

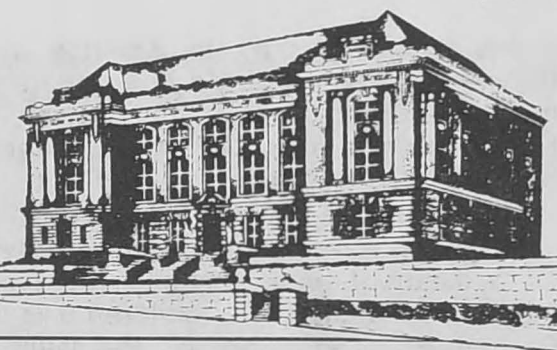
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# The Missouri Supreme Court Historical Journal

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## JUDGE HENRY LAMM

### *Justice of the Missouri Supreme Court 1905-1915*

A Short, Biographical Sketch  
By Ivan Light, Bloomington, Illinois  
Of the Illinois, Missouri, and Wisconsin Bars

OFFICE OF SECRETARY OF STATE  
MISSOURI STATE ARCHIVES

#### AUTHOR'S NOTE

When the writer first came to St. Louis to practise law, nearly a quarter of a century ago, and commenced to read the reports of the Missouri Supreme Court, the name of one writer of opinion stood out — it was a judge named "Lamm" — and his style was notable for its epigrammatic wit and wisdom.

However, it was idle to seek information as to this judge from the younger lawyers who generally knew only that Judge Lamm had a reputation for ability and wit. On the other hand, the older generation of lawyers took it for granted, apparently, that the facts about this well-known judge were current, forgetting how fleeting is fame and how short the memory of man.

Efforts to find a published, comprehensive account of Judge Lamm's career have since revealed only scattered bits of information. Hon. Donald S. Lamm, well-known Sedalia attorney and son of Judge Lamm, has stated that his father was "never sufficiently interested in personal data to write anything about himself and there is nothing available except incomplete sketches prepared by others."

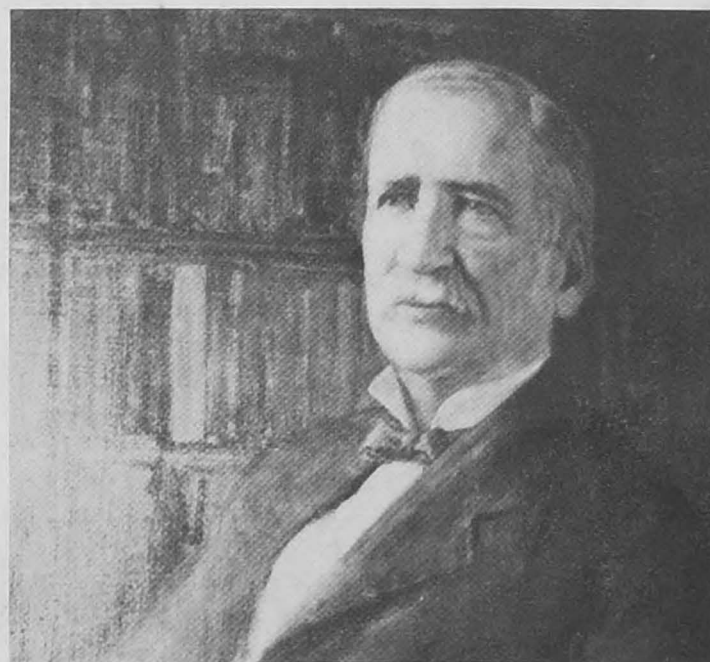
The writer had no first-hand acquaintance with Judge Lamm or personal knowledge of the facts, and the following brief sketch of his life, undoubtedly wholly inadequate, has been compiled from sources believed reliable, and is published to preserve a brief profile of one of Missouri's most colorful and learned jurists. There have been others better qualified for the task, but they have not done the job, and Time, according to its inexorable rule, is slowly obscuring the record.

Hon. Donald S. Lamm has been kind enough to read this sketch before publication and has been helpful in filling in some of the facts. Hon. John M. Holmes, Executive Secretary of the

Judicial Conference of Missouri, has also kindly supplied data requested.

The bulk of material has been gathered from newspaper files, historical articles and scattered publications bearing on Judge Lamm's career. In 1916, Mr. Walter B. Stevens, the well-known Missouri historian, who had been a student at the University of Michigan with Lamm, published a brief sketch of Judge Lamm, based upon personal recollections, comprising some 12 pages of a small pamphlet, published at Sedalia, and probably written in connection with Judge Lamm's campaign for the Governorship in 1916.

While the writer appreciates the assistance he has received from others, the responsibility for accuracy of facts or opinions stated falls to him.



#### EARLY DAYS AND EDUCATION

Henry Lamm was of pre-Revolutionary "Pennsylvania Dutch" ancestry, the first Lamm having

sailed from Germany to America in 1740. His forbears moved west, the first generation settling in famous Berks County, Pennsylvania, and then Henry Lamm's father, William L. Lamm, who was born in Berks County in 1803, settled in the Western Reserve in Wayne County, Ohio.

There, on a farm near Burbank, Wayne County, Ohio, Henry Lamm was born on Dec. 3, 1846, eighth in a family of ten children. His mother was Catherine Zuver, also of Pennsylvania Dutch stock. He undoubtedly found ample chores and hard work on the farm of that day with all the inconveniences of the pioneer area in the west. However, his early years on the farm inured in him a simplicity and naturalness that grounded his career as a lawyer and judge in the realities of life and enriched his vocabulary with the colorful phraseology of the pioneer period. Henry Lamm never lost his love of farms, of land and of nature.

Said the "Michigan Alumnus", in January 1905, apparently quoting a Missouri newspaper: "Lamm is a strong man, mentally, physically and morally. . . . A big, broad shouldered man, full six feet in height, of Pennsylvania Dutch ancestry, with muscles hardened at the plow in earlier years, he has the foundation for a man of force."

In 1861, at the age of 15, young Henry enlisted in the Union Army but was dropped from the rolls when his father informed the recruiting officer his true age. Young Henry then went to Cleveland to enlist in the Navy, but found no Navy there, and so he signed on for a ship plying between Cleveland and Detroit.

Young Lamm was educated in the common schools and at Canaan Academy in Wayne County, Ohio. During a visit to a brother, John Lamm, residing on a farm where Mason City, Iowa, now is, he managed to put in a year at Western College, Cedar Rapids, Iowa, which aroused in him a determination for further education.

In 1865, Henry Lamm, then 19, and his older brother, John, matriculated at the University of Michigan, even then an outstanding institution. However, brother John soon found that his small savings were insufficient for both of them, so John left the University, and went to farm in Pettis County, Missouri, where in a few years Henry joined him, and where both lived out their lives. Naturally, Henry Lamm always cherished the most lively and generous affection for his brother John.

It is related by Walter B. Stevens, Secretary of the Louisiana Purchase Exposition of 1904, and author of the Centennial History of Missouri, who was a fellow student with Lamm at Michigan, and knew him there, that on entering the University, Lamm soon became a close friend of James DuShane, son of a Confederate general. The two students, Northerner and Southerner, short on cash but long on ambition, rented a piece of land and built thereon a two room shack in which they lived for three years at the University, where Lamm constantly amused and entertained his classmates with his lively wit.

## EARLY LIFE AT SEDALIA

Lamm graduated from University of Michigan in 1869, with a degree of B.S., and migrated to Sedalia, Pettis County, Missouri, to join his older brother, John, and there he began teaching school. He earned the right to read the law-books in a law office in exchange for chores of sweeping out the office and building fires. In 1871, Lamm was admitted to the Bar, and for two years served as clerk of the circuit court, by the appointment of Gov. Woodson. In 1874, he married Grace Adela Rose, of East Saginaw, Michigan.

Also in 1874, an eventful year for him, he formed a partnership with Peter Hurst Sangree, and the two practised law at Sedalia under the style of Sangree & Lamm for about 31 years and until Lamm went on the Supreme Court in 1905 to fill a 10-year term.

On Oct. 5, 1914, Judge Lamm delivered an address in Memoriam of Peter Sangree to the Pettis County Bar, in which he said: "While at the bar I always had a partner, never but one and that one — Sangree. Along the edges, we so grew into each other we finally became a composite unit, one man as it were. So, if in speaking of him I speak somewhat of myself delicacy will not take offense, for it cannot be helped without starving the facts." Like Lamm, Peter Sangree was also of Pennsylvania Dutch stock. For him, Lamm held the highest respect and bore the greatest affection. His address on that occasion must be classed at literature, worthy to be read to classes in English for lucidity of expression and tenderness of form. While Judge Lamm was fulsome in his praise of his senior partner, it is obvious that only one, having himself nobility of character, could have delivered such an eulogy.

Following is a passage of graceful prose from this tribute to his partner, Sangree: "The steadying virtues and chastening afflictions of decent poverty, he knew in his youth. They left their mark on him, seen, in his case, in a repugnance to frivolity or ostentation and a rooted belief in the winning value of persistent human effort and self reliance."

In his Memoriam to Sangree, Judge Lamm related that he had paid his senior partner \$350, all the money he had, for an interest in his law business, and the partnership began to practise law with stove-pipe hats, a few law books and the simple office equipment of the day but with plenty of grit. In the first year, they made \$1,500, which the partners split. When, in 1905, Lamm went on the Supreme Court, the firm of Sangree & Lamm was the third oldest law firm in Missouri.

Lamm served as city attorney and also as secretary of the Board of Education for four years. He was elected and served two terms as prosecuting attorney, 1884-1888. Other than the last mentioned office he steadily declined nomination to public office, including for Congress, until he became a candidate for the Supreme Court in 1902.

He was Chairman of the Republican State



Convention in 1892, delegate to the Republican National Convention in 1892, and a member at large of the Republican State Committee from 1898 to 1904.

In 1889, replying to a circular request from the Alumni Catalog office of the University of Michigan, Lamm wrote that he was "a lawyer in full practice, hard worked," and then he added, "fairly honest — Don't put this in the Catalog however — it's only given as gossip." Writing of his career, he said: "All modest. Kept the wolf from my door. Am father of 5 likely children."

The fact is, however, well-known in Missouri, that as a practising lawyer, Lamm was very successful and able. When, in 1936, an oil portrait of Judge Lamm was presented to the Supreme Court, Lee Montgomery, of the Pettis County Bar, declared that Lamm was the "ablest jury lawyer at our bar within my memory." This portrait of Lamm was painted by Charles F. Galt, St. Louis artist, and was the gift of 100 friends and admirers of Judge Lamm. It now hangs in the courtroom of Division 1 of the Supreme Court.

### ELECTION TO SUPREME COURT

In 1902, Lamm was nominated for judge of the Supreme Court by the Republican judicial convention at Joplin, but was defeated in the election. In 1904, he was again nominated for the office by the Republican convention at Jefferson City, against the Democratic nominee, Hon. A. M. Woodson of St. Joseph, and Lamm won the November election, 316,908 to 303,739, thus becoming the second Republican elected to the Supreme Court. The first Republican elected to that court had been Judge Walter Moore Robinson, whom Judge Lamm succeeded in 1905.

It must be remembered that prior to this 1904 election, Missouri had, except possibly for the Civil War period, always been safely in the Democratic column in the national elections. In 1904, Theodore Roosevelt, Republican, carried Missouri for the presidency over Alton B. Parker, Democrat, by a vote of 321,449 to 296,312. However, crime-buster, former St. Louis prosecuting attorney, Joseph Folk, a Democrat, defeated Cyrus P. Walbridge for Governor by 326,652 to 296,552. It would seem, therefore, that in 1904, each of these three successful candidates, Roosevelt, Folk and Lamm, won on his own personal strength.

Mr. Woodson, beaten by Lamm in 1904, was elected to the Supreme Court in 1906 for a 10-year term from Jan. 1, 1907.

That year 1904 marked, as later events have shown, the departure of Missouri from the category of safely Democratic states to its current status as a doubtful state in presidential years, with a strong, independent vote, and prone to exhibit a marked preference with some particular candidate for important office, who often is able to carry others on the ticket with him to victory. We note this for what bearing it may have on Lamm's bid for the Governorship in 1916.

Lamm's wit and homely wisdom, for which he was already well-known, soon made itself evident on the Supreme bench. It is recounted that on one occasion an attorney, arguing a case, thus addressed Judge Lamm, "May I tell the Court the truth about this case?" to which Judge Lamm replied, "If an order of court be necessary for counsel to speak the truth, consider it entered!"

As a jurist, Judge Lamm was noted for two striking qualities:

(1) His concern with substance rather than with form, or as he put it, "striking away the leaves and getting at the fruit," or, "not getting stuck in the bark." This was but the operation of his strong sense of justice and equity, and of his abiding desire to see law become synonymous with justice and equity, so far as possible. However, while he was a powerful factor and a wielder of a mighty pen in that direction, he realized only too well the uncertainties of litigation and the impossibility of over doing complete justice, and his writings are replete with references to the superiority of compromise over litigation and emphasizing the pitfalls and uncertainty of lawsuits, a matter on which he and his old partner, Peter Sangree, had been in full accord. One of Judge Lamm's best-known sayings is that, "A lean compromise is better than a fat law-suit." He liked to quote the Biblical passage, "Agree with thine adversary quickly while thou art in the way with him; lest at any time the adversary deliver thee to the judge" &c. (Matt. 5:25). Judge Lamm likened a compromise to a treaty of peace (*Cox vs. Jones*, 129 S.W. 498), and he shrewdly observed that lawyers themselves instinctively shrank from becoming personally involved in litigation. The observation is undoubtedly true and contains food for thought for all lawyers truly considerate of their clients' welfare.

(2) The other characteristic which brought Judge Lamm well-deserved fame, eventually nationwide, was his power with the pen, the absence of dull, legal prose in his opinions and the epigrammatic style and colorful phraseology of his writing, which he fortified and embellished with frequent quotations from the Bible, from Shakespeare and from the classics, of which he was an omnivorous reader. His style has been likened to that of Charles Dickens. As the *Kansas City Star* wrote Aug. 20, 1916: "Judge Henry Lamm is a Missouri jurist who makes dry legal terms sparkle with wit."

The more than 500 opinions, delivered by Judge Lamm, will be found in the reports of the Missouri Supreme Court from vol. 186 to 263 (1905-1915), and a 344 page collection of passages from his opinions is contained in "Legal Philology," compiled by the late Fred C. Mullinix, attorney, of Jonesboro, Arkansas, and published by the Thomas Law Book Company of St. Louis in 1923 (2nd edition). Herein is space only for a very few examples of his colorful style.

The celebrated "mule case," a hotly contested lawsuit involving a claim for \$5, permitted Judge

Lamm a field day in the exercise of his wit and classic learning, and that on no greater subject than the common Missouri mule! — This was *Lyman v. Dale*, 171 S.W. 354, and though certainly not the most important, it is perhaps the best known example of his use of his famous wit in feathering the shaft of justice.

In this mule case, the defendant was riding a mule through the streets of Springfield, leading another mule by a halter. The led mule "spread" itself as the record tells us, and got tangled with plaintiff's buggy, damaging a wheel to the extent of \$1.50. Defendant offered to pay the \$1.50 to repair the wheel, but, as Judge Lamm observed, plaintiff had his "dander up," and sue for \$5. The case went through the justice of peace court, the circuit court and reached the court of appeals, where the justices could not agree, and three learned opinions fell from their pens in a seizure of "furor scribendi," as Judge Lamm termed it. The court of appeals sent the case up to the Supreme Court.

Judge Lamm's opinion held that there was no evidence to prove that the led mule was "wild and unruly," as charged, and that it was not negligence per se to lead a mule by a halter down the city street, rather than neck to neck. It can only be said that his opinion, in which for a half dozen pages, he quoted and referred to famous passages from the Scriptures and great literature relating to mules and asses, blending it all into a witty, yet apt, demonstration of the legal principles involved, must take high rank in the literature of Americana, along with other Missouri masterpiece on the animal kingdom, Sen. Vest's Eulogy to the Dog!

It was in this celebrated mule case that Judge Lamm remarked that the bones of the Missouri mule, "in attestation of his activity and worth lie bleaching from Shiloh to Spion Kop, from San Juan to Przemyśl. . . ." He also cautioned that: "Some care should be taken not allow such scornful remarks as that 'the mule has no pride of ancestry or hope of posterity' to press upon your judgement." And he observed that, "A thistle is a fat salad for an ass' mouth."

Who could forget the following sentence from *Troll v. Spencer*, 141 S.W. 861: "As an eagle does not catch flies, so equity deals not with trifles in its search for fraud." Another striking sentence: "The buzzing of a gnat in a man's ear concerns him more than the roaring of a lion in his neighbor's garden."

Pure Lammism is the following from *Stotler v. C.&A.Ry.*, 98 S.W. 521: "If there be no evidence that a young girl, able to labor, had performed labor, and no eviddnce of her earning capacity, may she recover damages for permanent injuries which diminish her ability to work in the future? In times past, when Satan, 'squat like a toad close at the ear of Eve,' spoiled the felicity of the race by his suggestions to that new (and somewhat inexperienced) woman, it was promulgated as a rule that: 'In the sweat of thy face shalt thou eat

bread, till thou return unto the ground; for out of it was thou take; for dust thou art, and unto dust shalt thou return.' If poor, labor is a necessity.

But it must not be supposed that Judge Lamm's learning and facility with words was not usually and potently employed to the most serious purpose. In his hands, they were powerful weapons to drive home the true claims of justice and equity, and it was his use of these powers as persuasive forces for high purposes that won him the genuine respect of fellow judges and of the Bar. If his wit, wisdom and humor were unmistakable, so, too, were his sincerity, integrity and realism.

Judge Lamm had a nose for fraud like a mouse for cheese, and unlikely to succeed was the litigant who sought to pull the wool over the eyes of this canny Chancellor. Some of his most famous passages arose in such cases, or where there was a contest between the weak and the strong, or between those in a confidential relationship. For example, in *Cohron v. Polk*, 158 S.W. 615, he wrote: "Where the weak, the illiterate, the confiding, the credulous are opposed in a challenged contract to the strong, the educated, the reliant, and the shrewd, equity brooks over the transaction with anxiety and watches it with vigilant and jealous eye to see that no unconscionable advantage is taken unintentionally or results with intention."

One of Judge Lamm's interesting opinions was in *Hale v. Simpson*, 95 S.W. 892, in which the Constitution of 1875 had been interpreted to treat inmate veterans of the Union and Confederate Armies at their respective state homes as paupers, and so to deprive them of suffrage. Judge Lamm's opinion indignantly rejected any such necessary result. Reviewing the outbreak of the Civil War and the strong differences of opinion among Missourians on the subject, Judge Lamm wrote: "Verily, our Missourian did not stand on the order of his going, but went under two flags, both ways, went at once. . . . When he came home from the wars, his might mother, the State of Missouri, with a great heart claimed him as her son, proud of his deeds, resolute to cherish his memory, magnanimous to forget his quarrel, tend to both uniforms, and mourning over the dead, or the war worn and desolate, Confederate and Federal."

It is plain that Judge Lamm loved Missouri and was proud of his adopted state and its old soldiers, both blue and grey. His opinion found it inconceivable that Missouri would give these old soldiers a home only at the price of depriving them of their vote as paupers. Such a construction was but a technicality, he declared, and he added, "Technicality may become a horse, which once astride and well ridden, will carry us wide of ultimate right."

On the subject of the Laws' Delays, Judge Lamm gave a classical address before the State Bar Association on Sept. 24, 1919, reprinted in the July-August, 1919, *American Law Review*, that leaves little to be added on this unfortunate



historic trait. He observed that it was one of the things that bothered the Barons when they confronted King John at Runnemedede on June 19, 1215. He observed that Shakespeare scheduled it as "one of the justifiable causes of suicide" in Hamlet, Act III, Scene 1. He referred to the everlasting case of Jarndyce v. Jarndyce that "drew" in the lives of Dickens' characters in "Bleak House." While he felt that improvement might be accomplished by effort, he showed that great cause of delay lay in the human factors that are inevitable, on plaintiffs as well as defendants.

In this address on the Laws' Delay, Judge Lamm also criticized the inflexible command of the Constitution that the Supreme and Appellate courts must write opinions in all cases. That provision was omitted from the Constitution of 1945, but it continued in the statutes, Sec. 477.030. However, many lawyers might differ with Judge Lamm on this, and feel that it is a wise requirement.

Judge Lamm was Chief Justice of the Supreme Court when the Commissioner system was re-employed in 1911, after brief use in 1883-1885. Judge Lamm is credited with having seen to it that the Commissioners became strong arms of the Court, rather than merely to function as subservient assistants to the Court, assuring that the Commissioners met the same high qualifications for office as the voting judges of the Court, and that they were accorded dignity and honor accordingly.<sup>1</sup>

## ELECTION OF 1916

Judge Lamm did not stand for reelection to the Supreme Court after his ten year term ending in 1914. He was already 68 years of age, and another ten-year term would have found him liable for the arduous duty on the high Court at an advanced age. In ten years, he had written 500 opinions. In his address, "The Laws' Delay," he referred to one of the requirements of judges as having "the knack of working like a monk in a cell without exhaustion of nerve."

His beloved comrade and former partner, Peter Sangree, with whom he had planned to resume the practise of law at Sedalia, died Aug. 5, 1914, and Judge Lamm formed a partnership with Hon. John D. Bohling, who had succeeded Judge Lamm in 1905 as Sangree's partner, and with his son, Donald Sangree Lamm, at Sedalia. In 1915, Judge Lamm was elected president of the Missouri Bar Association.

In 1916, Judge Lamm was nominated as Republican candidate for Governor against Frederick D. Gardner, Democrat, who was a very strong candidate. It will be remembered that in 1916, President Woodrow Wilson, Democrat, was elected president over Chief Justice Charles Evans Hughes, Republican, by a very close vote, and Mr. Gardner defeated Judge Lamm in the closest gubernatorial election on record: 382,255 to 380,092, minor candidates accounting for 23,551 more votes. In that 1916 election, the

Democrats also won control of both houses of the state legislature, and possible plans by the Republicans to contest the gubernatorial election were abandoned.

From 1904 to 1952, the popular vote in Missouri for president has invariably favored the national winner, seven times Democratic, five times Republican, and only thrice has the presidential winner failed to carry the gubernatorial candidate of his party into office, in 1904, when crime-buster Joe Folk bucked the Teddy Roosevelt popularity, in 1940, when attorney Forrest Donnell, Republican, defeated Lawrence McDaniels, Democrat, by a very narrow margin, and the third and last time in 1952, when the popular Ex-Governor Phil Donnelly, Democrat, was again elected Governor, although Gen. Eisenhower, Republican candidate for President, carried Missouri by a small margin. In 1916, Judge Lamm had just emerged from ten year's comparative seclusion on the high Court and could hardly have had the statewide popular appeal sufficient to prevail against the rule since 1904, "As goes the Nation, so goes Missouri!"

Nevertheless, Judge Lamm made a strong race and ran well ahead of his ticket, including Chief Justice Hughes, who lost Missouri to Pres. Wilson by about 29,000 votes. Judge Lamm made a very active and strong campaign in the State. The Republicans accused the Democrats of reckless, spendthrift administration in the State, and Judge Lamm campaigned on local issues. Mr. Gardner declared that, if elected, there would be a cleanup, economy and efficiency and sought the rural vote on the basis of his land bank proposal, popularly known as the Gardner land bank bill, a proposal which the Legislature had passed in 1915. Although Gardner won the Governorship, the land bank bill was defeated by the people. Mr. Gardner went on to renown as Missouri World War I Governor.

In later speaking to friends about the election, Judge Lamm lightly said that he was a man drowned in sight of shore, and so dismissed with a turn of a phrase which must have been a fond ambition. Ex-Governor Herbert Hadley, stumping for Judge Lamm at Independence on Sept. 30, 1916, stated that Judge Lamm was the "biggest, brainiest, most courageous and best experience man in Missouri politics since the days of Benton." Despite the obvious political circumstances, this encomium was praise of a high order from a responsible party and there must have been substantial and genuine basis for the employment of such superlatives.

## LOVE OF NATURE

Judge Lamm loved the out-of-doors and found an essential goodness in men of nature and men in nature. Others have observed it, but have not usually articulated it so well.

In *Cummins v. Parker*, 157 S.W. 663, Judge Lamm wrote: "The case is barren of fraud. Indeed, we own being a little inclined to take judicial notice, that barring a mild and (it may be)

innocuous form of exaggeration in narrating personal exploits (noticed by close observers and shyly commented on now and then in private discourse), neither huntsman nor fisherman are addicted to the venal vice of fraud for gain in matters pertaining to their associated dealings. It was Jacob, mark you, and Rebecca, not Esau, the hunter, who covinously contrived a notable property fraud (q.v.) And when Simon Peter (worried by trouble and despair) sayeth, "I go a fishing," and the others said, "we also go with thee," did they not touch a cord and set it vibrating to this very day in many a wholesome bosom?"

Judge Lamm was fond of the Ozarks, explored them and floated countless streams. It is said that you can take a boy out of the country but that you can't take the country out of a boy, for which country boys are grateful and city boys must ever remain in darkness. Judge Lamm was no exception, and his knowledge of basic human nature and problems was undoubtedly enhanced by his affinity to the soil.

Fine dairy cows were one of Judge Lamm's special interests (one of his sons, Henry Lamm jr, became a dairyman), and a little of that humorously came to the surface in *St. Louis v. Ameln*, 139 S.W. 443, where he wrote: "However much the cow waters her own milk, the milkman has no right to designedly duplicate nature's gift of water by a furtive gift of his own from the barnyard pump."

## LATER LIFE

Judge Lamm was 70 when he ran for Governor in 1916, and possibly his age was a factor against him in that close contest. Great honor and wide recognition of his talents had come to him. As might be expected, he was much in demand as a speaker. In personal intercourse, he was ever courteous, never gave offense, and was charming and witty in conversation. A lawyer who knew Judge Lamm intimately has written that his greatness "was based upon scholarship in law and literature plus unusual perspicuity and innate affection and respect for man. He was the master of the delicate touch acquired perhaps from the fact that he was a life long student of the great literature of the world."

In 1918, the United Railways of St. Louis went into receivership, and on Feb. 17, 1919, Judge Pat Dyer appointed Judge Lamm as Special Master in Chancery in that long and involved matter. As such Judge Lamm had frequent occasion to come to St. Louis to conduct hearings. It was at one of these hearings that he suffered the first of five strokes, which eventually brought his death on May 23, 1926, at the age of nearly 80 years.

He was an active and staunch member of the Congregational Church at Sedalia. Funeral services for Judge Lamm were held at his Congregational Church at Sedalia, and his body was buried in the Crown Hill Cemetery at Sedalia.

Judge Lamm left surviving him his widow,

Grace, and five children: Nettie Lamm, Philip Lamm, Henry Lamm jr, and Donald Sangree-Lamm, all of Sedalia, and R. Foster Lamm of Boise, Idaho.

In conclusion, it would be difficult to improve upon the judgement of Judge Lamm, rendered by another distinguished jurist, Chief Justice Ellison, who, in accepting the Lamm oil portrait for the Supreme Court of Missouri in 1936, said: "Of Judge Lamm it may be said, . . . He possessed a wonderful sagacity in discovering chicanery and artifice, and in separating fallacy from truth, and of sophistry from argument, so as to hit the exact equity of the case. He suffered not injustice to be strangled with the nets of form. His genius was comprehensive and penetrating, and when he judged it necessary he poured forth words the most seductive, equally calculated to persuade and to convince."

Thus, Henry Lamm, 1846-1926, able lawyer, wise jurist, erudite scholar and Christian gentlemen! His life and legal career are worthy inspirations to the Bar today and to future generations of lawyers and citizens.

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<sup>1</sup>The Commissioner system persisted for 73 years, and was finally phased out in 1982. See "Missouri Supreme Court Commissioners 1883-1885 1911-1982," Missouri Supreme Court Historical Journal, Vol. 1, No. 2, Fall 1986, by Norwin D. Houser.

## EDITOR'S NOTE

At the time former President James A. Finch, Jr., was fatally stricken he was collecting data preparatory to writing an article for the Journal on Judge Henry Lamm. In addition to the biographical sketch herewith reprinted, which was published in the November, 1956 issue of the Journal of the Missouri Bar, 56 J.M.B. 159, Judge Finch's file included two other articles from that Journal: "LEXIS Brightens Memory of the Sage of Sedalia," by Howard F. Sachs.

J.M.B. 31, January-February, 1976, containing 34 quotations from the published judicial opinions of Judge Lamm, and "Henry Lamm, Scholar, Phrasemaker and Wit," by Hugh P. Williamson, 17 J.M.B. 91, February, 1961. From members of Judge Lamm's family Judge Finch obtained on loan the only published copy of a bound collection of short accounts of Judge Lamm's experiences as a boy, containing thirty-five "chapters", each of which commenced with the words "When I Was a Little Boy." These vignettes, each a literary gem, were written by Judge Lamm and read to his children, when they were small. Copies of "When I Was a Little Boy," and of "Outing on the Niangua," loaned to Judge Finch, were made and filed in the records of the Supreme Court Historical Society. The latter is a thirty-five page account of a seventeen day venture by eight Sedalians, including Henry Lamm, by trail and boat on the Niangua River in the Missouri Ozarks. The text of the whimsical narrative, illustrated by 24 photographs taken on the trip, written by one John Montgomery, a member of the party, is augmented and embellished by ninety-two extensive, elaborate, delightful, and engaging footnotes written by Henry Lamm, studded with humorous sidelights of the trip, poetry, literary allusions and comments. The footnotes written by Lamm dominate the piece, and take up approximately 90-95% of the 35 pages.

The above, together with other material found in Judge Finch's file, including the Joint Collection University of Missouri Western Historical Manuscript Collection-Columbia; the State Historical Society of Missouri Manuscripts, and other sources, provide more than enough to write a book about Judge Lamm. For an article of a length suitable for republication in this issue of the Journal it was determined that Ivan Light's sketch printed herewith could not be improved upon, except to rewrite the paragraph referring to the Commissioner System to bring it up to date.



# Francis Marion Black

## *Judge, Missouri Supreme Court, 1885-1894*

In the late 1800's the citizens of the State of Missouri faced an array of challenges. A population boom, rapid economic growth, and expanding railroads and industries promised new prosperity. But before this promise could be realized the state was required to solve a number of important legal problems. Missouri needed a new constitution to replace the hated "loyalty oath" constitution which reflected the bitter conflicts after the Civil War; confusion over property claims abounded; and numerous liability actions threatened the existence of the state's new railroads and industries. The growth in population and increased complexity in the law necessitated a supply of new lawyers who were well trained. One individual who helped the people of Missouri meet these challenges was Judge F. M. Black, who served on the Supreme Court of Missouri from 1885 through 1894.

Francis M. Black was born in Champaign County, Ohio on July 23, 1836. The fifth of seven children, he was the son of a well-to-do farming couple, Peter and Maria Black. His father desired Francis to be a farmer too, and when he left home to study law, his father predicted the boy would return in "tatters and rags." The education he left home to obtain was brief. He attended one year of high school in Urbana, Ohio and three years at Farmer's College of Ohio. Afterwards he worked in the law office of General John H. Young of Urbana. At the age of 28 he was admitted to the Ohio bar.

In the spring of the same year, 1864, Francis Black came west to the City of Kansas, which is now Kansas City, Missouri. The Rev. J. M. Cromer, 38 years later, on the death of Judge Black, described what he knew of the jurist's beginnings in Kansas City:

*Judge Black was a man of simple tastes and habits. He had no affectation of any kind. Plain and practical in everything he had little use for mere pretention and display. He had but one absorbing passion and that was his profession. He loved his books and was a*

*close and hard student up to the day of his death. He believed in the genius of hard work, and came to his high place in his profession through pure merit. He sought no artificial means of advancement, but stuck to his law studies with a persistence that overcame all hindrances.*

*He began at the bottom. Coming to Kansas City just at the close of the war, he opened up an office, which served the double purpose of living room and business. And by an almost matchless devotion to his business he soon became prominent among his brother lawyers.*

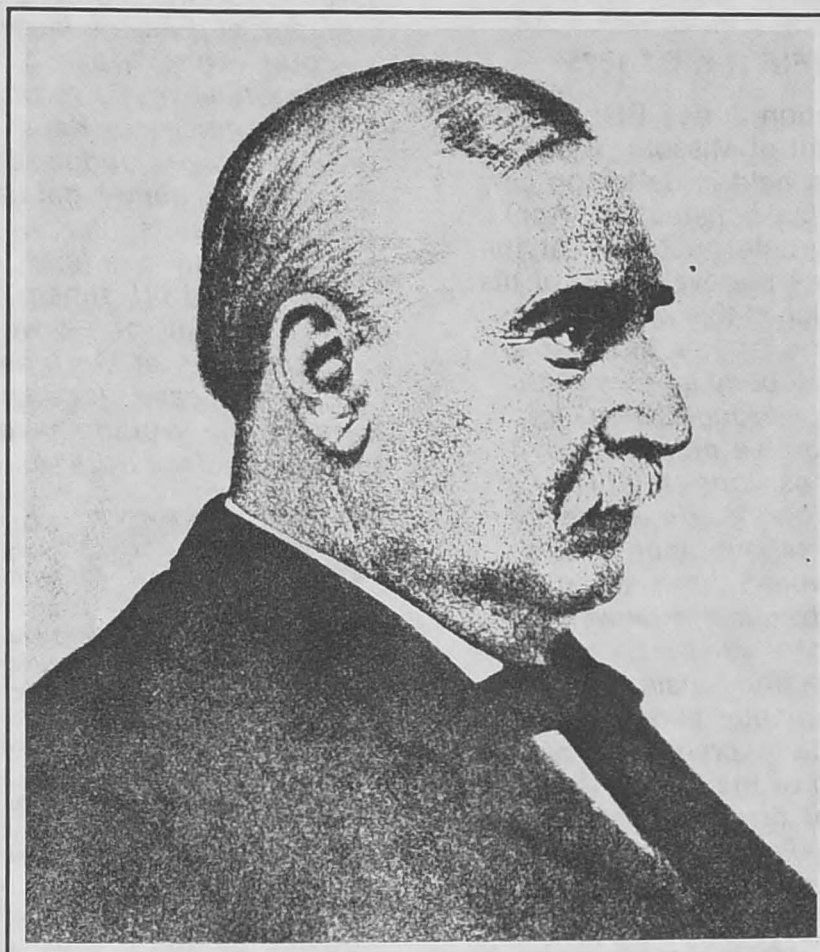
*But he was always the same simple and unassuming man. He never carried any firearms and never had any about his house. Although he came to this country when it was still rent by war, and when it was almost a universal custom to carry some weapon, Judge Black needed none, and was never molested.*

*He was the same plain man in his profession. The commonest laborer, clad in his coarse and soiled clothing, had as free access to him and engaged his interest quite as much*

*as the more prominent citizen. He was not patronizing toward such, but knew how to meet them upon their own level, and always had their confidence.*

Francis Marion Black returned briefly to Ohio in 1867 to marry Susan B. Geiger. She was the daughter of a prominent physician in Dayton. They had six children, four of whom lived past birth: two girls, Susan and Helen, and two boys, Frances and Arthur. His family and social life, while referred to as idyllic, was kept from public view. It was perhaps easier to maintain privacy in Black's day, and so, except for the circumstances surrounding his death, no further details of his personal life are known.

Judge Black died suddenly on May 24, 1902, of "apoplexy." The numerous pallbearers at his funeral were members of the legal community



including former Governor David R. Francis. One newspaper article about his death reflects the esteem in which he was held: "It was not unfitting that the end of Judge Black's busy and successful life should come at the close of the week and in the quietude of the evening. His painless death at such a time seemed to symbolize with something akin to beauty the blessing of rest which is the crowning glory of faithful effort." The article continues by citing reasons he was honored: "In these times when we feel that not all men upon the bench are honest, we feel like honoring the memory of a man who has honored his profession . . . [who] was a just and honest man in all his walks." Ironically for a lawyer, he died leaving no will. His estate was valued at \$150,000, at that time a considerable fortune.

### CONSTITUTIONAL CONVENTION OF 1875

The first major contribution Judge Black made to the political development of Missouri was as a delegate to the convention held in Jefferson City in 1875 to write a new state constitution. Again, turning to a newspaper article published at the time of his death, one finds the evaluation of his contemporaries of his service at this convention.

*He proved himself one of the most able members of that important body and his views upon various questions brought him into larger and yet more favorable notice and led to his elevation to positions of greater usefulness and higher honor. He earnestly supported beneficial limitations upon legislation enactments and favored those stringent restrictions upon the debt creating powers of cities, towns and school districts which afforded effectual protection against lavish bond issues and consequently litigation and imperilment [sic] of public credit. He also argued for the extension of the constitutional clause defining the right of eminent domain and providing for the inalienability of private property without reasonable compensation and the protection afforded by constitutional provision is in a large measure due to his efforts.*

### ELECTION TO THE BENCH

Francis Black was always an active Democrat. In 1880 his political involvement and fine legal reputation led to his being petitioned by 80 members of the Jackson County bar to run as judge of the 24th judicial circuit. Those who urged him to run included such prominent Kansas City attorneys as: John C. Gage, J. V. C. Karnes, Henry N. Ess, William Chrisman, and C. S. Crysler. Judge Black won this election and served on the circuit court for five years.

He was a no-nonsense judge who was firmly in control of his courtroom. An example recounted by Henry Wollman of New York City tells of the following narrow escape from death for Judge Black while he served on the Circuit Court:

*Judge Black was holding court in the old court house at Second and Main Streets, Kansas City. I was attorney for plaintiff in a case which was set for trial before him. He called his docket, all the other cases had gone off, and mine was the only case set for that day left on the docket. The attorney for the defendant did not wish to go to trial, and he finally stated that the court papers were mislaid. Judge Black apparently was not much impressed with the attorney's statement about the papers, and yet he was in no position to take issue with him. He said to him rather tartly, 'I will not let this case go over the term; I will set it for 2 o'clock this afternoon; you must find the papers by that time.' Court adjourned until 2 o'clock and the judge and all the lawyers in the case left the court room. Within one hour thereafter, that dreadfully tragic tornado which bereaved so many homes in Kansas City, blew the court house over. Judge Black's court room, in which so many legal battles had been fought, was in ruins. Judge Black's bailiff, a fine young fellow, whose name I cannot recall, was killed. If those papers had not been missing, all of us would have been in the court room at the time the cyclone struck it, and the case, together with the judge and counsel, would have been removed, by change of venue, to a higher tribunal.*



**BONNIE MARRIOTT** is a 1988 graduate of the University of Missouri at Kansas City Law School and a great-granddaughter of Judge Black. UMKC Law School is the successor institution to the Kansas City School of Law which Judge Black was associated with, and Ms. Marriott is the first descendant of Judge Black to attend the institution. She is employed at Roger M. Driskill Law Office in Richmond, Missouri and has been a member of the Historical Society since 1986.

Judge Black's tenure on the Circuit Court continued until his election to the Missouri Supreme Court in 1884. At least one observer — a student at the Kansas City School of Law in 1910 — credited his elevation to the Supreme Court to his reputation as an able and fair trial judge.

In the 1800's, the members of the Supreme Court performed tasks with which today's judges are not burdened — there were no stenographers to take notes or write their opinions. They also did not have clerks. Judge Black wrote his own opinions in longhand with a quill pen. An especially prolific jurist, he wrote over 600 opinions. Later critics praised his plain, terse statement of the facts, followed by his able, decisive application of the law, as models of judicial literature. In 1907 eminent Kansas City attorney William C. Scarritt referred to Judge Black's opinions as "lucid." Tracing references to



his decisions through Shepard's *Missouri Citations*, one finds many of his opinions repeatedly cited in various jurisdictions outside of Missouri. For example, his decision in *Stepp v. The Chicago, Rock Island & Pacific Railway Company*, 85 Mo. 229 (1884), was cited over 90 times. Reference to his opinions in various law reviews and the *American Law Reports* indicates the high regard the legal community had for his work.

In 1889, the General Assembly of Missouri convened with the Democratic Party holding all of the offices of the state and more members in the General Assembly than the Party had ever had in the state's history. Judge Black's opinions reflect the ideals of his party in his concern for the rights of the individual. For example, in *Martin v. Colburn*, 88 Mo. 229 (1885), he wrote a dissent that championed married women's property rights. Yet his was a well-tempered idealism. The political philosophy of Thomas Jefferson and Andrew Jackson did not prevent him from promoting the public welfare by balancing the needs of individuals against the needs of public institutions such as railroads and industries. He often wrote opinions to overturn jury decisions which awarded citizens and railroad workers damages for injuries received as a result of the operation of the railroads. He sought to limit the liability of the railroads to reasonable proximate cause. Extensive liability would have jeopardized their continued operation, depriving the state of a valued means of transportation. His careful appellate scrutiny often resulted in decisions favorable to the defendant in tort cases. Indeed in one case, *Waldhier v. The Hannibal & St. Joseph Railroad Co.*, 87 Mo. 37 (1885), he affirmed the lower court decision but remitted the damages awarded from \$25,000 to \$5,000 as reasonable and adequate where a 17-year-old boy had both of his legs amputated as a result of the injury. Judge Black found that the plaintiff was still able to obtain employment and therefore considered the jury award excessive.

Another area in which Judge Black had significant influence was equity jurisprudence. After the Civil War, conflicting claims over real property often arose from deeds based on property rights obtained during the early French and Spanish settlement of Missouri and patents issued by the State. Judge Black used equity principles to resolve disputes of this type. He wrote far more decisions involving ejectment actions than any other field of the law. An interesting example concerned ejectment from an island in the Missouri River, *Buse v. Russell*, 86 Mo. 209 (1885).

In 1889 David R. Francis became the governor of Missouri. Judge Black was his good friend and one of his advisers in what Missouri historian William Rufus Jackson called the Governor's "kitchen cabinet."

In 1893, at the peak of his judicial career and the same year he had become Chief Justice, Black was unanimously renominated for the Supreme

Bench at the Democratic State Convention. His reelection seemed almost certain, but as the Kansas City newspaper explained, 1894 was the "year so many thousands of Missouri Democrats stayed at home on election day." Judge Black's loss to the Republican candidate was similar to the fate of the rest of the Democratic ticket.

## PRIVATE LAW PRACTICE

After his defeat at the polls, Judge Black returned to Kansas City in 1894 and was involved in an extensive private practice of law. He established an office in the New York Life Building. A Jefferson City newspaper clipping from about 1895 states:

*The opening of the October term of the Supreme Court this week brought many prominent lawyers to the city, among others Judge F. M. Black of Kansas City, who served one term on the bench of this court, and who went down under the landslide of 1894. Financially, those who are in a position to know, say that it was a good thing for Judge Black. His salary as Supreme Judge was \$4,500 per annum, and the duties of the office involved a vast deal of hard work — drudgery, in fact. It is said that the fees gathered in by the judge during the first six months after he returned to the practice in Kansas City footed up about twice as much as his salary here for a year. His work on the bench was remarkable for the amount that he turned out and the sound law that invaded all of his opinions.*

As a private lawyer Francis Black was engaged in representing private corporations and the City of Kansas City, principally in negotiations and settlements. According to *The United States Biographical Dictionary*, "he was rarely seen around the courthouse and still less frequently did he argue or try a case before a jury. His pleadings were generally on law points to be decided by the court." At the time of Judge Black's death, he was representing Kansas City as a trustee in litigation involving the city's purchase of waterworks system from National Waterworks Company. Also, he was appointed receiver of the Guardian Trust Company and continued in that post until his death. The Guardian Trust Company and its predecessor corporation was involved in the financing of the Kansas City Southern and its predecessor railroad, Pittsburg & Gulf.

## FIRST PRESIDENT OF KANSAS CITY SCHOOL OF LAW

During the last few years that Justice Black served on the Supreme Court, actions taken in Kansas City by others in the legal community were laying the groundwork for another important part of his professional career. In "A Historic Review of Kansas City School of Law," Elmer N. Powell recalled how he was one of a group of men who met for the purpose of studying law together in 1893. They desired to form a formal law school

with a regular teaching staff so that their study could continue in a more disciplined way. These men obtained agreements from leaders in the legal community of Kansas City to volunteer to teach regularly in the school. However, it was not until 1895 that the Jackson County Circuit Court granted the *pro forma* decree petition to form the Kansas City School of Law.

The first president of the institution was Judge Francis M. Black. Judge Oliver H. Dean and Judge Edward L. Scarritt served as vice presidents; William P. Borland was Dean; Elmer N. Powell was secretary; and Edward D. Ellison was treasurer. Powell, Borland and Ellison were part of the original student group that had initiated the law school. They founded the school with a plan for students to be in touch with members of the profession and leaders of the bar. All of the lecturers and instructors were engaged in the active practise of law or served on the bench so that both practical and theoretical knowledge could be imparted to the students. Elmer Powell provided these further recollections about the beginnings of the school:

*The genesis of a law school in Kansas City is found in the struggles and ambitions of eight or ten young lawyers and law students who met together in various offices from time to time, beginning in 1892, for the purpose of acting as mutual quiz masters upon elementary subjects and certain leading cases in which they were interested. . . . [W]e often discussed the idea of a night law school and the need thereof in Kansas City, but we were advised by older heads that an attempt along this line had been made a few years before and had signally failed; however, we soon found that without regular instructors our interest languished . . . [I]n the early summer of 1895 Mr. William P. Borland, Mr. Edward D. Ellison and myself again revived the idea of a night law school here. We discussed the plan with certain eminent members of the bar and upon gaining their assurance that they would lead their influence and genius to the upbuilding of a law school, we proceeded at once to the work of organization and procured a *pro forma* decree of incorporation from the court. With such men behind us as Judge Francis M. Black, Hon. O. H. Dean, Judge E. L. Scarritt . . . we three originators of the plan felt that if we performed our part of the burden of organization and subsequent duties to follow the success of the school would be assured . . . by the opening of school in September of 1895 we found we had procured an enrollment of fifty-seven students.*

According to Mr. Powell, the original class of the law school included one woman (over 60 years old) and two black men, but these three did not finish their studies at the school. Interesting statistics regarding the student body, compiled between 1895 and 1915 showed that 50% came from states other than Missouri, 10% were college graduates before matriculating at the law school,

and 30% were high school graduates. In 1897, with the graduation of the first class from the law school, the General Assembly of Missouri amended its statutes so that graduates of the Kansas City School of Law were admitted to the Bar without further examination.

The students of The Kansas City School of Law remembered the role of Judge Black in the founding of the school:

*The Kansas City School of Law was established in 1895. It was richly endowed by the hopes, zeal and efforts of its many friends; but it did not require great perception to foresee that its early years must prove its most trying ones; it required even less perception to determine how much of its success must be made dependent upon its chief leader and sponsor; it required no perception whatsoever to decide that Francis M. Black should be chosen as its president. His eminence as a citizen, lawyer and jurist, his wealth of legal learning and experience, his proved executive ability, united to fit him to especially aid in the founding an institution of law. But, perhaps, then, it was not fully believed, either by himself or others, how completely he could bring himself into touch with the students. It was altogether a new field of action for him. But his rugged strength, his devotion to the school, his conscientious efforts, throughout his lectures on equitable jurisprudence, to share with them his learning as a great equity lawyer, aroused their immediate admiration. Beyond all this, they soon discovered that though his manners were oftentimes stern, abrupt and authoritative, his heart was never severed from the humanities of life.*

Judge Black devoted himself to the success of the Kansas City School of Law, although his own son attended law school in Columbia, Missouri. In his keynote speech before the school at its opening in 1895, Judge Black spoke of "eternal vigilance, untiring energy and scrupulous dealing with our fellowmen" as price for true success in law. He was interested in helping form the law school because he thought "some of the members of the bar were drifting from their moorings" and he thought he could instil into the minds of the coming lawyers a "higher standard of professional conduct." His obituary in the *American Law School Review* in 1902 stated, "His mind was naturally conservative, and his work in the school was directed to putting it upon a strong foundation of merits. He lectured upon the subject of Equity Jurisprudence, and was extremely strict in his requirements for the students, but always just and fair and willing to put himself to any extra labor to smooth the path of a deserving student."

#### CONTRIBUTIONS OF JUSTICE BLACK

Judge F. M. Black's major contribution to the state constitution of 1875 was in the areas of property law and fiscal responsibility. As a Chief Justice of the State Supreme Court he contributed significantly to the development of equity



jurisprudence for the State of Missouri, thereby helping many Missourians gain rightful claim to their property. The precedents established by his decisions on the Missouri Supreme Court still provide the basis for much equity law today.

Other decisions by Judge Black clarify important issues such as negligence and proximate cause. The limits on liability he established assisted in the survival of the railroads and other developing industries in an important period of economic growth.

Later in life Judge Black exercised his considerable influence in the development of the

Jackson County legal community. His crowning achievement was to serve as first president of a new law school for Kansas City and thereby assuring its success.

In reflecting on Judge Black's career in the *Kansas City Star* on June 8, 1902, prominent New York lawyer Henry Wollman commented, "He was a man the memory of whom should not pale with time, and yet how soon lawyers and judges are forgotten." Judge Black was a fine jurist and an important community leader. Over 100 years after his first election as a judge his contributions to the State of Missouri should not be forgotten.

## Judge Finch Memorialized at Supreme Court Ceremony

A memorial observance for former Supreme Court Justice James A. Finch, Jr., was held in the en banc courtroom of the Missouri Supreme Court on Thursday, October 13, 1988. At the memorial, a portrait of the late justice, who died April 1, 1988 was presented to the court. Judge Finch had served as a member of the Missouri Supreme Court from December 7, 1964 to December 1979 when he retired. He had served as Chief Justice from 1971 to 1973.



The entire Supreme Court was in attendance at the memorial which was also attended by Judge

Finch's family, including Mrs. Finch, his three children and his grandchildren, his brother and sister and their families.

Also in attendance were three former Chief Justices, Robert E. Seiler, J.P. Morgan and John E. Bardgett, former Supreme Court Commissioners Robert Welborn, Paul W. Barrett and Norwin D. Houser, Federal Magistrate Judge William Knox, retired Judge Marshall Craig of the 33rd Judicial Circuit and members of the Cole County Bar.

Judge Houser and Henry Andrae, Jefferson City attorney who had served on the University of Missouri Board of Curators with Judge Finch, delivered eulogies in honor of the late judge.

Judge Finch served as the first president of the Missouri Supreme Court Historical Society and was largely responsible for beginning publication of the JOURNAL.

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# S.C. Historical Society holds Annual Meeting

The third annual meeting of the Supreme Court of Missouri Historical Society was held Friday, September 9, 1988 at the Holiday Inn Executive Center in Columbia, Missouri. Forty-eight members attended the dinner. Judge Robert T. Donnelly gave the invocation. Following the dinner, President Richard Brownlee III called the meeting to order. Minutes of the last meeting were approved as printed in the last copy of the **JOURNAL**.

Mr. David Brydon gave the treasurer's report which showed that the Society currently had a total of \$30,048.88 in the Money Market Account, \$1,731.00 in the checking account and \$26,254.88 in unrestricted funds.

Dave Brydon, as Chairman of the nominating committee, presented a list of candidates for the following offices:

President ..... Richard S. Brownlee III  
1st Vice President ..... Virginia Gottlieb  
2nd Vice President ..... Paul Barrett  
3rd Vice President ..... William A. R. Dalton  
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(Term expires July, 1989)  
Trustee ..... Donald H. Chisholm  
(Term expires July, 1991)  
Trustee ..... Robert P. Russell  
(Terms expires July, 1991)

All officers and trustees were elected by acclamation.

Judge Warren D. Welliver gave a brief summary of proposed future projects of the Society now that Sidney Larson has completed restoration of 17 portraits of former Supreme Court judges. Judge Welliver described several projects that are under consideration for exhibits of interest to the thousand of students who tour the Supreme Court building each year. Included in the proposed projects is an exhibit featuring a will written by hand by a Boonville resident in a submarine sunk on the bottom of the ocean.

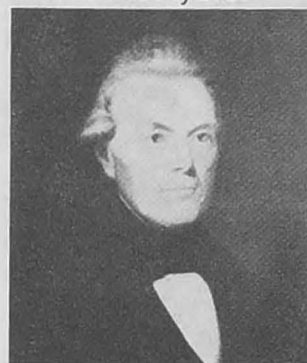
Another project would be to obtain a replica of the statue of Old Drum, the dog in the now-famous lawsuit, and prepare a display of pictures and biographical information of the attorneys who participated in this case.

Following the business meeting, Prof. Vincent Immel of St. Louis University Law School, introduced Professor Gerald Dunne who spoke on "Foiling the Great Governorship Steal: The Court's Finest Hour."

## Ryland Photo Present to Court

A photograph of a George Caleb Bingham painting of Judge John Ferguson Ryland, a member of the Missouri Supreme Court from 1849 to 1857, was presented to the Court by descendants of the judge on Thursday, November 10, 1988. Taking part in the presentation ceremony was a great grandson of Judge Ryland, John Ryland Wallace, who recounted personal details of the judge's life.

Also present for the ceremony were Mrs. Elizabeth Ayers Otto, a great, great granddaughter of Judge Ryland, and a great, great grandson, William V. Ayers.



Judge Ryland was born in King and Queen County, Virginia, in 1779. He came to Missouri in 1819 or 1820 and entered the practice of law in Franklin in Howard County. He was a friend of the Bingham family and served as administrator of the estate of the artist's father.

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