

ginning of this organization his hand was always outstretched in helpfulness, and he gave much time and thought to its upbuilding. There are few of his generation left; they were all men of deeds, not words, and all state builders; they were a goodly company, and as we look back upon their efforts we can but marvel at their accomplishment.

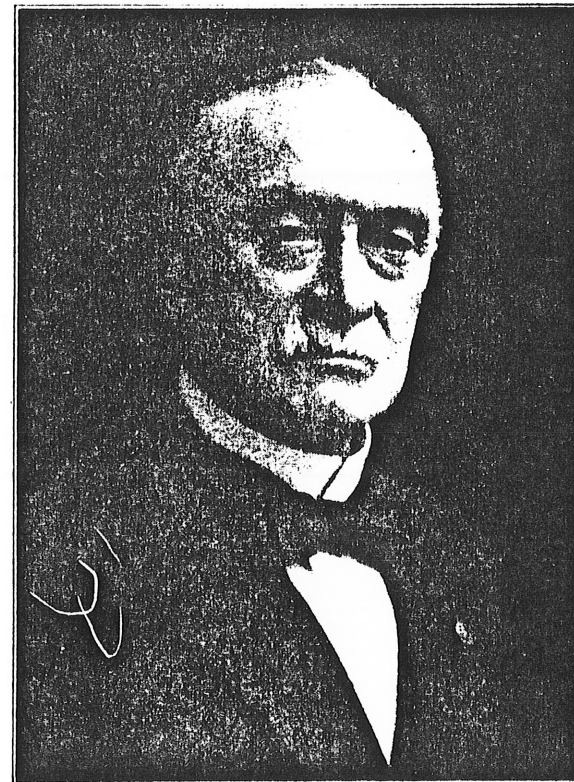
Mr. Francis was married February 23, 1862, while at home on a furlough, to Miss Lodeska Coffield, the daughter of Samual Coffield and his wife, Rebecca Clark Coffield. They, too, were pioneers in Kansas, coming from Grant county, Indiana, in July, 1860. Samuel Coffield, born in Guernsey county, Ohio, May 13, 1815, and died in Labette county, Kansas, October 15, 1885, was the son of James Coffield and Sarah Jane Craig, his wife. James Coffield was an Irishman and had come to this country with his parents in 1809; he lived in Pennsylvania for some time, and there married Sarah Craig, likewise of Irish ancestry. Rebecca Clark was the daughter of James Clark and Sarah Simons Clark; she was born May 18, 1821, in Bradford county, Pennsylvania, and died July 22, 1887, in Labette county, Kansas. The Clark and Simons families were from New England and go back to the beginning of things in America. Mr. and Mrs. Francis have three daughters and one son, Anna, Clara, Maude Elizabeth, and John.

#### ALFRED WASHBURN BENSON, LL. D.

Written for the Kansas State Historical Society, by THOMAS AMORY LEE,<sup>1</sup> A. M., LL. B.

**T**HE late Mr. Justice Benson, or, as he was commonly called, "Judge" Benson, was born July 15, 1843, at Jamestown, Chautauqua county, New York, and died on New Year's Day, January 1, 1916, in Topeka, Kan. He was the son of Peleg and Hannah (Washburn) Benson. Peleg Benson was born in Massachusetts, March 28, 1793, and died October 25, 1870. He was a soldier of the War of 1812, and was "a man who in humble life was faithful to every task, accepting fortune and misfortune with neither boasting nor complaint." Judge Benson's modesty is said to have been characteristic of the family. Peleg Benson was the son of Consider Benson, who was born September 4, 1776, and died September 3, 1855. He married, 1788, Hannah Parrington, who was born June 1, 1769, and died September, 1844. They had seven children, of whom Peleg was the third. Lieut. Consider Benson was descended from the immigrant, John Benson, who came to Massachusetts in the seventeenth century and

1. Thomas Amory Lee, son of Robert Ives Lee and Abby Kimber Lee, was born January 28, 1889. His father was a prominent citizen of Shawnee county, having settled there in 1870. He owned the "Prairie Dell" farm, the old Pottawatomie Baptist mission site, where in 1849 a commodious building was erected for the use of the mission. This building is still standing and is in a fair state of preservation. Thomas Amory received part of his education at Washburn college, later he attended Kansas University, where he took his B. A. and M. A. degrees. He was a student in the Harvard law school, and after his graduation there practiced law two years in Boston. He is now a resident of Topeka. Mr. Lee was married June 8, 1916, to Miss Mary Helen Shirer, a granddaughter of Mr. A. B. Whiting, a Kansas pioneer and president of the Historical Society in 1910. Mr. Lee is a member of many historical societies and is the author of a number of historical, biographical and genealogical sketches. In September, 1917, Mr. Lee entered the service of the Y. M. C. A. for work in France, and he has since enlisted in the army.



JUDGE A. W. BENSON.

founded a numerous and sturdy family. Lieut. Consider Benson may possibly have been the son of Consider Benson, who married Elizabeth (born 1732), the daughter of Ephriam and Mary Washburn, of Plympton.

Judge Benson's mother, Hannah Washburn, was born April 17, 1804, died October 14, 1873, and married Peleg Benson, March 5, 1831. Judge Benson was the fifth and youngest child. She was the daughter of William Washburn, who was born May 9, 1767, died July 26, 1851, and was married at Wendell, Mass., to Huldah Clark, on August 21, 1788. Huldah Clark was born on May 24, 1768, in Vermont, as was William Washburn. He was a Revolutionary soldier, and enlisted March, 1781, for three years as a private in Capt. Killam's company of Col. Rufus Putnam's Massachusetts regiment. He was only fourteen years old when he enlisted. William Washburn was descended from John Washburn, the immigrant who came to Plymouth, Mass., in 1632, from Evesham, County Worcester, England, and was followed in 1635 by his wife, Margaret, then aged 49, with sons John, aged 14, and Philip, who came in the ship "Elizabeth and Ann" from London. John Washburn was an original settler of Bridgewater, Mass., and died before 1670. He founded a large family and many of his name have come to distinction in the New World.

(Courtesy of Barbara Dew, Ottawa Library, Ottawa, Kansas)

The Bensons seem to have left Massachusetts for New York about a century ago, and the Washburns came to Carroll, in Chautauqua county, New York, in 1820 or 1821. Thus Judge Benson was descended from two sturdy Massachusetts families and was the grandson of two Revolutionary warriors. Nobly did he, in turn, enrich his patriotic ancestry for his descendants.

Judge Benson was reared on the farm of his father and educated at the ordinary district schools of the country, and at the Randolph and Jamestown academies. The Randolph Academy is now the Chamberlain Military Institute. While Judge Benson was there he and three other Chautauqua county boys boarded themselves in the second story of the "Valley House," a vacant hotel near the creek. Among his classmates were Bentley, of Rochester, who became a justice of the supreme court of New York; O. H. Price, the first mayor of Jamestown, N. Y.; three brothers named Allen, from Warren county, Pennsylvania—all of whom became lawyers, one a state senator of Pennsylvania, and one a judge in Colorado, and Republican candidate for governor; Lindsey, for many years presiding justice of Warren county; Babcock, who became chief justice of the state of Minnesota; Ross, who went west to the mines and became a millionaire; James Jefferson Meyers, a leader of the bar and speaker of the Massachusetts house of representatives; and A. A. Van-Dusen, judge of Chautauqua county, the last two of whom were very close friends of Judge Benson. Judge Benson was much interested in the career of his school friends, and talked to the writer at considerable length about Myers at one time. It is interesting to note how many of these schoolmates became judges, some of them, as Bently, Babcock and Benson, being really prominent ones. Prof Samuel S. Love was at the head of Randolph Academy when Judge Benson was there. At the time of his death Judge Benson still preserved the catalogue of Jamestown Academy, 1858-'59, of which Edward A. Dickinson was principal. There were then five instructors and lecturers. From 1861 to 1862 Judge Benson was a district-school teacher in Warren county, Pennsylvania.

From here on Judge Benson's active life began, and it may be divided into four parts—service during the Civil War; private life, 1865-1906, public life, 1906-1915; and professor of law, 1915-1916.

#### *Civil War Service—1862-1865.*

When the great war broke out and the President's call for volunteers to assist in preserving the Union came, the patriotism of his Revolutionary grandfathers surged within him, and Benson, like thousands of other young men throughout the North, felt that he must do "his bit," regardless of the cost to himself, "when the blood in his veins ran quick and all his youthful ambitions, hopes and desires were ripe and sweet, he heard the shriek of the belligerent fifes, and beat of the alarming drums, and saw the angry swish and swirl of the conscious flag." His military career, while eminently useful and honorable, was not by any means an extraordinary or even distinguished one. He enlisted as a private and came out major and brevet lieutenant-colonel of the same regiment, having taken part in eleven battles, besides many skirmishes and lesser engagements. He was at Chancellorsville, Wauhatchie, Mis-

sionary Ridge, Rocky Face, Resaca, in the operations in and about Dallas, Pumpkin Vine Creek, New Hope Church, Lost Mountain and Kenesaw, Peach Tree Creek, siege of Atlanta, and investment of Savannah, and marched with Sherman's army to the sea, and back through the Carolinas to Washington; where he participated in the grand review.

Benson enrolled August 28, 1862, at Randolph, N. Y., as a private in company H, 154th New York volunteers, an infantry regiment, and mustered in with the regiment at Jamestown, N. Y., September 26, 1862. In due course of time the regiment was equipped, and "the day arrived when the soldiers were to leave camp and move to the front. One thousand men and thirty-three officers marched from the camp to the station. How fine they looked in their new uniforms! There was no noticeable difference in their height now. They moved as one man. It was a sight well worth seeing.

"At the station the command was given, 'Break ranks,' to give each an opportunity to bid farewell to the dear ones. There were many more friends and relatives there than there were soldiers.

"This was a heart-breaking scene. One cannot describe it; one would not wish to. It was like standing at the open graves of one thousand men. All knew that not all—perhaps few—would come back. Each felt that it would be their own loved one numbered among the missing. Wives clung to their husbands, young mothers held up baby for papa's last kiss. Sweethearts and lovers exchanging vows. Brothers telling sisters to care for their parents. Aged fathers telling sons to be faithful to the cause. ~~Near me stood a mother with arms around her only son, begging him to resign, not to leave her. (No man on earth save one could have accepted his resignation, and that man was President Lincoln.)~~ When the fatal words 'Fall in!' rang out, the son was obliged to tear himself away. His mother fainted, and would have fallen beneath the train had not her husband supported her.

"The train carrying its passengers towards the South disappeared, leaving behind it those who had to face as hard battles as the grave departing ones."

Judge Benson made an excellent soldier and was with the regiment every day for service from muster in, September 26, 1862, to discharge, June 23, 1865, except the time that he was disabled by his Chancellorsville wound. He received his first promotion in April, 1863, when Capt. J. F. Nelson made him first sergeant, the most important noncommissioned office in the company. His regiment was first assigned to duty under Major General Sigel, a thorough soldier, at Fairfax, Va., and there became a part of the First brigade, Second division, Eleventh army corps, and so continued until the consolidation of the Eleventh and Twelfth corps, in the spring of 1864. He saw the usual service of men in his division, and was in various marches about Manassas and the old Bull Run battlefield until the spring of 1863, when the Eleventh corps moved to Chancellorsville, missing the bloody though small affair of Ball's Bluff, where Massachusetts and New York regiments, under the command of General Baker and Col. Charles Devens and Col. Wm. Raymond Lee lost so heavily. Then came Chancellorsville, the first battle in

which his regiment participated, and one that was nearly fatal for Benson. "He was shot through and through at dread Chancellorsville, while all the while the Rappahannock choked on its sluggish way to the ocean, with the mingled flow of brothers' blood. He was left for dead on that fatal field as the grim, sturdy columns of Stonewall Jackson, hoof and foot, swept over him their irresistible avalanche of disaster and death."

"The first day's battle at Chancellorsville was closing, with the northern army in retreat. A party of New York volunteers delayed a little to do what they might for their wounded sergeant, a boy of nineteen, shot through the left lung in a charge by Stonewall Jackson's men. 'We'll put you over by that big tree,' they told him; 'you'll be safer there than out here.' So they propped him against the trunk of the tree and went after their company, to report Sergeant Benson left for dead on the field of battle.

"Soon after dark the Union batteries began a fierce cannonading, and made the night horrible. To escape from the worst of the storm of shells a party of Stonewall Jackson's men gathered under the tree. They knelt in prayer, calmly commending themselves to the All Father, who, they were sure, still ruled in the affairs of men. They prayed also for their wounded enemy, 'the young soldier about to die.' As they left, one gave the sergeant a drink from his canteen, and they treated him with great kindness.

"Then a thought grew to hope in the boy's heart; the Union batteries were not far away; he would try to reach them; it would be better than being a prisoner. Sometimes walking, oftener on hands and knees, groaning, fainting, he made his way," over half a mile to a cold spring of water, on the Union skirmish line indicated by the furious cannonading, "and morning found him well cared for in the field hospital," in a Virginia barnyard.

"Have I any chance, doctor?" he asked the surgeon.

"If you were in the habit of using liquor at all," was the frank answer, "you would n't have a ghost of a show, but as it is you may pull through." The next day the hospital was captured by the Confederates.

He was a prisoner on the battlefield for eleven days after the battle, and was reported in his regiment as killed. The immediate effect of his wound was a dull, stunning sensation and faintness. After a couple of days it caused him sharp pain; his breathing was very painful, and he continually spat bloody phlegm. On May 13 the Federal prisoners who were able to march were sent off to Richmond, and Judge Benson, with others unable to move, was paroled. He was soon sent to the Chestnut Hill (Philadelphia) general hospital, where he remained until September 17, 1863, when he shortly after rejoined his regiment at Bridgeport, Ala., and from that day was constantly on duty until the end of the war, never missing a day of service. While in the hospital his wound gradually healed, expectoration lessened, and he grew better without any relapse, although his left side and breast were for a long time weaker than other portions of his body, and would perspire much sooner. When fatigued that side seemed weaker than the other for two or three years after

the wound was received, though Judge Benson fully recovered, and felt no ill effects from it after about 1868. The blouse he was wearing when shot is preserved in the G. A. R. hall at Ottawa.

Meanwhile at home he was believed to be dead by all, except his father. The newspaper had reported Alfred W. Benson as dead, and comrades who saw him fall on the field had confirmed the report. But his father could not believe it, and would not. To him the sorrow seemed too great. "Day after day he walked to town to meet each mail train, hoping to receive some word from his son. The neighbors shook their heads and pitied what seemed to be a failing mind. But the boy was not dead, and at the first opportunity after his exchange he wrote. The old postmaster knew the handwriting, and, leaving his mail sack, rushed out to deliver it to the waiting father. His father did not stop to open the letter. His boy was alive; that was enough. He hastened home, running most of the way, to break the news to wife and mother. Rushing into the room where she was sewing, he tried to speak, but could not; his emotion was too great. First he laughed and then cried; then throwing the letter into her lap, he turned and went to the barn. In his modest simplicity he would hide the emotion which he could not express."

On June 11, 1863, while still in the hospital, Judge Benson received his commission as a second lieutenant in his regiment, (the 154th) signed by Gov. Horatio Seymour. Upon being discharged from the hospital on September 17, 1863, after a fifteen-day furlough at home during convalescence, he was sent to a parole camp at Alexandria, Va. On October 16, 1863, he was exchanged, and so was free to join his regiment, which he did at Bridgeport, Ala., after a somewhat arduous trip on the Baltimore & Ohio railroad. Late in October he reached Bridgeport, and was at once assigned to duty as acting adjutant. On December 29 he was mustered in as second lieutenant, to date from July 6, 1863. He served as adjutant until about May 4, 1864. The regiment had been in only one battle during the time that Benson was absent, that one being Gettysburg. The corps to which the regiment belonged was now transferred to the Army of the Cumberland in the West, and sent in the fall of 1863 to participate in the operations about Chattanooga under General Grant. In the spring of 1864 the regiment was placed in the Second brigade, Second division, Twentieth corps, and continued so until the end. Judge Benson took part in the operations about Chattanooga, including the battle of Wauhatchie. Immediately after Missionary Ridge a force, including the brigade of which the 154th New York was part, marched, under General Granger, from the battlefield to the relief of Knoxville.

May 4, 1864, Lieutenant Benson was assigned to Company D and placed at its head as acting captain. He continued in command of this company until the end of the war. He also commanded company E for several months on the Atlanta campaign. On September 16, 1864, he was commissioned captain in the 154th New York by Governor Seymour, and was mustered in as captain at Atlanta on October 18, little more than a month thereafter, continuing in command of company D. After the battles of Rocky Face, Resaca, New Hope Church, Lost Mountain and Kenesaw, Peach Tree Creek, and the siege of Atlanta, in all of which



Captain Benson had taken part (though he was not in the charge on Kenesaw), came Sherman's famous march to the sea, and the investment of Savannah, in which also Captain Benson took part at the head of company D. While at Atlanta and Savannah Captain Benson served on the division court-martial as junior officer. While at Savannah, in December, 1864, Col. P. H. Jones ordered an election by the officers of the regiment for the post of major, and Captain Benson was the choice of the officers for the post. Colonel Jones forwarded a recommendation to that effect to the Governor of New York, who accordingly signed a commission appointing Captain Benson as major of the 154th, on March 4, 1865. Meanwhile the army had left Savannah and was marching to Raleigh through the Carolinas. At Goldsboro, N. C., in April, Captain Benson received his commission as major, in the first mail received since leaving Savannah. He was never mustered in as major, the regiment being below the minimum strength, and having two field officers. Besides, the war was over shortly after he received the commission. After General Lee's surrender the army marched from Raleigh, through Virginia, to Washington, and there took part in the triumphant grand review, on May 25, 1865. On June 11, 1865, Captain Benson was mustered out with his regiment at Bladensburg, Md., and received his final discharge with the regiment at Elmira, N. Y., where it disbanded June 23. He received a commission as brevet lieutenant colonel from the governor of New York, and finally reached home at Worksbury, Chautauqua county, New York, in June 1865, after almost three years of active service. He was in every engagement that his regiment<sup>2</sup> participated in except the battle of Gettysburg, when he was in the hospital from the almost fatal wound received at Chancellorsville; rose from private to major at the age of 21, and came out of the army a tried and true man. It is very characteristic of the man that no one of his friends knew until after his death that he had been given a brevet as lieutenant colonel. On the other hand, he was deservedly proud of his rank of major won on the battlefield.

During the more than fifty years between the grand review and Judge Benson's death, he was always keenly interested in the fortunes of his old comrades, or of any "boy in blue." In 1869 he made a speech to the Grand Army of the Republic in New York, on the first Memorial Day, which is still preserved among his papers; and on August 30 and 31, 1888, at the reunion of his regiment, at Ellicottville, N. Y., he was again on the program. He was post commander of Post Sheldon, No. 40, at Sherman, N. Y., in 1868, and one of the organizers and most active members of George H. Thomas Post, No. 18, Ottawa, Kan., of which he was the commander for several years. There he was closely associated for nearly fifty years with Col. J. N. Harrison, an ex-president of this Society. On August 30, 1906, he made an address, "In the Fifties," at Osawatomie, Kan., on the fiftieth anniversary of that battle. He attended more than one of the national encampments of the Grand Army of the Republic,

2. Besides the battles mentioned in this article, the 154th New York, in the campaign of the Carolinas from January to April, 1865, took part in the battles of Averysboro, March 16; Bentonville, March 19-21; the occupation of Goldsboro, March 24; advance on Raleigh, April 9-13; occupation of Raleigh, April 14; Bennett's House, April 26; and was present at the surrender of Johnston and his army. The 154th lost during its service 83 men killed and 195 men from disease, or more than one-fifth of its number.

among them the forty-seventh, at Chattanooga, September 15 to 20, 1913, and the forty-ninth. Above all, he went on to Washington in September, 1915, and took part in that feeble repetition of the great review of fifty years before. The fact that he was able to participate in the "second review" caused Judge Benson a great deal of satisfaction. His work in the Washburn Law School was heavy at the time that he desired to go, and although the judge had been looking forward to the review for several years, he said he could not go with justice to his work, and put aside his desire. Fortunately a friend, qualified to carry on the work temporarily, consented to take his place, with the students' assistance, and Judge Benson attended the review with his son-in-law, Mr. Page, of Topeka. Together they revisited Gettysburg and Chancellorsville, and Judge Benson told the writer, upon his return, that he had no difficulty in finding the exact spot upon which he had been shot fifty years before, and that he then retraced that painfully slow crawl of half a mile to the spring of water, which was as cold as before, and that he found the old barn which had served as a hospital.

Judge Benson was preëminently a man of peace, but it is the opinion of the writer that the judge took more pride in his military record and his title as major than he did in any other title he ever gained, except, that of Christian gentleman and justice of the supreme court. There can be no doubt that his experience in that time, of which Mr. Justice Oliver Wendell Holmes, jr., of the United States supreme court, has written in words of fire, made a competent, able man of an untried country youth.

*Private Life—1865-1906.*

It may seem somewhat strange to include under this head, and not under that of public life, all those years in which Judge Benson was mayor, county attorney, legislator and district judge; but his prominent public service, though, of course, based on the forty preceding years, did not begin until 1906.

When he returned home, in June, 1865, he resumed the study of the law, upon which he had commenced at Randolph before the war, and entered the office of Cook & Lockwood, at Jamestown, N. Y., where he remained until January 1, 1867, when he entered into practice at Sherman, N. Y., with A. A. Van Dusen, an old school mate, and later judge of Chautauqua county. He was admitted to practice before the supreme court of New York in November, 1866, at Buffalo. While living in Sherman he was elected a county supervisor, which position he resigned when he moved to Kansas in November, 1869. It seems probable that his two years' service in the western army, when he mingled with men from many of the middle western states, may have influenced him to come west quite as much as, if not more than, Horace Greeley's famous advice. At least we are thankful that he came to Kansas instead of to some other state. He came to Ottawa in November, 1869, and opened a law office there. After a few months he returned to Sherman, N. Y., where he married, May 10, 1870, Miss Unettie Louise Towsley, born June 25, 1843, in Manchester, Vt., and daughter of Darius and Lydia (Fowler) Towsley. Her grandfather, Nathaniel Towsley, was a soldier in the war of 1812, and two of Mrs. Benson's brothers served in the Union



army, one of whom—Leonard—was killed at Antietam. The Fowlers were pioneers of New York, and the Towsleys of Vermont. Judge Benson at once brought his bride to Ottawa, and they made their home at first in a house near the present Missouri Pacific railway station. Five children were born to Judge and Mrs. Benson in Ottawa: (1) Earl Washburn, born September 7, 1871, died December 4, 1871; (2) Marian Ella, born April 13, 1873, died July 30, 1887; (3) Louise, born July 8, 1874, died November 5, 1874; (4) Frances Amelia, born November 18, 1876, married at Ottawa, September 7, 1904, Herbert Ward Page, an attorney of Topeka, and nephew of Judge C. A. Smart, of Ottawa; (5) Kate, born July 4, 1879, died January 21, 1897. Of his children, only Mrs. Page and her children survived Judge Benson.

The first office Judge Benson held in Kansas, so far as known, was that of notary public, to which he was appointed by Gov. James M. Harvey on January 4, 1870. He was admitted to the fourth judicial district court on March 28, 1870, to the Kansas supreme court, February 22, 1872, and to the circuit court of the United States for the district of Kansas, June 5, 1873. He was also soon elected city clerk of Ottawa, and later city attorney. Judge Benson went into partnership with the late Harlan P. Welsh<sup>3</sup> and in due course of time acquired a practice which later became one of the most lucrative in the county. One of his first cases was before a justice of the peace in Pomona, some fifteen miles away. Benson started early one morning to ride to the town, but was stopped by a creek then overflowing its bank. He followed along the creek for several miles and found a young farm hand named Foster Dwight Coburn, who sent him in the right direction. Judge Benson is said to have tried to make his pony swim the creek, but the current was too strong and Coburn helped him out. Some forty years later the same Coburn was to refuse the position of senator of the United States, and to suggest his friend Benson for the place, which was accepted by Benson.

Kansas in 1869 was anything but the prohibition state which it now is, and Benson is said by Colonel Harrison to have been advised by one more or less prominent attorney, then in Ottawa, to leave, for no one could succeed there as a lawyer who did not drink lots of whisky. However, he did not leave, nor did he drink lots of whisky.

In 1871 he was elected county attorney, at the age of 28. The firm of Welsh & Benson was dissolved, and Judge Benson later went into partnership with Judge William L. Parkinson,<sup>4</sup> and the firm presently acquired

3. For sketch of Harlan Pyle Welsh, see Kansas Historical Collections, vol. 10, p. 279.

4. William Ludley Parkinson was born June 17, 1843, in what is now Rock Lick, Marshall county, West Virginia; he died in Ottawa, Kan., June 14, 1907. His father, John Parkinson, was a prominent man in his time, an ardent believer in the doctrine of antislavery. In this belief he reared his sons, and when the Civil War broke out four of them enlisted in the First Virginia infantry, under the reorganized government at Wheeling, when western Virginia repudiated the secession of the state. William Parkinson served as a soldier in the Union army from 1861 to 1863, when on account of injuries he was discharged. He afterward took up the study of law in Pennsylvania, at Waynesburg College. Upon completing his legal course he returned to Wheeling, remaining there until in 1870, when he visited Kansas. In 1871 he brought his family to Ottawa, and remained a resident of that city until his death. In later life Mr. Parkinson traveled much in the interest of his business, being identified with the promotion of the cane-sugar industry in this state. On May 14, 1867, he was married to Miss Marina C. Carter, at Brownsville, Pa.; she died at Ottawa March 13, 1875, leaving a son and daughter. For his second wife Mr. Parkinson married, in 1882, Mrs. Pendleton, who still resides in Ottawa.

a rich practice. [In 1878, at the city election in Ottawa, the no-license, or temperance ticket, as it was called, was headed by Judge Benson's name for mayor. The other ticket was called the license or business men's ticket, and was financed by the liquor men, who threatened to make it very hot for Judge Benson and to drive him out of the city. The campaign was a very warm one, indeed, and Judge Benson was elected by a majority of eight. At the same time four councilmen were elected (four holding over). Under the law as it stood then (before the constitutional amendment for prohibition), the mayor and council of cities of the second class could grant or refuse licenses. The licenses in force at the time of this election expired July 1, 1878, and the new Mayor Benson and council refused to renew them or to grant any others. After a rather stubborn fight the dramshop keepers gave up, and there have been no open saloons in Ottawa since that time. Judge Benson was reelected mayor in April, 1879.

In 1880, after an active campaign, Judge Benson was elected to the Kansas state senate, and represented Coffey and Franklin counties in the senate, 1881 to 1885. It will be remembered that the campaign of 1880 was the famous prohibition amendment one, and Judge Benson took an active part in it. His success as mayor of Ottawa in 1878 on a no-liquor platform was an argument which was widely used in the state campaign, and contributed, perhaps, to its success.

As soon as the senate met in 1881 Judge Benson was made chairman of the senate committee on temperance, to which were referred all bills designed to put the prohibition amendment in force. Judge S. O. Thatcher, of Lawrence, Judge Broderick, of Holton, and Judge Benson were the only lawyers on that committee, and the other members left the framing of the bill to the three lawyers. They carefully considered all bills referred, as well as suggestions from every source, but finally drafted the bill themselves, after weeks of arduous labor, during which they met every night except Sunday, and worked far into the morning. For some weeks those three men worked sixteen to eighteen hours a day, trying to perform ordinary legislative duties as well as to draft the prohibition bill. It will be remembered that, except Maine, no other state in the Union—or, so far as known, no country in the world—had a prohibition law in 1881, and what they drafted was no servile copy, but the result of weeks of hard, original thinking. As chairman of the committee, Judge Benson reported the committee bill to the senate. With a few amendments, which as chairman, Benson, also proposed, it passed both houses just as it came from Judge Benson's pen, and received the approval of Gov. J. P. St. John on January 21, 1881, and thus became the first Kansas prohibitory law. Were Judge Benson's public service confined only to his great part in the making of this law, Kansas and New York might well be proud of their son. How fortunate for the state that he was to continue in her service!

Judge Benson continued his legislative duties until December 31, 1884—meanwhile practicing law when he could—when, on that date, Gov. G. W. Glick appointed him judge of the district court of the fourth judicial district to fill a vacancy. He took the oath of office on January 6, 1885,

and thus began his long service as a trial judge, which, had he pleased, would have continued until his death. In 1887 he was given a banquet by the local bar association, at which Judge Thacher, "Uncle Jimmy" Green, of the University Law School, and others spoke. In 1888 he was elected for a second term, and in 1892 reelected for a third term. In January, 1897, he voluntarily retired from the judgeship, declining a re-nomination, and resumed the practice of law at Ottawa, being senior member of the firm of Benson, Smart & Harris. When he retired the bar association gave him a most flattering testimonial. In 1900, C. A. Smart, of the firm, having been elected district judge of the district, the firm was dissolved. Benson and Harris continued in partnership until Judge Benson was appointed United States senator, in 1906. F. M. Harris, of the firm, is now the mayor of Ottawa. From 1897 on, Judge Benson's private practice is said to have been very large, and indeed it would be strange if this were not so.

It is said that Judge Benson was tendered the nomination for Congress once in the second district, in place of Hon. E. H. Funston, father of the late Maj. Gen. Frederick Funston, but Judge Benson refused it. In 1904 a controversy grew up in the legislative district in which Judge Benson lived over the nomination of a candidate for the legislature, and without the judge's knowledge or consent, and apparently without any premeditation on the part of the convention, he was nominated for the legislature. When the judge heard of it he was amazed, and promptly declined; but the convention was adjourned, and nothing was done by the county committee to fill the vacancy, and finally the judge was persuaded, much against his will, to let the nomination stand, and he was elected as representative from the sixteenth district (part of Franklin county) to the Kansas legislature.

Judge Benson was at once made chairman of the house judiciary committee, one of the most important committees, and as such showed such marked ability and rendered such valuable service to the state that he attracted a great deal of attention, and received much favorable comment from newspapers all over the state. Governor Hoch was so much impressed that he publicly declared that he would appoint Judge Benson to the supreme court if a vacancy occurred. As a matter of fact, three vacancies occurred, and Governor Hoch named, first, Judge Silas Porter; second, the late Judge Graves, of Emporia; and finally Judge Benson. It seems very probable that had Judge Benson not put aside his personal wishes and private business and obeyed the summons of his neighbors to represent them in the legislature of 1905, a comparatively insignificant service for a man of Judge Benson's qualifications, he would never have been named as United States senator, or would never have realized his life-long ambition of being a justice of the supreme court. Thus did the response to the call of duty, ever the judge's most prominent characteristic, lead to the great reward.

It will be remembered that the state was very much inflamed over the "iniquities" of the Standard Oil Company in 1905, and relief was demanded. Accordingly a bill providing for a state oil refinery and branch penitentiary at Peru, Chautauqua county, was introduced to fight the

Standard Oil Company. The whole state was in favor of the bill, overlooking the fact that the constitution expressly forbids the state to engage in internal improvements. The newspapers advocated it, and when the bill came before the house its passage was certain, as the representatives responded to the popular cry. There was fervid and eloquent oratory for the bill. It is not an easy thing to oppose public sentiment or to oppose the wishes of an overwhelming majority of one's colleagues in the legislature. But the proposed law was so manifestly unconstitutional, the provisions regarding a branch penitentiary were so evidently a sham, that Judge Benson opposed it in a speech which for wit, sarcasm and judicial learning has possibly never been equaled in either branch of the legislature.

"One speaker compared the Standard Oil Company, in its power, to the combined armies of the world, and called on Kansas to assist in putting down this great octopus; another explained that the expense would not be overly great, as it would only require fourteen men to operate the plant.

"Judge Benson agreed with the speaker who asserted the overmastering power of the Standard Oil Company; then pictured the assistant warden of the penitentiary marching out on a frosty morning at the head of fourteen prisoners to attack the giant enemy, greater than the combined armies of Europe.

"'There is such a financial and military display as this,' he said, 'the battle of the Marston and the windmills would pale into insignificance.' Then he directed the attention of the house to the constitution of Kansas and their duties as representatives.

"The bill passed. The next day when Judge Benson appeared on the floor of the House he was greeted with unanimous applause. They knew that he was right."

The bill went to the supreme court, which declared it unconstitutional, exactly as Judge Benson had prophesied. (*The State v. Kelley*, 71 Kan. 211.) The house was crowded with members of the senate and of the supreme court and other state officers, and the galleries with friends of the bill, when Judge Benson made this speech, and it greatly enhanced his reputation.

He was the strong man of the House, and had more real influence with the members in matters of legislation than any other one man. "And that was the session when Stubbs was speaker."

Governor Hoch had named him a member of his advisory committee, and on June 10, 1906, Governor Hoch appointed him to the United States senate.

So far practically nothing of Judge Benson's life has been considered except his public service, either military, judicial or legislative. But this was really the smallest part of his active busy life from 1869 to 1906, thirty-seven years. Judge Benson rendered great service to the people of Kansas and to the nation in the three ways indicated, but in the opinion of the writer his greatest service was not in any of those capacities, nor, indeed, in all of them. In this opinion one of Judge Benson's law partners and closest friends concurs. "The question arises in the mind of any

one, What was his greatest work? To me the answer is: Not as a soldier, although a soldier he, every inch; no man of that Grand Army ever wore the bronze button more worthily than he. Not as a lawyer, although his services were invaluable in the formative period of this young state. Not as a legislator, although every piece of legislation that passed through his hands bore the imprint of his judicial mind. Not as a judge, although every decision from the bench, inferior or supreme, bore the marks of a cultured mind, whetted to keenness by an indomitable energy. My judgment is, that when the totality of his achievements is measured with that measuring rod of which we know so little, and weighed in the balance of God, it will be found that he did his greatest work as a private citizen as he went in and out among his fellow men! It is as a private citizen that Judge Benson will be best remembered by those who knew him and loved him, and they were many men, women and children. He was in the private practice of the law about twenty years in Ottawa—and what a lawyer he was! Bereaved women and forlorn children trusted him. How sacredly he cared for those trusts. Men who had little to leave their widows were not afraid to die if Judge Benson would care for that little. It is said that he was the executor, administrator or trustee of more estates in Franklin county than any other man. When he was district judge people liked to try their cases before him, feeling that all would be tried fairly and truly. His advice as a lawyer to poor persons needing it was above price, and indeed there was no price on it. He was the referee or master of a hard case concerning a small amount between two poor litigants. He was awarded \$50 when his work was over, and that \$50 was well earned. When he returned home he thought of the litigants, and, sitting down, sent one a check for \$25 and the other a check for \$25. When he was an attorney in a noted case over several hundred thousand dollars, he declined a fee of \$10,000 and took a small amount, because he thought it unjust under the circumstances. He took advantage of no man, and every man felt it.

In 1872 he and his wife joined the First Congregational Church of Ottawa, and he remained a member of it all his life. In course of time he filled every position which a layman can fill in the church. He was its clerk, deacon, and trustee for years. When he came to Topeka to sit on the supreme bench he at once became affiliated with the First Congregational Church, the first and oldest church of Topeka,<sup>5</sup> and the second oldest in the entire state. He acted as deacon of it until his death. He taught a woman's Sunday-school class in Ottawa for over thirty years. "Right here in this little edifice, where he worshiped so many years; in this

5. The first church organized in Topeka was the Methodist Episcopal Church, March 21, 1855. A church building was not commenced until in 1860, but the lots, donated by the town company, were given to the organization in 1856.

The Congregational organization was begun October 14, 1855, when nine persons met in the cabin of James Cowles "to consult in reference to the formation of an anti-slavery Congregational church." July 14, 1856, a meeting was held "to completely organize our body by the election of deacons, trustees and clerk." The Topeka Town Association donated six lots to the organization for church purposes, and the members set about raising money for a building. Twice was the building wrecked by storms as it neared completion, so that it was not until January 1, 1861, that the first sermon was preached in the church. The first sermon ever preached in Topeka was by Rev. S. Y. Lum, a Congregational missionary in the territory, and the pastor and organizer of the church at Lawrence.

corner, where for a third of a century he taught those who came and went. Some came to him in the giddiness of youth and stayed to learn the deeper things of life; some came with a keen sense of their own weakness, and stayed to learn the source of eternal strength; some came in the darkness of disappointments and stayed to learn from whence comes the light which never fails. They are out somewhere to-day on life's highway. I know not where; but wherever they are, their footsteps are surer, their lives are steadier, their hearts and souls are purer because they were taught by lips now still." His woman's Sunday-school class in Topeka was a favorite one in the church. A communion set was presented to the Congregational Church of Ottawa in honor of Judge Benson by his Sunday-school class, in memory of his thirty years of service as a teacher.

Judge Benson was a scholar of recognized ability along more than one line. He knew his Shakespeare as do few men. His energy was tireless. When he was over seventy years old, the janitor of the Columbian Building, in which he had his office, told the writer that Judge Benson was always the first man in the building, and that he came before seven o'clock. And so he did in the service of the state and nation.

His power of concentration in his work was so great that he knew nothing of what was going on around him, and did not even recognize friends sometimes when they came to his desk for a word of greeting. He was a mind of unusual acuteness, logic, and great ability and learning, yet tempered always with a firm basis of knowledge of human nature, and common sense. Unlike many lawyers, his financial investments were always, at least in the last twenty years of his life, successful ones. He seemed to have an almost uncanny knowledge of what was a "good buy" and what not. He was the vice president and a director of the First National Bank of Ottawa, with assets of over three-fourths of a million, and also the directorate of a smaller bank. It is said that when he left for Topeka his presence at the directors' meetings was greatly missed, because he always knew when not to make a loan.

An old friend has truly said that, "Judge Benson was a gentleman who had learned the fine art of living in harmony with others. He had no enemies. He shrank from any word or act that would wound the feelings of opponents in politics or at the bar. Yet he never shrank from duty, no matter how unpleasant the task. He was keenly sensitive to the opinions of others, but he never allowed the breezes of public passion to drive him from the course of law and right."

*Public Life—1906-1915*

Such was the man who was appointed to the United States senate on June 10, 1906, by Governor Hoch, to serve until the following January, to fill out the term of J. R. Burton, who had resigned. The appointment was a great surprise—to no one more than to Judge Benson himself. It is said that when appointed he declined, and whimsically remarked that he did not know what kind of clothes those fellows wore. It will be remembered that there was a great fight in the Republican party in Kansas in 1906 as to who should succeed Burton when his term came to an end.



United States Senator Charles Curtis, then a representative in Congress; Gov. W. R. Stubbs, then speaker of the house; United States Senator Joseph L. Bristow, Representative P. P. Campbell and Representative Victor Murdock were all fighting for the honor when news came that Burton had resigned. Governor Hoch was, or had been, friends of several of these aspirants, and decided to let them fight it out, and to appoint an outsider. He first offered the appointment to Foster Dwight Coburn, the Kansas state secretary of agriculture. A great wave of approval swept over the state, and the appointment was a very popular one. Secretary Coburn, however, very wisely declined the honor after a week's consideration, and is said to have suggested to the governor his old friend Benson. At least, at once on receiving Coburn's refusal, Governor Hoch called Judge Benson to the telephone and urged him to accept it. Judge Benson was amazed, and declined it at first, but finally decided to accept, and came to Topeka, where he very modestly told the governor that he had accepted the honor tendered, and thanked him for it. The appointment was a very great surprise to the state. All had expected Coburn to take the place, and Benson had never been mentioned for such a position. After the shock of the surprise, the appointment was generally approved. Judge Benson at once went on to Washington, after resigning from the legislature, and was sworn in without delay. He voted on several party measures, including the new statehood bill, in which he was interested. An old position was recreated for him, and he was made chairman of the committee on examination and disposition of documents. He filled all the duties of his place while his term lasted (about six months), but of course it cannot be claimed he made a great name for himself by six months of such service. He attracted a good deal of attention because he came from Kansas, "the home of the muckrakers." Eastern newspaper comments were extremely favorable, as it was quickly realized that here was a quiet and sincere gentleman of modesty, courage and ability. Perhaps it might not be amiss to quote here from an article which appeared in the *Saturday Evening Post* of August 25, 1906, by Alfred Henry Lewis, entitled "Major Benson, a Sunflower Statesman." He describes the major as on the sundown side of 60, with gray hair which "has stuck loyally by its post. His beard, shot with gray, knows no mowing touch of razor, but is kept in orderly reserve by subduing shears. His eye is kindly, and something human and fetching gleams therein. In person small, with no suggestion of adipose, the one big thing about Major Benson is his honesty. Ah, that honesty! It fences him about, envelops him like an atmosphere, embellishes him like a jewel. It is the first thing one notices, the last thing one forgets. . . . There is no doubt of his brains, none of his courage, none of his honesty. . . . Above all things, he will be modest."

Judge Benson was much pleased by the cordiality with which he was received by some of the more noted senators. Modest as always, he let the other man make the advances. Soon Senator Joseph Benson Foraker, of Ohio, was pausing at his desk to see if they could not trace some relationship, or Gen. John W. Daniel, of Virginia, was carrying him off for a long talk about the war. As always, he was well liked.

His first self-imposed task in the senate was characteristic of Benson.

He took down the Congressional Directory and looked up each man as he spoke, in order the more quickly to become familiar with those about him.

His term ended on January 29, 1907, and Judge Benson retired to private life, for he was refused an election to continue himself in office, although he sought it. The legislature elected Representative Charles Curtis to succeed the judge. The judge returned to Ottawa to practice law.

On July 24, 1907, Judge Benson received an invitation to be one of the guests of honor of the city of Buffalo for its "Old Home Week" and seventy-fifth anniversary. The President and Vice President of the United States, Grover Cleveland and William Jennings Bryan were other speakers. Judge Benson accepted, and before speaking at Buffalo went on to the Jamestown Exposition, and then intended to go to his old home, near by, to spend some time visiting his nephew, Sidney T. Benson, a resident of Falconer, N. Y.

On August 1, 1907, Gov. E. W. Hoch sent the following telegram to Judge Benson at the Cochran Hotel, Washington, D. C., where the judge had just come from Jamestown:

"I want you to fill vacancy on supreme bench. Will you accept? Wire answer  
E. W. HOCH."

Hon. Arthur L. Greene of the state supreme court had died, and Governor Hoch named his successor in less than a week. Judge Benson wired back at once, accepting the position, and thus his lifelong ambition was realized. The appointment was a great surprise to Judge Benson, and was entirely unexpected, as indeed were all his appointments. Unusually the office does seek the right man. The appointment met with almost universal approbation, although a few people thought that he was a railroad or corporation man because of his 1905 speech against the state oil refinery. As a matter of fact, Benson had never ridden on a train, although they had been sent to him for years, but had always quietly returned them with a note of thanks. Neither did he ever give a letter of rejection to the press, and this would have gone unnoticed if a friend had not seen him pay his fare to Washington when appointed senator, and asked him about it.

Judge Benson continued his trip to New York and made several speeches, one at Falconer, N. Y., as well as the one in Buffalo.

He presently returned and took his seat on the supreme court, and was elected in November, 1908, for the full term of six years, to succeed himself, beginning January 11, 1909, and ending January 11, 1915. At the end of his term he sought reelection at the hands of the people, but lost the election and was succeeded by John S. Dawson, of Hill City. Judge Benson's printed opinions are to be found in nineteen volumes of *Kansas Reports*, volumes 76 to 95. He wrote 340 opinions in those volumes, besides dissenting in 38 cases. Perhaps no justice was harder working than Justice Benson, with the exception of Judge Mason, who seems to have written more opinions than any other justice on the court.

Judge Benson was a fine lawyer and an almost ideal judge. The certificate which he obtained from Judge Cook, of New York, when he finished studying in his office, gave him a most flattering character. He

there began his legal education, but he never finished it. He had a mind eager for more learning, and was ever on the alert to learn more. He was extremely able, was well grounded in general principles along almost all lines of the common law, and was a master of certain parts of it, if any man may be called a master of any subject of the law. It is true that one thing was urged against him when he first ran for district judge. His predecessor had been a large, powerful-looking man, and Judge Benson was rather small and short. After his undoubted qualifications had been urged, an admirer of his predecessor said, "But won't he look like hell, hunched up behind that desk." When he became trial judge he was ever zealous to protect the rights of litigants, and was careful to see that each case was tried on its merits. He allowed no "monkeying" on a trial, but kept the lawyers to their business, so that each case would take no longer than necessary. When he retired from the district court the Douglas County Bar passed some very flattering resolutions, regretting his retirement.

When Judge Benson realized his lifelong ambition he had a splendid preparation for his new work, and he speedily made himself felt as one of the strongest judges on the bench. Whenever Judge Benson decided against an appellant, the defeated person could feel certain that his case had been carefully and indeed almost painfully considered. Perhaps no other justice on the bench had the power and the desire to put himself in the place of the petitioner for a new hearing as Judge Benson did. He asked himself always, "What would I do if it were I who were petitioning?"

It was a great disappointment to most of the lawyers and to educated men when the people failed to reelect him to the supreme court in 1915, and showed well the defects of the elective system. He failed of election, not because any one doubted his integrity or ability, but because he deemed it derogatory to the proud office which he held to advertise himself. What governor would have cared or even dared to refuse reappointment to a Benson when the state so sadly needs such men as he? And yet the people refused his reelection. Some time ago a state official, who has perhaps unequalled opportunities to know the justices of the supreme court, told the writer that in his opinion no justice who had sat on the bench in the last thirty years was so well qualified for the supreme court as was Judge Benson.

*Professor of Law.*

When it was apparent that Judge Benson had failed of reelection to the supreme court, Washburn College at once asked him to become a full professor of law and to devote his entire time to the law school. After consideration he accepted, and the trustees of the college announced his accession to the professorship. The dean of the law school desired to talk over his work in the school with the judge before his term of justice had ended, and the judge made a characteristic answer: "I can't talk to you about that now," said he; "my time belongs to the state until January 11th." And he refused to consider the law-school work until his term was over. Teaching law was not new work for the judge, for he had been

lecturer on code pleading at the Washburn Law School for some five years while he was on the supreme bench, and he had been lecturer on code pleading at Kansas University Law School for some seven years before that. He fitted into the work at the law school at once, and soon became one of the most proficient teachers and the best-loved member of the faculty. The boys soon found that Judge Benson was their friend, and they could go to him in any emergency. They liked him, and law-school celebrations were not complete unless Judge Benson was at their head. When the students marched through the city on some celebration, or out to the Hill to join the college students, the boys soon found that the judge, in spite of his seventy years, could march as fast as any of them, and that he liked to be with them. He became very popular, and was called on for speeches at various meetings. Perhaps the last speech that he made was at a "pep meeting" on the Hill, shortly before Washburn was to play football against one of its enemies. His boys began chanting, "We want Benson; we want Benson." And the speech that he made was full of fire.

His work at the law school was wide and covered a number of subjects, as mortgages, code pleading, contracts, and Kansas statutes, of which he was a master. The law school has not recovered from the loss of his death, and no one will be able to take his place. No one else will do, or can do, when "We want Benson." His service as a teacher was great, but it was not as great as his example to the boys. The boys fairly loved the old man, and I think that he knew it and was modestly proud of it. There he was, a perfect example of the ideal judge—able, upright, impartial—a great influence for good on the law students. Perhaps it may not be out of the way to add that he is missed by the faculty of the law school as much as by the students. Above all, they miss his genial presence and their kind friend. In the consultation room there was no one who could so illuminatingly bare the character of a student or reveal the difficulties of a problem in so few words as the judge. His knowledge of human nature was almost uncanny at times, and yet withal he never spoke evil. His great fund of common sense was the basis of all his knowledge, and permeated it all.

He continued his work in the law school for almost exactly one year, as he taught two terms, or half years. His work at the law school was most pleasantly interrupted by his visit to Washington, in September, 1915, when he took part in that brave yet pitiful march of 20,000 surviving members of the Grand Army of the Republic, bent and broken, fifty years after the great review of that great army of 200,000 strong.

The University of Baker honored itself by conferring upon Judge Benson the degree of doctor of laws.

During the vacations and when he had time, Judge Benson practiced law to the date of his death, almost. A week before his death he filed a petition for a rehearing in *Greenwood v. Greenwood*, 96 Kan. 591, and on the afternoon of the night that he was stricken he was busily engaged in the state law library looking up authorities in an important case in which he had been retained to assist the attorney-general of the state.

He was stricken late Wednesday night at his temporary home on

Quincy street, Topeka, and was soon taken to the home of his daughter, Mrs. H. Ward Page, on Lane street, Topeka, where he died at six o'clock, Saturday morning, January 1, 1916. It was a sad New Year's Day for many. His body was taken to Ottawa on the following day, and at two p. m. that day there was a funeral service in the First Congregational Church, at which Rev. Dr. W. A. Elliott, of the First Baptist Church, Rev. Dr. A. S. Henderson, of the First Congregational Church of Topeka, and Hon. C. A. Smart spoke, and Mrs. Henderson sang very beautifully, "Lead, Kindly Light," one of Judge Benson's favorite hymns. He was interred that day in the Highland Cemetery. The dean of Washburn Law School, the president of this Society, four judges of the supreme court and many friends attended the services. Judge Benson was survived by his wife; his daughter, the wife of H. Ward Page, an attorney of Topeka; several grandchildren, including a namesake, Alfred Benson Page; his brother, James H. Benson, of Jamestown, N. Y., three nephews and two nieces.

Perhaps an unusual number of memorials of the judge have been prepared. On February 10, 1916, public memorial services were held in the courthouse at Ottawa, Kan., and a memorial presented to the court. A beautiful memorial was presented to Topeka Bar Association on January 15, 1916, by its committee of three, composed of Capt. Joseph G. Waters, Senator James A. Troutman, and Judge T. F. Garver, and written as only our Captain Waters can write when his heart is touched. An extract follows:

"The gilder would waste his gold if he dare attempt to add luster to the life of Judge Benson. . . . He housed his being with an open door to the sunrise. He was a man wholly without guile, and modesty was native to him, as color to the rose. His life was a simple one; serene as the unflecked summer sky; dear as a friend, gracious to his kind, and always a loving and beloved man.

"He has been honored many times by his people, and each added service was to him a new consecration."

The State Bar Association, of which he was a founder, also memorialized him, and his portrait, painted by George Stone, hangs in the supreme court room.

Judge Smart and Mr. W. S. Jenks, both of Ottawa, published tributes to him. The Law School edition of the *Washburn Review* for 1916 contained a sketch by one of his colleagues. The best sketch of his life, perhaps, is the one in the Blackmar History of Kansas, 1912, vol. 3, p. 59 (part 1). The new Connelley History of Kansas will also contain a sketch of Judge Benson.

The memoir of the supreme court of the state is contained in volume 98 of the Kansas Reports, and Justice Porter, speaking for the court, says of the honorable Christian gentleman whose memory they were perpetuating: "I may add, that after several years of intimate relations with him during his service on this court, it is my belief that he was one of a few I have known who were as good as they seemed to be."

## JUDGE NELSON TIMOTHY STEPHENS.

Written for the Kansas State Historical Society by MISS KATE STEPHENS,<sup>1</sup> of New York.

**I**T USED TO BE SAID that when we talk of those gathered to God, we for a time lead back their souls to old associations. If this is so—if my father has been seeing what I have here written—he has recognized the truth I have striven to tell; how I have avoided saying he was this, or he had that admirable quality, although I have often been tempted to quote from letters coming, even through a quarter of a century after he died, telling me of his helpfulness, his sound judgment, his penetrating intelligence, and knowledge of and wisdom in the law. Deeds spoke to him, and speak to me—and, too, minor, everyday deeds. What he did supported what he said and lent it weight and value. Therefore, I have in a way I think so simple that a child might read it, here told somewhat of his deeds—somewhat of surroundings he made for his own and his family's daily life; somewhat he, driven by his sense of justice and effort to protect the undefended, accomplished for his neighbors; somewhat, making for the highest good of the state, he sought in urging foundations at the University of Kansas. And from addresses he gave in Kansas I have added extracts which have the preciousness of his very words, and speak his convictions—for he was in earnest; he lived an earnest life, entirely free from and entirely above poses and shams.

My father was practicing law in Moravia, N. Y., when President Lincoln sent out the call of the 15th of April, 1861, for 75,000 volunteers. He and my mother had four children, and he had a practice so lucrative that it supported their home with all the comforts and elegances of that day. However, he locked his office and went out enlisting men for defense of the Union.

Not many days later the recruits he had raised assembled in the main street of the pretty village. Drums beat attention; two or three men stepped forward, and presenting him with a sword, buckled it round his waist, and the whole enlisted company wheeled about and marched forth to war. The sun shone brightly that spring morning. But wives, who had stood in tears behind the white pickets fencing in homes, sobbed afresh as the recruits disappeared in the turn of the street, while children, elated at the music and movement of the throng, broke from their hands and peered curiously between the palings. I was one of those children, and the scene is before my eyes as I tell of it here.

In his diary of 1861 my father made fewer entries than in his journals of other years. At first he was probably too busy to write, and later too ill. "Marched from Martinsburg [Virginia] to Bunkerhill," I find under the entry July 15th; and under July 17th, "Marched to Charlestown." Again, "Marched to Harper's Ferry," under the 20th. "Battle of Lovettsville," under August 8th; and two days after, "Went to Balti-

<sup>1</sup> Kate Stephens was born in Moravia, N. Y., February 27, 1853. She graduated from the University of Kansas in 1875, and later did graduate study at Cambridge, Mass. and in Germany. In 1878 she became assistant professor of Greek at Kansas University, and professor from 1879 to 1885. Miss Stephens is a well-known writer. Her last volume, "Workfellows in Social Progression," was published in 1916.