

CHAPTER VIII

THE BENCH AND BAR

MANITOWOC A PART OF THE FOURTH JUDICIAL CIRCUIT—FIRST TERM OF COURT AND PRESIDING JUDGE—PREMIER MEMBERS OF THE MANITOWOC BAR—GRAND AND PETIT JURIES—EARLY CASES ADJUDICATED—SPECIAL MENTION OF PROMINENT LAWYERS OF THE COUNTY.

THE CIRCUIT COURT

Upon the adoption of the state constitution and the admission of Wisconsin as a state in 1848, the state was divided into five judicial circuits, a judge to be elected for each circuit. These judges were to sit together *in banc* as a supreme court, one of their number to be chosen by them as the chief justice. This was practically a continuation of the territorial system. This system continued until June 1, 1853, at which time a separate supreme court was established.

From the first Manitowoc county formed a part of the fourth circuit and although many changes in the circuits have been made, it is still in that circuit, which now contains only two of the original six counties, namely, Sheboygan and Manitowoc. In the selection for the first chief justice of the new state, Alexander W. Stow was chosen.

The "bench and bar" of Manitowoc county cannot be said to have had any existence before the year 1848. The county was created in territorial times by an act of the territorial legislature, known as No. 28 of the laws of 1836, out of a portion of the territory of Brown county, but was so thinly settled that it was not considered advisable to give the new county a complete organization for all purposes and the act provided it should remain attached to the parent county for judicial purposes.

On the 2d of March, 1848, the territorial legislature passed an act providing that from and after the second Tuesday in April following, the county should be organized for judicial purposes, and on that date the legal history of the county began.

Some of the provisions of this act make curious reading at the present time, among them the following:

"The commissioners of said (Manitowoc) county are restricted from expending any sum exceeding one hundred dollars per annum for the fitting, renting or use of any building to be used as a courthouse."

"Sec. 6. It shall and may be lawful for the county officers to keep their offices at their residence *in any part of the county.*"

Under this act the first term of the court was held in the schoolhouse at the Rapids on September 25, 1848. Hon. Alexander W. Stow, judge of the fourth circuit and also chief justice, presided. No court officers had been elected, and Justice Stow solved the problem by appointing Ezekiel Ricker as clerk of the new court, and Oliver C. Hubbard as sheriff. The following attorneys were admitted to practice in the court: J. H. W. Colby, James L. Kyle and E. H. Ellis. These three constituted the first bar of the Manitowoc county circuit court. There was but one case on the calendar, an action of ejectment which was not at issue, and a rule was entered requiring the defendant to plead. The court then adjourned. Practically the only business effected was the organization of the court and furnishing it with necessary officers.

The second term of court (which was practically the first) was called on the 19th of March, 1849, at the County House in the town of Rapids. Chief Justice Stow again presided. A grand and petit jury had been summoned. There were seven civil cases on the calendar and the court was evidently in full running order.

The following persons had been summoned, appeared and were sworn in as the first grand jury of Manitowoc county: Daniel Smith, Jacob King, F. Borchardt, William Ham, S. B. Sherwood, Benjamin Sias, P. P. Smith, T. A. Fenton, E. W. Packard, Oliver Clauson, Chester Buel, Alden Clark, Hiram McAllister, A. J. Vieau, E. D. Beardsley, William Cross, P. Glover, H. H. Smith.

The court appointed Daniel Smith, foreman, charged the jury as required by law and they entered upon their business. They brought in three indictments, the first being in the case of the State of Wisconsin vs. John Williams, for keeping a disorderly house in the town of Rapids. The second was the State of Wisconsin vs. Nelson Pendleton and Isaac Taylor, for nuisance in maintaining a dam. (This was the dam at Neshoto, which for a time was the subject of considerable litigation, and which still exists.) The third was against Sebastian Boldus, for keeping a disorderly house at Two Rivers.

There is no complete list of the petit jurors in attendance but the following twelve persons constituted the first jury drawn for the trial of any cause in Manitowoc county: H. Carr, M. Williams, N. Fenton, J. A. Goss, J. H. Treadway, M. Heywood, N. Jackson, F. Lenaville, D. Bolles, H. Hassel, O. LeClair, A. E. Sherwood.

The case in which they were called was J. E. Platt and others vs. P. Pierce & Company, and the plaintiffs submitted to a voluntary non-suit so that there was no actual trial. The civil calendar was disposed of as follows: In three cases the plaintiffs were non-suited, in one the answer was withdrawn and plaintiff in ejectment recovered judgment by consent. Two cases were tried by the court, a jury being waived, and on the afternoon of the second day the court adjourned for the term, having been in session less than thirty-six hours, and established a record for dispatch of business.

On the 27th of September that year, the court at its fall term was presided over by Judge Charles H. Larrabee of the third circuit, who held the term in place of Justice Stow. At this term an addition to the bar was made by the admission of Joseph M. Taylor, on motion of James L. Kyle. Mr. Taylor, however, concluded to locate at Sheboygan, where he practiced for several years.

At this term the presiding judge administered a lesson in promptness to

eight gentlemen, who had been summoned as petit jurors and failed to respond by fining them five dollars each and awarding execution therefor on behalf of the state.

The first real jury trial and the first criminal case decided in the court occurred when a jury was empaneled to try the indictment against John Williams, found at the previous term. The defendant was found "guilty" and was sentenced to a fine of fifty dollars and the costs of prosecution, and in default of payment to stand committed to the common jail of Brown county until paid.

The jury in this, the first actual *trial* were: P. Schaefer, C. Anderson, F. M. Boucher, William Crawford, Elijah Hothersall, E. M. Soper, N. Ross, J. Whitcomb, M. Morse, John Spencer, Joshua Idell, Samuel Johnson.

The court again made a record for promptness and speed in the dispatch of business by disposing of sixteen cases, three of them being contested jury trials, one civil and two criminal, and two contested cases tried by the court, all in two days.

By this time the court was fully organized and from that time on the business increased from year to year, the calendars growing longer and the business becoming more important as population and wealth increased. The County House was destroyed by fire in May, 1852, and advantage was taken of the fact to bring about a removal of the county seat to the village of Manitowoc. The first term held at the now city of Manitowoc was the fall term of 1853, which was opened at the schoolhouse on the south side of the river, on the 29th of September. The county was without a courthouse for several years, and court was held wherever quarters at all suitable could be procured; generally in one of the schoolhouses. The September term of 1855 was held in the dancing hall of George Dusold, and the March term of 1856 was opened at the residence of Colonel Peleg Glover. Meanwhile, the county seat had been changed after the fight over the matter customary in all newly settled countries, and a courthouse was in process of construction.

The legislature in 1853 had by a special law passed in that session, authorized the supervisors to issue bonds in the magnificent sum of five thousand dollars, afterwards amended to ten thousand dollars, to build the courthouse. It was completed in the summer of 1856 in time to hold the September term of court, Judge Gorsline being the first judge to preside therein. It was a solid, substantial building of brick, and after doing good service to the county for over fifty years was removed from its site and is still in commission as headquarters for Company H, Second Regiment Wisconsin Militia.

The judges who have presided over the destinies of the circuit court of Manitowoc county from its organization to the present, with the time they served, are the following named persons: 1848-51, Alexander W. Stow, chief justice; 1851-53, Timothy O. Howe; 1853-58, William R. Gorsline; 1858-69, David Taylor; 1869-81, Campbell McLean; 1881-99, Norman S. Gilson; 1899—, Michael Kirwan.

Justice Stow was elected from Fond du Lac county, Judge Howe was from Brown county, Judges Gorsline and Taylor were from Sheboygan county, while Judges McLean and Gilson were from Fond du Lac county. Judge Kirwan was the first Manitowoc county judge to preside over the circuit.

Justice Stow was one of those peculiar characters who were frequently found

in the new countries of the west. He was a bachelor, highly educated, well trained in the law, wealthy for those days, and lived in Fond du Lac county on a large farm he built up and conducted. He was defeated for reelection and retired to his farm for the balance of his years.

Judge Howe became very prominent in the politics of the state and nation, becoming United States senator and serving as such from 1861 to 1879, and later was a member of President Garfield's cabinet as postmaster general. When Judge Howe opened his first term of court at the Rapids, it happened there was an old pioneer Methodist circuit rider named David Lewis present. It occurred to the Judge that he would introduce the old Vermont custom of opening the court with prayer, and Mr. Lewis was invited to officiate as chaplain. He did so and delivered an invocation which for length and loudness was long remembered by the early settlers. He was especially emphatic on the necessity of imparting wisdom and rendering assistance to the "helpless and ignorant young judge." The record does not indicate that the ceremony was ever repeated, and while it may be true that the judges of the fourth circuit have been at times in great need of divine assistance, it does not appear that it was thus publicly invoked at any other time. Judge Howe did not serve out his term but resigned early in 1853 and resumed practice until elected United States senator in 1861. He was succeeded by Judge Gorsline, who was first appointed to fill the vacancy and then elected for a full term. He served out his term and went west. He was appointed to a United States district judgeship and served on the federal bench in Colorado for many years. He was also a judge of the territorial supreme court during the years 1866 to 1869, inclusive, and his opinions are to be found in Vol. I of Colorado Reports. After that time he practiced law in Denver until his death.

Judge Taylor, successor of Judge Gorsline, was a very eminent and scholarly lawyer, who held the office two full terms. He originally settled in Sheboygan county but had removed to Fond du Lac county and was elected from there. He later was promoted by election to the supreme court and died while a justice of that court. Judge Taylor served in the state senate for a term prior to his election to the bench and was instrumental in securing the adoption of the New York code of practice in this state. He was also the author and compiler of the first annotated statutes of Wisconsin.

His successor, Campbell McLean, of Fond du Lac county, served on the bench for two terms and was defeated for reelection. While not especially remarkable he was honest and careful and was above the average of *nisi prius* judges in ability. His decisions were very generally sustained on appeal to the supreme court. He was overwhelmingly defeated and on the expiration of his term left the state, returning to Plattsburg, New York. He there resumed practice and died some years ago.

Hon. N. S. Gilson, who followed him, was also from Fond du Lac. He served two full terms on the bench. During his incumbency there were many cases involving new and interesting questions of great public importance, and Judge Gilson soon manifested his ability as a judge by the manner in which he dealt with them. His name was frequently mentioned in connection with a position on the supreme bench, but the fact that Judge Taylor was from the same city militated against his being chosen. On his retirement from the bench

he was appointed to the newly created office of state tax commissioner and in that place won additional honor for his fairness and honesty of purpose and his judicial manner of dealing with the intricate questions arising out of the administration of the new and complex tax laws enacted in this state. He voluntarily resigned from that position in 1910, and is now residing at Fond du Lac.

Hon. Michael Kirwan in 1899 followed Judge Gilson and is still the presiding judge of the fourth circuit. He is the first judge of that court to be selected from the Manitowoc bar. It is perhaps too early to write all his history as a judge, but not too early to comment to some extent upon that which has been. The fact that his repeated elections have been practically unanimous, at least without opposition, are strong indications of his success as a judge. He has a firm grasp on the underlying principles of the law and his strong sense of what is right, good common sense and integrity of purpose is unquestioned. He is still in the prime of life and apparently has many years of useful work in prospect.

THE COUNTY COURT

The county courts of Wisconsin at the time of the adoption of the constitution were merely courts of probate, but the constitution conferred power upon the legislature to create inferior courts and confer probate jurisdiction upon them. This was done in 1849, when county courts were established to take effect January 1, 1850, and probate jurisdiction conferred upon them. March 14, 1859, the term of office of the county judges was extended to four years, since which time the county courts have existed substantially as they are at the present time. The law creating the county courts also conferred upon the judge all the power and jurisdiction of a circuit judge at chambers, made them courts of record with a seal, and clerk, the clerk of the circuit court originally being clerk of the county court. The revision of the laws in 1858 took away much of the jurisdiction over civil matters originally given, but it remained and still is a very important court.

By Chapter 143, P. & L. Laws of 1866, there was added to the probate jurisdiction of the Manitowoc county court, all the jurisdiction of a justice of the peace. The salary of the judge was small and it was supposed that by granting the opportunity to earn the fees of a justice of the peace in addition to the salary, it would make the office more desirable to a trained lawyer.

The law conferring this added jurisdiction remained in force nearly twenty years. It was repealed by Chapter 20 of the Laws of 1885. The expectation that by conferring the jurisdiction and fees of a justice of the peace upon the county court a better class of incumbents of the office would be secured was not realized, and from that time forward the office became in large measure the football of party politics.

From the organization of the court in 1848 until 1866, each incumbent beginning with J. H. W. Colby, had been an able and trained lawyer. After that period the office was held by laymen for a long time. These were mostly men of fair education, more than average ability and thorough integrity, but they lacked that training in the law which would have enabled them to discriminate between essential things and matters of discretion. This condition existed about

twenty years. After a time one or two actions of ejectment were brought by heirs to recover lands improperly sold by county court proceedings, in which they prevailed, the purchasers losing the moneys invested in the purchase. This enforced the attention of the people to the necessity of having in the office a trained lawyer, and since then the judges of the court have been elected from among the members of the local bar.

Judges Emil Baensch, Frank E. Manseau, J. S. Anderson and the present incumbent, John Chloupek, were all so chosen. They have given the court a prestige and dignity worthy of its important jurisdiction, and inspired the people with confidence in the justice and probity of its administration. (A complete list of the judges who have presided in this court is given elsewhere in this volume.) p 78

THE MUNICIPAL COURT

The municipal court of Manitowoc county was created March 9, 1895, by Chapter 17, Laws of 1895, the first judge to be elected at the regular April election of that year. The original jurisdiction was that of a justice of the peace in criminal matters, and all matters not punishable by imprisonment in the state prison. The act provided further that the justice should have civil jurisdiction in all actions where the debt, damages, demand or penalty claimed should not exceed \$500.

A clerk who was also reporter, was also provided for the court. July trials were limited to a jury of six persons as in justices courts. In case of the judge's disability to try a cause, the judge of the county court was called in to determine it and jurisdiction was conferred on him for that purpose. The permanent *locus* of the court is Manitowoc, but terms must be held once a month in the city of Two Rivers.

This act was amended by Chapter 193, Laws of 1903, by making the jurisdiction in criminal matters exclusive and depriving the justices of the peace of the county of all criminal jurisdiction.

The powers of the court were again enlarged by Chapter 659, Laws of 1907, which provided the court should be a court of record with a clerk and a seal. It has proven a very useful and important court. It does all the criminal business formerly done by the justices courts and nearly all the civil business of the county within its jurisdiction. The judges who have regularly presided in this court since its formation are Isaac Craite, A. P. Schenian and the present incumbent, Albert H. Schmidt. Judges J. S. Anderson and John Chloupek of the county court, have frequently presided as occasion required, being subject to call under the law, in the absence or disability of the presiding judge.

THE BAR

In common with all other parts of the west, it was the custom of the early lawyers of the fourth circuit to "travel the circuit." On horseback, in buckboards or by stage they went from county seat to county seat with the judge. They would be often employed to try cases of which they had no knowledge until within an hour or two of going to trial. While this practice may not have

been conducive to the making of profound lawyers, it certainly helped to make them ready, quick witted and versatile. The practice brought to the Manitowoc county terms of the circuit many celebrated lawyers from the surrounding counties, as soon as the court was fairly organized.

J. M. Shafter, E. Fox Cooke and Judge Taylor of Sheboygan, had a large practice here in the early days. A. M. Blair and E. S. Bragg of Fond du Lac, made frequent appearances here. E. S. Bragg was the famous commander of the "Iron Brigade" in the Civil war and became a figure of national importance. From Winnebago county would come Gabriel Bouck and S. R. Cotton. The latter became judge of the third circuit when Winnebago county was transferred, while the former became colonel in the Civil war and later member of congress. From Brown county came T. O. Howe and Henry S. Baird, the latter the pioneer lawyer of the territory and state, and the former a figure of national fame. As litigation became important, prominent lawyers from other parts of the state and from Illinois frequently appeared.

THE LOCAL BAR

As stated, the bar on its first organization consisted of three persons: J. H. W. Colby, James L. Kyle and E. H. Ellis. The two former had been here for two years or more, coming in 1846, in the order named, while Mr. Ellis came from Green Bay in anticipation of the separate organization of the county. It is difficult to understand why the name of Ezekiel Ricker was not placed on the meager roll of attorneys, as he was a member of the profession and in practice before the Brown county courts, but he probably thought that his acceptance of the office of clerk of the court would debar him from practice, and a sense of propriety forbade his formal membership in the local bar. The first addition to this trio was Joseph M. Taylor, a member of the profession, who, on September 29, 1849, was admitted on motion of James L. Kyle. Mr. Taylor was a member of the Sheboygan bar and practiced there a number of years, occasionally appearing in the local court. No further admissions are on record until March 25, 1853, when on examination by a committee consisting of J. L. Kyle, J. M. Shafter and E. Fox Cooke, S. A. Wood was admitted. Though the early records do not show other admissions to the bar, there must have been some such, because as early as 1851 the names of Hon. George Reed, Ezekiel Ricker and George Malmros begin to appear in the court proceedings. Messrs. Reed and Ricker were identified with the bar as long as they lived, but Mr. Malmros removed to Sheboygan and died a few years later.

A circumstance worth noting is that a highly educated young German in 1852 and 1853 acted as deputy clerk of the court. His name was Edward Salomon, and ten years later he became governor of Wisconsin. He removed to Milwaukee and was a member of that bar. After the war he removed to New York city and was an influential member of the bar there. The next recorded admission after S. A. Wood is that of Nicholas Wollmer, who, after preparation in some of the local offices, was admitted to practice at the September term of court of 1853 and was appointed district attorney in March, 1854. Immediately after his admission he formed a partnership with Ezekiel Ricker,

the firm being Ricker & Wollmer. This was without doubt the first law partnership organized here.

L. K. Warren was admitted September 30, 1854. He was a man of considerable wealth for those days and a good deal of his legal work was in connection with his own affairs. He formed a co-partnership with I. H. Parrish and the firm did a large business in 1855 and 1856, about which time Mr. Parrish was county judge, taking the place of Judge Ricker, who died during a cholera epidemic. Mr. Warren only remained with the Manitowoc bar a few years after this, when he removed to Michigan and there died. At this same term George L. Lee was admitted. Little is known of the antecedents of Mr. Lee. He was an able lawyer, a fluent and eloquent speaker. About 1860 he suffered a paralytic stroke which disabled him for further labor. He left Manitowoc for his former home, somewhere in the east, a hopeless invalid, and news of his death came a year or two later.

Charles H. Walker came to Manitowoc in 1854, probably after the September term closed. No record of the time he joined the local bar appears. He came from Kenosha and had practiced there a short time after his admission to the profession. He studied law in the office of Hon. Fred S. Lovell, a very prominent lawyer of that period. There are no records of admissions during 1855, but the promise and prospects of a railway to the west made the future of Manitowoc appear very bright and attracted a number of lawyers to the new bar. In the court proceedings appear about this time the names of W. H. Hamilton and Isaac H. Parrish, both of whom were identified with the practice of the law until about the close of the Civil war period, though there is nothing to indicate the time of their advent. Hon. Charles Esslinger, too, must have been admitted to practice about this time. He and Isaac H. Parrish, former partner of L. K. Warren, formed a partnership which lasted until 1861, under the title of Parrish & Esslinger. Mr. Esslinger was appointed postmaster under President Lincoln and abandoned practice.

At the September term of 1856 three new lawyers made their appearance and were admitted to practice at the bar. These were Hon. J. D. Markham, George Rice and John A. Daniels. Mr. Markham was identified with the bar thenceforth for fifty years, putting in his entire life work with it. Mr. Rice remained until the Civil war period and then returned to New York state.

The end of the year 1856 may well be considered the end of the formative or pioneer period of the Manitowoc bar. Thenceforward it was a substantial entity, making no mean figure in the history of Wisconsin jurisprudence. The legal business of the county was fairly large and there were a number of very able men to care for it. From the earliest period to the present Manitowoc county has had an able and hard working bar, and lawyers from abroad bore universal testimony that when they came to Manitowoc county to try cases they found "foemen worthy of their steel."

In April, 1857, B. J. Sweet became a member of the local bar, forming a partnership with George Rice, already mentioned, the firm being Rice & Sweet. The partnership lasted until near the outbreak of the Civil war. Mr. Rice returned to New York state and entered the army from there. At the time of the outbreak of the Civil war Mr. Sweet was state senator, representing the district comprising Manitowoc and Calumet counties. He entered the army

immediately as lieutenant colonel of the Sixth Wisconsin Volunteers and later was colonel of the Twenty-first Wisconsin Infantry. He acquired great renown as commander of the prison for captured rebels, known as Camp Douglas, Chicago, Illinois, at the time when a conspiracy was organized to release the prisoners and capture the city of Chicago. His vigorous measures quickly thwarted the project. At the end of the war he held the rank of brigadier general.

Just when ex-Governor Salomon, already referred to, was admitted to the bar does not appear, but it must have been about 1854 or 1855. His name is associated as counsel of record in a case with Hon. J. D. Markham early in 1856.

William M. Nichols came to the bar of Manitowoc county from the state of New York in 1857. He remained until 1864. He was a very active practitioner and had quite a large practice in Manitowoc and surrounding counties. His course during the Civil war alienated many of his friends and his practice declining, he returned to the east.

During the period from 1856 to 1859, there were practically no accessions to the bar. The persons heretofore named did practically all the professional work of that period. One exception must be noticed. Hon. John R. Bentley about 1857 opened an office and remained for two or three years, when he removed to Sheboygan, but for a number of years retained considerable of his Manitowoc practice. In Sheboygan he formed a partnership with Hon. W. H. Seaman, now judge of the United States circuit court, which existed for a number of years. Mr. Bentley was a man of culture and a very able lawyer. He became the commissioner of pensions under President Garfield, at Washington, and later removed to Denver, Colorado, where he served as circuit judge for several terms.

About 1859, however, George N. Woodin was admitted, and a little later William R. Crissey joined the bar and remained until after the war began, when he returned to the east. About the same time Henry S. Pierpont opened a law office in Two Rivers and was appointed county judge in 1861, succeeding Charles H. Walker in that office. Judge Pierpont never was an active practitioner, his inclinations being rather for a business life.

In 1863 a lawyer by the name of C. A. Boynton located in Manitowoc and after practicing alone for some time formed a partnership with G. N. Woodin under the name of Woodin & Boynton, which lasted about a year, when Boynton went elsewhere. In the same year Ellery B. Treat came to this city from Sheboygan county, and formed a partnership with W. H. Hamilton, under the name of Hamilton & Treat, which lasted until 1868. The firm did a large business during that period, as is shown by the old calendars of the court.

During the years 1865 to 1867 there came B. R. Anderson, Charles W. White and Henry Sibree. After practicing some years, B. R. Anderson removed to Kansas, but the others of the group remained in Manitowoc until death removed them. White and Sibree each held at some period the office of district attorney. All these were men who had entered the profession late in life, studying, as was the custom of the time, in the office of some practicing lawyer. They were men of great natural powers and more than average education and culture. Mr. Sibree particularly was a man of wide reading and fine taste.

Some younger men who had also been in the war, came to the bar about this period. Don A. Shove and H. H. Markham returned from the army, reviewed

their studies and were admitted to practice. H. H. Markham and George C. Markham, who was admitted a little later, read law in the office of their brother, Hon. J. D. Markham. They practiced but a short time here and then removed to Milwaukee, Wisconsin, where they formed a partnership, making a specialty of admiralty practice, in which they were very successful. The firm was in existence for about twenty years, when H. H. Markham removed to California and later became governor of that state. George C. Markham is now the president of one of the greatest insurance corporations in the United States,—the Northwestern Mutual of Milwaukee. Don A. Shove practiced his profession here for many years. He lacked the "gift of gab" essential to a trial lawyer, and very seldom, if ever, appeared in court in contested cases. He was justice of the peace, police justice and court commissioner and for about twenty-five years did the greatest part of that work. He had a wide knowledge of the law, a naturally judicial mind and was a very satisfactory magistrate. He removed to Dakota about 1888 and died there a few years later.

For several years there were but few changes. In 1870 the law firm of Walker & White was organized, which only lasted about two years. In the same year G. A. Forrest came to the city, entering the office of E. B. Treat as an assistant and practicing alone later, until 1872, when he formed a partnership with Charles W. White, under the name of White & Forrest, which for some years did a very large business. In 1871 Oscar F. A. Greene was admitted to practice. He had studied with Charles H. Walker and remained in the office some time as clerk and assistant, and in the beginning of the year 1872 the law firm of Walker & Greene appeared. About the same time the firm of White & Forrest was formed.

In the same year Hon. W. J. Turner came to this city from Ozaukee county, where he had been admitted to practice, and was soon followed by his father, H. G. Turner, of Port Washington, Wisconsin. They formed a partnership under the firm name of H. G. & W. J. Turner and practiced very successfully for about ten years, when they removed to Milwaukee, where W. J. Turner formed a partnership with W. H. Timlin under the firm name of Turner & Timlin.

In the period between 1870 and 1880 quite a number of young men came to the bar. Among those who remained and entered upon the practice were J. S. Anderson, Lyman J. Nash, C. E. Estabrook, W. A. Walker, A. J. Schmitz, E. G. Nash and Michael Kirwan. William Bach and George B. Byron were also admitted to practice but were not active practitioners, each of them holding the office of justice of the peace. Some time in 1873 R. P. Eaton came to the city. He was then in advanced years and did not have much general practice. He was known as a lawyer in territorial days.

About 1875 the firm of Walker & Estabrook was formed and lasted for a number of years, and almost simultaneously the firm of Nash & Schmitz was organized. The firm of Walker & Estabrook continued until 1887, when Mr. Estabrook was elected attorney general for the state and both members of the firm subsequently removed to Milwaukee, Wisconsin. Mr. Walker died there several years ago and Mr. Estabrook is still there, engaged in practice. The firm of Nash & Schmitz lasted until some time in 1875, when it was dissolved and two firms were formed, Mr. Nash entering into partnership with his brother,

E. G. Nash, the firm being Nash & Nash, while Mr. Schmitz formed a new firm with Michael Kirwan as partner, under the name of Schmitz & Kirwan.

Between 1880 and 1890 the bar received a large number of accessions. G. G. Sedgwick removed here from Kewaunee, forming a partnership with G. A. Forrest, the firm being Sedgwick & Forrest, which lasted for about two years. Mr. Sedgwick practiced alone for a number of years, when his son, becoming a member of the profession the firm of Sedgwick & Sedgwick was formed. Among those admitted were Emil Baensch, C. A. Blesch, H. L. Markham, F. E. Manseau, R. H. Markham and A. P. Schenian, all of whom remained here to practice. Mr. Blesch entered into partnership with G. A. Forrest, the firm being Forrest & Blesch. The Markham brothers formed a partnership under the name of Markham & Markham, which still exists. Mr. Baensch served a term as county judge and Mr. Manseau was also elected as judge but died in office. Mr. Schenian practiced some years in South Dakota but returned to this city and engaged in practice here.

With 1890 the history of the bar as a body may properly conclude. The greater part of those who came after that time are still at the bar making legal history. As might be expected, some have come and gone, but the majority who came to practice are still here. Those who have been admitted and have remained are the following: E. G. Schmitz, Fred W. Dicke, Richard W. Burke, John J. Healey, Harry F. Kelley, Arthur Wyseman, Edward L. Kelly, A. L. Haugen, Albert H. Schmidt, A. L. Nash, Walter M. Joyce, Charles E. Brady, Laurence H. Ledvina.

Among those admitted who practiced for a short time and then removed are E. J. Onstad, G. A. Alexander, Victor S. Pierrelee and W. H. Kalaher. Richard W. Burke lately removed to Florida. R. G. Plumb, admitted in 1892, has never entered practice, being engaged in the mercantile business.

One of the latest accessions to the Manitowoc bar is F. F. Groelle, who came here from Clark county and has taken a high place as a busy lawyer. The law firms now existing in the city of Manitowoc are Nash & Nash, Markham & Markham, Haugen & Brady, Kelley & Ledvina, Healey & Joyce and Kelley & Wyseman.

Those practicing alone are J. S. Anderson, G. A. Forrest, Emil Baensch, Isaac Craite, F. F. Groelle and E. S. Schmitz, also Fred W. Dicke, at Two Rivers.

Among the younger men are some lawyers of more than average ability who will be heard from in the future.

SPECIAL MENTION

We submit a few special sketches of lawyers who were prominent in the early history of the legal profession. It is to be regretted that so little is known of some of them but not a matter of wonder when we consider they came as strangers to a new and uninhabited land, most of them without family connections to hand down to future generations their life history.

J. H. W. COLBY

Unquestionably the first lawyer to settle in Manitowoc county was J. H. W. Colby, or as he was generally known, "Jerry" Colby, who had the honor con-

ferred upon him of being the first judge of the county court. He was also the first postmaster of Manitowoc.

He was born in New Hampshire in 1822. He came from the east in the spring of 1846, having been admitted to the practice of the law before his coming here. Soon after his arrival he was appointed as the agent for the Hinckley and Allen lands, one tract of which included about half of the present city of Manitowoc.

Here he made the acquaintance of Miss Emily Jones, daughter of Benjamin Jones, one of the founders of the city and they were married in the fall of 1850.

Mr. Colby was a highly educated and cultured gentleman, a graduate of Dartmouth College and had received a thorough training in the profession of the law. He died too soon to have had much opportunity to make manifest the legal ability of which he was unquestionably possessed. His death occurred May 10, 1853.

EZEKIEL RICKER

It is to be regretted that so little can be learned of Mr. Ricker. Like most of the early settlers he came from the east, but from what state is not now known. He arrived in Manitowoc in the summer of 1846, nearly at the same time as Mr. Colby and these two did all the law work for the community until the county was given a separate judicial existence. His contemporaries have now all passed away and little definite knowledge can be obtained regarding him. For years he was spoken of as a genial and companionable man of fine presence, a skillful and resourceful lawyer. He is mentioned frequently in the course of this history. He died during the cholera epidemic of 1854.

SYLVESTER A. WOOD

S. A. Wood was born in Acton, York county, Maine, January 14, 1822. After receiving an academic education he read law in the offices of Hon. Nathan Clifford, later justice of the supreme court of the United States, and William Pitt Fessenden, who became United States senator. Mr. Wood also attended lectures in the law school at Harvard for a year. He was admitted to practice at Portland, Maine, in the year of 1848, and came to Manitowoc October 26, 1849. He did not formally join the bar until March 24, 1853.

He was a very active practitioner for many years after his admission, but gradually withdrew and devoted himself to the care and management of large real-estate interests, for which he was agent. Mr. Wood is locally famous for his work in a very voluminous partition suit, which he brought to clear the titles to about eighty acres of property in the heart of the city of Manitowoc. At the time of his death he had been a member of the local bar for fifty-five years. He died August 12, 1908.

CHARLES H. WALKER

One of the strong men of the early Manitowoc bar was Charles H. Walker. He was born in Tully, Onondaga county, New York, September 5, 1828. His

family removed to Ohio, and while there he graduated from the Western Reserve College. He later studied law in the office of Hon. F. S. Lovell, a prominent lawyer of Kenosha, Wisconsin, and began practice in that city, removing to Manitowoc in 1854, where he formed a partnership with Judge George L. Lee, the firm being Lee & Walker. They were both very capable men and the firm was a strong one. Mr. Walker represented the county in the assembly in 1856-1857 and was county judge from 1858, which office he resigned to enter the Civil war. He rose to the rank of major of the Twenty-first Wisconsin Infantry.

On the close of the war he resumed his practice, but his health failing, he retired to a farm in the town of Rapids, where he died December 14, 1877. Judge Walker was a man of scholarly tastes and attainments, and an excellent trial lawyer.

HON. JOHN D. MARKHAM

J. D. Markham was born at Wilmington, Essex county, New York, April 23, 1828. He studied law in the offices of Kellogg & Hale, Elizabethtown, New York, and was admitted to practice July 25, 1855. He came to Manitowoc in the early summer of 1856 and was enrolled in the local bar on motion of E. Fox Cooke September 22 following.

The New York code of practice was adopted in this state the very next month and this gave him a great advantage over the old common law practitioners. He speedily built up a very large practice, which extended over a large part of northeastern Wisconsin.

He was unquestionably the ablest *nisi prius* lawyer in this portion of the state when in his prime. It is not too much to say that for over thirty years he was the unquestioned leader of the Manitowoc bar.

He was a lawyer before all other things and suffered nothing to interfere with his professional work. He never sought or held any other office than that of district attorney, which he held from 1859 to 1863. He died at Manitowoc, November 8, 1906.

RUFUS P. EATON

No history of the Manitowoc bar would be complete which had no reference to R. P. Eaton, who was a member of it for many years. He came to Manitowoc about the year 1873. He was then in advanced years and never acquired much general practice, at this bar. He was a lawyer of the old territorial days, a contemporary of Stow, Cotton, Baird and others of that day. He was a most determined fighter of the bull-dog type, getting hold and never letting go till every resource and technicality of the law had been exhausted. His name appears frequently in the early reports commencing in the 2nd Pinney and extending down to the 42nd Wisconsin Reports. His tenacity is commented on by the supreme court in *Eaton vs. Lyman*, 33d Wisconsin, P. 36. Justice Lyon says: "This action now makes its fifth and it is earnestly hoped its last appearance in this court. The student who is anxious to learn something of the vicissitudes to which a lawsuit of even moderate dimensions may be subject

when manipulated by skillful hands can gratify his curiosity to some extent by carefully perusing the reports in this case."

Little is known of Mr. Eaton's early life. He was a Vermonter and as stated, came to Wisconsin at a very early day. His practice was largely confined to real-estate matters, especially tax title litigation. He died in Manitowoc in the autumn of 1884.

G. G. SEDGWICK

George G. Sedgwick was born at Andover, New York, February 13, 1843, and in the same year his family settled in Illinois. He was admitted to the bar of Ozaukee county, at Port Washington, in 1874. He first practiced in Kewaunee, Wisconsin, locating there soon after his admission to the profession. He removed to Manitowoc January 1, 1880, and remained in practice there till his death.

Mr. Sedgwick was a man of great force with strong mentality and was a man to be reckoned with by his opponents. He was city attorney for Manitowoc several terms. He died January 28, 1907. He was a brother of Chief Justice Samuel Sedgwick of Nebraska.

NOTABLE MEN

The Manitowoc county bar has the honor of having furnished two of the present justices of the state supreme court, viz: the Hon. William H. Timlin and Hon. John C. Barnes. Justice Timlin was a student in the office of Turner & Turner in the city of Manitowoc, during the period from 1875 to 1877 and remained with the firm for a time after his admission to practice, taking part in its law work. Later he opened an office in the neighboring county of Kewaunee and after a few years removed to Green Bay, finally going to Milwaukee, where he first formed a partnership with his former preceptor W. J. Turner, and later with Nathan Glicksman.

His great professional success in the state and federal courts attracted public attention in a large degree and at the spring election of 1907 he was chosen as one of the justices of the supreme court. In the practice of his profession he was a tireless worker and he carried the same characteristic with him to the bench. He is considered to be one of the ablest members of a court notable throughout the nation for ability and learning.

Justice Barnes is essentially a Manitowoc county product. He was born in the town of Meeme and received his academic education in the schools of the county. He graduated from the law school of the State University in the class of 1883. About that time and for a year or two after his graduation he was a student in the office of the late G. G. Sedgwick and assisted him in his practice. In 1855 he removed to Rhinelander, the county seat of Oneida county, and soon had a large and important practice which extended all over Northern Wisconsin.

Upon the creation of the Wisconsin railroad commission in 1905, he was appointed one of the three commissioners and made its chairman. His ability and wide knowledge of railway law affecting this new and untried sphere of

government, as well as his eminent fairness and absence of prejudice in the solution of the numerous and delicate problems brought before the commission for adjustment was the subject of wide notice and comment. He resigned from the commission August 1, 1907, and returned to practice. His term of practice was short, for in April, 1908, he was elected to the supreme bench to fill the vacancy caused by the death of Chief Justice Cassoday and the following spring was chosen for the full term of ten years.

Justice Barnes has considerable of the native wit and sense of humor ascribed to his Irish extraction and one of his opinions in the case of a Holstein heifer, (*Kopplin vs Quade*, 145 Wis. 454) has given him a high position in the national galaxy of judicial humorists. It would, however, be wholly unfair to estimate him by that opinion. He is a careful and painstaking judge, of great ability and wide legal knowledge, well skilled in the application of legal principles to the facts and issues of any question at the bar.

The bar has also the honor of having furnished an attorney general for the state, the Hon. Charles E. Estabrook having been elected to that office twice and serving the state in that capacity from January 3, 1887, to January 5, 1891. It was while engaged in practice in the city of Manitowoc that he was elected as attorney general. Soon after his term as such expired, he removed to Milwaukee and entered law practice in that city. He has since represented one of the assembly districts therein for three terms. He is a good lawyer and efficient legislator, his name being connected with many beneficial laws enacted through his influence.

It has also contributed to the state for two terms a very capable lieutenant governor, Hon. Emil Baensch having been elected to and served in that office from January 8, 1895, to January 2, 1899—two full terms.

When the legislature in 1909, created the office of state revisor of laws, it vested in the supreme court the power of appointment to that office. With the bar of the entire state to select from, the choice of that high tribunal fell upon the Hon. Lyman J. Nash of Manitowoc and he is now the incumbent of that important position.

Manitowoc county also claims an interest in the Hon. W. J. Turner, who since his removal to Milwaukee has become one of the circuit judges of that city and is winning high encomiums for his successful performance of the duties of that high office.

NOTABLE CASES

In the course of its existence there have been many notable cases, civil and criminal, tried in the circuit court of Manitowoc county. Among these are the homicide cases of the *State vs. Pegalow & Franz*, noted as the first murder trial before the court. This case was twice tried, the first trial being about 1858 and the second in 1861. The defendants were found guilty in both cases. The case went to the supreme court twice on appeal. In the first appeal the judgment was reversed and on the second affirmed and the men went to the penitentiary and died there. The *State vs. John Hogan* who killed his brother with an ax and received a life sentence but was afterwards pardoned. The *State vs. Anna Straka* for the murder of Miss Haywood, a peculiarly cold

blooded murder for which the girl was found guilty, and also received a life sentence. William Morris of Meeme was charged with shooting a young servant girl. In his case the evidence, though strong, was wholly circumstantial and Morris was acquitted. This case attracted wide attention by reason of the peculiar character of the evidence, not only in Manitowoc county but all over the state.

George Rathsack was also tried for the murder of his wife with an ax under circumstances of peculiar brutality. Several efforts have been made to secure his pardon, but without avail. The case of the State vs. O'Brien for shooting a neighbor was also peculiar. The trial resulted in finding O'Brien insane and he was committed to the asylum for criminal insane at Winnebago.

Another case of like character was the trial of James Hempton for the murder of his wife by shooting. He was found insane by a jury, committed to the asylum and some years after was liberated as recovered.

Some notable civil cases have been tried and sent to the supreme court for final adjudication.

The comparatively early case of Riemer vs. Jahnke has become a leading case on practice in ejectment and is frequently cited in textbooks and legal encyclopedias. Watts vs. Owens tried in another circuit by Manitowoc attorneys is also a leading case on the statute of limitations and the heritable status of illegitimate children. Manitowoc County vs. Truman and others on the binding effect of bonds to secure bank deposits of public moneys, is a case frequently cited. Stephani vs. City of Manitowoc upon the liability of cities for their management of bridges across navigable rivers is an important case. Chloupek vs. Perotka and Ready vs. Huebner are republished with annotations in the leading set of selected cases. The cases of Strong vs. Kalk and others tried by local attorneys in a neighboring county, and the case of Kavanaugh's will, the latter dealing with bequests for masses, have also been republished with copious notes.

The later cases of Lotten vs. O'Brien involving questions of medical malpractice and statutes of limitations, Manitowoc vs. Manitowoc & Northern Traction Company, upon the rights of electric traction companies to regulate their fares and Siemers vs. Meeme Insurance Company are interesting and important cases from the legal standpoint.