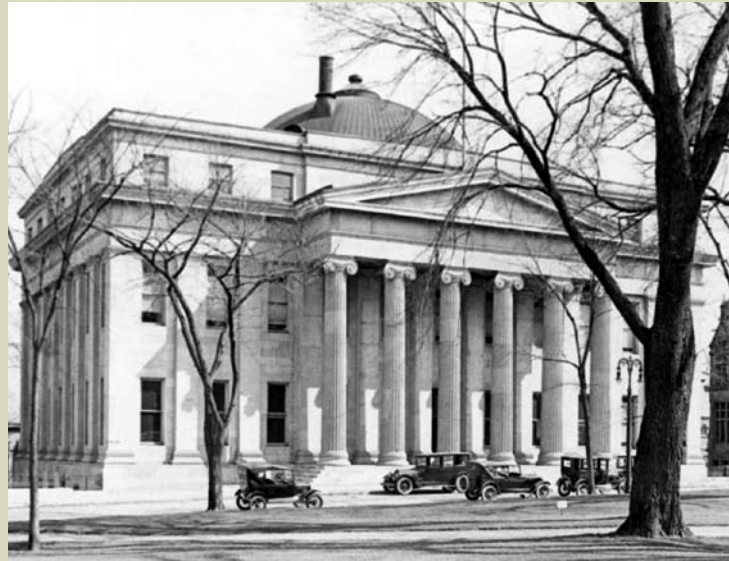


TOO FAR TO TRAVEL, EVEN FOR THE COURT OF APPEALS, AN EXPERT ALBANY-BASED APPELLATE BAR RESIDED IN THE CAPITAL

By Robert Emery, Associate Director & Head of Reference, Library

The Court of Appeals, established as New York's highest court by the Constitution of 1846, sat only in Albany. It was not, however, easy to get to Albany. Either by steamboat or by the New York Central, which established New York City-Albany rail service in 1851, it took nearly a full day to get from New York City to the capital. Travel from points west—from Syracuse, Rochester, or Buffalo—took much longer.

Hence grew the Albany "counsel business": a small but expert appellate bar, residing in the capital, employed by lawyers throughout the state to handle cases, on site, before the state's highest court.



Albany lawyers specialized in arguing before the Court of Appeals. Pictured here is the Old State House which is now occupied by the Court.

The Albany Law School Connection

The three examples described below show that lawyers affiliated with Albany Law were prominent in the "counsel business" during the Gilded Age, their arguments before the Court helping to shape the common law of New York state.

Amasa J. Parker (1807–1890) was a founder of Albany Law School and one of its longest serving trustees and professors. He was also Delaware County surrogate and district attorney, state assemblyman and U.S. congressman, member of the Board of Regents, state Supreme Court justice and judge of the Court of Appeals for one year. Parker appeared as counsel in almost 400 Court of Appeals cases over the course of 44 years (starting in 1856). Among his cases were *Bissell v. Michigan Northern* (22 NY 258) which stated the modern doctrine of corporate liability for ultra vires acts; *People v. Hackley* (24 NY 74) on the immunity of witnesses compelled to give testimony; and *Lansing v. New York Central* (49 NY 521) on the fellow-servant rule in torts.

Matthew Hale (1829–1897), unlike Judge Parker, largely stayed out of politics and devoted himself to law. After practicing in Poughkeepsie and New York, he moved to Albany in 1868 and joined the firm that became Hand, Hale & Schwartz, successor in interest to the almost

legendary appellate partnership of Hill, Cagger & Porter. He appeared in almost 170 Court of Appeals cases, making a specialty of complex corporate—particularly railway—cases (such as *Holsapple*, 86 NY 275; *Vilas*, 106 NY 439; and *Tonawanda Valley*, 123 NY 641). He was also one of the winning counsel in the *Bank Tax Cases* (69 US 200) before the U.S. Supreme Court. From 1870 until his death Hale was a professor at the Law School, teaching mostly domestic relations and criminal law.

Nathaniel Moak (1833–1892) was counsel in some 140 cases before the Court of Appeals. A Schoharie County farm boy, Moak supported himself by teaching in

the common schools while reading law in a local lawyer's office. Practicing in Albany starting in 1867, Moak was unusual in distinguishing himself both in corporate law and as a trial advocate. On one hand, for example, he advised Jay Gould's opponents in the interminable "Susquehanna War" for control of the Albany & Susquehanna Railroad Company. On the other, as Albany County district attorney in 1872, he gained national attention for his prosecution of notorious razor-murderer Emil Lowenstein. Although Moak handled the full range of civil litigation before the Court of Appeals, perhaps due to his extensive trial experience he had more than his share of criminal cases—such as *People v. Richards* (108 NY 137: is breaking into a tomb burglary?) or *People v. Schuyler* (106 NY 298: can an appellate court disturb a jury finding of insanity?). From 1882 on, Moak was a professor at Albany Law School where he primarily taught legal research (or, as they termed it in the old days, "books and their uses").

By the time the earliest alumni of Albany Law School reached professional maturity, transportation improvements had broken the Albany appellate bar's monopoly. While it lasted, however, older Albany Law trustees and professors were prominent players in the "counsel business" before the state Court of Appeals.