THE END OF DUELLING IN NEW JERSEY, AN ADDRESS DELIVERED BEFORE THE TRENTON HISTORICAL SOCIETY

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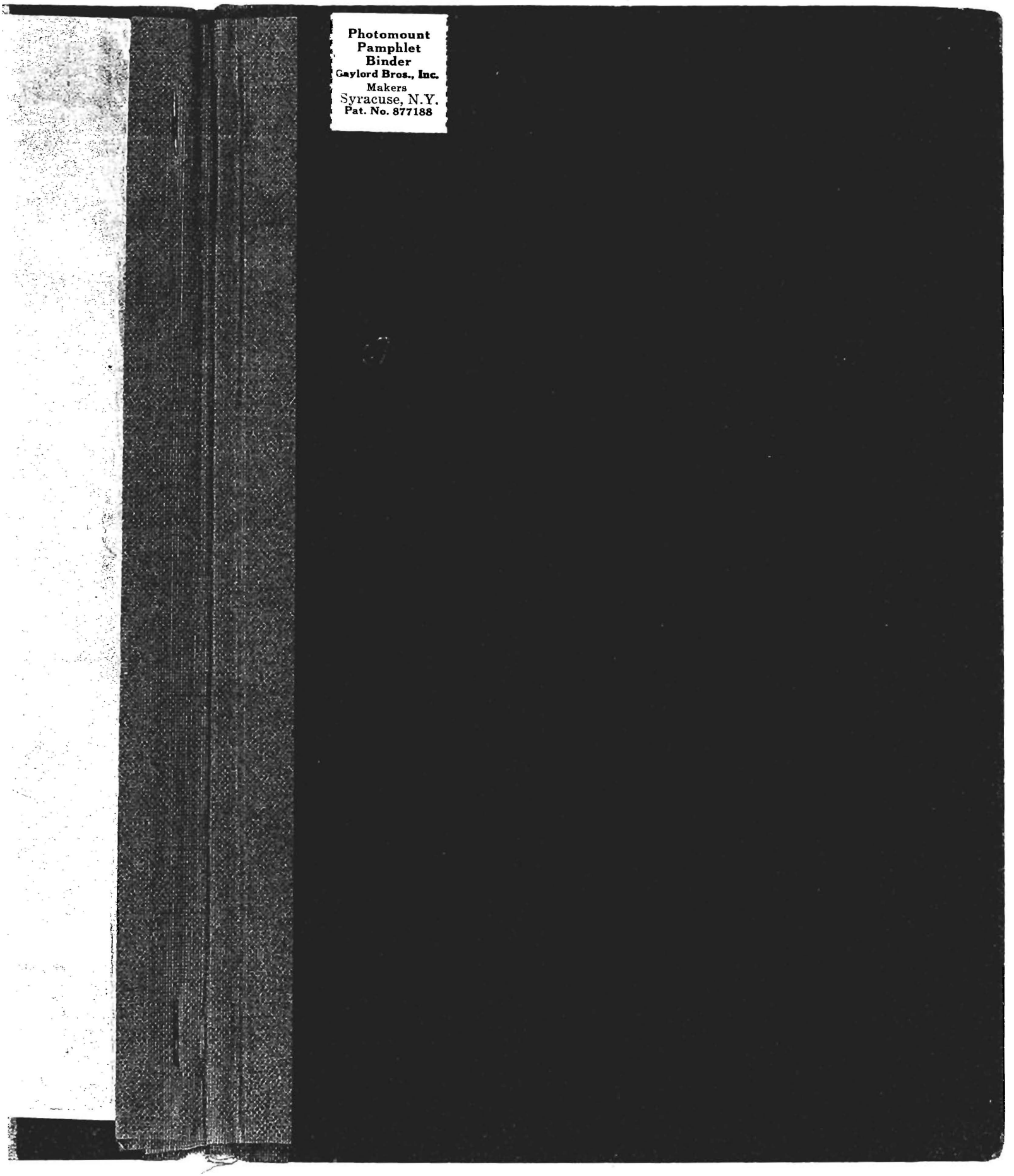
1921



The End of Duelling in New Jersey

BY

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An address delivered before
The Trenton Historical Society on
May 19, 1921

1921
The Trenton Historical Society
Trenton, New Jersey

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A man who issued a challenge to mortal combat in the old days, no doubt expected a certain amount of glory and fame, because of his exhibition of courage, and must have experienced keen disappointment and humiliation, when instead of finding himself on the field of honor, he was hauled into Court and sued for $5,000 damages, for trespass. That is what happened to the defendant in the case of Ogden *vs.* Gibbon, which was tried in Newark, in 1816, and afterwards argued before the Supreme Court and Legislative Council at Trenton, and probably had as much to do with arousing public opinion against duelling as the famous duel between Burr and Hamilton.

The duel between Burr and Hamilton occurred in 1804, and, resulting in the death of the latter, shocked the entire country. The death of the leader of the Federalists, who was regarded by many as the successor of Washington, and admired for his great ability and the important public services he had rendered, made a tremendous stir. Sympathy for his widow and children was deep and wide spread. Burr became a fugitive and was indicted for murder in two states. It created a deep and decided sentiment against the practice, especially in the northern states.

But many duels were fought after that event. The practice was of long standing and if not actually legalized was recognized by the prominent people of Europe and America as the accepted mode of settling disputes among gentlemen. For centuries the law had recognized its counterpart in "The Trial by Battle" and it was not until 1819 that that was abolished.

Trial by battle was practically a duel between the parties to a suit, or between champions chosen by them, and for a long time was recognized as a lawful method of deciding a legal contest. In the earlier days the absurdity of the method was not recognized, and it was confidently asserted

that "what triumphed was not brute force but the truth; the combatant who was worsted was a convicted perjurer." This method of deciding a question of fact gradually lost its popularity, but in 1819, when most of the people of England had forgotten that such a method of trial still existed, a clever lawyer astonished the courts by demanding on behalf of his client a trial by battle. His client, named Thornton, was charged with the murder of Mary Ashford, and when arraigned in court pleaded "not guilty," and throwing his glove upon the floor of the court in imitation of the days when "Knighthood was in Flower," declared "This I am ready to defend with my body," and demanded a trial by battle. The demand took the court by surprise, but the matter was later argued before the King's Bench, and it was there decided that he was entitled to "his lawful mode of trial." The days of champions had passed, no one followed that as a profession in the enlightened 19th Century, and no one appeared to fight for "the truth" as represented by the murdered woman, and the defendant was finally discharged. The result of this incident aroused indignation in England and afterwards this mode of battle was abolished by an Act of Parliament.

On September 20, 1816, Thomas Gibbon, a hot-blooded gentleman who had come from the south and settled in Elizabeth, sought to arrange a meeting between himself and Aaron Ogden, and in the challenge, named General Dayton as his friend to arrange the time and place of meeting.

The sentiment had changed somewhat, and it was evidently no longer considered a disgrace to decline to fight a duel. All the parties involved were prominent in public life and to some extent leaders of public opinion. Gibbon had amassed a fortune in the south and about 1812 moved to Elizabeth where he resided until 1825. He was one of the pioneers in the steamboat business and in connection with Fulton and Livingston, did a great deal to develop that business in and about the waters of New Jersey and New York. It was in the carrying on of this business that the interests of Ogden and Gibbon clashed.

Aaron Ogden had been a soldier in the Revolutionary War

and rose to the rank of colonel. In the War of 1812, he was selected as one of the major-generals, but declined the appointment. He was admitted to the Bar of New Jersey in 1784, and enjoyed a large and important practice. He served in the assembly and in the council, and in 1812 was chosen governor of this state—the last governor elected by the Federalists.

In conjunction with Daniel Dodd, he engaged in running steamboats between Elizabethtown and New York City; this brought him in conflict with Livingston, Fulton and Gibbon, to whom the New York Legislature had granted an exclusive right to navigate the waters of New York State with steamboats for a term of years. In 1813, New Jersey passed a retaliatory act, granting exclusive privileges to Dodd and Ogden, in the waters of New Jersey. This led to litigation, with varying results, and it was not settled until the U. S. Supreme Court reversed the State Court, and recognized the right of Gibbon's boats to run from one state to another, contrary to the provision of the New Jersey statute. The tense feeling of the parties was increased by a suit brought by Ogden against Gibbon on a promissory note, and this may be said to have been the immediate cause of the challenge.

Gibbon sent a challenge in the usual method, through General Dayton; Ogden refused to receive the letter. This enraged Gibbon, and immediately, with a horse whip in his hand, he went to the office of Colonel Ogden, which was located in a wing of the dwelling house, on Broad Street, Elizabeth, and there posted on the half open door of the office a challenge to mortal combat, and with it a charge that the colonel's conduct was rascally, and that if he remained mute and refused to explain his conduct in interfering with a dispute between Gibbon and his wife, that he would be treated as a convict. The Colonel was away at the time, but the action of Gibbon was witnessed by Mrs. Ogden and her daughter who were somewhat alarmed at the proceedings. The challenge remained on the door for a short time when it was removed by the daughter. It was a letter calculated to provoke a duel.

The reply of Colonel Ogden was a suit for trespass which was tried in Newark and resulted in a verdict of $5,000 in favor of the plaintiff. The case was taken to the Supreme Court and there argued by the Attorney-General, Theodore Frelinghuysen, and Richard Stockton for the plaintiff, and Elias Vanarsdale and William Halsey for the defendant, and the verdict was upheld in an elaborate opinion by Mr. Justice Samuel L. Southard, of Trenton, and concurred in by Chief Justice Kirkpatrick and Mr. Justice William Russell. The case was then taken to the Court of Last Resort, which at that time was a body influenced largely by political considerations and subject to political influence. It consisted of the Governor and a Legislative Council, and as Mr. Elmer states in his "Reminiscences of New Jersey," referring to this case, "A majority was procured to reverse the judgment." It was reversed by a vote of six for reversal, five for affirmance and two members not voting, one of whom was the Governor. Upon this becoming known, the counsel for Ogden insisted that all the members of the Court, especially the Governor, were bound to express an opinion. It was also contended that no judgment could be given, as the six votes for reversal did not represent a majority of the members present. The Court, however, re-affirmed its decision, but wisely refrained from giving any reasons for its holding, or publishing any opinion.

A new trial was granted, and the case was afterwards re-tried at Newark, and a verdict given for the plaintiff of $1,500, which was sustained.

Arising out of the same incident was an indictment by the Essex County Grand Jury—Elizabeth at that time being a part of Essex County—charging Ogden with misdemeanor; the indictment was taken to the Supreme Court by certiorari, where it was argued that because of the peculiar wording of the challenge, it did not come under the penal code; because it did not call for a meeting to fight, but merely asked for a meeting. A number of technical objections were made to the challenge, and Chief Justice Kirkpatrick held in his opinion that the indictment did not follow the words of the statute, and it did not expressly charge the offense and the indictment was quashed.

No further attempt was made to punish Gibbon, but the novelty of the subject matter involved and the prominence of the parties gave the case a wide publicity and attracted the attention of the nation. The suit for damages, in a matter that had always been looked upon as a question of honor, tended to emphasize the absurdity of resorting to duels to settle disputes, and helped to bring duelling into disfavor.

The next duel in this State of which I found any record was stopped by a constable, and a later attempt to resort to the code of honor in 1845 resulted in criminal indictment and jail sentences.