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William H. Robinson Jr.

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SAMUEL E. BROWNE

THE LITTLE GENERAL FROM OHIO

By William H. Robinson, Jr., of the Denver Bar

THE parade of law is serene and majestic. There is no tramping of feet; there is no playing of bands—no fanfare of trumpets; there are no plaudits of the multitude. So quietly does it pass that the onlookers are scarcely aware that there has been a parade. Consequently its marchers are nearly forgotten the moment they are out of sight, and yet law marches toward constructive and not destructive effort; it has a drama that is equally as fascinating as that of the parade of war, but its drama is concerned with the lives of men, not with the death of men.

The parade has stopped in front of us for a few brief seconds.¹ We see Denver as it was in the sixties—a crude frontier town in which legal institutions are almost unknown. Less than a half dozen lawyers had arrived in Denver as early as 1858-1859, but the small group that was to lead in the development of the law in the west came for the most part throughout the decade of the sixties. A host of courts in the city was attempting to administer justice. The probate and justice of peace courts established by the late Territory of Kansas, though still in existence, were "cut off in the midst of their usefulness and left to dry up like leaves on a dead branch." The district court presided over by Judge Allison and the county court under the direction of Judge J. Bryant Smith were unpopular. The extra-legal, People's Court, whose judges were Nelson Sargent and Jacob Downing, did most of the business. In addition to these courts there was the Claim's Club which by self-constituted judicial power regulated "rights to possession of land claims"; the High Court of the People which met irregularly to try murder cases, and the Miner's Courts. The great variety and diversity of these courts made the practice of law perplexing and uncertain. Perhaps the only certain thing to the lawyer was the very

¹ This article is the first of a series to appear in *Dicta* on the lives of Denver lawyers who were practicing in Denver during 1860-1870.

positive prohibition against them practicing in most of the Miner's Courts.²

Into this bramble bush of courts, President Lincoln sent Samuel E. Browne, in May, 1862, as the first United States Attorney for the district of Colorado.³ When Browne arrived in Denver he was taken to the barroom of the Planter's Hotel where the District Court, presided over by Judge B. F. Hall was in session.⁴ Everyone in the "courtroom" wore a brace of revolvers and few men had seen fit to remove their hats. Browne was startled and shocked, but he had the good judgment not to show it. This experience was his first in a frontier court. He had been born and reared in the East; and there amongst its courts and in the halls of the national government he had so far spent his life.

He was born May 12, 1822, in Franklin County, Pennsylvania. In 1849 he was graduated from Marshall College in Mercersburg, Pennsylvania; and after receiving his diploma, he taught school for three years. Beginning his study of law under the tutelage of D. F. Robinson in the spring of 1843, he completed his study under the supervision of Judge William A. Rogers at Springfield, Ohio, the following year; and on June 7, 1845, he was admitted to the bar of Ohio. For about fifteen years thereafter in the life of Samuel E. Browne there followed a period of unrest and indecision. In January, 1845, he moved to Wert, Ohio, where he began to practice law, but shortly thereafter he moved to Delphos, Ohio. About ten years later he moved again—this time to Piqua, Ohio. Soon after he had taken up his residence, he was selected as the official reporter of the Ohio Senate. He continued his practice of law in Piqua, however, until 1860 when he was elected a member of the legislature for a period of two years. When the Civil War was declared, Browne was appointed as quartermaster of the Army of Ohio under General McClellan.

² Denver Republican September 13, 1883. For a more detailed discussion of the early courts see STONE'S HISTORY OF COLORADO.

³ For a description of courtroom scenes in Colorado's early courts see a series of articles in Dicta during 1931 by Fred Holland, and the biographies of Thomas, Belford, and Hughes by William Robinson in the Rocky Mountain Law Review during 1930-1932.

⁴ Strictly speaking there was no such office as the United States District Attorney for Colorado at that time. Browne was designated as Attorney-general and from this designation came his nickname of "general".

Camp Putnam was established by Browne under the supervision of General McClellan, and when this task was completed Browne was placed in charge of the commissary department. In this command he seized the steamship Ohio, and on it transported the Fourteenth Ohio Regulars to Parkersburg, Virginia, where they took possession of the city. This act was the first invasion of southern states by the army of the North.

Recognition for his services was swift, and in July, 1861, he was sent to Washington, D. C., where he was appointed captain of the Seventeenth regular Infantry by President Lincoln. Within a few months he resigned this commission to accept the position of assistant Registrar in the Treasury Department. To finance the war, Congress had decided to issue \$60,000,000 of greenback currency known as demand notes. On these notes along with that of Secretary of the Treasury Chase was the name of Samuel Browne. During that winter he was made virtually a government express agent whose duty it was to convey money to the federal armies. In this capacity he distributed \$15,000,000. Upon the recommendation of Caleb Smith, Salmon Chase, and Judge Noah Swain, he was appointed on April 6, 1862, United States Attorney of Colorado.

Such then was his background as Samuel Browne stood in the barroom—courtroom in that May day, 1862.⁶ When he had accepted the appointment of United States Attorney, he had been aware of the crudities of frontier courts and justice, but he had scarcely been prepared for anything like the sight he then beheld. But he was to receive a further surprise. As he himself put it twenty-five years later:⁷

“I came to Colorado under the impression, which is still quite common among attorneys from the East, that I should find here in the legal profession few, if any, foemen worthy of my steel. I was soon convinced of my mistake and was made to feel that I would have to rustle if I wanted to make a respectable showing among the lawyers of that time.”

The first case Browne undertook in Colorado was the defense of Judge Hall who had been indicted for malfeasance

⁶ B. B. Stiles was clerk of the district court at this time, and A. C. Hunt, later territorial governor, was the marshal. A. C. Hunt was the brother of Hamilton Hunt who some years later formed a law partnership with Browne.

⁷ Daily News September 13, 1883.

in office by the Grand Jury. When the true bill had been returned, Judge Hall consulted Browne who after some reflection stated that he believed he saw a solution to the problem. In Judge Hall's court the following morning, Browne filed a motion to quash the indictment, stressing the fact that the indictment had been returned against Hall, the citizen, and therefore Hall, the judge, had a right to hear the motion to quash inasmuch as Mr. Hall and Judge Hall were two different persons in law. Browne then proceeded to point out a legal defect in the indictment. After gravely listening to Browne's argument for a half hour, Judge Hall ordered the motion to be sustained.

Shortly after this incident Hall was replaced by a man named Gale who knew no law. Probably nothing is more indicative of the fact that Judge Gale knew no law than of his unique method of ruling on demurrers. Judge Gale would hear the demurrers through the week, but would rule on them only one day each week. On the day that he was to rule on them, he stacked the demurrers upon his desk, and beginning at the top he would sustain the first demurrer, overrule the second, sustain the third, overrule the fourth, and so on through the entire pile. The lawyers in Denver soon perceived the scheme. One day Browne presented a demurrer to a complaint and as usual Judge Gale laid it aside to rule on it on "Demurrer day." The night before the demurrer was to be ruled upon, Browne had Judge Gale to his home for dinner. The following morning just as the Judge had reached his demurrer, which according to the Judge's system was to be overruled, Browne leaned over the Judge's desk. While engaging the Judge's attention by talking of the dinner party on the evening before, Browne placed another demurrer on top of his. True to form, the Judge overruled the demurrer on top and sustained the next demurrer which was Browne's. As the Judge announced his decision, the opposing counsel whispered to Browne, "You old fraud you, I saw you shuffle the deck on me."

One of the most amusing cases in which Browne in his capacity of United States Attorney did not fare so well was tried before Judge Allen A. Bradford in Pueblo. It was a case involving the theft of a mule. Now Judge Bradford

while camping-out had had his pet mule, Babylon, stolen from him several years before, and as a result the judge had been forced to walk a considerable distance to the nearest town. As prosecuting attorney Browne in the present case had severely denounced the thief and had demanded his conviction. During recess of court, however, Browne had received a fee to get the trial dismissed by payment of a fine. When the court again convened, Browne asked that the court accept a fine and turn the thief loose, for "it was only a miserable mule he stole after all."

Judge Bradford rapped viciously on his desk, "Let the S-B- stand up. The sentence of this court is that the prisoner be confined at hard labor for five years, and the prosecuting attorney hand over the fee that he has taken off of the prisoner to intercede in his behalf to the end that justice be defeated. This fee will be used to defray the expenses of this case. Next case."

In 1864 Wilbur F. Stone was appointed assistant United States attorney. Browne assigned Stone to the disposal of the criminal cases, while he himself undertook as a general rule, only the civil cases. In May, 1865, both men resigned their office, but their resignations were not accepted until October of that year.

During the years in which he had served as United States Attorney, Browne frequently saw the federal court held under the branches of a cottonwood tree or in the largest adobe house in the region. He had traveled in wagon train and on horseback for great distances to attend the sessions of court as it sat in the several districts. Not infrequently had he seen the mob snatch a case from the court and administer justice in its crude but effective way. One of the most famous of these instances was the trial of U. S. Coe and his gang of bandits. The Coe gang had been stealing sheep and cattle for some years. One day after a dramatic capture the gang, riveted together with iron chain, was herded before the federal court in Pueblo over which Judge Hallet was presiding. Arrayed against Browne as prosecuting attorney was Governor Hinsdale and Tom Nathan. The trial proceeded with a quadron, whom the Coe gang had captured as spoil in one of their raids, giving most of the evidence. The courthouse

was packed with spectators, most of whom were afraid that the gang would escape with light sentences. One morning during the course of trial, hanging from trees along the Fountain River where the Eighth Street Depot of the Rio Grande was later located, Coe's body was discovered by early risers. During the night he had been spirited from the jail by a small determined group of men and hanged. The rest of the Coe gang were convicted and sent to Leavenworth penitentiary.

It was not infrequently either that Browne and the federal judge traveled with a guard of soldiers to keep off the Indians. The Ute Indians in northern New Mexico were always troublesome. After the battle of Sand Creek in 1865, Browne secured a leave of absence from the government in order to raise troops to guard the plains route to Julesburg. Browne was elected Colonel of the regiment on January 17, 1865, and that winter he spent on the plains in command of these troops while Stone carried on the work of the United States Attorney's Office. The Indian uprising was quelled by spring, and by the end of April Browne mustered out the troops. Although this was his first Indian expedition, Browne during his life led many such expeditions.

By now, Browne's private practice had been built up to a considerable extent and so he resigned his federal appointment. His own practice was voluminous and successful. It is said of Browne that if he had been paid one dollar every time he had appeared in court that he would have been the richest man in the world. While this is perhaps a hyperbolic statement, yet the fact remains that Browne appeared as counsel in at least twenty-three cases in Volume One of the Colorado reports, and thereafter averaged eleven appearances to a volume until his last state supreme court case, *Dubois v. Bowles*, in 30 Colorado.

Browne was the wag and the wit of the Colorado bar. He would rather get off a good joke than win a verdict. There are many stories told about his courtroom wit. One instance accredited to Browne occurred in Judge Hallet's court. Browne by mistake sat down in a chair in which a tack had been inverted. Arising with alacrity, he bowed deeply, and handing the judge the tack, he said, "The court is sharp at the wrong end."

Another time Browne was questioning an old Spanish-Mexican who had stated he was 120 years old.

"Are you married?" Browne inquired.

"Cassara—many times," the old fellow replied, meaning that he had numerous wives, as morganatic marriages were common in the Southwest.

"Do you drink?"

"Si—Taos lightning. I was raised on it." Taos lightning was the most fiery of frontier liquors.

"That's all," waved Browne in dismissal. "I know what to do now to prolong life."

In spite of Browne's love for a joke, he had a great capacity for work. He was exceedingly industrious and put forth all of his efforts to win his case. Some of the methods he employed would not be countenanced today, but in the days in which he lived they were readily accepted. Typical of these methods was his defense in the Union Pacific-Colorado Central railroad case. The Union Pacific filed an injunction in the Boulder district court to enjoin the Colorado Central from bidding on a certain right of way which the Union Pacific coveted. The case was to be tried before Ambrose Stone. Under the rules of court of that day was the provision that if the judge did not appear on the third day after the opening of the term, which was set by statute, then the term lapsed and the judge could not sit in the district for another six months inasmuch as there was only two terms of court a year. Browne suggested to Judge Stone that he ride to Boulder on the Colorado Central and in that way view the disputed territory. Judge Stone agreed, and a day before the term in which the case was to be tried he was riding on the train to Boulder when suddenly the train came to an abrupt stop. Men wearing masks swarmed on the train, carried off Judge Stone, and disappeared without disturbing the rest of the passengers. The Judge was held in the mountains for three days by his masked captors who, while otherwise courteous and attendant to the judge, refused to speak in his presence. On the fourth night he was returned unharmed to his home. During the six months interval before the next term of court, the Colorado Central had built past the point in question, and the Union Pacific was forced to drop the suit.

In spite of his extensive practice, Browne was never too busy to welcome and encourage the embryo lawyer. He devoted many hours of his time to advising young attorneys and helping them to secure an office. The tribute paid to him upon his death⁸ fully sets forth Browne's philosophy of the law:

"His never failing high spirits made him immune to the annoyances and inconvenience incident to general practice in territorial days. The impromptu nature of trials never embarrassed him, and his ready comprehension of the nature of a case and his charm of argument secured as effective results as usually fall only to the most labored profession—no one had greater freedom of expression in the courts than he and no court was so dignified as to be able wholly to restrain his brilliant rallies. That he was never called to task was a tribute to the generous character of his wit."

Everyone always spoke of his cheerfulness and his wit. Wilbur F. Stone said of him:⁹

"Browne was the life of all parties. He was surrounded by an atmosphere of sunshine; was never too busy when you met to stop and say a merry word. Everywhere everybody expected something pleasant from him, and they were never disappointed—I don't suppose there is a man living in Denver who was better known or better liked than Sam Browne."

A born leader of men, Browne swept them along with him because of his fervent speech, his virileness, and his adventuresome air. Regarded as a strong delegate at political conventions, he enjoyed nothing more than to deliver a fiery political harangue. He had a wide vocabulary and a forceful manner of delivery. His weakness and faults, though well known, were absorbed by his geniality, his generosity, his integrity, and his engaging and attractive manner. He was democratic in his taste and friendships and Catholic in his opinions. Regarded as an able manager of estates, he was careless in his own business affairs and made no provision for his old age. Though he had earned large fees when he was actually engaged in practice, the last two years of his life found him in straitened financial circumstances. In addition, his mental and physical faculties failed, but withal he retained his cheerfulness. He began the deep sleep May 29, 1902.¹⁰

⁸ Vol. 1, Denver Bar Ass'n Rep. 89 (1903).

⁹ Denver Republican May 31, 1902.

¹⁰ Browne was buried May 31, 1902.