THE BENCH AND BAR OF ILLINOIS.

HISTORICAL AND REMINISCENT.

EDITED BY

JOHN M. PALMER,

WITH CONTRIBUTIONS FROM A NUMBER OF THE FOREMOST MEMBERS OF THE LEGAL PROFESSION IN THE STATE.

VOLUME I.

CHICAGO:
THE LEWIS PUBLISHING COMPANY,
1899.

Lyman Trumbull was born October 12, 1813, in Colchester, Connecticut. After receiving his education he went to Georgia, where he spent some time as the principal of a school. He came to Illinois in 1837, was admitted to the bar, and commenced the practice of the law at Belleville. The writer formed the acquaintance of Mr. Trumbull in 1839.

Mr. Trumbull was active in politics, and was appointed secretary of state by Governor Carlin. He was a candidate for congress, but was defeated. In 1855 he was elected to the United States senate, and was re-elected in 1861 and 1867. Mr. Trumbull was elected an associate justice of the supreme court on the 4th day of December, 1848, and held that office until July 4, 1853, when he resigned. He was elected to congress in 1854, but had not taken his seat when elected to the senate.

Davidson and Stuve say: "When Douglas was elected a supreme judge, in 1841, Governor Carlin, resisting legislative dictation, appointed Trumbull to the vacant office of secretary of state, over McClernand, but he came near being defeated in the senate by the latter and his friends, out of which grew some ill feeling.

"At the opening of Governor Ford's administration he incurred the displeasure of that functionary by opposing his policy towards the state banks, causing his dismissal from office. The same year, and the following one, he sought the congressional nomination in the Belleville district, but failing, upon the meeting of the legislature he aspired to the senatorial nomination, against James Semple, the governor's appointee, and failed again. In 1846 his name appears among the candidates for governor, but he failed, through the influence of Governor Ford and on account of his opposition to the canal. He immediately sought and obtained the candidacy for congress in the Belleville district, but was defeated by over two thousand majority, though the district was largely Democratic.

"As a politician Trumbull lacked that hearty and cordial geniality of manner which wins popularity among the masses. His intercourse with the people, if not formal, left the impression of reserve, and his nature was rather repellant than magnetic.

"But no such advantage obtained with him in regard to politicians. Over such as might be reached by the force of intellect he ever exercised a large in-

fluence. However, after these repeated trials for place, in 1848 he was elected one of the supreme judges under the new constitution, which office he resigned July 4, 1853, on account of insufficient salary.

"By nature, study and habit he was admirably fitted for the bench. With a mind strong, clear and penetrating,—a mind which, while it inclined to detail, never lost its broad grasp of principle,—he was capacitated for great eminence. He was an able, searching and comprehensive constitutional pleader. He was ever a strenuous and ultra Democrat, but in 1854, unable to brook the repeal of the Missouri Compromise, he opposed his party upon that question and was, in November, elected to congress as an 'anti-Nebraska Democrat,' which place he resigned to accept the senatorship."

Governor Ford, in speaking of his act for putting the state bank into liquidation, and in stating that it passed the house of representatives, says that "In the senate the whole out-door opposition was let loose upon the bill. Trumbull took his stand in the lobby and sent in amendments of every sort to be proposed by Crain of Washington, Catlin of St. Clair and others. The mode of attack was to load it down with obnoxious amendments, so as to make it odious to its authors, and Trumbull openly boasted that the bill would be so altered and amended in the senate that its framers in the house would not know their own bantling when it came back to them. From this moment I determined to remove Trumbull from the office of secretary of state. From the nature of his office he ought to have been my confidential helper and adviser, and when he found that my course was against his principles (if really it was against them), he ought to have resigned. * * * Judge Douglas, notwithstanding he had advised the measure before the finance committee, voted against it in the council." We do not recount these facts for the sake of reviving old controversies, for the parties to them have all passed away, except General McClernand.

Mr. Trumbull was afterward elected to congress upon the issue of the Nebraska bill, and was elected to the senate on the 8th of February, 1855, the writer, being a member of the state senate, having placed him in nomination as an anti-Nebraska Democrat.

Davidson and Stuve say (Illinois History, page 689): "James Shields, the regular Democratic caucus nominee, was placed in nomination by Mr. Graham; Abraham Lincoln, the idol of the old Whigs, and strongly anti-Nebraska, by Stephen T. Logan; and Lyman Trumbull, the nomination of less than half a dozen anti-Nebraska Democrats, by John M. Palmer. * * * Fifty-one votes were necessary to a choice on joint ballot. On the seventh ballot Shields was out of the field, and Governor Matteson, being substituted, received on the eighth ballot forty-six votes,—the utmost strength of the Nebraska Democracy. On the tenth ballot Mr. Lincoln's name was withdrawn, and the Whig vote being concentrated on Mr. Trumbull he received fifty votes direct, and before the result was announced Mr. Waters changed from Williams to Trumbull, electing him by just the requisite number. Neither persuasion nor menace could intimi-

date the Trumbull phalanx of five. Such was the manner of the first election of Mr. Trumbull to the senate of the United States."

Davidson and Stuve add in regard to Mr. Trumbull: "His record in congress, which is national and not our province to give, stands very high. He was for many years the able chairman of the judiciary committee, and there are few congressional acts of importance but what bear the impress of his far-reaching mind. As an orator he is devoid of imagery and ornateness of diction, but as a close, clear, compact and systematic thinker, with an excellent memory, a wide acquaintance of public affairs and an extensive knowledge of the law, he was the most formidable debater of the august senate. As a practical expounder of the principles of his party he eclipsed Mr. Seward. He ever has been a hard student."

In 1865-6 it became an interesting question to determine the status of the freedmen,—the negroes. Attempts were made in congress and in several state legislatures to define their rights specifically. The writer, who was then commander of the Department of Kentucky, being much interested in the subject, prepared a bill enumerating the rights to be conferred by law upon the freed people, and also a petition to the Kentucky legislature. While preparing the petition and bill it occurred to him that the whole effect could be accomplished by an act of congress, and he addressed to Mr. Trumbull the following letter:

Headquarters Department Kentucky,
Louisville, Ky., Jan. 4, 1866.

Hon L. Trumbull,
My Dear Sir:

I enclose you a copy of a petition which is being extensively circulated for the signatures of the colored people of this city, and will be presented to the Kentucky legislature.

I prepared the paper for them as a quiet, modest demand for the recognition of the essential rights of the freed people, seeking to avoid language which could be tortured to the purposes of prejudices and at the same time escape the disgraceful imputation of servility.

Still, I have such moderate hope that it will be favorably received by the legislature, that I have advised them to look to congress, and have prepared a petition for its consideration. You will perceive that the first point presented by the petition is that of residence in the state, or citizenship, if that form of expression is preferred.

Chapter XV, Revised Statutes of Kentucky, in all its provisions limits citizenship to free, white persons. The law passed in pursuance of a requirement of the constitution compels, or is intended to compel, all emancipated persons to leave the state, and Article II, Chapter XCIII, Volume II, pages 386-7, declares that any free negro or mulatto who has since the 11th day of June, 1850, migrated, or who shall hereafter migrate, to this state with the intention of remaining there, shall be guilty of felony, and upon conviction shall be confined in the penitentiary for any period of time, not exceeding five years.

The whole article is like this in barbarity and injustice, and will, in some parts of the state, be rigorously enforced. I trust your bill, to which I have seen telegraphic references, in terms or in legal effect repeals these and similar laws. I suggest that they may be defeated by an act of congress declaring all persons of African descent born in any of the United States or any of the territories or in any place subject to the jurisdiction of the United States, to be citizens.

By the constitution of the United States congress has power to establish an uniform

rule of naturalization, and this power is exclusive of that of the individual states (Kent's Commentaries, Volume I, page 424; Second Wheaton's Report, page 269), and it is also true that congress has by law naturalized or citizenized certain peoples in gross (see act of congress of March 3, 1843, with respect to the Stockbridge Indians. Statutes at large, Volume V, page 647), and instances of collective naturalization by the treaty-making power are numerous,—in the case of the acquisition of Louisiana, April 3, 1800; the purchase of Florida, in 1819; treaty with Mexico, 1848; and by joint resolution of congress, as in the case of the annexation of Texas, March 1, 1845. If the freedmen are declared by law to be citizens the legal consequences of citizenship follow and defeat the injurious operations of the laws already referred to.

I am aware that there are many jurists and publicists who entertain the opinion that the freed people of African descent are now, in point of law, citizens of the United States. This may be the correct view of the subject, but there is a formidable array of authorities on the other side, and it is certain that the courts, if the question is left in its present state of doubt, will hesitate, falter, and decide both ways for years to come. A few words of legislation will remove all doubts, and, what is more, will place the colored race in the class of free men whose political and legal rights are so carefully secured and guarded by many provisions of the federal and state constitutions.

I attach great consequence to this idea, for most of the oppressive legislation of the states proceeds upon the theory that negroes are not members of the political society and are not referred to or protected by constitutional provisions. They are elaborations of the amiably expressed, but damnably conceived, doctrine that we find so often in the resolutions adopted by meetings of those political bastards who call themselves Democrats, that 'this is a white man's government,' which means that a thief may be a Christian if he only steals from a negro. * * *

At the opening of congress in December Mr. Trumbull himself had introduced a bill in which he attempted to enumerate the rights to be conferred upon the negro, but accepted the suggestion of citizenship and introduced the civil-rights bill by an amendment to his own.

The relations between the writer and Mr. Trumbull continued to be friendly, and even intimate, until the closing years of his life. He voted against the impeachment of Andrew Johnson, and in that way separated himself from the Republican party. He was the Democratic candidate for governor in 1880, and was defeated by Governor Cullom.

Mr. Trumbull's last appearance in the supreme court of the United States was in defense of persons who were found guilty of contempt by Judge Woods. Mr. Justice Harlan said of the argument of Judge Trumbull "that if the premises had been conceded the argument would have been irresistible." He died at his home in Chicago on the 10th day of July, 1896.

Onias C. Skinner was elected a judge of the supreme court June 4, 1855, vice Samuel H. Treat, and served until April 19, 1858, when he resigned—shortly before the expiration of his term. He was a sound, able lawyer, and popular as a judge, gaining eminence by his excellent service on the supreme bench.

Pinckney H. Walker had served on the circuit bench in Pike county prior to 1858, in April of which year he was appointed to succeed Skinner as a justice of the supreme court. In the succeeding year he was elected for the full term, and was re-elected, dying February 18, 1885, only four months prior to the