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JOSEPH MEADE BAILEY, 1833-1895

WILLIAM F. ZACHARIAS*

It is not likely, when Kickham Scanlan, Louis Henry, Edward I. Felsenthal, Rudolph Frankenstein, and Joseph Grannick met one evening during the bustling year of 1887 in the law offices of Burke, Hollet and Tinsman in Chicago to discuss means of amplifying the training they were receiving in the law, that they then contemplated creating a law school. It is not likely, as they added to their original group, that they contemplated doing much more than spending a few evenings in earnest discussion of legal subjects; nor, busily occupied as they were in their daily tasks, that they thought of attending school in any formal fashion. But one thing is certain, that when they sought out a preceptor to guide their efforts, they made no mistake in calling upon and enlisting the aid of Joseph Meade Bailey, then justice of the Appellate Court of Illinois.

Discerning the need for an institution of the type suggested by this voluntary union of kindred spirits, he sagely advised the incorporation of the group, and shortly thereafter, the Chicago Evening College of Law, which he served as first dean, was founded. Its lineal

* Member of the Illinois Bar; Professor of Law, Chicago-Kent College of Law; assisted by Adam Kreuter, B. A., University of Arkansas, student at Chicago-Kent College of Law, who compiled the statistical data on the decisions written by Judge Bailey.

descendant, by growth and consolidation, is the present Chicago-Kent College of Law. In celebrating the fiftieth anniversary of its foundation, the College here records for posterity a brief account of the part played in the development of the law of Illinois by one who well deserves the title of "Pillar in the Temple of Justice" but who was known only as Joseph Meade Bailey.

PART I

On June 22, 1833, in Middlebury township,¹ Wyoming County, in western New York, there was born to Aaron Bailey, a farmer, and Marie Brannan Bailey, his wife, a child, whom they named Joseph Meade Bailey. These worthy parents, emigrants from New England and descendants from Pilgrim stock, reared their son amid rural surroundings, furnishing him with such education as could be provided by the district schools of the neighborhood. At fifteen, however, he had reached the horizon, and urged on by ambition, he left the family home and entered Wyoming Academy to pursue his education further. The family budget of these thrifty people could not stand the burden of such training; so he was obliged to fend for himself. Despite the fact that he was ill for about a year, he relied solely on his own exertions, first by manual work in the Academy, then by teaching in the rural schools, and, after 1850, in the Academy itself. Unsatiated ambition, however, drove him to still wider fields; so in 1851 he entered the University of Rochester. While laboring for his keep, he nevertheless prosecuted his studies so assiduously that, among the highest of his class, he was graduated with the degree of A. B. in

¹ The biographical sketches of Judge Bailey's life refer to his birthplace as Middlebury, Middleburg, and Middleborough. No such village or town ever appears to have existed in Wyoming County, New York, which covers an area of 590 square miles and had a population, as late as 1877, of only 29,164, though there is a Middlebury township in that county. The scene should not be confused with Middlebury in Schoharie County. Cf. Johnson's New Universal Cyclopaedia (New York, N. Y., 1877), IV, 1512.

1854. He was subsequently awarded the degree of A. M. in course from his Alma Mater.

At this point he selected law for his profession and entered the office of Ethan A. Hopkins, then one of the foremost lawyers in Rochester, of whom he afterward spoke in the highest terms. After studying with Hopkins for about a year, he applied for and was granted admission to practice by the Supreme Court of New York in November, 1855, at the age of twenty-two. In the fall of that year, he decided that the western lands offered considerable promise; so he set off for the middle west. He visited various localities in Michigan, Illinois, and Iowa, but finally decided that Freeport, county seat of Stephenson County, Illinois, situated in a countryside comparable to the scene of his birthplace, should be the home of his endeavors, and he settled there in August of 1856.

Shortly after admission to the Illinois bar on foreign license on October 22, 1856, he opened his first office in A. T. Green's one-story frame building, adjoining the office of Turner, Burchard and Barton, and his first legal business was to assist that firm in taking the deposition of a witness to be used in a chancery suit pending in the circuit court. The precision of his language and his skill in framing a sentence so as to express the exact meaning intended at once created a favorable impression.²

He became associated in 1857 with U. D. Meachem, then state's attorney for the local judicial circuit, whose frequent absence while attending court in other counties left Bailey in charge of the office and of the law and chancery business. He soon had gained a reputation as a sound lawyer, safe counselor, careful pleader, and persuasive advocate.

These achievements fulfilled an earlier resolution and

² The Bench and Bar of Illinois (Edited by John M. Palmer, Lewis Publishing Co., Chicago, Illinois, 1899), II, 1196.

influenced his return to the community of his birth, where he proposed to Miss Anna Olin, one of his fellow students at Wyoming Academy, who resided at Perry Center in an adjoining township. They were married at her home on February 22, 1859, and returned to Freeport to become leading, as well as lifetime, residents of that community. His wife, sharing in his humanitarian feelings, founded the first free kindergarten at Freeport and engaged very actively in all charitable enterprises.³

Four years later he became a partner of F. S. Brawley, and, while practicing with him, he decided that the time was propitious to devote his talents toward reform in the political and governmental life of his state. As an ardent Republican, he campaigned the Fifty-sixth District and was elected, at the age of thirty-three years, as a member of the Twenty-fifth General Assembly, which met at Springfield on January 7, 1867.

His sincerity as a legislator was witnessed by his efforts, despite the attacks made by those who sought to preserve the system of private privilege which had made the legislature of the state a den of graft and corruption, to secure the passage of a resolution that, in every corporation charter thereafter voted, a clause should be inserted subjecting such corporation to future regulation by the legislature.⁴

Even more noteworthy was his action in introducing a resolution calling for a convention "to alter and amend the constitution of this state."⁵ This put him among the first to see that the Constitution of 1848 had already become an outmoded instrument, promoting private chicanery rather than public good. So earnest was he in his

³ Chicago Legal News, Vol. XXVIII, No. 8, p. 60.

⁴ House Journal (1867), I, 47. Mr. Bailey subsequently introduced the same proposal in the form of a bill, House Journal (1867), I, 81; though it failed to pass, House Journal (1867), II, 957.

⁵ House Journal (1867), I, 136. The resolution was adopted and appears in Public Laws, Illinois, 1867, p. 192. The recommendation in the resolution does not appear to have been followed.

desire to make this change that he even proposed that all members of the legislature resign their seats at the end of the session so as to require special elections, rather than have his proposal wait until the general elections of 1868.⁶

As a member of the important Judiciary Committee he had a hand in shaping three important laws, still in force, which brought the state abreast of the times, and which passed unanimously when brought up for vote. They were the first "Act relating to the competency of witnesses,"⁷ the first "Act relating to separate maintenance of married women,"⁸ and the first "Act concerning the adoption of minors."⁹ His service on the Committee on Federal Relations brought him in touch with national affairs, for he dealt there with the Congressional Resolution proposing the Fifteenth Amendment to the United States Constitution, and he also recommended passage of an act to cede lands to the United States for the site of a marine hospital in Cook County.¹⁰

One thing above all, however, marked him as a humanitarian of the highest type; that was his attempt to prevent the leasing of convict labor in the state penitentiary at Joliet to private interests. Since the creation of the first state prison at Alton in 1833, it had been the custom to turn the management of the penitentiaries of the state over to private persons, who would relieve the state of the expense of caring for the prisoners, in return for

⁶ House Journal (1867), I, 196. In view of the penitentiary scandal which developed shortly after the close of the session, it is perhaps just as well that his ingenious plan failed to carry.

⁷ Public Laws, Illinois, 1867, p. 183, original text of Ill. Stats. 1937, Ch. 51, §§ 1-7, now partly modified by subsequent amendments.

⁸ Public Laws, Illinois, 1867, p. 132, which is identical with the text of Ill. Stats. 1937, Ch. 68, § 22, prior to the amendment of July 11, 1935.

⁹ Public Laws, Illinois, 1867, p. 133. Prior to the passage of this act all adoption proceedings were handled by private law. The volumes of Private Laws of Illinois from 1818 to 1869 are replete with such measures. Since this act, adoption has been a judicial proceeding.

¹⁰ House Journal (1867), I, 66. The site selected and subsequently utilized is located on Clarendon Avenue in Chicago.

which such private persons received the labor of the prisoners free of charge. The profit for the lessees was enormous, but the prisoners were treated worse than slaves, for they were ill-fed, ill-clothed, ill-housed, and beaten whenever frail bodies collapsed under the effects of such treatment. The lease for Joliet State Prison did not expire until June 10, 1869, but selfish individuals were at work in 1867 to secure the privilege for themselves, and a bill was proposed to this end shortly after the session opened.¹¹ Bailey led the fight against the measure¹² but it passed by a vote of 49 to 30.¹³ His efforts to relieve conditions were not in vain, though, for the legislature did pass two bills, one forbidding the whipping of convicts,¹⁴ and the other creating a reform school for juvenile offenders between the ages of eight and eighteen years.¹⁵

The fight for penal reform seemed lost when the session ended.¹⁶ Events, however, moved quickly. The former lessees of Joliet State Prison, under obligation to make certain improvements, became delinquent. This offered him a strategic opportunity, and when a special session of the legislature was called for June 14, 1867, Bailey promptly on the opening thereof introduced and forced through a bill for "An act to provide for the management of the Illinois State Penitentiary at Joliet." Fourteen days later the prison had been placed in the hands of the state commissioners.¹⁷ From that day till

¹¹ House Journal (1867), I, 246.

¹² House Journal (1867), II, 495.

¹³ Public Laws, 1867, p. 137.

¹⁴ Public Laws, 1867, p. 30.

¹⁵ Public Laws, 1867, p. 38. See also the Illinois Crime Survey (published by Illinois Association for Criminal Justice in co-operation with the Chicago Crime Commission, Chicago, 1929), p. 434.

¹⁶ With the close of the session the representatives drew the munificent pay of \$329 for fifty-three days of service, during which time Bailey had not missed a single meeting. House Journal (1867), II, 1037.

¹⁷ Public Laws, 1867, Second Special Session, p. 21. The Commissioners so appointed called at Joliet on July 1, 1867, and took possession from the lessees. Their report of conditions is appalling. See Reports made to the General Assembly at its 26th Session (Springfield, Illinois, 1869), I, 67.

this, the prisons of the state have been public institutions rather than private sweatshops. The same special session amended the criminal law so as to revise the provision differentiating between grand larceny and petty larceny. The figure then fixed, setting the property valuation at fifteen dollars has continued to this day.¹⁸

So well had he acquitted himself in his first public office that it is not surprising that his constituents re-elected him to the Twenty-sixth General Assembly which met on January 5, 1869. This time he entered, not as a novice seeking to win his spurs but as a known foe of special privilege whose merit won him the important position of Chairman of the Committee on Railroads, as well as membership on the Committees on Municipal Affairs and the Penitentiary.¹⁹

The session had barely commenced when steps were taken to insure a constitutional convention to reframe the fundamental law of the state. Bailey's bill to that end, introduced on the second day,²⁰ shows him to be one whose determination to promote the welfare of his state was unyielding. This cherished end was won before the session closed, and the people of the state were given an opportunity, through the Constitution of 1870, to strike at the abuses of private legislation. Against the end that this measure might fail to receive popular support, a proposed constitutional amendment was also offered to prevent the Illinois Central Railroad Company from ever being released by some complaisant legislature from its charter obligation to pay into the state treasury

¹⁸ Public Laws, 1867, Second Special Session, p. 37. From the founding of the state to 1833, the law had drawn no such distinction. By Rev. Laws, 1833, p. 182, the line of demarcation had been placed at five dollars. The present law may be found in Ill. Stats. 1937, Ch. 38, § 389.

¹⁹ House Journal (1869), I, 145-6.

²⁰ House Bill No. 7, House Journal (1869), I, 141. The Bailey measure passed the house with a single dissenting vote, House Journal (1869), II, 208, but the actual bill enacted was Senate Bill No. 1, containing identical language, after which House Bill No. 7 was laid on the table, House Journal (1869), III, 670.

a percentage of the gross receipts of operation. This measure likewise passed and the proposal was adopted by the drafters of the Constitution of 1870.²¹

The railroad rate abuses, which eventually led to the Granger Movement and to the creation of Federal and state commerce commissions, were not overlooked and it is not surprising to find Bailey proposing a law to require that passenger and freight rates be "just, reasonable and uniform."²² Lacking the administrative experience for dealing with such problems — experience acquired by legislatures only in later years—he sought to enforce such regulation by a substantial fine for each violation, but at least the germ of the idea of public control was introduced into the public mind.

One other measure, important in the history of railroading in Chicago, came before the Twenty-sixth General Assembly. In parliamentary language it was styled "An act in relation to a portion of the submerged lands and lake park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the City of Chicago." Its purpose, briefly, was to vest in the municipality title to the lands between Randolph Street and Park Row east of Michigan Avenue in the City of Chicago, with authority, upon vote of the council, to sell the same in fee. The measure appeared innocuous, and, in the eyes of some persons, a vital one to improve the dumping ground which had been permitted to develop along the east side of Michigan Avenue between the shore line and the Illinois Central Railroad tracks which then ran on stilted piling across the waters of the lake. Bailey's desire to help develop Chicago seems to have led him into proposing some minor amendments thereto,²³

²¹ House Journal (1869), I, 134. Public Laws, Illinois, 1869, p. 96. Illinois Constitution 1870, Art. XIV, sec. 2.

²² House Bill No. 1241 was introduced by Bailey on Feb. 9, 1869 (House Journal, 1869, I, 849), but again the Senate counterpart (Senate Bill No. 495) was the one actually adopted. Public Laws, 1869, p. 309.

²³ House Journal (1869), I, 877.

and even voting to approve the measure.²⁴ The scheme, however, was not really what it seemed; rather it was a plan to sell the entire area to the Illinois Central Railroad Company for a few hundred thousand dollars, although the land possessed, even in those days, a valuation running into millions. The measure was submitted to Governor Palmer for approval, but he vetoed the act expressing his reasons in no uncertain language.²⁵ The bill was resubmitted and again carried, but this time Mr. Bailey voted against it, convinced, if for no other reason, that the measure was an unconstitutional effort to invalidate the terms of the grant by which these lands were ceded to the State of Illinois on the abandonment of Fort Dearborn.²⁶ It was not until Justice Harlan wrote his celebrated opinion on the subject, however, that Grant Park became a public legacy in perpetuity.²⁷

Attention to railroad matters did not prevent Bailey from supporting further penal reforms, one of which created the good-conduct allowance in diminution of the term of imprisonment;²⁸ nor from helping liberate married women from the bondage imposed on them by the common law;²⁹ nor from remedying noticeable defects in the practice and procedure in the courts of Illinois. His own measure authorizing the addition of new parties after suit commenced,³⁰ as well as one granting a continuance in all cases where either party or his counsel

²⁴ House Journal (1869), II, 62.

²⁵ Reports made to the General Assembly at its 26th Session, Springfield, Illinois (1869), II, 1053.

²⁶ House Journal (1869), III, 638-9.

²⁷ *State of Illinois v. Illinois Central Railroad Company*, 33 F. 730 (1888); affirmed, 146 U. S. 387, 13 S. Ct. 110, 36 L. Ed. 1018 (1892).

²⁸ Public Laws, Illinois, 1869, p. 101.

²⁹ Public Laws, Illinois, 1869, p. 255, which allowed the married woman to retain her own earnings and to sue for the same, if necessary, is still law in this state. Ill. Stats. 1937, Ch. 68, § 7.

³⁰ Public Laws, Illinois, 1869, p. 370, which continued in effect until the adoption of the Illinois Civil Practice Act of 1933, was designed to obviate the necessity of bringing a new suit wherever the original writ had omitted to name necessary parties, or when death, after suit commenced, required a substitution.

was a member of the General Assembly,³¹ were adopted, and he supported the bill under which every executor and administrator since 1869 has been able to deposit unclaimed monies in his hands with the clerk of the court in order to secure his discharge.³²

Seventy-four days of active service in this session of the legislature, for which he was remunerated with the magnificent stipend of \$548,³³ marked the close of Bailey's career as a law-maker, for although he sought the Republican nomination for a congressional vacancy in 1869, he lost to H. C. Burchard, who had been a member of the first Illinois law firm to give him employment. Prior to his accession to the bench, he occupied but one other public office, that of presidential elector in the Hayes-Tilden campaign of 1874.

Between 1869 and 1877, part of which time he was associated with James I. Neff, he devoted himself to private practice, and such was his painstaking attention to his clients' affairs that he came to enjoy an extensive and lucrative practice while receiving the respectful admiration and recognition of his fellow-members at the bar as one of the leading lawyers of the state. Any prominent attorney in a county-seat town is certain to engage in a varied type of practice, and such was the case with Joseph Bailey if one can draw any inference from the reported cases in which he participated on appeal. His name appears as counsel forty-five times in the volumes of the Illinois Supreme Court decisions commencing as early as 1859, and it appears that his contentions were accepted by that court in twenty-seven instances. But

³¹ Public Laws, Illinois, 1869, pp. 370-1, was adopted by the present Supreme Court Rules; Ill. Stats. 1937, Ch. 110, § 259.14.

³² Public Laws, Illinois, 1869, p. 7, appears in Ill. Stats. 1937, Ch. 3, § 141.

³³ House Journal (1869), III, 766, discloses that he again punctually attended every session and was compensated, in addition to his regular allowance of \$518, with \$30 for his services as Chairman of the Committee on Railroads.

one of these cases will be mentioned, that of *Johnson v. Von Kettler*,³⁴ an action for false imprisonment, for it discloses the determination he could devote to protecting the rights of a client. He fought that case through three trials and three appeals in order to win in the end.³⁵

His clientele included many important firms and corporations, among them the Illinois Central Railroad and the American Insurance Company, the latter of which he served as General Counsel. While so engaged, he prepared the only published item, except for judicial opinions, appearing over his signature. This was an eighty-two page monograph, bearing the formidable title of "Briefs of Authorities upon Sundry Questions of Law Arising in the Business of the Collection Department of the American Insurance Company, of Chicago, Illinois,"³⁶ which seems to have been designed more as a labor saver in order to obviate unnecessary correspondence with the local attorneys and agents of the company than as a work of lasting legal significance, but it does bear the imprint of his thoroughness.

As the years rolled by and as his reputation grew, he decided that his ambitious plans would not be fulfilled until he had served the public in at least another department of government; so, as the judicial elections of 1876 neared, he determined to campaign once again. He was successful, and at the age of forty-four, despite the financial sacrifice involved, he donned the robes (which he wore with such marked distinction for the rest of his life) as judge of the Circuit Court of the Thirteenth Circuit, comprising the northwestern counties of Jo Davies, Stephenson, Winnebago, Carroll, Whiteside, Ogle, and Lee, wherein were located the thriving com-

³⁴ 84 Ill. 315 (1876).

³⁵ The prior appeals may be found in 57 Ill. 109 (1870), and 66 Ill. 63 (1872).

³⁶ The work is dated at Freeport, Illinois, on April 10, 1877, and was printed and published the same year at Chicago by the American Insurance Company.

munities of Galena, Rockford, Oregon, and Dixon, as well as his own home town of Freeport.

Judge Bailey had served but a little over a year on the *nisi prius* bench when Judge W. W. Heaton, presiding judge of the First District Appellate Court, which had been created by an act passed on June 12, 1877,³⁷ died rather suddenly. The Supreme Court, charged with the duty of assigning judges to serve in the new court, appointed Judge Bailey to take Heaton's place, and their selection was warmly endorsed by the bar. From 1878, until his elevation to the Supreme Court of the state in 1888, he served so well with his distinguished brethren that the new court became an important tribunal in the state judicial system.³⁸ During those ten years of service he wrote a total of 438 opinions which appear scattered throughout the first thirty-seven volumes of the Illinois Appellate Court Reports, although that imposing list does not nearly represent the volume of work handled by him, for at that time the court only wrote opinions where the judgment or decree of the *nisi prius* court was reversed.³⁹ Only three instances occur in this total wherein any dissent was expressed to his opinions, and in two of them the dissenter did not see fit to explain his attitude.⁴⁰ His written opinions are ex-

³⁷ Ill. Stats. 1937, Ch. 37, § 25.

³⁸ While in that court he served as Presiding Justice from March term, 1879, to March term, 1880; from October term, 1882, to October term, 1883, and again from October term, 1885, to October term, 1886. Any living member of the Illinois bar who was admitted in the First District during that period will remember him as the individual who questioned the candidates on problems arising in practice and procedure, for part of the function of the Appellate Courts then was to handle matters concerning admission to the bar. See Rules of Appellate Court, First District, in 1 Ill. App. 28. A personal note is furnished by the reminiscence of his co-judicial worker, Thomas A. Moran, who once said, "I think . . . he kept the courtroom too warm when he, Judge McAllister, and I were sitting together . . . and as I was the kid of the court, I had no say. They kept the room hot enough to fry eggs." Chicago Tribune, Vol. LIV, No. 290, p. 5.

³⁹ Ill. Rev. Stats., 1877, p. 324.

⁴⁰ These three cases appear in 8 Ill. App. 595; 9 Ill. App. 571; and 25 Ill. App. 379. The latter was Judge Bailey's longest opinion while on the Appellate Court bench.

pressed in such clear language and fortified by such apt citation and logical reasoning that only ninety-three of these cases were carried to the Supreme Court of Illinois, and the records of that tribunal disclose that his judgment was affirmed seventy-three times, reversed only eighteen times,⁴¹ with one opinion modified,⁴² and one appeal dismissed on jurisdictional grounds.⁴³

Lack of space prevents comment on all of these decisions, but much that he decided is relied on as authority today, and the diversification of his knowledge of the law is evidenced by the variety of subjects included in those opinions and the extent to which he has been quoted and cited in other jurisdictions and by legal writers generally.⁴⁴ He seemed able to turn readily from problems of commercial law to those arising from the family relation and with equal facility to dispose of unrelated questions concerning navigable streams, criminal law, and gifts *causa mortis*. The principal subjects, however, on which he wrote dealt with practice and procedure, insurance law, and contractual problems, for which his practice at the bar had made him eminently fitted.

A few, however, of those decisions which he pronounced while on the Appellate Court bench and which still play a significant part in the law of Illinois may well be mentioned. Among the cases of first impression are *Chicago, Burlington & Quincy Railroad Company et al. v. Hoyt et al.*,⁴⁵ in which he interpreted Article 13, Section 5 of the Constitution of 1870, to require rail-

⁴¹ 94 Ill. 416; 103 Ill. 403; 102 Ill. 592; 103 Ill. 633, with three judges dissenting; 108 Ill. 220; 109 Ill. 157, with two dissenting; 112 Ill. 263, with three dissenting; 114 Ill. 603, with one dissenting; 120 Ill. 184; 117 Ill. 643; 118 Ill. 17; 119 Ill. 617; 121 Ill. 283; 121 Ill. 638; 126 Ill. 499, with one dissenting; 124 Ill. 560; 129 Ill. 261; and 129 Ill. 557.

⁴² 120 Ill. 208, 10 N. E. 903 (1887), modifying 18 Ill. App. 341.

⁴³ 115 Ill. 113, 3 N. E. 728 (1885), based upon 16 Ill. App. 372.

⁴⁴ His Appellate Court decisions have found their way into the reports of all of the states in the union with the exception of Maine and New Mexico, and a glance at the citator discloses that most of his opinions have been cited by all the standard digests and annotated series of reports.

⁴⁵ 1 Ill. App. 374 (1878), affirmed in 93 Ill. 601 (1879).

roads to deliver grain to public warehouses only where the carrier might lawfully so do; *German National Bank of Chicago v. Meadowcroft*,⁴⁶ upholding the right of an owner of fungible goods to sue the warehouseman's creditors who had levied upon the property, thereby rejecting the contention that title passed to the bailee; *Katz v. Moessinger*,⁴⁷ holding enforceable a promise, made after filing of a petition in bankruptcy but before adjudication, to pay a debt contracted before the petition was filed; *Battenhausen v. Bullock*,⁴⁸ elaborating on the doctrine that the recording of a mortgage which fails to specify the amount of the debt or note secured thereby is not constructive notice to subsequent bona fide purchasers; and *Derby v. Derby*,⁴⁹ granting the wife power to establish a separate domicile apart from her husband for purpose of securing divorce.

Of like significance are *Holden v. Gibson*,⁵⁰ holding that an agreement for compensation for a portion of the cost of erecting a party wall is a personal right and not a covenant running with the land on which the wall is erected; *Tobey Furniture Company v. Rowe*,⁵¹ that equity would not specifically enforce a provision in a lease requiring the appointment of arbitrators to establish the valuation of the leased premises for the purpose of fixing a basis for rent but would act to prevent a failure of justice by fixing its own valuation; *Wollensak v. Briggs*,⁵² that equity will not entertain bills to compel specific performance of contracts for personal services; *Hayden v.*

⁴⁶ 4 Ill. App. 630 (1879), affirmed in 95 Ill. 124 (1880).

⁴⁷ 7 Ill. App. 536 (1880), affirmed in 110 Ill. 372 (1884).

⁴⁸ 11 Ill. App. 665 (1882), affirmed in 108 Ill. 28 (1883).

⁴⁹ 14 Ill. App. 645 (1884). This case will illustrate his ability to discriminate between what appear to be conflicting decisions, and also the depth to which his research could penetrate.

⁵⁰ 16 Ill. App. 411 (1885), affirmed in 115 Ill. 199, 3 N. E. 282 (1885).

⁵¹ 18 Ill. App. 293 (1885), which was cited with approval as late as 1932 in *The Union Trust Co. et al. v. The Board of Education of the City of Chicago*, 348 Ill. 256, 180 N. E. 819, involving rental of school lands in the heart of the Chicago "Loop" area.

⁵² 20 Ill. App. 50 (1886), affirmed in 119 Ill. 453, 10 N. E. 23 (1887).

Rogers,⁵³ holding that the "Family Expense" Act⁵⁴ imposes a personal liability on the wife and not merely a charge upon her separate property; *Ochs v. People*,⁵⁵ that the time fixed by the statute⁵⁶ permitting discharge for failure to prosecute does not commence to run until the term next after the one in which the defendant is bailed; and *City of Chicago v. The Phoenix Insurance Company of Brooklyn*,⁵⁷ denying a municipal corporation power to impose a special license tax on foreign insurance companies.

A word should be said about the cases in which his decisions were reversed by the Supreme Court of Illinois. The number was, relatively speaking, quite small, and in not a few instances the reversal occurred only by the narrow margin of one vote. One case among them, though, possesses unique importance, for the doctrine he had supported in 1887 became the law of the state thirty-two years later by a decision which overruled not only the court which had rejected his views but a long line of authorities predicated thereon. His decision in *The United States Life Insurance Company v. Kielgast*⁵⁸ had declared it erroneous to receive a coroner's verdict in evidence in a civil suit. The danger inherent in the use of such verdicts is amply pointed out in the case which adopted his views by the following language:

A review of the above cases clearly discloses that many of the cases, if not all of them, have been largely controlled by the admission in evidence of the verdicts of the coroner's jury. . . . As a consequence of such practice there has resulted in this State a

⁵³ 22 Ill. App. 557 (1887).

⁵⁴ Ill. Stats. 1937, Ch. 68, § 15.

⁵⁵ 25 Ill. App. 379 (1887), affirmed in 124 Ill. 399, 16 N. E. 662 (1888). This case reflected great public interest at the time as it involved a scandalous story of graft and corruption among the Cook County Commissioners. Judge Moran, second dean of Chicago-Kent College of Law, was also on the same bench and wrote a dissenting opinion, marking one of the few times when these lifelong friends did not agree.

⁵⁶ Ill. Stats. 1937, Ch. 38, § 748.

⁵⁷ 26 Ill. App. 650 (1887), affirmed in 126 Ill. 276, 18 N. E. 668 (1888).

⁵⁸ 26 Ill. App. 567 (1887), reversed in 129 Ill. 557, 22 N. E. 467 (1889).

race and scramble by litigants to secure a favorable coroner's verdict that would influence or control in case a civil suit should be brought to establish a claim by reason of death. . . . The allowance of coroner's verdicts as evidence in civil suits is wrong in principle and necessarily results in much injustice to litigants.⁵⁹ An evil which he recognized as early as 1887 became no longer possible of perpetration after 1919.

The closing words of the final opinion written while on the Appellate Court bench display how well he understood a characteristic failing of plaintiffs. The plaintiff therein, suing a carrier for damages for a loss of a box of goods, had received a verdict and judgment. The defendant contended that the amount of damages was excessive because the property had been heavily overvalued. On this point he wrote: "We may suspect that the evidence was strained so as to enlarge quantity and magnify as to quality and value of the goods, but we can not, under the evidence, demonstrate that what we suspect is fact . . . the judgment below should be affirmed."⁶⁰

The priceless background of native wisdom, scholarly attainment, kindness, and diligence which his experiences had developed up to this, his fifty-fourth year, became the legacy he brought to the infant Chicago Evening College of Law at the time of its founding in that last year on the Appellate Court bench, but the story of his parental interest in that institution must be left to further consideration.

To Be Continued.

⁵⁹ Spiegel's House Furnishing Company v. The Industrial Commission, 288 Ill. 422, 123 N. E. 606 (1919).

⁶⁰ The Hamburg American Packet Company v. Gattman, 27 Ill. App. 182, on p. 192, affirmed in 127 Ill. 598, 20 N. E. 662 (1889).