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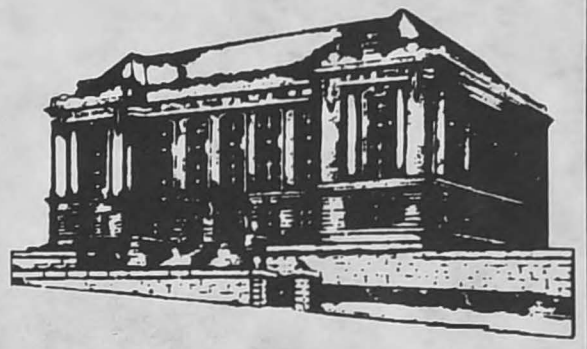


A Nation Divided, a State Divided, a Court Divided

Conflicting sentiments which led to the Civil War and the deep divisions these caused in Missouri's judiciary are nowhere better exemplified than in the attitudes expressed in the lesser-known Missouri Supreme Court Dred Scott decision of 1852 (which led to the better-known Federal District and U.S. Supreme Court decisions) and the decisions of future Missouri Supreme Court judges in choosing sides in the armed conflict which followed.

The 2-1 Missouri Supreme Court Dred Scott decision (at the time the Missouri Supreme Court consisted of three judges) and the dissenting opinion gives a vivid example of the disparate attitudes then existing on the Court toward states' rights and slavery. Nearly ten years later, six future judges of the Missouri Supreme Court indicated a similar disparity in choosing sides for the battlefield conflict, two electing to serve the Union, four choosing to fight for the Confederate cause.

An indication that Southern sentiment was still strong in Missouri for years after the War ended is the fact that four of the dedicated Confederate soldiers were later elected to serve on the Supreme Court of Missouri, a state which had supported the Union.

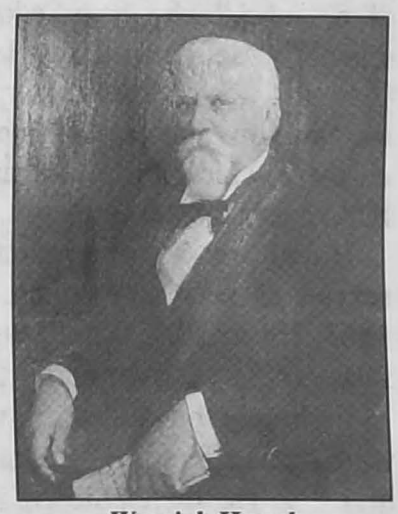
In her article (see below), "Supreme Court Judges and the Civil War," D.A. Divilbiss provides a look at these six judges who rose to prominence on the Missouri Supreme Court from such diverse philosophical backgrounds.

See page 5 for the Missouri Supreme Court Dred Scott decision **Scott, (a man of color) vs. Emerson** (15 Missouri Reports 577) and the dissenting opinion, which provide a vivid picture of the conflicts in attitudes among the judiciary reflecting, perhaps, the Court's "accommodation to the temporary public excitement which are gathered around it" referred to by Judge Gamble in his dissent.

Supreme Court Judges and the Civil War

Although it has been over 100 years since the end of the Civil War, public interest in this period of history remains high. However, the emphasis has shifted away from the bloody battles and biographical accounts of the generals to a new focus on the individuals, the foot soldiers who did the marching and fighting.

Six future Missouri Supreme Court judges actively participated in the Civil War. None of them were born in Missouri, but all took an active part in the formation and growth of their adopted state. Four joined the Confederacy; two joined the Union. Four received wounds that affected them all their lives. They were all leaders in the war and later were outstanding men as lawyers and judges. None of the former Confederates submitted to the "Iron Clad Oath." The Confederates were willing to fight to divide the country, but with the end of hostilities, they fought just as hard to restore the union and make the country whole. All six were dedicated to their particular cause; all six had war stories to tell.

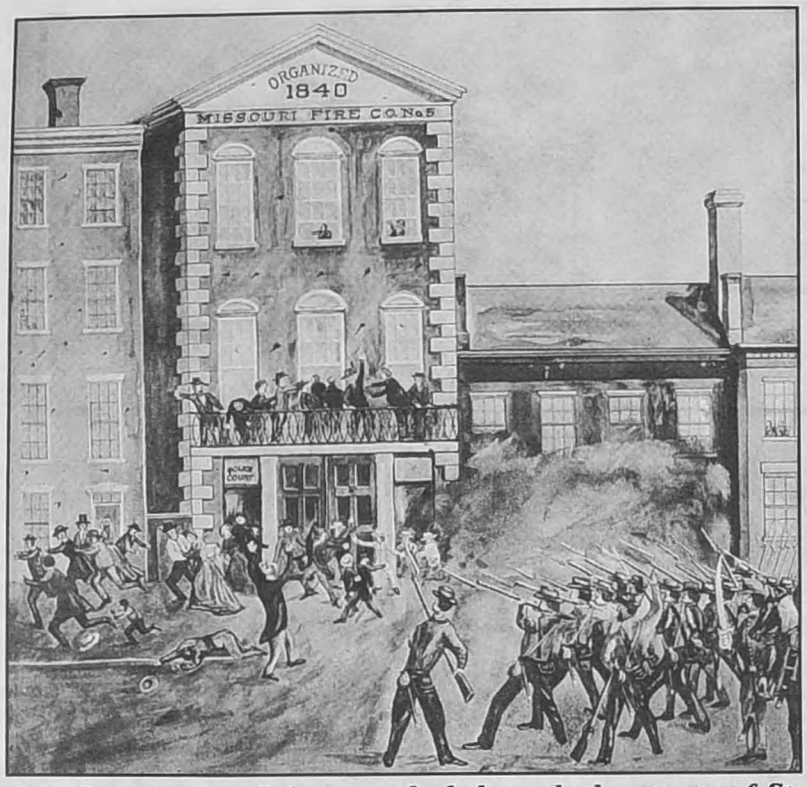


Warrick Hough

Warrick Hough 1836-1915

It is not surprising that, at the age of 24, Warrick Hough would decide to follow Governor Claiborne F. Jackson in supporting the Southern cause. Hough's parents were from Virginia where

(See JUDGES, Page 2)



As prisoners were being marched through the streets of St. Louis, someone in a crowd of southern sympathizers threw a stone at the troops and Lyon's forces began firing. Before the clash ended, 28 people had been killed or fatally injured. Hough's order resulted in the armed conflict which started the Civil War in Missouri.

Warrick was born in Loudon Co. in 1836. Furthermore, his father, John Hough, was a friend of the governor and had helped in the writing of the 1849 "Jackson Resolutions" that pledged Missouri's cooperation with the southern states should war develop. What is surprising is that in **only** 14 years Hough, the former Confederate soldier, would be elected a judge on the Missouri Supreme Court, a state that had supported the Union during the Civil War.

Hough's background could hardly be described as that of a "rebel." His early education was in the private schools of Jefferson City. He received a BA degree in 1854 and was selected to help the state geologist, Professor Swallow, prepare barometrical observations and calculations which lead Governor Sterling Price to appoint him Assistant State Geologist.

Hough received a masters degree in 1857. He served as secretary to the state senate from 1858-1861. He married Nina Massey, daughter of the Secretary of State. Eventually they had five children.

He began the study of law in the office of E.L. Edwards of Jefferson City and was admitted to the bar in 1859. He then entered into a partnership with J. Proctor Knott that lasted until January 1861.

With such a traditional background, it is hard to believe that he was the man credited with issuing the order that eventually lead to the start of the Civil War in Missouri. Judge Hough's first military experience was as a First Lieutenant in the Governor's Guards on January 17, 1860 when he commanded the Southwest expedition in the fall and winter of that year. When Claiborne Jackson became governor in 1860, he appointed Judge Hough Adjutant General of Missouri with the rank of Brigadier General of state troops.

Under Jackson's direction, Hough issued an order on April 22, 1861, for all state militia to report to an area located on the outskirts of St. Louis for training in defensive tactics. This encampment, named Camp Jackson, was placed under the command of General D.M. Frost. On May 10, Federal troops under the command of Captain Nathaniel Lyon forced the surrender of the troops at the camp. While the prisoners were being marched through the streets of St. Louis, someone in a crowd of southern sympathizers threw a stone at the troops and Lyon's forces began firing. Before the clash ended, 28 people had been killed or fatally injured. Hough's order resulted in the armed conflict which started the Civil War in Missouri.

When Governor Jackson left Jefferson City on June 15, 1861 for Arkansas to establish a "government in exile," Hough followed. He stayed with Jackson until Jackson's death in 1862. Thomas C. Reynolds, who as Lieutenant-Governor succeeded Governor Jackson, appointed him Secretary of State, an office Hough held until 1863 when he resigned to enter the Confederate army.

Hough received a commission as a captain in the Inspector General's Department and was assigned to duty by James A. Seddon, Confederate Secretary of War, on the staff of Lieutenant General Leonidas M. Polk After the death of General Polk, Hough was assigned to the staff of General Stephen D. Lee. Later he served on the staff of Lieutenant General Dick Taylor commanding the Department of Alabama, Mississippi, East Louisiana and West Florida, with whom he surrendered to General E. R. S. Canby, receiving his discharge (parole) in May, 1865.

Rather then face disfranchising laws contained in " Drake's" Constitution of 1865 and the punitive provisions imposed by the "Ironclad Oath" that prohibited lawyers from practicing their profession, Judge Hough moved to Memphis, Tennessee, where he opened a law practice. At this time in his life, he is described in the United States Biographical Dictionary as "one of the wandering soldiers of the fallen Confederacy, without a home, and under the ban of the law of the state…in which he had been raised and educated, and deprived of the means of earning a support for himself and his family."

In January, 1867, when the test oath was declared

unconstitutional by the United States Supreme Court, Judge Hough returned to Missouri and opened a law practice in Kansas City. Seven years later, in 1874, the entire membership of the Kansas City Bar and all the lawyers of Jackson County recommended him to run for the office of Missouri Supreme Court judge. In November of that year, he was elected to the Missouri Supreme Court for a period of ten years. Interestingly enough, one of his associates on the court was Henry M. Vories who had supported the Union during the Civil War. While on the court, Hough wrote over 400 opinions.

On his retirement from the court in 1884, Hough moved to St. Louis where he formed a partnership in the firm of Hough, Overall and Judson until 1889. Later he practiced with his son, Warwick M. Hough. In November, 1900, he was elected to the circuit bench of the City of St. Louis for the a term of six years. At the end of his term, he returned to practice law with his son until his death on October 28, 1915.

Though he had been involved in starting the Civil War in Missouri, and had supported the Confederacy, like so many Confederate soldiers, he had returned to Missouri and played a vital part in the process of healing the state and the nation.

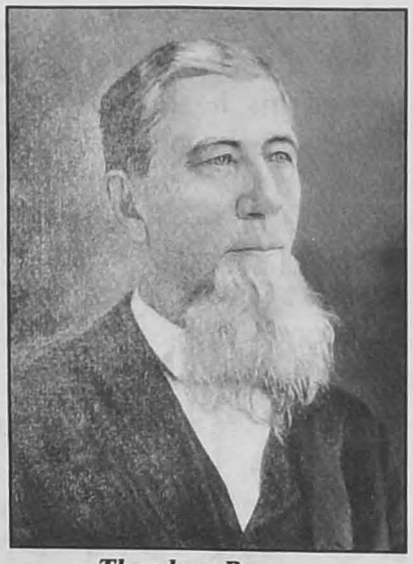
Theodore Brace 1835-1921

Judge Brace's career in Missouri started in 1856 in Paris, Missouri. He had left Cumberland, Maryland to join a friend in the practice of law in Independence, Missouri. but, because of bad weather, the roads became slick, making it impossible for the stage coach to travel. Brace was forced to stop in Paris.

It was December, and during the Christmas holidays, he was invited to a Christmas dance where he met Catherine Roanna Penn, daughter of the County Clerk. So enamored was he with Miss Penn that he abandoned the trip to Independence and decided to settle in Paris. In January, 1857 he opened his law practice in Paris and a few months later married Miss Penn.

The first 21 years of his life were spent in Cumberland, Maryland, where he was born on a farm June 10, 1835. He was educated by private tutors and later attended Allegheny Academy where he graduated at 15. For the next six years he was employed as a store clerk, post office clerk, clerk in the Circuit Clerk's office and clerk in a bank. All this time he was also reading law. He successfully passed the Maryland Bar in May, 1856.

By 1861 Brace was well established in Paris and had developed a lucrative law practice. However, when Governor Claiborne Jackson called for volunteers to support the southern cause, Brace responded immediately. Within a month, he had organized a regiment and was elected its Captain. These troops eventually became part of the Third Missouri Cavalry. Their initial encounters with Federal troops at Monroe City and Shelbina are described as "skirmishes." In the summer of 1861, Brace's troops were consolidated with three others to form a battalion of cavalry. Brace was elected lieutenant-colonel.



Theodore Brace

In September, 1861, Brace's regiment took a leading part in the battle of Lexington, Missouri. Brace led his regiment in the final charge that resulted in the surrender of all the Union forces. In a report from Brigadier General Thomas A. Harris, dated September 23, 1861, from Lexington, Harris praised Brace and other officers, saying that, though they were "poorly provided with entrenching implements, (they) perfected their defense with astonishing perseverance." It was from Lexington that Sterling Price, writing to Governor Jackson in a letter dated September, 21, 1861, stated he had "obtained the restoration of the great seal of the State and the public records which had been stolen from their proper custodians."

The Confederates were not so lucky at their next major engagement. In March, 1862 the troops under Sterling Price were defeated at the battle of Pea Ridge in Arkansas. Brace's men and other Missourians formed the left wing of the army and apparently bore the brunt of the battle. Their immediate commander, General Van Dorn, wrote in his official report, "They continually pushed on, never yielding an inch they had won, and when at last they received the order to fall back…they retired steadily thinking it only a change of position."

Brace's men, having completed their six months' term of service, were discharged and started for home. Brace decided to go back to Missouri to recruit another regiment, but when he got to Springfield, he became seriously ill with typhoid pneumonia. A farmer hid him in his cabin and tried to nurse him back to health, but while Brace was still very sick, Federal troops discovered his hiding place and arrested him.

(See JUDGES, Page 4)

(JUDGES, from Page 3)

Brace was taken prisoner, but because the condition of his health was so desperate, he was transferred to a hospital in Springfield. After at least six weeks in the hospital, he had apparently recovered enough to be transferred to the Myrtle Street prison in St. Louis. His condition then was so precarious that he accepted a discharge from imprisonment under bond of $10,000 and returned to Paris. Eighteen months later, his health had improved enough that he was able to resume his law practice

By 1874, Brace became interested in politics and was elected to the State senate. In 1878 he became a probate judge. He resigned this position to become the judge of the 16th Judicial Circuit in January, 1880. In 1884, his party encouraged him to run for governor, but he declined. He was elected to the Missouri Supreme Court in November, 1885 for ten years, and re-elected in 1896. He retired in 1906. On May 17, 1921, Judge Brace's life ended in Paris, Missouri, 65 years after he had arrived in Missouri.

James B. Gantt 1845-1889

In a memorial presented by the United Daughters of the Confederacy, Judge Gantt's participation in the Battle of Gettysburg is described as "there was little Jimmy Gantt, wounded in arm and leg, laying among the fallen. Right in the path of the Union infantry he lay, somewhat protected by a sapling that spread above him. Lifting himself with the sapling's help and supported by his one well leg, he snatched off his cap with his one well arm, and waving it defiantly in the face of his Yankee foes he shouted darefully, "Hurrah for Jefferson Davis and the Southern Confederacy." He was only 17 and had just received the first of five wounds he would receive in the war.

Judge Gantt was not a Missourian by birth. He was born October 26, 1845, in Putnam County, Georgia. He was educated in the Clinton Academy and the Bibb County Academy at Macon, Georgia. He was ready to enter college when the war started in 1861. Instead of college, in the spring of 1862, he volunteered in the Confederate Army and became a member of Company B, Twelfth Georgia Infantry. At age 16 he was the youngest member of his company, and was made an orderly sergeant.

His company was assigned to the Army of Northern Virginia. His regiment was a part of the command led by "Stonewall" Jackson. Gantt participated in all the campaigns against Milroy, Banks, Shields and Fremont. Having survived those, he followed Jackson on to Cedar Mountain, Chantilly, Sharpsburg, the second Manassas and the seven days' battle for Richmond. When Jackson was killed at Chancellorsville, Gantt was assigned to General Robert E. Lee.

Two months later, Gantt was at the great Battle of Gettysburg where he was wounded not once, but twice. After his recovery from his wounds, he rejoined his command and was severely wounded in the left ankle during the battle of the Wilderness and was sent to the hospital to recuperate. Upon release from the hospital, he returned to his regiment where on October 19, 1864, at the battle of Cedar Creek, he received an injury in his left knee that permanently disabled him. He was only 19. He would walk with a limp the rest of his life. When he was well enough, he returned to his home in Georgia just a few weeks before Lee's surrender of the Army of Northern Virginia on April 10, 1865.

Anxious to resume his education, he began the study of law under Colonel Lewis A. Shittle. To support himself, he started teaching at a private school in Putnam County, Ga. In January, 1867, he started law school at the University of Virginia, and graduated in July, 1868, with the degree of Bachelor of Laws.

At the time of Gantt's graduation, Georgia was immersed in the troubles of the reconstruction period, so Gantt decided to move to Missouri. He came with a letter of introduction addressed to "Philips & Vest, Sedalia, Missouri." He was later described by Judge John F. Philips in his memorial address as "He was in quest of a home and a livelihood. He was so lame, so young." Gantt stayed in Sedalia until 1880 when he moved to Clinton, Missouri and opened a law practice. Later that year he was elected Judge of the 22nd Judicial Circuit. Gantt returned to private practice after serving six years on the bench, and in November, 1890, he was elected to the Missouri Supreme Court.

The story is told that, while Gantt was a candidate for the Supreme Court, one of his constituents asked:

"Candidate for Supreme Court, ain't you?"

"Yes."

"In the War?"

"Yes."

"Which side?"

"Confederate."

"Got any scars?"

"Five."

James B. Gantt

(See JUDGES, Page 16)

Scott, (a man of color) vs. Emerson

15 Missouri Reports 577

[Scott, J. delivered the opinion of the Court]

This was an action instituted by Dred Scott against Irone Emerson, the wife and administratrix of Dr. John Emerson, to try his right to freedom. His claim is based upon the fact that his late master held him in servitude in the State of Illinois, and also in that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 degrees 30 minutes, north latitude, not included within the limits of the State of Missouri.

It appears that Scott's late master was a surgeon in the Army of the United States and, during his continuance in the service, was stationed at Rock Island, a military post in the State of Illinois, and at Fort Snelling, also a military post in the territory of the United States, above described, at both of which places Scott was detained in servitude _ at one place, from the year 1834, until April or May, 1836; at the other, from the period last mentioned, until the year 1838. The jury was instructed, in effect, that if such were the facts, they would find for Scott. He accordingly obtained a verdict.

The defendant moved for a new trail on the ground of misdirection by the court, which being denied to her, she sued out this writ of error.

Cases of this kind are not strangers in our courts. Persons have been frequently here adjudged to be entitled to their freedom, on the ground that their masters held them in slavery in territories or States in which that institution was prohibited. From the first case decided in our courts, it might be inferred that this result was brought about by a presumed assent of the master, from the fact of having voluntarily taken his slave to a place where the relation of master and slave did not exist. But subsequent cases base the right "to exact the forfeiture of emancipation," as they term it, on the ground, it would seem, that it is the duty of the courts of this State to carry into effect the constitution and laws of other States and territories, regardless of the righ's, (sic) the policy or the institutions of the people of this State.

The States of this Union, although associated for some purposes of government, yet, in relation to their municipal concerns have always been regarded as foreign to each other. The law of descents of one State is not regarded in another, in the distribution of the estates of deceased parsons. So of the law of wills, administrations, judicial proceedings, and all other matters of mer internal police. The courts of one State do not take judicial notice of the laws of other States. They, when it is necessary to be shown what they are, must be proved like other facts. So of the laws of the United States, enacted for the mere purpose of governing a territory. These laws have no force in the States of the Union, they are local, and relate to the municipal affairs of the territory. Their effect is confined within its limits, and beyond those limits they have no more effect, in any State, than the municipal laws of one state would have in any other State; State of Virginia acts; Cohen's 6 Wheat. This doctrine is declared and maintained, not only with respect to nations strictly foreign to each other, but also to the several States of this Union. Every State has the right of determining how far, in a spirit of comity, it will respect the laws of other States. Those laws have no intrinsic right to be enforced beyond the limits of the State for which they were enacted. The respect allowed them will depend altogether on their conformity to the policy of our institutions. No State is bound to carry into effect enactments conceived in a spirit hostile to that which pervades her own laws. In the Conflict of Laws, sec. 36, it is said: "but of the nature, and, extend and utility of this recognition of foreign laws, respecting the state and condition of persons, every nation must judge for itself, and certainly, is not bound to recognize them when they would be prejudicial to their own interests. It is, in the strictest sense a matter of the comity of the nations, and not of any absolute paramount obligation, superseding all discretion on the subject." So in sec. 32, it is said, "it is difficult to conceive, upon what ground a claim can be vested, to give any municipal laws an extra territorial effect,

Dred Scott

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(SCOTT, from Page 5)
when those laws are prejudicial to the rights of other nations or to those of their subjects; it would at once annihilate the sovereignty and equality of every nation, which should be called upon to recognize and enforce them, or compel it to desert its own proper interests and duty to its own subjects in favor of strangers, who were regardless of both. A claim so naked of any principle or just authority to support it, is wholly inadmissible."

Again, "the comity of nations is derived all together from the voluntary consent of the state by which it is shown, and is inadmissible, when it is contrary to its known policy or prejudicial to its interests. In the silence of the positive rule, affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interest." Sec. 38. It is a humiliating spectacle, to see the courts of a State confiscating the property of her own citizens by the command of a foreign law. If Scott is freed, by what means will it be effected, but by the constitution of the State of Illinois, or the territorial laws of the United States? Now, what principle required the interference of this court? Are not those governments capable of enforcing their own laws; and if they are not, are we concerned that such laws should be enforced, and that, too, at the cost of our own citizens?—States, in which an absolute prohibition of slavery prevails, maintain that if a slave, with the consent of his master, touch their soil he thereby becomes free. The prohibition in the act, commonly called the Missouri Compromise, is absolute. How is that to be interpreted? That act prevails along our entire western boundary; if our courts take upon themselves the task of enforcing the laws of other States, it is nothing but reasonable that they should take them as they are understood where they are promulgated. If a slave passes out western boundary, by the order of his master, and goes into the territory subject to the Missouri Compromise, does he thereby become free? Most of the courts of this Union would say that he does, if his freedom is sought to be recovered under the laws of that territory. If our courts undertake the task of enforcing that act, should they not take it as most of the other States would? Some of our old cases say, that a hiring for two days would be a violation of the constitution of Illinois and entitle the slave to his freedom, If two days would do, what not one? Is there any difference in principle or morality between holding a slave in a free territory two days more than one day? And if one day, why not six hours? The old cases say, the intent is nothing, the act is the thing.

Now are we prepared to say , that we shall suffer these laws to be enforced in our courts? On almost three sides the State of Missouri is surrounded by free soil. In one of our slaves touch that soil with his master's assent, be becomes entitled to has freedom. Considering the numberless instances in which those living along an extreme frontier would have occasion to occupy their slaves beyond our boundary, how hard would it be if our courts should liberate all the slaves who should thus be employed. How unreasonable to ask it. If a master sends his slave to hunt his horses or cattle beyond the boundary, shall he thereby to liberated? But our courts, it is said, will not go so far. If not go the entire length, why go at all? The obligation to enforce to the proper degree, is as obligatory to enforce to any degree. Slavery is introduced by a continuance in the territory for six hours as well as for twelve months, and so far as our laws are concerned, the offence is as great in the one case as in the other. Laws operate only within the territory of the State for which they are made, and by enforcing them here, we, contrary to all principle, give them an extra territorial effect. Chancellor Kent says: "A statute, though not in the nature of a judicial proceeding, is, however, a record of the highest nature. But if a statute, though a matter of record, was to have the same effect in one State as in another, then one State would be dictating laws for another, and a fearful collision of jurisdiction would instantly follow. That construction is utterly inadmissible, while it is conceded to be a principle of public law, requisite for the safe intercourse and commerce of mankind that acts, valid by the law of the State where they arise, are valid everywhere, it is at the same time, to be understood, that this principle relates only to civil acts founded on the volition of the parties, and not to such as proceed from the sovereign power. The force of the latter cannot be permitted to operate beyond the limits of the territory, without affecting the necessary independence of nations." 2 Kent, 117,8.

This language is used when speaking in reference to the legislation of other States of the Union. It is conceived, that there is no ground to presume or to impute any volition to Dr. Emerson, that his slave should have his freedom. He was ordered by superior authority to the posts where his slave was detained in servitude, and in obedience to that authority, he re-

(See SCOTT, Page 12)

Lunatics, Swamplands and the Vote for Women: The Case of Virginia Minor

(Talk given by Dr. LeeAnn Whites at the 12th Annual Meeting of the Missouri Supreme Court Historical Society)

Although rarely recognized, there is a definite historical relationship between the movement for racial equality and gender equality. Dr. LeeAnn Whites pointed out this relationship in an address to members of the Missouri Supreme Court Historical Society at its annual meeting in Jefferson City, Sunday October 5, 1997. As an example, she cited the period following the civil war and the freeing of the slaves as the "best of times and the worst of time" with the possibilities of tying together this great rebirth of freedom for four million slaves with the frustrations in the fight for women's rights.

During the war, women's rights activists had set aside their agitation for the expansion of the legal rights of women and supported the war effort. Through voluntary organizations, they had clothed, fed, nursed and buried soldiers and had established a close relationship with the abolitionists. For these contributions, they expected to be included in the expansion of freedom. It was inconceivable to them that the freed people would receive rights and educated white women would not.

With the passage of the 14th Amendment in 1867, women active in the women's rights movement felt this opened up the vote not only to "qualified male voters" but to women as well. Lucy Stone felt it was the "black man's hour." Elizabeth Cady Stanton and Susan B. Anthony argued "one for all, all for one." They believed that the outcome of the great struggle would not be the gendering of the constitution. These two views split the movement to such an extent that it was not reunited for twenty years.

In 1869, at the NWSA convention of the Anthony faction, the Minors presented their case. Francis Minor, Virginia's husband and an attorney, contended that because women were citizens at the time of the founding of the nation, and in 1857 the Supreme Court had ruled in the Dred Scott case that slaves were not, participating in the founding already gave them the power to vote. Furthermore, being a citizen in a democracy means that power resides in the individual citizen. Therefore, all they needed to do was to seize the day, take direct action and exercise the rights they already had.

The idea was adopted by the convention and it was decided the Presidential Election of 1872 would be used as a testing ground. The results were that hundreds of women voted. Susan B. Anthony was arrested and tried, but her case was dismissed because the judge didn't want it going to a higher court.

In St. Louis, Virginia Minor faced a different problem. She attempted to register to vote on October 15, 1872, but Registrar Reese Happensett denied her the right by because she was not a male citizen and, according to the Constitution of the State of Missouri and the registration law of the state, only male citizens were entitled to vote. The Minors proceeded to file their case, but lost in the lower court. In 1875, Mr. Minor argued his wife's case before the Supreme Court.

Dr. Whites said the Minors' argument went down in flaming defeat. The Supreme Court said that the status of citizenship did not necessarily confer the right to vote. It also said the right to regulate the vote properly resided at the level of the state. Further repercussions developed when the court cited the Minor case in the Cruikshank case, which stated that the southern states had no responsibility to defend the black man's right to vote. In addition, the court said that the state had the right to limit citizenship, not just based on gender, but also substitutes race, income, place of residence and education. For women, this action slowed down their acquisition of the vote and divided the women's movement until 1890.

With the defeat in the courts, Mrs. Minor started presenting petitions for women's rights to the Missouri state legislature. She was labeled a lunatic and her petitions were either tabled or sent to a committee investigating swamplands. She died in 1893, never seeing the passage of the 19th Amendment in 1920.

Dr. Whites ended her talk by wondering what motivates people to champion unpopular causes and subject themselves to the contempt of other people. She sees how the Minors, in spite of Virginia roots in the slave-holding south, were able to combine their support for freeing of the slaves to a new commitment for the expansion of rights for all. In conclusion, Dr. Whites said, "There are pivotal moments, when we should seize the day, or perhaps we are in for the long slog. Is it the best of times? Is it the worst of times? Is it for better or worse?"

Society Hosts 12th Annual Meeting

The 12thh annual meeting of the Missouri Supreme Court Historical Society was held Sunday, October 5, 1997 at the Jefferson City Country Club in Jefferson City, Missouri. Twenty-seven members attended the dinner meeting.

Following dinner, President Tom Vetter opened the business meeting with a discussion of the Treasurer's Report that had been distributed earlier to the members. Motion for acceptance of the report was made by Judge J.P. Morgan and seconded by Judge Andrew J. Higgins.

Nominations for the following officers and trustees were presented:

Chairman of the Board: William H. Leedy
President: Thomas A. Vetter
First Vice President: Mrs Sinclair S. Gottlieb
Second Vice President: William A. R. Dalton
Secretary-Treasurer: D.A. Divilbiss

Trustees (Three-Year Term): N. C. Brill, John S. Black, Emory Melton

Their election was unanimous.

President Vetter introduced State Archivist Dr. Kenneth Winn, who reported that the exhibit "The Verdict of History" was the largest and most expensive that the Archives had ever undertaken. He thanked the Society for its help in funding the opening reception and the Speakers' Series, which provided four in-depth discussions of exhibited cases and related topics.

President Vetter then turned the meeting over to the speaker for the evening, Dr. LeeAnn Whites, Professor of History and Women's Study, University of Missouri-Columbia. Dr. White's topic was "Lunatics, Swamplands and the Vote for Women: The Case of Virginia Minor." Her speech is reviewed on page 7 in this edition of the **Journal**.

New Study Examines Role of Courts on Emerging Industry in 19th Century

For persons who have a historical interest in whether justice or injustice has been dispensed by Missouri courts in tort actions during the early 19th century, and what effect these decisions had on commerce and industry, a new source of reliable information is now available. A thesis by Judge Tom C. Clark, 16th Judicial Circuit, entitled "Impact of Nineteenth Century Missouri Courts Upon Emerging Industry: Chambers of Commerce or Chambers of Justice?" will be published in the 1998 Spring Issue of the **University of Missouri-Columbia Law Review**.

The thesis, completed by Judge Clark during seven years of work for a Master of Judicial Studies degree from the National Judicial College at Reno, is based on his exhaustive research of 200 court cases between the years 1820 and 1870. This study examined whether the judicial system in Missouri tilted toward the interests of emerging industry at the expense of individual rights as alleged by some historical scholars. Judges Clark's conclusion: It did not.

A copy of the thesis is also available in the manuscript collection of the Missouri State Archives in Jefferson City.

Duane Benton Becomes Chief Justice

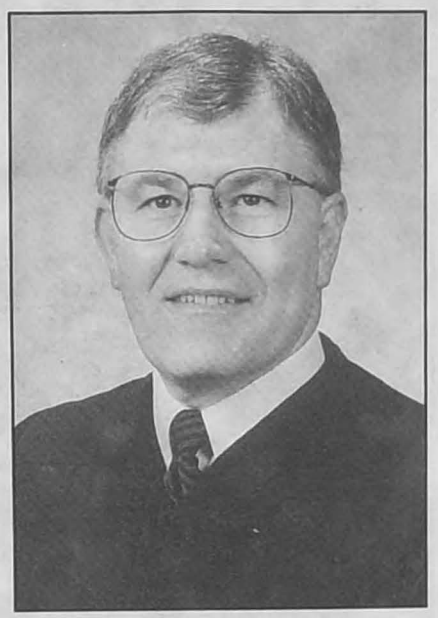
On July 1, 1997, 46-year- old Duane Benton became the new Chief Justice of the Missouri Supreme Court and the chief administrator of the statewide judicial system. Unlike the Chief Justice of the United States Supreme Court, who is appointed by the President for life, in Missouri the position rotates every two years among the Court's seven judges.

The new Chief Justice was born in Springfield, but grew up in Mountain View, Willow Springs and Cape Girardeau. In 1972 he graduated from Northwestern University, Evanston, Illinois, graduating summa cum laude and Phi Beta Kappa. Three years later he graduated from Yale Law School where he was editor and managing editor of the *Yale Law Review*.

From 1975-1979 he served with the U.S. Navy as a judge advocate. While in the Navy, Benton attended Memphis State University at night and earned a masters degree in business administration and accountancy. He is still a captain in the Naval Reserve. In 1983 he became a Certified Public Accountant.

Prior to coming on the court, he practiced law in Jefferson City for six years during which time he argued 10 or 12 cases before the Supreme Court. In 1989 he became state revenue director. In 1991 he was appointed to the Court by Governor Ashcroft.

In the role of Chief Justice, Benton will be the chief spokesman for Missouri courts. In a recent interview published in the **Jefferson City Tribune** he said, "There really isn't a Benton administration that will differ from the work of previous chief justices." He describes his position in the Court as helping to write the continual story of the courts chapter by chapter.



Chief Justice Duane Benton

Benton sees as the biggest challenge during his administration the implementation of the statewide court automation system that will be more efficient, less expensive and allow access to court opinions for everyone. He enjoys talking to tour groups that visit the historic Supreme Court building and frequently serves as a guide taking them through the building. He likes speaking to civic clubs and grade school classes about the judiciary.

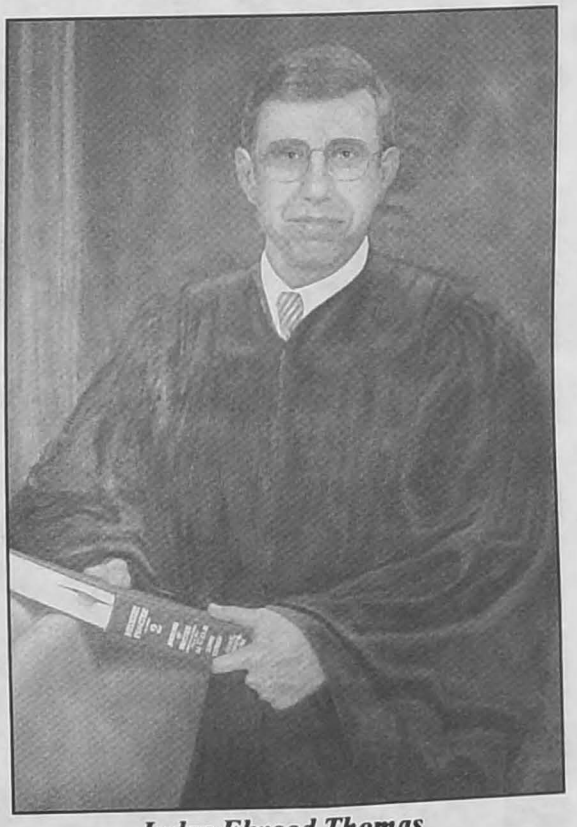
He is married and has two children.

Judge Elwood Thomas' Portrait Presented to Court

Colleagues and family members of the former Missouri Supreme Court Judge Elwood Thomas celebrated his life and legacy Friday, June 13, 1997, with the unveiling of his portrait that will hang outside the courtroom where he heard cases.

The mood was lighthearted as Chief Justice John Holstein encouraged others who served with Thomas to share their memories during a ceremony in the courtroom. Judge Holstein was one of Thomas' law students before serving with him on the Court. Thomas died in July, 1995 from complications of Parkinson's disease. He had served almost four years of his 12-year term on the Court.

In the portrait, Thomas is holding a law book he co-authored and bears the name Shook, Hardy & Bacon, a Kansas City law firm Thomas joined in 1978. He was a native of Council Bluffs, Iowa, and the son of a Methodist minister. Thomas was considered an expert on jury instructions and rules of evidence. He helped draft portions of instructions given to juries in Missouri and was co-editor of a two-volume litigation guide. He taught in the law school of the University of Missouri from 1965 until 1978. Thomas also served on the faculties for the National Judicial College in Reno, Nev., the National Institute for Trial Advocacy and the Missouri's Judicial College.



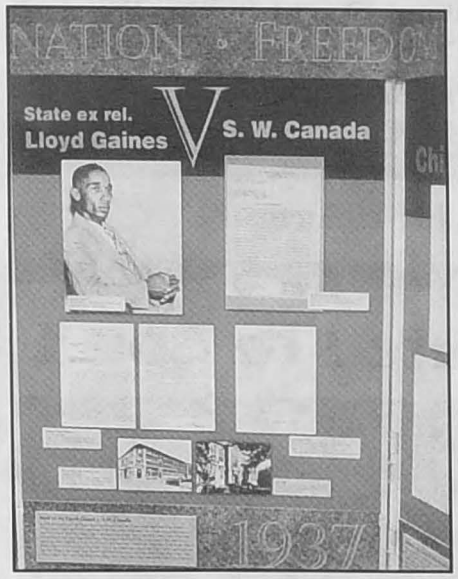
Judge Elwood Thomas

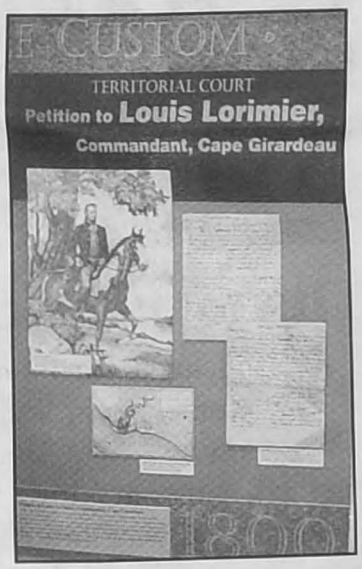
Secretary of State Rebecca Cook cuts the ribbon officially opening "The Verdict of History" exhibit. Assisting are Chief Justice John Holstein, St. Louis Bar Association President Charles Weiss, and Supreme Court Judge Ann Covington.

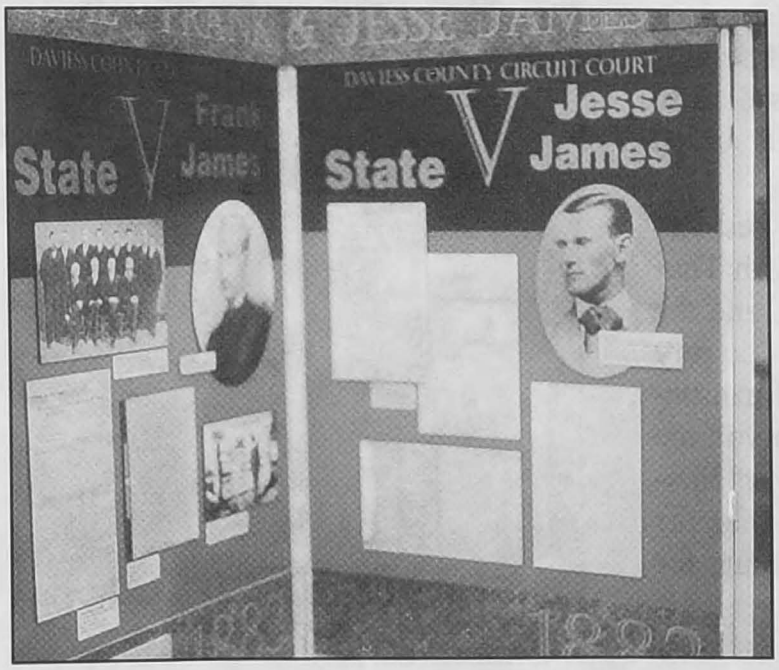
"The Verd

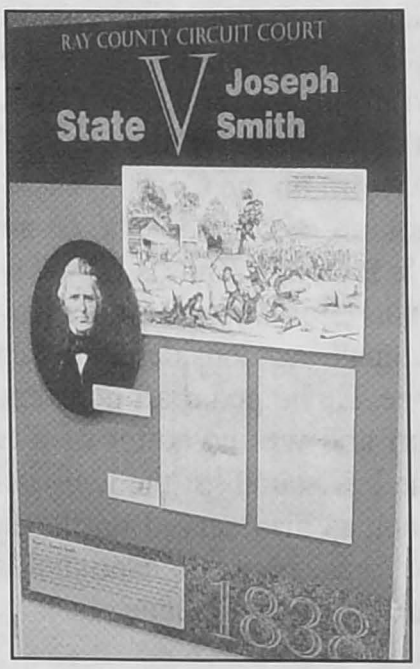
A magnificent exhibit graphically telling the i portant role the courts have played in M souri's history is now on display in the foyer the Missouri State Information Center in Jefferson Ci The exhibit, entitled "The Verdict of History: Exam ing Missouri's Judicial Records," was formally oper on Tuesday, February 25, 1997, with a reception a program sponsored by the Missouri Supreme Co Historical Society. Officially opening the exhibit w Secretary of State Rebecca Cook, Supreme Court Ch Justice John Holstein, Supreme Court Historical So ety President Tom Vetter, and State Archivist Dr. Ke neth Winn.

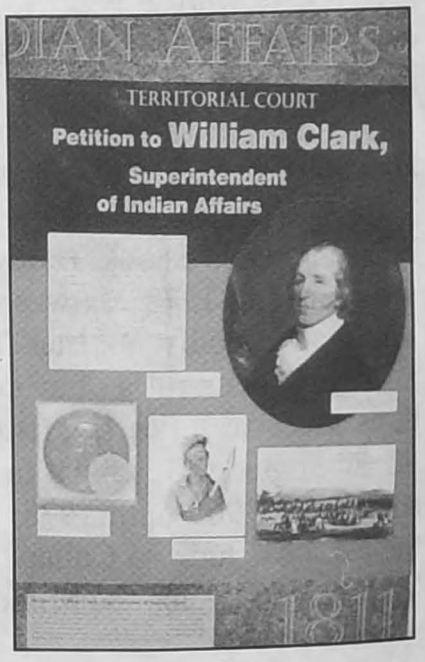
Dr. Kenneth Kaufman was the featured speak on the program, which was the first in a series four Visiting Lecture programs sponsored by t Missouri Archives and the Supreme Court Histo cal Society. Dr. Kaufman discussed "Understan









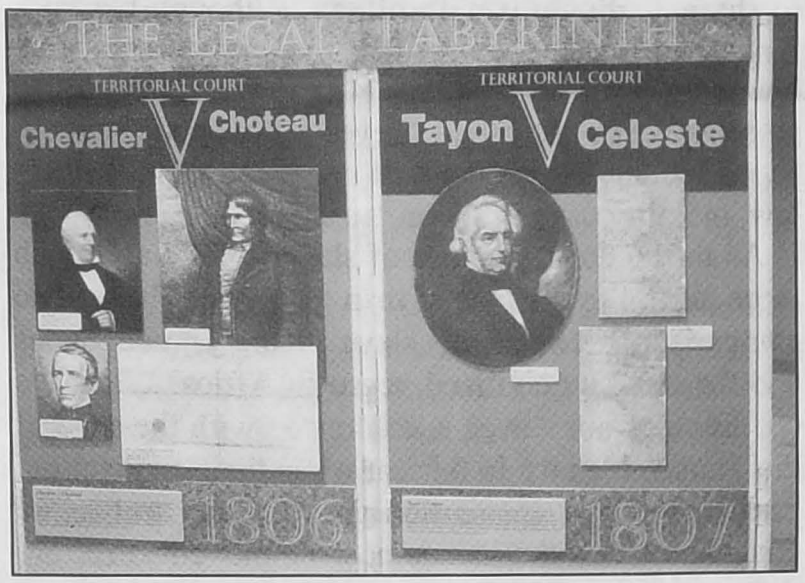


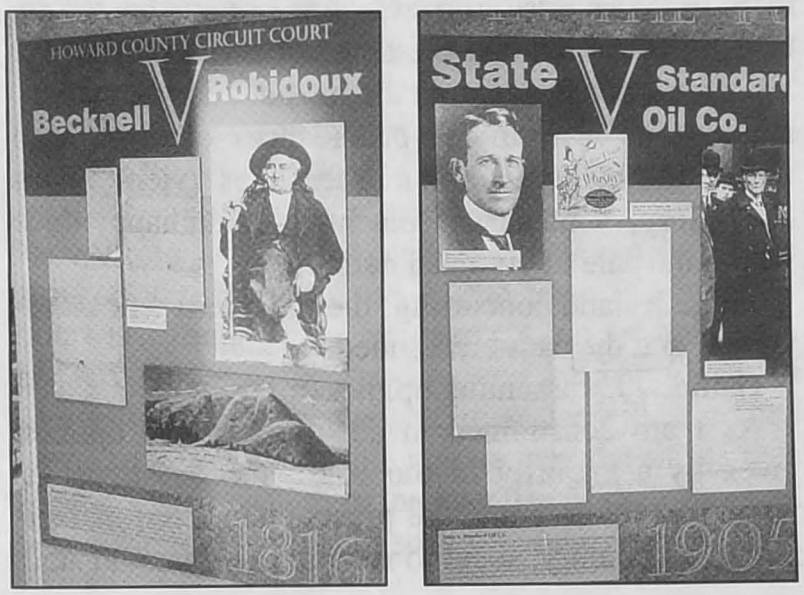
ict of History"

ing Dred Scott: Slave Law in Ante-Bellum Missouri." The speaker is the author of **Dred Scott's Advocate: a Biography of Roswell M. Field**, the lawyer who represented Scott in the historic U.S. Supreme Court case which arose out of a Missouri Supreme Court decision.

Dr. Winn said the display contains documents dating back to 1798, well before Missouri became a state, and was still under the jurisdiction of Territorial Courts. "The exhibit includes items from court cases involving French colonial life, Indian problems, tort cases arising out of stage coach accidents and drunken drivers, the Civil War, Reconstruction, the James gang, Pendergast and the famous Standard Oil Case which led to later anti-trust laws."

Tom Vetter, President, Missouri Supreme Court Historical Society, flanked by Secretary of State Cook and her husband, John.





(SCOTT, from Page 6)
paired to them with his servant, as he very naturally supposed he had a right to do. To construe this into an assent to his slave's freedom would be doing violence to his acts. Nothing but a persuasion, that it is a duty to enforce the foreign law as though it was one of our own, could ever induce a court to put such a construction on his conduct. The present attitude of the parties to this suit is conclusive, as to an actual consent, and nothing but the foreign law or the aid derived from it, can raise an implied one. If the State of Missouri had prohibited slavery within her limits, and our courts were called upon to execute that law, some zeal might be tolerated in our efforts to execute it; but while slavery obtains here, there is no consideration which would warrant us in going such lengths against our own citizens, for having permitted their slaves to remain in the territory of a State where slavery is prohibited.

In States and Kingdoms in which slavery is the least countenanced, and where there is a constant struggle against its existence, it is admitted law, that if a slave accompanies his master to a country in which slavery in prohibited, and remains there a length of time, if during his continuance in such country there is no act of manumission decreed by its courts, and he afterwards returns to his master's domicile, where slavery prevails, he has no right to maintain a suit founded upon a claim of permanent freedom. This is the law of England, where it is said that her air is too pure for a slave to breathe in, and that no sooner does he touch her soil than his shackles fall from him. The case of slave, Grace, 2 Haggard Adm'rl'ty Rep. 94. Story, in his conflict of laws, says, " it has been solemnly decided that the law of England abhors and will not endure the existence of slavery within the nation, and consequently, so soon as a slave lands in England, he becomes ipso facto, a free man, and discharged from the state of servitude; and there is no doubt that the same principle pervades the common law of the non-slaveholding States in America: that is to say, foreign slaves wold no longer be deemed such after their removal thither." But he continues, "it is a very different question how far the original state of slavery night re-attach upon the party, if he should return to the country by whose laws he was declared to be and was held as a slave:" Sec. 96,6. In the case of the commonwealth of Massachusetts vs. Ames, 18. Peck, Judge Shaw, although declining to give an express opinion upon this question, intimates very clearly that if the slave returns to his former country where slavery obtains, his condition would not be changed. In the case of Graham vs. Strader, 5 Mon. 183, the court of Appeals in Kentucky held, that the owner of a slave, who resides in Kentucky, and who permits his slave to go to Ohio in charge of an agent for a temporary purpose, does not forfeit his right of property in such slave.

An attempt has been made to show, that the comity extended to the laws of other States, is a matter of discretion, to be determined by the courts of that State in which the laws are proposed to be enforced. If it is a matter of discretion, that discretion must be controlled by circumstances. Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequence must be the overthrow and destruction of our government. Under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others. Although we may, for our own sakes, regret that the avarice and hard-heartedness of the progenitors of those who are now so sensitive on the subject, ever introduced the institution among us, yet we will not go to them to learn law, morality or religion on the subject.

As to the consequences of slavery, they are much more hurtful to the master than the slave. There is no comparison between the slave in the United States and the cruel, uncivilized negro in Africa. When the condition of our slaves is contrasted with the state of their miserable race in Africa; when their civilization, intelligence and instruction in religious truths are considered, and the means now employed to restore them to the country from which they have been torn, bearing with them the blessings of civilized life, we are almost persuaded, that the introduction of slavery amongst us was, in the providences of God, who makes the evil passions of men subservient to his own glory; a means of placing that unhappy race within the pale of civilized nations.

Judge Ryland concurring, the judgment will be reversed, and the cause remanded.

Gamble, J., dissenting opinion.

As I am constrained to depart from the opinion given by a majority of the court, the questions involved in the case and the present condition of feeling in the country, seem to require that I should state

the grounds of the dissent.

In all ages, and in all countries in which slavery has existed, the slave has been regarded not merely as property, but also as a being capable of acquiring and holding certain rights, by the act of the master. He could acquire and enforce his right to freedom in modes recognized by the law of the country in which he dwelt.

In the early English law, where there existed a species of slavery, known as villenage, the villain might be emancipated by his lord, either directly by deed, or by implication of law, from some act of the master recognizing him as a freeman, as by making to him an obligation for a sum of money, or conveying lands to him, or by impleading him in an action. This appears, as well by the text of Littleton as by the commentary of Lord Coke, 1 Just. 137 A. & B. By the Spanish law, 1 Partictus 587, the mode in which a master may emancipate his slave is prescribed; and at page 589 certain meritorious actions are mentioned, which, when performed by a slave, authorize his emancipation even against the will of his master. In Justinian's Institutes, Liber l Lit. 5 Sec. 1 it is declared, that "manumission is effected in various ways, either in the face of the church, according to the imperial constitutions, or in the presence of friends, or by letter, or by testament, or by any other last will. Liberty may also be conferred upon a slave by divers other methods, some of which were introduced by former laws, and others by our own."

In every slaveholding State in the Union, the subject of emancipation is regulated by statute, and the forms are prescribed in which it shall be effected. Whenever the forms, required by the laws of the State in which the master and slave are resident, are complied with, the emancipation is complete and the slave is free. If the right of the person thus emancipated, is subsequently drawn in question in another State, it will be ascertained and determined by the law of the State in which he and his former master resided; and when it appears, that such law has been complied with, the right to freedom will be fully sustained in the courts of all the slave holding States, although the act of emancipation may not be in the form required by he laws of the State in which the court is sitting. Take, for example, an emancipation by will. If a master, residing and holding slaves in Missouri, should emancipate them by will, executed an proved, according to our laws, and the slaves thus emancipated, should, in the exercise of their freedom acknowledged and enjoyed here, emigrate to another slave State, where emancipation by will was not permitted, there is no person so ignorant as to suppose that they would lose their right to freedom by such change of residence. Decision of courts might be cited on this point, but it is not necessary to appeal to the tribunals for the maintainance (sic) of a principle so perfectly plane.

In all such cases, courts continually administer the law of the country where the right was acquired; and when that law becomes known to the court, it is just as much a matter of course, to decide the rights of the parties according to its requirements, as it is to settle the title of real estate, situate in our State, according to our own laws.

We, here, are the citizens on one nation, composed of many different States which are all equal, and are each and all entitled to manage their own domestic interests and institutions, by their own municipal law, except so far as the constitution of the United States interferes with that power. The perfect equality of the different States, lies at the foundation of the Union. As the institutions of slavery in the States, is one over which the constitution of the United States gives no power to the general government, it is left to be adopted or rejected by the several States, as they think best. Nor can any one State, nor any number of States claim the fight to interfere with any other State, upon the question of admitting or excluding this institution. It must be borne in mind, that this freedom and equality of the different States, supposes that each can, of its own will, according to its own judgment, excludes slavery, with as little cause of offence to any of the other States, as if its decision was in favor of admitting it. As citizens of a slaveholding State, we have no right to complain of our neighbors of Illinois, because they introduce into their State constitution a prohibition of slavery; nor has any citizen of Missouri, who removes with his slave to Illinois, a right to complain that the fundamental law of the State to which he removes, and in which he makes his residence, dissolves the relation between him and his slave. It is as much his own voluntary act, as if he had executed a deed of emancipation. Nor can any man pretend ignorance, that such is the design and effect of the constitutional provision. The decisions which have heretofore been made in this State, and in many other slaveholding States, give effect to this and other similar provisions, on the ground, that the master, by making the free State the residence of his slave, has voluntarily subjected himself and his property to a law, the operation of which

(See SCOTT, Page 14)

(SCOTT, from Page 13)

he was bound to know. It would seem difficult to make any sound distinction between the effect of an emancipation produced by the act of the master, in thus voluntarily placing his slave under the operation of such a law, and that of any emancipation produced by the act of the master, by the execution of an instrument of writing in any State where the slave resided, which, according to the law of that State, would be sufficient to discharge the slave from servitude, although it might not be a valid emancipation under the laws of another State.

While I merely glance at the reasons which might be urged in support of the present plaintiff's claim to freedom, if it were an original question, I do not propose to rest my dissent from the opinion given in this case, upon the original reasoning in support of the position.

I regard the question as conclusively settled, by repeated adjudications of this court, and if I doubted or denied the propriety of those decisions, I would not feel myself any more at liberty to overturn them then I would any other series of decisions, by which the law upon any other question was settled. There is with me, nothing in the law relating to slavery, which distinguishes it from the law on any other subject, or allows any more accommodations to the temporary public excitements which are gathered around it. It is, undoubtedly, a matter to be deeply regretted, that men who have no concern with the institution of slavery, should have claimed the right to interfere with the domestic relations of their neighbors, and have insisted that their ideas of philanthropy and morality should be adopted by people who are certainly capable of deciding upon their own duties and obligations. That the present owners of slaves, when denounced, in terms that would be appropriate, if they had actually kidnapped the slaves from the coast of Africa, or had inherited the fortunes accumulated by such iniquitous traffic, should feel exasperated by such wanton and unfounded attacks, is but natural. That, alienation of feeling and, finally, settled hostility will be produced by this course of conduct, is greatly to be apprehended. But, in the midst of all the excitement, it is proper that the judicial mind, calm and self balanced, should adhere to principles established when there was no feeling to disturb the view of the legal questions upon which the rights of parties depend.

In this State, it has been recognized, from the beginning of the government, as a correct position in law, that a master who takes his slave to reside in a State or Territory where slavery is prohibited, thereby emancipates his slave: Winney vs. Whiteside, 1 Mo. Rep. 473; Le Grange vs. Chouteau, 2 MO. Rep. 20; Milley vs. Smith, Ibid 36; Ralph vs. Duncan, 3 Mo. Rep. 194; Julia vs. McKinney, Ibid 270; Natt vs. Ruddle Ibid 400; Rachael vs. Walker, 4 Mo. Rep. 350; Wilson vs. Melvin, Ibid 592. These decisions, which come down to the year 1837 sees to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration until the present. In the case of Winney vs. Whiteside, the question was made in the argument "whether one nation would execute the penal laws of another," and the court replied in this language: "Huberus, quoted in 4 Dallas 375 says, 'personal rights or disabilities, obtained or communicated by the laws of any particular place, are of a nature which accompany the person where ever he goes. If this be the case in countries altogether independent of each other, how much more in the case of a person removing from this common territory of all the States to one of the States. An adjudication on those rights, in the country where they accrue, may be evidence of them, but cannot give them. We are clearly of opinion, that if by a residence in Illinois, the plaintiff in error lost her right to the property in defendant, that right was not revived by a *removal of* the parties to Missouri."

The principle thus settled, runs through all the cases subsequently decided, for they were all cases in which he right to freedom was claimed in our courts, under a residence in a free State or territory, and where there had been no adjudication upon the right to freedom in such State or territory.

But the supreme court of Missouri, so far from standing alone on this question, is supported by the decisions of the other slave States, including those in which it may be supposed there was the least disposition to favor emancipation. In Lunsford vs. Coquellon, 2 Martin U.S. 401, the supreme court of Louisiana held, that the removal of a slave by his master from Kentucky to Ohio, with intention to reside there, ipso facto emancipates the slave. The same court, in Marie Louise vs. Marot and others, 9 L.R. 475, and in Smith vs. Smith, 13 L.R. 441 holds "that the fact of a slave being taken by the owners to the kingdom of France or other country, where slavery is not tolerated, operates upon the condition of the slave and produces immediate emancipation." See, also, Thomas vs. Generis, L. R. 483; Josephine vs. Poultney, I Annual R. 329. The current of judicial authority in that State, was so uniform, that in 1846

an act was passed by the legislature which declared, that residence in a country where slavery is prohibited, shall not entitle the slave to freedom. Upon this statute, the supreme court in Eugene vs. Percival, 2 Annual R. 180 remarks, that it settles the law upon the subject, upon the principles laid down by Lord Stowell, in the case of the slave, Grace, 2 Haggard's Admiralty R. 94.

In Harry and others vs. Decker and Hopkins, Walker 36, The Supreme Court of Mississippi held, that any State may, by its constitution, prohibit slavery within its limits, and so may the legislature, when not restrained by the constitution; and that slaves within the limits of the north-west territory, became free by the ordinance of 1787, and may assert their rights in the courts of Mississippi.

In Griffith vs. Fanny, Gilmers R. 143, the court of Appeals of Virginia held, that a negro held in servitude in Ohio, was entitled to freedom under the constitution of Ohio.

Judge Mills, in delivering the opinion of the court of Appeals of Kentucky, in Rankin vs.Lydia, 2 A. K. Marsh. 468, maintained the right of a negro to freedom by reason of a residence in Indiana, and considers the question, whether the plaintiff's claim to freedom was of a penal character, because it accrued by the laws of another government, that would not be enforced in Kentucky. The opinion is one of ability, and maintains the right of the negro to assert her claim to freedom in the courts of Kentucky, although there was no actual enjoyment of freedom in Indiana. See, also, Bush's Reps. vs. White and wife, 3 Monroe 104.

The cases here referred to, are cases decided when the public mind was tranquil, and when the tribunals maintained in their decisions, the principles which had always received the approbation of an enlightened public opinion. Times may have changed, public feeling may have changed, but principles have not and do not change; and, in my judgment, there can be no safe basis for judicial decisions, but in those principles, which are immutable.

It may be observed, that the principle is either expressly declared or tacitly admitted in all these cases, that where a right to freedom has been acquired, under the law of another State or community, it may be enforced by action, in the courts of a slaveholding State; for, in every one of these cases, the party claiming freedom had not procured any adjudication upon his right in the country where it accrued.

This very brief examination of the questions involved in this case, will show the grounds upon which I hold it to be my duty to declare, that the voluntary removal of a slave, by his master, to a State, territory or country in which slavery is prohibited, with a view to a residence there, entitles the slave to his freedom, and that that right may be asserted by action in our courts under our laws.

So far as it may be claimed in this case, that there is any thing peculiar in the manner in which the slave was held in the free country, by reason of his master being an officer of the United States army, it is sufficient to answer, that this court, in Rachael vs. Walker, 4 Mo. Reports 350, considered the effect of that circumstance, and decided that such officers were not authorized, any more than private individuals, to hold slaves, either in the north-west territory or in the territory west of the Mississippi and north of thirty-six degrees thirty minutes, north latitude. The act of Congress, call the Missouri Compromise, was, in that case, held as operative as the ordinance of 1787.

(JUDGES, from Page 4)

"All right, if I don't find another candidate with six, I'll vote for you."

Gantt's interest in the Confederacy continued all his life. He was the state commander of the United Confederate Veterans and was the captain commander of the General M. M. Parsons Camp of Confederate Veterans at Jefferson City. As evidence of the esteem in which he was held by former Federal troops, he was invited by their organization, the Loyal Legion, to give a talk in St. Louis on his own personal recollections as a Confederate soldier. It is reported in the **Encyclopedia of the History of Missouri** that at the close of his speech he received a standing ovation, and yet "not once did he say a word which indicated that he did not still feel the cause for which he fought was a righteous one."

When Gantt died on May 28, 1912, a special train carried his family and friends from Jefferson City to Clinton, Missouri. To honor his memory, all businesses in the town were closed, residences were draped in black and flags flew at half mast.

Leroy B. Valliant 1838-1913

Leroy B. Valliant was born in Moulton, Alabama, June 14, 1838. He was orphaned at the age of six and was placed in a private school in Greenville, Mississippi, where he remained until he was 14.

He attended the University of Mississippi for his undergraduate studies. He graduated in 1856 and immediately enrolled in the Cumberland University Law School at Lebanon, Tennessee, where he graduated in 1858. Valliant was admitted to the Bar of Greenville, Mississippi in 1859 and started practicing law there.

In 1861, Valliant left his law practice and enlisted in the Confederate Army. He was given the rank of first lieutenant. He helped recruit an infantry company which was assigned to the Twenty-second Mississippi regiment as Company I. In 1862 he was promoted to captain. He saw action in Kentucky in Bowen's brigade under General A. S. Johnston. At the Battle of Shiloh, Valliant was assigned to Breckinridge's corp. According to a report contained in **Confederate Military History**, the corp defended a line which was practically the north line of the state of Mississippi extending from the Mississippi to the Tennessee river. On the second day of that battle all ranking regimental officers were either killed or wounded and Valliant quickly assumed command of his regiment. A tribute to this regiment, also contained in the **Confederate Military History**, is described as "This regiment, confronted by the enemy's intrenchments (sic) and artillery across a deep railroad cut, was the first in the works, capturing one fine piece of artillery, the "Lady Richardson."

Leroy B. Valliant

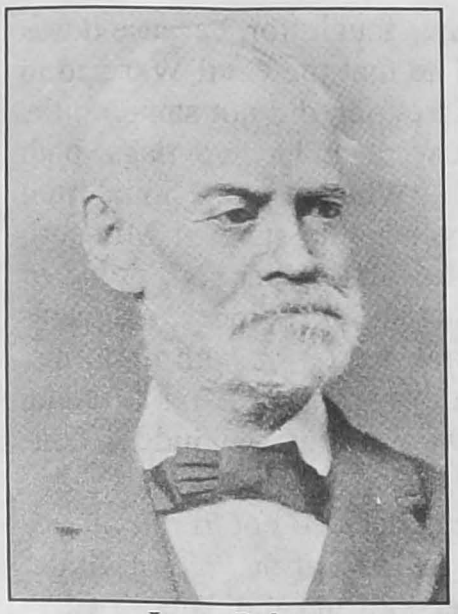
Valliant went on to participate in the defense of Vicksburg during the Union's naval attack, the Battle of Baton Rouge, and the Battle of Corinth in October, 1862. He was involved in other operations in Mississippi until 1863, when he was captured in Washington County, Mississippi. About a month later he was one of the prisoners exchanged at Vicksburg. By this time his health had deteriorated considerably. The sight in one of his eyes was so limited that it was practically useless and bothered him the rest of his life. When the war was over he returned to his law practice in Greenville, Mississippi, and eventually became Judge of the Chancery *Court.*

In the winter of 1875, Judge Valliant opened his office in St .Louis. In November of 1886, he was elected Judge of the Circuit Court. At the end of his six-year term he was nominated by the Democratic Convention for a second term. In 1892 he was re-elected by a 5,000 majority, in spite of the fact that the Republicans won both the State and National elections that year. In 1898, he was elected to the Missouri Supreme Court where he served until December 31, 1912. He died on March 3, 1913, at his son's home in Greenville, Mississippi. He is buried in Bellefontaine Cemetery, St. Louis, Missouri.

Judges James Baker (1819-1910) and Henry Lamm (1846-1926)

Only two former judges of the Missouri Supreme Court fought for the Union. Judge Baker was born in the south in Mason County, Kentucky, April 1, 1819. His undergraduate degree is from Indiana University. Upon graduation he moved to Davenport, Iowa, where he studied law in the offices of Judge James Grant. In 1843 he moved to Ottawa, Iowa where he practiced law for ten years.

In the fall of 1861 he recruited the 13th Iowa Infantry and was commissioned a lieutenant colonel.



James Baker

He participated in the Battles of Shiloh, Juka and Corinth. At the Battle of Corinth, he was assigned to the Second Iowa Infantry. A report of Col. James M. Tuttle in Volume VII of the ***War of the Rebellion: a Compilation of the Official Records of the Union and Confederate Armies*** mentions Baker's action. "I gave the order to fire, which was responded with fatal precision until the right wing, with Lieutenant-Colonel Baker, arrived, headed by General Smith, when we formed in line of battle, again under a galling fire, and charged on the encampment across the ravine in front, the enemy still retreating before us." Colonel Tuttle goes on to say that since he had received an injury, he retired from the field "leaving Lieutenant-Colonel Baker in command until the following morning." Later the next day he reports "Lieutenant-Colonel Baker had a ball pass through his ear and come out near his temple." Colonel Tuttle adds "to say that he was cool and brave would not do justice; he was gallant to perfection." Unable to continue fighting, Baker resigned and in the spring of 1864 he moved to Missouri, establishing a law practice in Springfield.

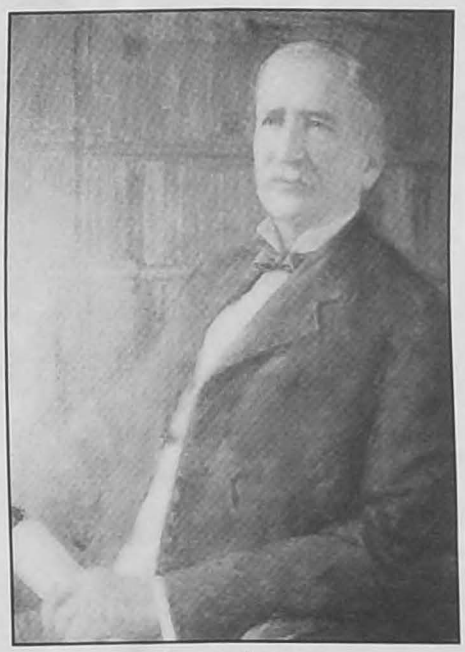
In 1865, he was appointed attorney for the Atlantic & Pacific Railroad. Three years later, in 1868, he was appointed by Governor Fletcher to the Supreme Court to succeed Nathaniel Holmes. He left the court after serving for only one year and returned to Springfield. In the fall of 1870 he was appointed attorney for the Missouri Pacific Railroad and Atlantic & Pacific Railroad, a position he held until 1876. Later he became the president of the Saint Louis and San Francisco Railroad. He died October 16, 1910.

Judge Henry Lamm had a shorter career in the army then any of the others. Born in Burbank, Wayne County, Ohio, on December 3, 1846, he was only 15 when the war started. He was determined to be a part of the fighting and lied about his age when he enlisted in the Union Army. His father put an end to his army career by telling the recruiting officer that Henry was only 15. He then decided to join the Navy and went to Cleveland to enlist, but there wasn't any Navy there, so he signed on for a ship going between Cleveland and Detroit.

At the age of 19, he entered the University of Michigan. Here he met James DuShane, the son of a Confederate general. This strange combination of Southerner and Northerner put their differences behind them and rented a piece of land where they built a two-room shack which served as home for three years while they attended the University.

Graduating in 1869, Lamm went to Sedalia where his older brother John lived. He began teaching school, and read law in a firm in exchange for sweeping out the office and building fires. He was admitted to the Bar in 1871 and served as clerk of the circuit court for two years. Three years later he paid $350.00 to form a partnership with Peter Sangree. Judge Lamm later said that the first year they made $1,500, which they split. This partnership lasted for 31 years until Lamm went on the Missouri Supreme Court in 1905, the second Republican to be elected to the Court. He wrote more than 500 opinions while on the Court.

Although he did not participate in the war, in one of his opinions, **Hale v. Stimson** (95 SW 892), Lamm expresses his thoughts and feelings about the war and his concerns for the state's veterans. The issue was a contested election for county collector in Phelps Co., Missouri. A.B. Hale , the contestor, challenged the election of William Stimson, Sr. on the grounds that the votes cast by the veterans living in the Federal Soldiers Home in St. James, Phelps Co., had resulted in Mr. Stimson's election. Hale challenged the statute, Missouri Revised Statutes, 1899, Sec. 6994, giving the veterans the right to vote as being in conflict with the Missouri Constitution of 1875, Article 8, Section 7. Though the Constitution stated that "no person, while kept at any poor house or other asylum, at public expense, nor while confined in any public prison, shall be entitled to vote at any election," the Missouri Revised Statutes, 1899, Section 6994, provided "that no person while kept at any poorhouse or other asylum at



Henry Lamm

(See JUDGES, Page 18)

(JUDGES, from Page 17)

public expense, **except at the soldiers' home**, shall be entitled to vote."

Judge Lamm, writing for the Court, found that the statute was not unconstitutional. He notes first that the original statute passed in 1897 spelled out the exemption for both the Soldiers Home at St. James, Missouri and the Confederate Home at Higginsville, Missouri. He states "These men and their comrades in arms, stalwart then, marched and countermarched, mined and countermined, dug, starved, froze, planned, dared, and fought through four years of Civil War under Lee, Johnson, and Stonewall Jackson, under Grant, Sherman, and Logan.... The grave since has swallowed up many a gallant survivor, hurried under the sod by the privations and exposures of war.... Suffice it to say that, while the elective franchise may be regulated by the state, yet in this case it has been regulated by statute, and that regulation should command obedience.... Nor do we greatly care to split hairs over the question of which cause the inmates of these homes fought for, because it was written in the book of fate that the Civil War had to come.... Verily, our Missourian did not stand on the order of his going, but went under two flags, both ways, and went at once.... When he came home from the wars, his mighty 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, tender of both uniforms, and mourning over dead, or war worn and desolate, Confederate and Federal." All of the judges concurred.

In 1914 Judge Lamm decided not to run for another term on the court In 1916 at the age of 70, he was nominated as the Republican candidate for Governor, but was defeated in the closest gubernatorial election on record at that time. He continued practicing law in Sedalia until he died on May 23, 1926. He was almost 80 years old.

Written by D.A. Divilbiss.

Supreme Court Of Missouri Historical Society Treasurer's Report October 1997

Balance On Hand: October, 1996			
Checking Account			$ 4,296.33
Money Market Account			75,021.45
			$ 79,317.78
Income, October, 1996-October, 1997			
Membership dues		$ 5,900.00	
Interest on Money Market Account		2,727.39	
		$ 8,627.39	
Annual Expenses, October, 1996-October, 1997			
Dr. Dick Steward, Honorarium for speech at 11th Annual Meeting	$ 500.00		
Tom Vetter, 11th Annual Meeting Dinner at the Country Club	1,112.36		
Jane Vetter, Flowers for 11th Annual Meeting	96.00		
U. S. Postmaster, Bulk Rate Fee	85.00		
Jane Vetter, Replacement Frames for Portraits of Judges Ragland and S. Dalton	1,440.00		
Busch's, Flowers for February Enrollment Ceremony	270.00		
Janet Musick, Layout of March issue of the JOURNAL	350.00		
Modern Litho Print, Printing Volume6, number 2 of the JOURNAL	953.69		
Capital Projects, Postage to mail JOURNAL	107.67		
Flower House, Flowers for Enrollment Ceremony	100.00		
Secretary of State, Annual Registration Fee	15.00		
University of Missouri Press, 10 copies of Professor Dunne's Book	319.46		
U.S. Postmaster, Postage for Invitations and Member Renewals	147.20		
	$ 5,496.38		
Expenses for the Exhibit "Verdict of History" held in connection with the Office of Secretary of State			
Expenses for the Reception:			
Brochures	$ 980.00		
Invitations and Envelopes	526.95		
Reissue of invitations due to cancellation of original date due to bad weather	223.88		
Food for reception	2,807.20		
Flowers and placemats	281.15		
	$ 4,819.18		
Expenses for Speakers:			
Dr. Kenneth Kaufman (declined honorarium, expenses only)	$ 124.10		
Dr. LeeAnn Whites (honorarium and mileage)	216.80		
Mr. Bob Dyer (honorarium and mileage)	231.92		
Dr. William E. Foley (mileage only-requested honorarium paid to Friends of State Archives	50.96		
	200.00		
	$ 823.78		
Total Expenses for Reception and Speakers		5,019.18	
Total Annual Expenses		5,496.38	
Total Expenses for the Year 1997		$ 10,515.56	
Balance On Hand, October, 1997			
Checking Account			$ 1,793.55
Money Market Account			75,748.84
			$ 77,542.39
Allocation of Funds on Hand			
Herman Huber Memorial Fund			$ 525.00
Unrestricted Funds			77,017.39
			$ 77,542.39

The Missouri Supreme Court Historical Journal

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