

THE LIFE AND TIMES
OF JOHN MASTICK
THE PIONEER LAWYER OF ROCHESTER

By JUDGE JOHN D. LYNN

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JUDGE JOHN D. LYNN VIEWING THE GRAVE OF JOHN MASTICK,
THE PIONEER LAWYER OF ROCHESTER, IN THE BUFFALO GROUNDS,
MT. HOPE CEMETERY, ROCHESTER, NEW YORK.

The Life and Times of John Mastick: The Pioneer Lawyer of Rochester

By JOHN D. LYNN

ADDRESS DELIVERED AT EXERCISES HELD IN MONROE COUNTY
COURT HOUSE, SEPTEMBER 16, 1922, DEDICATING A BRONZE
TABLET IN MEMORY OF JOHN MASTICK.



WE meet to-day upon the invitation of The Rochester Bar Association and The Rochester Historical Society, to dedicate formally this historic tablet, memorial to the pioneer lawyer of Rochester. Rather more than that: Memorial to law and its professional administration; to justice, to right defended, wrong redressed, liberty protected and license restricted, by the application of reason to the social and civic relations of men.

But the placing of this tablet is even more than that. It is memorial to the pioneer impulse, to the blazing of the trail.

More important than John Mastick's profession or position is, that he came when he did, and pooling his skill with that of the artisan, the woodsman, the trader, made one of that heroic band, few but fearless, who challenged nature with determined purpose to establish in this western wilderness, a seat of civilization, organized and orderly; where enterprise would create opportunity; where industry would be rewarded with prosperity; where the factory bell would silence the howling of the wolf, and the humming of the mill would echo the music of their dreams. Where culture and happiness would be limited only by their own wisdom and virtue.

All of which was not to be accomplished, however, without

struggle, sacrifice of present comfort and absolute ignorance of despair.

They must have been wonderful men and women. In them, the ideal and the practicable, hope and determination, must have been most happily united. Hence we celebrate them. Our memorial includes them all.

We, who see and enjoy the result, must be curious to know all that can be learned about them, their life, their work, and their surroundings. We know what they did. We want to know how they did it.

One who is not interested in the history of those who have gone before, makes but little stir in the present, and the future will not be much busied with his memory.

One hundred and ten years ago, the land upon which this city now stands, was primeval forest. And all this western section, of which the Genesee River is the center, an empire in area, was a dense wilderness, with here and there a log hut, the abode of a settler who had started a clearing, that in time would be his farm. West of the Genesee, upon not more than one per cent of it, had any attempt at settlement been made, and much of the remainder had not yet been explored by white men. The whole territory was practically in a state of nature, the abode of wild beasts, and men almost as wild, subdued but not tamed, and at this time liable, at any moment, to be seduced by the British into seeking vengeance upon these intruders upon their one time hunting-grounds. Bears were quite neighborly, and wolves were so numerous, that by law, a bounty was paid for their heads, and in building care must be taken to make even the house wolf-proof. Children at play had to be expert in killing rattlesnakes. War was on with Great Britain. Hard times were over the whole country, and in our settlement money was so scarce, it couldn't be the source of much evil.

More disheartening than all these, was the malaria arising from the ground newly opened to the sun, resulting in fever and ague, and other diseases incident to that condition. All but the rough necessities had to come from the far east; and the cost of moving a ton of freight from Albany to Rochester was one hundred dollars. Sugar could be got from the forest,

but salt—a greater necessity—must be hauled from Onondaga with ox-teams.

Certainly not a cheering picture, but it is with this background, we must study the pioneer, if we would understand his fight, and appreciate his victory.

It is our sorrow that we know so little of our municipal predecessors; though so short a time has elapsed since they were here and active. We would like to know what manner of folks they were, and how they looked and thought, and talked. But they were more busy making history than recording it; and photograph galleries and newspapers were not numerous about the four corners in those days. We can only, appreciating the conditions, note the accomplishments, and fill in the spaces between the few recorded facts, by assuming that results come from like causes the world through.

As a figure in this picture, we can see John Mastick coming into this settlement, with all the hope of young manhood, and a dignity, proportioned to his purpose, of becoming law-giver to the community.

He was born January 25, 1780, at Rockingham, Vermont; where his father, a Revolutionary soldier, died in 1786. Of his growing youth we know nothing; but the profession he adopted indicates that the widowed mother gave him encouragement, at least, toward an education.

In early manhood he journeyed into the Genesee Country and finally came to Avon—a settlement of very early date and importance—where he studied law with George Hosmer and, on November 2, 1808, was admitted to the Bar at Canandaigua. The proceedings upon his admission recall a settled and pleasing custom of that day: The candidate for admission was always examined by a committee appointed by the Court, and the first order of business was to repair to the tavern and have a dinner party at the expense of the applicant.

Upon motion being made in Mastick's behalf, the Court recognized this custom by facetiously ordering that the said John Mastick take his examination at once "at Erastus Rowe's Inn, at Canandaigua, in order to his admission as an attorney and counselor of this Court." And to guarantee the

success, of both dinner and John's petition, the Court further ordered "that N. W. Howell, John Greig and George Hosmer, Esquires, be his examiners." George Hosmer was his preceptor, and the first lawyer settled in practice west of Canandaigua; Nathaniel W. Howell had been the preceptor of George Hosmer, and was the first lawyer to settle at Canandaigua; and therefore the first practicing lawyer in the State west of Seneca Lake; and John Greig was a genial and convivial Scotchman with a leaning toward common sense. A very proper committee to be charged with the responsibility of creating the pioneer lawyer of Rochesterville. And Mastick was not likely to get the worst of it, with his professional father, and professional grandfather, both upon the committee.

Many of us have gone up against the like ordeal, wishing that we had a relative, of any degree, upon the committee; would have almost welcomed a mother-in-law. And oh! If only we could have had the privilege of inviting the committee over to the tavern, and sort of establishing social relations with them. The Judges of the Court who ordered this examination were not lawyers. In those days a man need not be a lawyer to become a Judge and I have heard it waggishly suggested that, in that respect, conditions haven't much changed, in fact, to the present day.

After he had been thus auspiciously admitted to the Bar, and his gratitude duly expressed in meat offerings, burnt offerings, and libations poured out—not upon the ground—Mastick returned to Avon, where he remained for a time, practicing his profession, and probably prospecting for a location for his future activities.

In his journey hither he first stopped at Charlottesburg—now the port of Rochester—but I conclude did not open an office, nor settle down. Charlotte had at that time made little start at village settlement. He came up the River, stopped for a time, at Hanford's Landing, below the lower falls, where a village settlement was then being attempted with a great deal of courage and activity. In 1812 he was made Supervisor of the Town of Northampton, and about the middle of that year came to Rochesterville and settled. He possibly came here through having been brought up on the

Connecticut River, near Bellows Falls, one of the then important water-powers of New England, and could foresee the commercial advantage of putting the waters of the Genesee into industrial harness. He must have had some vision beyond the common ken. The law does not precede, it follows civilization; and he must have had the pioneer sense acutely developed, to see, in what at that time was only a place to begin something, prospects that would outweigh this historic warning. He came while the settlement was completing its first half dozen rude buildings, and he came to stay.

Immediately he bought a lot on the east side of State Street, between Main and Corinthian Streets. We say today, a very good site. It was a good site then, as it was one of the few spots on the east side of State Street that was above water most of the year. He proceeded at once to clear, and build, and soon had a law office completed and "hung out his shingle." The following year, he was appointed Master in Chancery. As this appointment came from the Governor, judging the past by the present, I assume John was a Democrat.

What a law practice here at that time, might be, we can easily guess; although there were few people, there was active buying and selling of lands throughout the neighborhood; conveyancing, contracts, and counsel in the proposed organizing and constructing of business enterprises. An active, but probably not very lucrative, branch of his early practice, was preparing the claims, and attending the collection, of the bounty for killing wolves. As the open season was twelve months a year, and most of the settlers good marksmen, and the Indians made a specialty of this enterprise, this business alone would enable him to keep the wolf from his door. It is on record, that the hunters, white and red, coming to Mastick's office with their trophies, were so numerous and heavy laden, as to almost congest travel on State Street.

All things considered, he could hardly complain of his success up to date, when he had already attained the full measure of a lawyer's ambition, in two very important particulars. At thirty-three years of age he was the leader of

the Bar of his town, and owned the block in which his law offices were located.

Apart from its effect to him as a professional venture, I believe the coming of John Mastick here at that time, had a great value to the settlers gathered and gathering; and a like value in the nature of reaction to himself.

In the infancy of society, men are occupied with the business of the present hour, forgetful of the past, and careless of the future, with a tendency to accept the lack of formal, or organized restraint, as an invitation to excessive freedom of individual action. But here comes the lawyer, whose presence alone, is an announcement of established government. His professional title comes from Government. He is an officer of the State. His vocation is to apply, through governmental agencies, fixed rules to the settlement of differences of interest. Through his training he has become a man of form, who wants things to move regularly, and as the result of careful consideration. He is too conservative for settled times; but into this budding frontier settlement he brought, I believe, the steadying influence needed, to unite the energy of the pioneer with the responsibility of the citizen; and thus set the foundation of its future upon the corner-stone of law and order. And equally valuable must it be to the lawyer, to supplement his studies of the past, with a share in the tasks of the present, to partake of the struggle of his fellows, to know life not alone as it used to be, or ought to be, but as it is, and that he is a responsible part of it now, with the privilege of influencing its future; in short, that he is a citizen as well as a lawyer.

Whatever were the agencies contributing, the happy result to Rochester was that, as a settlement and village it escaped the almost inevitable experience of pioneer settlements generally; in that it never had its period of lawlessness, to be grappled with and overthrown by a revival of neglected responsibility.

Nearly all the settlements of our country, as they increased in numbers and prosperity, attracted a new immigration, often of people who came to escape the restraints of established order, and who gradually changed the habits of the community until in modern language, the place became

“wide open,” unbearable in vulgarity and vice, to be rescued only through aggressive, and sometimes violent, reform. Rochesterville escaped this moral depression, and never had need of the civic renaissance.

For the first five years, this settlement, though acting as a little commonwealth, had no legal establishment. No village organization, nor authority; and yet the conduct of each seems to have conformed to the will of all. Possibly they remembered their New England ancestors, who, when they went out and founded the colony of Connecticut, soberly announced, that the law of God would govern the colony until they had leisure to prepare some. Even in that circumstance, the lawyer might be very helpful, as there is no difference between the law of God and the wise laws of men.

But little more than a year after John Mastick came, the thought of the people was directed to the need of a public school,—and in line with the formality I have suggested, a public meeting was assembled, in Jehiel Barnard’s tailor shop, and it was decided to build a free public school. We must understand this school was public, only in the sense that it was to be built by the voluntary contributions of all the people, and was free, in that the door was open to all alike. It was not free from charge. The cost of conducting it was met by the parents paying in proportion to the number of children each sent to school. Those who had no child or sent none to school escaped the expense.

As the settlers were, at that time, inviting mechanics and laborers into the settlement for the building of raceways and mills, there might be some children whose parents, however willing, were unable to meet the expense. To provide for this emergency, it is said Jehiel Barnard made a motion, that the eight bachelors of the settlement, should each pay the cost of maintaining one child in school. As Mastick and Barnard were two of the bachelors, I hope John seconded that motion. However, it was carried, and the bachelors made it unanimous by establishing eight free scholarships; probably the first established in the Genesee Country. The building was completed and the school opened in the spring of 1814. There was no law to compel anyone to do his part in this enterprise, yet tradition—which usually keeps no secrets—

has not suggested that one resident failed in what his neighbors expected from him.

When in the growth of the settlement it seemed desirable, it was decided, at a public meeting, that a night-watch be established, and that the unmarried young men, each in turn, regularly patrol the streets of the settlement throughout the night. This service was entirely gratuitous, and it has never been charged that even one refused to take his turn and at intervals through the night twirl his ratchet and cry out: "All's well in the Village." This system of policing continued well into the village days, even after constables were elected and paid for day service.

In the same manner there were appointed fire wardens, health officers, street superintendents, and every needed supervision supplied, without other authority than public opinion.

Jehiel Barnard was the first tailor in the settlement and his shop was the public meeting-place of the citizens. In the absence of churches the first religious exercises were held there, the Episcopal service being read by some one of the residents, and the singing led by Miss Delia Scrantom, the pioneer young lady of the settlement, who came here to occupy with her parents the first house that was going to be built.

Barnard in donating his shop for these exercises may not have seen in advance all the possibilities, but he certainly improved his opportunity. He wooed and won the leader of the choir. They were married October 8, 1815, in the log house from which the picture was made, that now adorns the stationery of the Historical Society, and then stood where Powers Block now stands. It was the first wedding in the settlement, and revoked the first of those eight scholarships. And, like other undertakings of the pioneers, it was not to be accomplished without overcoming difficulties. There was no minister in the settlement. One was found in Victor, Rev. Reuben Parmele, who was duly engaged to perform the ceremony, but when he learned the marriage was to take place on Sunday, he refused to proceed, giving a different excuse, which did not deceive the pioneer. This was some predicament. Every young woman knows it is unlucky to

postpone a wedding. What they said about that minister is not on record. But in true pioneer fashion, they wasted no time in repining. They called on their friend Mastick, who, as a magistrate, performed the ceremony, and kissed the bride. John had, quite providentially, been appointed a Justice of the Peace, a short time before, being the first Justice of the Peace in the village. As this appointment also came from the Governor, I feel that, as to John's political standing "I guessed right the first time." No doubt this circumstance opened up to our pioneer lawyer a new source of income.

The wedding party was held the following evening and was a society affair. The first families all attended. Ira West, the first merchant of the settlement, provided the wine, to carry out a bargain with Barnard, that whichever of them married first, the other would provide this necessary delicacy. The music was furnished by a left-handed fiddler from the "Deep Hollow" and, as it was announced that evening that West's marriage to Miss Eliza Stone was soon to follow, we were losing our free scholarships pretty rapidly.

Mastick was soon to take part in another marriage ceremony, not as prompter this time, but as one of the actors. While he was living in Avon, he boarded at "The Widow Berry's Tavern," a very popular hotel of that day. When John came into our settlement, he came not entirely heart-free. As soon as he had his law office completed, we find him buying a one acre lot on South Avenue at the north end of the present Osburn House, which he proceeded to clear, and as fast as his circumstances would permit, built upon it a comfortable, and somewhat pretentious residence, for that time. When he had the house completed—a few months after the wedding of his friend Barnard—he went to Avon, and brought Catherine Berry, the widow's daughter, to Rochester as his bride. With its other evidences of activity, brides were increasing in our settlement. By this marriage, John became the brother-in-law of his law preceptor, George Hosmer.

Catherine Berry was the daughter of Gilbert R. Berry, who came as the first settler into Avon, in 1789, where he built a tavern and store near the river, and established trading posts up the river and down to what is now Charlotte, for

collection of furs. He also built and operated a rope ferry across the river at Avon, carrying the trails, which centered there, on westward through the wilderness. A rope ferry, as I understand it, is a flat-boat propelled by a rope, fastened at each side of the stream, and passing around a drum or windlass on the boat, in such a manner that turning the drum would wind up the rope and draw the boat onward, while at the same time paying out the rope to the other shore. When you wished to return, you need only change position and wind the other way.

Berry was a clever, free-hearted Irishman, who became very popular, but died in 1797, leaving his young wife to conduct the business and bring up the family. She proved equal to the task and continued the tavern and the ferry, making both more popular if possible than had her genial husband.

Avon was at this time quite an important center of life, affording the growing youth many advantages not possible in the newer settlements. Catherine Berry became a cultivated and sensible young woman. She was one of the founding members of the First Church of Avon in 1810, which, within two years, had a substantial church edifice, and settled resident minister. This church building, improved as time and circumstances required, stands to-day, opposite the "Whitehorse Tavern," a monument to the serious purpose of the pioneers of the town.

Mrs. Mastick was (September 10, 1817) admitted into membership of the First Presbyterian Church of Rochester, then recently organized, and occupying its first building on State Street near Church, but had hardly time to get into the social activities of the settlement, when she died, within four years of her marriage, leaving her husband childless and alone, in this home into which he had built so much of his life and his hope.

Rochesterville started upon the west side of the river but soon grew up on both sides, upon territory that was part of two counties. All east of the river was Ontario, all west in Genesee, which increased the natural difficulty of serving legal papers.

Many amusing stories have come down to us, of our citi-

zens crossing the river to avoid an undesired meeting with the sheriff of the other county. As imprisonment for debt was one of the humane and enlightened provisions of the law at that time, a meeting with the sheriff was, not alone undesirable, but quite inconvenient. As all our people were beginning business life, and business was mainly done on credit, and such property as they had accumulated, was in land, honest men were not always able to meet their obligations upon demand; and an unconscionable creditor could use this law as an instrument of torture.

After Main Street bridge was completed, the debtor had some chance, as he could cross the river quickly, and dry shod. Many of our early residents, men who gave our city substance and fame, often owed their liberty, temporarily, to their good luck in discovering this minion of the law, in time to beat him to the center of the bridge, by a neck. Then, from his point of vantage, he could wave salutation, not calculated to increase the composure of the officer; but quite satisfactory to the onlookers, who are always with the winner. Some very close races were had, and perhaps those exercises aided in developing that promptness and energy, for which our city has always been noted.

As long as the debtor remained in the other county he was immune, and there was a limit to the staying possibilities of the sheriff. As our enterprising pioneers usually had lands on both sides of the river, there was no loss of industry, through these governmental interruptions. He could swing an axe as effectively, and profitably, upon one side as the other. If we believe one-half of these stories, it would seem that the lands of our settlement upon either side of the River, were largely cleared by the residents of the other side.

To-day we can jolly a little entertainment out of these episodes. But what can we say of a law, so brutal, so senseless, so wasteful? Aside from the inhumanity involved, behold the stupidity of taking a man, unable to pay his debt, and placing him where he never could pay it!

The debtor could, if able, give the bond of some friend, that he would remain within the jail limits—sometimes the county, sometimes of less extent—he then had his liberty within this restricted area. If he went beyond, the bond was

forfeited. But legal ingenuity came to the rescue. Suit must be commenced, by the service of process, while the debtor was off the limits. A debtor wishing to take an excursion abroad, needed only to take his surety with him, and be entirely safe and in good society.

Our settlement, having become a mercantile center, always up to date and possibly inspired by some collection expert, organized a creditors' association, and made a list for the use of the members, of all who were on the limits for debt, so as to protect themselves in extending credit. This organization was popularly dubbed "The Shylock Society," and led to another organization consisting of the less fortunate, united with the more kindly of our people, pledged never to trade with a member of the other society, and boldly threatened to publish some things about the "Shylocks;" the first organized "Boycott" in America, I believe. The result was the Shylock Society abandoned its enterprise, and finally the thoughtful citizens generally started a movement for the abolition of imprisonment for debt, which they pushed so vigorously that in 1831 this barbarous legacy from the mother country lapsed.

In this movement, to the credit of the Bar, the lawyers generally were upon the right side, and rendered effective service here and at Albany, in removing this stain from our State.

March 21, 1817, the settlement was, by legislative enactment, incorporated as a village, by the same name that by common consent it had borne for five years.

Within five years from the echo of the first axe in the forest, here was an organized village of nearly one thousand inhabitants, with four schools, three hotels, three church organizations, a weekly newspaper, a Masonic lodge, a cotton factory, four merchant flouring mills, numerous stores and shops to supply every want, and a charming social and intellectual life.

And more wonderful, the village could take over a going concern, with every agency of governmental form in operation, and henceforth, continue under municipal authority what for five years had been done by co-operation and common will.

IN MEMORY OF
ONE OF THE BRAVE SETTLERS WHO PLANTED A CITY
1780 - JOHN MASTICK, ESQ. - 1827
THE PIONEER LAWYER OF ROCHESTER

HE WAS THE FIRST TO PRACTICE LAW IN THE WILDERNESS
VILLAGE, WHERE MEN AND WOMEN FACED STRANGE DANGERS
AND HEAVY TOIL.

THEY FOUND THE FOREST PRIMEVAL. THEY LEFT A CITY OF
HOMES. A FEW DARED AND SUFFERED. MANY ENJOY THE GOOD.

"YE SHALL KNOW THEM BY THEIR FRUITS."

ERECTED BY
THE ROCHESTER BAR ASSOCIATION &
THE ROCHESTER HISTORICAL SOCIETY
1922

BRONZE MEMORIAL TABLET, ON THE WEST WALL, SECOND FLOOR
CORRIDOR, MONROE COUNTY COURT HOUSE. ERECTED BY THE
ROCHESTER HISTORICAL SOCIETY AND THE ROCHESTER
BAR ASSOCIATION, SEPTEMBER 16, 1922.

Captain Basil Hall, an English traveler, visiting here ten years after the village was organized, noted what he found done and doing, at that time, which will enable us to understand how these pioneers worked this seeming miracle.

I quote: "On the 26th of June, 1827, we strolled through the village of Rochester under the guidance of a very intelligent friend, a native of this part of the country. Everything in this bustling place appeared to be in motion. The very streets seemed to be starting up of their own accord, ready made, and looking as fresh and new, as if they had been turned out of the workman's hands but an hour before. * * * The lime seemed hardly dry in the masonry of the numberless saw mills and manufactories. * * * In many of these buildings the people were at work below stairs, while at the top, the carpenters were busy nailing on the planks of the roof. * * * Several streets were newly finished, but had not as yet received their names; and many others were in the reverse predicament, having been named but not commenced—their local habitation being merely signified by lines of stakes. * * * I need not say that these half finished, whole finished and embryo streets were covered with people, carts, stages, cattle, pigs, beyond the reach of numbers; and as all these were lifting up their voices together, in keeping with the clatter of hammer, the ringing of axes, and the creaking of machinery, there was a fine concert I assure you. * * * A few years ago the whole of that part of the country was covered with a dark silent forest, and even as it was, we could not proceed a mile in any direction, except that of the high road, without coming full-butt against the woods of time immemorial. * * * And it actually occurred to us, several times, within the immediate limits of the inhabited town itself, in streets, too, where shops were opened and business actually going on, that we had to drive first on one side and then on the other, to avoid the stumps of an oak, or a hemlock or a pine tree, staring us full in the face. * * * There was little or no exaggeration, therefore, in supposing with our friend, that the same fir which might be waving in full life and vigor in the morning, should be cut down, dragged into daylight, squared, framed, and before night, be hoisted up to make a beam or rafter to some tavern, or factory or store, at the corner of a

street, which twenty-four hours before had existed only on paper.”

This picture is drawn by no sympathetic admirer, but a clear-visioned and critical narrator. An English Naval officer who expresses surprise that there should be a dancing-master in such a place, and whose prejudices prevented his noting that this bustling enterprise and magical transformation were coincident with a social and civic purpose, in which spiritual growth was keeping pace with physical and commercial progress. He has given us such a perfect picture of the life, the struggle, and the success of the early settlers, that we can forgive his noting that our boots were not polished, nor our hats brushed; but, when an Englishman criticises the fit of our mens' clothing—then we must laugh. He is not alone in mistaking appearance for substance. Some of our own writers, referring to this period, smugly state, “there were no aristocrats in the village.” What an error! In those days there was nothing here but aristocracy—the aristocracy of individual character. The only kind God recognizes or man respects.

The first court of record, ever held in our village, was a term of District Court for the Northern District of New York, in September, 1820. Judge Roger Skinner presiding. The first court of the County of Monroe, was held in the loft of the old Eagle Tavern, on the second Tuesday, the 8th of May, 1821.

The County had as yet no Court House; not because the people did not appreciate their dignity or had lost any of their wonted energy.

The Act creating the County, out of parts of old Ontario and Genesee, was passed February 23, 1821. It was organized as a County in March. The cornerstone of the Court House was laid September 4, 1821; and the completed Court House, built from stone quarried from the earth beneath it, was ready for the September Courts in 1822.

The first term of Court was organized as a Court of General Sessions—that being the title of the criminal branch of the County Court—composed of a first, or presiding Judge, and two associate Judges, with grand and trial Juries.

The Court was opened by Nathaniel Negus as Crier, with,

as the Clerk says, "proper proclamation." What proper proclamation was in that ancient day, those of us who have attended the courts of some of the old-fashioned States can imagine. I heard one once which was very impressive. The Crier arose in his place upon a high platform and, as the three Judges filed in, shouted, "The Supreme Court of the State of Delaware, their Honors, Justice Smith, Justice Brown and Justice Jones,—God save the Commonwealth." I didn't see anything in the appearance of the Judges that would call for that prayer.

The Jurors were called, and as usual, several fined for non-appearance; and as usual, the fine remitted as soon as any excuse reached the Court.

The Grand Jury, with Jesse Hawley as foreman, presented an indictment against David Sherred; "for stealing three pinchback watches." This was the first indictment in a court of this County.

There has been much contention, among historians, as to whom belongs the honor of being the first white child born in our village, with argument heated, and research profound; but alas, leaving the question as unsettled as they found it; each claimant having his set of partisans. But here is it established, by Judicial Record, that David Sherred, and he alone, is entitled, without let or hindrance, to assume, appropriate and enjoy, the dignity and advantage of being the first person to be indicted in the County of Monroe, with all the rights, privileges, emoluments and obligations appertaining thereto. While the indictment says nothing about larceny, stealing is certainly pretty close to it; but what degree of larceny, we can not conclude until we know more of what pinchback watches may be. I learn that they get their name from Christopher Pinchbeck, of London, who invented this class of watch, the distinctive feature of which is, that the case is a composition, of four parts copper and one part zinc. Whatever may be the degree of the crime, there was nothing very *grand* about the watch. The case seems never to have been brought to trial. Perhaps the District Attorney felt, that when Sherred learned what the watches were, his disappointment was punishment enough. Thus ended the first term of Court, on the second day of its existence, and ad-

jourment was taken to the second Tuesday of September next.

And on the 11th day of September, 1821, the Court met for its second term, composed of

Elisha B. Strong	First Judge
Timothy Barnard	Judge
John Mastick	Justice of the Peace
James Seymour	Sheriff
Derrick Sibley	Under Sheriff
Nathaniel Rochester	Clerk
Timothy Childs	District Attorney

all names very familiar to students of our early history.

The Grand Jury was organized with Henry Brewster as foreman.

Dyer Higgins was convicted of grand larceny and sent to prison. The first conviction for felony in this County.

Francis McCarty was "bound over," to keep the peace for one year particularly, as against Thomas and Jesse Congdon. We wonder why two of them had to seek protection of the Court from one assailant; but the Congdons were Quakers, and McCarty was—was not a Quaker, but must act like one for the year to come. McCarty provided the bond, Abner Wakelee becoming his surety. Abner was the first shoemaker to open a shop in Rochester, became prosperous, and gave his name to a large sub-division of land, in the north-eastern part of the city.

Every time we run across Abner Wakelee, in the history of our village or city, he was doing some act of kindness. That McCarty needed a friend, was enough to bring Abner to the rescue.

At the January Term in 1822, Mastick did not sit as a Judge but was engaged in practice before the Court. His place as Judge was taken by John Bowman, one of the regular County Judges, a pioneer lawyer of this section. Many of us here to-day, remember his son, the late William H. Bowman, for half a century a leader at the Bar of this County and a most lovable personality; and know his grandson and namesake John P. Bowman, now an active member of our Bar. Thus Judge John Bowman has, through his son and grandson, been continuously practicing in this County, for more

than one hundred years. A family law record rather remarkable, but not the only one in our history. Judge Harvey Humphrey, the literary lawyer of our village days, was succeeded by his son, the late George H. Humphrey, and he by his son, Joseph Lee Humphrey, giving three generations to our Bar from that family.

At this term of Court, a woman was tried for assault and battery, but promptly, and we must agree very properly, declared not guilty. Saving us the humiliation of having it recorded for all time, that one of our fellow citizens of the gentler sex had engaged in such unladylike procedure. The noted chivalry of our present day Jurors is evidently an inheritance.

Another case at this term is rather interesting. A convict was sentenced to one month in the County jail, on bread and water. In those days it seems that water drinking was prescribed as a punishment for crime.

With quite evident pride, the Clerk recorded the adjournment of the Court to the 2nd Tuesday in September next, "at the Court House of the County of Monroe." And on the 10th day of September, 1822, one hundred years ago, the Court met, in a completed Court House; just eighteen months from the time the legislature had given us the right to begin. And the only noise about it was the blasting in the quarry, and the creaking of the pulleys, as the sturdy pioneers hauled the big stones into place.

Pictures and descriptions of that Court House have come down to us. It was a structure of some pretension, artistic, commodious, convenient, and was built to last. Some achievement for our municipal ancestors, when we recall that ten years before, the site of that building and the whole seven hundred square miles included in Monroe County, were covered with forest trees, through whose intertangled density the light of the sun could hardly penetrate, nor could its heat reach the ground. And be it remembered that this transformation was wrought through the will and vision of that handful of pioneers, who *bet on themselves, and won!*

The Court of General Sessions, as the Criminal Court of the County, gives us, probably, a pretty fair side-light upon the character and customs of the early Rochester people.

The indictments show that perjury, larceny, assault and battery, and liquor cases, complete the list of offenses claiming attention from the Court. The perjury cases generally resulted in "not guilty." With larceny the Court was very severe, showing that we come quite naturally by our high regard for the rights of property. That there should be numerous assault and battery cases, is not strange, when we recall that the people of that day, from necessity, had become accustomed to act as their own policemen. And when convictions were had, the judges seem to have looked, not too seriously, upon this pioneer readiness to take care of one's self, the fines ranging from five to ten dollars.

The liquor cases seem to have been as difficult to convict as they are to-day. In running down the names of those who appeared as defendants in this Court, through a period of several years, the names found were generally not names familiar in village history, and do not subsequently appear in any list of citizens of the village. They were probably floaters, attracted here by the activity and prosperity of the place.

The grand juries often returned a sort of union indictment: "Assault & Battery & Riot;" but the verdicts and sentences prove clearly that the riot in those indictments was merely a figure of speech. On one occasion they found an indictment for riot against a single individual. Rather awkward in a legal view, however complimentary to pioneer efficiency.

Some of these riots arose out of the Fugitive Slave Law, not in trying to recapture the slave, but in trying to prevent it.

At one of the early terms of the Court there was presented an indictment for riot, against a body of men, very important citizens of the County, then, and throughout their lives, civically, socially and financially. The record is silent as to particulars, but in my childhood, there was a very gossipy tradition that they incurred this undesirable distinction, by preventing the re-taking of a black man by his alleged master; and so successfully, that the slave remained, and the master went away alone—as soon as he recovered. As the defendants admitted, in fact boasted of it, they were found guilty, and the Judges sentenced the leader to pay a

fine of \$10.00, and the others each \$5.00. Knowing the temper of the times, we may believe that the leniency of the Court never was criticized.

A very spectacular trial of those days, was to decide whether a black woman was to be surrendered as a fugitive slave. The village was very much aroused. Practically all who took any interest, were on her side. Able counsel were employed for her, but the evidence was so complete, she had to be restored to her master, and was escorted out of the village by a company of "Light Horse Cavalry." A municipal courtesy rarely extended, and one which caused our crack military organization to suffer some criticism. But in view of the former riot, perhaps, the dignity of established government made it wise.

In the first twenty years of settlement in this Genesee Country, there were many cases under this cruel, but constitutional law, not often however, in this village, as the Underground Railroad was here so well established, and so successfully patronized, that the master, though often seeking, seldom found his slave. Throughout this heavily-wooded territory, concealment was easy, and the hostility of the settlers was so intense, that trying to find or retake a fugitive might well be called a hazardous enterprise.

The only other case in this settlement that I know of was that of a negro, Davis, commonly called Dr. Davis, as he ministered in that capacity to people of his race, who was claimed as the runaway slave of a Kentucky man, who came on with his witnesses to retake him. The trial was in progress and the court room crowded with people, white and black. While the Kentucky men were entranced with the eloquence of their counsel some of the spectators were busy disguising Davis, and smuggling him out of the room and away. But his flight was soon discovered and active search started. Hand bills, offering reward, were scattered through the surrounding country. He was discovered and captured by a human being, who was willing to make \$50.00 that way. Davis cried in vain for rescue, then with a prayer to God, which he closed with the words of Patrick Henry, "give me liberty or give me death," he drew a razor, cut his throat, and fell bleeding at the feet of his captors. Davis was not

dead, but indications were he soon would be, or would need long and expensive care, and the local officials as was their duty, demanded from the master, a bond, to save the town from the probable expense. Naturally, under the circumstances, it was not easy to get the required bond, and the captors became fugitives in their turn, hurriedly and secretly leaving, with the North Star at their backs. Davis recovered, and lived in freedom his allotted time. God heard his prayer.

With scenes like this about them, our citizens, of course, became active in promoting the abolition law in this State. Slavery in the State of New York came to an end on the 4th day of July, 1827. And our village was entitled to much credit for bringing about this humane action.

Matthew Brown, one of our pioneers, throughout his life wore a crown of glory, granted by his fellow citizens, for the successful part he bore in bringing that law into effect.

The negro people of this neighborhood celebrated independence day this year, the first day of independence for them, but thoughtfully postponed it to the fifth, that they might not be thought interfering with the regular or white celebration of the day.

It was a large gathering. The mystery was, where so many negroes came from. They flocked in from the surrounding country. It was for many of them, no doubt, the first day they dared to be seen in public. Had a visitor from almost any state south of Pennsylvania, happened along that day, he would probably have recognized some long lost, and much mourned member of his household. With a band of music and a parade, with songs, prayers and speeches, they celebrated the emancipation of slaves by the State of New York, upon the same public ground where sixty-five years later we erected a monument to the Emancipator of the remaining millions. And no white man had any part in that celebration. A minister of their own color opened the proceedings, and the address was delivered by a negro, who until that morning, was legally the fugitive property of a white man. Rochester was one of the few places in the State of New York where the celebration could have happened.

The address of that runaway slave was a very creditable

performance for a man black or white. His closing sentence I quote: "My Countrymen, let us henceforth remember we are men. Let us as one man, on this day resolve that henceforth, by continual endeavor, to do good to all mankind, we will claim for ourselves the attention and respect, which, as men we should possess."

Another celebrated case in this County but of a little later period I will relate because of its novelty: A young wife living in one of the towns of the County, upon some grievance, real or imaginary, left her husband and returned to her father. The husband followed to bring her back, but the father with much temper refused to let him meet her, and drove him off the premises. The husband then consulted a Rochester lawyer, who in behalf of the husband brought an action of replevin against the father—not under the fugitive slave law—but by an old common law writ *de homine replegiando*, and he succeeded. The husband was put into possession of his property. This case is said to be the only use of that writ in the State of New York, and possibly in the United States; and the lawyer who used it didn't come from Philadelphia either.

One of the notable things about our village was: that these pioneers, however busy with their individual affairs, still had time for interest in the community life, in the affairs of the state and nation, and although Washington's Farewell Address was fresh from the printer they didn't understand it as excluding them from interest in, and some responsibility for, conditions in the world outside.

And in all public affairs, in all movements for municipal improvement or to better the conditions of their fellows, it is pleasing to note, that the pioneer lawyers played an active part. Whether to provide a reading room, to start a library, or organize any other cultural, humanitarian, or economic purpose, the lawyers were in it, and at the front.

When in 1822 the Greeks declared their independence, and engaged in that heroic struggle that inspired humanity, and became immortalized through the enthusiasm of Byron, it quickened the heart beats of our pioneers, and enlisted their sympathy and support. Our Village was aroused, and as usual, its sympathy took a very practical form.

When the condition of the Greek was the most desperate, and their little army had been nearly annihilated, our pioneers called a public meeting, and appointed a committee to raise money for the patriots. On this committee of twelve, of which Nathaniel Rochester was chairman, there were six lawyers and John Mastick was one of them. Of course this son of a continental soldier, whose mother was a Putnam of Massachusetts, could not hear with indifference this call from the Classic Isles, engaged in a struggle against barbarous tyranny, so like that in which the blood of his kindred was shed but a few years before. A considerable sum was raised and forwarded at once. And their enthusiasm did not expire in one sudden impulse. True to the spirit of our settlement the committee did not disband nor slacken their efforts, as long as the struggle lasted. And as the battle of Navarino, which assured Greek independence, was closing in victory, on the 20th day of October, 1827, John Mastick died. Too bad he could not have lived to celebrate that victory.

Thus closed the activities of the pioneer lawyer, and pioneer citizen. The late Edwin Scrantom, Rochester's clever raconteur, who knew and remembered him, as of the time of Barnard's wedding, says: "Mastick was a jolly bachelor, full of jest, popular, and was always saying, 'Well, there is a day of life before me, and betide what may, I will enjoy it.'" He was a

"Rare compound of oddity, frolic and fun,
To relish a joke and rejoice in a pun."

In his professional career I can find nothing spectacular. The spectacular events of our village days were not professional. We couldn't expect to find him electrifying the crowded Court Room. For most of his life we had neither Court Room nor crowds. He met the needs of his time professionally, civically and commercially. Like everyone in the village he dealt in real estate on his own account, and dealt largely, with manifest success. Owning, in the fifteen years of his village life, more than a hundred parcels of land; displaying wonderful nerve in his purchases, or looking back from existing results, showing prophetic vision in his selections.

He owned at different times, a great part of the east side of State Street from the Elwood Block to Central Avenue, and Main Street from Reynolds Arcade to the river. He owned mill sites, factory sites, residence lots and farms. With Elisha Johnson he owned, plotted and placed on the market, a large tract known, in title language, as the Johnson & Mastick Tract, between Union Street on the west, Sibley Place on the east, East Avenue on the north and Monroe Avenue on the south; the present site of the Genesee Valley Club, the two Theological Seminaries, Homeopathic Hospital and those many palatial residences we now see in that section. He also owned a number of farms in the suburban area which have since become attractive city residence property. He once owned the farm, which is now Mt. Hope Cemetery, where he now lies beside his wife, in graves overflowed with debris, the grave-stones disintegrating, the lettering obliterated. His own monument has fared better than many in the neighborhood, because a kindly maple grew up out of his grave, and successfully interposed its strength between the monument and the continual flood of waste and neglect, that will soon overwhelm tree and all. Not very flattering to the sentimentality of his municipal heirs.

Although his wife became an early member of the First Presbyterian Church, John does not seem to have accompanied or followed her in church connection. He was one of the founders and members of St. Luke's, one of the first Vestry Board, and continued on the Vestry or as Warden until his death, and was buried from there. Those first meetings in the first home, and then in Barnard's tailor shop, developed into St. Luke's Church, making St. Luke's, in fact, though not in formal organization, the first Church, in order of time in the village. Among the assets of his estate, was one of the notes or certificates issued by St. Luke's, in financing its building enterprises. The appraisers make note upon the inventory, that he should have bequeathed this note to the Church, but as he did not, they were compelled to inventory it, very clearly wishing to relieve themselves from any charge of impiety in listing this loan to the Lord as a commercial obligation. In John's behalf, I wish to record that he had been ill for about a year and probably with his aches and

pains forgot many other details. He did not forget, however, to provide for his aged mother; and with a lawyer's skill, surrounded that provision with such safeguards, that neither time nor accident could cause miscarriage of his filial purpose.

Mastick seems to have been a provident man, devoting himself attentively to business, and making it profitable. When he died he left a considerable estate. In fact, a large estate for a lawyer. Lawyers as a class do not get rich. They earn a lot of money, but they don't keep it. These shrewd business men get it away from them.

John added to the entertainment of the village by one of his real estate speculations. He bought from Philip Lyell two lots on the corner of State and Mumford Streets, and two lots on the corner of Mill and Mumford abutting them upon the east, under a contract by which the purchaser was to build a house on each lot within a year. John complied with this contract by building a house at the junction of the dividing lines between the four lots, so placed that one-quarter of the house sat on each of the four lots. Whatever may be thought of the performance, he "got away with it," as they say; and it was considered a good joke by the villagers. The house can be seen plotted upon Fenn's map, with the lines of the lots, sticking out on each of its four sides. This trick worked no loss to the village, as under subsequent ownership, its large grounds became a beautiful garden, one of the show places of the town.

No event in our early history more clearly shows the pioneer character, than the course of the villagers when they applied for a City Charter. The right of this village to become a legalized city was recognized by all. When the application was made it met with a hearty response, and the legislature proceeded at once to grant the request. But for years the settled policy of the State was to retain in the State Administration, the right to appoint certain of the municipal officers. This policy was, with the Federalists, a principle of their political philosophy, and was retained by the Democrats as official spoil for party advantage. So it naturally happened, that when the Charter came before the legislature, it was drawn in accord with that custom. And,

quite as naturally, our sturdy pioneers refused to accept it. The contest waged for several years. There were some here who counselled acceptance, who argued: "We were getting the same powers as granted other places; that we would be as well off as others." But the Rochester yeomanry said: "Never. We will remain a village forever, rather than accept anything less than our full right of self government." They had not learned—what has become the wisdom of a modern day—to not bother themselves with details, like rights, independence, or citizen sovereignty, but take what the Boss gives, and thank God it is no worse.

They thrice refused the Urban Crown, and the contest became almost state-wide in importance, but the pioneer won, as he had won his other victories, because he had never learned to quit.

With the incorporation of the city, the pioneer period may be considered closed. The pioneer lays his work before us, as the completion of a task, not with boastful air, but with the composure of a workman who knows he has done his best, and is willing to be judged by the result.

A citizen of Rochester judging the result at the time said: "We may declare with satisfaction, heartfelt rather than boastful, that nowhere in this broad land is there furnished a more remarkable illustration of the intellectual and moral energies of the American character."

I believe we may accept that conclusion as our judgment. The remarkable thing about our pioneers, was the sanity of their ideals. They instinctively understood that it is not land area, nor numbers, nor wealth, but citizens that make a city; and that the foundation of citizenship is individual character.

From the earliest moment, they gave their thought to the encouragement of such social agencies as would develop the moral grandeur of the community; while with calloused hands and brawny arms they were driving the axe up to the helve into the timber that stood in the way of their physical and commercial progress.

They not only built a city, but made it a city upon a hill.

Hats off to the Pioneer!

