

Benjamin D. Magruder 1885-1906

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A Southerner who supported the Union during the Civil War, Benjamin Drake Magruder was born on a plantation near Natchez, Mississippi, on September 27, 1838.

The family of his mother, Mary Bangs Magruder, resided in the vicinity of New Haven, Connecticut. His father, Professor W. H. N. Magruder, who graduated from Wesleyan University in Middletown, Connecticut, operated a private academy in Baton Rouge, Louisiana.¹

At the age of fourteen, Magruder entered Yale University and graduated fourth in his class just before his eighteenth birthday.² His



classmates included future United States Supreme Court justices David J. Brewer and Henry B. Brown.³ Then for three years Magruder taught and studied law at his father's academy. He graduated as valedictorian of the 1859 University of Louisiana Law School, then opened a law office in Memphis, Tennessee. A year later, he began a two-year position in the office of Master of Chancery.⁴

With the outbreak of the Civil War in 1861, Magruder moved to Chicago, forming a partnership with George F. Bailey under the firm name Bailey & Magruder. "While ever radically loyal" to the Union, wrote a Magruder biographer, "he refrained from enlisting or taking part in political discussions during the war, many members of his

immediate family being in the Confederate service.”⁵ Later he partnered in Magruder & Norton, Magruder & Kerr, and Hervey, Galt & Magruder.⁶

On June 15, 1864, Magruder married Julia M. Latham of Springfield, and they became the parents of a son and a daughter. Four years later, he won appointment to succeed William Mather as Master in Chancery for the Superior Court of Cook County, then held the position for fifteen years while also maintaining a large general practice. “Not only did he take advanced rank in his profession and secure a place among the foremost at the bar,” remembered Chicago attorney Nathaniel M. Jones, “but he also gained an established place in what was known as the best of the city’s social and intellectual life.”⁷

After the Magruder home at 7 Washington Place was destroyed in the Great Chicago Fire of 1871, he rebuilt on the site in 1873. A forty-year member of the nearby Fourth Presbyterian Church, he served for several years as a church elder.⁸

In October 1885, Magruder became the unexpected nominee for a vacancy on the Illinois Supreme Court. In a page-one article titled “Chicago’s Ring Beaten,” the *New York Times* reported: “The Cook County Republican machine was given a very black eye to-day by the Seventh Judicial District Convention. The machine, after forcing its slate on the County Convention yesterday, blandly decided that it would to-day nominate George W. Stanford as the successor to the late Supreme Court Judge T. Lyle Dickey. There are, however, four counties outside of Cook in the judicial district, and they with the anti-machine men from Cook were enough to knock out Mr. Stanford. Mr. Benjamin D. Magruder, a reputable lawyer of this city, was nominated on the second ballot.”⁹

With endorsement as well from the Democratic party, Magruder won the Supreme Court seat without opposition, then was elected for nine-year terms in 1888 and 1897, and served as Chief Justice in 1891, 1896, and 1902. “He was ever and always a student,” recalled fellow Justice Joseph N. Carter. “His days and nights were given to judicial labor. He never took a regular vacation, usually spending all of the summer between June and October working on his cases.”¹⁰

In the 1889 case, *People ex rel. Peabody v. Chicago Gas Trust Company*, Magruder refused to enforce a restrictive covenant between the Chicago Gas Light and Coke Company and the Peoples Gas Light and Coke Company. In a “scathing” 24-page opinion, he reversed a Cook County Circuit Court decision that allowed the Chicago Gas Trust Company to purchase stock in any other gas companies. “The business of manufacturing and distributing illuminating gas by means of pipes laid in the streets of a city is a business of public character,” Magruder wrote; “companies engaged in such business owe a duty to the public; any unreasonable restraint upon the performance of such duty is prejudicial to the public interest and in contravention of public policy. . . . Whatever tends to create a monopoly is unlawful as being contrary to public policy.”¹¹

Among other rulings in his twenty-one-year tenure, Magruder delivered opinions in two of the state’s “most important” cases, according to Court historian Ralph M. Snyder. In the 1888 case, *Illinois Central Railroad Company v. The City of Decatur*, Magruder affirmed a Macon County Circuit Court decision regarding liability for special assessments. After the City of Decatur had assessed the Illinois Central for street paving along a portion of the right-of-way, the railroad argued in circuit court that its charter exempted “all taxation of every kind except as therein provided.”

A special assessment, Magruder wrote, “is not embraced within the meaning of the word taxation, because the owner of the property assessed gets back the amount of his assessment in the benefits received by his property, and, therefore, does not bear the burden of a tax.” Snyder reported that Magruder’s opinion, affirmed by the U.S. Supreme Court, became “the groundwork for cases holding that railroads with tax exempt charters may be liable for special assessments.”¹²

Magruder delivered the opinion in one of the most well-known and significant cases in Illinois court history, the 1887 *August Spies et al. v. People* case. August Spies and six other defendants in the 1886 Haymarket Riot bombing appealed their murder convictions that had been rendered by Judge Joseph E. Gary of the Cook County Criminal Court. Magruder, in a 167-page opinion, upheld Gary’s decision, and, according to attorney Nathaniel Jones, “established in this State the doctrine that persons associating and conspiring together to aid and abet the killing of others are co-conspirators and are guilty of the crime of murder of the persons killed.”¹³

Julia Magruder died in 1904, a few years after the death of the couple’s daughter.¹⁴ In 1906, Yale University conferred the LL.D. degree on Justice Magruder. That year a committee of prominent Chicagoans, including Democratic Mayor Edward Dunne and labor attorney Clarence Darrow supported his reelection to the Supreme Court. The *Chicago American* endorsed Magruder, editorializing that he “decided against the trusts and in favor of the people.” The *Chicago Tribune* appeared to take a neutral stance, but according to the *Record-Herald*, which opposed his candidacy, Magruder had alienated many of his fellow justices with his antagonistic personality. Magruder had been the only dissenter in a 1903 decision affirming the state’s Gas Consolidation Act.

After the Democratic Party chose another candidate, Magruder ran as an independent but lost to Republican Orrin N. Carter.¹⁵

Magruder then resumed his Chicago law practice. He died of Bright's disease at his Chicago residence on April 21, 1910, at the age of seventy-two. Following Presbyterian services, he was buried in the family lot in Rosehill Cemetery.¹⁶

"The opinions of this departed judge," eulogized the *Chicago Legal News*, "breathes the pure spirit of love for his fellow men of sympathy for the unfortunate; and of righteous indignation at the schemes of fraud and indirection by which some of the great enterprises of modern business have been accomplished. . . ."

"One of the greatest tributes that can be paid to the Supreme Court of Illinois is that during the swift evolution of the commercial life of this state and amid all the tortuous schemes of our modern mad struggle for wealth, this Court has stood unflinchingly for the rights of the individual."¹⁷

¹ *Industrial Chicago, Vol. 6, The Bench and Bar* (Chicago: Goodspeed Pub. Co., 1896), 327; 247 Ill. 17.

² *Chicago Legal News*, 22 October 1910, 85.

³ 247 Ill. 18; James E. Babb, "The Supreme Court of Illinois," *The Green Bag* 3 (1891), 237.

⁴ *Industrial Chicago*, 327.

⁵ Newton Bateman and Paul Selby, eds., *Historical Encyclopedia of Illinois* (Chicago: Munsell, 1900), 349.

⁶ *Industrial Chicago*, 327.

⁷ 247 Ill. 17; *Chicago Legal News*, 23 April 1910, 297.

⁸ 247 Ill. 10; *Chicago Legal News*, 22 October 1910, 85.

⁹ *New York Times*, 23 October 1885, 1.

¹⁰ 247 Ill. 26.

¹¹ *People ex rel. Peabody v. Chicago Gas Trust Company*, 130 Ill. 268 (1889); Werner Troesken, *Why Regulate Utilities; The New Institutional Economics and the Chicago Gas Industry, 1849-1924* (Ann Arbor: University of Michigan Press, 1996), 49-50.

¹² *Illinois Central Railroad Company v. City of Decatur*, 126 Ill. 92 (1888); Ralph M. Snyder, "10 Significant Decisions of the Illinois Supreme Court," *John Marshall Law Quarterly* 5 (June 1940), 442; *Illinois Central Railroad Company v. City of Decatur*, 147 U.S. 190 (1893).

¹³ *Spies et al. v. People*, 122 Ill. 1 (1887); 247 Ill. 21; Snyder, 440; Michael J. Schaack, *Anarchy and Anarchists; A History of the Red Terror and the Social Revolution in America and Europe* (Chicago: F. J. Schulte & Co., 1889), 608-11.

¹⁴ 247 Ill. 11.

¹⁵ Troesken, 50-51.

¹⁶ *Chicago Daily Tribune*, 22 April 1910, 7; *Chicago Legal News*, 23 April 1910, 297.

¹⁷ *Chicago Legal News*, 22 October 1910, 85.