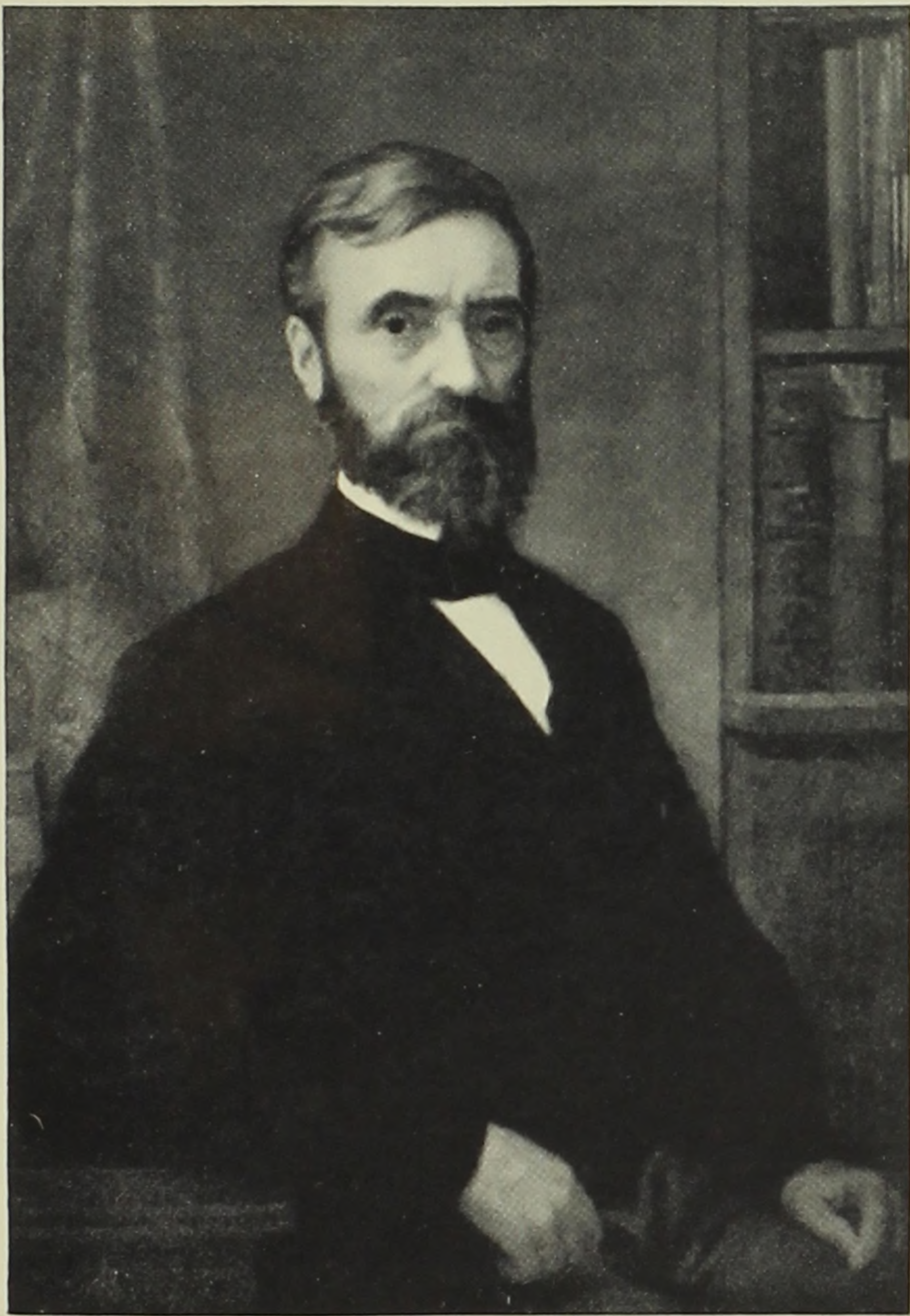


A Just Man

Judge Charles Mason, it was said, had the characteristics of "a noble Roman". Stalwart and erect, he was, "single minded, simple hearted, just, honest, temperate and patriotic; doing with an inflexible will what he thought was right, and careful of the rights of others". He was a soldier, author, lawyer, pioneer, and jurist, and, if the appraisal of his associates may be accepted, he was withal "eminently a *just* man".

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 the community could afford, he entered the Military Academy at West Point, where he finished in 1829, with the honor of the first rank in his class. Robert E. Lee graduated with second honors in the same class. Upon receiving his commission in the army, 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



FROM A PORTRAIT IN THE HISTORICAL, MEMORIAL AND ART DEPARTMENT OF IOWA

CHARLES MASON

moved to Newburg, New York, where he formed a partnership with Judge Hasbruck. After remaining there for two years he returned to New York City, where he became a frequent contributor to the *New York Post*, then edited by 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 and decided to cast his lot with the empire builders on the frontier. He spent the winter of 1836-1837 at Belmont, the temporary capital of the Territory of Wisconsin. In the spring of 1837 he rode down to Burlington, following political opportunity which had shifted with the seat of government. Apparently he liked the prospects of the new capital and determined to make his home there.

During the summer of 1837 he went back East on an important mission. At Berkshire, Massachusetts, he married Miss Angeline Gear. Mason returned to Burlington in November with his wife and a commission to the office of United States Attorney for the Territory of Wisconsin. His term was very brief, however, for in June, 1838, the Territory of Iowa was created, and he was immediately appointed Chief Justice of the Su-

preme Court. He was then only thirty-three years old.

As a young man Charles Mason was unusually capable, possessing a keen mind, an alert attitude, and a dignity of bearing that eminently fitted him for the work which lay ahead. The *Iowa Territorial Gazette* said of him: "in learning, wisdom, and experience, he is, if we may so express it, old. To a mind acknowledged to be of the first order — clear in its conception, and logical in its deductions — he adds untiring industry, and manner which will become the judge as well as the gentleman."

Nor was it long before Mr. Mason had an opportunity to justify the faith and confidence which had been placed in him. The first and perhaps the most important case to come before the Supreme Court of the Territory of Iowa dealt with the troublesome question of slavery. A slave named Ralph, living in Missouri, was permitted by his master to come to Iowa to earn money with which to purchase his freedom. Ralph being unable to earn sufficient money for payment of the purchase price, was seized and attempts were made to take him back to Missouri. A writ of habeas corpus was issued in Ralph's behalf, and his rights were tested in the courts.

Judge Mason, in delivering the opinion of the

court, held that when 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. Moreover, when the master tried to control as property that which the laws declared should not be property, it was incumbent upon the courts to prevent it. This decision was contrary to the judgment of the Supreme Court of the United States a few years later in the Dred Scott case, but in accord with the spirit of the fourteenth amendment to the United States Constitution. It is, indeed, significant that Judge Mason had the vision to perceive and enunciate the true principle of human justice long before it was established as the law of the land.

The first district court in the Territory of Iowa convened in Clayton County, at the town of Prairie La Porte — now Guttenberg — on September 11, 1838. Dubuque, Jackson, and Cedar counties were also in the district assigned to Judge Wilson, but for some reason, probably because cases were pending in which Judge Wilson had been retained as counsel, the first courts held in Dubuque and Jackson counties were presided over by Chief Justice Mason. In Cedar County neither Wilson nor Mason appeared at the appointed

time, and so no court was held there in the fall of 1838.

Judge Mason opened the first district court in Dubuque County on September 13th, when a prisoner named Kelly alias Anderson, who was held on a charge of horse stealing was found guilty. The *Iowa News* in commenting upon this case urged the need of a penitentiary, "that convicts, instead of being an expense, may be the means of an income to the Territory".

Throughout the years of Territorial history Mason continued to serve as Chief Justice. His opinions were written into the law of Iowa during the crucial formative years. These early decisions "show that he wielded a trenchant pen and was capable of stating his views with such terseness and clearness as to leave no doubt as to his conclusions or the soundness of the reasoning on which they were based." In ability and leadership he has been likened to Chief Justice Marshall. "Each came to his position without great reputation as a jurist; each had successors who surpassed him in technical knowledge; but neither was ever surpassed on the bench which he graced, as a great expounder of the law in its formative condition when reason rather than authority must furnish the best guide to wise conclusions."

Mason's service to Iowa did not cease with

Territorial days. Under the State Constitution of 1846 he continued to serve as Chief Justice until June, 1847, and his name figured prominently in State affairs for many years. In April, 1847, he was the Democratic candidate for the office of Superintendent of Public Instruction, but was defeated by James Harlan. When the Iowa and Missouri boundary controversy finally came before the United States Supreme Court, Governor Stephen Hempstead appointed him to represent Iowa and he succeeded in obtaining a favorable decree. He was one of the commissioners who revised and codified the laws of Iowa in the *Code of 1851*. In 1853 he was appointed Commissioner of Patents, but four years later he resigned and returned to Iowa. In 1858 he was elected a member of the first State Board of Education. In 1861 he was nominated for Governor by the Democrats but declined the honor. He was again nominated for Governor in 1867 but was defeated by Samuel Merrill. In 1868 and again in 1872 he was a delegate to the Democratic National Conventions.

It is to be noted, however, that Mason was pre-eminently a jurist and not a politician. He was not vitally concerned with party politics as such. His appointment to the Territorial Supreme Court had been made without solicitation and came as

a surprise. His candidacy for the office of Superintendent of Public Instruction was instigated through "the partiality of friends highly respectable both in number and character." He was not disposed to campaign even in his own interest. He did not know "of any antagonism of opinion" relative to the offices which he sought, that "would justify an attempt to call the people from their ordinary vocations to listen to public discussions on electioneering topics." I have "no particular schemes to propose," he said, "no objects, either personal, professional, political or sectarian, to accomplish." In a characteristic manner he added: "I have neither time, taste, nor capacity, for mere oratorical display; and to perambulate the state for the purpose of soliciting suffrages I shall never do while I can find any more creditable employment." This attitude may have been noble, but it was not conducive to vote getting.

Mason was always a sympathetic friend of youth. On one occasion in Iowa City his attention was called to a political cartoon drawn by a local boy. He asked to see other pencil drawings and water-colors and encouraged the lad to become a painter. Later he exhibited some of his protege's drawings in Washington, and assisted him in his studies abroad. Thus encouraged, George H. Yewell became a renowned artist. In

later years Mr. Yewell reciprocated by painting for the Mason family and for the State of Iowa a handsome portrait of Judge Mason.

Twice during his public career the character of Judge Mason was attacked. In the election of 1848 a question arose as to whether votes cast in the precinct of Kanesville should be counted with the Monroe County votes — Kanesville being outside of Monroe County, but within an area organized for election purposes under the jurisdiction of Monroe County. In the controversy which followed, the original poll book of the Kanesville precinct disappeared. Later it was found in the possession of Judge Mason. He was at the time an attorney for a candidate in a contest growing out of that election and was accused of having obtained the poll book through unfair means, although the book could have been of no value to him or his opponent since a duplicate copy had been obtained and was used without opposition.

Nevertheless, Mason's political opponents attacked him severely, and accused him of secreting "stolen goods". By way of analogy one of them said an attorney "may defend the horse thief when indicted, without censure, but it is no part of his duties to secrete the stolen horse in his stable." Mason was not, however, vitally af-

fectured or embarrassed by the attack. He replied that it must be a "diseased imagination" that could "perceive anything improper" in his conduct. He said he had endeavored to represent his client in "a perfectly fair, courteous, and gentlemanly manner", and suggested that it would be "far more pleasant if this endeavor could be reciprocated." He added, however, that "if, from taste, habit, constitutional peculiarity, or any other cause, others choose to pursue a different course", he would not quarrel with them on that account.

Again, during Civil War days, Mason was accused of being disloyal to the Union cause. In reality, however, he had opposed the war at the outset because he feared that it would mean the destruction of democracy in America. He advocated, rather, a peaceful settlement. "When our people refused to settle their differences of opinion", he wrote, "by the exercise of those moral and intellectual faculties which had created our noble system of government, and substituted the exercise of their brutal propensities therefor, I had little hope for the future except through those long and bloody struggles by which law and liberty regain the ascendancy which military violence always tramples underfoot. I scarcely expect to see a constitutional government restored in this country."

Despite his misgiving, however, when the time came for action, Mason tendered his services to the Secretary of War, in any position in which it was thought he could be useful. While he was not called upon to fight at the front, he is not to be charged with disloyalty. Rather he is to be commended for his courage in expressing his convictions, and for his willingness to serve, despite his personal opinions.

During the closing years of his life, Charles Mason lived in retirement on his farm near Burlington, where he died on February 25, 1882, at the age of seventy-seven years. Stalwart, courageous, patriotic, honest, sympathetic, and just, he had lived a long and useful life. Few men in Iowa have made a more lasting impression upon the history of the Territory and the State. Few have been more faithful to public trust. When Iowa shall have erected appropriate monuments to perpetuate the memory of its founders and benefactors, "surely that of Charles Mason will be no inferior one".

J. A. SWISHER