

THE PALIMPSEST

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John F. Dillon

In a large brick yard about two miles from Farmington several men shovelled clay and piled brick while the sun blazed down upon them between the low hills. It had been a hot August day. At noon they had eaten ravenously, and in the afternoon consumed great quantities of water. Toward evening a cool refreshing breeze sprang up and, unmindful of their fatigue and of their physical condition, the men sat in the open until they became chilled. Violent attacks of cholera morbus resulted. Post-haste a messenger was dispatched to the village for aid, only to find that both of the older resident doctors were gone. John F. Dillon, scarcely nineteen years of age, was the only physician available.

Dr. Dillon had just come to Farmington and had opened an office in a small dilapidated brick building on the banks of the Des Moines River. He

did not have a horse — that prime essential of the pioneer doctor's equipment. Indeed, he could not ride on horseback because of inguinal hernia, and the roads were almost impassable for vehicle transportation. In the emergency the young physician hastened as quickly as he could on foot to the scene of distress. There he found the men suffering intensely, requiring liberal doses of laudanum and stimulants and his personal attention for several hours. The sun was rising over the eastern hilltops before he returned to the village.

Years afterward, when Dr. Dillon had abandoned the medical profession and had become an eminent jurist, he frequently told of this experience. On one occasion when he had related the story to a group of friends, one of them said to him, "Now that you have told all about this, there is one thing you have not mentioned. Did those men live or die?"

"That question has been asked more than once, but I have always evaded an answer", responded the judge.

Whatever effect his treatment may have had upon the patients, this experience set Dr. Dillon to thinking. The next evening, while walking along the river with a young lawyer friend, Dillon turned to him and said, "Howe, I have made a great mistake. I can not practice medicine in this country without being able to ride on horseback, which I am utterly unable to do. I might as well admit the mistake and turn my mind to something else. I shall read law.

Tell me, what is the first book that a student of the law requires?" He was advised to read Blackstone's *Commentaries* and the *Iowa Blue Book*, both of which Howe agreed to loan to the aspiring youth.

Thus John F. Dillon abandoned the practice of medicine in the village of Farmington before he was twenty years of age, to become a great jurist, an eminent authority in the law of municipal corporations, a professor of law at Columbia and Yale, attorney for the Jay Gould estate, and counsel for the Union Pacific Railroad — a prominent New York City lawyer with an annual income of a million dollars.

Born of Irish parentage in the State of New York on Christmas, 1831, the boy came with his parents to Davenport when he was only six years old. There he attended the public schools and grew to young manhood. There, too, he not infrequently visited at the home of Hiram Price, for whose daughter Anna he had formed a deep attachment. At the age of seventeen, young Dillon resolved that he would become a doctor and began at once the study of medicine under the direction of E. S. Barrows, then one of the leading physicians at Davenport. To the knowledge thus gained he added a brief course at the Keokuk Medical College, where he graduated in 1850, and located immediately at Farmington.

Six months in the practice of medicine convinced him that he was not suited for that profession. He began the study of law in his little four-dollar-a-

month doctor's office, but he soon returned to Davenport where he was able to utilize his medical knowledge by working in a drug store, while employing his leisure time in reading law.

On November 10, 1853, he and Anna Price were married. The young couple had been schoolmates and childhood friends from the time the Price family had come from Pennsylvania to Iowa in 1844. Mrs. Dillon was dignified, self-reliant, and impressive. In social relations none was her superior and few her equal. Her personal pride raised her above all temptation to do an unworthy act. Gracious and affable, a brilliant conversationalist, particularly adept at repartee, she was a charming hostess.

A year prior to their marriage Mr. Dillon, at the age of twenty-one, had applied for admission to the bar, and upon motion of Austin Corbin he was admitted to practice in the courts of Scott County. His rise in the legal profession was meteoric. Before he had practiced a year he was elected prosecuting attorney for the county. Elected Judge of the Seventh Judicial District in 1858, he served one term and was reelected, but in 1863 he was elected to the Supreme Court of Iowa. Six years later he was reelected, but before qualifying for his second term, he was appointed United States Circuit Judge of the Eighth Judicial Circuit, comprising the States of Minnesota, Iowa, Missouri, Arkansas, Kansas, Nebraska, and Colorado.

Judge Dillon was endowed by nature with the

qualities requisite to a great lawyer. He had a keen mind, a retentive memory, clearness of judgment, capacity for hard work, and the ability to take a common sense view of a case. Whenever preparing a case for argument before the court or for the purpose of rendering a judicial opinion, no detail escaped his attention. His power of concentration and discernment enabled him to grasp the facts clearly and see them in proper perspective.

He was an incessant worker. It is said that during his early career on the bench he devoted so much time to his legal work that Mrs. Dillon feared he was not giving sufficient attention to social affairs. When she asked him why he did not spend more time with his friends and family, the Judge replied simply, "I have a reputation to make." Years later when he had achieved fame and fortune he was again asked the same question. "I have a reputation to keep", was his answer. He always guarded his reputation with scrupulous care, giving to every subject most diligent and careful attention without regard to the size of the fee.

When Dillon became Judge of the District Court he began a systematic study of judicial decisions in Iowa for the purpose of familiarizing himself with the trend of opinions and the prevailing view of the Supreme Court. As his work of analysis and classification advanced, however, he realized that his comments and annotations would be of value to other attorneys and judges. Accordingly, in 1860 he

revised and amplified his notes to produce the first digest of the decisions of the Iowa Supreme Court — Dillon's *Digest*, remarkable for its accuracy and compactness.

Again when Judge Dillon became a member of the Supreme Court he aspired to write a treatise upon some topic which he hoped might be useful to members of his profession. Selecting the subject of municipal corporations, he utilized all of his available leisure in study and research during the intervals between terms of court. Without the aid of a stenographer or typewriter he began an examination, one by one, of the thousands of court reports, commencing with volume one of the State of Maine and continuing through the successive reports of every State in the Union as well as the Federal and English courts. Thus he labored incessantly for a period of more than six years. The result was a monumental work, the first edition of which yielded him a royalty of five thousand dollars. Indeed, the treatise was so popular that a second edition had to be published a year later in 1873.

Meanwhile President Grant had appointed him to the United States Circuit Court — a position which he held for nine years. Both as a jurist and as a publicist Dillon's reputation was secure. Particularly in the field of corporation law he had won international recognition. At the height of his public usefulness and reputation as a judge he resigned his seat on the Federal bench to accept a

position as Professor of Law at Columbia University, and to become counselor for the Union Pacific Railroad.

From the year 1879 until the end of his long career in 1914, Judge Dillon remained a resident of New York City. In his earlier career he had lectured on the subject of medical jurisprudence at the State University of Iowa. At Columbia he taught real estate and equity jurisprudence, and a few years later he lectured on the "Law and Jurisprudence of England and America" at Yale University. While lecturing at Yale he gave utterance to a single sentence which in a large measure sets forth his whole philosophy and attitude toward life and embodies his conception of an ideal judge. "When recently crossing the bay of New York," he said, "the Statue of Liberty with its uplifted torch enlightening the world, suggested to me that the truer ideal of a modern judge was no longer a figure with bandaged eyes, but rather the figure of one who carries in his upraised hand the torch of truth lighted from on high, and who, throughout the arguments of counsel and in the maze and labyrinth of adjudged cases, walks ever with firm step in the illumination of its constant and steady flame."

On account of the rapidly increasing demand for his services as attorney he was obliged to abandon the teaching profession into which he had entered with eminent distinction. As a corporation lawyer he had few if any peers. Within a few years, in

recognition of his ability he was elected President of the American Bar Association.

In the leading cases before the Supreme Court of New York his services were constantly in demand. He also appeared in some of the most important Federal cases. Indeed, during a period of ten years he was reputed to have argued more cases before the Supreme Court of the United States than any other attorney not resident in Washington.

In the case of *John Jacob Astor v. Arcade Railway Company* he appeared in the New York Supreme Court for the property owners who brought action to restrain the defendants from constructing a railway beneath certain streets of New York City. The court decided in accordance with the view expressed by Mr. Dillon, holding that the act under which the company claimed authority to construct the railway was unconstitutional. In arguing for the defendant in the case of *United States v. Trans-Missouri Freight Association* in 1896, Mr. Dillon presented the view that the Sherman Anti-trust Act was intended to apply only to contracts in restraint of interstate commerce in which the restraint is unreasonable. The court did not accept Mr. Dillon's view at that time, but fifteen years later the Supreme Court of the United States adopted the rule so ably presented by him in the earlier years. Thus he was shown to be not only accurate in his analysis of a case but progressive as well—not always agreeing with the courts but sometimes anticipating

rules of construction which if followed would improve the law.

In 1911 Mr. Dillon undertook the preparation of the fifth edition of his *Commentaries on the Law of Municipal Corporations*, the four previous editions having been exhausted. Nearly forty years had passed since the publication of the first edition. Thus the work, as the author expressed it, was "not only a child, but the companion, of the far greater part of a prolonged professional career." It is not strange therefore that there was a solemn note if not a touch of sadness in his reflection that in the fifth edition he was taking "final leave of a work which is intimately incorporate with the studies, lucubrations, and labors" of his professional life. "My chief pride and satisfaction in the work", he continued, "consist in the fact that it constitutes the largest and certainly the last payment I shall be able to make on the *Baconian* debt which I acknowledge myself owing to the great profession of the law, to which without distraction, diversion, intermission or other ambitions I have given fifty-nine years — the whole of my active life."

The first four editions of this treatise had produced royalties in excess of fifty thousand dollars, and the indirect benefits accruing to the author were of inestimable value to him. The authorship of these volumes, perhaps more than anything else, had served as the stepping stone to his success and national eminence. It had made him an outstanding

authority in the law of municipal government and finance. Municipal bonds were scarcely marketable in New York City without his approval, while with his endorsement they were readily salable at face value in any market. For a single client Mr. Dillon approved more than fifty million dollars worth of bonds, not one of which was ever contested in the courts. Railroad corporations sought his service and the wealthy clientele of New York asked his advice about enormous financial transactions and entrusted him with the settlement of their estates. A lawyer for millionaires he himself became a multi-millionaire.

Throughout his years of prosperity, fortune, and fame, Judge Dillon never forgot his intimate relations with Iowa. When the Davenport Free Public Library was erected in 1904 he returned to participate in the dedication services. "From early boyhood Davenport was my home," he said, in an address delivered at that time. "The mystic chords of memory' here bind me to the past by the sweetest and the saddest of ties. Other days and scenes involuntarily rise before me. I see the little town of 1838 with its few hundred people, without schools, without libraries, without many of the comforts and with few of the luxuries of modern life, when the Indians were thicker than white men, when packs of wolves coming out on the ice from the island below the town were a familiar sight and their long, dismal howl a familiar sound."

In a letter to the editor of the Davenport *Democrat*, he wrote, "Yes; you are right! I am a Davenport and always expect to be in my memories, my sentiments and my affections. It was my home and my only home for the long period of forty-one years—from early boyhood to beyond the meridian of life. Though absent, it is and will ever remain to me the city of the heart."

When Mrs. Dillon and their daughter were lost at sea in 1898 a monument in their honor was erected at Davenport. And finally in 1914 when Judge Dillon's career was closed his body was brought to Davenport to repose on the banks of the Father of Waters where life had been sweetest and dearest to him.

J. A. SWISHER