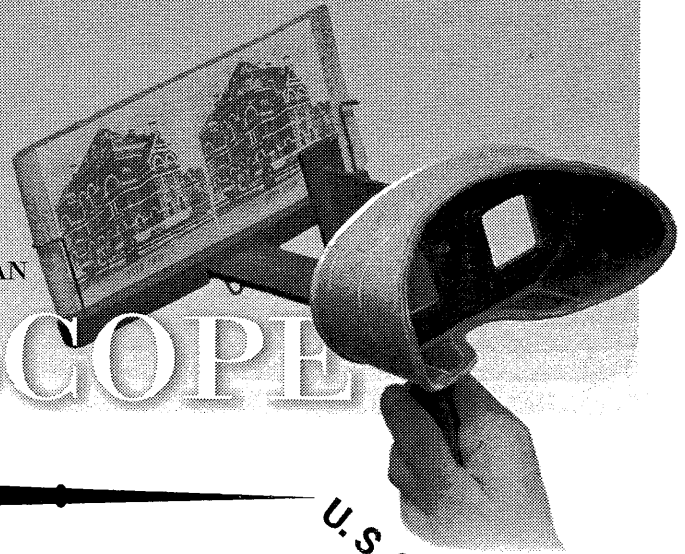


THE JOURNAL OF
THE HISTORICAL SOCIETY
OF THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN

STEREOSCOPE



The Taxing Journey of the *Daniel Ball*

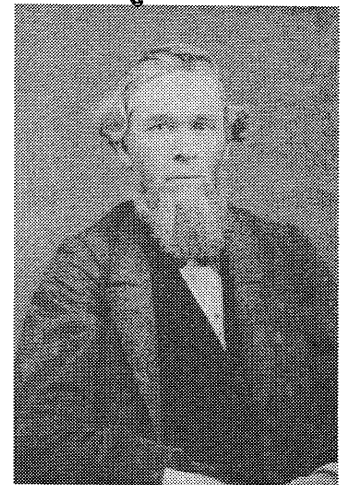
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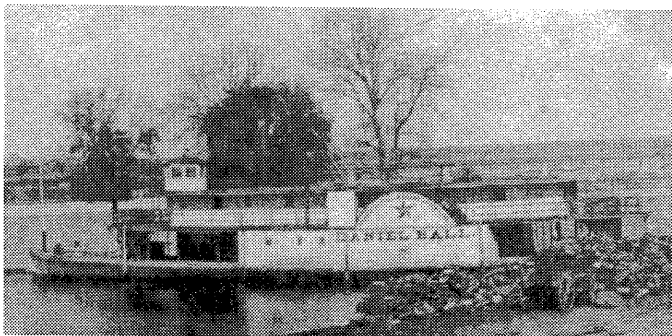
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Grand Rapids

During a poignant time of expanding federal presence in America, Congress on December 23, 1863 split Michigan's federal judiciary in two, and established the U.S. District Court for the Western District of Michigan. President Lincoln promptly appointed Solomon Lewis Withey District Judge. Under Judge Withey's direction, the District soon divided into the Northern and Southern Divisions, due in large part to the growing docket borne of the Upper Peninsula's rough and tumble brand of commerce.

In July 1868, Judge Withey dismissed a federal licensing case against the *Daniel Ball*, a grand belle of Michigan's steamship industry. Notwithstanding a growing federal presence in our country, Judge Withey declined to extend the Commerce Clause of the U.S. Constitution to a boat that operated exclusively in Michigan. The Circuit Court of Appeals and Supreme Court, however, deemed the Clause applicable, and the federal treasury unshackled. Why would the boat's owners fight to the end of the earth to protest a \$500 fine? History reveals that neither the owners, nor the boat, had a choice in the matter.



Judge Withey



The Times

Our greatest aspiration after 1865 was to turn the page. Emerging from a war that nobody won – the Union

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merely lost a little less — America set its
course on explosive economic growth.
In an era that first witnessed electric
industry, railroads and modern finance,
the war cry of the times was Prosperity!

West Michigan followed suit. Mr.
Charles Holt, a “gentleman experienced
in mining,” became convinced that
precious metals pervaded the ravines
along the Thornapple River in Cascade
and Ada. Mr. Holt sank a few pickaxes,
and proclaimed that gold had been
“found in sufficient quantities to yield
a good profit to the miner.” The short-
lived and highly unprofitable Kent
County rush was on.

E.S. Pierce & Co.
opened a department
store featuring “men’s,
boys, and youth’s
clothing, foreign and
domestic, including
cassimeres.” Pierce
chose No. 8 Canal
Street, Grand Rapids,
for the store’s location
— a stone’s throw

from archrival Palace Clothing House.

The cure-all in vogue was Shepard’s
Compound Wahoo Bitters, “not a
whiskey or stimulating beverage, but
medicine within the reach of all.”

Even the day’s humor had a solid
work ethic. The *Grand Rapids Weekly
Democrat* reported January 11, 1871 that

“A boy was sent by his mother
to saw some stove wood out of
railroad lumber. Going outdoors
shortly after, she found the
youth sitting on the saw-house,
with head down, and asked why
he didn’t keep at his work. ‘My
dear mother, I find it hard, very
hard, to sever old ties.’”

Railroads, it turns out, provided
ample frustration for entrepreneurs
young and old.

The River

From its headwaters in
Somerset Township, ten miles
south of Jackson, the Grand
River flows northwest for 270
miles before it empties into Lake
Michigan at Grand Haven. The
Grand steadily builds with help
from the Portage River North of
Jackson, the Cedar at Lansing,
the Looking Glass at Portland, the
Maple at Muir, the Thornapple at
Ada and the Rogue at Plainfield.
During its serpentine path through
Comstock Park, Walker, Grand

Rapids, Wyoming,
and Walker again,
the Grand joins
Mill, Indian
Mill and Plaster
Creeks. Buck and
Rush Creeks join
at Jenison and
Grandville, and
from there the
River proceeds to
the Great Lakes.

“Always ready for a
fight, the owners would
find a formidable
opponent in a freshly
catalyzed federal
government.”

The River has supported
boating and commerce since
time immemorial. The River
supported Native American trade
routes as early as 150 B.C., when
the Hopewell tribe flourished
from Ohio to Kansas City. The
Hopewell legacy remains on
display at Indian Mound Drive,
just south of Grand Rapids.

In 1836, Louis Campau
commissioned pole boat *Young
Napoleon*, which delivered shingle
and chord wood to the Grand
Haven docks. The first steamboat
in 1837, *Governor Mason*, another
Campau vessel, quickly dethroned
the pole boats as the Queens
of the River. The *Mason*, at 84
feet and 53 tons, marked the

beginning of a vibrant Steamer trade in West Michigan. The 40's and 50's produced a steady stream of new boats, such as the 58-foot *Martin A. Ryerson* and the 127-foot *Nebraska*, both commissioned by a banker, businessman and Eastern transplant named Daniel Ball.

But the glory years were short, and the markets and infrastructure languished. "Docks" remained clearings along the riverbanks, where a steamer could nose ashore and lower its gangplank. In March of 1856, William H. Godfroy served as Customs Officer for the newly opened Grand Rapids Port of Delivery. Regrettably, and due to political tussles in Washington, President Buchanan suspended both Mr. Godfroy's position and the Port from 1860 to 1888. Meanwhile, the first trains roared into town in 1858, as laborers completed the Detroit, Grand Haven and Milwaukee Railroad Bridge at Ann Street. Rail had arrived, ultimately reducing the Grand River steamship trade to a novelty.

The Boat and Her Owners

Amidst these challenges, W.C. Heyden launched the *Daniel Ball* in 1861 for owners Jesse Ganoë, Byron D. Ball and Demetrius Turner. With a length of 141 feet and a capacity of 123 tons, the *Ball* cast an imposing shadow. Popular with leisure travelers, the ship offered overnight round-trips from Grand Rapids to Grand Haven, and no further.

The owners presented a curious mix of talents – Ganoë, the veteran riverboat captain; Byron Ball, a relative of the boat's namesake, as well as a lawyer, politician and champion boxer (to some, one in the same); and Turner, a master

machinist and genius with marine engines. Always ready for a fight, the owners would find a formidable opponent in a freshly catalyzed federal government.

The Case

By Act of July 7, 1838, Congress mandated federal licensing of any steam vessel that transported goods or passengers on "the bays, lakes, rivers, or other navigable waters of the United States." The statute imposed a \$500 fine on unlicensed vessels. For reasons we can only speculate at, the *Ball's* owners refused to purchase the license.

On April 2, 1868, the United States through Assistant Attorney General A.D. Griswold filed a libel action in the District Court, demanding confiscation of the *Daniel Ball* to satisfy the \$500 fine. The next day, the owners and their surety avoided immediate seizure by filing a \$1000 bond with Court Clerk Isaac H. Parrish. Moving swiftly, Judge Withey dismissed the action on July 28. The Sixth Circuit Court of Appeals reversed the dismissal on November 6, and ordered Mr. Parrish to sell the steamer.

With the same spirit of optimism that launched the boat, the owners filed a petition of appeal with the United States Supreme Court. On March 28, 1869, Justice Noah H. Swayne certified the appeal, and ordered the litigants to Washington for hearing on the first Monday of December, 1870.

The *Daniel Ball* and the Government agreed on the essential

facts. The boat navigated the Grand River to transport goods and passengers between Grand Rapids and Grand Haven, without a federal license. The boat only drew two feet of water, and therefore was incapable of navigating Lake Michigan. The boat did not affiliate with any Great Lakes vessels. All transported goods were unloaded at the final destination in Grand Haven. Certain of those goods, however, were delivered to a warehouse on consignment, for shipment to ports in other states.

The inextricable issues were whether a) the Grand River constituted navigable waters of the United States, and b) the *Daniel Ball* engaged in interstate commerce subject to Congressional regulation.

Justice Stephen J. Field delivered a unanimous opinion affirming the Circuit Court and ordering the fine. The Court first rejected the common law definition of "navigable waters." In England, navigable waters included rivers subject to the ebb and flow of the tides. Under the federal statute, in contrast, the Court explained that "those rivers must be

"The *Daniel Ball* has produced a lasting legacy, both as a boat and as a federal case."

regarded as public navigable rivers in law which are navigable in fact." Public navigable waters comprise navigable waters of the United States if they "form in their

ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States..." The Court placed the Grand River squarely within this definition. From the

vantage of a fully laden 123-ton vessel, it would strain credibility to disagree.

The tougher question was whether the *Daniel Ball* engaged in interstate commerce, when she never left Michigan. The Court deemed her sufficiently an "instrument" of interstate commerce, for "whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely within one State, and some acting through two or more States, does in no respect affect the character of the transaction."

With this pronouncement, serious debate over the scope of the Commerce Clause dissipated like mist.

History, Like a River, Flows On

The *Daniel Ball* has produced a lasting legacy, both as a boat and as a federal case.

Consider the case. Judge Field's opinion severed our umbilical cord to English admiralty law, and formed a new and lasting doctrine. The decision pervades most U.S. admiralty decisions, and provides the bedrock for today's definition of the Commerce clause. The case has been cited in at least 620 reported case decisions, and in at least 160 law review and journal articles.

Consider the policy effect. In their appellate brief, the boat's owners warned that the U.S. position would decimate the notion of state trade.

"It seems clear...that this steamer was engaged exclusively in domestic trade. If not, there is no such thing

as the domestic trade of a state...The railroads entirely within a State, which transport bags of grain or barrels of fruit destined eventually to a distant market may be subject to congressional police regulations. But the regulations need not stop at the cars. They may go back to the teamster who drew the freight to the cars, and to the farmer who raised and forwarded it...Nay, even the omnibuses in our cities may be subjected to similar regulations, be required to be licensed and inspected for explosive oils in their lamps, if you please, under congressional legislation, because they carry passengers destined, and baggage marked for distant states."

An apocalyptic prophecy in 1871, this observation would barely raise legal eyebrows today.

Consider the boat. The *Daniel Ball* represented the last of a trade doomed to failure from its inception. Steam lost to rail within thirty years. The first Grand River steamship *Governor Mason* borrowed an engine from the wrecked ship *Don Quixote*. The *Daniel Ball*, one of only a handful of steamers to ply the Grand after 1860, similarly tilted at windmills. By 1890, the Michigan steamship era was over.

Indeed, the *Daniel Ball* was ill fated as an instrument of interstate commerce. Perhaps low profit margins, more than the pride and pluck of the boat's owners, pressed the licensing issue all the way to Washington. After losing the court

battle, the boat left West Michigan in search of more profitable waters. As a befitting end to a rough journey, the *New York Times* quietly reported on October 18, 1876 that "The Steamer Daniel Ball was burned this afternoon while approaching Bay City. Passengers and crew all saved. The vessel was valued at \$15,000, insurance about one-half."

Finally, consider the namesake. By every measure, Daniel Ball had a long and distinguished business career in Grand Rapids. Legend suggests, however, that he left town under crushing debt and the specter of bad luck, even before the federal case. While modern research can neither confirm nor deny this legend, glimpses appear along the way. For example, the *Jackson (Tenn.) Whig* reported on March 21, 1868:

"On last Sunday evening as little Johnny Trice...was playing in a lot in the rear of his father's residence...he discovered a piece of paper projecting from the top of an old decayed stump...Pulling the paper from its partially embedded position, he discovered that there were others buried deeper down... Gathering up all the papers he had found, he carried them home and showed them to his father...Through the kindness of Mr. Trice and Mr. W.D. Clark, agent of the express company in this city, in whose hands the papers have been placed for safe keeping, we were permitted to examine them all...

"One note, dated New York City, March 4, 1868, reads: Ten years after date I promise to pay to

the order of Daniel Ball, the sum of \$13,500, for value received. Signed Ira A. Allen.

"One note for \$3000, dated New York city, Feb. 24, 1868, given by H.B. Hewett, and made payable to Daniel Ball.

"One note for the same amount, in favor of same, and given by Charles H. Stewart.

"Among the papers are several other notes, some for a considerable amount, with credits bearing various dates entered upon them. Also several mortgages on property in Michigan in favor of Daniel Ball.

"There is also an insurance policy on the steamboat *Hudson* for \$15,000...

"It is highly probable that the person to whom the papers belonged was robbed either on the cars or at the depot in this city by some of the accomplished thieves that have of late infested this community. If Mr. Ball does not make his appearance soon we will be forced to believe that a darker crime than mere robbery has been committed."

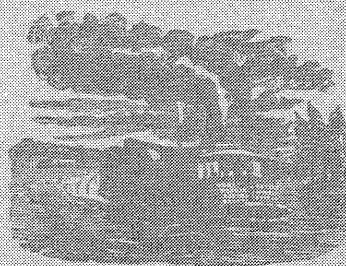
In fairness, the scant record does not firmly connect the victim Daniel Ball with the steamer's namesake. Daniel Ball is a common name. Perhaps another Daniel Ball suffered a loss of his finances and maybe his life in Tennessee – a Daniel Ball who also had real estate interests in Michigan, connections to steamers, and a healthy fear of railroads.

The author expresses his gratitude for the invaluable assistance provided by Mr. Gordon Olson, retired Historian, City of Grand Rapids; Ms. Joan Byerly, Librarian, U.S. District Court for the Western District of Michigan; and the Research Staff, History Section, Grand Rapids Public Library.

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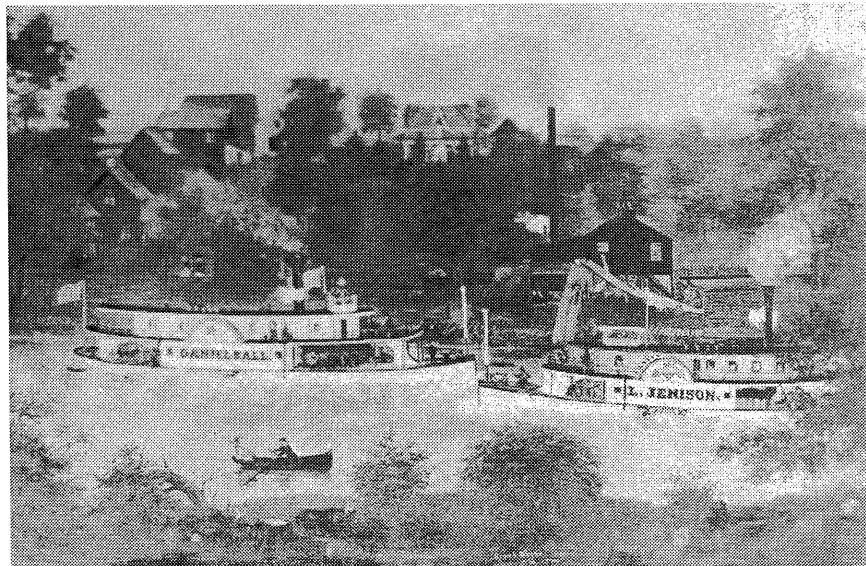
J. S. CROSBY & SON, Fire, Marine and Life Insurance Agents, 13 Canal-st.

Brief Biographies of the Participants

Hon. Solomon Lewis Withey, born April 21, 1820 in St. Albans Vermont, began life in Grand Rapids in 1838 as a teacher. After reading law with Rathbone & Martin, he partnered with John Ball in the firm Ball & Withey. Following eight years of practice, Judge Withey served as Kent County Probate Judge from 1848 to 1852. He also acted as Michigan State Senator from 1861 to 1862, before accepting his appointment as U.S. District Judge for the Western District of Michigan in 1863. While serving on the federal bench, Judge Withey held numerous and diverse titles, including Delegate to the State Constitutional Convention, President of First National Bank, and President of the Grand Rapids Woman Suffrage Association. He passed away as a sitting federal judge on April 25, 1886.

Byron D. Ball was born July 19, 1834 in Rochester, New York. He was the son of David Ball, who founded the City of Owosso in 1835. After serving two years as a machinist in Grand Rapids, Byron studied law and obtained his degree from State University in 1861. He served as

Kent County Prosecuting attorney for four years and Michigan State Senator for two. He was then elected Michigan Attorney General, where he served for two years before resigning due to ill health. He was described as "a man of large stature, compactly built, of immense strength, and one of the best amateur boxers ever seen on the university grounds." He passed away in 1876.



Captain Jesse Canoe piloted boats on the Grand River from 1855 to 1887. He built five vessels, and owned six.

Demetrious Turner, born February 25, 1815 in Essex Connecticut, mastered the machinist trade as a youth, without serving an apprenticeship. He enjoyed a long engineering career in Grand Rapids running a sawmill and building steamship engines.

Augustus D. Griswold was born in Oneida County, New York October 11, 1823. He moved to Michigan from Rome, New York in 1856, and acted as U.S. District Attorney for Western Michigan from 1865 to 1869. His service as District Attorney was interrupted for six months, when President Johnson first removed and later reappointed him. He then served as Michigan

State Senator, before establishing a law practice in Ovid, Michigan.

Isaac H. Parrish, born April 2, 1826 in Ontario County, New York, came to Oakland County, Michigan in 1834. Admitted to the Bar in 1848, he practiced law in Pontiac, Chicago, and Wisconsin. He was appointed Clerk of the U.S. District

Court for the Western District of Michigan in 1865, where he served ten years. He then served as Judge of the Kent County Superior Court for six years, before leaving the City for whereabouts unknown.

The official case citation is *The Daniel Ball*, 77 U.S. 557, 10 Wall. 557, 19 L. Ed. 999 (1871).

Dr. Ray B. Loeschner and James A. Mitchell Appointed Historical Society Trustees

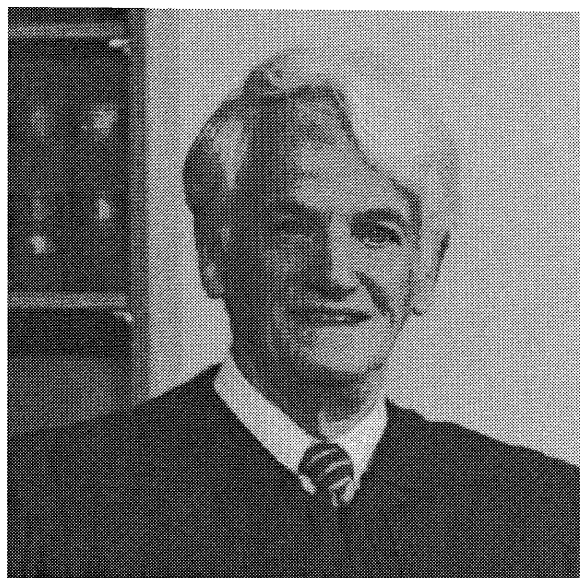
Dr. Ray B. Loeschner and James A. Mitchell, both of Grand Rapids, Michigan were recently appointed as new Trustees of The Historical Society of the United States District Court for the Western District of Michigan. Dr. Loeschner is currently the President of Loeschner

Enterprises, Inc., a fund-raising and consulting firm. Previously, Dr. Loeschner served as President of Olivet College and Ohio Northern University and was Vice President and Chief Administrator for the Charles Stewart Mott Foundation headquartered in Flint, Michigan. Jim

Mitchell is a member of the law firm of Price, Heneveld, Cooper, DeWitt & Litton, LLP, which concentrates on intellectual property law. Jim graduated from Michigan Technological University in 1965 with a Bachelor of Science degree in Chemistry and from the University of Michigan Law School in 1968 with a Juris Doctor degree. Jim is registered to practice before the U.S. Patent and Trademark Office. The Historical Society extends a warm welcome to our two new trustees."

Judge Wendell A. Miles Celebrates His Thirtieth Year as Federal District Court Judge

On April 17, 2004, Senior Judge Wendell A. Miles celebrated his thirtieth year as a federal district court judge, which is the record for continuous length of judicial service in this district. Judge Miles was appointed to the federal bench in 1974 by President Richard M. Nixon. A graduate of the University of Michigan Law School, Judge Miles was appointed the United States Attorney for the Western District of Michigan in 1953 and served in that capacity until 1960, when he was the unsuccessful Republican candidate for State Attorney General. In 1970, Judge Miles was elected as judge of Michigan's 20th Circuit and four years later ascended the federal bench. The Historical Society congratulates Judge Miles on this historical occasion and thanks him for his generous contributions to the West Michigan bar and community.



The Federal Bar Association

The Federal Bar Association, which publishes *The Federal Lawyer* magazine, is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a Judicial Profile of a federal judicial officer in your jurisdiction for publication in *The Federal Lawyer*.

A Judicial Profile is approximately 1,500-2,000 words, and is usually accompanied by a formal portrait and, when available, personal photographs of the judge. Judicial Profiles don't follow a standard formula, but each profile usually addresses personal topics such

as the judge's reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc.

If you are interested in writing a Judicial Profile, we would like to hear from you. Please send an e-mail to Cathy Barrie, the managing editor of *The Federal Lawyer* magazine, at cbarrie@fedbar.org.

If you're not interested in writing a Judicial Profile, but know of someone who might be, please feel free to forward this article to them.

Biographical Consultants for Former Judges Past and Present

The following persons are acting as consultants for the various present and former judges of the United States District Court for the Western District of Michigan. If you have any information that you wish to share with the Historical Society concerning these judges, please contact the appropriate consultant.

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-and-

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-and-

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