

**Governors Who Have Been**  
*and*  
**Other Public Men of Texas**

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By **NORMAN G. KITTRELL**

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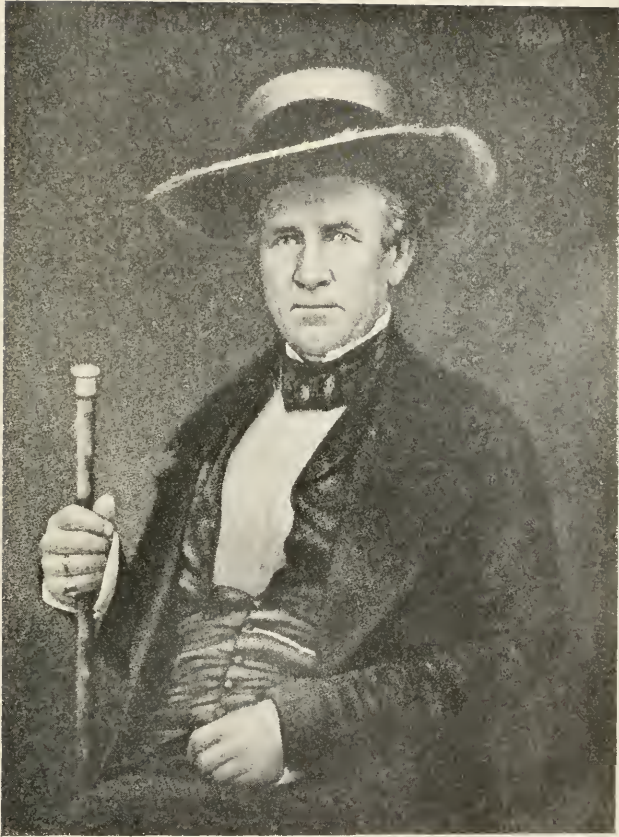
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Sam Houston





*Norman G. Kittrell*



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*By*  
NORMAN G. KITTRELL

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## Dedication

### In Token of Affection

"Which cannot be told in words, or shadowed forth in language."

THIS HUMBLE VOLUME IS  
DEDICATED TO MY WIFE

### Louisa Blackledge Kittrell

In whose veins,—and in the veins of our children,—I am proud to know there flows blood kindred to that which flowed in the veins of "Davy" Crockett, who with his heroic comrades on Sunday morning, March 6th, 1836, consecrated the Alamo to historic memories forever when they lifted the standard of human valor to a height never before or never since reached, wrote in their own blood their own passports to immortality, and by their matchless heroism—using the language of one who was once Governor of Texas:

"Taught mankind the lesson of earth's loftiest martyrdom."

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# Index to Chapters

	CHAPTER I.	
Early Legislators and J. Pinkney Henderson.....		9
	CHAPTER II.	
Ashbel Smith .....		16
	CHAPTER III.	
George T. Wood, P. H. Bell, E. M. Pease, John W. Harris....		24
	CHAPTER IV.	
Sam Houston, H. R. Runnels, Edward Clark.....		29
	CHAPTER V.	
Frank R. Lubbock .....		32
	CHAPTER VI.	
Oran Milo Roberts .....		37
	CHAPTER VII.	
Pendleton Murrah .....		45
	CHAPTER VIII.	
Andrew J. Hamilton, J. W. Throckmorton, Edmund J. Davis		46
	CHAPTER IX.	
State Convention of 1873, and The "Semicolon Case".....		55
	CHAPTER X.	
Richard Coke .....		61
	CHAPTER XI.	
State Convention of 1876, and some of the nominees.....		68
	CHAPTER XII.	
Richard B. Hubbard and others.....		78
	CHAPTER XIII.	
T. R. Bonner as Speaker of the House and D.U. Barziza.....		84
	CHAPTER XIV.	
John Ireland and G. W. Jones.....		89
	CHAPTER XV.	
L. S. Ross and D. C. Giddings.....		95
	CHAPTER XVI.	
James S. Hogg.....		100
	CHAPTER XVII.	
Gustave Cook, Soldier—Orator—Wit—Jurist .....		106
	CHAPTER XVIII.	
State Convention of 1894, and John H. Reagan.....		112
	CHAPTER XIX.	
Chas. A. Culberson, J. W. Bailey and Joseph D. Sayers.....		118
	CHAPTER XX.	
S. W. T. Lanham .....		124
	CHAPTER XXI.	
Thomas M. Campbell, Oscar B. Colquitt, Jas. E. Ferguson Thomas H. Ball .....		127
	CHAPTER XXII.	
William P. Hobby and Pat M. Neff.....		132

## INDEX TO CHAPTERS—Continued.

	CHAPTER XXIII.	
Early Texans and Their Descendants .....		134
	CHAPTER XXIV.	
East Texas Men .....		140
	CHAPTER XXV.	
The Judiciary of Texas .....		170
	CHAPTER XXVI.	
Judiciary, continued .....		178
	CHAPTER XXVII.	
Judiciary, continued .....		183
	CHAPTER XXVIII.	
Judiciary, continued .....		190
	CHAPTER XXIX.	
The Supreme Court on Its Own Disqualification.....		202
	CHAPTER XXX.	
The Court of Civil Appeals.....		204
	CHAPTER XXXI.	
The Commission of Appeals.....		206
	CHAPTER XXXII.	
Alexander Watkins Terrell .....		208
	CHAPTER XXXIII.	
Court of Criminal Appeals .....		211
	CHAPTER XXXIV.	
The Tragedy, The Pathos, and The Humor of the Court Room		219
	CHAPTER XXXV.	
Memories of the Court Room .....		247
	CHAPTER XXXVI.	
Memories of the Bench on the Circuit.....		276
	CHAPTER XXXVII.	
The Trial Court and the Upper Court.....		281
	CHAPTER XXXVIII.	
The State and the Defendant .....		285
	CHAPTER XXXIX.	
Legal Victories .....		290
	CHAPTER XL.	
The Court, the Bar, and the People.....		295

## Foreward

This modest volume is neither historical or biographical in the ordinary acceptation of those terms, but is a record of incidents and events associated with those whose characters, and whose services to Texas, render them worthy to have their memories perpetuated.

The reading of it will reveal no attempt at "fine writing" or any studied order of arrangement.

The writing was done *currente calamo* as incidents were recalled, or memories recurred to my mind.

It is the fruit of labor done in the early morning hours, and far in the night, and in other hours which did not belong to my employer, the State.

I thought it would be worth the time and toil to perpetuate such incidents and events in the lives of many of the men whose names are honorably associated with the history of Texas, as would inform this generation what manner of men they were.

The present is always debtor to the past, and this generation is debtor to their generation beyond its ability ever to pay.

The unofficial actions of men, and purely personal incidents in their lives, often serve to reveal more clearly their true characters than do their public actions; therefore, I have set down incidents, historical, tragic, pathetic and humorous, but not one that even remotely reflects unkindly upon any man.

It seemed to me, too, that brief sketches upon such cognate themes as the summary of contents reveals, might prove interesting, amusing, and perhaps instructive. There will not be found in the book a line or word to which any living man, or the friends of any dead man, can take exception; because it is free from anything controversial, and free of even the semblance of criticism.

My father was in public life in Texas as long as sixty-five years ago, and much that I have set down I heard from his lips.

It seemed to me most fitting that the frontispiece should be the "counterfeit presentment" of the majestic and impressive figure of him whose name and whose deeds are woven in imperishable colors in the very warp and woof of the history of Texas.

I deem it proper to state that delay in publication for something like three months after the "copy" was ready for the printer was the result of causes which were entirely beyond the control of either the publishers or myself.

The fruit of my often-interrupted and desultory labor, produced almost wholly from memory, is put forth in book form with the hope and belief that it will be accorded by every fair and generous reader that measure of charity which its many imperfections will demand.

NORMAN G. KITTRELL.

Houston, Texas,  
Sept. 15, 1921.



# GOVERNORS WHO HAVE BEEN, AND OTHER PUBLIC MEN OF TEXAS.

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## CHAPTER I.

This is being written just as Texas has passed through the throes of a second primary election, and when she faces the ordeal of the final campaign preceding the determinative election of Governor, in November, and it appears to me to be an opportune time to recall the memories which cluster about the names of those who have held the office of Governor in days gone by, but whom death has removed from the stage of action.

There were some remarkable men among them, and while some of them passed away before I ever heard of them, or was old enough to remember, traditions concerning them still linger, and it has been but a few years since many men were living in Texas who knew all of the early Governors of the State.

I do not recall that I ever saw any of them. The first Governor that I ever saw, except Sam Houston, was Hardin R. Runnels, and I saw him when I was but a mere lad. The proportion of Texans to become Governor has, of course, been very small; but there were many other men of conspicuous ability, and high character, who at the bar, on the bench, and in other spheres of honorable activity, so lived and wrought as to render their names and lives worthy examples of patriotic and honorable service.

It has been said that biography is at once the most interesting and most instructive form of literature, but it is not my purpose to attempt to write a biography, or even a biographical sketch of any man. My only purpose is to set down in simple form, without any attempt at literary adornment, such traditions as I recall, and such memories as occur to me, and such incidents as I have heard were connected with the names of some of those who lived nobly, served faithfully, and "passed on."

Some diversion and relief from the ceaseless labor of judicial position is necessary, and I hope to find it in writing *currente calamo*, in those hours which do not belong to my employer, the State.

There were instances in the lives of many public men in the early days of Texas, some of which were pathetic, some amusing, some heroic, but all of which served to reveal what manner of

men they were, better and more clearly than did their official actions.

My father, nearly seventy years ago, was in public life in Texas, as he had been in North Carolina and Alabama at an earlier day. He served in the Legislature of Texas with many public men whose names are enduringly graven on the pages of Texas history. In his day and time it was considered a greater honor to go to the Legislature than it is now considered to go to Congress, and the Legislature of that day, in point of ability, and all the essential equipments of statesmanship, stood second to none in the United States. The mileage and per diem was given no consideration, and if I recall correctly, there was no limit to the length of the session. Many of the members drove from their homes in carriages, and kept their carriages and body servants here in Austin during the entire session. My father always did so.

I have heard him tell over and over again of many interesting experiences while he served in the House, and heard his expression of opinion of many public men he knew. He was never defeated for a legislative position in any State, yet he never offered for the Senate, because, as he said, there were not enough members in that body.

I heard him after he had retired from public life, and at the most impressionable period of my life, talk of his experience and the acquaintances he had formed, and I have never forgotten what I heard him say, and shall set it down in simple, colloquial phrases, without attempting to follow the chronological order of events. I have no literary plan or order of procedure mapped out in my mind, nor shall I attempt to write of all those who were contemporary in one connection. As I recall incidents, or memories recur, I will set them down without regard to the lapse of intervening years.

The social habits, customs, usages and standards which prevailed three score and one-half years ago were very different from those of the present day. Social drinking was an almost universal custom, and it was often the case that men of high professional and political standing used intoxicating liquor, at times to excess. That offense against the social code was overlooked and condoned to an extent that it would not be now. The saloons did not close on election day then, and I recall that whoever got the influence of the saloons had half his political battle won. My father was an exception to that rule, for he would not have gone into a saloon or taken a drink, or treated a voter to a drink of any sort, for every vote in his district; and I trust I may say, without violation of the canons of propriety, that in that regard—if in no other—I followed his example when a candidate for office, without deviation.

Many public men played cards and made no concealment of the

fact. Gentlemen did not, as a rule, as I have heard, often risk their luck at banking games, but many of the highest order of ability, and who were influential and useful in the councils of the State, were addicted to the great American game, and constantly indulged in that most fascinating diversion; but they were not subjected to criticism, nor did it weaken their hold on popular confidence.

Men can be judged justly only in the light of their environment and of the prevailing customs of their day and time. That was tolerated then which would not be tolerated now, yet the standard of service and fidelity to duty in political station is no higher today than it was then.

There has been a time when it was said that in other states poker games were used as an indirect method of bribery, but no such pernicious element entered into the game when it was played by Texas Legislators, in the days of which I write; so far as I have ever heard. No one ever sought by any such method of procedure to influence legislative votes in that day and time. If the faintest breath of scandal ever attached to the name of a Texas Legislator, I never heard my father mention the fact. Many members might take drinks, many might play poker—some do both, but there was never a lobbyist brazen or bold enough to dare approach one of them with any proposition that was not consistent with the most rigid rectitude in legislative station. They were as unpurchasable a body of patriotic public servants as ever enacted laws for a great state; and there was not one of them who did not leave behind him an honorable record as a Legislator.

As striking evidence of the fact that a majority of the Texas Legislature three score and a half years ago had respect for religion, and admiration for a man who consecrated himself to preaching the old and simple gospel, and to the service of his fellow-men, the following incident will show.

There died in Austin, while on a visit to that city, on December 10, 1856, Rev. Daniel Baker, in whose honor Daniel Baker College at Brownwood was named, and who founded Austin College, which was first located at Huntsville, where the original college building now forms a part of the physical property of the Sam Houston Normal School.

The corporate institution and its physical equipment is now located at Sherman, where it is doing a great educational work.

I knew personally a number of men who rose to distinction in public life in Texas who were educated at Austin College, when it was located at Huntsville.

Dr. Baker never held any public office. He was simply an earnest, devout, consecrated preacher of the gospel—a mission more exalted than any of a political nature.

Immediately upon the announcement of his death my father in the House moved that adjournment be at once taken in honor of his memory, and followed the motion with the following remarks, which I take (what I trust will be deemed) pardonable pride in reproducing here :

“It becomes my painful duty to announce to the House the sudden and unexpected intelligence of the death of one of Texas’ public benefactors; the Rev. Daniel Baker is no more! This sad intelligence burst upon us so suddenly and unexpectedly, that it has been difficult to realize the truth. I could not believe it until I visited the chamber where this great and good man, this venerable father in Israel, died. I have laid my hand on that cold and marble brow, have gazed on that face which I have so often seen lit up with animation and life, but now stamped with the cold impress of death. I have pressed that hand which I have so often grasped before in the warmth of friendship and affection, but now stiffened and cold. I know that he is dead. As a general thing, I am opposed to the obtrusion of our private griefs on this house to the interruption of business; but I consider the death of Dr. Baker a public calamity. He is justly entitled to the claim and rank of one of Texas’ benefactors. His exertions and usefulness were confined to no particular locality, no limited sphere. Possessed of a catholic spirit, of universal love and benevolence towards his fellow-men, he was prompted thereby to extend his sphere of usefulness as wide as possible. There has been scarcely a State in the Union but has heard his eloquent pleadings in behalf of religion and all the great moral interests of society. Twenty years ago I knew the deceased in Alabama. He was then the same devoted, enterprising, assiduous man and minister that he has been here; and since the scene of his usefulness has been transferred to this State, we all know with what untiring efforts he has exerted himself, not only in the cause of his Heavenly Master, but especially in the cause of education. He has left proud monuments in proof of these truths, and in honor to his memory. There stands not two hundred miles from this place, on the brow of a lofty summit, a beautiful edifice, surrounded by shady groves and academic walks. In it is opened a fountain of science, at which near one hundred youths daily drink. This edifice is Austin College, reared principally by the noble exertions of the lamented deceased, whose loss we are this day called to mourn. But, while these monuments stand, and I hope they may long continue so to do in honor of Dr. Baker, he is gone! Let gentlemen vaunt their cobweb systems of infidelity. Let them hug to their bosoms their Voltaires, their Bolingbrokes, and their Humes, and pillow them under their heads, but give me that pure system of Christianity which will enable me, when my last moment comes, calmly and quietly to consign my spirit to Him who gave it, as did our friend.”

The motion was adopted and the same action was taken by the Senate. The concluding words of my father were prompted by the fact that the very last words of Dr. Baker were, “Lord Jesus, into Thy hands I commend my spirit.”

When my father in later years came to respond to the summons of the inevitable and resistless messenger, who sooner or later comes to every man, he “passed on,” sustained by the same faith which consoled, comforted and assured his friend, Dr. Baker.

So far as I recall, never before or since did a Texas Legislature by formal action pay honor to the memory of one, whose only claim to respect was that he was a preacher of the Gospel.

In the late primary election, there were more than 450,000 votes cast, while in the election of 1845 there were 9,538, of which General J. Pinckney Henderson received 7,853. He was the first Governor of Texas after annexation. His immediate predecessor as chief executive, was Dr. Anson Jones, the last President of the Republic of Texas; an able, unselfish and patriotic man. His grandson, the Hon. Charles Elliott Ashe, has for twenty years filled most acceptably and efficiently the position of Judge of the Eleventh Judicial District of Texas.

Governor Henderson would have risen to distinction in any State, because he was dowered by nature with the elements of leadership. The late Governor Roberts knew him personally and intimately. They lived in the same section of Texas, and practiced in the same courts, and when Governor Roberts became District Judge, General (he was so called as I understand) Henderson practiced before him. Governor Roberts was a competent judge of ability in men, and I heard him say on one occasion that J. Pinckney Henderson was the ablest man ever in public life in Texas.

The Mexican War came on during Governor Henderson's administration and he left the Governor's office and took a command to Mexico and bore himself so gallantly on the field of battle that he won the warmest commendation from Jefferson Davis, under whom he served. "Praise from Sir Hubert is praise indeed." He became a general in the army of the United States while yet Governor. It was said he refused to draw a penny of salary from the State while in military service.

When the war closed, he resumed the office of Governor and served out his term, not seeking re-election on account of impaired health. He returned to his law practice, but if I am not mistaken, was, on the death of General Rusk, chosen his successor in the United States Senate, but death ended his career a few days after he had taken his seat. During the days of the Republic, and shortly after its organization, he was sent as envoy to the Court of France. It was during the reign of the Louis, who was King of France between the death of Napoleon in 1821 and the accession of Napoleon the Third as Emperor of France in 1853. General Henderson met many skilled diplomats in that royal court, but the lawyer from the piney woods of East Texas upheld the dignity of his great station, and reflected the highest credit upon himself and upon the young republic he represented.

He served the Republic with great efficiency in other stations, and was one of the Commissioners who conducted the negotiations preliminary to annexation.

He came to Texas, as well as I remember, in 1836. He was a

man of very wonderful oratorical ability and had the power of fascinating audiences and thrilling them with his eloquence, and in that day and time a man who possessed that power, coupled with even a moderate amount of legal ability, was destined to succeed in a new country like East Texas was at that time, and the success of General Henderson was conspicuous, because he was both eloquent and able.

Under the conditions in which he began life in East Texas, it was often the case that something more was required than eloquence and legal ability.

A good many years ago, some gentleman whose name I do not now recall, but whose statement I accepted without question, related to me the following incident in the career of General Henderson. His home was in San Augustine, but as I recollect, he was attending court in some other county of the district. As he started one morning to the court house, located in the public square, he was stopped by a friend and told if he went to court he would do so at the peril of his life. The General was astounded and asked for an explanation. His friend told him that the only explanation was that \_\_\_\_\_ (naming a man whose reputation as a "bad man" had been already established), had threatened to kill him and was waiting to do so. The General said, "Kill me? What for? I have never done him any harm." The friend replied, "That makes no difference. He will kill you all the same." The General then said, "I have a family to support and cannot afford to be besieged in this hotel and kept away from the court house because a man whom I have never harmed is waiting to kill me without any cause. But what shall I do?" The laconic reply of his friend was, "Kill *him*." The suggestion of that dire alternative to a man who had been reared under wholly different conditions was shocking; but his friend had spoken the truth, and the General acted upon the turgid suggestion and "removed" the man who was preparing to assassinate him; and calmly proceeded to the court house and entered upon the trial of a case.

He was justified both by public sentiment and by the law and no reproach attached to his action. No man who could not fearlessly rise to the demand of such a situation in that day and time was fitted for active career at the bar of East Texas. The typical "bad man" was present then on the border of civilization, as he has always been, and it was the misfortune of a gentleman to be compelled to rid the community of one of that class, though he did thereby render a public service.

It is not meant by this statement to even intimate that there was none but a rude, uncultured class in East Texas in that day and time, for such was by no means the case. On the contrary, many men and women, of education, culture and refinement, dwelt in that part of Texas, even in that early day.

When the Rt. Rev. Alexander Gregg, who for thirty years was Episcopal Bishop of the Diocese of Texas, was ordained in South Carolina in 1859, he came at once to Texas, and I have heard him say that in that day he found a number of families in the San Augustine and Nacogdoches territory that in way of refinement, good breeding and social graces, compared favorably with the splendid people among whom he had been reared in South Carolina, who were the very highest type of Southern people in that day and time, which is to say they were the highest types of the human race.

I do not mean to make any invidious comparison of any one part of the State with another, but the good people of that marvelous realm called "North Texas," often poke good natured fun at "East Texas" by calling it "The Sticks," and old East Texas is entitled to have all the facts that are in her favor stated, and to have her day in court.

Conceding for the sake of argument—but not as fact—that North Texas year in, year out, is the best farming section of Texas, nevertheless it should be kept in mind that the noblest product in any land is the men it brings forth, and in that regard East Texas stands in unchallenged pre-eminence above any other section of Texas. Lest some reader of this may be disposed to treat this statement as a glittering generality not susceptible of being proved, I will set forth later a list as I recall the names from memory, of those who in the last four-score years and more, so to speak, have gone out of East Texas into more or less exalted spheres of service, and further on I shall relate such instances connected with the lives of some of these names in the list as I recall having heard. Why from a comparatively small portion of the State there should have come so many men of ability and who were leaders in every field of honorable activity in the development and progress of the State, is a question which might afford an interesting theme for the sociologist or the student of intellectual and moral development, but I content myself with the statement of the fact, for such it is.

## CHAPTER II.

One of the contemporaries of General Henderson in the diplomatic service in the Republic, was a man of very high order of culture, and admirably adapted for that character of public service. He was Dr. Ashbel Smith, who died within the comparatively recent past in Harris County. While dealing with instances in the lives of these two men, it may be appropriate to indulge in some reflection of the popular idea concerning men who were conspicuous in the early days of Texas.

It has been said, that in a great measure we are prone to magnify the achievements of men of the past. We reverse the physical law of optics, and they appear to grow greater as they recede, and they are greatly magnified by the mists of antiquity. However, to whatever extent this may be true as a general proposition, my experience has been that it does not apply to the men who redeemed Texas from Mexican despotism and established the Republic. They have fallen far short of receiving that measure of appreciation which is their just due. Many people who are not familiar with the early history of Texas, some of them Texans, are inclined to speak in terms of depreciation and patronage of the leaders among the pioneers of Texas.

The idea seems to prevail in many quarters that those men loomed large only because of their environment and because they were contrasted with small men. No conception could be more erroneous.

Many of the men who established the Republic of Texas, drafted its Constitution, shaped its policies and directed its destinies, would have been men of mark in any country and would have left the impress of their ability and constructive statesmanship on any era of history. It is an indisputable fact that from the seven hundred and eighty-three men who composed the Texas army at San Jacinto, more men went to the executive chair, to the halls of Legislation, to the pulpit and to the bar and bench, and to other positions of honorable service, than ever went from the same number of men in all the annals of history.

One of that army had been Governor of a sovereign State and was twice President of the Republic of Texas, twice United States Senator from Texas and Governor of Texas; another died in the position of United States Senator from Texas; another was President of the Republic of Texas, and his nephew and great nephew died while members of the Supreme Court of the United States. Another man who fought as a private in the battle of San Jacinto was twice Governor of Texas and twice Representative in Congress. The son of another San Jacinto soldier was a member of the Legislature of Texas and Major General in the army of the Confederacy. Two brothers who fought in that battle, became not

only lawyers of ability themselves, but the son of one of them, who was two years old when the battle of San Jacinto was fought, was a gallant Confederate soldier, and when on the bloody field of Shiloh the heroic soul of Albert Sidney Johnston was borne home to God on the wings of victory, the arms of that knightly son of the San Jacinto here, enfolded him, and that young Confederate Colonel, Thomas McKinney Jack, came to be the most gracious, graceful, charming and courtly gentleman, and the most accomplished nisi prius lawyer ever at the Bar of Texas.

Dr. Ashbel Smith, as I recollect, was not a Texas soldier. I think he came to Texas just after the Texas Revolution had succeeded. He was born in Connecticut but was a Southern man to the marrow of his bones. He was appointed Ambassador to England, or as he was accustomed in his sharp staccato voice and precise manner of speech to say—"Envoy E-x-t-r-a-o-r-d-i-n-a-r-y and M-i-n-i-s-t-e-r P-l-e-n-i-p-o-t-e-n-t-i-a-r-y to the Court of Her Majesty, the Queen of England."

There are doubtless some who will smile at the suggestion of the little Republic of Texas sending an Ambassador to the government of one of the most powerful nations in the world, with the expectation that he would be able to hold his own with the accomplished men that he would meet there; but the man who entertains the impression that Ashbel Smith was not fitted for the high position, has a very erroneous conception of the facts.

They may think that no man that the infant Republic had within her borders would have proved equal to the occasion, since he must have come from the rude and primitive environment of a frontier country; but I undertake to say that Ashbel Smith never had his superior in scholarship and culture in all Texas in his day and time, or since. In point of profound learning, thorough scholarship and familiarity with the ancient classics and with all the realm and range of literature, and with the conventionalities and amenities of social life; and in professional skill, this nation has never had as an Ambassador to England—one who was the superior of the man sent there by the struggling young Republic of Texas. I make this statement without reservation, barring no man from the comparison.

He had "sounded all the depths and shoals" of learning, not only in the profession which he fitted himself for (but which he rarely practiced except as a matter of accommodation to his neighbors), but in the sphere of literature, science and philosophy. He could translate the oldest black letter Latin as rapidly as the average man can read a newspaper.

One of the most highly educated men in Texas, who was for many years president of a college, told me that upon one occasion he visited Dr. Smith at his very humble little home on the shores of San Jacinto Bay, where the famous Goose Creek oil

field was later developed. He told the Doctor that a lady had asked him for some information about the science of anatomy as related to sculpture. Dr. Smith said at once, "Perhaps, Professor, I can enlighten you upon that point," and turning to his library, he took out an old Latin book, printed in the very oldest style of type, and gave the professor a liberal translation which furnished him all the information the lady desired.

He was very proud, and justly so, of his record as a soldier, of which I will say something later, and preferred the title of Colonel to that of "Doctor;" but the people had become so accustomed to giving him the title of "Doctor" that they persisted in it despite his preference for the military title.

Upon one occasion a gentleman who in his day and time stood in the front rank of physicians and surgeons in Houston, told me that a party once asked him why people called Dr. Smith, "Dr.," and asked if it was because he was really a doctor, or if he had just been dubbed with that title. The gentleman to whom the question was put, looked gravely at the party who propounded it, and speaking slowly, said, "My dear sir, Ashbel Smith has forgotten more about medicine than all the doctors in Houston ever knew."

The Doctor-Colonel was at once such a unique and amiable character that it may prove interesting to give some idea of his appearance and manners and set forth a few incidents in which he was a participant.

He was, as I recall, a man of medium height and slender, and had the appearance of being what is sometimes called "dried up." He looked much older than he really was. I am reminded of that fact by hearing my father (who was a very youthful looking man for his age) say that he frequently said to Dr. Smith, "Smith, when I get to be as old a man as you are, I hope I will be just as active as you are." The jest of the remark lay in the fact that my father was really a year older than Dr. Smith, but looked at least twenty years younger.

Dr. Smith wore, invariably, a Prince Albert coat buttoned closely and what was called in those days a "three-story" silk hat. He had a small tuft of beard on his chin and had he been taller would have been a fair representative of "Uncle Sam" as he usually appears in current pictures. He spoke with great precision and accuracy, in faultless English, and in a sharp penetrating tone.

When the war came on in 1861, though he was then fifty-five years of age, he raised a regiment, which was known as the Second Texas Infantry, and went with it across the Mississippi and was wounded leading it in one of the desperate battles around Vicksburg.

After the war, he represented Harris County in the Legislature and served as late as, perhaps, 1882. He was an actor in a very

amusing incident in the House shortly after the session opened which followed first after the inauguration of Governor Roberts. It will be remembered that the slogan, "Pay as you go," had its origin when the "Old Alcalde" was Governor. While the House was in session one day, a young member got hold of an imitation spider made out of some short pieces of rubber, stuck in cork. The cork was fastened to a string which was tied to a pencil and while the old Doctor sat at his desk, the young member dangled the "spider" several times before his face, and the Doctor pushed it aside. After awhile he discovered that he was being made the victim of a jest, and he sprang up with all the agility of a boy, and his offending fellow member fled down the aisle laughing. The old Doctor followed kicking at him as he went. When called to order by the Chair, he bowed with characteristic courtesy and said, "Mr. Speaker, I pay as I go."

An even more amusing instance occurred at a later period of the session, or perhaps it may have been during the next session. There was a negro member in the House, a mulatto, who wore a flap over one eye. The Doctor was making a speech upon some important question—for he spoke on no other kind.

The negro had seen other members rise and ask another member while he was speaking if he would yield to an interruption, and imitative as his race always is, the negro said, "Will de gentleman from Harris 'low me to interup' him?" The negro was at one end of the hall and the Doctor at the other, and he did not know who had made the request. His manners were always those of the old school, stately, courteous, and courtly, and he turned, prepared to bow low with a graceful wave of his hand and say, "Certainly, with pleasure," but when he had fully turned, he discovered who had interrupted him. In a moment he was rage incarnate, and raising his keen, shrill, clear voice to the highest pitch, and pointing a long bony finger at the negro, fairly shrieked, "Sit down! Sit down! You d—— yellow scoundrel!" It is hardly necessary to say that the colored member "sat down" forthwith.

The "interrupter" fared better with the old Doctor than he did a few years later when he interrupted without permission, or without asking it, the proceedings in the course of the trial of some women of his race in a minor court in the town in which he lived. His interruption angered one of the attorneys, and a difficulty speedily arose, and in the twinkling of an eye the career of the aforetime legislator was brought to a tragic end.

Quite a number of years ago, maybe twenty or more, a gentleman who had been Judge of a District Court in East Texas, told me that in a case in which a negro girl was charged with poisoning her master, Dr. Smith had been summoned as an expert in chemistry to testify as to the effect of certain kinds of poison. He had

failed to appear at a previous term of the court and there had been a fine of \$50.00 assessed against him.

When he entered the door of the rude building in which the court was being held the next term, he removed his three-story hat and bowed low to the Judge and said, "May it please your Honor, I have been advised by the service upon me of legal process, that at the last term of this honorable court, there was entered a fine of \$50.00 against me for failure to appear before this honorable tribunal upon a certain date and day fixed, and I desire to explain to the court the reason of my non-appearance. The City of Houston, near which I have the honor to reside, conceived the very commendable purpose of establishing in that city, an institution of learning of the highest order, and knowing my familiarity with philosophical and chemical science, solicited me to go to the City of Philadelphia and there select and purchase the equipment for the chemical laboratory for that institution of learning. I went, and reached the City of Philadelphia, and performed the pleasing duty assigned me and started upon my return home in ample time to have reached there, and would have been here at the day appointed; but the train upon which I was traveling was, by reason of accident, hurled from the track and I was covered with the wreckage of the train, and though neither killed nor wounded, was grievously shaken up." At this point the Judge interrupted him by saying, "Doctor, you are excused. Take the stand and be sworn."

The result of the trial, or rather the reason given by the jury when the verdict was returned, was as amusing as was the Doctor's excuse for not being present at the former term.

They propounded to the Doctor a great many hypothetical questions and he would reply, "Upon that hypothesis, I will testify as follows," and when the opposing counsel took him under examination, he would say, "Upon the hypothesis you propound I will testify as follows," and he proceeded to testify with that clearness and ability which his scientific knowledge enabled him to easily do. He used necessarily, as did the lawyers many times, the term "hypothesis." The guilt of the young negress was very doubtful and she was acquitted, a result which gave displeasure to many friends of her alleged victim, and when the foreman of the jury was questioned as to how he could have possibly arrived at such a verdict, his explanation was, "Oh, hell, man! The man didn't die from pisen. He died from hypothesis!"

This incident may sound somewhat apocryphal, but the same judge told me that the first case of felony he ever tried in one of the counties of his district, and if I am not mistaken it was the first case of any kind ever tried in the county, the jury retired to the sloping side of a hill and sat down on the grass under the shade of a tree, for there was no court house. The case was one

of alleged cattle theft and the jury wrestled with the verdict for an hour or two and then marched slowly up the hill to the shade of the tree under which court was being held and handed in to the Clerk the verdict, reading as follows: "We, the juror, clear the Defendant."

The late Alexander Watkins Terrell, a charming raconteur and delightful companion, told me a few years before his death two most interesting stories which Dr. Smith had told him. Anyone who ever saw Dr. Smith can appreciate the humor of them better than can those who never enjoyed that delightful privilege.

He pronounced Judge Terrell's name as if the last "e" was an "i," just as he invariably pronounced my father's name as if the "i" were an "e" and the "e" was an "i." He said, "Terrill, when I was Envoy Extraordinary and Minister Plenipotentiary to the Court of Her Majesty, the Queen of England, I was upon one occasion invited to a levee at the royal palace. An invitation from royalty being equivalent to a command, I of course went. Shortly after I had arrived the Duchess of Kent, the mother of the Queen, invited me into a very handsome conservatory filled with rare flowers, and said to me: 'Dr. Smith, some of my German relatives have in view the establishment of a colony in a part of your State lying, I believe, west of a place called Austin. They purpose to call the colony or the town when it is established, New Braunfels. My relatives entertain the hope that they may possibly be able to stay the spread of slavery westward, and I would be glad to know if you are familiar with that portion of the Republic of Texas.' I at once launched forth into a most e-l-o-q-u-e-n-t and rapturous description of that portion of Texas. I pictured all its virgin beauties, its delightful flowers, fertile soil and far-spreading landscapes. I painted it in such flowing colors that the dear old lady believed her kindred were destined to dwell in a veritable paradise, and she was delighted with the interview.

"Now, Terrill, to speak truly, I had never been in that portion of Texas in my life, and considering I drew wholly upon my imagination I made quite a success of my poetic description. I could not afford to let her royal highness think I was not familiar with every part of the Republic."

Judge Terrell, when he had finished the recital, said, "You see, that old woman away back there in 1844 or 1845 was planning to interfere with the spread of slavery in this country."

The other story was related by Dr. Smith as follows: "Terrill when the position of President of the Republic of Texas was held by Sam Houston the Capitol stood, as you know, upon the very spot where this hotel in which we are sitting now stands." They were in the Capitol Hotel in Houston, which stood where the magnificent Rice Hotel now stands.

"One night the President said to me, 'Doctor, have you your pill

bags?" I replied, 'I have.' The President said, 'Then follow me.' I did so. He turned, as I believe it is in yonder direction (pointing west), to what I think was then, as now, called Travis Street. It was very muddy, and of course there were no sidewalks—but there were some logs and pieces of rough boards put down at intervals along which we had to walk as best we could. The President went before in perfect silence, and I followed." (Any man who can remember having seen both men as I can with fair distinctness, can draw in his mind a picture of the scene. The two men picking their way in the semi-darkness over muddy logs and slippery boards, the one six feet two and weighing perhaps 195 to 200 pounds, perfectly erect and walking with a dignified, majestic stride when conditions under foot made it possible, the other about five feet seven or eight, weighing probably 130 to 140 pounds, and walking with quick, short, somewhat mincing steps, going on a mission, the purpose of which only the leader knew.)

The Doctor continued, "When we reached the intersection of this street, which is, I believe, Texas Avenue and Travis Street, we found a kind of shack built of boards and boughs, and in the middle of it was a large pot swinging on a tripod or crane."

(The Rice Annex Drug Store now covers that ground.)

"A huge Indian stood by the pot waving over it a rod or stick, or wand, evidently practicing some kind of savage incantation. A slow mist-like rain was falling, and shelter was desirable, but as soon as the President saw that the Indian was conducting a ceremony of some kind he stopped and uncovered and bowed his head. When the ceremony was over the President entered, I following, and the President turned to me and said, 'Doctor, there is your patient,' pointing to an Indian who was lying on a plank stretched on two blocks or chunks of wood in the corner of the rude apartment. I felt the pulse of the Indian and then said: 'Mr. President, I can detect no pulsation.' The President placed his hand over his heart and bowed and said, 'Ah, Doctor, is that so?' I then felt over the heart of the Indian and said: 'Mr. President, I can detect no, or, but little heart action.' Again the President placed his hand over his heart and bowed and said: 'Ah! Doctor, is it possible?' As the President was apparently much interested in the Indian, I repeated the examination and said: 'Mr. President, your friend is in *articulo mortis!*' Again the President bowed and said: 'Ah! Doctor!' After yet another examination I said: 'Mr. President, I regret to announce that your friend is dead.' The President bowed again and said: 'Indeed, Doctor, dead? Is John dead? Upon my soul I thought John was too d——d a rascal to die,' whereupon, still with head uncovered, he strode majestically out of the shack into the mud and darkness without another word." The incident occurred

many years before President Houston abandoned the habit of profanity, and united with the Church, in the faith of which he lived and died.

A few years before Dr. Smith died I was walking down the street near the gate of the Capitol grounds and overtook him. He mistook me for my uncle, the late Major T. J. Goree, whom I greatly resembled, and whose name he always pronounced "Gurree." The Doctor was then one of the regents of the University, of which institution he was the enthusiastic friend. He said: "Good morning, Gurree, I am delighted to meet you. I have just had an interview with the professor of whom I spoke to you a few days since." I said: "Doctor, you have mistaken me for my uncle." "Ah, I see, of course this is *Kettrill*. I have known you from your boyhood, but as I was saying, the professor declined to analyze some very interesting mineral specimens I brought with me unless he was compensated for his services. Between you and me, speaking after the manner of men, the professor is a d——n fool."

He was a most interesting, instructive, amusing character, a gentleman, a scientist, a scholar, a man of business, a graceful writer, deeply learned in the science of medicine, a brave soldier, and a man who trod levels so lofty that truth could not, and malice dared not, assail him. "Take him all in all, we shall not look upon his like again."

## CHAPTER III.

The successor of General Henderson in the office of Governor was the Honorable George T. Wood, of Polk County. He served as I have heard, several terms in the Congress of the Republic and was also a gallant soldier in the Mexican War. The home in which he lived was then in what is known as Polk County, but is now San Jacinto County. His home was approximately twenty-five miles east of Huntsville, and a few miles west of Ryan's Ferry, where Kickapoo (I think that is the name) Creek enters the Trinity River from the east.

The total number of votes in that election was 14,767, an increase of over 5,000 in two years. Governor Wood received something less than a majority of the entire vote. I never saw him so far as I recall, though long after his death I frequently passed by the home in which he died. I have heard my father say that the road over which he came from Alabama with his family, and with his slaves, and with the family and slaves of my maternal grandfather, and quite a number of other planters, ran in front of Governor Wood's home, which was located, as I have stated, just west of the Trinity River. He had about a year before retired from the office of Governor and was living on his plantation.

In later years I heard some of my father's slaves say, that as the caravan of wagons and teams drew near the house, Governor Wood walked out of the woods near at hand with a long Kentucky rifle on his shoulder. He had been hunting and as it was dead of winter, he was suitably dressed. The darkies heard that he had been Governor and they expected to see what they called a "big man," dressed in fine clothes. My father, their master, always wore old-fashioned cut-away coats, with front flap trousers and wore a high hat and stock and standing collar, and frequently carried a gold-headed cane, and his negroes took him as a model dresser, and the garb of Governor Wood was very surprising to them, although it was adapted to the season. I do not suppose that any of them had ever seen a Governor and they were unable to associate the plain garb, and long rifle, with one who had been the "biggest man in the State."

I saw recently in some purported historical publication, that Governor Wood died in Panola County in 1858.

My impression is that the author is mistaken. Unless I am in error, he died in 1859 in what was then Polk County, but is now San Jacinto County. As I have said before, I have often been to the place where he lived, and, I believe, died.

My father was a physician with a very large practice, and answered calls from long distances. He lived in Huntsville in 1858 and 1859, where he practiced his profession. His plantation was fourteen miles east of Huntsville and about twelve miles west

of Governor Wood's. He was called to see Governor Wood in his last illness. He responded promptly and when he entered the room where his patient was lying, the latter, in a strong, deep voice, said: "Good morning, Doctor, I am glad to see you, or rather I should say I am glad you have come, though I cannot see you. This doctor here who has been treating me has been giving me medicine which has rendered me unable to see you. I know you have come as quickly as you could, but you have come too late to be of any service to me. My condition is such that I am beyond help at your hands, yet I am greatly obliged to you for so promptly responding to my call." The circumstances attending the last illness of the old Governor were related to me by my father. The Governor had correctly diagnosed his own case, for he soon passed over to join the silent majority. He was a courageous soldier, and a rugged, sturdy patriot.

I, of course, know nothing of the causes which brought about his defeat for re-election, but in all likelihood it was the result of the war sentiment which was still strong. The battle of San Jacinto had been fought only about eleven years before, and his successful opponent, Peter Hansborough Bell, fought gallantly as a private in that battle, and in the War between the United States and Mexico did gallant service as a Colonel of a regiment. It has often proved to be the case in this country that a man who has done courageous service as a soldier is very hard to defeat. In the election of 1849 Colonel Bell defeated Governor Wood by about 1,550 votes, and the total increase of the votes over the number in 1847 was about 50 per cent.

After Governor Bell had finished his second term of office as Governor he served two terms as a member of Congress from Texas. Later he moved to North Carolina and I have been told, or heard somewhere, that he commanded a regiment in the Confederate Army, but whether that is true or not, I am unable to say. He died in North Carolina, in the comparatively recent past, at quite an advanced age. I have been told that he was in straightened circumstances in the latter years of his life, but if I am not mistaken the Twenty-Second Legislature came to his relief by the donation of a grant of land and a pension. He deserved all that was done for him, for he was a clean-handed, honest, public servant.

I have heard my father tell of a very amusing literary mistake he (Governor Bell) made in the opening sentence of one of his messages. I do not set down the incident to even appear to disparage the learning of Governor Bell. Mistakes in literary quotations are, by no means, infrequent. Many people believe that the adage, "God tempers the wind to the shorn lamb," is to be found in the Bible; whereas, it is from the pen of Lawrence

Sterne, a famous English writer of, I believe, the eighteenth century.

A man once prominent in Texas politics, who belonged to a distinguished family and who won great distinction as a cavalry leader in the war between the States, was a very pronounced enemy of Sam Houston. In the course of a speech he declared he was not afraid to proclaim his views on the issues of the day or debate them with anyone on the opposing side, not even the great "Sanhedrin" himself. He used the term "Sanhedrin" in the sense of applying it to an individual, whereas, it is a matter of common knowledge that the "Sanhedrin" was a Jewish tribunal, composed of seventy-one deacons, priests and elders. The mistake which Governor Bell made was that he got the Bible and Shakespeare mixed. In the opening sentence of one of his messages he said: "I congratulate the Legislature upon the auspicious conditions under which it has assembled," and added, "in the language of Holy Writ, 'Now is the winter of our discontent made glorious summer,'" which quotation is not from the Bible, but is the opening lines of that great tragedy, "Richard III."

I, of course, do not know whether there were any political conventions held in those days or not, but I have heard there were none. Every man was free to run or not, according as he saw fit, or considered that he had, or had not, a chance for election. The election of 1853 resulted in the election of Elisha M. Pease. He was a man of Northern birth and came to Texas in 1835. He served the Republic very efficiently in several positions, and was elected to the Legislature, both the House and Senate. He sided with the Democratic Party until it espoused the policy of secession.

Unlike some other men who held the same views that he did regarding secession and the war, he did not leave Texas nor give any aid or comfort to her enemies, though he took no part in public affairs. When he was in the Legislature he drafted the admirable system of probate laws of Texas, which is a monument to his legal ability, and his thoroughness and efficiency. After the close of the war he was appointed Provisional Governor, but resigned because of some differences with the military commander of the district of which Texas was a part. He was a man of very high character and was justly respected by all who knew him. I do not recall that I ever saw him, though he died as late as 1883. He achieved a great reputation as a lawyer while at the bar. As early, perhaps, as 1838 the firm of Harris & Pease was formed in Brazoria County, where both men lived at that time, and their names appear in many volumes of the reports. Judge John W. Harris afterwards became Attorney General of the State. His name appears as the occupant of that office, in the three first volumes of Texas Reports. He was a man of ability and courage.

At the time of his death, about twenty-five years ago, he lived in Galveston.

I have heard an incident related of his life that illustrates the kind of a man he was in his earlier years. It is said that he was once challenged for a duel in the days of the Republic, and availing himself of the privilege which the challenged party always had, he chose shotguns at ten paces. The challenging party, through his seconds, declared that such a condition meant nothing more nor less than murder, and that the Code did not authorize any such condition. Judge Harris replied, so it is said, that "the Code did not provide for near-sighted men, and he was near-sighted and could not see over ten paces." He stood by the condition he had prescribed, and the duel never came off.

Like many other lawyers in those days, he was obliged to take, in many cases, land in payment of fees, and was for many years "land poor," but as Texas increased in population and railroads were extended into new territory land rapidly increased in value, and in consequence the estate left by Judge Harris was a princely one.

He married the widow of James Wilmer Dallam, whose work, *Dallam's Decisions*, is to be found in most law offices. At the time of his marriage it was understood that he would adopt the only child of his wife by her first marriage, but for many years it was believed he had not done so, but long after his death it was discovered, wholly by accident, that he had kept his word, as the articles of adoption were found recorded in the archives of Matagorda (the proper) County.

The adopted child, a daughter, married many years ago Branch T. Masterson, a member of the well known Masterson family of Brazoria County, which has probably furnished more lawyers and judges than any other family in Texas. B. T. Masterson had few superiors in Texas as a land lawyer. He practiced before me, and I held him in highest regard, both as a man and as a lawyer. He died very recently. He was named for Dr. Branch T. Archer.

As I recollect, Judge Harris died prior to the Galveston storm in 1900. His elegant home was in the far western part of the City of Galveston and was swept away by that storm, and most of the members of the family lost their lives. The home of B. T. Masterson was also destroyed and Mrs. Masterson lost her life, and as I have understood, her body was not recovered until some ten days or two weeks after the storm. The Harris family was a charming, typical Southern family, and in the Harris home was illustrated all the splendid traditions of Southern breeding, culture and hospitality. It was my pleasure to have known most of the family.

The use of the name of Branch T. Archer reminds me of an

amusing incident in which Sam Houston is said to have taken part. Dr. Archer, for whom Mr. Masterson was named, was a surgeon of great skill and a very courageous man, and it is said that he and Sam Houston became very bitterly estranged, so much so that Dr. Archer had threatened personal violence to General Houston on sight. A short time before the incident occurred General Houston had met the editor of a newspaper who had published in his editorial columns some very severe strictures on the old General. The old gentleman met him on the street one day and said: "My friends tell me, sir, that you have dared asperse my name in the columns of your miserable sheet. I have not seen it myself, for I would not defile my hands by touching it, but I tell you now, that if you use my name again, I'll cut your d——d ears off and nail them to a post."

It is said that shortly afterwards he saw Dr. Archer coming down the street meeting him, and that as soon as he saw him he said: "Dr. Archer, I regret to be informed that you are a victim of that most distressing physical affliction called inflammatory rheumatism. During my residence among the Indians a squaw furnished me a sovereign recipe for that most painful malady, and I would be most happy to give it to you and thereby contribute to your relief from suffering."

By that time they had gotten opposite each other, and Dr. Archer raised his hat and bowed and the old General, then a comparatively young man, and President of the Republic, returned the bow with courtly grace, and both passed on. The old General had the most admirable gift of adjusting himself always to the present situation.

## CHAPTER IV.

The election of 1857 was, in some respects, the most remarkable ever held in Texas, in that it resulted in the defeat of Sam Houston for the office of Governor. There was already felt the premonitory symptoms of the gathering political storm, which broke upon the nation a little more than three years later. Secession had become to be talked about, and the political tide in the North was setting in a direction which indicated the election of an anti-slavery candidate. The indications were that secession was, by no means, improbable, and it was known that General Houston was a devout and intense Union man and bitterly opposed to secession, and there is no doubt but that that question had much to do with the result. Hardin R. Runnels was the successful candidate. I do not recall that I ever saw him but once in my life, and that was when I was a lad, hardly old enough to remember it. As I remember him, he was a man of medium size, hair auburn if not bright red. He had been Speaker of the House and lived in Bowie County. He was a man of high character and fair ability. His running-mate was Frank R. Lubbock of Harris County, while General Houston's running-mate for Lieutenant Governor was Hon. Edward Clark of Marshall, Harrison County. Governor Runnels received a majority of 3,924 votes. I was not old enough to remember very much about the election, but I think it likely that General Houston was still in the Senate, and I venture the opinion that he did not believe the people of Texas would defeat him for any office, but they did.

He bided his time, however, and in 1859 the two tickets were exactly the same as they had been in 1857, and though the election was held two years nearer the day of secession, and the feeling had grown much stronger in favor of that policy, the result was a distinct reversal of the former vote. General Houston was at that time sixty-six years of age, and was suffering from the wounds he had received in Indian warfare, and at the battle of San Jacinto. The campaign he made over a vast territory in buggies, carriages and stage coaches, speaking in school houses and under bush arbors, and in almost every conceivable kind of place, was a most remarkable one.

He increased his own vote over 8,000 and obtained about 5,000 greater majority over Governor Runnels than Governor Runnels had obtained over him. It was a wonderful achievement under all the circumstances, but Sam Houston was a power on the stump and was in many ways a remarkable man. I do not recall that I ever heard him make a speech, but I remember very well having seen him, and I have been in his house when I was a lad. Mrs. Houston and my mother were educated at the same institution and married in the same county in Alabama, though Mrs. Hous-

ton's marriage preceded that of my mother's by quite a number of years. .

When my father came to Texas he settled near where Governor Houston lived, and while they never agreed politically, their personal friendship, and that of the two families, remained unbroken.

The general outline of the career of Sam Houston is a matter of common knowledge, but even up to this time there exists, in some quarters, much misapprehension as to the character of man he was, and many people are disposed to disparage his ability and achievements. Some years ago I took the time and performed the labor necessary to examine closely the story of his life, and while the statement may provoke dissent from many, I undertake to say that no man in the history of this nation, since the colonists first landed in 1620 at Jamestown, Virginia, up to this time, ever had so unique and remarkable a career as did Sam Houston.

This statement is made without reservation and no man is barred from the comparison. In 1806, a barefooted, fatherless boy, he journeyed with his widowed mother and seven brothers and sisters to the mountains of East Tennessee. At sixteen years of age he lived with the Indians and joined with them in their sports and in the chase. Within the period of twenty-one years he passed through the honorable gradations of a clerk in a country store, of a teacher of a country school, and lieutenant in the United States Army under Andrew Jackson, and was thrice wounded in one of the bloodiest Indian battles of modern times.

He was a student of law, a lawyer, prosecuting attorney, adjutant general, twice a member of Congress from Tennessee, and Governor of that State. If his career had ended there, it would have been a remarkable one, but his later achievements were even more remarkable. He resigned from the office of Governor of Tennessee, crossed the Mississippi River, and again took up his abode with the Indians in the primeval forests of Arkansas and lived as they lived for more than three years. He put foot upon the soil of Texas for the first time on December 10, 1832, and predicted then and there, that he would be the President of a Republic.

The Texas Declaration of Independence was adopted upon his motion on his 43rd birthday, and he was at once appointed Commander of the Armies of Texas. On the 21st day of April he led that army to victory at San Jacinto, and became first President of the young Republic, established by that battle. After a constitutional intermission of two years, he again became President. After his term as President had expired, he served in the Senate of the Republic of Texas, and when Texas became a State was elected to the United States Senate, and served in that august body twelve years with honor and distinction. He was elected Governor and retired from public life as the Governor of the State,

which eventuated out of the Republic which his services were largely instrumental in establishing twenty-five years before.

If there is any such record of achievements in all the annals of American history, I have never discovered it in my reading. The military and civil career of General Houston and his varied and valuable services, present a tempting theme, but I can do no more than give this cursory sketch of as brave, as honest and as devoted and faithful a public servant as ever held official station.

When General Houston was deposed and removed from the office of Governor, Lieutenant Governor Clark succeeded him. I remember hearing a story told concerning what General, or Governor Houston said about the matter of the transfer of the office. It sounded very much as if it were true. A friend asked General Houston how the matter of his giving up possession and Governor Clark taking the executive office was carried out? He replied in the deliberate manner in which he always spoke: "I went over to the Governor's office after breakfast, expecting to proceed with the public business, but found little Eddie Clark in possession. I verily believe he camped all night at the wood pile so as to be on hand at an early hour in the morning."

The old man, of course, felt irritated, and was laboring under a sense of what he believed was injustice, and under such circumstances much must be pardoned. When he was aroused his tongue was never coated with honey or oil. He really meant no unkindness, but what he said was unjust to Governor Clark. The term "Little Eddie" was most inapt, for Governor Clark was a tall, portly, dignified gentleman who had the respect of all who knew him.

His views on the overshadowing issues of the day, and those of General Houston were different, and when the office became vacant by the deposition of the Governor, Governor Clark became his constitutional successor and felt able to take such oath as Governor Houston was unwilling to take. The latter demeaned himself with great dignity and exalted patriotism in that time of stress and turmoil and trial.

He always had the courage of his convictions and he would not have surrendered them for any office on earth. He warned the people that secession was most unwise, that success of their cause in case of war was impossible, and never ceased to plead for the Union, even when public passion was at highest tide. He had the prescience of a prophet, and the courage of a martyr.

## CHAPTER V.

The election of 1861 was remarkable in one respect, namely, that the two candidates for Governor had both been Lieutenant-Governor and both had been defeated for that office. I was not old enough to know much about politics in 1861, but the official returns show that it was the closest election ever held in Texas before, or, so far as I know, since. Governor Lubbock was elected by only 124 votes. In that most instructive and charming book entitled, "Sixty Years in Texas," written by him, he says that when he got as far as Bastrop on his way to Austin after the election the result was still in doubt and he stopped with friends in Bastrop to await definite information as to the ultimate result, lest he might find when he reached Austin that he had been defeated. Governor Lubbock and my father were friends and I have seen him often and knew him as well as a young man could know an old one. He was a very worthy character. He was from Harris County and had been District Clerk of that county since 1841. His case was the only one which I ever knew of a man going from the District Clerk's office to Lieutenant-Governor of the State, and from the Lieutenant-Governor's office to the Governorship. His career most forcefully illustrates that while intellectual ability and the graces of oratory, and the electioneering gift may be, and, of course are, most helpful aids to political success, yet no politician or candidate for office ever possessed so valuable an asset as is the reputation for incorruptible, personal integrity.

Governor Lubbock was not a big man, either physically or intellectually, but he was an absolutely honest man, and was a bright, catchy, amusing speaker on the stump, but not a reasoner or a deep man, mentally. His competitor, Governor Clark, was a much more impressive looking man, because he was tall, very dignified, and in every way a most worthy gentleman. Governor Lubbock lived to be over ninety years of age, and died respected and honored by all who knew him. When he was in political life, and for several years after, he had a habit, which was not uncommon to many men in his day and time—that of indulging in various brands and styles of profanity. He swore like a trooper, but was always clean of speech and indulged in no vulgarity. He forsook that habit a number of years before he died and joined the Presbyterian Church. Sam Jones was accustomed to say that repentance meant "turning around and going the other way." The illustration is a very good one, and it fits the case of Governor Lubbock admirably, because he turned completely around and was a most devout and exemplary Christian to the day of his death. He had undergone many hardships and dangers, and borne great responsibilities; and when the snows of more than

four-score and ten winters had whitened his locks, he passed to his final rest consoled and comforted by that faith which has been the comfort and consolation of so many of the lowliest and loftiest of the children of men.

Governor Lubbock did not offer for re-election, but at the conclusion of his term of office went to Virginia and offered his services to the Confederate Government and was assigned to duty on the staff of President Davis, whose devoted friend and champion he was to the last hour of his life. He carried the baby daughter of President Davis, later known as "the Daughter of the Confederacy," in his arms to visit her father when he was a prisoner in the dungeons of Fortress Monroe. When that daughter, who had grown to gracious, charming womanhood, came in 1895 to attend the Confederate Reunion in Houston, Governor Lubbock met her, and every man and woman who saw that meeting between the gray-haired old man and the youthful, beautiful woman looked upon it through the mist of tears, which could not be restrained.

After the lapse of fifteen years, Governor Lubbock entered public life again. In 1878 he was nominated for State Treasurer at the same convention which nominated Honorable O. M. Roberts for Governor. He held that office for six terms, or twelve years, and discharged the duties pertaining to it as he did every other public trust, with conscientious fidelity and absolute integrity. He was absolutely, indeed, it might be said, fanatically honest. About the beginning of the war, 1861-65, a fund had been raised in and around Houston, amounting to about \$1,200.00 for some patriotic purpose; perhaps for the erection of a monument of some kind. Governor Lubbock was made treasurer of the fund. After peace had been declared and the people were in a mental condition to give attention to such matters, it occurred to somebody to inquire about that particular fund. The inquiry developed that it had been turned over to Governor Lubbock. He was called upon for it. He produced it to the last penny forthwith, and it was said that he not only produced \$1,200.00, but produced the identical \$1,200.00 put in his hands some five or six years before.

When Governor Roberts became Governor and Governor Lubbock Treasurer, the financial condition of the State was very bad. The Old Alcalde adopted the policy of "pay as you go," and Governor Lubbock was heartily in sympathy with that policy, but his efforts to establish it and to enforce it caused him no little trouble. In all counties of less than 10,000 population, the sheriff was also tax collector, and it became customary—there being no law to forbid it—for a tax collector to bring a lot of money to the Treasury in one pocket, get a receipt for it, and then reach into the other pocket and pull out a lot of warrants and get it back. The old Treasurer proceeded to get a register and register warrants,

and if there was enough money on hand to pay the registered warrants and those that had not been registered he would pay both, but if, for instance, there was warrant No. 20 that was registered, he would not pay any other warrant until that one had been paid, unless he had money enough to pay both.

The first collector who paid in a lot of money but failed to get it back with the warrants he had in the other pocket raised a loud complaint, which was taken up all over the State, but Governor Lubbock adhered to the system. I always had great reverence and respect for the old man, both because of his high character and because he and my father were friends in days gone by; and so when I chanced to meet him on the street one day in Austin, I said: "Governor, this plan, or system, of registering warrants you have invented and put in force is worrying a lot of people." A gentleman, who was in my company, said: "I do not see how you can do it, Governor. There is no law for it." It was before the old man had joined the church, and he said: "D——n it, I made a law of my own, and if you don't think it works, you come up there with a lot of warrants that ain't registered and I will be d——d if you get your money until all earlier warrants are paid."

I met the old gentleman in the early part of 1883, while the Legislature was in session in the temporary capitol. He came into the Senate chamber on a very cold morning with an overcoat that reached nearly to the ground, and was wearing a cheviot cap that was covered with sleet, as he had just come in from the street. I bade him good morning and expressed the hope that he was well. He replied: "I feel better, I'll be damned if I don't." I asked if he had been unwell. He said: "No, but they have been counting the money in the Treasury for the last three weeks and I do not know whether it is all there or not. I believed it was. I get the best men I can get for the money they allow me, to take it in and pay it out, but I couldn't tell whether it was in fact actually there or not, but it is there to the last damned cent and \$6.00 over that I have made in change, and I tell you I feel better."

As soon as the committee's report revealed that there was several million dollars of actual money in the Treasury, it was suggested by some legislator that the bond of the Treasurer should be increased. When I happened to meet the old Governor one day I asked him if he had heard that there was a movement to increase his bond to half a million dollars, and asked him what he would do if such an act was passed. His reply was: "I would resign the d——d office in fifteen minutes. I am not going to crawl around on my belly and ask any man to go on my bond." He was elected Treasurer for the last time in 1888, at the same election Governor Ross was elected for the second time. At that time I was on the bench in the Twelfth District, and the Legis-

lature did me the honor to invite me to administer the oaths of office to the Governor and Lieutenant Governor elect.

After the ceremonies were over upstairs I went down to the Attorney General's office, and all the other officials constituting the executive department gathered there, and I administered the oath of office to all of them.

It was, of course, none of my business whether the Treasurer had given bond or not, but because I knew the old gentleman so well and respected him so highly, I asked him in a jesting way, "Governor, have you made your bond?" With typical earnestness and promptness, he answered, "Yes, sir," and thrusting his hand into the side pocket of his coat, said, "Here it is and it wasn't made in Austin either." I glanced over the bond and I knew all three of the sureties, whose names I could set forth if necessary. It was good for a million dollars, though it was for only \$75,000.00, all the law required.

I heard one of the most graceful and appropriate references made to Governor Lubbock by a toastmaster at a banquet that I recall ever having heard made on such an occasion.

The banquet was that given in 1889 by the citizens of Galveston to celebrate the passage of the bill making an appropriation for deep water; which was incomparably in all its appointments the greatest and most sumptuous banquet I ever saw spread, and many men from other States so pronounced it.

R. B. Hawley, who as a Republican represented the Galveston district in Congress for four years, was toastmaster. He was a handsome, graceful, cultured man, and introducing Governor Lubbock quoted from the last scene of the great drama, "Richelieu." The banquet was held just about the time the Treasurers of three Southern States had defaulted and absconded. Mr. Hawley said: "When traitors had poisoned the mind of the thirteenth Louis against his Prime Minister, the great Richelieu, and he was in the very act of dismissing him from his post of power, he discovered the treason, and found danger pressing on every side, and in that hour the King said: 'No successor to Richelieu. Round me thrones totter, dynasties dissolve; the soil he guards alone escapes the earthquake.'

"In more than one other State, Treasurers have proved faithless to their trusts, but the treasury of Texas has been guarded by an honest servant, and while other sister states bemoan their vanished treasure, Texas, thanks to one with us tonight and who we are proud to honor, has escaped the earthquake. I present to you Ex-Governor Frank R. Lubbock, State Treasurer, for whom there is no successor needed."

It struck me as a most felicitous introduction.

Senator Coke, who was a guest and who had been then for about twelve years in the Senate, responded in a few very forceful

words to the toast, "The President of the United States." He said in his calm, deliberate, impressive manner of speech: "We differ as partisans among ourselves as to policies and politics, and parties, and as to such matters up as to tariff and coinage, and as to our preferences as between men whom we desire to be President, but there is one gratifying fact concerning which among Americans there can be no difference of opinion, and that is that from the time of George Washington down to this, the day of Benjamin Harrison, there has never been a man in the executive chair of this great nation who was not an honorable, high-minded, clean-handed gentleman." Blessed is the nation concerning whose chief executives a great Senator could truthfully make such a statement.

No man connected with the Government of Texas, or any other State, ever left behind him a record of public service more honorable and worthy than did Frank R. Lubbock.

## CHAPTER VI.

There were incidents in the lives of many of the leading men who came to Texas at an early date that are worthy to be perpetuated, and while many are more or less amusing, they are illustrative of the character of the men, and some of them are remembered more distinctly than is any special feature of their public service. I deal with the name of Governor Roberts, without regard to chronological order—as he lived in Texas for over fifty years and belonged to several eras of Texas history.

Perhaps no man was ever better known in Texas since the days of Sam Houston than was Oran Milo Roberts, and no man was more deeply entrenched in popular confidence and respect. He was a singular combination of intellect, and almost childish simplicity. He came to Texas nearly eighty years ago as a very young man, and was District Attorney and District Judge, and about sixteen years after he arrived in the State he became Judge of the Supreme Court. He was popular, yet he had none of the arts of the demagogue. He did not possess one qualification that many successful politicians possess—the art of public speaking. He did not have the gift of ease and grace as a public speaker. He had none of the arts of the orator. It is doubtful if he ever attempted a simile or metaphor in the course of a public speech in all his life, but he knew what he meant to say, and said it in clear-cut English, and his patriotism and Spartan integrity, and his unselfish devotion to Texas, gave weight to what he said. Every man who heard him knew there was behind what he said, that which must be behind every speech if it has any weight, or in anywise influences popular action, namely—a man.

In the field of judicial writing he was at his best, but of this I will have something to say later. It was almost inconceivable that a man who could write such opinions as came from the pen of Judge Roberts, could be at the same time so absolutely simple in speech and action as he was at times. To illustrate what I mean: while he was a much older man than I, I enjoyed hearing him talk in that peculiar manner of speech which characterized him, and he was always interesting. On one occasion I heard him talking about his experiences in the army. He said one day they were about to have a battle and his commanding officer ordered him to throw his regiment across the creek that lay between the two armies, and he said: "I threw my regiment across the creek," then he stopped and in perfect seriousness made the following explanation: "Now you understand I didn't take each man up myself and pitch him across the creek, but I said, 'Boys, get over the creek, get over the creek.'" This was not said in the way of a jest, but in seriousness, as if he thought it necessary that he should not be literally understood as having

thrown eight hundred or a thousand men across the stream by sheer physical force.

The amusing naturalness and simplicity in a certain sense of Judge Roberts can best be illustrated by two well attested incidents. In 1874 and 1875, when he was on the Supreme Bench, the Court sat at Galveston, and the term synchronized with that festival and frolic known as the arrival of Momus, or Mardi Gras. It was a season of revelry and riotous fun. By common consent all city ordinances against minor offenses were suspended and the city, so to speak, was wide open.

For one day at least all social barriers were let down and the *creme de la creme* of society and the underworld mixed. Even the ordinances which regulated the movements of ladies of leisure were for the time being, abrogated, and they had full and unrestrained access to the streets. The old Judge, though gray-haired and venerable and dignified, enjoyed the fun and frolic as much as the youngest person on the streets. He never forgot his dignity, but he was a thorough Democrat and every crowd was his crowd. Wine, and even stronger stimulants, flowed fresh and he was by no means Puritanical, but indulged on proper occasions. "When in Rome do as the Romans do" was the motto he believed in.

The wine and the excitement, and the music, and the hustling and jolly crowd thrilled the venerable Chief Justice, and he was in such a state as not to be able to clearly distinguish between the most circumspect and refined lady of the inner circles, and her less scrupulous sister. Two of the latter class gaudily arrayed and full of the spirit of the occasion, and perhaps of other inspiration more substantial, were attracted by the erect carriage and the gray hair and dignified appearance of the Chief Justice, so one got on each side, and thrust her hand into the curve of his elbow, which he, with characteristic gallantry, offered, and down the street the trio marched, the old gentleman entirely oblivious or unconscious of the character of his escorts. Some member of the bar met the trio, and look in the situation at a glance, and stopped the old Judge and said he desired to speak with him. He took him aside and explained who his escorts were and led him on. Not until this had been done had the old man suspicioned that he was not escorting or being escorted by some of the very *creme de la creme* of society.

The second incident in which he played a characteristic and amusing part was related to me some years ago, and again very recently, by a friend of mine who served in Colonel Roberts' regiment during the war between the States. The regiment was camped somewhere either in Louisiana or Arkansas in the forests, and it was Christmas night and the winter was very cold. The Colonel was asleep in his tent, when he heard the voice of a negro man calling, "Cunnell, Cunnell, Captain Polk told me to come here

and say he wish you would come down to his tent." The Colonel replied: "Get away from here, and get away quick, and go back and tell Captain Polk I will do nothing of the kind, and ask him if he thinks I am going to get up this freezing night to go to his tent." The negro, of course, obediently left, but the Colonel had hardly had time to get back to sleep when he was again awakened by the negro's voice: "Cunnell, Cunnell." The Colonel was wrathful and ripped out: "How dare you come back here and wake me up again. Didn't I tell you to go away. Go now and tell Captain Polk if he sends you here again I will put him under arrest." The negro returned to the Captain's tent, but was soon back again calling for the Colonel. The third time the Colonel woke in a rage and said: "Say, leave here and leave quick. What does Captain Polk mean by such conduct and disobedience of my order? It is insulting." The negro said: "No, Marse Cunnell, he don't mean to 'sult you 'tall. He told me to tell you he had a jug of pow'ful good liquor, and about five dozen hen aigs, and he mout be able to mix up sumpin' you'd like." The Colonel softened immediately and began to roll from his blankets, saying as he did so: "Well, well, the idea of a Captain disturbing his Colonel at this time on a freezing night and asking him to get up and go to his tent, but I will go, since he is so polite," and he went. There were others who would have doubtless responded to the same summons.

A friend of mine, an ex-judge, who once lived in Waco, told me of a very amusing incident which occurred while the old gentleman was making a speech during one of his canvasses for Governor. The committee at Waco had placed a generous-sized pitcher of water on the speaker's stand and, without the old gentleman's knowledge, they had "spiked" it pretty freely with something which was stronger than water. The day was warm, and the old gentleman spoke for something like an hour, or an hour and a half, or maybe longer, and he drank freely and towards the close of the speech he felt considerably exhilarated, and undertook in illustrating some point to use the incident related in the Scripture about the woman who took the leaven and hid it in three measures of meal until the whole was leavened. By that time the old gentleman's mind had become a little confused, and his ideas didn't flow very freely, and he was unable to express the simile in the Scriptural phrase. After one or two attempts he wound up that portion of his speech by saying: "Well, you know, you know, she made all the dough in the tray rise at one time."

He was nominated for Governor without the slightest effort upon his part, and without preliminary canvass. The Convention of 1878 met in Austin and was in session ten days and because neither Governor Hubbard nor Governor Throckmorton could get

a two-thirds majority, the convention compromised on Governor Roberts, who was then on the Supreme Bench.

The financial condition of the State was not good at that time, and while nobody doubted the integrity of Governor Roberts, there were doubts whether he was adequate for dealing with the financial situation. He had in the management of his own affairs never manifested any financial ability, because he had never given any thought to making money. He lived in a wholly different atmosphere, yet he speedily put Texas on a cash basis. He showed not only a thorough conception of what was necessary to re-establish the finances of the State on a permanent business basis, but carried his plan into execution with the highest measure of success. He was called upon to deal with the big questions of finance and grasped it as he would have done had it been a big question of law, and did not waste time or go into details of immaterial moment. There had been many men in the history who were wise in big matters, yet were children otherwise.

I believe it was Sir Isaac Newton, the wisest of all scientists, who, when asked why he cut two holes in the door of his bed room, replied that one was for the big cat to come in, and the other for the little cat.

I have very little familiarity with history, but I have heard or read that the younger Pitt, Prime Minister of England, by sheer force of his great mind and sound judgment in dealing with the great problem of national finances when England was in a state of great financial depression, and threatened with irreparable disaster, placed her on a sound and prosperous footing, yet as to his own finances, died hopelessly bankrupt.

I have said that in the field of judicial writing he was at his best. If I may with propriety express an opinion, I will say that I have never thought that his opinions, taking the common run of cases, were as practical, or instructive, or helpful to the bar and bench as were those of some of his predecessors and successors. They are learned and show thorough familiarity with the fundamental principles of law, but do not appear to me to make as clear the ideas intended to be conveyed as is necessary to make them useful as guides and precedents.

He did write some opinions, however, that none but a man profoundly learned in the law and possessed of the ability to write the purest English could have written. No man who ever heard him in a public speech would believe, if he did not know who the author was, that Governor Roberts wrote the opinion on rehearing in *Duncan vs. Magette*, 25 Texas. Beginning near the bottom of the 252nd page and concluding at the bottom of the next page will be found a dissertation upon the distinctions between law as practically and necessarily administered, and abstract justice, which is so philosophical and so rich in literary

grace as to have been justly termed a legal classic. The reports of many courts will have to be searched to find anything superior in a literary point of view.

I recall distinctly that shortly after the opinion of Judge Roberts in *Keuchler vs. Wright*, beginning on the 467th page of the 40th Texas and covering 47 pages, appeared, it was pronounced by one of the leading law journals of the United States one of the ablest opinions ever delivered from any bench in all the judicial history of the government. In the preceding case of *Bledsoe vs. I. & G. N. Ry. Co.* Judge Roberts and Judge Gray and Special Justice J. W. Ferris, the latter writing the very able opinion, had decided the case, Justices Reeves and Devine dissenting. Judge Moore, being disqualified, did not sit in that case. Justices Reeves and Devine in *Keuchler vs. Wright*, still adhered to their position in the *Bledsoe* case and mandamus could issue, but agreed with the disposition of the case on another ground.

The opinions of both the majority and minority in the *Bledsoe* case are well worthy of reading at the hands of any lawyer. Both Judges Moore and Roberts wrote opinions in the *Keuchler* case.

Governor Roberts was especially capable in the selection of Judges for the higher courts. He knew a lawyer when he saw, or heard one.

When Hon. Malcolm D. Ector died in 1879 when he was Presiding Judge of the Court of Criminal Appeals, Governor Roberts at once appointed Hon. George Clark of Waco. His superior as a lawyer has never been upon any bench in Texas. The few opinions he wrote while on the Court of Criminal Appeals were monuments of unanswerable logic and judicial and legal learning. I have no doubt that there were many of the bar who can remember when in 1881 Governor Roberts appointed the Hon. John W. Stayton as Associate Justice of the Supreme Court. The expression was heard on every side, "who is John W. Stayton?" and nobody was more surprised than Judge Stayton himself. One of the distinguished members of one of the higher courts of Texas told me very recently that he chanced to be in Judge Stayton's office when he received the telegram tendering him the appointment. He read it over a time or two before he appeared to grasp exactly what it meant, and before accepting it got in his buggy and drove down to his house to consult his wife, and she advised him to accept, which he did. The bar of Texas soon learned who John W. Stayton was, and during his service of fourteen years as Associate Justice and Chief Justice of the Supreme Court, the man who Governor Roberts had taken from a small Southwest Texas town, demonstrated that he would have done honor to any court in Christendom.

Since the above was written a judge of one of the appellate

courts of Texas told me a very amusing incident in Governor Roberts' military career. On one occasion "Colonel" Roberts was advised that his regiment was to be reviewed by General Ben McCulloch. What the old man did not know about military tactics and etiquette would have made a large volume, so he referred to Hardee's tactics, and calling his Adjutant, said: "Adjutant, we are going to have a review, and we must have some music—music." All who know him recall how accustomed he was to repeating words.

The Adjutant said: "Colonel, we have no musicians or music." "Then get some, we are bound to have it. Hardee says it is necessary and that it must be placed on the right of the line. Get it—get it." The Adjutant started out, and chanced to meet an inhabitant of the country who was riding a gray mule, and inquired if he knew anybody who could play on any instrument, a trumpet, or trombone, or bugle. The countryman said he had a bugle at home and could play. He was directed to get it and take a position on the right end of the line. He did so. There was some delay in opening the review, and the mule went to sleep. When the calvacade of reviewing officers swept down the line and got near the bugler, he let out a blast that could be heard a mile, and it woke up the mule, and he pitched his rider right in front of the general and his staff, and broke up the parade and review.

I lived in Galveston when the court held session in that city and occasionally the old Judge broke bread with me at my very humble board.

One morning I overtook him taking his morning stroll. We passed by a spot he recognized and he said, "A preacher used to live here—I forget his name." I suggested a name, and he said "Yes, that is it, he was a preacher and a bachelor and he had two deers—a buck and a doe. Yes, he was a bachelor. The buck was making a lot of noise—you understand."

Then he dropped that branch of his story and launched out into a physiological and sexological discussion on the habits of animals under certain circumstances, which was as amusing as it was instructive. It looked as if he would explain all that was capable of explanation, but I called him back to his main story.

"Oh, yes," he said, "I like to forgot the preacher and the buck. The preacher didn't have any sense about a buck deer. He didn't know a buck was like a man, he didn't want to be interfered with. The preacher tried to stop him and the buck jumped on him and cut him with his hoofs, till the preacher had to go to bed and stay two weeks. No, sir, you mustn't fool with a buck under those circumstances. If the preacher had had any sense, he wouldn't have fooled with the buck."

Whatever he knew, he knew well, but his way of telling it was intensely amusing; but he was, withal, a patriotic, honest man,

who discharged every trust committed to his keeping with unflinching fidelity, and the highest degree of efficiency.

The leading opponent of Governor Roberts in both the election of 1878 and that of 1880 was Hon. W. H. Hamman of Robertson County, whom I had the pleasure of knowing.

In that day and time the Greenback Party was very strong in many parts of the United States, and General Hamman believed in its principles, as did many other able and patriotic men, and he espoused that cause with ardor and ability.

His fate was, of course, that of every man who dares to venture out into new fields of political thought and action, in that he was ridiculed and his sincerity was called in question, but he could possibly have had no unworthy motive for his action, and he had the courage of his convictions.

He was a man of impressive appearance, an able lawyer, a gentleman by birth and breeding, and a patriotic citizen. Being myself a "collar" Democrat, I, of course, voted the straight ticket, but inwardly I had a very considerable amount of sympathy with his views. I had not then, and have not since, studied much about the problems of national finance, as my own individual financial problems afforded me at once mental exercise and distress, but since about ninety per cent of the business of the nation is done on credit, and there is nothing behind millions and billions of national bonds except the good faith of the government, and the people are in the last analysis the government, I was not, and am not, able to understand why money might not have been issued directly as well as in the form of bonds, which the people must pay at last.

However, those who are wise in the sphere of finance—and comparatively their number is few, said it could not be done, and the Greenback party was "crucified" on a "cross of gold." General Hamman defended his convictions with ability, and made a bold and courageous fight upon the principles which he believed to be sound.

The sons of General Hamman have so demeaned themselves as to win the deserved respect and confidence of their fellow men, and reflect credit on their worthy sire, and their noble mother.

His youngest daughter is the lovely wife of that able lawyer and most efficient Congressman, Joe H. Eagle, who has represented the Houston district in Congress for the past eight years, but who declined to offer for re-election in 1920.

No man can be justly measured or judged amid the heat and passion of political conflict. His virtues are ignored, and his faults magnified, but when the fury of the political storm has passed, and men think normally and calmly, they are just in their judgments.

Gen. Hamman followed his convictions of duty, and now when the political organization to which he belonged is but a dim and shadowy memory and he has passed away, all men are willing to accord him that measure of praise, as an able, honest, worthy man that is justly his due.

## CHAPTER VII.

The election of 1863 came on in the midst of the War between the states and the public mind was absorbed by that fratricidal conflict, and no kind of election could arouse any very great public interest. There were 57,343 votes cast in 1861, but only 31,036 cast in 1863. The opposing candidates were Pendleton Murrah of Harris County and T. J. Chambers of either Liberty or Chambers County. I forget in which county he lived. General Chambers was a man of high character and of more than ordinary ability, and four times was unsuccessfully a candidate for governor.

Pendleton Murrah, who was elected governor, was a gentleman of culture and ability, an able lawyer, and was a man of modest, gentle demeanor, and of rather frail physique. If I am not mistaken, he was tuberculous and died very shortly after he left the office of governor, which he did before his term expired owing to the collapse of the Confederacy. He left the State to avoid the fate which befell Governor Letcher of Virginia, Governor Moore of Alabama, and other Southern Governors, who were incarcerated in Fortress Monroe.

There was related to me at one time a very amusing incident connected with his journey to Mexico. He went in company with General J. Bankhead McGruder, who had won distinction in Virginia early in the war, but had been transferred to the command of the Department of Texas.

His headquarters were in Houston. He was a West Point graduate and a soldier through and through. He was educated, cultivated, gallant and fond of society and was sometimes called "Prince John."

While he had many friends, he was not enamoured of Texas or its people, and there was a considerable measure of reciprocity of dislike between him and them.

While the party was in camp one night out somewhere where San Angelo now stands, two horsemen rode up to the camp, who had evidently ridden a long distance at a rapid speed.

One of the horsemen asked if Governor Murrah was there. The Governor arose, and in his modest, courteous way said, "I am Governor Murrah." The party who made the inquiry said, "Governor, I have a brother in the penitentiary, and I have a numerous endorsed petition for his pardon, and I wish you would grant it if you can. I came by Austin to see you, but you had left. Your private secretary kindly filled out a pardon and put the seal on it, and I have it here." The Governor said, "My dear sir, I am touched by your fraternal devotion, but I am no longer Governor, at least I have abandoned the office and I am no longer performing my official functions. I do not see how I can help

you." The rest of the party became at once interested and someone, speaking for the rest, said that such devotion on the part of a brother deserved to be rewarded, and urged the Governor to grant the pardon. The Governor said, "I will sign and date it, my friend, but I am afraid that before you can get to Huntsville, some six hundred miles or more, the Federal Government will be in charge, and if that is so a pardon signed by me will not be recognized." The anxious brother said, "I will take that chance. It is at least worth the effort." General McGruder produced a pen and ink and the Governor made ready by the light of a campfire, with a saddle or a camp stool for a writing desk, to sign and date the pardon. Just at that moment General McGruder, who had come up, spoke out in a precise, distinct tone, "Governor, before you affix your signature, will you allow me to suggest the insertion of an amendment to the pardon after it is prepared?" Governor Murrah with characteristic courtesy replied, "Certainly, General, I will be glad to receive any suggestion you have to make. What is the character of the amendment that you suggest?" General McGruder replied, "It is that you include in the pardon all the prisoners in the penitentiary of Texas. Turn them all out at once, and thereby improve the morals and society of the d——d state."

## CHAPTER VIII.

Between the time of the collapse of the Confederacy, and 1866, when the people elected a Governor, the duties of Governor were performed by persons appointed either by the President or by military commanders, and their tenure of office was very uncertain.

President Johnson, I think it was, in 1865, appointed Andrew J. Hamilton to the position of Provisional Governor. Considering the prevailing conditions the appointment was about as good a one as could have been made. Governor Hamilton was a southern man by birth, and had lived in Texas many years before the war, and served in both branches of the legislature, and in 1859 was elected to Congress as an independent candidate, defeating General T. N. Waul, who was, as I have heard, the Democratic nominee.

The Congressmen of this day and time, who complain that it is a hardship to have to canvass their comparatively small districts, would do well to recall what a race for Congress meant in 1859.

Governor Hamilton lived in Austin and General Waul in Gonzales, and I once heard General Waul say that one of their joint debates took place in Weatherford, Parker County. How much father north or west they had to go I do not know. They were both men of the first order of ability, strong speakers, and able lawyers.

I do not recall ever having seen Governor Hamilton but once, upon which occasion he made a brief but fierce assault on the administration of Edmund J. Davis, by whom he was defeated by a very narrow margin for Governor in 1869. He made no reference to that fact, however, but felt outraged as did all decent citizens, over the rank abuses and violations of the rights of citizens, which were so disgraceful a feature of the Davis regime, for which, however, I believe the subordinate officials, rather than Governor Davis, were directly responsible.

I lived in Galveston at one time and practiced law there for six years, and knew General Waul, who was an elegant gentleman of the "old school." He was an able lawyer, and a man of courtly manners, and a gallant soldier in the war of 1861-1865. I heard him relate a very amusing incident connected with the campaign in which he and Governor Hamilton were opposing candidates.

As was customary, the candidates alternated in opening the debate. The day they spoke at Weatherford was General Waul's day to speak first. Governor Hamilton, like most candidates, had a bundle, or collection of jokes and anecdotes, with which he illustrated his most striking points, and amused his audiences.

General Waul had learned every one of his opponent's anecdotes so that he could relate them even better than could his opponent, and in the course of his opening speech told every one of them. He thereby took from Governor Hamilton much of his effective oratorical ammunition. When the debate was over Governor Hamilton, who had a deep, sonorous voice and spoke with dignity and deliberation, said, "Waul, you played me a mean trick. You stole all my anecdotes. I'll swear I had as soon steal a man's children as his anecdotes." Their personal friendship was never broken by the strenuous struggle and fierce debates.

The conception of duty on the part of the two men when secession became a fact and war followed, was radically different; yet, I do not believe any man doubted the fidelity to honest conviction on the part of either.

General Hamilton left Texas and went to Washington and offered his services to the Federal Government, and received appointment as Brigadier General.

General Waul raised a command for the Confederate Army, known as Waul's Legion, and though he must have been past middle age, he led it gallantly into battle, and, if I am not mistaken, was wounded in the very fore-front of the fighting.

When by reason of advanced age he retired from the practice of the law in Galveston, he went to his farm, situated, I believe, in Hunt County, and died there at between ninety and ninety-five years of age.

It has rarely been the case that two men, both of whom were intellectually so well equipped for high office, were opposing candidates for Congress in Texas, or anywhere else.

General Hamilton was appointed by the military authorities a judge of the Supreme Court, after Chief Justice Moore, and Justices Coke, Willie, Donley and Smith had been removed as "impediments to reconstruction" which being properly interpreted is to say, because they were clean, honest, decent men, and able judges.

The appointment was made by one General Griffin, who at that time was military commander of the Department of Texas, and who was the same satrap who refused to permit the people of Galveston to do honor to the memory of Albert Sidney Johnston when his remains were enroute to Austin for final interment.

He issued but few other orders, as the yellow fever epidemic broke out in Galveston and he was among the first of its victims. If any tears were shed upon his bier, no record of the fact was preserved.

It is very surprising that so capable a man as was General Hamilton should have been appointed. While he was in the habit of indulging to excess in strong drink, I never heard his integrity

called in question, and the high order of his ability was recognized by all men.

All those who served with him on that "reconstruction" court have gone to join him "on the other side" and respect for the ancient and charitable adage, "*De mortuis nil nisi bonum*," demands that no unkindly criticism be indulged in, but if any reader of this will take the time to examine the fly-leaf of the 30th Volume of Texas Reports he will see that General Hamilton was the only really "big" lawyer on the Supreme Bench of Texas at that time.

The opinion by him in that volume in the case of Luther vs. Hunter, not only demonstrates that he was a lawyer of ability, but that had his conception of the questions involved been adopted, and the Southern States had been dealt with in harmony with his views, reconstruction would not have been marked by so much of the oppression and iniquity which characterized it. None of the colleagues of Judge Hamilton on the Supreme Bench could have any more discussed logically or intelligently the questions with which he dealt in Luther vs. Hunter than they could have translated the hieroglyphic inscription on the Rosetta stone dug out of the sand of the Egyptian desert.

Texas elected a Governor and a full complement of State officers in 1866, but when Thad Stevens and Ben Wade and other fanatics of that ilk succeeded in getting the "Reconstruction Act" enacted and put in operation, all the State officials, including the Supreme Judges and District Judges, were removed from office, though Texas never had before, and has never since, had a corps of more capable officials.

The Governor elected in 1886 was James W. Throckmorton of Collin County. Who was elected Lieutenant Governor, I am not sure, but think it was Hon. G. W. Jones of Bastrop. Governor Throckmorton was a southern man by birth, and though he was opposed to secession, his people elected him to the secession convention. When he, as one of the seven who voted against secession, cast his vote, the people in the gallery hissed. It is said that when he heard that most offensive indication of disapproval, he turned to the galleries and said, "When the rabble hiss, well may patriots tremble." Unlike Andrew J. Hamilton and Edward J. Davis, he did not forsake his State or turn against her, but cast his fortunes with her, and was a faithful, gallant soldier in the Army of the Confederacy. "Texas, right or wrong," was his patriotic motto, and he lived up to it like the true man that he was.

Even Sam Houston, whose devotion to the Union was so intense that he surrendered the Governorship rather than even appear to recognize the right of the State to secede, must have felt to some extent, as did Governor Throckmorton, at least so far as related to the duty of his son, as I conclude from an incident related to me a few years ago by a cultured, intelligent lady, a native of Houston,

who died recently. She was a visitor at the Mansion as a young lady. One day the Governor came home to "lunch," or at night, and Mrs. Houston was in great distress.

She said: "Oh, General, Sam (her eldest son) is going to join the Confederate Army." The old man turned to her with that stately deference and respect with which he always treated her, noble woman that she was, and in tremulous tones, said: "Margaret, my dear—what else can he do? It is his country, and he must stand by her, right or wrong."

His first born went to battle and bore himself in a way to prove that he was worthy of his ancestry. He was wounded and taken prisoner in the first battle in which he took part. It was said at the time, with what measure of truth I do not know, that as soon as the Federal prison officials discovered that he was Sam Houston, Jr., they released him.

I recall that when I was a lad, elections were usually held in August, and I think Governor Throckmorton was inaugurated shortly after the election, but was removed about September, 1867.

He and my father had served in the House together, and he appointed my father one of the administrators (now called regents) of the University. My father was Chairman of the Legislative Committee on Education in 1857-8 and was an ardent advocate of the University. In recognition of that fact I have in the recent past presented to the Medical Department at Galveston a portrait of him handsomely framed.

So far as I recall, Governor Throckmorton did not offer for public office again until 1872, when the State Democratic Convention met at Corsicana. There were two candidates for Congressman-at-Large to be nominated, and the contest, while free from bitterness or personalities, was very vigorous. There were a number of candidates, but the leading ones were Asa H. Willie, Roger Q. Mills, and J. W. Throckmorton. Judge Willie, who was on the Supreme Court in 1866, was nominated first. The vote between Colonel Mills and Governor Throckmorton was evidently very close, as the roll call before the footings were made revealed.

I recollect that the convention adjourned, either for dinner, or perhaps for the night—I believe it was until morning—to give the clerks time to verify the roll call and the count. There were many divided delegations and in consequence many fractional votes. The convention had every confidence in the integrity of the clerical officials, but the result was anxiously awaited.

When it was announced, Colonel Mills had secured a two-thirds vote by the unprecedentedly narrow margin of three-fourths of a vote, so a political career which gave Colonel Mills national reputation, and revealed him as one of the ablest leaders of the Democratic party of his day and time, began by a victory won by less than one vote.

I think it was only two years later that Governor Throckmorton was elected from the district in which he lived and was re-elected. He was justly intrenched in the confidence of the people, for he was honest, brave, able and patriotic.

I do not recall ever hearing him make but one speech. He was not a fervid, flamboyant stump speaker who attempted flights of fancy or sought to embellish what he had to say with similes, metaphors, or rhetoric, but his eloquence was born of clearness and earnestness, and he influenced his hearers because they knew they were not listening to a political demagogue, but to a man whose convictions were unpurchasable, and whose courage or integrity no man questioned. In 1866 he was opposed for Governor by ex-Governor Pease, whom he defeated by a vote of four to one. The result was foregone. No man who had not stood by the South from 1861 to 1865 could any more have been elected Governor of Texas then than a sinner could enter heaven without pardon.

In 1869 Texas had a Constitutional Convention and a gubernatorial election, and on March 30, 1870, she was declared to be back as a State with all her pristine power, in a union from which oceans of blood and millions of treasure had been expended to prove that she could not withdraw. Edmund J. Davis and Andrew J. Hamilton were opposing candidates.

Both men were of Southern birth, and were not only Union men, as contradistinguished from secessionists, but carried their opposition to the action of the majority of their fellow citizens so far, as to not only leave the State, but to seek and accept positions in the Federal Army of invasion.

In that regard, there was as between the two, so far as the overwhelming majority of the people of Texas were concerned, no choice. Both were equally "anathema," but Governor Hamilton was much the abler man of the two, and much the better lawyer. Then he had been, so far as I now recall, though I was but a youth at the time, very conciliatory and conservative as provisional governor, and the tenor of his decisions while he was on the Supreme Bench was such as to strongly commend him to the majority of the Democrats, which alignment men of all political faith, except Republicans, had been forced to accept as a means of common defense.

Judge Davis had been a district judge in the Corpus Christi section prior to the Civil War, but was a very intense partisan Republican and affiliated closely with the negro element of his party. He was very bitterly prejudiced against secession and secessionists, and secession and Democracy were, in his view, synonymous and convertible terms, and in his lexicography both were the equivalent of the sum total of all iniquity.

The election machinery was in the hands of the military, and

the election was very close. The official returns gave Mr. Davis only 909 majority out of about 70,000 votes. The belief was widely prevalent that he was counted in, but however the facts may really have been, he got the certificate and the office, a fact which was to Texas "the direful spring of woes unnumbered."

There came in with him, I believe, the 12th Legislature, which, for extravagance, inefficiency, and corruption, as to the majority was equal to the worst "reconstruction" legislature. From districts here and there widely scattered quite a number of excellent Democrats were elected, but they were able to only a slight extent to prevent the iniquitous legislation proposed by the majority.

Governor Davis made appointments to high places of men who were utterly unfit. In a few instances decent, capable men accepted appointments at his hands, but the majority of his appointees, at least a large number, were aliens and strangers.

I remember that it was said at the time that he claimed that he was compelled to appoint men he did not want to appoint, because many Democrats to whom he tendered positions declined to accept them. It can truly be said to his credit, that he was personally an honest man. I never heard it charged that he ever profited during his administration to the extent of a single dishonest dollar. He was a man of distinguished appearance, tall, erect, and dignified, and was said to have been a man of the highest type of personal courage.

I have heard that when he left the State with the view of reaching the Federal lines, he and a companion named, I believe, Montgomery, were caught out somewhere towards the Rio Grande, and that the pursuing crowd hung Montgomery and seriously debated whether they should not do the same with Judge Davis. While they were deliberating, it is said he took out some tobacco and a piece of shuck and coolly rooled a cigarette and as coolly proceeded to smoke it. It may be that this calmness and courage, in the face of what appeared to be imminent death, so challenged the admiration of his captors that they released him. At all events, he did join the Federal Army.

His administration was the most oppressive, tyrannical, and iniquitous ever visited upon a free people. A law was enacted creating a State police force, at the head of which was one James Davidson, a carpet bagger, a pigmy in physical stature, but in moral (or rather immoral) depravity, a giant. His police force roamed over Texas, arresting without warrant, robbing, plundering and murdering. They invaded the home of a worthy citizen of Limestone County and robbed him of \$3000. They shot down in cold blood two of the best citizens of Tyler, Smith County.

I saw Adjutant General and Chief of Police (which was his official title) Davidson ride into the town of Huntsville about the

middle of January, 1871, at the head of a squad of armed state police and post a proclamation declaring martial law, and levying a tax of twenty-five cents on the one hundred dollars' worth of property to pay the expenses of the unlawful occupation of the town. I know this to be true, because I paid part of the tax for my widowed mother.

He then proceeded to organize a military commission composed of State Militia officers and tried four young men who had been schoolmates of mine, and fined three of them one hundred dollars, and sentenced one to the penitentiary for five years, and actually put him into convict stripes. That was nearly a year after the Constitution of 1869 had been approved by Congress and the State fully restored to the Union.

The diminutive little coward and tyrant Davidson not long after, got into his hands about twenty thousand dollars of State funds and levanted, and so far as I know he has never been heard from since. The people of Texas in common with all the people of the South, had been for more than five years subjected to the domination of the scallawag, the carpet-bagger, and the negro, and were to such large extent deprived of the right of suffrage, that they were somewhat cowed and broken in spirit.

In no other way can I account for the people of Huntsville submitting to the outrage inflicted upon them. As I look back upon the day when I, but little more than a youth, went with a committee of citizens to protest against the tax levy and martial law, and explain that they had done nothing to merit such treatment, I recall how contentuously the petty tyrant Davidson treated the committee. I wonder that the people had not risen in a body and wiped him and his roving band of buccaneers off the earth. I have always regretted that they did not.

After General Davis ceased to be Governor he remained in Austin, and I believe, practiced law. He died in January, 1883, while the (I believe) 18th Legislature was in session in the temporary capitol. I chanced to be in Austin at the time, and I remember hearing a conversation on the day his death was announced, which was very interesting to me.

Hon. Alexander W. Terrell was at that time a member of the Senate, and the Senator from the district of which Limestone County formed a part was Hon. L. J. Farrar, a most excellent man. He was, as I recall, elected District Attorney in 1866 of the Judicial District of which Hon. Robert S. Gould was elected judge, and in common with all other office holders elected at the same time, was removed as one of the "impediments to reconstruction."

He lived in Limestone County at the time the robbery by the State Police was perpetrated, to which reference was made on a previous page.

Judge Terrell with that proper perception of the proprieties

which might have been expected of him, conceived the purpose to introduce in the Senate formal resolutions of respect regarding ex-Governor Davis, but he knew that it was very doubtful whether such resolutions would receive a majority in either Senate or House. I happened to be in conversation with Senator Farrar, who was a modest, soft-spoken, quiet gentleman, when Judge Terrell approached him with the manifest purpose of, so to speak, "sounding him out" on the matter. With characteristic suavity and courtesy he explained the purpose he had in view, and in an indirect way made it clear that he wanted to find out if Senator Farrar would oppose the adoption of the resolution. Senator Farrar readily divined his purpose, and said: "Very well, go ahead, Senator, but draw whatever you propose to say d—d light, if you expect my vote."

I assume that the sentiment of the House was sounded out in the same way, since the resolutions in terms and tone formal and perfunctory were adopted. So far as I recall, there was not a single speech of any kind made by any member of either House on the resolutions. The time was too near to the tragic events at Groesbeck, Tyler and Huntsville, for it to be expected that a Texas Legislature would pay tribute to a man, who, being Governor, and vested with great power, was held responsible for the most oppressive administration that was ever visited upon any people.

I have said that Governor Davis was reputed to be a very courageous man. I had never seen him, so far as I recall, until a few days before his death, which, as I recollect, resulted from an embolism which produced apoplexy.

His body lay in state before the speaker's rostrum in the House, and I looked upon his features in death, and if I had never seen or heard of him I would have said he was a man of courage. His appearance was strikingly life-like, and his expression seemed to say as plainly as if the words had been written on his brow, "Death, I am not afraid of you."

As I have said, he was esteemed to be personally an honest man, and doubtless possessed other personal virtues, but his administration will never be forgotten, and most likely never be forgiven, at least not for many a day to come.

## CHAPTER IX.

The successor to Governor Davis was Richard Coke of Waco. The State Convention met in Austin in, I think, September, 1873. I am writing entirely from memory, and may fall into error.

I do not recall who the contending candidates for Governor were besides Judge Coke, except I know Colonel John R. Baylor was one, and I believe, Hon. John Ireland.

I know Colonel Baylor was, because county after county voted for him, and the name Baylor was heard so often as the call of counties proceeded, that it looked, or sounded rather, as if he would poll a large aggregate vote, but his total vote was only 36. After the nomination had been made I said to him: "Colonel, your frontier friends stood by you." He said: "Yes, I got votes over a big territory, but the d—d Injuns have killed all my constituents." The Bayers, John R. and George W., were men out of the ordinary. All the Baylor family I ever knew or ever heard of were musical, and John R. and George W. were no exception to the rule. Both played the violin like non-professional Paganinis.

It used to be said they were "fiddlers and fighters," but the last word of the epigram is calculated to create an unjust impression, for they were not brawlers or hunters of trouble, but were gentlemen of unquestioned courage.

John R. Baylor was a large, brawny man, tall and muscular, and who must have been physically very strong. George W. Baylor, who died in the recent past, represented El Paso county in the Legislature just before his death. He was a tall, slender, light-haired man of quiet and unobtrusive demeanor. My impression is that the Baylor and Chilton families were related by consanguinity.

When I was a boy I saw the courage of John R. Baylor tested. He commanded a regiment in the Confederate Army, and on his way back home at the "break up" had to drive through Huntsville, where the State penitentiary was then, and (the main prison) is still located. Thousands of soldiers were returning wearied and dispirited and were in a mood for almost any kind of adventure. Clothing for the army had been manufactured in large quantities in the prison, and the belief was prevalent that but small part of it reached the soldiers, and the belief, whether founded in truth or not, inflamed their minds fiercely, so several hundred returning home gathered around the prison intending to seize a lot of cloth and clothing.

The financial agent was a nervy old fellow, and refused to surrender any of the cloth that was in his keeping, and the crowd opened fire on the building and into the doors, but fortunately hurt on one. Boy like, I got up as close as I dared, to see the fight. Colonel Baylor happened to be in town, as I have already said,

on his way to his home. I remember he wore a long linen duster. He went up to the front of the building and made a simple, straight-forward talk to the angry soldiers of a disbanded, or at least, disbanding army. He told them that they had made a splendid record in the war, and should not mar it by seizing the property of their own State. His words were sensible and conciliatory, but many of the besieging crowd were not in a mood to be reasoned with.

The Colonel soon realized that fact, and when it appeared that his appeal had been made in vain, he put his hand on his big ivory-handled six-shooter and said:

"I'll be d——d if you rob your State. I will protect her property," or words to that effect. The action was one of the highest degree of boldness—far bolder than it was prudent. No man but one of the highest type of courage would have dared attempt it. The State was not robbed. Men in a crowd, however numerous, or however inflamed with passion, are going to be slow to attempt to overcome the resistance of even one resolute man. No one of the crowd wants to lead. That crowd that day was no exception to the rule. Those angry men, who, under normal conditions, were law-abiding citizens, saw what manner of man was confronting them, and every man knew that if they opened a fight, some one or more would be killed, so they withdrew.

I have been told that the father-in-law of George W. Baylor ran an auction house, or perhaps brought goods through the blockade into Houston during the war, and at the "break up" had a large supply on hand in a building on Congress Street, between Main and Fannin, and he was told the disbanding and demoralized soldiers purposed to loot it.

He was naturally alarmed, and barred and barricaded his store and appealed to Colonel G. W. Baylor for a guard. Colonel Baylor's regiment was stationed near Houston, and it is said he picked fifteen men out of it, went to the store, removed the bars and barricade, and opened the doors and put five men in each door and stationed himself just outside. By that time quite a crowd, presenting a threatening aspect, had gathered. He quietly, and without bluster or bravado, said: "Now, if anybody wants to rob this store, let them begin." Nobody began.

George W. Baylor was an actor in that lamentable tragedy—the killing of General John A. Wharton, in 1865 in Houston, just as the Confederacy was collapsing. The army was in a state of demoralization, as the men saw the end had come, and discipline was impossible. I was not old enough to know much about the tragedy, and as my father lived at that time on his plantation, we got papers irregularly.

General Wharton was, as I remember, Commander of Cavalry on the Trans-Mississippi Department, and was a gallant soldier of

an historic family. As I recall, the trouble began over some military matters, and it was said General Wharton called Colonel Baylor a liar, and he (Colonel Baylor) went to the headquarters of General Magruder in the old Fannin Hotel, to complain of the language General Wharton used towards him—his inferior in rank.

While he was there, General Wharton came in and the trouble was renewed. It was clamed General Wharton struck at General Baylor with his sword. Whether that was true or not, I do not know, but whatever the facts were, Colonel Baylor killed him in the twinkling of an eye. He was indicted and the trial created great public interest, but he was acquitted. It was a deplorable tragedy. Both men were gallant soldiers and gentlemen born to the purple. It was difficult to believe that if General Wharton was in a normal state of mind, he would have struck at any man with the Baylor blood, because he knew the Baylor family, who like the men of the Wharton family, would not receive an insult, much less a blow, without resenting it, if need be, to the death.

At such a time as that when a nation was falling and armies were disbanding and hopes were perishing, and sorrow filled every soul, the minds of men were not normal, and much must be pardoned to such conditions and environment.

The reader, most likely, has concluded that I have forgotten the convention and the nominee, Judge Coke, but I have not.

As I said in the beginning of these disjointed and desultory sketches, I had no plan or orders of procedure marked out, but would jot down memories as they recurred to me, and the Baylor brothers deserved all I have said. They fought Indians on the frontier and stood guard over the thinly settled lines of pioneers who gradually pushed back the frontier, and opened the marvelous realm of West Texas to civilization.

The time I have referred to at Huntsville and the time John R. Baylor was a candidate for Governor were the only times I recall ever having seen him, and I recall how much he amused me at Austin when he said: "I made it a rule on the frontier whenever I met an Injun to cross him over Jordan and ask no questions."

At Austin in 1873 it may be said there began the political career of Richard Coke, which closed when nearly twenty-two years later he retired from the United States Senate, after eighteen years of service.

Future developments showed that no better selection could have been made. It is not meant by this statement to refer to his administration, which was able and progressive, but the reference is more directly to the way he met and solved the problems which confronted him before he was inaugurated. The situation required coolness, courage, and the sternest resolution.

Thousands of Texans recall how Governor Davis refused to sur-

render the office and appealed to President Grant, who was in the second year of his second term as President. Governor Davis based his refusal to surrender the office on a decision of the Supreme Court.

A Mexican named Rodriguez was charged with voting twice at the election in 1873. By habeas corpus the case got before the Supreme Court, and the Court held that the election was illegal because, instead of being held for four days, it was held only for one day. As I recall, the Legislature had changed the four-day election law. I never read the decision until I got to this point in writing. Life is too short to waste it over such judicial (?) literature. The rule of construction adopted was such that the Court will go down in the judicial history of Texas as the "Semi-colon Court."

The sobriquet "Semi-colon Court" applied to the Court which rendered the decision in the case, *Ex Parte Rodriguez* had its origin in this way:

Section 6 of Article 3 of the Constitution of 1869 reads as follows:

"All elections for State, District and County officers shall be held at the county seats of the several counties, until otherwise provided by law; and the polls shall be opened for four days from 8 o'clock a. m. until 4 o'clock p. m. of each day."

The Legislature on March 31, 1873, passed an act, the 12th section of which reads as follows:

"That all elections in the State shall be held for one day only at each election and the polls shall be open on that day from 8 o'clock a. m. to 6 o'clock p. m."

The Court quoted a provision of the Constitution (Sec. 3, Art. 5) reading: "The Supreme Court and the Judges thereof shall have power to issue the writ of habeas corpus and, under such regulations as may be prescribed by law, may issue the writ of mandamus, etc.", and said it had construed that the different clauses were separated by a semicolon.

Just here I will say that I have not examined the section of the Constitution of 1869, but the section as quoted in the report discloses no semicolon. But assuming it is used in the Constitution, as the Court states, I will set forth what the Court said it had held in construing that section. They held (they say) that while the constitution gave us original jurisdiction in habeas corpus, the clause must be so construed, that our jurisdiction in mandamus was only appellate and must be regulated by law.

They cited another section of the Constitution which they say was separated by a "semicolon."

They said further that in Section 6, Article 3, there was a plainer separation of the clauses (supposably they meant by a semicolon)

one of which is subject to a limitation or condition, while the other was not.

That the legislature has the power to provide for holding election at other places than the county seat; (here they used a semicolon) but it is equally clear that the Constitution is mandatory, and that the legislature has no power to limit the time within which the elections must be held.

The Court laid down the following proposition in grammar, but not claiming any special learning in that sphere, I do not assume to say whether it is correct or not:

“Neither will the rules of grammar nor of good composition admit of a proviso or condition, placed at the conclusion of an antecedent clause, applying to the subsequent clause of the sentence.”

By the method of reasoning above set forth (whether it is sound or not, I leave to the reader to determine) the court concluded that the legislature had no power under Section 6, Article 3, of the Constitution to enact a law for holding elections for only one day, therefore the law was unconstitutional, null and void, hence there was no valid election held, and it being no offense to vote twice, or any other number of times at an invalid election, the Mexican Rodriguez had committed no offense; therefore there was no authority for his arrest, and he was ordered discharged.

The proceeding as a whole presented some novel features. The State's counsel were contending that the Court ought to discharge the prisoner because his guilt of voting twice had not been proved, and because it was a fictitious case, and argued that the Court had no jurisdiction because the case was one purely political.

On the other hand, counsel for the Mexican insisted in the Court retaining jurisdiction and determining the question whether the Mexican should be held to trial. The assumption seems justified that if they had no assurance how the case would be decided, they had a strong belief on the point.

The three judges were put in what would appear to have been a very embarrassing position, since their official existence was involved in the result. If their decision was observed and enforced Governor E. J. Davis would hold over, and they also. If it was decided there was a valid election he and they went out together. The decision was wholly ignored, and the plans to hold the government formed by the Republicans were knocked into “smithereens” by Dick Coke and his followers, and Mr. Justice Walker, who wrote the opinion and rested the determination of the future of a great state on a “*semicolon*” was forced to hike himself back from whence he came, and these parts have known him no more since that memorable day, when Republicanism perished and passed in Texas.

The Democrats paid no attention to the decision, and prepared to take over the office of Governor, and all other offices. Governor Davis evidently believed the Federal Government would come to his assistance, and he had many precedents in other states on which to build that belief, as the Federal administration had in these days, no compunction about overthrowing a state government for the benefit of the Republican party.

Governor Davis summoned the militia and the state police and prepared to resist. Governor (to be) Coke prepared to overcome the resistance, and made the selection of Major George Bernhard Zimpleman who, I believe, was the sheriff of Travis county, to aid him and direct his forces. Major Zimpleman had been a Terry Ranger, and that being said, it is needless to add, could be depended on to do his duty, and help his people. President Grant disappointed Governor Davis by refusing him military aid, and without such aid, resistance was useless, and Republican rule passed in Texas.

President Grant's reply, when read between the lines, meant that since Governor Davis had been in office, and the Republican party had been in power for nearly four years, yet the people had repudiated them at the polls, he would let Texas work out her own salvation politically, and settle her own troubles, and that he was tired of being called on to interfere where he had no business to do so.

Governor Coke was promptly inaugurated, as he told me at Galveston on his way to Austin, he would be. I expressed to him the fear that he was going to have trouble. He replied with that deliberation of speech, and his unmistakable and characteristic lisp; "You come to Austin in about two weeks and I will be in the Governor's office,"—and he was.

## CHAPTER X.

If the question were put to me: "Who, in your judgment, was the ablest man, intellectually, ever connected with the Government of Texas?" I would answer without hesitation, "Richard Coke." The general run of people—the common mass—are prone to speak of men whom they think possess ability as "smart" men, and smartness is, in their minds, always associated with the gift of eloquent, or at least, ready and easy speech. Any fluent, verbose stump speaker is much more apt to win the title of a "smart man" at the hands of the shallow and superficial, than is a man of the highest order of intellect who is not dowered with the gift of ready and eloquent speech, yet some of the ablest men and greatest statesmen America has ever produced, were poor public speakers.

The combination of a high order of intellect, a handsome person, and an eloquence of speech is rare. Texas has furnished that combination in two men, and, remarkable to say, they were United States Senators at the same time—Joseph W. Bailey and Charles A. Culbertson.

Richard Coke was not handsome in person, graceful in carriage, or gifted as a public speaker, but he had a mind like a machine, inexorably logical and capable of deep research, and he had the integrity of Aristides and the courage of Caesar. I do not mean to convey the impression that he was in any sense a rough diamond. He was born a gentleman, and was a graduate of William and Mary College at Williamsburg, Virginia. All of the family I have ever known were educated gentlemen. I met in Richmond, Virginia, a few years ago, his brother who survived him, but who has, since I saw him, died. He was a lawyer of ability and retired from the practice with a competency. Two nephews of Governor Coke are among the ablest lawyers in Texas. The Cokes are descended from a Virginia ancestry, and the true Virginia gentleman is the highest type of man ever fashioned by the hand of the Divine.

I do not recall that I had ever heard of Judge Coke until he was a candidate at Austin in 1873.

When he became a member of the Supreme Court in 1866, I was but a boy, and did not take much interest in courts or judges, and after he was removed by military edict in 1867, he remained in private life until he emerged as a candidate for Governor in 1873. He was, I believe, for a short time, district judge, in 1865.

He was a man of sublime courage, combined with great intellectuality. While, as I have said, he had none of the graces of an orator, he could use his pen with great cleverness and power. His opinions in the cases in 29th Texas of Culbertson vs. Cabeen, involving the law of attachment; Cleveland vs. Williams, the law of sale of personal property, and O'Connell vs. Duke, the question of

“more or less,” in sale of land, have so far as I know never been criticised, much less overruled. It was a somewhat strange coincidence that in *O’Connell vs. Duke* he was passing on a case which one of his colleagues, Hon. George W. Smith, had tried as judge in the court below, and tried correctly, for he was an able lawyer.

Governor Coke took official action on one occasion which brought down upon his head a severer measure of criticism and condemnation than has ever been heaped upon any Governor of Texas since. I do not undertake to set forth every incident related with absolute accuracy of detail, but only in summarized form.

As I recall, the legislature voted a subsidy of \$6,000,000 in State bonds to the I. & G. N. Railway to promote the extension of the line of that road to Austin and San Antonio. Exactly how far west of Palestine it had reached at the time I do not now remember, but there was no line of railroad across the lovely stretch of country between Austin and San Antonio, and as I recollect, the only line of railroad into Austin was the present branch of the Central from Hempstead, and that was at that time a comparatively recent acquisition for Austin. Possibly the G. H. & S. A. Railroad had reached San Antonio from Houston.

Naturally, the people of Austin and San Antonio and all the country between and surrounding the two cities were eager for a railroad, and the passage of the subsidy bill was hailed with wild acclaim. Governor Coke made no statement with reference to it, and the constitutional limit of ten days was nearly at an end, when Hon. George Clark, at the time Attorney General under appointment of Governor Coke, went to see him about the matter, as Judge Clark told me himself. He called Governor Coke “Dick,” as there was only three or four years difference in their ages. He told me he said: “Dick, what are you going to do about that subsidy bill?” The reply was, “I am going to veto h——l out of it,” and he did veto it with such vigor and logic that passage of it over his veto was impossible.

He told the legislature that it had no power to vote taxes on, or fasten a debt upon, the whole people for the benefit of a part, or for the benefit of any railroad, however pressing the need for additional transportation facilities, or however much the road might promote development of the country it would penetrate. He put the veto mainly on legal and constitutional grounds, and his argument was as unanswerable as a proposition in mathematics. When the veto was read to the legislature and the news got to the people, there was, if such a phrase be permissible, neither levity or profanity being intended, h——l to pay.

The people of Austin and San Antonio were wild with rage, and exhausted the vocabulary of denunciation, to which “Dick” Coke

paid about as much attention as he did to the breezes of spring which caressed the roses in the yard of the Capitol.

I do not state the result on the popular mind of the veto on my personal knowledge or information, but base the statement on the authority of two such men as the late Fletcher S. Stockdale of Cuero, and the late William P. Ballinger of Galveston. All who knew these two men will, with one accord, agree that I could produce no worthier witnesses. Judge Ballinger and Governor Stockdale were warm personal friends.

I trust that I may without too great interruption of my story, digress just at this point to explain why Judge Ballinger was called Judge, and why Governor Stockdale was called Governor.

I will deal with the explanation as to the latter first. I have no book or other data before me, and I was but a mere lad at the time, but when Hon. Pendleton Murrah was elected, Hon. Fletcher S. Stockdale was elected Lieutenant Governor. I know, because he defeated my father for the position, the only instance in which he ever suffered defeat at the polls. The illness of his very aged mother made it impossible for him to leave home during the campaign. Governor Stockdale was a splendid gentleman, and useful citizen.

Judge Ballinger got the title from the fact that he was at one time a Justice of the Supreme Court of Texas, a fact which I venture to say, hundreds of Texas lawyers never knew.

Governor Coke had a deservedly high opinion of him as a lawyer, and a man, and was very desirous that he should become a member of the Supreme Court of Texas, and he nominated him and the senate confirmed the appointment. I have reason to believe Judge Ballinger was earnestly desired to serve, but he was not in a position to make the financial sacrifice the acceptance of the place would have involved. He qualified on the 27th day of January, 1874, and resigned the same day. The salary was, at that time, \$4,500 per annum, and the inadequate salary lost to the people of Texas the service of as thoroughly qualified a lawyer, and as admirable a gentleman as ever practiced at the bar of Texas, or that of any other state. That class of people who look upon \$375 a month as a princely stipend can understand why more of the best lawyers are not on the Bench in Texas, when they know what is a fact—that in each of three cases in which Judge Ballinger was employed in the year 1874, he received approximately as much as the State would have paid him for a whole year's service.

He was succeeded by Peter W. Gray, who resigned after a little more than two months' service, on account of ill health. He died October 3, 1874. His superior as a lawyer was never on the District Bench or the Supreme Bench in Texas.

I return now to the story of Governor Coke and the veto. Governor Stockdale was in Austin when the veto was sent in, and

Judge Ballinger told me that he related to him the following incident: Public feeling was so highly aroused and threats made so freely against Governor Coke that Governor Stockdale and a few—perhaps a half dozen—other personal friends and admirers of Governor Coke, went over to the executive mansion to call on him and stay with him. He received them with courtesy and cordiality, and after the salutations were over, some one of the party, perhaps Governor Stockdale, said: "Governor, perhaps you are not fully aware to what extent your veto of the subsidy bill has inflamed the minds of the people of this city. We have heard men indulge in the bitterest denunciation of you, and threats have been made to hang you in effigy, and we really fear that there are those in the crowd on the streets who even contemplate entering these grounds, if they do not enter the mansion, with the purpose of offering you and your family some personal indignity. We do not exaggerate the situation, and we felt that it was our duty as your friends, and as citizens to come here and offer you the benefit of our protection."

The Governor listened calmly to the explanatory statement, and then with characteristic calmness and deliberation, said: "I am obliged to you, gentlemen, for your proffered assistance. I deeply appreciate it, and I am delighted to have you as guests in the mansion, and you are welcome to stay as long as it suits your pleasure, unless your stay be with a view of my protection. I need no protection. This mansion belongs to the people of Texas, but for the time being it is my castle and my home. My wife and my children are here, and I can defend them and myself. That mob of which you speak may hang me in effigy if it sees fit on every telegraph pole, and every tree on Congress Avenue, and it will not alarm me, or disturb my equanimity for a moment; but if any man puts his foot within the limits of these grounds with the intent to insult me or offer any indignity to my family or myself, I'll be d—d if he goes out again until he is carried out feet foremost on a stretcher." The party withdrew and left the Governor with his wife and two small sons.

A man of different mold, a more timid, or at least a more prudent man would, out of abundance of caution, have stayed at home, and not have ventured upon the streets, but "Dick" Coke did not adopt that course. He put on his overcoat and his broad-brimmed felt hat, and took his walking-stick, of very generous size and weight, and went directly to the nearest point on Congress Avenue and turned south. In a few moments he came upon a crowd, or bunch of excited men, or drew near to them. He waited to hear what they were saying, and he found out that it was about him. They were, to drop into modern slang, "saying a plenty," and saying in rough terms and harsh tones.

He walked up closer before he was recognized, as the street

lights were not bright. He said: "I hear my name being very freely used, and from the way it is used, it seems I have given great offense and am in danger of being subjected to rough treatment. Now, I have come out to ascertain whether the time has come in Texas when a Governor cannot under his official oath exercise the constitutional prerogative of the office of Governor without being abused and assaulted. If any of you, or all of you, are so offended that you feel disposed to offer me insult or violence, I am here, and the time is most opportune and you can begin." They did not begin.

Figuratively speaking, they, like the Roman guard in the garden at Jerusalem, "went backward and fell to the ground." Literally speaking, they vanished into the encircling shadows quickly and the Governor was left alone. He proceeded down the avenue on one side and back on the other, and no man dared to interfere with him, and he returned unharmed and without affront or insult having been offered him, to the bosom of his family. No man ever doubted his courage. Those whom he led in battle swore by him.

I heard a man say once in the presence of one of my predecessors on the Bench of the 12th District: "I don't like any man like Coke that wears a great flop hat, and long-tail coat, and carries a big stick, and hollers when he speaks." The old Judge, to whom the remark was addressed, was aroused to fury in the twinkling of an eye, and said with vehemence: "I like him. I like that flop hat, because I have followed him when he was wearing it on the battlefield. I like to hear him holler, because I have heard him holler, 'Come on, boys,' when the bullets were flying and his men were falling around him. I have seen that bald head shining when with his big hat off, he was in the lead where the fighting was hottest. I like him for all you don't like him for."

The ardent defender of his old commander was, as to courage, a kindred spirit, for though he was as simple as a child, and carried a Bible always in his pocket, and lived according to its teachings as he understood them, he would have faced any danger, however great, if he thought he was being imposed on.

I have said that in point of pure intellectual ability Richard Coke never had a superior among the public men of Texas, and I will add, or among those of other states. I anticipate that this sweeping statement will not meet unanimous acceptance, but I do not make it without credible evidence to support it, which evidence I will produce later. I will ask first, why should not Texas have had, or have now within her borders as intellectual a man, or men, as there is, or are, in any other state?

The three familiar adages, "a prophet is not without honor save in his own house and among his own people," "distance lends en-

chantment to the view," and "familiarity breeds contempt," when correlated and summarized mean, "familiarity lessens appreciation." It is most often the case that we lose our appreciation of the true value of those things to which we become accustomed by long familiarity, and the men around and about us are never as great as those afar off. We cannot readily associate great endowment and great achievement with those we meet in the daily walks of life, especially if we have watched them grow up from childhood.

This truth is as old as the ages. When divinity incarnate was on the earth, and by the power of His omnipotence and omniscience, healed the sick, made the lame to leap, and the dead to live, the unbelieving multitude asked with querulous skepticism, "From whence hath He this power. Is He not the son of the carpenter?"

They had known Him in despised Nazareth, and had seen Him grow up to manhood, and did not believe in Him, though His power was revealed before their eyes.

Hundreds of thousands of people now living knew Richard Coke, and, speaking in a figurative sense, the grass has hardly covered his grave. They saw him a tall, ungainly, unpretentious, ungraceful man, who went about without bluster or parade, never seeking the limelight. His home was right here among us in Texas—not in Greece or Rome, yet he was a great intellect—his enemies so conceded, but when I say he was the peer intellectually of any man who has ever served in the Senate of the United States at any time, I anticipate dissent from the statement will be emphatic in many quarters, and Webster and Clay and Calhoun and Benton will be cited as evidence against me. They were all intellectually great men, but no age of the world, and no period in the history of any state or nation has possessed a monopoly of wisdom.

When Richard Coke was in the Senate, Roscoe Conkling was there; Allen G. Thurman was there, and Lucius Quintus Curtius Lamar was there, and Matthew Hale Carpenter was there, and I am not prepared to admit that they were not peers of the great quartette of statesmen named above.

Senator Coke and Judge A. W. Terrell both told me that Roscoe Conkling was the ablest men they ever saw, and when asked what member of the Senate he most dreaded in debate, Roscoe Conkling, without hesitation, answered, Allen G. Thurman.

That L. Q. C. Lamar was the peer of the proudest of that great assembly many believe, and many capable judges claimed that as lawyer and orator Matthew Hale Carpenter stood in the front rank of great Americans.

In that august parliament Richard Coke was thrown in contact and, so to speak, in competition, with those men, and if we know how he was esteemed, we can best judge of his ability.

The late Waller S. Baker of Waco, a splendid gentleman and

able lawyer, accorded me the privilege and pleasure of his friendship. Whenever I was in Waco I was his guest in his hospitable home. He told me a short while before his untimely death, which carried sincere sorrow to so many hearts, what estimate was placed upon the ability of Richard Coke by some of his colleagues.

In the early nineties the Democrats were in the majority in the Senate and the late J. Z. George of Mississippi was chairman of the Judiciary Committee. He was concededly a great lawyer. Mr. Baker told me that Senator George said to him: "Mr. Baker, whenever, as chairman of the Judiciary Committee, I refer a bill to 'Dick' Coke for a report and he brings it in, the report is never questioned, debated, or discussed, but is at once accepted as the last word in the law on the question."

He told me also that Thomas Francis Bayard, whose grandfather and father preceded him in the Senate from Delaware, and who was for twenty years a Senator from that State, also Minister to England and Secretary of State, said to him: "Mr. Baker, those of us who are now here as colleagues of 'Dick' Coke freely agree that he is the ablest intellect in this body, and many of us believe that there has never been here his intellectual superior since the government was founded." I submit that such testimony is worthy of full faith and credit.

## CHAPTER XI.

The term for which Governor Coke was elected was, under the Constitution of 1869, four years, but the Constitutional Convention which met in the fall of 1875 changed the term to two years, and it was provided that an election should be held, I believe, on February 15, 1876, both for the election of State officers and, if I recall correctly, all other officers, and for the adoption of the present Constitution. In fact, the whole State Government machinery was overhauled and changed. The election was held and the Constitution was adopted, so all the officers elected took their offices on the third Tuesday in April, 1876.

The State Democratic Convention was held in Galveston in January, 1876. It met first in the Tremont Opera House, corner of Market and Tremont Streets, but the attendance was so large the convention adjourned to Artillery Hall, at the corner of Avenue I and Twenty-second Street.

Governor Coke and Lieutenant Governor Hubbard were, of course, renominated by acclamation, as I believe were the Supreme Court Judges, who had under the then existing Constitution (that of 1869) been appointed by Governor Coke. The Court had been reduced to three. Then followed nominations for Judges of the Court of Criminal Appeals, which was created by the present Constitution. Pursuant to the order of procedure adopted, there next came on the nomination of a candidate for Attorney General, and then followed the most dramatic scene ever witnessed in any convention.

The scene was in no sense staged, but was wholly unexpected, and the motives and causes which brought it about, absolutely spontaneous.

While the convention was in session in the opera house in the course of a brief speech made by the late George P. Finlay of Galveston he planted an idea in the minds of the members of the convention which brought forth a remarkable harvest. He was a dyed-in-the-wool Confederate, had been a gallant soldier, and was a strikingly handsome man of very impressive appearance.

He said in substance that the time had come to reward some of the brave Confederate soldiers who were qualified for high position, especially those who had been maimed in battle. He spoke at the psychological moment, and carried the convention with him, though adjournment to the new place of meeting followed close upon his speech. It seemed from the general sentiment of the convention that the nomination would go to that very able lawyer and courtly gentleman, Hon. W. M. Walton, known to thousands as "Buck" Walton. He had been elected Attorney General in 1866 and been removed from office as an "impediment to reconstruction," than which no higher tribute could be paid any man.

The sentiment appeared to be prevalent in the convention that it would be poetic, (or probably a better phrase to use is "historic") justice to return him to a position from which he had been driven by military power. The other candidates were, as I recall, Mr. W. B. Brack, then of Sherman, later of El Paso, and a Mr. Jones from some East Texas County.

The candidacy of the latter named gentleman did not appear to be taken seriously, but Mr. Brack was a foeman worthy of even the shining lance of "Buck" Walton.

After the three gentlemen above named had been placed in nomination no other nominations were expected, but another came most unexpectedly.

Dr. M. D. K. Taylor of Marion County, formerly speaker of the House of Representatives, and a most accomplished parliamentarian, was President of the convention. In front, and a little to his left, was the Harris County delegation, one of which was Hon. J. C. Hutcheson, who in 1893-4-5-6 was member of Congress from the Houston District. He had removed to Houston about the year 1874, from Grimes County. There had come to the convention as a delegate from Grimes County a gentleman of whom Captain Hutcheson was very fond, and of whose legal ability he had a justly deserved high opinion. The gentleman was Major H. H. Boone, commonly known as Hannibal Boone.

He had won his title by gallant service in the Confederate Army. While leading a cavalry charge on one of the battle fields in Louisiana, grasping the bridle reins in one hand and waving his sword, or using his pistol with the other, a bullet from the Federal lines took off part of the thumb and the first and second fingers of his left hand, and his right arm at the shoulder joint, leaving him only the third and little finger of the left hand.

He had come to Galveston with no more idea of being a candidate before the convention than he had of being translated like Elijah of old, to heaven in a chariot of fire.

He had never held or asked for an office and wanted none, and had not the remotest idea that his name would be mentioned, and it was Captain Hutcheson who sprang the surprise on the convention.

He had been a gallant soldier in Lee's army in the battle fields of his native state, Virginia, and he knew and loved Major Boone, as did every man who knew him. Responsive to the suggestion, if not appeal, of Colonel George P. Finlay before referred to, the convention had nominated for Judges of the Court of Criminal Appeals Malcolm D. Ector of Marshall, who lost a leg at Murfreesboro, or Franklin, and Clarence M. Winkler, who won high honor as commander of one of the regiments of Hood's Texas Brigade, and the war spirit was in the air.

Suddenly Captain Hutcheson rose and said: "Mr. President, if we are going to reward with offices brave soldiers, I will nominate a man who is both soldier and lawyer—Hannibal Boone of Grimes County." The action and words of Captain Hutcheson came like "a bolt from the blue" to Major Boone, and he caught Captain Hutcheson by the skirt of his coat and said: "Hutch, don't do that; I don't want any office; sit down," but the Captain would not down.

It chanced that just then the convention was in a good humor, and the members were ready for any kind of excitement, and began to call out: "Trot out your man. We want to see him. Trot him out." Captain Hutcheson said: "Get up, Boone, and go," but the Major held back until the cry: "Trot him out, come out," became so loud and insistent that he could not refuse to respond. He walked slowly to the platform to the left of the President. He was a sincerely modest man, and it was evident when he turned and faced the convention that he was both embarrassed and full of emotion. He was not a large or impressive-looking man, but his carriage was erect—his step firm, and his manners dignified, and he was a gentleman through and through, and the convention recognized that fact and became quiet so that what he had to say might be heard. He said: "Gentlemen of the Convention: I beg to assure you that I am in no measure responsible for appearing before you today. I did not come here to seek an office. I came as an humble Democrat to represent my people in this convention, and on no other mission. I want no office. I am a candidate for no office, and I am specially desirous that you should know that I am not an object of charity or in need of any office." At that point his voice rose higher, and he said: "And I, above all things, want this convention to know that I ask nothing for this," and at those words he laid his little finger, one of the only two, on his left hand, on the empty sleeve of his coat that was drawn across his breast, and pinned to the left lapel of his coat.

There may have been some in that convention who did not know him, who may have thought that by his words and his action he was seeking to play to the galleries and win votes, but those who knew him as I did, knew that he was as incapable of pretense or dissimulation as is a prattling babe, and was truth and sincerity personified. The gesture with the maimed left hand holding the empty sleeve stirred the convention, and he followed it by lifting his distinct voice, tremulous with emotion until his words rang out as clear and thrilling as a bugle call to battle, and said: "But so help me, God, I would not exchange it for the baton of the Czar of all the Russias."

His earnestness, his evident sincerity, his dignified bearing, had caught the convention, and when he reached his climax of his

brief speech the members were swept off their feet, and a shout went up that showed he had won a victory which he did not want to win. Major Walton, knightly gentleman that he was, came forward and said had he known that Hannibal Boone could by any possibility have been induced to become a candidate he would not have offered for the place, and the other candidates likewise promptly withdrew. Major Boone in due time qualified, but proved his sincerity when he said he did not want to hold office by declining even to be a candidate for re-election. He entered office April 16, 1876, and held, as did all officers elected that year, until the end of 1878, when he moved his family and went back to his home at Navasota, and practiced his profession there until his death, nearly twenty years later. He went to his grave beloved and mourned by his neighbors and friends as few men have been.

Many lawyers who did not know him personally, and had never met him at the bar, were impressed with the idea that sentiment had swept into office a man not qualified to discharge the duties of the position. A lawyer who entertained that idea met me one day on the streets of Galveston and said: "Kittrell, a lot of you fellows played h——l when you put that country lawyer in the Attorney General's office." I said: "Why? What is on your mind?" He replied: "Why, don't you know that he has advised the Land Commissioner that the Galveston, Brazos & N. G. Ry. is only entitled to alternate land certificates when so and so, and so and so and so and so (naming three law firms) had advised the railroad that it is entitled to straight certificates?"

A member of one of the firms named was Attorney General of Texas at 26 years of age—one member of another of the firms had been Judge of the Supreme Court and was six years later elected Chief Justice. I replied: "Oh, well, it is just a matter of difference of opinion between seven lawyers on one side and one country lawyer on the other." "Yes," he said, "and the city lawyers are going to get out a mandamus and you will see what kind of a lawyer you put in." To the surprise of the three firms, the Supreme Court agreed with the country lawyer.

Shortly after he entered upon the duties of the office of Attorney General he gave the Governor an opinion interpreting, as I recall, that section or article of the Constitution relating to the setting apart one-half of the public domain for the purposes of public education.

Certain parties interested in such way, as that this opinion was adverse to their contention, by an action of some kind tested its correctness before the Supreme Court, and again the "country lawyer" was found to be right. If I am not mistaken, in the course of the opinion the court quoted from the opinion of the Attorney General.

Any man who seeks to disparage the ability of a lawyer because he lives in a country town has much to learn. I have spent about eighteen years of my life on the trial bench, several of them in a country district, and I have had before me in the country the best lawyers I ever saw. I heard the late L. B. Hightower, Sr., who for thirty years was judge of the 9th Judicial District of Texas, and who died in November, 1917, make in the courthouse in a country town where I was holding court, the ablest speech in a criminal case that I ever heard or read—such a speech as none of the famous criminal lawyers of America could have excelled—barring none. He was representing the side of the State. I shall never forget the exordium of his speech. It was: "Gentlemen of the jury: I do not live in your county. I live amid the primeval forests of East Texas, 'far from the madding crowds' ignoble strife,' where the mocking bird sings to his mate, and where the winds make music as they steal through the boughs of the towering pines, around which the yellow jasmine clambers and exhales its rich perfume upon the woodland air. I rarely leave my rural retreat, and would not be here today had it not been my duty to a friend to come to aid in the legal avenging of the murder of trusting innocence."

He did in fact live, as he said, but was at home in history, poetry and the classics. He was a gallant soldier from 1861 to 1865, and was as honest as fearless and as capable a district judge as ever sat upon the bench in Texas. There was no influence on earth that could have swerved him "even in the estimation of an hair" from the rigid perpendicular of judicial impartiality and rectitude.

The desire to pay a richly deserved tribute to one who was my own, and my mother's friend, has caused me to digress from my story of Major Boone, who was the friend and fellow soldier of Judge Hightower. They had dared death on the battlefield together, practiced law at the same bar, and in the heart of both the memories of the Southern Confederacy were cherished with a devotion that naught but death could abate.

When Major Boone was wounded in 1863 he and a noble daughter of Louisiana had plighted their troth, and purposed being married when the war was over, but when he had been maimed for life with characteristic generosity and chivalry, he tendered her a release from her vows.

He said when she had promised to become his wife he was in the full vigor of health and youth (he was about 28 years of age), but he had been maimed and made in a large measure helpless, and he had no right to ask her to become his wife under such changed conditions. She was, however, a typical Southern woman of the old regime. The blood of soldiers and gentlemen ran in her veins, and she declined her gallant lover's chivalrous offer.

They were married November 25, 1863, and on their way back to the home of Major Boone stopped at my father's home on his plantation, and I am old enough to remember that they did so. They were accompanied by the Major's colored body servant "Ransom," who he kept with him until the faithful negro died.

My father was proud to have the wounded soldier and his courageous young wife as his guests, and I have heard him say that when Major Boone offered his fiancée her release, she replied: "If you have body enough to hold your soul, I will marry you." No human body ever encompassed a nobler, knightlier soul than did that of Hannibal Boone.

Some years ago I was in Richmond, Virginia, and visited the Confederate museum, formerly the White House of the Confederacy. I saw in the Missouri Room the picture of Major Boone, a very excellent likeness. I said to the lady in charge: "Madam, that picture is improperly placed. It belongs in the Texas Room." She said: "It was not marked or labeled in any way, and we did not know where it belonged." I said: "It belongs in the Texas room, and, Madam, allow me to say to you, you have on these walls the pictures of many gallant Southern heroes, and you will in course of time add many more, but you have not here and will not have, the picture of any man, however exalted may have been his rank, who was worthier to have his picture hung on these walls than was the man whose picture I am pointing to."

Major Boone was a most genial and delightful companion; fond of a good joke and a good story. He often told a joke on me which he enjoyed greatly, and which much amused our mutual friends.

He and I were taking dinner on one occasion with a train crew at a way station, in what might be properly termed a second-class restaurant—the only available place. There was a young lady waiting on the table, who had been, owing to straightened financial conditions of her family, compelled to engage in that kind of service. She had evidently not been accustomed to it, and was obviously much embarrassed.

She was a strikingly beautiful young woman. It might have been said of her, as Appius Claudius said when he first beheld Virginia, the daughter of Virginius—"Such was not Hebe, or Jupiter had sooner lost his heaven, than changed his cupbearer!" In serving the coffee I turned as she passed, and struck her arm, with the result that the hot coffee was spilled on my shoulders and back. The poor girl almost fainted from embarrassment, and as she apologized, her eyes were tear-dimmed. I assured her no harm had been done, and that it was my fault—not her's, and sought to relieve her discomfiture as much as was possible. Major Boone's sympathies were aroused, and turning to her with that knightly grace with which he might have addressed a queen,

said: "My dear young lady, don't be distressed. You are not to blame, and he is not hurt. If a man had been in your place and the same accident had occurred, my friend might have got angry, but *you* might scald him with hot coffee from his head to his feet, and he would swear the sensation was rapturously delightful."

I assured the distressed young woman that the Major spoke the truth, and she was so amused by his gallant remarks that she smiled through her tears.

Somebody who is kind enough to read these rambling and disconnected sketches, may think I have allowed the bias of personal friendship to betray me into giving too much space to a man who was neither Governor, Senator, Congressman, Supreme Judge or General, but my purpose is to make record of those Texans who most worthily lived and most worthily served their state. Rank and reputation never were the hallmark of real worth. They are man-made, but God makes men, and Hannibal Boone was a man in the highest sense of that term. He was as true a friend as ever loved his fellow man. He was a lawyer of the very first order of ability. I know, because he practiced before me for nearly seven years. He was honor incarnate, and he was as gallant and as game a soldier as ever flashed a falchion or faced a foe.

The law of heredity has in the case of his posterity operated unerringly. His eldest son at 29 years of age was elected Judge of the 12th Judicial District, and filled the position with ability and efficiency, and is now Mayor of the city of Corpus Christi. Another son is now Judge of the 79th District of Texas. The widow of Major Boone still lives to cherish his memory, and rejoice in the character and achievements of her sons and his.

I recall that during the convention in Galveston it was suggested in certain quarters that Governor Coke should be called upon to announce that he would not be a candidate for or accept the position of United States Senator—at least such was the rumor which drifted about the hotels and the convention hall, but no such announcement came.

When the Legislature met he was elected United States Senator and began his service in that position March 4, 1877, and retained his seat for eighteen years, without, so far as I recall, even a suggestion of opposition. I heard some year or two after he entered the Senate, a very interesting, indeed amusing conversation in Galveston between a Republican named McCormick and the very well known, indeed famous, Major Thomas Peck Ochiltree.

I chanced to be taking dinner at the same hotel table with the two men, and the Major was sitting at one end of the table and Mr. McCormick on his right. Something was said about Senator Coke, and McCormick at once launched out into a criticism of his

appearance, and dress, and style of speaking, dwelling specially on his broad-brimmed hat and big walking-stick. The criticism was very similar to that indulged in several years later by the man who offended the old Judge who had been Senator Coke's fellow soldier, an incident I have already related. The Major turned up towards McCormick, the eye in which there was a decided cast, and as he continued to eat rapidly, said very abruptly: "You are a d——d fool. You don't know what you are talking about?" McCormick, somewhat taken back by the suddenness and bluntness of the remark, said: "I'd like to know why." "Because," Major Ochiltree said, "Dick Coke dresses that way down here among his own people, but don't you know that in Washington he wears tailor-made suits, and ruffled shirts, with diamond studs and a three-story silk hat, and wears kid gloves and carries a gold-headed cane," all of which was purely imaginative description, of course. Continuing, Major Ochiltree said: "You wait until 1882 comes around and he will come down here and get into that long-tailed coat, and put on that old flop hat, and get out his old hickory walking-stick, and bellow on the stump like a prairie bull, and spit on his shirt front, and sweep the decks like a hurricane."

McCormick was not convinced by the unique prediction, and insisted, "Old Coke," as he termed him, "could never be elected again." I heard and saw the famous Major's prediction fulfilled literally. I was in Austin the day the Senatorial election came off in the legislature which sat in the temporary capitol in 1883. There was no other candidate but Senator Coke, and every vote in the Senate had been cast for him, and I chanced to be in the House when the roll was called.

Beginning at "A" on down through the alphabet, the roll of members was called, and the unbroken line of responses was "Coke." The last name on the roll was Wyatt, and the owner of that name was a negro as black as a lump of charcoal. When his name was called, he answered "Coke," so, as Major Ochiltree had predicted, nearly five years before, "Dick" Coke swept the decks like a "hurricane."

The social and fashionable atmosphere of Washington was in no wise congenial to Senator Coke. He had no taste for such frivolity, and I heard his colleague, that courtly gentleman, Senator Sam Bell Maxey, once tell a very amusing joke on Senator Coke.

He said: "One day Coke came to me in apparently great perplexity and distress and said: 'Maxey, I have received an invitation from President Arthur to dine at the White House, and I haven't got any kid gloves, and I don't want to wear any, and I don't know what to do.' I said, I am going to dine with the President this evening and I will talk to him about it. During

the evening I told President Arthur of the dilemma he had placed my colleague in, and the President laughed heartily and said: 'Oh, tell Coke to come along and never mind about kid gloves.' " I will interject into the story at this point that the President made quite a concession to the Senator from Texas because he was very scrupulous in the observance of all the conventionalities. He was said to have been more thoroughly *au fait* in all matters of social usages and customs as they prevailed in high society than any President ever in the White House. He was essentially a gentleman, cultured, courteous, kind, and considerate, and of most elegant manners, and did not intend that the Texas Senator should be barred from the White House on account of any convention concerning his garb. If he did not care to come in *costume de riguer*, he should come anyway.

Continuing, Senator Maxey said: "I didn't have the opportunity to talk with Coke again until after the day of the dining had passed. When the opportunity presented, I said: 'Coke, did you ever find a pair of gloves?' He said: 'I did, but came mighty near not doing so. I went down Pennsylvania Avenue on one side and back up on the other, and could not find a pair big enough. After so long a time I went into a little hole in the wall on a side street and found a pair that I could get on, and when I did get 'em on, my hands looked like a pair of canvassed hams, but I wore 'em, but the gloves weren't the worst of my troubles. It was the trails of the women's dresses.

"I saw a powerful fine looking woman bowing to me, and I bowed, and she bowed, and I bowed again. I didn't know who she was, but thought maybe she desired to see me, so I started towards her. When I moved, she moved off, with her back to me. Now do you know what was the matter? I was standing on the trail of her dress, and I'll swear I wern't in fifteen feet of her.' I said: 'Did you get your gloves off safely?' 'H——l,' he said, 'I tore 'em off.' "

When Governor Coke became a Senator, March 4, 1877, of course, automatically, Governor Hubbard became his constitutional successor. He was an interesting man, and possessed in no small degree the gift of eloquence. He was well born and well educated. When only 23 years old, he was appointed United States District Attorney, and afterwards served his county in the Legislature.

He commanded a regiment in the Confederate Army, and in 1873 and in 1876 was nominated for Lieutenant Governor, and of course, elected. He was temporary chairman of the convention which nominated Grover Cleveland in 1884, and canvassed several middle western states during the ensuing campaign.

It will be remembered that the Republicans dug up and used an incident in the past private life of Mr. Cleveland as campaign

material. The charge was unquestionably true, and the facts soon became public property. It was that Mr. Cleveland who, at the time of his nomination (and election) was a bachelor, was the father of two children, the name of whose mother was Maria Halpin. It was said at the time the matter was brought up that Mr. Cleveland was preparing to issue an explanatory statement, but during that campaign Arthur Pue Gorman, Senator from Maryland, and one of the most astute politicians in the United States, was chairman of the National Democratic Executive Committee, and it was said he wired Mr. Cleveland the laconic advice: "Tell the truth," and that message became a campaign slogan. I recall the incident, not for the purpose of reviving anything derogatory to Mr. Cleveland, but because it became the medium through which "Dick" (as he was commonly called) Hubbard effectually squelched a man who interrupted him in one of the audiences he spoke to during the campaign.

The fellow tried to heckle the speaker by asking: "What about Maria Halpin?" As quick as a flash, "Dick" Hubbard gave the heckler the quietus he needed. None who remember him have forgotten his immense rotundity, or his big eyes and his deep, sonorous voice, and the habit he had of emphasizing his best points by shaking his head vigorously from side to side. Pointing his finger at the man who had asked the question, he said in tones that could have been heard half a mile: "Never you mind about Maria Halpin. She has nothing to do with this campaign, and let me tell you, young man, that the Democratic party has in the course of her history been guilty of many d——d fool acts, but she never yet put a gelding in the race for President." The crowd howled its approval.

A change of 555 votes in New York would have elected Mr. Blaine, so it is within the range of possibility that the ready retort of the Texas Ex-Governor brought about a Democratic administration and gave the nation one of its great Presidents.

I say it was possible because the retort of "Dick" Hubbard was flashed over the whole country. It may be that I have not given his reply *verbatim et literatim*, but have given the witty and truthful meaning.

## CHAPTER XII.

The question of pardons and commutations gave Governor Hubbard much trouble and worry, and his sympathies were often wrought upon distressingly. There was no Board of Pardon Advisers at that time to serve, so to speak, as a breakwater against the flood of tears he had to encounter.

Major H. H. Boone was Attorney General during his administration, and he told me that one very hot day he went to the Governor's office to see him on business, and just as he arrived at the office the Governor entered. He had walked over from the Mansion, and as he was about five feet nine inches in height and weighed over, or about, 300 pounds, he was sweltering and sweating. He opened his shirt front and seizing a big palmetto fan, stirred the air vigorously, saying as he did so: "Major, I have just had an awful time. I went home to dinner (the new fangled designation "lunch" for the midday meal had not at the time reached Texas), and when I got there the mother of—— (naming a man in Southwest Texas, who was under sentence of death) was there, and his wife was there, both pleading for the son and husband. The mother cried, and the wife cried, and Mrs. Hubbard cried, and d——n it, I cried. Oh, it was a fearful time, but I can't pardon the man who committed such a crime," and he did not pardon him. The sentence of the law was carried out.

I was riding with him once on a train shortly after his return from Japan, to which country he was appointed Minister in 1885 and served four years. I asked him what the state of morals was in the society of Japan. He opened his eyes wide and lifted his eyebrows and shrugged his broad shoulders, and said: "Oh, pretty much like it is everywhere, but they have some pretty sensible regulations there. A man can have his concubine, but before he enters into that kind of relation, he must with money, or stocks, or bonds, or other property, insure the comfort of his legitimate family, and that is very just. Then again they have a regulation that he must not keep the concubine in the part of the city where his family lives, but away over in some other part of the city," and then he made one of his indescribable grimaces, while his eyes twinkled, and he punched me in the ribs with his thumb and said: "And let me tell you, that is a first-class, sensible kind of an arrangement, sure as you are born."

The fight against him for the nomination was led by some able men and was very bitter, while the friends of Governor Throckmorton were, as was always the case with them, enthusiastic, faithful and devoted. As I recall, the candidates themselves indulged in no charges or recriminations. Both were gentlemen. Those opposed to Governor Hubbard brought up a charge once made that he had borrowed money in some way that associated

the transaction with persons who had dealings with the State, and it was intimated that his action was an infraction of the proprieties, if not forbidden by law.

There was, I am sure, no foundation for any allegation impeaching his integrity, and now since he and the friend who came to his relief have both passed beyond the reach of human praise or blame, it gives me pleasure to set down what was told me. A well known man in comfortable financial circumstances, was a very close friend of a much older man than I, with whom I was associated in the practice of law, when Governor Hubbard was Governor. That gentleman dropped into my office one day and the matter of borrowing the money by Governor Hubbard came up in the conversation, and the visitor said: "All the talk about Dick Hubbard getting money by improper methods is the veriest rot, and does him gross injustice. I will give you all the facts, and they are few: I have known Dick Hubbard for a long time and always go to see him when in Austin. One day I called and he was evidently much disturbed in mind and said to me: 'Henry (his given name), did you ever owe a whole lot of petty debts about which you were being bedeviled every day and not have the money to pay them? If you have, you know the fix I am in, and how I feel.' I said: Dick, how much do you owe? How much will it take to clean you up? He said: 'About \$3500, and I could get it from a well known firm in Galveston (which firm was said to have made the loan), but those people have contracts or dealings with the State, and I cannot go to them.' I said: I tell you what you do, Dick, make your note for \$3500 for such time as will suit you and I will endorse it. He made the note. I endorsed it. He got the money, and I paid the note, as I expected to have to do, and that is all there is to the talk about Dick Hubbard borrowing money improperly." I believe the story was true, because the man who told it to me was amply able to wait for his money, and he had no contracts with the State nor any business relations with the State or the Governor, and he could have had no motive to invent a false story. If Governor Hubbard did not pay the note his friend endorsed when it was due, it was not because he did not recognize his legal and moral obligation to do so, but because of sheer inability. He was not gifted with the capacity to either make or save money, and the number of his kind is legion.

The ability to make money is a special endowment—a distinct gift of nature. Men who can plan largely, and forecast in a practical way material results for others, cannot so contrive by honest methods as to transmit their conception into cash.

As I recollect, Governor Hubbard was the moving spirit—the procuring cause, to use a legal phrase, in the building of the Cotton Belt Railway. He desired to promote the prosperity and

development of the section of the State in which he lived, but he did not so plan as to make money for himself, as many a man with less intelligence, and less principle, would have done.

Many public men who understood and discussed with intelligence great financial questions of national importance were always in debt, indeed bankrupt. They belonged to a class, as did Governor Hubbard, in the eyes of which the only potential value a dollar had was what it would buy for immediate use. Its value for what it would make, or its productive capacity, had for them no existence. No man discussed more ably great financial questions than did the late Daniel W. Voosheer of Indiana, who was a great lawyer and an almost matchless orator. I stood one day two hours under an autumn sun and listened to him without tiring or being bored—on the contrary, was held spellbound. He appeared successfully for the defense in some of the most noted murder cases ever tried in the United States, and must have earned large fees. He was for more than thirty years in Congress, first in the House and later in the Senate, yet at the time of his death, twenty-three years ago, it was being arranged with President McKinley, who was very fond of him, to give him some appointment for which his ability fitted him in order to provide relief of his financial condition, brought about by his utter indifference to the value of money, and to its accumulation or the saving of it.

No great financial question or any other great national question ever came up in the United States Senate that the great mind of Daniel Webster did not illuminate it, and he was, besides, one of the great lawyers of America, yet his friends and admirers in Boston took up regular collections to prevent his being absolutely without money. Then again, even if a man in public life be not devoid of the ability to make money, if he gives to the people that measure of service which he owes them, he has no time to make money.

To plan for proper legislation and meet the ever-changing and never-ceasing demands of the public welfare leaves no time to plan for speculations, and if they did, the order of mind and line of thought required for the latter is wholly different from that required for the former. The real statesmen and the practical financier is rarely combined in one man. No Governor or legislator in Texas who does his full duty can make any money out of the office, if he is honest. Governor Hogg, after he left the Governor's chair, demonstrated the possession of the ability not only to lay practical financial plans, but to successfully execute them, yet I have heard that he said that when he left the Governor's office in January, 1895, he only had \$50 in money. He left public station with clean hands, a clear conscience, and a practically empty pocket.

It is eloquent testimony to the character of the men who have filled the gubernatorial and other executive offices of Texas and the numerous judicial positions, that despite the fact that they have at all times been paid inadequate salaries, yet in seventy-five years there has been but one instance in which a public servant of Texas has proved faithless to his trust, and he was driven from office.

Governor Roberts was succeeded as Governor by John Ireland of Seguin, Guadalupe County. John Ireland was in some respects, a most remarkable man. He was much misunderstood by those who were thrown in personal contact with him. He appeared to be stern and cold. Such an estimate was, in my judgment, most erroneous. He came to Texas at an early day and achieved success under many adverse conditions. He was a member of the House of the 13th Legislature, which met while E. J. Davis was Governor. He belonged to the minority, and a man of his character and ability in such a body was like a rare jewel cast into a pile of pebbles. At the next election he was sent to the Senate from the Seguin District, and there fought all the extreme legislation proposed by the Republican administration.

He opposed with earnestness and ability the I. & G. N. subsidy bill which, though it passed, Governor Coke slew it with a veto. He was one of the district judges elected in 1866 who was removed a year later by military edict. He had no aptitude for electioneering. He was not a good "mixer." There was nothing of hail-fellow, hand-shaking, back-slapping politician in his make-up; yet, as I recall, he had no opposition for the nomination for Governor in 1882 and of course had none in 1884.

His competitor in both races before the people was one worthy of the steel of any foeman—Colonel G. W. Jones, commonly known as "Wash" Jones. He was elected to Congress in, I believe it was, 1880, by 274 majority over the brilliant, popular, and able Seth Shepard of Washington County, who died only a year or two since in Washington City where, for twenty-five years, he was a member of the Court of Appeals of the District of Columbia. Colonel Jones was a far more effective public speaker than was Governor Ireland—indeed, was a power on the stump, both because he was able, eloquent, and logical, and because he was honest in his convictions. I do not recall that I ever saw him but once in my life, but if my memory serves me correctly, he was elected Lieutenant Governor at the time J. W. Throckmorton was elected Governor. I have no data before me on that point, but such is my recollection. It is doubtful if any other man in Texas could have polled 102,501 votes to 150,809 cast for Governor Ireland.

While Governor Ireland was in office he was ex-officio a member of the Capitol Board, one of the duties and responsibilities

resting upon which was to select the kind of material out of which the State Capitol should be built.

I was riding with him on one occasion on the train, and that subject came up, and he referred to it in these words in substance: "The other two members of the Board were of the opinion that in view of the difficulty of getting sufficient limestone in Texas, it would be advisable to resort to Indiana limestone, and they favored that course, or were so inclined." He evidently had no thought in his mind that his associates on the Board were influenced by any purpose, save and except, to do what appeared to be right and best. Continuing, he said: "I said: 'Gentlemen, you and I comprise the Capitol Board, but if you will examine the law carefully you will see that while that is true, yet the Governor is made the final arbiter in the matter of choice of material, and I'll be d—d if the Capitol is not going to be built out of Texas material,'" and it was, and is a monument to the wisdom and state pride of John Ireland.

At the next election his vote increased over 60,000 while that of Governor Jones decreased over 14,000.

From some time in 1875 until the third Tuesday in April, 1876, Governor Ireland was a member of the Supreme Court. He wrote the opinion in the case of Lewis vs. Aylott, 45 Texas, which is to be found on page 190 of the report, which is before me as I write. It laid down the law to be that real estate cannot be devised by nuncupative will in Texas, and the holding has never been departed from. I consider the opinion a very able one.

The paragraph of the opinion which is third on page 202, is full of words of warning and wisdom.

I remember well when the case was brought. The attorneys for the losing side had only moved to Galveston a short time before. I went there a green, inexperienced country youth, and became associated with a much older man than I, and his office was in the same building into which counsel for the appellant established their office a short while after I reached Galveston. They were Hon. Richard S. Walker and his son, John C. Walker. The son and I were about the same age—possibly I was a year or two his junior. Judge Walker, the father, was a very able lawyer and a most charming gentleman. If I am not mistaken, he had lived and reared his family in East Texas, making his home at Nacogdoches. The brief for the appellant in Lewis vs. Aylott reveals his thorough learning in the ancient law relating to real estate and its transfer by will. Andrew P. McCormick, afterwards United States District Attorney and United States District Judge, who died only a few years since at a very advanced age, while Judge of the United States Court of Civil Appeals for the 5th District, was trial judge, and a most excellent one he was. He was a native Texan, born in Brazoria County in the early

thirties, and as a practitioner and a judge had become thoroughly familiar with Texas law, and besides was learned in the common law.

I hold him in grateful remembrance for the kindness and consideration shown me when an inexperienced neophyte I first appeared before him. His judgment in *Lewis vs. Aylott* was affirmed. Judge Walker, as I recollect, was in a short while appointed to the District Bench in his old district, and retired from the firm of Waul, Walker & Walker, which was formed after the Aylott case had been tried. The firm then became Waul & Walker and so remained for many years. It did an extensive and important practice, deservedly so, because both members were very capable lawyers and men of high character. As I have already said, General Waul died a number of years ago. Mr. Walker still lives in Galveston, but is much impaired in health. Appellees won their case, but their counsel knew they had had a fight.

## CHAPTER XIII.

The election in 1876, when a full state ticket and a legislature was elected, took place, as I recall, on February 15th, and all officials went into office on April 18th, Governor Coke was Governor and held the position until he resigned early in 1877 to take his seat in the United States Senate.

In either 1876 or 1878, I am not sure which, probably the earlier year, Thomas R. Bonner of Tyler, Smith County, was Speaker of the House.

He was a man of ability, and impressive appearance, and a very accomplished parliamentarian, and elegant gentleman. There was some legislation sought concerning the Texas & Pacific Railroad and the bill was known as the Texas & Pacific bill. The opposition to it was very strong and the fight over it became very fierce. As I recall, some question of parliamentary law arose, and telegrams were sent to the Hon. James G. Blaine and Hon. John G. Carlisle, two of the greatest parliamentarians then in the United States, to get their opinions, and, as I remember, was sent as one message to both men.

During the parliamentary battle a very amusing incident occurred. The minority had adopted a plan of opposition often employed before, and since, of breaking a quorum, by leaving the hall and refusing to attend the sessions of the House. One of the members from Harris County was a well known lawyer by the name of Barziza, who was by his intimate friends and professional brethren generally addressed as "Bar," a term of affection. He was black-eyed, and black-haired, and of Italian descent, and was bright, energetic, eloquent and interesting. He was, for many years, a law partner of the late Charles Stewart of Houston, which fact avouched him a capable lawyer. He was one of the bolters.

One of the members from Galveston was a very estimable man—a Jew—who had, as an importer of coffee and a banker, acquired a comfortable fortune, and who had the deserved respect of every man who knew him. He was inclined to portliness, and was dignified and inclined to keep out of the limelight. The personality of the two men, Mr. Barziza and Mr. Kopperl, was as different as it is possible to imagine.

The one was fiery, impetuous, bold, quick, and ready in speech, with a clear, ringing voice, and with the dramatic quality highly developed, the other slow and hesitant of speech, with no oratorical gifts, and no self-assertiveness, but apparently timid, and with a voice which had in it no fire or fervor.

The Sergeant-at-Arms was instructed to arrest and bring in the bolting members. When he brought "Bar" in he stood by his chair. The Speaker said: "The gentleman from Harris will take his

seat." The gentleman from Harris, with his black eyes flashing, and his sturdy figure tense and erect, said in clear, ringing tones: "I decline to be seated until compelled by force." "The Sergeant-at-Arms will seat the gentleman from Harris," the Speaker promptly replied, and the order was obeyed.

The gentleman from Galveston was in the line of "prisoners" right behind "Bar." He stood in the aisle opposite his seat with hands hanging at his back in the exact attitude of a school boy prepared to recite "The Boy Stood on the Burning Deck."

The Speaker said: "The gentleman from Galveston will take his seat." That gentleman had seen "Bar" enact the dramatic role and, to use a slang phrase, "get away with it," so he followed his example. In weak, piping, tremulous tones scarcely audible to all the members, he said: "I decline to be seated unless compelled by force." Quick as a flash, the Speaker said: "If the gentleman from Galveston prefers to stand he can do so," and bringing his gavel down with a ringing stroke, said: "Call the next name, Mr. Clerk," and the gentleman from Galveston was left standing, overwhelmed with embarrassment, and had to quietly sink into his seat without being "compelled by force."

The personality of the two men made the difference in the two cases. What was dramatic and interesting on the part of one, became unimpressive and absurd on the part of the other.

That indefinable and elusive quality, or element, in character called personality is defiant of explanation or analysis, but it has made and unmade the political fortunes of many men.

It is the essential element in what is known as personal popularity, and a large factor in eloquence.

It is said that when that great politician—yea more—statesman, William H. Crawford of Georgia was presented to the King of France as Minister from the United States, the King bowed to him twice—an act without precedent, but which was an involuntary tribute to the majestic and compelling personality of the great American.

I have heard or read somewhere that on one occasion a political rival made a very severe attack on that great orator, Sargeant S. Prentiss. When the attacking speaker had finished, Mr. Prentiss did not utter a word, but stepped to the front of the stage or platform, and leaning on his walking cane (he was, I have heard, a cripple) drew himself up to his full height, which was not above medium, shook back his long hair, and looked defiantly first at his enemy, then at the great crowd, and stood for a moment before them in perfect silence. Soon a shout went up that sook the building and his enemy was overwhelmed.

If he had spoken in reply the result would not have been surprising, because as far as I am capable of judging, though I never saw him, he was the greatest orator the world has ever seen since

Paul preached on Mars Hill, but to have enthused and swept a crowd off its feet by merely standing in silence before it, was a triumph of the power of personality.

We are told in Holy Writ that when the Master in the garden beyond the brook of Cedron uttered the three simple words: "I am He," the band of officers who had come to take Him "went backward and fell to the ground." His was the awe-inspiring personality of divinity incarnate, and it is of course not meant to even appear to compare any mortal man with Him who was "born in Bethlehem," but the instance illustrates the marvelous power of personality. It confirms the report of the soldiers who had before that gone out to arrest Him, but came back without Him, and when asked for an explanation, said: "Never spake man like this man."

Sam Houston possessed the attribute of a most impressive personality, combined with the dramatic faculty. Had he chosen the stage as his life vocation, he would have risen to a prominence in the field of the drama equal to that attained by Booth or Forrest. Shortly before his death his beard had been permitted to grow out and he had lost weight. He was sitting one night in the hotel which stood where the Rice Hotel now stands in Houston, his chair leaning back against the wall of the lobby.

A group of young Confederate staff officers standing near were discussing the cases of several men who, like General Houston, were Union men—two or more of whom had been arrested. The officers were in full uniform and the sleeves of their coats were covered with a profusion of "gold braid;" and though not one of them had ever smelled powder, or heard a bullet whistle, they were loud and coarse in their denunciations of "Union men."

At last one of them said: "Yes, and there is that d——d old coward and traitor, Sam Houston. I would like to run my sword through his heart." In an instant the old general's chair came down with a sharp thud on the floor, and he rose to his full and majestic height and placing the forefinger of his left hand over his heart, and pointing the forefinger of his right hand in the face of the dudish officer who had coupled his name with cowardice and treason, said in tones which thrilled and awed: "Here is the heart of Sam Houston, and the man who says it is the heart of a coward or a traitor lies in his teeth, lies like a dog that he is." In the twinkling of an eye the party of traducers vanished, leaving the old man standing triumphant, the very incarnation of defiant and towering rage. That "band went backward and fell to the ground." That man never lived who unchallenged, could impeach the courage, or fidelity to conviction, of Sam Houston.

After his vote on the Kansas and Nebraska bill, he went to

the town of Brenham for the purpose of delivering a speech on the political issues of the day.

He could have gone to no place in Texas where opposition to the policies advocated by him was more intense. When he rose to speak in the courthouse he was, for the first time, refused a quiet hearing by a Texas audience. Derisive shouts and "cat-calls" greeted his appearance on the speaker's stand.

He paused, and bowing in his stately and impressive manner, said: "I beg pardon." His words seemed so irrelevant to the situation that silence fell upon the audience.

Again he bowed and said: "I beg pardon," and the silence became, if possible, more intense.

After a pause, he proceeded: "I beg pardon, I have no right to speak here. I am not a citizen of this county. I own no property here. I did not contribute by payment of taxes, or otherwise, to buy a brick, or a beam, or a rafter, in this building, and I humbly crave pardon for presuming to attempt to speak under this roof," and again he bowed.

Then stretching his majestic figure to its full height, in a voice that rang out like the notes of a trumpet, he said: "But if there be one man in this presence who desires to hear Sam Houston speak, if he will follow me to yonder sloping hillside, under the shade of yon spreading live oak, on the soil of Texas, I have the right to speak *there*, for I have watered it with my blood."

After a moment of utter silence, a shout went up that shook the building, and if any man had dared interrupt him from that time, the crowd that a few moments before derided and mocked the old man, would have torn the offender limb from limb.

A great man spoke at the psychological moment, and with a master stroke touched and stirred, and thrilled human hearts, and in a moment transformed a hostile audience into one ready to listen in respectful silence.

There have been many men who loomed large in the public eye and who exercised deserved influence on the public mind, who were in a certain sense always "boys" and who were addressed by thousands of people as "Bill" or "Dick" or "Steve."

Stephen A. Douglas was a great lawyer, a great orator, and a man of magnificent intellectual ability, and was once candidate for President of the United States.

Among his devoted friends was Beverly Tucker, a member of Congress from Virginia. It is said that on one occasion Mr. Douglas came over from the Senate to the hall of the House and went to the seat of his friend Tucker and sat down on his lap and put his arm around his neck, and said: "'Bev,' old boy, what office do you want when I get to be President?" "Bev" said at once: "None at all, Steve." "Well, what do you want me to do for you?" Bev replied: "I want you to come and sit on my lap and put

your arms around my neck and say: 'Bev, old boy, I love you.' That's all I want."

There have been, and are other great men who could not possibly be actors in such a scene. It is impossible to imagine any man slapping Robert E. Lee on the back and calling him "Bob." The very idea is inconceivable.

He was courteous, kind, gentle, sympathetic, approachable, and possessed of marvelous grace and charm, but no man would ever have dared attempt any such familiarity with him as was indulged in between a great Senator and a Congressman.

I knew him when I was a mere boy at college. His kind and gentle nature was clothed with an indescribable dignity and reserve which imperatively forbade familiarity. His majestic personality, translated into words, appeared to say, "So far and no farther."

## CHAPTER XIV.

I did not recall what counsel represented appellees in the case of Lewis vs. Aylott referred to in a previous chapter until I chanced to see their names in the report. The leading counsel who actually tried the case, Major James M. Burroughs, was a unique character and an able lawyer. Judging by his garb and his manner of speech, he would have been placed as an uneducated backwoodsman, but he was far from it. He was utterly indifferent to style in garments and just as careless in speech. He often said: "seed" and "heerd," but was in fact a man of both education and brains, besides of comfortable fortune.

As trial lawyer, he was able to take care of his case against any man. He had practiced in the border counties of East Texas, where law books were not abundant, but he was bed-rocked in the fundamentals of law. On one occasion I chanced to meet Colonel Thomas M. Jack on the street after the adjournment of court. We passed the customary salutations and he said: "I am very tired. I have been fighting Jim Burroughs in the courthouse all day, and the man who does that will need no rocker on his bed when night comes."

Thomas M. Jack was the most skillful, ingenious, resourceful trial lawyer I ever saw. His accomplishment in that line was only equalled by his fairness and chivalric grace and courtesy. Major Burroughs was a member of Hood's Texas Brigade during the war of 1861-5, and when that is said all men know he was where the fighting was the fiercest, and he worshipped at the bier of the "young and storm-cradled nation that fell," with all the fervor of devotion of the Moslem at Mecca.

He was never "reconstructed," but bewailed to the day of his death the failure of the cause in defense of which he dared death and danger. It may be that my liking for him was somewhat influenced by that fact. Republicanism, or as he termed it, "radicalism" was to him a term of offense. He treated all the appointees of the party in power with that measure of respect due the stations they occupied, but for being in those stations they were in his eyes "anathema," especially if they were Southern citizens when the war came on.

The Federal Judges appointed by President Grant and other Presidents, and the District Attorneys, were objects of his special dislike. One April night there came up a very severe blow which rose to the dignity of a storm, and it covered with water several blocks of ground the Major owned between Broadway and the beach. I happened to be called out in that direction, and saw the results of the blow, and on my way back met the Major, or perhaps overtook him, when he was taking his usual morning stroll.

The Federal Court at Brownsville was due to begin the spring term the next Monday, and the Judge and District Attorney had to go by steamer from Galveston to Point Isabel to get to Brownsville. The boat had sailed about twelve hours before the storm came. I said to the Major: "That was a pretty stiff blow we had last night, and I see it put a lot of water on your blocks on Center Street." "Yes," he said, "I woke up and heerd that wind a-blowin' and you know what I said to myself? I said 'Old (calling the name of the United States District Judge) and that d——d carpet-bag district attorney started to Brownsville last night in the boat, and if the wind blows the boat and both of 'em to the bottom of the Gulf of Mexico, I am willing for it to blow all my property away or cover it with water, and I won't complain a bit.'"

He was a rare old character. He has a nephew yet living in the sand hills of Leon County, in a small village, who was like his Uncle a gallant soldier in the ranks of Hood's Texas Brigade. He has retired from active business and professional life on account of his advanced age, but in the days of his professional activity, though he lived for a large part of the time in the woods twenty miles from a railroad, had no superior as a physician and surgeon or as a true thoroughbred gentleman in the ranks of the medical profession in Texas.

My cherished recollections of friends of my early days, which I felt constrained to set down as a tribute justly due them, led me to apparently lose sight of Governor Ireland and drop him abruptly, but I had no such intention.

As was said a few pages back, he had the appearance and the reputation of being a stern, cold, dispassionate kind of a man who was not moved by or responsive to the gentle and tenderer influences which so forcefully affect many men, but who ever judges him to have been so, does him injustice. He was fond of pleasure and congenial companionship, and to be in his company, in his periods of relaxation from the burden of official cares, was a very great pleasure. He was utterly free from affectation or pretense, and was a delightful companion.

I recall that upon one occasion when he had his office on the ground floor of the temporary capitol, I dropped in one evening to pay my respects just before leaving the city for my home. He received me with dignity, but courteously and cordially. I declined a proffered chair, but he said: "Oh, sit down. It is raining and blowing and disagreeable outside, and we can be comfortable here by this open fire. I have nothing to do."

I remained, and I do not recall that I ever spent a more delightful half hour. A few days before there had been a very worthy young white woman—a wife and perhaps a mother—assaulted and murdered by four negroes in, I believe, Anderson County. The crime was characterized by peculiar, indeed un-

precedented brutality and atrocity, and the four negro men and a negro woman were quickly hanged by the horrified citizens of the community.

I said to the Governor: "That was quick work on a large scale in Anderson County the other day." "Yes," he said, "It was very bad. As John Ireland, Governor of Texas, I emphatically condemn such action—and as John Ireland, the man, I think they did exactly right." No doubt in these words John Ireland expressed the real feeling of every Governor, North or South, who has red corpuscles in his blood.

John Ireland had one characteristic that more than any other revealed the inner man, and that was his love of little children, which I have heard was with him a passion, and I care not what a man may be apparently, or in fact, if he loves little children and enjoys their companionship, and finds pleasure in caressing them, there is in that man an inextinguishable spark of the divine.

Among the jewels of immortal beauty, which gem so thickly the teachings of the divine and tender Christ, there is none more beautiful than His words: "Suffer little children to come unto me and forbid them not, for of such is the Kingdom of Heaven."

During one summer while Governor Ireland was serving his last term as Governor, I came to Austin and brought with me my second son, then a little tot about 3 or 4 years old. He was a blonde and his hair hung in ringlets down to his shoulders. His skin was fair and he was becomingly dressed. I met the Governor on the street and we shook hands, but he at once dismissed me from his thoughts and said: "Kittrell, what a beautiful child," and stooped down and picked the little fellow up and kissed and caressed him and held him as close to his breast as if my boy had been "kindred to his blood." The act was so manifestly spontaneous and sincere, that it revealed what manner of man he was.

He had certain habits that may appear to the "Unco Guid," and rigidly righteous to be wholly inconsistent and irreconcilable. He was the most faithful church attendant I ever saw, yet he understood the great American game, and while he did not gamble for money, he enjoyed the diversion of a game for small stakes. I had a friend who represented an East Texas County in which I at one time lived—in the House one or two terms. He told me that on one occasion a party of members, he among the number, were playing a quiet game when Governor (then Judge) Ireland entered the room. All the players began to hide cards and pocket chips, and in every way possible conceal what they had been doing.

The man who told me the story said Judge Ireland walked in with that dignified carriage that he always maintained, and with

a cloak or cape around his shoulders (I cannot recall that I ever saw him with an overcoat on) and looked like a Roman Senator, and that the crowd were ashamed to have him detect them.

They did not deceive him. He said: "Keep your seats; don't let me disturb you. I know what you are doing. Go on with your game. I did not come in to play, but I will watch you a while," and he stood behind the player who related the story. The renewed game had not proceeded far when the Judge said: "Bill, you don't know how to play poker. You have been losing your money ever since I have been standing here. Get up and give me your seat, and go out and walk around the block." "Bill" obeyed his directions, and the Judge took his seat. The player who walked around the block said to me: "When I got back the Judge was pulling in the stakes from long law, and had me out of the hole."

While I do not gamble, and hold gambling to be a very harmful, dangerous habit, yet John Ireland could have done many worse things than sit down and help a friend get back money he couldn't afford to lose.

There were two places to which Judge Ireland rarely failed to go, and they were to church and to the theater. I chanced to be in Austin on one Sunday while he was Governor—indeed was there for several weeks. The particular Sunday to which I have reference was a very cold one. The streets and sidewalks were coated with ice, and the the mercury was unusually low. Looking south from the temporary capitol, as I recall, I saw but one person on the street and that person was the Governor. His cloak was drawn around his shoulders, and he was walking carefully to keep from falling, and was making his way to St. David's Episcopal Church. Any man who ventured out on such a day to go to church must have felt in his heart a sincere desire to worship.

I have no doubt that there were hundreds, if not thousands of church members in Austin that day who believed a card was a ticket to hell, but who did not go to church to do homage and render thanks to God for His mercies. The Governor of Texas did.

I do not recall that I ever knew a more inveterate theater goer than was Governor Ireland. He rarely missed a performance. He was a man of comfortable fortune and could afford to go. I was told some years ago by a relative of his—a brother lawyer—that Governor Ireland never drew a dollar of his salary while in office, but drew the whole for four years when his last term ended. I do not know such to be the fact, but think probably it was.

He was especially fond of comedies, melodramas, farces, and negro minstrels—any kind of a performance that furnished fun and relaxation. In those days I was very fond of the theater,

but have attended but one in ten years. I was sitting across the aisle from the Governor one night when some laugh-producing play was on, and when a hit was made which brought down the house, he reached across the aisle and slapped me on the knee as he laughed uproariously, and said: "Kittrell, ain't that great?"

I was instrumental once in bringing about a meeting between Governor Ireland and that accomplished actor, Lawrence Barrett. Mr. Barrett was playing a two-night engagement in Austin—the characters portrayed being Hamlet and Richelieu. I saw the first performance, but have forgotten now, which of the two plays was put on. I went into the Governor's office next morning. I said: "Governor, did you see Mr. Barrett last night?" He said: "Oh, no; I never go to see a tragedy played. I see enough of the pathos and tragedy of life here in this office. What I want is diversion and relaxation." I said: "You will miss a great treat if you fail to see Mr. Barrett and, by the way, he is upstairs in the Senate Chamber, and I have no doubt he would appreciate being permitted to call." The Governor said: "Certainly, I should be delighted to meet him." I had met Mr. Barrett, so I went upstairs and said: "Mr. Barrett, I should like to have the pleasure of presenting you to Governor Ireland." He seemed greatly surprised and said: "Oh, I could not think of presuming to intrude myself upon the Governor of Texas." I replied: "My dear sir, it will be neither presumption or intrusion. It will be a pleasure to the Governor, for he has just so said to me." Mr. Barrett was evidently more surprised than ever, but was manifestly gratified at what I had said. He considered it a most unusual honor to be invited to call upon the Governor of a great state, because in the North Governors and other public officials are by no means as accessible to the private citizen as they are in the South. They evidently up there believe more in the adage that "some divinity doth hedge about a king," and are disposed to keep the average man at a distance.

Governor Ireland was a genuine Democrat and a gentleman, and Lawrence Barrett was a strikingly handsome, well bred, graceful man, worthy to be received by any Governor, and he gladly accompanied me to the Governor's office. He was received by the Governor with marked cordiality and very gracious courtesy, and the meeting was evidently a great pleasure to both. I felt sure the Governor would express his appreciation of the call by going to see Mr. Barrett play that night, and he did. I was curious to know what he thought of it, and asked him. His reply was: "Kittrell, it was the finest thing I ever saw in my life. I enjoyed it immensely, and I am obliged to you for advising me to go."

A few years ago a brother lawyer related to me the following incident in the life of Governor Ireland which he related as if he

knew it to be true, and as he is an honorable man, and a distant relative of Governor Ireland, I accepted it as true:

He said Governor Ireland walked into the office of a lawyer whom he knew, and calling him by his given name, said: "How are you?" The lawyer replied: "Not well, Governor. I am depressed and feel badly." The Governor had a paper in his hand, and said: "I chanced to see in this paper that your property is advertised under foreclosure sale. How did that happen?" The lawyer said: "It was a purchase money debt, and business had been bad, and he was simply unable to meet his payments. Governor Ireland said: "Why didn't you let me know? I might have been able to help you." The lawyer replied: "Why, Governor, you were under no obligation to me. I had no earthly reason for asking you to pay my debts, and besides when you were a candidate for Congress against Colonel Schleicher I took the stump against you." The Governor said: "Well, you had the right to do that. This is a free country, and Schleicher was an able man, and you had the right to help elect him. How much do you owe? What will it take to pay the debt?" The debtor named a very considerable sum as the sale was of his home. Governor Ireland turned and walked out, but returned in a few minutes and handed the despairing debtor a check to cover the full amount of the debt, interests and costs, saying as he did so: "Take this, and if you can pay it back, do so. If not, your home is saved." and quietly withdrew.

He may have been "cold," as his enemies said he was, but the man who did what John Ireland did for an unfortunate fellow-man, is such a man as is rare, and the world sorely needs more "cold" men.

## CHAPTER XV.

Governor Ireland held the office of Governor during the years 1883-4-5-6, and he was followed by Lawrence Sullivan Ross, "the Little Cavalryman," who was nominated at Galveston in the summer of 1886. As I now recall, he and D. C. Giddings of Brenham and Marion Martin of Corsicana were the candidates for the gubernatorial nomination. Colonel Giddings was a successful business man; had twice been a member of Congress, and would have made an excellent Governor, but no man could have defeated "Sul" Ross in that convention.

No man was worthier to have been Governor of Texas than was Colonel Giddings, who was called by his intimate friends "Clint." He was, as I have heard, in early life a conductor on the railroad running from Hempstead to Brenham, when Brenham was the terminus of what is now the Austin branch of the H. & T. C. R. R.

He later read law and became a partner in the practice of his elder brother, Colonel J. D. Giddings, who was for many years a successful practitioner at the bar of Brenham, a town that has furnished the bar of Texas with as many lawyers who rose to professional and official distinction, as has any town in the State of its population, and more than many larger towns can boast of.

Colonel Giddings, I think, raised and commanded a regiment in the Confederate Army, and after the war, his brother and himself entered into the banking business at Brenham in the firm name of Giddings & Giddings. The bank was opened in 1866, as I recall, and under the management of the son of Colonel D. C. Giddings, is yet a stable and prosperous institution. The son, who is a most efficient and useful citizen, has proven worthy of his noble sire.

There came into Texas in reconstruction days a man from the North—a typical carpet-bagger. He had been, I think, a brigadier general in the Northern army, and saw in the then condition of Texas what appeared to him to be a most excellent opportunity to indulge in (as the Pilgrim fathers said when they plundered the Indians) "much gayneful pillage."

In, I believe, 1869, when E. J. Davis was elected Governor, the carpet-bagger was elected to Congress by the negro vote, to which he catered, and his affiliation was almost wholly with the members of that race. He, of course, abused the South and the Democratic party and mocked at the misery of the people he and his fellow carpet-baggers were plundering.

His name was William T. Clark. He was rather a good looking man and a stylish dresser, and his dudish appearance won for him the sobriquet of "Tomtit Clark." I heard him ranting before a crowd of negroes who howled with approval whenever he abused the South and the Democratic party.

As I think of it all now, I am reminded of the famous retort

made, I believe, by L. Q. C. Lamar to some Northern Senator who was pouring out the vials of his partisan wrath on the head of Jefferson Davis, "whose shoe's latchet" the traducer "was not worthy to unloose." Senator Lamar said: "When Prometheus was chained to the cold rocks of Mount Caucasus it was a vulture and not an eagle which preyed upon his vitals."

In 1871 "Tomtit" Clark came back to Texas and ran for Congress again, and Colonel Giddings was the Democratic candidate.

It may have been that the election was for the state at large. I am not sure, but in any event, the territory to be covered was of immense area. Colonel Giddings covered it. The officials vested with the function of returning officers were, of course, Republicans, most likely carpet-baggers or scallawags, who were worse, if possible, and they gave "Tomtit" the certificate of election.

Colonel Giddings promptly filed notice of contest, and with unflagging energy and at great expense, all borne by himself, got up the testimony to be presented to the Committee on Contested Elections of an overwhelming Republican Congress.

The Committee reported unanimously in Colonel Giddings' favor, and so overwhelmingly did he prove that he had received a majority of the votes amounting to thousands, that, marvelous to relate, every vote in Congress was cast to adopt the report, save one, and that was cast by William "Tomtit" Clark. The fraud of the returning officers was made so manifest that a rankly radical Congress gave an ex-Confederate Colonel, who was a Democrat, his seat—the only decent act ever performed by it, where Southern interests were concerned, so far as my recollection extends. Colonel Giddings was elected to Congress again in 1876, the year Samuel J. Tilden was elected, but as everybody knows, the will of the people was thwarted, and the office stolen by the same kind of returning board that tried to steal the election from Colonel Giddings. No man ever performed a greater service for Texas and the Democratic party and the cause of honest elections, than did Dewitt Clinton Giddings when he, single-handed, defeated the efforts of a lot of corrupt partisan officials to debauch an election in Texas, and when he drove a conscienceless obtruder into the obscurity he so fitly adorns. Colonel Giddings passed away a few years ago at his home in Brenham, and above his honored dust rests the soil of his beloved state, whose faithful and fearless adopted son he was.

As I recall, wholly from memory, the vote for Governor Ross in the first ballot was 406, which made it evident that opposition was useless. It was at that convention that the public career of J. S. Hogg as related to the whole state began. He was nominated for Attorney General, thanks to the fidelity and devotion of as steadfast and enthusiastic a body of followers as ever stood be-

hind a candidate. I trust to be able later to do justice to him and his remarkable career and valuable services to Texas.

Governor Ross polled 228,776 votes, defeating his Republican opponent three and one-half to one. I recall no gubernatorial administration in Texas that was so free from friction, or that was so little subjected to criticism as was that of Governor Ross. He had been sheriff, member of the constitutional convention of 1875 and later a member of the Senate, but was not as widely known as have been some candidates before, or so well. He was a man of culture and courage, and of an order of integrity so high, that even suspicion of infidelity concerning him was impossible. He had the commendable ambition to be Governor of the State in which he had lived since he was an infant at his mother's breast. He had fought Indians on her border e're he had attained his manhood, and had, as a commander in the Confederate Army, participated in 127 battles, big and little, before he was 27 years old, at which age he was a Brigadier General. He had no special fondness for politics, and after his first term of service as Senator, declined to run again.

The nominating convention met at Hillsboro, I think, and after several days of political battle neither of the two candidates could get the necessary two-thirds vote, so the convention nominated him and adjourned.

I happened to meet him shortly afterwards and said: "Well, General, they drafted you." "Yes," he said. "I am sorry they did. If I had known of it before the convention adjourned, I would not have accepted, but after it had adjourned, I could not afford to force another convention on the district by declining the nomination, so I was obliged to accept."

My recollection is that when Governor Ross was in the Senate the last time the sessions were held in a hall over the drug store now at the corner of Ninth Street and Congress Avenue, while the House held its sessions in the Millet Opera House, now the Millet Mansion. That was a very strong Senate. That can be said of any Senate that contained such men as L. S. Ross, A. W. Terrell, and Charles Stewart of Harris County, who was for ten years a member of Congress from Texas—a man big of body and brain, and of high character.

Some who read this may not know that there was a negro Senator in that body—a genuine black negro. His name was Burton, and he was from Fort Bend County, and in reconstruction times was sheriff of that county. He was a respectful, respectable, sensible honest man, and his conduct and bearing as a member of the Senate so commended him to his fellow members that a number of them, perhaps all, joined in presenting him with a handsome ebony walking stick, gold mounted. That was seventeen years after the close of the Civil War, yet a negro was

representing a senatorial district in Texas where the Democratic vote of the whole state was 4 to 1 as compared with the Republican.

Seventeen years later I saw a white Democrat of an old and most excellent Texas family, a young man of ability, give up his seat in the House to a negro, pursuant to the report of the Committee on Contested Elections of a Texas Legislature, yet it is preached in the North that we roast negroes here to make a Southern holiday. I have heard that Senator Burton owned a plantation, or at least a large farm, and possessed a comfortable fortune. I have heard the statement made, and have never heard it contradicted, that his old mistress in Mississippi was greatly impoverished by the war and that up to the time of her death he sent her \$50 a month and erected a monument over her grave, and that when his young mistress married he sent her a thousand dollars as a wedding present. If this statement is true, even in part, the gift of his brother Senators was worthily bestowed.

When speaking of "public men in Texas" his name might not be suggested, but he was in public station pursuant to lawful proceedings, and having proved himself morally worthy, he is entitled to recognition.

Governor Ross was as efficient and successful as President of the A. and M. College as he had been as Governor. He was one of those plain, simple, unpretentious, yet forceful and efficient men, who arrived at every goal he set for himself, and measured up to the demands of every situation. Just after the announcement of his election to the presidency of the A. and M. I met a drummer friend who traveled in East Texas territory. I was raised in large part in East Texas and am a great believer in that section of the State. I asked my friend what the news was in my old territory. He said: "All I heard was fixing up to send boys to the A. and M. I'll swear I believe every man that was a soldier under Governor Ross is going to send his son to school under him. They said 'Little Sul' is running the A. and M. now and we know where to send our boys. We know him because we followed him for four years." They were right, for neither they nor any other man ever followed a gamer or more gallant leader. He always led. He said, "boys, come on." He never said "go on." His habits of fighting time stayed with him. About two years before his death, I was invited to deliver the Commencement address at the college. My wife and I were his guests. He had a large room upstairs known as his room, but which he rarely occupied in summer. He apologized for being compelled to assign my wife and me to a small (but entirely comfortable) room on account of the number of his guests. He said: "I sleep out here on the gallery. I have slept on the

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pairie and in the woods so much that the inside of the house is too cramped and confining for me. You will find a box of cigars on the table in there—help yourself. I rarely touch them. I keep a sack of tobacco and a supply of shucks and stick to cigarettes." He caught the cold which ended his life on a hunting trip. In his passing, Texas sustained an almost irreparable loss. He loved his tent, and the winds, and the running waters here, and it is comforting to believe that the tent of the heroic soldier is pitched now on the banks of the river of life, by which blossom and bloom the trees of Paradise.

## CHAPTER XVI.

The nomination of James S. Hogg in 1890 was predestined before the campaign began. As well as I can recollect, the only opponent who took the stump against him or offered for the nomination, was Gustave Cook of Harris County, at that time Judge of the Criminal District Court of Harris and Galveston Counties, but his candidacy was of no avail, nor would that of any other man have been.

The Bard of Avon said 300 years ago that "there is a tide in the affairs of men which, taken at the flood, leads on to fortune," and the saying is as true now as it was when Shakespeare wrote it down, and James S. Hogg illustrated its truth most forcefully.

There were many who believed that he was merely an ordinary politician, who designedly stirred up prejudice against the railroads in order to win votes and ride into office. I may have thought so myself, but I was on the Bench and took no part in politics. Looking back upon the condition and events of thirty years ago, I do not believe the charge was true. In the first place, James S. Hogg was not an ordinary politician, nor an ordinary man in any way.

I say this with entire sincerity, though I never voted for his nomination, and though our personal relations at one time became very much strained, it might be said, hostile, I have never been able, and never desired to be able to keep alive resentment, or cherish malice or ill will.

The railroads of Texas had unquestionably done much to arouse public sentiment. There was practically no restraint in the matter of issuance of stocks and bonds, and they indulged, perhaps from necessity, resulting from fierce competition, in ruinously unjust discrimination in freight charges, and the very best interests of the state, indeed its good name, demanded correction of such evils.

As Attorney General, Governor Hogg, as I recall, sought relief for the people through the courts, but the result of his efforts was not such as was satisfactory to him, and he therefore determined to carry the fight to the people. He had been reared in poverty, and had mixed much with the plain people, and believed in them. I have no doubt that he believed that as the champion of the people against the railroads he could win the Governorship, and that was a very commendable and laudable ambition, and to make the attempt along those lines was entirely legitimate politics. I believe, too, that he had a higher and more unselfish purpose than merely obtaining an office—that he had wrought out in his mind certain plans and policies which he believed if put into execution, would correct existing conditions,

and regulate railroad management in such way as would be best for the people and for the roads.

The object of his deepest interest and most persistent purpose was a railroad commission, and he believed, as I understood, that such a body could be created under the Constitution as it then existed, but the consensus of opinion of the ablest lawyers in the Legislature was that a constitutional amendment would be necessary. I recall that L. A. Abercrombie of Huntsville, who was elected Senator in 1886, and consequently held over until 1890, favored a railroad commission, but believed it could not be lawfully created until the constitution was amended; and he was one of the best lawyers ever in that, or any other Texas Senate, and I believe, but am not sure, that he drafted the amendment.

The commission came in due time, as did the stock and bond law and other constructive and salutary legislation which Governor Hogg advocated, and when he left office in January, 1895, he had the satisfaction of knowing that the fight he began four, yes, six years before, had been won. No ordinary man would have ever worked out such a plan—certainly would not have carried it into full fruition.

National and State history teach us that it has ever been that when conditions reach a state of emergency and peril, out of the very stress and strain of the situation there is always evolved some man who was destined to correct the evils which threaten the welfare of the people. Samuel J. Tilden, single-handed, except for the aid of Thomas Nast, the cartoonist, crushed into powder the most corrupt and most powerful municipal ring of thieves and public plunderers that ever cursed a great city.

Grover Cleveland cleaned out the festering corruption in municipal government in Buffalo, and at the expense of his defeat for the Presidency, denounced the Senate Tariff bill of 1888 as an "act of national perfidy and dishonor," and the people made him President again in 1892.

James S. Hogg did not have to deal with a case of moral corruption. The railroads exercised powers which they had at least the legal right to exercise, because there was no law to prevent what they did. The credit of the State must have been irreparably injured if counties were not restrained and bond issues regulated, and Governor Hogg argued that law and morals should go hand in hand. I have said that his relations and mine became strained. The estrangement arose during the campaign in 1892 between him and Hon. George Clark. On the Clark ticket was an uncle of mine whom I loved better than any man on earth, and I took up the cudgel for him in resenting remarks made about him by Governor Hogg; but with me all bitterness ended with the end of the campaign. I feel that much must be

pardoned in a man when he was fighting as he believed, not only in defense of cherished ideals and policies, but for his very political life. I never felt or expressed any doubt of his integrity of purpose or action.

He left the impress of his constructive statesmanship upon the Statutes of Texas, and he will be remembered for his virtues long after his faults are forgotten. That he rendered the people of Texas much needed and most valuable service there is no doubt, and it is very gratifying to know that there has come, as the fruit and planning and foresight, wealth and comfort to his very worthy and deserving children.

The morning his death was announced the president and managing head of the Houston Chronicle sent a request to me at the courthouse, while I was on the Bench, asking me to prepare an editorial tribute. It had, necessarily, to be very brief, because the editorial page was ready to go to press, and was being held for the tribute.

I wrote it as fast as my pencil could fly over the paper, and it gave me very great satisfaction to be told a few days later by one of Governor Hogg's law partners, Frank C. Jones, Sr., who was, and is, a very highly esteemed friend of mine, that of all the newspaper tributes paid their father, my brief one gave to his family the most satisfaction. There was not a word in the few lines I wrote that was not true; and that I did not feel.

The campaign of 1892 between Governor Hogg and Judge Clark for strenuousness, vigor and bitterness, will long remain the standard. It was as lamentable as it was unnecessary, but it cleared the political atmosphere, gave each faction more respect for the other, and when peace was declared, the party was stronger than ever. Such conflicts, even between candidates of different parties, are to be regretted, and when they arise between men of the same party, they are tragically deplorable.

Every man in Texas knew then as well as he knows now, that George Clark was an honest man, a gentleman and a patriot, yet he was charged with being in the pay of the railroads, and the the representative of capitalists who wanted to exploit Texas, and many other kindred charges were made against him, for no other reason than that he differed from his opponent as to what financial, industrial and economical policies were best for Texas, but in that mad hour of passion men ceased to reason.

I was on the Bench at the time, but I favored Judge Clark's election. I never yet saw any kind of a political situation that would cause me as between two men of my own party, to vote against my personal friend.

Friendship with me is a sacred creed. When I come to stand before the bar of final judgment I doubt not that the catalogue of my offenses will be long and large, but I do not believe there

will be found there even one time the charge that I ever failed a friend or forgot a favor. I do not believe my "dearest foe" will charge that against me.

George Clark was my personal friend. His father and my father were friends, and lived in the same county in Alabama, and he and I were born in the same county, though he was quite a number of years my senior. He was a gallant soldier in the Army of the Confederacy and fell wounded in the midst of the fiercest fighting in front of the Confederate Capital.

He was a lawyer of the very first order of ability. The "Old Alcalde" knew a lawyer when he saw him, and he made him a Judge of the Court of Criminal Appeals, and he left behind him in the records of that court opinions that will be to the bar and bench, unerring guides to legal truth when his bones are dust. He was equally at home in the field of the criminal and the civil law and was the peer of the ablest in either sphere. That can be said of comparatively few lawyers. At least such is my experience. Judge Clark and Major W. M. Walton and A. W. Terrell and Leonard A. Abercrombie of Huntsville and W. L. Crawford of Dallas, are among the few names I can recall offhand, of men who were able and skillful in both lines of the profession. Judge Clark's profound knowledge of the principles of criminal law was best displayed on the bench where he put his conclusions into shape in faultless English, and sustained them by unanswerable reasoning. Unless my memory plays me false, he served under Governor Coke for a brief time as Secretary of State, rather as a matter of accommodation to the Governor than from any desire to hold the place. Later he was made Attorney General by Governor Coke—a place for which he was admirably fitted.

Judge Clark's father was a lawyer and for many years was Chancellor in one of the districts in Alabama where the jurisdiction of the court was purely equitable. He was a plain, solid, able equity lawyer, without any frills or furbelows.

Judge Wm. P. Chilton of Montgomery who was for twelve years Chief Justice of the Supreme Court of Alabama, once appeared before Chancellor Clark to argue an important case. They were warm personal friends. Judge Chilton was a great uncle of Hon. Horace Chilton, if the genealogical record in my memory is correct, and was a cultured, scholarly man. In the course of his argument he said: "May it please your Honor, at this point I feel I can appropriately quote from that great poet, John Milton." However so able a lawyer and cultured a man as was Judge Chilton, could weave any part of Milton's immortal epic into an argument in chancery is difficult to understand, and it seems the old Chancellor had doubts about it, for he at once said: "Never mind, Judge, about those hethen

(heathen) poets, just stick to the law and the facts." Judge Chilton "stuck" thenceforth.

It came to pass after Governor Hogg became a member of the bar at Houston that I was called upon to try a case in which he was made defendant. The action was in the nature of one to impress a trust upon certain lands in favor of the plaintiff—or in the alternative to recover damages in a large amount.

The original petition set the damages at, I believe, \$3,000,000, but as the land lay near Beaumont and was, of course, supposed to be underlaid with rivers of oil, a lawyer who at that time dropped the figures in his allegation of damages below a million, was ridiculed as a "piker."

There were, of course, allegations of fraud and deception made against Governor Hogg, and the case was one of that character where one tale was good until the other was told, and the very respectable and capable counsel who filed the suit were entirely justified in doing so, on the faith of their client's version of the dealings between him and Governor Hogg. One of the ablest lawyers ever at the bar of Texas, who was a political and personal friend of Governor Hogg, was employed before the case came to trial, and he revised the pleadings and reduced the amount of damages asked to \$66,000. Governor Hogg appeared for himself, but supported by quite an array of able lawyers.

It took nine days to try the case, and the result was a verdict for defendant, as it should have been. While I believe the plaintiff honestly thought he had been defrauded, he was not an educated man nor overly bright, and Governor Hogg had not only not defrauded him, but had tried to befriend him, and when the facts were fully sifted out and the truth revealed, not even the faintest odor of fraud attached to Governor Hogg's action.

I recall that the charge was a very difficult one to write, as the issues as plead were complicated, and I expected a motion for a new trial to be filed, alleging error in every paragraph of the charge. When the time for filing motion was about to expire, I asked the counsel who had been called into the case, if he was going to file a motion for a new trial. He replied promptly and with decided emphasis: "I am not. My case has been submitted under a charge to which there could be no objection, twelve men have found against me, and I am done." There is no truer or safer test of legal ability than the capacity to know when not to appeal, especially on the part of the plaintiff. A *lawyer* generally knows when not to appeal. The mere *attorney* never knows until the appellate court points out why he had no case, or no ground of appeal.

After the case was over some friend asked me if I heard what Governor Hogg said about me in the course of his argument. I replied I did not. It seems he said in effect, that the court was

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personally unfriendly to him, and he had to look to the jury for justice. The case was tried before the statute passed as a concession to judicial stupidity was enacted, requiring the charge to be delivered before the argument, but not till court and counsel have wrangled over every paragraph.

My attention was absorbed in writing the charge, and I did not hear what Governor Hogg said, but even if I had, I likely would neither have fined him nor reprimanded him, but would have pardoned the remark to his natural zeal in defending himself against charges involving his honor.

Besides, since I did not cherish the slightest personal ill will against him, and I was conscious that in the fear of God I was trying to "execute justice and maintain truth," I could have afforded to, and would have ignored the statement had I heard it. Had I been his bitter foe, the only way I was likely to have been influenced as regarded him, was that I might, out of fear of leaning against him, have unconsciously leaned toward him. He won, as he ought to have done, and I was, and am glad he did.

## CHAPTER XVII.

I stated a few pages back that the only opponent who offered for the nomination for Governor against Governor Hogg in 1890 was Gustave Cook of Harris County, and any story of the public men of Texas which did not include Gustave Cook would be like the tragedy of Hamlet with the melancholy Dane omitted from the cast. He was strictly *sui generis*. He had neither precedent or model. He was a bundle of inconsistencies and contradictions, but nevertheless through his mental and moral makeup there ran a thread of pure gold.

He joined the famous regiment, the fighting Paladins of Benjamin Franklin Terry, which came to be known as Terry's Rangers, and when the war closed, was, as I recollect, its Colonel. He said to me once: "I never could understand why it was that I couldn't go through a battle without getting in the way of a Yankee bullet. I was no braver than anybody else, but d——d if they didn't hit me every time I went in. When we got to Bentonville, North Carolina, with Joe Johnston, we didn't know General Lee had surrendered, so we lit into the first bunch of Yankees we saw, and they shot me pretty near through, and fifteen years afterwards I had to have the bullet cut out from under my shoulder blade." He was an authority on race horses, their blood and ancestry and pedigrees, yet never bet a dollar.

He was an earnest, eloquent anti-prohibitionist, but never took a drink. He swore like "our army in Flanders," perfectly unconscious that he was doing so, yet he believed profoundly in the fundamentals of the Christian faith, and was able to, and did, on the platform, defend it with persuasive logic and thrilling eloquence.

On the bench he was in one moment the very impersonation of judicial dignity and sternness, the next moment would let out some original remark that would bring a smile to the face of a mummy.

His heart was tender, his friendship strong, yet I have seen him try a murder case in which the defendant was bound to him by ties as close as was possible not to be within the prohibited degrees, and he never leaned or wavered the millionth of a mental inch from the perpendicular of judicial impartiality.

He was elected to the Legislature in Harris County in 1872 and had for an opponent a negro named Dick Allen. I said: "Colonel, you will have to observe the courtesy established by long custom and vote for your opponent." He said: "I'll be d——d if I do. I have been telling these people that no 'nigger' had any business in the Legislature, and I am not going to stultify myself to conform to any kind of custom. I am going to vote for Gus Cook."

His colleague, elected at the same time, was Dr. Ehrich F. Schmidt, a German druggist, and most estimable man. Both men were in the heyday and prime of a splendid manhood, and I recall them as the two handsomest men I have ever seen in my life, one a brunette, the other a blonde.

Judge Cook was for many years Judge of the Criminal District Court of Harris and Galveston Counties, and I several times exchanged with him. He said, "I like to go to the country where I can eat hen aigs and swap lies with the boys." He could condense the law of any kind of a criminal case correctly into briefer compass than any man I ever knew. He was as honest and as fearless as Saul of Tarsus.

The popular clamor had no more effect upon him than did the sighing of the winds. He was genial and courteous to everybody, but toadied to no man. The rich man was no more in his sight than his poorer neighbor, if the latter was worthy of respect. He was going to court one morning and a man stopped him who was rich and by reason of that fact, was somewhat of a king among his kind, which kind was not of Judge Cook's class. The man said: "Judge Cook, the people of this county are getting mighty tired of the way the Criminal Court is run. There are too many continuances and too much expense." The Judge said: "Is that so? And they have sent you to tell me about it as I understand." "Yes, sir," the man said, "and I have done it." The Judge looked at him for a moment with an expression of contemptuous scorn and said: "Well, you tell the people for me that the next time they send anybody to tell me how to conduct my court, to send a gentleman and not a d——d pot-bellied scrub like you are."

The messenger grew wrathful at once, and said: "You can't talk to me that way, sir; I won't stand it." The Judge said: "Now you are a d——d liar, for I have already talked to you that way, and you have stood it, and are going to stand it," whereupon he coolly strolled off down the street, leaving the messenger of the people boiling with wrath, but with prudence enough to say no more.

He could do things in the court house at one time that would touch the deepest emotions, and the next time violate all precedents.

I chanced to be in the criminal court room at Galveston one day when he was passing sentence on a negro youth who had been convicted of theft. He said: "I am ashamed to see you here. On the wall of my home there is a picture of your mammy with two of my children in her lap, and God never made a better woman than she was. She raised you right, and I am glad she is dead so she will not see you where you are now. Here, Mr. Sheriff, take this money and buy this boy such knick-knacks or comforts

as he may need," at the same time putting a lot of money in the sheriff's hands.

At a term of the court in Houston the District Attorney who always read or recited an indictment with much *impressment* got down to the charging part of one, and it revealed that the defendant was accused of stealing a watermelon. The Judge said: "Mr. District Attorney, where is the defendant?" "He is sitting there just in front of your honor's stand." The Judge leaned slightly over, but the heavy cornice and carving of the elaborate Judge's stand concealed the defendant from his view, until he pressed his corpulent form against the inner edge and leaned further, when he saw a little woolly headed negro boy about 10 or 12 years old. Raising up, he said: "Tut, tut, Mr. District Attorney, this won't do. You are trespassing upon the constitutional rights of a citizen. Any 'nigger' boy of that age has the constitutional right to steal a watermelon and it ain't right to worry the court with it. Gentlemen, return a verdict of not guilty." And they did.

In every city there are always to be found among the legal habitues of the criminal court room some very shady "shysters." One day the District Attorney was endeavoring to identify a lot of gold rings and chains found in the possession of the defendant, whose counsel were handling the part of the jewelry lying on the counsel table. The Judge called the sheriff to him, and bending his lips close to the officer's ear, said: "Watch that jewelry. It is in more danger now than it ever was before."

I saw him tested once as few judges have been tested. It was when I had not practiced law long, assisting, if what I did could be called assistance, an older and very able lawyer defend the brother of a friend of mine for alleged murder. The District Attorney, though always fair, was very strong, and the private prosecution was very vigorous.

The deceased, while he was a printer at the case, as was the defendant, had relatives of high social and professional standing, and the issue was doubtful. There was but one objection referred to the Judge during the trial and he resolved that against the defendant, and if there was any leaning or bias at all in his admirable charge, it was in favor of the State.

After the jury had retired I walked up to the Judge's stand, and he said: "Norman, this has been one hell of a case." Much astounded, I said: "Why Judge, I never saw a case more smoothly tried. We have had no contention over any question." "Oh," he said, "I don't mean what I say in that way. I wouldn't have cared anything about that, but I raised that boy sitting there," pointing to the defendant. "His mother's yard and mine joined in Richmond. He played with my children. He ate at my table, he slept on my beds, he sat on my knee, and no man

ought to be compelled to go through the ordeal I have gone through."

Under those circumstances no man connected with the trial even suspected that he had ever seen the defendant before in his life. No Judge could ever have been more absolutely impartial, though, as I discovered a few minutes later, his heart was full, almost to bursting.

I said: "Judge, let's walk down to the corner and get some lunch." He agreed. Before we had gone very far a deputy sheriff overtook us, and said the Judge was needed in the court room as the jury had reached a verdict. We returned and he took his seat and asked the jury if they had reached a verdict. The foreman said: "We have, sir." The verdict was one of acquittal. The Judge said: "Gentlemen of the jury, you are discharged with the thanks of the court. You have proven that you intend to uphold the law and administer justice in this community," and at once left the bench and walked rapidly to the door of the court room. Tears were rolling down his cheeks, and as he drew near to the District Attorney, who had started out of the room ahead of him, he cried out in a voice broken almost into sobs, "Frank, by g—d, they cleared him."

I asked him later what he would have done had the verdict been one of conviction. His answer was prompt and emphatic. "I would have given him a new trial in fifteen minutes." The verdict was right. I have had many jurors before me in murder cases, but so far as I recall, I never have seen any jury which, taken all in all, was composed of twelve men of as high character and as superior in order of intelligence as were those who tried that case. The defendant himself was but little if any happier than was the Judge. Only a man who has a heart, and has been placed in such a position can appreciate how trying an ordeal "Gus" Cook endured that day.

In that very court room where his emotions moved others to tears, he had laid before him one day an application for continuance in a case. The attorney was generally reputed to keep a supply on hand to meet most any emergency. The Judge turned page after page until he reached about the tenth, when he folded up the motion and said: "Mr. Clerk, enter a continuance. It will take the rest of the term to read this motion."

He had the faculty in conversation or on the platform of blending the comic and the serious, or putting them into that juxtaposition which creates humor. I heard him in the course of an address at a gathering of Confederate veterans one day pay a tribute to Jefferson Davis which, in point of chaste oratorical beauty, no man could have excelled. There was a sentence in it that I felt that it was impossible that it could have been the fruit of impulse or sudden inspiration, put forth "impromptu," and I asked

him about it. He said: "Why, I laid on the floor and groaned like a woman in travail shaping that sentence to suit me," and I am sure he told the truth. It was worth the toil, yet it sounded as if it came forth spontaneously, fresh-coined from the mint of his wonderful mind.

He sometimes, as a courtesy, or to help some deserving charity, delivered a lecture on the theme, "Simon—Sometimes Called Peter." I do not believe he ever delivered it for pay, because he cared no more about money, or knew no more how to make it, or take care of it, than did an infant in arms. The lecture was a marvel of humor and seriousness, fun and solemnity. I remember he said: "And Peter's wife's mother lay sick of a fever but she rose and ministered unto them. If one of these modern day of mothers-in-law had been Peter's mother-in-law she would have had Peter making a fire and fixing the coffee, and skinning around the back yard over chunks of wood and wheelbarrows and old stove legs trying to catch a yellow-legged chicken. The word 'Peter,' you know, comes from the Greek Petron, a stone, and in French, it is Pierre, so when you work it out to the end we are led to the conclusion that Peter was 'a brick.'" Immediately after such quaint conceptions as those quoted, he would rise to heights of eloquence that stirred and thrilled.

When the I. & G. N. Railway was first built a very wealthy man in New York was a large stockholder in it, perhaps was its president—a station on it is named for him. He was a very religious man, and a liberal philanthropist. Outwardly at least, he carried his religion into his railroad business, by having framed and hung in the stations along the line, scripture texts. The road was begun before the reconstruction period was over, and the carpet-baggers were robbing the South, unrestrained. In one of the depots the text was, "Thy gold and thy silver are mine." It caught Judge Cook's eye at once and he said: "You are d——d near right. You have got most all we had, and are getting the balance."

It should not be inferred from what I have said about Gustave Cook that he was gifted with eloquence, wit and humor, but not dowered with a sustained power of reasoning, for such inference would be most erroneous.

He was capable of presenting a legal argument in a civil case, with great force and clearness, for in addition to being thoroughly grounded in the principles of law, he had an unusual command of language, and clothed his ideas in faultless English, and could embellish an argument with metaphor and pointed illustration, without lessening its strength. He made before me on one occasion, one of the most clear-cut and forcible arguments on the

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constitutionality of a statute relating to contested elections I ever heard.

Able lawyer, just and brave judge, chivalrous, gallant soldier, genial companion, faithful friend, tender and devoted father, may his rest be peace in the bosom of the State he loved so deeply and served so faithfully.

## CHAPTER XVIII.

In 1894 there was a very spirited contest for the Democratic nomination for Governor. John H. Reagan, S. W. T. Lanham and Chas. A. Culberson were, as I recall, the contenders for the prize.

The convention met in Dallas, and Judge Reagan and Attorney General Culberson were the leading candidates. On personal grounds, which are very persuasive with me, my sympathies were with Colonel Lanham, though I had sincere admiration for the brilliancy and solid ability of Mr. Culberson, and profound reverence and respect for Judge Reagan, than whom no state ever had a more capable or more faithful public servant. He was, I think, twice district judge, and I believe was twice elected to Congress. One of his contests was with Lemuel Dale Evans and I have heard it was very heated, and that the race was very close.

I know Judge Reagan was in Congress in 1860, because my father visited Washington that year, and I have heard him repeat what Judge Reagan told him about the dangerous tension which political feeling had reached between Northern and Southern Congressmen. Judge Reagan said personal conflicts were imminent all the time, and said to my father: "Doctor, if one shot had been fired, this hall of Representatives would have been a slaughter pen."

Lemuel Dale Evans was a man of considerable ability—indeed, above the average, but his conception of fidelity to the South must have differed very widely from that of Judge Reagan, as he was presiding Judge of the Supreme Court of Texas in 1870-71. He must have been appointed by Edmund J. Davis, hence could not have been of Judge Reagan's way of thinking.

Judge Reagan came to Texas at a very early day, only a few years after the Battle of San Jacinto, when he was about 21 years of age, as he was born, as I recall, in 1818. It was delightful to hear him relate his reminiscences of the early days. He told me that he never played poker but once, and as far as he recalled never was drunk but once.

He was a deputy surveyor and traveled over a large territory. On one occasion he went to Fort Worth, or to where Fort Worth now stands, but there was nothing there then but a government frontier post. The crowd got to drinking mustang grape wine, which I have heard was calculated to upset even the most hardened toper. Next followed poker. The old Judge said he never had known much about poker, but sat in to be sociable, and the next thing he distinctly recalled, he was waking up and his pockets were full of money; the pile being about \$400. He said he couldn't account for it, as he really knew very little about

the game. It must be assumed he had the proverbial luck of the greenhorn. That was his first and last spree of the kind.

He said on one occasion a colony or tribe of Indians which had pitched its tents near Palestine, got obstreperous and the settlers had to send to Houston to get Sam Houston to come and pacify them, as nobody else could do anything with them. He was President of the Republic and quite a numbr of his staff came with him, and the party was joined on the route by one John I. Burton, who was quite a wag, and otherwise an original character. The President had not at that time forsaken the habit of indulgence in strong drink, which he did later in life under the influence of his devoted wife, and when he got to the camping place, near Tennessee Colony, was just recovering from what the boys sometimes call a "jamboree."

He at once sought his tent to get some sleep, and quiet his nerves and straighten up. The settlers who comprised, or composed, the Tennessee Colony had brought along a small number of brass instruments from Tennessee—enough for the beginning instruments of a brass band, and the performers were eager to display their musical skill (?).

John I. Burton went to the band boys and said: "Would you like to give the President a serenade? He is very fond of music." The boys felt honored, so they armed themselves with their trombones and other horns, and Burton guided them to a position just behind the President's tent. Every nerve of the President was out of tune, and even the chirp of a cricket, or the hoot of an owl sounded as if it had been magnified by a microphone; and he yearned to fall off into a deep sleep.

Just as it looked as if "balmy sleep, tired nature's sweet restorer" was about to exert her dominion, the Colony band broke loose on the opening notes of "Hail Columbia," which tune begins with no soothing, dreamy melody, but its first note is full grown. The President rose and came out in the night, the very personification of rage, and the band struck for the thickest part of the woods. He soon learned that Burton was responsible for the trick, and Burton did not return to camp for three days. What the President said no doubt made hot reading on the ledger of mortal accounts.

The Judge upheld the majesty of the judicial office, and allowed no trifling with it.

My father used to tell of one occasion upon which an old countryman got the best of the Judge. When I was a boy I used to wade and fish in Pool's Creek in Madison County. It was called for a family by the name of Pool—early settlers in that section. There was in the same section a family of "Cleeks" or "Clicks," and a feud broke out between the two families and several of the male members of each side, happening to meet by ac-

cident in the primeval forest, a pitched battle followed, and one side, I believe the Pool side, was about wiped out.

The only two persons who saw the fight outside of the participants, was an old "country cracker" and a negro, and, as I recall, the negro could not testify, as the law then was, though possibly I am in error on that point, which, however is not material.

Indictment was returned in due course, and trial before a jury began, with Judge Reagan on the bench. The old countryman was put on the stand and told to tell what he saw, in his own words. He began: "I told Dick, that's a nigger boy that lives with me, that we would go hog hunting and fur him to git a wallet of nubbins to pitch the skittish hogs." Just then the Judge said: "See here, I don't want to hear anything about hogs, or Dick or nubbins. You tell what you saw when the Pools and Clecks fought." "Yes, sir, your honor; I were a comin' to that pint," said the witness. "Then come to it quick," replied the Judge. "Well, as I were a-sayin', Dick and me went a hog huntin' and we found a bunch of shoats down back of my branch field." Again the Judge interrupted and said: "If the witness says anything more about Dick or hogs I will fine him. He must tell about the shooting." "Ef it please yer honor, I were a-comin' to that pint. As I were a-sayin', we found a bunch of shoats, and I told Dick to toss 'em a few nubbins, and he done it. Then we went 'cross the crick and we found some sows that wuz pow'ful skittish and I told Dick to toss 'em a few nubbins." The Judge could stand no more, and turning to the witness, said: "If you don't start out and tell about the shooting right from the start, I will send you to jail, so don't you mention hogs or Dick again, but tell about what you saw when you were where the killing took place." "Yes, yer honor, I were a comin' to that pint. As I were a sayin'——" Just then the Judge called out: "Mr. Clerk, enter a fine against the witness." At that juncture an attorney who was present went up to the bench and told the Judge that the simple, uneducated old man meant no disrespect; that he was thoroughly honest and truthful, but his mind so worked that he could tell the thing only one way, and if the Judge would let him tell it that way, the jury would get the truth, so the Judge yielded, and the old fellow never missed a bunch of sows, barrows, or mixed hogs all the way down the creek, and when he got to the scene of the bloody meeting, he told all about the affray.

Judge Reagan was Postmaster General of the Confederate Government from the inauguration of President Davis until just before the surrender of the Confederate Army, when, I am under the impression, he was made Secretary of the Treasury. My impression is also that he accompanied President Davis when he

left Richmond, and was captured with him, and I believe was imprisoned in Fortress Monroe, but do not state that to be a fact.

After he got back home I recollect, though I was but a boy, that he wrote a letter advising the people to accept the results of the war, and accord obedience to those in authority—that resistance was useless. It was good advice, but it aroused great feeling against the writer, as the people were so dumbfounded and disappointed by the result of the war, and so embittered by the treatment they had received, that they felt that Judge Reagan was trying to curry favor with the party in power, but they were grievously in error. He had a broader vision than did others, and was trying to serve his people.

They looked upon him as they did upon Sam Houston when, before the war began, he warned them that their defeat was inevitable, that though they might win victories at first, the strength of the North would be too great for the South to combat successfully, and that the grass would grow in the streets of their cities and towns, and sorrow fill their homes, but they mocked at his warnings and laughed him to scorn. In a few years they saw his prophecies fulfilled in ruin, desolation, suffering and sorrow.

His was a mind that forecast the future, just as he forecast the coming of the Texas Republic and his occupancy of the position of President of the young nation.

Judge Reagan saw that necessity existed for regulation of interstate commerce, just as James S. Hogg saw the same necessity for railroad regulation in Texas, and he was the father of the Interstate Commerce Act, for which he fought when the fight seemed hopeless and success impossible, but adherence to conviction and persistency in pursuit of what he conceived to be the right was an outstanding element in his makeup. I heard him say once that there was certain legislation he endeavored to enact when he was a member of the House in the Texas Legislature in 1847, but failed in his purpose, but that he had never lost sight of the matter, nor let up, and when he was a member of the constitutional convention of 1875 he achieved his purpose. For twenty-eight years he had treasured a desire concerning a matter which he believed was right and just, and he realized his desire after a lapse of time, that in the case of the average man would have served to have banished the idea from his mind.

Governor Hogg appealed to him to resign from the Senate and take the chairmanship of the Railroad Commission in 1891, and with characteristic patriotism, he yielded to the call, and Governor Hogg appointed Hon. Horace Chilton as his successor—a selection that met statewide and deserved approval.

James Reagan as a public speaker never attempted any flights of rhetoric or wove any garlands of fancy, but he was a most forcible and interesting speaker, because he knew what he meant

to say, and said it with luminous clearness, and he spoke the words of an honest man prompted by the impulses of an honest heart. Judge Reagan was a most ardent admirer and valiant champion of Jefferson Davis to the day of his death. The same was true of Governor Lubbock. Both men had been thrown into intimate contact with Mr. Davis, and not only admired, but loved him. Such seems to have been the case with every man who knew Mr. Davis intimately.

The attorneys general in his cabinet changed three times—Mr. Benjamin, Mr. Watts and Mr. Davis of North Carolina, having all filled that position, but my wife's father, who was Assistant Attorney General and frequently acting Attorney General, remained close to Mr. Davis during the entire war, and he, like Judge Reagan and Governor Lubbock, was his ardent admirer and devoted friend. There must have been those qualities in the chief executive of the Confederacy which challenged admiration and confidence. All intelligent men know that he was the most profoundly learned, cultured, and accomplished man ever in public life in America, but those who were not drawn into intimate association with him had the conception of him that he was autocratic, selfish, and cold, but the three men referred to above resented vehemently that charge and declared that he was gentle, considerate, and in every way most lovable.

He had, of course, that measure of self-confidence which his wonderful learning and intellect justified, and he may have at times exercised his power in a way that was not the wisest as subsequent events proved, but no man who knew him doubted his patriotism or unselfish devotion to duty.

He was faithful in his conviction and to his people even unto death, and May 31, 1893, nearly four years after his death, and twenty-eight years after he had been shackled in a dungeon, he was laid in his final resting place in historic Hollywood amid such a demonstration of grief and love, and gratitude, and reverence, and devotion to a fallen cause as the world never saw before—has never seen since—and will never see again. I know, because I was an humble constituent of the throng of 200,000 people that followed the catafalque on which the casket rested.

From New Orleans to Richmond, at noonday, and as the shades of evening fell and "in the dead waste and middle of the night" and at early dawn, thousands gathered with uncovered heads to do reverence to the South's great son. I saw strong, stalwart, brawny men, with cheeks wet with tears, men who had faced death on a score of battlefields, lift their children in their arms and press their faces against the glass-covered sides of the catafalque that they might look upon the flower-heaped casket which held the pulseless clay of a statesman, soldier, and patriot.

It seemed as if they were saying to their offspring: "Look upon

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him and learn what manhood meant, and learn that he was a true, brave, heroic servant of his people—a knightly son of a glorious race—a Christian gentleman, who loved duty and honor better than he loved life.” ’Twas such a man that John H. Reagan loved, and I believe they have met again, where there is no darkness or tears, but where for the faithful there remaineth rest eternal.

## CHAPTER XIX.

Charles A. Culberson was nominated at Dallas in 1894, and elected at the ensuing election. He entered public life dowered with gifts and advantages few young men have ever possessed. He had received the benefit of his legal training at the hands of his father, who, as a lawyer, stood second to no man of his day and time. His father's intellect was of the highest order, and his knowledge of the science of law was profound, and combined with such elements of success was great skill as a trial lawyer. I do not remember ever to have seen him, but believe from what I have heard that my statements are in accord with the facts.

He gave his son the benefit of a thorough education, and the son availed himself fully of the opportunity afforded him. He had inherited a clear, strong, vigorous mind, and he served no apprenticeship, and went through no "starvation period," but from the outset of his career demonstrated a marked ability, and as a lawyer "arrived" at an early age.

I for ten years represented the Western Union Telegraph Company in many counties in Texas, and I very frequently ran upon a precedent in telegraph law that gave me much trouble, that was set by the Supreme Court in a case in which Governor Culberson was attorney for the plaintiff in the early days of his career as a lawyer. The holding in the case still remains as settled law, and perpetuates the fact that a lawyer of the first class was responsible for it.

I have seen it stated that he won a very notable professional victory attacking an act of Congress, which he asserted was unconstitutional—a contention which the court of ultimate resort upheld.

I have a friend, Hon. Frank Andrews of Houston, whose opinion as to any lawyer's professional ability is entitled to respect, for he is a lawyer of the first order of ability himself. He is a man that thinks before he speaks, and measures well his words when he speaks. He said to me on one occasion: "I was thrown in daily contact with 'Charley' Culberson for four years while he was Attorney General. When one man associates in a professional way with another for that length of time, he is prepared to speak advisedly of his ability, because if his apparent ability is but a veneer of pretense, with no solid support, it will wear off. I thought at the end of four years, and I still think, 'Charley' Culberson is the best lawyer I ever saw."

Governor Culberson possessed also the advantage of a most attractive and impressive personality. He was educated at the Virginia Military Institute, and his training in the rigid discipline of that great school gave him a soldierly bearing. He walked

with a firm tread, held himself erect, and was besides the handsomest man I ever saw when he became Governor, and was, if possible, even handsomer when he entered the Senate. Had he lived in the age of mythology, he would have been given a place among the gods.

His administration was marked by the ability and efficiency which might have been expected of him, and at the end of four years he was promoted, if it be a promotion, which I insist it was not, to the Senate. It was my pleasure as a member of the House to cast my vote as one which comprised a part of, if I am not mistaken, the unanimous vote he received.

While he was Governor I enjoyed, as I am sure he did, a little episode in which he was one of the *dramatis personae*. I was passing through the south corridor of the Capitol one afternoon and saw a group composed of two women and two men, apparently much interested in studying Huddle's great painting, "The Surrender of Santa Anna." I knew one of the party, the late George Walker, who was for years manager of the leading theater in Austin. I was attracted by the beauty of one of the ladies, and stopped near enough to the party to discover that Mr. Walker was not sufficiently familiar with Texas history to very much enlighten his guests upon the meaning of the picture.

I stepped up and lifted my hat and said: "Mr. Walker, perhaps I can be of some service to you in the matter of interpreting the picture to your friends." He received my offer with evident pleasure, and said: "Judge, allow me to present Mrs. Goodwin, Miss Elliott and Mr. Goodwin," all of whom received the introduction most graciously.

Mrs. Goodwin was, on the stage, Miss "Maxime" Elliott, known to millions as one of the most beautiful women in the world. Miss Elliott was her sister, later the wife of Sir Forbes Robertson, the distinguished Shakespearean actor, a charming woman of shrinking modesty.

After I had finished interpreting the meaning and historical significance of the painting, I said: "Now, Mrs. Goodwin, you must allow me the honor of presenting you to the Governor of Texas." "Oh, no!" she exclaimed. "I could not think of intruding upon the Governor." I said: "Madam, a pretty woman could never intrude upon the Governor of Texas. We don't elect that kind of Governors here." She still protested, because she doubtless never dreamed that she would be invited to meet the Governor, because, as I have said on a previous page, Governors in the Northern states are not as accessible to the general public as are Governors in the South.

She and her party at last consented to accompany me; and so sure was I that they, and especially the beautiful woman whom I most especially desired the Governor to see, would be received

cordially, we sent in no cards, nor did we linger in the outer ante-room, but walked straight into the inner room, opening directly into the Governor's private office. The door was open, and as soon as his gaze rested on Maxime Elliott he called out: "Come right in, Judge, and bring your friends." I did so. He had been engaged in conversation with a lawyer from my home city, who kept his seat. The stately beauty said: "You are busy, Governor, and I will not intrude." But the Governor did not intend to have her leave, so he said: "Oh, he can wait—have a seat"; and with characteristic grace and elegance, placed a chair for her. She faced west, and he seated himself facing east, and I stepped into the inner ante-room, where I could see both of them, and I said to myself: "There is the handsomest pair of human beings that ever met," and I have never since changed my mind. They would have furnished a theme worthy of the brush of any artist, however talented or famous. The Governor, of course, received Miss Gertrude Elliott and Mr. Goodwin courteously, but the more famous lady caught and en-chained his attention.

Whether the Democrats were in control in the Senate when he entered that body, I do not recall; but, in any event, he soon rose to the chairmanship of the Judiciary Committee which, as I understand, is considered the highest honor among chairmanships.

He was re-elected in 1905, 1911 and 1916, and if his life is spared, will have completed four full terms when his present term ends.

I am advised that his physical health is much impaired, but that his mental faculties function in all their normal brilliancy and strength.

I was asked on one occasion by a friend in Virginia if I knew personally the two men who then represented Texas in the United States Senate. I replied that I did, and that J. W. Bailey and Charles A. Culberson were the two youngest, two handsomest, and two ablest men in that august parliament; and I have not since changed my mind upon that point.

I have never taken any part in the attacks made upon Senator Bailey, because I have never believed that the business transactions which were so exploited in the press, had any relation whatever to his senatorial action. I believed, and said as much to his nearest friends, that there never was a man big enough or honest enough to be able to afford to ignore the apostolic injunction about avoiding "even the appearance of evil," and that was, in my judgment, the height of Senator Bailey's offending.

I believe that as he was conscious that he meant nothing wrong, and had no untoward or sinister purpose in mind, he could not realize that anybody else could think to the contrary.

He made a mistake, as the best of us are liable to do, and if when he attacked in a bitter speech individual members of the Legislature, he had instead frankly stated that he realized he had made a mistake in view of his position as a Senator, but that any man who believed any improper motive had actuated him, misjudged him, and did him an injustice, and he was willing to let the dead past bury its dead, and to forgive those who had wronged him, he would have been at once restored to, and immovably entrenched, in popular favor.

That he is a man of very high order of ability, no man can justly deny. He never hesitated to take the unpopular or weak side of any question; and while his judgment may often have been justly questioned, his courage cannot be doubted—and courage in modern-day politicians is a rare virtue.

Had I been disposed to align myself with the anti-Bailey men, there were personal reasons which imperatively forbade. The father of his wife and my father were devoted friends. Her mother, a cultured, queenly woman, and my mother were neighbors and friends of long standing. Her sisters and mine were schoolmates, and her brothers and myself were collegemates and friends, and I never yet saw or heard or read of any kind of political controversy that could cause me to forget the treasured friends and associates of my parents, or the friends of my boyhood days.

Politicians come and go, and are forgotten. "The shouting and the tumult dies," often leaving nothing but regretful memories of bitter strife; but the friendships of early days are a treasure-house of pleasant memories which last until life ends.

It matters not what the enemies of any man may say of him, if he commands the friendship and devotion of thousands of honest men, who are ready to do political battle for him, work for him, spend and be spent for him, and who adhere to him and follow his fortunes at all times, there is in him those elements of manhood which entitle him to respect, however widely we may differ with him as to his political or personal actions.

Charles A. Culberson was succeeded in the Governor's office by Joseph D. Sayers of Bastrop County. I was temporarily out of Texas when Governor Roberts was nominated the first time, but my recollection is that Governor Sayers was nominated for Lieutenant Governor at that time.

Later he was elected to Congress, and served, I believe, sixteen years, much of the time as Chairman of the Committee on Appropriations. Texas never had in Congress a more honest or more efficient a representative. He was, too, a gallant soldier, and was, I believe, in General Tom Green's command, and won the commission of Major by his gallant services.

He was very severely wounded in one of the battles in Louisiana.

If his ankle was not broken, the wound at least was very severe and distressingly painful. He was hauled, as I remember, on a sugar cane cart to a point near the house of a wealthy planter who, as I recall, was, or had been, Governor of the State.

Some of the escort asked permission for him to be taken into the house, but it was denied; so Major Sayers lay all night out of doors, or perhaps under the sugar shed, suffering intensely. The next morning the proprietor of the plantation came down and saw him, and perhaps asked his name, or heard he was an officer, and at once said: "If you had let me know you were an officer, I would have had you brought into the house, and will take you there now." "No, sir," said the suffering soldier, "you will not. If the humblest private in my command would not be welcomed and cared for in your house, I will not enter it. I would lie here under this shed and die first." That incident reveals the manner of man he is.

During the convention at Galveston in 1898, when he was nominated for Governor, I introduced him to a charming lady, whose father was his fellow soldier in Louisiana, and who fell in the forefront of the fighting. He received her with the utmost cordiality, and when he discovered she was the daughter of his gallant comrade, he said: "Yes, madam, I knew your father. When I was wounded, or about that time, I entered a room where his body lay prepared for burial"—and he proceeded to pay an evidently heartfelt tribute to the hero who fell fighting thirty-five years before.

Those who know Governor Sayers best, esteem him most. I had never been intimate with him, nor have I ever been under any obligation to him—yet I know what those think of him who claim intimacy with him.

He vetoed the only bill drawn by me while in the House in which I felt any personal interest, and while I believed he made a mistake, yet I never doubted for a moment that he exercised his honest judgment.

He was, for many years, the law partner of that able and noble man, G. W. (Wash) Jones, but after he entered Congress, he had but little time to devote to his profession, and when he left the Governor's office, never resumed the practice.

It might have been supposed that after so long a time he would have grown rusty in the law, and his skill have somewhat abated, but a very able lawyer who had occasion to examine closely much of his work done only a few years ago, as Master in Chancery in the Federal Court in some very important cases involving many complicated legal questions, told me the work was most admirably done, and evinced a very high order of legal ability.

In the winter of 1889 I spent an evening with Major Sayers in the hospitable home of a mutual friend in San Antonio, the

late J. Harvey McLeary, who was elected Attorney General in 1880, when Governor Roberts was elected for the second time.

I asked Major Sayers about a number of prominent men, Republicans and Democrats, with whom he was then serving in the house, naming several of them. I did not chance to mention John G. Carlisle who, as I recall, was then Speaker of the House. Major Sayers said: "Yes, the men you name are all bright, capable men; but I have been in Congress about six years, and have had opportunity to judge of the intellectual caliber of all the men, Republicans and Democrats, in both branches of Congress, and I have never yet seen one who, in point of intellectual ability, was in John G. Carlisle's class. There is not one of them who, figuratively speaking, he could not lay across his knee and spank as a teacher could a school boy." The Major's opinion was shared by all men who knew John G. Carlisle well.

I was on one occasion talking with the Major's devoted friend, Harvey McLeary, a blunt, outspoken, apparently rough, but really kind-hearted and lovable man, devoted in his friendships and intense in his hatreds. He said: "Somebody asked me the other day why I was so devoted to Joe Sayers, and had so little confidence in —— (naming a man I knew well); I replied: 'Because Joe Sayers was never faithless to a friend or a trust, and the other man was never faithful to one.'"

Governor Sayers carried into his retirement the confidence, respect and reverence of every man who is capable of appreciating unselfish patriotism, unswerving integrity and fidelity to conviction and duty.

## CHAPTER XX.

S. W. T. LANHAM.

The successor of General Sayers was S. W. T. Lanham. He was, as I have said, defeated in the convention of 1894 by Governor Culberson. He was, I am sure, disappointed and discouraged, for on one occasion he referred to it, when talking to me, as the time "when the iron entered my soul."

He came to Texas shortly after the war an almost penniless ex-Confederate soldier, having gone into the army in South Carolina, his native state, when but little more than a lad, but he did a man's part. He long cherished the commendable ambition to be Governor, and risked the loss of a seat in Congress by offering in 1894.

He was at an early age made District Attorney of a judicial district which stretched from Weatherford away up into the Panhandle. It was called the "Jumbo District" and he made many friends who were scattered over that vast domain.

It rapidly filled up, and those friends served him a good part in later years. He was sent repeatedly to Congress, and after he was defeated at Dallas, the late Charles K. Bell, as I recall, took his place in Congress for four years. At the end of that time he was returned to Congress and was, I believe, a member when nominated for Governor in 1902. He had, if my memory serves me correctly, no opposition for the nomination. It took place at Galveston and Hon. John H. Reagan was on the stand of the presiding officer.

He and Governor Lanham had long served in the House together, and he was, so to speak, the Governor's patron saint, politically. They were devoted personal friends, and the first act of the nominee after acknowledging the honor conferred on him, was to go to Judge Reagan and embrace him as if he had been his father. It was really a very touching scene, because it spoke the language of the heart.

Governor Lanham consecrated himself to the service of the State. He was never beyond the limits of Texas while in office. He was, I have heard, in large part self-educated, but he was cultured and familiar with the best literature, and was an eloquent speaker, and his record in public and private life was without a blot.

He related to me an incident that occurred while he was Governor, which interested me very much. He was my guest at breakfast one morning in my home in Houston, and we were discussing after the meal was finished, a railroad consolidation bill he had been urged to veto. It consolidated several detached short lines which were operated by the Southern Pacific.

I had no connection with that or any other railroad, but the bill was so manifestly wise, and just, that I wrote Governor Lanham a personal letter, in which I quoted from Judge Reagan when he was on the Railroad Commission, relative to the desirability of consolidation under such circumstances.

Just after the Governor had received my letter there came into his office a North Texas politician who had no special influence, but who had his ears always to the ground to catch what the "peepul" were saying and who thought to be "anti-railroad" was always safe. He came in, he said, to warn the Governor against approving the bill, because it was most dangerous. He was as much wrought up as if the welfare of the whole State depended upon the Governor's action. The Governor was a soft-spoken, unemotional kind of a man, who thought for himself, and never slopped over, but always tried to reach a right conclusion.

When the self-constituted guardian of the "peepul's" rights had delivered himself, the Governor said: "I have just received a letter from a friend of mine in Houston who has no connection with the railroads in any way, and he gives me many apparently good reasons why I should approve the bill, but of course you are familiar with the situation and can help me reach a conclusion. If you will take this pencil and paper and map out the several lines, showing where they compete, and how consolidation will be harmful, you will do me a favor."

The North Texas statesman (?) knew no more about the country through which the lines ran or about the length of the roads, nor what towns they touched than he did about the interior of Zululand, and of course, could not draw any kind of a map, as he was bound to confess. Governor Lanham could discover no peril to the public interests in the bill, and in due time approved it, and the consolidated roads still operate under it.

Texas is to be congratulated that the day has passed when petty politicians can ride into office on a wave of prejudice against corporations.

That man who thought he could frighten Sam Lanham into vetoing a wise and wholesome piece of legislation because it was enacted for the benefit of a railroad system, was a fair representative of a class which has done Texas well nigh irreparable injury.

Its number, heaven be praised, has been reduced to a harmless and scattered few, who the procession of progress has left behind as derelicts by the wayside.

Governor Lanham's health was much impaired by four years of confinement and the burden of great responsibility, and he did not long survive the end of his term.

A gallant soldier, faithful public servant and Christian gentleman, he went to his grave consoled by the consciousness that he

had the confidence and respect of the people he had so long lived among and faithfully served. His brilliant and capable son, Fritz W. Lanham, worthily fills the seat in Congress which his father honored for many years.

Governor Lanham's associate in office as Lieutenant Governor was Hon. George D. Neal of Grimes County. He was a Senator from a large district for several years, and his ability and integrity made friends for him in the Senate as they did elsewhere. I knew him well, and esteemed him highly. He practiced before me in the 12th District and was a dependable, honorable man, who deservedly had the respect of all who knew him.

His sudden death a few years ago carried sincere grief to many hearts.

## CHAPTER XXI.

THOMAS M. CAMPBELL and OSCAR B. COLQUITT.

The successor to Governor Lanham was Thomas Mitchell Campbell of Anderson County. He was, as I recall, the second native son to be elected Governor, Governor Hogg being the first. Cherokee County has the distinction of having furnished Texas two of its native sons to be Governor. That red land county is capable of producing anything in the world. It is persistently prolific in peaches, peas, persimmons, peanuts, pumpkins, preachers, "possums" and politicians, with the accent on politicians; yet, strange to say, Governor Campbell was not a politician, in the sense that he had ever held or sought office. As I recall, he had never even been a candidate for office, but his East Texas environment certainly enabled him to absorb a lot of political wisdom—for he conducted a systematically planned campaign and won over strong opposition. He had been master in chancery in the matter of the receivership of the I. & G. N. R. R. during the administration of Governor Hogg and was, I believe, afterwards made receiver, and when the usual process of wiping out the stockholders and creditors had been accomplished, he became general manager of the system and demonstrated marked ability in that position.

While holding it, he evidently became impressed with the evils of the "free pass" and was responsible for the abolition of all free passes, except with very limited exceptions.

I was never in very deep sympathy with him in that matter, because I believed the roads ought to have been required to issue free passes to certain prescribed State officials, and the judges, and not have left the matter as one of grace or power. That would have neutralized all the objections usually made to giving passes by making it a legal duty, the performance of which no man could have justly complained of.

He was a business man of ability and his administration was creditable to the highest degree to him, and helpful to the interests of the State.

I have known him for many years, and value him as a friend. His son and namesake went overseas at his country's call and did his duty as became a man and a native Texan. Governor Campbell is not only a successful business man, but a thoroughly efficient lawyer, a rather rare combination.

He had the courage to be a prohibitionist when that faith and policy was not popular, but he lived to see his opinions vindicated, and his desires accomplished.

He defeated Hon. Oscar Branch Colquitt for the nomination in 1906, but four years later Mr. Colquitt won.

Governor Colquitt's service in the Senate, and on the Railroad Commission was very helpful to him in administering the office of Governor, which he did most creditably.

He and I clashed to a small extent while he was Railroad Commissioner and I was Judge of the 61st District Court. I really do not exactly recall how the difference arose, but it was in some way brought about by a suit brought by the Express Company against the Commission. As I now remember, it had the effect to bring about strained relations between us, but I have never cherished any unkind feeling about it, and am glad to have been advised that Governor Colquitt has achieved, at least, a reasonable measure of success in the oil field.

When the school buildings at Canyon City were burned, the insurance money, amounting to something over a hundred thousand dollars, passed under his control. When called upon for it, he not only promptly produced it, but like the faithful holder of the talent in Scripture, handed it over with interest, which action caused me much satisfaction. It was in striking and gratifying contrast with the action of another Governor later.

He had the same courage on one side of the prohibition question that Governor Campbell had on the other, and it was to his credit that he never recanted, or trimmed his political sails to catch the prohibition breeze.

I am not probably prepared to write temperately and impartially about the campaign of 1914, for while I cherish no personal ill will against the successful candidate in that campaign, I am the ardent friend of the one who was unsuccessful.

The result of that campaign is known of all men. It was in some respects a most remarkable one. The successful candidate when he announced, was scarcely known beyond the limits of his own county. A well known citizen and able lawyer, who has held in Houston official station requiring a high order of legal ability, told me that when Hon. Jas. E. Ferguson told him he intended to be a candidate for Governor he would, had not a sense of courtesy restrained him, have laughed in his face, but he did announce, and did so wholly on his own initiative and responsibility, and boldly defied all other men whose names were suggested, and their friends. He is a man of forceful character and pleasing address, and while possessing only a limited education, he was calculated to, and did attract followers and adherents rapidly.

It is but to state that which all men know that he attracted to the support of his candidacy all the enemies of prohibition, and all the active and passive enemies of organized Democracy in Texas.

The anti-prohibitionists were ready to follow any man who was opposed to prohibition, and the Republicans were desirous

of dividing and weakening the Democratic party if possible, and all the dissatisfied and discordant elements flocked to Mr. Ferguson's standard. All men, regardless of politics, have an instinctive admiration for boldness and courage, and the way in which Mr. Ferguson projected himself into the campaign had much of those elements in it.

He had no organization behind him, and was the product of no convention; had taken counsel with none but himself, and such action appealed strongly to many who had never seen or heard of him.

His novel, visionary, and impractical (and recently adjudged unconstitutional), land law or rent law, appealed to the unfortunately large tenant class, and the combination of voters which he attracted, secured him the nomination. It is unquestionably true that during his first term he was popular with both the legislators and the people. He was unpretentious and democratic in demeanor, "a good mixer," and stood by his friends at all hazards, and held undeniably a high place in the esteem of many people. Why and for what reasons and by what process he was deposed from the office of Governor is a matter of history, and his deposition was, in all its elements, a tragedy for him and for the State.

It would be uncharitable and unkind to perpetuate the memory of the facts in these pages, and it is unnecessary to argue whether the result was right or wrong.

It was reached by constitutional and legal proceedings conducted according to long established precedents, and presumably at least it was right; and it is generally conceded to have so been.

While this is true, it was a result deeply to be regretted, or rather it is to be regretted, that the cause which made such proceedings and result necessary, should have existed. I cannot believe that any man is so indifferent to the good name of Texas, or to the misfortunes or errors of any fellow man, as to be glad that such a drama was ever staged, or that the curtain fell upon such a tragedy in the life of a man who had held the high office of Governor of a sovereign state.

While I am under no obligation to the chief actor in the lamentable drama, and claim no more than a passing acquaintance with him and have no reason to be and am not his admirer, yet I wish him no ill fortune, and personally I regret that a career which presented promise of honorable achievement should have been so tragically cut off. It marred a record made by Governors of Texas for nearly three quarters of a century, and carried to many hearts sincere sorrow that her escutcheon, radiant as it was with the light of honorable service, should have been ultimately darkened.

As I have said, I am the ardent friend of the man who was the

unsuccessful candidate for the Democratic nomination for Governor in 1914.

I have known him since he was born. I went to school to his mother in a log school house when I was so young I can hardly remember the time.

I knew his father, who was a Methodist minister, when I was a mere lad. I knew the son when, as a penniless boy, he toiled at manual labor for a livelihood. I knew him as a successful merchant, and as the efficient mayor of his native town.

As Judge, I signed his law license in 1890, and six weeks later he tried before me, against as able opposing counsel as there were in Texas, a case involving in a most novel way the doctrine of estoppel, in which case I, by my charge, stretched the doctrine to a limit it had never before been carried in Texas.

He won his case before the jury, and the Supreme Court affirmed the judgment.

I knew him when he was a most efficient Congressman, and for these reasons, knew he was intellectually and morally qualified for the office of Governor.

I knew that the charges brought against him, while they did not, and could not, impeach his integrity, were calculated to prejudice him in the eyes of many people, and were made in violation of the primary obligations of social good faith which are binding upon all gentlemen.

I do not mean to be understood as intending to reflect upon the good character, or good citizenship of any man who supported the successful candidate, but it is but to state that which is true, to say that the overwhelming majority of those who did so were the enemies of the policy of prohibition, while the unsuccessful candidate espoused that cause, of which he had been the consistent advocate for many years, and he represented the hopes, wishes and heartfelt desires of nine out of ten of the women of Texas; and my belief has always unwaveringly been, that the side of any public question of a social or moral nature, in which a majority of women are found is always the right side. As inimitable "Gus" Cook used to say, "Man reasons, but God whispers to a woman and tells her what is right." Thomas H. Ball and all the men and women who followed his banner were against liquor and the liquor traffic, and against the open saloon, and therefore, were on the right side economically, socially and morally, and the majority of the people of the whole nation has vindicated their position since.

There were those whom I esteem who voted against Tom Ball, but no man who is at once candid and honest will deny that he was leading the forces which did battle to suppress and abolish an agency and influence which wrought ever-increasing injury

to the best interests of society, and which was always a menace to decent, honest government.

I heard him long before he became a candidate, predict before an immense audience, that the day was coming when this would be a "saloonless nation." Many mocked at the prediction, but it has been fulfilled.

He never compromised on the question of prohibition, or evaded that issue when he was a candidate for Congress, and Harris County, with 500 saloons, was in his district, yet was never defeated. I know he did not seek at the Fort Worth convention the position of leadership which was conferred upon him, but he accepted the call, and though he was defeated, he had rather have failed as leader of the forces of social virtue and civic righteousness than to have won as leader of the opposing combination.

Subsequent events brought home to the people of Texas in humiliation and regret the realization that the majority had grievously erred.

Tom Ball battled for justice to this generation, and to generations yet unborn by seeking to abolish a traffic which was the fruitful mother of social and moral "woes unnumbered," and justice never forgets.

The epigrammatic utterance of that great lawyer, Jeremiah S. Black, before the Electoral Commission of 1877, "Justice moves with a leaden heel, but strikes with an iron hand," found speedy confirmation in events and proceedings already referred to.

Texas, and not Tom Ball, was the victim of popular error. Had he been made Governor of Texas, no tribunal would ever have had occasion to sit in adverse judgment on any act of his.

He would have taken up, and have laid down, that exalted trust with clean hands and a clear conscience, as he has in the past taken up and laid down every trust, personal or official, ever committed to his keeping.

## CHAPTER XXII.

## WILLIAM P. HOBBY.

As an original proposition I doubt whether William P. Hobby would ever have offered for the nomination for Governor, but having succeeded automatically the deposed Governor—and the world war being on—it was natural that he should desire to serve a term by election.

He manifested energy, ability and a thorough conception of the requirements of his position as soon as he assumed the office of Governor by succession, and it was certainly the part of wisdom not to disturb and distract the people by a contest over office when they were absorbed in the great war.

I had not seen or spoken to Governor Hobby ten times in ten years when the question of the next election was beginning to be discussed. I knew his distinguished father, and esteemed him highly—but I had never seen the son in the office of Governor—nor was I under any obligation to him, but I wrote a communication to the *Houston Post* setting forth my reasons for believing he should be retained in the position, and why there should be no struggle over the office in time of war.

I would have taken the same position had any other decent man been in Governor Hobby's place. It was in my judgment manifestly what the situation imperatively demanded, and all fair-minded men will concede that William P. Hobby has "borne himself so meekly in his great office" as to have deserved the plaudits bestowed upon him by the great tribunal of the party—the State Convention.

I think it altogether likely that if conditions had been normal and Governor Hobby's immediate predecessor had served out his time, that B. F. Looney would have been made Governor. I am sure I was predisposed in his favor, though I would not have known him had I seen him, and would not now know him, but I regard him highly, both as a lawyer and a public servant, because of his efficient service as attorney general, and the esteem entertained for him by friends of mine in whose judgment I have confidence.

As I have said before, Texas has been most fortunate in the matter of Governors. All of them may not have been men intellectually pre-eminent, but none has ever been the tool of any ring, or been subservient to sinister influences, and every one, save one, took and laid down his high trust with clean hands, a record of which any Texan should be proud.

## HON. PAT M. NEFF.

Since I began writing these sketches Hon. Pat M. Neff has been inaugurated Governor of Texas.

I have never enjoyed the privilege of an intimate friendship with him. Our respective homes were some two hundred miles apart, and in consequence we met only as two men in public life ordinarily meet.

He served with marked efficiency as Speaker of the House in the Legislature, and was later for a number of years County Attorney of McLennan County, and in that capacity performed with ability the duties of District Attorney, besides conducting a large and successful law practice.

The strongest of his opponents for Governor was Hon. R. E. Thomason of El Paso, Speaker of the House of the 36th Legislature, and a most admirable gentleman. My son was a member of that body, and was the ardent admirer and political and personal friend of Mr. Thomason, and on his account I supported that gentleman in the first primary, but in the second primary supported Mr. Neff.

There was in the way in which he prosecuted his campaign for Governor that which challenged my admiration, as I am sure it did that of many others. It was marked by no fanfare, nor backed by any elaborate organization, or managed by any machine.

He took his Ford and was his own chauffeur, and went directly to the people, frankly and unreservedly declaring himself on every public question.

Like his chief competitor, he had the enthusiastic support of his home people, than which there is no safer test of the merits and moral worth of any man.

He has taken hold of the helm of the ship of State with a ready and firm hand, and has taken a commendably bold stand on every present day public question. It is very gratifying to every Texan to know that he gives promise of maintaining that high standard of gubernatorial honor and efficiency set by J. Pinkney Henderson three-quarters of a century ago, and which has, save with one regrettable exception, been consistently maintained by all who have followed the first great Governor in the exalted station of Chief Executive of Texas.

## EARLY TEXANS AND THEIR DESCENDANTS

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### CHAPTER XXIII.

#### STEPHEN W. BLOUNT.

Stephen W. Blount was an East Texas man. He was one of the signers of the Declaration of Texas Independence, and lived to a ripe old age, dying within comparatively recent past.

So far as I know, he never strove to acquire any official position, but devoted himself to business.

He made his home in San Augustine County, and conducted a general merchandise business in the town for many years, and accumulated a comfortable fortune.

His son, Stephen W. Blount, has practiced law in the courts of Nacogdoches County, and in the adjoining districts for many years with marked and deserved success. He represented his district in the House a number of years ago for one term, but has never since sought any political position, so far as I know.

His brother, Edward A. Blount, died only a few years ago, leaving a handsome estate. His charming family still lives in Nacogdoches, and has a lovely summer home a few miles out of town. He was a gentleman of high character, and a public-spirited, hospitable citizen.

Stephen W. Blount related to me a few years ago an incident which, had it occurred in these days, would have shocked all the certified accountants, and auditors, and bookkeeping experts. He said his father had employed a new bookkeeper and one day saw him making entries on the blotter after one of the family, or a servant, had come into the store and procured a quantity of family supplies. The old gentleman asked the bookkeeper what he was doing. He replied: "I am charging up those articles that have just gone over to the house. The old gentleman said: "Never mind about that. Don't you bother the books with anything any of my family get. This is my store, and when it is not able to furnish my family all they need I'll close it up."

Everybody knows that such a family as the Blounts lived liberally and generously, yet not even the slightest memorandum of anything taken by it from the store, no matter how much, was ever made unless it was actual cash, and that was set down only to keep the cash balance straight. That incident aptly illustrates the Southern idea of providing for comfortable living. The house into which the goods went was open to everybody, rich or poor,

and the humble and exalted alike were welcome participants in a generous but unostentatious hospitality.

If any merchant in this day and time were to do the same thing, a thousand "certified accountants" would proceed to prove that he was headed for hopeless bankruptcy, yet that old Texas pioneer and patriot, living much of the time a hundred miles from a railroad, in a village amid the primeval forests of East Texas, built up and transmitted to his worthy posterity a handsome estate.

### C. B. STEWART.

Dr. C. B. Stewart of Montgomery County, was another signer of the Texas Declaration of Independence. He lived for many years in Montgomery County, and died there.

I am under the impression that he left quite a large landed estate. I have seen him often. He was very deaf, and always carried an ear trumpet, almost as large as a trombone. He was a man of high character, and commanded universal confidence and respect.

I have no doubt that if it were possible to take the names of the fifty-three signers of the Declaration of Independence, and study their characters and trace their careers, there would be revealed, as to most of them, if not all of them, that they were efficient, honorable men, and worthy citizens.

There is a substantial basis for such belief. In the first place, none but courageous, virile, self-reliant men ever go out as pioneers into a vast unknown and untenanted domain, for the purpose of subduing it to the purposes of civilization and establishing free and stable government.

It is only that character of men who are ready and willing to dare the dangers, and endure the hardships involved in such an undertaking, and success is dependent upon mutual fidelity and honor upon the part of all who unite for such a purpose.

It requires, too, practical men to achieve success in such an undertaking. They must needs be men with vision, of course, but possessed also of the ability, judgment, and foresight to translate their visions into realities. The man who is devoid of physical or moral courage, or who is a seer of visions and a dreamer of dreams, but is without practical ability, has no place in such a body of men.

Those fifty-three men on the banks of the Brazos on March 2, 1836, representing at the outside only about 30,000 people, threw down the gauntlet of defiance to a nation of 7,000,000, and declared that they were and had the right to be free and independent; and they made that declaration good seven weeks later. Such men had the courage and judgment and efficiency necessary to success in any field of activity, and it is not surprising

that they not only achieved success in the sphere of business enterprise, and left a posterity worthy of such an ancestry, but left to that posterity legacies of great material value, but of less value, and less to be esteemed, than is their example of patriotism, courage and fidelity to duty.

#### THE FISHERS, BRYANS, AUSTIN, BEE AND CROCKETT.

Another signer of the Declaration of Independence was S. Rhoads Fisher, who came to Texas in the early days.

He bore an active and useful part in the establishment of the Republic and in formulating its policies. He was a man of liberal learning, and literary culture, and a gentleman by birth and breeding. He and General Sam Houston had some differences at one time over some public question, and he sent the General a challenge to fight a duel, but the matter was adjusted in some honorable way, and the cordial personal relations of the two as they existed before, were entirely restored, and were never again disturbed.

The duello was not an unheard of method of settling questions of differences in those days. As I recall, from either having heard it or read of it. General Felix Huston and General Albert Sidney Johnston fought a duel at a very early day, and General Johnston was wounded in the hip.

It is said that General Houston fought a duel in Tennessee with one Judge White, who was so dangerously wounded as to have made his recovery doubtful for a long time, and it may have been that fact which influenced General Houston to not desire to again adopt that method of settling a personal difference.

Personally, I have always believed that a duel was a most foolish way to determine any question, and no duellist ever challenged my admiration, but many better men than I am, were earnest advocates of the practice. I am told that that brilliant man, Henry A. Wise of Virginia, believed in the duel to the last day of his life.

It took more courage, in my judgment, to decline a challenge than it did to fight one, when the custom prevailed of fighting duels. A friend of mine, who served under General Forrest, perhaps as a courier on his staff, told me that General Earl Van Dorn, a fiery, hot-blooded Southern soldier, once challenged General Forrest to a duel.

General Forrest said: "General Van Dorn, no man doubts your courage or mine, and it is not necessary for us to go out and shoot, or shoot at, each other to prove our courage. Furthermore, there is an army of the enemy of our common country in front of us, and it is our duty to fight it, and not each other, therefore, your challenge is declined."

Nathan Bedford Forrest was the greatest cavalry leader the world ever saw, and was courage incarnate, but never, when he rode with nodding plume and flashing saber amid the hell and hail of battle, as he did on many a bloody field, did he display a higher type of courage than when he declined the challenge of his younger fellow soldier.

S. Rhoads Fisher was the father of Rhoads Fisher, who was for so many years connected with the General Land Office of Texas, and who died in the comparatively recent past, and whose son Hon. Lewis Fisher, was, for a number of years, the very efficient judge of one of the District Courts of Galveston, and later was Mayor of that city. Judge Fisher's wife is the granddaughter of James Wilmer Dallam, the reporter of Dallam's decisions. So far as my knowledge, acquired either by reading or by tradition, or otherwise, extends, the descendants of every Texas veteran have reflected credit on their ancestry.

The interpreter between Santa Anna and Sam Houston, as the latter lay wounded on the battle field of San Jacinto, was Moses Austin Bryan. He lived to a ripe old age, respected and venerated by all who knew him.

One of his sons was, for a number of years, Judge of the 21st Judicial District of Texas, and another son, Louis R. Bryan, has been President of the Texas State Bar Association and is now a resident of Houston, and is one of the most efficient and capable lawyers at the bar of Texas.

The son of L. R. Bryan, L. R. Bryan, Jr., now assistant cashier of the Lumbermans National Bank of Houston, sprang to answer his country's call and went overseas and took his place where death held high carnival, and stayed until the last shot was fired.

He bore himself as might have been expected of one in whose veins runs the blood of the patriot, Moses Austin Bryan, his paternal grandfather, and the blood of that princely gentleman, Chauncey B. Shepard, his maternal grandfather, and one who was of the same race and lineage of that knightly soul, Seth Shepard, who, when a mere boy, went out to do battle in defense of his native Southland.

There is one name connected with Texas history which stands pre-eminent in the calendar of Texas patriots, that of Stephen F. Austin who, Sam Houston said, was justly entitled to be called "The Father of Texas."

He was never married, and died at a comparatively early age, but he had sisters, or at least one sister, who came to Texas at a very early day and his collateral kindred have always been and are yet among the worthiest citizenship of Texas. The names of the Perry and the Bryan families, all of whom were of his kin

by consanguinity or affinity, have always been synonyms of social and moral worth, and exalted character.

My friend, Hon. E. T. Branch, Criminal District Attorney of Harris County, a grandson of a noble Texas pioneer, gave me, a few years ago, a number of autograph letters of Stephen F. Austin, which I cherish as a treasure beyond all price.

One of the letters, written to a relative, I believe a sister, reveals that he was urged to go to Mexico City to endeavor by negotiations with the administration of the republic of Mexico, of which Texas, a Mexican State, was then a part, to get relief from certain oppressive government regulations, the exact nature of which I do not now recall, and the letter is not at hand as I write.

He said he did not want to go, but wanted to settle down on his farm near his sister and rest, and was further desirous of not undertaking the journey, because it would cost him much money, which he would not be able to get back. On the margin of the letter there is written in pencil by some relative a memorandum to the effect that the money was never returned.

He made the journey—not in Pullman cars, paying 3 cents a mile, and getting 20 cents from his government—but went across trackless plains, haunted by savages, through primeval forests, and miasmatic swamps on a mission of patriotism, and the hall of his reception was a dungeon, and he came back broken in health, and soon passed away.

He was essentially a Texas pioneer, though never a Governor or judge or general, yet but for him and his compatriots, there would have been no Texas such as there is today.

They gave Texas to the world, and with their own hands, nerved by their brave hearts, wrote their own glorious record. Yet there are people, even in Texas, who speak of them with ill-concealed sneers, yet the names of those who made possible this imperial commonwealth will live in song and story when those who disparage their achievements, shall have sunk into an oblivion from which no trumpet will ever awake them to resurrection.

His nephew, Hon. Guy Morrison Bryan, whom I knew, and who was a most estimable gentleman, was elected to the Legislature of Texas in 1848, to the State Senate a few years later, to Congress in 1857, and was Speaker of the House of Representatives of Texas in 1873, and again a member of the House in 1878. He married a daughter of William H. Jack, who fought at the Battle of San Jacinto as a private and later achieved distinction in official station, and at the bar.

His son, Guy M. Bryan, Jr., a grand-nephew of Stephen F. Austin, is an executive officer of one of the leading banks of Houston, and a justly respected citizen.

General Hamilton P. Bee came to Texas at 15 years of age, when his father, Bernard E. Bee, was holding the position of Secretary of War of the Republic.

His brother, Bernard E. Bee, christened General T. J. Jackson "Stonewall," just before he (General Bee) while leading his intrepid South Carolinians and waving his gleaming sword, presented to him by the State of South Carolina, fell at first Manassas.

General Hamilton P. Bee was Speaker of the House of Representatives of Texas at 34 years of age—a position to which my father helped elect him. He was a gallant Confederate soldier, and a cultured gentleman.

As late as the administration of Governor Ireland he served as Commissioner of Insurance, Statistics and History.

His son, Carlos P. Bee, has filled the position of District Attorney and State Senator, and is now a member of Congress from Texas.

I did not, and do not cherish the purpose to elaborate on this special theme, but it seems to me to be germane to my main theme of Governors, Legislators and Jurists, to show what manner of men those were who transmitted to us so splendid a heritage.

By the operation of the same divine and unerring law which transmits the penalties for ill-lived lives and blessings for lives lived uprightly and in the fear of God "to the third and fourth generations" the splendid qualities and sturdy virtues which made noble and admirable the characters of their fathers have been transmitted to the descendants of the early pioneers of Texas, and have so dowered them that they have stood every test of service, and proved themselves worthy sons of noble sires.

It may be thought by some who read these pages, that I stress too greatly the subject of the early Texas pioneers, and some reader may infer that I claim descent from some one of that heroic band, but I do not.

I came to Texas, an infant in my mother's arms, long after they had wrought their great work, but I would deem myself unworthy to be a Texan if I did not appreciate their great achievements and admire their noble characters.

They were brave soldiers, unselfish patriots, farseeing statesmen, endowed with great constructive ability, and they left to those of us who now live and generations yet unborn, the richest, noblest heritage ever bequeathed by valor and statesmanship to coming generations.

I regret that I can not claim to be "kindred to the blood" of any of them, but I am proud to be able to say that my three sons are the great nephews and my three daughters the great nieces of Davy Crockett. I had rather they should be of kin to him than to any king or prince that ever wielded a scepter, or wore a crown.

He wore a coonskin hunting cap, and a buckskin hunting shirt, but that coonskin cap covered a clear brain and a level head, and under that buckskin hunting shirt, throbbed as heroic a heart as ever poured out its rich, red blood that liberty might live.

He was not cultured nor highly educated, but he lived uprightly and wrought nobly. He was one of the bold, brave leaders who blazed the way for the advancing cohorts of civilization and progress. He lived as became a man, in the highest sense of that term, and like a man, he died.

He fell fighting to the last at the foot of a statue of the Prince of Peace, within the consecrated walls of the Alamo, and of him it can be truly said:

“He taught men how to live, and Oh, too high  
A price for knowledge, taught men how to die.”

That man, I care not who he may be, that speaks, or even thinks, in terms of disparagement of the fathers and founders of Texas, is unworthy to share in the fruits of their faithful services and heroic sacrifices; and ought to take his feet off the soil they consecrated by their devotion and hallowed by their blood, and go elsewhere to live, if he purposes to longer cumber the earth with his unworthy presence.

## EAST TEXAS MEN.

### CHAPTER XXIV.

I have never enjoyed an extensive acquaintance in North Texas, but was reared in the piney woods of East Texas. It has been my good fortune to know many of the prominent men of that section, which was settled and in the enjoyment of many of the benefits and blessings of civilization and refined society, when the red man roamed over North, Northwest and West Texas, but now those parts of Texas which were settled last, have developed with marvelous rapidity, and a great future for them is kindling in splendor.

If time and space permitted, it would be a pleasure to deal with the name of every East Texas man who has held public position. The list is worthy of being perpetuated, though writing wholly from memory, I may omit some as worthy as were those I remember, and I shall not undertake to name all of those.

I never saw General Thomas J. Rusk, so far as I know. His career ended when I was a mere child. He commanded a wing of the Texas Army at San Jacinto, and when Texas became a part of the Union, represented her in the United States Senate, and at the time of his death, was Chairman of the Committee on Postoffices and Postroads. His home was in Nacogdoches.

Frank W. Bowden was, I believe, from Anderson County, and I once heard Governor Roberts say he was the most eloquent man ever in Texas.

Colonel Frank B. Sexton of Marshall, but later of El Paso, was a typical Southern gentleman, of stately, courtly manners and the highest personal character.

He was elected to the Confederate Congress during the war between the states, and was for many years attorney of the T. & P. Railway. He was a contemporary at the bar of that able lawyer Wm. Stedman of Marshall, whose mantle as a lawyer descended upon the worthy shoulders of his son, N. A. Stedman, who served at one time on the Railroad Commission, and also as District Judge at Fort Worth, and has for a number of years, represented the allied railway interests of Texas.

Tyler is by no means a large city, and until within the comparatively recent past had hardly arrived at the dignity of a city, but it has furnished to the bar of Texas a greater number of able lawyers than has any single town or city within my knowledge in proportion to its population: Micajah H. Bonner, G. W. Chilton, John M. Duncan, one of the most graceful and skillful trial

lawyers that ever appeared before me; Cone Johnson, lawyer and orator; Horace Chilton, John L. Henry, Tignal W. Jones, John C. Robertson, Sawnie Robertson, H. G. Robertson, T. N. Jones, N. W. Finley, one of the ablest judges ever on the bench of the Civil Appeals Court; Henry B. Marsh, W. S. Herndon, J. S. Hogg, R. B. Hubbard, and A. G. McIlwaine and J. M. Edwards are, or were, all Tyler men, and there is not one of the list who is not above the average in legal ability, while some are, or were, among the ablest lawyers at the bar of Texas.

Even in the small towns, mere villages, were able lawyers. Colonel E. B. Pickett, once Lieutenant Governor, and Hon. Chas. L. Cleveland, both lived at Liberty. The latter was at one time District Judge, later a partner for many years in Galveston of Asa Hoxie Willie, and died in the office of Criminal District Judge of Harris and Galveston Counties. I was in Houston when he died, having gone there to sit for him during his illness.

Both Colonel Pickett and Judge Cleveland were able lawyers and E. B. Pickett, Jr., grandson of Colonel Pickett, who may properly be called E. B. Pickett III, is a young lawyer of recognized ability.

Judge Jas. A. Baker and Leonard A. Abercrombie were both from Huntsville and both were able lawyers. Judge Baker was, during the Civil War, judge of the same district of which Judge Peter W. Gray was judge prior to the war.

He, after the war, about 1872, became a partner of Judge Gray, and the firm of Gray, Botts & Baker by the death of all the original partners, and the accession of others, is now the firm of Baker, Botts, Parker & Garwood. At one time or another nearly every member of the firm has practiced before me, and all without exception, have demonstrated marked efficiency as lawyers.

I heard the Chief Justice of the Supreme Court of Texas say recently that a case in which Jesse Andrews, Esq., of the firm appeared on one, the winning side, and Morris R. Locke, Esq., of Dallas, on the other, prepared the briefs, was the best briefed case he had ever examined, and other appellate judges who handled the record, have told me the same.

The head of the firm, Captain Jas. A. Baker, combines legal knowledge, the ability to advise wisely, and rare financial ability, a most unusual combination.

I have frequently recalled a remark made to me by Judge Baker before I began to practice law, to the effect that he meant to train his son for the corporation practice, as it was "destined to be the future field of profitable practice." The language was prophetic, as the statement was made before Judge Baker went to Houston to live. The son is now the executive head of a firm which was, in a large sense, founded by an East Texas lawyer,

which firm represents more corporate and commercial interests than any other in Texas, if not in the South.

I knew Judge Baker from my earliest boyhood. He and my father were near neighbors and close friends. Both were fond of good company, were famous raconteurs, and Judge Baker played the violin beautifully, and was a man of great social charm.

Leonard A. Abercrombie resigned the office of District Attorney to enter the Confederate Army, in which he held the rank of Lieutenant Colonel, and from which he returned utterly impoverished. He was, take him all in all, one of the ablest, most resourceful and skillful trial lawyers in civil or criminal cases I ever saw.

I read law in his office, and he practiced law before me for nearly seven years, and was a courtly gentleman of the most exalted character, and the most faithful friend ever a man had.

One of the Judges of the Court of Criminal Appeals nominated at Galveston in 1876 after the enactment of the Constitution which created the Court, was Malcolm D. Ector of Marshall, Texas.

He was one of the 20th District Judges who were removed from office in 1867. He commanded a brigade in the Confederate Army and lost a leg above the knee in one of the bloody battles in Tennessee, probably the battle of Franklin.

His nomination was part of the fruits of the appeal made by Geo. P. Finlay for recognition and reward of Confederate Veterans, to which I referred to in a previous chapter. He was an elegant gentleman, and served most efficiently as Presiding Judge of the Court until the fall of 1879, when he died, and was succeeded by Hon. George Clark, who was appointed by Governor Roberts.

In August, 1880, Judge Clark was defeated at Dallas by the Hon. Jas. M. Hurt. It is said when Judge Roberts heard the result of the balloting, he said: "I can beat 'em making judges."

I think it very likely that he, like myself, had never heard of Judge Hurt before, for experience soon demonstrated that though a very able man was defeated, the one who was selected made a great judge.

#### ROBERT M. WILLIAMSON.

There will be in all likelihood many who will read this humble volume who will not recognize the man, the outlines of whose life and character are the theme of this sketch, by the name which heads it.

If I had used the phrase "Three-Legged Willie," there would be few who would not at once identify the subject. When he first arrived in Texas he was called "Mr. Willie." After James Willie came, he and R. M. Williamson were boon companions. James

Willie was an older brother of the late Asa Hoxie Willie who was, from 1882 to 1888, the most efficient Chief Justice of the Supreme Court of Texas. James Willie at one time, was Attorney General of the State, and was the author of the Criminal Code and Code of Criminal Procedure of Texas, which is surpassed by no work of the kind in all the range of the literature of the criminal law. When a boy about 15 years of age, R. M. Williamson suffered an attack of white swelling in his left leg, with the result that the leg was bent back from the knee, and from the knee down he had a wooden leg.

That affliction is clearly revealed by an examination of the full length portrait of him which hangs in the Senate Chamber of Texas. To distinguish him from "Jim Willie" the Mexicans called him "Mr. Three-Legged Willie," which sobriquet was commonly adopted, and he was so known until his death. Many people did not even know that his real name was "Williamson." I confess that I did not know that fact until many years after he had passed away. I do not know with what measure of accuracy the portrait referred to portrays the real man, but it clearly reveals a dominant, forceful character, and it is sure that his "counterfeit" presentment fitly fills a place in the Valhalla of Texas heroes .

Robert M. Williamson, though born in Georgia, came to Texas from Alabama in 1826. In that day the code duello was recognized and all differences involving questions of honor were settled among gentlemen in accordance with its provisions, and on the field of honor young Williamson fatally wounded his antagonist, who had committed the one offense, which in that day and time, was, and it is to be hoped yet is, unforgivable—that of indulging in remarks which reflected upon the moral character of a young lady.

Robert M. Williamson was, in a large sense, a fair type of the intelligent, resourceful, efficient pioneer, but he was not an ordinary pioneer, who was content with a few cattle, and a free range, and hunting and fishing opportunities *ad libitum*, for he was in no sense an ordinary man. His vision was broad, and he aspired to worthy achievements.

It may be appropriate to set forth in this connection my views concerning the leaders among the early Texans for whose characters and achievements my admiration is intense.

There were many remarkable men who came to Texas at a very early day—men, who by reason of their courage, intellect and force of character, would have left the impress of their personality upon any country in any age of the world. Coming as they did into a territory covering an area of more than 350,000 square miles, and with less than one inhabitant to each ten

square miles, they of course ventured into a virgin realm, and were pioneers in the fullest and truest sense of that term.

They knew when they prepared to come that they would be compelled to face dangers and undergo hardships, and be compelled to live among crude surroundings in so far as concerned their places of residence and their local environment. They knew that the conveniences and comforts of life would be few, and that of luxuries there would be none. They knew, too, they would have not only to establish homes, but organize a government. Any man who entertains the view that the men who laid the foundations of Texas were rude, reckless, ignorant adventurers, embarking on, so to speak, a pioneering lark, because they either thirsted for excitement, or desired to reap profit by exploitation of a new land, sadly errs.

They came to Texas because they were far-seeing men. They rightly reasoned that a realm of such marvelous resources was destined to be settled speedily and afford homes in the course of one or more generations to many millions of people, and the splendid, but practical vision that filled their waking dreams has become a marvelous reality. We, of this generation, are their debtors, as heirs to the heritage which they bequeathed us.

There are many people who find it hard to believe that as far back as 1826—nearly a century ago—when Judge Williamson came to Texas, there were really any men of classical education, statesmanlike capacity, oratorical power, or legal ability to be found here, or that such men came here until many years later. Such people seem unable to associate culture, ability and capacity for legislation and organization with virgin forests and tents and log cabins and the general crudeness which characterizes all pioneer settlements.

They seem to think that civilization and all the refinements and luxuries which wealth make possible are necessary to intellectual development, and the production of statesmen, whereas the contrary is true. The enervating influences and habits of modern-day society do not call into full play those qualities which make for constructive statesmanship. Statesmen who would have reflected honor upon any legislative assembly in the world lived in the early days of Texas in log cabins with wives who would have graced the courts of kings.

In rude court houses built of logs, and not infrequently before juries who sat on the ground under the shade of forest trees, pioneer Texas lawyers delivered speeches as great in all the elements of oratory as are any of those perpetuated in rare volumes as the greatest specimens of orators in bygone ages.

The slightest intelligent reflection cannot fail to show that it was impossible for the work wrought in Texas between 1825 and 1845 to have been the work of any but able, far-seeing, progres-

sive, courageous men, who were familiar with the fundamental principles of right and justice upon which alone free government can safely rest.

In the ranks of those who undertook to open to civilization a virgin realm covering so vast an area, there was no place for the intellectual, physical or moral weakling. It was, if a slang phrase be permissible, essentially "a man's job."

In this connection, I take the liberty to borrow my own language used in an address once delivered by me before a joint session of the legislature of Texas on "Sam Houston: Virginian-Tennessean-Texan." "Only such men as I have named could have achieved the task which they so successfully accomplished. Primeval forests filled with wild beasts and almost limitless plains over which bloodthirsty savages roamed in unhampered freedom, offered no attraction to small men, or to men who lacked in either physical or moral courage. The weak and hesitant man never pioneers, but waits until his bolder fellows have blazed the way and opened the path for the army of progress. Such men as I have named were not only courageous men, but they were men of education, culture and capacity for participation in the affairs of government. They were endowed with the elements of leadership, and were so intellectually and morally gifted as to be able to leave to posterity a record of achievement in the sphere of statesmanship rarely excelled in any age, and enduring proof that they were as far-seeing, efficient and patriotic statesmen as ever laid the foundation, shaped the policies, or directed the destinies of a new nation."

Robert M. Williamson made a place here for himself, which was peculiarly his own, and kept it to his life's end. Nature had endowed him with rare qualities and gifts. He was the personification of independence, was courage incarnate, and possessed in a pre-eminent measure that "divine *afflatus*" which is as surely the dowry of the orator as it is of the poet; and was given the fairly earned title of "the Patrick Henry of Texas."

He held, before the republic was organized, the position of Alcalde, and after the republic came into existence, was one of the first district judges and ex-officio a member of the first Supreme Court. He lived first in East Texas, later at Old Washington, where the Declaration of Texas Independence was signed, and died in Wharton, Texas, in 1859.

The time which, but for his physical infirmity, he would doubtless have given in large part to youthful sports, he devoted to study, and was in consequence thoroughly familiar with the ancient Greek and Latin classics.

The marvelous expansion of Texas as relates to her judiciary cannot be more strikingly shown than by the statement that under the Constitution of 1836, the judiciary consisted of a Supreme

Court and not exceeding eight District Courts, with one judge to each, and every District Judge was ex-officio a member of the Supreme Court, but no judge could sit as a Supreme Judge in any case which had been tried before him as District Judge.

I have been informed that when the judiciary system was first organized there were only four judges of the Supreme Court, James Collingsworth being Chief Justice. Judge Williamson was one of the District Judges, but I am not able to say who the other two were. Later, the Chief Justice was T. J. Rusk and Judges Hemphill, Mills, Shelby, Jones, Hutchinson, Jack, Morris, Baylor, and Ochiltree were members of the court. When Chief Justice Rusk retired from the bench John Hemphill became Chief Justice.

There are now approximately, if not fully, ninety District Courts and nine intermediate courts of Civil Appeals, a Supreme Court having jurisdiction of only civil cases, a Commission of Appeals to assist the Supreme Court, and a Court of Criminal Appeals.

Any man who met the requirements of judicial position in the late thirties in East Texas had to possess a rare combination of qualities. He had to have ability, integrity and the highest type of courage, with all of which Judge Williamson was prodigally endowed.

In those days most lawyers drank more or less, many to excess. It was considered by no means unethical for a lawyer at the bar to appear in court under the influence of strong drink. I have heard it said that on one occasion in a rude frontier court house a lawyer who had imbibed far too freely stated a proposition of law which did not at all commend itself to Judge Williamson; on the contrary, he deemed it wholly unsupported by either principle or precedent. Such being his conviction, he said in his sharp, keen, penetrating tones: "Where do you find any law to sustain such a proposition?" The bibulous barrister, reaching down to his side, drew out a dirk of prodigious length and driving the point in the small pine table behind which he stood, said: "Hic!" There's the law!" As quick as a flash, the judge dropped a six-shooter across the edge of the judge's stand and said: "Yes, and by G—d, here's the Constitution." The organic law prevailed on that occasion. Like most, or at least many, men of great intellectual endowment and strong convictions, he was inclined to be intolerant of opposition, but fought out in the open against all opponents, fearing none.

Very soon after the republic became a state, steps were taken to locate and build a penitentiary—a step to which for some reason Judge Williamson was strongly opposed. If I am correct in my recollection, the penitentiary was established at Huntsville in 1849.

A very able member of the House from Galveston, who is yet

remembered there by the oldest citizens, championed the penitentiary bill, and had a safe majority in the House with him. The nearer Judge Williamson drew to defeat, and the more hopeless seemed the cause which he espoused, the fiercer his opposition grew, and the peroration of his final assault on the bill is said to have been in these words: "Mr. Speaker: If the gentleman is so anxious to have a penitentiary, he should be willing to get it the easiest and cheapest way possible, and I will point out the way. Fence in and cover over Galveston island, a long, low, sandy desolate storm-swept and sea-bound waste, once the abode of Lafitte and his pirate band, and now the abiding place of the lordliest set of d—d scoundrels these blue eyes ever blazed on."

Judge Williamson was one of the men who signed the first call for a convention to be held for the purpose of protesting against Mexican rule, and of taking steps to establish the Republic of Texas. The Mexican government offered a reward for the capture of each of the signers, among whom were Francis Johnson and Lorenzo De Zavala. He participated in the opening fight of the revolution at Gonzales, and was a captain during the revolution and took part in the Battle of San Jacinto, and was one of the framers of the Constitution of 1836.

He held the first court ever held under that Constitution in his district, which extended from Washington County to San Augustine County, and held under the shade of a tree the first court ever held in the latter county. From 1840 to 1845, he was a member of the Congress of the Republic. He took part in enacting that provision setting apart to every head of a family a homestead, which could not be taken for debt, the first statute of the kind ever enacted by any legislative body in all the history of the world.

He and his contemporaries and colleagues who directed the negotiations for annexation retained for Texas her ownership and sovereignty of all her public domain, one-half of which they set apart for the purpose of free public education of coming generations. The message of the then President of the Republic, the cultured and scholarly Lamar, upon the subject of education was, and yet remains, a literary classic.

They also provided in terms, which renders any interpretation unnecessary, that Texas should never be divided without the sovereign consent of her own people—and the mathematics of humanity have no calculus to compute the time of the coming of the division of Texas, nor will the world ever behold the mournful spectacle of the suicide of a sovereign state.

A son of Judge Williamson, Captain Willie Williamson, named for his father's early day friend, James Willie, was a gallant Confederate Captain when he had barely attained his majority, and was for many years after the close of the war between the states

a successful commercial traveler. I esteemed it a delightful privilege to be able to claim friendship with his noble wife and himself.

His son, J. D. Williamson, a grandson of Judge Williamson, is one of the most efficient and successful members of the exceptionally able bar of the city of Waco.

Find them where you may, and in any sphere of professional or business activity, the descendants of early Texans have always "made good." Those qualities which make for efficiency, insure success and inspire respect are inherited endowments, and rarely, if ever, has the law of heredity operated with greater certainty than in the case of the descendants of the men whose names are honorably associated with that of the young republic which eventuated into the sovereign state, the imperial commonwealth of Texas, which every intelligent man knows is destined at some not far distant day to forcefully effect, if indeed it does not dominate, control and direct the industrial, commercial, economic and political destinies of this, the greatest nation ever on the earth.

#### LOUIS T. WIGFALL.

Another East Texas man who left the impress of his intellect and courage upon the era in which he lived, was Louis Trezevant Wigfall, a much misunderstood man.

If I am not mistaken, he lived in Harrison county. He and my father were members of the legislature at the same time. He was considered by many as a kind of "stormy petrel" in politics, who rejoiced in arousing and inflaming public sentiment on the secession question, and there were those who thought that beyond his ability as a stump speaker, he possessed no great degree of ability. Such an estimate was grossly erroneous. I have reason to know that among the Northern people he was looked upon as being one of the most (in their eyes) offensive secessionists.

That he was a secessionist of the most ardent type there is no doubt, but when the die was cast and war came on he went to the front with Hood's Brigade.

I make the statement concerning how he was looked upon in the North on the faith of the following incident:

I resided when beginning the practice of law in Galveston and was often the guest in the hospitable home of Hon. Wm. Pitt Ballinger, then the nestor of the Texas Bar, a most estimable and delightful man.

On one occasion the Hon. Samuel Freeman Miller, Justice of the Supreme Court of the United States, was a visitor to that home with his family for a week or more.

If I am not mistaken, Judge Miller's first wife was a sister of Judge Ballinger—in any event, they were warm personal friends. Judge Miller was an intense Republican in political belief, and,

using the term "smart" in the sense of intellectual, was one of the smartest men I ever met. He was, as all lawyers know, a great lawyer and a great judge. He was a physician, I have heard until he was 32 years of age, and within fifteen years from the time he put aside his pill bags was on the Supreme Bench of the United States.

On one occasion in Judge Ballinger's home they were discussing past events, including the war and secession, and finally Judge Miller said: "Oh, Ballinger, it is not surprising that you had secession and war and all your troubles when you had as leaders and Senators such blatherskites and demagogues as Wigfall and other men of his kind." Judge Ballinger had never been a Democrat in political faith, and he was opposed to secession, but he was a patriot and stood by his people, and he did not let the attack on one of their leaders go unchallenged. It was really amusing to hear those two distinguished men quarrel like school-boys. Judge Ballinger countered on his guest by saying: "Miller, you don't know what you are talking about. If there was one man who was essentially *not* a demagogue that man was Louis T. Wigfall. He was an aristocrat of aristocrats, and a patrician of patricians.

"When he was a candidate before the Legislature for United States Senator he stood in the hall between the door of the House and Senate in company with a friend. As the legislators filed in he said to his friend: 'A lot of those fellows are fine specimens of legislators to be vested with the power of electing a gentleman to the United States Senate.'

"The friend said: 'Say, Wigfall, you are very indiscreet. Those men hold your political fate in their hands.' He replied: 'I don't care a d——n. The fact remains that a whole lot of 'em are copperas breeched hayseeds and have no business here.'"

Every lawyer knows that the members of the Supreme Court of the United States have their own standard of judging of the ability and distinction of a lawyer, and that is he must have appeared before them. "He has never been before us," is a remark they frequently make, and the plain implication is therefore he cannot be much of a lawyer. Judge Ballinger knew that, so he continued: "Furthermore, Miller, you have never had a lawyer before you who was the intellectual superior of Louis T. Wigfall, nor one better prepared to present an able argument upon any question of law."

Judge Miller seemed much surprised at the statement, and I must confess it gave me a new conception of Mr. Wigfall, whom I had never known, and never saw but once, and that was a very short time before his death in Galveston.

One incident in the career of Judge Miller presented a striking illustration of the irony of fate.

He was, when appointed a Justice of the Supreme Court of the United States, a resident of Iowa, though he was born, I think, in Kentucky. He was intensely bitter against secession, and as I have said, was the most orthodox of Republicans in political faith.

Many years after he was appointed to the bench there came an appeal from a Virginia Federal Court, the case of the United State vs. Lee. It involved the title to Arlington, the ancestral estate of the Lee family. The question involved was whether title had passed to the United States by a tax sale.

In the distribution of records to the several justices, the record in the Lee case fell to Judge Miller, and so it came to pass that a Republican of Republicans, a Union man the most intense, and an appointee of Abraham Lincoln, was called upon to determine a matter of profound interest to the eldest son of the great leader of the armies of the South in the war in which those who thought as did Judge Miller, termed a "rebellion." The appellee, G. W. Custis Lee, and had himself been a distinguished officer in the "rebel" army.

It is rare that fate had played such a trick on a public man, especially a judge of the most august judicial tribunal in all the world.

It is a pleasure to record that Samuel Freeman Miller rose to the demand of the remarkable situation as became a just, brave, upright, and impartial judge.

The case can be found in U. S. S. C. Rep., Vol. 106 (XVI Otto), page 196.

Judge Miller's opinion will remain through all the years to come as a monument to his legal ability, and judicial integrity, courage and impartiality. It is alike strange and regrettable that Chief Justice Waite and Associate Justice Woods, Bradley and Gray dissented—the latter writing the dissenting opinion.

Every lawyer should read at intervals the opinion of Judge Miller. It will strengthen his confidence in the court of last resort of this great nation, which has in repeated instances been a bulwark of defense for the South against unconstitutional and oppressive partisan legislation.

During Judge Miller's visit Judge Ballinger invited the bar of Galveston to meet his guest, and the invitation was gladly accepted by a large majority of the bar.

In those days the "punch bowl" was an indispensable accessory to the feast, and Judge Ballinger's bowl was filled with a most seductive beverage, concocted according to his own recipe, called, I believe, "Roman punch," and it had a "punch" in it beyond all doubt. Several members of the bar went home early well "soused." About 11 o'clock that courtly gentleman and distinguished and able lawyer, the late Major F. Charles Hume, said

to Judge Miller: "Well, Judge, can you stand another glass of punch?" "Of course I can," Judge Miller replied. "I wouldn't give a thrip for a judge who couldn't drink half a dozen lawyers under the table."

A short time before, Major Hume had argued before the Supreme Court of the United States the case of Dexter G. Hitchcock vs. The City of Galveston, in which he appeared for the appellant.

The Judge of the U. S. C. C. who afterward became a Justice of the Supreme Court, had sustained a demurrer to Major Hume's petition. The judgment was reversed by a court, divided four to three, and Judge Miller was one of the minority.

A short time later, before the same judge who had sustained the demurrer Major Hume recovered upon a jury trial, a verdict for \$112,000, which he collected.

When they had filled their glasses the Major said: "Judge, here's hoping that the next time I come before your court you will be right on the law." Judge Miller replied, as he prepared to drain his glass: "Here's hoping you will have a better case on the law next time."

The last glass seemed to have no effect upon either, but both were steady on their feet, and clear in their heads, though neither ever used intoxicants to excess.

At that hospitable board, in a Southern home, the great Judge, an intense northerner and friend of Abraham Lincoln, indulged in delightful badinage and exchange of social courtesies, with equally as great a lawyer who had fallen on the forefront of the fighting, the most desperately wounded man in all the host that followed Robert Lee that ever recovered and was able to fight again.

Such a scene would be impossible in any land but this. No man can read the opinion of Judge Miller in United States vs. Lee without feeling a thrill of admiration for the man who penned it.

When Louis T. Wigfall entered the Senate of the United States there were many strong men in that body. It is sufficient to prove that statement to mention Jefferson Davis, Robert Toombs, Judah P. Benjamin and Andrew Johnson. Mr. Wigfall held his own with the best of them.

I heard my father say that he was in the gallery of the Senate in 1860 and heard a tilt between Mr. Wigfall and Andrew Johnson. It took a man of courage to deliberately enter into a senatorial debate with Andrew Johnson, for he was a power as a debater; but Mr. Wigfall, with characteristic courage, and full of the prevailing Southern sentiment, taunted the great Tennessean in his closing remarks by saying:

"Now let the Senator from Tennessee put that in his pipe and smoke it," but the taunt provoked no reply.

Since the foregoing was written I had the good fortune to find in the State Library at Austin a copy of that most delightful book written by Mrs. D. Giraud Wright of Baltimore, a daughter of General Wigfall, entitled, "A Southern Girl in '61," in which I found related an incident in the life of General Wigfall which I had never heard before, but the record of which richly deserves to be perpetuated.

During the bombardment of Fort Sumpter General Wigfall was serving on the staff of General Beauregard, and was stationed on Morris Island. When he saw the Fort was in flames and the flag staff shot away, he resolved to go to the Fort and persuade Major Anderson, the Federal Commander, to desist from further resistance. His comrades endeavored to persuade him not to go, but he procured a skiff and took three negro oarsmen and a cockswain. He had not got far from shore when he was called upon to return, and was told that the Federal flag had again been raised to the top of the pole, but he refused to go back. He had tied his white handkerchief to his sword and was waving it aloft. A 32-pound ball struck the water within five yards of his boat and was followed by a shell which came near proving fatal to all who were in the boat.

As soon as he reached the wharf he sprang ashore, went round to an open porthole, and swung himself from a protruding gun to an embrasure. Shells were exploding in the Fort from the mortars on Sullivan Island. It took some time to find Major Anderson, who asked him: "Whom have I the honor of addressing?" The reply was: "Colonel Wigfall of General Beauregard's staff." When Major Anderson inquired what business he had with him, General Wigfall replied: "I have come to state that you must strike your colors. Your position is untenable. You have defended gallantly. It is madness to persevere in useless resistance; you cannot be reinforced; you have no provisions; your ammunition is nearly exhausted, and your Fort is on fire." Major Anderson asked him on what terms he was to surrender, and the reply was "unconditional. General Beauregard is an officer and a gentleman. He will doubtless grant you all the honors of war, but *speciali gratia*."

Major Anderson replied that he had done all he could to defend the Fort, to which statement General Wigfall assented, but told him to haul down his flag. Major Anderson replied that the Confederates were still firing on him. General Wigfall said: "Hoist a white flag. If you won't, I will on my own responsibility." Just at that time a shell burst in the ground within ten paces of where they were standing. Major Anderson invited General Wigfall into a casemate and the white flag was hoisted, the firing

ceased, and what is called the "Battle of Fort Sumpter" was over.

During the whole time that General Wigfall was on the way from Morris Island to the Fort he was being fired on because his white handkerchief was too small to be seen at the long distance amid the smoke and haze of the firing. He not only displayed great courage, but a spirit of chivalry towards a gallant foe.

#### WILLIAM B. OCHILTREE.

Among the able men of East Texas was William B. Ochiltree. He was a District Judge at a very early day, and lived, I am pretty sure, at Nacogdoches. I never saw him, but my father served in the legislature with him, and I have heard him say that when the intellectual obtained the mastery over the animal in W. B. Ochiltree, he was the ablest man he had ever met.

My father and Judge Ochiltree were warm personal friends, though their personal habits were very different. Judge Ochiltree loved a good drink, or rather drinks, and was fond of the great American game, while my father would not enter a saloon and did not know one card from another, and was an exemplary churchman. Judge Ochiltree had a large head thickly covered with deep red hair. A large lock or bunch hung over his brow down close to his eyes, and gave him the sobriquet of "Buffalo Head."

On one occasion my father made a brief speech in favor of some pending measure of importance, not expecting the bill to be attacked. As soon as he was seated, Judge Ochiltree arose and assailed the bill with vehemence, and worked himself up to great heat in the attack. My father was much surprised, and as soon as Judge Ochiltree had seated himself, rose and said: "Mr. Speaker, when I first heard the tremendous noise behind me a few minutes ago I thought some lordly monarch of the forest had emerged from his lair, and threatened destruction to all who might be in his path. Imagine my surprise, upon turning around, to see that the source of all the uproar was a contemptible "bull buffalo."

As my father took his seat, Judge Ochiltree leaned over and said: "I'll get even with you for that if it takes seven years," but he never "got even" or tried to, and the friendship between the two was never interrupted.

As an illustration of the great difference between the habits and indulgences of that day and this, an incident my father used to relate, which was first made known by Judge Ochiltree, is very striking. It involved the father and the son, and the latter looked upon it as indicating the precocious brightness of the latter.

They were playing poker in the same room at different tables.

The son came over to the father to borrow some money. The old man said: "What has become of your money? You had a good pile a while ago." Tom replied: "I loaned it to a friend." The old man said: "Well, here's enough for a stake, and I give you with it some advice which I want you to act on hereafter: Never lend money to a gambler." Tom assured him he would keep the advice in mind. In the course of a short while luck ran against the old gentleman and wiped out his pile, and he went to Tom to borrow a stake. Tom was about 20 years old at the time. He said: "Father, I would be glad to oblige you, but the best friend I've got in the world advised me only a little while ago never to lend money to a gambler, and I promised him I would not, so I must refuse you a loan"—and he did.

The old man thought the joke so good that he had to tell it.

Such an incident would be impossible now, except at the peril of the penitentiary for the man who owned the building, and the man who kept the gambling house.

Some poker playing goes on, of course, but every effort is made to conceal it, and no man who notoriously gambled could be elected to the legislature.

As I now recall, Tom Ochiltree was Clerk or Assistant Clerk of the House, and wanted to practice law, but not having attained his majority, it was necessary to remove his disabilities of minority. There was no statute for the purpose then, as there is now, and it took an Act of the Legislature to do what was necessary in the aspiring young man's case. The author of the bill moved that it be taken up out of its usual order, and be passed under suspension of the rules.

One of the members of the House was Hon. Thomas J. Jennings who was Attorney General of Texas at one time. He was a dignified, serious kind of a man, and rose and said: "Mr. Speaker, I understand the bill will operate to remove the disability of minority of Thomas P. Ochiltree, and thereby he will be able to receive a license as a lawyer—in other words, will by suspension of the rules, be elevated to the dignity of a member of the bar. That being true, I shall cheerfully support the bill, because it provides for that which is both necessary and appropriate.

"I was for ten years a law partner of the young man's father and have known the young man almost from his birth, and I know of no young man more deserving of *elevation by suspension* than is he." The bill passed.

The son was far more famous than the father. I knew him well. Thomas Peck Ochiltree was a remarkable man. He left a reputation, or perhaps a better phrase would be, a notoriety, in one regard that was of course neither desirable or creditable, but now when it little recks him whether he be praised or blamed, it gives me pleasure to say that I believe that he was often

charged with failing to conform his statements to the facts, when in reality he was telling the truth.

He was accustomed to speak with pride of his services in the Confederate Army, and many people believed all his statements were purely imaginative.

There is, however, no doubt that he did render efficient and courageous service, and that his commanding officer on whose staff he served, repeatedly in his reports bore witness to his gallantry. I have heard the reports read. If any average man in Texas had been told by Tom Ochiltree that he went to Europe in the diplomatic service of the government, and carried an autograph letter from President Grant, the statement would have been looked upon as an absolute fabrication, but it would not have been.

I personally saw and read the autograph letter wholly in President Grant's handwriting, written on a White House letter head and signed with the familiar signature of President Grant. It was addressed to the diplomatic representatives of the government of Europe, and stated it would be presented by his friend, Major Thomas P. Ochiltree, who went abroad in a diplomatic capacity (as I remember, as Inspector of Consulates), and that he would be received and treated as befitted the dignity and importance of his mission, or language to that effect.

In Europe, where there is such slavish adulation of rank and station, such a letter, of course, was, so to speak, an irresistible social instrument, wherewith to open the doors of every royal court to the bearer.

The fame and prestige of the writer both as a great soldier and as Chief Executive of the greatest republic in the world, justly entitled his friend to every honor customarily paid the bearer of such credentials.

After reading the letter, I said: "Major, what pay did you get for the services you rendered?" "Ten dollars a day and expenses," was his answer. I said: "It doesn't strike me that ten dollars a day is very much pay for the representative of the government in such a capacity." His reply to, or comment on, my remarks was decidedly "Ochiltreeish," if I may coin a word. It was: *But just think of the expenses!*"

In the party on the occasion referred to was a gentleman who had been desperately wounded in the Confederate Army, and Major Ochiltree was very loyal in his feelings to all men of that class. The gentleman said: "Say, Tom, come on and let's have a glass of beer. (The scene of the meeting was a German Volksfest). You refused to lunch with the Prince of Wales, but you won't refuse to take a drink with me." The Major said: "I knew the Prince of Wales wasn't inviting me on my own account, but only because I was in the American Minister's party at the yacht race.

I had on an engagement to lunch with Captain Freemantle of the Coldstream Guards, who came over and stayed with our army during the war, and I knew I would have other invitations from him, but I never would from the Prince of Wales, and I was looking out for the future."

When the Major returned to the United States he stopped on his way to Texas, in New Orleans, and was invited to some very fashionable function, perhaps a Mardi Gras ball. The New Orleans gentleman who accompanied him asked permission of the beautiful daughter of a rich sugar planter to present his friend, "Major Ochiltree, a close friend of President Grant." The young lady refused the desired permission, of which, of course, the Major had to be advised. His comment was: "What do you think of that? I, who have danced the minuet with every princess in Europe, am refused an introduction by a sugar biler's daughter."

He was appointed United States Marshal for the Eastern District of Texas by President Grant, and when his term of office ended, the accounting officers of the Department of Justice said his accounts did not balance—marshals were then paid in fees.

Of course, most of the work was done and the books were kept by his deputies, and it is altogether likely the Major did not know anything about the accounts, but the Government instituted suit against him and his bondsmen, but it was later dismissed, or perhaps adjusted in some way.

While it was still on the docket, he ran for sheriff of Galveston county, and the matter was brought up on the stump. He produced a letter from his two bondsmen to the effect, in substance, that they had no doubt that if the Major's claims of offset in the way of expenses was allowed, there would be no liability. It was explanation and exoneration in a very modified form, but when he had read the letter, he said: "Now, you see my bondsmen are not worried, and I haven't got any time to fool with the law suit. I am leaving it to my bondsmen to do the walking. I'm running for sheriff." He then continued, "I have proved to you that I did my full duty as a Confederate soldier, but they cuss me because I didn't stay here in the South in reconstruction times. I couldn't make a living here, and I had a chance to go to Europe, and I didn't see any reason why I should starve here when I could eat *pate foie gras* and drink champagne in Paris, and I went."

In 1882 he ran for Congress as a Republican in the Galveston District which then took in Laredo, and defeated Colonel George P. Finlay of Galveston and served one term in Congress.

He told me during the campaign: "Ain't I in hard luck? The Bishop of the Catholic Church on the Laredo section is my old school teacher, and I am a Catholic, and of 'course he won't do

anything for me," and he winked his cocked eye, and indicated that he felt safe, and he proved to be.

I have heard that the late John W. Mackay, shortly before his death, put the Major in the way of making in some kind of stock speculation a very considerable sum of money, enough to keep him in comfort the rest of his days, and perhaps leave a small legacy to his worthy sisters.

It sounds like it may have been true. I knew one man in Texas who, I was told, "grub-staked" John W. Mackay when he was a miner in Nevada or California, and that many years later the Texas man was threatened with financial ruin unless he could get temporary relief, and he appealed to Mr. Mackey for help.

As quick as the wire reached him, and another wire could reach New York, Mr. Mackay placed a hundred thousand dollars to his friend's credit in that city.

Mr. Mackey was a very rich Irishman, and generosity and gratitude are characteristics of the Irish race.

I have often heard the story told that when "Major Tom" started out to practice law he put up his sign as follows: "Thomas P. Ochiltree & Father, Attorneys-at-Law," but I had grave doubts of the truth of the statement, and was inclined to the belief that it was one of those apocryphal stories which often become associated with the names of unique and interesting characters, such as Thomas Peck Ochiltree certainly was, but since the preceding parts of this sketch were written, the story has been fully authenticated.

Very recently an esteemed friend in Houston who knew the Major as well as I did, told me he asked him about it. He told me that he said: "Tom, I understand that when you had obtained license to practice law, your father expressed to you the pride he felt at the examination you stood, and said he would take you into partnership, and that while he was gone on the circuit you might put up a sign for the firm, and that when he got back, you had a sign in gold letters a foot long, 'Thomas P. Ochiltree & Father, Attorneys-at-Law.'" The Major said: "There were no gold letters, but I did sure put up the sign reading that way."

The same friend told me also of the following incident as occurring within his knowledge, and I am sure there is no doubt of its truth substantially as I shall state it. After he had left the presidential office, General Grant visited Galveston, and elaborate preparations were made to receive him in a befitting manner.

A committee of reception composed of the oldest and best known citizens was named to receive the eminent guest, then perhaps the most distinguished man in all the world. Major Tom had been appointed United States Marshal for the then Eastern

District of Texas by President Grant, and any Southern man who accepted any position under a Republican administration in those days of "reconstruction" at once became *persona non grata* with every orthodox Southern Democrat. This feeling found expression in the rigid exclusion of Major Tom from every committee, and from all participation in the reception and entertainment ceremonies, which action called forth no complaint at his hands, and he did not intrude himself upon the committee or the distinguished guest.

The only depot in Galveston at the time was an unsightly "shack" in the western part of the city, and the reception committee duly identified by proper badges lined up to receive General Grant, but Major Tom was not in the line. He stood afar off out beyond the end of the double column. When General Grant had nearly reached his carriage—there were no such things as autos in those days—his eyes lighted on the radiant red of the Major's hair and mustache, and he called out, "Why h-e-l-l-o Tom! How are you? I am glad to see you," and grasping the Major's hand continued, "Come right along and ride with me. I want to talk to you." The Major in duty bound accepted the invitation, which was equivalent to a command, and so it was that the seat at the right hand of the great man, whom Kings had been proud to do honor to, was occupied by the Major instead of by the distinguished local citizen to whom the committee had assigned it. The stone which the committee had rejected the same became the head of the corner. He whom it was sought to humble was highly exalted.

When the Major was in Paris he was actor in a little drama which caused vast wonderment to the French. Many readers will remember that about fifty years ago the rage of the Parisian stage was the actress Adah Isaacs Menken, who won great fame by playing "Mazeppa," in which drama she rode, in as near a state of nudity as the most liberal limit of propriety would permit, a wild horse, to which she was strapped. The emotional and mercurial French patrons of the theatre went wild over the performance and sought every occasion to crown the beautiful woman with wreaths of roses and laurel. She was the "toast and talk of the town."

Major Tom was standing on the street in Paris one day in company with a friend, when the latter suddenly exclaimed,— "Yonder comes Adah Isaacs Menken in her carriage." The people were acclaiming her on every side, and when the Major turned and saw her he said, "I am glad to see her, I'll just go out and stop her carriage and get in and ride down the avenue." The French would have been no more astounded had it been Napoleon III or his Empress in the carriage, and the Major had made such a proposal, so the party he was talking with said, "Why you cannot do it, and dare not attempt it." The Major said, "I'll bet

you 50 francs that I will not only get into the carriage with her, but that I will do so at her invitation."

The friend promptly took the bet, and the Major sauntered out into the street and met the carriage, and the beautiful woman. The admired and feted queen of the hour recognized him and said, "Say, Tom, come get in and ride with me. I'll be so glad to have you," and the Major promptly entered the carriage and took his seat by the side of the great actress. The skeptical friend not only lost 50 francs, but like thousands of others was overwhelmed with astonishment. The explanation of the result of seemingly so remarkable a venture is very simple. Adah Isaacs Menken was born in East Texas and resided there, and she and the Major had been schoolmates and friends from childhood, and were "Adah" and "Tom" to each other.

#### THOMAS J. JENNINGS.

The name of Thomas J. Jennings appears as that of the Attorney General of Texas in the reports from Vol. 9 to Vol. 17, both inclusive.

He was a resident of Nacogdoches County and served in the House with my father.

One of his sons, Thomas R. Jennings, retired from the practice of the law on account of almost total deafness, and as I recall, died in Harris County some years ago.

Another son, Hon. Hyde Jennings, was a member of the bar of Fort Worth at the time of his death. I never knew him, but always heard him spoken of in terms of respect both as a lawyer and a man.

I have the impression that General Jennings was very stately and dignified in bearing,—possibly the term "pompous" might not inaccurately be applied to him. His manner was wholly natural—not affected.

It is said that he magnified his office to such an extent that when even an old friend would come in he would rise and in the most stately and formal manner ask, "Have you business with the *Attorney General*?" He must have so received Dr. Ashbel Smith in that way on one occasion, as I have heard my father say that he met Dr. Smith one day and the old fellow said, "Kettrill, Jennings is an atheist." My father said, "I have never heard so,—you must be mistaken." "No, Kettrill, I am not. He is an atheist, because he acknowledges no higher power than Thomas J. Jennings."

Notwithstanding his somewhat exaggerated official dignity, he was an able and upright man who proved equal to every demand, and rendered Texas valuable and honest service.

## HORACE CHILTON.

Horace Chilton is another product of East Texas who has done his section great credit. His father, Colonel George W. Chilton, was, as I recall him, a distinguished-looking man of the blond type, a gentleman of the old school. He was a gallant Confederate soldier, and was wounded in battle, and practiced law successfully after he had returned from the army. I believe he and my father served in the House together before the war.

As I have said before, service in the Legislature in those days was considered more of an honor than to go to Congress is now, and I seriously doubt whether any delegation Texas has had in Congress in the last quarter of a century was equal in intellect and legislative ability, taken as a whole, to the same number of men, who served in the Legislature of Texas between 1850 and 1860, and it is no disparagement to any Congressman to make this statement.

If my recollection as to genealogy is correct, Colonel George W. Chilton was a nephew of Hon. W. P. Chilton, who was for twelve years Chief Justice of the Supreme Court of Alabama. I know that his son, Horace Chilton, is called "Cousin" by the family of Hon. L. A. Abercrombie, late of Huntsville, whose wife was a daughter of Hon. W. P. Chilton, and a most cultured and accomplished lady.

When Hon. Horace Chilton was a candidate for the Senate, after his appointment by Governor Hogg to succeed Judge Reagan, I interested myself in his behalf. Though I had never been a supporter of Governor Hogg, who appointed him, I approved highly of the appointment. I took a double buggy and drove Senator Chilton over a part of Leon and Madison Counties, and to Huntsville, and he delivered several speeches on the trip, one at Madisonville.

I recall one incident on the trip very vividly. Madisonville was by no means then the well-built, attractive town it is now. The hotel was a kind of intermittent inn, sometimes open and sometimes not, and when open by no means inviting either as to bed or board, so the "drummers" with their unerring instinct for good eating, and the ability to find where it could be had, had beaten a path to the private residence of a merchant in the town, and he had been almost perforce compelled to make his house a hotel.

I did not tell the Senator where we would stop, or what we would likely get to eat, but we went to the quasi-public house. The host was a Russian Jew of generous rotundity, and most genial and likable, and his wife was a most excellent woman and his daughters very attractive and exemplary young ladies, whom I had known almost from their infancy.

We went into dinner (not lunch) about 12:30 and found what I knew we would find, enough wholesome food for forty people,

instead of for ten, which was about the number at the table. After we had eaten to repletion the Senator said, "Judge (I was then on the bench in that district), you may call that a dinner. I call it a banquet," which, considering the Senator was fresh from Washington where opportunity for rich feeding was present on every hand, I thought a high compliment to the village hostelry.

The wife of the host supervised the cooking and was herself one of the finest cooks I ever saw. There is not a hotel in Texas today, barring none, that ever served such meals as were served in that interior hamlet, nor can they serve a meal on finer damask, or on a table furnished with handsomer china, or cut glass.

Such entertainment greatly relieved the monotony of overland travel, and repeated speaking, and the quaint humor of the host who was a character as unique as he was amusing, was very entertaining. He said one day: "Gentlemen, walk in. Maybe you find something to eat, I don't know; but I bet you don't find no hog meat in this house. My wife is the out-beatenest Jew ever you see, and it's all that doggone Jacob business what you don't eat hog meat. When I go fishing I take my American Bible and eat bacon, but I don't get none here." I said, "Jake, Jacob is not to blame. It is the Mosaic law to eat nothing which splits the hoof and chews not the cud." "Oh," he said, "Moses and Jacob was partners, and it was all business mit Jacob. He took dose striped sticks and beat his fadder-in-law out of his cattles, and then he say, 'Don't you eat no hog meat. Eat all de time cattle meat. If he been in the hog business he would say, 'Don't you eat no cattles, but eat hogs.' It was all business mit Jacob, and I got to pay 35 cents for cow butter to cook mit and can't eat no hog meat." The exegesis of my Jew friend might not be accepted by theological exegetes as correct, but they cannot justly deny it the quality of originality.

Senator Chilton and I had a very interesting trip, which I have often recalled with pleasure.

His father died, I think, in 1884. I met the son at the Democratic State Convention that year in Houston, and he told me he had lost his father. His sorrow was then fresh, and evidently he felt the blow deeply. I am impressed with the belief that the affection between father and son was unusually strong.

The father lived long enough to see the son achieve that high distinction as a lawyer which he has consistently maintained, and if he could have been spared to see his son in the position of Senator from his native State in the most august parliament in the world, his cup of joy would have been full to overflowing.

## ROBERT SCOTT LOVETT.

Another East Texas man who has won for himself a high position in the fields of both law and business is Robert Scott Lovett.

He was for a number of years a member of the firm of Baker, Botts, Parker & Lovett, but something like sixteen years ago he went to New York at the instance of the late Edward H. Harriman, who was one of the greatest railroad men in America, which is to say, in the world.

It is a rather remarkable fact, and one most complimentary to the firm of which Mr. Lovett was a member in Texas, that his former associate, Edwin B. Parker, has recently been called to New York in the position of General Attorney for the Texas Company. Mr. Parker rendered very valuable service to the government during the war, and after the armistice was signed, was sent to France as a representative of the government in matters which involved hundreds of millions of dollars, and the proper management of which demanded both integrity, and a very high order of financial and executive ability, and Mr. Parker discharged his duties most efficiently.

Mr. Lovett is now practically the executive head of the entire Harriman system of railroads.

Mr. Harriman was not a wrecker, but a builder and developer, and he gave the public assurance that he desired and intended that the railroad system which he had built up should be honestly managed, when he committed it to the direction of Robert Scott Lovett.

He directs its operations with the same regard for, and observance of the obligations of honesty and fair dealing which marks his action in all the relations of life.

He was born in the piney woods about sixty miles north of Houston, in what was then Polk, but now San Jacinto County, about sixty years ago. His parents were most worthy people, but in modest financial circumstances, and he has risen to the position he now occupies by sheer force of personal merit, without the adventitious aid of any financial, political or social "pull."

I have known him for thirty years, and have known his cultured and accomplished wife since she was born. She is a native Texan, born in Huntsville.

If all the men who have been responsible for the management of the railroads of the United States during the past fifty years, and had been such men as Mr. Lovett, the prejudice against railroads and the antagonism between them and the people which has cost the roads many millions of dollars, would never have been developed.

The fullest, frankest, and most instructive testimony given before the Congressional Committee which in the recent past investigated the question of railroad finances, and operation, and the reciprocal rights and duties of the government, the people, and the roads, was that of Mr. Lovett. It was published in pamphlet form, and is well worth reading by every man who wants to be correctly informed on a great public question.

Mr. Lovett is a director in the Western Union Telegraph Company and in other large corporations, and so long as he holds those positions, the assurance will continue that no illegal or improper action will be "put over" with his knowledge, and most certainly not with his co-operation.

The place of Mr. Lovett in the firm was taken by Judge Garwood—a fact most complimentary to both gentlemen.

#### MORRIS SHEPPARD.

One East Texas, or rather Northeast Texas man, has achieved phenomenal success in politics. He comes from the Northeastern part of the State, but has always breathed the balsamic odor of the pines, which seems to have the magic power to transmute almost any average man into a successful politician.

Senator Sheppard's father was for many years a most capable district judge, and passed from that position to a seat in Congress.

He of course left the bench of the district court impoverished, as has every man who served at a salary of \$2,500, and could accumulate no money in Congress,—hence I assume left his family but little heritage, except a stainless record and an honored name. Upon his death a number of able men offered for the place, but his son, Morris Sheppard, then as I recall less than thirty years old, swept the field.

After serving several years in Congress he offered for the Senate. Older men halted and hesitated, but Morris Sheppard went boldly out after the place, and won over Hon. J. F. Wolters, a most worthy and capable man, who has since proved his readiness and ability to render most efficient public service.

He had, however, always been a consistent and I have no doubt conscientious anti-prohibitionist, and the prohibition sentiment at that time was by no means as pronounced and intense as it became later,—so Mr. Sheppard made a brave venture for so young a man. He has since been returned to the Senate without opposition.

Whether the people agree wholly with the views of any man or not, they always admire consistency, persistency, and pluck. The man who stands by his convictions, whether they be popular or unpopular, always commands the respect of the people.

I saw somewhere recently that one of the brother Senators of Senator Sheppard, a Republican, paid Senator Sheppard in open

Senate an eloquent tribute for his fidelity to the cause of prohibition, and the tribute was well deserved.

My acquaintance with Senator Sheppard is very slight, but I know him to be an indefatigable worker, and he has demonstrated his unswerving fidelity to conviction.

His first election to Congress resulted doubtless in large part from very commendable sentiment, and from a desire to pay tribute to his father's memory, but the North Texas gentlemen who offered might have known that a capable "piney woods" boy, with good character, and fluent in speech, was invincible in "the sticks."

### JOHN HENRY KIRBY

It was a hot day in June, 1879. The corn was in tassel and old Sol's penetrating rays distributed the fires of summer. There was not a breath of air. Not a blade of the corn trembled, except from the shimmering heat.

A stalwart youth of about eighteen, and a vigorous, well-preserved, broad-shouldered man of fifty-eight, were plowing round for round in the corn field. The perspiration rolled from their horses, whose nostrils were distended and their sides trembled with every respiration from the intense heat. Not a dry thread was on man or youth, but they persevered in their tasks.

It could be seen that they were father and son, and on occasions, to relieve the misery of their horses, they would drive their plows under the shade of the trees that skirted the corn field, giving their animals a brief respite. On one of these occasions the youth, who with a wooden paddle was cleaning his sweep while they halted in their work, addressed the other man thus:

"Father, I have been thinking for some time I would make you a proposition and I will submit it now. All of the children are married and gone away except myself, and if you will release me from the farm and help me to go to school for a time I will make a contract with you that I will thereafter support you and mother. With a little education I can earn more than both of us are earning on this farm, for at the end of every year when our debts are paid we have nothing left. You will remember what Mr. Cooper said to you last year about sending me to school."

Silence prevailed for a time while the elder man seemed to be turning over in his mind the seriousness of his son's offer. Then he answered:

"Son, I have been thinking over that very matter and I remember what Bronson said. Our neighbor, Jim Priest, has gone to Woodville to see if he can employ Frank Crow, who is reputed to be the best teacher in the county, and if he succeeds then we are going to fit up the old Buxton house as a school house and I

will release you from farm work for the balance of this year so you can attend continuously, but I will not accept your offer to maintain me and your mother. I can do that. What I want to do is to give you every chance that can be secured through any kind of sacrifice which both your mother and I are ready and willing to make."

There was joy in the boy's heart. Within two days it was announced that the services of Professor Crow had been secured, and then the neighbors met at the old Buxton place, which was an old log house on an abandoned farm, and fitted it up with benches and crude writing desks, and in its one big room Professor Crow, in due time, took up his school.

This youth attended regularly every day and applied himself with such diligence and manifested such capacity that he soon won not only the interest but the affectionate regard of Professor Crow. When the six months were ended Professor Crow importuned the father to let the youth go home with him to Woodville, where Crow's mother would board him on credit for a further scholastic period. The Professor was successful. The youth accompanied him to Woodville, the county seat, in January, 1880. He entered high school there, the principal of which was a scholarly man, Prof. W. F. Gibson. The youth attended diligently for a period of six months.

Beginning under Professor Crow in July, 1879, with primary lessons, taking grammar and first lessons in composition, he came out of high school at Woodville in June the following year, having mastered what would now be substantially a four years' course in our schools and colleges, for he had not only mastered all of the arithmetics, algebra, geometry, trigonometry, conic sections and differential calculus in the way of mathematics, but he had taken history, English literature, rhetoric, mental and moral philosophy, and all the other branches of that period, including the dead languages, and had read Caesar, Sallust, Virgil and Cicero in Latin and was well advanced in Greek.

Immediately following the close of the term at Woodville, in June, 1880, he secured a position as a school teacher and had soon saved enough money to pay Mrs. Crow his board bill and to pay a store account at Woodville for which his friend, S. B. Cooper, stood security.

This boy, with this limited opportunity and from this humble beginning, is now no other than John Henry Kirby, President of the great Kirby Lumber Company, and the directing mind in numerous other business enterprises.

It is manifest from the foregoing that any list of East Texas men which did not include John Henry Kirby would be inexcusably incomplete, for he is essentially an East Texan, and does credit to that remarkable realm.

He was born and reared in the midst of the primeval forests, where his worthy parents, typical representatives of the old school of Texas pioneers, industrious, intelligent, honest and God-fearing, settled at a very early day.

In, if I mistake not, 1883, John Henry Kirby was calendar clerk of the Senate of Texas at the salary of \$5.00 a day, and now he is the official and executive head of one of the largest, if not *the* largest of the lumber companies of Texas, which company bears his name.

There is no truer adage in Scripture, nor one which is oftener fulfilled, than "where there is no vision the people perish."

John Henry Kirby had a luminously clear vision of the possibilities of the development of the lumber industry of East Texas, and what was equally important, had the ability to inspire with enthusiasm and confidence like his own, northern and eastern capitalists. By sheer force of his energy, coupled with an unswerving faith in the enterprise he had undertaken, he drove a standard-track railroad line through a sparsely settled territory of virgin pine till he reached its very heart and center, and soon the hum of the saw was heard at many different mills, the products of which are carried to many foreign lands, besides supplying millions of feet of yellow pine lumber to Texas consumers.

Such success is never acquired by chance or by accident. It is the fruit of keen foresight, business ability of the first order, and rare executive capacity. It has been said that there is no business in which the profits can be so easily shown on paper, yet are so difficult to develop into actual money, and the statement has been verified by long experience.

The reason for Mr. Kirby's success is, that he attends to his business and works at the task he has set for himself. He is probably seen less frequently on the streets of his home city, Houston, than is any business man of his class. While his palatial home and my humble one are only about a mile apart, I do not recall that I have seen him in two years.

The interests for the successful direction of which he is largely responsible are of great magnitude and he is always "on the job," yet he finds time to give attention to public affairs.

He was at the front in the inauguration of the movement to build a Y. M. C. A. building in Houston, and contributed to purchase the property and erect the building as much as any other single individual. I have heard it stated on good authority that he subscribed \$4,000 towards the erection of the Confederate monument to Hood's Brigade, which stands in the Capitol grounds at Austin, and before it was paid, or about February, 1904, the Kirby Lumber Company went into the hands of a receiver. When that fact was announced the president of the Hood's Brigade Association wrote or wired him that in view of the embarrassment

of his company he would be released from his pledge. He replied, as I was informed, by wire that he did not desire to be released, but on the contrary would increase his subscription to \$5,000. It was his personal gift, and not that of the legal entity, the Kirby Lumber Company, and he made good his word.

Twenty-five years or more after he was a clerk in the Senate of Texas he was drafted by the people of Harris County into service as a member of the House, a position he filled most efficiently. That was his first and last adventure into the field of politics.

That part of East Texas from Beaumont north to Longview is largely his debtor, as the original lines of railway for the construction of which he was responsible, have been merged into part of the G. C. & S. F. system, which serves a large area and affords the conveyance of transportation to many thousands of the very best citizens of Texas.

#### THE TODD FAMILY.

No name is more closely or more honorably identified with East Texas than that of Todd.

Hon. Wm. S. Todd was from 1850 to 1862 judge of the old eighth judicial district, the dimensions of which can be at least in some measure realized, when it is said that it extended from Cooke County to Cass County, which means that it covered an area larger than that of many of the States of the Union.

He was not only an *incorruptibly* honest and fearless judge, but was also a very able one. I have been reliably informed that he was reversed less frequently than any judge of his day and time.

A judge may be honest and fearless but possess but limited knowledge of the law, but integrity and courage cannot supply the lack of legal learning. A sense of honesty and justice of course enables a judge to see the abstract right of a case, but as Judge Roberts points out in his great opinion on rehearing in *Duncan vs. Magette* in 25 Texas, already referred to, law is not administered according to abstract right, but in accordance with fixed rules of law and evidence, and a judge who is not grounded in these, but relies on his personal conception of abstract justice is often a blunderer, and his administration of the law from the bench becomes a judicial tragedy.

The reports are filled with the record of judicial errors made in this day and time, when text books on nearly every subject and reports up to almost the very day of trial are accessible to the judges, yet fifty to sixty years ago judges like Wm. S. Todd, Peter W. Gray, James H. Bell and Alexander W. Terrell conducted trials involving the most intricate and difficult questions of both civil and criminal law, and in doing so erred less frequently in proportion to the number of cases tried than I did thirty to forty

years later, though for the larger part of the time they had access to very limited libraries, and often to practically none at all.

The reason for the correctness of their rulings was that they were not case lawyers, but were deeply grounded in the basic fundamental principles of law.

Judge Todd was a member of the secession convention, and voted for the ordinance of secession. He was a Southern gentleman from crown to toe, which means he was the finest type of man ever fashioned by the hand of God.

When the tocsin of war sounded his son, George T. Todd, responded to the call of his native South, and went out as Captain of the first company which left Texas for the battlefields of Virginia. His company was Company A, first regiment of Hood's Texas Brigade, and fought in every battle from Bethel to Appomattox, and Captain Todd stayed at the post of duty till the stars and bars sank 'mid the wail of a people's agony of sorrow, behind the historic hills of Appomattox.

Returning to his home ragged and penniless, he entered upon the practice of the law and rose to the front rank at the bar. He lived at Jefferson for many years, and died there in the comparatively recent past at the age of seventy-four. He was that manner of man that was equal to every situation. Whether resting 'neath fortune's favor or her frowns, he was the same genial, courageous man. He was possessed of the saving sense of humor—a blessed endowment when it does not degenerate into buffoonery, which it never did in the case of Captain Todd.

A younger son of Judge Todd, Hon. Chas. S. Todd, has been for many years a successful practitioner at the bar of Texarkana. By the well nigh inerrant law of heredity, Judge Todd transmitted to his sons those instinctive impulses and perceptions, and those standards of conduct which are the indefinable, but unmistakable hall-mark of the gentleman, and the name of Todd in East Texas is the synonym of genuine merit and true manhood.

I never knew or saw Judge Todd, but I esteem it a privilege to have known Captain Todd, and to have had his friendship, and I hold in high esteem Chas. S. Todd and his charming wife, the latter of whom I have had the delightful privilege of having as a guest at my humble board.

## CHAPTER XXV.

## THE JUDICIARY OF TEXAS.

“Justice is immutable,  
Immaculate and immortal!—and though all  
The guilty globe should blaze, she will spring up  
Through the fire, and soar above the crackling pile  
With not a downy feather ruffled by  
Its fierceness.”

—*Virginius*—2nd Scene, Last Act.

No State has been more fortunate in having upon the bench of its court of last resort men both of ability and high character than has Texas.

It has been now nearly three-quarters of a century since the Supreme Court held its first session, and judges have come and gone, and the changes have been numerous, but the high standard set by the great judicial triumvirate which first comprised the court has been consistently maintained.

Within that time there have been charges of corruption made against judges in other states, and judges have been impeached for prostitution of their high positions to unworthy ends, but there has never been a judge upon the Supreme Court of Texas who could not have truly said in the words of the great Wolsey, “I have kept my robes and my integrity stainless unto heaven.”

When I use the term, “Supreme Court of Texas,” I mean that court as it was constituted from 1846 till 1867, when the judges who were elected in 1866 were removed from office by arbitrary military power, and that court as it has been constituted from February, 1874, until this time, and as it is now constituted.

In the interim from September, 1867, to February, 1874, there was, of course, a tribunal composed part of the time of five men and part of the time of three men, which was called the “Supreme Court of Texas,” and which by sheer force of circumstances, over which the people of Texas had no control, functioned as the “Supreme Court of Texas,” and the people and the bar were obliged to submit to it all legal controversies for arbitrament; but it is not that tribunal to which I refer as the “Supreme Court of Texas.”

I recall reading at one time an opinion by Hon. George F. Moore, in which he was dealing with an opinion delivered by the last named tribunal (I believe, on motion for rehearing), and in the course of his opinion he said, in substance, that whatever measure of legal ability, or personal merit, the members of that tribunal may have possessed, the Supreme Court of which he was a member did not feel bound to accept its decisions as law, and it would not hesitate to hold contrary to what that tribunal had

held; and proceeded to point out why the conclusion it had reached in the case he had in hand, was palpably erroneous.

Some of the members of that tribunal were aliens, interlopers and strangers; and others were men who forsook their country in her hour of peril, and were able to take such an oath as not one Southern man in a thousand could, or would, take,—so I am in hearty accord with Judge Moore.

I did not feel, however, that I would be justified in ignoring the fact of the actual existence of such tribunal; which, however unconstitutional and illegal may have been its origin and existence, was at least a *de facto* court, as many a lawyer and many a litigant found out to his sorrow. With possibly one exception, there never was an hour in the history of Texas when either one of the men who from time to time composed that tribunal would have had, under normal conditions, any more chance of obtaining, either by election or appointment, a seat on the bench of the Supreme Court of Texas, than he would have had to be vested with the robe and scepter of a king.

At one time when the tribunal was in session in Austin, a gentleman who before the Civil War had won high distinction as a lawyer, and who was Confederate States Judge of the Eastern District of Texas, entered the court room, and after gazing earnestly for a considerable length of time upon the aggregation of military-made Supreme Judges (?), said: "I had never even dreamed that I should live to see the time come when a man, who when I knew him at the bar was the most pestiferous petti-fogger in all East Texas, would occupy the seat once adorned by John Hemphill and later by Royall T. Wheeler. Surely my State has fallen upon evil times."

I remember it was said in those days that when the records were distributed to the several members of that tribunal, each one wrote his own opinion, and that it was deemed a breach of judicial comity, or courtesy, for any one of the five to object to the conclusion reached by another one.

I was not at the bar in those days, but I recall distinctly that it was stated as a fact, that one of the five wrote an opinion in a case, and laid the record aside. Another one of the five, seeing no opinion in the files, took the record and wrote an opinion of his own, holding directly contrary to what the first man had held; and both opinions were filed in the archives of the court. When delivered to the clerk to be recorded, or perhaps to the reporter, the contradiction and conflict was discovered, and in some way adjusted. Surely the baleful tree of "reconstruction" bore bitter and destructive fruit.

I will likely be safe in saying that not one lawyer in ten in Texas has even an approximately correct idea of the times when the several Supreme Judges held places on the Supreme Bench, nor

when the various changes took place. I am sure I had not, until I took the pains to investigate the records; for while I have written upon other themes almost wholly from memory, I was unwilling to trust entirely to memory as to the judiciary.

It may prove interesting to set forth the facts regarding judicial tenures and changes.

All lawyers, so far as I know, agree that the first court was composed of three great lawyers. They were men of wholly different order of mind, but all of them were men of vigorous intellect.

It is conceded, so far as I have ever heard, that Chief Justice Hemphill was the most profoundly learned man of the three. Judge Lipscomb enjoyed the rather unusual distinction of having been, before he came to Texas, a Judge of the Supreme Court of Alabama.

His grandson, a most useful citizen and worthy member of the bar of Texas, holds, or at least did hold, within the recent past, a judicial position in the county of his residence.

The first Chief Justice resigned after thirteen years of service to take a seat in the United States Senate. Judge Lipscomb died December 8, 1856. The last opinion written by him was that in the case of *Jacobs vs. Arnold*, which appears in volume 17 of the *Texas Reports*, page 652.

It appears from an examination of volume 18 that for a considerable time, how long I do not know, Judges Hemphill and Wheeler constituted the court. Hon. O. M. Roberts was appointed to succeed Judge Lipscomb, and his name appears for the first time as a member of the court, in volume 19.

Judge Wheeler was a man of nervous temperament, and inclined to pessimism and despondency, and was called upon to deal with questions of conflict between the military power of the Confederate Government and the rights of citizens, which it was understood greatly troubled him.

His salary, which was small, was paid in Confederate money, and proved wholly inadequate to meet the necessities of his family, to which he was passionately devoted. He was a man of spotless purity in private and public life, but his nature was unattuned to the excitement, and strife, and bitterness born of war, and the thickly gathering troubles of the present seemed to him to presage for him and his a future filled with hardships, and under the combination of troubles which beset him, his magnificent mind gave way, reason toppled from her throne, and in a state of total mental irresponsibility he died by his own hand.

The brief sketch of his life and services from the gifted pen of Hon. Chas. S. West, who in later years was a Justice of the Supreme Court of Texas, which can be found in volume 27 of the

Texas Reports, is a beautiful and deserved tribute to a great jurist.

The last opinion delivered by Judge Wheeler, so far as I have been able to discover, was in the case of Hanks vs. Pickett, 27 Texas, page 97.

Upon the resignation of Chief Justice Hemphill, Judge Wheeler became Chief Justice, and he and Judge Roberts appear to have constituted the court until the election of Hon. James H. Bell as Associate Justice.

I have heard a very interesting story concerning the campaign which resulted in the election of Judge Bell. His opponent, I have been told, was Constantine W. Buckley, who was for a number of years Judge of a district in the southern part of the State, and who was an able lawyer. He was, I have understood, the Democratic nominee.

Judge Bell had never been a Democrat, and never was afterwards. His political views were not in harmony with those of the majority of the people of Texas, but he had as District Judge displayed conspicuous ability. The Galveston News was at that time an even more influential journal than it deservedly is now, and, as I remember, from what I have heard, the late Wm. Pitt Ballinger was the legal adviser and the close friend of its then owner, Willard Richardson.

He had never aligned himself with the Democratic party, and he had the very proper conception that no man's political views had any just or proper relevancy to his fitness for judicial position.

He knew Judge Bell, and had practiced before him, and esteemed him highly as a judge. He was given free use of the columns of the News, even on the editorial page, and warmly espoused the candidacy of Judge Bell, with the result that the independent candidate defeated the nominee.

Judge Bell was a man of very high character and became a Republican after the war, but neither held nor sought office, and lived and died in the Republican faith.

I feel sure every lawyer who has read any material number of his opinions has been favorably impressed by their clearness, directness and brevity, and been struck by the frequency of the statement in the very beginning of his opinions, to the effect that he was of the opinion that the case must be reversed, or must be affirmed, according to the conclusion he had reached.

Judge Moore often began his opinions in the same way. Short opinions which go directly to the heart of the case, and correctly determine the controlling questions are greatly to be desired, but are impossible to be written if a court is crowded, pressed and hurried, because the judges then have no time to review and revise and condense.

A distinguished Judge, upon being asked why he wrote such

lengthy opinions, replied: "Because I have not the time to write short ones." The reply may appear at first glance to involve a contradiction, but it does not, and every appellate judge will bear witness that it was the statement of absolute truth.

A somewhat amusing story was told of a ruling made by Judge Buckley as trial judge.

An attorney, who afterwards under the E. J. Davis administration was Attorney General of Texas, presented a motion to quash an attachment. He set forth in elaborate and specific detail seventeen grounds why in his judgment the motion should be granted, and the eighteenth ground was, "for other reasons apparent of record."

Judge Buckley, after careful consideration of the seventeen specific grounds, overruled them all, but quashed the attachment "for other reasons apparent of record," to him, but not to counsel.

Judge Roberts became a Colonel in the Confederate Army, and in volume 26 the name of Judge Geo. F. Moore appears for the first time as a member of the court. I knew him as a young man beginning the practice might know a distinguished man much older than himself, but never saw him, so far as I remember, until he was on the bench long after the close of the war of '61-'65.

My father knew him and esteemed his ability very highly. I heard him say more than once, "Geo. F. Moore sets at defiance, and disputes by his appearance, all the laws of physiology and phrenology." His head was much smaller than that of the average man, and he did not appear to be a man of strong intellect, but his many clear, vigorously reasoned, and profoundly learned opinions demonstrate that he was.

His great opinion in the Sparks case in 27 Texas, page 705, proves in a highly gratifying and most conclusive way that he was not only a lawyer of the first order of ability, but a heroically courageous judge.

He was a charming man socially. He was always dignified, but never austere, and was always approachable.

There is not a lawyer in Texas who has had practice sufficient to require him to consult the Texas Reports, who is not debtor to Judge Moore for some of the ablest, and most illuminating and instructive decisions ever delivered from the Supreme Bench of Texas.

I met him casually one morning in Galveston while the Supreme Court was in session there, and he said, "I am going back to the practice for a few days. I am going to Crockett to try one or two of my old cases." I said, "Judge, won't you run up against a statute?" He said, "What statute?" I said, "There is a statute which says that no Supreme or District Judge shall appear as attorney in any court." "Well," he said, "That is news to me."

His ignorance of the existence of a statute confirms the ancient adage that "even great Homer may sometimes nod."

I heard him relate on one occasion an incident in his practice which amused me very much, by reason of what may properly be termed his keen satire that it revealed.

The City of Austin, or at least a large number of its citizens, had contracted to pay the Houston & Texas Central Railroad a large bonus if it ran a train into Austin by a certain date.

The road failed by some days, or maybe a longer time, to fulfill its part of the contract, and the committee of citizens refused to pay the bonus.

The road brought suit against all the obligors, and they sent a committee to Judge Moore to engage him as counsel. The chairman asked him to name his fee. He fixed it at \$5,000. The chairman said, "That is satisfactory, go ahead and we will pay the fee." The Judge said, "No, *sir*, I will not go ahead on that basis. You promised to pay the railroad company to come here, and it is here, and now you have come to employ me to keep from paying the bonus promised, and my fee must be paid or secured."

The eloquent and truthful tribute paid to the memory of Judge Moore by his life-long friend, Hon. Alexander W. Terrell, which is to be found in volume 60, Texas Reports, is well worth reading by every lawyer. It is such a tribute as might have been expected from such a source, and I know of no more appropriate or beautiful specimen of memorial oratory.

The response of Chief Justice Willie on behalf of the court, to the resolutions, and to the address of Judge Terrell, was worthy the perpetuation accorded it in the same volume.

It is a gem of fit phrasing and felicitous expression, and came from the heart of as sincere and pure a man as ever filled the exalted position of Chief Justice of the Supreme Court of Texas.

In the same volume are to be found the memorial resolutions adopted by the bar of Tyler upon the death of Hon. Micajah H. Bonner, who by appointment of Governor Hubbard succeeded Hon. Geo. F. Moore when he resigned, and also the admirable address of Judge Jas. A. Baker of Houston, who presented the resolutions by special request of the Tyler bar.

The tribute of Judge Baker to his distinguished friend was an offering of respect and admiration laid by the worthy living, on the bier of the worthy dead.

One able lawyer and just judge paid fitting tribute to another who was like unto himself. One Christian gentleman bore witness before a great court that one who had adorned that court, illustrated in his daily walk and conversation the teaching of that old, simple and sufficient faith, by which he who spoke was consoled and comforted when a few years later he answered his Master's call, "Come up higher."

Chief Justice Willie and Associate Justice Stayton both responded to the resolutions and to Judge Baker's address, with feeling and appropriate tributes to the worthy dead.

When any man, however exalted or however lowly his station, has so lived and served as to call forth from such men as James Addison Baker, Asa Hoxie Willie and John William Stayton heartfelt tributes of admiration, that man is avouched to those who survive him, and those who may come after him, as having lived according to the most exacting standards of worth and virtue.

The war between the states closed April 9, 1865, and the consequent demoralization was such that all branches of the government were disorganized, and as I have not taken the time to search official records of that day, I do not know what was the condition as to the judiciary up to the election of a Supreme Court in 1866.

My impression is that Governor Hamilton sought in a very commendable spirit to set the machinery of the trial courts in motion, and as I recollect, appointed Richard Coke as district judge, but I was not old enough at that time to take much interest in such matters.

I have not the slightest recollection whether or not there was any convention in 1866 to nominate candidates for Supreme Judge; or whether or not the candidates for other State offices were nominated.

That is however an immaterial detail. J. W. Throckmorton was elected Governor, and I believe Colonel Wash Jones was elected Lieutenant Governor.

The Supreme Court was composed of Geo. F. Moore, Richard Coke, Stockton P. Donley, Asa H. Willie and Geo. W. Smith, and it was a very able court.

None of them were old men, indeed scarcely middle-aged. Chief Justice Moore was only forty-four and Justices Coke and Willie, only thirty-seven.

I do not recall ever having seen Justice Donley or Justice Smith.

The opinions of the court of 1866 are contained in volumes 28 and 29, and up to page 374 of volume 30 of the Texas Reports. The last opinion of the court was written by Justice Stockton P. Donley, in whose honor Donley County was named.

While the court was on its summer vacation,—at least in September, 1867, a military edict issued by one Griffin, commander of the Department of Texas, swept all the Supreme Judges and the 20th district judges into the discard; and their places (at least in a physical sense) were filled by military appointees who could take the oath of allegiance, which meant that they had failed to stand by their State in her hour of trial, and could swear they had given none of her people any "aid or comfort" in time of war.

It is just to say that one of the five, Andrew J. Hamilton, was

a man of a very high order of ability, and an able lawyer and upright judge, and it is also just to say that while I was a mere youth at the time, I never heard then, or later, any charge made against the moral or official integrity of any of the reconstruction judges, but their intellectual and professional fitness was seriously questioned, and their constitutional and legal right to be where they were, was strenuously denied; but force, and not law, right or reason ruled in that mad hour.

## CHAPTER XXVI.

The Chief Justice appointed by the Federal Commander, when the constitutional court chosen by the people was abolished, was Amos Morrill, who practiced law in East Texas before the war. He was a Union man, and I assume, conscientiously so.

He was many years later appointed United States Judge for the Eastern District of Texas, which covered a territory now included in the Southern District.

He, as I recall, usually, if not at all times, wore a claw-hammer coat of an ancient vintage as to style, and was an intense Republican, but an amiable old man, and so far as I ever heard, an honest judge, but was inordinately vain.

He said that when he was appointed to the judgeship he was on a visit to New York, and knowing that he would have to deal much with admiralty questions, he took steps to prepare himself in that branch of the law. For that purpose he bought a copy of Benedict on Admiralty to read on the boat on his way home, and then continuing in perfect seriousness, said: "And when I got to Galveston I knew all about Admiralty Law."

Judge Wm. P. Ballinger told me the statement was made to him, and he never failed to be amused when he related the incident. He doubtless thought, most reasonably, that any man who could learn *all* the admiralty law in the time it took to make a trip by boat from New York to Galveston, had a phenomenal gift of acquiring knowledge.

I witnessed a very amusing act on his part at one time in the Federal Court at Galveston. It was doubtless far more amusing to me, who had no interest in the case on trial, than it was to counsel who were interested in his decision.

A large number of parties had been indicted under some Federal Statute relating to the Ku Klux, or interference with voters, or some other of the numerous acts of Congress which were designed to harass and worry the people of the South.

The indictments were very long, and Judge Ballinger and Colonel George Flournoy were employed to represent the defendants who lived, as I recollect, in the southwestern part of the State.

Both counsel were able lawyers. Colonel Flournoy was elected Attorney General of Texas at 26 years of age, and was a brilliant man of solid legal attainments, and Judge Ballinger's reputation as a lawyer of high rank had been long established.

They assailed the indictments by logical and able arguments, buttressed by numerous authorities, and a wealth of legal learning.

I chanced to drop into the court room just as the arguments on the demurrers closed. It was to be expected that the judge would say, "Gentlemen, I will take the matter under advisement, and will be glad to have a list of your authorities," or, if he had

reached the conclusion that the exceptions were not well taken, that he would summarize the legal reasons on which he based his conclusion. It seemed to me that respect for arguments of such ability, made by distinguished counsel, demanded one course or the other, but the Judge did not seem to think he was called upon to take either course.

He reached quickly out, and picked up a Bible which he had ready at hand, and which he had evidently fixed with a book mark so it would open where he purposed to read. He turned it with the left end up and squinted his eyes to discover the place he desired to open it at, and having opened it, said: "See what the Bible says: St. Paul appealed unto Caesar because he was a Roman citizen. Shall it be said that a citizen of the United States is not as good as a citizen of Rome. The demurrers are overruled."

The logic and eloquence of counsel brought forth no response from the court, except a quotation from Scripture.

On one occasion after the argument had closed in an important case, counsel for plaintiff said: "Will your honor kindly withhold your charge until I can get a stenographer to take it down? This is a very important case to my client, and involves interesting questions of law, and I very much desire to have your honor's charge in written form." "Have you a stenographer present?" "No, sir, but I can have in a few minutes if given permission." "Very well, get him." In a few minutes the stenographer rushed in and prepared to take down the expected-to-be elaborate charge of the court. Whereupon the old Judge said, "Are you ready, Mr. Stenographer?" Upon receiving an affirmative reply the Judge said, "Gentlemen of the Jury, I will now deliver you my charge on the law of the case. You are directed to return a verdict for defendant. Did you get that, Mr. Stenographer?"

Whether he deliberately perpetrated a joke on the counsel, or whether he changed his mind on the law while waiting for the stenographer, no man knows. He apparently had no more sense of humor than a wooden Indian, and one supposition is about as likely to be true as the other.

The Texas Reports, from page 374, volume 30, up to and including volume 39, have never been accorded any very great measure of respect by the bench and bar of Texas, yet they contain some very good opinions.

It was the way by which the Judges came to get their offices, rather than their characters, which gave the people so much offense.

I have never heard a doubt expressed as to their official integrity.

Many lawyers entertain the same opinion of the nine volumes as did one of the ablest lawyers I have ever known in Texas.

Fire threatened the destruction of his library, and did de-

stroy the building in which his office was located, and he was aided by many people to save his books.

The last man in the office before the room was in flames said, "Colonel, here are a lot of books you have left. I will bring them out." "No, sir," the Colonel said, "Let 'em alone. D——n 'em, let 'em burn," and they did. They were volumes 31 to 39, inclusive, of Texas Reports.

The last judicial action of the court was the decision of the case of *Ex Parte Rodriguez*, the report of which covers the last 70 pages of volume 39. A full account of the case has already been given. No doubt the court believed that the result of the decision would be to nullify the election of the Democratic ticket headed by Richard Coke, and that E. J. Davis would hold over, as there would be no successor to him to qualify.

When I say that the court no doubt so believed, I do not mean to charge that it purposely and consciously construed the law erroneously so as to bring about that result, but in that day of passion and excitement that charge was freely made, and affidavits were presented to show that the case was a fictitious one, concocted with the design of thwarting the purpose of the Democrats to get possession of the government of the State.

I never saw but one of the three judges in my life, and never spoke to him; and they are all dead, but even at this late day I have no disposition to asperse their memories, by charging them with official infidelity.

Justice Walker delivered the opinion of the court which I have read. It covers about 27 pages of the report.

I heard when he went upon the Supreme Bench that he was an officer in the Federal Army, his regiment being stationed in Texas, but that he had been a lawyer perhaps in Michigan or Wisconsin, or some other Northern State. I have said the opinions of the court are not much respected, yet only a few days ago a friend, and kinsman of mine, for whose legal ability I have great respect, told me he considered some of the opinions of Judge Walker to be very able ones.

Whether the court construed the law correctly or not made no difference. Its opinion was ignored, and the Democrats put all the Republican office holders out, and took possession of the State government and have had it ever since.

As an abstract proposition, disobedience of the decree of any court of lawful jurisdiction is not a light matter, and to defy the decision of a court of ultimate resort, and ignore its decree was a bold step, but the people had been for four years misgoverned and robbed, and they intended to practically construe the law themselves, and most fortunate it was that they had elected such a man as Richard Coke to carry out their wishes.

Conceding for the sake of argument that the Democrats were

technically unjustified, the fact remains that they were entitled to deliverance from a State government which respected the laws neither of God or man, and to such circumstances the old couplet, "It matters not how, or where, or when, the wily fox is trapped or slain," is applicable.

Governor Davis saw resistance was useless, and he vacated his office, and all the other officers followed his sensible example, except the Secretary of State, who came to Texas as a Federal soldier—perhaps a Colonel.

He declined to surrender his position, or the archives of the office. It was said that the Democrats did not resort to quo warranto, or any other kind of legal remedy, but that James E. Dillard of Kaufman County, then a member-elect of the Legislature and many years later a Judge of the Kaufman-Ellis District, went in and *vi et armis*, or *vi et pedis* (if I may coin a word of dog-Latin), lifted the imported Secretary of State out of his seat, and put him out into the hall, and installed his successor.

The ejected Republican office holder, if I am not mistaken, brought suit against Mr. Dillard, and perhaps others and recovered judgment for damages for the assault,—and in a strictly legal sense ought, perhaps, to have done so. I feel sure he continued to make his home in Austin and afterwards was elected Mayor of the City. Under such extraordinary conditions, and such a pressing emergency, a pair of strong arms and a far-reaching leg and foot are just as effective as a judicial writ of ouster, and far speedier in getting results.

The Chief Justice of the Court, when the futile opinion in the Rodriguez case was decided, was Hon. Wesley Ogden. He was the father of Hon. Chas. W. Ogden of San Antonio, who practiced law for many years in that city, and deservedly attained distinction and success in his profession, and his sudden death only a few years ago caused deep regret to a wide circle of friends.

The other member of the court was General (as he was commonly called) J. D. McAdoo. He practiced law in Washington County many years and was a man of decided ability, and so far as I ever heard, of most exemplary character. His daughter, a most excellent lady, is a near neighbor of mine in my home city, and her husband is attorney for one of the great railroad lines of Texas, and a very capable lawyer.

I remember very vividly hearing General McAdoo make a speech in a criminal case before I had reached my majority.

He was, as I recall, a very tall man of massive build, with a strong, impressive voice, and a very forceful speaker. The defendant was charged with assault with intent to murder. Both he and the party he shot were gentlemen of good character and social position. It was proved that some little time before the shooting took place the man who was shot cursed the defendant

in the presence of his (the defendant's) wife and mother as a "d——d coward and a d——d scoundrel."

General McAdoo was counsel for the defense while the prosecution was being conducted by the late Seth Shepard, then a very young man, but even at that time a brilliant and capable prosecutor.

Judge McAdoo's mother, a venerable old lady to whom he was devotedly attached, was, as I was advised, then living, as a member of his family.

After discussing the testimony at some length, General McAdoo said with great deliberation: "Gentlemen of the Jury. I do not believe it would be well for any man to curse me for a d——d coward and a d——d scoundred under any circumstances," then raising himself to his full height on the tips of his toes, he said in tones of the most intense earnestness, "So help me God, he should not do it in the presence of my wife and mother, and live."

I was standing or sitting very near to him, and his words and manner, and tones thrilled me through and through, and impressed me so that I have never forgotten the incident. Perhaps the fact that I fully agreed with what he said, and do yet, may have had something to do with the effect his words had on me. The defendant was acquitted.

## CHAPTER XXVII.

I shall not trouble myself to deal at any length with the personnel of the Court during the time when the decisions in volumes 31 to 39, inclusive, were rendered. For the greater part of the time the court was composed of Judges Lemuel Dale Evans, Wesley Ogden and Moses B. Walker. For a brief time one James Denison was a member.

After August 31, 1873, until the Rodriguez case was decided, it consisted of Judges Ogden, Walker and McAdoo. Judge McAdoo was a district judge before he went on the Supreme Bench.

Before taking up the matter of the personnel of the Supreme Court under Democratic rule, it may be interesting to point to a decision which will reveal probably the briefest charge ever delivered in a case of murder where the judgment was affirmed, and the sentence of the law carried out. I do not set forth the style of the case because in all likelihood some of the relatives of the defendants, or one of them at least, are still living in Texas.

The defendant referred to lived at one time in the town in which I was raised, where he had some relatives of excellent character. The charge will be found in volume 32, Texas Reports, page 67 (counting by the top paging). The charge is so very brief that I took pains to count the words in it, and there are only 165. Yet it was held sufficient to justify the hanging of two men.

Judge Morrill, of whom I have written on previous pages, was Chief Justice of the Court when the opinion was delivered, and I heard him say once: "When we were up there, and came to the decision of a criminal case, we never troubled ourselves much about technicalities or forms of procedure. If it appeared that the defendant had received deserved punishment we looked no further," or words to that effect.

In this day and time, when if the pages of a charge in a murder case were put end to end, they would reach from the crown of the head, to the sole of the foot of the average defendant, the lawyer who reads the charge referred to will agree that Chief Justice Morrill's statement is supported by the record.

The habit of writing long charges is most unfortunate. I know from experience that the Court of Criminal Appeals will, in an assault to murder case (the charge in which character of case is, or used to be, the *bete noir* of all judges), approve a charge one-tenth of the length of the average charge in such cases. Examination of the charge in Williams vs. the State, 135 S. W. 552, will confirm this statement. I am reported as having been sitting as "acting judge," which is a mistake. I was Judge of the 61st District, sitting for the Judge of the Criminal District Court, during his absence from the city.

When Governor Coke went into office in January, 1874, the

judges were appointive—and Governor Coke who had, as I have already said, demonstrated great ability as a Supreme Judge, appointed Oran M. Roberts, Reuben A. Reeves, Thomas J. Devine, George F. Moore and William P. Ballinger to compose the Supreme Court.

Hon. George Clark was appointed Attorney General by Governor Coke, and Alexander W. Terrell and Alex. S. Walker were appointed reporters of the court. The list of eight lawyers thus connected with the Supreme Court of Texas contained no name that would not have fitly adorned the bench. One of the reporters, Judge Walker, later became a member of the court.

The court constituted, as stated above, rendered the decisions to be found in volumes 41, 42 and 43 of the Reports. The name of John Ireland first appears as one of the justices in volume 44.

I think Judge Devine resigned. He lived for many years in San Antonio and died there. He was district judge for a long period, and was a learned lawyer, a courtly gentleman, and a citizen of the most exalted character. He was a devout believer in the Christian faith, and in the course of the eloquent tribute paid his memory by Judge Terrell, he said that as death drew near, the venerable jurist while suffering intensely, said, "Cease, fond spirit, cease thy strife; and let me languish into life."

I have already dealt with the character and career of John Ireland.

Judge Ballinger, as has been said on a previous page, qualified on the 3rd of February, 1874, and resigned the same day, because the salary (then \$4,500) was not sufficient to justify him in holding the position.

Governor Coke then appointed Judge Peter W. Gray of Houston. He held the position only about nine weeks, and when he resigned Governor Coke appointed Judge Robert Simonton Gould to succeed him.

Fortunate indeed was the Governor who had such material to choose from, and fortunate the State, the bar of which furnished lawyers so pre-eminently qualified morally and professionally for such a position.

Judge Gray lived in Houston for many years, but was before the Civil War judge of a district reaching from Galveston to Madison County, inclusive, and he sometimes held court in Polk County. He was the first Judge I ever saw on the bench, and as I was only a few years old, I can hardly remember the time. It was in Madisonville, Texas. I remember, however, the Sheriff. I think he had two pistols, and he needed them in that county at that time. I was as afraid of him as if he had been a bear, and I clung tenaciously to my father's side.

The present day district judges complain of inadequate salaries, as I did when on the trial bench, and they have a right to com-

plain, but they get nearly twice as much now as Judge Gray received, and can get over their districts in automobiles, and in railroad trains and are allowed part, at least, of their hotel bills and other expenses.

Judge Gray had to go from county to county on horseback, or in a buggy, or by stage—and plow through mud and swim overflowed creeks to keep his official engagements, yet he was a lawyer who would have adorned the Supreme Bench of the United States.

He was a delicate, dyspeptic man,—and for that reason was sometimes irascible on the bench—but he was a Virginia gentleman—that is to say, he was the highest type of gentleman in the world, and always so demeaned himself. He never allowed the dignity of his Court to be offended or infringed upon, but every litigant and lawyer received absolutely fair treatment. He was absolutely fearless, physically and morally.

On one occasion a party who was accustomed to getting drunk and disturbing the peace—and who was reputed to be a dangerous man—got out on the street in front of the Court House, and yelled, and swore, and otherwise violated the proprieties and the law.

Judge Gray told the Sheriff to go out and tell the man to be quiet—that he was disturbing the court. The man was armed—there being no law against pistol carrying in those days—and he told the Sheriff that he was not in the Court House and the Judge had nothing to do with him. The Sheriff reported to Judge Gray what the “bad” man had said.

The Judge said, “The court will take a recess”—and he went down stairs and out upon the square—and toward the offender, who, when he saw the Judge coming, said, “Judge Gray, I am on the public square where I have the right to be,—and you have nothing to do with me, and you musn’t bother me.”

The Judge paid not the slightest attention to the warning, but walked up to the man, brushed his weapon aside, caught him by the collar, and led him into court—pushed him into a chair, took his seat on the bench, and entered a fine of a hundred dollars against him, and put him in the custody of the Sheriff, and turning to the counsel in the case on trial said, “Gentlemen, proceed with your case.”

If any man from the incident just related should draw the conclusion that Judge Gray was a brawler and fighting man, he will be very much in error. On the contrary, he was a strict churchman—and was for many years one of the vestry of Christ Church in Houston, and died consoled, and comforted, by his faith and trust in the divine promise of life eternal.

He never sought to magnify his office, or display his authority by entering fines against lawyers and witnesses and jurors, as

do many smaller men in judicial positions. A friend of mine—a man much older than I—who practiced before Judge Gray, told me that he, one day, saw a lawyer whom I knew when a boy, appear before Judge Gray for the purpose of trying an important case—in a state of intoxication.

Judge Gray knew the lawyer was addicted to that unfortunate habit, but knew that when sober, he was a lawyer of unusual ability. Instead of lecturing him, or entering a fine against him, the Judge said, "Perhaps, Colonel, we had best postpone this case till morning and have all day to try in. I will excuse you till then", or words to that effect.

If any lawyer has interest enough in seeing how well a great Judge could try cases, if he will run through the reports of Judge Gray's time, he will see how rarely he was reversed.

When the memorial resolutions in his honor were presented to the Supreme Court Judge Roberts in reply to them said he meant no disparagement to many other able trial Judges when he said "that taken all in all, Peter W. Gray was the best district judge ever on the bench in Texas."

When he left the bench the number of Texas Reports had hardly reached 25—in fact two among the latest cases he tried are reported in 25th Texas, Isaacs vs. The State, and Wyler vs. The State. I knew both defendants.

I recall my father telling me Isaacs was going to be tried and he had plead "not guilty," and I asked my father how the man could say he was not guilty, when several people saw him kill Dr. Spillers?

With all the curious interest of a boy I watched the defendant as he sat on the trial, wearing a pair of highly ornamental boots of his own make, and dressed faultlessly.

Wyler killed his wife. The facts in both cases made it difficult to charge the law properly, but Judge Gray did so with unerring accuracy.

I tried one homicide case twice in the same county in which Judge Gray tried the two cases above referred to, and was reversed both times, which shows the difference between a lawyer like Peter W. Gray and a lawyer like myself.

Judge Roberts said the Supreme Court always treated the judgments rendered by Judge Gray with great deference and respect.

There have been five judges in Texas who were reversed in fewer cases than any others of whom I knew. They were Peter W. Gray, James H. Bell, Alexander W. Terrell, Reuben R. Gaines, and Frank A. Williams.

I have never made the calculation, but I feel safe in saying that eighty-five to ninety per cent of Judge Gray's and Judge Williams' cases were affirmed. I thought I did fairly well with a proportion of affirmances of about seventy per cent.

Judge Gray's health was very much impaired when Gov. Coke appointed him to the Supreme Bench in 1874, and he wrote only a few opinions in the two months that he served in the court, but, as Judge Roberts said, "They were witnesses to his legal learning."

Judge Gould was living in Galveston when he received the appointment as Associate Justice, but he lived many years in the sand hills of Leon County, where his memory is yet deeply revered. The Camp of Confederate Veterans for that County is named in his honor, and it could have been given the name of no purer, truer, knightlier gentleman.

He raised a battalion of cavalry in that county and surrounding counties and commanded till the war closed. He was a chivalrous soldier, a knight *sans peur et sans reproche*.

He was on the Supreme Bench as Associate Justice and Chief Justice for nearly eight years, and his brief, terse, clear opinions have been the safe guides for many a lawyer as he sought light upon the law.

Robert S. Gould as nearly fulfilled my ideal of a Christian gentleman as any man I ever knew. He was, of course, many years my senior, and I claimed no intimacy with him, but he was my father's friend, and some of my kindred followed him in battle, and they love his memory yet.

He was dignified, but never austere, and with the gentleness and tenderness of a woman there was blended in him the courage of a hero.

He was an able and scrupulously just Judge, a model husband and father, and while he never made broad his phylacteries or indulged in cant, he was a sincere, humble, devout Christian, and illustrated his profession in his "daily walk and conversation."

Judge Gould and Judge Winkler of Corsicana, who was elected to the Court of Criminal Appeals in 1876, had the opportunity in 1866 to display what manner of men they were.

Judge Gould had been Major of a battalion in the Trans-Mississippi Department, while Judge Winkler was, for a large part of the time, War Commander of the 4th Texas Regiment, Hood's Texas Brigade, in Virginia; which is to say he went again and again to where valor kept tryst with death.

In 1866 they became opposing candidates for Judge of a Judicial District extending, I believe, from Huntsville to Corsicana.

When what purported to be, and were in good faith believed to be, the official returns came in, Judge Winkler had an apparent majority, and received the certificate and qualified, and I have heard, was on the bench. In some way a mistake has been made, and a recount showed that Judge Gould actually had the majority.

If I ever heard where Court was in session, I do not now remember it, but I have been told Judge Gould presented the revised

returns, and the certificate he had received to Judge Winkler, and the latter was fully convinced that an error had been committed in tabulating the return, and promptly yielded his seat on the bench to Judge Gould.

He did not wait for a mandamus or *quo warranto* or any other kind of legal process or procedure. He knew Judge Gould would not have claimed the seat if he had not known he was legally entitled to it, if the salary had been a million dollars a year. Clarence M. Winkler would not have kept it, when he knew the majority was against him, if a hundred courts had decreed it to him.

Neither of two Southern gentlemen who were reared according to the noblest traditions of the "Old South", and who held to its exacting and exalted ideals would have kept an office to which he knew he had not been elected. It is to be hoped that their tribes are not extinct.

Judge Gould's tenure of office proved to be very short. He and all the other nineteen District Judges who were elected when he was, were swept from the bench at "one fell swoop" by military power.

Their only offense was that they were patriotic, decent men, and honorable and able judges, and hence, were necessarily "impediments to reconstruction," which was a riotous revel of corruption, rottenness and robbery.

Judge Gould's nephew, Hon. Robert Gould Street, became a citizen of Galveston more than fifty years ago when but little past his majority.

By sheer force of native ability and unflagging industry, he made a place for himself in the front ranks of the exceptionally able bar of that city, which he has ever since maintained.

He has, for many years, been judge of one or the District Courts in that city, and has edited most ably a new edition of Sherman and Redfield on Negligence. He is also author of that able work, Street on Personal Injuries. His legal ability is fully recognized by the profession everywhere.

He is a highly cultured gentleman, and is deservedly esteemed and respected, as a judge and a citizen.

My recollection is that J. M. Thurmond, who was afterwards Mayor of Dallas, and was killed in a personal encounter in the Court House, in that city, perhaps thirty-five or more years ago, by a well known lawyer, was appointed by the military commander to succeed Judge Gould. I knew Thurmond several years later, and he was, after a fashion, a likable kind of a man. He was not devoid of natural sprightliness, but his knowledge of law, at least Texas law, was nil, and he possessed no more fitness for District Judge than did any hack driver in Dallas.

When I went upon the bench of the 12th District I was practi-

ticing law in Leon County, and a member of the bar there told me he was present when Thurmond first took his seat as judge.

Thurmond was preparing to set sail on what to him was a wholly uncharted sea, so he called to Judge Gould and said: "Judge Gould, how do I proceed to open court?" The Judge replied: "According to the statute, sir," and turned and left the Court House.

It may seem incredible to those who did not live in that day and time, that such conditions could have existed, and such occurrences have taken place, but they did.

I have heard it often said that one of the military appointees as judge in one of the southwestern districts was requested on one occasion to take the recognizance of a defendant in a criminal case, and that the District Attorney, instead of saying: "Your Honor will please take the recognizance of the defendant," said: "Your Honor will please recognize the defendant." The Judge looked hard at the prisoner for an appreciable length of time, but did not raise his own hand, nor direct the defendant to raise his. Again the District Attorney said: "I beg your Honor's pardon, but will you please recognize the prisoner?"

The judge said with deliberate solemnity: "I think I'll know the man when I see him again."

One of the reconstruction judges opened court in an interior town when he was more than half intoxicated.

He said: "Mr. Sheriff, open this d——d shebang." The sheriff made the formal proclamations at the door of the court house.

The judge ran over the docket in a short time, then said: "Mr. Sheriff, close this d——d shebang," and it was closed. That judge later became a Federal Judge and, having abandoned the liquor habit, became a very capable judge.

## CHAPTER XXVIII.

The Court composed of Chief Justice Roberts and Associate Justices Reeves, Moore, Gould and Ireland, continued until the third Tuesday in April, 1876, when the number of judges became three, the change having been made by the Constitution of 1875, which was adopted by popular vote in February, 1876.

As I recollect, neither Judge Ireland nor Judge Reeves were candidates for nomination at the convention in Galveston in January, 1876. The salary was reduced from \$4,500 to \$3,500. My impression is that the salary was no attracton to Judge Ireland, even at the higher figure, as he was a man of ample means, and accepted the position only on account of the honor attached to it.

As I remember, the health of Judge Reeves was such as to make it undesirable for him to attempt to continue on the bench, and do the arduous labor the position made necessary, and he was that manner of man who was not willing to accept the money of the State, if he could not render a reciprocal measure of service.

He was one of the twenty judges who was elected in 1886, and in 1867 was put out of office by military order.

He was an able lawyer and a most amiable, kindly man. His son, William Q. Reeves, once appeared before me in a very important case and was a very skillful and capable lawyer. He was afterwards judge of the Palestine District, a position which he filled with marked ability.

He was a delightful, popular man, and his untimely death, ere the sun of his manhood had reached its noon, was a deep sorrow to a host of friends.

Judge Roberts was elected Chief Justice, and Judge Moore and Judge Gould Associate Justices at the 1876 election. When the Court so constituted met on April 18, 1876, Hon. H. H. Boone of Grimes County took the place of Hon. George Clark as Attorney General.

One able lawyer and splendid gentleman succeeded another. Judge Clark did not desire to hold the position longer, and as I have said before, Major Boone did not seek it or desire it, but obeyed the call of the people, and did not endeavor to retain it beyond the close of his term in December, 1878.

The 1876 Court rendered the decisions in Volumes 47, 48 and 49.

Judge Moore resigned as Associate Justice August 27, 1878, to take effect October 1, 1878. Judge Roberts was chosen as the dark horse nominee to break the ten days' deadlock between Governor Hubbard and Ex-Governor Throckmorton in the Austin Convention of 1878, and in consequence he resigned prior to the Tyler term of 1878.

Judge Micajah H. Bonner was appointed by Governor Hubbard to succeed Judge Moore, and he and Judge Moore and Judge Gould constituted the Court for some time. Judge Moore was elected Chief Justice and Judge Bonner Associate Justice at the election in November, 1878.

The Court composed of Judges Moore, Gould and Bonner rendered the opinions in Volumes 50, 51, 52, 53, 54 and 55. Judge Moore resigned as Chief Justice Nov. 1, 1881, and Hon. John W. Stayton was appointed Associate Justice Nov. 2, 1881, and Judge Gould was appointed Chief Justice. His name appears as that of Chief Justice first in Vol. 56 of the Reports.

In 1882 Judge Gould was defeated for Chief Justice in the Convention at Galveston by Hon. Asa H. Willie. Judge Bonner declined re-election and Hon. Chas. S. West was elected to the position of Associate Justice.

As has been already seen, Judge Willie was a member of the Court in 1866, hence was not without experience on the appellate bench. He was not an orator, but by reason of his profound knowledge of the law and his charm of manner, and high character was a very able trial lawyer.

He was a delightful, lovable gentleman, and his opinions which are to be found in Volumes 58 to 70, inclusive, testify in the strongest terms of his ability as a judge. He resigned March 3, 1888, after a little over five years' service.

He was compelled to resign owing to the inadequacy of the salary. I went into his office on one occasion when the court was in session at Galveston and he was delving into a record with books piled high around him, and I said: "Judge, I wish they would quit carting you judges around over the State from Galveston to Austin and from Austin to Tyler." He replied in his quiet, gentle way: "I wish they would pay us more."

It is said he expended out of his personal funds while in office nearly as much as the State paid him. Not a few of the able judges who have adorned the Supreme Bench of Texas have left it poorer in purse than when they took their seats upon it, and many of them have left it with health hopelessly impaired, yet it has always been the case, and is yet, that if the suggestion is made to increase their salaries to an amount commensurate with the dignity of the position, and the arduous and continued labor they must perform, the average legislator cries out: "You want to rob the people to pay the judges. If they didn't get more on the bench than they can make practicing law they would not law, they would not want the place."

There is no doubt that such statement has been often made, yet it is a fact as every intelligent man knows, that there are many honest and able lawyers who would efficiently fill the position of Supreme Judge who would forsake a law practice paying from

three to five times the salary of a Supreme Judge, to go on the Supreme Bench, because they value the honor of the position more than they do money. The man who does not entertain that conception of the position of Supreme Judge is not the kind of man to put in that position.

I never, so far as I recall, ever saw Hon. Charles S. West, but those who knew him best admired and loved him most. He was genial, hospitable, and cultured, and as a trial lawyer had few superiors, if any, in Texas.

The firm of Hancock & West, located at Austin, did a very large practice. Both members were able lawyers, but as I recall differed in political faith. Judge Hancock was a Union man, but in 1874 defeated for the Democratic nomination for Congress Hon. Seth Shepard, who was then only 27 years of age, but who had a host of the most devoted friends that any man in Texas ever had. The contest in the convention was long and bitter, but Judge Hancock won out and was elected to Congress—perhaps more than once. He was a man of very vigorous intellect. At an early age Judge West served in the Legislature and was a member of the constitutional convention of 1875, and was one of the codifiers of the law in 1879.

Judge West had no taste for political strife. He was essentially a lawyer and was one of the highest class.

His (I believe eldest) son, Robert H. West, died at an early age, but not before he had established a deserved reputation as a skillful and successful lawyer. He appeared before me on one occasion in a land case which presented some very novel questions of law, and while he ultimately lost, he conducted his side of it with marked ability. The case was somewhat out of the usual order, and in my finding of facts I said that "it is evident from the uncontradicted testimony that the defendants had deliberately laid a plan to steal the plaintiff's 640 acres of land."

The statement was out of the usual order and perhaps may have been in a sense unjudicial, nevertheless was a fact.

Mr. West ("Bob," as he was usually called) said it might be construed as to, in effect, impute some wrongdoing to him, so I added the statement in substance that "no reflection is intended upon counsel for defendants, as he took the case as he found it, and his character was such as to rebut even the suspicion that he would be party to any improper transactoin." He was entirely satisfied with the addendum.

I have heard that the members of the appellate court at Galveston were much amused at the finding, but concluded it had not best be set forth verbatim in the report of the case. The case is reported in 21st S. W., p. 711.

Another son of Judge West is now United States District Judge for the Austin and San Antonio District. It is a rather remark-

able fact that he presides over a court of which his distinguished grandfather, Hon. Thomas H. Duval, for whom he was named, was, for many years, the judge.

There have been some curious (so to speak) "mixups" of members of the same family in office and in politics—not only in Texas, but elsewhere.

Some forty years ago father and son were opposing candidates in a Texas district for State Senator. The son was elected. The memory of the remarkable race between the Taylor brothers in Tennessee in 1886 for Governor which "Bob," Democrat, won over "Alf," Republican, has been recently revived by the election as Governor after a lapse of thirty-four years of "Alf" in his 72nd year, over the Democratic nominee.

In Southeast Texas father and son were judges in adjoining districts, and the father had to pass through the son's district to get to one of the counties in his own, and what was more unusual, the son, by promotion to the Chief Justiceship of the Court of Civil Appeals, was called upon to review cases tried by his father.

The son is a handsome man and a good dresser, while his father, though he always clad himself in decent garments, paid but little attention to the fashions.

It is said that upon one occasion the elder man was called to the county seat of one of the counties in his district to hear a habeas corpus case. The call was urgent, and it found him clad in khaki, and with hunting boots on, and in that garb he went.

The son chanced to see him, and suggested that he ought to get another suit—that his garb was wholly unjudicial. As the story goes, the old gentleman said: "That's all right. These clothes are good enough. It has always been the case in our family that you furnished the style, and I furnished the brains." The reply was witty, but while the elder man possessed a vigorous intellect, he did not possess all of the brains of the family by a great deal. The son has a liberal share.

Everybody knows that father and son were both President of the United States, and when James A. Bayard of Delaware passed out of the Senate, his son, Thomas Francis Bayard, took his place.

For a considerable period of time the son of Justice William R. Day of the Supreme Court of the United States, was Judge of the United States District Court of Ohio, so the father was called upon to review the son's decision.

The son resigned and went back to the practice, and in due course, appeared before the Supreme Court to argue a case. He, it seems, is a tall, powerfully built man, while his father is thin, and small, and unusually light in weight. The son made a vigorous argument and when he had concluded, one of Justice Day's

brother judges leaned over and said to him: "Judge, that young man is a block off the old chip."

That incident reminds me of a similar incident which occurred between an elderly and very able lawyer and a younger man—his nephew—who opposed him as counsel in an important case. I knew both parties. The younger man was inclined to be vain and boastful and said to the elder: "You will find out before you get through that I am kin to you, and a chip off the old block." The uncle said: "Yes, but they were chipping powerful small chips when they got to you."

Remembering the many incidents that recur to my mind as I write, has the effect to break to some extent the thread of my story of the judiciary of Texas, but the recital of such incidents serve to relieve the monotony of reading of names, and dates, and dry details of changes by election, resignation and appointment.

The opinions of Judge West are to be found in Vols. 58 to 64, inclusive. Feeble health compelled him to resign, which he did on September 29, 1885, and Governor Ireland appointed Hon. Sawnie Robertson of Dallas to succeed him.

The admirable character of Judge West and the lesson of his useful life are fittingly portrayed in the report of the memorial exercises in the Supreme Court as reported in Vol. 66 of the Reports.

Judge Robertson was perhaps the youngest man ever appointed or elected to the Supreme Bench of Texas. He was reared, I believe, in Tyler, and is a close blood kinsman, if I am not mistaken, of Hon. Horace Chilton.

He vindicated the opinion of his friends and the wisdom of Governor Ireland in complying with their request for his appointment, for he proved to be a very able judge, as his opinions to be found in 64 and 65 Texas show in a most gratifying way. He too was compelled to resign from the bench owing to the inadequacy of the salary attached to the office. He did not long survive his return to the practice, but died in the flower and prime of a splendid manhood.

The name of Reuben R. Gaines appears as a member of the Supreme Court in Vol. 66, for the first time, the court being composed of Judges Willie, Stayton and Gaines, a triumvirate of Judges worthy of the highest traditions of the Supreme Court of Texas.

When Judge Willie resigned in March, 1883, Judge Stayton became Chief Justice; and Judge Alex S. Walker, who had long been one of the reporters of the court, was appointed associate justice. He had been district judge of the Austin District and was an able lawyer, and a man of high character. His opinion appears in Volumes 70, 71, and 72 of the Reports.

If I am not mistaken he was defeated for the nomination by

Hon. John L. Henry of Dallas, who took his position on the bench January 1, 1889, and Judge Walker succeeded Judge Terrell in the capacity of Reporter.

Judge Henry was an East Texas man. He practiced for many years in Polk County, and later moved to Tyler—thence to Dallas. He was lineally connected with the great orator Patrick Henry, and in the earlier stages of his professional career, was a very eloquent speaker, and was a most attractive, lovable and worthy man in every way.

Neither the greatest trials have been held, nor the greatest speeches been made in the stately temples of the law such as can be now seen even in small county seats, but the most primitive temporary court houses, in mere hamlets, have been the scene of great legal battles, and great professional triumphs.

When I was a little past my majority, and had been at the bar but a short time, I heard the trial of a contested will case in which Judge Henry was counsel for the contestants, both of whom were blind and close kin to the testator, but according to the will offered for probate, he had given his estate to entire strangers.

One of the beneficiaries was a lawyer of considerable means, a member of the bar of the district.

The trial was had in the county seat of a recently created county which had been cut off from other counties. Court was being held in a room built for a store, out of unplanned lumber in California box style, with no judge's stand, the Judge's seat being not exceeding four feet from the jury, and when Judge Henry was delivering the closing speech he was not half that distance from the foreman of the jury. The proponent and chief beneficiary under the will was sitting where Judge Henry could have laid his hand on him. I shall never forget his peroration.

He said—"Gentlemen of the Jury: Some of you and I have known each other a long time. We are not as young as we were when first we became friends. None of us have accumulated much of this world's goods, but the little store we have gotten together we want to go to our loved ones.

"The man who it is alleged made the will offered for probate wanted his property to go to my clients, whom you have seen sightless and poor. The will you are asked to uphold does not give them that property. Who knows but when you and I come to die, when our visions grow dim, when the death damp gathers on our brows, and we look for the last time on this earth upon our loved ones, that somebody inspired by selfish greed, will not stand by our dying pillow and wring from our wives and little ones their just heritage, as the man who claims under this will stood by the bedside of the uncle of my clients and wrung

from him as he lay dying the heritage which was justly theirs?" There was a pleading pathos in his very tones which defies translation.

Tears stood in the eyes of more than one of the jurors when he had closed, and the verdict was in his favor.

The opinions of Judge Henry are to be found in Volumes 72 to 85, inclusive.

Hon. John W. Stayton who, as I have said, succeeded Judge Willie as Chief Justice in March, 1888, was elected to the position in November of that year.

The memory of that great judge is too fresh in the minds and hearts of the bar and bench of Texas to make necessary any extended comment at my hands. Nothing can be added to the tributes paid his memory by the bar, and by his associates, which are to be found in the 87th volume of Texas Reports. I had the melancholy pleasure of drafting the tribute which was adopted by the Bar Association of Texas and which was presented to the Supreme Court by Ex-Attorney General J. H. McLeary.

It is a striking illustration of the truth that "life is but a fleeting shadow," that of the three Judges then on the bench, the five members of the committee on resolution of the State Bar Association, and the two distinguished lawyers who addressed the court, ten in all, only two are now living, that accomplished and cultured lawyer, Jas. B. Stubbs of Galveston, and myself.

Judge R. R. Gaines succeeded Judge Stayton as Chief Justice, and the name of Hon. T. J. Brown appears as a member of the court first in Volume 86.

My recollection is that he was appointed by Gov. Hogg, and he remained a member of the court until his death. The name of Hon. Leroy G. Denman appears first as a member of the court in Volume 87. He was appointed by Gov. Hogg, and in the convention at Dallas in 1894 there was a very close contest for the nomination between him and Major F. Charles Hume of Galveston. Judge Denman was successful.

The friends of both men were earnestly active, and the delegates to no convention ever had the opportunity to choose between two men better qualified for service in the Supreme Court of a great State.

The court composed of Judges Gaines, Brown and Denman continued until May 1, 1899, when Judge Denman resigned for the same reason I have heard, that influenced many of his predecessors; inadequate salary. Gov. Sayers appointed to succeed him Hon. Frank A. Williams who was and had been for something more than six years a member of the Court of Civil Appeals for the First Supreme Judicial District.

I have heard that Gov. Sayers did not know, and had never seen Judge Williams when the appointment was made.

Before, and when Judge Williams was elected to the Court of Civil Appeals Bench he was judge of, I believe, the 3rd district of Texas, in any event it was the district composed of Houston, Anderson and Henderson counties. His home was at Crockett, where before he went upon the bench he practiced law in connection with his brother-in-law, the late Col. David A. Nunn, a very able lawyer, and a man of high character and who was greatly and justly esteemed for his courage, integrity, high professional ideals, and legal ability.

My district was the one next on the South (the 12th) and I once, and perhaps oftener, exchanged districts with Judge Williams as he was disqualified in a number of cases in the district court of Houston County. His appointment by Gov. Sayers met universal approval, for he had on the district bench, and on the intermediate appellate bench, demonstrated a very high order of ability, and he added, if possible, to his reputation on the Supreme Bench.

The Supreme Court of Texas when composed of Judges Gaines, Brown and Williams commanded the unqualified respect of lawyers in and out of Texas.

In the summer of 1910 the State Bar Association of Virginia and Maryland held their annual meeting at Hot Springs, Virginia, a very beautiful spot.

The business sessions were held separately, but all meetings for social enjoyment were held jointly, and of course a banquet was a part of the proceedings. It was a very fashionable and very expensive hostelry, so much so that the man who went there when the rates usually charged were in force, had to have a plethoric purse, but the management in order to induce the meeting of the two associations there, put the rate at \$3.00 a day *table d' hote*. I heard that the usual rate was from ten to twenty dollars a day *a la carte*. I assume they knew that rate would be prohibitive to the average lawyer, as it certainly would have been to me, so they reduced the rate to the extent stated above.

I stood that rate four days. I had a very highly esteemed friend from Richmond, Virginia, who was elected president of the Bar Association of that State, and through him I met many lawyers. In the course of the speech-making at the banquet a distinguished lawyer from Baltimore in the course of an admirable speech said, "Until in the comparatively recent past I looked very lightly upon Texas lawyers and Texas Courts. I rarely paid any attention to a reference to a Texas case. I thought most of the law in Texas Reports was "horse-back law" and treated it accordingly, but a few years ago my personal engagements called me to Texas, in connection with a receivership

case (The Kirby Lumber Company, receivership), and I was thrown in contact with many Texas lawyers, and met the Judges of the Supreme Court of Texas, and I returned home and announced that I had been mistaken as to Texas lawyers and courts. My opinion of both was entirely revolutionized, as will be the opinion of any other lawyer who meets Texas lawyers and Texas judges as I did."

The frank and complimentary statement of one of the leading lawyers of a great city was very gratifying to my State pride. The conclusion reached was not surprising to me, because I knew he had met Reuben R. Gaines, Thos. J. Brown, Frank A. Williams, Thos. H. Franklin, Leroy G. Denman, Presley K. Ewing, Sam Streetman, Frank Andrews, T. H. Ball, Joe H. Eagle, and others of like standing—all worthy representatives of the able bar of a great State.

Associate Justice T. J. Brown was appointed Chief Justice January 3, 1911, to succeed Hon. Reuben R. Gaines, who had resigned and on the same day Hon. W. F. Ramsey, who had been a member of the Court of Criminal Appeals, was appointed associate Justice. Judge Frank A. Williams resigned to take effect April 1, 1911, and Hon. Joseph B. Dibrell was appointed to succeed him. Judge Ramsey resigned April 1, 1912, and Hon. Nelson Phillips was appointed his successor.

Hon. W. E. Hawkins was elected in November, 1912, and succeeded the Hon. Joseph B. Dibrell.

The court thus came to be composed of Judges Brown, Phillips and Hawkins. Judge Brown died May 26, 1915, and Associate Justice Phillips was appointed Chief Justice and Hon. J. E. Yantis was appointed Associate Justice. On the resignation of Justice Yantis Hon. Thomas B. Greenwood was appointed Associate Justice. Judge Gaines was a member of the Court for about 25 years. His name first appears as that of one of the members of the Court in Vol. 66.

Judge Brown was a member of the Court for about 22 years, and left an enduring record of most valuable service. Both had been very able and efficient district judges, and their opinions which are to be found in many volumes of the reports demonstrate that they were lawyers of the first order of ability, and when on the bench they were deeply entrenched in public esteem and confidence.

Upon the golden anniversary of the marriage of Chief Justice Gaines he was presented by friends and admirers with a handsome token of esteem in the form of a gold watch and chain. It was my privilege to be permitted to participate in paying a tribute to one who as man and judge so fully deserved it.

Judges Ramsey and Dibrell displayed marked ability as appellate judges, and their retirement from the bench was deeply

regretted. Judge Ramsey has since retirement been entrusted with important financial responsibilities, and has proved as efficient in the field of finance, as he was in that of the law.

Judge Hawkins will be succeeded by Hon. Wm. Pierson of Hunt County, and will be followed into retirement by the good wishes of many friends to whom he has endeared himself by many attractive traits of character. He has left on record opinions which have proved most instructive and helpful to the bar.

Since the last paragraph was written Judge Pierson has qualified and taken his seat on the bench. He had long experience on the trial bench in a populous district, in which there is an exceptionally able bar, and the enthusiastic support he received where he was best known is strong testimony to his professional and moral fitness for the position which he holds.

The promotion of Associate Justice Phillips to the Chief Justiceship was more than perfunctory compliance with established custom. It was the award of deserved honor to a man who had as Associate Justice demonstrated his ability to meet the demands of the position in such way as to preserve and perpetuate the exalted traditions of the court, and who as Chief Justice challenges the admiration, and commands the respect and confidence of the bench and bar of Texas.

Since the foregoing paragraph was written, it has become known to me that my connection with the Commission of Appeals will in all probability terminate at an early day, and for that reason I feel at liberty to express myself concerning the Chief Justice with greater freedom than I should have done had this been written a year earlier, or than I would do were my term of office to be extended.

Since he, in the last analysis, is vested with the power and charged with the duty of passing upon my work, were I to be continued on the court anything I might say might be attributed to unworthy motives.

I have never been on terms of personal intimacy with him, and during the nineteen months that I have been a member of the Commission of Appeals, have been in his office only a few occasions. My visits have never extended beyond a few minutes, given to the discussion of a case, or cases, in which the record had been assigned to me. I am under no personal obligation to him, except for the patience and courtesy which he has manifested towards me with relation to my official work, which I here gratefully acknowledge.

He has not always agreed with the conclusions I have reached, and in many instances has convinced me that I had fallen into error.

I make these preliminary statements in order to show that I write from a wholly impartial and impersonal point of view.

The mind of the Chief Justice is one of crystalline clearness, and he penetrates quickly to the very core of every case, and by reason of his strong intellectual endowment, and thorough familiarity with fundamental legal principles, he is able to state the reasons of the Supreme Court for granting the writ of error, in any case, with a clearness and terseness that would be impossible if he were a lawyer of only average ability.

I was very forcibly impressed with his ability to state in concrete and condensed form controlling legal principles, by the memorandum prepared by him in granting the writ in a very recent case. The original case grew out of a very novel state of facts, and was one of great importance. There have been a few cases similar to it in Texas, but upon the whole it was in large measure a case of first impression, yet on less than a half page of letter paper he set forth every principle of law applicable to the question at issue, with such luminous clearness that the member of the Commission to whom the record was assigned had but little to do beyond setting forth the facts and the contentions of the opposing parties, and state the conclusion reached in harmony with the memorandum prepared by the Chief Justice, in doing which he copied the memorandum in full.

It is known of all men that for three quarters of a century the position of Chief Justice of the Supreme Court of Texas has been, at all times when the government of the State was under the control of its own people, filled by men of the first order of ability, but in my judgment no man who has held that exalted position was intellectually the superior of the present Chief Justice.

I am aware that this statement expresses a high measure of praise, but it is the statement of my deliberate and sincere conviction. Were it not, it would not have been made, for I have not written herein a line, or word, that I did not believe to be true.

I am under the impression that Judge Greenwood did not seek, or expect appointment to the Supreme Court Bench, but that Gov. Hobby tendered him the position without solicitation on his part.

He has abundantly justified the good opinion of his friends and the judgment of the Governor. It is to be regretted that his worthy father could not have lived to see the son he trained in the way of the law, take his place on the bench of the Supreme Court of his native State.

Of the thirty-eight men who have occupied positions on the Supreme Bench of Texas only seven are living, and three of these constitute the present court. Of the ex-judges the four living are Judges Williams, Ramsey, Dibrell and Hawkins.

Writing in the light of my limited experience as a member of an adjunct branch of the Supreme Court, engaged in doing the

same character of work that Supreme Court Judges are required to do, I wonder that any are living. It is a matter of surprise to me how men retain their mental and physical vigor, who remained on the bench as long as did Judges Gaines and Brown.

In this day of stenographers and typewriting machines, it is also marvelous to me how the original judges of the Supreme Court, who had no such labor and time-saving devices at hand, could have done so much and such arduous and valuable work, and could have written such enlightened and profound opinions with such limited libraries.

Only a few days ago one of my colleagues in the course of what I consider a very able opinion harked back 74 years to the first volume of Texas Reports and found in the case of Sutherland vs. DeLeon a most apposite authority in support of his conclusion in a present day question of great difficulty.

There must needs be enduring vitality in an opinion rendered nearly three quarters of a century ago, when it is found applicable to a case involving large interests, which arose only in the very recent past under entirely changed legal, industrial, and social conditions.

## CHAPTER XXIX

## THE SUPREME COURT ON ITS OWN DISQUALIFICATION.

The reports of the Supreme Court of Texas disclose that in a number of cases one or more of the judges have declined to sit in cases to which certain life insurance companies were parties, on the ground that the judge or judges so recusing themselves were policy holders, holding policies which participated in the earnings of the company.

It may be that the position taken is sound in law and in conformity with the meaning of the Constitution (Section 11, Art. 11), hence is mandatory on the judges, but I am sure that there is not a lawyer in Texas who would have raised the slightest objection to any judge of the "Supreme Court of Texas," using that phrase in the sense in which I use it, who has been on the bench in the past, or who is on that bench now, sitting in any case to which any insurance company was a party, if the judge held not only one, but a dozen policies in it.

Without examining the constitutional provision the thought is suggested to the mind of every lawyer that for a Supreme Judge to recuse himself on such a ground gives the Constitution a very strained construction; yet such action evidences that delicate sense of judicial propriety which is instinctive in gentlemen and is always commendable.

It is in striking and gratifying contrast to the action of the Supreme Court of one Northwestern State beyond the "Rockies".

A law was enacted which allowed each of the judges who after his election changed his actual residence to the Capital, the sum of \$50 a month in consideration of the increased expense of living and of his expense of traveling to and fro from such legal residence.

The State Auditor refused to issue the warrants, whereupon one of the judges instituted a proceeding for mandamus to require him to do so. The action was brought in the Supreme Court. It seems that there was no law authorizing the appointment of special judges in that State as there is in Texas. This being true, the court had either to hear the case or lose \$50 a month while on the bench. They heard it, and issued the mandamus and got the money.

There was a lawyer in that State who was of the opinion that the court had no right to do what it did. Therefore he published the opinion in pamphlet form with many references to authorities as foot notes. The publication is before me as I write.

The lawyer disclaimed any intent to impeach the integrity of the court in which he expressed entire confidence, or even to be discourteous, and it seems to me that he proceeded to do in a courteous way what he did, and he did it well. He protested per-

sonal esteem for every member of the court. He said he was not attacking the court, but the system, and said, "If we have not, as it appears we have not, placed it beyond the power of the judges to sit in their own cases, then as citizens we should do so." I agree with him.

His deference and courtesy did not, it seems, operate as an offset to his boldness, since the court fined him \$500, which he told me he paid.

I do not believe the Supreme Court of Texas would have sat in such a case if the monthly stipend provided by the law had been \$5,000 a month of instead of \$50.

The members would have waited till some constitutional or statutory provision had been enacted, by the terms of which a special court could have been constituted.

I have had the experience of trying one case (on the criminal docket) in another State, and have attended court proceedings and seen Supreme Courts of other States, and in every instance had my respect for the law and forms of procedure, and the courts of Texas increased.

## CHAPTER XXX.

## THE COURT OF CIVIL APPEALS.

The Courts of Civil Appeals are so numerous, and the changes in their personnel have been so many, that to deal with the names of all the judges of them would extend this modest volume far beyond reasonable limits, which point I fear it has already reached.

Except the Court at Galveston I have appeared very rarely before any Court of Civil Appeals, and have never been on terms of very intimate friendship with any of the early judges of those courts except Chief Justice C. C. Garrett of the First District.

He and I were college mates at Washington and Lee University where he won the highest possible distinction as a student. He was a laborious, studious man, and highly educated, and while he was devoid of any of the gifts of a public speaker, wrote admirable opinions, and was a most efficient and capable judge. As I recall no judge on the Civil Appeals bench had a less number of writs of error granted against his opinions.

He was a man of exceptional purity in his private life, and in every way a most attractive gentleman for whom I had a deep attachment. His death—I believe in the summer or fall of 1905—caused me sincere sorrow. I have frequently recalled with a smile my only appearance before the Fort Worth Court when my friend I. W. Stephens, also a Washington and Lee man, was a member of that court.

A merchant had bought goods when, as my client alleged, he knew he could not pay for them. I contended as the law is laid down in *Talcott vs. Henderson*, 31 Ohio State Reports, "that inability to pay, is the legal and logical equivalent of intention not to pay", and sued to recover the goods.

Counsel for appellee, before the argument began, asked me how I expected to accomplish anything by my appeal, when the judge in the trial court sitting without a jury had found there was no legal or moral fraud. I replied that the judge could not by any ruling or holding transmute "chips and whetstones" into assets, or falsehoods into truths.

When the facts had been presented by me, and counsel for appellee began his reply, Judge Stephens in his slow and somewhat drawling tone said, "I am an unworthy member of the Methodist Church, and in the discipline of that Church it is said in effect that to buy what you have no reasonable expectation of paying for ain't honest." Counsel for appellee did not recover from the force of that remark, and I secured reversal and rendition, and got my money.

The retirement of Judge Stephens from judicial service a few

years ago was a distinct loss to the bench of Texas. He had demonstrated legal and judicial ability of the highest order.

The only time I recall appearing before the San Antonio Court Chief Justice James and Associate Justices Fly and Neill composed the court. Justice Neill was very deaf, and used a long ear trumpet, leaned far over towards the table behind which counsel stood when addressing the court, and his trumpet extended still further out.

I was engaged in a trial before the jury on a lower floor of the Court House, and announced I would consume only fifteen minutes of the court's time, and I kept my promise, and secured a reversal of the judgment.

Both those able lawyers and most efficient judges, John H. James and H. H. Neill, have passed away, and of the original court, Justice Fly (now Chief Justice) alone remains. He has for 28 years adorned the bench, and made a record as judge of which he has the right to be proud.

Many of the judges of the courts of Civil Appeals who by reason of resignation or by death, or by failure to be re-elected are no longer a part of the courts, I did not know, and a number of them now on the bench in portions of the State in which I have never lived, and have but little acquaintance, I have never seen.

Justice H. Clay Pleasants who defeated me for the nomination in 1892 served something less than seven years before his death, but left behind him a record of most valuable service.

Gov. Sayers very wisely appointed his son, Robert A. Pleasants, successor, and he for more than 21 years, much of the time as Chief Justice, has performed the duties of the exalted and exacting trust with a high degree of efficiency.

As I recall Hon. W. M. Key, Presiding Judge of the Third Court of Civil Appeals, Hon. W. S. Fly, Presiding Judge of the Fourth Court, and Hon. Anson Rainey, Presiding Judge of the Fifth Court, are now the oldest judges of the Civil Appeals Court in point of service.

The bar is indebted to all of them for many very instructive and helpful opinions.

If I am not mistaken all of them have passed the quarter century mark of service. Justices Rainey and Fly were, I believe, appointed by Gov. Hogg. Judge Rainey was both Senator and Judge in the Ellis County District, but he married an East Texas lady, and if East Texas gets into the family, and the head of it goes out after an office, he generally gets it.

Genealogical research has revealed that East Texas people are descendants of the tribe of Eli, for they "get there".

## CHAPTER XXXI.

## THE COMMISSION OF APPEALS.

In writing of the Commission of Appeals I do so as if I had no connection with that tribunal, except insofar as such connection as I have enables me to write advisedly, and mean to be understood as referring only to the other members of that judicial body.

The bar often feels that disposition of the business placed in the hands of the Commission is very slow, and that cases might be decided much faster.

There is no doubt that such is the fact, if speed be deemed more important than accuracy. To decide the questions which are contained in the records that come before the Supreme Court, and before the Commission rapidly, and at the same time with that accuracy which is essential to give them any value as precedents, is impossible.

If the record is to be skimmed over, and the work slurred over, it were better that no decision at all be made. If the bar knew the size of some of the records they would be more patient. Every case has gone through the District Court and the Court of Civil Appeals with a consequent constant accumulation of papers.

The records not infrequently contain a hundred thousand words—a number greater than is contained in an ordinary novel—often a statement of facts is equally as long or longer, to which is added briefs, exceeding in some instances 200 pages, which are followed by typewritten arguments, and supplemental arguments, and not infrequently the authorities cited are more than a hundred, and sometimes more than 200.

I recall a case, the record of which was assigned to me, in which the application for writ of error contained over 80 pages of typewritten matter, and which was followed by a typewritten argument nearly as long, or longer, and those papers had been preceded by a printed brief (?) of 160 pages, on paper an inch or two longer than the usual brief is printed on, and there were more than 40 assignments of error and authorities in proportion.

Any lawyer with any considerable experience will appreciate the time and labor required to analyze the contents of such a mass of papers and extract the wheat from the inevitable chaff. When that had been done in the case referred to, the opinion did not exceed a column in length. I know that the judges I am associated with examine every record, and every question, with scrupulous, painstaking care. If the question is one of unusual difficulty, and more than ordinary public interest, both sections of the court consult together.

Within the recent past five cases had been assigned, two to one section and three to the other, all involving the same difficult

question. A writ of error had of course been granted in every case, as the Courts of Civil Appeals had differed upon the question. The entire Commission consulted upon the question, and it was debated from every angle.

Necessarily the Supreme Court handles the cases before they reach the Commission, and nothing is surer than that it examines with most intelligent and scrupulous care the work of the Commission, and when to that work is added the work of passing on applications for writs of error, and the decision of cases reserved for action directly at its hands, more speedy disposition of cases is impossible.

From nine Courts of Civil Appeals new records are being sent to the Supreme Court every day, and no three men, or no nine men on earth, with a proper conception of the responsibility resting upon them, and who desire to arrive at a correct conclusion could do more than is being done.

If there was no other reason for extreme care, the courtesy and respect due the Courts of Civil Appeals would make it an imperative duty to review their work with open minds and with painstaking deliberation. To do less would be a failure to do full duty on the part of the Supreme Court and the Commission. Of course when a single brief cites a hundred or more authorities, the court does not attempt to examine them all, and the citation of such a number is inexcusable, as is indeed the citation of more than a few well considered and recognized authorities under each assignment of error. On this point I am of course expressing only my personal views, as none of my associates on the bench have seen or know what I have written.

## CHAPTER XXXII.

## ALEXANDER WATKINS TERRELL.

Whenever the judiciary of Texas is mentioned the name of Alexander Watkins Terrell immediately occurs to everyone, for while he was never upon the Supreme Bench, and so far as I have ever heard, never aspired to the position, he was for many years reporter of its decisions.

I heard the late Wm. Pitt Ballanger say that in the course of an argument he was making before the Supreme Court of the United States on one occasion he was asked from what authority he was reading or quoting. He replied, "from a Texas Report by Judge A. W. Terrell, who as a reporter has no superior in the United States".

No higher compliment can be paid his successor, the present, most efficient reporter, than to say he has maintained the, if I may coin a word, "Terrellean" standard.

Judge Terrell went upon the bench in the Austin District when a very young man, I believe when he was under thirty years of age, and filled the position with a very high order of ability.

He was a wonderful conversationalist. He had command of faultless English, and framed with ease beautifully flowing sentences. He was equally at home in the law in civil and criminal cases, and Texas never had a more efficient legislator. He was, too, a cultured scholar, and a delightful orator.

He ran easily the whole gamut of intellectual achievement. His address upon the occasion of the removal of the remains of Stephen F. Austin to Austin is a most polished, eloquent, and instructive example of memorial oratory.

He was once entertaining a distinguished bishop of the Episcopal Church and me, with some most interesting accounts of his experiences in Turkey to which country he was for four years minister. He said, "Bishop, they have trouble over there, because when the fanaticism of the Armenians, who have been Christians for 2,000 years, and Mohammedan fanaticism clash, there is bound to be, there is—er—well, there's h—l to pay. I beg your pardon Bishop, but no other term will express what I mean." The Bishop seemed to think that Judge Terrell was not wholly infelicitous in stating the situation.

The Judge had the commendable ambition to go to the Senate of the United States, and very reasonably desired to keep in favor with the large German vote in his district.

He made a speech one day at some festive gathering in Austin, and next day he met Judge James E. Shepard, an old friend, who, as Hamlet said of Yorick, "was a fellow of infinite jest and most excellent fancy." He said, "Terrell, your political cake's all

dough". "Why?" said the Judge in alarm. "Why yesterday in your speech you called the Germans 'blatherskites'." The Judge protested he did nothing of the kind. Judge Shepard said, "do you read German?" The judge said he did not. "Then" said Judge Shepard, "I will translate it for you. There is the word 'blumengarten,' that means blatherskites."

Judge Terrell took the paper and went at once to the office of publication and demanded an explanation. He was informed that he had been made the victim of jest—that the word meant "flower garden," or something of the kind.

He was immensely relieved. The jest was made richer by the fact that Judge Shepard knew no more about reading German than did Judge Terrell, but he enjoyed the joke to the latest day of his life. I have heard him tell it.

Judge Reagan and Judge Terrell were originally and for many years opposed to prohibition as a governmental policy. That they were conscientious and rested their objection on what they conceived to be fundamental grounds there is no doubt. That I wholly differed from them never led me to question their sincerity. Subsequent events of such nature as that to set them forth might be deemed an infringement of the proprieties, caused both men to change their views.

I met Judge Terrell on one occasion on the street in Austin and the name of a prominent Texas lawyer whom he greatly admired was mentioned, and he said to me, "Norman, when I see such a man as he was who has just been spoken of, not only figuratively, but literally in the gutter, if it were not that the policy of prohibition is so opposed to my conception of democratic principles and the limits of governmental authority, I'll swear I would take the stump against the damnable liquor traffic."

In their later years both he and Judge Reagan did take the stump against it. Both were sober men, but they struck in defense of others.

In the course of a speech in favor of prohibition on one occasion Judge Terrell said, "The thorn which has pierced my soul was borne by the tree I nurtured."

The reason for his action can be safely inferred from that impressive metaphor.

He was born and reared in, or near, Columbia, Missouri, and told me once this most interesting story. There came to Columbia a traveling theatrical company playing a Shakespearean repertoire, among other plays, Othello.

The curtain was ready to rise one night, but the actor who took the role of Othello was not on hand. He was a large, black haired, black eyed, handsome man of great dramatic ability by the name of Parsons. A hurried search was set on foot, and one of the searching party happened to pass a Methodist Church in

which a revival was being held. In some way he happened to learn that Mr. Parsons was in the Church. The searcher for the truant tragedian went to the door and asked an usher to tell Mr. Parsons to come out; that the theatre was full, and the curtain ready to go up. The message was delivered, whereupon Mr. Parsons arose, and in the very tones, and with the very gesture he had often used on the stage, said, "Othello's occupation's gone," and sat down. He never entered a theatre again, but joined the Church and C. B. Parsons became one of the greatest preachers in all the ranks of Southern Methodism.

It has been said that "the mighty gates of circumstance often turn on smallest hinge", and the results which flowed from that incident illustrate how forcefully the incidents and events in one life may affect the lives and destinies of others.

When C. B. Parsons became a minister he settled in Kentucky.

Some reader of this may recall that in 1876-77 the great democratic editor, Henry Watterson, for many years the most influential private citizen of the whole South, if not of the nation, served six months of an unexpired term in Congress. He served out the term of Hon. Edward Young Parsons, a brilliant young democrat of Louisville, who died; and I have been informed the deceased Congressman was a son of C. B. Parsons, the great Methodist preacher.

It so happened that the currents of human destiny which had their source in an humble Methodist Church in Missouri, so flowed that they carried into Congress the son of the traveling "Othello", who was converted from an actor into a preacher, almost as suddenly as Saul of Tarsus was transformed on the Damascus road, from a persecutor of the saints into the ablest exponent and defender of the Christian faith the world has ever seen.

There have been many men in Texas who took seemingly deeper hold on the popular heart than did Alexander Watkins Terrell, but there has not been in her limits a more cultured, accomplished, and efficient man, or one socially more delightful and instructive.

## CHAPTER XXXIII.

## COURT OF CRIMINAL APPEALS.

The Court of Criminal Appeals was created by the Constitution which was framed in September 1875, and adopted by popular vote in February, 1876, at which time a full complement of State officials was elected. The Constitution went into effect in April, 1876.

The State Convention of the Democratic party was held in Galveston, in January, 1876, and the Hon. Malcolm D. Ector of Marshall, Hon. John P. White of Seguin, and Hon. Clarence M. Winkler of Corsicana were nominated as candidates for a seat on the bench of the new court, and were of course duly elected.

As has been said in a previous page, the spirit of the Confederacy brooded over the deliberations of the convention, and no man whose record as a confederate soldier was not free from blemish had any chance of securing a nomination.

Gen. Ector had been a Brigadier General in the Southern Army and had lost a leg in one of the bloodiest battles fought in Tennessee, so he bore visible proof of his devotion to the Southern cause. He was one of the district judges who was elected in 1866, and who were removed "as impediments to reconstruction" in 1867.

He was a gentleman of exalted personal character, and rendered most efficient service as an appellate judge.

Judge White had also rendered honorable service as a soldier, and had demonstrated a high order of ability as district judge.

Col. Winkler's character and services are dealt with on another page.

The work of the court over which Judge Ector presided proved that the convention and the people had chosen wisely.

The personnel of the court remained unbroken till Oct. 29, 1879, when Judge Ector died. Gov. Roberts appointed Hon. George Clark of Waco to succeed him, an appointment which was in every way most admirable.

The court as constituted after Judge Clark's appointment was called upon to pass upon the case of the State vs. Abe Rothchild, who had been convicted of the murder of a woman called "Diamond Bessie."

The case had aroused statewide interest, and the defendant having been represented by counsel who stood in the very front rank of the bar, the conviction was hailed as a great triumph of the law.

The conviction was reversed and it fell to the lot of Judge Clark to write the opinion. The reversal met with disapproval as widespread as was the approval given the conviction. While

of course Judge Clark was responsible to no greater extent than were his colleagues for the conclusion reached and, the result of the appeal, yet the cry of "Give Us Barabbas" is nearly 2,000 years old, and the maddened populace always demands a victim, by whose sacrifice it seeks to appease its wrath.

The opinion is a masterpiece of logical and unanswerable reasoning, couched in faultless English, and no honest and unbiased man, capable of passing upon such a question can read it today in Vol. 7, p. 519, of the Court of Criminal Appeals Reports, without reaching the conclusion that it correctly declares the law. Reading between the lines of the last paragraph, it is evident that Judge Clark had a premonition that the action of the court would meet popular disapproval. His language was:

"The appellant, stranger though he is, and guilty though he may be, has not had a fair and impartial trial, in that he was deprived of the right of inquiry as to mode and manner of his presentment, and was tried by a juror who had already prejudged his case."

These are the words of a brave and honest judge who sitting in exalted judicial position and dealing with the solemn issue of life or death for a citizen had the courage to hold aloft the constitution and the book of written law, and speak to the waves of popular passion which beat fiercely about the defendant, as the Master spake to the tumultuous waves of the Gallilean sea, saying: "Peace; be still". The emoluments of the office which he held offered no attraction to Judge Clark, but he could not afford to retire under the fire of popular disapproval, so he became a candidate for nomination before the convention which met in Dallas on August 10, 1880, but was defeated by Hon. James M. Hurt, whose reputation as a lawyer in the field of the criminal law did not at that time extend beyond the southern boundary of North Texas, yet he proved to be a very able judge.

He possessed a mind of great logical power, and reasoned out of his decisions with luminous clearness.

He went upon the bench of the court before the election in 1880, Judge Clark having resigned October 1st, and Judge Hurt being the democratic nominee was appointed to the position, and by re-election in 1886 and 1892, he held the place until Dec. 31, 1898. He was a very democratic, amiable, approachable man, and was especially kind and considerate to young lawyers who appeared before the court.

It is said, with what measure of truth I do not know, that upon one occasion a young lawyer from some remote country district appeared before the court on behalf of the appellant. It was his first experience of the kind, and he became embarrassed by the questions put to him by Judge Hurt. The judge observing that fact said in his kind and fatherly tones, "My young friend, don't

get frustrated. I don't mean to embarrass you by asking you questions. I mean to help you. Just go ahead and talk like you were talking to a Justice of the Peace down where you live." The young fellow promptly replied, "I can't do that, your honor, without running the risk of being fined for contempt of court, because if I were talking to a Justice of the Peace down where I live and he were to interrupt me with questions like you have done, I would tell him to shut his d—n mouth and not bother me." The reply "brought down" the court, and of the three, Judge Hurt's laughter was loudest.

Hon. Clarence M. Winkler died May 13, 1882, and Gov. Roberts appointed Hon. Sam A. Willson of Cherokee County as his successor. Judge Willson, like Judge Ector, was one of the victims of the iniquitous policy miscalled "reconstruction." He was a gallant confederate soldier in Hood's Brigade, and led his company many a time and oft into the deadliest hail of battle. He was, too, a lawyer of marked ability and a citizen of exalted character, and was admired, honored and beloved.

In the first volume of Wharton on Criminal Evidence, page 491, in a note under the head of *Res Gestae*, will be found the language quoted below used with reference to the Court of Criminal Appeals of Texas, when it was composed of Judges White, Hurt and Willson: "This court is unquestionably the ablest criminal court in the United States."

Judge Willson resigned February 1, 1891, and was appointed reporter of the court February 6, 1891.

He held that position at the time of his death on January 24, 1892. The memorial tributes paid Judge Willson which are to be found in Vol. 30 of the Reports of the Court, deserve to be read by every layman, as well as every lawyer.

His son, Hon. Samuel Priest Willson, has ever since the creation of the Court of Civil Appeals for the 6th Supreme Judicial District, the sessions of which are held at Texarkana, been the Chief Justice of that court. In that position he has demonstrated that the mantle of the father descended on worthy shoulders, and the names of both the father and the son have added luster to the judicial annals of Texas.

Gov. Hogg on February 5, 1891, appointed Hon. W. L. Davidson as successor to Judge Willson. Judge Davidson had filled for a number of years most acceptably the position of Assistant Attorney General, and his selection to succeed Judge Willson was most fortunate for the State.

He remained a member of the court for a few days less than 30 years. While the material was being gathered for this sketch of the court, the people of Texas were profoundly and distressingly shocked on the morning of January 25, 1921, to learn that he had been, in the twinkling of an eye, removed from the com-

pany of his family and fellow men by the hand of death.

He had passed five years beyond the three score and ten years allotted as that span of life, beyond which "all is weakness and sorrow," but his intellectual powers were unabated and functioned in their pristine vigor, while his physical appearance would have led a stranger to believe that he was a score of years younger than he really was.

His death caused statewide sorrow and to the memory of no man who has ever died in Texas were greater honors shown. The funeral cortege moved from the University Methodist Church in Austin to the State Cemetery, and in addition to the religious services held in the Church, Hon. Nelson Phillips, Chief Justice of the Supreme Court, delivered a memorial address which will ever remain as a classic.

As a citizen, a soldier, a lawyer, a judge, and a man, Judge Davidson left behind him a stainless record. As a judge he was just, able, fearless, and was deaf to popular clamor. He was for 14 years presiding judge of the court, but on the 27th day of June, 1913, was removed from that position, an incident of which I shall have something to say on a later page.

Judge John P. White resigned as a member of the court on April 26, 1892, and Gov. Hogg appointed Hon. Eldred J. Simpkins of Corsicana as his successor. Judge Hurt was chosen as presiding judge May 4, 1892. Judge Simpkins was a cultured, scholarly man, and had been a most efficient State Senator, and was a lawyer of a high order of ability. He was elected to complete the unexpired term of Judge White in November, 1892, but was defeated for renomination by Hon. John N. Henderson of Brazos County, in 1894. Judge Henderson lost an arm on one of the battle fields of Virginia, where he bore himself most gallantly as a member of Hood's Texas Brigade. When it is said he belonged to that famous command it is unnecessary to add that he went where the fighting was fiercest.

He had had the benefit of long experience both as district attorney and district judge, and in consequence was well fitted for a place on the bench of the Criminal Appeals Court.

He remained a member of the court until his death on December 22, 1907.

Judge Hurt was not a candidate for re-election in 1898, and Judge M. M. Brooks of Hunt County was nominated at Galveston, and was elected in the November election. Judge Hurt retired on the 31st day of December, 1898. After the election of Judge Henderson and Judge Brooks the court was composed of these two gentlemen and Judge Davidson. Gov. Campbell appointed Hon. W. F. Ramsey of Cleburne to succeed Judge Henderson. I have been told that Judge Ramsey said that when he was appointed, he really knew very little about criminal law, but his

opinions did not disclose the fact. They are marked by forceful reasoning, and a clear conception of fundamental principles, and often were couched in terms of eloquence. He resigned January 5, 1911, to take a place on the bench of the Supreme Court, in which position he added, if possible, to the reputation which he had won on the bench of the Court of Criminal Appeals. Hon. M. M. Brooks resigned January 1, 1910.

He rendered most efficient service as judge. He is a man of ability and courage, and his opinions were clear, pointed and strong. His retirement was a distinct loss to the bench. Gov. Campbell appointed Hon. Felix J. McCord of Longview as successor to Judge Brooks. Judge McCord was for a number of years judge of the Tyler district, in which position he demonstrated marked judicial ability. He was assistant attorney general at the time of his appointment to the bench, and when this is being written is an honored and influential member of the Thirty-seventh Legislature.

Hon. A. J. Harper of Limestone County qualified pursuant to election as a member of the court January 4, 1911, and Hon. A. C. Prendergast of McLennan County qualified on January 9, 1911. The court was from that time until June 27, 1913, composed of Hon. W. L. Davidson, presiding judge, and Judges Prendergast and Morrow.

On the date last named Judge Prendergast qualified as presiding judge.

The removal of Judge Davidson from the position which he had so long honored was, it can be said, with entire truth, a surprise and shock to the bar and people.

The suggestion had never occurred to the popular mind that he would not continue in that position as long as he remained on the bench. The members of the court are vested with the power of choosing their own presiding officer. This being true, it is obvious that two of the court must agree that either the third member, or one of the two, shall be chosen. If the latter plan is adopted necessarily one man must vote for himself, and with the vote of the other of the two, the third man if he has been presiding judge is removed from the position.

The statute is an unfortunate one. There should be a Chief Justice of the Court of Criminal Appeals just as there is of the Supreme Court. If such was the case so unfortunate an incident as the removal of Judge Davidson could never occur.

The change was made pursuant to power duly vested, but the possession of a right, or power, is one thing, while whether it shall be exercised and if so, how, is wholly another thing. Judge Davidson had filled the position of presiding judge with dignity and efficiency since the 2nd day of January, 1899, and had been a member of the court for more than 22 years, and was old enough

to have been the father of either of his colleagues, and the public could see no reason why he should be displaced.

There are certain proprieties and amenities which while they are not creatures of statute, their observance nevertheless is obligatory upon all men, but the impulse of obedience to and observance of them must be inborn and instinctive. It is not, and cannot be a matter of education.

Violation of the obligation to observe them, invariably and evitably offends the popular sense of justice and propriety, and that was the effect which the removal of Judge Davidson had upon the minds of the people of Texas, and their disapproval found expression at the ballot box more than three years later, when one of the judges responsible for the change was defeated for re-election and his colleague did not offer for re-election.

There is in the minds of the mass of the people an inherent instinctive sense of propriety and justice. It may be said to be a natural impulse or emotion which cannot be defined, and which is defiant of analysis, but its existence is certain. If it be offended it wreaks upon the offender inevitable penalty.

Many readers of these pages will recall that in 1904 Gov. Johnson of Minnesota was a candidate for re-election. He had been once, perhaps twice, before elected in a republican state. Mr. Roosevelt was a candidate for president and most likely if that had not been done which was done, as is hereinafter set forth, Gov. Johnson would have been defeated.

Some ardent republican, zealous for the success of the republican gubernatorial ticket, conceived the idea of digging up out of the records of a county poor house a certificate showing that the father of Governor Johnson had died an inmate of that institution. The certificate was lithographed and copies in that form were scattered by millions over the state of Minnesota.

Governor Johnson had risen by sheer force of high personal character and great intellectual ability, from bitter poverty and deep obscurity, to the position of governor and had maintained always a stainless reputation and the employment of such means to compass his defeat stirred the people to deep indignation. Its effect was just the contrary of what was expected. The people gave expression to their resentment of such ghoulish and iniquitously unjust action at the ballot box, and while Mr. Roosevelt carried Minnesota, by 70,000 majority, Gov. Johnson was re-elected by 30,000 majority, showing that the certificate which blazoned forth to the world a fact intended and calculated to unjustly harm a worthy citizen and faithful public official, cost the republican candidate 100,000 votes.

Judge Davidson became presiding judge again in 1917, and so remained until his death. Hon. W. C. Morrow of Hill County, a lawyer of demonstrated ability, who had as State Senator ren-

dered most efficient service, qualified as successor to Judge Harper on December 31, 1916, and Hon. O. S. Lattimore of Tarrant County was elected in 1918, and qualified January 1, 1919.

Judge Lattimore's fitness for the place was never questioned, and he has proven that his selection was in every way most felicitous.

Gov. Neff appointed Hon. F. L. Hawkins of Waxahachie to succeed Judge Davidson, and the appointment met, so far as I have heard, unanimous approval. I have but the slightest acquaintance with Judge Hawkins, but Gov. Neff practiced before him in the Waxahachie district of which he had been judge for a number of years, and was therefore in a position to judge of his fitness for the appellate trial bench, and it may be safely assumed the Governor made no mistake in the appointment.

Since the last paragraph was written Judges Lattimore and Hawkins chose Judge Morrow as presiding judge, which action was obviously in accord with the requirements of propriety and justice.

It is a matter of pride and gratification to the bar of Texas that the opinions of the Court of Criminal Appeals of Texas are so often and so widely quoted, and in the northern and northeastern states, where such radically erroneous and such disparaging opinions are entertained concerning Texas courts, it must have been a profound surprise to the bar to read the words of one of the greatest, if not *the* greatest of American writers on criminal law, that the Criminal Court of Appeals of Texas was, when composed of Judges Hurt, White and Willson, the ablest in the United States. Such a tribute has never before, so far as my reading has revealed to me, been paid any state court, civil or criminal, and it is one of which the bar and people of Texas should be very proud.

I have not intended in dealing with the matter of Judge Davidson's removal, and so to speak, demotion, to give offense or do injustice to any man, but such an incident is a legitimate theme to be discussed. I can in no way better illustrate my personal views with reference to the course to be taken in such a situation than by setting forth my own action under similar conditions.

When on the night of November 22, 1919, Governor Hobby called me at my residence in Houston by 'phone and without the slightest previous intimation that he purposed so to do, tendered me a position on the Commission of Appeals, I did not know whether the position of presiding judge was one of appointment by the Governor, or whether the selection rested with the court.

I had never read the law creating the Commission. I immediately wrote Judge Sonfield, the only member of the Commission with whom I was acquainted, and said to him that if the fact

that I was to succeed Judge Montgomery, the presiding judge, gave me the right to demand that position, I hoped such course was not mandatory. That it appeared to me that justice and propriety required that one of the two gentlemen who had been colleagues of Judge Montgomery should take the position, and that I would not take it, unless the law made it obligatory on me to do so. I was delighted to find that such was not the case, for I should have been most reluctant to have exercised the right.

## CHAPTER XXXIV.

## THE TRAGEDY, THE PATHOS, AND THE HUMOR OF THE COURT ROOM.

The remainder of this humble volume may not be exactly germane to my title theme.

There may be some who will think of it as a professor in a theological seminary thought about a trial sermon which an esteemed friend of mine, now a clergyman in Houston, preached when he graduated from the theological seminary.

The old professor said, "Henry, I have but one comment to make on your sermon. If your text had had the smallpox your sermon never would have caught it."

It may be that there is no direct relevancy between what I have said already, and what I may say hereafter, but it will do no harm to set down and perpetuate either amusing or pathetic incidents, and perhaps some reader may be interested. Where the instances are stated of my own knowledge, I know them to be true, and where they are stated upon information of others, I believe them to be true.

The court room is supposed to be a place where all the proceedings are conducted with great dignity and decorum, and such is usually the case, as it should be, but often fun and laughter relieve the stress and strain of the proceedings, and should not be sternly rebuked, because no offense is intended. Some of the most humorous, and some of the most pathetic incidents that have ever occurred, have occurred in court rooms.

It is a theatre where both comedies and tragedies are enacted, and joy and sorrow, hope and despair there often find expression. We weep in sorrow and weep for joy. The fountain of grief, and the fountain of gladness lie close together; and the tragic and the comic are often elements in the same judicial drama.

I suppose every judge can recall one or more cases, the incidents of which are more deeply impressed on his mind and memory than are those in other cases.

The memory of one case still abides with me. I had been reared in the same community with the defendant, and his relatives and my family were friends. He was charged with murder by poison. I had changed the venue twice on my own motion, and was rewarded for the last change by being hung in effigy in the town where the offense was alleged to have been committed. The indignity gave me no concern personally, but I had been reared in the town, and my aged mother lived there, or at least was there at the time, and it carried deep distress to her heart, as she was more to me than life itself. I would, had conditions made it necessary, have continued changing the venue until the case

reached El Paso. I personally went with two sheriffs and guarded the prisoner for 115 miles, and put him in the jail of a county outside my own district.

My action aroused deep feeling against me, but I received a majority over two opponents in the election the next year.

I trust the narrative may be properly broken just here, to say that whenever it is necessary to call a host of opposing witnesses to determine whether a defendant can, or cannot, obtain a fair trial in any given county, that very fact proves in nine cases out of ten that he cannot; and the judge ought not to hear a single witness, but change the venue of his own motion. I could, perhaps, be properly termed a "crank" about fair trials.

I will, without money, and without price, defend any man who it appears to me deserves defense, if it appears that he is not going to get a fair trial in the court. Three times at least in the recent past I have interested myself in behalf of the pardon of prisoners when I had never seen, and from whom, or from no one for them, did I have any agreement for remuneration, dependent upon success, for I would not take such employment. I acted on behalf of justice and for no other reason. I did not believe they ought to have been convicted, and they were pardoned.

The counsel who had defended one of them asked me to read the testimony for, I believe he said, the defense. I said, "No, I will read it all," and I read and re-read it.

I had never seen the negro defendant in my life, but I wrote the Board of Pardons and the Governor that the conviction was an outrage on a hard-working, respectable negro, who owned his own home, yet had been sentenced to the penitentiary for 20 years for killing a half drunken deputy constable who unlawfully assaulted him. I told the authorities in my letter that I believed the judge, had he the case before him again, would give the negro a new trial.

The negro was pardoned. I never received, desired or expected a penny for what I did. I got a wronged citizen his liberty.

I return now to the case in hand.

An absolutely essential witness was the then Professor of Chemistry in the University of Texas. At my own expense I wired an attachment for him. He was thoroughly qualified and a most cautious witness.

He would not say that he examined the stomach of a party of the name used in the examination, or that he received the stomach from the sheriff of a named county. He said, "I do not know. I received a stomach from the hands of a man who *said* he was the sheriff of the county you name, but I do not *know* whose stomach it was, nor do I *know* who brought it to me.

He then, with remarkable clearness and simplicity, and in lan-

guage utterly free from professional nomenclature, or scientific terminology, explained how and by what process he analyzed the stomach, and how he *knew* that the stomach contained strychnine, and when the State turned him over to the defense there was no possible doubt that he had found strychnine as he said.

Somebody has said, "never dispute the right of way with a locomotive or take any chances with the hind parts of a mule." Josh Billings said, "Some folks keeps on borin' till they bore through and lose all the ile," and nowhere does that quaint philosophy find more frequent or distasteful confirmation than in the cross-examination of witnesses.

If I had been defending I should have let the witness severely alone. He was absolutely impartial, and was an educated scientific man, who knew, as few men I have ever seen did, all the secrets in the sphere of analytical chemistry, and every pass made at him on cross-examination proved to be a boomerang, and intensified the effect of his testimony.

It is folly to venture out against any intelligent, honest witness, who is telling the unvarnished truth.

Counsel for defendant may have doubted that the chemist was doing so, or have doubted whether he could produce visible evidence of the results of the analysis, so the eldest man of the several counsel, who has now been dead for a number of years, said, "Did you find in that stomach strychnine in visible, palpable form?" or words to that effect.

A faint smile lighted the face of the witness as he reached into the right hand lower pocket of his vest, and drew out two watch crystals with the concave sides glued together, and placing them between the thumb and forefinger of his left hand, turned them like a wheel, holding them up in plain view of the court, counsel, and jury, and as he was doing so, said to the interrogating counsel, "If you will kindly keep your eye on this you will see a powder falling from side to side. That powder is strychnine and came out of the stomach analyzed by me."

The counsel returned to the attack, "How do you know that the powder between those two crystals is strychnine?" The witness said, "I reduced some of it to a liquid form, and injected the liquid into the hind leg of a frog, and the frog died in 20 minutes with all the symptoms of strychnine poisoning."

"I also burnt the powder in conjunction with (I think he said, but I may be wholly mistaken) permanganate of potash, and the result was a blue flame, and strychnine is the only substance known to chemical science that will produce a blue flame when so burnt."

Counsel, undismayed, again renewed the attack, which seemed to me to be a most impolitic thing to do. He said with great

earnestness and deliberation, "Do—you—sir—mean—to—tell—that—jury—that—you—found—enough—strychnine—in—that—stomach—to—kill—a—man?"

The witness seemed surprised at the question, and amused at the way in which it was put, as the evident implication was that the counsel did not believe he would commit himself that far, but the witness turned full front to the jury, and in a way that he seemed to intend as an imitation of the manner of speech of the counsel, said, "Yes—I—mean—to—to—tell—this—jury—that—I—found—enough—strychnine—in—that—stomach—to—have—killed—twenty—men."

With what seemed to me far more of courage, than of tact or prudence, the counsel for the defendant put yet another question, "Do—you—sir—tell—that—jury—under—your—oath—as—a—witness—that—you—found—in—that—stomach—strychnine—sufficient—to—destroy—human—life—beyond—a—reasonable—doubt?"

The witness, still sitting full front to the jury, said: "Yes, I—tell—this—jury—that—I—found—in—the—stomach—I—analyzed—strychnine—sufficient—to—destroy—human—life,—not—only—beyond—a—reasonable—doubt,—but—beyond—the—possibility—of—a—doubt."

That was the last nail in the structure of testimony. The verdict in three and one-half hours from one of the best juries I ever saw empanelled was guilty with the death penalty, and the penalty was carried out.

I have often thought I should like to see some of the criminal lawyers who seem to find delight in trying to confuse expert witnesses, try their hands on that Professor of Chemistry. I have seen lawyers, who made a speciality of criminal practice, who had in all their lives learned less about the principles of law, than that modest professor knew in an hour about the principles of the profound science of chemistry.

In the course of that trial I saw an exhibition on the part of one of the venire of moral courage, ingrained integrity, and sense of honor which deserves to be perpetuated.

He asked me a few days before the trial about the case, saying he had been summoned on the venire and hoped he would not be accepted. I, of course, told him I could not talk with him about the case.

When he took the stand and was called upon to answer the questions which, if answered in the affirmative would have relieved him from the duty he so sincerely desired to avoid, he was in evident mental distress, but slowly and in a manner that seemed plainly to say, "Oh, if I could only answer yes!" he slowly and hesitatingly answered, "No."

He knew relatives of the defendant who were worthy people,

and he and the leading counsel for the defense were knit in such bonds of attachment as bound David to Jonathan, and Damon to Pythias, yet he served, and I have stated the result.

He is dead now, but his memory as an honest, brave man, abides still as the savor of a sweet incense in the community in which he was born, and reared, and died.

I have known judges who would have fined him for language used on a later occasion. He was asked the question, "What do you say to the allegation of plaintiff that you aided the defendant in defrauding him?" "I say it is a d——d lie," was the instantaneous response, and immediately he turned to me, and bowed, and said, "I beg your pardon, your honor."

I did not fine or reprimand him, but simply said, "Proceed with your testimony."

I knew his words sprang from the first impulse of an honest man, to refute a charge against his integrity, which no man could justly question, and he had no thought of showing disrespect to the court.

#### JOHN R. KENNARD.

One of my predecessors on the bench in the Twelfth District was Hon. John R. Kennard of Grimes County. The hand of the Divine never fashioned a braver or more honest man than John R. Kennard.

He was a fighting Confederate for four years, and it was his war record which enabled him to defeat for District Judge, Hon. George Goldthwaite of Houston in 1866.

He was no such lawyer, by any means, as was Judge Goldthwaite, who had very few superiors as a lawyer, but Judge Kennard had a war record, better in the opinion of men of those days, than was that of his opponent.

He went out of office with nineteen other District Judges as "impediments of reconstruction" in 1867.

He was elected District Judge in 1880, when the district took in Houston County. He succeeded Hon. William D. Wood of Leon County, who was a most capable judge, and who had been a most efficient State Senator, and who died in San Marcos in comparatively recent years, leaving a handsome estate.

John R. Kennard was sincerity and childish simplicity personified. He was genuinely pious, and carried a Bible always in his inside coat pocket, but was not long-faced or Puritanical, yet lived up to his profession.

In many cases, when sentencing a defendant, he preceded the final pronouncement with a kind expression of regret and sympathy, and of hope that the defendant would be well treated, and never failed to assure him that the court had tried to do him justice. The last assurance, he gave a negro defendant on one occasion, and the negro said, "I bleeve dat Jedge in mah heart,

I sho do bleeves you makes a pass at jestis if you don't hit it."

The County Judge of one of the counties in his district killed a man and, rather strange to say (having in mind the recollection of the sentiment and conditions prevailing in the county at that time), was convicted and given five years in the penitentiary. The old Judge began with his usual formula in passing sentence, but had not proceeded very far before he was interrupted by the defendant, who said, "See here, Judge, I came here to be sentenced to the penitentiary, not to hear any damn moral lecture." I discovered a year or two later that the defendant had a good deal of quiet humor and a surprising fund of sensible philosophy. I was passing through the penitentiary one day and found him attending to the grist mill. I had known him a long time, so I greeted him kindly, and said to him, "Judge, I hope you are getting along well." A faint, quizzical smile lighted his face for a moment, and he said, "To say the least, I've got a steady job."

His manner of cutting off the kindly admonition of the Judge reminded me of an instance which occurred in an East Texas court.

The Judge, whom I knew, was called upon to sentence a defendant to death. The judge was also a preacher, and he invested the situation with all possible solemnity. The defense put up by the convicted man was, as I recall, insanity, and notwithstanding the verdict, there was much doubt of his mental responsibility. The Judge, in most solemn tones, pronounced the dread sentence of the law, concluding with the words, "Hanged by the neck until you are dead—dead—*dead!*" He had scarcely uttered the last "dead" when the prisoner said, "And you go to hell—hell—hell!"

Judge Kennard was absolutely a matter of fact man, and unless there was some human element in a case which appealed to his easily-aroused but sincere emotions, he paid no attention to flights of oratory; and tropes, and similes, and metaphors, and quotations, were wasted on him.

A worthy member of the bar, who yet practices in the Twelfth District, was very prone to quote Scripture in his speeches, whether made to the jury or to the court. He was trying a case before Judge Kennard without a jury, and made a very earnest closing appeal, the peroration of which was, "And now we ask your Honor to render unto Caesar the things that are Caesar's, and unto God the things that are God's." Before the counsel could even take his seat, the old Judge said: "That's all right, but what am I going to do with these two men here that are fighting over a sawmill?" The Scripture quotation was lost on him.

I never liked the criminal practice and rarely appeared on that side of the docket, but on one occasion I applied to the old Judge

for bail for a defendant, charged with murder, who had hunted the deceased for six months, and killed him on sight. His reasons for doing so were that the deceased had eloped with his daughter, and betrayed here into a mock marriage; though he was already a married man.

I argued that under such circumstances there could be no such a thing as a premeditated design, formed in a mind, capable of cool reflection. That no man could ever, after making such a discovery, have a calm mind, but the emotions raised on the first moment of discovery of the action of the deceased, would, like a falling cataract, gain increased impetus every moment, and the further the defendant traveled and the longer he searched, the more impossible would it be for him to contemplate anything coolly.

When I had concluded my opening address to the court, the court recessed until morning, when the District Attorney was to be heard. When he came in next morning, he said, "May it please your Honor, I have thought over the matter of bail in this case, and influenced, I will say, to some extent by the speech of counsel for defendant, have concluded to withdraw my objection, and agree to bail."

As he spoke I noticed that the old Judge's face was flushing, and that he was opening and closing his eyes rapidly, and the District Attorney had hardly uttered his last word, when the Judge said, "It would have made no difference whether you objected or not, I was going to give the defendant bail anyway," and the tears he made no effort to restrain, ran down his cheeks. His brave but tender old heart went out in sympathy to the stricken father, but when the case came to trial before the jury, he held the scales of the law poised on absolutely even beam.

He said, "What amount of bail do you suggest?" I said, "It makes no difference to us whether it is one thousand, or a hundred thousand." He said, "I will make it ten thousand."

There occurred then one of those scenes which proves that the hearts of all men who love honor, and cherish family pride, and are ready to defend both against every transgressor, are attuned to the same high note.

The defendant was an utter stranger, whose home was in a distant county, but when I turned to the crowd outside the bar and called for sureties, men began to step forward with right hands in the air to enter into a recognizance for the stranger. They came so thick, and fast, that the generous offer of some had to be refused. The tears of the Judge and the ready sympathy of the bystanders, made a touchingly pathetic scene.

There was, however, developed later, a deeper pathos as related to the defendant. On the first trial there proved to be three jurors who were incapable of appreciating the lofty impulses, and

motives, which prompted the defendant to rescue his daughter, and avenge the honor of his family, and they forced a disagreement of the jury, to the astonishment of the whole community.

After the jury had been discharged the defendant talked to me. He was about fifty years old, and was a stalwart, manly, honest, true man. He had the frankest, dark brown eyes I ever saw. He was universally respected, and could have given bond for a million dollars if it had been required.

He said, "If that man had stolen my horses, I could have bought more horses. If he had burnt my barns, I could have built more barns. Had he burnt my home, I could have built another one. I own all the land lying around me between the two rivers near which I live, and I could have replaced any property that he might have destroyed; but he stole my only daughter, and her mother is twenty years older than she was the night my daughter left our home, and her health is broken down by sorrow, and for the first time a blot has been put upon my family name, though we have lived here from pioneer days, yet three men in this county seem to think I ought to go to prison for doing what I did. It seems to me to be mighty hard." When he finished tears had welled up into his big brown eyes, and I suspect tears dimmed my eyes also.

He passed over to join the silent majority some years ago, and I can repeat here with propriety what he told me. He said: "When I found that man I said (calling him by his full name), 'you have betrayed my hospitality and my friendship, you have broken the heart of my wife, you have stolen and disgraced my child and brought dishonor on my family name, and by G——d I am going to kill you.'" He stopped there—the rest I knew.

I heard after the last trial had ended, that a big, stalwart farmer, with whom I had gone to school in a log cabin, got upon a chair in the jury room as soon as the jury had entered it, and said, "Every man who wants to clear the defendant say 'Aye,'" and there was a unanimous chorus of ayes, and the broken-hearted father was freed, as he ought to have been.

I wrote in that case the only speech I ever wrote to be delivered before a jury, before or since. I, of course, did not read it to the jury and I argued in perfect good faith, to which faith I still hold, that upon principle, and by analogy the defendant was justified under the statutes of Texas. That he was, is as susceptible of demonstration as is a problem in primary mathematics.

I recall an incident which occurred in Judge Kennard's court, in which humor and pathos were strangely blended. The District Attorney moved to dismiss a criminal case on the ground of the death of the defendant, a negro. The old Judge said, "How do

you know that the defendant is dead?" The District Attorney said that he did not know it personally, but was advised that it was so. Whereupon, the old Judge said, "You had better be certain, because they asked me down in Grimes County to set aside the forfeiture on the bond of a negro called Simon Fairfax because they said he was dead, and they produced a lot of what they said was a hair cut from his head, but in a few days the sheriff had Simon in jail, and the defendant in this case may not be dead." There was a prominent lawyer of the district walking to and fro in front of the Judge's stand cogitating on a case soon to be called for trial. He heard the statement of the court and stopped and said to the Judge, "That defendant won't come back, I wish to God he could," and then resumed his walk to and fro.

The pathos of the incident arose from the fact that the defendant had invaded the premises of the lawyer, and had frightened his family, and perhaps threatened them with bodily injury, and the lawyer had killed him. He, therefore, knew there was no danger in dismissing the case.

I chanced to be standing by the Judge's stand in the court house at Madisonville one day, when a tall, strapping man, evidently considerably under the influence of liquor, approached the Judge's stand.

The Judge was trying a divorce case, a character of case which he had a strange and amusing penchant for trying. The man said, "I want to see you." The Judge said, "Just take a seat, I will be through in a few minutes." It took longer to get through with the case than the Judge had expected, and longer than the visitor was willing to wait, and he again approached the stand and said, "I want to see you, Judge." The Judge said, "Well, just be patient, I can't stop this case, I will be glad to see you as soon as it is over," and he again fixed his mind on the trial.

The law of physics, that two physical objects, cannot occupy the same place at the same time applied to his mind. He could not think of two things at once. He had as absolutely forgotten that the man had ever spoken to him as if he had never seen him, and when the case was ended he started to leave the court house. The man who had waited for him had just enough liquor in him to be mean, and walked up to the Judge and said, "You insulted me a while ago." The Judge said, "Are you the man that spoke to me, if so, what can I do for you?" The fellow said, "I have come to call you to account." He did not know the man he was speaking to. He would have been no surer of an explosion if he had dropped a coal of fire into a powder magazine. In an instant the old Judge said, "All right, if you want to call me to account, I am here. No man ever called John R. Kennard to account that didn't get an answer. I'll maul you till you can't see, and do it in a minute." The old man was about six feet three

in height, and weighed about two hundred and forty pounds, and was afraid of nothing in human shape. The very sensitive would-be fighter saw he had stirred up the wrong man and like the witches in the play of "Macbeth," seemed to have vanished into thin air. The old Judge was a candidate for re-election in 1884 but died seven days before election day. He was a true man to the last, and told his friends to get out another Democrat as a candidate and elect him; and they did.

I believe he has realized the truth of the assurance of that Master in whom he trusted with a childlike faith, that "the pure in heart shall see God."

#### WILLIAM H. BURGESS.

Shortly after the case referred to in the previous chapter had been tried the last time, I chanced to meet in the Senate Chamber of the Temporary Capitol that bright, witty, eloquent, chivalrous man, William H. Burgess, of Seguin, who was for a number of years a partner of Hon. John Ireland.

He was the author of the famous epigram, "You can no more run the Democratic Party without whisky, than you can run the Baptist church without water."

"Bill" Burgess, as his legion of friends called him, was a gallant soldier in Hood's Texas Brigade. He died a number of years ago, but his three sons, William H. Burgess, Richard F. Burgess and Russell Burgess, have proved themselves worthy scions of their knightly ancestry; a lineage of gentlemen and ladies of the "old regime" of the South, which furnished the world the highest types of Christian civilization ever known in any age or any land. It was not an aristocracy of money, but of blood, and worth, and virtue, and the sons of "Bill" Burgess are gentlemen by birth and breeding. I chanced to speak to Major Burgess about the case which had so much interested me. He said, "That *was a remarkably interesting case*, but it hardly equals the one which came before the grand jury in my district when I was District Attorney." My recollection is that he was elected District Attorney in 1876. I was curious to know of any case that could possibly be more tragic or more pathetic than was the one I had referred to, and he told me the following story: I do not, of course, undertake to repeat his language verbatim, but shall give it substantially, and in detail as he gave it to me.

After the grand jury had been organized, the foreman, who was an old man with gray beard, asked if there was any witness, or witnesses, conveniently at hand that might be called in while the bailiff was summoning others.

Some one said that the proprietor of a country store in which a man had been killed a few days before by a stranger, was in town. He was brought in and sworn, and was asked to tell all

he knew about the homicide. He said, "I saw the man killed, but do not know the name of the man who killed him, as he was a stranger, and only stayed long enough to give his reasons for doing the shooting.

"He rode up to the door of my store and threw his bridle reins on the gallery and walked in. Several of us were sitting in something like a semi-circle around the stove, on chairs, and nail kegs, and boxes. The man at the right hand end of the row had not been in the community very long, and none of us knew much about him. The stranger was well dressed and looked like a nice man. He looked at me and then looked down the line or semi-circle, till he got to the last man, and after looking at him closely for some time, quick as a flash, drew a six-shooter and shot the man twice before his body struck the floor, and when it reached the floor the man was dead. I and the rest of the crowd jumped up, but the stranger said, 'keep your seats, gentlemen, while I explain what you no doubt consider my remarkable action.' We sat down but he stood with his right foot on a chair and as well as I can remember now, he told us what I am going to tell you. He said, 'When the war broke out in 1861 I was eighteen years old. I joined the Southern army in Alabama, where our family lived and where I was born. It consisted of my father, my mother, and a sister about 16 years old, and myself.

"My sister was as beautiful as an angel, and I loved her as I did nothing else on earth, even more than I loved my mother. My family were comfortably well-off, as they owned a large plantation and negroes, so I did not take a furlough during the whole war. Some of my comrades were poor men, and I let them take my chance for a furlough. I rose to be a Captain before the war ended. When I got home my mother met me at the gate, sobbing violently. I knew her emotion was too great to be caused alone by joy at my return, so I thought of my sister the first thing, and asked where she was. My mother said she was in the house, but I must not see her. I unlocked my mother's arms from my neck, and rushed into the house, and went to the bedside of my sister. From her head to her feet,—she was a mass of sores. She was dying of a loathsome disease. I rushed back to my mother for an explanation. She said that during the war she at times went into the city and brought our sick soldiers to recuperate on the farm. One was rather a good-looking intelligent man and he stayed about six weeks. He professed love for my sister, and she reciprocated his seeming affection, and when he asked for the privilege of marrying her my mother consented, as my father had died, and I might be killed in battle. They were married and in a few days the man left to return to his command. Shortly afterwards it was discovered that he was a married man with a family. I went to my sister's bedside, and

knelt, and lifted up my right hand and swore to God, by the love I bore my dead father, and the love I bore my mother, and the idolatrous love I had for my sister, that the man who had deceived and betrayed her should not live upon the earth. My sister died that day, my mother soon followed her, and I sold the plantation, and cotton, and all the stock, and with a picture of the man which had been left at my home, in my pocket, began my search for him. In some way he found out I was on his track, and he fled. I followed him to the Mississippi and across it. I followed him over the Rocky Mountains and into the wilderness nearly to the Pacific Ocean. I followed him over the desert by day and by night. I lost his trail some time for weeks, but I never stopped my search for him. I never saw him till today, and there he lies.' When he got through the man mounted his horse and bowed and rode off, and that is all I know."

Mr. Burgess said when the witness had finished testifying tears were pouring down over the foreman's gray beard, and he rose and brought his brawny fist down on the table and said, "No bill, by G——d," and the other jurors said "no bill," and no indictment was returned. The avenger of his sister found no accuser. Of course, the old foreman violated the decalogue when he allowed his feeling to find expression by taking the Lord's name in vain, but I am inclined to believe his oath was treated as Sterne said "Uncle Toby's" oath was. "The accusing angel which flew up to heaven's chancery with it, blushed at it as he gave it in, and the recording angel dropped a tear upon the word that blotted it out forever."

#### JONES RIVERS.

The court rooms in the tier of counties lying along the Colorado and Brazos rivers, from Columbus to Georgetown, were the theatres in which were displayed the wit, and jests, and marvelous eloquence of Jones Rivers for many years.

Some gentleman, just who, I do not now recall, told me a number of years ago, that he had heard Jones Rivers speak, and that he was capable of eloquence equal to that of Byron, as displayed in his finest verse.

Like many lawyers of that day and time, he lingered too long over the intoxicating cup, and like most geniuses drank not wisely but too much. I never saw him in my life, but I have been told that he died in the town of Georgetown, Williamson County, in 1859.

The circumstances surrounding his death, and the way in which he met the call of the relentless messenger, is, I believe, well authenticated. I would not be sworn to the statement, but I have a very distinct recollection of hearing the facts from the late Howard Finley, who was a lawyer at Galveston for many

years, and was a brilliant man, but like Jones Rivers, was his own worst enemy. My recollection is that he told me he was present when Jones Rivers died. In any event I do not believe there is any doubt about the truth of the story substantially as I shall relate it.

He was traveling the circuit, and was attending court at Georgetown. He was taken sick and a physician was summoned, who came promptly and examined the sick man closely and said, "Mr. Rivers, if you have any business, or other arrangements to make, you had best do so quickly, for you have not long to live." The patient received the announcement without a tremor and turning to some one in the room—and I think Howard Finley said he was the man—said, "Please raise the curtain over that window." The curtain of cheap thin calico was raised. The window frame was small, and the window lights only about eight or ten inches in size. The sash rattled in the frame as the intermittent blasts of a norther struck the house.

Georgetown, now a beautiful, up-to-date little city, in the center of one of the finest agriculture territories in the world, was then a mere hamlet on a hill, with almost limitless prairies stretching away on every side. There was a thin sheet of sleet on the ground, and the brown and sere grass could be seen through it. Altogether, it was a desolate and depressing scene.

The dying man said, "Well, I have not lived as I should have done, but God has been good to me, nevertheless, and His mercy has followed me to the very grave and gate of death, for He has called me to die in Georgetown, and I know of no place on earth that I could leave with less regret." He was dead in an hour. There may be those who are skeptical about any man meeting death with a jest, but there are repeated instances where men have done so.

A good many years ago there was a very witty, brilliant man in the city of Richmond, Va., whose name was August. He was very sick on the 31st day of July and one friend standing by asked another what day of the month it was. The reply was that it was the 31st day of July, and the man who asked the question said, "Well, tomorrow will be the first of August." The sick man then spoke up and said, "Yes, and tomorrow will be the *last* of August," which proved to be true.

I have been told that the proprietor of the hotel in which Jones Rivers died was named Ake, and it used to be said that the boys of the town worked the old man up into a fury, by interpolating into the dying statement of Jones Rivers, after the word Georgetown, the words, "and in Ake's hotel."

The late William Pitt Ballinger of Galveston practiced law in Texas from 1847 till 1888. He married a daughter of a San Jacinto soldier, and knew all the prominent lawyers in early days in

Texas. He once told the following story concerning the defense by Jones Rivers of Colonel C. C. Herbert, who was commonly known as "Claib" Herbert. C. C. Herbert was elected to the Confederate Congress during the Civil War. I have a faint recollection of having seen him once, and recall him as a brawny, broad-shouldered blonde, who looked as if he might have had the blood of Norseman ancestry in his veins. He was a planter who kept fine saddle horses, and a pack of deer hounds, and was big-hearted, generous and hospitable.

One day while he and a party of friends were enjoying at his table, a typical Southern dinner, such as only a "nigger" bare-footed, and with a bandanna handkerchief on her head could cook, and the equal of which no "chef" on earth ever did cook, a little boy about ten years old came running into the house, sobbing bitterly.

Colonel Herbert met him and asked what was the matter. Between sobs the little fellow said, that the man he lived with (and who, in some way, had legal control of him) had beaten him. Colonel Herbert examined his body and it was evident that the child had been cruelly whipped. Colonel Herbert directed a servant to wash the hands and face of the little boy, and fix him a seat at the table. About that time some one hallooed at the gate, and Colonel Herbert went out in response to the call. He saw that the man at the gate was the individual with whom the little boy lived, and whose name, as I now recall, was Howard.

He was a typical Puritan, and talked with the high pitch and nasal twang, which unerringly identifies the descendants of that crowd which, owing to the greatest marine disaster of modern times—the safe landing of the Mayflower on Plymouth Rock—landed on the shores of America three or four centuries ago. When Colonel Herbert reached the gate in front of which Howard was sitting on his horse, Howard said: "Colonel Herbert, have you seen anything of that little boy who lives with me? It became necessary to chastise him slightly this morning and he has disappeared."

Colonel Herbert made no reply, but caught Howard by the collar, dragged him from his horse, and with a club or some other such weapon, gave him a fearful beating, after which he flung him under his horse, saying as he did so: "That'll teach you not to beat another orphan boy."

As soon as Howard was able to travel, he went to town, and the District Court being in session, went before the grand jury and an indictment for aggravated assault and battery was returned against Colonel Herbert. Colonel Edwin Waller, in whose honor Waller County was named, was District Attorney, and Hon. Fielding Jones was on the bench. The case went to trial immediately, and Howard told his tale as a witness, and Jones Rivers,

who appeared for the defendant, asked him enough questions to show that he had beaten the boy.

After Howard testified the State rested. The judge asked Jones Rivers if he had any witnesses. He said, "Only one, sir," and walked back to the rear of the court room and when he returned was leading by the hand the little boy. The boy was small for his age, and was ill clad, and bore all the indications of orphanhood in poverty. He sat the boy down in full view of the jury, saying, "that is our only witness, and we will not have him sworn."

Colonel Waller said: "Gentlemen of the Jury, the defendant has not denied the testimony of the State's witness, and there is nothing for you to do but return a verdict of guilty, and assess such punishment as you think proper, under the instructions of the court."

Jones Rivers knew all the jurors, and knew their family history; and had known the father of the boy. He knew that the most intelligent man on the jury, who had been acting as foreman in other cases, had been a fellow soldier of the boy's father at San Jacinto. He knew, too, that he had married, late in life, and had twin boys about the age of the orphan boy, love of whom was the absorbing passion of his life.

Jones Rivers said: "Gentlemen of the Jury, I have two clients today, the one is 'Claib' Herbert, who is my friend, and your friend, and the friend of every man who needs a friend, and who has proved to be the orphan's friend. The other client is yonder, poor, frail, orphan boy, who sits before you, and whom Howard admits he beat.

"For aught I know, some of you stood side by side in the fighting lines with this poor child's father at San Jacinto, and with him help win a victory which made Texas free.

"For aught I know, some of you may have boys like this with which God has blessed you in your old age, and which you love as this boy's father loved him. Some of you are growing old. Your hair and beard are silvering with the frost of many winters. (He was describing the foreman of the jury exactly, and appeared to be addressing himself exclusively to him.)

"Soon you must pass over to the other side and join your comrades who have gone before, and it may be that when you have gone, your little ones may be committed to the keeping of some Howard, as was this poor, striped and beaten child.

"It may be that the little eyes that now brighten at your coming will then be red with weeping (as he spoke he drew so near to the foreman that he could have touched him with his hand).

"It may be that the little form which you draw close to your throbbing heart in the very rapture of a father's love, may be bruised and wounded by some Howard, as was and is the frail

form of that poor child that sits there, in all the helplessness of orphanhood before you.

"It may be that the little arms that reach up and encircle your neck in expression of the love of a young heart, may be raised to shield his little body against the brutal blows of some Howard; and then, perchance, the God of the orphan, may in His infinite goodness raise up some 'Claib' Herbert to protect and avenge your darling, and if he did, would you have that protector and avenger punished?"

The climax was reached, the old foreman could stand no more, and he rose and lifting both hands above his head, while the tears rolled down his cheeks, and fell on his gray beard, cried out, "No—No—No—N-o N-o," and dropping his head on the railing before him, with his face in his hands, sobbed aloud.

Jones Rivers, of course, sat down. Colonel Waller promptly rose and began the closing speech for the State, whereupon the old foreman stood erect and said, "Set down, Edwin Waller, set down, you are a good man and a good officer, but set down." Then turning to the judge he said, "Your Honor, we find the defendant not guilty." "So say you all, gentlemen?" said the court. The answer was unanimously in the affirmative, and the court said: "Let the defendant be discharged."

The witchery of the eloquence of one who possessed the "divine afflatus" which is as distinctly the possession of the orator as it is of the poet, and which is a gift of God, triumphed over the cold, abstract letter of the law, and won a victory for righteousness which had its support in the law of the God of right and justice.

Judge Ballinger, after telling me the story just related, said that "Claib" Herbert went on one election day to the voting place which was on, or near, his plantation. There being no law against saloons being open on election day, there was one open nearby. He said to the proprietor, "I want you to close up. I want no liquor sold here. If you do there will be trouble among the voters." The saloonman said that election day was the best day for his business, and he could not afford to close, and would not do so. In the twinkling of an eye "Claib" Herbert drew back and struck the saloonman full in the face, and he would have fallen but for the shelf behind him, and he rallied and put up a fight.

The next morning Colonel Herbert came into the saloon and the man squared himself for another fight; but Colonel Herbert raised his hand in protest and said: "No, I didn't come to fight. I came to ask you some questions which I want you to answer. Did I hit you first last night?" "Yes, Colonel, you struck me before I knew it." "Did I hit you a fair blow?" "Yes, full in the face." "Did I knock you down?" "No, sir." "Did I draw

blood?" "No, sir." "Then 'Claib' Herbert's fighting days are over. When he gets the first blow, and a fair blow and neither knocks down or draws blood, he fights no more." Strange to say, he was killed accidentally just after the Civil War while trying to stop a fight between two men.

### THE COURT AND THE MOB.

A seat on the District Bench in East Texas, is not always cushioned with down, or garlanded with roses.

That it is not, I can personally testify, for while there are no better people in the world than can be found among the constituency, which I served as judge for nearly seven years in the Twelfth District; yet, at times they became aroused and broke out in the form of mobs.

They did so on three occasions while I was on the bench and if any man has never faced a mob, I can inform him that the situation is not one to be sought. I have faced three Galveston storms, and I would rather face three more, than face one mob. I saw only two of the three which gathered in my district, but that number was an abundance. I do not mean to be understood as even appearing to boast, that on either occasion, I displayed any heroism, because I did not.

I knew that no man in either mob was going to offer me any violence. Many of the members of the first mob had known me all my life, and some of them and I had gone to country school together, and most of them were my friends. Those who formed themselves into a mob did not in either instance seek the cover of darkness, but operated in broad daylight, and nine out of ten were, under normal conditions, law-abiding citizens.

Such citizens do not form themselves into a mob unless under great provocation, and while they proceeded to effect the end they had in view, by unlawful methods, they were not at heart, criminals; yet, I am earnestly opposed to mob rule, and it should be relentlessly crushed out. When their passions have subsided and they have become normal, those who ordinarily constitute the mob, are fair minded.

Although the first one that I was forced to meet was formed in election year, and I was a candidate for re-election. I was, of course, in duty bound, to tell them, as they, every man armed, gathered in semi-circle around me, that their action was unlawful (they had killed two men the day before), and that the court was open to punish criminals, and I was, in duty bound to charge the grand jury that the acts of the mob was murder—which I did—yet, at the election, I received a clear majority over two opponents. I had to take the course I did or prove recreant to my trust, and unworthy to be a judge. There was no bravado

in my action, for, as I have said before, I was in no danger of physical violence, and I simply did my duty.

Many judges in East Texas and elsewhere have been compelled to deal with mobs, and in all likelihood, others will have to do so in the future, and I believe that what I learned from my experience with the second of the two mobs, may be worth space that it will take to record it; even if it be not exactly germane to the general purport of what I am writing.

I discovered that mobs are not actuated by contempt for the law, or by a spirit of defiance of the courts, nor by any sheer desire for vengeance, nor are they actuated by any brutal or blood-thirsty motive. I am sure no such motive prompted the mob to which I refer, and I believe that what was true of that one, is true of nearly every mob. I drew this conclusion from the following facts: I placed myself between the mob and the jail, in which the prisoner was supposed to be, and in which I believed him to be, and began to speak substantially as I had on the previous occasion about four years before.

One of the mob, whom I had never seen before, and for that reason I do not believe he lived in my district, interrupted me. The leader of the mob, whom I knew well, and who was a worthy citizen, ordered the man peremptorily away, and said to him, "Let the Judge talk," and while I talked to those hundred or more men, mounted and armed, bent on taking human life,—they bared their heads under the blazing August sun, and treated me with as much respect as if I had been on the bench in the court house.

The reply of the leader to what I said, revealed to me what I had never thought of before, and put the "mob," as the term is ordinarily understood, in a new light. He said: "Judge, we do not mean any disrespect to you, or to the law, or to the court. You are our judge, and we respect you as such, but this negro has gone into the house of one of our neighbors, and beaten a lady into insensibility, and ravished her, and he does not deserve a fair trial. Then, we do not want the lady to have to go into the court house and tell the facts before a crowd of people."

In the last sentence of that leader's talk he stated the gist and core of the reason for mob violence, when a woman is the victim of the crime. It is that she is compelled to go into court and by the unescapable compulsion of the rules of evidence, reveal the humiliating details and revolting physical facts concerning her own defilement.

Such an ordeal, in the eye of a pure and refined woman, is in but a slight degree, if any, preferable to death.

I have said the mob was not actuated by sheer brutality, and that statement was proven by the fact that while the victim of the negro's lust desired that he be burnt, the mob declined to yield to her request, and he was hanged, and not a shot was fired into

his body, nor was it maimed in any way. I trust the idea that I have intended to convey will excuse this digression, for I believe what I learned that day was of sufficient importance to be set down here, because the people of the South, have been accused by negrophiles who live elsewhere of indulging in mob violence in a spirit of sheer lawlessness. As I have said on a previous page, it takes no high degree of courage to face a mob when you feel assured that you are not going to be either killed or wounded; but when the mob spirit is in the air, and has extended its baleful influence into the jury box, and that influence is reflected by a death penalty assessed, which verdict is not authorized by the testimony, it takes a judge with a true conception of judicial duty, and with the courage to translate that conception into action, to meet such conditions as it should be met. The radically erroneous idea, which to a large extent, has taken hold on the popular mind that no one man has the right to say that shall not be done, which twelve men have said should be done, has been the fecund mother of many mobs. Those who think that way, have the conception that a judge is a mere automaton whose duty it is to register the conclusions of a jury, though it is a reflection of prejudice, and of inflamed and vicious public sentiment.

Most happily for Texas, she has had, and no doubt has yet, judges who did not and do not agree with that conception of the judicial function, and who will not play the role of judicial automaton.

There was furnished in an East Texas county some thirty years ago most gratifying proof that one judge knew the law, and knew his duty, and dared do it. I knew him well, and exchanged districts with him during my term of service as judge.

A negro was indicted, and put on trial for murder. He was convicted and the death penalty assessed against him. I do not know whether the judge waited for a motion for a new trial to be presented or not, but in any event, he coolly wiped the verdict out and set the judgment aside and the people murmured loudly, so loudly, as I have been advised, that their murmuring presaged or foreshadowed a mob. At the next term of the court a second trial was had, with the same result, and again the judge annulled the verdict by a new trial. The people were even more enraged. The judge, a small delicate, quiet, unassuming man, paid no more attention to the murmuring of the angry populace than he did to the sighing of the stately pines which towered above the court house. Before the next term of the court the officers of the law found a clue which, being followed, unraveled the mystery of the murder, and revealed that the twice convicted negro was as innocent as a babe unborn.

The life of an obscure, penniless negro was saved by the fidelity

to duty and the courage of the judge, in the face of the verdict of twenty-four men that he deserved to die.

Heroism is revealed in many forms; but there are few higher types of heroism than that displayed by the judge who, with no music and no flags and none of the "pomp and circumstance of glorious war" to thrill and stir, executes justice and maintains truth in the face of popular clamor.

When he, "in the unvoiced silence of a student's cell," strives to determine what is the law, and find the light, and in the fear of God, phrases and frames a judgment which he knows will call down upon him popular condemnation, and perhaps cost him his office, yet declares the law as he believes it to be, he is a hero in the sight of God.

There is, however, a type of heroism higher than that. The judge, who, when the mob has registered its wishes through the medium of the jury box and pronounced its mandate of death upon evidence which the law does not recognize, coolly annuls that mandate, and disregards the verdict begotten of prejudice and suspicion, and thereby declares that the law and not the mob, shall rule; rises to heights of heroism well nigh sublime. That was what the East Texas judge wrote twice on the record of his court with a stroke of his pen. That judge was Edwin Hobby, father of the man who was Governor of Texas when this sketch was being written.

#### A NOTABLE LEGAL BATTLE.

Every criminal case upon the result of which depends a man's life or liberty is full of human interest, and where able and skillful lawyers are engaged on both sides, and fight the case on its merits, the court room becomes a stage, and the legal drama makes appeal to the whole gamut of human emotions.

I sat a portion of one term at Galveston by exchange with Judge Gustave Cook and tried a homicide case. The case was one which aroused great public interest. Public sentiment was so strongly aroused against the defendant, that Judge Cook was severely criticised for allowing him bail.

The slayer and the slain were both professional gamblers, but the slain man had been well born, and well educated, but had gone off at a tangent, and become a sporting man—yet he was very popular, as he had the manners of a gentleman.

The defendant, on the other hand, was in every particular exactly the opposite.

The counsel for the State were F. M. Spencer, who had just retired from the position of District Attorney after fourteen years of continuous service, and who seventeen years later was Judge of the District Court of Galveston County, and who was both experienced and able as a prosecutor; W. C. Olivér, the incoming

District Attorney, a most capable lawyer, and Jas. B. Stubbs, then and now, one of the ablest lawyers at the bar of Texas.

Marcus C. McLemore, John Lovejoy and Col. Geo. P. Finlay appeared for the defense. A *nol pros* having been entered as to Colonel Finlay's client, a well known gambler of San Antonio, Colonel Finlay did not appear actively on the trial.

Marcus C. McLemore was a graduate of an American university, and of the University of Heidelberg, and of the Paris School of Civil Law and was equally at home in the field of the civil and criminal law, and was a most skillful trial lawyer in either field.

John Lovejoy gave promise then of developing into what he afterwards became, a power before a jury in any kind of a case.

It took from nine in the morning till midnight to get a jury. I recall even now, how the defense strove to avoid taking the last man called. He was a singing evangelist and revivalist, and all gamblers were the children of Satan in his sight, but he had to be taken.

There was not a dilatory motion made, nor any technicality invoked by either side. So to speak, both sides stepped out in the open and fought without shields. In the vernacular of the prize ring, it was a "bare-knuckle" fight.

The skill manifested in examination of witnesses, and the rapidity with which they were examined I had never seen equalled before, and have never seen since.

There was no re-direct, or re-cross, or re-recross and re-redirect examination, which is always the unfailing indication, either of improper preparation, or of ignorance of the rules of evidence, or both.

What in the hands of less skillful lawyers would have taken an hour, was frequently disposed of in ten minutes. Many a case in which there were as many witnesses examined has taken a week, while unless my memory betrays me, thirty witnesses were examined, and the arguments presented, and the case put in the hands of the jury between 9:00 a. m. and 12:00 p. m., or midnight.

The whole trial illustrated the difference between lawyers and "shysters," between men fighting on principle, and on a high plane and men willing to get results by any kind of method, however devious, as is the case in many murder trials, and between experts and bunglers.

The arguments were terse, eloquent, fair, strong. John Lovejoy was the least eloquent man of the five, but as I told him after the case was over, he made the speech best suited to the case. He leaned, indeed almost sat, on the edge of a table, and in a voice never raised beyond a conversational pitch, and without even a single attempt at eloquence, and with no effort to appeal to the emotions, but talking as if he were transacting a matter of business, put the case of his unpopular client before the jury with a

persuasive and convincing power I had never seen surpassed before, nor have I seen it since.

He was my friend for many years, and I am glad to lay this deserved tribute on the altar of his memory.

It was a battle royal between five legal paladins, every one of whom wielded a shining lance.

The evidence made it necessary to charge the law on both degrees of murder, and on manslaughter, and on self-defense, and upon when the right to pursue an adversary began, and when it ended.

I know of no judge who could have covered the case correctly in a shorter charge except Gustave Cook. I have seen a charge written by him with a pen on less than a page and a half of legal cap, which supported on appeal the death penalty.

It was the second charge I had ever written in a murder case, and it was very gratifying to me, a beginner on the bench, that not a single special charge was asked, nor a single exception taken to the charge given.

About nine o'clock next morning the jury returned a verdict of acquittal, which in some quarters was severely criticised, and for that reason, as a matter of justice to one of the finest juries I ever saw in a jury box, I took occasion to say the verdict was proper, as it was.

Five of the six able lawyers and knightly gentlemen who appeared in the case have "passed over," and only Jas. B. Stubbs remains. He and I are the only professional or official actors in a stirring judicial drama, who are left.

We, as that great wit, Dr. Ferris of Richmond, Texas, used to say, still linger "as monuments of God's mercy and the devil's forgetfulness."

#### AN HONEST TALESMAN.

On the trial of the first murder case in which I ever sat, eleven jurors had been empanelled, and I sent out for talesman.

The first man of six called was a farmer, who tilled his own farm, but well educated, and a man of a very high order of intelligence.

When asked as to his sympathy or bias, he said: "No, but I am conscious of a very profound sympathy for the parents of the defendant, who are my neighbors."

He answered all disqualifying questions in the negative, but added: "Mr. District Attorney, you have heard what I have said."

Both sides accepted him. In eighteen hours he brought in a verdict signed by him as foreman, giving the defendant five years in the penitentiary, and no motion for a new trial was even filed.

Such a man as that man was, is a moral asset of incalculable value to any community.

## COURT SCENES IN GRIMES COUNTY.

I recall an amusing incident which occurred in the course of a trial of an important criminal case before me, while I was on the bench in the Twelfth District.

The District Attorney,—a very fair, but very able representative of the pleas of the State, conceived the idea that a colored witness was testifying falsely, and for that reason put him through an unusually rigid and searching cross-examination.

He fired at the witness question after question in quick succession, giving him no time to plan or prepare an answer, but pressing and plying him remorselessly, but at all times in the bounds of legitimate cross-examination. At last the witness was fairly cornered, and threw up his hands and said: "Dar now, Mr. State's 'torney, you done cross talk me 'twell you cotch me lyin'." The crowd in the court room which had been listening with absorbed attention, broke into uproarious laughter, which I only perfunctorily tried to stop. I felt that the crowd was entitled to relief from the tenseness of the situation.

In all my experience of eighteen years on the bench that witness was the only one I ever heard admit he was lying.

In the same county and court room an incident occurred which was pre-arranged,—a fact in which I, of course, had not even an intimation, and which I did not discover until after the case was over.

Major H. H. Boone, who had been Attorney General of Texas, carried the plan into execution, but it was the conception of his partner, A. F. Brigance, a very shrewd and resourceful, but honorable lawyer. I would have been justified in fining both men, but the motives which prompted their action was so worthy and generous that I was utterly disarmed.

A country boy, more or less wild, and sometimes dissipated, had killed a negro under circumstances which made a successful defense very difficult, if not impossible.

He was not a common offender, nor at heart really a bad citizen, and he had an aged grandmother who was deeply devoted to him, and who was a noble old lady whose friend Major Boone had been for many years, and whom he highly esteemed, and whose anxiety for the fate of her grandson appealed to his sympathies.

The same District Attorney referred to as being a party to the incident previously related, was representing the State. He put in his testimony quickly but in a very impressive way, and rested.

Major Boone said: "Take the stand, Mr. Knott." Mr. Knott, commonly called "Tom," came around, and was sworn. He was a comical looking individual, though not lacking in intelligence.

His head was round, and he had on his face a good natured grin, which made him rather attractive as well as amusing, and as he knew all the jury, his grin expanded when he looked at them.

Major Boone said: "Mr. Knott, did you know the negro that the defendant is alleged to have killed?" The question was a perfectly legitimate one, as an apparent predicate laid for the purpose of proving the dangerous character of the deceased, and no objection was made to it. Instead of replying by a simple affirmative, Mr. Knott looked at the jury, broadly grinning, and said before any objection could be interposed, "I guess I did. Didn't I shoot his legs full of bird shot one night at Courtney while he was trying to climb into the bedroom of two young white ladies?" The District Attorney sprang up, shouting, "I object, I object," but he was too late. The bolt had been shot. The poison had been injected into his case, against which there was no antidote in the law. The District Attorney pulled his mustache and turned white, and then red, and Major Boone, after asking the witness a few other meaningless questions, dismissed him.

It would have been most impolitic for the State to have cross-examined, because though the testimony was utterly irrelevant, it was absolutely true, and cross-examination would but have intensified its effect.

Though the liberty of a young man of respectable family was at stake the round head, and the good natured grin of the witness and the indescribable way in which he made the interrogative response, was irresistibly amusing, and the inability of the District Attorney to conceal the fact that he realized he was smitten "under the fifth rib" made the whole scene serio-comic. The rest of the proceedings were perfunctory, though I charged the jury the law as applied to the legitimate evidence, but "Mr. Knott" had decided the matter of the verdict.

Some days later Major Boone said to me: "Norman (he always addressed me that way out of court), I did not like to do what I did in the court the other day, but I could not see that boy go to the penitentiary and his good old grandmother die of a broken heart. I told Tom Knott you might likely fine him \$50, and if you did, I would pay the fine. It was my only way out, and Tom Knott told the absolute truth."

I was sure that the witness had told the truth, or that at least Major Boone believed what he was going to swear to what was true, for if he had not, no influence on earth, not even his love and sympathy for his aged friend, could have induced him to put the witness on the stand.

In the same court a negro was indicted for murder. He had stationed himself at the end of a corn row and emptied a double-barreled shotgun into one "Sam Sparks," another negro. He was a big burly negro and I had him brought into court and assigned

him counsel. I said, "Are you ready to go to trial?" He said, "What you talkin' erbout—trial 'bout what?" I said, "The grand jury says you shot Sam Sparks." He scratched his head and said, "Sam Sparks? Sam Sparks? Seem lak I been heerd dat name so'mers, but I disremembers whar it wuz. Sam Sparks? Me shoot Sam Sparks? I ain't got no 'membrance of shooting no sich nigger." I said, "You will go to trial tomorrow." He said, Mr. Jedge, I tell you whats de trouble. My brains is all done got outside of my haid like grapes, and I can't get 'em back. Dat's de reason I ain't got no 'membrance 'bout dat nigger Sam Sparks; but séem lak I heerd dat name 'fo' dis time. I speck my brains done been got back in my haid by termorrer, so I lak to go back to jail," so I let him go.

The District Attorney felt certain of a conviction, but he sensed a purpose to interpose a plea of insanity to prevent a trial at all, and his vision of a fifty-dollar fee appeared to be growing dim. Next morning the negro's assigned counsel said he would enter a plea of guilty to murder, with the understanding that the death penalty would not be assessed.

I, of course, told him that I had nothing to do with the penalty beyond instructing upon it. The "crazy" negro got life imprisonment. I never knew till long afterwards,—perhaps after I left the bench, that the whole scene was planned by his assigned counsel to save his neck. The "crazy" negro played his part with consummate skill.

It is impossible to translate into printed words the amusing picture presented by the negro seemingly struggling, and striving, to remember the name of a negro he had shot to death only a few days before.

A previous District Attorney of the same district was a great joker, and jester, and his indulgence in the habit resulted on one occasion in his overwhelming embarrassment, and the corresponding amusement of a large crowd in the court room.

An old colored brother was charged with the theft of a yearling. He insisted most strenuously that he was innocent "fo' Gawd," but wanted to know how he could get out easiest. The District Attorney said, of course, jestingly: "Just give me a yearling, and I'll nol pros your case." "No, sir, I ain't gwine to give no deestric attorney my yearlin' when I ain't done nothin' to go to no pen fur." The case was called and the witnesses began to file in, and the old darkey got very nervous. When the State announced ready the old darkey, who was still sitting out in the body of the court room, rose and said: "Mr. Deestric 'torney, I'll done it. I'll 'cept your proposition. You nul squash de case and I'll give yer de yearlin' like you sayed." It was sometime before the court could restore order, but the "deestric attorney" was cured of jesting with defendants,—at least in that way.

In that court house where comical situations provoked uncontrollable mirth I recall what was nothing less than a tragedy.

A young man just merging into manhood was being tried for murder. His father was a most worthy citizen, and his locks were slivered by the snows of many winters. The boy, drunk on the meanest of crossroads liquor, had killed a neighbor. Though defended by one of the ablest lawyers in Texas, acquittal was impossible, and the jury gave him seven years in the penitentiary. When the verdict was read, the old father rose, and bending under the weight of years and ill health, walked towards the door of the court room, his white hair barely visible in the dim and flickering light of a kerosene lamp. His form was so bent over as that he seemed to say: "My burden is more than I can bear," and as he passed out into the night, while his "boy" was going to jail, my heart went out to him, though I had never known him. I heard afterwards that the old father survived the crushing blow only a short time.

Perhaps fifteen or twenty years had rolled around, when one day I chanced to be in the same town, and went into the court house. A man met me and grasped my hand cordially, and said: "Judge, I am glad to see you. Do you know who I am?" I admitted I did not. He then told me who he was and it was the young man who got seven years for murder. I told him I was glad to see him and hoped he was doing well. He thanked me, and said: "I took my medicine, and have been doing well since I came out." I said, calling him by his given name: "I must say that as I recollect the facts you got off light." His reply was: "I wonder that they hadn't broke my d——n neck." He had cause to congratulate himself.

The picture of that gray-haired father passing out into the night, broken-hearted, mourning for his boy even as David mourned for Absalom, is indelibly graven on my memory, and the recollection of it intensified the solemnity of the scene, when in duty bound, I passed sentence on his wayward boy.

There was then and there revealed an instance of the pathos of the court room. That boy, like hundreds of other boys, was the victim of liquor, and the procession of its victims from the courthouse to felons' cells was almost endless, yet men strove, and fought, and spent, to prevent the abolition of a traffic the fruits of which were crime, dishonor and death.

We see often in court rooms exhibitions of the spirit of manhood and friendship and devotion to principle, that is above all price, or the temptation of sordid gain.

A man charged with murder was tried before me. The slain man belonged to a good family who desired to employ private counsel to prosecute. The facts revealed a social and family tragedy involving the good name of a woman.

The defendant had served gallantly four years in one of the most famous fighting brigades in the whole Confederate army, and the first lawyer approached with a view to his being employed to prosecute, had been a comrade of the defendant.

He, without a moment's hesitation, declined to consider the employment, and no amount of fee could have tempted him to prosecute the fellow soldier side by side with whom he had dared death on a score of bloody fields.

In the same county a white man who had served gallantly in the same brigade just referred to, was charged with killing a negro. His plea was self-defense. One trial resulted in a hung jury. When the case was called for trial next time one of the ablest lawyers in Texas, and one of the most chivalrous soldiers that ever bled for his country, and whose empty sleeve bore silent testimony to his courage, announced that he would appear for the defense. I had reason to believe the defendant had no money, and knew some strong motive prompted the action.

The defendant was acquitted, and the next day the counsel explained why he defended. He said: "I became convinced that the whole constabulary force of this county had combined for personal reasons to convict that defendant. I knew, too, that the defendant had been a gallant, faithful Confederate soldier who followed Lee for four years, and I meant that he should have a fair trial. I'll swear that no Confederate soldier shall ever be railroaded to the penitentiary while I am able to defend him."

On one occasion in Grimes County a little negro about 18 years old was put on trial for burglary. He was very unskillfully defended, but really needed no defense. To my surprise he was convicted. Major Boone chanced to be sitting in the court room and heard the trial. As we walked down to dinner at the hotel he said to me: "Norman, that conviction is an outrage, and I have too much respect for the law of my State, and too high a regard for my obligation as a lawyer, to be content to sit idly by and see justice so outraged, and I am going to take hold of the case." As I agreed fully with him, I said: "I hardly think you need trouble yourself, Major, I will take care of the boy," and I promptly granted a new trial, and there was never another.

Major Boone had no possible interest in the ignorant, humble little "nigger," but if I had not granted a new trial he would have flung himself without reserve of skill or energy, into his defense—out of his chivalrous love of right and justice.

The same splendid gentleman was a faithful democrat, and at one election exerted himself strenuously to defeat a certain man for re-election as sheriff, who was most obnoxious to the democrats, and succeeded. The defeated man preparatory to a contest desired to employ the lawyer who had been largely instrumental in his defeat. Chancing to meet him in the road one day, and

having no doubt that all that was necessary to obtain his services was a liberal fee, which he was able to pay, said,—“How much can I *hire* you for as a lawyer to get me my office.” The reply most astounding to the candidate was,—“You can’t hire me at all. Do you suppose that after I have gone all over the county telling the people you ought to be beaten for sheriff, that you have got, or ever saw money enough to induce me to *gō* to court and try to keep you in the office? You can’t hire me at all, and I want you to know it.” Such men as that maimed hero was—make us believe that indeed “man is but little lower than the angels.”

I have no idea that he received a penny in the way of a fee in any of the instances related above.

As I said in the beginning of these desultory rambling sketches, it seems to me that such incidents as I have related concerning one who did honor to his profession, and to his state, reveal more clearly the inner real man than could be done in any other way.

They interpret his impulses, his motives and the ideals of duty, he cherished, and the standard by which he shaped his personal and professional conduct.

## CHAPTER XXXV.

## MEMORIES OF THE COURT ROOM.

I had occasion many years ago to stay for several days in an interior town 35 miles from a railroad. District Court was in session and an attorney who I happened to know, had been appointed to defend a white man charged with murder of a negro with whom he had been gambling, and he asked me to help him.

The man was very vigorously prosecuted, and the local counsel and I together succeeded in getting him into the penitentiary for 99 years. We got interested in the defendant, and appealed and reversed the case.

A year rolled around before the case was reached again, when, though I lived a hundred miles away, I went back to the court and paid the way of a witness,—it being before witnesses received fees.

I did not know anything about jurors in that county, so I took any man who said he would give my client a fair trial.

The witness whose way I paid the way of was unquestionably present when the killing took place and testified that the negro applied to the white man an epithet so foul I cannot repeat it here. I said to the jury,—“he not only called him—, but prefixed the epithet with d—, and followed that with ‘poor white,’ and I say that neither the law of honor nor the law of manhood required any white man to take such an insult from a negro, and I believe this jury agrees with me. About half the jury nodded hearty assent to my statement. When they did so the old judge (for he was quite old) took up his charge and started with a pencil and wrote around the edges,—“I charge you first that the defendant is not being tried by the law of honor or the law of manhood but by the law of Texas.” When he came to read his charge he began with the addendum, and as he proceeded, and whenever he reached a part which was to be followed by pains and penalties he would interpolate verbally “mark you gentlemen, mark you.”

A friend to whom I once related the remarkable proceeding asked me why I didn't take a bill of exceptions to the court's charge and his interpolations. I said,—“Because I had twelve bills of exceptions in the jury box.” The defendant was acquitted in ten minutes.

A few days later he came to the village in which I lived and I got him employment and loaned him a little money. In a few days he quit his job and decamped without repaying me. I concluded I had made a mistake in being instrumental in turning so worthless and ungrateful a wretch loose. His kind are only fit to adorn (?) jails and penitentiaries.

The old judge lived on a farm several miles from town, and came in every morning in a gig or buck board.

I met him coming in as I was going back to the railroad. He said,—“Good morning, sir. You made the most outrageous speech yesterday I ever heard, but it was the speech for the case, and I wish you good luck.” He was an honest old man, and by no means devoid of ability, but was the kind of judge which has cost Texas millions of dollars by acting under the delusion that the only province of a criminal trial is to convict and thereby becoming counsel for the prosecution, and committing reversible error.

A bystander in an East Texas Court who had intelligence enough to understand the tenor and effect of a charge in a criminal case, after listening to one delivered by a thoroughly honest judge whom I knew, but who believed in convictions, said,—“I’ll swear, I always heerd that the State had only two speeches, but in this court she’s got three. The deestrick attorney makes two and the jedge makes tother.”

The judge last referred to was inclined to be very strict and rigid in the conduct of his court, and disinclined to encourage or permit levity. He had misdemeanor jurisdiction in one county, and had sent a defendant to jail, in default of payment of a fine.

A half-witted boy in the town came by the jail, and the prisoner said,—“Will you take a message to the judge and district attorney for me? I can’t get out of here you know.” The boy said,—“What is it?” The prisoner told him. The boy said,—“If I go thar and tell that jedge that he will put *me* in jail.” The prisoner said,—“Oh, no, he won’t. It won’t be you telling it for yourself, but for me.” The prisoner persuaded the boy to go, and when the boy got before the judge the latter said,—“Well, what do you want?” The boy turned his ragged hat like a wheel between his fingers, and trembling all over said,—“That fellow in jail told me to tell you and the deestrick attorney something for him, but I’m skeerd to tell it.” “Go on, go on,” the judge said. “If I tell it Mr. Judge you ain’t goin’ to fine me or put me in jail is you?” The judge said “no, of course not. Go ahead and give the message.” “Well—well, er, that fellow sayed to tell that d—jedge and deestrick attorney to go to *h—l.*” The judge blushed deeply, as did the “deestrick attorney” but kept his word, and the messenger was not fined or imprisoned. The boy may have been half-witted, but he was smart enough to have unintentionally, or by design get the judge committed, or he would have been in jail in ten minutes.

Referring again to prosecuting judges, they do not appreciate the fulness of their error. They are really prompted by the desire to see the law enforced, and do not want to see guilty men

escape either through technicalities, or the ingenuity of counsel, or laxness or corruption of juries, and such a spirit is commendable of course, but whether a defendant is convicted, or acquitted, is no official concern of theirs.

Their duty is to rule in, or rule out, evidence, and charge the law applicable to the facts, and nothing more.

Furthermore the conception that every acquittal is an outrage on the law, and that only conviction is its vindication is radically erroneous. More men are convicted than are acquitted, and about as many are convicted as ought to be.

I have no mushy maudlin sentimentality about criminals. I have sentenced three defendants to the gallows and they were hanged, but the eternal howl about criminals escaping conviction is for the largest part, the veriest rot.

The courts do not of course always function perfectly. No human agency has ever yet done so, and when some jury renders one outrageous verdict of acquittal the public is shocked, but it pays no attention to the ten verdicts of conviction.

Some two or three years ago I went for the first time in many years into a criminal court for the purpose of defending a "black sheep" of a worthy family, upon the request of his brother.

The defendant was acquitted and as I recall that was the third acquittal out of 103 trials. Every one of the defendants received, as I believe, a fair trial, because Cornelius W. Robinson, criminal district judge of Harris County, and E. T. Branch, the district attorney give every defendant a "square deal." That judge, like most judges, thinks some provisions of the law are not wise, and he is sometimes very loath to give them in charge to the jury, but he will do so if precedent demands such action.

In the recent past a brother lawyer, and a very capable one, brought me a number of special charges which he said he intended asking the judge to give in a case in which the defendant set up as a defense that he had seen the deceased—a soldier—and his (defendant's wife) together under such circumstances as led him to believe that illicit relations existed between them.

The attorney asked me to look over the charges and tell him what I thought of them. I knew before I looked, that those special charges, like all others, were an abomination in the law, and I said—"I never gave a special charge in a criminal case in my life, and I will not review yours, but I will write just such a charge as I would give were I on the bench as my friend the judge is, and such a charge as you will find in my hand-writing in the same court, in an identical case."

I proceeded to do so and when I had finished the charge I examined the case of Price vs. State, XVIII Criminal Appeals Court to see if the charge was correct as I had not examined that report in many years. The charge was correct.

I chanced to meet the Judge before he delivered his charge and as we were boys together, and had been friends for many years, he talked freely to me about it. He said,—“I think I detect your fine Italian hand in that charge which counsel for the man on trial has handed to me.” I said,—“Yes, I wrote it.” He said,—“I don’t believe in any such law.” I replied,—“That may be, but it is settled law in Texas, and if you refuse to give it, or give what amounts to the same in legal effect, you will be reversed.”

I had nothing to do with the trial, but I heard afterwards the substance of the charge was given.

The defendant was acquitted. I do not recall ever having been reversed for refusing special charge in a civil or criminal case. At one session of the Supreme Court, and the Court of Criminal Appeals at Galveston, I had 17 cases, civil and criminal, before them, and 15 were affirmed.

So long as any Judge holds to the view that it is his duty to see that the defendants are convicted, so long will judgments rendered by him be reversed. The law is no more vindicated when pains and penalties follow its decrees; than it is when some innocent man, or some man whose guilt is not proved beyond a reasonable doubt,—which is the same thing in law,—is acquitted.

There was nothing more God-like in the handing down of the decalogue to Israel at the foot of Sinai, than there was in speaking ’mid the awful travail of Calvary, pardon and peace to the dying thief.

It is very rare that a District Attorney can safely object to admission of evidence. If the jury are given all the testimony that will throw any light on the case, they will get at the right.

If a jury once gets the idea that evidence is being excluded at the instance of the State, which if introduced would reveal the whole truth, the defendant is half acquitted then.

#### A QUARTETTE OF ABLE LAWYERS.

Civil cases are sometimes as interesting as those of a criminal nature, because there is nothing more interesting than is a new and close question of law, when discussed by able lawyers.

I had before me in one case Judge Sam Streetman of Houston, L. M. Dabney of Dallas, his brother, S. B. Dabney, and Presley K. Ewing of Houston, and it goes without saying that no point was overlooked, or any legitimate argument left unrepresented.

Four such lawyers rarely appear in one case.

The question involved upon which the plaintiff’s right to recover depended, was in a sense one of first impression, and as I recall, all four of the able lawyers discussed it, and the discussion was an enjoyable legal treat.

As I recall, Major John Lovejoy was also present, but he took no part in the discussion, except at some unexpected time he

would interject some more or less relevant suggestion, and one which, in his inimitable way, injected such element of amusement into a cold discussion of a question of law, as would have disturbed the solemnity of a Chinese funeral.

If it was held that under the facts the plaintiff could recover, and his injuries came within the terms of the indemnity contract, it would have constituted a pioneer case.

The impression made upon my mind was that all the parties were afraid to risk a decision of the Supreme Court, and as I recall, a compromise was arrived at, but not before Presley K. Ewing had for plaintiff by his ingenious reasoning carried the law, as he thought it to be, to a limit it had never before been carried, so far as I recall.

After the case had ended, Judge Streetman and I concluded that plaintiff's counsel would risk losing a case regardless of its magnitude, in order to establish a new rule of law.

He has successfully pioneered many times, and is not afraid to venture out into new fields, because he is a lawyer worthy of the steel of any foeman, and in my judgment has no superior as a lawyer at the bar of Texas. I believe many others will agree with me, and I do not believe that the sincere esteem and affection I have for him, the fruit of a friendship of more than thirty years duration, has biased my judgment. He practiced before me almost continually for eleven years, and I feel that I know whereof I write.

I have had but little occasion to complain of the treatment I have received at the hands of trial courts, or indeed of any court, hence do not mean to imply any invidious distinction between judges when I say that I recall the late Andrew P. McCormick as *one* of the most satisfactory, if not *the* most satisfactory judge I ever appeared before.

He, of course, was a much older man than I, and in politics was a Republican,—a fact, he being a native Texan, I found it hard to forgive, but he knew no politics on the bench.

When I was a young man, just married, and living in a most modest way, he was frequently a guest at my very humble board, and my wife and I cherish grateful recollections of his friendship.

He had one quality or element, or whatever it might properly be called, which is a propulsive power in any man, and that was self-confidence. It did not find expression in boasting, or vanity, or self-assertion, but he had confidence in his own knowledge of the law, and being an educated man of strong native intellect, and thoroughly grounded in the common law, and familiar with Texas statute law, his confidence was justified.

What I remember most clearly was his common sense, and his sense of justice, and what was, if possible, even more admirable, his readiness to admit his own error when he became convinced

he had erred, of all traits in a judge the most admirable. None but big men possess it.

I heard the late Chas. L. Cleveland ask to take up the motion for a new trial in a case tried before him without jury. He said: "You need not discuss the motion, Judge. The court erred, and erred most egregiously. The motion is granted."

When quite a young man my older partner presented a motion for a new trial in a case tried before a jury. Judge McCormick said: "I have, for some reason, an impression that justice has not been done in this case. If plaintiffs are entitled to take half of the defendant's home, they can prove their case again. It may be that evidence can be discovered which will show they ought not to take it."

Before the court met again written and irrefragible evidence was discovered, which, when shown to plaintiff's counsel, who was a gentleman, he dismissed the action.

The keen sense of justice of an honest judge saved for the defendant the fruits of years of honest toil.

A smaller, narrower man of this kind that subscribes to the doctrine of jury infallibility would have said: "The jury are the judges of the facts, and I have no authority to invade their province. The motion is overruled."

No man believes more strongly in jury trials than I do, but I do not believe in making a fetich of them.

Twelve jurors who have heard conflicting testimony for days, and sometimes for weeks, and been argued at by lawyers, each side contending that a verdict for the other side would be an act of gross injustice, are just as apt to go off at a wrong tangent and do a foolish thing as is any one of the individual twelve units. They are by no means immune against error, but often err egregiously, as Judge McCormick said he did.

The plaintiff in a slander case once began to introduce evidence to prove the utterance of the slanderous language. Judge McCormick says: "Why do you take the time to prove your allegations? The defendant plainly admits using the language." I had not at the time had much experience in the practice, but I had drawn the answer, and I said: "Your honor, plaintiff cannot use our admissions as a weapon to destroy the effect of our general denial." He said: "I never heard of a case where you must prove what a man admits, but it is now the noon hour, and when court opens again you may be able to produce authorities."

I knew I could, because I drew the answer with the authority before me: Fowler vs. Davenport, 21 Texas.

When I presented it he said: "You are right, and I am wrong. Go ahead, gentlemen, and prove your case for the plaintiff."

I do not know whether many judges felt as I did, that they

had rather try a whole docket than to hear one sharply contested motion for a new trial, but I so felt.

The action of courts on motions for new trials has been the cause of more harmful prolongation of cases than has any other action exercised by courts, and more injustice has been done by granting than by refusing new trials.

This is true, because if a new trial is refused, the way of correction is open and easy, but if it is granted the other side is helpless. Such a condition of law is iniquitously unjust.

It has happened times without number that capable lawyers have, after most careful preparation, brought actions, and recovered just verdicts, with the result that because the judge has conceived the idea that he has probably erred in giving, or refusing charges, or in admitting or excluding evidence, he destroys with one stroke of his pen the work of months,—perhaps of years, and often the loss is irretrievable.

No judge, though he be a Mansfield or a Marshall, can know as much about a case by hearing it tried as a capable lawyer knows who has studied it from every angle, and collected authorities on every point, and no judge can have any more interest in a case being tried correctly than has the man who brought it.

Many an able lawyer has won a victory he ought to have won, and been willing to risk his case on the law in the appellate courts, but was denied the right by the trial court to have it carried up; yet a judge is just as apt to err in determining whether he erred, as he is when he originally acted.

If the man against whom the motion is granted, had any possible way of relief in Texas, there would not be so much ground for complaint, but he is absolutely as helpless as if his hands were tied while firebugs set fire to his home.

Of course the mere intimation, much less contention, that there should be in Texas the right of appeal from motions granting a new trial just as there is from the refusal of one, will be received in some quarters as rank heresy.

The adage of the mossback is, "what has always been must always be, and what has never been must never be," and such a principle of action is absolutely at war with any progress in jurisprudence.

All wisdom did not die with "the fathers," and because they did not provide for appeals from orders granting new trials, is no reason why such a statute would not be wise, and promote the hastening of final determination of litigation.

The "fathers" did not allow any man in any case to testify in his own behalf, nor did they allow any man, however unjustly convicted, to go at large on bail pending appeal, but a more enlightened policy now prevails by statutory provision.

All that is necessary is a simple statute providing, in effect,

that appeals from judgments granting new trials may be taken, and when taken shall be prosecuted and conducted in like manner as is now provided in cases of other appeals. The statutes of Texas will be inexcusably defective until they contain such a provision.

Such is the law in Missouri. Within the recent past more than once it has been availed of in that State,—indeed it is almost so often used as are appeals from orders overruling new trials.

In the last case I read from that State a woman recovered upon an insurance policy on the life of her husband, a verdict for \$5,000.00. The court was of the opinion that, under the law, the facts being practically undisputed, plaintiff had not the legal right to recover, and he therefore set the verdict aside.

Had the woman been unfortunate enough to have been compelled to sue in Texas, she would have had no road open to her to obtain relief, but would have been obliged to have waited and tried her case again, and run the risk of having another verdict set aside.

In Missouri she appealed and the appellate court set aside the judgment, granting a new trial and re-established the verdict,—a sensible, practical, just way to proceed, and a way that should be provided in Texas.

If the attorney for any litigant is willing to back the verdict he has recovered to the extent of the costs of an appeal from an order granting a new trial, he ought to have the right to do so.

I once tried a case before my old friend, Judge L. B. Hightower, Sr., in Liberty County.

I represented the Western Union Telegraph Company. The argument closed late at night.

I told the Judge that if he would allow the case to go over till morning I would write him a perfectly fair charge. He assented, and next morning used the charge, which was just what I would have given had I been in his place. On our way back to the hotel the night before he said to me: "Norman, you made a crackcr-jack speech, but it will do you no good. No corporation ever escapes from this bunch over here."

When the jury came in I was at the far end of the court room. The verdict was for defendant,—a result almost without precedent in that court.

The Judge was so astounded that he called to me across the court room: "Norman, does that suit you?" I, of course, said it did.

A motion for a new trial was a waste of paper before him, and none was filed.

He strongly believed in twelve *bonos et legales homines*, and he was right.

Some verdicts are, of course, outrageous, but upon the whole

juries are right on facts far oftener than courts are on the law. The reports will abundantly prove the truth of this statement.

Their stupidity is sometimes irritating. After a three days' boundary trial before me, in which, as is usual in such cases, there had been a swearing duel between surveyors, the jury came in, headed by a fine-looking man of apparent intelligence, who said: "We want to ask one question. We want to know where the original surveyor put the line between the two tracts of land." I said: "If the parties knew that you wouldn't be here. That is just what you were sent out to determine."

If the richest and most influential man in his (Judge Hightower's) district was a party to a case tried before him without a jury, and that man was shown to have been guilty of, or a party to anything fraudulent or "crooked," he would excoriate him in burning words in delivering his oral conclusions upon the facts.

He had no fear of any man's influence, and he loathed dishonesty with unspeakable bitterness and contempt, and was not afraid to say so. Honesty, courage, impartiality, and legal ability, made him a Judge before whom every man could appear with confidence that his cause would be ably and impartially tried.

He was a better Judge asleep than some I have seen were when awake.

On one occasion a valued friend of mine, Finney McDonald, a good lawyer of Montgomery County, and I were trying a telegraph case. In the course of the trial he objected to an interrogatory and to the answer: I said: "That's perfectly admissible," but he was not convinced as the answer contained in fact the core of my defense, and as a verdict for the defendant in Montgomery County was almost as unusual as one in Liberty County, I was as anxious to get the answer in as he was to keep it out.

It was after dinner, and the day was cold, and the Judge sat by the stove and had gone sound to sleep. I insisted that he be not disturbed, but my insistence was unavailing, so I gently woke him up. He said: "Well, what's the trouble?" I said: "I have asked the following question, which you can read. It and the answer are both objected to." He read both and instantly said, "objection overruled," and dropped his head back and in ten seconds was asleep again.

When the argument was over he gave a perfectly unobjectionable charge, and in about three and a half hours the jury returned a verdict for defendant. My friend on the other side was outraged, and was sure the inadmissible (as he thought) evidence was responsible for the result. So far as I knew, or know yet, the identical question had been passed on but once in Texas, and that was in a telegraph case, reference to which I agreed to send

my disappointed opponent. I did so immediately on my return, and he did not even file a motion for a new trial.

Another Judge, whom I assume was awake, had excluded evidence absolutely identical and the judgment was reversed. While writing this, I examined the case which I sent the losing side, as just stated.

My longest remembered memory of the bench is, if I may perpetrate an "Irish Bull," when I never reached it. The day I was twenty-six and one-half years old I was nominated for District Judge of the Galveston Court, but a combination of independent Democrats and Republicans defeated several Democratic candidates, myself among the number, by small majorities.

That against me was 108, while some of my colleagues got through by less than one-tenth of that number of votes.

Judge Stewart was elected by perfectly legitimate politics, and held the position for about thirty years.

Judge Andrew P. McCormick defeated Judge Chas. L. Cleveland for State Senator.

Judge Stewart was a good lawyer, and made a capable judge, and was a kindly, amiable man of unquestioned integrity. He practiced law before the Civil War and stuck to his country habits, and put on no frills,—indeed not as many as he should have done.

On one occasion the head of the Galveston Bar, who believed in observance of judicial appearance and propriety, escorted a New York lawyer to the court house to call on Judge Stewart. The New Yorker was accustomed to judges in gowns and seated apart far from humbler men, the very embodiment of judicial dignity. It was a hot day and Judge Stewart was trying a dull case. He had his coat off, both feet hoisted on the judge's stand, and was leaning far back smoking a cob pipe. The local lawyer, knowing how his guest felt, was deeply mortified, and it can be assumed the visitor was horrified, but he never saw a judge who had a cleaner official record than the Texas judge who so shocked his sense of judicial propriety.

The incident reminds me of one very similar which was related to me by a friend in Houston, one of the ablest lawyers at the bar.

He once lived in the country, and an old country friend had called to see him, who was uneducated, roughly dressed, unfamiliar with city ways, brawny and unshaven, but was a manly, honest, plain-spoken old hero. While the two were discussing old times there came in a New York lawyer who was associated with the Houston lawyer in a case. He was dressed in the latest product of the sartorial art. The Houston friend said: "Mr. Winslow, allow me to present you to my old friend (giving his name), who was a brave soldier in war, and is a worthy and honored citizen in peace." The New Yorker acknowledged the

introduction with gracious courtesy, and the introduction was hardly over before the old "Confed" said: "Cap'n (meaning his Houston friend), talkin' 'bout de war, when I got home from Virginny I didn't have a dollar. Thar wuz a nigger on my place what had eighty dollars, and he 'lowed as how he wanted to play poker. We clum up in de fodder lof' and I won ever dollar of dat nigger's money." The Captain, desiring to smooth over the contretemps, said, in his courtly, suave way: "Now you see, Mr. Winslow, the results of war. My friend romanced so much in camp that everything he thinks about he believes to be true, and he has imagined a story on himself." The old "Confed" didn't intend to have his veracity impeached, so he said: "You're wrong, Cap'n. Hit ain't no story. Hit's the God's truth. I sho' did skin dat nigger outen eighty dollars." The feelings of the "Cap'n" can be imagined, but not described.

The old "Confed" said to me one day: "Judge, kin I git offen the jury. I don't want to send nobody to the penitentiary or hang 'em, and I ain't gwine to do it." "Oh, yes, I reckon I would, too, if the law and the *evidence* said do it. I'd do what I swore." He stopped for a moment, and then added with vehement earnestness: "Unless he belonged to Hood's Brigade. I'll swear I wouldn't send no Hood Brigade man to pen or the gallows. They done suffered enough, God knows."

A tragedy crossed the life of that humble, sturdy old hero, and he was brought before me charged with homicide. He called a man to account for language used concerning a member of his family. A difficulty arose, and he killed the man. It was distressing, and grieved me deeply, as I knew and esteemed both men.

When the indictment was returned I told the sheriff to withhold execution of the warrant of arrest till the second day. I knew that the Reunion of Hood's Texas Brigade was to be held next day ten miles away, and the stalwart old defendant would want to mingle with his old comrades, and he was entitled to bail and could give a hundred thousand dollar bond, if necessary.

The next day he did not wait to be arrested, but came in and gave bail. He was, of course, acquitted. He was amusing in his sincerity and simplicity.

Misfortune fell hard upon the old fellow, but he bore it like the man that he was. I trust he rests in a peaceful tent on the eternal camping ground "beyond the river."

#### HON. GEORGE MASON—A GREAT LAWYER.

A case was tried many years ago in Galveston in which the late Colonel George Mason of that city played a most surprising part. The facts were related to me by Colonel D. A. Nunn of Crockett, as he and I rode over the sand hills of Leon County one hot afternoon.

When memorial resolutions were presented, years afterwards, in honor of Colonel Mason at a meeting of the State Bar Association I summarized the facts in a brief address, and Colonel Nunn, who was present, told me afterwards he had forgotten he had ever related the incident to me, but that I had repeated the facts almost verbatim.

Colonel Nunn had spent two years in preparation of the case, and it took three weeks to try it. Single depositions cost as much as \$50.

As I recall, Asa H. Willie and Charles L. Cleveland represented the defense. That it was well represented all who read this will know. When the case was to be argued one morning, Colonel Nunn went the night before to Colonel Mason's house, to plan the order of presentation of the mass of testimony.

To his astonishment and alarm Colonel Mason seemed to have no clear conception of a single issue, and scarcely talked coherently about the case. Colonel Nunn left almost in despair. Next morning he opened for the plaintiff, and counsel for the defense followed with arguments such as might have been expected of such lawyers. Colonel Mason had not proceeded far in his closing speech before the accuracy of some date, or amount, or record, referred to by him was challenged.

There had been books of account, accounts of sales, drafts, stated accounts, and almost every conceivable kind of written evidence reaching back for years, and he had not made a single memorandum, or at least had none in hand.

He was a large, stately, ponderous kind of a man, deliberate of speech, and slow in movement. He said: "I refer to the record." The record sustained him, and every interruption met the same reply, and the same result followed. Not once was he in error. For *seven* hours he stood before the jury without the scratch of a pen, or a note, or word, or phrase set down as a reminder, depending on nothing but his great intellect and marvelous memory.

He secured a verdict for *every dollar*—forty thousand or more, that he sued for.

There is not one man in ten thousand capable of such an achievement.

Colonel Mason evidently was in agreement with Judge Roberts, who said: "Never use a pencil, or paper, or make a note when trying a case. Depend wholly on your memory."

There is much sound philosophy in what the old judge said. The memory, like any other faculty, becomes weakened and often atrophied, if not cultivated and exercised. If we forsake reliance upon it and depend on writing, it will cease to function in a large measure.

George Mason was a son of the Mason who figured in the

Mason-Slidell incident during the Civil War, and grandson of George Mason, who wrote the famous resolutions of 1798, which have furnished so many politicians a theme for argument, or at least for declamation, and was a great lawyer.

The collection of the judgment was almost as remarkable an achievement as its recovery. As I recall, Colonel Nunn told me it took several years, during which he was once shot at by the defendant, but his zeal knew no abatement, his industry was unflagging, his persistency phenomenal, his courage dauntless. He conceived the idea that what purported to be a dresser or a bureau in the defendant's house was in fact an iron safe. No constabulary officer could, of course, break into the house, but Colonel Nunn succeeded in a perfectly legitimate way in making a levy on the dresser (?) and was rewarded to the extent of about \$30,000.

Colonel Nunn appeared before me the first hour after I took my seat as Judge of the Twelfth District, in some very important matters, and my ruling very much offended him,—so much so that for years he refused to exchange the common courtesies of social life with me, and declared, I was told, that I was a “kid judge who developed in a day into a Jeffreys,” but he was, while a man of strong feeling, at heart a just man. Several years rolled around and I found myself in his home town sitting as Judge in a case in which he took a leading part. He had not exchanged even the customary salutations with me, and tried the case, and made all objections as if he had a personal grievance against me, and the attorneys on the other side.

When it had been submitted to the jury he approached me and said: “Judge, come with me and I will drive you over our little town and around it.” I, of course, cheerfully accepted his invitation, and after a delightful drive he carried me to his elegant and hospitable home, where I met his queenly and noble wife,—a sister of Hon. Frank A. Williams, and renewed my acquaintance with his charming daughter, whom I had known before.

It is a delightful memory associated with a big man physically and professionally, and who scorned every art of the “shyster.”

When a man who had employed him in a case was asked by him what he could prove, the man replied by asking him what was *necessary* to be done. He said, as he drew up to his six feet five, “It is necessary for you to go through that door, and go quick, or I will kick you through.” The client went.

#### JURIES.

Those citizens who are drawn to serve as jurors serve their country at a greater sacrifice,—at least most of them do,—and get less thanks for their service than do any other public servants,—for such they are.

I believe that a very large proportion of jurors are honest and try to do their duty, yet they are often interrogated on their *voir dire* as if counsel think they are crooks. Their place of birth, their age, their family relations, their residence, their business, the extent of their acquaintance, and every other element, relation and incident in their lives, that ingenuity can conjure up as a basis for a question is probed into, and half of the questions are an inexcusable waste of words, and time, and the people's money.

The man who is questioned as to fitness to serve on a jury is pitched from counsel to counsel as he were the ball in a game of battle-dore and shuttlecock, and he is led into the realms of metaphysics, psychology, and mental philosophy, and supposition, and conjecture, and probability until, unless he is a man of unusual intelligence, he does not know his own mind. I have thought sometimes that many men I have heard questioned on their *voir dire* would have been justified in returning the kind of answer that a man who was undergoing a civil service examination gave when asked, "How near does the sun ever get to the earth?" The answer was, "I don't know, but not near enough to interfere with my doing good work for the government."

If some venireman were to say in response to such questions as I have heard put to men who were being examined as a prospective or possible juror, that whenever he might have been born, or wherever he might live, or whatever his business might be, he would render a fair verdict to the best of his ability, I would not, were I judge, either fine or reprimand him.

I have known it to take from an hour to an hour and a half to select twelve men to try a civil case, when no talesmen were necessary, and when just as fair a jury could have been obtained in fifteen minutes.

Such a proceeding is nothing more or less than a studied and strenuous effort on the part of each side, to see that a jury is obtained that will not, by any possibility, give the other side a verdict.

Every lawyer knows that it is no unusual thing for it to take several days to get a jury in a murder case, but I have not the patience to write on that theme.

The examination of veniremen is, in such cases, carried to extremes which reflect on the court that permits such trifling with the law, justice, and common sense.

If I were on the bench in the trial of a criminal case, and a venireman were to answer in the negative the statutory questions, which when answered in the affirmative make his exclusion from the jury mandatory, and were to say he could, regardless of what he had read or heard, and of what opinions had thereby formed, render a fair and impartial verdict, I would rule him a

qualified juror and stop all further questions. If any court saw fit to hold such action erroneous it could take the responsibility. If there is any precedent that makes such action erroneous, the sooner it is overruled, the better it will be for the good name of the courts, and for the people.

If the examination of veniremen on their *voir dire* were permitted unrestrained to be carried to such limits as the lawyers who make a specialty of criminal practice would carry it, if not restrained, the result would be that every jury in a criminal case would be composed of either fools or knaves, or a mixture of the two.

A few years ago a court opened on the Canadian side of the boundary line on the same Monday that one opened on the United States side. Both had an important homicide case to try.

At the end of the week the Canadian court had tried the homicide case, and a number of others, and adjourned for the term, while in the court on the United States side the jury in the homicide case had not been completed.

Except when the character of the panel is unusually poor it would be just as safe, and just as promotive of justice, to draw twelve names out of twenty-four, shaken up in a hat, if an honest verdict is really desired.

I went on one occasion into a court presided over Hon. E. R. Sinks who for 23 years so efficiently and acceptably filled the position of judge of the Brenham-Bastrop district. I was representing the Western Union Telegraph Company and wanted to try, as I always did. In ten years service for that company I applied for a continuance but twice, and was forced to do so then by delay on the part of the other side,—yet I secured nearly 60 per cent of verdicts “for defendant.”

On the occasion referred to Judge Sinks said: “Judge, I have no jury except those twelve men who have just been out on a murder case.” I said: “I never saw one of them before in my life, but if they will give me a fair trial I will take them.”

The local counsel could not well afford to repudiate twelve men who had been sitting in judgment on the life or liberty of a fellow-man, so they went to trial.

In three hours a fair verdict was rendered, which I promptly paid.

I defended the same character of case in Kerr County which had been brought there, though the plaintiff lived in Bexar County, because Kerr County had a large German population and the son-in-law of the plaintiff was a merchant in Kerrville.

I was never there before in my life, and knew but one man in the county, and knew him very slightly. All the panel were the same to me, and I do not recall striking a single name. The verdict was for the defendant.

The average jury will do right if the law is given it in such form by the court as that it can understand it.

There is too much abstract law put in charges, both civil and criminal, and they are too long. Take, for example, a charge on assault with intent to murder. The average judge begins and defines murder, and before the degrees were abolished by statute, defined murder in both degrees, and then defined manslaughter, and then copied the statutory causes which will reduce homicide to manslaughter, and then went back and told the jury that if they believed the act of the defendant had he killed the deceased, would have been murder in either degree then his act was assault with intent to murder, but if they believed his act would have been manslaughter, then the assaulted party not having been killed, the act was aggravated assault and battery.

When the charge is completed and read, the jury are as little enlightened as if it had not been given it, and the charge is from three to six feet long.

The court should tell them that if a defendant shoots at or cuts another wilfully and intentionally, and when he is in a state of mind sufficiently cool to contemplate what he is doing, then he has committed an assault on malice, and if he intended to kill the party assaulted the act was assault with intent to murder. That is all the law necessary unless the evidence requires a charge on a lesser grade of assault. If it does, fit the charge to the facts without copying the statutory grounds, which as Judge Clark said in *Guffee vs. The State* are purely illustrative, not exclusive.

Some years ago I was sitting as special judge in a large number of cases, in which the local judge was disqualified.

A criminal case was called in which he was not disqualified. It was for assault with intent to murder. I sat at the counsel table and wrote a charge, while he wrote one on the bench. I charged on aggravated assault and battery. He did not. Both charges were written with a pen. His covered eight pages,—mine covered two

I handed him mine to examine. He looked at it, and turned it over and upside down before beginning to read, as if it were a rare curiosity. At last he said: "I don't see why this won't do. I'll give it," and he did. The defendant was convicted and no assault was made on the charge.

Referring again to the question of jurors and juries, it is to say that which is as trite as it is true, that there is no more important duty that can devolve upon any citizen, than to determine under oath disputed questions of fact upon which depend not only valuable property rights, but most often the life or liberty of his fellow man. No duty so often involves a loss of time and money as does jury duty, and what is even a greater burden, jurors are often obliged in obedience to their oaths to condemn their fellow

man to humiliation, disgrace, and suffering, and not infrequently to death, and they should be presumed to be decent, honest citizens, as the large majority of them are, and be treated accordingly by court and counsel, and the judge who is quick to fine one or more of them for being a few minutes late, or for even not coming at all, is very apt to exercise his power unjustly.

I learned a lesson on the subject of fines once that I have never forgotten. The incident had escaped my memory for the time being when I wrote some pages back that I had never entered but one fine in eighteen years' service.

A number of very important criminal cases were ready for trial, in all of which one humble citizen, a peddler, was an indispensable State's witness. He lived only three or four miles from town, and had been summoned, but was not present, and had sent on excuse.

His absence entailed great expense on the State, and I entered a fine against him *nisi*.

He never appeared, because to prevent his appearance some of the gang to which the defendants belonged had murdered him and buried him in a sand bed near his humble home.

I later sentenced one, who took no part in the actual murder, but was, in a statutory sense, guilty, to prison, and he served his sentence.

Juries are more blamed than praised, and more blamed than they should be, and I am glad to set down a few words in their defense, and pay them a tribute that is their due.

#### INSTANCES OF RARE PROFESSIONAL SKILL.

Any lawyer should be able to win a case where he has available plenty of testimony, and the law applicable to it will sustain a recovery, but none but a lawyer of the first order of ability can take a few disconnected, and so to speak, incoherent facts, and build up honestly a case that will support recovery.

Judge Waltus H. Gill came before me on one occasion with, in effect, a broken lantern and a dead man as the entire basis for recovery. The rest of the evidence was a matter of deduction, and construction, and analysis of facts, and the connecting of the handling of trains in a yard with the dead man and the lantern. Not a single witness had seen the man fall, or had seen him killed.

The opposing counsel were as able as there are in Texas, but Judge Gill built up a case that stood assault before the jury and all the courts.

The achievement stands out in my memory as the most skillful piece of professional work I ever saw done.

I was instrumental on one occasion in placing in the hands of my friend and neighbor, John W. Parker, of Houston, a personal

injury action which was handled in such a way as to be on a par with the case tried by Judge Gill, and the cases were very similar, a dead man and a lantern being the foundation of both.

Mr. Parker had not a single witness when he announced ready, but depended on getting testimony out of the large number of witnesses the defendant railroad had present. It was a bold, but apparently hopeless venture, but he recovered and collected a large verdict.

To win such professional victories in open honest legal battle requires a combination of sound judgment, legal ability, and consummate skill as a trial lawyer.

I feel that it is worth the space that it will take to show how the case last referred to strikingly confirmed the truth of the scriptural adage, "Cast thy bread upon the waters for thou shalt find it after many days." Eccl. 11-1.

Years before the case was brought, an humble, uneducated man, not more than an ordinarily skillful carpenter, contracted to do certain work for me in enlarging the capacity of my very humble cottage in which I then lived.

What it should cost me was definitely agreed on. When the job was finished it had cost sixty per cent more than the agreed price. He frankly admitted he had made a mistake, and I knew that legally I owed him nothing. I reasoned, however, that he was a poor man, working at the then rate of \$2.00 a day, and while what I would have to pay was then a very material sum to me, I concluded I was better able to do without than he was, and I paid him in full, for which he was very grateful.

Years rolled by,—the old carpenter died, but not before his son had married and brought his wife to the family home. The son was the victim of the railroad accident. When the widow in her weeds entered my office to request my assistance to get a settlement out of the railroad, she opened the conversation by saying: "I came to you because my father-in-law often told me of your kindness to him."

The railroad rejected her claim, and as I was on the bench at the time I put the matter in the hands of my son, and he associated Mr. Parker with him, and the result was as already stated. The bread I cast on the waters, though it did not find me, found one that is more than "me" in my sight.

Of course, the case was not tried in my court, because I do not recall ever having tried any kind of a case in which my son was interested, except where all my action was purely formal or pursuant to agreement of all those interested in the proceeding. I declined to appoint him receiver of a large estate, though the parties most in interest specially requested his appointment and had a bond for \$50,000 ready.

I required them to go to another judge, who made the appointment.

“Mankind is unco weak  
And little to be trusted.  
If self the wavering balance shake,  
'Tis rarely right adjusted.”

With me a son is more than “self.”

#### THE COURT'S RULINGS, AND ATTORNEYS.

No judge who has served for any considerable length of time on the bench can have failed to observe how differently different lawyers take the rulings of the court, especially in the matter of the admission or rejection of evidence, or that of action on motion for new trials.

Some lawyers manifest neither surprise or displeasure, or act as if they felt they had been aggrieved, but courteously reserve their exceptions, and proceed with the trial, or if the ruling makes further trial unnecessary or impossible, prepare for appeal. They recognize that the judge is liable to err, and that probably he may have ruled correctly, and are just enough to accord to him the purpose to do right.

Other attorneys act as if they felt that the judge had intentionally done them injustice, and in most unpleasant ways manifest their displeasure, and cherish the judicial action as a personal grievance.

An impartial and competent bystander, who knew neither of two men each representing his respective class, who had witnessed such an exhibition, would assign each lawyer to his class, the first to the class of “lawyers”—the second to the class of mere “attorneys” who hold licenses, but who would not be a lawyer if he had a ream of licenses.

I have known capable, worthy lawyers who honestly believed judges ruled against them for personal reasons, and to gratify some personal grudge or dislike. I believe they are grossly mistaken.

I recall a case in which the Supreme Court said I erred almost inexcusably, yet Judge James A. Baker took his exceptions just as suavely and courteously as if I had directed a verdict in his favor.

In another case tried by him, in which he ultimately lost, he bore himself in the same way.

In the latter case I held that the fact that though the plaintiff was for months disabled by injuries received in a railroad wreck, his employers paid him his salary, could not be proved to diminish the damages he suffered, as such payment was a matter of

grace, with which the railroad had no concern. The Supreme Court approved the holdings.

Most strange to say, the *identical* question nearly thirty years later came before me. I held the same way. Writ of error was granted on that point alone, as I recall. The Supreme Court held the case for many months, and finally affirmed it, and cited the first case, which I had tried, as it appeared in the reports to support its holding.

The two cases are the only two, so far as I know, in which the question ever arose, and I know of no similar instance.

In ninety-nine cases out of a hundred the lawyer who attributes a personal motive to the judge is wrong. The duties of a judge are so important, and his trust so solemn, that it becomes invested with sanctity, and that man is as rare, as he is unworthy, who will prostitute it to personal ends.

Many judges are not learned in the law, but a dishonest one is most unusual.

I have lost repeatedly,—indeed in every case but one—tried before my friend, Henry J. Dannenbaum, one of my successors in the Sixty-first District Court, and while I *believe* he erred, yet I *know* he *tried* to give me a fair trial, because there was no more capable or upright judge on the bench in Texas.

#### TWO LAWYERS WHO KNEW THE LAW.

It is sometimes the case that civil actions in which no appeal to the emotions can be made, make a lasting impression on the mind of a judge.

Some twelve or fifteen years ago a lawyer of high personal and professional standing who is now dead, brought a suit for injunction before me, and it was evident that his petition had been prepared with great care, and that he believed in his case.

Both parties to the action were corporations, and as I recall the case involved the question of the distinction between the "police power" (a most elastic term) and the right of "eminent domain."

Hon. H. M. Garwood appeared in person for the firm of Baker, Botts, Parker & Garwood, and demurred to the petition in such way as to present a question decisive of the case.

He had the right, of course, to open the argument on his demurrer, and he supported his contention by an argument of such luminous clearness, and such persuasive reasoning, which though brief, so thoroughly convinced the opposing counsel that he had no right to relief by the process invoked, that he dismissed his case, and never again filed it.

Both men displayed legal ability,—the one by his masterly argument,—the other by his demonstrated capacity to see the truth and force of the argument.

If a mere "attorney," as contradistinguished from a "lawyer," had represented the plaintiff, he would have beaten the air, and vexed the judicial ear for hours, and have appealed, and would never have discovered that he had no case to begin with, till he received the bill of costs in the Supreme Court.

I heard through the medium of a friend a few years ago, that the Chief Justice of the Supreme Court of the United States was heard to say to a friend, with whom he was walking home in the afternoon, of one argument day, that "the argument made before us today by Mr. Garwood of Texas was the best argument I have heard since I have been a member of the Supreme Court." I am prepared to believe that statement was made.

### JUDICIAL ABILITY AND WIT.

On one occasion that most efficient lawyer, able legislator, and admirable citizen, Walter Gresham, whose sudden death in the very recent past so shocked and grieved a host of friends, was replying to an argument made in support of an attack on certain of his pleading.

Hon. Andrew P. McCormick was judge of the court. He said: "I have very grave doubt of the sufficiency of your pleading to authorize the admission of the evidence you purpose to offer."

Mr. Gresham said: "My pleading is very broad, and I think covers the point." The judge, with a gracious smile and a characteristic twinkle of his eye, said: "Unfortunately, when things get too broad they get 'too thin' and the rule applies to pleadings."

Mr. Gresham caught instantly the meaning of the judicial *bon mot* and took leave to amend.

I was a participant in an amusing incident in the Supreme Court at Galveston on one occasion when Judge Moore was on the bench.

There were two cases on the docket involving the same question of law, and the question had never been before the court.

I was helping, or *trying* to help an unlicensed amateur real estate lawyer, who had furnished me an opinion he had dug up, which I found was destructive of his case, because it had been expressly disapproved on appeal to the next highest court in the succession of courts which function in New York, so I was at sea.

That admirable gentleman, Major W. B. Botts, then of the firm of Botts & Baker, was present. As I recollect he rarely appeared in any court, though he was a most excellent lawyer. The discussion in some way became very informal, and Judge Moore said: "Major Botts, what do you think of the question?" Major Botts replied: "To be frank with your honor, I am not prepared to express an opinion." Judge Moore then said to me: "What do you think about it, Mr. Kittrell?" I was more or less a beginner in the law, and had not much idea of any kind about the matter,

so I said: "I can only say, as my older and abler brother has done, that I do not know what to say."

Judge Moore, with a hearty laugh, said: "Counsel and court seem to be in the same fix. We do not know either."

They found out, however, later, and made the question luminously clear. It was the same question which was later determined in 53 Texas, 162, and as I recollect, the decision in whatever case it was first made, was an expensive one to the railroad company, but the justice of the holding cannot be reasonably questioned.

#### THE CLOSE OF MY JUDICIAL SERVICE IN HOUSTON.

There was one incident, or event, connected with my service on the bench in Houston,—the memory of which will abide with me till my heart throbs for the last time.

More than a year before my last term expired, I announced my purpose not to be a candidate for re-election.

Ten years to a day from the time I qualified, I administered the oath of office to my worthy successor,—Hon. John A. Read, and extended him my congratulations, and inducted him into the judge's seat. When I had done so one of the oldest and most distinguished members of the bar rose and, addressing me, said: "I desire to present you, sir, on behalf of the bar of Houston, a gift, which you will please consider as constructively present. It is a desk rug, chairs, and other appointments necessary to completely furnish the law office to which you are about to retire, and which has been installed in that office."

I had no knowledge or intimation of such kindly purpose, and did not even know where the office was, as my son had selected it.

I found attached to the desk in a permanent way a plate beautifully engraved, to the effect that the gift had been presented to me by the bar of Houston in token of its appreciation of ten years' service as Judge of the Sixty-first District.

As soon as my successor had taken his seat he announced that his physician imperatively forbade his serving on the bench until the middle of the ensuing October,—a period of about eight months.

A bar meeting was called at once to elect a special judge, at which, as I recall, I was not present. One hundred and twenty-four out of one hundred and twenty-five votes were cast for me over the earnest protest of my son.

I told him, however, that under such circumstances I did not feel that I had the right to refuse such a call to service, and by repeated elections every sixty days I held until my successor was able to take the bench.

Its arduous labors proved too much for his strength and he sank to an early death, deeply and deservedly mourned by many friends.

## JUSTICES OF THE PEACE.

Nearly every lawyer and judge can remember some incident concerning some Justice of the Peace which always brings a smile.

It may be that some of the tales told of those subordinate judicial functionaries are apocryphal, but I have personal knowledge of some incidents which are calculated both to cause amusement and to provoke incredulity.

I had occasion once to pass on the admissibility of an entry on the docket of a Justice of the Peace as evidence, and when the question had been passed on, I continued to glance through the docket.

I came upon an entry made in due and solemn form, which revealed that the Justice and the County Attorney had engaged in a fight in the court room, and the Justice determined that the majesty of the law should not be violated, without at least an appearance of vindication, proceeded in due and regular (?) form to swear out a complaint against himself, swear to it before himself, plead guilty before himself, and assess a fine of ten dollars against himself.

His sincerity might not have been, indeed could not have been, questioned, had he stopped there, but ten days later he entered an order reciting that a motion for a new trial had been filed, and after due consideration the court was of the opinion that the law was with the defendant; therefore, the judgment before rendered was ordered set aside and a new trial granted.

The affiant, the defendant, and the judge were combined in the person of his honor—the Justice of the Peace.

I venture to say that the record he made stands an isolation of uniqueness, and without precedent in judicial annals, even in the records of Justices of the Peace.

Some years before the Judge of the District Court while on his way across the country, met two men on horseback, and one was chained to the neck of his horse. The Judge asked the officer where the man was being taken. The reply was to the penitentiary from ——— County. The Judge says: "Why, court doesn't open there till tomorrow." The officer said quickly, "But ——— (naming the Justice of the Peace referred to above), sent this man." The Judge directed the prisoner to be sent back, and in due form he was sentenced in the District Court.

Many years later, when I was Judge in the same district, I asked the Justice of the Peace if the story was true. He said: "Why the fellow plead guilty and I looked at the statute and it said the penalty was two years in the penitentiary, and I didn't see any use of bothering the District Court with him, so I sent him on to Huntsville."

There is a familiar adage that "Truth is stranger than fiction,"

and if any reader has any doubt about the truth of the adage, if he will look on page 56 of Ex-Governor Frank R. Lubbock's most interesting memoirs, he will have all doubt removed.

Whatever Frank R. Lubbock wrote down may be accepted as true. He said he was the foreman of one of two juries, both of which returned verdicts in murder cases in Houston about 1838 or 1839.

That counsel for the defendants said their execution would be judicial murder, but that the Judge, whose name he gives, overruled all motions and entered a decree that "the prisoners, in consequence of the insecurity of the jail, the extreme cold weather, and their uncomfortable situation," be hung on the Friday following, which was done, and the spot where they were executed is called "hangman's grove" till this day.

Such judicial solicitude for the bodily comfort of convicted defendants has rarely been manifested, but it may be safely assumed that the defendants would have preferred to have endured a few days of extreme cold, rather than take the chances of landing where many good people believe the mercury will be found in the other end of the thermometer.

I knew a very kindly old man when he was Justice of the Peace at nearly 80 years of age. Another old fellow was a great lawyer in the minor courts, and had one form of peroration for all his speeches to court or jury, which was reference to his age, and his early entrance into the profession of the law.

He appeared one day before the venerable Justice in defense of a negro charged with unlawful gaming. There was no jury, and the lawyer concluded a most earnest appeal in these words: "I am sixty-four year old and have been a practicing of law for 43 year, and I never saw a more innocent man in my life than this defendant."

In a moment the old Justice said: "I see your 64 and go you ten better, and he's guilty as a dog, and you know it. Ten dollars."

The same Justice of the Peace, who sent a man to the penitentiary, heard a civil case without a jury, and announced to the parties that after he had been to dinner, and attended a horse race set for 2 o'clock he would render judgment.

He seemed slow to act and plaintiff's counsel approached him about it. He said: "I thought that old gray could run, and I bet the defendant the judgment on the race. The old gray come out fifty feet behind and you lost." He kept his word, and entered judgment for the defendant.

An attorney who had been Chief Justice of his State went out before a Justice of the Peace one day to oblige an old friend. The initials of the Ex-Chief Justice were W. P. He argued strenuously the controlling point of law, and as he did so, counsel for defendant smiled a smile that plainly implied,—I have an author-

ity here that will overwhelm him. When the Ex-Chief Justice had closed his opening speech, the opposing counsel rose and said: "Now, your honor, I will show you how differently the gentleman talks now, from what he did when he was Chief Justice of the Supreme Court of this State.

"Here is an *identical* case, and let me read you his opinion, holding exactly to the contrary of which he has tried to make you believe is the law. When I have read it I shall say no more." He read the opinion, and sat down with a look of triumph on his face.

The Ex-Chief Justice picked up the book and opened it at the case and said: "Now, your honor, let's see who is trying to mislead the court. He has read you an opinion by a man of my name, but whose initials are C. J. You have known me thirty years and you know my initials are W. P. That's all I have to say." The old Justice said: "Yes, I see. You don't fool this court. Judgment for the plaintiff."

The opposing lawyer was too dumbfounded to object. That incident was related to me by a most intelligent daughter of the Ex-Chief Justice.

There is a thoroughly authenticated instance in Texas where counsel for a prisoner had to ride under whip and spur for fifty miles, more or less, to secure a writ of *habeas corpus* to prevent the hanging of the prisoner pursuant to a judgment of a Justice of the Peace.

#### JUDGE ROBERTS AND THE IRISH BARRISTER.

A most amusing incident occurred once during the session of the Supreme Court at Tyler, where Governor Roberts was presiding as Chief Justice.

That charming gentleman, Hon. Thomas B. Greenwood, Associate Justice of the Supreme Court of Texas, told me recently that he had heard his father, a distinguished lawyer whom I had the pleasure of knowing, often relate it.

There lived at Henderson, Rusk County, before and during the War of 1861-1865 a lawyer by the name of Martin Casey. His name unmistakably identified his Irish nationality.

I do not recall ever having seen him, but have been told he was a highly educated man, and from the number of times that his name appears in the earlier reports, must have enjoyed a good practice at the bar.

After Judge Roberts returned to the Supreme Bench, Mr. Casey went to Tyler to argue a case. He had not been in the Supreme Court for many years, and been but a short distance from home.

He felt it to be obligatory upon him to array himself in a garb suited for the occasion. Among his purchases of garments was a shirt. There were no fashions in shirts before the war, and no

white shirts, or very few, during the war, but a new fashioned shirt had appeared. It was of the kind generally worn now at *costume de rigueur* social affairs, or to speak, in plain language, worn with a swallow tail coat. It was called the "locust back" shirt.

The bosom was solid and stiff, and what may be called the placket or opening in the shirt was in the back. The Irish barrister had never seen a shirt open anywhere else than in the front, so he supposed the opening in that shirt was intended to go that way, so he put it on with the stiff, solid bosom behind, and his back looked like a blackboard.

He had not been careful as to measurement of the neck, so it was several sizes too large. He rose and began to address the court, and his Irish blood got up and he soon became vehement and gesticulated vigorously. His shirt responded by creeping up and rising toward the top of his head. He chewed tobacco and expectorated freely and most of the expectoration fell into the placket. After awhile his shirt rose so threateningly that the Chief Justice said: "Mr. Casey, Mr. Casey, I think your shirt's coming over your head,—over your head." The old Judge wanted to avoid an embarrassing situation. The threatened disaster served to enlighten the eloquent Irishman on the subject of the change of fashion in shirts.

#### HARDIN HART.

There was at one time a Judge in North Texas, whom I never saw, but have often heard of. He, at times, sat in the District Court at Dallas. He was a Republican, and was appointed Judge, either by E. J. Davis, or perhaps by military power. While, as I infer from what I have heard, he was not much of a lawyer, I have been told he was an honest, conscientious old man. I have no doubt that many now living knew Hardin Hart, for such was his name.

I assume that in his early days he indulged, as many men did, in the diversion of playing the great American game, as I have heard he often used on the bench the metaphors of the poker table.

A friend told me once that on one occasion when Judge Hart was on the bench in Dallas a well known lawyer, who I believe is still living, and who is called by his familiar friends "Bob," had a case he professed to be anxious to try. On the opposing side, as counsel, was another well-known lawyer, by the name, I think, of Sneed, who said he was not ready for trial, and asked "Bob" to consent to a continuance, but "Bob" refused. He then appealed to the court, but no statutory grounds were presented, and the court refused his continuance.

"Very well," said Mr. Sneed, "I will go to trial." Thereupon

"Bob" expressed a willingness that the case go over, but Mr. Sneed said, "No, you have been horsing for a trial, and you shall have it," and then "Bob" appealed to the Judge.

The old Judge said, "'Bob,' you bluffed, and bluffed, and *bluffed*, like you had a full hand, but when Sneed crope up behind you thar you sot behind two deuces. Now you jest go to trial."

In one of the large towns of the district, Sherman, I believe, two men were on trial for murder, committed for the purpose of robbery, and they secured about \$8,000.00.

The evidence was largely, if not wholly, circumstantial, and the State had put on all its testimony (which was very strong), except that of identifying the money. The cashier, or teller, of the bank had kept for some reason the serial number of the bills, paid to the murdered man, and a lot of money was captured on the persons of the defendants when they were arrested. The teller, or cashier, took the stand and read the numbers of the several bills, and the District Attorney would produce a corresponding bill from the bundle of captured money. It was deadly evidence, and when every bill had been identified, the old Judge, who had been watching the proceedings with undivided attention, drew a long sigh and said to the District Attorney: "Cowles, you already had two par, now you've got a full."

If any reader of this humble volume does not understand the metaphor used by the old Judge, he may be able to find some Texas lawyer who practiced in the early days in Texas, for in that day the knowledge of poker was part of the legal curriculum. I have heard it said that somewhere about 1846 a young man was being examined for admission to the bar, and he was asked only the following questions: "Can you shoot a six-shooter?" "Can you swim a horse across a swollen creek?" "Can you play poker?" He answered every question in the affirmative and the chairman of the examining committee said: "You are qualified for a lawyer in Texas and we will so report," and they did. That young man became, in after years, one of the ablest lawyers of the bar of Texas, and one of the few Texas law writers—Hon. John Sayles.

#### SAM HOUSTON GRANTS A PARDON.

A most amusing incident occurred about 1861 which, while it did not occur in a court room, had direct relation to court procedure.

Some time before the Civil War a woman was convicted of murder in Houston and given six years imprisonment in the penitentiary.

Hon. J. W. Henderson defended her. He was a dark, swarthy man and was called by many "Smoky Jim." He was, too, called "Governor" Henderson, because he was for awhile Governor of

Texas by constitutional succession in some way, but exactly how I do not now recall, and it is not necessary to the story to know.

He came to Austin to try to get Governor Houston to pardon Mrs. Monroe. He, no doubt, timed his visit to correspond with the meeting of the secession convention, which was in session upstairs, while Governor Houston's office was downstairs.

Sam Houston's prejudice (or perhaps a better word is "conviction") against secession was very strong, and his dislike of all secessionists intense.

The Governor received his old friend very cordially, and with the deliberation and clear enunciation which characterized his speech, said: "Well—Henderson—what—can—I—do—for—you—my—friend?"

Whereupon the following conversation occurred: "Governor, I want you to pardon Mrs. Monroe." "Why should I pardon her, Henderson?" "Oh, she's a woman and she's been there long enough." "Well, wasn't she fairly tried?" "Oh, yes, I've no complaint to make on that score." "What Judge tried her, Henderson?" "Peter W. Gray." "No better Judge in this State or out of it, Henderson." "I agree with you, Governor." "You defended her, Henderson?" "Yes, I represented her." "Then it goes without saying that she was well defended, Henderson." "I did the best I could." "And she was convicted, Henderson." "Yes, and given six years." "And she appealed, and the conviction was affirmed, Henderson? Am I right?" Henderson had, with consummate finesse led the old Governor up to the point where he meant to strike a winning blow, and he answered, "Yes, Governor, and it is fair to say that the opinion affirming the judgment was the ablest ever written by Judge Roberts."

In an instant the old Governor straightened up in his chair, and said with fervor and fire, "Roberts? Roberts? *Oran Milo Roberts*, that fellow who is presiding over that mob upstairs?" "The same, Governor."

"Then, Henderson, so help me God, I'll pardon the woman. No citizen, however humble or lowly, shall be deprived of life or liberty by the decree of any such as fellow as that," and he pardoned her forthwith. She lived in Houston for many years afterwards, and her name appears often in real estate transfers.

That incident had both its amusing and its serious side. It illustrates the ingenuity of a lawyer and his knowledge of human nature, but it also forcibly illustrates how high the tide of passion and political prejudice had risen in those stormy days.

Sam Houston and Oran M. Roberts have long since joined "the innumerable caravan that is moving on to the endless realms of shade," and all men know now, that they were patriots who loved their country, and strove for the right, as God gave them to see the right, and for their actions in those days both can answer

with a clear conscience in that day of final reckoning when "God will sift out the hearts of men before His judgment seat."

#### A UNIQUE GROUND FOR DELAY OF A TRIAL.

When I was on the bench in Trinity County, I at one term of the court finished all the important business about Monday of the third week, and announced that I should close the court about Tuesday.

There was a lawyer, a resident of the county, who had practiced at that bar for 40 years or more, and who, though nearly four-score years old, was marvelously preserved, and with all a practical joker, but possessed a great fund of shrewdness and common sense.

He urged me not to go home, saying he had a divorce case of great importance that for various reasons he could not try before Friday.

As I always held to the view, and do yet, that a judge is a hired man of the people, and should consider first the convenience of the attorneys who represent the people, rather than his own, I stayed.

The testimony revealed that the defendant was a rather comely matron on the sunny side of life who had, dropping into the vernacular of the present day, "gone on a strike" and breached in part at least the connubial contract. There was no allegation or evidence that she was treading the "primrose path of dalliance," nor that she had barred the door of the home against her liege lord, nor had she forsaken the family board, nor compelled him to do so, but the rest of the contract, which was a matter of conclusive implication, she had violated, and repudiated, and persistently continued so to do, to the plaintiff's great deprivation, disappointment, and discomfort, and mental and physical distress. The proof was clear, and the earnest plea of the ill-treated plaintiff was granted.

When the case was over I said to the attorney: "What made you hold me here for three days to try a case which has been disposed of in ten minutes?"

He drew up one corner of his mouth, turned his head on one side, and winked his eye, and said with great deliberation: "I—know—when—to—try—a—case. A—heap—depends—on—when—some—kinds—of—cases—are—tried. If—I—had—put—that—fellow—on—the—stand—when—you—first—got—here—three—weeks—ago—you—wouldn't—have—thought—much—of—his—case,—but—I—knewed—that—when—you—had—stayed—in—these—piney—woods—three—weeks—you'd—think—he—was—the—cruellest—treated—man—you—ever—heard—of—and—I—waited—for—the—right—time."

The reason given for the delay, while unique, was both ingenious and philosophical; as I was obliged to admit.

## CHAPTER XXXVI.

## MEMORIES OF THE BENCH ON THE CIRCUIT.

In the Twelfth District, Frank M. Etheridge, then of Fairfield and later of Corsicana and now of Dallas, practiced before me, and the promise he gave then as a lawyer has been greatly to my pleasure abundantly fulfilled.

He recovered a verdict in a personal injury action which, on a very close point, was reversed.

I said to him one day just before another trial: "Etheridge, have you amended your pleading?" "You bet, and I have done better than that. I have amended my proof," which he had done, of course, in a perfectly legitimate way. He won again, and the judgment was affirmed.

He announced ready for trial one day in a personal injury action, whereupon one of the local counsel for the road, with great deliberation, and I might say solemnity, rose to move a continuance.

He was what that original genius, Major Phil Claiborne, would have called a very "preponderous" kind of a man—one of the kind that could invest the taking of a judgment by default on a promissory note with more dignity and solemnity than was displayed by John Marshall when he rendered the opinion in *Gibbons vs. Ogden*.

He assured the court of his great anxiety to try, but deeply regretted to say that the papers had, in some way, been mislaid,—which made trial impossible.

Etheridge rose just at that juncture, and in that penetrating voice which will forever exclude him from operative honors, said: "May it please the court I got tired of riding thirty-five miles across these sand hills only to find out, that when I was ready to try cases the papers were always out of pocket, so I carried every paper in every civil case I have in this court home with me, and had copies made and I have them here, and reaching down under the table he took up a box holding a half bushel, more or less, and taking out a bulky package said: "Here, sir, is a complete and accurate copy of every paper in this case." I said: "Go to trial, gentlemen." The "lost" papers somehow were soon found.

From time immemorial lawyers on the circuit have played poker. They play most often for diversion,—rarely for gain.

They played in the sand hills when I was on the bench, but in every instance but one that I recall, played for petty stakes, and without liquor, or beer, or profanity, or vulgarity.

One night two elderly lawyers, non-residents, came into my room. They were on opposing sides in a case of very considerable magnitude, and each had a package of papers under his arm. I said: "See here, I want you gentlemen to be ready to try that

case tomorrow, and if you get to playing poker you will not be ready." They said: "Oh, we will play a while then go to work on that case." When midnight came they were still playing a *five-cent limit game*.

Another night a lot of lawyers and some laymen opened a game when I had gone to bed. One of the party was a man over seventy, and another not much younger. In the course of one hand only those two stayed. That game was the only one I ever saw on the circuit that was played for more than amusement. The two were old friends, and had played together many times in days gone by.

The younger bet \$2.50. The older sat leaning against my bed. He had the ace of spades and the nine of spades and nine of clubs. He says: "I'll stay," and put up his money. He drew two cards and caught another ace and another nine. Some who read this may know what the draw made his hand. The other man drew two cards. The old fellow said: "Bet out." The younger bet \$2.50. The old man raised him \$5.00. The younger said: "May I borrow from somebody? I have no more money with me." The old fellow said: "Yes, get all you want." I reached up to my vest, which was hanging on the head of my bed, and took out a roll containing a hundred dollars, and tossed it to the younger man, who was a lawyer, the old man was not, and said: "Help yourself, Captain." He called the raise. When the show down came the following colloquy took place across the table. The old man said: "What yer got?" "Two pair." "No good, I got a full house." "Yes, but my two pair are both tens." "Lem'me see 'em." The hand was laid on the table. "All right, take the money, but I'm thinkin' you got that last one from under your leg." "Now, see here, don't talk that way. You played poker with me thirty years ago, and you know I play a square game." "Yes, I did play with you thirty years ago, and you'd a done it then, and I hain't heerd 'bout yer reformin' nary time sence."

My friend, Tom Ball, was standing by, but preparing to go to bed, as neither he nor I took any part in the game, but he remembers it, not so much for the reason that two such hands were out, and the larger was so badly played, as because I had as much as a hundred dollars at one time. I am inclined to think myself that the latter fact was the more remarkable of the two.

I wanted to see the sheriff and an attorney one night, but neither could be found. Somebody suggested where they *might* be found. It was growing late, but I went to a private bedroom in the hotel, and both men I wanted to see, and the County Attorney, and the foreman of the grand jury and others, were playing poker.

When the time came for the County Attorney to deal he said

he was obliged to go home, thirteen miles away, in order to be on hand to open Sunday School, of which he was Superintendent, next morning, so he did not deal, but laid on the bed and shuffled a deck of cards. When the deal reached him again he dealt out six hands. I saw all five of the other men begin to fumble with their chips. The first man who bet, was raised, as were the rest, until the bet got to the Superintendent, and he raised them all. When the show down came there were marvelous hands out, but the sixth hand, the Superintendent's, was the best of all of them. It was a petty game, but the aggregate of the "pot" was substantial. Frank Etheridge said: "All right, take the money, but I have learned a lesson. I play with sinners hereafter. No more Sunday School Superintendents for me in a poker game."

There is no mental strain so intense as that brought about by the work of a lawyer in trying cases, and it is not surprising that so many find relief from it in the diversion of poker.

#### THE JUNIORS BEAT THEIR SENIOR.

The firm of which that able lawyer and judge, Hon. Waltus H. Gill, is the senior member, brought two suits before me ten years or more ago, growing out of the same alleged breach of duty by the S. W. T. & T. Company.

One plaintiff was a lady, the other her brother-in-law, really suing on behalf of his wife.

The Judge very generously turned over the lady's case to two young members of his firm, or at least to two young men who were in his office, John C. Townes, Jr., and Hugh Lamar Stone, Jr. The former is the son of that able lawyer and Christian gentleman, Hon. John C. Townes, at one time Judge of the Austin District, later head of the firm of Fisher & Townes of Austin, and for many years past, and now, a most efficient teacher of law in the University of Texas, and to whom the bar of Texas is debtor for his most helpful work on pleading, and for perhaps other treatises on legal subjects.

The latter is the son of H. L. Stone, who has been for many years a member of the Corsicana bar. Both were, in a sense, beginners in the law, and fresh from the University of Texas, and were, as has been every graduate of that institution who has ever appeared before me, thoroughly prepared to practice law.

I have had many graduates of that institution before me, and I have never yet seen one who, if he was naturally endowed with enough mental equipment to justify the hope that he would ever be a lawyer, did not "make good" in his profession.

That fact has given me peculiar pleasure and pride, because as far back as 1858, my father, as Chairman of the Committee on Education in the Lower House of the Legislature, championed

the cause of a University, and was in 1866 appointed by Governor Throckmorton a regent (then called administrator) of that institution.

Hugh Lamar Stone holds now a very responsible position in the legal department of one of the greatest oil companies in the United States.

I have had the experience in the recent past of being most artistically "done up" by him, both in the trial and appellate courts. I assume Judge Gill thought that the young men could present a stronger appeal with a young lady for a client.

They tried their case first and secured a verdict for \$1,500.00. On hearing the motion for a new trial I suggested that I thought a remittitur of one-half would be proper.

They plead almost pathetically that I should not require them to remit, and evidently had less in mind the money consideration, than the fear that Judge Gill might recover a larger verdict than they did.

I told them the case was a hard one on the defendant, for though it was legally liable yet it was in an actual sense without fault, since its agent at the point called, without warning, abandoned his post and the company's service without notice. The very efficient and very suave representative of the defendant, John Charles Harris, failed not to set up, so to speak, all the equities of the situation.

Though the plaintiff was a most worthy young lady and a neighbor of mine, and I was, as I still am, fond of both young men, I was inexorable and required the remittitur, and on appeal the court trimmed it \$250.00 more, so the judgment finally paid was \$500.00.

Judge Gill recovered only \$200.00, so the ambition of the two "kid" members of the firm was realized.

When Judge Gill brought in his motion for a new trial he said: "Your honor, I have filed my motion for a new trial in the Telephone Company case. I don't expect you to grant it, because if I were in your place I would not do so."

There has been more folly perpetrated, and more money lost through imprudent and unwise urging of motions for new trials than in any other way relating to court procedure.

A few years ago a verdict for something over \$5,000.00 was rendered against a client of mine,—a corporation.

I saw that in the last analysis it was a question of fact, and advised the managing head of the company to pay the judgment. He said, "No," he sometimes played poker and believed in chances, so he would chance it. A new trial was granted. The next time the "chance" cost the defendant an increase of \$6,000.00.

A very capable lawyer filed a motion for a new trial before me in a personal damage suit in which the verdict was \$8,000.00.

Had the pages been pasted end to end, it would have been ten feet long, and every paragraph began "the court erred."

It seems impossible that I could have erred that many times in one case. The motion reminded me of an old fellow I knew when I was a boy, and till I became judge. He was a great talker, but one day he was introduced by a friend to another old man who could outtalk him.

Disgusted, he went back to the friend who had made the introduction and said: "That man you introduced me to is the biggest liar I ever heard."

The friend said: "I don't think so. Why do you say so?"

"He's bound to be. There ain't enough truth in the world for all he says to be so."

It seemed to me there could not possibly be as much error extant, as the attorney alleged I committed in one charge.

My confidence in the attorney, and my knowledge of his ability, led me to believe I must have erred, so I granted the motion.

When I came down from the bench he said: "Dog-gone it, what did you grant my motion for?" I said: "Because you alleged I had committed forty errors, more or less, and if I had committed one-tenth of them you were entitled to a new trial. If you were bluffing, I called your hand."

The verdict next time was \$16,000.00, and it was affirmed, so a motion most elaborate and specific, which the movant did not really want granted, cost his client \$8,000.00.

The best lawyer is the one who knows when to quit, but the attorney in that case was, and is, a first-class lawyer. He simply played his hand too far, and others have made the same mistake.

## CHAPTER XXXVII.

## THE TRIAL COURT AND THE UPPER COURT.

I have heard judges say that they paid no attention to the upper courts, and were indifferent whether their judgments were affirmed or not, and have heard them complain at what they conceived were erroneous reversals.

When a judge has done the best he could, he may dismiss the case from his mind and refuse to worry, but I am slow to believe that there is any judge who does not examine with great interest the reports of proceedings of the upper courts. I am sure I did. I felt certain at times that the intermediate courts were wrong, and I was right, and when that opinion was vindicated I was much pleased.

In an important contested will case I peremptorily instructed the jury to find against the will. I do not believe very strongly in the "some evidence" or "scintilla of evidence" theory. I felt so sure that the will was not made by a man possessed of testamentary capacity, that I told the jury to so find.

The Court of Civil Appeals wrote a long opinion, which, when boiled down meant the case should have gone to the jury. I, of course, deferred in duty bound to that opinion, and on a second trial the jury found against the will, and so obviously proper was the verdict that no new trial was asked for, though an estate of over \$60,000.00 was involved, so I was right on the first trial.

The case of *Dorchester vs. Merchants National Bank*, 163 S. W., p. 5, presented for the first time in Texas the question, whether the drawer of a check upon a bank in which the drawer had funds sufficient to meet the check, was bound by presentation of the check through the Clearing House, when it could have been presented a day earlier by the payee, whereas by the delay of the Clearing House the bank closed its doors and failed before the check reached it. There was no dispute as to the facts.

I held that the drawer of the check had nothing to do with the Clearing House, and was not in privity with it as he had no right to avail himself of its regulations in any way; hence was not bound by its action or non-action.

The Court of Civil Appeals said I was clearly wrong. The Supreme Court said I rendered a proper judgment, and the Court of Civil Appeals erroneously reversed it. I made a most elaborate finding of fact and conclusion of law, and my friend, John C. Logue, of Andrews, Streetman, Logue & Mobley, who handled the case for Dorchester, receiver, with great skill, as he does all cases, was kind enough to say that my findings and conclusions were the best he ever saw. Evidently the Court of Civil Appeals did not agree with him. I am glad the Supreme Court did.

If any lawyer desires to take a course in mental athletics he can do so by reading the case of *Underwood vs. Security, etc., Co.*, 207 S. W., 642. He will wonder, as I do, how I ever succeeded in being half right in that case.

The Court of Civil Appeals held I was half right, holding that the plaintiff was not entitled to recover on one of two policies, but was half wrong when I held she was entitled to recover on the other.

My friends, Judge Streetman and Richard West Franklin, commonly called "Dick," were on opposing sides. Both appealed from my holding, but after the Court of Civil Appeals held I was half wrong in allowing any recovery, only Judge Streetman was left to try to get relief.

The company's lawyer was in the case, but his associate was not in need of his help. He can take care of himself. He did so to the extent of one-half, as the Supreme Court held with me as to the other half.

It took a widow eight years to get it decided, whether under a printed contract she was entitled to what the contract promised her. When Hamlet soliloquized, among the inventory of troubles which led him to desire to "shuffle off this mortal coil" was "the law's delay." Had he lived in this day and time he would not have soliloquized, but have "shuffled off" in sheer despair.

Major H. H. Boone and Captain J. C. Hutcheson of Houston often appeared in opposing sides before me, and when they did, there was a battle between legal gladiators fought out fairly and on the loftiest plane of professional ethics and honor. Neither man would urge before a court a legal proposition that he did not believe was sound.

I have sat as judge in many counties in Texas and spent altogether nearly eighteen years on the trial bench, and I have never had before me in any case any two men who knew their cases better, nor tried them more skillfully and honorably than did Major Boone and Captain Hutcheson. Some of the most interesting and difficult cases I have ever been called upon to try, were cases in which they were counsel, and unlike many lawyers they were helpful to the court, and as I was, when on the bench of an interior district quite a youthful judge, I needed help.

The judge, whether young or old, who thinks he does not need help from the counsel before him, sadly errs.

My personal regard for both men was very strong, and they knew I was going to give them, as far as lay in my power, a fair trial in every case, so in all the years in which they practiced before me not a single note of unpleasantness ever marred our intercourse.

Both men had one quality, or gift, or capacity,—I might almost say virtue, which is a most commendable one for any lawyer to

possess,—that is, they could stand defeat in legal battle without whining or complaining, and they never quarreled with the judge if he gave a new trial. They appeared on the same side once before me in a personal injury case and secured a verdict for \$30,000.00. It was manifestly against the weight of the evidence, and I set it aside, as did every judge, State and Federal, before which any case growing out of the same wreck was tried.

When court was over some friend asked Major Boone, in my presence, what kind of luck he had during the term. He replied: "First rate, I got a verdict for \$30,000.00," and laughingly added, "but Norman here set it aside," but not a word of even implied criticism or complaint did he utter.

I have heard of the adage that the losing lawyer has three remedies: "to get a new trial, if he can; if he fails, then to appeal, and next get drunk and adjourn to the tavern and cuss the judge." It has seemed to me at times that some lawyers had the idea that the remedies were cumulative.

As I have said before, Major Boone's sons have proved worthy of their ancestry, and Captain Hutcheson's have done likewise. If there is one man who has better opportunity to determine the ability of lawyers, it is the trial judge. Therefore, I feel that I am prepared to write advisedly when I say that J. C. Hutcheson, Jr., who practiced before me for nearly eleven years, appearing in nearly every character of case, and who was appointed Judge of the United States District Court for the Southern District of Texas before he was thirty-nine years of age, has, in my judgment, no superior as a lawyer on the Federal Bench in Texas, and very few, if any, outside of it.

His younger half-brother is a member of the firm of Baker, Botts, Parker & Garwood, and long since "arrived" as a most capable lawyer. He arrived, too, as a soldier almost as soon as his feet touched the soil of France.

He enlisted, as I have heard, as a private in the artillery branch of the regular army.

As soon as he reached the front, and before he was given time to sleep or rest, he was assigned to a gun, and he stood by it and kept it in action for fourteen consecutive hours.

His father had seen service on the fighting front more than fifty years before, and stood at the post of duty till valor could no more avail; and on a foreign soil, with his mother and wife and little ones 4,000 miles away, the son proved the truth of the adage, which is as true as it is old: "Blood will tell."

#### LAW LICENSEES WHO MADE GOOD.

I recall four men whose law licenses I signed, all of whom have "made good" as lawyers,—a fact which has given me much

pleasure: Thos. H. Ball, W. L. Dean, S. W. Dean and James E. Webb.

The three latter were all boys, from the post oaks of Madison County, while T. H. Ball was born and raised in Huntsville.

The Dean brothers came off of a small farm among the "Shin-oaks" in the northeast part of Madison County.

The younger brother, S. W. Dean, resigned from the bench of the Twelfth District after several years of most efficient service. W. L. Dean could have had the same position at any time, but he preferred to practice at the bar. He was for four years Senator from his district, and his name is associated with as much, perhaps more, important legislation than is that of any Senator who served in the Thirty-fifth and Thirty-sixth Legislatures. I know of no man at the bar to whom I would more readily commit important litigation on either the civil or criminal docket than W. L. Dean, because he is a lawyer of the first class.

James E. Webb went to San Antonio in 1889 with a law license, and but little else except a high sense of honor, native ability, and untiring industry.

With such equipment he rose to the front rank in the exceptionally able bar of that city.

He was a gentleman from the crown of his head to the soles of his feet, and practiced his profession in accordance with the most exacting standards of professional ethics, and personal honor. His tragic death in the burning of the Country Club at San Antonio a few years ago deprived the bar of a lawyer of the first rank, and a valuable citizen, and carried sorrow to many hearts, and to none greater than to my own.

It gratifies me very much to know that his son and namesake, who bears a striking resemblance to his father, gives promise to prove a worthy successor to his knightly sire.

I have already dealt with the name of my valued friend, T. H. Ball.

## CHAPTER XXXVIII.

## THE STATE AND THE DEFENDANT.

My service on the bench led me to the conclusion—which the observation of later years has strengthened—that the widespread conception of the function of the District Attorney and the measure of his duty which aforesaid prevailed, and in the remote districts prevails, yet, it is to be feared to a harmful extent, is wholly erroneous.

It was that he was charged with but one duty, and that was to get convictions, and that it was not his duty to see that any witnesses were summoned who were not favorable to conviction.

The conception that all witnesses should be summoned and put on the stand—whom he believed to be credible—it matters not whether their testimony was favorable to the prosecution or not—never seemed to dawn on the mind of the average District Attorney.

Under the iniquitous fee system of paying District Attorneys, which has happily been cast into the junk heap, as it should have been forty years ago, a mercenary man, not possessed of moral principle, could become a menace to the liberty of the citizen.

I recall distinctly the first witness I put on the stand in a criminal case in the largest county in my district, when I was District Attorney, an office I held for about a year. His first statement was, "I done come here to testify fur de State—I ain't no witness fur de 'fendant." When I said to him: "I want you to understand you are here to tell the truth, whether it helps the State or the defendant," he was astounded as were the members of the bar sitting by, and the counsel for the defendant.

It is as much the duty of the District Attorney to see that the defendant gets a fair trial as it is of the Judge. Any District Attorney who keeps back, fails to disclose, or excludes any evidence favorable to the defendant of which he knows and which is available, does that which he has no right to do, and which proves him unworthy to hold his office.

A few years ago the editor of one of the leading law journals of the United States, went for one or more successive summers to England, and studied at first hand, the methods of procedure in the criminal courts of that country.

He attended the trial of cases in both the *nisi prius* and appellate courts, and upon his return wrote most interestingly concerning what he saw and heard. He said that during the trial of an important criminal case the Queen's Counsel, an officer whose function, as I understand, corresponds to those of the District Attorney in the United States, leaned over to the counsel for the prisoner and speaking *sotto voce*, said: "There is a point

very favorable to the defendant which you seem to have overlooked."

If the fate of a defendant in some Texas courts depended on the County Attorney, or District Attorney, suggesting to his counsel a point in his favor, he would be doomed without hope.

Of course the erroneous and harmful conception of the function of prosecuting officers which I criticize, is not universal, but hundreds of lawyers will bear me witness that it exists, but fortunately for the administration of justice, to a far less extent, than it once did.

The writer above referred to attended a session of the High Court of Appeals in London, over which the Lord Chief Justice presided. That great judicial functionary receives a salary nearly four times as great as that paid the Chief Justice of the Supreme Court of the United States. The appellant had been convicted of murder. In the course of the argument the counsel for appellant referred to the alleged unfairness of the identification of the defendant.

The Lord Chief Justice said: "If there has been anything unfair in the matter of identification, we will not hesitate to quash the conviction." It seems that there is no reversals and remands over there, but they "quash" a conviction and that ends the case. Either the counsel for appellant or the Queen's Counsel stated that there was in the Temple of the Court, or accessible in the city, an intelligent witness who testified on the trial. The Lord High Justice said: "Bring him in at once—we will hear him." He was brought in and testified.

That proceeding would be as impossible under the laws of Texas as it would be to try a defendant in his absence from the State. There is a case reported in Texas in which the defendant was convicted of the theft of a colt. He insisted the colt was his property and was raised by him. Obviously, it was a case of mistaken identity. He was convicted and appealed. Pending the appeal the colt, alleged to have been stolen, was found, or returned to the premises of the owner. Affidavits were at once prepared, showing that a mistake had been made, and an entirely innocent man had been convicted, but the Court of Appeals would not consider them. They were not pierced by a pink tape, and fastened with a seal, and approved by a judge; in other words, were not part of the "record." The only way out of the judicial tragedy was to find some kind of error in the record and reverse the case. If the record had been absolutely flawless, the conviction of a perfectly innocent citizen would have been affirmed—because of lack of some hoary precedent or a statute covering such a case.

It is not meant by what is said to criticize the court in any degree. It did all in its power under the law. I have never had

any great measure of respect for any kind of precedent which conflicted with my ideas of justice, and had I been on the court, and my views could have prevailed, I would, when the affidavits were presented, have not only annulled the conviction, but have ordered the indictment burnt, the decree expunged from the record, and every vestige of testimony of the miscarriage of justice destroyed.

There was no statute or precedent for such action, but I know of no prohibitive statute, hence as my old friend, Governor Lubbock, said about registering warrants when no law authorized it, I would have "made a law of my own."

The District Attorneys who served on my court gave me but little trouble in the way of such procedure, as I have criticized.

They were Ben Campbell, later the very efficient and progressive Mayor of Houston, and B. D. Dashiell. The mind of the former was so constituted that he was predisposed to believe in the guilt of every defendant, but he prosecuted with a fairness equalled to his vigor, which is to say with all possible fairness, and the same is true of the latter. In a certain homicide case in which the defendant was distantly related to me, but within a prohibited degree, the immediate predecessor of Mr. Campbell had insisted on a conviction, but the jury disagreed.

I did not go even into the court house while the defendant was on trial, but I heard that Mr. Campbell refused to ask a conviction. When he met me later he said: "I would not ask any jury to convict that old man, because he was justified. He had to kill to save his own life."

I did not ask him for the reason for his action, but I knew that he would have done just what the defendant did, had there been forty men instead of ten preparing to assault him.

I recall a trial for homicide before me of a handsome, stylishly dressed "Octoroon," charged with killing her husband.

B. D. Dashiell prosecuted, and my Republican friend, Lock McDaniel, in the recent past United States District Attorney for the Southern District of Texas, as fair and square a man as ever lived, defended. It was a battle in the open, and I never heard two abler speeches. Rapier struck fire from rapier, but the champion of the defendant won, as he should have done.

Referring again to the English methods of procedure in criminal cases, the editor referred to said that no representative of the pleas of the crown dared to make any appeal to the emotions of the jury. If he did he was fined for contempt of court. I venture to say that a thousand lawyers in Texas can recall when they have known a District Attorney to open his case with a bare outline of the evidence, and in his closing speech not only appeal to the emotions of the jury, but assail the defendant in bitter terms.

Whenever that is done, the judge should set aside the verdict as soon as it is returned.

Just before I left the bench, a civil case was being tried before me, in which all the plaintiffs were not only ladies and gentlemen of moral worth and high social position, but were my esteemed personal friends, as were their counsel, one of whom was *pro forma* plaintiff.

The defendant was a negro. The subject of the litigation was some city lots or a plot of city suburban land.

Just as the defendant was about to leave the witness stand, one of the counsel for plaintiff, a most worthy man, a capable man and my friend, said to the defendant: "Didn't you come to this city as a Federal soldier fifty years ago, or about that time?" I said: "That question is improper and should not have been asked, and if a verdict is returned for plaintiff, I will set it aside. When or how the defendant came here, or from where, has nothing to do with this case. The only question to be determined here is, did, or did not, the ancestor of plaintiffs execute and deliver to defendant a deed to the land sued for?"

The jury found he did. I do not recall ever having seen a negro in a civil suit lose before a jury of white men when he ought to have won, and I have tried many such cases.

I do not mean to be understood as including Harris County in my comments on some District Attorneys, for while I have no desire to appear in the criminal court, and rarely do, I have been at times virtually obliged to do so. I did so while Hon. John H. Crooker was District Attorney, and have had occasion to have professional intercourse with his successor, Hon. E. T. Branch, and have found always that the office was conducted in accordance with what I consider the proper conception of its functions.

There is an investigator of facts attached to it, and he is sent out, not to work up a case for the State, but to get at the bottom facts.

In the recent past, to oblige a brother lawyer who had never had any experience in criminal practice, I appeared for a negro woman, a descendant of an old family servant of the brother lawyer.

The investigator came to my office and I had an eye-witness of the killing detail her testimony, and had my stenographer take it down. Before she began, the investigator of facts said: "I will read you, Judge, what I have." I said: "No, let this woman make her statement first." When she had finished he said: "That is just about what I have found out." I presented all the evidence to Judge Crooker and he dismissed the case.

In another case, with which I had no connection, a young man plead guilty to the felony theft of railroad brass. He had a wife

and two children. It was before jobs were so plentiful and wages so high. He worked when work was obtainable, and his hands were hard from honest toil, but when he could get no job and his wife and children were cold and hungry, he committed a legal crime.

I said to Judge Crooker: "That is a case for a suspended sentence." He said: "No, I will dismiss it," and he did and he was right. "Blessed are the merciful, for they shall obtain mercy." I consider Harris County fortunate in the possession of the force of officers who represent the State in the criminal court. The Assistant District Attorney, J. V. Lea, was District Attorney in the interior, and also District Attorney in the Criminal District Court of Galveston and Harris counties. He is absolutely fair. He has represented the State, and appeared in civil cases before me, and we have been friends from our boyhood days, and I know of no man, barring none, who can sift the wheat out of the chaff in a mass of testimony, and put it before the jury, and apply the law to it, with more simplicity, clearness and power.

## CHAPTER XXXIX.

## LEGAL VICTORIES.

There have been some remarkable legal victories in civil cases won in Texas. That achieved by Colonel George Mason by his remarkable, indeed marvelous argument of *seven* hours before a jury, in which, without a note or a memorandum of any kind, he sifted out, analyzed and presented to a jury the salient and controlling facts in a mass of testimony which it had taken three weeks to take, has rarely been surpassed.

The next one to occur to my mind is that won in the case of Dexter G. Hitchcock vs. The City of Galveston.

That chivalrous gentleman, gallant soldier, and splendidly equipped lawyer, Major F. Charles Hume, filed the petition in that case in the Federal Court when he was in his thirty-second year, though his client believed his attorney was forty-five, as he told me himself. The judge who first heard the case on demurrers and exceptions and who tried it on the facts, afterwards became a member of the Supreme Court of the United States.

Hon. William P. Ballinger, Hon. George Flournoy and Hon. George Mason, three as able lawyers as were then in Texas, represented the City.

On the trial before a jury, Hon. A. H. Willie appeared in the case. On his return from Congress he had been chosen City Attorney of Galveston and took Colonel Mason's place.

The demurrers and exceptions of the City were sustained. Major Hume had the courage to stand by his pleading.

His necessarily lengthy petition was written in his most peculiar but legible handwriting, and he told me that the preparation of the drawings showing the streets, blocks and sidewalks which his client undertook to work upon cost his client \$800.00. They were used as exhibits to the petition. It was more than three years before the case was reached on the docket of the Supreme Court of the United States. He argued the appeal in person, while Judge Ballinger and Colonel Flournoy argued the case of the City.

The court divided four to three, reversed the Circuit Court. On the trial before a jury, Major Hume was first obliged to meet the objection that his client was not in fact a citizen of Illinois, as he alleged, but of Texas. He won on that issue. On the facts he secured a verdict for \$112,000.00, and on passing on the motion for a new trial, the Judge said had the verdict been \$200,000.00, he would not have disturbed it.

Though no appeal was taken, it required three years more to collect the judgment, but it was collected, principal and interest, "to the uttermost farthing."

If any lawyer thirty-two years of age in Texas, or anywhere else, has in these modern days won such a legal victory against such odds, the fact has never come to my knowledge.

The third notable legal victory which recurs to my mind was won by a man whom I doubt if one man out of five of the bar of Texas ever heard of, much less saw.

If the attics in the homes of a generation or two back were searched, they will reveal dust-covered copies of a magazine, entitled "Godey's Ladies' Book, Sarah Josepha Hale, Editress." That lady, I have been advised, was the mother of William G. Hale, the lawyer I refer to.

He practiced prior to the Civil War in the Corpus Christi section of the State, as I now recall.

I have seen him and bowed to him on the street, but do not claim to have known him.

He was, I should say, not over five feet six or seven inches in height, and weighed not exceeding 140 pounds. He was always plainly, indeed often shabbily, dressed. He had a head that was very long through from front to back, and setting far back on it, wore generally a narrow-brimmed boy's hat, and both pockets of his coat were filled with "Dick Dead-Eye" and "Wild Bill" novels.

Like many of the great lawyers, he imbibed stimulants very freely, but the effects never reached above his neck.

If I am not mistaken, the first equity case in the way of a receivership proceedings ever filed in the Federal Court at Galveston was filed about 1867 or 1868.

It was entitled N. A. Cowdrey vs. G. H. & H. R. R., or perhaps against certain bondholders or stockholders, or both.

Hon. John C. Watrous, who some may recall, Sam Houston endeavored strenuously to have impeached, was presiding judge of the court, and had been prior to the war.

He was, I have been advised, a very able man.

Mr. Hale represented the receiver, while Judge Ballinger and that distinguished and very able lawyer, Jeremiah S. Black of Pennsylvania, represented the defendants.

A member of the bar of Galveston told me many years ago that he heard Mr. Hale's argument in 1870.

He said while the other side were arguing the case, Mr. Hale sat in a large chair in almost a recumbent position, holding a newspaper, and apparently paying not the slightest attention to the argument of the great lawyers.

When his turn came to speak, he rose and beckoned to a negro in the back part of the court room, and the negro brought him a wicker basket, which he opened and took out, first, a neatly folded napkin, next, a silver flask, the screwed-on top of which constituted a cup.

He poured out a stiff drink of brandy, drank it, wiped his lips with the napkin, folded it neatly and replaced it and the flask in the basket, and proceeded to argue the case.

The result was that he, to use my informant's language, "wiped the opposition off the face of the earth," and left them without even a hope on appeal, as I recall the facts. Many years later, I mentioned the remarkable case to a friend, a well known lawyer, and he told me that when Judge Black got home, he said to a friend there: "I had never been to Texas, and when I was offered a fee of \$10,000.00 to go there, I decided to go, though the fee was no greater than I had often received. I had been Chief Justice of the Supreme Court of Pennsylvania, and Attorney General of the United States, and I believed I would be able to take care of myself against any lawyer I would likely meet in Texas,—but I found down there a little fellow by the name of Hale, about five feet high, and I have no desire to return to try any other case."

A lawyer who practiced for many years in Galveston told me that Mr. Hale was lying asleep on a table one day in his (my informant's) office in such condition that sleep was most necessary. My informant was troubled over a question of law and could find no authority whereby he could answer it. He woke Mr. Hale up. He yawned and rubbed his eyes and said, "What do you want?" The lawyer stated the point on which he was seeking light, and said he wanted an authority. Mr. Hale said: "Look in volume so and so on page so and so and you will find the case of (giving the style), which is the case you need," and at once dropped back to sleep. The lawyer got the volume and the case was directly in point and supplied just what he was looking for.

William G. Hale was a walking encyclopedia of legal knowledge. Yet his reputation as a lawyer was far less extensive than that of many who were not even approximately his equal. In the scope of his legal learning—and his ability to utilize and employ all he had ever learned in the preparation, trial and argument of cases, it is doubtful if he ever had an equal at the bar of Texas.

It was more than forty years ago that after one conviction, with, I believe, the death penalty assessed, the late David B. Culberson and the late W. L. Crawford secured the acquittal of Rothschild for the alleged murder of "Diamond Bessie." It was a great triumph of skill and legal knowledge.

#### LEGAL VICTORIES.

The latest legal victory of more than usual magnitude of which I have heard was that won by F. M. Etheridge of Dallas in the matter of the will of Peter McClelland, deceased. The State courts had decided in several cases, before Etheridge's employment, that the codicil repealed the gift of the estate made by

the testator to Peter McClelland, Jr., his only child. Etheridge filed a bill in the Federal Court for a construction of the will, asserting that the prior decisions were *obiter dicta* and indefensible, and won out on that proposition. *McClelland vs. Rose*, 208 Federal, 503. The bill was filed against the trustees and three members of the class designated by the testator as "my heirs at law"—in other words, the collateral kin. After final decree in favor of Peter, Jr., a number of the collateral kin filed a bill in the State court for a retrial of the case. Etheridge filed a supplemental bill in his equity suit in the Federal court, asserting that the original action was a class suit and that all members of the class, whether actually present or not, were concluded by the decree, and an injunction was sought against the prosecution of the case in the State court. The supplemental bill was dismissed and on appeal the United States Circuit Court of Appeals held that the suit was a class suit and that all members of the class designated by the testator as "my heirs at law" were concluded. *McClelland vs. Rose*, 247 Federal, 721. The decree, therefore, finally removed all claim of the testator's collateral kin and vested the entire beneficial interest in Peter, Jr., despite the fact that the State courts had decided that he had no interest and never would have any interest in the estate.

The Hunt case will in the Federal court at Los Angeles involved the purely legal question of whether paragraph 14 of the will created a valid, charitable trust, and it involved a million dollars. In that case Etheridge made, before Judge Olin Wellborn, a legal argument of five hours, wholly without aids to memory, in maintaining his position that the attempted charitable trust was invalid. Of that argument the Los Angeles Times of July 12, 1912, said:

"The argument of the demurrer to the complaint in equity filed in the United States District Court involving the interpretation of the will of the late John W. Hunt closed before Judge Wellborn in the United States District Court yesterday. After a hearing covering two days, the court took the matter under advisement and briefs will be furnished.

"The attorneys were Francis Marion Etheridge, of Dallas, Texas; Hon. Charles M. Cooper, of Jacksonville, Fla., and Bradner W. Lee of this city. Etheridge appeared for the complainant and the latter two attorneys for the defendants. The arguments of Messrs. Cooper and Etheridge have, perhaps, never been equalled in a local court, for their eloquence and judicial learning, that of Etheridge being especially brilliant. His diction and knowledge of the law on the subject of the creation of trusts in wills, running all the way from the earliest days of English law down to the present time, quoted by the Dallas man without reference

to any book, were the marvel of all who heard it. The effort of his opponent, Cooper, was but little less remarkable.”

Whilst the cause was under advisement a satisfactory settlement was made.

## CHAPTER XL.

## THE COURT, THE BAR, AND THE PEOPLE.

I heard both Judge Roberts and Judge Brown say that the District Judge is the most important officer in the State Government, and the truth of that statement cannot successfully be denied.

The office is not only one of great dignity, at least should be so considered, but of extensive jurisdiction, and the Judge is vested with great power, and if he sees fit, he can abuse that power grossly, without his action being subject to revision or restraint, by any tribunal.

This being true, the imperative obligation rests upon him not to abuse it, but to constantly guard against even the possibility of such abuse.

The office of District Judge is one far more difficult to fill efficiently than is that of Judge of the higher courts, because the judges of the latter courts have large libraries at their command,—have ample time to examine every question, and the very great assistance afforded by the opportunity for consultation with other judges.

The District Judge, on the other hand, is compelled to decide, as has been said, in homely but expressive phraseology, “right off the bat,” with no time to examine authorities or consult with counsel not interested in the case, or to get help from any source, and under such circumstances nothing but a correct knowledge of fundamental principles can save him from manifold errors.

If I were asked what in my judgment is the most desirable,—yea, essential, qualification (next to integrity) for a District Judge, I would unhesitatingly answer: “That he should be a gentleman.”

A gentleman is one who never fails to consider first the feelings and comfort of others, and who never subordinates them to his own.

It is the duty of every Judge to extend to the bar the same measure of courtesy and consideration that he expects it to extend to him. The bar owes no Judge any more courtesy or consideration than he owes to it.

I tried as trial judge, before God, to act upon that principle, and be guided by that standard.

My experience has been that the vast majority of lawyers (as distinguished from “shysters”) are gentlemen. I have never had reason to believe that any lawyer ever attempted to mislead or deceive me about any matter before my court, and I have accepted their simple word in matters of gravest moment.

There is no tyrant at once so petty, so offensive, and so contemptible as a judicial tyrant; because his is the tyranny of cowardice. He takes advantage of his exemption from being called

to judicial or personal account, to tyrannize over gentlemen who have no defense against such tyranny.

No Judge has the moral right to fix a code of rules to govern the conduct of his court, and require every lawyer to conform to them under penalty.

A great Judge of the Supreme Court of the United States once said that "No court should be enslaved by its own rules," and no Judge should make a procrustean bed of rules and demand that every lawyer practicing before him shall adjust himself to it.

The Judge who has his pen in hand ready to enter a fine against some attorney, or litigant, or witness, or juror, is, nine cases out of ten, a man who is unable to demonstrate his intellectual or professional fitness for the judgeship.

I served on the trial bench nearly 18 years, and with the exception of one witness who contemptuously flouted the subpoena from a grand jury, I never entered a fine against any juror, litigant, witness or attorney.

I sent an old neighbor to jail for two hours one day for, in the face of the court, threatening a witness on the stand, and later assaulting him in the courthouse.

I was asked by an attorney once how I could possibly get jurors if I assessed no fines when they failed to appear. The answer I gave him expressed my views and reflected my action for eighteen years. It was,—“Nine jurors out of ten are good citizens and respect the courts of the country. They are willing to obey the orders of the court and perform the duties required of them. Many of them live in the country, often away from postoffices or telephones, and when they are unable to come, have no means of sending their excuses.

Their families may be sick, or the creeks be up, or they have made, before they were served with notice, business engagements which if they fail to keep they will suffer financial loss. Their crops may be in the grass, or their fences washed away. A day out of the crop of a "one-horse farmer" may mean loss he cannot afford. A week lost may mean financial disaster. Under any of the circumstances named they ought not to be expected or be compelled to come and serve as jurors. Furthermore, they ought not to come. Their first duty is to their families." It may be said they can always invent an excuse. Very well, let them do so,—I never swore a panel of veniremen to tell the truth as to their excuses. I was compelled to test their qualifications in that way, but I recall no statute requiring a man to present excuse under oath, thought there may be such statute.

I told the panel that they were not under oath, because a man that will lie when not under oath will lie when he is, and a man that will lie or equivocate to escape jury service is not fit for a juror, and his absence is a good riddance.

I found that before the week was up every venireman summoned for the week, but not present, sent some good excuse for his absence. If the excuse was true, he ought not to have come. If it was not true, an unworthy and unreliable man was kept out of the jury box.

Many good citizens stand in terror of the courts of their country. A young German, who I am sure was an honest fellow, told me in my court that he wanted to go home because he was afraid his wife would not live until he returned. Tears were in his eyes, and his voice was tremulous. I asked him why he came? His reply was,—“I was afraid not to come.”

A plain, humble, but worthy citizen had left what he feared was a dying wife, lest, if he was not present in court, a fine would be assessed against him he could not afford to pay. No citizen should stand in such fear of any court of his country. I said, “Go home at once, and never do you leave your sick wife to come to any court.” He expressed profuse thanks and went at once.

The next applicants for release were two plainly, but neatly, dressed farmers. I did not know who they were, and do not know yet. They said, “We are entirely willing to serve, your Honor, but we are strawberry farmers, and it has been raining for two weeks. This week it is dry, and unless we clean our crops they will be lost.” I said,—“Go home at once. You can serve some other time. I will find some others to take your places.”

No Judge has the moral right to arbitrarily fix certain days on which, and no other, he will hear certain cases, regardless of the convenience of attorneys or litigants.

I have often sat in the noon hour, or hours, hearing injunction, or divorce cases, or motions. In every city there are many working women who have married unwisely, and in consequence seek divorces. If they leave their work during work hours their wages are docked. For that reason I sat often at noon, and often after 6 o'clock, to hear such cases when requested. I did not do so as a matter of policy, but as a matter at once of principle, duty and courtesy.

I was as scrupulously careful to do so, after I had a year in advance announced my determination not to be a candidate, as I was when I expected to be a candidate for re-election.

A Judge is essentially a servant of the people. They pay him to discharge certain duties, and he is under the moral obligation to be accessible to the attorneys who represent the people, especially when statements of facts and bills of exception need to be acted on. It is his duty to consider the convenience of the bar, rather than of his own.

I have heard of Judges who seemingly delight in lecturing lawyers or some prominent man from the bench.

Such exhibition of judicial discourtesy and "assinity" appeals to the groundlings and tickles the *hoi polloi*, but they degrade the bench. Such action is judicial electioneering, the most detestable form of demagoguery.

No Judge who has the proper conception of the dignity of the office, or of the proprieties which are obligatory on every gentleman, will ever be guilty of lack of consideration for the feelings or convenience or comfort of any person who has business before his court, I care not how lowly may be the estate of that person.

I astonished a lot of plain people one night from the forests of another county outside of my district by staying up till midnight to approve their witness accounts, so that they could take the midnight train and be saved twelve hours delay. I heard one say to the other: "That Judge in our county would never have done this for our class of folks." According to my conception of duty, not to have done it, when thirty or more men had left families in remote wooded districts unprotected, would not have only been discourteous, but inexcusably unkind.

The custom of making a rule for setting cases and rigidly abiding by it in a numerical sense is another piece of judicial, or, rather, unjudicial, absurdity.

It was known in the Sixty-first District Court while I presided over it that regardless of the position of a case set for the day which non-resident counsel were present to try, it was tried first, and the same rule applied where there were an unusually large number of witnesses in any case, and I never heard any complaint of such a rule.

I believe more folly has been perpetrated through the medium of special charges than in any other medium of procedure known to the law.

So far as I recall now, I never, save with one exception, gave a special charge in a civil or criminal case in my life, and if I was ever reversed for refusing to give one, the fact is not remembered now.

I have been reversed frequently by the Courts of Civil Appeals for giving some of my own charges, or parts of them, at least, and in all likelihood the courts were often right, but their reversal is by no means conclusive of error, because in more than one instance they reversed me in most important cases tried without a jury, in which the Supreme Court held I was right. The Supreme Court before there were any Courts of Appeals, reversed me for errors in my own charges, but never, so far as I recall, for refusing a special charge.

I do not mean that I ignored special charges tendered, for I

did not, but examined them both as a matter of courtesy and duty. If they suggested a charge on a point I had overlooked, or if the tendered charge was better phrased than my own, I used it, but I gave no special charges, because four out of five ought not to be given.

I used a form of charge, in a physical sense, which my brother Judges in Houston adopted, and which all Judges will find a great time-saver.

I had the court reporter to have sheets of typewritten paper cut in half, and except the formal and indispensable parts of the charge each paragraph was written on a separate page, and any page not satisfactory to me, or to which well founded objection was made by counsel, could be changed, or removed altogether, and as much depends on the order of the arrangement of the points or paragraphs in a charge, the separate pages pinned together at the upper left-hand corner so the pages opened from the right to left like a book, could be shifted to secure logical order of arrangement in reading the charge to the jury.

The one exception when I gave a special charge was when my mother was dying, and I was waiting for a train. I gave fifteen, and the result was that the defendant had no possible chance to reverse a substantial verdict, and had to pay it without appeal. When I charged a jury I was either very right or very wrong. No man needed an interpreter to find out what I meant, and I tried to prepare findings of fact and conclusions of law the same way.

I never had a moment's disagreement with an attorney over a bill of exceptions, it matters not how strong he made it, if he was within the utmost limit of the facts. I never tried to qualify the bill so as to avoid responsibility. If I added anything, it was a brief explanation of why I so ruled.

Demurrers and exceptions have been the cause of the waste of more good paper, and caused the loss of more valuable time than any other plea or proceeding in the courts. Unless an attack on a pleading goes to the very core of the case, and questions that a case is stated affirmatively or defensively, it is a waste of time to consider it. If sustained, in most instances the party will amend, until he states a recoverable case, or a sustainable defense,—thanks to the help of the other side in showing him where and how he was wrong.

When a mass of exceptions were filed I overruled them all (unless some one or more seemed to me to be materially meritorious), and charged the jury on the law as it appeared to me to be applicable to the facts.

If I was ever reversed for such action, I do not recall it, and I believe I am within the truth when I say that in eighteen years I never spent eighteen hours hearing argument on pleading.

I suppose there never was a Judge who it was not charged had his favorites at the bar, who could expect better treatment than could other members, and in one sense the charge is true, but in no other.

Every good Judge *does* have his favorites, and they are those lawyers who never bring a case without knowing what they desire and expect to accomplish, and who prepare their pleadings carefully,—and know what they are going to prove, or at least believe they can prove, and who have prepared a trial brief on every point.

His favorites are *not* the lawyers who plead carelessly, and who do not know what they can prove, but trust to chance, or suggestion, and the help of the Judge to get through.

If the Judge sustains objections to the admission of evidence because the pleadings do not authorize its admission, and declines to do injustice to the vigilant, diligent lawyer on the other side, who comes to the temple of the law, and before its altar, with his lamp lighted and full of oil, by helping them out of their dilemma, they complain.

I believe nine Judges out of ten are morally honest, and to say that any Judge has favorites, who can expect different and better treatment than other lawyers, is to say he will be guided not by his oath of office, and his sense of duty, but by his personal preferences as between individuals, which is a libel on any Judge of whom it is said, and the lawyer who says it is guilty of a wrong. If the Judge declines to help the careless, incompetent lawyer, the latter is in the fix that the old Judge told a candidate for admission to the bar he would be in, when he said he did not know much about the common law, but knew about the statutes. The old Judge said: "My friend, if the legislature were to happen to repeal the statutes, you wouldn't know any law at all."

I recall a case on a contract to sell a piece of property for \$7000. The defendant made his contract by his agent. Values rose and he declined to make the deed. Plaintiff proved a perfect case and rested. Defendant started to introduce evidence in defense. Plaintiff objected on the ground that the pleading was not under oath, as was required by the statute. Counsel for defendant asked for leave to withdraw his announcement of ready, so he could amend. Plaintiff objected. I said: "You gentlemen (defendant's counsel) are both skillful, experienced lawyers. This case is plainly on a written contract made by an agent. A perfect case has been proved. Now you want leave to stop and start again. To grant your motion would be gross injustice to the vigilant, diligent attorneys on the other side. Your motion is refused." "What, then, will your Honor do?" "I will," I said, "direct the jury to return a verdict for plaintiff,"

which I did, and the judgment was affirmed and writ of error was refused.

Had counsel for defendant to that case been young and inexperienced lawyers, so to speak, "on their first feet," I, in all likelihood, would have granted their motion, because a Judge is perfectly justified in preventing any young and inexperienced lawyer from losing a meritorious case because of his inexperience, and consequent embarrassment. I had less hesitation in denying the motion in the case referred to because the defendant had no meritorious defense, but was obviously seeking to prevent compliance with a plain written contract, because the value of the property had materially increased.

No Judge ever sowed any kind of seed from which he is surer to reap a harvest of pleasant memories than by extending a helping hand to worthy young and struggling lawyers within the limits of judicial propriety and impartiality.

It is rarely the case that the road they travel is not hard and thorny, and they often present the example of modest, but genuine worth, receiving less financial reward than comes to others possessed of both less ability and less principle.

Many young lawyers begin with divorce cases, and I made it an annual custom to set aside a day just before Christmas, which I devoted to divorce cases. I called it my "divorce Christmas matinee," and it enabled many a young fellow to provide himself with spending money,—indeed, perhaps, in some cases, urgently needed funds, for the holidays.

I have in mind more than one young man who for no other reason except that he was worthy and needed it, I extended a helping hand to, and have been abundantly rewarded by the pleasure which their marked and continued, and continuing, success gives me.

I trust no person who does me the honor to read these rambling sketches will do me the injustice to think that I mean to set myself up as an example of judicial wisdom, or official inerrancy, for I have no such thought in mind, and I do not so assess myself. I have written for no other reason than that I felt that perhaps to set down my experiences during the eighteen years of service on the trial bench, and the conclusion drawn from those experiences as to the duties of a judge, as they relate to the bar, to the people whom the bar represents, to litigants, and to all others who come before the court, might not be without some value.













