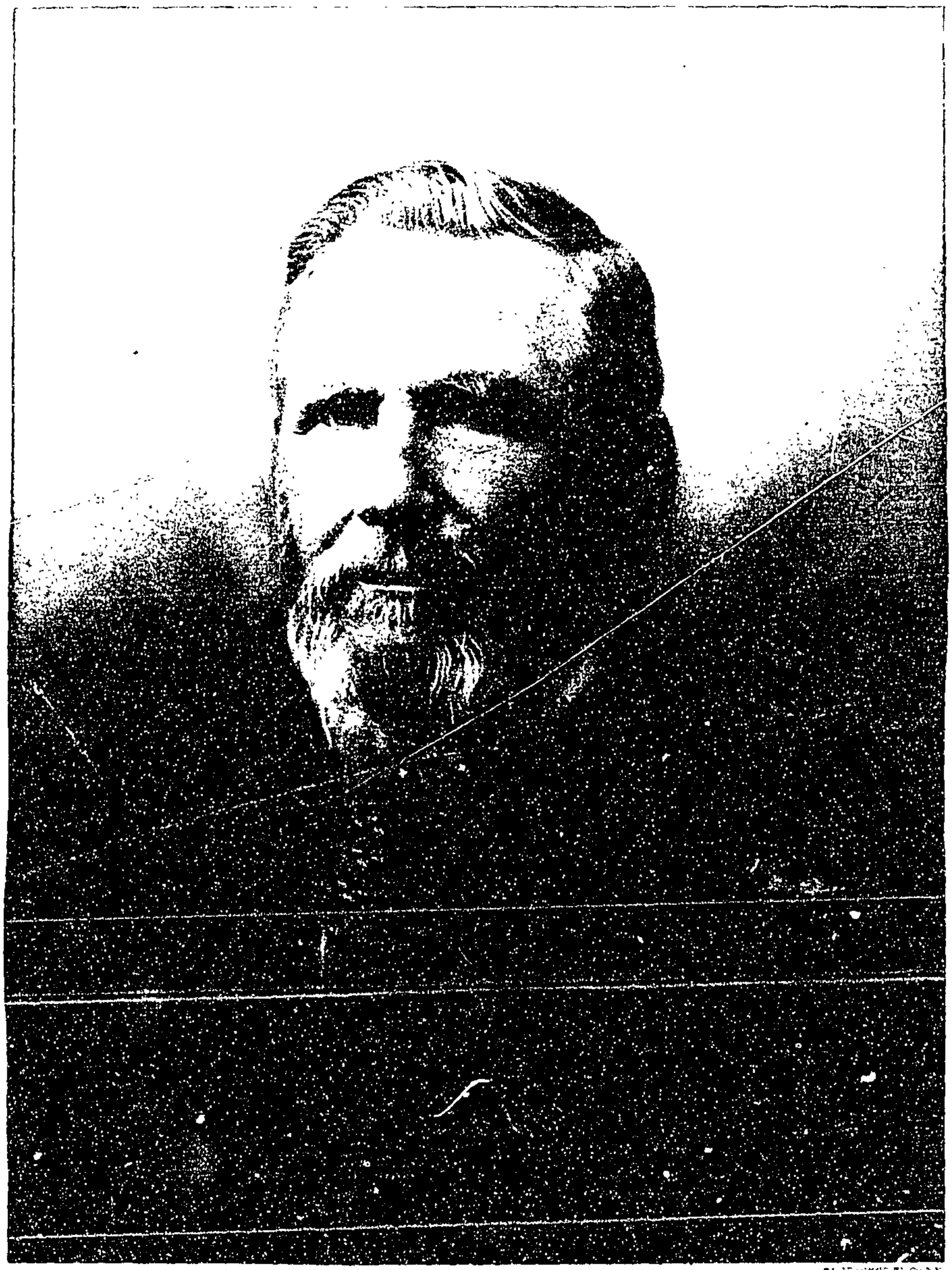

R. P. Rooney

THE

BENCH AND BAR

OF

CLEVELAND.

BY

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PREFACE.

If that which follows does not justify the existence of this book, no words that can here be set down will carry weight, or be accepted as evidence in its favor. It grew out of the fact that no attempt had yet been made to present a history of the Bench and Bar of the second county of Ohio, and was encouraged into life by the good words of those best competent to judge of the need of such a work, and to give advice as to what form it should assume, and what it should contain. Much more it might have contained, and much more it perhaps ought to contain, but the limits assigned it were those of necessity; and in considering the things it lacks, the members of the bar are asked to consider also the great variety of information it presents, and to take note of the time, labor and money expended in its preparation. The editors do not care to take up in excuses the space permitted for thanks to the able writers whose pens have been engaged upon this work; to those, within the bar and without, who have so patiently and willingly imparted information; and to those by whose material encouragement this history has been possible. To all these, and to the legal profession of Cleveland, it is respectfully dedicated.

It will be borne in mind that the general history of the courts has been carried down to June 1, 1889.

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INTRODUCTORY.

THE BENCH AND BAR OF CLEVELAND.

INTRODUCTORY.

JAMES HARRISON KENNEDY.

The little settlement formed near a century ago at the junction of the Cuyahoga river with Lake Erie managed to exist until 1816 without a church organization, and held no church building until 1829; but courts, and the machinery for the conduct of civil affairs, were called for and supplied at an earlier day. It is, I know, a popular impression that the pioneer settlers, not only of the Western Reserve, but of all Western sections where New England elements predominated, were pious and God-fearing men, who had little need of courts, and less of the officers of the law;—an impression too often strengthened by writers who talk of "the good old times" in a strain that would indicate that all times that were early were good, with no bad times or bad men interspersed.

The facts are,—as can be demonstrated by any one who looks under the surface of popular narrations,—that the strong arm of the law was needed in early Ohio as elsewhere; and that those who would protect themselves against violence, theft and the many forms of small swindling known in all times and the world over, were led to seek the establishment of courts and the enforcement of the laws, as soon as enough could be gathered at any center-point to make such proceedings possible. While the hardy and attractive virtues of courage, comradeship, hospitality, and back-woods chivalry existed in abundance and made the history of northern Ohio memorable by their constant display, there are too many instances recorded in proof of the presence of less attractive qualities, to be ignored. As Professor B. A. Hinsdale has well said, in illustration of a point similar to the above: "The first settlers were generally not godly men, such as founded Plymouth, Massachusetts, and Connecticut, or even Marietta and Granville, Ohio. The men who have created the traditional view of the early history

of the Reserve have either been ignorant of the following facts, or they have accorded to them little weight: First, the Reserve was opened to settlement at a time when religion in New England was at a low ebb. Secondly, Old Connecticut did not at first send, as a rule, what she considered her best elements to New Connecticut. At a later day, the character of the emigration improved in respect to religion and morals; but the first emigration was largely made up of men who desired to throw off the heavy trammels of an old and strongly conservative community, where church and state were closely connected, and where society was dominated by political and religious castes. Still further, the East was at this time swept by an epidemic of land speculation; while the laxative moral influence of a removal from an old and well-ordered society to the woods produced its usual effects."*

Doctor Hinsdale cites us to an authority† who casts a flood of light upon the moral and religious character of north-eastern Ohio, not proving that people here were worse than elsewhere, but that they were not all saints of the latter-day, ready to be translated without death, or beyond the criticism of modern biographers. Doctor Robbins was a missionary who set down his impressions as they came, in the privacy of his own diary, and no doubt with an idea that beyond the circle of his own descendants they would never see the light or undergo quotation. Doubtless he was something of a Jeremiah, who was disposed to see gloom where one of the temperament of Beecher would have caught the early gleamings of a better morn, but the plainness of language he employs leaves little doubt of his meaning. No section that deserved censure was spared; no denomination that needed correction was left unadmonished. There was a lack of religious interest everywhere; at Hudson,—afterwards one of the centers of religion and education in the West,—the people were "dull and worldly;" at Cleveland (in 1804) they were "loose in principles and conduct," and but few "had heard a sermon or a hymn in eighteen months." In Mesopotamia some were "much inclined to infidelity;" at Windsor the people were "thoughtless;" at Mentor, "much inclined to infidelity and immorality," while trading was indulged in on the Sabbath; at Painesville, "not one seemed to have the least regard for the Sabbath;" at Willoughby, one of the leading settlers "did not thank the missionary society for sending missionaries;" Newburgh was accused of "infidelity and profaning the Sabbath;" and no wonder that Doctor Hinsdale finds food for thought in Doctor Robbins' declaration that "the greater part of the New England people in the country are pretty loose characters." To quote,

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*"Rev. Dr. Robbins on the Western Reserve." By B. A. Hinsdale, A. M., in *Magazine of Western History*, for August, 1889, page 353.

†"Diary of Thomas Robbins, D. D., 1796-1854." Printed for his nephew. Owned by the Connecticut Historical Society. In two volumes. Edited and annotated by Increase N. Tarbox. Boston, 1886.

as bearing upon this point, the forcible remarks* of a close student of Western Reserve history,—Judge H. C. White,—"the religious and political opinions of men at the close of the last century were greatly colored and affected by the ideas born of the French revolution. We do not at this distance rightly appreciate the force upon men of the new habits and modes of thought which found their way to America out of this great historic convulsion. No spirit has more reacted upon Puritanism than the spirit which arose out of this great upheaval. The political and religious doctrines of this grand epoch mingled with the nascent elements of society in these western wilds. They turned men for the time from the formalities and outward observances of religion. It was so with the rudiments of social growth even in the Puritan settlement of Cleveland. History records the fact that infidelity achieved an early and strong hold among the settlers. It was open and aggressive. It is said that in ribald mocking the effigy of Jesus was shockingly paraded in the new streets of the village. It was many years before any organized religious work found favor here; and by many years the distillery antedated the church."

Yet these are only the shadows cast across a luminous background. No community planted west of the Alleghenies, in any period, had more to encourage it in its own age and commend it to the future, so far as good blood and training are concerned, than pioneer Cleveland, and that quarter of the state of which it is now the metropolis. This fact is so apparent in all the details of its history that no arguments need be urged in its behalf. As Judge White has said, in the paper already quoted: "The Connecticut Western Reserve is the last home of colonized Puritanism. In individuals and families it has been carried into the Mississippi valley and beyond it up the slopes of the Rockies and down the Western slopes, but in no other locality of the West does its organizing quality appear,—in no other place has its social flavor so permeated as here upon this Western Reserve. It was actually colonized here. The settlement of Northeastern Ohio was unprecedented. It was not the straggling immigration of a few families; it was the veritable exodus of a colony." The stern, moral law of Plymouth indeed made a mark upon the time. "The Puritan inculcated a righteous sense of justice. He drew his legal inspirations from that ancient people whose legal code was graven on tables of stone. He may have been too ready to condemn the accused. And this same bias in the administration of public justice may have left its traces in this community. It is said that one of our legal criminal advocates in Ohio, a short time ago, was engaged on the defense in a noted case of homicide occurring in our midst. When asked the chances of his client, he said that if the trial were pro-

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*"The Western Puritan." Henry C. White, in *Magazine of Western History*, October, 1885, page 619.

gressing elsewhere, away from the heart of the Western Reserve, he could acquit his client. 'But,' said he, 'the accused is at the hard, unmerciful bar of those Puritans, who have reversed the gracious theory of the common law that every man is presumed to be innocent until proven guilty—and the result is doubtful.' But while we laugh at that quaint, fantastic and harsh asceticism which fulminated ponderous statutes against minute and trivial offenses, we should never forget that to this grand spirit of Hebraism —to that lofty ideal of the Puritan fathers who would fain have made the world a very city of God,—we owe the incalculable blessing of that conserving moral force springing from the Bible which finds its way into all the currents of our civil and social life." Judge White is not alone in this estimate of the strength and lasting endurance of this great force. "Though Puritanism has now outgrown most of its primitive peculiarities," says the Honorable Harvey Rice,* "yet many of its traits, like golden threads, are still apparent, not only in the texture of New England character but in the finish of Western Reserve character. It is this finishing touch that has given to Western Reserve life a moral power that wields a positive influence in the affairs of both church and state. . . . And though she reveres her ancestry, she never allows the Puritanic element she has inherited to misguide her judgment in matters of faith or in freedom of action. In a word, she has acquired a character of her own that is as remarkable for its noble traits as it is for its originality."

I have quoted these fruitful paragraphs for the purpose of showing why, in one respect, the bar of Cuyahoga county,—and especially in that period which now belongs altogether to history,—should be granted a distinction possessed by few like bodies in the West. During the two first decades of its record it was not a rude body of crude and half-educated men, evolved from the chaos of a new region, as a casual glance might show, but rather a New England court jurisdiction transplanted almost bodily from New England. The products of the best families; the sons of Revolutionary statesmen and Revolutionary soldiers; the graduates of the foremost colleges of the East; the legal seedlings of the best American culture of the day, ready to ripen in the virgin soil of New Connecticut; the young men of promise and hope, who banished themselves from the graces and culture of home, where there was little room unoccupied, and came on horseback or on foot to the open spaces of the West, where they, too, could expand and take root, as their fathers had before them;—these were the first lawyers of the Western Reserve, who have made the legal history of Ohio illustrious by their genius, and brightened it by the nobility of their characters. Call the roll of the first

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*"Sketches of Western Life." By Harvey Rice; published by Lee & Shepard, Boston, 1888, (second edition), page 144.

hundred lawyers of north-eastern Ohio, and ask of each from whence he was transplanted, and about the heart-fibres of almost every one you will find the fragments of a parent New England soil! Pease, from Connecticut; Hitchcock, from Connecticut; Tod, from Connecticut; Andrews, from Connecticut; Ranney, from Massachusetts; Huntington, from Connecticut; Kelley, from Connecticut; Spalding, from Massachusetts; Foote, from Connecticut; Otis, from New Hampshire; Griswold, from Connecticut; Rice, from Massachusetts;—and so the list might be carried on to an indefinite length.

With such men, in all the vigor and power of young manhood, and ambitious for the future while careful for the present,—to set the pace for the new-made bar of Cleveland, the race was sure to be well run, and all the prizes contested.

Evidences are scattered through the pages that follow of the work they performed, the results they reaped, the scanty material returns at first, and the greater returns of honor and money as the country prospered, as their clientage was enlarged, and their powers matured. In the papers found elsewhere, some of these veterans tell of their personal experiences, and speak generous words of those associated with them. While the illy-paid practice of a young lawyer in a pioneer country, and the hardships of circuit-riding before railroads were invented or highways made, do not seem full of invitation to those born in better times and used to the smoother ways of life, it was far from being all darkness or all bitterness; and the surest way to bring the light of youth once more into the eye of one of these veterans of the bar is to recall the days of his youth, when he went forth into the wilderness, like the boy David seeking the giant Goliah. One veteran* has recalled some of these early days in a narrative that will bear brief quotation: "It was the custom to follow the courts in their terms for the several counties of their circuit; so that, substantially, the same bar would be in attendance at courts distant from others fifty to one hundred miles. We travelled on horseback, over very bad roads, sometimes mid-leg deep of mud, or underlaid with the traditional corduroy bridge. Our personal gear, the saddle-bags stuffed with a few changes of lighter apparel, often our law books; our legs protected with 'spatter-dashes,' more commonly called leggins, and our whole person covered with a camlet or Scotch plaid cloak, we were prepared to meet whatever weather befell us. It may well be supposed that meeting together at some favorite tavern, (such was the name in those days), the genial members of the profession, coming from different counties, would be likely to greet each other with more than ordinary warmth and delight. We were generally thrown together in one common, large sitting room, and frequently, in a large degree, in a like

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*"Reminiscences of the early Judges, Courts, and Members of the Bar of Ohio." An address before the State Bar Association, Columbus, Ohio, December 26, 1883. By Hon. Henry B. Curtis.

sleeping room. Thus, conversations and amusements would become common through the whole circle. The profession was rather exclusive, and generally protected by the kind landlord from outside intrusion. Hence, returning to our hotel, after the quarrels and contests of the court room, and refreshed by a supper now not often seen, we gathered in our big parlor, perhaps around a large, brightly burning log-fire, and were ready for anecdotes, jokes and songs, as the evening and the spirits of the party might invite."

The earliest settlers of Cleveland,—that scattered few who were here at the close of the last century,—had little concern for the formation of courts, or their jurisdiction; and the proceedings of the first judicial body of the North-west Territory, at Marietta, in the Fall of 1788,* had little interest for the almost unbroken wilderness of north-eastern Ohio. The first Court of Quarter-Sessions of Trumbull county, to which Cleveland then belonged, was a later and a closer event, being held at Warren, on August 25, 1800. This court was organized in this manner: Under the territorial law, the governor was authorized to designate officers for any new county which he might choose to erect. The justices of the peace constituted the general court of the county, five of their number being designated justices of the quorum, and the others associates. They met quarterly; were known as the "Court of the Quarter-Sessions;" and in their hands was lodged the entire civil jurisdiction of the county—local, legislative, and judicial. The first session opened on the Warren common, at four in the afternoon, under a bower of trees, between two large corn-cribs. It continued five days, and the labors it accomplished can be best shown by the following synopsis of the record,† preserved in the handwriting of Judge Pease:

Trumbull County, } ss.
August term, 1800. }

"Court of General Quarter-Sessions of the Peace, begun and holden at Warren, within and for said county of Trumbull, on the fourth Monday of August, in the year

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*The first Court of General Quarter-Sessions held in the "Territory North-west of the River Ohio," was opened at Marietta, in "Campus Martius," September 9, 1788. The commissions appointing the judges were read. Judges Putnam and Tupper, of the Common Pleas Court, were on the bench, and, with Esquires Isaac Pearce, Thomas Lord and Return Jonathan Meigs, jr. (three county justices of the peace or territorial magistrates), constituted the quorum of our first Court of Quarter-Sessions, held a hundred years ago in the North-west Territory. The first act of the court was to proceed to impanel a grand jury, which was accordingly done, the following named gentlemen constituting that body, namely: William Stacey (foreman), Nathaniel Cushing, Nathan Goodale, Charles Knowles, Anselm Tupper, Jonathan Stone, Oliver Rice, Ezra Lunt, John Matthews, George Ingersoll, Jonathan Devol, Jethro Putnam, Samuel Stebbins and Jabez True. And this was the first grand jury to exercise its important functions in the "Territory North-west of the River Ohio."

†"History of Trumbull and Mahoning Counties." Cleveland, 1882, vol. 1, page 66.

of our Lord eighteen hundred, and of the independence of the United States the twenty-fifth. Present, John Young, Turhand Kirtland, Camden Cleveland, James Kingsbury, and Eliphalet Austin, Esquires, justices of the quorum, and others, their associates, justices of the peace, holding said court. The following persons were returned, and appeared on the grand jury, and were empaneled and sworn, namely: Simon Persons (foreman), Benjamin Stowe, Samuel Menough, Hawley Tanner, Charles Daly, Ebenezer King, William Cecil, John Hart Adgate, Henry Lane, Jonathan Church, Jeremiah Wilcox, John Partridge Bissell, Isaac Palmer, George Phelps, Samuel Quinby, and Moses Park. The court appointed George Tod, Esq., to prosecute the pleas of the United States for the present session, who took the oath of office. The court ordered that the private seal of the clerk shall be considered the seal of the county, and be affixed and recognized as such till a public seal shall be procured. The court appointed Amos Spafford, Esq., David Hudson, Esq., Simon Perkins, Esq., John Minor, Esq., Aaron Wheeler, Esq., Edward Payne, Esq., and Benjamin Davidson, Esq., a committee to divide the county of Trumbull into townships, to describe the limits, and boundaries of each township, and to make report to the court thereof."

Under these instructions, the committee divided the county into eight townships, of which Cleveland was one, and the report was accepted and confirmed. Constables for the various townships were appointed, Stephen Gilbert and Lorenzo Carter being designated to serve in Cleveland; and after a variety of orders had been given upon minor matters by the court, it adjourned,—and local civil government in north-eastern Ohio was set going. The steps by which Cuyahoga county came into being, and her courts were established and commenced their long and honorable career, are related in full in the pages that follow. It needs no more than the various papers that follow to show that the Bench and Bar of Cleveland have held their own in honor and reputation with those of any community of the West, and performed their part in making the history of Ohio for the three-quarters of a century past. Much has been said and much more might have been said, but all the details of history of a great body of men in a conspicuous profession are not to be gathered within even the ample space of a volume of this character. The publishers, the editors, and the writers have endeavored to cover the field as comprehensively as possible, and to present the salient points of record, of incident, and of reminiscence, trusting that, in the plentitude of that which has been said, the forgotten or overlooked may be forgiven or condoned.

THE LEGAL AND JUDICIAL HISTORY.

THE LEGAL AND JUDICIAL HISTORY.

F. T. WALLACE.

There is an evolution of political institutions as there is of life on the earth, more manifest to us in our rapid westward development of states, counties and cities than is apparent in the rise and progress of those of ancient times. The legal and judicial history of Cuyahoga county embraces two periods—the territorial and the constitutional. During territorial times, from the institution of civil government under the confederation and the ordinance of 1787, at Marietta in 1788, to the state constitution of 1802, the specific territory now called Cuyahoga county was then unindicated, unnamed and unknown, except as constituting a fraction of the vast Territory of the North-west.

The first territorial governor and judges, in whom was vested legislative power, on the 27th of July, 1788, created the county of Washington, with Marietta as the county seat, embracing the territory from the Ohio river to Lake Erie, with the Cuyahoga river and the Portage path as its western boundary, then including the eastern part of the present county. It is the first time the name of the river appears in territorial legislation.

There was an Indian trading post at the mouth of the Cuyahoga in 1791, but otherwise the whole region of the south shore of Lake Erie, and far into the interior, was but the habitation of the wild man, and the wilder beasts, of a dark and almost impenetrable forest. On the 15th of August of this year, the authorities of the North-west Territory created Wayne county, nominally embracing the whole tract from the Cuyahoga westward and northward beyond Detroit, which place they made the county seat. Thus, the county seats of Washington and Wayne were over three hundred miles apart, and the territory of the present Cuyahoga county was divided between the two jurisdictions by the river. However, as the Indians had primitive ways of settling disputes among themselves, prompt and effectual, unretarded by the law's delay, and having no suits in court, and never being called to serve as jurors in the white man's court, they never complained of the remoteness of county seats and judicial tribunals.

In September, 1796, the "City of Cleaveland" was surveyed and mapped—a forest city, indeed. The following year Washington county was divided, and the territory east

of the Cuyahoga was embraced in the new county of Jefferson, with Steubenville as the county seat. The last division by the territorial legislature in 1800 was in the creation of Trumbull county, embracing the entire Western Reserve, including the Fire-lands and the opposite islands, with county seat at Warren. The state legislature subsequently, in 1807, created several counties out of the original Trumbull county territory; among them Geauga, with Chardon as county seat, Cuyahoga county, with territory substantially as now, with Cleveland as the county seat, but it was left attached to Geauga county for judicial purposes until its organization by due appointment of officers, three years later, January 16, 1810.

The administration of law within what is now Cuyahoga county began in the infancy of the settlement of Cleveland, during the territorial period, when Governor St. Clair appointed James Kingsbury, of Cleveland, a justice of the Court of Quarter-Sessions for the county of Trumbull, held at Warren. In addition to his attendance upon the regular session at the county seat, he dispensed whatever of local justice was necessary at home. The legends which have come down to us from the old pioneers have secured for Judge Kingsbury's memory a reverential affection and regard among the present generation. Born in Norwich, Connecticut, he emigrated with his father, at the age of eighteen, to Alsted, New Hampshire, where he married a most estimable lady, Miss Eunice Waldo, received a military commission, with the rank of colonel, from the governor of New Hampshire, and in 1796, with his wife and three young children, a yoke of oxen, a horse and cow, and a few articles of household effects, commenced the long and weary journey to the Western wilderness. He was the first pioneer of the Reserve unofficially connected with the surveying party. The sickness and suffering of the family, and the death and burial of their infant during their brief stay at Conneaut, before reaching Cleveland, are among the saddest stories of pioneer life.*

The first lawyer who established himself in Cleveland, while yet Ohio was in its territorial condition, in 1801, was Samuel Huntington. He was a *protege* and adopted heir of his uncle and name-sake, Governor Samuel Huntington, of Connecticut. He was an educated and accomplished gentleman, about thirty-five years of age, had traveled in Europe and held correspondence in the French language. He had a wife and two sons. The same year he built a spacious block house on the high bluff overlooking the river valley and lake, in the rear of the present American House, the ample grounds of which fronted on Superior street. It was considered a baronial establishment among the half-dozen neighboring log cabins of the paper city. He had visited, the previous year, a few settlements and had made the acquaintance of Governor St. Clair

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*See Whittlesey's "History of Cleveland," page 268.

at Chillicothe, and soon after his settlement in Cleveland, the governor appointed him lieutenant colonel of the Trumbull county militia, and in 1802 one of the justices of the Quorum, and priority was conceded to him on the bench of Quarter-Sessions. He was elected a delegate to the convention to form a state constitution in 1802. He was elected a senator for the then county of Trumbull, and on the meeting of the legislature at Chillicothe was made president of that body. He was appointed a judge of the Supreme Court in 1803, his commission, which was signed by Governor Tiffin, being the first issued under the authority of the State of Ohio. In 1807, Judge Huntington was elected governor, succeeding the first governor, Tiffin, who became a senator of the United States. Thus the legal and judicial history of our city and county had an honorable and auspicious beginning in the person of Samuel Huntington—the first lawyer, judge and governor of the state from among the pioneers of the last years of the eighteenth century, on the shores of Lake Erie.

The second legal character of note who took up his abode in Cleveland was Stanley Griswold. He had been appointed from Connecticut secretary of the territory of Michigan in 1805, under Governor Hull, and collector of the port of Detroit. Having resigned his official trusts, he made his home within the township, near Doan's Corners. Mr. Tiffin resigned his seat in the United States senate, and Governor Huntington appointed him to fill the vacancy. It is among the remarkable circumstances of that early period that Cleveland had a judge of the Supreme Court, a governor, and a United States senator before it had a physician. There was, however, but little important legal civil business, and perhaps not more than two or three criminal cases to note, in which Mr. Huntington participated in the trial, either as lawyer or judge, during the pioneer period. The first murder of which there is any record was that of Menompsy, in 1802, a "medicine-man" of the Chippewa tribe, by Big Son, a Seneca. Big Son's squaw fell sick and he had employed the Chippewa doctor to attend her; but as she died, the disconsolate husband, prompted thereto by superstition and whiskey, attributed her death to malpractice, and, instead of bringing suit for damages after the manner of the pale-face, plunged a knife into the heart of the red-skin doctor, and thus settled the doctor's bill for the squaw's "last sickness," and obtained satisfaction for her loss.

As the west side of the river was the camp and territory of the Indians, remnants of several tribes, excited by the murder of the medicine-man, and fearful lest they might take vengeance on the few white settlers on the east side, efforts were made, and through the influence of Mr. Huntington and others succeeded, by which they were induced to withdraw to Rocky River, to hold their pow-wow over the dead, and to deal with the murderer according to the principles of Indian retaliatory justice.

There occurred in 1807 a double tragedy which portended an Indian war of exter-

mination of the few white settlers. An Indian called John Mohawk killed a white man named Daniel Diver. Two of Diver's friends, named Darrow and Williams, determined to avenge the murder. Finding a Seneca Indian named Nicksaw in the woods, and either believing him to be the murderer, or not caring whether he was or not, without a word of warning, they shot him in his tracks and left him in the snow. It was soon ascertained that it was not Nicksaw, but John Mohawk who had killed Diver. Then the whites in the several settlements were anxious that Mohawk should be demanded from the Indians and punished for his crime. At the same time it was suggested by some of the leading men that equal and exact justice required that Darrow and Williams should be arrested and punished for the killing of Nicksaw. Their friends and neighbors bitterly opposed this, and threatened death to any officer who should attempt to arrest them. The surrounding country was greatly excited, while the few inhabitants of Cleveland watched the movements of the Indians across the river, and were anxious above all else to keep the peace with a dangerous enemy that far outnumbered them. Stigwanish, or Seneca, as he was commonly called, chief of the leading tribe of that name, held audience with Judge Huntington,—said he was not content to see all the power of the whites used to inflict punishment on John Mohawk, while they were indifferent regarding the murder of an innocent Indian. He wanted justice for both sides. He offered to deliver up Mohawk when the slayers of Nicksaw were secured. He said he did not want war, but did want justice. The result of the whole excitement was that neither party obtained justice. Mohawk was not given up by the Indians and the murderers of Nicksaw were not punished by the whites. Seneca was a remarkable specimen of the wild man of the forest. His fame has come down to us through three generations. He was characterized by General Paine, the founder of Painesville, as having the honesty of Aristides, the dignity of a Roman senator and the benevolence of William Penn. Unlike the average Indian, he never asked for a gift, and when one was voluntarily made to him he always returned it by another of equal value. He was killed in Holmes county, in 1816, by a white man.

Mr. Huntington participated very early in the trial of McMahon, at Youngstown, charged with the murder of an Indian named Spotted George, at Salt Springs, but it does not appear in history whether for the prosecution or the defense. After having served one term as chief magistrate of the state, Governor Huntington retired to his farm near Painesville, where he resided until his death.

COMMON PLEAS COURT.

Cuyahoga county began its independent existence in May, 1810, by holding its first term of court. Hon. Benjamin Ruggles was presiding judge of the Court of Common Pleas; Nathan Perry, Sr., A. Gilbert and Timothy Doan, associate judges;

Stevenson Burke

John Walworth, clerk; and Smith S. Baldwin, sheriff. At this time, Huron county, which was still unorganized, was attached to Cuyahoga county for judicial purposes. The first court was held at the newly erected store of Elias and Harvey Murray, just finished but unoccupied, standing where the former Atwater block stood, now the entrance to the viaduct. One indictment was presented for petit larceny, several for selling whiskey to Indians, and others for selling foreign goods without license.

The Court of Common Pleas for Cuyahoga county began a session June, 1810, when the population of Cleveland was only 57. Hon. Benjamin Ruggles was president of the court. The business of the term embraced the consideration of five civil suits and three criminal prosecutions. Thomas D. Webb is recorded as the attorney who filed the first præcipe for a summons, being the suit of Daniel Humason *against* William Austin—action, trespass on the case for eleven hundred white fish of the value of $70, which came into the hands of the defendant by "finding," but who refused to give them up on demand, and converted them to his own use. Alfred Kelley appeared for the defendant, denied the force and injury, &c., the plaintiff joined issue and "put himself on the country." At the next term the defendant appeared by his attorney, "and the plaintiff being solemnly demanded to come into court and prosecute his suit, but came not. Whereupon the court considered that sd. Daniel take nothing by his bill, but that he be amerced, and that sd. William go without delay, and have execution for his costs and charges by him laid out about his defense, of $9.55."

Alfred Kelley appears in the second case on the docket on behalf of Ralph M. Pomeroy vs. James Leach. Suit on a note of hand dated October 27, 1808, "at Black Rock, to-wit, at Cleveland," for $80, and in another sum of $150. This case was continued one term and then discontinued by settlement.

And now, in the third case, the famous old pioneer, Rodolphus Edwards, was chosen defendant in the suit of one John S. Reede. It was an appealed case from Justice Erasmus Miles' court, by the plaintiff, the justice having decided that the plaintiff had no case against Edwards. The plaintiff failed to prosecute his appeal, and the old pioneer was decreed to "go" with judgment for his costs, $8.54. R. B. Parkman was defendant's attorney. The fourth case was an action of ejectment for a farm in Euclid, in which Alfred Kelley appeared for the heirs of Aaron Olmstead, of East Hartford, Conn., vs. Richard Fen, and James Lewis, the tenant. Samuel W. Phelps, attorney for defendants. After one continuance the case was settled.

The history of criminal jurisprudence opened at the November term, 1810, by the presentation by the grand jury of the first "true bill" of indictment, the State of Ohio against Daniel Miner. "Daniel," as the jurors on their oath declare, "not having obtained such license or permit as the law directs to keep a tavern, or to sell, barter or

deliver, for money or other article of value, any wine, rum, brandy, whiskey, spirits or strong drink by less quantity than one quart, did, with intent to defraud the revenue of the county, on the 25th of October last past, sell, barter and deliver at Cleveland aforesaid, wine, rum, brandy, whiskey and spirits by less quantity than one quart, to-wit, one gill of whiskey, for the sum of six cents in money, contrary to the statute, &c." Being arraigned, he pleaded guilty, and "put himself upon the mercy of the court," whose mercy was not strained, but was shed upon him like the gentle dew in a fine of *twenty cents*. But Daniel was not yet out of the lion's den, for there was another prosecution against him, in which he was charged with like intent to defraud the county, not having first obtained a license to keep a ferry, did, on the same day of the former offense, diverse men and horses, with force and arms, ferry over Rocky River, contrary to the statute and against the peace and dignity of the state. He again pleaded guilty and once more craved the mercy of the court, but judicial mercy and grace had been exhausted in the former case. The heart of the court was hardened and a fine of $5 was imposed, supplemented by a much larger bill of costs.

Another instance of the negligence of merchants, traders and other enterprising men, in the matter of observing statutory requirements, may be found in the first judicial record of the county, wherein Alfred Kelley appears for the first time as prosecuting attorney for the county to maintain an indictment against Ambrose Hecox, charged with selling "one-half yard of cotton cambric, six yards of Indian cotton cloth, one-half pound Hyson skin tea, without license, contrary to the statute law regulating ferries, taverns, stores, &c." The profits and capital involved in this harmless transaction were more than wiped out by a fine of one dollar, and six dollars and thirty cents costs. Most of these statutory misdemeanors were doubtless the result of ignorance of the law, as Chillicothe, where statutes were manufactured, was far away and Cleveland had no newspaper then, with correspondents at the state capital to warn the citizens of legislative enactments, nor were the printed laws distributed as in modern times. Besides, what generous merchant of the future city could hesitate for a moment to sell cambric enough for a handkerchief and a half pound of tea to one of the pioneer ladies of the village, only just a little in advance of taking out a license?

The first jury empaneled for the trial of a civil suit was at the June term, 1811, Frederick Falley vs. Philo Taylor, for damages for selling eight barrels damaged white fish. Alfred Kelley, attorney for the plaintiff, and Samuel W. Phelps for defendant. The jurors were James Root, Robert Carr, Luther Dille, William Austin, Mason Clark, Christopher Gunn, James Jackson, Dyer Shuman, Simon Smith, Daniel Kellogg, James Worden, John Brooks. Verdict, $19.

At the same term Erastus Miles was prosecuted for selling liquor to "diverse

Indians." He pleaded guilty and like his predecessors implored the mercy of the court, which was shed upon him to the extent of $5 for the benefit of the county—and costs.

During the early terms of court, prosecutions were largely for keeping tavern and selling liquor without license. Many such offenses were committed at Huron, while that part of the territory was attached to Cuyahoga county for judicial purposes.

Thomas McIlrath, of Euclid, was prosecuted in 1811 for violation of the license law for selling one quart of whiskey for three raccoon skins. He pleaded not guilty and put himself on the country, but the "country" said he was guilty. Exceptions were taken to the indictment, but were overruled and a fine of $5 was imposed.

At a term of court during the exciting period incident to the war of 1812, John S. Reede and Banks Finch engaged in a personal encounter denominated a "fight and box at fisticuffs," for which they were indicted. How realistic but unscientific such affairs were in the primeval forests of northern Ohio in those early days, compared with the exercise of the manly art in modern times, may be inferred when we read that "the jurors upon their oaths present that John S. Reede, of Black River, and Banks Finch, of Huron township, in said county, on the first day of February, 1812, with force and arms, in the peace of God and the state, then and there being, did, then and there with each other agree, and in and upon each other did, then and there assault and with each other did then and there willfully fight and box at fisticuffs, and each other did then and there strike, kick, cuff, bite, bruise, wound and ill-treat, against the statute and the peace and dignity of the State of Ohio." Such disturbance of the peace of God and the state—such kicking and cuffing—such biting and bruising—such unscientific and unartistic work—above all, such violation of the Marquis of Queensbury Rules, called for exemplary punishment, and the sporting citizens of Black River and Huron were made to smart under a fine of three dollars each, and costs.

Amos Spafford, a pioneer citizen, who resurveyed the paper city and was elected a representative in 1809, subsequently moved to Huron, and was arrested and held to bail there for his appearance at the June term, 1812, at the suit of Elisha Alvord for $100 house rent. At the March term, 1814, our late venerable and honored citizen, Levi Johnson, was plaintiff in action against William W. Williams, appealed by the defendant from a judgment of George Wallace, a justice of the peace, for enticing away an apprentice, (the defendant's son), bound to the plaintiff to learn the "art and mystery of the carpenter's trade," and to serve until he should become twenty-one years of age. But as soon as the young apprentice became sufficiently skilled in the profound mysteries and secrets of the art of building barns and board fences in the artistic style of that period, he was enticed away by his father, as the plaintiff alleged. Alfred Kelley appeared for the plaintiff and Peter Hitchcock for the defendant, but the case was

settled and the famous lawyers did not lock horns. Sometime thereafter the same Justice Wallace was charged with an assault on one Robert Bennet, "in the peace of God and the state then and there being"—verdict, not guilty. But Cyrus Prentiss, being indicted for assaulting the same person, pleaded guilty and was fined $3.

The record of four years, from May, 1810 to May, 1814, embraces one hundred and nine civil suits, the greater number being petitions for partition of lands, and generally of non-resident heirs, mostly living in Connecticut. During the troubled times incident to the war of 1812 and the surrender of Hull at Detroit, the courts were forgotten—only seven cases were tried at the November term, five at the March term, 1813, and four at the June term. There seem to have been no criminal prosecutions during the war period. The only lawyers who appear of record during the first four years comprise the names of Thomas D. Webb, Alfred Kelley, first settled and prosecuting attorney, Robert B. Parkman, Samuel W. Phelps, Peter Hitchcock, John S. Edwards, and D. Redick.

At the October term, 1814, Elihu Spencer appeared for Henry Champion, of Connecticut, against Daniel Bronson, in an action on a note of hand. John S. Edwards was attorney for the defendant. The issues were submitted to a jury, who rendered a verdict for $800, the largest at that time ever rendered in the county. At this same term of court, one Daniel Robertson, of Huron, was indicted, tried, and convicted of stealing four barrels of salt, of the value of $20 each, with the barrels,—in the whole $80—the goods of one Abner Shirley, and was sentenced to be "taken to the public whipping-post in Cleveland, and that he be whipped fifteen stripes on the naked back, and be imprisoned in jail ten days and pay a fine of one hundred dollars."

A careful examination of the files discloses every paper in the proceeding except the mittimus and the sheriff's return of the execution of the sentence. Posterity is, therefore, left in the dark concerning the post and the fifteen stripes. There is no minute on the docket indicating that the sheriff made a return. Otherwise the record is full and complete. An inquiry of some of the few remaining old citizens, whose memory runs back at least to 1812, shows they have no knowledge upon the subject. In fact, no one personally knows or ever heard of such a public penal institution, or of such a judicial sentence. But for the judicial record, the ancient colonial institution would have had no "standing" in court. It does not seem to have developed into the dignity of a fascinating legend or the gravity of a classic myth. It is possible, however, that some forehanded individual, whose remote ancestors delighted in whipping-posts for witches, who had made his fortune as a sutler in the then late war, erected a "post" somewhere near the log court house in the Public Square, and donated it to the public, as elaborate and artistic drinking fountains are erected and donated in modern times by

benevolent millionaires, whom the public thanks and blesses, but never partakes of the beverage.

The Hon. George Tod was president of the court at the October term of 1815, when Calvin Pease, Elisha Whittlesey and Leonard Case for the first time appear as attorneys of record.

While the war fever rages the angry passions are aroused, and the unbridled tongues of individuals are wont to be glib—hence at the December term, 1812, the first civil suit for slander, Reede *vs.* Benton, was docketed. Hitchcock and Phelps were the lawyers. It was a triumph for the defendant. Then the atmosphere was clear of slanderous words for five years, and until in an evil hour in 1817, one Daniel O. Hoyt was invited to respond in damages to one Belinda Tod, for making, as she alleged, ungentlemanly and slanderous remarks of and concerning her. The defendant, however, took honorable measures to disabuse her mind of the supposed "wrong and injury," and heal her wounded spirit, and she withdrew her suit and paid the costs, $1.50. Indictments for assault were quite numerous for two or three years just prior to 1820, which were vigorously conducted by the official prosecutor, Kelley. For twenty years from the foundation of the city, marital relations seem to have been most affectionate and happy. It was not until 1816 that the discovery was made that marriage was a failure. Then it was for the first time in the history of the county that one Peleg Brown found his life miserable in the possession of his wife Anna. Happily, domestic differences were adjusted and the case dismissed; thus making, instead of marriage, the first divorce proceedings a "failure."

Notwithstanding the outcome of this case, it nevertheless established an alarming precedent. It set the fashion for many unhappy households, and within a short time there were more than a dozen like proceedings entered on the court docket, all of which, however, came to naught, mostly by dismissal by the petitioning party. In a few instances there was a trial, but the allegations were "not proved." In 1821 the petition of one Sophronia White against her husband Harvey was sustained, the prayer granted, with $200 alimony, and the custody of their infant child, "two years old last spring." From 1820 to 1835 there were some thirty divorce petitions filed, but decrees of separation were very few. The filing of the petition, bristling with serious charges against husband or wife, often had the effect of awakening the parties to a sense of their personal humiliation no less than their public shame, when they would mutually adjust their differences, renew their marital vows, dismiss the case, continue the partnership and carry on business as usual at the old stand.

Under the early judicial system, there was an annual session of the Supreme Court in the several counties, and the first session in Cuyahoga was in August, 1810, when

Wm. W. Irwin and Ethan A. Brown produced their commissions and organized the court, appointing John Walworth their clerk. At this term, Alfred Kelley was admitted to practice in the supreme and county courts, being the first attorney in the county to take the oath to support the constitution. The county was pre-eminently honored in its first practicing lawyer. The first, and for ten years or more, the prosecuting attorney, the leading practitioner in the common law courts for a much longer period, contending with the increasing legal talent of the county and meeting in intellectual conflict with distinguished lawyers of the state, he won as an able and honorable lawyer an enviable eminence. But his place in the history of the county and state, and in the memory of men, is that of a financier and a master mind in the execution of great public enterprises. He was to the State of Ohio what his contemporary, Dewitt Clinton, was to New York, and what, in later times, DeLesseps was to the commercial nations in the world-renowned enterprise at the isthmus of Suez.

There is a constant reminder of the memory of Judge Samuel Cowles, a partner of Mr. Kelley, in the stately mansion erected by him on Euclid avenue in 1833, now the Ursuline Convent, to which in later years have been added the beautiful crescent-formed colonnades, not unlike St. Peter's at Rome. He was a graduate of Williams College, admitted to the bar of Hartford county, Connecticut, where he practiced some fifteen years, when in 1820 he came to Cleveland. He was first a partner of Alfred Kelley, and afterwards with his late student, S. J. Andrews. John W. Allen was a student of Mr. Cowles in 1825. Mr. Cowles was appointed Judge of the Court of Common Pleas in 1837, and died in office in 1837.

In 1819, J. S. Couch was the presiding judge, and Reuben Wood first appeared as attorney in a case. For nearly fifty years, and down to within the memory of the present generation, the tall form and genial spirit of Reuben Wood was recognized and revered throughout the state, having in his long and useful life been publicly honored; first, in 1825, as state senator, re-elected in 1827, elected presiding judge of the Third Judicial Circuit in 1830, and in 1833 elected a judge of the Supreme Court, re-elected in 1841; the last three years on the bench he was chief justice of the state. In 1850 he was elected governor of the state, and re-elected in 1851. He resigned the office of governor in 1853 upon his appointment of consul to Valparaiso, South America, also serving for a time as minister to Chili. He died in 1864.

In 1820, Calvin Pease was presiding judge, followed in 1821 by John McLean, afterwards a judge of the Supreme Court of the United States. In 1822, Judge Pease again held the term, followed by Judge Burnet in 1823, when Woolsey Wells was admitted as an attorney. Peter Hitchcock appeared as presiding judge for the first time in 1825. Wm. McConnell, Harvey Rice, John W. Allen and Sherlock J. Andrews were admitted

to the bar at the same term in 1826; Mr. Andrews on a certificate from the full bench of judges of the Supreme Court at Columbus, which bore the signatures of Calvin Pease, Peter Hitchcock, J. Burnet and C. R. Sherman.

Of these three young and accomplished gentlemen, the venerable Harvey Rice, now (1889) in his eighty-ninth year, is the sole survivor. A scholarly gentleman, a graduate of Williams College, Massachusetts, he early formed a partnership with his friend and relative, Reuben Wood, and for some ten years was devoted to the business of the firm, it being the second legal partnership in the county (Kelley & Cowles was the first), and Kelley & Sterling the third, and until 1835, when he was appointed clerk of the county courts, holding the position for seven years. In 1830, he was elected a representative in the legislature, and in 1851 a state senator. He is recognized as the father of the common school law, which has given educational fame to the state, and which has been copied and adopted by several other states. He is likewise the author of several volumes of history, poetry, and many admirable monographs of general literature.

Mr. Allen early became a marked public man. He was imbued with the spirit of enterprise, and was a leading mind in the promotion of all the great railroad undertakings which had the city as an objective point, in the early days of the system that superseded the old stage lines. He was a member of Congress prior to 1840, mayor of the city in 1841, and postmaster of Cleveland in 1872. He died in 1887.

The professional life of Sherlock J. Andrews embraced fifty-four years; associated first with Samuel Cowles, then as Andrews, Foot & Hoyt. He was in active advocacy at the bar from the term of his admission to the year of his death (1880), hardly excepting a term in Congress from 1840, and the membership of two conventions to revise the constitution, 1849–1873, and only excepting the five years from 1848 to 1853, when he was judge of the Superior Court of Cleveland. Of all the eminent and honored members of the legal profession that have come and departed since the organization of the county, the memory of Judge Andrews is doubtless the most vivid among the members of the bar, even unto this day. Although nearly ten years have elapsed since his death, it seems but as yesterday, when with dignity and grace he stood before court or jury, delighting all around him by the logic of his argument, spiced with the aroma of his humor or made pungent with a few grains of healthy sarcasm.

John W. Willey first appears on the records of the court as an attorney in 1827. He was an eminent lawyer for many years, and his memory has been held in reverential regard for more than a generation. He was early a judge of the Circuit Court, and the first mayor of Cleveland, serving through the years 1836 and 1837.

In 1830, George Hoadly was admitted an attorney. Mr. Hoadly early became

and for many years was the favorite magistrate for the trial of civil suits. He was a gentleman truly "learned in the law." He possessed a choice legal library, was familiar with its contents, and could help a lawyer to a "precedent" at a moment's notice, and often instanter, giving volume and page from memory. He was an impartial judge, an eminent citizen and an honorable man.

The year 1831 scored the accession to the bar of but one single attorney, in the person of Austin C. Penfield. In the cholera year of 1832, Ebenezer Lane and John C. Wright, supreme judges, held the term; but little business was transacted, and it was evidently not a healthy season for candidates for the bar, as none appear to have been admitted that year. But in 1833 things took a more cheerful and hopeful turn, and Wm. R. Sapp and John A. Foot came to the bar. Soon thereafter the legal firm of Andrews, Foot & Hoyt came into being, which continued some twenty years. Mr. Foot still survives (1889), having lived in peaceful and happy retirement for a full generation. His has been an honorable life, and he "has done the state some service."

Up to 1835, the Cuyahoga bar could not be deemed a multitude as in later years, but there were doubtless an abundant number of the legal profession to meet the necessities of a sparsely populated county and an infant city. This year the term of the Supreme Court opened with Joshua Collet and Reuben Wood on the bench. Harvey Rice was appointed clerk, being also at the time clerk of the Common Pleas. The record of the court gives evidence of a remarkable legal revival, when many were "called"—Ezra C. Seaman, Phillip Battell, Lucius Royce, Heman Burch, Geo. W. Lynde, Flavel W. Bingham, Seth J. Hurd, Albert A. Bliss, S. W. Cockran, Elijah Bingham, John Barr, Thomas Bolton and Hezekiah S. Hosmer. The next term Simeon Ford, Lord Sterling, C. L. Russell, Orson St. John, H. M. Hanes and Alex. N. McGuffey were admitted within the legal fold.

George W. Lynde and George A. Benedict were the first masters in chancery, appointed in 1838.

Samuel Williamson came to the bar in 1833, was a partner with Leonard Case some three or four years and until he was elected county auditor, holding the office eight years. Returning to practice, he subsequently formed a partnership with Albert G. Riddle, was prosecuting attorney for a term, and afterwards state senator. When Mr. Riddle was elected to Congress, in 1860, the partnership ceased, and during the remainder of his useful and honorable life he served as president of the Society for Savings. Mr. Riddle was a brilliant advocate, and was also prosecuting attorney of the county for one or two terms. At the close of his congressional term he took up his residence in Washington, where he has often been retained as leading counsel for the government in important cases, both civil and criminal. He is, moreover, the author of several vol-

umes illustrative of Western history, and many monographs and addresses of more than ordinary interest.

The ultimate fate of all the members of that large class of candidates and hopeful young gentlemen who, according to the harmless fiction of the English Inns of Court, were "called to the bar" in 1835, is not now conveniently ascertainable. Philip Battell, it is believed, settled at Middlebury, Vermont; George W. Lynde was a familiar figure at the bar here until his recent death at an advanced age; Flavel W. Bingham became the first judge of probate under the new constitution, and died in the service of the government during the civil war; John Barr remained here and was judge of the Police Court in 1854, and county clerk in 1855. Hezekiah S. Hosmer settled in Toledo, where he was a lawyer and editor of good repute for many years, besides being an author, and the first chief justice of Montana. Thomas Bolton formed a partnership with Moses Kelley, a grave and sedate gentleman and a learned chancery lawyer, and ultimately became a judge of the Court of Common Pleas, and Mr. Kelley was early elected to the legislature, and in 1866 was United States district attorney for the northern district of Ohio.

Samuel Starkweather was at the bar as early as 1828. He was collector of customs of the port of Cleveland under the administration of President Van Buren; was elected the first judge of the Court of Common Pleas for Cuyahoga county under the new constitution of 1851, for the term of five years. In 1856, he was elected for two years mayor of Cleveland. Judge Starkweather was distinguished for his admirable social qualities, no less than for his brilliant and graceful oratorical accomplishments, which won for him the friendly and appreciative *soubriquet* of "the silver-tongued."

Horace Foote came here from Connecticut about 1836, and established himself in the then Ohio City, where he resided for many years, and until some time after the union of the two cities, when he was elected judge of the Court of Common Pleas under the act of March 11, 1853, and made his new home on Euclid avenue. He held the judicial office for twenty years. He was a technical lawyer of great industry, wholly devoted to his profession, tenacious and persevering in the interest of his client. As a judge he had the confidence of the bar and the community for his legal learning, honesty and judicial impartiality, but was at times dreaded rather than loved by the younger members of the bar for his constitutional severity of manner.

Henry B. Payne, a graduate of Hamilton College, and a law student of John C. Spencer, of Canandaigua, New York, became a lawyer in Cleveland in 1834, and soon thereafter formed a partnership with his early friend, Hiram V. Willson, who had a little earlier settled at Painesville, but removed to Cleveland. Their professional association continued some twelve years, when Mr. Payne was necessitated to retire from practice on

account of failure of health, accompanied with hemorrhage of the lungs, the result of constant and crushing mental and physical professional labor. It is reported of Mr. Payne that as a lawyer he was distinguished for quickness of perception, a seemingly intuitive conception of the principles of the law involved, and a wonderful comprehension of all the surrounding circumstances and the testimony in the case on trial. He did not, however, trust alone to his own inherent powers, but was a close student and thoroughly prepared his cases. Being thus doubly armed, and gifted, moreover, with a Gladstonian facility of speech, logic, humor, and an available reservoir of often useful sarcastic severity, he ranked high as an advocate, was always a desirable associate counsel, and a formidable opponent. He was a state senator in 1849, a representative in Congress in 1875, and a senator of the United States for six years from March 4, 1885. The firm of Willson, Wade & Wade succeeded on the retirement of Mr. Payne, and continued until 1854, when Edward Wade was elected to Congress, immediately following which Mr. Willson became judge of the United States District Court for the Northern District of Ohio.

Robert F. Paine and James Wade succeeded to the clientage of the two prior firms and continued until 1869,, when Mr. Paine was elected to the Common Pleas bench. He had been a member of the legislature as early as 1844, and prosecuting attorney in Portage county in 1846. He came to Cleveland in 1848, and the following year was appointed clerk of the Court of Common Pleas, holding the office until the adoption of the new constitution of 1851. In 1861, Mr. Paine was appointed United States district attorney for the northern district of Ohio, holding the office four years. Judge Paine was no ordinary man. The hardships and vicissitudes of early life did not chill the genial currents of his soul. He was pleasant, humane and honorable, and won distinction alike at the bar and on the bench.

There is an incident in the judicial life of Judge Paine singularly remarkable, if not a prophetic foreshadowing of a coming event: Judge Paine's charge to the jury in the celebrated case of the State *vs.* Gallantine, for the shooting of Dr. Jones, in which the plea of insanity was set up to the indictment for murder. The charge having been published in full, it was commented on editorially and by the profession with approval, and among many complimentary and congratulatory notes received by the judge was one from James A. Garfield, February 6, 1871, in which are found the following significant words:

"The whole country owes you a debt of gratitude for brushing away the wicked absurdity which has lately been palmed off on the country as law, on the subject of insanity. If the thing had gone much further all that a man would need to secure immunity from murder would be to tear his hair and rave a little, and then kill his man."

Just ten years later the thoughts above expressed were literally illustrated in the murder of President Garfield himself.

Thomas Bolton, a native of Cayuga county, New York, and a graduate of Harvard University, admitted in 1835, long a practitioner at the bar in partnership with Moses Kelley, a native of the same state and a graduate of the same university, was elected judge of the Court of Common Pleas in 1856, and by re-election served upon the bench for ten years. He had in early years served a term as prosecuting attorney, and his partner, Mr. Kelley, had been elected to the legislature.

Jesse P. Bishop was a native of Vermont, but graduated at the Western Reserve College at Hudson, a partner with Franklin T. Backus for fifteen years, and until 1856, when he was elected judge of the Court of Common Pleas, holding the office five years. Mr. Backus had been admitted to the bar from the office of Bolton & Kelley in 1839. He was a good lawyer and an honorable man. He was twice nominated for judge of the Supreme Court of the state, but in the unfortunate years of his party's defeat.

On the retirement of Mr. Bishop the firm of Ranney, Backus & Noble was constituted.

Samuel B. Prentiss came to Cleveland in 1840, and was the head of the legal firm of Prentiss, Prentiss & Newton for many years, and until 1862, when he was elected judge of the Court of Common Pleas, and by subsequent re-elections held the court for fifteen years. F. J. Prentiss became county clerk and John T. Newton removed to Toledo. Judge Prentiss was a technical lawyer of the old school of pleading and practice, but readily adapted himself to the new code of civil procedure, which took effect July 1, 1853. He was learned in the law, amiable upon the bench, and patient in spirit. His legal and judicial characteristics were suggestive of an inheritance from his eminent father, who was early famed as the most learned lawyer in Vermont, a senator of the United States, and for many years judge of the United States District Court of that state.

James M. Coffinberry came to Cleveland from Hancock county, where he had been some ten years in legal practice, in 1855. He had been for a term prosecuting attorney for Lucas county prior to 1845. In 1861 he was elected judge of the Court of Common Pleas of Cuyahoga County, and served the full term of five years to the public satisfaction. It is among the judicial legends that no decision of his has ever been reversed on review by higher courts. Judge Coffinberry's opportunity for judicial distinction culminated in his last year upon the bench, in his charge to the jury on the trial of Dr. Hughes for the murder of Tamzen Parsons, of Bedford, which took place December, 1865. It was publicly regarded as one of the ablest ever delivered in a capital case in the county.

Rufus P. Spalding, born on the island of Martha's Vineyard, graduated at Yale in

1817; a law student of the famous Chief Justice Zephania Swift, of Connecticut, had thirty years of eminence and distinction at the bar, in the legislature of which he was speaker, and as judge of the Supreme Court of the state, before he came to Cleveland in 1852, and formed a partnership with Richard C. Parsons. As a matter of course he became at once a leader at the bar. In 1862, at the age of sixty-two years, he was elected to Congress, where he served six years, in the troubled period of the rebellion and re-construction, with ability and public distinction. He had a marked individuality, which gave him prestige and made him a natural leader among the highest types of men in every position to which he was called. He had accomplishments other than legal, oratorical and judicial, being a terse and graceful writer; he had besides those qualities of mind and spirit which would have distinguished him among the diplomats of European courts. Members of the bar of the younger generation are doubtless hardly aware of that highly finished eulogy which he pronounced in January, 1847, before the two houses of the legislature, on the life and character of General Thomas Hamer, who died while attached to the army in Mexico; or of that later speech which awoke responsive echoes like the pibroch in the Highlands, when he was commissioned by our citizens to meet Kossuth over the border and welcome him to Ohio, when he assured the distinguished Hungarian patriot not only of sympathy and material aid, but declared that if men were needed in the patriots' cause—

"The rushes and the willow wand
Would bristle into axe and brand,
And every tuft of broom give life
To plaided warrior armed for strife."

The law firm ceased during Judge Spalding's congressional service, and Mr. Parsons was elected to Congress in 1873. Mr. Parsons had very early been a member of the legislature and speaker of the House, United States Consul to Brazil, and marshal of the Supreme Court of the United States.

Personal allusions herein are of necessity mainly touching lawyers and judges pertaining to the early history of the bar and bench rather than to its later personality. Running, however, over the pages of judicial records, we find the name of one who was admitted to the bar in 1839, who has now for just fifty years stood before more courts and juries than any other member of the bar now in practice, and though still in harness is the sole survivor of all practitioners admitted before him. Two only of all that goodly company of legal patriarchs—the venerable octogenarians, Harvey Rice and John A. Foot—who were admitted before him, still live. He is the last primeval oak in the legal forest, the rest being second growth and saplings. He has survived the lightnings of many Summers and the blasts of many Winters, and is still erect and unimpaired, while all his early contemporaries have fallen. Samuel E. Adams has no prede-

cessor now in practice. He is the last in the line of practicing lawyers admitted prior to 1840. While he has rejoiced in many legal triumphs and sorrowed for his clients over occasional defeats, Time's effacing fingers have passed lightly over his cheerful countenance. His eye is not dimmed, nor his natural force abated, and as friend after friend departs in the course of nature, history, science, and philosophy become more and more his mental comforters and social companions.

Rufus P. Ranney had won distinction at the bar in several counties of the Reserve, had been a leading judicial mind in the constitutional convention of 1850, was once appointed judge of the Supreme Court to fill a vacancy, and once elected to the same high position, before he came to Cleveland, in 1856. In 1862, while associated with Backus & Noble, he declined the candidacy for the supreme bench, but was nevertheless placed on the ticket of his party and elected. He reluctantly obeyed the call, but only for a brief season, when he resigned and returned to professional life and its more generous rewards. Judge Ranney for many years has been regarded as the Nestor of the legal profession in the state. His legal and judicial status may, with propriety, be likened unto that of the late departed worthies of the law in sister states—Jeremiah Black, Charles O'Connor and Benjamin R. Curtiss.

Stevenson Burke has had an eminently successful professional life. Long a practitioner at the bar and a judge of the Court of Common Pleas in an adjoining county, to which office he was twice elected, first in 1861, and again in 1866, but resigning in 1869, he came to Cleveland and formed a partnership with F. T. Backus and E. J. Estep. Mr. Backus dying in 1870, the firm became Estep & Burke, and continued till 1875, when Judge Burke remained alone until the firm of Burke, Ingersoll & Sanders was constituted, which continued until 1887, when Mr. Sanders was appointed judge of the Court of Common Pleas, and the firm continued as Burke & Ingersoll. Judge Ingersoll had previously served on the same bench.

Judge Burke has ever been an earnest, energetic and devoted lawyer to the interest of his clients. Armed and equipped with all the law of his case, and possessed, moreover, of the happy faculty of presenting an argument to court or jury, he never darkened counsel with words without knowledge, but always made his legal propositions manifest and his utterances understood. Gigantic railroad enterprises of three decades have, in these later years, culminated in litigation involving millions, in which Judge Burke has participated with ability and success. He has often met in such conflicts legal talent of the highest order of many states, and it is said of him that he is never more happy in the trial of a cause than when he is called upon to cross swords with an array of foemen worthy of his steel. He is then an Ajax defying the lightning.

More than thirty years ago David K. Cartter came to Cleveland from the interior

of the state, where he had practiced law for several years and had been elected to Congress. A politician rather than a learned lawyer, deficient in culture, rough in personal exterior and professional manners, and often indelicate in his verbal expressions, yet he was far from being deficient in mental resources, and had his due share of influence with a jury. He was appointed, early in the administration of President Lincoln, judge of the Supreme Court of the District of Columbia, which office he held a quarter of a century and until his death in 1887.

From time to time, since the adoption of the new constitution, the legislature has provided for an increase of the judicial force of the county necessarily incident to its rapid growth in population and the augmentation of its commercial, manufacturing and business enterprises, especially in the last two decades, in which the county and city have advanced to their present magnificent proportions. The thermometer which marks the rise and progress of commercial and business centers is the judicial docket which indicates by figures the number of causes filed for adjudication. The highest and most important—the real legitimate business of the legal profession—is but the natural result and evidence of the advancement of an active and prosperous business community. Hence the necessity which has called to the bench of the Court of Common Pleas of the county, within the last two decades, an additional force equal to the present full complement of six judges.

In addition to the judges heretofore mentioned, the following named gentlemen have each in succession occupied the bench of the Court of Common Pleas for one or more judicial terms: Darius Cadwell, G. M. Barber, James M. Jones, J. H. McMath, E. T. Hamilton, S. E. Williamson, Henry McKinney, J. E. Ingersoll, E. J. Blandin, John W. Heisley, A. W. Lamson, C. M. Stone, C. W. Noble, W. B. Sanders, Geo. B. Solders. The following judges constitute the court for 1889: Stone, Hamilton, Noble, Lamson, Sanders and Solders.

A second experiment of a Superior Court of Cleveland was authorized by law in 1873, and was equipped with a force of three judges, who held the first session thereof in September of that year, and its last term in June, 1875, when the law was repealed, and the Court of Common Pleas was made administrator *de bonis non* of the unadjudicated cases.

The Cuyahoga bar never having imposed a prohibitory or even protective tariff on imported legal talent. but on the contrary having adopted intellectual free trade, not however with a view to cheapen domestic professional labor by foreign competition, but that the public might have the best the market afforded, the result has been eminently to the advantage of the people in the acquisition to the bar from time to time of improved blooded stock, and an excellent quality of professional wares. Among the

earlier invoices may be noted W. S. C. Otis, Judge Bliss, Judge Coffinberry, Judge Tyler, Judge Hord, Judge Cadwell, Judge McMath, John Hutchins, General Crowell, Judge Jackson, Judge Pennewell, Judge Dickey, Judge McKinney, Gen. Meyer; and more recently Judge Hale and Judge Boynton—the latter directly from the great fountain of legal wisdom and authority, the Supreme Court. Such immigration is generally indicative of sore legal famine in the effete cities and rural villages, and the dry and dusty deserts round about, when the elite of the land, the kadis, the emirs, the great sheiks of the law, strike their tents and flee to the delta of the Cuyahoga, the Goshen of abundance and good pasturage, to dwell therein, replenish their sacks, and sacrifice to the blind goddess of justice in the temple of Themis. A generous bar bids such strangers welcome, society extends to them its social graces, and a wealthy clientage contributes abundantly to their financial happiness.

FIRST SUPERIOR COURT.

The first Superior Court of Cleveland was created in 1848, of which Sherlock J. Andrews was elected judge, and George A. Benedict was appointed clerk thereof. It continued for the period of five years, but was dispensed with on the revision of the judiciary system under the new constitution.

THE PROBATE COURT.

The Probate Court came into existence under the new judicial system, probate of wills and settlement of estates having before appertained to the jurisdiction of the Court of Common Pleas. Flavel W. Bingham was the first judge elected, in 1852, for the term of three years. He was succeeded by Daniel R. Tilden, in 1855, who held the office by an unbroken succession of triennial elections for thirty-three years, when he was succeeded, in 1887, by Henry C. White, the present incumbent.

The long official life of Judge Tilden is the most remarkable on record, either in this or any other state. He was probably fifty years old when he came to Cleveland. He had been a prominent lawyer in Portage county; had held official position there, and had served in Congress as far back as when Abraham Lincoln was a member. On coming to Cuyahoga county, he became a partner with Robert F. Paine for a few years and until his election, in the Fall of 1854, to the position which to him proved substantially a life office, at least reaching far beyond that period of life when judges in many states are necessitated to retire by constitutional limitation, even while in the enjoyment of perfect physical and mental vigor. There being, however, no such constitutional block to the judicial wheel in Ohio, the people had free course and were glorified in perpetuating the official life of their favorite judge during a third of a century, and until the raven locks that once graced his ample brow were white as snow. Judicial adapta-

bility, official integrity, supplemented by genial personal qualities, constituted Judge Tilden's capital on which the people banked their estates and trusts for a full generation, while his contemporaries in other official positions were compelled to strike their official tents, often at the end of a single term.

The probate mantle of Judge Tilden has fallen upon worthy shoulders. Learned in the law; a student and historian; a man of ability and intense industry; with a judicial mind, rare fairness, and unquestioned honesty, Judge Henry C. White has already shown himself a model probate judge, whose learning is equaled by his good common sense.

THE CIRCUIT COURT.

The last change in the judiciary system of the state was made by act of April 14, 1884, when the District courts were abolished and the Circuit Court was substituted, Cuyahoga falling into the eighth of its divisions. Two drafts have been made upon the bar of the county for judges of that court, and the lot fell first to Charles C. Baldwin, and more recently the second to H. J. Caldwell. Sufficient time has not elapsed to enable the bar to thoroughly test the merits of the new system.

CUYAHOGA ON THE SUPREME BENCH.

Franklin J. Dickman, a native of Virginia, a graduate of Brown University, came to Cleveland about 1858. He was elected to the legislature in 1862. He became a partner of Judge Spalding, and received the appointment of United States district attorney for the northern district of Ohio. He served on the late Supreme Court commission, and was appointed judge of the Supreme Court to fill a vacancy, and is now serving upon the same bench by public election. He is the fourth supreme judge credited to Cuyahoga county in the history of the state—the order being Huntington, Wood, Ranney, Dickman. Mr. Dickman was renominated to his present position by the Republican state convention of Ohio, in the Summer of 1889.

THE UNITED STATES COURTS.

Prior to 1855 the Circuit and District courts of the United States for the State of Ohio were held at Columbus. The two cities on the extreme northern and southern borders of the state were the sources of nearly all the business appertaining to the jurisdiction of the federal courts. The vast commerce of the lakes furnished a large number of admiralty cases to be adjudicated therein, and an inland journey of more than a hundred and fifty miles for a hearing in such, alone was a costly burden, alike to proctors, captains, sailors, ships and cargoes. Therefore, lawyers in this part of the state took the subject in hand with such earnestness and energy that Congress, in 1854, notwithstanding great opposition from the central and southern part of the state through

their representatives, divided the country as equally as possible by county lines about the center of the state, and thus constituted the northern and southern districts.

Cleveland became the judicial seat of the northern district, and the government directly built a court-house, combining within its ample dimensions a post-office, custom-house, apartments for internal revenue and offices.

The first judge of the United States District Court for the northern district was Hiram V. Willson, appointed by President Pierce in March, 1855. Daniel O. Morton, of Toledo, was appointed United States district attorney, and Jabez W. Fitch, of Cleveland, United States marshal. At the first term of the court Frederick W. Green was appointed clerk of the court. Mr. Green had been a member of Congress from the Seneca district, and the efficient champion of the bill creating the new federal district. The full official equipment of the tribunal for business was in the appointment of the then alert and genial and now venerable Lewis Dibble as chief bailiff and crier of the court. General Henry H. Dodge and Bushnell White were the first United States commissioners.

Immediately following the organization of the court, the docket exhibited a multitude of libels in admiralty, patent cases, equity proceedings for foreclosure of mortgages, and every variety of action within the federal jurisdiction. The criminal docket was early plethoric with indictments against counterfeiters of the coin of the realm, of which in those days "the woods were full," and among whom were many expert and facile artists, some of whom when at liberty to enjoy social life, and not professionally engaged, were well known and saluted on the streets, dined at first-class hotels and leisurely picked their teeth on the door steps. The cases of the greatest public interest, and producing the most intense excitement in the community, grew out of alleged violations of the fugitive slave law. The most celebrated of such cases was known as the Oberlin-Wellington rescue case, in which the president and several professors and gentlemen of the faculty of Oberlin College, with others, were indicted, charged with the violation of that law in rescuing a fugitive slave, and who, declining to give bail, were, during their trial, hospitably entertained by Sheriff Wightman, at the county jail, as distinguished guests of the United States marshal. Eminent citizens visited the accomplished prisoners, or left their cards, and prominent ladies of the city comforted and cheered their wives and children, who were permitted within the walls of the castle, by daily visits, pleasant salutations, delicacies, sweet-meats and fragrant flowers. The Oberlin cases were followed soon after by the seizure, trial, and rendition of Lucy, an escaped slave girl from Virginia, the last slave ever returned under that obnoxious law—the civil war and the emancipation proclamation having put an end to the "peculiar institution," and many inhumanities to man incident to the cruel relation of master and slave.

During the excitement incident to the John Brown raid, and after the breaking out of the rebellion, Judge Willson defined the law in regard to conspiracy and treason, drawing, with nice distinction, the line between a meeting for the expression of opinions hostile to the government and a gathering for violently opposing or overthrowing a government.

Among many important civil cases was one, known in the legal history of the city as the "Bridge Case," in which the questions to be decided were: the legislative authority of the city to bridge a navigable river, and whether the bridge, if constructed, would be a nuisance, damaging the plaintiffs' private property. Judge Willson's decision, granting a preliminary injunction until further evidence could be taken, was an exhaustive review relating to the obstruction of navigable rivers.

Judge Willson died in 1866, and the assembled bar of the district rendered testimony to the integrity, ability and moral worth of the deceased—declaring him to have been "a learned, upright and fearless judge, ever doing right and equity among the suitors of his court, fearing only the errors and mistakes to which fallible human judgment is liable."

During the protracted illness of Judge Willson, and for some time after his death, Judge Withey, of the United States District Court of Michigan, presided, and until the advent of a new judge, in the person of Hon. Charles Sherman. He was a brother of Senator John Sherman and General Wm. T. Sherman, and resided in Mansfield until his appointment to the bench, when he became a resident of Cleveland. In 1873 he resigned, and was succeeded by Hon. Martin Welker, of Wooster.

Judge Welker was one of the first judges of the Court of Common Pleas elected by the people, under the new constitution of 1851. He was elected lieutenant governor on the ticket with Governor Chase, in the famous campaign of 1857. He was aid-de-camp to the governor, and judge-advocate general of the state during Dennison's term, and afterwards served with the three-month volunteers on the staff of General J. D. Cox. In 1862 he was assistant adjutant-general of the state, and superintended the Ohio drafts. He was elected to Congress in 1864, and twice re-elected. Judge Welker's judicial life has been eminently satisfactory to the bar and the public. Always pleasant and kindly in manner and spirit, professional duties in his court were made agreeable. He held his last term in May, 1889; having arrived at the age of seventy years, he retired under the compensatory provisions of the law.

Judge William R. Day, of Canton, succeeded to the judicial office. Judge Day is a graduate of Michigan University, and about forty years old, with a ripe legal experience, and a very successful practice in eastern Ohio. He is a son of the late Judge Luther Day, of the Supreme Court of Ohio. In 1886 he was, without opposition,

elected judge of the Court of Common Pleas of Stark-Carroll-Columbiana sub-division of the north judicial district.

But by reason of continued ill-health, without holding a term of the court, Judge Day resigned the judicial office, and immediately thereupon, in July, 1889, Captain A. J. Ricks was appointed United States district judge for northern Ohio. Judge Ricks was born in Massillon, Stark county, Ohio, in 1843. While attending Kenyon College he enlisted in the 104th Ohio infantry at the age of nineteen. He was offered the position of captain and aid-de-camp in 1864, but declined, and became war correspondent of the Cincinnati *Commercial.* After the war he studied law with Judge Baxter, at Knoxville, and became a member of Baxter's law firm. In 1870 he took editorial charge of the Knoxville *Daily Chronicle.* In 1875 he returned to his old home in Massillon, and while practicing law there Judge Baxter was appointed United States Circuit Court Judge. The new judge appointed Captain Ricks clerk of the court, which office he filled until his elevation to the bench.

The legal learning and judicial qualities of Mr. Ricks' mind exemplified during his clerkship, as master commissioner and referee in numerous railroad and other important cases submitted to him for adjudication and adjustment, often involving millions of dollars, made manifest his peculiar qualifications for the bench, and prompted the most eminent of the profession in the district to urge his appointment as Judge Welker's successor.

Judge Martin Welker's official retirement from the bench of the United States Court was officially completed Wednesday morning, July 31, 1889, and his successor, Judge Augustus J. Ricks, was duly inducted into office by Judge E. S. Hammond. Promptly at 10 o'clock Judges Hammond, Welker and Ricks filed into the United States Court room, which was well filled with members of the city bench and bar. The oath of office was administered to Judge Ricks by Judge Hammond, who afterwards presented the Bible used in the ceremony to Mrs. Ricks. It contains the following endorsement on the fly leaf:—

On the 31st day of July, 1889, upon this Bible was administered the oath of office to Augustus J. Ricks as judge for the United States District Court for the northern district of Ohio, and we now present it with our compliments and congratulations to his good wife.

M. WELKER,
E. S. HAMMOND.

When the ceremony was completed, Judge Welker, in a short speech, asked that his successor receive the same courteous treatment from the bar which had ever been accorded to him. Judge Ricks read a telegram from Judge Jackson, who was in Wyoming Territory, consenting to the temporary appointment of Martin W. Sanders as clerk of the United States Court, and Mr. Sanders was at once sworn into office.

Messrs. Harvey D. Goulder, E. J. Estep and Judge J. M. Jones were appointed a committee on resolutions, and the court took a recess until 11 o'clock. At that hour, Mr. Goulder presented the following resolutions:—

WHEREAS, Hon. Martin Welker, late judge of the District Court of the United States for the northern district of Ohio, has voluntarily resigned his position, and to-day, by the qualification of his successor, absolutely severs his connection with the court and bar as such judge; and

WHEREAS, Under the circumstances, we, the members of the bar who have attended his court for years back, regard it proper to express our appreciation of his conduct as judge, his ability as a jurist, and his kindness and many good qualities,

Resolved, That we deem it a privilege to express our high appreciation of the valuable judicial services of Judge Welker; our sense of obligation to him, who at all times has been a courteous, upright and impartial judge; our great respect for his genial character and bearing, and for his ability, in ry and integrity as a man and a judge during the fifteen years he has performed the arduous and responsible duties of the position.

Resolved, That it is with regret that we part with Judge Welker in his official capacity, and that he takes with him in his well-earned retirement the genuine respect and good wishes of every member of the bar.

Resolved, That we extend to Hon. Augustus J. Ricks, the successor to our retiring judge, a cordial welcome and our heartfelt good wishes, and promise to him our best endeavors to make his position easy and his life happy.

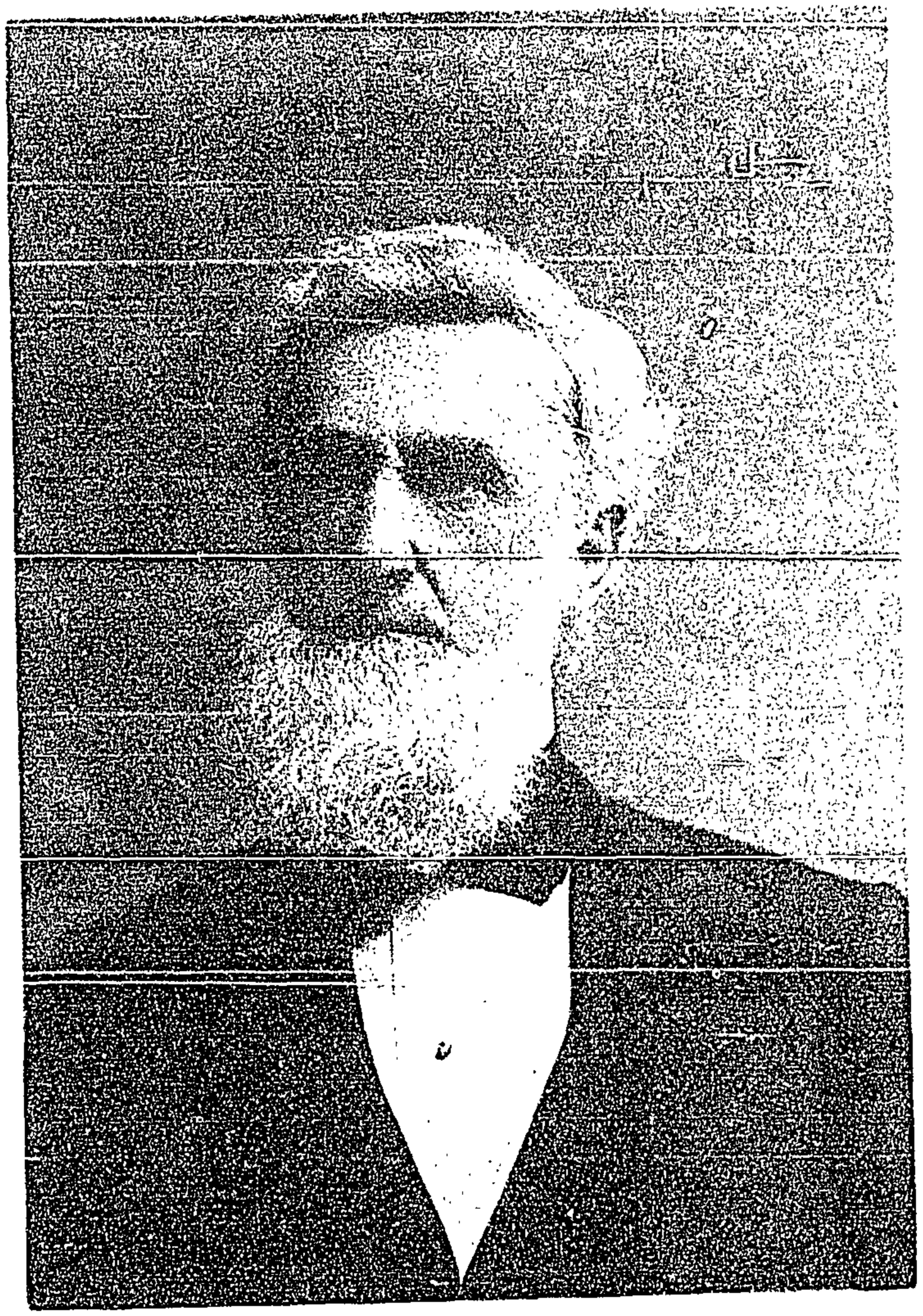
Resolved, That the court be requested to cause a copy of these resolutions to be entered upon the journals of the Circuit and District Courts, and that an engrossed copy be presented to the retiring judge.

HARVEY D. GOULDER,
JAMES M. JONES,
E. J. ESTEP,
Committee.

Mr. Goulder followed the reading of the resolutions with an address, in which he paid a high compliment to the retiring judge, and bespoke a brilliant future for his successor. Judge Burke, in seconding the resolutions, said:

"It gives me pleasure to endorse the kind things which have been said by the gentleman who has preceded me. It is a happy thing, I take it, to be allowed to retire from the bench with the unanimous commendation of the bar. We always think when in the heat of battle that the judge should be on our side, and we wonder that he is not, and this ofttimes stirs up one side or the other. I bespeak great things for the incoming judge, whom I shall expect to hold the scales so perfectly even that he will please all the lawyers. This is an age of progress and we expect the courts to grow better and better, instead of the reverse. I endorse the resolutions with great pleasure."

Judges Ingersoll and Jones followed, and also Attorney Hoyt, and the resolutions were unanimously adopted. Judge Hammond, in a happy speech, referred to Judge Burke's remarks, saying: "The lawyer must be born over again who does not feel the



disappointment of defeat when a case goes against him, and it will not be the second birth contemplated in the sacred book either." Judge Welker returned his thanks to the members of the bar in a fifteen-minute speech, and in closing said the pleasantest recollection of his life would be the cordial and courteous treatment he had received from the members of the Cleveland bar, which was the best in Ohio.

Judge Ricks spoke briefly of the generous support he had received from the local bar, and court adjourned till August 9.

Martin Welker Sanders, the newly appointed clerk, is a native of Wooster, O., where he was born in 1867. His childhood was spent in Washington, D. C., until the age of nine years, when he came to Cleveland, and where he has lived ever since and obtained his education in the public schools of the city. He was attending college when he was given a clerical position in the United States Courts in July, 1886. He was appointed United States commissioner August 20, 1887, and made deputy clerk October 24, 1888, in which capacity he served until appointed clerk of both Circuit and District Courts. He is a very competent public official, a gentleman of pleasant address, and doubtless the youngest clerk in like position in the United States.

In 1869, Congress, to relieve the judges of the Supreme Court from circuit duties theretofore incident to their respective offices, created nine Circuit Courts, with large original jurisdiction, with a like number of judges. Judge Baxter was appointed to the circuit embracing Tennessee, Kentucky, Ohio and Michigan, and held the judgeship until his death in 1885. He was born in North Carolina in 1820, and in early manhood was speaker of the House of Representatives and an elector on the Henry Clay ticket. Removing to Tennessee, he was elected a member of the constitutional convention of that state in 1870. As a lawyer he was eminent and recognized as the head of the bar in that state. He had the just credit of personal honor coupled with legal abilities of the first order. As a judge he won the high regard of the bar of his circuit for legal learning, quickness of perception and comprehension of intricate legal propositions, and a readiness in action often surprising. Moreover, he was impartial and fearless, irrespective of persons.

Judge Howell Edmunds Jackson was born at Paris, Tenn., in 1832. He received a classical education, graduating at West Tennessee College in 1848, and afterwards studying for two years at the University of Virginia; studied law under his kinsmen, Judges Totten and Brown; entered the Lebanon Law School in 1855, graduated the following year and commenced the practice of law at Jackson; removed to Memphis in 1859, and engaged in practice; served on the supreme bench by appointment on two occasions; returned to Jackson in 1876, and was elected to the state legislature in 1880; was elected to the United States Senate and took his seat March 4th, 1881. He was

appointed during his senatorial term judge of the United States Circuit Court, to succeed Judge Baxter, deceased. His pre-eminent judicial abilities are recognized throughout his wide circuit.

In 1853, Hon. Frederick W. Green was appointed clerk of the United States District Court at the first session thereof, and held the office thirteen years, when in 1866 he was superseded by Earl Bill, who held the same for twenty years. He died in office, and was succeeded by his son, Charles Bill, who held the office one year, when in 1887 he resigned.

Under the law establishing a system of United States Circuit Courts and the appointment of Judge Baxter to that bench in 1878, Captain A. J. Ricks was appointed clerk of the court, and upon the resignation of Mr. Bill in 1887 the district judge appointed Capt. Ricks clerk of that court, and thus the two courts were united in the person of one and the same clerk.

And now, after the lapse of more than eighty years, and the corduroy highways of the county have been succeeded by the canal, the turnpike and the stage coach; and they in turn have passed into a state of "inocuous desuetude" by the railroad and the electric street cars; and steamers plow the oceans and the lakes, and glide over the great rivers of the world; while the tallow candle of the olden time has been succeeded by gas and the electric light, and the telegraph and telephone have become the indispensable handmaids of commerce, Cuyahoga county has emerged from the forest and its few dozen pioneers, and Cleveland has advanced from its half dozen citizens and its *one* lawyer until the population of the county exceeds three hundred thousand, and the city holds within her gates a bar roll of three hundred members. From humble beginnings and small suits in 1810, Cuyahoga county now ranks high in intelligence, prosperity and wealth, and the business of her courts calls for the entering of judgments high up in the thousands and decrees in equity for many millions.

The Cleveland bar is not surpassed by that of any other city of like population for its many instances of profound legal learning and admirable forensic ability, supplemented and graced by those accomplishments which come of the learning of the schools, of history and literature, and keep pace with the progress of the world in the researches and developments of the sciences, and the best philosophical thought of modern times. The bench is inseparable from the bar, and must be considered at all times heretofore and now included herein.

THE CIRCUIT COURT.

The Circuit Court was established by the election of judges in the Fall of 1884; the sittings commencing February 9, 1885. This was in pursuance of a change of the constitution of the state, voted by the people not long before. The Circuit Court succeeded the District Court, which had been legislated out of existence. Hon. Wm. H. Upson, Hon. Chas. C. Baldwin, Hon. Geo. R. Haynes, who were elected for terms of two, four and six years each, formed the bench of the Sixth Judicial Circuit, which was composed of the counties named: Cuyahoga, Summit, Lorain, Huron, Medina, Erie, Sandusky, Ottawa and Lucas. The circuit was reorganized in 1888, and now comprises the counties only of Cuyahoga, Lorain, Summit and Medina. This reorganization placed Judge Haynes in another circuit, and Hon. Hugh J. Caldwell, of Cleveland, was elected in the Fall of 1887, and took his place on the bench in February, 1888, where he is now presiding judge, succeeding Judge Baldwin.

It is the work of the Circuit Court to review the action of the lower courts in such cases as are carried up on appeal or otherwise, and it is in session almost continually during the year in one of the counties embraced in the circuit. The work of this court and its value in preventing expensive litigation cannot be overestimated. The salary of a circuit judge, who is elected for a term of six years, is $4,000 a year.

In Judges Baldwin and Caldwell, the Cleveland bar has two able and learned representatives upon this bench, who have shown by their record their fitness for any judicial responsibility to which they might be called.

THE SUPERIOR COURTS.

G. M. BARBER.

Under the ordinance of 1787, what now constitutes the State of Ohio was part of what was then called the "North-western Territory," or the "Territory North-west of the Ohio river."

Under that ordinance, only one court was provided for the entire territory, which consisted of three judges. The only qualification for the office required by the ordi-

STORIES OF THE BAR.

the bridge, and, fat and aged, it took him some precious minutes to waddle back to his post, and, when there, he was so conscientious and punctilious about collecting toll and making change before opening the gate that the chances for recapturing the flying fugitive were becoming desperate. Goynes reached Canada, and two fine broadcloth coat patterns soon afterwards reached his counsel. The last the writer knew of him, he was back upon the Maumee, running a popular barber shop in Toledo, and said to be "well heeled" with real estate in that growing city.

Just how the right horse *happened* to be at the right place at the right time may possibly be known to a much-honored early chief-justice of one of our Western territories, and another.

RANDOM RECOLLECTIONS OF THE EARLY DAYS.*

JAMES A. BRIGGS.

I was admitted to the bar at the October term of the Supreme Court, held in Zanesville, in 1833, Judges John C. Wright and Reuben Wood presiding; committee of examination, Henry Stanberry (afterward attorney general of the United States), Charles C. Converse (afterward judge of the Supreme Court of Ohio), and John H. James, one of the leading lawyers in south-west Ohio. I had been for several weeks preparing for examination in the statute laws of Ohio, and the reports of the Supreme Court of the state, in which a student was expected to be well read, as well as in the general principles of law—Blackstone, Chitty, Comyn, Starkie, Kent's Commentaries, and in pleadings. In Ohio, at that time, briefs were not much used. All cases were thoroughly argued before the judges, and notes taken of the points, and the authorities cited by the court.

I remember that Judges Wright and Wood were very pleasant in manner, and very considerate in their treatment and bearing to students and the young members of the bar. At the time of my admission to the bar, Ohio had many very able men practicing in its courts. They were located all over the state. Perhaps they were men not learned in the books, not carefully versed in all the English and American re-

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* This article, expressly prepared for the Bench and Bar of Cleveland, was one of the last ever penned by the venerable James A. Briggs. He had been in feeble health for several years, and died at his home in Brooklyn, New York, from a stroke of paralysis, on August 22, 1889.

ports, but they were men of strong common sense—educated in practical schools to defend the right and condemn the wrong, if not done always according to precedent.

Mr. Thomas Ewing, in a case that was carried to the Supreme Court at Columbus, from Cuyahoga county, did a thing that, I think, was never done before in court. Judge Wood was giving the decision of the court, in which a statute law of Ohio was to be construed. In the southern and middle portions of the state, in the transfer of real estate, it was the custom for the wife to join in the deed, without a special relinquishment of dower. On the Western Reserve it was the custom for the wife to make a special relinquishment of dower, and to acknowledge that "separate and apart from her husband, without any fear or compulsion, she acknowledged the same to be her act and deed." Judge Wood was delivering the opinion of the court, when Mr. Ewing arose and interrupted the judge, and said, "If the Supreme Court sends out a decision of the character you propose, it will unsettle the titles to two-thirds of the real estate in Ohio, and produce a generation of litigation." And then, turning to his brethren of the bar around the circle, he said, "I appeal to my brethren of the bar for the correctness of my opinion." The court hesitated, adjourned; the unrecorded decision was smothered, and afterward the court made a contrary decision. Mr. Ewing was one of the truly great lawyers of the country, acknowledged as such in the Supreme Court of Ohio, and in the Supreme Court of the United States in Washington.

The first time I was in the Court of Common Pleas at Cleveland, in the Fall of 1833, in a case of forgery, a motion was made to forfeit the bond a party had given for his appearance at court. The attorney of the defaulting forger read from a letter that he was dead, and consequently could not put in an appearance. Mr. S. J. Andrews, afterwards judge, said to the attorney of the forger, "Let me see that letter." When Mr. Andrews had read it, and had examined it carefully, he said to the court, "There can be no doubt, your honor, that the man who was arrested for forgery and gave bond for his appearance here is certainly dead, for this letter is in his own handwriting, and he must surely know the fact." The bond was forfeited.

The active members of the bar in Cleveland, in 1834, were John W. Allen, Samuel Cowles, John W. Willey, James L. Conger, Harvey Rice, Samuel Starkweather, John C. Kennedy, Daniel Radcliff, Leonard Case, V. J. Card, John A. Foot, S. J. Andrews, Samuel Williamson, J. M. Hoyt, H. B. Payne, H. V. Willson, H. H. Dodge and Jonathan Lapham, of Willoughby.

The membership of the bar rapidly increased in the six or seven years up to 1840 or 1842. Messrs. Benedict & Hitchcock, Charles Whittlesey, Bartlett & Chapman, Silliman, Stetson & Barr, Bolton & Kelley, Backus & Bishop, Wm. Strong, E. G.

Williams, L. C. Turner, F. W. Bingham, A. H. Lewis, C. L. Russell, Joseph Adams, B. White, F. Randall, H. Billings, F. J. Prentiss, D. Parish, Seth T. Hurd, Ambrose Spencer, Edward L. Thompson, S. H. Mather, A. L. Collins, O. P. Baldwin, N. P. Bennett, A. D. Smith, Geo. and H. C. Kingsley, and there were others who were students who were admitted to the bar and went to other states. The character and ability of some of those early lawyers in Cleveland may be judged by the positions they attained in after life. Mr. John W. Allen and Mr. S. J. Andrews were elected to Congress from the Cleveland district; Mr. Andrews was judge of the Superior Court in Cuyahoga county; Mr. J. L. Conger was in Congress from Michigan; Mr. Bennett was on the bench of the Supreme Court of California; Mr. A. D. Smith was chief-justice of the Supreme Court of Wisconsin; Messrs. F. Randall and A. L. Collins were on the bench in Wisconsin; Mr. R. M. Chapman was a member of the Senate of Maine; Mr. Sawyer was in Congress Missouri; Messrs. Foot, Backus and Payne were in the Senate of Ohio; Mr. Starkweather was a judge of the Common Pleas Court in Cleveland; Mr. O. P. Baldwin was elected a member of the Senate of Virginia, from the city of Richmond; Mr. Kennedy was the professor in the Columbia College Law School, in the District of Columbia; Mr. Radcliff was a member of the legislature of Virginia, from Prince William county, and district attorney in the city of Washington, D. C.; Mr. Strong, district judge of the United States Court in Oregon; Mr. Willson, on the bench of the United States Court for the Northern District of Ohio; and Mr. Henry B. Payne, now in the United States Senate from Ohio; Mr. Willey was president of the Common Pleas Court of Cuyahoga circuit; and Mr. Joseph Adams was elected prosecuting attorney of his county in Iowa; Messrs. Bolton and Bishop, S. O. Griswold and S. B. Prentiss and Horace Foote were on the bench in Cleveland.

The lawyer who stood foremost of all the members of the bar in Cleveland, and of all who came there to attend court, was Mr. Sherlock J. Andrews. As an advocate, nature had been lavish in her gifts to him. He had rare natural gifts; a remarkably fine voice, capable of every expression; an impressive and very effective manner, that never failed to win the attention of court and jury; a thorough classic and legal education; a rich and glowing fancy; a wonderful command of the choicest language, improved and enriched by the study of the best ancient and English classics. He was a born orator. He would convulse court and jury by the sallies of his wit, or hold them in silence by his impressive eloquence. He excelled almost any member of the bar in the examination of witnesses. He seemed to possess the power of unfolding truth without the labor of investigation. One of the finest efforts I ever heard him make was in a case that came into the Com-

mon Pleas, from Brecksville, where the father of a scholar sued a teacher for insisting that he, with the other pupils, should read every morning in the Bible. Mr. Andrews made one of the most eloquent speeches we ever heard in Ohio. As a defense of the Christian religion, it was masterly. He melted his audience to tears, as he described the army of the Revolution during seven years of privation and toil, and suffering and sublime human endurance, in the snows of Winter, without shoes, and with insufficient clothing, following their great commander, without murmur or complaint, because of the faith in God that they had derived by reading the Bible. The army of New England men in the Revolution were *New Testament boys.*

Leonard Case, Esq., the president of the old Commercial Bank, was altogether the best land lawyer on the Western Reserve. He was a man of an uncommon degree of common sense, educated in the school of adversity; of great strength of intellect, and of large practical knowledge of men and things. He was as familiar with the statutes of Ohio as any boy ever was with the story of "the rude boy," in Webster's Spelling Book. I remember that the now venerable Mr. George Bancroft, who long years ago was a real estate owner in Cleveland, said to me, "that Mr. Case was one of the most remarkable men he ever knew." Mr. Case was for many years the agent of the State of Connecticut for the sale of its lands, and he said he never knew the power of *interest* until he computed it at six per cent. on the land contracts. The first lot of land he ever bought was in Painesville. He said he never bought but once land that was not forced onto him. He paid $1,500 for the "Ox Bow," and sold it for $15,000. The State of Connecticut urged him to buy land it owned on the Kinsman road, east and west of Perry street. He declined, because he was the agent of the state, and advised his friend, the late Philo Scovill, to buy it at $20 an acre. The 1,800 acres he bought in Brooklyn on his own judgment; the eight acres on the Square, Superior and St. Clair st[illegible]nd the ten-acre lots on St. Clair road, were all actually forced onto him. The eight acres he paid $250 for. What is it worth now? The late Mr. Horace Perry refused to unite with him in the purchase, as it was a low, wet alder swamp. In a referee case before Mr. Case, where Judge Andrews was opposed to Mr. Case, after it was closed, the judge said, "I think, Mr. Case, I can beat you in tropes, but you certainly beat me in figures." The farm and home of an old clergyman, with whom Mr. Case boarded, in Warren, when he was young and very poor, and whose family were very kind to him, were advertised to be sold, on mortgage, at sheriff's sale. Mr. Case drove out to Solon, found out how much the debt was, came home, and, on the day of sale, bid off the property, had a sheriff's deed made out in the name of the wife of the venerable clergyman, had it put on record, and sent it out to her. It was over $4,000 he paid for early memories of kindness received and remembered.

Mr. Seth T. Hurd was one of the early lawyers of Cleveland. He did not know very much of Blackstone or Kent, of Chitty or Starkie, but had an inexhaustible fund of stories, and he told them admirably well, and was a genial, pleasant man. One day, I was in the clerk's office, and he came in and wanted a writ of replevin for a man's wife. I asked how he could replevin a wife? "Why, she proposes to go off with another fellow." "Well, you must state how much she is worth, and swear to her value." "I can't do that," and out he went. The clerk said to me, "Briggs, why did you tell him that? I would have had in a few moments an application on file to replevin a man's wife." He died the editor of a paper in western Pennsylvania. In Cleveland, he was associated in the law with Daniel Parish, who married a divorced woman. One of the lawyers of Cleveland, who, running over with fun one day, when he heard that the woman's former husband was in town, wrote a letter to Parish, saying, "If I meet you on the street, I shall shoot you at sight, so prepare yourself for certain death." Then he wrote another letter, and signed Parish's name to it, and gave him the same pleasing information, whereupon, in the greatest fright, they both left the city for several days.

Judge John Barr was born at Liberty, Trumbull county, Ohio, in 1804. In 1810, his father settled in Euclid, Cuyahoga county, where he took pastoral charge of a Presbyterian congregation. In 1825, the son was made deputy sheriff of Cuyahoga county, by James S. Clarke. He occupied the same position under Edward Baldwin, the successor of Mr. Clarke, and, in 1830, was himself elected sheriff, by an overwhelming majority. After serving two terms, of two years each, he declined the office, for the purpose of joining the law firm of Silliman, Stetson & Barr. Mr. Silliman died, the health of Mr. Stetson failed, and the firm was broken up. Mr. Barr was elected judge of the Police Court, and resigned that office to become clerk of the Court of Common Pleas. Judge Barr took a deep interest in historical matters relating to Cleveland and the West, and the collection of papers made by him upon historical themes were of great value, and have been in constant quotation by historical writers. His death occurred suddenly on January 24th, 1875.

About 1839, a table of fees was adopted by the bar of Cleveland, signed by all its members but one, and printed. The fees at that day were ridiculously small, not as high as a brick-layer's of to-day. I remember one fee for making a law argument before the Supreme Court, $20. Mr. Bushnell White, a young and eloquent lawyer, refused to sign the "fee bill," and gave as his reason, "if a party could get Mr. S. J. Andrews to make an argument in the Supreme Court, for the same fee that he would have to pay him, he was a fool if the party did not employ Andrews." I presume I have among my papers a copy of this "fee bill;" it would be a curiosity now. The lawyers' fees were

as much too low fifty years ago as they are in some cases too high now. Since the era of great corporations, great fees have been paid to attorneys.

The salaries of the president judges of the Common Pleas circuits in Ohio, until within a few years ago, were $730 a year. This was a little more pay than the late Judge Peter Hitchcock got for teaching school, in Geauga county, when he first went to Ohio; eight dollars a month, and collected his pay himself, and took it in pork and beef, butter, wheat, corn, etc., at store prices.

RECOLLECTIONS OF THE CLEVELAND BAR.

D. W. CROSS.

Nearly forty-five years ago (in 1836), the staunch old steamer *Commodore Perry* landed at your busy wharf a young man having a moderate amount of fire and ambition, and a large amount of youthful activity, with the fixed design of spoiling a good business man, and making a poor lawyer. Had his foresight been equal to his "hindsight," he never would have entered the office of Payne & Willson, one of the leading law firms of Cleveland, and tackled Blackstone; but it wasn't.

After being settled in the office of Messrs. Payne & Willson as the junior student at law (A. H. Curtiss, James Bennet and O. P. Baldwin being the seniors), it became his duty to take off a memorandum of the cases from the court trial docket, in which they were retained. At that early day (1836), there were over four hundred cases in which this learned, energetic and active law firm appeared for one side or the other, and generally pitted against Andrews & Foot (subsequently Andrews, Foot & Hoyt), Bolton & Kelley (successors of James L. Conger), Horace Foote, Joseph Adams, Samuel Starkweather (then United States collector of customs for this district and port), and would occasionally cross swords with Daniel Parish, Seth T. Hurd, John Erwin, James K. Hitchcock, Collins, etc.

Judge Van R. Humphry presided with great dignity, neatly dressed, (always wearing a ruffled shirt), assisted by two associates, Judge Barber and Judge Warren, ostensibly for consultation. But they not being lawyers, were seldom called upon to express an opinion. It was said that a member of the bar once asked Judge Warren if he had ever been consulted by the presiding judge while on the bench. After musing a moment, he said: "Yes, I have been once! Near the close of a long, uninter-