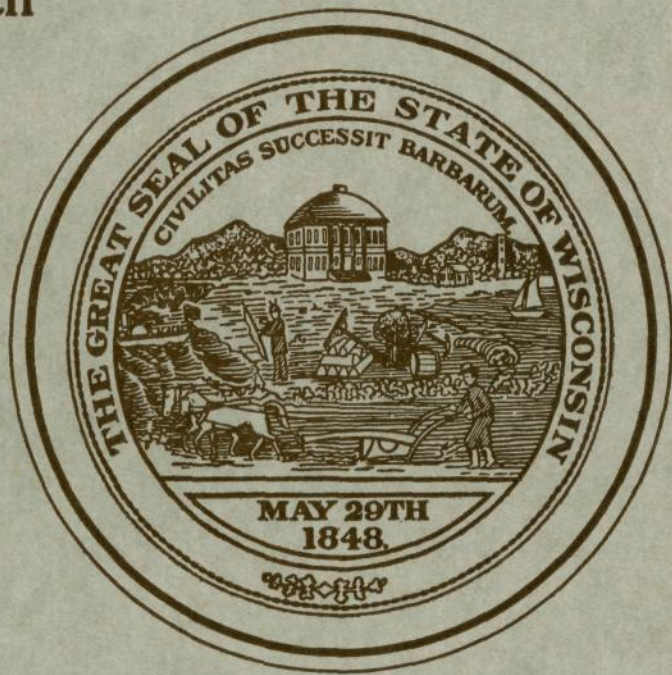


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SOCIETY OF WISCONSIN

THE STATE HISTORICAL SOCIETY OF WISCONSIN

THE STATE HISTORICAL SOCIETY OF WISCONSIN is a state-aided corporation whose function is the cultivation and encouragement of the historical interests of the State. To this end it invites your cooperation; membership is open to all, whether residents of Wisconsin or elsewhere. The dues of annual members are two dollars, payable in advance; of life members, twenty dollars, payable once only. Subject to certain exceptions, members receive the publications of the Society, the cost of producing which far exceeds the membership fee. This is rendered possible by reason of the aid accorded the Society by the State. Of the work and ideals of the Society this magazine affords, it is believed, a fair example. With limited means, much has already been accomplished; with ampler funds more might be achieved. So far as is known, not a penny entrusted to the Society has ever been lost or misapplied. Property may be willed to the Society in entire confidence that any trust it assumes will be scrupulously executed.

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BUILDINGS AND GROUNDS
 OF THE
WISCONSIN MEMORIAL HOSPITAL
 AT
FARWELL'S POINT, WISCONSIN
 MAJOR W. F. LORENZ, M.D., MEDICAL DIRECTOR & SUPT.
 ARTHUR PEABODY, STATE ARCHITECT, J. G. D. MACK, STATE CHIEF ENGINEER
 1923

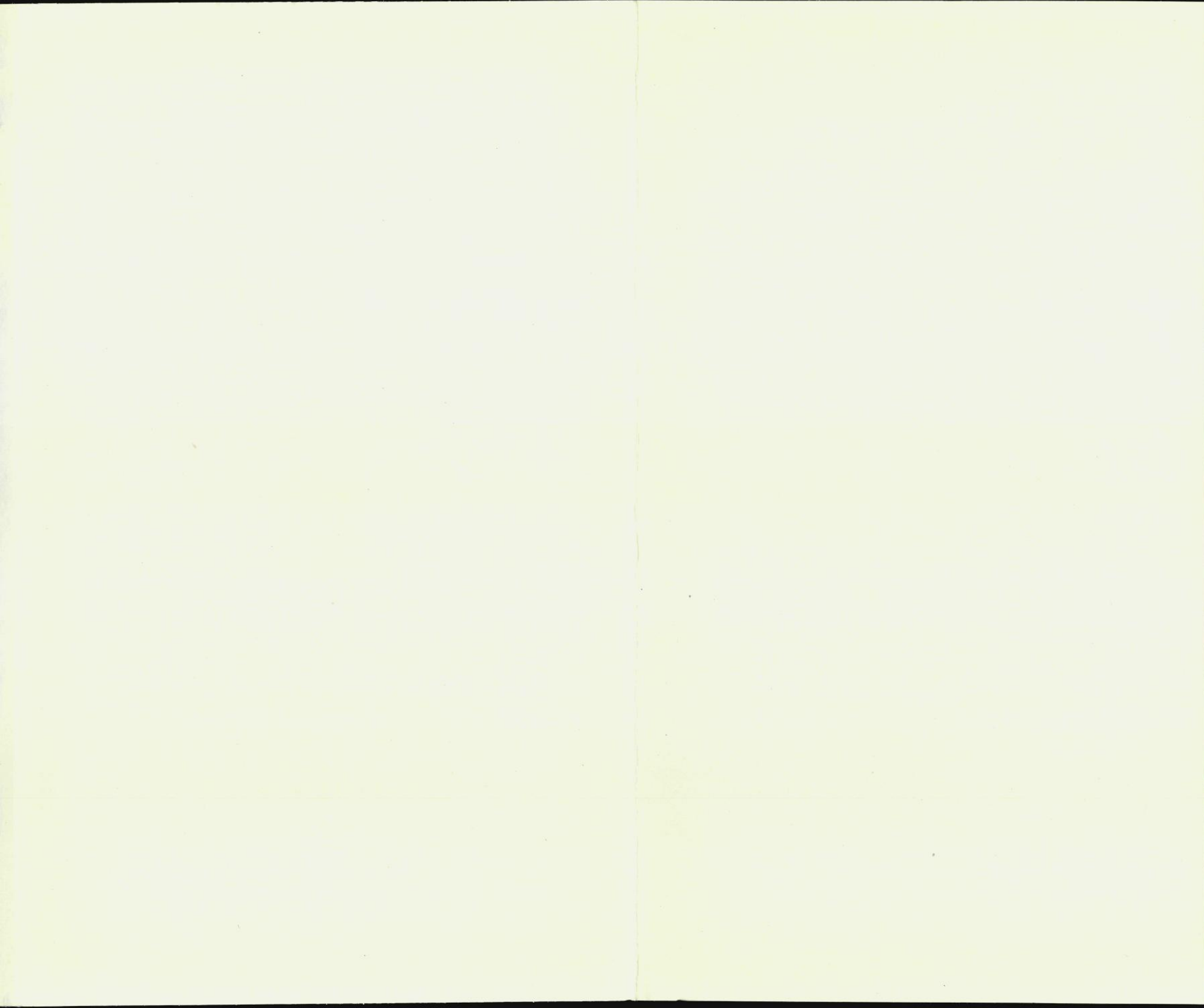


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PUBLICATIONS OF THE
STATE HISTORICAL
SOCIETY OF WISCON-
SIN. JOSEPH SCHAFER,
Superintendent and Editor

CONTENTS

WILLIAM PENN LYON.....	<i>Clara Lyon Hayes</i>	251
THE EPIC OF A PLAIN YANKEE FAMILY.....		
.....	<i>Joseph Schafer</i>	285
WISCONSIN'S EFFORTS IN BEHALF OF SOLDIER REHABILITATION....	<i>Frank C. Richmond, M. D.</i>	310
A PIONEER CHURCH AT PROSPECT.....		
.....	<i>Theodora W. Youmans</i>	321
HISTORIC SPOTS IN WISCONSIN.....	<i>W. A. Titus</i>	333
THE MUSEUM AND THE SCHOOL.....		
.....	<i>Katherine E. Byram</i>	340
DOCUMENTS		345
EDITORIAL COMMENT:		
The Courts and History.....		347
COMMUNICATIONS:		
Corrections		358
THE SOCIETY AND THE STATE		
.....	<i>Louise Phelps Kellogg</i>	359

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WILLIAM PENN LYON¹

CLARA LYON HAYES

III. JUSTICE AND CHIEF JUSTICE OF THE WISCONSIN SUPREME COURT

In January, 1871, Governor Fairchild appointed Judge Lyon to the Supreme bench to fill the vacancy caused by the death of Judge Paine. Judge Lyon did not move his family to Madison until after his election to the Supreme bench in April, 1871. He then rented a house on Clymer Street for a short time, moving in the fall to State Street within half a mile of the University, where he continued to live until 1877, when he purchased from J. O. Culver his residence on Lake Mendota at the head of Carroll Street.

Grandfather Lyon was still a loved member of the family. After he was seventy years old he developed a hobby that solved for him the problem of an occupied and contented old age; he began to collect shells, geological specimens, butterflies, and moths—natural curiosities of all kinds; he learned to stuff birds and mount them. In Racine he had a large room where he kept his cabinet, and the children of the neighborhood were in the habit of visiting "Grandpa Lyon's" room at any hour of the day. Often he would lead a procession of youngsters up the front stairs to his sanctum to view his treasures, but at no time did Mrs. Lyon cause him the slightest disquiet, though the practice might at times cause her some trouble. One of the children who had the good fortune to be a favorite of Grandfather Lyon became a teacher of natural science and a collector herself. She said that her taste for the study began in the days when the old gentleman used to tell the children about the wonders of

¹ Parts one and two of this biography were published in the September and December, 1925, issues of this magazine.

nature as he showed them the collection of "curiosities." When Judge Lyon moved to Madison the collection was taken to the rooms of the State Historical Society in the Capitol building, and Grandfather Lyon was appointed curator of the cabinet. His death occurred in December, 1884, after which his natural history specimens were given to the University.

At my request,² Chief Justice John B. Winslow, who was an old and peculiarly close friend of Judge Lyon, consented to prepare a short sketch of the career of Judge Lyon as a justice and as chief justice of the Wisconsin Supreme Court. This statement, much of which was later published in Winslow's *Story of a Great Court*, is here-with presented as an authoritative treatment of this most significant phase of Judge Lyon's life work:

"The death of Byron Paine, associate justice of the Supreme Court, on the thirteenth day of January, 1871, came with a profound shock to the people of the state. Barely forty-three years of age and apparently in vigorous health there seemed no reason to doubt that he would render many more years of valuable service to the state. He was dear to the hearts of the great mass of people. Since that day in May, 1854, when at the age of twenty-six he had appeared in the Supreme Court as the champion of human freedom and successfully challenged the constitutionality of the fugitive slave law in the *Booth* case,³ the people had loved him and had delighted to honor him; and right well had he deserved that love and honor, for his abilities were as great as his character was pure. But he had laid down his burdens in the very prime of life and the duty devolved upon Governor Lucius Fairchild to appoint a suc-

² Judge Winslow to Mrs. Hayes, Sept. 13, 1910: "Herewith I enclose you the article upon your father's services in the Supreme Court of the State of Wisconsin, prepared pursuant to your request made last winter. . . . I hope it will prove satisfactory both to yourself and to your father. . . . Please remember me to your father with the kindest regards. Tell him that we go to work this morning upon the new year's calendar. He will remember how that feels."

³ 3 Wis. *1.

cessor without delay, for the labors of the bench were heavy and there were then but three justices to carry the load even when the bench was complete. In this matter I am confident that Governor Fairchild did not feel any necessity for spending time in deliberation. I think he had no doubt as to whom he should appoint from the very first moment. Judge Lyon at that time had been presiding judge of the old first circuit for a little more than five years; he had signally demonstrated his fitness for the judicial office; he had made a *nisi prius* judge remarkable for his judicial equipoise, clearness of mind, and firm but just and reasonable enforcement of the law. Governor Fairchild knew his record and his qualifications well, and felt no necessity for endorsements though many endorsements came unbidden from the whole southern portion of the state, where Judge Lyon's qualities were known and where the desire of the people that he be advanced was only tempered by their sorrow in losing so near a friend.

"On the twentieth day of January Judge Lyon was appointed to fill the vacancy and on the twenty-sixth of the same month he took his seat. Governor Fairchild himself told the writer of this chapter more than twenty years later that he regarded the appointment of Judge Lyon to the Supreme bench with greater satisfaction than any other single act of his long administration.

"Judge Lyon found no lack of work ahead of him when he took his seat, and his assistance was heartily welcomed by Chief Justice Dixon and Justice Cole, who were to be his co-laborers for several years. Judge Paine's term was about to expire, and hence the election for the next full term was due in April, 1871. Had Judge Paine lived he would doubtless have been elected his own successor without opposition, but his death, and the appointment of his successor by the Governor at a time so close to the election, changed the situation radically in the opinion of some of the Democratic lawyers and politicians, especially those in the northern and north central portions of the state. Since the ex-

piration of the term of Judge A. D. Smith in 1859 the Democrats had been in a hopeless minority in the state and had had no representation on the bench, although they had doubtless turned the scale in favor of Judge Dixon in 1860, when he ran as an independent candidate against Judge A. Scott Sloan, the Republican nominee. While the last-named election was the first great victory for the non-partisan idea in judicial elections, it had by no means established that idea as a rule. Party conventions for judicial nominations had fallen into disuse, but they had been succeeded by legislative party caucuses, which, after consultation, put candidates in the field. In pursuance of this custom legislative caucuses were held by both parties on the evening of February 9. At the Democratic caucus Harlow S. Orton, who was then a member of the Assembly, was nominated, but he immediately declined to run; at the Republican caucus a resolution was unanimously adopted which ran as follows:

Whereas, in the opinion of the Republican state central committee it is not deemed advisable or necessary to nominate a candidate in view of the course which has generally been pursued by the Republicans of this state in selecting candidates for Judges of the Supreme Court without the interposition of a nominating convention, but through the recommendation of the Republican members of the legislature in session at the capitol, and

Whereas, his Excellency, the Governor, has appointed Hon. William Penn Lyon of Racine to serve out the unexpired term of the late Judge Byron Paine, therefore,

Resolved, that we recognize the appointment of Judge Lyon as one eminently fit to be made; that in his election to the bench of the Supreme Court for the full term the people of this state will secure the services of an honest man, an able lawyer, an experienced jurist, and an incorruptible judge, whose integrity is above reproach, a fit successor to the lamented Paine, a worthy associate of the two judges who have so long, so ably, and so well constituted a majority of the Court and contributed to make it fully equal to any Court of last resort in the several states of the Union; to the intelligent voters of Wisconsin for Associate Justice of the Supreme Court we recommend the election of William Penn Lyon.

“The declination of the Democratic caucus nomination by Mr. Orton made it seem for a time as if Judge Lyon

would have no opponent, but there was a feeling on the part of some Democrats that they ought to have a representative upon the bench, and that this was the only way to make the bench really non-partisan. On March 7 the *Madison State Journal* stated that some Democratic papers in the state had placed Judge David J. Pulling's name at the head of their columns, but the *Journal* also stated that it did not believe he would allow his name to be used. In this, however, the *Journal* was mistaken. Judge Pulling was then and had been for some years presiding judge of the third judicial circuit, which included the county of Winnebago and city of Oshkosh. He was recognized as a very able lawyer and a *nisi prius* judge who dispatched business not only with rapidity but with a masterly grasp of the case and the principles of law involved. Judge Pulling was unquestionably ambitious, but he was also an able politician, and he did not propose to lead any forlorn hope or enter a fight lost before it was begun. It is said in Berryman's *Bench and Bar of Wisconsin* (vol. 2, p. 79) that 'when first called to be a candidate he peremptorily declined.' However this may be, it seems certain that he was not averse to making the contest if he could be convinced that he stood a good chance of election, and his friends accordingly took steps to make the call more emphatic. Petitions were largely circulated among the bar requesting him to run, which received many signatures, and many of the Democratic editors of the state also joined in the request. Members of the Democratic State Central Committee met and tendered their support, and on the eighth of March the Democratic members of the legislature met in caucus and formally nominated him.

"On March 11 Judge Pulling published an acceptance addressed as follows: 'To Hon. John W. Cary *et al.* members of the bar; Hon. Sam Ryan, Jr. *et al.* members of the press; Hon. Andrew Proudfit *et al.* members of the State Central Committee; Hon. P. V. Deuster *et al.* State

Senators, and Hon. D. W. Maxon *et al.* members of the Assembly.'

"In this acceptance he said in substance that when, a few weeks earlier, it was proposed that he be nominated for the position by the Democratic State Central Committee and the Democratic members of the legislature, he declined because he believed the office ought not to be treated as a purely political office, and because his personal preferences were opposed to running; but that, many newspapers having put up his name, and having read the proceedings of the Democratic members of the legislature, as well as the requests from the Democratic State Central Committee, and from a large number of attorneys of both parties, he did not feel at liberty to refuse.

"While the campaign was quiet, there is no doubt that it was pressed with considerable energy by Judge Pulling and his partisans. It was a time when the Republican dissatisfaction with President Grant, which resulted in the Liberal Republican movement in 1872, was becoming acute, and thus Democrats were feeling somewhat encouraged. The attempt was made also to give Judge Pulling's canvass the character of a non-partisan movement, but without much success. The *Milwaukee News* of March 18 said that it was informed that on the death of Judge Paine the two surviving judges on the Supreme bench, Dixon and Cole, requested the Governor to appoint a Democrat as Paine's successor. The *State Journal* of March 20 denied this statement on the authority of the Governor himself. The *Winnebago County Press* published an article claiming that at some time in the past Judge Pulling in his real estate operations at Menasha had given to purchasers of land deeds which he represented to be full warranty deeds, which in fact contained warranties against his own acts only, and that he had been burnt in effigy by his victims.

"Judge Lyon remained quietly at work at his desk, although the writer feels little doubt, from his own recollec-

tion of the campaign made against himself under somewhat similar circumstances twenty-four years later, that the experience was not altogether a pleasant one.

"The election was held on April 4, and Judge Lyon received a majority of 11,668 for the unexpired term of about nine months, and 11,647 for the full term of six years. These majorities were somewhat greater than the Republican majority at either of the three immediately preceding gubernatorial elections, so that it is evident that the attempt by Judge Pulling's friends to give his candidacy the aspect of non-partisanship was unsuccessful.

"It was by no means an easy task to follow Judge Paine upon the bench. The remorseless accuracy of his thought, the clearness of his reasoning, and the simple eloquence of his verbal expression combined to make his opinions legal classics. Judge Charles E. Dyer of Racine truly said of him on the presentation of bar memorials to the Supreme Court, January 25, 1871: 'He stood not always upon precedent, but at times struck out new paths in the far-reaching field of the law, seldom failing, however, to plant his judgments upon the basis of sound logic. His analytical mind always first sought safe premises from which it progressed to unanswerable conclusions.'

"While I am certain that Judge Lyon's natural modesty would forbid him to claim an equal rank with Judge Paine as a jurist, it is perfectly proper for me to say that in my judgment there is no great room for choice between the two; indeed, in their essential traits they seem surprisingly alike. Both had a strong sense of justice, both had the rare faculty of stripping the non-essentials from a case and going at once to the vital question, both were content to part with precedent if precedent spelt injustice, and both possessed terse simplicity of style and clarity of thought which make their opinions a delight to the lawyer.

"Judge Lyon was a trifle more than forty-eight years of age when he took his seat upon the Supreme bench, and was in vigorous health physically and mentally. His life

had been singularly varied and active. He had been a lawyer, a legislator, a soldier, and a trial judge, and in each capacity he had met the responsibilities thrown upon him with the calm grasp which comes from conscious but in no sense egotistical strength. He came to this crowning work of his life possessed of a wealth of experience both with men and things, which rarely falls to the lot of a man less than fifty years of age. His services began at a time which may be properly called the beginning of a new period. The Court had been in existence some eighteen years; during that time the state had grown from a frontier community composed of straggling rural settlements far distant from each other, to a great state of more than a million souls, with prosperous cities, great railroads, and manifold industries. The time during which the jurisprudence of the state was being fundamentally molded and the general policies determined had largely passed, but a period fully as important was beginning—namely, the period when with the great growth of wealth and population and the development of great industrial and transportation corporations new legal and economic questions were pressing to the front and demanding wise solution.

“The volume of the business of the Court had largely increased with the close of the Civil War, and was still increasing. While formerly the decisions of a year filled only a single volume of reports, more than two volumes were now required, and the end was not yet. So Judge Lyon’s new position was not one of elegant leisure, but rather a position in which he was to spend twenty-three years in hard, unremitting, and tedious labor; but he entered on it cheerfully, with the determination to do his entire duty. He had the confidence and respect of his veteran colleagues, Dixon and Cole, and together these three men carried the great and increasing burden of the litigation of the state until the resignation of Chief Justice Dixon in June, 1874.

“An innovation which he at once made in the manner of the preparation of opinions, while not vastly important in

itself, may well be noticed because it is essentially characteristic of the man. The judges had been accustomed in their opinions to take up and treat the questions presented without making any preliminary statements of the facts of the case or of the result in the trial court, leaving those matters to be supplied by the official reporter. This method, while generally satisfactory, left much to be desired at times, for in a complicated case with a large record it could not always be certain that the reporter would accurately distinguish between the facts which were material and those which were immaterial to the Court's treatment of the case. Of course, the judge writing the opinion should, of all persons, be able to extract and present the vital and necessary facts, and so Judge Lyon from the first prefaced every opinion with a brief statement of the salient and necessary facts and the result in the trial court. These statements were at first made a part of the opinion, but soon were printed separately with a statement that they were prepared by Justice Lyon, and in volumes twenty-nine and thirty of the reports the reporter printed a notice stating that in all cases where the opinion was written by Justice Lyon, the statement of facts was also from his pen, whether it appeared as part of the opinion or not. For some years Judge Lyon remained alone in this practice, but as new judges came on the bench his example was followed, and before he left the bench every judge prepared his own statement of facts, and it is now one of the unwritten rules of the Court.

"While the work of the Court during the first three years of Judge Lyon's service was arduous and steadily increasing in volume, these years were doubtless pleasant years to him. The justices were all comparatively young men and all vigorous in body and mind; Judge Cole, who was the eldest, was but fifty-one years of age at the time of Judge Lyon's accession, while Judge Lyon himself was forty-eight, and Chief Justice Dixon only forty-five. They were all capable of hard work, all intellectually honest, and

were of congenial tastes and dispositions, and we may be sure there was little friction. The Chief Justice, however, had long been restless and dissatisfied. He was not a provident man; he had labored for years at a beggarly salary, and while he was now receiving \$4,000 per year, still he found himself poorer at the end of each year than when it began. He was doubtless conscious of his abilities, but he saw his youth and manhood slipping away with ever accelerating speed, and each year he found himself in deeper financial difficulties with no hope for the future. He therefore determined to resign, and in June, 1874, heard his last case and left the bench to engage in practice in Milwaukee.

“Governor William R. Taylor first offered the vacant seat to Colonel William F. Vilas, then not quite thirty-four years of age, but doubtless the most brilliant of the younger generation of lawyers in the state. It must have seemed a glittering prize to the future statesman, but he declined, as it is said, on the advice of his father, who thought there were greater rewards in store for his gifted son if he remained in the practice. Thereupon the Governor on June 17, 1874, appointed Edward George Ryan of Milwaukee to the vacant place, and the appointment was at once accepted. The appointment was received with considerable surprise by the public. Not because Mr. Ryan was an obscure or mediocre man, for he was very far from that. He had practiced law in the state for more than thirty years; on numerous occasions he had taken a commanding part in matters of the highest importance in the political and judicial history of the state, and had demonstrated beyond cavil or doubt his great abilities as an advocate, an orator, and a scholar. He had been a prominent, if not in fact the most prominent, figure in the first constitutional convention; he had fully proven his greatness as a lawyer and an advocate in the three greatest legal controversies which the state had seen—namely, the Hubbell impeachment, the *Booth* case, and the *Barstow and Bashford* case of the disputed governorship. But while there was no doubt as to

his ability, there was serious doubt whether he was good judicial timber. He was at that time sixty-four years of age, his temper was known to be uncertain and at times violent, he had had no judicial experience, his entire professional life had been spent at the bar, the great cases in which he had appeared were cases of the kind which aroused the deepest passions and party feelings, and it was justly feared that the qualities which had given him prominence as an orator and advocate were not of the kind which would tend to make him a great judge. Thus the appointment was in many quarters looked upon as an experiment, and at best a doubtful one. However, the experiment was made and the new Chief Justice took his seat with the good will and the good wishes of all, not excepting his colleagues, who for six years were to labor with him in that close companionship of the bench than which few human relations can be closer. There are, however, some unpleasant and disagreeable things that must be said about Chief Justice Ryan if one would write history. The reliable historian cannot always write pleasant things any more than the inspired prophet can always prophesy smooth things. From his very boyhood Mr. Ryan had been afflicted with a violent temper which he never learned to control. It was unreasoning and unreasonable; the most trivial incidents aroused his anger, the most innocent occurrences set on fire suspicions which were as baseless as they were incapable of being appeased. By his ebullitions of temper he drove clients from his door, wrecked his career as a lawyer, and desolated his own hearthstone. He made bitter enemies without necessity or reason, and alienated those who would fain have been his friends. This failing was the curse of his whole life, the great and appalling weakness in a character which possessed many of the qualities of true greatness. It may well be supposed, therefore, that Justices Cole and Lyon viewed with some uneasiness the coming of such a character into the consultation room, but they were both philosophers and

both men of remarkably equable dispositions, and under the circumstances this seemed to be peculiarly fortunate.

"The first case which came before the newly organized bench was not only a great one, but one which may well be said to mark the beginning (in Wisconsin) of the great struggle between corporate power and privilege on the one hand, and the people on the other.

"The day of the little railroad of a hundred miles or more in length, operating one or two daily trains and doing a small business local in its character, had gone; the great railroad corporation, operating hundreds of miles of road, doing interstate business amounting to many millions annually, and attempting perhaps to pay dividends on fabulous amounts of watered stock, had come and the people had begun to realize the changed conditions.

"Two really great railway corporations were then operating in Wisconsin, namely, the Chicago and Northwestern, and the Chicago, Milwaukee and St. Paul companies. Between them they covered practically the whole state, but their real termini were in adjoining states and their interests were largely foreign. They had generous charters which clothed them with full powers to regulate rates and fares as they chose. By means of this power they could either make or break a given community or locality by the single stroke of a pen as interest might dictate. The long-tilled fields of Wisconsin had now begun to come into competition with the virgin acres of Minnesota and Dakota, which were almost boundless in their fertility; and it required but slight discrimination on the part of the railroads to put the Wisconsin shipper at a great disadvantage in the race with his more favored western brother.

"The cry that railroad rates were exorbitant, arbitrary, and discriminative became a loud one; it was taken up by the Patrons of Husbandry, a national organization of farmers commonly called the Grangers, which now had become a great power in the West; and in the fall of 1873 the long rule of the Republican party was broken by the elec-

tion of William R. Taylor, the Democratic or "reform" candidate, as governor, and a legislature which may perhaps be properly called the first distinctly anti-railroad legislature in Wisconsin.

"In the Senate there were seventeen Republicans and an opposition of sixteen made up of Democrats, Liberal (anti-Grant) Republicans, and so-called reformers; in the Assembly there were forty-one Republicans and fifty-nine opposition members of various brands; but there was a clear majority in both houses for railroad rate regulation.

"An act fixing maximum passenger and freight rates to be charged by the railroads of the state and providing penalties for disobedience (popularly known as the Potter law, because introduced by Robert L. D. Potter, a Republican senator from Waushara County) was passed and approved by the Governor. It was one of the first laws fixing railroad rates, and was brief and comprehensive. It divided the railroads of the state into three classes, fixed maximum passenger rates per mile for each class, and then divided freight into special classes and fixed minimum rates to be charged for transportation of each class. It also provided for a railroad commission of three members and gave the commission power to investigate into the actual cost of the roads, their gross and net receipts and indebtedness, and to reduce the freight rates fixed by the law when it could be done without injury to the road. The law went into effect in April, 1874, but was absolutely disregarded by the great railroad companies, who took the ground that their charters formed inviolable contracts with the state and gave them power to fix rates, with which power the legislature could not interfere.

"Early in July, 1874, A. Scott Sloan, then attorney general of the state, filed informations in the Supreme Court and moved for writs of injunction against both of the great railway companies already named to restrain them from charging greater passenger and freight rates than were permitted by the act. With the attorney general were

I. C. Sloan, his brother, Harlow S. Orton, and ex-Chief Justice Dixon, all great lawyers; for the Northwestern Company, C. B. Lawrence and B. C. Cook of Chicago and George B. Smith of Madison appeared, and for the St. Paul Company, John W. Cary of Milwaukee and Philip L. Spooner of Madison.

"The motions were argued together in August, the arguments occupying nearly or quite a week. Before the question of the power of the legislature to regulate rates could be taken up, two preliminary questions had to be considered: namely, the question of the extent of the original jurisdiction of the Supreme Court; and the further question whether the constitution makers, when they named the writ of injunction in connection with the strictly prerogative writs in the last clause of section 3 of Article VII of the constitution, intended to raise it to the character of a prerogative writ or intended to leave it simply a judicial writ issued in aid of a judgment either interlocutory or final.

"The case was worthy of the court which heard it and of the eminent counsel who argued it. It was decided September 15, 1874, and the state was victorious on all points.⁴ Not only was the original jurisdiction of the court sustained on the ground that the question was one affecting the sovereignty of the state, its franchises and prerogatives, but the power of the legislature, by virtue of that clause of the constitution reserving the right to alter or repeal corporate charters (Art. XI, sec. 1), to control its corporate creations by reasonable regulations not confiscatory in their effect was fully vindicated.

"The opinion was written by Chief Justice Ryan, as was fitting, and it is probably his greatest; it left no substantial question undecided, and terminated the controversy. The companies at once perceived the futility of further litigation and proceeded to obey the law. The case has passed into the books as a leading case; it was the first case

⁴ Attorney General vs. Railroad Companies. 35 Wis. 425.

to mark out with precision the previously ill-defined field of the original jurisdiction of the Supreme Court, and it also was a pioneer case in vindication of the legislative power of control over corporations. The opinion is phrased by the Chief Justice, but the decision is by the whole court, and each member is entitled to his just share of the credit. It has been cited with approval in fifteen states as well as in the federal courts.

"Two years later the railroads returned to their own, the Granger excitement had subsided, and the legislature repealed the act and put in its place an act providing for the appointment of an entirely innocuous railroad commissioner, whose functions consisted chiefly in collecting statistics, making maps, and drawing his salary.⁵ Thus the situation remained for more than a quarter of a century. The times were not yet ripe for efficient railway regulation; the Potter law was ahead of its time; but it, and the decision made under it, remained as landmarks by the aid of which a later generation reached effective results.

"Another species of litigation was at hand, however, resulting directly from the wonderful development of machinery, which was destined to attain great proportions and occupy a large percentage of the time of the Court for years, namely, personal injury actions based upon negligence. Prior to 1870 the cases of this kind had been quite rare, but with the rise of the great factory and the great railroad, injuries and deaths resulting from accident became far more numerous and personal injury actions multiplied. In the small shop of the early day, where the workman was associated on familiar terms with his employer at the bench, he felt little inclination to sue even if he suffered injury; but as the small shop developed into the great factory, as the hand machine gave way to the massive combinations of cogwheels and rollers, and the proprietor and his workman became comparative strangers, injuries multiplied vastly and there was no feeling of sentiment to hold the employee

⁵ Chap. 57, Laws of 1876.

back in case he was injured, but rather a feeling that his employer ought to pay roundly for any injury which the employee might suffer.

"A class of lawyers developed also who made a specialty of such litigation and encouraged it, taking it upon contingent fees generally amounting to one-half of the recovery.

"So far as the personal injury action between employee and employer is concerned, we are now beginning to see that it is a great economic waste as well as an ineffective remedy, and that it ought to be and doubtless soon will be supplanted by some system which will charge the business with the responsibility for injuries to employees which are not recklessly incurred and so arranged that the relief will be immediate and will go to the injured party and not to the lawyer.

"But for many years the business was to flourish and it was vastly important to all interests that wise and certain rules be laid down which should govern the rights of the parties.

"It is unquestionably true that the Supreme Court of Wisconsin early succeeded in establishing clear, logical, and definite rules governing this litigation, which reduced the law of personal injuries to a system and that this system has been ever since adhered to and administered with fidelity; and it is equally true that to Judge Lyon is due the credit for this achievement fully as much as to any other man. Few of the states can claim so consistent a record in this branch of the law as Wisconsin; in many of the states there has been lamentable uncertainty, inconsistency, and indecision in the administration of the law of negligence; in some states the difficulty has been with the question of proximate cause, in others with the question of contributory negligency and assumption of risk, and in still others with the question of who are fellow servants, while in some states the decisions have befogged the law upon all of these subjects.

"In Wisconsin, however, logical principles were laid down in the beginning and have since been consistently followed. The doctrine of proximate cause was first extensively discussed by Chief Justice Dixon in the *Kellogg* case⁶ which was an action against a railway company charging the negligent setting on fire of dry grass and weeds on its right of way, which fire spread to the adjoining field of the plaintiff and destroyed his stacks of grain and his stables. The argument of the railroad company in that case was that the damage was too remote and could not be considered as proximately caused by the original negligent act; the principle was, however, laid down that though the damage be not the immediate or direct result of the negligent act, still if it be a result likely to follow the act and which might reasonably have been anticipated as the natural and probable result of the act under ordinary circumstances, it is not a remote but a proximate result. This case was tried by Judge Lyon while at the circuit and came before the Supreme Court on appeal in the fall of 1870, and was decided before the death of Judge Paine. A motion of rehearing, however, was not filed until September 21, 1871. The doctrine was again somewhat discussed in the *Brown* case⁷ in 1882 but was more elaborately considered and molded into the definite shape in which it has ever since been administered in the *Atkinson* case⁸ in 1884.

"After some uncertainty in the earlier decisions the doctrine that an employee cannot recover of his employer for injuries resulting from the negligence of his co-employee was squarely laid down in the *Moseley* case⁹ in 1861, and the further doctrine that the question whether two employees are fellow servants is to be determined not by their mere rank but by the fact that they are employed in the same common pursuit, was settled by the *Brabbits*¹⁰ and

⁶ *Kellogg vs. Chicago and Northwestern Railway Co.* 26 Wis. 223.

⁷ *Brown vs. Chicago, Milwaukee and St. Paul Railway Co.* 54 Wis. 342.

⁸ *Atkinson vs. Goodrich Transportation Co.* 60 Wis. 141.

⁹ *Moseley vs. Chamberlain.* 18 Wis. *700.

¹⁰ *Brabbits vs. Chicago and Northwestern Railway Co.* 38 Wis. 289.

*Peschel*¹¹ cases in 1875 and 1885 respectively, the opinion in the first-named case being by Judge Lyon. In the *Brabbits* case also the doctrine that an employer is in duty bound to furnish to his employees reasonably safe tools and implements, and that this duty cannot be delegated to an employee, so that the failure to perform it will become the negligence of a co-employee, was first clearly laid down. The same principle was applied to the place in which the employee is to work in the *Dorsey* case¹² in 1877.

"The doctrine of comparative negligence had never been adopted in this state; the doctrine that slight want of ordinary care contributing proximately to cause an injury would defeat a recovery was definitely formulated in the *Dreher* case¹³ in 1868, so there was no occasion for the laying down of any new doctrine in this field; but the cognate doctrine that an employee assumes the ordinary and obvious risks of an employment, though not of concealed and unknown hazards, seems first to have been formulated in the *Strahlendorf* case¹⁴ in a brief opinion by Judge Lyon.

"Thus the fundamental principles governing negligence actions were practically given their complete shape during Judge Lyon's first few years upon the bench. They have been somewhat elaborated since that time but have not been substantially departed from, with the result, as the writer believes, that few courts are able to show so clear and logical a code governing this very important branch of jurisprudence.

"The business of the Court, which had been rapidly increasing before Judge Dixon's resignation, continued to increase after Judge Ryan's appointment with accelerated speed. There were no stenographers, typewriters, or even copyists. Each judge wrote out his opinions in longhand. The purely clerical work was necessarily very tedious in addition to the heavy judicial labor. Judge Ryan's health

¹¹ *Peschel vs. Chicago, Milwaukee and St. Paul Railway Co.* 62 Wis. 338.

¹² *Dorsey vs. Phillips and Colby Construction Co.* 42 Wis. 583.

¹³ *Dreher vs. Town of Fitchburg.* 22 Wis. 643.

¹⁴ *Strahlendorf vs. Rosenthal.* 80 Wis. 674.

was bad and his temper worse. While on the bench or in the consultation room he was the courteous, dignified, and able judge (this we know from the testimony of Chief Justice Cole given in response to the addresses of the bar after Judge Ryan's death¹⁵), but here his courtesy to his colleagues practically ceased. For weeks at a time he would not speak to them when he met them outside of the court room or consultation room. When they deemed it necessary to increase the number of cases upon an assignment from fifteen or twenty to twenty-five in order to keep up with the business and clear the annual calendars, he strenuously objected, and charged them with deliberately desiring to kill him with labor. When twenty cases had been argued, he would leave the bench and take no part in the balance. He even went so far as to urge his friends to try and secure the passage of a law making the opinion of the Chief Justice preponderating and decisive on all questions.

"These harassing circumstances, combined with the unremitting and strenuous intellectual toil of the bench, were enough to wear upon the nerves of the strongest man. Judge Lyon, however, was happily endowed with an even temper, and he and Judge Cole calmly performed their multiplying duties without complaint.

"An instance of the kind of difficulties which these two men had to meet during these years was related to the writer by Judge Lyon many years after, and may with no breach of propriety be repeated here. Judge Ryan had at one time a great grievance against John Bascom, the great president of the University of Wisconsin. Both men were great intellectually, but their viewpoints were radically different. If any one attacked the bench or bar, Judge Ryan was ready to take up arms in defense of the profession immediately. In a baccalaureate sermon preached at the University (I think in 1876 or 1877) President Bascom made some strong comments upon the corruption of the bench, as shown by the then recent disclosures concerning Judges

¹⁵ 50 Wis. 23-52.

Barnard and Cardozo in New York. Judge Ryan took the remarks as a denunciation of the bench in general, and his indignation took fire at once and he determined to make a scathing reply at the time of the admission to the bar of the graduates of the Law School a few days later. This reply he prepared and in it used his great powers of sarcasm and invective remorselessly and with telling effect. On reading it to Judges Cole and Lyon and informing them of his intention, they insisted that it should not be read in Court. Judge Ryan stormed and insisted that he would read it despite their protests. They told him that if he commenced to read it they would direct the crier to adjourn court and would quit the bench, thus leaving him without a quorum. Judge Lyon was a man who would go far to avoid an unpleasant clash, but if he was convinced that duty required him to take a given course, bluster and threats had no effect upon him. Judge Ryan had undoubtedly become aware of this fact; he was very angry and none knew what he would do, but when the day came he had evidently realized the futility of his intended course and did not attempt to read the paper. It was preserved, as I understand, and is still in existence, and is said to be a literary masterpiece.

“It was becoming more apparent every year that the bench must be enlarged or it would be overwhelmed with labor, and in November, 1877, a constitutional amendment was ratified by the people increasing the number of judges upon the Supreme bench from three to five, and fixing the length of their terms at ten years instead of six.

“In the winter of 1878 legislative caucuses were held by both parties, and finally it was arranged that David Taylor of Fond du Lac, a Republican, and Harlow S. Orton of Madison, a Democrat, should stand together as non-partisan candidates for the two new places on the bench. The arrangement was unanimously ratified by the people, and the two men were elected without opposition early in

April, 1878, and commenced their duties on the eighteenth of the same month.

"They were each sixty years of age, but both were men of strong physique and both had been lawyers of the highest standing in the state for many years. It may well be imagined that their coming was hailed with unfeigned relief by the two judges who had been carrying so heavy a load for years. This increase in the number of judges greatly minimized the embarrassment resulting from Judge Ryan's uncertainties of health and temper, as the work could be carried on and the business dispatched without serious difficulty by the four vigorous men who now made up the balance of the bench whatever might be the course of the Chief Justice. As a matter of fact the situation did not long continue. On the thirteenth day of October, 1880, Judge Ryan left the bench when a case was called in which one of the parties had been his client. The next day he sent word to his colleagues that he was ill, and on the nineteenth day of October he died.

"It was most fitting that Judge Cole, who had now rendered twenty-five years of conspicuously able and faithful service upon the bench, should succeed to the Chief Justice's chair. Such was the consensus of public opinion, and Governor Smith gave effect to it by appointing him to that position on the eleventh of November, 1880, and on the same day he appointed John B. Cassoday of Janesville to the place upon the bench made vacant by the elevation of Judge Cole. Mr. Cassoday had for years been one of the most distinguished lawyers of the state; he was fifty years of age, a man of remarkably even temper and gracious manner, and withal an indefatigable worker. Probably no choice could have been happier, although there was a feeling among Democrats that the governor should have placed a Democrat upon the bench and thus maintained its political equilibrium. If, however, a Republican was to be appointed, no appointment could have been more satisfactory to the most ardent Democrat.

"The bench remained as thus constituted for more than ten years, until the sudden death of Judge Taylor, April 3, 1891. During this time the business was still increasing, especially the personal injury litigation, but the justices were all steady and consistent workers and there was practically no friction in the labor. With the exception of Judge Orton all were possessed of equable temperaments. Judge Orton was of susceptible temper and easily moved, but the writer knows from his own experience of later years that his gusts of temper were soon over. His heart was kindly and he retained no malice. It may well be imagined, therefore, that these eleven years during which there was no break in the judicial family were pleasant years notwithstanding the increasing toil. During all this time also there were no contests, political or otherwise, for seats upon the bench. As the term of each judge expired he was re-elected upon a non-partisan call without opposition. The last bitter contest had been in 1879, when Judge M. M. Cothren of Mineral Point was nominated by a Democratic legislative caucus and ran against Judge Cole, who had been called out as an independent candidate by a non-partisan call. Judge Cothren was defeated by the phenomenal majority of thirty-three thousand votes, and thus was demonstrated the firm hold which the non-partisan idea in judicial elections had obtained upon the people of Wisconsin. Judge Lyon had himself been re-elected without opposition in 1877 and 1883, the last time for a ten-year term.

"As the end of Chief Justice Cole's term approached in the spring of 1891, it was generally conceded that his successor ought to be a Democrat, inasmuch as the state had swung into the Democratic column in the fall of 1890, and there was but one Democratic representative upon the bench. It was understood that Judge Cole was not desirous of reëlection, as he was well past seventy years of age and somewhat infirm. Two candidates were called out by non-partisan calls, both Democrats—Silas U. Pinney of Madison and E. H. Ellis of Green Bay. Mr. Pinney had

been one of the most eminent lawyers of the state for years and was elected in April, 1891.

“By this change Judge Lyon became chief justice by virtue of seniority of service in January, 1892, and remained in that office until the expiration of his own term in January, 1894. Another and totally unexpected change in the personnel of the bench took place in the spring of 1891. Judge Taylor died suddenly at the close of a long day of labor at the desk on the third day of April, 1891, universally mourned, and on the fourth day of May following Governor Peck appointed the writer of these lines to fill the vacancy, and he took his seat three days later.

“I can never forget the warmth of the welcome which was given me by all the sitting judges when I came to Madison on the seventh day of May and commenced my duties, but especially was Judge Lyon’s greeting cordial; among other things he said: ‘John, I had picked you out for my successor, but you have stolen a march on me and got here before I expected you.’

“I had known and respected Judge Lyon from boyhood, but at a distance; he was a man taking a leading part in great events while I was a mere boy at school, and when I came to manhood and entered the bar he had removed from Racine to Madison and commenced his duties on the Supreme bench. Thus my personal contact with him up to this time had been slight, but for nearly three years I was now to be closely associated with him in my daily work, and thus I can speak from personal knowledge of his work upon the bench.

“When five men are compelled to work together day after day during the year as equals, and required to debate upon and decide three hundred and fifty or four hundred lawsuits, there are bound to be many and serious differences of opinion. They cannot sacrifice convictions merely for the sake of harmony, and there will infallibly be sharp clashes. Each man while maintaining his self-respect and his independence of thought must treat the opinions of his

colleagues with consideration and respect, if unpleasant scenes are to be avoided. As a presiding officer upon the bench Judge Lyon's manner was well nigh perfect; never tyrannical or petulant, he yet controlled counsel and shortened tedious and unenlightening arguments with tactful suggestions which left no sting.

"In the consultation room he was unquestionably the leader. At that time there was no system by which the discussion of each case was opened by any particular member of the court, but, as a new case was reached, any member who felt disposed expressed his opinion on it and the discussion proceeded in an entirely informal way. I feel entirely safe in saying that in the majority of instances Judge Lyon opened the discussion with an illuminating remark or two concerning the controlling question in the case, which generally hit the bull's-eye. Without the least offensive assumption of superiority or authority he demonstrated that he was chief justice in fact as well as in name, in the consultation room no less than upon the bench. In both places friction was reduced to a minimum under his wise and gentle rule.

"The most striking characteristic of his opinions is their simplicity. In plain words and without circumlocution or flourish he always proceeded at once to the vital questions of the case and decided these questions in language as free as possible from technical terms. He never strove for rhetorical effect; he aimed to convince the understanding rather than to charm the literary taste; he rarely indulged in trope, simile, or metaphor, or attempted to be humorous. He cited few authorities, and those he did cite were always to the point; he rarely deemed it necessary to back up a well-established proposition of law with a long array of citations. He has said of his opinions that he has no masterpieces, and in one sense the statement is true, for his opinions are remarkably uniform in their excellence and hence it cannot well be said that any of them rise to great heights compared with the others. Nevertheless there are

some opinions written by him in great or delicate cases which deserve some special mention.

“There are no questions of fact more puzzling to courts and juries than the questions which arise as to the competency of a testator to make a will. At what particular point does a mental peculiarity cease to be a peculiarity only and become a delusion or hallucination, so as to render its possessor incapable of making a valid will? This is often a very difficult question. It was met by the Court in the *Chafin* will case,¹⁶ and the subject was very luminously discussed in an opinion by Judge Lyon, in which opinion general principles were laid down briefly but logically and with such clearness that the opinion has been a guide to trial courts upon the question of mental competency or incompetency ever since.

“In 1890 the question of the reading of the Protestant version of the Bible came before the Court. The constitution of Wisconsin provides that no man shall be compelled to support any place of worship (Art. I, sec. 18), and prohibits any sectarian instruction in the public schools (Art. X, sec. 3). Prior to 1890 selections from the Protestant version of the Bible had been very frequently read by teachers in the public schools as a part of the opening exercises. As it is well known, there are many differences in verbiage and some differences in meaning between the Protestant version and the Roman Catholic or Douay version of the Scriptures—differences which are regarded by earnest partisans on either side as very important and fundamental.

“There had always been more or less objection on the part of Roman Catholics to the practice, but its legality was not seriously challenged until the action of *State ex. rel. Weiss vs. the District Board*,¹⁷ brought in 1889 by certain taxpayers of the city of Edgerton, Rock County, to obtain a writ of mandamus compelling the board of educa-

¹⁶ 32 Wis. 557.

¹⁷ 76 Wis. 177.

tion to discontinue the practice of reading the Bible in the schools of the city.

"The case attracted much attention and stirred up much controversy between ardent adherents of the contending religious bodies. Religious controversies are always apt to be bitter, whether waged in the newspapers or in the courts, and this was no exception to the rule. In the circuit court of Rock County it was held by Judge John R. Bennett that no constitutional provision had been violated by the reading of the Protestant Bible in the schools, and the case was promptly appealed to the Supreme Court. Briefs upon both sides were elaborate, and the questions whether our government is fundamentally a Christian government and whether the Christian religion is any part of the common law of England were discussed with much learning.

"The court unanimously held that the petitioners were entitled to have the reading of the Bible in the public schools stopped on two grounds: first, because it constituted the giving of sectarian instruction in public schools; and, second, because such reading in effect converts a public school into a place of worship, and thus the taxpayer is compelled against his will to support a place of worship. Three opinions were filed, all concurring in sustaining the plaintiff's contention; but the opinion of the Court was written by Judge Lyon, and one or two extracts from it will serve well to illustrate his judicial style.

"In discussing the circumstances which doubtless caused the insertion of the clause forbidding sectarian instruction in the public schools, he says: 'The early settlers of Wisconsin came chiefly from New England and the Middle States. They represented the best religious, intellectual, and moral culture, and the business enterprise and sagacity, of the people of the states from whence they came. They found here a territory possessing all the elements essential to the development of a great state. They were intensely desirous that the future state should be settled and de-

veloped as rapidly as possible. They chose from their number wise, sagacious, Christian men, imbued with the sentiments common to all, to frame their constitution. The convention assembled at a time when immigration had become very large and was constantly increasing. The immigrants came from nearly all the countries of Europe, but most largely from Germany and Ireland. As a class, they were industrious, intelligent, honest and thrifty—just the material for the development of a new state. Besides, they brought with them, collectively, much wealth. They were also religious and sectarian. Among them were Catholics, Jews, and adherents of many Protestant sects. These immigrants were cordially welcomed. And it is manifest the convention framed the constitution with reference to attracting them to Wisconsin. Many, perhaps most, of these immigrants came from countries in which a state religion was maintained and enforced, while some of them were non-conformists and had suffered under the disabilities resulting from their rejection of the established religion. What more tempting inducement to cast their lot with us could have been held out to them than the assurance that, in addition to the guaranties of the right of conscience and of worship in their own way, the free district schools in which their children were to be, or might be educated, were absolute common ground, where the pupils were equal, and where sectarian instruction, and with it sectarian intolerance, under which they had smarted in the old country could never enter? Such were the circumstances surrounding the convention which framed the constitution. In the light of them, and with a lively appreciation by its members of the horrors of sectarian intolerance and the priceless value of perfect religious and sectarian freedom and equality, is it unreasonable to say that sectarian instruction was thus excluded, to the end that the child of a Jew, or Catholic, or Unitarian, or Universalist, or Quaker should not be compelled to listen to the stated reading of passages of Scrip-

ture which are accepted by others as giving the lie to the religious faith and belief of their parents and themselves?

“Again, in discussing the argument that the exclusion of the Bible from the schools would tend to weaken the hold of the Christian faith on the people, he says: ‘The drift of some remarks in the argument of counsel for the respondent, and perhaps also in the opinion of Judge Bennett, is that the exclusion of Bible reading from the district schools is derogatory to the value of the Holy Scriptures, a blow to their influence upon the conduct and consciences of men, and disastrous to the cause of religion. We most emphatically reject these views. The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and, above all, by parents in the home circle. There, those truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental conscience. The constitution does not interfere with such teaching and culture. It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble. Religion teaches obedience to law, and flourishes best where good government prevails. The constitutional prohibition was adopted in the interests of good government; and it argues but little faith in the vitality and power of religion to predict disaster to its progress because a constitutional provision enacted for such a purpose, is faithfully executed.’

“The case was the first case in the country in which the question was squarely presented and squarely decided in accordance (as the writer believes) with sound reason and the manifest intent of the constitutional guaranties against sectarian instruction in schools. Cases of the kind had indeed arisen in Maine, Massachusetts, and Iowa, and had

been decided the other way, but under different constitutional provisions and with doubtful reason.

"In an able and learned note to the case published in *29 American Law Register* (N.S.) beginning on page 321, it is said of it: 'The Supreme Court of Wisconsin deserves well of the American people for its dignified and careful discussions embodied in the three opinions printed above, and it is to be expected that its views will aid the Courts of the Union very materially in reaching correct conclusions in the premises.'

"The case has been followed in Nebraska¹⁸ under similar constitutional opinions, the main opinion citing and relying upon the Wisconsin case, which is said to include 'a thorough review of both the legal principles involved and the historical aspects of the controversy.'

"Two cases which excited much public interest and stirred party passions came before the Court in the spring of 1893—namely, the actions brought by the state to recover of former state treasurers large amounts of interest which banks had paid to the treasurers on the state funds on deposit.

"The treasurers did not deny the receipt of these sums from the banks as interest on the deposits of state money, but claimed to be entitled to retain them because they had given bond to the state covering all moneys which came into their hands, thus becoming debtors to the state as soon as they received any state money, and if debtors to the state, then owners of the money and entitled to its accretions in the bank. This practice had prevailed from early days in the history of the state; at first the sums were small and few knew of the practice, while those who did know did not begrudge the treasurers this modest perquisite; but, as the revenues of the state increased, the interest on balances mounted rapidly until it largely exceeded the salary and made the office sought after as a means of acquiring modest wealth.

¹⁸ State vs. Scheve. 65 Neb. 871.

“In the campaign of 1890 the Democratic party made the question a campaign issue, and pledged its candidates not only to cease the practice, but to prosecute actions to recover the interest moneys paid to past state treasurers in whose favor the statute of limitations had not run.

“Both of these promises were redeemed. Actions were promptly commenced by Attorney General J. L. O’Connor against ex-Treasurers McFetridge and Harshaw and their respective bondsmen, and judgments were obtained holding them liable for all such interest moneys in the Circuit Court of Dane County before Honorable A. W. Newman of Trempealeau, circuit judge of the sixth circuit. The cases were appealed to the Supreme Court and came on for hearing in September, 1892. They were decided in favor of the state in April, 1893, upon the general ground that the moneys received by the treasurer remained the moneys of the state notwithstanding he had given bond to account for them, and that any increment of the moneys of the state belonged to the state, not to the treasurer. The opinions in the cases were delivered by Judge Lyon, who was then chief justice, and are phrased with his usual directness and clarity of thought. Thus ended a practice the morality of which was much discussed at the time, which should have ended long before.

“Another action which aroused much public interest as well as party passion was the action brought in the early part of 1892 to test the constitutionality of the legislative apportionment act of 1891. The act was unquestionably an unblushing gerrymander, and it was natural that it should be so. It was the first apportionment act which the Democrats had had an opportunity to pass since the early days of the state. Republican legislatures had gerrymandered the state after every census for partisan purposes, and when the Democrats came into power in 1891 they seized the opportunity to give the Republicans a taste of their own medicine. County lines were ignored, shoe-string districts created, and fantastic shapes were spread upon the political map in order

if possible to perpetuate Democratic rule. It is only justice to say that the law was little if any worse than the immediately preceding Republican apportionments, which the Democrats had borne without serious complaint, but the idea had begun to get abroad that the command of the constitution requiring legislative districts to be bounded by county lines and 'to consist of contiguous territory, and be in as compact form as practicable'¹⁹ was something more than a mere glittering generality which the legislature could obey or not as it chose.

"In February, 1892, therefore, the Democratic attorney general, Honorable J. L. O'Connor, filed an information on behalf of the state asking for a perpetual injunction against the secretary of state, restraining him from carrying out the provisions of the new apportionment law, and the cause was heard February 10, John C. Spooner, George W. Bird, and Charles E. Estabrook appearing for the state, and General Edward S. Bragg for the defendant.

"The case was, in fact, a pioneer case. I know of no case in which an apportionment law had been attacked and overthrown in the courts before this case.

"The Court was unanimous in the opinion that the law violated the constitutional commands, especially the requirements relating to county lines and compactness of territory. The case naturally fell to Judge Lyon as chief justice to write. It was a case which would inevitably be a leading case in the books, and there was an opportunity to write an opinion which would challenge public attention as no opinion had done for many years. With characteristic modesty, however, and with that unselfish regard for useful results rather than his own glorification which marked his official actions generally, Judge Lyon said to Judge Orton: 'Judge, you are known to be a Democrat and I think the decision would have much better effect upon the public mind if the opinion of the Court were written by a Demo-

¹⁹ Const. Wis. Art. IV, sec. 4.

crat than if written by a Republican, so I wish you would write it.'

"Judge Orton accepted the offer gladly, and thus the reports show that the opinion of the Court was written by him. Judge Orton said afterwards to the writer that to turn over to a colleague such an important case where the opinion was sure to mark an era in legislative and judicial history, was the most generous act of the kind he had ever known a judge to do. While Judge Orton thus wrote the opinion of the Court, Judge Lyon and Judge Pinney each wrote concurring opinions, it being deemed that the case should be made as impressive as possible. Judge Lyon's opinion was principally devoted to the proposition that the true meaning of the constitutional provision that assembly districts must be bounded by county, town, or ward lines was that a county could not be dismembered any more than a town or ward. This case passed into the books as absolutely the leading case in a great field. Other courts in other states having similar constitutions followed it, and it is not too much to say that the case has resulted in a general curbing of the practice of gerrymandering in a large number of the states.

"Judge Lyon's talents were not confined to the decision of great constitutional questions: his logical mind grappled with questions involving commercial or miscellaneous legal propositions with equal facility, and these he stated and decided with the same directness and lucidity of treatment which marked his opinions in constitutional cases. Instances of this are the opinions in the case of *Wells vs. McGeoch*,²⁰ where the question of the rights of the parties arising out of an attempt to corner the wheat of the country was involved, and *State ex. rel. vs. State Canvassers*,²¹ where the question of the duty of the State Board of Election Canvassers in canvassing the returns of a congressional election as well as

²⁰ 71 Wis. 236.

²¹ 36 Wis. 498.

the question of the right of the court to coerce the canvassers was involved.

"Judge Lyon had reverence for precedent but he had greater reverence for justice. Where it seemed to him that some mouldy, medieval precedent would work absolute wrong in the case before him he was very apt to say with a twinkle of the eye, 'Well, I think this is a case where we will have to use a little *main strength*,' and the precedent was very apt to go by the board. The expression has survived in the consultation room, and it is heard there at times today.

"While never inclined to be severe or caustic in his treatment of counsel in his opinions, he could upon proper occasions administer a rebuke as effective in its results as it was dignified in its terms. The following opening paragraph from his opinion upon the motion for rehearing in the case of *Haley vs. Jump River Lumber Company* (a case in which the writer hereof wrote the opinion of the Court)²² will illustrate this: 'We do not suppose the learned and courteous counsel who prepared the argument in support of the motion for a rehearing intended to be especially severe upon this court when they therein expressed the opinion that the decision herein evinces an entire disregard of many material facts in the case, that it is a manifest violation of the plainest principles of law and justice, and that it is a wide departure from well-settled legal principles; yet they will pardon us for suggesting that these are not well-chosen terms in which to characterize a judgment of any court. This court is liable to err, and sometimes does err, in its judgments, but always, with cheerful alacrity, corrects such errors when discovered. No caustic applications are necessary to goad it to its duty in that behalf, and hence, as a general rule, their use is not to be encouraged.'

"For something more than a year he lectured gratis before the Law School of the University of Wisconsin, and

²² 81 Wis. 412-423.

upon one commencement at least he delivered the annual address to the graduating class.

“As the end of his last term approached it was frequently suggested to him that he ought to accept another term, and it is very certain that he would have received the hearty and unanimous support of both people and bar had he consented to allow his name to be used. In the spring of 1893 when the election for his successor took place, he was but a few months over seventy years of age and was possessed of physical and mental vigor far surpassing that of many men a score of years younger. To all these suggestions, however, he turned a deaf ear. His uniform reply was in substance this: ‘I believe I am in good mental condition and I want to stop while I am still in that condition; ten years is a long time, and if I were to accept a reëlection and during that time my intellectual powers should begin to fail I probably might not be aware of the fact, but the *profession* certainly would and I have no desire to be occupying a seat here with the lawyers saying to each other, “Well, the old judge’s mind is rapidly failing.”’

“And so he retired voluntarily at the end of his term in January, 1894, after a judicial career of twenty-eight years upon the circuit and Supreme Court benches combined, bearing with him in his retirement the love and respect of the entire state.”

(To be concluded)

THE EPIC OF A PLAIN YANKEE FAMILY¹

JOSEPH SCHAFER

II. THE MILWAUKEE COUNTY HOWARDS

The emigration to Wisconsin in 1836 of the James Corydon Howard family was typical of a movement that affected some thousands of New York and Vermont Yankees. Most of those going west from that general region would utilize the grand canal as far as Buffalo. From there they would either go by the lakes all the way around to Milwaukee, or go to Detroit by lake and thence overland, or make the entire trip with team by land.

The Howards were forewarned about the land journey, for Jephtha Porter, one of Mrs. Howard's brothers, had made the trip and had written back his impressions of its difficulties. "We have arrived at our journey's end in safety," he says, "after a long and rugged journey of 800 miles by land through rain and mud over stumps and stones, and celebrated the fourth of July in the wild wilderness of Wisconsin Territory. Now Corydon I shall advise you by all means to take water at Sackets Harbour and come round the lakes. You will save yourself a great deal of trouble and expense of money. It has cost us double the amount."²

Mr. Howard had already opened negotiations for a boat passage. He seems to have tried, Yankee fashion, to secure better rates by playing off two transportation companies against each other; but the plan may have fallen through because rates were already pretty well settled. Buckley and Clark, of Sackett's Harbor, offered the follow-

¹Part one of this study appeared in the December, 1925, issue of this magazine.

²Letter dated Milwaukee, July 18, 1836.

ing schedule: to ports on Lake Michigan, passage and board, \$18.00; children half price. Passage without board, \$12.00. For freight the charge to Chicago, Kalamazoo, or St. Joseph was twelve shillings per barrel unit, which was thirty-two gallons or five cubic feet.³ Milwaukee prices were identical with those charged for Chicago. The T. O. Hall Company suggested certain modifications of those prices so far as passengers were concerned, but the other company asserted that the Halls had no boat on the upper lakes to enable them to carry out their promises. If Howard was able to secure the service the Halls promised, cabin passage cost him, without board, \$10.00, steerage \$8.00. With board, cabin passage was quoted at \$18.00, the same as the price on the other company's boats. Nothing was said in the Halls' schedule about freight.

There is a paper in the Howard collection which summarizes the cost of moving and apparently also of getting settled. Some of the items are as follows: passage, \$62.00; freight, \$59.00. Pork at Sackett's Harbor, \$22.50; flour, \$6.75. As there were two adults and three children under twelve, the aggregate at regular cabin rates, with board, should have been \$63.00. Probably that was the figure intended. We have no inventory of the freight they brought, but the schedule of early purchases in Milwaukee, by the things omitted, suggests that household furniture, bedding, dishes, etc., made up the bulk of what was carried along. The only article of household equipment purchased was a stove costing \$17.00, doubtless to take the place of one which was sold before the family's departure from Rossie, or to add an unusual touch to the slender comforts of a claim cabin home. It is somewhat remarkable that Mr. Howard should have been obliged to buy tools, such as an ax, spade, hoe, saw, hammer, and square. But it was known that prices of these articles were not much higher in Mil-

³ The rates to ports on Lake Erie were as follows: to Erie, Pa., and Cleveland, O., 3 shillings; to Huron and Sandusky, 3 1/2 shillings; to Maumee, 5 shillings; to Detroit, 4 shillings. Passage to Erie and Cleveland, \$4.00; to Detroit and Maumee, \$6.00.

waukee than in New York, which probably made it seem unnecessary to bring all of them around the lakes. Possibly, too, his purchases were in addition to the supply of tools on hand.

The tract of land on which the Howard family settled and which became their permanent farm residence was the northeast quarter of section 20, township 6, range 22 east—town of Lake, Milwaukee County. For this tract Mr. Howard filed his claim with the Settlers' Association October 31, 1836, and at the government land sale in March, 1839, he bought it, together with several other pieces near by, one of them cornering with it on the southeast.

Tradition says that Israel Porter and his son Washington had spied out the land, selecting tentatively the location in section 20 together with others, and offering Howard his choice of their selections. He gave all of them a careful scanning before deciding to build his cabin, and he never regretted his decision to build where he did. In fact, all through life Mr. Howard was an ardent believer in the west shore of Lake Michigan, particularly in Milwaukee County, as a choice farming and fruit growing region. The quarter-section was covered with a heavy growth of timber consisting of several varieties of oak, sugar maple, linn or basswood, and other trees. The surface was gently rolling and, lying on one of the glacial ridges which parallel the lake, it was well drained and thoroughly tillable when cleared. The soil was a uniform layer of Miami silty clay loam, one of the choicest soils in the lake region. A glance at the old farm as it is today, divested of its original forest covering, suggests that when the government surveyor of the township described the land as "good 2d rate" he must have been influenced by the obvious disadvantage of the heavy clearing to be done before it could be made useful for agriculture.

The difficulty of clearing is reflected in the progress of farm making on the land. Mr. Howard was no ordinary worker, dependent solely on the labor of his own hands. He

had the means to employ labor, and we know from the records that he drove a thriving business in the sale of wood from his premises. The two older sons, James and John, soon grew to working stature and they were kept busy for a number of years on the home farm. Yet in 1850, after living there fourteen years, the farm had but forty acres under cultivation. Ten years later the amount of arable was seventy acres and in 1880 one hundred and twenty-five acres. Even at that late date there were eighty acres of woodland on Howard's holdings, the description of which showed three hundred and eleven as the total number of acres. The farm was then divided into one hundred and twenty-five cultivated, one hundred and six in permanent pasture, and eighty acres woods.

A few months after the seventh census was taken, 1850, Mr. Howard wrote to his brother Dean to ask if he could send him a renter for his farm, it being his desire to move to some place where all the children could attend a good school. It was practically impossible to find in Wisconsin a man whom he could trust with his farm and orchard. "I have," he says, "between 40 and 50 acres of good improvement and more chopped off. Some 4 or 500 cords of dry wood two good horse teams. Good tools, a plenty of all kinds of livestock for the farm a good barn 30 x 50 ft basement stable 20 x 30 ft and the improvement all in good order. A young orchard. Some few of the apple trees beginning to bear. 200 in number. Above a hundred Peach trees which I think if the season is good will bear this year a number of bearing Plum and Pear trees and a few bearing cherry trees. Year before last I sold \$20 worth of Peaches from seven trees last year they bore but little. I have sold my peaches and plums for \$4 per bushel. I gave away and used I presume more than I sold. Don't you know of some honest industrious good farmer who is coming west that you could send and recommend to me."⁴ To

⁴ Copy of letter dated Jan. 19, 1851.

this inquiry Dean answered, "I do not know of any one going west from here now. Business is so good here that it is calling people in instead of sending them out."⁶ The upshot was that Mr. Howard never moved off the farm at any time, though he rented portions of it to his sons.

The rate at which the farm was brought under cultivation could doubtless have been accelerated had such a course been deemed advisable. But in that case there would probably have been much waste of timber, and this the Howards did not want. They held views on that subject which sound strangely modern. "You should be very saving of your timber lands," writes Dean in 1843, "clear but little and cultivate what you do clear the better—trim up your small trees. I hope you may live to see trees a foot through that you now trim with a jack-knife. I think you will see the day when you can cultivate timber to a better profit than farmer's produce in that country for you will always have a market for that."⁷ It seems likely that the condition of the fuel market, and the rapidity with which timber could be profitably removed, fixed the rate of land clearing. For there is much complaint during the 1840's about the inability to hire men to draw wood to market. The teams often stood idly in the barn during the sleighing season because teamsters were not to be had.

In 1844, when the harbor was being improved, Mr. Howard offered to supply harbor timber at given rates per running foot, and he seems to have entered into a contract with the commissioners for that purpose. This was incidental to the moderate wood business he was then carrying on. But the time came during and after the Civil War when the prices of agricultural products seemed to justify hurrying the process of clearing. Also, people of the city seem to have poached on the more distant parts of his forest, so that a neighbor predicted "in two years you will not have

⁶ Letter dated Lyonsdale, N. Y., Feb. 7, 1851. The new California gold was making times good. By 1855 we hear of some of the Wisconsin Yankees returning to New York.

⁷ D. S. Howard to J. C. Howard, Jan. 9, 1843.

a stick of timber left.”⁷ Fortunately, the price of timber products was rising also, thus supplying an additional motive. We have not the details of the operations year by year, but in the winter of 1873-74 Howard paid wood cutters for a total of 1033 cords of wood cut on his land.⁸ There were also quantities of staves and heading, and a few fence rails. Some two hundred cords of the wood was described as having been cut on section 16 where Howard had bought school land. This acceleration of the woods work explains the growth of the farm in arable during the two decades 1860 to 1880.

The “old house” on this farm was the original erection of logs, with subsequent additions. Howard gives a kind of picture of the home and family in a letter written late in 1857, when the new brick house was going up. “We live,” he said, “in the old log cabin which sheltered us in our new wilderness home 21 years ago the 21st of last month [September]. We have only 3 rooms. My family consists of my wife, myself, two grown up sons, two daughters, two little sons and our hired hands, but we are still pretty comfortable.”⁹ The “3 rooms” were in effect six, for there was a loft, and the main log house, which was large, seems to have been curtained across both below and above. There was a lean-to on each of two sides, each one making a large room.¹⁰

By 1857, however, several things had occurred to suggest the idea of providing a new and more commodious house. The first of these was the settlement of accounts with those who had bought Mr. Howard’s property in the East, consisting of a tract of land at Rossie often described as “The Island,” and an undivided share in the old Porter mill at Gouverneur. The Church brothers had bought the island, while another party was owing him money on the

⁷ Charles Hermann and Company, June 7, 1869.

⁸ The cutting was done by foreigners, most of the names of payees being German.

⁹ J. C. Howard to Rachel Stowell, Oct. 11, 1857.

¹⁰ Information furnished by Leon Howard.

mill. Correspondence about those debts was copious, often acrid, and sometimes sulphurous. It continued from the date of Howard's removal to Wisconsin for more than ten years. Finally, in 1848, Howard received his balances and made new investments in land near Milwaukee.¹¹ He was prospering as a farmer also, the principal crop grown being hay, of which in 1859 he had fifty tons, which probably represents the average crop for those years. It was the same in 1870, when the aggregate value of all farm products was given as \$1,915. His farm (which included three hundred sixty acres, of which seventy were cultivated) was rated in 1860 at \$20,000.

By this time, also, Howard had a certain amount of money out at interest, upon which he could draw—or supposed he could draw—to meet the expense of building. So in the summer of 1857 he developed the plans for a truly noble farmhouse, assembled material, hired carpenters, masons, and brick-layers, and set all busily to work. Then the panic struck him. His own bills had to be paid, and he prided himself on never permitting a creditor to “dun” him for an honest debt. But as a creditor he had always followed the opposite principle never to sue for a debt. If the debtor could not pay he would extend his time, then extend it again, and yet again. The result was a certain amount of embarrassment for a number of years. The house cost more than had been anticipated, and Howard complained that it left him under the necessity of paying interest instead of receiving it. As late as 1865 his letters have a pessimistic note on that account.¹² It would seem, however, that although he was borrowing some money to tide along, he was by no means necessitous. For in June of the same year he was asking \$150 per acre for his land in township 8, where he had one hundred twenty-five acres.

It was a great house when completed. The good wife

¹¹ In 1849 he bought a quarter-section (NE 1/4) in Sec. 18, T. 8 N, R. 22 E (town of Milwaukee). The next year he bought a tract of school land in Sec. 16, T. 6 N, R. 22 E (Lake).

¹² For example, the letter of Dec. 2, 1865, to Dean.

had no advantage of it, for consumption carried her off in February, 1858, before it was occupied. But the family enjoyed it. Much company was entertained there. The young folks had their parties; several of the Howard children played musical instruments, which was a lure to other young men and women, for pianos were not plentiful in the country and a "fiddler" never lacked for an appreciative audience. It was, however, less a social center for the neighborhood than a gathering point for the Howard clan. The always busy "Uncle Dean" on his way to and from his widely severed jobs sometimes stopped at the farm for a day or two, occasionally longer; all members of his family, including the aristocratic "Aunt Ann," made visits there. Once at least Aunt Elen Howard Church, who was a great sufferer from sciatica, came around the lakes and spent a considerable period with her brother's family; while other aunts, uncles, cousins, and friends from New York as well as Wisconsin headed for the great house on the Howell road whenever opportunity brought them to Milwaukee. The old father, James Howard, who lived till the year 1860 never came to Milwaukee to visit his son, although frequently urged to do so. Instead, Mr. Corydon Howard made a number of journeys east for the special purpose of seeing his father, who was so unwell for years as to seem always about to depart this world.

There are only scattered hints as to how this large family lived in the big house. They were always well fed, for Mr. Howard was a generous provider and Sophronia had accustomed them all to excellent cooking. That they were well supplied with table equipment is indicated by the fact that there were silver spoons, both small and large. The first bill of expenses, which includes the items for moving to Wisconsin, for small outlays in connection with building the log house, for a pair of oxen, etc., shows also numerous purchases of supplies. These include, aside from pork and flour bought at Sackett's Harbor, five barrels of flour, half a hog, and thirty dollars' worth of potatoes as staples. In

addition this bill, which probably covers only the items bought before the end of the year 1836, shows that the delicacies of the time were not excluded from the log-cabin home. For there is half a barrel of dried apples, codfish, rice, beans, coffee, raisins, aside from condiments and even brandy and wine. The children, when away from home, recalled the bounteously spread table "at home," and one of them remembered a winter when her father slaughtered sixteen hogs, perhaps not all for the family meat supply. Mr. Howard, notwithstanding a habit he shared with many, of grumbling about hard times, loved to be regarded nevertheless as a kind of "Uncle Bountiful" to the whole clan, especially to any who were ill, or in distress from any other cause. At such times he was apt to say he had enough of this world's goods to keep himself, his family, and relations provided they cared to come to his place and share the common fare.

The house was doubtless a place of generous living. It was also a place where reading was encouraged. Mr. Howard was a man of much general information. He sometimes wrote letters to the papers, he indulged largely in religious discussion by letter, and he read various publications aside from weekly newspapers. One of the daughters, marooned on a frontier farm, in imagination sees her father sitting by the open fire in the library, with a pan of apples before him, "reading the *Banner of Light*." All of the children were intelligent, fair spoken, and thoroughly literate, though most of them enjoyed no school advantages beyond those furnished by the local district. The home made up largely for such deficiencies. It is significant that one important and much used room in the great house was called the "library."

In addition to the children mentioned in Mr. Howard's letter of 1857, heretofore cited, there were several that died at early ages, and three were already out of the nest. The census taker's roll call of the family in 1850 resulted as follows: James C. Howard, 46; Sophronia, 41; James, 21;

John, 19; Ellen, 18; Dean, 16; Perone, 14; George, 12; Sophronia, 8; Ann, 6; Frank, 2; Baby [Leon], 8 months. The 1860 schedule omits, of this group, Sophronia the wife; James, who was married and living on a portion of the farm in his own home; Ellen, married and living at a distance; Ann and Frank, who had both died before their mother. It includes Arthur, the youngest, then (1860) five years old. In 1870 an attempt was apparently made to list all living members of the family, whether present or absent. The children at that time were James, John, Ellen, Perone, George, Leon, and Arthur. There were also in the household two little girls, grandchildren of Mr. Howard, who were five and three years old respectively, and a German serving woman with a child two years of age.

Ellen, the oldest daughter, is first mentioned in one of her mother's letters of 1833. She was then the "little Tike" who, though barely a year old, could already say "Pa!" Ellen was married late in 1853 and removed to the new town of Portage. Her husband was John Dean, a young Easterner who had been schooled for the law and who, on his arrival in Wisconsin about this time after a sojourn in California, seems to have had several thousand dollars which he was burning to invest. Dean is described as an abnormally nervous man, who talked fast and incessantly and "fidgeted" all the time. After being plighted to Ellen he made a tour of southeastern Wisconsin, writing his impressions in long letters addressed to Mr. Howard. Though not as illuminating in most respects as might be anticipated, some of these letters contain matter of real historical interest. An example is one in which he tells about attending a temperance rally in Kenosha. The meeting was addressed by two eastern women who indirectly aimed also at promoting the woman's suffrage propaganda. They were a Mrs. Fowler of New York, who was an M.D., and a Mrs. Nichols of Vermont—both well educated and "smart" women, who held the audience about three hours. They were escorted by Sherman Booth, editor of the *Free*

Democrat, who led the way into the packed church, wearing over his shoulders a woman's shawl. Booth made the introductory speech.¹³ The picture of Portage given in another letter shows us a lively village some four years old and containing about three thousand inhabitants. It had twenty-six stores, eight hotels, four churches, six school-houses, and a select school just commencing, also a bank. Some thirty boats had run from the Mississippi to that place during the summer, twenty-five steamers making the trip regularly. Mr. Dean, being an optimist and having already decided on Portage as his future home, predicted that the place was destined to be "the Rochester of Wisconsin,"¹⁴ i. e. "the largest inland city in the state."

After settling in Portage, the Deans went east on a deferred wedding tour, taking some weeks of the summer of 1854 for that purpose. They visited in Philadelphia, New York, Boston; went to Vermont, where John's people lived, and then stopped in central New York to see the Howard connection. They were nobly entertained by Uncle Dean at Lyonsdale, they "saw Niagara," the objective of all traveling Americans, and in short made of the outing a grand tour such as was then deemed appropriate to persons of means and some distinction.¹⁵ For several years they prospered moderately in Portage, John doing a little law business, a little school business, and a good deal of speculating in lots and building of houses to let. By these latter means he soon tied up all the money he had and some he borrowed. When the panic struck, in 1857, he found it not easy to pay taxes and interest. After struggling for a while he returned to California in 1859 to recover his fortunes, but the halcyon days of the "gulches"

¹³ Letter of Nov. 6, 1853. The meeting was held on the evening of Nov. 2, apparently just prior to the election at which prohibition was voted.

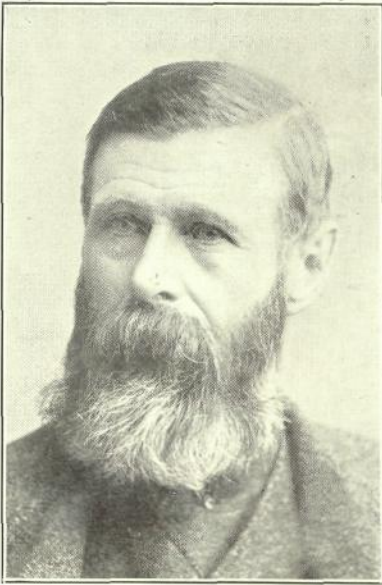
¹⁴ Letter of Nov. 9, 1853.

¹⁵ But there was one unfortunate episode of the visit to Lyonsdale, which revealed strikingly Mr. Dean's want of self-control under what he regarded as a slight on the part of "aristocratic Aunt Ann." He was evidently thus early a man of extreme irritability of temper, which grew upon him with advancing age and ended at last in mental shipwreck.

and river "bars" were over. Dean came back no richer than he went, and in consequence lost nearly all of his Portage property. His family lived on some of Howard's land; and after he returned in 1866 from the army, in which he had with difficulty procured a second lieutenancy, they decided to try pioneering in one of the new counties of western Michigan. It was the usual story of deprivation, hardship, sickness, and almost abject poverty, of which the frontier yields so generous a volume. But in this case the end was a tragedy, for John Dean became wholly incompetent and finally had to be placed in an institution for the care of the mentally diseased. But before this happened the Michigan experiment had been given up and the family returned to make a home on some of Mr. Howard's outlying lands in Milwaukee County. Ellen's later years were spent in California, it is believed in a state of comfort and ease more befitting her patient, gentle nature.¹⁸ She left a sturdy son, James, who is the Wisconsin representative of the family, and a daughter, Ann, in California, who is reported to be a superior woman in every sense. At one period the Deans lost by death four young children in less than one year.

James P. Howard, the eldest son of James Corydon Howard, married a remarkable woman, Maria L. Smead, of Greenfield, Massachusetts, and removed to that place, living on the Smead farm. James was not in vigorous health. But the cause of his constant physical depression, his despondency, and readiness to give up the ghost, was believed by his wife to be mainly psychological. The fact is, their mother's death from consumption cast a pall of gloom over the entire family. One and all believed themselves fated to go in the same way. Their letters are full

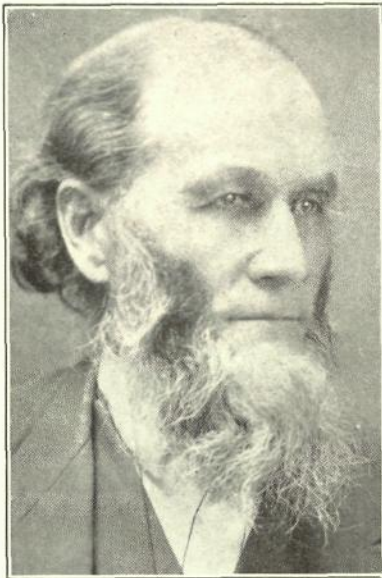
¹⁸ Ellen, as her letters show, was a woman of good mind and poetic feeling. "I think," she wrote her father, June 16, 1867, from Michigan, "there is a great deal of pleasure in pioneer life and there are many trials too. You, Pa, know all & more than I can tell you for many years to come. Every station in life has its bitter with the sweet & for my part I had much rather breathe the air from such beautiful green groves than from the dirty dusty buildings of a city. You never saw anything more beautiful than the woods here now." Yet in the same letter she tells of the painful illness which continued to drag her life down.



JOHN HOWARD



MRS. JAMES P. HOWARD



DEAN S. HOWARD



MRS. DEAN S. HOWARD

of concern about each other's health; they try various remedies, natural and artificial, even occult. James's case was one of the most stubborn. He tried a widely heralded doctor at Springfield, Massachusetts, who professed himself able to cure any curable disease by saying to the patient (who had paid liberally in advance) "You're cured." But James doggedly refused to try the spiritualist healers his father recommended. With Maria's efficient help—and she, noble woman that she was, had courage enough for all—he reared three fine boys, and all returned to the old home after J. C. Howard's death. It is interesting to learn, from remaining members of the family, that James died at the ripe age of about eighty-one. He was a man of considerable culture, was devoted to the interests of his eastern community, being secretary of this and that society, attending the Grange, the debating and lyceum clubs, and even singing-school. He was a student of the science of farming, loved gardening and horticulture, and also went heavily into the production of honey. This latter industry he transplanted to the Milwaukee farm on his return thither. When he died, one of his sons carried it on, and today the bee farm of James Howard still persists, but in the hands of another man. James, Maria, and their sons are living memories around the Milwaukee estate. Maria endeared herself to the whole neighborhood by her friendliness, her care for the sick and all who were in trouble. It was not long prior to their return to Wisconsin that Maria had occasion to write a letter to her father-in-law, J. C. Howard. James was sick, discouraged as usual, and in need of some slight financial assistance which he was aware ought rightfully to come from his father. So he wrote asking for aid, and received instead a letter filled with stories of ill health, losses from fire, from a distressing lawsuit which still dragged on so far as payment of costs was concerned, and other evils. He could not obtain money to send. He suggested they should sell their property in the East and come back to live on a portion of his land. To this note Maria responded for

James in a letter which is deserving of permanent preservation. "I have not the dispepsia," she says, "or the blues. Have not been burned out, am not in law, and my courage is first rate. This estate [at Greenfield, Massachusetts] is all owned in the family, we have no interest money to pay. We sold butter enough in Boston market last year to pay our taxes in this town twice over, and it was not much of a year for butter either as far as price was concerned, or quantity. Our land in an adjoining town rented for \$40 which paid the taxes more than three times over. Just now we are making more butter than at any time last year, over 50 lbs the past week. It brings now 24 cts in Boston. . . . We hear from all quarters that business is dull, but I dont realize it, nor am I likely to with nine in our family to wash, iron, cook and mend for. I receive the same wages that I always have for the same kind of work, viz. my board and clothes. I had no idea when we came here that we should remain so long, but if we should go now we would leave two old ladies in a very helpless condition. It is just possible that my brother may sometime come home to live. If he should, and James wishes to take me to any place between this and the Pacific Coast, or the Gulf of Mexico, I shall not object,—If it seems best to go.

"I fully believe that we are all earning our living. I believe this branch of the Howard family is a self supporting institution, and I should scorn to go West or anywhere else to be supported. If the time should come when I had no strength left to earn my living, and was poor besides, in such an event, this is the proper place for me, where my father, grandfather, and great-grandfather have been paying taxes for more than 100 years. This town owns a farm where all such are made very comfortable." On the subject of how this letter "went home" to father Howard the records are silent.

The fourth child of Corydon and Sophronia Howard was named for his uncle, Dean Samuel. He was born in 1834 when the family was living temporarily in Ontario

province, where Mr. Howard was assisting his brother Dean with the contract work he was doing on the River Trent. Young Dean was always an object of his uncle's solicitude, especially since his health from childhood was feeble. He grew to manhood, taught school for some years, married, and had several children; but his disease, consumption, gradually undermined his strength. To counteract its effects he tried various changes of climate, both north and south. In the later 1850's he joined his uncle Dean at Corpus Christi, Texas, doing such work as he was able to do and hoping for improvement. Being disappointed there, he thought of going either to the highlands of central Mexico or to the mountains of Utah and Colorado, a plan already being followed (1859) by tubercular patients, but that project was not carried out. His father, who was relied upon for funds, believed that if he had a chance to recover at all he could get well just as surely in Wisconsin as elsewhere. Dean made his home at Prairie du Chien, and there are many letters from that place, some quite encouraging about the town's future. Particularly was this true of the period when railroad construction was bringing the sleepy old village in touch with the lake at Milwaukee.¹⁷ Dean died in 1860 and his widow, who was left in straitened circumstances, married again after some years. Her oldest son kept up a correspondence with his grandfather until the latter's death.

The marriages of Perone and Sophronia, the two younger daughters who reached maturity, seem to confirm the sociological theory that in a mixed society like the Milwaukee district girls have decidedly a poorer chance than boys to find proper mates. At all events Perone's first marriage, during the early part of the Civil War, with a scapegrace soldier was very sad. Later she married again with happier results. But she lived only a few years, the ancient enemy, consumption, carrying her off in early womanhood.

¹⁷ A letter from J. S. Howell to J. C. Howard, July 27, 1855, shows that Prairie du Chien was having a boom. But Howell was a "realtor."

Sophonria married a man who from all accounts was unworthy of her. She suffered much, and also died young, leaving two daughters who made their home at their grandfather Howard's house.

Following her death, the husband married a woman who was well known to Mr. Howard and who wrote him long and detailed letters about conditions in South Dakota (then, 1878-79, Dakota Territory), where they had taken up a claim and where the husband died. This woman suffered all the hardships incident to prairie pioneering under the most adverse conditions. She tried to live through the winter in the badly built claim shanty, by burning hay for fuel. The result was a severe, long-continued illness. Her renters the next summer neglected the crop; also the hot winds caught the wheat at an immature stage and practically destroyed it. What the outcome was and whether she was able finally to "prove up" on her claim we do not know, the correspondence being cut off by Mr. Howard's death in 1880. It supplies, however, a realistic picture of a then common phase of life in what is now one of the richest and most prosperous farming districts of southeastern South Dakota.

George W. Howard, the fourth son and sixth child, was born evidently in 1838, for the census of 1850 gives his age as twelve. He was a studious, serious youth, who at an early age fitted himself to be a schoolmaster. He taught the home school, the Porter school in Pewaukee, the Genesee school, and various others before going to Waukesha, where he taught in the State Industrial School for Boys. The first notice of his connection with that institution occurs in 1866, when he and his wife were both at work there. His success as a disciplinarian is indicated by the fact that the home school, District No. 5 (town of Lake) had the reputation of being the "toughest" school in Milwaukee County. Before he finished his first term the county superintendent pronounced it the "most orderly" school in the county. He did not whip a single child, had

the good will of all the patrons and respect of the children. The people of the district, he said, were much given to bickering among themselves. Yet all visited the school and at the close of the term "offered to raise my wages 50 per cent if I would agree to take the school the following year." At one period he was willing to take such an offer. The district could pay but sixty dollars at that time, and his suggestion was that private families who had children wishing instruction in the higher branches, "such as geometry, physiology, algebra, physical geography, etc.," would be willing as before to make up the balance rather than send children to private schools at a distance from home. That mode of financing a good teacher in the better rural schools was probably not unique, the constitutional prohibition of other than "free schools" applying only to common schools. The higher studies could be paid for privately.

Some years later, in 1875 and '76, George was principal of the public school in Superior, Wisconsin. That place was new and raw. The school had three rooms in 1876, though the previous year it had had four. Bad times, and the removal from the town of several families, caused the change. The work of the principal was appreciated. "Several of our best men," he says, "have told me that I am teaching the best school that they have ever had here; but I do not expect to remain another year. The town is so devoid of life and grows worse and worse. It is hard to see how these men could stay here 15 or 20 years, as many of them have done." There were a few Irish and German families in the neighborhood of the town, who raised hay and potatoes. These were practically the only farm products marketed in Superior. Supplies for the mines were generally shipped in and prices ruled very high. There was no flour mill near, and only one good sawmill and one shingle mill. The first steamer of the season of 1875 came in, buffeting the ice, on the twenty-second of May. At that time there existed considerable mining excitement, on the crest of which some were trying to promote agriculture by

bringing in a Swiss colony to combine dairying with mining. On the whole, the picture of Superior which emerges from these letters is a sombre one.¹⁸

George, and Mary, his wife, visited the Centennial Exposition in the summer of 1876, going also to Greenfield Massachusetts, to see James's family, and exploring other parts of the East. On their return they settled down in a small house in Whitewater, with the expectation that George would complete the Normal School course, which he could have done in record time since, by examination, he passed off all subjects of the first year. But they remained only until the end of that calendar year, for so good an offer came from the management of the State Industrial School at Waukesha that it could not be resisted, and both he and Mary became teachers there once more.¹⁹ From there, after about two years of service, they removed to California. George continued in the teacher's occupation at Los Angeles and Santa Monica until his death by drowning. He was no doubt an excellent teacher and a man of fine ideals. His letters disclose a mind of perhaps less acumen and originality than was possessed by either James or John. But he gave himself a more thorough training than his elder brothers had. He is said to have worked out, independently, the courses required for a state life certificate and to have secured such a paper by examination, both in Wisconsin and in California.

In George's case the letters do not show what early school advantages beyond the local district school he received. The youngest of the boys, however, Arthur, spent a couple of terms as a student in Carroll College, Waukesha. But we have very little material on Arthur. There are several letters written by him from Waukesha, and a few others which he wrote when in 1878-79 he accompanied John on a health-seeking trip to Colorado. He is under-

¹⁸ George to his father, May 23, 1875. Mary, his wife, same day.

¹⁹ They were to receive \$1000 clear of all expenses including living apartment and board.

stood to have gone to California many years ago and to be still living there at the age of about seventy. Leon, also, has recorded himself in only a few letters. But he lives in a town house in full view of the old brick farmhouse. He is hale and hearty at seventy-six. Leon has laid us under special obligations as the donor of all the Howard papers.

John Howard, the second child and second son, remained on the farm as its manager when the other boys married or moved away. With James he labored for years to get the farm into good productive condition, but unlike his older brother he did not break away from it during his father's lifetime. The one year spent in Colorado, with Arthur, was his only time of absence—except for short visits east.

John never married. There is a bundle of letters, some in his hand, others in that of a young woman, which reveal a budding romance and the manner in which it was broken off. He had sought the young woman's company to parties. During the winter nights, when sleighing was good, they drove to spelling-school or lyceum by the light of the moon and the stars. Doubtless, as the merry sleigh-bells jingled and the cutter crunched the compacted snow, soft words were spoken and love almost spoke through them. Not quite, for John was cautious, sedate, and dignified. So when the young woman attempted a display of epistolary hysterics, obviously with the object of bringing the situation to a head, he drew back gently but firmly and, with the argument that a man in his "state of health" ought to have no plan for the future, terminated the discussion. Since the maiden indignantly returned his letters but failed to send for her own, we have in this collection both sides of the story. It is by no means the kind of material which would be exploited by the up-to-the minute novelist looking for thrills, but just the simple story of a modest rural pair of half a century ago, to whom love did not come with a mighty rush, nor run smoothly if it came. So John, all his life long, was doomed to have his home made for him by one

or the other of his sisters, and by his brother's wife, the capable Maria.

John was a scientific farmer so far as that was practicable with his limited education. His correspondence is charged with suggestions respecting improved farm equipment, such particularly as relates to the business of hay making, discussions—with James and others—of the best method of growing particular crops, and there is also much about livestock. He was in correspondence with some of the leading stock-breeders, like Richard Richards. He ordered from them choice pigs, cattle, and sheep. He was a reader of various farm journals; like his father, he was an exhibitor at the state fair—and he sent to James H. Gregory, of Marblehead, Massachusetts, for his garden seeds.

But John's life did not consist wholly in the multitudinous activities of the industrious farmer. He was a good citizen, interested in his community, anxious to help forward its social as well as its economic prosperity. As a member of the school board and its clerk, it was his duty to nominate the teacher; and we find him making anxious and wide inquiries in order to guarantee a good teacher for the school. Through this correspondence (for, like his father, he kept copies of his business letters) we obtain glimpses of the school. In 1871 he wrote to a prospective teacher: "The condition of our school house is good. The number of names of pupils registered last winter term was 66, progress in studies not far advanced; perhaps I should say very backward—text-books used reading & spelling National; Arithmetic & Algebra, Davies; Geography, Monticeths; Grammar, Clarks; History, Willards. We have not paid over \$50 per month, & expect to pay all of that to get a really good teacher." But he persuaded the board to pay John M. George, an approved teacher, sixty-five dollars per month.

He was interested in the Granger movement, writing about it to his friends in Iowa, and securing from James in

Massachusetts many details concerning the organization in order to introduce it at home.

John was the refuge of his sisters in their many and great troubles. They relied upon his sympathetic understanding, but also upon his good judgment and business sagacity. The picture reproduced in this issue shows him as he is portrayed also in the letters—a good man, a man of solid if limited culture, ability, and above all, wisdom. He loved music and was a performer on the violin. “Did you take John’s violin with you? do you play any?” wrote Ellen to John and Arthur when they were in Colorado.²⁰ “Birdie wants you to play *Bell Mahone* next Sunday eve & we will listen & see if we can hear it. Have you read about their conveying music over or on wires from one place to another some distance away? What will they do next?” John had qualms about his health, too, like James and the rest, due no doubt to the tragedy of their mother’s death from the white scourge. But he was not, like James, seriously incapacitated by it, and the testimony is that he worked hard and continuously—save for the interludes mentioned, like the visit to Colorado. He died in 1912, at the age of about eighty-one.

The career of the father, James C. Howard, as a farmer has been partly described. He was especially interested in his orchard, and at the state fairs was sometimes appointed to judge fruit in the “professional” growers’ class. He was a good farmer, but his wealth (for he was accounted wealthy, for a farmer) consisted mainly in land which was not farmed. He was a shrewd buyer, and having all faith in the future of Milwaukee, he invested his money exclusively in land located near the city. In 1870 he rated his real estate at \$50,000 and personalty at \$1500. Some years later he conceded that \$60,000 was not an over-valuation of his property, and others put it at \$100,000. But, as we shall see, he suffered some losses.

That Mr. Howard was well thought of by his neighbors

²⁰ Letter dated Aug. 25, 1877.

is shown by the fact that he was long a justice of the peace in his town, held the office of school clerk for some years, and was also a member of the town board. He had higher ambitions. For example, he sought election to the legislature once, but Milwaukee County was a discouraging area for Whigs and he was defeated as a matter of course. We have a kind of electioneering letter which sets out his principles in terse, vigorous sentences and in a dogged "take-me-or-leave-me" tone which bespeaks the man of character and independence, but not the shrewd politician. Apparently he never tried it again.

In early manhood he in some way had imbibed the doctrines of "infidelism," as he called them, though there is good evidence that he never went beyond a mild agnosticism. But he was ever ready to defend his beliefs, or lack of beliefs, against all orthodox contenders and, since he took his polemical letters seriously, we find copies of them preserved among his papers together with those of his adversaries.

He was destined, however, to be converted to spiritualism, the manner of the conversion being recorded by him with painful minuteness. There is enough material on the subject of spiritualism to render these papers interesting for that reason alone. He attended séances, he made journeys to conventions, he was a constant reader of the *Banner of Light* and other organs of the faith, and he interested himself in procuring opportunities for lecturers. Moreover, as one who believed himself vastly benefited by the new cult, he became zealous for the conversion of his family and friends, writing many and long letters urging them to "investigate" the subject. Strangely, this propaganda was in the main resultless. His sisters found their older faith more satisfactory, his cousins were either orthodox or agnostics, his older sons had been too deeply indoctrinated with the philosophy of doubt to give much heed to his new-found "way of salvation." Still he persisted, most of the time, it must be said to his credit, in a spirit of tolerance though occasionally a correspondent angered him. He and

his brother Dean, exceedingly close friends through life, nearly severed relations over this question; and John Dean, his son-in-law, by some indiscreet remark drew down upon himself a severe rebuke. It is amusing to note how Mr. Howard's boasted hard-headedness gave way before the weird doings of the table-tippers, the face molders, and the painters of the countenances of spirits invoked at set times by spiritualist mediums. The test of his devotion was the willingness to pay good money for these things, and on this head the records leave no doubt.

But his convictions, once arrived at, were naturally strong and his nature both impulsive and assertive. When yet in the agnostic stage he read an announcement that a young English woman, persecuted by the family on account of her departure from orthodoxy, had come to America and was seeking a home. He inquired for the woman's address, wrote to her, and offered the privilege of his home, such as it was in the old log house. She came, made his house headquarters, and found employment in the neighborhood for some years. Just so when he accepted the new faith—he could not do too much for its votaries, who were always welcome to the best his house afforded, and could also command both his time and his means.

The loss of his devoted wife Sophronia, February 24, 1858, was the severest misfortune Mr. Howard ever suffered. For if the unanimous testimony of brothers, sisters, husband, and children is to be credited, Sophronia was a saint. She wrote but few letters, and only those written to her husband on the rare occasions when the two were separated have been preserved. These reveal her tenderness and generous sympathy, but show likewise the quiet efficiency which distinguished her as mother and house manager. Pioneering was doubtless wearing upon her, but her husband wrote, with perfect justice, that Milwaukee County, Wisconsin, was less the "frontier" than St. Lawrence and Lewis counties, New York. She doubtless had more comforts as the wife of a prosperous farmer living

only four miles from the heart of Milwaukee, than she could have had in the old home. Yet the burden of rearing so large a family and caring for the home, with hired men and guests for good measure, was too great for her strength, and her health gave way under it. Despite the solicitude of the family, she could not be induced to spare herself—until it was too late. A girlish hand, probably young Sophronia's, wrote the diary of her last days and marked the passing of "my angel mother" as a turning-point in her own life—as indeed it proved.

The daughters were the housekeepers for several years after Mrs. Howard's death. In 1864 Mr. Howard married for his second wife an attractive English woman who at home had been a teacher of music. This marriage gave him much trouble and caused financial losses of considerable consequence. The story need not be told here, although the collection of papers is complete enough to furnish all details. It involved a long-drawn-out divorce trial which had no definite issue, judgments for attorney's fees, which Mr. Howard protested, and all the distressing accompaniments of the search for incriminating evidence. The woman died several years prior to Mr. Howard's death, but his estate was still charged with certain sums claimed by attorneys which he had refused to pay.

His character as "Uncle Bountiful," for which he cast himself, was maintained to the last. At all events, there was complaint in certain quarters that nearly one-half of the estate had been given away in various bequests to distant relatives or friends who had no real claim upon him as against his own children. He left money to his two sisters, Elen Church and Elizabeth Turnbull, and another of the legatees was his brother Dean. Dean, however, explained that his brother in that bequest had evidently designed to equalize their contributions to the comfortable maintenance of their old father during the many years when he was helpless both physically and financially. Dean had been near at hand and had given more than his share of money for the

father's support, while Elen and Elizabeth cared for him directly. He promised the Howard boys that they should not, in the end, lose anything as a result of this seeming overgenerosity on their father's part. There were other bequests which distressed and aggrieved the direct heirs greatly. But, on the whole, the family's clan feeling, the good will and affection subsisting among the children, enabled them to weather successfully the strain of "settling up." They all trusted John as the person especially charged with the business, and so far as appears all remained good friends.

The Howard family of Milwaukee County is representative of a myriad families most of whom did not preserve written records. It has played and is playing an honorable part in the building of Wisconsin and of other commonwealths. The family has not, so far as I know, furnished great leaders in any department of activity, but it has given us a group of independent, intelligent, and highly useful citizens such as make the enduring warp and woof of our civilization.

(The End)

WISCONSIN'S EFFORTS IN BEHALF OF SOLDIER REHABILITATION¹

FRANK C. RICHMOND, M. D.

FOREWORD BY WILLIAM F. LORENZ, M. D.

FOREWORD

The situation which confronted the United States, as well as all other combatant nations of the Great War, was new and unexpected in so far as mental and nervous collapse of troops was concerned. In no previous war in which this country or any other country had been engaged were there casualties of this nature sufficient to attract the attention of the medical officers or to continue as a post-war problem.

In the late war such results were not conditioned by the large number of soldiers involved, but more likely by the peculiarly terrifying and intensive character of modern warfare. There are many features of modern warfare which are new and in all probability contributed to this new form of casualty. In the first place, the tremendous strain of rapid and intensive military training was too great a burden for those of relatively less nervous stability. The horrifying modern implements of war, such as poison gas, aerial bombings, and high-explosive firing at great distance by modern artillery, undoubtedly helped to bring about the new type of war casualty which was rather generally referred to as shell-shock. War simultaneously on land, on sea, in the air, and under the water got on the nerves of men. In practically all armies ten per cent of the casualties—

¹ This paper was prepared for the reunion of the Women's Overseas Service League held in Milwaukee on October 24, 1925, and read by Dr. Richmond.

including those among both officers and privates—were due to nervous and mental collapse.

Many cases of nervous and mental breakdown occurring on the battle field recovered shortly after their treatment at a hospital behind the lines, although many others did not recover and were sent back to the United States. Upon my return to this country in May, 1919, having had personal experience in seeing these cases develop and in supervising their treatment, and suspecting that many more would develop and were not likely to recover within a short time, I very naturally was interested in learning what became of these latter cases. There was no evidence of any extra provisions for this new problem; in fact, some of the men were in county asylums, and I learned that in other states many of these mentally disabled ex-service men were temporarily held in jails and lock-ups. Everywhere throughout the country either they were being cared for at home by relatives who had had no experience and could not understand their condition; or, when their condition was particularly severe, or they had no friends or relatives who could afford to maintain and care for them, they were sent to state hospitals for the insane and regarded as mental cases in no wise different from the usual civilian mental case that was committed. At most of the state hospitals it was disclosed that these men received no special attention; that the medical personnel was quite unfamiliar with their true condition; and that few people, medical men included, realized that hundreds and thousands of these cases were potentially existing throughout the country, shortly to require hospitalization—a prospect impossible of realization because the civilian mental hospitals were already filled to capacity.

At this period Dr. Thomas A. Salmon of New York, psychiatrist of international repute, who had served as colonel in the war and was in charge of the care and treatment of these cases in France, tried in every way possible to bring before the federal government the need of providing adequate hospitalization for these men. This was in

1919. The prospects of getting federal provision were not promising, and as a consequence it was advocated in Wisconsin that the state should make its own provisions for the care and treatment of these men, and not wait until the federal government, incidentally having a far bigger problem to handle and being slower to move, could act.

Through a wisdom and prevision which now appears as though inspired directly from on high, public authorities in Wisconsin long before the return to the state of any considerable number of ex-service men from the war had made generous provision for the relief of the needy, destitute, diseased, and disabled among them. Chapter 452, *Laws of 1919*, provided for the organization of the Service Recognition Board and carried an appropriation of \$500,000 to be expended during the period of convalescence and readjustment of needy, sick, and disabled soldiers, sailors, marines, etc.—aid not to exceed \$30.00 a month. This board was duly organized with Governor Phillip, Adjutant General Holway, and Major William F. Lorenz, M.D., as its members, and Colonel John Salsman as secretary and executive officer. During the period of its existence the Service Recognition Board took care of 2175 ex-service men at a total cost to the state of \$328,207. Of these, 941 were sufferers from tuberculosis, 124 from the effects of gas, 77 from rheumatism, 253 from mental and nervous diseases, 230 from wounds, and 550 from miscellaneous disabilities, diseases, and incapacitating conditions due to military service.

In July, 1924, the Service Recognition Board passed out of existence and its functions were amplified and assumed by the Soldiers Rehabilitation Board, provided for by Chapter 345, *Laws of 1923*, and composed of Drs. Harper, Lorenz, and Middleton, representing respectively the State Board of Health, the Wisconsin Psychiatric Insti-

tute, and the medical department of the University of Wisconsin, with Colonel Salsman as secretary and executive officer. This board was given authority among other things "to provide treatment for any man or woman who served in the military or naval service of the United States at any time from March 1, 1917, until July 1, 1919, for any physical or mental disease or injury or the consequent result of such disease or injury which is directly or indirectly traceable to such military or naval service. Such person must have been a resident of this state for not less than five years next immediately preceding application for treatment." The board was authorized to provide for the care and treatment of such applicants in hospitals owned or operated by the state, by counties, by municipalities, by sectarian organizations, or by private persons, preference in selection to be given in the order named, subject to emergencies and the opinion of the board as to the best interests of the patient. During the year from July 1, 1924, to July 1, 1925, 187 men received treatment under the jurisdiction of the Soldiers Rehabilitation Board in general hospitals, tuberculosis sanatoria, and at the Wisconsin Psychiatric Institute, at a cost of \$43,000.

By the provisions of Chapter 191, *Laws of 1925*, the Soldiers Rehabilitation Board was reorganized with an addition to its membership of the Adjutant General and the State Commander of the American Legion. The Adjutant General's department was directed to perform the duties theretofore performed by the Service Recognition Board and the Soldiers Rehabilitation Board, with the advice and approval of the latter.

In addition to the activities of these state agencies for the relief and rehabilitation of ex-service men, two other outstanding efforts of Wisconsin for the benefit, welfare, and assistance of its ex-service men are the cash bonus law and the educational bonus law. Under the former up to January 1, 1925, 114,792 claims were allowed and paid in the sum of \$15,726,747.61; and under the latter, 8320 ap-

plications were allowed and paid between September 8, 1919, and September 15, 1925, in the sum of \$4,177,190.69.

REHABILITATION OF MENTAL CASES

In the summer and fall of 1919, largely through the foresight and activity of Dr. Lorenz, the State Board of Control in cooperation with the Service Recognition Board undertook to provide special arrangements and accommodations for the care and treatment of the ex-service men in the state mental hospitals and for such cases as future developments should require. The Board of Control set aside for the purpose a hospital building on the grounds of the Wisconsin State Hospital for the Insane at Mendota, with a capacity of forty beds. This building was thenceforth devoted to the exclusive purposes of the Wisconsin Psychiatric Institute, which had been established some years before and operated as a department of the Wisconsin State Hospital for the Insane. By mutual agreement between the Service Recognition Board and the State Board of Control the usual and ordinary cost of this service was to be borne by the Board of Control, while the cost of special means and equipment for the proper care and attention of the ex-service men patients was to be borne by the Service Recognition Board, which financed its end of the agreement by allowing \$30.00 per month for each person so cared for. Dr. Lorenz was placed in charge as medical director, serving in such capacity without compensation; and on October 1, 1919, the arrangement began to function with eighteen patients then at the Wisconsin State Hospital. My connection with the work began December 1, 1919. Before the end of 1919 the capacity of forty beds was overtaxed, and from then until the Wisconsin Memorial Hospital took over the service, additional quarters were provided, as demands increased, at the near-by Wisconsin State Hospital. The arrangement between the Service Recognition Board and the Board of Control continued in effect until July 1, 1921,

when the Wisconsin Psychiatric Institute was erected as an independent state institution.

From October 1, 1919, until July 1, 1921, the number of ex-service men cared for under this provision was 268 (217 new admissions and 51 re-admissions), of whom 105 were discharged as recovered or improved, 2 died, 8 were transferred to other hospitals, and 25 were discharged as not improved, leaving 128 in the hospital July 1, 1921. The amount paid by the federal government into the state general fund for the care and treatment of these cases was \$69,714.38, and the amount contributed by the Service Recognition Board and expended under the direction and personal supervision of Dr. Lorenz as medical director was \$47,289.

During the period of the infancy of this service "the boys" found themselves treated more like guests than patients of a mental hospital. Unselfish and wholehearted devotion was shown on every hand by doctors, nurses, attendants, and employees alike. Those indeed were the golden days of service, even though the problems were many and perplexing and the whole organization was afflicted with "growing pains." Great stress in the care and treatment of these ex-soldiers was laid upon the following points: the best hospital facilities which could be made available, with the best of medical and psychiatric service; good food and plenty of it, appetizingly prepared and properly served; a well-directed occupational therapy department in charge of an exceptionally able director. Athletics of all kinds were encouraged, recreational opportunities were cultivated, and a liberal policy in the matter of visitors and ground paroles was inaugurated.

When on July 1, 1921, the Psychiatric Institute came into independent being and took over as the special problem of its hospital department the care and treatment of the mentally disabled ex-service men, 128 of them made up its hospital population. The medical staff was increased, the separate business department came into existence, and the

organization was expanded all along the line. Later on, in the spring of 1924, another considerable expansion in the service in the medical, administrative, and business departments became necessary. And on July 1, 1925, the work was taken over by the Wisconsin Memorial Hospital, the origin, construction, and operation of which makes a separate chapter in this story.

From October 1, 1919, until July 1, 1925, the total number of cases treated was 1038, of which number 628 were new admissions and 410 were re-admissions. The total number discharged as restored or recovered was 552, died 18, transferred 52, discharged as not improved 133, and as without psychosis 18—making a total of 773, leaving 265 cases in the hospital on July 1, 1925. For this service the state of Wisconsin contributed all buildings, equipment, and capital expenditures, and the Soldiers Rehabilitation Board paid \$16,698 between July 1, 1924, and July 1, 1925. The United States government, through the United States Veterans Bureau, maintained the service by paying to the state, into a revolving fund applicable only to relief of ex-service men, the following sums:

July 1, 1921, to July 1, 1922.....	\$141,863.60
July 1, 1922, to July 1, 1923.....	187,216.88
July 1, 1923, to July 1, 1924.....	230,814.48
July 1, 1924, to July 1, 1925.....	235,740.00
	Total \$795,634.96

All of the above amount has been expended in the care and treatment of the 1038 cases which have been admitted to the so-called "Soldiers Hospital" at Mendota.

WISCONSIN MEMORIAL HOSPITAL

At Farwell's Point, across Lake Mendota from Madison, there has been established and erected the Wisconsin Memorial Hospital for the care and treatment of discharged soldiers, nurses, and marines, residents of this state at the

time of their enlistment, who served in the late war against Germany and her allies, and who are suffering from mental diseases and who are or may hereafter become beneficiaries of the federal war risk insurance act. This hospital as an independent state institution began to function on July 1, 1925, with Dr. Raymond L. Kenney in charge as medical superintendent. It is the agency provided by the state of Wisconsin to carry on the work of rehabilitating the ex-service men suffering from mental disorders. On July 1, 1925, there were 265 patients in the hospital population and on October 1 of the same year, 255. During this period of three months the United States Veterans Bureau paid \$61,566 for the maintenance of compensable cases, and the Soldiers Rehabilitation Board paid \$6,840 for the maintenance of cases not compensable.

The construction of the hospital was provided for by the state of Wisconsin in the following manner: Chapter 305, *Laws of 1921*, provided for the appointment of a commission to select a location on land owned by the state and proceed with the construction of the hospital. It appropriated for the purpose the sum of \$250,000, of which \$150,000 was to be paid out of the general fund of the state and \$100,000 out of the surplus funds belonging to the Service Recognition Board. The commission, consisting of nine members, under the chairmanship of Governor Blaine speedily organized with Dr. Lorenz as secretary, and as expeditiously as possible carried out the mandate of the legislature. By Chapter 398, *Laws of 1923*, an additional appropriation of \$180,000 was made from the general fund to complete the hospital to the point where it could be operated as an independent state institution.

The Wisconsin Memorial Hospital has therefore been erected by the state at a cost of \$430,000. The federal government pays for the care of the inmates at the rate of \$3.00 per day for compensable cases, and the state through the Soldiers Rehabilitation Board pays at the same rate for the non-compensable cases. The hospital is especially well de-

signed on the cottage plan in separate units, comprising in all a total of eleven buildings, and is completely equipped for careful and complete diagnosis, scientific treatment, and humane care. Its capacity is approximately three hundred beds. Its design and arrangement departs markedly from the institutional type of edifice so commonly associated with the custodial care of the insane.

In the conduct of the hospital five physicians in addition to the medical superintendent are employed—a rate of one physician to every fifty or sixty patients, while in state hospitals of similar character the ratio is one physician to from one hundred to two hundred and fifty patients. Graduate female nurses are in charge of the cottages as well as the clinical wards. The atmosphere of the entire hospital is in decided contrast to that of many state hospitals for the insane, where confinement and custodial care appear to be the end sought. These provisions and the modern liberal manner in which the administrative affairs of the hospital are managed have induced a large number of patients to seek voluntary admission early in the progress of their mental disability. And by early treatment many cases have been restored which delayed treatment would have failed to rescue.

So far the main and most attractive feature of the Wisconsin General Hospital has not been touched upon—the beautiful setting in which the buildings are placed. The fact is, that words cannot paint adequately the natural beauties, attractions, and advantages of the location at Farwell's Point occupied by this hospital. Justly is Wisconsin famed for its natural beauty spots, and the Wisconsin Memorial Hospital at Farwell's Point on the shore of Lake Mendota has a natural setting that surpasses that of any other mental hospital in the United States, if not in all the world. It is a summer resort par excellence and a winter retreat most inviting, while in the spring and autumn Nature's smiles and enchanting moods bring to the disordered mind such rest, diversion, and recreation that "the boys"

in large measure are restored and rehabilitated by Nature's ways.

The reaction of the patients to the efforts of the state in their behalf and toward their environment is expressed as follows in an editorial in the initial number of the *Mendota Breeze*, a weekly newspaper edited and printed by the patients on the grounds: "We wish to express appreciation of the sustained interest in the welfare of the soldiers as exhibited by the state of Wisconsin, through those duly appointed for that purpose. We are also grateful to individual citizens of this state who have done their bit for us, and to the various organizations who are well known for their good works."

Under the direction of Dr. Lorenz and with his personal participation, a medical and psychiatric survey of the 134 ex-service men in the Wisconsin State Prison, 91 at the Wisconsin State Reformatory, and 65 in the Milwaukee House of Correction was completed early in 1923. A thorough medical and psychiatric examination was given 290 individuals, a mass of interesting data was collected by Drs. Lorenz, Middleton, Kenney, and myself, and the outstanding features of the survey were published in scientific journals and the public press. In the official report of the commission the following recommendations were made:

1. That a thorough mental and physical examination be made of all ex-service men in penal institutions in the United States.

2. That a thorough mental and physical examination be made a part of the routine of all persons incarcerated in penal institutions.

3. That in rural states such mental and physical examinations be made through a medical service of the medical department of the state university, if such exists.

In July, 1924, the State Board of Control put into practical operation the second recommendation, and since then all persons admitted to the state correctional institutions in Wisconsin, as well as those applying for parole, are

given the examinations recommended. In July, 1924, also, the Field Service Department of the Wisconsin Psychiatric Institute was established to carry on this work. During the ensuing year 2065 such examinations were made. Since July 1, 1925, the work has continued directly under the Board of Control of Wisconsin as the Psychiatric Field Service, with myself as director. And thus it has come about that Wisconsin's generous and laudable efforts in behalf of the rehabilitation of the ex-service men has led into the wider field of rehabilitation of the socially maladjusted, male and female, adult and minor. There is, therefore, no gainsaying the fact that some good has eventually resulted from the war, though much more was hoped and wished for.

With all these facts and figures in evidence, we believe it may be truly said that Wisconsin, in proportion to wealth and population, has been the most liberal state in the Union in its solicitous generosity toward its ex-service men, and in its efforts to reach and return to good health and efficiency those who have been or may yet be rehabilitated. While for those beyond the hope of rehabilitation the state's solicitude and assistance will be available in most generous measure until Taps shall be sounded for the last one of them.

A PIONEER CHURCH AT PROSPECT¹

THEODORA W. YOUNMANS

The Free-Will Baptist church of New Berlin was organized long before Wisconsin became a state, long before Waukesha County came into existence as a political unit. It was one of the very early church organizations of the section which later became Waukesha County.

The first line of the first page of Church Book No. 1, giving record of the organization, is dated "Newberlin, Wisconsin Territory, July 11th, 1840" and recounts a meeting called at the home of Elder Rufus Cheney "for the purpose of finding out the minds of the people with regard to forming a church." The meeting was adjourned to the home of Elder Nathan P. Kendall and at that time, to continue the record, "six came forward and were united into church fellowship by Elder Rufus Cheney, called the Free-Will Baptist church of Newberlin." The six founders of the church were: Elder Rufus Cheney, Ruth Cheney, Aretus Whitcomb, Lydia Whitcomb, Daniel Gilbert, Caty Gilbert. It was "voted that Daniel Gilbert be church clerk. Voted that we hold monthly meetings on the first Saturday of every month in the afternoon."

Elder Rufus Cheney, the leading spirit in the founding of the church, was born in New Hampshire, grew to manhood and married there, and was ordained to the Baptist ministry in 1810. He lived in various eastern states, first visited Wisconsin in 1836, came to Franklin, Milwaukee County, in 1838, and settled in New Berlin in the fall of 1839. The organization of the church followed the next year. The Rufus Cheney home, where most of the early

¹A paper read by Mrs. Youmans at Big Bend in September, 1925, at a meeting of the Waukesha County Historical Society.

meetings of the church organization were held, later passed into the hands of Thomas Faulkner, and then to his son Elden R. Faulkner, where it still remains. Mr. Faulkner told me that the first meeting for the church organization was held in the room in which I sat a few weeks ago to secure information from him for this history. The house has been enlarged and changed since then, but the then kitchen, now the sitting-room, remains substantially as it was in those days of 1840. The house with its surrounding acres lies at the foot of Prospect Hill, to the south on the Muskego road.

The Gilberts were also Wisconsin pioneers. Daniel Gilbert was born in New Hampshire; he lived in Vermont and New York, and came to this state in 1839 by way of the Great Lakes, settling in New Berlin. Both the Cheney and the Gilbert families have large share in the early history of this part of Waukesha County. Of the Whitcombs I know nothing, except that it is recorded later in the book that Aretus and Lydia Whitcomb were dismissed by letter. Evidently they moved away.

Daniel Gilbert, chosen first church clerk, proved a good official, record of each meeting being inserted regularly and neatly, but to our infinite regret very briefly. We want to know so many things of which it gives us no information. Records of the first three meetings are typical: "August 1 1840 Monthly meeting at N. P. Kendalls Elder R. Cheney present peace and harmony prevail all appear to be steadfast;" "Sept 5. Monthly meeting at Elder R. Cheney union prevails but few present;" "October 3 Monthly meeting at Elder R. Cheney's the little few seem determined to progress in the divine life." No punctuation marks at all appear in these early records.

The first accessions to the church, in July, 1841, were Brother C. Monger and Sister Monger, and Brother S. Dexter. Other early members received were Sister Eliza Whitcomb, John Cheney and Annliza his wife, Harry B. Cheney and Saloma his wife, Rebecca Houck, Almon Hol-

comb, C. Randall and Lucy his wife. Both the Cheney's were sons of Elder Rufus Cheney and followed that intrepid pioneer to the new country, making their homes near him. Both joined by letter from the church at Attica, New York, as did several others later. If any church is to be regarded as mother to the infant organization in Wisconsin which we are considering, that church was the one at Attica, New York.

The first death recorded has brief notice: "Sister Ann-liza Cheney was buried yesterday, December 31, 1842." Her sojourn in the new home was short. Hers may well have been the first grave in that plot of God's acre later known as Sunnyside Cemetery, though of this I have no positive knowledge.

Communion service was held in the little church group several times during its first year. In the last meeting of 1840 "the brethren met with us to consult on the propriety [of] forming a quarterly meeting." There was one formed at the time.

In May, 1842, states the record book, John Horn came forward and requested to unite with the church, which voted to receive him. He was baptized on the fourteenth day of the month. This is the first account of a baptism, and the place of that rite is not specified. Mr. Faulkner told me that the early baptisms took place in a pool created by a big spring on what later became the Bela Farnham farm, through the woods southeast from the Cheney farm perhaps half a mile. The little stream meandering down from the spring had been dammed for the purpose. Later baptisms were in Hale's mill-pond, and I well remember the awe with which the child that was then I used to watch the solemn procession of the pastor and the candidate, suitably attired in old clothes, into the water, until it was waist deep or more, the quick submersion backward of the candidate all over into the water, the gasping recovery, and the equally solemn return to dry land of the dripping pair. With the precarious foothold in sand or mud beneath

the water, each baptism must have been a test of strength and balance for the pastor, especially when the candidate was larger and heavier than himself. But I cannot remember hearing that the pastor ever failed or fell.

On May 5 "Sister Mary Ann Cheney was received into the church bringing letters from Attica, N. Y." Evidently John Cheney had returned to his old home for his second wife, Mary Ann.

In 1843 we have first intimation of those difficulties which appeared frequently in the church records for a number of years. The book states that "it is a low time with the church," and further, "The case of Brother S. L. was brought up by which it appeared from a letter from Pike Grove church that Brother L. had been guilty of unchristian conduct and that they had labored with him but to no good effect. Therefore voted to withdraw the hand of fellowship."

The first deacon chosen was Daniel Gilbert, and the manner of his choosing was this: "Elder Herman Jenkins being present proposed that there should be a private vote taken on the subject: it was then proposed by Elder R. Cheney that Elder Jenkins should take the vote. Elder J. then went to each member of the church (that was present) and took the vote by each member giving their vote in a whisper: he then declared it to be unanimous choice for Daniel Gilbert to be deacon."

In March, 1844, we have first intimation of a disagreement over a school district which made a good deal of dissension for several years. I quote: "It was a cold time and there appears to be a great deal of hardness in the church. It appears to originate from a difficulty in Elder Cheney's School district about the site the school-house and the doors being opened for random members (of other denominations) to commune with the church to the grief of some of its own members." The Free-Will Baptist church stands for open communion with all Christians, but members of the New Berlin church made their own interpreta-

tion of this provision. After much discussion at many meetings this action was taken: "Resolved that this church shall not commune with members of other denominations to the grief of its own members but the member aggrieved shall make complaint to the person with whom they are aggrieved and if satisfaction is not given the aggrieved member shall tell their complaint to the church, the church shall give the accused a right to come and clear themselves or make satisfaction if they choose and can."

Another record is that "the church is not well united, not much travail unless it be in discord. . . . Voted that for a member to be in the practice of tattling is a misdemeanor worthy of church discipline."

There was a special church meeting to hear and judge of the school-house controversy, with a moderator, a clerk, and all the approved paraphernalia. Various grievances were set forth, one of which was that of Brother Wood, "who is grieved with some of the brethren for signing a petition to set himself and brother Whitcomb off into the Dutch district contrary to their wishes." The school-house *per se* had nothing to do with the church, but the church of those days interested itself acutely in all the personal affairs of its members, and did not hesitate to call them to task when such a course seemed proper to the brethren. In the ten years after its founding the church heard many controversies on different kinds of topics, and in a number of instances the hand of fellowship was withdrawn from members.

After August, 1844, the records are in a new handwriting—that of Daniel Church, elected clerk in place of Daniel Gilbert, who had served in that capacity since the church was organized.

All or nearly all the church meetings during the first five years of its existence were held at Elder Cheney's house. In 1845 and thereafter meetings were generally held at the school-house. There is no record that Elder Cheney was actual pastor of the church at first, but in 1845

he was officially made pastor and a committee was appointed "to make some arrangements for the support of the gospel amongst us." This is the first reference in the book to expenses and finances. The committee reported in favor of a subscription and the report was adopted. Sister H. was excluded evidently because she had been absenting herself from meetings.

Meanwhile many people had been coming into the church. Nothing is said in the records of revival meetings, but when twenty persons were baptized at one time, as in February, 1845, we may suppose that such meetings had been held. Baptism was administered by Elder Cheney and Elder Jenkins, in a Wisconsin February, mind you, and probably in the big spring.

Committees were constantly being appointed to visit this or that delinquent member, and if they did not mend their ways ("take up their walk with the church," was the phrase), they were excluded.

In 1846 appear two items of special interest. One is this: "Agreeable to the request of the quarterly meeting this church votes to pay ten cents per member for the support of the yearly meeting." The second item relates the stand of the church, now first recorded, on the subject of temperance, when a committee was appointed to visit an erring Brother L., it having been reported that he was in the habit of drinking too much liquor. This committee reported later that "Brother L. denies having drunk to hurt him and seems to think he shall drink as he pleases." The case against Brother L. hung fire for some time, but he finally agreed not to make use of liquor as a beverage and the church "voted to withdraw the labor against him." Accusations of drinking against other members appear occasionally for several years, and finally in a covenant adopted long afterwards the church took a strong stand for temperance.

In 1848 Thomas Faulkner related his experience, was baptized and received as a member. Only a few months later

Brother Hiram Hale was baptized and united with the church. Both these members remained pillars of the church, useful and devoted, during their long lives.

That same year, 1848, when Wisconsin became a state, appears this record: "Voted to raise a church fund for to meet the necessary expenses of the church, each male member paying 25 cents, females 12 and one half cents." A few more items and we must close the first twenty years of church history. A certain Dowd was given right to "improve his gift in public as preacher of the gospel." This same right was later given one Mevis. Elder Jenkins became pastor. A meeting was cut short to hear a lecture by Governor Randall. Elder Keevill was made pastor.

Certain things stand out prominently in these first twenty years from 1840 to 1860. The growth of the church was amazing. We wonder how in this new country there were enough people to provide the constant accession of new members. It was a changing membership, members coming in and going out, either voluntarily by letter, which probably meant that they were moving farther on, or involuntarily by exclusion. A few died. As I compute the membership, there had been received into the church by 1860 about one hundred and thirty-five members, and at that date the church membership may have been about half that number. Pastors during the period were Elders Rufus Cheney, Plumb, Belknap, Herman Jenkins, Enoch Jenkins (the two father and son), and E. J. Keevill. Elder Keevill seems to have been remembered as a revivalist of the old school, who sometimes conducted revival meetings outside his own church. A Waukesha woman has a child's memory of his pacing up and down a platform holding tightly to his breast a Bible, of whose value he spoke in glowing terms.

During these first twenty years we read very little about expenses or finances of any kind. We may conclude that the church of that day and place paid little attention to money. There was, in fact, little money in the country.

Mr. Faulkner tells us that Elder Cheney preached a free gospel freely for fifty years, without salary, and that other pioneer preachers had little or no salary in money—although we may suppose that sides of pork, bags of potatoes, and loads of wood found their way with some frequency from the homes of members to the homes of pastors. There were few ministers among the pioneers; and with the universal hunger for religion, as proved by the amazing growth and development of churches all over this county, ministers who came were divided among as many groups as possible. The Free-Will Baptist was a small denomination, and each of the few ministers must cover as large a territory as he could. Thus the meetings of the New Berlin church were held monthly, a minister coming for the Saturday afternoon meeting and remaining over Sunday. One record each month is the general rule in the first church book.

On page 87 of this book the last line, dated May 3, 1860, reads as follows: "Church edifice dedicated to the worship of God." This was, of course, the old white church with the rising sun in the pediment with which some of us are so familiar, beautifully placed on top of the hill, facing the glorious view to the south. I could not find one word about the church building in the book previous to its dedication. There is nothing to tell us that a church was contemplated, nothing of the committees in charge, the cost, or the raising of money. Fortunately, Mr. Faulkner, whose father joined the church in 1848 and who himself became a member in 1871, is again a storehouse of information. He remembers that the estimated cost was \$1200 and that the actual cost overran the estimate. He recalls that H. E. Hale was one of the building committee and was so anxious to have a gallery that he paid for it himself; that Elder Cheney gave \$300 toward the building fund, a large sum for those days; that the building was erected by Quincy W. Church. No doubt a standard plan of architecture was adopted, since churches of this type are common both in this

vicinity and elsewhere—a dignified, churchly type. The site for the church was conveyed by warranty deed by one Lindsey, but whether by gift or sale I do not know. The building was erected on honor, as is proved by the fact that now at sixty-five years of age it is in excellent condition and due to last decades longer.

We may presume that a new era opened for the church with the dedication of the new building, though for some years the records remain of the same general character. Gradually they become less restricted, and the work of the church takes on characteristics with which we are more familiar. There was no word about abolition when that question was rending this country in twain. But Mr. Faulkner tells me they were all abolitionists; that during the Civil War the church had a Soldiers' Aid Society with meetings in the church building, and that this society sent to the soldiers in the South a quantity of ketchup and a keg of horseradish (the keg holding several gallons) and various vegetables.

Elder Keevill remained with the church until 1863. He was followed in order by Elder Edwin Berry, Elder Plumb, and Elder O. D. Augir. I have a childish memory of Elder Augir as a tall, austere man with a black beard and a long ministerial coat.

The records of the seventies contain notice of a meeting to consider paying off the indebtedness on Rochester Institute, a school owned and conducted by the quarterly conference at Rochester, Racine County. The support of such a school must have been a heavy burden to the few churches in the conference. It indeed proved too heavy, was abandoned after a struggle, and passed into other hands. Pastors up to the close of the century were Elders A. P. Bunnell, Frank B. Moulton, Roswell Cheney, M. G. Pett, G. H. Hubbard, A. H. Whittaker, F. E. Butterfield, J. P. Hewes, R. R. Kennan, L. L. Sowles. The Wisconsin yearly meeting of the state organization of Free-Will Baptists met twice with the Prospect church, first in 1877,

when our house seemed full of awesome ministers, and again early in the present century.

Let us take up briefly the associated activities of the church, the first of these being the Sunday-school. We have a book dated 1844, entitled *Sunday-school Library Record*, that contains much of interest. It is surprising to learn that the Sunday-school started out with a library of two hundred and fifty books, including thirty-three publications of the American Tract Society. The titles show the kind of books which were considered proper nourishment for the child mind eighty years ago. Here are a few of them: *Child's Book on the Sabbath*, *Treatise on Religious Affections*, *Youth's Friend and Scholar's Magazine*, *Ann or the Conflict and Trial of Faith*, *An Alarm to Unconverted Sinners*, *Family Conversations*, *Harriet and Her Scholars*, *Murdered Mother*, *Frank the Irish Boy*.

In the first records of the Sunday-school there were seven teachers, classes being small. Lessons consisted, in part at least, in the commitment to memory of Bible verses; and the numbers of these verses, by individuals and classes, were carefully computed. In the first five weeks, we read, 492 verses were committed, one person having a record of 43 verses and another of 42. Later the grand total of verses committed rises to 1018, and even to 1182. The Sunday-school records touch mostly on books taken out of the school library and verses committed, and these only in the early years.

Women had little part in the life of the church for a number of years. The sisters are recorded as having been admitted to the church and sometimes as having left the church by letter, by death, or occasionally because they were excluded. Of course, they did church and Sunday-school work, but no official recognition came to them until now and then a sister was appointed on a committee to labor with some recreant member—a thankless task one would think, in the early days always performed by men. Later, women were chosen delegates to the quarterly meet-

ings, and still later were occasionally elected officers of the church.

But the main activities of women centered in the Ladies' Aid Society, which for nearly forty years has upheld the hands of the church, raised money for various church and benevolent purposes, and still exists, vigorous and forceful, and as busy as ever. It is, of itself alone, worthy a longer paper than this—and I have the records for such a paper, three secretary's books filled and a fourth half-filled with the detail of the activities of the society—the work it did, the money it raised and expended, the officers it elected. It is all there, neatly set down—a truly remarkable record of devotion and of service, and of secretarial efficiency. The society has now been in existence thirty-nine years, from 1886 to 1925. It has held during that long period between seven hundred and eight hundred meetings. In 1916, when the thirtieth anniversary was celebrated, a member estimated that \$1,200 had been raised and expended. The sum is, of course, much larger now. The Aid Society, for so many years auxiliary to the church, has now absorbed the church and its property. But before detailing this final chapter, let us note some of the later ministers in charge: Elders Barry, Cooper, Bain, Beecher, Meyer, Roberson, Moody, Humphries, Hanson, Parsons, Barbour.

Meanwhile the church was not receiving accessions in the same degree as it lost membership. Conditions were changing. It became more and more difficult to keep up the congregation and maintain a pastor. New Yorkers and New Englanders had built up the church, but the fathers had passed away and most of the sons and daughters had gone elsewhere. Those who came to take their places, till their farms, live in their homes or build homes of their own, were of different religious faith. The Prospect post office had been discontinued when free rural delivery was instituted. The hamlet lost its character as a neighborhood center. The church dwindled. A deceased member, Mrs.

Jane Killips Harris, had left a bequest of \$1,000, the interest of which was to be used in keeping up preaching in the church. But the will was so worded that the administration of this legacy was in the hands of the national Free-Will Baptist Association, and this organization would pay no expenses of this kind except for ministers of its own denomination. The burden became too heavy for the handful of active members. They decided that it was useless to try to retain the church organization any longer. But a way opened by which they could retain the building and have it of use in the community. By arrangement with the Ladies' Aid Society, that organization changed its constitution to include any church members, men or women, who might wish to join, changed its name to the Prospect Aid Society, and the church property was legally deeded to this society. The only conditions provided were that it should never be used for dancing, card-playing, or raffling, and that if the Aid Society should cease to exist the property should revert to the American Red Cross Society.

This consummation was effected in January, 1925. The old church is now in fact a community home, usable for church services, for meetings of the Aid Society, or other suitable purposes, subject to the exceptions named.

HISTORIC SPOTS IN WISCONSIN

W. A. TITUS

SAUK CITY AND PRAIRIE DU SAC, TWIN VILLAGES WITH AN HISTORIC BACKGROUND

Yet it was not that nature had shed o'er the scene
Her purest of crystal and brightest of green;
'Twas not the soft magic of streamlet or hill—
O, no! it was something more exquisite still.

—*Thomas Moore.*

Few Wisconsin towns can claim a more charming setting than the twin villages of Sauk City and Prairie du Sac on the west bank of the Wisconsin River. Almost adjoining, they are beautifully located on the high plain known for a century and a half as Sauk Prairie. Across the river the hills rise in majestic grandeur, boldly serrated against the eastern sky line. These elevations, partly wooded and usually rock-capped, are covered in spring with the richest of green. Then as the year grows older the hues gradually change until in autumn the succession of great hills, rolling back into the limitless haze of Indian summer, are a riot of crimson and purple and gold. Between these sentinels of the ages on the one side and the modern towns on the other, the mighty river flows placidly on until, more than a thousand miles to the southward, its waters mingle with the tropical sea. It is said that the German pioneers who first settled in the villages and on the adjacent prairie were attracted to the locality by its marked resemblance to the Rhine region from whence they came. Comparatively few Wisconsin people know anything, even today, of the scenic beauty everywhere in evidence within a radius of thirty miles from the old dwelling place of the Sauk tribesmen.

Jonathan Carver visited Sauk Prairie in 1766 and found there the principal village of the Sauk Indians. His is the earliest detailed description of the place. It is generally believed that this Sauk village extended along the river front on approximately the same site as is now occupied by the two modern towns. Carver, writing of this aboriginal village, says:¹ "This is the largest and best built Indian town I ever saw. It contains about ninety houses, each large enough for several families. These are built of hewn plank, neatly jointed, and covered with bark so compactly as to keep out the most penetrating rains. Before the doors are placed comfortable sheds, in which the inhabitants sit, when the weather will permit, and smook their pipes. The streets are regular and spacious; so that it appears more like a civilized town than the abode of savages. The land near the town is very good. In their plantations, which lie adjacent to their houses, and which are neatly laid out, they raise great quantities of Indian corn, beans, melons, etc., so this place is esteemed the best market for traders to furnish themselves with provisions, of any within eight hundred miles of it."

The Sauk had been driven from their old home near Green Bay after 1733 by a combined force of French and allied Indians. The cause of this attack and expulsion is said to have been the strong attachment that the Sauk displayed for their later confederates, the Foxes, when the latter were under the French ban. It was at this time that they retired from the haunts of the white men and built their excellent habitation on what was thenceforth known as Sauk Prairie. This village is again mentioned in 1778 in the journal of Charles Gautier. In the winter of 1777-78 Gautier was sent into the present Wisconsin by Governor Guy Carleton of Canada, to arouse the savage tribes against the Americans and to secure their services in the British army. Gautier writes in his journal that on May

¹ *Travels in Wisconsin* (New York, 1838), 49. See also *Wisconsin Historical Collections*, vi, 225; xviii, 282.



PRAIRIE DU SAC FREE BRIDGE

22 he visited the great Sauk village and that, unknown to him, the emissaries of the Americans were there at the same time, the Indians keeping each in blissful ignorance of the presence of the other. He mentions that several French traders were living in the village at the time and assisted him in his efforts to align the Sauk with the British. The savages were divided in their preferences, some of them favoring the British and others the Americans. Gautier reports that he was able to get only twenty Sauk warriors to join his savage recruits. Having induced a total of two hundred and ten warriors from the different tribes to follow him, he led them to Green Bay and there turned them over to the pro-British partisan Charles de Langlade. The following is a translation of a small portion of Gautier's quaint journal:²

May 22nd, I arrived at the Village of the Sakies and the next day I talked war. That day there arrived three Sakies of the Village from the river la Roche who came to speak to all the Villages of Siskonsin with a so-called belt of the Bostonniens [Americans] who had surrendered in the course of the Winter; they were at one end of the lodge when I began to talk at the other end, without knowing that there were some strangers in this lodge, afterwards I was warned not to go to the river la Roche as I had premeditated, by a good old woman (such is not often found) as I and my men would be killed.

How long the Sauk continued to inhabit their village on Sauk Prairie is not definitely known, but Augustin Grignon states³ that when he visited the old village site in 1795, it appeared to have been deserted for several years, as only the remains of a few fireplaces and posts were to be seen. The consensus of opinion is that the place was abandoned in 1783, when the pressure of hostile tribes from the northward forced the Sauk to seek a new home to the southwest on the banks of the Mississippi. A half-century later, by the irony of fate, the Sauk met the first of their

² *Wis. Hist. Colls.*, xi, 107-108. The expression "who had surrendered" is a mistranslation for "which had been sent them."

³ "Seventy-two Years' Recollections of Wisconsin," in *Wis. Hist. Colls.*, iii, 206.

final defeats at Wisconsin Heights, almost within sight of their old home on Sauk Prairie.

After the departure of the Sauk in 1783, there is nothing recorded of their old village neighborhood for the next sixty years except the foregoing statement by Augustin Grignon. In 1842 Count Agostin Haraszthy, an Hungarian nobleman exiled from his native land because of his liberal political opinions, purchased a tract of land fronting the river on Sauk Prairie and founded the village of Haraszthy, now known as Sauk City. Evidently Haraszthy was a man of considerable wealth, especially when the time and place are considered. Dr. R. G. Thwaites contributes the following sketch of the life of this interesting character:⁴

"Count Agostin Haraszthy was born in 1812 in the comitat of Bacska, Hungary, his family having been prominent in Hungarian annals for upwards of 700 years. Educated in the law, he was, at the age of 18, a member of Emperor Ferdinand's body guard (of nobles), later being chief executive officer of his (Haraszthy's) district, and then private secretary of the Hungarian viceroy. Upon the failure of the liberal movement of 1839-40, in which he was engaged, he was compelled to fly to the United States. After extensive travels over our country, he wrote a book (in Hungarian) intended to encourage his fellow countrymen to emigrate to America. In 1840-41 he settled in Wisconsin, near Portage, as related by Mr. Turner in the above text; here he had a large tract of land, which he improved at much cost, making necessary roads and ferries. Gaining permission to return temporarily to Hungary, to surrender certain important state papers to that government, he succeeded in saving \$150,000 from his confiscated estates, together with a considerable amount of family plate and paintings. With this fortune, he returned to Wisconsin (1842-43), and founded what is now Sauk City, where he planted the first hop-yard in our state, and encouraged

⁴ *Wis. Hist. Colls.*, xiv, 79-80, footnote. See also Wisconsin Historical Society *Proceedings*, 1905, 224-245.

others to do likewise; he was highly successful with this crop. He became the head of an emigrant association which brought to Wisconsin large and successful colonies of English, Germans, and Swiss. In 1848 he made considerable contributions of arms, supplies, and money to his revolutionary compatriots in Hungary. The following year (1849) he removed to California, being elected sheriff of San Diego County. He was for many years a prominent citizen of that state, holding important state and national offices. He is called the Father of Viniculture in California, and published much on that subject—in 1861 being appointed by the governor as special commissioner to visit European vineyards and report thereon; the result of his report was the introduction of 400 distinct varieties of grapes into the Golden State. In 1868 he went to Nicaragua, where, at the head of a company of friends, he obtained valuable privileges for the manufacture of wines and spirits, sugar, and lumber—acquiring 100,000 acres of some of the best land in Central America. It was upon his plantation, the Hacienda San Antonio, near the port of Corinto, that he met his death (July 6, 1870), as stated above by Mr. Turner.”

Of him, Satterlee Clark writes as follows:⁵ “I must say something of Count Haraszthy and his family. In about 1842 or 1843, I am not certain which, Count Agostin Haraszthy came to Wisconsin, bought some property at Sauk City on the Wisconsin, and settled there with his family. He was a nobleman in every sense, and he and his wife were among the most refined people I ever knew; and both were exceedingly good looking. I saw them frequently, both at home and at Madison. At the latter place they had a large number of friends and acquaintances, by whom they were much respected.”

The Wisconsin Heights battle field is only about a mile below Sauk City on the opposite side of the river and ad-

⁵ *Wis. Hist. Colls.*, viii, 321.

jaacent to the Mazomanie road. It is the outstanding historic spot of the Sauk City neighborhood. A monument beside the highway tells the traveler of the hopeless struggle of almost a century ago. It contains the following inscription: "Wisconsin Heights battlefield. Near this site the Sauk chieftain Black Hawk and his band were overtaken by Wisconsin and Illinois troops on July 21, 1832. Erected by the John Bell Chapter D.A.R., Madison, September 3, 1923."

In this last armed conflict on Wisconsin soil between the aboriginal possessors and the white usurpers, there could be no doubt as to the outcome. The Sauk chieftain Black Hawk with his followers, including the women and children, had invaded Wisconsin by following the upward course of the Rock River from its mouth to a point near the present village of Hustisford. Disappointed in his expectation of securing aid from the Winnebago and other Wisconsin tribes, and fully informed of the military forces that were gathering to oppose him, Black Hawk realized that his only hope lay in getting his hungry and dejected followers back to the west side of the Mississippi River. He accordingly led his band down stream to the vicinity of the present village of Johnson's Creek, and then started directly for the Four Lakes region. Passing between Lakes Monona and Mendota and over the present State University grounds, with the troops in close pursuit, the Indians headed northwest for the Wisconsin River, which they reached at the place now known as Wisconsin Heights. Their reason for crossing the Wisconsin River is apparent. By keeping to the south of the river they would have an easier route, but they would be continually harassed by the armed settlers of the region; to the north and west of the Wisconsin River the region was an uninhabited wilderness, difficult to traverse, but offering little danger to the fugitives of being intercepted before they reached their Mississippi River objective.

Upon approaching Wisconsin Heights, Black Hawk

threw out a rear guard to harass the pursuing troops and to cover the movements of the main body of the Indians while rafts were being constructed to carry the non-combatants across the river. The timber and thick underbrush favored this movement; but the troops, after some skirmishing, charged with fixed bayonets and cleared the bluffs. The savages retreated into the thickets of the river bottom, while the troops from their vantage ground on the hills poured a steady but somewhat ineffectual fire into the brushy lowlands, where the Indians were almost perfectly concealed. Night came on and the troops camped on the hills. By morning the surviving Sauk had succeeded in crossing the river, where for the time the military forces did not elect to follow them. The last chapter of the Sauk misfortunes was to be written in blood a short time thereafter at the mouth of the Bad Axe.

It is interesting to know that during the days of hectic land speculation in Wisconsin Territory, when magnificently planned cities, long since forgotten, were staked out and lots sold to the unwary at fancy prices, the old Wisconsin Heights battle field was surveyed and platted, and named Superior City. A painting of this battle field hangs in the State Historical Society building in Madison. It is a striking landscape view and presents a fairly correct conception of the topography of the region.

THE MUSEUM AND THE SCHOOL¹

KATHERINE E. BYRAM

It has often been said that "a prophet is seldom without honor, except in his own country." Too frequently in the past the same could have been said regarding museums. But in the last few years there has been a growing appreciation of museums and their wonderful collections. Whenever a community takes pride in an institution, it is almost needless to say that the girls and boys reflect that same spirit—for they are absorbers and reflectors of a greater capacity than most people realize.

To discuss the benefit of a museum to the schools, let us consider its benefit to the four departments: primary, intermediate, junior high school, and senior high school.

How can a museum be of the most benefit to the primary grades one, two, and three? A large part of the language work, English, and geography in these grades consists of oral story telling. It is easy for this work to drag at times, because of a lack of interest, or because of a lack of interesting material (which conditions are probably effect and cause). At such times a teacher who can take a class to a museum is fortunate indeed. After hinting just a little at the things to be seen, any class will be thrilled even at the thought of going. Each child could be told that he might tell the class later all about the things he liked best. If you have ever had the pleasure of being in a schoolroom after such a visit, you know that there will no longer be any lack of interest. All now have a common interest and are eager, not only to tell their little stories, but also to add to the tale or correct it, if one little detail is omitted by the narrator.

¹ A paper read at the Green Bay meeting of the Wisconsin Museums Conference, Thursday, October 22, 1925.

It has been such a satisfaction to them to learn that the little Indian girl had a doll; that the Eskimo boy plays a game of ball. This is but one little illustration of the way in which a museum can enrich and supply material for the work in language or geography. Visits of this kind can be made for class study of some special objects or displays to which reference is made in the history or reading lessons.

When the primary grades are making a special study of Indian life, how profitable a visit to the museum can become! After reading about the Indian's bows, arrows, canoe, or his beaded clothing, what a pleasure it is to go and really see these very things in a well selected Indian collection! For, after all, to see is generally to know, and how real the language, history, and geography references become when supplemented by the actual seeing of the objects described! As one little girl so aptly said, "When I really and truly see all these things with my own two eyes, then I just know how they really and truly look." Don't you think that she "really and truly" defined knowledge—the knowing of how things really are, not a vague idea of how some one else said that they are?

Much the same procedure can be used in the fourth, fifth, and sixth grades. In this intermediate department the museum can furnish a never-failing supply of topics for oral and written work. It is quite customary for pupils in this department to make a special study of pioneer days. Again the material offered will help to make the study more real. The lantern with a socket for a candle, the little wooden cradle, the candle mold, the old musket and spinning-wheel, make the girls and boys realize how crude were the tools and implements of those days, and how great were the courage and patience of those who used them, and also how great has been the progress to the comforts and luxuries of today.

Too often we expect too much from a modern city child. How can he really appreciate the hardships and toil of the sturdy pioneers? He has never had their experiences, nor

worked by their methods. I read not so very long ago of a certain city museum whose managing board realized this fact and searched all over the city until they finally found two dear old ladies who could spin and card wool. So they had them give exhibitions once or twice a week, and at this time explain the processes, tell stories of their younger days, and answer the questions asked by the eager young people who crowded to see them. These girls and boys learned something about the length of time required for spinning, and also something of the patience and endless toil of the pioneer women.

In the junior high school the museum can be of the greatest aid to the American history classes when studying some particular period—Colonial, Revolutionary, Westward Expansion, Civil War, or the interesting days since then. The same helpful displays—firearms, uniforms, money used, household furnishings quaint and unusual, letters written by soldiers—all enrich the mere statements made about them in books.

The museum furnishes a wonderful background for work in the ninth grade, in which pupils take up the study of civics and community problems in some form. Just to illustrate: Week before last we had special work on fire prevention as a community problem. Our text-book gave an interesting description of the development of fire departments and their equipment. Incidentally the old-time hand pumper was mentioned. This might not have meant very much to girls and boys who do not have access to a museum. But in this particular class nearly all the pupils had been to our local museum and had seen the one so carefully preserved—Green Bay's first fire-fighting apparatus. Here again there was the supplementing of book knowledge with personal experience, the "really and truly" knowing how an old-time hand pumper looks.

In the study of the development of community life there can be traced in the well arranged displays all the steps from primitive days to now—and Wisconsin surely

furnishes wonderful relics of its early days. In the development of the local community the historic background can be sought at the museum. Using Green Bay as an example—the old Indian days, the French régime, old days at Fort Howard, and later periods can all be made more real and interesting by the valuable collections from those periods. Progress along industrial lines can more easily be understood when students compare the implements of by-gone days with those of today.

In the senior high school the museum can function in the same way—furnishing subjects for interesting themes, enlivening the work in history and English, and giving valuable aid in the study of certain periods of local and world history.

Like all good things, visits of the kind mentioned can be overdone and then the students will be made to dislike them. If too much is asked of them, if too many set lessons, with points *a, b, x,* and *z,* are given, the real charm and interest will fade away, and it will seem like one more thing which *must be done*. You and I know that we like to do some things, not because we must, but because we want to, and girls and boys are just the same.

So when scholars are taken by a teacher, or go of their own accord, and are allowed to browse around and ask questions, which they like to do, and some one answers these questions as carefully and cheerfully as our curators do, then indeed does a museum serve its purpose, giving joy and knowledge—"the really and truly knowing" how things were or are. It is not just a collection of old things, but a wonderful connection with the past. Then it awakens in the girls and boys a real appreciation of the labors of those who have gathered and cared for the relics and treasures of by-gone days. Then it adds to their general knowledge and culture. The last and greatest benefit of all is that it then inculcates in the minds and hearts of our younger citizens a sense of civic pride—a pride based upon the splendid record of the past and a hope that they may be able to pass on to the

future a community whose record shall be as fine as that handed down to them; that they can really mean what they so often repeat in school—the beautiful words of the Athenian oath: “We will transmit this city, not less, but greater, better and more beautiful than it was transmitted to us.”

DOCUMENTS

After the journal of the Reverend Salmon Stebbins was published in our December issue, we found the following letter from him, which as it contains more information about the first religious service held at the state capital supplements the entry in the journal for November 28, 1837. See *ante*, page 204.

CYPRUS KENOSHA Co Wis
Nov [1872]

To Hon L. C. Draper

DEAR SIR

I have delayed to answer your request first, because my Diary of the past was at Kenosha & I have repeatedly forgotten to recover it Second because in referring to it I find much that would be desirable in your researches wanting in the manuscript But such as it is here it goes

I made my advent into the world in Plainfield N. H July 13th 1795.

And my advent into Wisconsin Oct 26 1837 Stop'd at Southport (that then was) and passed on to Milwaukie Sac Washington. Then took lake-beach without semblance of road swam my horse across the Sheboy[g]an river and found a town of some 22 families. No inhabitants from Washington here nor from this to Manitowoc nor from there to Green bay except a few at Depere— Passed up the east side Winniebago lake to Fon du lac containing 3 families from thence to Fort Winnebago & from thence to Madison which I reached Nov. 28th 1837 where I found the contractor and his posse of help engaged in building the capitol (His name I disremember) He learned soon my profession and invited me to preach in his bar room to which I consented when he sent messenger and gathered in I thought the entire town to whom I p[r]eached I suppose the first sermon ever preached in the capital of our state and the character of my congregation may be estimated by the fact that without solicitation the next morning I

was presented with a purse of 11 dollars to aid in my missionary work I say in my diary "I preached to a very interested & interesting congregation." There were then no inhabitants between there & Jefferson & but few there — But my diary is not what it ought to have been had it been designed for any thing but personal or domestic reminiscence.

Respectfully Yours
S. STEBBINS

EDITORIAL COMMENT

THE COURTS AND HISTORY

The judicial career of William Penn Lyon (whose biography appears in this and two preceding numbers of the magazine, and is to be completed in the next number) attained its climax of dramatic interest in 1890, four years before his retirement. It was in the January (1890) term of the Wisconsin Supreme Court that was argued the famous Edgerton Bible case, cited in the law reports as *State ex rel. Weiss and others vs. District Board*, etc.

The opinion in that case, written by Chief Justice Lyon, established the principle that the reading of passages of Scripture, without note or comment, to pupils assembled in the public schools constitutes "sectarian instruction" within the meaning of the state constitution (Art. X, sec. 3). Such reading also constitutes the school-house where it occurs a "place of worship" within the meaning of Article I, section 18. Of its effect the late Justice John B. Winslow says: "The case was the first case in the country in which the question was squarely presented and squarely decided in accordance with sound reason and the manifest intent of the constitutional guaranties against sectarian instruction in schools. . . . The case has been followed in Nebraska under similar constitutional opinions, the main opinion citing and relying upon the Wisconsin case, which is said to include 'a thorough review of both the legal principles involved *and of the historical aspects* of the controversy.'"¹

With respect both to those legal principles and to the common-sense wisdom of this noteworthy decision the history of its operation during more than a third of a century has left little room for question. It has been sanctioned by the

¹ *Ante*, p. 278-279, Italics mine.

highest legal talent in other states and it has undoubtedly relieved the Wisconsin common schools of a seemingly insoluble difficulty, more and more threatening to the social peace, particularly in communities of mixed religious character. Though vigorously attacked from some quarters at the time, and though some still believe the decision went further than necessary,² its fundamental soundness is now generally admitted by the religious groups who were most aggrieved by it, and it is doubtful if any considerable portion of the Wisconsin people would today be willing to abrogate the principles it laid down. But satisfaction with the decision as a forward-looking interpretation of the constitution and the law does not necessarily carry with it approval of the Chief Justice's discussion of the "historical aspects of the controversy," the only phase upon which I feel competent to speak.

The reading of the present installment of the Lyon biography, which reviews the Bible case opinion, suggests as an interesting and perhaps fruitful inquiry the question whether these historical aspects have really been adequately treated therein when viewed from the standpoint of historical criticism; also, what are the fundamental differences between the jurist and the historian in the conception of a historical problem and the method of its treatment. Such an inquiry ought to prove interesting to historical students, however it may be regarded by devotees of the law. The study can be made economically in this issue of the magazine by reason of the juxtaposition of the present article with the Lyon biography, which the reader is invited to peruse before going further. That will make unnecessary the recital of the story out of which the case arose.

As already intimated, the two grounds on which the Chief Justice (supported by a unanimous bench) reversed the decision of the lower court and held for the plaintiff

² For instance, in declaring that the school-house where the Bible was read became thereby a "place of worship," which excludes such reading from all public buildings.

were these: (a) because the reading of the Bible in the public school constituted the giving of sectarian instruction, which was forbidden in Article X, section 3 in the following language: "The legislature shall provide by law for the establishment of district-schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; *and no sectarian instruction shall be allowed therein;*"³ (b) because such reading of the Bible in the school "converts a public school into a place of worship," contrary to Article I, section 18 of the constitution, which declares: "The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; *nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent;*"⁴ nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship, nor shall any money be drawn from the treasury, for the benefit of religious societies, or religious or theological seminaries."

In discussing the circumstances which, he assumes, caused the insertion of the clause forbidding sectarian instruction in the public school, the Chief Justice says: "The early settlers of Wisconsin came chiefly from New England and the Middle States. They represented the best religious, intellectual, and moral culture, and the business enterprise and sagacity, of the people of the states from whence they came. They found here a territory possessing all the elements essential to the development of a great state. They were intensely desirous that the future state should be settled and developed as rapidly as possible. They chose from their number wise, sagacious, Christian men, imbued with the sentiments common to all, to frame their constitution. The convention assembled at a time when immigration had

³ Italics mine.

⁴ Italics mine.

become very large and was constantly increasing. The immigrants came from nearly all the countries of Europe, but most largely from Germany and Ireland. As a class, they were industrious, intelligent, honest and thrifty—just the material for the development of a new state. Besides, they brought with them, collectively, much wealth. They were also religious and sectarian. Among them were Catholics, Jews, and adherents of many Protestant sects. These immigrants were cordially welcomed. *And it is manifest the convention framed the constitution with reference to attracting them to Wisconsin.* Many, perhaps most, of these immigrants came from countries in which a state religion was maintained and enforced, while some of them were non-conformists and had suffered under the disabilities resulting from their rejection of the established religion. What more tempting inducement to cast their lot with us could have been held out to them than the assurance that, in addition to the guaranties of the right of conscience and of worship in their own way, the free district schools in which their children were to be, or might be educated, were absolute common ground, where the pupils were equal, and where sectarian instruction, and with it sectarian intolerance, under which they had smarted in the old country could never enter? Such were the circumstances surrounding the convention which framed the constitution. In the light of them, and with a lively appreciation by its members of the horrors of sectarian intolerance and the priceless value of perfect religious and sectarian freedom and equality, *is it unreasonable to say that sectarian instruction was thus excluded, to the end that the child of the Jew, or Catholic, or Unitarian, or Universalist, or Quaker should not be compelled to listen to the stated reading of passages of Scripture which are accepted by others as giving the lie to the religious faith and belief of their parents and themselves?**

The strikingly effective passage just quoted stands in

* Italics mine.

the decision after a discussion of averments by the defendant that the *circumstances of the time must be taken into the account and that the interpretation which was contemporary, or nearly contemporary, with the adoption of the constitution ought to control its interpretation.* "Undoubtedly," says the Justice, "they are correct rules—applicable alike to constitutions, statutes, and all written instruments where the language employed is of uncertain import, but if the words of the instrument are unambiguous there is no room for construction outside the words themselves, and the above rules cease to be controlling." The prohibition of sectarian instruction being explicit, he held that the court was freed from the controlling force of contemporary interpretation. Justice Lyon found no difficulty in determining that the reading of the Bible in the school constituted sectarian instruction, the climax of the argument being the claim by the American Bible Society that the mere reading of the King James version carried by Protestant missionaries into Catholic countries had the effect of converting Catholics to Protestants.

At this late day, probably few persons will be found to gainsay the conclusion reached. But if it were essential to the argument to declare, or assume as "reasonable," that sectarian instruction was prohibited in order that certain classes of religionists might suffer no violation of conscience or of right through the stated reading of portions of the Scriptures, the historian would be compelled to doubt. His conditions of proof can be satisfied only by the ascertainment of the contemporary facts, not by inference from a set of surrounding circumstances, some of them falling chronologically after the fact.

The Judge's argument up to this point can be stated, syllogistically, as follows: (1) Sectarian instruction was forbidden; (2) The stated reading of Scripture is sectarian instruction; (3) The reading of Scripture is forbidden. In reaching his conclusion he introduced two assumptions: (a) that the word "sectarian" as used in Article X, section

3 is clear and unequivocal; (b) that the makers of the constitution had his own view of what the word meant and were motivated in adopting that view by the circumstances narrated. The historian would be compelled to question the unambiguity of the word "sectarian" until he should ascertain that the convention could reasonably have given it no other content than the jurist sees in it. "And," the historian would say, "if it can be shown that the men who framed the constitution did not read the word as Judge Lyon reads it, then the Judge's conclusion (if he were obliged to hold an equally rigorous course in relation to the historical background) would not logically follow."

It can hardly be doubted, that if instead of the method of inference Judge Lyon had followed the ancient judicial device of the inquest, and had called before him the survivors of the two constitutional conventions, his mind would have been rendered less certain about the unambiguity of the word "sectarian," which is the key word in the prohibiting clause. If he had announced to those venerable men: "You, of course, meant to prohibit the reading of the Bible in the schools for the reason that such reading constitutes sectarian instruction," some of them at least, and perhaps all, would have been dumbfounded, for the excellent reason that such an idea had never occurred to them.

The historian cannot be satisfied with the method of inquest, so long as any chance remains of learning from contemporaneous records how the majority of the convention stood on that question. For this purpose he would consult the list, noting that (in the first convention, where the prohibiting clause was worked into form) out of 124 members elected, 42 were from New England and 46 from New York, making 88 who certainly had the Yankee antecedents, while a number of the other native-born members and several of the foreign-born may have been likeminded with the Yankees on this point. Of other Europeans, Ireland furnished 7 and Germany 3, making a possible 10 who may be counted opponents of the Yankee policies and prac-

tices respecting the use of the Bible in schools. He would then turn to the lists of committees to see who it was that prepared the report on the educational article of the constitution, and would read the report, with any debate which occurred upon it and any amendments offered and adopted. He would find that the Committee on Education consisted of Graham, Ryan, Dennis, Fitzgerald, and Drake.⁶ These gentlemen brought in a report containing the following: "*And inasmuch as the public schools should be equally free to children of all religious persuasions, no book of religious doctrine or belief, and no sectarian instruction shall be used or permitted in any public school.*"⁷

The language used is at least as clear and unambiguous as is the language of section 3, Article X, on which the Judge relies. It seems inherently probable that in the minds of this committee the clause was designed to make possible the exclusion from the schools of the Bible with other books of religious "doctrine or belief." In the absence of other evidence, the historian would not pronounce the committee's motives perfectly clear. But he would hold that if the committee intended to exclude the Bible, the action of the convention rejecting the clause quoted and substituting the one actually adopted is conclusive evidence that the majority did not want what the committee proposed. The convention pointedly refused to say: "No book of religious doctrine or belief shall be used in any public school."⁸

That the convention believed the language of the report would be construed to cover the case of Bible readings in the schools is not only in the nature of the case highly probable, but we have a significant bit of testimony in addition to their decisive action on the committee's report, to prove that they had the Bible in mind and were determined

⁶ Wallace W. Graham, Milwaukee; Edward G. Ryan, Racine; William M. Dennis, Dodge; Garret M. Fitzgerald, Milwaukee; Jeremiah Drake, Columbia. Three members of the committee were natives of Ireland.

⁷ Italics mine.

⁸ *Wisconsin Historical Collections*, xxvii, 619.

it should not be excluded from the schools. The article (X) in its amended form was adopted by a vote of 69 to 28, all the members of the Education Committee voting *aye* except Ryan, who voted *no*. The vote shows that there were clauses in the article from which a respectable minority dissented. But not so the amendment to section 3 of the article. For the writer of the Madison letter to the *Sentinel and Gazette*, under date of December 3, 1846, has this to say: "The section [of Article X] to raise \$1.50 on each child in the district between certain ages was stricken out, and the section prohibiting religious instruction was modified to sectarian instruction. On this amendment Mr. Graham called for the yeas and noes, which were refused, and when adopted but one or two votes were heard against it."⁹

A reporter writes to be read and understood. His choice of phrases is determined by what is in the public mind. When, therefore, this writer refers to the committee's clause as one "prohibiting religious instruction," we may rest confidently in the view that that was the way it was talked about in and out of the convention. And how did it prohibit such instruction except by excluding, along with books of "religious doctrine," that "book of religious belief" which had always been used as the chosen means of religious instruction—the Bible?

At the lowest, if the members of the convention, by this all but unanimous vote, really had, as they believed, saved religious education while still prohibiting sectarian instruction, they certainly had accomplished that result while permitting the use of books "of religious belief." And will any court or historian aver that these men were willing to admit to the schools the Koran, the Bagavat Gita, and the dialogues of Confucius, while rejecting the Christian Bible as unfit to be used for religious instruction?

One commentator on Article X, section 3 says: "The sectarian disputes which distracted and disgraced New

⁹ *Wis. Hist. Colls.*, xxviii, 95.

York are forever obviated." Those disputes, it is almost needless to point out, were not over the reading of the Bible in the New York schools. They were over the question of granting public money for the support of parochial or church schools as demanded by the Irish Catholic voters. The upshot was a law of 1842 enacting that no portion of the school fund should be thereafter given to any school in which "any religious sectarian doctrine or tenet should be taught, inculcated, or practised."¹⁰ In fact, the idea that such teaching should be prohibited was widely held by men interested in promoting public school education, but the exclusion of Bible reading was no feature of the plan. It was in the year of Wisconsin's first constitutional convention (1846) that Horace Mann of the Massachusetts Board of Education, in his controversy with the Reverend Mr. Smith over "Godless" schools, declared he stood firmly "for the reading of the Bible in the schools, but without comment," while his adversary wished the old privilege of sectarian instruction.¹¹

In view of the facts brought out, and especially the circumstance that the convention by a nearly unanimous vote reversed the Education Committee's plan to exclude "books of religious doctrine or belief," the historical critic must dissent from the dictum of the distinguished jurist that the language in which the constitution prohibits "sectarian" instruction in the common schools is *unambiguous*. To the historian it is ambiguous because it may mean either one thing or another thing: either it meant that the sectaries should not be permitted to teach their peculiar creeds, as they had formerly done, in Massachusetts for example, perhaps using the Bible as a text but indulging in a wide liberty of exposition; or, it meant in addition to this and contrary to the experience and habit of nine-tenths of the framers, that the Bible itself must not be read, even without com-

¹⁰ Ellwood P. Cubberley, *History of Education* (Boston, 1920), 694.

¹¹ Cubberley, *Readings in the History of Education* (Boston, 1920), 575.

ment, because the tendency of its spontaneous teaching was, as the jurist held, sectarian instead of simply religious.¹²

That question about the meaning of the clause being recognized, the historian, had he been sitting as judge, would not have been able to free himself from the rule that in case of doubt appeal must be had to the views of those who enacted the measure under discussion. If the jurist had followed a similar course there is hardly a possibility that he could have decided the case as he did, for the practice of Yankee teachers prior to the adoption of the constitution, reinforced by their practice for many years after its adoption, without protest from those who best knew the intent of the constitution makers, leaves little chance for doubt that contemporary opinion of the framers favored Bible reading in the schools and the belief that the practice had been protected in Article X, section 3, which, by contrast, prohibited only sectarian instruction.¹³

Fortunately, as we now think, the courts are not compelled to hold rigidly to scientific methods in dealing with historical problems. Whereas the historian in this case would find reason to doubt the meaning of the clause in question, and by such doubt be compelled to widen the jurisdiction of history in reference to the case, the jurist was entitled to treat the clause as unambiguous in order technically to free himself from the hampering jurisdiction of the historian's court. He is at liberty to permit himself to be motivated by other considerations than the views of the historical framers of constitutions or laws, which views, imposed permanently upon society, would often give rise to

¹² Judge Lyon finds that various sects have their origin in varying interpretations of the Bible, which is of course true. But it is hard to see how a religious book which is subject to a variety of interpretations becomes by that fact sectarian. The nature of sectarianism is to be exclusive.

¹³ A good illustration comes from Racine, Judge Lyon's home town, in the period 1853-57. The writer of the poem quoted below, who at the time of which she writes was a student in the Racine high school, is speaking about the morning exercise as regularly conducted by Mr. McMynn:

"A few words from the Bible, a prayer and a song,
Then a clear exposition of right and of wrong;
A plea for uprightness in word and in deed,
'First God, then our country, then self' was our creed."

great social evils. The court in this case believed the living times and the future required him to disregard the dead hand of the past. The constitutional provisions, both in Article X and in Article I, afforded technical grounds for the decision reached, and those technical grounds he seized upon and used in dextrous manner, perhaps too sweepingly. The decision, if the historical analysis herewith presented is correct, represents a high instance of what is currently called "judge-made law." But it has yet to be shown that courts can always avoid the making or remaking of the law in their decisions; or that, under exceptional circumstances, they may not save society from losses of incalculable extent by wielding the power which they have in this regard.

Judge Winslow, in describing Chief Justice Lyon's manner in the conference room, tells that when a case was before the judges for discussion in which "some mouldy, medieval precedent would work absolute injustice . . . he was very apt to say, with a twinkle in his eye, 'Well, I think this is a case where we will have to use a little main strength,' and the precedent was very apt to go by the board." We believe he, and his collaborators, used a good deal of "main strength" in the Bible case; but if they had shirked the responsibility—which also they might have done—it is not improbable the state would have been torn by factionalism over this school question for many years.

My purpose, however, in referring to the Edgerton Bible case, is to present a plain instance of the divergent attitudes toward history of judges on the bench and historians in the research library. To the one, history became a mere garnishment of an otherwise complete legal argument; it was used apparently for the purpose of rationalizing the opinion and of rendering less obnoxious to some the findings of law. To the other, it would have been the point on which the decision must inevitably have turned, if the rule of contemporary interpretation is anything more than a legal fiction, or a foil for courts bent on exercising judicial license.

JOSEPH SCHAFER

COMMUNICATIONS

CORRECTIONS

A member of the family of Mr. and Mrs. Thomas Pendleton Burnett writes the editor personally an indignant protest against the statement in a communication printed in the December number that the Burnett family "were poisoned." The family deny that there is the slightest ground for such a statement, Mr. Burnett having died of double pneumonia and Mrs. Burnett of a fever resembling typhoid. The protest comes too late to enable us to do more than insert this notice.

In the December number of the *Wisconsin Magazine of History* I note an error in the account of my mother, Mrs. Lucius Fairchild. The article under the title "Necrology" states that Frances Bull was born in Washington. This is not true: she was born in Detroit, Michigan. It is true that she was brought up in Washington. Her mother was early left a widow and married a second time, when my mother was about seven years old, Judge Charles Lee of Detroit, who went to Washington to live at the instance of General Lewis Cass, who under President Buchanan was secretary of state. Judge Lee was employed in the State Department. My grandmother had one child by this second marriage, Mr. Charles S. Lee, who lives at Flemington, New Jersey, on an estate called "Uplands." Mr. Lee has a number of beautiful and interesting things in his possession which were formerly the property of General Lewis Cass. Charles Merriam Bull and his wife are buried in Detroit.

MARY FAIRCHILD MORRIS, *Milwaukee.*

THE SOCIETY AND THE STATE

BY LOUISE PHELPS KELLOGG

During the quarter ending January 10, 1926, there were one hundred and forty additions to the membership of the State Historical Society. Fourteen persons enrolled as life members: Mrs. J. A. Branson, De Pere; J. Mayme Dieruf, Madison; Mrs. Harriett S. Farwell, Lake Forest, Ill.; George I. Haight, Chicago; Dr. Louis R. Head, Madison; May Houghton, Milwaukee; Louis Kahlenberg, Madison; George Kroncke, Madison; J. Edward Maas, Wilmette, Ill.; Mrs. George P. Miller, Milwaukee; P. R. Sanborn, Milwaukee; W. H. Schuchardt, Milwaukee; Charles H. Sunderland, Superior; Mrs. Eleanor Tenney, Winnetka, Ill.

Thirty-one persons became annual members: Lila Boll, Antigo; M. C. Crandall, Baraboo; Rev. O. Derenthal, Bayfield; Dr. Amelia C. Ford, Milwaukee; A. D. Frantz, Plymouth; Dr. H. P. Greeley, Madison; Adolph Hafner, Milwaukee; Mrs. R. H. Hess, Madison; Walter Horst, Fort Thomas, Ky.; Dr. C. E. Johnson, Madison; William Kiekhofner, Madison; Paul Knaplund, Madison; R. A. Kremers, Milwaukee; R. R. Kropf, Madison; Dr. Victor Kutchins, Green Lake; Lina Logeman, Mishicot; Mrs. Flora E. Lowry, La Crosse; J. O. Meyers, Reeseville; Mrs. G. A. Morison, Milwaukee; Dr. J. H. Ott, Watertown; Amelia A. Patterson, Milwaukee; Mrs. Palma Pederson, La Crosse; Henry W. Pickford, Madison; Annie M. Pitman, Madison; Jennie M. Pitman, Madison; Fred Rogers, Crandon; R. F. Schuchardt, Chicago; Mrs. C. G. Stern, Milwaukee; Walter Stern, Milwaukee; C. H. Tenney, Madison; Fred Ullrich, Platteville.

New Wisconsin school members (49) are: high schools at Antigo, Appleton, Bangor, Barneveld, Berlin, Black River Falls, Chetek, Chilton, East Troy, Eau Claire, Fond du Lac (Roosevelt Junior High School), Friendship, Green Bay (Washington Junior High School and West High School), Hartland, Horicon, Hortonville, Hudson, Jefferson, Loyal, Menasha, Milton, Milwaukee (Lincoln High School), Neillsville, North Fond du Lac, North Milwaukee, Ondossagon, Osceola, Oshkosh, Pepin, Poynette, Random Lake, Reedsburg, Reeseville, Shawano, Sheboygan, Stoughton, Two Rivers, Weyauwega, Wild Rose; normal schools at La Crosse, Milwaukee, Platteville, River Falls, Stevens Point, Superior, Whitewater; Milton College, Milton; Saint Mary's College, Prairie du Chien.

In accordance with a resolution passed at the annual meeting in October, 1925, whereby the Wisconsin school membership was interpreted to include libraries in the state, the following public libraries

(45) have affiliated with the society: Appleton, Baraboo, Barron, Bloomington, Boscobel, Brodhead, Chippewa Falls, Columbus, Delavan, De Pere, Dodgeville, Durand, Eau Claire, Edgerton, Green Bay, Hudson, Janesville, Kaukauna, Kenosha, Manitowoc, Marinette, Marshfield, Medford, Menasha, Menomonie, Milton Junction, Mineral Point, Monroe, Mount Horeb, Neenah, Neillsville, Oconomowoc, Oshkosh, Platteville, Portage, Prairie du Chien, Racine, Rhinelander, Sparta, Superior, Tomah, Viroqua, Washburn, Watertown, and Wausau.

The public library at Muscatine, Iowa, joined as an institutional member.

Mrs. Charles J. MacIntosh and Mr. E. E. White, both of Milwaukee, changed their memberships from annual to life.

A special meeting of the Executive Committee of the Society was called December 21 to appoint a treasurer in the room of the late Lucien S. Hanks, who had served the Society in that capacity for many years. Lucien M. Hanks, son of the deceased, was chosen curator and treasurer in his father's stead.

NECROLOGY

Since the appearance of our December number two prominent curators of our Society have been called by death. Lucien Stanley Hanks, who died December 16, had been a resident of Wisconsin since 1856, and of Madison since 1860. Born at Hartford, Connecticut, May 8, 1838, he was educated in his native state, and after his advent to Wisconsin was occupied in banking at Janesville and Madison. In 1890 after long service therein he became president of the State Bank of the capital city. Appointed curator of our Society in 1899 to succeed Judge S. U. Pinney, he was chosen in 1900 treasurer in the room of Honorable Frank F. Proudfit, an office in which he continued until his death. In June, 1923, he contributed to this magazine an article entitled "A Footnote to the Story of a Great Court."

Charles N. Brown was born April 13, 1855, in Madison County, New York, and came when nine years of age with his parents to a farm in Dane County. He was educated at Albion Academy, Milton College, and the University of Wisconsin. After completing the liberal arts course in the last institution, Mr. Brown taught for several years, being for a time principal of the high school at Horicon. In 1879 he returned to the University, entered the Law School, and was graduated therefrom in 1881. His rank in the Dane County bar was high and his services for his community many. He was elected curator of our Society in 1903, and in 1924 became chairman of the Finance Committee. His sudden demise on the last day of 1925 caused a deep sense of loss throughout Madison and the state.

Lucius C. Colman of La Crosse, former president, vice-president, and curator of this Society, died suddenly at his home December 22 last.

Lucius Colman was the son of Charles L. Colman, founder of the Colman Lumber Company, and a grandson of Henry R. Colman, a pioneer missionary to the Oneida Indians of our state. Lucius was born at Fond du Lac in 1853, went to La Crosse when but two years of age, and resided there until his death. He was an active public servant, holding many local offices and serving on the State Park Commission and the Board of Normal Regents. His official connection with our Society began in 1902, when he was elected to take his father's place on our Board of Curators. The same year he was chosen one of the vice-presidents, and in 1910 became president, serving in that capacity for three years. He continued to be curator until 1919.

ACQUISITIONS

Since our last report the Society has been the recipient of the papers of John G. McMynn, one of the notable educators of the state, presented by his daughter Mrs. Louise McMynn Greene of Milwaukee. These papers have been transcribed and bound through the care of Colonel Howard Greene, and are valuable especially as illustrating the educational and military career of Colonel McMynn. Coming to Wisconsin the year it became a state, first at Kenosha, later at Racine, he built up higher schools of the first quality; then on the call to arms he was appointed in 1861 major of the Tenth Wisconsin Infantry, and some time later became colonel of the same regiment. While still in the army he was elected state superintendent of public instruction, an office in which he served from 1864 to 1868. After building up a remarkable academy at Racine, he retired in 1886 and made his home in Madison, where he died in 1900. The papers are valuable chiefly for educational history, both of the earlier and later period of our state schools. There is also considerable material on the Civil War relating to the military operations of the Tenth Regiment in the South.

The papers of Joshua Hathaway, a pioneer surveyor and landholder of Wisconsin, were obtained upon the recent demolition of the Hathaway homestead in Milwaukee. These papers are not concerned with social or political affairs, but relate mainly to land agencies and other business interests of this notable pioneer. There are among them a few letters of the family of Washington Irving. A portrait of Joshua Hathaway, painted by the Reverend B. J. Dorward, is in the Society's museum; while an article by him on "Wisconsin Geographical Names" was published in volume one of our Society's *Collections*. His early surveying activities during our territorial era are described by his nephew in *Wisconsin Historical Collections*, xv, 390-392.

The Civil War papers of Thomas O. Drinkall have been presented to the Society by Mrs. Walter Brennan of Lancaster. Although largely of a routine nature, concerned with the stores, muster rolls, and equipment of the Third Wisconsin Cavalry, in which Drinkall was a com-

missioned officer, they are nevertheless a welcome addition to our files for that period.

The reminiscences of Mrs. Georgia Benedict Bullock, sister-in-law of Colonel Jerome Watrous, have been presented to our Society by her daughter Mary Bullock, now a teacher of history at Mason City, Iowa.

LANDMARKS AND MARKERS

In connection with the State Museums Conference held at Green Bay, October 22 and 23, under the auspices of our Society, the Wisconsin Archeological Society, and the local historical society, three markers were dedicated on the grounds of the State Reformatory at the sites respectively of Camp Smith, the first courthouse in Wisconsin, and Governor Doty's early residence. The exercises were arranged by Mrs. Margaret Hutton Abels of the State Board of Control, and consisted of appropriate music by the Reformatory Band and addresses by Superintendent E. H. Eklund, President Arthur C. Neville of the Green Bay Historical Society, Dr. Joseph Schafer and Miss Kellogg of our Society's staff, and J. H. Taylor of the Memorial Road Commission. Miss Marian Sharp of the Kellogg Public Library unveiled the tablets, while President Neville read the inscriptions.

October 24 last the Milwaukee Old Settlers Club dedicated a tablet in Mitchell Park to the memory of Jacques Vieau, which reads: "On this site the first permanent fur trader, Jacques Vieau, in 1795 built his cabin, the first house in Milwaukee. Here also was the crossing of the Green Bay-Chicago Trail." Tribute was paid to Vieau by K. K. Kennan, vice-president of the club, who spoke on the fur trade in general and on the fields of wild rice in the valley of the Menominee, which attracted game, Indians, and traders. George W. Ogden, chairman of the club committee, presided, and Mayor Hoan was present and made a short address. The unveiling was performed by descendants of Vieau through his daughter, the wife of Solomon Juneau.

One of the most interesting experiments in communism was that instituted in territorial days in Wisconsin under the title of Ceresco. The Wisconsin Phalanx, as it was called, was organized at Kenosha under the leadership of Warren Chase, and after purchasing fourteen hundred acres of government land at what is now Ripon, built several buildings and began to live in the socialistic fashion then advocated by the followers of the French philosopher Charles Fourier. The Ceresco phalanx built what was known as "the long house" for the accommodation of its members. This house is still standing and has now been made over into a modern apartment house, seventy-five years after the dissolution of the community which gave it birth. Ceresco after existing for six years failed not for lack of means, but because of the departure of some of its members to search for gold in California, and because of the de-

sire of many others to return to the régime of private property. As its historian, Curator S. M. Pedrick, aptly says: "It was pecuniarily a success, but socially a failure."

The historic hotel at Ashland, built in 1871 and named for Charles L. Colby, then president of the Wisconsin Central Railroad, is marked for destruction and is being razed in the name of progress. The Colby House was not only the first hotel built at Ashland, but it was also headquarters for the lumbermen and boom leaders of those early days. Lots in the new town changed hands at unheard-of prices, and so great was the demand for housing that tents were resorted to in order to accommodate the arriving residents. Unfortunately the boom did not last long, and Ashland relapsed into a quietude from which it was not aroused for nearly thirty years. The defunct Colby House, however, entertained for many years all the notable travelers to that northern city.

October 15 last there perished by fire the old hotel at Lone Rock, an historic building which was first erected at Point Bas on the Wisconsin River, where during rafting days it was headquarters for rivermen. In 1871, its usefulness in that service being over, the building was purchased by Albert M. Woodbury, taken down, and its timbers rafted down to Lone Rock and there reerected on a unique plan with the studding beams reversed, so that the former top of the building was at the bottom. This made the ceilings of the first floor lower than those of the second, and gave the whole building a top-heavy appearance. In its new location the old tavern never entirely recovered its former popularity.

Another landmark on the lower Wisconsin is soon to give place to a modern structure: that is the old toll bridge at Muscoda. This old bridge, which helped to bring a measure of prosperity to the river town, was begun in 1867 and crossed by the first team of horses in September, 1868. It was built by the enterprise of General Jonathan Moore, was 1712 feet long, and cost nearly \$25,000. The toll in recent times has been five cents for foot passengers and from fifteen to twenty-five for vehicles. For many years it was fifty cents for teams. As the traffic increased the structure paid for itself more than once, but notwithstanding a growing desire to abolish the toll, not until last year were arrangements made to bond the towns at each end and build a "free" bridge. So the old toll bridge is doomed, and with it will fall many memories of transits between Grant and Richland counties.

Interest was recently awakened in Eau Claire concerning the location of a sundial erected in 1867 to afford the pioneers of that place an opportunity of setting their timepieces by the sun. Search for this old relic brought out letters from Curator W. W. Bartlett and others, giving the location of the old dial and that of the base or standard now on the lawn of the C. N. Buffington home. There also appeared with these letters in the Eau Claire *Leader* a picture of the town taken fifty-five years

ago, with the famed steamcraft *Ida Campbell* in the foreground, and the old Ingram and Kennedy warehouse near by.

A modern memorial sundial was erected in October on the grounds of the National Soldiers' Home at Milwaukee by the Gold Star Mothers of the state in convention at that place.

LOCAL HISTORICAL SOCIETIES

The Waukesha County Historical Society is stimulating historical interest by offering gold medals for the best papers on local history prepared by students in the county schools. The George M. Hoyty medal is for the northern half of the county, that of D. J. Hemlock for the southern; and the subject is the story of a pioneer family, preferably that of the student's ancestors.

The Winnebago County Archeological and Historical Society holds monthly meetings, at which have been given notable addresses. In October President H. E. Cole of our Society spoke on early taverns and their value as community centers; in November Chief Reginald Oshkosh of the Menominee tribe spoke on the ethnology and primitive conditions of his race; while in December Curator W. A. Titus of Fond du Lac gave an address emphasizing the importance of the Fox-Wisconsin waterway in the development of our early commonwealth, closing with an eloquent appeal for markers for the historic sites along its route. The local society favors placing tablets on the principal bridge of Oshkosh commemorating the value of this important waterway.

This society has charge of the public museum at the Sawyer Foundation and has arranged special exhibits for each of the winter months. The museum also had on November 4 a public unveiling of the oil portrait of the donor of the foundation, Edgar P. Sawyer. This portrait is the work of Oshkosh's local artist, Merton Grenhagen, and at the unveiling an address was given by Mrs. Ben Hooper, while the cords of the cover to the painting were drawn by the seven-year-old grandson of the subject, Edgar P. Sawyer II.

The Fond du Lac County Historical Society is very much alive and actively promoting historical interest throughout its entire field. The midwinter meeting was held January 8 at the Community House in Fond du Lac, when a program on the French régime in Wisconsin was presented, for which the chief speaker was Louise P. Kellogg. She was followed by Mrs. Virginia Severin, who gave a delightful paper on the French immigrants to Fond du Lac in the middle of the nineteenth century. This being the annual meeting, the efficient board of officers was reelected, consisting of: president, Charles L. Hill, Rosendale; vice-presidents, Town Miller, Brandon; Mrs. Cora Gibson, Taycheedah; Mrs. Waldo Sweet, Fond du Lac; secretary, Mr. F. Scribner, Rosendale; treasurer, Mrs. D. E. Hoag, Oakfield. Advisory committee: Curator

W. A. Titus, Fond du Lac; Curator S. M. Pedrick, Ripon; Mrs. Kate Pier McIntosh, Fond du Lac. Plans are being arranged for prizes to be offered for papers by students in the county schools on pioneer life in the townships—an excellent plan to stimulate historic interest among the rising generation.

The organization of a Door County Historical Society to center at Sturgeon Bay and to undertake the marking of the beautiful and historic sites throughout that remarkable peninsula is being discussed.

W. C. English of Wyocena addressed the Sauk County Historical Society on October 19, on "Looking Backward" through the years of Sauk and Columbia County history. Mr. English remarked upon the unhistorical myths that pass as authentic history, and asked all members of the society to refute them. The former officers of the society were reflected.

The *Sheboygan County Pioneer*, published under the auspices of the county historical society as a supplement to the *Sheboygan Press*, continues to present papers and documents of interest. In the October number appeared letters and deeds of 1835 and earlier belonging to the descendants of William Payne, one of the operators of the first sawmill built on the Sheboygan River.

The Lake Geneva Woman's Club sponsored a very successful meeting last November known as Pioneer Day. On this occasion John E. Burton was present and gave a series of delightful reminiscences on the early residents and school teachers of Lake Geneva.

ANNIVERSARIES

Platteville, one of the oldest communities in the southwestern part of our state, is making preparations to observe next year the centennial of its first settlement by Major John Rountree. Dennis J. Gardner is writing a pageant for the occasion, which it is hoped will be suitably celebrated.

Milwaukee's Masonic order turned out in October last to commemorate the founding seventy-five years earlier of the oldest Knight Templar Commandery in the Northwest, now known as Wisconsin Commandery One. Among the eminent Sir Knight Commanders of this lodge have been Henry L. Palmer, A. V. H. Carpenter, Eugene S. Elliott, and Adolph H. Wagner, the last of whom still lives to enjoy his reminiscences of early days. On the occasion of the anniversary a delegation from the oldest Chicago commandery was present.

The *Wisconsin Agriculturist* was founded at Racine in January, 1876, and in the first days of the late new year was the recipient of many congratulations from its loyal constituency on attaining its fiftieth

birthday. It has grown from small things to be one of the best known and most progressive farm papers in the West. It is housed in a fine building, with a printing plant modern in every particular, and its growth has been advantageous to Racine County and all the surrounding territory.

Fifty years ago in November the Augusta State Bank of Eau Claire County was organized, and on its half-century birthday kept open house. Part of the celebration consisted in the reminiscences of early Augusta prepared by C. A. Kirkham and published in the Eau Claire *Leader*.

The public library at Oshkosh celebrated in October last the thirtieth anniversary of its founding and the twenty-fifth of its occupancy of its present fine building.

CHURCH ANNIVERSARIES

The Asbury Methodist Episcopal Church of Milwaukee held exercises in November commemorative of its seventy-eighth birthday. This church was organized in 1847 in what was then known as the Walker's Point section of Milwaukee. Ten years later it received its title of "Asbury"; in 1889 the present building was commenced and dedicated three years later. The Reverend J. Scott Davis, under whose fostering care the church was built, was present at the anniversary exercises.

The Reedsburg church of the same denomination held its diamond jubilee last November. Many former members were present and an historical address was presented by the Reverend T. S. Beavin, the present pastor.

St. James Episcopal Church on Grand Avenue, Milwaukee, celebrated last November the days of its founding in 1850. A three days' commemoration service brought out many reminiscences of the three-quarters of a century of the church's growth.

Intensive missionary work for the Congregational churches of the Northwest resulted in 1850 in the organization of a church of that denomination at each of the two college towns of Ripon and Appleton. The Ripon church held its celebration November 15; while the past was vividly recalled to the Appleton congregation by the presentation October 7 of a historical pageant in which the descendants of the founders of the church and many others took part.

The diamond jubilee of the founding of the Evangelical Lutheran Synod of Wisconsin was widely celebrated by many of the congregations throughout the state. The synod was begun in Milwaukee in 1850 by itinerant preachers among the German Protestants. In 1892 the synods of Minnesota and Michigan united to form the Evangelical Joint Synod, which now has six hundred congregations extending from Michigan to the Pacific Coast.

St. Mary's Catholic Church of Fox Lake observed its seventy-fifth anniversary last December, when it was recalled that the first church was built in 1850 on a site donated by Dr. Stoddard Judd, member of both of Wisconsin's constitutional conventions.

One of the most interesting religious communities in Wisconsin is that at St. Nazianz, Manitowoc County, founded in 1854. For an account of this community see our Society's *Proceedings*, 1903, 108-113. The old church on this property is preserved as a relic of early days, and there on October 21 a commemorative mass was held on the seventy-first anniversary of the first service of this community held in Wisconsin.

The Baptists of Milwaukee on November 21 joined in celebrating the seventieth anniversary of Immanuel Church and the canceling of the last mortgage upon its property.

Juneau's St. John Evangelical Lutheran Church had a golden jubilee the last of November, in which many visitors from neighboring towns took part. The son of the founder of the church, the Reverend J. P. Koehler of Wauwatosa, preached in the morning and the Reverend Philip Koehler, a grandson, in the evening.

The Eau Claire parish of the Sacred Heart held a golden jubilee for three days in November, wherein the bishop of La Crosse was present and celebrated pontifical high mass.

Readers of this magazine will remember the account in the issue for March, 1923, page 317, of the first Evangelical Church in Sauk County, known for its founder as the Ragatz Church. The fiftieth anniversary of the building on Honey Creek of the stone church for this congregation was celebrated November 8 with about six hundred people in attendance.

WISCONSIN HISTORY IN NEWSPAPERS

The *Brillion News*, Otto J. Zander publisher, gave a most interesting "Pioneer Boy's Story of Brillion's Early Days" by Elmer G. Fuller, on the front page of its weekly issues October 2 to December 11 inclusive. The story is really a historical account of the settlement of Calumet County and relates the coming of the Indians, then of the Easterners, to this section of our state. Its later portion gives a brief narrative of the early settlers of the town of Brillion.

October 24 the *Janesville Gazette* issued as a supplement a "History Number" entitled "Eighty years of Janesville and the *Gazette*," in which was a photographic reproduction of the *Gazette* for August 21, 1845. The *Gazette* claims to be the third oldest paper in the state, and is the survivor of nearly a hundred newspapers and periodicals printed

at Janesville since 1845. This newspaper was established by Levi Alden, of whose printing shop a good account appears in this history number. Other features are the story of the Janesville press; a picture of the village of Janesville in 1845; a portrait of Joseph Willard (it should be Josiah), father of the famous temperance advocate; another of Carrie Jacobs Bond, the song writer.

The *River Falls Times* published in November a "Better Community" edition, in which are several historical features, notably a picture of the city in 1880; an article by Harrison Hatton on how the pioneers came to the St. Croix valley; the story of Joel Foster, the first settler; and an article on River Falls as a milling center.

A very interesting and accurate account of the Wisconsin Indian tribes, their religious beliefs, government, and traditions was given in successive numbers of the *Milwaukee Journal* by an author who signed himself F. V. V.

Mrs. C. S. Van Auken, of the La Crosse County Historical Society, published during the winter months a series of articles in the *La Crosse Tribune* on the history of Wisconsin, including among them recollections of pioneer men and women of early days, such as Governors Doty, Dodge, and Tallmadge, William S. Hamilton, Morgan L. Martin, Henry D. Barron, and many others.

The *Viroqua Censor* often prints articles on "Vernon County of Old"; that of December 21 was written by Dr. C. V. Porter.

"The History and Development of Marshfield" appeared serially in November and December in the *Marshfield News*. It was republished from the *Wood County History*.

Local history of Crawford County and Prairie du Chien by W. E. Martner appeared in the issues of the *Courier* at the latter place for October 21 and January 4 respectively.

La Crosse as a "big town" in 1853 appears in the *Tribune* of that place for December 5, an article recalling boom times and the glories of the Tallmadge House, and the business places of seventy years ago.

Among the smaller communities finding their historians are two sketches in the *Oshkosh Northwestern*, October 23 and 29, giving descriptions of the founding of Waukau and Manawa.

The "ancient" town of Edgerton is featured in the October 23 *Wisconsin Tobacco Reporter*, published at that Rock County town.

Superior also had its days of advance and retreat, which were recalled by a series of articles running in the *Superior Telegram*. Among them were the recollections of Achille E. Bertrand, John A. Bardon,

and Harry Ashton. These were supplemented December 29 by the account of an old-timer who remembered the coming of the first railroad to this northern port.

Among the feature articles recently appearing in the *Milwaukee Journal* was one on the archeology and Indian history of Milwaukee which appeared with appropriate illustrations in the issue for December 13. The number for October 11 carried a similar article by Harry R. Zander on the Oshkosh family of Menominee chiefs.

O. J. G. Peters of the Deep Waterway Committee wrote for the *Portage Democrat* of November 11 an article on old river days on the Ohio, and the similarities between the Ohio River and the Fox River navigation improvement systems.

A paper read by Mrs. Persis Stickney Scarl at the summer meeting of the Waukesha County Historical Society concerning the "Early Schools in Vernon" was printed in the *Waukesha Freeman* of September 30.

The *Kenosha News* had historical articles on December 22 and January 6, the former giving the political units to which Kenosha County has belonged, and the latter giving the origins of Kenosha County townships. These were taken from sketches compiled by O. L. Trenary for a Kenosha County courthouse booklet.

Eugene W. Leach probably knows Racine County and its history as well as any one now living. In the *Racine Journal-News* for January 5 he presents an article on "Pioneer Facts and Folks," which is full of useful information.

For the *River Falls Journal* for December 21, Mrs. Sarah Tozer has compiled an interesting sketch of the former academy, the oldest incorporated institution in northwestern Wisconsin.

Apropos of the article in the preceding pages about Sauk City and its founder, we note an article in the *Baraboo News* July 30 last on Count Haraszthy and his experience with bad roads in our pioneer days.

HISTORICAL NOTES

The annual meeting of the American Historical Association was held December 29-31 at Ann Arbor, Michigan. The address of President Charles M. Andrews, "The American Revolution: An Interpretation," appears as the leading article of the January *American Historical Review*. One of the chief features of the Ann Arbor meeting was a luncheon conference at which plans were made for raising an endowment fund for the Association. Solon J. Buck, of the Minnesota Historical Society, has been granted leave of absence to devote his time to the securing of this fund.

The Colonial Dames of America for the State of Illinois unveiled in December two bronze tablets on the Michigan link bridge, presenting them to Chicago in honor of the French explorations of Jolliet, Marquette, La Salle, and Tonty.

The Kenneth Sawyer Goodman Memorial Theatre, that was finished this autumn on the Parkway in Chicago, and presented to the Chicago Art Institute by the children of Mrs. Erna Sawyer Goodman, has an especial interest for Wisconsin people since the donors are grandchildren of our former senator Honorable Philetus Sawyer of Oshkosh.

A brief account of the Potter-Pryor affair in Congress, which rounded to the credit of Wisconsin's congressman John Fox Potter, appeared in this magazine in June, 1919 (vol. ii, p. 449-452). In that it was stated that all bowie knives except a large one, presented by Missouri admirers, were in our historical museum. We now learn that the missing weapon belongs to the museum of Lawrence College, and that in Appleton rests this huge knife, with a blade three feet long and a walnut handle as long again, on which is engraved the famous witticism, "Will always meet a Pryor engagement." We are pleased to learn that this interesting relic is now where it may be seen by the public, and typify the ending of the system of dueling, so popular in our southern states "before the war."

MUSEUM NOTES

The Society is the recipient of a recent portrait of General Charles R. Boardman, painted by his fellow townsman Merton Grenhagen, and presented to our Museum by a group of General Boardman's friends, headed by Colonel H. I. Weed. This new acquisition hung in the Society's rooms during November, and has at the request of the donors been lent to the Adjutant-General's office at the Capitol.

For some years past it has been the custom of the State Historical Museum to install for the benefit of visitors special Christmas exhibits. Those arranged this year occupied a number of cases in the North Hall of the Museum, and were of an especially attractive and instructive character. In the exhibit of former children's toys (1800-1890) were a number of homemade playthings made by fond fathers in Wisconsin pioneer days. In another case were shown pretty Christmas cards of many kinds (1850-1895). The first printed cards of this nature appeared in the United States in 1847. The custom of using them made slow progress, only about one thousand being sold the first year, and a small number in the following years. Among a large number of old-fashioned Christmas gifts on display was a plush-covered, gilt-metal bound candy box given by President Ulysses S. Grant to Mrs. Lucius Fairchild as a Christmas gift in 1879. Other interesting specimens in this display were jewelry, fans, lace handkerchiefs, satin slippers, bouquet holders, purses, chatelaines, foot muffs, a tea cosy, and em-

broidered spectacle cases bearing dates from 1880 to 1885. Song books containing old rhymes, carols, and hymns occupied another case.

Another special exhibit for the holidays was seventy old china and metal barber basins, the fine collection made by the late General Lucius Fairchild while in Spain and other countries. This is probably the only collection of its kind in any museum in the United States.

Holiday visitors were greatly pleased with a series of forty attractive flower paintings and landscapes hung in the auditorium by the Madison Art Association. These were the work of four artists: Blanche McMullen, Helen E. Moseley, and Helen and Sally Hall Steketee, all of Grand Rapids, Michigan.

An exhibit of thirty-six landscape paintings by Jessie Kalmbach Chase, a Madison artist, has now taken its place. Many of her attractive canvasses represent Door County scenes, her girlhood home having been at Sturgeon Bay.

The portrait of General Lucius Fairchild painted by the famous American artist John Singer Sargent, was loaned by the State Historical Society to the Boston Museum of Fine Arts for the Sargent memorial exhibition which opened there in November. This portrait, which has hung at the south entrance to the Historical Museum since its acceptance by the Society on October 15, bears the inscription: "Presented to Comrade Lucius Fairchild, past commander-in-chief of the Grand Army of the Republic, as a token of esteem and regard, September 12, 1888." The picture was painted at the request of Mrs. Fairchild, and it was her desire that Sargent be given the commission. The G. A. R. at that time had the custom of presenting to its retiring commander some gift in recognition of his services. When a committee asked Mrs. Fairchild what she would choose, she replied that nothing would please her more than a portrait of her husband. General Fairchild went to Nahant, on the Massachusetts coast, for the sittings, and the picture was completed for the presentation in 1888.

The city of Green Bay has received from Mr. and Mrs. George Grant Mason of New York a gift of \$50,000 for the erection of a museum building. Mrs. Mason is a daughter of Mr. and Mrs. Arthur C. Neville of Green Bay, and the museum is to be re-named the Neville Museum in honor of her parents. Her father has been for years the superintendent of the local public museum, which now occupies several rooms in the basement of the Kellogg Library in Green Bay. The new building will permit the corporation to accept many historical specimens and collections which it has not been able to care for because of a lack of exhibition space. Its present collections contain many rare and beautiful specimens intimately connected with the early history of the Green Bay region. Mr. Neville is the present president of the Wisconsin

Museums Conference, having been reelected to that office at a meeting held at Green Bay on October 22 and 23.

The *Wisconsin Archeologist* has published a report on "The Lake Kegonsa Region" by Dr. W. G. McLachlan of McFarland, who has been conducting archeological researches for the state society in that region in his spare time for the past ten years. With the appearance in print of this report, monographs of the Indian archeology and history of the five Madison lakes—Mendota, Monona, Waubesa, Wingra, and Kegonsa—have been made accessible to the student of Wisconsin archeological history. The first of these reports made its appearance in 1912. In the Lake Kegonsa region Dr. McLachlan found twenty-six groups of Indian earthworks containing a total of one hundred and sixteen mounds. His report also locates and describes the sites of seven former early Indian villages and the trails which connected them with Lake Koshkonong, the Rock and Sugar rivers, Madison, and the Fox-Wisconsin portage.

At a meeting of the Wisconsin Archeological Society held at Milwaukee on November 16, H. E. Cole, president of the State Historical Society, gave an illustrated lecture on "Tavern Tales and Travel Trails," in which the early Indian trails, pioneer roads, and early taverns of the state were most interestingly described. At a meeting held on December 21, W. C. English of Wycena delivered an equally interesting illustrated lecture on "Wisconsin Caves," in which special attention was given to those containing traces of use as early Indian habitations and burial places. The speaker greatly deplored the present neglect and mutilated condition of some of the once beautiful stalactite and stalagmite ornamented caverns of the state, and urged that steps be taken by state societies for their protection against further vandalism.

Recent gifts to the State Historical Museum include a cache of four Indian limestone sinkers found at Oconomowoc and presented by Dr. F. C. Rogers; a small collection of flint implements from Sauk County, given by G. O. Cooper, Madison; and potsherds and other specimens from a shell heap in Maine, given by N. C. Fassett, Madison. Mr. W. W. Gilman of Milwaukee has placed in the Museum's care a collection of Indian implements obtained by himself years ago chiefly from the Indian village site at the foot of Lake Monona. Mr. and Mrs. E. B. Maltby, Portage, have donated a number of historical specimens, which include an iron kettle, butter stamp, snuff box, spectacles, and articles of clothing. Agnes Sperry, Delafield, has given a carpenter's plane; Caroline Brewster, a series of old plaster of Paris hat forms; Colonel Howard Greene of Milwaukee, a silver watch and a number of G. A. R. badges; Mrs. T. W. Evans, Madison, a silk dress; S. R. Titus, Lindsey, several lancets; Mrs. K. C. Kielley, Steuben, old cut paper portraits; and Mrs. J. W. Lamberson, Weyauwega, a Staffordshire chinaware platter.

Hubert M. Jaycox has presented to the State Normal School at Whitewater a collection of Indian implements secured by himself

largely from the site of the famous Indian enclosure at Aztalan. This collection is particularly valuable because of having been gathered on this site many years ago, during the donor's boyhood.

OUR CONTRIBUTORS

Mrs. Clara Lyon Hayes ("William Penn Lyon") in this installment of her father's biography presents material prepared by Justice John Winslow, one of Judge Lyon's colleagues on the Wisconsin Supreme bench.

Joseph Schafer ("The Epic of a Plain Yankee Family"), our superintendent, concludes his story of the Howard family, based on a collection of manuscripts given to the Society by Mr. Leon Howard.

Dr. Frank C. Richmond ("Wisconsin's Efforts in Behalf of Soldier Rehabilitation") is chief of the Psychiatric Field Service in connection with the Wisconsin Memorial Hospital.

Mrs. Theodora W. Youmans ("A Pioneer Church at Prospect"), of Waukesha, will be recalled by our readers as the author of "How Wisconsin Women Won the Ballot," published in the September, 1921, issue of this magazine.

W. A. Titus ("Sauk City and Prairie du Sac") is a curator of the State Historical Society and a frequent contributor to this quarterly.

Katherine E. Byram ("The Museum and the School") is a teacher in the public schools at Green Bay.

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