

## Benjamin R. Sheldon 1870-1888

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“One of the ablest jurists who ever sat upon the supreme bench of Illinois,” wrote John M. Palmer of Benjamin Robbins Sheldon. Born in Sandisfield, Berkshire County, Massachusetts, on April 15, 1811, to attorney Benjamin and Sarah Robbins Sheldon,<sup>1</sup> young Benjamin attended college at Lenox and Stockbridge, then at age nineteen graduated from Williams College in Williamstown, Massachusetts. Completing legal studies at Yale University, he began his career in Pittsfield, Massachusetts.



Sheldon soon relocated to northwestern Illinois, gaining admittance to the bar on January 12, 1835, and opening a practice in Hennepin in Putnam County. A few years later, he moved to the larger town of Galena, in Jo Daviess County.<sup>2</sup>

Under the 1848 Illinois Constitution, Sheldon won election as judge of the Sixth Judicial Circuit, known as the “Galena Circuit.” During his term, the legislature created the Fourteenth Judicial Circuit, comprising Jo Daviess, Stephenson, and Winnebago counties. Sheldon resigned his Sixth Circuit judgeship to become a candidate in the Fourteenth Circuit. “He made such a favorable impression upon the lawyers in the new counties in which he held court,” reported an area newspaperman, “that the sentiment for

returning him in the new district . . . was unanimous.” His service on the Fourteenth Circuit began in 1851 and continued with terms in 1855, 1861, and 1867.<sup>3</sup>

In 1857, Sheldon presided over a notorious Winnebago County trial, in which Alfred Countryman, a married father of two infant children, stood accused of murdering Sheriff John F. Taylor. Arrested for cattle theft, Countryman had escaped captivity, then shot and killed the pursuing Taylor. After capture by a group of local residents, a circuit court jury found Countryman guilty of murder and sentenced him to be hanged.

“Your case is a sad instance of the mischief of the barbarous practice of carrying deadly weapons,” Judge Sheldon admonished the defendant. “If you had not had that weapon of death concealed upon your person, you might have escaped a murderer’s doom. In a well-ordered community like this, there is no need, under ordinary circumstances, to carry about such weapons of defence, and when carried they are much oftener used as the weapon of offence than of defence. The penalty of your high crime is the forfeit of your life—the terrible punishment the law inflicts not out of vengeance towards you, but for the protection of human life, to deter men from the commission of the crime of murder.” According to a Winnebago County history, the hanging of twenty-seven-year-old Countryman was the area’s first, and perhaps only, death penalty sentence.<sup>4</sup>

A staunch Republican, Sheldon won election to the expanded seven-member Illinois Supreme Court in 1870. The following year, he moved from Galena to reside with his sister in Rockford. “He did not care for popularity,” wrote one biographer, “rather he did appear to shun it. He mingled but little with the people and yet those who knew him best say that he loved humanity. They say that he felt that in his career of jurisprudence it

was his highest ambition to contribute to the public welfare and that he felt that the application of the law could not but benefit mankind.”<sup>5</sup>

The *Petition of Alexander Ferrier* case, brought before the Supreme Court in 1882, provided one of Illinois’ most significant cases regarding children’s rights versus state responsibilities. Ferrier, a Chicago resident, filed a petition in the Cook County Court alleging that his neighbor’s nine-year-old daughter, Winifred Breen, did not have proper parental care; she was truant from school and had “repeatedly been picked up by the police and others while wandering about the streets at night.” The girl’s father, a convicted felon, was presumed deceased, and her mother suffered periods of insanity, thus no longer a “fit person to have the custody of the child.” By petitioning that she be committed to the Illinois Industrial School for Girls in South Evanston, Ferrier made the girl’s home environment the subject of a public trial.

Industrial School president Helen Beveridge, wife of former Governor John L. Beveridge, testified in county court that the institution imposed “no more restraint upon their liberty than that imposed upon children in an ordinary family or institution of learning; that they are taught ordinary household duties, sewing, and the ordinary branches of English education.” The young girl testified that “she was afraid of her mother; that she knew about this industrial school and wanted to go there.”

Surprisingly, after the county court jury returned a verdict sending Breen to the Industrial School, her court-appointed attorney, Consider H. Willett, appealed the decision. Challenging the constitutionality of the state’s reform-school Industrial Schools Act, he played to fears of promoting dependency through state charity. In addition, he contended that not only was the state forcing Cook County to pay subsidies to private

institutions but also that Chicago could become a center for child stealing. The possibility of a parent losing a child, he argued, undermined parental rights.<sup>6</sup>

In affirming the lower court's judgment, Justice Sheldon declared that the Industrial Schools Act procedures for hearing dependency cases contained such extensive due process protections that it did not violate the state Constitution. He defined the South Evanston Industrial School as truly a school, not a prison. "We perceive hardly any more restraint of liberty than is found in any well regulated school. Such a degree of restraint is essential in the proper education of a child, and it is in no just sense an infringement on the inherent and inalienable right to personal liberty so much dwelt upon in the argument."<sup>7</sup> With that decision, the Illinois Supreme Court began providing the framework for state care of dependent children.

In the 1874 *Peers v. Board of Education* case, Justice Sheldon delivered the judgment affirming a Madison County Circuit Court decision. Three years earlier, the Collinsville Board of Education had contracted with Wm. H. Phillips & Brother for the construction of a school house. The contractors ordered a quantity of lumber from J. W. Peers, but did not pay him for it. Peers then sued the Board of Education. "We are of the opinion that the school directors had no authority to bind the school district by the acceptance of the order in question," Sheldon wrote. "In order to establish such a liability, the lumber should have been sold to the directors. But it was sold to Phillips & Bro. for the school house, and not to the directors. They never ordered or contracted with appellant for the lumber, and Phillips & Bro. alone are liable for it."<sup>8</sup>

In 1878, Sheldon affirmed a Cook County Circuit Court decision involving a Chicago man who died from injuries sustained when struck by a Chicago, Rock Island

and Pacific Railroad Company yard engine. His widow, Johanna Austin, sued the railroad for negligence in preventing the accident. In *Austin, Admx. v. The Chicago, Rock Island and Pacific Railroad Company*, Sheldon ruled that by walking along the track the deceased “placed himself in the position of danger,” then cited previous court decisions in similar cases. “To walk upon the track of a railroad, without looking in both directions to discover approaching engines or train, when the exercise of such precaution would discover either the one or the other, is such negligence as will preclude a recovery, unless the injury be willfully or wantonly inflicted by the defendant.”<sup>9</sup>

During Sheldon’s eighteen-year Supreme Court tenure, he served as Chief Justice in 1876, 1883, and 1887. Then in June 1888, at the close of his second term, Sheldon voluntarily retired from the bench.<sup>10</sup> The lifelong bachelor resumed the practice of law, traveled to Europe, wintered in California, and attended to various business enterprises. “Notwithstanding advancing years,” wrote a contemporary attorney, “he was favored with mental vigor, so that he was able to keep abreast with the times and attend to the details of his business interests almost to the last.”<sup>11</sup>

At the age of eighty-five, Sheldon died in Rockford on April 13, 1897. Following services at his North Court Street residence, he was buried in the now-named Greenwood Cemetery.<sup>12</sup> With an estate valued at \$2 million, Sheldon provided generous bequests to Williams College, “expressive of lasting gratitude for the advantages which the college training had afforded him,” and in Rockford to the Young Men’s Christian Association and Rockford College.<sup>13</sup>

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<sup>1</sup> John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 969-70. *Rockford Daily Republic*, 14 April 1897, 1, gives his birthplace as Marlborough, Middlesex County, Mass., and the *National*

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*Cyclopaedia of American Biography* (New York: James T. White & Co., 1906), Vol. 13, p. 345, lists his birth year as 1812.

<sup>2</sup> *Biographical Encyclopaedia of Illinois* (Philadelphia: Galaxy Pub. Co., 1875), 476.

<sup>3</sup> *Rockford Daily Republic*, 1.

<sup>4</sup> *History of Winnebago County, Illinois, Its Past and Present* (Chicago: H. F. Kett & Co., 1877, rpt. Bowie, Md.: Heritage Books, 1990), 306-10.

<sup>5</sup> *Rockford Daily Republic*, 1.

<sup>6</sup> David S. Tanenhaus, "Between Dependency and Liberty: The Conundrum of Children's Rights in the Gilded Age," *Law and History Review* 23 (No. 2, Summer 2005), 351-86.

<sup>7</sup> *In re Ferrier*, 103 Ill. 367 (1882).

<sup>8</sup> *Peers v. Board of Education of School District No. 3*, 72 Ill. 508 (1874).

<sup>9</sup> *Austin v. Chicago, Rock Island, and Pacific Railroad Co.*, 91 Ill. 35 (1878).

<sup>10</sup> 173 Ill. 12.

<sup>11</sup> 173 Ill. 13.

<sup>12</sup> *Rockford Daily Republic*, 16 April 1897, 1.

<sup>13</sup> 173 Ill. 13; Newton Bateman and Paul Selby, eds., *Historical Encyclopedia of Illinois and History of Winnebago County* (Chicago: Munsell, 1916), 717.