

Joseph M. Bailey

1888-1895

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A native of New York State, Joseph Mead Bailey was born in Middlebury Township in Wyoming County, on June 22, 1833, the third of eight children of Deacon Aaron and Maria Braman Bailey. She was a descendant of Richard Clarke, a mate on the *Mayflower*. Aaron's parents, Aaron and Mary Winchester Bailey, had moved from New England to settle in northern Illinois near Lena, Stephenson County.¹

Joseph Bailey spent his youth on his father's New York farm and completed primary studies at Wyoming Academy. He "subsequently taught school or turned his hand to anything that would help him with funds to get into college," then entered the University of Rochester.² Upon graduation in 1854, he studied law under prominent Rochester attorney Ethan A. Hopkins. Bailey was admitted to practice in 1855, at the age of twenty-two.³



"Believing that in the West was to be found a wider and less encumbered field for the profitable exercise of skill and energy," wrote a biographer, Bailey followed his grandparents to Illinois and settled in Freeport, the Stephenson County seat in 1856. He formed a brief partnership with U. D. Meacham, state's attorney for the Fourteenth

Judicial Circuit. Bailey “soon gained a reputation as a sound lawyer, safe counselor, careful pleader and persuasive advocate.”⁴

In February 1859, Bailey returned to New York to marry Wyoming Academy classmate Anna Maria Olin, daughter of John and Maria Olin of Wyoming County. They became the parents of five children, one of whom died in infancy. Anna Bailey participated in Freeport charitable activities and founded the city’s first kindergarten.⁵

Joseph Bailey began a partnership with F. W. S. Brawley, with offices in Freeport and Chicago. After the dissolution of that firm, Bailey partnered for ten years with Freeport attorney James I. Neff. In 1863, after Bailey convincingly argued his first case before the Illinois Supreme Court, Chief Justice Sidney Breese was heard to remark, “That young man will one day be a member of this court.”⁶

In 1866, Bailey became known in statewide politics by winning a seat in the Illinois General Assembly as a Republican. He served as chairman of the committee on federal relations and as a member of the judiciary committee. Reelected in 1868, Bailey became chairman of the committee on railroads and a member of the penitentiary and municipal affairs and insurance committees.⁷

Among Bailey’s prominent legal clients were the American Insurance Company of Chicago and the Illinois Central Railroad.⁸ In 1869, he was an unsuccessful candidate for the Republican nomination to fill a Congressional vacancy in the Freeport district, and in 1876, he was a Republican elector in the disputed Rutherford B. Hayes-Samuel J. Tilden presidential election.⁹

That same year, the legislature consolidated the twenty-six judicial circuits in Illinois into thirteen circuits and allowed an additional judge in each new circuit. Bailey

won election to the Thirteenth Judicial Circuit, comprising Stephenson, Jo Daviess, Ogle, Carroll, Winnebago, Lee, and Whiteside counties. In 1878, he was assigned to the First District Appellate Court in Chicago and reassigned in 1879, 1882, and 1885. “Six days a week find him hard at work in Chicago,” the *Tribune* reported.¹⁰

“His opinions in the Appellate Court Reports have been quite widely cited,” reported author James E. Babb. “While practicing at the bar and attorney for an Insurance Company, he wrote a book upon that subject, largely for the information of the local counsel for the Company. He was a trustee of the old University of Chicago, and is now a trustee of the new University of that name.”¹¹

In 1879, both the University of Rochester and University of Chicago bestowed Bailey the LL.D. degree for his merit as a jurist.¹² In 1887, he and fellow appellate court justice Thomas A. Moran founded the Chicago Evening Law Class, with Bailey tutoring law clerks for the new Illinois Bar Examination. By 1888, those evening sessions developed into formal classes of the Chicago College of Law, and Bailey became the College’s first dean, followed by Moran.¹³

In 1888, Bailey won election to the Illinois Supreme Court, succeeding the deceased Benjamin R. Sheldon. “Judge Bailey came on the Supreme Court bench two years after I did,” recalled Justice Simeon P. Shope, “but we were there together six years, and during that time I learned first to admire him, then to respect him, and finally to love him. He was a model Judge, combining as he did the widest learning with the most unwearied industry and the loftiest integrity. To that it must be added that he soon became noted for his powers of reach and his keen analysis. Well do I remember that away in the middle of the night, hours after the rest of the bench had cast off the cares of

business and were devoting themselves to domestic pleasures and other recreations, I have passed Judge Bailey's room and discovered from the rapid click of his typewriter machine that he was still at work.”¹⁴

In the 1889 case, *Harris v. People*, Justice Bailey upheld the “common law right” to a jury trial in criminal cases. Nancy Harris had been convicted in the Cook County Criminal Court for larceny and concealing stolen property. Even though she had consented to trial without a jury, she appealed the verdict on grounds that the criminal court had no power or authority “to try her without a jury.”

The Supreme Court agreed. “We are of the opinion then, both upon principle and authority,” wrote Justice Bailey, “that the Criminal court had no legal power to try the defendant without a jury, notwithstanding her consent and agreement in that behalf, and that the trial and conviction are therefore erroneous.” He issued a verdict reversal and remanded the case to the criminal court.¹⁵

Bailey served as Chief Justice from June 1892 to June 1893. In the 1893 murder case of *Painter v. People*, Bailey delivered the Court opinion affirming a decision of the Cook County Criminal Court. George H. Painter had been sentenced to death for the 1891 strangulation death of Alice Painter in Chicago. His attorneys argued before the Supreme Court that “evidence of prior assaults on the deceased was calculated to inflame the minds of the jury.”

Before rendering the Supreme Court opinion, Bailey reiterated numerous details of the non-married couple’s tumultuous relationship. He described the testimony of witnesses who heard loud noises from Alice’s room, “as though some one was struggling, being bumped along the floor,” and that several of the witnesses then saw George Painter

leaving her room. He, however, maintained that he had been at a saloon at the time of the murder, a statement corroborated by other saloon patrons, and that on his return to her room he found Alice dead. Bailey concluded that threats by the accused could be admissible to prove that he committed the crime.¹⁶

“We have considered attentively the various propositions submitted by counsel for the defendant in their full and able argument,” he wrote, “but we are unable to find any material error in the proceedings of the trial court, or any reason shown which makes it our duty to set aside the conviction and award a new trial. It follows that the judgment of the Criminal Court of Cook county must be affirmed.”¹⁷

An assertive debater on the Court, he often argued with the equally formidable Justice Benjamin Magruder. “I have seen Judge Magruder jump on him and roast him unmercifully,” recalled fellow Justice Shope, “but I could never see that it ruffled his temper any more than if a fly had lit on his shoulder. He was always a temperance man. The court was not composed of intemperate men by any means, but sometimes whisky would be given them and some of them would take a drink. But I never knew Judge Bailey either to drink with them or to rebuke them.”¹⁸

On October 16, 1895, Bailey died at Freeport after a brief illness, at the age of sixty-two. His Supreme Court term would have expired in 1897.¹⁹ At First Baptist Church, Dr. Galusha Anderson, a University of Chicago Divinity School theologian who had been Bailey’s University of Rochester classmate, delivered the funeral sermon. “Farewell incorruptible Judge,” Anderson concluded.²⁰ Bailey was buried in the family lot at the Freeport City Cemetery.

“Usually firm in his convictions,” eulogized Justice Shope, Bailey “listened willingly to argument, impartially weighed it and yielded readily when convinced. No judge had greater respect for or yielded more readily to authority than he did. That great question, ‘What is the truth?’ seemed ever present before him, and he sought its solution with conscientious diligence.”²¹

¹ *Chicago Tribune*, 30 March 1888, 7. Maria Bailey’s maiden name is also reported as Brannan.

² *Freeport Daily Bulletin*, 17 October 1895, 4; *Chicago Tribune*, 30 March 1888, 7.

³ *Portrait and Biographical Album of Stephenson County, Illinois* (Chicago: Chapman Bros., 1888), 752; *Daily Inter Ocean* (Chicago), 17 October 1895, 1; *Freeport Daily Bulletin*, 19 October 1895, 4.

⁴ *In the Foot-Prints of the Pioneers of Stephenson County, Illinois* (Freeport: Pioneer Pub. Co., 1900), 347.

⁵ *Chicago Tribune*, 17 October 1895, 5; Stephenson County Genealogical Society, “City Cemetery Inscriptions (Freeport),” Vol. 5, p. 247.

⁶ *Freeport Daily Bulletin*, 17 October 1897, 5.

⁷ *Freeport Daily Bulletin*, 17 October 1897, 4; Newton Bateman and Paul Selby, eds., *Historical Encyclopedia of Illinois* (Chicago: Munsell, 1900), 31.

⁸ *Biographical Encyclopaedia of Illinois of the Nineteenth Century* (Philadelphia: Galaxy Pub. Co., 1875), 134.

⁹ *Freeport Daily Bulletin*, 17 October 1895, 4.

¹⁰ *Chicago Tribune*, 30 March 1888, 7.

¹¹ James E. Babb, “The Supreme Court of Illinois,” *The Green Bag* 3 (1891), 237.

¹² Bateman and Selby, 31; *Daily Inter Ocean*, 17 October 1895, 1.

¹³ *Chicago Tribune*, 17 October 1895, 5; Babb, 237; “Judge Bailey,” *The Commentator* 13 (April 2007), 5.

¹⁴ *Chicago Tribune*, 17 October 1895, 5.

¹⁵ *Harris v. People*, 128 Ill. 585 (1889).

¹⁶ Michael H. Graham, *Handbook of Illinois Evidence*, 9th Edition (New York: Aspen Publishers, 2008), 779.

¹⁷ *Painter v. People*, 147 Ill. 444 (1893).

¹⁸ *Chicago Tribune*, 17 October 1895, 5.

¹⁹ *Chicago Tribune*, 17 October 1895, 5.

²⁰ “Judge Bailey,” *The Commentator*, 5.

²¹ 162 Ill. 12.