



Yours with sincere Esteem
J. Williams

JUDGE JOSEPH WILLIAMS

Associate Justice Supreme Court of Iowa Territory, 1838-1846;
Chief Justice, June 1847 to January 5, 1855.

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JUDGE JOSEPH WILLIAMS¹

TERRITORIAL JUSTICE OF IOWA SUPREME COURT

By WM. M. McLAUGHLIN²

Judge Joseph Williams came to Muscatine, Iowa, from Pennsylvania in 1838, when Iowa was part of the Wisconsin Territory. He was an unusual and unique character. The late Judge George G. Wright once said of him:

He was doubtless as eccentric as any man ever elevated to the bench. He was a Methodist, a democrat, a prince among good fellows, and withal a wise and just judge; he was the best story teller I ever knew; he could lead a class meeting, address a Sunday School, sing a rollicking song, play a fiddle, flute or fife,³ and charge a jury with equal ease; he was not a great lawyer, but an acceptable judge.

It is said that Judge Williams was schooled in the classics, a popular public speaker, a fine baritone singer, and that he possessed considerable ability as a ventriloquist.

There were three of the Williams brothers. They settled at Muscatine. Their given names were William,

¹"Of the early judges who have adorned the bench of the Supreme Court of Iowa the memory of none has been so keenly kept alive as that of Judge Joseph Williams. By reason of his strongly marked individuality, he was always a center of interest and observation."—Edw. H. Stiles in the ANNALS OF IOWA, p. 161, Vol. VII.

²A paper by Wm. M. McLaughlin, attorney and lecturer, a member of the Des Moines bar.

³Seth J. Temple in article *Camp McClellan During The Civil War*, in ANNALS OF IOWA, p. 25. Vol. XXI: "A visitor in Camp—Day before yesterday Judge Williams of Muscatine, visited Camp McClellan—especially to see the Muscatine boys there, we presume. The judge is a gray-haired and very affable old gentleman and well known in this region. He rather astonished the boys in camp. He first got a violin and uniting his voice to its melody, sang some first-rate songs. He then visited the band headquarters, and taking a drum not only beat it in style, but beat all the drummers in camp. He then convinced them that he was also rather ahead in the fife. No other instruments 'aying around loose, he did not give further exhibition of his musical genius. The judge was a drummer boy in the War of 1812. During his visit to the camp he joined the band, and played the fife when they 'beat off.' The judge's visit was apparently a delightful one to himself and to the whole camp. He will be welcome again."—*Davenport Democrat*, January 22, 1862.

Joseph, and Robert.⁴ Robert continued to reside in Muscatine until his death; William joined the army and attained the rank of major. He was with the troops that established the fort at Fort Dodge in 1850, the fort being first named Fort Clarke. Fort Dodge continued as a fort until it was vacated after a period of two years. At that time Major Williams resigned from the army and purchased from the government the land and buildings of the fort and founded the present city of Fort Dodge.

At the time of the Spirit Lake massacre in 1857 three companies of volunteers were formed, one at Webster City and two at Fort Dodge, and Major Williams was placed in command of the three companies. Major Williams and the three companies made the trip to Spirit Lake in an attempt to rescue the settlers in the late days of the winter, across unsettled and uncharted prairies, encountering blinding blizzards and intense cold and amid terrible suffering, the temperature being far below zero. Major Williams was long an outstanding and most worthy citizen of Fort Dodge. A daughter of Major Williams became the wife of the late John F. Duncombe, one of Iowa's distinguished lawyers.

Judge Joseph Williams was addressed by his friends generally as "Judge Joe". He was born at Huntingdon, West Morland county, Pennsylvania on December 8, 1801. He was a fellow student with Jeremiah S. Black in the private law office of Chauncy Forward, long a celebrated Pennsylvania lawyer. In their association in the study of the law there was developed a warm and lasting friendship between Judge Williams and Jeremiah S. Black, a friendship that doubtless had much to do with Judge Williams' march to fame. On their admission to the Pennsylvania bar each hung out his shingle at Somerset in that state, and the two youthful attorneys

⁴"Joseph was the junior of William and the senior of Robert. Their father died in 1822, when Joseph was about twenty-one years of age, the latter having lived at home and under the direction of his father until that time. . . . He was deemed sufficiently equipped to enter as a law student, soon after his father's death, the office of Chauncy Forward.—Edw. H. Stiles in the ANNALS OF IOWA." p. 163, Vol. VII.

became rivals in the practice of the law, but that rivalry seems to have augmented rather than lessened their friendship.⁵

Jeremiah S. Black later became Chief Justice of the Supreme Court of Pennsylvania and won national fame as a great lawyer. He was Secretary of State for a time in President Buchanan's cabinet and for a time Attorney General in the same cabinet. Judge Jeremiah S. Black, who will be mentioned as Judge Black hereinafter, was a great patriot. When the states began to secede he urged President Buchanan that measures be immediately taken to protect federal property and resist armed rebellion and persuaded the president to send supplies to the southern forts. Judge Black was a great admirer of Abraham Lincoln. It is said by good authority that Jefferson Davis told Judge Black shortly after Lincoln delivered his first Inaugural Address that someone else, perhaps William H. Seward, had written the inaugural for Lincoln, to which Judge Black replied: "You men of the south don't know Lincoln. There is only one man living who could have written that address and his name is Abraham Lincoln."

IOWA COURTS ESTABLISHED

The Supreme Court of Iowa Territory was constituted by an act of Congress of June 12, 1838 entitled, "An Act to divide the Territory of Wisconsin and to establish the territorial government of Iowa." By this organic law it was provided that the judicial power of the territory of Iowa should be vested in a Supreme Court, District Courts, etc.; that the Supreme Court should con-

⁵In "*Reminiscences of Jeremiah Sullivan Black*," prepared and published by his daughter, Mary Black Clayton, she states that her father commenced to write an autobiography which was never finished, but from which she quotes: "My competitors were exceedingly formidable men; half a dozen of them achieved great reputation in public life, and some were well known for their talents. I need not give you any extended account of them, but will enumerate them and mention some of their characteristics." Of what was set down concerning Judge Williams follows: "Joseph Williams was a practicing lawyer whose ready tact was very dangerous to an opponent, and he was well up in the books. After he left Somerset he became Chief Justice of Iowa, and later was a federal judge in Kansas. He never got over his fondness for fun, but he performed his judicial duties worthily and well for he was a sincere lover of justice. These are the men whose competition I had to face; my seniors and superiors in everything that makes practical power."—ANNALS OF IOWA, p. 165, Vol. VII.

sist of a chief justice and two associate judges; that they should hold their offices for a term of four years and should hold a term at the seat of government of the said territory annually. The act further provided that the territory should be divided into three judicial districts and that a district court should be held in each of the three districts by one of the judges of the Supreme Court at such times and places as might be prescribed by law; and that the judges after their appointment should reside in the district assigned to them. The Supreme Court and district courts respectively were vested with a chancery, as well as a common law jurisdiction. It was further provided in the act that each of the said district courts should have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the United States circuit and district courts. Under this act the president, by and with the consent of the senate, nominated Charles Mason chief justice and Joseph Williams and Thomas S. Wilson associate judges.⁶

The Territory of Iowa was, in compliance with the act, divided into three judicial districts, Polk County, Muscatine and Burlington being in the second district. Martin Van Buren was then President of the United States. Judge Black and President Van Buren were close personal friends, and Judge Black used his influence with the President in favor of Judge Williams, resulting in Judge Williams, as above stated, being appointed a judge of the Territorial Supreme Court of Iowa. The three judges above named were up for re-appointment in 1842, toward the end of their first four-year term. John Tyler had succeeded William Henry Harrison as President, and Judge Williams, in the interest of himself, and Chief Justice Mason and Justice

⁶ "When the separate Territory of Iowa was organized in 1838, the seven counties then organized were divided into three judicial districts, served by members of the territorial supreme court. It was a young judiciary: Chief Justice Charles Mason of New York was aged thirty-four, while Associate Justices Joseph Williams of Pennsylvania, was thirty-seven, and Thomas S. Wilson of Ohio, was twenty-five."—Remley J. Glass, in the *Pioneer Bench and Bar*, ANNALS OF IOWA, p. 4, Vol. XXIII.

Wilson, journeyed to Washington to see the President concerning their reappointment.

Edward H. Stiles in his *Reminiscences of Pioneer Lawyers of Iowa*, tells the story of Judge Williams' experiences while on that journey and his interview with President Tyler:

On a morning in the latter part of the trip Judge Williams noticed on the stage just opposite him a handsome and charming lady. The judge naturally became acquainted with the lady and they conversed freely; and in the course of the conversation Judge Williams disclosed his name to her and the purpose of his trip to Washington, mentioning the names of his associates on the Iowa Supreme bench. When the stage reached Baltimore, the lady's stopping place, they parted company, and Judge Williams had not learned her name and did not know who she was. When he reached Washington, after due time he sought an interview with President Tyler, who received him very cordially and proceeded to converse with him in the most affable manner. The judge was somewhat embarrassed at this unexpected effusion of personal kindness, but after a while ventured to suggest the nature of his business. "O," replied the president, "that matter has already been attended to, and my secretary will hand you your commission."

"But," said Judge Williams after recovering himself sufficiently, "I shall not want the position unless my associates are also reappointed."

"O, that has been attended to also, and their commissions will be handed to you with your own. And by the way," said the president, "there is a lady acquaintance of yours in the next room who would like to see you."

Whereupon the folding doors were opened and Judge Williams was led into the presence of the lady he had parted company with at Baltimore, Mrs. John Tyler, the wife of the president, who was delighted to meet him again. She had arranged matters in advance with her husband, and Judge Williams went home rejoicing.

FIRST COURT HELD IN POLK COUNTY

The first court ever held in Polk county was the United States district court with Judge Williams presiding. This was at Fort Des Moines in April, 1846. The act requiring that the supreme judge assigned to a

particular district should reside in that district, and Judge Williams being assigned to the second district, he resided at Muscatine. Hence under the act we have a territorial supreme judge conducting court in Polk County as a judge of the United States district court.

There was no courthouse nor courtroom to receive him. The board of county commissioners met the situation by ordering that "No. 26 occupied by Miss Davis as a schoolroom be vacated for the approaching session." Number 26 was one of the barracks erected in 1843 for use of the garrison and was a part of old Fort Des Moines. Judge Williams' court remained in session but three days, and the business transacted was of a formal and perfunctory nature. The government was represented by Thomas Baker, United States district attorney, and John B. Lash, United States marshal. The clerk of the court was Perry L. Crossman, and the sheriff Thomas Mitchell, the latter having been elected by the voters of Polk county at the first county election in the spring of 1846.

The first procedure was a venire to the sheriff to "summon twenty-three good and lawful men to appear forthwith before said court to act as grand jurors in and for said county."

A jury was impaneled and retired to consider. After due deliberation the jury reported no true bills. The jury was discharged and the court adjourned. There being no official seal of the county, the court on the first day of the term ordered that, "the eagle side of a twenty-five cent piece of the American coin should be the temporary seal of the court in and for said County of Polk." One of the jurors, one Jeremiah Church, apologized to the court for the "uncouth and barbarous appearing set of men that constituted the jury." Whereupon Judge Williams wisely replied: "Men might have clean hearts under a dirty shirt."

Judge Williams held his second term of the United States district court in Polk county in September, 1846. There were several cases on the docket. No true bills

were returned. One William D. Frazee was admitted to the bar; also Phineas M. Casady, whose name as an outstanding citizen will ever be linked with the history of Polk county, was admitted to the bar and duly sworn in. Mr. Casady at that time was of the age of twenty-eight years.

POWERS AS A VENTRILOQUIST

It is related by the late Tacitus Hussey, a former Polk county historian of note, that while holding court at Des Moines Judge Williams sat at breakfast one morning at the Des Moines House. Several ladies and gentlemen were present at the table. One of the ladies present was a Mrs. Warner whose infant daughter Hattie was sleeping upstairs. Judge Williams, through his art of ventriloquy, imitated a baby crying as if upstairs. Mrs. Warner hastily left the table and rushed upstairs. In her absence the judge advised the party at the table of the joke he was playing on Mrs. Warner. She quickly returned to the table saying, "I was sure that I heard Hattie crying, but I found her sleeping just like a little angel." Upon being advised of the joke, she joined in the merriment. It may be said in passing that baby Hattie became the wife of Hoyt Sherman, Jr., nephew of Major Hoyt Sherman, and for many years Hattie Sherman was one of the most prominent and outstanding women of Des Moines.

Just prior to Iowa's entering statehood the second four-year term of the Territorial supreme court was about to expire, and again Judge Williams and his associates on the Supreme bench were reappointed by the then President, James K. Polk.

Iowa became a state in 1846. The new constitution of Iowa provided that the supreme court should consist of a chief justice and two associate judges, to be elected by the joint session of the general assembly. They were to hold their offices for six years. The first general assembly deadlocked and thus failed to elect judges, and in that event the law provided that the governor make the ap-

pointments. Previous to the July term, 1847, Chief Justice Mason and Justice Williams resigned as Territorial Judges, and Governor Ansel Briggs appointed Judge Williams Chief Justice, and Judge Charles Mason and John F. Kinney associate justices. Judge Williams was later elected by the general assembly for another term of six years. He retired from the supreme bench early in 1855, having served seven years as associate supreme judge while Iowa was a territory, and eight years as chief justice during statehood. He was succeeded by Chief Justice George G. Wright.

In 1857 Kansas became a territory, and President James Buchanan, upon the recommendation of Judge Black, appointed Judge Williams as territorial supreme court judge of the new Kansas territory, and Judge Williams moved to Fort Scott, Kansas, and assumed his new duties as judge of the supreme court of that territory. During the first term of the administration of President Lincoln, supposedly upon the recommendation of Judge Black, Judge Williams was appointed by President Lincoln judge of the United States district court at Memphis, Tennessee, the court at Memphis being deemed a military necessity. Upon his retirement from the United States district court at Memphis, Judge Williams returned to Fort Scott, Kansas, taking up his residence there, where he died on March 31, 1870.

It is related that Judge Williams, while chief justice of the Iowa supreme court, paid a visit to the east and called at the office of his old friend Judge Black, who was then chief justice of the Supreme Court of Pennsylvania. He found Judge Black absent, and left the following note on his desk:

The Chief Justice of Iowa salutes the Chief Justice of Pennsylvania.

O, Jere, dear Jere, I've found you at last;

Now memory is burdened with scenes of the past.

Restore me to Somerset's mountains of snow,

When you were but Jere, when I was but Joe.

JUDGES IMMORTALIZED IN SLAVE DECISION

The territorial supreme court decided many very important and difficult cases, but attention will be called to but one. A case decided by our territorial supreme court is found as the first case reported in Volume 1, Morris, of our state supreme court reports, that case being entitled "In the matter of Ralph, a colored man, on habeas corpus." Ralph, being within the territory, was claimed by Montgomery, a resident of Missouri, as a slave, and by virtue of a precept from the justice of the peace and certain proceedings pursuant to statute being had before him, the sheriff of Dubuque county delivered the negro into the custody of the claimant for the purpose of being transported to Missouri. Ralph was afterwards brought before the judge of the third judicial district by a writ of habeas corpus, from whence, by consent of the parties, the proceedings were transferred to the supreme court upon an agreed statement of facts in substance as follows:

That in 1834 Ralph being a slave of the claimant, a written agreement was entered into between them by which Ralph was permitted to come into this territory to reside, he on his part stipulating to pay the claimant \$550 with interest from the first day of January, 1835, as the price of his freedom; that it was to earn the purchase price that Ralph had been laboring in the mines near Dubuque, which Ralph failed to pay.

Two Virginians at Dubuque who knew of the agreement volunteered to deliver Ralph to his former owner for \$100. Montgomery accepted the offer. Ralph was seized and handcuffed and taken to Bellevue to be sent by steamer to Missouri. A farmer working in his field saw the kidnaping and hastened to the office of Judge Thomas S. Wilson of the supreme court and demanded a writ of habeas corpus, which Judge Wilson promptly issued and served, by which Ralph was returned to Dubuque. The case was one of so much importance that at the request of Judge Wilson it was transferred to the supreme court for trial. After a full hearing it was

unanimously decided that Montgomery's contract with Ralph, wherein he was permitted to become a citizen of a free territory, liberated him, as slavery did not and could not exist in Iowa. Judge Mason, with Judge Williams and Judge Wilson concurring, in part said:

Where a slave with his master's consent becomes a resident of a free state or territory he could not be regarded as a fugitive slave nor could the master under such circumstances exercise any rights of ownership over him. When the master applies to our tribunal for the purpose of controlling as property that which our laws have declared shall not be property, it is incumbent upon them to refuse their cooperation.

All honor to the wisdom and sense of justice of these pioneer judges immortalizing their names in an opinion in direct conflict with the infamous later decision of the highest tribunal in the land, in the case of Dred Scott.

It should be related that Charles Mason, the chief justice, who wrote the foregoing opinion, was a native of Pompey, New York. He was born in 1804 and died at Burlington, Iowa, in 1882. He was a graduate of West Point in the Class of 1829; he ranked Number One in his class. General Robert E. Lee was a class mate. He was considered by the legal fraternity as a great and able jurist.

Judge Williams had the unusual distinction of having been appointed to judicial position by five different Presidents of the United States. The order of the appointments is as follows: Martin Van Buren, John Tyler, James K. Polk, James Buchanan and Abraham Lincoln. In addition to his presidential appointments he was appointed as chief justice of the Iowa supreme court by Governor Ansel Briggs, and elected once to the same position for a term of six years by the general assembly of our state.

The published opinions of the Iowa territorial supreme court are found in Volume I, Morris. The opinions of Judge Williams as chief justice of the Iowa state supreme court are found in Volumes 1, 2, 3, and 4, Green, Iowa Supreme Court Reports.

CONTEMPORARY APPRECIATION

Judge Wright, again speaking of Judge Williams, said :

In conversational powers he was unsurpassed and possessed social powers which charmed and captivated the high and the low. He made impressions which will last while the state endures and left monuments which will remain so long as our judicial records shall be read.

Henry O'Connor, attorney general, said: "Judge Williams was able and a learned lawyer, his character above any eulogy of gratitude. His faith in humanity was less only than his faith in God."

When the supreme court room was opened in the new capitol at Des Moines many visiting lawyers were present. Among them was Judge Samuel F. Miller of the United States supreme court, said to have been the greatest constitutional lawyer since John Marshall. In his remarks on that occasion Judge Miller referred to Judge Williams, saying he regarded him as one of the "clearest and most intuitive and best judges that had ever graced the supreme bench of Iowa;" that his decisions had operated as an important factor in properly molding the jurisprudence of the state; that because of his peculiarities and great love of social life Judge Williams was never appreciated by the bar; that his opinions show a "clear head and an honest heart."⁷

⁷In 1856 David Paul Brown, the then great criminal lawyer of Philadelphia, prepared and published a book entitled *The Forum*. Edw. H. Stiles states in the *ANNALS OF IOWA*, p. 165, Vol. VII that Brown's references were mostly to men who had gained a reputation at the bar, quoting from pages 375 and 376, Vol. II, the following to show that Mr. Williams was regarded as one belonging to that class, as well as to show Mr. Williams himself in the role of a practitioner:

"Before Mr. Williams was appointed United States judge for the territory of Iowa, he was defending a client in the interior of Pennsylvania, against the claim of a quack doctor who professed everything and knew nothing, and who had instituted a suit for surgical services, and had marked the suit to the use of another, in order to become a witness himself. The following was the cross-examination:

"Mr. Williams: 'Did you treat the patient according to the most improved principles of surgery?' Witness: 'By all means, certainly I did.'

"Mr. Williams: 'Did you decapitate him?' Witness: 'Undoubtedly I did—that was a matter of course.'

"Mr. Williams: 'Did you perform the Caesarian operation upon him?' Witness: 'Why, of course; his condition required it, and it was attended with great success.'

"Mr. Williams: 'Did you, now Doctor, subject his person to an autopsy?' Witness: 'Certainly; that was the last remedy adopted.'

"Mr. Williams: 'Well, then, Doctor, as you performed a post-mortem operation upon the defendant, and he survived it, I have no more to ask, and if your claim will survive it, quackery deserves to be immortal.'

Edward H. Stiles in his notes on *Pioneer Lawyers of Iowa*, in referring to Judge Williams, said:

His unique grace, his versatile talents, his varied accomplishments, his keen sense of humor, his early transition from the grave to the gay, his amusing anecdotes, his charming presence, his delightful talks, his strong sense of justice, his unbounded generosity have been told and retold orally and through newspapers and periodicals for half a century.

The writer has endeavored to tell at least a part of the story of the life of Judge Joseph Williams, a judge whose opinions "show a clear head, an honest heart, and whose decisions operated as an important factor in properly molding the jurisprudence of our state."

The generation of three quarters of a century ago knew much of the history of Judge Williams; the present generation knows little or nothing of him. In gathering this history the writer was compelled to resort largely to the musty volumes of old books and glean from their somewhat faded pages this romantic story of a somewhat romantic character who materially aided as a pioneer judge in laying the foundation of our jurisprudence on the bedrock of human rights.

The tumult and the shouting dies,
The captains and the kings depart.
Still stands thine ancient sepulchre,
A simple and a contrite heart.

Lord God of hosts, be with us yet,
Lest we forget, lest we forget.

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