Eng. by J.C. Buttre Co. N.Y.

Yours Truly
Henry C. Caldwell

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HENRY CLAY CALDWELL.

BY EDWARD H. STILES.*

Biography is the soul of history, and biography in its turn must properly rest upon facts, incidents, and achievements attendant upon the person, and to some extent on the concensus of public and private opinion in relation thereto, rather than upon the mere statement or estimate of the biographer. In this wise I shall endeavor to corroborate by particular facts what I may say in a more general way concerning the subject of this sketch.

Of all the distinguished men I have known in my time, none stand out as strikingly along the line of remembrance as Henry Clay Caldwell. It is nearly a half century since I first saw him. He was then twenty-five, I was twenty. It was at Ottumwa, Iowa, while I was being examined for admission to the bar by the committee appointed by the court for that purpose, according to the usage then prevailing. The committee consisted of Christian W. Slagle of Fairfield, Amos Harris of Centerville and Edward L. Burton, who afterward became a distinguished judge in that district—all were able lawyers and all have passed away. The committee and myself disagreed in respect to a nice question that was put to me. Mr. Caldwell turned abruptly from an adjacent table where he was writing, and in that decidedly energetic manner characteristic of him, exclaimed, "The young man is right." This

*Edward H. Stiles was born in Granby, Conn., Oct. 8, 1836. He removed to Iowa in 1857 and settled in Ottumwa. While a resident of that city he served a term in the Iowa House of Representatives and was afterward elected to the Senate. While serving as State Senator he was elected Reporter of the Supreme Court. His labors extended through sixteen volumes, which were published and may now be found in the Iowa State Law Library. In 1886 he removed to Kansas City where he has since resided. He has enjoyed a large legal practice and for some years served as Master in Chancery.

incident early impressed me with him, and I refer to it for that purpose, as well as to illustrate the natural quickness of his mind and his vivid personality.

I next saw him engaged in arguing a question of great public interest before Henry B. Hendershott, the then presiding judge of the Ottumwa district. The case was that of the State of Iowa ex rel. vs. The County of Wapello, reported in 13th Iowa, 388, in which it was held for the first time by an undivided court that counties had no power to subscribe stock to build railroads, overruling the prior decisions of the court holding a contrary view. The case has ever since been regarded as a leading one on that subject throughout the entire country. Though quite young, he had already attained the reputation of being one of the brightest and ablest lawyers of the State. Associated with him in the argument was James F. Wilson of Fairfield, afterward a Congressman and United States Senator, whose distinguished services and great ability shed a permanent lustre on the State. Senator Wilson paid the debt of nature some years ago. Judge Caldwell, full of years and full of honors, retired from the Federal bench in 1903, after continuous service there of forty years. His service had been the longest of any Federal judge then on the bench, and it had been as illustrious and beneficial to the country as it had been long. It would have been a national blessing could it have continued. He exerted all of his great powers to hold the judicial course to just and proper lines. His wonderfully strong personality, his high character, his keen and exalted sense of justice, and the extraordinary vigor with which he enforced his views, gave him a national reputation. His virile opinions have been far-reaching in their influence and will increase in interest as time passes. They are distinguished for their entire consistency, for the profound knowledge of the law which they exhibit, and for the heroic application of those great principles of justice upon which our jurisprudence is founded. "He carried the torch of justice lighted from on High." He is justly entitled to be ranked as a great man, whose long and conspicuous services in the administration of justice and in the accomplishment of judicial reforms have left a lasting influence upon the country and its laws.

It has been said: "From a great man, subtract all that he owes to opportunity, and all that he owes to chance; all that he has gained from the wisdom of his friends and the folly of his enemies, and our Brobdingnagian would often turn out a Lilliputian." But this statement has no application to him, for his early years lacked opportunity, and chance took little part in his success. He exemplified the old saying, that every man to a great extent is the architect of his fortune, for by his own forces he compelled what opportunity did not offer, and his successes were mainly wrought as results of his own efforts and individuality. Of him it has been well written that "He furnishes one of the most notable examples to be found at the bar of this country, of the triumphs of intellect and industry over grave and discouraging obstacles."*

Had he remained at the bar he would have undoubtedly attained as great distinction in the field of practice as a lawyer as he did on the bench as a judge; for he strikingly displayed, while young, the essential qualities necessary for that purpose.

In addition to his accomplishments as a lawyer and judge he possessed those of a varied kind. Though not a collegiate or schoolman, his insatiable thirst for knowledge had impelled him to read widely, and made him conversant with history and general literature. His productions give evidence of a cultivated mind; but above all, they give evidence of intellectual and reasoning forces of the highest natural order. Every line teems with vigor. The productions of most men, on grave subjects, are sometimes tedious and require special cause to make them interesting. Not so with his. About them, and upon whatever subject, there is a lively quality, an intellectual fire, that at once fixes attention and kindles interest. Nor were his productions confined to judicial opinions. His diversified qualities made him a favorite at bar meetings and banquets, and on various occasions his presence and speech were sought after. What he said or was expected to say never failed to evoke interest, and his audiences were rarely disappointed.

* *Distinguished American Lawyers*. N. Y., 1891.

Among his most widely known addresses and papers are:

"Railroad Receiverships in the Federal Courts." Before Greenleaf Law Club, St. Louis, 1896. Pamphlet.

"Trial by Judge and Jury." Before Missouri Bar Association. *American Law Review*, Vol. 33, 1899.

"Receiverships and Preferential Debts." Before Colorado Bar Association. *American Law Review*, Vol. 37.

"The Relation of Debtor and Creditor." Before Arkansas State Bar Association. 1886. Pamphlet.

"The Insecurity of Titles to Real Estate." Pamphlet.

"The American Jury System." Pamphlet.

"A Lawyer's Address to a Lay Audience." Pamphlet.

Address, Dedication Hot Springs County Court House. 1889. Pamphlet.

Address, Monticello Fair Association. 1886. Pamphlet.

Address, Before New England Society. St. Louis. 1895. Pamphlet.

Address, Old Settlers Association. Van Buren County, Iowa. 1889. Pamphlet.

Address, Pine Bluff Banquet.

Address, St. Paul Bar Banquet. 1892. Subject, United States Court of Appeals.

Viewed as an individual from a social standpoint, no one could be more interesting or charming: interesting, in his reminiscences, in his wonderful memory of early events, in his graphic narration of incidents connected with the Iowa frontier, under the shadow of whose primeval forests he was reared amidst the struggles of the hardy pioneer, and from these deep surroundings imbibed that love of nature and drew that inspiration of divine protection and human sympathy that characterized his subsequent career; charming, in his tall, broad-shouldered and commanding figure—a little bowed by the stoop of the student; in his markedly strong and heroic face, "bearded like the pard;" in his frank and open personality, in his bluff and boundless hospitality, in his hearty welcome and generous entertainment; in short, in the supreme originality of the man, which no art could conceal, and which displayed itself in his spirited and racy conversation, in which wit and wisdom were happily blended; in his animated table-talks and post-prandial speeches, in his keen sense of humor, in his amusing stories, his hearty laugh and robust manners.

It was these traits that endeared him to the people of Iowa, where he lived for nearly thirty years, to the soldiers of his command, and especially to the people of Arkansas, of whose federal court he was the judge, of whose capital he was a resident of nearly forty years, and whose civic institutions he helped to rescue and rebuild from the smouldering ashes of civil war. Though he was viewed at first by them with suspicion, if not actual aversion, as a northern intruder and soldier who had actively and directly aided in encompassing their defeat, and who at the head of his conquering command had been the first to enter Little Rock, they soon came to know and respect, and finally to revere him, for his manly qualities, his unspotted character, and his very able and absolutely impartial administration of justice, untrammeled by senseless impediments; for, though deeply learned in the law and intimately familiar with its history and the course of judicial decisions, he had no patience with mere quibbles and stale precedents when interposed to thwart the course of substantial justice.

As an Iowa soldier and officer he served with conspicuous gallantry, and was on the point of being made a brigadier-general for distinguished service when he accepted from Mr. Lincoln his appointment as Federal judge.* Had he remained in the service and been given a wider field of operations, he would doubtless have attained still greater distinction. In this connection I cannot refrain from quoting as apropos the following extract from General Davidson's official report of the capture of Little Rock:

"Lieutenant Colonel Caldwell, whose untiring devotion and energy never flags night nor day, deserves, for his varied accomplishments as a cavalry officer, promotion to the rank of a general officer."

Coming, as already indicated, to judge among a people with whom he had been actively at war, and who were naturally

*At about this period or not very long after, James F. Wilson wrote Colonel Caldwell from Washington:—

"You can be a Brigadier-General or a United States Judge. Which do you prefer?"

I heard it said, at the time, that Wilson had been instrumental in securing the Judgeship for Colonel Caldwell, because he feared his rivalry, and wanted to thus shelve and get him out of his way to the United States Senate. There is nothing in this letter, however, to show this, but it would seem rather the contrary, as his promotion to a Generalship, which he might have chosen, would have added still more to his strength and popularity.

stirred by resentment and distrust, it seems strange that he so soon and thoroughly gained their entire confidence and esteem. His extraordinary personality and high sense of justice furnish the explanation. That such was the case is shown by the following correspondence and references. In response to a communication addressed by me to one of the foremost lawyers and citizens of Arkansas, George B. Rose, of Little Rock, he writes:

It is a great pleasure for any citizen of Arkansas to testify to the immense service which Judge Caldwell rendered to this state. It is probable that Arkansas never had a citizen to whom it was more deeply indebted. He came here during the civil war, as an officer in the northern army, and was appointed almost from the saddle to the bench. It was expected that he would carry into his new office the animosity which the war had engendered; but it was found that as a judge he had neither friend nor foe, and that his one purpose was to do justice between the parties. Shortly after his appointment the policy of reconstruction was inaugurated, all citizens who had participated in the late rebellion or sympathized with the rebels were disfranchised, and the state was ruled by a horde of adventurers who came down for the purpose. In those evil days it was almost impossible to get justice in the state courts, but if any man could obtain admission to Judge Caldwell's court he was sure to receive a fair and impartial hearing and an honest judgment. His court, therefore, became the refuge for every one who by any means could gain admission under the Federal laws.

During the six years that the Carpet-Bag regime lasted he was the greatest protection that the people of the state had. He remained all the time a strong Republican, but did not carry his politics upon the bench, nor did he permit himself to be drawn into any of the machinations of his party, as unfortunately did some of the Federal judges of the south.

When the Carpet-Bag yoke had been cast off, it was proposed in congress to re-establish it, and a committee was sent down composed largely of the bitterest enemies of the state, for the purpose of investigating conditions. It was expected that they would make a report favorable to the plan, but largely through the influence of Judge Caldwell, who exposed to them the abuses of the Reconstruction government, and whose authority and influence were too great to be ignored, they reported in favor of the maintenance of the government which had been established by the people. Had Judge Caldwell at that time taken the other side, it is practically certain that the Carpet-Baggers would have been restored to power by the aid of the bayonet, and the state would have suffered an injury from which it could not have recovered for many years.

Judge Caldwell has also been a great benefactor in the liberalization of our laws. He has always taken very advanced ground in favor of

judicial reform, and has left imperishable traces upon our statute books. He was largely instrumental in securing the adoption of the code of civil practice. At first, our courts were disposed to look upon it with disfavor and to construe out of it all of its vitality. Judge Caldwell, however, always gave it in his court a most liberal, beneficent construction, as indeed he gave to all acts; and finally he infused into all our tribunals and into our bar the same contempt for technicalities which he himself felt. In consequence, Arkansas is, of all the states, the one which has, I believe, the most liberal system of practice; the one which looks most exclusively to the justice of the case, and which cares least for the forms of procedure.

The women of the state are particularly indebted to Judge Caldwell. He felt very strongly the injustice which was done them by the common law, and through his exertions acts were passed securing them in their rights to enjoy their property and earnings and to dispose of them, which are as liberal as could possibly be devised.

He was also a friend to honest debtors, and procured the passage of statutes giving them the right of redemption from sales under foreclosure and the like. During a part of his early tenure, there was no limitation in this state upon the interest that might be exacted, and he witnessed a great many abuses by the descendants of Shylock which he was powerless to prevent. This gave him a strong distaste for usury, and he induced the legislature to adopt strong laws against contracting for interest in excess of ten per cent. At first the usurers set up a cry that money could not be lent at that rate, but the result has been that money has been more plentiful and more easily obtained than before, while the fangs of the usurer have been drawn.

There are a great many other reforms in our law of which he is the author, but it would perhaps be too tedious to enumerate them all.

As a judge, he was not only fearless and honest, seeking only to do justice, but he was also conspicuous for his learning, particularly in the decisions of the Supreme Court of the United States.

When Judge Caldwell left the state, it is safe to say that his departure was looked upon with regret by every person within its borders. So far as I know he had not an enemy; while the members of the bar regarded him with the strongest personal attachment. He was sometimes hasty of speech but never unkind in intention. He was particularly kind to young lawyers, and always took care that their clients did not suffer in consequence of their inexperience, and he did this in so gentle a way that they felt no humiliation. Whatever success I have had at the bar has been largely due to his teaching. But my sense of personal attachment has not led me to exaggerate in any degree his incalculable public services to our state.

Judge Jacob Trieber, judge of the United States District Court for the Eastern District of Arkansas, writes concerning him: "You have no idea of what a warm place he has in the hearts of the people of this State."

The following extracts along the same line are from Democratic newspapers, and cannot therefore be supposed to have been influenced by any political bias towards Judge Caldwell. This is from the *Arkansas Democrat* of January 7, 1884:

In place of Judge McCrary, recently resigned from the bench of the Eighth Circuit, we know of no man upon whose shoulders the judicial ermine could so justly and so fitly be placed as upon those of Henry C. Caldwell, the present Judge of the Eastern District of Arkansas. There is no district judge who has had so many novel and interesting questions of first impressions before him, and who has so rarely been mistaken in dealing with them.

When he first went upon the bench, now nearly twenty years ago, he had to deal with the acts of Congress confiscating the property of Confederates. These laws were designed to act upon the principle and follow the usages and procedure of Admiralty courts, where no juries are allowed, and nothing was said in the act in regard to jury trial. Hence most, if not all, of the District Judges, in administering these laws, held that causes under them were admiralty causes, and no trial by jury should be allowed. But Judge Caldwell, then newly administering Federal procedures, saw through the fallacy of this reasoning, and held that under the constitution they were common law causes, and their issues triable by jury; in which he was sustained by the United States Supreme Court. He then had to pass upon the perplexing question of the statute of limitations growing out of the closure of the courts during the war and the construction of the limitation act of Congress of 1863—in all of which he was correct, and his rulings sustained by the Supreme Court.

And then came before him the questions growing out of the "direct tax" laws of Congress of 1861, and their amendments; in these cases he was also sustained.

Then came the variety of questions of slave contracts, contracts arising from the purchase and sale of slaves, negotiable paper and conveyances of property based upon slave consideration, in which he was also sustained.

Then in regard to contracts, agreements and conveyances based on confederate money consideration. Also contracts and conveyances and "*ex-delicto*" rights dependent upon the legislation of the confederate governments in the revolted states and the decrees, judgments and orders of their courts, and the action of their ministerial officers.

And later the administration of the reconstruction laws, the election laws, and civil rights laws passed by Congress, all of which involved new

issues and the new application of legal principles. Besides these, the administration and construction of the revenue and bankrupt laws of the United States, both of which were new.

In the construction and application of this long array of new statutes, great caution, sound judgment, clear, precise and accurate knowledge of legal principles were necessary, for there were few, if any, precedents to guide the steps of the traveler in these then unexplored regions of the law. To evolve just conclusions from all these various and momentous issues, required a clear intellect, great grasp of mind, and thorough familiarity with legal principles and their analogies to enable the Judge to safely thread his way through the mazes of this legal *terra incognita*. It is safe to say that no judge upon the Federal bench has had so many nice and difficult questions to pass upon, and made so few errors. It may truly be said that Judge Caldwell, though sitting on the bench with such distinguished jurists as Justice Miller, Judge Dillon and Judge McCrary, has never appeared to a disadvantage in such august presence. His moral qualifications for the position are as full and high as the most scrupulous and exacting moralist could desire. He has as a judge kept his ermine pure and unspotted, against which no breath of calumny has ever breathed. And this, though his judicial career for ten years was surrounded by all the temptations, opportunities and corruptions prevailing at the close of the war and in the demoralization of reconstruction. The inducements for political preferment and wealth held out to the weak, the avaricious, the ambitious and corrupt during that trying period, swerved him no jot from the path of duty and honor. Though an inflexible republican he has so justly and discreetly performed the functions of his office among a people who were for years strongly opposed to the legislation he was enforcing, that he has convinced all parties and all shades of opinion, of his justness, integrity and wisdom, and endeared himself to the profession of the law and to the people. The government could in no way so well honor, protect and uphold its interest and its dignity, as by his appointment.

The following is from the *Helena News*:

A soldier serving his country on the field of battle, he sheathed his sword and was appointed to a Federal judgeship by Abraham Lincoln. No man could have been placed in a more trying position. The Carpet-Baggers looked to him to reward their devotion to the Republican party by sustaining all of their attempts to plunder the people of the south. The southern people, smarting under the sting of defeat, which Caldwell had helped to administer, naturally looked upon him as an enemy. But quickly they realized that in Judge Caldwell they had a just and honorable judge; a man only to be feared when they were guilty of wrongdoing. He has commanded and still commands the love and respect of the people of the entire south, of all political parties, though no oppor-

tunity ever escaped his quick perception and masterly use of language, to score unmercifully the highest as well as the lowest for their misdeeds.

In the field of judicial reform, in addition to the instances pointed out in the foregoing references, his views, orders and opinions in respect to railroad receiverships, stand out conspicuously, and have operated as powerful factors, especially in respect to claims that should be deemed preferential to mortgages securing the bondholders. It is not very long ago that the doctrine that claims for operating supplies furnished railroad companies were preferential to those of the mortgage bondholders, was unknown. The doctrine is comparatively new, because railroads are new. It was supposed and so held that such mortgages were superior to any and all subsequent debts that the railroad might incur. After a time this rule became so softened as to admit as preferential claims of this kind which had arisen just before, or a very short time before, the receivership. Judge Caldwell may be properly regarded as a pioneer in this field, and the first to declare and carry out by appropriate orders the doctrine that such mortgages must give way to the claims of creditors for supplies and labor necessary to the operation of the road, without regard to any special limitation as to time, other than that fixed by the order appointing the receiver.

To avoid the confusion that had arisen in the courts as to what claims were or were not preferential, and as to the time within which they must have arisen, he made it an invariable rule in all proceedings to foreclose such mortgages, where a receiver was asked, to make specific provision in both these respects in the order appointing the receiver, and as a condition thereof. His course in this regard was at first bitterly assailed from certain quarters, but it gradually grew in favor until the rule has become universal in the ten states and territories composing the Eighth Circuit, and I think generally throughout the country. The principle received the approval of the Supreme Court of the United States in Fosdick vs. Shall, 99 U. S., which was the first utterance of that court on the subject, and has been amplified and applied in a variety of cases since.

Through and by what processes of reasoning he came to these conclusions is clearly shown in his response to the toast, "Coon-Skin Cap Law," given at a banquet of the Colorado Bar Association a number of years ago, which has been rescued from oblivion and from which I must be allowed to make the following liberal quotations, as it so completely covers the case:

MR. TOASTMASTER: I am persuaded that you are possessed of some occult power. In no other way could you have knowledge of the legend of the "Coon-Skin Cap Law."

To those not blessed with the occult power of the toastmaster, the toast implies a comedy, but in fact it relates to a tragedy, and to the saddest of all tragedies—a tragedy directly traceable to judicial ignorance and error, and which "revives the memory of a rooted sorrow, which weighs upon the heart."

Mr. Ruskin says, "The greatest thing a human soul ever does is to see something and tell what it saw in a plain way." I will essay that task.

A man entered into a contract with a railroad company whose road ran through two or more states, to furnish wood and ties to the company, to be taken from the timberlands in the Mississippi river bottom, which at that point was fifty miles wide and annually overflowed from five to twenty feet in depth. In this bottom, perched upon stilts, he built a log cabin, and, with his wife and an old negro man who assisted him in his work, lived there, except during the periods of overflow, when they were driven to the hills.

He was engaged in this work about four years, during which time the company, which was in a chronic state of impecuniosity, only paid him on account a sum barely sufficient to buy enough meal and bacon to subsist upon.

The annual overflow drove him out of his cabin to the hills. Sickness ensued, and it was nearly a year before he was ready to resume his work; and just as he was ready to do so, the railroad went into the hands of a receiver, upon a bill filed to foreclose a mortgage upon it.

All of this happened more than a quarter of a century ago. When the bill was filed the timid and callow judge [alluding to himself] found some authority for treating as preferential, claims for labor and materials that had accrued within three or four months; and he stretched this to six months, and made an order accordingly.

Presently a petition of intervention was filed in the case, and when it came on for hearing, the intervenor appeared in person to represent his claim. He wore a coon-skin cap, with the tail hanging down the back, coarse cotton shirt, and pants and shoes to correspond. He was long past the meridian of life; his hands were calloused by toil, and his face wore

the "shadowed livery of the burnished sun." But the wrinkles, the sunburn and the unkempt beard could not conceal from view that ineffaceable and unfading charm that always marks the face of the man of honest good will. The poet took no liberty with truth when he said "Honest labor bears a lovely face." It was evident that he had earned his bread according to the divine decree, "in the sweat of his face."

In a plain, modest manner he told how he had worked getting out wood and ties for the road, and how the company had made small payments from time to time, always promising payment in the near future. The balance due him for wood and ties amounted to over $700.00, a sum which to him was a fortune, and all his fortune.

At the close of his testimony, with deference and modesty, he said: "When I sold wood to steamboats on the Mississippi river I had a lien for its price, on the boat, ahead of mortgages, and I suppose there is no difference between wood sold to run a steamboat and wood and ties sold to run a railroad!"

But the Supreme Court had said they could not find that the rule which has obtained in admiralty from the dawn of commerce, which prefers such claims over mortgages, had ever been applied to railroads; and this, of course, was true, for there had been no railroads to call for its application; they were a modern invention. The court might have fortified its opinion by citing a case in point: A suit was brought before a justice of the peace in Vermont by one farmer against another for breaking his churn. The justice took time to consider, and then said that he had looked through the statutes carefully, and could not find that any action had ever been brought before for breaking a churn, and gave judgment for the defendant.

It is a curious fact that the errors and mistakes of great men and great tribunals are proportioned to their greatness. When they do err, the error is colossal. * * *

The last item in the account was eleven months old when the road went into the hands of a receiver. The judge decided that this was fatal to his claim, according to the then decision, which restricted the payment of such claims to those which had accrued within six months; that although his wood and his ties kept the railroad running and from being utterly valueless either as an instrument of commerce or as a security, he had no equity to be paid in preference to the mortgagees, whose security he had preserved.

The decision was a thunderbolt for that old man. He looked like a man sentenced to death. With a trembling hand he reached for his coon-skin cap, with difficulty arose from his seat, and tottered rather than walked out of the court room.

He took the train for home and was let off at his cabin. His aged wife and the old negro man were waiting his return with eager expectation. He entered the cabin, and in anguish said, "Oh wife! Oh Ned! We are ruined! The judge will not pay us anything for our wood and

ties.'' While his wife and the old negro man gave way to tears and sobs, the coon-skin cap man sat silent and dejected. Presently he rose up and went out of the cabin.

His wife prepared their frugal meal and called her husband. There was no answer. No answer coming to repeated calls, his wife and the old negro went out to search for him. They found him—hanging to the limb of a tree, dead. The coon-skin cap was lying at the root of the tree.

No lesson is lost to us if it doesn't come too late. The specter of that man of honest toil hanging from that tree, the vision of that cap, and an uneasy and alarmed conscience, imposed upon that judge the burden of prayerfully enquiring whether the judgment that produced this awful tragedy was just, and upon making that inquiry he found that there was a close analogy between ships and railroads; that both were instruments of commerce; that neither could perform their functions or be of any utility to the public, or of any value as a security, unless they were kept running, and that they could not be kept running without labor, materials and supplies, that were not and could not be paid for at the time they were procured or purchased; and that every one taking a mortgage on such property knew this, and must therefore be held to have impliedly consented that such claims should have preference over his mortgage.

He found that there was just as much law for saying that such claims were valid if they accrued within six years, as there was for saying that they must have accrued within six months; that the length of time depended on the length of the chancellor's foot; in a word, that all of the law on the subject was judge-made law; and that judge thereupon determined to measure out equity according to the length of his own foot instead of that of some other judge, and to make a little judge-made law himself, and he then and there made it a rule of his own court that no railroad receiver would be appointed except upon the condition that all claims for labor, supplies and materials, necessary to keep the road in operation, and all claims for damages resulting from its operation that were not barred by the statute of limitation, should have preference over mortgages. And this rule is what the toastmaster has been pleased to call the ''Coon-Skin Cap Law.'' This rule was without any precedent to support it, but it was sublimely just. It was its own precedent, and it would be happy for mankind if all judicial precedents had the same everlasting and impregnable foundation. Since the adoption of that rule no citizen of Arkansas has had occasion to commit suicide for the same reason that the coon-skin cap man did. * * * After all, the human skull is but the temple of human error, and judicial clay, if you analyze it well, will be found to be like all other human clay.

At first the ''Coon-Skin Cap Law'' was not in favor with most judges, but its author consoled himself with the reflection that great truths commonly dwell a long time with minorities. But it is a gratifying fact that the sun sets every night on an increased number of support-

ers of the "Coon-Skin Cap Law." Through legislation in some states, and by judicial decisions in others, it is fast becoming the law everywhere. Like John Brown, the body of the man with the coon-skin cap "lies mouldering in the grave, but his soul goes marching on."

In relation to the limit of time and the character of supplies to entitle to a preference, there is a total want of uniformity in the decisions of the courts, and even in the decisions of the same court. Claims six years old have been allowed by the Supreme Court, and at another time it has said that only claims which accrued "some short time" before the receiver was appointed could be paid, which is exactly as definite as to say that a certain thing is as big as a piece of chalk. The equity is admitted by allowing any debt to be preferential for ever so short a time. The principle being established, the equity should be complete. There is no difference in principle whether such a debt is six days, or six months, or six years old—if it was a preferential debt in its inception that equity inheres in it until it is barred by the statute of limitation. There is no rule of law or equity to the contrary; there is only the varying and conflicting opinions of judges. It is a legislative function to make a statute of limitation, and every state has such a statute, which is applicable to preferential debts as to any other.

It has also been said that there is no difference between a mortgage on a farm and a mortgage on a railroad. Before a mortgage on a railroad can be likened to a mortgage on a farm the farm must be put on wheels and, propelled by steam or other motive power, be under obligations to the public to carry passengers from the Atlantic to the Pacific, and enjoy the high privilege of running over every other farm on the line of its route between the two oceans, and from the nature of its business be compelled to obtain on credit the labor and materials essential to keep it moving, and enable it to discharge the duties it owes to the public. * * * The whole doctrine is bottomed on the essential difference between a railroad and all other kinds of property except a ship; between a ship and a railroad the analogy is perfect.

The law on this subject should be known, but all that is known about it outside of the jurisdiction where the coon-skin cap law prevails is, that it is consistent in its inconsistency, certain in its uncertainty and uniform in its want of uniformity.

The fine distinctions drawn by some courts between preferential and non-preferential debts are simply bewildering. In one case a claim for fuel was preferred, and a claim for headlight and lubricating oil rejected, presumably upon the ground that red hot boxes resulting from the non-use of lubricating oil would perform the office of the headlight, and that the pungent odor emitted from the hot boxes would advise all animal creation having nasal organs of the approach of the train. Such microscopic administration of equity requires a much keener vision than ordinary men possess, or, according to Pope, were ever intended to possess:

"Why has not a man a microscopic eye?
For this plain reason, man is not a fly."

In time of war it is permissible to send out a column of cavalry with orders to "subsist on the country," but courts of justice ought not to decree that railroads can, either in peace or in war, "subsist on the country" through which they run for the profit of their bondholders, who are always practically their owners.

That this was an important step in judicial reform which has redounded greatly to the benefit of the people in the correction of a crying evil there can be no question. What this crying evil was is clearly told in the following excerpt from his paper on Railroad Receiverships:

Another benefit inuring to the railroad company and its mortgage bondholders from a railroad receivership was the opportunity it afforded to escape the payment of all obligations of the company, for labor, supplies and materials, furnished and used in the construction, repair and operation of the road. Whenever a railroad company became so largely indebted for labor, material and supplies, and other liabilities incurred in the operation of its road, that it could profitably pay the expense incident to a receivership and foreclosure, for the sake of getting rid of its floating debt, it sought the aid of a friendly mortgage bondholder through whose agency it was quickly placed in the hands of a receiver, and immediately a court of equity was asked and expected to do the mean things which the company itself was unable or ashamed to do. The president of the company was commonly appointed receiver, and the work of repudiating its debts was swiftly and effectually accomplished through the aid of a court of equity. The floating debts incurred in improving and operating the road, for the benefit of the company, and its security holders, were repudiated, and the road formally sold under a decree of foreclosure to a new company in name, organized by the owners of the stock and bonds of the old company. By this process a railroad company was enabled to escape the payment of its debts by what was little more than a mere change of its name.

He also adopted a rule of court providing that such receivers might be sued. Generally, leave to sue a railroad receiver in a court of law was rarely given. The result was that all of the litigation growing out of the operation of a railroad, which might be hundreds of miles in length, was concentrated in the court appointing the receiver, and on the equity side of that court, where the suitor was denied a trial by jury, although his demand was purely a legal one. This

mode of procedure was attended with great delay, costs and inconvenience to the claimant. To remedy this condition was the object of his rule, giving the right to a claimant to establish the justice and amount of his demand, by the verdict of a jury in a court of the county where the cause of action arose and the witnesses resided.

Among his many decisions enforcing his views on the subject of railroad receiverships, those in Dow vs. Railroad, 20th Fed. Rep., and Farmers' Loan & Trust Company vs. Railroad Company, 53rd Fed. Rep., may be mentioned; and in the paper above referred to—Railroad Receiverships in the Federal Courts—his views on the whole subject, enforced with all the powers of his mind, will be found.

That the value of his judicial services in the direction mentioned was highly appreciated by the country, was fully shown by the press and other publications of the times. As illustrative of this, in 1894 there was presented to Congress a paper bearing the following title:

"Memorial of the General Assembly of the State of South Carolina to the Congress of the United States in the matter of receivers of railroad corporations, and the equity jurisdiction of the courts of the United States."

In the course of this memorial the following language is used:

> There have been instances in which judges of federal courts have refused to appoint receivers of a railroad. Appalled at the power that such an appointment would place in the hands of the court, and with a just sense of the responsibility thus devolved upon the court, they have shrunk from granting the order of appointment. Had all the federal judges been like Mr. Justice Miller, Mr. Circuit Judge Dillon, or Mr. Circuit Judge Caldwell, the courts of equity of the United States would never have been degraded to their present position of being feared by the patriotic and avoided by the honest; nor would they have opened the door to the mismanagement, corruption and nepotism which have marked, and still do mark, the administration of railroads by the courts.

When it is noted that the three great judges here referred to, were all from this State, Iowa may well be proud of her products, and each of them proud of this association of his name.

In the *American Law Review* of August, 1893, Vol. 27, will be found an article entitled *The Court Management of Railroads* from the pen of that distinguished lawyer, judge and legal writer, Seymour D. Thompson, with whose name the profession is familiar. He was for some years a judge of the Missouri Court of Appeals, and the strength of his opinions attracted the general attention of the bench and bar. He afterward became generally known as one of the ablest law writers of his time, giving to the profession among other works, *Thompson on Negligence*, and later *Thompson on Corporations*, considered the most elaborate and best treatise that had been given on that subject. In the article referred to, after touching upon the action of Judges Miller and Dillon in refusing to grant a receiver of the St. Louis, Iron Mountain & Southern Railroad, and take the property out of the hands of the railroad company pending the foreclosure, he thus refers to Judge Caldwell:

> Proceeding on similar views, Mr. Circuit Judge Caldwell when Judge of the United States District Court for the Eastern District of Arkansas, and *ex officio* Circuit Judge, persistently refused to allow his court to go into the general railroad business, and granted receivers of railroads on a principle of necessity, and then, only upon equitable terms. * * * The Supreme Court approved his policy. One of the equitable conditions imposed by him on bondholders soliciting the appointment of a receiver, was that they should consent in advance, that the receiver might be sued in the state court, and that they should appoint an agent within the jurisdiction, on whom the process of said court might be served. His decision in Dow vs. The Memphis, etc., R. R. Co. (20th Fed. Rep., 260), is one of the best judgments that has ever been delivered on the subject of railway receiverships. One cannot read it without acquiring the impression that if other judges had pursued the same policy, the disciplinary act of congress, passed in 1887, authorizing actions against receivers of railroads appointed by the federal courts to be brought without obtaining leave of court, would not have become necessary. * * * One cannot read the decision of this eminent judge without feeling regret that he has not long before this, been transferred to a seat on the highest Federal bench. His long experience as a Federal judge, his clear perception of legal principles, his strong sense of justice, his well known firmness of character, and especially the entire absence of any unsteadiness in his judicial work, point to that place as his proper sphere.

His decisions upholding the rights of the public, against powerful interests, are numerous and may be found in the reported cases of the Federal Court covering a period of nearly four decades. I feel privileged to refer to just a few of these in corroboration of my statements. The first relates to the rights of persons under contracts with life insurance companies, some of whom it must be confessed display more energy in soliciting business and collecting premiums than they do in paying losses. The case of McMasters vs. New York Life Insurance Company was tried in the Circuit Court of the United States for the Northern District of Iowa, whence it was taken to the United States Circuit Court of Appeals, where it was held by a divided court that the plaintiff was not entitled to recover—Judge Sanborn delivering the opinion for the court, and Judge Caldwell a dissenting one. Both are exhaustive, and taken together constitute a masterful review of the authorities on the subject. That of Judge Caldwell illustrates his powers of keen discrimination, close analysis, and forceful statement.

The pivotal question in the case was whether preliminary statements of the soliciting agent, and one contained in the application, as to when the policy was to commence, as affecting the time within which the premium must be paid, should control, or the express terms of the policy itself in that behalf as it was finally written up. McMasters signed an application for insurance. It was dated December 12th, 1893. It was the express oral understanding and agreement between him and the agent that the first year's premium was to be paid by McMasters upon the delivery of the policies to him, and that the contract of insurance was not to take effect until such delivery. The application itself provided that the policies should not be in force until the actual payment of the premiums to the company. The agent in forwarding the application and for the sole purpose of enabling him to get the benefit of an extra commission for that month, interlined on the face of the application, and without the knowledge or consent of McMasters, the words "Please date policies same as application." The company did not fully comply with this request, but dated

the policies as of December 18th, 1893, and provided for the payment of the annual premiums from that date, and also provided that after the policy had been in force for three months, the assured should have a grace of thirty days for the payment of the next premium. These policies were taken by the agent to McMasters, December 26th, 1893, who asked him if they would insure him for the period of thirteen months (the one year with the period of grace added), to which the agent replied that they did so insure him, and thereupon McMasters paid him the full amount of the first annual premium, and *without reading the policies*, received them and placed them away.

Calculating from the date of the policies, and the time for the payment of the premium expressly fixed therein, the thirteen months period would expire January 11th, 1895; but calculating from the date the policies were delivered and the premiums paid, it would not expire until January 26th, 1895. McMasters died January 18th, 1895. It was contended by the company and so held by the court, that the express terms of the policy fixing its duration and the time within which the premiums must be paid, must govern, and that all prior acts and negotiations between McMasters and the agent, were merged in the policy—the final written agreement of the parties—the express terms of which could not be changed by extraneous evidence; and that the operation of this rule was not varied by the fact that McMasters, relying on what had taken place between himself and the agent, did not read the policies, as there was nothing to prevent him from so doing. Judge Caldwell took the opposite view and fortified it by a thorough review of authorities on the construction of life insurance contracts, which he contended should receive a more liberal construction than that applied to ordinary contracts. To one reading the able opinion of Judge Sanborn, it seems perfectly invulnerable, until he reads the dissenting one of Judge Caldwell, 99 Federal Reporter, 856. The case was taken on a writ of certiorari to the Supreme Court of the United States, and that court sustained the contention of Judge Caldwell, reversed the majority opinion, and ordered

judgment to be entered for the plaintiff. 183 U. S. Reports, 25.

The case is one of public interest as protecting the rights of the citizen under insurance contracts, and defining the duties of insurance companies in the respect referred to.

The next case of public interest I desire to notice, and in which grave constitutional questions were presented, is that of the Pacific Express Company vs. Seibert, Auditor of State, 44th Fed. Rep., 310, in which was involved the constitutionality of the statute of Missouri providing for the taxation of the property of express companies, defining what should be regarded as such and prescribing the mode of taxation and the rate thereof.

The district judge had granted an injunction staying the collection of the tax. Judge Caldwell held that the act was valid. The case went to the Supreme Court of the United States. That court affirmed the judgment, 142 U. S. Rep., 339, and in the concluding words of its opinion, specially commended both the reasoning and the language of Judge Caldwell's opinion in these words: "The opinion of the court below on this branch of the case is elaborately argued, and is conclusive. We concur in the reasoning of it as well as in the language employed, and refer to it as a correct expression of the law upon the subject."

His views on what is termed "Government by Injunction," and the growing tendency to fly to the equity side of the court on every occasion for that relief; on the right of trial by jury; and of wage earners to organize, to peaceably assemble, and to strike for the increase or against the reduction of wages, are well exemplified in what is widely known as the Union Pacific case, in that of Hooper vs. The Oxley Stave Company, and in his address on "Trial by Judge and Jury," before the Missouri Bar Association. His action and decision in the first of these, and the somewhat startling boldness of the views therein expressed upholding the right of the employees of the Union Pacific Railroad Company, whose wages the receivers had arbitrarily reduced without giving them the preliminary notice required by the agreement previously entered into

by them and the railroad company before it went into the hands of the receivers, at once drew upon him the attention of the whole country, and though criticised by mortgage bondholders and those in that line of interest, they were hailed with general approval. I should greatly desire to enter into the details of these cases and exhibit his views by quoting from his opinions, but as limitation of space forbids, I must content myself with this passing reference. Suffice it to say, that in my opinion they present as powerful arguments as were ever used in support of the rights of the people, of the rights of trial by jury, and against its insidious infringement by the too frequent appeals for the writ of injunction.

As illustrating his natural disregard for mere technicalities tending to impede the course of justice, and his favor towards legislative and judicial reforms tending to facilitate its attainment, as well as his aptness and pungency of expression, the case of McDonald vs. State of Nebraska, 101 Fed. Rep., 171, may be referred to. The case was originally brought in the name of the State Treasurer of Nebraska in his official capacity. An amendment was sought and allowed to change the name of the plaintiff by substituting the State of Nebraska in place of that of the treasurer. The defendant had insisted that the treasurer of state in his official capacity, was not, and the state was the proper party to maintain the suit, and it was contended that the substitution of the State of Nebraska as plaintiff in the action was a change of the cause of action, and was equivalent to the bringing of a new action, and that, as the statute of limitations had run against the plaintiff's claim before the substitution was made, the cause of action was barred. On this subject Judge Caldwell in his opinion said:

> A defendant has an undoubted right to insist that the person entitled to recover on a cause of action set forth in a petition, shall be brought on the record as the plaintiff in the action, to the end that he shall not be compelled to respond twice to the same demand; and that the one suit shall bar all others for the same cause of action. But it has come to be the settled law that where, either by mistake of law or facts a suit is brought in the name of a wrong party, the real party in interest, entitled to sue on the cause of action declared on, may be substituted as

plaintiff and the substitution has the same legal effect as if the suit had been originally commenced in the name of the proper plaintiff.

There are in the history of the jurisprudence of every country certain epochs which mark the beginning of distinct trains of legal ideas and judicial conceptions of justice. There was a time in England and in this country when the fundamental principles of right and justice which courts were created to uphold and enforce were esteemed of minor importance compared to the quibbles, refinements, and technicalities of special pleading. In that, the great fundamentals of the law seemed little, and the trifling things great. The courts were not concerned with the merits of the case, but with the mode of stating it. And they adopted so many subtle, artificial, and technical rules governing the statement of actions and defenses, that in many cases the whole contention was whether these rules had been observed, and the merits of the case were never reached, and frequently never thought of. Happily for mankind, and for the law itself, that epoch is past in England and in this country, and we now have an epoch in which substance is more considered than form, in which the justice and right of the cause determine its decisions. * * * There, as here, every error or mistake in the pleadings which does not affect the substantial rights of the adverse party may be cured by amendment; and what is meant by substantial right, is a right going to the actual merits of the case. Such a right is not acquired by a mistake or error in pleadings, which has not mislead the other party to his prejudice. And the prejudice must be actual and irreparable and not merely theoretical. At this day, the party who seeks to profit by an error or mistake in pleading, must be able to invoke the principle upon which the law of estoppel is founded. And the emotion of surprise once so assiduously cultivated by lawyers, has lost its virtue. Extreme sensitiveness to that emotion no longer avails to turn a suitor out of court, or to delay justice.

In epigrammatic expression he has rarely been excelled. I have gathered at random from his miscellaneous productions the following, most of which may be classed as apothegms:

The four corner-stones which support the social fabric are the dwelling-house, the house of God, the school-house, and the court-house.

The first three of these institutions teaches us to do voluntarily what the fear of the fourth compels us to do.

They are the fountain heads of the virtue and intelligence essential to the maintenance of a free and stable government, and the institutions which form the citizen.

The dwelling-house is the sacred abode of virtue and security; nations that do not possess them are nomads or savages.

The house of God symbolizes the Christian religion, which anchors society on the moral foundation indispensable to the continued existence

of a Republic. A despot without faith may govern by force, but a free people cannot successfully govern themselves without faith in God.

The school-house symbolizes the education of the youth to qualify them to discharge the duties of citizenship, but these three corner-stones are not of themselves adequate to support the social fabric.

The lessons that teach the reward of virtue and the woes of vice are lost on many men.

For the perverse and wicked, who break away from the teachings and restraints of moral agencies, there must be something stronger than moral suasion.

The contests of passion and selfishness render it necessary that authority should exist somewhere and always be at hand to do justice and to repress and punish crime.

This necessity gives rise to the laws regulating the conduct of man as a member of society. These laws require him to do right and punish him for doing wrong, but they would be of no utility without a tribunal clothed with authority to compel obedience to them, and which has a fixed time and place of meeting for that purpose; and the court-house is that place. The court-house therefore symbolizes the law and its enforcement.

The most fearful and wonderful thing about man, is the imperious sway of superstition over his mind; it overpowers all sense of reason and humanity, and renders cruel and ferocious the mildest people on earth.

Sincere and kind-hearted christians delighted in burning the living bodies of heretics and witches, but would not permit physicians, in the interest of science and humanity, to dissect the dead body of saint or sinner.

A lawsuit may be likened to a labyrinth into which the parties enter full of hope and confidence, but from which they are likely to emerge weary and broken in spirit and estate.

The discharge of the supremely important duty attaching to the judicial office requires varied talents. These are some of the qualifications a judge should have: He must know some law—no man can know all the law—and have a strong and unerring sense of justice which is better than learning in the hair-splitting technicalities and refinements of the law, which often defeat rather than promote justice; he must have moral courage and be indifferent alike to censure and applause; he must be serene and tranquil under all circumstances, for emotion is the grandest of levelers, and impairs the force and dignity of magistracy; he must not believe without reason, nor hate on provocation; his constant contact with the injustice and wickedness of men must not shake his faith in the virtue of mankind; he must be mild and compassionate, but firm, inflexible and just; he must hear before he decides, for Solomon says, "He that answereth a matter before he heareth it, it is folly and shame unto him."

Clean, plain justice, honestly administered, in blunt English, is just as good as the polished article, and is likely to have about it a stronger flavor of common sense.

One who looks solemn and wise, usually enjoys a reputation for superior wisdom. whether he possesses it or not. Mr. Fox speaking of Lord Chancellor Thurlow, said his aspect was so solemn and imposing that it proved him to be dishonest, since no man could be so wise as Thurlow looked.

Prosperity and contentment will be the happy lot of the children who inherit broad acres, if they have the good sense to keep them, when the poverty, vice and crime of the city will make the nation mourn.

Macaulay has left on record a prophecy that the great cities will breed the barbarian who will some day destroy modern civilization. Recent events in some of our large cities give significance to this prophecy.

Reduced to its last analysis the intelligent and impartial administration of justice is all there is of a free government. It is the public justice that holds the community together. It is to the court that all must look for the protection of their liberty, person, property, and reputation.

The conflict and confusion in the law is past all remedy by the court. The only remedy is codification, and the people can bring this about. The lawyers have no power to do it. Beside, all great reforms must proceed from the people, from the non-professional to the professional, or from below, upward.

The courts are not to be censured for the continuance of chaotic conditions in the law. They made the reports but they cannot codify them. They cannot obviate the hardship of compelling a citizen to go to law to find out what the law is.

Corporations formed for business purposes are useful and necessary agencies, as a general rule. They furnish a convenient method of aggregating and managing capital in business pursuits, such as banking and insurance, building railroads and the like, and in all enterprises requiring a larger expenditure of money than individual capital can supply. But a corporation created for the sole purpose of lending money, is nothing but a concentrated and intensified usurer and miser. The man who lends his money and deals honestly with his customers, and resorts to no fraudulent or sham devices to evade the usury law, is a respectable and useful citizen. Even the miser has a soul which may sometimes be filled with generous emotions, but this artificial and magnified money lender has no soul, no religion, and no God, but mammon. By the law of its creation it is legally incapable of doing anything but lend money for profit; every other function is denied it by law; the song of joy, and the cry of distress, are alike unheeded by it; it neither loves, hates nor pities; its chief virtue is the absence of all emotion; it is argus-

eyed and acute of hearing, or blind and deaf accordingly as the one or the other of these conditions would best subserve its interest. Though a legal unit, it is infected with all the mean and plausible vices of those who act only in bodies, where the fear of punishment and sense of shame are diminished by partition. It never toils, but its money works for it, by that invisible, sleepless, consuming and relentless thing called interest. It never dies; and, unlike the man who lends money, has no heirs to scatter its gain. In the eager and remorseless pursuit of the object of its creation it turns mothers and children out of their homes with the same cold, calm satisfaction that it receives payment of a loan, in "gold coin of the present standard of weight and fineness." They have agents whose offices are embellished with a flaring placard reading "Money to loan." Over the door of every such office there ought to be inscribed in characters so large that none could fail to read, the startling inscription that Dante saw over the gates of hell:

"Abandon hope, all ye who enter here."

His happy blending of wit and wisdom in his lighter vein of speech and conversation to which I referred in the outset, is well illustrated in his remarks at the St. Louis New England dinner, and in his address before the Pine Bluffs Banquet. From the former I cannot refrain from making the following brief extracts:

An after-dinner speech is a kind of intellectual skirt-dancing that I know nothing about. To prevent misapprehension, I will take the precaution to add that I don't know anything about any kind of skirt-dancing. * * * I have no business here anyway. I am not a New Englander, but very far removed from them. Norse on one side and Scotch on the other, the reason that I am a dead failure at the intellectual skirt-dancing is apparent. The Norse in me is too stupid to make that kind of a speech, and the Scotch too religious. I never was in New England but once in my life, and then I got lost in the labyrinths of Boston and had to give a man a dollar to take me to my hotel. I had not forgotten the name of my hotel, however, and I was that much better off than the Colonel from Missouri who forgot the name of the suburb near Boston he wanted to go to. He said to the hotel clerk: "It runs in my head it is something like 'Whiskey Straight,' though that is not it exactly." "Oh," said the clerk, "I know. You mean Jamaica Plain." "Yes, that's it," said the Missouri Colonel, and immediately ordered a whiskey straight for the clerk and himself.

Undoubtedly the Puritan was a grand man. He was a Christian as he understood christianity. Religion was a very solemn thing with him. He believed that much feeling was synonymous with sin. Among scenes of pleasure there was no joy in his smile, and in the contests of ambi-

tion there was no quicker beat to his pulse. He rather endured than enjoyed life. His religion was so solemn, that singing, except when out of tune, was a sin, and dancing a device of the devil. A tuning-fork was the nearest approach to a musical instrument he could tolerate. He was infected with that curious and almost incurable infirmity, infallibility. He was sure of his creed, and a man who is sure of his creed, is sure of his own infallibility. The consciousness of his infallibility gave him splendid moral courage, which is the only kind of courage that elevates our character. * * *

The New Englander of to-day is much more tolerant than his ancestors. He has learned that there is more good in bad men, and more bad in good men, than his puritan ancestors ever dreamed there was. But while the Puritan thought a great deal about the next world, he did not lose his interest in this. He was frugal and thrifty and never mistook his capital for his income. When his conscience pricked him for owning slaves, he quietly unloaded them on the Virginia tobacco planters and immediately organized an abolition society to set them free, expiating the sin of trafficking in slaves himself by freeing the slaves of others.

He worked zealously for the conversion of the heathen. He had the happy faculty of mingling business with his missionary work, and when he sent a ship-load of 5,000 casks of New England rum to the heathen Africans, he sent on the same vessel a missionary; and the world has wondered ever since what the heathen with 5,000 casks of New England rum wanted with so much missionary. * * *

A cynic has said of him, that he was entitled to little credit for his virtues, because he had neither money enough to be extravagant, nor leisure enough to be dissipated. He believed in the providence of God, and his faith gave him splendid courage. He had the merit to conceive and the courage to execute grand things, but he did everything in the name of the Lord, to whom he gave the credit. He never was troubled on this score with the doubts that beset the old darkey in my state. An old colored woman who was teaching her grandchildren the catechism wound up with the statement. "Yes, and de Lawd freed your grandaddy and your gran-mammy." "What you telling them children dat for," said the old man, who sat in the corner smoking his pipe. "The Lawd never done no such thing. 'Twas the Union soldiers freed us, 'cause I done see 'em do it with my own eyes." "Well," said the old woman, "I reckon the Lawd hoped 'em to do it." The old man responded, "Well, maybe the Lawd hoped 'em some but he never done it by hisself. He done been tryin' to do it by hisself for a long time and couldn't."

Ladies and gentlemen, the difference between your ancestors and mine is this: Mine left their native country for their country's good, and yours left their native country for their own good. Mine left to

come to a country where they could "swear and chew tobacco," and yours left to come to a country where they could pray as they pleased and make everybody else pray as they did.

In 1896 he was seriously considered as a candidate for the Republican nomination for president. It was thought by a considerable following that he would make a great president, in whose hands the country would be safe, and its laws enforced with the same unswerving strength, wisdom and justice that he had displayed in their administration from the bench.

But while his advanced views along judicial lines and his heroic treatment of growing evils, had endeared him to the people, they had not done so with the most influential leaders of his party, and especially those of the east. In short the very things that made him popular with the former had a contrary effect with the latter. The movement was purely spontaneous, and without the least participation on his part. While it was a tribute to his fitness, it lacked, as already indicated, the conditions to give it any assurance of success.

In 1900, his views favorable to the double-money standard, which had always prevailed, and in the support of which the leaders of both parties had vied with each other on all occasions, and which he took no pains to conceal, put him somewhat at variance with his party when it suddenly, and to most people unexpectedly, changed its policy by declaring for the single gold standard, at the St. Louis convention, when Mr. McKinley was nominated.

In consequence of this, and because of his great ability, and his well known views on the subjects hereinbefore referred to, he was prominently mentioned for the vice-presidency by those opposed to the new policies declared by the Republicans. There was quite a strong pressure brought to bear for the purpose of inducing his consent to accept a nomination for vice-president on the ticket with Mr. Bryan. I personally know that this was not at all agreeable to him, and against all his notions of propriety as a judge. The following interview reported through the press of the time, expresses his views and is perfectly characteristic of him:

The Associated Press correspondent called on Judge Caldwell to-day and said to him: "An Associated Press dispatch from Minneapolis is authority for the statement that you have declined to permit the use of your name for Vice-President. Is the statement in the dispatch true?

The Judge replied:

"Yes. Several weeks ago I received letters from some of the leading and influential members of the party intimating that it might become desirable to nominate me for Vice-President. I paid no attention to the previous loose talk on the subject, but learning from these letters that the matter of my candidacy was assuming somewhat of a serious aspect, I immediately advised these gentlemen by letter that I could not under any circumstances consent to the use of my name for that position. A brief extract from one of these letters will disclose my reason. 'No federal judge should become a candidate for any political office and continue to hold his judicial office. It would subject him to merited criticism, and impair his influence and usefulness as a judge. Moreover, I esteem the office of United States Circuit Judge of equal dignity with that of Vice-President, and of more practical importance and authority. The Vice-President has nothing on his mind except the state of the President's health, and nothing to do but to be the guest of honor at big dinners that kill. He is more ornamental than useful. The position would not suit me.'"

It only remains for me to mention some facts connected with his birth, parentage and rearing, and some general ones not included in previous mention.

He was born in Marshall county, Virginia, on the 4th day of December, 1832, and was brought by his father to Iowa when but four years of age.

His father was Van Caldwell,* who deserves a passing notice. He was born in Virginia in 1799. He came with his family to Iowa, then a part of Wisconsin territory, in 1836, and settled in the edge of Davis county on the Des Moines river, where he died in 1856.

It was the primitive wilderness; the Indian country. The Sac and Fox Indians had not yet parted with the title to what was afterwards known as the Second Purchase. They were in possession and proximate neighbors. They were in frequent evidence. Black Hawk had been their Chief. He died and was buried there. His grave was afterward robbed and his body treated in the most ruthless manner. Judge Caldwell had once told me of a thrilling incident through which he and

* See article in *Annals of Iowa*, 3d ser., vol. 2, pp. 386-390.

the other members of the family passed when the robbery of the grave was discovered. At my request he afterward sent me a written account of it, which I here produce as it preserves an interesting historical episode, and an important and impressive incident in the early life of my subject:

Our relations with the Indians during the time we lived in their country were of the most friendly character. Once only we came near having a deadly encounter with them. Black Hawk's grave was half a mile from our cabin and in plain view from our back door. From the time he was buried up to the time his grave was violated, a squad of Indians would, at intervals of a week or more, visit the grave, pluck the weeds from the bluegrass sod that covered it and sprinkle over it corn soup or other food to sustain him on his journey to the Happy Hunting Ground.

The year after he was buried a squad of seven Indians visited the grave to perform the usual ceremony, when they discovered that the puncheon roof over the grave had been torn down and Black Hawk's head and his medals and many other things buried with his body taken.

It is a curious fact that Indians have even a greater reverence and regard for the graves of their dead than the civilized man has for the graves of his dead. The violation of an Indian grave, particularly of a chief's, is the highest offense that can be committed against his family or tribe, and when the desecration of Black Hawk's grave was discovered by the seven Indians who had come to perform the accustomed solemn rites over it, their savage passions were aroused to the highest pitch. They knew at once that a white man had done the deed, and according to the Indian's idea of retaliation and justice, some members of the white race must be made to atone for the wrong, without regard to the question whether the persons punished had perpetrated the wrong.

Looking in the direction of the grave, my father perceived unusual actions on the part of the Indians indicative of great excitement and divined at once that Black Hawk's grave had been violated.

Mounting their ponies they started for our cabin with their tomahawks and knives flashing in the sunlight. Half way between the grave and our cabin was a fence, and the road followed the fence to the river bank and thence at right angles up to the cabin, but the Indians scorned to follow the road and springing from their ponies threw the rails right and left until the fence was leveled to the ground, and mounting their ponies pursued their course in a straight line through the growing corn to our cabin.

In the meantime my father perceiving our danger took orders for our defense. The double-barrel shotgun was hastily loaded with slugs of lead and the daubing and chink knocked out at a suitable place to

make a port-hole, and I was given this gun at full cock and told I must take deliberate aim and bring down an Indian with the contents of each barrel, but not to touch the trigger until ordered to fire. My father and brother, each holding an ax in his hand, stood just inside of the cabin door. My father said no blow must be struck except to repel an attack by the Indians, that if a blow was once struck we should probably all be killed in the struggle, but that we must sell our lives as dearly as possible.

On reaching the cabin all the Indians, with the exception of one, dismounted, and one of them who appeared to be the leader, approached the door flourishing his tomahawk in a most menacing manner, exclaiming that the white man had robbed Black Hawk's grave. The door of the cabin was very low, so low that the Indian, who more than once raised his tomahawk in an attitude to strike, could not deliver an overhead stroke that would be effective, and but for this obstacle he probably would have delivered the blow. We told them we did not rob the grave and that we were their friends and would go up to the Indian Agency and get General Street, the Agent, to send the dragoons down and catch the bad man who did it. Our pleading seemed to exasperate rather than pacify them, and matters had reached such a pitch that a deadly struggle appeared inevitable, when the Indian who had remained motionless on his pony suddenly dismounted and running up sandwiched himself in between the belligerent Indian and my father, turned to the Indians and with great emphasis repeated what we had said and much more to the same effect; for a time they disputed with him, but finally they acquiesced in what he said, quieted down and metaphorically we smoked the pipe of peace, but as soon as they did so they demanded that some one go to the Agency with them to get the dragoons. My father wrote a letter to General Street, the agent, reciting what had happened and telling him what we had promised as a peace offering and begged him to send down a squad of dragoons. Mounting my pony I rode to the Agency, a distance of ten miles, with the Indians, and delivered father's letter to General Street. After reading the letter, General Street said the robber had gotten out of the country and it was useless to send the dragoons; that he would report the matter to the War Department and that Department would take steps to recover and restore the stolen articles and punish the guilty party, but I pleaded so earnestly that he send the dragoons down, as we had promised the Indians he would, and assured him in such earnest terms that unless he did so we would certainly all be killed, that to please the Indians, but mainly I think to quiet my fears, he said he would comply with my father's request, and accordingly sent for Captain Allen, who commanded the company of dragoons, and requested him to detail a sergeant and five men to return with the Indians, which the Captain did.

The dragoons went with the Indians to the grave and found the tracks of a carriage which they followed to the limits of the Indian's

country, when becoming satisfied that further pursuit would be useless they returned, and our friendly relations with the Indians were re-established.

The story of the subsequent recovery of Black Hawk's head and its destruction by fire when the building in which it was stored in Burlington was burned, has been often told.

I observe a curious mistake (probably the result of a clerical or typographical blunder) in a volume entitled: *John Brown Among the Quakers*, and bearing the imprint of the Historical Department of Iowa, —it is there stated at page 100 that Black Hawk died "at his lodge on the Iowa river," and the implication is that he was buried there. He died at his palatial bark wigwam on the left bank of the Des Moines river and was buried on a slight elevation in the prairie, half a mile back from the river. He died and was buried on the land of the Indian trader, Capt. Jim Jordan, and a wagon-load of stone placed there for the purpose by Captain Jordan marks the spot where he was buried.

Van Caldwell was celebrated throughout the Des Moines valley for his hospitality. He was an ardent Whig and a great admirer of Henry Clay, for whom the subject of this biography was named. He was one of the highest types of the early pioneer; tall and commanding in figure; sympathetic and generous to a fault. Like father like son. No man in trouble was ever turned comfortless from his door. Strong in common sense and heroic in character, his counsel and advice were often sought by his neighbors. His memory was fragrant of good deeds in that part of the valley when I went from New England to Ottumwa in 1857. His warm personality and his interest in public affairs made him a favorite with the people, and his home was frequently visited by leading men of the Territory and State. It is more than likely that the influence of these visitations had the effect of firing the intellect and ambition of the son; for though without the continuous advantages of even a common school, he soon became a student at home, and eagerly devoured all the books that came within his reach. Judge Caldwell studied law in the offices of Judge J. C. Knapp, and George G. Wright—afterwards Judge of the Supreme Court and United States Senator from Iowa. Both Knapp and Wright were distinguished lawyers. Young Caldwell was admitted to the bar in 1851. Besides the older ones, he had young compeers in his profession to contend with worthy of his steel; among them

Charles C. Nourse, who afterward became distinguished as a lawyer of great ability. He should also have been a historian; he was, for he delivered the address of Iowa at the Centennial Celebration at Philadelphia in 1876, and among the addresses of all the different states that of Judge Nourse, in my judgment, was the best in the narration of historic events and general features. At the age of twenty-four Mr. Caldwell was elected prosecuting attorney of Van Buren county, and in 1860 a member of the State Legislature. He was made chairman of the Judiciary Committee, and his display of talents attracted general attention. Upon the breaking out of the war he resigned his seat in the Legislature to enter the military service. He served successively as Major, Lieutenant Colonel, and Colonel of the Third Iowa Cavalry. It is not my purpose to refer to the details of his military career any farther than I have in the prior part of this article, and in the note below,*

*Colonel Odon Guitar who commanded the Federal forces at the battle of Moore's Mill (July 28th, 1862) says in his report:

"Captains Duffield and Cook (Third Iowa Cavalry), were upon the right: Major Caldwell was upon the extreme left. The buckshot rattled upon the leaves like the pattering of hail. I could not see our line forty feet from the road on either side, but knew that Caldwell, Cook, Duffield, Glaze and Dunn were at their posts and felt that all was well.

Of the conduct of officers and men I cannot speak in terms of too high commendation. Where every man discharged his whole duty it would seem invidious to discriminate. It is enough to say that with such officers and men I would never feel doubtful of the result upon an equal field.

The following is a summary of our loss: Third Iowa Cavalry, killed 2, wounded 24. We lost twenty-two horses killed, belonging almost entirely to the Third Iowa Cavalry." (*Rebellion Records*, Series 1, vol. 13, pp. 187-189.)

General Davidson, commanding Cavalry Division, in reporting the operations of his Division on the march from Pilot Knob to Little Rock, from August 1st to September 1st, 1863, referring to his staff officers says, "they have efficiently aided me, especially Lieutenant-Colonel Caldwell, Third Iowa Cavalry, whose accomplishments and gallantry as a soldier deserve acknowledgment." (Ib., pp. 485, 486.)

General Schofield in his report of the operations of the army in Missouri, referring to the battle of Kirksville, says:

"Among the other officers especially deserving mention are Lieutenant-Colonel Shaffer and Major Clopper, of Merrill's Horse; Major Cadwell, Third Iowa Cavalry; Major Benjamin and Major Dodson, of the Missouri Militia. Colonels McNeil, Guitar, Wright, Smart, Philips and Warren; Lieutenant-Colonels Shaffer, and Crittenden, and Majors Clopper, Hunt, Caldwell, Banzhaf, Hubbard, Foster and Lazear showed on numerous occasions gallant and officer-like qualities, which on a larger field would have secured for them the highest commendation." (*Rebellion Records*, Series 1, vol. 13, pp. 13-14.)

In his report of December 10th, 1863, of the operations of the army in Missouri and Arkansas, General Schofield says:

"Some cavalry sent from Little Rock and Camden under Lieutenant-Colonel H. C. Caldwell, Third Iowa Cavalry, pursued the rebel cavalry to Arkadelphia, captured the place with a number of prisoners and some property." (*Rebellion Records*, Series 1, vol. 22, part 1, pp. 14-15.)

Major-General Steele in his report of this expedition says:

"Caldwell captured more property than fell into the possession of Marmaduke during his raid."

Colonel La Grange in reporting an engagement at Chalk Bluff, Missouri, May 9th, 1863, says:

"Our artillery which had been ordered to advance was thrown into confusion, but by order (Adjutant Ed. D. Towne, First Artillery) fell back to a suitable position and was well supported by the Third Iowa Cavalry, Lieutenant-Colonel Henry C. Caldwell." (Ib., p. 265.)

for they are given in Stuart's *Iowa Colonels and Regiments* and Ingersoll's *Iowa and the Rebellion.*

On the 20th of June 1864, he was appointed Judge of the United States District Court of Arkansas. In 1890 he was appointed United States Judge for the Eighth Circuit. In 1903 he resigned that office to spend the remainder of his days in the quietude of private life.

The announcement of his retirement was received with the most profound regret, not only by the profession, but by the nation at large. From the many communications touching it, which his family have placed in my possession, I must be privileged to refer to the following:

On receipt of his resignation the President and Attorney General of the United States wrote him over their own signatures, respectively, the following letters:

WHITE HOUSE, Washington, June 8, 1903.

Sir:

It is with sincere regret that your resignation as United States Circuit Judge for the Eighth Circuit, to take effect June 4th, 1903, is hereby accepted as tendered.

I desire to take this occasion to congratulate you upon your long and faithful service upon the United States bench with such distinguished usefulness, and to assure you of the high esteem which your ability and integrity have always commanded. The impartial administration of law and justice which has marked your judicial career should bring a serene satisfaction to you in your remaining years which I trust will be many and full of health and happiness.

Sincerely yours,

THEODORE ROOSEVELT.

Hon. Henry C. Caldwell,
Wagon Wheel Gap, Colorado.

Office of the Attorney General,
Washington, D. C., June 8, 1903.

Hon. Henry C. Caldwell,
Wagon Wheel Gap, Colorado.

Sir:

I regret to find upon my return to Washington your resignation of the office of United States Circuit Judge for the Eighth Circuit. You have filled the office of federal judge for so long a period and with such distinguished usefulness that it is indeed a matter of the most sincere regret that you feel constrained to retire.

I will present your resignation to the President for formal acceptance. Very respectfully,

P. C. KNOX,
Attorney General.

The following is from John W. Noble of St. Louis, a former Iowan, a lawyer and statesman of national reputation, and who was Secretary of the Interior during the administration of President Harrison:

Dear Judge Caldwell:

Your retirement from the United States Bench, impresses me deeply with a sense of your long and most worthy service for our country. From the forum to the field, and from the field to the court, your course has been marked by a single purpose to do your duty; and this you have done with marked fidelity to every trust and with usefulness to all.

To have been associated with you in those early days and to have been at the bar over which you have presided, are sufficient to call forth my expression of continued friendship and admiration.

You have already the thanks of the Republic through the President of the United States—please accept this faint tribute of affection from an old comrade and friend. JOHN W. NOBLE.

And this, from U. M. Rose of Little Rock (father of George B. Rose hereinbefore referred to), one of the most accomplished lawyers and scholars in the country; for a period President of the National Bar Association, Representative of our government to the recent Hague Conference, and whose appointment to the bench of the Supreme Court of the United States was warmly urged a few years ago:

Little Rock, Arkansas, June 28, 1903.

Dear Judge:

I have had something of a feeling of sadness since I learned that you are no longer on the bench, though the event was not unexpected. It was, however, very striking and impressive as closing a long series of important events, and recalling to my mind many associations that have been rudely severed from time to time.

I however fully approve of the step you have taken. After so long a period of labor, surely some days of rest are due, and you have done so much for the profession and for the country in many ways, that I cannot think that they can justly claim that you should sacrifice your repose and health by longer service.

You have retired with a reputation among all classes that any one might well envy, and that public esteem that has been justly and honorably earned.

With compliments, I remain, Very truly,

U. M. ROSE.

Hon. H. C. Caldwell,
Wagon Wheel Gap, Colorado.

And this, from the distinguished Colorado lawyer, Charles J. Hughes of Denver:

Denver, Col., March 19th, 1903.

Dear Judge:

A rumor has reached us here that you have determined to retire from the Circuit Bench within the next few months. Many of us have entertained the hope that you would not feel either the necessity or inclination for this step, for years to come, and have seen no evidences of any reason why this step should be taken. * * * I could not permit an occasion like this to pass without expressing the deep appreciation I have felt for your many courtesies, and also express my opinion, shared in universally by the bar, of the distinguished services you have rendered to the Bench, to the Bar, and the country, by your conscientious, devoted and unswerving discharge of singularly high, trying and delicate duties. Yours very truly,

CHARLES J. HUGHES.

And this, from Henry D. Estabrook, of New York, General Solicitor of the Western Union Telegraph Company:

New York, June 10th, 1903.

My Dear Judge:

It has been many years since I have seen and talked with you, nor was my practice ever so large as to bring us into frequent relationship. But now that you have retired, full of years and honors, I want to tell you how often I have thought of you, and always admiringly. I admired your legal attainments, of course, but I particularly admired your native sense of justice, your hatred of wrong-doing, your sympathy with the friendless, the tempted, the unfortunate. I shall never forget how, during enforced idleness in Little Rock one day, I was permitted to see, through the magistrate, the heart of a man; to learn that a certain curt gruffness of manner, and which was wont to discourage me, was after all the outward defense to a susceptible generosity.

You take with you in your retirement, the affectionate remembrance of all who knew you. Sincerely,

HENRY D. ESTABROOK.

And this, from the *American Law Review:*

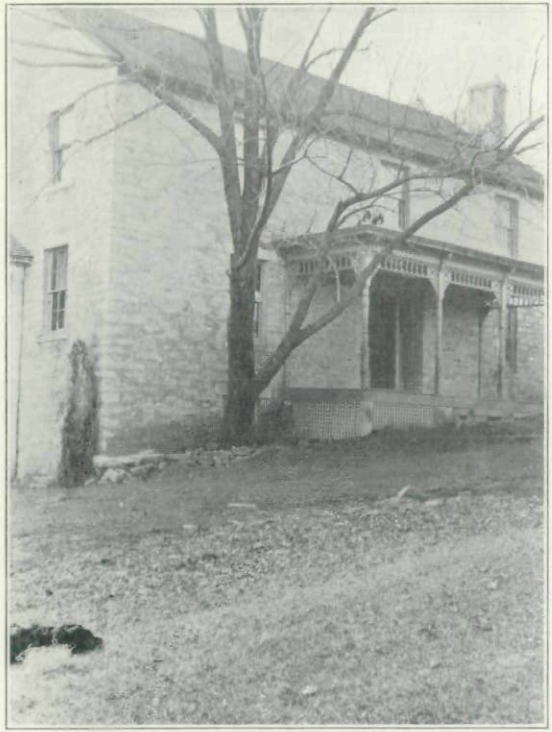
Judge Henry Clay Caldwell has recently resigned the office of Circuit Judge of the United States for the Eighth Judicial Circuit. * * * Like Jesus of Nazareth, Judge Caldwell at every turn, in every act, on every occasion, "had compassion on the multitude." The consciousness of having, on every occasion where it was possible, done good, and having, on every occasion where it was not possible, endeav-

ored to do good, is a rare jewel for a judge to take with him into his retirement.

He remembered and revered the past, the scenes and personages of his early years; the hardships of the pioneer, the struggles of the wilderness. He remembered and revered its plain mannered and heroic men; its faithful and devoted women; its deep woods, its flowing streams, its stretching prairies, and all the natural bounties which Heaven unfolds to serious men.

In his later years he decided to make his summer sojourns in Colorado; he selected an isolated mountain glade near Wagon Wheel Gap, which furnished a broad and beautiful open space at its foot, narrowing as it ascended into the mountains. Through it coursed a clear brook which took its rise in the mountain side. There, away up the narrowing glen, towards the source of the rivulet, in the midst of a natural park luxuriously wooded, and with the timbered mountains rising on either side and at the rear, he built a commodious summer abode, amply supplied with water piped from the brook, and in the large sitting room of which he erected a huge fireplace—such as he had seen in his father's house and warmed his youthful limbs before. To make the reminiscence more complete, he equipped this fireplace with a long iron crane like those of the olden time, provided with a hook on which constantly hung a teakettle over the fire which was never suffered to die out.

"Here"—using the language of another—"at a stated hour each day, the wild birds gathered under his window, and upon the same plank enjoyed a free lunch with his chickens. The antelopes pursued by hunters took refuge upon his ground; he warned or drove off the pursuers and threatened them with prosecution under the game law. The little timid animals learned that on his ground they had a haven of refuge, and they sought those grounds for safety as a matter of acquired habit. Thus the great judge made a daily example of his doctrine of a universal brotherhood, a brotherhood that embraces not only man but the dumb animals as well. Abraham sat in his tent at the cool of the day and angels visited him. Judge



Front and West view of Edwin James' home near Burlington, Iowa. Photographs by Karl R. Wundt.

Caldwell sat in his door at the cool of the day and breathed the wonderfully bracing mountain air; and great marches of mountain and valley spread out before him."

I lay down my pen with a feeling that I have not done justice to my subject, and with a regret that the work had not been wrought by an abler hand. I trust, however, and believe, that the simple facts I have related will be found to carry the highest eulogy in themselves, and fully justify all I have written.

DR. EDWIN JAMES.

BY L. H. PAMMEL, PH. D.,

Professor of Botany, Iowa State College, Ames.

(Concluded from October *Annals.*)

Doctor James was considered excellent authority upon all matters relating to the American Indians, and Mr. Bancroft, in preparing his *History of the United States,* relied greatly upon the articles by him which appeared from time to time in various periodicals. In the twentieth edition of the history, acknowledgment, in the form of marginal notes, is made of this debt. An article published in the *Philadelphia Transcript,* for instance, was the source of the following in Bancroft:

> Materialism contributed greatly to the picturesque brilliancy of American discourse. Prosperity is as a bright sun or a cloudless sky; to establish peace, is to plant a forest tree, or to bury a tomahawk; to offer presents as a consolation to mourners, is to cover the grave of the departed; and if the Indian from the prairies would speak of griefs and hardships it is the thorns of the prickly pear that penetrate his moccasins. Especially the style of the Six Nations was adorned with noble metaphors, and glowed with allegory.*

The grammatical formation of the Indian languages differs greatly from that of English. In an article in the *American Quarterly Review,* Doctor James speaks of the difficulties encountered in arranging the paradigm of a Chippewa verb. Bancroft draws largely from this paper in the following,

*Bancroft's *Hist. of the U. S.*, vol. 3, p. 257.