

## THE HISTORY OF LIQUOR LEGISLATION IN IOWA 1878-1908<sup>1</sup>

The year 1878 may very appropriately be said to mark the line of division between two distinct epochs in the history of liquor legislation in Iowa. The period before 1878 may be called the formative period. During those years various methods of dealing with the liquor problem were tried, the people were forming ideas and developing strong temperance organizations, and by 1878 there had evolved a firm conviction in the minds of a majority of the people that absolute prohibition should be the rule in Iowa. The period since 1878 is clearly a constructive period in liquor legislation. Beginning with 1878 the efforts of temperance advocates have been centered about the one idea of absolute prohibition, and liquor laws have followed the same general tendency.

### THE CONSTITUTIONAL AMENDMENT CAMPAIGN INAUGURATED

It would perhaps be difficult to determine at just what time the idea of a prohibitory amendment to the Constitution began to take shape in the minds of its advocates. But it is evident that the first public announcement of such an idea was made at the annual convention of the Woman's Christian Temperance Union at Burlington (October 15 to 17, 1878) by Mrs. J. Ellen Foster, chairman of the committee on legislation.<sup>2</sup> In her report she recommended

<sup>1</sup> For a discussion of the history of liquor legislation in Iowa before 1878, see the writer's contributions in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. V, No. 2, p. 193; Vol. VI, No. 1, p. 55; and Vol VI, No. 3, p. 339.

<sup>2</sup> There has been some dispute, it seems, as to who originated the Prohibitory Amendment idea. Mr. B. F. Wright, of Charles City, claims this dis-



“that a form of petition be issued by our State Union, praying the next Legislature to pass a bill, submitting to the votes of the people an amendment to the constitution, forever prohibiting the manufacture and sale of intoxicating liquors, including wine, beer, ale and cider.” Mrs. Foster supported her recommendation by arguing that statutory enactments were subject to repeal at any time when the legislature for political reasons might see fit to do so, while a Constitutional amendment could only be repealed by a vote of the people. Moreover, she said the submission of an Amendment to the vote of the people would take the temperance question out of party politics and allow it to be decided upon its merits alone.<sup>3</sup>

The recommendation of Mrs. Foster was well received by the convention, and a plan for carrying on the work was adopted. On January 15, 1879, the Blue Ribbon State Convention adopted a conservative resolution favoring a Constitutional Amendment.<sup>4</sup> Six days later, on January 21, the State Temperance Alliance at its annual meeting heartily endorsed “the plan of submitting to the people of the State, at as early a date as possible under the constitution, an amendment to the constitution which shall be in so far as possible self operating in terms, and prohibiting under sufficient penalties, all traffic in all kinds of alcoholic liquors as a beverage, including ale, beer, wine and cider.”<sup>5</sup>

The coöperation of these three strong organizations tinction on the ground that he suggested the plan to Mrs. Foster; and Mrs. Foster herself admitted that the idea was not original with her but had been suggested to her by “a gentleman of Floyd County.” However, all this does not affect the fact that to Mrs. Foster is due the credit for opening the campaign.— See Fellows’s *History of Prohibition in Iowa*, p. 4; and also Alden’s *Prohibition Handbook for Iowa*, p. 8.

<sup>3</sup> *Proceedings of the Woman’s Christian Temperance Union of Iowa*, 1878, p. 6.

<sup>4</sup> *Dubuque Weekly Times*, Wednesday, January 22, 1879.

<sup>5</sup> *Proceedings of the State Temperance Alliance of Iowa*, 1879, pp. 27, 28.



brought into the Amendment campaign a large army of supporters. Moreover, the influence which the women were able to exert in the temperance cause had been fully demonstrated during the Woman's Crusade. The Blue Ribbon Reform Clubs all over the State embraced hundreds of earnest workers, and they were especially efficient in creating local sentiment in favor of the movement. But the State Temperance Alliance was perhaps the best equipped to carry on the campaign in an energetic and thorough manner. It had by this time branched out into county and township alliances and was thus in close touch with all parts of the State. And so, it was under auspicious circumstances that the Amendment idea was launched on its four years' campaign.

POLITICAL PARTIES AND THE AMENDMENT IN 1879

Opposition to Governor Gear on the part of the Prohibitionists again began to manifest itself early in 1879, when it became evident that he would be a candidate for reelection. Moreover, there was every probability that the Prohibitionists would place an independent ticket in the field. These two facts caused no little anxiety to the Republican leaders who remembered very distinctly the large vote polled by the Prohibitionists at the preceding gubernatorial election. Accordingly, Republican newspapers devoted considerable space to answering the charge that Gear was opposed to prohibition. One paper, especially, gave an account of Gear's public life as evidence of the fact that while in office he had never opposed any measure which the people demanded, and this, it claimed, was all that could be expected of any public official.<sup>6</sup> It became apparent that the temperance question would play a more important part in the campaign of this year than ever be-

<sup>6</sup> *Dubuque Weekly Times*, Wednesday, March 5, 1879.



fore, and so the various State conventions were awaited with some interest.

The early date at which the party conventions were held is further evidence that an unusually strenuous campaign was expected. The Democratic State Convention was held at Council Bluffs on May 21, 1879; the position of the party on the temperance question was stated in the platform by the declaration "That the Democratic party of Iowa is desirous of promoting temperance, and being opposed to free whiskey, it is in favor of a judicious license law."<sup>7</sup> One week later, on May 28, the Greenbackers held their convention at Des Moines, and took a neutral position by commending "the moral reform of men and the elevation of families by agencies of the temperance cause," and by demanding "the use of all just and legal means for the suppression of the evils of intemperance."<sup>8</sup> No notice of the Amendment movement was taken in the platforms of either of these parties.

It was on June 11, at Des Moines, that the Republican State Convention placed the following plank in its platform with surprisingly little opposition:

That we reaffirm the position of the Republican party heretofore expressed upon the subject of Temperance and Prohibition, and we hail with pleasure the beneficent work of reform clubs and other organizations in promoting personal temperance, and in order that the entire question of prohibition may be settled in a non-partizan manner, we favor the submission to the people, at a special election, of a constitutional amendment prohibiting the manufacture and sale of all intoxicating liquors as a beverage, within the State.<sup>9</sup>

The readiness with which the Republican party thus es-

<sup>7</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. I, pp. 115, 116.

<sup>8</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. I, p. 118.

<sup>9</sup> *Weekly Iowa State Register* (Des Moines), Vol. XXIII, No. 21, Friday, June 13, 1879.



poused the cause of the Prohibitory Amendment may be accounted for in several ways. In the first place, there were undoubtedly many men in the party who heartily wished to remove the temperance question entirely from politics, and who saw in the Amendment movement a means to this end. Moreover, if the Amendment were adopted by the people the party would receive the benefit of having supported it; whereas, if it were defeated, the party could no longer be expected to support a measure which the people did not desire. It is intimated also that the plank was a mere concession to the temperance people to induce them to vote for Gear at the coming election.<sup>10</sup> In addition to those who were influenced by these reasons of expediency and party preservation, there were of course many others who sincerely desired Constitutional prohibition and believed it to be the best solution of the liquor problem.

The majority of the Prohibitionists were naturally very much pleased with the stand taken by the Republican party, and the leading temperance papers as well as temperance leaders immediately began to oppose any effort to place a separate ticket in the field. They realized that such a proceeding would only tend to divide forces and decrease the chance of success, and they saw no reason for independent action when one of the old parties was pledged to support the Amendment movement. The opposition was especially directed against a certain Ward Sherman, the leading promoter of the third party idea, who openly avowed that he hoped a Prohibition ticket would be placed in the field which would poll votes "enough at least to defeat the Republican nominees."<sup>11</sup>

<sup>10</sup> Alden's *Prohibition Handbook for Iowa*, p. 9.

<sup>11</sup> *Weekly Iowa State Register* (Des Moines), Vol. XXIII, No. 25, Friday, July 11, 1879.



It was due largely to the efforts of Ward Sherman that a Prohibition State Convention was called to meet at Cedar Rapids on July 16, 1879. Only about seventy-five delegates attended, representing not more than one-sixth of the counties of the State. There was a sufficient number of conservatives present to defeat the proposition to nominate a State ticket, by a vote of forty-one to thirty-two. A platform favoring woman suffrage and prohibition, both statutory and Constitutional, was adopted.<sup>12</sup> The radicals, disappointed in the action of the convention, bolted and nominated a ticket consisting of D. R. Dungan, for Governor; Frank T. Campbell, for Lieutenant-Governor; J. M. Beck, for Judge of the Supreme Court; and J. A. Nash, for Superintendent of Public Instruction.<sup>13</sup> Campbell and Beck were also the Republican nominees for their respective offices, while Nash was taken from the Greenback ticket.

The entire Republican State ticket was elected by handsome majorities, Gear receiving approximately thirty-six thousand votes more than at his first election. D. R. Dungan, the Prohibition candidate for Governor, received only 3,291 votes—about one-third of the number received by Elias Jessup two years before. It is very evident that the eleventh plank in the Republican platform of 1879, whatever may have been the reasons for its adoption, resulted favorably to that party in this election.

#### THE AMENDMENT IN THE LEGISLATURE OF 1880

In Iowa all Constitutional Amendments must be passed by two successive General Assemblies before being submitted to a vote of the people. Consequently the advocates of the Prohibitory Amendment were anxious that the first

<sup>12</sup> *Dubuque Weekly Times*, Wednesday, July 23, 1879.

<sup>13</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. I, p. 116. Professor G. F. Carpenter was first nominated for Governor, but he promptly declined.



step should be taken by the legislature in 1880. On January 14 of that year the State Reform Club (as the State organization of the Blue Ribbon Reform Clubs was now called) met at Des Moines, and among other things passed a resolution asking the General Assembly "to take the necessary steps to submit" the Amendment to the people.<sup>14</sup> A week later the State Temperance Alliance at its annual meeting adopted a similar resolution.<sup>15</sup> It was charged that the Republican party had not been sincere in its declaration favoring the Amendment, and that it had not contemplated the prohibition of ale, wine, and beer. The *Iowa State Register*, a paper which throughout the campaign heartily supported the Amendment, insisted that the plank meant just what it said and that no evasion was intended. Moreover, it strongly urged that the legislature should carry out the pledge of the party and submit the Amendment to the people.<sup>16</sup>

The Eighteenth General Assembly convened on January 12, 1880, and it soon became apparent that the various temperance organizations throughout the State had been busily at work. Petitions, more numerous than ever before, signed by hundreds and thousands of people came in from nearly every county in the State, asking that a prohibitory amendment be submitted to a popular vote. There were also a number of counter petitions objecting to any such proceeding. In addition to these there were petitions both for and against the repeal of the wine and beer clause.<sup>17</sup>

On January 28, Mr. J. A. Harvey of Polk County intro-

<sup>14</sup> *Iowa State Register*, Vol. XIX, No. 13, Friday, January 16, 1880.

<sup>15</sup> *Iowa State Register*, Vol. XIX, Nos. 17 and 18, Wednesday, January 21, and Thursday, January 22, 1880.

<sup>16</sup> *Iowa State Register*, Vol. XIX, No. 48, Thursday, February 26, 1880.

<sup>17</sup> Public Archives, Office of the Secretary of State, Des Moines. See also *Journal of the Senate*, 1880, and *Journal of the House of Representatives*, 1880.



duced into the House of Representatives a joint resolution "Proposing to amend the Constitution so as to prohibit the manufacture and sale of intoxicating liquors within this State." After much debate, during which attempts were made to substitute license and local option for prohibition, the resolution passed the House on February 10, by a vote of seventy-eight to twenty-one.<sup>18</sup> It was then transmitted to the Senate where it was amended and passed by a vote of thirty to nineteen on March 12.<sup>19</sup> The House concurred in the Senate's amendment on March 16 by a vote of sixty-six to twenty-six,<sup>20</sup> and on the following day the resolution received the Governor's signature. The joint resolution thus approved, and as printed, reads as follows:

*Be it resolved by the General Assembly of the State of Iowa:*

That the following amendment to the constitution of the state of Iowa be and the same is hereby proposed: To add, as section 26 to article 1 of said constitution, the following:

SECTION 26. No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer.

The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof.

*Resolved, further,* That the foregoing proposed amendment be and the same is hereby referred to the legislature to be chosen at the next general election for members of the next general assembly, and that the secretary of state cause the same to be published for three months previous to the day of said election, as provided by law.<sup>21</sup>

<sup>18</sup> *Journal of the House of Representatives*, 1880, pp. 83, 137, 138, 139.

<sup>19</sup> *Journal of the Senate*, 1880, p. 323.

<sup>20</sup> *Journal of the House of Representatives*, 1880, p. 503. Further details in the legislative history of this resolution are given below in connection with the discussion of the decision of the Supreme Court which declared the Amendment invalid.

<sup>21</sup> *Laws of Iowa*, 1880, p. 215.



## HISTORY OF LIQUOR LEGISLATION IN IOWA 511

The period intervening between the introduction of the joint resolution and its final adoption was one of great suspense and anxiety to the friends of the Amendment, as well as to those most interested in opposing it. During the debate in the Senate, where it was recognized that the battle would be won or lost, the chamber was crowded to its utmost capacity with spectators. At times it was feared that the old building occupied by the legislature would not be able to bear the unusual burden. "The upper floors settled so that the office doors below would not open or close," but new supports were provided, and the debate continued with great earnestness on both sides.<sup>22</sup> The outcome as has been seen was a victory for the friends of the Amendment, and the pledge of the Republican party was redeemed so far as this legislature was concerned.

### THE LIQUOR LAWS OF 1880

In addition to the joint resolution proposing a Constitutional Amendment, the liquor problem was touched upon in three acts during the same session of the General Assembly. "An Act to Regulate the Practice of Pharmacy, and the Sale of Medicines and Poisons", contained a clause making it unlawful for druggists or pharmacists "to retail, or sell, or give away, any alcoholic liquors or compounds as a beverage."<sup>23</sup> Another act, approved on the same day, prohibited the furnishing or giving of intoxicating liquors "including ale, wine and beer, to voters at or within one mile of the polls, during the day upon which any election is held in this state, prior to the closing of the polls."<sup>24</sup> The only other instance of liquor legislation during this session was an act so amending the law in re-

<sup>22</sup> *Iowa City Daily Republican*, Vol. IV, No. 1153, Tuesday, March 2, 1880.

<sup>23</sup> *Laws of Iowa*, 1880, p. 74.

<sup>24</sup> *Laws of Iowa*, 1880, p. 79.



gard to agricultural fairs as to prohibit the sale of intoxicating liquors at State, as well as at County and District Fairs.<sup>25</sup>

THE AMENDMENT CAMPAIGN DURING 1880 AND 1881

Although the first step in the legal process for securing the Amendment had been taken successfully, the Prohibitionists realized that the struggle had only begun. Accordingly, during the interval until the meeting of the next General Assembly in 1882 every effort was made to keep the question before the public. The forces of the opposition also began to organize during this period; and on both sides preparations were made for the great contest which everyone realized would occur if the Amendment were submitted to the people.

Early in April, 1880, the Iowa Brewers' Association held a convention at Cedar Rapids and adopted a long series of resolutions. They denounced in strong terms both the Amendment movement and prohibition in general. Furthermore, they declared that "the prohibitionists having united in a strong organization, a strong organization must be formed to oppose it." They announced their determination to work for the election of men to office who were opposed to "all prohibitory laws and measures," and for this purpose they formed an organization "to be governed by a central committee consisting of five members, including the President of the association."<sup>26</sup>

Clear Lake seems to have been the Mecca of temperance workers at this time. In 1876, as has been shown, it had been the birthplace of the State Temperance Alliance. In August, 1880, the annual temperance jubilee was held at the same place, and it was at that time that there was

<sup>25</sup> *Laws of Iowa*, 1880, p. 139.

<sup>26</sup> *Iowa City Daily Republican*, Vol. IV, No. 1189, Monday, April 12, 1880.



organized the Iowa State Prohibitory Amendment Association, the principal object of which was, as the name indicates, to aid in the campaign for the Amendment. In the following year this association was incorporated, with a capital stock of \$100,000 and with Des Moines as the principal place of business. During the year branch associations were also formed in the several Congressional Districts.<sup>27</sup>

The Woman's Christian Temperance Union continued to give the Amendment movement its warmest support. Recognizing that money was necessary to carry on the campaign successfully, at a district convention held at Iowa City on September 1, 1880, it was recommended that "each County Union have a finance committee, . . . to solicit funds from the rural districts to aid the prosecution of the Constitutional Amendment work the coming year".<sup>28</sup>

During the autumn of 1880 there seems to have been some agitation in favor of calling a constitutional convention to revise the Constitution—especially with respect to the Judiciary and the control of the State over corporations. One argument advanced in support of such a project was that by this means the Prohibitory Amendment could be passed more promptly and effectively. It should be said, however, that the person who made this plea did not approve of the Amendment as proposed by the General Assembly, referring to it as "an obstruction rather than a help to the cause of temperance." "To frame the temperance amendment", said he, "so that it would really accomplish the object aimed at, would alone be a sufficient return for all the cost and trouble of a constitutional convention."<sup>29</sup>

<sup>27</sup> *Prohibition by Constitutional Amendment* (Cresco: 1881), pp. 3-9.

<sup>28</sup> *Iowa City Daily Republican*, Vol. V, No. 1313, Saturday, September 4, 1880.

<sup>29</sup> Communication signed "H" in *Iowa City Daily Republican*, Vol. V, No. 1360, Friday, October 29, 1880.



It appears that a convention of brewers and liquor dealers was held at Des Moines, January 19, 1881, and an organization known as the Protective Association of the State of Iowa, was formed. Detailed plans were made for carrying on the fight against the Amendment, for which purpose a large fund of money had already been raised. At the same time that the brewers were making these plans, a temperance convention was being held in the same city. The Prohibitory Constitutional Amendment Association of the Seventh District of Iowa was organized, and the members declared that to receive their support candidates for seats in the legislature must not only be in favor of the Amendment, but must be men whose past lives gave evidence that they would not yield to "the influence or money of the rum power."<sup>30</sup>

In each of the three party platforms of 1881 the Amendment question received due attention. At the Democratic State Convention at Des Moines, June 16, a petition from the Woman's Christian Temperance Union was presented, asking the convention to embody in its platform a resolution favoring the submission of the Amendment. In this petition the Democratic party was given the credit for enacting the prohibitory law of 1855.<sup>31</sup> The members of the convention, however, were not to be inveigled from the accustomed position of the party, for in the second plank of their platform they expressed opposition to "all sumptuary laws, and the proposed prohibitory amendment to the constitution in all its steps and stages, as the most offensive form of sumptuary regulation." The Greenbackers stated their belief that all great public questions should be decided by the people, and favored the submission of the Amendment. And the Republicans declared that the pledge

<sup>30</sup> *Iowa State Register*, Vol. XX, No. 17, Thursday, January 20, 1881.

<sup>31</sup> *Iowa State Register*, Vol. XX, No. 144, Friday, June 17, 1881.



made by the party in 1879 should be fulfilled "in order that the good faith of the party may be maintained, and that the people in this government of the people, by the people, and for the people, may have an opportunity to express their wishes concerning the pending amendment, regardless of party affiliations, and with perfect freedom from all party restraint and influences."<sup>32</sup>

The Prohibitionists placed no ticket in the field during this campaign, but concentrated their efforts in the endeavor to secure the election of Republicans who favored the Amendment. Especially was this true in regard to candidates for the legislature, for there is evidence that in many districts the temperance question was the leading issue.<sup>33</sup> Aside, however, from these local contests the Amendment movement seemed to have little effect on the result of the election. The total vote cast was much smaller than at the election two years before; but the Republican candidates on the State ticket were chosen by large majorities.

As the Amendment campaign progressed the leaders in the movement were urgent in their appeals to the temperance people to make greater exertions. They complained that the forces of opposition were busy at work, while the friends of the Amendment did very little but pray. This complaint was well grounded—at least as far as the first part of it was concerned. An interesting instance of the activities of the liquor dealers may be seen in a meeting held at Iowa City in November, 1881, by the brewers and saloon-keepers of that place. They effected a strong local organization for the purpose of protecting their business interests, and in a series of resolutions they made the sig-

<sup>32</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. I, pp. 123, 124, 125, 126.

<sup>33</sup> *Iowa City Daily Republican*, Vol. VI, No. 1615, Wednesday, August 31, 1881.



nificant declaration "That it shall be the duty of every member to abide *strictly* by the laws of the *general* government of the United States and the laws of this *city*."<sup>34</sup>

THE AMENDMENT IN THE LEGISLATURE OF 1882

The Nineteenth General Assembly convened on January 9, 1882, and again for three months the legislative proceedings were watched with great interest by those most concerned in the Amendment movement. In his inaugural address, delivered January 12, Governor Buren R. Sherman touched upon the temperance question—the first official mention of this subject by any Iowa Governor since 1854. He favored submitting the Amendment to the people, not only that the pledge of the Republican party might be fulfilled, but because he believed it to be "the right of the people to be heard upon all questions affecting the public welfare."<sup>35</sup>

In the Senate the opposition to the Amendment was confined largely to efforts to cause delay in voting on the question of its submission. An unsuccessful attempt was made to pass a resolution requesting the Attorney-General to express an opinion upon the question: "Does the Constitution require that a member of the legislature in voting for the proposed prohibitory amendment to the Constitution should agree to and approve the same, or does he vote upon the question of submission regardless of his own opinion." On February 22 a resolution was introduced declaring that in case the Amendment should be adopted, provision should be made for "fair and adequate compensation" by the State for all property confiscated thereby.

<sup>34</sup>*Iowa City Daily Republican*, Vol. VI, No. 1683, Monday, November 21, 1881.

<sup>35</sup>Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, pp. 237, 238.



It was urged that under protection of the law "four million dollars" had been invested in the manufacture of beer, and that without some compensation the Amendment would be unjust and oppressive. This resolution was referred to the Committee on Ways and Means, but was not reported favorably by them. Finally, however, on March 2 the Senate, by a vote of thirty-five to eleven, adopted a joint resolution agreeing to the Prohibitory Amendment as proposed by the preceding General Assembly.<sup>36</sup>

A question which was troubling the minds of some people at this time—especially the people of Des Moines—was as to whether the Amendment would prohibit the manufacture of liquor for exportation. A large establishment known as the International Distillery had just been put into operation at Des Moines, and the people of that city were anxious that it should not be put out of business. The *Iowa State Register*, which from the first had supported the Amendment movement, stated that as a police measure it had favored and would still favor the Amendment; but that if it were intended to prohibit manufacture for exportation, it would withdraw its support. It appealed to the legislature to settle the question by defining the real meaning of the Amendment.<sup>37</sup> In response to this desire on the part of a portion of the people, the Senate, late in the session, passed a resolution declaring that the Amendment was intended to prohibit the sale and manufacture for sale as a beverage within this State "of all intoxicating liquors, including ale, wine, and beer," but that it "was not designed to prohibit the manufacture, sale, or keeping for sale of such liquors for any or all other purposes."<sup>38</sup>

<sup>36</sup> *Journal of the Senate*, 1882, pp. 161, 195, 259, 322.

<sup>37</sup> *Iowa State Register*, Vol. XXI, No. 44, Tuesday, February 21, 1882.

<sup>38</sup> *Journal of the Senate*, 1882, pp. 501, 502.



This interpretation was received with disapproval by those opposed to the Amendment. One member of the Senate objected to the resolution on the ground that it could have no legal effect in binding the courts, and hence might mislead the people. The Keokuk *Gate City*, a paper which was strongly opposed to the Amendment, declared that in the light of this interpretation it was "immoral, impious, dishonest, flagitious and an enormity. . . . The other States get the drinking", said the editor, "and we get the proceeds. The other States suffer the ills of intemperance and we make money out of it. We cannot buy a tablespoon of whiskey for ourselves, but we can make and sell it by the barrel to our fellow-citizens of other States."<sup>39</sup>

In the House of Representatives the opposition followed the same tactics as those adopted in the Senate. The same series of resolutions was introduced in the attempt to discredit the Amendment and draw off its supporters, but with as little success, for each resolution was immediately laid on the table. On March 9 the Senate joint resolution agreeing to the Amendment was concurred in by a vote of sixty-four to twenty-nine.<sup>40</sup> Governor Sherman affixed his signature on March 13,<sup>41</sup> and the second step in the amendment process had been taken.

It remained for the General Assembly to submit the Amendment to the vote of the people and fix the time for holding the election. By an act of March 31 the necessary provisions were made, and a special election was called for June 27, 1882. Except that the ballots were to have written or printed upon them the words, "For the adoption of the amendment", or "Against the adoption of the amend-

<sup>39</sup> Quoted from *The Gate City* (Keokuk) in the *Iowa State Register*, Vol. XXI, No. 69, Wednesday, March 22, 1882.

<sup>40</sup> *Journal of the House of Representatives*, 1882, pp. 208, 209, 210, 440.

<sup>41</sup> *Laws of Iowa*, 1882, p. 178.



ment", the election was to be conducted in the same manner as the general elections.<sup>42</sup> Provision was made by another act for the termination of all wine and beer licenses on the first day of May following the date on which the license had been granted.<sup>43</sup>

THE LAST MONTHS OF THE CAMPAIGN

The Prohibitory Amendment had passed the legislature and now the campaign was on in dead earnest. Before this time all the preparations had been tentative, but now that it was definitely decided that the question should be submitted to the people both sides began seriously to gather their forces for the impending struggle. The official call for the election was made by Governor Sherman in a proclamation of May 8, which included the exact text of the proposed Amendment, corresponding word for word with the joint resolution as printed in the laws of 1880.<sup>44</sup>

Almost immediately after the action of the legislature was made known Aaron Kimball, President of the State Temperance Alliance, issued an address to the people of the State, in which he urged all friends of the Amendment "to see that every school district, hamlet, ward, township, county and district of the state is thoroughly aroused and organized." "Let no honorable effort be spared;" he appealed, "but let public meetings and free discussions be held in every neighborhood, and let the press, the rostrum and the pulpit all unite in this good work."<sup>45</sup> That this appeal should be heeded was but natural, for it was a matter which affected every village, town and city in the State. Probably never in the history of this State has there been

<sup>42</sup> *Laws of Iowa*, 1882, pp. 164, 165.

<sup>43</sup> *Laws of Iowa*, 1882, p. 125.

<sup>44</sup> *Shambaugh's Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 383.

<sup>45</sup> *Fellows's History of Prohibition in Iowa*, p. 5.



such universal discussion of the temperance question as during the months immediately preceding the vote on the Prohibitory Amendment.

The State Brewers' Association held a convention at Des Moines on April 12 and 13 and made extensive plans for fighting the Amendment. In a series of resolutions they declared that they would never "knowingly support for office or place of trust any one who shall vote for this proposed outrage upon our property and rights." Furthermore, they threatened the Republican party with defeat if it continued to support "fanaticism". In order to raise funds to carry on the campaign an assessment of two per cent per barrel was levied upon the beer manufactured during the preceding year. This tax brought in nearly six thousand dollars. A committee of one from each Congressional District was appointed to act through an executive committee in directing the campaign. Provision was also made for a generous use of campaign literature. In an address to the people the complaint was made that the Amendment would be an injustice to the brewers who had invested their money in a business which had been permitted by the wine and beer clause of 1858.<sup>46</sup>

The reply to this argument against the Amendment was that the saloon-keeper was himself to blame for the agitation in favor of total prohibition. "His violation of the liberal law, in Iowa, which gave him the opportunity to sell light liquors, but not the others", said one editor, "his growing abuse of the liberty it gave him, and his steady defiance of its penalties, his offensive and provoking contempt for public opinion and statute law, are the things that he can thank for the storm that is now gathering about his head to sweep him out of business altogether."<sup>47</sup>

<sup>46</sup> *Iowa State Register*, Vol. XXI, No. 88, Thursday, April 13, 1882. Also *Iowa City Daily Republican*, Vol. VI, No. 1796, Saturday, April 15, 1882.

<sup>47</sup> *Iowa State Register*, Vol. XXI, No. 61, Sunday, March 12, 1882.



While the Republicans generally were supposed to be in favor of the Amendment and the Democrats as a party to be opposed to it, no strict party line seems to have been drawn between the supporters and opponents of the measure. Many prominent Democrats came out boldly in favor of the Amendment, while many Republicans were active in working against it. The Democratic press as a whole assumed an attitude either of opposition or of neutrality, while the leading Republican newspapers were about evenly divided on the question. There is evidence also that many liquor dealers favored the Amendment on the grounds that it could give them no more annoyance than the existing prohibitory law and it would exempt them from heavy licenses on beer and wine, the sales of which constituted only a small portion of their business.<sup>48</sup> Thus it is evident that it would not be correct to say that any one party or class of people as a whole favored or opposed the Amendment.

As the day of election drew near much excitement was manifest all over the State, and both sides labored assiduously to win votes. The dramatic elements in the contest evidently appealed to one editor for he spoke of the impending struggle in the following words:

The two armies in the contest over the amendment move into the field to-morrow for the contest on Tuesday. To-day the two legions are passing by; to-morrow they will be camped on the threshold of the day of conflict, each under its own colors. . . . No fairer army ever moved under fairer banners than that which is going now into the field of open contest to battle for the amendment. . . . Never before, in a single day, and with a common step, did so many men ever move forward in a solid column under the white banner of temperance. . . .

Here is the other army—the army of occupation, silent, sullen and dark. It puts no song on the air, and has no flag to give to the breeze, and no voice in all the earth praying for it, and not

<sup>48</sup>*Iowa City Daily Republican*, Vol. VI, No. 1837, Tuesday, June 6, 1882.



a human heart that beats which is beating for it with either the hope or fear of love. . . .

We beg of the men of Iowa, and challenge them on their manhood, and on their love of home, here to look duty in the face, and never to give their right arm to the task of casting a vote that they cannot explain in good temper now and without shame hereafter.<sup>49</sup>

#### ARGUMENTS FOR AND AGAINST THE AMENDMENT

Before proceeding to discuss the election and its results it may be well to sum up in a general way the arguments for and against the Amendment as expressed at various times during the progress of the campaign.<sup>50</sup> Obviously any such summary will include also the leading arguments for and against prohibition as a principle. Reversing the order usually pursued in debate the argument of the opposition will in each case be stated first, followed by the reply of the supporters of the Amendment.

The argument most frequently used against the Amendment, as well as against all prohibitory measures both before and since 1882, was that it was contrary to the spirit of American institutions and a violation of personal liberty; that the right to drink liquors was a right of the individual of which he could not be deprived; and that the right to drink intoxicating liquor implied the right to sell it. Advocates of the Amendment, on the other hand, contended that the prohibition by law of murder, thieving, gambling, and other practices dangerous to the public welfare had long been recognized as legitimate and necessary; that the use of intoxicating liquor was largely responsible

<sup>49</sup> *Iowa State Register*, Vol. XXI, No. 151, Sunday, June 25, 1882.

<sup>50</sup> The arguments here enumerated are gathered from scattered sources to which specific reference is hardly necessary. It must not be thought that all of the arguments on either side were advanced by any one class of people. The Amendment was supported and opposed for very different reasons by different people.



for all crimes; and that, therefore, it should be prohibited, even though the rights of a few individuals were sacrificed for the good of the whole community.

Probably the strongest argument used against the Amendment as such was that the Constitution was no place for a provision which was in nature a police regulation and, therefore, should be left to legislation. Furthermore, it was urged that the best method of dealing with the liquor traffic was a matter which would always vary with changing conditions, and that it would be unwise to bind the State to any one policy which could only be departed from through the tedious process of again amending the Constitution. The Prohibitionists replied that this was exactly what they desired. Prohibition was, and would continue to be, the best means for the suppression of intemperance, and the entire question should be put entirely beyond the control of party politics and the varying whims of legislators.

Another objection declared that the Amendment was impracticable. Statutory prohibition, it was contended, had never been a success and no greater heed would be given to a constitutional provision which depended entirely upon legislation for its enforcement, and thus there would be created through habitual violation a general disrespect for law. In rebutting this argument the friends of the Amendment asserted that prohibition had been more successful than any other plan yet used in dealing with the liquor problem and could be strictly enforced; and, moreover, in the matter of legislation the General Assembly was bound to support the Constitution.

Two prominent arguments against the measure that have already been noted were: (1) that it would unjustly deprive liquor dealers of the property in which they had invested their money under protection of law, and (2) that there



was little virtue in prohibiting the manufacture of liquors for home consumption when it could be manufactured for outside trade. The reply to the former objection was, as has been suggested, that the liquor dealers had by their own conduct brought down the storm upon their heads; and moreover, that it had often been found necessary to confiscate property which was a nuisance or dangerous to the general welfare. In regard to the exemption in favor of manufacture for exportation, it was pointed out that the Amendment was in strict conformity with the existing prohibitory law which the opposition insisted was all the legislation that was necessary.

These seem to have been the leading points in the debate on the Amendment as it was waged in the press and on the platform. There was also some disagreement as to the effect of absolute prohibition upon the price of grain and on immigration into the State. It was contended by some that if beer and lighter drinks were prohibited more whiskey and strong liquor would be consumed. On the contrary, it was replied that no more whiskey would be disposed of than was at that time being sold in violation of law, and that with wine and beer under the ban the sale of the stronger drinks could be the more easily controlled. The moral aspects of the question also received attention, especially from the friends of the Amendment. There doubtless were other disputed questions, but in general it may be said that the discussion centered around the points here enumerated.

#### THE ELECTION AND ITS RESULTS

Tuesday, June 27, 1882, the day set for the election on the Prohibitory Amendment, dawned upon a people deeply agitated. Upon the vote cast that day would rest the triumph or defeat of a movement which had been inaugurated



four years before and which had aroused the warmest feelings of support and opposition. Probably never in the history of Iowa has there been another election attended by so many strange demonstrations. The friends of the Amendment were far more active than their opponents. In many places men, women and children, clergymen and laymen alike, were present at the voting places, distributing ballots and soliciting votes for the Amendment. Free lunches were served near the booths by the Woman's Christian Temperance Union; children paraded the streets carrying temperance banners; and all-day prayer meetings were held in the churches. In some cases the church bells were rung every hour during the day, and when in the evening it was learned that the Amendment was probably victorious the air was filled with their peals. The saloons all over the State were closed during the day and good order generally prevailed.<sup>51</sup>

When all the returns were made and the results canvassed it was found that the Amendment had been adopted by a majority of 29,759, there having been cast 155,436 votes for, and 125,677 votes against it. Seventy-five counties declared in favor of the Amendment, twenty-three were opposed to it, and in one county the vote was a tie. Polk County gave the largest majority in favor of the Amendment while Dubuque County led in the opposition. It is interesting to note that ten counties which had voted for the prohibitory law of 1855 now declared against the Amendment, and on the other hand, twenty-three counties which had opposed prohibition in 1855 now voted in favor of it.<sup>52</sup>

<sup>51</sup> For accounts of scenes on election day, see the *Iowa State Register*, Vol. XXI, No. 153, Wednesday, June 28, 1882 and the *Iowa City Daily Republican*, Vol. VII, No. 1856, Wednesday, June 28, 1882 (extra); also Fellows's *History of Prohibition in Iowa*, p. 6.

<sup>52</sup> *Iowa Official Register*, 1889, pp. 207, 208.



The victory for the Amendment has been accounted for in various ways. It has been asserted that thousands of Republicans voted for the measure simply because its submission had been favored by their party, and that many Democrats had cast an affirmative vote in the hope that if the Amendment was adopted it would prove the downfall of the Republican party.<sup>53</sup> These, of course, are charges for which it would be somewhat difficult to produce absolute proof. Indeed, a comparison of the vote on the Amendment with the vote for Secretary of State in the autumn of the same year, would hardly justify this view of the result. Governor Sherman, in writing of the election, stated it as his opinion that neither personal considerations nor party affiliations governed the result. "There were many instances", said he, "where men of high character and rigidly temperate habits worked and voted against the proposed amendment. On the other hand, large numbers of persons of grossly intemperate habits voted for it." Furthermore, he declared that the issue was "wholly divorced from party politics. The election was a special one, where no other question was pending, and was, in the strictest sense, non-partisan."<sup>54</sup> It must be remembered, however, that Governor Sherman was a Republican and that the Republicans were not at all anxious to claim credit and glory for the adoption of the Amendment.

A word should be said in this connection concerning the attitude taken by the foreign-born population of the State upon the Amendment question. The nationalities most numerously represented in this foreign population were the Germans, the Swedes, the Norwegians, and the Danes.

<sup>53</sup> Faulkes's *Iowa's White Elephant, Being a Review of the Rise and Fall of Prohibition in the State of Iowa*, p. 21.

<sup>54</sup> Article by Buren R. Sherman on *Constitutional Prohibition*, in the *North American Review*, 1882, pp. 525-535.



As a general statement it may be said that of these four classes the Germans and Danes were mostly opposed to prohibitory measures and favored a license system, while the Swedes and Norwegians to a great extent favored the Amendment. Governor Sherman, in connection with the statements mentioned above, denied the charge that the foreign-born population was largely responsible for the liquor traffic, and said that not only were a majority of the saloon-keepers native-born, but the election returns showed that in some counties as many as three-fourths of the foreign-born citizens had voted for the Amendment.

#### THE EFFECT OF THE AMENDMENT

On July 29, 1882, Governor Sherman issued a proclamation declaring that the Amendment had been legally adopted, and that it was "a true and valid part of the constitution of the State of Iowa".<sup>55</sup> Naturally the success of the Amendment was a source of joy to the Prohibitionists and a disappointment to those who opposed it. Many brewers, distillers, and liquor dealers, especially in the river counties, began immediately to make preparations to remove across the river into the neighboring States. On July 27 a temperance convention, composed of from three to four hundred delegates, was held at Des Moines for the purpose of devising means of enforcing the Amendment. It was recommended that immediate legislation was needed to provide penalties for selling ale, wine, and beer, and there was a suggestion that a special session of the General Assembly should be called for that purpose. An address was issued to the liquor dealers of the State asking them to peaceably obey the provisions of the Amendment, and a resolution was adopted requesting the Congressional delegation to

<sup>55</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 386.



formulate and work for a law giving States which in their constitutions prohibited intoxicating liquors the right to restrict the importation of such liquors into the State.<sup>56</sup>

There was some discussion throughout the State as to the date when the Amendment would be in force. Some people thought that it would not take effect until a special act for that purpose had been passed by the legislature, but the legal opinion was that it had gone into effect immediately upon adoption and that no legislation was necessary.

The Republican State Convention was held at Des Moines on August 2, and although an effort was made to secure a declaration favoring the enforcement of the Amendment the platform was silent in regard to the temperance question. For this reason the party was branded with cowardice and bad faith by the radical Prohibitionists. The Democrats, meeting in convention at Marshalltown two weeks later, declared that "the Democracy of Iowa are opposed to all sumptuary enactments; while we deplore the passage of the prohibition amendment to the constitution, we are resolved by every legal means to eliminate the obnoxious measure from the constitution of the State."<sup>57</sup> After the close of the campaign of that year (which, it should be remembered, was not a gubernatorial campaign) it was asserted that the Amendment had cost the Republicans two Congressmen and had led to the defeat of that party in many localities. It was also said that the Anti-Prohibitionists were leaving the Republican party in large numbers, and the prediction was made that another such year would mean the election of a Democratic legislature.<sup>58</sup>

In many towns of the State provisions were made for

<sup>56</sup> *Iowa City Daily Republican*, Vol. VII, No. 1881, Friday, July 28, 1882.

<sup>57</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. II, pp. 54, 56.

<sup>58</sup> Quoted from *The Glenwood Opinion* and *The Fort Dodge Messenger* in the *Iowa City Daily Republican*, Vol. VII, No. 1985, Sunday, November 26, 1882.



the enforcement of the Amendment by the passage of ordinances prohibiting the sale of ale, wine, and beer, and fixing penalties for their violation. In the majority of cases which came before the lower courts it was decided that the Amendment made liquor-selling unlawful and therefore a nuisance which might be abated in the usual way in the absence of any legislation imposing penalties.<sup>59</sup> In some localities, however, where the Amendment was not regarded with favor, a plan of nullification was adopted similar to that charged against Council Bluffs where it was said the "City Council of Council Bluffs have entered into agreement with the saloon keepers of that city, whereby the latter are to continue business, and are to be fined monthly or quarterly, the fines during the year to amount to a good round license."<sup>60</sup>

#### THE AMENDMENT DECLARED INVALID

The Amendment had not long been in operation before it was hinted that it had not been passed in a legal manner. A friendly case to test this point was instituted by two Davenport brewers, Koehler and Lange, and John Hill, a saloon-keeper. The case was brought up for hearing at the October (1882) term of the Scott County District Court, over which Judge Walter I. Hayes was presiding. It was an action to recover one hundred dollars for a quantity of beer sold and delivered by Koehler and Lange, the plaintiffs, to John Hill, the defendant. Hill held that he could not lawfully be forced to pay for beer sold in violation of the Constitution. The plaintiffs replied that the Amendment had not been passed in accordance with the manner provided in the Constitution and was therefore invalid. Judge Hayes decided in favor of the latter contention and

<sup>59</sup> *Iowa City Daily Republican*, Vol. VII, No. 1959, Friday, October 27, 1882.

<sup>60</sup> *Iowa City Daily Republican*, Vol. VII, No. 1877, Monday, July 24, 1882.



pronounced judgment upon the defendant. An appeal was taken to the Supreme Court of the State.<sup>61</sup>

The case thus appealed came before the Supreme Court at its December term in 1882, and was argued on both sides by some of the most prominent lawyers in the State. Among the counsel for the appellant were Smith McPherson, then Attorney-General, William E. Miller, J. A. Harvey, James F. Wilson, C. C. Nourse, and John F. Duncombe. Representing the appellees there were such men as John C. Bills and George G. Wright. The opinion of the Court, declaring the Amendment invalid, was delivered on January 18, 1883, by Judge William H. Seevers, and was concurred in by Chief Justice James G. Day and Judges James H. Rothrock and Austin Adams. Judge Joseph M. Beck delivered a lengthy dissenting opinion.<sup>62</sup>

The only question which the Court felt itself called upon to determine was whether or not the Amendment had been constitutionally agreed to and adopted. "The validity of the amendment", run the words of the opinion, "and whether the same now constitutes a part of the Constitution, depend upon the question whether the Eighteenth General Assembly agreed to the amendment which was ratified and adopted by the electors, and whether the amendment was agreed to by the Eighteenth General Assembly in the form and manner required by the Constitution."

The legislative history of the Amendment was discussed in detail. It was shown that the joint resolution proposing

<sup>61</sup> *Iowa City Daily Republican*, Vol. VII, No. 1965, Friday, November 3, 1882.

<sup>62</sup> That these opinions were delivered on January 18, 1883, is shown by statements in newspapers of the following day.—See *Iowa City Daily Republican*, Vol. VII, No. 127, Friday, January 19, 1883. In the *Supreme Court Reports*, however, these first opinions are printed together with the opinions on the petition for a rehearing delivered at the April term, 1883.—See Koehler & Lange *vs.* Hill, 60 Iowa 543.



such a measure was first introduced in the House of Representatives, where it was agreed to and sent to the Senate. In the Senate, after various amendments had been offered, the following substitute for the House resolution was introduced:

No person shall manufacture for sale, or sell, or keep for sale, as a beverage, or to be used for such purpose, any intoxicating liquors whatever.

This substitute was amended by adding after the word "whatever" the words "including ale, wine, and beer" and by striking out the words "for such purpose". With these amendments the substitute was adopted and reads as follows:

No person shall manufacture for sale, or sell, or keep for sale, as a beverage, or to be used, any intoxicating liquors whatever, including ale, wine and beer.

This substitute having been adopted, the joint resolution was considered engrossed, "read a third time, and agreed to by the Senate, as shown by the journal," and sent back to the House of Representatives. In the House the Senate substitute was concurred in. The joint resolution was then enrolled and signed by the Speaker of the House and the President of the Senate and approved by the Governor. The Amendment thus proposed, agreed to by the Nineteenth General Assembly and ratified by the people, reads:

No person shall manufacture for sale, or sell, or keep for sale, as a beverage, any intoxicating liquor whatever, including ale, wine and beer.

The important point to be noted is that the Amendment, as agreed to by the Nineteenth General Assembly and submitted to the people, did not contain the words "or to be used" as included in the substitute resolution adopted by the Senate and placed in its journal. Therefore, the court held that the Amendment submitted to the people and ap-



proved by them was not identical with the resolution adopted by both Houses of the Eighteenth General Assembly and was invalid, since the Constitution expressly provided that the same amendment should pass through all the successive stages in the process.

Furthermore, the Constitution provides that all amendments must be entered upon the journals of both Houses of the General Assembly at which they are proposed. The Court held that in this instance the word "entered" meant "entered in full." The Senate had fulfilled this requirement, but the House of Representatives had failed to do so, in that its journal did not contain the text of the proposed Amendment as adopted by that body after concurring in the Senate substitute; and for this reason also the Court declared that the Amendment had not been adopted in a constitutional manner.

The counsel for the appellant had argued that the enrolled joint resolution was the authoritative statement of the action of the Eighteenth General Assembly. The Court replied that the Constitution said nothing whatever concerning the enrollment, signing, or executive approval of a proposed amendment, and therefore any of these three proceedings was unnecessary and could not be treated as primary evidence. The journals of the two Houses, they declared, must in this case be regarded as final authority for the action in those two Houses, and no other evidence of what had been done or what had been intended could be admitted. Therefore, since the journals of the two Houses did not show that the same resolution had been adopted by both Houses, and since the joint resolution itself was not entered in full on the journal of one House, the Amendment was invalid and could not be recognized as a part of the Constitution.

Judge Beck in his dissenting opinion took the ground



that the enrolled joint resolution should be regarded as "the ultimate and authoritative expression of the legislative will." He also insisted that the word "entered" did not necessarily mean "entered in full", and contended that although the journal of the House of Representatives did not contain the full text of the proposed Amendment, it did contain many references to that measure by title and statement of general content, and that therefore the provision in the Constitution had been complied with. Finally, he held that the matter of proposing amendments was entrusted to the legislative department, which should be the sole judge of the regularity of its own proceedings. The Nineteenth General Assembly, he said, had determined that the joint resolution had been adopted "in due form" by the preceding General Assembly, and had been entered upon the journals of both Houses, and he held that it was not the business of the Court to inquire further.

#### THE PETITION FOR A REHEARING

The decision of the Supreme Court was a great disappointment to the Prohibitionists and a source of elation to their opponents. The attitude taken in various parts of the State is fairly well indicated by the comments in the different newspapers. The *Muscatine Journal* criticised the principle of deciding questions on mere technicalities and quoted a saying of Horace Greeley to the effect that "as this is not common sense, we suppose it must be law", but did not charge the judges with dishonesty or bad faith. The *Davenport Democrat* said that while the decision was received with considerable satisfaction in that city, there was no general demonstration. The *Council Bluffs Nonpareil* approved of the decision as removing a dangerous provision from the Constitution. The *Iowa Capital* said: "We haven't time to say much—and don't feel like it, any-



way." Other papers were loud in their denunciation of the judges, while still others openly expressed their satisfaction at the defeat of the Amendment.<sup>63</sup>

On February 7, 1883, a temperance convention, attended by over seven hundred delegates, was held at Des Moines. Great disappointment at the defeat of the Amendment was manifested, but to show that they were not disheartened plans were made for an effort to retrieve the loss. The committee on resolutions made a majority report which reviewed the situation and demanded that a movement for a resubmission of the Amendment be begun at the next session of the legislature. The minority report recommended that the Governor be asked to call a special session of the General Assembly for the purpose of resubmitting the Amendment. After much discussion the minority report was adopted by a two-thirds vote.<sup>64</sup> Governor Sherman, however, refused to call an extra session, giving as his reason that a constitutional amendment could not be proposed except at a regular session, and that the occasion was not of a sufficiently extraordinary character to warrant the calling of a special session.<sup>65</sup>

A movement for a rehearing of the Amendment case was begun soon after the decision in January. Early in March, Attorney-General McPherson and James F. Wilson, on behalf of the State and at the request of Governor Sherman, filed a petition for a rehearing.<sup>66</sup> This petition was considered by the Supreme Court at its April term, and was argued on both sides by able attorneys. It virtually amounted to a rehearing of the Amendment case and is

<sup>63</sup> Quotations from various newspapers in the *Iowa City Daily Republican*, Vol. VII, No. 129, Sunday, January 21, 1883.

<sup>64</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. III, pp. 29-32.

<sup>65</sup> *Iowa City Daily Republican*, Vol. VII, No. 170, Saturday, March 10, 1883.

<sup>66</sup> *Iowa City Daily Republican*, Vol. VII, No. 176, Saturday, March 17, 1883.



often referred to as such, but technically it was only a hearing of the arguments for and against granting the petition for a rehearing. The opinion of the Court was delivered by Chief Justice Day and the petition for a rehearing was not granted. Judge Beck again delivered an elaborate dissenting opinion.<sup>67</sup>

Justice Day in his opinion covered much the same ground as had been embraced in the former opinion which he affirmed. He was also called upon to decide whether the Court had the right to determine upon the validity of a constitutional amendment; and he held that the Court, just as in the case of a statute, had the right to inquire whether provisions of the Constitution had been complied with. In closing the opinion Justice Day used the following words:

The cause of temperance can sustain no injury from the loss of this amendment, which would be at all comparable to the injury to republican institutions which a violation of the constitution would inflict. That large and respectable class of moral reformers which so justly demands the observance and the enforcement of law, cannot afford to take its first reformatory step by a violation of the constitution. . . . The people can, in a short time, reenact the amendment. In the matter of a great moral reform, the loss of a few years is nothing. The constitution is the palladium of republican freedom. . . . Whatever interest may be advanced or may suffer, whoever or whatever may be "voted up or voted down," no sacrilegious hand must be laid upon the constitution.

THE CAMPAIGN OF 1883

Probably in no political campaign in the history of Iowa had the temperance question played a more prominent part than in the campaign of 1883. The Prohibitionists, sorely disappointed at the failure of their efforts to secure either a reversal of the Amendment decision or an immediate re-submission of the question, at first agitated the proposi-

<sup>67</sup> Koehler & Lange vs. Hill, 60 Iowa 543.



tion of calling a Constitutional Convention and bent their energies toward influencing the political parties, especially the Republicans, to take some definite action at their State conventions. The Democrats met at Des Moines on June 6, where Edward Campbell, the temporary chairman, in his speech urged the party to "bear in mind that to go before this people with a prospect of success we cannot be made the mouth-pieces of either the prohibition or the saloon element." The fourth plank in the platform expressed opposition to constitutional prohibition, and advocated "a well regulated license law, with penalty of forfeiture of license for violation thereof." Judge Walter I. Hayes, who had first declared the Amendment invalid, was the nominee for Judge of the Supreme Court.<sup>68</sup>

The attitude of the Democratic party, and especially the nomination of Judge Hayes, seemed to the Prohibitionists a direct challenge, and they were more determined than ever that the Republican party should take up the gauntlet. The Republican State Convention met at Des Moines on June 27, where it early became evident that the temperance question would receive its due share of attention. Hon. John A. Kasson, the temporary chairman, said in his address that "In the great and unending debate between the claims of Iowa homes and the demands of Iowa saloons the Republican party, enlightened by and obedient to the popular verdict rendered just one year ago to-day, ought not, cannot and will not, take the side of the saloon." His words were received with great applause, as were also the words of Col. David B. Henderson, the permanent chairman, when he said: "my friends, the wife and child of the 'drunkard' are raising their hands to you for aid. Their appeal will not be unheard." Calvin Manning, the nominee

<sup>68</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. III, pp. 33, 39.



for Lieutenant-Governor, in his speech of acceptance declared that Republicanism meant "protected homes and firesides; a school house on every hill, and no saloon in the valley." These words were greeted with "uproarious, long-continued and renewed applause", and the last clause later became the war-cry of the Prohibitionists all over the country.<sup>69</sup> The third plank in the platform reads:

That when the Republican party of Iowa pledged itself in 1879 to give to the people at a special and non-partisan election, an opportunity to vote on a proposition to so amend the Constitution of the State as to prohibit the manufacture and sale as a beverage of intoxicating liquors, it acted in good faith; and the special election of June 27th, 1882, evidences the redemption of the pledge so given, and that we now declare that we accept the result of that election with its majority of 29,759 votes in favor of the adoption of the amendment so voted on as the verdict of the people in favor of constitutional and statutory prohibition, and without making any new test of party fealty we recognize the moral and political obligation which requires the enactment of such laws by the next General Assembly as shall provide for the establishment and enforcement of the principle and policy affirmed by the people at said non-partisan election, and to this end the faith of the party is pledged.<sup>70</sup>

The Greenbackers, meeting in convention on July 11, declared in their platform that the manufacture and sale of intoxicating liquors should be prohibited and that the will of the people as expressed at the election on the Amendment should be carried out. Furthermore, they denounced Governor Sherman "for permitting the will of the people to be overthrown."<sup>71</sup>

<sup>69</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. III, pp. 41, 43, 44.

<sup>70</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. III, p. 45.

Dr. S. N. Fellows, who was a member of the committee on resolutions in this convention, is to be credited with inserting the phrase "and to this end the faith of the party is pledged", which bound the Republican party that year to the policy of prohibition.

<sup>71</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. III, p. 49.



With these declarations in their platforms the political parties entered upon the campaign; and it early became apparent that the question of prohibition would be the leading issue as far as State policy was concerned. James F. Wilson, who delivered many speeches throughout the State during the campaign, often occupied almost his entire time in discussing the temperance question which he considered the most important issue before the people.<sup>72</sup> One newspaper declared that at the coming election prohibition should come first and party afterwards. "The issue now", said the editor, "is prohibition of the liquor traffic. . . . Every voter must decide what he will do in this matter at the October election."<sup>73</sup> Another writer in speaking of the election of 1883 says: "There is no doubt that several elements entered therein, but I think it will be granted that the tariff and the liquor question were the principal issues."<sup>74</sup>

Especial interest was taken in the contest for the position of Judge of the Supreme Court. Many of the Prohibitionists had been very bitter in their denunciation of the judges who had declared the Amendment invalid. At the Republican Convention an unsuccessful effort was made to renominate Judge Day; but whether his defeat was due entirely to his opinion in the Amendment case would be difficult to determine. His rejection was criticised by some, while by others it was considered a wise policy on the ground that he could not have polled the party vote. At the election J. R. Reed, the Republican candidate, received a plurality of over twenty thousand; but it is interesting

<sup>72</sup> *Iowa City Daily Republican*, Vol. VII, No. 295, Saturday, August 11, 1883.

<sup>73</sup> Quoted from the *Grinnell Independent* in the *Iowa City Daily Republican*, Vol. VII, No. 297, Tuesday, August 14, 1883.

<sup>74</sup> *The Liquor Question in Iowa, A Few Observations on Prohibition and the License System*, Le Mars: 1883.



to note that Walter I. Hayes ran ahead of the other members on the Democratic ticket by about two thousand votes, while Reed ran behind his ticket by an equal margin.<sup>75</sup>

Naturally, however, owing to the character of the issue, the real contest was in the election of members of the legislature, and it was here that the question of prohibition was especially prominent. When the returns were canvassed it was found that of the twenty-nine new Senators nineteen were Republicans and ten Democrats, making, together with the hold-overs, a total of thirty-nine Republicans and eleven Democrats in the Senate. Of the one hundred Representatives elected, fifty-two were Republicans, forty-two were Democrats, and six were Greenbackers.<sup>76</sup> Thus, if the pledge of the Republican party were to be carried out, statutory prohibition by the next General Assembly was practically assured.

#### THE PROHIBITORY LAW OF 1884

In his message of January 15, 1884, Governor Sherman strongly urged and recommended the enactment of prohibitory legislation. "Ours is a government", said he, "by the people, of the people, and for the people, and their will being ascertained, no representative of the people can justify himself in opposition thereto. . . . Partisan ties should be laid aside, and in consideration of this great question and forgetful of all else save the ultimate good to the State, let us vie with each other in perfecting the law in response to the public command."<sup>77</sup>

In the House of Representatives an attempt was made to secure the adoption of a resolution proposing a constitutional amendment almost identical with the former one,

<sup>75</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. IV, p. 7.

<sup>76</sup> Fairall's *Manual of Iowa Politics*, Vol. I, Pt. IV, pp. 8-12.

<sup>77</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 255.



but it does not appear that the matter got beyond the committee to which it was referred. Without going into detail in respect to the legislative proceedings it will be sufficient to say that the General Assembly enacted two laws which imposed prohibition as absolute as that contemplated by the Amendment. The first of these laws repealed the famous wine and beer clause which had been on the statute books since 1858 and for the repeal of which the Prohibitionists had labored so long. The definition of intoxicating liquors was made to include ale, wine, and beer, and the manufacture and sale of these drinks was prohibited under the same penalties as already existed in respect to the stronger liquors.<sup>78</sup>

A law passed late in the session and approved on April 3, went more into detail in the way of placing further restrictions on the liquor traffic and providing further and heavier penalties for violation of the law. It virtually took up the provisions of the *Code of 1873* relating to intoxicating liquors section by section and amended them in such manner as to make the manufacture or sale of liquor practically impossible within the State. The first seven sections of the law were concerned with placing the manufacture of intoxicating liquor under the same regulations as were already provided for its sale. That is, any person might manufacture, as well as sell, intoxicating liquor for medicinal, mechanical, culinary, or sacramental purposes by securing the proper permission and by conforming to certain requirements as to keeping records and making reports. Manufacturing without such a permission was made punishable by heavy fines and imprisonment, varying in severity according to the number of offenses.

Furthermore, any person having a permit, who should sell liquor at a greater profit than thirty-three per cent,

<sup>78</sup> *Laws of Iowa*, 1884, p. 8.



was made liable for treble damages. The penalty for selling without a permit was increased three-fold, as well as the penalty for keeping with intent to sell. The finding of liquor upon the premises of any tavern, eating house, or other place of public resort, was declared presumptive evidence that such liquor was kept for illegal purposes. Any building in which the unlawful manufacture or sale of intoxicating liquor was carried on, together with the furniture, fixtures, and vessels, was made a nuisance which might be abated; and any person who should establish or continue such a nuisance was made guilty of a misdemeanor punishable by a heavy fine for which he should stand committed until paid. An action to secure an injunction might be brought by any citizen of the county in which such nuisance was located.

Common carriers were forbidden to bring any intoxicating liquor into the State unless furnished with a certificate from the county auditor that the person to whom such liquor was to be delivered was authorized to sell it; and any violation of this provision was held to have been committed in any county through which liquors were transported. The keeping of intoxicating liquors in club houses was also prohibited. Perhaps the most significant feature of the law was that in nearly all of the penalties it was provided that one-half of the fine should go to the person who brought information of violation, and the other half to the school fund of the county.<sup>79</sup>

#### PROHIBITION IN OPERATION

Absolute prohibition was at last to be given a trial in Iowa. The prohibitory law of 1855, even before its modification by the wine and beer clause of 1858, had not imposed absolute prohibition; and hence there was much

<sup>79</sup> *Laws of Iowa*, 1884, pp. 146-151.



speculation as to the effect of the law which was to go into effect July 4, 1884. That there would be much opposition to the law was very evident. The brewers of the State met in convention at Burlington on April 23 to deliberate upon the course which they should pursue after the law was put in force. They protested against "this high-handed outrage upon the natural and constitutional rights of the citizen", which would deprive them of the fruits of long years of labor, and expressed their determination "to fight the same, and its promoters, in all lawful ways, and to the bitter end." They denounced the theory that the will of the majority should rule when, as in this case, it violated constitutional limitations, and appealed to all "liberty-loving and law-abiding men" for aid in resisting the law. Finally, they expressed their approval of the "manliness of the majority of our supreme court in rendering their opinion against the validity of the constitutional amendment without regard to the mad ravings of enraged fanatics and the contemptible threats of their venal mouthpieces."<sup>80</sup>

The prohibitory law went into effect on July 4; and it may be said that many saloons closed their doors immediately. This was especially true in communities where there was a strong temperance sentiment. In many of the larger cities, however, the law was not observed and efforts to enforce it were met with great opposition, as may be best shown by a number of the most striking cases.

In Burlington, on the fourth of July, 1884, beer and wine were sold as freely as before and very little effort was made at concealment. In some cases the front doors were closed, but the rear entrances stood open. At least twenty saloons continued to sell all day, and the proprietors announced their intention not to obey the law. This was also

<sup>80</sup> *The Burlington Hawk-Eye*, Thursday, April 24, 1884.



the case with the breweries.<sup>81</sup> A week later officers furnished with a search warrant entered a building in which it was suspected that liquor was concealed and carried off nine bottles of beer and a bottle of "Reed's Stomach Bitters". A crowd had gathered, and before the officers had proceeded very far all the liquor had been snatched from them with the exception of one bottle of beer and the bottle of bitters.<sup>82</sup> A vigorous prosecution of violations of the law was instituted which resulted in many convictions. By the middle of August over thirty saloons had been closed.<sup>83</sup> Great excitement was caused on the night of August 15 by an attempt to dynamite the residence of W. E. Blake, an attorney who had been active in the prosecutions. It was thought to have been the work of some person whose enmity Blake had incurred by his efforts to enforce the law.<sup>84</sup>

At Dubuque the prohibitory law did not meet with general observance even at the first, and it was not thought that any serious attempt would be made to enforce it. In fact one newspaper made the statement that "it is understood that the law will be ignored in Dubuque the same as the old law has been ignored for the past twenty years or more."<sup>85</sup>

At Marshalltown the immediate effect of the new law had evidently been the closing of all of the saloons. But on July 14 a correspondent to an Iowa City paper wrote that "a saloon here on Saturday gained notoriety and a large patronage by placing beer on tap. About noon the crowd

<sup>81</sup> *The Burlington Hawk-Eye*, Sunday, July 6, 1884.

<sup>82</sup> *The Burlington Hawk-Eye*, Sunday, July 13, 1884.

<sup>83</sup> *The Burlington Hawk-Eye*, Friday, August 15, 1884.

<sup>84</sup> *The Burlington Hawk-Eye*, Saturday, August 16, 1884.

<sup>85</sup> Quoted from *The Dubuque Herald* in the *Iowa City Daily Republican*, Vol. VIII, No. 240, Wednesday, July 9, 1884.



was so large the customers had to wait thirty minutes to have their orders filled."<sup>86</sup> The opening of this saloon, however, was met by prompt action and a warrant was issued for the arrest of the proprietor. A mob gathered to resist the carrying into execution of this warrant. The arrest was made, nevertheless, and the saloon was closed. The crowd, unable to get any more liquor from that source, went to the brewery where the beer was made, and attempted to get in by throwing beer-kegs and other missiles through the windows. Finding the liquor securely locked in a cellar, they forced the owner of the brewery to deliver the keys, and a scene of revelry followed. The brewer, who had been somewhat violently treated by the mob, was so frightened and discouraged that he offered to sell his remaining stock of liquor to the temperance people, to be destroyed by them, and to quit the brewing business at that place at least.<sup>87</sup>

Opposition to the enforcement of the prohibitory law resulted in even greater acts of violence at Iowa City. On Saturday night, July 19, 1884, the residences of an attorney and a citizen who had been particularly energetic in prosecuting violations of the law were attacked by a mob of ruffians. Large stones and other missiles were hurled through the windows, doing much damage to the interior of the houses, but resulting in no injury to any member of the families thus rudely awakened from their sleep.<sup>88</sup> The excitement caused by this outrage had scarcely died away when it was aroused to a more feverish pitch by other occurrences. On the afternoon of August 13, a trial for violation of the liquor law was being held in Scott Township,

<sup>86</sup> *Iowa City Daily Republican*, Vol. VIII, No. 245, Tuesday, July 15, 1884.

<sup>87</sup> Marshalltown correspondence in the *Iowa City Daily Republican*, Vol. VIII, No. 247, Thursday, July 17, 1884.

<sup>88</sup> *Iowa City Daily Republican*, Vol. VIII, No. 250, Monday, July 21, 1884.



at a place about three and one-half miles southeast of Iowa City. A mob of two hundred men went out from town, broke up the trial, tarred and feathered one of the prosecuting attorneys, and stoned the house in which he took refuge. The life of a constable, who attempted to resist the fury of the mob, was threatened and but for the timely assistance of the deputy-sheriff the threat might have been executed. The special ire of the mob was directed against the man whom the indictment in this case named as the informer and a rope was provided for the purpose of hanging him, as a warning to all others who should feel it their duty to give information of violation of the law. He managed, however, to elude the crowd.

That evening the streets of Iowa City were filled with people and the most intense excitement prevailed. Guns were fired, but apparently with no purpose for no one was injured. As the man referred to above as the informant in the case of the afternoon and his brother were making their way home they were attacked by the mob and were being carried away in the darkness when rescued. Several arrests were made but the prisoners were torn away from the officers before they could be conveyed to the police station. The riotous demonstrations continued, though in a less violent degree, during the next two days. A large force of officers was employed — especially to watch the residences of persons against whom the wrath of the mob might vent itself. A company of militia was held in readiness at Marengo to come to the assistance of the city officials in case there should be need. Gradually affairs assumed their normal course, but as is usual in cases of mob violence it was difficult to locate the guilty parties.<sup>89</sup>

<sup>89</sup> For a full account of the Iowa City mob see the *Iowa City Daily Republican*, Vol. VIII, No. 279, Wednesday, August 13, 1884, and the following issues.



The relation which the prohibition question bore to political parties at that time was discussed in a pointed manner by the editor of a Keokuk newspaper. He stated his belief that if the Democratic party in the next campaign should come out in favor of prohibition it would lose four-fifths of its members; and that if the Republican party should declare opposition to prohibition it would be deserted by a corresponding proportion of its members. "A party", said he, "does what it has to do. The republican party cares nothing for prohibition; the democratic party nothing for license."<sup>90</sup> That this estimate was largely true there can be but little doubt.

In December, 1884, an attempt was made at Des Moines to adopt the plan followed by Council Bluffs, namely, of allowing liquor dealers to continue business by paying a tax which would in reality amount to a license. Resolutions to this effect were introduced in the City Council, but they were reported upon adversely by the committee and the plan was defeated.<sup>91</sup> Keokuk, however, adopted this scheme and soon found itself in trouble. The saloon-keepers, after continuing their business for some time, refused to pay the tax and the matter stood just where it had at the beginning.<sup>92</sup>

A serious obstacle to the enforcement of the prohibitory law in many places was the doubt as to the constitutionality of the law, an obstacle which was removed by a decision of the Supreme Court of the State, at the March term in 1885. Judge Rothrock, who delivered the opinion of the Court, held that the law was not repugnant to the Constitution in any sense and was therefore perfectly

<sup>90</sup> Quoted from *The Gate City* (Keokuk), in the *Iowa City Daily Republican*, Vol. IX, No. 67, Wednesday, December 17, 1884.

<sup>91</sup> *Iowa City Daily Republican*, Vol. IX, No. 67, Wednesday, December 17, 1884.

<sup>92</sup> *Iowa City Daily Republican*, Vol. IX, No. 116, Friday, February 13, 1885.



valid.<sup>93</sup> This question having been settled, the enforcement of the law depended almost entirely on public sentiment in the different communities.

The spirit of mob violence and resistance to the enforcement of the law which had been so prevalent in the early months of the operation of prohibition continued to manifest itself in various localities during 1885. In March the saloon-keepers at Sioux City were aroused by the report that an attorney from Le Mars was coming to that city to aid in the work of prosecuting violations of the prohibitory law. An angry mob gathered at the railway station to meet the train on which the attorney was expected, for the purpose of intimidating him and preventing him from carrying out his plans. It happened, however, that the attorney was not on the train and the excitement subsided. The mayor declared that at any time the attorney desired to come to the city he would be given ample protection, and the spirit of lawlessness exhibited by the mob was severely condemned.<sup>94</sup>

Later in the summer, at Muscatine, an attempt was made to burn some property belonging to a man who had taken a leading part in enforcing the prohibitory law. At Fort Dodge a former Governor of the State, who had given information of violations of the law, was brutally attacked by an angry liquor dealer and was saved from serious injury only by the interference of friends.<sup>95</sup> Many other instances might doubtless be given to show the widespread opposition to the enforcement of prohibition. Mob violence, however, was strongly denounced by the press and by the better class of citizens. One editor in commenting upon the Sioux City incident said that "it is the most

<sup>93</sup> *Littleton vs. Fritz*, 65 Iowa 488.

<sup>94</sup> *Iowa City Daily Republican*, Vol. IX, No. 156, Tuesday, March 31, 1885.

<sup>95</sup> *Iowa City Daily Republican*, Vol. X[IX], No. 264, Friday, August 7, 1885.



conclusive argument in the world that the law should be enforced, if it takes every able-bodied, law-abiding citizen in the State to do it. . . . If the rum power is so strong that its insane slaves blindly set themselves up against the enforcement of our statutes, then it is indeed time that law should prevail, if it takes a revolution to accomplish it."<sup>96</sup>

When the prohibitory law had been in operation one year a Davenport newspaper editor issued a circular letter to the mayors of the principal cities of the State, inquiring as to the extent of the enforcement of the law. A summary of the facts thus gained showed that in some places prohibition was entirely successful, in others the number of saloons was the same as before the law was enacted, while in many places there had been an increase in the number of saloons. This increase varied from six at Boone to ninety-four at Ottumwa. In ten places it was reported that the annual tax levy had been increased to meet the loss of the revenue formerly derived from the saloons.<sup>97</sup> A writer in another newspaper, however, stated that the extent and strength of enforcement should not be judged alone from the result in larger places, for, said he, "in scores and hundreds of the smaller cities and towns of Iowa it is absolutely enforced, so far as the existence of saloons is concerned, and many who voted against it have come to acknowledge its benefits and blessings."<sup>98</sup> The statement was made, on the authority of investigations carried on by the State Temperance Alliance, that in three hundred and forty townships in eighty counties the number of saloons had decreased by about six hundred, and

<sup>96</sup> Quoted from *The Times-Republican* in the *Iowa City Daily Republican*, Vol. IX, No. 158, Thursday, April 2, 1885.

<sup>97</sup> Quoted from *The Davenport Democrat* in the *Iowa City Daily Republican*, Vol. X[IX], No. 242, Monday, July 13, 1885.

<sup>98</sup> Quoted from the *Cedar Rapids Republican* in the *Iowa City Daily Republican*, Vol. X[IX], No. 242, Monday, July 13, 1885.



that on this basis in the entire State there were three thousand saloons fewer than prior to July 4, 1884.<sup>99</sup>

The temperance question again assumed a prominent position in the political campaign of 1885. It was of vital importance to the Prohibitionists to secure the election of officers who would enforce the prohibitory law and legislators who would strengthen it by further enactments. The two leading parties took their accustomed positions. The Democrats pledged their best efforts to secure "the enactment of a license law of \$250, with power to increase the same from \$250 to \$1,000, as may be deemed best for the public interests in the various localities of the state," and in addition they favored the passage of a law making it a crime to manufacture or sell adulterated liquors.<sup>100</sup> The committee which framed the platform was evidently ignorant of the fact that there was already such a statute.

The Republicans seemed desirous to disclaim any responsibility for the prohibitory law as a party measure. Prohibition, it was forcibly asserted, had never been a test of fealty to the Republican party. The law had been enacted in response to the expressed will of the people and it was because of that expressed will that the party had pledged itself to enact the law. However, they now declared "for a fair and thorough trial of that law that it may have time to demonstrate its efficiency or prove its inefficiency before it is repealed". They condemned the action of the Democratic party in favoring "a \$250 license, compulsory on every community, regardless of local opinion, for the legalizing again in Iowa, of the sale of whiskey and all other alcoholic liquors".<sup>101</sup> William Lar-

<sup>99</sup> *Iowa City Daily Republican*, Vol. X[IX], No. 262, Wednesday, August 5, 1885.

<sup>100</sup> Fairall's *Manual of Iowa Politics*, Vol. II, Pt. I, p. 41.

<sup>101</sup> Fairall's *Manual of Iowa Politics*, Vol. II, Pt. I, p. 46.



rabee was chosen as the candidate for Governor, partly at least because, being a conservative on the question of prohibition, it was thought he would best be able to keep together the Prohibition and anti-Prohibition factions of the party.

In spite of earnest protests by the State Temperance Alliance a small coterie of disgruntled Prohibitionists held a convention at Cedar Rapids on September 23, adopted a platform, and nominated a State ticket.<sup>102</sup> At the election James Michelwaite, the candidate for Governor, received only 1,417 votes. William Larrabee, the Republican candidate, was elected, but by a small plurality because of a fusion of the Democrats and Greenbackers.<sup>103</sup>

As the date for the opening of the next General Assembly drew near there was some agitation in favor of a law establishing a State constabulary for the enforcement of the prohibitory law. The recommendation was also made that law-breaking by liquor dealers should be made a police-court offense, and that the fines for violations should go into the municipal treasury. "Governments", it was suggested, "enforce law for revenue better than they do for principle."<sup>104</sup>

#### THE LIQUOR LAWS OF 1886

Governor Sherman in his message of January 14, 1886, transmitted just previous to his retirement from office, took the opportunity to touch upon the temperance question. "Notwithstanding the adverse opinions and unfriendly criticisms indulged in by its opponents," he declared, "there is no doubt the Prohibitory Liquor Law has been

<sup>102</sup> *Iowa City Daily Republican*, Vol. X[IX], No. 303, Thursday, September 24, 1885.

<sup>103</sup> *Iowa Official Register*, 1907-8, p. 526.

<sup>104</sup> Quoted from the *Iowa State Register* in the *Iowa City Daily Republican*, Vol. X, No. 67, Thursday, December 24, 1885.



reasonably successful. . . . I am aware the law is violated in very many of our cities, but this argues nothing for its repeal — the same may be said as regards the law against burglary, and other graver crimes, yet none desire their modification. Whatever failure has attended it, is largely due to the apathy of its original champions, who, while stentorious in demand for its enactment, have been noticeably quiet in aiding its enforcement." He called special attention to the bootlegging which was being carried on in some communities and recommended severe penalties for offenses of this nature. Moreover, he made several suggestions as to additional provisions for the enforcement of the law.<sup>105</sup>

William Larrabee, the new Governor, was heartily in favor of enforcing the prohibitory law. In his inaugural address of January 14, 1886, he reviewed briefly the evils of intemperance and paid the following tribute to the saloon:

The saloon is the educational institution which takes no vacation or recess and where the lowest and most pernicious political doctrines are taught. Its thousands of graduates may be found in all positions of wretchedness and disgrace, and are the most successful candidates for our poorhouses and penitentiaries. It is the bank where money, time, strength, manliness, self-control and happiness are deposited to be lost, where drafts are drawn on the widows and orphans, and where dividends are paid only to his Satanic Majesty. Let it perish.

The Governor then proceeded to trace the history of the movement which had resulted in the prohibitory law, and declared emphatically that while the law had not been entirely successful it had not been a failure and should not be repealed until it had been given a fair trial. "The question now", said he, "is not between prohibition and license, but whether law or lawlessness shall rule. . . . True

<sup>105</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, pp. 344-346.



Americans are law-abiding, and recognize the right of the majority to rule, and the duty of the minority to yield obedience. In the large cities and in communities where public sentiment is opposed to the law, it is openly and flagrantly violated. The honor of the State compels us to vindicate its majesty. . . . Public funds should be appropriated and, if necessary, the whole power of the State should be brought into requisition, to secure obedience. Whatever authority may be vested in me will be unhesitatingly exercised."<sup>106</sup>

At a temperance convention at Des Moines, January 21, 1886, which was attended by over five hundred delegates, resolutions were adopted expressing the warmest approval of the stand taken by Governor Larrabee and calling upon the General Assembly for legislation to remedy the defects of the prohibitory law and to provide for its better enforcement.<sup>107</sup>

Being thus urged to act, the General Assembly, after prolonged and animated debate in both Houses during which the halls were crowded with spectators, passed the well-known "Clark Bill", which received the Governor's approval on April 5. The prohibitory law was greatly strengthened, especially in regard to the abatement of nuisances and the transportation of intoxicating liquors. It was made the duty of district and county attorneys to institute action for the abatement of nuisances, and the general reputation of a place was held admissible as evidence in proving the existence of a nuisance. In all successful cases the plaintiff was to be "entitled to an attorney's fee of not less than twenty-five dollars, to be taxed and collected as costs against the defendant." Severe pen-

<sup>106</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 25-30.

<sup>107</sup> *Iowa City Daily Republican*, Vol. X, No. 91, Saturday, January 23, 1886.



alties were provided for the keeping of nuisances and the violation of injunctions.

One section was devoted to the manner in which nuisances might be abated. It provided for the seizure and destruction of all intoxicating liquors found in places proven to be nuisances, and for the removal from the building and the sale of all furniture, vessels, or other appurtenances used in the illegal manufacture or sale of liquor. Furthermore, the building was to be closed for one year unless its owner conformed to certain regulations.

The finding of intoxicating liquors "except in the possession of one legally authorized to sell the same or except in a private dwelling house," which was not connected with a place of public resort, was made "presumptive evidence that such liquors were kept for illegal sale". The provision of the law of 1884 in regard to the transportation of intoxicating liquors was amended and strengthened by increasing the penalty for violation and defining the offense more in detail.<sup>108</sup> Shipment of liquors under false names was made punishable by a fine of one hundred dollars. The real and personal property of the person convicted of violation of the law, as well as the real and personal property of the owner of the premises on which the illegal manufacture or sale of intoxicating liquors was carried on, was made liable for the payment of judgments for infraction of the law.<sup>109</sup>

In addition to this law which if rigidly enforced would virtually leave no loop-hole for illegal traffic in liquor, there were three other acts dealing with the temperance problem. One of these, which was strongly objected to by the

<sup>108</sup> This section of the law of 1886 (section 10) was declared unconstitutional by the Supreme Court of the United States in 1888, on the grounds that it was a regulation which interfered with interstate commerce and consequently was not in the power of the State to enact.—*Bowman vs. Chicago and Northwestern Railway Company*, 125 U. S. 465.

<sup>109</sup> *Laws of Iowa*, 1886, pp. 81-86.



Prohibitionists, gave to registered pharmacists who should conform to certain provisions as to permits and reports, the sole right to sell intoxicating liquors for medicinal purposes only.<sup>110</sup> The substance of another act is indicated in the title: "An Act to Provide for the Teaching and Study of Physiology and Hygiene with Special Reference to the Effects of Alcoholic Drinks, Stimulants and Narcotics upon the Human System, in the Public Schools and Educational Institutions of the State."<sup>111</sup> This law is still in force. The remaining law provided that the possession by "any person engaged in any kind of business," of a receipt "showing payment of the special tax, levied under the laws of the United States, upon the business of selling distilled, malt or fermented liquors," should constitute evidence that liquor was being kept and sold contrary to law, except in the case of persons authorized to sell.<sup>112</sup> It seems that many liquor dealers had maintained that they had a right to sell because they had paid the tax imposed by the United States government.

#### THE ATTEMPT TO ENFORCE PROHIBITION FROM 1886 TO 1890

The Twenty-first General Assembly had done all in its power to make possible the enforcement of the prohibitory law. Penalties had been provided which were too heavy to be disregarded, and the question now was largely one of whether public sentiment in the various communities was strong enough to insist upon the enforcement of the law and whether the Prohibitionists would live up to their principles. In a proclamation of May 3, 1886, Governor Larrabee issued an ultimatum to the violators of the law and gave to the Prohibitionists the moral advantage of executive ap-

<sup>110</sup> *Laws of Iowa*, 1886, pp. 105-108.

<sup>111</sup> *Laws of Iowa*, 1886, p. 1.

<sup>112</sup> *Laws of Iowa*, 1886, p. 135.



proval. He declared that the prohibitory law had been enacted in response to the desire of the people as expressed in the vote on the Amendment and stated that he had received a large number of petitions for pardons and remissions of fines for offenses committed against the law. The remaining portion of the proclamation is worthy of attention as indicative of the attitude taken by Governor Larrabee throughout his two terms in office:

Now, Therefore, I, William Larrabee, Governor of the State of Iowa, relying with confidence upon the loyalty and true christian spirit of our people to sustain all measures adopted for the promotion of the general welfare, do, under the pains and penalties of the law, warn all persons engaged in the illegal sale of intoxicating liquors to desist from such unlawful practice, and I do hereby give notice that wilful violators will hereafter have no claim on executive clemency. And I call most earnestly upon all the good people of the state, to aid to the best of their ability, in the enforcement of the law. Especially do I call upon all temperance societies, and other bodies organized for kindred purposes, to realize the necessity for new energy in their labors.

Let the priests, ministers, teachers, and the press use their best efforts to enlist the moral forces of the State in this cause — Let the Judges, attorneys, and other officers of the Courts, be painstaking and persistent in enforcing the law, both in letter and spirit — Let the sheriffs and peace officers be fearless and vigilant, and let the mayors and all other municipal officers awaken to new zeal in their efforts to secure its observance.

I exhort all citizens to lay aside partisan differences, and by united and determined efforts banish the dram-shop from Iowa.<sup>113</sup>

This proclamation of the Governor was received with great enthusiasm by the Prohibitionists. The executive office was flooded with letters of praise and approval from individuals, churches, Sunday-school conventions, and temperance organizations all over the State. "The pulpits next

<sup>113</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 212, 213.



Sabbath [will] ring out your words", wrote a woman prominent in temperance work in the State and Nation, "and many will say more earnestly than ever before, 'God save the Commonwealth of Iowa and bless Governor Wm. Larrabee.'" <sup>114</sup> It seemed as though the Governor's appeal had not been made in vain, and that the people in all parts of the State would insist upon the enforcement of the law. But it is to be feared that too many of those who were loudest in their demands for enforcement were unwilling to take an active part in the work. Many people expected the law to enforce itself, while they sat back and did nothing.

If the closing of the saloons was the sole design of the prohibitory law, the amendments of 1886 completed the work which had been begun by the law of 1884, for there was a general and voluntary cessation of business by saloon-keepers throughout the State — except in communities where there was strong opposition to the law. But the demand for intoxicating liquors as a beverage had not decreased, and where there is a demand for a thing it is seldom difficult to find some means of supply. In this case it is common knowledge that during the early years of prohibition in Iowa the saloon was replaced by the drug-store, the "hole in the wall", the "blind tiger", the "blind pig", and the "boot-legger". The pharmacy law had given to registered pharmacists the sole right to sell intoxicating liquors for medicinal, mechanical, culinary, and sacramental purposes, and it can scarcely be a matter of wonder that immense quantities of liquor were bought and sold under cloak of this provision. Many druggists doubtless endeavored to abide by the law, but it was a difficult task even for the most conscientious. If a customer asked for liquor for mechanical purposes it was no easy matter to determine

<sup>114</sup> Public Archives, Office of the Governor, Des Moines.



whether his intentions were honest. There were many more who made no serious attempt to obey the law, as is evidenced by the fact that a partial list of the prosecutions of druggists for two years (1885-1887) shows a total of seventy-four convictions, of which the greater portion were for the unlawful sale of intoxicating liquors.<sup>115</sup> These cases, which were from all parts of the State, show that everywhere druggists were carrying on the illegal sale of liquors. In fact it is undoubtedly true that many of the deposed saloon-keepers entered the drug business and hired registered pharmacists for no other reason than that they might continue the liquor traffic. The partition in the rear of the store served as a screen to hide an improvised bar to which the initiated were freely admitted.

Besides the drug-stores a great many ingenious means were devised to defeat the law and supply the demand for liquor. "The first alarming evil that grew out of the proposed revolution", says one writer who was opposed to prohibition, "was the driving of drink to the homes of the people. . . . Another lamentable feature is that hundreds of business men inaugurated bars in their places of business. . . . Agents representing manufacturers of ale, beer, wine and liquors of every description to the number of more than a hundred, for a time traveled through the state, taking orders for private stocks, and home consumption. . . . Throughout the country in many parts of the state beer depots were established. The home of some farmer would be designated as the central point where his neighbors could call and get their kegs of beer, which had been ordered outside and hauled into the state. . . . Another scheme was that of having a simple elevator running from the cellar to the first floor of a building so ar-

<sup>115</sup> *Fourth Biennial Report of the Commissioners of Pharmacy for the State of Iowa, 1887, pp. 66-73.*



ranged that no one could see from whence the liquors came, but by walking into the room and placing the money on the counter, the demand would be supplied at once. . . . Another method was the 'blind pig' or 'hole in the wall' under a stairway. By simply lifting one of the steps hung on hinges, the liquor desired was found on ice therein. . . . In many cities hundreds, if not thousands, of homes were turned into neighborhood saloons, and the evidence is not lacking to show that in some portions of the state, places of this character existed every two or three blocks where one or two kegs of beer were sold daily in addition to some whiskey. . . . It soon became apparent that there was a great inflow of liquor from every direction into the state of Iowa".<sup>116</sup> And so the account might be extended indefinitely to show the manifold ways in which the prohibitory law was evaded.

The foregoing recital naturally takes into account only the gloomy aspect of the effects of the prohibitory law. Nevertheless these are the conditions with which those attempting to enforce the law had to contend, and the wonder is not that toward the end they became somewhat disheartened, but rather that they succeeded as well as they did.

At Sioux City in August, 1886, Rev. George C. Haddock was murdered while engaged in an attempt to enforce the prohibitory law. Perhaps nothing could have done more to arouse public sentiment against violators of the law. At any rate there followed a crusade which resulted in the closing of many saloons in communities where they had been running openly.<sup>117</sup>

<sup>116</sup> Faulkes's *Iowa's White Elephant*, pp. 35-38.

<sup>117</sup> For an account of the Haddock murder see Haddock's *Life of Rev. George C. Haddock*. For evidence of the crusade against the saloons see the *Iowa City Daily Republican*, Vol. X, Nos. 310 and 353, Tuesday, October 19, and Friday, December 10, 1886.



At a meeting of the State Temperance Alliance at Des Moines in January, 1887, it was stated that where public sentiment had been strong enough there had been little difficulty in enforcing the law; but it was freely admitted that in many places the law was virtually a dead letter because a majority of the people were opposed to its enforcement. At this meeting it was suggested that a law should be enacted to provide for the levying of a tax on the counties in which prohibition was not enforced and that the proceeds should be used to enforce the law.<sup>118</sup> Of course such a law would not have been constitutional had it been enacted.

While the majority of the people conceded and insisted, both at the time of the Amendment contest and after the passage of the prohibitory law, that the manufacture of liquor for exportation was not prohibited, there were, nevertheless, many others who looked upon this interpretation with repugnance. It seemed inconsistent to allow the free export of a commodity the sale of which was prohibited at home because of its injurious effect on humanity. An opportunity was given to test this interpretation in the spring of 1887. At Des Moines injunction proceedings were instituted against the International Distillery, the largest establishment of its kind in the State. The injunction was granted by the District Court, and the case was appealed to the Supreme Court of Iowa. The decree of the District Court was sustained, and the manufacture of liquor for exportation was declared unlawful under the prohibitory law, which was held not to be in violation of the provisions of either the State or Federal Constitution.<sup>119</sup> Following this decision the case was appealed to the Supreme Court of the United States, where the opinion of the Iowa court was af-

<sup>118</sup> *Iowa City Daily Republican*, Vol. X[XI], No. 91, Saturday, January 22, 1887.

<sup>119</sup> *Pearson et al. vs. The International Distillery et al.*, 72 Iowa 348



firmed.<sup>120</sup> Thus the injunction was granted and the distillery was forced to close.

The breweries had generally closed a short time before the above decision. Certain cases arising in Kansas, where there was a prohibitory law almost identical with the one in Iowa, were taken to the Supreme Court of the United States. In the case of *Mugler vs. Kansas* (123 U. S. 623), it was held that the prohibition of the manufacture and sale of intoxicating liquors within a State, came within the police power of the State and did not violate any of the provisions of the Constitution of the United States; that it was not necessary that persons whose property was made valueless in consequence of such a law should be compensated for their loss by the State; and that the destruction or confiscation of property which constituted a nuisance was not depriving a man of his property without due process of law and therefore was constitutional. This decision was accepted as final by a majority of the Iowa brewers without waiting for a test case in their own State.

Thus it will be seen that the prohibitory law had resulted in the closing of a majority of the distilleries and breweries. On July 26, 1887, Governor Larrabee sent out a circular letter to the Sheriffs of the counties, asking them to fill out the following blank form and return to him:

\_\_\_\_\_County, \_\_\_\_\_ 1887

1st Approximate number of saloons in your county on the 1st day of August 1887\_\_\_\_\_

2nd Largest number of saloons in the County at any time during the past two years\_\_\_\_\_

\_\_\_\_\_  
Sheriff.

The results of this circular letter<sup>121</sup> are embodied in the

<sup>120</sup> *Kidd vs. Pearson*, 128 U. S. 1.

<sup>121</sup> Public Archives, Office of the Governor, Des Moines.



## HISTORY OF LIQUOR LEGISLATION IN IOWA 561

following table which, perhaps, is as authoritative a statement of the effect of the prohibitory law up to 1887 as it would be possible to obtain. (See also Map III.)

COUNTIES	APPROXIMATE NO. OF SALOONS AUG. 1, 1887	LARGEST NO. OF SALOONS DURING PAST TWO YEARS
Adair	0	0
Adams	0	2
Allamakee	2	14
Appanoose	0	0
Audubon	0	6
Benton	0	0
Black Hawk	10	20
Boone	0	11
Bremer	0	4
Buchanan	0	14
Buena Vista	0	4
Butler	0	0
Calhoun	0	0
Carroll	27	40
Cass	0	20
Cedar	3	12
Cerro Gordo	0	0
Cherokee	0	0
Chickasaw	8	16
Clarke	0	0
Clay	0	0
Clayton	Do not know	Do not know
Clinton	Refuse to state	Refuse to state
Crawford	13	13
Dallas	0	7
Davis	0	0
Decatur	0	1
Delaware	0	8
Des Moines	80	80
Dickinson	0	3
Dubuque		
Emmet	0	0
Fayette	0	22



COUNTIES	APPROXIMATE NO. OF SALOONS AUG. 1, 1887	LARGEST NO. OF SALOONS DURING PAST TWO YEARS
Floyd	0	6
Franklin	0	2
Fremont	0	12
Greene	0	0
Grundy	9	12
Guthrie	0	2
Hamilton	0	0
Hancock	0	4
Hardin	0	2
Harrison	0	17
Henry	0	2
Howard	0	0
Humboldt	0	0
Ida	0	5
Iowa	0	0
Jackson	30	40
Jasper	0	0
Jefferson	1	10
Johnson	0	Do not know
Jones	0	10
Keokuk	0	35
Kossuth	0	1
Lee	75	75
Linn	0	60
Louisa	0	0
Lucas	0	16
Lyon	0	0
Madison	0	0
Mahaska	0	0
Marion	0	0
Marshall	0	37
Mills	19	19
Mitchell	0	0
Monona	0	8
Monroe	0	0
Montgomery	0	0
Muscatine	0	7

(Reported by Ex-Senator C. M. Brown)



## HISTORY OF LIQUOR LEGISLATION IN IOWA 563

COUNTIES	APPROXIMATE NO. OF SALOONS AUG. 1, 1887	LARGEST NO. OF SALOONS DURING PAST TWO YEARS
O'Brien	0	0
Osceola	0	0
Page	0	0
Palo Alto	6	6
Plymouth	3	40
Pocahontas	0	0
Polk	0	135
Pottawattamie	35	90
Poweshiek	0	0
Ringgold	0	0
Sac	0	0
Scott	Do not know	Do not know
Shelby	0	18
Sioux	1	4
Story	0	3
Tama	0	5
Taylor	0	0
Union	0	0
Van Buren	0	0
Wapello	40	60
Warren	0	0
Washington	0	0
Wayne	0	0
Webster	0	15
Winnebago	0	1
Winneshiek	18	48
Woodbury	0	108
Worth	0	7
Wright	0	0

During the political campaign of 1887 prohibition was again one of the leading issues. The Republicans declared that Iowa had "no compromise to hold with the saloons", and favored the vigorous enforcement of the law and further amendments to prevent drug stores and wholesale houses from becoming the successors to the saloon.<sup>122</sup> The Demo-

<sup>122</sup> *Iowa City Daily Republican*, Vol. XI, No. 274, Thursday, August 25, 1887.



crats advocated a license system with five hundred dollars as the minimum price of a license.<sup>123</sup> The Prohibitionists held a convention at Des Moines on July 14, adopted an elaborate platform, and nominated a State ticket headed by V. G. Farnham of Plymouth County.<sup>124</sup> It is rather interesting to note that Farnham received only three hundred and thirty-four votes — the smallest number ever received by a Prohibitionist candidate in Iowa.

It was within the ranks of the established parties that the prohibition question played an important part in the contest. One newspaper even went so far as to say that the results of the election showed "that party lines were almost wholly ignored and that prohibition was the central issue in the struggle." The statement was also made that money was freely used by the liquor dealers in the effort to secure the election of legislators who would favor the repeal of the prohibitory law.<sup>125</sup> In the election of county officers the Prohibitionists were more successful than in the contest for Governor — as for instance, in Polk County where they elected one of the two representatives and all the other county officers except sheriff.<sup>126</sup>

Governor Larrabee, in his message of January 11, 1888, declared that while in general the prohibitory law was being enforced and public sentiment was in favor of it, nevertheless there were some localities in which it was openly violated. Especially did he denounce the laxness of officers whose duty it was to enforce the law. "Citizens have again and again called upon me", said he, "to enforce the Prohibitory Law in the few counties and places where, as yet,

<sup>123</sup> *Iowa City Daily Republican*, Vol. XI, No. 281, Friday, September 2, 1887.

<sup>124</sup> *Iowa City Daily Republican*, Vol. XI, No. 238, Friday, July 15, 1887.

<sup>125</sup> Quoted from the *Council Bluffs Nonpareil* in the *Iowa City Daily Republican*, Vol. XI[XII], No. 29, Saturday, November 12, 1887.

<sup>126</sup> *Iowa City Daily Republican*, Vol. XI[XII], No. 25, Wednesday, November 9, 1887.



but little regard has been paid to it. I in turn have called upon the judges, sheriffs, and other officers to aid in accomplishing this, but, I regret to say, without success. . . . I think some measures should be adopted to quicken the consciences of the officials, who neglect or refuse to perform their sworn duty; or else provide a way for their suspension or removal."

At about this same time the Governor also transmitted to the General Assembly a series of letters which he had received from District and Superior Court judges in reply to a communication asking their views regarding needed legislation and the effect of the prohibitory law. Probably no class of men in the State had a better opportunity to judge of the workings of the law, and hence their opinions were especially valuable. From these letters it appears that, while the majority of the judges approved of the law and only suggested further amendments, there were many who were strongly opposed to it, and still others who, though somewhat dissatisfied with the law, did not favor its repeal until it had been given a more extended trial. It is noticeable that those judges who heartily favored the law, in nearly every case, came from those Districts in which there were no large cities and where there was the least difficulty in enforcing prohibition.

Various reasons were given by the judges who advocated the repeal of the prohibitory law. "You ask me whether I would advise the repeal of the present law," wrote Judge Charles H. Phelps of the First District. "In its present form, I say, yes. Its penalties are so severe, its practical destruction of valuable property, particularly expensive breweries, seems to many temperate and right minded people so unjust, that in counties where prohibitionists are not in the majority, juries will not convict, and the result is free whiskey. In its stead I would propose local option and



high license. . . . The efforts to enforce the present law have cost this county between six and ten thousand dollars, nearer the latter sum, with no beneficial results, and our tax payers are getting very tired of it."

Another judge said that "if it has had any effect, it has been to cause the sale of a more vile and injurious article of liquors." "The present law has afforded opportunities for impecunious lawyers to use it to their own profit", declared Judge W. F. Brannan, "suits upon the various clauses of section 1539, code, have been freely brought in some of the counties of this district, many of which, brought merely to extort money, have accomplished their purpose, and the suits have been dismissed without benefit to the school fund. Injunction suits have in like manner been instituted which have been dismissed for a consideration paid to the attorney who brought them, as I am informed."

Still another judge objected to the prohibitory law on the grounds that it discouraged immigration to, and encouraged emigration from the State. Speaking of Dubuque County, Judge Ney of the Tenth District said, "I have no hopes for the successful enforcement of prohibition in that county, unless there should be an entire revolution of the popular feeling."<sup>127</sup> These and other objections of a similar character were urged by the judges from the districts in which public sentiment was not in favor of the law. At the same time a large majority of the judges were opposed to a repeal of the law until it had been given a more thorough trial.

In 1888 the General Assembly, acting in accordance with the recommendations of the Governor and the advice of the judges, passed three acts designed to strengthen the prohibitory law. The first of these was very elaborate and de-

<sup>127</sup> *Letters Written by District and Superior Court Judges to the Governor, Embodying their Views Concerning Needed Legislation and the Operation of the Prohibitory Liquor Law, 1888, pp. 7, 19, 24, 26, 30.*



tailed and was directed against the illegal sale of intoxicating liquors by pharmacists. It was made much more difficult to secure a permit to sell, and the applicant was required to give a heavy bond and take an oath that he would not violate the law. It was further provided that all requests for liquor must be made on blanks furnished by the county at cost, and that these blanks must be preserved by the permit holder and returned to the County Auditor. Permits might be revoked at any time, and the Commissioners of Pharmacy were required to cancel the registration of any pharmacist convicted of more than one offense. Other provisions were made in regard to the keeping of records by holders of permits, and penalties for violation of the law.<sup>128</sup> The second law also related to pharmacists and simply provided for the release of penalties in certain cases.<sup>129</sup> The remaining act provided that in abating a nuisance the officer should "be entitled to the same fees for removing and selling the movable property that he would be for levying on and selling like property on execution", and that for closing a building and keeping it closed he should receive a reasonable fee. However, no person was permitted to receive fees in advance of the trial, and in case the court found that an action "was brought maliciously and without probable cause", the costs might be assessed against the person bringing the action. All injunctions were declared to be binding throughout the judicial district in which the action was brought. In all cases of proceedings against persons charged with violating injunctions ten per cent of the fine was to be given to the prosecuting attorney. Finally, it was provided that all packages of intoxicating liquors must be correctly labeled before shipment.<sup>130</sup>

<sup>128</sup> *Laws of Iowa*, 1888, pp. 91-103.

<sup>129</sup> *Laws of Iowa*, 1888, pp. 103, 104.

<sup>130</sup> *Laws of Iowa*, 1888, pp. 104-106.



With these additional regulations the attempt to enforce prohibition was continued with varying success in different localities. At Dubuque the liquor dealers formed a "Personal Liberty Association" the avowed object of which was to oppose the enforcement of the prohibitory law, and the result was that the saloons continued as openly as before.<sup>131</sup> Practically the same state of affairs maintained in all the river towns.

The law which imposed such severe restrictions upon the sale of liquors by pharmacists met with much opposition. In his address of welcome to the ninth annual meeting of the Iowa Pharmaceutical Association at Des Moines in May, 1888, Hon. Carroll Wright said, "you who have a pride in your calling and who have conducted a legitimate pharmacy, are being made to suffer for the misdeeds of those who, creeping into the drug business by the back door, have converted their certificate into a license for a saloon. I may be mistaken, but I think the legislature of Iowa could have rid you of those pests without casting upon the entire calling an unjust reflection." The attitude conveyed in these words was very manifest throughout the proceedings of the convention.

One member of the association who was unable to be present at the meeting, wrote a letter in which he waxed eloquent over the injustice of the law in regard to pharmacists. "I presume", said he, "we shall soon be back under the old blue laws of New England, and be obliged to get a permit to kiss our wife on Sunday, or any other woman on Monday, which law would only be imposed through envy and jealousy, as the prohibitory laws of Iowa are generally enforced through malice and revenge. It does seem to me the last Legislature (if indeed it is entitled to the digni-

<sup>131</sup> *Iowa City Daily Republican*, Vol. XI[XII], No. 113, Thursday, February 23, 1888.



ty of the name), did all they possibly could, and worked with a zeal worthy of a better cause, to cripple the industries and destroy the moral and material prosperity of the State, with an equanimity without a parallel in either ancient, or modern history, except perhaps, in the instance of Nero, fiddling while the capital of his empire was burning." Of course this tirade expresses the sentiments of the most violent opponents of the law, but there was throughout the State a feeling that the law was too severe, not only among the pharmacists themselves but among other people who were in a position to judge of the workings of the law.<sup>132</sup>

During the year 1888 the question of the maintenance of a separate political party was one which greatly agitated the minds of the Prohibitionists. Although there was a sufficient number of men who wished to and did continue a separate party organization, there were several leading Prohibitionists who opposed such action. A pamphlet containing open letters by S. N. Fellows, E. K. Young, and D. R. Lucas was circulated in the effort to induce Prohibitionists to remain in one of the old parties, but the failure of this effort is shown by the fact that since 1884 the Prohibition party has had a continuous existence in Iowa.<sup>133</sup>

One of the greatest obstacles to the success of prohibition was the reluctance, and in many cases the refusal, of officers to enforce the provisions of the law. It is a commonly known fact that in many cases municipal and county officers were elected solely on the condition that they would not attempt to enforce the prohibitory law. The following extracts from letters to Governor Larrabee are only good illustrations of the complaints that poured into the executive office:

<sup>132</sup> *Proceedings of the Ninth Annual Meeting of the Iowa State Pharmaceutical Association*, 1888, pp. 5, 7, 30, 31, 33, 39.

<sup>133</sup> *Fellows's Open Letters to the Prohibitionists of Iowa*, 1888.



Fort Dodge, Iowa, January 28th, 1889

I think there is no doubt but what there is a considerable liquor being sold here contrary to law; but it is almost impossible to get evidence to convict these violators. Our Justices of the Peace and Constables are all Democrats, and hence liquor men; also the Sheriff. If a search warrant is sued out to search these places the violators are sure to hear of it before the officer arrives on the ground.

Reinbeck, Iowa, March 11th, 1889

In this little town of about 800 inhabitants there is five saloons running openly. Beer is ship[p]ed in here by the carload, & the law is defied. The County Sheriff drinks with them. The city Marshall is a saloon loafer, & is full most of his time. The Mayor drinks, & stands in with the saloons. . . .<sup>134</sup>

With conditions similar to those described in these letters existing in many localities, especially in the larger cities, it is not strange that the prohibitory law was constantly disregarded. Moreover, the methods used in the efforts to enforce the law in many places brought the prohibition idea into disfavor. It has been asserted, and doubtless with much truth, that the law gave rise to a class of petty lawyers and professional informers whose main purpose was to spy upon supposed violators of the law and institute prosecutions solely for personal gain. A system of extortion very closely allied to blackmail was often resorted to. "Thousands of cases have been filed in various courts," says one writer, "the original notices served by officers, and the cases settled by the payment to the attorneys bringing the suits, of such amount of 'fees' as could be agreed upon. . . . Instances are known where some of these blackmailers have deliberately gone from saloon to saloon, week after week and month after month, at stated intervals,

<sup>135</sup> Public Archives, Office of the Governor, Des Moines.



and collected amounts of money from them with as much regularity as licenses would be collected by a city."<sup>135</sup>

In spite of the many violations and abuses and the indifference of officials, it may be said that up to 1889 the prohibitory law was reasonably successful as far as the closing of saloons was concerned. The Secretary of the State Temperance Alliance sent a circular letter to the Clerk and Sheriff of each of the counties asking information in regard to the operation of the law. Statistics prepared from the answers to this letter were presented at the annual meeting of the Alliance in 1889. In eighty-three counties the law was reported a success and a benefit to the people. Seventy-three counties reported a decrease in crime and criminal prosecutions. Outside of the river counties it was reported that there were only eighty-five saloons in the State and that these were located in five counties.<sup>136</sup> Moreover, the general belief in the efficacy of the law at this time is shown by a second series of letters written to the Governor by the district judges. Of the twenty-one judges replying to the Governor's inquiries only two were in favor of the repeal of the prohibitory law.<sup>137</sup>

One of the most reliable sources from which to determine the effect of the prohibitory law in reducing the number of saloons is to be found in the reports of the United States Commissioner of Internal Revenue. The report for the year ending April 30, 1883, shows that of the 21,495 persons in Iowa who had paid the United States special tax upon the manufacture and sale of certain commodities, there were 20 rectifiers, 5,001 retail dealers in intoxi-

<sup>135</sup> Faulkes's *Iowa's White Elephant*, p. 45.

<sup>136</sup> *Proceedings of the Thirteenth Annual Meeting of the Iowa State Temperance Alliance*, 1889, pp. 20-22.

<sup>137</sup> *Letters Written by District and Superior Court Judges to the Governor, Embodying their Views Concerning Needed Legislation and the Operation of the Prohibitory Liquor Law*, 1890.



eating liquors, 86 wholesale dealers in intoxicating liquors, 117 brewers, 283 retail dealers in malt liquors, and 67 wholesale dealers in malt liquors.<sup>138</sup> This was before the enactment of the prohibitory law of 1884. In 1888, when prohibition had been in force four years, the report shows a total of 6 rectifiers, 2,928 retail dealers in intoxicating liquors, 36 wholesale dealers in intoxicating liquors, 74 brewers, 249 retail dealers in malt liquors, and 48 wholesale dealers in malt liquors.<sup>139</sup> It must be remembered that in both instances the number of retail dealers included druggists as well as saloon-keepers, and that in the latter year the druggists doubtless constituted a much larger proportion of the total number than in the statistics for 1883.

Many interesting facts are also revealed in a later report of the Commissioner of Internal Revenue. It is there shown that whereas in 1883 the amount received from the tax on spirituous liquors in Iowa was 4.5050 per cent of the whole amount collected in the United States, in 1889 the amount collected in Iowa was only .0989 per cent of the whole. The great decrease of the manufacture of intoxicating liquor within the State probably accounts for this large difference in percentages, as the distilleries and breweries had been the most fruitful source of revenue. Another fact shown in the report of 1895 is that in 1883 the total amount of revenue received from all sources in Iowa by the United States government was \$4,062,720.07, while in 1889 it was \$392,576.90, a decrease which was largely due to the prohibitory law. Moreover, it is shown that in 1883, there were 4,285,162 gallons of distilled spirits manufactured in Iowa, while in 1889 only 575 gallons were produced.<sup>140</sup>

<sup>138</sup> *Annual Report of the Secretary of the Treasury on the State of the Finances*, 1883, p. 145.

<sup>139</sup> *Annual Report of the Secretary of the Treasury on the State of the Finances*, 1888, p. 309.

<sup>140</sup> *Report of the Commissioner of Internal Revenue*, 1895, pp. 252, 253, 327, 328, 384, 385.



The facts given in the foregoing paragraphs all go to show that down to 1889, the prohibitory law had the effect of greatly reducing the number of places where liquor was sold openly, and that it practically abolished the manufacture of liquor within the State.

## THE CAMPAIGN OF 1889

One of the most interesting episodes in the political history of Iowa is the campaign and election of 1889—not only because the result was the defeat of the party which had been in power in the State since 1854, but also because of the circumstances which led to that defeat. In any attempt to explain the Democratic victory the prohibition question must be given a prominent place. This election may be said to mark the beginning of the return swing of the pendulum of public opinion against prohibition.

In their platforms the two leading parties took their accustomed stand upon the liquor problem. The Republicans said "we reaffirm the past utterances of the Republican party of Iowa upon prohibition, which has become the settled policy of the State, and upon which there should be no backward step. We stand for the complete enforcement of the laws." It was doubtless the declaration that prohibition had become "the settled policy of the State" which caused much of the defection from the party at the polls in November. The Democrats declared for local option, with a minimum license tax of five hundred dollars for communities which voted in favor of license. They also arraigned the Republican party "for changing the pharmacy laws of the State by which a great hardship and gross indignity has been imposed on honorable pharmacists and upon all the people requiring liquor for the actual necessities of medicine."<sup>141</sup>

<sup>141</sup> *Iowa Official Register*, 1890, pp. 107, 110.



The Prohibitionists held a convention at Cedar Rapids on June 6, and nominated a State ticket headed by Malcom Smith of Linn County. In their platform they declared for the continuance of prohibition and against any form of license. In addition, they advocated woman suffrage, laws for the observance of the Sabbath, arbitration in labor disputes, immigration laws, the Australian ballot, and the popular election of President, Vice-President, and United States Senators.<sup>142</sup>

As the campaign wore on the prohibition question played an important part in political discussions both in the newspapers and by public speakers. The Democrats charged the Republicans with supporting an unjust and burdensome law which was not and could not be enforced. The Republicans insisted that the Democrats were inconsistent in that they opposed prohibition because it interfered with "personal liberty" and at the same time advocated a local option law, which would result in prohibition in three-fourths of the counties of the State.<sup>143</sup> Furthermore, it was claimed that many prominent Prohibitionists were endeavoring to defeat the Republican party.<sup>144</sup>

Election day came and Horace Boies, the Democratic candidate for Governor, received a plurality of 6,573, while the Republicans elected the remainder of their State ticket. Malcolm Smith, the Prohibitionist standard bearer, received 1,353 votes.<sup>145</sup>

The Republicans slowly awoke to the fact that their long record of victories had been broken, and for a few weeks next following the election they spent much time in the en-

<sup>142</sup> *Iowa Official Register*, 1890, pp. 116-118.

<sup>143</sup> *Iowa City Daily Republican*, Vol. XIII, No. 271, Saturday, September 21, 1889.

<sup>144</sup> *Iowa City Daily Republican*, Vol. XIII, No. 301, Tuesday, October 29, 1889.

<sup>145</sup> *Iowa Official Register*, 1890, p. 190.



deavor to explain the defeat. Republican newspapers were almost unanimous in assigning prohibition as one of the leading causes of the large defection from the ranks of the party. One editor was of the opinion that the result should be attributed to three causes: Hutchinson's lack of popularity and his extreme views on prohibition, Governor Larrabee's attitude toward the railroads, and one other cause which was more powerful than all others. "We mean Prohibition", declared the editor, "and dismissing every other factor in the contest this one is before the Republican party and will not down. It is a matter of household regulation that the Republican family must settle if the family does not want to be turned out of the house entirely by the neighbors. . . . In Iowa City, for instance, it is safe to say that the majority of the Republican business men voted for Boies."<sup>146</sup> Another editor asserted that "the feeble attempts made to enforce the prohibitory law, and the open violations in many places have led the people to desire a change."<sup>147</sup> It was evident to all that the anti-prohibition Republicans had deserted the ranks of their party. It was also evident, at least to some of the leaders, that the party must soon retreat from its advanced position on the prohibition question.

## THE LAWS OF 1890

Naturally after such a decided reversal in what had seemed the accepted order in the political arena, the question of the best and most politic means of dealing with the liquor traffic was one which closely engaged the attention of the legislators who met at Des Moines in January, 1890. In his last biennial message Governor Larrabee stated at

<sup>146</sup> *Iowa City Daily Republican*, Vol. XIII, No. 311, Saturday, November 9, 1889.

<sup>147</sup> Quoted from the *Blairstown Press* in the *Iowa City Daily Republican*, Vol. XIII, No. 312, Monday, November 11, 1889.



great length his views on the temperance question. He traced briefly the history of liquor legislation in this State, and insisted that the prohibitory law was as well enforced in most localities as any other law. He strongly opposed the idea that since the saloon could not be entirely abolished, it should be made respectable by licensing it.

“The gilded or so-called respectable saloon”, said the Governor, “is a ten-fold more dangerous allurements for our boys than the squalid outlawed whisky-den. If the sale of liquor as a beverage cannot be entirely suppressed, let it be monopolized by bootleggers and the keepers of dens and holes-in-the-wall.” The decrease in crime and pauperism and the prosperous condition of the poorer classes were cited as evidence of the beneficial results of prohibition. He urged the continuance of the law until it had been fairly tested, and closed this portion of his message by referring to the persistence of the North during the Civil War and saying that “as the millions of happy people now bless those sturdy defenders of the Union, so will in days to come when the saloon is completely banished from our fair state, every hearth-stone invoke blessings upon those who now remain true to their convictions of right and the obligations of their trust.”<sup>148</sup>

Horace Boies, the new Governor, in his inaugural address, expressed an entirely different attitude toward prohibition, not merely because he represented a party which was opposed to such a policy, but because it was his personal belief that some other method of dealing with the liquor traffic would be wiser and more successful. “In considering this question”, said he, “we cannot rightfully shut our eyes to the fact that a considerable portion of our population have been taught from infancy to believe that the

<sup>148</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 184-192.



moderate use of malt and vinous liquors at least is not criminal, but instead thereof that it is actually beneficial."

It could not be expected, Governor Boies held, that any statute, however strong, would be able to alter such convictions. "Of all the means ever employed to improve the morals of men that of excessive punishment is the least effective", he declared. The prohibitory law, although every provision had been made for its enforcement, had "lain limp and lifeless, ignored, disregarded and despised in most of the large cities of the state". A local option law would provide for prohibition in localities where it could be enforced and at the same time would give those communities which did not favor prohibition, an opportunity to regulate the liquor traffic by license. Again, Governor Boies said: "In my own judgment the chief obstacle to the enforcement of this law lies in the fact that in and of itself it is a cruel violation of one of the most valued of human rights. By that act Iowa stands convicted of first making the business of the brewer and winemaker legal, of watching, without warning, the expansion of their business within her borders until millions upon millions of the capital of her citizens had been invested therein, and then coldly wiping it out without one effort to compensate those who were ruined thereby." Furthermore, he claimed that the majority of the voters at the preceding election had declared in favor of a change in the prohibitory law, and he urged upon the legislature the necessity of passing legislation for Iowa "wise enough to exercise a practical control over a traffic that to-day is unrestrained in most of her centers of population."<sup>149</sup>

Thus, the Twenty-Third General Assembly had before it the recommendation of two Governors who differed wide-

<sup>149</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 285-293.



ly in their opinions as to the best method of dealing with the liquor problem. The Republicans, however, still had a majority in the legislature, and since the Republican party had declared that there should be no backward step on the prohibition question, it was but natural that the views of Governor Larrabee should have more weight than those of Governor Boies.

Evidently the Prohibitionists feared that the prohibitory law was in danger, for both houses of the General Assembly were flooded with petitions from all parts of the State asking that no modification be made in the law. There were some grounds for the fears of the Prohibitionists, since in both houses numerous local option and license bills were introduced, and in the Senate one of these bills was defeated by a margin of only eight votes.<sup>150</sup> On the other hand, a joint resolution to amend the Constitution so as to prohibit the manufacture and sale of intoxicating liquor passed the Senate on April 15 by a vote of twenty-six to twenty-two.<sup>151</sup> A similar resolution was introduced in the lower house,<sup>152</sup> but neither this nor the Senate resolution seem to have gone beyond the committee to which they were referred. At any rate neither one passed the House of Representatives, although a majority of the members of that body favored a continuance of statutory prohibition.

After all the discussion two liquor laws were enacted near the close of the session. One of these went to great length in modifying the prohibitory law by repealing nearly the whole of the act of the preceding General Assembly which related to the sale of intoxicating liquors by pharmacists, and enacting new provisions in its stead. It is doubtful, however, whether the new law was any great im-

<sup>150</sup> *Journal of the Senate*, 1890, p. 613.

<sup>151</sup> *Journal of the Senate*, 1890, p. 752.

<sup>152</sup> *Journal of the House of Representatives*, 1890, p. 299.



provement over the old one. There were a few new provisions, some of which made the law more lenient, while others tended toward making it more severe, but there were no changes of a sufficiently radical nature to warrant any detailed discussion here.<sup>153</sup> The other act passed at this session deserves only a mention. Its contents may be best summed up in the somewhat long and cumbersome title: "An Act to amend Section 2272 of the Code of 1873, and to provide for appointing guardians of the person of habitual drunkards, and for the custody, restraint, and confinement of habitual drunkards, and their reformation, under orders of the district court, or the judge thereof; and for terminating such guardianship."<sup>154</sup>

## THE ACT OF CONGRESS OF AUGUST 8, 1890

In 1890 an opportunity was given to test the constitutionality of the Iowa prohibitory law as far as it placed restrictions upon the importation of intoxicating liquors from other states and its sale in the original packages. A Peoria, Illinois, brewing firm had shipped a quantity of liquor to Keokuk, Iowa, to be sold in the original packages. A portion of the liquor was seized by the city marshal on the ground that it was being kept for sale contrary to the provisions of the prohibitory law. The brewers brought suit to recover the liquor and won their case in the Superior Court for the city of Keokuk, and the defendant took an appeal to the Supreme Court of Iowa, where the decision of the lower court was reversed. The case was then appealed to the Supreme Court of the United States, and in the opinion delivered in 1890 Chief Justice Fuller declared that the section of the Iowa prohibitory law which forbade the sale of imported liquors in the original packages

<sup>153</sup> *Laws of Iowa*, 1890, pp. 53-63.

<sup>154</sup> *Laws of Iowa*, 1890, p. 67.



was in violation of the Constitution of the United States because it interfered with interstate commerce, the regulation of which was left entirely to Congress. The right to import liquors implied the right to sell them, "by which act alone it would become mingled in the common mass of property within the State."<sup>155</sup>

This decision was a victory for the liquor dealers and original package houses did a flourishing business — not only in Iowa, but in all States where prohibition was in force. "Peaceful and quiet communities from which the sale of liquor had been banished for years", said Judge Caldwell, of the United States Circuit Court, "were suddenly afflicted with all the evils of the liquor traffic. The seats of learning were invaded by the original package vender, and the youth of the state gathered there for instruction were corrupted and demoralized, and disorder, violence, and crime reigned where only peace and order had been known before. The invaded communities were powerless to protect themselves. They could neither regulate, tax, restrain, nor prohibit this traffic."<sup>156</sup>

The result of these conditions was that petitions were sent from all parts of the country, but especially from Iowa, to Congress asking for the passage of a law prohibiting the transportation of intoxicating liquors to or through a prohibition State.<sup>157</sup> Congress did not deem it proper to comply with these requests, but on August 8, 1890, it did pass an act commonly known as the "Wilson Bill" which had been introduced by Senator James F. Wilson of Iowa. The following is the text of the act, which it will readily be seen was a direct blow at the original package traffic:

<sup>155</sup> *Leisy vs. Hardin*, 135 U. S. 100.

<sup>156</sup> *In re Van Vliet*, 43 Federal Reports 761.

<sup>157</sup> *Congressional Record*, 1st Session, 51st Congress (See Index).



## HISTORY OF LIQUOR LEGISLATION IN IOWA 581

That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original package or otherwise.<sup>158</sup>

The constitutionality of the Wilson Bill was upheld in an Iowa case which was decided in the United States Circuit Court for the Eastern District of Arkansas, and also in a Kansas case which was appealed to the Supreme Court of the United States.<sup>159</sup> The result in Iowa was the closing of many of the original package houses which had sprung up after the decision in the case of *Leisy vs. Hardin*. The reports of the United States Commissioner of Internal Revenue for the years ending June 30, 1891 and 1892 show that in the year 1890-1891 there was in Iowa a total of 7,619 liquor dealers, including brewers, who paid the special United States tax, while in the year 1891-1892 the number had decreased to 5,209.

### THE REACTION AGAINST PROHIBITION

The four years from 1890 to 1894 may be characterized as a period of reaction against the prohibitory law. This statement may meet with objection from those who most strongly favored the law, on the ground that prohibition was not given a fair chance under the Democratic administration of Governor Boies; but the facts do not warrant this objection. While the change of attitude may in part be attributed to political causes, it must also be admitted that the absolute failure of the prohibitory law in many

<sup>158</sup> *U. S. Statutes at Large*, Vol. XXVI, p. 313.

<sup>159</sup> *In re Van Vliet*, 43 Federal Reports 761; *In re Rahrer*, 140 U. S. 545.



localities and the abuses to which it gave rise in some cases induced a large number of people to alter their opinion as to the wisdom of absolute prohibition. It would be difficult in any other way to account for the decided change in the policy of the Republican party toward the regulation of the liquor traffic, or for the enactment of the mulct law in 1894. Political parties seldom make any great change in their policies unless it is manifest that such a change will bring them more votes; nor are important laws for the public welfare often enacted unless it is evident that a majority of the people desire such a law and that the conditions demand it.

As has already been suggested, the first decided evidence of the trend of public opinion against the prohibitory law is to be found in the election of Governor Boies in 1889. Prohibition was one of the leading issues in the campaign of that year, and it was well known that a Democratic victory would mean a change of policy in the matter of liquor legislation. The result of the election gave Republican leaders much to think about. On April 2, 1890, a conference of "Anti-Saloon Republicans" was held at Des Moines. There were about two hundred delegates present, and opposition was expressed to the further support of prohibition as a party measure. The attitude of those present is shown in the following resolution:

The experience of this as well as other states has conclusively shown that general prohibition, operating upon all communities alike, without respect to their habits, conditions, circumstances or desires is not adapted either to suppress intemperance or to promote morals. And therefore the experiment should be abandoned and the law so modified that those communities which desire a change shall have the right to determine for themselves whether intoxicating liquors shall be sold as a beverage within their limits.<sup>160</sup>

<sup>160</sup> *The Iowa State Register* (Weekly), Friday, April 11, 1890.



In January, 1891, the saloons which had almost entirely been driven out of Sioux City were allowed to return across the Missouri River from Covington, where they had taken refuge, and upon the payment of a tax into the city treasury were permitted to do a wide-open business without interference by the authorities. Commenting on this state of affairs, one Sioux City newspaper said the saloon "lays its cold and merciless hand upon the children of misfortune — upon the overburdened hearts of women. But there must be no fanaticism. There must be no restriction of personal liberty. The city must be run for revenue only. . . . The saloon has come back to stay. . . . It has wrapped itself in politics and has the promise of impregnability."<sup>161</sup>

One of the chief criticisms made against Governor Boies was his liberal use of the pardoning power. He was charged with prostituting that power "to the base use of defeating the operation of a law that happens not to meet with his personal or party approval!" It cannot be denied that Governor Boies remitted the fines and suspended the sentences of an astonishingly large number of violators of the prohibitory law, but practically the same thing may be said of Governor Larrabee during the latter years of his administration.<sup>162</sup> Moreover, it should be remembered that a large proportion of the cases in the courts during these years arose out of infringements of the prohibitory law, and hence it was but natural that the remissions and suspensions in these cases should bear an equal proportion to the total number. The methods used in some cases in securing conviction must also be taken into account.

In the spring of 1891 the State Temperance Alliance

<sup>161</sup> Quoted from *The Sioux City Journal* in *The Iowa State Register* (Weekly), Friday, January 23, 1891.

<sup>162</sup> See *Report by the Governor of Iowa of Pardons, Commutations, Suspensions of Sentence, and Remissions of Fines*, of the years 1890, 1892 and 1894.



made an effort to revive the old question of the validity of the Amendment of 1882 and bring it before the court once more. Mr. J. A. Harvey, President of the Alliance, asked Secretary of State McFarland for a certified copy of the State Constitution, including the prohibitory Amendment as adopted by the people in 1882. As had been expected, Mr. McFarland refused to grant this request on the grounds that the Amendment had been declared invalid and, therefore, was not a part of the Constitution. Mr. Harvey then made application in the courts for a writ of mandamus, in the hope of forcing the court to decide once more whether the Amendment had been legally adopted.<sup>163</sup> The effort caused somewhat of a stir for a short time, but it failed to bring the desired results. The question was not brought into the Supreme Court of the State at any rate.

In the campaign of 1891 it may be said that prohibition was again the leading issue as far as State policies were concerned. The Democratic party reiterated its declaration in favor of a license of five hundred dollars and local option. It was charged by the Republicans that the Democrats had abandoned the local option idea, but a reading of the Democratic platform shows this charge to be untrue.<sup>164</sup>

At the Republican State Convention an effort to substitute a license plank for the resolution favoring a continuance of prohibition was lost by the decisive vote of 951 to 84, amid the display of great enthusiasm.<sup>165</sup> Nevertheless, a weakening of the position assumed by the party toward prohibition is discernible in the following temperance plank in the platform, which shows a greater desire to use prohibition as a weapon against the Democrats than to support it as a wise policy:

<sup>163</sup> *The Iowa State Register* (Weekly), Friday, April 3, 1891.

<sup>164</sup> *Iowa Official Register*, 1892, p. 167.

<sup>165</sup> *The Iowa State Register* (Weekly), Friday, July 3, 1891.



We have no apologies to offer to the people nor to the Democratic party for the Republican record in the conspicuous issue in the State campaign this year. In the interests of true temperance and under the laws of Iowa enacted by the representatives of its sovereign people, the saloon was made an outlaw in this State. We charge that the outlaw has had the patronage, council and protection of the Democratic party; that the Democratic party, as it has won power, has nullified the law, defied the authority of the State, and the expressed will of the people, and that now an appeal is made to the electors of the whole State for approval of the lawless work. We recognize that it is law against defiance of law, subordination against insubordination; the State of Iowa against the Democratic party. We recognize that the issue is between true temperance and free and indiscriminate traffic; we renew our pledge to the people and submit the issue to them. We recognize the fact that the control of the next legislature by the Democratic party means State wide license, and the control of the next legislature by the Republicans means continued opposition to the behests of the saloon power through the maintenance and enforcement of law.<sup>166</sup>

The People's Party (organized during this year) in its platform censured both the Democrats and the Republicans "for the constant effort to re-open the temperance question in this State, to the exclusion of the grave economic questions which now confront the people."<sup>167</sup> The Prohibitionists nominated Isaac F. Gibson for Governor, and adopted a comprehensive platform favoring prohibitory amendments to the National and State Constitutions, and the establishment of a State constabulary to enforce the prohibitory law in the rebellious counties.<sup>168</sup>

As the campaign progressed each of the two leading parties seemed to center their efforts in the endeavor to discredit the other party on its attitude toward the liquor

<sup>166</sup> *Iowa Official Register*, 1892, pp. 163, 164.

<sup>167</sup> *Iowa Official Register*, 1892, p. 172.

<sup>168</sup> *Iowa Official Register*, 1892, pp. 173-175.



problem. The Republicans charged the Democrats with supporting the liquor traffic, and insisted, moreover, that a high license could never be collected in Dubuque, Clinton, Scott, Des Moines, Lee, Wapello, Pottawattamie, or other river counties, any more than prohibition could be enforced within their borders.<sup>169</sup> The Democrats asserted that, in the hope of controlling the farmer vote, the Republican newspapers were suppressing facts "that would show beyond question that prohibition is a failure in Iowa; that Des Moines has over 300 drinking places; that nearly all the cities and towns throughout the state have a greater number of open drinking resorts than they ever had before; that whiskey is just as free in Iowa as any other purchasable commodity".<sup>170</sup> Moreover, the Republicans were charged with selling out to the third party Prohibitionists and promising additional prohibitory legislation in return for the support of the Prohibitionists at the polls.<sup>171</sup>

The leading arguments used against the prohibitory law during this campaign are summed up in the following lines:

The right of trial by jury is denied; men may be arrested without warrant of authority; houses, offices, stores may be entered and searched; spies, informers and perjurers are offered bounties for ferreting out liquors; fines and penalties are enormous; punishments are harsh and severe, and the most summary destruction of property is authorized and encouraged. But the sale of liquor goes on. With all the extraordinary provisions of the present law it still is not enforced.<sup>172</sup>

Indeed, to give an adequate discussion of the part played by the prohibition question in the campaign of 1891 would require more space than can be devoted to that subject in

<sup>169</sup> *The Iowa State Register* (Weekly), Friday, July 10, 1891.

<sup>170</sup> *The Des Moines Weekly Leader*, Thursday, July 2, 1891.

<sup>171</sup> *The Des Moines Weekly Leader*, Thursday, July 30, 1891.

<sup>172</sup> *The Des Moines Weekly Leader*, Thursday, August 20, 1891.



this connection. One needs only to read the newspapers of that year to be impressed with the fact that throughout the State this question entered more or less into the election of officers from city marshal to Governor.

Horace Boies was reëlected Governor by a larger plurality than at his first election, receiving 8,213 votes more than Hiram C. Wheeler, the Republican candidate. The entire Democratic State ticket was also elected, which had not been the case two years before. Moreover, the Democrats elected a sufficient number of State Senators so that in the Twenty-fourth General Assembly there were twenty-five Democrats, twenty-four Republicans and one People's Party man in the Senate, whereas in the preceding session the Republicans had a majority of six. In the House of Representatives the situation was not materially changed.<sup>173</sup>

The results of the election could doubtless be explained in many ways; but this second Democratic victory, more sweeping and decisive than the first one, is clearly an evidence that the people were becoming more and more dissatisfied with prohibition, since that question had been one of the chief issues in the campaign. "The election is over", said a prominent Republican, "and Iowa has gone — not Democratic, but anti-Prohibition — that fact is now settled. . . . The hardest fight in the history of civilization, on prohibition, was made last Tuesday, and the sovereign voice of the people said we do not want prohibition."<sup>174</sup> And this was the verdict of many people, both at that time and since. Henceforth it became the ardent desire of Republican leaders to induce their party to abandon its support of prohibition.

Following the election the Republicans of northwestern

<sup>173</sup> *Iowa Official Register*, 1892, pp. 72, 74, 233.

<sup>174</sup> *The Iowa State Register* (Weekly), Friday, November 13, 1891.



Iowa held a conference at Sioux City. All factions of the party were represented and a movement to harmonize the party on the prohibition question was inaugurated. It was the sentiment of this conference that the prohibitory law should be repealed. Moreover, in a series of communications from leading Republicans all over the State, printed in a Des Moines newspaper, stating their opinions as to the attitude the Republican party should assume toward prohibition, a majority favored either a resubmission of the question to a vote of the people, or a local option law.<sup>175</sup>

In the midst of the growing dissatisfaction with prohibition, however, it must not be thought that efforts to enforce the prohibitory law were abandoned. The prosecutions continued as before and with reasonable success in many places.<sup>176</sup> The temperance forces were active, and where the officers were sympathetic their efforts were attended with good results. "The only difficulty in enforcing prohibition in Iowa", said one editor, "has been the shameful neglect, inactivity and culpability of officials who have had a greater desire for the votes of saloon worshippers than they have had respect for the law or their oaths."<sup>177</sup>

No liquor laws were enacted by the General Assembly in 1892, although strenuous efforts were made to do so. These efforts, however, are interesting in that they show the attitude of the legislators toward prohibition and in a sense pave the way for the legislation at the next session of the legislature.

Of the ten liquor bills introduced in the Senate seven provided for local option and license, while none of them can be said to have contemplated a strengthening of the prohibitory law. One of the local option bills lacked only

<sup>175</sup> *The Iowa State Register* (Weekly), Friday, November 27, 1891.

<sup>176</sup> *The Iowa State Register* (Weekly, Friday, February 12, 1892.

<sup>177</sup> *The Iowa State Register* (Weekly), Friday, March 4, 1892.



one vote of passing, while another, known as the Gatch bill, passed by a vote of twenty-seven to twenty-two,<sup>178</sup> but was not concurred in by the House.

In the House of Representatives where the Republicans had a majority the sentiment in favor of a continuance of prohibition was stronger, but all bills, local option and prohibitory alike, met the same fate — that of indefinite postponement.<sup>179</sup> Two joint resolutions regarding the liquor problem were adopted by the House. One of these instructed the Iowa delegation in Congress to use their efforts to secure the adoption of a law prohibiting the granting of United States special tax licenses to retail liquor dealers “unless such persons hold lawful permits issued in accordance with the laws of the State or Territory in which such special tax is to be collected”. The other joint resolution was one “proposing to amend the constitution so as to prohibit the manufacture and sale of intoxicating liquors as a beverage”.<sup>180</sup> Neither of these resolutions received the concurrence of the Senate.

While the Gatch local option bill was supported by nearly all the Democratic members of the Senate, several of them hastened to explain their votes. They regarded the proposed measure as an effort of the Republican party to shift the responsibility for enacting a local option law, but they were willing to support it because it was a step away from absolute prohibition. One Senator in expressing his views as to the necessity of a change in the manner of dealing with the liquor traffic, discussed the operation of the prohibitory law in the following words, which, if based on facts, are significant:

<sup>178</sup> *Journal of the Senate*, 1892. Senate file, Nos. 1, 23.

<sup>179</sup> *Journal of the House of Representatives*, 1892. House file, Nos. 4, 25, 105, 118, 253.

<sup>180</sup> *Journal of the House of Representatives*, 1892. House Joint Resolutions, Nos. 4, 7.



There is not a city in Iowa of five thousand population where prohibition is a success. Des Moines, the seat of all the leading prohibition forces of the State, where the State Temperance Alliance meets, and from which all prohibition works proceed, where there is a Republican mayor and police force, prohibition is simply a farce. There are not less than one hundred open saloons in this city where men can walk up to the bar and order their drinks, all the way up from a glass of beer to a cocktail, without answering questions. In cases like these but few men can deny that license will greatly improve the situation, even from a moral standpoint.<sup>181</sup>

While the legislature was still in session an enthusiastic temperance meeting was held at Mount Pleasant where strong opposition was expressed toward the Gatch local option bill, which was pronounced a long backward step in liquor legislation.<sup>182</sup> On the other hand, a conference of anti-prohibition Republicans from different parts of the State was held at Des Moines late in March. A committee was appointed to confer with the Republican House caucus and ask for a high license and local option measure similar to the Gatch Bill. Moreover, those attending the conference pledged themselves to "use every influence to induce the Republican party to discontinue the policy of prohibition as a party measure."<sup>183</sup>

During the fall of 1892 and the spring of 1893 the State Temperance Alliance seems to have become hopelessly divided over the question of the support of a third party, and charges of corruption were made against some of the officers. However true these charges may have been it is nevertheless a fact that after this time the influence of the Alliance seems to have declined rapidly. It seems that at the annual meeting in 1893 not more than fifty members were present, and that most of these were old people.

<sup>181</sup> *Journal of the Senate*, 1892, p. 379.

<sup>182</sup> *The Iowa State Register* (Weekly), Friday, March 4, 1892.

<sup>183</sup> *The Iowa State Register* (Weekly), Friday, April 1, 1892.



“Nothing more plainly than this showed that the Alliance has been captured by the third party Prohibitionists,” commented the editor of the *State Register*, “that it has outlived its usefulness, and has fallen into the hands of men and women who are unable to rally to the cause they espouse the achieving aid of the young and progressive men of the state.”<sup>184</sup> At about this time the Alliance was deserted by many prominent and earnest Prohibitionists who did not believe in the third party idea.

Early in 1893, before the campaign was opened, leading Republicans were busy discussing the attitude which their party should assume toward the prohibition question. Nearly all were agreed that it would not be wise to continue to support absolute prohibition. The newspapers were inclined to take the ground that the party had done its full duty in regard to the prohibitory law and that the question should now be left to the people to decide. Moreover, there was a tendency to make light of the importance of the prohibition issue in the hope of inducing people to line up upon broader questions of National governmental policy. The fact that in 1891 the Democrats had elected six out of the eleven Representatives in Congress had alarmed Republican leaders at Washington, and there is evidence that in 1893 much outside pressure was brought to bear upon the leaders of the party in Iowa to induce them to abandon prohibition as a political issue in the hope of bringing Iowa again safely within the ranks of Republican states.

A conference of the members of the Republican State Central Committee was held at Des Moines in March for the purpose of making plans to unify the party and keep it together at the coming election. It was the general belief of those present that Republican Prohibitionists would be

<sup>184</sup> *The Iowa State Register* (Weekly), Friday, March 3, 1893.



willing to make concessions "in order to preserve the life of the party in the state" and to save "what may be saved of real temperance prohibition even if political prohibition has to suffer in the operation." It was charged with much truth that "Prohibition for prohibition's sake has been the blighting curse of temperance in Iowa."<sup>185</sup>

The Republicans were the first to hold a State convention. The result of the changed attitude of the party toward prohibition is seen in the following plank in the platform, which is virtually an acknowledgment of the desire of the party to get rid of a troublesome issue without committing itself to any new policy:

That prohibition is no test of Republicanism. The General Assembly has given to the State a prohibitory law as strong as any that has ever been enacted by any country. Like any other criminal statute, its retention, modification or repeal must be determined by the General Assembly, elected by and in sympathy with the people, and to it is relegated the subject, to take such action as they may deem just and best in the matter, maintaining the present law in those portions of the State where it is now or can be made efficient, and giving to other localities such methods of controlling and regulating the liquor traffic as will best serve the cause of *temperance and morality*.<sup>186</sup>

This resolution gave rise to much discussion in the convention before it was finally adopted. Judge George B. Struble of Tama County moved to amend the plank by omitting all instructions to the legislature, or in other words omitting that part of the resolution beginning with the word "maintaining". It was over this amendment that the contest occurred. The debate lasted three hours. The Prohibitionists in the convention favored the amendment because, they said, the plank as it stood virtually in-

<sup>185</sup> *The Iowa State Register* (Weekly), Friday, March 31, 1893.

<sup>186</sup> *Iowa Official Register*, 1894, p. 100.



structed the General Assembly for local option. The anti-Prohibitionists, on the other hand, opposed the amendment on the ground that the omission of the instructions would leave the whole matter just where it stood before, and would afford no promise of relief for those counties where prohibition was a burden and a failure. The amendment was lost by a vote of 613 to 590, when the plank as given above was unanimously adopted together with the remainder of the platform.<sup>187</sup>

The Democrats, with characteristic consistency, again advocated a local option and high license law and in addition declared that "as a partial reparation for the unjust confiscation of private property caused by the prohibitory law we favor such legislation as will permit the manufacture of spirituous and vinous liquors within the State".<sup>188</sup>

The People's Party charged that both the Republicans and the Democrats were "engaged in an attempt to outbid one another for the support of the saloon element in the state, and are seeking to drown by their cry for the saloon every other important consideration relating to the public welfare." A system of State or National control by which all profits of the liquor traffic would be eliminated was advocated.<sup>189</sup>

The Prohibitionists adopted the most lengthy platform of the year. They were strong in their opposition to "the proposition for resubmission, local option or the mulct system", which they declared not only endangered the prohibitory law, "but offers nothing good instead and exhibits a desire on the part of the originators of all such schemes to get rid of prohibition in any form and all responsibility for its support." They condemned the Na-

<sup>187</sup> *The Iowa State Register* (Weekly), Friday, August 18, 1893.

<sup>188</sup> *Iowa Official Register*, 1894, p. 103.

<sup>189</sup> *Iowa Official Register*, 1894, p. 107.



tional government for receiving revenue from the liquor traffic, and in strong terms denounced Governor Boies for "his persistent opposition to the prohibitory law". In addition to these declarations the platform touched upon a great variety of governmental policies, both State and National.<sup>190</sup>

Without going into the details of the campaign of 1893 it will, perhaps, be sufficient to say that prohibition was one of the prominent issues, as might be expected after the foregoing declarations in the party platforms. Frank D. Jackson, the Republican candidate for Governor, was elected by a majority of 32,161 over Horace Boies, who was candidate for a third term on the Democratic ticket. Bennett Mitchell, the Prohibitionist candidate received 10,349 votes, a startling increase over the vote for Isaac T. Gibson, two years before. The Republicans elected the entire State ticket by even larger pluralities than that given to Jackson. The Democrats also met with heavy losses in the election of legislators. In the Twenty-fifth General Assembly the Republicans had a majority of eighteen in the Senate, and a majority of fifty-six in the House of Representatives.<sup>191</sup>

While the changed attitude of the Republican party toward prohibition is probably not the only explanation of the complete and remarkable victory of that party, it may with truth be assigned as the principal cause. And in whatever manner people were disposed to account for the result, it was the general belief that absolute prohibition was doomed and that the next General Assembly would adopt a different method of dealing with the liquor traffic. Bereft of the support of either of the leading political parties, it was only a few months until the reaction against the prohibitory law was to culminate in the enactment of the mullet law.

<sup>190</sup> *Iowa Official Register*, 1894, pp. 109-111.

<sup>191</sup> *Iowa Official Register*, 1894, pp. 37, 41, 186.



Prohibition had been in force ten years — certainly long enough to give it a fair trial. Whether it was on the whole a success will be a disputed question as long as there is difference of opinion as to the best method of dealing with the liquor problem. That in some counties the law was all that could be desired while in other localities it was not and could not be enforced, is a fact now generally admitted. At the National Conference of Charities and Correction at Chicago in 1893, Miss M. E. Starr in reporting for Iowa produced figures to show that in one city there was one saloon for every two hundred inhabitants; and in another city, somewhat larger, there was one saloon to every one hundred and twenty-four inhabitants, or one saloon to every twenty-nine voters. Moreover, she asserted that as nearly as could be determined there were about 3,500 open saloons in the State in addition to the drug stores and other secret drinking places, making an average of one open saloon to every forty-one families in those communities where saloons existed.<sup>192</sup> If these figures are accurate they do not speak very well for prohibition in some localities. A reference to the report of the United States Commissioner of Internal Revenue for 1893 reveals the fact that during the year 1892-1893 the total number of liquor dealers, including brewers, who paid the special tax was 6,599, which was a great increase over the number during the earlier years of the prohibitory law.

Along with the reaction against prohibition there had been a gradual disintegration of the various temperance organizations of the State. It is to be feared that in their zeal to become a force in politics many members of these organizations lost sight of the high purpose for which they had banded themselves together. A prominent Prohibi-

<sup>192</sup> *Proceedings of the National Conference of Charities and Correction, 1893*, pp. 321, 322.



tionist writer has the following to say of the conditions in the temperance camp at the beginning of the year 1894:

At the close of Governor Boies' administration in January, 1894, general apathy and demoralization of temperance forces prevailed. The State Temperance Alliance had practically disbanded, the Woman's Christian Temperance Union was divided into Partisan and Non-Partisan organizations and had lost much of their zeal, prestige and influence, many prohibition workers were completely discouraged, and some had removed from the state.<sup>193</sup>

#### THE MULCT LAW OF 1894

In tracing the origin of the mulct law, the beginnings must be looked for in the discussions of the year 1893. When it became evident that prohibition would no longer satisfy the majority of the people it was realized that something must be substituted for it, and many new systems were suggested. Among them the one which was received with the greatest favor was known as the no-license or mulct tax system, modelled for the most part after the Ohio law. The credit for suggesting this plan is usually given to Welker Given, who was at that time editor of the Marshalltown *Times-Republican*. The plan was explained in detail by the originator, and while it was bitterly opposed by many people it received strong support not only from the newspapers but from many leading temperance men as well. One editor said that if it should become apparent that a majority of the people favored this system, then the prohibitory law should be modified without using any "devices of language to cover up the fact that we have acknowledged the failure of prohibition." After the discussion of the plan had gone on for some time and the system had been severely criticised, Mr. Given declared that he was willing to allow the no-license tax proposition to lie on the table

<sup>193</sup> Fellows's *History of Prohibition in Iowa*, p. 15.



until the next session of the legislature. "The persons now entitled to the floor", said he, "are the ones who can present plans looking to the abolition of the drink evil in the Iowa towns on the border line of the license state of Illinois."<sup>194</sup> Gradually the discussion was dropped; and so the matter rested until the General Assembly met in 1894.

Governor Boies in his retiring message to the legislature made a clear, logical plea for municipal and township local option. He did not approve of the Ohio mullet law. If such a system were adopted in Iowa he declared that the State "would stand before the world convicted of maintaining as part of its penal code a statute that it deliberately encourages its own subjects to violate." What he wished was a law providing for different methods of controlling the liquor traffic according to the needs and wishes of various localities. At the same time he pointed out that "whatever change is made in the law must of necessity apply alike to all parts of the State."<sup>195</sup>

In his inaugural address, Governor Jackson stated that while prohibition had driven the saloon out of existence in many counties, there were other localities in which the law was a failure. "From these localities", said he, "there is an earnest demand for relief — a demand, not from the law-defying saloon sympathizer, but from the best business element; from the best moral sentiment of such communities; from the churches and from the pulpit." He favored the continuance of the principle of prohibition, but advocated such modification as would make it possible to control the liquor traffic where the law could not be enforced.<sup>196</sup>

<sup>194</sup> *The Iowa State Register* (Weekly), Friday, April 14, and Friday, May 26, 1893.

<sup>195</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 376-381.

<sup>196</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, p. 16.



A large number of liquor bills were introduced in both houses of the legislature in 1894, but only those which became laws need be mentioned. The bill for the mulct law, which contained many of the features of the plan advocated by Mr. Given, was introduced in the House of Representatives on February 28 by the Committee on the Suppression of Intemperance. After much debate and several amendments a vote was taken and the bill was lost. A motion to reconsider prevailed and after more discussion another vote was taken and the bill was passed by a vote of fifty-three to forty-five.<sup>197</sup> In the Senate the bill was passed by a vote of twenty-six to twenty-four, after strenuous efforts to defeat it.<sup>198</sup> The law received the Governor's approval on March 29, 1894, and being deemed of immediate importance went into effect upon publication in the newspapers.

The essential features of the mulct law may be summed up briefly. It provided that a tax of six hundred dollars should be levied against all persons, except registered pharmacists holding permits, engaged in the sale of intoxicating liquors and against the owner of the property where such business was carried on. The tax was to constitute "a perpetual lien upon all property both personal and real, used in or connected with the business." The revenue derived from this tax was to be paid into the county treasury and one-half was to go to the general county fund and one-half to the municipality where the tax was collected. It was stipulated that nothing in the act should "be in any way construed to mean that the business of the sale of intoxicating liquors is in any way legalized, nor is the same to be construed in any manner or form as a license." It simply

<sup>197</sup> *Journal of the House of Representatives*, 1894, pp. 509, 692, 695, 696, 747, 748.

<sup>198</sup> *Journal of the Senate*, 1894, pp. 566, 567.



provided that, in cities of five thousand or more inhabitants, the payment of the tax should constitute a bar to proceedings under the prohibitory law in case there should be filed with the county auditor "a written statement of consent signed by a majority of the voters residing in said city who voted at the last general election," and in case the person paying the tax should conform with certain other conditions. The same provision held true in towns of less than five thousand inhabitants, with the exception that here the statement of consent must be signed by sixty-five per cent of the voters "residing within such county and outside of the corporate limits of cities having a population of five thousand or over".<sup>199</sup> Thus, while the prohibitory law was not repealed it was provided that that law might be violated upon the payment of a certain sum of money and the consent of a certain number of voters.

In addition to the mulct law the Twenty-fifth General Assembly passed an act amending the prohibitory law in regard to the keeping of records of liquor sales. Two joint resolutions were also adopted: one of them proposed to amend the State Constitution so as to prohibit the manufacture and sale of intoxicating liquors; while the other provided for the publication and distribution of ten thousand copies of the mulct law.<sup>200</sup> The prohibitory amendment resolution was not agreed to by the succeeding General Assembly and hence was never submitted to a vote of the people.

#### THE EARLY YEARS OF THE MULCT LAW

No attempt will be made in this paper to discuss the general workings of the mulct law during the fifteen years which have passed since its enactment. But it is desirable

<sup>199</sup> *Laws of Iowa*, 1894, pp. 63-69.

<sup>200</sup> *Laws of Iowa*, 1894, pp. 70, 203, 206.



to give some idea of the manner in which the new law was received, and some facts as to its immediate effect.

It cannot be said that the law was given a very enthusiastic reception. In the first place, there were doubtless many who did not fully understand its provisions. To the radical Prohibitionists it seemed a complete overthrow of all their principles. Republican editors were cautious in their praise of the law, which they preferred to speak of as a fulfillment of the promises made in the Republican platform of 1893 rather than as the best plan which might be devised to control the liquor traffic. For instance, one leading Republican editor said that the law "taken as a whole is not unsatisfactory and it ought to be given a fair trial."<sup>201</sup> The Democrats were willing to admit that the Republicans had fulfilled their promise, but the law was referred to as "dishonest, impractical and indefensible", and as "an instance of political acrobatism that is without a parallel in history." It was charged that the party lash had been used to secure the passage of the law, and that additional influence had been brought to bear by the railroads and the brewers and distillers from the surrounding States. Furthermore, the complaint was made that the law permitted the sale of liquor within the State but not its manufacture, and that this would cripple Iowa business interests.<sup>202</sup>

The mulct law had not been in force long when an opportunity was afforded to test its constitutionality. In a case appealed to the Supreme Court of Iowa at the April term in 1895 the validity of the law was upheld. While it was virtually a local option measure it did not, as did the local option laws of 1857 and 1870, confer upon the people the power of legislation. The language of the court upon this point is as follows:

<sup>201</sup> *The Iowa State Register* (Weekly), Friday, March 30, 1894.

<sup>202</sup> *The Des Moines Weekly Leader*, Thursday, March 29, 1894.



## HISTORY OF LIQUOR LEGISLATION IN IOWA 601

It must be borne in mind that the act in question is a general law, applicable alike to all localities of the state coming within its terms. It does not depend upon a vote of the people to give it vitality. It went into effect upon its publication, and was a complete and valid enactment at that time. If it repeals the general prohibitory law in any particular, it does so only by implication, and the repeal is not made to depend upon the vote of the people. . . . Prohibition remains the general rule, and license, or a bar to the proceedings against violation of it, the exception.<sup>203</sup>

In his message of January 14, 1896, Governor Jackson presented some facts which throw light on the operation of the mulct law during the first year of its existence. He pointed out that during the last year under state-wide prohibition, or in other words during the year ending June 30, 1894, the United States government had issued 6,032 licenses to liquor dealers in Iowa; while during the year ending June 30, 1895, the first year of the mulct law, only 4,264 such licenses had been issued. This was a decrease of 1,768 in one year. Furthermore, in the fifty-one counties which, on July 1, 1895, had not adopted the mulct law, the number of licenses had decreased seventeen and one-half per cent; while in the forty-eight counties which had adopted the mulct law the decrease had been thirty-two per cent. During the first year the mulct tax had been assessed against 1,620 saloons, and the revenue from that source together with the added penalties assessed by municipalities was \$1,156,317. The effect of the law was most noticeable in Clinton, Scott, and Woodbury counties.<sup>204</sup>

### LIQUOR LEGISLATION SINCE 1894

Since 1894 the liquor laws enacted by the General Assembly of Iowa have been in the nature of modifications of

<sup>203</sup> State of Iowa *vs.* Forkner, 94 Iowa 1.

<sup>204</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 50, 51.



or amendments to the prohibitory and mullet laws, and it will not be necessary in this connection to make more than a mere mention of them. Several acts relating to intoxicating liquors were passed at each regular session of the legislature, except the session of 1898.<sup>205</sup> In 1900 a concurrent resolution was adopted requesting the Board of Regents of the State University and the trustees of the other State educational institutions to adopt and enforce rules against the use of intoxicating liquors.<sup>206</sup> The liquor laws as they exist in 1908 may be found in full in the *Code of 1897* and the *Supplement of 1907*.

In 1899, when the mullet law had been on the statute books five years, the Auditor of State sent a circular letter to the county auditors asking for information regarding the situation in each county respecting the operation of the liquor laws. From the replies received it was found that the mullet law was in operation in one or more cities, towns or townships in forty-eight counties; while in the remaining fifty-one counties the prohibitory law continued in force. In the counties where the mullet law was in operation there was a total of 1,530 saloons paying an average annual tax of \$864.45.<sup>207</sup>

Statistics prepared in 1907 by the Secretary of State show that on September 30, 1906, the mullet law was in operation in one or more cities, towns or townships in forty-three out of the ninety-nine counties in the State—a total of 242 towns and cities, and 51 townships. The total number of saloons in these counties was 1,770, and the average tax was \$865.85.<sup>208</sup> In the remaining fifty-six counties the prohibitory law was still in force. In seventy-six

<sup>205</sup> *Laws of Iowa*, 1896, pp. 33, 61; 1900, pp. 59, 60, 153; 1902, pp. 59, 60, 61; 1904, pp. 3, 91, 92; 1906, pp. 69, 70, 71; 1907, pp. 125, 126.

<sup>206</sup> *Laws of Iowa*, 1900, p. 164.

<sup>207</sup> *Report of Auditor of State*, 1899, pp. 194, 195.

<sup>208</sup> *Iowa Official Register*, 1907-8, pp. 573-578.



## HISTORY OF LIQUOR LEGISLATION IN IOWA 603

cities and towns no tax was levied in addition to the minimum required by law, while in one hundred and sixty-four cities and towns an additional tax was imposed. The total amount of revenue collected throughout the State under the provisions of the mulct law for the year ending September 30, 1906, was \$1,474,145.20. Furthermore, there were twenty-two breweries and distilleries in operation in the State.

### GENERAL SUMMARY

From this sketch of the history of liquor legislation in Iowa it appears that the Territorial period is characterized chiefly by the enactment of license laws and the scattered activities of local temperance societies. Since Iowa became a State in 1846 the events which stand out most clearly in liquor legislation are: the prohibitory law of 1855; the wine and beer clause of 1858; the Amendment of 1882; the prohibitory law of 1884, and the mulct law of 1894.

The liquor problem has been so interwoven with State politics that no campaign or election since 1865 can be fully understood without taking into account the influence of this much mooted question. Indeed, the history of the Republican party in Iowa for a number of years is chiefly the history of its attitude toward prohibition. The Democrats have consistently opposed prohibition throughout, and hence have missed much of the anxiety which their opponents have experienced in shaping their policies in regard to this question. The Prohibitionists as a political party have made but little showing, even at the times when their cause seemed in greatest danger.

Iowa has had many and varied experiences in its attempts to suppress the liquor traffic. License, local option, and absolute prohibition have been tried and discarded. Whether the present system is the best one that can be de-

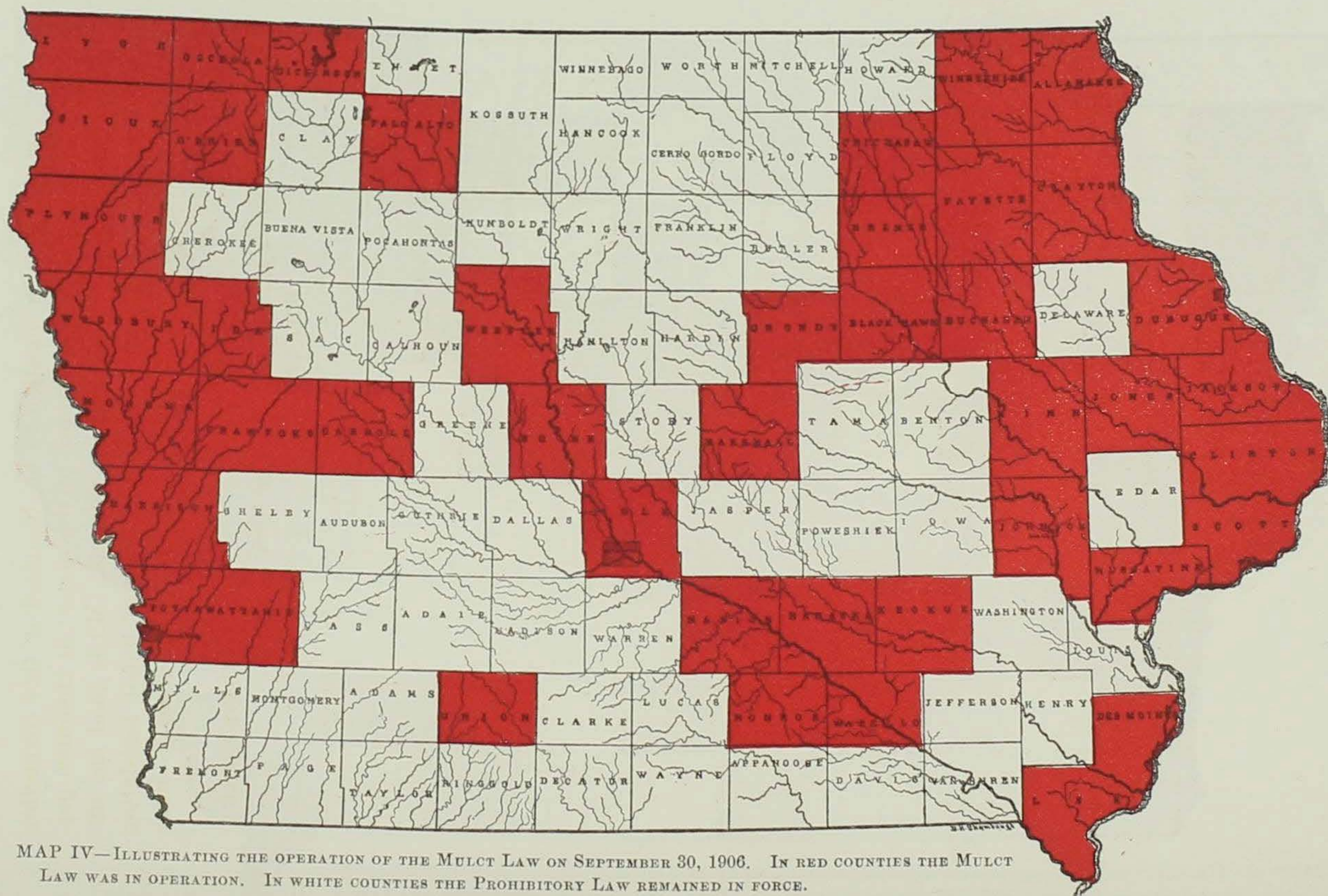


vised is not a question to be discussed in this connection since it is not the purpose of this paper to announce personal opinions and propose reforms. Much good has undoubtedly been done, and the history of liquor legislation in Iowa will furnish lessons for the guidance of other States.

DAN ELBERT CLARK

THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY





MAP IV—ILLUSTRATING THE OPERATION OF THE MULCT LAW ON SEPTEMBER 30, 1906. IN RED COUNTIES THE MULCT LAW WAS IN OPERATION. IN WHITE COUNTIES THE PROHIBITORY LAW REMAINED IN FORCE.

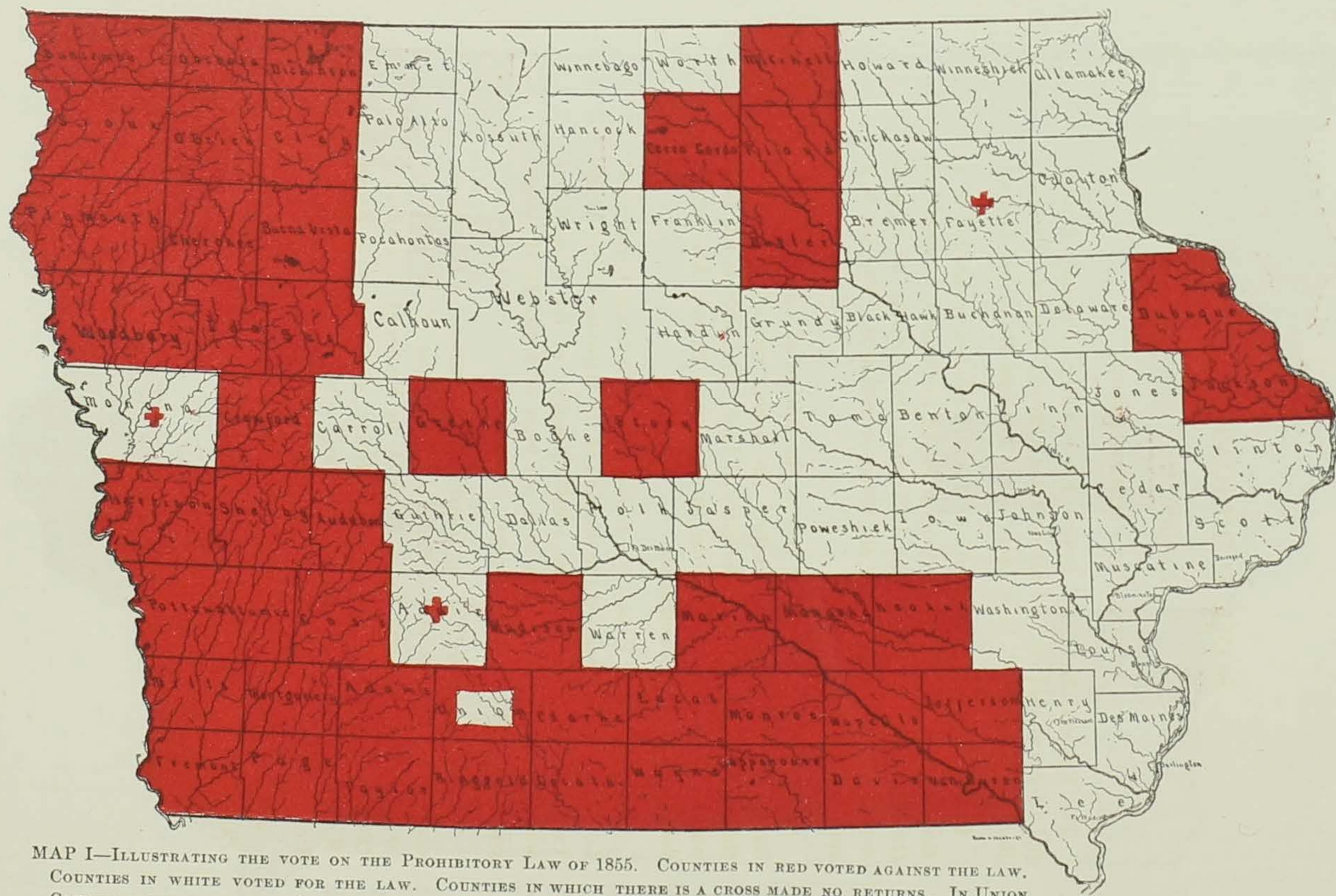












MAP I—ILLUSTRATING THE VOTE ON THE PROHIBITORY LAW OF 1855. COUNTIES IN RED VOTED AGAINST THE LAW. COUNTIES IN WHITE VOTED FOR THE LAW. COUNTIES IN WHICH THERE IS A CROSS MADE NO RETURNS. IN UNION COUNTY THERE WAS A TIE. A MAJORITY OF THE NORTHERN AND WESTERN COUNTIES WERE UNORGANIZED AT THIS TIME, BUT WERE ATTACHED TO ORGANIZED COUNTIES FOR ELECTION PURPOSES. HENCE THE APPARENTLY LARGE NUMBER OF COUNTIES WHICH VOTED AGAINST THE LAW.—See *Iowa Official Register*, 1889, pp. 207, 208.