, manslaughter and acquittal, he neglected satisfactorily to explain what would reduce culpable homicide from murder to manslaughter. In this respect, he was quite wrong to state in his charge to the jury, that “[t]here is scarcely any law in this case at all.” During the lunchtime adjournment, moreover, one of the jurymen inadvertently committed a serious breach of sequestration by going off on his own to take lunch at home. Although he was quickly fetched back by a deputy sheriff, the damage had already been done. The jury took less than twenty minutes before returning a verdict of guilty of wilful murder against Harry Allen. Afterwards, however, rumours of the temporary absence of one of the jurors began to circulate through the Court House and eventually came to the ears of counsel for the defence.
On Monday, 29 March, when proceedings resumed, the crown prosecutor moved for judgment against the defendant while James Terrell moved for reservation of the crown case—in other words, a reference to the full bench of the Supreme Court, sitting as a Court for Consideration of Crown Cases Reserved. Judge Longley allowed the motion on grounds that the unauthorized absence of a jurymen might invalidate the conviction, but refusing on the other two grounds alleged, namely misdirection and non-direction by the trial judge. Terrell’s contention was that the judge had not properly instructed the jury either as to what would constitute the defence of self-defence against the charge of murder, or as to what would constitute manslaughter and reduce the former to the latter. Not to be outdone by Judge Longley, Terrell appealed from the refusal of the trial judge to reserve the crown case on those grounds which, if accepted, would result in Harry Allen’s conviction for wilful murder being quashed and a new trial ordered.

The appeal was argued before the Supreme Court en banc on 9 April, James Terrell appearing for the appellant and Stuart Jenks, the deputy attorney-general, assisted by crown prosecutor Morrison, for the crown. The appeal was allowed, and the crown case reserved as originally applied for. Two weeks later, the appeal bench delivered its judgment that Harry Allen must have a new trial, because “the question of provocation producing hot blood should have been left to the jury; and the circumstances which in law reduce murder to manslaughter should have been fully explained to the Jury in this connection, but were not.” The ruling was based on Section 261 of the Criminal Code, according to which “Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden

109. This had been a device of English criminal procedure from 1848 to 1907, when it was rendered obsolete by the creation of the Court of Criminal Appeal, but which became part of Canadian criminal procedure under the provisions of the Criminal Code (§ 1014). “The trial judge was empowered to ‘state a case’ for the opinion of [the] court. He could not be compelled to do so, and only a question of law could be raised. If the court considered that the point had been wrongly decided at the trial, the conviction would be quashed”: Black’s Law Dictionary, 6th ed. (1990), at 354. It lasted until 1923, when the Criminal Code was amended to introduce a different system of appeal and procedure modelled on the British Criminal Appeal Act, 1907, 7 Edw. 7, c. 23 (U.K.); see also (1848), 11 & 12 Vic., c. 78 and Stats. Can., (1923), 13 & 14 Geo. 5, c. 41, s. 9.

110. A similar situation had arisen the previous year when counsel for the defence appealed—unsuccessfully—against the trial judge’s refusal to grant the application for crown case reserved: infra, note 141.

111. RG 39 “A” vol. 51, supra, note 96.

112. The original text of the decision is in file B-1058: supra, note 96.
provocation." A mistrial having thus been declared, the prisoner was remanded until the next criminal sittings of the Supreme Court.

The Johnston murder case was sub judice while an important change was taking place on the bench of the Supreme Court. On 19 April Wallace Graham, who had been Judge in Equity since 1889, succeeded Sir Charles James Townshend as Chief Justice of Nova Scotia. Graham, who was reputedly the best lawyer in eastern Canada, not only presided at the hearing of Allen’s appeal, but also set himself down to preside at the October criminal sittings of the Supreme Court. The second trial of Harry Allen opened on 6 October and lasted for two days. Before it commenced, Chief Justice Graham, who must have been anticipating disagreement over the verdict, warned the jury that they might have to stay together all night. The crown witnesses were the same, except for the addition of the two uniformed police officers who had been in charge of the house, and the photographer C. H. Climo, who the day following the murder had taken photographs of the front of the Williamson house next door, and the dining-room, hall and kitchen of the Johnston house; these photos were submitted as exhibit evidence and shown to the other crown witnesses to corroborate their testimony. The prisoner was again the sole witness for the defence. Engineer Christie was recalled by the prosecution in rebuttal on the second and final day of the trial, but the report of his testimony is not extant.

Mrs. Johnston’s tale of spousal abuse, which had conspicuously failed to move either the judge or the jury at the first trial, had so grown with the retelling under cross-examination by James Terrell that on one occasion at least, question and answer were ordered struck out of the recorded evidence, while on another the prosecution objected to the question, “Did your husband ever threaten you?” only to have the witness answer regardless, “Yes, he has [sic] threatened to kill me several times.” The crown prosecutor re-examined Mrs. Johnston in an effort to show the Johnston marriage to the jury in a less unfavourable light—in effect admitting that the defence stratagem of alleged spousal abuse might persuade the jury to allow the accused the benefit of the doubt. In his summation, counsel for the defence told the jury that they “should disregard entirely the statements as to Johnston’s very creditable reputation in public, but they should carefully consider his private life at home.” The crown prosecutor, on the other hand, deplored that the defence had

115. Unlike the first trial, the official transcript is extant: supra, note 93.
undertaken “to cast a blemish on the deceased’s private life with his wife.” This was to be a case where the defence would ultimately prevail by stigmatizing the victim as the principal author of his own misfortune. In his charge to the jury, Chief Justice Graham was at pains not to commit the same error of omission as had the original trial judge. He dwelt at length on the defence case, even quoting verbatim pertinent sections of the Criminal Code. Alluding to the apparent absence of motive to commit murder, the chief justice stated that the crown was met with the difficulty that if there was no provocation, “why did this man use his revolver? I do not think that the Crown will go so far as to say that Allen, without any motive, went there and shot Johnston in cold blood”—to which one might rejoin that the judge was begging the central question of fact which it was up to the jury to decide. As it happened, the jury deliberated for about an hour and a half before returning a verdict of guilty of murder. Two weeks later Harry Allen was sentenced to death, the execution to be carried out at the County Jail in Halifax on 12 January 1916.

On the same day he passed sentence of death on Harry Allen, Chief Justice Graham also wrote to the Secretary of State, recommending that the sentence be reduced to life imprisonment. He expressed the opinion that if he had tried such a case without a jury, he would probably have convicted the accused of manslaughter only, mainly on the ground of provoked. He further implied that Johnston’s popularity had effectively denied Allen a fair trial, and stated that “on the whole there was no good reason for disbelieving the prisoner's testimony, though unsupported, as to the existence of a quarrel which led to the shooting.” Chief Justice Graham concluded his argument for clemency by stating that “if there were degrees of murder in Canada [as there are now], this would not come under the category of murder in the first degree.” In other words, the killing of Johnston was neither planned nor deliberate; it was murder in the second degree. The letter was referred to the consideration of the Minister of Justice, who had the power to recommend a reduction of sentence to the Governor-General-in-Council.

James Terrell, for his part, was also busy. He had been instructed on behalf of his client to make a formal application for commutation of the death sentence, and offered to travel to Ottawa to put Harry Allen’s case to the Minister in person. The offer was politely declined, as the record of the trial had been supplied by Chief Justice Graham in support of his own recommendation, and the Minister therefore already had all the necessary documentation. Terrell inveigled some members of the jury, including the foreman, into petitioning the Governor-General to reduce the sentence. Having implicitly shifted responsibility for the verdict of wilful murder onto the shoulders of the trial judge, the petitioners further
stated their feeling “that there was something at the back of the occurrence which did not come out at the trial, and more especially having regard to the evidence of Mrs. Johnston, and to certain questions which were asked in cross-examination, but which the learned Judge who tried the case did not permit to be answered.” Terrell’s influence so pervades this monstrous fabrication that he might have ghosted the text himself. Terrell also suborned the ministers of the two churches attended by most of the Black population of Halifax, namely, Cornwallis Street Baptist Church and Zion Gottingen Street Methodist Episcopal Church, into writing letters in support of his application for Allen’s reprieve. The respective pastors, Rev. Moses B. Puryear and Rev. Joseph P. Stephens—both Americans—emphasized that they were well placed to know the mind of the Black community and to speak on its behalf. They dwelt on the ‘respectability’ of Allen’s family and repeated the hear say and malicious gossip about provocation not coming out at the trial. These letters would have carried all the more weight in view of the fact that their authors had known Lawyer Johnston well. The situation in which the pastor of the African Baptist Church, Rev. Puryear, found himself was especially delicate, because both Johnston and Allen had been members of his congregation. “They were both respectable young men,” wrote Rev. Puryear, “and Allen’s parents who are both living, are of exceedingly good standing.” If the clergymen’s letters are as accurate a reflection of public opinion within the Black community as they are of James Terrell’s views, then attitudes towards the convicted and condemned murderer must have altered significantly between his committing the crime and the conclusion of his second trial. It is impossible to avoid drawing the conclusion that Rev. Puryear and Rev. Stephens were willing to cooperate with counsel for the defence in trying to save Harry Allen from the gallows—for the sake of what they perceived to be the greater good of the Black community as a whole. Johnston was dead; he could not be resurrected by the judicial murder of his killer. The Afro-Nova Scotian community of Halifax thus closed ranks in the attempt to spare the murderer’s life. Unfortunately, however, the plan of campaign involved damning Johnston’s memory with innuendo. The means to an end became the end in itself: Johnston had successfully defended others, such as Murphy, with less creditable reputations than his own; he could not defend his memory against accusers who not only dishonoured and libelled the dead, but also obtained summary conviction.

The remainder of the story can be told in brief sketches of the principal *dramatis personae*. On 31 December 1915, twelve days before he was scheduled to be hanged, Harry Allen’s sentence was commuted to life imprisonment in Dorchester Penitentiary. However welcome the news of
Allen’s reprieve may have been to James Terrell and his collaborators in the Black community, it was quite differently received among disinterested whites. On 4 January 1916, the day after news of the commutation reached Halifax, Charles J. Gibson, a local manufacturers’ agent, wrote to the Chief Justice of Canada, who had not been involved in the proceedings, as follows:

I cannot understand your decision in the Allen case. I am not an interested party at all but everyone knows he committed a foul brutal murder as one shot would have been sufficient to maim his victim but he kept on shooting firing several shots into an unarmed man. What is Canada coming to? Another U.S., where law is a joke.117

Gibson’s letter was replied to by a departmental official writing on behalf of the Deputy Minister of Justice, who went so far as to quote verbatim the confidential opinion of Chief Justice Graham, the presiding judge, “that the public interest would not be prejudiced by reducing [Allen’s] punishment to imprisonment for life.” Harry Allen served about fourteen years of his life sentence. He applied unsuccessfully for a ticket of leave first in 1924, and then regularly thereafter, until he was finally paroled in 1929. He went to work for the Salvation Army in Montreal and Toronto, where—alcoholic and violent—he died in July 1935, leaving a wife and ten-week-old infant son.118 Allen’s former girl-friend, Inez Hagan, died unmarried in Massachusetts in December 1916.119 For his efforts on behalf of Harry Allen, James Terrell was appointed King’s Counsel in June 1916.120 He was killed in an automobile accident in Bedford on New Year’s Day, 1921.121

Janie Johnston lived in the house on Macara Street for another ten years, vacating it temporarily in 1918 while it was undergoing reconstruction as a result of damage sustained during the Explosion. Lawyer Johnston had died intestate and for all practical purposes insolvent, and her administration of the estate brought Mrs. Johnston into conflict with her in-laws.122 The untimely death of Lawyer Johnston, for which no one, least of all himself, was in the smallest degree prepared, was a centrifugal force which threatened to tear the family apart. Turning for legal advice and representation to W. J. O’Hearn, who of all the Halifax barristers had probably been closest to her late husband, Mrs. Johnston in

117. RG 13, vol. 1526, file CC 208, supra, note 93.
118. Ibid.
119. Liverpool Advance and Western Counties’ Advocate (Liverpool), 3 Jan. 1917, p. 3.
120. Royal Gazette (Halifax), Vol. 126 No. 15 (11 Apr. 1917), at 238.
121. Supra, note 102, at 1.
July 1915 brought an action in the Supreme Court against his mother and two eldest surviving brothers, in order to compel the sale of his real property assets so that she might make good his debts.\textsuperscript{123} Lawyer Johnston’s mother Elizabeth Ann and brother Clarence Harvey, within days of his death, obtained supersessory letters of administration for the estate of the paterfamilias, William Johnston—by then nearly five years dead—which Lawyer Johnston, acting as sole administrator, had left unsettled and to which he was personally indebted. Nor was his father’s the only estate for which he had been acting as sole administrator, and to which he was indebted. Judith Fingard has identified Henry Thomas Johnston, “a carpenter from Bermuda, [who] supervised white men as a foreman employed for nineteen years by J. W. Rhuland, a white building contractor, and did well enough to enjoy a period of retirement before he died in 1911 worth $4,000 in bank savings.”\textsuperscript{124} It was Carpenter Johnston’s money, loaned in the shape of a mortgage, which enabled Mrs. Johnston to purchase the Macara Street property in 1908. Henry T. Johnston was an elderly and childless “cousin,” who after the death of his wife in 1907 returned from Yarmouth to Halifax and boarded with the Johnstons at 25 Macara Street, until his own death four years later. Like William Johnston eight months previously, Henry T. Johnston died intestate.\textsuperscript{125} Lawyer Johnston petitioned for and was granted sole administration of the estate, to which he was also substantially indebted, but it too was left unsettled at his death. The assets of Lawyer Johnston’s own estate, which included a half-interest in the house and shop at 131 Gottingen Street, formerly belonging to his paternal grandmother Clarissa, were barely sufficient to cover his debts. He was also liable for half the rental income from properties formerly owned by his father, which had been conferred jointly on him and his brother William Robinson. The confused state of her late husband’s finances placed Mrs. Johnston in an invidious position. As the registered owner of 25 Macara Street, which was mortgaged to the estate of Henry T. Johnston, she was being threatened with an action of foreclosure by the heirs-at-law, who were her late husband’s siblings. The Johnston family offered to forgive the debt if she would resign to them the entire assets of her late husband’s estate, and relinquish her residual interest in the as yet unclosed estate of her father-in-law. Whether this offer was accepted or refused is not clear, and there is no direct evidence

\begin{footnotes}
\item[123] Johnston v. Johnston et al.: RG 39 “C” (HX), box 592, file B-1285, PANS.
\item[124] Fingard, \textit{supra}, note 7, at 19.
\end{footnotes}
in the probate file to indicate that Lawyer Johnston’s estate was ever formally closed; the latest document in the file bears the date 9 April 1919. Ten years later, Mrs. Johnston conveyed the Macara Street property to Joseph E. Griffith, who had acted as solicitor for the Johnston family in 1919, when they threatened to bring a foreclosure action against her to compel distribution of the assets of Henry T. Johnston’s estate. This must have been the mutually agreed, final settlement of Lawyer Johnston’s heavily encumbered estate. Janie Johnston, who did not remarry, left Halifax about 1938 and returned to Windsor Junction, where she lived out the remaining twenty years of her life. The dowager Mrs. Johnston remarried in 1916 but was again widowed in 1927. She resided in the old family home at 1 Gerrish Lane until her death in 1939. The third and longest surviving of James R. Johnston’s four brothers, Clarence Harvey, died as recently as 1973.

James R. Johnston, whom the coroner described as being a “well developed robust healthy man,” might have lived and laboured for another forty years. As it was, his premature death left the Black community temporarily without indigenous legal counsel. James Terrell, who had come to prominence as a result of his herculean labours on behalf of Harry Allen, was anxious to replace Johnston as the lawyer for Blacks. He went so far as to have his card placed first in the “legal directory” of The Atlantic Advocate, the official organ of the Atlantic Association [for the Advancement of Coloured People?] and the

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127. Unidentified Halifax newspaper clipping: courtesy Noel H. Johnston [grandson].
128. Eight days after his brother’s murder, and no doubt encouraged by the telegram of condolence which had been received from the Prime Minister, Clarence, who was then a station porter on the Intercolonial Railway, had written to Sir Robert Borden soliciting a post in the federal public service. The original letter is not known to be extant, but the reply received from the Prime Minister has survived: Pachai, supra, note 4, at 91. Mrs. Mabel Johnston, widow of the second eldest brother, William Robinson, is today perhaps the only living contemporary of Lawyer Johnston, whom she remembers well. I am grateful to Lindley V. Johnston for granting me the inestimable privilege of interviewing his mother, a centenarian, on Easter Sunday 1991.
129. The extent to which James Terrell was able to ingratiate himself with the Black population of Halifax is evident from the fact that a relative of Elizabeth Ann [formerly Mrs. William] Johnston’s second husband, Joseph C. David, was called “Terrell David.”
fountainhead of Afro-Nova Scotian journalism. Terrell was without serious competition until 1917, when Joseph Eaglan Griffith, who held the degrees of LL.B. and B.C.L. from New York University and McGill, respectively, was admitted to the bar. Griffith, who had emigrated from Charlestown, Nevis, British West Indies, to the United States, was almost certainly acquainted with Lawyer Johnston—they had probably met on one of the latter’s visits to the U. S.—for he boarded at 25 Macara Street after his arrival in Halifax in late 1916. So impressed were they by his credentials that the Council of the Nova Scotia Barristers’ Society waived the normal rules, thus enabling Griffith to be admitted within four months, after a nominal period of articled clerkship. Griffith practised continuously in Halifax until his death in 1944, but did not involve himself in Black church or community affairs; even in surveys of the professional field his name is not mentioned. Like Johnston, nevertheless, he was a respected and successful practitioner, and had one celebrated murder case in which he procured the acquittal of his client through an

130. The “Atlantic Association” may have been an offshoot of the National Association for the Advancement of Colored People, founded in the United States in 1909, and in effect the forerunner of the NSAACP, founded by statutory incorporation nearly forty years later: S.N.S. (1945), 9 Geo. 6, c. 97. The first number of The Atlantic Advocate appeared in April 1915; it featured an obituary of Johnston on page 2. (I am grateful to my colleague Philip Hartling for drawing the magazine to my attention.) It seems likely that Johnston’s law practice was more or less divided, in order of descending priority, among the four firms advertising in the “legal directory” of that first issue: James Terrell, Murray & McKinnon, W. J. O’Hearne, K. C. and Covert & Pearson. The “Murray” of Murray & McKinnon was Robert Harper Murray, trustee and Secretary of the original Nova Scotia Home for Colored Children: Pachai, supra, note 4, at 75. Among the four, however, it was O’Hearne who had been closest to Johnston professionally since their law school days. O’Hearne had participated in the mock trials in the basement of Cornwallis Street Baptist Church [supra, note 39], and he and Johnston were admitted to the bar within three months of each other. O’Hearne, who was an outstanding criminal lawyer, had been appointed King’s Counsel in June 1914; he became Attorney-General in 1922 and judge of the County Court for Halifax in 1928. It was O’Hearne, moreover, whom Mrs. Johnston would retain as proctor for the administration of her late husband’s estate. O’Hearne, who must at least have been asked to do so, could no more have defended the murderer of his friend than Richard John Uniacke could have prosecuted his own son for killing his opponent in a duel: B. Cuthbertson, The Old Attorney General: A Biography of Richard John Uniacke (Halifax, 1980), at 76-77.  
131. RG 39 “C” (HX), box 604, file B-2766, PANS.  
132. McAlpine’s Halifax City Directory [1917], at 273.  
133. It would appear that Griffith had been admitted to the bar of Quebec before coming to Nova Scotia; his letterhead stationery describes him as “avocat.” This fact, which is not alluded to in his bar admission file, would help to account for his greatly accelerated admission to the bar of Nova Scotia.
eloquent address to the jury that drew praise from the bench. Griffith was followed in 1920 by Rowland Parkinson Goffe, a native Jamaican formerly of London, England, who had been admitted to Gray’s Inn in 1905. Goffe was called to the bar by Gray’s Inn in 1908, practised at the English bar for six years, and “was employed in various government departments” during and after World War I. Goffe, whose career merits further investigation, resided and practised intermittently in Halifax, where he died in 1962 in his ninetieth year.

The year following Goffe’s admission to the bar, Griffith took into his office as an articling student Frederick Allan Hamilton of Scarborough, Tobago, who graduated B.A. and LL.B from Dalhousie University and was admitted to the bar of Nova Scotia in 1923. Hamilton opened his law office on Cunard Street, near the heart of the Black community, hoping no doubt to attract the clientele which had been formerly served by Lawyer Johnston but which was then the principal constituency of Lawyers Griffith and Goffe, both of whose law offices were located downtown. The legal business of the Black community, however, was not sufficient to accommodate all three of them. Within months Hamilton had closed his office and relocated his practice to industrial Cape Breton, where there was a substantial West Indian immigrant community. He practised first in Glace Bay, then in Sydney, and was appointed King’s Counsel in 1950—only the second Afro-Canadian lawyer to be thus honoured. Lawyer Hamilton’s role as an ethnic community leader in Sydney-Glace Bay was comparable to what Johnston’s had been in Halifax. He not only founded Nova Scotia’s first Black newspaper, but also stood—unsuccessfully—for election to Sydney City Council.

As Griffith had died five years before, it was presumably to Goffe and Hamilton (who died in 1951), that Rev. W. P. Oliver was referring when, speaking in June 1949, he stated that there were two Black lawyers in Nova Scotia, both of whom came directly from the West Indies, received their education in Nova Scotia and remained here to practise—which

134. *Daily Star* (Halifax), 7 June 1944, p. 2; *R. v. Coleman* (1927), 47 C.C.C. 148 (S.C.N.S.). Griffith’s successful use of the insanity defence against a murder charge may have been the first in Nova Scotia: RG 39 “C” (HX), box 707, file R-217 (1924), PANS. The same year he defended George Coleman, moreover, Griffith was retained—unsuccessfully—by the mother of Harry Allen to obtain for him a Ticket of Leave from Dorchester Penitentiary: letter, Griffith to Minister of Justice, 6 June 1924, supra, note 93.

135. RG 39 “C” (HX), box 632, file C-1043, PANS. More would probably be known about Lawyer Goffe had the “number of letters and testimonials” as to his character and fitness, which originally formed part of the bar admission file, not been removed. (I am grateful to George Davis [infra, note 139] for pointing out Lawyer Goffe to me.)

136. RG 39 “C” (HX), box 661, file C-4790, PANS.

137. Pachai, supra, note 4, at 109.
“indicates that they [we]re not truly products of the local culture.”  

This helps to explain why comparatively recent immigrants such as Griffith and Goffe, who had taken their university degrees outside Nova Scotia and cannot be said to have come directly from the West Indies, did not assume leadership roles in the Afro-Nova Scotian community of Halifax’s north end, and why Lawyer Hamilton did so in the much newer and less well-established West Indian immigrant community of industrial Cape Breton. No less than seven West Indians graduated from Dalhousie Law School between 1900 and 1931. Most articled with Griffith; all but one were admitted to the Nova Scotia bar; none remained in the province. Of the three West Indian immigrant lawyers who came to stay, only Hamilton had come directly from the West Indies and received his education in Nova Scotia. Griffith nevertheless arrived at a time when there was no Black lawyer in the province, and was soon followed by other West Indian lawyers or law students. There would not be a second indigenous Afro-Nova Scotian graduate of Dalhousie Law School admitted to the bar until George W. R. Davis, in 1952.

While no one would seriously argue that the killing of Lawyer Johnston, unlike his posthumous fate, was the result of a conspiracy, no one could deny that it was cold-blooded. Johnston’s surviving sister-in-law remembers that Harry Allen threatened publicly to kill Johnston, and that Johnston laughed at him. Whatever ‘hot blood’ there may have been on the occasion of his death, unquestionably there was bad blood between the two men over the four months leading up to it. The apparent absence of motive, which did not impress the crown prosecutor or the jury at either trial, is problematic. It certainly planted grave doubts in the mind of Chief Justice Graham, and provided the rationale for the commutation of the death sentence. Harry Allen had nothing to gain from killing his brother-in-law, who was his benefactor, and the punishment which he meted out to Johnston was absurdly disproportionate to the alleged offence. If there was provocation, then there was also both retaliation and self-defence—not on the part of Allen, who was the armed aggressor, but on the part of Johnston, who had nothing but a chair to defend himself against bullets which were surely enough aimed to strike him several times in the head. Johnston was a strong, healthy man in his prime, and fought desperately for his life. Despite the trauma and loss of blood, he could not have been easy to kill, and might well have survived had it not been for that final shot.
fired out of doors. Harry Allen, moreover, was discovered in a paroxysm of rage, trying to throttle a corpse. The terrible circumstances of Johnston's death render all the more invidious the implication that he was the author of his own misfortune, or that he was no better than he should have been and therefore got what he deserved. Perhaps not quite so incredible is the implication that the real victim of the tragedy was Mrs. Johnston, who, as the crown prosecutor stated to the jury in his summation at the second trial, was in an unfortunate position: her husband was killed and her brother killed him. But Mrs. Johnston was shocked rather than surprised by what happened. She knew that her brother owned, kept and carried a loaded hand-gun; she knew that her husband and her brother did not like each other or get on well; she knew that "J. R." did not like to see her paying overmuch attention to Harry. The proper perspective from which to view the tragedy, therefore, is not Johnston's relationship with his wife but Mrs. Johnston's deeply troubled relationship with her brother. If motive there had to be, then it was Allen's annoyance at Johnston's responsibility for having separated him from his girl-friend, Miss Hagan. It was no more a question of Allen's defending his sister against her husband than of Allen's defending himself against a postprandial assault by Johnston. Both excuses are likewise incredible and ridiculous; they were the product of a rationalizing or mythologizing tendency within the oral tradition of the Halifax Black community.

The question whether Harry Allen returned to the dining-room intending to kill his brother-in-law must forever remain unanswered. Did he go back upstairs to the bedroom in order to fetch his pipe or his revolver? Did he re-enter the dining-room looking for his pipe, thus innocently igniting a flash-fire by his unwelcome and unexpected appearance—or intending to discharge the gun? It was one thing for Allen to keep a loaded pistol in his room, and take it with him when he left the house; it was quite another for him to carry it on his person about the house. The court records show that Allen was twice convicted of wilful murder; we do not know whether he was guilty beyond a reasonable doubt. Allen was undoubtedly fortunate in his sister's choice of legal counsel, Terrell, who defended the accused by persecuting the victim's memory, and ensured that Johnston would thereafter be perceived by the community whence he had come as a highly ambiguous, even discreditable and suspect figure—whose brutal assassination could somehow be retrospectively justified in terms of his supposed bad character, in much the same way as revisionist historians are now rationalizing the death of President Kennedy. By defaming Johnston's character, Terrell effectively placed the victim on trial for his posthumous reputation. The jury at both trials, however, were less naive and biased than counsel for the defence took them to be; they appreciated
that Johnston’s public career and private life were equally irrelevant and immaterial to establishing the guilt or innocence of his accused murderer. The deceased was not posthumously on trial for any crime or sin, however trivial or serious, which he may have committed during his lifetime. Fortunately for Harry Allen, Janie Johnston retained on his behalf an ambitious and frustrated criminal counsel with a reputation to restore, who was able to persuade the second trial judge, the Minister of Justice and influential opinion-makers in the Black church and community to focus their image of the killer and his victim with the lens of the defence.

James Robinson Johnston merits comparison with Martin Luther King. Both were charismatic Baptists; both were leaders born of leaders; both were orators; both were visionaries and innovators; both exercised political influence; both had detractors and leadership rivals within their own community; both suffered character assassination; and both were murdered in their thirty-ninth year. Johnston’s premature death, like King’s, created a vacuum of leadership which proved difficult to fill. His contemporaries among Afro-Nova Scotians were prepared to acknowledge that they had lost a leader; they did not appreciate, perhaps they could not have foreseen, that they had lost their first citizen or proconsul, whose personal magnetism, combined with the longstanding prominence of his family and the prestige of the legal profession—his entry into which had opened the way for other Blacks to follow—rendered him unique and irreplaceable. Johnston was fifty years ahead of his time; the manner of his death retarded by half a century what Rev. Oliver, writing in 1949, called the “cultural progress” of native Afro-Nova Scotians. With the exception of Dr. Oliver himself, moreover, who was a young child when Johnston died, no other Black Nova Scotian leader has achieved a standing of equal prestige and celebrity in the community at large. Paradoxically, none sank deeper into oblivion after death.

Among Johnston’s great contemporaries, only James Alexander Ross Kinney (1878-1940), on whom the epithet “race leader” has been perhaps
too exclusively conferred,\textsuperscript{144} is comparable. Kinney both replaced Johnston as permanent Secretary of the African Baptist Association (in March 1916), and assumed the place at the board of the Nova Scotia Home for Colored Children which would undoubtedly have been occupied by Johnston as prime mover of the enterprise. During the twenty-five years which elapsed between Johnston’s death and his own, Kinney effectively carried on the latter’s half-finished work. Although Johnston and Kinney were outstanding examples of élite non-clerical leadership in church and community, the microcosm was just not big enough for both of them. Kinney withdrew from fellowship at Cornwallis Street Baptist Church for most of Johnston’s public career, and only became active in the Association after Johnston’s death. Kinney was an outsider (from Yarmouth), and the Thomas–Johnston–McKerrow axis, which had ruled the mother church for four decades, must have seemed unbreachable. Lawyer Johnston’s premature and unforeseeable sudden death, however, provided Kinney’s window of opportunity. \textit{Pace} Pearleen Oliver, it is difficult to understand why the palm of “most outstanding layman ever to enter our [African Baptist] work”\textsuperscript{145} should be awarded to Kinney rather than to Johnston, whose loss—scarcely less so than Kinney’s—was “irreparable.” It is but an accident of history, moreover, that Johnston was cut off in his prime while Kinney lived for most of the allotted span. The year after Kinney’s death a memorial tablet was unveiled in Cornwallis Street Baptist Church to his memory; no such tribute was ever paid to Johnston.\textsuperscript{146} Whatever enemies or rivals he may have had triumphed by, and so benefited directly from, his peremptory removal from the scene.

James R. Johnston had led the Afro-Nova Scotian community during the immediate prewar years, and it required three men to fill his shoes.\textsuperscript{147}

\begin{itemize}
\item \textsuperscript{144} Oliver, \textit{supra}, note 64, at 47.
\item \textsuperscript{145} \textit{Ibid.}
\item \textsuperscript{146} The state of apprehended rivalry between the two men was nicely illustrated by an article in the first issue of \textit{The Atlantic Advocate: “When the late James R. Johnston, LL.B., passed from time to eternity the mantle of leadership of the Men’s Bible Class of the Cornwallis Street Baptist Church fell upon the shoulders of James A. R. Kinney whose untiring efforts have increased the membership roll to 84, ...” (\textit{supra}, note 27, at 13). It is instructive that the author of the piece should have perceived Kinney as playing Elisha to Johnston’s Elijah, who was taken up to heaven in a whirlwind.
\item \textsuperscript{147} Winks, \textit{supra}, note 48 at 348-50. Although the classical Roman republican analogy may not be pressed too far, one is reminded of the assassinated dictator who was replaced by a triumvirate, the youngest of whom—like Kinney—both eclipsed and outlived the other two.
\end{itemize}
James A. R. Kinney was the “most effective” member of the triumvirate which performed this role during World War I and for most of the interwar period. The other two were Johnston’s most intimate friend, the evangelist Rev. States, whose career in the African Baptist Church Johnston had helped decisively to launch, and who was serving as Moderator of the Association at the time of Johnston’s death; and the Reverend William A. White, who replaced Johnston as Clerk of the Association pro tempore, and who in 1919 became pastor at Cornwallis Street. All four of these contemporaneous careers—two clerical, two lay—demonstrate that it was the hierarchy of the African Baptist Church and Association which traditionally supplied the élite leadership of the Afro-Nova Scotian community, within which Black Baptism was the ‘broadest church’.

Appendix

Address of William Alexander Henry, K.C., to the Nova Scotia Barristers’ Society, Friday, 5 March 1915

Mr. Chairman:—I rise to second the resolution so eloquently and feelingly proposed by Mr. Justice [Benjamin] Russell. There are many members of this society who were more closely brought into contact with our deceased brother than I was, but I yield to none of them in my warm admiration for and appreciation for his many sterling qualities of mind and character. Of his abilities as a practitioner little need be said to a gathering of Halifax barristers. Not only in the special branches of professional work to which he devoted his talents, but in the more frequented paths of the profession, he had attained a standing of which many an older practitioner, starting with none of his handicaps, might well have been proud. His success especially in view of those handicaps, should have been and no doubt was an inspiration to those of his race in this city, and he was justly looked upon as a leader among them.

In his relations to his brother lawyers he was courtesy itself. None of us ever asked him in vain for an indulgence or concession which could be granted consistently with the interests of his client. If he made a bargain, he kept it. You needed no written agreement with Johnston. He was straight as a die, and tho’ his skin was dark he was pure white in all else. He had all the characteristic humor and cheerfulness of his race. You could not meet him, if only for the briefest interchange of greetings, without feeling brighter and better by reason of the geniality and

cheerfulness which radiated from him. It will be many a long day before the recollection of his jolly, dusky countenance fades from my memory.\footnote{These lines were quoted by the obituarist in \textit{The Atlantic Advocate}, (\textit{supra}, note 27), who nevertheless tactfully omitted the inadvertent racial slur, “dusky.”} His was a lovable personality. He attracted not only your respect but your regard. I am sure that there are many here today who feel as I do in connection with his sudden and untimely demise a sense of intimate personal loss.

It would be proper here to say a word of sympathy for his bereaved widow. Where death comes to a man who has lived out his allotted span, or even when it is the result of illness, so that those near and dear to him are given some warning of the end and [ ... ?] degree of preparation for it, our sympathy goes out in fullest measure to those bereft, but the tragic nature of the death which today we have to mourn puts it in a category of its own. When, to the appallingly sudden taking away of the beloved husband, there is added, not only the horror of the manner of his death, but also the other peculiarly distressing circumstances connected with it, what can be said or done to mitigate the anguish of that sorrowing widow? The most we can do is to put upon record the appreciation of those with whom his professional life was spent, for his many admirable qualities, in the hope that when time has somewhat assuaged her grief, it will be of some comfort to her to know that her departed husband was held in such high regard by his brethren of the bar.