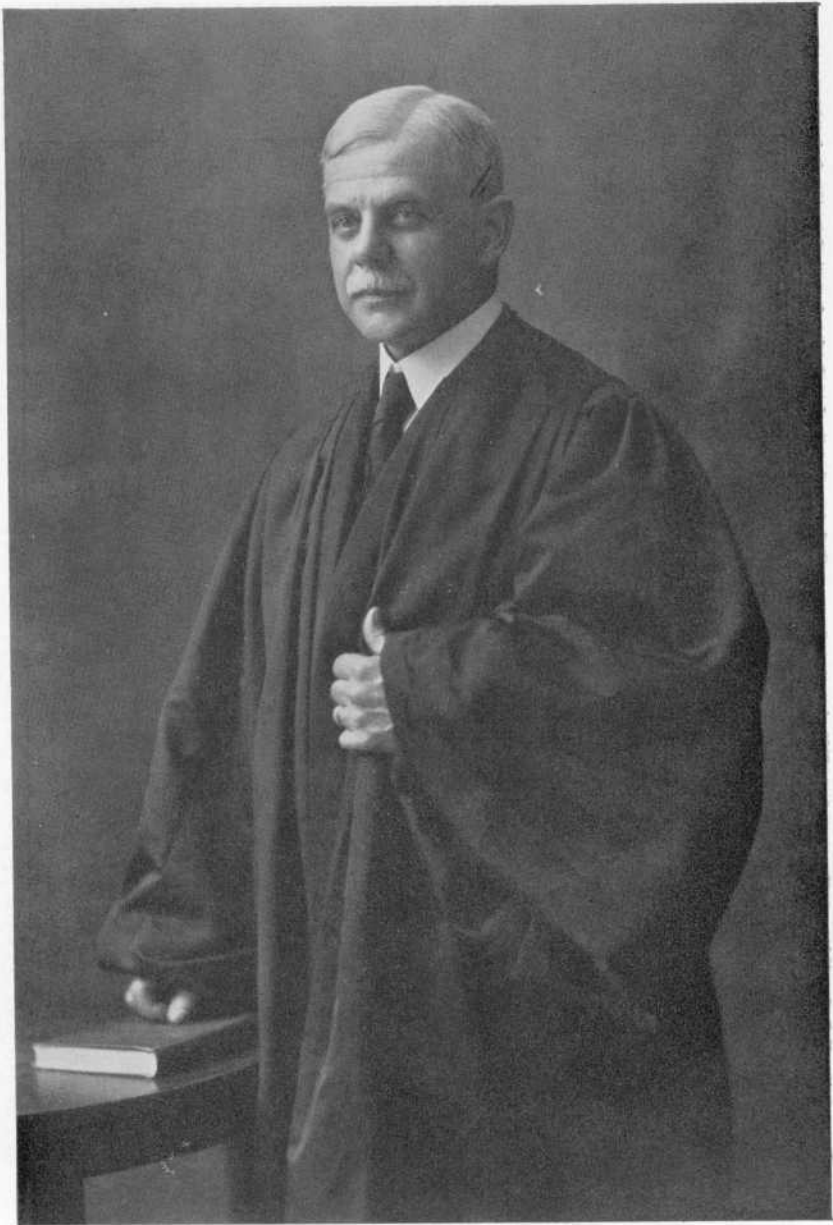


JAMES MADISON MORTON  
1837 - 1923

*Justice of the Supreme Judicial Court of the  
Commonwealth of Massachusetts*



JAMES MADISON MORTON, JR.  
1869 - 1940

*Circuit Judge of the United States Court of Appeals*

## HON. JAMES MADISON MORTON

1837 — 1923

James Madison Morton, late an Associate Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, was born in Fairhaven, September 5th, 1837. His parents, James M. and Sarah (Tobey) Morton were natives of East Freetown as were likewise the parents of Marcus Morton, a former Governor and Chief Justice of the Supreme Court. The son of Marcus Morton was appointed to the Superior Court and the son of James M. Morton was elevated to the Federal Bench.

The name of James M. Morton is not listed in the "Fall River Directory of 1853" but in 1855, James M. Morton, the father of Justice Morton resided on Davol Street in Farmville. He was at that time the local Postmaster. The Post Office was in the Market Building.

Justice Morton attended the Fall River High School, matriculated at Brown College, which in later years conferred upon him the honorary degrees of Master of Arts and Doctor of Laws. He graduated from the Harvard Law School in the Class of 1861.

He began the practice of law in the office of Judge Lapham, located in Pocasset Block. In 1864 he formed a partnership with John S. Brayton under the firm name of Brayton and Morton, with offices in Section G, Granite Block. When Mr. Brayton retired from the practice of law to devote his time to banking and industrial organizations, Andrew J. Jennings became his partner.

He was preeminently successful in the practice of law and his methods were studied and copied by many prominent lawyers. His advice was given freely to younger men but never unsolicited. His presentations of a case to a jury were never circumambient nor did he try to confuse or mislead a witness. He seemed to have an initial advantage over his opponents in trial cases, from the fact that he was always considered to be honest and right. His early practice coincided with the industrial advancement of Fall River at the close of the Civil War and his knowledge of banking procedures and his business sagacity called for his aid as a director in industrial enterprises. He was city solicitor from 1864 to 1867.

He had practiced law in Fall River for nearly thirty years when he was appointed Associate Justice of the Supreme Judicial Court by Governor

Brackett. He was then fifty-three years old. He served as Associate Justice for a little over twenty-three years and during the last eleven years, he was the senior associate. After his demise, April 19, 1923, Chief Justice Rugg in "Proceedings" held before the Supreme Judicial Court described his reports on judgments as follows:—"He wrote one thousand fifty-six opinions expressive of the judgment of the court and eight dissents. They were uniform in fine quality. Without critical and comparative analysis it would not be easy to select any of these as of outstanding superiority above others. Every one is exceedingly well done. Each is adequate, complete, simple. There is a sense of security and satisfaction in reading them. They are clear, concise, logical. They decide the points involved with sufficient fullness of discussion and nothing more. They convince by their inherent reasonableness and compelling justness. His style was direct and plain. There was no attempt at embellishment. He had no genius for epigram."

In 1913, Justice Morton resigned and retired to private life, to the regret of the court, the bar and the public. He continued his residence in Fall River during the period of his court service and returned to enjoy the remaining years of his life in close fellowship with those he loved most. He was for many years a member of the Unitarian Church; a faithful attendant, a member of the Standing Committee and oftentimes Moderator of its meetings. He found relaxation by making frequent trips to New Brunswick to lure the trout and salmon. Before the North Pond was closed, he was frequently met by fellow anglers, on early summer evenings, fly casting for small-mouthed black bass.

Six years after Justice Morton's retirement a convention was called to revise the Constitution of the Commonwealth. The voters of the congressional district, with little regard for party affiliation, chose Mr. Morton to represent them in the deliberations concerning our fundamental law. No more qualified delegate could have been chosen. He was made chairman of the committee on judiciary and became a dominant figure in the convention. His advice was constantly sought. On his eightieth birthday, the assembled convention, in a marked way, showed their appreciation for his help and friendship.

Fall River has named a large junior high school in his honor and by so doing brings to the youth of generations to come an insight into the nobility of his living. Fall River is proud to have had as its first representative on the Supreme Bench, a man who in personal appearance and action typifying what he actually was, a scholarly, Christian gentleman possessed of the qualities of honesty, patience and firmness.

# Chapter XI

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## JUDICATURES

### EARLY JUDICIAL PROCEDURES

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The Mayflower Compact<sup>1</sup> was not only a document which controlled the course of action of the Pilgrim fathers; it was the foundation on which our democratic institutions were built. The gathering in the cabin of the Mayflower was the first New England town meeting and the first elective officer was confirmed by the will of the majority qualified to vote. From that time forward, new laws and regulations were voted and additional officers elected to meet new requirements.

The governors and assistant governors were elected at the annual meetings. The whole body of Freemen constituted the General Court; a name which, to this day designates the Massachusetts legislature. Certain requirements were demanded before a resident could become a Freeman. "In 1671, it was provided that Freemen must be twenty-one years of age, of sober and peaceable conversation, orthodox in the fundamentals of religion, and possessed of twenty pounds of ratable estate in the colony."<sup>2</sup>

Trial by a jury of twelve honest men was ordained by the General Court, on December 27, 1623. In 1636, a law was enacted by which the governor and two assistants might try civil cases not exceeding forty shillings and criminal cases involving only a small fine. Eighteen years before Freetown was incorporated, a law was enacted which — "Provided that in every Towne of this Jurisdiction (Plymouth Colony) there be three or five Celectmen<sup>3</sup> chosen by the Townsmen out of the freemen such as shall be approved by the Court; for the better managing of the affaires of the

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<sup>1</sup> The Mayflower Compact was not intended to be a cartel of democratic government but as George W. Williston states in "Saints and Strangers" "it was conceived as an instrument to maintain the status quo on the Mayflower, to show inferiors in general and servants in particular their place." It is nevertheless the corner stone of the foundation on which our governmental structure is built.

<sup>2</sup> "American Landmarks of Plymouth", p. 71.

<sup>3</sup> The title "Selectmen" in all probability meant selected men without reference to character or qualifications.

respective Townships; and that the Celect men in every Towne or the major parts of them are heerby Impowered to heare and determine all debtes and differences arising between pson and pson within their respective Townships not exceeding forty shillings;" \* \* \* "That the said Celect men in every Township approved by the Court or any of them shall have power to give forth summons in his Majesties name to require any pson complained of to Attend the heareing of the case and to sumon witnesses to give Testimony upon that account and to determine of the controverseyes according to legal evidence; ant that psons complaining shall serve the sumons themselves upon the psons complained against."

When Plymouth, Bristol and Barnstable Counties were established, county courts were organized. Bristol County was not instituted until 1685. The development up to that time was the foundation on which were established the judicial systems which followed. The vicissitudes and changes which occurred during the colonial period and the days preceding and immediately following the Declaration of Independence are interestingly portrayed in the first volume of "Courts and Lawyers of New England" by Herbert Parker, LL.D. and published by the American Historical Society, in 1931. Suffice it to say here, that during the Revolution, law and order were maintained by a "Proclamation for the Courts of Justice" issued by the General Court, which was ordered read by the courts of justice, at town meetings and from the pulpits.

In 1777, the General Court constituted itself a Constitutional Convention and by the will of the people of the Commonwealth, a constitution was adopted June 16, 1780. Article XXX of the Bill of Rights provided that — "In the government of the Commonwealth, the legislative department shall never exercise the executive or judicial powers, or either of them; The executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and men." Under this article of the constitution, the courts were organized and as a separate entity of government to interpret the laws. Such judicial powers as might have been assigned to selectmen were transferred to trial justices until the establishment of police or district courts. Just before Fall River became a city, the following names are listed as Trial Justices in Fall River, Massachusetts and Fall River, Rhode Island:—James Ford, Prelet D. Conant, Hezekiah Batelle, Cyrus Alden and Eliab Williams.

### Modern Courts

The following notice is printed in the first Fall River Directory.

#### POLICE COURT

No. 13 Pocasset Block

LOUIS LAPHAM, Justice, \_\_\_\_\_, Clerk.

Office hours from 8, A. M. till 12, P. M. and from 7 till 9, P. M.

Return days for Criminal Matters, Monday and Friday, at 9 o'clock, A.M., every week.

Return days for Civil Matters, on the 1st, 3d, and 5th Mondays of each month, at 10 o'clock, A. M.

Special Terms for the trial of criminal cases, held as circumstances require.

The Police Court<sup>4</sup> was established in 1852. In 1874, the Second District Court of Bristol County took over the procedures of the Police Court. Josiah C. Blaisdell was judge until 1893 when he was succeeded by John J. McDonough and he in turn by Edward F. Hanify until his promotion to the superior bench and Benjamin Cook replaced him.

In 1857, the Police Court was held in Hathaway's block on Market Street; the next year in a new building erected by the city and called the Court House. Attorney Lapham continued as judge and was assisted by special justice James Ford. Augustus B. Leonard was court clerk. Special mention should be made of Mr. Leonard for he served as clerk of the Police and District Courts from 1857 to the time of his death, July 1, 1915. Many people knew him personally and nearly everybody knew him by name. He was a slightly built gentleman and wore a beard so long, that when at work, or on the street in stormy weather, he tucked it beneath his coat.

As early as 1847, the town voted, — "The town will give the use of its Hall for the temporary accommodation of such courts as may hereafter be held in this town" but Superior Court sessions were not held in Fall River until 1877 when rooms in Borden Block were used. The present Court House on North Main Street was erected in 1889 and the wing housing the registry of deeds some time later.

Members of the Fall River bar have been honored by appointments as Justices of the Superior Court. Henry K. Braley was appointed in 1891 and in 1902 was elevated to the Supreme Judicial Court. He died in 1929. Hugo A. Dubuque was appointed to the Superior Court in 1911 and served until his death in 1928. Edward F. Hanify received his appointment in 1929 and Joseph L. Hurley in 1937.

<sup>4</sup> The first recorded case tried in the Police Court is dated July 25, 1855. The prisoner pleaded guilty and was fined \$3.00 for drunkenness.

As previously stated, James M. Morton was appointed to the Supreme Judicial Court in 1890.

James M. Swift was elected Attorney General of the Commonwealth and served from 1911 to 1914.

James M. Morton, Jr. while serving as judge of the United States District Court for Massachusetts was raised by President Hoover to be a Circuit Judge in the United States Court of Appeals.

The Bristol County Courts which now hold sessions in Fall River include the Superior Court for Civil Business, the Superior Court for Criminal Business, the Probate Court, the Court of Insolvency and the Second District Court.

### *Police*

In 1636, constables<sup>5</sup> were elected by the General Court at Plymouth. Miles Standish, Captain of the Guard had performed the duties properly belonging to such an office. The office of constable became necessary on account of the gradual growth of the colony. After the union of the colonies in 1692, the General Court of Massachusetts passed a law requiring tithingmen to be chosen in every town. At first they seemed to have had general police duties but after a few years, they were concerned only with the keeping of the Sabbath laws. No records of the activities of such officers in Freetown have come to the writer's attention.

The records, or perhaps the lack of records, indicate that Freetown was a law abiding community. It is recorded that in 1690, stocks were erected near the meeting house at Mother's Brook but were seldom used.

### *Fall River Police Department*

Fall River did not establish a night watch until forty-three years after its incorporation. At a town meeting held April 13, 1835, it was voted to "authorize an application of the Justice of the Peace to the Selectmen of said town to appoint or establish a night watch or street watch in said town". In May 1839, a committee recommended that a night watch "be established according to law" but no action was taken until the year after the fire, when six men were appointed in July 1844. Previous to this, the old town reports reveal that payments were made to constables, health officers and town prosecutors. The first night watch had quarters in rented rooms. The total expense from July to the next annual town meeting amounted to \$965.20. Lanterns cost \$5.95 and rattles, \$6.38.

<sup>5</sup> John Hathaway of Taunton was made constable of Falls river and places adjacent, September 20, 1680.



In 1854, when the city charter was adopted, the force consisted of seven day and eight night men, the head of the department being known as chief constable and chief of the night watch. Nearly all the officers were over fifty years old. William Sisson, the Chief Constable was paid \$10.50 a week; the watchmen, \$8.50. Three years later the title of Chief Constable was changed to City Marshal and in subsequent years to Chief of Police.

By 1872, the force had been increased to twenty-eight men, twenty-two of whom were on night duty. In the following two years, the number was increased to seventy. In 1874, the city was divided into four districts and in addition to the Central Station, stations were erected, connected with the fire stations in the eastern, northern and southern sections.

For a number of years, the annual report of the city marshal contained an occupational list of those arrested. In 1877, among those listed were one phrenologist, two physicians, one school master, one music teacher, one druggist, eleven firemen, two undertakers, one hundred forty-four housekeepers. The remainder were laborers, spinners and weavers. Out of a total of 2,419 arrests, 1,319 were for drunkenness.

Until 1882, the police department was politically controlled. Conditions were improved by an amendment to the city charter, approved by the legislature, which made all appointments permanent, subject to removal for cause. Mayor Cummings in speaking of this ordinance said, — "It has developed a spirit of self reliance, encouraged individual judgment and happily removed the department from active politicians."

In 1894, the control of the police force was placed in the hands of a commission appointed by the governor of Massachusetts. At various times attempts have been made to shift the control back to the city government, but these have not been successful.<sup>6</sup>

The patrol-wagon system was instituted in 1890 and twenty years later the automobile replaced the horse drawn wagon. The progress of the force kept pace with modern inventions, including the adoption of the police signal system and in later years the use of radio cars. Francis T. Estes was for many years the electrician in charge of the signal system.

The police department, under the supervision of the commission of three appointed by the governor is now (1940) composed of the Chief of Police, a deputy chief, five captains, seven lieutenant inspectors, ten deputy lieutenants, one detective sergeant, nine deputy sergeants, one hundred forty-five patrolmen, two police women, two matrons and one police surgeon.

<sup>6</sup> In 1946, the control of the police department was again vested in the city government.

In the order of their first appointments the following have served as City Marshal or Chief of Police:—William Sisson, Chester W. Greene, Samuel R. Buffinton, Asa Eames, Henry C. Wilcox, Franklin Gray, Albert Winslow, Andrew R. Wright, Sewell D. Brigham, Josiah A. Hunt, Rufus B. Hilliard, John Fleet, William H. Medley, Martin Feeney, Abel J. Violette.

### *Police Headquarters*

The first city owned police headquarters were in the old town house on Central Street and subsequently in the basement of City Hall. From 1857 to 1916 the "Central Station" was in a large granite structure on Court Square. Before Purchase Street was extended from Franklin to Bank and later from Bank to Granite Street, Court Square<sup>7</sup> ran from North Main Street to Bedford Street. The old Court House, where police headquarters were housed, was at the right angle turn of the way, now the southwest corner of Purchase and Granite Streets.<sup>8</sup>

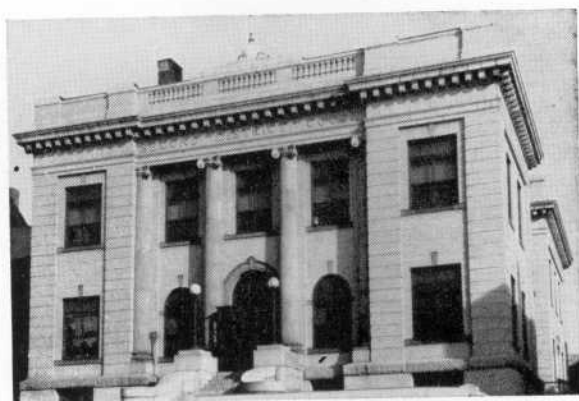
In the inaugural address of Mayor Nathaniel B. Borden delivered on March 28, 1858 he reported that "early in the season, from some cause or for some reason, the building in which was kept the city horses, was burned. The horses were also burned; but the roads could not well be worked until their places had been supplied by others. The supply was secured; but afterwards it was found a suitable place for their keeping was not easy to be obtained. This determined the Government to secure a stable, of which the city should be owner. Hence the purchase that was made. The property as was supposed, was obtained at a reasonable rate; and although in the purchase, a stable only, was contemplated, it was found on examination, of capacity to furnish other accommodations—accommodations for which the city was in want, and of which, some at least, had been a subject of consideration by the former as well as also by the present government. Hence the construction of the building in a manner and form as now appears. It accommodates the Police Department in all its branches — in it is a lockup for which the want had long been manifest, and which probably is not equaled in the Commonwealth — it affords better accommodations for a branch of the Fire Department than any other in the City, connected with it is a spacious reservoir and in a good place; on it is the city bell, to be used for alarms of fire and for other purposes, if thought desirable; and for the stabling the city horses, ample provision is made."

<sup>7</sup> See Fascicle I, pp. 79, 81-82.

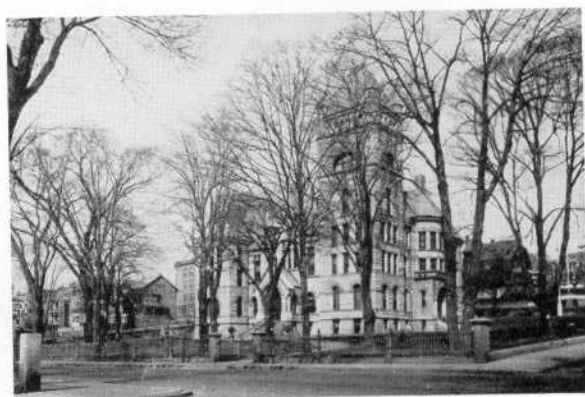
<sup>8</sup> See map, page 17.



OLD COURT HOUSE



SECOND DISTRICT COURT HOUSE



SUPERIOR COURT HOUSE



THE DISTRICT COURT IN SESSION

*Judge John J. McDonough*

*Clerk Augustus B. Leonard*

The fire stations which occupied the first floor front remained in the old Court House from 1858 to 1876. The city stable was back of fire apparatus and the police station on the second floor. When the building was reconditioned<sup>9</sup> the police station occupied all of the first floor, with executive offices and sleeping quarters on the second floor. The west side of the second floor, with an entrance on Granite Street was occupied by the police court. When the Second District Court House on Rock Street was completed in 1911, the police succeeded to the entire use of the building. In 1916, the Police Headquarters Building, on the corner of Bedford and High Streets was ready for occupancy. The old court house, along with other old buildings, was torn down and Purchase Street widened.

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<sup>9</sup> In Fascicle I, p. 81, Mr. Phillips was in error concerning the recommendation for the building of the old court house. James F. Davenport was not mayor until long after that time. He probably had the remodeling of the structure in mind.

