

JUSTICE SAMUEL F. MILLER AND HIS FIRST CIRCUIT COURT.

Soon after his appointment as Associate Justice of the Supreme Court of the United States by President Lincoln, pursuant to the Act of July 15, 1862, reorganizing the Federal Circuits and creating the Ninth circuit (comprising Missouri, Iowa, Kansas and Minnesota), Samuel F. Miller came to Des Moines to institute the Circuit Court provided for under that act. Some of the facts incident to the organization of the new court over which he presided until his death, October 13, 1890, are worth reproduction.

The court was convened at Sherman's Hall, Third Street and Court Avenue, Des Moines, Tuesday, November 11, 1862, Judge Miller presiding, with District Judge J. M. Love also sitting. The officers of the court were Judge W. G. Woodward, Clerk, Wm. H. F. Gurley, District Attorney, and H. M. Hoxie, Marshal. After the ceremonies of opening, the first work transacted was the admission of a number of attorneys to practice in the Circuit court—among them, Benton J. Hall of Burlington, Judge James Grant of Davenport, Attorney General Charles C. Nourse of Des Moines, Henry Wiltse of Dubuque, Henry Strong and Col. John W. Rankin of Keokuk and Leroy L. Palmer of Mt. Pleasant.¹

One incident in the inauguration of the new court is interesting. The Clerk had no seal. Judge Woodward procured an instrument that he regarded as sufficient for temporary use. Some one questioned the validity of papers authenticated thereunder. Mr. J. S. Polk of Des Moines suggested that the seal ought to be engraved on a "plate of the precise size of a silver half dollar." Thereupon Judge Miller remarked: "You will find it difficult to get at the preciseness you speak of;

¹*The Daily State Register*, November 11, 1862.

for I believe *there is not a silver half dollar in town to measure by.*"² Those were days when the infusions of "red dog" and "wild cat" bank notes and depreciated Greenbacks were illustrating the efficacy of Gresham's law.

The efficiency and vigor of this court was noteworthy and impressed all observers. Although convened on Tuesday all cases on the docket were disposed of and the court adjourned by Saturday, November 15. "Judge Miller," observes a contemporary, "has the rare faculty of doing up business with remarkable dispatch. The record of the cases disposed of in one week is sufficient evidence of this fact. The judge has made a decidedly favorable impression in this initial term of the court in Iowa."³

On Tuesday, May 13, 1863, Judge Miller opened the second session of the court, again in Sherman's Hall. As at the first session admission of attorneys to practice was first ordered. Among those admitted were Judge J. Perkins of Adel, J. W. Thompson of Davenport, Daniel F. Miller of Ft. Madison, Charles T. Ransom of Iowa City, and H. Scott Howell of Keokuk. The account of the proceedings intimates that one prominent attorney of Warren county desired admission, but owing to his pronounced antipathy to the course of President Lincoln's Administration in the Civil War, declined to take the oath of allegiance entailed.⁴

This second session was noteworthy for two reasons: First, because of the character of the instructions given the Grand Jury by Judge Miller; second, because of sundry important decisions rendered and verdicts found. The instructions were delivered orally to the Grand Jury. Either the substance of charge or the vigor of the Judge's delivery so impressed the attorneys in attendance that "the entire bar, irrespective of party, united in a request that he should write it out for publication, and he therefore complied with their wishes."⁵ The various subjects touched upon in the instructions indicate the many phases of the stress in which the people of the State were

²*Ibid*, Nov. 16.

³*Ibid*, Nov. 18. ⁴*Ibid*, May 15, 1863. ⁵*Ibid*, May 16.

at the time. Those portions relative to treason and conspiracy to interfere with national authority had peculiar interest to the public because several prominent citizens of Iowa in the year preceding had been summarily arrested and incarcerated in national forts or in Federal prisons, on charges of treasonable utterances or of conspiracy. The Charge entire follows:

Gentlemen of the Grand Jury:—You are called here for the purpose of assisting in the administration of the criminal laws of the country. The frame of our Government is peculiar in the co-existence of two law-making powers, exercising jurisdiction over the same people. They are, however, well defined in the class of subjects to which their legislative powers respectively extend. The Federal or national government has confided to it by the Constitution of the United States, which is the supreme law of the land, the exclusive right to legislate upon certain classes of subjects and the state governments have in like manner exclusive control over certain other classes of subjects. Each of these grand divisions of the political power has its courts, separate and distinct from each other, to administer the laws which each has a right to enact, and you are here today as a part of the National Court, with the duty imposed upon you to inquire into the violations of the nation's laws.

The Constitution of the United States provides that the Congress shall have power to coin money and regulate the value thereof. This duty it has performed; and in order to protect the people from spurious, depreciated or counterfeited coins, laws have been passed to punish those who may attempt to impose such on the public. There are laws of a highly penal character against counterfeiting the coin of the nation, against uttering or putting in circulation any counterfeit coin, against having such coin in possession with intent to pass it on, and against having in possession the instruments for making it.

The Government of the Union has the right to borrow money, and as a necessary incident to this power it has the right to issue bonds, notes and other securities. These securities are liable to be counterfeited, and the signatures of the proper officers forged. The Congress has therefore passed stringent laws for the punishment of any person who shall forge or counterfeit these securities, or who shall knowingly put such counterfeits into circulation, or have them in possession with intent to do so. Into all these offenses it is your duty to inquire, and make presentment if they are found to exist. And since the securities of the Government, in the shape of Treasury notes have become the principal circulating medium of the country, it is very important that the public should be protected from a counterfeit issue of them.

There are laws for the protection of the mail, the carrying of which is another subject of exclusive federal control. Into the various postoffice repositories are placed every day millions of dollars, in drafts, notes, and bank bills, and equivalents of money. The letters which are carried by mail contain the confidential secrets of a thousand hearts, which if exposed to the public would involve the happiness of as many families. The temptation to the officers who have the handling of these letters to open them, to learn their contents, and to appropriate their wealth, is of the strongest character; and experience has proved that the severe punishments which the law provides for these offenses, and for robbing the mail, have yet failed to secure perfect protection. I invite your attention to this subject, as one closely connected with one of the best interests of society.

There are laws against destroying the timber upon the national domain, and against trading with the Indians (who have recently become so troublesome upon our borders) which you may be called upon to enforce, but of which I cannot now speak more definitely.

There is another class of laws, gentlemen, to which I feel it to be my duty to call your attention, which I do with the utmost pain and reluctance. I mean those laws which relate to the preservation of the Government itself. When our fathers, shortly after our independence as a nation had been recognized by the mother country, proceeded to establish our present form of government, and presented to the world a written constitution as its foundation, it was received by the statesmen of Europe with general distrust and failed to command the universal confidence of our own. Based substantially upon the Democratic idea, of the right of the people to govern themselves, and relying upon a written fundamental law to bind together the people of numerous states, with varied interests, it was confidently predicted that its duration would be short and its end inglorious. Three-quarters of a century of prosperity, of growth, of addition of territory and population, of increase of wealth and power unparalleled in the history of any other nation had taught us to laugh at these predictions. The increasing love and devotion of the people to their government, and the pride with which they cherished the common glory of the nation, had led us to believe that its destruction by their own act, or that of any considerable portion of them was scarcely to be dreamed of. We had fondly hoped that the principle of obedience to the laws, which equally with the love of liberty has characterized in all ages, the people of the Anglo-Saxon race, would safely carry us through all the trials to which our form of government might be subjected.

Recent events which constitute a prominent part of the world's history, have taught us that our feeling of security was not well founded. The present wicked and causeless rebellion tells us plainly that the passions and thirst for power of ambitious men may in this country and this age, as it has in other countries and other times, prove too powerful for the memories of the past, and the hopes of the future as they are bound up in our present Constitutional Government. It has also taught us the value, nay the absolute necessity of obedience to the laws.

Treason against the United States consists only in levying war against them, or in adhering to their enemies, giving them aid and comfort. To constitute the crime of treason, some overt act is necessary. That is, something more than mere expression of thought, or opinion. Some act must be performed toward carrying the treasonable purpose into execution. And before conviction can take place this act must be proved by two witnesses. There can be no doubt that all those now or heretofore engaged in the Rebellion are guilty of treason, and that their lives are forfeited to the law, but I am happy in the opinion that no *actual* treason has been committed in Iowa. If, however, your researches should unfortunately prove the contrary, it will be your duty to bring the fact before the court.

In reference to the probability of violations of another law of analogous character, I fear I am not justified in entertaining an opinion so agreeable.

Very soon after the Rebellion broke out, the Congress of the Union finding that the Nation was engaged in a struggle which seriously threatened its existence, passed a law concerning conspiracies. By this statute it is provided, that when two or more persons shall conspire or confederate together, for the purpose of destroying or overthrowing the government of the United States, or forcibly resisting the execution of the laws, or any officer of the government in the lawful exercise of his authority, they shall be guilty of a conspiracy, and punished by fine and imprisonment. You will observe in the construction of this law that it requires two or more persons to agree upon a concerted course of action, but it does not require that the action itself should take effect as in the case of treason. It is sufficient if the agreement is made, or the resolution taken to act in concert, for any of the purposes mentioned in the act. You will observe that it relates to the purpose of forcible resistance to the law, and that the conjoint formation of this purpose, by two or more persons, constitutes the crime.

The right of the citizens to discuss, and by peaceable means; to endeavor to procure the repeal or modification of an obnoxious;

law or the change by legal means of an officer of the government for one more satisfactory, is unquestionable. On the other hand the duties of obedience to the law, while in force, and of submission to those in authority so long as that authority exists, is equally clear and if possible more essential to the public safety. No government can, even in time of peace, long tolerate a violation of its laws without rapidly tending to decay. Much less can it in time of war, a war which threatens its own dissolution, permit those who are receiving its protection to conspire for its overthrow.

Those who are loudest in their complaints against the government at the present time profess to be peculiar champions of the law and the Constitution. They surely should unite with us in the effort to enforce vigorously in this hour of our national calamity, the laws which are made for the security of all, and for the preservation of the government in which all are so vitally interested.

Satisfied that you, gentlemen, aided by the counsel of the able District Attorney, will do your duty in the premises, I commit these matters to your charge.⁶

The following gentlemen composing the Grand Jury received the foregoing instructions.

N. Baylis, [Baylies], Foreman, J. P. Foster, Clerk, W. F. Ayres, Wm. H. Bigelow, W. M. Calfee, A. N. Comstock, Owen Edgerton, J. K. Hobaugh, J. M. Holladay, J. C. Jordan, John Jack, Lewis Jones, J. K. Lyon, D. Limpus, S. H. Reynolds, Wm. S. Pritchard, Geo. M. Swan, John L. Smith.⁷

The foreman, Nicholas Baylies, was a resident of Polk county, near Des Moines. Prior to his removal to Iowa he had had a creditable career as a lawyer, legislator and District Judge in Vermont. Under his foremanship we are told the jury "opened its sessions each morning with prayer." This practice was regarded by *The Register* as a "hopeful and refreshing indication of the earnestness and sincerity of the jurors." It was in "broad contrast with the usual customs adopted by rebel-sympathizing inquisitions."⁸ Whether the supplication was the result of the piety of the presiding judge or of the foreman or of the jurors, or the expression of their feelings in view of the awesome character of the dangers threatening the public or their persons in those troublous times is not clear. The practice does not appear to have been continuous in the courts.

⁶*Ibid*, May 16. ⁷*Ibid*, May 13. ⁸*Ibid*, May 17.

A number of the officials of the national government under President Buchanan, the Postmasters at Ft. Dodge, Iowa City and West Point, and the Receiver of Public Monies at Decorah, were adjudged in default in their accounts and judgments against them and their bondsmen for serious sums were entered on the record. Among the important civil suits decided were, *J. Edgar Thompson vs. the County of Lee*, and *Rogers vs. the City of Burlington*, in which Judge Miller held certain issues of bonds in aid of railroads invalid, concurring therein in the holding of the Supreme Court of Iowa. In *Walkley vs. the City of Burlington*, in which the plaintiff sought to mandamus the city council to appropriate monies to pay a judgment, he granted an alternative writ allowing the city until the next term of court to show cause why such a writ should not issue. Another interesting case was *Jacob Edwards, et al., vs. Addison Daniels, et al.*, in which a plea of usury was set up in defense against an attachment issued to realize on promissory notes. Judge Miller held that where notes made in Iowa, payable in Boston, are usurious by the laws of both states, the effect will be governed by the laws of Iowa; whereas in the case of notes made in Boston and payable in Boston the full amount specified on the face of the notes may be received; the court in the latter case would not enforce the penal law of usury of Massachusetts.⁹ In the two cases last mentioned, Mr. S. V. White, for forty years past a notable figure in Wall Street, was one of the attorneys. He was then a resident of Des Moines.

F. I. H.

⁹The cases mentioned are not reported in Woolworth's *Circuit Court Reports—Justice Miller's Decisions*. Brief mention of the rulings may be found in the *Daily State Register*, May 19, 20, 22.

ALEXANDER BROWN, HIS FAMILY AND FRIENDS.

The life of Alexander Brown, of whom an article by his life-long friend, Hon. Robert Sloan, appears elsewhere in this number of *The Annals*, is of the type most useful in the early

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