

Morehead was in the habit of crawling into the jail at night; in fact, that he went out and in when he wanted to. There were about sixty bills found by this grand jury, mostly for gambling. All of the bills were decided, on trial, to be defective. I believe that *no single* indictment found in Lee county up to the organization of Iowa territory, was sustained by the court on trial; but it was about as well as if they had been good. There was no penitentiary in the territory, and no place to keep criminals, and those indictments caused many to run off to where they had both jails and penitentiaries; and in those days Judge Lynch held court occasionally. In his courts there was no demurring to indictments, and so seldom mistakes in his rulings that there was a very wholesome dread amongst the worst class of criminals to coming into that popular court.

THE EARLY BAR OF LEE COUNTY.

[The following interesting sketch of a Court Scene in the pioneer days of Lee county we reproduce from the *Daily Constitution*, of Keokuk, in which able journal it appeared some months ago.]

THE traveler through Keokuk, as he views its superb private and public buildings, and notices the thick stream of human beings who throng its streets and marts of commerce, can hardly realize that thirty years ago nearly all the ground of Keokuk was covered by a dense growth of bushes and trees, and that the most important character then of the place, financially considered, was a wood dealer; one who had erected a log hut near the river, and there kept a wood-yard, selling occasionally a few cords to the few steamers which then ventured on the waters of the upper Mississippi. Yet such was the fact. The wood dealer referred to was a Yankee, who could turn his hand occasionally to any sort of business that would earn a penny; and he had managed by some means to become the owner of what was called in the

language of those days a "blanket title," to a portion of the "half-breed tract." That sort of a title usually cost a blanket, paid to some drunken Indian or half-breed; and though it had merits sometimes, yet usually was good for nothing.

But to return to our wood cutter. He sold his blanket title to the then clerk of the district court at Fort Madison, for eight hundred dollars, and took his note therefor upon six months time. When pay time arrived, the clerk refused to pay the note, on the ground that the title bought was valueless, and the note was obtained by the fraud of the wood cutter. This led to a law suit in the district court at Fort Madison, and the wood dealer had Hon. P. Viele, for his attorney, and the clerk had Miller and Gilbraith (D. F. Miller and W. H. Gilbraith) for his attorneys. Charles Mason was judge, and the case was one of the first issues submitted to a jury. The evidence of the witnesses being conflicting the trial was severely contested. The lawyers of Lee county, who have come here in late years, can hardly realize with what zeal, enthusiasm, and *sometimes* bitterness of debate, lawyers fought over their cases thirty years ago. The county was new, the lawyers were mostly young, and the struggle was, which among them should be enabled to secure the best legal character. They were fighting for place and reputation.

But to return to our law suit. When the evidence was all in, and the case ready for argument by the lawyers, Miller whispered to his partner, that their client was beaten unless plaintiff's attorney (Viele) made some mis-step in his argument of the case. Gilbraith took the hint, and being possessed of excellent speaking powers, especially in a case of severe criticism, and review of another's conduct, he pitched into Judge Viele's conduct as attorney for plaintiff, with severe animadversion. Viele showed signs of excitement during Gilbraith's excoriations, but husbanded his wrath for the concluding speech which belonged to him. When Gilbraith had concluded his remarks, Judge Viele commenced his concluding speech. His exordium was beautiful in language, though terrible in the denunciations of the opposing counsel;

but he was so much excited by controversy with the lawyers against him, that his argument was more declamation than solid reasoning, and fell much below his usual standard; for the Judge was usually an able debater. The exciting character of his speech, however, filled the court house with hearers who several times cheered the best of his periods. But we now come to the conclusion of the Judge's speech, which though touching in sentiment, yet as it was based in part on a mistake in fact, caused the Judge the loss of his case. The Judge pausing a moment, reached forward and taking his client (who was sitting near him) by the hand, raised him up, and standing him before the jury, said: "Here gentlemen is my client. He is an honest man, and his face bears the impress of his honesty. He is a hard working man, and his hands show his industry and his honest means of a livelihood. He has a wife and a large family of little children at his humble home in Keokuk, dependent upon his daily sweat and toil." As the Judge finished this period, his client stepped close to him and whispered, that he was not married. But the Judge had gone too far to retreat, and waiving his hand to his client indicative of a wish for him to step back, said to him in his usual bland voice, "Yes, my friend, it is all right; it will come out right." He then proceeded with his remarks to the jury as follows; "Yes, gentlemen, while I am addressing you, demanding justice at your hands for my client, at this moment, the wife and children of my client are standing at the doorway of their humble cottage home, with eyes strained up the road towards Fort Madison, looking for the return of the husband and father; and the first words that will greet my client on his return home, will be "husband," "pa," "have the court and jury at Fort Madison done you justice?" These remarks, delivered in a sympathetic tone, and with graceful gestulations, were greeted with a general buzz of approbation from the audience.

When the jury retired to consider of their verdict, it stood on its first vote eleven for plaintiff, and one for defendant. The eleven demanded of the one, why he went for defendant?

He told them that he had intended to go for plaintiff too, until he had heard Judge Viele's sympathetic appeal for the "wife and children," &c. "For," said he, "I know plaintiff well, and he has no wife nor children, and keeps '*bach*' in a log cabin; and as that statement of his lawyer was erroneous, I believe the whole claim is a fraud." This changed about half of the jury; and they disagreed, and were discharged. Before the next term of court, the Judge's client committed some act of "border warfare," somewhat common in Iowa, in those days, and fled the country, and neither he nor his note has since been heard of.

Ah! those were grand old days of pleasantry among lawyers of Iowa. But these resident lawyers who attended the Lee court in those days, Judge Viele, A. Rich, H. Eno, H. T. Reid, Ed. Johnston, D. F. Miller, W. H. Gilbraith, of Lee county, and M. D. Browning, D. Rorer, J. C. Hall, and H. W. Starr, of Burlington, and non-resident attorneys, who, also, sometimes attended the Lee courts, Cyrus Walker, O. H. Browning, and A. Williams, of Illinois, R. S. Blannerhasset, of St. Louis, Francis Key, of Baltimore, and — Walsworth, of New York, what changes has time made upon them! Several of the most eloquent have long since passed to the summer land; several have retired from the bar, oppressed with the weight of years; and those who still linger on this side of the river, are whitened with the frosts of age. A little while yet, and the pioneer lawyers of Iowa, like its "old settlers" in common, will belong exclusively to the history of the past; but the many anecdotes of their geniality, sociability, and forensic displays, will survive them and encourage those who succeed them, to rival their pleasantries, virtues, and honors.

Copyright of Annals of Iowa is the property of State of Iowa, by & through the State Historical Society of Iowa and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.