

IOWA'S FIRST LAWGIVER.

Eugene F. Ware, of Topeka, Kansas, sends *The Burlington Hawk-Eye* some interesting facts concerning the early history of Iowa which are printed below. In a letter to the editor Mr. Ware says that having been directed by the governor of Kansas to assist the attorney general in the United States supreme court in the suit of Kansas against Colorado for the diversion of the water from the Arkansas river, which flows from Colorado into Kansas, it became necessary to dig down into the early laws of Kansas, and as it belonged to the Louisiana purchase, he found many interesting facts. Those of particular interest to the people of this State he has used in preparing the article which follows. Mr. Ware was formerly with *The Burlington Hawk-Eye*, and since removing to Topeka has gained much note as a lawyer, writer and poet. In the latter capacity he is best known as "Ironquill." Mr. Ware writes to *The Hawk-Eye* as follows:

TOPEKA, KANSAS, Feb. 1, 1902.

DEAR SIR:—It may be interesting to know that William Henry Harrison was the first American lawgiver of Iowa. After the adoption of the constitution of the United States and after the creation of the Northwest territory by ordinance of July 13, 1787, a law was enacted by congress, creating the territory of Indiana. The law was approved May 7, 1800, and all of the territory west of Ohio to the Mississippi river was called "Indiana territory."

The legislative authority of Indiana was confined to a governor and three judges, all appointed.

The act provided for a legislature to be elected when there were "five thousand free male inhabitants" of voting age. (Nothing said about their being "white.")

The power of the governor and three judges to legislate was taken from the ordinance of 1787, and is as follows:

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, . . . which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress. (1 S. L. 51.)

Owing to the fact that the voting population of Indiana territory remaining below the required number, its legislature for several years from the organization of the territory

consisted of the governor, William Henry Harrison, afterwards president, and the three judges appointed to hold the courts in the territory. The seat of government was fixed by law at the village of Saint Vincennes, called by the English-speaking people Saint Vincent, under which name it was mentioned in the ordinance of 1787. The place was widely known by its English name, but the old French name, Vincennes, persisted and was finally adopted.

The first law passed by Indiana territory for its government was passed January 19, 1801.

It was signed by William Henry Harrison as governor, and by William Clark, Henry Vanderburgh and John Griffin as judges. It was a law requiring lists of persons and property in the territory, and was adopted from the code of Pennsylvania. It was done at the town of "Saint Vincennes." The Indiana lawgivers also passed "a law establishing courts of judicature" at the same place, Vincennes, January 23, 1801. This law was also adopted from the Pennsylvania code. The governor and judges also passed laws concerning practice on appeals, which laws were taken from Kentucky and Virginia. These laws, though few and simple, were perhaps all that were necessary for the then sparsely settled country of Indiana territory.

The laws which Indiana territory adopted for its own use and guidance came from Pennsylvania, Virginia and Kentucky.

After the purchase of Louisiana territory, in 1803, and the taking possession of the same, the congress of the United States passed a law, March 26, 1804 (2 S. L. 283), subdividing said territory upon the thirty-third degree of north latitude, running from the Mississippi river west, being the present southern boundary of Arkansas. The southern part of the said territory was called the Territory of Orleans, and that portion north of the line was called the District of Louisiana. This act separating the two parts of Louisiana territory contained the provision that the governor and judges of

Indiana territory might legislate for the new district, being the upper district (Secs. 12 and 13), and the act also contained the following:

SEC. 13. The laws in force in the said district of Louisiana at the commencement of this act, and not inconsistent with any of the provisions thereof, shall continue in force until altered, modified or repealed by the governor and judges of the Indiana territory as aforesaid.

By virtue of the provisions of the act of March 26, 1804, it became necessary that the governor and judges of Indiana territory should legislate for the district of Louisiana.

In order to prevent confusion, it must be remembered that the northern part of the Louisiana purchase, so separated as stated, was first called the "District of Louisiana;" then the same territory was afterwards renamed the "Territory of Louisiana," and afterwards renamed the "Territory of Missouri;" so the same geographical boundaries in fact pertained to the three political divisions. As the said act of congress gave to Indiana territory the power to legislate for the district of Louisiana, the governor and judges of Indiana proceeded to enact such laws as they deemed necessary.

Although more than four years elapsed since the organization of the territory of Indiana, no legislature had yet been elected, and the territory was still governed by Mr. Harrison and three judges, and they had passed laws amounting in volume to about fifty pages; and when congress, in 1804, gave them the right to legislate for the district of Louisiana, the governor and judges of Indiana took most of the laws which they had adopted during the four years and, making only such changes as would necessarily fit them for the new territory, readopted them practically verbatim for the district of Louisiana. The laws were not passed separately and in detail, but were all passed at once in a body, as of the date of October 1, 1804, except one, a supplemental law regarding marriages, which passed April 24, 1805.

The formula by which these laws were passed was as follows, and we give a sample as representing all:

A law establishing the office of sheriff.

Be it enacted by the Governor and Judges of the Indiana Territory, authorized and empowered by an Act of Congress to make laws for the District of Louisiana, and it is hereby enacted by authority of the same:

First. That there shall be appointed and commissioned by the governor in each district a sheriff, etc., etc.

The foregoing is hereby declared to be a law for the District of Louisiana to take effect accordingly.

In Testimony Whereof, We, William Henry Harrison, governor, Thomas T. Davis, Henry Vanderburg, and John Griffin, judges in and over the Indiana Territory, have hereunto set our hands at Vincennes the first day of October, 1804, and of the independence of the United States the twenty-ninth.

(Signed)

WILLIAM HENRY HARRISON,
THOMAS TERRY DAVIS,
HENRY VANDEBURG,
JOHN GRIFFIN.

Congress took away this power March 3, 1805. (See 2 S. L. 331.)

The laws enacted by William Henry Harrison and the judges of Indiana territory were, therefore, the first laws that Iowa received of a local character from any American source, and are the laws of Iowa today unless they have been repealed.

Very respectfully,

E. F. WARE.

A QUESTION was brought before the county court of Dubuque in November or December last on petition of citizens of Dubuque, praying the court to allow a vote to be taken on the question: "Will the county of Dubuque become a stockholder in the Dubuque and Keokuk railroad company?" After argument it has been decided that the court has no power to put such a question, nor has the county the power to take stock. We understand that the judge has promised a written opinion on this subject.—*Dubuque Herald, Feb. 5, 1852.*

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