CHAPTER TWENTY-TWO

IN CONCLUSION

In looking back over the history of the bar, I am impressed with the difficulty of measuring the flight of time and the changes wrought. It is hard to realize that our political life as a state has not yet reached seventy-five years. The existence of this bar began with the birth of the state. Their development was coeval. It is a far cry from the rough board, unpainted, shanty-like house at the Rapids, in which the four original members met, to the palatial temple of justice in which the present bar gathers at the opening of the term.

The Supreme Court, at the Capitol of the State, then and for many years after was a distant goal which many of the early lawyers never reached. It entailed a long and weary journey in primitive conveyances, requiring many days to go and return. Now, it only requires a portion of two days at most, while the telegraph and telephone places us at all times in speaking connection.

The governmental changes meanwhile, until within the last score of years, were but few. The early lawyers who drafted our state constitution were men of vision who saw the necessity of leaving to the legislature a large margin of law-making power for future development. By careful legislation, changed conditions were easily adjusted to the fundamental law.

The daily routine work of the bar at the present time need not be described. The courts remain as they were first constituted by the adoption of the constitution, with some slight modifications in the county courts, and have about the same jurisdiction. The only radical changes which have occurred, were the adoption of criminal trials upon information in place of indictment, which worked a discontinuance of the meetings of the grand jury, and the adoption of the code of civil procedure which took the place of the old system of the common law.

The right to call a grand jury still remains but is in the discretion of the judge and is but little used. In the opinion of the writer it is a valuable privilege and its occasional use would be beneficial. Fifty-two years have passed since the
last grand jury for Manitowoc county met and to the best of my recollection the same is true of all other counties of the old Fourth Circuit.

The present trend of political thought and action is radical in the extreme and changes at variance with fundamental law are advocated by many. This has been manifested by the creation of Bureaus, Boards and Commissions of all kinds with almost unlimited power to formulate rules and regulations which have all the force of statute law. They hold judicial hearings, render judgments and by their own officers enforce them. In short, they exercise all the governmental powers, legislative, administrative, judicial and executive. The judicial powers vested in the courts are largely encroached upon and in many instances the courts are made mere adjuncts to enforce their decrees. The right of review of such decrees by the constitutional courts through appeal or writ of error is hampered or abridged by statute in every possible manner.

The result is, that an important element of law practice has come into existence which was almost wholly unknown to the old-time lawyer, causes which at an early day were tried in courts of general jurisdiction are now heard and determined before a board of laymen under rules of practice formulated by themselves, unbound by precedent, and with little regard to the rules governing legal testimony. The philosophy and principles of law are seldom in issue and the only solution called for, is the meaning or application of some statute or rule.

Such practice is necessarily narrowing and cramping in the extreme. If we may rely upon history bureaucratic government has never been either successful, or satisfactory to the governed.

Another evil which has obtained a strong foothold since the year 1900, is a growing tendency to over-legislation. In early times certainty in the law was considered more desirable than mere exactness of definition. Hence when a statute had been construed by the Supreme court the tendency was to retain it, perhaps with some slight amendment, to conform to, or avoid the effect of, the court's decision. The idea of certainty and permanence in the law seems to have been entirely lost. The existence of the "lex non scripita" (the law of construction) is ignored, and a supreme effort is made to secure a "lex scripta", a written statute for each and every conceivable human situation or combination of circumstances. Each alternate year the legislature turns out from 2000 to 3000 sections of new law or amendment and repeal of the old, much of it wholly unnecessary and unwarrantable,
The work of the bar in keeping check upon these changes is enormous. The work of the court of last resort is also increased and made more difficult and unreliable. Before the rule of “stare decisis” can be established the statute law on which it was founded is modified or repealed.

The young men of the present bar are working just as their predecessors did fifty years ago, meeting and conquering (or being conquered by) the same kind of difficulties and problems. In some respects I think their task is harder and more difficult than in that early period by reason of the uncertainties created by over-legislation.

There has been much effort to secure a greater degree of preparation on the part of those who seek to enter upon the profession of the law. Law schools and colleges have multiplied and a longer or shorter course of study, followed by more or less stringent examinations is required. I doubt, nevertheless, whether better lawyers have resulted from such preparation than by the old method of study in an active law office. There was a public sentiment in the old days that the law was a learned profession and that a goodly amount of scholastic preparation was essential as a foundation. The existence of such sentiments attracted men of scholarly instincts to the profession, and its standard was fairly high. Such men on finding themselves deficient studied to remedy their defects.

In previous pages I have paid tribute to the patriotism of the local bar during the Civil war. All there said is equally true of the present members of the bar during the World war of 1914-1918. All the members of the bar gave their time and services freely in speaking at war meetings throughout the county and in other counties. They aided “the drives” so-called to raise funds for the Red Cross and other war agencies, to further the sale of war-bonds issued by the government; speaking and urging the people to stand by the government in the emergency.

When the nation finally entered the war and the young men were called to service, the entire bar volunteered their services in filling out the questionnaires sent to those selected, keeping a delegation constantly at the court-house until no longer needed. It was hard and fatiguing work and it is just and proper that mention be made of it.

Nor was this all they did, every one of the young unmarried members of the bar, six in number, entered the service of the army or navy as volunteers. One married member, Archie L. Nash who had received part of his education at a military institute also tendered his services. He was at once appointed as instructor of artillery practice with the rank of captain of
artillery. Later he was promoted to the rank of major and went to France just in time for the final round-up. Those who went into the service constituted one-fourth of the entire active bar. Had the war lasted longer, others of the older element would unquestionably have been drawn into the great vortex.

It is characteristic of the profession of the law that it makes for conservatism. It is their daily duty to enforce or defend the inalienable rights of their fellow citizens. Hence the number of lawyers engaged in the radical agitation for the overthrow or extreme change of the present system of liberty under the law is very small. Their motto is, “prove all things, hold fast to that which is good”.

The bar of Manitowoc county is no exception to the rule. They are a hard working, conscientious body of men, with whom the writer is proud to have been associated for half a century.

Some of them have already achieved eminence in their work. Others are striving to attain it. The two or three survivors of the early day, who have “served their generation” wish them well.

“____________ what is writ is writ.
Would it were worthier, but I am not now
That which I have been, and visions flit
Less palpably before me; ____________”

Byron (Childe Harold.)

THE END.