

AURORA, ILLINOIS, May 23, 1925. 192

Miss Ida M. Tarbell,
New York,

Dear Miss Tarbell:

I have been reading in the June McClure your chapter on the lawyer period of Judge Gary's life. The story has awakened recollections of some very interesting years. The stage you have set, and the characters you have placed upon it--some of them at least--are as familiar to me as "household words." I have therefore had an intense pleasure in reading your story. Naperville and Wheaton--pleasant little towns--are perhaps our favorite route for a week-end drive. The courthouse at Wheaton I have often worked in.

Some of the figures in the story are to me not merely names or puppets. They are human beings, with whom I have had familiar relations. Judge Cody, for instance, Gary's early preceptor and later his partner, I knew well. I had a hand in electing him Judge of our Circuit Court in 1874. He was chosen then to fill a vacancy caused by the resignation of ~~XXXX~~ the presiding Judge. His election came about under singular circumstances. The Illinois constitutional convention of 1870 made a brave endeavor to divorce the election of our high Judges from partisan politics. Their election was set at a time when no other officers were to be elected. For a time no partisan nominations for Circuit Judge were made. This was the case when Cody was elected. He was an old-fashioned Democrat, and this was, and is yet, an overwhelmingly Republican section. Cody was an independent candidate, supported by a farmers' organization known as the Grange, which was making a fight against railroad domination. I was a part owner of an Aurora paper that was in sympathy with that movement, and we had much to do in awakening a public sentiment that gave the election to Cody. I reported many cases that were tried before Judge Cody, so that I came to know him well. Cody was by no means a brilliant lawyer, and he lacked much of being a great Judge. But he was a good man, and was rated as a safe and sound Judge.

After his retirement from the bench, Cody entered into partnership with Elbert Gary and his brother. I think the arrangement was made at the suggestion or request of Cody, because it was something he needed, and, on Gary's part, it was an act of kindness to take care of Cody. The arrangement did not turn out well. Cody was of an easy-going disposition, inclined to sit back and take time to think things over. Gary, on the other hand, was alert, ambitious, mentally and physically active, with a capacity for great and prolonged labor, and with a faculty for arriving at instantaneous judgment on weighty matters, though never rash or hasty. The combination did not pan out well, and a dissolution of the partnership resulted. This led to strained relations between Cody and Gary. Cody turned up as a principal witness in the senile dementia suit

I mentioned in my former letter. Next to Valette, the surveyor, Cody was the most important witness for the Defense.

With Senator Hopkins, also, I was on very intimate terms up to his death a few years ago. I had occasion to render him what he regarded as ~~very~~ important service during the early years of his practice, and that led to ~~very~~ intimate relations. He unbosomed himself to me as to his ambitions, aspirations, hopes and expectations as he did to no one else outside of his family. He and Gary were born in the same year, and they were early attracted towards one another. Each admired in the other qualities he himself did not possess. Hopkins was the cruder nature of the two--strong, self-confident, resourceful, aggressive, but lacking the culture that seemed innate with Gary. The latter was more sophisticated. He had opportunities of contact with city-bred men that were denied to Hopkins in his early years. Hopkins came to the bar in this county at a time when there were among the lawyers a number of very able men. With them a lawsuit was a fight; it was war to the knife, and the knife to the hilt. It was a school of practice in which there was much slugging, and in that school the inborn combativeness of Hopkins was strengthened and sharpened. No one could hit harder, or be more merciless, than he, where that was the game to be played. Gary had his lessons at the bar from a different class of men. He owed something, too, no doubt, to the Gallic strain in his blood. He had the suaviter in modo; Hopkins had in a high degree the fortiter in re.

In your letter of May 8th you said you would be interested in any criticism or comment I might make on your treatment of Judge Gary as a lawyer. I hesitate at offering anything like criticism. The story is well told, and conveys clear ideas of Gary's progress at the bar. But, as you contemplate a book after the story has run its course in the magazine, perhaps one or two suggestions will not be unwelcome. If the story has a fault, it is that it is a little too rose-colored. This is to be a friendly biography, and of course it should convey a favorable impression of the subject, but if that is carried too far, it tends to produce reaction in the reader. Shade does not necessarily dim the light. It may be so used as to accentuate the light.

I think the effect of the story may be enhanced by a more elaborate stage-setting for your hero's entrance upon his work. He came to the bar on the eve of revolutionary changes in the law--changes that have been so gradual that historians have taken little notice of them. Nevertheless a tremendous advance has been made in the law itself, and in its interpretation by the courts. This advance is in conformity with the changes wrought in the social structure by the great inventions and discoveries of the last two or three generations. A great era of railroad building began just about the time that Elbert Gary appeared on the stage

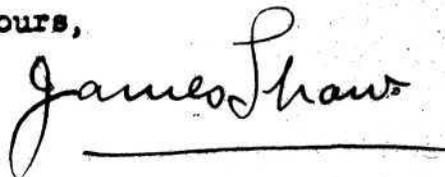
of action. That was followed by the telephone. The construction and operation of these appliances found the law silent as to their rights, duties and obligations. The factory system arose, or rather it became enormously extended. Concerns employed hundreds, and even thousands of men and women. How should the rights of these human beings be protected? At first the law dealt harshly with workers who met with accident. There was the principle known as the "fellow-servant" doctrine, which held that a workman injured by the neglect or ignorance of another workman could not hold the employer liable. There was also the doctrine of "assumed risk," which held that an employe injured by a machine that he knew to be defective, could not call upon his employer for compensation for the injury.

These peculiar doctrines, and others of a similar nature, materialized as lawyer-made or court-made laws. With the development of the labor union, and its influence in procuring the enactment of laws more humanitarian, these doctrines have gone the way of other harsh laws. The conditions for working people have become humanized.

Of course I do not think that Judge Gary had anything to do with bringing about these changes. There was nothing of the professional or emotional reformer in his makeup. His philosophy was to accept the world as he found it, and to make the best of it for himself, his friends and his neighbors. But these were the conditions that confronted him as a young lawyer, and at least a hint of them would lend color and atmosphere to your word-picture.

I hope this long screed will not be found too wearisome.

Sincerely yours,

James Shaw