

William K. McAllister 1870-1875

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A New York native, William King McAllister was born in Salem, Washington County, on August 5, 1818. The son of well-to-do landowner William McAllister and his



wife, Hannah Shoulder McAllister, young William remained on the family farm until entering college at the age of eighteen.¹ After discontinuing his formal education because of ill health, he prepared for the bar at the office of a Wayne County, New York lawyer, and was licensed to practice law in 1844.

McAllister practiced law for ten years in Albion, New York, and during that period, wrote one biographer, “was brought in contact with the best legal minds in the State of New York, and this intercourse afforded him a discipline and an experience which must have been invaluable to him.”²

McAllister married Cordelia Andrews about 1840, and the couple would become parents of two sons and two daughters.³ In 1854, the family moved to Chicago, where he soon secured a large clientele. As “an excellent lawyer and a citizen of high standing,” wrote John M. Palmer, McAllister “possessed a logical, common-sense eloquence which, in his practice before juries, proved more successful than all the tricks of the insincere and more pretentious orator.”⁴

John A. Jameson defeated him in his 1866 bid for the Cook County Superior Court, but in 1868, McAllister won election by an overwhelming vote as judge of the Recorder's Court of Chicago.⁵ At that time, according to a biographer, "the city was overrun with garroters and criminals of all descriptions. Judge McAllister brought about a complete revolution. Toward the real criminal he was as inexorable as the law he administered, and they were sent to [the state prison at] Joliet in droves. But for the unfortunate victims of circumstances he had a compassion that at times encroached upon the law in the case. He knew the law, but he loved justice. Where his convictions were concerned he was a tower of strength."⁶ In 1870, Independent candidate McAllister defeated Republican Charles Hitchcock for a seat on the Illinois Supreme Court—"a position of honor," according to historian Palmer, "more than of pecuniary reward."⁷

Among the cases during his five-year tenure, the 1872 *McElhanon et. al. v. McElhanon, etc.* case involved whether a party to an action may appear in court as both plaintiff and defendant. In instituting a suit against James Hughes, John McElhanon was required to post a \$500 bond, with James M. McElhanon as his security. John, averring that he was the assignee of Hughes in bankruptcy, brought debt upon that bond, against both himself and James as surety. "The case was brought to this court by writ of error," wrote McAllister in reversing the Washington County Circuit Court decision, "and the principal error assigned is the insufficiency of the declaration. Chitty says that 'it is an answer to an action that a party is legally interested in each side of the question. A party can not be both plaintiff and defendant in an action.' This rule will operate," McAllister concluded, "although the party appears on one side in his *personal* and on the other in his *official* character."⁸

In the 1874 case *Patten v. Patten*, Justice McAllister ruled on the validity of the 1861 Married Women's Property Act, which gave married women the right to possess the money that they brought into a marriage. Mary Patten had sued her husband Charles Patten to pay over the money that was due to her during the time they were married. The Cook County Circuit Court ruled in favor of Mary Patten, and Charles Patten took an appeal to the Illinois Supreme Court. Justice McAllister affirmed the lower court's judgment, writing that the 1861 Act abolished the common law practice of married women losing their estate to their husbands. Unless Mary Patten specifically gave her husband the agency to transact her business, then she had the right to recover.⁹

The 1870 Illinois Constitution had provided for the establishment of appellate courts after 1874, to relieve the four-year backlog of Supreme Court cases, "but delays and procrastination followed," reported Chicago Bar Association historian Herman Kogan.¹⁰ The *Chicago Legal News* reported that "the dockets in the three grand divisions aggregate one thousand to twelve hundred cases per annum. Of these, not less than eight hundred require written opinions. Nearly one-half of the year is necessarily occupied in holding court and in consultation. The balance of the time must be devoted to writing opinions."¹¹ On the heels of Justice Anthony Thornton's resignation due to the overworked and underpaid situation on the state's highest court, Justice McAllister followed suit. Herman Kogan added, the "intolerable situation confronting the overworked high court justices was dramatized in November 1875, when Justice William K. McAllister resigned his seat in protest against increasing burdens—the rise in cases stemming mainly from Chicago." Before his resignation, he had consented to run for, and

subsequently won, election as Cook County Circuit Court Judge, with an annual salary of \$7,000—a \$2,000 increase from his Supreme Court pay.¹²

Four years later, in June 1879, the Supreme Court justices appointed McAllister to the First District Appellate Court.¹³ Reelected in 1885, he continued as both a circuit and an appellate judge for the remainder of his life. Praised by the *Chicago Times* as “a man of tender heart and the most generous sympathies,” McAllister joined other Chicago judges and attorneys in unsuccessful clemency efforts for the eight men convicted of inciting violence at the 1886 riot in Haymarket Square.¹⁴ On the circuit court, he heard the celebrated case against “the handsomest girl in Chicago,” the wife of local gambling boss Michael C. McDonald. When Chicago police attempted to raid her family’s living quarters in 1878, Mary McDonald responded with two pistol shots, one of which tore through an officer’s coat sleeve. She was arrested and charged with the attempted murder of a police officer. After a studious examination of the case, McAllister found for the defendant, ruling that the police action, lacking sufficient warrant for entry into private quarters, constituted an unlawful invasion. That decision, reported historian Richard Lindberg, although immediately assailed by law-and-order advocates, “set an important precedent for years to come; one that would provide a modicum of protection to the gambling trust. The police had to be more circumspect in the proper execution of gambling raids.”¹⁵

On October 29, 1888, at age seventy, McAllister died suddenly at his Ravenswood home.¹⁶ Funeral services were held at First Congregational Church of Ravenswood, followed by interment at Rosehill Cemetery.¹⁷

McAllister was “one of the greatest lawyers of Chicago,” according to a city history. “His large number of printed opinions while upon the benches of the Supreme and Appellate Courts,” reported legal historian James E. Babb in 1891, “have given him high rank for judicial ability.”¹⁸ His opinions were models of clarity and conciseness, and the two “great controlling elements in his character were unflinching integrity, great love for suffering humanity and profound attachment to personal and constitutional liberty.”¹⁹

¹ *Chicago Times*, 29 October 1888, 1.

² *Chicago Legal News*, 3 November 1888, 72; *Biographical Encyclopaedia of Illinois* (Philadelphia: Galaxy Pub. Co., 1875), 267.

³ 1860, 1880 U.S. Census.

⁴ John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 60.

⁵ Frederic B. Crossley, *Courts and Lawyers of Illinois* (Chicago: American Historical Society, 1916), 312; *Biographical Encyclopaedia*, 267.

⁶ *Chicago Tribune*, 30 October 1888, 3.

⁷ *New York Times*, 4 July 1870; Palmer, 60; *Industrial Chicago; Vol. 6, The Bench and Bar* (Chicago: Goodspeed Pub. Co., 1896), 74.

⁸ *McElhanon v. McElhanon for use of Le Compte*, 63 Ill. 457 (1872).

⁹ *Patten v. Patten*, 75 Ill. 446 (1874).

¹⁰ Herman Kogan, *The First Century: The Chicago Bar Association, 1874-1974* (Chicago: Rand McNally & Co., 1974), 46. With continued pressure from the Chicago Bar Association and other groups, the General Assembly in 1877 enacted legislation organizing the Appellate Court system within four districts: Cook County, and northern, central, and southern Illinois.

¹¹ *Chicago Legal News*, 23 October 1875, 38.

¹² Stephen Anderson, ed., “Wisdom and Deliberation,” *Illinois State Bar Association News*, 1 June 2001; Richard C. Lindberg, *The Gambler King of Clark Street; Michael C.*

McDonald and the Rise of Chicago's Democratic Machine (Carbondale: Southern Illinois University Press, 2009), 260.

¹³ James E. Babb, "The Supreme Court of Illinois," *The Green Bag*, 3 (1891) 234; A. T. Andreas, *History of Cook County, Ill.* (Chicago: A. T. Andreas, 1884), 350.

¹⁴ *Chicago Times*, 30 October 1888, 1; Kogan, 75.

¹⁵ Lindberg, 44-46.

¹⁶ *Chicago Times*, Oct. 29, 1888; *Chicago Tribune*, 29 October 1888, 1.

¹⁷ *Chicago Tribune Supplemental Sheet*, 31 October 1888, 1.

¹⁸ *Industrial Chicago*, 74; Babb, 234.

¹⁹ *Chicago Legal News*, Nov. 3, 1888.