

After further talk on early life, take up the early law period. He was 24 when he was put up as President of Wheaton. His uncle Jesse opposed it because he was not old enough. A year later he was elected to office, shows how he was held in the community at this time. Two years later he organized the Gary Wheaton Bank and in the fall of 1880 he was elected County Judge of DuPage County. He says in some of his notes that he had always had an ambition to be a judge. Says that the lawyers at the bar didn't like the man who was running - a rich man by the name of Murray, who was using considerable money and was also a Democrat, and they elected him. He says that by this time he was right along on one side or the other of all the best cases coming from DuPage county as well as large cases from Chicago and vicinity. I got a rise by speaking of his acquaintances made in traveling back and forth. He says with emphasis, "I got business by winning lawsuits. I never tried to deceive either judge or jury, and I knew what I was talking about. I had first class competition, too. There are any number of lawyers in Chicago, Joliet, Aurora, all around that country, that I would rather have to try a case for me than any lawyer I can get today. I was associated with all these men" - and he mentions the county seats of all the counties in the northern part of the State.

Many cases came to Wheaton through change of venue. The famous Burch divorce case was tried at Naperville. "That was before I was studying law. It was brought there on the ground of local prejudice. From early days there was a group of important lawyers at Naperville. I think the first case in which I attracted attention was Hough vs The Illinois Linen Co. The Cranes were in the

Illinois Linen Company, and Hough was president of the Illinois Stock . Judge Leffingwell, a very able lawyer, was against me. The venue was changed to Dupage County. Judge Cody was on the bench. Hough had two lawyers but he spoke to Cody about other counsel. Cody said, 'Get Gary.' This was along about 1874. This was the case in which Gus Ballou said that in school I had all the fun and he got all the lickings. It was a case in which there was an immense amount of accounting presented and quantities of testimony. When court was through the other lawyers went about their business, and I read that testimony at night and made mems on every line of it. I had it so in mind that if a dispute came up I could refer immediately to the testimony. Hough ^{so} was impressed with my familiarity with the case that he came to me and said, 'I have made up my mind to have you make the closing argument.' The other two lawyers could not agree as to which one was to do it and probably Judge Cody advised Hough to let me do it. Leffingwell in his argument for the other side talked 6 1/2 hours - I talked 10 1/2 hours in two days. There was so much testimony and such intricate accounting. All the lawyers were able men but they did not know the case as well as I did. If I was interrupted I could immediately turn to the testimony to support my opinion. After two or three hours the opposing lawyers left the court room, and the jury had to admit the verdict for the full amount.

"If you are going to take up this case, however, we have got to be fair. You will have to mention that the Supreme Court set aside the verdict, but it was set aside on another point, and that was that Hough as president of the company had no right to certain profits that he claimed outside of his salary."

This is a good illustration of what is constantly coming up in the Judge's talks. "We must be fair," he says, "and if you

are going to do that you must also do this."

He was evidently extraordinarily resourceful, had unusual initiative in devising ways to turn a suspicion that he had of a witness or an opponent into proof. He tells of a case where a warehouse owned by Jewish merchants had been burned down with all its contents, and an elaborate claim had been made against the insurance company. He was the lawyer for the insurance company. There was no proof other than the statement of the owners of what was in the warehouse. He became convinced that they were lying. During the progress of the case, accidentally he was told that a Jew cannot swear to a lie after taking the Jewish oath. He decided then to call as a witness the Jewish secretary who had made up the inventory submitted by the owners. Judge Gresham was on the bench, and he moved when this young woman came that the Jewish oath be administered to her. There were immediate objections by the opposition. Gresham didn't know what Gary was up to but saw that there was some reason for the request and ruled that there was no objection of course to such an oath being administered, and he allowed it.

Gary described how they prepared for the ceremony. It seems there are candles lit, etc. I should get this. The girl sworn was put on the witness stand and was obliged to tell that the inventory was not made from an examination of goods but according to the wish of the men. The verdict was for the insurance company. Gary comments that it is almost impossible to get a verdict for an insurance company from any jury.

He tells of another case - a case between two firms, where he became certain that a witness on the opposing side was lying. It was a large account. He asked that a special subpoena be issued and the books brought into court. This was done, and they showed his suspicions justified - the figures had been changed.

Deering

He tells how he first became associated with Deering. I did not get the year for this but I know it was early. A man by the name of Dickey had brought suit against Deering. This suit was heard in Belleville near St. Louis. When he arrived he found that there wasn't a single witness to contradict the most important testimony brought up by the plaintiff, Dickey. The only way was to break down by cross examination Dickey's chief witness. In listening to him Gary had become convinced that he was dishonest.

"When I began cross-examining him," he said, "I never let him know any moment what I wanted. After a time the opposing lawyers saw what I was doing and they began to object, arguing that questions should be asked so that the witness could understand my point. I said, 'Your Honor, I know and the counsel for the other side knows the object of keeping him advised of my purpose in my questions is that he may shape his testimony.' The judge ruled that the witness should not be assisted by his attorney in testifying.

"My manner in this cross-examining was always mild. The opposing lawyer made a strong tirade against the practice. The judge answered, 'I think the gentleman absolutely right. He can make his objections if he wishes, I shall overrule them.' I continued this cross-examination into a second day, and my last question to the witness was, 'Do you know whether you have told the truth or not?' He said, 'No.'

"But I was very much worried, and Webster (I think he was Deering's representative) telegraphed for Deering. I said, 'If I break him down, all right; but it is a very dangerous business. You have no witness, and I don't know what is going to happen.

"Deering was there when I was making my argument and I end up with, 'Gentlemen of the jury, if the chief

witness for the plaintiff doesn't know whether he is telling the truth or not can you give him the verdict?'

"Deering came over after I sat down and said, 'I want to tell you, Mr. Gary, that whatever the jury does I am perfectly satisfied.'

"This was the beginning of a long association, some 25 years, I think. The case came up probably in the early 80s."

This brought up the question of his practice while he was in the judgeship. "It took it with the understanding that I could keep up my practice." The terms in DuPage County were short, only 2 or 3 weeks at a time, although he held court in other counties for other lawyers at various times. I told him I wanted him to work out his code as a Judge, that I was interested in a comment he had made while telling me of his examination by Walsh in Washington.

He said "I never ill-treated a witness when examining him. You don't have to be ungentlemanly. There was a case in which Andrew Crawford of the Chicago & Western Road was concerned - an important case concerning the value of real estate. I had been asking questions which, if answered, could damage my case. Crawford was on the stand for 2 or 3 hours, and finally got very much excited and said, 'Your Honor, I have not been allowed to finish the answer to any question which I have been asked. I don't think that is right.'

"I said, 'Your Honor, let us look at the record. If he is right, I am wrong and I apologize.' The record was brought and read in its entirety. The Judge said, 'Mr. Crawford, every question was answered fully before Mr. Gary interrupted you.' What Crawford wanted was to ring in things that were not germane.

"Old man Cooke (?) the Nestor of the Northwestern Bar, a very learned man, gave young lawyers a rule: 'Never cross-

examine a witness simply because it is your turn. A witness may tell things very damaging to you.'

"Cross-examining is a high art. First, the lawyer must be a gentleman, in justice to himself, and, secondly, if he is not a gentleman the jury is prejudiced against him. Here is something that illustrates this.

"Judge Brown had a breach of promise case. I was the lawyer for the woman. There was no evidence except that of the two parties - they contradicted each other. Judge Wing was the leading lawyer on the other side. When Wing was talking he was very bitter in denunciation of the woman. She was sitting behind me and she wiped her eyes. Wing turned on me savagely and said, 'What right have you to let her do that?' I turned around and immediately said, 'I will take her out.' I did - I took her into the hotel, and I wouldn't let her come back. When I came to my plea, I said to the jury, 'Gentlemen, this woman has not been treated right by this court nor by the opposing lawyer. Do you think it was fair and right to prevent her sitting here and hearing her own case?' When I started I didn't know just when I was going to finish my argument. We didn't have very much time and the Judge had said, 'If you are not through in forty minutes I will have to call the case and we will go on in the morning.' I decided I would begin that night and if I didn't feel I had the jury I would continue in the morning. At this point in my argument, I was the jury wiping their eyes, and I promptly closed, thanking them. They gave my client the full amount - about all the young man was worth."

The Judge was delightful in telling these stories - full of zest. Recollections tumbled out one after another. I think he could have gone on all the afternoon and enjoyed it. He seems to me extraordinarily exact. That is, he remembers the judge, the

the counsel and many incidents in these various suits. I says
"I could tell you no end of these things, but I don't see how
they are going to work in." Of course I do. Tell him I think
we cannot tell many in full but that the Lagore case should be
told. Tells me he had very large property cases, very important.
I think I must get a list of his cases - show the range.

He must be a rare story teller in a group of lawyers.
The freshness of his feeling is amusing and astonishing. In tell-
ing any one of these cases, he gets indignant, appreciates the
humor, takes great pride in clever devices, evidently watched
his jury and had a keen appreciation, something like Lincoln's
of how things would strike them.

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Talk with Judge Gary - December 4, 1924

Told Judge Gary that I have concluded that he came into the Steel Corporation through barbed wire: He said, "Yes, that's true. I made barbed wire when I was a boy. My father had an inventive turn and when I was about ten or twelve, he drilled a hole in an old anvil and set us boys to cutting with a cold chisel strips of wire, which we put into the hole in the anvil and with a hammer bent them. We then twisted the wires with pincers on our wire fences, so we got a sort of barb. We made our own staples by bending a wire over a round stick. We did all sorts of things on the farm. I remember I grafted six or seven acres of apple trees, some of which are standing today near Wheaton."

1911
I get him onto Gates again. Told him I want to know more about him. He seems a little dubious about this belonging to the story but I insist that I must know more in order to be able to say anything. Tells me that Gates died in Paris in 1912 and that the newspapers published a great deal at the time about him. Reverts to that first factory. He tells of an instance in that first factory, when Elwood discovered that they were infringing on their patents, he got out an injunction and the firm took up their machines and went into So. Ill.

Gives me an interesting picture of Jack Haish who was with Gliddon, the earliest inventor of barbed wire,-- fine looking old person. His picture is to be had from the John Haish National Bank of DeKalb, Ill. by writing to the cashier - comes out that the year must have been 1897. Gary spent most of the time here in New York working on a combination of the whole wire industry of the coun-