

January 1926

A Forgotten Celebrity

C. S. Thomas

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

C. S. Thomas, A Forgotten Celebrity, 3 Denv. B.A. Rec. 7 (1926).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

on a sand bar, and then, of course, find ourselves behind prison bars. Obstacles and obstructions are then set in the path of justice by counsel who plead at the bar of the court. We are then called before the bar for sentence and the word becomes the official

name of the court and of the legal profession.

Finally, we note in the Standard Dictionary, that "Bar," is the official abbreviation for barrister, barleycorn, and barrel. This despite the fact that to bar means, in one sense to prohibit.

—J. C. S.

A Forgotten Celebrity

By HON. C. S. THOMAS

Former United States Senator from Colorado.

I wonder if anything is more evanescent than fame or notoriety; and wondering still, I wonder if "seeking the bubble reputation", is worth while, whether "at the cannon's mouth" or otherwise. In the vast majority of instances the game is hardly worth the candle; for some men fall away from the spotlight during life and the mantle of oblivion covers most of us before the grass upon our graves is yet green. The living are too much engrossed in their own affairs to give much thought to the memory of the dead or to spend their time in stimulating the expended energies of those falling out of the ranks.

But every condition has its compensations. Those of us who hang on or hang over, whose memories are freighted with vanished events, and traditions and personalities, can revive some of them at times, for the edification or amusement of our junior contemporaries. And since some men are born both to point a moral and adorn a tale, a very brief review of one of them may not be without interest to the bar if not to the general public.

Thomas M. Bowen, member of the Constitutional Convention and Justice of the Supreme Court of Arkansas, Judge of the District Court, and United States Senator from Colorado, was one of these. He was nothing if not pic-

turesque. Reputed natural son of Senator James H. Lane of Kansas, member of the first Legislative Assembly of that State, and of the first regiment of Kansas Volunteers in the Civil War, he reached Arkansas in the course of time and determined to stay there.

His opportunity came with reconstruction, which brought him pelf and political position. As Chairman of the Constitutional Convention, he so manipulated its action as to secure an adjournment of its sessions, subject to his call. He then declined to reconvene it until he should be guaranteed a place upon the bench of the Supreme Court, if the proposed Constitution were ratified. The guaranty was given and his scheme was realized.

The Chief Justice of this remarkable court was "Poker Jack" McClure. Injunctions being valuable at the time and the Supreme Court being clothed with both original and appellate jurisdiction, McClure and Bowen did a flourishing competitive business in granting writs to rival parties. If one favored a plaintiff the other would be equally gracious to a defendant. Litigants were thus made immune against each other until they came to terms either with themselves or with the court. The latter was said to have made more out of the practice than the former. At any rate Bowen

"played the game" as he expressed it until ambition drove him to strive for higher things. He tried to reach the Senate from Arkansas, only to be defeated by Stephen W. Dorsey. Then came the Brooks-Baxter war for the office of Governor. Baxter prevailed and a hegira of state and county officials followed. Bowen left without any baggage and two days afterward landed in Denver with a number of co-refugees. He at once looked about him for congenial and self supporting occupations.

Del Norte seemed attractive. It was then the gateway to the San Juan, an ElDorado for all sorts of adventure. Thither Bowen located soon afterwards; he launched the San Juan Consolidated Mining Company; owner of locations adjacent to the Little Annie. While manipulating the fortunes of this mining adventure, he began to flirt with Colorado politics and politicians. Upon the admission of the State, he announced his candidacy for the District bench. His nomination for Judge of the Fourth District was soon followed by his election, within two years after his hurried arrival. He thus became one of the four *nisi-prius* judges of the new commonwealth with jurisdiction over nine counties embracing a territory considerably larger than the State of Ohio.

Judge Bowen succeeded Judge Moses Hallett. The latter had an exaggerated sense of judicial dignity. Bowen had none. Hallett was a stickler for forms and ceremony. Bowen cared nothing for either. The contrast was emphasized at his first term of court held at San Luis in Conejos County. William H. Meyer was then clerk, interpreter and political boss of the county, whose population was ninety-nine per cent Mexican. The first case called for trial was an indictment for petit larceny. During the impanelling of the jury, Bowen sat with his feet

on the bench, smoking a cigar and reading a newspaper. When the jury was agreed upon, Bowen without raising his eyes from his paper, said, "Billy, swear them roosters", and they were sworn accordingly. While traveling the circuit, he generally devoted his evenings to his favorite game of poker. His training in Arkansas now served him well, for the Fourth District abounded with experts at the game and neophytes were few and far between.

Judge Bowen was in many respects an excellent lawyer, and when he gave his attention to the duties and requirements of his office, he discharged them creditably and effectively. But he was too restless and too much engrossed with other objects, politics principally, to do this except at rare intervals. This state of mind coupled with his utter indifference to public sentiment or to the proprieties of his position made his career replete with incidents of which one or two may be noted as typical of them all.

The first term of court in Hinsdale County was held in April, 1877, in the new Court House, hurried to completion for the event. Lake City was then a boom town; the center of a wide spread mining activity. Hence a large crowd were on hand for the opening of court. Henry Finley was sheriff. Bowen was as usual late in arriving at the court room. When he came he edged through the crowd, took his seat, threw his feet upon the bench, took his cigar from his mouth, blew a cloud of smoke into the air, turned to the sheriff and said: "Turn her loose Finn"! and Finn "turned her loose".

When Leadville gave promise of its enormous mineral resources the creation of a new county with that city as its County seat became inevitable. Bowen desired its inclusion in his District together with Park and Eagle

Counties. So he turned lobbyist, spent the winter of 1878 and 9 in Denver and thus accomplished his purpose. When a member of the House asked him whether his District was not then too large for one Judge to administer, he promptly replied: "You must think I am on the Bench for the fun of holding court. That is a mere pastime, I have other objects in view!" These other objects were outlined the same winter when the Judge entered the lists for the United States Senate against Messrs. Hill and Chaffee.

Bowen's first term of court in Lake County was characterized by what for him was an extraordinary occurrence. He charged the Grand Jury to devote itself to the subject of gambling which was the commonest of pursuits in Leadville, and, of course, in defiance of the Criminal Code. He did not expect its suppression, but he very properly wanted it expelled from the street level to the second floor. For this he was properly commended. But the next day he showed me a check for \$250.00 given him by the undersheriff, as the proceeds of a poker game of the night before, with the laconic remark that he "had cured that Guy of his habit of disturbing the mourner's bench."

One night in Lake County the attorneys for two mining companies became involved in a heated controversy before Judge Bowen and finally indulged in offensive personalities. The Judge finally lost his temper and yelled "shut up and sit down or I'll fine every d——d one of you". All sat down.

In 1880 William H. Stephens secured a placer patent for the Leadville townsite and began actions of ejectment against hundreds of squatters, who organized for a common defense based upon the contention that a placer patent conveyed to the grantee only the right to extract the loose gold if any from the soil and not the fee simple. Also that the patentee held his

title if it was in fee, in trust for the actual bona fide occupants of the surface. Judge Bowen decided for the patentee and against the squatters. Judge Hallett decided otherwise in some cases brought in or removed to the U. S. Court and involving the same issue. The Supreme Court of the United States reversed Judge Hallett and sustained Bowen. During the argument of the case, Mr. Justice Miller took occasion to laud Judge Hallett and assail the character of Judge Bowen, when the decision of the latter was cited as a precedent by counsel for the plaintiff in error. This episode aroused much angry comment in Colorado, Bowen naturally protesting against such a breach of comity and good taste by an eminent member of the highest Judicial Tribunal in the land. The bar, regardless of individual opinions, sympathized with Judge Bowen, who for once conducted himself with decorum. Judge Hallett, equally discreet, made no comment whatever upon the incident.

Not long after this episode, Bowen's judicial career came to an abrupt and somewhat dramatic close. In 1880 a man named Hoover committed an atrocious murder in Fairplay. Being duly indicted, he was put on trial at the spring term of court for Park County in 1882. Under the then prevailing statute the defendant could by pleading guilty of murder escape the gallows and submit to a sentence of life imprisonment. This Hoover did and the Judge and District Attorney were perforce content. But the community was outraged. The next morning when Bowen and the District Attorney proceeded to the Court House, they confronted the corpse of Hoover dangling from a rope fastened above the doorway; and on entering the Court room, they found a noosed rope upon the bench with a note warning the two officials to change their methods or take the consequences. Another mur-

derer was awaiting trial, so the Judge instructed the clerk to enter an order of adjournment *sine die* as soon as he could get out of town, which he and the prosecutor proceeded to do. They hot footed it to Red Hill about five miles distant to the railway station, boarded the train for Denver and neither of them ever returned to Park County. Bowen soon after resigned, pursuant to an announcement which he had made prior to the episode above recounted.

He was elected to the General Assembly from Rio Grande County in the fall of the same year and to the United States Senate by that Assembly in January, 1883. He accomplished this feat by asking for and securing the pledge of a complimentary vote sufficiently large with his own to give him a bare majority. Being a member of the caucus, he could easily see that the vote was cast as promised. The result was a sensation, but his real supporters pressed their advantage and his election followed. As a senator his record was a blank. Beyond drawing his salary and voting with his party he did practically nothing,

except to verify his reputation as a poker player. He and Senator Riddleburger of Virginia became close friends, the latter being equally handy with the cards. On one New Year's day Riddleburger said to Bowen that he would make some late calls and leave cards without entering his friends' houses. "Leave a few packs for me", said Bowen, "and let 'em be squeezers."

Edward O. Wolcott easily beat Senator Bowen when he tood for re-election. He returned to Colorado and moved to Pueblo where he spent his last few years in relative seclusion. His party nominated him for Congress in 1894, but he was defeated by John C. Bell. He died soon afterwards. Thus ended his unique career. While most interesting, it can hardly be regarded as worthy of imitation. He possessed undoubted talents, which were nearly always misdirected. His ambitions were lofty, but, when realized, they were distorted to ignoble ends. While he achieved some distinctions, he ignored or despised their responsibilities. The fates have been kind to him, for he is gone and forgotten.

A Political Libel Suit

It seems incredible that the man to whom his constituents gave the well known "Webster Vase", bearing the inscription "PRESENTED TO DANIEL WEBSTER, THE DEFENDER OF THE CONSTITUTION, BY THE CITIZENS OF BOSTON", and who is known today as "The Defender of the Constitution", should ever have thought it necessary, in protecting his reputation, to institute a prosecution against Theodore Lyman, Jr., for alleged criminal libel upon him, Webster, as a senator of the United States in publishing that he, Webster, conspired with other leading Federalists in 1807-

1808 to break up the Union and re-annex New England to England.

This prosecution arose out of the political campaign of 1828. The Federalist ticket for the election was headed by John Quincy Adams for President. The Democratic candidate was Andrew Jackson. Adams, in 1807 and 1808, as a Federalist senator had split with his local party over the Embargo Acts for which he had been a staunch advocate. However, in 1828, Webster and most Federalists in Massachusetts supported Adams as against Jackson, while other Federalists, who had not forgotten Adams' support of the detested Em-