CHAPTER THREE

The First Judge

The previous paper brought the history of the bar down to 1854. Both bench and bar had been working smoothly. In the intervening years, the county had received a large influx of settlers, largely Germans, who had left their country on account of the Revolutionary troubles of 1848. The village of Manitowoc was increasing in population and business importance and in those respects had outstripped the Rapids.

The court calendars grew longer each term, and litigation of an important character was increasing. A change had taken place in the court, caused by the retirement of Judge Stow, on January 1, 1851. As he was rather a remarkable man, I have compiled the following sketch of him, drawn from various sources:

HON. ALEXANDER W. STOW

Judge Stow was the first chief justice of the state of Wisconsin, and at the same time the first judge of the Fourth Circuit. To understand this apparently anomalous situation, it is necessary to explain the judicial system then existing.

Then the several circuit judges held courts in the counties of their circuit, hearing and deciding causes as at present. On appeals being taken, all, or at least four of them, sat together—en banc, as it is called, and the appeal was argued and heard before the full bench, constituting the Supreme Court.

Thus each judge was a trial judge for his circuit in the first instance and also a justice of the Supreme Court which met at stated terms to consider appeals at the Capitol in Madison.

The term of office for these judges was fixed at six years, but the law governing their first election provided that the judges then chosen should be divided into five classes, class one to hold office for two years, class two for three years, and so on, so that one of the judges of the five circuits should be elected each year. The terms of the first judges were decided
by the secretary of state drawing lots. In this proceeding, Judge Stow drew the short term of a little over two years, expiring January 1, 1851. His associates unanimously chose him chief justice.

Alexander W. Stow was born at Lowville, New York, February 5, 1805. His father, Silas Stow, was a prominent Federalist in the early political struggles of that state. He was chief justice of the county court and associate judge of the Supreme Court, and also served a term in congress. He appears to have been considered a man of superior ability and culture.

The son inherited much of the talent of the father. His studies appear to have been under his father’s supervision and the association with, and influence of, the eminent men with whom he was brought in contact made him almost by intuition an accomplished scholar. His only regular schooling of which mention is made is that at the age of sixteen years, he was placed in the military academy at West Point, where he remained only a year and then returned to enter a law office in his native village.

In due time he was admitted to practice and formed a partnership with Honorable Justin Butterfield at Sacketts Harbor, New York. Here he had several years of general practice. In the intervals of practice he spent some months of travel in Europe which brought him to the period when he came to Wisconsin Territory, some two or three years before its admission as a state.

He settled at Fond du Lac, and being for those days a man of considerable wealth, purchased a large number of tracts of land near that city, on one of which he founded a large farm, though he was never considered much of a farmer. He entered upon the practice of law in Fond du Lac and also opened an office in Milwaukee, dividing his time between the two places so that he became widely known throughout the Territory.

All accounts agree that his eccentricities were many and peculiar. He was by turns rough, uncouth, harsh and vulgar, heedless of form and conventionality, and then the polished gentleman, polite in manner, careful and exact in expression, dignified in bearing.

The late Judge Morgan L. Martin of Green Bay, who had known him in New York, in a monograph wrote of these mannerisms: “There were some by which his general character was judged of harshly and unfavorably by those little acquainted with him, there were many which should go far to redeem it from reproach.”

And Chief Justice E. G. Ryan, the greatest of those men
who followed him in the exercise of the great office, also writes: "The writer is proud to say that they were intimate and fast friends. . . . Those only who knew him well, knew that beneath an outside rarely gentle and often harsh, he had a generous and noble nature and led a life of genuine kindness and consideration for all whom he honored with his intimacy. . . . None of his peculiarities arose from mean or false qualities. . . . All his eccentricities were excesses of strength. A high integrity pervaded his whole character."

There is an incident in Judge Stow's life of which little is said, which is, nevertheless, of interest. It is mentioned in Berryman's history, and Justice Winslow also alludes to it. It is a notorious fact that many men who came to the frontier either in government employ or impelled by love of adventure formed irregular connections with the Indian women.

The case of General Sibley, United States Army, who married a Chippewa woman, and thereafter lived with her on the frontier till he died; kept there at his own request, is one of many. There were evidences of a strong infusion of Indian blood in many of the "first families" of the early day in Wisconsin. Most of these unions were temporary in character and broken off sometimes under circumstances which reflected little credit on the man.

Judge Stow had formed a connection of this kind (Justice Winslow calls it a common law marriage) with a woman of the Winnebago tribe. If it was a mistake on his part he was at least manly enough never to repudiate the relation, recognized her as a wife, lived with her till his death and made suitable provision for her support. She survived him many years. Pioneer settlers of Calumet County have told me that she was known as "the Widow Stow," and was much respected in her neighborhood, for her kindness and helpfulness to poorer neighbors and in cases of sickness, and trouble.

I recall an incident in relation to the above, which now interests me much more than it did at the time. When I returned from the army in August, 1864, much broken in health, I took some time to rest and recuperate before attempting any business.

My uncle, Reverend Walter McFarlane, was a minister of the Methodist Episcopal church, at Taycheedah, Fond du Lac County. I spent a couple of weeks at his parsonage near the shores of Lake Winnebago and accompanied him in his drives around the country.

Returning late one afternoon he drew his horse down to a walk and called my attention to a rather rambling farm house which stood a few rods back from the road. In front was a garden filled with shrubbery and flowers in which was a lithe,
dark-faced woman of about middle age gathering flowers. He asked me to notice her and after we had passed on, said: "This is the Stow farm," and told me the story of her relations with the Judge, then deceased, with dubious shaking of the ministerial head. Long afterwards I wished I had come in closer contact with her. One can but wonder whether there were not some traits of strong character in this half savage woman to attract and hold a man of the mentality of Chief Justice Stow.

The first chief justice had an intense and deeply rooted aversion to the principle of an elective judiciary. When the people of the Fourth Circuit recognizing his great ability and personal integrity almost unanimously demanded that he be a candidate for election as their first judge he long refused and finally consented on the condition that he would under no circumstances be a candidate a second time.

In regard to this, Chief Justice Ryan says, "that honorable but mistaken pledge cost the state a great judge; how great his short judicial service can only indicate. . . . He reverenced the judicial office; and while he held it he made all men respect it. He had a high sense of judicial dignity and authority; and there was no trifling with the court in which he presided on the bench, he looked what he was—a great judge."

Perhaps this strictness on the bench may furnish the explanation to a singular proceeding recorded in the early records of the Manitowoc Circuit Court held at the Rapids on September 27, 1850. This was the last day of the last term the Judge presided, for his term expired January 1, 1851.

The work of the court was ended and the grand jury had come in and made its final report. The clerk of the court, Perry P. Smith, then records:

"His honor, Alexander W. Stow, here made a few remarks to the grand jury and bade them farewell! Kyler K. Jones, a member of the grand jury, rose and made a motion that this jury tender their thanks to his honor, the Judge, for the very able and distinguished manner that he had discharged his duties while he had acted as a judge—which motion was adopted, after which his honor, the Judge, again remarked to the jury that he was not entitled to their thanks, but that in the discharge of his duties he had acted according to the dictates of his own conscience and not from any selfish motive and, further, that he preferred the name of a judicial tyrant to that of a judicial coward."

With this episode, certainly a curious one, perhaps possibly only in such pioneer conditions and primitive surroundings the connection of the bar and people of Manitowoc
County with its first circuit judge ended. I never saw Justice Stow, and so far as I know he never again visited Manitowoc. He never resumed the practice of his profession after his retirement from the bench. He lived a retired life on his farm near Fond du Lac, dying there five or six years later.