care and education of children of their relatives, and have had as many as seventeen under their control, and have thus made to society good returns for the large estate which their industry and prudence have gathered up during a life of toil, if not of privation. The concentration of wealth in such hands is a benefaction and not an evil to community.

THE EARLY HISTORY OF IOWA.

BY CHARLES NEGUS.

(Continued from page 332.)

THE first session of the legislature of Iowa, after adopting the constitution, convened on the 30th of November, 1846, and continued until the 25th of the following February. But the members were so much occupied in the controversy about electing senators and supreme judges, that the real wants of the people received but little attention until the last of the session.

One of the first and most important considerations to the members of the legislature was to provide the means to compensate themselves for their services. The territory had become a state with a debt of about twenty thousand dollars hanging over it. The members of the constitutional convention had not been paid, and there was no money in the treasury with which to meet the expensss of the present legislature. To meet these emergencies, the legislature passed an act authorizing a loan of fifty thousand dollars to be made to the state, and appointed W. F. Coolbaugh, of Burlington, to negotiate the loan; so the first state legislature imposed a debt on the state of one-half the amount to which it was limited by the constitution.

About this time there were great efforts being made

throughout the state for a temperance reform. Previous to this time, ever since Iowa had sustained a government, the county authorities had been authorized to grant licenses for the retailing of liquors. Petitions were sent from every part of the state, asking the legislature to take some steps for the suppression of intemperance, and at this session there was an act passed requiring the citizens of each county, at the April election, to give an expression of public sentiment on the question of licensing the retailers of intoxicating liquors. The law required that there should be a poll opened for the electors to vote "license," or "no license," and if a majority of the votes cast in any county were against a license, then there was to be no liquor sold in that county. The result showed that there was a majority in every county in the state, except two, opposed to the selling of intoxicating liquors. But this law did not have the effect that was desired by its friends; for, notwithstanding there was a large majority of the electors in the state who voted against a license, the law was very unpopular, and but very little regarded, and intemperance seemed to increase, rather than diminish.

At this session of the legislature the state was divided into two congressional and four judicial districts. The first congressional district embraced the counties of Lee, Van Buren, Jefferson, Wapello, Davis, Appanoose, Henry, Mahaska, Monroe, Marion, Jasper, Polk, and Keokuk, and all the territory lying directly west of these counties; and the second district embraced the balance of the state.

On the 24th of February, 1847, in pursuance of the provisions of the constitution, there was an act passed creating the office of superintendent of public instruction, and also of fund commissioners for the several counties, and defining the duties of these officers, who were to be elected on the first Monday of the next April — the superintendent for three years, and the fund commissioners for two years. To the superintendent was given the general management of the educational interest of the state; and to the county fund

commissioners was entrusted the selling of the school lands within the county for which each was elected, and the loaning and managing of the funds arising therefrom. In the same law provisions were also made for the election of all school officers, and their several duties defined.

At this time the financial affairs of the country were very much embarrassed, and it was very difficult for the settlers on the public lands to procure the means to pay for the lands on which they had settled. There were many hard-working, industrious citizens of the new state who had made large improvements on the public domain, but had not the means to buy the government title, and were liable at any time to have their improvements taken away from them by land speculators. With a view to benefit the settlers, and to create a school fund at an early day, the legislature made provisions for selecting the five hundred thousand acres of land given by congress to the state for school purposes, by authorizing any person capable of contracting, who had settled upon any of the public lands which, in the opinion of the fund commissioners, would be a safe and profitable selection, to signify to the fund commissioner of the county where the lands were located his desire to have the same recognized as school lands; and the land so designated, which was not to exceed three hundred and twenty acres for one individual, should be returned by the fund commissioner to the superintendent, to be by him registered as land selected for the state under the grant of congress. Then the superintendent was to contract with the settler for the sale of the land so selected — the purchaser to pay one-fifth in advance, with the privilege, if desired, of ten years' time in which to pay the remainder of the consideration, by paying an annual interest of ten per cent.

This, at that time. was considered as a very beneficial provision for the settler, and the entire five hundred thousand acres would probably have been speedily taken up, had there been no doubt about the validity of the law regulating the selection of the land, and there would have been

a large school fund immediately created. The act provided for the taking effect of the law from and after its publication, and it was published in a newspaper at Iowa City; but there was nothing in the act providing for its publication in any newspaper, although it was evidently the design of the legislature to have the law take effect immediately, and both parties, by their actions, showed that they understood that the law was in force as soon as it was published in the newspaper; for both parties brought out their candidates for the several offices to be filled at the April election. For superintendent of public instruction, the democrats nominated Charles Mason, who had been chief justice of the territory ever since it was organized, and was considered as one of the best qualified men of the state for the position. The whigs nominated, for their candidate, James Harlan, who was a young Methodist preacher, having just left college and come to the state, to take charge of a literary institution at Iowa City. Harlan was a forcible speaker, and, as soon as he received the nomination, commenced canvassing the state, making speeches wherever he could get an audience, and belonging to the Methodist church, many of the members of that body took a deep interest in his election. Mason, still retaining his position on the bench, owing to the failure of the legislature to elect judges, never left his judicial business, and made no effort to secure his election; and the result was that Harlan was elected. This was very mortifying to the democrats, and, soon after it was officially known, Elisha Cutler, the secretary of state, promulgated that the election was of no effect, from the fact that the law creating the office of superintendent of public instruction, and other school officers, was not in force at the time of the election, because the law itself did not provide for its publication in newspapers, as required by the constitution. The objection raised by Cutler was seized hold of by the democrats; the leaders took sides with Cutler, and most of the democrats elected as fund commissioners refused to act, while, on the other hand, most of the whigs who had

been elected undertook to discharge the duties of their several offices. The whigs charged the democrats with raising this objection merely for the purpose of depriving Harlan of his office, claiming that if Mason had been elected there never would have been any objections to his exercising the duties of superintendent. Cutler, as secretary of state, refused to give Harlan a certificate of his election, although the returns showed, when officially counted, that he had a majority of all the votes cast. Harlan obtained from Cutler a certified statement of the vote, and prepared his bond, as required by law, and laid them before the governor, who approved of the bond, but refused to give him a commission, on the ground that he had no authority to do so. During the summer there were writs of *quo warranto* issued against Harlan and some of the other school officers, requiring them to show by what authority they undertook to discharge the duties of their respective offices. In Johnson county, there was a suit brought against Asa Calkins, who had been elected a director of a school district, contesting his authority to exercise the duties of the office. The case was decided against Calkins by the district court, and he appealed to the supreme court. He set up, as a defense, his election by the people at the April election, to which the plaintiff demurred, and the demurrer was sustained, on the ground that the statute under which the election was held had not been published at the time of the election, as required by the constitution, and therefore had not become a law. It was admitted, on the trial, that, previous to the first of April, the law had been published in the public newspaper, printed at Iowa City, under and by the direction of the secretary of state, who, by the laws of the state, had supervision of the publication and distribution of the laws, and copies of it were sent by him into every county in the state; and the law was received and acted upon by the people at large as being in full force. It was also admitted that the act was not, in pamphlet form, "published and circulated in the several counties of the state, by author-

ity, until the first day of May, 1849;" and that the election for school directors was held on the first Tuesday of April, the day after the election of superintendent and fund commissioners. The constitution provided that "no law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of the state, by authority. If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state." This law provided that it should "take effect and be in force from and after its publication," but made no provision for publishing it in newspapers. And the supreme court held that, inasmuch as the act itself did not provide for its publication in the newspapers, notwithstanding the act had been published in the newspapers at Iowa City, by the direction of the secretary of state, and by him circulated in the several counties, still it was not published in the manner required by the constitution, and was not in force at the time of the April election; and, consequently, Calkins and the other officers elected at that time had no right to hold their offices. The same questions were involved in this case as in the superintendent's, but Harlan succeeded in delaying the trial of his case until after the meeting of the legislature.

There were nearly fifty thousand acres of land selected under the provisions of this law, and the first payment of ten per cent made; but the United States land officers refused to recognize the acts of the state officers as being valid, and a great portion of the lands so selected were entered at the land offices, and the claimants were deprived of their homes, and not until after much delay did they get back their money.

About the time this question was settled, there was a large quantity of land warrants issued to Mexican soldiers, which were in market at low prices, and on long credit. This was a new and easy method for settlers to secure their homes; so that, before the provisions of this law could be

carried into effect, the inducement at first held out to settlers to avail themselves of the benefits of this act had ceased, and but very few felt disposed to select land under its provisions; and the result was that this method of selecting the five hundred thousand acres of land was abandoned, although it was very probable that, had the law gone into effect at the time it was the intention to have it, in less than one year the whole quantity of land would have been selected, and there would have been at once created a large school fund for educational purposes.

During this session of the legislature acts were passed defining the boundaries of Ringgold, Taylor, Fremont, Marion, Clayton, Fayette, Allamakee, and Winneshiek counties, and organizing Dallas county; and also an act providing that all that tract of country, on the Missouri river, purchased from the Pottawattamie Indians, might be temporarily organized into a county, to be called Pottawattamie, whenever, in the opinion of the judge of the fourth judicial district, the public good should require it. This strip of country was attached to the organized counties east of the various portions of it for political and judicial purposes, and there was no attempt made to organize any new county, except Dallas, this year.

The legislature having adjourned without electing United States senators and supreme judges, the state was without representation in the senate. The old territorial judges resigned, and it became the duty of the governor to appoint others to fill their places, who were entitled to hold their offices until the adjournment of the next legislature, if others were not elected previous to that time. Joseph Williams, associate justice under the territorial government, was appointed chief justice; and George Green, of Dubuque county, and John F. Kinney, of Lee county, associate justices. The legislature at first divided the state into four judicial districts: The counties of Lee, Des Moines, Washington, Louisa, and Henry composed the first district; the counties of Muscatine, Scott, Cedar, Clinton, Jackson,

Jones, Dubuque, Delaware, and Clayton, and the country north and west of Delaware and Clayton were attached to these counties, and composed the second district; the counties of Van Buren, Jefferson, Davis, Wapello, Keokuk, Mahaska, Marion, Monroe, and Appanoose, and the territory west of these counties, composed the third district; and the counties of Johnson, Linn, Benton, Iowa, Poweshiek, Jasper, Polk, Dallas, Tama, Marshall, Story, and Boone, and the territory west of these counties, composed the fourth district. At the April election, George W. Williams (now the attorney general) was elected judge of the first district; James Grant of the second; Cyrus Onley of the third; and James P. Carlton of the fourth.

On the 22d of February, 1847, there was an act passed making provisions for the location of the permanent seat of government for the state; and John Brown, of Lee county, Joseph D. Hoag, of Henry county, and John Taylor, of Jones county, were appointed commissioners. The law appointing commissioners provided that they should meet on or before the first day of the next May, and should proceed to examine the state, or so much of it as they might think expedient, for the purpose of determining upon a judicious site for the permanent seat of government of the state. The commissioners, when they had located the site of the new seat of government, were to lay off a portion of the lands so selected, not exceeding one section, into lots, and, when laid off, they were authorized to make a sale of lots, not exceeding two lots in any one block for the first two years after the town should be laid out. Under the provisions of this law, the commissioners, after traveling over a great portion of the state, selected, as a site for the new seat of government, sections four, five, eight, and nine, and the west half of sections three and ten, in township seventy-eight, north, in range twenty west of the fifth principal meridian, and called it Monroe City. The commissioners then proceeded to lay off a portion of it into lots, and on the 8th of October of that year they had a sale, and

sold, to different individuals, between three and four hundred lots, the proceeds amounting to $6,189.72, one-fourth of which was paid at the time of purchase, and the balance was to be paid in two, four, and six years. The money realized by the commissioners was not enough to pay the expenses of selecting the site, and laying it off into lots, as most of them were sold at very low prices — some selling as low as one dollar. The commissioners, though they received, from the proceeds, but a small compensation for their services, supposed they had amply remunerated themselves by securing large interests in and about the proposed capital town. Monroe City, for a while, attracted considerable attention, and there were great efforts made to secure property in that section of the state, speculators anticipating that fortunes would be made in the future by the increase of the value of real estate. But these anticipated fortunes soon vanished, for at the next election the changing of the seat of government became a political question, and a majority of the new members of the legislature were opposed to the contemplated change, and the act was repealed. Monroe City was vacated, and an appropriation was made, and the treasurer was directed to refund the money to all who had purchased lots, except the commissioners themselves. Hoag had become a large purchaser of lots, and by the vacation of the town he was left with but a very small compensation for his labors, and his petition for relief was before the legislature for several years before he was remunerated for his services in locating and laying out Monroe City.

The doubt concerning the right of the officers elected at the April election of 1847 to discharge the duties of their offices, had, in a great measure, rendered ineffectual the school law, and there seemed to be some occasion for a special session of the legislature. At the August election Josiah Kent, a man who had pledged himself to act with the democrats, had been elected, in Lee county, to fill the vacancy occasioned by the death of Conlee; and Clifton

had given such assurances that it was believed by some of the leaders among the democrats that he would act with them, should there be a called session of the legislature. With Clifton's vote, it was known that there could be elected United States senators and supreme judges by the democrats; so that to the office-seekers there were strong inducements for a called session. Some of the leaders of the party brought their influence to bear on the governor, and he was induced to issue his proclamation convening the legislature in extra session, on the first Monday of January, 1848.

At the opening of this session, there came up some interesting questions in both branches of the legislature. In the senate, on the third day of the session, Springer, a whig, representing Louisa and Washington counties, offered the following preamble and resolution: —

"WHEREAS, It is reported that the seat of the former member (James Davis) of the senate from the counties of Wapello and Monroe has, since the adjournment of the general assembly, in February last, become vacant by resignation of that gentleman, and his removal from his district; therefore,

"*Resolved*, That a committee of three members be appointed, with power to send for persons and papers, to investigate the facts of the case, and report to the senate at an early day."

This resolution was adopted, and Springer, P. B. Bradley, and Thomas H. Benton (the latter two being democrats), were appointed a committee to carry out the object of the resolution.

Similar resolutions were offered in relation to Thomas Baker, of Polk county, and John M. Whitaker, of Van Buren county, only the charges were that they had accepted "lucrative positions;" and committees were appointed to make the necessary investigations.

The committee on Davis's case reported that they found that he "had removed from his district, and settled in the

town of Keokuk; that he had been appointed United States deputy surveyor, by the surveyor general of the United States, for the states of Iowa and Wisconsin, in which capacity he would receive some six or seven hundred dollars for his services;" that he had written out his resignation, and handed it to P. B. Bradley, who lived at the place where the governor resided, with instructions to give it to the governor when he should advise him so to do; that Bradley, not having been advised by Davis to deliver the letter to the governor, had not done so, but still retained it in his possession. The majority of the committee thought these facts did not deprive Davis of his right to hold his seat in the senate, and recommended the passing of a resolution that Davis was constitutionally and legally entitled to hold his seat in that body; but Springer dissented from the opinion of the majority, and made a minority report. In his report, Springer referred to those parts of the constitution which said that "no person shall be a member of the house of representatives who shall not have attained the age of twenty-one years, be a free white male citizen of the United States, and been an inhabitant of the state or territory one year next preceding his election, and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent." "Senators shall be chosen for the term of four years, at the same time and place as representatives; they shall be twenty-five years of age, and posses the qualifications of representatives as to residence and citizenship." Springer contended that Davis, having moved out of his district, and having accepted the position of deputy surveyor, and discharged the duties of the same, were both causes for vacating his seat; and he also claimed that the letter of resignation, written out and put in the hands of Bradley, was a resignation; and he recommended the adopting of a resolution declaring the seat of Davis vacant.

The resolution of the majority of the committee was adopted by a strict party vote of eleven to seven (Davis not

voting)—all the democrats voting in favor of the resolution, and the whigs against it.

In the case of Baker, the committee found that at the previous August election, after he had served one session in the legislature, he had been elected to the office of prosecuting attorney for Polk county, and continued to hold that office. On this report Baker was declared by the senate to be entitled to hold his seat by the same vote as was given in Davis's case.

In the case of Whitaker, the committee found that he had only been appointed as an agent to select the lands given to the state for the endowment of the university, and that it was not such an office as was contemplated in the constitution, and did not make him incompetent to hold his seat. This report was also concurred in by the senate. These decisions seem to have been more the result of party considerations than any construction put upon the constitution.

While these contests were going on in the senate, there was a case of a similar character in the house. John N. Kinsman, a democrat, who had been elected to represent the district composed of Marion, Polk, Dallas, and Jasper counties, and had served at the previous session of the legislature, again appeared, and took his seat; but objections were raised to his holding it, and a committee was appointed to investigate the matter, but final action was delayed from time to time, so that his case was not reported upon by the committee until near the close of the session. It appeared that Kinsman had moved out of the district he represented, and had been living for some months in Mahaska county; which facts the committee reported to the house, without making any recommendation. J. C. Hall, who stood high in the legal profession, appeared before the house as Kinsman's attorney, and advocated his right to hold his seat in an able argument. But this did not avail Kinsman anything. There was a resolution offered declaring his seat vacant, which was adopted by a vote of twenty to eighteen

(Kinsman not voting), being a strict party vote — all the whigs voting for the resolution, and the democrats against it; and so Kinsman's seat was declared vacant, which gave the whigs (counting Clifton) two majority in the house.

This case, like those in the senate, seemed to have been decided upon party feelings, without any reference to the letter of the constitution. Against this decision the democrats drew up and signed a lengthy protest, which they had placed upon the journals. In this protest they claimed that the action of the whigs in declaring Kinsman's seat vacant was tyrannical, and without precedent, and set out at length the rersons why they came to this conclusion.

The democrats, after the election of Kent in the place of Conlee, had a clear majority in the legislature on joint ballot, on which they could rely, and the convening of the legislature brought nearly all the leading politicians to the capital, either as candidates or to electioneer for some special friend. The democrats held a secret caucus, and nominated their candidates for senators (A. C. Dodge and Thomas W. Wilson) and judges, but kept their nonimations a profound secret, and it was not known who the nominees were as long as there was a prospect of having an election. The senate passed a resolution to go into joint convention soon after the legislature assembled; but in the house those who had counted on Clifton acting with the democrats were disappointed, for on all political questions he voted with the whigs, which gave the latter party a majority of one. There were repeated moves made in the house, on the part of the democrats, to go into joint convention, but every attempt failed, the vote generally standing nineteen to twenty.

The principal reasons assigned by the governor for convening the legislature, were to remedy the defects in the school law occasioned by the law not taking effect at the time it was designed to have it; but the legislature passed no law which materially effected the school interest, or made the condition of things much, if any, better than they

would have been had there been no session. The whigs introduced a bill to legalize the acts of Harlan, and authorizing him to hold the office for three years, the time for which he was supposed to have been elected; but the democrats opposed the bill, and it was defeated.

The real cause for convening the legislature appears to have been the election of United States senators and supreme judges, but the whigs, with the vote of Clifton, prevented a joint convention, and these offices were not filled.

There was an act passed at this session providing for a revision of the laws of the state; and Charles Mason, of Des Moines county, William G. Woodward, of Muscatine county, and Stephen Hempstead, of Dubuque county, were appointed commissioners to revise and prepare a code of laws.

During this winter, the propriety of taking some measures for the constructing of railroads in the state was agitated in the northern part of the state, and interest enough taken to have a convention called, which was held at Iowa City, and was very fully attended. At this convention the projects were conceived of building two roads — one from Davenport, *via* Iowa City, to Des Moines, and thence to some point on the Missouri river near Council Bluffs, and another, running north and south, from Dubuque, *via* Iowa City, to Keokuk. To aid in these enterprises, it was determined to ask aid of the general government, and the legislature was requested to memorialize congress for a grant of the public lands. The legislature passed memorials, asking congress for a grant of lands, consisting of every alternate section for a distance of five miles on each side of the proposed roads. Those who moved in this matter first were actuated more by the hopes of making some political capital out of it than by any idea that it would ever amount to anything real; but the labors of this convention attracted considerable attention, and the public mind soon began to regard the proposed projects as practical undertakings, and

the future proved that this convention was not without beneficial results.

The supreme court having decided that the school officers elected at the April election had no authority to discharge the various trusts for which they were elected, and no law authorizing them to discharge the duties of their several offices having been passed at the called session, it became necessary to have another election for superintendent, and for other officers. Harlan was again the whig candidate, while the democrats selected Thomas H. Benton for the position. Benton had been a member of the senate for the past two sessions, and in the deliberations of that body had proved himself to be an able debater, was quite popular throughout the state, and was thought to be a match for Harlan in a political canvass. They commenced the canvass soon after the adjournment of the legislature, and traveled together all over the state. The contest was so close that it was doubtful for a long time which was elected, but, upon officially counting the vote, it was found that Benton had a majority of seventeen.

The whigs made a great clamor about the election, claiming that it was not fair, and that Harlan had been cheated out of the office; but Harlan never undertook to contest the election, and Benton qualified, and proceeded to the discharge of his official duties. It was considered by many that Harlan had not been fairly dealt with by the democrats in being turned out of his office, and it created a sympathy in his favor, and made him the prominent man of the state in the whig party; while, on the other hand, Cutler, who brought to public attention the defect which prevented Harlan from holding the office for the full term of three years, though encouraged and sustained in his acts by many of the democratic political leaders, was condemned by the masses, and was never afterwards elected to any station of trust by the people.

After the adjournment of the legislature, the commissions of the supreme judges expired, and it became the

duty of the governor to make other appointments. Kinney and Green were re-appointed associate judges, but S. Clinton Hastings, of Muscatine, received the appointment of chief justice, in the place of Williams. Hastings was a shrewd politician, and not very scrupulous as to the manner in which he carried his points, if he could only succeed, and in getting this appointment over the former chief justice, he resorted to strategy. A short time before the appointments were to be made, he caused it to be represented to the governor that Williams had had an offer to engage in other business, at a much better compensation than he would receive by being on the bench, and that he did not desire the appointment. The governor, believing this, gave the appointment to Hastings, and left the old chief justice a private citizen, much to the chagrin of himself and friends.

INCIDENTS CONNECTED WITH THE EARLY SETTLEMENT OF MARION COUNTY.

BY WM. M. DONNEL.

DURING the early settlement of the county, some portions of it were infested with thieves. Being sparsely settled, with no railroads or telegraph lines, excellent opportunities were afforded for the escape and secretion of persons with stolen property. Horse stealing was extensively carried on by an organized band, who extended their route from Independence, Missouri, north-east, by way of Red Rock (Marion county) and Fairfield, up the Mississippi river, terminating at Prairie du Chien. Sometimes these marauders would bring negroes with them from Missouri, for the purpose of returning them and obtaining the rewards offered for the capture of run-away slaves. They also extended their business to the robbing of stores and

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