

Attorneys in Iowa in 1847

By GOVERNOR FRANCIS M. DRAKE*

I claim to be one of the oldest citizens of Iowa. It has only been sixty years since I put my foot on Iowa soil. It was in 1836, and I have just been figuring my arithmetic, and I find out it has just been about sixty years.

I had one of the best mothers in the world. I used to tell her I never knew of a single mistake that she made in all her life, except the one that she did not wait until she crossed the Mississippi before I was born. As I have lived in Iowa all my life, know nothing except what I learned in Iowa, I have always regretted that I was not born in Iowa. But I have this to console me, that I was here when Iowa was born. I was in at the birth of Iowa.

I moved here in 1837; my father settled at Fort Madison. That little village was surrounded by Blackhawk and his tribe. It was simply surrounded by Indians and wolves and bears. And I have seen it grow from that day to the present time.

Why, I remember very well when I was a boy, about the first courts we used to have. I remember an old gentleman by the name of Allen, old Squire Allen. I was present, a boy listening to a lawsuit. You know we all like to go around and attend lawsuits if we don't get mixed up in them too much. Some one of the attorneys moved to quash the proceedings. Well, the old squire, while they were discussing the questions, he began to get his papers that were lying there, and he would lay them across, cross them one on another, and so on until they got through arguing. When they got through he said, "Gentlemen, I have made up my mind to squash," and he got up and said, "In the name of the United States of America I squash these proceedings." He said, "Gentlemen, the proceedings am squashed."

When I moved up into Davis county in the spring of

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1846, old Squire English was acting as the court in that part of the country. There were two lawyers. One of them was Dr. Ritchie, and the other one was Colonel Hawley, and they had cases two or three a week, one of them on one side of the case and of course the other one on the other side, and it would not be long after they got into a trial until they began to pass pretty severe words at each other. For instance first Hawley would say to Ritchie, "You are an inveterate horse thief." Ritchie would come back at him by telling him he was a hog thief, and so they would bandy words until one day old Squire English—he was a pretty patient old fellow who endured a great deal—said, "I have been calling order in court here." These gentlemen by this time had got off their coats and their sleeves were rolled up. He got up and said, "Now I command in the name of the United States, order, and I am going to have peace, by the Eternal, if I have to fight for it." And, sure enough, he had to fight for it.

I used to be kind of a pettifogger myself, and I remember a case I am going to tell about . . . There was a Squire Allen down on Salt Creek. There were two Squire Allens in that part of the country—one living over on Village Creek in the south part of the county and the other living on Salt Creek in the north part of the county. There was a fellow charged with stealing sheep. He got Jones to go up and defend him. There was kind of a country lawyer, I won't say he was a pettifogger, but he was a country lawyer who was prosecuting, and after the witnesses had all testified, and the case was being submitted to the court, he went on to state that according to the *summum bonum* he found the fellow was guilty. He had been tried under the *summum bonum*, and the old squire nodded his head. The testimony really showed the fellow was guilty and had stolen the sheep.

When he got through, Jones got up and said, "I agree with my friend; according to the *summum bonum* he would be guilty of stealing that sheep, but," he says, "those days are all past; we are not living under the days of *summum bonum*; why, if you will look up, my

dear sir, and look upon the flag of our country, you will see written the words, '*E pluribus unum*,' and my client comes and asks the court to be tried, and to be tried under that flag of his country, and according to the doctrine of *E pluribus unum*, and according to that doctrine he is not guilty; he is an innocent man."

Well, the old judge scratched his head, and he said, "That is so. I remember very well we had a revolutionary war here, and we got rid of all those *summum bonums* and all that kind of thing, and are now under the stars and stripes of our country, and the man has a right to be tried under that doctrine, and according to that he is not guilty. I shall have to release him. Stand up, sir." The fellow stood up. "The court has acquitted you, but my personal opinion is that you are guilty. Now go, and may God have mercy on your sheepthieving soul."

Now since I have come to this country during these many years, from fifty to sixty years, we have progressed as everything else has progressed not only in the United States but the world over. It has been an age of progress every way. School houses have been erected, dotting the state all over. We have our beautiful court houses. And the magnificent state house; no finer one can be found. I have been in every state, I believe, in the United States and today I am prouder when I look at the state house at Des Moines than any other state house in the United States. And we have had eminent lawyers and statesmen. I asked my private secretary, Major Fleming, to furnish me a list from the lawyers of 1847 of all lawyers of the Supreme Court of the state. I never bother with manuscripts, but I will read this list.

The following is a roll of the attorneys of the Supreme Court of the state, in 1847, as found in Morris' Iowa Reports, printed in that year:

Charles Mason, Burlington	Henry W. Starr, Burlington
David Rorer, Burlington	Lacon D. Stockton, Burlington
James W. Woods, Burlington	Edward Johnston, Fort Madison
Jonathan C. Hall, Burlington	Daniel F. Miller, Fort Madison
James W. Grimes, Burlington	Hugh T. Reid, Fort Madison
William H. Starr, Burlington	Curtis Bates, Iowa City
Milton D. Browning, Burlington	Morgan Reno, Iowa City

Asa Calkin, Iowa City.	George Greene, Dubuque
Peter H. Patterson, Iowa City	Francis Springer, Wapello
Gilman Folsom, Iowa City	Edward H. Thomas, Wapello
Hugh D. Downey, Iowa City	G. W. Teas, Mount Pleasant
Eastin Morris, Iowa City	Wm. Thompson, Mount Pleasant
Perry D. Turner, Iowa City	Wm. H. Wallace, Mount Pleasant
A. W. Sweet, Iowa City	Alfred Lotspeich, Mount Pleasant
William Penn Clarke, Iowa City	John T. Morton, Mount Pleasant
W. J. A. Bradford, Iowa City	J. B. Teas, Fairfield
Gilbert C. R. Mitchell, Iowa City	Charles Negus, Fairfield
Ebenezer Cook, Iowa City	T. H. Gray, Fairfield
Stephen Whicher, Bloomington	Christian W. Slagle, Fairfield
Ralph P. Lowe, Bloomington	James Craig, Fairfield
Wm. G. Woodward, Bloomington	George W. Wright, Keosauqua
S. Clinton Hastings, Bloomington	James H. Cowles, Keosauqua
Jacob Butler, Bloomington	Augustus Hall, Keosauqua
J. Scott Richman, Bloomington	Joseph C. Knapp, Keosauqua
James L. Parmer, Bloomington	Samuel W. Summers, Keosauqua
James D. Templin, Bloomington	John P. Cook, Tipton
Irad C. Day, Bloomington	William H. Tuthill, Tipton
Thomas Rogers, Dubuque	Isaac M. Preston, Marion
Timothy Davis, Dubuque	William Smyth, Marion
John V. Berry, Dubuque	Milton T. Peters, Oskaloosa
Stephen Hempstead, Dubuque	Henry B. Hendershot, Ottumwa
Lewis A. Thomas, Dubuque	George Acheson, Fairfield
Platt Smith, Dubuque	John David, Marion

Looking over the list of attorneys found in the little volume of reports compiled by Eastin Morris in 1847, which list was supposed to comprise the names of all who had been admitted to practice in the Supreme Court of the territory who were then living in the new state, I was interested in tracing the subsequent careers of many of them, because it was my fortune to know personally a large number, if not most of those pioneers in the profession in Iowa. First in the list comes the name of that eminent jurist and worthy man, Charles Mason. He had been, as you know, chief justice of the territory during its entire existence, presiding over the state court during the first six months of the commonwealth. As you also know, he became associated with William G. Woodward and Stephen Hempstead in the preparation of the code of 1851, which was passed by the General Assembly mostly as it came from their hands. You know what a noble production that code is. I look upon it as one of the very best enactments ever passed by a legislative body; you remember it was a single enactment. Hempstead, you know, was the second Governor of the

state, and in the list I find the names also of his successors, Grimes and Lowe.

Woodward was destined also to sit on the bench of the Supreme Court, and in the list appear the names of Wright and Stockton, his associates, and those of Greene and Hall, who preceded Woodward, and Lowe again, who became one of his successors. There also I find recorded the names of men who sat in Congress in later years, such as Grimes and Wright in the senate, and Hastings, Davis, Thompson, Miller, Hall, Cook and Smyth. The last named was also to be a district judge, as likewise were Mitchell, Lowe again, Richman, Knapp, Tut-hill, Smyth again, Hendershot and Springer.

It was determined also that Springer should preside in the able convention which framed the second constitution of the state. Here appears Negus, the faithful chronicler of the events of his time, Reid the soldier, the Starrs, and Edward Johnson, one indeed of the noblest in a noble galaxy. The profession may well claim that no like number of men did more (did any do so much as they?) for the upbuilding of Iowa than did the sixty-six men whose names are found in this early roll of the leading lawyers of Iowa.

They have mostly gone on to the life of the world to come. I can now only recall Penn Clarke, Richman, Springer, Thompson (Black Bill, as he was called), John T. Morton, Hi Henry, and Henry B. Hendershot, as yet on this side of the final river. These men all deserve well of their country. Let us hope their declining years are cast amidst pleasant surroundings, and that the evening of their days is cheered by the glow of a delightful sunset.

It is indeed a great pleasure to me to refer to these old pioneers because so many of us remember the pioneer days. I always have memories of Judge Nourse. I knew him when I was a boy; he knew me when I was a boy. We were boys together; he lived in Van Buren county, and I lived in Davis, and I remember very well the first speech that I ever heard him make in a campaign. He was talking to a meeting that was held during

the candidacy of Cass for President, and I thought he made one of the finest stump speeches that I ever heard in my life, and I only wonder that he did not keep on in that kind of business. But he succeeded as a lawyer.

We came to this country then, not in palace cars, but we came in schooners, prairie schooners, covered wagons, pulled through the mud, sometimes hub deep, by horses sometimes, but most generally by oxen. It took a long time to get to this country, even if you only came from the state of Illinois, but they did come from every quarter—they came from Virginia, Kentucky, Tennessee, Indiana, Pennsylvania and Ohio. And one thing among others that I think has made this great state of Iowa what it is, is because it has been made up from the different states of the Union, the east as well as the south and the middle states. It has brought into this state in building it up an independent class of people. I mean men of independent thought; men who thought for themselves, acted for themselves; men who builded their foundations on principle; men who had at heart the interest of this commonwealth.

The Polk County Court House

All of Polk county is proud of its new court house. It will henceforth be only secondary to the state house in interest to visitors to the city. At first one is struck with the mere classic beauty of the building. It is built of gray Bedford stone after the French Renaissance style of architecture.

No less pleasing to the eye is the interior of the building. Here are long corridors supported by stately white marble columns, grand iron and brass stairways, and cozy little balconies where one may pause to view the beauties about him. Looking up into the dome where the light filters softly through stained glass, one is reminded somewhat of the administration building at the Chicago World's Fair.—*The Midwestern*, December, 1906.

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