The Early Courts of Chicago and Cook County

ANNUAL ADDRESS BEFORE

The Illinois State Historical Society

MAY 8, 1914

By

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Reprinted from the Journal of the Illinois State Historical Society, July, 1914

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I have found it somewhat difficult to decide what period of time to cover in this address. At first I considered giving the history of the courts, not only under the Constitution of 1818, but that of 1848, as fairly included within the subject, but decided that this would make too long an address, and therefore have limited it in a general way to the courts under the Constitution of 1818.

No adequate history of the courts of Illinois has ever been written. While short sketches have been given of the courts of the Territory of Illinois, none are found of Chicago or Cook County. No separate history of those courts has ever been undertaken. Brief fragmentary sketches can be found in addresses and scattered through various histories of Chicago. On account of the burning of all the court records in the great fire of 1871, it is practically impossible now to get authentic information as to many historical questions of interest touching the courts, their officials and the cases tried therein. I shall sketch briefly some of the questions upon which information can be obtained.

Most laws creating courts in this country have given them jurisdiction with reference to county lines. In the early history of the State there was some legislation establishing various city courts. Much more frequently there has been legislation of this nature in recent years, owing to the great increase in urban population. When Col. G. R. Clark took possession of Illinois in 1778, under the authority of the Governor

of Virginia, the County of Illinois, as a part of Virginia, was formed, including this State and all of the country known as the Northwest Territory, and continuing as such County until 1782. However, until 1784 there was practically no legal authority in Illinois. The people were "a law unto themselves," but apparently conducted their affairs,—although informally,—with harmony and honesty[1]. The Northwest Territory was created by Congress July 13, 1787, including Illinois. Thereafter in 1790 the counties of Knox and St. Clair were formed, including a part of this State. The territory of the present Cook County was within the limits of Knox County. Indiana Territory was organized May 7, 1800, Knox County continuing as before. February 3, 1801, the boundaries of St. Clair County were changed so as to include Cook County and practically nine-tenths of the entire State. The Territory of Illinois was created February 3, 1809, but St. Clair County,—as to the territory now in Cook County,—remained unchanged until 1812. In that year on September 14 a new county was formed of which the southern boundary was the present northern boundary of St. Clair County, and which extended across the State to the east, taking in all the rest of the State to the north and including all north of that to the Canadian line. This new county was called Madison. On November 28, 1814, a change was made in the counties so that all of the eastern half of the State as theretofore existing was included in a new county called Edwards, which had within its boundaries the present Cook County. On December 31, 1816, the northern limits of Edwards County were moved south near to their present location, and all of the territory formerly in Edwards County lying north of its new northern boundary was formed into a new county called Crawford. This was the situation when Illinois was organized as a State. The next change that affected Cook County was made on March 22, 1819, when the northern boundary of Crawford was made coincident with the present northern boundary of Crawford extended west, and all the remaining portion of Crawford

1 Bross' History of Chicago.

County as originally designated (including the present Cook) was included in a new county called Clark. On January 31, 1821, Pike County was created, including within its limits all of Illinois west of the Illinois River and north of the Illinois and Kankakee Rivers. On January 28, 1823, the new county of Fulton was created out of a portion of Pike. The western boundary of Fulton as then created was the present western boundary extended. To the north it took in the southern part of present Knox and the southwest portion of Peoria. The act provided that "all the rest and residue of the attached part of the County of Pike east of the fourth principal meridian shall be attached to and be a part of said County of Fulton until otherwise disposed of by the General Assembly." By this wording Cook County was attached to the new County of Fulton at least for all governmental purposes. On January 3 of the same year, however, the new County of Edgar was created with its present boundary lines. By that act it was provided that all that tract of country north of Edgar County to Lake Michigan be attached to Edgar County. By this last provision that part of Cook County south of a line extended west from the point where the eastern Illinois State line joins the shore line of Lake Michigan was included within Edgar County. January 13, 1825, the County of Peoria was created, with its present county lines. Section 8 of the act creating such county, however, provided, "That all that tract of said country north of said Peoria County, and of the Illinois and Kankakee Rivers, be, and the same is hereby attached to said county, for all county purposes." On the same day another act was passed by the legislature creating the counties of Schuyler, Adams, Hancock, Warren, Mercer, Henry, Putnam and Knox. The boundary lines of Putnam County included all that territory north and east of Peoria County and north of the Illinois and Kankakee Rivers. Construing together these two acts, it appears that geographically it was intended to place Cook County and all that part of the State north of the Illinois and Kankakee Rivers and east of the western boundary line of Peoria County, extended, within

Putnam County but that all this territory should remain under Peoria County for governmental purposes until Putnam County had a sufficient number of inhabitants to authorize a judge of the circuit court to call an election for county officers in said Putnam County. It is sometimes stated that at least a part of Cook County was at one time within the boundaries of the County of Vermilion and was taxed as of that county[2]. Vermilion County was created by the Legislature January 18, 1826. During the year previous, as already stated, all of the territory north of the Kankakee River, including the present Cook County, had been made a part of Putnam County. We are inclined to think some of the early writers made the mistake of including Cook County as a part of Vermilion, because Vermilion was created out of Edgar, and Edgar, as we have seen, at one time included for governmental purposes that part of Cook County south of a line drawn east and west from the junction point of the Illinois State line with the shore line of Lake Michigan, but as a matter of fact that portion of Cook County became a part of Putnam County before Vermilion County was created. There was no other legislation affecting the territory now within Cook, until the passage of an act of the Legislature January 15, 1831, whereby Cook County was created, including within its limits all of the present County of Cook, the northern half of Will, all of Du Page, a small part of Kane and McHenry, and all of Lake. By the same act Chicago was made the county seat. Will County was created January 12, 1836, including within its boundaries the present Will County and that part of Kankakee north of the Kankakee River; Kane and McHenry counties were created on January 16th of the same year, Kane County having within its boundaries practically all of the present counties of Kane and DeKalb and the northern part of the present Kendall; McHenry County including within its borders all the present County of McHenry and the present County of Lake. Du

2 Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus Historical Series.

Page County was created out of Cook County with its present boundary lines on February 9, 1839. Since then the boundaries of Cook County have remained as they are at present.

The population of Cook County from the beginning of the eighteenth century until Illinois was organized as a State was so small that no courts of civil or criminal jurisdiction were required. On August 3, 1795, Gen. Wayne signed a treaty with the Indians by which they granted title to six miles square of territory at the mouth of the Chicago River to the United States. It is stated in some of the writings that at that point there had previously been a fort built by some French explorers.[2b] The first person, not an Indian, who settled at this point was De Saible, a San Domingan Negro who came in 1779. He lived here until he sold his cabin in 1796 to one Le Mai, a French trader. In the summer of 1803 the United States ordered the building of Ft. Dearborn at the mouth of the Chicago River. A company of soldiers under Captain John Whistler, U. S. A., then stationed at Detroit, were ordered to go to Chicago for that purpose. When the party arrived there they found three or four cabins occupied by Canadian French and their Indian wives; among the inhabitants being Le Mai, Ouilmette and Pettell.[2c] In 1804 John Kinzie bought the house of Le Mai and moved into it with his family. He lived there until his death in 1828, except the four years after the Fort Dearborn massacre in 1812.[3] Fort Deaborn was rebuilt in 1816. A few white persons came to Chicago shortly after this but there was little business there of any kind except trading with the Indians or with the soldiers at the garrison or any practical settlement for farming or other business purposes until a law was passed for the building of the Illinois and Michigan Canal. On the south branch of the Chicago River one Charles Lee settled at a place called Hard Scrabble in 1804. In 1816 this place was used as a trading post and so continued until 1826. Major Long of the United States government topographical engineers visit-

2b Qaife, Transactions, Ill. State Hist. Soc. 1912, p. 115.
2c 1 Andreas' History of Chicago, p. 72.
3 Vol. 1, Currey's History of Chicago, 89.

ing Chicago in 1823, said it was inhabited by a miserable race of people in a few log or bark huts, displaying not the least trace of comfort and affording no inducement to the settler.[4] In 1821 one Ebenezer Childs visited Chicago, and made a second visit in 1827, when he wrote the place had not improved since 1821, that only two families resided there.[5] When Peoria County was created it had Chicago within its governmental jurisdiction, as we have seen, but even then it had only a mythical existence, the name sometimes applying to the river and sometimes to the cluster of inhabitants on its sandy, marshy banks.[6] The Illinois and Michigan Canal having obtained its magnificent grant of land from the government on August 4, 1830, the original plat of the town was made, lying east of the south branch and south of the main river.[7] Previous to this time this land had been mostly fenced in and used by the garrison of the fort as a pasture.[8] At the time of this platting the place contained only five or six log houses and the population was less than 100.[9] In estimating or approximating the population of Chicago at this time one of the writers gives the following: 1829, 30; 1831, 60; 1832, 600; 1833, 350; 1834, 1800.[10]

In 1833 the village of Chicago was incorporated under a general act of the State. At an election held August 10, 1833, 28 voters appeared and the trustees elected met August 12, 1833, for their first regular meeting.[11] The charter incorporating Chicago as a city was passed by the Legislature March 4, 1837. The first city election was held May 2, 1837. From that time dates the existence of Chicago as a city.[12]

Previous to the organization of the County of Cook, January 15, 1831, naming Chicago as the county seat, there had been

4 Directory of Chicago, 1839, Historical Sketch, 2 Fergus Historical Series; 1 Currey's History of Chicago, 131.
5 1 Currey's History of Chicago, 135
6 1 Andreas' History of Chicago, 174.
7 1 Andreas' History of Chicago, 174; 2 Kirkland & Moses' History of Chicago, 181; 1 Currey's History of Chicago, 227; Part 1, James' Charters of Chicago, 18.
8 Annals of Chicago, Balestier, 1 Fergus Historical Series, 23.
9 Annals of Chicago, Balestier, Fergus Historical Series, 24.
10 1 Andreas History of Chicago, 159.
11 Part 1, James' Charters of Chicago, 20.
12 Part 1, James' Charters of Chicago, 22, 23.

little need by the few inhabitants of the territory within Cook County for the settlement of their disputes by courts of justice. Indeed it may well be doubted whether, had there been courts, there would have been any business for them. The history of this pioneer community in this regard was similar to that of every small community first settling a new country. Any disputes between the inhabitants were settled by compromise, the advice of other settlers, or by force. As there was a United States garrison at this point during most of the years from the time the first white inhabitants arrived until the county was organized, the officers of the garrison exercised a restraining influence over the few inhabitants not connected with the fort. This was illustrated at Chicago when John Kinzie, who had been having trouble for years with a trader named Lalime, finally was attacked by him and as a result of the combat Lalime was killed. Kinzie, after having his wounds dressed by his wife, escaped to Milwaukee, where he remained until he was satisfied the officers of the garrison were convinced,—as he had maintained from the first,—that he had killed the man in self-defense. He then returned to his home in Chicago and nothing was done to try or punish him. During the few years immediately preceding the organization of Cook County the gradual increase in the number of white inhabitants gave cause for occasional requirements for the settlement of disputes by civil courts. More often there was a desire to have these civil officials perform marriage ceremonies, as there were no resident ministers. Until 1826 justices were appointed under the law by the Legislature on the recommendation of the local authorities and held office during good behavior. This law was changed in that year so that thereafter justices of the peace were elected every four years.[13] There seem to have been no justices of the peace living within the present territory of Cook County before 1821 and perhaps not before 1823. On June 5, 1821, the commissioners court of Pike County (Cook County was then within that county) recommended John Kinzie as a suitable person

13 Historical Sketch of Courts of Illinois, Carter, 11.

to be appointed as justice of the peace;[14] there is no record showing that Kinzie was then appointed. In 1823, Cook County being set off as under the government of Fulton County, John Kinzie on December 2, 1833, was again recommended for the office of justice of the peace.[15] This date is sometimes given as February 11, 1823, and sometimes as July 5, 1823.[16] One Amherst C. Ransom, sometimes called Rausam, was recommended for justice of the peace on June 17, 1823, and qualified for the appointment. It is not at all certain, however, that he ever resided in Chicago.[17] Some writers on that subject may have been misled into thinking he resided here because in June, 1823, as assessor he levied a tax on all personal property in Chicago under the order of the Fulton County authorities.[18] On January 13, 1825, one "Kinsey" was confirmed by the State Senate as justice of the peace for the County of Peoria, just then organized. It is generally supposed that this name "Kinsey" was intended for John Kinzie. John Kinzie, however, was not commissioned until July 25, 1825. The authorities agree that he was the first resident justice of the peace in Chicago,—his previous recommendations apparently had not been followed by appointment.[19] Two other justices, Alexander Wolcott and Jean B. Beaubien, were appointed September 10, 1825, and they with Kinzie were the judges of election in the Chicago precinct of Peoria on December 7, 1825. The office of justice of the peace, as already stated, was made elective in 1826 and several of them were elected between that date and 1831. Among others, Russell E. Heacock became justice September 10, 1831. The writers state he was probably the first justice in Cook County before whom trials were held.[20] He was also the first resident

14 2 Kirkland & Moses' History of Chicago, 152.
15 1 Andreas' History of Chicago, 426, 2 Kirkland & Moses' History of Chicago, 152.
16 Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus Historical Series, 50.
17 John Wentworth's Reminiscences of Chicago, Supplement, 7 & 8 Fergus Historical Series, 41.
18 Wentworth's Reminiscences of Early Chicago, Supplement, 7 & 8 Fergus' Historical Series, p. 42.
19 1 Andreas' History of Chicago, 420.
20 1 Andreas' History of Chicago, 18.

lawyer in Chicago,[21] unless we except the first Indian agent, Charles Jouett, who came here in 1805, and returned in 1816. While he was here he did not attempt to follow his profession, but simply acted as agent of the government. Later he was a judge in Kentucky and Arkansas.[22]

There seem to have been some duties for a constable to perform, as September 6, 1825, Archibald Clybourn, then residing at Chicago, was appointed constable in and for the County of Peoria.[23] There is no authentic record that any civil suit was tried before any of these justices previous to the organization of the county in 1831. Their business, if they had any, consisted of performing marriage ceremonies, drawing and acknowledging legal papers and serving as officials at various elections that were held. The first marriage that occurred in Chicago was performed by John Hamlin, a justice of the peace of Fulton County, on July 20, 1823, between Dr. Alexander Wolcott, then Indian agent here, and Eleanor Kinzie, daughter of John Kinzie. Justice Hamlin seems to have been passing through Chicago and performed the ceremony there, filing on Sept. 4, 1823, the marriage certificate in Fulton County.[24] One of the provisions of the act creating Cook County was that an election should be held at Chicago on the first Monday in March next for "one sheriff, one coroner and three county commissioners." There was only one voting place for this election. The first commissioners elected were Samuel Miller, Gholson Kercheval and James Walker. These men, under the laws then in force, formed the first county commissioners' court of Cook County. They organized that court and took the oath of office on March 8, 1831, before Justice of the Peace J. S. C. Hogan. William See was appointed clerk.[25] At the first session of the court, grand and

21 Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus' Historical Series, 18.
22 1 Andreas' History of Chicago, 419-420.
23 Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus Historical Series, 42; 1 Andreas' History of Chicago, 103.
24 1 Andreas' History of Chicago, 90; Chapman's History of Fulton County, 248.
25 1 Andreas' History of Chicago, 116.

petit jurors were selected. On April 13 of the same year a special term of court was held, largely for county business. The county commissioners' court had jurisdiction over public roads, turnpikes, canals, toll bridges, and in all things concerning public revenues, county taxes, licensing ferries, taverns and all other licenses, but without any original or appellate jurisdiction in civil or criminal suits, except in cases where the public concerns of the county were involved and in all public business.[26] This court practically did all the business that is now done by the board of supervisors or county commissioners of counties and in addition did a considerable part of the work that is done now by the county courts of the various counties. Commisioners were elected biennially at the time Cook County was organized. In March, 1837, the law was changed, providing that three commissioners should be elected at the next election, one to hold for one year, one for two years and one for three years, and every year thereafter an election for one commissioner to hold for three years.

No general election was held until 1832. The first sheriff, Stephen Forbes, seems to have been elected in that year.[27] He taught school for three months in Chicago in 1830 and was selected justice of the peace on December 13, 1830.[28] The first coroner was John R. Clark.[29]

By an act of February 16, 1831, it was provided that the counties of Cook, La Salle, Putnam, Peoria and eleven other counties should constitute the Fifth Judicial Circuit. This circuit included all of the organized counties then in the State north of Pike County and west and north of the Illinois and Kankakee rivers. The act further provided that there should be two terms of the circuit court held annually in each of the counties,—in Cook County on the fourth Monday of April, and second Monday in September. Judge Richard M. Young was named as the judge to preside in the circuit. This court had

26 Laws of 1819, 175; Historical Sketch of Courts of Illinois, 9.
27 1 Andreas' History of Chicago, 114.
28 Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus' Historical Series, Supp. 41.
29 Bross' History of Chicago, 27.

then practically the same general jurisdiction in civil and criminal matters as now. No definite information can be obtained, the records having been destroyed by the Chicago fire, as to the time of holding the first term of the circuit court. The late Governor Bross in 1853 in a historical sketch of the city of Chicago (p. 26) stated that the public minutes (apparently the minutes of the county commissioners court) provided, September 6, 1831, that "the circuit court be held in Ft. Dearborn in the brick house, and in the lower room of said house." The same writer states (p. 27) that the county commissioners authorized April 4, 1832, the sheriff to procure a room or rooms for the April term of the circuit court at the house of James Kinzie, "provided it can be done at a cost of not more than $10." At the funeral of Col. Hamilton (the first clerk of the circuit court) in 1860, Judge Manierre stated that the first term was held in September, 1831. It is also stated by another authority that Judge Young during this year on a trip to Chicago to hold court was accompanied by lawyers Mills and Strode, bringing fresh news of the Indian troubles which culminated in the Black Hawk War. Charles Ballance in his history of Peoria states that Judge Young made his appearance in Peoria in May, 1833, and announced that he was on his way to Chicago to hold court, and that on that occasion he (Ballance) attended court at Chicago.[30] Thomas Hoyne, who was deputy circuit clerk under Col. Hamilton in 1837, states in a lecture that he gave on the "Lawyer as a Pioneer," that the first term of the court was held in Cook County in September, 1833,[31] by Judge Young and that Judge Young also held a term in May, 1834, in an unfinished wooden building known as the Tremont House; that Judge Sidney Breese held a term there in the spring of 1835, exchanging with Judge Young, and in the fall of that year Judge Stephen T. Logan exchanged with Judge Young and held the next term there. John D. Caton, formerly a member of the Supreme Court of the State, came to Chicago in 1833. In his

30 1 Andreas' History of Chicago, 420.
31 The Lawyer as a Pioneer, Hoyne, 22 & 23 Fergus Historical Series, 77.

reminiscences published in 1893 he states that the first term held there for the trial of cases before a petit jury was the May term, 1834. In another place he states that this was the first case ever tried in Chicago in a court of record.[32] He believed this to be true because he remembered his case was number one on the docket of the circuit court of Cook County. If this is correct, Judge Young may have come to Chicago on any or all of the terms for the years 1831, 1832 and 1833, though no regular court was held for the trial of cases until the spring term of 1834. Writers on this subject generally accept Judge Caton's statement as correct. I am disposed to question its accuracy. His statement was made after the records were destroyed, when Judge Caton was an old man. I have no doubt that he believed he was speaking the absolute truth, but it would seem passing strange that Judge Manierre who made his statement when the records were still in existence and Attorney Hoyne, who was as familiar with the early records in the circuit clerk's office as any man in Chicago, should have made incorrect statements as to the time when the first term of court was held, and that all those statements should be published without some one calling attention to the error. On the information that I have been able to obtain I should hesitate to state positively that the first term of court was held either in 1833 or 1834. I am inclined to think, however that the data at hand fairly justifies the conclusion that a term of the circuit court was held earlier than 1834.

Judge Thomas Ford, afterwards Governor, was circuit judge in this district from January, 1835, until about the first of March, 1837. John Pearson succeeded him as judge of the circuit court, and presided in Cook County from 1837 until he resigned in November, 1840. February 10, 1841, the circuit judges were all legislated out of office and five new judges of the Supreme Court appointed. The Supreme Court was then composed of nine members, not only to hear the cases appealed to that court, but to try all the cases in the circuit

32 3 Currey's History of Chicago, 308; 2 Kirkland & Moses' History of Chicago, 153.

courts in the State. To the circuit in which Cook County was located, Judge Theophilus W. Smith of the Supreme Court was assigned for circuit court work. He held his first term in Chicago in April, 1841. In 1842 Stephen A. Douglas, who was then on the Supreme bench, held circuit court at Chicago in July.

The first public prosecutor in the circuit in which Cook County was placed was Thomas Ford, afterward circuit judge. Later James Grant was prosecutor. Grant afterward moved to Iowa and served as a judge of the district court of that State.

Col. Richard J. Hamilton was not only the first clerk of the circuit court, but the first probate judge. The first will placed on record was that of Alexander Wolcott, for years Indian agent at Chicago, filed April 27, 1831, before Judge Hamilton.

There was when Cook County was organized, a court of probate in each county. The judge was selected by the General Assembly on joint ballot, to hold his office during good behavior. That court had jurisdiction in all matters touching the probate of wills, granting letters testamentary, and the settlement of estates. The law was amended in 1837 so that at the first election, to be held on the first Monday of August, 1839, and every fourth year thereafter, there should be elected an additional justice of the peace for each county to be styled "Probate Justice of the Peace;" to have the jurisdiction in civil cases conferred by law upon all other justices of the peace and to be vested with all judicial powers theretofore exercised by the judges of probate. In 1845 the law was changed so that they were elected for two years. Col. Hamilton held the office of probate judge until 1835, when he resigned. He resigned as clerk of the circuit court in 1841, at the time Judge Theophilus W. Smith came here to hold circuit court. Judge Smith appointed one of his sons-in-law, Henry G. Hubbard, as circuit clerk to succeed Col. Hamilton.[33] It may be stated in this connection that Col. Hamilton, shortly after he arrived here, was appointed to fill a vacancy as clerk of the county

33 1 Andreas' History of Chicago, 145.

commissioners' court and held the office of school commissioner for years, and was also recorder of Cook County. It is apparent that there were then more offices than there were men competent to fill them, or at least men who desired to fill them.

The first city charter of Chicago provided, (section 68), that the mayor should have the same jurisdiction within its limits, and be entitled to the same fees and emoluments as were given to justices of the peace, upon his conforming to the requirements of the law of the state with reference to that office.[34] I cannot find that any mayor of Chicago exercised the functions of justice of the peace until in March, 1849, when Mayor Woodworth of Chicago sent a message to the council stating that he would co-operate with them in holding such court, and in pursuance of that idea a mayor's court was instituted and notices given to all police constables that violators of any city ordinance would be brought before the mayor daily at nine o'clock in his office in the north room of the market.[35] By section 69 of the first charter it was provided that there should be established in the city of Chicago a municipal court, to have jurisdiction concurrent with the circuit courts, in civil and criminal cases arising within the limits of the city, or where either the plaintiff or defendant resided, at the commencement of the suit, within the city. By a supplemental act passed July 31, 1837,[36] it was provided that the judge of the municipal court of Chicago should perform all the duties pertaining to the office of the judge of the circuit court. This court was created because of the great increase in business in the circuit court in Cook County. Judge Thomas Ford, who had recently resigned as circuit judge, was appointed by the Legislature as the first judge of this municipal court. The terms were held alternate months.

An attempt was made during the hard times of 1837 to prevent the opening of this court. Many of the obligations created during the speculative period—which was then about

34 Laws of Illinois, 1836-7, p. 75.
35 1 Andreas' History of Chicago, 448.
36 Special Session, Laws of Illinois, 1837, p. 15.

at an end—were maturing and the debtors were unable to meet them. The dockets were crowded in both the circuit and municipal courts and many thought that something must be done to prevent the collection of these claims. Some of the debtors felt that no court should be held. A public meeting was called at the New York House,—a frame building on the north side of Lake Street near Wells. It was held at evening in a long, low dining room, lighted only by tallow candles. The chair was occupied by the State senator from Chicago, one Peter Pruyne. James Curtiss, nominally a lawyer, but more of a politician, who had practically abandoned his profession, was one of the principal advocates of the suspension of the courts, as was also a judge of the Supreme Court, Theophilus W. Smith. On the other side were Butterfield, Ryan, Scammon, Spring, Ogden, Arnold and others. The opponents of the courts claimed that if they remained open, judgments would be entered against debtors to the amount of $2,000,000, or $500 to each man, woman and child in Chicago. Curtiss said no one was to be benefited but the lawyers by keeping the courts open, and that he had left that profession. Ryan, afterward chief justice of the Wisconsin Supreme Court, a man of large frame, great intellect and great in debate, arose and said, pointing to Curtiss, that if the debtors expected that kind of a lawyer to save them they would be mistaken; that it had long been a question whether Curtiss had left the profession of the law, or the profession of the law had left him. Butterfield sharply scored Judge Smith for descending "from that lofty seat of a sovereign people, majestic as the law, to take a seat with an assassin and murderer of the law like Judge Lynch.' The debate waxed fast and furious, but in the end the good sense of the meeting resulted in the resolution being laid on the table and the courts were kept open, as they have ever been since in this State.[37] Out of the discussion over that question arose an agitation which resulted February 15, 1839, in the Legislature abolish-

37 1 Andreas' History of Chicago, 444; The Lawyer as a Pioneer, 88; 22 & 23 Fergus' Historical Series, 88.

ing the court and transferring its business to the circuit court of Cook County. Judge Ford was shortly after commissioned as judge of the new circuit created a few days later.[38] Within a year after the municipal court was abolished it became evident that the increase of business in the circuit court required some relief. Special terms of that court were authorized for Cook County. February 21, 1845, the Legislature of the State established the Cook County Court, the judge to be chosen and hold office the same as a circuit judge, and the court to have concurrent jurisdiction with the circuit court; the court to hold four terms a year; the clerk of the court to be appointed by the judge. Hugh T. Dickey was chosen by the Legislature as the first judge of this court, and James Curtiss was appointed by him as first clerk.[39]

The first United States Court was opened in Chicago, in July, 1848. In the absence of Circuit Judge John McLean, the court was held by Judge Nathaniel Pope of the Federal District Court, with his son William as clerk.[40]

In March, 1845, the Jo Daviess County Court was established with the same jurisdiction as the Cook County Court, the Cook County judge being required to hold the Jo Daviess County Court. The Constitution of 1848 provided that these two courts were to be continued until otherwise provided by law. The next year the Jo Daviess County Court was abolished and the Cook County Court was changed into the Cook County Court of Common Pleas, which afterward became the Superior Court of Chicago and later the present Superior Court of Cook County.

The first public building of which any mention is made was the "estray pen," erected on the southwest corner of the public square. The next public building was the jail, erected in the fall of 1833, "of logs well bolted together," on the northwest corner of the public square. It stood there until 1852.[41] Chicago has had four different court houses located on the

38 1 Andreas' History of Chicago, 444.
39 1 Andreas' History of Chicago, 446.
40 1 Andreas' History of Chicago, 448.
41 Bross' History of Chicago, 27

public square on which stand the county building and city hall. This ground was conveyed by Congress in 1827 to the State of Illinois as a part of the canal grant. Twenty-four lots were deeded to Cook County January 16, 1831, to aid in the erection of public buildings. Of these twenty-four lots thus given, sixteen were afterward sold to pay current expenses.[42] The remaining eight lots (bounded by Clark, Randolph, La Salle and Washington streets) were retained as the public square.[43] In 1835 a substantial brick court house was erected. This appears to have been located on the north-east corner of the block facing Clark Street. The basement was for the office of the clerk and the first floor was for for court room, which would seat about 200 people.[44] The city authorities never had any office in this building. In 1850 or 1851 the county and city authorities agreed to build jointly a court house and city hall on this block. The corner stone was laid September 12, 1851. The building was three stories high, the main part being 100 feet square and the jail being in the basement. In 1853 it was ready for occupancy. The Court of Common Pleas first occupied the edifice in February of that year.[45] This building was soon found too small and another story was added, but this became inadequate for the growing needs of the county, and in 1870 it was extensively added to by wings on the east and west. This work was completed shortly before the Chicago fire.[46] After the fire the county and city authorities were obliged for several years to find quarters in a temporary building hastily erected on the south-east corner of Adams and La Salle, which from the rough manner of its construction became known as the "Rookery." In 1877 the city and county entered into an agreement for the construction of a building which was completed in 1885 and occupied as a city hall and county building until the present

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42 Prospects of Chicago, Brown, 9 Fergus Historical Series, 16.

43 3 Currey's History of Chicago, 302.

44 3 Currey's History of Chicago, 302; Bross' History of Chicago, 119.

45 1 Andreas' History of Chicago, 180.

46 3 Currey's History of Chicago, 302-303.

structure was commenced, the building being completed in 1911.[47]

Thus, in bare outline, I have named the various courts in Cook County under the Constitution of 1818 and some of the officials of those courts, but a history of the courts is necessarily incomplete unless it discusses some of the cases tried and gives an account of some of the lawyers who practiced therein. Russell E. Heacock, as stated, was the first resident lawyer in Chicago, coming in 1827.[48] Col. Hamilton had been admitted to the bar and evidently advised people on legal matters while he was acting as circuit clerk and probate judge. Isaac Harmon was a justice of the peace and advised occasionally on legal matters, as did Archibald Clybourn, who lived outside of the city. None of these men had at that time opened an office or tried to earn a living by law. Heacock followed his early trade of carpenter and Harmon worked in a tannery.[49] Judge Caton in his reminiscences, states that he came here June 19, 1833, and found Giles Spring had preceded him by a few days. Caton and Spring therefore seem to have been the first men that located here and opened offices to practice law. Between that time and the date when Thomas Hoyne came in 1837, several lawyers had located in Chicago who became prominent not only in the courts but in other ways in the later history of the city. He states that at that time there were twenty-seven persons engaged in the practice of law in Cook County.[50] Among this number were Judge Caton, Giles Spring, James Grant, Ebenezer Peck, Grant Goodrich, J. Young Scammon, Mark Skinner, Isaac N. Arnold, Alonzo Huntington, Hugh T. Dickey, Joseph N. Balestier, James H. Collins, A. N. Fullerton, Buckner S. Morris, Henry Moore, Edward W. Casey and Justin Butterfield.

Judge Caton had studied law with James H. Collins in New York State. Collins came the next year after Caton and located on a farm in what is now Kendall County. Judge

47 3 Currey's History of Chicago, 303.
48 1 Andreas' History of Chicago, 107.
49 Caton's Early Bench and Bar of Illinois, 2.
50 The Lawyer as a Pioneer, Hoyne, 22 & 23 Fergus' Historical Series, 84.

Caton persuaded him to come to Chicago and the two entered into partnership, under the firm name of Collins & Caton. Later Collins became a partner of Butterfield. He was chief counsel for Owen Lovejoy when the latter was being tried in Bureau County for assisting runaway slaves to escape. This trial was held before Judge Caton, then on the Supreme Court, but holding circuit court, and resulted in the acquittal of Lovejoy. Collins was a man of great perseverance and resolution, and a hard worker, a strong lawyer, but without great brilliancy.

Isaac N. Arnold came to Chicago in 1836. He was the first city clerk after the incorporation of the city.[51] He was a great personal friend of Abraham Lincoln. He was elected in 1860 as a member of Congress and served until 1864. He wrote a history of Lincoln, which is held in high esteem. He tried many important cases; among others, while a young lawyer in Chicago, was one to test the constitutionality of the "stay law," so called, which he claimed was a step toward repudiation. The law provided that no land should be sold under a mortgage before being appraised, and unless it should bring at least two-thirds of such appraisal. He filed a bill in the courts in 1841 to foreclose a mortgage praying for the sale to the highest bidder regardless of the redemption and State laws. The United States Supreme Court upheld his contention and enforced a strict foreclosure.[52] Another case involving the land laws was heard in the State courts,[53] (Brainerd v. Canal Trustees,) in which he and Senator Douglas were counsel. This is one of the few cases that Douglas argued before the Supreme Court of Illinois, after he resigned his membership in that court to become a member of Congress. Hugh T. Dickey, as already stated, was the first judge of the Cook County Court, being appointed in 1845. He resigned in 1848 on his election as a circuit judge under the new Constitution. He was succeeded by Giles Spring as judge of the Cook County

51 1 Andreas' History of Chicago, 435.
52 Bronson v. Kinzie, 1 How. (U. S.) 311.
53 Brainerd v. Canal Trustees, 12 Ill., 448.

Court. Judge Dickey resigned as circuit judge in 1853 and was succeeded by Buckner S. Morris. Morris had been mayor and alderman of Chicago before he was a circuit judge. In 1860 he was a candidate for Governor of Illinois on the Bell-Everett ticket. Grant Goodrich was a leading lawyer in Chicago from the time he came until the time of his death, and served for a time on the bench. Lincoln's biographers state that Goodrich in the '50s offered Lincoln a partnership if he would come to Chicago, but Lincoln declined because he was afraid the climate would not agree with him.[54] Ebenezer Peck came to Chicago in 1835 and soon took a very active part in public affairs. In 1849 he was chosen as reporter of the Supreme Court to succeed Gilman and held that position until 1863, when he resigned on being appointed by Lincoln one of the judges of the Court of Claims of the District of Columbia. Among the most remarkable lawyers in the early history of the Chicago courts was Justin Butterfield. Arnold and others of his associates state that he was the best trial lawyer of his day in the city, if not in the State. He served as United States prosecuting attorney for the District of Illinois from 1841 to 1844. He was appointed commissioner of the General Land Office by President Taylor, a position which Lincoln was also then seeking. It is said that Butterfield was appointed because of the warm personal friendship of Daniel Webster. Perhaps no other lawyer in the history of the State has had so many anecdotes told of him illustrating his power of sarcasm and repartee. He was a very forceful speaker, but not always a persuasive one before juries.

Samuel Lyle Smith came to Chicago in 1838 and made his headquarters in the office of Butterfield & Collins. In 1839 he was chosen city attorney. The lawyers of that day speak of him as one of the most eloquent men ever at the Chicago bar. In 1847, at the River and Harbor convention in Chicago, he especially distinguished himself as an orator. Henry Clay is said to have stated that he was the greatest orator he ever

54 Lincoln the Lawyer, Hill, 161.

heard.[55] He died in 1854 when a little past 40, during the cholera epidemic. James H. Collins and several other lawyers were among the many who passed away at the same time by this dread disease.

Thomas Hoyne, the father of Thomas M. Hoyne, one of the oldest practicing lawyers now in Chicago, and grandfather of the present State's attorney of Cook County, came to this city in 1837, studying law after his arrival. He was elected city clerk of Chicago in 1840, and elected probate justice of the peace in 1845, holding the latter position until the court was abolished by the Constitution of 1848. When the first University of Chicago was established, he was elected one of the board of trustees. He was connected with the law schools of Chicago practically from the time the first one was started as teacher or trustee. In 1876 he was elected mayor of Chicago, but served only a few months, as there was a dispute about whether the election was properly held and a special election was called.[56] He was considered one of the greatest ornaments of the bar of Chicago. Edward G. Ryan was for several years a practicing lawyer in Chicago, and also edited a newspaper. He afterward moved to Wisconsin and became one of the great chief justices of the Supreme Court of that State. Time will not permit a further discussion of the members of the bar of that period.

I have already referred to the first term of court held in the circuit court of Cook County. Before taking up and discussing any of the trials in courts of record, it is proper to refer briefly to the first criminal case of which we have any account, tried within the limits of Chicago. This was prosecuted by Judge Caton shortly after his arrival, the complaint being sworn out before Justice Heacock. The charge was that of robbing from one Hatch $34 in eastern currency while stopping at the tavern. On a change of venue to Justice Harmon on the north side, the case was prosecuted by Caton and defended by Giles Spring and Col. Hamilton, and the man held

55 1 Andreas' History of Chicago, 432.
56 2 Andreas' History of Chicago, 464.

to the circuit court for trial. He was let out on bail and disappeared, so the case was never further prosecuted. Judge Caton, in his reminiscences, says this was the first case entered of record in the circuit court, and also that he had the first civil case, an attachment proceeding filed in the circuit court. This last mentioned is the case he claims was the first jury case tried in Cook County.

The first divorce suit was started at the May term, 1834, in the circuit court of Cook County, which was then being held in an unfinished loft of the old Mansion House, just north of where the old Tremont Building stood.[57] The first murder trial was at the fall term in 1834, in an unfinished store 20x40 on Dearborn, between Lake and Water streets. Judge Young presided. A laborer in a drunken fit went home in the month of June that year, and finding something wrong in his domestic affairs—apparently his supper not ready,—manifested his dissatisfaction by beating his wife. The physicians testified she died from the effects of the beating and the coroner's jury held him to answer for the murder and he was indicted for that crime. He was prosecuted by the district attorney, Thomas Ford, and defended by James H. Collins, Judge Caton's partner, and acquitted.[58]

So far as I am able to ascertain, the second murder trial in Cook County was in 1840, that of John Stone for the killing of Mrs. Lucretia Thompson. The evidence against him was purely circumstantial. Stone was indicted for murder and on the trial convicted and sentenced to be hanged.[59] The case was taken to the Supreme Court of the State on a writ of error and the judgment affirmed.[60] He was accordingly executed on July 10, 1840, the place of execution being about three miles south of the court house in Chicago, not far from the lake shore.

57 1 Andreas' History of Chicago, 421; Wentworth's Reminiscences of Early Chicago, 7 & 8 Fergus' Historical Series, 33.

58 1 Andreas' History of Chicago, 421; Caton's Early Bench and Bar of Illinois, 41.

59 1 Andreas' History of Chicago, 152, 445.

60 Stone v. People, 2 Scam. 326.

This case was tried before Judge John Pearson. One of the jurors was John Wentworth, who at that time and for years afterward was the editor of *The Democrat,* a paper published in Chicago. A rival newspaper, *The Chicago Daily American,* charged that Wentworth was writing editorials in the jury room while the case was being conducted. The case was tried at the April term, 1840. Contempt proceedings were instituted at the May term, 1840, before Judge Pearson and a rule entered against the editor, William Stuart, of *The American,* to show cause why he should not be punished for contempt of court. After a hearing the court adjudged Stuart guilty and fined him $100 and costs. The case was taken by Stuart's attorneys, Justin Butterfield and Isaac N. Arnold, to the Supreme Court and reversed.[61] The opinion in the Supreme Court was written by Judge Breese, holding that while the court had the power to punish for contempt under such circumstances if the communications had a tendency to obstruct the administration of justice, the writings in question had no such tendency. The opinion said, among other things: "An honest, independent and intelligent court will win its way to public confidence, in spite of newspaper paragraphs, however pointed may be their wit or satire, and its dignity will suffer less by passing them by unnoticed, than by arraigning the perpetrators, and trying them in a summary way. . . . Respect to courts cannot be compelled; it is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found upon the judgment seat, so long, and no longer, will they retain the public confidence. . . . In restricting the power to punish for contempts to the cases specified, more benefits will result than by enlarging it. It is at best an arbitrary power, and should only be exercised on the preservative, and not on the vindictive principle. It is not a jewel of the court, to be admired and prized, but a rod rather, and most potent when rarely used." Stephen A. Douglas dissented and Judge Caton, not having heard the argument, took no part in the decision. I am disposed to

61 Stuart v. People, 3 Scam. 395.

agree with the sentiments expressed and the conclusion reached by the opinion.

Judge Pearson had considerable difficulty in Chicago while serving as circuit judge. The majority of the lawyers, without regard to politics, were opposed to his appointment. The new circuit, the Seventh, was created February 4, 1837, including the counties of Cook, Will, McHenry, Kane, La Salle and Iroquois.[62] Judge Pearson then resided at Danville, outside of this judicial circuit. The lawyers thought he was incompetent for the position, not only in learning, but in other judicial qualities. His appointment from the first was very unpopular with the Chicago bar. Most of the lawyers in Chicago were Whigs, while Judge Pearson belonged to the Democratic party, and the lawyers charged that this new circuit was created for his appointment, in the same manner that in England sometimes younger children were provided for in a new colony. In 1838 writs of mandamus were issued by the Supreme Court in two different cases requiring certain action by him in the trial of those cases.[63] At the May special term in 1839 in the circuit court at Chicago, the case of Bristol vs. Phillips was tried before him. Bristol's lawyer was J. Young Scammon, while Isaac N. Arnold was on the other side. A dispute arose over the signing of the bill of exceptions by the judge, who refused to sign the one Scammon thought should be signed. At the July term, 1839, of the Supreme Court, Scammon as attorney for Bristol, moved for a writ of mandamus against Pearson to require him to sign a bill of exceptions which had been tendered him. The court allowed the petition to be filed and issued an alternative writ. Scammon, the attorney in the case, attempted to hand the writ to Judge Pearson while in court, but he, fearing that Scammon would thus serve the writ, refused to recognize him when he arose to make motions, claiming to be engaged in other matters at the time. Scammon had previously been fined for contempt in

62 Laws of Illinois, 1836-37, 113.
63 People ex rel Teal v. Pearson, 1 Scam. 458; People ex rel Brown v. Pearson, 1 Scam. 473.

another matter by Pearson. Scammon, therefore, when he found the court would not recognize him, put the bill of exceptions and writ to be served on Pearson in Justin Butterfield's hands. It was in the afternoon, just before the closing of the term of court, with practically all of the members of the bar present. Mr. Butterfield arose and said he had received a communication from Col. Strode who had been called out of town in relation to business of the court, requesting him to present a motion in the case of People vs. Hudson for the trial or discharge of Hudson at this term of court. The judge directed the clerk to file the paper and motion which was done. Then Mr. Butterfield handed up the papers given him by Scammon, saying it was a bill of exceptions in a case tried at a former term. The court said that he had not signed the bill of exceptions. Mr. Butterfield replied that he knew that was true, but, handing him another paper, said, "Here is a writ of mandamus from the Supreme Court, directing you to sign it." The court said, "What's that, sir?" Mr. Butterfield repeated his statement. The court then, holding the paper towards Butterfield, said, "Take it away, sir." Butterfield said, "I cannot take it away, sir, it is directed to your honor, I will leave it with you. I have discharged my duty in serving it upon you and cannot take it back." The court then told the clerk to enter a fine of $20 against Butterfield and threw the papers, bill of exceptions and writ of mandamus, on the floor over the railing in front of the desk between the bench and the bar. The court then said, "What do you mean, sir?" Butterfield said, "I mean to proceed by attachment if you don't obey it!" The court then commanded, "Sit down, sir; sit down, sir," and ordered the clerk to proceed with the reading of the record. The judge afterward asked the clerk if he had entered the order for the fine of $20, and when the clerk told him he had, asked him to read it to him, and then told him to enter as a part of the order, "for an interruption." Mr. Butterfield objected to the change in the order, saying that the fine was not for an interruption. A somewhat complete history of this matter is found in the Illinois Su-

preme Court report of the case (People vs. Pearson[64]), and also in an address of the Hon. Thomas Hoyne, "The Lawyer as a Pioneer."[65] Mr. Hoyne states that when the court adjourned and the judge left the bench, Mr. Butterfield stepped up to him and said, "Sir, you have now disgraced that bench long enough; sit down, sir, and let me beg you to attend a meeting of this bar instanter in which we are about to try your case, and rid ourselves and the people, once for all, of your incompetency and ignorance." The judge left, but the members of the bar prepared papers and that winter presented them before the House of Representatives at Springfield asking for articles of impeachment. The house, which was composed largely of the political friends of Judge Pearson, refused to order impeachment proceedings. They charged that the attack was a political prosecution gotten up by the old Federals and Whigs, but Mr. Hoyne, who himself was a Democrat, states that Edward G. Ryan, a lifelong Democrat, who was then running a Chicago paper called the *Tribune,* and who afterwards,—as has been stated,—became a chief justice of the Supreme Court of Wisconsin, was one of Pearson's strongest opponents and critics, and that the charges against Pearson were not based on political differences. The case was heard late in 1839. In 1840 a motion was made in the Supreme Court for an attachment against the defendant for contempt in disobeying the writ of mandamus. The motion was allowed and the attachment issued. On a hearing before the court, at which Judge Pearson was represented, the jurisdiction of the court to punish was questioned for several reasons, among others, that Judge Pearson was no longer judge of the court. Under the advice of his friends, after the Supreme Court ordered him to sign the bill of exceptions, he had resigned as judge and had been elected as State senator for the district comprising Cook, Will, Du Page and McHenry counties. It appears that after his appointment as circuit judge,

64 2 Scam., 189.

65 The Lawyer as a Pioneer, Hoyne, 22 & 23 Fergus' Historical Series, 90; 1 Andreas' History of Chicago, 444.

he had moved from his home in Danville to Joliet, Will County, and lived there while he was circuit judge and when he was elected as senator. The Supreme Court after a full hearing, decided it had jurisdiction and fined him $100 and costs of the proceeding.[66] Stephen A. Douglas was one of the Supreme Court judges at the time this fine was entered. He took no part in the decision because before his appointment as judge he had been counsel for Judge Pearson in the first case. The court was otherwise unanimous, except that Judge Breese wrote a separate concurring opinion in which he stated that possibly Judge Pearson's actions were based on the ground of misapprehension of his rights and duties as judge of the court. It also appears on a supplemental motion filed in this case by J. Young Scammon, that when the writ of attachment was issued, Judge Pearson could not be found in Springfield, and that he was pursued and overtaken and placed under arrest in Clay County, and brought back to Springfield. The court on this supplemental motion allowed the costs of this arrest to be charged against Pearson. This was at the December term, 1841. At the December term, 1842, counsel for Pearson made a motion for rehearing but this was denied.[67] It may also be noted that in the original case of Bristol vs. Phillips the Supreme Court on motion for the attorney for Bristol after Judge Pearson had resigned, ordered the bill of exceptions that he had refused to sign, to be filed in the original case and taken to be true, the same as if it had been signed by the judge.[68] This case was never decided in the Supreme Court. It appears by stipulation filed in the clerk's office of that court July 8, 1842, that the case was settled by the parties, the judgment being reversed, each party paying his own costs. It may be interesting to note that this lawsuit was brought by Phillips against Bristol,—the latter being captain of the steamboat James Madison,—to recover for the loss of two trunks. That steamboat ran in 1838 between Detroit and Chicago. The wife and son of Phillips took passage on the

66 People ex rel v. Pearson, 3 Scam. 270.
67 People v. Pearson, 3 Scam., 406.
68 Bristol v. Phillips, 3 Scam. 280.

boat at Detroit for Chicago. The claim was made that they took two trunks on the boat with them at Detroit and the trunks could not be found afterward. Phillips recovered this judgment against Bristol for the value of the trunks and contents. I do not think that Judge Pearson was dishonest or corrupt in his actions in this regard, but rather a man of strong passions, a warm friend and an uncompromising enemy. He was not broad-minded and was very impatient of criticism. He died at Danville, Illinois, in 1875.

While we cannot tell with certainty when the first case was tried in the circuit court of Cook County, the records of the Supreme Court show that the first case that was brought up by appeal or error from the Cook County courts to the Supreme Court was Webb vs. Sturtevant at the December term, 1835, of that court.[69] This case was tried at the May term, 1835, of the Cook Circuit Court by Judge Sidney Breese. The lawyers were B. S. Morris and James Grant for appellant and Giles Spring and Ebenezer Peck for appellee. The opinion was written by Justice Lockwood. It was a dispute as to the possession of certain real estate to which both parties laid claim. The next case from the county was at the same term of the Supreme Court.[70] (Lovett vs. Noble). This case was also tried before Judge Sidney Breese in the circuit court. The lawyers for appellant were Judge Caton and Stephen A. Douglas and for appellee Ebenezer Peck and Giles Spring. The first people's case coming from Cook County reviewed by the Supreme Court was heard at the December term, 1836, of that court,[71] (Baldwin vs. People). Judge Caton represented the plaintiff in error and James Grant the people. Baldwin was charged with stealing a horse, and the proof showed it was a mare. The court held that the proof that the defendant had stolen a mare or gelding would sustain an indictment for stealing a horse and that the indictment charging that the horse was stolen and carried away would be sustained by proof that it

69 1 Scam., 181.
70 1 Scam., 185.
71 1 Scam., 303.

was ridden, driven or led away. That seems to be a sensible decision, but to those who talk about technicalities (as the layman understands that term) controlling a case in the courts of review, it will be found that the Supreme Court of that time now and then reversed cases for reasons that laymen now would say were purely technical. As an example, the third criminal case reviewed by the Supreme Court of the State from Cook County[72] (Bell vs. People) was on an indictment found in the municipal court of Chicago. The indictment purported to be found "by a grand jury chosen, selected and sworn in and for the City of Chicago and County of Cook." The court held that the municipal court could only have an indictment returned by grand jurors chosen within the City of Chicago, and that this indictment on its face showed that the jurors might have come from Cook County outside of Chicago; that the indictment alone must be taken for evidence of that fact, and that such an indictment on its face was bad, whereupon the court reversed the case. As the City of Chicago was within the County of Cook and the indictment could fairly be construed as meaning that the grand jurors were chosen and selected from the City of Chicago, within the County of Cook, I think the indictment might well have been sustained.

In the first Scammon Report of Supreme Court decisions are found twenty-nine cases brought up from Cook County for review by writ of error or appeal. Of the twenty-nine, eighteen were reversed, ten were affirmed, and one was partially affirmed and partially reversed. The critics of today who are of the opinion that all or most cases ought to be affirmed would here find data justifying an argument that the courts of that day were reversing cases unnecessarily. Let me say in passing that I do not agree with the argument that most cases are improperly reversed by courts of review. If no cases ought to be reversed, there would be no necessity of having courts of review. While courts of review should give weight to the real facts rather than to pleading; to the substance rather

72 1 Scam., 397.

than the shadow; to substantial justice rather than to form, if justice is to be fairly and properly administered in this or any other state, it is frequently necessary for courts of review to reverse some cases.

The first case appealed from the Municipal Court of Chicago for review[73] is Peyton & Allen vs. Tappan. This case was heard before Judge Ford on the municipal bench. In the two cases immediately preceding this one, found in the same volume of Supreme Court Reports, it is curious to note that in one appealed from McLean County and in the other from Cook County, Judge Ford took part. In the Cook County case he sat as judge of the circuit court when the summons was issued. In the case from McLean he was one of the lawyers. Evidently Judge Ford was a very busy man.

In May, 1835, Gen. John B. Beaubien went to the general land office and purchased for $94.61 the entire Fort Dearborn reservation. He had derived his military title of general from the fact that the State at that time was divided into military districts, the people electing a general in each district. He had lived upon the reservation for many years, and a law had been found which satisfied the land office that he could make the purchase. There was great excitement over this purchase. The newspapers published articles and the people discussed it at length. Some asked if he bought the fort or the land, and what were the officers to do? Some of the people congratulated him on having a fort of his own, and others asked if there would not be a conflict between the United States troops and the State militia. General Beaubien himself was in command of the militia. Nothing serious, however, occurred. A case was agreed upon for the courts and submitted in 1836 to Judge Ford in the circuit court of Cook County. Judge Ford decided against Beaubien's claim. On appeal to the Supreme Court of the State, that court reversed the circuit court, upholding Beaubien.[74] The case was then taken to the United States Supreme Court, which reversed

73 1 Scam., 387.
74 McConnell v. Wilcox, 1 Scam., 344.

the decision of the Supreme Court of the State, effectually wiping out every pretense of a right to the land as claimed by Beaubien.[75] Beaubien was glad to call at the United States land office and receive his money back without interest. This, however, did not end the agitation over the reservation. During the previous years, while the litigation was pending, the secretary of war authorized the solicitor of the general land office to come to Chicago and sell the land in the reservation. It was surveyed and platted as the Fort Dearborn Addition to Chicago and contained about fifty-three and one-fourth acres. All of this was sold by the government except what was needed for the occupancy of the public buildings. Beaubien had lived for years on some of the lots in this subdivision. He had many friends and there was a general public demand that when these lots were sold no one should bid against him; he was expected to buy his homestead for a nominal sum. Attorney James H. Collins was opposed to this plan to give the lots to Beaubien. He put in a sealed bid for the Beaubien homestead and it was struck off to Collins. His action aroused great excitement. His life was threatened and he was burned in effigy.[76]

Many other interesting trials and other matters could be referred to and much more could be said of the courts and the lawyers connected with the early history of Chicago. One cannot read the history of these men and their times without feeling that in the judicial forum as in other walks of life "there were giants in those days." There were Davis, Trumbull, Stephen T. Logan, Baker, Breese, Palmer, Douglas, Lincoln, and in Chicago, Butterfield, Arnold, Ryan, Goodrich, Spring, Hoyne and many others of great ability, who gave their best efforts to the enforcement of the law, so that every person, whatever his condition, might obtain justice in the courts.

I can appreciate how Arnold felt, when on a visit to England, he met in Westminster Hall Rev. Edward Porter, then

75 Wilcox v. Jackson, 38 U. S., 4.

76 Address on Ft. Dearborn, Wentworth, 16 Fergus Historical Series, 40, 41; Kirkland & Moses' History of Chicago, 191.

a minister of Chicago, and when they were talking over the great trials that had been held there, Dr. Porter said, "This is the grandest forum of the world. And yet I have seen justice administered on the prairies of Illinois, without pomp or high ceremonial, everything simple to rudeness, yet justice has been administered before judges as pure, aided by lawyers as eloquent, if not as learned, as any who ever plead or gave judgment in Westminster Hall."[77] I believe that the same may be truly said of the courts and lawyers today in Illinois. If they are faithful to the traditions of their great predecessors, justice will be as fairly administered by judges as honest and pure, aided by lawyers as learned and eloquent as were those in the early history of the State, or even in Westminster "in the great Hall of William Rufus."

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77 Recollections of the Early Chicago and Illinois Bar, Arnold, 22 Fergus Historical Series, II.

Note. The original records have been examined in Pike, Fulton, Peoria and Putnam counties as to the facts stated herein as shown by the respective records of said counties. I am indebted for this examination in Pike County to Judge Harry Higbee, in Fulton County to Hon. B. M. Chiperfield, in Peoria County to Gerald H. Page, attorney-at-law, and in Putnam County to Judge John M. McNabb.