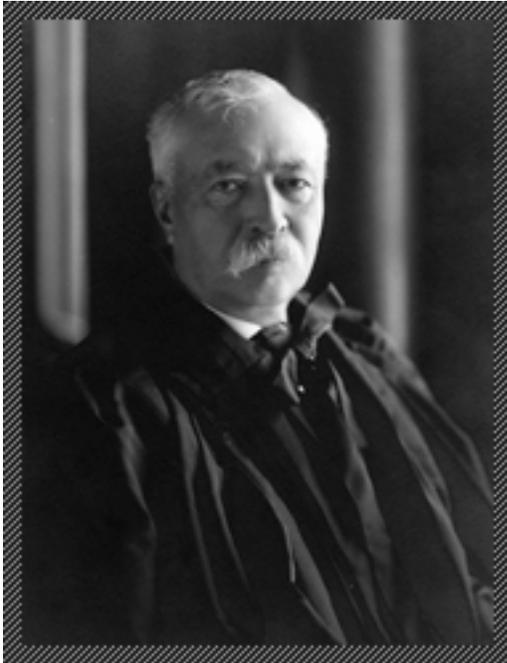


## James H. Cartwright 1895-1924

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Only two other justices served longer than James Henry Cartwright's twenty-nine years on the Supreme Court, and only a few others wrote more opinions than him. Born on the frontier



in the first half of the nineteenth century and living well into the twentieth, his life and tenure on the court spanned periods of significant change in American society.

He was born in Iowa Territory on December 1, 1842, one of six children of Barton Hall Cartwright, who was a descendant of an old New England family and second cousin to Reverend Peter Cartwright, the pioneer Illinois circuit-riding preacher. Barton Cartwright followed the same calling as his second cousin, which meant frequent relocation. The Cartwright family moved to Illinois in 1843, then resided in a number of communities in the western part of the state until settling in Mt. Morris, Ogle County, in 1850.<sup>1</sup>

He took his schooling at the local Rock River Seminary, which was a regionally significant educational institution in the mid-nineteenth century. Although he did not receive a diploma, Cartwright was able to work as a teacher at a local school while still a teenager. In April 1862, he enlisted for Civil War service in the 69<sup>th</sup> Illinois Infantry for ninety days. His father had joined General William T. Sherman's army as a chaplain, and the young Cartwright

found it necessary to return home at the end of his ninety-day term to help manage family affairs. In June 1864, he enlisted again, this time for one hundred days in the 140<sup>th</sup> Illinois Infantry and at age twenty-two served as a captain. The 140<sup>th</sup> was mustered in for garrison duty at Memphis in order to free combat troops for concentrated action in the East. Cartwright took an active interest in the Grand Army of the Republic for his entire life. Locally, he was often referred to as “Cap,” in deference to his Civil War rank.<sup>2</sup>

After his military service, he was a student at the University of Michigan from 1865 to 1867 when he received a law degree. He was admitted to the Illinois bar that same year and joined the practice of Henry Mix, a prominent attorney in Oregon, Illinois, a few miles from Mt. Morris and the seat of Ogle County. His law practice was always in Oregon even when serving, until 1876, as the general counsel for the short-lived Chicago and Iowa Railroad Company. During this period, he held two one-year terms as mayor of the city of Oregon in 1873 and 1875 and although active in civic affairs throughout his life and always voting Republican, he had no interest in politics after election to the bench.

The year 1873 was a significant year in his life. In addition to gaining the mayoral office, he married Hattie L. Holmes of Oregon in November and purchased his 365-acre Springdale Farm immediately north of the city boundary. The farm succeeded in producing over two hundred trotting horses that were sold nationwide and established his reputation as one of the leading authorities in the United States on the pedigrees of trotting horses. He became president of the Illinois State Agricultural Society in the 1880s and undertook local conservation activities such as stocking the Rock River, which flows through Ogle County.<sup>3</sup> The marriage produced six children, five of whom survived. One son, James H. Cartwright Jr., also received a law degree

from the University of Michigan and practiced in Chicago until the 1950s. His daughter Ada was among the few women admitted to the bar from the early part of the century.<sup>4</sup>

In 1876, he became Master in Chancery—an officer of the court who assisted the circuit judge—in Ogle County. As a resident of the Thirteenth Judicial Circuit, he was elected circuit judge in 1888. Re-elected in 1891, he was soon assigned to the Appellate Court in what was then the second district sitting at Ottawa. In 1895, Cartwright ascended to the Illinois Supreme Court when he was elected to fill the unexpired term of Justice Joseph M. Bailey, who died in office. Cartwright was re-elected in 1897, 1906, and 1915. He was nominated to run again, unopposed, in November 1924, but died before the election.<sup>5</sup>

During his time on the Supreme Court he wrote more than 1,700 opinions. Of these, 150 addressed constitutional issues. Only Justice Pinkney H. Walker, whose service on the court ended in 1885 and Sidney Breese, who left the court in 1878, wrote more opinions than Cartwright with Walker writing 2,304 in his twenty-seven years as a Supreme Court justice, and Breese writing 1,962 in his twenty-three years.<sup>6</sup> Only Justice Thomas C. Browne, who served on the court from its beginning in 1818 until his retirement in 1848, and Justice Clyde E. Stone, who served from 1918 to 1948, sat on the Supreme Court longer than Cartwright.

One of Cartwright's most significant cases was *Block v. City of Chicago*, for which Cartwright wrote the opinion as Chief Justice and the court's acknowledged constitutional expert. In the spring of 1908, Jake Block, an exhibitor of motion pictures, was denied permission to show the films *The James Boys in Missouri* and *Night Riders* under the city's censorship ordinance that had been enacted the previous year. Block argued in the city's Superior Court and then the Illinois Supreme Court that motion picture exhibitors had been unconstitutionally singled out and suffered from burdensome regulation. Block argued further

that depiction of historical events could not be determined obscene or immoral and pointed out that stage plays did not need approval from the censors before performances.

The Supreme Court upheld the city's ordinance and Superior Court's ruling in Cartwright's 1909 opinion, which held that motion pictures were indeed different from stage plays and could be regulated along with nickelodeons and similar forms of entertainment. He also found that censorship was a valid police power and that the City of Chicago did not abuse its power in the administration of the law. What was important for the development of the American motion picture industry was Cartwright's ruling that it "is true that pictures representing the career of the 'James Boys' illustrate experiences connected with the history of the country, but it does not follow that they are not immoral. Pictures which attempt to exhibit that career necessarily portray exhibitions of crime, and pictures of the 'Night Riders' can represent nothing but malicious mischief, arson and murder. They are both immoral and the exhibition would necessarily be attended with evil effect upon youthful spectators."<sup>7</sup> He also wrote sensibly that "there are people who differ upon the subject as to what is immoral and obscene" adding that, extreme views aside, "the average person of healthy and wholesome mind knows well enough what 'immoral' and 'obscene' mean and can intelligently apply the test to any picture presented to him." Yet it was important to have the local government apply the test in the case of motion pictures because the "ordinance applies to five and ten cent theaters such as the complainants operate, and which, on account of the low price of admission, are frequented and patronized by a large number of children, as well as by those of limited means who do not attend the productions of plays and dramas given in the regular theatres." Cartwright concluded that the audience must be protected from obscene and immoral depictions, and that the "welfare

of society demands that every effort of municipal authorities to afford such protection shall be sustained.”<sup>8</sup>

In the early days of motion pictures any legal action involving the industry’s distribution and exhibition activities would have significant consequences for its future development. At the time of *Block v. City of Chicago*, Chicago was in fact an important center of motion picture production as Hollywood had yet to become the movie capital of the world. Thus the action of the Illinois Supreme Court had consequences for the entire film industry and has been the subject of study by film historians.<sup>9</sup>

Off the bench, Cartwright had an active interest in the legal profession in addition to his other civic interests. He held membership in several bar associations, often speaking at meetings. In 1899, when the John Marshall Law School opened its doors for the first time, Cartwright served as one of the original faculty members.<sup>10</sup> Following the consolidation of the Supreme Court in Springfield in 1897, Cartwright served on the commission for the construction of the Supreme Court Building—the headquarters for the state’s legal department. Cartwright took his commission seriously, giving his attention to all the details of planning and the actual construction, which was completed on time and within its budget in 1908. His skill and knowledge as a jurist brought him some national attention when in 1906, President Theodore Roosevelt considered appointing him to the United States Supreme Court. Ultimately Roosevelt chose his Attorney General William H. Moody instead.<sup>11</sup>

In April 1924, at age eighty-two, Cartwright had to leave his duties in Springfield and return home to Oregon because of an undetermined illness. On May 18, 1924, while shaving, he toppled over and died. His funeral at Oregon may have been the city’s largest. The ceremony was held at the Oregon Coliseum, the local civic center, in order to accommodate a large number

of friends and neighbors, his colleagues from the Supreme Court, who served as honorary pall bearers, and the American Legion. The Chicago Bar Association and the Illinois State Bar Association each sent a committee of over thirty of their members, including three former governors. After his funeral, the *Chicago Legal News* reported that “he was recognized as the dean of the Supreme Court; his keen analytical mind, his lucid interpretation of the law, his application of common sense to the legal problems presented, with his long service and familiarity with the practices and decisions of the court made him in later life the outstanding figure in court.”<sup>12</sup> He is buried in the northeast portion of Riverside Cemetery in Oregon, on land that was once part of his Springdale Farm. He had served as judge in Illinois for thirty-six years, of which twenty-nine were on the Supreme Court. Taking into account that his first case as a practicing attorney was heard before the court in 1867, his relationship to the Supreme Court of Illinois spanned over sixty years.<sup>13</sup>

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<sup>1</sup> 314 Ill. 12 (1925). Much of this memorial of Cartwright in a Supreme Court ceremony was delivered by his Oregon neighbor and friend Frank O. Lowden.

<sup>2</sup> 314 Ill. 13; *History of Ogle County, Illinois* (Chicago: H.F. Kett and Co., 1878), 491.

<sup>3</sup> Newton Bateman and Paul Selby, *Historical Encyclopedia of Illinois and Ogle County, Illinois* (Chicago: Munsell Publishing Co., 1909), 868; 314 Ill. 22-23.

<sup>4</sup> “Memorials,” *Chicago Bar Record* 37 (1955-1956), 465.

<sup>5</sup> 314 Ill. 14.

<sup>6</sup> Orrin N. Carter, “Constitutional Decisions of Justice Cartwright,” *Illinois Law Review* 15 (November, 1920), 237.

<sup>7</sup> *Block v. City of Chicago*, 239 Ill. 251 (1909).

<sup>8</sup> 239 Ill. 251.

<sup>9</sup> Comments on *Block v. Chicago* have been in the literature on film for over thirty years. See for example Peter Sklar, *Movie-made America, A Cultural History of American Movies* (New York:

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Random House, 1975); Ray Broadus Borone et al., *Laws of Our Fathers: Popular Culture and the U.S. Constitution* (Bowling Green: Bowling Green State University Press, 1986); Charlie Keil et al., *America's Cinema Transitional Era: Audiences, Institutions, Practices* (Berkeley: University of California Press, 2004); and Lee Grieveson, *Policing Cinema: Movies and Censorship in Early Twentieth Century America* (Berkeley: University of California Press, 2004).

<sup>10</sup> William Wleklinski, *A Centennial History of John Marshall Law School* (Chicago: John Marshall Law School, 1998), 10.

<sup>11</sup> Gov. Charles Deneen speaking at the dedication ceremony for the opening of the Supreme Court Building in February 1908. 232 Ill.10 (1908); 314 Ill. 20.

<sup>12</sup> *Chicago Legal News* 56 (No. 44, 22 May 1924), 349.

<sup>13</sup> The case was *Roe v. Taylor*, which he must have brought to court soon after he was admitted to the bar. Memorial to Cartwright by James L. Sheean, 314 Ill. 26; *Roe v. Taylor*, 45 Ill. 485 (1867).