

THE COUNTY JUDGE SYSTEM.

BY JAMES O. CROSBY.

Charles Aldrich, the founder of the Historical Department of Iowa, made provision for the preservation of much important information on early Iowa public matters. He often combined with valuable contributions to THE ANNALS his own equally valuable editorial observations. Such a combination of article and editorial prepared about 1906 is presented herewith.—Editor.

By the act of Congress organizing the Territory of Iowa, approved June 12, 1838, it was provided that persons holding office at that time in the limits of the new Territory should continue until their places should be filled by the territorial government of Iowa.

On the 17th of January, 1839, the Council and House of Representatives of Iowa Territory passed an act establishing courts of probate in each county, the judges to be appointed by the legislature, to hold for the term of three years. They were made courts of record with jurisdiction over estates of decedents, and such other matters "as they may be or now are invested with by law," with terms to be held on the first Monday of every month, appeals and writs of error to be taken to the district court the same as from justices of the peace.

An act was passed February 15, 1843, organizing a Board of County Commissioners to transact county business. It was made "a body corporate and politic" under style of "The Board of Commissioners of the County of _____," and consisted of three commissioners, holding for three years.

They were empowered—

1. To provide necessary buildings for the use of the county.
2. To lay out, discontinue or alter highways and other ways.
3. To license ferries, inn-holders, retailers of spirits and

other liquors, common victualers and other licenses provided, except in cities and towns that may have that power.

4. To fix the amount of taxes and cause the same to be levied and collected.

5. To control the receipts and expenditures of county money.

6. To have the care of the county property, the management of county business, but to have no power but such as is given by law.

7. To sue for county redress; be sued for claims against the county, but claims against the county must first be presented to the Board for allowance before suit is brought.

A clerk of the Board of Commissioners was elected every two years, and in addition to his duties as clerk, called to his assistance two justices of the peace and they constituted the board of county canvassers.

By § 105 of the Code of 1851, the county judge was vested with the powers of both the board of county commissioners and the judge of probate, and by another section, of the clerk of board of county commissioners, as chairman of the board of county canvassers.

The county court was always open for the transaction of business, excepting such as required notice, and for such regular terms were held on the first Monday of each month excepting April and August, when elections were held, and in those months on Tuesday after the first Monday.

The clerk of the district court was *ex-officio* clerk of the county court and register of probate.

The county judge, clerk and treasurer constituted a board for the correction of the assessment roll, for those who applied for change in their assessments.

In the absence of the county judge, or his inability to act, the prosecuting attorney acted in his stead.

Under this system business of the county could be transacted without delay, and with a competent man in the office, faithful and honest in the discharge of its duties, it would be difficult to suggest a system better adapted to the wants of the people.

By the Revision of 1860, all jurisdiction of county matters was transferred from the county judge to a board of supervisors, consisting of one member from each township, leaving the county judge with jurisdiction only of probate and wills, administration of estates of deceased persons and guardianship of minors and insane persons.

In April, 1868, the General Assembly established circuit courts and transferred to them the remainder of the county judge's jurisdiction.

The unit of government in Iowa is the county, with lesser corporate bodies for city government and common school matters. In the hands of a single efficient man whose whole time is given to the work of his office and with no division of responsibility, with opportunity to become well acquainted with the territory and people within his jurisdiction, no element of good government would be lacking; but political partisanship often bestows offices upon persistent seekers, as a reward for party services, with little regard to the fitness of the man for the office. This is as true of county commissioners and township or county supervisors as of the office of county judge.

The history of our State shows abuses under all the systems, arising both from incompetence and dishonesty, more especially in the early settlement of counties.

In the northwestern part of the State one county judge meeting another said: "How much have you got your county indebtedness up to?" The answer was, "\$60,000." "Oh," said the other, "I've beat you; I've got mine up to \$80,000, and I'll have her up to \$100,000 by spring."

The firm of Luse & Lane, formerly of Davenport, blank book makers, in an early day supplied those new counties with blank books such as were then by law required to be kept. After the supervisor system was adopted, to make collections it became necessary to visit those counties, and Mr. Luse did the traveling with a team and light wagon. He was well acquainted with border civilization and knew the peculiar ways of the pioneer.

On a wide extended prairie just at night he came to a double cabin, built of aspen poles, under cover of one shake roof, with an alley between, and in about the middle on each side was a puncheon door. As he drove up he saw a man at the entrance of the alley and inquired how far it was to the county seat. The man answered: "Wall, stranger, I reckon you're about thar." He then asked if he could stop there over night, and the man said: "You can't git nowhere else tonight, 'thout you sleep on the prairie." He was told that he could put his team in a little shed made also of aspen poles and covered with prairie grass, and that there was a scythe there and he could mow some grass for his horses.

For supper he "ate what was set before him and asked no questions for conscience sake," while he closely studied the eccentricities of his host, for he had a bill for a full set of books furnished to that county. After he had sized up his man he began to play the agreeable to him and succeeded in getting him and the whole family in pleasant humor. There was the wife, a daughter about sixteen, and four smaller children. Then he made himself known as the party who made the books for the county. The man said: "Oh; but you can't get your pay till the board meets." Luse said of course he didn't expect to, and changed the subject and told pleasant stories. Pioneer said: "Stranger, let's have a meeting of the board." "All right," said Luse, and they adjourned to the other cabin, when Luse was asked to present his bill, which he did, and it was audited and a warrant drawn for the amount and handed to Luse with the information that he couldn't get his pay till the treasurer came, and then the board adjourned to the family room, where Luse redoubled his efforts to make himself agreeable, and very successfully, for he was shortly informed that it was time for the treasurer to be in his office, and they went to the cabin where the board had met. "Oh, yes," said the pioneer, "the treasurer is here. Stranger, where's that warrant o' your'n?" Luse handed it out, and from under the bed the man pulled a trunk and taking the money from it paid the warrant to Mr. Luse, who was overflowing with gratitude for the kindness and hospitality received at that county seat.

The county seat was also a school district and that board of supervisors and treasurer was also a school board. The county office was rented to the district, and the contingent fund was exhausted for rent and fuel. His older daughter received all the teacher's fund for teaching his other four children.

Where authority is conferred, it includes the power to exercise it in a careless or corrupt manner, as well as the power to exercise it faithfully and honestly. The voters are authorized to select persons to fill the county offices. If they exercise that power with the same wisdom and discretion they use in their individual business of importance, good government will result; but if candidates are chosen by reason of their partisan service, persistent efforts to obtain office or supposed availability, the evils that may result from the best form of government that can be devised will often follow.

AN EDITORIAL BY CHARLES ALDRICH, 1906.

Hon. James O. Crosby, of Garnavillo, writes in our pages of the Old County Judge System of County Government. He gives the history of its origin, setting forth the provisions of the law relating to the powers and duties of the judges, concluding his interesting and valuable article with a presentation of the humorous side of "the system," in the newer regions of the State, "some forty years ago." He states the exact truth when he sets forth how admirably it served its purpose where the incumbent was an honest man and qualified to discharge its duties—for, within his own county, this official was a veritable autocrat, wielding authority which the State does not intrust even to governors. *But living in those days in a county where there were plenty of honest and able men from whom to select the county judges, he doubtless saw little of its worst side. For many years subsequent to 1856 a number of counties in the northwestern quarter of our State

*"Where a county had the good fortune to elect a judge of high integrity, of good judgment and manly courage, it was a fine system of government; just as an absolute monarch, possessing all the best qualities of manhood makes the best government for his people. These, however, are rare cases in this world of selfishness."—Ex-Gov. C. C. Carpenter.

were from time to time scandalously plundered by or under the rule of the county judges. If the judge were a weak man he was controlled by others. If he were a man of nerve he "bossed the job" of stealing, according to his own fancy. Six or eight adventurers would pitch their tents in an uninhabited county, where as a matter of course there were no newspapers, and proceed at once to "organize" it. This was easily effected by electing some of their number to fill the positions of county judge, recorder and treasurer, clerk of the district court, and possibly two or three other places of minor importance. Then followed the letting of contracts to some of their pals, to build a court house, jail, bridges, and drain the swamp lands. One county paid a large sum for draining its swamp lands in this way: a ditching machine was hauled *across* the ponds and sloughs, simply making an open trench, with no sort of outlet. The result of all this manipulation was the issuing of bonds or county warrants in stupendous amounts, with little or nothing to show for the expenditure. Some of the counties, after a permanent population came in, repudiated the indebtedness thus piled upon them, or were released from it by the decisions of the courts; while others gradually liquidated these large debts later on. In some cases counties were more than twenty years in paying the debts contracted by these very unique "judges." Such rings of speculators, whose politics meant public plunder, would manage to control both the county judge and the recorder and treasurer—the latter officer having charge of the collection of the taxes. Payment of county warrants was systematically refused, though speculators were always ready to buy them—at large discounts. The avidity thus manifested in gathering in county warrants, often at less than one-half their face value, sufficiently showed how the nests were comfortably feathered. This phase of stealing was transacted for many years in more than one of those new counties.

The county judges were happily superseded, under a law passed in 1860, by a board of supervisors consisting of one from each organized township. With this change, one-man

power, with all its opportunities for occasional good government, or for the other extreme of robbing the counties, disappeared from our statute books. A few years afterward the number of supervisors was reduced by the law which exists today. At some future time, after the early settlers have all passed away, graphic writers may tell strange stories of how certain counties were "organized" and then mercilessly plundered. The truth in some instances would be stranger than fiction. While now and then a board of supervisors has wrought grievous public wrong in the letting of contracts, they are too thoroughly hedged about by law to be able to match the iniquities of some of those old county "judges."

MARTIN H. CALKINS.

BY L. F. ANDREWS.

Hon. Martin Halbert Calkins, M. D. died in his beautiful home at Wyoming, Jones county, September 27, 1909, aged eighty-one years and twelve days. He was noble in every attribute that constitutes true nobility and superior manhood.

He was of sanguine-volatile temperament, hopeful, ardent, warm, sympathetic, confident, energetic, persevering, frank, self-controlled, decisive, courteous and social.

He was large physically; large of heart; gifted with large mental endowment; of scholarly culture; racy, genial humor; of healthy body and mind; never fearing to speak the truth. He did his work diligently and discharged his duty with contentment, cheerfulness and resolution. He possessed a vigorous personality, whose unfailing kindness, broadly-generous impulses, and independence of thought and action made him beloved to a degree seldom realized in human experience, forcibly reminding one of the "gude Samaritan," William MacLure, the physician so graphically pictured by Ian MacLaren in his "Beside the Bonnie Brier Bush."

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