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THE LAW CAME TO FAYETTE COUNTY

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In the early summer of 1870, two young men opened their law office in West Union, Iowa, and began that period of watchful waiting for the unwary client which all young lawyers experience. They had been class-mates in the then newly established law school of the State University of Iowa, and were determined to seek success in their own state. One of them was William E. Fuller, later member of congress from that district, and for a number of years assistant attorney general of the United States. The other was my father, John D. Glass. In the fall of 1871, mindful of Horace Greeley's admonition, my father moved to Mason City, where he continued in the successful practice of law until his death in 1918, a period of almost fifty years, during which he held many positions of trust and responsibility. He had brought his bride to West Union in January of 1871, and many are the stories of pioneer days in Fayette county which my parents told me.

Those early family contacts with Fayette county and the many friends I have had and now have among its bench and bar constitute my justification for preparing this inadequate account of the men who made judicial history in Fayette county for almost one hundred years.

IOWA TERRITORY AND STATE ORGANIZATION

When the Territory of Iowa was established in 1838 by its severance from Wisconsin territory the repercus-

sions of the Black Hawk war had hardly ceased to echo over the woods and prairies of Iowa. Young Captain Lincoln of the Illinois volunteers had gone back to ride the circuit in southern Illinois. Lieut. Jefferson Davis with his young bride, the daughter of Gen. Zachary Taylor, later president of these United States, had retired to his plantation. Black Hawk was in prison and the land for which he and his tribe had fought—another "Dark and Bloody Ground"—was being opened for settlement.

The frontier had crossed the Mississippi and was moving toward the Western Plains.

In 1844 Iowa's First Constitutional Convention met at Iowa City, but the proposed constitution was rejected by popular vote and it was two years later, in 1846, that a second convention at Iowa City, then the capital of the territory, was more successful in its endeavors, so that the basic law of Iowa as framed by it was approved by a majority of the voters though by the very narrow margin of 9492 favorable votes as against 9036 opposed.

The succeeding years saw the young state increase rapidly in population, wealth and settled areas. The census of 1840 showed a population of 43,000, while ten years later it had increased to 192,000, and in 1860 reached 674,000. Fayette county's population during this pioneer period increased from 825 in 1850 to 12,073 in 1860.

In 1834 that portion of the Wisconsin territory lying west of the Mississippi was divided into two counties, De Moine on the south, and DuBuque on the north.

On December 21, 1837, DuBuque county was itself divided into a number of counties, of which Fayette was one. Fayette's area at that time was a mere 140,000 square miles, taking in northern and western Iowa, all of Minnesota west of the Mississippi and most of what now constitutes North and South Dakota, extending north to the Canadian border.

On February 3, 1847, Fayette county's present boundaries were established as follows: "That the following shall constitute the boundaries of the county of Fayette, to-wit; beginning at the southeast corner of township ninety-one north, range seven west of the fifth principal meridian; thence running west, on the line dividing townships ninety and ninety-one, to the line dividing range ten and eleven, thence north on said range line to the line dividing townships ninety-five and ninety-six north; thence east on said township line to the range line dividing ranges six and seven; thence south on said range line to the place of beginning." [1 GA, ch 23, sec 2.]

Its organization was effected in 1850, when the census showed its population to have been 825, excluding Indians.

DISTRICT AFFILIATIONS OF COUNTY

During the almost one hundred years of her existence as an Iowa county, Fayette has been a part of the Third Judicial district of the Territory of Iowa and of the Second, Tenth, and Thirteenth Judicial districts of the state. It has had judicial association with many counties in eastern and northeastern Iowa.

Though Fayette was designated a county in 1837, while a part of the Territory of Wisconsin, I have found no attempt at judicial districting until January 21, 1839, when the statutes of the Territory of Iowa provided for the formation of three judicial districts of which Jackson, DuBuque, Scott, and Clayton should compose the Third, with Justice Thomas S. Wilson as presiding judge. At this time Fayette county's affairs were cared for by Clayton county. [Territorial Statutes of Iowa, ch. 38.]

The First General Assembly of Iowa on February 4, 1847, divided the state into four judicial districts. "****
Second district—Muscatine, Scott, Cedar, Clinton, Jackson, Jones, Dubuque, Delaware and Clayton, and the

counties north and west of Delaware and Clayton shall be attached to the county of Clayton for judicial purposes****." [1GA, ch 26.]

A year later, on January 22, 1848, the extra session provided for times of holding court as follows: "***** In the county of Clayton on the third Monday in April and second Tuesday in September. **** In the other counties of said district at such times as the judge of said district may appoint after they are organized." [1exGA, ch 16.]

On January 15, 1849, provision as to the times of holding court in the Second district provide further that court should be held "in the county of Winneshiek, Fayette, and Allamakee at such times as may be appointed by the judge of said district." [2GA, ch 81.]

An enlargement of the Second Judicial district was effected on January 22, 1853, providing that "Dubuque, Delaware, Clayton, Alamakee, Winneshiek, Fayette, Buchanan, Black-Hawk, Bremer, Chickasaw, and Howard shall constitute the Second Judicial district." Terms of court were to be held in the county of Fayette on the second Monday in June and November of each year. [4GA, ch 46.]

On January 24, 1855, a redistricting of the state was arranged with the Tenth Judicial district composed of the counties of Clayton, Allamakee, Winneshiek, Fayette, Chickasaw, Floyd, Mitchell, Howard, Worth, and Cerro Gordo. Provision was made for election of a judge and other matters and terms of court were to be held "in the county of Fayette, on first Monday after the third Monday in May and October." [5GA, ch 111.]

The Seventh General Assembly on March 20, 1858, divided the state into eleven judicial districts of which "The Counties of Clayton, Alamakee, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Mitchell, Floyd, and Butler shall constitute the Tenth district." [7GA, ch 94.]

And on March 28, 1864 a new redistricting took place under the terms of which the Tenth district was provided to contain "Counties of Clayton, Allamakee, Fay-

ette, Winneshiek, Howard and Chickasaw." It was further provided that "In Fayette county, court should be held on the second Monday after the third Monday in May and on the first Monday in December of each year." [10GA, ch 98.]

During the early years of the state, the legislature fixed the times and places of holding court and it was not until the sixties that that duty was placed in the hands of the district judges.

The increase in business and general prosperity in the years of settlement following the Civil war brought increasing litigation and made necessary additional judicial facilities, which on April 3, 1868, were met by the creation of Circuit courts throughout the state. In that act it was provided that the counties of Allamakee, Winneshiek, and Howard should constitute the First Circuit in the Tenth Judicial district and counties of Clayton, Fayette, and Chickasaw constitute the Second Circuit.

This same legislature adopted the now almost forgotten provision for "General Terms" which constituted an appellate body composed of the district judge and the two circuit judges, intermediate between the *nisi prius* courts and the supreme court. [12GA, ch 86.]

On March 29, 1872, the Fourteenth General Assembly provided that the boundaries of district and circuit courts should be the same and that there should be but one circuit judge in each district after the 1st Monday in January, 1873. [14GA, ch 24.]

The provisions as to the "General Term" were abolished by the Thirteenth Assembly. By the Twenty-first General Assembly the circuit courts were eliminated as of January 1, 1887, and the state was re-districted into eighteen districts, of which it is provided that "The thirteenth district shall consist of the counties of Clayton, Allamakee, Fayette, Winneshiek, Howard, and Chickasaw, and shall have two judges."

Though in later years additional districts have been added to meet changing conditions throughout the state, the Thirteenth has continued as it was on January 1, 1887.

JUDGES OF FAYETTE COUNTY COURTS

The list of judges, who performed their duties for the benefit of the people of Fayette county, from Thomas S. Wilson in Territorial days to William H. Antes, who recently took the place made vacant by the resignation of Judge Martin M. Cooney, shows the names of many strong and able characters, men learned in the law and conversant with the frailties of human nature. They came from many states and with many and diverse backgrounds, and yet each did his part in building up judicial prestige and universal respect for the law among the people of northeastern Iowa. Save Judges Fellows, Hobson, Springer, Taylor, and Eichendorf, these men served on the bench for comparatively short periods. With those exceptions there has been a surprising turnover among the judges of the Fayette county courts. I am not sure whether it was the result of political machinations or that the high caliber of the men caused them to take other positions of equal or greater importance, but in any event the average term of office of district and circuit judges in this District has been but seven years.

As one reads the given names of the judges who presided in the courts of Fayette county in those earlier days, they indicate the families and homes from which those men came. We can imagine some God-fearing Christian mother turning the leaves of her Bible to select such names as Elias, James, Thomas, Samuel, Ezekiel, Reuben or Benjamin for the young son, while Milo and Leander show a classical background, and when Judge Fellows' family gave him the name of "Liberty" they must have appreciated what America had to offer to its citizens.

Judge James Grant served as judge of the old Second Judicial district of Iowa from 1847 to 1852, having come to Davenport, Iowa, in territorial days.

Judge Grant was born in Halifax County, North Carolina, in 1812. His grandfather of the same name was one of the Grant clan who fought for the Pretender at the Battle of Culloden. He received his education at Chapel Hill, graduating in 1831 and coming west in 1833. He was small in person with full and penetrating eyes and a very large but well-shaped nose. His voice was one which made the welkin ring. Though small in figure, in his youth he was ready to fight at the drop of a hat.

In the early days Judge Grant acquired at his personal expense one of the finest and largest private law libraries in the west. When the legislature required a term of the supreme court to be held twice a year at Davenport, it was on condition that it should be without cost to the state. Judge Grant furnished a room for the court and turned over his magnificent library for the court's use at his own expense.

He was interested in many important cases. For example, he carried the Railway-Aid-Bond litigation through all the courts of the land, finally being sustained in the Supreme Court of the United States. He was active in the Mark Howard case, arising out of the sale of the old Mississippi and Missouri railroad to the Rock Island company in which matter he secured a million dollar judgment for his client and a hundred thousand dollar fee for himself.

Judge Grant died at Fresno, California in 1891 leaving no descendants.

Judge Thomas S. Wilson came to Iowa from Ohio, where he was a friend and neighbor of Edwin M. Stanton, Lincoln's secretary of war. In 1838, at the mature age of twenty-five years, he was appointed by President Martin Van Buren to the Iowa Territorial Supreme Court. These supreme court justices also acted as *nisi*

prius judges in the three districts of the young territory, Judge Wilson being assigned to the Third district of which the area now forming Fayette county was a part. After the state was organized, he continued on the state supreme bench until October, 1847. He also served as district judge of the Second Judicial district of Iowa from 1852 to 1858, presiding over the first session of the Fayette county district court in 1852. Judge Wilson died at Dubuque in 1894.

Judge Samuel Murdock, the first judge of the Tenth Judicial district, was born in Pennsylvania on St. Patrick's day of 1817, came to Iowa in 1841, read law, and was admitted to the bar at Iowa City in 1843. He held many important positions during the territory period; and in the early days of the state, when the Tenth Judicial district was organized, he was elected its first judge, serving a two-year term. Judge Murdock must have been a unique man. It is said that he gave much of his time to scientific pursuits and we well imagine some of his peculiarities from the opinion of the supreme court in the case of *Smith vs. Frisbie* handed down in 1859, to which reference is made later in this article.

Judge Elias H. Williams who succeeded Judge Murdock on the district bench was born in Connecticut in 1819, graduated at Yale and came to Iowa in 1846, locating at Garnavillo. He served as county judge in Clayton county, was elected district judge in 1858, serving two terms, and in January of 1870 was appointed supreme judge to fill a vacancy. He was a man of means and ability and after his retirement from the bench he was actively engaged in the promotion of the railroads which were then seeking to cross the State of Iowa. His wife was a sister of Governor William Larabee. Judge Williams died August 20, 1891.

Judge Milo McGlathery came to Fayette county from Lawrence county, Pennsylvania, in 1856 at the mature age of 22 years, and in that year was admitted to the bar. A year later he became prosecuting attorney and

another year later was elected district attorney for the Tenth Judicial district, serving for eight years. He held the position of district judge in the old Tenth district for two terms from 1867 to 1874. It seems a little strange to realize that he began his position on the judicial bench at the age of 32 years. He died in 1876 shortly after he had retired from the bench.

Judge Reuben Noble of Clayton county was born April 14, 1821, at Kingston, Mississippi, and came to Clayton county, Iowa, in 1843. He held many important positions in the county and state, and in October of 1874 he was elected as judge of the district court. During his long life on the bench and at the bar, he was well known to the lawyers and litigants of Fayette county, and his magnetic presentation of a case won causes which a man less efficient might have lost.

Judge Ezekiel E. Cooley was a New Yorker born and bred. He received both his general and legal education in the Empire state before coming to Decorah in 1854 as one of the pioneer lawyers of the district. In writing of him after his death it was said: "He was well read in law, a man of keen mental activities and useful in all matters pertaining to the uplift of the people in his locality. . . . He took rank as the peer of the best lawyers in the district." The people must have recognized his "usefulness" for he served as representative in the Seventh General Assembly of the state and was a personal friend of James W. Grimes and Samuel J. Kirkwood. He served as judge of the old Tenth district from 1879-1881 and of the present Thirteenth district in 1894-1895.

Judge Leander O. Hatch, who served one term beginning in 1882 as district judge of the old Tenth district and continued in the present Thirteenth district until his death in 1894, was born in Ohio in 1826 and educated in the schools of that state. He read law the "hard way" using borrowed books as he taught school, being admitted to the bar in 1849. Judge Granger who

studied in his office and later became his partner said of him: "In my opinion, the state of Iowa never produced a lawyer or jurist of finer discrimination than Leander O. Hatch."

Judge Hatch came to Waukon in 1854 and fifteen years later moved to McGregor. During his long years in the practice he had as his associates C. T. Granger and Reuben Noble, who also served with distinction on the Iowa bench.

Judge Charles T. Granger was born on October 9, 1838. Twenty-five years later he was admitted to the bar. He served in the war of 1861-1865, and shortly after his return from the battle fields of the Rebellion he served as district attorney for the Tenth district. For a time he practiced in Mitchell county. In 1873 he became circuit judge and after the termination of the circuit court in 1886 was elected to the district bench where he served with Judge Hatch in the new Thirteenth district. In 1888 he was elected a justice of the supreme court of Iowa where he served until 1900. He died at Long Beach, California, in 1915. The opinions which he handed down while in the supreme court show his rare ability.

Judge Liberty E. Fellows was born in Vermont in 1834 where he received his general education and taught for some years. He came to Iowa in 1857, studied law, and was admitted to the bar in 1862, locating at Lansing. He served both in the Iowa house of representatives and the state senate and was elected to the district bench four different times. Judge Fellows must have been a dominant figure in his section of the state for he served on the board of trustees of the Mt. Pleasant state hospital and as regent of the State University and as grand master of Masons in Iowa. Originally a Democrat he saw the error of his ways and in 1883 became a member of the Republican party.

Judge W. A. Hoyt was born in New York on April 16, 1844. He came of legal stock, as his uncle, William

Allan, was a distinguished jurist of New York state. Judge Hoyt graduated from Columbia in 1866 and five years later began practice in Fayette county. He was elected judge of the district court in the fall of 1889 and served a four-year term. In addition to legal activities he was interested in Upper Iowa University, for which he served as trustee for many years. He died in 1903.

Judge Alfred N. Hobson was born in Allegheny, Pennsylvania, on April 1, 1848, and died at his home in West Union in 1918. He attended Upper Iowa University and the State University and was admitted to the bar of the state in 1870. During most of his years of practice he was associated with L. L. Ainsworth. He served six terms on the district bench and in 1915-16 he was president of the Iowa State Bar association. One who knew him well said of him, "Hobson was the best district judge I ever knew. This was partly due to ability and character, but more especially to judgment and temperament."

Judge Hobson had expressed three wishes with regard to his passing—death without ever a momentary illness, while still a presiding judge, and with all his natural teeth in his head. All these wishes were granted.

Judge William J. Springer was the son of a pioneer minister, born near Decatur, Illinois, on November 13, 1852, coming to Iowa soon thereafter. He read law and attended the law school of the University of Iowa, graduating with the law class of '76. He located in New Hampton three years later and in 1912 was appointed judge of the Thirteenth district to fill the vacancy caused by the death of Judge Fellows. He continued on the bench until his death on February 24, 1926.

E. H. Estey, a life-long friend, wrote of him, "He was a man of the highest ideals, an able and honorable lawyer, and a learned and upright judge."

Judge Charles N. Houck, who filled out the term of Judge A. N. Hobson in 1918, was born in Burr Oak,

Iowa, in 1872 and educated in Carlton College and the University of Minnesota. He now is engaged in the practice of law at Decorah, Iowa.

Judge Herbert E. Taylor, who served on the bench of this district from 1919 to his death in the spring of 1942, was born on July 3, 1876, at Castalia in Winne-shiek county. I believe he was the first of Fayette county's district or circuit judges born in Iowa. He was graduated from the University of Iowa and practiced in his district and also for a short time in Mason City. His death in the spring of 1942 was a shock to all who knew him.

Judge James D. Cooney was appointed as a third judge for the Thirteenth district in 1924, but continued in his judicial position only until 1926 when he became associated with the legal department of Wilson and Company, Inc., of which concern he has been vice-president for many years. Cooney was born in Arlington in 1893 and graduated from the college of law of the University of Iowa in 1915. He served in the air force in World War I. His home is now in Lake Forest, Illinois. His brother, Martin M. Cooney, recently served on the district bench.

Judge Carl W. Reed who served on the Thirteenth district bench from 1926 to 1932 was born in Cresco, May 6, 1873, and graduated from the University of Minnesota. He has been interested in the civic and fraternal activities in the community and was long in the practice of law at Cresco. He served five sessions of the Iowa senate and since 1940 has been a member of the Iowa Commerce Commission.

Judge Walter L. Eichendorf, another one of the native Iowa judges, was born in Clinton, Iowa, July 26, 1889. He was a graduate of University of Iowa in 1912, and served in World War I. He has taken an active interest in the affairs of the American Legion and of the bar association of Iowa, serving on many important committees. His death occurred in 1944.

Judge Thomas H. Goheen was born in Lawler, July 22, 1879, and graduated in law from the DePaul University in Illinois. He was active in the practice many years in Calmar, which is his residence at the present time.

Judge Martin M. Cooney, a brother of Judge James D. Cooney, was appointed to fill the vacancy caused by the death of Judge Taylor in 1942 and served until his resignation in 1945. He was born in Arlington, Iowa on September 30, 1901, and is a graduate of the University of Iowa in law. He served overseas for twenty months during World War I, receiving his discharge in 1919. His residence is in West Union. During his years of practice he established himself as a successful and aggressive member of the bar.

Upon the death of Judge Eichendorf in 1944, George B. Richter of Waukon, an Iowa born lawyer and a graduate of the law school of the State University of Iowa, was appointed to fill the vacancy.

The resignation of Judge Martin M. Cooney in 1945 left a vacancy which has been filled by the appointment of Judge William H. Antes of West Union, to the bench.

THE CIRCUIT COURT

Legal business over Iowa had so increased by 1868 that the legislature enacted laws establishing circuit courts in each judicial district of the state. Most of the younger lawyers of the state have no knowledge of its functions or duties, while those of us who are older only recall it when an abstract shows proceedings entitled "In the Circuit Court" or when we go down into the basement vaults at the court house to dig out records of some early estate or legal action.

As to the creation of the circuit court, see Twelfth G. A. Chapter 86, as to the provision, for only one circuit judge see Fourteenth G. A. Chapter 24, and as to its termination, turn to Twenty-first G. A. Chapter 134.

Martin V. Burdick, then of Decorah, and Benjamin T. Hunt of Elkader served on the circuit bench of the Tenth Judicial district from 1869 through 1872 when Charles T. Granger was elected as sole circuit judge, which position he held through 1886 when he went upon the district bench.

Circuit Judge Martin V. Burdick was admitted to the practice by Justice Thomas S. Wilson in 1852, and shortly thereafter located at Decorah where he served as county attorney. He was for a time editor of the *Decorah Chronicle* and served as state senator from 1862 to 1864. With the organization of the circuit court, he was elected as one of its two judges, which position he held until 1872. He later moved to Lansing where he died in 1886.

Judge Benjamin T. Hunt was born in New York in 1817, but received his education in Fairfield, Van Buren, Ohio, where he taught school, studied law, and learned the shoemaker's trade.

He came to Iowa in 1857 by way of Prairie du Chien in Wisconsin, locating first at McGregor, then three years later in Elkader where he was associated with Samuel Murdock, later on the District bench, and with R. E. Price.

He was one of those large-framed men who stand out in a crowd enjoying the pleasures of the table and the companionship of his friends. Perhaps no lawyer in the district was a more complete master of the delicate and dangerous art of cross examination.

Judge Hunt was elected to the circuit bench in 1868, serving out his term. He died in 1873.

COUNTY JUDGES

At the inception of the organization of Iowa counties provision was made for a county court whose presiding officer also acted as executive head of the county, somewhat as the auditor does today. In addition to having general charge of the financial affairs of the county, he also served as probate judge.

Many men who later held responsible judicial offices in the state began their careers as judges of the county court. M. V. Burdick served Fayette county as county judge for a few months in 1854 and from 1869 to 1872 sat on the circuit bench. Jacob W. Rogers who had been admitted to the bar in 1855 later served as county judge for two terms.

County courts continued in existence until 1886 when the Circuit courts were established taking over their probate jurisdiction, while their executive and financial duties were vested in the then created office of county auditor. Chapter 15 of the 1851 Code of Iowa sets forth the duties of these early semi-judicial officers.

A list of the county judges in Fayette county is appended.

COURT HOUSE AND COUNTY SEAT

When West Union was laid out in the spring of 1850, a tract 400 feet square was donated by Wm. Wells, Jacob Lebrand and J. W. Rogers to Fayette county to be used for public buildings so long as the county seat remained in West Union. In the years between 1850 and 1856 no less than three contracts were let for the building of a courthouse by various county judges and acting judges, all without avail. The struggle for the county seat during these years and since has been bitter, continuous and acrimonious. Election followed election to change the location of the county seat and to vote taxes for the erection of needed county buildings. However, in April of 1856 work was commenced and a brick courthouse, forty by sixty feet in size and two stories in height was completed at an expense of \$8,000.00.

Inasmuch as the question of taxation for the erection of county buildings had been voted down decisively from time to time and as the county had no jail, it was decided to improvise one. A cell was constructed in the northwest corner of the courthouse with the inner wall of oak planks laid flat and spiked together. For almost six years the cell or jail served the purpose, until on

Sunday, September 15, 1872, one James Thompson, alias Benson, who was confined therein decided to add arson and escape from custody to his original crime by burning the wall of his cell and escaping through a hole in the exterior wall. In the fire which resulted the courthouse and many valuable early records were destroyed.

After the fire in 1872 and until the second courthouse was completed in 1874, the county offices were located in the Stone block across the street to the north from the square at a yearly rental of \$400.00.

The location of the county seat and the building once more became a truly "burning" issue. "North" and "South" in Fayette county fought as bitterly as had the opposing forces in the War of the Rebellion. Petitions and remonstrances galore were filed, legal controversies went into the courts, and political contests involving the question were aired in every school house of the county. At last West Union offered to rebuild the courthouse, providing the county would appropriate a sum equal to the insurance received. This was agreed to and above many remonstrances the appropriation was finally made and the contract signed on May 7, 1874. The new building was completed on September 10 following.

Almost before the completion of the new courthouse on the old foundation, it was evident that more room was needed. Further elections failed to approve the issuance of bonds or taxation for additions to the courthouse, but in accordance with the emergency powers of the county board of supervisors, the sum of \$5,000.00 was expended for the erection of a jail and jailer's residence which was completed on September 29, 1882.

After attempts to provide bonds or taxes for the enlargement of the courthouse, the same prerogative of the county board was exercised to improve the west side of the courthouse, and again the east side of the courthouse, and finally the front of the building. This makeshift continued in use until the year 1922 when the matter of the location of the county seat and courthouse seems to have been finally settled by the construction in

1922-24 of the present very fine courthouse on the courthouse square in West Union. It was constructed at a cost of \$329,000 without assistance from the PWA, which many counties later used. It is built of Bedford stone and is complete in every particular. The court room on the north side of the building contains a memorial to my family friend, the Hon. William E. Fuller, installed by his sons and daughters.

FAYETTE COUNTY IN THE SUPREME COURT

During the early years of the state, the legal matters arising in what is now Fayette county were handled in the courts of Clayton county, but after Fayette county's organization in 1850 and the first session of the district court held in July, 1852 at West Union, with Judge Thomas S. Wilson on the bench, the usual litigation of pioneer days appeared.

Matters of procedure, actions on notes, claims for damages, and arguments on real estate brought to the supreme court appeals of a nature not very different from those which confront the present day lawyer.

In leafing through the early Iowa Reports it was not until the fall term of 1858 that I found the first appeal from Fayette county—the case of Cobb vs. Newcomb, 7 Iowa 43. This involved the sufficiency of the return on an original notice served in 1857. Wm. McClintock who had been admitted to the bar at the first term of court at West Union, represented the appellant while L. L. Ainsworth successfully represented the appellee. The old rule in support of the validity of the acts of an officer was sustained.

The same attorneys appeared in the case of Hanan vs. Hale, 7 Iowa 153, which likewise presented a question of procedure; in an action on a promissory note—McClaskey vs. Strickland, 7 Iowa 259; and in Moss Brothers vs. Blinn, 7 Iowa 261. This period certainly shows an interesting beginning in the practice before the supreme court and convinces me that litigation in

Fayette county was getting into its stride so definitely continued in later years.

The first criminal case, *State vs. Minski*, 7 Iowa 336, decided on December 13, 1858, found M. McGlathery as district attorney battling over a change of venue with Ainsworth and McClintock for the defendant, while I was interested to observe that in a Chickasaw county case, *State vs. Bailey*, 7 Iowa 390, decided on December 14, 1858, the attorneys for appellants were the firm of Ainsworth, McClintock and McGlathery. Perhaps, it is too late to bring this matter to the attention of the Committee on Legal Ethics of the Iowa Bar association.

The early case of *Smith vs. Frisbie*, 7 Iowa 486, which went up from Fayette county has always interested me greatly because of the rather free and easy way in which matters were then handled.

The error upon which the appellant relied was, "That one J. O. Crosby, an attorney-at-law presided in the trial of the cause in the place of Samuel Murdock, the judge of the Tenth judicial district, whose duty it was to preside." Judge Murdock absented himself, Mr. Crosby presided, and the defendant withdrew from the trial of the action.

Somehow I would like to know the true inwardness of what took place in Judge Samuel Murdock's court in West Union eighty odd years ago, but the supreme court's opinion only sets out:

"That a person who was not a judge under the laws of the state was placed upon the bench to try the case against the wishes of one of the parties is made manifest; therefore, the proceedings and the judgment under them, must be reversed. It is to be hoped that no one holding the responsible office of judge would refuse a party a bill of exceptions to show his objections and we regret to see the necessity of resorting to a bill signed by third persons where the facts do not appear to be questioned. Judgment reversed and cause remanded." *Smith v. Frisbee*, 7 Iowa 486.

QUASI LEGAL HISTORY

When lawyers gather in the courthouse library or in the judge's chambers while waiting for the attention of the court or in the recess periods, they tell those stories handed down from legal generation to succeeding legal generation, of earlier men and times which constitute the humorous background of almost one hundred years of practice in the courts of rural Iowa. Fayette county has its full share of that quasi legal history which has come down from pioneer days.

Hon. Joseph S. Auerbach, of the New York bar, in his recently published volume "The Bar of Other Days," recounts the story of an examination for admission given by Abraham Lincoln somewhat as follows: Lincoln had been appointed by the supreme court to examine a candidate with whose qualifications as to education and character he was well acquainted. Mr. Lincoln reached for his quill and said: "Well, Billy Brown, I'm going to sign your commission." The young man suggested that inasmuch as the certificate stated that the applicant had been examined, some questions should be asked.

Lincoln replied: "Yes, Billy, you're right," and looking at him in his characteristic, quizzical manner said, "Now what in the name of the Lord shall I ask you?" and then added, "I have it, which way does the Sangamon River run?" Billy opined that it ran downstream; and Lincoln thereupon said, as he signed the certificate, "Right you are, and now you're an Illinois lawyer."

Without doubt similar examinations marked the admission to practice of the men who became members of the Iowa bar in the early terms of Judge Wilson's court.

Judge Ainsworth, one of the early attorneys in Fayette county, was a friend and legal adviser of Charles Webster, of Waucoma, for many years on the Iowa railroad commission. In the early days their business relations had centered round the little town of Eldorado in

Fayette county. Mr. Webster delighted to recount how Judge Ainsworth often definitely settled a quasi legal argument by citing some case by book and page from the mythical "Eldorado Reports".

The dignity of the bar was never immune from the sly digs of the Fourth Estate. When William E. Fuller of West Union, later member of congress and assistant U. S. attorney general, was married in the early seventies, the editor of the *West Union Gazette* set out a flowery story of the wedding closing the account with good wishes to the young couple in the following complement—

"May their cup of joy be full
And every year a little Fuller!"

The succeeding years well nigh justified that wish.

L. L. Ainsworth was one of the able lawyers of Fayette county; but, according to tradition, he sometimes looked a little too long upon the wine when it was red. His head was always clear, though he sometimes addressed the jury while seated at the counsel table.

A winter term of the district court was being held at New Hampton thirty miles away where Ainsworth was to commence the trial of an important case the next morning. Snow was falling and the wind had approached blizzard intensity when Ainsworth hired a livery rig to make the trip. Fred, his driver, wore a coonskin cap and fur coat but Ainsworth filled with warmth from his libations wore a long tailed coat and high silk hat which was then *de rigueur* for the well dressed lawyer. Presently L. L.'s chin sank on his chest and the wind swept his plug hat into a road side snow drift from which, after considerable search, it was rescued by the driver. A mile or two along the road the same thing happened once more and again Fred, the driver, rescued the stovepipe hat. This was too much for Fred who shoved his cap on Ainsworth's head saying, "Here you wear the cap and I'll wear the hat." Fred wore the plug hat triumphantly into New Hampton just in time for

Ainsworth to stop at the corner saloon, take his morning's morning, and boast that he was the only lawyer there to have a plug hatted driver.

And I am informed he won that case!

During the early days of the Civil war when Lincoln's call for volunteers arrived there were no officers' training camps or Reserve Officers' Corps. Commissions were issued as political patronage. If a congressman like John A. Logan could by his civil leadership raise a regiment, he was made its colonel regardless of military experience. If a state senator like L. L. Ainsworth could raise a company, he was made a captain.

"L. L." as he always was called, was a law partner of Carman A. Newcomb. He didn't altogether like his partner, and felt assured that the latter had no appetite for bullets. As a state senator, L. L. had been entrusted by Gov. Samuel J. Kirkwood with some blank commissions for captains, to be placed where they would do the most good. Newcomb was a very eloquent speaker, and at a war meeting declared that nothing would please him better than to lead a company to the front. Ainsworth, sitting on the platform, spoke next, and said that he was able to gratify his partner's wish, for he had some blank commissions for captains, and would be glad to fill one out for him. Newcomb was caught, and as a consequence left West Union May 29, 1861, as captain of Company F, Third Iowa Infantry, the first body of soldiers ever to leave Fayette county. But while they were encamped at St. Louis he resigned his commission before smelling any gunpowder, located in St. Louis, later being elected a judge, and in 1866 a member of congress.

There is a story preserved by Edward H. Stiles concerning Judge James Grant. Grant and his wife had gone to California to spend the winter, accompanied by his wife's mother. During the sojourn the old lady died suddenly and the judge and his wife turned their sorrowful way homeward, after placing the precious casket in the care of the express company whose general agent

was a friend of the judge. They took passage over the Rock Island route while the casket was sent via the Burlington. Upon reaching Davenport, Grant went to the express car but to his surprise no casket was there, nor did the agent know anything about it; whereupon the Judge hastened to the telegraph office and sent the following dispatch to the express agent in California: "Where in Hell is my mother-in-law?" We are informed that satisfactory explanations were made.

Illustrative of the conditions which marked the early terms of court in Iowa, I quote from a letter of Judge Wilson:

"I hunted over the ground where the city of McGregor now is. There was then no settlement there. Alexander McGregor sold eighty acres of land in Chicago, where the Wells Street depot now stands, to buy at McGregor. The Chicago property is now worth many millions. The first court ever held in the Territory of Iowa after its organization was held by me in that county in September, 1838, at Prairie Laporte from which the county seat was afterwards removed to McGregor.

"The first term of court in Jackson county was held by me in an unoccupied building belonging to Mr. Heffley, a grocer. A hogshead of molasses which was in the room was rolled against the side wall, with the end upward. Judge Grant was trying his first case in that county and the following ludicrous incident illustrates one of his well-known peculiarities. While addressing the jury the high-pitched, shrill and piercing tones of his voice, for which he was distinguished, reached the ears of the loungers on the outside, who thinking there must certainly be a row on hand rushed pell-mell for and into the court room. The bailiff, a short man, mounted on top of the hogshead to restore order, but while shouting for order at the top of his voice, the head of the cask gave way and he went down chin-deep into the molasses. The effect of this on the court proceedings can be imagined better than described."

There is a story of Judge Noble for the truth of which Clarence Murphy is responsible.

While attending court at Elkader, the judge and visiting attorneys had arranged to take their meals at the home of the Widow Seibert.

Judge Noble was one of the able lawyers of his district, and in addition to his judicial duties had become a gentleman farmer and stock raiser near McGregor.

In order to improve his porcine herd, the judge purchased a well-bred boar pig (or as an old Irish client of mine termed it "a foine gintleman hog"). The pig in his crate was placed in the back of the judge's carriage that afternoon ready for transport to the farm near McGregor.

That evening at supper (it was supper, not dinner, in those days) the meal was unusually good and the judge and barristers joined in compliments to the Widow Seibert on the excellence of the repast of which roast pork had been the main course.

When Judge Noble started for McGregor he sought to inspect the young boar but found the crate empty and realized he had been eating his own pig!

I hope that subsequent decisions in his court were not influenced by the felonious actions of those brother barristers.

While trying cases during various World Series, I have observed the bailiff handing notes to the presiding judge perhaps containing the results of each inning and therefore was more than a little interested when C. F. Murphy of Elkader told me a story of the sporting interests of Judge Samuel Murdock, handed down through J. O. Crosby who practiced in his court.

In the early days, the judge and attorneys rode the circuit on horseback and, as a natural concomitant, discussions of the speed of their mounts resulted in wagers and races.

While Judge Murdock was presiding in West Union one time, such a race had been arranged and one of the

lawyers asked for an adjournment to attend the contest but Judge Murdock sternly refused. During the trial, however, that attorney observed that Judge Murdock had slumped down in his chair and was taking in the horse race through the court room window by the aid of field glasses.

Judge Thomas S. Wilson, of the territorial supreme court, was a small man, very young and very boyish in appearance, as the following instance will illustrate. In the early days there lived in Dubuque a prominent local character by the name of McHenry. He was a large man, a big six-footer. He and Judge Wilson became engaged in a heated controversy on the street, which threatened to end in personal conflict, for Wilson was too plucky to be deterred by his opponent's size. At this juncture an Irishman came along and seeing the situation ran on to the street and picked up Wilson in his arms as he would a boy and set him down on the sidewalk, saying, "My little man, you had better let a big fellow alone."

THE BAR OF EARLY DAYS

In the year 1834, Dubuque was a lead mining center for the Mississippi valley with many lawless characters among its citizens. This year one Patrick O'Connor killed his partner after a petty quarrel. He thought that the LAW was far away and could not reach him; but outraged citizens hastily convened a miners' court which in rapid succession, arrested, tried, convicted and hanged the murderer in a manner not much different from that set forth in Bret Harte's story, "The Luck of Roaring Camp."

On September 11, 1838, the first session of a district court in the Territory of Iowa was held at Prairie La Porte, now Guttenberg, in Clayton county with Judge Thomas S. Wilson on the bench.

Along with the Territory of Iowa and the west, Fayette county grew rapidly after its organization in 1850.

The population of the county had jumped from 825 in 1850 to 2055 in 1852; settlers from eastern states were coming every day to the new land across the Mississippi. We presume that litigation was a natural result of struggles for land and property in those pioneer days and that such judicial matters required courts. As a result of this need, on July 1, 1852, Judge Thomas S. Wilson convened the first District court of Iowa in and for Fayette county in special session at West Union in the old West Union House.

THE LAW HAD COME TO FAYETTE COUNTY!!

Judge Wilson, a resident of Dubuque, originally from Ohio, first presiding district judge in Fayette county, had been appointed to the territorial supreme court by President Martin Van Buren, although but twenty-five years of age. He served there until Iowa was created, and continued on the supreme bench of the state until his resignation in October of 1847. Later he served as judge of the old Second district and of the Ninth district as well.

During that first session at West Union, William McClintock and Martin V. Burdick, later a circuit judge, were admitted to practice in the courts of Iowa, while in succeeding years other eminent citizens were enrolled, Eber C. Byam in 1853, Carman A. Newcomb in 1854, Jacob W. Rogers and Joseph Hobson in 1858, while in 1856 Milo McGlathery, L. L. Ainsworth, and S. B. Zeigler all became members of the bar.

Examinations of prominent citizens for admission to the bar were not conducted with that strict search into legal erudition which most present-day lawyers have experienced. The candidate was referred to a judge or lawyer who discussed legal and other matters with him in the local tavern, culminating in a dinner at the expense of the neophyte, as his name was added to the rolls.

Among the attorneys who have been admitted to practice in the supreme court of the state of Iowa in 1865,

appear the names of but three Fayette county attorneys: L. L. Ainsworth, William McClintock and Milo McGlathery, all of West Union. Clayton county's list, however, shows twelve names from four different towns. (See Nineteenth Iowa Reporter).

Early day lawyers and pioneer judges were rough and ready men. They rode the circuit from county seat to county seat, stopping for "Court Day" at some primitive tavern or rough log cabin, and trying their cases in hastily improvised court rooms. They had had their legal training, for the most part, in frontier law offices, not in the cool purlieus of the Inns of Court or under the shadows of the Harvard elms. Some knowledge of Blackstone and Kent, of the statutes of the young territory or state, coupled with a gift of oratory and cool courage, made up for many things which today we consider vital to success in law. A quill pen and a sand box had the place now filled by secretary and typist, while the contracts and pleadings they prepared so carefully show economy of language, though not of thought, rather than modern verbosity.

I do not contend that in those early days "there were giants in the land," yet what lawyer of today can question the ability of men like Ainsworth and Hobson and Fuller and Fellows, and what Iowa judge can doubt the judicial courage and moral integrity of Mason, Williams, and Wilson who wrote the opinion in the case of Ralph, the negro slave, as it appears on the first page of Morris' compilation of Decisions of the Territorial Supreme Court.

The list of the lawyers of Fayette county for the ninety years since that first term of court includes many men who merit more than passing comment. However, as decade after decade has gone, the men who defended their clients' rights in hotly contested court battles and advised them shrewdly and well in some little office on the courthouse square are forgotten and their names are brought to light only when one digs deep in the dusty files and musty records of all but forgotten litigation.

The Fayette county bar has had the somewhat unusual experience of having had three women among its members.

Miss Josephine Ainsworth who came of a long line of lawyers practiced for a short while after her graduation but soon went into Y.W.C.A. work.

Miss Mildred F. Crawford who had been for a time in the home of H. P. Hancock, the nestor of the Fayette county bar, was active in the practice and in politics until her death at an early age.

Miss Regina C. Ingersoll is in the practice in Oelwein where her father had practiced before her.

These modern Portias were in each instance a credit to our profession.

It would be impossible for me to comment on the Fayette county bar without paying a tribute of esteem and high regard to the Hon. William E. Fuller who served in the state legislature, in the congress of the United States, and as assistant United States attorney general in charge of claims arising out of the Spanish American war. All who knew him esteemed him highly and the memorial which his family placed in the court room should serve to preserve the record of his successful life in the minds of the younger members of the bar.

No account of the elder members of the bar of Fayette county would be complete without a just and proper tribute to Hon. H. P. Hancock of West Union, for years president emeritus of that bar, having been engaged in the active practice since 1880, now recently deceased. He was born in New York state on September 15, 1852, and graduated from the law school of the University of Michigan. His long list of clients and friends gave him many marks of the esteem they had for one of the pioneer lawyers of the state.

And down the years from William McClintock to the youngest barrister fresh from law school the Fayette county bar has merited the success which has come to its members.

And so "The Law Came to Fayette County."

PRESIDING JUDGES OF FAYETTE COUNTY COURTS

TERRITORIAL JUDGES

Thomas S. Wilson, Associate Justice of the Iowa Territorial Supreme Court, was assigned to the Third Judicial district of the Territory of Iowa, of which Fayette county was a part.

JUDGES OF SECOND DISTRICT

James Grant.....	Davenport.....	Scott	1847-1852
Thomas S. Wilson.....	Dubuque.....	Dubuque	1852-1858

JUDGES OF TENTH DISTRICT

Samuel Murdock.....	Elkader.....	Clayton	1855-1857
Elias H. Williams.....	Garnavillo.....	Clayton	1858-1866
Milo McGlathery.....	West Union.....	Fayette	1867-1874
Reuben Noble.....	McGregor.....	Clayton	1875-1879
Ezekiel E. Cooley.....	Decorah.....	Winneshiek	1879-1881
Leander O. Hatch.....	McGregor.....	Clayton	1882-1886

JUDGES OF THIRTEENTH DISTRICT

Leander O. Hatch.....	McGregor.....	Clayton	1887-1894
Charles T. Granger.....	Waukon.....	Allamakee	1887-1888
Liberty E. Fellows.....	Lansing.....	Allamakee	{ 1889-1890
			{ 1895-1913
W. A. Hoyt.....	Fayette.....	Fayette	1891-1894
Ezekiel E. Cooley.....	Decorah.....	Winneshiek	1894-1895
Alfred N. Hobson.....	West Union.....	Fayette	1895-1918
William J. Springer.....	New Hampton.....	Chickasaw	1913-1926
Charles N. Houck.....	Decorah.....	Winneshiek	1918
Herbert E. Taylor.....	Waukon.....	Allamakee	1919-1942
James D. Cooney.....	West Union.....	Fayette	1924-1926
Carl W. Reed.....	Cresco.....	Howard	1926-1933
Walter L. Eichendorf.....	McGregor.....	Clayton	1926-1944
Thomas H. Goheen.....	Calmar.....	Winneshiek	1918-
Martin M. Cooney.....	West Union.....	Fayette	1942-1945
George B. Richter.....	Waukon.....	Allamakee	1944-
William H. Antes.....	West Union.....	Fayette	1945-

CIRCUIT JUDGES OF TENTH DISTRICT

Martin V. Burdick.....	Decorah.....	Winneshiek	1869-1872
Benjamin T. Hunt.....	Elkader.....	Clayton	1869-1872
Charles T. Granger.....	Waukon.....	Allamakee	1873-1886

JUSTICES OF SUPREME COURT FROM THESE DISTRICTS

Elias H. Williams.....	Garnavillo.....	Clayton	1870
Charles T. Granger.....	Waukon.....	Allamakee	1888-1900

COUNTY JUDGES OF FAYETTE

Thomas Woodle.....	1851-1854
M. V. Burdick.....	1854 (May to August)
Gabriel Long.....	1854-1855
C. A. Newcomb.....	1855-1857
Jacob W. Rogers.....	1857-1861
H. N. Hawkins.....	1861-1866 and 1868-1869
John Ecker.....	1866-1867
Jason L. Paine.....	1869 (Jan. to Oct.)
Hiram Hoagland.....	1869

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Sometime before his death, my friend, Walter H. Beall, editor of the *West Union Argo-Gazette*, had urged upon me the preparation of this review of the bench and bar of Fayette county, giving me valuable advice and counsel.

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Reference has been made to early Iowa Session Laws, to Proceedings of the Iowa State Bar association, to that most interesting volume "Recollections and Sketches," by E. B. Stiles of the Iowa bar, and to various county histories.

Errors, of course, appear but early records are not always accurate or in agreement, and for such errors I crave the indulgence of the reader.

COLORADO PRESERVES ITS HISTORY

The contracts have been let and construction started on the vaults in the sub-basement of the Colorado State Museum building. These are intended primarily as vaults for the Archives Division and will be equipped for scientific care of precious documents and records. Temperature and humidity control, cleaning and restoration facilities, and a fumigation chamber are to be provided.—*Colorado Magazine*.

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