

The
PALIMPSEST
APRIL 1924
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THE PURPOSE OF THIS MAGAZINE

The PALIMPSEST, issued monthly by the State Historical Society of Iowa, is devoted to the dissemination of Iowa History. Supplementing the other publications of this Society, it aims to present the materials of Iowa History in a form that is attractive and a style that is popular in the best sense—to the end that the story of our Commonwealth may be more widely read and cherished.

BENJ. F. SHAMBAUGH

Superintendent

THE MEANING OF PALIMPSESTS

In early times palimpsests were parchments or other materials from which one or more writings had been erased to give room for later records. But the erasures were not always complete; and so it became the fascinating task of scholars not only to translate the later records but also to reconstruct the original writings by deciphering the dim fragments of letters partly erased and partly covered by subsequent texts.

The history of Iowa may be likened to a palimpsest which holds the records of successive generations. To decipher these records of the past, reconstruct them, and tell the stories which they contain is the task of those who write history.

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THE PALIMPSEST

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The Des Moines Rapids Canal

Along the Iowa shore of the Mississippi River between Keokuk and Montrose, there lies buried beneath the waters of Lake Cooper an engineering work which was, in its day, a magnificent accomplishment. In fact the Des Moines Rapids Canal was, for more than a third of a century, a waterway of considerable economic importance to the people of the entire Upper Mississippi Valley. The building of the canal by the United States government during the decade between 1867 and 1877 excited the interest and admiration of the entire nation and was the special pride of the army engineers under whose direct supervision the work of construction was performed.

Prior to the building of the canal, the Des Moines Rapids had proved a serious obstacle to the navigation of the river and imposed a heavy toll upon the commerce of the region. In low water all steam-

boats were compelled to unload their cargoes at the head or the foot of the rapids, and the river freight was then transferred to the other end of the dangerous channel on lighter-boats. This operation involved a great expenditure of time and money and caused damage to produce and merchandise from handling and exposure to the weather.

Agitation for the improvement of the channel over the rapids, whereby the river traffic might be carried on unimpeded, was instituted as early as 1830. The first official investigation of the problem was made during the year 1837 by Robert E. Lee, then a young lieutenant, who was directed by the War Department to make a detailed survey of the Des Moines Rapids of the Mississippi. According to his report the rapids consisted of a series of "chains" of hard limestone over which the shallow water flowed smoothly but with terrific force. The names of these chains, such as the "English Chain", the "Lamelus [Lemoliese] Chain", and the "Battiste [Spanish] Chain", marked on the map accompanying Lee's report indicate that he retained the colloquial nomenclature. The river flowed between bluffs a hundred and fifty feet high, but on the Iowa side they rose beyond a narrow flood plain and sloped down to the river only at a few points. As the result of his investigation Lieutenant Lee proposed that "one of the natural channels" should be increased in width and depth so as to accommodate loaded boats at all times. He charted the channel

which he thought would "afford the easiest and safest route".

As time passed the feasibility of Lee's scheme of carving a channel in the rocky bottom of the river was debated and many serious objections were advanced, the chief of which were the extreme difficulty of its execution, the exorbitant cost, and the great danger to the vessels navigating this channel at night and in a high wind, as the boats would necessarily have to slow down and thus increase the difficulty of holding them to their true course.

Another proposal was to erect dams and lift locks. This plan, it was contended, would relieve navigation of the hazard attending the "channel improvement". The principal objection to this plan, however, was the obvious circumstance that if the dams extended entirely across the river all river craft would have to pass the locks. Large rafts and flat-boats would have to be "locked through" even in high water, an inconvenience which could be obviated only by means of a chute, the navigation of which would always prove extremely hazardous. Singularly enough, while this plan was rejected at the time as being the least promising of all, it is the one which is now in operation.

While the desire of the people for the improvement of the Mississippi was repeatedly expressed in Congress, in commercial conventions, and by the press, very little was done until January 15, 1849, when Governor Ansel Briggs approved an act of the

Second General Assembly of Iowa authorizing the "Navigation and Hydraulic Company of the Mississippi Rapids" to acquire a right of way for a canal around the lower rapids of the Mississippi River. The amount of capital stock deemed adequate to complete the proposed improvement was fixed at \$500,000.

On December 1, 1849, Samuel R. Curtis, who was employed as chief engineer by this company, submitted a detailed report after making a careful survey of the project. In this report he recommended that a canal and wing-dam improvement be built along the Iowa side of the rapids, beginning at the Upper Chain and carried down the river to the "upper end of the town plot of Keokuk", thereby creating a continuous artificial channel and eliminating the necessity of using the tortuous, uncertain channel over the rapids.

It was suggested that this proposed canal would also serve as an enormous mill-race. The force of the water accumulated at the lower lock would be of equal if not greater importance than the advantages derived from the navigation of the canal for, without any apparent drain on the mighty river, sufficient power could be developed "to propel a thousand run of French burrs" and operate "all the machinery that human invention can locate within the reach of its influence." What a prophetic vision of the tremendous hydroelectric development realized on that identical site over sixty years later!

This conception, however, proved to be altogether too big an undertaking for the times, and the Navigation and Hydraulic Company of the Mississippi Rapids, failing to secure sufficient support, was compelled to abandon its plans without attempting any construction work. Talk of the canal, however, tended to crystallize public opinion on the question of improving river navigation so that the influence of the discussion was felt in the halls of Congress.

In 1852, an appropriation was secured from the national government and John G. Floyd was placed in charge of "blowing out the channel" after the fashion recommended by Lieutenant Lee. The army engineers at that time did not favor a canal. This work, however, proved disheartening, and the appropriation woefully inadequate. It was estimated that at the rate of progress made during the first two years fully two centuries would have been required to complete the project.

Up to the time of the Civil War, though repeated efforts had been made, very little had actually been accomplished toward any permanent improvement of the navigability of the Des Moines Rapids. During the summer of 1866 Major General J. H. Wilson resurveyed the rapids and proposed that a lock canal seven and six-tenths miles in length be built along the Iowa shore. The construction of this canal under the supervision of the Department of War was authorized by Congress in March, 1867, and the work began the following October.

Plans of the improvement called for the construction of a canal along the river from Nashville (now Galland) to Keokuk by building a guard bank three or four hundred feet from the shore and excavating the channel thus formed to a depth sufficient to provide five feet of water at the extreme low stage of the river. Where points of land jutted into the stream the canal was to cut across instead of following the sinuosities of the shore line. The rock and earth removed from these cuts and from the bottom of the canal were to be used in the construction of the guard bank or outer wall. Locks were located at the upper and lower ends of the canal and a third lock with a lift of eight feet was situated at the mouth of Price's Creek about two miles above Keokuk. Above Nashville to the head of the rapids a channel was to be excavated along the Iowa shore in the open river. This stretch was known as the "improved river".

One of the most difficult tasks in the construction of the canal was the excavation of the rocky channel inside the guard bank. Electrically discharged dynamite for blasting beneath the surface of the water had not yet been introduced, so that common black powder had to be used. In the absence of compressed-air drills, holes for the powder charges were made with hand or churn drills within the coffer dams, while two boats equipped with steam drills were used where drilling beneath the surface of the water was required. The charges of powder were

lowered into the blast holes by means of long tin tubes with a fuse for detonating extending up through the tubes to the surface of the water. The force of the powder explosion was mostly upward, resulting in a "big noise and considerable muss" but relatively little damage to the rocky ledges below. All summer long while the work was in progress the blasting on the canal could be heard for a distance of twenty-five or thirty miles and sounded like cannonading in a distant battle.

Three chisel-boats were also used in cutting away the rock beneath the surface of the water. They were employed to good advantage where the ledges of limestone were thin and interbedded with shale or marl. These boats were of very shallow draught and equipped with a pile-driver device on the bow, operated by steam power. Attached to the lower end of a mauling head which weighed about a ton and a half was a chisel-like bit, from which the boats derived their name. These boats were held in place by a hawser attached to the stern and fastened some distance upstream. Another rope, extending from the shore at right angles across the bow of the vessel, was wrapped around a capstan so that the boat could be swung slowly back and forth on the arc of a circle as the ledges were broken or chipped away by means of the heavy chisel.

At first the chisel bits were permanently attached to the heavy maul head and the entire contrivance had to be shipped to Pittsburgh every time the chisel

needed sharpening. This caused so much delay and expense that a means was devised of attaching removable bits to the heavy maul head by shrinking an iron hoop around the bit and head like a tire on a wheel. A large supply of these detachable bits was obtained so that sharp ones could be substituted in a few hours.

The river embankment which formed the outer wall of the canal was constructed by first piling up a riprap "toe" of broken rock taken mainly from the bottom of the canal, though some stone was brought in from a quarry up Price's Creek in the vicinity of the "Old State Fair Grounds" and some from the Gladstone quarries up the river in Illinois. Upon this foundation a track was laid and earth hauled in from the cuts. When completed the bank was ten feet wide on top and about twenty feet high. At various places temporary cross banks were built from the canal wall to the shore line and excavation was completed before the water was let in. These units of construction were called pits and fifty or sixty workmen constituted the gang for each pit.

The locks, each three hundred and fifty feet long and eighty feet wide, were constructed of the "best magnesian limestone" laid in "hydraulic cement". The dimension stone was quarried from the bluffs skirting the rapids, much of the finest coming from the famous Sonora quarries along the Illinois shore. This stone was usually quarried in rough blocks and loaded on barges which were pushed across the river

by the light-draught tow-steamer *Cricket* to the stone yards at Nashville and Price's Creek, where the blocks were dressed and numbered. Two steam derricks, one on each side of the lock, were used in laying the walls.

The locks were filled through culverts leading to each gate recess, passing in the rear of the main walls, and discharging through openings in the chamber walls. From five to ten minutes were required for the process, depending upon the stage of the river. The mechanism for opening and closing the gates and wickets was controlled by hydraulic pressure furnished by pumping engines of special design, built in the Buckeye Foundry at Keokuk. For many years Thomas Hartley was in charge of the lower lock, Jack Russe, the middle lock, and Thomas Harrington, the upper lock.

The canal was built by contract, principally by the firm composed of James J. Dull of Pittsburgh and George Williams of Keokuk. Dull and Williams began operations with a substandard-gauge locomotive and a few dump cars and gradually expanded the equipment until they had four locomotives, about five hundred cars, and some twenty miles of track. The main track ran along the guard bank from which spurs extended into the excavation pits and quarries. The construction road connected with the Chicago, Burlington, and Quincy at Keokuk, but owing to the difference of gauge all of the coal, lumber, stone, and other supplies had to be trans-

ferred to construction cars before they could be moved over the works or unloaded at Sandusky where the company maintained large warehouses and machine shops.

The four locomotives were said to have been "little beauties". They had two pairs of three-foot drive wheels and were built like switch engines without a pony truck in front. They were powerful and in skillful hands were most versatile in their accomplishments. At noon their deep melodious whistle called the men from labor to refreshments, while they were continually busy, with their chug, chug, chug all day long, hauling cars from place to place, plowing the ground, driving piling, pulling stumps, dragging logs, towing lighter-barges up over the rapids after the tow-path for the horses had been cut off by the canal construction, transporting visitors over the works, and even hauling their unfortunate companions out of the river when they occasionally took an unanticipated plunge.

The track of the construction railroad was seldom in good order, owing to the fact that it frequently had to be shifted laterally over the bed of the canal or raised vertically in building the outer wall. The track was raised by shimming up the ties with large blocks of stone, sometimes as much as two or three feet. Stone and earth were then hauled in over this raised track and dumped between the ties, thus building up the wall to the level of the track, whereupon the operation was repeated.

The unstable condition of the track when so elevated was the cause of frequent accidents, sometimes of a serious nature even involving loss of life. One day opposite Rickey's point the outside rail settled under the "George Williams" and the engine rolled over into the river. Engineer Ed Johnson and fireman F. A. Whitney, who were in charge at the time, narrowly escaped with their lives. As fireman Whitney crawled out of the river as "wet as a drowned rat" an Irish workman remarked, "Shure, a man that is born to be hung, will niver be drowned." Great difficulty was experienced in salvaging this engine because she came to rest with her wheels up. On another occasion the "James D. Dull" jumped the track below the mouth of Price's Creek and backed into the river before she could be stopped. A track was built down the embankment, however, and she was pulled out practically unharmed by two of her sister engines.

On March 2, 1870, a workman by the name of Daniel Pletcher was decapitated by a dump car, and on March 16, 1871, William Dugan was crushed to death beneath an overturned car. Another man's arm was broken and several others were severely injured by the same accident. Michael Cahill, a foreman, lost a leg when a string of empty dump cars ran down grade and struck a car he was pushing. Hardly a month passed in which some workman was not hurt.

There was plenty of excitement along the canal.

Drinking was rampant, though most of the men are said to have been rather more given to sobriety than the average of the times. There were nearly as many saloons in the towns as all other places of business combined. Among the itinerant workmen, who were mostly single fellows seeking temporary employment, fights, brawls, and assaults were so common as to excite little comment. Occasionally a quarrel between cliques or gangs resulted in a battle royal. On January 23, 1870, for example, more than forty men engaged in a general fight at Balingler's Switch. Several were painfully wounded by flying bottles, chairs, and other weapons. About two months later, the workmen went on a strike and Sheriff John A. Bishop with a posse of fifty deputies was summoned from Keokuk to quell a threatened riot.

Between one and two thousand men were employed in building the canal. The pay roll for November, 1875, amounted to \$67,700 and showed an average of sixteen hundred and fifty men employed that month. About half of the workmen were Swedes, "fresh from the old country". Most of the rest were Irish. Between Keokuk and Montrose the river bank was dotted with shanties built by the contractors and rented for a nominal sum. There the workmen lived with their families or bunked together in bachelor quarters.

The construction of the Des Moines Rapids canal was, for the day in which it was executed, an engi-

neering feat comparable to the building of the Panama Canal. The undertaking attracted nation-wide interest. Magazines and newspapers in all sections of the country carried comments upon the progress of the work and the economic benefit to be derived. People came from far and near, especially engineers, to witness the operations. Indeed, the visitors were so numerous that a flat car was converted into an observation car by placing boards across for seats and a railing around for safety. When "influential strangers" or government officials arrived in Keokuk a boy was sent up to Sandusky on horseback, with instructions for an engine to bring the sightseers car down to the lower lock for a tour of inspection. This job was a diversion much coveted by the engine crews. On February 24, 1868, Horace Greeley, who lectured that evening in Keokuk, spent the day inspecting the canal.

On the whole the construction of the canal was a slow and laborious business. Modern machinery was almost unknown. As many as fifty men were required to do the work of a single steam shovel. All of the earth was moved by hand shovels and wheelbarrows, after having been loosened by enormous horse-drawn plows. High water often interfered with the work. In April, 1870, construction had to be suspended on account of the flood and considerable damage was done.

Sometimes money ran out and then all work ceased until Congress made a new appropriation.

When the canal was nearly complete Dull and Williams were underbid by a rival firm and lost the contract. Thereupon they promptly pulled up all their tracks, loaded the engines, rails, and equipment, and moved to Florence, Alabama, where they had secured a contract to recondition the old canal around the Muscle Shoals of the Tennessee River. Kittle and Middleton, the new contractors, being unable to purchase any of the old machinery or tools from Dull and Williams, were compelled to go into the open market and secure new equipment of their own. They reconstructed a narrow-gauge railroad, and purchased two locomotives and a number of cars to carry on their operations.

Just a little less than ten years after the first spadeful of earth was turned at Nashville on October 8, 1867, the canal was opened for traffic. The locks were completed long before the rest of the canal was finished but at last, on August 22, 1877, the steamboat *Montana* passed through the canal from Fort Madison and that evening, thronged with public officials, newspaper representatives, and prominent personages, she led the *Northwestern*, the *Golden Eagle*, and the *Cricket* from Keokuk to the head of the canal and back. On shore a Burlington excursion train accompanied the flotilla. The band played, speeches were made, canal officials were fêted, and general enthusiasm prevailed.

In the open season the canal fairly teemed with packets, rafts, and excursion steamers. But river

transportation had reached its peak before the canal was begun and by the time it was completed steamboating on the Mississippi was rapidly declining. The railroads were already sapping the life of the river traffic so that the canal proved to be a disappointment commercially. For thirty-five years it remained in operation. Now and then the timber lock gates were renewed and the sediment washed into the canal by the creeks was dredged out, but few other repairs were ever needed. As time passed the great steamers and rafts gradually disappeared from the river and only government dredges, an occasional excursion boat, and a few stoical packets passed through the canal around the hazardous rapids of an earlier epoch.

During the second week of June, 1913, the flood gates of the Keokuk Dam were closed and gradually the still waters of Lake Cooper flowed over the old canal. To-day no vestige remains visible except a few feet of the inner abutment of the lower lock. There it stands, an excellent sample of old masonry, perfectly preserved and containing in the center of the point a well which now shelters the automatic apparatus for recording the stage of the river.

It is a singular circumstance that this well was the only part of the old canal which was never used during the operation of the canal and is at present the only part of the old canal that is not under water, and is now functioning in the way it was originally intended. While the canal was in use

there was no particular need of watching the stage of the river but now the regulation of the flood gates in the great dam requires that heed be taken of the rise and fall of the water. And so this old abutment remains a fitting monument to a splendid piece of engineering, to an improvement which served its purpose and passed out of existence in the wake of eternal progress.

BEN HUR WILSON

Birds of Early Iowa

During the years immediately following the Civil War a pioneer family lived on a farm in Keokuk County about five miles from the site of the present town of Keota. The oldest son in the family, then a small boy just able to make his way around the farm, tells the following story of the birds so familiar to the pioneers but now almost unknown.

Our cabin stood upon an eminence on the east bank of Clear Creek which soon ceased to be "clear" owing to the breaking up and cultivation of more and more of its watershed. To the south of the residence and occupying lower ground was a meadow about twenty rods wide. Beyond this meadow to the southward stretched a fine large native forest unbroken for miles except by a few small farms that here and there had been hewn out of the wilderness. To the west and northwest there was also timber and brush lands, and to the east and northeast lay the clearing which constituted my father's farm. Since there was no public road within half a mile of the house, the creaking of oxcarts and the rattle of farm wagons did not disturb the serenity of our surroundings. The woods, the meadows, and the farm lands were a paradise for the wild birds.

Directly south of our house and beyond the meadow, in the midst of moderately large timber, stood a

huge oak tree, the patriarch of the forest. It reared its lofty head some forty feet above the surrounding trees and stretched its branches out over the forest like the arms of a giant extended in benediction. The trunk of this great tree was nearly six feet in diameter and when it fell a victim to the woodman's ax in later years a count of its annual rings showed that it must have been a sapling as large around as a man's coat sleeve at the time Columbus discovered America.

Upon this tree during migration time the passenger pigeons used to alight and roost by the thousands. So numerous were they that the upper branches occasionally gave way under their weight and for a few minutes confusion reigned, the beating of the birds' wings sounding not unlike the roll of distant thunder. Then the noise gradually died away as the pigeons found another resting place, smoothed their ruffled plumage, and settled down for the night.

The number of these birds was almost incredible. For days at a time one could not look up at the sky without seeing some of them in flight and occasionally during the migration season there were so many that they obscured the sun and cast a shadow upon the earth like passing clouds.

Some five hundred feet northeast of this great oak and near the edge of the meadow stood an ancient and wide-spreading elm. This tree and its nightly occupants furnished my boyish curiosity and imagi-

nation many a thrill, for it was usually the roosting place of a flock of wild turkeys. I could sit upon our doorstep in the twilight and see one dusky form after another make its way up from limb to limb in the old elm until I could count from eighteen to twenty-five dark spots in the tree. My father was a worshipper of nature and never bothered these stately and beautiful birds.

In the early morning the turkeys would fly off the old elm and leisurely hunt grasshoppers over the meadow and through the orchard, disappearing after awhile in the cornfield, apparently not afraid of any one on the premises. When I was just learning to count my mother called me to the east window one morning and asked me to count the wild turkeys quietly foraging through the orchard. With considerable difficulty I made out that there were twenty-two.

One spring my father was preparing to have some brush land broken for cultivation. The man who had undertaken to do this work came one morning in June with a great plow which had a wooden beam ten feet or more in length, a plow bottom in the rear that turned a furrow nearly two feet wide, and a pair of trucks in front. But what was of especial interest to me was the fact that he had five fine horses. That kind of work was generally done with the help of oxen. Four years old, bare headed and bare footed, I took my chances with briars, thorn-bushes, and rattle snakes, and followed this most

interesting outfit to the brush land which was to be transformed into a cultivated field.

While they were making the first round with considerable noise and shouting at the horses, a great bird suddenly flew out of the bushes and into the timber beyond. "That's a wild turkey", said my father, as he went into the bushes from which the bird had appeared. In a few moments he came back with his straw hat full of turkey eggs and hurried off to the house where he found an old hen accommodating enough to finish the job of incubation. The birds raised out of this flock, together with some new blood added a few years later when father found another nest, made the foundation for a thriving bronze turkey industry.

An old hickory tree east of the orchard was a favorite resting place for the pinnated grouse or prairie chickens which were about as numerous then as the several species of blackbirds are to-day. An uncle who lived with us one year acquired a taste for prairie chicken. He had an old rifle with an octagonal barrel that seemed to me as long as a fence rail. It must have weighed at least fifteen pounds. Sometimes when a supply of prairie chickens was desired, the east window was raised a few inches and the muzzle of this old gun was poked out. Every time the gun spit fire we could see a chicken tumble to the ground. When he had brought down enough chickens for a "mess all round" he went out and brought them in.

It is unnecessary to more than mention here the thousands of ducks and geese of many species that passed over every spring and fall: at least a few of most of these species are still alive and familiar to many people. Our game laws have helped in their preservation, and an awakening to the danger of the extermination of these creatures is fortunately apparent to-day.

One class of birds seen during migration time in those days especially inspired my youthful mind with awe and admiration. These were the great white or whooping cranes and the sand-hill cranes. They used to come along in flocks of from three to twenty or more, at an immense elevation, sweeping the sky in great majestic circles and ever and anon came that peculiar "whoop" that sounded like a combination of flute, bugle, and foghorn. I have not been favored by the sight of a crane or heard that raucous "whoop" for many a long year.

Another bird that was rather common in those days was the beautiful and graceful swallow-tailed kite. Individuals of this species could be seen floating about in the air almost any summer day, frequently carrying mice, ground squirrels, frogs, or snakes in their talons, as if they enjoyed the sensation of being carried about by the air while regarding the tidbit in their talons as a child might contemplate an apple or an orange. The last one of these beautiful creatures it was my good fortune to see come over Sigourney in the summer of 1910.

His shadow flitted across my path one day as I was walking in the street. I looked up and was delighted to see that even one of these graceful birds was still alive for I had not seen one for twenty years before. I watched his evolutions and gyrations over the city quite a while, then he disappeared to the eastward. The next day a man came to town carrying its dead body. He said he did not know what kind of bird it was but saw it soaring about over his premises and thinking it was after his chickens rushed for his "blunderbuss" and put a sudden stop to its supposed evil intentions.

In addition to these feathered inhabitants of the land there were others, less numerous or more retiring, but well known to the pioneers. From the woods near by came the drumming of the ruffed grouse and in the dusk the whippoorwill, close at hand but unseen, sent out its weird chant. This is sometimes heard to-day but for the most part the wild birds have disappeared. The domestic hen clucking contentedly in the barn yard has taken the place of the prairie chicken and we look up to see the air-planes whirring by instead of the clouds of pigeons, the flocks of cranes, or the solitary kite circling in the sky.

E. D. NAUMAN

The Pen Knife Quarrel

When the Territory of Iowa was created in 1838 President Van Buren appointed William B. Conway of Pittsburgh to the office of Secretary of the new Territory. This selection is said to have been in reward for Conway's earnest support in the election of President Jackson and later of Martin Van Buren. Prior to receiving his commission as Secretary of the Territory of Iowa he was editor of a Democratic newspaper in Pennsylvania in which he gave full expression to his partisan bias. Conway had never held a political office until his appointment as Secretary and he had had no experience in public affairs, but he was young, ambitious, and eager to assert his authority in the new office. Moreover, his lack of tact, his delight in facetious expressions, and his peevish temperament continually embroiled him in controversies during his sojourn in Iowa.

One of these quarrels arose between Conway and the Council of the First Legislative Assembly of the Territory of Iowa shortly after that body met at Burlington in Old Zion Church. On November 23, 1838, eleven days after the session started, the Council found itself in need of several articles necessary or convenient for the use of its members. Accordingly a resolution was passed asking the Secretary of the Territory to furnish the members of the Coun-

eil with "pen knives, stamps, half a dozen ink stands, and a tin pan for each stove in the Council Chamber."

This resolution was sent to the Secretary and on the following day, November 24th, he replied to the Council in a characteristic letter. Conway wrote that a resolution "in relation to pen-knives, tin pans, &c" had received the "attentive consideration which the magnitude of the subject" appeared to demand and that the part of the resolution which related "to extra ink stands and tin patty pans" would be promptly complied with. He asserted that pen knives could not be secured, but that this deficiency was not due to any ill will or neglect on his part. Moreover, he took great pains to recite what he had already done for the convenience of the members of the legislature. Stationery for the use of the legislature had been purchased in Cincinnati but had not arrived because navigation on the Ohio had been entirely suspended. This, he informed the Council, was "the act of God" whose will was beyond human power to resist and whose designs human wisdom could not counteract. He said that as soon as the Governor had named the day on which the legislature was to convene he as Secretary had "proceeded to St. Louis, to make preparations for the approaching session, and returned, in despite of every peril, to provide for the comfort and convenience the dignity and elegance of the Honorable, the Legislative Assembly; and for whose comfort and convenience

and dignity" he had "made every provision within the reach of his power always excepting knives."

Since that time the Secretary had tried to get knives at Burlington, but knives of suitable quality and in a sufficient quantity could not be procured in this town. "And the Secretary can't make knives", he declared. "If he could do so, he would do so, with expedition and pleasure." He promised that, at the next session, "if it should comport with his own wishes, and the wishes of all those whom it may concern, that he should retain his present station" he would take "especial care to supercede the necessity of any further legislation on the subject of knives" because it was his earnest wish that "all the members should have knives and stamps, and folders, and all and singular such thing or things, device or devices whatsoever, as may facilitate the operation of the hands in yielding assistance to the deliberations of the head."

This flippant and ironical reply of the Secretary greatly offended the Council and the letter was referred for consideration to the committee on expenditures. In the meantime Mr. Conway was informally advised by Stephen Hempstead and Jesse D. Payne, members of the committee, that the purpose of referring the letter to this committee was to determine whether the reply was "deficient, as regards the respect claimed by and due to, the Honorable Council." The Secretary at once suggested to these gentlemen and later to Robert

Ralston, the other member of the committee, that, in his judgment, the proper thing to do would be to inquire formally of the Secretary whether "disrespect was *intended*" by his letter or not. This suggestion Conway repeated in a note to the committee so that "his wish to explain might thus become a matter of record." He was confident that the position he had taken was the "only one which, as a gentleman, he could occupy, and this position he was determined to maintain."

The members of the committee, however, must have deemed it beneath their dignity to ask for explanations concerning the intentions of the Secretary. They assumed that Mr. Conway, being responsible as a public official for his statements and experienced as an editor in the use of the English language, would mean what he said. At all events they paid no attention to this note asking to explain the intent of his first letter. On November 27th the committee reported "with much regret" that the "communication of the Hon. Secretary of this territory to the Council, dated Nov. 24th, is of such a nature as to call forth a severe animadversion upon its tone and spirit." The evident intention of that communication, in the opinion of the committee, was not only to treat with irony and contempt the resolution of the Council requesting certain supplies, but at the same time "to convey the idea that the articles asked for by the resolution were unnecessary and unimportant."

Besides taking exception to the tone of Conway's reply the committee report also complained that the Secretary had failed to make suitable preparations for the session of the legislature. The house which they were to occupy was found to be unprepared notwithstanding the great peril which the Secretary claimed to have experienced in returning from St. Louis, "to provide for the comfort and convenience, the ease, elegance, and dignity of the Honorable Legislative Assembly". The committee realized that the reason for this, according to the Secretary, "was the act of God" and, although it "would not pretend to impute blame to the Hon. Secretary, for the frustration of his great designs, by the Creator of the universe, whose powerful arm can arrest the progress of Governors, Secretaries, and Legislatures", the committee did think it was "somewhat surprising that the acts of God, should so far intervene, as to prevent officers of the Council and House of Representatives, from getting upon the credit of the Legislature, a few tin cups and a bucket to drink out of". Moreover, the committee asserted as a matter of fact, that the Secretary had taken great pains "to prevent the Merchants and citizens of Burlington" from extending credit to the officers of the Council and House of Representatives by intimating that such accounts would not be paid by him.

This combination of circumstances left the Council no other alternative than to ask the Secretary to supply the missing articles. The committee did not

think that the resolution had implied any disrespect to the Secretary and therefore regretted very much that he "should have so far forgotten the dignity which he owed to himself, his office, and the Representatives of the people, as to attempt to ridicule their proceedings and make their acts a subject of merriment and derision."

In conclusion the committee emphatically assured the Secretary that the Legislative Assembly would not "tamely submit to the insults and derision of any officer of this Territory; and they, at all times, will defend to the last their honest rights, and the liberty of the people whom they have the honor to represent." This sentiment and, indeed, the whole attitude of the committee apparently received the hearty indorsement of the entire Council, for the report was adopted without a single dissenting vote.

Mr. Conway, however, read the report with "perfect astonishment" and, thinking that "*all*" of the members of the Council might not have been aware that he had desired to explain the intent of his original communication before any official action was taken, he addressed a letter to the Council on November 28th in which he severely rebuked the members of that body for not inquiring of him whether he meant any disrespect before they condemned him. An opportunity to explain, he declared, "was a preliminary requirement which intercourse between *gentlemen*, whether official, or personal and private, imperatively required." In view of all he had done

to reach an understanding with the committee he respectfully requested the Council to reconsider the vote on the adoption of the condemnatory report. If for any "incomprehensible reasons" the Council should not comply with this request the Secretary announced that he would be "reduced to the unpleasant alternative of joining issue on the Report itself", in which event he would be "abundantly prepared to satisfy any and every honest, honorable and rational mind", both as to facts and principle, that the report should not only be reconsidered but rescinded.

On the following day, November 29th, President J. B. Browne referred this letter to the Council for consideration. It is evident from the laconic record in the journal that the mood of the Council had not changed since the adoption of the committee report two days before. Thoroughly impressed with the dignity and importance of their own office, the members of the upper house of the first Territorial legislature had expected to be treated with courtesy and profound respect. They had been irritated by the Secretary's facetious response to their request for pen knives and tin pans, and had frankly stated their opinion of his conduct. But it was not in Mr. Conway's nature to receive censure with humility, and when his blustering report was read in the Council chamber the farcical qualities of the controversy quite eclipsed the original contentions. It must have been with an air of suppressed mirth that

Mr. Payne moved to lay the Secretary's letter on the table until the Fourth of July. Mr. Hempstead thought the letter should not be printed in the journal and, amended to that effect, Mr. Payne's motion was adopted.

The rage with which Secretary Conway read of this action in the journal may well be imagined. The criticism of the Council he had resented, but to be openly flouted by a few backwoods lawmakers, to have his earnest efforts in retrieving a false step greeted with ridicule, to be treated with contempt was more than he could endure. With mingled feelings of vindictiveness, injured pride, and self-defense he immediately wrote a long communication to the Council in which he reviewed the whole controversy and concluded with an elaborate analysis of the facts and principles involved.

He did not stop to consider whether or not the Council had "vastly transcended their rightful powers" in excluding "an official communication" of an officer of the government "from their Journal (a public Record, the property of the people,)" but proceeded at once to consider the report of the committee on expenditures. The assumptions upon which that "unwarrantable Report" were based he reduced to five "methodical specifications".

The "first and the most material" of these assumptions was that the Secretary's "*intention*" had been to treat the resolution of the Council with "*irony and contempt*". "Who could explain the

Secretary's intention but himself", he asked. Yet when he offered to do so he had been denied the opportunity and the Council had proceeded to "torture his language into contempt".

The second assumption in the committee report was that the Secretary had intended to "*convey the idea*" that the articles which the Council asked for were "unnecessary and unimportant". In reply Mr. Conway called attention to his previous "sufficiently respectful" communications to the Council as evidence of "the estimation in which he held *all*" of the comforts and conveniences of the Legislative Assembly. Moreover, there could be no question of the "*importance*" of the matter because "the progress of this unwelcome negotiation had added Gothic proportions to a subject not heretofore believed to have been capable of such vast extension!"

The next "accusatory statement", according to the Secretary, charged him with having intimated that he would refuse to honor accounts made by the officers of the legislature. He replied that when he wished to be "understood to make an intimation" his meaning could "seldom be misapprehended". He reminded the Council that, as the disbursing officer of the Territorial government, he was "bound under a penalty of Twenty Thousand dollars" to account for all expenditures and he could not allow every person claiming to be an officer of the legislature to buy whatever he pleased without the restriction of obtaining an order from the Secretary. He

had, however, offered to give specific orders for the purchase of supplies as they were needed and these orders he insisted had never been withheld, or dealt out with a niggardly hand. Moreover, in reply to the plea for a "few tin cups and a bucket to drink out of" which the committee had "so beautifully and pathetically paraded before the public, through the medium of a Senatorial Report", Mr. Conway alleged that he had never refused an application for a "few tin cups and a bucket to drink out of" made to him "in form, or out of form, by any man, woman, or child, that does now exist, or ever has existed". Indeed, "his heart would have melted within him, if such a touching idea had ever reached his feelings, even through the misty visions of a dream, that any Member of the Honorable Council should have suffered the slightest inconvenience for want of a 'few tin cups and a bucket to drink out of.' "

The fourth and fifth "methodical specifications" related to the lack of "*many necessary* articles of stationery and furniture" and to the inadequate preparations that had been made for the session of the legislature. The Secretary bade the members of the Council look around their chamber and see if the surroundings were such as to be an excuse if the laws passed "should not bear the impress of wisdom". And as to making preparations for the coming of the legislators Mr. Conway reminded the Council that "the duties of the Secretary, on that occasion, were unusually arduous. It was the *begin-*

ning of the *first* session. A new Government was to be established. The Rivers were all down to the lowest ebb, and the season was anomalous, in the calendar of Autumn. Still the Honorable Representatives met; though the rain fell, and the winds blew, and the heavens lowered gloomily upon their meeting! May God forbid that this should be ominous of the result of their deliberations." Meanwhile the "Secretary was out, through mud and rain, directing and assisting in everything that could be done, to prepare comfortable and pleasant quarters for men who had the honor to represent a free people."

Thus having disposed of the "facts" in the case Conway approached the subject from the standpoint of "principle". The Council had "solemnly condemned an officer of the Territorial Government" without a hearing, he declared, in spite of his request for an opportunity to explain. The "common right of self defence" had been "rashly invaded". Authority "equivalent to the most despotic usurpation" had been assumed by the Council "without allowing the accused the exercise of that right which the meanest criminal can claim". What gentleman of the Council, he asked, would "submit, with servile tameness to a proceeding like this"? How then could they "ask the Secretary to bow down, in meek submission, before a rash decree" at which their sense of honor and justice must revolt. The Golden Rule, he averred, "is a maxim which not only bears

the sacred impress of Divine authority, and wisdom, and goodness; but it is also the test of true honor." As for himself he "would still fondly cling" to the "pleasing conviction" that this doctrine might yet "receive the assent of the Council".

In conclusion he reminded the Council that he was bound to transmit to the President and to Congress a copy of the proceedings of the Council. His official certificate was necessary to give validity to the proceedings in the courts of the Territory. Since he had "sworn to do his duty" he warned the Council not to make the mistake of supposing that he would give validity to "*mere selections*" from the journal or to a mutilated and garbled record. On the contrary he promised to "attest, before the people, and the Courts of this Territory,—before the Congress, and the President of the United States, and before high Heaven" that the record was false. His own official communication of November 28th had been "excluded from the Journal", had been "spurned from the Record"—the record which was the "*property of the people*" and of which the Secretary was "the legal *Guardian*". It was his duty, he reiterated, to "record and preserve *all your Laws and proceedings,*" and "less than all he will *not* receive." This action, Conway asserted, was not prompted by any hard feelings toward the members of the Council or by a desire to inflict an injury on any of them, but he proposed nevertheless to defend his own rights and his own honor.

At this point he inquired whether the members of the Council were prepared "to reconsider and recind" the committee report. He did not ask that it be "*expunged*", for he did not approve of that principle, "if the defence be allowed to accompany the accusation." He merely requested that the journal be restored to that condition which would authorize him to certify that it was a complete record. He would require no sacrifice of the "true dignity" of the members of the Council nor "would he inflict a wound" on their "proper pride". He only asked for the revocation of a decree which branded him with official delinquency, for his offense was nothing more than the clash of "Senatorial gravity" on the one hand and the "easy familiarity" of his "*epistolary style*" on the other. Finally he professed himself to be "anxious to renew his friendly intercourse" with the Council if that could be done on "honorable terms". These terms were that the "condemnatory Report" of the committee "*in its moral effect*" should be recinded, revoked, annulled and made void."

This letter was dated December 3, 1838, but it was not until December 27th that further formal communication in regard to the matter passed between the Secretary and the Council. On that date Mr. Conway, at the suggestion of Judge Thomas S. Wilson, sent a note to the Council stating that he was willing to withdraw his original communication of November 24th if the report of the committee on

expenditures, "together with subsequent proceedings of the Council, in reference to said communication" were also withdrawn. This, the Secretary had been "informally advised", the Council was willing to do. He would then be prepared, he said, to renew his "relations with the Council, official and personal, as they existed prior to the 24th of last November."

On motion of Mr. Payne the Council resolved to comply with the suggestions of the Secretary and the quarrel was amicably settled. In the meantime, disagreements developed between the lawmakers and Robert Lucas, Governor of the Territory, over the problem of expenditures. Conway, having made his peace with the Council, then proceeded to join forces with the Legislative Assembly in vigorous opposition to the Governor.

JACOB VAN EK

Comment by the Editor

THE FIRST LEGISLATIVE ASSEMBLY

The fall plowing was done, houses were banked, and the corn was nearly all husked when the newly elected members of the First Legislative Assembly of the Territory of Iowa gathered at the Methodist Church in Burlington on November 12, 1838. A few, delayed perhaps by muddy roads, did not arrive on time. Cyrus S. Jacobs never came. A short time before the meeting of the legislature he had been shot and killed in the streets of Burlington by David Rorer, a prominent lawyer of that city.

The plaster was scarcely dry in Old Zion Church when the heavy-booted and ruddy-faced Representatives of the people of Iowa first met in the auditorium of that sacred edifice. At the same time, with entire disregard of superstition and the fitness of things, the thirteen members of the upper house of the legislature assembled below in the basement. Amid such pious surroundings the spirit of harmony and good will might have been expected to prevail, yet seldom if ever in the history of this Commonwealth has a session of the legislature been marked by so much bitter quarrelling and vindictive strife.

They were able-bodied men who composed that first Territorial Assembly. Not one among them was less than five feet seven inches in height, while eleven of the thirty-nine measured six feet or over.

As Saul, the son of Kish, who stood "higher than any of the people, from his shoulders and upward", was anointed the first king of Israel, so it may be that Jesse B. Browne, of powerful frame and military bearing, was selected first President of the Council partly because he towered above his fellows to the height of six feet and seven inches.

The First Legislative Assembly was characterized by just such anomalies. While the members of the smaller branch of the legislature were, on the whole, taller than those of the House and chose for their presiding officer the tallest man in the Assembly, the larger branch, as if in contemplated contrast to the Council, selected for its Speaker the lightest member of the Assembly (William H. Wallace, who weighed only a hundred and thirty pounds), although the House outweighed the Council man for man. Thomas Cox of Jackson County was the heavyweight of the Assembly. He tipped the beam at two hundred and fifty pounds.

Most of the members claimed to be farmers — dirt farmers they were, though that designation was unnecessary then. In a frontier country where the chief concern was the acquisition of land, it might be expected that the law-making body would be closely allied to the soil. It is more surprising that only four lawyers found seats in the first Territorial Assembly. Four others dubbed themselves merchants.

The frontier is the special province of a rising generation. To men and women with their lives be-

fore them belongs the opportunity of developing a new country. And so it was altogether proper that the pioneer lawmakers should reflect the character of the newest Territory. They were young, vigorous, self-reliant, thoroughly convinced of their own importance, and certain of their prerogatives. Several were New England Yankees, some were born north of the Ohio, while nearly half were the sons of Virginia or Kentucky.

Above all, the members of the First Legislative Assembly took themselves seriously. There was scarcely a trace of humor in their proceedings from the beginning to the end of their deliberations. Perhaps the nearest approach was the motion in the Council to table one of Secretary Conway's communications until the Fourth of July; yet even that may have been an accepted method of indefinite postponement, for the same action was taken on other occasions in both houses. Some of the resolutions that were passed, like the request of the Representatives for "pen-knives, paper-knives, letter stamps, wafers, sealing wax, tape, twine and ink; together with everything which shall contribute to the convenience, comfort and gentility of the House", cause a smile, but the House was intensely in earnest about it.

It was the solemn nature of the Assembly — combined with an exaggerated sense of importance and the attitude that the national government which paid their bills was, according to the current expression,

a cow to be freely milked — that caused so much dissension among the first Territorial officers. The Council began by quarrelling with the Secretary over tin cups and pen knives; and that unseemly squabble had scarcely been settled when both houses joined in a bitter dispute with Governor Lucas because he refused to approve of spending six thousand dollars to hire over twenty clerks, sergeants-at-arms, and other assistants for the Legislative Assembly of thirty-nine members. Distrustful of the inexperienced Assembly, the Governor also interposed a frequent veto on their measures, and the Assembly in turn addressed a memorial to President Van Buren asking that he remove Governor Lucas from office.

Inexperienced and wilful though the first Territorial lawmakers may have been, the quality of their legislation was admirable. For clearness of statement and freedom from verbiage the acts of the First Legislative Assembly have seldom been surpassed. Early in the session the judges of the Supreme Court were requested to draft a "proper code of jurisprudence" and such other bills as they should deem necessary for the Territory. With rare judgment the measures recommended by the judges were adopted; and they have remained the basis of legal procedure in Iowa to this day. Fully conscious that they were laying the legislative foundation of a future Commonwealth those youthful, untrained men of the frontier performed that task with their customary common sense.

J. E. B.

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