THE JUDICIARY OF THE TERRITORY OF IOWA

COURTS IN THE IOWA COUNTRY PRIOR TO 1838

The year 1833 was one of unusual interest and importance in the history of Iowa for it was during this year that the first general influx of white population came into the unsettled country west of the Mississippi. Among the newcomers were two miners, Patrick O'Connor and George O'Keaf, both natives of Ireland. O'Connor was a man of vicious character who had lived for a time at Galena, Illinois, but had become involved in crime and had been forced to leave that vicinity. Upon his arrival in Iowa he formed a partnership with George O'Keaf, and for a time gave promise of industry and reform.

The two men built a cabin about two miles south of Dubuque, where they engaged in operating a mine. It was not long, however, until trouble ensued. On the 19th of May, 1834, O'Keaf went to Dubuque to secure provisions and upon his return found that his partner had locked the door. When asked to open it O'Connor replied that he would do so when he got ready. Thereupon O'Keaf placed his shoulder against the door and forced it open. O'Connor, who was seated at the opposite side of the room, leveled his musket and fired, killing O'Keaf instantly.

Soon a crowd of miners gathered and some one suggested that the murderer be immediately hanged to a tree in front of the cabin. Indeed, a rope was procured for that purpose, but a more deliberate judgment prevailed, and it was agreed to investigate the case before taking such radical action. Accordingly, O'Connor was taken to Dubuque, and on the 20th of May, 1834, the first trial for murder in what

is now Iowa was held in the open air, beneath the wide-spreading branches of a large elm tree.

Captain White was appointed prosecuting attorney and Captain Bates of Galena, Illinois, who happened to be present, was selected by O'Connor as his attorney. Twenty-four men were named from among the bystanders, and from this group Woodbury Massey, Hosea L. Camp, John McKensie, Milo H. Prentice, James Smith, Jesse M. Harrison, Thomas McCabe, Nicholas Carrol, John S. Smith, and Antoine Loire, with two others whose names are not known, were selected as jurors by O'Connor. These men being seated upon some logs, Captain White asked O'Connor if he was satisfied with the jury. O'Connor replied that he had no objection to any of the men, but insisted that there was no law in the country by which he could be legally prosecuted. This objection was quickly overruled and the trial proceeded.

After the witnesses had been examined the attorneys began their addresses to the jury.[1] Captain Bates urged that the case be taken to the State of Illinois for a hearing. Captain White replied that other offenders had been sent to Illinois, and had been released on a writ of habeas corpus. He contended, moreover, that the State courts had no jurisdiction in cases arising west of the Mississippi River. Following these arguments the jury retired and after an hour's deliberation returned with the following verdict:

> We the undersigned, residents of the Dubuque Lead Mines, being chosen by Patrick O'Conner, and empanneled as a Jury to try the matter wherein Patrick O'Conner is charged with the murder of George O'Keaf, do find that the said Patrick O'Conner is guilty of murder in the first degree, and ought to be, and is

[1] Black's *Lynchings in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. X, p. 169.

by us sentenced to be hung by the neck until he is dead; which sentence shall take effect on Tuesday the 20th day of June, 1834, at one o'clock P. M.[2]

O'Connor was accordingly executed on the date fixed. Thus it will be seen that the first murder trial in the Iowa country was conducted, and the first execution directed, by a self-appointed court. The case is interesting, moreover, because it was the first attempt at judicial procedure within the limits of the Commonwealth of Iowa, and it is important chiefly for the reason that it attracted wide attention and exhibited the need of a regularly organized judicial system.

Soon after the execution at Dubuque the Iowa country was reorganized. This was accomplished by an act of Congress approved on June 28, 1834. This act provided that the country north of the State of Missouri and between the Mississippi and Missouri rivers should be temporarily attached to the Territory of Michigan.[3] The land included in the transfer embraced not only the present State of Iowa, but the eastern half of North and South Dakota and the larger portion of what is now Minnesota. At the close of the Black Hawk War, in 1832, the Sac and Fox Indians had ceded to the United States government a strip of territory in Iowa, which extended some fifty miles westward from the Mississippi River, and from the northern boundary of Missouri northward to the southern boundary of the Neutral Ground.[4] This Sac and Fox cession was known as the "Black Hawk Purchase" and later as the "Iowa District". It was this "Iowa District" which was now organized into counties of the Territory of Michigan.

[2] *Annals of Iowa* (First Series), Vol. III, pp. 569, 570.

[3] *United States Statutes at Large*, Vol. IV, p. 701.

[4] See map accompanying Garver's *History of the Establishment of Counties in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, p. 441.

On September 6, 1834, the Legislative Assembly of Michigan divided this district into two counties, by running a line "due west from the lower end of Rock Island."[5] The territory north of this line was named Dubuque County, all south of it was Demoine[6] County. A court was organized in each county, to be held at Dubuque and Burlington. John King and William Morgan were appointed judges of the respective districts. The first court was held in a log cabin in Burlington in April, 1835.

The organization of the Iowa district under the jurisdiction of the Territory of Michigan was, however, of brief duration. The people of Michigan were at this time agitating the question of statehood. Moreover, it was apparent that the Territory was too large to be admitted as a State. Accordingly, George Wallace Jones, a Territorial delegate to Congress, on the 7th of January, 1836, presented a bill providing for a division of this land, and for the establishment of a new Territory. On the 20th of April this bill became a law, and the Territory of Wisconsin was created.[7] It included the area of the present States of Wisconsin, Iowa, and parts of Minnesota, North Dakota, and South Dakota.

Under the organic law of this new Territory the judiciary was vested in a Supreme Court, district courts, probate courts, and justices of the peace.[8] The Supreme Court consisted of a chief justice and two associate justices. The law further provided that the Territory should be divided into three judicial districts; and that a district court should be held in each of the districts, by one of the judges of the

[5] *Laws of the Territory of Michigan,* Vol. III, p. 1326.

[6] This is the spelling found in the act.

[7] Parish's *George Wallace Jones,* p. 18.

[8] Organic Act of Wisconsin, Sec. 9, in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 84.

Supreme Court, at such times and places as might be prescribed by law.[9]

Henry Dodge, Governor of the Territory, in his first annual message to the Legislative Assembly, on October 26, 1836, recommended the early action of that body, "in defining the jurisdiction and powers of the several Courts of this territory, dividing the territory into judicial districts, and prescribing the times and places of holding the proper Courts."[10] In emphasizing the importance of this matter he said: "There is now in confinement in several counties in this territory, criminals charged with capital offences; and the due administration of justice requires that they should be tried as early as competent courts can be organized."[11]

In accordance with this suggestion, the legislature on November 15th passed an act relative to the judiciary. This act provided that the counties of Dubuque and Des Moines should constitute the second judicial district, to which David Irvin, one of the judges of the Territorial Supreme Court, was assigned as judge.[12] The law further provided that there should be two terms of the district courts held annually in each of the counties. The times appointed for the holding of such courts were: in Dubuque County, on the first Monday in May and the second Monday in October; in Des Moines County on the first Monday in April, and the first Monday in September.[13]

[9] Organic Act of Wisconsin, Sec. 9, in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 85.

[10] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 3.

[11] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 3.

[12] *Laws of the Territory of Wisconsin*, 1836–1838, p. 18.

[13] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 19, 20.

Under the provisions of this act the first District Court convened in Dubuque County in May, 1837. This session was held in a two-story log house, at Fourth and Main streets, Dubuque, Judge David Irvin presiding. Owing to the ill-health of Judge Irvin nearly the whole docket was continued until the June term of 1838.[14]

In the original county of Demoine no district court was held. This condition was due to the fact that before the time appointed for the holding of such court a law had been passed dividing the county, and providing for courts in each of the new counties. This law was entitled "An Act dividing the county of Des Moines[15] into several new counties." It was approved December 7, 1836, and went into force immediately. By its terms the territory included in the former county of Des Moines, together with the Keokuk Reservation[16] was divided into seven new counties, one of which retained the name of Des Moines. The other six counties created at this time were: Lee, Van Buren, Henry, Louisa, Musquitine, and Cook.[17]

The times appointed for the holding of the district courts in the several counties were as follows: At the "town of Madison, in the county of Lee, on the last Monday in March and on the last Monday in August in each year; in the town of Farmington, in the county of Van Buren, on the second Monday in April and the second Monday in September in each year; in the town of Mountpleasant, in the county of Henry, on the first Friday after the second Monday in April and September in each year; in the town of

[14] Oldt's *History of Dubuque County, Iowa,* pp. 448, 449.

[15] The spelling is modernized in this act.

[16] The Keokuk Reservation had been ceded to the United States on September 28, 1836. See *United States Statutes at Large,* Vol. VII, p. 517.

[17] For a complete discussion of the establishment of counties in Iowa see THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, pp. 375-456.

Wapello, in the county of Louisa, on the first Thursday after the third Monday in April and September in each year; in the town of Bloomington, in the county of Musquitine, on the fourth Monday in April and September in each year.'"[18] The county of Cook was attached to the county of Musquitine for all judicial purposes.

In accordance with the terms of this act the first district courts held in the counties of southeastern Iowa convened during the early months of 1837. The first of these was held at Fort Madison, in Lee County, on March 27th. Upon this date a number of persons were summoned to serve as a grand jury, but were found to be illegally drawn and were discharged. It soon became apparent to the court that a proper number of grand jurors could not be procured. Hence after a session of two days, the court adjourned until the next regular term. On August 28, 1837, the second session of the court convened. The grand jury at this time returned sixty-two indictments, of which fifty-six were for gambling, three for assault, one for injuring cattle, and two for assault with intent to kill. The two latter cases were against Wade Hampton Rattan. When these cases came up for trial in April, 1839, the defendant failed to appear and default was entered. The other indictments, with two or three exceptions, were dismissed as being defective.[19]

In Henry County the first session of the District Court convened at Mt. Pleasant on the 14th of April, 1837. A grand jury was chosen and given a room in a log cabin in which to deliberate. After some time the jury returned and reported that they had no presentments to offer. The court was evidently displeased with this report, for no sooner had the jury been discharged than a new one was

[18] *Laws of the Territory of Wisconsin,* 1836–1838, p. 78.

[19] *The History of Lee County, Iowa* (Western Historical Company), p. 459.

impaneled. This time the jury did better, and returned some five or six true bills, each of which charged the defendant with assault and battery. The second session of the court convened on September 15, 1837, but as the judge failed to appear, court was adjourned until the following April. At this time there was but one important case tried. It was that of United States *v.* William S. Tally, indicted on the charge of arson. The jury returned a verdict of not guilty and the prisoner was dismissed.[20]

In the counties of Van Buren, Louisa, and Muscatine, cases similar to these arose and were dealt with in much the same manner. In a majority of cases prosecution failed to result in punishment. The records in Louisa County show that court convened on Thursday, April 20, 1837. On the following day there was a motion to quash twelve indictments—eight of which were for assault and battery. The grounds of the motion were: first, there was no seal; second, there was no indorsement by an attorney. The motion was sustained and the indictments quashed.[21]

In returning to the two original counties, Dubuque and Des Moines, it will be remembered that there was one term of the District Court held in Dubuque County in 1837, and that a majority of the cases were continued until the June term of 1838. This latter term did not convene, however, owing to the fact that prior to this date—on December 21, 1837—the legislature passed an act dividing the county of Dubuque, and forming fourteen new counties.[22] In the creation of these counties the legislature included not only the original county of Dubuque, but also a large part of the Sac and Fox Cession of 1837, and even extended the

[20] *History of Henry County, Iowa* (Western Historical Company), pp. 398, 399.

[21] Springer's *History of Louisa County, Iowa,* pp. 75, 78.

[22] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 132-138.

boundaries into the Indian country not yet ceded to the United States. The fourteen counties formed at this time were: Dubuque, Clayton, Jackson, Benton, Linn, Jones, Clinton, Johnson, Scott, Delaware, Buchanan, Cedar, Fayette, and Keokuk.[23] Most of these counties were not organized for judicial purposes until some months later, under the authority of the legislature of the Territory of Iowa.

ORGANIZATION OF THE COURTS IN THE TERRITORY OF IOWA

The people of Wisconsin soon found that both their area and their population were too large for one organization. The result was another division of the Territory. This was accomplished by an act of Congress approved on June 12, 1838.[24] This law provided that the part of the Territory lying west of the Mississippi River, and west of a line drawn due north from the source of said river, should form a new Territory, to be known as the Territory of Iowa.

The act further provided that the judicial power of the newly created Territory should be vested in a Supreme Court, district courts, probate courts, and in justices of the peace. The Supreme Court was to consist of a chief justice and two associate justices,[25] all of whom were to be appointed by the President of the United States. The tenure of office for the judges was established at four years. It was further provided that the Territory should be divided into three judicial districts, and that a district court or courts should be held in each of the three districts, by one of the judges of the Supreme Court, at such times and places as

[23] See map in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, p. 443.

[24] *United States Statutes at Large*, Vol. V, p. 235.

[25] Organic Act of the Territory of Iowa, Sec. 9, in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 108.

should be provided by law.[26] The jurisdiction of the various courts was defined, and provision was made for the appointment of clerks.

In order that the judiciary might not be delayed in its action, it was provided that temporarily, and until otherwise provided by law of the Legislative Assembly, the Governor of the Territory should define the judicial districts and assign the judges in accordance with his own discretion. He was also given power to appoint the times for holding courts in the several counties of each district. It was understood, however, that the legislature might at any time alter or modify the judicial districts, and change the location of the judges or the times of holding court, if such changes seemed expedient.[27] Another feature of the Organic Act was a clause which provided that in case of the death, removal, resignation, or necessary absence of the Governor from the Territory, the Secretary should act as the executive, during such vacancy or necessary absence.[28]

Soon after the passage of the law creating the Territory of Iowa, President Van Buren appointed Robert Lucas of Ohio as Governor, and William B. Conway of Pennsylvania as Secretary. As Judges of the Supreme Court he appointed Charles Mason of Burlington, Chief Justice, and Joseph Williams of Pennsylvania, and Thomas S. Wilson of Dubuque as his associates. At the time when the Organic Act went into effect—July 4, 1838—neither the Governor nor the Secretary had yet arrived in the Territory, hence the provisions relative to the establishment of the judicial districts could not be immediately carried into effect. In-

[26] Organic Act of the Territory of Iowa, Sec. 9, in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 108.

[27] Organic Act of the Territory of Iowa, Sec. 20, in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 116.

[28] Organic Act of the Territory of Iowa, Sec. 3, in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 104.

deed all governmental action was delayed until the arrival of Secretary Conway on July 20th. Three days later he was sworn into office by Judge Irvin,[29] and immediately thereafter entered upon his official duties.

Mr. Conway was a young man, inexperienced and ambitious. He was, therefore, very glad to comply with the provisions of the Organic Act, in assuming the duties and the dignity of Acting Governor, until the arrival of Governor Lucas. One of his first acts after assuming this office was to issue a proclamation, on July 25th, dividing the Territory into three judicial districts, assigning a judge to each district and designating the time at which the court in each county should be held. Prior to this time Cook County had been disestablished and a new county, Slaughter, had been created.[30] Moreover, six of the fourteen counties, created from the original county of Dubuque, had been provided with local government. Thirteen of the twenty-one counties now existing were to be assigned judges; and it was with reference to the districting of these thirteen counties that Secretary Conway issued his proclamation.

The apportionment according to Mr. Conway's plan was as follows:

1. The counties of Clayton, DuBuque, Jackson and Cedar, shall form and constitute the first Judicial District, which is hereby assigned to the Hon. THOMAS S. WILSON.
2. The counties of Scott, Musquitine, Louisa, Slaughter and Johnson, shall form and constitute the second Judicial District, which is hereby assigned to the Hon. JOSEPH WILLIAMS.
3. The counties of Lee, Van Buren, Henry and Des Moines, shall form and constitute the third Judicial District, which is hereby

[29] Parish's *Robert Lucas*, pp. 170, 171.

[30] Garver's *History of the Establishment of Counties in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, p. 390.

assigned to the Hon. CHARLES MASON, Chief Justice of the Territory of Iowa.[31]

The time which was designated in the Secretary's proclamation for the holding of the courts in the several counties was as follows:

1st. District

In Clayton county, on the 2d Monday in September next.
Du Buque, 1st Thursday after said second Monday.
Jackson, 4th Monday in September, and Cedar, 1st Monday in October.

2nd. District

In Scott county, 1st Thursday after the first Monday in October next.
Musquitine, 2nd Monday in October.
Louisa, 3rd Monday in October.
Slaughter, 4th Monday in October.
Johnson, 1st Thursday, after the 4th Monday in October.

3rd. District.

In Lee county, 1st Monday in November next.
Van Buren, 2nd Monday in November.
Henry, 3rd Monday in November.
Des Moines, 4th Monday in November.[32]

The plan as completed by Mr. Conway formed the basis upon which to work in the development of the early courts, but it was not destined to remain long in force. The first Legislative Assembly met at Burlington on November 12, 1838;[33] and on January 21, 1839, an act was passed which altered the several districts, and changed the times of holding courts.

[31] Shambaugh's *Executive Journal of Iowa, 1838–1841*, p. 5.

[32] Shambaugh's *Executive Journal of Iowa, 1838–1841*, pp. 5, 6.

[33] *Journal of the House of Representatives*, 1838–1839, p. 3.

The provisions of this act include the following sections:

Sec. 2. The terms of the district courts, in each of the organized counties of this Territory, shall commence as follows, in each year:

In Henry county, on the first Mondays of April and August.

In Van Buren county, on the second Mondays of April and August.

In Lee county, on the fourth Mondays of April and August.

In Des Moines county, on the first Mondays of May and September.

In Johnson county, on the second Mondays of May and September.

In Cedar county, on the third Mondays in May and September.

In Scott county, on the fourth Mondays in May and September.

In Muscatine county, on the first Mondays in June and October.

In Louisa county, on the second Mondays in June and October.

In Slaughter county, on the third Mondays in June and October.

In Clayton county, on the first Mondays of April and September.

In Jackson county, on the second Mondays of April and September.

In Du Buque county, on the third Mondays of April and September.

Sec. 3. The counties of Henry, Van Buren, Lee, and Des Moines, shall compose the first judicial district, and Charles Mason is assigned to the same as district judge thereof.

The counties of Louisa, Muscatine, Cedar, Johnson, and Slaughter, shall compose the second judicial district, and Joseph Williams is assigned to the same as district judge thereof.

The counties of Jackson, Du Buque, Scott, and Clayton, shall compose the third judicial district, and Thomas S. Wilson is assigned to the same as district judge thereof.

Sec. 4. For judicial purposes, the county of Linn is hereby attached to the county of Johnson, the county of Jones to the

county of Cedar, and the county of Clinton to the county of Scott.[34]

It is interesting to note in what particular and to what extent this legislative act altered the plan as outlined by Mr. Conway. An examination of the two plans of apportionment will show that the counties Henry, Van Buren, Lee, and Des Moines which Mr. Conway designated as the third judicial district were made the first judicial district by the legislature; that the counties Jackson, Dubuque, and Clayton, which had been in the first district, and Scott

The time which was designated in the Secretary's pro- to make up the third district; and further that Cedar County was transferred from the first to the second judicial district. It will also be noted that the counties of Linn, Jones, and Clinton, which Mr. Conway had not mentioned, were provided with courts. This change increased, from thirteen to sixteen, the number of counties of the Territory having a regularly organized judiciary.

TERRITORIAL LEGISLATION WITH REFERENCE TO THE JUDICIARY

Not only did the legislature provide plans for the district courts, and extend the judiciary into the newly reorganized counties, but throughout the Territorial period, it continued to pass laws placing the various courts upon a more efficient basis. The first law relative to the judiciary was one which provided that the Supreme Court should hold its first session in the city of Burlington on November 28, 1838. This bill passed the House of Representatives on November 24th,[35] and was approved by the Council on the 26th.[36] It did not receive the Governor's signature and be-

[34] *Laws of the Territory of Iowa*, 1838–1839, pp. 128, 129.

[35] *Journal of the House of Representatives*, 1838-1839, p. 44.

[36] *Journal of the Council*, 1838–1839, p. 53.

come a law, however, until the 28th[37]—the very day upon which, under its provision, the court should have convened. This date is sometimes given as the time of the convening of the first session of the court. It would seem, however, that this is an error, since no cases are reported as having come before the court at that time.

On January 21, 1839, another act was passed the terms of which were that there should be two terms of the Supreme Court held annually at the seat of government of the Territory, commencing on the first Mondays in July and December.[38] This law remained in force for about a year, and resulted in two terms of the Supreme Court during the year 1839.

At the session of the legislature in 1839-1840 the law was again changed, by providing for an annual session of the court, to convene on the "first Monday in July in each year".[39] During the next two years this law remained in force, and accordingly in 1840 and again in 1841 there was but a single session of the court, convening each year in July.

Early in January, 1842, still another change was made by the passage of an act providing that the term of the Supreme Court should be held at Iowa City, beginning on January 10, 1842, and that in following years the annual term should be held at the seat of government, on the first Monday in January in each year.[40] This law was not finally approved until January 10th, the day upon which it provided for the meeting of the court. As a result of this delay it was impossible for the court to convene upon the day appointed, hence this clause of the law was without

[37] *Laws of the Territory of Iowa*, 1838–1839, p. 108.

[38] *Laws of the Territory of Iowa*, 1838–1839, pp. 128-130.

[39] *Laws of the Territory of Iowa*, 1839–1840, pp. 166, 167.

[40] *Revised Statutes of the Territory of Iowa*, 1842–1843, Ch. 43.

effect, and there was no session of the Supreme Court held during that year. The clause of the law which provided for the meeting of the court in following years remained in force, however, and throughout the remainder of the Territorial period the court convened at Iowa City in January of each year.

At the beginning of the Territorial period the jurisdiction of the Supreme Court followed that of the corresponding court of the Territory of Wisconsin as provided for in the legislative act of 1836. Accordingly, although it was primarily an appellate court, dealing with cases appealed from the several courts, it had original jurisdiction in such matters as habeas corpus, mandamus, quo warranto, and other processes not especially provided for by statute.[41] The legislation upon this point during the Territorial period was not such as to change materially the power of the court. By an act passed in 1843 the legislature declared that the Supreme Court should have the final decision in all matter of appeal, writs of error, or complaints arising from decrees of the lower courts. It provided, moreover, that the Supreme Court should have a general supervision of all inferior courts.[42]

With reference to the lower courts a number of laws were passed, some of which should be mentioned in this connection. On January 23, 1839, an act was passed relative to the proceedings in chancery.[43] This law provided that the several district courts should have exclusive original jurisdiction of all matters in chancery, in which a plain, adequate, and complete remedy could not be had at law. Special chancery terms were provided for, and the

[41] 1 Morris 36.

[42] *Revised Statutes of the Territory of Iowa,* 1842–1843, Ch. 46.

[43] *Laws of the Territory of Iowa,* 1838–1839, p. 130.

judges were authorized to establish such rules of procedure as seemed necessary and expedient.

Another act that added efficiency to the judicial system was one establishing probate courts.[44] By the terms of this act it was provided that there should be established, in each county of the Territory, a court of record to be known as the Probate Court. The jurisdiction of this court was coextensive with the limits of the county and extended to all matters relative to estates, testate or intestate. The court was to convene in the respective counties, on the first Monday of each month, and at such other times as extraordinary circumstances might require. Some suitable person within the county was to be appointed judge for a term of three years.

Justice of the peace courts were also provided for by legislative enactments.[45] The law upon this point was to the effect that there should be appointed in each organized county of the Territory as many justices of the peace as, in the opinion of the Governor, the public good might require. The jurisdiction of the justice of the peace was coextensive with the limits of the county, and extended to actions of debt, covenant and assumpsit, action on contract, trespass, and other civil cases, where the amount involved or the damage claimed did not exceed fifty dollars.

Aside from the laws passed organizing and establishing the several courts there were other acts passed which were of primary importance in the development of the judiciary. One of the most important of these laws was entitled "An Act defining Crimes and Punishments."[46] This law constituted the Criminal Code of the Territory. It defined in detail each of the crimes punishable under the law, desig-

[44] *Laws of the Territory of Iowa*, 1838–1839, pp. 126, 127.

[45] *Laws of the Territory of Iowa*, 1838–1839, pp. 282-285.

[46] *Laws of the Territory of Iowa*, 1838–1839, pp. 142-172.

nating the nature and extent of punishment applicable to each case. This code contains one hundred and nine sections and covers some thirty pages of printed matter.

Another legislative enactment relevant to a consideration of the judiciary was "An Act regulating Practice in the district courts of the Territory of Iowa". The first section of this law provided that "all writs issued by any court in this Territory shall run in the name of the United States of America, and bear test in the name of the presiding judge and shall be sealed with the seal of said court, signed by the clerk thereof, and made returnable to the first day of the next term, after the date of such writs."[47] The act then prescribed the manner in which service should be had and indicated the method of procedure before the courts.

In reviewing the laws passed with reference to the courts, one is impressed with the advance made during the Territorial period and especially during the first session of the legislature. This progress seems to have been due to the conditions of the courts when the legislature first convened, and to the zeal and efficiency of the men entrusted with the duty of formulating the laws. From the very beginning of the legislative session a keen interest was shown in matters pertaining to the judiciary. On November 14th, the third day of the session, the President of the Council appointed ten committees, one of which was the Committee on the Judiciary. The members of this committee were Stephen Hempstead, Jonathan W. Parker, and E. A. Swazy. On the following day, November 15th, a committee similar to this, but consisting of five members, was appointed in the House of Representatives. The members of this committee were James W. Grimes, S. C. Hastings, Hardin

[47] *Laws of the Territory of Iowa*, 1838–1839, p. 370.

Nowlin, James Hall, and Laurel Summers.[48] Upon these men, together with the Judges of the Supreme Court, devolved the duty of formulating the laws relative to the judiciary.

The manner in which the Judges of the Supreme Court were involved in the formulating of the laws, and thus given a legislative function, is shown by the legislative journals. On November 14th, the day upon which the first legislative committees were appointed, James W. Grimes introduced a resolution requesting the Judges to submit to the House of Representatives such bills as they thought would increase the efficiency of the judiciary.[49] There seems to have been no further action upon this resolution. But on November 21st, on motion of S. C. Hastings, the House adopted the following resolution:

> Resolved, by the Council and House of Representatives of the Territory of Iowa, That the judges of the supreme court be requested to furnish this Legislative Assembly, during its present session, with such bills as will in their opinion form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof.[50]

This action was immediately approved by the Council and the law became effective.[51]

The assistance of the Judges in formulating proper laws is shown in the communication of Judge Mason to the House of Representatives on November 16, 1838, some days before the first resolution relative to compensation had been introduced. In this message the Judge said:

[48] *Journal of the House of Representatives,* 1838–1839, p. 20; *Journal of the Council,* 1838–1839, p. 23.

[49] *Journal of the House of Representatives,* 1838–1839, p. 20.

[50] *Journal of the House of Representatives,* 1838–1839, p. 33.

[51] *Journal of the Council,* 1838–1839, p. 41.

In compliance with the resolution passed in the House of Representatives on the 14th inst., I herewith present a bill for regulating Criminal procedure in Courts of Justice. Having been requested by one of the members of that body to draft such a bill, I had been engaged some time in preparing it and had nearly completed it when the resolution was adopted. As it is not convenient at present to consult with the other judges in relation to this matter, and I am informed it is desirable to have the bill in readiness for legislative action as soon as practicable, I have been induced to present it at once for the disposal of the House.[52]

Following this communication numerous other recommendations were made by the Supreme Judges. Among the less important laws suggested by them were acts relative to informations in the nature of quo warranto, writs of attachments, trespass, bonds, replevin, and other civil actions. Of the more important pieces of legislation in which judicial assistance was had, the Judges introduced the bill which established the probate courts,[53] and the act which provided that the district courts be given jurisdiction in matters in chancery.[54]

Of the eight men appointed to the committees on judiciary, it appears from an examination of the legislative record that Messrs. Grimes, Nowlin, and Hempstead were perhaps the most active in securing desirable legislation for the courts.

THE PERSONNEL OF THE TERRITORIAL COURTS

Of the men who have contributed to the development of the judiciary in Iowa none stand out more prominently than the Judges of the Supreme Court during the Territorial period. Indeed, it is not too much to say that the

[52] *Journal of the House of Representatives*, 1838–1839, p. 31.

[53] *Journal of the House of Representatives*, 1838–1839, pp. 126, 127.

[54] *Journal of the House of Representatives*, 1838–1839, p. 197.

success and efficiency of our early courts was determined by the attitude of these men. It may, therefore, be of interest in this connection to consider, somewhat in detail, the character, qualifications, and experiences of each of these three men prior to the date of their appointment to the bench.

Judge Mason sprang from an ancestry of considerable note. He was a descendant of Captain John Mason, a daring English naval commander, who, after receiving many honors from the sovereigns of England, died about 1635 and was buried in Westminster Abbey. Charles Mason was born on October 24, 1804, in the town of Pompey, Onondaga County, New York. After receiving such education as the schools of his native place could afford, in 1825, in his twenty-first year he entered the National Military Academy at West Point, where he was graduated in 1829 with the honor of the first rank in his class. This fact becomes significant when it is remembered that the distinguished Robert E. Lee was graduated in the same class. Upon receiving his commission in the army, after his graduation, Mason's first assignment to duty was as instructor at West Point. After two years spent there he resigned from the army, and began the study of law in New York City, where he was admitted to the bar and began the practice of his profession.

In 1832, soon after his admission to the bar, he removed to Newburg, New York, where he formed a partnership with Judge Hasbruck. After remaining there for two years he returned to New York City, and while there he became a frequent contributor to the *Evening Post,* then edited by the distinguished poet, William Cullen Bryant. During the editor's absence on a tour of Europe, Mason was for a time editor of the *Post.* Thus as student, lawyer, and editor he was employed until 1836. In the summer of

that year he made his first visit to the West. He soon returned to New York, but came back again and spent the winter of 1836-1837 at Belmont, the temporary capital of the Territory of Wisconsin. In the spring of 1837 he first came to Burlington, which was at that time a mere hamlet, but had recently become the capital of Wisconsin Territory. This was Mason's first visit to what is now Iowa. It is believed that the trip from Belmont to Burlington was made on horseback.

He again visited the East during the summer of 1837, and on August 1st of that year, was married to Miss Angeline Gear, of Berkshire, Massachusetts. In the following November he returned with his wife and located at Burlington. He came this time as United States Attorney, having been appointed to that office to assist Governor Henry Dodge in the administration of the government of the Territory of Wisconsin.[55] His term of office as United States Attorney was, however, very brief for as already indicated, the Territory of Iowa was created in June of the following year (1838) and he was immediately appointed to the office of Chief Justice, a position which he was eminently fitted to occupy.[56]

[55] The facts contained in this sketch are for the most part taken from the *Iowa Historical Record,* Vol. IX, pp. 529-540.

[56] Judge Mason's service to Iowa did not end with the Territorial days; his name continued to be prominent in State affairs for many years. When the controversy arose between Iowa and Missouri relative to the boundary, he was appointed by Governor Hempstead to represent Iowa in the Supreme Court of the United States, where he succeeded in obtaining a decree in favor of Iowa. He was one of the commissioners to revise and codify the laws of Iowa, which resulted in the *Code of 1851.* In 1853 he was appointed Commissioner of Patents and removed to Washington. In 1857 he resigned and returned to Iowa and in the following year was elected a member of the first State Board of Education. In 1861 he was nominated for Governor by the Democratic State convention but declined the nomination. He was again nominated for Governor in 1867 but was defeated by Samuel Merrill, the Republican candidate. In 1868 and again in 1872 he was elected delegate to

A consideration of the early life of Judge Williams presents a picture quite different from that of Judge Mason, although no less unique and interesting. His strong personality and pleasing manner never failed to attract attention. Instances illustrating his peculiar traits, his versatile talents, his varied accomplishments, his keen sense of humor, and amusing anecdotes are found wherever the name of Judge Williams is mentioned. He was born in Huntington, Pennsylvania, on December 8, 1801,[57] and was a brother of the distinguished William Williams, who in 1857 led the Relief Expedition after the Spirit Lake Massacre.

Little is known of Judge Williams's early education, except that it was sufficient to give him a correct and commanding knowledge of the English language. As a young man he entered upon the study of law in the office of Chauncy Forward, one of the most celebrated lawyers in Pennsylvania. After his admission to the bar he settled at Somerset, where he continued to practice law for a number of years. Reports of cases in which he acted as counsel reveal the fact that he possessed extremely shrewd methods of cross examination, and indicate that he was a practitioner of more than usual ability in conducting cases. He was not an incessant student of the law and intellectually he was far from the equal of Judge Mason, but for innate ability, shrewdness, and witticism he had few if any equals among his associates. Judge Mason said that he was "one of the most companionable and entertaining men I have

the National Democratic conventions. The last few years of his life were spent in retirement on his farm near Burlington, where he died on February 25, 1882, at the age of seventy-seven years.—*Iowa Historical Record,* Vol. IX, pp. 529-535.

[57] Gue's *History of Iowa,* Vol. IV, p. 287; Stiles's *Recollections and Sketches of Notable Lawyers and Public Men of Early Iowa,* pp. 38-44.

ever known, and although perhaps not what would be termed a very close student, was a man of exceedingly quick parts and arrived at just conclusions as if by intuition.'"[58]

When as a young man he entered the law office of Chauncy Forward, he met a fellow student, Jeremiah S. Black, with whom he became closely associated. After their admission to the bar these two men were fellow-practitioners at the Somerset bar. Black later became Chief Justice of the Supreme Court of Pennsylvania, and a member of President Buchanan's cabinet. When Iowa became a Territory he urged the appointment of his friend, Joseph Williams, to the supreme bench of the new Territory and it was perhaps through his influence more than that of any other man that the appointment was made.

At the time of the appointment Judge Williams was thirty-seven years of age, and several years the senior of either of his associates. Although he was considered a brilliant and successful lawyer, he had not acquired a reputation extending beyond the limits of his native State. Moreover, it was the opinion of many of his friends that he would never make a successful judge. They believed that his jovial nature and social aptitude were such as to disqualify him for the bench. But notwithstanding his marked social characteristics, he was able to maintain a high degree of dignity, and to attain a place of high standing among the members of the supreme bench.[59]

[58] *Annals of Iowa* (Third Series), Vol. VII, p. 169.

[59] After a service of more than eight years on the Supreme Court bench Judge Williams resumed the practice of law. His retirement from the bench was, however, brief. In December, 1848, by a joint ballot of the Legislative Assembly he was called to the position of Chief Justice of the State. This position he held for a period of six years, retiring in 1855. In 1857 he was appointed one of the Federal judges for the Territory of Kansas and removed to Fort Scott. During Lincoln's administration he was appointed

The third member of the Supreme Court, Judge Thomas S. Wilson, was born at Steubenville, Ohio, on the 13th day of October, 1813. He was descended from a long line of honorable ancestors upon both sides. His great-great-grandfather landed at the present site of Philadelphia with William Penn. His grandfather was in the Revolutionary War, and held a commission signed by George Washington. His father was an attorney in Philadelphia for a time, but later removed to Steubenville, where he married Miss Frances Stokeley. Judge Wilson was the third child of this marriage. He was educated in the schools of his home town until fitted for college, when he entered Jefferson College, at Havensbury, Pennsylvania. Here he was graduated in the class of 1833 when only nineteen years of age. After graduating he obtained a clerkship in the land office at Steubenville, and at once entered upon the study of law. He was admitted to the bar in 1835, and began the practice of law at the Steubenville bar.[60]

On the 20th day of September, 1836, he was married to Miss Anna Hoge, the daughter of Colonel David Hoge, a prominent citizen of his native town. The next day the newly married couple took a boat down the Ohio and up the Mississippi, to make their future home in the frontier region. In October, 1836, he came to Dubuque. The future Iowa was at this time a part of the Territory of Wisconsin, and Dubuque was one of the leading towns of the frontier. A number of years later Judge Wilson gave the following account of his settlement in the West:

> When I came to Wisconsin I landed with my wife at Prairie

United States District Judge for Tennessee. He died at Fort Scott, Kansas, in March, 1871.—*Annals of Iowa* (Third Series), Vol. VII, pp. 161-171; Gue's *History of Iowa*, Vol. IV, p. 287.

60 *Pioneer Law-Makers' Association of Iowa*, 1894, pp. 142, 143.

du Chien, as my brother, George Wilson, who was a lieutenant in General Taylor's regiment, was living there. George advised me to settle either at Mineral Point or Dubuque. I visited the former place, but did not like its appearance. On my way back to Prairie du Chien, feeling homesick and melancholy and much perplexed as to which of the two places would be the most desirable, I alighted from my horse at one of the Platt mounds and tossed up a dollar, saying to myself, "if heads turn up, I will go to Dubuque; if tails, to Mineral Point." It turned up heads and I started on a canter for Prairie du Chien. The steamer which made semi-annual visits to the town, had made its fall visit and we were obliged to put our baggage into a canoe, and by this means of conveyance we made our way to Dubuque. We reached Cassville the first evening, and Dubuque on the second, eating our mid-day lunches on the island.[61]

Upon arriving at Dubuque young Wilson immediately opened an office and began the practice of law. The following year, 1837, he was appointed by Governor Henry Dodge, as Prosecuting Attorney for Dubuque County. He soon resigned this office, however, for he said he "disliked the business of prosecuting."[62] In 1838 when the Territory of Iowa was organized he was nominated as a delegate to Congress, but declined the nomination to accept the office of Judge of the Supreme Court. When he received this appointment he was scarcely twenty-five years of age, and several years younger than his associates. It is evident that the appointment of one so young, to such a high and responsible office, shows that he must have been regarded as a young man of superior legal attainments.[63]

[61] *Annals of Iowa* (Third Series, Vol. X, p. 439.

[62] *Annals of Iowa* (Third Series), Vol. X, p. 440.

[63] Judge Wilson remained prominent in politics for many years after the close of the Territorial period. The first legislature having failed to elect Supreme Judges, he was one of the three men appointed to fill the vacancy.

Having sketched the careers of the members of the Court, some attention should be given to the conditions under which they were appointed. In this connection it appears first of all that all of the appointees were Democrats. This fact was no doubt considered in making the appointments. But it is too much to assume that all of the appointments were made because of the political influence brought to bear by the individual appointees. Indeed, there is evidence tending to show that two of the appointments, that of Judge Mason and of Judge Wilson, were made without the appointee's knowledge. In writing upon this subject some years later Judge Mason said: "The first information I had on the subject was that the bill organizing the new territory had passed and that I had been appointed by President Van Buren, Chief Justice, with Joseph Williams of Pennsylvania and Thomas S. Wilson of Dubuque as my associates."[64]

Judge Wilson writing upon the same subject said:

As soon as the bill organizing Iowa was passed, the northern counties held mass meetings for nomination of a delegate to Congress, and I was nominated. . . . After my nomination, at the suggestion of friends, I prepared to canvass the lower counties of the

Soon he retired from the bench and entered into the practice of law. One of the cases in which he acted as counsel was that of Chouteau *v.* Molony, which involved the title to the land where the city of Dubuque now stands. The case finally went to the Supreme Court of the United States, where Mr. Wilson obtained a favorable decision. This he says was the most important case with which he was ever connected either as judge or counsel. In 1848 he was candidate for United States Senator, but was defeated by George Wallace Jones. In 1852 he was elected District Judge and served until 1863. In 1866 and again in 1868 he was a member of the State legislature. During the later years of his life he lived in comparative retirement, although he maintained a law office in the city of Dubuque, where he died on the 16th of May, 1894, at the age of eighty years.—*Pioneer Law-Makers' Association of Iowa,* 1894, pp. 142, 143; Gue's *History of Iowa,* Vol. IV, pp. 290, 291.

[64] *Annals of Iowa* (Third Series), Vol. VII, p. 166.

Territory. When I arrived at the steamer to take my passage to Burlington, I was informed by the clerk that I had been appointed one of the judges of the Supreme Court of Iowa. When I expressed my doubts about it he took me into the office and showed me a copy of the *Missouri Republican* which contained a notice of it. I then returned home to consider whether I should accept. After a few days' consideration I concluded to do so, and declined the nomination for Congress.[65]

As has been suggested in another connection the appointment of Judge Williams was made largely through the influence of Jeremiah S. Black of Pennsylvania. The influences involved were not, however, such as to render the appointee subject to political control. In fact, in all the appointments there is reason to believe that the President had clearly in mind the desirability of appointing good and efficient men regardless of political party and partisan influences.

EARLY CASES IN THE DISTRICT AND SUPREME COURTS

The courts having been provided for by the Organic Act and by legislative enactments, and the appointment of judges having been made, some attention should be given to a consideration of the early cases arising in the several courts. The first sessions of the district courts in the various counties were characterized by a small amount of business, improvised methods of conducting court, and an abundance of zeal and enthusiasm on the part of the attorneys, who for the most part were young and anxious to establish a reputation. A few cases will suffice to illustrate this point. The first court held in Johnson County was convened on May 13, 1839, at Gilbert's trading house, some distance south of the present site of Iowa City. T. S. Par-

[65] *Annals of Iowa* (Third Series), Vol. X, p. 440.

vin, Prosecuting Attorney and one of the first lawyers admitted to the bar in the Territory of Iowa, gives an extended report of this case. The officers of the court he says were: Judge—Hon. Joseph Williams of Bloomington (now Muscatine); Clerk—Luke Douglass; Prosecuting Attorney—T. S. Parvin of Bloomington; United States Attorney—Charles Weston of Davenport; United States Marshal—Charles Hendrie of Dubuque; Sheriff—S. C. Trowbridge of Johnson County.

The court held a three days session. "The grand jury met in a ravine on the prairie, near the trading house, the attorney using a log for a platform from which to harangue the jury."[66] The only business of importance transacted was the finding of a true bill of indictment against Andrew J. Gregg, on the charge of counterfeiting. Gregg was not well known in the community, but was believed to belong to a band of outlaws whose operations extended from Dubuque to the State of Missouri. There being no jail in which to imprison him, it was necessary to put a guard over him day and night.

After being thus guarded for several weeks, and indeed it is said, until the expense incurred exceeded the whole revenue of the county for a year, he by some means secured a pistol, and bidding defiance to his guards, coolly walked off and disappeared.[67] Thus the result of the first session of the district court was only to incur expense, and to impress upon the minds of the settlers the need of buildings and equipment for the enforcement and maintenance of order and justice. Some time later Gregg appeared at a social gathering in the neighborhood and attempted vio-

[66] *Early Iowa—The Iowa City Republican Leaflet*, No. 16, pp. 65, 66.

[67] *Early Iowa—The Iowa City Republican Leaflet*, No. 16, p. 62.

lence, but being hotly pursued he disappeared and was not again seen in Johnson County.[68]

The experiences in the early courts of Johnson County are typical of those elsewhere in the Territory. An early case in Lee County was one arising from the sale of a "blanket title" to a portion of land in the Half-breed Tract. A settler of somewhat questionable character sold a practically worthless claim to the Clerk of the District Court, for eight hundred dollars, and took his note for the amount, due in six months. When the time for payment arrived the purchaser refused payment, on the ground that the claim was valueless and that the note had been obtained by fraud. The case came to trial before Judge Mason in the District Court at Fort Madison. Philip Viele was attorney for the plaintiff, and D. F. Miller and W. H. Gilbraith for the defendant. The evidence of the witnesses being conflicting, the trial was severely contested, and gave ample opportunity for the young attorneys to exercise their wits in an attempt to overcome the opposition.

When the evidence was all in and the case ready for the argument of the attorneys, Miller whispered to his partner that the case was lost unless the plaintiff's attorney, Viele, made some error in presenting his argument. Gilbraith took the hint and in his argument dealt in a severe criticism of the opposing attorney, and said very little about the case at bar. As a result Viele became excited and let his argument fall far below his usual standard. This, together with the fact that he based his closing argument upon an untruth, resulted in a verdict for the defendant. As a final plea for the plaintiff, Viele took his client by the hand and represented to the court that he was an honest, hardworking man and that he had a wife and large family of chil-

[68] *Early Iowa—The Iowa City Republican Leaflet*, No. 16, p. 62.

dren depending upon his daily toil. The plea delivered in a sympathetic tone, and with graceful gesticulations, was greeted with a general buzz of approbation from the audience.

When the jury retired to consider their verdict it stood, on its first vote, eleven for the plaintiff and one for the defendant. The eleven demanded an explanation of the one supporting the defendant. He answered that he had intended to support the plaintiff too, until he heard Judge Viele's sympathetic appeal for the "wife and children". "For", he said, "I know the plaintiff well, and he has no wife nor children, and keeps *'bach'* in a log cabin; and as that statement of his lawyer was erroneous I believe the whole claim is a fraud."[69] It is needless to say that the opinion of the eleven men was changed and a verdict given in favor of the defendant.

Similar cases arose in various other counties of the Territory and were adjudicated in the same sort of improvised court, and under similar methods of procedure. While it is true that many of the cases thus contested were not of primary importance it would be a mistake to suppose that no important cases arose in these courts.

The first and perhaps the most important case to come before the Supreme Court of the Territory of Iowa was one arising in the District Court of Dubuque County. The case was one involving the question of slavery and is interesting in the light of the Dred Scott decision, rendered by the United States Supreme Court some years later. Montgomery, a citizen of the State of Missouri, owned a slave named Ralph, with whom he entered into a written agreement by which the latter was permitted to secure his freedom upon the payment of $550. Ralph removed to

[69] *Annals of Iowa* (First Series), Vol. IX, pp. 614-616.

Iowa and succeeded in finding work at the Dubuque mines, but earned little more than was needed for his own support, hence he made no payment on the contract. Montgomery would, probably, never have claimed Ralph again had it not been for two kidnappers from Virginia, who offered to secure the negro and return him to his former master for a consideration of $100. This offer was accepted. The ruffians then made an affidavit that Ralph was a fugitive slave and procured an order from a magistrate to the sheriff to seize Ralph and deliver him to them to be taken to his master.

Ralph was working on a mineral lot a little west of Dubuque. He was seized by the sheriff and delivered to the kidnappers, who placed him in a wagon and took him to Bellevue, intending to take him to St. Louis on the first steamer. They avoided Dubuque, lest a writ of habeas corpus should be issued requiring the prisoner's release. Alex. Butterworth, a farmer, working in the field near Dubuque, went at once to the residence of Judge Wilson and demanded a writ of habeas corpus. The writ was granted and issued to the sheriff who started in pursuit of the party. He overtook them at Bellevue and Ralph was returned to Dubuque.[70]

When this case came before Judge Wilson in the district court, he recognized the importance of the question involved, and suggested that the suit be transferred to the Supreme Court of the Territory. In the higher court it was unanimously decided that Montgomery in granting Ralph the privilege of entering a free Territory, thereby gave him his freedom, and could not again take him into a slave State. In the opinion of the court slavery did not and could not exist in Iowa. Judge Mason, in delivering

[70] THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, pp. 88-95.

the opinion, held that where a slave with his master's consent became a resident of a free State or Territory he could not be regarded thereafter as a fugitive slave, nor could the master under such circumstances exercise any right of ownership over him; and that when the master applied to the courts for the purpose of controlling as property that which the laws declared should not be property, it was incumbent upon them to refuse their co-operation.[71]

This case came before the Supreme Court of the Territory in July, 1839, and was the only case adjudicated during that term. The decision is in direct conflict with that of the Dred Scott case, but is in accord with the spirit of the fourteenth amendment to the United States Constitution which deals with the question of citizenship. It is a fact worthy of notice that the first case in the Supreme Court was one involving a question of national importance, and was decided in accordance with the principle of human justice.

It will be remembered that the first Legislative Assembly provided that the Supreme Court should convene twice each year, on the first Mondays in July and December.[72] Under this provision the second term of court was convened in December, 1839. During this session ten cases were adjudicated, eight of which had to do with methods of court procedure, and the rules to be followed in the settlement of cases. In the case of Gordon and Washburn *v.* Higley the court held that the District Court might direct such a change in the verdict of a jury as to make their verdict correspond to the usual forms, wherever such change could not, by any possibility, alter the evident meaning of

[71] 1 Morris 1; Gue's *History of Iowa*, Vol. I, p. 199.

[72] *Laws of the Territory of Iowa*, 1838–1839, p. 128.

their verdict. And furthermore that this change might be ordered after the members of the jury had separated.[73]

The case of Edward Powell *v.* The United States laid down the rule that it was not necessary that a defendant plead, the presumption being that he plead not guilty, but that the omission of an arraignment would be sufficient ground for reversing judgment.[74]

The case of Harrell *v.* Stringfield decided that technical phraseology in the verdict was not material and that an error which could work no harm would not be sufficient to warrant a reversal of the judgment.[75]

From these cases it will be observed that the judiciary was not in a dormant state, but rather that it was in the process of evolution, of growth and activity, each case adding something to what had gone before and thus contributing its part to the development of the present judicial system. A further evidence of the growing importance of the work of the Supreme Court is shown in the fact that at the July term of court in the following year, 1840, there was a docket of twenty-two cases, as against the one case adjudicated in July, 1839.

According to the original law establishing the time of holding court, the next session would have convened in December, 1840, but prior to this time, on January 17, 1840, the Legislative Assembly approved the law providing for an annual session of the Supreme Court, to convene on the "first Monday in July in each year". Accordingly there was no December session in that year, and the next session was convened in July, 1841. During this term twenty cases were adjudicated. These cases dealt with a variety of sub-

[73] 1 Morris 13.

[74] 1 Morris 17.

[75] 1 Morris 18.

jects such as negotiable instruments, forcible entry and detainer, debt, partnership, fraud, and questions of court procedure. None of these cases, however, were of primary importance as establishing fundamental principles of law.

THE REAPPOINTMENT OF JUDGES

It will be remembered that there was no session of the Supreme Court during the year 1842. From this fact one might expect to find a lack of interest in judicial affairs. An investigation of conditions, however, shows that quite the reverse was true. In accordance with the provisions of the Organic Act the Judges were appointed in 1838, and their commissions were to expire on July 4, 1842. Prior to this time the presidential election of 1840, and the death of President William Henry Harrison had resulted in a new President, John Tyler. It was the opinion of many that he would appoint members of his own party to supersede the Judges of the Territory of Iowa.

For more than a month after the expiration of the Judges' term of office, no appointment was made, and the Territory was without a judiciary. In the meanwhile the people of Iowa could only express their opinions as to what action would be taken. This they seem to have done very freely. On July 16th there appeared in one of the leading papers of the Territory the following comment:

> Not a word do we learn yet in regard to the appointment of Judges for our Territory. Mr. Tyler and his cabinet have forgotten, probably, that there is such a place as Iowa or that the people in so remote a Territory stand in need of either Judges, or laws, for the preservation of order and the protection of property among them.[76]

The facts indicate, however, that there was a more sig-

[76] *Iowa Capital Reporter* (Iowa City), July 16, 1842.

nificant reason than the one here assigned for the delay in making the reappointment. It was charged by the members of the Whig party that Judge Williams had from time to time participated in partisan politics and that in so doing he had become recognized rather as the "party's man than the People's magistrate."[77] In accordance with this feeling the Whigs addressed a petition to the President remonstrating against his reappointment. There was also a slight objection to the reappointment of Judge Mason. Daniel Webster, as Secretary of State, in June, 1842, sent to the President the names of Thomas S. Wilson for Chief Justice, and Stephen Whicher, and Isaac Leffler for Associate Justices, and suggested their appointment. President Tyler was not, however, prone to act hastily in the matter and chose to investigate the case before submitting these names to the Senate. After some deliberation the names of Whicher and Leffler were stricken out, and those of Mason and Brown substituted in their places. In this condition the nominations went to the Senate, where at the request of Augustus Caesar Dodge, at that time a delegate to Congress, they remained without consideration until Judge Williams could be heard from.[78]

In the meanwhile petitions favorable to the reappointment of Judge Williams, and signed by many of the voters of the Second Judicial District were sent to the President. Upon the receipt of these petitions, it appears that President Tyler became convinced that the only objection to the reappointment of Judge Williams was based upon purely partisan grounds, if indeed not upon fictitious and trumped-up charges. He, thereupon, withdrew the nominations from the Senate and again remodeled them, by placing Mason

[77] *Iowa City Standard*, September 28, 1842.

[78] *Iowa City Standard*, September 28, 1842.

as Chief Justice, and Judge Wilson and Judge Williams as Associate Justices. In this form the nominations were ratified by the Senate, and the old Judges thereby re-appointed for a term of four years.

Interesting controversies arose between Whigs and Democrats relative to this delay and to the final outcome of this appointment. One of the leading newspapers of the Territory in attacking the President makes use of the following language:

> Now, we inquire, whose fault is it that we were left without Judges—who is culpable, in that the interests of the people were sacrificed and their safety in a measure jeoparded? Is not the President the man who should be held responsible?—What right, in strict justice, had he to put the nominations in his pocket—and that, too, at a time when the commissions of the Judges were on the point of expiring—and spend weeks in making inquiries into the politics of the parties?[79]

Another of the Territorial papers in defending the attitude of the President said:

> The President could not have acted differently in the matter from what he did, and have acted *justly* and *consistently*. So soon as he was satisfied that the charges made were false, and that the purported proceedings of the Bloomington meeting were a *forgery*, he promptly, and with an independence creditable to him, re-appointed our Judges with the least possible delay compatible with justice, as well to the people of the Territory, as to the judges, who had for the four previous years discharged the duties of their stations to the almost entire satisfaction of those with whom they acted.[80]

While President Tyler was investigating the record of

[79] *Iowa City Standard*, September 28, 1842.

[80] *Iowa Capital Reporter* (Iowa City), October 8, 1842.

the various candidates for the appointment, Judge Williams was himself busily engaged in promoting his own candidacy. For while Judge Mason had a farm to which he could retire, and Judge Wilson had a good law practice, Judge Williams had neither and was, therefore, anxious for a reappointment. He not only used his influence in securing a petition, urging the President to reappoint him, but he made a trip from his home at Muscatine to the national capitol, in furtherance of this cause.

An interesting story is told of this journey. It was made overland and for the most part by stage. Upon reaching Wheeling, the Judge fell in company with a handsome lady. He, being a gallant man and quite at ease in the presence of ladies, found no difficulty in making himself agreeable. The two were traveling companions all the way to Baltimore. As they pursued their journey Mr. Williams related to the lady the nature of his business at Washington, but strangely enough he did not learn his companion's name or place of residence. When he got to Washington, and had sufficiently recovered from the journey, he presented himself to the President. He was received very cordially. "What can I do for you, Judge Williams?" said the President. The Judge suggested as gracefully as he could that he had come seeking the renewal of his commission. The President replied that the matter had already been fixed. Judge Williams was then ushered into the parlor where he met the lady who had been his traveling companion—the President's wife. She greeted him very cordially and said, "I spoke to my husband about you and he said you should have the appointment".[81] Judge Williams, feeling under obligation to the other members of the court, Judge Mason and Judge Wilson, spoke to the President about

[81] *Iowa Historical Lectures*, 1894, pp. 75, 76.

their reappointment, and found that their commissions too would be renewed. Thus the long contest for the reappointment of Judges was settled in a manner quite satisfactory to the members of the court, and it appears in a manner quite generally acceptable to a majority of the people of the Territory.

The editor of one of the leading Territorial papers commenting upon the reappointment a few days later used the following language:

> We have at length the gratifying intelligence to communicate to our readers that Judges have been appointed for our Territory by the authorities at Washington and that the wheels of our judicial system, which have been at a standstill for some month or two past may be expected therefore to be set in motion again ere long . . . .
>
> But the mere appointments of the Judges is not the only pleasing information connected with this matter which we are enabled to convey to our readers. We have the further good news to tell them, that the old Judges are all reinstated in their places as they stood prior to the 4th, ultimo, towit: Judge Mason as Chief Justice of the Territory, and Judges Williams, and Wilson, as associates.
>
> This result will, we are sure, be highly gratifying to a very large majority of the people of the Territory, and should be so, we think, to every individual in it; for surely none will deny that the duties of their stations have been discharged by those gentlemen with much ability, and with the most exemplary fidelity. . . .
>
> To President Tyler, however we may have differed hitherto, or may differ with him hereafter, upon other subjects, our thanks in common with those of the people of Iowa, are due for his action in this matter of the appointment of Judges. He might have given us those here at home who would have been greatly less acceptable; or he might have sent those among us from abroad whose presence in the Territory would have been a pollution to it; instead of doing either of which, he restored to us as Judges

those whom we all know to be worthy, and by whom all must feel assured that justice will be dispensed between man and man, free from fear, favor, or affection.[82]

LATER DECISIONS OF THE SUPREME COURT

The Judges having been reappointed for the ensuing four years, the judiciary was ready to resume its duties. And since there was no session of the Supreme Court in 1842, there was an unusually large amount of business awaiting the court when it convened in January, 1843. None of the suits were perhaps of primary importance, as involving great legal questions, but many of them are of much interest, because of the men connected with them, and as an indication of the methods of court procedure. A typical case is that of United States *v.* Cropper,[83] a suit arising in Johnson County and presenting the question as to the duties of the board of commissioners respecting the delivery of lists of grand jurors to the Clerk of the District Court.

It was held that it is the duty of the commissioners to deliver to the Clerk of the Court attested copies of the lists of grand jurors, thirty days previous to the beginning of the term. The attorney for the plaintiff in this case was Ralph P. Lowe, a distinguished and successful lawyer of the Territory, and afterwards Governor of the State. His competitor, the attorney for the defendant, was W. G. Woodward, a very able lawyer, a son of the defendant in the celebrated case of Dartmouth College *v.* Woodward, and later one of the Judges of the Supreme Court of the State. Aside from the interest in the men involved in the case, this decision is worthy of notice because of its dissenting opinion. The majority opinion was rendered by

[82] *Iowa Capital Reporter* (Iowa City), August 20, 1842.

[83] 1 Morris 190.

Judge Wilson, Judge Williams concurring, while a vigorous and somewhat extended dissenting opinion was delivered by Judge Mason.

It is a notable fact that there were during the Territorial period a number of cases in which a dissenting opinion was rendered. Indeed it is believed that the organization of the courts was such as to foster a disagreement among the Judges. This was due to the fact that one of the Judges of the Supreme Court presided over each of the three district courts. It was necessary, therefore, in the higher court for a judge to pass upon his own ruling in the lower court. This defect of organization was perhaps unavoidable, yet it was a serious defect, for it is very difficult for any man, however thoroughly judicial and impartial he may be, to avoid, in the appeal of a case, a bias arising from his own ruling in the court below. There is no intimation that the ruling in this case was a result of a biased opinion, indeed there is evidence to the contrary, for while the dissenting opinion was rendered by Judge Mason, the original hearing of the case was before Judge Williams. Yet one can not but recognize the defect in the organization of the court at this point.

The term of court which convened in January, 1844, was not unlike that of the previous term. One of the most interesting cases was that of Waw-kon-chaw-neek-kaw *v.* The United States: a case in which an Indian was convicted of the murder of one Moses Tegarden. The case arose in the District Court of Dubuque. An appeal was taken on the ground that the record did not show that the jury were properly and lawfully sworn. The court held that such an objection could not be sustained after the case had gone to trial and a verdict had been rendered. Chief Justice Mason in rendering the decision said:

The proceedings below will be presumed to have been correct, unless the contrary is shown by the plaintiff in error. . . . It would be subversive of justice to allow a party to remain silent in relation to matters of this nature, until after a final hearing, and then obtain a re-hearing of the case and put the public to the trouble and expense of a new trial, merely because a clerk of the District Court omitted a caption to his transcript.[84]

In January, 1845, the seventh term of the Supreme Court convened with a docket of ninety-eight cases.[85] Many of these were, however, stricken from the docket, while others were continued until the next term of court, so that the entire list of cases adjudicated was reduced to forty. The first case reported during this session—Hughell *v.* Wilson[86]—was one involving the validity of a statute relative to public lands. On January 25, 1839, the legislature had passed an act providing that the claimant of public lands, who had marked out and designated his claim, but had not enclosed it with a fence, could maintain an action of trespass upon said claim. The court held that this statute was valid and that one cutting trees upon such a claim was subject to a fine. The amount of money involved in this case was very small, but the principle under consideration was one of vast importance to the people of the newly settled country.

Another case, arising during this term of the court, and one presenting an important question was that of Hight and Hight *v.* The United States.[87] George W. Hight and George V. Hight had been indicted upon the charge of murder, and subsequently brought action on a writ of habeas corpus for the purpose of being admitted to bail.

[84] 1 Morris 335.

[85] *Iowa Capital Reporter* (Iowa City) January 11, 1845.

[86] 1 Morris 383.

[87] 1 Morris 407.

It was contended for them that the evidence against them before the grand jury was so slight that they were entitled to be discharged on bail. The court refused to bail the prisoners, whereupon the case was appealed to the Supreme Court.

Judge Mason in delivering the opinion said substantially that while an indictment furnishes no presumption of guilt against a prisoner when he is upon his trial, it furnishes the strongest presumption of his guilt in all proceedings between the indictment and the trial. Although it is within the power of the court to grant bail, the prisoner can not in capital offences demand bail as his natural right. The court is not required to investigate the evidence upon which the indictment is found. The finding of the grand jury is conclusive as against the prisoner, although it may have been found on slight evidence.

The following term of court, in 1846, was of unusual importance because of the cases relative to the "Half-breed" settlements. The principal case in this connection was Webster *v.* Reid,[88] a case involving the title to extensive tracts of land in Lee County. This suit was full of interest not only to the immediate parties, but to the community as a whole, indeed some of the questions involved were many times before the courts, and were not finally settled until after Iowa had become a State. The case arose as a result of the intermingling of the whites with the Indians. In the early days the settlers were for the most part young men, having no families. Many of these settlers, in coming in contact with the Sac and Fox Indians, had married Indian women and had become the fathers of a generation of children commonly known as the "Half-breeds". In the treaty of 1824 by which the Indians ceded large tracts of

[88] 1 Morris 467.

land to the United States, a reservation was made for the benefit of these half-breeds. The stipulation in the treaty was as follows:

> It being understood that the small tract of land lying between the rivers Desmoines and the Mississippi, and the section of the above line between the Mississippi and Desmoines . . . . is intended for the use of the half breeds belonging to the Sac and Fox nations, they holding it, however, by the same title and in the same manner that other Indian titles are held.[89]

On the 30th of June, 1834, Congress passed an act relinquishing all right of the United States in the Half-breed Tract and giving "power to said half breeds to transfer their portions thereof by sale, devise or descent, according to the laws of the State of Missouri."[90] Neither the treaty nor the act of Congress designated the persons owning the land within the reserve.

On the 16th of January, 1838, the Territorial legislature, to ascertain who were the real owners of the tract, and to bring about a partition of the lands among the real owners, passed an act providing for the appointment of three commissioners, who should hold their sessions at the town of Montrose, receive and record the evidence of all claimants of any interest in the lands; and who were to report to the District Court for Lee County the result of their investigation and the evidence received by them. This act also provided that the commissioners should receive $6.00 per day each, for their services, which was to be paid by a sale of such portions of the land as might be necessary to pay the same, said sale to be made on the order of the District Court. Under the provisions of this act commissioners

[89] 1 Morris 468.

[90] 1 Morris 469.

were appointed, two of whom, Edward Johnston and David Brigham, actually served for nearly a year, indeed until January 25, 1839, at which time the Territorial legislature repealed the act by which they had been authorized to work. No sale of land had been made at that time to defray the expenses of said commissioners. To meet this contingency the act of January 25, 1839, provided that the commissioners should bring action in the District Court of Lee County against the owners of said half-breed lands. It is important to note in this connection that this act further provided that the trial of said suit or suits, should be before the court and not before a jury,[91] and that "The words 'owners of the half breed lands lying in Lee county,' shall be a sufficient designation and specification of the defendants in said suits".[92]

Under this law actions were brought by the commissioners, and as a result two judgments were executed, one in favor of Edward Johnston for $1290, the other in favor of David Brigham for $818. To satisfy these judgments the sheriff sold the land on January 1, 1842. Hugh T. Reid bought the entire tract of 119,000 acres for $2884.66.[93] The question presented was whether Reid secured a good title. The court held the title valid, notwithstanding the circumstances under which it was obtained. Some years later, however, the same question arose in the Supreme Court of the State, in the case of Reid *v.* Wright, and here Reid's title was held to be invalid. The court based its decision in this case, in part, upon the fact that the Territorial legislature had provided that cases relative to the Half-

[91] 1 Morris 469, 470.

[92] 1 Morris 469, 470.

[93] 1 Morris 470.

breed Tract should be decided by a court and not by a jury. The judge said:

> This is not according to the law of the land. . . . It infringes the clause of the ordinance of 1787, which guaranties judicial proceedings, according to the course of the common law, and violates that clause of the ordinance which declares that no man shall be deprived of his liberty or property but by the judgment of his peers and the law of the land; and consequently it is utterly void.[94]

Again the Judge says:

> In the case before us, the want of jurisdiction over the parties appears upon the face of the proceedings. Suit is brought and judgments entered against "*owners*" of certain lands.
>
> Parties cannot be brought into court in this manner, and judgments cannot be so rendered.[95]

Other points involved in the case make it a long and complicated one. It will be sufficient to note in this connection that the case finally went to the Supreme Court of the United States, where the holding of the State court was affirmed, thus overruling the decision of the Territorial Judges.

THE MOVEMENT TOWARD STATEHOOD: ELECTION OF JUDGES

As early as 1839 the agitation for statehood had begun in the Territory of Iowa. The pioneers accustomed to self-rule in other States had brought with them the desire for self government in the land of their adoption. Like the people of other Territories they looked forward to the time when they could lay aside the Territorial government and enter into full statehood. The movement was not, however, one of rapid and unprecedented change, but rather one of

[94] 2 G. Greene 29, 30.

[95] 2 G. Greene 38.

slow and steady growth. Indeed it was not until after five years of agitation, that, in August, 1844, delegates to the first constitutional convention were elected by the people of the Territory. This convention met on Monday, October 7, 1844, in the Old Capitol Building at Iowa City, and there began the work of framing a constitution to be submitted to the people for their ratification or rejection. One of the questions with which the convention was confronted was with reference to the reorganization of the judiciary.[96]

On the third day of the convention eleven standing committees were appointed, one of which was the Committee on the Judiciary Department. The members of this committee were Messrs. Jonathan C. Hall, James Grant, James Clarke, Stephen Hempstead, Stephen B. Shelleday, Jonathan E. Fletcher, and Andrew W. Campbell.[97] Within a few days this committee gave its report, recommending that "the Judges of the Supreme Court and District Court shall be elected by the joint vote of the Senate and House of Representatives and hold their offices for six years".[98] There was, however, a minority report which proposed that all of the judges be elected by the people of the State. It is apparent from the debates of the convention that little consideration was given to the executive appointment of judges. The question rather was: Shall the judges be elected by the people or shall they be chosen by the General Assembly? Stephen Hempstead who was in favor of direct election said "that in a Republican or Democratic government, the people were sovereign, and all power resided in them." He contended, moreover, that when the legislature,

96 Shambaugh's *History of the Constitutions of Iowa,* pp. 175, 176.

97 Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846,* p. 9; *Journal of the Convention of 1844,* pp. 3, 4.

98 Shambaugh's *History of the Constitutions of Iowa,* p. 208.

or the Senate and Governor appointed officers, they acted as proxies of the people; and that if the people were capable of electing these proxies, they were capable of electing the officers themselves.[99]

Gideon S. Bailey from Van Buren County, in reply to the argument of Mr. Hempstead, said he had no doubt of the capacity of the people to elect their judges; but he thought there was real danger of judges becoming corrupt through political influences. He argued that they were "liable to form partialities and prejudices in the canvass, that would operate on the bench." He admitted that the people were sovereign and had power to elect judges as well as the Governor, but he was in favor of the legislative appointments. In further support of this plan he argued that the people were not acquainted with persons proper to fill the office of judge.[100]

After much discussion on the floor of the convention a compromise was reached, in which it was agreed that the judges of the Supreme Court should be named by the General Assembly; and the judges of the district court should be elected by the people. The provision as embodied in the constitution was in the following language:

> The District Court shall consist of a Judge, who shall reside in the district assigned him by law, be elected by the qualified voters thereof, and hold his office for the term of four years, until his successor is elected and qualified. . . .
>
> The Judges of the Supreme Court shall be elected by joint vote of the General Assembly, and shall hold their offices for the term of four years, and until their successors are elected and qualified.[101]

[99] Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 103.

[100] Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 105, 106.

[101] Constitution of Iowa, 1844, Art. VI, Secs. 4, 5.

From these provisions it will be observed that there was not only a change in the manner of selecting judges, but that there was a complete reorganization of the judicial system. The judges of the district court in the Territory were members of the Supreme Court, whereas the proposed constitution provided for separate judges for the various courts. This change was intended to obviate the difficulty of a judge on the supreme bench being biased by a decision which he had rendered in the same case in the lower court.

On Friday morning, November the first, after a session of twenty-six days the convention adjourned. The questions which had been discussed on the floor of the convention were now taken up by the press, public speakers, and the public as a whole. The subject of the election of judges and the reorganization of the judiciary received its share of attention. In commenting upon the proposed constitution, *The Iowa Capitol Reporter* said: "the organization of the Courts meets our entire approbation." And concluded—"we are determined to give it our decided support, and wish to see its unanimous adoption by the people."[102]

The Dubuque *Transcript* on the other hand made particular objection to the election of judges by the people. It considered this provision alone sufficient to condemn the entire constitution.[103]

The Burlington *Hawk-Eye* in speaking of the constitution, said: "With many exceedingly good points, it has others so radically wrong both in principle and operation, that like the scorbutic taint in the human system, it infects and vitiates the whole scope of its provisions." It set its "face

102 Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 210, 211.

103 Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 211.

uncompromisingly against the whole construction of the Judiciary,'' including the popular election of judges.[104]

From these and numerous other comments it is apparent that the constitution was severely criticized because it provided for the election of judges of the inferior courts by the people. To the minds of many the office of judge was too sacred to be dragged into partisan politics. Judges, they thought, ought not to be directly responsible to the people. There were of course other objections to the proposed constitution, some of which were even more significant than that relative to the courts. The question of proposed boundaries, for instance, was of primary importance. Yet the question of the reorganization of the judiciary formed one of the interesting problems, and must be considered as one of the objections which led to a defeat of the constitution. Suffice it to say that this constitution was twice submitted to the people—once in 1844 and again in 1845—and was each time rejected.

The rejection of this constitution did not, however, permanently check the movement toward statehood. An act of the Territorial legislature approved on January 17, 1846, provided for the election of delegates to another constitutional convention, to meet in Iowa City the following May.[105] The convention convened on the morning of May 4th, and in the afternoon of the same day six standing committees—including the Committee on the Judicial Department—were appointed.

The question of election of judges was soon again brought forward and discussed as in the former convention. Mr. George W. Bowie from Des Moines County, in speaking upon this subject admitted that the people were

[104] Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 212, 213.

[105] Shambaugh's *History of the Constitutions of Iowa*, p. 289.

competent to choose judges but opposed the plan on the ground that men eminently fitted to become judges would shrink from the public scrutiny and thus the best men would be eliminated from the contest.[106]

Mr. Samuel A. Bissel from Cedar County, in supporting the opposite view, contended that public opinion was the only true test of the character of a public man, and that public opinion could be determined only at the ballot box.[107]

Thus the subject was argued pro and con as in the convention of 1844, and with essentially the same result. The lapse of two years had served to impress upon the minds of the legislators the merits of the proposed reorganization. The idea of an elective judiciary had come to stay. The new constitution, therefore, like that of 1844, embodied a clause providing for a separation of the Supreme and District Judges, the former to be chosen "by joint vote of both branches of the General Assembly", the latter to be "elected by the qualified voters of the district".[108] Thus the question so vigorously debated in 1844 was again presented to the people for their adoption or rejection. The debates and press comments were not unlike those of the previous contest, and the arguments presented were essentially the same.

Wm. Penn Clarke in an address to the people, which appeared in one of the Territorial papers, said:

> I am opposed to the adoption of the constitution . . . . because it proposes an experiment with our judiciary system. An *elective* judiciary is one of the vagaries which has grown up out of the party strife of the country, and is calculated to disrobe our Courts

[106] Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 322.

[107] Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 323-325.

[108] Constitution of Iowa, 1846, Art. VI., Secs. 3, 4.

of Justice of their sacred character and impair the confidence the people ought to, and do entertain in the integrity of our judges. It is an experiment which has been tried in but a single State of this Union, Mississippi; and it is a singular fact, as undeniable as it is singular, that in this State, life and property are less secure than in any other, and its public credit is lost beyond redemption.[109]

Notwithstanding these and many other arguments, the proposed constitution was received favorably by a majority of the people. And by its adoption, the Commonwealth which for the past eight years had existed as a Territory now entered the fullness of statehood. And the judiciary, which had its beginning in the improvised and unorganized courts, came to assume the position of State courts, with the dignity, decorum and efficiency comparable to that maintained in other State governments.

JACOB A. SWISHER

[109] Address of Wm. Penn Clarke in Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 355.