

Volume 17 Issue 1

THE JOURNAL OF  
THE HISTORICAL SOCIETY  
OF THE UNITED STATES  
DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN

# STEREOSCOPE



*In this issue of Stereoscope, attorney and local historian Thomas R. Dilley looks at the efforts of two early historians to record the law practice and court system of Grand Rapids in the 19th century. Our thanks to retired city historian Gordon Olson, who supplied photographs from the Grand Rapids Public Library.*

—David J. Gass, President

*The Historical Society for the U.S. District Court  
for the Western District of Michigan*

## Courts & Lawyers in Grand Rapids—A Look at the Early Years

*By Thomas R. Dilley*

**L**awyers have played significant roles in the development and culture of Grand Rapids, from its earliest days until the present. It is hardly surprising, then, that the story of this development has appeared in some of the more than dozen histories of Grand Rapids and Kent County published between 1874 and the late 1960s. Chapters in these books, usually titled with some version of “The Bench and Bar,” provide insights into the early formation of the court system, as well as the sometimes subtle changes that have produced the system with which we are familiar today.

Many of the early histories, dating from the late 19<sup>th</sup> century, are huge compendiums of statistics and lists, presented largely without any thoughtful analysis, or that take the form of biographical dictionaries or “mug books,” as they were then described. They featured hundreds

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of flattering biographical sketches of men of perceived—often self-described—prominence, who had paid a fee for inclusion, or simply subscribed for a copy of the then as yet unpublished book. A few of the histories, however, strove to convey to curious readers some of the rustic tone present in the early administration of justice, perhaps illustrating, by the end of the 19<sup>th</sup> century, just how far we had come.

Among the more florid of these efforts is the *History of Kent County, Michigan*, Chas. C. Chapman & Co., Chicago, 1881. Chapman was one of the major publishers of local and regional histories in late 19<sup>th</sup> century America, at a time when popular interest in local and regional history, awakened by the recent national centennial, made the books highly marketable. Their efforts were concentrated largely in the upper Midwest, where they published dozens of voluminous county histories (the Kent County volume runs to just over 1,400 pages) describing the early days of the counties, and briefly profiling hundreds of local businessmen and their various enterprises, as well as many practicing lawyers.

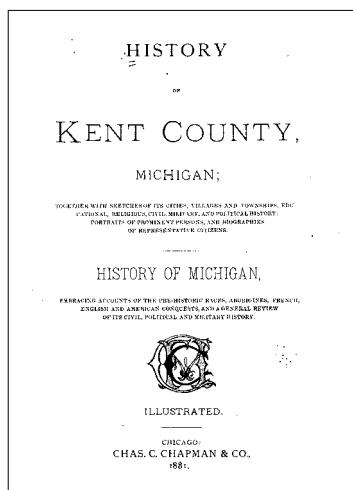
The method of the Chapman Company was to send into the targeted area one or more company representatives. These representatives would first connect with obvious leaders and interview them about their own business and personal histories. From these initial contacts, they would then obtain referrals to others in the area viewed as worthy of inclusion in the prospective book. As part of the interview, each local luminary would also be pitched to subscribe for a copy of the completed book, if and when it was actually published—an offer many of them accepted.

The information obtained in the interviews was then dutifully returned by the Chapman agent to the home office in Chicago, where staff writers (all of them regrettably anonymous to us today) composed the largely pre-sold book.

The efforts in Kent County, conducted in 1880 and 1881, were obviously successful and resulted in the publication of what was and remains the largest single-volume history of our area. Because of the ‘subscription’ sales format, it is difficult to assess exactly what ‘success’ for Chapman really meant and how many copies of the Kent County history were actually produced. But it is clear today that this now rare volume was a popular item not only in the cities of Kent County, including Grand Rapids, but also in the then-developing rural areas as well.

What follows is a reproduction of a portion of the entire 13-page chapter about the local law practice from the Chapman book, titled “The Courts and Bar.” Its anonymous author, obviously schooled and experienced in the sometimes baroque prose of the day, offers a view of criminality that was then common, and presents a chronicle of a few of the rather woolly efforts undertaken to contain it.

—Thomas R. Dilley



## ***History of Kent County, Michigan*** **Chas. C. Chapman & Co., Chicago, 1881**

### **Chapter X. The Courts And Bar.**

As man is the capital of nature, so does he afford to man a subject for deep inquiry. It has been

understood throughout the ages that crime is hereditary. The gambler, who placed his fortune at the small mercy of a die long centuries ago, may possibly be the ancestor of a notorious mountebank of the present time; and the creature whose passions led him to the crime of murder, while yet Caesar ruled the Roman empire, may possibly have been the first of a race whose representatives disgraced every generation of the past and continue to stain the civilization of our time.

Whatever faith may be placed in the hereditary theory of crime by the great majority of people, it seems to be approved by facts: demonstrations of passions transmitted from father to son are common, and therefore it is not a matter of surprise to learn that he who is convicted of a great crime followed in the very footsteps of some ancestor. Though the advance of civilization has materially retarded an indulgence in criminal acts, it has not stayed the workings of nature in regard to the fierce passions of man. They who in former times followed the vocations of their fathers, now seek out varying labors, and thus the tendency of intuitive viciousness is held in check, though it can never be wholly subdued.

Very few hereditary criminals join the fortunes of an early settlement: they come in after years, often with the best intentions, and for a time observe all the conventionalities of life; but afterward the ruling passion begins to re-assert its terrible superiority over the mind, and the result is crime, sometimes insignificant, but generally monstrous and shocking.

To preserve the lives and properties of the people against the machinations of such men, the State promulgated her "statutes," or legal rules, which not only

prescribed the penalties and punishments to be inflicted on transgressors, but also defined the manner in which the laws should be administered.

The people of Kent put these laws in operation the moment they organized the township of that name. The old justices, associate judges and chief justice were the centers of equity. The primitive appearances of the early courts, the desire to do justice, evident in the words and gestures of the judges, their genial dispositions, and the free and easy characteristics of the bench, bar and clients, made the administration of the laws admirably democratic, fully suited to the requirements of the time, and capable of adjusting all discords that might creep into existence within the young county.

Under the second order of affairs many causes of a serious character were presented to the courts. With the advance in population and knowledge, new sources of disunion became known: land disputes, boundary squabbles, even forgery and perjury became common crimes; matrimonial alliances were not in all cases judicious; opposing temperaments met to oppose to the bitter end, and consequently the era of divorce, of the total disruption of family ties, ensued. Such cases will not be given more than this reference in these pages; but, unfortunately, there occurred a few murders which threw a shadow over a history exceptionably honorable. To notice such capital crimes is scarcely within the province of history, and for this reason alone only a few criminals will be noticed.

In 1837 Judge Ransom opened the first session of the Circuit Court for Kent county, in a house opposite Jefferson Morrison's store at the foot of Monroe street, next the Guild House. Robert Hilton was foreman of the grand jury. Among the other jurors present were Geo. Coggeshall and Lovell Moore.

The Superior Court of Grand Rapids was established under Legislative authority, approved March 24, 1875. It is distinctly a municipal court of record. The judge is elected for a term of six years. The first term commenced the first Tuesday of June, 1875, when Judge John T. Holmes presided. He retired in June, 1881, when Judge Parrish was elected.

As early as 1838 the Prosecuting Attorney, Osgoode, then residing at Grandville, indicted a half-breed for murder; but the prisoner was not convicted.

Louis Genereau was indicted for murder before the court of Kent county, convicted and sentenced to imprisonment by Judge Whipple.

### The Murder Of Nega.

Among the criminal records of early days, the most important is that which treats of the murder of Nega, an Indian woman, and the capture and trial of E. M. Miller on the charge. It appears that on Dec. 20, 1842, two men, Miller and Hovey, were proceeding with a team from the forks of the Muskegon to its mouth when they fell in with two squaws, one the mother, the other a child of ten summers. Miller forcibly stopped the mother, and drew her to a place near by, where he pitched his camp for the night. The child, frightened, ran into the woods. In the morning the woman was found dead, Miller ran for the lake shore, intending to escape, while Hovey took the team back to the starting point. This murder was perpetrated Dec. 21, 1842. The murderer broke her neck, then drew the body into the forest, covered it with brush, and, believing that he could escape, started along the trail toward the lake shore, thence down the frozen ice to the mouth of the Kalamazoo river, *en route* to Chicago.

The Indians of the Muskegon soon noticed the disappearance of Nega, and entered at once on a search. Savage intelligence led the searchers to the scene of the first struggle, and onward still to the locality where the body of one of their most favored women lay cold in death. The Indians halted not for council, but dashed forward in pursuit of the murderer and tracked him to the settlement at Muskegon. Here he succeeded in eluding capture. The murdered woman was the daughter of the Muskegon chief and wife of a sub-chief, a very important squaw in the village circle; therefore the Indians cried out for revenge. Failing to obtain a clue to the whereabouts of Miller, they started for Grand Rapids, related their story to Rix Robinson and Louis Campau, and only rested when they saw that their white friends were determined to seek out the murderer and punish him.

Robinson and Campau lost no time in observing their promises to the Indians. One rode in haste to Grand Haven, while the other superintended the scouting parties in the neighborhood of the rapids along the river. The former, on arriving at Grand Haven, waited on the newly elected Sheriff—T. D. Gilbert, now of Grand Rapids—and instructed him to proceed at once in pursuit of Miller. At that time Robinson was a most influential citizen of the county and the State. An order from him in such a case as this was claimed instant action, so that the sheriff of Ottawa county had no alternative left but to obey.



*The Kent County Courthouse in 1838 and 1893.*

Mr. Gilbert was then young and filled with the enthusiasm of a young man who succeeded in winning a place in popular esteem. He exerted all the faculties which are generally brought into play by the chivalry when any serious question is presented, and formed the conclusion that Miller did not halt at Muskegon, but pushed onward with the intention of reaching Chicago. Under this opinion he examined the snow-clad shores of the lake for some miles above and below the estuary of Grand river; but failing to find even a track, he concluded to try the glare ice on the lake.

He had not proceeded far when he discovered the clear ice stained with tobacco juice. Aware that the red men did not possess all the accomplishments of their white brothers, he was not slow to conclude that here he had struck the murderer's trail. Pushing forward he soon discovered another evidence of the tobacco-eater passing that way, and, following up the clue so found traveled onward until the tobacco marks on the ice were hidden in the darkness of night. Even then he did not return; but with an official earnestness determined to reach the light-house near the estuary of the Kalamazoo river. Having reached that point he asked the officer in charge whether a man passed that way during the day. He was answered

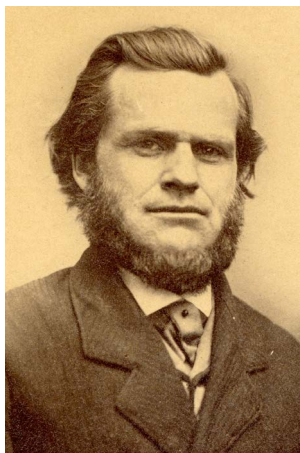
negatively. Then he instructed the light-keeper to send his boy over to the village of Saugatuck without delay if a man should pass.

That night Mr. Gilbert actually proceeded to the village, where he had supper and a rest. Early next morning the light-keeper's boy came to inform him that a man arrived at the light-house. Without loss of time the young sheriff proceeded thither, entered, and, saluting the stranger, "How are you, Mr. Miller?" informed him that he was the Sheriff of Ottawa county in search for the murderer of an Indian squaw. "Very well," replied Miller, "I suppose I must go with you." In returning along the shore, the sheriff pointed out to the culprit the signs which led him to follow up the trail, and also the spot where he ceased to observe the tobacco strains "Well," said Miller, "I turned off the track at nightfall, went behind the sand hill, lighted a fire, and encamped there during the night. This is how you missed me."

The march to Grand Haven was performed in silence. Arriving there, the unfortunate prisoner was placed in irons for the night, and brought on to Grand Rapids the succeeding day, where he was placed in jail to await trial.

While he was in prison, the Indians came from all parts of the country to obtain a glimpse of him who murdered the "pride of the Indian village of Muskegon." The warriors appeared curious, yet did not betray a sign of the deep anger, or dreams of revenge which rankled within their hearts. In their converse with the old traders they were earnest in their demands for his death, stating the facts that justice required a life for a life, and justice must be done. The assurances given by Rix Robinson and Louis Campau satisfied them; but not until after the trial did they cease to visit the village and gather round the jail.

The day of trial arrived. Judge Ransom presided. T. B. Church, assisted by Mr. Clark, of Kalamazoo, prosecuted. The grand jury was composed of the principal men of the county. The counsel for the defense were Geo. Martin, Johnson and Julius Abel. Chief Justice Ransom opened the Circuit Court May 17, 1843. The grand jury produced May 20, 1843. The grand jury was sworn, and after a short consultation returned a "true bill" against Miller. In the



*Hon. James B. Ransom*



*Thomas B. Church*

absence of the prosecuting attorney, Thomas B. Church was appointed by the Governor to represent the People. He was then quite a young man, enthusiastic and determined. This was his first great criminal case, and to render the cause of the People successful, he left no honorable resource unemployed. Every statute and ruling bearing on the crime of murder was studied in full, the legal documents were prepared with the greatest care; neither formality nor technicality was unobserved, so that when the indictment was read and its varied, salient features dwelt upon, the counsel for the defense, though able, realized that they had to grapple with a tiger rather than a lamb.

The morning of the trial was dark and gloomy, yet every hour brought large delegations from all parts of Kent, Ottawa, Muskegon and Ionia to witness the trial. Indians came hither in large numbers and swelled the throng. All was intense excitement; the small court-room in the beautiful court-house of that day was completely filled; the crowd without was dense indeed.

As the morning grew toward noon, the clouds grew darker, and the low, rumbling sound of distant electric explosions could be heard, giving notice of the coming storm. Still the people continued to crowd into the village and to the public square, and there each one took a place, waiting expectantly to hear a word from the orators within the temple of justice, and hoping to learn the result of the trial before returning to their homes.

About three o'clock in the afternoon the prisoner's counsel addressed the jurors; the acting prosecuting attorney reviewed the evidence tendered, and closed his great labors of that day by a brilliant appeal to his countrymen on the jury to give justice for justice's sake and right the wrongs of the natives, even as they would those of the "New Americans." The testimony closed on Wednesday, May 24, when Judge Ransom charged the jury in a solemn manner. He reviewed the testimony of each witness, the circumstantial features of the murder, defined the law in the case, and then directed the jury to find a verdict in accordance with the facts.



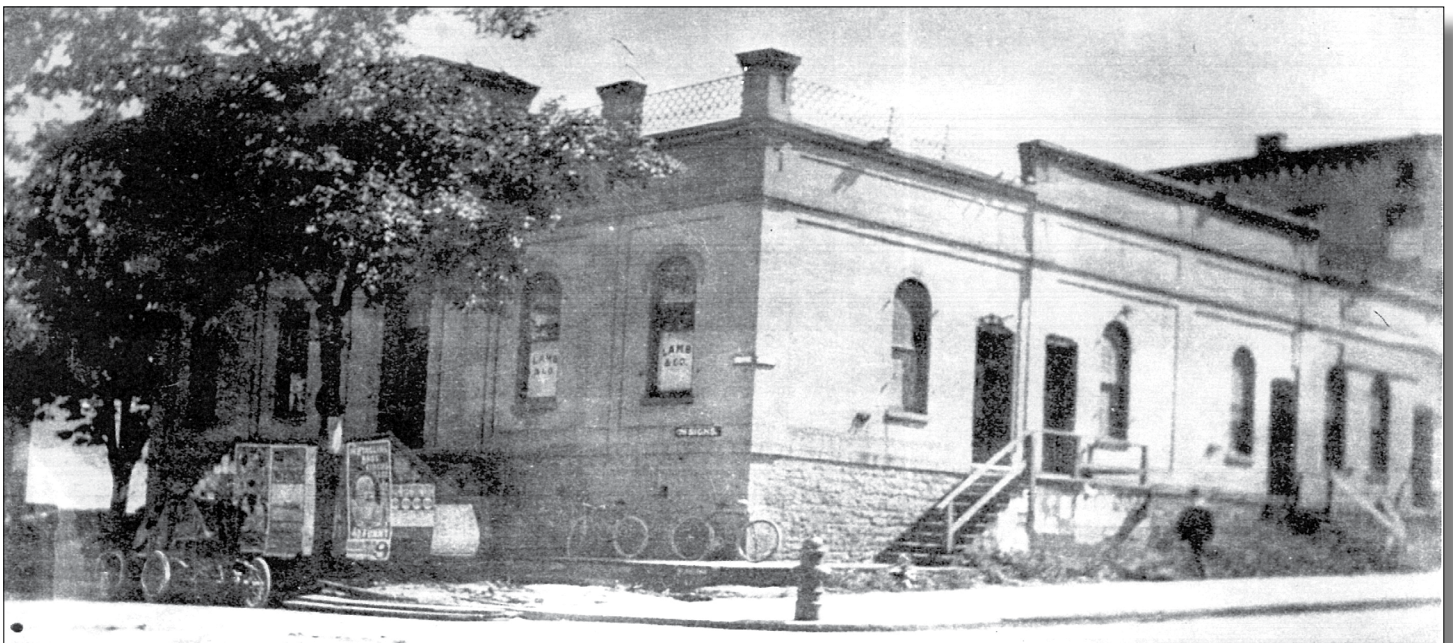
The jury retired at three o'clock p.m. At this moment the thunderstorm swept past in all its fury. Lightning, thunder and rain aided each other in rendering the scene terrific in the extreme. The jurors stood motionless; the judge himself wondered what all this disturbance of the upper world portended; the building was shaken to its foundations, the people stood aghast. It seemed to be the storm-king giving warning to do justice, and the jury took the hint. After retiring to the room, peal after peal of thunder rang out; each flash of lightning seemed to halt in its flight as if to enliven the darkness which spread over the land; a steady torrent of rain poured down, until it seemed that heaven was at war with the earth.

The jury agreed upon a verdict at 11 o'clock at night, and returned reluctantly to deliver it. Chas. H. Taylor was clerk at the time, and in reply to the question, "Have you agreed upon a verdict?" received the answer, "We have!" "Is the prisoner guilty or not guilty?" The foreman, in answering, trembled violently, recovered a little, and had just sufficient strength left to reply, "We find him guilty of the crime, but recommend him to executive clemency." At this moment the roar of thunder became deafening; the lurid glare of electricity was nature's kaleidoscope, lighting up the scene. The prosecuting attorney, counsel for the prisoner, prisoner, judge and audience were all silent under the influences of the occasion; the jurors were singularly timid, yet disturbed nature did not show signs of peace or

approval, but continued her wild show until night came on.

The following day Judge Ransom delivered sentence. In view of the fact that a bill was pending before the Legislature, providing for the abolition of capital punishment, the prisoner was sentenced to be hanged Feb. 25, 1844, so that the judge, who witnessed the aerial proceedings of the day and night previous, would not have to say in other and later years, that he was the last judge in Michigan to sentence a fellow-man to the scaffold, nor permit the jurors to hold themselves responsible for his death. The "abolition bill" did not pass the Legislature that year, so that Sheriff Withey made full preparations for the execution.

A scaffold was erected on the public square in February, 1844, under the sheriff's orders. However, friends of the criminal interested themselves in his behalf, and succeeded in obtaining a reprieve. Before the term allowed in the reprieve expired, the act abolishing capital punishment was approved, the sentence of death set aside, and imprisonment for life substituted. Miller, however, did not remain in prison many years. His relatives in Maine interested themselves in his behalf, and this fact, coupled with the more important one that Hovey, the man on whose evidence the prosecution relied for conviction, and on whose testimony Miller was sentenced to be hanged, when dying confessed that he it was who killed the squaw, and not the unfortunate man who was in prison. Under such circumstances the Governor signed a pardon, and the



*The Old Kent Building. In 1860 ground at the corner of Kent (Bond) and Lyon (where Keith's Empress Theatre later stood and where the Old Kent Bank now is), was purchased for \$1,000 and the building shown above was built and used until 1887.*



victim of evil company was discharged. To say that Miller was not equally guilty with Hovey is out of the question; nor is it possible to become convinced that he who would consign a neighbor to the hangman, could tell the truth, even on the brink of eternity.

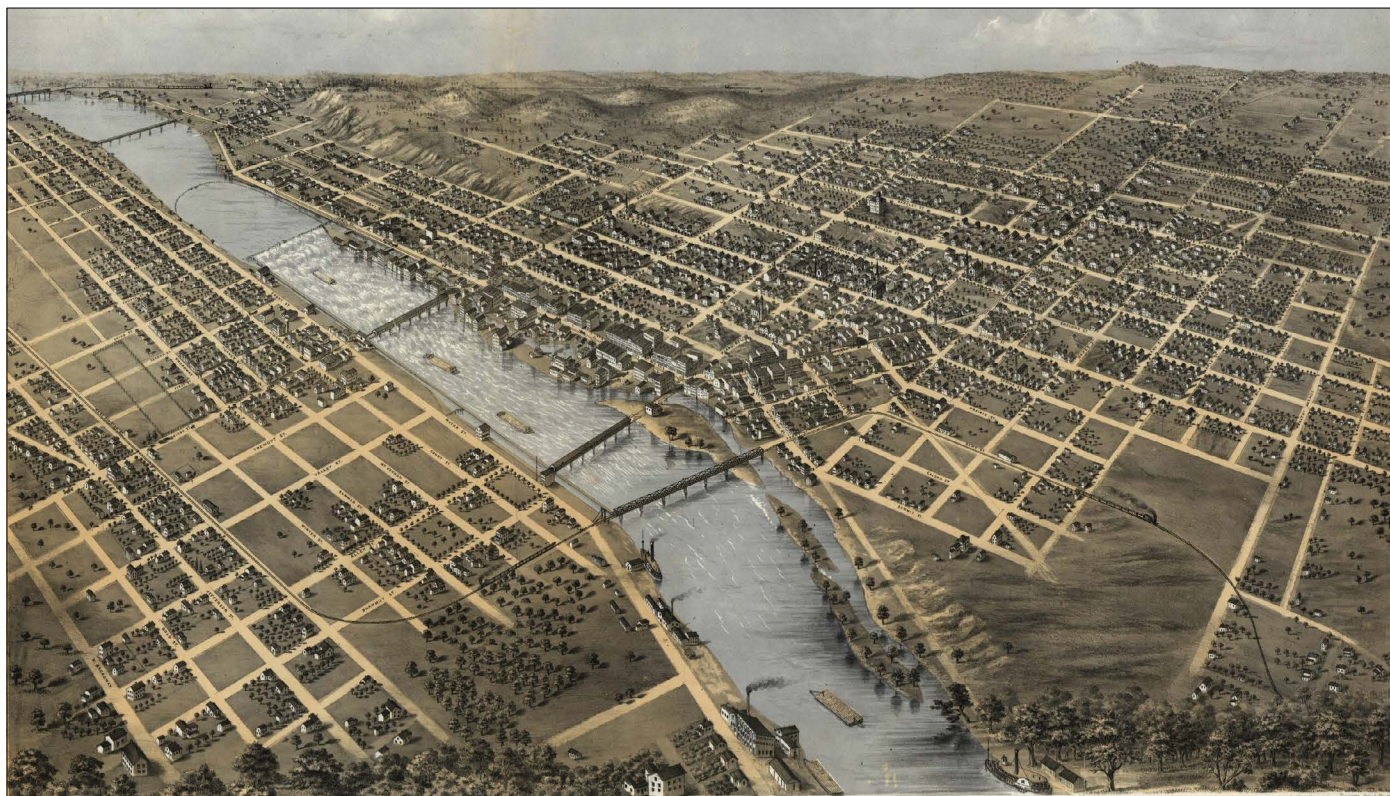
### **The Murder of Dr. Kerny.**

The first case of murder recorded in the history of Plainfield township is that of the killing of Dr. Kerny by Cornelius Tubbs. It appears that trouble arose between the two men on account of slanderous reports said to be circulated by Kerny regarding Tubbs' wife. The gossip and his victim met in the township of Plainfield early in August, 1854, when they entered into a combat of words. The doctor was under the influence of whisky; Tubbs was suffering from a painful felon on the right hand. He did not seek an encounter with the medical man, but, on the contrary, sought every means of retiring. He succeeded in an effort to leave the village, and started for home on foot. He proceeded only a half a mile, when he was overtaken by the doctor, who beat him severely about the head and face. Tubbs tolerated all this, but when the doctor touched the "felon sore," all patience vanished, and Tubbs, seizing a grub, dealt his assailant a terrific blow, which

fractured his skull. Here the battle ended; the unfortunate doctor grew unconscious, in which state he remained until his death next morning. Tubbs was arrested, tried for murder, was defended by T. B. Church, and acquitted, his plea of justifiable homicide being favorably received by a jury of his fellow citizens.

### **The Murder of Barber.**

Early in March, 1860, Mr. Barber, who was then Township Treasurer of Algoma, set out for Grand Rapids to report to the County Treasurer and hand him the moneys which he had collected. The day previous he met Kengin, a fellow townsman, and arranged with him to accompany him, and in accord with this arrangement called at the latter's house next morning. Both left for Grand Rapids; but as Kengin passed out the gate he picked up an ax, remarking that he would have it ground at Plainfield. When about half-way up the hill, a half-mile from Rockford, the murderer raised his deadly weapon, and dealt his defenseless, unsuspecting victim two heavy blows, causing instant death. The assassin fled. A teamster passing that way immediately after discovered the body, gave the alarm, Kengin was pursued, and when arrested at Plainfield



*Grand Rapids, 1868 Photo Credit: Library of Congress, Geography and Map Division*

denied the charge of murder. When taken into the room where the corpse was stretched, he parted the blood-clotted hair, coolly viewing the gaping wounds, and pretended to weep over the body of his dead friend. His trial resulted in a conviction for murder in the first degree. He confessed his guilt, but never acknowledged the amount of money taken. This murderer was sentenced to imprisonment for life, which sentence he is now undergoing.

### **Murder of James Crawford.**

The murder of Crawford was perpetrated March 1, 1870. The deceased visited the house of Peter Lamoureux to discuss business matters. After a few minutes the conversation grew into a dispute, and presently merged into a quarrel. Crawford was in the act of leaving the house, when Lamoureux seized a hammer, with which he struck the retreating Crawford on the head, burying the hammer in the brain of his victim. After receiving this terrible wound, the unfortunate man walked to his home, four and a half miles distant. Having arrived there he fell into an unconscious state, in which he remained until death ended his sufferings March 11, 1870.

The murderer was indicted on the charge of manslaughter, was defended by T. B. Church, convicted, and sentenced to imprisonment for seven years. He received his discharge in 1879. He survived his release about 18 months, and died Aug. 9, 1881. He was buried in the Plainfield cemetery, near the grave of his victim.

In the case of Mills, charged with causing the granary of C. W. Taylor to be burned, the court was occupied

60 days and the jury for 40 days. E. E. Sargeant, T. B. Church and John Van Arman, of Marshall, prosecuted, and Samuel Clark, of Kalamazoo, Judge Goodwin, of Detroit, and a few local lawyers, defended. George Martin presided as Circuit Judge.

Bradley F. Granger, accused of attempting to poison James Miller, a lawyer of Grand Rapids, in 1843, was examined, and escaped lynching through the efforts of Sheriff Harry Eaton. At his trial the jury failed to convict. He was defended by T. B. Church.

### **Trottier's Cheese.**

Trottier, an Indian trader, who kept his books in hieroglyphics, intended to debit the account of a customer with the price of a grindstone; but in entering it he made a large circle, without making a place for the axle. In course of time Trottier, in looking over his book, saw this figure and presumed it meant a cake of cheese. The purchaser was asked to pay, and, on refusing, was summoned before a Kent county justice. The defendant allowed the trader to proceed with the case, and then coolly asked the plaintiff. Was it not a grindstone which he sold? Trottier realized the fact immediately, and cried out "Oh yes! yes! I forgot to make a hole in it, and took it to mean a cake of cheese."

Other equally important cases have marked the history of the county, but an account of them here seems impracticable, if not inappropriate.

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*Looking North on Canal (now Monroe Ave.) from the corner of Canal and Pearl, circa 1877*



When Dwight Goss sat down at his desk some time in the opening years of the twentieth century to pen his work, *The History of Grand Rapids and Its Industries*, C. F. Cooper & Co., Chicago, 1906, he brought with him not only a demonstrated knowledge of the development of the city, but also no less than twenty years in the practice of law here.

Born in Portage County, Ohio in 1857, Goss attended the local schools until 1867, when he and his father (his mother had died the previous year) moved to Clinton County, Michigan. There, he completed his primary and secondary education, graduating from Ionia High School in 1879. For a year or so thereafter he worked on the family farm and taught school. Then, in 1880, he enrolled at the University of Michigan, where he spent two years in literary study followed by enrollment there in the Department of Law. After graduation, he came to Grand Rapids, and for a year and a half worked as a clerk in the pioneer law office of Smiley & Earle.

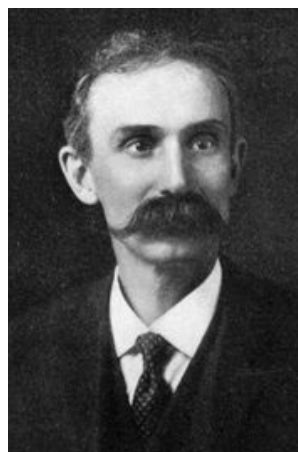
Goss was admitted to practice in Grand Rapids on January 1, 1887. He was appointed assistant United States Attorney in 1898, where he remained until 1902. Thereafter he returned to a flourishing private practice. It was at this time when Goss undertook the creation of his two-volume, 1,300-page history of Grand Rapids.

By all appearance, the Goss history, unlike some of its predecessors, was written entirely by its stated author. Perhaps not surprisingly, given Goss's own status as an active and much respected member of the local bar, the book features a lengthy chapter entitled *The Bench and Bar*. That chapter includes a short summary of local legal history and 185 biographies of local lawyers, then both past and present. The book was written in a pleasant, occasionally anecdotal style, making it one of the more readable histories in the greater local history oeuvre. As is often the case, though authored locally and published by a Chicago house, it is impossible to know today the size of the original edition, or how successful a project it was when it first came on the market in 1906. Today, it is a legitimately rare book. Though available in some libraries and a few private collections, it is infrequently cited in historical scholarship or bibliography. Sadly, Dwight Goss died in 1909, only a few years after the publication of his book, certainly denying him the notoriety, and perhaps sales, that his prodigious efforts certainly deserved.

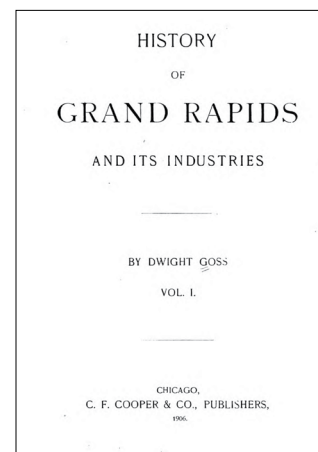
What follows is a transcription of Goss's opening comments about local legal history, including descriptions

of two cases he thought notable, one of which will ring familiar to devotees of constitutional history.

—Thomas R. Dilley



Dwight Goss



## ***The History of Grand Rapids, and Its Industries***

**C. F. Cooper & Co., Chicago, 1906**

### **Chapter XXVI. The Bench and Bar.**

The bench and bar of Kent County have had an existence of about seventy years and the time naturally falls into three periods, which can be called the poetic age, the romantic age, and the prosaic age. Each age had its typical judge and its typical lawyer; and in each period the bench and bar made their imprint upon the history of our commonwealth, and the development of Grand Rapids.

In the pioneer days the judges came to Grand Rapids across the country either by stage or on horseback, disposed of the business on hand either in a day or a week as the business required and departed for the next county. Sometimes lawyers from Kalamazoo, Marshall or Detroit came with the judge and assisted local attorneys in trying important cases, but those were events in the old days, for important cases were few and far between.

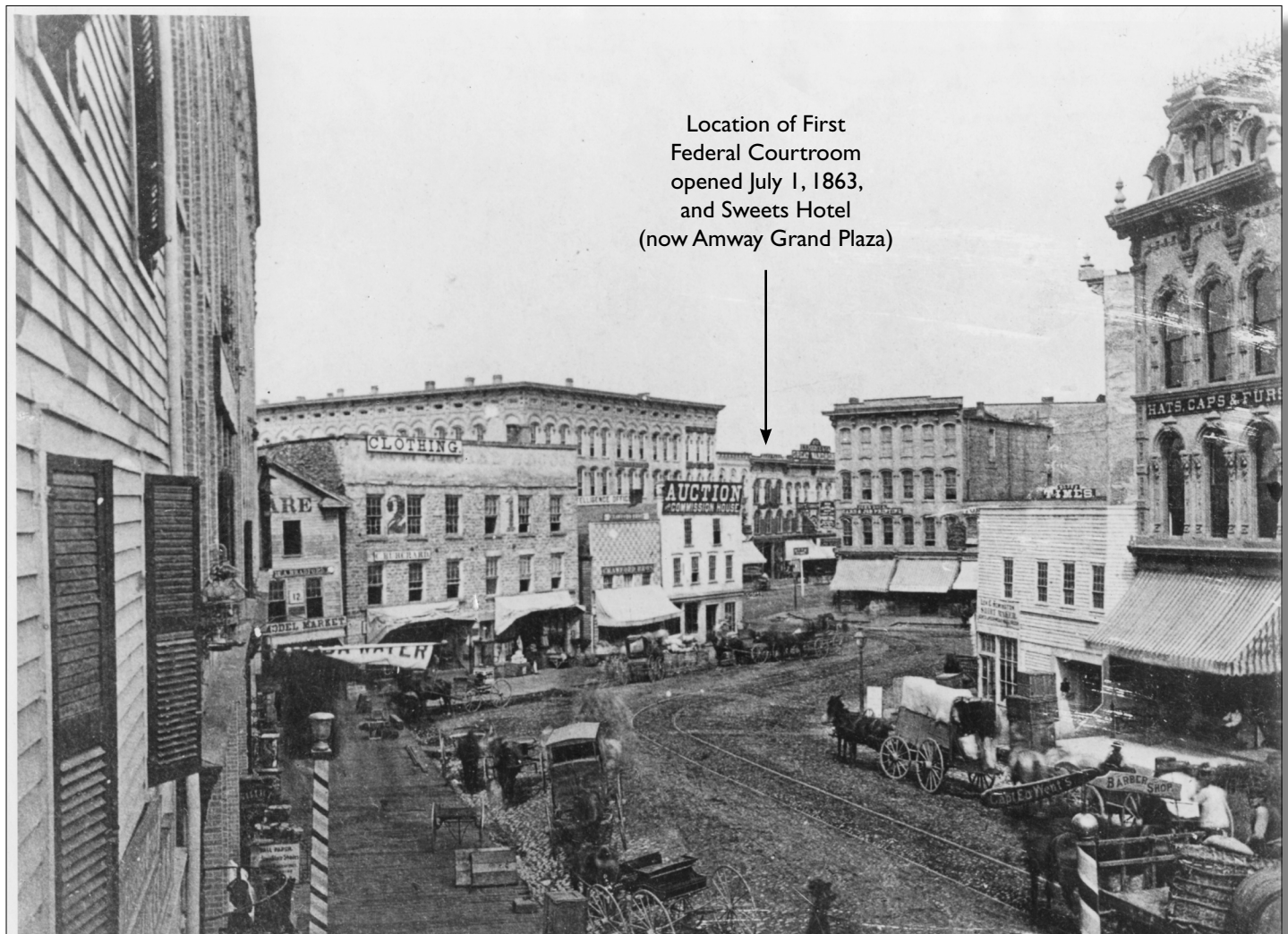
For the first two years court was held in private houses or at the village taverns and the business was disposed of

in a day or two, but in 1838 the county built a court house on what is now Fulton Street Park. It was a two-story frame building 30 by 40 feet in size fronting east and west. It was built by Sylvester Granger and William J. Blakely at a contract price of \$3,000. A few years afterwards Sylvester Granger was admitted to the Kent County bar in the building he had helped to erect.

On July 12, 1844, the court house was destroyed by fire. The county at once built at a cost of \$300 a single-room building on the site of the old court house which was used for about eight years as a place for holding court, and then for nearly forty years the Kent County Court like the Hebrews of old wandered in the wilderness and had an abiding place in rented halls and vacant buildings until the present court house was completed in 1891. The itinerant judges of the early days were not profound

jurists, but they did know human nature and the needs of the growing communities in which their lot was cast. They knew how to apply common law and common sense to the disputes of the pioneers, and in criminal matters knew how to give fair play to the accused and how to dispense justice to the convicted. There were not many appeals from their decisions; they commanded the respect and confidence of the bar and the public. They worked hard and received little pecuniary reward, but they did a great work for Michigan in establishing law and order, and making business methods fair and honest. All honor and glory to the bench of by-gone days!

The bar in pioneer days was decidedly different from the bar of today. The pioneer lawyer did little law business for the simple reason that there was little law business to do. During the first fifteen years there was not enough



*Downtown Grand Rapids in the early 1870s, before several buildings in the center were torn down to permit a continuation of what is now called Monroe Center and eliminate the city's first "S" curve in 1874.*

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legitimate law business in the courts of record in Kent County to support a single lawyer and his family at the prices then paid for legal services. The result was that the pioneer lawyers did other work than law business. The petty cases of Justice Court furnished some business. Many of the pioneer lawyers were elected Justices of the Peace and were glad to increase their professional incomes with the perquisites of the office. Many obtained agencies from insurance companies and solicited insurance; nearly all acted as local representatives for outside land owners, and whenever there was a real estate transfer made a few honest shillings in commissions and for conveyancing. A few lawyers added journalism to their accomplishments and edited and managed local newspapers. Many were politicians and whenever it was possible added the fees of office and the pleasures of public life to their professional incomes and honors. The real aristocrats of the profession acted as loan agents for eastern capitalists and negotiated real estate loans to the settlers, or were representatives of eastern commercial houses who gave credit to local business men, and collected payments when due, or secured good promises for future payments.

The old time lawyer was not troubled with a large number of law books and law periodicals to distract his attention from other professional duties, but those that he had were generally well read and well worn. He did not have ready-made forms and precedents for his cases, but had to use his own knowledge and genius in preparing his pleadings.

The old time lawyers did not become rich and affluent, but if they were wise and shrewd they obtained control of cheap lands and town lots and franchises that afterwards rapidly increased in value and made them and their families comfortable and independent.

In the pioneer age or poetic age of the Kent County bar the average lawyer was a Jack of all professions and practicing law was but an incident in his career, but many of them in the romantic age reaped the fruits of their studies and experiences in the poetic age. The pioneer lawyers were good fellows and good citizens. They knew everybody and everybody knew them. They did much for Grand Rapids and Kent County.

After Grand Rapids was organized as a city in 1850 and Kent County had become well settled there came a time when the attorneys of the county could give their entire time and attention to the practice of law and obtain a good income therefrom. Grand Rapids had a resident

judge and the business of the courts rapidly increased. Many settlers came and commenced to clear out farms in the wilderness. They had their troubles and needed the assistance of courts and lawyers. Lumbermen began to buy timber and ship forest products. They made many contracts with one another and with farmers and with business men both at home and abroad that were broken or not lived up to, and the result was extensive litigation for lawyers and courts.

Again soon after 1850 Grand Rapids became an attractive point for projected railroads and plank roads and transportation companies, and the usual attending troubles of such enterprises brought business to lawyers and courts.

About that time also many corporations were organized, and as corporations have no souls they had to employ lawyers to furnish them a conscience with which to transact business.

At that time, too, Grand Rapids began to be the headquarters for conducting business enterprises in other counties, which tended to increase the legal business of the city.

Early in this period lawyers began to accumulate books for law libraries and the city soon possessed the leading reports of the country and all the text-books of law both American and English.

During the romantic period of the law practice in Grand Rapids the attorneys retained their leadership in public, municipal, and political affairs which they had obtained in pioneer days. Each lawyer of any standing had his clients and acquaintances throughout the community upon whom he could call for aid in a worthy enterprise, or assistance in a political or business scheme. The consequence was that in those days lawyers knew what was going on, knew how to start things going, and how to keep them going after they had started. Lawyers dominated in social and business affairs.

But it was in politics that the lawyers demonstrated their chief power and influence. In the days preceding and during the great civil war national and state politics were often in a chaotic state and political excitement ran high. Political prizes became valuable. Large sums of money were collected for national defense and state improvements. All these things helped the business of the lawyers and increased their prestige.

With their leadership in general affairs each lawyer developed a personality and cultivated a following that



advertised his business, his influence and his success. Lawyers fostered their own social qualities and improved all opportunities to extend their acquaintanceship and their standing. Good fellowship was cherished as a valuable business asset. But it was in the court room, in the trial of causes, that the lawyer of the romantic age was at his best. Important cases were frequently tried and people flocked to the court room for entertainment. They went in crowds to hear attorneys who had become famous for eloquence, repartee, wit, shrewd cross-examination, good story telling, and humor. Attorneys who had idiosyncrasies of word and manner never lacked for an audience. Lawyers' arguments, manners and smartness were discussed and commented upon outside the court room; outside attorneys who attended court were compared with home attorneys, and both modesty and loyalty compel the admission that the Kent County bar did not suffer in the comparisons.

In those days there were men who enjoyed lawsuits and paid their attorneys well for the excitement of the contest and the love of possible victory. They were public benefactors who liberally patronized the law for the entertainment it furnished the public. In these degenerate days such patrons of a noble profession have almost ceased to exist. In those days the court room was a theater in which lawyers were the actors, the cause was the play, and the public furnished the audience.

In that happy period the people applauded and appreciated their lawyers. It was the romantic age of the law practice.

What a change to this prosaic age of the law practice! Nowadays cases involving hundreds of thousands of dollars are tried with a lawyer and his clerk on one side, another lawyer and his stenographer on the other, the judge, the jury and a half dozen sitters on the back seats, and all acting as if the whole thing was a bore.

These declining days have seen a Grand Rapids court room filled with attorneys of national reputation representing different interests at a hearing where the issues involved millions of dollars, who argued for hours with an

audience of less than a dozen persons beside the interested attorneys and their assistants. Very seldom do civil causes attract any attention from the public. Cases filled with romance and pathos are tried to empty benches. The great public which in the old days took such an interest in lawsuits and lawyers has almost ceased to attend the courts.

The successful lawyer has ceased to be a hero; the romance of the law has departed. A law suit is no longer a drama in which the end is waited for by the public with bated interest. The public no longer discusses the dress, the manners, and the appearance of attorneys. Attorneys themselves are dry and prosaic. Most lawsuits are simply

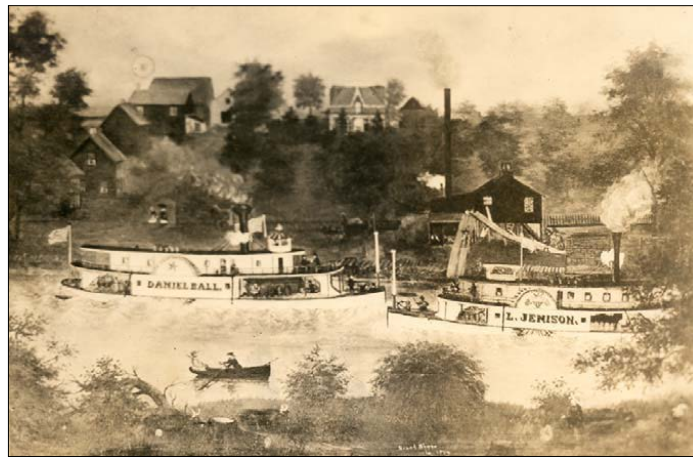
investigations of mistakes and misunderstandings in business transactions. Lawyers are no longer orators and actors; they are plain business men who receive their fees and glory in keeping their clients out of troubles. They no longer entertain and amuse the public.

Grand Rapids has had many exciting and interesting lawsuits. Some were of interest to the public, others to the profession,

of which a few examples can be given.

The first murder trial in Kent County was had at the May term of 1843. Judge Ransom presided. The people were represented by Thomas B. Church, who had located at the Rapids less than a year before, and was assisted by Samuel Clark, an attorney of Kalamazoo. The defense was represented by Simeon M. Johnson, Julius C. Abel and George Martin, all pioneer attorneys,

In December, 1842, two white men named Miller and Hoven, driving an ox team from the forks of the Muskegon river to its mouth, fell in with a squaw named "Nega." The Indians of Muskegon river, missing the Indian woman, who was a daughter of a chief, searched for her and found her body with a broken neck, near where the white men had camped. They took up the trails of the white men and found that Hovey had taken the team to the starting place, while Miller had fled down the river and up the shore towards Saugatuck. Hovey claimed to know nothing of the murder, while Miller was a fugitive.



*The Daniel Ball, 1870*

T. D. Gilbert, who was then Sheriff of Ottawa County, after a time arrested Miller, at the light house near the mouth of Kalamazoo river, and brought him to Grand Rapids. The Indians immediately demanded "a life for a life," but were restrained by the efforts of Louis Campau and Rix Robinson.

Miller was tried and convicted chiefly upon the evidence of Hovey. At that time capital punishment prevailed in Michigan and the convicted man was sentenced to be hung, but he was reprieved until the bill abolishing capital punishment became a law, when he was sent to prison. In a few years Hovey died, and on his death bed he confessed that he was the guilty party. Miller was then pardoned. Thus Kent County escaped the stain of an execution. A scaffold was prepared under the direction of Sheriff Withey, but for the reasons given was never used.

In 1851 occurred the celebrated Mills trial. George Mills was a character who had been in Grand Rapids from early days and by questionable methods had accumulated considerable property and with certain classes had much influence. He possessed a quarrelsome disposition and a vindictive, revengeful temper. Many citizens were not surprised when he was arrested for burning a grocery. There were many delays but finally the case was brought on for trial.

The prosecution was conducted by E. E. Sargeant and Tom Church of Grand Rapids, and John Van Armen of Marshall; the defense was conducted by Judge Goodman of Detroit and Samuel Clark of Kalamazoo, assisted in outside work by local attorneys. The trial took sixty days and was held in an audience room on the West side near Bridge Street. From start to finish every step was stubbornly contested and every point of law disputed. The court room was crowded at every session. Many ladies attended. Platforms were erected on the outside near the windows to accommodate the hearers. Everybody knew George Mills and many people had a personal interest in his conviction or acquittal. In his closing argument Tom Church made one of the

greatest speeches of his life. When the trial closed the court officers, the jury and the attorneys were in a state of physical exhaustion from their duties. The respondent was convicted, and sentenced to prison, but was released before completing his term. He did not return to Grand Rapids to reside.

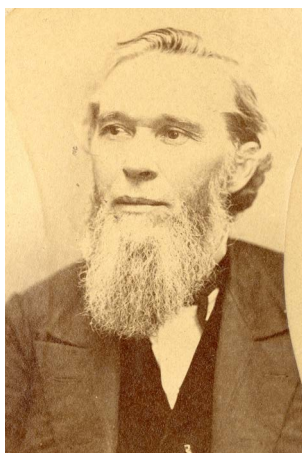
A leading case in the admiralty and interstate commerce of the United States was the case of "The Daniel Ball" decided by the United States Supreme Court in December, 1870. It was a Grand Rapids case. In March, 1868, "The Daniel Ball," a steamboat of one hundred and twenty-three tons burden, was navigating Grand river between Grand Rapids and Grand Haven and transporting merchandise

and passengers without having been inspected or licensed under the laws of the United States. The government filed a libel against the boat in the United States District Court at Grand Rapids to recover a penalty for neglecting to obtain inspection and license.

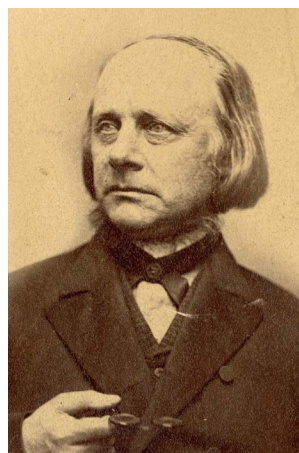
Two questions were presented for the decision of the court: First, whether the steamer was engaged in transporting merchandise and passengers on a navigable water of the United States within the meaning of the acts of Congress; second, whether those acts were applicable to a steamer engaged as a common carrier between places in the same state when only a portion of the merchandise transported was destined to places in other states, or came from places without the state. Both questions were decided in the affirmative by the Supreme Court, and the principles of law declared in that case became the basis for the Interstate Commerce Act and the decisions sustaining it.

The libel was dismissed by Judge Withey of the District Court, but his decision was reversed by Judge Swan of the Circuit Court and the libel was sustained by the Supreme Court of the United States. Col. A. T. McReynolds appeared for the boat, the U. S. officials for the government.

A case in these later days that attracted unusual attention from the public and the profession was the case of Haines vs. Hayden, reported in 95 Mich., at page



*Solomon Withey*



*Andrew T. McReynolds*

332. It was tried in the Kent County Circuit Court in February and March, 1892, in the old court rooms of the Norris Block just before the court house was completed. Eminent counsel were employed on both sides. It was a will case. For the proponent were Major L. Dunham, E. A. Maher and William Kingsley of Grand Rapids, and Alfred Russell of Detroit; for the contestant were C. H. Gleason, M. J. Smiley and Edwin F. Uhl.

It was a case filled with scandal and hatred and all the baser passions of human nature. In popular parlance it was known as the "Jocky Brown" will case.

In June, 1891. James H. Brown died at the age of 84, leaving an estate amounting to about \$160,000, and two daughters who were sisters, or supposed to be sisters, and who were both past the meridian of life. Brown for years had been a familiar figure in the courts of Kent County. He was a sharp, shrewd, unyielding and in a measure unscrupulous man who drove hard bargains and always insisted on all his legal rights. He was a money loaner and speculator and universally was known as "Jocky Brown." In his last years he was blind, but nevertheless always had cases pending in court and gave personal attention to their conduct.

By the terms of his will he gave almost his entire estate to his eldest daughter and made her an executor of his will; to the other daughter he simply gave the income from \$10,000, and even that portion was to be held and controlled by the favored sister and the income doled out as her judgment might dictate.

The less favored sister contested the will on the grounds of undue influence and mental incapacity, and produced evidence tending to show that the favored sister had

poisoned her father's mind, when the will was made, into believing that the less favored sister was not the child of the testator; in fact the favored sister gave testimony tending to show that her own mother was unchaste and that her younger sister was illegitimate. Of course the testimony took the usual wide range of a will case; everything said and done by "Jocky Brown" and his family for fifty years was investigated. All the dry bones of the family skeleton were thoroughly shaken and dusted.

When the arguments came it was a contest of grants. All connected with the case were well known advocates. Mr. Uhl and Mr. Smiley had long been considered among the leaders of the Kent County bar; they had long been rivals and generally on opposite sides, but now they were associates and each was determined to equal if not to surpass his own best efforts. Mr. Russell had a national reputation as a lawyer and advocate. During the entire trial of weeks' duration the court room was filled and when the arguments came all available space in reach of the voices of the advocates was crowded. But the jury did for "Jocky Brown" dead what no man had been able to do for him living: they broke his will, and their verdict

was sustained by the Supreme Court

All the lawyers of the poetic age, and most of those in the romantic age have passed away. They did good work for their adopted city. They did their share in establishing its institutions, and developing its resources. The stories of their struggles can be read with profit. Many left only fragmentary records, and are unrecorded. Others are here given.



*The cornerstone for the large multi-story Kent County Building was laid in 1889, and was it was occupied in 1892.*



## Past Issues of Stereoscope

Stereoscope: The Journal of the Historical Society is published seasonally by the Society and often features in-depth articles about the Court's colorful past. The first issue was published 16 years ago in 2003, and since then there have been 33 issues. Persons interested in submitting articles are invited to contact David J. Gass (616) 831-1717. To view/print the articles go to our website—<http://www.federalcourthistoricalwdmi.org/Stereoscope.html>

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