

Eminence at the Bar

At the first session of the Iowa Territorial Supreme Court held at Burlington on November 28, 1838, twenty-eight attorneys were admitted to the practice of law. Among them were David Rorer, James W. Grimes, S. C. Hastings, T. S. Parvin, Ralph P. Lowe, William B. Conway, and Stephen Hempstead — all prominent in founding the Commonwealth of Iowa. Hastings and Lowe each became Chief Justices of the Supreme Court of Iowa, and Hastings later served as Chief Justice of the Supreme Court of California. Conway was the first Secretary of the Territory while Parvin was the first Territorial Librarian. Hempstead, Lowe, and Grimes each served as Governor of Iowa, and Grimes became a distinguished member of the United States Senate. But for eminence at the bar, David Rorer was perhaps the most prominent of them all.

In the first volume of Iowa Supreme Court Reports for the years 1839 to 1846, Rorer appears as attorney in thirty-five cases. Some of these cases dealt with matters of procedure and technicalities of the law, others presented questions of substantive law. Among the legal subjects argued by

Rorer were contracts, debt, bills and notes, replevin, guardianship, mechanics' liens, and fugitive slaves. During those years while Iowa was a Territory he usually represented his clients alone and so he argued against more often than with the ablest pioneer attorneys such as James W. Grimes, Milton D. Browning, William H. Starr, Stephen Whicher, and J. C. Hall.

For three decades after Iowa became a State, Rorer continued to appear in important cases before the Supreme Court. In the cases reported he acted as attorney in 128 Supreme Court decisions. During the year 1848 alone he argued twenty-eight cases before the Supreme Court, and in the following year he appeared thirteen times. The next highest number of appeals in which he participated was ten in 1857. In 1852 and 1859 he presented eight cases. During that formative period of thirty years there were only three years in which he did not appear before the highest State court at least once. Most of that time he was employed as legal representative of the Burlington railroad, and consequently his practice tended to concentrate upon matters pertaining to the development of railroad transportation.

But during the earlier years of Rorer's practice in Iowa, he was involved in the three principal cases concerning the rights of former slaves. In

the first, and most famous, he maintained that Ralph was a free man because he lived in free territory. Nine years later he argued in the Daggs case that the State of Iowa was constitutionally obligated to enforce the fugitive slave law. And in 1855 he successfully defended Dick against the charge of being a fugitive slave. His reasoning in the Ralph and Daggs cases contributed important principles to the jurisprudence of slavery and the nature of the Union.

In the year 1834 a slave owner named Montgomery living in Missouri made a written contract with his slave, Ralph, whereby it was agreed that Ralph should become free in consideration of the payment of \$550. Moreover, in order that he might more readily earn the purchase money, Ralph was permitted to leave the State of Missouri and become a resident of that part of the Territory of Wisconsin which later became Iowa. Ralph obtained work at the Dubuque lead mines, but did not save sufficient funds for the payment of Montgomery. Later he was seized by agents of Montgomery who sought to take him back to Missouri. The captors were intercepted and a writ of habeas corpus was issued in behalf of Ralph. The case came up for hearing in 1839 as the first case tried before the Supreme Court of the Territory of Iowa.

The rights of Ralph were presented by David Rorer who contended that Ralph, being a resident of the Territory of Iowa in which slavery was prohibited by the act of Congress creating the Territory, became free by operation of that law. Moreover, he argued that Ralph became free as soon as he established residence in Iowa with the consent of his master, by virtue of the provisions of the Missouri Compromise, which prohibited slavery in the territory north of parallel $36^{\circ} 30'$, except in the State of Missouri. Rorer emphasized the point that Ralph was not a fugitive. He had come to Iowa by the voluntary consent of his former owner. Montgomery, by permitting his slave to go to a territory where slavery was prohibited, "virtually manumitted such slave". The very act of his contracting presupposed a state of freedom on the part of the slave. If Montgomery had any right of action, it was for the collection of the money Ralph had agreed to pay.

Members of the Supreme Court were unanimous in supporting these views. Ralph was, therefore, discharged and allowed to go free. The facts were similar to those later presented in the Dred Scott case. But the United States Supreme Court, uninfluenced by Rorer's logic, did not follow the Iowa precedent.

In June, 1848, nine Negro slaves — two men,

three women and four children — escaped from the plantation of Ruel Daggs of Clark County, Missouri. A little later nine Negroes, presumably the same group that had escaped from Daggs, were apprehended by two slave hunters, Samuel Slaughter and a companion named McClure, in a woodland area near the town of Salem, Iowa. Before the captors could start back to Missouri, however, they were confronted by three citizens of the Quaker community of Salem — Elihu Frazier, Thomas Clarkson Frazier, and Henry Johnson — who demanded that the Negroes be taken before an officer and the rights of property proven before they were taken away. So insistent were the Quakers in their demands, that Slaughter and McClure were compelled to yield.

At the ensuing trial which was held before Nelson Gibbs, a justice of the peace, it appeared that the two slave catchers were not personally acquainted with the fugitives, and claimed them only by the description which had been sent out. Accordingly, Justice Gibbs decided that the claimants had proven neither their ownership nor their right to detain the Negroes, and that he, as justice of the peace, had no authority to hold them. So far as he knew they were as free as any other citizens. Thereupon he released them and, with the aid of sympathizers, the Negroes escaped.

In 1850 Daggs brought suit in the Federal Court at Burlington against Elihu Frazier and others to collect damages for the value of the slaves. David Rorer represented the plaintiff in this case. In his plea to the jury he emphasized the importance of the case, not only to Iowa, but to the United States in general. Iowa had recently become a State and was therefore obligated to sustain the United States Constitution and the acts of Congress, which sanctioned slavery. To hold slaves was the privilege of the citizens of Missouri. Negro slaves were property, the same as horses or oxen, and the owner had a right to claim his property wherever he found it. Any person who prevented him from exercising this right was held liable to the owner for the damages done.

"The guilty deserve to be punished", declared Rorer, "and the injured are entitled to redress. Above all, the law should be vindicated — its supremacy confirmed. The idea that any man or society of men may be permitted to trample upon the plain letter of the law and constitution should be severely rebuked, and the offenders convinced that the impunity they have enjoyed in other places will never be found in Iowa."

In defense of the Quakers of Salem, J. C. Hall contended that property rights were within the jurisdiction of the State. In Iowa Negro slaves

were not recognized as property. Therefore, the citizens of Salem might give aid to needy human beings without incurring liability, unless it was clearly shown that they were aiding fugitive slaves. The escape of nine persons in one area and the finding of nine persons in another locality was not evidence of identity.

Despite the able arguments of Hall, the "silver tongued Rorer" convinced the jury that the Negroes were fugitive slaves and that Frazier and his friends had aided in their escape. Accordingly, a judgment for \$2900 damages was assessed against the defendants.

The question of identity was the principal issue in the Dick case. Dr. Edwin James, who was known to be an abolitionist and a "station master" on the Underground Railroad, drove into Burlington in the forenoon of June 23, 1855. With him in the farm wagon was a Negro named Dick. Earlier in the morning they had crossed the Mississippi River on a ferry to the end of the railroad opposite the city. There the Negro was "pounced upon by two Missouri man-hunters, armed with pistols and bowie knives," who alleged that Dick was the slave of Rutherford in Clark County, Missouri. They demanded that he should be surrendered to them as Rutherford's agents. Dr. James and Dick recrossed the river to Burlington,

where the agents sought to establish their claim by legal process. A complaint signed by William C. Young was filed with Magistrate George Frazee who issued a warrant as required by law whereupon Dick was arrested and held for trial as a fugitive slave.

Meanwhile, several prominent citizens of Iowa had become interested in the case. Elaborate plans were made to defend the Negro against the slave catchers who, it appeared, had never seen Rutherford's slave whom they sought. At the trial David Rorer and T. D. Crocker appeared in behalf of Dick, while Milton D. Browning represented the claimant. Young Rutherford, a son of the claimant and one who was supposed to be well acquainted with his father's slaves, was present. In the crowded court room every one "was agog to see the witness upon whose testimony the fate of Dick depended." Even the ladies, of whom a considerable number were present, seemed anxious to know how a man looked who was willing to consign the poor fugitive to life-long servitude. Rutherford took the witness stand and Dick was requested to stand up, so that the witness might identify him. Much to the surprise of everybody, including the judge and attorneys on both sides, young Rutherford promptly stated that the Negro before him was not the one whom he sought, that

he did not know this man, and that he had never seen him before.

No other evidence was offered. Upon motion by Rorer the court ordered that Dick should be released from custody and whatever property had been taken from him should be restored. It is reported that "more than a thousand exulting people escorted Dick to the ferry-boat on which Dr. James, Dick, and plenty of guards crossed the river, and this time Dick was started by rail towards Chicago without detention."

As one of the organizers of the Burlington and Missouri River Railroad Company in 1852, Rorer became interested in the law pertaining to the rights and obligations of such corporations. His practice became more and more concentrated upon railroad cases. Being employed continuously as solicitor for the Burlington and Missouri River Railroad and its successor, the Chicago, Burlington and Quincy, he naturally devoted much attention to the legal problems involved in the sale of stock, the acquisition of the right-of-way, and the settlement of damage suits. Many of the early disputes were intrinsically trivial, but the precedents established were important. The development of the law interested Rorer.

Between 1855 and 1876 David Rorer appealed twenty-four cases to the Supreme Court of Iowa

on behalf of the railroad. Of these he won thirteen and lost eleven. If these instances are representative of the litigation in which he participated, the range of issues was wide and technical.

The first time Rorer appeared before the Supreme Court for the railroad was in 1855 when a citizen named Sater refused to grant right-of-way to the company for the assessed damages. Sater took his claim to court, but before the dispute came to trial the railroad company proposed to dismiss the suit and abandon all claim to the right-of-way. To this Sater objected and the district court sustained his claim to collect damages. Before the Supreme Court, Rorer argued that the railroad company had not yet acquired any right to the property, that Sater had sustained no damage, that the company was free to select a different route, and that the suit to settle damage claims under the eminent domain statute could be dismissed without injury to the property owner. This view was upheld.

There must have been many damage suits against the railroad, for several were appealed to the Supreme Court. In two instances claims were made for the value of cattle that were killed on the tracks. In one case a passenger claimed damages for baggage that was stolen in transit. Citizens of Burlington sought damages because their brewery

burned. Originally the building fronted on the river with only a street between. But the Burlington and Missouri River Railroad Company had filled in along the shore and built tracks between the street and the river so that there was no access to the stream. Firemen could not reach the river "by reason of the use of the street and embankment by the railway company" and so property worth \$22,000 was destroyed. But Rorer was able to convince the Supreme Court that the location of the tracks had too remote a connection with the fire to be a cause for claiming damages.

To encourage the construction of railroads, cities and counties often borrowed money to buy stock in companies that promised to provide rail transportation for the community. Years of litigation in State and Federal courts were consumed in establishing the legality of such subsidies. The last time Rorer appeared before the Supreme Court, in 1876, he won a decision for the railroad in a dispute which originated in a transaction to which he had been a party as attorney for the company when the railroad was being built.

The voters of Wapello County in 1853 approved of subscribing \$100,000 for capital stock of the Burlington and Missouri River Railroad to be paid in county bonds issued in twenty monthly installments of \$5000 each. The first six install-

ments were issued and delivered to the company at Ottumwa in the presence of Rorer on January 12, 1855, but thereafter the county refused to issue any more bonds for the railroad. Indeed, Wapello County obtained a ruling by the Iowa Supreme Court in 1862 that counties had no authority to subscribe for railroad stock, which nullified the whole contract. This decision was later overruled by the United States Supreme Court. But Wapello County never paid the remainder of the subscription approved by the voters in 1853.

Years later, in 1869, Wapello County sued the railroad to obtain stock certificates for the \$30,000 paid in bonds. These bonds, sold in the meantime by the railroad, constituted a legal liability of the county. The district court in Ottumwa decided in favor of the county, but Rorer appealed for the railroad and persuaded the Supreme Court that Wapello County had violated the original contract by failing to pay the full subscription and therefore forfeited the bonds that were delivered.

David Rorer took a scholarly attitude toward the law. He read widely in the preparation of his briefs, and his experience as an advocate led to more thorough study of certain branches of the law. In order to make his knowledge available to other members of the profession, he decided to write some books.

His first volume, *The Law of Judicial and Execution Sales*, was published in 1873. In the preface he explained that the policy in the United States, "unlike that of England, has everywhere encouraged the distribution of landed property, not only by rendering it liable to change of ownership *in fee*, by ordinary bargain and sale, but also by sales on writ of execution, and on decrees of the courts. Hence, much of the landed wealth of the country is held or claimed under titles and sales made by coercion of law." He ventured to hope that his book might "meet from the courts and lawyers a favorable reception."

Fortunately this hope was not in vain. Five years later, in 1878, in preparing a revised edition, Rorer said: "The favorable reception by the courts and the legal profession of the original edition of this work, encourages the author to lay before them a second edition, greatly enlarged, and so re-arranged as to afford a more ready reference to the contents." This volume in its revised form contained 612 pages.

The regulation of the rapidly growing railroads after the Civil War created as many legal problems as political issues. Rorer's work as solicitor for the Burlington railroad required careful attention to the legislative authority of the States. His second book, *American Inter-State Law*, published

in 1879, was a pioneer work on the States "in their dealings and relations with each other, as well as with the national government." The subject, he said, must be clearly distinguished from that of international law.

Both his practice and his research culminated in Rorer's monumental two-volume *Treatise on the Law of Railways*, published in the last year of his life, 1884. "The approbation accorded by the courts and bar," to his previous works, he wrote in the preface, "encourages the author now, to offer them" this product of his experience, "hoping it may prove useful and meet with a like indulgence." He must have been pleased to know that his writings were used as textbooks in various colleges of law.

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