

The Legal Profession

When James W. Grimes landed at Burlington early in April, 1836, he found four lawyers already there. "No minister in town", he wrote. "We had one but he died a few days ago." The presence of only one attorney at Dubuque in May, 1836, was considered a "good omen" by the *Du Buque Visitor* but before many months half a dozen had hung out their shingles. Twenty lawyers were admitted to the bar when the first Territorial Supreme Court met at Burlington on November 26, 1838.

An abundance of legal talent was available at the Territorial capital. Chief Justice Charles Mason resided in Burlington. There, too, was James W. Grimes, then only twenty-two years old, but destined to become the third Governor of the State and the father of the Republican Party in Iowa. His partner in 1838 was William W. Chapman, who was elected the first Delegate to Congress from the Territory of Iowa. David Rorer, Cyrus S. Jacobs, James W. Woods, William H. Starr, and Henry W. Starr, Milton D. Browning, and Isaac Van Allen were also practicing law at Burlington.

A bitter political feud snuffed out the life of Cyrus S. Jacobs when he was shot by David Rorer on the street in Burlington. Jacobs, the erstwhile editor of the *Gazette* and successful candidate for the Territorial House of Representatives, had a vituperative tongue. His invectives against Rorer were sharply answered by that thoroughly pugnacious man. On October 29, 1838, Jacobs met Rorer and demanded an explanation of certain charges. When Rorer refused to explain, Jacobs undertook to cane him, whereupon Rorer got a pistol and shot his adversary. Jacobs died three days later, and Rorer, appalled at the violence of his deed over a political quarrel, swore never to run for office again.

Short of stature but strongly built, Rorer was a veritable dynamo in action. He built the first brick house in Burlington, held the first meeting to incorporate the town in his office, drafted the city charter, and assisted in laying out and naming the streets. In 1839 he successfully defended the negro Ralph before the Territorial Supreme Court. His name was attached to thirty-five cases in the first volume of the *Iowa Reports* and continued to appear until two years before his death in 1886. For years he was counsel for the Burlington railroad.

Another Burlington lawyer was James W.

Woods, a native of Massachusetts, and a generous, kindly, fun-loving man. He came to Burlington in 1833 but did not settle there immediately, spending much of his time across the Mississippi in Illinois. In 1838 he was a law partner of William H. Starr and subsequently a trusted legal adviser of the Mormon prophet, Joseph Smith. Iowa owes its Missouri River boundary in a large measure to the vigorous campaign that "Old Timber" Woods waged against the adoption of the Constitution of 1844.

William H. Starr, a New Englander and Yale graduate, came to Burlington in 1837 and was promptly appointed prosecuting attorney for the first judicial district by Governor Henry Dodge. Starr was an able lawyer and a forceful speaker.

To Burlington in 1837 came a second William H. (Cock Eye) Starr to join David Rorer as a junior partner. The two Starrs were cousins and to avoid confusion Rorer's partner agreed to change his name to Henry W. Starr. Born at Middlebury, Vermont, in 1815, Henry W. Starr graduated from college when he was nineteen. He came to Burlington with a degree from the Cincinnati Law School in 1837. Later he and James W. Grimes became partners, their names appearing together for years in the *Iowa Reports*. A man of genius and a great orator, Henry W.

Starr won his greatest forensic triumph over Francis Scott Key before the United States Supreme Court in the trial over the patent covering the original Spanish land grant to Louis Tesson.

Milton D. Browning was born in Kentucky in 1810 and came to Iowa in 1837. One of the seven Burlington lawyers admitted to practice by the Supreme Court of the Territory of Iowa in 1838, he had little inclination for politics. Nevertheless, he served as Representative in the Territorial Assembly and was subsequently elected to the State Senate four times.

Little is known of Isaac Van Allen, who was admitted to the bar in 1838. A native of Albany, New York, Van Allen served as United States District Attorney for the Territory. He died at Rockingham in 1839.

A galaxy of lawyers practiced before the Dubuque bar in 1838. The metropolis of the mineral region was the home of Associate Justice Thomas S. Wilson of the Territorial Supreme Court. Stephen Hempstead and B. Rush Petrikin were admitted to the bar at Burlington in the fall of 1838. In addition to these men, Peter H. Engle, James Churchman, Richard Farwell, William W. Coriell, R. D. Parker, Edwin Reeves, and John V. Berry, were also practicing at Dubuque.

Next to Thomas S. Wilson, the name of

Stephen Hempstead is written boldest in the annals of Dubuque. Born in Connecticut in 1812, Hempstead moved to a farm near Saint Louis in 1828. He clerked in Galena, enlisted in the Black Hawk War, attended Jacksonville College, and studied law under Charles S. Hempstead, a relative and successful Galena lawyer. In 1836 Stephen Hempstead was admitted to practice before the courts of the Territory of Wisconsin. He is said to have been the first resident lawyer of Dubuque. Hempstead represented Dubuque, Jackson, and Clayton counties in the first Legislative Council of the Territory of Iowa in 1838. Subsequently he served as President of that body, was a member of the Constitutional Convention of 1844, and assisted Charles Mason in preparing the *Code of 1851*. In 1850 he was elected second Governor of the State of Iowa. Although not a brilliant man, Hempstead was a sound lawyer and an influential legislator.

Described as an "old-fashioned Democrat" by his contemporaries, B. Rush Petrikin was born in Pennsylvania and practiced at Bloomington before coming to Dubuque. In 1838 he was appointed the Register of the United States land office at Dubuque. After holding this office four years, he returned to Pennsylvania.

Peter H. Engle was one of the most talented

among Dubuque's early settlers. He was speaker of the House at the First Legislative Assembly of the Territory of Wisconsin at Belmont in 1836. Two years later, in 1838, William W. Chapman defeated him for Delegate to Congress by a small plurality. Parvin described Engle as the "ablest" of the candidates, his defeat being attributed to a rumor that he had been drowned. After this defeat he moved to Saint Louis where he rose to high distinction as a lawyer and judge.

Another able Dubuque lawyer was James Churchman who gave the Fourth of July oration at Dubuque in 1838. William W. Coriell, one of the owners of the *Iowa News*, was also practicing law in 1838. He was one of the commissioners appointed to lay out the towns of Fort Madison, Bellevue, and Dubuque. Richard Farwell, one of the founders and officers of the Dubuque literary association, had inserted his card in the *Iowa News* as early as October 7, 1837.

Phillip Viele, Henry Eno, Alfred Rich, and Edward Johnstone were displaying their professional shingles in Fort Madison. Viele, of Dutch-French descent, was a graduate of Union College and a classmate of William H. Seward. Admitted to the New York bar in 1824, he soon surpassed all rivals in oratory. When he came to Fort Madison in 1837 he won the hearts of the pioneers and

the verdicts of the jury by his extraordinary eloquence. On at least one occasion, however, his fervent plea failed. He had just painted a touching scene of a wife and children awaiting the return of his client. The vote of the jury was eleven to one in Viele's favor. When the lone dissenter was asked the reason for his decision he replied: "Well, I know that man has no wife and children. He keeps 'bach' in a log cabin. I believe the whole claim is a fraud." The eleven other jurors promptly reversed their views.

Viele served as prosecuting attorney before the district court at Fort Madison in 1837 and 1838. Long an ardent Democrat, he turned Whig in 1840 and stumped the Territory for Harrison. He was one of the organizers of the Republican Party, and was chosen president of its first convention at Iowa City in 1856. Three years later he became a member of the State Board of Education.

Henry Eno, another New Yorker, was a leader in the movement to divide the Territory of Wisconsin. He drafted the call for a meeting of the citizens to prepare a petition to Congress to establish the Territory of Iowa. Not an especially good pleader before a jury, Eno was nevertheless a good lawyer. Later he moved to California where he was at one time an unsuccessful candidate for Lieutenant Governor.

With a name that belied his poor and friendless condition, Alfred Rich landed at Fort Madison during the winter of 1836-1837. Disappointed in a love affair, the gifted but eccentric young Kentuckian taught school for a short time until his legal training was accidentally discovered. In 1839 he was elected to the legislature. As the Whig candidate for Delegate to Congress, he was defeated by A. C. Dodge in 1840. Two years later he died of consumption, probably induced by his habits of dissipation.

Edward Johnstone, whose massive frame won for him the title of "the kingliest man in Iowa", came to Fort Madison in 1837. He was born in Pennsylvania in 1815 and was a talented lawyer, but had no great love for his profession. With Thomas S. Wilson and David Brigham he served as a commissioner to settle the land titles in the Half-breed Tract. A Democrat in politics, he served as Speaker of the House and was twice elected to the Council. He was a member of the Constitutional Convention of 1857. Later he moved to Keokuk and engaged in banking.

According to Judge George G. Wright, the first member of the legal profession to settle in Van Buren County was H. H. Buckland, but he soon left Bentonsport and went back East. Isaac N. Lewis seems to have been the first lawyer ad-

mitted to the bar in Van Buren County — on November 12, 1838.

Early in April, 1838, when Judge Irvin came to Farmington to hold court, he was followed on the circuit by a coterie of lawyers from other counties. Among those present was Nathaniel Knapp of Fort Madison. Knapp had taken a room at the hotel with a friend and had gone out "to have a time with the boys". Later in the evening Isaac Hendershott, a resident of Burlington, arrived at the hotel. There being no unoccupied bed except the one engaged by Knapp and his friend, he was assigned to it. About midnight Knapp and his companion returned, and, taking a candle, proceeded to their room. Finding their bed occupied, Knapp threatened violence, whereupon Hendershott sprang from the bed, pulled a dagger from his cane, and ran it through Knapp's body in the vicinity of the heart. Knapp sank to the floor and died instantly. Hendershott made his escape and was reported to have died of bilious fever at Lexington, Missouri, while fleeing to Mexico.

George W. Teas and Joseph B. Teas, brothers who had formerly practiced in Burlington, inserted a card in the *Iowa Territorial Gazette* on October 27, 1838, notifying the public that they were then associated in the practice of law at Mount Pleasant. Later George abandoned the

legal profession for the Methodist ministry. His brother Joseph had represented the settlers west of the Mississippi at the seventh Legislative Council of the Territory of Michigan at Green Bay and in 1836 was elected president pro tempore of that body. Joseph B. Teas was in the Council that met at Belmont while George served in the House. It was Joseph Teas who proposed to make Burlington the capital of Wisconsin Territory until the public buildings in Madison were ready.

Bloomington, now Muscatine, could count several able lawyers in 1838. Associate Justice Joseph Williams had selected Bloomington as his home. Theodore S. Parvin had been favorably impressed with Bloomington when he accompanied Governor Lucas on his tour of the Territory. To Bloomington from New York came Seranus Hastings in the spring of 1837. Hastings was elected to the House of the first Legislative Assembly in 1838. Thereafter he served in the Senate almost continuously until his appointment as Chief Justice of the Iowa Supreme Court in 1848. During the following year he moved to California, where he served as Chief Justice in the highest court of that State.

Stephen Whicher arrived at Bloomington aboard the *Ariel* in the fall of 1838. He is said to have been the "finest and profoundest" Bloomington-

ton lawyer of his time. Irad C. Day and Ralph P. Lowe were admitted to the Iowa bar in 1838. Lowe was a member of the Constitutional Convention of 1844, was the first Republican to be elected Governor of Iowa, and served also as a Justice of the Iowa Supreme Court.

Conspicuous among the lawyers practicing at Davenport were Gilbert C. R. Mitchell and Jonathan W. Parker. Mitchell was born in Tennessee and graduated from East Tennessee University at Knoxville. Having practiced law in Alabama for a decade, he purchased a squatter's claim at Davenport in 1835, and began practice in the courts at Davenport and Stephenson. During his later years he served his constituents as a legislator, a mayor, and a district judge.

Jonathan W. Parker was admitted to the bar at the first term of court presided over by Judge Joseph Williams at Davenport in the fall of 1838. A native of Pennsylvania, Parker was active in local and Territorial affairs, serving as President of the Territorial Council at Burlington in 1839. He is said to have done much in framing the code of laws for the Territory. In 1844 he left Davenport, traveled extensively, then studied medicine, and finally died of cholera at Cincinnati in 1850.

Another lawyer who was destined to write his name large in the history of Davenport was James

Grant who arrived on June 18, 1838. Born in North Carolina in 1812, Grant graduated from the University of North Carolina in 1831. He taught school at Raleigh, then served as prosecuting attorney in northern Illinois. Later he developed into a successful railroad lawyer, at one time having more cases before the United States Supreme Court than any one else. Of his brilliant arguments Justice Dillon once said that every sentence was "clearly cut and finely chiseled".

Ebenezer Cook and John P. Cook, brothers and natives of New York, had achieved considerable prominence in Davenport by 1838. Both took an active part in the county seat fight between Davenport and Rockingham. Ebenezer had served as clerk of the court in Scott County under Judge David Irvin and this appointment was continued under Judge Joseph Williams. He was a member of the Constitutional Convention of 1844. A leader in bringing the railroad to Iowa, Ebenezer Cook rose to the position of acting president of the Rock Island company before his death in 1871. John P. Cook was active in politics and business, serving in several sessions of the legislature.

Among the other attorneys located at Davenport in 1838, were Simeon Meredith, J. W. Drury, William B. Conway, Alexander McGregor, and W. J. A. Bradford. The latter was a native of

Massachusetts and the first reporter of the Supreme Court of the Territory of Iowa. He remained in Iowa only a few years. Returning east, he published a volume entitled *Notes on the Northwest, or Valley of the Upper Mississippi*. In this book Bradford bewailed the low standards of the bar. "A young man", he declared, with "a schooling of one year, and the same amount of reading in law, frequently without instruction or direction, sometimes by an apprenticeship, is made a lawyer; such, at least, he is designated by legislative enactment, and the license of the court, but he is often, in a double sense, an infant in law. . . . Judges have been appointed here of less than twenty-five years of age, and of only two or three years' practice at the bar; and a judge of that green age sits *alone* on a trial involving life or death! In this way, the laws are administered, under the sanction of Congress and the government of the United States."

While professional standards were not very high in 1838, public welfare does not appear to have been seriously jeopardized. The youth and inexperience of the legislators was unfortunate, but, as Bradford pointed out, the "most objectionable enactments of the territories will stand comparison with the laws of Maryland."

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