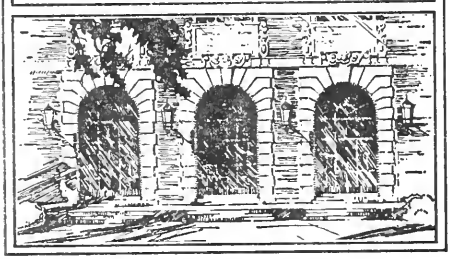
A 2



John Dean Caton

EARLY

BENCH AND BAR

OF

ILLINOIS.

BY

JOHN DEAN CATON,

Ex-Chief Justice of Illinois; author of "The Antelope and Deer of America;" "A Summer in Norway;" "Miscellanies," etc.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 87 CLARK STREET
1893

PREFACE.

Some years ago when in social conversation with two gentlemen of the Bar, I was relating some professional incidents which had occurred many years before, when one of them suggested that it would be interesting to the profession of the present day if I would note down events which had occurred in the early times and lay them before the public; I promised to do so, and the result was a series of articles published in the Chicago Legal News. Upon their publication I received many letters from gentlemen of the Bar in various parts of the State, expressing the hope that the articles might be republished in book form. I finally revised these articles and prepared them for the press, with several new papers which have not been previously published, and placed them in the hands of the printer, thinking that many incidents and some peculiarities of former times might be thus perpetuated, which may in still later times be considered worth remembering. I do this the more readily as I am probably the only man now living who can speak from personal observations and recollections of events of fifty years and more ago.

In the Appendix I have given an address delivered before the State Bar Association on the 24th of January last, and another given before the Chicago Bar Association February 11, 1893, in which will be found some statements germane to the subject, not previously given.

1900 Calumet Ave., Chicago, April 26, 1893.

INDEX.

PORTRAITS.

EARLY BENCH AND BAR OF ILLINOIS.

I.

MY FIRST CLIENT.

I arrived in Chicago on the 19th of June, 1833, with fourteen dollars and some cents in my pocket, and stopped the first night at the log tavern at Wolf Point, kept by W. W. Wattles. The next day I took lodging with Dexter Graves, who kept boarders at five dollars per week in a log house just north of Lake and east of Dearborn streets. There I found Giles Spring, a young lawyer who had arrived a few days before me, but he had seen no sign of professional business. I went over the river to the north side to the office of Col. R. I. Hamilton, which was in a log building, a part of which was occupied by his family. He was the clerk of the Circuit Court, and of the County Commissioners' Court and Judge of Probate. Neither Spring nor myself could find a room for an office, nor was it possible to do so till the December following, when Dr. John T. Temple erected a small balloon building, for his own office, on South Water street west of Franklin. In this there were two lower rooms, the rear one of which he rented to me for an office. As Spring could find no place where he could take a client in—out of the cold, I mean—I offered him desk room in my office which he gladly accepted, it being agreed that when one had a client the other should withdraw. This was the first law

office ever opened in Chicago. For a library he had Peters dorf's Abridgment and I had Chitty's Pleadings.

Let us now go back to the beginning.

Col. Hamilton very kindly offered us the use of his office when we should have writing to do or wished to study the Statutes of 1833, a copy of which he had. I spent several days diligently studying that good old book. What struck me as the worst part of it was that it gave no fees to the attorney of the successful party against the party in the wrong.

Col. Hamilton was a very good lawyer and so was Russell E. Heacock, who had practiced law for many years in the southern part of the State, but there being no business here for a lawyer, he had built a log carpenter's shop at the corner of State and South Water street, where he worked at the trade which he had learned before he studied law. He also held the office of justice of the peace. The rest of the judicial force of Chicago consisted of Isaac Harmon, who lived in Miller's tannery, on the North Side, and had his office in one room, and Archibald Clybourn, who lived two miles up the North Branch. Stephen Forbes was sheriff and lived at Lauton's crossing opposite to where Riverside now is.

Well, here I had been two weeks boarding with Dexter Graves, at five dollars per week, and no sign of any sort of law business.

My board bill must now be paid, and that, with a few other stingy expenditures, would bankrupt my treasury. I began to think that after all Chicago was a better place to starve in than to make a fortune. At any rate, it was too honest and too peaceable to need a lawyer's services, or, in fact, for any great city.

After I had eaten a supper that I did not know I should ever be able to pay for, in a rather dejected mood I wandered out to a Hoosier encampment in the border of the brush about where Madison street is, and thence southerly, and joined the men who said "which" instead of *what*. These

were men who came from the Wabash on the Hubbard trail and brought their *truck* up and traded for salt. They came with ox teams of five or six pairs of oxen to a covered wagon, in which they lived both on the road and in town. Their oxen were grazing near where they were encamped, east of where the Board of Trade now stands. The camp consisted of a dozen or more *prairie schooners*, their camp fires sparkling in the darkness.

The Hoosiers were seated on their ox yokes around their fires, cooking their suppers of fried apples and bacon and cold corn bread.

As I came from the sombre background and approached the nearest camp fire, an old frontier patriarch who seemed entitled by seniority to preside, extended his hand to me with a hearty good-day, and without rising, hitched along on the ox yoke and offered me a seat beside him.

"*Which** is the matter young man," said he, "you are the first man I have seen near this neck of timber who was not going like chain lightning though I haven't learn tell that they struck yet."

"That's what's the matter" said I, "nobody strikes, but everybody runs. What sort of a chance can an honest lawyer have in such a place? Here I've been two weeks and not the ghost of a fee. They talk about a big place to be here and nary a thief or counterfeiter about. Who ever heard of any smart town without one or both of these gentry?"

"Hold your horses, young man," said my new friend, "where they sell salt for a dollar a bushel, and give a bit a bushel for onions, will not do long without lawyers, unless they are taken to the other side of kingdom-come be-

*Soon after I came to Chicago an article appeared in a Boston paper, in which some eastern traveler gave a description of what he had noticed in and about Chicago, and he seemed to have been particularly struck with some characteristics of these Hoosiers from the Wabash, who brought their truck by these long ox teams, and in speaking of this particular use of the word *which*, he fell into doggerel and said of the Hoosier, "When the last trump shall sound, were I as Crœsus rich, I'd give it all to see him jump, and loudly answer 'which?'"

fore their time is up. Never fear, the lawyers and the devil have a smart chance ahead and not long neither, unless they stick out their heel corks and settle back into the breaching. These yankees that are coming in here in bigger flocks than the locusts that eat up the '*Filistens*, hip and thigh,' will be stealing corner lots and running off with 'em in less nor a month and then they will be after you to chase 'em. Chase 'em! Why them fellows will slip through a knot hole where you could not squeeze a flaxseed. But they will pay you all the same. There's your hog and hominy young man."

"Yes," I replied, "what am I to do in the mean time? I must eat every day and if I can find nothing to do I shall be as thin as a ghost in less than two weeks. I have been a school master in my day and was reckoned a good one at that. Do they have schools down on the Wabash where you live?"

"Well," said he, "we don't have schools down there yet to hurt, but they are beginning to talk about one, I've hearn tell, and maybe that would do for a makeshift. Come 'round to-morrow night and we'll talk it over again. You shan't go hungry while ther's a shoat in the bottoms or me'n those boys have a hunk of bacon left."

"Hello, Uncle Jake!" shouted a voice from a neighboring camp fire in ringing tones. "*Which?*" inquired my new friend.

"What are you wagging your chin about over there?" inquired the same voice. "Oh," said Uncle Jake, "here's a young feller on the anxious seat relatin' his experience, and it's a rather hard one. He arn't a yankee nuther, but from old Kentuck or may be Tennessee, I reckon. He's a young lawyer and he says there ha'nt been a fight or a horsethief in this burgh yet, and he don't think this'll be much of a town, no how."

"Never you mind, tell him," was the encouraging reply, "they'll see enough of them 'afore long, to make a smart chance of a town, and make the lawyers too, I reckon;

mor'n half the people we see will turn that way 'afore they have a church in the place. Then there'll be heaps of work for lawyers good and bad."

On hearing these comforting opinions, I arose and shook hands with Uncle Jake and the boys, and took my leave without explaining my nativity, for they deemed all from the east of Ohio yankees, whom they considered sharper but no more honest than horsethieves or counterfeiters. In my conversation I had avoided the Eastern twang and had adopted the Southern accent and pronunciation, which had misled Uncle Jake in his conclusions as to whence I came.

I could not fulfill my engagement to call the next night, for I was professionally engaged. As I took my way across the prairie toward the log cabin which constituted my inn, and crawled into my bed in the attic, I felt encouraged by the kind and hopeful suggestions of my new found Hoosier friends.

The next morning after breakfast, having no office to go to, I went over to South Water street, to see what new faces would show themselves. Presently a rather short, stout young man stepped up to me and inquired if I was a lawyer. This inquiry went through me like an electric shock, but I composed myself instantly, and answered him that I was, and inquired if I could be of any service to him. He replied that some one had stolen from him $46 of Bellows Falls money, and he wanted my assistance to catch the thief and recover the property.

As I had no office to which I could take my client for a private consultation, I led the way across the street to the bank of the river, where we seated ourselves. Then he informed me that he had slept the night before at Wattles' tavern in a room with another young man, a stranger, and when he awoke in the morning, his room mate and his money were gone. After minute inquiry I was satisfied that his room mate was the thief.

As Mr. Justice Heacock was the only magistrate on the

south side of the river, we made our way to his office, or carpenter shop, as the case might be.

I got the statute, and using his carpenter's bench for a table, wrote out a complaint in most elaborate form, putting in not only all that was necessary, but a good deal that was not necessary, and read it over very carefully to my client and the justice, who then swore him to the complaint and made out a warrant for the arrest. This we took to the log cabinet shop of James W. Reed, situate on South Water street between Franklin and Wells. Reed was the constable of the town, a stout, vigorous man of about thirty years of age, and the only cabinet maker in the place.

We all started out in a search of our man and for a long time could get no trace of him and feared he had taken to the woods or to the prairies. In an hour everybody had heard of the theft with the usual exaggerations, and nearly everybody became a *quasi* detective. Toward night, Reed got a pointer and soon ran his man to earth and marched him down to the carpenter's shop—the justice's office—followed by a crowd which fairly filled it.

Justice Heacock took his seat on a saw horse beside the carpenter's bench, on which was lighted a single tallow dip, supported by four nails driven into a block of wood, and opened his docket and called the case in a very formal manner. I answered for the people, and the prisoner for himself, and pleaded not guilty in a very emphatic tone. I then proposed that the constable search the prisoner for the stolen money, which was ordered by the court, and duly entered on the docket. Of course I assisted, and the court solemnly looked on, while the crowd pressed around curiously, if not anxiously. All the pockets were turned inside out, but no Bellows Falls money was found. The prisoner was then stripped to his shirt and long stockings, but nothing that we were after was found. The feeling of the crowd was evidently swaying in favor of the young man, and the court showed decided signs of weakening, and in an emphatic tone ordered him to put on his clothes. He

seized his pants and as he raised his right foot to introduce it into the outer garment, the calf of his right leg was brought into distinct view in the dim light, when my eye caught a little bunch on the swell of the leg. I quickly seized this between my thumb and forefinger and fastened to it, and probably some of the skin as well, and told the constable to carefully roll down the stocking and see what was there. He did so, and took out a little wad of bank bills, which he handed to the court with an expression of triumphant satisfaction. The court received the little wad and carefully unrolled it till it developed $46 of Bellows Falls money.

A murmur of excitement ran through the crowd, while the justice in a severe tone said: "Young man, this looks suspicious and requires further investigation." I think the prisoner and myself felt the strongest revulsion of feeling, but in quite opposite directions—he from hope to despair, and I from despair to confident belief that I had the right man.

It was now past 9 o'clock, and the court announced an adjournment till 9 the next morning, that the examination might be made thorough and deliberate, and ordered the constable to keep the prisoner safely till morning, and then bring him into court.

As there was no jail in the county, Mr. Reed took his prisoner to his cabinet shop, where he ordered him to lie down on a pile of shavings under the work bench, when he secured the door and windows and seated himself to watch the night through. For myself, I retired feeling immensely satisfied at the change the day had wrought in my hopes and prospects.

The next morning all hands appeared promptly at the log carpenter's shop or justice's office, where Mr. Spring and Colonel Hamilton appeared for the prisoner. They filed an affidavit under the statute for a change of venue, which, of course, had to be granted, and as soon as the proper papers could be made out, Mr. Justice Heacock took them and started for

the office of Mr. Justice Isaac Harmon, who was the nearest justice. He lived and had his office, as before stated, in a part of John Miller's tannery, which was east of the North Branch and north of the main river near their junction. There was no bridge across the main river, but one across each of its branches not far above their junction. To go by these bridges would nearly double the distance, so those of us connected with the case took canoes and crossed the main river to the north side, near where Dearborn street is, and then went on foot up to the justice's office, where the papers were delivered over in due form, thus vesting Mr. Justice Harmon with jurisdiction of the case. In the meantime, there only being canoes enough at Dole's dock to transport the court party over, the spectators hastened around by way of the bridges, and the string of hastening men (there were very few boys in town) showed that the trial was looked upon as a great event, in the hitherto innocent but bustling town.

When the court was opened Spring made a motion to quash the whole proceeding and discharge the prisoner on the ground of insufficiency of the complaint and made a most earnest and zealous speech in support of his motion. Now Spring could make just as earnest and confident a speech when he knew he was wrong as when he thought he was right. He certainly manifested no doubt or misgiving as to the correctness of his position, and fairly raved at the monstrous outrage upon the young man by detaining him for a moment on such papers, and confidently claimed that the money, of which we had fairly robbed him, should be restored. All of this served to prepare me well for a speech in support of my complaint, and I already congratulated myself upon the complete manner in which I should expose the fallacy of Spring's position, but my client seemed evidently impressed by his confident earnestness and looked a little anxious.

The moment Spring closed, I jumped to my feet primed to overflowing to do battle for my complaint, when the

court quietly said he thought that the complaint was sufficient and so I need not trouble myself, and overruled the motion.

By this time it was nearly noon and some one, I think the justice himself, suggested as his office was small and a considerable public interest was manifested in the examination, the further hearing was adjourned to Wattles' tavern, where the proceedings would be continued after dinner.

Soon after one o'clock, the court was convened under the porch of the log tavern, a deal table supporting the open docket of the justice, whose dignity was held up by a Windsor chair. The crowd was considerably augmented, many in their shirt sleeves, for it was a warm July day, and all were clad in as light costume as comported with the dignity of the occasion. I was directed to call my witnesses, and Mr. Hatch, the complainant, was sworn. He gave his statement as before related, together with the account of the finding of the money, which he identified. Ried, the constable, gave an account of his search for the prisoner and of his search of him, and of the finding of the money inside his stocking.

The cross-examination of the witnesses was much longer than the direct, but, as is very often the case, it strengthened their direct testimony. I may say here that more cases are ruined by too much cross-examination than by too little. I have often seen a doubtful case made clear by what was intended to be a crushing cross-examination. If a witness is intelligent and reasonably self-possessed, and means to tell the truth, an attempt to break him down by a blustering cross-examination will often develop damaging facts which are brought to his attention, and so I have often seen cases ruined by too much cross-examination. I always made it a rule to prove my case in the shortest and most direct way possible, and then stop. If it is to be strengthened by collateral circumstances, it is much better to let them be brought out on the cross-examination than on the direct. No evidence was introduced for the prisoner.

After the testimony was closed I opened the case in a

short speech when Spring went in for a grand effort in his earnest, confident manner and was followed by Col. Hamilton, in a less nervous, but more deliberate manner, and considering that they really had no defense to make but could only try to create a sympathy for the young man, their efforts were excellent. Spring had got in the first speech in the morning before a Chicago audience and now had made a fine effort in which he had scored several points for himself, if not for his client; I felt that I must do my best or rank number two in the very start. I went at it in earnest, reviewing the evidence and showing its conclusive character and then took up the sympathy part, pointing out that it must be the last resort of manifest guilt. That if this was his first offense it was the part of true sympathy to nip his career of crime in the bud, rather than to encourage him to commit further crime by giving him immunity for this. That the community had greater claims upon our sympathies to be protected from the depredations of thieves than any acknowledged thief could have, and pointed out the great importance of proclaiming to the whole criminal class that Chicago was an unwholesome place in which to practice their arts. That the courts must take the responsibility of determining whether Chicago was to become a den of thieves or an honest community where life and property were to be protected by a rigorous administration of the law. I drew a picture of Chicago in the future, if the courts by their decision should make it a refuge for criminals, and Chicago purged of crime by a relentless administration by the Criminal Courts. It was for his Honor now to determine which class of immigrants were to be invited to come in, the good or the bad. I dwelt upon this theme in all its phases, at considerable length, and when I sat down I felt in the very atmosphere that I had struck the right chord and had achieved a complete success. By praising the strenuous and ingenious efforts of my opponents in so desperate a case, I detracted nothing from my own success.

This was the opening career of the two first practicing lawyers in Chicago, and the people had manifested a decided interest to know whether we were likely to prove a success or not, and we both felt gratified at their manifest approval.

The court, without reviewing the evidence or the arguments, promptly held the defendant to answer in the Circuit Court. It turned out that he had several friends in town who probably knew him or his family at the East and who went his bail, and he was thus discharged from the custody of Constable Reed. He never appeared in Chicago again, so far as I know.

Mr. Justice Harmon promptly sent the papers to the office of the clerk of the Circuit Court.

Col. Hamilton entered upon the records the case of the people against his own client, which was the first case ever entered upon the records of the Circuit Court of Cook County. Mr. Hatch very cheerfully paid me ten dollars of the recovered money, which just paid my board up to that time. Although small in amount, it was the greatest fee I ever earned (and I have received some good ones in my day) if measured by the amount of good it did me. The bright spots in my horizon, lately so dark, now shown like a firmament of stars.

The second case also came to me, of which I will give an account hereafter, the incidents of which were a little funny and more unique than the first. Just before the great fire of 1871, which consumed all of the old records, with two friends, Norman Williams, Esq., and C. E. Towne, Esq., I examined the old records and found the papers, and as I recollected they were the two first ever entered there.

This case then passed into the hands of the State's Attorney, Thomas Ford, who was afterward judge of the Municipal Court, of the Circuit Court, of the Supreme Court, and then Governor of the State; nine years later I succeeded him as judge of the Supreme Court.

Later Spring presided on the Circuit bench in Chicago most acceptably.

II.

MY SECOND CLIENT.

THE FIRST CIVIL CASE TRIED IN COOK COUNTY.

Perhaps ten days after Spring and myself had introduced ourselves to the little public of Chicago, as stated in "My First Client," I obtained my second client, which will make a shorter story than the first. In the meantime I had earned a few dollars posting books for Robert A. Kinzie. Ready to earn a little outside the profession, both Spring and myself had undertaken to carry the chain for Josh Hathaway, who had come to Chicago with me and had been given a small job of surveying by Geo. W. Snow, who was deputy county surveyor.

Josh had thoroughly studied surveying theoretically, but had never set a compass, while I had some practical knowledge of the subject, having executed several jobs to earn a little in my school days. So it was agreed between us that he should hold himself out as a surveyor without advising the public of his want of practice, and that when he got a job I would go along to carry the hind end of the chain and quietly give him any instructions he might need in starting. Spring was glad to go along to carry the fore end of the chain for he seemed as glad to earn a dollar as I was.

We found our starting point, perhaps a mile north of town, east of the North Branch, in the timber, and ran north. The line soon ran us into an alder swamp, and a denser one I never saw.

Every foot of the way had to be cleared by the ax-men, so it was very slow work. At noon we came back to town

for our dinners, and as we passed the clerk's office on our way, Col. Hamilton came out and told us that a man had been in his office who wanted to bring an action in attachment. That he had told him he must get a lawyer to draw his papers. That he had gone away but would be back in the afternoon. We both wanted the case, of course, but agreed that we would eat our dinners and return to our work and the Colonel was to send the client after us and we would trust to luck as to which he would come upon first, who, of course, would get the case.

We told the Colonel that we would be found in that alder swamp, to which he was to direct the client. I thought that my position at the hind end of the chain would give me the advantage, for the man would most likely strike our trail where we entered the swamps, and so must necessarily follow it up and come upon me first. I dare not, however, tell the Colonel to advise him to look for the trail along the edge of the swamp, for that would have at once disclosed my fancied advantage.

We went back to our work, but made very slow progress in the dense thicket, all being idle most of the time except the ax-men, whose constant blows could be heard at a considerable distance, and I imagine that Spring confidently calculated upon this as giving him the advantage, but he kept his thoughts to himself as well.

So soon as the ax-men had cleared the way sufficiently to let us advance one chain we did so and then sat down to wait. While thus sitting on a log waiting in profound silence, I heard a crashing in the brush, and guessed instantly that it was the coveted client. He was fighting his way slowly through the thicket, but making directly for the choppers. I thought the game was lost, but when he got opposite me, not more than twenty feet away, the Devil took control of my hands, and I lifted the handful of steel pins in my right hand and dropped them into my left, which made a pretty loud ringing noise. Instantly the noise in the brush stopped as if the traveler was in the attitude of

listening. The sight could not penetrate more than half the distance between us, and the blows with the axes still continued. This, I appreciated, must soon start the man on his way to them, so I gave the stakes another ringing clash into the left hand, when the man started directly toward me and very soon was before me and asked if I was a lawyer. I felt guilty of having broken the spirit of our agreement, if not the letter, and regretted what I had done; but it was then too late to do much to repair the wrong which I felt I had done. I appreciated that I had done a mean act, and I felt mean about it, but, as usually occurs in such cases, it redounded to Spring's benefit instead of mine, of which I have been always glad, and wish it might ever be so in such cases. I told the inquirer that I was a lawyer and that Mr. Spring, to whom I pointed, was another, and that either of us would be happy to serve him professionally. I am sure it would have been a relief to me then had he gone over to Spring and retained him. But no; he said he thought may be I would do and asked if I could go with him then. I said yes, and we started for the clerk's office together, and on the way he stated his case to me.

A man owed him some money, who was a non-resident, but had some property which he wished to attach.

We went to the clerk's office, where I prepared the necessary papers and procured the writ of attachment, which was duly served by the time the surveying party returned. That was the first civil cause ever entered on the docket of the Circuit Court of Cook County.

Spring was employed the next day by John Bates, who reside dhere till a few months ago, when he was killed on a railroad track when about eighty years of age, to interplead (which the process of claiming the property attached is called in the statute).

At the next term of the Circuit Court, which was held in May, 1834, the case was tried before the first petit jury ever impaneled in the Cook Circuit Court, when Spring beat me and got the verdict. I got my judgment by default against

the debtor, but could never find a thing out of which I could collect it, and as my own client never showed up again, I got nothing except a small retaining fee, while Spring got a good fee and a good client; so the laugh was on his side at the end, which I think he enjoyed almost as much as he did the fee.

I may add that I not only tried the first jury case in the Cook Circuit Court, but also the cases tried before the first juries impaneled in the Circuit Courts of Kane County and of Will County, of which I may hereafter give an account.

III.

MY FIRST MARRIAGE CEREMONY.

A FRENCH COUPLE.

When I was twenty-two years old I was elected a justice of the peace on the 12th of July, 1834, and then I commenced my judicial career. The election was for the Chicago precinct, but the jurisdiction extended over the whole county of Cook. I received 182 votes and my opponent received 47 votes.

I do not propose to confine myself strictly to judicial or professional incidents, but shall introduce incidents and events as they shall occur to me, illustrating the state of society, the social and business conditions in the community and vicinity as they existed in those early days, when from sheer lack of numbers the crude and the accomplished found themselves standing and associating nearly on the same level.

There were but few young people in Chicago and vicinity, and I was acquainted with nearly all of them and soon monopolized nearly all of the marrying business.

The first official act I ever performed was to marry a couple. James Kinzie, who was a friend of the parties, called on me and informed me of the service desired, and wished me to go with him without delay. I put myself in presentable apparel as soon as possible and went with him. He led me down Water street to the foot of La Salle, where we took a canoe and crossed to the North side, and he then conducted me to a log house where we found the wedding

party assembled. He introduced me to them in French, for few of them could understand English.

The most interested parties were a young couple of Canadian French, who had always been connected with the fur trade and could not speak or understand English. The bride, I should judge, was about twenty-two years old, rather short, dark complexioned, with a sharp black eye. The groom was short and stout with a fairly intelligent expression. Everything was ready. Kinzie was active and officious and seemed to run everything in his own way. He arranged the parties by the side of the room and requested all the company to stand up. At the same time I stood up before them and asked them in English if they wished to enter into the contract of marriage. When Kinzie, acting as interpreter, asked them if they wanted to get married, they both answered "*Wi! Wi!*" with an inclination of the head and an emphasis which showed that they were in earnest. I then told them to join their right hands, which, when it was interpreted, they obeyed. I then went through with a rather short ceremony, making them promise enough, if they kept all, to secure a life of happiness, which Kinzie interpreted sentence by sentence, and then I pronounced them man and wife in as solemn a voice as I could assume, and told the groom to kiss his bride, which, when he understood the command, he did with animation, while the bride seemed becomingly embarrassed. It was evident that she would have preferred to have had that part of the ceremony a little more private.

After this all were seated on benches, boxes and stools, except the bride and groom and myself, who occupied the only three chairs in the house, which had probably been borrowed for the occasion. Some refreshments were then served including a sort of whisky punch; after this I left them to have a good, jolly time among themselves. As I left, Kinzie slipped into my hand the silver dollar allowed by law, which was the first money I ever received for official

services. I was back at my office before noon. This was my first fee as justice of the peace. It was well that my first marriage ceremony was performed among so plain a people, for as it was I was sensibly embarrassed, although I managed to keep up a calm exterior, as if it were an every-day occurrence with me.

Some one told me that years later I granted a decree of divorce dissolving that same marriage contract, but I do not think that was true.

IV.

MY SECOND MARRIAGE CEREMONY.

LIFE IN THE EARLY DAYS.

There seemed to be more weddings than law suits at that time in Chicago and vicinity in proportion to the population, some of which afforded amusing incidents—and instructive too—so far as showing how things were sometimes done in the olden time, when all was primitive. Here I shall draw on my memory for a few more of these events.

Not many days after the matrimonial event last described, a couple of rather ragged, bare-footed boys called at my office and told me that I was wanted at their house to marry their sister. Careful inquiry informed me that they lived in a log house in the woods about two miles north of town, that their name was Cleveland, and that the party was already waiting for the squire. I recognized the house by their description as one which I had seen when out hunting in that direction, and as soon as I could prepare myself properly, I procured a horse and rode out to the rural abode of Mr. Cleveland. On arriving, I hitched my horse to a sapling near by and went in. I was greeted by the matron of the house, who was a fat, robust looking woman, while Mr. Cleveland was a tall, spare man with a very fair complexion; I may say he was a pronounced blonde. There was but one room in the house, though that was of good size. It served as kitchen, drawing room, reception room, parlor and dressing room, and, no doubt, as sleeping room

for the whole family, though no sign of a bed appeared.

The old lady bustled about till she found the washboard, which she deftly clapped onto the frame of a chair from which the splint bottom had long since disappeared, and invited me to be seated, and I was seated, and wiped from my forehead the fast flowing perspiration provoked by a very warm July day. A survey of the reception room disclosed no furniture except a deal table, the seat which I occupied and several benches of different lengths, not to mention some pots and kettles in the corner of the great fireplace, and some shelves in one corner on which were some tin plates and cups and other table furniture, by no means extravagant. Near this sat the master of the mansion, who might have been fifty-five years old, and opposite to him sat, on another stool, a soldier from the garrison, as I judged from the clothes he wore. I soon observed that one corner of the room was cut off by old quilts and other articles of bedding, and by the agitation and whispering, this was evidently occupied. As it proved this was the dressing room in which the bride was being adorned.

I soon took in the situation and directly adapted myself to it. I dashed into a lively conversation with the good lady of the house in which I soon learned where she came from, when she came West, how she liked it, if the mosquitos were bad there in the woods (she said they were horrible), how many children she had and the ages of each, and if it was her daughter to be married and where was the groom. Yes, her eldest daughter was the bride and the gallant soldier who sat in the corner near the window was the groom, whom I was to make happy by a few official words. Then I speared away awhile at the old man, as he was considered in this young country then, and from him I glided off to the soldier and talked up military matters, so that in a little while the restraint which at first seemed to be embarrassing wore off, and all seemed quite at ease and happy.

After awhile the curtain was raised and the bridal party came forth from the secluded corner and burst upon us like

—like—I am at a loss to find a fair comparison. First came the two younger sisters. They were of medium height for their ages, and slightly built, and really handsome, one perhaps fifteen and the other eighteen, decently and plainly dressed, but neatly. One of these, the eldest, I recognized as having seen at Ingersol's Hotel at Wolf Point, waiting on the table. They were followed by the bride, gayly decked out in furbelows, but it was clear she was the daughter of her mother. Though not tall, she was very stout. I got up from the washboard quickly and bespoke the party cheerfully and pleasantly as I knew how.

Before any one was seated again, the two boys walked into the house covered with perspiration and dust, each one having a gallon jug strapped to his back. Our hostess soon undid the straps and placed the jugs on the table, scolding the boys roundly for their tardiness, while they protested they had fairly run their legs off, in order to get back in time to see the fun. Madame soon found a milk pan, into which she put a cup of molasses from one jug, and then a cup of whisky from the other, and then a cup of cold water from a pail standing under the table; after she had thus measured out about six quarts, she went at it with a large wooden spoon and stirred it up lively. When sufficiently mixed, the good and hospitable lady took a tin cup and dipped it partly full and presented it to me, saying, "Squire, are you fond of blackstrap? I always had a knack for making blackstrap, and you shall try it first, though you ain't the oldest, I guess."

I protested that blackstrap was my delight and the only drink I ever indulged in, and after putting it to my lips pretended to drink heartily. I was so busy praising the beverage that I doubt if she observed whether I drank or not. I then passed the cup to mine host, who smacked his lips after a few swallows as if he were well used to the exercise. He refilled the cup and passed it to the son of Mars, who did ample justice to the skill of his future mother-in-law and then passed it to the bride, and thence it proceeded to the

other members of the family. This refreshing scene occurred before the marriage ceremony, an innovation no doubt born of the belief that it was the most important.

While this convivial scene was in progress I managed to get the innocent soldier outside and took him around the corner of the house and called his attention to the stout figure of the bride which was so marked that no one could fail to notice it. But the prudent suggestion which I felt it my duty to make to one whom I feared was being duped, proved quite gratuitous, for he said that it was all right, and he had determined to marry the girl anyway. So, as his license was correct and duly signed and sealed by Col. Hamilton, I had no further scruples on the subject and we returned to the cabin and soon after proceeded to make the two or three one. I made the ceremony very short and did not conclude it with the directions for a salutation which was then quite the thing among that class of people, because I thought the situation might make that part of the ceremony rather awkward. I took my leave as soon as possible after having received the statute dollar which just paid for the hire of the horse.

Of course I mentioned the cause of my visit to the country soon after my return, and the news soon reached the garrison, when a file of soldiers was sent out for the unlucky wight, who had ventured to commit matrimony without the leave of the commanding officer, although I am not aware that any of the articles of war required such permission. However, that made no difference, and the easy-going bridegroom was rudely torn from the bowers of bliss and locked up in the guard house before sundown, where I understood he was kept on a low diet for two weeks, and it was a long time before he got *leave* again.

I never interested myself to inquire how the disconsolate bride bore her grief in the meantime or since.

V.

ANOTHER CONNUBIAL EVENT.

LIFE IN THE COUNTRY—A WEDDING DINNER.

One Saturday in March, 1835, I was called upon at my office, by a stout, vigorous young farmer named Powell, and requested to go the next day about sixteen miles up the north branch, and unite him in marriage to a young lady living in a log house at Dutchman's Point. I promised to be on hand by noon the next day and he departed manifestly in a very happy frame of mind, as if contemplating a long life of future happiness.

The next morning was bleak and chilly with a strong northeast wind blowing, but when the event of a lifetime depended on my presence, and especially when I remembered that I hoped that at no very distant day I should require a similar service of some one, and how I would want to choke him should he disappoint me, I drew on my overcoat soon after breakfast and went to a livery stable and mounted a stout looking cob, and struck out into the bleak prairie, presenting my right cheek to the cold, damp wind.

The low, flat prairie was covered with water for the first eight or nine miles which splashed up at every step, and frequently the horse would step close beside a crawfish hole, with which the prairie was honey-combed, when the water would shoot up like a geyser to the height of several feet, often giving me a good sprinkling of the muddy water and more than once striking me fairly in the face. I had taken the precaution to tie a wrap around my neck so as to pro-

tect my shirt collar and bosom, long leggins protected my lower garments, and the overcoat received most of the showers of mud which came above my knees. But the boots! Nothing could be done for them, and they were soon so soiled that their color was indistinguishable. But that was no matter. Everybody was prepared to make allowances for that condition of things, so I gave myself no trouble about it.

Notwithstanding the apparent discomforts, that was, in truth, a happy ride. The fact is I was something in love myself; and so my thoughts were far away from the mud and water and the chilly wind and the bleak prairie, reveling in thoughts which I need not explain, and building air castles of huge proportions, which I decorated with the most elaborate architecture and ornamented with the brightest colors. Whoever has been in this frame of mind, will appreciate how utterly oblivious I was to all of the actual surroundings and lived for the time in a sort of Elysium, and listened to the songs of the birds of paradise. Thus hour after hour my horse plodded along at a walking pace, while I was in a state of oblivion to my surroundings. At length, after I had covered eight or nine miles of this low, wet prairie, I struck higher ground and it was possible to increase my speed, which I did, for I saw I was likely to be late to the wedding; I, however, arrived at the designated place in good time. The house was a large, commodious log structure with several rooms on the ground floor. What was most cheering to me, was a great wood fire in an old-fashioned fire-place at one end of the house, which would admit great logs four or five feet in length, and seemed big enough to roast an ox. This fire was occupied by the culinary operations, which were going on. A fine turkey and a plump pig, which were suspended before it and were being constantly basted by a ten-year-old boy, whose face was as red as a beet, diffused through the room an appetizing fragrance which made me rejoice that dinner time was rapidly approaching, and my mouth fairly watered at the

thought. A nice party of well dressed country people occupied the room, who were as chatty and as jolly as the occasion required. Powell met me at the door and without giving me time to take off my muddy wraps led me direct to the bride to whom he introduced me with a flourish, which showed that the situation produced in him no embarrassment more than as if he had been married once a week for the last five years. Not so, however, with the girl; she seemed considerably embarrassed as all eyes were turned upon her. She was taller than the average of women, and fairly stout in proportion. Indeed she was a large, well formed woman of fair complexion. She was decidedly awkward in her actions, evidently having seen but very little of even country society. This might have been expected when neighbors were miles away, and she probably had not a single acquaintance in town, and had never been there more than to pass through it on her way West. In fine, she was troubled to know where to put her hands and feet.

I did my best to put her at ease by a cheerful, easy and commonplace conversation and without staring at her. Her father and mother were standing near by looking on, to whom I was next introduced, and then I was paraded in my muddy leggins and overcoat and introduced to all the rest. I was then permitted to take off my outer covering. A boy had already been sent to take care of my horse, and I was seated near the fire to warm myself a little. This was scarcely done when Powell, who acted as master of ceremonies at his own wedding, came up to me and placed in my hands his marriage license and intimated that it was time to proceed to business. The license showed that the bride was fourteen years of age and the groom twenty-six. He, no doubt, noticed my surprised look as I again glanced at the full-grown bride, and quietly whispered to me, "It is all right; girls are like new potatoes. They are old enough as soon as they are big enough. She will keep house with the best of them."

With this he skipped back to the side of the blushing

bride, seized her hand and raised her to her feet. At the same time I advanced to the middle of the room in front of them and requested the company all to arise, thinking she would feel less embarrassed when all were standing. I then gave them a short lecture on the solemnity of the occasion, and the gravity of the responsibilities they were about to assume, and the course of conjugal life which would surely result in the greatest possible measure of happiness to both. This no doubt sounded funny from a young fellow not yet twenty-three years of age and who knew no more about matrimony than he did about preaching, nor half so much, but the truth is, he had already begun seriously to think about it and had in reality thought much upon the proper course for husbands and wives to pursue toward each other to enable them to live happily together, and I am not surprised that it had to break out on so proper an occasion.

Well, I married them good and strong, but at the conclusion I thought I would not gratify the groom's love of display and increase the bride's embarrassment by directing him to salute his bride, yet he did it all the same, and she submitted meekly, as if it were inevitable, as he had no doubt informed her that it was indispensable to a good marriage, and very likely had acted upon the belief that *de bene esse* is just as safe and just as proper under the circumstance as *nunc pro tunc*.

I then shook hands with the newly married couple and congratulated them cordially, and my example was followed by only a part of the company, the rest evidently being too diffident to thus display themselves. So soon as all was over the good housewife, the mother of the bride, made a movement for the big family table, which was pulled out into the middle of the room, and many willing hands helped her to set it, and to dish up as good a dinner as I ever wish to sit down to. The carving was not of the most artistic character, but the turkey and the pig and the boiled ham were soon reduced to ample portions, while the fricasseed chicken had been dismembered before it was put into the

pot. Boiled potatoes and mashed potatoes, corn bread and white bread, all done to perfection, filled out a dinner that an emperor might have envied, and my long cold ride had fitted me gloriously for just such a dinner. Coffee was the only beverage, but it was as good as the rest of the repast and nothing more was wanted.

The good woman of the house watched my eating with evident satisfaction and listened to my encomiums of her skill with even more, and when I expressed the hope that her daughter, the bride, could do as well, she was still more pleased and assured me that she had been all her life teaching that girl all about it and that she knew it from A to izzard.

We all showed stalwart appetites, and even the bride vindicated her sturdy appearance at the trencher, and it was hard to get her to suspend the process of mastication long enough to express her opinions on any subject, if she had any brilliant ones.

Soon after dinner I expressed my wish for my horse and the small boy was sent for him, while I endeavored to get inside my muddy wraps. When this was accomplished Powell came up to me and placed a silver dollar in my hand with the air of one who thought he was doing the handsome thing and he did not care who knew it, evidently expecting profuse thanks; but when I remembered that I must pay two dollars for the hire of the horse, and as it was too late to return to town I must impose myself upon the hospitality of some friend in the country, I did not feel like thanking him very much, so I took my leave without great ceremony, mounted my horse and rode away across the bleak prairie toward the hospitable abode of Mr. Mansel Talcott, on the O'Plane river, eight miles distant.

The generous dinner I had eaten so fortified the inner man that the outer did not mind the cold blast which was now nearly to my back. I could not help reflecting on the way, that she whose destinies I had just united with the man whose disposition I had just seen illustrated, would not

be likely to be over-burdened with too much pin money: in fact I doubted if she ever got any. I have never heard since how that was, though I have heard that Powell proved a man of some business capacity and worked a number of men on his farm, whom he fed principally on boiled white turnips, asserting that if they would *stuff their shirts* full enough of that they would not starve, and I was ready to believe it.

More than fifty years later, at a reception given by the Calumet Club to the old settlers of Chicago, the young bride of that long time ago, introduced herself to me in a frank and easy way, showing that she had seen much of the world since, and she had, for she had kept a country tavern just beyond the suburbs of the city. She had lost her Powell, but had captured a second husband who, I have since learned from another source, did not turn out all she had hoped for, and from whom she filed a bill for a divorce, in which she was defeated by having shown too much kindness to the defendant *pendente lite*. But for all this she now seemed jolly and happy.

I arrived at Mr. Talcott's a little before sunset and was received at the door by the old gentleman (even middle-aged men seemed old to me then), with that open-handed and generous hospitality which was a part of Mr. Talcott's very being, and which I had often before enjoyed, and with a welcome by the ladies inside not a whit the less cordial.

These consisted of Mrs. Talcott and their daughter Angeline, a young lady perhaps twenty years of age, smart, well educated and accomplished, and an ornament to any society into whose association she might be thrown.

Only the summer before they had heard that I was sick in town, and sent for me and kindly nursed me for two weeks till I got able to return to my work.

Angeline was one of the very few friends to whom I had confided my own love affair at the East, in which she took a lively interest and seemed as pleased as I was to talk about it, and she made me describe my sweetheart over and over again, till she said she would know her on sight,

though she wondered how I should know her myself when she remembered that I had never passed a word with her orally, but that little piece of romance connected with the affair seemed to impart to it an additional interest. Her mother was a most charming woman, of rather a frail appearance, yet smart and active, about fifty-five years of age, with a lively, cheerful disposition, which made her enjoy young people's society, and with whom her sympathies were as much awakened as they would have been thirty years before. She was a charming companion to both old and young. Mr. Talcott was an uncommonly stout man, with an exterior appearance rather rough, but with a heart big enough for several common men. Nor must I omit to mention Mansel Talcott, Jr., who was then a lad, I should think, about sixteen years old, who already showed evidence of that business capacity which he afterward displayed, and that kindly nature and generous heart for which he was distinguished in manhood.

During the evening I gave an account of the late wedding, and all were vastly amused; especially at the fee I had received and my way of describing the ceremony.

Angeline had been commissioned to engage my official services at another wedding, about two weeks hence, at the house of a neighbor two miles up the river.

It was arranged that I should come out in the forenoon of the day of the wedding, and spend the afternoon at the house of my hospitable friend, for the wedding was to occur in the evening.

The next morning I returned to town.

VI.

ANOTHER WEDDING IN RURAL LIFE.

REFLECTIONS—REMINISCENCES.

On a pleasant spring morning in March, 1835, I mounted my horse and struck out over the unbroken prairie for the house of my very kind friend, Mr. Mansel Talcott, to fulfill the appointment which I had made some days before with Miss Talcott, to unite in the bonds of wedlock a rural couple, whose love, I doubt not, was as sincere and as earnest as if they had walked in a higher circle of society.

These errands of love always made me meditative and happy. They seemed to remind me of the joyous time to come, in the hopes of which, after so many years have passed away, I can truly say I was not disappointed; nay, my brightest dreams have been more than realized. I built air castles big and beautiful. Naturally of a hopeful disposition I was ever feasting on hopes, not blindly as if they were to be realized by destiny, but determinedly, as if they must be realized by my own efforts and merits, with the help and support of one who I felt sure would sympathize with me and encourage me. In this I have not been disappointed. In whatever of success has attended my efforts, she has done her full share, and now in old age we are passing down the hill together, with the same cheerful concord and sympathy which has ever since characterized our lives. If the ascent was steep and laborious, its descent is gentle and quiet. The wayside seems strewn with flowers whose fragrance is grateful and refreshing.

It was during my solitary rides over the prairies that I used to indulge in those day dreams and formed plans and resolutions to make them realities. When engaged in real business I had the force of will to expel them entirely from my mind and to concentrate my thoughts relentlessly upon whatever I had in hand. If, as the time approached, this was sometimes hard to do, yet I did it and gave my undivided thoughts to business. I knew I had to work. I resolved to work, and to some purpose.

Sweet is the consciousness of a well-spent life. I can survey the past in a calmer mood than I then surveyed the future, and am astonished to see how well that future has been realized. Indeed, my success has been more than I then anticipated, my domestic happiness has been more than I then dared to hope for, but my labors have been harder than I then supposed that I was capable of performing, though I have overcome the obstacles which I have encountered in the way with greater ease than I then thought possible. I have developed business capabilities outside of my profession, of which I was then unconscious, and which my industry and love of labor have turned to good account. It is a sweet reflection in the decline of life to believe that I have not lived in vain, that I have contributed my mite to the well-being of mankind, and that this seems to be appreciated by my fellow-men; that I have in some measure filled the place designed for me by Him who regulates the economy of the Universe.

I may now say to young lawyers that they can only succeed in their profession by hard work and by the highest integrity and honorable practices. The first is necessary to learn what the law is and its proper application to given facts. The next is indispensable to secure lucrative employment. Little tricks and sharp practices may succeed for a time in little cases, but they can never secure an honorable reputation, which is indispensable to marked success. They are evidence of a little mind and can not secure a large reward, either in reputation or financially. Little advantages

dishonorably obtained are worse than honorable defeats. Hold your honor as sacred as your soul's welfare. Show yourselves worthy of the highest trust and you will be trusted: not without. Work hard and think strongly and deliberately. Lincoln was a great example of all these characteristics.

I arrived at the hospitable house of my friend for dinner, and was welcomed with a cordiality which bespoke the kindness of heart which there prevailed. The afternoon was pleasantly spent and as the shadows of evening began to fall, Angeline and I mounted our horses and took the trail leading up the river along the skirts of the timber which bordered its banks. My companion was to be bridesmaid and we had a sort of rehearsal, and I received particular instructions on some points which she thought important, and especially was I to require the salutation of the bride by the groom at the close, the contemplation of which she seemed to much enjoy, and she insisted that I should do the same thing immediately after, and she would arrange it so that the whole company should follow my example. This I promised but with the condition that the bridesmaid should receive the same attention, to which she at first demurred, but finally said she would manage that all right.

It was dark when we arrived at the log cabin of the settler, who was among the first to locate in the O'Plane timber. It was a good sized, commodious house for a frontier settler, and all about bespoke neatness and respectability. Several of the neighbors were assembled to witness the ceremony. Angeline introduced me to them all, for she had made the acquaintance of nearly all of the settlers for miles around. She had given me no description of the bride or groom, only that they knew nothing of what is called society but had only associated with frontier life, and that the bride's family belonged to the Society of Friends, and so I must expect to see everything plain—very plain. As my family belonged to that society and I had been brought up under its teachings, I was glad to learn that I

should meet some of that faith which my mother so much loved, out on this remote frontier.

Angeline had already told them of my antecedents in this regard, and doubtless this had its influence in the selection which was made of the officiating officer, for the Friends will tolerate a marriage ceremony performed by a civil magistrate, while they can not, with a clear conscience, be present at one celebrated by a preacher of another denomination.

The bride was young, and the groom was not many years her senior. She was quite plain looking, but he was one of the handsomest young men I ever saw. His was not an effeminate, delicate beauty, but a manly, sturdy beauty, if that term be proper when speaking of one of medium size, yet of a powerful build, uniform features, a frank, open and winning countenance, toward whom one felt oneself drawn as if by a cord of friendship, not to say admiration, at first sight. He was a decided brunette, but this rather added to his manly beauty. I soon learned that he was as unacquainted with the ways of the world as one who had spent his life on a farm well could be, and had never been in any town more than to pass through it, and had only associated with those in similar conditions. He was of good natural parts and a clear intellect.

He soon intimated to me that he would like to see me alone, so we took a walk out of doors, when he told me that he had never seen a wedding, and would like to be instructed as to the mode of proceeding and what he was expected to do. I then rehearsed to him the order of the ceremony to its conclusion, that he would have nothing to do but to assent to the questions which I should ask him, and to join right hands with the lady. That at the conclusion of the ceremony I should direct him to salute his bride, which he must do as an evidence that he recognized her as his lawful wife; this meant that he should kiss her then and there.

In the meantime Angeline had been getting the bride

ready for the dread event. She, too, had never witnessed a wedding and knew nothing of its proceeding, but had some idea of its consequences.

The bridesmaid gave her minute instructions as to how she should act her part, but carefully abstained from any intimations to the concluding performance, about which I was so particular to instruct the groom.

When we returned to the house the party seemed to be in waiting for us. The bride and bridesmaid were seated by themselves at one side of the room, while the company were seated as far away as they could get. As I saw everything was ready, I told the groom to take his place at the right hand of the bride, who, with the bridesmaid, rose to her feet in good order. She was dressed in white muslin, as was befitting, but the pattern of the wedding garment was very domestic and unique. In short, it was precisely that of a lady's nightgown with a yoke at the top and a most elaborate skirt and large sleeves. This Angeline had gathered around the waist with a broad, red ribbon, which I think she had brought along for the purpose, as a sort of wedding present, for I afterward learned that she had planned that wedding costume to suit her own fancy, or, I may say, freak. It was in the main well adapted to the plain and simple taste of the Friends, though the red belt and big bow in front were a reluctant concession to the vanities of the world. The hair of each of the ladies was disposed of in the plainest possible way and without the least ornament, and I, who had in early life been taught to admire plainness in everything, thought they really looked beautiful.

I placed myself in the space in front of the bridal party and then asked the company to arise. I proceeded to deliver a lecture upon the solemnity of the occasion and the great responsibilities which these parties were about to assume and how they should bear themselves toward each other in order to insure the greatest amount of domestic happiness, and all of that. During this delivery I tried to

imagine myself a person of fifty, who knew well what he was talking about, instead of a young squire of twenty-three.

I knew Miss Talcott was all the while trying to catch my eye so that by some ludicrous or grotesque look or expression of countenance she could make me break down or make me laugh, but I refused to gratify that desire, and kept my eyes steadily fixed upon the two interested parties, who were a real study at that time.

At the close of my lecture I proceeded with the ceremony proper, which I soon concluded and pronounced them man and wife, when I directed the groom to salute his bride. As this was the part which he had no doubt most held in expectation, he made a fierce grab at his new made wife and attempted to execute the order. This was entirely unexpected by her, and as she probably had no idea of the meaning of the direction which I had given, she, no doubt, thought the young man had lost his mental balance as she had nearly done herself; she rushed away from the supposed madman in real terror and actually fought back in a cat-like manner. But he was equal to the occasion, and followed her up with such manly vigor, quite to the corner of the room, to which she retreated, that by superior strength, he accomplished his purpose with such a smack that it could have been heard out of doors.

When she was released from the embrace of her stalwart husband, she had nearly fainted, but Angeline came to her support and assured her that it was all right and a necessary part of the ceremony which she had unfortunately neglected to explain to her. It took some time, however, to reconcile her to having been kissed by a man in so public a way, and Angeline said she much doubted whether he had ever kissed her before in his life.

This rumpus was enjoyed by the mischievous bridesmaid beyond measure, and she could hardly refrain from laughing outright and boisterously at the ludicrous figure which the scene presented. Her plans had worked to a charm and

just as the ingenious girl had hoped. Most of the company stared upon the scene as if a cataclysm was actually taking place, though a few plainly understood and enjoyed it.

After this funny episode had terminated and Angeline had got the parties back to their places, though it was difficult to make the timid bride understand that all was not yet over, I stepped up to the married couple and shook their hands and warmly congratulated them on the happy change which had now taken place in their life history, though I doubt if the abashed girl understood a word I said; but the groom evidently enjoyed the situation in a calm and confident manner. I was stubbornly blind and deaf to all the winks and nods of the roguish bridesmaid to go further and kiss the bride myself. I felt it would have been a cruelty to have further embarrassed the timid creature, especially as I felt sure that Angeline would have assured all the rest that it was the proper thing for each one to do the same thing.

When I had turned away leaving half of the programme unexecuted, the bridesmaid hastened up to the father and mother of the bride and by mere force rushed them up to the wedded pair to kiss and congratulate their daughter, and assuring the good lady that it would be a clear slight if she should omit that mark of respect for her son-in-law. Her confident impetuosity carried her point and the young man took the salute of his new mamma, if not with a hearty relish, at least with a benign resignation. The father kissed his daughter with an affectionate tenderness which plainly bespoke the depth of the love he felt for her, and she received it as if it was a daily occurrence, and carried a blessing with it. All efforts to get the rest of the company to follow up the assault proved abortive, and soon the order of the gathering was broken up. Then we did our best to inspire a lively mood and not entirely without success. I talked with all of the oldest people in the room on such subjects as I thought would most interest them, and it was not difficult to get on free and easy terms with them all.

Angeline knew them nearly all, and her kind heart and social disposition were well appreciated wherever she went. Indeed, she had become a sort of oracle among them. She was a favorite among all classes.

At length some plain but excellent refreshments were set before us, including chickens and some coffee, well brewed, which were disposed of with the celerity peculiar to frontier life.

By ten o'clock all were gone but ourselves. Angeline said she must stand by her friend, the bride, till the last, and she did so. We then took our leave and left that innocent and amiable family to their quiet and peaceful life.

We had scarcely got out of hearing of the house when my companion became convulsed with laughter, and she made the forest ring with her merry peals. She rehearsed over and over the scene which she had, in fact, created, and pointed out the ludicrous parts, laughing to the echo at each.

Angeline was fond of fun and fertile in resources to create it, but kind of heart and sympathetic. If her practical jokes caused temporary pain or annoyance, she managed afterward to obliterate their memory by kind and generous acts, in which she delighted even more than in her merry-making.

More than fifty-three years have now elapsed since the events which I have related occurred. It would be interesting to know how many who witnessed them are still left to remember them. Many years have elapsed since the amiable girl, who was then my companion, passed away, mourned by a husband and a large circle of appreciative relatives and friends. But where are the parties most interested in what took place on that, to them, memorable evening? Have they been spared to celebrate their golden wedding, surrounded by descendants as virtuous and as worthy as they were themselves? I have never seen them since, and have now forgotten their names, so that it would be difficult to hunt them up, even if living; so that I may not hope even to meet them again; and yet I never married a couple who really interested me more.

VII.

CIRCUIT SCENES.

I.

THE FIRST TERM OF CIRCUIT COURT IN COOK COUNTY—FIRST TRIAL FOR MURDER IN COOK COUNTY—DEFENDS A THIEF IN WILL COUNTY—FIRST TRIAL IN KANE COUNTY.

In the first paper of this series, I have stated how it occurred that I prosecuted before the examining magistrate the first case that was ever entered upon the docket of the Circuit Court of Cook County, and in the second paper I have related how it happened that I was retained in the first civil case, which was marked No. 2, which ever found a place upon that same docket.

The first term of the Circuit Court of this county was presided over by Judge Young, and was held on the 14th day of May, 1833. By the act of February 16, 1831, Cook county was placed in the fifth judicial circuit, and by another act of the same date, the times for holding courts in Cook county were fixed for the fourth Monday in April and second Monday in September; but as there was no business to be transacted, either civil or criminal, no circuit courts were organized in this county in that year, nor until the May term, 1834, when, as before stated, the first court was organized. Although my two cases were entered upon the docket previous to the first day of October, 1833, when the court should have been organized, Judge Young did not appear, and so no court was then held.

I am aware that it has been claimed that an earlier court

had been held in Cook county, but this impression, no doubt, has arisen from the fact that the laws fixed the times for holding the courts in Cook county before that date; but at none of these times was the court held, for the simple and sufficient reason that there was no business for it to do until the October term, 1833, when Judge Young did not appear to hold the court.

After the grand jury was impaneled at this May term, and had been charged by Judge Ford, who was then state's attorney for the fifth circuit, they retired. It was at that time very common for the presiding judge to call upon the state's attorney to charge a grand jury, and it was not uncommon for him to call upon some member of the bar to perform that office. Indeed, it was sometimes the case that a lawyer of note, when first attending a court, gladly accepted such a position as a means of introducing himself to a new community, and in such cases the charge was sure to be an elaborate one, able and to the point. I do not remember that any indictments were returned by that grand jury, except against the young man whom I had prosecuted for stealing the Bellows Falls money, and as he failed to appear (as it was probably intended that he should do when the bail was taken), I am very confident that no criminal trial took place at that term.

The first petit jury ever impaneled in that court was to try my attachment case, of which I have previously spoken, and in which I was beaten by Spring, and as I think he was right, and as I felt all the while a self-reproach for the manner in which it came to my hands, I felt a relief rather than chagrin at the result, although I made the very best fight I could, and tried hard to get a verdict against the weight of evidence. Thus it fell to my lot to conduct the first jury case that was ever tried in the Circuit Court of Cook County.

At the same term I had a habeas corpus case, of which I presume the State courts would, at this time, decline to take jurisdiction. It was against the commandant at Fort

Dearborn for the release and discharge of a soldier under his command, on the ground that he was under age when he enlisted, and as his father had not given his consent as the law required.

I found precedents in a Digest of the New York Reports where the State courts had exercised that jurisdiction, and indeed very little opposition to my proceeding was made on that point, and Judge Young sustained his jurisdiction. At that time the State courts claimed jurisdiction in nearly all cases where it was not vested exclusively in the Federal courts, and without this citizens would have often been subjected to great inconvenience and expense by being compelled to resort to the Federal courts, generally at a great distance away. In this case it would have been equivalent to a denial of justice to compel this boy to go to Judge Pope at Springfield to get the writ, and compel him to go there for the trial.

Upon the trial I proved by a witness who knew him from childhood that he was under the age of eighteen years, which was also clearly manifest from his appearance, but I did not prove conclusively that his father did not consent to his enlistment, nor did the commandant produce a particle of evidence showing such consent had been given, and upon this condition of the testimony the case was submitted to the court.

I argued it to a most ridiculous length before the court, and, no doubt, said all that could have been said, and a good deal more than could be well said, and the court listened to me for seven hours without the least evidence of impatience, and then decided the case against me. The only point which I now remember, or which was probably worth remembering in my argument, was, that as I had proved the infancy of my client, it was for the Government to show, as a condition precedent to a legal enlistment, that his father or guardian had given his consent to the enlistment, which had not been done. While, on the other side, it was contended that it must be presumed that the enlist-

ing officer had done his duty, and had received the parental assent before he would accept the enlistment. Ford argued the case for the United States.

The court adjourned for dinner during the argument, and when I saw the judge going off with the commandant to the fort for dinner, I confess I felt a little uneasy that some improper influence might be exerted upon the judicial mind. Ridiculous as this unworthy thought was, I may find a very lame excuse for it in the burning solicitude which a young lawyer feels in his case at the very commencement of his career, for no purer or more upright man ever sat upon the judicial bench than Judge Young.

In the month of June, 1834, an Irish laborer in a drunken fit went home and finding something wrong in his domestic relations, perhaps because his supper was not to suit him, he manifested his dissatisfaction by giving his wife a beating, and, not being in a condition to discreetly measure the force he employed, she died from its effects. An autopsy was held upon her remains, conducted by Dr. Temple, assisted by Dr. Kimberley, Dr. Harmon, and several other local physicians, and they reported that death had ensued from the blows inflicted by her husband, and the coroner's jury held him to answer for murder; this was the first autopsy ever held in Cook county, so far as I could learn. I was applied to, to defend him. I was convinced that the *quo animo* was wanting to constitute the crime of murder, and that the true line of defense was to make the homicide a simple manslaughter, and addressed myself to the preparation of the case upon that line.

Sickness prevented me from attending the October term of the court, which was held on the first day of October, 1834, Judge Young presiding, so that the entire defense fell upon my partner, Mr. Collins, who adopted the same line of defense which I had fixed upon and carried it further than I had hoped to. The indictment was for murder, and Mr. Ford, the state's attorney, being convinced that he could not sustain that charge, asked for a conviction for manslaughter

and for a severe punishment. Mr. Collins took the bold ground that he could not be convicted of manslaughter under that indictment, but that the jury must convict him of murder or acquit him altogether. This, at first sight, might seem a little dangerous, for it could not be questioned that a brutal homicide had been committed without the least justification, and there was danger that they might convict him of murder rather than to let him escape altogether; but this was not so dangerous a course as would at first appear, for had they done so, there was no doubt that the court would have granted a new trial, and thus have saved him from capital punishment.

Collins urged his position with such persistency and apparent confidence that he persuaded Judge Young to give the instruction which he asked, and thus secured the complete acquittal of our client.

Now, Judge Young was really a very good lawyer, but he manifestly had had no case which had required him to investigate that particular point of law which authorizes the conviction for a lower grade of offense, of the same class, under an indictment for a higher grade, as, for instance, manslaughter for murder, an assault with a deadly weapon under an indictment for an assault with intent to commit murder, and the like.

Mr. Collins' arguments were of such force as to create a doubt in the mind of the judge on this point of law, and he gave the prisoner the benefit of the doubt. Such was the result of the first trial for murder in Cook county.

It also happened that I tried the first jury case ever tried in Will county.

I had been retained to defend a man for stealing a red overcoat from Tuttle King, who at that time kept a clothing store in Chicago.

A violent prejudice seemed to exist in Chicago against thieves and counterfeiters, who had become unpleasantly numerous within the last few years, so that it seemed to me, as I often expressed the opinion, that the juries here were

so prejudiced that to read to them an indictment was enough to insure conviction of the prisoner; that they seemed to regard an indictment which had been found by a grand jury as very truth, as if it had been found in one of the gospels. Indeed, not only the juries, but the courts seemed to have a settled prejudice against persons indicted for that class of crimes, and the only chance to get them off was upon some technical point, as to quash the indictment or to find a variance between the counterfeited instrument offered in evidence, and the copy set forth in the indictment, and indeed this did not always avail, though the points were well taken.

This is illustrated in the case of Quigley v. The People, 3rd Scam. There Quigley had been indicted for passing a counterfeit bank bill, which purported to be set out *in hæc verba* in the indictment. There it was set out to be payable to B. Ayrn, or bearer. On the trial the counterfeit bill offered in evidence was payable to B. Aymor, or bearer, and I objected to the admission of this bill in evidence because of this variance. Most undoubtedly this objection was well taken, for the law is well settled that the least variance between the copy set out in the indictment is fatal to the admission of the instrument in evidence. But Judge Pearson evidently thought that my man was guilty anyhow, and that he would give him a taste of the penitentiary, at least until his judgment could be reversed by the Supreme Court, so he admitted the instrument in proof. My man was convicted and sent to the penitentiary. The error was so palpable that I determined to take the case up and have it reversed, but Quigley said I need not put myself to that trouble, for he could get out of the penitentiary by his own efforts quicker than I could get him out by reversing the judgment in the Supreme Court; but I begged him to stay there until I could take the matter up, and get it reversed, which would only require a few months, and which he reluctantly promised to do. In my brief in the Supreme Court I made two or three unimportant points, which I did

not expect to sustain, beside the vital one of variance. To make this point sure I had been very careful to see that the copy of the indictment as set out in the record was made so exact as to leave no question on that point, and managed to have the original bill offered in evidence pasted into the record in its proper place, so that there could be no mistake about that. In arguing the case I committed the fatal mistake of making several points which I did not expect to sustain, but dealt mostly with the evidence, which I did expect to sustain, for I knew the law was with me on that point.

In due time I received a notice from the clerk of the court that the judgment in Quigley's case had been affirmed, which set me almost wild with astonishment, and when I received a copy of the opinion written by Judge Smith my astonishment was in no whit diminished by observing that he had taken up and discussed and decided the unimportant points, which I had thrown in as a sort of make-weight, against me, and so affirmed the judgment without taking the least notice of the question of variance more than as if it had not been in the record at all.

To say the least, I thought this a very careless way of examining and disposing of a record, or disposing of a point which could not be got over, if it had been noticed.

I was obliged to inform Quigley of the decision, and that I could do no more for him.

In a very short time afterward I learned that a prisoner named Quigley had escaped from the penitentiary, and had taken five other prisoners with him, and they were never heard of afterward from the prison authorities; but I did learn from another source, somehow, that when he had got his friends out with him he dare not leave them to themselves, but took charge of them till he landed them in the middle of Kentucky, where he left them. They traveled only nights, sustaining themselves on milk from the farmers' cows on the way, and hiding in the bottoms during the daytime.

Now, it seems to me I was right in my conclusion that there was a strong prejudice existing against that class of citizens, not only on the part of jurors in Chicago, but on the part of the courts up to the highest in the State, by reason of which they could not feel assured that they would have the law fairly administered to them, and when that is the case there must always be great liability that innocent persons will be convicted of crime.

Hence it was that I procured a change of venue to Will county, in Fox's case, and to try him, the first jury ever called in the Circuit Court of Will County was impaneled.

There was present in court Cyrus Walker, a very distinguished lawyer from Schuyler county, who had come up to make acquaintances and attend court in the northern part of the State. I invited him to take a seat with me, and assist in the trial of Fox's case, and thus introduce himself there. He did so, and took a leading part in the trial.

I told him we had a pretty bad case, and so the evidence on the part of the people proved it to be. Mr. King identified the red overcoat, which had been stolen, and also a large black overcoat, which had been found on him. The state's attorney proved that when the prisoner was arrested on the street he had on the red overcoat and over it the black one, which did not quite cover the red coat at the ends of the sleeves, and by this carelessness on his part he was detected, and at the time he had explained he had bought the overcoat of somebody else; in short, this was the State's case. To meet this we produced witnesses who proved that it was frequently so cold in Chicago in July (the time when the arrest was made), that it was necessary to wear two overcoats to be comfortable, and this was the only defense we could present.

We argued the case to the jury at considerable length, and Walker especially declaimed upon the climate of Chicago, and commented upon the prudence of the prisoner in having bought two overcoats to protect himself, and warmly commended his example, which should be strictly imitated by every one who had a regard for his health or comfort.

Now, this argument to a jury of Chicagoans would have been sure to have sent our man to the penitentiary at once for a long term of years, but a country jury, who felt no obligation in defending the reputation of the place as a desirable summer resort, some of whom had perhaps experienced the chilling effects of a gale sweeping down from the north, accepted the explanation as satisfactory, and so acquitted the prisoner.

Now, the only thing which my client had to pay me for my fee was a very fine two-year old colt, which was at Brown's country tavern, which was about half way between Joliet and Chicago, and, as we all returned to Chicago in the stage, when we stopped for dinner at Brown's, Fox turned over the colt to me. I left it there for a few days until I could send for it, and when I did send for it a week later, Mr. Brown said that the thief had come back and claimed the colt, and was about to take it away, stating that he had settled my fee in some other way; but Mr. Brown refused to let him take it, and so I got the colt at last.

When I heard this, I confess that my confidence in his statement that he had purchased the coat to keep him comfortable in Chicago in July, was rudely shaken.

It happened also that I tried the case which was submitted to the first petit jury ever impaneled in Kane county. It was Wilson v. Wilson.

One day while at work in my office a man and his wife, way-worn and dusty, entered, and sought my professional services for the redress of a grievance which they had suffered. Both were rather undersized, under thirty years of age, very poorly clad, and were what may be justly termed simple people, without force of will or energy. Their story was that they had come from Buffalo on a schooner, which a week before had been wrecked about two miles south of this city; they and the crew had been all landed safely, after a hard night's experience on the wreck, but they had lost everything except what was on their persons. The woman was evidently *enciente*, and pretty far advanced.

After a day or two's stay in the town, they had started on foot for the country, and when in the prairie about two miles beyond Laughton's Crossing, where Riverside now is, they had met a drove of horses from Schuyler county in this State, belonging to one Wilson, who was in charge, with several men with him. Wilson pretended to be a sheriff, and to have a warrant for their arrest, and did arrest them and detained them about half an hour in the prairie, but finally left them, nearly frightened to death.

After they had somewhat recovered from their fright, they turned back, and stopped at Laughton's house at the ford, and told their pitiable story.

Laughton had been a client of mine, and they were strenuously advised to come back to Chicago and state their case to me, with the confident assurance that I would see that justice was done for the outrage. This they did, and hence their appearance in my office as above stated. I immediately took means in a quiet way to obtain the name of the owner of the horses, and leader of the gang, who was yet in town, and before night he was under bail to appear at the next term of the Circuit Court to answer to an action of trespass and false imprisonment. My client's names were Wilson, and that was the name of the defendant.

Mr. Scammon was retained for the defense. He succeeded in getting the case continued for one or two terms, and then took a change of venue to Kane county, on an affidavit showing that the people of Cook county were prejudiced against his client so that he could not have a fair trial here.

No doubt there was considerable prejudice against him in the town of Chicago, for I had taken an interest in my clients more than professional, and had taken pains to enable them to get a support which they so much needed.

Dr. Brainerd and I had been students in Rome, N. Y., at the same time, and one day in the fall of 1835 he rode up to my office in Chicago on an Indian pony, and stated that he had come here for the purpose of practicing his profession. He was about as impecunious as I had been on my first

arrival here, and I at once offered him desk-room in my office, and assured him that I would do all I could to introduce him where it would do the most good. He went out and sold his pony, put up a sign alongside of mine, and this was the commencement of the career of one of the most distinguished surgeons and physicians who have cast lustre on the medical profession of Chicago, and the founder of Rush Medical College.

He was in the office at the time Wilson first called upon me for advice, and as it was evident that a doctor would soon be wanted as well as a lawyer, I introduced him to them, and he took an immediate interest in the case. Indeed, it was an opportunity not to be neglected. I had already introduced the doctor to Mrs. John H. Kinzie, and several other of the leading families on the North Side, and he interested himself among the ladies, whose acquaintance he had made, telling the sad story of the poor castaways, and it was not long before he had his patient comfortably housed in a log cabin, and induced a number of lady acquaintances to call upon her to see what they could do for her comfort, and when the time arrived she had been well provided with a bed, and an abundance of comfortable clothing, and many of the ladies seemed to vie with each other in calling, and bringing provisions and delicacies, to an extent which wealth could hardly have purchased in Chicago at that time. At the proper time Dr. Brainerd attended to the case with a skill and assiduity which at once established him in a respectable practice, and no one knew better than he how to cultivate it in a proper and professional way. It may be well appreciated that in the little town of Chicago, as it was, say fifty-five years ago, a case in which so many ladies had felt an interest would be pretty well understood by a large proportion of the people, and if the jury were to be called from the village alone, I think it would have been difficult to have got one clear of prejudice, and indeed, Scammon might have been well justified in taking the change of venue.

John Pearson had been elected judge of this circuit at the session of the Legislature (1836–37), and he opened his first

court at Geneva, on June 19, 1837, and the first case on the docket was that of Wilson v. Wilson, change of venue from Cook county. I had found a witness, who from a distance of half a mile or more had seen the plaintiffs walking on the road in the prairie, when they were met by the defendant with a drove of horses; that the defendant with several other men stopped and dismounted from their horses and seemed to surround the plaintiffs, and that after half an hour had elapsed they remounted their horses, gathered up the drove, and proceeded with them toward Chicago, and that after the expiration of another half hour the plaintiffs had returned along the road to Laughton's house, when they appeared to be in a much demoralized and frightened condition. At that time the parties to a suit, or those who had even a remote interest in the result, could not be allowed, or forced to testify, so that what actually took place at the time of the stoppage in the prairie could not be explained to the jury, but I had an undoubted right to draw the most unfavorable inferences against the defendants, which could be justified from the facts proved, and I made the most of this right. It is easy to imagine the picture which I drew of the outrage and suffering of these poor people, out there in the lonely prairie, at the hands of these beastly and lecherous ruffians, who were as destitute of sympathy and compassion as they were of decency and morality.

I also took out with me Drs. Brainerd and Goodhue, and proved by them the danger to the woman incurred by such outrages as that complained of.

No witnesses were introduced for the defendants. My intention was to make a short opening of the case and to make my great effort in my closing speech, but as I arose I cast my eye toward Mr. Scammon and saw at once that he had made up his mind that if I only made a formal opening he intended to submit the case without further argument, so I instantly changed my purpose, and went at it in earnest, going over the whole ground, and insisted upon a verdict

which would not only compensate them for the injury done them as far as that could be done with money, but would also teach other evil-doers to avoid this part of the State at least, when they proposed to commit such crimes.

This forced Scammon to address the jury in the interest of his clients. He could make but little headway in his attempt to maintain that I had not proved a technical arrest and trespass, but loudly and earnestly insisted that the inferences which I drew as to the extent of the outrage committed were entirely gratuitous and not true in fact. He hardly asked for an acquittal, but his great effort was for a nominal, or at least, a small verdict.

The jury was out but a little while, when they returned with a verdict of "guilty," and assessing the plaintiff's damages at $4,166.66, which amount at that time was considered simply enormous, at least in this part of the State, for a trespass to the person.

Scammon made a motion for a new trial, which was promptly overruled, and judgment entered for that amount.

So it was that I tried the first jury cases ever tried in the Counties of Cook, Will and Kane.

II.

PRACTICE IN EARLY DAYS—FOLLOWING THE CIRCUIT—ITINERANCY—INCIDENTS.

In the olden time in Illinois, say prior to 1850, the circuit system of practice was in vogue in legal life, and presented incidents and peculiarities which are entirely wanting since the country has become more populous. With the growth of the cities and towns, resident lawyers of ability and learning are found in every county seat at least, who require no assistance in the conduct of the most important cases. It was not so in the early days. Then the few local lawyers who had settled in the county towns were generally new comers, without experience and self-confidence, and both they and their clients depended largely on the assistance

from abroad, especially at the trials of causes. This state of things necessitated a class of itinerant lawyers whose ability and experience had secured to them reputations co-extensive with their judicial circuits, and, in many cases, throughout the State. These were few at first, but with the increase of population and business their numbers increased, while their theaters of action became more circumscribed.

At first they, with the judge, traveled on horseback in a cavalcade across the prairies from one county seat to another, over stretches from fifty to one hundred miles, swimming the streams when necessary. At night they would put up at log cabins in the borders of the groves, where they frequently made a jolly night of it. This was a perfect school for story telling, in which Mr. Lincoln became so proficient. It was, indeed, a jolly life on the border, the tendency of which was to soften the asperities and to quicken the sensibility of human nature. Here was unselfishness cultivated, and kindliness promoted, as in no other school of which I have knowledge.

This circuit practice required a quickness of thought and a rapidity of action nowhere else requisite in professional practice. The lawyer would, perhaps, scarcely alight from his horse when he would be surrounded by two or three clients requiring his services. Each would state his case in turn. One would require a bill in chancery to be drawn. Another an answer to be prepared. A third a string of special pleas, and for a fourth a demurrer must be interposed, and so on, and all of this must be done before the opening of the court the next morning. Then perhaps he would be called on to assist in or to conduct a trial of which he had never heard before, just as the jury was about to be called, when he must learn his case as the trial progressed. This requires one to think quickly and to make no mistakes, and to act promptly to take advantage of the mistakes of the adversary, who was probably similarly situated. It is surprising how rapidly such practice qualifies one to meet such emergencies.

Those early settlers had not much money to pay lawyers' fees, but they would generally pay something and give notes for the balance, or, perhaps, turn out a horse or a colt in payment. These would probably serve to pay tavern bills, and a horse or two might be led home or sold on the way. Fee notes formed a sort of currency at a county seat about court time and could frequently be sold to a merchant or the landlord at a moderate discount. A town lot or an eighty of land would sometimes be taken for a fee, especially when it had been a part of the subject-matter of the litigation.

The southern part of this State was first settled, and so legal tribunals were there first established. The first settlers were mostly immigrants from Kentucky and Tennessee, with some from Virginia and the Carolinas, though many were from the Eastern States. The lawyers from the Southern States were in the majority, while the Eastern States furnished many able lawyers as well. Among the former I may mention S. T. Logan, Judge Young, Archo Williams, O. H. Browning, Thomas Ford, J. T. Stewart, J. J. Harding, Col. Snyder, and many others; while among those from the East I may name Lockwood, Breese, Baker, Mills, Kane and others. All of these men would have ranked high at any bar, and were thoroughly read in the fundamental principles of the law. Later came Lincoln, Davis, Treat, Douglas and Trumbull, all able men. It may be remembered that all were young men then and fond of amusements and pastimes and practical jokes, and after the pressure of the first few days of the court was over, they spent their evenings, and I may say nights, in hilarity, which was at times, no doubt, boisterous. For instance, Benedict, who had a fog-horn of a voice, which he used most recklessly when excited, and who had been roaring to a jury at an evening session, was met when he came to the tavern, by the sheriff, with a bench warrant, on an indictment "for making loud and unusual noises in the night time," and soon a court was organized and he was put upon

his trial, and before midnight he was convicted and sentenced to repeat the offense in arguing a motion for a new trial, or to pay a heavy fine, upon the ground that two affirmatives would make a negative, or that the hair of the same dog would cure the bite. It was said that he fairly outdid himself in that effort, so that he aroused the whole town from their slumbers, and he came near being fined for overdoing it.

Judge Young was a good performer on the fiddle and thus contributed much to the hilarity of circuit life. As the settlements extended into the northern part of the State, this circuit system of practice came with them, and for a time prevailed in all of its pristine beauty, except in Chicago alone, where the visits from foreign lawyers were only made upon special retainers and in important cases. I saw Mr. Lincoln here several times engaged in important cases.

Under the old circuit system, when the State was divided into five circuits, and a circuit judge was elected for each, John York Sawyer was judge of the Vandalia circuit. He was not a tall, nor a very stout man, but carried in front about the largest bay-window for his size I ever saw. He presided in a very suave way, but with a fixed determination to do ample justice and without a very scrupulous regard to forms, especially if those forms did not suit him at the time. It was related to me that on one occasion Hubbard, who had a considerable practice, argued some question before him at great length and with great confidence, and concluded with an air of assurance which declared that he knew he could not be beaten this time. The judge in his decision praised Hubbard's argument and followed it all the way through, especially emphasizing the weakest parts of it, as if he was greatly impressed with them, and then decided against him without stating a single reason for the decision. This enraged Hubbard terribly, and he could hardly wait till court adjourned and the judge had retired before he gave vent to his indignation to the members of the bar and other by-standers, in terms forcible

if not elegant, and in conclusion he said: "I tell you, gentlemen, what I am going to do about it, and so you may prepare yourselves with smelling bottles or cover these streets with quick lime; I am going right now to hunt up that offensive mass of bloated humanity, and I will relieve his corpus of a peck of tadpoles the first slash." But he did not do it, and I was told that the facetious judge, when told of it, laughed heartily at Hubbard's rage, regarding it as an excellent joke.

Another circuit scene, in which we may see how Judge Sawyer administered the law, may be given as it was told to me by Judge Ford, soon after I made his acquaintance, in 1834.

At the time of which he spoke, horse thieves were punished at the whipping post, and Ford always insisted that it was the most deterent punishment ever inflicted for the punishment of crime. He said he had often seen criminals receive a sentence of ten years or more in the penitentiary with apparent indifference, but he had never seen a man sentenced to be whipped who did not perceptibly wince, and that the most hardened would turn pale and shudder.

A man who had been indicted for horse stealing, had retained General Turney to defend him. The general struggled hard for his client, but the proof was so clear that the task was hopeless, and the jury, after a short absence, returned a verdict of guilty. The general immediately entered a motion for a new trial and was about to proceed to argue it, when the dinner bell at the tavern hard by, where they all boarded, was heard loudly calling all to dinner. Judge Sawyer, as I have said, was a man with a very protrudent stomach, and he especially prized his dinner. The judge interrupted the counsel, saying: "General Turney, I hear the dinner bell now ring, so the court will adjourn till one o'clock, when I shall take pleasure to hear you on your motion for a new trial." So the court was adjourned till one o'clock, but before the judge left the bench he motioned the sheriff up to him, and in a determined whisper, said:

"While I am gone to dinner take that rascal out behind the court house and give him forty lashes, and mind you lay them on well, and tell him if he is ever caught in this county again you will give him twice as much."

After the whipping the culprit was turned loose and was taken charge of by some of his friends, who washed him off and bathed his lacerated back with whiskey, and dressed him, and when he had taken some dinner he hobbled down the street, and as he passed the court house he heard the general's loud voice and crossed over, and soon discovered he was earnestly pleading for a new trial in his case. This horrified him, and he rushed into the house and cried out, "For God's sake don't get a new trial. If they try me again they will convict me again, and then they will whip me to death."

The general stood aghast for a moment and said, "What does all this mean?" With the utmost composure the judge replied: "Well, General Turney, I thought we would make sure of what we had got, so I ordered the sheriff to whip that rascal while we were at dinner, and I trust he has done so. But go on, general, with your argument, for I am inclined to be with you. I think another whipping would do him good."

III.

TRIAL OF A MURDERER.

In the year 1832 there lived in the bottoms of the Sangamon river a middle-aged, rough and savage man, whose disposition was quarrelsome, whose habits were intemperate, and whose means of livelihood were suspicious. In fact, his reputation was bad. He lived in a small log cabin with a truck patch near by, which was grown up to weeds more than to vegetables, and he had a small field of corn surrounded by a slash fence, which was badly cultivated by his wife and children—of whom there were several—about as rough as himself. The children grew up wild and un-

kempt. He had an old wagon, a plow, one cow and several young cattle growing up, and a small drove of hogs which ran in the bottoms and lived on mast. A few chickens scratched around the old log stable and a couple of hounds completed the inventory of the effects owned by the settler, if we add to it the inevitable long barreled rifle, by means of which most of the meat was supplied. This hopeful voter when in his cups in Springfield, picked a quarrel with a peaceable citizen and killed his man. He was indicted for the murder, and employed Gen. Adams, an old lawyer, who had not professedly quit practice, though most of his practice had quit him. But he was still smart enough to look out for the main chance, so he drew up a bill of sale covering every possible thing about the prisoner's place, except the wife and children, which was duly executed, and a few days before the trial he sent some men up, who brought away every movable thing which they could find—except the old bed and table, which were not worth bringing—the cow and the calves, the horse, the wagon and the plow, the hogs and the chicks. As the poor woman stood in the cabin door with her little brood of children gathered around her and saw everything driven away but the hounds, it is said that she actually shed tears; accustomed as she was to hardship and privation she now felt a desolation which she had never known before, and perhaps for the first time, a sigh of grief escaped her.

Well, the trial came off and his counsel did the very best he could for his client. He pictured in eloquent terms to the jury, the wife and children mournfully bowed down in prayer for the deliverance of the husband and father, whose destinies were now placed in their hands. It was for them to say whether he should return a free man to gladden his humble home with his presence once more, or whether it should ever remain as one of desolation, without support, and without hope.

The general's eloquence was of no avail; perhaps the jury had heard of the manner in which the general had collected

his fee, which must have tended to pluck the feathers from the sympathetic expressions poured forth in the counsel's effort.

The jury found the prisoner guilty and he was sentenced to be hanged.

About that time the papers were full of accounts of the marvelous properties of electricity. It was said to be capable of actually resuscitating dead persons, and the doctors of Springfield determined to experiment on this subject, and made arrangements with the sheriff to give them the body as soon as it should be cut down, that they might test the efficacy of electricity in an attempt to restore the dead to life. The sheriff determined, however, that the test should be real and no humbug, so he kept the subject hanging for a good half hour. So soon as it was cut down it was hurried away to a doctor's office, where the culprit's counsel, with several other lawyers, were invited to be present to witness the experiment.

The subject was quickly stretched on a table, and the poles of a powerful galvanic battery were applied to various parts of the body. The eyelids were made to wink, arms and legs were made to strike and kick, though feebly, but the lungs and heart obstinately refused to act, and finally the doctors had to admit that their efforts were as futile to restore the man's life as had been those of the lawyer to save it. The sheriff had done his job too well. It was then proposed to examine and see what had been the effect of the fatal noose upon the neck, so they went to work and removed the skin from the neck.

During all of these operations Gen. Adams had been leaning on his cane looking upon this scene with a long and sorrowful face, for he was not accustomed to the scenes of the dissecting room, and near him stood Ben. Mills, one of the most eloquent and witty lawyers who ever practiced in Illinois.

At length Adams turned to Mills, and said:

"Brother Mills, it is, indeed, a sad sight to see a fellow

mortal, who is made in the image of God, thus mutilated and cut up as if he were a brute beast."

"Yes, yes," said Mills, "It does look pretty bad, no doubt, but for your consolation, brother Adams, I may say that it is very seldom that a lawyer has the pleasure of seeing his client twice skinned."

The old man gave a sudden twitch as if he had felt a bodkin stuck into him, and then slowly turned around, his eyes rolling as if in pain, and said:

"Brother Mills, if it is just the same to you, I would rather you would not say that any more."

I tell the tale as it was told to me.

IV.

CIRCUIT COURT HELD BY THREE JUSTICES OF THE PEACE—THE LEAD MINERS—STORIES OF BENCH AND BAR.

There is a small chapter of judicial history of Illinois, which it may be well to record in these later days lest it be entirely forgotten, and that is that a Circuit Court was once held by three justices of the peace.

On the 27th of February, 1827, an act was passed organizing the county of Jo Daviess, and placing it in the first judicial circuit. In section 4 of that act this provision was made: "In case the judge of the Circuit Court of said county can not attend at any regular term of said court, it shall be his duty to notify the clerk of said court of the same, who shall immediately, on receiving such information, notify all the justices of the peace of said county; and it shall be the duty of the justices of the peace, or any three of them on receiving such notice, to attend and hold said Circuit Court * * * (provided that when sitting they shall have the same jurisdiction as Circuit Courts, except capital cases)."

The isolated condition of this county more than sixty years ago, separated from the settled portions of the State by great distances, and the necessity for legal tribunals for settling disputes involving large pecuniary interests grow-

ing out of the lead mines which had been discovered and were then largely worked, no doubt suggested this necessity for some extraordinary provision to insure the holding of the Circuit Court, in case the judge of the first circuit should be unable to attend; and no doubt, though the emergency which gave rise to that provision of law ceased to exist, and went out of mind and was quite forgotten, so far as I have been able to discover, it has never been repealed; and if that be so, it is still the law, and the judge of that circuit might give the necessary notice of his inability to attend, and that court might still be held by three or more justices of the peace of that county. Placing the county in another circuit, and providing for a judge to hold the courts in that new circuit, could not have the effect to repeal this portion of the statute, any more than another portion which created the county of Jo Daviess. In pursuance of this law the first Circuit Court in Jo Daviess county was held by three justices of the peace.

In order that I might be sure that my information on this point was correct I wrote to J. C. O'Neill, Esq., clerk of the Circuit Court of that county, for information on the subject, and received from him the following reply: "Our records show that the first term of the Circuit Court in this county was begun and held on Monday, the second day of June, A. D. 1828. The judge of the circuit not appearing, and the justices having been notified, the following justices presided: John Conley, Hugh R. Colter and Abner Field. The attorney-general not attending nor deputing any person to prosecute for him, the court appointed Jonathan H. Pugh to prosecute for him. At this term Thos. Bennett was foreman of the grand jury. The first judge who appears to have presided here was Richard M. Young, at a term begun and held on Thursday, the eleventh day of May, 1829."

When the tract of country north of the Illinois river, and especially the military tract, became settled up to a considerable extent, the necessities for legal tribunals made it

imperative that more judicial force should be brought into requisition than the four justices of the Supreme Court could afford, so, on the eighth of January, 1829, a law was passed providing for the election of a circuit judge, who should preside in the circuit to which he might be appointed north of the Illinois river, and fixing his salary at $750 a year. No law was ever passed expressly creating the fifth circuit, but it was inferentially created by the law, and was passed the 19th of January, 1829, which named the counties which would constitute the fifth circuit, of which Jo Daviess was one, and providing that Richard M. Young should hold the courts in that circuit.

Most of the lead seekers who constituted the population of Jo Daviess, went up the Mississippi river from the southern part of the State. Their practice was to go up in the spring and work at lead mining during the summer, and to go down the river in the fall and spend the winter in a warmer climate. This annual migration up and down the river, corresponded exactly with the habits of a fish found in the Mississippi, well known as sucker, and hence that appellation was applied to those migratory miners, and was soon thereafter applied as a general name to the inhabitants of the State. I am aware that some parties have sought to change the orthography of the word to "succor" as being more complimentary at least, but this is the origin of the word as given me when I first came to the State, fifty-five years ago, and I have no doubt of its truth.

These justices of the peace, as well as the constables and sheriff, were elected from among the miners. Many of these were Irishmen, whose enterprise pushed them wherever hard work was to be done, and a reasonable reward for it was to be obtained. Even then, they were not averse to holding office, and so the sheriff and justices of the peace were all of that nationality, and were said to as well enjoy keeping the peace by breaking it, as in any other way. Disputes about mineral claims soon arose, many of them involving large pecuniary amounts. These had to be set-

tled by legal tribunals as soon as they were established there, and so invited the presence of able lawyers. Among those practicing there when I came to the State I may mention Ben Mills, and James M. Strode, who was in command of the militia at Galena, in 1832, when martial law was there declared.

As the time for holding the court approached, it being understood that Judge Young would not be present to open the court, the justices of the peace who were to perform that duty, applied to Mr. Mills for information as to how they should proceed. This facetious gentleman gave them all necessary information as to the mode of proceeding, and especially he enjoined upon them to maintain the dignity of the court at all hazards, and especially to allow no one to address the court without special permission, or when called upon. This part of their duties was particularly dwelt upon, and above all others was treasured up in their memories.

Among the other members of the bar present when the court was opened, was an Irish lawyer named Nagle. Being ambitious to be first to place his name upon the records of the court, so soon as that august tribunal was proclaimed by the sheriff to be open, Nagle jumped to his feet and made some motion. The presiding justice at once ordered him to take his seat, and not to open his mouth again until his betters had spoken; that he must learn to respect the dignity of the court, and not to speak again until he was called upon. Nagle felt himself greatly outraged at being thus summarily suppressed, and with great animation declared: "It seems to me that your honor is damnably impregnated with dignity this mornin'." The court was now more shocked than ever at this new affront to its dignity, and at once ordered the unlucky attorney to be hastened to jail, and there to remain until he learned respect to his betters, and subject to the further order of the court. The burly sheriff at once seized the unlucky offender, and in spite of his uproarious protests hustled him off to the log jail, where he was told he would have to live on bread and water for an

indefinite time, and a constable was placed in charge of the prisoner to see that he did not pull the jail down or crawl through some of the cracks.

After this the business of the court went on with great regularity. Mr. Mills, as the oldest member of the bar present, was first called upon to make himself heard, and then the other members of the bar according to their seniority.

Mills appreciated that his crammings had been but too well relished, and he at once interested himself to get poor Nagle out of his scrape, which he found no easy task. In his name and on his behalf he made most abject apologies, and expressed the greatest contrition, which Nagle himself would, no doubt, have repudiated had he known of them at the time. He, however, did get him released after a day or two's confinement, and it was never heard after that, that the court had ever cause to complain of any disrespect to its dignity, when held by those justices of the peace.

This was the relation as given me by Judge Young himself, as he heard it in Galena, when he held his first court there. He further said that after he had opened the court the lawyers got up one after the other and made their motions, and the business proceeded in the usual quiet way. After he adjourned court for noon, while he was walking up to the tavern for his dinner, he was accosted by one of those same justices of the peace, who said: "Well, Judge, I see those lawyers are having domd foine times here with you." "Oh, yes," replied the judge, "we are getting along very finely, I think." "Yes, yes," said the justice, "but dom 'em, when we held court we made 'em squat."

V.

PRACTICE IN ANOTHER COUNTY—DEFENSE OF ONE ACCUSED OF THEFT.

In the spring of 1835, I determined to extend my practice to Putnam county, which was a large county then, and the oldest settled in the northeast part of the State. I started on

horseback from Chicago, and on my way from Ottawa to Hennepin I fell in with Thomas Hartzel and George B. Willis, both of whom I had met in the first political convention ever held in Illinois. It met at Ottawa, on the 4th of March, 1834. Dr. David Walker, of Ottawa, was president, and I was secretary. We nominated one senator and one representative for the district, embracing all of the north part of the State, including Peoria. I was glad to meet them again. They both were old residents of Hennepin. I explained to them that I was going to attend their court, and inquired as to the amount and character of the business in the court and of the lawyers who usually attended. They said there was *right smart* of business there, and there was talk of more, and some of it pretty important, and that there were some criminal cases on the docket; that there was but one lawyer in Hennepin, a young man just come in, named Thomas Atwater, who had never been in court yet. They would be glad to help me all they could. There was a man in jail for larceny, and if I could get him off it would make me famous.

"Probably," said I, "the man is guilty and the proof clear;" if, so the condition to success which they suggested was rather hard.

They said it did appear to be a pretty bad case, as one witness swore that he saw the prisoner steal the goods, and that he had confessed before the magistrate that he did steal them. But he had friends in the town that still had their doubts about his guilt, and there was quite a general feeling that there was a sort of mystery about it that needed explanation, which might be possible with shrewd management.

But he was not my client, and I saw no likelihood that he ever would be. True, he was poor and unable to fee a lawyer, else those from abroad, who had been in the habit of practicing there, would surely be employed. If the court should have to assign him counsel I might stand some chance, as the young lawyers are most likely to be selected

who have no other business in court. But Judge Breese was to hold the court, and I had never met him, and he might not think it safe to intrust the case even partially in my hands. I stopped at the tavern kept by my friend Willis, and in which the larceny had been committed. I was industrious making the acquaintance of everybody I could meet.

The judge and several lawyers put in an appearance in the afternoon of the day after my arrival, and I soon made their acquaintance; I tried to be unassuming, but not restrained. At first I thought Judge Breese was a little reserved, but when, on comparing notes, we discovered that we both came from Utica, N. Y., his bearing seemed more cordial. He had left there sixteen years before, I had come from there but two years before, and he had many things to inquire about relative to his old home, and of course, I could tell him much that was interesting to him.

He opened court the next morning in an unfinished frame building and organized the grand jury, who, in the course of an hour, brought in a true bill against Pierce for grand larceny. The state's attorney at that time was James Grant, of Chicago, now Judge Grant, of Davenport, Iowa. Pierce was soon brought into court, when the judge asked him if he had counsel, and he replied that he had not, and had nothing with which to pay a lawyer, and in answer to an inquiry of the court he expressed a wish that counsel might be assigned him.

The judge then asked me if I would undertake the prisoner's defense, assisted by Mr. Atwater, if he would consent to assist in representing the prisoner. We both consented and were allowed to take our client out of doors and confer with him in the shade of a tree. I then told Pierce that the first thing for him to do was to tell us the exact truth, for if he was guilty we could make a much better defense for him if we knew it, and all of the attendant circumstances, and that if he were innocent, it was all important that we should know it, certainly.

SIDNEY BREESE.

He then asserted in the most solemn manner that he was entirely innocent of the larceny, and his explanation of his confession of guilt was, that after the larceny had been discovered, and the goods had been found in a trunk which belonged to him or his wife, she had come to him and told him that Thompson had persuaded her to join him, in stealing the goods, and that they together had taken them from the box and put them in the trunk; that under this pressure, and in order to give his wife a chance to escape to Cincinnati, where her mother lived, he had confessed he stole the goods. That after he had made the confession, Thompson had come up and swore that he saw him steal them. That Thompson was a bully and a ruffian, and everybody was afraid of him.

The story was told in such a way as to convince us both of its entire truth. Pierce was evidently a simple-minded, rather a weak-minded man, who could be persuaded to do anything by an artful, and, probably, a bad woman.

But how were we to prove the truth? The conviction that he was innocent made us anxious to prove it if the proof existed. We had but little time to prepare the defense—to rake up every thread and every circumstance which carefully woven together might tend to prove his innocence, for the trial was set for the next morning. Whatever was to be done, must be done in a few hours.

The first ray of light we got was from Pierce himself who said he was sick on the night of the theft—so sick indeed that he could not have left his bed.

Following this clew we got the name of the doctor who attended him and of an old woman who had nursed him that night.

We now felt that we had made some progress and separated till after dinner. In the meantime Atwater was to find the doctor and the nurse and get their stories.

I walked down the street alone toward my hotel, meditating. My attention was presently attracted by a subdued voice, and, as I looked up, I saw a man coming toward me

with a quick step. When he came up he asked me if I was to defend Pierce. I told him that I was. "Well," said he, "he is innocent; and if you will go a mile and a half on the other side of the river you will come to a loghouse, in which live a couple named Fitzgerald. They know something to help you. Good day, sir," and he turned quickly and walked away, looking about him as if he was afraid of being seen.

I ate my dinner hastily, took my saddle-horse, and soon crossed the river on the ferry-flat and galloped away across the river bottom till I reached the bluff, where I found the log cabin. When I entered the house I inquired of the good woman who met me if her name was Fitzgerald. She said it was. I told her that I was appointed by the court to defend Pierce on a charge of larceny; that I was convinced of his innocence, and understood that she and her husband knew something about it. She was evidently not pleased with my visit, and at first denied knowing anything about it, and said people got along best who minded their own business.

I represented to her the enormity of the crime of letting an innocent man go to the penitentiary on the testimony of a perjured scoundrel like Thompson, who was himself the thief, and that she could never sleep well, if she refused to tell what she knew that would save an innocent man and shield the guilty one; that if she did this the ghosts of innocence would haunt her all her life, and that I would see that Thompson left the country quick or went to the penitentiary so that he could harm no one.

She began to weaken at last and finally went out and called her husband. He showed the same reluctance, and I had to go over with my reasonings and persuasions again with both.

At length they fairly gave in and the old lady said she would tell me all about it; let what would come, she would not have innocent blood on her hands.

She said that the night of the larceny she and her hus-

band slept in a bed at the head of the stairs; that during the night they heard a noise in a room below; that they both got up and carefully crept down the stairs, and there they saw through the cracks in the lathing not yet plastered, this man Thompson and Mrs. Pierce take the goods out of the box and put them in the trunk where they were found, and that Pierce was not there at all. They both promised to come to the court the next morning and tell all they knew if the devil stood at the door.

I was now happy and made very fast time back to town and was quick in sending the sheriff over with a subpœna for both to make sure work of it.

I now felt sure that we would acquit our man. Of course, not a word was lisped, even to Pierce, of the witnesses I had found; my absence had been unaccountable to Atwater, till told of the result, when we met after my return. Then I learned that he had found the doctor and the nurse, and that they would both be on hand and testify that Pierce was too sick that night to have left his bed and committed the larceny.

I did not sleep very soundly that night, for I was too busy thinking up the speech I would make to the jury. It was manifest that the more I should abuse Thompson, the better it would take with everybody, for he was both hated and feared, and the man who dared to abuse him roundly would do a popular thing, and then when I should have proved his perjury and larceny, all would admit that he would deserve all I could give him. I piled up all of the bitterest epithets I could think of, which I would hurl at him in such a deluge as would even make him hate himself.

I had no fear of personal violence from him, bully as he professed to be. I was young (twenty-three years old), and weighed 190 pounds, was active and of exceptional strength, and felt perfect confidence in my ability to take care of myself. He seemed about fifty years of age, and to weigh about 175 pounds.

We were promptly on hand at the opening of the court the next morning, and soon after had the satisfaction of seeing the nurse and doctor appear and take back seats, and shortly after Mr. and Mrs. Fitzgerald came in and mingled with the crowd of spectators who now began to fill the little court room, while many more were seen on the outside, as if a considerable interest was felt in the proceeding, for it was generally understood that Pierce's trial was to be the first real business transacted. We had been strictly silent as to the evidence we had discovered, but somehow there seemed to be a general expectation that some important developments might be made.

I was especially gratified to observe that Thompson was there. He took a front seat, with an air of confidence, if not of defiance, befitting that of a bold thief and a bully who was ready to commit perjury to cover up his crime.

Pierce had been brought in and was seated beside us at the bar, which consisted of a plain deal table about six feet long and three feet wide. He was pale and nervous and fairly shivered from weakness resulting from his recent sickness and confinement in the little log jail. He felt that though innocent he was already condemned. He could see no way of escape, for we had felt it our duty to conceal our discoveries from him as well as all others, for Thompson must on no account get the least inkling of them. I encouraged our client with the positive assurance that he would be acquitted, and finally that we had found evidence which would clearly show his innocence. This helped him some, but it could not entirely dispel his despair. I did not regret this, for his woe-begone appearance was a powerful appeal to all for sympathy and pity, which of itself would have been of great service in a doubtful case. As yet the jurors were dispersed among the crowd and must, to a certain extent, partake of their feelings.

When the case was called we announced our readiness for trial, a jury was soon impaneled, and the state's attorney made a short opening. He stated that the trial was a

mere form, which the law required before the prisoner could be sent to the penitentiary. That he would prove so clear a case that it would not be necessary to leave their seats before returning a verdict of guilty.

The usual practice then was for the defense to state its case at this point, but we requested the favor to postpone this till after we had heard the testimony for the people. This was granted without objection.

Mr. Grant proved that the goods were nailed up in a dry-goods box in an unfurnished room in the hotel, and that they were subsequently found in a trunk belonging to the prisoner. He then proved that the prisoner had confessed to the magistrate that he stole the goods, and he proved their value. He then called Thompson, who took the oath with a sort of indifferent swagger and took the stand. He swore without the least hesitation that he saw Pierce when he took the goods from the box, and placed them in the trunk, and that he saw him lock the trunk.

We had, as yet, cross-examined none of the people's witnesses. But not so with Thompson. He was cross-examined in such a way as to make him swear to everything in the most positive way with every detail of time and place, and as to Pierce's every motion and action. He was well acquainted with him and could not be mistaken, but he scarcely knew Mrs. Pierce and had not seen her that day. He swore that Pierce seemed well and strong, for he had broken open the box, and removed the goods in a way that showed he was in a hurry, and needed no one to help him.

Every step of the cross-examination seemed to strengthen the case against us, as I intended it should, by enabling Thompson to make up as consistent a story as possible by weaving all of the lies into it that were necessary to make it consistent, and especially such lies as I knew I could contradict him in, and before I had finished I had a perfect mountain of them; for, as the case was going along so smoothly, he thought he had everything his own way, and could tell what he pleased without our being able to

detect it. If he had had old lawyers to deal with, or less simple ones, he would, no doubt, have been much more cautious.

When I dismissed the witness he left the stand with a wag of the head and an air of confidence and satisfaction that he made no effort to conceal. The jury looked positively distressed, and the audience manifested their disappointment and chagrin at the ineffective way in which I had cross-examined Thompson, for their only hope was that he could be broken down on cross-examination, for all believed he was lying all the time; in fact, that I had given away all of the case there was to give away.

I then arose to state the defense we expected to make. I stated that as it now looked, the statement of Mr. Grant in his opening, that this trial would be but a matter of form, and only to satisfy the forms of the law before sending the prisoner to the penitentiary, seemed justified; but we expected to make it a matter of substance, and that Pierce would not be the man to go to the penitentiary for that larceny.

I first explained why the confession was made. That after the larceny was discovered and the goods found in the trunk and a great commotion was being made about it, Mrs. Pierce had come to her husband and in great distress told him that Thompson had persuaded her to join him in stealing the goods and that they two had stolen them and put them in that trunk. That she implored him on her knees to do something to divert attention from her until she could go to her mother in Cincinnati. That overcome by her tears and entreaties, he had consented to confess the larceny himself and trust to the future for the result, although by so doing Thompson would have an opportunity to escape punishment also.

That this man Thompson was a bully and a braggart and boasted of the terrible things he had done to his enemies and had actually so terrorized many of the good people of the town that those who knew the truth of the matter had

deemed it prudent to keep their mouths shut. That we had, however, succeeded in finding two most credible witnesses, who actually saw Thompson and this woman steal the goods, and that we would prove by the doctor and the nurse that Pierce was very sick on the night when the goods were stolen, and could not possibly have got up and committed the theft.

Thompson had placed himself as nearly before me as he could during my opening, and looked fiercely and defiantly at first. I occasionally glanced at him with a quiet and satisfied smile. Before I closed, his countenance was a real picture. The time for the epithets had not come yet, so I did not use them, but contented myself with stating the simple facts in terms as short as would suffice to do so.

My little speech had evidently produced the desired effect. An expression of relief was manifest on every countenance. Even the judge, who had hitherto appeared as impassive as a block, brightened up and leaned forward as if to catch every word, and when I sat down, he straightened up and looked around with an expression which seemed to say: "If all of this be true, this Thompson must be the greatest villain remaining on this earth unhung." Before, he seemed to have taken no interest in the case. Now he was awakened to a lively interest.

He said, "Mr. Caton, call your witnesses," in a tone which clearly manifested his impatience to hear the evidence, which should prove such total depravity in a human being.

I first called the doctor, who testified that he had attended the prisoner and visited him late in the evening of the night when Thompson swore he saw Pierce steal the goods. I made the direct examination very short. I just proved what I expected to by him, and leaving it to the cross-examination to bring out the thousand little incidental facts which I knew would strengthen the case more in that way than if brought out by me. A vigorous attempt to break down the testimony of a witness on cross-examination, if it fails, strengthens the case immeasurably. I really think

that the state's attorney believed that the doctor had exaggerated the man's sickness, and hence he went at him rather fiercely, but my man seemed to have grown sicker and sicker as he progressed and gave all of the details of the case.

It was manifest that I had succeeded in completely breaking down Thompson's terrorism, and it seemed to me that the doctor was anxious to show that he did not care a button for him.

I next called the nurse, and she testified that she had been with the prisoner almost the entire night referred to. She showed him to have been fully as sick as the doctor had done. That he had suffered very much and was so weak that he could not turn in bed without help. That she was positively certain that he did not leave the room that night, and that he could not have done so had his life depended on it. She further stated that Mrs. Pierce did not come near her husband during all of that terrible night, and had not been seen in his room since some time in the afternoon before. It was evident that the state's attorney now began to appreciate that there might be something real in this defense and that it was not impossible that he was relying upon perjured testimony to convict an innocent man. His cross-examination of the nurse was short and formal.

I now called Mrs. Fitzgerald, who came forward with a firm step and firm look which manifestly said she was no longer afraid of Thompson. She told how she and her husband were sleeping in the chamber near the head of the stairs, when about midnight they were awakened by a noise in the room below, when they both got up and crept softly down the stairs, on which they seated themselves, and plainly saw through the crack in the lathing, this man Thompson, whom she pointed out, and Mrs. Pierce, take the goods from the dry-goods box, carry them across the room and place them in the trunk. When the trunk seemed full they closed and locked it and Mrs. Pierce put the key in her pocket; then both took the trunk and carried it to a corner of the

room and left it; that there was one candle in the room; when the trunk was set down they hastened back to their bed without waiting to see when or where Thompson and Mrs. Pierce went.

In this case there was a cross-examination on the matter of identity, but it only served to convince every one that the woman knew what she was talking about, and that it was certainly Thompson and Mrs. Pierce that she saw steal the goods.

I next called Mr. Fitzgerald, and, as I have often observed in other cases, "the gray mare proved the better horse;" still, he corroborated his wife, which was all I wanted of him, though not with the decision and firmness which she had manifested. But I cared nothing for that; I knew that we already had enough testimony in to convince every rational mind that Pierce was an innocent man and that Thompson was a very wicked liar. With this witness we closed our case. Mr. Grant proposed to submit it to the jury without argument.

But we could not think of throwing away such an opportunity and merely said that we had a duty to perform to the prisoner, which we could not omit, and must present our views of the case to the jury.

The state's attorney then opened the case briefly, though he did as well as any man could have done. It was manifest he felt that the defendant was innocent, and that he was asking the jury to convict him upon perjured testimony.

Atwater followed with his maiden speech, which was a very good one. He grouped the testimony together very systematically, and showed how each part supported every other, all pointing to the absolute innocence of the accused. My turn to address the jury now came. As I arose I felt as if every friend I had in the world was whispering to me that I must now make a supreme effort, not so much for my client, for he was now safe, but for myself. In fact, I was fairly saturated with my subject, and the danger was that I

should slop over and say too much or not at the right time, or in the right way, rather than I should omit anything. I began in a very quiet and moderate way, stating that Mr. Atwater had so well and so fully presented the case that, in truth, he had left little for me to do. I presented the testimony, however, in my own way, first considering our own testimony, showing Pierce's absolute innocence, and then took up the testimony relied upon for the people, explaining the reasons for the confession as before stated, and referring to the circumstances which showed that that explanation was true, dwelling upon Pierce's enfeebled condition from recent sickness and his poverty, from which he was unable to employ counsel to defend him or buy him a supper after they should, by their verdict, set him free. I then took up the testimony of Thompson, when I began to warm up to my work in earnest.

It was evident that the public temper demanded all of the hard things that could be said of him. I showed that when Pierce lay sick unto death, when he required and had a right to claim the most constant and devoted care of the wife who had sworn before God at his sacred altar to cleave only unto him, this black-hearted villain had seduced her from her allegiance to him, in the hope that he might die from her neglect, and then, in order to place her the more completely in his lustful power, as well as for gain, had persuaded her to join him in the perpetration of this crime, and when, in spite of her neglect, he had refused to die and became convalescent, and the larceny had been discovered and the law was searching for the thief, he had concocted that diabolical plot and sent the weeping and apparently penitent woman to her enfeebled husband to persuade him to confess the crime. This plot was but too successful, and when the sick man had given his every cent of money to enable her to escape, which she, no doubt, divided with her paramour, and was sent to the jail, then it was that this fiend in human form fairly made the devils blush, by boldly standing up and swearing that he saw Pierce steal the goods! If he could

swear Pierce into the penitentiary for a term of years, the helpless woman would be completely in his power and he could enjoy her society at his will without the interference of her enfeebled husband.

While I was in the midst of this tirade, I turned partly around to catch an expression of the audience, and discovered behind me, and not more than two feet from me, this man Thompson, with a heavy bludgeon in his hand, the perspiration pouring from his face, his eye glaring fiercely at me with a terribly fiendish expression on his countenance. I at once concluded that he had crept up there in order to make a deadly assault upon me, when my back was to him. To say that this made me terribly angry is to put it mildly. That was one of the few times in my life when I have been really mad. I felt instantly inspired with a superhuman strength, which would enable me to crush any living man to the earth in a moment. I glared upon the supreme scoundrel, a look of scorn and detestation and defiance, which I was told later seemed fit to wither a statue. I pointed my finger in his very face, and called upon the court and jury to look at the cowardly assassin, who had not the courage to attack a child in the face, but must skulk up behind so he could strike unseen. I then proceeded to pour upon him denunciations and epithets which rushed upon me faster than I could utter them. Terrible words of execration seemed to coin themselves, and I poured them out with the rapidity of a tornado, constantly emphasizing them by fierce gesticulations right into his face, which was now red and now pale like the changing flashes of a boreal light. Some of these anathemas have been ringing in my ears ever since. Their bare memory makes me shudder. What, then, must have been their effect when poured out under such excitement?

The culprit stood this for a little while with a bold defiant expression, as if looking for a good time to strike, but soon he began to weaken and show doubt and hesitancy. This expression grew upon him more and more for

several minutes, when he backed toward the door through the dense crowd, who shrunk from his touch as if he had been a slimy snake. I called upon the state's attorney to prosecute the perjured thief, now that he knew for a certainty who was the guilty party. I called upon the sheriff to arrest the scoundrel before he should reach the woods and hide his guilty head in the bushes. I called on all good citizens to scorn and spit upon so loathsome a wretch. I advised all decent women, whenever they saw him, to bar their doors and windows as against a leper, whose very breath was contamination, and I kept shouting after him in this unseemly way, till he was fairly out of sight. I then paused, and turned around and was silent for a few minutes, and then every man in the court room, except the judge, was on his feet and seemed half bewildered. I at length apologized to the court for the unseemly exhibition which I made in a presence where dignity and moderation should always reign, but I hoped he would find in the scene which had provoked me some apology for the breach of decorum of which I was conscious I had been guilty. After a moment's pause Judge Breese remarked, "You can proceed, Mr. Caton." I then turned to the jury and apologized to them for having for a moment forgotten myself and the presence in which I was, under a provocation which might have excited an older man. I then said the evidence had made the prisoner's innocence so manifest that I did not think that his interest required that I should longer detain them.

The state's attorney then closed the case with a short speech, which virtually gave it up and left it for the jury to say which of the witnesses they would believe and which they would disbelieve.

The jury retired without any charge from the judge and in a few minutes returned with a verdict of *not guilty*.

The verdict was received with a manifestation of approval which was sternly checked by the court, when it was entered, the prisoner discharged and the court adjourned at once.

Then followed a scene of hand shaking very unusual at that time in a western assemblage. Pierce was congratulated and we were congratulated, not only by the jury but by every one else who could get near us.

At length the room began to clear and we were able to move toward the door. I was immediately surrounded by clients anxious to secure my services, and before I reached my hotel I was retained in nearly every case pending in the court, and in several important ones to be commenced. Two of these were chancery suits, which proved in the end to be of more real benefit to me than any other cases I ever was employed in.

When I left that town I took away with me about one hundred and fifty dollars in money and about the same amount in good notes, which in those days of small fees was considered as doing extraordinarily well for a beginning, in a court which lasted less than a week. More than that, I had been very fortunate in getting on the right side and so had won nearly every case, which gave me a reputation which was of more value than all of the rest.

When I inquired for Thompson he had disappeared and no one could tell where he had gone and I could never learn that he was ever seen or heard of in that town afterward.

After the court adjourned the term, we all—that is, the judge and several lawyers, made our way to Ottawa on horse-back, where the next court was to be held. At that time western hostelries had not attained to that state of refinement which places ablution furniture into sleeping rooms, but all had to go down stairs and wash in a tin basin placed on a bench outside the house. When I came down from my room the morning after our arrival, I had my coat and vest on my arm, that I might be ready for the toilet process, which was to be performed outside. When I reached the bar room, or office as it would now be called, the first man I saw, was that same villain Thompson with that same alpine stick in his hand.

"You old villain," said I, "what are you here for? Has not the sheriff got you under lock and key yet?"

"I have come up here to give you a thrashing," said he; "you insulted me the other day and I have come to settle it."

I dropped my coat and vest onto a chair and stepped up close to him and said that now was the time to begin. That I had no fears of one so steeped in crime. That so black a villain must necessarily be a coward, and I again overwhelmed him with epithets. I knew if he was going to strike at all he would have done it on the instant. A moment's hesitation was fatal to his purpose. I spoke in a pretty loud voice, and directly a crowd gathered around, to whom I related his villainy, and who soon manifested signs of hostility. On perceiving this, he turned and made directly for the door, and made quick tracks out of the town, and I have never seen or heard of him since.

VI.

CHANCERY SUITS—SUIT AGAINST COL. STRAWN—EARLY DAYS ON THE BENCH.

In my last I spoke of two retainers which I received at Hennepin upon my first attendance upon the Circuit Court there. As the conduct of these cases resulted in the greatest professional benefits to me, it may be well to speak of them more particularly. These benefits did not consist so much in the amount of compensation which I received as in the amount of learning which I obtained in their management. Both were suits in chancery, which were filed to enforce resulting trusts. Up to that time I had not paid particular attention to chancery law, and had had but little experience in that branch of the profession. The first was Babb v. Strawn. In this case a bill had been filed by Mr. Peters, of Peoria, to compel Col. Strawn to convey to the complainant the town site of Lacon, then in Putnam county, upon the ground that the land had been entered with the complainant's money, and to account for moneys received on the sale of town lots.

Although no answer had been filed as yet, Col. Strawn had taken a great mass of depositions to prove the value of his services rendered in laying out the town, selling of lots, and otherwise benefiting the trust property. In this condition of the suit I was retained. I procured an order from the court ordering the depositions to be opened, a careful examination of which qualified me better to draw an answer, than I could have done from my client's statement of the facts without them. By agreement with Mr. Peters, the venue was changed to La Salle county, to which the records were at once transmitted, a copy of which I ordered for my own use.

The other was a case of Wauhub v. Wauhub. This was a case where a family of that name, consisting of a father and mother and several children, had squatted upon a quarter section of land adjoining the town of Lacon, had built a house in which they lived, and had made other valuable improvements on the land. Some time before the land came into market, when it would be possible to prove up a pre-emption, the father died, leaving the wife and children upon the premises. The mother was an invalid and had been confined to her bed for the previous twelve years. Under her direction, however, and general supervision, the farming business had been carried on by the children, all living together upon the premises, deriving their support from the products of the farm, keeping no accounts among themselves, and claiming no separate interest in any part of the property.

William Wauhub was the oldest son and so took the general management of affairs. When the land came into market he proved up a pre-emption in his own name and took the title to himself and paid for it with money derived from the sale of the products of the farm, as the others claimed, while he insisted that he obtained the money from other sources, and this was the most important question of fact litigated in the case.

Soon after the entry was made, William claimed to own

the land in his own right, when the next oldest brother came up to the court at Hennepin to seek legal advice, and being satisfied with the manner in which I had conducted Pierce's defense he retained me; having no money with which he could pay me a retainer, but declaring himself able to pay the court expenses, he proposed to give me one-half of the land if I should win the case, but to pay me nothing if I should lose it. He brought to me several neighbors who confirmed his statement of the facts, as above stated, from which I was satisfied that a resulting trust could be established. I took full notes of the facts from which I could draw the bill, commenced the suit, so as to establish a *lis pendens*, making all the other members of the family complainants and William Wanhub defendant. I obtained leave to file the answer in one case, and the bill in the other at the next term of the court.

As before stated, I had never before paid much attention to chancery law, and I now determined to make it a special study. Not only that which related to resulting trusts, but to all other branches of that department of my profession, including the practice, pleadings and general principles upon which courts of chancery administer relief, and I applied myself to that study with untiring industry. Kent and Story, Hoffman and Daniels, and many other text books were read and re-read from beginning to end, and compared one with another, noting particularly wherever they disagreed, in which cases I examined the references, that I might form my own conclusions as to which was right, both on authority and on reason or principle.

Of course, during these researches, everything relating to resulting trusts was specially noted and treasured up in the memory; not only this, I read case by case all of Johnson's Chancery Reports, and all of the chancery cases found in the Kentucky Reports, as well as in the reports of other States to which I then had access.

To this task I devoted all my leisure time for two years at least, and became so familiar with the subject that I rarely

heard a question raised in court, either of pleading, practice or principle, that it was not almost as familiar to me as my alphabet, and I was astonished to see other lawyers and the courts hesitate upon questions, where, it seemed to me, there should be no doubt at all.

Now, it was the accident of my having been retained in these two cases that prompted me to this thorough course of study of chancery law, which laid the foundation for any merit I may have acquired as a chancery lawyer, and when I went on the Supreme Bench, at thirty years of age, I found I was vastly more familiar with chancery law than any of the other judges, and hence it was, that nearly all of the chancery records were assigned to me for a number of years in that court, as will be seen by any one who will examine the Reports, commencing with the third of Scammon and following up to the twelfth or fifteenth of Illinois.

I had been upon the bench about a month, and Chief Justice Wilson had distributed the records to other members of the court, till I thought he considered me so much of a boy that he deemed it not wise to give me any record on which I should write an opinion. Finally, the case of Frisby v. Balance having been argued, was taken up in the conference room. The Chief Justice called for opinions from each one, but no one was prepared to express an opinion without further consideration, and I did the same, although I had pretty distinct views about the case. The Chief Justice then offered the record for more careful examination to each member of the court in succession, but each made some excuse for not taking it, till he came to me, when he laid it on my desk and said: "Here, Caton, this is a good case for you to break in on." The record was a large one, and the rules then required neither abstract nor brief, but only the record as it came from the Circuit Court was filed. I took the record without demurrer or remark. When I got to my room I pitched into it as a hungry man would into a Christmas dinner. I first read it all through carefully, and then made a full abstract of it.

I then fully digested it, and carefully set down the several points which it presented, both of law and fact. I then re-examined the facts and set down my conclusions upon each one. I then took the points of law which arose in the case, upon which I thought I knew what the law was, but to be sure, I went to the library, and made up a brief. I then stated my conclusions, with the authorities in support of them. I then wrote out the opinion as it now appears in the report, but before I presented it in conference, I asked Governor Ford to my room and read it to him, and asked his criticism upon it. Although he had decided it in the court below and my opinion reversed his decision, he approved the opinion and highly complimented it. The only point upon which I reversed the decree below, was that he had granted affirmative relief to the defendant without a cross-bill, the error of which he readily appreciated. All of this took me at least a week.

When I read the opinion in the conference room, all readily agreed to it except upon the very point on which I reversed it, on which point all at first disagreed with me, really because all had been in the habit of granting such relief without a cross-bill, on their circuits. Judge Breese was particularly strenuous, and cited a clause in the statute which authorized the defendant to put interrogatories for the complainant to answer, at the close of his answer to the bill. I fought it out right on that line, brought in the books, and showed the reasons which governed the use of every part of chancery pleadings, and finally obtained the approval of all the members of the court, and I have no doubt that this rule has ever since prevailed in this State, and probably there are very few now living that have any suspicion that any other rule ever prevailed here, even on the circuit.

After that I had never cause to complain that a fair proportion of the records were not given me, for, with rare exceptions, I received all of the chancery records, and as all the evidence was then required to be presented in deposi-

tions, they usually involved the most labor, and I very rarely met with opposition to my conclusions.

This state of things impressed upon me the idea of a great responsibility. The jurisprudence of the State was then in its infancy. We were then laying down rules which were to be followed by those who should come after us, and it was of the greatest importance, not only to ourselves, personally, but to the profession generally, that these rules should be such as to bear the test of time and of the closest scrutiny, and I intended to spare no labor or pains to accomplish this result.

I have thought it might be profitable to some young members of the bar to learn how it was that I became a pretty good chancery lawyer while yet a very young man. What I learned so early and so well, it seems to me, I remember pretty well yet, although I have learned a great deal more since.

Having thus explained how it was that these two cases indirectly redounded so much to my advantage, it may be proper that I briefly follow each one up to the end.

The case of Babb v. Strawn I argued before Judge Pierson, in Ottawa, at the fall term, 1837. The only real question considered was, as to the amount of compensation my client was entitled to. Colonel Strawn was not satisfied with the amount given him by the decree, and so, by his direction, I appealed it to the Supreme Court, and argued it in that court at Vandalia, at the December term in 1838. That was the first case I ever argued in that court. That court then consisted of only four judges—Wilson, Smith, Lockwood and Brown. They affirmed the decision by an equal division of the court, and I was so ungenerous at the time as to believe that they thought that was the easiest way to dispose of a very large record.

In the fall of 1838, I had the misfortune to have two farms entirely burned over by prairie fires with everything upon them. On one was grain enough in the stack to have paid all my debts, and more. On the other was hay enough

to have wintered a hundred head of cattle. In October I went down to Sangamon county where I purchased about seventy-five head of cattle, and was driving them up to the latter farm, when early one morning, about fifteen miles below Ottawa, I met a man who inquired my name and then informed me that my Plainfield farm had been burned over, even to the ox yokes and other farming utensils, and then after giving me a few minutes time to digest that, he told me that my Du Page farm had been burned over and all the grain upon it consumed. I immediately employed a man to herd my cattle on the prairie, where they were, and pushed on for Chicago, where my family was, where I arrived the next forenoon. After remaining one day to arrange affairs here, I mounted my horse to look after my stock, which I found where I had left them, all right. I then pushed on about twenty miles further to Col. Strawn's, to make arrangements with him to winter my cattle, knowing that on his large farm he had abundant fodder in his corn fields with which to do so.

During my solitary ride across the prairies I pictured to myself the pleasure he would experience in offering to winter my cattle at a very low figure, and the happiness it would give me to assure him that I should charge no other fee in his suit with Babb, excepting my simple expenses to Vandalia to argue his case at the ensuing term. I was much disappointed when I stated my case to him, to observe that he was determined to drive as hard a bargain with me as possible. Winter was fast approaching, and the arrangement for the care of my stock must be made immediately, and he alone had the means at hand for caring for them. As I was in his power I made the best terms I could, but was careful to say nothing about my fee in his case, consoling myself with the reflection that I was now absolved from any obligation to treat him very leniently, when the question of fees should come to be considered.

Some time after the case had been decided I sent him a bill for one thousand dollars, for my services in that case.

He paid no attention to it for some months, when finally he came up to see me about it, and protested that my charge was exorbitant, and that he could prove that when at his house I had agreed to attend to the case for fifty dollars. I then told him that I had no doubt that he could prove that or anything else he wanted to prove; that I knew him too well to doubt that, but that I would catch him at it as sure as he lived.

I then commenced suit against him at Lacon, and to prove the value of my services I took the deposition of Mr. Peters, when we were attending court in Kane county. Peters testified that he had been counsel on the other side in the case, and that the case had been very ably tried on both sides, and that he thought a thousand dollars a very reasonable fee for the services which I had rendered in the case.

In the meantime I had received notice and a copy of interrogatories to take the deposition of some man in Iowa, whom I had no recollection of ever having seen. From the interrogatories it was manifest that he intended to prove by this witness that he had heard me agree with Col. Strawn to take that case through from beginning to end, for fifty dollars. In my cross-interrogatories, I simply asked him if he had had any communication with Col. Strawn about his deposition about to be taken, either oral or in writing, and, if the former, to state what was said as nearly as possible, and if in writing, to attach the original communication to his deposition.

When I sent my cross-interrogatories to the clerk I requested him to let no one know what they were.

When the next term of the court was opened at Lacon, Mr. Purple and Mr. Dickey volunteered their services to try my cause for me, and Mr. Peters was engaged for the other side.

The practice then required a special order of the court to open depositions, which was at once obtained. When the defendant's deposition was opened, the first thing to attract

our attention was an original letter in Col. Strawn's handwriting, from the defendant to the deponent, in which he offered him five dollars if he would swear to the statements following. Then followed about a page of matter written in the first person, to which the witness was to swear for the five dollars, stating that he had heard a contract made between Col. Strawn and myself, by which I agreed to conduct his case through from beginning to end, and to pay my own expenses, for fifty dollars, stating many collateral circumstances to increase the probability of his story. Then, turning to the deposition, we found that he had sworn to the exact words of the letter without addition or diminution.

Upon the trial, Mr. Peters' deposition was read for my side by Mr. Purple, who emphasized, in a very pungent manner, the statement that the case "was very ably tried on both sides." For the defense, the foreign deposition was read, and a witness was called to the stand, who swore that he was present when the bargain was made as stated in that deposition, following the same phraseology, scarcely varying it by a single word. On cross-examination he positively denied ever having conversed in any way with Col. Strawn about what he was to swear to. The cross-examination was what might have been expected under the circumstances, but the most valuable result obtained was that he obstinately refused to vary his statements from the formula set forth in the letter of instructions to the foreign witness. I should have stated that the deposition was not read in evidence till after the oral testimony had been given, and probably Peters would not have read it at all had he not felt sure that we would have done so by the leave of the court.

The summing up on my side was what might have been expected from two such able lawyers as Dickey and Purple, the latter being especially caustic in some portions of his address. Peters, on his side, of course, could not deny that the services were worth the thousand dollars, as stated in his deposition, but based his defense solely upon the special

contract claimed to have been proven. The trial had occupied the whole day, and Judge Ford adjourned the court until evening to receive the verdict. When at the evening session the jury was brought in, Col. Strawn was seated close to the jury box near the upper end. When the foreman announced a verdict of seven hundred and fifty dollars for the plaintiff, the colonel jumped to his feet and strode out in front of the jury, remarking as he went, "Thank you, gentlemen, a very small fee, indeed; only about a half bushel of dollars." After harvest I was told that he hauled in his wheat with a four-horse team, which he drove himself, and whenever he met a neighbor, and especially if he happened to be one of the jury, in a sarcastic tone he would exclaim, "That load of wheat you see is part of lawyer Caton's fee."

Had he kindly assisted me and shown some sympathy in my distress, no charge would have ever been made him for those services.

There is a moral in this story, but whether he ever profited by it or appreciated it I do not know.

The Wauhub case may be soon disposed of. I went to Lacon and took the deposition of the neighbors, who knew the facts of the case. It was then that I first met the old lady, who was lying in the bed she had occupied for so many years. She was an inveterate smoker, and during my visit she was constantly employed in that soothing occupation. She died some years later in that same bed, and, as I was informed, with the pipe in her mouth, which was still lighted, so that it might be truly said she smoked with her last breath.

When the case was ready for hearing I applied to the court for an order for a feigned issue to try the principal fact involved in the case, which was granted. As was my duty, I prepared the pleadings according to the old English practice, which was a declaration in the case of John Doe v. Richard Roe, that a wager had been made between the parties, wherein John Doe had affirmed that the land,

describing it, had been purchased by Wm. Wauhub, of the United States, with money belonging to the said complainants and defendant, naming them, in equal proportions, and the said defendant, Richard Roe, averred that the said land was purchased with money belonging to the said Wm. Wauhub, exclusively, and in his own right, whereupon the said parties had made a wager, whereby the said plaintiff had agreed to pay the said defendant a certain sum of money, naming some sum, in case the said purchase money did not belong to the complainants and defendant, naming them, in equal proportions, but that the said purchase money belonged exclusively and in his own right to the said William Wauhub, and the said defendant, Richard Roe, then and there promised and agreed to pay the said plaintiff a like sum of money, if the said purchase money did not belong to the said Wm. Wauhub exclusively, and in his own right, but did belong to the parties in the chancery suit, naming them, in equal proportions. The declaration then averred that the facts were as the plaintiff had declared them to be, and were not as the defendant had declared them to be, whereby the said defendant had become indebted to the said plaintiff in the said sum of money, naming it, which he had often been requested to pay, but that he had neglected and refused to do so, whereby an action had accrued, etc.

I also prepared a plea, admitting the fact of the wager as stated, but denying the facts as stated in the declaration, which would entitle the plaintiff to the money claimed in the declaration and added the *similiter*. The next morning I presented these pleadings to Mr. Peters, and asked him to sign the plea as attorney for the defendant, which he at first declined to do, stating that this was a proceeding which he did not quite understand, and that he did not propose to assume any such responsibility. Judge Ford, however, advised him to sign the plea, as it was a mere matter of form, to get the issue presented by the pleadings before the jury, and likened it to the fictitious pleadings in an action of ejectment, where the lease, entry and ouster had to be averred

and admitted in order to present the real issue in the case, although such facts had never really existed. Mr. Peters then signed the plea, and the jury was called, who found a verdict in favor of the plaintiff, whereupon the court entered a decree in my favor for the execution of the resulting trust.

As William Wauhub was shown to be beyond the jurisdiction of the court, I had Jesse C. Smith appointed a commissioner to execute the deed in his name, and, as I had all the papers prepared beforehand, this was done directly, promptly acknowledged and filed with the recorder, which was reported to the court, and the report approved.

Hitherto the practice had been, in such cases, to treat the decree as an absolute conveyance. This was more commonly the case in suits for partitions of lands, where the confirmation of the report of the commissioners was deemed sufficient conveyance to the several parties, of the parts assigned them. In this way, Mrs. Judge Breese held title to her share of the large estate of her father, of which she had conveyed many tracts with warranty deeds, about which no question had ever been raised, until a few years ago, when Judge Snyder, of the Belleville Circuit, decided that the fee had not passed to her by the confirmation of the report of the commissioners, thus leaving her liable upon all of the warranties she had made. This decision very much disturbed the judge, and he wrote me for my opinion as to its correctness. I answered him that in my opinion it was the law, but possibly a remedy might be found, yet, and at his request I met him in Mount Vernon, where the Supreme Court was in session. The partition had taken place about forty years before; and he could hardly believe that such distinguished lawyers as David J. Baker and Colonel Snyder, who were two of the commissioners who made the partition, could have omitted anything to make their work complete.

I advised him that the matter was still *in fieri*, and now pending before the court, and prepared a petition to be presented to that court to have the suit redocketed, and a com-

missioner appointed to execute the necessary conveyances. This, he informed me, was afterward done, and thus was he relieved of a great embarrassment.

I have thought that this sketch of our judicial history might be worth the space it occupies.

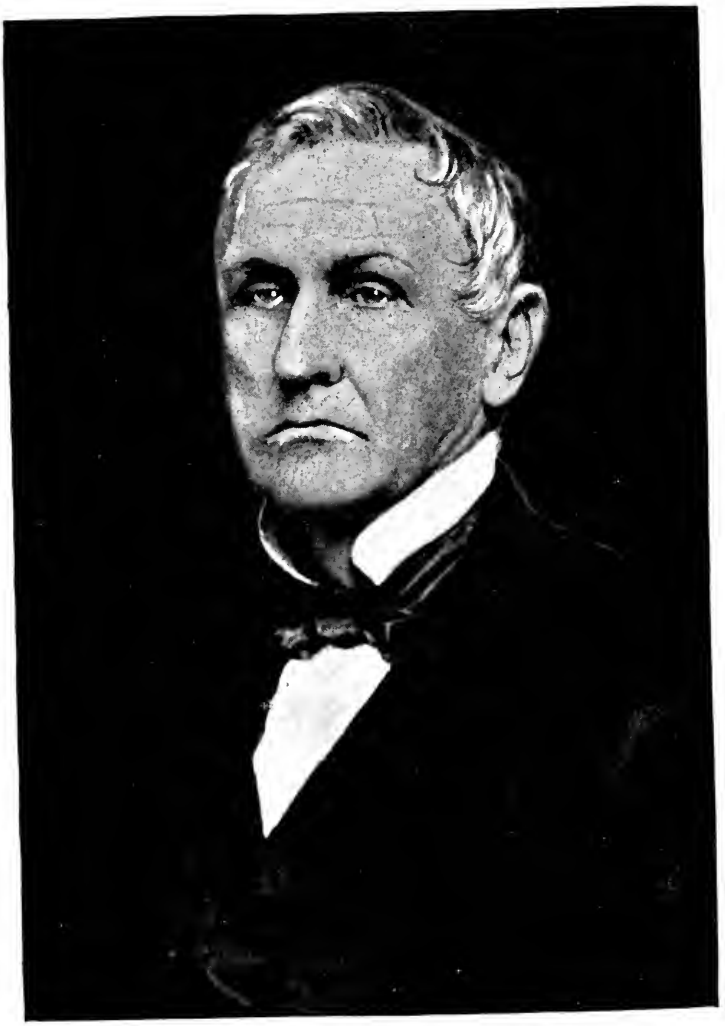
VII.

RE-FORMATION OF THE SUPREME COURT—ELECTION OF NEW JUDGE —ELECTED AS JUDGE OF SUPREME COURT.

After Gov. Carlin was inaugurated he made an order removing the secretary of state, and appointing another in his stead. His right to do this was denied by the incumbent, and he refused to deliver up the office. A proper case was made, and the question was presented to the Supreme Court for its decision. The court then consisted of Wilson, Lockwood and Brown, whigs, and Smith, a democrat. The court, by the three first named justices, decided that the governor had no power to make the change, to which Smith, justice, dissented.

When the Legislature assembled in December, 1839, it was found to contain a large majority in each house of democrats, when this decision assumed a political aspect. As the judges of that court were elected for life or during good behavior, there was no mode of re-forming that court, as it was called, but by increasing its members; so a bill was passed adding five more members to the court, who were to be elected by joint ballot of the General Assembly. To fill these places Breese, Douglas, Ford, Scates and Treat were elected. A bill was also passed requiring the judges of the Supreme Court to hold the Circuit Courts in the nine circuits into which the State was divided, and assigning a particular circuit to each.

This measure was strenuously opposed by the old judges, who did not relish the idea of being again required to do circuit duty.



SAMUEL H. TREAT.

Ford was assigned to the ninth circuit, in several counties of which I had kept up my practice during my residence on my Plainfield farm.

Having recovered my health, in the spring of 1842 I removed into Kendall county, preparatory to returning to Chicago to resume my practice here, after the close of the spring courts in the ninth circuit. While attending the court at Geneva, which was the last court of the spring circuit, Judge Ford received a communication from the Democratic State Committee that they had nominated him a candidate for governor at the ensuing August election in place of Col. Snyder, who had been previously nominated by the State Convention and had lately died. Before we separated Judge Ford privately told me not to return to Chicago, as I had contemplated, but to remain in Kendall county; that he should be elected governor, and that the governor would appoint me his successor, and that he thought me the best qualified of any member of the bar in the circuit. I consequently remained there till after the August election, at which Governor Ford was elected by a large majority. That very night I started for Quincy, where Governor Carlin resided, when I presented myself before the governor as a candidate for the vacant judgeship. He received me very cordially, but as he had not yet received the resignation of Judge Ford, there was no vacancy to be filled; he said he should be happy to see me again, after he had received Ford's resignation. He gave me no other assurance than this that my application should be favorably considered, but I accepted this invitation as a favorable omen and returned to Lisbon, where my family then was. Probably a week later I again presented myself before Governor Carlin, who again received me very cordially, and at once informed me that he had concluded to appoint me to the vacancy created by Ford's resignation, and wrote out the appointment, with a direction to the secretary of state to issue my commission, he having blanks in his office signed by the governor. With these documents I returned through Springfield and received

my commission from Mr. Trumbull, who was then secretary of state, when I went across the hall and was sworn into office by Judge Treat. This commission could only extend to the close of the session of the next General Assembly, which would by joint ballot elect a successor to Judge Ford. When the election occurred John M. Robinson, late the United States Senator from this State, was elected, and at the end of the term I returned home supposing that my judicial career was at an end.

Although Robinson had been an active politician, he was a fairly good lawyer, and possessed a good deal of what he himself called horse sense. He held his first court at Lacon, then went up to Hennepin where he held the circuit, and thence to Ottawa, where he opened the court a week later. He was a man considerably advanced in years, with a constitution somewhat impaired, and on the second day of the term complained of illness, and a few days later took to his bed, where he died two or three weeks later.

So soon as Governor Ford was informed of his death, he wrote out a commission entire with his own hand, which he sent me. This was my second commission as judge of the Supreme Court of Illinois. I now had two years to serve upon the bench before the Legislature would be called upon to elect a successor to Judge Robinson. Before that occurred I had an opportunity of getting well acquainted throughout the circuit, and, as my friends thought, demonstrated my fitness for the high office which I then filled, notwithstanding my lack of years, and was nominated unanimously by the party to which I belonged, which was largely in the ascendency in the General Assembly.

The opposite party nominated David Davis, who subsequently became eminent as a jurist, when a member of the Supreme Court of the United States. His nomination, however, was well understood to be merely complimentary, by reason of the numerical strength of my party friends. When I was elected I received my third commission as a justice of the Supreme Court. This was for life or during

DAVID DAVIS.

good behavior, according to the provisions of the constitution then in force.

When the Constitution of 1848 was adopted, it abolished the Supreme Court of nine judges, and created a new Supreme Court of three judges, with only appellate jurisdiction, except in a few specified cases, and provided they should be respectively elected by the people in each of the three grand divisions into which the State was divided. For this court, Treat, Trumbull and myself were elected, and then I received my fourth commission as judge of the Supreme Court. We organized the new court at Mount Vernon, in December, 1848. The constitution provided that we should cast lots at that term, as to which should hold the office for nine years, which for six years, and which for three years. This we did very quietly and by ourselves in our own room. Treat drew the longest straw, and so became chief justice of the court; I drew the second and Trumbull the third. Before Trumbull's term expired he was elected a senator to Congress, and Scates was elected to fill his vacancy. Before my term of six years expired Treat was appointed United States District Judge for the Southern District of Illinois, when I became chief justice for nearly six months, or from January to June, inclusive.

During the last six months, when I held office under that fourth commission, it was by a rather doubtful tenure. The constitution provided that our terms should commence on the first Monday of December, 1848, and should continue for three, six and nine years respectively, and provided that the elections for our successors should respectively be held in the June following, and made no provision for the intervening six months. To meet this emergency, the General Assembly passed a law providing that we should continue in office till our successors were elected and qualified. Whatever might be said of the constitutionality of this act, it was thought to give color of office sufficient to make us officers *de facto*, so as to make our acts as legal and binding as acts of officers *de jure* would be.

At the expiration of my term thus extended, I was elected to succeed myself for the nine years term, in June, 1855. At the same time, Judge Skinner was elected to fill the vacancy caused by the resignation of Judge Treat, who was appointed United States District Judge, when Scates, who had been elected in the Third Grand Division to succeed Judge Trumbull, became chief justice by virtue of his holding the oldest commission.

As before stated, at the June election in 1855, both Skinner and myself were elected, and on this I received my fifth commission as judge of the Supreme Court of Illinois.

As the constitution provided that the judge holding the oldest commission should be chief justice, the governor, perceiving that embarrassment might arise from the omission of the constitution to determine who should become chief justice when two of the judges should hold commissions bearing the same date, issued my commission one day earlier than that to Skinner. When we met at Mount Vernon for the November term, 1857, of the court, Skinner claimed that the governor had no right thus to determine who should be chief justice, and that a fair way to settle the question was by casting lots for it. Of course the decision of this question fell upon Judge Breese, who had been elected to succeed Judge Scates in June, 1857. Judge Breese decided that as I actually held the oldest commission, the constitution declared that I should be the chief justice, and then I took my seat as presiding officer of that court for the second time, and held that office until I resigned, in 1864.

This short historical sketch shows how two embarrassing questions were disposed of during the time embraced in it. I thought it proper to recall them here. The first was, how the hiatus was bridged over between the expiration of my six years commission, which occurred in December, 1854, and the election of my successor in June, 1855; and the other was as to how I became chief justice, after the resignation of Chief Justice Scates, when both Skinner and myself were

LYMAN TRUMBULL.

elected at the same time in 1857. It also shows how I became Circuit Judge for the Ninth Circuit, from August, 1842, to December, 1848, with the exception of about two months.

During that time some interesting circuit scenes occurred which I may give hereafter.

VIII.

LYNCH LAW—PUNISHMENT OF THE OFFENDERS.

Two years before I came to the Supreme Bench, I had been called to Ogle county, which was in the ninth circuit, to prosecute an action on a note of hand, which had been given to a particular friend of mine, for an improvement and claim on the public lands. As the lands in that part of the State had not yet been brought into market, claim titles were the only ones known in that region, and the courts and lawyers had, by a sort of universal consent, adopted and adhered to rules adapted to that class of titles, and we acted upon them with as much assurance as if they had been adopted by the Legislature, or were to be found in the books of the common law. Well, in this case a defense was set up that the payee of the note had not a good title to the claim for which it was given, and as my client had left the county after he had sold his claim, the witnesses managed to throw sufficient doubt over his right to induce a jury of the neighborhood to find a verdict for the defendant; but I made a stubborn fight in an up-hill case, and was soon engaged in several other cases then pending, and in some which were to be tried at the next term of the court, so I was fairly engaged in practice in that county, although when I went there first I only expected to try the particular case which called me there.

A year later I was retained in the most important case, nominally at least, in which I was ever engaged. That was to defend one hundred and twelve men charged with the crime of murder. For some years before, there was a sort

of an organized band of criminals, principally engaged in horse stealing and counterfeiting, but who on occasions did not hesitate to commit murder. They became bold and defiant. They were well known throughout the community, and had many sympathizers, who, in order to turn suspicion from themselves, roundly denounced them when in certain circles; indeed, they were so well organized and bold, and had so many sympathizers, who did not profess to be of them, that it was impossible to punish them even upon the clearest proof of guilt. The jail was broken open and burned to liberate some of the gang who were confined in it, and some of their sympathizers would always manage to get on the jury, so that a conviction became impossible.

But the evil-doers consisted of but a small percentage of the population of the county, a great majority of whom were as excellent men as could be found in any other community. They, seeing that the arm of the law was too short to afford them protection for either life or property, formed themselves into a sort of association or club, the declared object of which was to rid the community of the criminal class; one Campbell was elected captain of this club, which also elected several subordinate officers. This was done on Saturday, and, as its proceedings were open and public, they were known immediately throughout the county. The desperadoes saw at once that they must strike such a terror throughout the community as to disintegrate the members of this club by the force of fear, or they must go themselves. They saw it was an issue of blood, and did not hesitate to accept it at once. By arrangement three of the gang were to commence operations by assassinating, in the most public manner, Campbell, the leader of the association, and accordingly, on Sunday, rode up to his cabin in broad daylight, called him to the door and riddled him with bullets.

The news of this terrible tragedy was known throughout the county by Monday morning, and without call or notice, the members of the club assembled at their appointed rendezvous, and details were sent out to arrest and bring in the

murderers. This was finally accomplished, and they were brought before the assembled club in a grove a few miles south of the county seat. There a court was organized, consisting of a judge and jury, all of whom were sworn by a justice of the peace, to impartially try the case and a true verdict to render. Witnesses were sworn before this tribunal, who saw the murder committed, and who positively identified the prisoners as the murderers. Lawyers had been appointed to prosecute and defend the prisoners and every formality was observed which was characteristic of a regularly constituted court of justice established by law. A verdict of guilty was returned, and a sentence passed that all should be shot on the spot. A company was detailed to carry the sentence into execution, which was done at the word of their commanding officer.

This prompt proceeding struck such a terror into the criminal class, that the most notorious of them fled at once, without standing on the order of their going, and their sympathizers were dumb with terror.

As every member of the club who was present, was in the eye of the law guilty of murder, I was at once consulted as to the wisest course to pursue. I unhesitatingly advised that an indictment should be procured against all who were present at the execution, feeling perfectly assured that they could be acquitted then, while a change of condition, of population, and of public sentiment might, without a judgment of acquittal standing upon the record, give them trouble at some future time. Accordingly an indictment was presented against one hundred and twelve who were present at the trial and execution of the culprits. Of course, my consultations had been with only a few of the leaders, but now it was necessary to have them all together, and accordingly we marched out onto a little isolated peak in the prairie, and I had them formed in a circle around me, while I called over a list of the defendants, when all answered to their names except four, who were unavoidably absent. Even the sheriff, in whose nominal custody they

were, was conveniently absent, and no one but the prisoners and myself were within two hundred yards of us. I was assured that no one of them had boasted of the transaction, or in any way admitted that he was present at the time, and I saw no difficulty in the way, except as to the four defendants that were not present, in whose favor a judgment of acquittal was as necessary as to the others; but this was got over by selecting four of the party, each of whom was to answer for one of the absentees when his name should be called in court to plead to the indictment. When all of the many details were arranged for the conduct of the case, we marched back to the court house, which was cleared of all others, as supposed, and when my numerous clients filed in they filled the little court room quite up to the table around which the lawyers sat. While the court was waiting for our appearance it had been occupied with some unimportant business, so that all was ready to proceed with the case when we arrived. The case was at once called, and the clerk proceeded to call the prisoners, who promptly answered to their names. I confess I felt a little anxiety whenever the name of an absentee was called, but the proxies all answered promptly and without another word, until the last answer was made, when some one near the door hallooed out in a rather tremulous voice, "That ain't him."

This caused a flutter of excitement for a moment, and the judge directed that name to be called again, when the proxy, who was standing away back in the crowd, again responded for his principal, and no one could tell who had interrupted the proceedings in the manner stated. The clerk proceeded with the call of his prisoners, and all were declared to be present, and I entered a plea of not guilty for the whole lot, when the jury was called. Of course, with the number of challenges which we had, I could select a jury to suit myself, but I had occasion to use very few challenges. The entire panel was of exceptionally good men, and we accepted the most prominent of these, while the state's attorney made very few challenges. He then proceeded with his testimony

but utterly failed to prove that any person had been killed, much less that any of the prisoners had taken any part in killing anybody. The truth was, that no one was present at the trial and execution but the defendants, and no one could be found who had heard any one of them say a word about it. All the witnesses had heard rumors, with which the whole atmosphere was filled and had been ever since the event happened, but of course, these widely differed from each other, and some of them were wildly extravagant, but this was not legal testimony. I did not object to them, because I wished to demonstrate by their contradictory character how unreliable mere rumors are. I called no witnesses, no argument was made to the jury on either side, and I asked the court to instruct the jury that mere rumors were not evidence, which, of course, he did, and explained the law in his own way as to what evidence was necessary to authorize a conviction. The jury were absent but a short time, when they returned with a verdict of acquittal, upon which judgment was entered, and thus ended that celebrated case.

There were in the town at the time quite a number who sympathized with the prosecution, every one of whom were well known, and some were allowed to manifest their feelings, but this was done more by looks and shrugs than by words, and very few remained in the county long after these events transpired. Many of my then clients have filled honorable public positions, in which they have acquitted themselves in the most useful and honorable way, and all, so far as I have ever learned, have deserved and have received the respect of their fellow-men.

IX.

INCIDENTS OF TRIALS.

When I came to the bench of the Circuit Court of the Ninth Circuit crime was scarcely more frequent in Ogle

county than in the other counties, where less stringent measures have been necessary to check its perpetration. Indeed, no trouble existed in the enforcement of the law in the proper and legal way. Undoubtedly there were many still left to sympathize with those who had departed, and some were still left who were more than sympathizers, but all were known and watched. However, as time went on, some assumed a bolder tone than others, and occasionally a horse was spirited away.

Mr. Fridley had been elected state's attorney for the ninth circuit at the session of 1842–3. He found affairs in Ogle county rather quiet and orderly, with jurors carefully selected from among the best citizens, and no unusual number of criminal prosecutions.

At one term he found a man by the name of Bridges in the jail on a charge of horse stealing. Now, Bridges had an unsavory reputation, and had for a long time been believed to be more than a sympathizer with the criminal class. If he had fled from the county after the execution of the murderers of Campbell, he had returned with his family, and was ostensibly engaged in farming. Fridley had, with his usual industry and perseverance, gathered up all the evidence attainable, and made a case before the grand jury which would insure a conviction on the trial, and this became so well understood that his counsel, Mr. Peters, advised him to plead guilty, preferring to trust the court to determine the measure of the punishment, rather than to leave that to an Ogle county jury.

I sentenced him to seven years in the penitentiary, which was more severe than Mr. Peters had expected, and which many of his outside friends characterized as outrageous, and even threats were floating about against us; but we paid little attention to these, feeling confident that the lesson of only two or three years before was still fresh in the memories of the evil-doers, and that they would not again commit an outrage which might raise a greater storm of indigna-

BURTON C. COOK.

tion than even the first had done, and which might more materially decrease the population of the county.

At the session of 1844–5, Mr. B. C. Cook had been elected to succeed Mr. Fridley as state's attorney, and proved himself as persevering and efficient in the prosecution of criminals of all grades as the former had been. Indeed, he became as obnoxious to the criminal class by the energetic manner in which he discharged his duties, as I had by the sentence of Bridges and by my other official acts in the discouragement of crime, and threats against us both became more pronounced; Mr. Cook received some anonymous letters of a threatening character, but we heeded them little, feeling assured that if the criminal classes really meant injury they would not put us on our guard by letting us know it, and also feeling assured that a former lesson had not been forgotten. When the term closed Mr. Cook and myself started in my buggy for Ottawa, our home. The road led through Hickory Grove, where there were two settlers, Mr. Bartholemew and Mr. Flag. The former entertained travelers in his log cabin, and we often stopped there both before and after.

We arrived there all right in time for supper, had our horse stabled and fed, and prepared to spend the night; but when the nearly full moon came up, which rendered everything almost as light as day, we concluded to hitch up and cross the sixteen-mile prairie to Paw Paw Grove. There was not a single settlement in the whole distance, but the trail was fairly beaten and the road good. We jogged along leisurely talking frequently of the threats we had heard, but entertaining no fear of their execution, till we reached Plum Thicket, six miles on our way. This was a little patch of but a few acres of wild plum trees and very few thick underbrush, and containing a few trees of considerable size, and is situated directly on the north bank of Kite Creek. This dense thicket had been mentioned as a favorite rendezvous for horse thieves, where they were in the habit of concealing their stolen property, and one of us had suggested that

it was a likely place for them to make an attack upon us if they so intended, but for the reasons before stated we had no apprehension of this. The trail ran along on the north side of the grove and as close as possible to the hazel thicket, which bordered it. Into this thicket we could not see a yard, and all was dark in the somber gloom beyond it. Just as we got opposite the middle of the grove, one within it, and pretty close to us, hallooed out: "Who goes there?" And Mr. Cook thinks he saw a man in his shirt sleeves with a rifle in his hand, but I did not observe him. At this I confess my heart jumped pretty well up in my throat, and I will venture the opinion that it was much the same way with Mr. Cook; but I doubt if it occurred to him, that as I sat upon the right side and next the grove I might possibly serve as a shield to him, nor did that, then, occur to me.

Neither of us spoke a word when we heard this salutation; but I gave Snap a check of the reins, which he well understood, and went on at a slashing trot, and in two minutes passed through the ford of the creek with a great splash, and up the steep bank on the other side, without losing a single step in his long swinging trot. Not a single word passed between us, until we had got a mile from the ford, when I inquired if his shotgun, which lay by his side, was loaded, but he was not sure whether it was or not. We passed over the twelve miles, of course, to Paw Paw Grove, canvassing the situation as we went along, and soon concluded that there were no horse thieves or their sympathizers in Plum Thicket, but that probably some innocent travelers had camped there for the night, who, to amuse themselves, had hailed us in the manner stated, and this is as near as I ever came to suffering the performance of the many threats which I have received for the performance of official duties.

Several other incidents happened when I held the circuit in Ogle county, which, if not instructive, may be a little amusing. At one term on the first day a jury was sent out in an unimportant case, which I thought was a very

plain one, and expected a verdict after a short deliberation, and was surprised to see them come into court after three hours and ask to be discharged, because they could not agree. I sent them back with the intimation that I very rarely recognized the impossibility of an agreement, especially in such a case, and certainly not without the most ample opportunity for deliberation. They came in with the same report, and were sent back every day in the week, till Saturday morning, when they brought in a verdict, as I thought it should be. So soon as the verdict was announced Mr. Peters, of counsel with the losing party, jumped to his feet, and moved to set the verdict aside, and in support of his motion, read an affidavit of his client, stating that one of the jurors, naming him, had, during one of the nights of the deliberation, left the jury room, and separated from his fellow jurors, not being in charge of any officer of the court, and had gone to the tavern, where he had slept all night in bed with another man.

So soon as this affidavit was read an old farmer named Kellogg, from Buffalo Grove, one of the jurors, a hard-fisted and hard-headed settler, who claimed to be and thought he was an oracle in his neighborhood, jumped to his feet, and said: "Now, Judge, I never would have agreed to that verdict in the world, but I knew you would have to set it aside," and then sat down with an air of great satisfaction.

Immediately the counsel on the other side arose and read an affidavit of the juror named, which stated it was true; that having been worn out and made sick by the constant wrangling and disputations of one of the jurors with the other eleven for several days and nights, he had separated from the other jurors and gone to the tavern, where he had slept in a bed with Mr. Peters that night, but that not a word had passed between them or between him and any other person in relation to the case under consideration, and that he had immediately returned to the jury room, and there continued until a verdict had been agreed upon.

As Mr. Peters had nothing further to say, and as I was

well satisfied that no improper influence had been exercized upon the juror, I stretched the point a little, and overruled the motion, at which Mr. Kellogg seemed thoroughly disappointed and disgusted.

I confess to a little surprise at the celerity with which these affidavits must have been prepared, but as I have before stated the circuit practice often required rapid thinking and rapid work, and as it might be that the facts were obtained by intuition only, and as neither party raised any questions about it, I did not think it my duty to do so.

I may remark, however, that the jury had been authorized to seal their verdict and then separate if they should have agreed upon a verdict before the opening of the court, which they did; an investigation might have explained how the facts were obtained, and the affidavits so promptly prepared.

There was practicing at that bar an old bachelor named Fuller, who was a very good lawyer, but had his peculiarities, as old bachelors are frequently supposed to have. One of these peculiarities was that he was constantly in fear of taking cold, to avoid which calamity, except in very pleasant weather, he wore over his dress coat a surtout coat with the skirts cut off at the hips.

On the opposite side of the river resided an English family of the name of Henshaw, who had associated in good society in the old country, and here entertained their friends with great hospitality. Some young lady friends were visiting them from Chicago, who much admired Mrs. Henshaw's mode of cooking game, which was then very abundant there. One of them inquired of Mrs. Henshaw how she managed to have such tender, delicious venison, and she promptly replied that she hung it up by the tail till it dropped off. A few days later the young ladies crossed the river to do some shopping in town, and when they returned she inquired of them whom they had seen, when one of them replied, that among others they had met Mr. Fuller in the store where they were trading, when Mrs. Henshaw

inquired how they liked Mr. Fuller. The reply was that he was a very pleasant gentleman, but he appeared to have been treated as she treated her venison, and so he must be ripe, if not tender or delicious. Let me say to the credit of Mr. Fuller that he subsequently got married.

Mr. Fridley had preceded Mr. Cook as before stated, as prosecuting attorney in the ninth circuit, and during his administration a case of mayhem was sent down to Ogle county by a change of venue from Jo Daviess county. When the prosecutor was put upon the stand he showed up as a well built, powerful man, while the prisoner was rather a small man, and appeared as if he would be no match for the prosecutor in a fight; but there was one eye half forced from its socket, with a repulsive white appearance, which showed that he had got much the worse in the dispute. A brother of the complainant, and another person were present at the *mill*. The prosecutor and his brother both swore that the prisoner was the aggressor, while the indifferent bystander testified that the complainant had commenced the fight. All of the witnesses were examined in great detail from the beginning to the end, showing the progress and the end of the *scrimmage*. There were great discrepancies in the statements made by the brothers and the third witness, and as the science of jurisprudence had not so far progressed as to offer a high premium for perjury by allowing the prisoner to swear in his own exculpation, the evidence closed with two witnesses against one. Mr. Dickey, who was defending the prisoner, to overcome this advantage, in summing up to the jury pointed out many inconsistencies in the statements of the witnesses for the people, and insisted that the story told by his witness was the most probable and natural for the occurrences of such a fight, and said that if Scott or Bulwer or Cooper, or any other great novelist, were going to describe such a fight in a novel they would describe it just as his witness had testified to this one, simply because it was most probable

and natural—most consistent with human action under such conditions.

In reply to this Fridley in his closing speech said that Mr. Dickey had told them that if a novelist was going to put in his novel an account of such a fight as this was, he would put it down just as his witness had stated it here. "Well," said Mr. Fridley, "I agree with Mr. Dickey in this. Now what does a novelist do, when he's going to write a novel? He just sits down and invents the infernalest lie he can think of. Then he tells the story in his book, and that's just the way with Mr. Dickey's witness. He just invented this big lie, and then came here and told it to you, but he didn't expect you to believe it any more than you would a novel. Mr. Dickey was right in what he said and he don't believe it either."

This was a shot fatal to an otherwise promising case. The prisoner was convicted and sent to the penitentiary.

X.

STORIES AND INCIDENTS OF TRIALS.

I have had occasion to mention Mr. Fridley as prosecuting attorney and as an actor in some of the circuit scenes in Ogle county, and as I shall probably have occasion to mention his name hereafter, I may be pardoned a few lines descriptive of him as a lawyer.

Benjamin F. Fridley was certainly a man of some remarkable characteristics. His mind was clear and penetrating, his observations exceptionally acute; his study of mankind was much more profound than his study of the law. He was witty without knowing it, and his sense of the ludicrous was really brilliant without his appearing to appreciate it. I scarcely ever knew him to laugh, while his quaint suggestions would sometimes provoke laughter in others, though generally these were made in so solemn and matter-of-fact a way as not to provoke boisterous laughter, but rather a quiet internal satisfaction.

BENJAMIN F. FRIDLEY.

He readily perceived the vital points of a case, though when his interest could be subserved thereby he could appear to be as stolid as a block about them. His primary education was very limited, and his orthography was nearly as remarkable as that of Chief Justice Wilson, who always assumed that the proper way to spell any word was to use as many letters as could possibly be appropriated for the purpose. I observed once, when sitting beside him on the bench, and Stephen T. Logan was arguing a case and quoted from Dana's reports, that in making a note of it he wrote it down *Dainey;* and yet any one who will read over his opinions will observe that he was really a fine scholar, and a clear and perspicuous writer.

His opinions will compare favorably with those of any other judge to be found in our reports. With this example before us we are not at liberty to condemn Mr. Fridley for his bad spelling. He, too, was a very poor reader, but by pauses, repetitions and emphasis, he could cover this up most ingeniously, and would manage to give what he read a meaning to suit himself. I never saw evidence that he had ever read a literary work in his life and I doubt if he ever read a law book through, but he knew a great deal of law, and what he did know he was able to turn to the very best account. He learned his law from his observations in courts or in conversations with other lawyers. When he heard a proposition of law stated for the first time he could tell intuitively whether it was good law, by determining in his own mind if it ought to be law. When it suited his purpose he would pretend to be ignorant of a principle which he well understood, and would pretend to be unable to understand a ruling which he perfectly comprehended.

He was the originator of many aphorisms, which I often hear repeated, the author of which is not generally known; for instance: Fridley and I were appointed by Judge Ford at the DeKalb Circuit Court to defend an impecunious horse-thief. When we were congratulating ourselves that the evidence was quite insufficient to convict him, as a last

resort, the officer who arrested him was put upon the stand, who testified that the prisoner had confessed to him that he had stolen the horse. At this point the court adjourned for dinner. When walking up to the hotel together, I remarked to Fridley that a very good case had been badly spoiled by that last witness. "Yes," answered he, "in this country, if a man is amind to be a darn fool, there is no law agin it."

After our man was sent to the penitentiary I repeated this to the judge and lawyers present, who seemed to think it a very forcible and novel way of stating a plain proposition, and I have often heard it repeated since to illustrate a great variety of conditions to which it was applicable.

Fridley was state's attorney for two years during my administration on the circuit bench, and he was certainly a most efficient prosecutor; in the main he was just and fair, but when fully convinced that the prisoner was guilty, he was sure to convict him in one way or another. When the emergency required it, he exceeded all men I ever knew to worm in illegal testimony, and he would contrive to make it tell, when it was ruled out, but he would do it in such a way as to avoid censure, and yet to make the very ruling out of the evidence tell against his opponent, sometimes by an affectation of illiteracy. The first time he went round the circuit as prosecutor, many of the lawyers evidently thought they would have a fine time, and sought to expose his want of education in various ways, and particularly by moving to quash his indictments for bad spelling and bad grammar, which they would parade to the amusement of the audience; but these were generally overruled, as they expected they would be, but this was invariably followed by a successful prosecution, whether the prisoner was guilty or innocent, so that it was not long before this amusement was found to be too expensive to be indulged in, unless the defense was deemed so clear that conviction was thought to be impossible.

When I was holding the Kane Circuit, the grand jury

came into court, and complained that they had found an indictment against a man for larceny, but that the state's attorney refused to draw the indictment; whereupon Mr. Fridley stated that he had heard all the evidence before the grand jury, and was certain that no conviction could be had; that the man complained of had found an old plowshare in the weeds by the side of the road, and supposing that it had been lost or thrown away, had thrown it into his wagon and taken it home, without any felonious intent; and that he did not deem it his duty to put the county to the expense of a useless trial. I told him that he had better draw the indictment, and when it should be returned into court he could do with it as he thought best.

The defendant was a German, a middle-aged, well-to-do farmer, and not having well understood what had taken place in court, was greatly alarmed upon learning that he had been indicted for stealing the old plowshare, and in hot haste employed Mr. Peters to defend him. Mr. Peters feeling that he was in conscience bound to do something to earn the fat fee which he intended to charge the wealthy old German, and in order to anticipate a *nolle pros.* by Fridley, hastened to make a motion to quash the indictment in a rather ostentatious way, raising the most trivial objections which he argued in a way to give the impression that the state's attorney did not understand his business, although in conclusion he tried to smooth it over, as if he feared to wound Mr. Fridley's susceptibilities. When he closed I promptly overruled the motion to quash without hearing from Mr. Fridley, when Mr. Peters turned to the state's attorney with a rather consequential air, and asked him what he proposed to do with the case, expecting no doubt a *nolle pros.* at once, but Fridley was fairly aroused by this motion to quash, and with the greatest coolness rose and replied that he proposed to try it and to convict the prisoner, too; that upon a partial understanding of the case before the grand jury he had believed that the prisoner had found the plowshare, and picked it up innocently,

but on a more thorough examination of the evidence, and the discovery of new facts, which showed that the prisoner had concealed it among some old iron in a loft, he was convinced it was a most flagrant case of deliberate larceny, which it was his duty to prosecute to the utmost; that he was now convinced that the grand jury was right, and that he had been wrong, and that he would show the court and jury how wrong he had at first been, and concluded by saying, "Let a jury come."

There was a snap in his dark, keen eye, shining out of a solemn, stoical countenance, which showed that he was much in earnest.

Mr. Peters now appreciated his peril and the indiscretion he had committed. The effect of Mr. Fridley's statement in court was already parried. He had no knowledge of the facts of the case in detail, and he feared there might be something which might be successfully urged against him. It was a hot day in June, and the perspiration burst out in great beads, covering his naked pate and fat face, and running down his cheeks in a torrent. A jury was called and the trial began—and it was a trial.

During the prosecution there was a combination of mildness of manner and ferocity of effect which I have scarcely seen equaled. The trial lasted until nearly dark, when the jury was sent out, and I adjourned court for supper.

When the court met after tea the jury brought in a verdict of "guilty." The poor German almost fainted when he was informed of the verdict, and the perspiration rolled from Mr. Peters in more copious streams than ever before, while Fridley sat as calm and immovable as a statue. A motion was immediately made for a new trial, and as it was in the evening of the last day of the term, I told Mr. Peters that I would hear from the state's attorney, who simply said as it was late he would leave it to the court. I then summed up the evidence, briefly showing that, in my opinion, the plowshare had been picked up without any felonious intent, and concluded by ordering a new trial.

Mr. Peters then arose, as mild a mannered man as one often sees, turned to Mr. Fridley, said in a rather soothing voice: "After hearing the views of the court on the subject, I appeal to you if you consider it your duty to prosecute this case further?" Fridley arose, and in a very calm voice said, "Oh, Mr. Peters, if you cease to occupy a hostile attitude, I will dismiss the case."

Mark Fletcher was clerk of the Circuit Court of Kane County, and a most excellent clerk he was, too. He had a vein of quiet humor about him in which he frequently indulged. He had taken an American silver dollar and placed it on the outside of his Bible, on which he administered official oaths. He then placed it in his press and made a deep and distinct impression of the coin on the cover of the book, on the opposite cover of which there was a cross. When asked why he had the impression of the dollar on the book, he replied that when he swore a Catholic he presented that side on which the cross was shown, but when he swore a Yankee, he presented that side of the book on which the dollar was shown.

At one term of the court a case of divorce was tried in which a Presbyterian minister from Elgin was the complainant. He proved a pretty strong case of the misconduct of the defendant by several witnesses brought from Quincy, Illinois, but not being entirely satisfied, I held the case over for further consideration. A day or two after I called the case up, reviewing the evidence, and expressing my doubts about its sufficiency and the hope that some further evidence might be produced which would remove my doubts. Some bystander from Elgin, having misunderstood what I had said, rushed away in hot haste and informed the clergyman that I had granted his divorce. Whereupon, the same evening he was married to a sister of his flock, but after two days of wedded bliss he learned, to his consternation, that I had not decided the case at all.

He immediately started for Geneva, and rushed into the court in breathless haste just as I was about to adjourn it for

the term, and made known the plight in which he found himself. His despair was unmistakable. I allowed him to be sworn. His testimony removed all doubt and I granted the decree. I was told that he hastened back to Elgin with as much speed as he had shown in his way down, and was married over again as quickly as some one could be found to perform the ceremony.

At another term of the same court three men were indicted for the burglary of a log cabin in the country in which lived a Scotch family. The man of the house was away at the time; only the wife and several small children were in the cabin and necessarily she was the only witness. All of the burglars were masked, but she recognized them all by their voices, for they lived in the neighborhood and she knew them all. The manner in which she gave her testimony was very convincing; indeed, I have rarely seen a witness whose testimony more favorably impressed me. On the cross-examination by their counsel, she was required to detail with great particularity every act which each one of the defendants did while ransacking the house for plunder. During the examination she had stated that one of the defendants had done some act which I do not now remember. Instantly that defendant whispered something to his counsel, who nodded his head and went on with the examination on the line which he was then pursuing; after a while he came back to the same point and led her over the same ground as before, but when she came to this particular point she stated it differently from her former statement. Counsel then asked her if she had not formerly stated it was so and so; she stated that she had not, or if she had it was a slip of the tongue.

This was most convincing proof to me that her statements were certainly true, for if the defendant had not been present he could not have known that she made a mistake in relating the transaction, and there could be no doubt that his whispered communication to his counsel told him of that mistake. However, the state's attorney had not seen the

transaction as I observed it, nor did I tell him of it until afterward. Indeed, I was convinced that the jury would convict them, and so were they, for they disappeared that night, being out on bail. I kept the jury together till the sheriff brought the defendants back. He found them stowed away in the hold of a vessel in the Chicago harbor which was about to sail for the lower lakes. It was late in the evening of the last day of the court when he returned with his prisoners, and I received the verdict, and sentence was passed. The severity of the punishment inflicted induced the suspicion that the jury had probably changed that part of their verdict during the two days they had been kept together waiting for the return of the prisoners.

XI.

LIFE ON THE CIRCUIT.

I observe in the daily press that some one has introduced into the Legislature a bill authorizing the judges of courts to charge the juries in cases tried before them as they may think the merits of the case require, without being strictly confined to written instructions. Such was the law during the early years of my judicial service, and in important cases I frequently adopted that mode, deeming it possible in that way to assist the jury in arriving at correct conclusions. In New York, where I had studied my profession, such was the universal practice of the courts. My observation there had taught me that the greatest care was necessary for the judge not to seem to take sides with either party—not to express any opinion or bias as to which party should succeed—but simply to review the evidence, if necessary, with exact fairness, and to clearly state the principles of law applicable to it. There I had observed that whenever a judge assumed the role of an advocate, his opinions at once ceased to have a preponderating influence, and were not treated with any more consideration than were those of the lawyer advocat-

ing the same side; whereas the judge who showed perfect impartiality was listened to with the greatest deference and confidence. By these observations I profited in my mode of charging juries, and I now believe that I could do more in that way to assist juries in arriving at correct conclusions than I could have done by adhering strictly to the written instructions asked.

At the next term of the court in Kendall county after the present law requiring written instructions to be adhered to by the courts, Mr. Butterfield, who had practiced for many years in the New York courts, was in attendance.

Mr. Dickey, who was much pleased with the passage of the new law, spoke to several members of the bar of it, and among others addressed Mr. Butterfield, and asked him if he did not think it an excellent law. "Oh, yes," said Mr. Butterfield, "it is a most excellent law. Tie up the hands of the court, and turn loose the pettifoggers, and undoubted justice will always be done." I thought then, and I still think, that this was a forcible way of stating an undoubted truth. If a judge is worthy of the seat he occupies, he is entitled to confidence and respect, and should be entrusted with the impartial administration of justice in his court. Courts are instituted to administer impartial justice according to law to all suitors before them, and not to sit by and see justice perverted because one lawyer happens to be smarter than the other, and should not be compelled to act as mere stakeholders between the advocates.

Mr. Butterfield was undoubtedly a very able lawyer, and would often illustrate an idea by comparison, with great force, which, however, was frequently more apt than convincing. When the case of the Shawneetown Bank was before the Supreme Court he represented the bank. That bank had been created and was doing business before the second constitutional amendment had been adopted. That constitution prevented the creation of any new banks. When the charter of the old bank was about to expire by limitation, a law was passed extending its charter, and the

question was, whether this was the creation of a new bank, which was prohibited by the constitution. In arguing the case before the Supreme Court Mr. Butterfield said: "May it please the court, when God lengthened out the days of old Hezekiah, was he the same old Hezekiah as before or a new Hezekiah?"

In the olden time judges, lawyers, jurors and witnesses all had to be accommodated at some little hostelry at the county seat, where it would take two or three tablefuls to feed all the guests; then when the bell rang for a meal there would be a rush for the dining room, when none stood upon the order of their going. A table was usually placed near the door, upon which the guests as they passed in threw their hats or wraps in a promiscuous pile. Mr. Helm, a resident lawyer of Yorkville, a man of full habit and pretty large proportions, in going out had some difficulty in finding his own hat, and in his efforts tried on several which would not fit him; all were too small, for his hat was nearly as big as a bee-hive. He had just laid down a small hat, which would barely sit upon the top of his head, and picked up his own, when Mr. Butterfield came along, and claimed the little one which he was about to lay down, when Mr. Helm remarked: "Brother Butterfield, it seems to me you have a very small head. My hat would cover your face as well as your head." "Yes, yes, Brother Helm," said Butterfield, "you have a very thick head but mine is a good deal the longest."

His wit was generally of an unfortunate kind, for it usually partook of caustic sarcasm, which left a rankling fester in the feelings of its object, and to indulge in this vicious habit he sometimes could not resist the temptation to even endanger a cause. I recollect once when he was arguing a case before the Supreme Court, Stephen T. Logan, who was from Kentucky and was a laudable admirer of the judiciary of that State, had quoted a very pertinent case from Pertle's Digest. When Butterfield came to answer him, instead of trying to explain away the case he

fell to abusing and ridiculing the Kentucky courts in such a way as to be offensive to the admirers of the eminent judges who had adorned the benches of that State, and especially did he ridicule Pertle's Digest. "Why," said he, "this Pertle's Digest may be good law south of the Ohio river, but whenever it gets north of that stream it should be taken up and impounded as an estray, but no man except a Kentuckian would ever come and claim the property and pay charges."

In arguing a case once he was met squarely in the face by a statute passed by our Legislature, and he had nothing to do but to abuse the law and the lawmakers who passed it. It was an old statute and was evidently a surprise to him. In his tirade against the Legislatnre that passed the law, he drew pictures of the members of the General Assembly, and among other things said: "Their only means of support is to hunt coons and go to the Legislater." (He always pronounced this and similar words in that way.) Judge Lockwood, who had been getting mad for some time at this vicious tirade, broke in and told Mr. Butterfield that he would not sit there and hear a co-ordinate branch of the government so unjustly vilified.

But let me come back to the Circuit Courts.

At a term of the Circuit Court of Peoria County which was held by Judge Koerner, with whom I had exchanged circuits for the time during Fridley's administration as state's attorney, he had indicted a man in that court for stealing a five dollar bank note, of the value of five dollars, which at that time was a penitentiary offense. When the note was produced on the trial it proved to be from some eastern bank, and as the larceny was clearly proved, his counsel directed their attention exclusively to reduce the value of the bill to less than five dollars, and so save their client from the penitentiary. They produced some of the bank officers by whom they proved that that money was at a discount of two or three per cent.

To rebut this, Fridley called one of the jurors, Mr.

GUSTAVUS KOERNER.

Stephen Voris, who was a prominent merchant of the place. Mr. Voris testified that most of the currency in circulation there, consisted of eastern bank notes, most of which, including this bill, passed at par in ordinary business transactions; that he received it at par at his store in payment for goods sold, and also in payment for accounts and notes due him. He introduced several of the merchants of the place who testified to the same thing, and that it was only when they had to buy eastern exchange, or when they wanted to get specie for a legal tender or the like, that they had to pay a premium when using this kind of money. The defendant's counsel insisted strenuously that the statute meant gold and silver, which was the only legal tender at the time when the limit was fixed which fixed the value of the things stolen, which determined whether the offense should be punished in the penitentiary or not. But Fridley was equal to the emergency. In summing up to the jury he pointed out to them, that it was their province to determine the value of the goods taken. "And," said he, "you, Mr. Voris, and these other merchants here, would take this bill at par, in payment for goods sold at your store, or for debts due you, without thinking to shave your customer two or three cents on the dollar, but this infernal rascal here ain't willing to steal it at par! Such monstrous audacity should be punished by a year or two extra in the penitentiary." This settled the prisoner's case, but the jury only gave him a year of punishment.

Once when trying a case in the Peoria Circuit Court I was provoked to laughter to such a degree that I was unable to control it. The case was tried by Wm. L. May on one side, and by Knolton on the other. May had received a fair education, but that was all. He was a politician by profession, and was a fairly good lawyer as well. Knolton was a collegiate graduate, but was very uncouth in his manners and exceedingly slovenly in his habits. The case involved the construction or repair of a house, and in the course of the trial some technical architectural terms were

used, one of which was written out in the pleadings, which May had frequent occasion to use in the course of his cross-examination. This term was not pronounced as it was properly spelled in the pleadings. Whenever he had occasion to use this term he pronounced it as it was spelled. Whenever he did this Knolton would correct him in the pronunciation in a low voice, but so everybody could hear him. This was very offensive to May, and every time the correction was repeated he got madder and madder. He had a very fair complexion and sandy hair. Finally his face grew livid and his red hair seemed to stand on end. Knolton did not observe this, but kept on repeating the correction as often as opportunity occurred. At length the explosion came, when May jumped to his feet, his powerful frame fairly trembling with emotion; he leaned across the table right over Knolton, and brandishing his fists he exclaimed: "Perhaps you know, you say you do! Perhaps you are right, you say you are! Perhaps you are a learned man, you say you are! Perhaps you have been through college, you say you have! But I never saw your diploma, and I wouldn't judge you had by the way you talk." Knolton, who had not observed the rising storm, turned partly around, and looking into May's face seemed struck dumb by the fearful expression on his countenance and his wild gesticulation, and fairly crouched down as if to avoid an attack which he was in nowise prepared to resist.

Now, this does not seem very funny or laughable when described in words, so it must have been the accompanying incidents which made it seem so supremely ludicrous to me. The sort of climax which May poured out upon his crouching victim before him was uttered very rapidly and distinctly with all the force and vehemence which his rage could inspire. At least I was so overcome with laughter that I had to get down beneath the bench as if to pick up something until I could decently compose myself.

At the proper season of the year we usually passed up the river on a steamer from Peoria to Lacon—the next court—

and as the river steamers had no regular times of passing Peoria, we sometimes had to prepare quickly for the journey. At one time, when it was announced before the court had adjourned that a steamer bound up had arrived, I closed up the business as soon as possible and adjourned the court and hastened at once to the landing. Mr. Peters, who had been engaged until the last moment, started down with the rest of us, but some one reminded him that he was in his slippers, which sent him into a shoe store which we passed, where he got a pair of boots, which were tied together at the straps, and he came trotting after us at the best speed so fat a man could make. We all arrived in time, and when we went into the cabin the temperature of Mr. Peters was so high that he concluded to continue in his slippers, and not put on his boots until we should arrive at Lacon. In due time we were all assigned to state-rooms and went to bed. Some time in the course of the night the watchman came through the cabin crying fire. At this, of course, every one jumped up. I opened my state-room door to see what I could. At that instant Peters burst out of an adjoining room and rushed down the cabin to the companionway, which was a good way off, in his drawers, and one of his new boots on a foot, while the other was dragging after him, hanging by the string in the strap. The hair on the back of his head seemed to stand out as if charged with electricity, and on his countenance was an expression of anxiety, not to say terror.

The scene was so ludicrous that I believe if the boat had been on fire from stem to stern, I should have laughed till I cried. By the time he reached the companionway, or head of the stairs which descended to the lower deck, word came that the fire was out, when Peters quietly hobbled back to his room in the midst of a crowd of passengers, who by this time got from their state-rooms into the cabin, mostly in very light habiliments. Then others laughed as well as I. The fright was over and all were more or less *en dishabille*,

when the ludicrous features of the scene could be well observed and appreciated.

Quite different feelings were once excited during the trial of a case in the Marshall Circuit Court. That case involved a collision between the Prairie Bird, which plied between Peoria and Peru, and a descending steamer, which was towing along her side a barge loaded with gunpowder. As is very common in such cases, there was great discrepancy in the testimony between those on the different boats, as to their respective positions at the time of the collision. Several sportsmen were going up the river on the Prairie Bird on a duck shooting excursion. Some of them testified that when they heard the shock of the collision, they opened the windows of their state-rooms on the port side, and saw that the boat was lying in the water grass near the shore, while the pilot and several others on the descending boat, testified that she was in the middle of the river, which was her place; that the Prairie Bird was ascending as if to pass her on the left hand side, but that she suddenly changed her course, as if to cross the river, and pass her on the right hand side, which brought her right in front of the bows of the descending boat, so that to avoid the collision was impossible. The pilot said that before the boat struck, he saw that the barge, loaded with powder, the bow of which projected some distance beyond that of the steamer, must inevitably strike the Prairie Bird right at the mouth of her furnaces, the doors of which were open and lightened up everything around them; and he expected that the powder would become ignited, when both boats and everybody on them must be instantly blown to atoms, and that nothing saved them but the fact that the lines which held the barge to the boat gave way, when the barge rebounded and floated off in the current, and then his boat crashed into the other in such a way as to force the Prairie Bird so far onto his bows as to hold her there, and until he backed his boat clear across the river and stopped on the other shore. The pilot's description of the situation, and especially at the time when he realized

that the barge must crash into the furnaces of the other boat, when destruction would be certain to all, was so vivid and realistic, that I confess a shiver ran through my whole frame, and I think that many others experienced a similar sensation.

It must indeed have been an awful moment when he felt certain that that was to be the last, not only for himself but for so many others, and then to think what a revulsion of feeling must have occurred when he saw the lines part and the barge float innocently away.

When he came to this part of his testimony, I confess I felt a relief, at least somewhat akin to that which he experienced when the incident occurred.

XII.

TRIAL OF MR. LOVEJOY.

In my last article I gave an account of a trial which took place in Peoria county, of a man who wanted to steal currency at a discount, which took place before Judge Koerner, with whom, as before stated, I had exchanged circuits temporarily. I had also made a similar exchange at another time with Judge Young, and as all the incidents given in these papers are written (vicariously) from memory alone, I frequently slide over events, which I find to be a very convenient mode of avoiding misstatements when my recollection is indistinct.

I can not resist this opportunity to state that the kindness and courtesy which I received at the hands of the bar of Judge Koerner's circuit and of his personal friends, while I was filling his place there, were very gratifying at the time and are still green in my memory after the lapse of forty-five years; nor can I resist the inclination to state the fact that of the seventeen judges with whom I sat on the supreme bench of this State, Judge Koerner and Judge Trumbull alone remain, both of whom possess the vigor and

elasticity, both mental and physical, of middle-aged men, and that two of us have been enabled, a considerable time since, to celebrate our golden weddings, and that we are still going on toward another period of those happy events. While both of these gentlemen are still actively engaged in the practice of the profession, I must enjoy the luxury of mental employment in other ways, and hence it is that I have troubled the editor and readers of this journal with these papers about the bench and the bar of the olden times.

I will now proceed with other events according to my best recollections.

At a term of the Circuit Court which I held in Bureau county, the grand jury returned an indictment against Owen Lovejoy, for assisting a runaway slave to escape. That was before the organization of the republican party by the amalgamation or co-operation of the whigs with the abolitionists. Previous to that time the latter had been equally held in disesteem by both political parties, for the simple reason that to have done otherwise would have amounted to political suicide. The abolitionists held and maintained their opinions from the deepest conscientious convictions, well appreciating that their doctrines must subject them to the charge of disloyalty to the constitution and laws of the general government, which forbade them to assist in the escape of runaway slaves from the slave States, and these Federal laws were supplemented by State laws, in most, if not all of the free States, and our black laws, as they were called, manifested the greatest zeal in this direction.

Indeed, I had been in Chicago but a short time, when some overzealous person entered a complaint under our statute against all the negroes in town (some six or eight in number) for being in the State without free papers, which was an offense against the statutes as they then stood; this created consternation among these men, all of whom had come in from the Northern States, where such papers were unknown, and were astonished to find that they were liable

to be convicted and sold into a sort of slavery for the want of the evidence which the statute required of their freedom. The laws here made no provision for such cases, for the reason, probably, that it had never occurred to the law-makers that a negro could ever come from any but a slave State.

The County Commissioners' Court was then in session here. I sent each one of my clients to bring up witnesses to prove that he was a free man and came here from a free State, and applied to the court for free papers, not basing my application upon any statute, but upon the very necessity of the case. By this time a large majority of the town and county were from the free States, while most of those from the Southern States had no sympathy with a prosecution which was so unjust and wicked as the one now pending before the magistrate outside. After a long and hard struggle before the court it made an order granting my motion, and I was authorized to prepare the certificates of freedom for each of my clients, which Col. Hamilton drew up in the most elaborate form and had duly executed, and the seal of the County Commissioners' Court was attached; to this was added the signature of the clerk and of all the members of the court. With these certificates I hastened to the magistrate's office, where the case was pending, and offered them in evidence in defense. It was objected that they were not obtained in a manner conformable to the statute, but the justice held that they were good enough certificates for him, and discharged my clients, each of whom walked proudly out of court with the certificate in his pocket. See act of 1829, § 2, in Field's Rev. Stat., p. 464.

I may say here that it was very rare to find an immigrant from a slave State, who was not quite as earnest to protect a free negro in all his rights as he was to have a runaway slave returned to his master. As I have said, both political parties were anxious to avoid the charge of being called abolitionists, and manifested an equal zeal for the conviction

of Lovejoy. He was the most prominent abolitionist in the northern part of the State, able and courageous to the last degree. He was a pastor of a church in Princeton with the largest congregation of any in the county, all of whom were pronounced abolitionists, and there were many others there who did not belong to his church or congregation, but who were scarcely less abolitionists than he, and as bold and outspoken on the subject. As is usually the case, this defiant and outspoken sentiment engendered an equally zealous opposition to it, and this state of public feeling in the county had extended to all the northern part of the State, more pronounced in the adjoining counties than further away, but still active enough to make the approaching trial a subject of extensive interest and comment. Arrangements were made long beforehand, and money subscribed to bring Alvin Stewart, a famous abolition lawyer, from Utica, N. Y., as leading counsel in the defense, and it was well known that James H. Collins, of Chicago, my former law partner, and an equally ardent abolitionist, would take part in the defense of Mr. Lovejoy.

I had known Mr. Stewart when I was a law student in Utica, and had often been present in court when he was trying causes. In one respect, at least; he was the most extraordinary man I ever saw. His face was anything but beautiful, and there was a mobility about its muscles which enabled him fairly to gesticulate with his countenance. The distortions of his face, while supremely ludicrous, were always suggestive, and even brilliant at times, and never approached in the remotest degree the appearance of imbecility. His language was well chosen, but very odd. His similes and illustrations were incongruous and yet very expressive. His tone and accent were of the most solemn character. Not a smile was ever known to rest upon his face, and yet I will undertake to say that no man ever listened to him for ten minutes without being absolutely convulsed with uncontrollable laughter, no matter how solemn or interesting his subject. After a few sentences the

laughter would begin, when judge, jury, lawyers and the audience would all yield themselves up to laughter, which they, at first, could not restrain, and finally did not want to. I once heard him argue a very common-place, matter-of-fact case before the Supreme Court of New York, when all the judges upon the bench were fairly in convulsions with laughter. He never said a silly thing, but always odd beyond comparison; it was his tone and facial expressions which provoked to laughter quite as much as what he said.

It may not be surprising, then, that knowing Mr. Stewart as I did, I was pleased to hear that he was to take part in the defense of Lovejoy, for I knew it would afford him occasion for a supreme effort to display his sarcasm, his vituperation, his denunciation, in language, tone and expression so different from that ever heard before, and especially so laugh-provoking, that I was very anxious to hear him again, and be again shaken up with laughter as I had not been for many years.

But Stewart did not come and the defense fell upon Mr. Collins alone. The subject-matter of the trial was sufficient to crowd the house every moment, evincing the deep interest felt throughout the community. The witnesses sworn were all on one side. The prosecution proved that a large fat negro woman was domiciled in Mr. Lovejoy's house for several days, and they offered to prove by several witnesses that she said she was a slave, belonging to a man in Missouri, whose name and residence she gave, and that she had run, or been assisted, away, and was on her way to Canada and freedom, and that Massa Lovejoy was a mighty good man, and helping her along; but all of this testimony I of course ruled out, holding that it was only hearsay evidence, and especially that of a person whom the law would not credit when under oath (for then the sworn testimony of a negro could not be admitted against a white man), much less could her unsworn statements be received. A number of witnesses were offered who had conversed with Mr. Lovejoy, to all of whom he had stated that she

was a woman, needy and in distress, and that he was going to help her to where she could help herself.

A public meeting had been held to raise funds to help her along, to which Mr. Lovejoy had made a speech, detailing her sufferings and necessities, and at which others had spoken, detailing her account of her slavery, her sufferings and escape, but of course all this had to be ruled out as incompetent evidence against Mr. Lovejoy; indeed, not one word was proved from beginning to end, showing that Mr. Lovejoy had ever admitted or intimated that the woman was, or ever had been, a slave. Every expression proved as coming from him was carefully guarded, so as not in any way to incriminate him as connected with this woman. He denounced slavery and slaveholders in general terms, pictured the sufferings of the slave, and declared in livid language that it was the duty of every man who deserved happiness in this world and beatitude in the next, to consecrete the means which God had given him to the escape of slaves from their cruel bondage to a place of freedom; but for this Mr. Lovejoy was not indicted, and so I ruled it out as incompetent, although it was impossible to keep it out in the first instance, for counsel had a right to prove what he said in his speeches to find if something criminating could not be found in them.

Able counsel was employed to assist the state's attorney in this trial, and the case was summed up most elaborately, but, no doubt, more for the benefit of the audience than for the jury. While probably no person in the court room had the least doubt that Mr. Lovejoy well knew that the woman was a slave, and as such was helping her escape from her master, that he was in fact president of the *underground railroad*, as it was called, by which slaves were assisted to escape, and its chief manager, there lacked the legal evidence that this woman was a slave. Mr. Collins argued the case with his usual ability, pointing out the entire insufficiency of the evidence to justify a conviction.

In that case I charged the jury fully upon the evidence

and the law, admonishing them that the excitement and prejudice which might pervade the whole community, and the moral conviction, if they entertained such conviction, of the defendant's guilt, should have not the least influence upon their verdict, if they did not find legal evidence to justify a conviction; that a storm of excitement and prejudice might be raging around them, but they must stand up against it, like an adamantine rock, against which the waves of the sea dash without making the least impression; that unless there was legal evidence sufficient to show, beyond a reasonable doubt, that this woman was a slave, they must acquit the defendant; and they did acquit him, greatly to the chagrin of the anti-abolitionists, and as greatly to the joy of Mr. Lovejoy and his partisans. The rejoicing of the latter was undoubtedly the most heartfelt and sincere, for they acted from a deep and conscientious conviction of duty, while the feelings of the others were more political than moral.

XIII.

ANTI-SLAVERY TIMES IN ILLINOIS.

But the abolition spirit was by no means confined to Bureau county; it was equally earnest and zealous in portions of Putnam county, of which Bureau had formerly formed a part. Lamoil settlement was situated about six miles from Hennepin on the edge of Grand Prairie. Within the last ten years this had become a large and prosperous settlement, with its schools and churches; with hardly an exception the inhabitants of this neighborhood were abolitionists of a very pronounced type.

When I opened a term of the court at Hennepin the grand jury was called, and when the name of one of the citizens of Lamoil was reached he stepped forward and said: "Judge, I must decline to be sworn on this grand jury, for my conscience will not allow me to swear that I will execute all

the laws of this State. I know that my refusal to do this will subject me to fine and imprisonment, but these I shall cheerfully submit to rather than violate my conscience."

I at once saw that I had a martyr to deal with, who was ambitious to suffer for conscience' sake, so without another word I told him to take his seat and we would see to his case later. The panel was completed, the jurors sworn and sent out, and I went on with the other business of the court without any further reference to the case of the martyr. When court opened the next morning the conscientious juror was promptly on hand, and called up his case himself, and inquired of me what punishment I proposed to inflict upon him for refusing to be sworn on the grand jury. I answered him that I had not time to consider his case yet, and should not be able to do so for a day or two, and told him that I would let him know when I wanted him. He took his seat with evident disappointment, and there he sat all day with a steadfastness which was now becoming interesting. The next morning he again called up his case and expressed an anxiety to know what his fate was to be, that he might be suffering the punishment and have it over. I again told him that I had not time to consider the matter, but that when I wanted him I would manage to let him know. He industriously devoted another day to holding down a wooden seat in the court room, and this proceeding was repeated every morning in the week until Saturday, when he again applied for sentence, and I told him he might go home, that I did not think that the State had been a sufferer to an appreciable amount by the loss of his services, and so I should not inflict any punishment at all upon him. He certainly looked more mortified and chagrined at not being punished than most persons do when they are punished.

Mr. Dickey's father was a Presbyterian clergyman, and was in charge of a church situated at Mount Palatine, and was fully in sympathy with his people on the subject of slavery. One day during the term Mr. Dickey drove out to visit his father, and in the course of conversation his father

expressed his abhorrence at the imprisonment which his neighbor and parishioner was suffering in the jail at Hennepin for conscience' sake, and expressed the opinion that such barbarities in a Christian community would do more to spread the lights of freedom than all the words which could be uttered, be they ever so eloquent. The old gentleman seemed much astonished and chagrined when told that his good neighbor had not been imprisoned at all or fined, nor yet had received a word of reproof from the court for refusing to be sworn, but had all the week hung about the court, begging daily to be punished, a prayer which was constantly refused him. The reverend gentleman's disappointment at this termination of the affair was evidently not a whit less than was that of the intended martyr himself, and he was even loath to believe that what his son told him was true. He said that it was reported and generally believed throughout the community, and such reports had been sent abroad, that the poor man had been hurried off to jail, and was there languishing on bread and water, for how long a period no one could tell, and that meetings had been held and prayers had been offered that he might be given strength and fortitude to valiantly suffer for righteousness' sake.

Mr. Fridley had three indictments found by a Peoria grand jury against one Bennett, a farmer, who lived back in the country; one was for stealing a horse, another for stealing a wagon, and a third for stealing some other article which I do not now remember. Powell, Bryan and Knolton were engaged to defend him, and as he had a very unsavory reputation in Peoria county, they applied for a change of venue, and by agreement the case was transferred to Putnam county, which, by the clipping off of Bureau and Marshall counties, had so reduced its size and population as to leave sufficient time to dispose of an occasional case from other counties in the circuit.

In the course of the trial Fridley introduced a nephew of the defendant, who, upon the death of his father and mother, had gone to live with his uncle, who from the very first

had initiated him into the profession of thieves, and the boy had become so expert that by his hands he committed most of his larcenies. With great particularity and candor, the boy detailed with minuteness the manner in which his uncle conducted his criminal business, and the manner in which he had conducted the boy's education in the same line.

There was great abundance of corroborating as well as direct evidence, tending to support the charges made against Bennett.

In his summing up, Fridley drew a graphic picture of the man who would take his own brother's son, who was left without father or mother or friends to care for him, and compel him to turn thief under his own diabolical instructions.

After summing up the case in a very forcible, not to say brilliant manner, Fridley concluded as follows: "But, gentlemen, what do I do? You are going to send this man to the penitentiary for ten years for stealing a horse. I shall next try him for stealing that wagon, and he will go up ten years for that, and then there is the third indictment against him, which I shall next try, and he is sure of ten years for that, which is the worst case of all of them. This makes thirty years of hard work, which he owes to the people of the State of Illinois, and as I judge he is now about forty years of age, and as but seventy years are allotted to man, he can only have time to work out what he owes the State, so that every minute I detain you here I am defrauding the people of this State out of the services which he owes them." Neither party asked any instructions, and the jury was sent out immediately.

The next case was called up at once, and Bennett's counsel made an effort to have it continued or postponed, but as no good reason could be shown, I overruled the motion, and directed a jury to be called. Just at this moment the first jury came in with a verdict of guilty and ten years in the penitentiary.

At this point his counsel all withdrew from the case, stating that they could be of no further service to him, where the law was so swiftly administered. I then asked the prisoner if he wished to employ counsel. He answered no, as he proposed to try his own cases thereafter. He did so and he tried his case fairly well, and made a pretty little speech to the jury, rather pleading for mercy than denying his guilt. Fridley did not press him hard, and the jury brought in a verdict of guilty, fixing the punishment at five years in the penitentiary, and Bennett manifested a satisfaction in the fact that he had been more successful in his own defense than his counsel had been for him in the other trial.

Now, I forget whether Fridley tried the third case immediately thereafter or had it continued and stricken from the docket with leave to reinstate, but I do remember that in passing the sentence I directed the last five years to commence on the expiration of the first ten years.

When it is remembered that I had twelve counties in my circuit, in each of which I had to hold two courts a year, besides my Supreme Court duties, and that three of these were large counties, Peoria, La Salle and Kane, requiring about two weeks each at a term, and that I was determined to clear every docket at each term, it will be readily appreciated that quick work had to be done, and no time unnecessarily lost. In Peoria county, especially, which was the largest county in the circuit, we had to be very industrious; there I usually opened court at eight o'clock in the morning, and with an hour's intermission, held on until dark, and frequently until late at night. I recollect at one time that I tried seven jury cases and received seven verdicts in one forenoon. Though all of these cases were contested, none of them were of any great importance. As a general rule, questions of the admissibility of evidence were not allowed to be argued, but were decided as soon as raised, and so of all motions which arose during the trial.

Probably the questions which arise at the present day in

our courts of justice may be much more difficult than those which were then presented, but then I never could afford the time to hear argument in support of a position about which I entertained no doubt in my own mind, nor even against it for any great length of time, unless I thought counsel were talking sense or to the purpose. Let it be remembered, again, that the circuit system prevailed at that time, which compelled everybody to think quickly and to act promptly.

When I first began to practice in Putnam county, as stated in one of the earlier numbers of this series, there was already a pretty large settlement in the Ox-bow Prairie, of members of the Society of Friends, with many of whom I soon became acquainted, and when they learned that I was born and brought up in that denomination, and still had a great reverence for the tenets of my father and mother, they directly claimed me as one of their own, and seemed to feel rather proud of me, and treated me with the greatest kindness and affection, and sent me in apples and other delicacies, when I attended court in that county. Now, fifty years ago, the men of this denomination held it to be a matter of conscience to wear their broad-brimmed hats on all occasions, whether in court, in church or in the drawing room, and it was not deemed improper, if one could endure the discomfort, to wear his hat at the table; and there was manifestly great rejoicing throughout that community, when they learned that I was appointed to preside in their court, and for the first time they then obeyed summonses to sit upon the juries; it was quite interesting to see, when I first opened court there, what a considerable proportion of the audience consisted of my brethren, all studiously covered with their broad-brimmed hats, not one of which was removed when the court was opened. They now felt at full liberty without molestation to thus bear their testimony against the vanities and ceremonies of the world, which they conscientiously felt they were doing by neglecting to uncover the head in the presence of any mortal, however exalted

might be his position. In this they were following the example of their great prototypes, Barkley, Fox and Penn, who refused to be uncovered, even in the presence of the king.

Of course I allowed them to indulge in this peculiarity to their heart's content; even to the extent of martyrdom, which they sometimes seemed to suffer in very hot days by wearing their hats without even removing them to wipe off the perspiration from their sweltering brows. It was almost ludicrous to see two or three jurors in the box thus covered, and to see them take the affirmation which they did in place of the oath, still wearing the uncomfortable broad-brimmed hat. If they were a peculiar people, and indulged a feeling of pride without appreciating it by thus adhering to a mere form, they were still a conscientious people of the strictest integrity in all their transactions with their fellow-men. They, too, were abolitionists of the strictest kind, and prided themselves upon the fact that the founders of their religious denomination more than two hundred years ago were the first among Christian peoples to bear their testimony against human slavery, and to this they had always adhered with the tenacity of a religious tenet. They greatly rejoiced to see others, even at this late day, rising up to join them in this great work.

If they were an obstinate and a stiff-necked people, ready to sacrifice everything for their beliefs and principles, they were equally tenacious in maintaining and upholding the highest measure of personal integrity.

Temperance, too, was made a part of their religion, which they carried further than the most pronounced prohibitionist would be required to practice at the present day. It was a religious offense to knowingly sell even a bushel of corn or of rye to be distilled into whisky, to do which must be followed by repentance or expulsion, and that, too, when for the want of transportation there were scarcely any other markets for those cereals but the distilleries. But for their tenacity to non-essentials, such as in dress, in language, in

forms, and in amusements, and the like, I believe they would be, to-day, the most numerous Christian denomination in the land. But for their tenacious adherence to such utterly unimportant and nonsensical actions, by which they repel from their communion their own rising generation, who refuse to submit to and be bound by their unyielding and unaccommodating notions, which they call principles, they would have continued to grow and prosper and gather into their fold from the outside world large reinforcements attracted to their fellowship by the excellence of what may be strictly considered their religious and moral teachings. Fanaticism may assume various guises, and be fanaticism still, and usually expresses the most sincere beliefs of the human heart.

They refused to limit their discipline to matters of religion and morals, but so insisted in enforcing a yoke upon the necks of all those who desired to walk with them in matters purely religious and moral, that an ever increasing number, of their younger members especially, walked out from among them, till now they are so diminished in number that a large percentage of the people know nothing of them. I am still a birth-right member of that denomination of Christians, for all who are born within the fold are members in full fellowship, until "read out" for some breach of discipline unatoned for by expressions of penitence or regret, and since my marriage out of the church, for which offense, without acknowledgment of contrition, I should have been lopped off as a branch from the true vine, I was never within the jurisdiction of a meeting authorized to call me to account, and as they could not act without jurisdiction of the person and giving me an opportunity to repent, which I am very sure I never should have done, I am still a member in full standing, and nominally, at least, as good a member as the best of them.

My friends in the Ox-bow never raised any question or troubled themselves about this matter, but seemed ever pleased to extend to me their gracious regards, and the neat

and plain dress of both men and women, with which I was so familiar in the days of my boyhood, reminded me so forcibly of that maternal love which was ever glowing in my memory, that they always looked beautiful to me, and they still awaken memories so fond that I trust they will ever continue.

XIV.

TRIAL OF PHILLIPS FOR MURDER.

In the fall of 1842 one Phillips, a farmer, living on Indian Creek, at the north end of La Salle county, had a difficulty with his neighbor of the adjoining farm about cattle or fences or something of the kind, and in the course of the controversy Phillips shot and killed his neighbor. I do not remember at what term he was indicted for murder, but I am quite sure that the trial took place at the fall term of 1843.

During the session of 1842–3 the Legislature passed an act increasing the punishment of manslaughter, and repealing so much of the old law as defined the punishment for that crime. The previous punishment for that offense could not exceed three years in the penitentiary and a fine of one thousand dollars, and I had heard it said that at the same term of court one man had been sent to the penitentiary for one year for killing another man, while another culprit had been sent to the penitentiary for five years for stealing a horse. But, be this as it may, the Legislature did pass a law repealing that part of the statute which had fixed the maximum punishment of manslaughter at three years imprisonment in the penitentiary, and inflicting another punishment with a higher maximum.

As both Phillips and the deceased were well-to-do farmers, and were well known through all that part of the country, the occurrence created much excitement, which was by no means confined to the immediate neighborhood.

While Phillips was not without his friends, they were, however, largely in the minority.

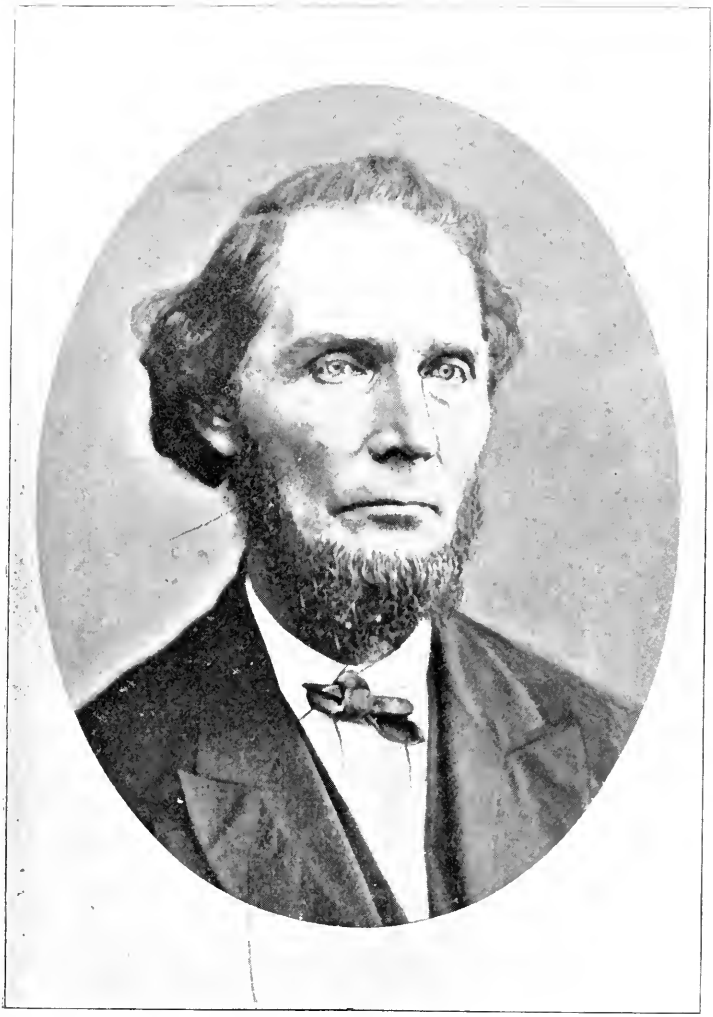
When the trial came off the large concourse of citizens who filled the town testified to the deep interest that was felt in the matter. I had changed circuits with Judge Young for a part of the spring term, and while he was sitting for me in La Salle county he had bailed out the prisoner, which had the effect of increasing the clamor against Phillips.

Fridley was prosecuting attorney at that time. Whether the friends of the deceased had employed counsel to assist him in the prosecution I do not remember, but my impression is that he was alone in the prosecution. Purple and Dickey were employed for the defense.

A jury was obtained without difficulty, mostly from the southern part of the county. The homicide was clearly proved, so there was no serious question on that point, and the defense relied upon was that the killing was accidental. At least two witnesses saw the transaction. The evidence showed Phillips' cattle were in the field of the deceased, who was pursuing them with his dog, and setting him onto the cattle with great vehemence. When the defendant saw this he seized his rifle and rushed out to the fence which divided the two fields belonging to the respective parties, and fired the fatal shot.

The defense insisted that the shot was fired at the dog, and that the man was accidentally hit. There was considerable discrepancy as to the relative positions of the man and the dog, so there were plenty of grounds for one party to insist that the man might have been hit by a shot intended for the dog, while the other insisted that they were so far apart that the shot which killed the man must have been intended for him.

Fridley tried the case upon the theory that it was murder, pure and simple, while Dickey and Purple bent all their efforts to show that at most it was but manslaughter, and



ANTHONY THORNTON,

Ex-Judge of the Supreme Court of Illinois.

it was manifest that this was the best verdict they could hope to secure.

Of course, counsel on both sides were well aware of the passage of the new law since the killing took place, but neither alluded to it during the trial. Fridley evidently did not wish to concede that in case a verdict of manslaughter should be returned, the judgment would have to be arrested; and the other side of course, would not intimate such a result for fear it might force the jury to determine that the homicide was murder rather than to allow the prisoner to escape without punishment. In my charge to the jury, of course I was entirely silent as to that subject, for, as a matter of law, the jury had to determine whether the offense was murder or manslaughter, without regard to the consequences which might follow their conclusion, only if they found a verdict of manslaughter, they should fix the term of punishment in the penitentiary, not to exceed the period of three years, which was the limit of the old law. The jury was sent out in the course of the afternoon, and at the usual time for adjournment I took a recess, informing the sheriff that I would come in and receive the verdict should it be agreed upon in the course of the evening. I was notified of an agreement by eight o'clock, and when proceeding to the court house a great many people were on the street hurrying up to hear the verdict. I was walking with Mr. Dickey. We approached in front of the jury room, which was on the second floor, the window of which was open, and we distinctly heard a loud peal of laughter, in which, apparently, several of the jurors joined.

Dickey at once clapped his hands in joy and said there was no hanging in that laughter, that if they had found his client guilty of murder no one of the jury would feel like laughing, and so it was. A verdict of manslaughter was rendered and the court was adjourned for the day. The next morning a motion was made in arrest of judgment, which, after argument, I sustained and discharged the pris-

oner, holding that the law which fixed the measure of punishment for manslaughter at the time this crime was committed had been repealed absolutely and without any saving clause, and as the new statute could not have a retroactive effect, there was no law now in existence providing for the punishment of manslaughter committed before the repeal of the old law and the enactment of the new.

Well, now, this decision did make a clamor of great violence, to say the least. On the sidewalks and at the street corners I was denounced in most violent terms for turning loose a murderer, with an encouragement to him to go and kill somebody else. Public meetings were held and raving speeches were made, in which I was denounced in certainly as bitter terms as was Phillips, and an address to Gov. Ford was adopted pointing out my unfitness for the place to which he had appointed me, and inquiring if he could not devise some way to remove me from the office which I so unworthily occupied. In due time they received an answer from the governor, in which, I was informed, he pretty sharply rebuked them for their unreasoning clamor, and said that they might congratulate themselves for having a judge who had the courage, in spite of threats and denunciations, to declare the law as it was; that if I had had the weakness to yield to outside pressure, and refuse to arrest the judgment, the Supreme Court would, without a moment's hesitation, have reversed the judgment and set the prisoner free. After this, in a very few weeks the excitement quieted down, and I never, so far as I know, received a censure for the course I took since.

He who would creditably fill a judicial office must have the courage of his convictions, and act upon them regardless of all other considerations. He must be deaf and blind to all outside influences, and have an eye single only to duty. When the Constitution of 1848 was adopted, making the judiciary elective, I, with many others, feared that it might have a tendency to impair the independence of a judicial

office, and lower it to the level of the politician, and induce at least weak and ambitious aspirants to sometimes warp their decisions in compliance with the demand of popular excitement, as if they feared "an appeal from the decision of the judge upon the bench to the multitude in the court house yard;" but experience has shown that these fears were practically groundless. If a firm and fearless discharge of duty has sometimes raised a popular clamor and denunciation, with us, at least, this is but short-lived. Calm reflection must soon take the place of excitement, when a reaction will set in, when approbation will take the place of denunciation, and re-establish a proper equilibrium. The public appreciates, scarcely less than the most thoughtful and conservative individual, the absolute necessity of a firm, pure and courageous judiciary. While it may tolerate weakness and vacillation, and even peculation, in other public positions, it can never be so with the judiciary. Trabonium and Bacon, perhaps two of the greatest legal lights that ever illuminated the profession, were only suspected of being influenced by improper motives, and yet that alone proved sufficient to throw them down from the exalted positions which they held to the lowest levels, even in public estimation. If, in our own times, similar suspicions had been excited against a judicial officer, the same consequence has followed, and so I trust it will ever be. There are countries where it is said that the judicial office is so corrupted that judgments can be bought with money, but that can only be where the standard of morality is so low that the common people have come to believe that it is a necessary accompaniment of official life. With the intelligence and enlightenment of our country, we may hope and believe that such can never be the case here, and that the standard of intelligence and integrity required of all public officers will be elevated to that measure now required for those who administer our laws, rather than that they will be dragged down to a lower level.

At the time of the trial of which I have just spoken, I

was holding my commission by gubernatorial appointment, which must expire at the close of the next General Assembly, by a joint vote of the two houses of which the place had to be filled, and it would have been more than human for me not to have inquired, in my own mind, what effect so unpopular a decision as I was obliged to make would have on my pending election; but so far from having a weakening influence upon my determination to discharge my duty fearlessly, and to administer the law as I knew it to be, it fixed me in that determination more firmly than ever, if possible, and I afterward had the satisfaction of knowing that the course which I then pursued received the approbation and cordial support of those who then denounced me. Had I wavered one hair then, I should have deservedly been lost forever.

Right on this point I may refer to another instance in illustration. When going to open the first term of the fall circuit in 1844, in Kendall county, I found the roads in a most horrible condition, showing that no road labor had been bestowed upon them. That was the wettest summer that I ever knew in this country. All the sloughs were full of water, and had been tramped up until they seemed to have no bottom, and I myself, with a light carriage and two horses, got stalled in a slough not two miles from the court house, and had to pack my wife and children out to dry ground, and then to hitch the horses to the end of a pole, and draw out the carriage. If to be covered literally with mud constitutes an element of beauty, then, indeed, was I beautiful for once in my life. Well, now, I was out of humor, and I fear I continued so all the next day, which was Sunday, nor did I feel very amiable when I opened court on Monday. I was fairly saturated with the idea that a county with such roads must have a very shiftless population, and, above all, must have a very shiftless set of roadmasters, so that when the grand jury was sworn I was fully prepared to give them a charge on the subject, and I did it to the very best of my ability; especially I pointed

out to them that the immigrant seeking to buy a farm, and to make a home for himself and his family, if he ever got into their county, would only seek to get out of it if he possibly could; that he necessarily would make up his mind that they were all a shiftless, trifling set, with whom he wished to have no fellowship; that when he passed out of their county he would shake their mud from off his feet in disgust. The result was that before night the grand jury brought in indictments against every road-supervisor in the county, and before I adjourned court that week I had the satisfaction of fining every one for neglect of duty. Indeed, all came in and pleaded guilty but one. Fridley had seconded my efforts with the greatest zeal. He had indicted this man on a bad slough, which was supposed to be in his district, but upon the trial it was found that this particular slough was a few rods over the county line. Fridley circulated around for a few minutes, and soon found witnesses by whom he proved that there were two or three other bad places in the man's district, and the jury, after a few minutes' deliberation, returned a verdict of guilty, and I fined him ten dollars, while the others were all let off with five each. When the cost of the prosecution and of his counsel fee were added to the ten dollars he probably wished he had pleaded guilty like the others.

When I adjourned that court and went on my way to Geneva, I found the road fairly lined with men repairing it, not only in Kendall county, but in Kane also, which was my next county. This convinced both Fridley and me that the fame of our work had gone before us. I charged all the grand juries in my circuit that fall, in substantially the same way, with equally good results. The influence of that campaign on the roads of that circuit was plainly observable, so long as I held the courts there at least.

Some of my friends were very uneasy that I would make so many enemies by the vigorous prosecution which we instituted against road supervisors, that every county in the circuit would send members to the approaching Legisla-

ture who would vote against me; but the result proved that my action met with general approbation, and my strength in the circuit was manifestly much increased by the course which I had pursued.

I had got thus far in dictating this article, when I received a letter from Owen G. Lovejoy, Esq., of Princeton, referring to a former paper, in which I gave an account of the trial of his father for assisting a runaway slave to escape from her master. Mr. Lovejoy says: "I have just finished reading your recollections of the trial of my father, published in the last issue of the Legal News, and I think you are slightly mistaken as to some of the evidence in the case. Some years ago I found among my father's papers minutes of the evidence in that case, and some of the points of your charge to the jury in my father's handwriting, and also a draft of an instruction or request to charge in Mr. Collins' handwriting. My father was indicted for harboring and secreting a certain negro woman, called Nancy, she then being a slave and owing service and labor to some person to the jurors unknown, residing within some State, Territory or district to the jurors unknown, by feeding, clothing and comforting the said Nancy.

"There was, as you state, no direct evidence that Nancy was a slave, and the prosecution therefore endeavored to convict by proving father's declarations that she was a slave. One witness, Isaac Delano, testified that father, when on his way to Greenfield, now La Moille, in Bureau county, and having Nancy in the vehicle with him, stopped at his, Delano's, house at Dover, and that father told him, Delano, that Nancy was a slave who had escaped from her master. Delano also testified on cross-examination, that father, in the same conversation, stated that her master was passing from Kentucky to Missouri through Illinois, and while on her way Nancy escaped.

"Mr. Collins' instruction reads that, 'if the jury believe from the evidence that Nancy was, before the time charged in the indictment, a slave in Kentucky, and was brought

from thence into the State of Illinois by her master, she thereby became free and was not, at the time of the alleged harboring and secreting, a slave as charged in the indictment.'

"The following are the points of your charge:

"Opinion of judge.

"'Principles important if not the offense. Forget the opinions of:

"'1st. Must prove she was a slave, and belonged to some person within jurisdiction.

"'2d. Must have harbored her.

"'3d. Must have fraudulently concealed her, for this is the meaning of harbor.

"'4th. All confessions must be received.

"'5th. If a master voluntarily brings a slave into this State the slave is free.

"'6th. Must show that slavery exists where master lives.'

"You will observe that while the prosecution succeeded in proving that father had stated that Nancy was a slave, the antidote went with the poison.

"In these days when it is proposed to have the negro dominate the white man in some portions of the Union, it must seem strange indeed, to you, when you recollect that forty-five years ago you presided in a court where a white man was indicted for feeding and clothing a negress."

As Mr. Lovejoy's statements taken at the time must be received as certainly correct, so far as they go, he did not pretend to state all of the evidence, or all of the instructions. I now remember that one witness did testify to statements having been made by Mr. Lovejoy, admitting that the woman was a slave. I was at the time impressed with the belief that the witness must have been mistaken as to the purport of Mr. Lovejoy's admission, and this belief was inspired by the extreme caution and ingenuity shown by Mr. Lovejoy in all his other conversations and speeches, proved by a great multitude of other witnesses, in which he carefully avoided any such admission.

There was at that time a paper published in Chicago, devoted to the cause of the abolitionists, called the Western Citizen, published by a Mr. Eastman, and in it the Lovejoy trial was reported, how fully I do not remember; but I do remember that Mr. Dickey (late Judge Dickey of our Supreme Court) told me that by request he had prepared a synopsis of my charge to the jury for that paper.

No doubt there is some one living who has the files of that paper, and I, at least, should be interested to know what its report of the trial was.

I had often discussed the question in the conference room, if not elsewhere, in which I ever maintained that if a man voluntarily brought his slave into Illinois, the slave by that act became free, and when I saw it lately stated in a daily paper that I had so instructed the jury in the Lovejoy case, I concluded that the author of the statement must have made it from my known opinions on the subject, as I have no recollection that I ever had the occasion to express my views on the subject officially, nor do I now remember it; but Mr. Lovejoy's statement on the subject must be received as conclusive. As the roads through Illinois from some portions of Kentucky to Missouri were much shorter than any other in the earlier years of the State government, many slaves were thus transported across the State without question, and authorities were not wanting to show that by such transit the slaves were not manumitted, and able judges in this State adhered to that opinion at the time of which I am speaking.

As the lesson designed to be taught by this paper is that the judicial officer should ever exercise his functions in total disregard of popular clamor, but to stand up manfully and heroically, and administer the law as he has sworn to do it without regard to the effect which it may have upon his own popularity, it seemed to me that another reference to the Lovejoy trial was appropriate.

XV.

TRIALS.

During Fridley's administration as state's attorney, an indictment was returned in the Circuit Court of La Salle County against a man for stealing a calf. Mr. Glover was employed for the defense, and very soon after the jury was impaneled I observed that something was the matter with Fridley. Something had evidently occurred to provoke him, for he very plainly manifested a disposition to convict the man, right or wrong. He had not proceeded far with his evidence before I was satisfied that it was only a case of mistaken identity at the most. A number of witnesses were called on each side, each testifying with confidence in favor of the party which called him. As the case progressed, Fridley's determination to convict this man became more and more manifest, especially when the defendant's evidence tended to show his innocence or that he had taken the calf really believing it to be his own, and when I became entirely convinced that there was no felonious intent in the case I turned in to help Glover just as far as I could with any degree of propriety, but this only stimulated Fridley to redoubled exertions to secure a conviction. Glover and I did the best we could for the defendant, and although I had the last speech to the jury in the form of a charge, Fridley beat us both, for the jury returned a verdict of guilty in spite of us. When the motion was made for a new trial, Fridley of course declined to argue to it, for he had accomplished his object in securing a verdict, and this was all he wanted, and for this he was especially anxious when he saw that I was inclined to help the defense and secure an acquittal.

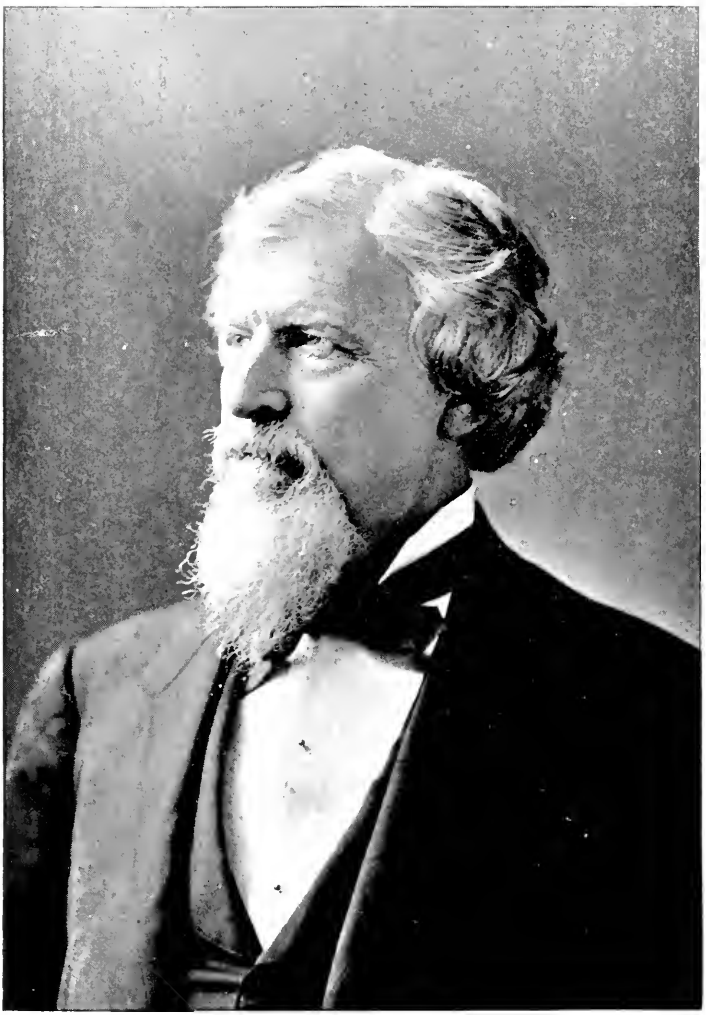
I can not now remember any of the ingenious turns and telling expressions by which he managed to get the jury so firmly enlisted on his side as to beat us both. I only

remember that they were ingenious and telling, and were successful with that jury, and even on his impassible countenance there was an expression of satisfaction which showed how much he enjoyed his triumph.

Most lawyers who have practiced in the country will remember that it has frequently occurred that controversies about the identity of domestic animals have been maintained on both sides, at first with confidence, and then with bitterness, and that many witnesses will be brought who testify to the identity of an animal with the same confidence that they would to the identity of their own children, but directly opposite to each other. Such a case was once tried before me either in Kane or Kendall county (I do not remember which), in which the identity of a calf was involved. The usual number of witnesses testified on each side, and with equal confidence, until it was impossible to form any satisfactory conclusion as to which was right, when finally the owner of the cow and of the calf introduced them both to maintain his claim to the latter. He showed that when he brought the calf home and turned it in with the cow, it at once rushed up to her and commenced sucking, which she not only suffered it to do, but caressed and licked it in the meantime, as if greatly satisfied to see it again.

Now I thought we had something tangible, upon which some reliance might be placed, but the other party brought up witnesses, and several of them, who testified that that particular cow would allow any calf to suck her, and always manifested an equally maternal affection for every calf she met, and licked and fondled all with great impartiality, and that that calf had been suffered to suck several different cows and would claim that privilege of any cow that it met. All of these witnesses testified with equal confidence, and it was manifest with equal integrity and sincerity.

Which way that jury *guessed* in making up their verdict I do not remember, but of course whichever way it was that verdict had to stand.



T. LYLE DICKEY.

Mr. Dickey was engaged on one side of that case and probably no person who was familiar with him forty years ago has failed to hear him relate the case of the bovine witnesses, which he was very fond of telling, and he did it with many amusing incidents which I do not now remember.

At a term of the Circuit Court which I held in Kendall county, one Rider was indicted for murder and Mr. Dickey conducted the defense. In impaneling the jury I was struck with the fact that he accepted several who stated that they had formed an express opinion that his client was guilty, and he afterward explained to me that he did so because of his knowledge of their high integrity, intelligence and firmness, from which he felt sure that they would clearly understand the facts which would be testified to by the witnesses, and the law as it should be laid down by the court, and would give him the fair benefit of it in making up their verdict, and that they would have a controlling influence with the other jurors. Upon the trial it was shown that the prisoner lived in a log house about half a mile from the town of Georgetown, now Newark, in that county; that he was much addicted to intemperance, and when under the influence of liquor was quarrelsome and considered dangerous; that one morning he went to Georgetown with his rifle in his hand, and commenced drinking, and became so much intoxicated that he commenced to quarrel with several persons, one of whom he shot, as it was supposed, in a vital place, and the physician who was called declared that he could live but a few hours at the most; yet contrary to all expectations he did recover. So soon as he had done the shooting he started for his cabin, into which he entered with his son, who was but a boy, and securely barred the door.

In a short time he was followed by a large posse, consisting of most of the citizens of the town, who loudly demanded that he should surrender himself upon the charge of murder. This he refused to do. They surrounded the house, and parleyed with him a considerable time. They had no war-

rant for his arrest, and I do not remember that there was a constable or magistrate in the party. When he refused to surrender, and gave them notice that he would defend himself to the last, the crowd made attempts to break into the house. Some got onto the roof, while others got a heavy stick of timber and proceeded to batter down the door, whereupon he fired his rifle, and killed one of the battering party. Many witnesses were sworn, and as is always the case in describing an exciting transaction, considerable discrepancy was observed, especially as to the details, but the unquestioned fact remained that the man was in his own house with his young son; that the door was barred; that it was battered down with a stick of timber, and that a man who was actively engaged in that work was shot and killed by the prisoner while so engaged.

An incident occurred during that trial which illustrates the frailty of human observation and of human memory. One Havenhill, a most respectable farmer, and who lived in the neighborhood, was of the party in pursuit of the prisoner, who described the incidents of the affair with great particularity and manifest candor. He testifed that there was a window on the side of the house near the door, and that through that window he saw the prisoner and his son, and described their actions and doings before the assault was made upon the door. The acts thus described were supposed to be damaging to the defense. On this point he was very positive and very persistent, and the most rigid cross-examination only served to show that he could not possibly be mistaken that there was a window on that side of the house near the door, through which he saw the prisoner and his son do the acts which he described, and he stated many incidental facts which showed that on this point he could not be mistaken.

The next morning, just as I opened court, he rushed into the room in manifest excitement, and said that he wished to make an explanation to the court and jury before the case proceeded any further, which I permitted him to do.

He said that the evening before he had had an interview with Mr. Dickey, in which the latter stated to him that he was certainly mistaken about there being a window on that side of the cabin; that he himself had lately examined the premises, and certainly knew that such was the case, and begged of him to go and see for himself; that he would afterward find out that he was mistaken in his statements, when it would be too late to regret that he had testified falsely against the life of a fellow-being; that under these urgent persuasions of Mr. Dickey, he had got up early in the morning and rode down to the place, which was ten or twelve miles off, when, to his utter astonishment, he found that he had been mistaken, and that there was no window on that side of the house, although he had felt so positive on the point that if his own life had depended upon it he would not have made the journey to verify his recollection or observation without the persistent urging of Mr. Dickey.

This is another illustration of the unreliability of human memory, on which so much of our rights of property, or even life, depend. I know in my own case many instances have occurred, in which, it now seems to me, that I could not have been mistaken, and yet the proof is absolutely convincing that I was mistaken, and I have no doubt that many others can recall similar circumstances. I have a case in mind now, where it seems to me that I read in Lewis & Clarke's Expedition, by Paul Allen, an account of a transaction which occurred during the winter of 1804–5, while they resided at their fort near the Mandan Indians, with which York, the colored servant of Capt. Clark, and an Indian Chief, were connected. I was within the last few months describing this transaction to a friend, who seemed much interested in it, and thinking it would be more interesting to him to read it in the author's own words, so soon as I found leisure I took down the book, believing that I could find the passage in a few minutes, which, however, I failed to do. I then read the account which they gave of

their residence at that place, occupying seventy-five pages of the book, without finding a description of the incident, which I so clearly remember. So certain was I that it was there, that I read it over carefully three times, but without finding it. Then, thinking it might be in some other part of the book, I read the whole two volumes through, and can find no allusion to the incident anywhere. I can't account for it. It seems to me that I can now see the page. The incident is of such a character that I can not imagine I saw it anywhere else. Did I dream it? It seems as clearly impressed upon my mind as any events of my past life.

I have since mentioned the incident, which I thus clearly recollected, to at least two gentlemen, who I know were familiar with the work referred to, and were learned in that class of literature to which it related, and they both recollected the incident as I recollected it, and thought that it was in the same book to which I refer, and one of them, Mr. E. E. Ayer, of Chicago, who has the finest library ever collected upon the North American Indians, assured me that he would soon give me a reference to the passage; but many months later he informed me that he had not only carefully examined the work referred to, but all other works in his library in which he thought it possible the passage could be found, without the least success. Still his recollection is as clear as mine that he has read it somewhere, and it still seems to him as if he found it in Lewis & Clarke's Journal, in their account of their residence among the Mandan Indians during the winter of 1804–5, but it is not there; nor can I find it anywhere else; yet it seems to me, as before stated, that I can see the very part of the page on which it occurred; and my friend's recollection seems equally clear and is equally at fault.

Alas, for human memory! It is too frail to be certainly relied upon, and yet we must often depend upon it to assert rights or to defend against wrong. My experience convinces me that my observations are as good and my memory as

reliable as those of most men, and yet I know that it can not be relied upon at all times.

The man whom Rider had shot in the town, and who, it was universally supposed, could live but a few hours, did finally recover, and was now as well as ever.

Mr. Dickey in his argument to the jury placed his defense entirely upon the statute defining justifiable homicide, contained in Section 32 of the Criminal Code as found on the 176th page of Field's Revised Statutes of 1833, and is now contained in the Revised Statutes of 1874, Chap. 38 and Section 148, which also embraces Section 33 in the revision of 1833. The part upon which he relied especially is contained in these words: "Justifiable homicide is the killing of a human being in necessary self-defense of habitation, property or person, who manifestly intends or endeavors by violence or surprise to commit a known felony, * * * or against any person or persons who manifestly intend and endeavor in a violent, riotous, or tumultuous manner to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling therein." He expatiated extensively upon this section of the statute, and showed how exactly it covered Rider's case; how he was assailed in his own dwelling house by a mob, who had no authority of law to arrest him had they met him in the streets, much less so when in his own dwelling house with barred doors, and warned to keep away or take the consequences. No matter what justification they might have had for their conduct, had Rider actually been guilty of murder, and they no doubt believed he had, yet the result showed that he had not been guilty of that crime. He then explained to the jury why he had accepted so many of them who had expressed opinions that the prisoner was guilty of murder, and he declared his undoubting belief that the result would vindicate his confidence in their integrity, intelligence and firmness of character, which would enable them to dismiss from their minds previous opinions, and give the prisoner the benefit of the law as they now found it to be and as

they would receive it from the court. In my charge to the jury I succinctly reviewed the evidence, and told them that the statute relied upon by the defense was applicable to the case, and told them it was their duty to administer the law as it existed, and told them that the prisoner was on trial for the murder of the deceased and not for shooting the man that had recovered.

The result showed that Dickey had not been mistaken in the estimate which he had formed of the character of the jurors which he had accepted, for after due deliberation they brought in a verdict of not guilty and the prisoner was discharged.

I do not remember that he was ever prosecuted for assault with intent to kill, for which he would probably have been convicted, and I think I heard that soon after the trial he left the country.

There was no excitement or even complaint, so far as I ever heard, that Rider was acquitted; all seemed to recognize that, technically at least, the law was on his side, and seemed willing to give him the benefit of it.

CHARLES B. LAWRENCE.

Ex-Judge of the Supreme Court of Illinois.

VIII.

THE CONFERENCE ROOM.

I.

THE DIFFICULTY OF EARLY TRAVEL—LUCK FOR PLACE—TRIP TO MOUNT VERNON.

As preliminary, or an introduction to the first paper which I propose to write under the title of "The Conference Room," in which I shall occasionally take my readers behind the screen which conceals the most confidential and secret proceedings of a court consisting of more than one judge, I will devote a short space to the difficulties of travel which the judges of the courts had to undergo, in reaching the places where they had to perform their official duties. The first term of the court held by the three judges under the Constitution of 1848, was fixed in December of that year to be held at Mount Vernon, in Jefferson county. There were no railroads then to help us on the way, and Mount Vernon, as things then existed, would now be considered in a remote and secluded part of the country. I went from Ottawa in a double buggy, with my wife and child, and drove through the country to Springfield, which occupied four days. On the way I stopped at Washington, in Tazewell county, and held my last Circuit Court at a special term which had been appointed by Judge Treat to try a criminal case, which I had sent over by change of venue from Peoria county. At Springfield I left my wife and child at quarters which I had secured for them, and took in Judge Treat, whom I had invited to ride with me on to Mount Vernon.

We started from Springfield on a dark, cloudy morning, and before we had proceeded half a mile a heavy snow storm set in, which proved to be the most severe that had been known there for many years. I drove a good team, and we pressed forward through the blinding storm without stopping until we reached Macoupin Point, twenty-eight or thirty miles, by which time the snow was about ten inches deep, when we were glad to take shelter, though the weather was not cold. The next day we pushed on toward Greenville, in Bond county, which we reached the second night after, and the next day we reached Carlyle, in Clinton county. Here one of my horses was taken ill, when I left him and procured another in his place. The snow was still deep and the roads very heavy. Indeed, for more than three quarters of the way since we left Springfield, not a single track was seen from the road.

The unusual fall of snow seemed to shut everybody up, and we passed many log cabins in the timber which bordered the prairies, and in the forest through which the road passed, where we could see families shivering around large fires in their cabins, with both doors and windows wide open, and pigs squealing around on the outside as if they, too, would be glad to get near that fire.

Indeed, the people there hardly seemed to know what snow meant or how to protect themselves from the cold, and this caused constant remark between us.

We had expected when we left Springfield to reach Mt. Vernon on Saturday, but here we were only at Carlyle on Saturday night with a sick horse and a still unbroken road before us. We got our new horse and made an early start Sunday morning and pushed forward at the best speed we could; but a considerable coat of snow was still on the ground and it was already getting dusk when we reached, in the edge of the timber, the brick farm house of a well-to-do farmer, who, we learned at Carlyle, was in the habit of entertaining travelers, and where we could get excellent quarters unless the good lady of the house should

happen to be out of humor, and then we would have to stay out all night, if necessary, in a storm, before she would let us into the house. For many years I remembered the name of this farmer and the distance from Carlyle to his house and from there to Mt. Vernon, but I can not state them now with certainty. I am very confident we were still from fourteen to eighteen miles from the latter place. It was raining hard and a cold wind was blowing, and it was getting dark when we drove up to the fence in front of the house, where the landlord came out and met us, who, upon our application for entertainment, with evident embarrassment, frankly told us that his wife was in a tantrum and that he could not afford us shelter. He told us that the nearest house was about two miles ahead, where lived a widow in a log cabin, and that this was our only chance for that night.

Neither of us had ever been there before, but entreaty was of no avail; we started on. Even the snow, which would have afforded some light, had disappeared in the course of the afternoon. We found the road to be narrow and winding, deeply gullied, up and down steep hills, and across creeks now swollen with the rain, over some of which were narrow, corduroy bridges, and through others we had to ford. We had not gone half a mile before pitch darkness set in, so we could not see a vestige of the road, or even the forest trees which border it on either side. Then one of us had to get out and wade through the mud in front of the horses, and with our feet feel where the road was and see if there were gullies on either side, and so we plodded on for more than three hours, copious rain falling all the time, and the cold wind increasing in violence. We had to look sharp all the latter part of the way, lest we should pass the widow's cabin without observing it. At last we did find it along toward midnight and succeeded in arousing the widow and her little family of children, and the brave woman, as she was, admitted us without knowing whether we were tramps or honest men. Treat went in and helped to get up a good

fire, while I unhitched the horses and took them to a shed across the road, which partly protected them from the storm. I found some corn for them in a crib near by, and then went to the house, where I found a good fire and some corn bread and cold meat set on the table with a pot of coffee. Humble and plain as it was, this was a luxurious repast; we were nearly famished. There was but one room in the house, in which there was a bed and under it a trundle bed, where a part of the children slept.

Covered as we were with mud and rain, we must have presented anything but a charming sight; but after drying ourselves as well as we could by the grate fire, we managed to get into the bed, while the good woman nestled into the trundle bed with her little ones.

With the break of day we were astir, when I went out to feed and harness the horses, while the landlady fried some meat, with which, and some more corn bread, we made our breakfast. The rain had stopped but the cold had increased very considerably, and the horses, having been but partially protected from the storm and still wet and shivering, were evidently in bad humor. However, I managed to hitch them to the vehicle, into which we climbed, having compensated the woman liberally for her kind entertainment, reflecting sharply upon the contrast between her kindly hospitality, and the conduct of the rich farmer's wife, who had refused us shelter under such forbidding circumstances.

Well, there are many good women in this world, while there are some who are not so good; and we really thought that her husband was more to be pitied in the long run than we were.

When we started up to pursue our journey, the new horse, which had evidently been used to better treatment, laid back his ears and refused to budge an inch. I did not thrash him, and whip him, as one might have been inclined to do, but got out and got to his head and petted him and coaxed him till he seemed to have attained a better humor, when I got in and he started up and went along very cheerfully;

indeed, he acted as if he would like to have taken a run for awhile. We pursued our way slowly but diligently through the muddy forest road, and reached Mt. Vernon soon after noon, where we found Judge Trumbull, who had arrived before us.

After we had got our dinners we opened the court, and this was the first court opened under the new constitution.

I have been thus particular in describing our first journey to Mt. Vernon that our successors of the bench and bar of the present day might know how we were obliged to travel to attend our courts forty years ago.

At this first term of the court we were required by the constitution to cast lots for terms to be held by each under the first election, which should be three, six, or nine years.

Some members of the bar had expressed the opinion, or at least the expectation, that this proceeding would be had in open court in the presence of the bar and such other persons as should choose to attend, but we determined otherwise; so after the court had been opened on the first day without transacting any business of importance, the court was adjourned until the next day, Judge Treat presiding for the time. After the adjournment of the court we assembled privately in our room at Grant's, where we all stopped, and proceeded to dispatch that duty. Three strips of paper were prepared by Judge Trumbull. On one of these Judge Treat wrote the figure three, on another the figure six, and on another the figure nine, and I think I rolled or twisted them up, as near alike as possible, without knowing the figure that was upon either, and placed them in a hat. It was agreed that each should draw one of the pieces of paper from the hat, and that the figure found upon it should determine the time during which his commission should run. Judge Treat drew the first paper and upon it the figure nine was written. I drew the second and upon it the figure six was written, and of course Trumbull drew the last, on which was written the figure three, and so our respective terms of office were decided under that constitution, which also pro-

vided that the one who drew the longest term should be the first chief justice during his term, and that afterward the judge holding the oldest commission should be the chief justice; and so it was that Judge Treat became the first chief justice of that court under the Constitution of 1848. Judge Treat then drew up an order reciting these facts, and stating these results, which upon the opening of the court the next morning, was entered.

Some disappointment was expressed that this important proceeding had been transacted in so quiet and secret a manner, but there was no help for it; some suggested that it looked a little as if a bargain had been arrived at between us as to what the result should be, and in support of this it was suggested that Treat, who drew the longest term, and thus became chief justice, had been for the longest time a member of the Supreme Court, while I, who drew the middle term, had been a member of the old court for six years, while Trumbull, who drew the three years term, now went on the bench for the first time; and so it was thought that as fortune had decided as most men cognizant of these facts would have thought it most appropriate that it should be determined, it looked a little as if fortune had been helped out by an agreement; but this suspicion was entirely gratuitous, as no agreement whatever had been suggested between us on the subject. Fortune decided the matter as she saw fit, and we all agreed that she had decided wisely. At this first term of the Supreme Court of three judges, which lasted but a single week, some important cases were argued, and I may now refer to that of The People ex rel. v. Reynolds, 5th Gilman 1, which involved the constitutionality of a legislative act. The Legislature had passed a law providing for the division of Gallatin county, but it also provided for an election to be held in that county to determine whether the law should take effect or not.

Several similar laws had been passed and executed in this State, but two decisions had been made, one by the Supreme Court of Pennsylvania, and the other by the Supreme Court

of Delaware, which had been lately published in a law journal, both denying the constitutionality of the acts which authorized the voters of individual counties to determine by their votes whether the sale of spirituous liquors in their counties should be prohibited or not, and this upon the ground that it was a delegation by the Legislature of legislative powers to the voters of the counties. Those courts deemed this a most dangerous attempt to establish a pure democracy, which would be as dangerous to a republican form of government as an absolute monarchy, or at least, a long stride in that direction. There was no denying the fact that these cases were fairly in point, and that they could not, without quibbling, be evaded. If the people could not be authorized to determine by their votes whether the sale of spirituous liquors in their counties should be prohibited or not, then certainly it was unconstitutional for the Legislature to authorize the people of the county to determine by their votes whether or not the county should be divided; and I was instructed to prepare an opinion directly overruling those cases and maintaining the constitutionality of the law in question.

I did so, assigning reasons for the decision which were approved by the other members of the court, and so far as I know, no question has been made in this State of the correctness of our conclusions.

Subsequently I understood the Supreme Court of Michigan made a decision which practically overruled this case, although, I believe, it attempted to draw a distinction between their case and ours. And I think about this time a similar question arose in New York, in which the decisions in Pennsylvania and Delaware were said to have been followed; I have never hunted them up, and so can not speak positively on the subject, but I must be allowed to express a doubt whether, in either of those States, it is now held to be unconstitutional to pass a law authorizing the voters in a local municipality to determine by their votes whether or not ardent spirits shall be sold within their limits.

The case of The People v. The City of St. Louis was heard at the next session of the court, at the December term, 1848, at Springfield, in which Trumbull did not sit, having been counsel in the case, and the record was assigned to me to prepare the opinion. It was a bill in chancery to restrain the city of St. Louis and many individuals from committing a nuisance by filling up the channel of the Mississippi river, flowing between Bloody Island and the main land at East St. Louis. The main channel of the river was west of Bloody Island, thus leaving the island within this State, but the channel east of the island, through which two fifths of the water of the river flowed, was not so deep or so broad as the main channel; still it was navigable for the lighter class of steamers, barges, and other water craft in an ordinary stage of water, and in fact was soon navigated more or less constantly.

The encroachments upon the river on the Illinois shore above Bloody Island were such as to threaten to cut a new channel east of the island, and thus deprive the city of St. Louis of the benefits of the deeper channel, which it then enjoyed, and this would undoubtedly have been a terrible calamity to that city.

To avert this threatened danger St. Louis made arrangements with the riparian owners on the Illinois shore, and proceeded to fill up that channel between the island and the main land in such a way that if it ever had been completed it would have been impossible to ever have removed the obstruction, and this without having applied to the Illinois Legislature to do so; the bill was filed to restrain this action on the ground that it was a nuisance to obstruct a public highway within the State.

The Circuit Court of St. Clair County refused to grant the injunction, and the case was brought to the Supreme Court by appeal. It may be readily understood that a most intense interest was felt by the citizens of St. Louis while the case was pending in our court, and many of its able

lawyers and prominent citizens came up to Springfield to watch the proceedings.

The case was argued before us by P. B. Fouke for the appellants, and by Crum and Blennerhassett for St. Louis. Many important questions were raised and discussed, but the one of greatest interest was, what were the jurisdictions and powers of the States through which, or along the borders of which, the Mississippi river flows.

It became my duty to write the opinion of the court in this case, and I confess I approached it with some diffidence. The principal question which created solicitude in our minds in considering the case was to determine the rights and powers, or the jurisdiction the several States in whose boundaries a part of this river lies, have over the bed of that stream. After much consideration we decided that the Mississippi river was a navigable highway, under the absolute control of the State, as much as are the public roads on land, restricted and qualified only by the Spanish treaty and by the ordinance of 1787, which secures to all the citizens of the United States the free navigation of a river, without tax or toll. If such navigation is maintained, then the State may do what it pleases with the bed of a river. It may fill up all its channels except the main channel in the navigation, in which all the citizens of the United States have an interest and a right. But no individual or corporation, without the sanction of the State, has a right to obstruct any part of it, any more than they would have the right to obstruct any public highway or land, without legal authority or consent. That river as well as all other navigable rivers running into it are public highways, and as such are subject to State control. The State has even the right to change the channel of any of these navigable rivers within its borders, provided it leaves its navigability unimpaired.

Upon the argument of this cause no case was cited determining the authority of the several States within whose borders portions of this great river are situated, over

such portions as are within their several boundaries, and our own researches during the conference failed to find any case in any of the States where this important question had been decided. Many physical peculiarities are exhibited by this, one of the great rivers of the world, and it was important that we, to whom was first submitted this great question, should so decide it that it should be approved and followed by the independent courts of last resort of the several States similarly situated. Analogous cases were not wanting in this country and in England in reference to navigable waters, but physical conditions and political boundaries existed here, which rendered these analogies far from parallels to our case.

Whether the questions which were decided in that case have arisen and been determined in other States I have not examined to see, yet I confess I would be interested to know whether such has been the case or not, and how they were determined.

II.

SERVICE IN THE SUPREME COURT—SCENES IN THE CONFERENCE ROOM.

The conference room of a court, consisting of several members, is a school in which human nature may be studied to advantage, as well as other characteristics which go to make up the man and the judge, but few who have sat upon the bench of a court of last resort have ever been associated, at different times, with a greater number of individual members of the court of which he constituted a part, than I have been. During my service on the supreme bench of this State, covering a period of nearly twenty-two years, there were associated with me seventeen different judges, some for many years and others but for short periods, and I can now say, with great satisfaction, that during all that time the greatest personal harmony prevailed in the conference

room, and I may say, out of it, among the members of the court. Never did I hear between any two members of the court, any offensive or acrimonious word passed. Necessarily, differences of opinion often existed between the members upon questions arising before us, and these were often considered and discussed with earnestness and animation, but never with feelings or expressions of bitterness, never with the apparent object of securing a triumph, but always for the manifest purpose of arriving at the truth, and obtaining a proper legal decision. Often, indeed, some of us had to yield something for the sake of harmony, and all seemed disposed to do this when it could be done without yielding up a principle which was deemed vital in itself, and was thought to establish a precedent which it was believed would have to be reversed at some future time; and then, and only then, was the dissent expressed in an opinion which went upon the records.

I am glad, indeed, of an opportunity to testify to the singleness of purpose, and the earnest desire of each member of the court to attain and express conclusions which would reflect the law as it was, and which should stand the test of time.

In a former paper of this series, I deemed it proper to open the door of the conference room a little way, and now I propose to open it a little further; but not so as to expose any of those secrets which propriety requires should ever remain undivulged. The mode of conducting business in the conference room when I went upon the bench, in 1842, would later have been considered crude and unsystematic; but the limited amount of business did not require that system and order for its dispatch, which was necessary in later years. Of course, the chief justice presided in the conference room as he did upon the bench, but he did it in a social way rather than in a formal mode. No notes or minutes were kept of the proceedings in the conference room. Usually a case was considered as soon as it was finally submitted, and as we never had printed records and rarely abstracts of any

kind, or even written briefs, but only notes, which we kept ourselves, of the authorities quoted, our discussions of the case in the conference room were usually based upon the arguments which we had heard at the bar. Chief Justice Wilson did not possess to an eminent degree the faculty to critically analyze a case, and evolve with precision the points upon which its decision must turn, but in the course of the consideration of the case in the conference room, these would come to be pretty distinctly defined from the various suggestions made by different judges, and as this is really the first necessary thing to be done in considering a case, some of the judges at least, made it a point to accomplish that end as soon as possible. This is necessary to enable one, as expressed by one of the judges, to think at a mark; by which he no doubt meant that one's thoughts must be focused upon a single point rather than to have them scattered all over the side of a barn.

While nominally the chief justice distributed the records among the members of the court for a more thorough examination and for writing out the opinion of the court, practically we did that for ourselves.

The older members of the court seemed very willing to avoid the labor of writing opinions, while several of the younger members sought for records, which would give them opportunities to get into the reports by the opinions which they should write, and the limited amount of business was hardly sufficient to satisfy these ambitious young men, while the chief justice seemed to appreciate the laudable ambition which inspired this desire for work, for it was a sure guaranty that no labor would be spared to understand the record, and to search up all the law bearing upon the questions involved. Besides, the discussion in the conference room served to point out which of the judges seemed to have the clearest idea of a case or to best understand the law applicable to it, and so would be designated the one to whom the record might most properly be given. Not that the case would then be left entirely to the one to whom

it was assigned, but several other members of the court, at least, made it a point to carefully examine all the records of any importance and the law involved in the case, so that when the opinion was read in conference, the case was again carefully discussed and considered.

As the business of the court increased, more system was required, but still very little change took place during the period of the nine judges.

During the period of the three judges much improvement was made in the mode of proceeding in the conference room.

The first rule requiring anything printed in the record was in 1855, which demanded printed abstracts to be filed, and in 1856 printed briefs were required. Printed records were not required during my time. These rules relieved the judges of a great deal of work, which had been previously required to give them a full understanding of the cases which they had to decide. If the abstract filed by the appellant or plaintiff in error was not satisfactory to the other party, he could file an abstract himself, or so much of an abstract as he deemed necessary to supply the defects of the other, and we assumed by the use of these that we could fairly learn what the record contained, though we frequently found it necessary to go to the original record, especially in cases where the two abstracts disagreed. This was always done in full conference while I was on the bench, and the briefs were examined in the same way, and the authorities read, and in most cases the whole matter was discussed between us, and a decision agreed upon at the time, though it was not unfrequent that after a thorough discussion among ourselves the consideration of a case was postponed for further examination by each judge individually, after which it was again called up, further discussed, and finally decided. This was invariably the rule during my time.

It sometimes occurred that we could not arrive at a satisfactory conclusion during the term, when the case was laid over for a further examination by the judges separately dur-

ing the succeeding vacation. I may hereafter refer to a few of these cases.

When I became chief justice in 1855, I introduced the practice in the conference room of keeping an *agenda*. This consisted of a small bound book in which I entered the title of each case and set down under it the several points which it was deemed necessary to decide and the decision upon each point agreed upon. These notes of decision were made at the time, and in the presence of all the judges, read over and corrected, when necessary, to meet the views of all, and sometimes a few of the prominent reasons were also inserted in the *agenda;* a copy of this was made for each of the judges, and therein was also stated the judge who was to write the opinion. In cases where we disagreed upon any point, that was pretty fully stated in the *agenda*, and the case was usually held over for further consideration until the next term, and so of cases or points where some one or all of us desired further time to examine and consider them. All of these cases I transferred to the new *agenda* for the next term, for a separate *agenda* was always prepared for each term.

This *agenda* system we found of the greatest value. It economized time and secured accuracy, and it sometimes corrected mistakes.

The judge in writing the opinion had before him a full minute of the points to be decided in the opinion, and when he read it in conference, each of the other judges, having his *agenda* before him, could instantly see if the opinion accorded with the decision which had been agreed upon. It sometimes happened that the judge in writing out his opinion changed his mind upon some point, when he would write out his opinion, according to his present convictions, to what it should be, and so departed from the notes in the *agenda*. In that case, of course, a thorough reconsideration of the matter was necessary, and I recollect that almost invariably the change was approved, and I have no doubt that thus many motions for rehearing were avoided. Whether this *agenda*

system has been continued since I left the bench I have no means of knowing, but if it has not, no doubt it has been abandoned for good reasons; and whether it has been possible for the court to thoroughly examine the case in full conference, as it was done in former times, of course I have no means of knowing.

Of the old judges who were on the bench in 1842, when I took my seat, there were two associate justices of the first Supreme Court, organized after the adoption of the constitution in 1819, and upon the re-organization of the court in 1825, Wilson was made chief justice and Brown associate justice, together with Samuel D. Lockwood and Theophilus W. Smith. Judge Smith died before I went on the bench, so that Wilson, Lockwood and Brown only remained of the judges who constituted the court, previous to the re-organization of 1848. With them I was associated on the bench for six years, and learned to know them well.

Chief Justice Wilson was a man of good parts, a thorough gentleman, courteous and affable, pleasant, and of a very cheerful disposition. He was fond of a good joke, even at his own expense, or that of his best friend. He appreciated humor and told a story well. He was a good lawyer, but not a great lawyer. He had read law books to good purpose, but not nearly as many of them as many others have. He comprehended well a principle of law when stated or read to him, and when a case was cited in support of any proposition of law he readily determined whether it was applicable or not; and here let me say that an inability to do this is a very common defect among a considerable proportion of lawyers; at least, very many of the lawyers who have argued cases before me, have cited cases in support of a position with the undoubted conviction that they were certainly in point, and could never be made to see that it was otherwise, when, in truth, they lacked that analogy to the one at bar which alone could make the decision applicable. This defect is incurable and can not be remedied by education or study, or the most industrious training.

The trouble is, that they can never be made to comprehend the distinction, which is palpable to the great majority of lawyers. On the other hand, I have met with a few lawyers whose perceptions were so fine and delicate that they could see a distinction which could not be appreciated by the ordinary mind, by which I mean the great mass of able lawyers, who can make others see it as they see it themselves.

Chief Justice Wilson was of this latter class. He did not know all the law that there is, nor does any other man that lives, but, as I have said, he had the capacity to understand the law when it was read to him, or was stated to him in argument, with the reasons in support of it, and this is a capacity of the greatest value in a judge. I have stated that he was sociable and agreeable in his nature, fond of pleasantry, could tell a good story and tell it well, and often when tired of hard thinking and of listening to dry discussions in the conference room he would break in and tell some good story, which would be a relief and rest to all. "Why," said he "Judge," breaking in upon one of us, during one of these dry discussions, "you remind me of a lawyer who lived on the other side of the Wabash, who came across the river to our side to try a cause before a justice of the peace. A Sucker lawyer was on the other side and in the course of the trial he asserted some principle which the Hoosier lawyer denied most strenuously. After the dispute had gone on for some time the Sucker took up the Illinois statutes, and read an act which changed the common law, and declared the law to be as he had asserted it. At this the foreign gentleman seemed dumbfounded for a moment and was silent. He finally arose with great deliberation, and sorrow clearly depicted upon his countenance, and said, 'May it please the court, when I hear of the assembling of a legislature in one of these Western States, it reminds me of a cry of fire in a populous city. Nobody knows when he is safe. No one can tell where the ruin will end.'"

The chief justice and Judge Lockwood were very warm

personal friends, and had been very intimate, almost from their first acquaintance, when both were bachelors, and old bachelors at that. Wilson was married first, and brought his wife from Virginia and settled down to housekeeping on the Wabash river. Once, in the conference room, at my first term on the bench, Judge Lockwood was discussing some question with an earnestness which showed that he thought he certainly knew what he was talking about. After listening some time to Lockwood's confident manner of maintaining his point, the chief justice turned to me and said: "Caton, Lockwood knows a great deal, but he sometimes thinks he knows more than he does. I well remember that a few months after I got married and brought my wife to Illinois, Lockwood came all the way across the State to visit and congratulate me, and we had the pleasure of his society for a number of days. One morning Mrs. Wilson did not appear at the breakfast table, and in answer to his inquiries I told him that she felt quite unwell, that she was suffering considerable pain and especially in the small of her back, and that they could not conceive what was the matter as she was usually very healthy.

"Lockwood remarked that it was nothing serious, that he had been troubled several times with the same complaint himself, and that he always found relief by the application of a bag of hot salt to the small of the back, and recommended that the same remedy be resorted to now. This was done, and the relief soon came, but in a way by no means desirable; it was in the loss of a prospective heir; and Lockwood has never been able to convince me that he had been troubled with the same disease, and had found relief in the same way, and I have ever since believed that for once, at least, he was mistaken."

During this recital Lockwood seemed restive and impatient, for any joke at his expense tended to annoy him.

III.

THE JUDGES OF THE SUPREME COURT.

Samuel D. Lockwood was the first judge whose acquaintance I made in the State of Illinois. When living, I revered him as a man and as a jurist, and I revere his memory since he has departed. I first met him the fifth of October, 1833, when he was holding the Circuit Court at Pekin in Tazewell county, where I arrived in the afternoon on horseback from Chicago. I first saw him on the bench, and after court adjourned for the day, I introduced myself to him, and explained that I was already practicing law in Chicago, but had not yet received a license, which I wished to procure from him should he, upon examination, find me qualified to commence the practice of the profession. He received me most kindly, and treated me with the utmost courtesy and consideration, introduced me to the members of the bar present, among whom I remember Stephen T. Logan, John T. Stewart, John J. Harden and Dan Stone, who were attending that court from abroad, all of whom I then first met. The judge then inquired of the place of my nativity, whence I came and when.

After supper he invited me to take a walk. It was a beautiful moonlit night; we strolled down to the bank of the river, he leading the conversation on various subjects, and when we arrived at a large oak stump, on either side of which we stood, he rather abruptly commenced the examination by inquiring with whom I had read law and how long, what books I had read, and then inquired of the different forms of action, and the objects of each, some questions about criminal law, and the law of the administration of estates, and especially of the provisions of our statutes on these subjects.

I was surprised and somewhat embarrassed to find myself so unexpectedly undergoing the examination, and bungled considerably at the first when he inquired about the different

SAMUEL D. LOCKWOOD.

forms of action, but he kindly helped me out by more specific questions, which directed my attention to the points about which he wished to test my knowledge, when I got along more satisfactorily.

I do not think that the examination occupied more than thirty minutes, but it had the effect of starting a pretty free perspiration. I think I would have got along much better had it commenced in a more formal way. However, at the close he said he would give me a license, although I had much to learn to make me a good lawyer, and said I had better adopt some other pursuit, unless I was determined to work hard, to read much and to think strongly of what I did read; that good strong thinking was as indispensable to success in the profession as industrious reading; but that both were absolutely important to enable a man to attain eminence as a lawyer, or even respectability.

I thanked him for his advice and assured him that I had no ambition in life except to qualify myself for a high position in the profession, and that I thought that ambition would enable me to follow his advice to its utmost extent, and that I believed I had firmness of character and of purpose enough to enable me to do so, though it might take long years devoted to that single purpose to accomplish it; and I may now say that I faithfully lived up to the promise I then made to my venerable friend—for he seemed so to me—but he was then only in middle life, though his hair was almost as white as snow. His kindly bearing to me then made an impression which never faded in all of the vicissitudes of after life, and whenever I disagreed with him in the conference room I did so with great hesitancy, and whenever he changed his views so as to conform with mine I still feared that I might be wrong after all. In his private character he was a model of purity and propriety.

If Judge Lockwood was not a great man, he was a good man and a good judge. He had been a close student of the law, and seemed to have read everything within his reach. His perceptions were very clear and discriminating. He

had a high sense of justice, yet he would not hesitate to enforce the law as he found it although he might think that in a particular case it worked injustice. His high sense of the proprieties of life was as conspicuous in the conference room as in every other walk of life. His sympathies were easily awakened and were ever active, and yet they were so under the control of his sterner feelings and his sense of duty that it could never lead him to warp the law in obedience to its demand. His discrimination was always keen, but ever practical. He had an exalted opinion of State rights, in which I could not always agree with him, and I once wrote a dissenting opinion in which I maintained that the provision of the United States Constitution, which secures to all innocent persons the rights to life, liberty and property, prohibits a State constitution to reduce a free man to a state of servitude, who is not guilty of any crime. The opinion which had been read in that case was so modified after I read my dissenting opinion as to avoid that question, so it was never filed. His active efforts to defeat the constitution which proposed to make Illinois a slave State showed what were his individual sentiments on that subject, and his efforts in that great controversy were remembered as long as the controversy itself was fresh in the memory of men. All his acts and thoughts were the reverse of austerity, without lowering his dignity in the least on proper occasions. His social qualities were pleasing. He enjoyed humor and a good anecdote, but was not as good a story teller as many of his contemporaries. His style of writing was easy and perspicuous, and whoever will carefully study his opinions will not fail to see that he was a close and accurate thinker, a diligent student, and a terse writer.

The jurisprudence of Illinois owes much to Judge Lockwood, for he was a potent power in laying its foundation, and his labors and efforts at that early day should never be forgotten; I have ever esteemed it as one of my most happy privileges that I could benefit by so intimate association with him at so early a period of my life.

THOMAS C. BROWNE.

Judge Thomas C. Brown was the only remaining member of the old court of four judges before whom I practiced in the Supreme Court, for Judge Smith had died before I came to the bench, and so I was never associated with him in that tribunal.

Judge Brown was really a remarkable man in several respects. If he ever read a law book it was so long ago that he must have forgotten it. He had already occupied a seat upon the supreme bench for twenty-four years, from the first organization of the court upon its admission into the Union as a State. During all that time I have reason to believe that he never wrote an opinion. One of the opinions which appears to have been written by him in the reports, Judge Breese testified before the Legislature in a proceeding depending in that body, that he wrote the opinion for Judge Brown. In the conference room I never heard him attempt to argue any question, for he did not seem to be able to express his views in a sustained or logical form, and yet he was a man of very considerable ability, and had very distinct views of his own on questions that came before him for decision.

He had been listening to arguments before the court for more than twenty years; and I may say here that it is the best school that any man can attend to learn the law. The lecture of a learned professor to a class in a law school, however important to a student in the beginning, can bear no comparison to the arguments before an appellate court, where every argument is a lecture upon some particular question or questions, generally prepared by an able man, who exhausts the subject to a greater or less extent; and if the arguments are one-sided arguments, and so might mislead the student, the misleading arguments are sure to be met by the counsel on the other side, so that the judge or the student hears the reasoning and authorities which may be produced on both sides, and he is enabled, if he is capable of doing so, to understand what the law is in the particular case.

There were very able lawyers who practiced before that court in its earliest days, as well as since, and no one could have listened to their legal discussions for twenty years without hearing and learning a great deal of law if he was only capable of comprehending it. Now, Judge Brown did not lack this capacity, but he did lack the capacity of clearly expressing, either in writing or orally, his thoughts in a clear and perspicuous manner. He could express himself in conversation so as to be well understood, but never in the form of a sustained discussion. He expressed himself in epigrams, or short and pungent sentences which showed that he was a good thinker, and had clear and distinct views of his own. He was a profound student of nature, and could judge with great accuracy, not only of individual character, but of what would influence the minds of men. He listened attentively to the discussions in the conference room, and would never express his opinion, especially in an important case, until he had heard all that could be said on either side by other members of the court, for he appreciated that he could not well maintain his views by argument; but he would often throw in pungent expressions, which of themselves would contain a pretty extended argument. At the session of the General Assembly in 1844–5, when Shields and myself were holding commissions by appointment, and so our terms would expire with the adjournment of the Legislature, a fearful spasm of economy seemed to sweep over it, and a bill was introduced fixing the salary of the supreme judges at one thousand dollars per annum. As this could only take effect upon Shields and myself, should we be elected, a committee was appointed to wait upon the other judges, whose salaries were protected by the Constitution, and get their written consent to this reduction of their salaries. Of course those judges, who felt as independent of the Legislature as they were of the judges, politely declined to agree to any such proposition. These visits were not made to the judges in the conference room, but they were made to them severally or individually.

When Manning, an able lawyer, and a member from Peoria, approached Brown with a proposition, he replied: "Perjury, perjury, sir; you ask me to commit perjury. The Constitution says that our salaries shall not be reduced during our continuance in office, and now you ask us to participate in a reduction, which is a clear violation of the Constitution which I have sworn to support. I never did and I never will knowingly commit perjury."

But they had Shields and myself tight; for all that we did not decline the election on that account, but were elected and held our offices two years at the reduced salary. Let it be remembered that we had to go around our circuits twice each year and attend the Supreme Court in the winter, pay all our own expenses, and even our own postage on official business, without any perquisites, unless we might occasionally make a dollar by performing a marriage ceremony, or a quarter for taking an acknowledgment of a deed or swearing somebody to an affidavit, which, altogether, never amounted to ten dollars a year.

At the next session of the General Assembly a law was passed raising our salaries to the same amount received by the other judges, but they never made up the thousand dollars which we received less than the others during the two years.

I recollect that once, in the conference room, he and I differed from all the other judges upon a case which went up from his circuit, involving questions growing out of what was called squatter, or claim titles to public lands, a tenure by which a very large portion of the land in our circuits was held, and was scarcely known in other parts of the State. Our predecessors on the circuit bench had, with the sanction of the bar, established a sort of common law for the government of this sort of titles, which was recognized and acted upon by all, without a thought that these rules could ever be disturbed or questioned; but some new lawyer had lately come in, who could not find anything in Blackstone or in our statute to support these rules, and took

his case to the Supreme Court, and we were astonished to see that the other members of the court were inclined to overturn our local law, as it had been administered without question for so many years, which would disturb a great many titles in our circuits that were regarded as well settled, and were bought and sold every day without question. Without coming to a final decision, however, I was permitted to take the record and write out our views and present them at a subsequent conference. Brown's room was opposite to mine in the hall at the hotel, and at a conference between us we agreed that the whole case was resolved into two principal questions, and that if they would agree with us on the first question, we thought that we could see that they would be compelled to concur with us on the second. So I took the record to my room and wrote out our views upon the first question involved, which I took across to his room and read to him, and he expressed himself much pleased with the manner in which I treated it. I then gathered up the papers and said I would go and write out the second part. "No, no," said he, "don't write another word now. Let them take their medicine in broken doses. If they will take the first and keep it down they will take the balance without making a wry face." I readily perceived the force of his suggestion, at least so far as presenting it in broken doses was concerned, although I think I wrote the balance of the opinion the same night, but did not attach them together.

At the next conference I read the first part. When I had done the chief justice inquired where was the balance of the opinion. I told him that unless what I had written was approved, it was no use to write any more, so I had presented this for their consideration, and if it was adopted I would then see what I could do with the balance of the case. It was considered and approved unanimously, and at a subsequent conference I read the balance of the opinion, and the final result was that they took the last part of the dose more complacently than the first, so that we finally

obtained the sanction of the Supreme Court for our local common law governing claim titles.

I often heard a story, not long after I went upon the bench, in which it was stated that Chief Justice Wilson asked his associates severally for their opinions on the case which was under consideration, and that when he came to Brown he was answered that he was not quite prepared to give his opinion yet, he wanted to consider the case further; and that Wilson replied, "Oh, nonsense, Brown, you may just as well guess on the case now as any time." But that never occurred while I was in the conference room, and I am sure I never heard it related by any one of the judges as having occurred; and I have no doubt the story was made up by some one who supposed it to be characteristic.

I never saw Judge Brown upon the circuit bench, but always understood that he got along very pleasantly with the bar and administered justice as satisfactorily as any of the other judges holding Circuit Courts. He evidently appreciated that while he could plainly see how a question should be decided he might not readily be able to assign the best reason for that decision, and so he prudently declined to assign any reasons. Probably all of us would have got along better at times had we adopted the same wise course.

Mr. B. C. Cook relates a story, that he tried a cause before Judge Brown at Dixon, in Lee county, and that after he had obtained a verdict to which he thought he was fairly entitled, a motion for a new trial was made, which he thought was so plainly unnecessary that he declined to argue. The judge, after looking solemn and wise for a few minutes, said, "Well, Mr. Cook, let us give him a new trial. Maybe he will be better satisfied next time."

Perhaps I have said enough to give a fair idea of my opinion of the peculiarities and abilities of Judge Thomas C. Brown, and will conclude by saying that I think he was a man of very considerable ability and a much better judge than he usually has the credit of being.

I have been looking over some of the earlier volumes of

our reports, and am thereby reminded of events which occurred from forty-five to twenty-five years ago. This has afforded me great satisfaction. It called to mind incidents long since forgotten, which occurred in early life as connected with the duties and responsibilities which then devolved upon me, and of associations, both personal and official, many of which, but for such reminder, might never have again been thought of. I will repeat that my personal and official associations were of the most pleasing and harmonious character; still a sense of sadness creeps over me, when I remember what a large proportion of those with whom I then associated in official and professional life, have gone before me. I will particularize some of those events which are called to mind by those old reports.

I have in a former number of this series referred to the case of Ballance v. Underhill, 3 Scam. 453, as the first record which was assigned to me to prepare the opinion of the court; but I had before that, without the asking, in the case of Camden v. McCoy, 3 Scam. 447, delivered a dissenting opinion. Douglass had prepared an opinion in that case, to which all the judges agreed except myself. Not supposing that it would be read the next morning from his place on the bench, and desiring to present my views with considerable care, I had not prepared my dissenting opinion, as the opinions were always recorded as soon as possible after their delivery, and the record read by the clerk from the record book the next morning. So soon as Douglass had closed reading the opinion of the court, I declared my dissent from it, and proceeded to state, orally, the reasons for my disagreement with the other members of the court. So soon as the court adjourned for noon I was surrounded by a considerable number of the bar, who urged me in the strongest terms to write out my dissenting opinion and place it upon the records, for they thought that I was certainly right and would some time be sustained by the court and my opinion be made a rule of the commercial law of this State. I did write out my dissenting opinion that night, and handed it to the clerk

in the morning, who had left a blank in his record following the principal opinion, in which the dissenting opinion was recorded. I do not remember whether the same question again arose while I was on the bench, or if it has arisen since; I can not say what has been the course of decision upon it. I now see that in my dissenting opinion I held that if a note of hand is presented by the payee, without indorsement by him, with the name of another written on the back, without any evidence to show when that name was written, or for what purpose, that the presumption of law is that it was written there at the time of the execution of the note, and that his obligation was not that of an indorser, but that he became a guarantor, and was in fact a joint maker of the note, and might be sued as such jointly with the party whose name was written on the face of the note; that the consideration for which the note was given was a sufficient consideration for the guarantee; that all the acts done at that time constituted but one transaction; that the obligations were simultaneous, alike and joint, and that they might be enforced in one action against both, and that the creditor need not bring a multiplicity of actions to enforce his rights. Then, for the first time, was my voice heard from that bench. It was next heard when I read the opinion of the court in the case of Ballance v. Underhill, in which it was held that a defendant in a suit in chancery could not be decreed affirmative relief upon statements made in his answer, but that he must file a cross-bill to entitle him to such relief; and I had a pretty hard struggle to get that decision adopted. Indeed, I confess that I then thought that I was looked upon as too much of a boy to entitle my opinions of the law to be of much weight or influence.

At the same term of the court in the case of Updike v. Armstrong, I wrote the opinion of the court reversing a judgment which I had rendered in the Circuit Court.

As I was defeated in the election by the General Assembly, which took place during my first term of the court, my commission would expire at the close of that session. I

supposed that I should then retire from the bench forever. Before the close of the term the case of Doyle v. Teas, 4th Scam. 202, had been argued and submitted and considered in conference at several sessions, in which I took a pretty active part, but no final agreement had been arrived at. I was requested by the chief justice, with the approval of all the other members of the court, to take the record and write an opinion during the vacation, which, if agreed to, should be read by some member of the court at the next term. I confess that this request was gratifying to me, as it convinced me that my views were entitled, at least, to respectful consideration, and especially on questions of chancery law, which was further evidenced by the fact that most of the chancery records had been given to me after the case of Ballance v. Underhill. Of course I took the record under the peculiar circumstances with great satisfaction, and resolved to do my very best in preparing what I supposed to be my last judicial opinion, and I did expend a great deal of labor upon that opinion, and especially upon the question as to what notice shall affect a subsequent purchaser of real estate. By a careful investigation and comparisons, I discovered what I had never noticed before, that both Kent and Story alike, had laid down radically different rules to govern this question of notice, under precisely the same circumstances, and after reviewing a large number of decisions, both in England and America, I found it impossible to deduce any satisfactory rule from them, and the rule which I did finally formulate may be as difficult in its application to particular cases as those which had been laid down by others; however, I sought to so frame it that it might be applied to all cases, though the facts proved might be ever so variant.

IV.

SALARIES OF JUDGES—HISTORY OF THE COURT FROM THE BEGINNING—HARDSHIPS OF TRAVEL IN ATTENDING COURT.

The next case to which I am inclined to refer is that of Seeley v. Peters, 5 Gilm. 130. The only question arising in that case was whether the common law of England, which required that the owner of domestic animals should restrain them from going on uninclosed premises of another, was in force in this State or not. The case was tried before me at the Peoria Circuit in 1847. I had previously bestowed great labor and care in examining the question and thought I understood it thoroughly, and upon the trial I instructed the jury that the common law of England prevailed here, and that the owners of stock were liable for damages if permitted to stray on the uninclosed lands of another.

After the case had been argued and submitted, and we retired to the conference room with the record, we all expressed our opinions of the case. No assignment of the record was made to any one to write the opinion, nor was any vote taken as to what the decision should be, but I at least supposed that it would be considered at a future conference, when each member of the court would have an opportunity of assigning his reasons for the conclusion at which he arrived; and so the case was passed, and the conference proceeded to consider other cases.

For several days this case was not again referred to. Finally an opinion was read reversing the judgment, which was approved by a majority of the court, holding that the common law had been repealed by the first section of the law of 1819, and also that it was not applicable to our condition in life, as existing here, and that our people had always supposed that the law required every man to inclose his own premises to keep off the stock of others roaming at large.

To say that I felt chagrined and mortified at being thus

ignored by the other members of the court, expresses my feelings mildly. The case had been considered by them outside the conference, and it was manifest that they had studiously avoided any intercourse with me on the subject. I was a member of the court with as many rights and duties in connection with it as either of the other members, and to practically expel me from it bespoke some cogent reason, which they did not care to explain to me. To assume that I would unduly endeavor to secure a decision affirming my ruling on the circuit, as might naturally be implied from being thus excluded from the conference on the case, I felt sure was not justified by my past action as a member of the court. They certainly knew that I had never shown any sensitiveness at having my own decisions reversed, but had always shown an ardent desire to obtain correct decisions, whether they might affirm or reverse my circuit rulings. The case of Kimball v. Cook, 1 Gilm. 423, had been heard before the nine judges, and while I had heard the argument I declined to vote upon it, because I was in great doubt whether my decision upon the circuit was right or not, and I saw it would require a most laborious examination of the statute to satisfy myself on that point; but when the vote was taken it was found that four members of the court voted for affirming and four for reversing. While that would affirm my judgment by an equal division of the court, I was by no means satisfied that the decision would be right, and so consented to take the record and write out an opinion which would decide the case, whichever way I might conclude the law to be. I did so, and after a very careful examination of the statute I was entirely satisfied that I had committed an error in the court below, and so wrote out an opinion reversing my own judgment, and when I read it in conference three of the four who had voted for affirmance appeared to be convinced with me that the judgment should be reversed, and so it was done, and my opinion was adopted as the opinion of

the court, excepting Judge Young, who wrote a dissenting opinion.

Indeed, I thought my associates should have appreciated that my only desire was to have cases decided according to the law, without the least regard as to whether I, or some other judge, had made the decision in the lower court, which was under review at the time. I know I was just as anxious to reverse my own decisions, when satisfied of the error, as if they had been made by another judge. My only desire, and my ambition, was to lay down the law in the Supreme Court so that it would stand the test of time and scrutiny, rather than to perpetuate an error upon the records of the court from a false pride of opinion, which would afterward be found to be erroneous. I felt that lasting fame could only be secured by right decisions at the last, and that by affirming an error I could only weaken what reputation I might otherwise acquire. It is no reflection upon the capacity or integrity of a judge that his decisions at *nisi prius* should be reversed on appeal. There he must decide cases upon first impression, without that thorough examination which would enable him to form a matured judgment. Chancellor Walworth was taken from the circuit bench and made chancellor of the State of New York, and yet, whoever will have the curiosity to examine, will see that proportionally more of his decisions as circuit judge were reversed, than were those of any other judge who ever sat upon a circuit bench of that State; still his great reputation as a jurist was never impaired by that circumstance.

If I know myself, I know that I never had the least sensibility about having my judgments rendered on the circuit reversed in the Supreme Court, and I never admitted the idea that it was for that reason that I was excluded from the conference in the consideration of this case. Perhaps it was because the other judges did not care to bear the infliction of hearing me argue the question in conference, which had been so well argued at the bar, and upon which their minds were conclusively made up; but for all that I did feel

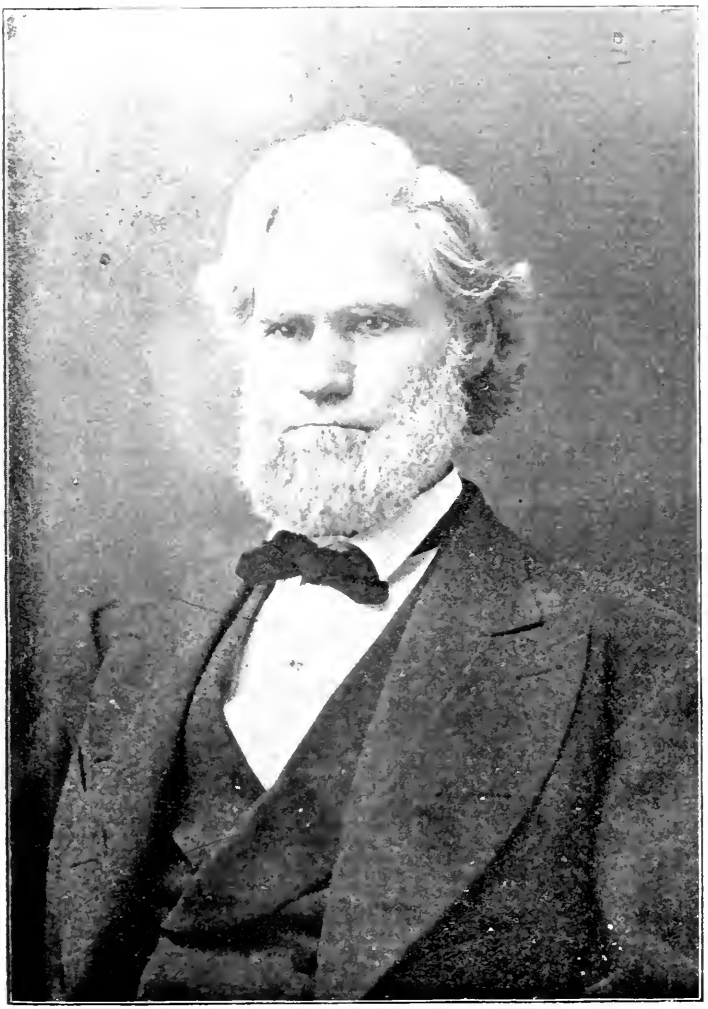
it keenly, and at once resolved to write a dissenting opinion, in which I thought I could demonstrate that the decision had not been the law before, although it must become the law afterward, at least for a time, and I did my best to do so. I certainly showed that the first section of the act of 1819, which was strongly relied upon, had been repealed and never afterward re-enacted; that many decisions of as respectable courts as any in the Union, and exactly in point, sustained a ruling of the court below, and that whether it was contrary to the genius of our institutions, and of the habits and notions of our people, were questions for the Legislature, and not for the court to determine. I understand that the Legislature has since that time enacted several laws modifying or changing the rule laid down by the court in that case, but I have not taken the trouble to examine them.

In looking over the report of that case after the lapse of so many years, I see that my dissenting opinion was unpardonably long, and that some of its expressions were more pungent than I wish they had been, but I am still satisfied that I was right in my conclusions as to what the law was. It is evident that when I wrote that opinion, I could not but feel the sting which had been provoked by what seemed to me to be a discourtesy; in this I am now satisfied that I was wrong, for I am entirely convinced that no discourtesy was intended. I am happy now to remember that the event never produced a shadow of coolness or ill-feeling between us; the same harmony and personal friendship always afterward existed as it had done before.

V.

ANECDOTES OF LINCOLN AND OTHERS—STORIES OF CELEBRATED TRIALS.

When Judge Breese took his seat upon the bench of the Supreme Court for the second time, the court consisted of Breese, Skinner and myself. In the course of conversation



ONIAS C. SKINNER.

we discovered that we all three came from Oneida county, N. Y., and this remarkable incident soon became known to the bar, and was the subject of comment among them. The conference room at Springfield adjoined that of the library, where the lawyers usually assembled in the evenings, examining their cases and making up their briefs, while we were in conference in the adjoining room. Generally Mr. Lincoln was present in the library with the other members of the bar at work upon his cases. With rare exceptions not a word could be heard from the library room till about nine o'clock in the evening, when a boisterous laughter would frequently break out there, which put an end to their work for that evening, and had a strong tendency to suspend work in the conference room. We knew at once that Mr. Lincoln was telling some new story, for which he was so celebrated, and the temptation, to me at least, was very strong to go out and hear it. This occurred very early in the first term, which we held in Springfield, after Breese had joined us at Mount Vernon. When I passed into the library room Mr. Lincoln, who was seated on one of the tables, his feet hanging down nearly to the floor, said: "Judge Caton, I want to know if it is true, as has been stated, that all three of you judges came from Oneida county, New York?" I told him I believed it was so, whatever that might indicate. "*Only this*," he said, "*I could never understand before why this was a One-i-dea court.*" Of course this produced a laugh so loud and universal that the other judges had to come out and see what was the matter, and when it was explained they joined in the merriment as cordially as the rest of us.

I must say here that I was usually glad to learn in that way that Lincoln was in the library room, thus diverting the attention of the other members of the bar from the drudgery of the work in which they had been engaged by telling some amusing story; both before and after that time, and in the conference room, we were not loath to have our attention diverted by the same means, at least for a time.

Beyond comparison, the most difficult task I ever assumed at the request of my associates was to write an opinion reversing the judgment in the case of The People v. Thurber, 13 Ill. 554, but it just had to be done. It would have been a very easy task to write an opinion affirming the judgment, but that would have entailed a public calamity, which could not be thought of for a moment. That was one of those cases where consequences had to be taken into consideration and given an absolutely controlling influence, and my duty was to hunt up shreds and scraps of statutes to sustain the decision, and relying as little as possible upon the consequences of an affirmance, which, after all, constituted really the controlling consideration.

To have affirmed that judgment would have been to suspend the operations of all our election laws and held them suspended until a statute could have been passed to cure an omission in an existing statute.

In obedience to the Constitution of 1848 the first General Assembly which assembled under that constitution, passed a law abolishing the Court of County Commissioners and the office of clerk of that court, and creating a County Court with a clerk, and conferring upon it judicial powers which had never been exercised by the County Commissioners' Court, as well as the powers which had previously existed in the County Commissioners' Court, and of course, it followed that the clerk of the new court would exercise the powers devolving upon him in relation to the jurisdiction conferred upon the court; but the previous laws had required the clerk of the County Commissioners' Court to perform many *ex officio* duties in the execution of many other general laws which had no connection whatever with the jurisdiction of that court; and without the performance of these duties by some one authorized by law to perform them, their operation must be absolutely suspended, and yet the Legislature had omitted to pass any statute devolving these duties upon the clerk of the new County Court, or upon any other person or officer, and my task was to find

some authority for holding that these *ex officio* duties had been lawfully exercised by the clerk of the new County Court. I repeat that this had to be done or else the wheels of government, to a vital extent at least, must be suspended.

I ransacked the statutes thoroughly, and found in different acts many provisions and expressions which showed clearly that the Legislature supposed and believed that existing laws authorized the clerk of the new court to perform all of these *ex officio* duties which had been imposed upon the clerk of the old court, but that was all. From these expressions I inferred that it was the will of the Legislature that these duties should be performed by the clerk of the new court; that although that will was not expressed in any separate and affirmative statute, it was clearly manifest from the language which the Legislature had used in several different acts, and that the will of the Legislature clearly expressed in several acts, when taken together, constituted the law of the case as much as if that will had been expressed in one distinct statute.

Now, this was the best I could do in support of a decision which had to be made, and as my associates could suggest nothing better it was made to pass, and the government went on quietly as before.

Strange to say, nine years later we found ourselves confronted with a similar difficulty in the case of Wood v. Blanchard, 19 Ill. 38, and it is a little singular that two such hard questions as these should be presented to us for decision, while, I venture to say, nothing analogous to them had ever been presented to any other court for adjudication. In this case it appeared that the old constitution created the office of coroner, the mode of whose election and duties were subsequently prescribed by acts of the Legislature. By the adoption of the Constitution of 1848, the old constitution was superseded, and, in fact, repealed, and so was the office of coroner abolished, and not re-created in the new constitution, nor had any subsequent act of the

Legislature created that office; and yet, for nine years, people had been electing coroners who had been discharging the duties of that office; and the only question presented was whether there was such an office, and could be such an officer, in this State. To have decided otherwise would have created incalculable mischief. Many titles depended upon the validity of their actions, especially when acting as sheriffs, and the necessity for affirming the decision in the case was scarcely less imperative than was that of reversing the decision in the other; certainly no affirmative law had been passed for the purpose of creating such an office, but it was equally certain that several laws had been passed, showing that the law-making power assumed that there was such an office and had legislated upon that assumption. Indeed, the convention which had abolished the office had prescribed in its schedule certain duties, which should be performed by the coroner after its adoption. By a law duly enacted after the adoption of the new constitution a provision was made for the election of a coroner whenever a vacancy should occur. Now, while it was admitted that no law had been passed expressly creating the office of coroner; this law had been passed providing for his election and prescribing his duties, in some cases at least. This, we held, clearly showed that it was the intention of the law-making power that there should be such an officer as a coroner, and consequently it must have been equally the intention of the law-giver that there should be such an office, which might be filled and held by such an officer.

The rule established by these anomalous cases may be thus formulated: the will of the law-maker is the law, when expressed in a constitutional way, and we may look through all its statutes to find a legitimate expression of that will, and when found it is the duty of the courts to enforce it.

I say this is the rule fairly deducible from the decisions of these two cases, and I still think it is in perfect harmony with the long and well settled rules for the construction of statutes, and that it fairly justified those decisions, though I

confess that in writing that opinion I felt as if acting under a sort of constraint imposed by an absolute necessity, which I have never felt when deciding any other case. I do not think it probable that any other court will have occasion to use them as precedents for the want of cases parallel to these.

The dissentient might formulate another rule, perhaps scarcely less consistent with the general rules of the law for the construction of statutes, which may be stated thus: if the law-maker actually believes or supposes the law to be so and so, and expresses that belief in a constitutional way, that does not make it the law, for he does not thereby affirmatively declare that it shall be the law. Or he might state it thus: if the law-maker misapprehends the law, no matter in what form that misapprehension may be expressed, that does not change the law.

In this respect the misapprehension of the legislative department as to what the law is, has a different effect from the mistakes of the judicial department; for if the Supreme Court mistakes the law, its decision made under such misapprehension actually changes the law, at least for the time being.

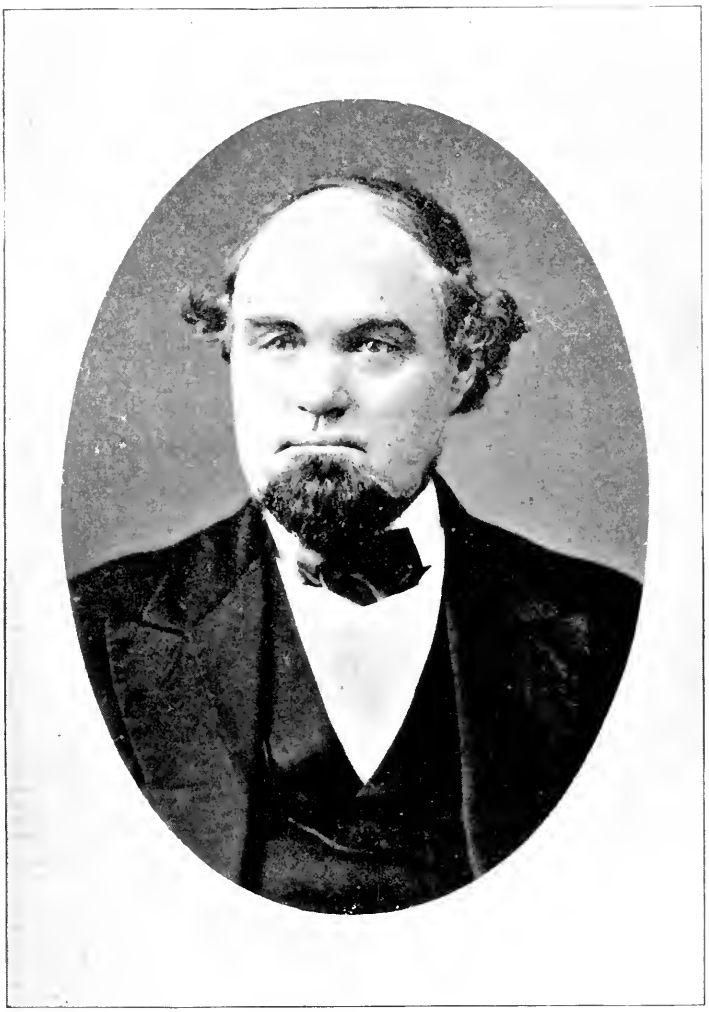
The case of Baxter v. The People, 3 Gil. 368, presented some very important questions arising under our Criminal Code, in which the duty was assigned to me to write the opinion of the court, the first of which was, whether a decision of the Circuit Court overruling a motion for a continuance could be assigned for error, and I was instructed to hold that a decision of such a motion in a criminal case rests in the sound discretion of the court, and could not be assigned for error; that the statute of the 21st of July, 1837, allowing error to be assigned on decisions denying motions for a continuance, only applied to civil cases. In Vickers v. Hill, 1 Scam. 308, the court had decided that the Practice Act of 1827, which confessedly only applied to civil cases, provided that decisions of motions for continuances could not be assigned for error, and we held that the amendment

to that act passed in 1837 was only intended to apply to those cases provided for in the act to which it was an amendment. I see that by Sec. 63 of the Practice Act in the Statutes of 1874 overruling motions for continuance in criminal cases may be assigned for error, but I have not traced the statutes back to see when this innovation was first introduced by the Legislature.

For the first time in this case we were called upon to give a construction to the statute which declares that accessories to crimes "shall be deemed and considered as principals and punished accordingly."

The indictment against Baxter was for the murder of Col. Davenport, as principal. The evidence showed that he was accessory before the fact, and the question was whether he should have been indicted as accessory, and concluded with the avowment that he thereby became principal, or whether the indictment against him as principal was sustained by the proof that he was accessory. After much consideration a majority of the court determined that he was properly indicted and convicted as principal upon proof that he was accessory before the fact, and I understand that that rule has been followed ever since in this State without question, and that the anarchists were lately convicted and executed by the application of this rule, without even asking the court to consider it; but it was not originally adopted without doubts and misgivings; and Mr. Justice Koerner, after all, dissented, and maintained his dissent in a very strong opinion, holding that the indictment should have stated the facts of the case as they really existed, so that the prisoner would have been fully advised of what he was to meet and controvert on the trial.

Another very important question was decided in this case. The trial was commenced on Friday and the case submitted to the jury on Saturday, who brought in a verdict on Sunday, which was received and recorded and sentence of death was passed on that day. This was assigned for error upon the ground that Sunday is *dies non juridicus*, and that the



PINKNEY H. WALKER.

court had no jurisdiction to do a judicial act on that day. This position was sustained so far as the sentence was concerned, and so the judgment was reversed, but we also held that the receiving of the verdict was not a judicial act, and hence it was properly received on that day.

Then the question arose whether the reversal of the judgment carried with it a reversal of all the anterior proceedings. Undoubtedly the weight of authority in the English courts supported that proposition, and that the prisoner should have been discharged forever for the crime of which he had been guilty; but we thought we found an abundance of authority for holding that the reversal of the judgment only reversed that which was erroneous, or, in fact, void, for we held that the sentence of death which was pronounced on Sunday was absolutely void for the want of jurisdiction to do any judicial act on that day, and so we remanded the case to the Circuit Court with instructions at its next term to pass the sentence of the law upon the verdict which had already been properly received and recorded, which was held to be a ministerial act only.

VI.

APPOINTMENT OF PINCKNEY H. WALKER AS JUDGE—SKETCH OF HIS LIFE.

During the December term of the court, 1856, Judge Skinner asked me if I was well acquainted with Gov. Bissell. I answered him that I was pretty well acquainted with the governor. He then told me that he was about to resign his seat upon the bench, but would only do so upon the condition that Pinckney H. Walker would be appointed to succeed him, and that as the governor was a republican and Judge Walker a democrat, he might not be inclined to make such an appointment, and requested me to see the governor and ascertain if he would appoint Walker in case of such a vacancy. I accordingly called upon the governor and frankly stated Judge Skinner's proposition to him, and also

told him that while I did not know Judge Walker personally, I was entirely satisfied that he was especially qualified for a place on the supreme bench, and that he would discharge his duties there honorably to the governor who should appoint him, and be useful to the public service.

He replied that he would take the matter into consideration, and would consult his confidential friends on the subject, especially those who knew Judge Walker personally, and that he would let me know later.

Perhaps a week after this interview I received a note from the governor stating that he was very favorably impressed with Judge Walker from what he had heard concerning him, but that he would prefer to have a personal interview with the judge before coming to a final decision on the subject. I assured him that I would arrange for such an interview as soon as practicable, and immediately telegraphed Judge Walker to come to Springfield at once, but did not explain the reason for the request.

Within a day or two afterward Judge Walker put in an appearance, when I was introduced to him for the first time, and the reason of my message was explained to him; he expressed a willingness to accept the office should it be offered him, although, at the June election following, he would have to submit his claims to a vote of the people in a division which was largely republican politically.

At that time politics cut very little figure in judicial elections in any part of the State. But a year or two before I had been elected by a two-thirds vote of the people while two-thirds of the voters of my district were opposed to the political party with which I affiliated; but in fact, this affiliation was more nominal than otherwise. During all the time I was on the bench, I never made a political speech or attended a political meeting, or in any way discussed political questions in public, or even in private to any considerable extent, and, indeed, I rarely voted except on special occasions.

I never would vote for any candidate simply because he

was the nominee of my party, or unless I believed him to be as meritorious in every respect as his opponent of the opposite party. I always believed, and still believe, that politics should find no place on the judicial bench, and that, I always feared, would be the great danger of making the judiciary elective; and I still fear that danger may come of it, but I have been happy to observe that the people generally seem to appreciate that danger, if the professional politicians do not.

I am pleased to say now, that Judge Walker's eminent qualifications for the bench were duly appreciated by the people of his division, and that he was successively elected ever after, so long as he lived, and that he died, still wearing the ermine untarnished.

During all the fifteen years that I sat upon the bench of three judges, all belonged to the same political party, and I do not believe that any man living ever even suspected that party politics had the least influence upon our judicial decisions. During that time five or six cases came before us, of which suspicious persons might think that they had a political bearing, but it so happened that in all of these cases we decided against what some might suppose would be favorable to our political party. Pardon this digression.

That evening I went with Judge Walker to visit the governor, and our visit was certainly a very pleasant one. Gov. Bissell was that sort of a man with whom any gentleman could pass an hour most delightfully.

He was a gentleman himself in the highest sense of the term. He was a man of very marked ability. He was an excellent lawyer of the most spotless integrity. He had won a high reputation as a soldier in the Mexican war, and was as sensitive for his honor as for the apple of his eye.

The next day the Secretary of State intimated to me that Judge Walker's commission was made out and would be delivered so soon as Judge Skinner's resignation should be received. I then took Judge Skinner's resignation into the

secretary's office and delivered it to the Secretary of State, and received Judge Walker's commission.

Later on, in 1864, when I felt that an imperative domestic duty compelled me to resign the high place which I then occupied on the Supreme Bench, I called upon Governor Yates, and informed him that I had some thoughts of resigning, and asked him if he would allow me to suggest for his consideration the name of my successor; he said he would be most happy if I would do so, and I suggested the name of Judge Beckwith; after a few days' consideration he informed me that he had considered my suggestion, and conferred with his confidential friends on the subject, and that he had made up his mind that should I determine to resign, he would appoint Judge Beckwith to fill the vacancy; and so it was done.

In the case of The People ex rel. v. Governor Bissell, 21 Ill. 229, an application was made to the Supreme Court for a writ of mandamus to be directed to the governor, commanding him to issue certain State bonds to the relator, which, as was claimed, an act of the Legislature required him to do; and thus was presented the question when, and how far, one of the three departments of the government possessed the power to control another, and the record was assigned to me to write the opinion of the court. In that opinion I endeavored to point out, as best I could, to what extent and in what way, under the constitution, one department could control or influence the action of another. While necessarily, in many cases, one department may control or influence the action of another department, that is usually, if not universally, done indirectly; as where the courts may decide a law to be unconstitutional, which had been passed by the legislative department; while the Legislature may restrict or extend the jurisdiction of the courts, or the governor may pardon a criminal who has been condemned by the judiciary. Such powers are usually, if not always, of a restraining character rather than compulsory.

Without this we expressly disclaimed any authority on the

CORYDON BECKWITH.

part of the judiciary to control or direct the governor as to how he should discharge his duties as prescribed by the constitution or the law, or whether he should discharge them at all; though he may neglect or refuse to perform an act required of him to be performed, he is as much beyond the reach of the courts to compel its performance as is the Legislature.

We had no more power to compel him to call an election which the law required him to do, than we had to compel the Legislature to enact a law which the constitution required it to enact. The judiciary may undoubtedly exercise a restraining power indirectly over the acts of the governor, should he do an act not authorized by the constitution or the laws, by declaring such act void, and so nullify it and thus destroy its effect, as we would an act of the Legislature, which we might declare unconstitutional, but we could not act directly upon him by forbidding him to perform the act.

We recognized the right of the governor to call upon the judiciary for its judgment of the law in relation to the performance of duties imposed upon him, by submitting an agreed case, for instance, presenting the question, in which case he submits himself to the jurisdiction of the court, when the court will hear arguments and decide it as in other cases; but even in that case, should he refuse to conform his action to the decision of the court, I do not conceive that it would have the power to compel him to submit as it could ordinary suitors. I know of no case in which that question has been presented. It may be said that his having once submitted to the jurisdiction of the court—that the court having acquired jurisdiction of the case and of the person in a mode recognized by the law, it may exercise that jurisdiction to the end, according to the general principles of the law governing all other cases; but this, I apprehend, would be an exception; for even *that* rule must have its exceptions; for instance, the legislative power may pass a law depriving

the court of jurisdiction in a case *pendente lite*, after it has acquired complete jurisdiction of it.

Thus we see that there are a great variety of ways in which one department of the government may exercise control over another, but generally indirectly, as before stated. This precise question was attempted to be raised, and it was argued in the case of Webster v. French, 11 Ill. 254, but it was evaded rather than decided in that case. That bill was filed for a specific performance of a contract for the sale of the Quincy House, which belonged to the State. An act of the Legislature had directed the governor to advertise the Quincy House for sale and to receive sealed proposals for it up to the first day of July then next, and to accept the bid of the highest responsible bidder, and as governor to execute a deed to the purchaser. Bids were received and the governor had accepted the bid of Ash & Diller and executed a conveyance to them, thus vesting the legal title, and that bill was filed, claiming that the bid of Ash & Diller was an illegal bid and that the complainants' bid was the highest and best legal bid, and that the governor had decided that they were responsible bidders. The bill made the governor and Ash & Diller and several other bidders, parties defendant. It was demurred to and the demurrer was sustained in the court below, and upon this decision the case was brought to the Supreme Court.

The governor raised no question in the pleadings as to the jurisdiction of the court, though the question was raised by defendants' counsel in the argument of the case.

We held, that excepting as to the execution of the deed, which had already been accomplished, all of the duties required of the governor were merely ministerial and not executive, and might have been authorized to be done by any other person; and that the only question in the case was that of property rights between the complainants and the governor's grantees, in whom the legal title was now vested; we proceeded to adjudicate the case as between those parties, and evaded the question as to what we could have

done to enforce a decree requiring the governor to act in his executive capacity, so that question remained undecided and unconsidered until the case of the People ex rel. v. Gov. Bissell, before referred to.

But there were several other very important questions presented in this Quincy House case for which we could find no precedents directly in point to aid us in our deliberation, especially as to the first; and that was, by what rules of law, biddings by sealed proposals should be governed; that was the more remarkable since vast interests have in later times been involved in that class of bidding by which public and private contracts are made for the execution of public and private works, and the purchase and sale of properties, both public and private. I say that we thought it remarkable that no question should ever have been raised in the courts as to what rules shall govern this class of transactions, and what was necessary to constitute a legal bid by sealed proposals, while the books are full of rules governing sales by open bidding at public auctions.

In this case the complainants bid $21,100, Root & Co. $500 more than any bid made for the property, while Ash & Diller bid $601 over and above the highest bid for the property. The governor tacked Root & Co.'s $500 bid upon the specific bid of the complainants, and then upon that he tacked the bid of Ash & Diller of $601, making a total of $22,201, and for that sum awarded the purchase to Ash & Diller, to whom he executed the deed, and I was instructed to write an opinion holding that the specific bid of the complainants was the highest legal bid made for the property, and that the other two bids were illegal and void.

No cases were found bearing at all upon the question, except that of Williams v. Stewart, 3d Merrivale, 471, when Lord Eldon in a mere dictum said, that bids something like these were accepted in the north of England, where they are called *candlestick bidding*, I suppose because the written proposals were placed under candlesticks standing on the

table before the commissioners receiving them, until all were in.

As this was the only case found which had the least resemblance to the one before us, I was required to discuss it and decide it on general principles, which I did as well as I could. We held, that sales by sealed proposals were but another mode of sales by auction, and that the same mode of fair dealing and justice is required to govern their conduct as is required in the conduct of auction sales where the bids are open and public; and to secure this, the rules for receiving the bids in the latter must be exactly reversed in the former. Where open bids are received, every bidder has a right to know what other bids are made against him, so that he may govern his bid, if he chooses, by the judgments of the other bidders; and for the seller to receive a secret bid, or one not known to the other bidders, is a fraud upon them, for which the law will afford an adequate remedy; whereas at auctions by sealed proposals the policy is that each bidder shall act upon his own judgment, or at least independently of the judgments of any other bidder, and if the seller should, before the bidding is closed, make known the bid of one bidder to another, that would be a fraud upon the bidder whose offer was disclosed. Upon these principles the bids of Root & Co., and of Ash & Diller, which were based upon the judgments of specific bidders, were a fraud in law upon the specific bidders and void; and that as the complainants were the highest specific, responsible bidders, they were entitled to the property at their bid, and that Ash & Diller, who had been invested with the legal title, might be compelled to convey it to them upon their performance of the conditions of their bid.

I understand that since that time the practice has grown up and become quite general that notices for secret bids have reserved the right to accept or reject any bids. It seems to me that the reservation of this right in inviting bids may present questions which the judiciary will be called upon to decide. How far this is consistent with that

rule of fairness and integrity which should govern all auction sales, may open a field for discussion which will admit of a pretty broad range, and may at some time invite serious consideration, where statutes do not intervene to sanction it. It seems to me that it hardly comports with that fairness reciprocal rights and obligations would seem to require, if the parallel which is laid down in this case between open and secret auctions is to be maintained. If in open auctions the right were claimed to accept or reject all bids made, it would be an anomaly, at least; and how far it would be sanctioned by the courts, is still, I apprehend, undecided. It seems to me it would be but a mockery of fairness and equality of rights, and why is it less so in case of secret auctions?

In open auctions the seller has an undoubted right to fix an upset price, below which bids will not be received; but he can not reserve the right to reject any bids above that price, and the same right should undoubtedly be allowed the seller in secret auctions; but why he should be allowed to reserve other rights not allowed in cases of open auctions I do not clearly comprehend. In either case unlawful combinations may be formed to defeat that fair competition between the bidders which justice requires; but these combinations are unlawful and will be relieved against by the courts.

One other important question was decided in this case, which has already been referred to in a former number of this series. In the cases of Doyle v. Teas, 4 Scam. 457, De Wolf v. Long, 6 Gilm. 679, and Wright v. McNeely, 11 Ill. 241, in all of which cases I wrote the opinions, it was stated that where a bill is filed for the specific performance of a contract, the purchase money must be tendered, and the tender kept good by bringing the money into court and depositing it with the clerk, and held subject to the order of the court. In neither of these cases was a decision of that point necessary in determining the case, although in each the question was presented and argued; but its decision not

being absolutely necessary for the determination of the case, what was said upon the subject was not maturely considered. In this case, however, it was squarely presented and must be met; we were asked to reconsider the subject, and we did so, and all the cases at hand bearing upon it were carefully examined. Many cases were found in which language was used as strong as I had used in the cases referred to, holding that a tender must be made and kept good by bringing the money into court, yet in not one of them was that rule enforced, and in some of them decrees were entered directly in violation of it; in not one of the cases examined was a contrary rule laid down in words, and yet, in a great many, decrees were entered where tenders had not been brought into court, and in several of them where no tender at all had been made; in some of them further time had been given after the hearing for the payment of the purchase money.

The case of Washburn v. Dewey, 17 Ver. 92, was the only case found where the question of bringing the money which had been tendered, into court, was squarely decided in terms, and there it was held that a sufficient excuse was shown for not having done so.

Upon what we conceived to be abundant authority, I cheerfully took back what I had said in the previous cases, and held that in this case it was not necessary to have brought the tender into court.

The rule undoubtedly is, that all of this question of tender, and of keeping the tender good by bringing the money into court, is a matter of discretion with the chancellor.

Let it be remembered that matters of discretion are always subject to review in the court of chancery.

The only other case to which I shall refer is that of Shackleford and wife v. Hall, 21 Ill. 212.* In this a question was presented which had never before been considered in this country, and very rarely in England.

*A bad mistake was made by the reporter in this case; the position occupied by the several parties is misplaced.

"The facts of the case show that all of the devisees of the estate in remainder, now in controversy, were the heirs at law of the testator, and as such heirs at law had an expectation of the estate. In the absence of the will each would have been entitled to his or her respective portions of it according to our statute of descent." The testator having devised the estate in his will precisely as the statute would have cast it in the absence of a will, imposed the subsequent condition that if either of his children should marry before attaining the age of twenty-one years, he or she should forfeit the estate thus bequeathed. Mrs. Shackleford did not choose to wait until she was twenty-one years old, and so was married before that time. Her brother, Henry H. Hall, then filed a bill to declare the forfeiture, which, upon hearing in the Circuit Court, was dismissed, and thence was brought to the Supreme Court. Upon the arguments for the complainant, the plaintiff in error, the violation of the condition subsequent was relied upon, and really that was about all he had to say in the opening. For the defense it was claimed that the condition was in restraint of marriage, and therefore void; but to this a conclusive answer was given that a reasonable restraint was not only proper but commendable, and that a restraint to the age of twenty-one years, or even a greater age, was not unreasonable, and upon this the case was submitted. So soon as we reached the conference room with the record, Breese broke out and said: "That brother is a mean fellow; yes, he's a great rascal, and we must beat him if possible. Now, Caton, how can it be done?" I replied that the law referred to on the argument was certainly all in his favor, and I didn't remember any law to controvert that, and Judge Walker was equally at a loss to find any way to get around it. I then stated that during the argument there seemed to be, as if it were floating in the atmosphere, some intangible, undefined idea that I had seen something somewhere, some idea, derived from something I had read some time, probably when I was a student, when reading some text book, that

might have some bearing on the case, but what it was I could not say. It was but a vague, indefinite impression, and seemed rather like a fleeting dream than a tangible idea; that I felt confident that I had never seen a case from which that thought had arisen, and that I felt no assurance that there was any principle laid down in the books, in any way qualifying the decisions which seemed to be so directly in point, holding that this condition subsequent was valid.

Breese then picked up the record from my desk, placed it in my hands and said: "You take this record and hang on to the tail of that idea till you follow it up to its head, until you find some law to beat this unnatural rascal, who would cheat his sister out of her inheritance just because she wanted to get married a few months before the time fixed by the old man."

I took the record home with me, and after I had finished writing opinions in all my other cases I took up this. I examined carefully all the Digests in the library, and went through the English reports. I sought thoroughly, without finding a single word bearing in any way upon the case, still believing that there was something somewhere that would throw some light upon it on one side or the other. I took down Jarman on Wills, and went home determined to read every text book in the library on that subject before I would give up the search, and commenced reading at the very beginning, and then proceeded very deliberately page by page until I had got, perhaps, two-thirds of the way through the book, when I read a short paragraph which did not at first attract my attention particularly, and I passed on; but before I had finished the next paragraph the previous one began to impress itself upon me, and I looked back and read it again, and the more I studied it the more I thought it contained something to the purpose. It referred to several old English cases, the reference to which I took down, and made my way to the library as soon as possible, impatient to see what these references would develop. In less than an hour I found the law to be as well settled as any other well rec-

ognized principle of law, that where a testator devises an estate to his heir accompanied with a condition of forfeiture, a breach of that condition shall not work the forfeiture, unless its existence is brought home to the knowledge of the heir, and this rule applies as well to conveyances by deed as by device. I still think it a little remarkable that these cases, although few and most of them very old, are not found referred to in any of the Digests which I have consulted, and that no such case appears ever to have arisen in any of the courts of the United States, or in later times in England, and it is probable that to-day this case stands alone in the American reports.

When I read my opinion at the next conference Judge Breese especially manifested great satisfaction at the result of my investigations, and walked across the room and patted me on the back, saying, "Well done, my good boy," and seemed not less pleased at the strictures I had expressed in the latter part of the opinion upon the conduct of the hard-hearted brother, as he termed him, and in this expression we all concurred.

IX.

REPORTERS OF THE SUPREME COURT.

SALARIES—LABORS—PERSONAL MENTION.

I should not close these sketches of the bench and bar of Illinois without referring to the reporters by whose labors the decisions of the Supreme Court of this State have been put in proper form and laid before the profession, not only in our own State, but throughout the Union. To their ability and their industry we are all deeply indebted for the fidelity with which they have performed their tasks, and they certainly deserve a recognition from those whose labors they have recorded as well as from those who have profited by their industry.

When I first cast my lot with the profession in this State, Breese's Reports alone had been placed before the public. It was a small volume and contained the decisions from the organization of the Supreme Court in 1819, up to the close of the December term of that court in 1831.

Necessarily the relations existing between the reporters and the bench were of the most intimate and confidential character. They occupied desks in the conference room and were present at the deliberations there conducted, and sometimes assisted the judges in reading arguments, abstracts or briefs. The propriety, and sometimes even the necessity, of this is manifest when we appreciate they were thus enabled to understand more fully the scope of the arguments adduced by the different judges in their deliberations upon each case, by which they were led to the decisions

JONATHAN YOUNG SCAMMON.

announced in the formal opinions which they had to report, and they were bound by the same obligations of secrecy which rested upon the judges.

Sydney Breese was a young man then, but he was a good lawyer and had already attained a high position at the bar. His subsequent career as jurist, while he occupied a seat on the supreme bench of his adopted State for twenty-two years, having served six years of the meantime in the United States Senate, well maintained the reputation which he had so early acquired. This reputation grew with his years of experience and industry, until he finally closed his career by death in 1878, while he was still a member of that court, of which he had been one of the brightest ornaments. His fame will be perpetuated so long as integrity, ability and industry shall be appreciated.

After Breese's reports were closed, the decisions of our Supreme Court remained quietly in their archives until 1839, when Jonathan Young Scammon was appointed to that court, and he continued as official reporter until after I came upon the bench. The first volume of Scammon's Reports was published in 1843, and the third and fourth volumes brought the decisions up to the close of the December term, 1843. Scammon was an able lawyer with a well disciplined mind, who clearly comprehended and plainly and succinctly stated the points decided in the case. The syllabi of his cases are models of perspicuity and brevity.

Upon the resignation of Mr. Scammon, Chas. Gilman was appointed reporter to the court. He continued to hold that office until the time of his death, in July, 1849. He published five volumes of reports, entitled Gilman's Reports, the first four of which contained the decisions of the court of nine judges from Scammon's time up to the time when that court was legislated out of office by the Constitution of 1848. His fifth volume contains the decisions of the new court of three judges during the first year of their term of office, that is to say, from the December term, 1848, to the June term, 1849, both inclusive. Mr. Gilman was an excellent

lawyer, a man of great industry, and conscientious in the discharge of the duties of his office. He, like his predecessors, did the work himself of preparing the opinions for the press, reading the proofs, and superintending the publication of his work. This work upon the fifth volume was not completed at the time of his death. It contains the first year's work of the three judges, consisting of 668 pages, and contains the decisions of ninety-eight cases.

Upon the death of Mr. Gilman, Ebenezer Peck was appointed reporter, at the December term, 1849, and he held that office and discharged his duties for a period of fourteen years or till the January term in 1863, when he resigned the office of reporter, to accept the office of judge of the Court of Claims, at Washington, to which he had been appointed by Mr. Lincoln. During these years Judge Peck issued eighteen volumes of the reports. He abandoned the practice, which had hitherto been observed, of calling the reports after the names of the reporters, and so entitled his first volume, Illinois Reports, Volume XI, ten volumes of the Supreme Court of Illinois having been previously issued; Judge Peck's last volume being 30th Ill. These volumes testify to the capacity, industry and fidelity of the reporter.

For several winters the reporter and myself occupied the same room and did our work at night side by side, and thus I was enabled to observe his mode of preparing the cases for the printer, the systematic order in which his work was done, and the industry and zeal which he devoted to the discharge of his official duties.

All of this is manifest to any one who will carefully examine these reports.

After the resignation of Judge Peck, Norman L. Freeman was appointed reporter at the April term, 1863, and he has filled that office with great acceptability up to the present time, and it may be earnestly hoped that he will be able to do so for many years to come.

My first decisions are to be found in the third volume of Scammon, and my last in the 33d of the Illinois Reports, so

EBENEZER PECK.

NORMAN L. FREEMAN.

it will be seen that I helped to make up the decisions contained in thirty volumes during the twenty-two years I was on the supreme bench, and it is with great satisfaction that I can say that all of the reporters, excepting Breese, have held office and discharged their duties during the time when I was on the bench.

Mr. Freeman had practiced before our court for a number of years before he was appointed its reporter, and we were all familiar with his eminent fitness as a lawyer for that place, but his other qualifications remained to be proved; and in these he has far surpassed the most sanguine expectations of the court, the profession, and his personal friends. The experience which he has had has year by year shown an improvement in his work. He has not been content to keep up the standard of the work which existed at the time of his acceptance of office, but the improvement which is manifested in almost every succeeding volume, shows that his ambition to excel has not diminished: that his capacity to improve has grown with his opportunities; that his ability for labor, and his untiring zeal for improvement have never diminished from the very beginning. He has lately issued the one hundred and seventh volume of his own reports, and this implies an amount of labor which few men living could have performed and performed it well. We may know that from the amount of work accomplished, he must have employed many assistants, and from the character of the work done, that these assistants must have been able men; yet the whole bears the impress of his personal supervision, not alone of one department, but of all departments alike.

Probably no reporter living has had the experience or performed the labor involved in the production of these hundred volumes, and I hesitate not to say that he stands at the very head of the legal reportorial profession.

X.

THE FRAILTY OF HUMAN MEMORY.

PERSONAL INCIDENT.

I have often been impressed, not to say alarmed, with my observations demonstrating the frailty of human memory. When we remember how much of our rights, our liberties and our lives depend upon human testimony, founded upon human memory, we may well feel alarmed when we see how frail our memories are. Laying aside the want of integrity and intentional falsehood, which, of themselves, may well cause us to fear that the truth may be perverted or denied, much more danger is to be apprehended from misrecollection or erroneous observation of occurring events, as they transpire. In the ascertainment of truth, much more is to be feared from the honest witness than from the corrupt perjurer. The falsehood of the latter is much more easily detected than the mistakes of the former. I might write a volume giving my observations on this subject, and yet leave much untold; still I should repeat much that might be paralleled by the observations of others.

Let me relate one instance of many, in my own experience, showing how unreliable is our recollection of past events.

In the spring of 1835 three of us, then young men, planned a horseback excursion with three young ladies of Chicago. The late C. B. Dodson with Miss Sherman, now Mrs. Thomas Church; Horace Chamberlin, who not long after lost his life in the Texas revolution, and Miss Rose Hatheway, many years since deceased, who was a sister of

the late Mrs. John Calhoun, of Chicago, and myself with Miss Agnes Spence, constituted the party. All were good riders, and all the horses selected were spirited and lively. The trip laid out was to go down to the Calumet river, twelve miles distant, where we would take lunch, and then return to the city. The way led us along the road south four miles to the oak woods, thence through timber all the way to Hale's tavern, situated on the banks of the Calumet, at the crossing of that stream. The road was considerably traveled, but through the timber was confined to a single wagon track, which wound along through the trees, sometimes close to the shore of the lake, at others a short distance from it, according as the nature of the forest or the ground permitted. The first four miles were over the usual race course, where those who had fast horses were in the frequent habit of trying conclusions, and as soon as we struck this race course Miss Spence's horse showed that it was familiar ground to him, and he plunged ahead in a way that showed that he thought it his duty to win another race there. I soon caught his rein and brought him down, while the lady protested I should leave it all to her, that she could manage him, and would give him as long a run as he wanted; but to this I would not consent. Her widowed mother had allowed her to come with me very reluctantly, fearing that some accident might befall her, and it was only upon my repeated assurance that I would take the greatest possible care of her and would be absolutely responsible for her safety, that she had consented. This incident no doubt prompted me to greater caution than I might otherwise have exercised, so I took a check rein, attached to the bit of her horse, and carried it in my hand all the way. She chafed at this almost as much as the horse did, and she soon convinced me that she was a superior rider, and could manage the horse with skill; but I knew if he should take it into his head to run away in the forest, which we were approaching, she would be powerless to manage him, so I persist-

ently held the check rein. We had our little dashes all the same, and each exhilarating run served to elevate our spirits and made us forget our prudent resolutions.

Finally Dodson proposed a race between our ladies, which was promptly accepted upon the condition that he should ride abreast with his lady, while the check-rein compelled me to do the same with mine. The roadway was narrow, but for half a mile ahead was straight and the timber open, and so we all dashed ahead at top speed, and the half mile of straight road was quickly covered. We then took a turn to the left, so that we could not see the road before us until we reached the turn. I was on the extreme right with Miss Spence on my left, and next to her was Miss Sherman, with Dodson on the extreme left. This gave the ladies the middle of the track, while we were on the outer sides. When we turned a bend in the road at full speed I was appalled. A large oak tree stood on the left hand side near the road, from which a large limb projected out over the road. Near the trunk it was high enough to allow a horseman to pass under it, but further on it bent down, so that I saw it must inevitably sweep my lady from the saddle, while I, by changing my position a little, could escape it. I pulled up both of our horses with such force as to throw them on their haunches, and told her to throw herself back intending to catch her on my left arm, but when I extended my arm for this purpose I found that it was restrained by my riding whip which I held in my hand looped around the left arm. The consequence was that she fell backward to the ground right between the horses, at the very instant that I threw them upon their haunches, by pulling them up with all my might. No one can imagine my feelings at that moment, when it seemed certain she must be trampled to death, and the picture came up before me of carrying her mangled corpse back to her widowed mother whom we had left so short a time before. As soon as possible I turned around to see the result, and was astonished to see that she had already regained her feet and was shaking the dust from her riding habit

Of course I dismounted as soon as possible, and ran up to her, but was so paralyzed that I could hardly ask her where she was hurt, and led her to a log near by, where she sat down, saying she believed she was not hurt at all. By this time the rest of the party had come up and an examination was instituted. It was found that a curl or lock of hair near her forehead had been cut off by a cork of one of the horse-shoes, which had stepped upon it, as it dropped upon a stone in the road. Still the severed hairs were hanging intertwined with the others. The only scratch found was upon one of the ankles, where a cork had cut a hole in the stocking, but hardly discoloring the skin, and she insisted that the jar of the fall had not hurt her in the least.

Chamberlin and Miss Hatheway had followed along so as to keep near us, and they described the scene as fairly appalling when they saw her fall head first between the horses at the very instant they were so violently drawn back. That was an escape which may not be often paralleled, and I am sure that I felt the shock longer than the lady did, for in a very short time she was as lively as ever.

We soon mounted and pursued our journey to Hale's tavern, where we got our lunch and spent an hour or two with about as much joyous jollity as six young people knew how to raise. We then returned to the city without incident. There was no more running of horses that day.

Many years later, when I was holding the Circuit Court at Geneva, Kane county, during a social chat with Mr. Dodson, I incidentally mentioned that it occurred when we were going out. "No," said he, "It took place when we were returning." I insisted that it occurred while we were going out, and referred to the fact that I had observed the lake on our left during the race, whereas if it had occurred on our return the lake would have been on our right. Now, there are few events in my past life which are as deeply impressed on my memory as this, and I feel absolutely certain that I am right in my recollection. Indeed, I well remember that the whole matter was discussed when we stopped for lunch; but

all the incidents to which I could refer in confirmation of my recollection, could not have the least influence in the belief of Mr. Dodson, and his conviction was so fixed that I have not the least doubt he would have sworn to it without hesitation, if he knew that his own life depended on the truth of his statement; and my belief in the correctness of my recollection of the event, and that it occurred while we were going out, is equally strong, though my observations have taught me to distrust my own memory as well as that of others, and so even in this I may have been wrong; but I must say that I do not believe it is so.

We finally agreed to leave it to the ladies, two of whom were still in Chicago, and he promised to call upon them the first time he went to the city, and get their recollection of the matter. When I met him again some time later, I asked him if he had seen the ladies and what they said about it. "Yes," said he, "I have seen them, but I very soon saw that you had all conspired together to get up a lie and make a fool of me, but it won't work. I know that it occurred when we were returning."

Still when I remember the many instances when I, myself, as well as others, who have entertained as strong convictions as I had, and still have, that the accident happened when we were going out, have been mistaken, and it has been conclusively proved that we were in error, I am constrained to admit that Mr. Dodson may have been right in his recollection of the occurrence.

I have in a paper, when giving an account of the trial of Rider for murder, shown how Mr. Havenhill, a witness for the State, had been mistaken in his previous testimony, when he had sworn that he had seen the prisoner through a certain window in the house, and nothing short of his own observation of the fact that there was no window on that side of the house, could have convinced him of his error. That he was honest in his previous testimony, he has demonstrated from the fact that he hastened with all speed to

appear in court and acknowledge his error before the trial closed.

It is but a part of human nature, that those who have had the least opportunity of observing the occurrence of such misrecollections by men of the highest integrity, are the most persistent in their conclusions that they are certainly right, and are loath to admit that others, with equal opportunities, can not honestly disagree with them.

I must again repeat that I am appalled, when I remember that all our rights may depend upon human recollection, which I know is so liable to error, and when I also appreciate that it is impossible to devise other means for the ascertainment of truth. At best, we can ascertain all the surrounding circumstances, and adopt those conclusions which seem most probable from our observations of human events, and these observations are so variant in different men, and we may so often adopt different conclusions from the same circumstances, that here, too, may be great liabilities to error.

A special training for the ascertainment of truth from given circumstances is of the greatest value, and our profession affords the greatest facilities for this training; though we may soon be obliged to admit that the modern detective system affords a still better school, for the reason that the mind is not diverted from that single study by other important matters.

APPENDIX.

RECOLLECTIONS OF THE EARLY BENCH AND BAR.

ADDRESS DELIVERED BEFORE THE ILLINOIS STATE BAR ASSOCIATION, AT SPRINGFIELD, JANUARY 24, 1893,

BY JOHN DEAN CATON.

Mr. President and Gentlemen of the Illinois State Bar Association:

I appear before you as the representative of those who once filled the places which you now occupy. It is a source of extreme satisfaction to be assured, by your kind invitation, that amid the cares, the duties and the responsibilities of an arduous profession, I am not forgotten by those who have come up in later years to fill the places and bear the burdens, which were once filled and once borne by those who, with rare exceptions, have been called to appear before a higher bar, where no errors are committed and no rehearings can be asked for.

Sixty years is a long time for any individual to have acted upon the stage of life, and the changes which have taken place during that time, in almost every branch of human thought, are very great, and in them our profession has largely participated. Within the last fifty years the different modes of doing business and the means of accomplishing desired ends, have been more marked than in any previous thousand years, and so have been compelled alterations in the laws and in the modes of administering them.

Many of these apparent changes were possible by the courts, under the flexibility of the common law, simply because the principles of that law were founded upon the reason of things and the results of human experience.

Old rules, which had been adopted by the courts to meet conditions which had previously existed, had to be changed, or even abrogated, as new emergencies demanded, as reason and experience dictated. As all the changes in the law, which altered conditions seem to require, could not be made by the courts under the plea of construction, legislative enactments were in some cases demanded, and the Legislatures of the various States early addressed themselves to the task of passing statutes which they supposed were required by the altered modes of conducting human affairs. Many of these were wise and necessary, while in others it would have been better had the subjects of them been left to the courts, which were better qualified to deal with them.

From long experience and observation, I am compelled to say that legislative bodies more frequently legislate too much than too little. This is by no means a new evil.

Even the Romans, during the Imperial period, indulged their mania for legislation to such an extent, that finally it was admitted that no man knew what the law was.

And hence, under the reign of Justinian the Great, Tribonian, with his associates, prepared the Justinian Code, which, by the Imperial fiat, was made the law of the land, and the precedents, or decisions of the courts were carefully digested in what is called the Pandects, to aid in the interpretation of the Code, and from these grew up the civil law of the continent of Europe, to which even the common law is indebted for those great principles of right and wrong which the consciousness of wise and enlightened men recognizes as just. And this, in its broadest sense, should be the basis of all law for the protection of individual rights and the rights of organized communities.

The courts, compelled by emergencies, have, under the plea of construction, introduced apparent changes of the law

to meet the demands in the changes of the modes of doing business, and in general, I may say, these changes have been quite as salutary as those made by the Legislatures.

These rules of law have been made by able men, deeply learned in the science of government, with no special interest to subserve after receiving the advice of the gentlemen of the bar, who present to their considerations the fruits of deep study and the observations of experience.

They act under a sense of responsibility to the whole community and to civilization, knowing that their decisions will be scrutinized and criticised by the ablest men who shall come after them, and who must pass a final judgment upon what they do. Many more safeguards are thrown around the judicial tribunals, to secure wise and impartial action, than can surround Legislatures.

The former have no constituency whose special interest they feel called upon to subserve, while the latter have varied constituencies, who may have conflicting interests to protect or promote, for which representatives may feel called upon to exert themselves. But legislative bodies can not be dispensed with in free governments. They are the very bulwark of liberty, and whatever conflicting interests they may represent, as affecting their immediate constituents, whenever great interests of State become involved, they rise above the petty considerations of local interest, and answer to the demands of patriotism which will uphold and insure the paramount welfare of the State.

Precedents, or previous decisions, involving the same principles, have, among the ancients as well as moderns, constituted the great body of the laws in all civilized countries, and so they will continue to do, so long as the advancement of civilization shall continue. When the exigencies of society shall require important changes in principles, they must be brought about by legislation; but the infirmities of human language, in which these changes must be expressed, are such that the courts of law, whose duty it is to enforce them, must give them construction, and so declare their

meaning, and give them practical application to the affairs of men. Wise legislation is of little value without wise construction and administration, and in this, an able bar is of not less importance than an able bench. The members of the bar are the legitimate advisers of the courts, and I can say from personal experience that such advice is anxiously listened to and most attentively considered. It is a staff upon which the courts lean, while traveling the path which they are pursuing when seeking the ends of justice and equity. Every member of the bar should appreciate, that while his duty requires that he should defend and protect the interest of his client, he also owes a duty to the courts, to aid them to arrive at proper results. This does not imply that the lawyers engaged on opposite sides of a case should always maintain the same positions, or defend the same principles, for that would be misleading to the bench. To arrive at sound conclusions, it is important that controverted questions should be presented in various aspects, for that is indispensable to enable a court properly to balance the reasons which may be urged on either side, and which are necessary to arrive at correct decisions.

Seventy-five years have elapsed since the organization of our State government. But fifteen of these years had passed when I came to the State and identified my interests with its people. A great many of those who had lived here during this time, and in the territory previously, and had helped to make the history of this State thus far, were upon the active stage of life, still comparatively young, and in the full vigor of manhood. If they did not write history as they made it, they could tell it most charmingly and impressively.

Many of these have helped form the constitution of the State, and as the population was small, nearly all the prominent men knew each other, and knew what each had done that was worthy to be remembered.

As is usual and might be expected, members of our own profession were among the most prominent and most widely

known throughout the State, and among these I formed my first acquaintances and my first friendships. I was the junior of them all, and so was largely dependent upon their kindness and friendship to help me in the difficulties which must always beset a young lawyer commencing the practice of his profession, where the habits of the people and the mode of proceeding differ widely from those in the State whence he came; and I now wish to bear my testimony to the large-hearted generosity and kindness of those who then constituted the bar of the State. Instead of throwing obstacles in the way of the new comer, they extended to him a fraternal hand, and took a genuine pleasure in helping him along over the rough places.

At that time, what may be called the circuit practice necessarily prevailed, and in each circuit in the State there was a class of lawyers who attended most of the courts in their own circuits, and very frequently attended the courts in other circuits, mostly to try important causes, where their special reputations had caused them to be retained. This circuit practice was a special school, unequaled in its way, and in it these circuit lawyers acquired qualifications which could be learned in no other school.

They had but few books to study, but these they studied to a purpose. Blackstone and Coke upon Littleton, were their favorite books, and from them they learned the fundamental principles of the law, and the reasons why the law was so; and I may be permitted to say here, that one may learn to state the rules of law as they are laid down in the books till he can repeat them like the alphabet, yet he is not a lawyer unless he fully comprehends why they are the law; what are the reasons which have made them the law. This and this alone will enable him to apply the law in every emergency, and to new states of facts as they must constantly arise. As in traveling the circuit few books could be carried, and but rarely were books to be found at the county seats, excepting the statutes, this sort of legal qualification was indispensable for both judges and lawyers,

and the character of their work was such as to train them to think quickly and accurately, and to change the thoughts rapidly from one subject to another.

In passing from one county seat to another, the judges and lawyers always rode on horseback, with saddlebags, very frequently traversing uninhabited prairies of from ten to twenty miles or more across. Indeed, at that early time all the settlers lived in cabins along the skirts of the timber, with inclosures in the adjoining prairies in which were cultivated fields, their stock ranging in the groves or grazing on the prairies. Nearly every cabin entertained travelers, who stopped for meals or to stay over night. Ham and eggs, fried chicken and warm biscuit, with good coffee, constituted the menu at nearly every cabin. If the position was such that the approach of the traveler could be seen some distance away, and it was about meal time, it did not require very attentive listening for him to distinguish the outcry of the chickens from the hen-coop as one or more were being immolated, which he knew was to satisfy the cravings of his inner man.

If a boy was about to take his horse, he might go into the house at once; if not, he would have to stable and feed his own horse, which many preferred to do, to make sure that they were well cared for. If he went into the house soon, he might see the good lady pull from under the bed a bread-tray, which was kept constantly supplied with dough, and in a trice the biscuits would be molded and placed in the bake-pan; chickens were placed in the frying pan; the coffee-pot was set to brewing; the table was set; and in an incredibly short time he was seated at the table with a meal before him as inviting as was ever set before a guest in the most fashionable hotel, with the most modern conveniences. The food was plain but substantial, and was always cooked to a turn. It was not smothered up in rich condiments, but its flavor was most appetizing. Even now, I fondly remember the feasts which I have enjoyed in those log cabins.

In riding from one county seat to another, the judges

and lawyers generally traveled in a band together, although not always in a compact body. Usually the gait was a fast walk or a slow trot, and frequently the band would be separated into little squads of from two to four, when the monotony of the ride was relieved by conversation and the relation of anecdotes or story-telling, as it was called, though ordinarily these last were reserved for the evening, when the whole party would be assembled. Then it was that the delights of circuit riding were most appreciated. All were good story-tellers, and with rare exceptions each one added somewhat to his store since the last meeting, either from having heard a good story from somebody else or invented one; and a new story, if it were only a good one, was always received in the way that showed that it was fully appreciated. Frequently a quite ordinary incident would be dressed up and so embellished as to be exceedingly ludicrous and amusing.

The early circuit riders, for the purpose of illustrating certain characteristics of the human mind, used to tell a story of Judge Harlan (a name suggestive of the ermine) when he was circuit judge. They stated that when he had closed his court at a little town in the southern part of the State, and nearly all were ready to mount their horses and proceed to the next county, and just as he was putting his foot in the stirrup, a lawyer rushed up with a paper in his hand, and asked him to sign a bill of exceptions. With evident marks of impatience, he dropped the reins of his bridle, and hastened back into the log tavern and called for pen and ink, which were shown him on the little counter in the bar-room. Goose quills, then, only were used for pens. He seized one and jammed it into the inkstand with such force as to spoil it. He only appreciated this when he attempted to sign his name. And this crushing process he repeated several times before he succeeded in writing his name, and then it was hardly legible, when he threw down the pen and paper, evidently in bad humor, and bolted from the house, mounted his horse, applied the whip, and took the

lead upon the trail which led across a ten-mile prairie to a cabin in a grove of timber.

The rest followed as best they could; but none could succeed in eliciting from him even a word of recognition during the ride. When he reached the cabin, he accosted a woman who stood at the front of the house, and asked her for a drink of water. This she brought him in a gourd, from the well, of which he drank heartily, and when he returned the gourd to the good lady, he remarked, "That is good water and I tell you, madam, they do keep the infernallest pens back in this little onery town that we just left, that you ever saw," and he again took the lead, apparently still brooding over those pens.

Euchre parties were frequently formed, and so was time pleasantly passed; and sometimes a dance was gotten up, when an old fiddle could be found, and some one was capable of using it. Judge Young himself was deemed the best fiddler on the circuit, and so contributed much to the hilarity of such occasions.

Sometimes a mock trial was instituted, when an indictment was presented against some member of the bar, accusing him of most ridiculous crimes, embellished with laughable incidents. On such occasions, the judge, the lawyers and the witnesses fairly overflowed with wit; and boisterous laughter was not considered a breach of decorum in that court, and the verdict of the jury partook of the character of the previous doings. A verdict of "guilty" was almost a foregone conclusion, and the penalties inflicted were frequently the most ludicrous and amusing of all the proceedings. If the wit was keen, it was frequently deeply penetrating, but the subject of it must bear it good naturedly and console his irritated feelings with the reflection that he would get his revenge on some future occasion. To show irritation at hard rubs was the worst thing a man could do, but to turn them off in some witty way enhanced his popularity for the time.

But the first few days of the term could not be given up

to amusement; all thoughts must be bent on business. Before the cavalcade of judges and lawyers had arrived, suitors and their friends, witnesses and sightseers, had already appeared, and were awaiting this important arrival; and scarcely had the advocates dismounted, generally covered with dust or mud, when they were surrounded by clients, eagerly seeking to engage their favorite counsel, and as soon as their leggings and dusters or overcoats could be discarded, they gave ear to those who sought their services, and listened to brief accounts of the cases in which their services were sought. One man wanted a suit defended; another wanted a case tried; another a suit commenced, and soon everything was bustle and excitement. Special pleas must be prepared in one case; in another, a demurrer must be filed; in a third, a bill in chancery must be drawn, or an answer prepared; and in another, preparations for a trial which might come off immediately; and finally, some poor fellow was in jail for horse-stealing, or counterfeiting, or perhaps for murder, who wanted a lawyer to defend him; and all this heterogeneous mass of business was rushed in upon them in a manner which would have confused any mind not well trained to that mode of practicing law. Not infrequently, men were called in to take part in a trial when the jury was already being called, and they must learn the case during the trial itself, and it was astonishing to see how rapidly they could see the salient points of the case, and methodically arrange and present them.

In the spring of 1835, for the first time I attended the Circuit Court at Hennepin, in Putnam County, which was held by Judge Breese, and there I first met him. Everybody was talking of the case of one Pierce; he was in jail on the charge of larceny, and it was said that he had not only confessed that he stole the goods, but that a witness named Thompson had sworn before the committing magistrate that he saw him steal them. As I was entirely unknown I took little interest in the matter, only I was struck with the frequent expressions of sympathy for the

prisoner, which I heard, and some even expressed doubts of his guilt after all. Judge Breese opened the court the next morning, organized the grand jury, who, in the course of an hour, brought in an indictment against Pierce, who was directly brought into court. When he was asked if he had counsel, he replied he had not, and had nothing with which to pay counsel, and, in answer to a question by the court, expressed a desire that counsel might be appointed to defend him. The judge then asked me if I would undertake his defense, assisted by Mr. Atwater, a young man just admitted to the bar, and very lately settled in the town—the first lawyer there. We accepted the appointment, of course. It was not unusual, at that time, when a new lawyer appeared at the opening of the circuit for the judge, as a mode of introducing him to the people, to ask him to defend a criminal, or to charge the grand jury, or the like, and we appreciated this appointment as an act of kindness on the part of the judge. We took our client out, and sat down on the grass in the corner of a rail fence to learn from him what we could of the case, still supposing it was one of those desperate cases where no defense is possible. We requested Pierce to tell us the exact truth, for, if he were guilty, we could make a better defense by knowing all the circumstances of the case, than to go into the trial ignorant of the real facts. He said he was perfectly innocent; that Thompson and his own wife had stolen the goods, and he had confessed he stole them in order to let her escape; and that he was so sick on the night of the larceny that he could not leave his bed, and was attended by a nurse and a doctor. After a searching investigation, we were convinced of his innocence. Pierce also stated that Thompson was a ruffian and a terror to the whole people, and that everybody was afraid to say a word against him. The court gave us till next morning to prepare for trial. As I was going to my dinner, a man crossed the street quickly and spoke to me in a low voice, saying that Mr. and Mrs. Fitzgerald, who lived two miles across the river in a log cabin, knew some-

thing that would help Pierce, if they could be got to tell it, and disappeared as if in alarm.

I scarcely waited for dinner, when I mounted my horse and was on the way to the Fitzgerald cabin. After I had exhausted every effort to allay their manifest fear of Thompson, they finally consented to tell me what they knew of the case, which was, that they had slept in the house on the night of the larceny, and had seen Thompson and Pierce's wife take the goods from a box, about midnight, and put them in Pierce's trunk; and they promised to appear in court the next morning and testify to what they knew. I galloped back, even faster than I had come, and found that Atwater had seen the nurse and doctor, who had corroborated Pierce's statement about his sickness. Of course we kept all this a profound secret, even from Pierce. On the trial, the next morning, Thompson swore that he saw Pierce steal the goods, and in my cross-examination I directed my efforts to make him swear to this in the strongest way possible, and thus apparently injure my case. In the defense, we first brought the doctor and the nurse, and then Mr. and Mrs. Fitzgerald, who seemed to have lost all terror of Thompson, and told the whole story.

Here was a great chance for a speech before a new audience—not for Pierce, for he needed none, but for myself—in which I pictured Thompson as a ruffian, thief, perjurer and as a lecherous scoundrel generally, in words which I had been all the night before recalling; and before I was done he slunk away out of the room and made for the bush. After a verdict of acquittal, the court adjourned, and before I had reached my hotel I was retained in every cause then pending in that court, and in some very important causes to be commenced, and never after did I want for clients, so long as I attended that court.

It was at the Putnam Circuit Court that I first met Judge David Davis, and it is with great satisfaction that I state that we were ever after warm personal friends.

When John York Sawyer was circuit judge, it was said

that in the administration of criminal justice he did not always adhere to the conventional rules of practice. Once, Gen. Turney was defending a man for horse stealing. At that time the punishment for that crime was at the whipping post. Just before noon the jury brought in a verdict of guilty, when the general moved for a new trial. Then it was that the dinner bell was heard at the little tavern where they all stopped, when the judge remarked: "Gen. Turney, I hear the dinner bell ringing now; we will adjourn court till after dinner, when I will hear you on this motion." When the sheriff had adjourned the court the judge motioned him up while he still sat on the bench, and whispered: "While I am gone to dinner, you take this rascal out and give him thirty lashes, and see that they are well laid on; I am bound to break up horse stealing in this circuit."

When the court opened after dinner, the judge told General Turney he could go on with his motion for a new trial, and he did so. In the meantime the sheriff had obeyed orders, and after the whipping had delivered the culprit over to his friends, who washed off his lacerated back, to which they applied a lotion, and then put on his clothes, after which he went limping down the street. As he passed the court house door, he heard his counsel's voice, and, upon listening, discovered that he was earnestly pleading for a new trial in the case, whereupon he rushed into the court house and cried out, "For God's sake, General Turney, don't get a new trial; if they try me again they will convict me again, and then they will whip me to death." The general, of course, was dumbfounded, and appealed to the court to know what this all meant. The judge quietly remarked that that was all right; that in order to make sure that no horse thief should escape punishment in his circuit, he had ordered the sheriff to whip the rascal while they were gone to dinner, and he supposed he had done so. I was informed that horse thieves did become scarce in Judge Sawyer's circuit.

Judge Ford, who related this event to me, often expressed

the opinion that whipping was a much more deterrent punishment for crime than imprisonment; that he never saw a criminal sentenced to be whipped who did not cringe at the sentence; while he had rarely seen a prisoner manifest emotion at being sentenced to a long term.

In 1829 an act was passed which, as the State was but eleven years old, may be justly ranked among our legal antiquities. That act provided that in the absence of the circuit judge (Judge Young) the Circuit Court of Jo Daviess county might be held by three justices of the peace of the county, and under this law the first circuit court of that county was so held, and Judge Young related to me some amusing incidents of the court, when held by the three justices, in their austere efforts to maintain the dignity of the court. I have failed to find any subsequent act repealing that statute, and if it has not been repealed directly, or by implication, that circuit may still be held by justices of the peace, by reason of which, such magistrates in Jo Daviess county may claim to occupy a higher plane of dignity and jurisdiction than the justices of the peace in other counties.

But those happy days of circuit practice, and jolly nights and warm and sympathetic friendships, begotten of such associations, are now gone forever, I fear, in this State; and necessarily so, for the conditions which made them possible—yes, which necessitated them—have passed away, never to return. But it may be well that a record of them should be preserved, so that they may not be entirely forgotten.

I may mention a few men who rode the circuit, before my day, whose names, and of whose abilities, I heard from the lips of others, though for very few of these can space be spared to illuminate this page. All practiced in the southern counties of the State. There were Hubbard and Harlan, Kent, Cook, Reynolds, Semple, Forquer and Sawyer.

Of those whom I met and knew personally, the list would be long, though only a part of these did I ever meet upon

the circuit, and some of them I only knew as judges, and not as practicing lawyers. There were the four judges of the Supreme Court when I came to the State—Wilson, Brown, Lockwood and Smith—and Young, who was judge of the fifth circuit. With all of these, except Smith, I sat upon the bench of the Supreme Court. Logan, Hardin, Stewart and Stone I met at the first circuit court I ever attended in the State, at Pekin, in 1833. Young, Ford, Mills, May and Strode I first met, in 1834, at the first circuit court ever held in Cook county. Breese I first met when he held the Circuit Court in Putnam county, to which I have already referred. I may be allowed to mention a few others of the lawyers who traveled the circuit, more or less, forty years ago: Snyder, Gillispie, Browning, Williams, David J. Baker, Edward Baker, Shields, Koerner, Trumbull, Morrison, Grimshaw, Campbell, Wheat, McRoberts, Field, Peters, Purple, Dickey, Jesse B. Thomas, William Thomas, Whitney (Lord Coke), McConnell, Martin, Linder, B. C. Cook, Fridley, Thompson Campbell, Marshall, John A. Logan, Gridley, Minchell, Joshua Allen and Lincoln, who, it is scarcely necessary to state, was always the very soul of hilarity and amusement on the circuit. His capacity for illustrating either wit or argument, whether upon a trial in court or in our social gatherings, always distinguished him from other men. His very presence was a joy to all.

The law and chancery jurisdiction have ever been exercised by the same courts, and the common law and English chancery system of pleading have ever prevailed in this State, with very few statutory modifications. The first modification, for the purpose of simplifying pleadings, was made by a very early statute, which authorized actions to be commenced on promissory notes by petition and summons, which, it was thought, would so simplify matters that every one could be his own lawyer; but its use was never general, or even common, and I have never, during all my experience, known more than two actions to be brought under it, and those not with very economical results. Another important

change was early made in chancery by authorizing the complainant in his bill to waive the oath to the answer, when the answer should not be evidence; and another change, authorizing a defendant to attach to his answer interrogatories, which the complainant must answer under oath. Under this last provision, the courts had been in the habit of granting affirmative relief to the defendant, and this question happened to be presented in a case of Ballance v. Underhill, which was the first case ever assigned to me in which to write an opinion, and I wrote it, reversing that part of the decree which gave to the defendant affirmative relief, affirming all the rest; and on this point I had my first struggle with my associates, who said it had been the uniform practice to grant such relief in similar cases.

At that time Judge Pope of the United States District Court, at Springfield, was in the habit, when he had leisure, of dropping into the conference room as freely as if he were a member of the court, without at all interrupting the deliberations then progressing; and he happened to come in while we were considering this controverted question. He seemed to listen attentively to the discussion, while I was trying to maintain my position against all of the others. At length, the conference adjourned without taking a vote, and we separated. When we were passing through the library on our way out, the judge came up to me and patted me on the back, saying, "My boy, you are right. Stick to them, and they will come to you at last. Come, go to my room and smoke a pipe with me." I did stick to them, and they did come to me at last, and voted unanimously for the opinion; and the rule was then adopted requiring a cross-bill to be filed in order to authorize affirmative relief to be granted to the defendant, which has ever since prevailed, I think, with the general approval of the bar.

By practice sanctioned by courts and lawyers, much of the verbosity and formalities required in the English courts, in both the common law and chancery pleading, was eliminated in early times, and I think, with marked advan-

tages; while all that was substantive, and necessary fairly to advise the opposite party of what he had to meet, was retained. In this way has gradually grown up a change in our system of pleading which greatly simplifies the work of the profession and the courts; and the system thus wrought out has tended to promote the ends of justice, as much, at least, as has been done by the adoption of codes in other States which were designed to accomplish the same end. Whether there has been a relapse of the old formalities and redundancy of words since my time, I can not say; on that subject you are the best informed. Almost from the beginning, it has ceased to be necessary for a bill in chancery to contain a thricetold tale, as in the old forms containing the stating, the charging and the interrogating part, in each of which the facts had to be repeated. In my first bill, with great labor, I followed this rule; but ever since, I have deemed it better to simply state the facts upon which I relied for relief in the shortest and clearest manner possible. If an unnecessary fact be stated in a pleading, it may some time rise up to pester the pleader. I early learned to appreciate the importance of understanding the reasons why certain rules of law had been adopted, not only from my circuit practice, but from my general practice as well. The reasons of the law are the soul and essence of the law.

During my time, that is, up to the time I resigned the chief justiceship of our Supreme Court in 1864, the rules of practice or modes of administering justice, to a large extent, remained unchanged. Since then important changes have been made, with which I have not kept pace as a lawyer in active practice necessarily would have done. I was forcibly reminded of this a number of years ago, when I went into the Circuit Court in Chicago, where a case was pending in which a corporation in which I had some interest was plaintiff, and two individual parties were defendants. When I went in, a motion was being argued for a continuance by the defendants. As the plaintiff's case was conducted by a young lawyer, and I thought I saw some indications that he

was getting the worst of it, I turned in to help him, and in the course of my remarks, Judge Murphy, who presided, discovered that I was ignorant of a late statute, when he kindly suggested that a statute had changed the law; that we might take judgment against one of the two joint defendants, and not against the other. This astonished me, and I felt like exclaiming with an Indiana attorney long ago, as related by Chief Justice Wilson. He reported that a case was pending before an Illinois justice of the peace, down on the Wabash, in which an Illinois lawyer was engaged on one side and an Indiana lawyer on the other. In the course of the trial, the Illinois lawyer asserted a principle of law which was denied by the Hoosier, who denounced it as the most absurd proposition ever heard of in any civilized community, and that it never could be the law except among barbarians. Upon this, his opponent placed before him the Illinois statutes, which declared the disputed proposition to be the law of this State. After the Indianian recovered from the shock which this statute produced upon his nerve he straightened himself up, and with great solemnity exclaimed: "May it please the court: When I hear of the assembling of a Legislature in one of these Western States, it reminds me of a cry of fire in a populous city. No one knows when he is safe; no man can tell where the ruin will end." However, as the effect of the statute might be in my favor, I could not complain of it, and a little reflection convinced me that it might have been enacted in the interest of justice.

Perhaps the most important changes which have taken place since my time, by direct legislation, are in the law of evidence. During all the time when I was connected with the administration of the law, it was assumed that no one who had a direct pecuniary interest in the event of a trial could tell the truth when under oath; hence it was a settled rule that no one who had the slighest pecuniary interest in the result of a trial could be a witness, and for the reason that it was assumed that such interest would induce him to testify falsely. No position in life, no established

character for rectitude, no confidence which all members of the community might have in the uprightness of any man—earned by long years of integrity and probity—could relieve him from the suspicion which the law arbitrarily stamped upon him, while no one dreamed that this legal suspicion of unreliability cast the remotest reflection upon his integrity. We simply found the law to be so, and that it had been so, time out of mind, and no thought of the injustice of such a rule ever dawned upon us; no lawyer ever thought of questioning its propriety, or even suggested a doubt that it was not the safest way for the ascertainment of truth. No judge ever thought of intimating, in an opinion, that a regret was felt that the sources of light which might develop the most important facts had been thus shut out, and that court or jury had been left in darkness where it was evident that the brightest light might have been thrown upon an important transaction, from sources of which the most skeptical could entertain no moral doubt.

This serves to show what curious beings we are, and how firmly we are wedded to old customs and old modes of thought. We are inclined to look upon the ways of our ancestors as sacred, and therefore as just. The statute allowing parties in interest to testify in courts of justice caused a radical change in the administration of the law, and while it undoubtedly opened a wide door to the inducement to perjury, it as clearly afforded a new means for the ascertainment of truth. It was a revolution, in fact, and when once started it swept over this and other countries with astonishing velocity. England, whence we derive most of the principles which have governed us in the administration of justice, and whose conservatism has prompted her to move slowly and cautiously in the adoption of reforms, cordially embraced this reform with a general approbation of the courts and of the legal profession; and the gentlemen of this association can tell better than I can what has been its effect upon the administration of justice, though

I am told that it has met with general approbation; but I presume that the change was more cordially accepted by the younger members of the bar and of the courts than by the older ones, into whose very being the old system had struck so deep a root by long practice and accustomed mode of thinking.

The change made in the criminal law which allowed a prisoner to testify in his own behalf upon his trial, I think, from what I heard about the time the change was made, did not meet with quite so ready an acceptance. I heard it characterized as a legislative device to promote the crime of perjury by offering a reward, often of inestimable value, for the commission of that crime. There may be, and probably is, some truth in this criticism. The inducement for a guilty man to testify in such a way as to shield him from the punishment to be inflicted for a crime committed, is undoubtedly very great, and that premium is no doubt very often offered to those on whose consciences the obligations of an oath would press very lightly. True, courts and juries might not feel themselves obliged to give the same credence to the testimony of a prisoner in his own behalf, as they would to that of an indifferent person, but that could not remove the temptation to perjury or the danger from it. Again, it presents a danger which must ever menace him who has some conscience left, and so, we may presume, is not a hardened criminal, and who refuses to go upon the stand and commit perjury in order to escape punishment for crime. Although courts and counsel are forbidden to urge this fact in order to create a prejudice against the presumption of innocence, it would take something stronger than the mandate of a statute to prevent a jury from noticing it and thinking about it, and in fact, from being influenced by it. In that way, it does undoubtedly have a prejudicial influence upon the cases of the least hardened criminals.

The passage of our statute which opened the doors of the learned professions and other occupations to females, was

another change from the old modes of thought and proceeding in our profession. Of the thousands of applications, during my time, of candidates for admission to the bar, not one was a female. While we had no statute expressly forbidding this, it was so generally accepted as the law that women were ineligible to the profession, that no one seems to have thought of making such an application, no matter how eminent may have been her legal qualifications. But let not the present generation boast that it was the first to discover her fitness or capabilities to study or comprehend those principles which would qualify her for professional life. That was known and recognized and acted upon long ages ago.

The ancients were not destitute of distinguished women in the medical profession. Agnodice, an Athenian maiden, assumed the garb of a man to enable her to study medicine, in which profession she became famous. As her popularity and her practice greatly increased, the male physicians were filled with envy, and accused her of corruption before the tribunal, to whom she confessed her sex; when a law was immediately made allowing all freeborn women to study midwifery, to which branch of the practice she was most devoted. She was born 506 years B. C.

Hortense, not a Roman matron but a young lady of the Roman Empire, was the most learned lawyer of her time, when the science of the law absorbed the thoughts and studies of the most learned and talented of that great people. At the age of twenty-one years, she had already acquired such fame that she was placed at the head of the most distinguished of the Roman law schools, and it was said of her that her beauty was so great that the beholder who gazed upon her could think of nothing else, until she opened her mouth to speak, when the charm of her eloquence dispelled all other thoughts, and her beauty was forgotten amid the fascinating influences of her address and the irresistible force of her reasoning.

She was the daughter of Quintus Hortensius, a great

orator and lawyer. She was born eighty-five years B. C. The speech which she made in defense of the 1,400 Roman matrons against a special tax, proposed by the Triumvirs, has come down to us in the language in which it was uttered, and well sustains her reputation as an orator; and she succeeded so well that 1,000 of her clients were exempted from the tax.

These must serve as examples of women who acquired great distinction, and displayed great ability in professional life among the ancients.

While there have been many female sovereigns in the past who have illustrated their capacity to study and understand the sciences of statesmanship and of jurisprudence, public sentiment, begotten of prejudice and egotism, has practically closed against women the doors which lead to what are called the learned professions, until within the last few years, while their great abilities in the conduct of affairs in which they were permitted to engage has been a thousand times illustrated by the most pronounced success. When our own Legislature passed a law authorizing women to engage in the different occupations on the same plane of right with men, many of the old school of thought anticipated that its effects might be calamitous. For myself, I did not participate in this apprehension. No doubt, early memories and associations may have had their influence upon me in this matter. I was born and brought up in the Society of Friends, a religious denomination in which the endowments and qualifications of women were always distinctly recognized. They not only took part in the business meetings of the society, but their right to preach in the religious meetings was recognized equally with that of men; and in my boyhood, when I was so situated that I could attend those religious meetings, I heard sermons preached by women, and prayers made by them, which made as lasting an impression upon my young mind as did ever those of men. The neat, plain dress of such a speaker, her sweet, benign countenance, her charming gentleness of manners, her soft and winning per-

suasions, were calculated to win the heart of the hearer when the discourse of a man would have sounded harsh and almost repulsive. It seemed to me that she knew better how to touch those strings which vibrate from heart to heart, and especially those which reached down deep into the youthful soul, than did the other sex; and this loving and benign influence was understood, appreciated and utilized by that denomination of Christians; and I have no doubt that a memory of this had much to do with shaping not only my feelings but my judgment on the subject.

I presume numerically the medical profession has been augmented much more by lady practitioners than has the legal profession, and this may result from some peculiar endowments which they possess for the former. Their sympathetic nature, their natural gentleness, their quick perceptions, come to the aid of their judgment and their learning, and seem to endow them especially for the practice of the healing art; while the practice of the law seems to partake more of the belligerent character, and so may be thought to require a sterner nature and disposition. This, I say, may be one reason why fewer ladies devote themselves to the legal than to the medical profession. Why so few devote themselves to the cure of souls, I will not attempt to say; but I may assert, without fear of contradiction, that a large proportion of those who have joined the clerical profession have met with marked success. But it is not in professional life alone that women have abundantly vindicated their right to the highest respect and consideration. The utility of their efforts in the moral world stands forth so conspicuously as to challenge the admiration of mankind, and I may be permitted to point with pride to their work and recognition in the Columbian Exposition, in connection with which their labors and their influence are felt in all civilized countries.

Gentlemen, I speak to you as from a former generation. We were once young, vigorous and ambitious. We sought to fill the places to which fortune had assigned us, accord-

ing to the best of our ability, so that the world might be the better for our presence. We appreciated that we were members of a high and an honorable profession, with corresponding responsibilities. History shows that lawyers are more frequently called upon by their fellow-men than members of any other profession or calling to take part in the conduct of public affairs; and by this is the measure of their responsibility fixed. So it has been in the past, so is it now, and so will it be in the future. Whatever flippant expressions may be heard from the ignorant, the prejudiced or the envious, to the contrary, this fact affords us the comforting assurance that the integrity, the ability and the learning of the profession are fully appreciated and valued by the community at large all over the country; and this of itself should act as an inspiration to every member of the profession to strive with his utmost energy to maintain that high standard of morality and integrity which has secured the confidence of our fellow-men, and enabled us to fill out the measure of usefulness which our place in society has rendered possible. Should the time ever come when the profession of the law shall be dragged down by its votaries from the position of a noble and an honorable profession to that of a venal trade, then the name of lawyer will become a title of reproach instead of an honorable appellation.

But few are now left who commenced the struggle of professional life with me, animated by hope and ambition, inspired by indomitable will and a fixed purpose to succeed. I have seen them drop out one by one as we traveled the road of life, side by side, till now but isolated instances are left of those who can tell from memory the incidents of the distant past; but they have left dotted along that way beacons of brilliant light, which have served to guide their successors, and will serve to guide those who shall still come, later, to the goal of honorable distinction and of usefulness. It is one of the happiest hopes that I can now entertain that honesty and honor, usefulness and learning will be upheld in

the future as in the past, and that the name of our profession may continue to be the synonym of all that is noble, useful and energetic. The comforting hope of the past must rest in the future. So can the younger men who are just coming upon the stage of life most honor those who have gone before them.

REMINISCENCES OF THE CHICAGO BAR.

ADDRESS DELIVERED BEFORE THE CHICAGO BAR ASSOCIATION FEBRUARY 11, 1893, BY JOHN DEAN CATON.

Mr. President and Gentlemen of the Bar Association of Chicago:

I am happy to accept your kind invitation to meet you here at this time, and to say a few words about the earliest history of our profession in Chicago. It is indeed grateful to find myself surrounded by a legal atmosphere, in the presence of gentlemen of the profession which I love so well, in a city which now stands where stood a little hamlet sixty years ago, and where I first commenced my professional career, and where it was my fortune to commence the first action ever brought in a court of record in Cook county. I think I may be pardoned for feeling a certain measure of pride in having had my name thus associated with the first judicial records of this county. There was no city here then, nor even a village corporation; for it was six weeks after my arrival before 150 male inhabitants over the age of twenty-one years could be mustered in the place—a statutory condition necessary to form a village corporation. It so happened that I was appointed the first corporation attorney, which was the first office I ever held in this State. Although the emoluments were very small, I well remember that they were very opportune, and were probably as gratefully received as have been those of any legal representative of the town or city since.

Although as early as 1830 the statute fixed the terms of the Circuit Court in Cook County and made it the duty of

Judge Young, of the Fifth Circuit, to hold the court here, of which Col. R. J. Hamilton was the clerk, yet no case of a civil or criminal nature had arisen to be placed upon his docket till more than two weeks after my arrival, and the judge, having been informed by the clerk of this fact, had not appeared to open the court.

The first case that was ever entered upon the docket of the Circuit Court of this county was a criminal case, and the first fee I ever received was for prosecuting a thief who had stolen $36 of Bellows Falls money from a Mr. Hatch, who employed me to prosecute him and recover the money, which I did. I received $10 for this service, the first fee I ever received in this State, and I never received a fee with more satisfaction, for it just paid my two weeks board up to that time—to have paid which would have exhausted my funds. Giles Spring, whose arrival had preceded mine by a few days, and Colonel Hamilton defended the case before the magistrate, and then it was that both Spring and myself had an opportunity of being heard before a Chicago audience (for nearly every man and boy in town were present), and we both made our speeches as much to the people as to the magistrate, who bound the prisoner over to the grand jury; and so Colonel Hamilton had the pleasure or the pain of writing down his client's name, the first upon his docket, and filing his recognizance.

The second action upon that docket was an attachment case, which was commenced by me. Of course I was very glad to get it. Spring necessarily was employed on the other side, and he beat me on the trial before the first petit jury impaneled in the Circuit Court of this county and got a good fee, for those times, while I had to be content with a $5 retainer.

As neither Spring nor myself received our licenses to practice in this State till October following—when I went on horseback to Greenville, in Bond county, to obtain them —we signed our clients' names to precipes, pleadings and such

other papers as otherwise we would have signed as attorneys.

When we remember that in the absence of panics and similar financial convulsions the amount of legal business is a safe criterion by which to determine the amount of commercial transactions, the entire absence of litigation in the higher courts would indicate that little commercial business had been carried on here up to the time of which I speak, and the entire absence of crime which had to be dealt with by the Circuit Court speaks well for the peace and good order of the community. In truth, nothing had occurred which could not be dealt with by justices of the peace, and three such officers represented all the judicial force in the place, namely, Isaac Harmon, Russell E. Heacock and Archibald Clybourne. Only one of them, Harmon, kept an office, and he did nearly all the business. Mr. Heacock was the only lawyer of the three, and he was a very good lawyer too; but in the absence of any professional business he opened a carpenter shop, a trade which he learned when young; his shop, built of logs, was situated on the corner of South Water and State streets, and it was from him I procured the warrant for the arrest of the criminal already spoken of. The criminal was brought in just at dusk, and the justice took his seat on a saw horse by the side of his work bench, upon which he placed a lighted tallow dip, held in position by four nails driven into a block of wood.

This particularity can only be justified by my desire to enable you to understand the judicial position at the very commencement of its history in this city, and to enable you to draw a contrast between then and now. At that time there was already an appreciable amount of business in the Circuit Court of La Salle county, and especially in Putnam county, but there were no resident lawyers in either, and clients depended upon the circuit riders for the conduct of their cases.

These lawyers were a class who traveled the circuit with the judge, and who had to practice law on the wing, as it

were, and who received their retainers about the time court opened and frequently had to learn their cases as the trials progressed. Their experience in this mode of practicing law enabled them to do this with extraordinary facility and success. As a general rule they were well grounded in the fundamental principles of the law; and habit had enabled them to think quickly and accurately and without confusion when required to pass from one subject of thought to another.

The first Circuit Court which I ever attended in this State was in October, 1833, at Pekin, in Tazewell county, where I first met Judge Lockwood, who held the court; John J. Hardin, State's attorney; Stephen T. Logan, John F. Stuart and Dan Stone, of Springfield, who were the first circuit riders I ever met. I next attended a Circuit Court at Greenville, in Bond county, which was held by Judge Smith of the Supreme Court, also in October, 1833, where I first met Jesse B. Thomas, who was State's attorney in that circuit. The next Circuit Court which I attended was the first ever held in Cook county, in May, 1834. Judge Young held the court. Thomas Ford, of Quincy, was State's attorney. The foreign lawyers in attendance were William L. May, of Springfield; Benjamin Mills and James M. Strode, of Galena. I do not remember the number of cases on the docket at that term. Spring and I were engaged in them all, on opposite sides, excepting one in which Mr. Ford represented the United States. I had brought a writ of habeas corpus directed to the commander of the fort here to procure the discharge of a soldier who had been enlisted before he was eighteen years old without the consent of his father.

The State courts at that time exercised that jurisdiction, even where the Federal courts were conveniently near, as I showed by a case in Johnson's reports. The question of jurisdiction was not seriously contested, but the court held that the *onus* lay upon me to prove that the father had not consented to the enlistment, and because I did not succeed

in doing this, clearly, the soldier was remanded. I suppose that no State court at this time would entertain jurisdiction in such a case.

Six days after the opening of the Circuit Court here the court was required to be opened at Ottawa, in La Salle county, which is eighty-four miles distant. It required two days' riding on horseback to reach that place, and as half a day of the term time was given up to a political discussion between Colonel May and Mr. Mills, rival candidates for Congress, practically but three days were allowed to dispatch the business in court, but that proved to be amply sufficient. Ford, State's attorney, was called upon by the judge to charge the grand jury. This gave him an opportunity to be first heard in Chicago, where he had never been before. I went to Ottawa with the judge and lawyers who had come here with him and attended that court. There were several more cases on that docket than had been on this, but I obtained but little business there, although I had been there twice before, and had formed a good many acquaintances, having on the previous 4th of March attended, as a delegate from Chicago, the first political convention ever held in Illinois. In that convention we nominated one candidate for the State Senate and one for representative in the General Assembly to represent all the northern part of the State as far south as Peoria, including that county. I did not anticipate much pecuniary result from my attendance upon these various courts which I have mentioned, but it served to extend my acquaintance and especially to familiarize myself with the practice of the courts in this State, and the mode of doing business here, which I early learned was widely different from that which prevailed in New York, where I had studied my profession.

The day after my first arrival in Chicago I called at Colonel Hamilton's office. He then held the offices of clerk of the Circuit Court, clerk of the County Commissioners' Court, and judge of the Probate Court. He received me with a cordiality and welcome which were one of his dis-

tinguishing characteristics and secured for him the warm friendship of all with whom he came in contact. He invited me to come to his office to do any writing I had occasion to do and kindly loaned me the use of his copy of the statutes of 1833, which I there first read, and, I may add, carefully studied. In New York the statute gives certain fees to the successful lawyer, which must be paid him by the unsuccessful party, because it is deemed but just that he who wrongfully causes litigation should pay the cost which he has compelled by his wrongful acts of omission or commission, and I was greatly disappointed to find that the fee bill provided no compensation to be paid to the lawyer of the successful party; and I may now say that in my opinion the rule which compels the party in fault to pay at least a part of the expense which he compels the party who has suffered wrong to incur, in order to recover his rights, is but just, and consistent with sound policy. The law which exempts a man from paying anything which he has compelled the injured party to incur, encourages litigation.

This is not the only law which seems to have been made in the interests of wrong-doers. In our Criminal Code the State has placed itself to a great disadvantage in the prosecution of criminals, by giving them much greater chances for escape than the State has for conviction. I repeat that many of our laws seem to be made for the benefit of delinquents and criminals. Notwithstanding my disappointment at not finding in the fee bill an allowance for the successful lawyer, I finally contented myself with the reflection that if others could stand it I could, and directed my studies to the rest of the statute.

I may mention one other case which I had to conduct in 1833. With the eastern immigrants had come a number of negroes, perhaps eight or ten. Of course, coming from the free States, they had no free papers, as our statute required, which had been framed upon the manifest assumption that all negroes were born slaves and that such must be the legal presumption, only to be overcome by document-

ary evidence showing their right to freedom. Some person in the town, badly troubled with what we then called "negrophobia" on the brain, swore out warrants against every negro here and had them brought before Squire Harmon to compel them to present their free papers or be sold as the statute required, and they employed me to defend them. Fortunately, the county commissioners were then in session, and I asked the court to hold the cases open till I could appear before that body and prove that all my clients were born free and obtain free papers for them. Of course I could show no statute authorizing such a proceeding but the justice very willingly granted me the time, when I marched my clients over to Colonel Hamilton's office, where the commissioners were in session, and made my application for free papers. I made a little speech, showing that from the very necessity of the case they must have jurisdiction and exercise it too, to prevent a monstrous wrong, which would be a disgrace to both the town and the State. The commissioners allowed me to produce my proof, which was abundant, and then made the order that the clerk should issue the proper papers to show that fact, when immediately Colonel Hamilton set himself to work and got up a most elaborate document, couched in the most formal terms, sealed with the seal of the court and issued one to each of my clients. Armed with these documents, we returned to the justice's office, whereupon the justice decided that those were good enough free papers for him, and immediately discharged the prisoners and taxed the cost to the prosecutor.

Another incident that happened a few years later may be worth relating, as it shows a great change in the position occupied by the negro in Chicago. At that time a very considerable colony of colored men lived here and among them was George White. He had a very loud voice and made himself town crier. He was both smart and ambitious. At the same time there lived in the gutters of Chicago, a young man named Harper. He was a man of

liberal education, but had succumbed to the disease of drunkenness; had enlisted as a common soldier in the army, where he was found to be absolutely incorrigible, had been drummed out of camp at Green Bay, whence he had made his way to Chicago, where he continued his dissipation and subsisted on charity and by doing little chores about the town. Everybody felt a kindly feeling toward Harper, for he was learned, witty and amiable, but he was a vagrant of the most pronounced description, and some one caused his arrest as a vagrant. He was convicted and condemned to be sold for the shortest time for which a bid could be obtained at public auction. George White cried the sale throughout the town, with many commendations of the goods to be sold. A large concourse gathered at the auction block, nearly all of whom had a kindly feeling for Harper, who had got sobered up while in confinement, and we all appreciated that he was possessed of high and keen sensibilities when sober. The constable offered the victim for sale, and when he called for bids George White bid twenty-five cents for a month's service. No other bid being received he was struck off to the negro, who walked up with a satisfied expression of countenance to take possession of the goods; but just as George was about to lay his hand on Harper the latter made a bolt to the ring of spectators which surrounded the place, when an opening was immediately made in it through which he ran, when it was closed up before George could pass through in pursuit of his fleeing chattel.

Harper took refuge among his friends who concealed him and kept him in hiding for a week or two while the purchaser was vainly seeking him, when some one gave him the quarter back, for which he disclaimed ownership, and the vagrant reappeared unreformed and pursued his old course of life. The disease had become so fastened upon him that it seemed absolutely uncontrollable. He actually sold his body to a doctor of whom he was begging for half a dollar, who, with the hope of disgusting him, offered the money

for his body for dissection, who assured him that if he gave him the money he would freeze to death before morning. Harper eagerly embraced the offer, actually signed the deed for his body after death, assuring the doctor that he expected to outlive him. After a number of years he finally disappeared from Chicago. The next we heard of him in Baltimore, where with six other reformed drunkards he formed the Washingtonian society and distinguished himself as a lecturer on temperance, the fame and influence of which fifty years ago spread throughout the United States. Through the influence of that society many drunkards were reformed and became distinguished lecturers in the temperance cause.

Edward Casey was the only lawyer that I distinctly remember who joined us here in 1833, but Alexander N. Fullerton may have come in that year. In 1834 our bar was augmented by the arrival of a very considerable number, several of whom became distinguished, but it is beyond my present purpose to name them now. For a score of years thereafter the number was increased only by immigrants, but later by native-born Chicagoans. How many, you know better than I do.

Now it will compare favorably both in numbers and ability with any bar in the republic, and as I trace back the thread of memory to the very beginning I may feel a just pride in noting its advancement from that time to this, not only in learning but in reputation. If I contemplate the past with great satisfaction, I anticipate the future with high hopes. I feel that I may appropriate to myself some portion of the credit that may attach to the bar of Chicago, and should feel as a personal reproach any stigma which may ever fall upon it. Remember, gentlemen, that the highest integrity can alone maintain that reputation which secures to the bar the public confidence which has selected from our profession so large a proportion of the public men who have so nobly maintained the institutions of our republican government. So long as we shall deserve it, from our ranks

will be selected a large proportion of those who shall make and those who shall administer the laws of the land; and I may be permitted now to wish this association a long and prosperous career, and its individual members long, successful and happy lives.

The appreciation by a later generation of a somewhat active and extended professional life is the sweetest consolation an old man can have. Gentlemen, I thank you.

WHO GUIDED THE MORMONS TO SALT LAKE.

A DESCRIPTION OF THE GREAT SALT LAKE COUNTRY AND HOW IT BECAME INHABITED BY THE MORMONS.

In the latter part of 1844 I received a copy of "Fremont's First and Second Expeditions to and Beyond the Rocky Mountains," which I read with great interest. In his second expedition he gave an account of the Great Salt Lake, now called Utah, which he visited on his way west, which was the first authentic account ever published of that lake and region, and on his return he discovered the Utah Lake, which is a fresh water lake lying about twenty miles south of the salt lake and which discharges its fresh water into the salt lake, of which, and the surrounding country, he also gave an account.

He gave a very good account of his observations made in what may be called the Utah Valley, which suggested the great possibilities for the future of a civilized settlement in that valley.

That was the first session of the Legislature after the murder of Joseph Smith, which had occurred in the previous June. When the Mormons settled in Hancock county, they were petted and caressed by both political parties, as both wanted to secure their votes. The favors thus showered upon them undoubtedly made them arrogant and made them magnify their importance as a political factor in the State, and under this influence some of the Mormons committed acts of outrage upon the Gentiles, as they called everybody not of their own people. A portion of these Gentiles were friendly to them and defended them through thick and

thin; these were called Jack-mormons; one of whom, named J. B. Backenstos, they had elected to the Legislature. His special business was to look after their interests in that body, and in the performance of this service he certainly had a very difficult task on his hands, as they had become as generally odious as they had been popular before, when both political parties were endeavoring to secure their votes; and now they vied with each other with equal zeal in their endeavors to oppress them. A number of the leading Mormons, headed by Brigham Young, were at the Capitol to assist and advise with Backenstos in his endeavors, more to protect them against hostile legislation than to obtain any favorable legislation, which was manifestly impossible.

In this state of things I met Backenstos one morning in the rotunda of the State House, when on my way to the Supreme Court room, and asked him how he was getting along in his efforts for his Mormon constituents; he replied that things looked very bad; that everybody was down on them; that both political parties were vieing with each other in their efforts to oppress them; that nobody would listen to reason or justice or even common humanity, and that they were already driven to extremities. I then had Fremont's report under my arm. It then first occurred to me that the Salt Lake country, in the midst of the Rocky mountains, would afford them a secluded retreat where they could run things their own way without interference from the outside world for the next hundred years, and at his request I gave him the book when I had turned down the leaves at those places where the valley of the Salt Lake is described, and he took it to his constituents with my suggestions for their examination and consideration.

At the end of perhaps two weeks, he returned me the book with the thanks of his elders, who, he said, were so favorably struck with my suggestion that they had already determined to send an exploring party to the valley of the Salt Lake the next spring, who would give it a thorough exploration, and if they should make a favorable report, they

would, as soon as possible, remove their people to and take possession of that country.

This was accordingly done; a favorable report was made by the exploring party and the removal was commenced and prosecuted as rapidly as that could be effected, under the leadership of Brigham Young. In this exodus the great bulk of the Mormons joined, though some of them who did not believe in the polygamy doctrine of Brigham Young refused to go, but remained in the east and formed a small community by themselves, where they and their descendants still remain without further persecution.

About twenty years later, when overhauling a box of books for which I could not find room on the shelves of my library, I came across this same copy of Fremont's report, which called to my mind the incident above related, and it occurred to me that here was an incident of sufficient historic value to entitle it to record among the archives of our State; so I wrote it out on the fly-leaf in this copy of Fremont's report as being the book which first suggested the removal of the Mormons to the Salt Lake Valley, and presented it to the Chicago Historical Society. Everybody is aware that the Mormons claimed that they were first led to that retreat by a divine inspiration or interposition, the truth of which I will not deny, but this book was the instrument selected by the author of the inspiration to effectuate his purpose, for it served to select the place and to point out the road to it.

I should have inserted these facts, although not strictly connected with the judicial history of the State, at an earlier place in this series, had I not known that Judge Moses, who was the librarian in charge of this book, was preparing an elaborate history of this State, and assumed that he would deem it of sufficient importance to deserve a place in its history; but an examination of that work since its publication shows that it is not there mentioned. A note just received from Judge Moses informs me that he recollects a few years ago that I called upon him, and at my request he

procured the book referred to and read the note on the fly-leaf to me; that he intended to insert it in his chapter on the Mormons, but that it was accidentally omitted; and that it will be inserted in a revised edition of his work. He regards the incident of historic value and worthy of especial mention.

CHICAGO, April 19, 1893.