

## THE CASE OF MR. LORIN(G) WHEELER.

HIS APPOINTMENT AND RESIGNATION AS CHIEF JUSTICE OF THE  
COUNTY COURT OF DUBUQUE.

BY BENJAMIN F. SHAMBAUGH, PH. D.

Generally speaking changes in political thought outrun changes in law. For the law is inherently static, rigid, conservative. Statutes or parts of statutes frequently retain a legal status long after they have ceased to be followed in the actual administration of government. In other words, the *laws* of administration do not always tally with the *facts* of administration: and the student of Politics must everywhere supplement materials taken from statute books with materials gathered from observations of governmental operations. In the world of political phenomena we are not yet done with "fictions."

The case of Mr. Lorin(g) Wheeler, an inhabitant of the original county of Dubuque, is an illustration of the above truths drawn from the early history of Iowa.

The original county of Dubuque was established in 1834 by an act of the Legislative Council of the Territory of Michigan. In accordance with this act it became the duty of the Governor of the Territory of Michigan to appoint and commission certain local officers for the said county of Dubuque—the power to appoint and commission the important local officers being at that time vested in the Governor by the acts of Congress and of the Legislative Council of the Territory. It was not until some time after this that these local offices were made elective.

In 1834, then, the *law* declared that such officers as Justices of the Peace and Justices of the County Court should be appointed by the Governor by and with the advice and consent of the Legislative Council, and the same were to be commissioned by the Governor. But as a matter of *fact* the

people of Dubuque county took a hand in the selection of local magistrates. Indeed, they practically dictated the selection of such magistrates. This is clearly illustrated in the following material which is herè published for the first time.

DECEMBER 26, 1834:—On this day the following appointments were made by and with the advice and consent of the Legislative Council, viz:

\* \* \* \* \*  
 Lorin Wheeler, Chief Justice, Dubuque.\*  
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DUBUQUE APRIL 20TH 1835.

SIR In consequence of the dissatisfaction which seems to exist in reference to my being appointed Chief Justice for this co. I now tender You my resignation which I hope You will be pleased to accept. My reason for doing this is to quiet the minds of a few who think that the Executive has not power to make appointments without this approbation.

Yours Respectfully

To his Excellency S. T. MASON.

L. WHEELER.

DUBUQUE APRIL 8 1835.

*To his Excellency the acting Governor of Michigan Territory:*

At a meeting of the citizens of Dubuque County & Town aforesaid, for the purpose of nominating a suitable person for the office of Chief Justice of the County, aforesaid to fill the Vacancy occasioned by the resignation of Mr. Loring Wheeler the following proceedings were entered into Mr. Woodbury Massey was called to the chair & Wm Myers, appointed Secretary, the Object of the Meeting having been explained from the Chair. Mr. John King was unanimously nominated to fill said office. On Motion M. H. Prentice was appointed to draft a petition to your Excellency in favor of such nomination.

W. MASSEY

Ch'm

WILLIAM MYERS

Secty

DUBUQUE APRIL 8. 1835.

*To his Excellency the Gov'r of the Territory of Michigan.*

Whereas the office of Chief Justice of the County Court of Dubuque County, has become vacant by the resignation of Lorin Wheeler Esq. Now therefore, we the undersigned, citizens of the County aforesaid, do hereby earnestly recommend to your Excellency our worthy fellow citizen, John King Esq., as a suitable person & well qualified to discharge the duties of said office, and as in duty bound your Petitioners will ever pray, &c.

MILLO. H. PRENTICE

[and 112 others.]

\*Taken from "Record of Acts and Proceedings of the Executive Department of Michigan Territory," Executive Journal, Vol. II., Book No. 251, pp. 116, 117.

DUBUQUES MINES May 25, 1835.

*To His Excellency the Gov'r of the Territory of Michigan*

SIR Be pleased to permit the undersigned to say a few words in relation to the appointment of Chief Justice of our County Court. Your Excellency will probably recollect that, the first appointment made to that office, was not accepted by him, whom the People had nominated & your Ex'cy appointed, to-wit, Thos. McKight Esq. Subsequently, under the impression that civil law could not go into operation without the existence of that officer, the people assembled again to nominate another person to fill said office—whereupon Mr John King was, with the exception of 2 or 3 persons present, unanimously nominated to your Excellency for that office. In order that there should be as little delay as possible in the organization of civil gov't, here, the proceedings of the meeting were sent by express, in advance of the mail, to Galena to be mailed there, as in so doing 2 or 3 days would be gained in the time of their reaching your Exc'ly—The next news in reference to the subject, was, the appointment of Mr Lorin Wheeler to fill said office—it does not become us to say anything in relation to the politics or private character of Mr Wheeler, but this much we do say, that he is *not* the choice of the people, for that office—During the week of our Court the People held another public meeting on the subject, & waited upon Mr Wheeler to know his intentions in relation to his holding on to the commission—He said he should resign & told the people to go on and make another nomination & his resignation should accompany the nomination to the Gov'r Accordingly the meeting proceeded to nominate a person to fill the vacancy occasioned by Mr. Wheeler's resignation, (the proceedings of which meeting accompany this) but the Resignation does not but we are assured by Mr Wheeler that he has sent it on some time ago—the Proceedings of our meeting have been kept back in waiting for the promised resignation to accompany them—in conclusion we would say, that we have no personal enmity to Mr Wheeler & inasmuch as the people have honored us with their confidence, (of which we are proud) we deem it a duty we owe to ourselves as well as to our fellow citizens, under present circumstances, to make a few plain statements of facts in the case & cordially & earnestly unite with our fellow citizens in the renomination of Mr John King to the office of Chief Justice of the County Court of Dubuque County—We have the

Honour to be  
Your Excellency's Ob't  
and humble Servants.

MILO H. PRENTICE } Associate Justices  
HOSEA. T. CAMP } of Dubuque County.

The foregoing letters are exact copies from the originals as preserved in the office of the Secretary of State, Lansing, Michigan. They illustrate the fact that in appointing the local officers for the counties west of the Miss-

issippi, the Governor of the Territory of Michigan simply confirmed the extra-legal nominations made by the people. For the records show that on the 20th day of June, 1835, Mr. John King was appointed "Chief Justice of the County Court" of Dubuque.

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THAT KEOKUCK [so spelled at that time] will at no very distant day be a place of considerable commercial and shipping business there can be no doubt. It has advantages of navigation which no other town in Illinois or Iowa above it and on the river possesses. Almost invariably the navigation is open here a month or six weeks longer each year than it is above the rapids. In consequence of which goods, merchandise, &c., shipped late in the season at St. Louis, for the upper country have generally to be unshipped here; and thence carried to their place of destination by wagons. And frequently during the summer months, the water becomes so low on the rapids, that vessels are necessarily compelled here to unload, [and] re-load, as the case may require, to lighten them, and enable them to pass over the rapids in their respective voyages. But perhaps the greatest advantage Keokuck has of the river towns above is the opportunity to ship produce, from that point to a southern market at the earliest time of the season. It contains at present perhaps 200 inhabitants, and all it yet wants to secure a rapid influx of population and growth in commercial importance is the final settlement of the Half Breed Land Title on which it is located.—*Fort Madison Courier*, Dec. 4, 1841.

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ANOTHER COMPANY OF VOLUNTEERS.—Gov. Clarke, in compliance with an order from the President, has authorized Gen. James M. Morgan, of Burlington, to enlist a company of volunteers, who are to be stationed at Fort Atkinson, in place of the U. S. Dragoons, who have been ordered South. The volunteers are to remain in the service twelve months, unless sooner discharged.—*Bloomington Herald*, July 3, 1846.

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