

## ROBERT LUCAS, THE FIRST GOVERNOR OF IOWA.

(Continued from page 50.)

Under an act of congress "to divide the territory of Wisconsin and to establish the territorial government of Iowa," approved June 12, 1838, the subject of our sketch was appointed by President Van Buren, governor of the territory of Iowa, a position which carried with it, *ex officio*, the duties and responsibilities, in addition to those of executive, of superintendent of Indian affairs. His commission, transmitted to him by John Forsyth, then secretary of state of the United States, bore date the 7th of July, 1838, and reached him at his residence at Piketon, Pike county, Ohio, ten days afterwards.

His appointment was effected through the instrumentality of Thomas L. Hamer, of Brown county, Ohio, afterwards a distinguished field and general officer in the Mexican war, but then a member of congress from Ohio, and to whom President Grant was indebted for his cadetship at West Point—an appointment which, however, had been first offered to Gov. Lucas's son, Edward W. Lucas, but declined.\*

It was a rule with Gov. Lucas to answer all business letters immediately on their reception; and, accordingly, we find him in this case, writing his letter of acceptance the same day his commission was received, saying he would start in a few days for the new territory, and assuring the secretary that every exertion would be made by him "to discharge the duties of the appointment in accordance with the wishes of the administration of the general government, and to the satisfaction of the American people."

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\*Ed. Lucas, in the course of events, lived to render Grant gallant assistance at Pittsburg Landing, as Lieutenant Colonel of the 14th Iowa volunteers, which was captured with all its officers present at Shiloh. After the war, Col. Lucas drew from the political wheel of fortune which President Johnson turned, a postmaster's commission at Iowa City, but was jostled out of it, through the inexorable requirements of party policy in 1869, by the distinguished soldier and statesman who had succeeded him in the nomination to West Point, and who had acknowledged his prowess at Shiloh.

A journey from the interior of Ohio to the banks of the upper Mississippi was then a matter of weeks, and not of hours, as now. So that, although Gov. Lucas set out from his home on the 25th of July, delaying on his route only a few days at Cincinnati, to make arrangements for the selection of the books for a territorial library, for which congress had appropriated five thousand dollars, it was not till nearly the middle of August that he reached Burlington (then the temporary seat of the territorial government), whose citizens received him with the honor of a public dinner.

His family remained at their home in Ohio, and did not all join him in Iowa for more than a year after his appointment, but he was accompanied from Cincinnati to Burlington by Jesse Williams, as clerk in the Indian department, and by Theodore S. Parvin, as his private secretary. Williams, who now lives in Sioux City, subsequently became the secretary of the territory; and Parvin, now a professor in the State University of Iowa, but then a youth fresh from college (whom the governor took a fancy to at first sight at a social gathering of a mutual friend in Cincinnati, while Lucas was on his way hither), after serving about a year as secretary, received the appointment of district attorney for the central district, when the territory was divided into three judicial districts.

William B. Conway, of Pittsburgh, Pennsylvania, who had been appointed secretary of the territory some little time before Lucas was commissioned governor, had reached Iowa about a month in advance of the latter, and had hastily and officiously assumed the functions of executive, and on Lucas's arrival, he found him with the anxious air of an expiring man with a whole will to write, but only time for a codicil, busy issuing proclamations, and making appointments as acting governor. It is difficult, especially for weak and vain men, when once usurped, to lay down the scepter of power, and it is not, therefore, strange, that Mr. Conway, on the arrival of the governor, subsided only with a struggle from the coveted office of governor, to the less attractive and imposing one of secretary; nor is it to be wondered at that he frequently after-

wards displayed, by indifference and inattention to his duties as secretary, his dissatisfaction with his official position, and by plotting and intriguing with members of the first legislature, betrayed his designs and hopes of eventually supplanting the executive.

Gov. Lucas's first official act, as executive of Iowa, was to issue a proclamation, dated August 13, 1838, dividing the territory into eight representative districts, apportioning the members of the council and house of representatives among the nineteen counties then composing the territory, and appointing the second Monday in September ensuing, for the election of members of the legislative assembly and a delegate to Congress.

At the first meeting of the legislative assembly, which took place by appointment of the governor on the first Monday of November, 1838, an "iron-clad oath" was administered to the members by the governor in person, to the following effect:—

"You, and each of you, do solemnly swear upon the holy evangelists of Almighty God, the Searcher of hearts, that you will support the constitution of the United States, the act of congress to divide the territory of Wisconsin and to establish the territorial government of Iowa, and that you will faithfully, impartially, and to the best of your judgment and ability, discharge the duties of a member of the council (or house of representatives), so help you God."

To those who were conscientiously prevented from swearing on the Bible, but affirmed with uplifted hand, the last part of the adjuration was changed to the words, "as you shall answer to God in the great day."

His first message to the legislative assembly, after its organization, was dated November 12, 1838. As it was to suggest a complete code of laws for the government of a new commonwealth, it necessarily embraced a multiplicity of subjects. By the act of Congress erecting the territory of Iowa, it was provided that, until the legislature of Iowa should enact others, the laws of Wisconsin (which were themselves blended with those of Michigan, on account of the former territorial

connection of these two communities) should, except when incompatible with the act of congress dividing the two territories, be in force in Iowa,—a necessary provision for the time being, but a source, nevertheless, while it lasted, of constant confusion and doubt. Gov. Lucas, therefore, recommended the adoption of a system of laws, to take the place of those of Wisconsin, which would be adapted to the wants of Iowa, and suggested the appointment of a committee of three persons of legal ability and experience, to digest, during the recess of the legislature, a system of laws for consideration and adoption at the next session, advising, at the same time, the exclusion from them of all technical fictions. In this connection the governor took occasion to express his disapprobation of laws then in force in some of the states, providing for imprisonment for debt, and his approval of the death penalty for murder, only because the condition of the territory, without secure prisons for the safe keeping of dangerous offenders, made it necessary. He advised the discontinuance of public executions, and the infliction of the extreme penalty in the presence only of the sheriff and a suitable number of witnesses. The recent violent death of a member-elect of the house of representatives in a street quarrel, was employed as an occasion for protesting against the pernicious practice of carrying concealed weapons, which he very much deprecated.

There was one commendable project the governor had very much at heart, and which he never got tired urging strenuously upon the legislature—the organization, upon a broad basis, of a liberal system of common schools, and two vices, which with fervor he recommended the legislature to eradicate—gambling and intemperance, which he considered the fountains of all crimes. The organization of the militia was also one of his pet measures, which he lost no opportunity of pressing upon the attention of the law-makers, and with good reason; for the immediate neighbors of the pioneers to the north and west were the red-hued denizens of the pineries and prairies, experts with the scalping-knife and bow, who shook hands with the “whites” over their annuities at the agency

once a year, and the remainder of the time shook tomahawks at the "pale-faces."

There was a broad difference between the views of a majority of this legislative assembly and the governor, on many points of authority, as well as on questions of public policy and expediency. The governor, exercising his undoubted right, had interposed his veto to a number of acts passed by the legislative assembly, from which they were unable to take refuge in a two-thirds vote, as the organic act plainly set forth that no act of the legislature should have the force of law till approved by the governor. Secretary<sup>V</sup>Conway was evidently greatly instrumental in fomenting the discord between the governor and legislature, which ultimately culminated in a petition, signed by a large number of both houses of the legislature, to the president, praying the removal of Governor Lucas from the executive chair.

This memorial, which was dated the 12th of January, 1839, and signed by eight of the members of the council, and by seven members of the house of representatives, alleged that under Gov. Lucas's administration, any measure called for by the people met with an executive veto unless it agreed with his whims of the moment, and that he exercised his veto in all cases without regard to judgment or propriety, and without respect to the feelings or rights of the legislature; that few members of either house called on him, and that those who did were liable to be treated with silent contempt; that he had refused to inform the house whether he had approved the laws they had passed; that to some of the laws he had given only a qualified approval, and the fate of others remained unknown, and that, finally, an act conferring the privilege of banking on certain parties, distasteful to all, though supported by some of the democrats, "to try the democracy of the governor," was not only approved by him, but his action thereon "foreknown and pledged."

In addition to this, a memorial for the governor's removal was passed by both houses, signed in due form by their presiding officers, and transmitted to the president. It was written

in a grandiloquent style, as if the signers, instead of intriguing against a faithful public servant, were arraiguing a second George the Third before the withering judgment of mankind, and thereby incurring for themselves liability to the halters and prisons of tyrants, instead of taking their chances for the succession.

These pretended martyrs averred that he had "refused to place his signature to laws the most salutary and essential to the public good, without even deigning to make known his objections thereto," and had "withheld others of equal importance without giving them to understand what, or whether, any executive action was taken in regard to them, and that, too, with a view to subject their action to his will;" that he had declared himself paramount to the people's representatives, by officially declaring that, independent of him, they had no power; that he had usurped the judicial authority by dictating in notes to his approval of many laws, the construction which should be given them; that he had declined, in a coarse and uncourteous manner, to inform them what laws had received his sanction; that he had refused to consider recommendations of applicants for office from members from the district or county in which the applicants resided, and indirectly had declared his intention not to regard such recommendations; that he had, on various occasions, anticipated the action of the executive department in regard to public measures before they were officially before him, in a manner indicative of a design to make the legislative assembly subservient to his will; that while officiously scrupulous in relation to disbursements of money for the expenses of the legislative assembly, he had sent his own bills to the secretary for payment without authority of law; that he had declared his determination to veto all bills for which he would not vote as a member of the assembly; that he had appointed persons to office who had neither domicile nor interest in Iowa, some of whom were his relatives; and that he had manifested a want of ability to govern in peace or command in war, which was to them alarming, and that he was, in the language of the Declaration of Independence, "unfit to be the ruler of a free people."

These complaints to the president were ably met by a "protest," signed by John Frierson, James Brierly, Samuel Parker, George H. Beeler, G. S. Bailey, William Patterson, William G. Coop, and Calvin J. Price, members of the house of representatives, who gave the following reasons for dissenting from the action of the majority, which form an ample refutation of the charges of the conspirators:

"1st. Because we believe the object intended to be effected by the memorial, as also the sentiments therein contained, to be contrary to the wishes and opinions of our immediate constituents at least, if not also contrary to the wishes and opinions of a very large majority of the people of this territory.

"2d. Because the memorial was not presented to this house for consideration until near the close of the session, when the rules were suspended, and it was rushed through without affording time for a proper consideration of its contents.

"3d. Because, in reviewing the official acts of the governor of this territory, candor compels us to acknowledge that, while we see but little to censure, there is much to commend, so far, at least, as his acts have been connected with the proceedings of this branch of the legislative assembly.

"4th. While all admit his honesty and purity of purpose — while none but bitter political opponents pretend to doubt his patriotism — we, at least, all confess, and desire to bear witness, that we do not see in a single one of his official acts the slightest departure from any one of the provisions of the organic law, nor the least violation of any of the constitutional provisions of the general government. And we believe, further, not only that he has, in his official actions, been governed by a sincere wish to promote the best and most permanent interests of this territory, local and general, but also that his acts generally will tend unerringly to that desired consummation."

The protest then went on to analyze, in the order they were made, the charges brought against the governor.

To the first charge, that the governor had refused to attach his name to legislative acts essential to the public good, the

protesters asserted that they knew of none such, and that they did not believe that he had refused to sanction any law which did not, in some of its provisions, contravene the laws of congress, the ordinance of 1787, or the Constitution of the United States. To the allegation that he had declared the legislative assembly to be without power independent of the governor, they simply called attention to the fact that the act of congress organizing the territory *said the same thing*. They admitted the truth of the charge of his refusing to inform the legislative assembly what bills he had signed, but showed that they had been properly and promptly deposited with the secretary of the territory, whose duty it was to have transmitted them to the legislature, and met that of his pocketing bills, with the statement of his undeniable practice of placing all bills when signed by him in the hands of the secretary. As to his refusing to appoint applicants for office on the recommendation of the members from the district where the candidates resided, they proved that the members themselves were to blame in this regard, in not agreeing among themselves in their recommendations,—members from the same district frequently recommending different parties for the same place. To the count that the governor had refused to place himself on speaking terms with members of the legislature, they replied that this arose from preoccupation on the part of the governor, and that his most intimate friends would sometimes present themselves at his office when it was thronged with business visitors, without receiving so much as a nod from the executive. The accusation of his threatening to veto bills, they characterized as one based on street rumor, unsubstantial, if true, for a foundation for impeachment. To the imputation that he had objected to the payment of the legislative expenses, while drawing money for himself without authority of law, which was predicated on a letter to the legislature from Secretary Conway (embracing communications concerning the disbursements of the territory between himself and the governor), they answered by exhibiting that Conway had suppressed part of the correspondence between himself and the



governor, and cited the fact that a resolution calling for the concealed letters was laid on the table by the majority, and that, had the full correspondence been laid before the legislature, it would have demonstrated that he had not sought the payment of his private bills, but remuneration for public property which he had paid for out of his private funds. To the charge of his nepotism, and appointing non-residents of the territory to office, they opposed a flat denial. To the accusation that he had manifested such a want of ability to govern in peace and command in war as to fill the memorialists with dread and alarm, the protesters said, sarcastically, they did not think the governor should be held responsible for the alarm of those who were easily frightened, but would oppose the governor's whole life, together with his service, both in peace and war, against this preposterous charge. They further showed that the pretence that he had usurped the judicial authority, was really based on an honest effort of the governor at compromise with the legislature, by the appendage of notes explanatory of his opinions on the measures to which he gave the sanction of his approval, when they were not so entirely objectionable as to demand his veto, yet, nevertheless, subject to exception, and that it was an executive prerogative, for which there was abundant precedent in the usage of the governors of many of the states, though carrying no actual legality with it. One of the concluding paragraphs of the protest to the memorial containing this remarkable catalogue of charges, is in these commendatory words:—

“Believing that, as executive, Gov. Lucas is acceptable to the large majority of the people of this territory, and believing him to be an honest and pure man, and in all respects perfectly well qualified for the high station he now holds, we desire his continuance in office.”

These proceedings seem to have been founded, in a great degree, on the communication, referred to above, from Secretary Conway to the legislature. A clause in the act of congress organizing the territory of Iowa, provided that the legislative power of the territory should “be vested in the governor and

legislative assembly." The legislature contended that this provision did not extend to the organization of either house; that the right to elect the usual clerks, door-keepers, messengers, &c., was a right inherent in either body, and that the election of such did not require the executive sanction to make it regular, any more than would the adoption of rules or the decision of questions of order, and on this proceeded to elect sergeants-at-arms and other like officers, without the previous passage of an act defining the number, fixing the names, and determining the compensation of these officers, as the governor considered was necessary. A joint resolution was passed by the legislature on the 5th of December, 1838, specifying the per diem which the chief clerk and the officers of each house should receive, and directing the secretary of the territory to pay the same. The secretary, knowing he would be held to a strict accountability by the secretary of the treasury for all disbursements, and wishing to fortify himself with all the authority possible in so doubtful a case, or, in default of this, to widen the breach between the executive and the legislature as much as possible, wrote an official letter dated the 6th of December, 1838, asking the opinion of the governor on the subject. Gov. Lucas, promptly, on the same day responded, as above indicated, giving it as his opinion that the secretary was unauthorized, and would be liable for any money he might pay on a mere joint resolution of the legislature, without the executive approval.

This letter of the governor, with a long legal opinion from his own "department" (as he styled the secretary's office), at the conclusion of which he announced his intention to pay as directed by the legislature, without executive sanction, was transmitted by the secretary to the legislature, and served afterwards as the basis of select committees, majority and minority reports, harangues, speeches and declamations, and all the forms of frothy effervescence to which our law-making bodies, from the first legislature to the thirteenth general assembly of Iowa, in their exalted dignity, have been subject to, and was used, finally, as one of the chief excuses, on

the part of the malcontents, for petitioning the president to remove the governor.

As for the memorial, we have no data on which to make a historical statement as to its reception in the executive office of the White House by the "Little Magician," otherwise known as the "Fox of Kinderhook," but may suppose that he winked and leered to himself at the verdant simplicity of his trans-Mississippi petitioners. We have authority, however, for saying that he directed his secretary of state, the Hon. John Forsyth, to inclose it to Gov. Lucas, and request an explanation, which the governor made with candor and manliness, and transmitted to the president, together with the protest we have already quoted from, and a petition from the people of the territory asking his retention in the office he then held, all of which, undoubtedly, proved satisfactory to the authorities at Washington, for Gov. Lucas continued to discharge the functions of executive of Iowa till after a change of administration in the general government took place, in 1841.

The perplexities and difficulties that Gov. Lucas encountered from the outset in the administration of his office, would have unnerved and overwhelmed a man not gifted by nature with iron resolution and sturdy independence. Unpleasant relations with his secretary, and bitter controversies with the legislature, were not the only thorns in his official path.

The spirit of slavery, grown more arrogant from the generous concessions made to it by the terms of the compromise of 1820, and thirsting, like the alcoholic appetite, for more material with which to consume itself, discovered a maternal longing for part of the southern confines of Iowa. On the 18th of June, 1838, congress had passed "An Act to authorize the president of the United States to cause the southern boundary line of the territory of Iowa to be ascertained, and marked." Under the provisions of this law, A. M. Lee had been appointed boundary commissioner, on the part of the United States, and Gov. Lucas had appointed Dr. James Davis, on the part of Iowa, but the state of Missouri, first through her executive, and then through her legislature, declined to

be represented on the commission, as congress had invited her; but pending the survey, under an act of her legislature passed in 1837, attempted to exercise jurisdiction north of what was known as Sullivan's, or the Indian boundary line (surveyed and marked in 1816, by Col. John C. Sullivan, by direction of the United States surveyor general, William Rector, and which had, till then, been recognized by all as the dividing line between Missouri and Iowa), by collecting taxes in Van Buren county, Iowa, through the sheriff of Clark county, Missouri.\*

The acuteness of Gov. Lucas's mind, and the clearness of his judgment were well shown in this controversy. He promptly called the attention of the secretary of state to the subject, and approached Gov. Boggs, of Missouri, with conciliatory words, desiring to adjourn the question to congress for their settlement. But the statesmen in the interest of slavery, being impatient and short-sighted then, as we have seen them since, and Missouri menacing the peace of the territory with an armed force, Gov. Lucas firmly planted himself on the impregnable position, that the difference was not one between Missouri and Iowa, as the former would have it, and as even the Iowa legislature was willing to accept it, but between Missouri and the United States; and that he, as the agent and representative of the general government, must hold possession, at all hazards and at any cost, of the territory of Iowa, as committed to his care, in all its integrity and completeness, and see that the people therein, citizens of the United States, were protected in their rights, and the laws of the territory, under those of congress, faithfully executed. To this end, he, without hesitation, called out the militia of the territory to act as a *posse comitatus* to aid the civil authorities in the enforcement of order and the laws.

An "Act to organize, discipline, and govern, the militia" having been passed by the legislature, in accordance with the

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\*For a detailed and interesting account of this controversy, the reader is referred to the Annals of Iowa, October, 1866, page 743, and January, 1867, page 786,—*The Southern Boundary of Iowa*, by Charles Negus.

governor's recommendation, it was approved on January 4, 1839. This law divided the militia into three divisions, with a major general at the head of each. Jesse B. Brown, of Lee, Jonathan E. Fletcher, of Muscatine, and Warner Lewis, of Dubuque counties, were appointed by the governor major generals respectively of the first, second, and third, divisions.\* Each division was composed of two brigades, and each brigade of four regiments, with the customary officers. They were, however, destitute of arms, except such rifles and shot guns as were the private property of individuals. Gov. Lucas had asked the Hon. J. R. Poinsett, then secretary of war, to provide books of military instruction for the officers, and to deposit arms and munitions of war at some depot within reach, for the rank and file, in case of Indian troubles, for the red tape of that day forbade the distribution of arms to the militia until they were enumerated and returned to Washington, which the Iowa militia had not yet been. Secretary Poinsett had promised to accede to the governor's request, and fifty copies of "Cooper's Tactics" were eventually furnished for the military education of the officers, and Fort Armstrong, on Rock Island, being the most accessible to the territory of the military posts in the vicinity, was designated as a depot for military supplies. But at the breaking out of the troubles with Missouri, the books had not yet reached Iowa, nor the arms Rock Island.

By the 29th of July, 1839, matters had come to such a pass as to call for a proclamation from the governor, warning those who infringed upon the laws of the United States, of the penalties to be incurred, and citing peace officers of Iowa to their duties and privileges if overborne by force, but charging all that to the civil authorities (which he maintained to be all-sufficient for the eventual settlement of all internal misunderstandings, whether between individuals or communities), they must look for a solution of the difficulty.

Soon after this, the newspapers gave publicity to a proclama-

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\*The Hon. Charles V. Mason was first offered the appointment of major general of the first division, but declined it.

tion from the governor of Missouri, dated the 23d of August, 1839, ostensibly a reply to that of Lucas, but evidently intended to inflame and mislead the public mind, in reference to the question at issue.

This called forth, as a rejoinder, another proclamation on the subject from Gov. Lucas, which was dated the 25th of September, 1839, in which he showed that it was Missouri, and not Iowa, that endeavored to enlarge her boundaries at the expense of a sister commonwealth, by proving that Iowa was exercising jurisdiction only to the line that had, from the organization of the state of Missouri till then, been acknowledged by that state as her northern boundary line, and which had been regarded by sundry acts of congress and Indian treaties as such, and to which line the territory of Wisconsin, previous to her division, and subsequently the territory of Iowa, under the authority of the United States, exercised unquestioned jurisdiction. He recited the passage by congress of an act authorizing the president to have the boundary between Missouri and Iowa definitely determined; that Missouri had declined to avail herself of her privilege to be represented in the commission appointed for this purpose; and that the result of that survey then awaited the action of congress, with which Iowa would be entirely satisfied; but affirmed that until that decision should be made by congress, the territory of Iowa, acting under the authority of the United States, would acknowledge no other boundary line than the one to which the jurisdiction of the United States, through their territorial officers, had ever been exercised from the time the country west of the Mississippi river and north of the state of Missouri, was, by an act of congress, attached to the territory of Michigan for judicial purposes. He contended that Missouri never set up any claim to territory north of "Sullivan's line" till 1837, and never attempted jurisdiction in the disputed tract till Sheriff Henry<sup>V</sup> Heffleman, of Clark county, Missouri, attempted to collect taxes in Van Buren county, Iowa, under an assessment required by an act of the Missouri legislature, passed the 16th of February, 1839. "The line that has uni-

versally been known as Sullivan's, or the Indian boundary line," said the governor of Iowa, firmly, "and which has been recognized by all the authorities as above cited, is the line to which the territory of Iowa, acting under the authority of the United States, has heretofore exercised uninterrupted jurisdiction, and it is the line to which he intends to exercise jurisdiction, until congress declares some other line to be the boundary of the territory."

In this proclamation he called the attention of the district attorney and the marshal of the United States to the subject, as the ministerial officers of the laws of the United States within the territory, and directed them to arrest and bring to trial all offenders under the federal laws, and also directed the district prosecutor of the first judicial district, and the sheriff of Van Buren county, as the proper ministerial officers of the territory, to arrest all offenders under the territorial laws, authorizing them, at the same time, in case the civil authorities were insufficient, to call to their assistance a sufficient number of the militia as a *posse commitatus*.

Finally, he exhorted the citizens at the scene of conflict to be calm and discreet, reminding them that they occupied the exalted station of free and independent citizens of the United States, and that the civil authority, to which they must look in the first instance, was abundantly able to protect them, but at the same time assuring them that should the president authorize him to repel force by force, in the event of an invading force entering the territory, as threatened by the governor of Missouri, it would be promptly done, regardless of the boasted prowess and superior numbers of the Missouri militia.

(To be continued.)

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