

# There Were Four of Us or, Was It Five

2by3

THOMAS D. O'BRIEN  
1936

## Foreword

Over a year after Thomas Dillon O'Brien's death on September 3, 1935, Memorial Services were held for him before the Minnesota Supreme Court. \* The lawyers and judges who eulogized Justice O'Brien did not mention his memoir, *There Were Four of Us or, Was It Five*, because it had not been published. Several hundred copies were printed in 1938 by the *St. Paul Dispatch*. The Memorial Services, which permit us to learn how the Justice's contemporaries remembered him, follow.

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\* At this memorial service, Justices Charles L. Lewis (1851-1936) and Charles B. Elliott (1861-1935) were also eulogized. Only the tributes to Justice O'Brien are posted here. The three memorials were printed in Volume 198 of the *Minnesota Reports*, and reprinted in *Testimony: Remembering Minnesota's Supreme Court Justices* (Minn. Sup. Ct. Hist. Soc., 2008).



**Thomas D. O'Brien**  
1859-1935  
Associate Justice, 1909-1911

In the afternoon of November 25, 1936, at two o'clock, the court being assembled at the court room in the State Capitol, Chief Justice John P. Devaney called upon Michael J. Doherty, president of the Minnesota State Bar Association.

Mr. Doherty then said:

The bar of Minnesota asks leave at this time to join with the court in honoring the memory of three men who have passed from this life since this court last convened for a similar purpose. Each of these three men was during his lifetime a leader of the bar of this state and a distinguished member of this court.

The bar is represented by Mr. Charles Donnelly, the Honorable Frederick N. Dickson, Mr. James D. Shearer, and the Honorable Pierce Butler, who will present a memorial on behalf of the Honorable Thomas D. O'Brien. Although the last mentioned of this group [Butler] has for some years occupied a high judicial position, he is still, I think it is safe to say, in spirit, a member of the bar of Minnesota.

Mr. Charles Donnelly then said:

As a member of the committee consisting of Mr. Justice Butler, Judge Frederick N. Dickson, and myself, I desire to submit this memorial:

Thomas Dillon O'Brien died at his home in this city on September 3, 1935, in his seventy-seventh year. He was an associate justice of this court from September 1, 1909, until January 1, 1911. Except for his short service on this bench and a service of two years as insurance commissioner of this state, he was throughout this long period a practicing lawyer, devoting himself unsparingly to the interests of his clients.



Thomas Dillon O'Brien

He was a member of a remarkable family. His father, Dillon O'Brien, and his mother were natives of Ireland, highly educated, and living the carefree life of people who have leisure and means to enjoy it, until the depression that descended upon Ireland in the Forties swept away their possessions and left no choice but to emigrate and begin life anew in some other land. They came to America and settled at LaPointe on Madeline Island, Wisconsin, near the head of Lake Superior, where the father became a teacher in a mission school. Here Thomas was born on February 14, 1859. In 1863 the family moved to Minneapolis, and two years later to St. Paul, Minnesota; and for the remaining 71 years of his life Thomas was a resident of this state and, except for a short period during his boyhood, a resident of this city.

In 1877 or 1878 he entered the office of Young & Newell as a student and clerk. Later, and at the time of his admission to the bar in 1880, he was clerk of the municipal court,, where he remained for a year. In 1885 he was appointed assistant city attorney. A partnership formed with his brother John D. O'Brien continued until 1888, when he entered into a partnership with his brother C. D. O'Brien. In 1891 he was elected county attorney of Ramsey County and served one term. He disliked the role of prosecutor, felt that he was not by temperament fitted for it, and declined reelection.

In 1905 Governor John A. Johnson appointed him insurance commissioner. This position he held until 1907, when he resigned to enter private practice and organized the firm of O'Brien & Stone. On September 1, 1909, he was appointed by Governor Johnson a justice of this court, to fill out a term that ended January 1, 1911, when he returned to private practice, organizing the firm of O'Brien, Young & Stone, later O'Brien, Horn & Stringer. In 1917 he became the first president of the St. Paul Association. He was one of the founders of the St. Paul College of Law, lectured there for many years, and until his death was a member of its board of trustees. When the St. Thomas College of Law was organized, he became its dean and so remained during the period of its existence.

His service as a member of this court was too short to enable him to achieve fully the high place in the ranks of the judiciary that, with a more extended service, his abilities would undoubtedly have won for him. He was a member of the court for but 16 months, and during this period he wrote the opinions in about 100 cases, appearing in Volumes 109-113 of the Reports. Strong, clear, direct, firm, and easily understandable, his opinions exhibit the ease and mastery with which long training and earnest thought and study enabled him to move over the whole field of jurisprudence; and they are informed throughout with the love of justice and the determination to do right that, during his whole life, were so characteristic of the man.

It was as an advocate, however, that he won the high place that he held in his profession; and it is as a great advocate and a great citizen that he will be remembered by those who knew him. His sense of civic duty was high, and it was a matter of wonder to his friends and associates how, in his busy career as a lawyer, he found so much time to devote to the public service. His death marked a great loss to the profession and to the state; and it is eminently fitting that a tribute to his memory should be placed on the records of the court on which he served.

Pierce Butler  
Frederick N. Dickson  
Charles Donnelly

Mr. Charles Donnelly then said:

In presenting this memorial to a man who had achieved such distinction in his profession and who, throughout a long life, was ready at all times to respond unselfishly to any call made upon him to render public service, I feel that I ought to say a word about my own relations to him and what his friendship meant to me.

There are doubtless many of the older members of the bar of the state who knew Judge O'Brien longer and better than I knew him, for my acquaintance with him began only about 25 years ago, and at that time he had already been a practitioner at the bar of the state for nearly 30 years. When I first met him he was immersed in the work and study involved in the Minnesota Rate Cases; and, as it happened that at that particular juncture I was myself pretty much occupied with that branch of the law, we had a common intellectual interest, and in this our friendship originated. I saw a good deal of him thereafter in the trial and argument of cases and came to share the admiration in which he was universally held for his gifts as an advocate. He was a most formidable antagonist, and few who encountered the rapier-like thrust of his wit or sarcasm cared to provoke it a second time. But it was not an embittered wit. He did not like to feel that he had left a wound. Indeed I have sometimes

thought that he suffered more than his opponent from the blows he gave, for of all the strong, forceful, rugged men whom I have ever known he was, I believe, the most gentle-hearted.

It was a matter of regret to those of us who know and admired Judge O'Brien that he did not have the opportunity in a more extended service on this bench to exhibit the qualities that we believe would have placed his name high among those of the eminent men who have occupied places on it. It is sometimes said that exceptional gifts of advocacy, such as he possessed are not compatible with that calm and serenity that are supposed to go with or form a part of the judicial temperament. Names will readily occur to the minds of all of us that completely refute that notion. Judge O'Brien was undoubtedly a strong and resolute champion, or even partisan, of any cause that he had taken up or that had enlisted his sympathies. But his sense of justice was also strong; he was fully capable of taking the detached view that is a necessary preliminary to judicial action; and in the work he did in the short period of his service here we have an earnest of what he might have done.

Yet though the brevity of his judicial career was a disappointment to his friends, and may have been a disappointment to him, no one can look back over that long life that, beginning on a little island at the head of Lake Superior almost with the beginning of the history of our state, came to a close only a year ago in the city that he loved, without realizing not only that this life was lived from first to last with a strong unity of purpose but that that purpose was always high. In whatever field his activities were cast, he never slurred his work, nor did his interest in it ever slacken or flag. To the task in hand, whatever it was, he gave the best that was in him. His interests were keen to the end, his sympathies were quick and warm to the end; and in taking our farewell of him the lines of Milton may, I think, in very truth be applied to him:

Nothing is here for tears, nothing to wail  
Or knock the breast, no weakness, no contempt,  
Dispraise or blame; nothing but well and fair,  
And what may quiet us in death so noble.

The Honorable Frederick N. Dickson then said:

Judge O'Brien was a very good friend of mine for many years, and it is as a friend that I would like to submit this memorial.

Thought is deeper than speech and feeling deeper than thought, and it is extremely difficult, in fact impossible, to set down in words a satisfactory tribute to the memory of such a man and such a friend as Judge O'Brien.

The scion of a distinguished, cultured, and at one time opulent family, he yet enjoyed the advantage of passing his youth in the straightened circumstances common to the pioneers of a new country and thus was brought in touch with the common people and learned to know and appreciate their problems and their methods and means of getting happiness and enjoyment out of life as well as overcoming their obstacles and disappointments.

For nearly 50 years I knew Judge O'Brien quite intimately, was associated with him from time to time in some legal matters as well as in a social way, and many times have enjoyed the benefit of his wise and kindly advice.

Judge O'Brien lived in a remarkable era. The span of his life measures an era of the most stupendous progress in civilization the world has ever known Born in 1859 at LaPointe on Madeline Island at the head of Lake Superior, a far-flung outpost on the extreme frontier of western civilization, he witnessed and experienced the transformation of Minnesota and the Northwest states from a wilderness into the splendid commonwealths of today. He witnessed and experienced the progress from the dim illumination of candlelight to the brilliant electrical lighting systems that now banish darkness and turn night into day; from transportation through rivers and forests and prairie trails by canoe, oxcart, and horse to transportation by railroad, the automobile, and the airplane. From a time when news was sparsely and slowly disseminated by the weekly newspaper and by word of mouth from one to another, he

lived to see general news of all kinds hourly disseminated to a great nation and the world at large by means of the telephone and the radio from a time when the national election could not be known generally for weeks and months to a time when such result is known to the whole nation and the world on the evening of election day. He saw the crude entertainment of pioneer days supplanted by the marvel of the talking pictures. He witnessed the marvelous and almost miraculous development of medical and surgical science and the very extensive development and amelioration of the law of the land through judicial decision and statutory enactment by the representatives of a free people, extending to the humbler and laboring classes protection of their property and human rights.

Of all of these marvelous changes and developments Judge O'Brien was not only a witness but was himself a part, especially in the development and improvement of our laws and in the liberalizing of our political philosophy. Living in such an era, with his cultured family background, his wide experience in human affairs, his innate intelligence and broad human sympathy, and his youthful experience and observations of the struggles and problems of the humbler classes, he could hardly avoid developing into the splendid character he was and rendering to society the humane and beneficial services he performed.

For two years Judge O'Brien was county attorney of Ramsey County. At the end of his term he refused again to stand for the office because he felt that he did not possess the stern qualities of a successful prosecutor. While he abhorred crime and the motives that inspired it, his sympathy with the innocent who necessarily suffer from the wrongs of those upon whom they depend made that phase of official duty most distressing, and he felt that he lacked the implacable and uncompromising attitude so necessary to a successful prosecutor.

Judge O'Brien was born and bred in the Roman Catholic faith and remained throughout his life a staunch and consistent member of that church. He was, however, less intrigued with its ritualism than impressed

and motivated by its fundamental Christian doctrine. He was a devout Christian, believing absolutely and unquestioningly in the fundamental principles of Christianity. He believed in the existence of a personal God who rules and orders the universe, who has a kindly personal interest in humanity, and to whom humanity owes a personal allegiance, who has equipped humanity with a capacity to know right from wrong and with a knowledge of its duty to choose the right in preference to wrong. And he believed in that other wonderful doctrine of the immortality of the soul and a life beyond the grave for which this life is but a training and probation, a philosophy of life that in all ages has produced the finest results in human character. His religion was not a mere philosophy but rather a very practical rule of conduct, and in all his ways he sought earnestly to conform his life to the ethical teachings of Jesus.

Judge O'Brien's keen wit and delightful sense of humor, his wide and varied fund of human knowledge, and his broad and liberal outlook upon and appraisal of the problems of humanity made him a most delightfully entertaining and instructive companion, and his generous, sympathetic, and lovable nature made him a wonderful friend. While he will be remembered as a great lawyer and a sound judge, a loyal and capable public servant who in his official and public capacities rendered valuable and lasting service to his state and country, he will, I believe, be best and most lovingly remembered by those who were fortunate enough to have enjoyed intimate social relations with him, as a delightful companion, a wise, kindly, helpful, and beneficent friend, and a genuine Christian gentleman.

Mr. James D. Shearer then said:

Judge Thomas Dillon O'Brien, known to his intimates as Tom O'Brien, was a very unusual man. He was large physically, mentally, morally; a kindly man, temperate in speech but convincing; dignified but not unbending; quietly humorous among friends or to clarify a business proposition. He recognized that beneath a rough exterior there was often a warm heart and a discerning mind.



He had great poise in bearing and manner, was a good friend.

His going has left a void in the bar of this state.

In closing I would pay him the tribute that Hamlet paid to his father, the deceased king:

He was a man, take him for all in all,  
I shall not look upon his like again.

Chief Justice Devaney then said:

The tribute of the Honorable Pierce Butler of the United States Supreme Court in memory of Judge Thomas D. O'Brien will be read by Mr. M. J. Doherty.

Mr. Doherty then read as follows:

Official work makes it impossible for me to attend the session at which will be presented the memorial to Honorable Thomas D. O'Brien. We were friends since first associated in professional work nearly 50 years ago. I ask that I may express and leave upon the records of the court a word concerning him.

He was indeed a fortunate man. Among the things that developed and sustained him were: A fine physique and vigorous mind, just pride in an honorable lineage, steadfast adherence to the religion of his ancestors, sound instruction by a father distinguished among the men of his day for culture and character and wise guidance by a mother eager to uphold all that makes for right living, strength in professional standards reinforced by counsel and example of leaders of the bar with whom he worked during the period of preparation and his first years in the practice, persistent purpose to be worthy of his high calling, encouragement grounded upon the strong attachment ever existing between him and his

brothers and sisters, and above all the constant support of a loved and loving wife and of their children.

He was ever ready to help all belonging to his great family. His friends were legion, and willingly he served them. He was liberal in thought and wanted to know and was keen to help to attain that which best will serve the people, the State, and the Nation. He believed in our form of government and that, consistently with the Constitution, there may be accomplished all desirable changes. He was a good lawyer: as counselor, diligent, sensible and frank; in negotiations to settle controversies out of court, alert and effective; in the conduct of litigation, a skillful strategist and powerful advocate. By conscientious preparation and faithful presentation of his clients' causes according to the truth, he merited and attained high standing in the community and before the courts. He was a good Judge. In every case he was careful to ascertain the controlling facts rightly to apply the law and plainly to state the reasons for the judgment of the court.

He was an admirable man and will be affectionately remembered by all who knew him. Long may the record of his successful life serve to encourage and guide.

Pierce Butler

Chief Justice Devaney then said:

Justice Royal A. Stone, who was to speak for the court in memory of Judge O'Brien, is unable because of illness to be here at this time, and he has asked me to read this tribute:

It is so much our habit in matters of necrology, when the subject in his lifetime was an object of our respect and affection, to indulge in exaggeration that tributes such as we are now tendering are seldom taken by the thoughtful at their face value.

There is another reason why any tribute of mine to Thomas D. O'Brien should be taken with some allowances. For the 16 years from 1907 to 1923, except for the period from September 1, 1909, to January 2, 1911, during which he was a member of this court, we were partners. From 1906 to 1907, inclusive, while he was insurance commissioner and I assistant attorney general, we were in almost daily collaboration. We both resigned in the autumn of 1907 and organized the firm of O'Brien & Stone, which, with the usual changes due to the kaleidoscopic nature of human life and its affairs, has continued to the present time.

After such an association, with a spontaneous beginning and ever increasing admiration and confidence on my part for my friend, my partner, and my elder brother in the law, it is not to be expected that anyone can acquit me of a disposition toward overstatement on this occasion.

Notwithstanding, it is my fixed purpose to indulge so far as in me lies in fair statement, without effort to add another hue to the complete spectrum that Thomas D. O'Brien made for his own life.

More than any of you, probably, I know how well merited are the things that have been said at the bar. I know especially how much Judge O'Brien would appreciate, sincerely and deeply, the making here of a proper and fair record in his memory. I know also that no opposition would be greater than his own to the utterance here of praise of him that he did not deserve.

Entirely aside from his professional life, he was a most unusual man. There was a largeness, a symmetry, and a balance about his mental and spiritual makeup that were fittingly symbolized by his large, splendidly developed, and always well-carried physique. His outward appearance of poise, courage, and forward-looking was a true reflection of the inner man. In all that, he enjoyed a rich heritage from the very finest quality of cultured Irish ancestry. He had the good fortune to be able to carry on that tradition in his own family life.

On the professional side, while I have known many lawyers better versed in the case and book learning of our profession, I have known none with a better instinctive understanding of the verities of the law and their proper application to the duties and controversies of life. He was frank in expressing his dislike for the mounting volume of law books and for the increasing vogue of the case lawyer. Against their technique, he wanted liberty to invoke and apply to the ever changing situations presented by human evolution those principles that would work out what to him seemed justice. And with what seemed in any case to be justice to Thomas D. O'Brien, it was always difficult to express reasoned disagreement.

If I were to select from his numerous public services those that to me seemed the most important, I would first choose one that at the time was somewhat of a political secret. When the late John A. Johnson first became governor of the state in 1905, he knew that his attorney general would be of an opposite political faith. Wanting close at hand a counselor of his own party and his own choice whom he could trust, Governor Johnson chose Mr. O'Brien as his insurance commissioner. The first important advice that the governor sought and obtained from him was to the general effect that the Republican attorney general, Edward T. Young, was the constitutional head of the legal department of the state and that it was the governor's duty to seek, and if possible to be guided by, his advice. Governor Johnson followed that counsel and found that in Mr. Young he had a legal adviser of the highest professional capacity, whose judgments in the affairs of his office and the state would be influenced not at all by partisan considerations. Ever afterwards Governor Johnson gave Judge O'Brien credit for having at that important juncture started his administration on the right track and for having kept him, the governor, from making a serious mistake.

Later on, while he was insurance commissioner, Judge O'Brien became the chairman appointed by President Theodore Roosevelt of the committee of insurance commissioners that did so much in collaboration with the activities of Charles Evans Hughes and his committee to put the

old-line life insurance business of the country on a sound basis. The old and vicious tontine system was uprooted and destroyed, and in important particulars, in respect to the assurance of important rights to the assured, policies were standardized all over the nation.

Again in 1907, when labor disputes on the Iron Ranges of Minnesota threatened the disorganization of an important industry in a large portion of the state, Governor Johnson sent Judge O'Brien as a conciliator and mediator to the scene of the trouble. He took such steps that chaotic conditions immediately became orderly, and industrial peace was established where industrial strife had been imminent. For his work there, that keen and accurate appraiser of men, Charles B. Cheney, then and now on the editorial staff of the *Minneapolis Journal*, characterized Judge O'Brien as the Taft of Minnesota, and the name Taft was then at the zenith of its significance in American affairs.

To an extent I have never known in any other man or woman, Judge O'Brien had the capacity for deciding justly, notwithstanding the personal interests of himself or his clients. He could appraise fairly and justly the views of opponents. He was never afraid to point out where they were right even when exposing an error of his own. If at times he leaned over backward, as the saying is, in that respect, it was one of those weaknesses nearly always found with such greatness as was his.

His greatest delight was in aiding law students and young lawyers. He was never too busy or too weary to take time off from his own work to counsel them in theirs. He was generous to a fault—altogether more free at times in extending financial aid, sometimes to deserving needy and sometimes to mere impostors, than was just to himself. That was but one manifestation of his habit of resolving doubt against his own interests. One magnificent result was that he never intentionally wronged anyone.

Instinctively, as well as by training, he was one of those automatically just men concerning whom it was said so long ago: "The path of the just is as the shining light that shineth more and more unto the perfect day."

If in our profession, if in our affairs of government and business, lawyers and businessmen and politicians would follow the path from which the life of Thomas D. O'Brien never consciously strayed, we would be on the way to "the perfect day."

# **There Were Four of Us or, Was It Five**

by

**THOMAS D. O'BRIEN**

**1936**

"Only 200 copies will be distributed".  
cf. St. Paul Dispatch, July 20, 1938.

[ this note is on page 3 of this memoir at the Minnesota Historical Society ]



## Foreword

*This book is the record of the life of a family, a city and a state.*

*Underlying the whole memoirs are the foundations of deep religious conviction, and unswerving faith in America and the principles upon which it was founded.*

*Judge O'Brien himself derived the greatest pleasure from writing the book, or rather from dictating it—which he did in the last two months of his life. He never re-read it, nor corrected the manuscript himself. Had he been able to do so, some passages might have been revised, and the omission of certain names would not have occurred.*



Above are the main characters of these memoirs. Top, right, Dillon O'Brien, father of the author, and left, the author himself. Below are the author's three brothers, John D. O'Brien, Dr. Harry O'Brien, and Christopher D. O'Brien, former mayor of Saint Paul.



## CHAPTER 1

My Father, who loved stories illustrating the eccentricities or foibles of the Irish, used to tell of a man endeavoring to account for four persons engaged in a fray. "There was four of us in it," he'd quote. "The two Murphys was one, O'Brien was two, and meself was three. Begob, there was four of us in it. The two Murphys was one, O'Brien was two . . ." and so on, which may serve to explain my uncertainty as to whether Father should be included as a main character in this rambling story. Confusion of mind, however, is not the reason for the doubt. Father was so superior to all four of his sons, Chris, John, Harry and myself, in education, gentleness and charity, in actual natural ability, we never considered ourselves on a par with him. Even now, after all these years, looking back upon his life and ours, I cannot believe that any of his sons would have equalled his accomplishment under similar circumstances. Therefore, Father must be included in this story of four brothers, this narrative of an emigrant family, written in the hope that it will help to illustrate the wonderful opportunity which the ordinary man or woman has under our American government and laws.

My Mother, too, must be given her place: a royal place, for to us she was a queen.

And thus having, in characteristic racial fashion, made the principal persons six instead of five, I may consider the stage set and let the curtain go up!

Father was born in Roscommon County, Ireland, in 1818. His father, Dennis O'Brien, was a prosperous country gentleman who seemed to have been the last of his family able to maintain himself during the chronic impoverishment which cursed Ireland. In my father's case, this impoverishment was increased by the extravagance of the class to which he belonged. Father's mother, Lucy Dillon, was a domineering, proud and extravagant woman, who outlived her husband and apparently exercised no judgment in bringing up her children.

My mother's name was Elizabeth Kelly. Her father, who

*Five*

bore the title of Captain, was a stipendary magistrate and a highly respected and well-to-do scion of the country gentry. He kept a pack of hounds, which probably was beyond his means. His title of Captain undoubtedly came from the fact that he recruited a company or a quota of soldiers for Wellington's army, but he arrived too late to take part in the battle of Waterloo.

Father was educated in a Jesuit college in Ireland, and Mother in a convent. They were married very young and went to live at Father's estate, Fairfield, in County Galway. Mother had a brilliant mind and a tenacious memory. All her life she remained equally fluent in French and English, although she had no real practice in speaking French for fifty years before her death. I have called her a queen because of her queenly manner. A certain austerity, the attitude of Queen Victoria toward unseemly levity, was reflected to the fullest extent by Mother in her dealings with her children, even after they became mature men and women, with families of their own. Again, she merited the royal title by her manner of greeting strangers. I have seen her, in a log house on a farm in this country, meet the president of the railroad company owning the land, in a manner no queen could surpass in dignity.

After marriage, these young people, established at Fairfield, participated in the life of the country gentry. They were Catholics, while most of their neighbors were Protestants, and they were devoted to maintaining what is known in Ireland as the ascendancy. "Keeping up with the Joneses" is hard enough, as we know it, but to a Catholic family in Galway, in the last century, it was appalling! Fox hunting, military balls, dinners for the elect, trips to Dublin and London—no wonder that debts against Fairfield became greater each year, with no one calling a halt!

Captain Kelly, who was the young people's best friend, contracted typhus fever while taking the deposition of a man suffering from that disease, and died within a few days. Then came the famine, and with the poor tenants unable to



pay any rent, no interest could be paid on mortgages. The British Parliament passed the Encumbered Estates Act, designed to avoid the delays and obstructions inevitably encountered in foreclosing a mortgage in the courts of equity. The new procedure was invoked. There were no exemptions of real or personal property, and the young couple was stripped of everything. Left thus, while finding themselves, they were obliged to live upon the hospitality of relatives and friends.

It was soon decided that the family must emigrate to America.

## CHAPTER 2

Father came first, a steerage passenger on a sailing ship that took three months to cross the Atlantic. He went to his friend and distant relative, Peter Cruice, who lived at Orchard Lake, Michigan, the center of the apple-and-peach-growing districts of that state.

Even then, Father's talent for public speaking was recognized, and he earned some money by it, not hesitating to eke out the sum with a laborer's wages, when the lecture field was barren. Some of the good Irish of Detroit were shocked to see the lecturer of the evening working on the docks next day, Father used to relate; but he was a man of no false pride; his own country had denied him a living, and he had come to America to make one for himself and his family. Always he had perfect contempt for the "shabby genteel" who consider themselves above honest labor. Once I asked him what I would have learned had he remained in Ireland. "Oh, you would be able to drench a horse, worm a dog and ride to hounds," he replied, "but you would know nothing useful."

In later years, he wrote of America:

"I love America. I love it, for it has given my children a home. I love it because it is the sanctuary where millions of my countrymen have found refuge. I love it for the atmosphere of freedom which fills it from the Atlantic to the Pacific. . . No external causes can shake the stability of the Republic. It rests upon no party

platform. Its pillars are the homesteads of the people. While these remain pure and virtuous the Republic lives; should they become corrupt, it matters not what party cry hurls the noble edifice to ruin."

Whether prophetic or not, these words should be read by every citizen today. If read and appreciated, we would not have so much foolish talk about social injustice, capitalism, failure of this government to continue the orderly and legitimate progress it has maintained since its establishment. The United States was the first civil government on earth to lay a foundation for social justice by guaranteeing life, liberty and property to the individual; and as occasion has arisen, it has enacted progressive legislation to the same end. Fortunately, we have a Supreme Court clothed with power to prevent abuse, so our progressive legislation has been kept within the lines of sanity and sober judgment; due process of law has been observed; life, liberty and property have been assured.

Next year, my Mother came, in the steerage of a sailing ship. Her special responsibilities consisted of four children: Susan, Christopher Dillon (or "Christy," as we called him), John D. and Mary. Undoubtedly Susan and Christy were of considerable help. Mother always described Christy as an active, manly boy.

Father met them in Detroit, and the family went directly to Orchard Lake.

Soon afterward, Father obtained a position as teacher in the government school for Indians, at La Pointe, Madeline Island.

La Pointe, or, to give it its full name, La Pointe du Saint Esprit, had been established as a Jesuit mission in 1655 by Father Allouez. Pere Marquette was stationed there before starting on his journey to the Mississippi with Joliet. The Indian school, at the time my father found a position there, was in charge of Bishop Baraga and was financed by the government. Bishop Baraga accompanied the newly appointed teacher and his family on their voyage from Detroit to La

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Pointe, where they arrived at two o'clock in the morning and were obliged to occupy the steps of the church until the village could be aroused from sleep.

There at La Pointe and at Redcliffe, whither the school was subsequently removed, Father taught the boys, and Mother instructed the girls. Susan was sent to the convent school at Sault Ste. Marie, from which she returned with a good knowledge of French and a valuable faculty for getting along with the Indians. Chris learned French from Mother, and both he and Susan gained some knowledge of the Chipewewa language. Thus, with the aid of Bishop Baraga and two priests, Father Chebul and Father Van Pamel, the school and the mission were carried forward by the family.

I can easily understand how the romance of the situation took possession of the young people's imagination and rendered life on the Island enjoyable. There were fishing, sailing, berrying and hunting in summer; snowshoeing and trapping in winter. But how dreary it must have been to Father and Mother, set down in a wilderness to make out an existence! Even so, I have heard my Mother say she spent some happy years on the Island, when the children were young and dependent upon her for their wants. Among other interests, she became very weatherwise. Long before the United States Weather Bureau was organized, we had bulletins from her, predicting future weather conditions, and her predictions generally were right!

Father occupied part of the time in writing a book, "The Dalys of Dalystown", which was really a great Irish story. Later, he wrote two smaller books, "Frank Blake" and "Dead Broke". I have described all these in a sketch of him which I wrote for "Acta et Dicta", the Catholic publication for 1933.

So this group, all great lovers of the open, did not lead an utterly dismal life on Madeline Island, despite the hardships.

There were no horses or other draft animals, except dogs, on the island; and as the winters lasted from November until May, dogs were very important in all domestic arrangements.

One day in the depth of winter (February 14th), Chris set forth with his dog team to Bayfield to bring the doctor to Mother on the occasion of my birth. Years later, Chris would recall the memory of his expedition, whenever he wanted to put me in my place!

Changes come slowly to such places as Madeline Island. The original mission church is gone, but the graveyard remains. In it there is a headstone on which is engraved the following epitaph:

Erected to the memory of Abraham Beaulieu

Born September 15, 1822

Accidentally shot April 4, 1844

As a mark of affection by his brother.

Whatever its past, Madeline Island held no future for us then, and my parents were not willing to rear their children on an island in Lake Superior, with only Indians and a few French fishermen for companions.

### CHAPTER 3

Chris was the first to break away from home in the wilderness. Early in the fall of 1862, he walked to Minneapolis, where he obtained employment in a wholesale grocery firm. Presently, in the same year, father went there, on foot. He was given charge of the toll-bridge between St. Anthony (now East Minneapolis) and Minneapolis, where he remained four years. In the following spring, Mother and the children joined them; they made the journey by stage-coach.

One day, I remember, Father entered the toll-house in great excitement, announcing the assassination of Lincoln. I remember, too, the soldiers coming home from the Civil War, wearing their peaked caps and blue uniforms, part of which were overcoats with capes. These clothes remained common apparel for quite a while; I suppose the government had a supply on hand which it was selling at cut prices. To my childish eyes, these veterans were old men. The next soldiers I saw were bound for the Spanish-American War, in 1898; and from the standpoint of maturity, they seemed to me children whom it was pitiful to send into action.

*Ten*



The nearest approach I ever made to going to war was at this later time, but though I believe I could have obtained a commission as captain in a Minnesota company—I had been in the militia some years previously—the claims of a growing family and straitened financial circumstances prevented my doing so. I have lived through three wars: the War between the States, the Spanish-American War, the World War—and yet have never smelled gunpowder from a hostile weapon.

In 1865 Chris, a strong, healthy, active youth, joined a mule-team caravan bringing government supplies to Fort Sully. Long afterward, Chris was fond of recalling his experiences as a mule driver! He used to say to me that he always knew when I was about to "bolt a situation" or do something foolish, because, before doing so, I invariably tossed my head in the same way that one of his mules did when about to balk! Life on the plains must also have imbued Chris with the belief that neither mules nor oxen can be driven without the use of strong language, for I have heard him confess to Mother that he had learned to "bite his tongue"—that is, to swear—and I can testify that he retained the habit of cursing until late in life, when religious convictions became so strong as to prompt adoption of milder forms of expression.

When Chris returned from the Fort Sully expedition he obtained employment on the Mississippi River Survey. Afterward, as a student, he entered the law office of C. K. Davis, then just emerging into prominence.

This same year, '65, we moved to St. Paul. John remained in charge of the toll-house. Father became editor of the North Western Chronicle, a Catholic weekly newspaper; he also wrote and lectured, but as frontier conditions still prevailed in Minnesota, his remuneration from those sources was very scanty.

In '69, Susan married Benjamin Cayou, an ex-soldier and a farmer. During this same year, Father bought eighty acres of railroad land near Litchfield, in Meeker County, and all of us except Chris and John sought a living on this farm.

Father had given much thought to the cheap, fertile land in Minnesota, and he now conceived the idea that if the Irish who crowded the large cities of the East could be induced to take up farms in Minnesota and become industrious, sober, intelligent farmers, the benefits to them would be inestimable. It is noteworthy that Archbishop Ireland, subsequently, held the same view and seriously prosecuted the work of colonization. He was also a leader in the total abstinence movement, and as Father had taken the pledge in Ireland from the great apostle of temperance, Reverend Theobald Matthews—a pledge which he religiously kept all his life—he formed a strong friendship with the Archbishop and devoted his energies to promoting colonization and temperance.

Litchfield was established only when the railroad reached that point in the summer of 1869, so that in order to reach our farm we had to travel by stage from St. Cloud, a distance of about forty-five miles. The road through the woods was "corduroyed" and over it we jolted and bumped wearily for two days, stopping over night at Forest City, where we saw the log stockade still standing as erected in 1862, the time of the Sioux uprising.

I think the only Catholic church in Meeker County was at Forest City. Greenleaf, where there was a small grist mill, Darwin and Litchfield were merely stations, where Mass was celebrated as frequently as possible. Certain it is that the first Mass said in Litchfield, with Father Cahill officiating and my mother serving, was celebrated in our little house.

On our Litchfield farm, the children were Mary, Jennie (now Mrs. S. J. Donnelly, mother of Stan D. Donnelly, a brilliant trial lawyer in St. Paul), Henry J., whom everyone called "Harry", Susan's daughter, Elizabeth, and I. Elizabeth was born on the farm.

We had opportunity to attend school in Litchfield. Mr. Bailey, a clergyman of the Christian Church, was the excellent teacher. The school-house was a frame building, two stories in height. Compared with the log building where we attended school at first, while on the farm, this school-house

*Twelve*



seemed very elegant. Our earlier log-house school, however, had unique features all its own. Sloping boards placed along the walls served as desks. Benches, also running lengthwise, were the seats. In session, the school thus revealed two rows of children sitting back-to-back. We found it fascinating to dig or cut spaces in the logs as receptacles for our pens and pencils.

It was at this log school-house that my sister Mary began her career as teacher. Here, too, presuming upon my relationship to her, I made myself very obnoxious—a “gabby” and pert boy! Mary, however, was a strong character, a real disciplinarian; she finally called in one of the trustees of the school, a burly Norwegian named Ole Ness, who taught me my proper place! . . . When we came to St. Paul, later, Mary obtained a position in the Jefferson school, a position she retained with great honor and credit, until she voluntarily retired. She never married, but devoted her life to her family, particularly to her mother, during Mother’s long widowhood. I am glad to say she is still alive, the good friend and confidante of her numerous nieces and nephews.

Our neighbors at Litchfield were nearly all Norwegians; and as years go by, my admiration for the Scandinavians increases. They flocked to Minnesota, settled upon attractive tracts of land and built their churches and schools on knolls overlooking beautiful lakes. Thus they transformed into reality the vision my father had for his people, the Irish.

One of our neighbors I remember in particular, an old man whom we called “Doctor” Fryberger. I think he was a relative of the present well-known lawyers of that name in Minneapolis and Duluth. When I was about eleven years old, I took the old man, with my ox-team, Tom and Jack, to the mill at Greenleaf, where he had a few sacks of wheat ground into flour. On the way we became stuck fast in the mud, and it required the efforts of several farmers to extricate us.

I was very happy during my life in Meeker County. It developed self-reliance and brought me closer to nature than I ever could have become in a city. During this period in

Litchfield I received my first fowling-piece, a ten-gauge, muzzle-loading, single-barreled gun. Father brought it to me from St. Paul, and my happiness at receiving it has never been exceeded. Once I brought down four mallards with it. I still have that gun!

Farming, then as now, was strenuous. We did not make much success of the venture; and after about two years' trial, Mother and the four children moved to the village of Litchfield, leaving the farm to Susan and her husband. But they were no more successful, and shortly they moved to Stillwater, where Ben found employment as a guard at the State Prison.

On our removal to St. Paul, I was filled with desire to go to work at once and bear my share of the family expense. I found that I should have to spend two years more of school before doing so; but even when the chance came, I was careless about my contributions, and I have often thought with shame how far I fell short of those made by the others.

#### CHAPTER 4

In 1868, George J. Crowe with his wife and family came from Ireland to Minnesota and settled on a farm on Star Lake, directly across from us. Mrs. Crowe and my mother were sisters; naturally, a warm friendship sprang up between the young cousins. We boys soon developed a taste for hunting small game, a taste which we gratified on every possible occasion.

Before Minnesota became thickly settled, it was a hunter's paradise. The large grain fields in western Canada had not been opened, and sandhill crane, geese and ducks began their migrations southward early in the autumn, making a long stop in Minnesota to enjoy feeding in our stubble fields. In addition, the local ducks were very numerous, as were prairie chickens, plover and ruffed grouse.

There was one point on Star Lake to which the geese resorted periodically to replenish their gizzards with gravel. The point was well covered to the water's edge with trees and shrubs, and I had no difficulty in making a crawling approach to a flock of geese I had seen there one day. I



had never shot a goose. I crept along cautiously. And then, when I rose to my knees and beheld a large gander standing within a few yards of the spot where I was kneeling, I was suddenly smitten with "buck fever" and I blazed away without taking aim. The entire flock flew away, unscathed.

The considerable timber around the lake was well stocked with partridge. We hunted these with the aid of our dogs, which would flush the birds into a tree; the dogs would then take a position under the tree and by their barking let us know the location of the game. At our approach, we would find a partridge in the tree, foolishly craning his neck at the dogs. When more than one partridge was thus treed, they would often stay in the tree until we shot the entire covey.

Aunt Crowe, as we all called her, though stern in matters of principle, would make any personal sacrifice for us youngsters and would bear our boisterous fun with almost unbelievable patience. Harry and I seized on every possible reason for spending the night with our cousins, whose house was larger and better equipped.

Uncle George Crowe had come to America with some means; in fact, he arrived in Meeker County with a spanking team of horses. Much to the amazement, if not amusement, of the local farmers, the lumber-wagon drawn by these horses was equipped with a step to enable ladies to climb into the wagon. He also brought from Ireland a piano, probably the only one in the county at that time. Susie, his eldest daughter, was an excellent pianist, and the Crowe place soon became a Mecca for the young people of the neighborhood.

As I have said, there was no Catholic church in the vicinity, so both Mother and Aunt Crowe insisted on regular Sunday prayers at home, a service which consumed the greater part of the forenoon. Aunt Crowe would kneel before a small altar in her bedroom and lead the prayers in a firm and strong voice, while behind her back many a prank was played by the irreverent children. Catechism followed the prayers; then the reading of a selection from a book of sermons which Aunt Crowe had procured, much to our regret.

After this, we were free, free to spend the day out of doors.

After we left Meeker County, Uncle George died and the Crowe family moved to Graceville, Big Stone County, where they opened a general merchandise store that is still owned and managed by members of the family. Graceville is situated on the great plains that begin at Darwin and extend to the Rocky Mountains. On my visits at Graceville, where I was always hospitably entertained by Aunt Crowe and her family, I had some of my most delightful hunting experiences. In our pursuit of game, we boys often went far afield returning late to the hospitable home of Aunt Crowe. No matter how late our arrival, she gave us a cheery welcome and immediately prepared a warm meal for her hungry boys. A favorite dish she called "spatch cock": a prairie chicken, dressed, split and fried on a griddle over a hot fire. How we relished this repast, after a cold ride across the prairie!

Aunt Crowe took great interest in our shoots and gave us much good advice as to our conduct while hunting.

"You must never take any liquor while you're out shooting," she would say. "But after the guns are unloaded and put in the wagon, if you feel cold or tired, a moderate drink will be no harm."

Harry Crowe and I were real chums. He was a splendid companion and an excellent shot; indeed, he often became annoyed with us when our marksmanship was not up to his standard. My brother Harry, who had become an expert wing-shot before he was ten years old, was extremely fond of shooting; probably he would win the greatest share of his cousin's commendation.

Noted for hospitality and kindness, the entire Crowe family also was truly Catholic. Two of the daughters became religious in the Order of the Good Shepherd, wherein both rose to high and responsible positions.

Some of the happiest days of my life were spent as Aunt Crowe's guest at Graceville.

*Sixteen*



## CHAPTER 5

We moved to St. Paul in 1874, and Harry and I entered the Christian Brothers School, in the old brick building at Sixth and Wabasha Streets. The curriculum was about equivalent to that of the first year of high school of the present day. After graduating, I spent a few months at Faddis Business College, and then went forth to seek my fortune.

John, meanwhile, as clerk, had entered the office of Henry J. Horn, a leading lawyer of St. Paul. John was a very skillful penman, and in those days, before typewriters had been invented, he was a valuable clerk to Mr. Horn.

A mystery has always existed as to where John and Chris obtained their education! The time either one spent in school was negligible, and it seems impossible that their parents could spare the time necessary to educate them; yet they both became brilliant and successful lawyers, masters of an attractive literary style and thoroughly familiar with general literature.

The dates of their admission to the bar were rather close, and soon it became the fashion to pit one brother against the other. The brothers, on their part, being young, ambitious and self-reliant, accepted these opposite retainers and engaged in many a notable legal battle, much to the joy of the spectators. Stories were told of flashes of wit and sarcasm darting from one brother to the other, verbal tilts which exceeded the limitations of the Minnesota bar. Cooler judgment, however, prevailed eventually, as time passed; and through their own refusal to accept retainers against each other, the rivalry ceased.

Chris had become a member of the firm of Davis and O'Brien, subsequently Davis, O'Brien and Wilson. The firm had an enormous practice. At that time, the District Court of Ramsey County held three terms a year. The first day of the term, cases were set for that term; so the struggle for Davis, O'Brien and Wilson cases to be set for trial, without disturbing all the rest of the calendar, was momentous! The problem was complicated, moreover, in the September term, by the duck-shooting proclivities of Chris! Wilson tried no cases at all, Davis only a selected few, so the bulk of the trial

work fell upon Chris; yet he never seemed burdened, doubtless owing to his great facility in placing before a jury the facts of a case. He would swing into court with a cheery "Good morning!" to the judge and jury, take a swift glance at the jurors empanelled for a trial, and usually pass them all with a general inquiry as to their qualifications.

In 1877 or 1878, I forget which, I was employed in a clerical position by the firm of John B. West and Horatio G. West, founders of the West Publishing Company, now the largest law-publishing firm in the world. I believe I was then the sole employe of the firm. The Wests hoped that a small publication called "Syllabi", edited by Homer C. Eller, would grow to a position entitling it to publish legal notices. One Saturday night I carried an entire edition of "Syllabi" under my arm to Horatio West's house, where he directed it to its subscribers. Part of my work was to copy some opinions of the Supreme Court, which were published in "Syllabi". Soon all the Minnesota opinions came to be published; then those from Wisconsin; and so grew up the great reporting system we know today.

After three weeks with the Wests, I was taken as a student and clerk by the firm of Young and Newel, who were then engaged in foreclosing the mortgage on the St. Paul and Pacific Road: the proceeding which placed that railroad in the hands of J. J. Hill. Mr. Hill came to our office every day, spending much time with Judge Young, who had personal charge of the foreclosure.

George B. Young was a Harvard graduate, who came from Boston and settled in Minneapolis. A brilliant lawyer, he was appointed to the Supreme Bench by Governor Davis, but he was unable to procure renomination. After leaving the bench, he was Supreme Court reporter for many years. The firm of Young and Newel dissolved, I believe, over the division of the fee in the foreclosure case. Stanford Newel, while perhaps not an energetic lawyer, was a man-of-the-world; he and Major Thomas Wilson maintained luxurious bachelor apartments on upper Third Street, where the Public Library



now stands. Late in life, he was appointed Minister to The Hague. He organized and was the first president of the Minnesota Club. We who knew him in our younger days will always remember him for his kindness and courtesy.

## CHAPTER 6

Chris was ten years older than I, and a well-grown boy, when our parents came to America. His education may be accounted for by the fact that he was an omniverous reader, with a remarkable memory. Mother used to say that Chris could read a page of history and repeat it to her verbatim! When Chris studied law, text-books were the chief authorities, and with his retentive memory he obtained from them a complete grasp of underlying legal principles. I think he was in many respects the last of the old school of lawyers, who regarded a lawsuit not only as a contest by a client over some private right, but also as an intellectual contest in which great principles of right and wrong were to be established.

Although he always carefully explained to a client the chances of success of a case, Chris felt that a client had a right to have his case tried if he so desired; he never considered the effect of success or failure upon himself. Probably he won and lost more cases than any other member of the Bar, which can be accounted for by the fact that he was not afraid of losing a case where he believed his client had had justice or right on his side. In coming to this conclusion, he took his client's story as final.

Chris won his reputation as a trial lawyer by securing the acquittal in Minneapolis of Kate Noonan, who was accused of killing her lover. One day, the Judge of the district court, presiding at a trial of another case, became exasperated, and, being a quick-tempered man, said with some vehemence, "I am trying this case." "I beg Your Honor's pardon," replied Chris, "I am trying one side of it." This illustrates his courage and quickness.

He was an eminently successful county attorney of Ramsey County for four years, being elected for his second term, without opposition. Also he was mayor of St. Paul, but he

did so many things unpopular with the politicians, he was denied a second term.

The firm of Davis, O'Brien and Wilson was dissolved in the early 80's solely because of differences of opinion between the members. Davis left the firm, and Chris and Wilson continued together until the latter's death a few years later.

One day, after Chris had ceased to be county attorney, Judge Wilkin, the presiding judge, appointed him to defend a man charged with murder. The county paid an attorney ten dollars for a case, regardless of the time required. Chris, who was busy with a large practice, at first demurred; but when Judge Wilkin, assuming full judicial dignity, said, "This man is charged with a capital offense and I desire he should have experienced counsel," he bowed to the judicial will, and not only defended the man but also secured his acquittal. Next day, the man walked into the office and asked Chris for money. When Chris said he had none, the grateful defendant pointed out that Chris had received ten dollars from the county! This was too much for Chris, who handed over the ten dollar bill he had received, and he and his client parted forever.

Many years after this, Judge Nelson, judge of the Federal District Court, requested Chris to defend an Indian chief accused of murder on the reservation. Chris' liking for Indians made him assume this duty with alacrity, and he determined to bring an element of romance into the trial.

His first step was to obtain a chief's full-dress attire. He brought his client into court wearing an imposing head-dress of feathers, reaching from head to heels; then, after all the testimony had been heard, he asked Judge Nelson's permission for the chief to address the jury. The kindly judge, who by this time had entered into the spirit of the occasion, consented; whereupon, the chief addressed the jury with all the dignity of an Indian, describing his free and open life until his arrest, adding that since his imprisonment he could see the sun only for a few minutes each day by peering sideways through the bars. His speech must have been impressive; whether or not Chris had written it, I never knew—he was



entirely capable of doing so, if necessary. In the end, the chief was acquitted. Chris left the same evening for the North on a fishing trip, and he was surprised to find on the train the Indians who had figured in the trial. A relative of the murdered man approached to speak to Chris, but he was instantly surrounded by friends of the acquitted chief, who thus warded off any harm that might have been intended.

Chris organized the Winnebijou Fishing Club, which had a lodge on the Brule River in northern Wisconsin. He literally counted the hours that must elapse between visits to the Brule. Always he insisted on having Indian guides, with whom he could converse in Chippewa. And he gathered a fund of Indian legends, in all of which Winnebijou, a sprite, took the leading part. His life among the Indians and his love for fishing and hunting made him always notice the weather before he commenced a trial; he considered that even the direction of the wind might have as much effect upon a jury as upon a rainbow trout in the Brule River, his favorite fishing ground.

Jule M. Hannaford, the lovable and able president of the Northern Pacific Railway, had an equal love for the Brule. He and Chris were close friends and timed their visits to the River so as to be there together.

Chris married Miss Susan Slater, while very young, and they had a large family; their eldest son, Richard D., is now a judge of the district court.

Taking advantage of the fact that he was my elder brother, Chris never hesitated to have good-natured fun at my expense. On one occasion he insisted on making a motion on behalf of a client which, as I told him, was utterly without merit. At the conclusion of his argument he said, "There is one other consideration which I should like to mention. My associate and younger brother insists my position is untenable, but since in my experience he has been invariably wrong, I feel I must be right."

## CHAPTER 7

"Yes, the south of Ireland," said John to someone who inquired of him whether he was from the South. The answer is a good companion to one made by my father to a man who said, "I presume you are a Protestant Irishman." "That," said Father, "is because you have not seen my horns."

John was born in Dublin and was only six or seven years old when brought to this country. I think his baptismal name was John Dennis, but he was always known as John Dillon. He was a nervous, imaginative boy, and as he grew from childhood to youth and manhood he revealed a wonderful character; he was more like Father than any of us. I think he and Father used to talk over his cases together, for the purpose of developing their full strength. Always genial companions, they went to Ireland together in 1881.

John was somewhat of "a lawyer's lawyer." Many lawyers, particularly young men, retained him to assist in their cases. Judges and members of the Bar joined in recognizing his keen, analytical mind and great legal ability, while everyone recognized the charm of his conversation.

He loved to tell of experiences in which the joke was on himself. For example, when crossing the ocean, on three successive mornings when returning from his bath without his glasses, he blundered into a stateroom occupied by two ladies, complete strangers. So confused and dismayed was he, on the third morning, he first shouted, "What is the meaning of this?" and then, rushing into his own room, he implored his wife to visit the ladies at once and explain to them that without his glasses he was nearsighted to the verge of blindness and, in addition, an idiot who should not be left at large!

Then there was the time when, leaving the cathedral, he noticed an antagonist in a trial which involved a family quarrel, looking at him from the corner of her eye though pretending not to see him. When he came abreast of the lady and her crony, she remarked, giving an extra twist to her shawl, "Do you know that some of the greatest hypocrites in town do be coming to this Mass?"

*Twenty-two*



John always lowered his voice when angry, which I think is itself a danger signal. In addressing a jury, he would begin in a very modest, hesitant manner, at the same time bringing out the full force of his case. Said a man accused of obtaining diamonds by unfair means, "Say, O'Brien sat there during the whole trial as if he didn't know what was going on; but, boy! when it came to the arguments to the jury, he just took an axe and scattered us all over the room!"

His eldest son, Dillon J., studied law with him and after John's death, became a member of the firm to which I belong. Dillon possesses many of the good qualities of his father. Unfortunately, he has never married. Some years ago he purchased a place on the St. Croix River above Stillwater, which he named "Fairfield" in remembrance of his grandfather's place in Ireland. I still hope that some day a handsome lady from Galway will come over and take possession of Dillon and Fairfield.

Among the stories told of John and Chris is one which had a wide circulation, but the truth of which I have never been able to verify. It is that once when appearing against each other in court, Chris said, "The trouble with John is, he thinks he has all the brains in the family," and John's reply was, "No, Tom has some."

A true story is that all three of us once took part in a trial before Justice Brewer, who was presiding at a term of the United States Circuit Court. John and I were partners at that time. I opened for the defense and John closed, while Chris opened and closed to the jury on his side. Justice Brewer began his charge to the jury with: "Gentlemen, I think we may safely say that one thing has been established by this trial and that is that no one member of the O'Brien family will be allowed to do all the talking." My recollection is that Chris cleaned up on us!

Years afterward, when I was before the Supreme Court of the United States, in *ex parte* Young, during recess Justice Brewer came down from the bench to greet me and inquire for my brothers.

Like most successful men, John felt he had mistaken his calling. He longed to be a newspaper editor. Wherever he went, he studied the local paper. He had great literary ability of which, of course, his professional duties prevented the full development. I recall a little poem he wrote to a favorite niece who sent him a valentine on which was printed "Remember me." His answer to the child referred to her brothers and sister, all children of Chris and read:

"When Dick has a waistcoat with pockets,  
And Chris has a yellow mustache  
And you are preserving gold locket  
With the types of some earlier mash;  
When Sadie's coherent and bolder,  
And Finn has grown taller than you,  
And your Mama admits she is older,  
I'll remember you still, darling Sue.

When the waves of oblivion are flowing  
The uttermost headlands of time,  
When the harvests are reaped of all sowing,  
I'll remember you still, Susie mine!  
And echoes of sweet childish laughter  
Like the odor of spice islands near,  
Will come to me in the hereafter,  
And I'll love you the same, Susie dear."

## CHAPTER 8

Harry was three years younger than I. After leaving the Brothers' school, he entered the employ of P. H. Kelly & Co., wholesale grocers, where he remained several years.

In '83 or '84, someone casually suggested to me that Harry study medicine, and I promptly passed the suggestion on to him. Dr. Gillette, who won fame and fortune as a pediatrician, was a friend of Harry, and the two boys sought the advice of Doctors Smith and Abbott as to the possibilities of their being admitted to the profession. They obtained some encouragement, and Dr. Ancker of the City Hospital afforded them

*Twenty-four*



facilities; so they entered at once upon the work of holding their jobs by day and studying medicine by night.

Harry was an extremely outspoken, candid boy; he approached his employer with the frank statement that having determined to study medicine, he deemed salary more important to him than position. Promptly he received the reply that it would be impossible to have his mind on medicine and the grocery business at the same time, and that as medicine was to be his life work, he had better resign from the grocery business. Considering the source of this suggestion, it is needless to say it was carried out and Harry was left without a job.

Despite this, he redoubled his efforts at self-education, and in the following year he entered the University of Pennsylvania in Philadelphia. There he was taken in hand by Dr. William Cruice, a graduate of the university, and a warm friendship grew up between them.

Dr. D. Hayes Agnew, the famous surgeon who extracted the assassin's bullet from President Garfield, was professor of surgery at the university. He was ambidextrous, and after Harry saw him operate he determined to become ambidextrous. By the time he graduated, he could use the scalpel in either hand with equal facility.

After graduating, in 1888, and practicing in Philadelphia for a few months, he returned to St. Paul and successfully practiced his profession until his death, in 1931. He was a clinical teacher in the University of Minnesota for many years, and he established the first training school for nurses at St. Joseph's Hospital. He also was chiefly instrumental in furnishing St. Joseph's Hospital with its first ambulance. The superintendent of another hospital said, "Harry, if you get an ambulance for St. Joseph's, I'll get one for my hospital." "I certainly hope so," replied Harry. "I'm not doing this as a matter of competition, but as a work of mercy."

In the early part of the present century, he withdrew from general practice and devoted himself to surgery. This is not the place, of course, to give a list of his cases, but he performed brilliantly some very difficult operations. Always he

*Twenty-five*

was careful not to operate at all unless the need was imperative.

Some time after his return from Philadelphia he married Miss Mary King, who died in 1909, leaving two children, Wallace D. and Everton J. D. Harry subsequently married Miss Caroline M. Beaumont.

In some way, while we were living on Madeline Island, I acquired the nickname "Gitchee Gummie" or "Gamma," which was the Indian name for Lake Superior. Harry, born in April, was nicknamed "Segquan," the Indian term for spring. Both of us having been born at the mission and growing up together in Meeker County, we felt for each other a closer association than for our older brothers. Until we were fully grown we were constantly together and known to everyone as "Gitchee" and "Siggie."

I hope that nothing I have said will be taken to indicate a greater regard for one of my brothers than for either of the others. We all were loyal to each other and took honest pride in each other's successes. None of us saved much money, for the old Galway spirit clung about us. Chris' most severe criticism was to characterize a man as "an Irish Jew"! Harry had no sense whatever of the value of money; and John, in the heyday of his practice, kept no books at all. He formed the habit of making a small charge for answering simple questions. This and his other charges he would enter upon a card index, and when the client paid his bill John would destroy the card; the incident would be closed. Of course, this was before the income tax put us all on our good behavior with reference to book-keeping.

## CHAPTER 9

In April, 1880, through the clemency of the Supreme Court and the strenuous efforts of Judge Young, I was admitted to the Bar. At that time the old practice still prevailed of appointing each term a committee from the Bar who examined applicants for admission, in open court. I can truthfully say the court was not impressed with my knowledge of law, but the committee made allowance for nervousness and assumed I knew more than I appeared to, and so I scraped through.

*Twenty-six*



I don't believe that at any time since then I should have been able to pass a present day examination.

At the time of my admission I was clerk of the municipal court, where I remained for a year and where I had an excellent opportunity to learn practice.

Judge Flint of the municipal court was from Vermont and, like all Vermonters whom I have known, very loyal to his state. A Vermont case, therefore, was generally conclusive with him; but still, he was a shrewd judge, and a toss of his head would indicate an intention to disregard the testimony of a witness. He was quite old at the time of my appointment, and physical disabilities caused him to lose considerable time. The law provided for special judges to be called in when necessary. As these were always young men, impatient of delay, some amusing and strange incidents occurred. C. K. Davis referred to the record made by a special judge as "a confluent and running error."

Once a reporter on one of the papers criticized Judge Flint rather harshly. I resented his article, and when he next visited the court we had some words. Judge Flint heard of this; and next morning, when the docket was cleared, he said to me, "I want no officer of my court to commit a breach of the peace, but if you do lick Jones, I have twenty-five dollars to pay your fine."

In addition to my appointment, I received many acts of kindness from Judge Flint and have always held him in pleasant memory.

St. Paul at this time was just emerging from the status of a river frontier town, and many conditions and practices prevailed and were looked upon as legitimate which would not be tolerated now. Gambling houses were wide open, the most famous being one owned by a man known as Jack Chin. Keepers of disorderly resorts were fined regularly, once a month, at a fixed rate, which really took the place of a license. There were no clubs or meeting-places except saloons or billiard parlors. Many of the well-appointed saloons had so-called parlors in the rear, where many prominent mem-

*Twenty-seven*

bers of the Bar gathered in the evening for a social glass. A well-known and very orderly place was Schmidt's saloon and restaurant on upper Third Street. I think Judge Wilkin, the presiding judge, boarded with Schmidt; he had his chambers on Third Street, a few doors west of Schmidt's; certainly he spent most of his evenings in the place. The main room was heated by an old-fashioned coal stove, a half-dozen tables were arranged about the room, and a long and well-stocked bar occupied one side. Judge Wilkin signed many chamber orders in this room, which was really a cozy and comfortable place in which the Judge and some elder members of the Bar could meet and discuss the news of the day, while "hoisting in a few toddies."

The district judges for Ramsey County were Judges Wilkin, Brill and Simons. In spite of his slowness in deciding court cases and his pronounced liking for a toddy in the evening, Judge Wilkin was a fine judge, always dignified in court, and he had the respect and liking of all the members of the Bar. He was most painstaking and thorough in the trial of jury cases. John O'Brien once said that Judge Wilkin stated his case and claims to the jury so much better than he himself had been able to, he was surprised at the strength of his own case.

One evening after court, Judge Wilkin met an old settler, a perennial juror.

"Good evening," said the judge. "What are you going to do this evening, Mr. Smith?"

"Well, judge, I think I'll get tight."

"Not very tight, I hope," said Judge Wilkin.

"No, only reasonably so," said Smith, quoting a phrase often heard in the judge's charge. And with that assurance and with courtly bows, the gentlemen parted.

Judge Brill was then and continued to be a well-read, industrious and absolutely just judge. He and Chris were warm friends; Judge Brill was best man at Christie's wedding.

A group of young men in active practice at this time consisted of Walter H. Sanborn, subsequently presiding judge of



the Circuit Court of Appeals; Charles E. Otis, afterward a judge of the District Court; W. J. Cornish, another judge of the District Court and, later, receiver of the Union Pacific Railroad Company; and C. D. O'Brien. They fought each other furiously in court, often appearing as antagonists before Judge Brill; yet no one ever could point to the slightest favoritism shown by him. Presiding at a trial, he was so impassive he had the appearance of coldness. I used to say he reminded me of a slot machine; the lawyers would pour the evidence into him, there would be a movement of the internal mechanism, and out would come the decision! It was almost invariably correct, for Judge Brill was reversed less often than any other district judge in the State. His son, Kenneth, now on the district bench, is of equal probity, a worthy successor to his illustrious father.

Judge Orlando Simons had a rugged personality. His chambers were on the second floor of the old court house, where, before his appointment, he occupied an office with Mr. H. F. Masterson. One very warm day, Mr. W. P. Warner, a successful lawyer noted for his deliberateness appeared before Judge Simons without his coat. The judge objected to this, and Warner went into the chambers which adjoined the court room and there found an old linen duster left by Masterson. Now, Masterson measured at least six feet three in his stockings, and Warner did not exceed five feet six with the aid of high-heeled boots. Nothing daunted, he donned Masterson's garment and, tucking the tails over his left arm, returned to court and completed his argument. Neither the judge nor Warner had any sense of humor, and I have no doubt that neither saw anything incongruous in the proceeding.

C. K. Davis, trying a case against Warner and exasperated by his slow, deliberate manner, said cuttingly, "May it please the Court, I move for a rule that Mr. Warner be permitted to trim no more than one finger nail between each question."

Judge Simons, of whom I was speaking when other memories led me astray, though perhaps not a profound lawyer, was a painstaking, impartial and just judicial officer. Appar-

ently he was never so well satisfied as when he reversed his own decision, evidently thinking his last conclusion must be right and honest.

In those days we never heard of affidavits of prejudice, except in Justice Court, where, of course, there was the usual jockeying to have the case tried by one's favorite justice. In the district court we accepted the judge who called the case for trial, and, except in criminal cases, much less time was spent in selecting the jury.

## CHAPTER 10

Until the creation of the Circuit Court of Appeals, regular terms of the circuit were held in the Federal Building, at Fifth and Wabasha Streets. There was no circuit judge residing in Minnesota, and the terms were presided over by circuit judges from other states, or by justices from the Supreme Court of the United States. Judges Dillon and Brewer, as circuit judges, held court here, and Justice Miller of the Supreme Court occasionally presided. Judges Dillon and Brewer were courteous and considerate to members of the Bar, but Justice Miller was inclined to be both peremptory and harsh.

Then, as now, the most important cases came before the Federal Court. There was no library connected with the court, so the first day of the term found lawyers toiling up to the third story of the Federal Building, with armloads of books which they spread upon tables and used in their ensuing arguments. Many notable arguments were made there, by leaders of the Bar.

On one occasion, a suit to recover upon a fire insurance policy was on trial before Justice Miller. The defendant's attorney moved for a verdict, but was met with the following statement from the court:

"Brother, it seems to me your company promised to pay this poor man's loss in large type, and took it back in small type. Now the jury and I are going by the large type."

Again, in another case which had been tried once or twice before, he said, "It will take **thirteen** men to give the plain-

*Thirty*



tiff a verdict in this case," and he entered an order of final dismissal.

The leading firm of Bigelow, Flandreau & Clark had a case in which C. K. Davis appeared on the other side. Flandreau and Clark, as usual, made the arguments, while Bigelow sat at the table, nodding his approval. When leaving the court room at recess, Davis, who was easily exasperated, said, "I suppose God Almighty could make a wiser man than Bigelow, but He never has made one who **looked** wiser!" It was probably in this same case that H. J. Horn, meeting Davis at the door, inquired, "Well, Cush, how did you get along with Justice Miller?" "Why," said Davis, "the old rhinoceros tramped all over me!"

I had a slight run-in with Justice Miller, myself. Judge Nelson suggested that at the next motion hour I call up the propriety of his, Judge Nelson's, signing a settled case. "What have I to do with signing a settled case?" roared Justice Miller. I replied, in a weak and timid voice, that Judge Nelson had told me to bring the matter before him. I looked appealingly toward Judge Nelson, who said not a word; and with a snort and a wave of the hand, I was dropped from the circuit court to the district court.

Cushman K. Davis, in spite of his rather high and thin voice, was an orator of the old school. His addresses to juries were replete with classical allusions. Perhaps his greatest effort was his summing up before the State Senate in the defense of Judge Sherman Paige, whose trial resulted in his acquittal. Davis, borrowing a line from Milton, referred to one of the witnesses for the prosecution as "Squat like a toad, close to the ear of Eve." I believe quotations from the classics are now deemed out of place in arguments in court, but at the time of which I am speaking the influence of orators like Webster and Clay was still strong upon all who aspired to oratory. Davis's literary attainments included a treatise on "Law in Shakespeare" and a lecture on Madame Roland.

C. A. Severance, a fine lawyer, was the politician of the firm of Davis, Kellogg & Severance; and as partisanship ran

high and the Republican party was in exclusive control of the state, an active Republican was an asset to any law firm. Severance used to tell how at the passage of the law allowing leases to be taken upon the iron lands of the state he took up a position in the Auditor's office with a bundle of applications in his hand; immediately on receiving word that the Governor had signed the bill, he placed these applications on file, thus securing priority for his client.

Judge William Lochran, who succeeded Judge Nelson, was an intellectual giant, although, like many men of that type, subject to strong prejudices. We argued the Minnesota rate cases before him for three weeks. When we stopped, he suggested he would like until two o'clock of that day to formulate an opinion. At two o'clock, he came into court and orally delivered an opinion covering about one printed page. Although the Supreme Court reversed his decision upon the confiscatory character of the law, his opinion, in general, more nearly stated the law as finally settled than anything else said about the case. .

While the argument was taking place, a lawyer, who loved to gossip, had occasion to call upon the judge in his chambers, and he asked Judge Lochran how I was doing in the argument. "Oh, very well," replied the judge whereupon, my friend remarked, "It's a funny thing that an Irishman seems to do so well as a lawyer, but, as a judge, always appears to be a damn fool." "I'm sorry to hear that," said Lochran. "I was born in Ireland."

Judge Lochran was perfectly fearless in trying personal injury cases, and if the plaintiff did not make out a case, he promptly dismissed it. It happened one term he dismissed every personal injury case brought before him, which prompted Chris to declare Judge Lochran had won all of his cases at the last term: a remark which Judge Lochran heard with great glee.

He was a member of the famous First Minnesota Regiment, leaving the service with the rank of captain; he wrote an admirable history of his old regiment. He was upon the dis-



strict bench in Hennepin County when President Cleveland appointed him Commissioner of Pensions, a position in which he had as secretary the genial and able Charles Donnelly, now president of the Northern Pacific Railroad Co. Presently, he was appointed to the Federal bench and continued in that position until his death.

## CHAPTER 11

Until the latter 80's, lawyers did not specialize as they do now. Members of the bar tried both civil and criminal cases. I have known the following lawyers, including myself, to appear for the defense of men charged with crime: I V. D. Heard, Henry J. Horn, C. K. Davis, W. P. Warner, C. D. O'Brien, and John D. O'Brien; and these men appeared also in personal injury cases, on one side or the other.

Henry J. Horn was attorney for the Street Railway Co. for many years, defending it in personal injury cases. He was a conscientious, high-minded gentleman, a sincere church member, but those characteristics did not prevent his being an able and adroit trial lawyer. In cases where he had no real defense, his custom was to spend a great deal of time proving how well and carefully the company was managed, apparently to support a claim that the accident could never have happened!

One day I heard my partner, Alexander E. Horn, son of H. J. Horn, arguing with a client whether certain papers were retained by the client or left with us for safe-keeping. Finally, I heard Alec say, "Bob, did I ever show you the system we have for keeping your papers?" This was too much for me. I fled from the office, shrieking "Heredity!"

H. J. Horn and Isaac Heard were for the defense in the famous Lautenschlager case, prosecuted by C. D. O'Brien, when he was county attorney. Lautenschlager and his wife were charged with murder in the first degree, and at that time the death penalty was allowed only when imposed by the jury. The jury returned a verdict imposing the death penalty against the husband. Heard, who was a nervous, mercurial man, swung around to his associate, exclaiming,

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"My God, this is awful!" To which the more imperturbable Horn replied, "Well, Ike, I'm glad the verdict isn't against us."

Heard had come to Minnesota in territorial days. An excellent lawyer, he had served as attorney of Ramsey County. He was secretary of the military commission that tried and sentenced to death three hundred Indians for participation in the Sioux War of 1862, and he wrote an interesting history of the outbreak and subsequent trial.

The Indians were led by their chief, Little Crow, a man of considerable education, a fiery orator, who believed the United States was so involved in the war with the South it would be unable to make defense against the Indians; believed, further, that England would intervene on behalf of the South, in which case he would receive aid from Canada.

The outbreak was extremely savage. Although the Indians undoubtedly had grievances against the government and the traders, their rage was vented upon innocent men, women and children, hundreds of whom were slaughtered before the outbreak could be subdued. Finally, through the efforts of Bishop Whipple and other philanthropists, President Lincoln pardoned all but thirty-eight of the condemned Indians. These were hanged at Mankato on one large rectangular scaffold. Naturally, sentiment as to the propriety of Lincoln's clemency was divided; many white people asserted that, instead of three hundred, all Indians should be exterminated. Heard always claimed, without so stating in his history, that through some bungle one of the Indians whose death sentence was approved by Lincoln escaped and one of those pardoned was hanged in his stead. Be that as it may, Little Crow was killed by a white settler while he and his son were picking berries in McLeod County some months after the outbreak. What is claimed to be his scalp is in the possession of the Minnesota Historical Society.

Certain older members of the bar used to delight in picturing Henry Horn, because of his exemplary life but genial characteristics, as having led a wild youth! Judge Flandreau, in particular, took every opportunity of telling how, at a

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banquet attended by Horn, a toast was proposed which was so obnoxious to one of the guests that he threatened to shoot any one who drank it; whereupon, Henry, who was from Pennsylvania, quietly arose, glass in hand, and said, "The Keystone State always drinks, regardless of the sentiment."

Another anecdote, undoubtedly truer, is of the time he went to New York to seek a settlement for a client, a failing merchant. One of the chief creditors, after keeping every one waiting some time, bustled into the meeting with the statement, "There is just one settlement I'll accept: One hundred cents on the dollar." A silence fell upon the group. Horn broke it by saying in his quiet voice and manner, "May we have until two o'clock to consider this offer?" I am not sure, but I believe he secured relief for his client.

Horn conducted much important litigation: Among other cases, that of Pearsall vs. the Great Northern Railway Co., in which he secured a decision denying the right of the Great Northern and the Northern Pacific to consolidate by the methods proposed.

Perhaps it is age, but it seems to me that the jury trials in those days, conducted by those able and fearless attorneys and covering a vast variety of subjects, were more interesting than the present interminable contests as to the responsibility for automobile accidents. Ambulance chasers were unknown, and insurance companies had not assumed the defense of cases for negligence. The result was, both plaintiffs and defendants placed their cases with their regular attorneys, who tried the cases upon the evidence which came to them without the aid of claim agents or special investigators.

It must, I think, be admitted that consolidation of cases was first instituted by those engaged on the defense, and that the development of the ambulance chaser followed as a natural consequence. This has produced a condition in which lawyers have become specialists and the practices of one side cannot be suppressed without injustice to it.

As evidence of the romantic attachment the lawyer of those days felt for his profession, the personal feeling that

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it was his duty to see justice done to those in the toils of the law, I remember an incident which occurred while Mr. Horn and I were thrown together for some days looking up authorities in a case in which we were associated. A woman of the town had murdered her paramour, a drunken brute who had beaten and ill-treated her in every possible way. Mr. Horn, who was then well over 60 years of age and, as I have said, a man of exemplary life and habits, said to me, "I'm strongly tempted to offer my services gratis, in the defense of that poor creature." No doubt he realized that his mere appearance as an attorney for the woman would be a tower of strength. As it happened, he did not appear. The woman escaped, I think, with a very light sentence. I cite this incident as an example of an attorney's regard for the purpose and duty of his profession.

## CHAPTER 12

The driving of a golden spike to mark the completion of the Northern Pacific Railway in 1883 was elaborately celebrated in St. Paul. Henry Villard assembled three trainloads of guests to witness the ceremony; the guests included President Arthur, James G. Blaine, Generals Ulysses S. Grant, William T. Sherman and Philip Sheridan, and many other distinguished citizens. As the trains were to pass through St. Paul, the city determined to give Villard's guests a banquet at the Hotel Lafayette, a magnificent structure recently erected by the Great Northern Railway Co., equipped to vie with the handsomest hotels on the eastern seaboard.

Chris, who was mayor of the city, presided at the banquet. Champagne flowed so freely that not only many of the guests but also most of the colored waiters became intoxicated and required the vigorous efforts of Chief John Clark and a squad of St. Paul police to maintain order.

This was the first time I had ever seen "Phil" Sheridan. He was standing in the lobby, feet wide apart, hands behind his back, head thrust forward as if about to order a charge upon an enemy. He was quite heavy and bore little resemblance to the youth weighing only 114 pounds who had been



given the task of driving General Early's forces from the Shenandoah Valley.

Chris was invited to join the excursion, which left for the West immediately after the banquet. A protege of his, the son of a distinguished Congressman who was a member of the party, also was invited. This young man became drunk whenever he had the opportunity, and of course he had not overlooked the freely flowing champagne at this banquet. I was one of the ushers at the dinner, and just before the trains left Chris said he feared his young friend had become inebriated and asked me to look him up and put him safely upon the car. I made some non-committal answer; but as I never liked the young man, I made no search for him; I do not know to this day whether he got aboard the train!

The extension of the Great Northern Railway, after its acquisition by J. J. Hill, and the completion of the Northern Pacific resulted in the influx of an immense number of people to St. Paul. It started a real estate boom which lasted until about 1890; the effects of this boom have not entirely disappeared to this day. I examined titles and marked additions to St. Paul and to property located in at least four counties. Since it was difficult to make more than a living by examining titles, I indulged in no purchases of speculative real estate; but as soon as I was able to earn a margin, I put it into town lots—just before the boom burst! Consequently, I was rendered insolvent for 20 years!

Until 1888 I remained in partnership with John D. O'Brien, but in that year I was invited to partnership with C. D. O'Brien, with whom I remained until 1905.

On April 24, 1888, I married Miss Mary Cruice, the daughter of Dr. Cruice who had guided Harry through college, and the granddaughter of Peter Cruice, who had befriended my father when he first came to America. To her I owe all the happiness and much of the little success I have had since that time. Four children were born to us, three of whom are still living and have families of their own; the fourth, Wil-

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liam R., contracted tuberculosis in Germany during the World war and died after a long illness.

We have been greatly blessed in our children. Eleanor, the eldest, after graduating from Trinity college, Washington, D. C., became an able teacher in the High School at Litchfield, where she met and married William P. Robertson, a successful young physician. In 1918, although he had a young son six weeks old, Will offered his services to the government and was appointed a doctor on the hospital ship Solace, where he served with credit until the termination of the war. Eleanor and young Billy, meanwhile, made their home with us. Will died suddenly, in October, 1930, leaving Eleanor with scanty means and three sons, the oldest not thirteen. Her courage, buoyant spirits and marked ability in managing three active boys and at the same time taking a prominent part in the American Legion Auxiliary have won the admiration of all who know her.

Dillon, our oldest boy, obtained a commission at the Des Moines training camp, and immediately afterward married Miss Stella Kennedy, who accompanied him to the training camp at Little Rock, to which he was assigned as instructor. After the Armistice he returned to St. Paul and entered the printing business. Although he has had some hard knocks in that highly competitive business, he and Stella and their two bright children have a happy home. Stella's father was Jeremiah C. Kennedy, one of the oldest and best gunsmiths in St. Paul. Theodore Roosevelt, passing through St. Paul en route to his Dakota ranch, always sought the services of Kennedy Brothers in putting his guns in proper shape.

Louise, our second daughter, married Vincent L. O'Connor, a son of John P. O'Connor, who for many years was the business manager of the diocese of St. Paul. They, too, were married when Vincent obtained his commission at a training camp, and they were together at the military post to which he was assigned as an instructor. After the war, Vincent became a member of the firm to which I belong. Vincent

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and Louise with their four bright children also have a happy home.

William R., whose life the war cost us, married Miss Marion Gibbons. Her devotion to him, her loving care of him during his long, lingering illness, we can never forget.

### CHAPTER 13

In 1885, Mr. William P. Murray appointed me Assistant City Attorney, first putting me in charge of the prosecution of misdemeanors, in the municipal court, then turning over to me the defense of personal injury cases brought against the city. Those cases were quite numerous, for nearly all sidewalks in the city were of wooden construction. Another assistant in the office prepared the pleadings, and he had one stock allegation which he always put in the answer, namely, "That the plaintiff, by the excessive use of intoxicating liquors, had rendered himself incapable of properly caring for his own safety." I don't remember ever having sustained this defense, but it sounded well in the answer!

The verdicts rendered against the city in personal injury cases indicate, as a trait of human nature, that an infinitesimal pecuniary interest makes one a partisan. The jurors, being generally taxpayers, in city cases assess damages at only a fraction of the amount they would return against corporations in which they had no interest. Nowadays, when nearly everybody owns or drives an automobile, a similar condition exists in assessing damages in accidents from the use of those powerful machines.

I have often wished labor leaders would recognize this trait when organizing protective associations. If each member made a very small contribution to the indemnity fund, the result would be fewer accidents, since each workman would then be on the alert to prevent accidents to his fellow workmen, and thus save the payment of indemnity for injuries. Thus a defective machine would be immediately reported, and a clumsy workman put right by the kindly advice of his co-workers.

Not realizing this while I was defending the city, I at-

tributed the results to my own skill, and I longed for an opportunity to show what I could do if appearing for the plaintiff. At last the opportunity came, and I found myself cuffed and kicked by an old lawyer for whom, before the trial, I had felt a pitying contempt. When the jury retired, I returned to the office in a quite hopeless frame of mind. John met me and inquired as to the result. I told him I thought I would be beaten. I frankly confessed that I thought my head had become swelled from my success in defending the city. Said John, with one of his quizzical smiles, "I guess that's so. This experience ought to do you good."

William P. Murray was an Indiana Democrat who came to St. Paul in 1849. He was a member of the Constitutional Convention, taking, of course, the Democratic side when the split came in that body. He served several terms in the state legislature and was a most genial, whole-souled, honorable gentleman, whose kindnesses I can never forget. He knew all the old settlers and most of the people in the city in humble circumstances. A great many of them depended on him for advice, some refusing to pay their taxes unless Mr. Murray went with them to the treasurer's office to see that everything was right.

Back in territorial days, Louis Robert, one of the original French settlers, for whom Robert Street was named, deeded to Mrs. Murray, for the consideration of one dollar and a promise to build upon it, a strip of land seventy-five feet wide running from Seventh to Eighth Streets, now the center of the Golden Rule block. Through really heroic sacrifices, the Murray family held this property which now, under a long lease, returns a handsome annual rental. Mr. Murray's daughter, Winnifred, now Mrs. Alexander Milne, has had the active management of this property. Management in which she has shown great skill and business acumen.

If ever a group of people deserved this good fortune, it was Mr. and Mrs. Murray and their excellent family.



## CHAPTER 14

I was elected County Attorney in the fall of 1891, and I appointed as my assistant Pierce Butler, who but a short time previously had been admitted to practice and who already had given evidence of his strength both in the practice of law and in politics. He is now Associate Justice of the Supreme Court of the United States.

A few weeks after we assumed office, a habeas corpus proceeding, in which we represented the county, was begun in the Supreme Court. I advised Butler this would be a good opportunity for him to make his first appearance before the high court. He was very reluctant to do so, protesting he was too young and inexperienced. I insisted, however, and finally he made preparations for the argument.

True to my cautious instincts, I went to the court to be at hand if any catastrophe should happen to my assistant. When his time came to speak, he advanced to the lawyers table with his authorities in his hand; and taking a deep breath, he began his argument, in a clear and steady voice. Satisfied that he was able to take care of himself and his case, I left the court room. This, I believe, was the last time I ever had any doubt as to his ability to handle a situation!

Either in 1891 or 1892, a group of promoters arranged for a prize fight to take place in St. Paul between Bob Fitzsimmons, the Australian champion, and Charles Hall, the American. As the governor was said to have consented, it was presumed that the mild laws relating to prize fights would be ignored; so several prominent citizens joined in sponsoring the match. A special pavilion was erected, with enough seats to accommodate the large crowd which the fight was expected to attract.

A few days before that set for the fight, a committee of citizens, including Archbishop Ireland and ex-Senator S. J. R. McMillan, appealed to the governor to prevent the fight. After some discussion, the governor ordered Sheriff Bean, who was also colonel of the First Minnesota Regiment of Militia, to do so and, if necessary, to use the militia in carry-

ing out his orders. The sheriff was thus instructed because it was known the city authorities were in favor of allowing the fight to take place.

Early on the day of the fight, Sheriff Bean, accompanied by his attorney, Walter H. Sanborn, came to the county attorney's office to ascertain what the attitude of that office would be; and we promptly told him we would support the sheriff in carrying out the governor's orders and, as far as possible, prevent an unseemly clash of authority between the sheriff and the city officers. I was rather pleased to hear the sheriff say, "Mr. Sanborn told me I could depend on your being for law and order."

Some of the promoters had stated 'n the papers that they had joined the enterprise believing it to be lawful and sanctioned by the authorities. Acting on this, I sent for the leaders to come to our office, and I put before them in the presence of the sheriff, the true situation. They promptly gave me their word the fight would be called off. I was entirely satisfied with their assurance, particularly because I was well informed that John Clark, chief of police, and other influential local authorities fully realized that an impossible situation had arisen, and were entirely adverse to the clash of authority which would be inevitable if it was attempted to hold the fight.

Our meeting was about to adjourn when the mayor of the city and the corporation attorney abruptly intruded and demanded that the fight go forward. This, of course, nonplussed the promoters. I was highly indignant at the cavalier manner in which my office and advice were treated, but I kept as cool as possible, and waited until the intruders had finished. Then, turning to the promoters, I said:

"You have stated in the public prints, and I believed you, that you joined this enterprise only because you believed it to be lawful and sanctioned by the authorities, both state and local. You know now that is not true. There sits the sheriff of Ramsey County who is ordered to and will, if necessary at the expense of bloodshed, put down this fight. I de-



mand to know, as county attorney, whether you and your associates will allow that situation to be precipitated?"

Immediately, the leading promoter, a gentleman holding a responsible position in the business world, replied, "Sir, you have already had our answer: The fight will not take place."

Several days previously, my sister, Mary, my brother, John, and I had made reservations to leave, that afternoon, for the Pacific coast. Being entirely satisfied that the fight was off, and knowing that I was leaving the office in Butler's competent hands, I took the train as arranged. Later in the day, some of the good citizens who had opposed the fight felt they could not rely upon the promises I had obtained; they even suggested that my leaving the city was an evasion of duty, and they insisted the sheriff make a show of force. This the sheriff did, and the militia marched two or three times around the deserted pavilion—deserted, for the promises were kept and no attempt was made to stage the fight. Still, notwithstanding my confidence, I was glad to receive word, on the train, that no disorder had occurred.

I did not particularly enjoy being county attorney, as the prosecution of persons accused of crime was distasteful to me. The law at that time provided that murder in the first degree should be punished by death, unless the presiding judge certified that by reason of exceptional circumstances the death penalty should not be inflicted. I had once heard a prosecuting attorney in an outside county vigorously argue for the imposition of the death penalty upon a man he had just convicted of murder in the first degree; and although in that case the crime was peculiarly heinous, I made up my mind that if the occasion ever arose while I was in office, I would advance no argument in favor of the death penalty, but would simply state to the judge, before the plea for clemency commenced, that in the absence of misstatements by opposing counsel, I would make no reply. I am glad to say that no such occasion arose during my term of office.

Once, however, it seemed imminent. It was in a case where,

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as the evidence first came to us, it was a clear case of murder in the first degree, although, as actually delivered in court, was greatly softened by the witnesses. When the jury had retired, I approached Judge Kerr, a just and honorable man, who had presided at the trial.

"Judge," I said, "I want to sleep tonight. This is not a hanging case."

"No, Tom, it is not," came his welcome assurance. And the jury evidently took the same view, for they brought in a verdict of murder in the second degree, and the defendant was sentenced to imprisonment for life.

As the end of my term of office approached, I determined not to run again and suggested to Butler that he become a candidate in my place. At first he demurred, but finally consented. He obtained a large majority at the election, was elected for a second term, and filled the office for four years with conspicuous success.

I soon learned, when prosecuting in the municipal court, that the attorneys, generally young men, defending persons accused of misdemeanors, always insisted on going over the entire story, no matter how long. To save time, I adopted the practice of making out only the merest skeleton of a case, which, if left alone, would not have been sufficient to enable the judge to pass sentence. The zealous attorney for the defendant, on cross-examination, always filled up all the spaces, as I knew he would, and judgment was rendered upon the merits.

## CHAPTER 15

The conducting of a jury trial is, I think, as great an intellectual effort as can be imagined. The trial lawyer has to bear in mind, at the same time, the testimony which has gone in, as well as that which is being given from the witness stand; and, in addition, he must anticipate, as far as possible the testimony which is to follow. He must consider the legal effect of all this testimony on the presiding judge, and also how it will appeal to the jury, whose mental attitude is likely to be quite different from that of the judge.

*Forty-four*



Once when I was prosecuting a man for murder, I witnessed a magnificent piece of audacity on the part of William W. Irwin, who was attorney for the defendant. The man, an old soldier, had a few acres of land on the shore of one of our outlying lakes, where he lived with a mulatto woman as housekeeper. One Fourth of July, a poor laborer went to this lake to fish, and wading out as far as he could he tried to catch some small fish with a long cane pole. His wading brought him in front of the defendant's place and the dock where he kept boats for hire. Arming himself with an oar, the defendant demanded that the fisherman leave the lake. When the poor fellow tried to wade ashore, the dock owner struck at him several times with the oar, while the fisherman used the cane pole to defend himself from attack. At this point, the mulatto woman, armed with a pistol, rushed to the shore and shot the fisherman through the breast. As the poor fellow staggered forward, the dock owner shoved him back into the lake, where he died. Later, the proprietor of the place, taking hold of the dead man's collar towed the body into the lake beyond his property and there left it, until it was taken in charge by the coroner.

The brutality of this delectable pair, the innocence and simplicity of the laborer, moved me very strongly. Both defendants were indicted, I think, for murder in the second degree, as the law made principals of all who in any manner participated or assisted in the commission of a crime. I determined to do all in my power to convict them and I hoped for a successful prosecution.

Irwin appeared for both defendants, demanding separate trials.

I called the case against the woman first, as that case was iron riveted. She was convicted and sentenced to twenty-five years' imprisonment.

Irwin approved of this, and in his most bland and insinuating manner he assured me that he always knew the woman would be convicted, but that he was confident I realized the old soldier had committed no murder and should be acquitted.

I was rather quiet during the trial, but when it came to the summing up I put forth my strongest efforts against the man, basing my argument upon the attack he made on the deceased, his conduct in shoving him back into the lake and his subsequent disposal of the body, a participation which I claimed made him a principal. I made a strong argument and Irwin was clearly nonplussed; but with the readiness and brilliancy which always marked his conduct in court, he immediately arose and addressed the judge.

"The argument of the county attorney has been so extravagant and his position so palpably absurd," he said, "I decline to make any address to the jury. I leave it to their good sense to do justice."

The jury retired, and as we were leaving the court room, Judge Brill, who had presided, said to me, "That was the most audacious action I ever witnessed! I thought your summing up logical and convincing."

The jury returned a verdict of "Not guilty". I have never recovered from my chagrin at the result, or ceased to feel indignant at the wanton murder of the poor laborer who, in his own simple manner, was only seeking a day's harmless recreation.

Irwin was an exception to the general rule, in that he specialized in criminal cases. He himself said that lawyers do not choose their specialties but try the cases brought to them. Well over six feet in height, he always wore a wide-brimmed black hat and long coat; late in life he came to be known as "The Tall Pine". A brilliant lawyer and orator, somewhat unscrupulous in preparing a defense, he was for many years the most successful defender in the Northwest. In his defense of murder cases, he was wont to cite "a suspicious movement toward the hip pocket" by the deceased, or "the flash of something resembling a knife or a pistol". His last appearance in this vicinity, in a prominent case, was at Minneapolis in defense of Harry Hayward, who was convicted and hanged for the murder of Catherine Ging. About this time the public began to consider Irwin's appearance as



evidence of a defendant's guilt, and his practice declined. Shortly afterward, he removed to Florida and had considerable success as attorney for a railway company.

Irwin appeared with C. K. Davis in defense of a newspaper reporter who had shot to death a man with whom he had quarreled at the Merchants hotel. His address to the jury, as well as Davis', was a brilliant oratorical effort. However, their client was convicted, but only of one of the lesser degrees of homicide.

The strongest cross-examiners to whom I ever listened were Charles E. Hughes, Pierce Butler and C. D. O'Brien. Hughes' method was precise, good-humored and as rapid as the fire of a machine gun. Chris was suave, persuasive and polite until he got his witness where he wanted, when he became rather fierce. Butler, whose spear knew no brother, trampled over a witness who showed the slightest sign of weakness. Personally, I was always cautious in exercising this perilous privilege, preferring to leave a question unasked rather than incur the danger of allowing a witness to emphasize his previous testimony.

One of the best and most adroit witnesses I ever knew was John Clark, who could neither read nor write when appointed chief of police by Chris, as mayor. On his direct examination he always answered hesitantly and with the utmost diffidence, reserving the full strength of his testimony for the cross-examination, when he became very emphatic.

One reason for the success of my brothers, Chris and John, in jury trials was their ability to vary the monotony of the proceedings by some joke or gibe which appealed to the jury's sense of humor. One day a scientist, describing geological conditions here, said "St. Paul has not moved since the flood." "Oh, yes, it has," said Chris. "It moved at the last election." This drew a hearty laugh from the jury.

John had a fund of anecdotes and illustrations which he had no hesitation in using. Discussing what constituted "reasonable care", he would say, "Now, gentlemen, when an old maid looks under the bed before retiring, she is using

not reasonable but extraordinary care." In a very desperate jury case in which John appeared for the plaintiff, he was opposed by one of the strongest trial lawyers in the city. In summing up for the defense, this gentleman made a very fierce attack on the plaintiffs, accusing them of perjury and other crimes and misdemeanors. When John rose to reply, he assumed his most diffident manner. He explained to the jury that lawyers did not own the cases they were hired to try but were employed only to present their clients' claims. He went on to say that the lawyer who made a violent and unfair attack on those opposed to him always reminded him of professional mourners who in former times were employed by the family of the deceased to weep and wail over the remains. This caused a ripple of amusement. And now being "behind the familiar barricades", as Sheridan said of one of his battles, John sprung the prize story which he reserved for only great occasions. It was of the man who, having lost his wife, exhibited great grief at the funeral services held in his home. Next day a friend met this man on the street and attempted to condole with him.

"I was at the house and witnessed your excessive grief," said the friend.

"Didn't you go to the graveyard?" asked the bereaved.

"No, I was unable to do so."

"I raised hell at the grave!" exclaimed the disconsolate widower.

A gale of laughter swept the court room. Even the presiding judge smiled sedately. Needless to say, the jury in a few hours raised hell with the defendant.

Another illustration which John used when claiming a witness went too far with his testimony was of the carpenter who, while shingling a roof, attempted to shingle out into a fog and so met disaster.

## CHAPTER 16

I returned to private practice and for some years I had the usual ups and downs of a lawyer's experience, without, however, making enough money to pay my real estate debts

*Forty-eight*



incurred during the boom. In 1905, Governor John A. Johnson appointed me insurance commissioner.

Some time after my appointment, the Armstrong Committee was elected by the Legislature of New York to investigate the practices of the large insurance companies. The committee selected as its attorney Mr. Charles E. Hughes, now Chief Justice of the United States Supreme Court. About the same time a group of five commissioners, of whom I was one, entered upon a similar investigation; but we soon found the Armstrong committee, under the able leadership of Hughes, held and would continue to hold the center of the stage.

Theodore Roosevelt was then president and had made comments upon the insurance situation. Convinced that the situation needed reforming, not only in New York but also throughout the country, I conceived the idea that if President Roosevelt would call a joint meeting of the governors, attorneys general and insurance commissioners of the United States, some good might result. Governor Johnson gave me a strong letter of introduction to the president, and armed with this I called at the White House. I sent in my card and the letter, and presently I was taken into the cabinet room, which gradually filled with other callers. In the course of an hour or so, President Roosevelt entered from his private office and began, as some one said, to throw the callers out through the windows and doors. When he reached me, he deplored the fact that I had not made an appointment and asked me to wait until he had leisure to talk with me. I gladly assented, for I had never seen such dynamic action and was somewhat uneasy, as my ideas were none too well formulated. I spent the remainder of the time I had to wait in composing a short, concise statement of my object in calling upon him. Later, in his private office, I made my statement in fifteen or twenty words.

The suggestion was favorably considered, and I was told to take the matter up further with Mr. Loeb, the president's secretary. I then told the president I need intrude no longer upon his time; whereupon, he himself entered into a general conversation.



When I returned home, Governor Johnson and Frank Day made so much of my mission and its success that President Roosevelt became annoyed and very nearly called the whole plan off! He was placated, however, and after some wrangling between the commissioners with whom I had been acting, the meeting was called and held in Chicago. Governor Johnson was elected to preside, and a committee of fifteen, of which I was chairman, was provided to consider the entire situation and propose the necessary reforms.

The committee, when it met, wisely decided to await the action of the Armstrong committee; and when its report was made, our committee of fifteen adopted virtually all of the reforms proposed in New York and drafted legislative bills to carry them out.

It was very gratifying to us to have those bills placed upon the statute books of twenty-two states in 1907, thus crystallizing and making permanent the legal reforms recommended by the Armstrong committee.

The changes in the law thus secured related principally to standard provisions in life insurance policies, abolition of the Tontine system, fixing the reserve and cash surrender value, requiring such value to be paid upon the surrender of the policy, and prohibiting the policy to be forfeited for the non-payment of a smaller amount.

Observing the effect of standard fire insurance policies, I had become an advocate of standard life policies, but I did not make much headway until the Armstrong committee took it up. Once, when arguing with a gentleman representing a good company, I mentioned the evils I had observed from fraudulent policies.

"Major, we don't want to force you to adopt a bad form of policy," I told him. "I would be willing to take as a model the policy issued by your company."

"Sir, if we have a good and favorable policy form," he replied, "we don't desire to share it with any of the other companies."

This answer convinced me that it would be impossible to

obtain the consent of the insurers to any legislation in that direction.

At the time these laws were enacted I thought the fixing of the surrender value and the making of its payment compulsory on a demand were excellent provisions, for I believed then that a run upon a life insurance company was impossible. During the recent depression, however, it was found necessary to grant the insurance companies a moratorium from these provisions, so great were the demands for payment.

During the investigation by the Armstrong committee, I heard Hughes cross-examine Hyde, president of one of the big companies. His good humor, the rapidity and precision of his questions on a technical subject, showed Hughes to be a master of the art of cross-examination—which often is a two-edged weapon.

During the agitation concerning insurance it was proposed to ask Congress to enact a model insurance law for the District of Columbia, which could, if necessary, be copied by the various states. Unmindful of the old truth that "Fools rush in where angels fear to tread", a group of insurance commissioners, including myself, sent President Roosevelt our suggestions for a model code, and he forwarded them to Congress with a special message containing some complimentary remarks about our work.

I always liked Theodore Roosevelt and had for him the admiration which a timid man, leading a sheltered and sedentary life, has for the exponent of "the strenuous life". He had the courage to go West and build up his health by the life of a cowboy. He made a fearless president; and whether or not, as leader of the Rough Riders, he displayed great military talent, he certainly showed courage in his Cuban campaign. His conduct in continuing a speaking tour after receiving, in Milwaukee, an assassin's bullet in his chest proved him to be a man of transcendent nerve. The statesman, Earl Grey, describes in his memoirs a day spent with Roosevelt in the English forests, where Roosevelt identified the different birds by their songs and astonished Grey by



his general knowledge of nature. With all this, his industry and accomplishments as an author, his difficult big game hunts, his successful explorations, all taken together, place him among the immortals.

During the summer of 1907 I resigned as insurance commissioner, and John A. Hartigan, who had been the actuary of the department, was appointed to succeed me. He filled the office with marked success and, after he retired, secured an excellent position in the insurance world. One of his first acts as commissioner was to appoint as his assistant Dennis F. Lyons, the distinguished general counsel of the Northern Pacific Railway (since deceased). I have often thought since then although I could claim no credit for the selection of Mr. Lyons, I could claim plenty for the appointment of a man who appreciated Lyons' ability and knew what a valuable assistant he would make.

## CHAPTER 17

Before St. Paul grew to metropolitan proportions, the young people were largely dependent upon themselves for amusement, and among the organizations for this purpose the Minnesota Boat Club was prominent. The club had been organized at an early date by a group of young men of whom Charles Corning—an uncle, I think, of Leavitt and Clifford Corning of this city—was a leader. Among the organizers or very early members of the club were L. W. Rundlett, Hunt Butler, W. H. Hyndman, C. D. O'Brien, Kenneth Clark and many others, some of whom achieved national fame as oarsmen.

It was the custom to give an inter-club regatta every Fourth of July, the course being a mile up stream and return, from the boathouse on Raspberry Island. A formal ball was given once a year and, like the regatta, was well attended. One beautiful summer night we gave what we called a fete champetre on the island. The moonlight glinting through the trees illuminated many locations where romantic couples could sit out dances.

Each year those who had capsized on the river were required to finance a picnic, always held on the river bottoms



about five miles above the boathouse. In rowing to the picnic grounds, we necessarily passed Banholzer's brewery, where it was convenient to obtain some kegs of beer, to be consumed during a day spent in foot races, wrestling matches, baseball and other athletic sports.

A legend of the club is that of a boat race between Chris O'Brien and Kenneth Clark, who became president of the Merchants National Bank. Neither was an oarsman, so the race had to be rowed in heavy boats. So much time was spent in covering the course, most of the spectators left before the race was finished! Another legend is of the time when a group of husky young Englishmen who had settled at Fairmont came to St. Paul with their four-oared shells to race with the club here. Charles F. Marvin, a perfect young Hercules, was stroke of the Minnesota crew and volunteered to entertain the visitors the evening before the race. Next day, Charlie appeared at the boathouse in the pink of condition, but the visitors had been so over-entertained they were scarcely able to finish the course! Marvin's crew triumphantly won the race!

Among the later members were W. H. Lightner, James K. Taylor, Cass Gilbert, M. J. Boyle, Lucius Ordway, John J. O'Leary, John and Percy Parker, George Becker, and myself. Very few of us developed into great oarsmen, but a notable four-oared crew was composed of Hunt Butler, bow; George Becker, stroke; and the Parker boys in the waist.

The members would do their rowing on the river in the afternoon, after five o'clock, and after a shower or a plunge in the river, would climb the long stairs to the bridge and proceed at once to Grote's "Tivoli", a very respectable saloon and pavilion on the river bank, facing Bridge Square, and there quench their thirst with beer. I never knew of any excessive indulgence on those occasions.

Hanlon, a champion professional sculler, was present at a regatta held in Minneapolis, in which our club participated. A discussion arose as to the care required in order to avoid capsizing the frail single shell made of paper or of the lightest

cedar and reduced to the smallest possible size. John O'Brien, a rich lumberman from Stillwater, offered to bet one hundred dollars against Hanlon's shell that he could remove the outriggers from the boat and then paddle it around the lake. Not realizing O'Brien's experience, while a youth, in riding logs on the St. Croix River, Hanlon eagerly accepted the wager. The outriggers were removed, and O'Brien, furnished with an oar, took his seat in the shell and not only paddled it safely in a sitting position but also, when well launched actually stood up in the shell and continued to propel it, returning to the landing place in safety.

The Minnesota Boat Club, with one or two unfortunate exceptions, has always upheld clean amateur sport to a remarkable degree. Perhaps occasionally we would jump the gun in a race; but fair play was the rule. The club always has been composed of splendid young men whom any father would be glad to have his son associate with.

In my youth nearly all athletic exercises were in the hands of amateurs. We had no million-dollar skating rink. Instead of professional hockey, we would construct and clean our own rinks, where shinny instead of hockey was played. We would go into the woods and dig up a shrub, the root of which curved sufficiently for our purpose; then, with this as a shinny block, we would take sides and try to propel it across a line drawn over the ice. Our first skates were those in which the blades were imbedded in wood from the heel of which a screw protruded. This was firmly screwed into the heel of the shoe, and the forward portion of the skate was fastened to the foot with straps. Later came the club skate, made entirely of metal fastened to the shoe by levers. Club skates were known as half-rockers, the front of the skate curving upward, the rear portion of the blade terminating just beyond the heel. To stop, we turned up one foot, letting the sharp end cut into the ice. Then came the full-rockers, on which the blade curved at each end; and to stop, one turned the blade sidewise. With these curved skates, our chief amusement,

*Fifty-four*



aside from shinny, was fancy skating, in which we cut various figures on the ice.

Coasting was another winter sport, in which we used everything from a single sled to the large bob-sleds seating ten to twelve persons. These sleds generally were of home manufacture and afforded us the keenest pleasure.

Another recreation was provided when a party of young people would secure one of the big bob sleighs used by the express company. The sleigh would be half filled with straw and a liberal supply of buffalo robes, and would be drawn by four horses. "Straw rides", as they were called, would afford delightful entertainment, which generally ended with a dance at the house of one of the party. Hiring the sleigh and horses, however, was rather expensive, and most of us could not often indulge in the luxury.

Nothing is better for young people than clean amateur athletics. It brings them out in the open air, develops their physique, teaches self-reliance, as well as how to meet competition and, at the same time, to control the temper. The extreme development of professionalism in athletics has always seemed to me unfortunate. Wellington said, "The battle of Waterloo was won on the cricket fields of Eton." He meant that his men had received their discipline in school contests, in days when everybody from dons to the greenest students were to be found on the cricket fields.

The Minnesota Boat Club is still active, taking part regularly in the annual regatta of the Minnesota and Winnipeg Association. I was greatly attached to it. Although never a superior rower, I greatly enjoyed rowing and participated in the winning of some minor races. As an active member and before my marriage, I thought it impossible I would ever give up rowing; but as a married man, I realized that I must give stricter attention to meal hours and other domestic obligations than was required by an indulgent mother. So I resigned from the club.



## CHAPTER 18

Bridge Square, as it was called, was an open space at the junction of Second, Third and Wabasha Streets. At an early date the Ingersoll Block, a three story building, was erected, fronting Wabasha Street and making the junction between Second and Third Streets. The third story of the building originally was a public hall and in it were held political meetings, church fairs and theatrical performances, for it was the only place suitable for those purposes in the city. The drygoods store of D. W. Ingersoll & Company, predecessor of the present Field, Schlick, Inc., occupied the first floor; the St. Paul Library, then privately owned, occupied part of the second floor; and Morris Lamprey, a well-known lawyer, occupied as his offices the remaining portion. Later, when other places of amusement were built, the third floor was cut up into offices, one of which was occupied by O'Brien and Eller, the firm of which I became a member. How well I remember wondering if the footsteps in the hall would bring a client to the office and, if so, would he come to me! One of my first acts in this office was to subscribe to "Turner's Art Gallery", a useless publication, the price of which was paid in monthly installments. Like all other deferred payments, the recurring installments became a heavy burden. John used to say the collector must have occupied a permanent position in the hallway, as he seemed to know whenever I received a small fee and promptly pounced upon it!

Homer C. Eller, before entering into a partnership with John, had been a clerk in the firm of Bigelow, Flandrau and Clark. He was an excellent lawyer, the editor of the *Syllabi*, and one of those delightful associates who, if you stated a legal problem to him, would quietly disappear and return later with the authorities directly in point. During the Civil War he had been a drummer-boy and, I think, accompanied Sherman on his march to the sea. He was a modest, diffident man. Once, during their earlier association, John asked him to go to a woman's house and obtain from her the facts upon which she based a claim against the city for personal injuries. On Eller's return to the office, John prepared to draft the com-

plaint, but found Eller had ascertained very few of the facts.

"What did you find out?" asked John, rather exasperated.

"Well," replied Eller, scratching his head, "she showed me her leg."

If he showed bashfulness on that occasion, he gave evidence of unselfish courage in his care of a young woman who was an assistant in the St. Paul library. Entirely dependent upon her salary, she was obliged to resign her position when she contracted tuberculosis. Eller, who loved books and spent much time in the library, so sympathized with her that without saying a word to either John or me, he quietly married her for the sole purpose of caring for her during the short remainder of her life. Some years after she died, he married his boyhood sweetheart from Indiana, with whom he lived happily until his death.

## CHAPTER 19

When Lincoln issued his first call for volunteers, Governor Alexander Ramsey, who was then in Washington, immediately tendered one thousand men to Lincoln and telegraphed Lieutenant Governor Ignatius Donnelly of his action. Donnelly called for a meeting at Bridge Square, and many volunteers were secured. The first to sign the roll was Josiah R. King, who thus became the first volunteer in Minnesota and perhaps in the United States. When the regiment disbanded, King had reached the rank of captain; he returned to St. Paul, where he lived for many years. His statue, erected by the local posts of the Grand Army, graces the little park near the cathedral, and a tablet to his memory has been placed in the Union Depot.

Willis A. Gorman, colonel of the regiment, used Bridge Square as a drill ground. It was said, his voice was so powerful his commands could be plainly heard on Jackson Street.

The Knights of Pythias, under command of Delos A. Montfort, also drilled on the square. Many other public gatherings made old Bridge Square a community center.

During the '80's, all the foremost actors and actresses visited St. Paul. Edwin Booth, John McCullough, Lawrence Barrett, Joseph Jefferson, J. W. Florence and Mrs. John Drew,



all gave performances in the city. To be sure, their stay here was usually short, but we eked out our pleasure in theatricals by amateur performances, in many of which the officers from Fort Snelling took prominent parts. The St. Paul Dramatic Club gave plays, followed by dances, at the old Atheneum on Exchange Street. I took part in many of these performances, but with an amateur's bad luck I sometimes appeared on the stage with my costume so disarranged that the audience was convulsed with laughter.

In 1880, John and Father purchased the house on Lincoln Avenue in which I still live. That year, or the next, John wrote for the children an operetta called, "Jack, the Giant Killer", in which he adapted airs from popular operas. Mother and the piano constituted the orchestra; Sue, John's favorite niece, was Jack; I was the giant; and the other parts were taken by Harry, Jennie and our nieces, Lizzie Cayou and Sadie O'Brien. A small printed program was prepared by Father and John, in which the house was called "The Tree Claim Theatre"—tree claims could then be entered on government land—and contained the statement: "The piano used on this occasion was furnished by Messrs. Dyer & Howard, on the installment plan."

This production so enthused me that I wrote a musical burlesque, calling it "Exiled, or O'Phelan's Strategem". It was performed for the benefit of the cathedral parish in the old Market Hall on St. Patrick's Day, 1883. Those who took part were Phil Schaub, Stan Donnelly, M. Dougherty, Jared How, M. J. Donnelly, John Hanley, James Shea, Harry O'Brien, and quite a large chorus. The burlesque was well received by a large audience, but I fear the expense left very little of the proceeds to the parish! Only a short time ago I received from M. J. Boyle, a warm friend of my boyhood, an extract from his diary of fifty years ago, giving his account of the performance of my burlesque.

In those times St. Patrick's Day was generally observed by the Irish and their friends. Members of the ancient order of Hibernians and Father Matthew's Temperance Society would

*Fifty-eight*



assemble and, in full regalia, consisting principally of a bright green sash, they would attend Mass at the cathedral and then march to the residence of Bishop Grace in the old stone building on Sixth Street next to the cathedral. When the marchers arrived, Bishop Grace would appear on a small balcony on the second story of this building and would make some appropriate remarks in answer to the address presented by the marchers. Sometimes the bishop took advantage of the occasion to express disapproval of certain activities among his people. Thus he once disapproved of the Ladies Land League, which would now be called the auxiliary of Parnell's Land League, one of the means adopted by that great patriot to improve the condition of Irish tenants. Women were by no means emancipated at that time, and the bishop was shocked at their taking part in public and semi-political movement. I wonder what the dear old man would think of the activities of women of the present day!

William M. Markoe, a cultured gentleman and formerly an Episcopalian clergyman, but at this time a very zealous Catholic, had been most active in organizing the Ladies Land League in St. Paul; but after the bishop's expressed disapproval, it was given up, at least here. Markoe had the distinction also of making the first balloon ascension in St. Paul and of establishing a fleet of sailing boats on White Bear Lake. These were called cat boats; they had a substantial draft and were used for many delightful trolling parties on the lake.

Nearly all the parishes of the city held evening entertainments on St. Patrick's Day. Sometimes these consisted of supper, followed by addresses from local orators and, perhaps, a short play by the young people of the parish. My father wrote a play about Robert Emmett for one of these entertainments, and he and my brothers, Chris and John, took part in other plays. I was always interested in theatricals, and when I was old enough I organized and took part in these St. Patrick Day celebrations, in which I felt the greatest interest. I remember that for years I was awakened on the morning of March 17th by hearing my mother at the piano playing

"St. Patrick's Day". The first line of the verses was "No matter our sorrows, today we'll forget them."

In giving our theatrical performances, we were somewhat hampered by the ascetic views of Father Ravoux, an early missionary to the Indians and then vicar general of the diocese. He considered such works as those of Tom Moore lewd and suggestive, and was always opposed to young women taking part in our performances! Father Ravoux was a familiar figure on the streets of St. Paul. Early in the spring he always made pilgrimages to the river to observe the opening of navigation. This was a habit he had acquired in early days before the advent of railroads and when the arrival of the first boat was an event eagerly looked forward to. No boat could reach St. Paul until the ice had left Lake Pepin, but the first man who sighted the smokestacks of the first boat coming around the bend of the river would start on a run to the levee, crying, "Boat! Boat!" This boat was always welcome, for it carried fresh meat and other supplies for the people who for many months had been shut in by the winter.

Father Ravoux was not our only arbiter. We had to meet other objections. Once, after many rehearsals of a play in which I was supposed to be re-united with a long-lost daughter, Father Shanley, then pastor of the cathedral, told me there must be no kissing on the stage! I had enjoyed the rehearsals, as the young lady who took the part of the daughter was quite dear to me; but when the evening of St. Patrick's Day arrived and I was confronted by a group of austere clerics, my nerve gave out and I contented myself with shaking hands with the girl!

The winter climate of Minnesota is bracing and thoroughly enjoyable to those who dress suitably for it. This was demonstrated in the days of the ice palaces, the first of which, entirely composed of blocks of ice, was erected in 1886 in Central Park, near the present building of the Historical Society. Skating rinks, curling clubs and toboggan slides were scattered throughout the city; some of the latter were



rather steep and dangerous. Nearly all the young people of the city were organized into clubs, with uniforms consisting of knitted caps, coats and knee breeches or skirts made from blankets, long woolen stockings and moccasins. The most prominent and permanent of these clubs bore the Indian name Nushka. It was largely recruited from members of the Boat Club and their friends, young men and women. Marching in uniforms made from red blankets and with Indian snowshoes strapped over their shoulders, the Nushka Club cut quite a dash!

A group of husky young fellows from Winnipeg attended the ice carnival and taught us many winter sports—among others, tossing a victim in a blanket, a somewhat strenuous exercise in which our Canadian guests were adepts.

The storming of the ice palace, defended by the ice king and his cohorts, was made by hundreds of marchers armed with Roman candles. These candles, together with the rockets fired from the palace, made a brilliant display.

The ice carnival was repeated in 1887, but later some conservative and influential citizens felt that an ice carnival unduly emphasized our winter climate, and the attempt to rival New Orleans' Mardi Gras was abandoned.

I owe my greatest happiness to the ice carnival, as it afforded me the opportunity of meeting my wife, who came from Philadelphia to enjoy the spectacle.

## CHAPTER 20

I did not meet William Jennings Bryan until after his nomination in Chicago. D. W. Lawler, who had been selected as the Minnesota member of the Democratic National Committee, refused to support Bryan and I was elected to take his place. My first duty was to chaperone Ignatius Donnelly to Lincoln, Nebraska, where a large ratification meeting was held. I met Bryan often during the ensuing months of the campaign.

A conscientious Presbyterian with a strong leaning toward predestination, Bryan was perfectly consistent in his defense of the Tennessee fundamentalists' law, for he loved to read



and quote from the Bible, every word of which, I think, he believed. While with him one day I remarked upon his robust strength, and he replied he had always kept himself clean, believing that he was destined for a high position in the service of humanity.

Some months before his nomination in 1908, he and I discussed the availability of Governor John A. Johnson for Vice President. Later, Johnson allowed himself to be announced as a candidate for President. A few days before the Denver convention, to which I was a delegate, I received a telegram from Bryan asking me when on my way to Denver to stop at Lincoln. He told me with considerable feeling that Johnson's friends had so bitterly attacked him, Bryan, he would not consent to Johnson's nomination for the vice-presidency, and that because of our previous discussion he had sent for me to tell me of his determination. After some further conversation we parted pleasantly. I saw him again on my return trip, and he suggested I secure my substitution as national committeeman for the gentleman selected, but I told him I could not do so.

My brothers and I were not all of the same mind regarding Bryan. Chris was absolutely devoted to him, John was rather indifferent, Harry actively disliked him. One Sunday evening when, as usual, we all gathered at Mother's house, Bryan's name cropped up in our talk.

"Christy," said Harry, "I don't know anybody but you who likes Bryan."

"Well," said Chris, "you can't expect people under anesthetics to have very clear political views."

This implication that Harry took his views from patients under the influence of opiates seemed to me a very witty rejoinder, but Harry said he saw nothing in it either witty or funny.

These Sunday evenings were very enjoyable. Mother would sit in her favorite chair, complacently twirling her eyeglasses, while her sons would discuss and argue a wide range of subjects. She always kept a supply of pound cake for her grand-

children; and at the close of the evening, if she thought we had been good boys, we might each receive a piece of cake and a glass of wine.

## CHAPTER 21

The legislature of 1907 prescribed a maximum rate upon cattle, grain, lumber and other commodities when carried in carload lots. At the same time, it reduced the maximum passenger rate from three to two cents. As the Railroad and Warehouse Commission had reduced general merchandise rates, an entirely new rate schedule was prescribed for Minnesota. Early in the summer of 1907, stockholder suits against Attorney General Edward T. Young and the members of the Railroad and Warehouse Commission were brought in the Federal court to restrain the enforcement of these rates. Mr. Young retained me to assist in the defense, and I immediately resigned as insurance commissioner, to devote all my time to this work.

These cases, which afterward became known as the "Minnesota Rate Cases" as finally reported in 232 U. S., attracted a great deal of attention in railroad circles throughout the country.

The plaintiffs advanced several arguments against the rates. They claimed, first, that inasmuch as the prescribed schedules changed the rates to border towns in Minnesota, they compelled changes not only to localities immediately across the border but also to those located along the entire length of their lines. This, they said, was an unlawful interference with interstate commerce. They claimed, second, that the penalties for violation fixed in the commodity law were so enormous as to be invalid; and, finally, that the prescribed rates were so low as to be confiscatory—We, on our part, claimed that the jurisdiction of the state over rates entirely within its borders was supreme; that the prescribed rates were ample, the penalties reasonable; and finally, that the suits were really against the state and that under the Eleventh Amendment the court was without jurisdiction to entertain them.

The applications for temporary injunction came before

*Sixty-three*



Judge William Lochran, who, after patiently listening for three weeks, held the suits were not against the state but were confiscatory and, therefore, unlawful; and the injunction issued.

We believed that under prior decisions the suits were in reality against the state and beyond the jurisdiction of the court. Finding that the Supreme Court of the United States would determine upon habeus corpus proceedings the question of jurisdiction, General Young, with high courage, resolved to violate the injunctions; and when, as was inevitable, he should be arrested for contempt, to test the question of jurisdiction by the short method of habeus corpus.

In pursuance of this plan, he applied to the district court of Ramsey County for a writ of mandamus. He was promptly summoned for contempt. Judge Lochran, although stating, like the gentleman he was, that he knew the attorney general's conduct was prompted solely by a desire to obtain an early decision, fined him one hundred dollars and committed him to the custody of the marshal until the suits in the state court were dismissed.

We had our moving papers all ready to be signed, and that evening Assistant Attorney General George T. Simpson and I left for Washington and filed our petition with the Supreme Court. A rule was issued, ordering the plaintiffs to show cause why a writ of habeus corpus should not be allowed, and on motion of General Simpson, the petitioner, General Young was enlarged.

Previously, he had been advised by one of his political friends to accept no favor, but to go to jail and thus make himself an invincible candidate for governor. Young, however, was above such a political trick and he contented himself with reporting daily to the marshal.

Simpson succeeded Young as attorney general and was substituted for him as a defendant in the case. He maintained the defense with equal vigor.

The argument on the petition for the writ of habeus corpus took place December 2nd and 3rd, 1907. General Young, Ex-



Governor Hadley of Missouri and I argued in favor of granting the petition; and Jared How, J. F. McGee and Charles W. Bunn argued in opposition.

March 23rd, 1908, a decision was handed down denying the petition. The court held that the suits were not against the state within the constitutional prohibition, and that, consequently, the Federal court had jurisdiction; that the penalties found in the commodity law were invalid, and that the lower court having found the rates to be confiscatory, the injunctions were properly issued.

Our amour propre was saved to a slight degree by a vigorous dissenting opinion delivered by Justice Harlan, whose prior decision we had largely relied upon when filing the petition.

This brought us back to the circuit court for trial upon the merits. The cases of three typical railroads—Northern Pacific and Great Northern as strong roads, Minneapolis & St. Louis as a weak one—were selected for trial. Hon. Charles E. Otis was appointed master, George N. Hillman as reporter—and the struggle was on! Jared How, Pierce Butler and Hale Holden of Chicago actively participated in presenting the evidence for the railroads; while General Young and myself, assisted for a time by Edmund S. Durment, performed a similar service for the state. The trial consumed considerable time, as the railroads presented an immense mass of testimony, consisting in part of long and intricate tabulations. The record finally occupied twenty thousand pages.

The case now presented two main questions. First, did the prescribed rates constitute an unlawful interference with interstate commerce? Second, were they so low as to be confiscatory?

The first question created but little dispute of fact, as the schedules, both state and interstate, spoke for themselves; so it was to the claim of confiscation that most of the testimony was addressed, particularly as this claim involved the valuation of the property of the respective railroads.

For some time there had been developing the theory that

value could best be determined by ascertaining the cost of reproduction. The railroads proposed to do this by the following formula: The railroad to be considered as non-existent, but all other conditions as actually existing; then, to determine what it would cost the company at present prices to construct and equip the railroad, from which cost might be deducted existing depreciation.

In endeavoring to sustain this formula or method, the plaintiffs "shingled out into the fog", as John would have said. Thus, in valuing land, a multiple of three was generally used, so that where the road ran through a farm worth concededly \$50.00 an acre, the right of way, because of the excessive price railroads were compelled to pay for newly acquired property, should be appraised at \$150.00 an acre. The master deemed this excessive, but in such cases he allowed a multiple of  $2\frac{1}{4}$ . The Supreme Court held this was attempting to proceed upon an impossible hypothesis. Obviously, the formula afforded an opportunity for indulging in the wildest speculation, of which the railroads availed themselves to the fullest extent. However, none of the engineers who prepared and presented tabulations made according to this formula testified that their computations showed value or anything more than cost of reproduction. The well-known engineer, John F. Stevens, said the method was absolutely worthless; and J. J. Hill, when asked his opinion, said no road had ever been built in just that way.

During the taking of this testimony, many amusing incidents occurred. Thomas Cooper, the genial land commissioner of the Northern Pacific, was a leading witness as to the use of multiples in valuing lands. With a strong Scotch burr, he described the excessive prices railroads were compelled to pay when acquiring land for right of ways. As an example of this, he told of a jury that added the average of the prices testified to by witnesses of the land owner to the average derived from the testimony of the railroad witnesses—and returned a verdict for the combined amounts! Even the engineer employed by the Railroad and Warehouse Commission had



been infected by this fallacy, and we had great difficulty in persuading him that if he felt he should present tabulations based upon the use of multiples, he should also present another table without the multiples, which counsel could present to the master as embodying their claim. When these tables were presented, he, with our entire consent, stated that they were prepared at our request, and did not embody his own views.

The leading and most able witness for the state was Charles F. Staples, then a member of the Railroad and Warehouse Commission of Minnesota, afterwards for many years with the Interstate Commerce Commission in Washington. He was a sturdy and frank witness whose testimony upon the entire rate structure was clear and convincing and wholly unshaken on cross-examination. No one could know Mr. Staples without appreciating his fairness and courage.

The master concluded that the cost of reproduction as employed by the plaintiffs was the sole test of value; that the prescribed rates would not yield a fair return upon the value so determined, and were, therefore, confiscatory; and that the rates constituted an unlawful interference with interstate commerce. His decision was painstaking and voluminous and was affirmed by Circuit Judge Walter H. Sanborn in an equally impressive opinion. The injunctions were made permanent.

We, of course, immediately resolved to appeal to the Supreme Court; while the railroad attorneys, who were confident of success, feared we might not do so and offered to assist us in any way in their power in getting the huge record to Washington. The appeal was taken, and then began the long grind of preparing a brief which, within reasonable bounds, would sufficiently explain a record of twenty thousand pages. Young undertook to present the legal question as to interference with interstate commerce, while to me was assigned the work of discussing the facts generally.

In endeavoring to condense the facts, I, with the assistance of D. F. Jurgensen, then assistant engineer for the commission,



prepared a table which has always given me considerable satisfaction. It occupied but one page of the brief and showed how the valuation adopted by the court was 156 per cent of the entire capitalization of the three railroads, and the effect if this were applied to all the railroads in the country; and the gross amount required to produce 7%, and how that amount compared with the revenues of the government.

The cases came for argument before the Supreme Court in April, 1912, and were decided in June, 1913, and reported in 230 U. S. 352.

Charles Bunn and Pierce Butler presented the arguments for the railroad companies, Young and I presented those for the state. The case attracted the attention of railroad and public officials everywhere. A committee of state commissioners filed a brief, as did also Mr. Durment on behalf of the state, and Mr. William P. Clough on behalf of the Northern Pacific and Great Northern railways.

I have never been satisfied with my argument. The decision was so drastic and I had worked so hard on the brief, day and night, I was on the verge of a nervous breakdown. For several days before the argument I had suffered from vertigo, and as I was obliged to open the argument, I did so in a rather ineffective manner. The chief burden of the oral argument fell upon General Young, who was well able to sustain it.

When, fourteen months later, the decision, written by Justice Hughes and dismissing the cases as to the Northern Pacific and Great Northern Railways, was rendered, the attacks of vertigo had ceased and my health was fully restored. We cared nothing for the affirmance of the decree in the case of the Minneapolis & St. Louis, since, as a weak railroad, it would be compelled to adopt generally the rates in force upon the lines of its strong competitors.

The opinion delivered by Justice Hughes is most comprehensive. It covers one hundred pages, analyzes in that space the entire record, and discusses every point presented by both sides.

*Sixty-eight*

During the pendency of the cases, we procured an act of legislature making it the duty of the Railroad and Warehouse Commission to collect on behalf of shippers or travelers, in case the rates were fully sustained, any excessive amounts they were compelled to pay while the injunctions were in force. Afterwards, I was sorry the statute did not put it exclusively in the hand of the commission to make those collections; because, although the commission advertised it was prepared to secure the refundments, and did so in many cases, a group of young men obtained from many shippers the right to represent them in obtaining refundments, charging, of course, for their services. I do not know what those charges amounted to, but in the aggregate they were very large.

## CHAPTER 22

John Lind, Charles A. Towne and Frank Day formed a galaxy which, on the free silver issue, left the Republican party to support Bryan in 1896. The Democrats immediately nominated Lind for governor, but, though he made a strong race, he was defeated by D. M. Clough, a good-natured, rough-and-ready lumberman, who subsequently operated a lumber mill in the West. When the Spanish War came, Lind was appointed quartermaster of one of the Minnesota regiments; he served until peace was declared. This so added to his prestige that he was elected governor in 1898, defeating William Henry Eustis, a genial and philanthropic resident of Minneapolis.

Lind used to describe himself as a typical Swede, and I think he was. Being an intense anti-imperialist, he threatened, on the occasion of President McKinley's visit to Minnesota, to demand publically the return from the Philippines of the Thirteenth Minnesota Regiment, which had been sent there as part of General Funston's army to quell the Aguinaldo insurrection. This threat, however, his private secretary, L. A. Rosing, of Cannon Falls, and I persuaded him to waive, on the grounds that the request would not be granted and the demand would merely place him in opposition

*Sixty-nine*



to the president, commander-in-chief of military forces. He insisted, however, that he would take occasion to show his disapproval of our occupancy of the Philippines.

"None of you cautious fellows," he said, shaking his finger at us, "none of you can stop me!"

During Lind's administration the Northern Pacific Railway Company purchased the St. Paul & Duluth railroad, and the issuance of bonds to meet the purchase price required Lind's approval. At first he withheld it, on the ground that the St. Paul & Duluth was the only large railroad entirely within the state and over which the state had jurisdiction. Notwithstanding my statement to the governor that I held a retainer from the Northern Pacific Railway, he insisted on my opinion of the transaction, saying he wished to approve the issuance of the bonds if he could do so consistently with the best interests of the state. I had never been consulted as to the purchase by the Northern Pacific Railway, and on the spur of the moment I suggested to the governor that he approve the transaction on condition that the Northern Pacific enter into a contract with the state providing for the permanent maintenance of the present line and terminals of the Duluth road, and continuing the control of the state over that line. Lind seized upon my suggestion, and I took the matter up with Charles W. Bunn, general counsel of the road, who seemed greatly pleased. The contract was subsequently entered into, and although I have since had reason to doubt its validity, it has, I believe, been faithfully observed.

Leonard Rosing's devotion to and admiration for his chief were exceptional. Rosing, a Swede, was also an enthusiastic Democrat and a true and unselfish friend from whom I received many kindnesses. In 1902 he was the Democratic candidate for governor, but he was defeated in spite of a vigorous campaign. In 1905 he became executive clerk to Governor Johnson and served in that capacity for some years. Rosing organized the Association of Minnesota Municipalities,



and was in every way a worthy and useful citizen of the state.

During the campaign of 1896, the St. Paul Dispatch published what purported to be an extract from the Iron Age, an atheistic newspaper, in which Lind was described as an infidel. The article, an entire fabrication, was devised by a drunken and irresponsible reporter, and undoubtedly cost Lind many votes from the good Scandinavian Lutherans. Lind instituted a suit for libel against the Dispatch, in which S. L. Pierce and I appeared on his behalf and secured a verdict of \$500.00. This, together with his enlistment in the Spanish War, made him well-nigh invincible for a second term. He was defeated for re-election, however, by Samuel R. Van Sant, an old and successful river steamboat captain and commander of the G. A. R.

While Lind was governor he was persistently criticized in the Dispatch, of which Harry Black was editor, and that paper constantly published offensive cartoons in which Lind's head was greatly distorted. After Van Sant's election, Lind proceeded to the office of the Dispatch and cuffed Black's ears. He then came to my office and reported what he had done, saying he expected Black would obtain a warrant for his arrest. Chris and I doubted this, and the event proved we were right, for Black contented himself with describing in the Dispatch the assault as wanton and cowardly. This conduct of Lind had its counterpart in an act of Governor Marshall, who, before the days of railroads, walked from St. Paul to Stillwater to beat up an enemy! Marshall, however, was arrested and fined. The record of his trial before a justice of peace is still in the court files at Stillwater.

Although often urged to become again a candidate for governor, Lind would never consent to do so; but he was elected to Congress from Minneapolis, and as he had previously served as Congressman for three successive terms, he made an influential member. During the Villa revolution, President Wilson sent him to Mexico on a special mission,

the details of which I never ascertained. I believe he accomplished his mission to the satisfaction of the president.

## CHAPTER 23

A delightfully wild and, as our opponents would say, typical Democratic State Convention was held at Duluth early in 1904, to name delegates to the National Convention. The radical element of the convention desired delegates favoring the nomination of William Randolph Hearst for president; while the conservative element favored Judge Parker, who was subsequently nominated and was defeated by Theodore Roosevelt. The radicals, by a small margin, captured the preliminary organization and at once attempted to gavel through their program. By clever filibustering tactics, we conservatives defeated this attempt and secured several of the delegates, but not before the police were called in to quell the disturbance. Our chief attack took the form of demanding a roll call, a thing which the radicals were unwilling to face.

The convention was thrown into utter confusion. Members shook their fists and shouted at one another, until no one could be heard. Daniel Aberle, a delegate from St. Paul, so strained his vocal cords that he never again spoke above a whisper. Leonard Rosing engaged in a hand-to-hand encounter with the police. I discovered that I could easily make myself heard during occasional lulls in the turmoil, and at such intervals I mounted a chair and loudly demanded a roll call. The members of the convention, not realizing how I timed my demands, credited me with a voice of marvelous power! Some one suggested that C. D. O'Brien address the gathering. This put Chris in his element. Mounting the platform, with a great show of injured innocence he denounced the radicals for their unseemly behavior, assuring them that if order were restored he and his friends would accept the decision of the majority, otherwise they would leave the convention. Considering that the tumult was precipitated entirely by Chris and his friends, his address



was a specimen of audacious special pleading! To our surprise, it was respectfully received by even the radicals.

Next, we secured the privilege of the floor for John Lind who was merely a spectator. He made an address, and at the close of it order was restored and a roll call allowed for the selection of delegates. Judge Parker's adherents secured a number of delegates.

The convention did not close until the last train had gone. We spent that night in Duluth. Through some mistake, Chris' room in the hotel had been surrendered and he was driven to share my bed. Chris placed his hands upon the bed, preparatory to kneeling down to say his prayers. Before doing so, he turned to me and exclaimed, with true Celtic inconsistency:

"Well, Tom, damn their souls, we beat them out!"

I got very little sleep that night, for my burly elder brother so snorted and snored in faint echoes of bedlam, so rolled and tossed as if buffeted in the previous fray, daylight appeared before I fell into fitful slumber.

Later in the year, when casting about for a candidate for governor, a meeting was held in our law office, attended by John Lind, Leonard Rosing, Frederick B. Lynch, Frank Day and myself. We decided, after some discussion, to ask John A. Johnson of St. Peter to become a candidate for the nomination.

Johnson, a newspaper man, was very popular with editors throughout the state and seemed to us the most likely candidate. Later he was enthusiastically nominated. His opponent was Robert A. Dunn, then state auditor, who was nominated only after a bitter contest in the Republican State Convention, in which Judge Collins was defeated and which left many sore spots in the ranks of the Republicans.

Johnson was known to be of humble origin. Some "smart Alec", thinking it would be clever to exploit that fact, went to St. Peter and returned with a story that Johnson's father was an incompetent provider and his mother compelled to



take in washing. Frank Day, Johnson's political manager, hearing it was proposed to publish this story, was at first greatly perturbed; but when it actually appeared in a Minneapolis paper, he seized upon it as showing Johnson's strength of character and the creditable fight he had made in attaining his present position. As might have been anticipated, the story was a boomerang. It created the widest sympathy for Johnson, who was triumphantly elected. Johnson's nobility of character was further shown by the fact that although, as I believe, he knew the man who had dug up the story about his humble parentage, he subsequently secured his appointment to a lucrative position in the state government.

I had been defeated for district judge. Governor Johnson, overruling several refusals on my part, appointed me insurance commissioner. In 1909, shortly before his untimely death, he appointed me, again without any solicitation on my part, associate justice of the Supreme Court. I thus owe to his memory a debt of gratitude I can never repay.

#### CHAPTER 24

I find it very difficult adequately to describe John A. Johnson. His charm of manner was so great, he was so frank and of such rugged honesty, that he captivated all who came in contact with him. These qualities, combined with his industry, mental alertness, sincerity and natural ability, made him so popular a governor that he was elected for three successive terms and was seriously considered as good presidential timber by a large number of people outside the state.

During Johnson's first campaign, a leading issue had been the adequacy of settlements made with lumbermen cutting timber on state land. Shortly after his inauguration, the public examiner made a report citing additional instances claimed in adequate settlements. The governor sent for me and told me some of his good advisers had suggested that he transmit the report to the Legislature, then in session, and ask for an appropriation to employ attorneys to prosecute

the client. I replied at once that to do so would be a slight upon the attorney general, who, I believed, under the constitution was given control of all litigation on behalf of the state; that the attorney general, though Republican, was his constitutional adviser whom he would be constantly obliged to consult during their respective terms of office; that aside from all legal considerations, I thought it would be very unfortunate at the beginning of his term to start a fight with the attorney general by ignoring him in the manner suggested; and that, in my opinion, the proper course was for him to transmit the examiner's report to the attorney general, E. T. Young, saying he proposed to transmit it later to the Legislature and ask the attorney general whether he needed additional assistance.

Johnson, although not a lawyer, instantly recognized the force of my objections. "Tom, you're right," he said, almost before I had finished. "Two years is a long time for a running fight."

My advice was taken, with the result that Johnson and Young became fast friends and remained so during Johnson's life. Some years later, when Johnson's fame and popularity were at their height, I was flattered and delighted to hear him say, "Tom, you put my administration on the right track at the very beginning."

Once when I, as insurance commissioner, was considering an order which I felt would be unpopular with the newspapers, I put the matter before Johnson and received the instruction to do whatever was right.

In 1907 an extensive strike was inaugurated in the iron mines in St. Louis county. The miners demanded troops for their protection. Instead, Johnson himself went to the scene of conflict, and concluding that the public peace was not then seriously threatened, he refused to order out the militia. Later the strikers sent a message to him, complaining that the local authorities were breaking up peaceful meetings of strikers and otherwise provoking breaches of the peace; and asking that troops be sent to prevent further violence. The



governor sent three men, of whom I was one, to go to the mines and advise him of the true situation. I demurred, suggesting that as both sides had asked for the militia it should be sent. Frank Day, the governor's secretary, loudly protested against ordering out the militia. Johnson took me aside at this point.

"Damn politics!" said he. "I'll never forgive myself if a single life is lost through my failure to perform my full public duty. I want you to go to the scene of the strike and let me know immediately the true situation. The militia will be held in the armory, and if you say troops are needed, they will entrain in fifteen minutes."

These confidential instructions given to his own appointee demonstrated his absolute honesty.

Lyle Day, Harvey Grimmer and I, constituting the committee, reached the range next morning. We held consultation with representatives of both sides, who agreed that the greatest menace to public peace arose from the marching from mine to mine of large bodies of strikers. The strikers agreed to abandon this practice if they were allowed to hold peaceful meetings in their halls. I suggested a proclamation from the governor forbidding the marching and at the same time protecting the strikers in their right to hold peaceful meetings. The mine owners said the strikers would not keep their word. I pointed out that in that case the blame for any disturbance of the peace would rest upon their shoulders. Finally, a special train to Duluth was furnished, enabling Grimmer and me to reach home the following morning. Day remained on the range some days longer.

On the way home we wrote our report, which we submitted to the governor. Immediately he began to prepare a proclamation in accordance with our recommendations, and it was issued the same day. In this the governor prohibited the marching of large groups upon the public roads and instructed the local authorities not to interfere with peaceful meetings of the strikers in their halls.

My theory of the legality of this proclamation was based



on the admission of both parties that the marching was a fruitful cause of disorder, the acquiescence of the strikers in its terms, and their promise of obedience. The strikers did keep their word; the marching was abandoned; and the strike, which I think was probably on its last legs, ended without further violence.

An amusing feature of our mission was the resentment of the mine owners because we had heard the strikers' story before theirs. This was not intentional on our part; the leader of the strike had boarded the train between Duluth and the Range and had given us his account of the situation. In the end, this proved fortunate, because, before the meeting with the mine owners, we obtained the strikers' promise to abandon their marching. Some criticism also was made because we assumed to solve the difficulty in one day; but as the strike was ended, I took little note of this entirely unfair faultfinding.

The governor's anxiety was shown by his calling me on long distance immediately after my arrival at the scene of the strike. I assured him, in the presence of the mine owners, that everything was quiet and that I expected to return that day with a plan which I hoped would preserve the peace. I don't think the mine owners, who had made preparations to convince us of the unwarrantable conduct of the strikers, approved of my confident attitude when telephoning Governor Johnson; but in view of the success of our mission, their criticism troubled me not at all. The Minneapolis Journal published a laudatory editorial, written by my friend Charles B. Cheney, on the work of the commission, in which he described me as "the Taft of Minnesota."

Harvey H. Grimmer, a "Johnson Republican", was the clerk in the governor's office. A kindly, able and witty gentleman, he was thoroughly devoted to Johnson during his life and to his memory, which he showed by attending the memorial exercises held at St. Peter to mark the twenty-fifth anniversary of the governor's death. A specimen of his humor and high spirits is his remark on an occasion

*Seventy-seven*

when some obnoxious plan was proposed: "I know it won't be accepted by either of my parties," he said, with a look of profound wisdom.

Johnson loved young people, and while he had the respect of staid and substantial citizens, the active younger generation fairly worshipped him. He took an interest in all athletic sports, particularly in baseball, and could give from memory the records and standing of all the principal players. He appointed as messenger Billy Williams, a colored boy, who was really a great ball player.

Frank Day, the private secretary, was a good-natured, mercurial man of great ability, who endeavored to look after the political side of the administration. A story he used to tell on himself was that once when passing through a small town he called on the telephone a man to whom he had refused a political favor. "Hello, Jim, this is Frank Day. I called you up as I was just passing through town." Back came the answer: "Well, just keep on passing."

Day was a successful owner and editor of the Fairmont Sentinel and a strong Republican until he left that party on the free silver issue in 1896. He contributed materially to Johnson's first nomination for governor, his influence and popularity with the country editors giving him exceptional strength.

Day engaged for years in a bitter controversy with a rich citizen of Fairmont who was the owner of a rival paper. Finally, dipping his pen in gall, Day published an article in his Sentinel, in which he said that while rich men often were a benefit to the community, Fairmont was cursed with one who was the prototype of the greedy and grasping Shylock, portrayed by Shakespeare in "The Merchant of Venice." Mr. Ward, the man referred to, retained M. D. Munn of St. Paul and instituted sixteen libel suits against Day. I was retained for the defense, and the trial of the first suit came on before Judge Quinn at Fairmont.

Some time before, I had acted as prompter at an amateur



performance of "The Merchant of Venice", in which Captain McGuire of Fort Snelling appeared as Shylock and L. W. Wilkes as Launcelot Gobbo. During rehearsals I had committed to memory almost the entire play. Now at this trial at Fairmont, feeling very proud of my knowledge, I wove my remarks, summing up, around the text of the play. I thought I was proving myself to be a Shakespearean scholar. The jury, however, listened without the slightest sign of interest, and Day continuously rattled a newspaper which he pretended to be reading. The jury returned a verdict of \$1.00. This was highly satisfactory to us, particularly as the other suits were dropped, but I have never felt that my efforts won the victory; undoubtedly, it was due to local prejudice.

#### CHAPTER 25

Johnson was a decidedly attractive speaker and made a handsome income as a lecturer upon the Chatauqua circuit. His greatest fame was from a speech he delivered in the Academy of Music in Philadelphia in connection with the commencement exercises of the University of Pennsylvania. In that address he dwelt particularly upon the opportunities afforded youth in America. During the recent depression, when I heard public speakers declare that such opportunities had ceased to exist, I often thought of Johnson's buoyant and happy optimism, and wished that we had more public men imbued with his spirit.

Except for the large crowds who flocked to hear Johnson, stump speakers during the campaign of 1906 had great difficulty in obtaining audiences. I made a stumping tour but found my audiences confined principally to the local brass band provided for the occasion. This became so marked that some one on a local committee asked me not to forget to compliment and thank the musicians! On this tour I met Johnson by appointment, and he inquired as to my success. I assured him I had converted every bass-drummer in Minnesota! With a laugh, he promised me I should have a differ-



ent experience that night; and so I had, for the hall was unable to accommodate the crowd of townspeople and farmers who assembled to hear their beloved governor.

A marked characteristic of Johnson was his frankness. Once a leading brewer called upon him to inquire whether, in case of the passage of a bill, then pending in the legislature, restricting saloons, he would give it his approval. Johnson replied without the slightest hesitation:

"I most certainly will. It is a purely moral question entirely within the discretion of the legislature. You, yourself, would sign the bill if you were in my place, even though you still owned the brewery."

"I guess that's so," replied the caller, and he left with increased admiration for the governor's frankness and courage.

In 1908 Johnson was nominated for a third term, in spite of his strenuous opposition and repeated refusals. His ambition was to devote himself to the lecture platform, from which he could obtain a handsome income. The State Convention, however, so strongly and even violently insisted upon his candidacy that he finally consented—and was triumphantly elected. I entered the convention hall during the turmoil, and it was whispered among the delegates that I was charged with delivering an ultimatum from the governor stating that he would not accept. The rumor so alarmed the delegates that not until I assured them that I, myself, favored Johnson's acceptance was I allowed the floor for the purpose of making a necessary motion.

That same year, a movement started in the East, backed by Tammany, to run Johnson against Bryan for the presidential nomination. Headquarters were established in Chicago to further the movement. It was the literature issued from these headquarters which so enraged Bryan that, as I have related, he sent for me to tell me he would not consent to Johnson's nomination as his running mate.

Convinced as I was that no one sponsored by Tammany could secure the nomination, I took little interest in the move-

ment and frankly expressed to Johnson my opinion that he had no chance. He agreed with me, but said if the boys wanted to amuse themselves it would do him no harm. What I did not appreciate was that the governor shrewdly understood the publicity he was receiving and knew how much it would enhance the value of his services upon the lecture platform.

The esteem in which Johnson was held by the people of the state was shown by two bronze statues of him—one at the state capitol, the other at St. Peter—which were erected at the suggestion of C. D. O'Brien by popular subscriptions of one dollar each.

## CHAPTER 26

My short term as associate justice of the Supreme Court was, I think, the most valuable experience of my life, in giving me an insight into the attitude of the courts toward lawyers practicing before them. My two best friends upon the bench were Chief Justice Charles M. Start and Associate Justice Calvin L. Brown. They were both typical Yankees, Start having come from Vermont and Brown's family from New Hampshire. I have always liked New Englanders and so had no difficulty in affiliating with them, although I think at first the chief feared my Celtic disposition might cause dissension in the court.

On the day of the Republican Convention which nominated my successor, he came into my room and said he felt in his bones I would be nominated; but I, who knew the strength of the combination formed by Minneapolis Republican lawyers and remembering the fate of Judges Mitchell and Clark, was confident he was wrong. Indeed, I made no effort to change the result.

The chief, though somewhat impatient, saying that "justice delayed is justice denied," was a most just man. His attitude toward women litigants was that of a gentleman of the old school, chivalrous in the extreme. While he knew there were bad women in the world, he had no conception of the



nagging, extravagant wife who so often ruins her husband. "I have gone through life with the curiosity of a boy," he said, when we argued with him as to his marital problem, "and the reflection of old age is that women have always treated me better than I deserved." I always thought this a beautiful tribute to his wife and daughter.

After I left the bench, I met Start one day on a street-car and he told me his latest Vermont story. A traveler inquired of a tavern keeper as to the identity of a man leaning against the tavern door. Said the host, "Oh, he ain't no one in partic'lar. He's just one of them lanky fellows who keep on cryin' after the funeral's over." The chief said that he applied that story to lawyers filing petitions for re-argument; and then he asked me if I had not recently filed such a petition.

Justice Brown and I were very fond of baseball, but the chief considered it a boisterous and, perhaps, rowdy sport so we determined to take him to a game. We did so, and he immediately became intensely interested in the umpire as one exercising judicial functions. He asked the reason for a called strike, saying the batter had not attempted to strike the ball. When we explained that it was a good ball which the batter should have struck at, he applied to the incident the equitable doctrine of election, saying, "Ah! I see he had his election." I think this visit removed his objection to baseball, for afterward he expressed his sympathy with umpires.

After his death, I purchased his set of Minnesota reports, which I found very valuable because of his elaborate notations.

Justice Brown was a lovable and patient man evidently born to be a judge. When a case was assigned to him, he would first carefully ascertain all the facts, then he would sit at a window while determining what he thought was the law and justice of the case. He would seek for authority sufficient to sustain his views, and then would write his opinion in pencil and hand it to his secretary to type. He and I became very warm friends, and I received many acts of kindness from him in connection with my judicial work.

*Eighty-two*



## CHAPTER 27

Ignatius Donnelly, whose son, as I have said, married my sister Jennie, was one of Minnesota's most unique characters, a man of tremendous ability and energy. He won international fame as a writer, but he so loved the turmoil of politics he could never forgo engaging in the conflict. His headstrong and domineering disposition drove him from one party to another; and notwithstanding his brilliant gifts as an orator, he was a distinct failure as a politician.

He belonged to the Populist party in 1896. An enemy, also a Populist, threatened in the public print to move for Donnelly's expulsion from the Populist Convention when it met that year. Bryan was supported by the Populists, and we Democrats naturally desired peace. I called upon Donnelly at his office and told him I thought I could induce his antagonist to refrain from making the motion for expulsion. Striking the desk with his fist, he cried, "If Owen doesn't move to expel me, I'll move to expel him!"

A harvester company which sued Donnelly on some machine notes had previously issued an advertising program that showed a beautiful field of grain being harvested, while from a neighboring hill a family group looked on in admiration. Donnelly, who was a lawyer, defended his own case, and in summing up he exhibited the poster to the jury.

"That poor woman on the hill," he said, "is saying to her husband, 'John, there's that awful machine which ruined us on our farm in Illinois! Let's go on, as fast as possible, to some place where it can't follow us.'"

One day in the lobby of the Merchants Hotel, he engaged in a discussion with a group of farmers as to whether animals could reason or only acted from instinct. One of the disputants, telling of his assistance to a cow in giving birth to a calf, related how the cow first licked her calf and then, with eyes brimming with gratitude, raised her head and licked the hand of her owner. Did such conduct indicate reason or instinct?

"Neither," replied Donnelly. "She thought she had twins."

*Eighty-three*

He had a fund of anecdotes, including some of Lincoln, which, when told in his inimitable manner, were highly entertaining.

Introducing General Sherman to the Minnesota legislature, he described him as a man who had kissed every woman and whipped every army that came before him.

Donnelly's home life was very beautiful. Mrs. Donnelly was a lady of very high attainments and in every way a beautiful character. Among other gifts, she possessed a wonderful and highly cultivated voice which would have made her one of the great singers in the country, had she not preferred a domestic life.

## CHAPTER 28

I knew Archbishop Ireland, more or less intimately, from the time he was a young priest just returned from service as chaplain of the Fifth Minnesota Regiment. He was a man of such wonderful energy and such intense feeling for church and country that he often seemed exacting in his demands upon his subordinates; but though often impatient, he was, in the last analysis, eminently just and keenly sympathetic.

At an early date, my father and he became warm friends; and, as I have said, Father was for years his active assistant in the cause of colonization and of total abstinence.

In his public addresses, the archbishop never failed to inculcate love for America, and soon became universally known as an eloquent advocate of American ideals. Judge Flandreau, in his book, "Minnesota," paid him a fine tribute by saying that he had convinced not only the people of America and France, but also the Pope of Rome, of the entire adaptability of Catholicity to a republican form of government.

Archbishop Ireland's generosity of spirit can be illustrated by an episode regarding even such a mundane matter as a real estate deal. For example, the original Schuneman and Evans building, at Sixth and Wabasha streets, was erected on land leased from the diocese by some gentlemen who, unfortunately, were financially unable to complete the project and were obliged to surrender the lease, leaving unpaid a large number



of bills. There was no obligation upon the diocese to pay these debts, but, notwithstanding, the archbishop insisted on making a fair settlement with the creditors. The non-Catholic creditors, represented by C. A. Severance, were loud in their expression of admiration of the archbishop's generosity, but a Catholic creditor grumbled at not being paid in full and asked why the Pope could not be called upon for the balance! When I reported this to the archbishop, he laughed heartily and said it was typical.

When the United States took over the Philippines, the acquisition by our government of the friars' lands became a vexed question. Archbishop Ireland suggested to President Roosevelt the appointment of a commission to Rome to seek an amicable settlement. Roosevelt feared the project, but wishing to learn what public reaction would be, he asked the archbishop to consult with some influential newspapers. This he did, receiving a favorable response. Next, he took the project up with Mark Hanna, leader of the Republican majority in the Senate. Hanna was enthusiastic. "We will make it a party question," he said at once. This made everything smooth. William H. Taft and Bishop Thomas O'Gorman of Sioux Falls, South Dakota, went to Rome, and the matter was adjusted to every one's satisfaction.

During the Taft-Bryan campaign of 1908, some of Bryan's supporters criticized Taft for having gone upon the mission. One speaker compared him to Pontius Pilate, the administrator of a foreign province controlling both church and state. When Bryan was in St. Paul that summer, he expressed to me his doubts as to the Catholic vote. I told him they were well founded, as Taft had earned the good will of Catholics by having, for the first time in the history of the world, adjusted the taking of church lands upon a fair and equitable basis. Bryan agreed with me that the work was well done, but he dreaded to discuss the question lest he be accused of raising a religious issue. Later, I sent him some clippings giving extracts from the speeches of his supporters, attacking Taft as I have described. I received word from him that he had forbidden any further attacks along those lines.

*Eighty-five*



I think it was about 1914 when Archbishop Ireland was subpoenaed to testify in a case at Benson, wherein a man had been arrested for selling obscene literature attacking Catholics. The matter sold was falsely claimed to be a translation from the writings of a Catholic theologian, and the archbishop was called by the prosecution to prove the correctness of the translation. When I volunteered to accompany him, he was greatly pleased, and on the following evening he called at my house to take me to the train. Sitting in his car, with his hat on the back of his head, he looked ready for battle and greeted me with. "We are going to do some good! I have gone over the whole matter. It is a garbled translation." Next day at Benson Judge Qvale ruled, somewhat to the archbishop's regret, that the correctness of the translation was immaterial and that in no event would the defendant be justified in selling obscene literature. Many of the settlers around Benson had come there as a result of the colonization efforts of the archbishop, and so his appearance in court was a veritable triumph. Judge Qvale left the bench to greet him. Many old soldiers gathered around, with whom he fraternized in the most familiar manner.

After leaving the court, the archbishop expressed himself as well satisfied with the outcome. Returning to Father Shea's house to await the train for St. Paul, we lighted cigars and entered into familiar conversation. I don't think I ever spent so pleasant an hour. In high good humor the archbishop related many of his interviews with the great men of the world, English and French statesmen, American presidents. He told how President Cleveland had opposed the war with Spain. Believing that Fitzhugh Lee, then minister to Cuba, was rather provoking the war, Cleveland refrained from recalling him only because his own term of office was about to expire; but contrary to official courtesy, he asked his successor, McKinley, not to reappoint Lee. McKinley did reappoint him, however, and after the blowing up of the Maine, war was declared. The archbishop told many other interesting stories,

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also an amusing one of an Irish nun in a Spanish convent: When Dewey's fleet entered Manila Bay, this nun was found on her knees by another Irish nun, praying for the defeat of the American fleet. "Don't you know," said the newcomer, "more than half the sailors of the American fleet are Irish?" "Do you tell me so?" cried the other. "Then may Almighty God send them victory!"

At the request of Leo XIII, Ireland spent some time in France, urging the Bourbons to become reconciled to the republic. A brilliant French scholar, he delivered an address on Jeanne d'Arc, not then canonized, which attracted wide and favorable comment. One evening, while a guest at a social gathering, he noticed a dame of the *ancien regime* looking at him, and presently he overheard her say, "Not handsome, but a very intelligent face."

Early in the 80's, the archbishop announced that he intended to vote the Republican ticket. He told me he did this because he thought it unfortunate the Catholic vote should be so largely confined to the Democratic party, and while he made no attempt to influence any individual, he hoped his example would result in a more independent spirit among the Catholics. In 1896 he publicly supported McKinley and spoke at some public meetings in New York.

A priest named Cahensley devised a plan for keeping Catholic European immigrants segregated according to their nationality. Receiving considerable backing, he took his plans to Rome. The plan was very offensive to Archbishop Ireland, who felt that those coming to America should abandon their former nationalism and be wholly American citizens. He carried his protest to the Pope and induced C. K. Davis to make a similar protest on the floor of the Senate. The plan was abandoned, but the controversy caused some enmities.

It was, indeed, inevitable that a man of Ireland's disposition and restless energy should have strong enemies. And although his elevation to the cardinalate was advocated by many influential men, both in and out of the church, his enemies always succeeded in preventing the appointment. I

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was intensely anxious for his elevation, not only because of my admiration for him, but also because I believed it would be taken by the people of the United States as a papal endorsement of his magnificent Americanism.

During the war, C. A. Severance and Father Yeager, a well-known Minnesota priest, were commissioned to one of the Balkan States and, on their return journey, visited Rome and had an audience with Pope Benedict XV, who inquired for the health of "Cardinal Ireland." Leaving the Vatican, Severance jocularly remarked to his companion, "Don't tell me the Pope is infallible, if he doesn't know Archbishop Ireland is not a cardinal." It is likely, however, that the designation by His Holiness was an application of the doctrine that equity, when it is in the interest of justice, will consider as done that which should have taken place; and I believe that had the archbishop lived a few years longer, he would have been created a cardinal.

Always he had great affection for France, and when the World war came he immediately took the side of the Allies. When America entered the war, his feeling became intense and his blessing went out to every American soldier he met.

Archbishop Ireland's final achievements were the erection of the magnificent cathedral in St. Paul and the basilica in Minneapolis. Under the successive administrations of Archbishops Dowling and Murray, and due largely to the herculean labors of Reverend Lawrence Ryan, pastor of the Cathedral, its interior is rapidly approaching completion, making the edifice one of the most beautiful of its kind in the world. The magnificent main altar was a gift from the late Mrs. George Slade, nee Charlotte Hill. The basilica in Minneapolis has been fully completed through the efforts of Reverend James M. Reardon, a zealous and eloquent priest who spared neither himself nor his parishioners in completing the work.

## CHAPTER 29

Archbishop Dowling, who succeeded Archbishop Ireland, was a very lovable man. He was particularly attached to the young priests of the diocese, whom he encouraged in every

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possible way. He organized the Archbishop Ireland Educational Fund, and he caused to be erected at Lake Johannah a thoroughly equipped and very beautiful preparatory seminary, Nazareth Hall, where he spent most of his leisure time, chatting with the students.

The present archbishop, His Excellency John Gregory Murray, is a native of Connecticut. Before his appointment to the archdiocese of St. Paul he was bishop of Portland, Maine. He is a man of restless energy and of profound erudition, and his great affability makes him a delightful conversationalist. He loves to practice the simple Christian virtues, such as visiting the sick, and he has already endeared himself to the citizens of this state.

Unfortunately, before 1930 heavy debts were incurred by the parishes, convents and educational institutions of the diocese. This burden has fallen upon the shoulders of Archbishop Murray, who is unsparing of himself in his efforts to meet the situation, as well as to perform the other duties of his high office.

#### CHAPTER 30

When the United States entered the war in 1917, two of my partners, Royal A. Stone and Dillon J. O'Brien, resolved to enlist. The firm of O'Brien, Young & Stone was at that time composed of Young, Stone, Dillon and myself, and when the two younger members decided to enlist they placed upon Young's desk and mine, as a matter of course the files of the cases on which they had been working, some of which were quite important. As president of the St. Paul Association, I was much occupied with war propaganda, so a serious situation arose as to the work in the office. To relieve the congestion, I invited Alexander E. Horn to become a member of the firm. He did so and was so efficient and diligent in sharing our burdens that I have always felt he was largely instrumental in saving the business of the firm.

Royal A. Stone first entered into partnership with me in 1907. He was a volunteer in the war with Spain in 1898 and, although over age, insisted on again enlisting in the World

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war and entering a training camp, where he obtained a commission as major. He was assigned to the Adjutant General's office, where he did excellent work, leaving the service at the close of the war with the rank of brevet Lt. Col. Returning to our firm, he remained with us until his appointment as associate justice of the Supreme court, a position in which he has shown marked ability.

Dillon J. O'Brien was commissioned a captain and served as instructor in different training camps. He also returned to us and is still a valued member of the firm.

In 1881, E. C. Stringer and McNeil V. Seymour opened a law office in Hastings. Stringer was later appointed by President Cleveland United States district attorney for Minnesota, and the firm moved to St. Paul, where for many years it enjoyed a very lucrative practice. Stringer died in 1916, but not until his son, E. S. Stringer, became a member of the firm. After the death of Seymour in 1921, Ned, as we call him, entered our firm, bringing with him many of the best clients of Seymour & Stringer. Ned had graduated from Yale and had completed his legal studies in the St. Paul College of Law, where he now lectures on constitutional law, in which he has become proficient. I think he has never quite forgiven me for two of my actions: One, misstating the law upon stockholders' liability to his class in the law school, when lecturing on corporations; two, writing the opinion in **State vs. Standard Oil Co.**, where his firm was defeated. Much water, however, has flowed under the bridge since then, and now he seldom refers to the grievances.

In the meantime, Vincent L. O'Connor had joined the firm, and later, McNeil V. Seymour, Jr., Philip Stringer and Bernhard G. Bechhoefer.

I was in Washington at the same time as were Ned Stringer, Bert Oakley and Alec Horn. We stayed at the same hotel and, while waiting for our cases to be called, took strolls about the city. No matter where we started I noticed the walk always ended at the circle containing the statue of Martin Luther. When we reached that point, my companions,

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all Presbyterians, would strike attitudes and exclaim, "Tom, there's the statue of Martin Luther!" One Sunday morning Alec Horn and I breakfasted together. Leaving the dining room, I asked the hat girl the location of the nearest Catholic church, and she directed me to one a few blocks down the street, whereupon, Alec, who had no intention of going, asked for the nearest Presbyterian church. The girl—who, of course, was Irish—replied with a twinkle in her eye:

"There used to be one right across the street from the other, but they became so discouraged by the crowds going to the Catholic church, they shut down."

I immediately handed the girl a quarter, saying, "Young lady, you have avenged the slights and insults of a week".

### CHAPTER 31

This record of the activities, interests and friendships in my life would be incomplete without a review of the various hunting experiences which I have shared with many friends and which form some of my pleasantest recollections. I pause here, to cast a retrospective glance over incidents still green in memory.

During my happy boyhood in Meeker county, when my cousins and I ranged the fields in pursuit of small game, as I have related in Chapter 4 of these memoirs, we soon learned the favorite haunts of wild ducks and the best means of approach without alarming them. I would crawl up to some log or tree and, rising, would be sure to find a duck within range, at which I would take a pot shot; but even when the bird fell to my gun, I often had great difficulty in retrieving it.

Later, at Graceville in Big Stone county, we boys discovered that the most fascinating of the wild game and the most difficult of approach were the magnificent bronze and white sandhill cranes. They would gather in flocks on the exposed prairie and engage in stately and grotesque dance; when feeding, one of their number always was posted as a sentinel. Long before a man could approach within gunshot, this alert sentinel would give the alarm and the flock would take flight.

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Sometimes, on a calm September day, a group would rise high in the heavens and, apparently without the slightest movement of their wings, circle in the form of a crown in the blue ether, almost out of sight. Were it not for a rather harsh cry they gave, one probably would have been unable to detect this interesting manoeuver. These cranes were at least six feet tall; they were upland birds and entirely distinct from the blue herons that frequent our marshes and are not edible.

Once when Chris and I were hunting on the prairie, Chris concealed himself and I endeavored, by going to windward, to drive a flock of these cranes within range of his gun. For some unaccountable reason, the birds avoided Chris and flew in my direction. I succeeded in bringing down a fine specimen, which, as I remember, was the only one I ever shot.

The geese, too, were very wary, though not so hard to approach as the sandhill cranes. By concealing ourselves before daybreak on the shore of a lake, we often shot some before they left the lake. When feeding, the geese also posted a sentinel that gave warning at the approach of danger. An unarmed man ploughing in a field could approach within gunshot of a feeding flock, but a man carrying a gun was almost certain to startle them into flight before he came within range.

The lakes in the vicinity of Graceville were frequented by geese, but their favorite "roosting place" was Lake Traverse, which they left each morning to feed in the adjacent fields. Once a party of us pitched camp on the shore of Lake Traverse and at daylight witnessed an amazing spectacle: Geese and ducks arose from the lake in such multitudes as almost to obscure the Dakota hills on the opposite shore. One of the party and I went back about ten miles to a farmhouse, dug pits in a field frequented by the birds, and put out decoys; before daylight the next morning, we entered the pits and waited expectantly, until the first streak of dawn. Soon we heard the welcome honk-honk of the geese coming to our decoys in small flocks; with them came many mallards, lured

by the goose decoys. All came so rapidly, it was exciting work for a few hours and when we returned to camp later in the day, our bag was the envy of our companions.

Lake Traverse is the point at which the waters of Minnesota divide, some flowing south to the Mississippi, others north by way of the Bois de Sioux and the Red River of the North to Hudson Bay. Formerly, at the time of which I speak, these waters overflowed a large marsh, making a fine retreat for water fowl. A few years later, this marsh entirely disappeared, but still later it was again flooded, and on its borders many shooting lodges were built: Among others, the Duck Inn, owned by a club composed of St. Paul men, among whom were Judge John B. Sanborn, M. L. Countryman, John F. Fitzpatrick, H. F. Wilkinson. Judge Bunn and, for a time, myself.

Our shooting was done from canoes. One day after a strenuous canoe trip, I returned rather tired to the club house and opened my valise in search of a small bottle from which I intended to take a snifter. I was enraged to find the colored cook had helped himself to nearly all the liquor, leaving only enough to color the water with which he had refilled the bottle. Judge Bunn, who returned at about the same time, was more fortunate, and I had a consoling drink from his flask, which he found intact.

During the recent drouth the slough again vanished, rendering the club house valueless, but I have no doubt that in the near future the marsh will again be flooded and be available for duck shooting.

I presume every hunter has been startled, at least once, by the premature or unintentional discharge of the shotgun he carried. I learned at an early age that the only safe method is to keep the muzzle of the gun so pointed that no one can be injured, as well as never to point even an unloaded gun at a companion—"for sure," as the Irish say, "the devil might put a load in it." My observation has been that a large percentage of shooting accidents occur from one of three causes: Carrying a loaded gun in a vehicle, dragging it from



a boat by the muzzle, or taking it through a fence in the same manner. In these days of breech-loaders, there is little excuse for an accident from any of these causes.

Before railroad passes were prohibited and prior to the enactment of restricted game law, a party of which I was one secured a private car which, after stocking it well, we boarded for a goose hunt in North Dakota. I used a gun belonging to Chris, which had two sets of barrels, 10 gauge, the longest 34 inches in length, and which, when loaded with No. 1 or B.B. shot, meant sure death for any goose coming within its range. Shooting from pits, we were very successful in securing our game. One afternoon, while a fine drizzle was falling, I, with one or two companions, killed more white and brown brant than I would care to mention! My wife, who did not care for game, has never entirely forgiven me for the large shipment to her I made of those birds!

When tired of shooting, we moved on to Missoula, Montana, where I was thrilled by my first sight of snow-capped mountains. The citizens of Missoula entertained us lavishly, organizing a deer hunt during which L. W. Rundlett, then city engineer of St. Paul, secured a fine specimen.

Another year, a party of us went to Carrington, North Dakota, where I witnessed a new method of taking brant and geese. Two boys, with a team of ponies harnessed to a buckboard, would approach the birds—on this occasion, brant or “wavies”—as near as possible from the windward side. The birds would let them come comparatively near; then, when they rose against the wind, the young hunters would put the ponies to the gallop and thus bring themselves within gunshot of the escaping birds. We dug pits that night and slept in a haymow, but next morning not a brant would come near us; the wary fowl had been thoroughly frightened by the previous day’s “running.”

## CHAPTER 32

My brother John cared nothing for shooting or fishing. Chris and Harry were excellent shots, and Chris was also expert in casting a fly: A gift he practiced on his beloved



Brule river, although, despite the protest and ridicule of his fellow club members, he occasionally descended to using bait. He knew every fishing hole for miles up and down the river. Late in August, when the rainbow trout were coming up from Lake Superior, he would place himself at the head of one of these holes and let a carefully baited hook float down with the current, until it was taken by a large rainbow trout, which he would bring to his landing net after a magnificent fight. Chris would then return to camp, with two or three of these handsome trout; and I am sure he was envied by all the members, in spite of their jocular remarks.

Harry was a snap shot, and hunting was his chief recreation. As early as June, he would begin to put his hunting gear in order, so as to be entirely ready when the season opened in September.

When I was a boy, many duck hunters used an eight-gauge shotgun, but gradually the bore was reduced to ten, twelve, sixteen; and finally the real experts, among whom was Harry, used twenty-gauge guns. For myself, I never got below the twelve.

One day, after many disappointments, Harry and I were sitting in a blind, when I saw approaching a pair of teal. Harry could not see them and, crouching in the blind, told me to let him know when the birds were within range. I kept my eyes on the teal and when they were near enough I gave the word to Harry, intending to leave one for him and take the other, myself. However, he was so quick that he dropped the bird I had selected, and when I shifted to the other, he brought it down also, with his second barrel, leaving me, his slow elder brother who had done all the work of marking, without firing a shot!

The right of way of the old St. Paul & Pacific railroad ran through a belt of hardwood timber which, beginning near Mankato, extended north to the pine areas. This timber, called the "Big Woods," was filled with deer. I once killed one in McLeod county, and in the excitement over my first deer I nearly shot a companion, who always insisted that

as I followed the deer when taking aim, I had a dead bead on him! Some years later, accompanied by an Indian guide, I shot another deer. Filled with the lust for killing, I took the guide's knife and was preparing to cut the animal's throat when it turned its beautiful brown eyes on me and uttered a faint bleat. Of course, I could not finish the work, I left it to be done by the guide. Never again did I feel strongly inclined to kill one of those beautiful creatures.

It was the custom, long ago, to "shine" deer in the north woods. A light would be placed in the bow of a canoe, which was paddled along the shore of a lake or stream until a deer was heard feeding among the lily pads. When near enough to see the light reflected in the animal's dazzled eyes, the hunter would bring it down with a charge of buckshot.

Richardson, who was United States treasurer under President Lincoln, in his reminiscences gives many delightful accounts of his hunting trips in Vermont, including "shining" deer, which the law then permitted. I once thought hunting with a camera must be tame sport, but with increasing years I have sometimes wondered whether more satisfaction could not be obtained that way than by the use of a gun.

Various kinds of wild ducks are to be found in Minnesota. Mallards, teal, spoonbill and other so-called "puddle ducks" are to be found around Lake Traverse, in Anoka county and in the extreme northern part of the state. Redheads and canvasbacks frequent lakes containing wild celery, such as Heron lake in the south and lakes in Otter Tail and Douglas counties in the northwest part of the state.

William P. Kenney, president of the Great Northern railway, makes an annual trip to Douglas county in pursuit of canvasbacks. I have never had the pleasure of accompanying him on one of these trips, but there is a well-confirmed rumor that on such occasions he leaves most of the shooting to his companions, reserving for himself his share of the total bag. Incidentally, he has had a remarkable career. Beginning as a poor newsboy in Minneapolis, he found a job in a railroad office and by sheer talent rose from one position to another.



He became the trusted assistant of James J. Hill and is now president of the railway which through his energy and ability has pulled from the slough of despond in which many railroads are floundering.

Another popular railroad executive is Charles Donnelly, who, originally a lawyer, is now president of the Northern Pacific Railway. His affability and cheerful disposition, coupled with high talent, have won for him a host of friends and made him a valued counselor to men in control of large businesses. I have always felt an hour spent in the company of either Mr. Donnelly or Mr. Kenney a delightful experience.

### CHAPTER 33

As game birds became less plentiful and the pursuit of them more strenuous, I devoted more time to fishing, especially for bass, both large and small-mouth. The small-mouthed bass is generally found in rivers, and as it will take a fly and the angler may use a light trout rod, the sport is very fascinating. Formerly, the Mississippi river from the mouth of Lake Pepin to Winona was a famous resort for small-mouthed bass; but in more recent times fishing in the Mississippi has not held up, probably because of its pollution. Bass may still be found in the St. Croix river and, I believe, the Chippewa river. The scenery of these three rivers is so beautiful that to one who loves outdoor life it makes little difference how many fish he takes, the mere excursion affording him sufficient satisfaction. The Bunn family—that is, Federal Judge Bunn and his sons, C. W. Bunn and George L. Bunn, afterward on the bench of the Minnesota Supreme court—were devoted to bass fishing. There is, indeed a thrill in casting a fly at a likely spot, or where bass have been seen, perhaps, to jump. I have known a fish to jump for the fly even before it reached the water; then if with a quick turn of the wrist you fasten him, the struggle to bring the fish to your landing net becomes most exciting. Your guide should immediately swing your boat into deep water, thus enabling you to keep the fish in the current below you. Woe betide you if he heads the boat upstream, for then the bass will be sure to rid itself of



the hook! I believe that, pound for pound, bass are the gamest fish that swim!

Small-mouthed bass are found also in some of our lakes. In a lake in Otter Tail county, the bass frequented shallow water. I once landed with my four-and-a-half-ounce fly rod a specimen weighing over five pounds, much to the delight of my friend and host, Martin L. Fosshaug. I must confess, however, I was using a small frog as bait. Fosshaug would stand in the bow of a big flat-bottomed boat, if the day was calm and the lake smooth; as soon as he sighted the fish, down would go the anchor and we would begin our endeavors to get the fish to take our lure. When a good fish was fastened, Fosshaug and his friend, Johnson, would raise the cry, "Ride him, cowboy!" which, of course, added to the zest of the one holding the rod. Once I was able to see, in the clear water of this lake, the efforts a moderate-sized small-mouth made to get rid of the hook. He darted from side to side, actually turned somersaults in the water, and apparently went through all the gyrations an animal on land would employ to get rid of an unwelcome tether. When taken from this lake, the color of the fish changes from black to gray, so they are sometimes called "gray bass", but their pink eyes and general shape mark them as true small-mouthed bass.

Not the least of the pleasures of fishing is the lunch at midday. The newly caught bass, dressed and steaked, covered with cornmeal and fried in a pan of boiling lard, is so delicious that the hungry fisherman is fortunate if he escapes the penalty of over-eating. Once, when he was a boy in my office, I introduced Carlton F. McNally, now a dignified and respected district judge, to such a repast. He ate so much I feared I would never get him home; but evidently he was a better judge of his own capacity, for we returned in safety—and he still loves to eat!

#### CHAPTER 34

After the termination of the Minnesota rate cases, I obtained some lucrative business and was able to pay the

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mortgage on my home and the other debts I had carried since the real estate boom of the 80's. I mentioned this fact to my young son, Billy, whose comment was "Gee! it must have been like going to confession!"

My recollections of the disastrous conditions following booms caused me to avoid speculation during the boom times preceding the depression. I have always thought it quite plain that the depression, from which I hope we are now emerging, was caused principally by extravagance and speculation. The craze for large commissions affected rich and poor alike. I often said the only difference I could observe between the boom of the 20's and that of the 30's was that while the latter was localized and principally affected real estate, the former was widespread and dealt with securities. As a result, I kept out of the market and avoided incurring indebtedness which I probably would never have been able to meet.

What should be truly designated as the "New Deal" was inaugurated in this country with the establishment of our government. Constitutions, both Federal and State, are designed to protect individual liberty and to secure social justice. A French nobleman, De Tocqueville, stated this admirably in his book, "Democracy in America," where in the closing paragraph of the first chapter, he wrote:

"In that land, a great experiment was to be made by civilized man of the attempt to construct society upon a new basis; and it was then, for the first time, that theories hitherto unknown, or deemed impracticable, were to exhibit a spectacle for which the world had not been prepared by the history of the past."

Of course, we always have had, and always will have, with us the crafty and greedy. Many large fortunes have been secured, because of the colossal resources of the United States; but each year there has been enacted progressive legislation designed to maintain equal opportunity. The present efforts to regulate capital and labor, readjust farm values and utilize public water power are entirely in line



with the progressive legislation enacted from time to time since the American Revolution.

A really great book, showing how America has protected the individual and introduced liberty to all the enlightened nations of the world, is "The Puritan in England, Holland and America," by Douglas Campbell, a lawyer of New York. If the masses of the people could only envision the tyranny and cruelty of European governments up to comparatively recent times, they would perceive something of the magnificence of this government; they would realize that the Federal Constitution, instead of being a straitjacket, is in truth their protection against arbitrary and tyrannous action by any party, group, tribunal or official.

There will always be conflicting interests, and men will always dispute and quarrel concerning them. This is true in politics, business and often in private and domestic life; but in the last analysis, the American people have always decided wisely. And in spite of the present violent disturbance in the economic and political world, we may feel assured that as prosperity gradually returns and necessary progressive legislation is enacted, sanity and peace will return to our country, and the struggles and privations endured by Washington, Franklin, Jefferson and other founders of this government will not have been in vain. We who have so benefited under the prosperity and liberty we have enjoyed will hand down this government unimpaired to our children, and demonstrate that the great experiment described by De Tocqueville has been a success.

Some day an American Dickens will appear, who will point out, in simple, story-telling style, the interest which we all have in maintaining life, liberty and property as guaranteed by the Constitution. There is a wide field for such a work, and he who occupies it will obtain both honor and profit and earn the eternal gratitude of his countrymen.

## CHAPTER 35

During the existence of the National Bank of the United States, the renewal of whose charter was refused by President

*One Hundred*



Andrew Jackson, it was held a state had no power to tax the bank, as it was an instrumentality of the Federal government. In 1864, national banks were authorized in the several states by an act of Congress which permitted the state to tax the bank's real estate and also its stock, but at a rate no higher than that imposed upon other moneyed capital in the hands of individuals. When the constitution of Minnesota was amended in 1906 to allow classification of property for taxation, the legislature reduced the rate on money and credits, but left the tax upon the bank stock at the older and higher rate. Encouraged by the decision of the Federal Supreme Court in the so-called Richmond case, the First National Bank of St. Paul determined to resist the tax imposed upon its stock for that year. Our firm was employed to make the defense.

We were defeated in the district court, but were successful in the Supreme Court of the state and, later, in the United States Supreme Court, to which the state took the case by certiorari. The principal question of fact at the trial was as to the existence of other competing moneyed capital. Cyrus P. Brown, who I think is a great banker, testified so strongly and fairly upon this question that our opponents were unable to produce any satisfactory contradictory evidence.

Not only Minnesota but also many other states resented the decision, but recognized its finality and felt their only chance for relief was in securing an amendment to the act of Congress. An association of tax officers of various states was formed, headed by Senator George L. Sullivan of this state, to secure the enactment of an amendment of Section 5219, U. S. Rev. Stat. Ever since that time innumerable meetings, conferences and hearings have been held and many amendments suggested, but, unless some change in old Section 5219 has been made by the banking law just passed, the problem remains unsolved.

In Minnesota, the banks have entered into a compromise with the state, providing for a substantial reduction in the taxes. This is the last case in which I had the honor and pleasure of appearing before the United States Supreme Court.

*One Hundred One*

## CHAPTER 36

These memoirs would be valueless did they not give the opportunity of pointing out the field which America affords for the advancement of the industrious and well-disposed citizen. If those of whom I have spoken achieved greatness, most of them have done so through their own unaided efforts.

Our distinguished citizen, Frank B. Kellogg, was brought up on a farm, with but little early schooling; he became a leading lawyer, United States Senator, Ambassador to the Court of St. James, and Secretary of State, and is now a member of the World Court. Justice Butler was a farm boy, who delivered milk in St. Paul. Archbishop Ireland's father was a carpenter. Governor Johnson's mother was a washer-woman. W. P. Kenney, as a boy, endured poverty and hardship, sleeping in the corridors of printing offices in Minneapolis waiting for his quota of the morning paper. Dennis F. Lyon's father was a laborer in Massachusetts. And so one might continue through a list, demonstrating that it is not true that the time for individual advancement has passed, although it may be true that we have too many college graduates who have become bond salesmen!

A college education is a magnificent thing for the boy or girl who really appreciates it, but a positive detriment to one who idles through school for the purpose of playing football or indulging in some other campus activity. One cannot hear the appeals now being made to youth to change the old order, without saying, like Othello, "The pity of it, Iago, the pity of it!"

There is no country in the world which equals ours in natural resources. No other government exists which, while strong enough to protect itself from all outside enemies, is still restrained from interfering with the activities of the orderly individual citizen.

Progress is a magnificent term, but mere change is not always progress; and whether or not it be called progress, it would be disastrous if politicians should succeed in inculcating generally the belief that the government should support all



the people, instead of the people supporting the government. It is still true, as it was in Jefferson's time, that the best government is the one which governs least. And while it is obvious that our government today must interfere with and regulate business to an extent unheard of in the past, it is just as true that this may be done without uprooting our ideas as to property, industry and thrift.

Will not a moment's reflection convince us that no country in the world ever presented the spectacle of as prosperous a people as does America today, in spite of the business depression we have been going through for the past few years? No other country has an equal religious liberty, nor a system of free public education at all approaching ours; and our public charitable institutions such as those for the blind, the defective and insane, are immeasurably beyond those in any other land. The generosity of our people is proverbial, and when a great disaster visits any section of the country the rest of the people, led by the Red Cross, immediately go to the rescue. Leading citizens vie with each other in maintaining the Community Chest for the benefit of the unfortunate. All these truths the North American Indian never learned, perhaps never had a chance to learn, with the result that there now remain, living principally upon government doles, but a few degenerate remains of a once proud, even though savage, people.

Neither my father nor any of his sons accumulated riches, nor did any of them belong to the powerful or great. They faced poverty and the struggles of life simply and bravely, and succeeded as they could have in no land except America. They led no armies, built no railroads, but were satisfied and happy in securing a decent living for themselves and their families; and it is impossible to persuade one who has lived through such an experience that the gates of opportunity are not still open to all who are satisfied to lead similar lives.

It is the simple things of life which bring real happiness, as John Boyle O'Reilly says in his beautiful little poem,

*One Hundred Three*



**"The Cry of the Dreamer":**

"I am sick of the showy seeming of a life that is half  
a lie,

Of the faces lined with scheming in the throng that  
hurries by.

From the ceaseless thoughts' endeavor I would go where  
children play,

And I long for the dear old river where I dreamed my  
youth away;

For a dreamer lives forever, but a toiler dies in a day."

John Boyle O'Reilly was a brilliant young Irishman who, for the purpose of helping Ireland, joined the English army as a private, thinking he could win the soldiers to the cause of Irish independence. His efforts were discovered and he was transported for life to an English penal colony. Friends in America fitted out a ship in which he escaped to Boston. There he became editor of *The Boston Pilot*, and his talent as a writer, his pure life and his lovable disposition made him one of the most respected and beloved citizens of that center of New England culture.

Father met him when he visited Boston, in his efforts to convince the Irish of the crowded seaboard cities of the happiness and prosperity they could secure upon the cheap and free lands of Minnesota. The columns of the *Boston Pilot* were freely open to Father, and he and O'Reilly formed a friendship which lasted during their lives. I had the pleasure of meeting O'Reilly on the occasion of a visit he paid to St. Paul. After his death and during the World War, O'Reilly's daughter, who strongly resembled him, came to St. Paul on a lecture tour in support of the allies. A group of us entertained her at tea, and her charm, vivacity and intelligence captivated all who met her.

A long and active life has convinced me that riches commonly bring unhappiness and that idleness is a positive curse. Even the children of the supposedly rich are often inclined to give more thought to their future shares of their

parents' estate than to how best they can aid in maintaining a happy home.

Andy Coll, a simple soul but the embodiment of kindness and good-nature, learned this while he was a guard at one of our large safety deposit vaults.

"The first thing I hear when, after a man's death, his family came here to open his safety box," Andy would tell you, "will be 'Is that all he left?' Then, if they find anything they don't like, 'What did the old fool buy that for?' No, sir, riches is no good."

The happy man is he who, by hard work, earns a modest competency and puts aside something for his old age.