

CHAPTER IX.

ousting the officers—murders and homicides—murder of George Queary—
“the Dale-PHELPS Tragedy”—Bruce Green kills Calvin Warren—A
Negro murder case—The robber Johnson—The great Benjamin Will
case—The will—Indicting rebel preachers—Registration of voters—
News from headquarters—The war is over—The Drake constitution—
After the war—Robbery of the county treasury—Politics and election
of 1870—Registration in 1870—Census of 1880—Flood of 1876.

ousting the officers.

The convention on March 17, 1865, passed an ordinance vacating the offices of the judges of the Supreme court and of all the Circuit courts and all the county offices. It was to take effect May 1st, and was never submitted to the people. It gave the governor power to fill all these offices by appointment. The terms of many of the officers who had been elected by the people had not expired; notably, the supreme judges, who had been elected for a term of six years, and some of whom had served only eighteen months. The reason assigned for the removal was that only loyal men should be in office. They found no little trouble in store when it came to enforcing the ordinance. The American people have always been quick to resent any interference by a legislative body with the judiciary, especially so when it partakes of partisan politics, and the “ousting business” was no exception to the rule; but his excellency Governor Fletcher proceeded to fill the offices the ordinance vacated and to place therein some of his political friends.

In this county the appointments were: W. J. Holliday, county clerk, vice T. O.

Eskridge, removed; John S. Duncan, circuit clerk, vice W. L. Chipley, removed; James Bell, treasurer, vice C. K. Cotton, removed. County Court Justice Samuel Huston gave way to Lewis F. Carothers. The other officials remained.

In this judicial circuit John I. Campbell was appointed judge in the room of Hon. Gilchrist Porter.

All the new appointees were radical Republicans. Office-holding in those days was a biased affair, and a Democrat need not aspire to any such pinnacle, and Shelby county submitted to the inevitable; but some of the supreme judges in St. Louis were not so easily passed out. Judges Bay and Dryden claimed the law was not vested with the proper authority, was unconstitutional, and they refused to vacate. Governor Fletcher ordered the police to arrest them and eject them from the court. It was done and they were taken before a criminal court of St. Louis and fined for disturbing the peace.

MURDERS AND HOMICIDES.

But four homicides occurred in this county during its early history, and, comparatively speaking, it has been a

county free of tragedies. It has ever been a home-loving, law-abiding people.

MURDER OF GEORGE QUEARY.

September 4, 1873, George Queary, a colored barber, was shot and killed by George Ashby, colored. The shot disemboweled the victim. He relocated the dismembered organs and held them in place with one hand, clinging to the lamp post with the other, until shortly he fell to the pavement and was carried home and died that night. The trial brought out the evidence that they had quarreled a couple of hours previously. Queary had gotten the better of Ashby, who left him, vowing vengeance. It also came out that Queary had a "self-protector" and had called to the crowd to "get out of the way" before Ashby fired. In his trial at Shelbyville, May, 1875, Ashby was found guilty of murder in the second degree and sentenced to twenty years in the penitentiary. He was defended by Jewett & Hale, able lawyers assigned him by the court.

THE DALE-PHELPS TRAGEDY.

On the night of the 1st of May, 1875, there was a most desperate affray in Clarence, resulting in the death of one man and the serious wounding of two others.

John and Jonah Phelps, brothers, were two young men who lived on a farm six miles south of Clarence, whither they had moved from Roanoke, Howard county. Their cousin, James Phelps, lived on a farm adjoining town.

In Mr. Dale's restaurant some men had eaten some oysters and had fallen on the floor in a drunken sleep. John Phelps was teasing them. Mr. Dale's

son, John D. Dale, then a boy fifteen years of age, was attending the restaurant, and remonstrated with Phelps. James Phelps came in and said to young Dale, "What is it your d—d business?" In a short quarrel that resulted Phelps struck the boy and knocked him down and the two clinched. The boy's father sought to interfere, but John Phelps caught and held him. Jonah caught up a chair and used it when and where he could.

Jim Phelps and John Dale were on the floor, and Phelps was stabbing and cutting the boy fearfully. He made eight severe wounds. Jonah Phelps struck at Dale with a poker, but missed him and the blow fell upon Jim Phelps, stunning him. Young Dale then sprang up, all bleeding from his stab wounds, and ran behind the counter and secured a revolver. Jim Phelps recovered and again advanced, when Dale shot him through the upper portion of the body from side to side. He staggered to near the door and fell dead. As he was walking off, Dale again fired, or the pistol was accidentally discharged, and wounded him in the heel. At the first crack of the pistol John Phelps released old man Dale and started towards young John, who fired and shot him fairly through the body, the ball passing through one lung. Jonah ran away and escaped unhurt.

Young Dale was arrested while lying in bed suffering from his numerous wounds, and upon preliminary examination was bound over. He was indicted soon after and at the November term following (1875) he was tried on a charge of murder. Prosecuting Attorney Dobyns made most strenuous efforts

to convict him, going, as some thought, beyond his duty in his zeal; but the jury acquitted him without leaving their seats. Indeed, they announced that they were ready to render a verdict as soon as the evidence in the prosecution was in and before that of the defense had been introduced.

John Phelps recovered from his severe wound. John Dale grew to manhood here and is the present clerk of Shelby county.

It is perhaps just to say that it is universally considered that there was not the least element of crime in what he did. Indeed, there are many who think that for a fifteen-year-old boy he exhibited remarkable courage and proved himself a hero instead of a criminal, and that he should never have been indicted or even arrested.—Shelby County History, 1884.

BRUCE GREEN KILLS CALVIN WARREN.

In the summer of 1880 a fatal stabbing occurred at Lakenan. Calvin Warren and a young man, Bruce Green, had been to Shelbyville with a load of pottery, which they disposed of, and returning by way of Shelbina, on the road home, being intoxicated, they quarreled over a trivial matter. After reaching Lakenan the quarrel was renewed, and Warren, who was the aggressor, made an assault upon Green, who stabbed him so badly he died in a few hours.

Green was indicted in October, 1880, and gave bond for \$1,000. At the April term, 1881, he was tried at Shelbille and acquitted. It was a trial that excited the interest of the whole country. Prosecuting Attorney R. P. Giles made a strenuous effort to convict, two of

Warren's sisters, who attended the trial and were ladies of wealth, offering to pay well any additional counsel needed, but the prosecutor refused aid. The prisoner was ably defended by his uncle, Hon. J. G. Blair, of Lewis county. Blair was a distinguished pleader, and it is said his speech in behalf of his nephew was marked for its eloquence, its force, and its tenderness. Green was acquitted and went home with his uncle to make his home permanently.

A NEGRO MURDER CASE.

In 1881 Shelbina had a murder, when a negress was killed by some colored men. It seems that some negroes were at enmity with a negro man who was the recipient of too many favors of a negress, an inmate of the house where the shooting was done.

On the night of the murder, five negro men—Baily Lafoe, William Wilson, George Buckner, Ben Heathman and Oscar Brown—visited the house where they supposed the enemy was, with the avowed purpose of "doing him up."

They attacked the house, and the negress started up from her bed and started to another room, when the assailants, seeing her through the window, thought it their man and shot and killed her.

They were all arrested. Brown turned state's evidence. At the October term of Circuit court, 1881, George Buckner and William Wilson were convicted of murder in the second degree and given a sentence of eleven years for Buckner and ten years for Wilson. At the following April term a *nolle prosequi* was entered in each of the other cases, and Heathman, Lafoe and Brown were dis-

charged. It was said that Brown fired the fatal shot.

THE ROBBER "JOHNSON."

J. B. Johnson figured in the county's history of 1882 as the most daring and dangerous robber that had ever trod the fertile soil of Shelby county. It happened that on the night of June 16, 1882, B. F. Smith, a popular proprietor of the City hotel in Shelbyville, was robbed of half a hundred by a guest who registered as "J. B. Salmon" but later said he was "J. B. Johnson." He was a pedestrian, entering Shelbyville by the eastern road, and talked fluently with his host at the City hotel, representing himself to be a carpenter, and that he had been working in Lewis county and was en route to his home in St. Joseph. He was of gentlemanly address and agreeable in his demeanor, and there was nothing to betray his "outré" impression, on a casual acquaintance, but after a more scrutinizing survey one might otherwise interpret his cold, glittering eyes, his hard, cruel mouth, which would have a tendency to make one judge him as he was,—one of the most cunning, treacherous criminals of the country, daring beyond limit. Another alias used by him was Henry Clark.

Whether he ever had a home or not could never be ascertained. The robbery occurred about as follows :

Smith's guest asked his host for change for a \$20 bill and early retired to his room. On the following morning about two o'clock Smith was awakened by his wife, who directed his attention to the robber, standing at the foot of their bed, with a drawn revolver, demanding of his host to arise and yield

up his money, or his life was at his mercy. Mr. Smith forthwith arose and delivered over to the man the contents of his purse, which, contained in the neighborhood of \$50. At the request of the intruder he then accompanied him to the hotel office, delivered to him his grip, and then the robber thoughtfully and courteously bade him adieu and stepped out into the night, to the music of the thunderstorm then prevailing.

With the coming of dawn the county turned out in hot pursuit after the robber, who was apprehended near the town of Clarence. Deputy Sheriff Charles Ennis first discovered him, and a party from Clarence, headed by the marshal and J. D. Dale, captured him a mile east of town. The Clarence officials had been notified of his whereabouts by Deputy Sheriff Ennis, who was aboard an east-bound train and recognized the robber walking along the road. He was captured by main force, refusing, in the face of the well-armed and threatening deputation, to throw up his arms, deliver his weapon or make a surrender.

When in the grasp of the officers he proceeded to become notorious. On the evening of the same day he was under guard in the second story of the hotel at Clarence, when "Johnson" proceeded to auction off to the highest bidder the hat he wore, which he claimed belonged to the renowned Jesse James. Having attracted all the men from the street, he attempted to escape by making a sudden spring through an open window to the street below. He, however, was unfortunate enough to break a leg, and so was easily recaptured.

At a preliminary trial Johnson was bound over and sent to the Palmyra jail

for safe keeping. It was here, before his broken limb was well knitted, that he headed and urged his fellow inmates on to an outbreak, making a brutal assault on the young man who carried his food, and whom he beat almost into a lifeless state before a rescue was made. On October 13, 1882, he was arraigned in the County Circuit court and plead guilty to robbery. The distinguished Judge Redd sentenced him to twelve years at hard labor in the penitentiary.

Within the walls of the state penitentiary the daredevil was not cowed. He headed a revolt of some of its most hardened criminals. With his own hand he fired the walls of the penitentiary, cut the hose to head off the quenching of the flames, and struck down every guard that came his way. The casualty from this desperate act cost the state \$150,000 worth of property. For this act he was sentenced to a dark cell, which only made a demon out of a sullen spirit, and, unprovoked, he attacked his cell-keeper, whom he beat to insensibility. The history concerning the man during his incarceration is to be found on the records at the Missouri state penitentiary, given us through the kindness of Mr. Roach, secretary of state. as follows:

“J. B. Johnson was received for incarceration from Shelby county, October 15, 1882, having been convicted of burglary and larceny. His sentence was for twelve years. At the December term, 1884, of the Cole County Circuit court said Johnson was convicted of arson and attempt to break prison. His punishment for this charge was assessed at imprisonment in the penitentiary for a term of twelve years from October 13,

1894. He was an inmate of the prison at the time he committed the crimes of arson and attempt to break prison. In the latter part of 1900 the prison physician certified to the governor that the said Johnson was confined in the prison hospital, was afflicted with consumption, that he was suffering from an incurable disease, and that further confinement would greatly endanger and shorten his life. Upon this certificate the prison inspectors recommended the pardon of Johnson, and accordingly a pardon was issued to him December 4, 1900, upon condition that he immediately leave the state and never return. Thus endeth this chapter on Johnson, so far as the records in this department disclose.

“CORNELIUS ROACH,
“Secretary of State.”

THE GREAT BENJAMIN WILL CASE.

An incident that stirred the county of Shelby as well as the adjoining counties, and indeed all the states, in the 70s, was the great Benjamin will case. Mr. Benjamin has received much mention elsewhere, as he was a prominent pioneer in the early history of the county. From the “History of Shelby County” of 1884 we publish the narrative account in its entirety:

In April, 1878, a suit was begun in the Shelby County Circuit court to set aside a will made, or alleged to have been made, by Ron. John F. Benjamin, of this county, a few hours before his death, March 8, 1877.

This was and is a “celebrated case” in the annals of northeast Missouri jurisprudence, and will bear something of detailed mention and elaboration.

Mr. Benjamin was a native of New

York, born in 1817. He came to Shelby county at an early day—before 1846—and settled at Shelbyville. He was an attorney of more than ordinary ability, and was possessed of great shrewdness, sagacity, and aptness for money-making. He improved every opportunity to add legitimately to his property, and in time became possessed of a considerable fortune, estimated at about \$75,000. It is said that he made something of a start in California during the flush times of 1849-51. He was himself a “forty-niner.”

During the Civil war Mr. Benjamin was an ardent Unionist and early entered the Federal service. Some of his services are noted elsewhere. He rose from a captaincy to a brigadier generalship of the Missouri militia. In 1864 he was elected to congress as a radical Republican, and re-elected in 1866-68, serving three terms as a member of the thirty-ninth, fortieth and forty-first congresses. In 1872 he was again a candidate, but was defeated by Col. John M. Glover, the Democratic nominee.

After the war Mr. Benjamin removed from Shelbyville to Shelbina, where he built a handsome and comfortable residence costing over \$15,000. After being defeated for congress he repaired to Washington and, in the fall of 1874, engaged in banking with one Otis Bigelow, the firm being known as Bigelow & Benjamin.

General Benjamin had long been married, but was childless. While in Washington as congressman he formed the acquaintance of some ladies named Welsh. One, Miss Minnie Welsh, he took under his patronage and assisted financially and in many other ways.

Upon her marriage to a gentleman named Hammond he assumed a protectorate over her sister, Guy H., a beautiful and winsome young lady, but capricious and guilty of certain breaches of propriety and offenses against good morals. Married to a Mr. Allen, she eloped from him at Los Angeles, Cal., and in male attire concealed herself in the stateroom of her paramour on board a vessel bound for San Francisco. She was apprehended and the elopement frustrated.

In Washington and elsewhere General Benjamin introduced Guy Allen as his adopted daughter, and she called him “papa.”

She made at least one trip to Shelbyville with him, and accompanied him elsewhere on many occasions. It cannot be questioned that the general, old and mature as he was, was very much attached to if not infatuated with the fascinating lady. Her enemies allege that his relations with her were illicit, as had been those he formerly maintained with her sisters. It does not seem that Mrs. Benjamin recognized Guy as her daughter, or approved of her intimacy and familiarity with General Benjamin. She and others had been informed that Mrs. Allen was a Washington city adventuress, pretty and engaging, but wily and wicked.

In April, 1876, while at Shelbina, Benjamin made a will, which was witnessed by W. A. Reid, Daniel Taylor and other citizens of the county. By the provisions of this will Guy Allen was to receive a specific legacy of the general's military clothing and equipments, his private silver plate, and his diamonds. She was also to receive the

income from the proceeds of the investment of one-half of his estate remaining after certain other legacies had been paid and satisfied. The investment was to be made in United States or Missouri bonds, the interest on which was to be paid "to my adopted daughter, Guy H. Allen, aforesaid, during her natural life, the same to be for her sole and separate use, and neither to be paid to nor in any manner controlled by her husband."

Also in this will the general directed that there should be erected over his grave a monument costing not more than \$5,000, and on which should be inscribed the following: "John Forbes Benjamin; born in Cicero, New York, Jany. 23, 1817; died at — — , 18—. A captain, major, lieutenant-colonel, and brigadier general in the Federal Army, and a member of the 39th, 40th, 41st Congresses."

General Benjamin spent a great deal of his time in Washington. He had rooms on D street, between Second and Third, which he occupied in connection with Mrs. Allen. Their rooms adjoined and communicated. Mrs. Benjamin remained at the elegant home in Shelbina.

In the early winter of 1877 General Benjamin suffered from colds and neuralgic pains. On the first of March he was seized with a violent attack of pleuro-pneumonia. He died March 8th. At the time of his decease Mrs. Allen was lying very ill in an adjoining room and was not informed of his death until ten days after it occurred.

The general's body was immediately taken to an undertaker, who prepared it for shipment, and in charge of one George C. Rowan it was shipped to Shelbina and there buried.

Immediately after General Benjamin's death a will was produced bearing his undoubted signature, "John Forbes Benjamin," and purporting to have been made March 7, 1877, the day before his death. This paper was written by one George Truesdale, a real estate agent of Washington, whose office was in the banking house of Bigelow & Benjamin, and who was well acquainted with the general in his lifetime.

He swore that the paper was written at Benjamin's dictation and signed by him as represented. There signed this paper as witnesses the general's attending physicians, Drs. J. H. Thompson and G. L. Magruder; his partner, Otis Bigelow, and Mr. Truesdell; and there was present, and witnessed the signing, the nurse, Catherine Mahoney. The following is a copy of the will:

The Will.

Know all men by these presents that I, John Forbes Benjamin, of the town of Shelbina, County of Shelby, and State of Missouri, being of sound mind, but conscious of the fact that I have but a few days to live, do make, publish, and declare the following to be my last will and testament, thereby revoking all wills and codicils heretofore made by me.

1st, I give and bequeath the following specific legacies:—

To my good friend, Charles M. King, of Shelbina, of Missouri, my law library and furniture, or all that portion of the same now in use by him, and my gold-headed cane.

I give to George C. B. Rowan, of Washington, D. C., who has given me so much kind care during my sickness, one hundred dollars (\$100).

To my beloved wife, Diana, all my property of every description owned or possessed by me in the State of Missouri; also \$12,000 in the District of Columbia, six per cent gold bonds. I also give her a deed of trust loan of \$4,000 made to John G. Waters, and a note for \$2,000 of William Ridge, of Shelbina, Missouri, which I hereby direct to be forwarded to her at Shelbina, Missouri.

I give and bequeath to my adopted daughter, Mrs. Guy H. Allen, wife of James M. Allen, late of Cleveland, Ohio, all my interest in the partnership of Bigelow & Benjamin, and all debts which may be owing to me by persons in the District of Columbia, and all the real estate owned by me in the District of Columbia.

She is now very ill and may not survive me many days, and perhaps not at all; in either event, I give and bequeath the part given to her to her sister, Mrs. Minnie Hammond, of Cleveland, Maryland, wife of Eugene Hammond, of Cumberland, Maryland.

My remains after death here to be suitably but not extravagantly cared for by an undertaker and the same forwarded to Shelbina, Missouri, for such cemeterial disposition as may be had there. I leave it all to the discretion of my wife aforesaid.

I have long professed faith in the Lord Jesus Christ before me, as the Son of God. Into His hands I commit my spirit.

I nominate and appoint my friend, Joshua M. Ennis, of Shelbyville, Missouri, the executor of this my last will and testament, so far as my property in the State of Missouri is concerned, and appoint George Truesdell to wind

up my business in the District of Columbia, so far as will not interfere with the rights of Otis Bigelow, my surviving partner. Subscribed by my own hand. Done in the City of Washington, in the District of Columbia, on the 7th day of March, A. D. 1877.

JOHN FORBES BENJAMIN.

Subscribed by us as witnesses in the presence of each other, and in the presence of and at the request of the testator, who declared to us that the foregoing was his last will and testament, the testator being known to each of us to be the party signing as such.

J. H. THOMPSON, M.D.

G. L. MAGRUDER, M.D.

OTIS BIGELOW.

GEORGE TRUESDELL.

About March 1, 1877, or eight days before his death, Mr. Benjamin made what was intended evidently to be a schedule of his property. This schedule, or memorandum, which was in his own handwriting, was as follows:

"Bank, \$34,500; St. L., \$2,000; notes, \$11,440; Ridge, \$2,000; Waters, \$3,000; bonds, \$12,000; R. E. (real estate), \$2,000; int., \$10; profit, \$50; cash, \$2,450. Total, \$69,750."

The immediate relatives of General Benjamin—his wife, Mrs. Diana Benjamin; his brothers, George H. and Henry H.; his sister, Mrs. Louisa Wood; and a niece, Mrs. Thurza Parks—contested this will, and in April, 1878, brought suit in the Shelby county circuit court to have it set aside and declared null and void, on the ground that it had been fraudulently obtained and made; that the principal beneficiary, Mrs. Guy H.

Allen, had an undue influence over the testator, etc.

It was further charged or insinuated that there had been foulest of foul play in the transaction; that a general conspiracy had been entered into by the doctors, the nurses, Colonel Truesdell, Jennie Welsh, a sister of Mrs. Allen, and Mrs. Allen herself, to put General Benjamin out of the way, and to obtain possession or control of the greater portion of his valuable property. Some thought he had been drugged in his last illness; others that a will different from the one shown had been prepared by the General's dictation, but that the one exhibited was substituted when it came to signing.

Numerous witnesses testified as to the genuineness of the will, giving circumstantial accounts, substantially agreeing, of its preparation and of the soundness of mind of the testator at the time of making it. It was also testified by all the witnesses who were present when General Benjamin died that at the time of his death and for some days preceding and succeeding that event, Mrs. Guy Allen herself lay in an adjoining room unconscious of what was occurring and had occurred to Mr. Benjamin. It was furthermore sworn to that Mr. Benjamin was not friendly disposed toward his brothers and sisters; that he had been estranged from them for years, and it was sought to establish the conclusion that this was the reason why they were excluded as beneficiaries of his will. It was furthermore sworn to that the testator had repeatedly introduced and represented Mrs. Guy Allen as his adopted daughter, and treated her openly with great affection. His first acquaintance

had begun with her during his first term in Congress, when he was a boarder in her mother's establishment.

The suit was begun in April, 1878, but was not tried until a year later. The intervening time was spent in taking depositions in Washington and in other proceedings incident to the law's delay. In April, 1879, the case was called in the circuit court at Shelbyville.

Judge John T. Redd, of Palmyra, was on the bench. A strong array of lawyers from Washington and elsewhere was present, and the court room was crowded with spectators. The trial was prolonged for some days and every point was hotly contested.

For the plaintiffs there were D. C. Cameron and Judge Barrow, talented and experienced attorneys from Washington City; Thomas L. Anderson, the veteran lawyer of Palmyra, the Nestor of the northeast Missouri bar, and King & Giles, the well known accomplished practitioners of Shelbyville. For the defendant, Guy Allen, there was A. S. Worthington, of Washington, now district attorney; Hon. B. F. Dobyns, a most learned counsel and brilliant advocate of this county; Hon. Theo. Brace, an erudite judge of this circuit. P. B. Dunn, Esq., represented J. M. Ennis, the executor for Missouri, and a lawyer named Barnard appeared for George Truesdell, the Washington City executor. Mrs. Allen herself was present throughout the trial and testified as a witness, making a most favorable impression—demure and modest as a Quakeress, and shrewd and quick-witted as a queen's maid of honor.

He, over whose effects the litigants were wrangling and snarling, lay silent

in his narrow house in the Shelbina cemetery, and those who ought to have been mourning his memory, were quarreling over his dollars.

Of what avail now was the wealth he had toiled so long and so hard for—the privations he had endured, the hard bargains he had made and the enemies he had created thereby? How much had he taken with him to that city whose gates are of pearl and whose streets are paved with gold and lighted with the divine glory? Alas! for the dross which he had striven so hard for! It had become as the spoil of the pirate—as a bone over which dogs might fight! Far better had he done good with it while he lived, visited the widow and the fatherless and those who were sick and in distress and ministered to them in their affliction. Par better had he never acquired it.

After some days the jury retired, but found it impossible to agree. In October following, the case was tried again, with the same result. The multiplicity of testimony, some of it conflicting, the weary lawyers with their inextricable tongues, the lengthy and learned instructions of the judge, the entrancing features of the principal defendant in the case, who was present on both occasions, and sat the trial through, muddled the senses and confused the opinions of our Shelby county yeomanry.

Before it could be brought to trial again the case was taken on a change of venue by consent of parties (Judge Brace, who had come to the bench, having been of counsel) to Macon county, where it yet lies undisposed of. But in the meantime a suit was begun in the District of Columbia by Mrs. Allen, now married again to a Mr. Schley, of

Washington, to secure the property which she claims was bequeathed to her by her "foster father." The nisi prius courts decided in her favor, and it is understood that their decisions now await confirmation by the Supreme Court of the United States. Upon this decision rests the ultimate fate of the case in its entirety in the courts at Macon and elsewhere.

The property in the District of Columbia has already been distributed by order of the Probate court there, and Mrs. Allen given her share or the greater part thereof. The Benjamin relatives fought the case, without success, however.

The decision that finally settled the case was rendered in the Supreme Court of the United States April 15, 1886. The case was decided in favor of Mrs. Allen and the Washington executors. All opposition was then withdrawn and the will was admitted to be probated.

But the fascinating and beautiful Guy, fair of feature and light of love, yet reigns as a queen. She has at least the partial enjoyment of her fortune, and is happy in the possession of her new lover and husband. She speaks in tenderest tones of General Benjamin, and takes great pride in exhibiting his letters, wherein he speaks of her fondly, calling her "Bonnie," and by other terms of endearment.

Mrs. Benjamin, the widow of the General, did not survive him but a few months. She died in Shelbina in the summer following, and was not buried beside her husband, but in the Shelbina cemetery, and there is, as yet, no stone to mark her resting place, or that of her husband.

On Wednesday, June 12, 1889, the

body of Gen. John F. Benjamin was disinterred at Shelbina and interred the same day at Shelbyville under the auspices of the Grand Army of the Republic.

INDICTING 'REBEL' PREACHERS.

The Drake Constitution, section 9, article II, compelled preachers, teachers, lawyers, etc., to take the test oath, and this brought a protest from all over the country, from all denominations, Protestant and Catholic, but the authorities proceeded to "make good." Ministers of the gospel were arraigned all over the state, and even three Sisters of Charity were dragged into court in Cape Girardeau county and fined for teaching without taking the test oath. Fourteen ministers were indicted at a single session of Circuit court. In our own county we furnished our own integral part of history along this line. In November, 1866, the following ministers were indicted for not taking the Drake oath: Rev. Jesse Faubian, three counts; Henry Louthan, Robert Holliday, Milford Pehers, William Pulliam, Father D. P. Phelan and Revs. Robey and Brown. The indictments against the preachers were found separately and charged each with having on a certain date "at the county of Shelby aforesaid, more than sixty days after the 4th of July, 1865, unlawfully, feloniously, etc., etc., 'preached' without first having taken, subscribed and filed * * * the oath of loyalty," which said preaching was "contrary to the form of the constitution in such case made and provided, and against the peace and dignity of the state." The preachers were arrested, but their trial awaited the decision of a case before the United States Supreme court. The case was that of

Rev. J. A. Cummings, of Louisiana, a Catholic priest, who was convicted in the Circuit court for teaching and preaching in the Circuit court without taking the oath. There was no proof he had been disloyal, but he simply refused to take the oath. He was convicted, sentenced to a fine of five hundred dollars and to be sent to jail till the fine was paid. He appealed to the Supreme court of the state. It upheld the lower court. He appealed to the United States Supreme court and it set the test oath aside as contrary to the nation's constitution.

That court declared it to be an ex post facto law. It said no state was permitted to enact a law which punished men for offenses committed before the law was passed.

That quashed the Drake oath law, and when the decision was made in favor of the preachers and the teachers, the indictments all over the state were never called up and never heard of again and Shelby county preachers went on their way in their mission of love.

REGISTRATION OF VOTERS.

The convention agreed to submit their Constitution to the people for endorsement, but to be sure it would not be rejected, they passed an "ordinance" declaring that no one should vote for nor against the Constitution who would not first take the Drake oath. In order to make sure that none took it falsely, a system of registration of voters was provided for. The registering officer was given the power to pass upon the qualification of all persons to vote, and if he deemed any of them could not truthfully take this oath he refused to enter their names upon the poll books. Yet

after this extreme precaution, the election polled on June 6, 1865, a majority for the Constitution of 1,800, out of a total vote of 85,000. In this county the board of registrars prepared a list of questions, which were submitted to every applicant for registration. The questions were printed in a book and opposite blanks for answers, one book for each township, and the applicants became a matter of record.

SPECIAL INCIDENTS IN THE HISTORY OF THE COUNTY 1865 TO 1884.

Spring opened up unusually early, the song of the bluebird was heard in the land, but the weather was cold and damp and delayed the sowing of the seed. The farmer was so glad to return to his every-day routine life he began his plowing as early as the weather would permit, although not quite sure was he as yet, that he would be left at home to reap, but there seemed to predominate a hush throughout the land that seemed to whisper of rest and home. News that could be ascertained from the chief seats of war and the signs of the times indicated that the war was over, yet all these signs had been misleading before, and so they entertained yet a fear that again they were all deceived. Planting in the county continued up through May and the first of June, but the season remained a favorable one, and crops were of an extraordinary yield. Everything was abundant and prices remained steady and good.

NEWS FROM HEADQUARTERS.

About the first days of April news was spread broadcast that General Lee's army in Virginia was in bad shape, and

this intelligence was followed up on April 9, just four years, lacking three days, after the Confederates captured Fort Sumter, by the surrender of General Lee to General Grant at Appomattox. But a few days previously Richmond had been occupied by the Federal troops, and when this intelligence was received there was the wildest enthusiasm among the Unionists of this county.

Even many of the Confederate sympathizers were not sorry to again be in the land of peace, even though the terms were far from their liking.

But the hearts of the Southerners knew no rejoicing. They were ready to fight to the bitter end for the cause which they promulgated. It was now self-evident that they had taken poor stock in the Confederacy. It was now sure defeat for those who followed the Stars and Bars. The Confederates became reconciled and awaited the inevitable with resignation to the end.

THE WAR IS OVER.

And the breathless waiting for news was not in vain. A quick succession of events brought the war to a close. A few days after Lee surrendered to Grant, Gen. Joe Johnston's army surrendered to General Sherman, and then followed May 13, Kirby Smith's trans-Mississippi army, except a portion of Shelby's brigade and some other Confederate Missourians, some five hundred, went on to Mexico. Soon Confederate soldiers began to return to their Missouri homes. Many lived here and others passed on through to their homes.

In most instances the vanquished soldier was allowed to return to his home in

peace, but in a few instances they were buffeted and taunted by the men in blue, an insult to the name soldier, which carries even with it the characteristic of bravery. The Confederate soldier had fought a good fight, had openly acknowledged defeat, philosophically accepted his situation and had gone to his work, hoping to mend his fragmentary fortunes. Not all were permitted to return to his dear ones at the dear old homestead, for many a soldier in gray lay upon the battlefield, his life a ransom to redeem the cause he honored, while his loved ones at home were bowed and broken because he never returned.

THE "DRAKE" CONSTITUTION.

On the 18th of April the state convention, by a vote of 38 to 14, formed an entirely new constitution of the state, which was to be presented to the voters for adoption June 6th. It was called the Drake constitution, from the fact that Charles Drake, the vice-president of the convention, was its leading spirit, and from this fact and the extreme severity of the code, it has been called the "Draconian code," in comparison to the laws of Draco of Greece, which affixed the penalty of death alike to petty thefts and murder, saying in explanation that death was not too severe for small offenses and he knew of no greater punishment for murder.

The circumstances which led to the framing of the new constitution, the Draconian law, was the fact that the convention went further, prescribing a "test oath," which declared that no person should vote nor hold office who had "ever" engaged in hostilities or given aid, or comfort, countenance or support

to persons engaged in hostilities against the government of the United States, or had given letters, goods or information to its enemies, etc. It went on to say any person who had done any of these things or any other thing like-them, could not vote, teach in any public or private school, practice law, preach the gospel, solemnize marriage, etc., unless such person had first taken the ("test oath." All citizens attempting to teach or preach without oaths were to be fined not less than \$500 or committed to prison not less than six months, or both, and if a person falsely took it, he was to be imprisoned in the penitentiary for perjury.

The "test oath" is said to have disfranchised at least one-third of the people till 1872, and it is said would have disfranchised another third had they adhered strictly to the requirements.

The canvass which followed was a bitter one. Although the war was practically over, all the Confederate armies had surrendered, yet a few guerrillas and bushwhackers continued their existence in this state to the detriment of peace and safety to the sections they infested. Bands of military were kept in the field to hold the guerrillas in check and administer punishment for any disorder, and a spirit of unrest prevailed, and the provisions of the new constitution and the restrictions connected therewith, the embittered feeling which hostilities had caused, all bred ill will and was not calculated to restore an era of good feeling.

Hundreds of taxpayers, many of them old and honored citizens, were denied the privilege of the ballot in the decision of the great contest before the state, the

making of an organic law, to affect and govern them and their children.

On the other hand the friends of the new constitution maintained that citizens who, by overt or covert acts, had attempted to destroy the government, who had, by fighting against the Federal government, "committed treason," or in deeds, words or sympathy, given, encouragement to those who had, were not and could not be proper recipients of the ballot. They further alleged had the Confederate armies succeeded and Missouri become one of the Confederate states, then the Unionist would have considered himself fortunate had he been allowed the privilege of living in the state. That he would not have been allowed to vote, etc., etc.

Even in our own county, threats are said to be on record, such as a speech of Senator Green's at Shelbyville in 1861, in which he said in speaking to the Union men, "If *you* win, we will leave; if *we* win, *you* shall leave."

The whole state cast the following vote, which shows how the vote was cut down. Total vote cast at the election adopting constitution, **85,478**; for, **43,670**; against, **41,808**; majority for, **1,862**. The Shelby county vote stood : For, 282; against, **164**.

Small wonder the ex-Confederates hated with a bitterness the Drake constitution, but happily the bitterness of strife is passing on down the march of time and the Union is walking, as it were, hand in hand, seeking the welfare of our free land.

AFTER THE WAR.

When war was a thing of history and the excitement was a thing of the past,

the people again took up their regular avocations, the county made rapid progress in her development, increasing her population at a rapid rate, making valuable business acquisitions and permanent business improvements. Immigration was livelier than before in the county's history, and took up large tracts for homes, building thereon houses that were an improvement over the average home of the past. Much new land was opened up and the older tracts were improved.

The war had left the county badly in debt, had interfered with its business in a general way, so that all public improvement had closed, but as soon as these debts were gotten out of the way, public improvements were again foremost and the public highway was improved. Roads were built, bridges constructed, etc., as soon as the county could provide the means.

On July **15, 1871**, a contract was let for the first bridge that crossed Salt river between Shelbina and Shelbyville. at the old Dickerson ford. The contract price was **\$5,373.75**, but the bridge with its approaches cost **\$10,007**. The work was completed in December, **1871**.

In 1871 the first iron bridge of the county spanned the South Fabius, in the northeastern part of the county. It was built by Bishop & Eaton at a cost of \$2,800.

ROBBERY OF THE COUNTY TREASURY.

Shelby county had not survived the depletion of its treasury by war, when on November **20**, 1868, the county treasury was looted of \$10,000 by burglars. The treasury was a safe the county bought in **1857**, and set in a vault, built for the purpose, in the county clerk's office. It was

supposed, of course, to be secure and was the county's only "safety bank." The burglars had made their entrance into the county clerk's office by the north window. The doors were pried open with levers and steel wedges and pries made for the purpose. The safe was thoroughly overhauled and every coin taken that was in her possession. The robbery was first known when County Clerk W. J. Holliday reached his office on the following morning, and caused no small stir in the little burg. The bank contained in money :

| | | |
|-------|--------------------------------|---------|
| 1 | \$1,000 national bank note.. . | \$1,000 |
| 1 | \$500 national bank note.. . | 500 |
| 3 | \$100 national bank notes.. . | 300 |
| | (or greenback) | |
| 7 | \$50 national bank notes.. . | 350 |
| | (or greenback) | |
| 301 | \$20 national bank notes.. . | 6,020 |
| | (or greenback) | |
| 63 | \$10 national bank notes.. . | 630 |
| | (or greenback) | |
| 80 | \$5 national bank notes.. . | 400 |
| | (or greenback) | |
| 16 | \$10 Union military bonds. | 160 |
| 19 | \$5 Union military bonds. | 95 |
| 13 | \$3 Union military bonds. | 39 |
| | ----- | |
| Total | | \$9,494 |

Of this sum \$1,290 had been received from the tax on licenses, \$3,224 belonged to the state revenue fund, and \$4,980 to the state interest fund. In addition to the sum of public money in the safe, Clerk Holliday had some funds of his own, and a considerable sum belonged to the enrolled militia, having not yet been disbursed, making a total of \$10,000.

Only a few days previous the county

collector, J. M. Collier, had taken \$30,000 to Quincy for safe keeping, which would have afforded the robbers some extra pin money had they come while it was in the safe. The collector made a full and legal investigation of the case, in which the county attorney, M. J. Manville, represented the county.

The result was the public officials were exonerated from all censure and blame and the implication of no one.

Two men from Quincy, strangers, were unfortunate enough to be sojourning in the city at the time. The citizens became suspicious of them, took them into custody and made a desperate effort to implicate them, even going so far as to take them to the country to lynch them, but they averred their innocence so fervently that they were released.

The real thieves were never apprehended. No tools were found till a year later, when some drills and wedges and a few iron and steel pries were discovered in a fence corner in a meadow south of town and north of Black creek. It was supposed they were the tools that cracked the Shelby county safe.

POLITICS AND ELECTION OF 1870.

The January legislature of 1870 agreed to submit to the voters an amendment to the constitution abolishing the test oath and restoring the ballot to former Confederates, Southern sympathizers and all other male citizens, and relieving them of other proscriptive penalties. The slaves and their descendants had already been granted this privilege in 1867. The people were to vote on the new amendment in November, 1870. A very warm and earnest campaign preceded the vote; indeed, the Presidential

years did not eclipse it. The Republican party disagreed as to what should be done to the large number of disfranchised citizens. Many hoped to postpone it. These were called Radical Republicans, but an equal number believed in a removal of all political disabilities at once. These were termed Liberal Republicans. The Radicals were led by Charles D. Drake, and maintained the extreme and iron-clad policy, and the Liberals, headed by Gratz Brown and Carl Schurz, contended for a more magnanimous policy for those who had by word or deed held complicity with the rebellion.

The Radicals in convention at Jefferson City, nominated Joseph W. McClurg for re-election for governor. The Liberals withdrew and adopted a platform and nominated Gratz Brown for governor. The Democrats declined to nominate a ticket and supported the Liberal Republican ticket. There was a growing sentiment among the people that the war was over, that the time for iron-clad oaths was past.

Taxation without representation was growing more unpopular every day, that since negroes, who formerly were slaves, was now allowed the ballot, their masters should not be denied its privilege. That public sentiment, both within and out of the borders of the state, was making largely against the condition of affairs as tyrannical and unjust.

Owing to the test oath associated with the Drake constitution, very few Democrats ever reached the polls and therefore had little power in the direction of public affairs. As was natural, few Confederates or their sympathizers were Republicans. Their disfranchisement had

embittered them against the author of their condition, and they cast lots with the Democrats, whether or not they were of that faith before the war. With the Confederates at their right hand and a split in the Republican ranks it was apparent, once the disfranchising clause was removed, the Democratic party would speedily come into power.

In Shelby county politics were humming. The old Democratic war-horses, who for so long had been a prodigal out in the cold, pricked up their ears and scrambled forward to win out. The party managers held the reins well under control. A combination ticket between the Democrats and the Liberals was arranged and shrewd politics was played to make sure the overthrow of the Radicals.

REGISTRATION IN 1870.

| | |
|-------------------|--------------|
| Salt River | 308 |
| Jackson | 178 |
| Clay | 184 |
| Jefferson | 93 |
| Taylor | 87 |
| Black Creek | 263 |
| Bethel | 183 |
| Tiger Fork | 107 |
| Total | 1,403 |

The election in the county was a mixed triumph for Liberals and Democrats.

Governor—*McClurg*, 600; Brown, 637.

Congress—J. **T. K.** Hayward, 594; J. **G.** Blair, 635.

Representative—Shorts, 571; Shafer, 653.

Circuit Clerk—Leonard Dobbins, 616; Duncan, 591.

County Clerk—E. A. *Graves*, 661; J. S. Preston, 542.
 Sheriff—*William A. Poillon*, 534; S. F. Dunn, 677.

NOTE.—Straight Republicans in italic.

On the amendments the vote stood: For, '881; against, 242.

In the state they were adopted by more than 100,000 majority. Brown defeated McClurg by 41,038.

The year 1870 is memorable in history as having been the year when the Radicals allowed both the “niggers and rebels” to vote in Missouri.

CENSUS OF 1880.

The population of Shelby county in 1880 was : Whites, 13,089; colored, 935. Total, 14,024.

TOWNSHIP ENUMERATION.

| | |
|--------------------------------------|-------|
| Bethel | 1,343 |
| Black Creek, including Shelbyville | 2,074 |
| Clay, including Clarence. | 1,761 |
| Jackson, including Hunnewell. | 2,057 |
| Jefferson | 1,548 |
| Salt River, including Shelbina. | 2,866 |
| Taylor | 1,212 |
| Tiger Fork | 1,163 |

TOWNS.

| | | | |
|----------------|-------|----------------|-----|
| Shelbina | 1,289 | Clarence | 570 |
| Shelbyville .. | 619 | Hunnewell | 424 |

1860, 1870, 1880 COMPARED.

| | | | |
|---------------|-------|--------|--------|
| Whites | 6,565 | 9,540 | 13,089 |
| Colored | 736 | 571 | 935 |
| Total | 7,301 | 10,111 | 14,024 |

FLOOD OF 1876.

The summer of 1876 is known in Shelby county as the “high water era.” It was a cool spring and in the “good old summer time” came a remarkable rainfall that raised some of the streams of the county to their maximum height. Salt river was swollen beyond that of any past date, to even the pioneers, who remembered well the floods of 1844, 1851 and 1856. It was literally from bank to bank at many locations. At the long bridge, over the old Dickerson ford, on the Shelbina-Shelbyville road, the water skimmed over the bridge and obscured its approaches. On the northern extremity was washed a huge boulder of granite in the road. To the east side of the road was a large black oak tree with the high water mark of 1876 nailed on it.