CHAPTER FIVE

The Second Judge

HON. TIMOTHY O. HOWE

When Chief Justice Stow persisted in his decision not to be a candidate for reelection, the people and especially the lawyers of the Fourth Circuit began to discuss the matter of a successor.

Sentiment finally crystallized in favor of Hon. Timothy O. Howe of Green Bay and in the spring election of 1850 he was duly elected to take his seat on the first of January following. Although there was no contest to speak of at the election he was not without some opposition. The political trend during Territorial times had been unmistakably Democratic and Tim Howe, as he was known, was an enthusiastic Whig and devoted admirer of Henry Clay. But he was known as a man of the most strict integrity, a scholar and man of letters and in addition a learned and capable lawyer.

He was born in Livermore in the State of Maine, February 24, 1816. His father was a country physician with quite an extended practice. He received a good common school and academic education, and after studied law, first in the office of Hon. Samuel P. Benson of Winthrop and later with Judge Robinson of Ellsworth. He was admitted to the bar in 1839 and began practice at Readfield in that state. He served as a member of the Maine legislature in 1845, taking an active part and was regarded as a young man of unusual promise.

In the latter part of that year he moved to Wisconsin Territory and opened a law office in Green Bay. He held closely to his law practice, taking little or no part in local or general politics and soon became widely known throughout the Territory. Upon admission of the state in 1848, he was the Whig candidate for congress, but the district being strongly Democratic he was defeated by James D. Doty, former Territorial governor. His election as judge of the Fourth Circuit and ex-officio associate justice of the supreme court was the first office held by him in Wisconsin. It so
happened that when the time came for him to assume his duties the December term of 1850 for the Supreme court was still in session and his first official acts were those of associate justice of that court.

On March 20, 1851 Judge Howe held his first session of court at the Rapids. There were present William F. Snyder, Sheriff, J. H. Colby district attorney, P. P. Smith was clerk. Quite a large crowd was in attendance to welcome the new judge. Among others was a Methodist circuit rider and Judge Howe following an old New England custom invited Rev. D. H. Lewis to open court with prayer, which was done. My uncle, the late Gilbert Burnet, was in attendance as a witness and I have heard him tell, with great glee how the good preacher implored divine assistance for the new judge and how much he needed it in his "condition of helplessness and ignorance."

The roll of the grand jury was called and H. H. Smith of Two Rivers appointed foreman. The record of P. P. Smith continues: "His Hon. Judge Howe then charged the jury in a clear manner, not to be misunderstood, when the jury waited upon by an officer of the court retired for business."

Among the members of that jury were the following persons whose relatives and descendants still live in the county, Oliver C. Hubbard, George Dusold, Richard Steele, Jos. Edwards, Michael Fellows, Socrates Hill, and Pliny Pierce.

Among the petit jurors were Clifford King, O. H. Platt, Frank McAllister, Henry M. Brown (better known as "Honey" Brown), Harry Johnson, John Hollenbeck, Thomas Plumb, Sebastian Boldus and Wm. Playfair.

There was a calendar of eight state cases and eighteen civil cases. Several cases were removed to Washington county, the judge having been of counsel. My relative, Gilbert Burnet, and Patrick Bolen, father of late Sheriff John Bolen, were recognized to appear as witnesses in a criminal case to be tried at next term. The session ended the second day.

The September term of that year lasted four days.

Judge Howe continued to act as a justice of the supreme court until 1853 when the legislature created what is now known as the separate supreme court with three justices. This relieved the circuit judges from their duties as supreme court justices and limited their jurisdiction to their circuits.

Judge Howe continued to serve as the judge of the Fourth Circuit until early in 1855, when he resigned the office. The county seat having been removed from the Rapids to Manitowoc, he held his last term of court at the school house on the south side of the river in that village on January 8,
1855, no courthouse having yet been provided. He had served the people of Manitowoc county as their circuit judge a little over four years when he resigned and returned to the practice of the law at Green Bay.

He was unquestionably a great judge; in my humble estimation fully equal to his predecessor Chief Justice Stow. That he was a learned and skillful lawyer is beyond question. Any one who has read the report of the great quo warranto case of State ex rel, Bashford vs. Barstow brought to oust the governor of the state of Wisconsin from office, will readily concede it. He and Chief Justice Ryan were there pitted against the greatest intellects of the Wisconsin bar and were successful.

It was my good fortune in after life to be brought in contact with Judge Howe in many ways. In my army life his brother was for a time chaplain of my regiment, while his future son-in-law the late Hon. Enoch Totten of Washington, D. C., was first a lieutenant and later major commanding the regiment.

After my admission to the bar, like many others, I dabbled somewhat in politics at the period when Judge Howe was United States Senator, and had much to say in Wisconsin politics. This brought me into correspondence with him, and I received many letters, some of which I still preserve. I cherish my memories of him and rank him as the greatest man intellectually it was my fortune to meet intimately. I frequently introduced him to Manitowoc audiences and am proud to have spoken with him from the same platform.

Judge Howe's activities in political life has obscured his fame as a lawyer. But, nevertheless, any one who followed his career in the senate can see that his success was largely due to his legal training and ability. He was at his best when debating some question of constitutional or international law. That his learning in the law was recognized by his associates in the government is well attested by the fact that he was tendered the appointment of Chief Justice of the Supreme Court of the United States by President Grant upon the resignation of Chief Justice Chase. He declined the appointment because the Wisconsin legislature was then Democratic and would choose his successor.

The people of Manitowoc county and the old Fourth Circuit may well take pride in the fact that in the early days Hon. Timothy O. Howe presided over their court.

Judge Howe was possessed of a peculiar dry humor not unmixed with sarcasm which was very effective both on the bench and in his public speeches. One instance of this long survived in the county. He had tried a court case, and the
attorney for the plaintiff had piled up a large number of books on the table and began to speak. The judge said, "I do not wish to hear anything from the plaintiff." The lawyer protested that his client expected him to make the effort, that he had carefully prepared his argument and ought to be heard, that he would need about two hours to develop it properly, etc.

The judge answered, "I can't give you all that time but I am willing to compromise with you—if you will give up your argument I will give you judgment as demanded in the complaint."

I call to mind another instance: Some time in the late "seventies" Charles Francis Adams wrote and published in the North American Review an article in which he rather severely arraigned the policies of the Republican party during and after the Civil war. In it he had the questionable taste to allude to his descent and connection with the illustrious Adams family.

In a scathing reply which Senator Howe published in the Madison Journal he availed himself of this opening and said of the writer, "On examination of his pedigree we may fairly concede that he has been sired by two presidents and a half."

This article is not the place to speak of Judge Howe's political career. It comprised two terms as United States senator, Commissioner to negotiate a treaty with the Indians for purchase of the Black Hills, Postmaster-general in President Arthur's cabinet.

He was a great lawyer, a great judge, a great statesman, and an honest, incorruptible and unselfish man. He died at Kenosha, Wis., on March 25, 1883.