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Wm. Hedges Robinson

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HUGH BUTLER—THE TENACIOUS SCOT

By WM. HEDGES ROBINSON, *of the Denver Bar*

IT seemed to the impatient young lawyer that every twist in the stage road must bring Central City in sight; but the coach rumbled and rattled over the rough road without seeming to come nearer to the town. Rugged mountains that grudgingly gave way for the creek and the road, reared high in every direction. To the boy, there seemed to be no end either to the jostling or to the road.

Suddenly the coach whipped around a corner and Central City was before him. A sharp sense of disappointment came over Hugh. Surely this huddled bunch of shacks could not be the far-famed city.

A long, dusty street on the right side of the gulch, intercepted by a narrow way about three hundred feet long, were the only thoroughfares. On the left side of the gulch, slab-sided houses rested on poles and scaffolding over the mountain stream. A few stores were crowded together in an incredibly small space. All buildings were of frame—a perpetual menace of fire. On every side pock-marked mountains pressed down upon the town.

Hugh climbed down from the stage and registered at the St. Nicholas hotel. Of that hotel, perhaps the most that can be said is that board was five dollars a day. Born of a Scottish mother, Hugh Butler ever rebelled at the prices prevailing at mining camps. His thrifty nature could never adjust itself to the fact that in Central City he paid more and received less for his money than any other place in the world. The heritage from his mother and that from his father were ever at war in this mining camp.

From his Irish father, he had inherited a love for beauty. The tall mountains etched against a sunset sky and the mountains scarred with mines, the calmness of the faraway places in the hills and the turbulence of the town—never could be reconciled in his heart. Even this first evening in Central City, he was deeply conscious of the fact that beauty and ugliness crowded upon each other here.

He was puzzled equally by the language. Everyone talked of the amount of "feet" that he had. Butcher, baker,

candlestick-maker would without the slightest provocation excitedly describe a claim that he owned, and pull odd pieces of rock from his pockets. Nearly every citizen in the town carried a specimen. Much of the currency was in the form of gold dust, claims for footage, or assignments of claims. But this language now so puzzling to Hugh Butler was to become to him as familiar as terms of the law; for he was to own claims, mines, and specimens of his own, and a good many of his fees would be paid in feet.

All of this was Central City—the most populated, progressive and prosperous place in the State. In fact Central City was the Colorado metropolis long before the Queen City of the Plains was anything more than a frontier trading post with a few stores on Blake Street.

Hugh lost little time in establishing himself. In partnership with a young lawyer, he opened an office on Main Street under the name of Royle and Butler.

The following year (1864) Hugh Butler was elected to fill out the unexpired term as prosecuting attorney for Gilpin County. He was re-elected, but resigned in 1866 because of the pressure of his private practice. While prosecuting attorney, he appeared for the people in the case of *Paton v. The People*, 1 Colo. 77, which was one of the first criminal cases to be heard in the territorial Supreme Court. The case involved the right of the City of Black Hawk to regulate and tax saloons, gambling, and bawdy houses when such a right had been granted to the county commissioners under an act of legislature, which in 1861 created the County of Gilpin and made Central City the county seat.

Illustrative of the private practice which Butler commanded is the fact that he appeared as counsel in twelve of the nearly three hundred cases reported in the First Colorado. At this date there were approximately 130 lawyers in the state, and the number of cases in which Butler appeared is only outdone by Sam E. Browne, whose appearance in the Supreme Court have outnumbered all other lawyers in this state, and Alfred Sayre who was later a partner of Butler. It is interesting to note that the first case, *Smith v. Cisson* (1 Colo. 29) in which Butler appears as counsel in the Supreme Court he

lost, and that the procedure questions there involved were again to plague him.

In 1867, he was elected to the upper house of the territorial legislature, and re-elected again when his term expired. His political career which had begun with the district attorneyship, terminated with the senatorship so far as public holding was concerned. However, he continued to be an active and aggressive Democrat for many years. In 1876 he was selected chairman of the state central committee of the Democratic party, managing its first state campaign. Six years later he ran for state senator from the Denver district and was defeated. With the exception of serving as mayor of Central City in 1871, Butler held only two political offices, although in 1882 Governor Grant offered to appoint him as superior court judge in Denver. Butler refused the appointment because of an extensive and profitable practice.

It was not unusual for his practice to compel him to take a trip to the East. On one of these trips, Butler met Annie Thatcher Machie, daughter of John Milton Thatcher of Kentucky and widow of Charles M. Machie. They were married on February 13, 1872, and their life together was one of rare devotion. No children were born of this marriage, and when Butler died on June 27, 1912, he left no surviving relations in America, his wife having died several years before.

His marriage marks a turn in Butler's life. So far his practice had been the rough and ready practice of the frontier with its self-created laws and procedure. Some stabilization had begun to enter the law in Colorado, and some of the causes for its roughness had begun to disappear. When international financiers began to manipulate silver, they destroyed the towns of Central City, Black Hawk, and a hundred other silver mining towns. They wiped out the picturesqueness of the Teller House, the Opera House, and the Barton House within whose walls such personages as General Sheridan, Jefferson Davis, Jay Gould, Baron Rothschild, Count Turenne, Lord Dunraven and others had stayed. Partly because of this changing scene, partly because Mrs. Butler wished to be near her brother, Joseph Thatcher who was president of the Denver National Bank, Butler moved to Denver. His removal was the first of a general exodus of lawyers who had

made the bar of the little Kingdom of Gilpin the most brilliant of the West.

While not neglecting his mining interests, Butler's practice changed radically. In 1874 he became a member of the firm of Sayre & Wright, changing the name to Sayre, Wright & Butler. This firm controlled practically all of the corporate practice in the state and was frequently referred to as the "trust." It numbered among its clients, the First National Bank, the Colorado National Bank, the Chaffee interests, Kansas, Pacific and Denver railroads, the gas and the water company, and the city railway company.

The third and final phase of Butler's life commenced in 1892 when he accepted a professorship in the University of Colorado Law School, to teach common law and code pleading. This position he filled with a quiet distinction which a background founded upon an extensive practice and a philosophy well suited to these subjects permitted him to enjoy.

His Scottish heritage gave him a tenacity which was frequently illustrated in his trial tactics and his Irish heritage made him delight in legal legerdemain. One case, which he ultimately lost and in which he was a principal figure, shows these traits which made it said of him that if he represented a defendant, the cause was never tried until both parties were dead and generally not then.

The facts of the case were that William Linn, owner of an undivided interest in the American Mine, assigned his interest to Butler and Charles Wright on January 24, 1879, for certain monies advanced by Butler. The assignment permitted Butler and Wright to enter into possession and to work the property, paying the debt to themselves out of the proceeds. It later developed that the Little Sliver and the American had overlapping claims. This dispute was settled by transferring practically all of the interest in the American to the Little Sliver and operating both mines under a general managership, partially controlled by Butler and Wright. In the meantime, Lewis C. Rockwell by assignment had secured Linn's interests and brought an action alleging that Butler and Wright had defeated the contract by the conveyance to the Little Sliver and therefore owed the plaintiff \$5,000, which was the balance due for Linn's interest. The suit was

commenced in 1884 and brought to the Supreme Court in 1885 (*Linn v. Butler*, 8 Colo. 355), where it was remanded to the trial court for further pleading and trial. In the meantime Linn died and in December, 1885, Butler moved for a dismissal because the action being personal did not survive Linn. This motion was overruled and in April, 1886, the defendants filed an answer, after which the plaintiff requested that the administrator of Linn (David Gage) be joined as a party plaintiff. The court ruled in January, 1887, that Gage should be made a party and a trial was had in December when a verdict was returned for Rockwell. Filing a bond, Butler appealed to the Supreme Court and the decision was there affirmed in 1890. (*Butler v. Rockwell*, 14 Colo. 125.)

Then Butler appealed to the United States Supreme Court alleging that an act of the state legislature creating supreme court commissioners to report to the court on referred cases was unconstitutional; and since the hearing in the state supreme court had proceeded in this fashion, the decision of that court was repugnant to the federal constitution. The United States Supreme Court held that since the federal question was not properly submitted to the state court it would not rule upon the question. (*Butler v. Gage*, 138 U. S. 52, 34 Sup. Ct. 869.)

Rockwell then commenced a suit on the bond filed in the state supreme court; and Butler again defended on the ground that since the commissioner and not the Supreme Court had acted, there had been no affirmance of judgment and hence no right of action on the bond had occurred. This contention was overruled in 1893 (*Butler v. Rockwell*, 17 Colo. 290) and a judgment for \$9,008.33 was given but the case remanded for a technical error in the trial court's judgment relating to the rate of interest. Even after three law suits and four appeals involving eight years, it is said, that Butler and Wright never did pay the full judgment, but compromised for a lesser sum.

Law to Hugh Butler was very much a game which was played by the rules of procedure and practice. His array of motions and demurrers in a case was frequently astounding, and his ingenuity in delaying a case when he represented the defendant was amazing.

Probably no other early Colorado lawyer more cannily and resourcefully took advantage of the technicalities of the law. Even among a bar which delighted in the mazes of common law pleading, Butler was renowned for his barrage of legal motions.

However, law was not the only subject which engrossed him. His interests were wide and varied. Shortly after coming to Colorado in 1863 he began to acquire mining properties, many of which involved him personally in litigation, as for example see *Butler v. Hinckley*, 17 Colo. 523. He appeared as counsel in many mining cases, notably that concerning the Bassick mine at Querida in Custer County, which case was taken to the United States Supreme Court. It would be difficult to estimate what sums of money he invested in mining, certainly \$20,000 and probably more; but none of it yielded any great return. It is doubtful if he much more than broke even in his mining ventures.

He was also engaged in several large real estate adventures, being one of those who platted the Town of Edgewater on April 22, 1889. He was one of the organizers of the Miners and Mechanics Institute. He helped create the Fire Department of Central City, and he held many chairmanships in civic enterprises.

Because of Butler's interest, the Miners and Mechanics Institute deserves some further mention in his biography. It was organized in January, 1867, under a territorial charter granted by Governor Cummins. A combined library, chautauqua, museum and scientific institute, the association was very prosperous for the first years of its life. It gathered together 1,000 volumes, and had a large membership which yearly contributed dues of ten dollars. For several years, Butler served as chairman of its executive committee, and it was he who in 1873 informed the Institute that its library had been sold to the city for \$300 for school purposes, thus announcing the beginning of the end of the Institute whose buildings were shortly afterwards destroyed in the big fire.

In his seventy-second year, the year of his death, Butler could proudly review a long and useful life. Educator, lawyer, politician, he brought to each of these a full measure of distinction. His life was like his speeches without froth or

pyrotechnic display. As a charter member of the Colorado Bar Association and of the Denver Club, where he resided during the final years of his life, as a Mason and Knight Templar, and as one of the first eight to be admitted to practice in the federal district court in Colorado, Hugh Butler was regarded as an outstanding lawyer and civil leader of his day.

Hugh Butler could well be proud of the road that he had journeyed. It had been a long trip and he bore it well. It had started in Airdire, Scotland, near Lanarkshire on May 31, 1840, crossed the ocean to Hawesville, Kentucky, thirteen years later, moved in 1857 to Lewiston, Illinois, where Hugh taught school for three years and studied law for two more, then in 1862 led to Chicago for a short time before the long trek was made to Colorado in the following year. And when the final journey was made to an unknown destination on that June evening, Hugh Butler eagerly faced it with the courage that was his throughout life.

MORE ABOUT ABSTRACTS

Hayes R. Hindry, of the Denver Bar, submits the following:

MR. ALECK DENTON, 1214 Marcus Bldg., Prewit, Texas.
 Prewit, Texas. January 4, 1936.

Dear Sir: I have examined the abstract of title in seven parts covering the South 236½ acres out of Edmonton Survey in _____ County which you are preparing to buy and herewith render my opinion.

Don't buy the G_____ land. It has been my sorrow and burden to look over several horrible examples of a title examiner's nightmare, but this alleged title takes the cut glass flyswatter. It is my private belief that you couldn't cure the defects in this title if you sued everyone from the Spanish Government (who started this Mess) on down to the present possessor of the land, who is there by virtue of a peculiar instrument optimistically designated by the abstractor as a "General Warranty Deed."

In the first place, the field notes of the Spanish Grant do not close; I don't think it is possible to obtain a confirmation grant since the last unpleasantness in 1898. In the second place, there were nineteen heirs of the original grantee, and only three of them joined in the execution of the conveyance unto the next party in this very rusty chain of title, which is a major defect in the first place. We might rely on limitation here, except that I am reliably informed that nobody has succeeded in