

# Albion Tourgée & the Fight for Civil Rights



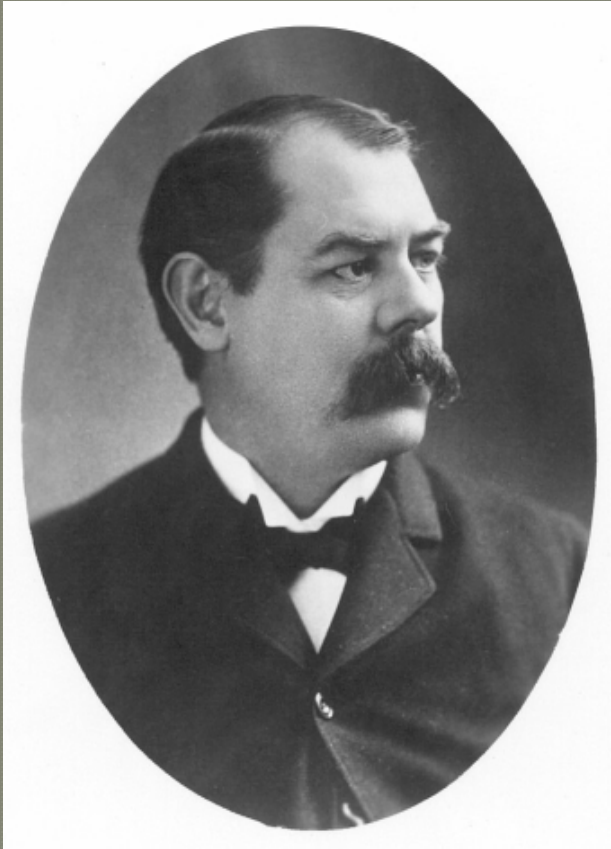
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# Brainstorm

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- When you hear the words “**abolitionist**” or “**civil rights activist**” what comes to mind?
- What people in particular come to mind and why? What did this person do or what was she/he known for?

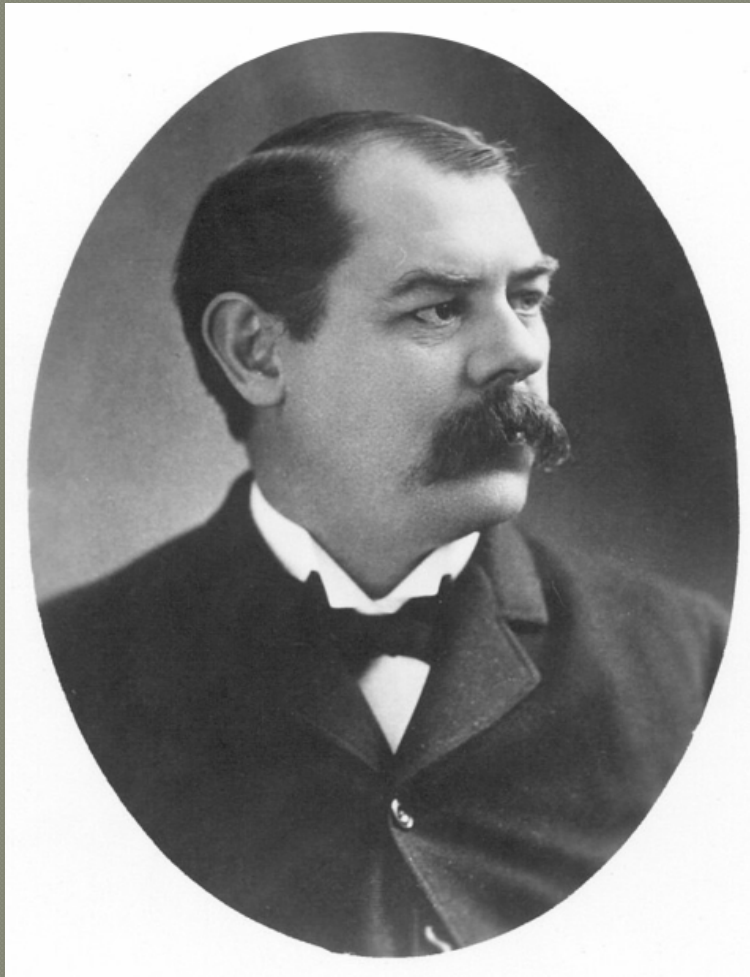
# Who Am I?



- I volunteered for 2 enlistments in the Civil War, partly based on my beliefs that slavery was wrong.
- I served an 8 year term as a US Superior Court Justice in NC, where I made sure 63 KKK members were indicted for their violence against blacks.
- I helped write the 1868 NC State Constitution, ensuring the equal citizenship for all men was a priority.
- I wrote more than 20 books (including 2 best sellers) many with the purpose of highlighting the cruelty inflicted upon blacks during slavery and Reconstruction.
- I founded the first national civil rights organization (the National Citizens Rights Association) in 1891
- I authored the nation's first anti-lynching law, passed in Ohio in 1896.
- I challenged the unfair Separate Car Act all the way to the US Supreme Court in an attempt to show how segregation was a violation of the 14<sup>th</sup> Amendment.

# Albion Tourgée

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- Why haven't we learned about Albion Tourgée?

# Albion Tourgée's Early Life

- Tourgée was born in the Ohio frontier on May 2, 1838
- The area was populated by evangelical abolitionists who greatly influenced Tourgée, who declared his disagreement with slavery early on. He considered abolitionists courageous and admired how they stood by their views, even though they often endured public ridicule and threats.
- Later in his life, Tourgée would write extensively of his admiration for abolitionists such as Frederick Douglass and William Lloyd Garrison, who he referred to as “men of conscience.”
- Tourgée attended the University of Rochester in 1859, where he excelled in debate and earned a reputation as a student who would challenge authority.
  - For example, even though the University banned political clubs, Tourgée organized a student group in support of Abraham Lincoln's presidential race in 1860.
  - During this time he also wrote an essay critical of prosecutions of distributors of Hinton Helper's antislavery book ("The Impending Crisis of the South").



# Military Career



*Lieutenant Albion W. Tourgée,  
105<sup>th</sup> Ohio Infantry, 1862 (at left)*

- Tourgée had to drop out of school in 1861 due to financial issues. His plans to reenroll were interrupted by the start of the Civil War in April 1861.
- Tourgée responded to Lincoln's call for troops & enlisted in the 27<sup>th</sup> NY infantry to fight for the Union.
- Tourgée's first term of service in the Union Army was brief since on July 21, while fighting in the Battle of Bull Run, he was shot in the back and paralyzed from the waist down.
- Although doctors said he would remain paralyzed for life, Tourgée had regained the ability to walk by the summer of 1862.
- Incredibly, as soon as Tourgée had regained motion, he re-enlisted in the Union Army, this time with the 105<sup>th</sup> Ohio infantry.

# Military Career



- Although his injuries plagued him, Tourgée served as a Lieutenant for another 18 months.
- Throughout his service, when stationed in places like Kentucky and Tennessee, he witnessed slavery and met enslaved people.
- Tourgée formed strong bonds with the fugitive slaves he encountered, many who had joined his regiment to fight the Confederacy for their freedom.
- In May 1863, Tourgée married his longtime fiancée Emma Kilbourne, a former classmate.
- As his back problems worsened, Emma convinced Tourgée to resign from the military in Dec. 1863.
- Tourgée himself would later acknowledge that his military experience “radicalized him” on civil rights issues, leading him to fight for the rights of people throughout his life.

# Reconstruction

## Tourgée Moves to North Carolina

- After the Civil War ended in 1865, C wanted to assist in the Reconstruction process, aiding in the transition from a slave society to a free one.
- He encouraged friends and family to move to the South. After meeting with North Carolina State Governor William W. Holden, Tourgée chose Greensboro, NC as his new home.
- Upon his family's move to Greensboro, Tourgée and his wife became actively involved with the local Quaker community, longtime antislavery supporters. The community aided the black community to found schools and acquire property.
- Unfortunately, Tourgée's commitment to racial equality, broader democracy, and protection of the economic underdog, white and black, collided with the values of most of the southern elite.



# Reconstruction

## Becoming a NC Political Leader

- In 1866, conservatives were swept into power of the NC General Assembly. They began passing laws to restrict the rights of formerly enslaved people (black codes.) This was largely allowed because of President Andrew Johnson's lenient reconstruction policies, which restored the "planter class" to power.
- Tourgée continually denounced such Conservatives and the "black codes" at local political meetings, leading him to become popular in Republican political circles.
- From 1866 to 1867, he furthered his message of equality through editing Republican newspaper, the "Union Register."
- Based on his growing reputation, Tourgée was picked to represent Guilford County at the national "Loyalist Convention" held in Philadelphia in 1866. The Convention was a group of Southern Republicans who called upon Congress to take stronger measures to counteract President Johnson's reconstruction policies.

# Reconstruction

## The 1868 NC Constitutional Convention

- In 1868 Tourgée was elected to the North Carolina Constitutional Convention on the strength of black voters, who had been given the right to vote by the U.S. Congress.
- Based on Tourgée's legal training and speaking ability, he emerged as a natural leader at the 1868 State Convention.
- Tourgée influenced the adoption of broad reforms, including:
  - equal citizenship for all men, regardless of race.
  - Elimination of property requirements for jury duty and holding of public office
  - Abolition of corporal punishment including whips and stocks
  - Free public education for all
  - Popular election of most political offices and judgeships
  - And an overhaul of civil and criminal codes
- He also tried to implement elimination of North Carolina's poll tax and abolishment of capital punishment, was unsuccessful.
- NC's new 1868 Constitution Convention still resulted in a revolutionary document, with rights and equal protections included that wouldn't be reversed even as Republican governments began to fall throughout the South.

# TO THE VOTERS of GUILFORD.

## FELLOW CITIZENS:

Having been urgently solicited to become a candidate for the Constitutional Convention, and having consented so to do, I hereby offer for your suffrages, as the exponent of the following principles to the earnest and unflinching support of which, in the future as in the past, I am impelled by every incentive of justice, humanity and patriotism:

1st. Equality of civil and political rights to all citizens.

2nd. No property qualifications for jurymen.

3rd. Every voter eligible for election to any office of trust or emolument.

4th. All legislative, executive and judicial officers of the state to be filled by vote of the people.

5th. A criminal code humane and christian, without whip or stocks.

6th. An ample system of public instruction reaching from the lowest primary school to the highest university course, free to the children of every citizen.

7th. A uniform and equal system of taxation upon property.

8th. The tax upon the poll (or more properly tax upon the value of labor,) not to exceed three days' work upon the public highway or its equivalent.

9th. In addition to the provisions of Section 4th of the Constitutional Amendment, the assumption or payment by any county, city, or other political corporation, within the state of any debt, contracted in aid of rebellion, directly or indirectly, should be prohibited by Constitutional enactment.

10th. The rights of citizenship to be extended to the present excluded classes, whenever the Congress of the United States shall see fit to remove their disabilities and not before.

These are the principles and ex-

judgment and integrity? Shall capacity, honesty and your suffrages be sufficient to entitle the voter to a seat in the assembly, or shall the clayey Juggernaut set up his alter in the State House?

The aristocracy of slavery is dead. Shall we now build up an aristocracy of land?— Shall we have a government of a few, by a few and for a few? You have tried it once and the past seven years are its results—six hundred thousand dead are the glorious first fruits of aristocratic rule.

Poor men of Guilford! laboring men of Guilford, now is your golden moment!— The tide is at the flood! Old things are away. Slavery, that fed daintily upon your lives, has ceased to ask its yearly hecatomb of men and women. Aristocracy, which would let "a thousand paupers die that one oligarch might live," is fighting its last battle with Democracy. Muscle is no longer bought and sold, nor brain made the subject of barter. Wealth is no longer the great I Am, nor manhood a political cipher. "The bone of contention" has become a constituent element of the Republic. "We, the people," has a new signification. Do you choose to govern yourselves or be ruled by those who still crave the name of "master?" Will you be free men or serfs? Will the "new people" have a "new" state, or the old one patched up, with its whip and stocks, its oppressive system of taxation and its tyrannical landed aristocracy!

Laborers of Guilford are you not as capable of self government as those men who with the motto rule or ruin, did both rule



# Reconstruction

## NC Code Commission

- After the NC Constitution was ratified, Tourgée was asked to serve on a three-person committee in 1868 to re-write the Code of Civil Procedure for the state. His work helped modernize laws and make them more understandable to common people.
- Although Tourgée was interested in running for US Congress, the NC Republican Party convinced him to run instead for Superior Court Justice.



NC Code Commission –  
Tourgée is pictured on the right.

# Reconstruction

## NC Superior Court Justice

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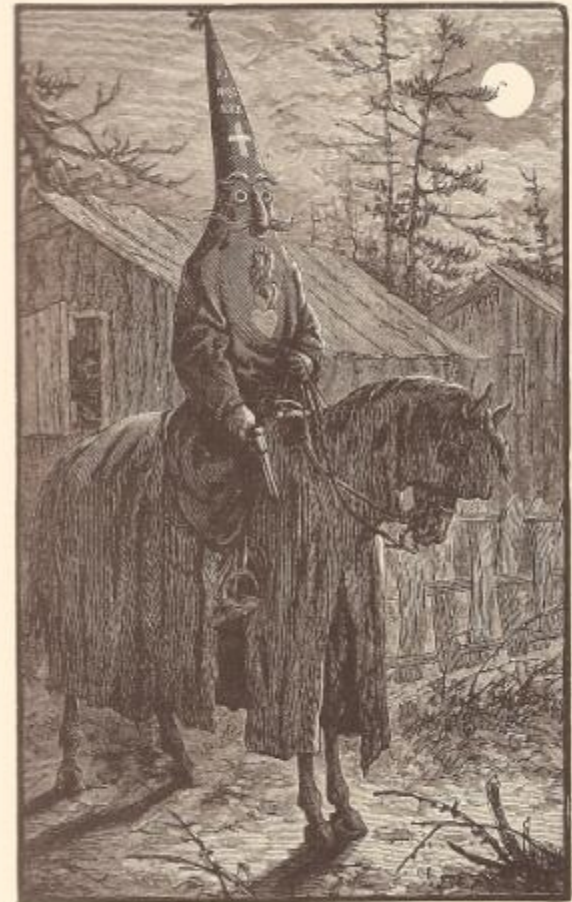
- Tourgée was elected and served six years (1868-1874), though out which he earned the respect and praise of many, even some prominent conservatives.
- Even still, Tourgée's stances on equality were often controversial given the climate of the time:
  - Tourgée banned the use of racial slurs by lawyers; those using racial slurs were imposed heavy fines
  - He insisted that cases involving racial violence be ruled on by a racially integrated jury
  - On several occasions, he implemented the harsh sentences deserved for whites who had committed crimes against blacks, ensuring justice be served regardless of the social and political pressures of the times



# Reconstruction

## NC Superior Court Justice

- During Tourgee's tenure as judge, the Ku Klux Klan engaged in a campaign of terror and political intimidation designed to drive blacks and their Republican allies from power.
- Tourgée often received threats and it was rumored that the Ku Klux Klan planned to assassinate him.



THE MASKED SENTINEL.

# Reconstruction

## NC Superior Court Justice

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- Refusing to back down, Tourgée led an investigation in 1871 of the KKK and the racist atrocities they committed. His work resulted in indictments against 63 Klan members, including several prominent & powerful NC citizens.
- Due partially to black voters being intimidated at the polls and ballot box fraud, Conservatives took back the North Carolina State legislature in 1870 . This led to an unfortunate slow roll back of Republican policies over the next decade.
- Many of the Klansmen Tourgée had help get indicted were pardoned and the civil rights of black citizens were eroded more and more throughout the South.

# Reconstruction

## North Carolina Constitutional Convention, 1875

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- At the North Carolina Constitutional Convention of 1875, Tourgée tried to prevent the new Conservative majority from undoing the 1869 constitutional reforms.
- Many Republican reforms were thankfully left in tact, but Conservatives did change the State Constitution to include segregated schools and a ban on interracial marriage.
- The changing tide of state politics meant that Tourgée's ideals of equality were less and less popular. When his Superior Court term expired in 1876, he was shut out of most of the political opportunities in the state. Tourgée was reduced to the position of Pension Officer in Raleigh.

# Reconstruction

- The Tourgées lived an unconventional life in the South & were often shunned by “polite society” due to their close association with blacks, black advocates, and poor whites.
- In 1869, the Tourgées adopted Adaline Patillo, an ex-slave, and raised her and her sister Mary in their home.
- In 1873, they sent Adaline to Hampden Institute, where she was a classmate of Booker T. Washington.
- After the birth of her own daughter in 1870, Tourgée’s wife moved North to raise their child in a less hostile environment.
- A year later, after a failed run for US Congress in the fall of 1878, Tourgée reconciled with his wife and agree to leave North Carolina.

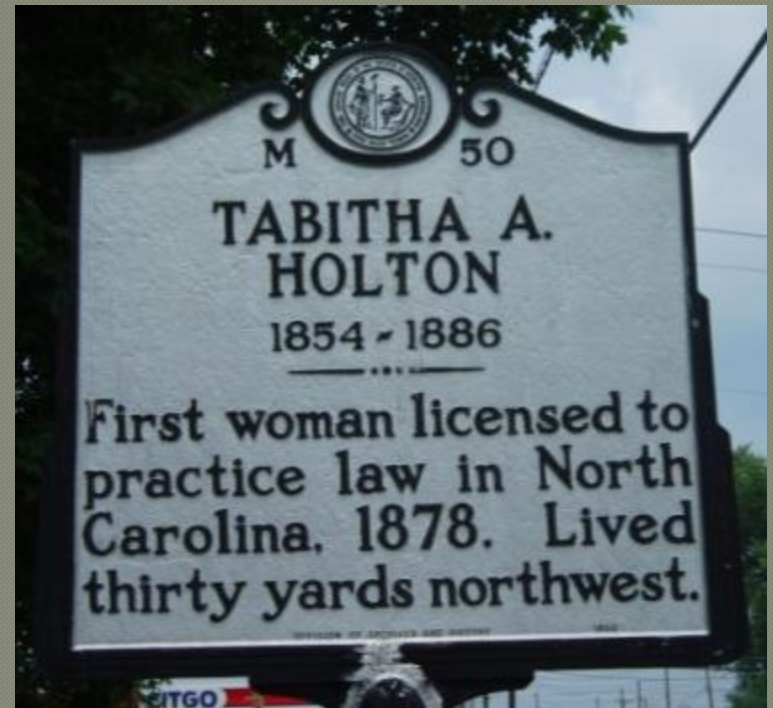
## Personal Life



Mary and Adaline Patillo, c1875

# In Re Application of Holton (1878)

- Before Tourgée left to join his wife and daughter in the North, he made one last contribution to the reconstruction of North Carolina when he argued in favor of Tabitha A. Holton, who was seeking admission to the bar but was denied because she was a woman.
- Holton and her brother had prepared for the bar exam, but the State refused to give Tabitha the exam, arguing that women could not be admitted to the bar because they were not included in the term “persons” when the governing statute was originally framed.





# In Re Application of Holton (1878)

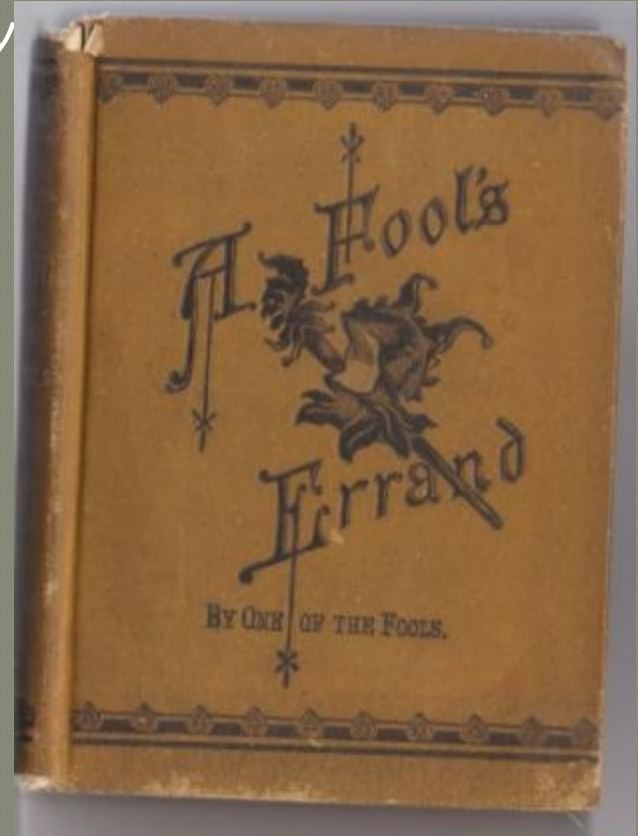
- In a special hearing of the State Supreme Court, Tourgée argued that the revolution that had brought citizenship to former slaves ought to extend to women as well.

“The Court has already held that the term ‘person’ in this state included colored males which was certainly as far from the intent of the Legislature at the time of [the statute’s] adoption as the construction now contended could possibly be...The same reason which induced the Court to extend the law to the colored men, applies with equal force to women. The circumstances surrounding the former have been changed by revolution. The circumstances which surround the latter are constantly changing by the progress of enlightened thought.”

- His argument was successful and after Tabitha Holton passed the bar exam (on her first try), NC became the first southern state (and only the 6<sup>th</sup> state in the Union) to admit women to the bar.

# Literary Fame

- In 1879, Tourgée published *A Fool's Errand by One of the Fools*, a novel written to tell the “true story of Reconstruction.”
- The novel, which he published anonymously, was a scathing indictment of the Republican Party for abandoning Reconstruction.
- While Tourgée had published a few other novels previously, *A Fool's Errand* became a sensational best-seller within 6 weeks of its release.
- The novel was given credit for rekindling the political debate over how to solve the racial strife in the South.

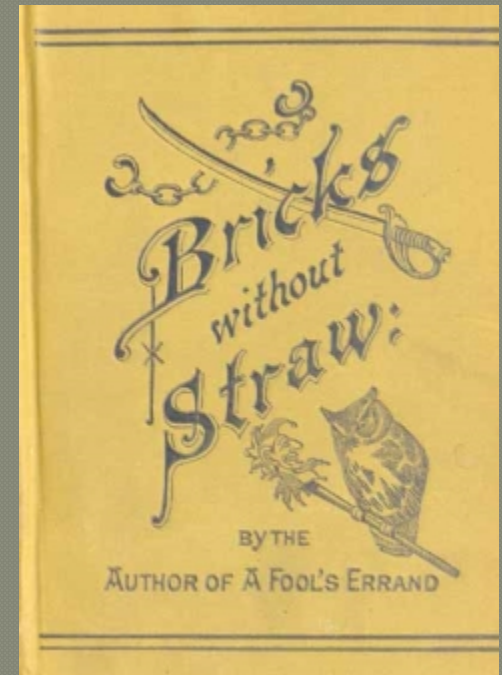


"Abolitionist" meant only one who was in favor of the abolition of slavery. At the North it had this significance, and no more. At the South it meant also, one who was in favor of, and sought to promote, negro-equality, miscegenation, rape, murder, arson, and anarchy, with all the untold horrors which the people there believed would follow the uprising or liberation of a race of untaught savages, lustful as apes, bloodthirsty as cannibals, and artful as satyrs. . . .

"Carpet-bagger," which was in some sense the lineal descendant of "abolitionist," was, as was very proper for a second edition, a considerable improvement on its immediate predecessor. It was undefined and undefinable. To the Southern mind it meant a scion of the North, a son of an "abolitionist," a creature of the conqueror, a witness of their defeat, a mark of their degradation: to them he was hateful, because he recalled all of evil or shame which they had ever known. They hissed the name through lips hot with hate, *because* his presence was hateful to that dear, dead Confederacy which they held in tender memory, and mourned for in widow's weeds, as was but natural that they should do.

# Literary Fame

- Once Tourgée's authorship was revealed, he moved to New York City where he enjoyed celebrity status, socializing with leading literary figures and key Republican Party leaders.
- Tourgée became an important voice for the national Republican Party and he took an active role in the 1880 presidential campaign, wielding a great amount of influence on Republican candidate James A. Garfield regarding southern issues.
- Tourgée published *Bricks Without Straw* during the election season in 1880, which told the story of Reconstruction through the perspective of two former slaves and encouraged Federal intervention in the south. The novel, a sequel to *A Fool's Errand*, surpassed sales of *Fools Errand* within its first six months.



# Literary Fame



- When President Garfield was assassinated only a few months into his first term, Tourgée's position of influence in the Republican Party faded, leading him to focus more on his literary career.
- Tourgée continued to write and address problems of race and society. He completed 12 novels, 3 novellas, and 3 collections of short stories.
- Tourgée launched a weekly magazine in 1882, but it was unsuccessful and by 1884, Tourgée had bankrupted himself trying to save it.



# Tourgée & the Early Civil Rights Movement

## “A Bystander’s Notes”

- When not writing fiction, Tourgee went on lecture tours and wrote many editorials on a variety of political and social issues.
- In 1888, the Chicago Daily Inter-Ocean, the city’s leading Republican newspaper, gave him a weekly column: “A Bystander’s Notes”
- The column brought Tourgée back into the thick of politics as he shared details regarding the alarming amounts of racial violence and brutal lynching taking place, highlighting the failure of the Republican Party to do anything about the new wave of white supremacy in the south.
- His column provoked extreme responses. On one hand, Tourgée received hate mail and was ridiculed as dredging up old Civil War controversies so that he could gain political attention. On the other hand, he gained numerous admirers, especially among African Americans who cheered his devotion to issues of Civil Rights.
- “A Bystander’s Notes” was soon republished across the nation in black-owned newspapers.

# Tourgée & the Early Civil Rights Movement

## The Separate Car Act

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- In 1890, the State of Louisiana proposed the “Separate Car” Act, which would require railroads to maintain “equal and separate” facilities for whites and non-whites. Despite the presence of 16 black legislators in the state assembly, the law was passed.
- Though segregation was widely practiced at this time, this was the first law passed that officially required racial segregation in any business or public service.
- The Separate Car Act required either separate passenger coaches or partitioned coaches to provide segregated accommodations for each race. Passengers were required to sit in the appropriate areas or face a \$25 fine or a 20-day jail sentence.

# Tourgée & the Early Civil Rights Movement

## The Separate Car Act

- This law was one of several bold new attempts by conservative southern governments to deprive blacks of civil and political rights through the law (as opposed to their otherwise attempts outside of the law, with violence and intimidation)
- Tourgée denounced the law in his column and called upon Louisiana blacks and civil rights advocates to challenge the law, arguing that it violated the 14<sup>th</sup> Amendment's guarantee of "equal protection."



# Tourgée & the Early Civil Rights Movement

## The Separate Car Act


- Within a year, a group of New Orleans activists led by Louis A. Martinet, the editor of an African American newspaper and an avid reader of “A Bystander’s Notes,” organized a ‘citizens league’ to challenge the law. The group contacted Tourgée and asked him to assist.
- With Tourgée’s assistance, the group planned to have a pre-determined person break the segregation law, ensuring he be arrested. The legal team would then challenge the arrest in the courts, appealing throughout the local, state, and federal courts, calling attention to the unconstitutionality of the law.
- Tourgée agreed to take part in the planning and legal defense, refusing payment even though he remained in debt, and worked with the team through long-distance correspondence.
- Their first case, *State of Louisiana v. Desdunes*, involved a black man being kicked out of a “white-designated” car as planned, but it was dismissed on a technicality and never made it beyond local courts.

# Tourgée & the Early Civil Rights Movement

## National Citizens' Rights Association

- As Tourgée and Martinet planned the Louisiana “test case,” they also launched a national civil rights organization.
- On Oct. 17, 1891, Tourgée announced the National Citizens' Rights Association, founded to protect the rights of all citizens, regardless of color. 20,000 members enlisted by the end of 1891.
- Tourgée served as a spokesperson for NCRA and over the next three years, met with political leaders, published pamphlets and editorials, and lectured extensively.

**JUDGE ALBION W. TOURGÉE**



⊞ SOLDIER ⊞ JURIST  
⊞ LAWYER ⊞ NOVELIST  
⊞ ⊞

Author of “A Fool’s Errand,” “Bricks Without Straw,” “Out of the Sunset Sea,” etc., will Lecture on

**“The Race Problem”** A Subject of Vital Interest At This Time

AT UNION PARK CONGREGATIONAL CHURCH,  
Corner Washington & Ashland Boulevards

TUESDAY EVENING, APRIL 11th, 1893, at 8 o’clock

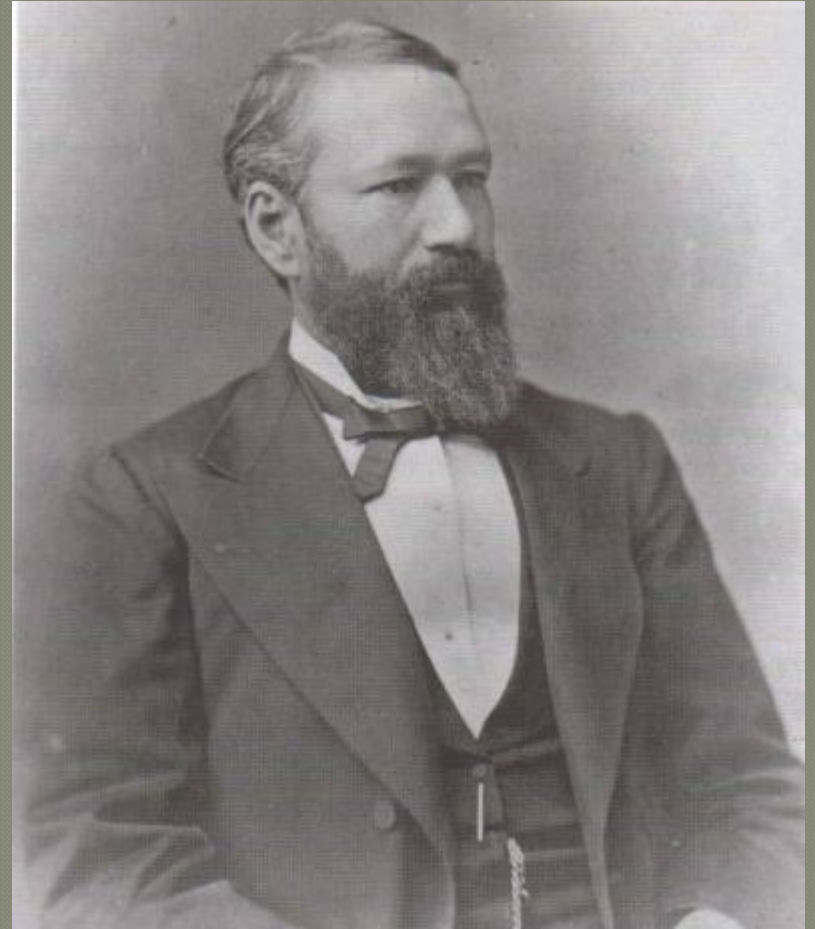
TICKETS 50 CTS. NO RESERVED SEATS.



# Tourgée & the Early Civil Rights Movement

## *Plessy v. Ferguson*

- While their first test case failed, in 1892, Tourgée and his team's plans of testing the Separate Car Act in the courts became a reality.
- Tourgée had determined that the best way to challenge the law in court was to raise the legal question of how race can even be determined for the purposes of ensuring separate seating. They planned to have a man light-skinned enough to pass for white board a train in New Orleans and sit in the white car.
- Tourgée and his team approached Homer Adolphe Plessy and asked him to serve as the plaintiff in the case. Plessy one-eighth black and appeared to be a white man.



# Tourgée & the Early Civil Rights Movement

## *Plessy v. Ferguson*

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- On June 7, 1892, Plessy boarded a New Orleans train and sat in the “whites only” car. Plessy then informed the conductor that he was black and was thus breaking the law. Plessy was arrested and Tourgée’s plan was officially in motion.
- In the Criminal District Court for the Parish of Orleans, Tourgée argued that the law requiring “separate but equal accommodations” was unconstitutional.
- As Tourgée anticipated, Judge John H. Ferguson ruled against him and convicted Plessy of violating the Separate Car Act.
- Tourgée appealed Ferguson’s decision and the case was sent to the Louisiana State Supreme Court, which also upheld Ferguson’s decision.
- Three and a half years later, on April 13, 1896, the US Supreme Court finally heard oral arguments. Tourgée and his co-counsel Samuel F. Phillips argued the case for Plessy.

# Tourgée & the Early Civil Rights Movement

## *Plessy v. Ferguson*

- Unfortunately, the Supreme Court of the United States upheld the lower courts' decisions. Speaking for a seven-person majority, Justice Henry Brown wrote:

"That [the Separate Car Act] does not conflict with the Thirteenth Amendment, which abolished slavery...is too clear for argument...A statute which implies merely a legal distinction between the white and colored races -- a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color -- has no tendency to destroy the legal equality of the two races...The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."

# Tourgée & the Early Civil Rights Movement

## *Plessy v. Ferguson*

- The lone dissenter, Justice John Harlan, showed incredible foresight when he wrote:

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law...In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case...The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution."

- Over time, the words of Justice Harlan rang true. The *Plessy* decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal."
- The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public

# Tourgée & the Early Civil Rights Movement

## *Plessy v. Ferguson*

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- The *Plessy* decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal."
- The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools.
- Not until 1954, in the equally important *Brown v. Board of Education* decision, would the "separate but equal" doctrine be struck down.





# Tourgée & the Early Civil Rights Movement

## The Tourgée Bill

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- In 1894, Harry Smith, African American editor for the Cleveland Gazette, enlisted the NCRA's support in his campaign to draft an anti-lynching law in the State of Ohio.
- Tourgée drew up a law that would steeply penalize any country government where there was a lynching. Tourgée wrote the law in this way since lynchings usually occurred with the acceptance and/or approval of local communities and law enforcement.
- Harry Smith was elected to the State House of Representatives in 1896 and introduced the Tourgée Bill. The Bill was enacted into law and upheld by the State Supreme Court. This anti-lynching bill was the first of its kind in the country.

# Tourgée's Legacy

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- Tourgée ended his civil rights work after the devastating Plessy decision.
- In 1905, a few months after Tourgée's death, a new civil rights organization, the Niagra Movement, was founded.
- Launched by W.E.B. Du Bois and other civil rights activists, the organization would eventually reorganize itself in 1910 as the NAACP.
- At the inaugural meeting in 1905, the Niagra Movement adopted a resolution that each local chapter hold a memorial service honoring three "Friends of Freedom" whose uncompromising approach to justice they aspired to emulate: William Lloyd Garrison, Frederick Douglass, and Albion Tourgée.

“The origin of an American people unbounded by race lies not with the founders, who by and large made their peace with slavery, but with the abolitionists [who] invented the concept of equality before the law regardless of race, one all but unknown in American jurisprudence before the Civil War.”

*Eric Foner, The Story of American Freedom*

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ALBION W. TOURGÉE

— 1838-1905 —

Union army officer.  
author, judge. Member  
of 1868 Convention.  
Home was 2 blocks S.

DIVISION OF LAND AND WATER

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