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THOMAS KNOX GORDON (1728-1796)
LAST ROYAL CHIEF JUSTICE OF SOUTH CAROLINA

THOMAS M. STUBBS*

The recent and exceptionally generous gift to this State by the Hon. Robert A. Riches, of London, of the handsome portrait of the last Royal Chief Justice of South Carolina, has aroused a natural interest in both the history of the Chief Justice and in that of the portrait itself. Such information regarding both as has come to light will be related below.

LIFE PRIOR TO COMING TO SOUTH CAROLINA

Information on the life of the Chief Justice is meager at best. He was the son of John Gordon, a Belfast merchant, and of Grace Knox, his second wife, and was born in Belfast in 1728. A graduate of the University of Glasgow in 1746, he was a student in the Middle Temple, London, the following year, but was never called to the English Bar. How long he remained in London is not clear, but in 1754 he became the first Worshipful Master of a Masonic Lodge of Irish students in the Middle Temple. He was called to the Irish Bar at King's Inns, Dublin, in 1755.¹

Gordon took part in a movement in 1761 for the relief of the French prisoners of war then in Belfast.² This was two years after the fall of Quebec and two years before the Treaty of Paris, which followed the Seven Years' War between Britain and France. In 1767 he purchased a family estate in County Down, called the Ballintaggart lands.³ Here he lived, his house being called "Loyalty Lodge", sometimes "Woodville". Neither the name of his wife nor date of his marriage has been found, or whether or not his wife and children (he had four sons and a daughter) or any of them, accompanied him to South Carolina.

APPOINTED CHIEF JUSTICE OF SOUTH CAROLINA
UNDER ACT OF 1769

Among the many grievances of the colonists of South Carolina was the lack of courts in the Middle and Back Country, away from

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1. Philip Crossle, *The Gordon Family in County Down*. (1913) A transcript of portions of this work is to be found in *The Caroliniana Library*, and will be referred to hereafter as the Crossle transcript.

2.-3. Crossle transcript.

Charles Town† itself. The costs of litigation in Charles Town, together with the hazards and difficulties of travel, as well as the time and delay involved in presenting their claims for adjudication rendered the situation almost intolerable. Citizens in some of the isolated sections banded themselves into groups called "Regulators", taking the matter of law enforcement into their own hands and punishing offenders in accordance with measures they thought were deserved. Conditions gradually became more chaotic.

This situation necessitated some measure of relief and this induced the passage of the Circuit Court Act of 1769.⁴ This act provided, among other things, that courts be held twice a year at Orangeburg, Ninety-Six, Beaufort, Camden, Cheraw and Georgetown, in addition to those held at Charles Town itself. The new court, designed for the trial of cases at law, was known as the Court of Common Pleas and General Sessions, and certain judges of the old court were retained for the new. Five new judges, however, all Royal appointees from Great Britain, were named as additional judges for the court as rearranged. These were Thomas Knox Gordon, as Chief Justice, Edward Savage, Charles Matthews Coslett, John Murray, and John Fewtrell, as Associates. "These men," says one historian, "formed an addition to the ranks of the needy placemen, whose increasing numbers had already begun to arouse the animosity and weaken the loyalty of the people."⁵ Gordon himself said that he had not sought the position, but had been solicited by Lord Hillsborough to give up his practice and go to South Carolina, because Hillsborough "had it in his heart to have the American benches filled with professional men".⁶

Certainly the role assigned to the new Chief Justice would have been difficult, if not impossible, even for one of a more equable nature. His predecessor, Chief Justice Shinner, had been removed by Governor Montagu in 1768, because of incompetence and ignorance of the laws of South Carolina.⁷ Shinner was said to have lacked judicial dignity and has been described as "a vulgar bully and black-guard" who owed his appointment to "the influence . . . of the Mis-

†Officially changed to Charleston in 1784.

4. John Faucheraud Grimke, *Public Laws of S. C.*, Philadelphia, 1790, pp. 268-273.

5. W. Roy Smith, *S. C. As a Royal Province*, New York (MacMillan Co.), 1903, p. 141.

6. Robt. W. Barnwell, Jr., *Loyalism in S. C. 1765-85*, unpublished manuscript at Duke University, 1941, p. 20.

7. David Duncan Wallace, *The History of S. C.*, N. Y. (Amer. Hist. Soc.), 1934, Vol. II, pp. 73-4.

ress of Lord Halifax".⁸ The new Chief Justice necessarily was looked upon with misgivings by the people, who by no means had forgotten the scandalous Shinner affair.

Another unfavorable circumstance for the newly arrived appointees was delay in payment of their salaries. The Circuit Court Act of 1769 provided for the building of court houses and jails in the six newly-created judicial districts.⁹ In April, 1770, an Act was passed authorizing an issue of £70,000 in public orders for this purpose,¹⁰ but it was not until May, 1772, that these buildings were ready for use.¹¹ Meanwhile the new members of the Court failed to receive their compensation, it being contended in the Commons House of Assembly that they were rendering no service and hence were entitled to no pay. The South Carolinians were charged with deliberate delay in completing these public buildings.¹²

In 1772 the British Secretary of State for the Colonies, Lord Hillsborough, ruled that these salaries were payable from February 19, 1770, the date Lieutenant Governor Bull publicly announced the King's confirmation of the Act of 1769.¹³ This was an added cause of friction between judges and people. Undoubtedly Chief Justice Gordon and his associates must have had Hillsborough's approval to have gained their appointments and if the Chief Justice's position was not due to Hillsborough's sponsorship there was some connection between the two, either through ties of blood, marriage or friendship. It could scarcely have been a coincidence that Gordon named his eldest son, "Wills Hill",¹⁴ the given name of Lord Hillsborough, whose real name was Wills Hill Downshire, and who, though an Englishman, was created an earl in the Irish peerage in 1751.¹⁵

The precise dates of arrival of the Chief Justice and his associates have not been found. They, or some of them, were in Charles Town by August 28, 1771, when a new rule of court was adopted. This rule required the posting of notices to defendants who lived "in the country", to be made on the State House door, rather than on the prison door, "the new prison now finished being in a remote part of the town".¹⁶ Other desirable new rules were adopted during 1772

8. Edward McCrady, *S. C. Under the Royal Government*, N. Y. (MacMillan Co.), 1901, pp. 465, 469.

9. Grimke, *op. cit.* pp. 268-73.

10.-13. W. Roy Smith, *op. cit.* pp. 138-141.

14. Crossle Transcript.

15. Encyc. Britt. (14th ed.) Vol. VII, p. 565.

16. A. E. Miller, *Miller's Compilation*, Charleston (Miller & Browne) 1848, p. 6.

and 1773, all designed to enhance the efficiency of the administration of justice, and to make for speedier trials.¹⁷

Chief Justice Gordon, of the Court of Common Pleas, occupied more than one official capacity. He was also a Royal appointee to the Governor's Council.¹⁸ As a member of Council he became ex-officio a member of the Court of Equity, by virtue of the Chancery Act of 1721,¹⁹ as amended in 1746,²⁰ and in effect until 1776.²¹ Thus the Chief Justice was, from the beginning, placed in capacities potentially embarrassing and conflicting. This would in time occasion his most questionable act of public conduct in the Province. He first appeared with Governor and Council, at the October Term, 1771, at Charles Town, as a member of the Court of Chancery.²²

How the Chief Justice and his associates spent their time after arrival and while waiting for court houses and jails to be completed and the issue of salaries to be determined does not appear. But one thing is certain, the Chief Justice lost no time in becoming a substantial Provincial landowner during this period. Plats for some six thousand acres of land were made for him between May and November, 1772.²³ Thirteen grants for five hundred acres each, pursuant to these plats, were issued to him between October, 1772 and late September, 1774.²⁴ All began by reciting: "George III, by the Grace of God, of England, France and Ireland", and ended with the signature of Lieutenant Governor William Bull. These lands lay in what must have seemed to the cultured and city-bred Chief Justice truly outlandish places, called Ninety-Six District, Beersheeba Congregation, and along the Broad, Edisto and Pacolet Rivers and Robinson's Creek. Nearly all were described as being in Craven County; two in Colleton. As grantee he was named as "The Hon. Thomas Knox Gorden" (*sic*) or "Thomas Knox Gordon, Esq.". So that even if the colonists were dilatory in payment of his £500 annual

17. *Ibid.* pp. 6-7.

18. Henry A. Middleton Smith, Article on the Courts of S. C., *Chas. Year Book*, 1885, p. 322. Act of 9 Sept. 1721; 7 St. at Large, 163. McCrady, *op. cit.* p. 43.

19. 7 St. at Large, 163.

20. 7 St. at Large, 191.

21. *Records of the Court of Chancery of S. C.* Legal Introduction by Dean J. Nelson Frierson, p. 54. Washington, D. C. (American Historical Association). 1950. Edited by Anne King Gregorie and referred to hereafter as Gregorie.

22. *Ibid.* p. 589.

23. See file of plats for Pre-Revolutionary Grants, Historical Commission, Columbia, S. C.

24. See Books of Land Grants, Volumes 26, 28, 29 and 33, in office of Secretary of State, Columbia, S. C.

salary, the King's favor was shown by making him a substantial landowner with considerable promptness.

The salary issue being settled at long last, and Gordon having become established as a landowner, prospects for a successful administration seemed favorable. But this illusion was soon to be dispelled. The new Chief Justice became embroiled with two of his associates of the Bench, which created animosities of such magnitude that his administration would have been frustrated even without the happening of other events leading to the Revolution of 1776.

The requirement in the Act of 1769 that Courts of Common Pleas be held, spring and fall, in the six new judicial districts, made it necessary for the Chief Justice to be away from Charles Town about ten weeks out of the year.²⁵ Thus he was able to meet with the Court of Chancery only infrequently.²⁶

His first clash with an associate probably occurred at the November Term, 1771, at Ninety-Six. A damage suit had been filed by one John Harvey against Daniel Robinson, one of the leading "Regulators" of the community. Harvey, it was charged, had in September, 1769, at Noble Creek, been "chained to a tree and severely whipped to the accompaniment of drum and fiddle, a horse not his own having been found in his possession".²⁷

A matter of this sort, when substantiated by evidence, must have been shocking to the Chief Justice, who was accustomed to law and order. After all, had he not been sent to the Province to put an end to this sort of lawlessness? On the trial of this case he charged the jury to find a verdict for the plaintiff, Harvey, in full. Associate Justice Rawlins Lowndes, a carry-over from the old Court, and native South Carolinian, then remarked that, "The Chief Justice, having lately arrived, was unacquainted with the grievances and oppressions of the people, and that damages should be very small, as they would go to one of the most infamous characters in the Province".²⁸ This aroused the animosity of the Chief Justice who filed complaint against Lowndes with Lieutenant Governor Bull and the Council, only to have his complaint dismissed.²⁹

In his second altercation with an associate of the judiciary the Chief Justice prevailed — at least for a time. This conflict was with young William Henry Drayton, a nephew of the Lt. Governor, a member of the latter's Council, and successor on the Common Pleas

25. Wallace, *op. cit.*, Vol. II, p. 97. Gregorie, *op. cit.*, p. 589.

26. Gregorie, *op. cit.*, pp. 589, and *passim*.

27.-28. Wallace, *op. cit.*, Vol. II, p. 59.

29. *Ibid.* p. 60.

Bench to Justice Murray who died in office, January, 1774. Despite the part previously played by Drayton in the case of Thomas Powell, the printer of Charles Town — one of our very early cases involving the freedom of the press — Drayton received this appointment to the Bench.³⁰

As early as April, 1772, Drayton had been appointed a member of the Governor's Council, the majority of which were the King's place-men from Britain.³¹ A minority of the Council, or upper chamber, consisted of Provincials. Among this minority were not only William Henry Drayton, but his father, John Drayton, as well. In August, 1773, the Council allowed to die before it, for inaction, a bill strongly urged by the Virginians, against counterfeiting paper money. This bill had previously passed the Lower House.³²

For neglect to act on this important matter, the Draytons, father and son, entered a protest in the Council Journal, — a minority report.³³ On August 30, at the instance of the Draytons, a copy of this protest was printed in *The South Carolina Gazette* by Thomas Powell, its publisher. The majority of the Council, including Chief Justice Gordon, took exception to this publication.³⁴ Thereupon, Sir Edgerton Leigh, then President of the Council, issued a warrant for the arrest of Powell, charging him with contempt of that body. Powell was thereupon arrested and put in jail in Charles Town.³⁵

A *habeas corpus* for his release was presented to Rawlins Lowndes, and George Gabriel Powell, two of the King's Magistrates. They ordered the discharge of Powell, on the theory that the Council, or Upper House, was merely a Privy Council, or advisory body to the Governor, and had no such authority and immunity from criticism as had the House of Lords in England.³⁶ In September the Council denounced this decision, while the Lower House unanimously approved it, requesting the Lieutenant Governor to suspend from the Council those members who had ordered Printer Powell committed.³⁷ By then the whole matter was so involved that the Lieutenant Governor washed his hands of it by referring it for action to the King and his ministers in England.³⁸

30. W. Roy Smith, *op. cit.*, p. 394: *The General Gazette*, January 24, 1774; Robert W. Gibbes, *Documentary History of the American Revolution*, Vol. II, p. 13. N. Y. (Appleton Co.) 1855.

31. Henry A. Middleton Smith, *op. cit.*, p. 322; W. Roy Smith, *op. cit.*, p. 138; McCrady, *op. cit.*, p. 469.

32.-34. W. Roy Smith, *op. cit.*, p. 388.

35. Gibbes, *op. cit.*, p. 43. W. Roy Smith, *op. cit.*, p. 388. McCrady, *op. cit.*, pp. 715-16.

36. W. Roy Smith, *op. cit.*, p. 393.

37. *Ibid.* pp. 388 *et seq.*

38. McCrady, *op. cit.*, pp. 722-3.

Thomas Powell then brought a damage suit against Sir Edgerton Leigh for false imprisonment. This matter came before the Chief Justice and his associates in the Common Pleas. The Court dismissed Powell's complaint, "Declaring in express terms that the Council was an Upper House of Assembly and hence had no right to commit for contempt".³⁹ Thus the issue was clearly drawn: Royal Placemen from Britain against Provincials.

In August, 1774, William Henry Drayton, by then both a member of Council and of the Court of Common Pleas, sent a letter to Philadelphia "To the Deputies of North America, assembled in the High Court of Congress". This letter was merely signed, *Freeman*, but in it was set forth at considerable length "The American Claim of Rights". Among the listed grievances of the colonists was the arbitrary and unjudicial conduct of certain of the King's appointees to the Bench.⁴⁰ The following month the Chief Justice, joined by Mr. Justice Coslett, filed a complaint with the Lieutenant Governor and Council to the effect that Mr. Drayton had, "Impugned their honor and questioned their fitness as judges". They questioned further whether Mr. Drayton himself should longer serve as a member of Council.⁴¹ In October, Mr. Drayton replied at great length, and circuitously, as was his custom. He justified the views of the *Freeman* letter, but failed to admit his authorship.⁴² Indeed all during the controversy, which was to culminate in March, 1775, with Mr. Drayton's removal from the Council, he failed to admit he wrote the *Freeman* letter. Still his authorship seems to have been an "open secret", for Henry Laurens, writing from London in October, 1774, attributes this letter to Mr. Drayton.⁴³ On March 1, 1775, even before his removal from Council, the Lieutenant Governor had removed Mr. Drayton from the Bench.⁴⁴

Mr. Drayton's attack on the Chief Justice had pointed out what was perhaps the latter's most questionable conduct as an official—the part he played in the case of Thomas Powell, the printer. Drayton accused Gordon of acting with Sir Edgerton Leigh as a member of Council, in causing the arrest of Powell, and later, as Judge of the Court of Common Pleas, sitting in judgment on Powell's action for damages against Leigh for false arrest.⁴⁵ Indeed the Chief Jus-

39. W. Roy Smith, *op. cit.*, pp. 388 *et seq.*

40. *Ibid.* pp. 394 *et seq.*; Gibbes, *op. cit.*, pp. 11 *et seq.*

41. Gibbes, *op. cit.*, pp. 39 *et seq.*

42. *Ibid.* pp. 41 *et seq.*

43. Duncan D. Wallace, *Life of Henry Laurens*, N. Y. (Putnam's) 1915, p. 197.

44. Gibbes, *op. cit.*, p. 82.

45. *Ibid.* pp. 41 *et seq.*

tice should have disqualified himself in this case, and, even if it were not his own cause, because of his prejudice in the matter.

By this time, however, the questions involved had degenerated from strictly legal issues to purely partisan politics. Much heat and venom on the subject are reflected in the communications from both sides to the Lieutenant Governor.

It cannot be gainsaid that the Chief Justice could have picked for wounding no two more ardent patriots in the American cause than Rawlins Lowndes and William Henry Drayton. It is never safe to wound a "King," it is said, but Justice Gordon wounded two directly, and indirectly a number of their associates, who were soon to become leaders in freeing the Colony from the English yoke. By this time it had become clearly foreseeable that the days of usefulness of the Chief Justice would soon terminate. He remained in the Province until some time in 1775, but we have found no record of his leaving. In August, 1775, the names of Chief Justice Gordon and his associates of the bench were ordered published by the General Committee as enemies.⁴⁶ Events were moving rapidly by now. Sir Edger-ton Leigh with his family, left for England as early as June, 1774.⁴⁷

In 1782, Thomas Knox Gordon was listed with other Loyalists — officials and otherwise — as subject to banishment and confiscation of property, for refusal to take the oath of allegiance to the State of South Carolina.⁴⁸ By April, 1776, the General Assembly had deemed it necessary to pass an act to punish those persons found here who were guilty of sedition and other acts of aid and comfort to the enemy.⁴⁹ If found guilty under this act, the offender should forfeit his estates. The following February another act was passed requiring all persons to take the oath of allegiance to the State, and upon refusal, "He or they shall, within sixty days of such refusal . . . be sent off from this State, taking his or their families with them . . . to Europe or the West Indies, at the public expense [with certain exceptions] provided that all . . . such . . . persons shall be at liberty to sell his or their estates and interest in this State . . . and [after satisfying debts due here] . . . to carry the amount or produce thereof with him or them". The act further provided for appointment of attorneys in fact to act in lieu and absence of such banished persons.⁵⁰

46. Barnwell, *op. cit.*, p. 65.

47. Albert G. Mackey, *A History of Freemasonry in S. C.*, Columbia, S. C. 1861, Charleston, 1936, p. 51.

48. Gregorie, *op. cit.*, p. 589; *Josiah Smith's Diary*, S. C. Hist. & Gen. Mag., Vol. XXXIX, p. 198.

49. IV STAT. AT LARGE, p. 343.

50. I STAT. AT LARGE, p. 147.

The enforcement of the latter Act became very difficult. Efforts to this end produced dissension and near riots. A new Act was passed in March, 1778, more palatable in form, revoking in part the previous Act, but upholding in substance the penalty of banishment for refusal to take the oath. Time for disposal of property was extended.⁵¹ Other Acts in somewhat the same vein were later passed to make allowances for persons who had overlooked or neglected to take the oath, and for the benefit of those who sought belatedly to recant.⁵² By this time, however, the Chief Justice had long since left the Province. Nor does he appear ever to have wavered in his allegiance to Great Britain.

The Chief Justice was consistently loyal to the King, as we would have expected him to be. What was said as an apologia for the behavior of Sir Edgerton Leigh might well explain Chief Justice Gordon's: "He [Leigh] was, however, an Englishman [Irishman] by birth, and the recipient of favors of great value from the Crown. It was natural, therefore, that, in the great quarrel that then existed between the Colonies and the Mother Country, he should take the part of the latter. His enemies would as naturally extenuate his virtues and exaggerate his faults".⁵³

Another apt summing up of the Chief Justice is as follows: "The photograph [of the portrait] indicates that he was a picturesque old Tory, and, since he presided just before the American Revolution, we could not expect him to measure up to the standard of our democratic judicial system".⁵⁴

We are able to understand better the conduct of the Chief Justice as we view it over the long lapse of years. We view him less harshly than we do Sir Edgerton Leigh, who was needlessly irritating and contemptuous in his official acts. But we cannot look upon him as favorably as we would upon Lieutenant Governor William Bull, who, was ever tactful, and whose official acts, while expressed in a conciliatory and benevolent manner, were none the less firm. The Chief Justice appears to stand somewhere between the two—but as one who was apt to lose his temper and with it his judgment and the cause he advocated. In the most favorable light he was certainly a controversial figure.

⁵¹-⁵². See Vol. I STAT. AT LARGE, pp. 135-6, 147. Vol. IV *Ibid.*, pp. 343, 450.

⁵³. Mackey, *op. cit.*, p. 51.

⁵⁴. Hon. L. D. Lide's Letter of October 28, 1950, to Dean Samuel L. Prince.

RETURN TO IRELAND

The record of the Chief Justice after his return to Ireland is indeed meagre. He found that his Ballin-taggart property had been badly trespassed upon in his absence. In time he was named Magistrate for County Down.⁵⁵

Thomas Knox Gordon's name is found listed with those who filed claims with the British Government to be compensated for losses suffered as Loyalists in South Carolina.⁵⁶ By 1783 this movement for compensation began in earnest and claimants were allowed until March, 1784, to get their statements in.⁵⁷ A commission was named to examine the facts and pass upon the merits of each individual case.⁵⁸ Each applicant was required to appear and to give account of his service, of trials endured, or losses suffered for the Loyalist cause, together with a schedule of property lost.⁵⁹

The number of the claims was large, requiring some thirty-eight books for listing all of them from the Thirteen Colonies.⁶⁰ But the Commission moved at a very slow pace in examining these claims, resulting in suffering to the claimants and, as a consequence, criticism of the Commission.⁶¹ In 1788, Mr. Pitt, then Prime Minister, felt it necessary to lay the matter before Parliament.⁶² The satisfactorily proved claims were then allowed, subject to percentage reductions, gradually increasing in proportion to the amounts claimed. Mr. Pitt also raised the question as to how to deal with losses due to being deprived of professional and official incomes.⁶³ As to these Mr. Pitt recommended a plan of pensions.⁶⁴

As we have had no access to the records themselves, it is not known what awards were given Chief Justice Gordon due to his banishment from the Province and confiscation of his lands. He appears to have been entitled to file claims on two counts: first, as to his loss of some sixty-five hundred acres of land in South Carolina, and second, because of his loss of professional income. We have found no record of his sale of lands in South Carolina as he was privileged to do.

Another brief incident in Gordon's life in Ireland has been recorded. In 1791, as Magistrate for County Down, he committed to jail "a

55. Crossle Transcript, *supra*.

56. S. C. Hist. & Gen. Mag. Vol. XIV, p. 41.

57. Lorenzo Sabine, *Biog. Sketches of Loyalists in the Amer. Revolution*, Boston. (Little, Brown). 1864, pp. 104 *et seq.*

58.-59. *Ibid.*, and Mabel L. Webber's article in S. C. Hist. & Gen. Mag., Vol. XIV, p. 37.

60. Webber article, *supra*.

61.-62. Sabine, *op. cit.*, pp. 104 *et seq.*

63.-64. Sabine, *op. cit.*, pp. 104 *et seq.*

gang of desperate ruffians". There they languished for a year, later to be tried as "vagabonds" and acquitted. About two months after acquittal it is recorded that the "stack-yard of Mr. Gordon of Loyalty Lodge was maliciously set on fire".⁶⁵ Was this merely coincidental?

Thomas Knox Gordon died in May, 1796, his wife having predeceased him by nearly two and a half years.⁶⁶ He provided for his daughter, Grace, and for his four sons in his will. He failed to name any of his children as executor, but instead, named five of his nephews for this purpose.⁶⁷ One of these nephews, David Gordon, appears to have acquired the portrait with which we are concerned — at least it passed to this collateral branch of the family.

Daughter Grace Gordon, in her will of 1825, left to her friend Margaret Digby, three quarters of Ballin-taggart "together with all other lands in the State of Charleston, South Carolina".⁶⁸ [*Sic*] Can it be that the Gordons still clung to the hope that they were entitled to these long since confiscated lands?

The grave-stone of the Chief Justice, presumably at Loyalty Lodge, bears the following inscription:

"Died on the 4th May, 1796, at an advanced age, Thomas Knox Gordon, Esq., a native of Belfast, and for many years His Majesty's Chief Justice in South Carolina, a station which he filled with reputation to himself and advantage to the country. His deportment through life in its various relations was fair and reputable — as a friend he was sincere and constant, and as a companion few were possessed of such powers of pleasing."⁶⁹

The details of the Chief Justice's will are not available to us so we know of no specific gift of the portrait by will, if indeed the portrait belonged to his estate. None of the four sons was named David, so, we presume the David Gordon, a solicitor of Dublin, whose will was executed in 1836, and in whose possession the portrait apparently was kept, was the David Gordon, a nephew named by the Chief Justice as one of his executors.

David Gordon, solicitor of Dublin, died in 1837, leaving substantial estates.⁷⁰ Apparently he resided at "Florida Manor", one of his several properties, where, it seems, the portrait of his uncle was kept. The 1836 will of David Gordon was long and complicated, providing for life estates to certain named persons, with disposal of remainders thereafter upon failure of issue or other contingencies. By a residuary clause all the rest of his estate "both real and per-

65-69. Crossle Transcript.

70. Vol. V, Law Reports, English and Irish Appeal Cases, House of Lords, 34-36 Victoria. p. 254. The case of Gordon v. Gordon.

sonal" not specifically disposed of, was left to testator's sons, Robert and James. The personalty was probably divided amicably between them. Apparently the portrait in question and "Florida Manor" itself fell to James. Both Robert and James married, but died childless. James, by will, made provision for his widow for life, and left, subject thereto, the rest and remainder of *his* estate to his cousin, Sir Lionel Smith Gordon.⁷¹

Family litigation commenced after James' death to determine the proper construction of some of the provisions of David's will. It would serve no purpose here to detail the ramifications of this suit, but the outcome of the matter, decided finally by the House of Lords in 1871, was that Sir Lionel Smith Gordon was held to have no title to "Florida Manor".⁷² He soon vacated it, removing his personal possessions, including the portrait.⁷³

Sight of the whereabouts and fortunes of this branch of the family is lost for many years. Where they resided is unknown. In time the portrait fell to the ownership of Sir Lionel Smith-Gordon, the Third Baronet, and probably the grandson of that Sir Lionel Smith Gordon, who vacated "Florida Manor" in 1871.

When the bombing of London by the Germans commenced in World War II, the Lionel Smith-Gordons were residing there at the Thomas Carlyle Mansion. As a precaution, they stored their portraits, silver, books and other irreplaceable effects in a safe place until the war was at an end.⁷⁴

In 1943, at Salisbury, England, the portrait of Chief Justice Gordon was sold to a Brighton art dealer, by the executor for the Third Baronet. Mr. Robert A. Riches, who made this generous gift of the portrait to the State of South Carolina in 1952, acquired it from this dealer.⁷⁵

DID GILBERT STUART PAINT THIS PORTRAIT?

Mr. Riches, the donor, states that in his opinion the portrait is the work of Gilbert Stuart (1755-1828). He also states that this view is held by Tancred Borenius, distinguished art historian, and by Messrs. Sottleby, art dealers of Bond Street, all of London.⁷⁶ It would be gratifying if this were confirmed with certainty, a matter

71.-72. *Ibid.* Gordon v. Gordon, *supra*.

73. Hon. Robert A. Riches to Gov. James F. Byrnes, letter of June 19, 1952.

74. Mrs. Leila F. Cranwell, of Charleston, to Gov. Byrnes, letter of September 15, 1952.

75. Mr. Riches' letter to Gov. Byrnes, June 19, 1952.

76. Mr. Riches' letter to Dean Prince, August 18, 1950; his letter to Gov. Byrnes, June 19, 1952.

naturally for the determination of the expert. Circumstances indicating that this could well be the work of Stuart will be related.

The handsome, four-volume work on Stuart, compiled by Lawrence Park, was published in 1926.⁷⁷ While this work purports to be exhaustive of the subject, no reference to this portrait is made in it, nor does a copy of it appear among the many copies of Stuart's paintings which are reproduced. This is not conclusive, however, since, even in a carefully prepared work of this kind, involving the listing, description and reproduction of the many works of so prodigious an artist as Stuart, a less well known portrait in private hands could have been overlooked.

The similarity between the Gordon Portrait and that of George Hamilton, of Dublin (1733-93), included by Mr. Park, is most striking. Both the verbal description of the Hamilton portrait⁷⁸ and the photograph of it⁷⁹ would indicate to the eyes of the layman that the two portraits were executed by the same artist at about the same time.⁸⁰ The draperies in the backgrounds of the two portraits are similar, and the brass-studded chair in which each subject sits appears to be the same. These details, it is true, may be conventional for the time and for the type of subject.

George Hamilton was an Irish lawyer and, at the time of his death in 1793, was Baron of the Exchequer for Ireland. Both Gordon and Hamilton resided for years in the same community. They were of about the same social and educational caste, and, since they both became judges, must have had about the same professional and social contacts.⁸¹ Hamilton was five years younger than Gordon, but died at sixty, while Gordon lived to be sixty-eight, surviving Hamilton by three years.

The artist, Gilbert Stuart, was born in Rhode Island in 1755. His father, a Loyalist, was forced to flee to Nova Scotia at the outbreak of the American Revolution. The younger Stuart was brought up in a Loyalist atmosphere. At eighteen he made his first trip abroad where he studied painting for a year or two in Scotland. In 1775 he went over again, sailing from Boston for England. He soon found employment and art instruction in London with Benjamin West (1738-1820), also an American expatriate. West, at the time, had become a favorite of King George III, and was then enjoying a rich

77. Lawrence Park, compiler, *Gilbert Stuart*, four volumes, N. Y. (Wm. E. Rudge), 1926.

78. Park, *op. cit.*, Vol. I, p. 380.

79.-80. *Ibid.* Vol. III, p. 224.

81. Park, *op. cit.*, Vol. I, p. 379.

patronage as a portrait painter.⁸² Stuart remained with West about five years, meanwhile gaining in skill as a painter and gradually attaining such prominence that he began to receive valuable commissions on his own.⁸³

In October, 1787, Stuart moved to Dublin, remaining in Ireland five or six years.⁸⁴ There he was engaged to paint the portraits of the great and prominent people of that area. The George Hamilton portrait was painted about 1790. Stuart appears to have executed a large volume of work during this period, photographs of about twenty-five of his portraits of this period being included in Mr. Park's work. Gordon and Stuart were both in or near Dublin during the years 1787-1793.

This long residence of Stuart in Dublin would have afforded him an excellent opportunity to paint the portrait of Chief Justice Gordon, of nearby Loyalty Lodge, County Down, if indeed he did. It would appear too that the Loyalist views of the two would not have been incompatible.

Stuart did not return to America until the Revolutionary War had been concluded nine years. By then tempers had subsided, and it appeared safe for a former Loyalist to come back home. It was then especially inviting for Stuart to do so, for there were portraits of many distinguished Americans — even that of “the Father of his Country” — which needed to be painted.

Whether or not Stuart painted the Gordon portrait, and whoever the artist may have been it is certain that it is artistically fine, is a thing of beauty, and a splendid adornment upon the south wall of Governor Byrnes' office, where it now hangs. It should be repeated that all South Carolinians should be grateful to Mr. Riches for so valuable a gift. Nor does it seem inappropriate that this portrait of its last Royal Chief Justice should find a permanent home in South Carolina, the most reluctant of all the Thirteen Colonies to break its ties with the Mother Country.⁸⁵

82. *Ibid.*, Vol. I, pp. 13 *et seq.*

83. *Ibid.*, Vol. I, pp. 33 *et seq.*

84. *Ibid.*, Vol. I, pp. 40-42.

85. Since the foregoing article was written we have had access to a photostatic copy of an article appearing in *The London Times*. The article bears no date, but is illustrated by a photograph of the portrait, bears the caption “Uncommon Eighteenth Century Portrait”, is signed “From a Correspondent”, and states in part: “The only painting of a Chief Justice of one of the former American Colonies known to exist in this country is that of Chief Justice Gordon of South Carolina . . . The painting, in the possession of Mr. R. A. Riches, Bar Librarian at the Royal Courts of Justice, was at one time at Florida Manor, County Down. It seems to indicate that the Chief Justices of the American Colonies wore the SS collar as an emblem of the office of Chief Justice. The SS collar was worn also by Irish Chief Justices as it is today by Lord Goddard. Possibly it has been worn elsewhere in the Empire and Dominions.”