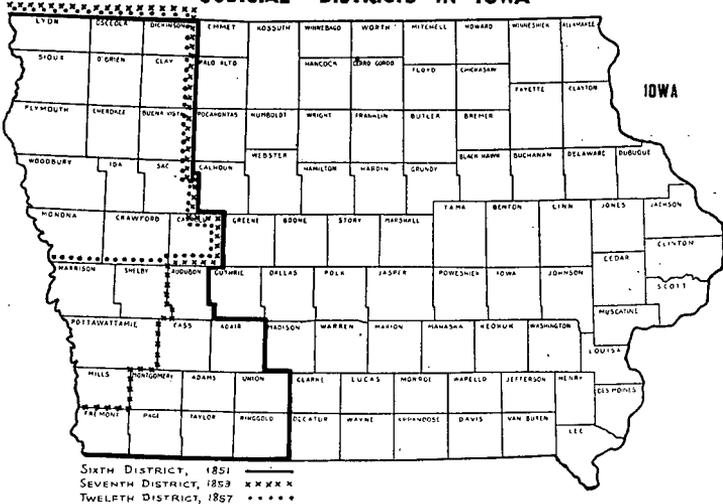
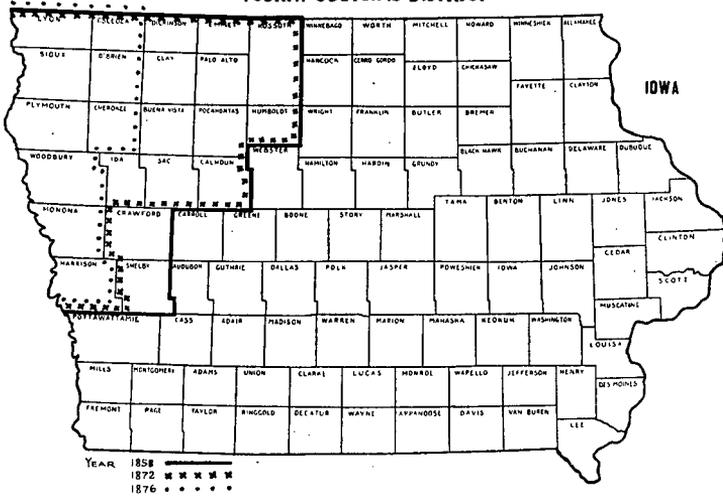


### JUDICIAL DISTRICTS IN IOWA



### FOURTH JUDICIAL DISTRICT



# ANNALS OF IOWA

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## JUDICIAL DISTRICTS IN NORTHWESTERN IOWA

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The landed territory of Iowa was a part of the Louisiana Purchase, made by the United States from France in 1803, and was first governed by the Ordinance of 1787. This was a congressional act for the government of the territory of the United States, northwest of the Ohio River, adopted July 13, 1787. Later Iowa was successively attached, for judicial purposes and government, to the states of Missouri, Michigan and Wisconsin.

June 2, 1838, Iowa was detached from Wisconsin, and on July 3, 1838, it became a separate territorial entity, permitting it limited self government under a governor appointed by the president and a legislative assembly consisting of a Council of thirteen members and a House of Representatives of twenty-six members.

At its first territorial Legislative Assembly held at Burlington January 21, 1839, three judicial districts for holding the District Court were established in thirteen eastern counties. The Supreme Court with three members, was organized and sessions held the first Monday in July and December each year.

Statute laws of the state in its territorial capacity enacted at this session include an act fixing the terms of the District Courts, as well as the Supreme Court. The first Judicial District was composed of the counties of Henry, Van Buren, Lee and Des Moines; Charles Mason was the judge. The Second Judicial District was composed of Louisa, Muscatine, Cedar, Johnson and Slaughter. Slaughter was afterward renamed Washington County. Joseph Williams was the district judge. The Third Judicial District included Jackson, Dubuque, Scott and Clayton; and Thomas Wilson was the judge. For judicial purposes the county of Linn was attached to Johnson County, the

county of Jones to Cedar County, and the county of Clinton to Scott County.

"October 7, 1844, the people of Iowa, through a convention of delegates, formed a constitution and state government and on March 3, 1845, an act providing for the admission of Iowa, and at the same time, of Florida (to meet the exigencies of the slavery situation), was adopted by Congress. Certain requirements were set forth, which had to be approved by the citizens of Iowa, before the admission into the Union could be proclaimed.

"To comply with the requirements, a second convention of delegates met at Iowa City and on May 18, 1846, adopted the Constitution of that year."<sup>1</sup>

By act of Congress passed December 28, 1846, Iowa was fully admitted to the Union.

On March 5, 1857, Iowa adopted its present Constitution. Section 6, Article V, provides for a District Court to be presided over by one judge in each district. Section 10 provides for eleven judicial districts, but the number of districts and judges could be increased or diminished after the year 1860.

In 1884 the Constitution was amended so as to give the legislature the power to divide the state into districts for judicial purposes and authorizing it to increase or diminish the number of judges. It does not permit a judge to be removed from office by such changes.

It will be noted that this constitutional provision only applies to district judges. Circuit Courts and judges thereof were later added to the judicial organization by legislative act.

"When Iowa became a state, the people had a miscellany of laws, an accumulation of ill-assorted, overlapping and redundant acts, that had first been passed and in force in the old territory of Wisconsin. The forms of procedure had been brought from the old Eastern States and there was a mixture of southern and northern court practices. It was altogether a system that was cumbersome and expensive. In 1848 there was considerable agitation and an urgent demand for codification of our laws. The legislature appointed a commission with power to 'draft, revise and prepare a Code of Laws,' and most thor-

<sup>1</sup>Glass, ANNALS OF IOWA, Vol. XX, p. 404.

oughly did they execute their important task. The laws were rewritten and reorganized, being condensed, verified and classified under local categories. Justice McClain, himself an author of an annotated code and a supreme justice, said that 'the Code of 1851 is a model of plain, unambiguous statements, in direct and clear language, of the rules and legal propositions, which are attempted to be laid down. So satisfactory has the work been done, that while these sections have been overlaid by subsequent legislation they have been largely retained in the Revision of 1860, the Code of 1873, and the Code of 1897 as the best statement of that portion of the law which they are intended to cover.'<sup>2</sup>

It has been said that the Code of 1851 was a codification of the common law. Of course this is not true. The commission compiled, restated, and enacted in fine form, the administrative law of the state and local governments, and it codified the forms and methods of procedure in civil and criminal actions, but the Code did not mark the abandonment of the common law in Iowa. What it did mark was the discontinuance of the common law procedure in civil actions.

The commissioners made their report in 1850 and it became the Code of 1851, the first Code in Iowa, and possibly the first complete Code in the United States.

As set out on pages 627-28 of the 1851 Code of Iowa, it was provided that the territory of Iowa should have a Supreme Court with a chief justice and two associate justices, who were to serve for four years; and three judicial districts over each of which one of the supreme judges should preside. It also established probate courts and justice courts. The Supreme and District courts had both chancery and common law jurisdiction. Appeals might be taken to the Supreme Court of the United States.

The Iowa Code of 1851 provided for the election of a county judge with duties similar to those of the present county auditor, and in addition thereto the duties incident to a county Probate Court, holding regular sessions on the first Monday of each month excepting April and August in which months the sessions were held on the first Tuesday following the first Monday. This

<sup>2</sup>ANNALS OF IOWA, Vol. VII, p. 625.

change for April and August was necessary as the first Mondays in those months were election days. The office of the probate judge was at the county seat.

The County Court had authority to provide for the erection and preparation of court houses, jails and other necessary public buildings within and for the use of the county; also in relation to roads, bridges, ferries, the poor, cases of bastardy, and the handling of probate and guardianship matters and such other powers as are or may be given it by law.

The County Court determined the amount of taxes to be levied for county purposes, according to the provisions of the law in force at the time the same was collected. The clerk of the District Court was required to act as clerk of the County Court.

The law also provided that "a county judge should be elected at the first election holden in August after the statute had been in force thirty days, and if such does not take place in the year 1851, the county judges elected in 1852 shall hold for the term of three years and a new election shall take place at the August election in the year 1855 and every four years thereafter."

These matters were continued in force by the Code of 1860 in Chapter 105.

The first reference in legislative law, to courts now in the Twenty-first Judicial District, is found in Chapter 36, Acts of the Third General Assembly, approved February 4, 1851.

It created the Sixth Judicial District, composed of the counties of

Ringgold	Mills	Harrison
Fremont	Union	Carroll
Adams	Pottawattamie	Wahkaw (Wood-
Cass	Audibon (Audubon)	bury)
Shelby	Monona	Buena Vista
Crawford	Sac	Sioux
Ida	Plymouth	Dickinson
Cherokee	Clay	Buncombe
O'Brien	Page	(Lyon)
Oceola (Osceola)	Montgomery	
Taylor	Adair	

Twenty-nine counties.

Ringgold was spelled with two "g's" and this is correct, as the county is named after Major Samuel Ringgold who was killed at the battle of Palo Alto—second battle of the Mexican War. Audubon was spelled A-u-d-i-b-o-n. Emmet was spelled with two "t's" at the end. Osceola contained no letter "s". Humboldt had no "d" next to the last letter.

We find strange counties in the early judicial districts. Who knows where Yell County is or was? Where were Fox, Risley, Waukaw, Belknap, Bancroft, or Buncombe counties? From their description, by congressional townships, given by the acts creating them and from laws passed by the legislature we learn that Fox County is now Calhoun, Yell County is now Webster, Risley is now Hamilton, Waukaw is now Woodbury, and lastly we find that Buncombe is now Lyon County.

An old history of Iowa published in 1875 by R. S. Peale & Co. tells us that the northwestern county in Iowa was named Buncombe in derision because it was, before its organization, inhabited by Indians and was a hide-out of offenders against the law. This is not true as we will later show.

Many changes were made between 1850 and 1872 in the organization of judicial districts. Immigration was rapidly increasing the population, business conditions improved and as more money came into possession of the people, law business improved. A lawyer cannot prosper unless clients have money or property to protect or secure. No doubt there was a large increase in litigation in many sections where little had existed before and the lawyers and judges appreciating the condition, were striving at each session of the legislature to make the arrangement of districts more convenient for transaction of their business.

The legislature during the session of 1850-51 arranged and laid out all of the north, northwest and northeast territory of Iowa into counties and gave them names. This was done before the treaty was ratified that extinguished the Indians' title to the lands lying west of the Des Moines River. Webster County was named Yell, after and in honor of Archibald Yell, and Hamilton County was named Risley, both being in honor of two colonels who fell in the Mexican War. The bill was introduced by Hon. P. M. Casady, a senator. The extreme northwestern

county was named Buncombe in honor of Colonel Buncombe, a soldier of the Revolutionary War. His name is commemorated also in the name of Buncombe given a county in North Carolina.

Cerro Gordo, Buena Vista and Palo Alto commemorated names of famous battlefields of the Mexican War.<sup>2</sup> Mitchell, O'Brien and Emmet were named after Irish patriots. Mills County was given that name in honor of Major Frederick Mills, a leading lawyer of Burlington who fell at the battlefield of Churubusco near Mexico City. Buncombe County retained its name until after the battle of Wilson's Creek in Missouri. It was the first battle in which Iowa troops were under fire and Brigadier General Nathaniel Lyon was in command and was killed. So Lyon replaced the name of Buncombe, there being some prejudice against the unpleasant sounding word. Kossuth County was named after and in honor of the Hungarian patriot leader who was making a tour of the United States at the time the name was changed.

Chapter 46, Acts of the Fourth General Assembly, approved January 22, 1853, created the Seventh Judicial District composed of the counties of

Mills	Pottawattamie	Harrison
Shelby	Monona	Crawford
Carroll	Woodbury	Ida
Sac	Plymouth	Cherokee
Buena Vista	Sioux	O'Brien
Clay	Dickinson	Osecola
Buncombe		

Nineteen counties.

Chapter 260, Acts of the Sixth General Assembly, approved January 29, 1857, created the Twelfth Judicial District comprising the counties of

Monona	Crawford	Carroll
Woodbury	Ida	Sac
Plymouth	Cherokee	Buena Vista
Sioux	O'Brien	Clay
Dickinson	Osecola	Buncombe

Fifteen counties.

<sup>2</sup>Palo Alto, a battlefield in Texas, and the battle was fought May 8, 1846. The battle of Buena Vista was fought February 22, 1847, five miles south of Saltillo. The battle of Cerro Gordo took place a few miles north of Mexico City.

Chapter 47, Tenth General Assembly, approved March 18, 1864, fixes the times of holding court in the Fourth Judicial District in the several counties and further provides that the counties of Buena Vista, Cherokee and O'Brien are hereby attached to the county of Clay; the county of Ida to Sac; and the county of Sioux to Woodbury County, for judicial purposes. It also provided that all suits now pending in any of the counties attached to another county for judicial purposes, by this act, shall be deemed pending in the counties to which such counties are attached. It is further made the duty of the clerk of the District Courts of the several counties, attached to another county as aforesaid, to deliver to the clerk of the District Court of the county to which said counties are attached, all papers filed in any cause now pending in said counties, together with a transcript of all record entries made in said causes; the cost of making said transcript to be paid by the counties in which said suits are now pending.

The chapter also provides that if judgment is rendered in any cause decided in a county to which another county has been attached, such judgment shall not be a lien upon real estate, until the transcript of judgment has been filed in the county where the cause originated.

Section 6 of the act provides that where counties are attached to another by this act for judicial purposes, the judge of the District Court may at each session thereof, held in the county to which said counties are attached, make such order, apportioning the expense of holding the court among the several counties, as he may deem just and equitable.

By act approved March 20, 1858, known as Chapter 94, Acts Seventh General Assembly, the Fourth Judicial District was established as consisting of the counties of

Harrison	Humbolt	Calhoun
Crawford	Shelby	Monona
Sac	Woodbury	Ida
Plymouth	Buena Vista	Cherokee
Sioux	Clay	O'Brien
Dickinson	Buncombe	Osceola
Pocahontas	Emmet	Palo Alto
Twenty-two counties.		Kossuth

This was the first law that established the *Fourth* Judicial District, so as to include the counties that now compose the Fourth and the Twenty-first Judicial Districts. As it will be noted it includes sixteen other counties in western Iowa.

Chapter 86 of the Twelfth General Assembly, passed April 3, 1868, reorganized the judicial districts of the state, but the last named twenty-two counties were retained in the Fourth Judicial District.

This same act established the Circuit Court and the *General Term Court* and defined the jurisdiction and powers of the two courts.

It provided for the election of two circuit judges in each district to be elected November, 1868. They held office for four years and each judge must hold four terms of court in each year and at least one term in each county.

The Circuit Court was a court of record and had concurrent jurisdiction with the District Court in civil actions at law, foreclosures, and equitable actions, partitions, applications for writ of *ad quod damnum* (condemnations of property for public use), appeals from special proceedings for damages for establishment of highways.

Circuit Court judges had the same powers as district judges, and statutes in force respecting the commencement of actions, jurisdiction, process and practice, pleading and mode of trial in actions at law and in equity, attendance of jurors, effect of judgments, lien and enforcement thereof and taxation of costs, applied to Circuit Courts the same as District Courts.

Circuit Courts also had original and exclusive jurisdiction to probate wills, appoint executors, administrators and guardians; settle estates, issue marriage licenses and had jurisdiction over all actions and proceedings where the County Court and county judge had previously.

It had exclusive jurisdiction of appeals in civil and criminal cases from mayors, justice and inferior courts.

No grand jury was empanelled in the Circuit Court, but when an indictment had been found in the District Court, with the consent of the defendant, the District Court could order trial to be had at next term of the Circuit Court.

Also, any case could, by consent of parties, be transferred

from Circuit to District Court or from District Court to Circuit Court.

In each judicial district there was held, not less than two, and not more than four, General Terms each year. The General Term was governed and held by the one district judge and the two circuit judges; the district judge presided.

General Terms had power to make, alter and repeal rules of practice in the several courts in the district. All appeals from judgments or orders of the District Court or Circuit Court were decided in the first instance by the General Term Court. Appeals were taken from thence to the Supreme Court in the same manner as appeals now are taken. Appeal to the General Term Court was limited to those taken within three months after rendition. The clerk's duties, fees and costs were the same as the Supreme Court.

The General Term could reverse, or affirm, in whole or in part, and direct such judgments as the court below should have done; could enter judgments on an appeal bond and make order as to costs; the record was immediately certified to the clerk of the lower court and judgment rendered there in accordance with the decision of the General Term.

Appeals from cases commenced before justices of the peace were final, unless two or more judges certified the decision to the Supreme Court as being one on which the opinion of the Supreme Court was desirable. Appeals in other cases could be taken from the General Term to the Supreme Court. Judgments and orders of the Supreme Court were to be certified back directly to the court wherein it was first tried, but cases originally commenced by Justice Court were certified back to the Circuit Court.

Judges of the District Court and judges of the Circuit Court could reserve their decisions on questions of law, tried in their respective courts, for determination of the General Term; and where necessary might order finding of a special verdict by the jury on questions of fact, in causes tried by a jury; and in cases tried to the court the court could make a finding of facts; and the hearing and determination of said cause shall be in all respects the same and have the same effect as a trial by appeal.

The General Terms Court was short lived; for, two years

after it was passed, the succeeding legislature, Chapter 41, Acts Thirteenth General Assembly, approved March 30, 1870, repealed the law by which the General Term had been established and abolished the General Term and provided that appeals from Circuit and District Court should be taken direct to the Supreme Court.

Chapter 61, Fourteenth General Assembly, approved April 18, 1872, provided that the counties of

Webster	Calhoun	Sac
Ida	Lyon	Osceola
Humboldt	Kossuth	Pocahontas
Palo Alto	Emmet	Dickinson
Clay	Cherokee	Woodbury
Monona	Harrison	Buena Vista
O'Brien	Sioux	Plymouth

twenty-one counties, shall constitute the Fourth Judicial District.

Chapter 90 of the same General Assembly, approved April 23, 1872, just five days after the passage of Chapter 61 just mentioned had been approved, eliminated Webster County from its assignment to the Fourth Judicial District and it was restored to the Eleventh Judicial District where it still is.

While the Circuit Court was first organized by legislative authority in the year 1868, there were some amendments to the law during the two subsequent sessions of the legislature and in the year 1873 at an adjourned session of the Fourteenth General Assembly what is known as the Code of 1873 was adopted and the jurisdiction of the Circuit Court and the District Court is specified.

Chapter 2, Acts of the Thirteenth General Assembly, approved January 20, 1870, fixed the time for holding courts in the Fourth Judicial District. The method was rather crude and cumbersome and difficult to follow. For instance:

In Woodbury County court commenced the first Monday in March and the third Monday in August. That was easy.

But look at this:

In Clay County, on the fifth Monday after the fourth Monday in March.

In Buena Vista County on the first Thursdays after Mondays above fixed for commencing court in Clay County.

In Dickinson County on the sixth Monday after the fourth Monday in March, and the eighth Monday after the third Monday in August.

In Ida County on the fourteenth Monday after the third Monday in August.

In O'Brien County on the first Thursday following the Monday above specified fixed for holding court in Ida County.

In Cherokee County on the twelfth Monday after the fourth Monday in March; and the fifteenth Monday after the third Monday in August.

In Plymouth County on the first Thursday after the Monday above fixed for holding the fall term in Cherokee County.

In Sioux County on the sixteenth Monday after the third Monday in August.

After reading that you would probably be sure of only one thing and that is that your court would begin on a Monday or a Thursday.

Chapter 56, Acts of the Sixteenth General Assembly, approved March 8, 1876, created the Fourteenth Judicial District and it carved liberally into the Fourth Judicial District. Counties in the east end of the district,

Calhoun	Sac	Ida
Buena Vista	Pocahontas	Humboldt
Kossuth	Palo Alto	Clay
Dickinson	Emmet	

eleven counties, were placed in the new Fourteenth District.

The new Fourth District was reduced in size to nine counties:

Harrison	Monona	Woodbury
Plymouth	Cherokee	O'Brien
Sioux	Lyon	Osceola

Chapter 181, Laws Twentieth General Assembly, approved April 7, 1884, divided the Fourth District into two circuits.

Lyon, O'Brien, Sioux, Osceola and Plymouth constituted the First Circuit.

Woodbury, Monona, Harrison and Cherokee constituted the Second Circuit.

Chapter 134, Acts Twenty-first General Assembly, adopted

April 10, 1886, confirmed the above membership in the Fourth Judicial District, but increased the judges to three.

Chapter 54, Twenty-fourth General Assembly, increased the number of judges to four.

On April 10, 1886, the legislature passed a law known as Chapter 24, Acts of Twenty-first General Assembly, which abolished the Circuit Court after January 1, 1887. At that time we were still in the Fourth Judicial District consisting of the six counties now in the Twenty-first District and the counties of Woodbury, Harrison and Monona and we had three judges.

When this act was passed we had many circuit judges in the state who had been elected to a term expiring January 1, 1888, and the question arose as to whether the legislature could legally legislate them out of an elective office. The office of circuit judge is not mentioned in the state Constitution. The District Court is therein definitely designated.

There was no prohibition, constitutionally, preventing the legislature from establishing and organizing the Circuit Court.

The legal question as the rights of Circuit Court judges was generally discussed. Hon. D. D. McCallum of Sibley was one of the demoted judges and he was very active in making plans to recover his salary for the year 1888. Other judges in the same condition joined with him and a test case of mandamus was brought by Circuit Court Judge Crozier in the Polk County District court against the state auditor demanding issuance of the state warrant claimed to be due Judge Crozier for salary as circuit judge. The case is reported in 72 Iowa, page 401, *Crozier v. Lyons, Auditor of State*.

After citing the constitutional provisions which only refer to District Courts and provide that a judge should not be removed by act of the legislature during his term of office, the Supreme Court said:

It will be observed that this section is an inhibition from removing from office, either a district or supreme judge, by act of the legislature. But neither the provision cited, nor the amendment to the Constitution authorizing the reorganization of court, has any reference to the courts created by act of the legislature, or to the judges of such courts. It follows therefore, that the legislature had the power to abolish the office of judge of the Circuit Court, and our sole inquiry must be directed to the question whether the power has been exercised.

Continuing the court made it quite clear that the legislature had the right to abolish the office of judge of the Circuit Court.

Counsel for the deposed judge argued that while the office of Circuit Court was legally abolished, the duties of circuit judge may yet be exercised and performed by circuit judges, notwithstanding.

Meeting this argument the court suggested that the statute only provided for salaries to be paid to judges of the Circuit Court, and if there was no Circuit Court, there could be no salary. Judge Rothrock wrote the opinion.

Prior to 1860 the legislature, at each regular session specified the dates for holding terms of court in the several counties, but the Revision of 1860 delegated this power to the judges (Section 2660) when no time had been fixed by the legislature.

The Code of 1873 (Section 165) provided that at least one term of court should be held in each county in each year and directed the district and circuit judges in each district to meet on or before the first Monday in December, 1873, and fix the time for holding terms of court in each county in their district for the two years next ensuing.

When the Circuit Court was abolished in 1886 the legislature authorized the district judges to hold the terms theretofore selected for holding Circuit Courts and arrange the schedules so that each judge should hold at least one term of court in each county and that not less than four terms be held in each county (Chapter 134, Twenty-first G. A., Section 6). And this is the present law (Code Section 10777-81).

The Thirty-sixth General Assembly in 1913, divided the state into twenty-one judicial districts, depriving our six northwestern counties of their long membership that had existed since 1858—fifty-five years—in the Fourth Judicial District, and placing them in a new district, at the foot of the list, denominated the Twenty-first Judicial District. It always seemed to me that the logical thing for the legislature to do would have been to leave the six northwestern counties in their old district calling it the Fourth and giving the two counties on the south end, Woodbury and Monona, membership in the new Twenty-first District.

Woodbury and Monona counties now remain the only remain-

ing members of that old Fourth District which at one time included very nearly the western half of the state.

The twenty-one judicial districts now in the state utilize seventy judges in conducting their courts. Two counties in the state each comprise a whole judicial district.

Polk County with its six judges constitutes the Ninth Judicial District.

Lee County with its two judges is alone designated as the First Judicial District.

Lee County has two county seats, one at Keokuk and one at Ft. Madison. In the past it has been the custom to elect one judge from the northern half of the county and he generally has been a resident of Ft. Madison. On the other hand one judge has always been a resident of Keokuk in the south half of the county. This has been changed and both judges now reside in Keokuk.

Pottawattamic County is the other county in the state with two county seats, one at Council Bluffs and one at Avoca.

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#### DES MOINES AGAIN NAVIGABLE

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The steamer, Colonel Morgan, which has been permanently anchored at our wharf since last spring, was released from imprisonment yesterday morning, and took a trip down stream. Quite a number of passengers were aboard luxuriating in the prospect of a river excursion. A steamboat navigating the Des Moines in midwinter is an anomalous feature in Iowa.—*The Iowa Citizen*, Des Moines, February 6, 1858. (In the Newspaper Division of the Historical, Memorial and Art Department of Iowa.)

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