



Charles Kingsley in Little London

BY WILLIAM J. BAKER

In 1874 Charles Kingsley, the Victorian novelist, clergyman, and social reformer, toured the United States, lecturing to large and enthusiastic audiences from New York to San Francisco. In June and July he concluded his tour with a restful sojourn in Colorado Springs, a small town which, because of its sizable and influential English population, was beginning to be called "Little London." Why did Kingsley visit the town? What connections did he have there? How was he received? What was his response to the Pikes Peak region and its inhabitants? Answers to these questions tell a great deal not only about Charles Kingsley and the early English flavor of Colorado Springs, but also about British interest in frontier Colorado in the 1870's.

When General William J. Palmer, the founder of Colorado Springs, and his youthful bride Queen honeymooned in England in 1870, they were entertained for several days in Kingsley's rectory at Eversley. Palmer used the time for soliciting capital for his railway-building on the American frontier, but Queen was most intent on observing and coming to know her famous host, whose novels *Alton Locke*, *Hypatia*, and *Westward Ho!*

Colorado Springs in the 1870's.

were as well-known in America as in England. She recorded her initial impressions in a diary:

Drove to Eversley—where Mr. Kingsley met us at the door—and Mrs. Kingsley and Rose [the daughter] were waiting for us in the parlor. After a little talk we went to our room and got ready for dinner. Mr. Kingsley took me in—and we had a most interesting conversation and I went to bed feeling sure that I would *love* all of the charming family,—and wishing that we were to spend weeks instead of days with our new friends.¹

Little could any of the new friends imagine Kingsley's future interest in Colorado Springs.

He was introduced to the town by his son and daughter. The son, Maurice, was a railway engineer and was recruited by Palmer to become the first assistant treasurer of the Denver and Rio Grande Railway, which ran through Colorado Springs. Present at the ceremonies on July 31, 1871, when the first stake was driven for the Fountain Colony, soon to be renamed Colorado Springs,² Maurice was responsible for the visit of his sister Rose in November, 1871. Rose Kingsley penned some of the finest firsthand descriptions of the newly-founded colony. Arriving from Denver on the narrow-gauge railway, she was vividly conscious of being among the pioneers in a barren land; whereas she had expected "a sequestered valley, with bubbling fountains, green grass, and shady trees," she found only "a level elevated plateau of greenish-brown, without a single tree or plant larger than a Spanish bayonet (*Yucca*) two feet high." The "streets" were designated by plow-turned furrows, with only twelve wooden houses and several tents dotted about.³ For a refined young lady from England, that frontier outpost appeared stark indeed.

Undaunted, Rose threw herself into the life of the little community. Within a month of her arrival she was serving as a substitute teacher in the local school which Queen Palmer had founded and was organizing a reading group called the "Fountain Society of Natural Science." In January, 1872, she began playing the organ for the Episcopal service of worship; and on January 28, she promoted a benefit concert, at which Maurice sang, to obtain funds for the building of a reading

room.⁴ When she returned to England in March, 1872, Rose conveyed to her father the romance of frontier life in Colorado Springs.

Much about the little town undoubtedly sparked the imagination of Charles Kingsley. The Pikes Peak area not only represented the foreign elements of the untamed American West: Colorado Springs, in 1872, was essentially an English colony. When General Palmer collaborated with William E. Pabor and General R. A. Cameron, early in 1871, to draw up a circular describing the proposed colony and explaining the conditions of membership, copies of the pamphlet were circulated throughout Great Britain as well as the United States. Even the conditions of membership in the colony appealed to rugged and serious men of Kingsley's stripe. A prospective member was required to be "possessed of a good moral character" and "strict temperate habits"; no sale of "intoxicating liquors" would be allowed in any public resort. A "land certificate," to be purchased for \$100, would entitle the holder to a choice of lots for building.⁵

One of Palmer's closest associates was Dr. William A. Bell, an Englishman who married well in the old country and lived at Manitou (on the outskirts of Colorado Springs) in the style of an English gentleman—with four servants, two maids, a coachman, and a gardener, all brought from England.⁶ Dr. Bell was Colorado Springs' most influential liaison with Great Britain. He not only encouraged young Englishmen to emigrate, but also convinced wealthy Britons of the feasibility of investing capital in the Colorado Springs land company as well as in the Denver and Rio Grande Railway. In 1874 he wrote and circulated in England an article entitled "The Colonies of Colorado in their Relations to English Enterprise and Settlement."⁷ He beckoned those "hundreds of small farmers throughout England, who, through lack of sufficient means, are unable to carry on that costly system of farming which alone pays here." And he appealed to "the trader, or the son of the successful man

¹ Ormes, *Book of Colorado Springs*, pp. 43, 44, 137, 187. Note the mistaken date for Charles Kingsley's visit: "Canon Kinsley [sic] was also here that winter [1871], lecturing" (p. 325).

² Quoted in Irving Howbert, *Memories of a Lifetime in the Pike's Peak Region* (New York: G. P. Putnam's Sons, 1925), pp. 224-25.

³ Amanda M. Ellis, *The Colorado Springs Story* (Colorado Springs: The Dentan Printing Co., 1954), pp. 15-16.

⁴ Bell's article was included in a pamphlet entitled *The Development & Colonization of the "Great West,"* along with an article by Palmer. See Herbert O. Brayer, *William Blackmore: Early Financing of the Denver & Rio Grande Railway and Ancillary Land Companies, 1871-1878*, Vol. II of *A Case Study in the Economic Development of the West* (Denver: Bradford-Robinson, 1949), p. 226.

¹ Note for February 7, 1871, manuscript journal of General and Mrs. William J. Palmer, Pioneers' Museum, Colorado Springs.

² Manley D. and Eleanor R. Ormes, *The Book of Colorado Springs* (Colorado Springs: The Dentan Printing Co., 1933), p. 32.

³ [Rose G. Kingsley], *South by West, or Winter in the Rocky Mountains and Spring in Mexico*, ed. by Charles Kingsley (London: W. Isbister and Co., 1874), pp. 47-48.

of business, who, trained to business habits, found his means too small—or an opening too hard to find—to warrant his making the venture in England.” But most of all, Bell was anxious to attract “the sons of men of more or less wealth, who, being obliged to make a living for themselves in these days of large expenditures and many wants, have not, unfortunately for themselves, had the opportunity of acquiring business habits, or any knowledge capable of being turned to practical account.” In Colorado Springs, of course, a young man “could easily find in the young community many channels for turning his abilities and money to very profitable account.⁸

With such extravagant promises, some disappointment was inevitable to the new settlers. Not all the young Englishmen who responded to the circulars were pleased with what they found at the base of Pikes Peak. The Promised Land hardly flowed with milk and honey. Planning to farm for their livelihood, two young Britons found “nothing but a gravel patch” in the area. Feeling duped, they demanded to see the authors of the circular to which they had responded: “If we catch them we’ll shoot them.”⁹ Nevertheless, in November, 1873, Rose Kingsley observed that six villa lots had been sold “to English people of good means” within the past three weeks. “Indeed,” she added, “the English and Canadian incomers are now making a marked portion of the population.”¹⁰ A large number of history’s unnamed young Englishmen came, some to repair fortunes, some to escape the old country’s anachronistic system of primogeniture which was still financially and socially detrimental to the younger sons, some to find farm land which was no longer available in Britain, but all to invest and to seek adventure.

Many of the sites in the Pikes Peak region owe their names to the presence and imagination of Britishers. William Blackmore, an English capitalist who invested heavily in the colony, gave the name “Manitou” to the settlement around the mineral springs at the base of Pikes Peak; and he named “Ruxton Creek,” fittingly, after a young English adventurer who had explored the area in the 1840’s.¹¹ The name for General Palmer’s



Near Colorado Springs, Manitou was a popular vacation spot.

estate, “Glen Eyrie,” was suggested by an “old Mr. Blair,” Palmer’s Scottish landscape gardener, who observed that an eagle had built its nest on the face of a mountain overlooking the valley.¹²

Given the early presence of a strong English constituency in Colorado Springs, one is not surprised to find first-rate performances of Shakespeare’s plays within a decade of the founding of the town. Charles Rignold, the famous professional Shakespearean actor, gave a performance of *Henry the Fifth* in a “theater” on the second floor of one of the town’s few two-story buildings. Since the theater could be reached only by an outside flight of stairs from the sidewalk, Rignold led his large white horse up the stairs, through a narrow hall, and up to the tiny stage. With sword in hand, seated on his charger, he gave the rousing speech on the eve of Agincourt:

We few, we happy few, we band of brothers.
For he today that sheds his blood with me
Shall be my brother. Be he ne’er so vile,
This day shall gentle his condition.
And gentlemen in England now abed
Shall think themselves accurs’d they were not here.

Rignold raised and waved his sword to lead his troops forward, only to bang the ceiling. “But,” one old-timer remembered long

⁸ Quoted in Brayer, *William Blackmore*, p. 227. On the subject of foreign (especially English) capital investment in Colorado Springs, see pp. 71-162.

⁹ John S. Fisher, *A Builder of the West. The Life of General William Jackson Palmer* (Caldwell, Idaho: The Caxton Printers, Ltd., 1939), p. 215.

¹⁰ [Kingsley], *South by West*, p. 149.

¹¹ William J. Palmer, “Founding of Colorado Springs,” *Colorado Springs Gazette*, August 4, 1896. For the story of George F. Ruxton, see Clyde and Mae Reed Porter and LeRoy R. Hafen, *Ruxton of the Rockies* (Norman: University of Oklahoma Press, 1950).

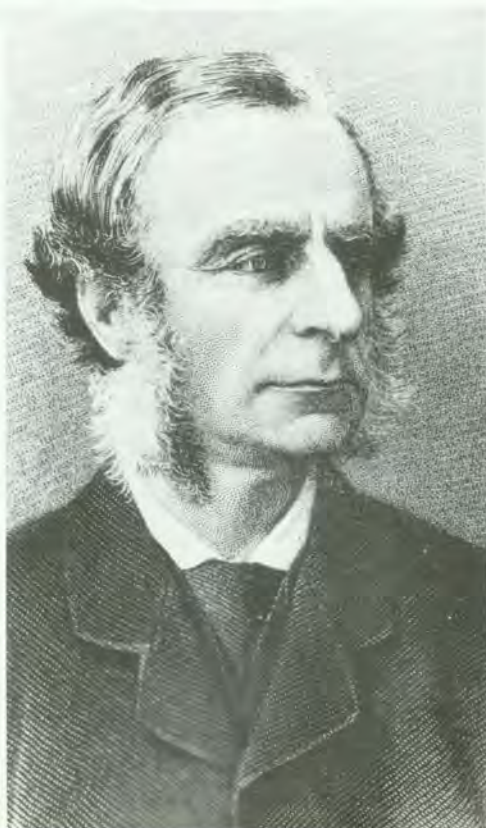
¹² Charles Mellen, *Sketches of Pioneer Life and Settlement of the Great West* (New York: privately printed, 1935), p. 12.

afterward, "he went through the play in the utmost good humor and attempted to give us our money's worth of Shakespeare."¹³

For many years Boxing Day, as in England, was celebrated annually in Colorado Springs. More Union Jacks flew from flagpoles on Queen Victoria's birthday than did American flags on the Fourth of July. English, Scottish, and Irish spinsters were regularly to be seen arriving on the railway, to serve as governesses and hopefully to marry well. "Little London" was a fitting nickname for young Colorado Springs.¹⁴

J. E. Liller, an Englishman who left his journalistic post in London to edit Colorado Springs' first newspaper, the weekly *Out West*, catered to the interests of the transplanted Britishers. *Out West*, obviously an unusual newspaper for the American frontier, featured long excerpts and abbreviated anecdotes from Shakespeare, Macaulay, Tennyson, Dickens, and Ruskin. The political rivalry between Gladstone and Disraeli was a favorite subject of random lines. Queen Victoria received more attention than did the American President. And in the very first issue, on March 23, 1872, a long letter from Charles Kingsley

Charles Kingsley
(1819-1875), clergyman,
novelist, and
social reformer.



appeared, with a promise from the editor that there would be a series of Kingsley's "Letters from the Old Country" on "matters Social, Literary, Scientific, and Political, especially in their *International Aspect*."¹⁵ Subsequent letters were published on April 6 and June 20, 1872.

At the outset, Kingsley announced the motive which prompted all three letters: to "form one more link of cordiality and mutual understanding between the two Peoples who are one in race, one in genius, and—as I fully believe—one at heart." He compared England to the father and America to the son, with both father and son respecting each other as equals, "proud of each other's success and tolerant of each other's peculiarities."¹⁶

The first letter, though not published until the spring of 1872, was written on December 20, 1871. The Prince of Wales had recently been deathly ill with typhoid fever, an episode which evoked an "out-burst of old-fashioned loyalty to Royalty" and proved to Kingsley's satisfaction that his nation loved the Monarchy and was "determined to uphold it." Nor did the Prince's crisis have significance only for the domestic life of the Old Country: England's affection for America ("for John Bull has a vein of sentiment under all his hardness and covetousness") had been heightened by the sympathy which Americans had expressed regarding the Prince's condition.¹⁷

Kingsley's social concern, along with his pulpit rhetoric and literary expertise, seldom remained hidden for very long, even in his correspondence to frontier America. In the closing lines of his first letter to *Out West*, he struck the chord which had dominated his novels of social criticism: his country needed "a National Crusade against Preventible Disease." Perhaps the Prince himself would head a movement to eradicate the typhoid fever which struck him down and remained a constant menace to the working classes; "then, generations yet unborn may bless the memory of a Prince who sickened as poor men sicken, and

¹³ *Ibid.*, 35.

¹⁴ See Marshall Sprague, *Newport in the Rockies: The Life and Good Times of Colorado Springs* (Denver: Sage Books, 1961), pp. 80-89.

¹⁵ J. E. Liller, "Introductory Editorial," *Out West* (Colorado Springs), March 23, 1872.

¹⁶ Charles Kingsley, "Letters from the Old Country: No. 1," *ibid.*

¹⁷ *Ibid.* See Frances E. Kingsley (ed.), *Charles Kingsley: His Letters and Memories of His Life* (London: Macmillan, 1910), II, 238: "I must note," wrote the Dean of Chester Cathedral, "[Kingsley's] old-fashioned courtesy, loyalty, and respect for official position. I suppose his political and social views would have been termed 'liberal'; but his liberalism was not at all of the conventional type. I should have described him as a mixture of the Radical and the Tory, the aspect of character which is denoted by the latter word being, to my apprehension, quite as conspicuous as that which is denoted by the former."

all but died as poor men die, that he might learn to deliver the poor of his realms from dirt, disease, and death."¹⁸

The second letter dealt with British public opinion on the "Alabama Claims." The *Alabama* was one of several Confederate ships which were built and equipped in English ports during the Civil War; for ten years the United States had been demanding reparations from Britain for damages done by the *Alabama* to the Union cause. Kingsley's opinions on the subject were more technical and therefore less interesting to the general reader than were his reflections in either of the other two letters. But two points were pregnant with significance for the future as well as for Kingsley's own day. One was his prophetic view of the British Empire: "We have as much territory already as we can manage, and that far too widely and too dangerously scattered over the world." A subsequent century of history has proved his point. Another gem—one whose glitter immediately caught the eyes of Little Londoners—was a pragmatic explanation of the necessity for an immediate settlement of the *Alabama* dispute: "The present state of things must hinder the free flow of British capital (and our wealth just now is enormous) to the far West, and so check seriously the development of your own Colorado and of other Territories. If England has been somewhat of a goose, she is still laying golden eggs."¹⁹ Since Colorado was not yet a state in 1872, Coloradoans were more interested in obtaining English capital for the West than in seeing payments of reparation fill the coffers in Washington. Their English friend was speaking their language.

Kingsley's third letter to the readers of *Out West*, published in June, 1872, was entitled "The Americans at Chester." As Canon of Chester Cathedral, he daily saw groups of American tourists, fresh from their New York-Liverpool voyage, viewing, "most of them for the first time, an ancient and historic city." For the American visitors who were awestruck with the antiquity of the cathedral, its manuscripts and its relics, Kingsley had a question: Have you not something older? "Have you not the rivers and the mountains and the forests, to which all this is but a mushroom crop?" He knew the answer: the American craved "not the mere soulless antiquity of nature, but the antiquity of human work." In that eager reverence of the Yankees for Old England, Kingsley detected a consciousness of a common

heritage. Thus he closed his final letter to Little London in a vein similar to the manner in which he began the series:

We are the same people; we speak the same tongue; our surnames—truest test of race—are the same; and the more we know of each other the more we shall find that our instincts and intellects are the same, that we see with the same eyes, and feel with the same hearts, that the only permanent difference which ought to remain between us is this—that the one nation should be the complement of the other and learn from the other: that as America should learn from us—what the cultivated persons of whom I have been writing have learnt—faith in, and reverence for, the magnificent Past, so Britain should learn from America faith in, and reverence for, the magnificent Future.²⁰

So by 1872 Kingsley had literary as well as familial connections with Colorado Springs. Still, he had no intentions of visiting the town. In 1869-1870 he had traveled to the West Indies and had returned to England resigned never to leave again. Although he was only in his early fifties, he was prematurely worn out. For much of his adult life, his meager clerical stipend had to be supplemented by the pen: his novels were wrung out of financial necessity as well as conviction, and the work was anxious and fatiguing as well as exhilarating. Moreover, his life had been one long series of controversies. Some fellow clerics invariably accused him of being unorthodox, or even unchristian, when they read his novels or considered his friendship with the theological liberal F. D. Maurice. And Kingsley was the person who, in 1864, accused John Henry Newman of lacking integrity, thereby provoking a fierce debate which ultimately resulted in Newman's monumental *Apologia Pro Vita Sua*. Following the Newman episode, Kingsley (in the words of his wife-biographer) was "suffering from illness caused by overwork of brain" and a thorough rest and change were "seriously urged upon him."²¹ For the next ten years, that quaint phrase, "overworked brain," was used often. The appointment to the canonry of Westminster Abbey in 1873 came, again in the words of Frances Kingsley, "too late to save the overstrained brain. The candle had already burnt down, and though light and flame still flared up, they flared as from the socket."²²

In 1873 Maurice Kingsley returned to England from his railway survey in Mexico to find his father visibly broken in

¹⁸ *Out West* (Colorado Springs), March 23, 1872; cf. Kingsley (ed.), *Life and Letters*, II, 67.

¹⁹ Charles Kingsley, "Letters from the Old Country: No. 2," *Out West* (Colorado Springs), April 6, 1872.

²⁰ Charles Kingsley, "Letters from the Old Country: No. 3—The Americans at Chester," *ibid.*, June 20, 1872.

²¹ Kingsley (ed.), *Letters and Memories*, II, 166.

²² *Ibid.*, 304.

health. He immediately urged a long sea voyage and change of scenery before the duties at Westminster were assumed. Medical advisers concurred, but Kingsley refused to leave his aged mother, who was in ill health. His mother died shortly thereafter, freeing him to agree to a trip to America. On January 29, 1874, he left Liverpool for New York City, accompanied by Rose. The ultimate destination was the Rocky Mountains, where Maurice and Rose had lived and knew people. "We go," Kingsley wrote to a friend, "in April or May (when the prairie is in flower) to San Francisco and then back to Denver and the Rocky Mountains south of Denver."²³

In New York, Boston, Philadelphia, Baltimore, and Washington he was "received with open arms, and heaped with hospitality." His time in New York was "a great rattle, dining, and speechifying." In Boston he dined with Henry Wadsworth Longfellow, spent hours talking with John Greenleaf Whittier, and enjoyed a morning with Asa Gray, the naturalist. In Washington he was received by President Grant and was asked by the Speaker of the House of Representatives to open a session of the House with prayer. Then he made his way West, lecturing often in order to pay expenses.²⁴

Late in May, 1874, Kingsley arrived in California, where he lectured at "Berkeley University" to a large gathering of students who were "full of vigour and enthusiasm."²⁵ In San Francisco, however, he caught a severe cold in the damp fog. He left on June 10 for Denver, where his case was diagnosed as pleurisy.²⁶ Little consultation was needed to decide that the warmth, fresh air, and pleasant surroundings of Colorado Springs were the ingredients needed for recuperation.²⁷ On June 20 the simple line appeared in the *Colorado Springs Gazette and El Paso County News* that "Canon Kingsley and Miss Kingsley are the guests of Dr. and Mrs. Bell, at Manitou."²⁸

²³ *Ibid.*, 310.

²⁴ *Ibid.*, 313-15.

²⁵ Frances E. Kingsley (ed.), *Charles Kingsley: His Letters and Memories of His Life* (New York: Scribner, Armstrong, and Co., 1877), p. 458. Note that this is a different edition ("unabridged") from the one previously cited ("abridged"). There is, as one would expect, some material in the 1877 edition which is not in the subsequent "abridged" editions such as the one of 1910. There is, however, more new material in the so-called abridged editions than in the original. For a note on this bibliographical problem, see Walter E. Houghton, *The Victorian Frame of Mind, 1830-1870* (New Haven: Yale University Press, 1957), p. 437.

²⁶ Canon Kingsley was examined by his brother, George Henry Kingsley, who had come to Denver in 1871 as the personal physician of Windham Thomas Wyndham-Quin, the fourth Earl of Dunraven. See Marshall Sprague, *A Gallery of Dudes* (Boston: Little, Brown and Company, 1966), pp. 121, 147-79.

²⁷ The recuperative wonders of Colorado Springs were already being heralded. In May, 1872, J. E. Lillier estimated that one-third of the region's population consisted of "reconstructed invalids" and predicted that within a few years



Kingsley was "in perfect peace" at Dr. Bell's estate.

The American tour, which had been designed for rest, had turned into a mad rush to meet appointments. Now Kingsley could find much-needed relaxation in pleasant and strangely familiar surroundings at Dr. Bell's estate. The house, though newly built, was Victorian in the style of the old country, with sturdy frame, stolid lines, large rooms, open fireplaces, and even bay windows. Bell's retinue of domestic servants brought an extra touch of England to the honored guest. "We are here in perfect peace," Kingsley wrote to his wife shortly after his arrival, "at last, after the running and raging of the past three weeks, and safe back over those horrid deserts, in a lovely glen, with red rocks, running and tinkling burn, whispering cotton woods, and all that is delicious, with Pike's Peak and his snow seemingly in the back garden, but 8000 feet over our heads."²⁹

Kingsley had long been interested in botany and geology, and as he rested at Manitou, friends and servants brought him specimens to identify. Within a week of his arrival at Dr. Bell's home, the tale circulated in the *Rocky Mountain News* that his "love for nature and the affectionate study with which he examines her minutest manifestations" were already prompting him to spend five or six hours daily "in the most exciting and fatiguing rambles around the base of Pike's Peak."³⁰ The re-

the area would be the "Sanitarium of the World." *Out West* (Colorado Springs), May 16, 1872.

²⁸ *Colorado Springs Gazette and El Paso County News*, June 20, 1874. This was the weekly successor to *Out West*. See Levette Jay Davidson, "Out West, a Pioneer Weekly and Monthly," *The Colorado Magazine*, XIV (July, 1937), 135-42.

²⁹ Kingsley (ed.), *Letters and Memories* (1910), II, 326.

³⁰ *Daily Rocky Mountain News* (Denver), June 23, 1874.



"The Canon in Glen Eyrie," from *Rose Kingsley's South* by West.

port was undoubtedly exaggerated, but accurately suggested Kingsley's restlessness as well as his keen interest in nature studies. When he visited General Palmer's estate at Glen Eyrie, he glowingly described to his wife those "craggs, pillars, caves—red and grey—a perfect thing in a strange scene; and the Flora, such a jumble—cactus, yucca, poison sumach, and lovely strange flowers, mixed with Douglas's and Menzie's pine, and *eatable* pinon, and those again with our own harebells and roses, and all sorts of English flowers."³¹

Unfortunately Kingsley never mentioned—in any of his several letters to his wife—his hosts or the inhabitants of the Pikes Peak region. His insight into the character of the people in the area would have been of interest to future local antiquarians as well as to historians of the American frontier.³² But he chose only to comment upon the lady-painted butterflies, rattlesnakes (or the lack of them: he was disappointed to see none), tropic butterflies "all colours, and as big as bats," a "real eagle's nest close by, full of real young eagles," and a horned toad which he hoped to take with him back to England.³³

As he regained his strength, Kingsley became restless for home. A constant thread throughout his life had been the awareness of "the magnetic effect of the place where one has been bred." He had intellectually affirmed as well as felt in his bones the *Heimweh* of which the Swiss spoke, that ache-for-home which made it "seem pleasanter to lie down [in England] and die, than to live anywhere else on earth."³⁴ Before he left San

Francisco he had admitted that as beautiful as California was ("I think it destined to be the finest country in the world"), he wanted to be "nearer and nearer home," for there was "no place like England." By July 2 he was writing to Mrs. Kingsley that, although Colorado Springs was a "delicious place" to be, he was "homesick, and counting the days" until he could get back to Eversley. Within a fortnight he added: "I count the hours till I can cross the Great Valley, on this side of which God has been so good to me. But, oh! for the first rise of the eastern hills, to make me sure that the Mississippi is not still between me and beloved Eversley."³⁵



The rectory at Eversley.

Coupled with his homesickness was a poignant premonition of the nearness of death. Within a year he would be buried in the churchyard of Eversley. Seeing the long, dark shadows of Pikes Peak as symbolic of the sunset of his own life, he desired simply to "get safe and well home," to settle down "into the

³¹ Kingsley (ed.), *Letters and Memories* (1910), II, 327-28.

³² As Robert G. Athearn has suggested: "The British, always remembering that they were British, were capable of an objective criticism the American pioneer was not able to achieve. For these people had frequently traveled extensively, were usually well educated, and often understood characteristics of nationalism in their most offensive form." *Westward the Briton* (New York: Charles Scribner's Sons, 1953), p. 186.

³³ Kingsley (ed.), *Letters and Memories* (1910), II, 328.

³⁴ *Ibid.*, I, 3, 161.

³⁵ *Ibid.*, II, 325, 327, 328.

quietest old theologian," and to sit beside his beloved Fanny at Westminster and "rest our weary bones there for a while before kind death comes."³⁶

But first, some public demands had to be met. As Kingsley's health improved, his friends and admirers urged him to preach a sermon in the new Grace Episcopal Church and to give a lecture in the town hall. On Sunday, July 12, he preached "a characteristic sermon," in the words of the *Colorado Springs Gazette*, "full of vigorous thought, but eminently plain and practical."³⁷ On the following Wednesday evening, July 15, Kingsley lectured to a large audience composed of English, American, Welsh, Irish, and Scotch settlers, some of whom had come from miles away for the special event.³⁸

As Kingsley stood lecturing, his appearance was striking. Although slightly stooped, he was tall and lean, and moved with a military air of efficiency. His long bushy sideburns were a distinguished iron grey, as was his full head of hair. With broad forehead and piercing eyes, he looked the part of the enthusiastic, if not youthful, warrior. His heavy British accent, so pronounced that at times his words were almost unintelligible to his listeners,³⁹ held the attention of his audience although the lecture was excessively long.⁴⁰

For those members of the audience whose minds might have been wandering in the middle of the lecture, a little unexpected event recaptured their attention. A bug, different from any Kingsley had ever seen, landed on his manuscript and caught his eye. "Mr. Bug," in the words of a Denver visitor to Colorado Springs, "sat still a moment or two, during which space the speaker 'improved the occasion' to study his peculiarities of form and structure." The lecture went on without a pause as the bug expanded his wings to fly away, only to be "deftly caught" in the hand of the speaker. For several seconds, Kingsley examined the bug while "going right on with his line of argument" from his prepared text. The audience was amazed both at his boy-like interest in a new species and in the mental

³⁶ *Ibid.*, 326, 328.

³⁷ *Colorado Springs Gazette and El Paso County News*, July 18, 1874.

³⁸ Paul V. West, "English Influence in the Early Life of Colorado Springs," a lecture delivered to the Historical Society of the Pike's Peak Region on May 20, 1952. The unpublished manuscript is in the Pioneers' Museum, Colorado Springs. On pages 16-23 the author gives some details of the English, Welsh, Irish, and Scottish families in the area in the early days of the colony.

³⁹ *Daily Rocky Mountain News* (Denver), July 18, 1874.

⁴⁰ *Colorado Springs Gazette and El Paso County News*, July 18, 1874: "Canon Kingsley's lecture on Wednesday evening, was listened to with marked attention throughout, notwithstanding its length considerably exceeding that of ordinary lectures."

discipline which allowed him to look at and think about the bug, while speaking about Westminster Abbey.⁴¹

The lecture on Westminster Abbey was Kingsley's favorite and oft-repeated one for American audiences.⁴² Using the Abbey, of course, as his text for expressing his own values and interests, he suggested first that the Abbey stood as a symbol of the ultimate meaninglessness of class and creed. Kings and queens could be found side by side with Englishmen of every rank, from the highest aristocrats to the sons of mechanics and day laborers; Roman Catholics were found there buried beside non-conformists. Moreover, the Abbey was a place of concord; people who in life were enemies, in death were friends and comrades. Queen Elizabeth and Mary Tudor, the sisters who were political rivals in the sixteenth century, lay quietly side by side, while near them was Mary Stuart, who was executed during Elizabeth's reign. And William Pitt the Younger lay within a foot of Charles James Fox, their wordy warfare ended.

Nor was the Abbey merely a monument to eight hundred years of English history. The heritage enshrined there was a common one for Englishmen and Americans alike. When American visitors entered Westminster Abbey they should understand that the great men who were buried there belonged to them, that, for example, the American Congress as well as the English Parliament was a child of the Magna Carta. The ancestral shrine at Westminster encouraged respect and affection between two great nations and provided inspiration for both. "Remember . . . by well-used sentiment, and well-used sorrow, great nations live."⁴³ Thus Kingsley's final words to the inhabitants of Little London harked back to the theme of his letters of 1872—that Great Britain and the United States had complementary futures as well as a common past.

Kingsley left Colorado Springs on July 16, 1874, and on July 17 he repeated his lecture on Westminster Abbey to an overflow crowd at the Guard's Hall in Denver. A group of

⁴¹ Kingsley (ed.), *Letters and Memories* (1877), p. 470.

⁴² For the text of Kingsley's lecture see Charles Kingsley, *Lectures Delivered in America in 1874* (Philadelphia: Jos. H. Coates & Co., 1875), pp. 1-31. The following summary is a collation of Una Pope-Hennessy's treatment of the lecture in New England, in *Canon Charles Kingsley* (New York: Macmillan, 1949), pp. 279-81; a note on the same lecture as delivered in San Francisco in the *Daily Times* (Denver), July 16, 1874; and a report of the lecture in Denver in the *Daily Rocky Mountain News* (Denver), July 18, 1874. The *Colorado Springs Gazette and El Paso County News* reported simply that "it would be useless for us to attempt to give any resume of the lecture, for it not only sketched, with masterly power, the chief features of Westminster Abbey, the great English national mausoleum, but touched upon an almost innumerable number of suggested subjects. It must suffice to say that it afforded our citizens a rare treat."

⁴³ Kingsley, *Lectures Delivered in America*, p. 31.

prominent Denver citizens, led by the editor of the *Rocky Mountain News*, had been trying since Kingsley's brief visit in the middle of June to get him to deliver a lecture.⁴⁴ A public address by such a famous man ("one of the most distinguished of living Englishmen")⁴⁵ would be a boon for the cosmopolitan image of the city. Thus the announcement on the day of the lecture: "It will be a reproach on the good name of the people of Denver if Mr. Kingsley does not find in the Queen City of the Plains a similar reception to that which greeted him on the Atlantic and Pacific coasts."⁴⁶ And the opening line of the report on the day after the lecture: "Canon Kingsley should feel complimented at the audience that greeted him at Guard's Hall last evening. For the best people in Denver turned out to do him honor, literally the best people, and the eastern cities could do [no] more than give him of their best."⁴⁷ Although the lecture on Westminster Abbey again stressed the historical and contemporary ties that bound England and the United States together, the local newspaper coverage of the event hardly veiled the relationship which was uppermost in the minds of the civic leaders of Denver: the comparison of their growing frontier city with the older established cities of the East.

Kingsley concluded his lecture on a personal note: "So I wish God to bless you, for I shall never see you again."⁴⁸ He then departed immediately for New York City and embarked for England on July 25, 1874. By late January of the following year the word reached Colorado that the Canon of Westminster and the Rector of Eversley had died. For several weeks the *Colorado Springs Gazette and El Paso County News* carried eulogies and excerpts from his writings. Estimates of his greatness as an English novelist were understandably exaggerated, but undoubtedly many Coloradoans would have agreed with John Greenleaf Whittier, who wrote to Mrs. Kingsley in 1876 that "since I have seen *him*, the man seems greater than the author."⁴⁹

⁴⁴ *Daily Rocky Mountain News* (Denver), June 14, June 21, June 24, 1874.
⁴⁵ *Ibid.*, July 14, 1874. Errors marred this introduction to Kingsley: "He was born in 1819, and after educating himself for the bar entered the church, and became a curate at Eversley, a moorland [moorland] parish in Hampshire [Hampshire] county, England. . . . He was appointed professor of modern history at Cambridge in 1869 [1860], and made dean of Rochester [Chester] in 1870 [1869]."

⁴⁶ *Ibid.*, July 17, 1874.

⁴⁷ *Ibid.*, July 18, 1874.

⁴⁸ *Ibid.*

⁴⁹ Kingsley (ed.), *Letters and Memories* (1877), p. 473. The candid report on the Denver lecture, in the *Daily Times*, also emphasized the quality of Kingsley the man, rather than his performance: "The lecture by Canon Kingsley last night was not noted for eloquence in matter of manner of

Years later one of the original settlers in Colorado Springs spoke fondly of the early tourists who "came to see the wonders of Colorado with the eyes of appreciative intelligence."⁵⁰ Charles Kingsley would have been a good example. But he was more than a tourist. Through his son and daughter, his rugged spirit of individualism was invested in the town. With his pen (in the letters of 1872) he reminded Little Londoners of their links with the rest of America as well as with Great Britain. And while actually visiting the town, though homesick he delighted in the beauty of the region and responded gladly to the welcome and admiration of the people. If English capital was essential for the early development of Colorado Springs, a case could easily be made for the equally important investment of morale and inspiration. In that sense, Charles Kingsley was an investor in Little London.

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delivery except in special places. It was earnest throughout, and the audience gave strict attention and frequent applause. The interest centered mainly about the man, and not his lecture" (July 18, 1874).

⁵⁰ Mellen, *Sketches of Pioneer Life*, p. 27.

Colorado's Territorial Courts

BY JOHN D. W. GUICE

Though scant attention has been directed toward the trans-Mississippi territories,¹ historians have classified the judiciary as the weakest branch of an administration characterized by inefficiency and corruption.² While the "carpetbagger" epithet has a degree of accuracy, in terms of the enormity of their contributions this image is misleading in reference to Colorado's early territorial courts.

The history of courts is a history of their judges. Historian and Colorado Supreme Court Judge Wilbur Fisk Stone expressed this fact more eloquently. "Every court takes its quality and complexion from the judge, and its influence and effects are measured by the structure of the man and not the machine."³ Accepting the wisdom of Stone's observations, the most fruitful method of uncovering the problems and productiveness of the territorial judiciary is to explore the careers of its judges.

As were all succeeding Organic Acts, the act of February 28, 1861, establishing the Territory of Colorado was patterned after the Wisconsin Act of 1836. It provided for a very simple judicial system.⁴ Three judges were appointed by the President with the advice and consent of the Senate. Having four-year terms, they presided both separately as District Judges and in a body as the Supreme Court. Their jurisdiction in both capacities included cases under United States and territorial law; appeals from the territorial Supreme Court went directly to the Supreme Court of the United States. Territorial courts

possessed chancery as well as common law jurisdiction. Provision was made for subordinate Justice of the Peace Courts, but because of their limited powers they were not of major consequence at least through 1865.⁵ Territorial justices were supervised by the United States Attorney General, and his relations with them were similar to those maintained with the federal district judges.⁶ However, their leaves of absence, granted on the condition that their duties were to be performed by one of their associates, were usually watched more closely than those of other officials.

Many humorous anecdotes have emanated from the duality of the duties of the territorial judges, sitting as District Courts on the one hand and as their own appellate body on the other. Embarrassing, indeed, it must have been for the Associate who was requested to retire while his colleagues conspired to reverse his District Court decisions. His humiliation was probably short-lived, for no doubt the two Associates would, with deft diplomacy, suggest that the Chief Justice should step out—perhaps to take advantage of an offer of hospitality—while they sought gleeful retribution in the reversal of their chief's proudest decision. Not peculiar to Colorado, this ludicrous weakness was common to all territories from 1861 to 1890.⁷

Colorado Territory's first appointments were made by President Abraham Lincoln who, on March 21, 1861, nominated Benjamin F. Hall of New York as Chief Justice and, as Associates, E. Newton Pettis of Pennsylvania and Charles Lee Armour of Maryland.⁸ The Organic Act had authorized the Governor to define "temporarily and until otherwise provided by law" judicial districts, assign judges, and appoint times and places for court terms.⁹ By proclamation issued July 11, 1861, Governor William Gilpin established and assigned the districts after having administered oaths of office to Hall and Pettis.¹⁰ Hall was assigned to the First District with court at Denver, Pettis the Second District with court at Central City, and Armour the Third District with court at Canon City. The dis-

¹ An analysis of the status of territorial history is found in Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), pp. 1-20.

² Still the most helpful explanation of the trans-Mississippi territorial government is Earl S. Pomeroy, *The Territories and the United States, 1861-1890* (Philadelphia: University of Pennsylvania Press for the American Historical Association, 1947).

³ Wilbur F. Stone, "History of the Appellate Courts of Colorado," address before the Denver Bar Association, April 5, 1905, 34 Colo. xxiv (1905).

⁴ *An Act to Provide a Temporary Government for the Territory of Colorado, Statutes at Large, XII, chap. LIX, 172-76 (1863)*. Hereafter cited as *Temporary Government for the Territory of Colorado*.

⁵ Limitation of their jurisdiction was raised from \$100 to \$300. *An Act to Amend an Act entitled "An Act to Provide a Temporary Government for the Territory of Colorado," Statutes at Large, XII, chap. LIX, 700 (1863)*.

⁶ Pomeroy, *Territories and the United States*, p. 51.

⁷ Stone, "History of the Appellate Courts," 34 Colo. xxiii-iv (1905).

⁸ Pomeroy, *Territories and the United States*, p. 126. Hall and Pettis were commissioned on March 25, 1861, Armour three days later.

⁹ *Temporary Government for the Territory of Colorado, Statutes at Large, XII, chap. LIX, 175*.

¹⁰ *Rocky Mountain News* (Denver), July 13, 1861. Certificates attesting to oaths of office are in the State Department Territorial Papers, Colorado Series, II (July 8, 1861—November 18, 1861), National Archives microfilm. Hereafter cited as *Territorial Papers, II*.



William Gilpin,
Colorado's first ter-
ritorial governor,
wrote prolifically on
western expansion
and development.

tricts as originally assigned were roughly as follows: First, all of the territory east of the mountains; Second, the northwestern quarter of the territory; Third, the southwestern quarter of the territory.¹¹

The Organic Act stipulated that the judges "shall, after their appointments, respectively, reside in the districts which shall be assigned to them."¹² While District Courts were principally held in the assigned towns, circuit riding was a common experience from which countless humorous stories have their origins.¹³ Governor Gilpin wasted little time setting the first terms for the District Courts, scheduling them for September, 1861.¹⁴

Meanwhile, Chief Justice Hall was busy setting the wheels of justice in motion, for on July 9 the United States Marshal posted notice of the convening of the District Court the following day. The paid advertisement in the *Rocky Mountain News* announced the convening of the court "for the purpose of organization, and the adoption of rules and regulations for

practice therein, at the court room provided by me on Fifth Street near the Herald office, on Wed., the 10th inst. [sic] at 10 o'clock a.m."¹⁵

While the customary amenities dominated this organizational session presided over by Hall and attended by Pettis, definite progress was evident. Five attorneys were appointed by Hall to examine candidates for admission to practice in Colorado territorial courts. Twenty-five lawyers immediately indicated their desire for qualification. Expediting the judicial process was the examining committee, which had its initial report prepared within twenty-four hours. So on July 11, scarcely four days after Hall's arrival, twenty-seven attorneys, duly recommended by the committee, were admitted to the Bar of Colorado Territory. As a prudent gesture, "Diplomas" were also presented to Governor Gilpin and Territorial Secretary Lewis L. Weld. By the end of July the rules of the court had been adopted, a process painstakingly reported in the columns of the *News*, and the court adjourned until the September term.

The gap separating theory and reality is sometimes quite wide. For the sake of accuracy, it is necessary to leave momentarily the chronological development of the courts to review the more mundane problems facing both the citizens and the appointed officials of the territory. The plight of the people was expressed by the *News* in an editorial of June 29, 1861, exactly four months after the passage of the Organic Act. "The Governor, Marshal, and Secretary are en route hither from Canon City—Judge Pettis has gone fishing—Surveyor General Case is at the Tremont House—Judge Hall and the balance of them are—somewhere—but not yet in our territory."¹⁶

The populace had no monopoly on frustration. In addition to establishing the new courts, Hall was faced with devising an equitable and orderly transition of existing litigation and business ventures inaugurated under the previously binding laws of the Kansas Territory.¹⁷ Further complicating matters was the public repudiation of Kansas laws in anticipation of an extra-legal provisional government, Jefferson Territory. Nevertheless, business continued to be conducted under Kansas law.

The gravity of these conditions did not escape Hall, particularly in regard to the status of untold thousands of dollars

¹¹ *Rocky Mountain News* (Denver), July 13, 1861.

¹² *Temporary Government for the Territory of Colorado, Statutes at Large*, XII, chap. LIX, 174.

¹³ Activities of the bench and bar are vividly described in Wilbur F. Stone (ed.), *History of Colorado* (Chicago: S. J. Clarke Publishing Company, 1918), I, 732-64.

¹⁴ Proclamation of Governor Gilpin, July 23, 1861, Territorial Papers, II.

¹⁵ *Rocky Mountain News* (Denver), July 9, 1861. Detailed reports of the court's organization, on which this account is based, occupy many columns in the issues of July 10, 12, 13, 15, 16, 23, 24, 25, 26, and 27, 1861.

¹⁶ *Ibid.*, June 29, 1861.

¹⁷ *Weekly Commonwealth and Republican* (Denver), August 20, 1863.

worth of commercial and real estate transactions. Awaiting his reaction were speculators and adventurers poised to take advantage of any temporary lapse in the law. The *Weekly Commonwealth and Republican* was lavish in its praise of Hall for upholding the laws of Kansas pending the enactment of Colorado statutes. "It was certainly bad for lawyers who had expected to upset matters," philosophized the editor, "but it was salvation to the people who had property."¹⁸

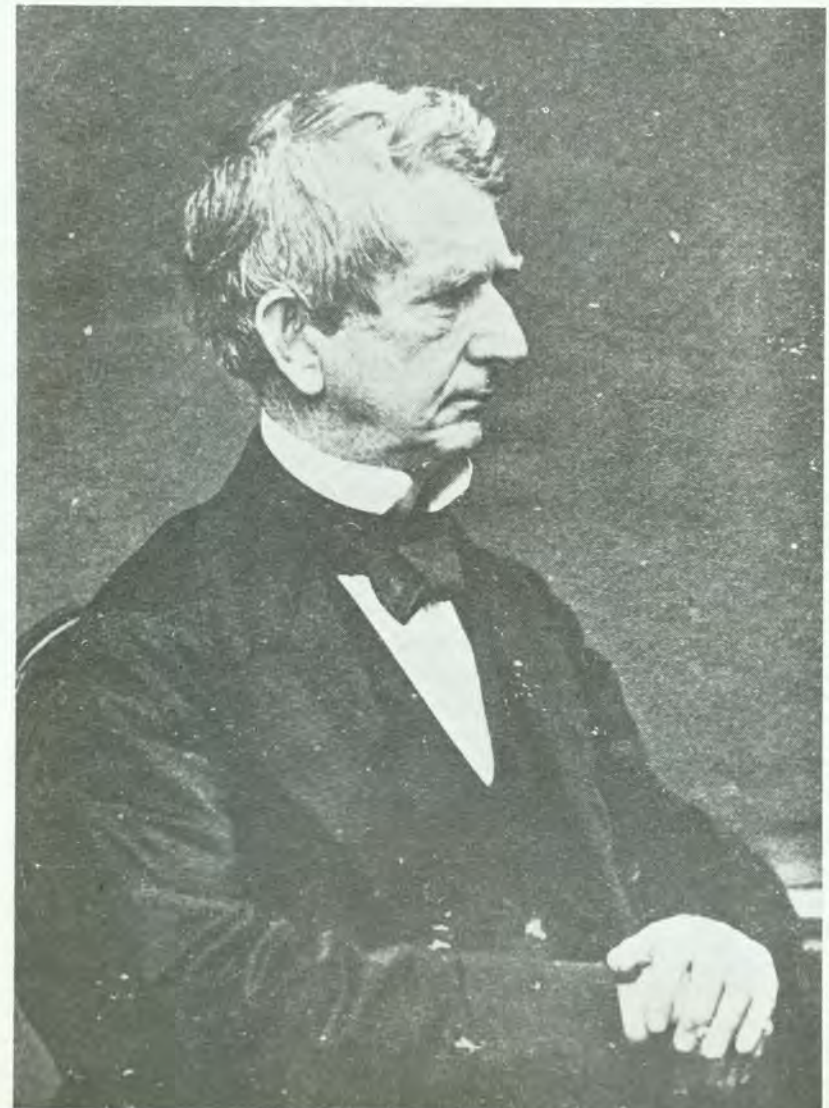
This vexation was, perhaps, merely portentous of more formidable challenges to follow. Of these, manpower might well have been the most vexing to the Chief Justice. Justice Pettis, an early arrival, departed from Denver some time after July 30, 1861, without ever presiding over his court, remaining absent until his replacement, Allen A. Bradford, was finally named in June, 1862.¹⁹ Pettis felt compelled to devote his energies to Union recruiting activities "in the States" rather than to the bench.²⁰ The second Associate, Armour, at first made hardly any greater contribution. After not appearing on the scene until late October, he could not have diminished Hall's anxiety by delaying his departure to his post in Central City until the following February.²¹

The dereliction of their responsibilities by his Associates imposed considerable hardship on the Chief Justice. Adding to his consternation were reminders from the Governor that the empty benches would have to be temporarily filled by him, a fact of which Hall was probably only too well aware. One such memorandum stated that "in consequence of the protracted absence of Associate Justice Charles Lee Armour and the necessity of the establishment of the United States District Court within the Third Judicial District, the duty of organizing the said Court at Canon City is assigned to you." Gilpin set the term to begin within the week.²²

Under these extenuating circumstances, Hall was not reluctant to seek alleviation from superiors in Washington. In correspondence with President Lincoln, October 9, 1861, Hall complained of the "non-arrival" of Armour as well as of the

"absence" of Pettis.²³ At the same time, the Chief Justice boasted that he had succeeded "in keeping a Judiciary alive in their Districts" while disposing of enough "legal business" in his own district to warrant a second term. On October 30 he reiterated these difficulties to Secretary of State William H. Seward, revealing that they had been compounded by the atti-

A lawyer by profession, William H. Seward served as governor of New York and United States Senator before his appointment as Secretary of State, a position he held under both Lincoln and Johnson.



¹⁸ *Ibid.*

¹⁹ Paul H. Giddens (ed.), "Letters of S. Newton Pettis, Associate Justice of the Colorado Supreme Court, Written in 1861," *The Colorado Magazine*, XV (January, 1938), 3-14; letter from Hall to Seward, May 28, 1862, State Department Territorial Papers, Colorado Series, I (December 28, 1859-April 22, 1874), National Archives microfilm. Hereafter cited as Territorial Papers, I. Territories were administered by the State Department until 1873.

²⁰ Giddens (ed.), "Letters of S. Newton Pettis," p. 3.

²¹ Letter from Hall to Seward, October 30, 1861, Territorial Papers, I; *Rocky Mountain News* (Denver), February 4, 1862.

²² Memorandum from Gilpin to Hall, July 29, 1861, Territorial Papers, II.

tude of Armour, who evidently arrived in the interim. "Judge Armour's here and has been desired by the Governor to go to the post where he is assigned," Hall stated. "He declines, but hangs around the tent of the rebels here, apparently affording them aid and comfort."²⁴

Some seven months passed and the situation apparently showed little improvement. Secretary of State Seward was warned by Hall on May 26, 1862, of the extremely large accumulation of cases which required "consideration of the full bench."²⁵ Reminding Seward of the absence of Pettis since the previous July and of the resulting extra burden, Hall urged either his Associate's presence by July or his replacement.

Ample records exist to verify that Hall was indeed busily engaged in clearing the docket of the "Supreme Court for the first judicial District."²⁶ The first civil case in his court, decided in favor of the defendants, was styled *Tennent and Company v. Margaret E. Cody and Elijah Cody*, filed August 19, 1861. Typical of early civil actions of the period, it involved alleged nonpayment of \$557.36 for merchandise shipped from the East. Profiteering by merchants is a favorite topic of those who describe Rocky Mountain boom towns. However, an examination of early litigation points clearly to the other side of the coin—the heavy risk of consigning goods to that area. Indicative of this risk is not only the number of collections on record, but also the slowness of appeal. Since cases were sometimes appealed more than once, suppositions must be made with care. Illustrative of the delay encountered by litigants is Grand Docket #5, a suit involving one lot of potatoes, decided December 18, 1861, in the First District Court and not finally dismissed by the Territorial Supreme Court until September 26, 1867.²⁷

The Colorado territorial justices were appointed less than a month prior to the firing on Fort Sumter, and they arrived in Denver some three months after that event when mobilization on both sides was at a frenzied pace. The Civil War added

significantly to the responsibilities of the judiciary, and it afforded them an opportunity to contribute more notably to the development of Colorado Territory than might otherwise have been possible.

While the sentiments and loyalties of the court were divided as were those of the populace, Chief Justice Hall was unwavering in his support of the Union cause. Of his Associates, Pettis chose to display his strong affections for Old Glory in greater geographical proximity to headquarters, and Armour's sentiments were highly suspect. To state it mildly, Hall was preoccupied with ridding the territory of rebels. In his correspondence with President Lincoln, the Chief Justice emphasized the dangers of Confederate activity in Colorado. With reference to Southern sympathizers seeking the places of Armour and Pettis, Hall pleaded with the President, beseeching him "to appoint none of the applicants for those places now residing here. They cannot be trusted in this emergency."²⁸ There can be no doubt regarding Hall's lack of modesty, for he also volunteered to the President the crucial role played by his appointee in frustrating rebel ambitions in the territory.

Despite such overzealous tendencies, Hall did exert every influence he could muster in behalf of the Union. At the opening of the September, 1861, term of court, for example, Hall delivered a lengthy and resounding charge to the jury amounting to a patriotic pep talk and a warning against treason.²⁹ That objections were raised to his stance is indicated by irate letters to the editor of the *News* referring to Hall's charge as nothing more than a license for tyranny.³⁰ Contemporary newspaper accounts show that numerous arrests were made by the United States marshal, confining individuals for "treasonable acts and utterances" or for being "rank secessionists."³¹

It was in response to challenges of the war that Hall rendered his most famous decision. Captain Joel McKee, arrested on order of Governor Gilpin for recruiting troops in Colorado for "unlawful" purposes, i.e., raising a rebel army, was denied a writ of habeas corpus. Hall subsequently wrote a decision of fifteen printed pages entitled *The Privilege of the Writ of Habeas Corpus under the Constitution*, justifying abridgment of that privilege at the discretion of the judiciary in case of

²³ Letter from Hall to Lincoln, October 9, 1861, photographic copy from the Lincoln Papers, Library of Congress, in the Territorial Collection, Colorado State Archives. Hereafter cited as Lincoln Papers.

²⁴ Letter from Hall to Seward, October 30, 1861, Territorial Papers, I.

²⁵ Letter from Hall to Seward, May 26, 1862, *ibid.*

²⁶ District Courts were so designated in the Supreme Court Opinions, Colorado State Archives. First District Court civil case records are now housed in the Archives.

²⁷ Supreme Court Opinions of Territory of Colorado, I, 4, Colorado State Archives. Records of criminal cases are in the custody of the Records Management Service, General Services Administration, Denver Federal Center, and were not examined in preparation for this article. Comments on criminal cases and other aspects of early legal history are in Forbes Parkhill, *The Law Goes West* (Denver: Sage Books, 1956).

²⁸ Letter from Hall to Lincoln, October 9, 1861, Lincoln Papers. Letters from Hall to Seward of several dates in the Territorial Papers, I, also express this concern.

²⁹ *Rocky Mountain News* (Denver), September 3, 1861.

³⁰ *Ibid.*, December 7, 1861.

³¹ A typical account is in *ibid.*, September 30, 1861.

rebellion or invasion.³² For this "bold and timely decision" he was credited by the *Weekly Commonwealth and Republican* for disrupting a plot to burn Denver and for being instrumental in maintaining Colorado in the Union camp.³³

The range of concerns stemming from the war seemed to have no end for the Chief Justice. If Hall was not worried over the care of war prisoners, or over keeping track of Confederate-minded job seekers, he was troubled by the disloyalty of Associate Justice Armour. In the same communication to Secretary of State Seward in which he spoke of Armour "hanging around" the rebels, Hall concluded: "He is not the man for the place. I write plainly but earnestly as I deem it is my duty to do."³⁴ Using similar language, he referred in a note to Governor Gilpin to local aspirants for the bench as "infected with treason."³⁵ It appears Hall's keen interest in the war effort never wavered during his tenure in Colorado, for as late as May 20, 1863, he was offering recommendations for the removal of troops "to the states" where they were needed as well as for reasons of economy.³⁶

It was for his relentless castigation of rebel sympathizers that Hall was criticized the most. A letter from Hall to a friend in the East, casting aspersions upon Colorado's rebel tinge, reached the editor of the *News*. Previously complimentary to Hall, that journal published a scathing editorial of condemnation, only the first in a series of attacks on the judge. To his Auburn, New York, colleagues Hall, after bemoaning perpetual personal danger, suggested that the Colorado population hailed chiefly from "the most demoralized Slave States" and "the debauched Free State of Pennsylvania" and that it included as well "border ruffians who fought for slavers in Kansas." The same letter disclosed Hall's policy of giving no lawyer a license who would not take "an oath of allegiance." Then he confessed the procedure was meaningless.³⁷

If Hall thought he had a manpower crisis, he should have traded chairs with President Lincoln! The obstacles to recruitment facing the President were imposing. It should not be

surprising, in view of the privations of territorial service, that the average officer was inexperienced and that the turnover rate precluded the territories from retaining experienced administrations. Of the 424 territorial governors, secretaries, and judges appointed during the period 1861-1890, 288 did not complete their terms, and only 60 were recommissioned.³⁸ The peculiar judicial needs of the West were in some cases simply beyond the capabilities of men who were honest and able enough for commendable service in the East.

That Colorado deviated only slightly from the pattern is observed by the contemporary editor-traveler-commentator Samuel Bowles.

The men sent out to these new Territories as judges are not apt to be of a very high order either of morals or intellect. They are often hungry adventurers; and their salaries bearing generally no comparison to the cost of living in these remote regions, and large pecuniary interests often being involved in the questions brought before them,—as is especially the case in the mining Territories,—they are too apt to yield to the temptations offered them, and to sell their judgements for a price. . . . One especial motive with the Coloradans for making a State government is to get a judiciary of their own that shall be both more intelligent and independent than that furnished by Washington authorities.³⁹

Hall's remarks to Governor Gilpin show that he was of similar mind, for he informed Gilpin that he would leave unless he was sent two Associates of "fidelity, brains, and learning."⁴⁰ At the same time he referred to Associate Justice Pettis as "worse than none," "a mere boy" who knew "no law nor anything else of value." Hence, "carpetbagger" is the category into which Colorado's pre-1866 judges have been consigned by early and contemporary historians.

The Organic Act set the annual salaries of the Chief Justice and Associate Justices at \$1,800, paid quarterly. The territorial legislature in its first session sent a resolution to the United States Congress requesting an "adequate addition to the salaries of the territorial judges."⁴¹ Coloradans were only too aware of

³² Denver, C. T.: Printed by T. Gibson, Republican Office, 1862, copy in Territorial Papers, I.

³³ *Weekly Commonwealth and Republican* (Denver), August 20, 1863.

³⁴ Letter from Hall to Seward, October 30, 1861, Territorial Papers, I.

³⁵ Letter from Hall to Gilpin, October 9, 1861, Lincoln Papers.

³⁶ Letter from Hall to Attorney General Edward Bates, May 20, 1863, *ibid*.

³⁷ Letter signed "H" dated Denver, September 27, 1861, to Messrs. Knapp and Peck, printed in the *Daily Journal and Union* (Albany, N.Y.), December 10, 1861, reprinted by the *Rocky Mountain News* (Denver), May 13, 1892, with editorial comment.

³⁸ Earl Pomeroy, "Carpet-Baggers in the Territories, 1861-1890," *The Historian*, I (Winter, 1939), 53-65.

³⁹ Samuel Bowles, *Across the Continent: A Summer's Journey to the Rocky Mountains, the Mormons, and the Pacific States, with Speaker Colfax* (Springfield, Mass.: Samuel Bowles & Company, 1865), p. 60.

⁴⁰ Letter from Hall to Gilpin, October 9, 1861, Lincoln Papers.

⁴¹ U.S. Congress, House, *Increase of Salaries in Colorado Territory: Joint Resolution and Memorial of the Legislature of Colorado Territory, Praying for an increase of allowance per diem of the members and officers of the legislative assembly and an increase of salary of the territorial judges*, H. Misc. Doc. 24, 37th Cong., 2d Sess., 1861-62.

the higher cost of living in their area and of the inevitable ill effects of insufficient remuneration.⁴²

Legislative action may have also stemmed from Hall's bitter complaint to Gilpin explaining that his salary was barely adequate to meet his expenses in the territory, leaving no margin for his family's support. Underscoring his warning, Hall continued: "Necessity compels me to ask for a better place or better pay."⁴³ The inequity of his compensation was accentuated by a comparison of his salary with that of a "Bureau Clerk" in Washington whose expenses were one-fourth those of a territorial officer. While the high cost of living in the West certainly did not plague Pettis for long, he pointed out in a letter to his hometown some of the financial frustrations abounding in the lives of the judges. By way of illustration, Pettis predicted that the clerk's fees at Denver and Central City would range from \$3,500 to \$4,000.⁴⁴

That Hall did not confine his pleadings of financial distress to local officials is abundantly evident from his correspondence with the Secretary of State.⁴⁵ These messages contain encores of the inadequacies of compensation which left him "to labor for nothing in effect," and to support his family from other income. Adding to his tribulations was an officious controller holding up his salary on technicalities. In this fashion the justices harangued until Congress raised their annual salaries to \$2,500 in 1867 and \$3,000 in 1870.⁴⁶

Regardless of salary, there is a psychological remuneration to certain positions. Evidently this psychic income applied to territorial judgeships, as the bureaus in Washington were full of applicants for those posts. Holding onto a place behind the bench must have been another version of the old game "king of the mountain."

Hall was fearful of sharing the fate of Gilpin. In a memorandum presumably to either Secretary of State Seward or President Lincoln, he admitted previous endorsements of Gilpin, but he emphasized his complete lack of involvement in the

Governor's "financiering."⁴⁷ In his lengthy letter April 25, 1862, to Seward, Hall repeatedly asserted he was totally divorced from all money matters, implying poor if not dishonest management by the administration. With clear references to individuals seeking his place, Hall requested Seward's protection. The Chief Justice then offered his hopes that Governor John Evans and Secretary Samuel H. Elbert would be an improvement, citing a proverb: "The Fox in the brambles feared a change of flies lest the second swarm should be more greedy than the first."⁴⁸

Political maneuvering did not end with a territorial appointment. Officials were expected to follow the party line, even the judges, and those who "kicked over the traces" were not apt to last long. Governor Evans did not conceal his desire to rid the territory of any federal officer who did not support the "regular union ticket." In March, 1865, he suggested to J. M. Ashley, chairman of the House Committee on Territories, that such officials, including two Supreme Court Justices, be removed.⁴⁹ On Evans' letter there is a notation in Ashley's hand that he was in complete agreement with that policy.

Accepting the premise that the history of courts is the history of their judges, we are obliged to glance briefly into their lives, seeking clues either to their contributions to or degradations of frontier society. Doubtless the latter outweigh the former quantitatively, but in terms of an enduring legacy more credit is due the judiciary than it normally receives. If it had not been for its Chief Justice, Benjamin F. Hall, the first "carpetbagger" court would have been void of ability and integrity. A native of New York and a member of William H. Seward's law firm in Auburn, Hall brought to his post in Colorado considerable legal talent in addition to an exceptional political and cultural background.⁵⁰ During the 1850's, under an appointment from President Millard Fillmore, Hall compiled and indexed into six volumes the decisions of the United States Attorneys General, an achievement of wide acclaim.

Though the political nature of his selection is apparent, Hall's performance on the territorial bench, in view of the prevailing adversities, was one of considerable merit. Newspaper

⁴² Payment in greenbacks intensified salary inequities. Examples of prices are in Colin B. Goodykoontz, "Colorado as Seen by a Home Missionary, 1863-1868," *The Colorado Magazine*, XII (March, 1935), 60-69.

⁴³ Letter from Hall to Gilpin, October 9, 1861, Lincoln Papers.

⁴⁴ Giddens (ed.), "Letters of S. Newton Pettis," p. 14.

⁴⁵ Letters from Hall to Seward, April 25, 1862, and January 19, 1863, Territorial Papers, I.

⁴⁶ *An Act amendatory of "An Act to provide a temporary Government for the Territory of Montana, approved May twenty-six, eighteen hundred and sixty-four, Statutes at Large, XIV, chap. CL, 426-27 (1868); An Act to regulate the Salaries of chief Justices and associate Justices in the Territories, Statutes at Large, XVI, chap. CXXX, 152 (1871).*

⁴⁷ Letter from Hall presumably to Seward or Lincoln, October 23, 1861, Lincoln Papers.

⁴⁸ Letter from Hall to Seward, April 25, 1862, Territorial Papers, I.

⁴⁹ Letter from Hall to Ashley, March 14, 1865, Lincoln Papers.

⁵⁰ "Benjamin Franklin Hall," *National Cyclopaedia of American Biography* (New York: James T. White & Company, 1906), XIII, 24.

accounts and correspondence substantiate this assessment. On July 7, 1861, the territory's first Chief Justice arrived aboard the evening stage of the Central Overland, California and Pike's Peak Express.⁵¹ Within an elapsed time of ninety-six hours Hall had taken his oath of office, opened his court, admitted twenty-nine members to the bar, and announced the first rules of practice in his court. This flurry of judicial activity caused the *News* to adjudge as "highly commendable" the promptness "with which Chief Justice Hall has entered upon his duties."⁵² Not only did the judge move with speed, but his actions reflected a solid knowledge of law coupled with an abundance of common sense. His address at the opening session of the First District Court was propriety personified. It included a brilliant history of the common law, a plea for patriotism, and a taste of religion. As an example, Hall called on the "God of Heaven" to "so imbue us all with the humanizing and elevating principles of our real National Life, that we may comprehend our several duties and perform them acceptably to Him and our country."⁵³ The following day the *News* editorialized that the judge had been most favorably received by the attorneys present and that his address was "a chaste and accomplished rhetorical effort and his views sound and practical."⁵⁴

There are no indications of any attitudes on Hall's part except those of devotion, diligence, and integrity. As we have seen, perhaps his diligence approached the level of zeal in matters of patriotism. While it was standard procedure for pioneer judges to object vociferously to extralegal law enforcement activities, Hall's social concern was deeper, more genuine, and less superficial than that normally found among territorial officers. Not only do his letters indicate a disappointment at the limitation of his accomplishments, but they reveal a corresponding satisfaction with what he had done toward "restoring peace" to a turbulent land and "planting the seeds of a higher civilization."⁵⁵ In one communication Hall stated that he was presently occupied with a civil docket of one hundred sixty "causes."⁵⁶

It was common practice for territorial officials to take leaves of absence, so common in some instances that no business was conducted. In contrast to the rule, Hall was quite con-

scientious regarding the timing of his one leave of absence.⁵⁷ After receiving official permission for the leave it was repeatedly postponed due to the absence of the Governor or of his Associates, to the press of court business, or to Indian and rebel menaces. Considering prior discussion of the impact of the Civil War on territorial activities, there is a danger of belaboring the point. However, Governor Gilpin's comment to President Lincoln should not be omitted.⁵⁸ "Chief Justice Hall, full of talent and energy, . . . is the only Judge who has remembered that he has a country and owes to it devotion and the conscientious performance of his duties."

William N. Byers, editor of the *News*, was loud in his praise of Hall until the spring of 1862, when he was offended by the Judge's description of the rebel complexion of Colorado's population. Byers heartily endorsed the denunciations of Hall by a correspondent from Idaho who saw the "learned" Chief Justice as a "vain, bloated, egotistical, self-complacent, bombastic, ignorant old ass." Showing no restraint, the writer grew bolder, claiming the judge was "trying to cover himself with the lion skin of a judicial authority, which though large, could not be made to cover so great an ass without the distinctive mark of the species being at all times visible."⁵⁹ That Hall was not universally admired toward the end of his tenure there can be no doubt. Likewise, there is no doubt that he had his share of admirers. On his departure from Denver August 19, 1863, the *Weekly Commonwealth and Republican* virtually deluged the first Chief Justice with praise.⁶⁰ In particular, he was commended for the orderly transition of government, protecting titles against "jumpers," and for his role in saving Colorado from Confederate infiltration by the Joel McKee ruling. Howard Lamar's recent survey of Colorado's territorial history in *The Far Southwest 1846-1912* gives credibility to this viewpoint.⁶¹

From Denver Hall returned to Auburn, New York, where he resumed law practice and resided until his death in 1891. His resignation was most likely prompted by financial considerations, an indication of his integrity, for he continued in the good graces of the administration.⁶²

⁵¹ *Rocky Mountain News* (Denver), July 8, 1861.

⁵² *Ibid.*, July 9, 1861.

⁵³ *Ibid.*, July 10, 1861.

⁵⁴ *Ibid.*, July 11, 1861.

⁵⁵ Letter from Hall to Seward, April 25, 1862, Territorial Papers, I.

⁵⁶ *Ibid.*

⁵⁷ Letter from Hall to Seward, January 19, 1863, Territorial Papers, I.

⁵⁸ Letter from Gilpin to Lincoln, September 13, 1861, Lincoln Papers.

⁵⁹ Letter from Hall to Knapp and Peek, September 27, 1861, reprinted in the *Rocky Mountain News* (Denver), May 15, 1862; *Rocky Mountain News* (Denver), May 30, 1862.

⁶⁰ *Weekly Commonwealth and Republican* (Denver), August 20, 1863.

⁶¹ Lamar, *Far Southwest*, pp. 227, 300.

⁶² Letter from Hall to Lincoln, February 26, 1864, Lincoln Papers.



S. Newton Pettis
later served as
U. S. minister
to Bolivia.

Next in the survey of the first Colorado Territorial Supreme Court is Associate Justice S. Newton Pettis. Comical but pathetic, his career offers an excellent example of the source of frustration and resentment bred by ineffective territorial administration. The first to arrive, the first to leave, Pettis was the only territorial justice in Colorado who never tried a single case, though he remained on the payroll over a year.⁶³ Earlier accounts of this episode speculate as to the reasons for his record-breaking one-month stay. It is clear from his letters to the territory written after returning East and from his subsequent Union recruiting record that his rapid departure for the "States" was motivated by emotional and political involvement in Civil War mobilization. In 1864 he recruited some eighteen hundred men for the Union Army from the rebel prisoners at Rock Island, Illinois.⁶⁴

President Lincoln's appointment of Pettis was not only in recognition of his legal ability, but particularly was it in reward for his unremitting and fruitful work in behalf of Lincoln's nomination.⁶⁵ This fact did not affect the judge's popularity in the territory. On his arrival June 12, 1861, in

⁶³ *Rocky Mountain News* (Denver), June 14, 1861; October 25, 1861; October 30, 1861; December 17, 1861.

⁶⁴ Typed biographical synopsis compiled by the Pennsylvania State Library and Museum, in the biographical cross-index file, State Historical Society of Colorado Library.

⁶⁵ Giddens (ed.), "Letters of S. Newton Pettis," pp. 3-4.

Denver he was described as "a most agreeable and affable gentleman," and he had so impressed the citizens that they petitioned Governor Gilpin two weeks later to assign him to the Denver court. His desertion of their judicial system did not cause enthusiasm for Pettis to wane, as the *News* lamented upon word of his resignation the loss of "an efficient officer" and a "worthy member" of society.⁶⁶

In addition to verifying his acceptance and social adjustment in Colorado, Pettis' letters to colleagues in Meadville, Pennsylvania, reflect intelligence, perception, and education. His post-war achievements indicate that the territory suffered considerable loss by his resignation, for his later career included positions as congressman, presiding district judge, and foreign minister while he enjoyed a lucrative corporate and international law practice. In 1880 Pettis declined appointments to the territorial Supreme Courts of New Mexico and Wyoming.

It is likely that the other Associate Justice of the first Supreme Court, Charles Lee Armour, has the distinction of being the only territorial judge to be publicly labeled a "Liar and a Coward" on a twenty-two by sixteen-inch handbill.

TO THE PUBLIC!

ON Saturday, September 10th, 1863, the Judge of this District caused the arrest of a client of mine, on a Bench Warrant, and ordered the Sheriff to commit him to Jail. I, as attorney, called on the Judge and offered to give any bail that he could in reason ask, for the appearance of the party accused, at the next Term of the Court.

He refused to receive a bond,—refused to name the amount of bail,—and stated to me that an application for a WRIT OF HABEAS CORPUS would be of no avail, as he "WOULD NOT GRANT IT!"

Knowing his conduct to be INFAMOUSLY tyrannical, and in violation of all law, I determined, on Sunday morning that the wretched's Fears SHOULD grant what Justice demanded on the previous day, AND ON SUNDAY MY CLIENT WAS LIBERATED.

Knowing that the rights of my client had been most grossly outraged by the Judicial vagabond who pretends to be a JUDGE, and feeling that I had been insulted, I addressed to him the following note, to which, up to this date he has made no reply.

"I demand from you an apology by the hands of the bearers of this note, Joseph A. Thatcher and Thomas R. Sanders, Esqrs., or by some other friend whom you may select for the dignified manner in which you treated me yesterday, and I also demand from you assurances of professional and gentlemanly courtesy for the future. I am &c."

To Hon. Charles Lee Armour.

JAMES M. CAVANAUGH.

Believing myself to be entirely justified in my course, I do hereby PRONOUNCE and POST Charles Lee Armour, Judge of the 2nd Judicial District, Colorado Territory,

A LIAR AND A COWARD.

Dated: Central City, Sept. 22nd, 1863.

JAMES M. CAVANAUGH.

Posted September 22, 1863, at Central City by Attorney James M. Cavanaugh, the handbill designated Armour a "Judicial vagabond" pretending to be a judge and referred to his conduct as "infamously tyrannical [*sic*]." ⁶⁷ Unfortunately for the territory, Cavanaugh had produced an excellent resumé of the judge's character.

The refusal by Armour to take his post in Central City promptly was only a hint of things to come. When Armour was chastised for allegedly associating with rebels the *News* defended him on the grounds that "Abe Lincoln knew what he was doing." ⁶⁸ Furthermore, the *News*, in announcing Armour's impending departure for Central City, congratulated its friends there on the enviable addition to its citizenry. What a poor prophet Byers was in this instance! Within the year the administration was earnestly petitioned for his removal. When this tack proved unavailing, in 1862 the legislature attempted to force his resignation through Colorado's first "gerrymander." ⁶⁹ Armour had been "sage brushed" to a district consisting of Conejos and Costilla Counties in the southernmost section of the territory. But our "judicial vagabond" was not about to acquiesce. Instead, as Stone so aptly reports, he "refused to visit his adobe castles in Spain or resign his office." Armour passed his time enjoying imported cigars, sipping toddies, and drawing a salary until he had outwaited the legislature, which changed the boundaries of the districts more to his liking. ⁷⁰

A major source of Armour's intense unpopularity was his tyrannical courtroom antics. Everyone taking an oath, for example, had to "swear on an old, musty Bible and kiss the begrimed book regardless of the labial transfusion of prehistoric microbes." ⁷¹ Or he would, under the pretext of preserving the court's dignity, jail his bailiff for chanting too few or too many "hear ye's" at its opening. ⁷² Lawyers, in jest, would brag of quoting His Honor the Bible for Blackstone and, in gambling cases, Hoyle for the Statutes. ⁷³ It is ironic that of the three original appointees Armour alone would serve his complete term.

⁶⁶ *Rocky Mountain News* (Denver), June 14, 1861; July 3, 1861.

⁶⁷ Broadside, "James M. Cavanaugh to the Public," September 22, 1863, Western Historical Collections, University of Colorado Library, Boulder.

⁶⁸ *Rocky Mountain News* (Denver), November 1, 1861.

⁶⁹ Stone, "History of the Appellate Courts," 34 *Colo.* xxv (1905): letter from Harding to Lincoln, July 18, 1864, Lincoln Papers.

⁷⁰ Parkhill, *Law Goes West*, frontispiece map.

⁷¹ Stone, "History of the Appellate Courts," 34 *Colo.* xxv (1905).

⁷² Unidentified newspaper clipping, Dawson Scrapbooks, Vol. XXV, p. 7, State Historical Society of Colorado Library.

⁷³ *Ibid.*



Allen A. Bradford later served two terms in Congress as representative from Colorado Territory.

Six months prior to the creation of the Territory of Colorado, Allen A. Bradford arrived at the Gregory Diggings. On June 6, 1862, Bradford was appointed Associate Justice to fill the vacancy left by the resignation of Pettis. His residence of less than two years, in the eyes of Coloradoans, disqualified the new justice for the figurative title of "carpetbagger." Odds are, however, that he really did have a carpetbag, for he had practiced law and held public office in Missouri, Iowa, and Nebraska Territory before locating at Central City in 1860. ⁷⁴ A native of Maine, Bradford had wandered on numerous occasions over America's frontier, once as far west as California, before settling in Colorado. In 1862 he moved to Pueblo where he resided until his death in 1888.

Though Bradford discharged his responsibility with unchallenged competence and humanity, his total disregard for traditional decorum became legendary. And "el juez gordo," as he was known in the Third District, surely established all records for the disregard of sartorial standards. Bradford's version of a judicial robe on the circuit was either a tobacco-stained linen duster or a Mexican "zarape." ⁷⁵ It may have been

⁷⁴ Allen A. Bradford, "History of Colorado," Bancroft Manuscript File, MSS-XA, State Historical Society of Colorado Library; William S. Speer and John Henry Brown (eds.), *The Encyclopedia of the New West* (Marshall, Tex.: United States Biographical Publishing Company, 1881), pp. 44-45.

⁷⁵ Abstracted from accounts in the Dawson Scrapbooks, Vol. VII, p. 13; Vol. VIII, p. 511; Vol. XXXV, p. 7; George Rex Buckman, "An Historical Rocky Mountain Outpost," *The Trail*, VII (April, 1915), 5-16.

in his court that tales of spectators playing monte and other games of chance originated. Bradford also had infamous prejudices—one against mule thieves for he was once their victim—another against poker players who had won from him.

Neither his fellow citizens nor his colleagues of the bar and bench allowed his eccentricities and uncomely appearance to detract from his ability, benevolence, and aspirations for Colorado's growth. Bradford stepped down from the bench March 3, 1865, to represent the territory as its delegate in Congress, a post he held for two terms, 1865-1867 and 1869-1871. On termination of his effective service in Washington, Bradford returned to Pueblo where, until his death, he devoted his energies to his practice and community development.

Upholding the notoriety of the "carpetbag" judiciary in fine style was Hall's successor as Chief Justice, Stephen S. Harding, who took office July 10, 1863.⁷⁶ From Indiana, where he was admitted to the bar at age twenty, Harding had come to Colorado in the wake of a turbulent nine-month tenure as Governor of Utah which ended January, 1863. Considering the adversities facing federal officials in Utah during this period, it would hardly be fair to judge a man solely on his inability to cope with that assignment.

Instead of making amends for his failures in Utah, Harding followed a course in Colorado which led to his demise as a public official. He did preside at one term of the Supreme Court as an appellate body in 1864, writing six opinions. But Harding's venality and incompetence became so odious that the Bar organized a boycott against his court, successfully forcing his resignation effective New Year's Eve, 1865.⁷⁷ Samuel Bowles observed that Harding, more often than not, was influenced by personal predilection rather than equity. With reference to the corruption obvious in a particular mining decision, Bowles recorded that "the judicious grieved, the unskilled laughed, and everybody said there could be no contempt too great for such a court."⁷⁸

It was probably Harding's repugnance as an official that intensified accusations of his affair with a woman he supposedly brought with him from Utah. In a lengthy letter to President Lincoln, marked "Private," Harding vehemently denied these charges, explaining them as the work of a vengeful and un-

scrupulous Associate, Armour, an "ingrained villain," according to Harding, perpetrated rumors of Harding's paramour in response to the legislative gerrymander which included a fee system designed to Armour's detriment. The letter went into great detail regarding petitions for Armour's removal and his "sage brushing," but it conveniently omitted his own difficulties. Harding's opening paragraph is intriguing in that it indicates that there must have been a great clamor about his "Mormon woman." He began with references to his duty and trust and then pleaded: "I beg of you in return that you will not cast it [this letter] aside without noting its contents."⁷⁹ Why would Harding expect Lincoln, who had appointed him to two positions, to be predisposed not to read his report? Lincoln's reply was not uncovered by this investigation so his exact response is not known. It is known, however, that the pressures in the territory became unbearable. Harding headed back to his law practice and family in Indiana.

By 1865 a concerted drive was under way to end the regime of the "carpetbag" judiciary. Governor Evans sent several recommendations to President Lincoln shortly before his assassination, exhorting the appointment of Coloradoans to the Court, one of whom was Moses Hallett.⁸⁰ After Lincoln's death Evans continued to seek this change in policy.⁸¹ Temporarily these pleas were not heeded, and the final "carpetbag" jurist was appointed. On June 10, 1865, William H. Gale of New York and Charles F. Holly of Boulder were appointed Associate Justices. Gale's twelve-month tenure was moderately effective while Holly's even shorter tenure was rendered useless by his personal indiscretions. It seems that Holly, assigned to the Second District at Central City, was undone by his own grand jury, which returned an indictment charging the Judge with adultery.⁸² His Honor, it was alleged, had been caught *flagrante delicto* with a married woman.

Finally in 1866 with the appointment of Moses Hallett as Chief Justice and William Gorsline and Christian S. Eyster as Associates, a new era in the history of the territorial Supreme Court began. "From 1866," explained Judge Stone, whose career spanned both territorial and statehood periods, "having a majority of judges of our own choice, the court moved on smoothly

⁷⁶ "Stephen S. Harding," *National Cyclopaedia of American Biography* (New York: James T. White & Company, 1907), V, 515.

⁷⁷ Stone, "History of the Appellate Courts," 34 Colo. xxvi (1905).

⁷⁸ Bowles, *Across the Continent*, pp. 60-61.

⁷⁹ Letter from Harding to Lincoln, July 18, 1864, Lincoln Papers.

⁸⁰ Memorandum from Evans to Lincoln, March 6, 1865, *ibid.*

⁸¹ Letter from Evans to John G. Nicolay, April 27, 1865, *ibid.*

⁸² Parkhill, *Law Goes West*, p. 24.

to the date of our admission to statehood."⁸³ Characterized by integrity and brilliant judicial performance, the court made contributions of national significance in areas of water and mineral law by the time statehood was achieved.

The task here, however, is to evaluate Colorado's early territorial bench. If score is kept purely on a quantitative basis, it is clear the "judicial derelicts" were in the majority and that the Supreme Court of Colorado Territory followed the expected pattern of weakness and venality. On the other hand, if the assessment is a reflection of the court's accomplishments despite severe handicaps of the territorial system, political realities, grossly inadequate facilities, and the Civil War, the contribution was significant. In a period of great turbulence and anxiety, an orderly transition of jurisdiction was achieved, protecting property valued in the millions of dollars and preventing serious disruption of the social process. The territory might well have become a detriment to the Union had Confederate infiltration not been checked with strong assistance from the judiciary. Colorado, relatively speaking, progressed and achieved statehood quite readily. In spite of an inauspicious beginning, it would be wrong to deny the Supreme Court its just due for the major role it played in development of the territory.

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⁸³ Stone, "History of the Appellate Courts," 34 Colo. xxv (1905). Confirmed in Wm. Hedges Robinson, Jr., "The Growth of the Judicial System in Colorado," *Colorado and Its People*, ed. LeRoy R. Hafen (New York: Lewis Historical Publishing Co., Inc., 1948), II, 374.

Rails to Taylor Park

BY REX MYERS

Nestled beside the Continental Divide, just west of the 14,000-foot giants we call the Collegiate Peaks, is a high mountain valley known as Taylor Park. This island in a sea of mountains is almost thirty miles long, about ten miles wide, and well over 9,000 feet above sea level. Today rough and often dusty roads tie the scattered summer communities and the sagebrush hills with Taylor Park Reservoir, located in the approximate center of the valley. But there was a time, shortly after the turn of the present century, when Taylor Park had many active mining towns, and many more optimistic people, all hoping to link their mountain island with the outside world. One such dream took form in the Taylor Park Railroad Company.

Through the years many historians¹ have mentioned the Taylor Park Railroad Company—some using the correct name, some just referring to the "Railroad to Taylor Park." Most accounts associate the planned railroad with the 1904 mining boom that Tin Cup experienced, but no detailed research has ever been done into the entire history of the proposed line. This, then, is the study of a paper railroad and its tunnel under the Continental Divide.

From 1880 to 1900 there was every reason for the promoters of a railroad to believe they could make a considerable profit by providing cheap and convenient transportation for people and ore into and out of Taylor Park. The toll per wagon for hauling ore out of the park was \$6.50 on the Elk Mountain Toll Road in 1881, while the one-way fare from Tin Cup to St. Elmo

¹ Nolie Mumej, *History of Tin Cup, Colorado (Virginia City): An Alpine Mining Camp Which Refused to Become a Ghost Town* (Boulder: The Johnson Publishing Company, 1964), p. 179; Robert Ormes, *Railroads and the Rockies: A Record of Lines In and Near Colorado* (Denver: Sage Books, 1964), pp. 373, 374, 375; S. E. Poet, "The Story of Tin Cup, Colorado," *The Colorado Magazine*, IX (January, 1932), 33n; M. C. Poor, *Denver, South Park & Pacific: A History of the Denver, South Park & Pacific Railroad and Allied Narrow Gauge Lines of the Colorado & Southern Railway Company* (Denver: Rocky Mountain Railroad Club, 1949), p. 430; interview with Francis Rizzari, owner of the Taylor Park Railroad's only known rolling stock, January, 1963.

over the same route was \$3.50 per person.² The Taylor Park Mining Company estimated in 1902 that it cost \$18.00 a ton to ship ore out of Taylor Park by wagon, while a railroad could do it profitably for only \$5.00 a ton.³ Perhaps one writer in 1883 best put into words the feeling of the people in Taylor Park.

[Any railroad into Taylor Park] would enter a country that would demand supplies, at the lowest calculation, for 1,500 to 3,000 miners, and it would have the handling of from 100 to 1,500 tons of ore per day. If a railroad was built within the reach of the ten camps here shown,⁴ in less than three months 5,000 persons would be added to their populations and the output of ore would rise from 800 to 1,200 tons per day.

The entire basin is covered with good saw timber and timber for ties, etc. There would be more revenue to a railroad that would build to it . . . than any other line they can build of 100 miles in extent.⁵

The desire for cheap and easy transportation into the park did not go unheeded. From 1877 a variety of burro trails, wagon roads, and railroads had been planned into Taylor Park from all directions. Some of the trails and roads still remain, but with the exception of the Taylor Park Railroad Company itself, most of the railroads never got beyond the planning stage.

The first dream of a route over Tin Cup Pass appeared on an 1879 map of the Chalk Creek Valley, which shows the "Proposed R. R. to Elk Mt." projected up the north fork of Chalk Creek.⁶ (The route does not turn south at the junction of the north and south forks of Chalk Creek, as did the Denver, South Park and Pacific Railroad a few years later.)

MAP
PROPERTY
THE ALPINE SILVER MINING CO.
COLORADO



This projected line in 1879 was obviously little more than a dream, for the only "Elk Mountain Railroad" incorporated to operate in Gunnison County was organized on November 29, 1887, but it was slated to run in what is now the Crystal River Valley, not over Tin Cup Pass.⁷

A second railroad was projected over Tin Cup Pass in 1879, and this company did get to the incorporation stage of planning. Known as the Colorado Southern Railroad Company (not to be confused with the Colorado and Southern Railroad that was to take over the Denver, South Park and Pacific line in later years), this line was organized by interests at Hortense, Colorado (in the Chalk Creek Valley), and was to run from the present-day site of Nathrop, Colorado, through Hortense and Alpine, and then over the Divide to Tin Cup.⁸ This may have been the line referred to on the 1879 map mentioned above, but since there is no mention of the Colorado Southern ever extending to Elk Mountain, there is good reason to believe that two separate lines were planned.

The first railroad over Cottonwood Pass was planned by the Buena Vista and Gunnison Railway Company, incorporated on October 11, 1881, for \$250,000. The route was to connect with the Denver and Rio Grande at or near Buena Vista, travel up South Cottonwood Creek, then over the pass and down to Hillerton in Taylor Park.⁹ The company was to establish an office in Buena Vista, but there is no record to indicate they got that far.

Plans to cross the Elk Mountain Range to the north of Taylor Park were first made in the spring of 1879 by the Colorado Western Railroad, which planned a branch line from Glenwood Springs to Crested Butte "by the most practicable route."¹⁰ This line also did not get beyond the paper stage with its branch line.

In addition to these specific attempts to put rails into Taylor Park, there was always local pressure on the Denver, South

² Mumey, *History of Tin Cup*, p. 174.

³ *Gunnison Republican*, June 5, 1902.

⁴ Spring Creek, Italian Mountain, Forrest Hill, Ashcroft, Beauman, Telluride, Gold Belt, Chin's Camp, Taylorville, and Tin Cup.

⁵ John K. Hollowell, *Gunnison, Colorado's Bonanza County* (Denver: Colorado Museum of Applied Geology and Mineralogy, 1883), pp. vi-vii.

⁶ *The Alpine Silver Mining Co., of Colorado* (New York: Mining Record Press, 1879), fold-out map.

⁷ Elk Mountain Railway Company, Certificate of Incorporation (September 6, 1888), Gunnison County.

⁸ Ormes, *Railroads and the Rockies*, p. 144.

⁹ Buena Vista and Gunnison Railway Company, Articles of Incorporation, (October 25, 1881), Gunnison County.

¹⁰ Colorado Western Railroad Company, Certificate of Amendment (June 9, 1879), Gunnison County.

Park and Pacific to extend its line from either St. Elmo or Pitkin; on the Denver and Rio Grande to extend up Taylor Canyon from Almont, or over the Continental Divide from Buena Vista (there is evidence that the D&RG may have actually surveyed this route); and later on the Colorado Midland to extend from either Buena Vista or Aspen. Such an extension by these railroads would not only have opened Taylor Park, but also would have shortened considerably the trip from Denver to Aspen.

On December 5, 1895, the Taylor Park Mining Company was incorporated for twenty years, with a capital stock of \$5,000,000. A very important section in the incorporation papers was to have a direct effect on the founding of the Taylor Park Railroad a few years later. In Article II appeared the statement that the company was "to mine, treat, ship and sell all manner of ores and minerals."¹¹ The key word here is "ship." Five years later, May 6, 1901, Thomas T. Goodale, one of the four incorporators of the Taylor Park Mining Company, was to be instrumental in the organization of the Taylor Park Railroad Company to help lower the costs of transporting low-grade ores.¹²

The Gunnison newspapers in May, 1901, reported the filing of the Taylor Park Railroad Company incorporation papers with great enthusiasm, foreseeing a new boom in the Taylor Park district. The line had a capital stock of only \$100,000, to be used for the securing of a right-of-way, but there was every indication that expansion would take place. The newspapers guessed the line would run over Cottonwood and Taylor Passes between Buena Vista and Aspen. As an afterthought, one paper suggested that winter weather along with Taylor and Cottonwood Passes might present a problem.¹³

The railroad officials had difficulty deciding which of the two passes to use over both the Elk Mountains (Pearl or Taylor Pass) and the Continental Divide (Cottonwood or Tin Cup Pass). Reports circulated freely while the line was being surveyed, stating that this pass or that pass had been chosen. As a matter of fact, the company actually did survey two different routes, not making the final decision until the middle of 1902. As if this were not confusing enough, the newspaper reporters

of the time could not make up their minds as to the name of the pass between St. Elmo and Tin Cup—Tin Cup Pass today. At times it was referred to as "Chalk Creek Pass," "St. Elmo Pass," "Alpine Pass" (not to be confused with the Alpine Pass the Denver, South Park and Pacific used for their Alpine Tunnel), the "Pass between St. Elmo and Tin Cup," and, of course, just plain "Tin Cup Pass."

After incorporation in May, 1901, it did not take long for the Taylor Park Railroad Company to place men in the field. By June 6, Aspen had become the center of operations for the



This view of Aspen was taken after 1900.

railroad. Fifteen surveyors were camped four miles up Castle Creek (toward Ashcroft) surveying a proposed route up Conundrum Gulch to the marble quarries at its head, then over to Ashcroft, to Taylor Park, and on to Buena Vista. There was every reason to believe the line would be into the park by the

¹¹ Taylor Park Mining Company, Articles of Incorporation (December 7, 1895), Gunnison County.

¹² Taylor Park Railroad Company, Articles of Incorporation (May 8, 1901), Gunnison County.

¹³ *Gunnison News-Champion*, May 10, 1901.

end of the summer.¹⁴ By July 25, the survey was reportedly within two weeks of completion to Ashcroft, with grading scheduled to start in six weeks.¹⁵ Optimism was running high.

The situation was complicated in August when the Denver and Rio Grande took an interest in a possible railroad route through Taylor Park. The *Aspen Democrat* reported: "The party of engineers who have been making a survey of Taylor Park and Cottonwood Pass for the Denver and Rio Grande Railroad have about completed their work."¹⁶ This was the first of many times that the D&RG would be mentioned in connection with the Taylor Park Railroad.

By October, Clough and Anderson, along with Billy Day, appeared to be the probable contractors for the railroad. They had been in and around Aspen looking over the proposed route. The president of the railroad, Archibald A. Stewart, was expected to announce the winner of the contract, and the whole town was excited to see work start.¹⁷ On the eighteenth of October, the Gunnison newspapers reported the route would go over Taylor and Cottonwood Passes, probably with a one-thousand-foot tunnel necessary for the latter Divide.¹⁸ (This was the first mention of the possibility that the company might construct a tunnel.)

On October 27, the chief engineers for the Taylor Park arrived in Buena Vista to survey the route up Cottonwood Creek, "and also to carefully inspect the mountain peaks where it is thought tunnels will likely be built."¹⁹ Active work was promised within thirty days. The *Rocky Mountain News* commented that the Taylor Park Railroad "besides opening an extensive mineral region, will be a very picturesque route."²⁰ And the *Denver Times* thought that the "railroad will help much. With the new road and reasonable freight charges, the district would produce immense tonnage."²¹

The Denver newspapers were optimistic about the success of the Taylor Park Railroad. They stated that the survey was completed from Aspen and predicted trains would be running into Taylor Park by the following year. It was also noted that they would be standard-gauge trains. This factor would be important for two reasons. Initially, the larger standard-

gauge engines could not pull the steep grades or round the sharp corners of their narrow-gauge cousins. The line would, therefore, have to limit itself to the more gradual passes (Taylor and Tin Cup Passes). It would also follow that the line would have to connect with a standard-gauge line once it left the park. Both the Rio Grande and the Colorado Midland at Aspen and Buena Vista were standard gauge, but the Colorado and Southern at St. Elmo was narrow gauge.

A mild winter in 1901 made it possible for the survey crews to remain in the field into the new year. The line was surveyed directly to Tin Cup "avoiding high ground for an easy grade."²² Early in January, the company announced that it would connect with both the Colorado Midland and the D&RG at Aspen and Buena Vista, and said that the survey should be completed shortly. "The Taylor Park road has not been making much noise lately, but people from that section seem just as convinced as ever that the track will be laid this next season."²³ By February, 1902, the newspapers were making their own noise:

It has been practically assured that the district is to have a through railroad, capable of handling the output of the mines of this district, and furnishing a means of transportation for the vast bodies of ore now stored in nature's repositories.

With the advent of the railroad, this district will witness a boom that will make the oil booms pale into insignificance.²⁴

In April of 1902, an unnamed Boston trust company purchased \$800,000 in bonds from the Taylor Park Railroad Company, making it possible to start construction of the line. Newspapers from Denver to Gunnison ran articles announcing the imminent start of the line: "Assured railroad into Tin Cup means great mining improvement," and "The railway to go."²⁵ One paper did add a pessimistic comment that "the cut-off between Aspen and Buena Vista will be ready for use before the year closes if no big tunnels have to be constructed."²⁶ It was the construction of such a tunnel that was going to slow up the railroad.

In May, while one survey party was finishing its work between Tin Cup and Tin Cup Pass, another was working down the Taylor River Canyon to a mining area located at Lottis

¹⁴ *Gunnison Republican*, June 6, 1901.

¹⁵ *Ibid.*, July 25, 1901.

¹⁶ *Aspen Democrat*, August 8, 1901.

¹⁷ *Gunnison Republican*, October 3, 1901.

¹⁸ *Gunnison News-Champion*, October 18, 1901.

¹⁹ *Gunnison Tribune*, November 1, 1901.

²⁰ *Rocky Mountain News* (Denver), October 29, 1901.

²¹ *Denver Times*, November 2, 1901.

²² *Rocky Mountain News* (Denver), December 25, 1901.

²³ *Gunnison News-Champion*, January 3, 1902; January 24, 1902.

²⁴ *Rocky Mountain News* (Denver), February 10, 1902.

²⁵ *Ibid.*, April 16, 1902; *Denver Times*, April 19, 1902.

²⁶ *Gunnison Republican*, May 15, 1902.

Creek. At the same time, the well-known railroad contractors Orman and Crook of Pueblo moved their grading equipment into the Buena Vista area, reportedly to work on the Taylor Park line.²⁷

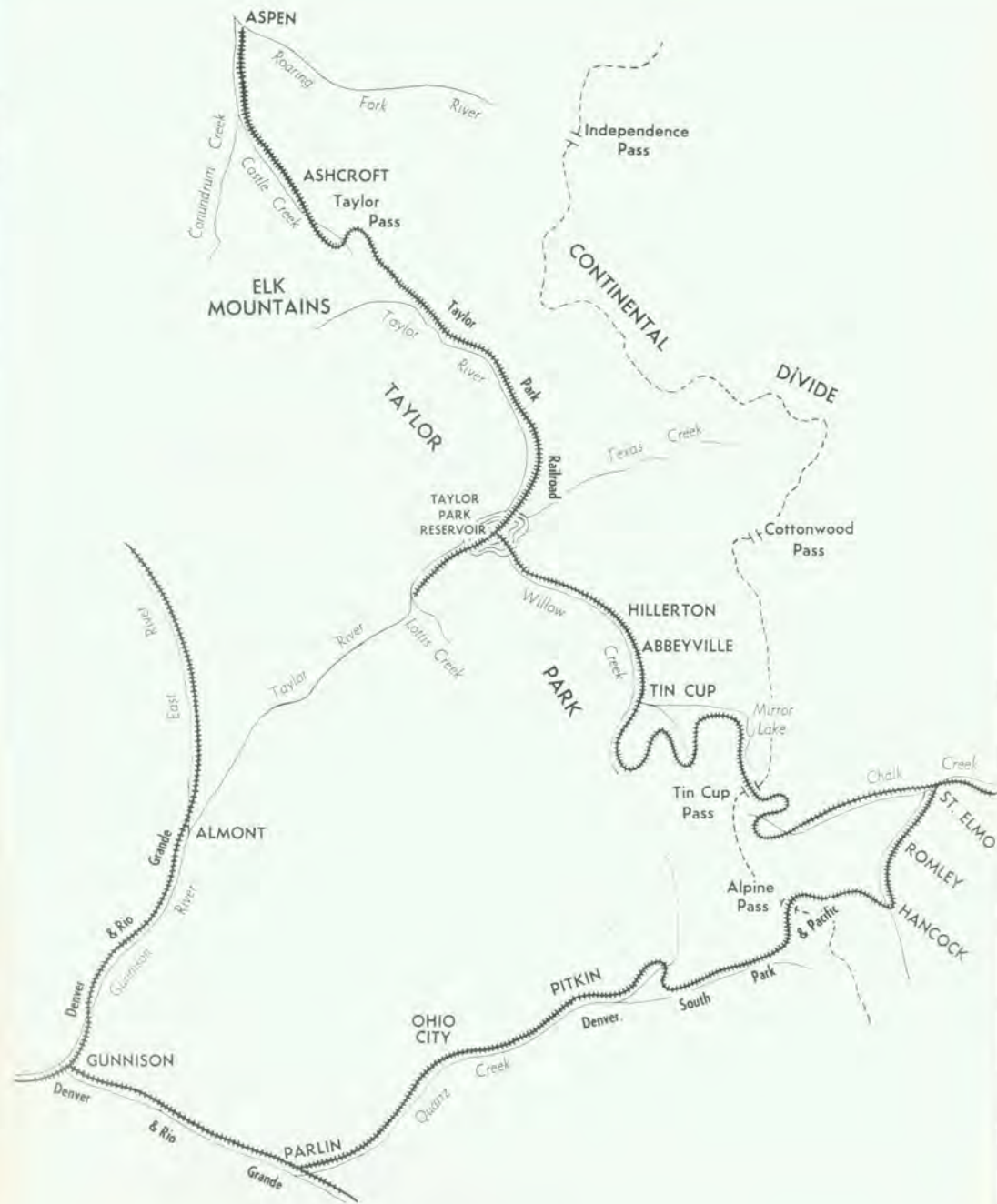
There is great activity going on, and a camp has been established between Buena Vista and Alpine Pass, ready to begin grading and laying tracks. There are at least 1,200 men in camp besides surveying parties through the district.

Orman and Crook, railroad contractors, now have four camps established in and around Buena Vista. A force of several hundred men is engaged in straightening the Denver and Rio Grande tracks on both sides of Buena Vista and on the east side an eight-mile grade is being built, including two iron bridges across the Arkansas River. . . .²⁸

While this above report would indicate the Taylor Park Railroad was making considerable progress toward construction, it does not seem likely that the company would need to rework standard-gauge D&RG track; or that they would be working on eight miles of grade east of Buena Vista; or that they would need two iron bridges across the Arkansas River. The work was probably being done by Orman and Crook for the Denver and Rio Grande. This hypothesis is further strengthened by the fact that there was considerable speculation during this period that the Rio Grande, the Colorado Midland, or the Colorado and Southern was financing the Taylor Park line. These rumors were emphatically denied shortly thereafter by the people in charge of the Taylor Park company.

On June 6, 1902, Thomas T. Goodale, secretary-treasurer of the Taylor Park Railroad, announced the company would construct a 115-mile line between Aspen and Buena Vista starting at Buena Vista. The line would connect with the Colorado Midland and the Colorado and Southern, using the old Denver and South Park grade to St. Elmo. The company planned to have trains running to Taylor Park by January 1, 1903, and to Aspen by June, 1904. Total estimated cost would be \$3,500,000. This sum (considerably above the \$800,000 in bonds posted earlier) would be financed entirely by Boston capitalists who were completely independent of the other Colorado railroads.²⁹

The directors of the Taylor Park company finally approved the route from Ashcroft to a point four miles northwest of Tin Cup on July 9, 1902. On July 17, they filed a plat of their proposed route with the government land office in Gunnison



²⁷ *Gunnison News-Champion*, May 16, 1902.

²⁸ *Ibid.*, May 23, 1902.

²⁹ *Ibid.*, June 6, 1902.

son. The 34.41-mile main line was to follow Castle Creek out of Ashcroft, go over Taylor Pass to Bowman and Dorchester, follow the Taylor River to its junction with Willow Creek (at the present-day location of the Taylor Park Reservoir), and then continue a short distance toward Tin Cup, stopping four miles short of the town. From this main line, a Gunnison branch would extend down Taylor Canyon a distance of 5.85 miles to the mouth of Lottis Creek. There was speculation that the line would be extended at a later date down the canyon to Almont and the Denver and Rio Grande; then, perhaps, on to the coal fields near Crested Butte.³⁰

President Stewart and Secretary Goodale announced that grading would start within thirty days. The board of directors, they said, was in the process of deciding on one of two routes over the Divide from Tin Cup (either Cottonwood Pass or Tin Cup Pass—both of which had been surveyed). Once the decision was made, work would start on both ends of the line simultaneously.³¹

On July 30, 1902, the directors made up their minds, deciding on Tin Cup Pass. This 13.86-mile stretch was to take up where the last survey left off, pass Tin Cup, gain elevation through a series of switchbacks near the head of Willow Creek, "thence north northeast and south past Black [Mirror] Lake to the summit of St. Elmo Pass."³²

The survey crews continued to plat the route from the pass to St. Elmo, including work on the tunnel beneath the Divide. By the first of November, the tunnel survey was completed and Orman and Crook were awarded the contract for construction.³³

Indications are strong at this writing that the preliminaries for the building of the long-talked-of Taylor Park Railroad are completed and that actual construction is to commence within the next fortnight. Many wise ones prophesied that it would never get beyond the "railroad on paper" period, but their prognostications are proving wholly delusive.

Work will commence in a few days on the 1600 foot tunnel for the Taylor Park Railroad, and will be pushed to completion as fast as possible. It will be worked from both sides of the range, and about 200 men will be employed.³⁴

In the middle of December, it appeared that construction might be delayed until spring, but on December 27, "a large force of men and a grading outfit passed through Buena Vista

³⁰ *Gunnison Tribune*, July 18, 1902; *Gunnison News-Champion*, July 18, 1902.

³¹ *Gunnison Republican*, July 10, 1902.

³² *Gunnison Tribune*, August 8, 1902; *Gunnison News-Champion*, August 8, 1902.

³³ *Gunnison Republican*, August 21, 1902; November 27, 1902.

³⁴ *Gunnison Tribune*, December 5, 1902.

this morning for St. Elmo, where grading will be begun immediately at the mouth of [the] . . . tunnel."³⁵ Hopes were high that the tunnel would be completed by spring.

Saturday, January 3, 1903, more men with wagons and other implements arrived at Buena Vista from Aspen and left immediately for St. Elmo, where bunkhouses, barns, and a sawmill were supposedly under construction in preparation for



The tents of the railroad construction camp are visible at the right (arrow) in this view of the old wagon road over Tin Cup Pass.

actual work on the tunnel. Six days later, two railroad cars of materials were sidetracked at St. Elmo for use on the tunnel. One car contained a five-ton boiler, eight machine drills, and other assorted tools; the second car contained blasting powder. The rumor was also circulated that the Taylor Park company was having difficulty coming to terms with the Colorado and Southern about the use of right-of-way from St. Elmo. It appeared that the Taylor Park Railroad might have to construct its own grade down Chalk Creek to the Arkansas River.³⁶

As it became obvious that work was going to be done on the line, speculation again arose that the Colorado and Southern

³⁵ *Ibid.*, January 2, 1903.

³⁶ *Gunnison News-Champion*, January 16, 1903.

or the Denver and Rio Grande was behind the move, in an effort to bypass the storm-swept Alpine and Tennessee Pass tunnels respectively. Again, A. A. Stewart emphasized that although his railroad intended to be a feeder to both the C&S and the D&RG, it had financial connections with neither. The Boston capitalists behind the enterprise were interested solely in providing cheap transportation for their mining ventures in Taylor Park.³⁷

Some time between December, 1902, and January, 1903, the contract for construction of the actual tunnel under Tin Cup Pass had changed hands. The equipment that was arriving in Buena Vista on January 3 belonged to Joseph S. Hunn and Company of Aspen, and on February 12, the newspapers announced that this company had the contract.³⁸ The new outfit, under the supervision of a Mr. Lovejoy, did not wait long to get to work, for on February 13 the Gunnison newspapers carried the following account:

This week the contractors commenced the preliminary work and soon machine drills will be cutting through the formation at a rapid rate. The company has been at work several days cutting timber to be used in the tunnel and in the necessary buildings. It will require 70,000 feet of lumber, 40,000 feet of which has already been cut.³⁹

The route from St. Elmo to the tunnel was to be six and one-half miles long, following the northern bank of the North Fork of Chalk Creek to timberline and then across the open flat "by means of considerable openwork cutting."⁴⁰ This southern exposure would make the line much easier to keep open during the winter than the Colorado and Southern line to the Alpine Tunnel.

It was probably during the spring and summer of 1903 that the Joseph S. Hunn company did most of its work on the east side of Tin Cup Pass. Among the buildings constructed, perhaps

Grading on the east side of Tin Cup Pass.



using some of the forty thousand feet of lumber reportedly cut, were two which housed equipment (including the five-ton boiler and the machine drills) located near the mouth of the tunnel; a small unidentified building just south of the tent camp in the big meadow; and a "long, low building" of "just boards and tar paper" which included a bunkhouse, a kitchen and dining room, and an office and sleeping room for Mr. Lovejoy.⁴¹

On April 29, 1903, the board of directors of the Taylor Park Railroad met in Boston to amend the articles of incorporation, increasing the capital stock of the company from \$100,000 to \$3,500,000, in 35,000 shares worth \$100 each. In the signatures of the directors, Thomas T. Goodale was still listed as secretary, but Francis E. Tucker was the new president, replacing Stewart. The amendment called for by the directors was approved in a meeting of the stockholders in Denver on June 10, 1903. (For some reason, however, the certificate of amendment was not filed with the county clerk in Gunnison County until March 12, 1904—almost a full year later.)⁴²

With actual construction started from St. Elmo, and with every reason to believe that work would be pushed from the other end of the line as well, mining activity in Taylor Park picked up considerably, and was, in part, responsible for the boom in Tin Cup the following year. With winter, however, activity stopped on the tunnel and in Taylor Park as well.⁴³

In 1904, the Taylor Park Railroad tried once again to get construction going on the line. When the certificate of amendment to the articles of incorporation was filed in March, it was hoped that "work will be aggressively pushed during the year."⁴⁴ Through April, May, and June, optimistic reports continued to appear in the Gunnison newspapers. The railroad had finally overcome the opposition of the other railroads, the funds were available, "the inconsequential people who first conceived this route have passed away from its purposes" and new men were pushing a 115-mile line "of broad gauge road in the most

³⁷ *Ibid.*, January 16, 1903.

³⁸ *Rocky Mountain News* (Denver), February 12, 1903.

³⁹ *Gunnison Tribune*, February 13, 1903.

⁴⁰ *Gunnison News-Champion*, February 13, 1903.

⁴¹ The quote is from a letter from Christine C. Wyse (formerly Mrs. Thomas Launder) to the author, July 19, 1967. The location of the sawmill, if there ever was one, cannot be ascertained today, and to the best of Mrs. Wyse's knowledge, there was no sign of it even in 1904. It is quite possible that the company did not have a sawmill of its own, or if it did, that it was not a permanent structure.

⁴² Taylor Park Railroad Company, Certificate of Amendment to the Articles of Incorporation (March 12, 1904), Gunnison County.

⁴³ *Gunnison News-Champion*, April 24, 1903; May 15, 1903; October 23, 1903.

⁴⁴ *Colorado Republican* (Buena Vista), April 7, 1904.

thorough manner and with heavy steel rails."⁴⁵ The tunnel was to be completed soon and trains would be running into Tin Cup before fall.

The eastern capitalists behind the railroad, however, were apparently having second thoughts as to the advisability of the line. On July 15, 1904, the following article appeared in a Gunnison newspaper:

The Taylor Park Railroad project is by no means dead, indeed its prospects were never brighter than today. For several weeks officials of the road with two mineral experts, H. A. Keeler of New York and A. A. Steele of Omaha, representatives of the capitalists behind the road, have been in Taylor Park examining every mine. . . . The route surveyed over Tin Cup Pass to St. Elmo has a two and one half per cent grade, the lowest of any railroad crossing the Continental Divide.⁴⁶

From all indications, the two experts were very pleased with the results of their tour. But their press releases must have concealed their real opinion about the area, for from July, 1904, to January, 1906, little or nothing was heard from the mining experts, the eastern capitalists, or the Taylor Park Railroad in general. The newspapers tried to round out the year as optimistically as possible with beautiful pictures of Taylor Park, glowing statements of the wealth buried in the mountains waiting to be discovered, and statements such as: "A railroad would transform Taylor Park almost at once into the busiest district of Colorado" and "Taylor Park needs a railroad badly, and it is sure to come soon."⁴⁷ The railroad apparently did not anticipate better times as readily as the newspapers did, for in December, 1904, the Taylor Park Railroad Company hired Thomas E. Launder of St. Elmo to watch the equipment and buildings on Tin Cup Pass.

The only published mention of a railroad in 1905 came from the other side of the Continental Divide and the *Colorado Republican* in Buena Vista. On February 9, an editorial advocated a railroad from Buena Vista to Taylor Park through the Divide at the head of Cottonwood Creek. The author pointed to three advantages of such a line: (1) men could live in Buena Vista and work in Taylor Park with quick and economical transportation between the two; (2) an outlet would be provided for the low-grade ores found in Taylor Park; (3) if the line were ex-

tended, Buena Vista would have access to the fruits at Paonia, with easy transportation for freight and passengers alike.⁴⁸ In March, the paper was pushing for an electric railroad at least up South Cottonwood Creek to handle the ores of that area. It was pointed out that adequate water power was available in the area to make such a line both feasible and profitable.⁴⁹

Between December of 1904 and August of 1905, Thomas Launder and his bride Christine lived at the construction camp near the tunnel. They lived in the room of the boarding house



Christine and Thomas Launder posed with Mrs. Launder's niece Lottie Norris (left) in front of the boarding house in August, 1905.

which was originally built for Mr. Lovejoy, and although T. T. Goodale did visit the camp on occasion while the Launders lived there, no actual work was done by the company, and apparently Mr. Launder was not paid for all his services as the watchman. On December 21, 1905, the following article appeared in the *Colorado Republican*:

Charles Ankele, the sheriff from Buena Vista, arrived here [at] St. Elmo to attach the property of the Taylor Park Railroad Company, for Thomas E. Launder.⁵⁰

⁴⁵ *Gunnison Tribune*, April 29, 1904; June 3, 1904; *Gunnison Republican*, June 9, 1904; June 16, 1904.

⁴⁶ *Gunnison News-Champion*, July 15, 1904.

⁴⁷ *Ibid.*, December 9, 1904; *Gunnison Republican*, December 29, 1904.

⁴⁸ *Colorado Republican* (Buena Vista), February 9, 1905.

⁴⁹ *Ibid.*, March 2, 1905.

⁵⁰ *Colorado Republican* (Buena Vista), December 21, 1905.

With 1906, events appeared to take a turn for the better. On January 4, Buena Vista City Clerk W. H. Davis received a letter from New York capitalists promising a railroad for Taylor Park if Buena Vista would help get the necessary franchises and rights-of-way. The county commissioners, the chamber of commerce, and the city council quickly passed resolutions supporting the new move. On January 17, T. T. Goodale, now president of the Enterprise Mine in Taylor Park, stopped in Buena Vista to get support for the proposed electric line—freight and passenger—to be built into Taylor Park. He said that either St. Elmo or Buena Vista would be the outlet, depending on which community displayed more interest. For the remainder of the month, Buena Vista worked hard to secure the railroad, and felt the chances were really “quite promising.”⁵¹

By January 26, news of the activity across the Divide reached Gunnison. Under the headline “Trolley line to Taylor Park,” the following story appeared:

Buena Vista dispatches indulge in considerable talk of a proposed trolley line from that city into Taylor Park. Instead of the original Taylor park railroad the idea is to run a trolley line over Cottonwood Pass. The line would cost a million and a half but would be ten miles shorter [in] route. . . .

Innumerable mountain streams furnish the power, and every mine is but waiting for its installation when they will use the electrical energy, it having demonstrated that the power can be transmitted by wire much cheaper than an equivalent amount of power can be made by steam.⁵²

The article went on to say that three different companies were looking over the prospects of building such a line, but that the city of Buena Vista had already granted franchises and rights-of-way to one company (probably the one represented by Mr. T. T. Goodale).

“ELECTRIC LINE FOR TAYLOR PARK ALMOST ASSURED.” In three-quarter-inch red headlines across the full width of the paper, the *Colorado Republican* told the world of Buena Vista’s good fortune on February 1, 1906. A story which took up almost the entire front page told how a Mr. Albert B. Stanford of Denver had made plans to build an electrical dam across the Taylor River, backing up 4,500,000 cubic feet of water into Taylor Park. The electrical power from this dam, along with additional power from South Cottonwood Creek, would provide more than enough energy to operate the trolley line

over the Divide. In addition, Mr. Stanford expressed a willingness to cooperate with the New York capitalists in fulfilling their plans.⁵³

With a blaze of glory the Taylor Park Railroad faded from view. After the red headlines of February 1, no further mention of the project appears in either Buena Vista or Gunnison newspapers, and Mr. Stanford’s dam did not materialize immediately. On September 3, 1913, the secretary of state of Colorado issued a statement to the Taylor Park Railroad Company declaring the line “defunct and inoperative,” marking the official end of the line.⁵⁴

Why did the Taylor Park Railroad fail? It surely got beyond the “railroad on paper” stage, a gap so many Colorado railroads failed to bridge. The two major reasons would probably be: (1) lack of capital to get started; and (2) lack of ore in Taylor Park to keep going. The failure of the railroad to plan ahead may be seen in the difference between the initial incorporation at \$100,000 and the subsequent amendment three years later at \$3,500,000. Had the company started with the latter sum, it is likely more progress would have been made. It is doubtful, however, that the enterprise would have succeeded even then, for despite the optimistic values and quantities quoted from Taylor Park, most of the ore was not worth as much as newspaper reports would lead one to believe, and the quantity never approached that necessary to support a railroad. These facts were probably contained in the report of the two “mineral experts” during the summer of 1904.

The major accomplishment of the Taylor Park Railroad was its building of a construction camp and its actual start on a railroad tunnel under the Continental Divide at Tin Cup Pass. The company probably never owned property in either Chaffee County or Gunnison County, as the county clerk’s offices in both counties contain no record of the company ever purchasing land. The property Mr. Launder attached in 1905 probably consisted of only the construction camp along with any machinery that remained from the car sidetracked in St. Elmo on January 9, 1903.

Construction was most likely limited to work on the tunnel and in the immediate area of Tin Cup Pass. Today, however, no grading can be discerned anywhere along the proposed route. The activity reported at Buena Vista in 1902 was, almost

⁵¹ *Ibid.*, January 4, 1906; January 18, 1906; January 25, 1906.

⁵² *Gunnison News-Champion*, January 26, 1906.

⁵³ *Colorado Republican* (Buena Vista), February 1, 1906.

⁵⁴ Filed in the office of the Secretary of State, Denver.

without question, for the Denver and Rio Grande, and was not associated with the Taylor Park line. The tunnel itself was not completed, as can be witnessed by the lack of tailings at the portal. The only known rolling stock the company had was a small, standard-gauge handcar used for bringing rocks out of the tunnel.⁵⁵

Today the rocky trails across Taylor and Pearl Passes are impassable by car; Taylor Park Reservoir covers the site where the Gunnison branch of the Taylor Park Railroad was to start down the canyon; and a National Forest campground occupies the mouth of Lottis Creek. Ashcroft, Bowman, Dorchester, Tin Cup, and St. Elmo are all ghost towns now—except for the few summer months when tourists travel into the area. Cottonwood Pass now has a modern dirt road over it, and while Tin Cup Pass can be driven from the east by car, the west side is for four-wheel-drive vehicles only.

The steep hill one climbs on the east side of Tin Cup Pass, just before breaking through timberline, is known as "Sawmill Hill" (named after a sawmill which was active in the vicinity around 1880). At the top of this hill the road makes a sharp turn to the right before continuing its ascent. Here was located the major living area for the construction workers. On the left is a large meadow where most of the men lived in tents, while on the right, and slightly above the road, close investigation of the small clearing will reveal the foundations and trash dumps of the boarding house where Mr. Lovejoy and the Launderers lived.

The portal of the Taylor Park Railroad tunnel may be seen a few hundred yards below the summit of Tin Cup Pass on the eastern slope. Careful investigation in the shrubs and bushes around the portal will disclose the locations of the equipment buildings, along with some discarded machinery. Little is left of the paper railroad and its rocky tunnel—a monument to dreams.

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⁵⁵ The wooden remains of the hand car may be seen today near the tunnel, while the wheels are in the possession of Francis B. Rizzari of Denver.

Three Governors in a Day

BY MARJORIE HORNBEIN

"Well, we've got to win this election, boys," said Denver Chief of Police Michael Delaney. "You want to do the best you can. We will see that you don't go to jail. You know what to do; do the same as you did before and do all you can. If we don't win this election the chances are we will get ditched. You know what you got before—protection."¹

These singular instructions were delivered early in November, 1904, at a meeting held in Kopper's Hall. In attendance was a group of several hundred persons of low repute and few scruples—gamblers, saloon keepers, ex-convicts, and prostitutes. They were the Democratic "repeaters" who were paid to go from precinct to precinct and vote the Democratic ticket at each polling place. Private Detective William Green, who later was sentenced to jail for his role in this election, also addressed the gathering and instructed it in the art of repeating. He urged the repeaters to swear in any vote which might be challenged.²

These plans for fraudulent voting were only a part of the illegality that marked the Colorado gubernatorial campaign of 1904 in which former Governor Alva Adams, the Democratic candidate, challenged the incumbent, Republican James Peabody.³ Interest in this contest was so great that it quite overshadowed the presidential campaign between President Theodore Roosevelt and Alton B. Parker. "Never before in the history of Colorado," said Republican attorney John Waldron, "has there been such rancor and bitterness engendered and manifested in any gubernatorial race."⁴

¹ Quoted in Colorado, General Assembly, *Journal of the General Assembly of the State of Colorado in Joint Session*, 15th sess., 1905, XIV, 122. Hereafter referred to as *Joint Session Journal*.

² *Ibid.*, 224.

³ Alva Adams was elected governor for the first time in 1886 and for a second term in 1896. James Peabody had been mayor of Canon City prior to his election as governor in 1902.

⁴ *Joint Session Journal*, XIV, 210.

During the same week in which the Democratic group met at Kopper's Hall another political meeting was held—this one in Hastings, the site of the Victor Fuel Company's coal mine in Las Animas County. Here, as in Denver, a captive audience was in attendance; but here Republican county leaders sought to intimidate prospective voters. All miners, saloon keepers, and merchants were required to attend and listen to Delos Chappell, the owner of the Victor Fuel Company. "Old man Chappell," as he was called by the miners, warned them that "the mine was working very good at the present time and that if the Democrats should win we would have to close the mine down. . . . if the Republicans should win and find out that some of the working men voted the Democratic ticket they would fire him [*sic*] from employment of the company."⁵

The Hastings meeting, with Chappell's threat to the miners, indicated the sad state of the entire Colorado mining industry. During Peabody's administration the hostility and conflict between the mineowners and the miners had increased. Continual disputes led to a series of strikes in the Cripple Creek mines and in all the mills of Colorado City; soon all the coal and metal mining regions of the state were affected.⁶

Throughout the struggle, Peabody had worked closely with the Citizen's Alliance, a group formed in Teller, El Paso, and San Miguel Counties, whose purpose was to put down any resistance of the miners. The Alliance was composed of a small conservative circle of Republican businessmen, soldiers, and other citizens who disliked the immigrant miners and sought to prevent any improvement in their status. This group, despite its obvious prejudice and bias, was the one to which the governor turned for advice before making any decision in regard to labor.⁷

By September, 1904, with the election only two months away, Republican leaders realized that Peabody's chances for re-election were declining. Drastic measures had become necessary to insure a Republican victory in the mining counties, for in that area lay Peabody's only chance of defeating Adams, who admittedly held strength in Denver.

Therefore, the Republicans engaged in a vigorous campaign which included widespread coercion and intimidation of

the voters, the majority of whom were the miners. This was not a difficult task, for their employers were all Republican leaders and members of the Alliance, as well as of the powerful Mine Owners' Association. (This association controlled the issuance of "work cards," and without such a card a miner had no chance of finding employment.) For example, Clarence Fitch, assistant secretary of the association, told Edgar McDaniels, a miner working in the granite mine in Cripple Creek, that if the Democrats won "there will be no work in this camp," and warned him that he would lose his job if he voted for Adams.⁸ And Delos Chappell brought a carload of men to the polling place in Hastings and insisted on registering them. Chappell, though, denied any intimidation of his men. "I think perhaps I could be construed as advising them," he admitted, however. "I think my remarks were along the line that our interests were mutual in the election."⁹

Only after election day did the miners tell of their exploitation by the Republicans. McDaniels said: "If the people had been allowed to go to the polls and vote as they seen fit, without any intimidation, coercion of any kind, the Democratic ticket would have been elected by at least a thousand votes." Tony Disneria believed that the miners "would like to vote for Adams awful well, but they were afraid." Emil Pfeiffer said that the Democrats were afraid to work in the campaign or even to go to the polls.¹⁰ The Republicans had done their job well; on election day the miners voted for the man whom they hated and feared. They needed the jobs in the mines, so their ballots were cast for Governor Peabody.

Due to the activity of the powerful Democratic machine, election day in Denver was also marked with corruption and fraudulent voting. The repeaters who had been coached at the meeting in Kopper's Hall moved from precinct to precinct to vote under false names. Frequently they repeated in the same polling place after having disguised themselves. The women wore bathrobes, kimonos, or evening dresses for their different appearances. They were aided by election officials and the police, just as Police Chief Delaney had promised. But the next morning, the police drove them all out of town, for they were no longer of any use, and they might cause trouble.¹¹

⁵ Deposition of Pasquale Pelino, *ibid.*, III *Contestee*, 2227.

⁶ See George G. Suggs, Jr., "Prelude to Industrial Warfare: The Colorado City Strike," *The Colorado Magazine*, XLIV (Summer, 1967), 241-62.

⁷ See George G. Suggs, Jr., "Colorado Conservatives vs. Organized Labor: A Study of the Peabody Administration" (unpublished Ph.D. dissertation, University of Colorado, 1964) for a study of this period.

⁸ Deposition of Edgar McDaniels, *Joint Session Journal*, III *Contestee*, 2080.

⁹ Deposition of Delos A. Chappell, *ibid.*, V *Contestee*, 449.

¹⁰ Deposition of Edgar McDaniels, *ibid.*, III *Contestee*, 2082; deposition of Tony Disneria, *ibid.*, III *Contestee*, 2139; deposition of Emil Pfeiffer, *ibid.*, III *Contestee*, 2026-27.

¹¹ *Ibid.*, XIV, 123.



Alva Adams

Clearly, both parties had acted in ways that prevented a free election. Both had engaged in fraud in an effort to elect their candidate, for control of the governor was essential to the control of Colorado politics. Nevertheless, when the votes were canvassed and tabulated, they showed that Alva Adams had received 123,092 votes to 113,754 for the incumbent, Governor Peabody.¹² Alva Adams was elected on the face of the returns.

On January 4, 1905, the Colorado legislature met in joint session. Tension was immediately apparent when the State Board of Canvassers presented the election returns. Peabody at once submitted a protest, demanding that all the precincts from Denver be rejected as fraudulent. In response to the governor's demand, Republican leaders presented a resolution to the joint session calling for appointment of a committee of five senators and ten representatives which would investigate the Denver vote.¹³ The Democrats and those Republicans unfavorable to Peabody were strongly opposed to any investigation, for if the entire Denver vote were cast out, they feared that Adams might lose his majority.

As the Democrats sought recognition to voice opposition to the resolution, noise and turmoil filled the hall. Observers from the press said that a riot was imminent.¹⁴ Both Lieutenant

¹² James Cowie (comp.), *State of Colorado: Abstract of Votes Cast at the General Election Held the Eighth Day of November, A.D. 1904, For Presidential Electors, State Legislative and District Officers and the Constitutional Amendments* (Denver: The Smith-Brooks Company, State Printers, 1905), p. 20.

¹³ *Denver Post*, January 16, 1905.

¹⁴ *Rocky Mountain News* (Denver), January 6, 1905.



Warren Haggott



William Dickson

Governor Warren Haggott and the speaker of the house, William Dickson, were at the speaker's desk wielding their gavels. Haggott shouted to the secretary of the senate, and Dickson to the clerk of the house, instructing them to call the roll. They did so simultaneously but their voices could not be heard above the din. Haggott, who had presided at the opening of the session, insisted on the right to continue. He hoped to be able to kill the resolution, while Dickson wanted to occupy the chair to further its adoption as a possible means of seating Peabody. Each one tried to outdo the other in pounding his gavel, but neither could subdue the uproar.¹⁵ "Never has there been such wild disorder in any legislature," the *Denver Post* exclaimed.¹⁶

The first session of the joint assembly had become a farce. It ended when Haggott, shouting that the assembly was adjourned, left the hall, followed by a group of Democrats and insurgent Republicans.¹⁷ The proceedings had caused a deterioration of the already critical political situation in Colorado. The schism in the Republican party had seriously weakened its effort to seat Peabody.

The Peabody supporters claimed that the dissident Republicans, who had refused to act with the majority of their party, were under the direction of the Colorado and Southern Railroad, which was supporting Adams. Although the mining and utility corporations had worked for Peabody throughout the campaign,

¹⁵ *Ibid.*; *Denver Times*, January 6, 1905.

¹⁶ January 6, 1905.

¹⁷ *Rocky Mountain News* (Denver), January 7, 1905; *Denver Times*, January 6, 1905; *Denver Post*, January 6, 1905.

and allegedly controlled him,¹⁸ the Colorado and Southern had consistently opposed the governor. This was because of the railroad's fight with the Denver Tramway Company, whose president, William Evans, opposed any expansion of the Colorado and Southern. He feared that if the railroad were successful in building suburban electric roads, such competition would seriously interfere with the profitable interurban runs of the Denver Tramway.¹⁹

Another group of Republicans was friendly to former United States Senator Edward Wolcott, and hoped to restore him to power in Colorado and eventually return him to the Senate. Wolcott had antagonized many corporate leaders by a speech that he delivered before the Colorado Republican convention on September 29, 1903. There he warned of the growing power of corporations in the state, declaring:

The moment the corporations of Colorado which depend on municipalities for aid and for franchise assume to dominate the parties of the state and to make political parties an appendage of corporate needs, then comes the death knell of political integrity.²⁰

This remark was directed against the Denver Water Company and the Denver Tramway Company, especially its president, William Evans. Hostility had long existed between Wolcott and Evans. It was handed down to Evans by his father, John Evans, and dated back to early political battles between the latter and Wolcott. This animosity also disrupted the Republican party, for Wolcott supporters were not favorable to Governor Peabody, whom they considered to be a tool of Evans.

Senator Wolcott, however, did give some support to Peabody during the campaign, but only for the purpose of promoting party harmony. In his last speech, delivered the night before election, the senator gave his candidate a strange tribute:

No man who knows Governor Adams would believe for a minute that he is affiliated and allied with the Western Federation of Miners. And I do not. But in view of the assurances he has given his party as to the use he would make of the law, or rather the non-use of it, I am led to believe the people of this state would be infinitely worse off with a weak man [Adams], than with a vicious one [Peabody].²¹

¹⁸ *The People v. Times Publishing Company*, 35 Colo. 287 (1906).

¹⁹ *Denver Post*, March 6, 1905.

²⁰ Thomas F. Dawson, *Life and Character of Edward Oliver Wolcott, Late a Senator of the United States from the State of Colorado* (New York: For private circulation, 1911), II, 434.

²¹ *Ibid.*, 455-56. Senator Wolcott died on March 1, 1905, while the contest was still being debated in the legislature.

After the first stormy session of the legislature, Republican leaders, recognizing the disunity of their party, feared that their hope of seating Peabody could not be realized—at least for the present. Their position was complicated not only by the several antagonistic groups within the Republican party, but just as seriously by a constitutional amendment which had been passed in the November election. It provided for the unification of the Colorado Supreme Court and the Colorado Court of Appeals and for the addition of two new justices to be appointed by the governor.²²

Until 1904, the Supreme Court was a body of three judges. Its most recent constituents were Chief Justice William Gabbert and Associate Justices John Campbell and Robert Steele. Gabbert and Campbell had consistently supported the Republican position in decisions to which Steele wrote powerful dissents. Therefore, if a Republican governor did not appoint the new judges, the Republicans might lose their control of the state judiciary. This would be crucial for Republican corporate executives, whose causes were frequently adjudicated by the Supreme Court.²³

Thus the prized appointments became the basis for a deal between Democratic and Republican leaders. The compromise provided for the seating of Alva Adams, who was actually entitled to the governor's chair as he had been elected on the face of the returns. But the Republicans would agree to withdraw their protest on the Denver vote and to seat Adams only if Peabody were allowed to appoint the Supreme Court justices before he left office. This arrangement was accepted by the Democratic leaders, and Alva Adams was inaugurated as governor on January 10, 1905.

Two days after the inauguration, Peabody filed a notice of contest against Governor Adams with Secretary of State James Cowie. In his petition Peabody alleged that: "Adams was not legally elected and is not now lawfully holding office; that this contestor Peabody did in fact receive a majority of legal votes cast, and the contestee is in truth and fact a usurper."²⁴ Peabody had apparently disregarded the advice offered

²² Colorado, General Assembly, *An Act to Submit to the Qualified Electors of the State of Colorado Amendments to Sections Five (5), Six (6), Seven (7), and Eight (8), of Article Six (VI) of the Constitution of the State of Colorado, Concerning the Supreme Court*, S.B. 9, Session Laws, 14th sess., 1903, pp. 148-51.

²³ On December 2, 1904, the *Denver Post* exclaimed: "The corporations insist on having the highest tribunal friendly to their cause, as all their cases are finally adjudicated by that body."

²⁴ *Joint Session Journal*, XIV, 9. See also Colorado, General Assembly, *Senate Journal*, 15th sess., 1905, pp. 64-65.

by the *Denver Post* in an open letter addressed to him: "Do the best thing you ever did—come out like a man and say 'I was defeated and I don't want the governorship.'" The *Post* also repeated what Democratic leaders had already alleged, namely, that Peabody was controlled by William Evans: "All hinges on Peabody standing by Evans' game. If the governor would say 'No I will not be a catspaw,' and would emphatically repudiate Evans' scheme to count him in, the ground would fall from under the bum Napoleon."²⁵

At the same time that the *Post* advised Peabody to quit, the *Denver Republican* published an editorial predicting that "Adams will announce that there shall be no stain on the family shield, and will refuse a tainted office."²⁶ But as the advice of the *Denver Post* went unheeded, so the prediction of the *Republican* never came to pass. Both newspapers underestimated the tenacity with which each candidate and his supporters sought the governorship, and with it, control of Colorado politics.

On January 18, Lieutenant Governor Jesse McDonald, a Republican who had been elected in the November election,



Jesse McDonald served as mayor of Leadville and as state senator prior to his term as governor.

appointed a committee of twenty-seven members to hear testimony on former Governor Peabody's challenge to the legality of Adams' election. W. H. Griffith, a liberal Republican representative from Teller County, became chairman of the committee, which consisted of twelve Republican representatives, six Republican senators, six Democratic representatives, and three Democratic senators.²⁷ Each candidate filed a brief in support of his position.

Attorney John Waldron, representing Peabody, claimed:

The entire city government, and all its officials are tainted from core to circumference, with connivance or participation in these election frauds. . . . There is a low moral tone prevailing in this community, and . . . unless this body, by its action in this case, teaches the lesson that elections must not be stolen in the future, you might as well keep away from the polls. . . . Election frauds have gone on, unpunished by the courts in this community, until their commission has become a quasi legitimate occupation.²⁸

In his reply, Adams alleged:

Divers corporations doing business in the State of Colorado and divers mine operators' associations . . . entered into a conspiracy with each other and with the Republican State Central Committee . . . to secure the election of the same James H. Peabody as Governor of the State of Colorado. . . . there was sent into the various counties . . . by the said corporations . . . large sums of money, much of which . . . was used for the purpose of buying votes, padding registration lists, corrupting election officials . . . to prevent a free, fair, and open election.²⁹

After the briefs were filed, the legislative committee prepared to hear testimony. Each side had scores of witnesses and an abundance of evidence to present. Alva Adams secured depositions from more than two thousand citizens who had voiced heated opposition to a decision of the Colorado Supreme Court which in effect had eliminated their votes. The court's decision was made in response to a motion filed by the attorney general which asked it to cast out all the votes from "certain precincts" in Denver on the ground that some of the votes were fraudulent. The court sustained the motion and ordered the election commission to exclude the votes of these "certain precincts" from the abstract of returns.³⁰

²⁵ December 3, 1904.

²⁶ December 21, 1904.

²⁷ *Denver Republican*, January 18, 1905; *Denver Post*, January 18, 1905.

²⁸ *Joint Session Journal*, XIV, 208-09. See also *Senate Journal*, p. 65.

²⁹ *Joint Session Journal*, XIV, 39-40.

³⁰ Decision "On Motion to Restrain the Election Commission from Canvassing Returns from Certain Precincts and to Exclude such Returns in Making up the Official Abstract of Votes," *The People ex rel. the Attorney General v. Tool et al.*, 35 Colo. 243-52 (1905).

Of course, the many honest voters who had cast legal ballots were angered to see their votes thrown out simply because others in the precinct were fraudulent. Public feeling about eliminating so many Democratic votes became intense and created antagonism toward the Supreme Court and the Republican party as well. The citizens who testified for Adams felt that they had been deprived of any participation in government, even of their right to vote.³¹ Their position was supported by an editorial in the *Denver Post* which observed:

The people of Colorado of both parties had become so accustomed to election fraud that they allowed for false vote in estimating the outcome. Many people regarded stuffing ballot boxes as nothing worse than getting drunk. Therefore, the idea of throwing out entire precincts where there was fraud was completely revolutionary.³²

A strange drama was enacted before the joint committee of twenty-seven legislators whose task was to determine and report to the legislature the legally elected governor. The *Post* exclaimed: "If Mark Twain should drop into Denver on one of those nose-reddening days and spend a few minutes before the legislative committee, what a funny book or play could be written on 'How to Steal a Governor in Colorado.'" Waldron said that he believed that no "history of litigation in the civilized world has ever produced the equal of this contest, in the number of witnesses, in the range the testimony has taken, in the volume and mass of proof to be analyzed."³⁴ The evidence grew to 180,000 pages, most of which were testimony from the more than 2,000 witnesses.

As an important part of their case, the Democrats sought to place in evidence the election boxes from Huerfano County, where the Republicans had allegedly cast a large number of fraudulent ballots. The Republicans, of course, resisted any investigation of the Huerfano vote, and tried to prevent Adams from getting a subpoena for Juan Montez, election clerk of the county. When Montez was finally handed a summons in his home in Walsenburg, he refused to come to Denver in compliance with the order until he first received traveling expenses.

³¹ The testimony of Selene Forrester was typical: Q. "You were surprised, I suppose, when you heard that your ballot was thrown out?" A. "I never was more surprised in my life. . . . I would like to get the expert here; I would give him a little tongue lashing. . . . I would just as soon have voted Republican as Democratic if he is a good man, but such a man as Peabody is ought to be ground under our feet." Deposition of Selene Forrester, *Joint Session Journal*, VII *Contestee*, 5541-42.

³² December 22, 1904.

³³ February 9, 1905.

³⁴ *Joint Session Journal*, XIV, 244.

Adams agreed to pay the train fare to Denver, so Montez finally obeyed the summons and appeared before the committee. But he had failed to bring the most important part of the evidence—the ballot box from the Maitland precinct. This precinct, No. 23, was a coal camp run by the Colorado Fuel and Iron Company, and it was here, the Democrats believed, that the Republican vote had been fraudulent.³⁵

Montez was arrested for contempt of the subpoena and was sent back to Walsenburg with the sheriff and ordered to get the Maitland box. Shortly after the train left the station, he jumped and fled under the Sixteenth Street viaduct. Police could not locate him until the following day, when he was found on the outskirts of the city. He was ordered to go to Walsenburg immediately and bring back the Maitland box. This time he obeyed the order, but when he did return with the box, it was found to be empty. Not a single ballot, not even a poll book, was inside. Apparently the ballot box had not even been used during the election, and thus the returns from this precinct were not official.³⁶

The Democrats charged that the corporation officials of the Colorado Fuel and Iron Company had themselves agreed on the vote and notified the election clerk the number to report. "This is the most flagrantly corrupt incident that has ever happened in Colorado history," the *Rocky Mountain News* charged.³⁷ However, aside from this startling disclosure before the investigating committee, the Democrats took no action to exclude the votes of Huerfano County from the official returns.³⁸ While the joint committee was busily engaged hearing evidence in the election contest, the legislature was debating a labor law. This, too, was crucial to the political situation, for labor's struggle against the corporations had been the crux of the gubernatorial campaign. This critical problem involving the rights of the miners and the privileges of the mineowners had been transferred from the mining camps to the legislature, where it still had little chance of being solved.

³⁵ *Ibid.*, III *Contestee*, 1934-47. See also the *Rocky Mountain News* (Denver), February 12, 1905; *Denver Times*, February 15, 1905.

³⁶ *Joint Session Journal*, III *Contestee*, 1934-47.

³⁷ February 16, 1905. Other evidence revealed repeating by the Republicans. Frankie Hayes and Clara Chase, prostitutes from Pueblo, testified that a Republican worker, George Fariss, had told them that they must vote. They could not refuse this request, for Fariss collected their fines regularly, and was able to admit or exclude them from certain areas. Neither was registered, but each admitted having voted twice. Deposition of Frankie Hayes, *Joint Session Journal*, II *Contestee*, 1372-74; deposition of Clara Chase, *ibid.*, 1376-78.

³⁸ Such action was not necessary, for the Democratic party had won the election on the face of the returns.

The assembly did, however, enact a law favorable to labor, but it was a very weak one. It was passed with the support of the conservatives, who feared that the Democrats and the liberal anti-Peabody Republicans might push through a stronger measure. Griffith, the chairman of the joint committee, had the courage to oppose this bill. It provided for an eight-hour work day, as the miners had demanded, but this applied only to "miners." Therefore, Griffith pointed out, all trammers, muckers, and timber men were excluded.³⁹

He submitted an amendment which would include all men working in the mines. This proposal was enthusiastically supported by Democrats and the liberal group of Republicans, but the Peabody supporters voiced heated objections to its broad coverage. Apparently, they had not yet lost control of the legislature, for the amendment was defeated, and the original bill passed on February 28, 1905.⁴⁰

However, the controversy had caused even more friction in the Republican party, and its leaders feared that Peabody's chances of winning the contest had been weakened. Throughout the contest, the *Denver Republican* published daily editorials admonishing Republican leaders to stand united. One article observed that "the Democrats always stand together, while the Republicans divide and allow differences over minor questions to neutralize their efforts."⁴¹

But the Republicans did not heed this advice. During the illness of Chairman Griffith, who was obliged to be absent from several committee hearings, more trouble arose among the Republican members of the committee. A few Peabody supporters took advantage of Griffith's absence and attempted to select a



William Griffith,
chairman of the
joint committee.

subcommittee of three persons to prepare the committee's report for the legislature.⁴² A few days later, when Griffith returned to his post, he was furious that such a plan had even been proposed, and his sharp display of anger was noted in all the newspapers.

The *Denver Republican* found such behavior unjustifiable, and said that "Griffith appeared in a most excitable frame of mind and made allegations that could only be due to aberrations."⁴³ But the *Rocky Mountain News* was critical of the committee, and observed that if the proposed subcommittee had prepared the report, it would actually have been written by John Waldron, the attorney for Peabody.⁴⁴ In this controversy, the Peabody group was defeated, and the plan for the subcommittee was rescinded. But its proponents had split the party, and unity now seemed impossible.

While some Republicans, including Griffith, were favorable to Adams, many were opposed to both candidates and felt that neither was entitled to the office of governor. This group started a movement in the legislature to seat Lieutenant Governor McDonald as governor; they asked Peabody to admit defeat and unite with them for the sake of the Republican party, but Peabody refused. He and his supporters still hoped to have enough votes in the legislature to win the contest and unseat Alva Adams. But they had miscalculated their strength, for on March 2, when the committee started preparation of its reports, only fourteen of its twenty-seven members were willing to sign the majority report which stated that James Peabody should be seated as governor.⁴⁵

In addition to the majority report, two others were submitted to the assembly. One was the Griffith report, which was prepared by Griffith and J. B. Thomson of Boulder, also a Republican. It admitted that "gross frauds were committed by the Democrats," but concluded that "it is not clear that there is sufficient evidence to unseat Adams."⁴⁶ The group supporting

³⁹ *Senate Journal*, p. 350. See also the *Denver Times*, February 10, 1905, and the *Rocky Mountain News* (Denver), February 11, 1905.

⁴⁰ Colorado, General Assembly, *An Act to Declare Certain Employments Injurious and Dangerous to Health, Life and Limb; Regulating the Hours of Employment in Underground Mines and other Underground Workings, in Smelters and Ore Reduction Works, in Stamp Mills, in Chlorination and Cyanide Mills, and Employment About or Attending Blast Furnaces, and Providing a Penalty for the Violation Thereof*, H.B. 1, *Session Laws*, 15th sess., 1905, pp. 284-85.

⁴¹ February 24, 1905.

⁴² *Denver Post*, February 10, 1905.

⁴³ February 21, 1905.

⁴⁴ February 21, 1905.

⁴⁵ *Joint Session Journal*, XIV, 178.

⁴⁶ *Ibid.*, 403; see also the *Denver Times*, March 2, 1905.



Morton Alexander,
author of the
report submitted
by McDonald's
supporters.

McDonald submitted its report, which was written by Senator Morton Alexander and which set forth an ingenious proposal for the legislature's consideration. Alexander charged that:

Brazen, shameless and far-reaching frauds were committed [in the election]. . . . that the complex and confused condition of the frauds thus perpetrated render [sic] it wholly impossible for us to separate the legal ballots from the illegal ones, and equally impossible for us to determine whether contestee or contestor received an honest majority of the legal votes. . . . No person was elected governor . . . because of said fraud. Therefore, be it Resolved . . . that the action of this body in declaring Alva Adams elected Governor of this State be rescinded and revoked and that a vacancy be and is hereby declared to exist.⁴⁷

When Alexander presented this report to the legislature, the entire body was thrown into pandemonium. When the speaker, William Dickson, was finally able to restore decorum, he quickly ruled the report to be out of order. Dickson had been elected speaker due to the efforts of Peabody and William Evans, so he opposed this report, which if adopted, would certainly defeat Peabody. Dickson ruled that the "issue was solely between Peabody, the contestor, and Adams, the contestee, and the decision must be for one of the two contestants."⁴⁸

⁴⁷ Joint Session Journal., XIV, 407-08.

⁴⁸ Ibid., 403; see also the *Denver Times*, March 8, 1905.

This denial of the Alexander report seemed to indicate failure for the plan to place McDonald in the governor's chair. But his supporters were not ready to admit defeat, and Senator John Campbell introduced a resolution that appeared to contain a solution. He asked that the legislature submit to the Supreme Court the question of adopting the Alexander report.

By this time, the Democrats had little hope of retaining Governor Adams in office. Their only victory could be the defeat of Peabody, so they were willing to submit the query to the court. On the other hand, the Peabody supporters felt confident that the Supreme Court would not admit the Alexander plan, but would affirm the ruling of chairman Dickson. In view of such beliefs by each party, a resolution to submit to the court an interrogatory as to the legality of the report was easily passed. It was entitled *In Re Senate Resolution No. 10*, and in it the assembly asked if it could legally adopt a report of the investigating committee which found it impossible to determine the man elected, due to the impossibility of separating the legal from the illegal ballots. The interrogatory was speedily dispatched to the judicial chambers, and, as the Peabody group had hoped, the Supreme Court ruled that the legislature had no power to declare a vacancy. It must find for one of the two contestants.⁴⁹

Despite the court's ruling, the number of legislators who wanted neither Peabody nor Adams was large enough to circumvent its decision. They worked out a curious and clever scheme whereby Peabody was to be declared "lawfully elected to the office of said Governor . . . and entitled to the immediate possession . . . of said office."⁵⁰ But before he could be sworn in, he would be obliged to sign an agreement that he would execute no business, make no appointments, and submit his resignation in twenty-four hours.⁵¹ When he had complied with this latter requirement, McDonald would be sworn in.

Actually, this plan accomplished the same end that the Alexander report had tried to effect. The court's order was in reality disobeyed, though technically the legislature complied with its instruction. It would find for one of the two contestants, although he was to hold office for only one day. McDonald would be governor, and the Republicans would still control the statehouse.

⁴⁹ *In re Senate Resolution No. 10 Concerning Governorship Contest*, 33 Colo. 307-15 (1905). See also *Senate Journal*, pp. 385-89.

⁵⁰ *Joint Session Journal*, XIV, 423-24.

⁵¹ *Rocky Mountain News* (Denver), March 16, 1905.

On March 16, Secretary of State James Cowie received Peabody's signed resignation, although Alva Adams still occupied the governor's chair. In his resignation, the former governor stated: "I initiated the contest before the legislature of Colorado to establish my title to the office of Governor. . . . I deemed it my bounden duty to the people of Colorado and to the Republican party . . . that I should begin and prosecute such contest to the end that the will of the people, lawfully expressed at the polls, should be carried into effect."⁵²

The statement continued with an admission of the division within the Republican party, which Peabody felt had caused his defeat. He said:

To my surprise and regret, I discovered toward the latter stages of the contest, that certain members of the legislature, elected as Republicans, entertained feelings of ill-will and dislike toward me personally; I was of course conscious that an unfortunate schism existed among the members of the Republican party at the time I begun [sic] my contest proceedings, but I was not then aware of the extent to which such schism existed. . . . I feel that I have been cruelly aspersed by those who should have stood by me loyally, but it is not meet that I should dwell upon this topic. For the good of my party, for the best interests of the State I love so dear, the step I am about to take seems necessary. . . .⁵³

In an interview with representatives of the press, the former governor explained his views on the labor disputes which had contributed mightily to his political downfall. He said:

This contest has not been waged for party purposes, or for a political job. It has been carried on that there might be established in Colorado such conditions as would render life and property safe under the law, and would enable a man to work when, where, and for whom he pleases without fear of intimidation or violence.⁵⁴

After Peabody had submitted his resignation and issued his farewell statement, the legislature met to adopt the committee's report, which, paradoxically, would seat Peabody as governor for one day. The report received only fifty-five votes. Forty-one legislators would not even agree that Peabody should hold office for twenty-four hours, and among these were twelve Republicans.⁵⁵

Shortly after the vote was taken, at 5:00 P.M. on March 16, 1905, James Peabody was given the oath of office by Chief

⁵² Resignation of James H. Peabody, Executive Record No. 17 (1905), p. 35, Colorado State Archives.

⁵³ *Ibid.*, 35-36.

⁵⁴ *Rocky Mountain News* (Denver), March 18, 1905.

⁵⁵ Senator William McCarthy was excused from voting, thus making the total vote cast ninety-six. *Joint Session Journal*, XIV, 423. See also the *Rocky Mountain News* (Denver), March 17, 1905.



A native of Iowa, W. H. Gabbert came to Colorado in the late 1870's, ultimately settling in Telluride.

Justice Gabbert, and thus Alva Adams was unseated.⁵⁶ Adams, like Peabody, issued a statement to the press. Both men viewed themselves as martyrs for their party and their state. Peabody, according to his own words, had been sacrificed in order that a man would have the right to work "when, where, and for whom he pleased." Adams believed that he had been sacrificed so that the political power of corporations would be curtailed in Colorado. He said:

The majority of the legislature has bowed to the dictates of corporations. . . . Colorado is a province of the fuel company, the smelter trust, the tramway and allied corporations. By command of the corporations a usurper has been placed in the executive chair. . . . I am calm and moderate in my statements, but do not deny a feeling of intense resentment at being robbed.⁵⁷

Many Colorado voters, including some legislators, believed with Adams that he had been unjustly thrown out of office. Republican representative James Milton filed a protest before the assembly stating:

I hereby protest against the action taken here in unseating the legally elected Governor of Colorado, Alva Adams; as I am convinced that the majority knows that James H. Peabody did not make his case, and cite the action of the majority in

⁵⁶ *Joint Session Journal*, XIV, 424. See also the *Denver Times*, March 16, 1905; *Denver Post*, March 17, 1905; *Denver Republican*, March 17, 1905; *Rocky Mountain News* (Denver), March 17, 1905.

⁵⁷ *Rocky Mountain News* (Denver), March 19, 1905.

demanding and getting said Peabody's resignation before they would seat him, as proof that they know he (Peabody) did not receive a majority of the legal votes of this State.⁵⁸

Several other Republicans in the legislature hastened to corroborate Milton's statement. Representative James Garcia declared that he would not vote for Peabody, because he did not make a case. Thomas Dungan commented that "Peabody did not receive a plurality of the votes." Al Metz explained: "I am as good a Republican as any member of the assembly, but I could not honestly vote for Peabody. Alva Adams was certainly elected." Richard Hoyt, like the above-mentioned representative, felt that Peabody was not the choice of the people.⁵⁹

Former Governor Charles Thomas later wrote an historical essay in which he told of this contest and its strange conclusion. He, too, was critical of the action of the legislature. He thought that:

This compromise was creditable neither to the assembly nor to Peabody. General sentiment condemned it, but the public had to accept it as an ending to a long and unhappy controversy. The assembly unjustifiably evaded its duty, which was to decide the controversy on its merits.⁶⁰

Regardless of public opinion, the plan to seat McDonald was executed as cleverly as it had been planned. On March 17, at 4:25 P.M., Governor Peabody kept his promise and formally ordered his resignation delivered to Secretary of State Cowie, although it was already in Cowie's possession. Five minutes later, Chief Justice Gabbert appeared in Cowie's office with Jesse McDonald, who was promptly sworn in as governor of Colorado.

The Republicans had won the long and bitter contest. Alva Adams, who had been elected on the face of the returns, was defeated. As he prepared to return to private life after his brief term as governor, he received a telegram from Governor Thomas which assured him: "More joy the exiled Marcellus feels than mighty Caesar with the Senate at his heels."⁶¹

MARJORIE HORNBEIN, *who received a master's degree in history from the University of Denver, focused her thesis on several aspects of the 1904 election.*

⁵⁸ *Joint Session Journal*, XIV, 424.

⁵⁹ *Denver Times*, March 17, 1905.

⁶⁰ Charles S. Thomas, "Fifty Years of Political History," *History of Colorado*, ed. James Baker and LeRoy R. Hafen (Denver: Linderman and Co., Inc., 1927), III, 936.

⁶¹ *Rocky Mountain News* (Denver), March 18, 1905.