

The  
**PALIMPSEST**  
MARCH 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

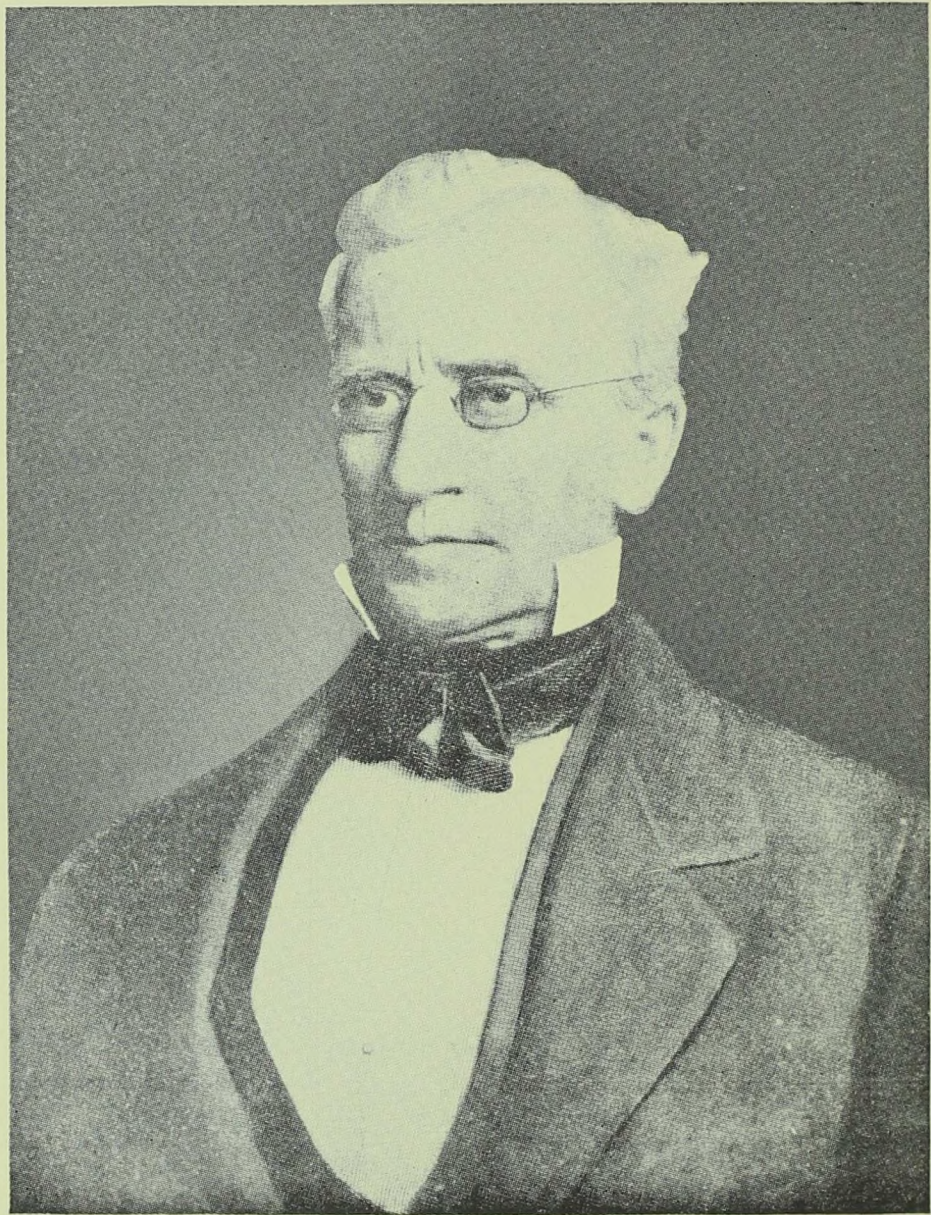
*Superintendent*

### 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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W. Williams

# THE PALIMPSEST

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## Judge Joseph Williams

When the Territory of Iowa was established in 1838 President Martin Van Buren appointed Charles Mason and Thomas S. Wilson of Iowa, and Joseph Williams of Pennsylvania to be the judges of the Supreme Court. The Organic Act creating the Territory provided that each of the three judges should be assigned to a separate district in which he should reside and hold court at stipulated intervals throughout the counties of which the district was composed. The Act further provided that the judges should meet as a Supreme Court once a year at the capital of the Territory. Judge Williams was assigned to the second or middle district which at first was composed of the counties of Louisa, Muscatine, Cedar, Johnson, and Slaughter, later renamed Washington. He took up his residence at Bloomington, now Muscatine, and entered vigorously upon the career which won for him the popular esteem

and affectionate regard of hosts of his fellow Iowans.

Judge Williams was thirty-seven years of age when he came to Iowa, and he had already acquired a reputation in his native State as a formidable lawyer whose ready tact and rapier-like wit was dangerous to an opponent. At the age of twenty-one he had begun the study of law in the office of Chauncey Forward, one of the ablest lawyers of the Keystone State, where he had for a fellow student, Jeremiah S. Black, who afterwards became Chief Justice of Pennsylvania and later Attorney General of the United States. Both Williams and Black soon made their influence felt before the Somerset bar to which they were admitted.

On one occasion before coming to Iowa, Williams was defending a client in Pennsylvania against the claims of a quack doctor who had instituted a suit for surgical services. The following cross-examination of the plaintiff reveals the skill of Williams as a practitioner.

Mr. Williams — “Did you treat the patient according to the most approved principles of surgery?”

Witness — “By all means — certainly I did.”

Mr. Williams — “Did you decapitate him?”

Witness — “Undoubtedly I did — that was a matter of course.”

Mr. Williams — “Did you perform the Caesarian operation upon him?”

Witness — “Why, of course; his condition required it, and it was attended with great success.”

Mr. Williams — “Did you, now, Doctor, subject his person to an autopsy?”

Witness — “Certainly, that was the last remedy adopted.”

Mr. Williams — “Well, then, Doctor, as you performed a post-mortem operation upon the defendant, and he survived it, I have no more to ask, and if your claim will survive it, quackery deserves to be immortal.”

Williams was a man of many accomplishments and wherever the duties of his position took him, he was held in high esteem. At his home in Bloomington and throughout the district he was the center of interest at every gathering which he attended. He could sing well and could play many instruments — the fife, the flute, the banjo, and the violin. Like Abraham Lincoln he had an inexhaustible fund of stories which he could relate in an inimitable style. His charming manners, his conversational gifts, his keen humor, and his generosity made him a favorite. And although he was the life of the company in the evenings at a tavern, on the bench he was sedate and performed the duties of a Judge of the Supreme Court with distinction and dignity.

During the early years of the Territory of Iowa the three judges of the Supreme Court were compelled to hold court in many odd temples of justice. A half-finished log cabin served as a court room in

one county, a trading house in another, and a log barn became a courthouse for the nonce in a third. Boxes at one place, and walnut planks laid on barrels at another were used as tables for the lawyers and clerk. Usually the sheriff had to shift for himself. Splint-bottomed chairs were sometimes provided for the lawyers, while jurors, litigants, and spectators often sat on planks laid on blocks of wood. His honor, the judge, sat in a rocking chair on a raised platform at one county seat, in an arm chair loaned for the session at another. Jury rooms were hard to find and consequently the deliberations were held oftentimes in a convenient, secluded glen with a bailiff keeping the curious crowd away from the open-air jury room.

Attending court in those days was no easy task for the lawyers and judge who plodded their way over the prairies and through the timber around the circuit. Rivers, without bridges and out of their banks after spring freshets, had to be forded. Muddy roads, sometimes mere blind paths, and bottomless sloughs were encountered between one settlement and another. Many of the inconveniences, too, were due in a large measure to lack of boarding accommodations. One who rode a judicial circuit in the Territorial days has left this picture:

“I can see yet the tin wash pans with buckets of water and dippers ranged on a board on the back porch, or in black bar-room, the crash towels on rollers, the old brush and comb with hairs enough in

each, to set up a wig maker in no very small business. I can see yet the swimming islands of fat and lean bacon, the hammer proof eggs, the rich golden biscuit, the pies of wonderful tenacity, the plates, cups and saucers and glasses filled with marmalade, jellies and all imaginable mixtures made of the plum, the crab-apple and the pumpkin.

“I think I can smell and taste that same coffee served in cups, black enough to enjoy the right of suffrage, and weak enough to win the indorsement of any committee. Remember, too, a dozen or more huddled into one room with too much ventilation or none, sleeping on the floor and sometimes not at all; our horses in sheds or without any shelter after going through rain, and sleet, and cold, or heat.”

But the evenings at the taverns and boarding houses when court was in session were passed in an atmosphere of cheerfulness and hilarity. Men played pranks on one another, volleys of sarcastic wit passed back and forth, and jest and quip, sharpened perhaps by the spur of a jorum of rum, incited uproarious laughter. Then suddenly, ridicule and badinage would give place to stories, anecdotes, and songs.

Judge Williams was invariably the life and center of attraction of the social circle in the evenings at the tavern where he stopped. As a comedian he kept the crowd gleeful, while as a master of the violin he changed the mood of his auditors from gay to grave at will by the tunes he played. Sometimes



he gave a lecture on temperance filled with eloquence and spiced with humor. Again, his singing "Little Billy Peal" or other favorites evoked a round of hearty, boisterous applause such as would greet a star actor after a particularly pleasing bit of work.

Although hardships and inconveniences of holding court were many during the early years of the Territory of Iowa the three judges of the Supreme Court performed their duties with credit to themselves and the profession to which they belonged. They handed down many decisions and established precedents that had a marked influence upon judicial affairs in after years. One of their most noteworthy decisions was rendered in the fugitive slave case, *Montgomery v. Ralph* (a negro), in which it was held that a slave under the laws of another State, brought by his master to Iowa, while under the protection of the laws of Iowa must be permitted to go free.

As the four-year term of the three judges drew to a close it was expected that John Tyler, a Whig, who had succeeded to the Presidency upon the death of William Henry Harrison, would appoint three men of his own political faith to succeed Mason, Wilson, and Williams, all of whom were Democrats. In fact, certain politicians in Bloomington had prepared a statement, purporting to be the sentiment of the district, asking for the removal of Williams. This statement was sent to Washington where it came to the attention of a friend of Williams who

secured a copy and returned it to the supporters of the Judge in Iowa. Although his friends had no difficulty in securing a numerously signed counter petition, Williams thought that his chances for re-appointment might be helped by a personal visit to Washington and so, armed with the endorsement of his friends, he set out on his journey to see the President. T. S. Parvin, who knew Judge Williams intimately, has given the following account of the incident.

“In those days he had to travel by steamer to St. Louis, up the Ohio to Maysville (which was then the terminus of the great ‘National Pike’ commencing at Cumberland, Maryland). Taking a stage at Maysville he soon found himself seated in front of a lady, pretty, brilliant and entertaining. The Judge was, both by nature and by practice, a ladies’ man and sought to ingratiate himself into her favor by making himself as agreeable as possible, which was no difficult task for he was a gentleman of Chesterfieldian manners. He communicated to the lady his name, his rank and the purpose of the journey eastward, and strange to say, for the Judge was not a bashful man, he never learned her name, or her position. Reaching Baltimore, they separated, the Judge stopping to visit some friends, and a few days later wended his way to Washington, where, having made his toilet at his hotel, he called upon his excellency, John Tyler, President of the United States. Upon his name being announced he was received,

much to the surprise of the Judge, with unusual courtesy and kindness of manner, bade take a seat and immediately the President entered into familiar conversation with him as though he had known him a life-long period, asking him many questions about Iowa, in whose history he seemed to take special delight, of his associates in office and other public men of the Territory, until the Judge quite forgot the purpose for which he had come; rallying, however, he ventured to suggest the matter of his re-appointment to the President. 'Oh,' says the President, 'that matter is all fixed to your satisfaction, Judge,' and immediately commenced to talk upon other subjects. After a little the Judge renewed his attack, when the President said, 'Your appointment has been made and the Secretary will furnish you with your commission when you are ready to return to your distant home.' 'But,' says the Judge, 'I could not think of going back with a commission of reappointment and my associates being left out in the cold.' 'That matter too you will also find all to your satisfaction, Judge; I have reappointed all three of you. By the way, Judge,' said the President, 'there is a lady in the adjoining room who would I know be much pleased to meet you and I have to request that you join me in a call upon her.' The Judge had the courage to say that he was quite sure it would afford him as great a pleasure to meet the lady, (although he did not know who she was), so accompanying the President they entered the

golden room, when a lady, as we have said, beautiful in appearance, graceful in manner, and with an earnestness quite unusual among strangers, the good woman rushed to the Judge, seized him by the hand and cordially greeted him. As soon as the Judge could recover from his astonishment the President said 'Judge Williams, Mrs. Tyler, my wife,' and lo and behold! she was the woman with whom he had travelled some three days and as many nights over the mountains and through the valleys from the Ohio to the Potomac. 'I hope, Judge,' said the lady, 'you have found everything to your satisfaction; I spoke to the President as soon as I got home and asked him to reappoint you and your associates to office, and he promised he would do it.' 'Yes,' said the Judge, 'he has,' and thereupon the three joined in familiar conversation as though they had known each other many a year."

When the news of the reappointment of Mason, Wilson, and Williams as judges of the Supreme Court of the Territory reached Iowa it was greeted with pleasure by the people irrespective of party. For four years more these men held court in their respective districts and met annually in the Old Stone Capitol at Iowa City for the sessions of the Supreme Court. They continued to contribute valuable service during this formative period of Iowa.

The fame of Williams as a wit, as a musician, and as a jolly addition to any company continued to grow, nor did his reputation as an able jurist suffer

from his popularity as an entertainer. Of his many tricks for amusing an audience during the evenings at a tavern perhaps the most effective was his weird, mysterious power of ventriloquism. He could imitate with such wonderful verisimilitude the cry of various kinds of animals that the uninitiated were completely deceived. For instance, he enjoyed imitating the squalling of belligerent cats in a roomful of ladies to the great mystification and alarm of the fair sex who could neither discover the brawlers nor learn from whence the sound came.

On one occasion, while holding court in his district, Judge Williams and the lawyers occupied beds in a down-stairs room of a tavern while jurors and other court attendants slept on the loose board floor of an unfinished room above. Sound carried between the two rooms almost as clearly as if no floor existed. After the candles were extinguished and conversation languished the two groups settled down to sleep. Suddenly the stillness was shattered by the terrific squalling of two tomcats in mortal combat in the midst of the men upstairs. Instantly all hands were up, candles were lighted, and a search for the disturbers began, but no cats could be found. The surprised boarders returned to their beds on the floor with no satisfactory explanation as to what had become of the nocturnal prowlers. But they had hardly composed themselves for sleep again when the loud growling, snarling, and snapping of two dogs in their midst brought them up again

swearing. Then until candles were lighted there followed an uproar, the dogs continuing to growl and bark, and the men endeavoring with all the noise they could make to oust them. How the dogs came to be there was a mystery, but the noisy evidence of their presence in the darkness was unmistakable. Presently the dog fight ceased and the uproar abated. Then came the solution of the mystery for no longer could the Judge and his companions restrain their merriment. A roar of laughter from below reminded the mystified lodgers above of Judge Williams's skill as a ventriloquist.

The reputation of Williams as a musician was no less than his standing as a fun-maker. He was in great demand to "fiddle" for dances, and the coming of the Judge for a term of court was the signal for the young folks to arrange a dance. His friends liked to relate an incident at Tipton where one day he sentenced a man for horse stealing. That evening the Judge furnished the music for a dance. He noticed one man on the floor who seemed to enjoy himself even more than the others. His appearance seemed familiar and at last Williams asked who he was, whereupon he learned that the enthusiastic dancer was the man whom he had sentenced for horse stealing that very afternoon. The sheriff, wishing to attend the dance and having no place to leave his prisoner, had brought him along for safe keeping. The music and the dance ended abruptly.

Anent his skill as a fifer, a St. Louis newspaper in

1846 carried the following item: "Judge Joseph Williams of Iowa, distinguished for his great versatility of talent, paraded with the (Texas) volunteers of Burlington, Iowa, and marched at their head playing a fife. The judge is a perfect specimen of a happy man. He is a devout member of the Methodist church and attends scrupulously to religious duties. He is also one of the best temperance lecturers we ever heard, is judge of the second district of Iowa; associate justice of the supreme court; a fine poet; a superior musician; fifer for the Texas volunteers, the tallest kind of a companion we ever met at the social board — and he tells the best story of any humorist of the day."

Even the cartoonist found the musical ability of the Judge a theme for his pen. In the early fifties Judge Williams vigorously opposed Le Grand Byington relative to the construction of a railroad from Davenport to Iowa City. In fact, Muscatine people generally opposed the plan for they desired the road to extend from Davenport to Muscatine, thence west to Oskaloosa. George Yewell, later the well-known portrait painter, expressed the sentiment in a cartoon in which he pictures Judge Williams playing a clarinet astride an enormous bull which stood on a railroad track. With tail erect and head down the animal, pawing and snorting, impeded the progress of a locomotive on which appeared Le Grand Byington as engineer. One character in the cartoon remarks, "Music won't charm a locomotive."

In the interchange of jest or repartee seldom did anyone ever come out ahead of Judge Williams, yet once, during a session of court in Polk County, he met his match in a woman. The Judge boarded across the river from the temporary courthouse and made the trips back and forth in a boat, being rowed across sometimes by one man, sometimes by another. On one occasion when the Judge wished to cross the river no man was in sight, but he prevailed upon a young woman, Mary Hays, who was washing clothes near the bank, to row him over.

As soon as they set out from the bank the Judge began to tease Mary and jokingly proposed to turn the boat downstream, carry his fair companion off, and marry her.

At this Mary's provoked spirit fairly glittered in her eyes. With intensity of emphasis, she exclaimed, "You carry *ME* off! *You* marry *me*! I would not *have* such an old dried up cracklin'. I wouldn't marry *you* if you were the last man on earth, and a woman couldn't get to heaven without a husband; and if you don't stop your nonsense and behave yourself, I'll pitch you head first into the river, and *you* may make as long a voyage as you please, but one thing is certain, you don't take *me* with you!"

The Judge, it is said, stopped teasing her at this, laughing heartily at her Amazonian threats.

Judge Williams had a trait of caring little for money and often on account of his indiscriminate generosity he would find himself without funds.



Many times on the circuit he would give away money to someone in distress and then borrow from his lawyer friends to pay his own board bill. Once when he was on the way to market in Bloomington, a beggar accosted him, and Williams, taking a dollar bill from his vest pocket — all the money he had with him — gave it to the stranger and then bought goods on credit. At another time when a term of the Supreme Court had just closed at Iowa City, the Judge had barely enough money left to pay his stage fare to Muscatine. While he was waiting for the stage a man whom he had never met slouched up to him and asked to borrow enough money to go to Muscatine. Williams looked at the man a moment, saw that he was in distress, and reaching in his pocket gave him the money. Then to pay his own fare to Muscatine the Judge borrowed from a friend the amount he had just given the stranger.

When the Territory of Iowa became a State, Williams was made a member of the Supreme Court of the new Commonwealth, and he served as Chief Justice of that tribunal from 1847 to 1848, and again from 1849 to 1855.

It was during his term as Chief Justice of the Supreme Court of Iowa that Williams made a trip to New York City and learning that his old friend and fellow student, Jeremiah S. Black, was also there, he called at the hotel where Black was stopping. Not finding him in, Williams left the following note.

“Salutations of the Chief Justice of Iowa to the Chief Justice of Pennsylvania.

“Oh, Jere, dear Jere, I have found you at last,  
Now memory, burdened with scenes of the past,  
Restores me to Somerset's mountains of snow,  
When you were but Jere and I was but Joe.”

It has often been asked whether a man so variously gifted that he could write poetry, sing well, tell funny stories, lecture entertainingly, play the violin, fife, and flute, and charm any company with his conversation could have had the judicial temperament and learning so necessary in an able jurist. Edward H. Stiles in his *Recollections and Sketches of Notable Lawyers and Public Men of Early Iowa* produces ample evidence that Judge Williams was a well-read and well-equipped lawyer who arrived at just conclusions as if by intuition. His written opinions, moreover, were remarkable for their clearness and terseness of diction.

In 1857 Williams was appointed one of the Federal judges for the Territory of Kansas where he soon became as popular as he had been in Iowa. Fortunate investments in land near Fort Scott — property which increased quickly in value — made him well-to-do and fortified him against the improvidence of earlier years. In 1863 President Abraham Lincoln appointed Williams judge of a court established at Memphis, Tennessee, under military authority. In this arduous position he discharged his duties with ability, and his strong sense of jus-

tice and kindness of temper won the respect and regard of those who were erstwhile enemies of the Union.

At the close of the war, Williams returned to Iowa and for a few years resided at the old home near Muscatine. In February, 1870, he made a trip to Fort Scott, Kansas, to attend to business matters in connection with his land. A short time after his arrival he was taken ill, his sickness developed into pneumonia, and he died at Fort Scott on March 31, 1870. His body was returned to Iowa and was buried at Muscatine.

The announcement of his death was made before the Supreme Court of Iowa by Henry O'Connor, who was then Attorney-General of the State. On that occasion Mr. O'Connor said: "His character was above even the eulogy of gratitude. The simple story of his life is his highest eulogy. An able and learned lawyer, a just and upright judge, a patriot beyond the reach of suspicion, a citizen above reproach, an honest man, and a friend whom adversity did not frighten. It may be said of Judge Williams what can be said of few men, that he made a friend of everyone with whom he came in contact and that he never lost one by desertion or neglect. His reputation and fame were national. The sunshine of life seemed to be in his keeping, and in every company of which he formed a part, he dispensed its light and warmth with a hand as lavishly generous as its sources were inexhaustible. He had

no thought of the morrow, cared not what he should eat or wherewith he should be clothed. His faith in humanity was less only than his faith in God.”

And Judge George G. Wright on behalf of the Court responded: “By the aid of conversational powers unsurpassed, and social qualities which charmed and captivated the high and the low, the learned and unlearned, and yet making no one the less mindful of the sacred duties and obligations of life, he made impressions which will last while the State endures, and left monuments which will remain so long as our judicial records shall be read. Such a life is a proud part of our State and professional inheritance.”

BRUCE E. MAHAN

## Justice in Early Iowa

Contrary to a prevalent notion, the men and women who first settled in Iowa were hard-working, law-abiding, and intelligent — although somewhat uneducated people. They were pioneers of the type whose love for the frontier life was tempered by their desire for fair play and orderly government. In establishing political institutions they copied the forms and methods with which they were familiar back East, but they were interested primarily in results, whether applied to the problem of clearing the land or the more difficult matter of setting up institutions of government. And in the latter, as in the former, the pioneers resorted at times to rather crude and unusual but none the less effective methods.

Justice in early Iowa reflected the character of the settlers themselves. In the settlement of disputes they were prone to proceed by the most direct methods: technicalities were viewed with distrust and impatience. The innate belief of the people in fair dealing and their desire to do justice to the parties concerned tended to promote a rather summary procedure. This was particularly true of the protection of property rights, which was one of the chief concerns of the early settlers.

Of the early institutions of government in Iowa,

the claim associations were among the first to be established. The settlers came before preëmption privileges were extended over the region and some extralegal method had to be devised to prevent claim jumping. These associations, or clubs as they were sometimes called, were most zealous in protecting a bona-fide settler in his claim to a quarter or half section of land.

Occasionally a new comer would take possession of a claim or a part of one in the absence of the squatter. Such a case arose in Scott County and was settled with customary dispatch. A sheriff having been sent for and a posse assembled, the occupant was ordered to leave the cabin and to vacate the premises. This he refused to do. The posse then proceeded to hitch a yoke of oxen to the corner of the cabin "and as the timbers began to show signs of parting" the claim jumper expressed a willingness to leave immediately. He was then shown "the most feasible, as well as the quickest route" to the other side of the river.

These claim associations protected the squatters until the land was offered for sale and even then prevented outsiders from overbidding them. The first public land sale in Iowa was thus an event of importance and thousands of settlers attended it in the fall of 1838. Speculators, too, came in considerable numbers — some wishing to buy land and others desiring to loan money to prospective purchasers at the rate of fifty per cent a year. The

scene must have been interesting. Only one or two townships could be sold in a day "and when the land in any one township was offered, the settlers of that township constituted the army on duty for that day, and surrounded the office for their own protection, with all the other settlers as a reserve force, if needed."

One man at this sale declared that he proposed "to invest his money as he pleased" without reference to the settlers' claims. This he proceeded to do by bidding upon a piece of land which was not offered for sale that day because the squatter did not have his money ready. The news of the bidder's action spread quickly and according to one account "within five minutes time, not less than fifteen hundred of as desperate and determined a set of men as ever wanted homes, started for the bold bidder." A friend, knowing the temper of the mob, ran to the bidder and advised him to abandon his bid. The friend then announced to the crowd "that the bid was withdrawn, and that the bidder had also withdrawn himself." The withdrawal of the bid was accepted, but the crowd objected to the departure of the stranger and only acquiesced when it was found that the party "had escaped the back way, and could not be found". This was the last outside bid during that sale.

A man, however, did not need to actually jump another's claim or to bid against a squatter at a public sale in order to get into trouble. According

to an old county record a prospective settler from Illinois who casually remonstrated against any one holding more than one claim and not even that "unless he lived on it" got into serious difficulty. No sooner had he voiced these sentiments than he was confronted by a rather unceremonious squatter who said, "My name, Sir, is Simeon Cragin. I own *fourteen* claims, and if any man jumps one of them I will shoot him down at once, Sir. I am a gentleman, Sir, and scholar. I was educated in Bangor, have been in the United States army and served my country faithfully — am the discoverer of the Wopsey — can ride a grizzly bear, or whip any *human* that ever crossed the Mississippi; and if you dare jump one of my claims, die you must." The apparent rage of the speaker and his vigorous language so alarmed the young man that "he found the shortest road possible to the State of Illinois".

Offenses against persons as well as property occurred in the early days of Iowa. The first murder trial in the Iowa country occurred in 1834. Patrick O'Connor was accused of killing George O'Keaf. Some were of the opinion that O'Connor should be hanged at once, and indeed a rope was brought for that purpose but the sober-minded element insisted that the matter should be more fully investigated. Accordingly, O'Connor was taken to Dubuque, only a short distance away, where an impromptu trial was held. Both the people and the defendant selected counsel who in turn summoned from those



present twenty-four men. The accused was then directed to choose from this panel twelve persons to act as jurors. O'Connor admitted that he had shot O'Keaf and, after a few other witnesses were examined, the jury retired. At the end of an hour's deliberation, they brought in a verdict of murder in the first degree and recommended hanging — a sentence which was later executed.

Another case of summary and rather unique justice occurred in connection with the Bellevue war. A group of alleged horse thieves having been judged guilty, the committee of citizens in charge of the trial determined their punishment by voting, "White beans for hanging, colored beans for whipping". As a result the outlaws were whipped and by order of the committee placed in a boat, given three days' rations, and sent down the Mississippi.

The pioneers were not, however, always the best judges of evidence. Rumor and external circumstances were given much credence. In 1834 a demented young man in Dubuque had to be sent to the home of his father in another State. Accordingly a subscription of money was taken and a man by the name of Wheeler was employed to accompany him. When Wheeler returned to Dubuque he was accused of having mistreated the young man and of having abandoned him in a destitute condition. The accused protested his innocence, asking his persecutors to write to the father, but public sentiment was so inflamed that his request was refused and "he was

tarred and feathered and drummed out of town". A few days later a letter from the young man's father was received thanking the citizens of Dubuque for returning his son and testifying to the kind treatment the young man had received throughout the journey. The person who had preferred the charges against Mr. Wheeler "could not be found".

Instances of such a character, however, were rather the exception than the rule. The sympathies of the pioneers were usually on the right side: mere violence and even bloodshed rarely confused the issue. A feud known as the Massey-Smith war may be cited in illustration.

Woodbury Massey was a merchant and the owner of a claim upon which was located a valuable mine. Smith and his son later set up a claim to the mine and actually took possession of it. Suit of "forcible entry and detainer" was brought by the rightful owner and a jury decided in his favor. Despite the outcome of the suit the Smiths retained possession. Massey, accompanied by the sheriff armed with a writ to oust the claim jumpers, went to the mine. The Smiths fired upon Massey and killed him. Their arrest followed, but the jurisdiction of the court at Mineral Point (Wisconsin) having been questioned they were discharged from custody. A short time later a younger brother of Mr. Massey shot and killed the elder Smith — a fate which "it would seem, the community judged he deserved, for young Massey, though he did this in broad day

light, in the presence of numerous witnesses, was never tried for the act, or even arrested”.

The death of the elder Smith soon brought the son to the mines with the avowed intention of avenging “the death of his father”. Rumors of this were brought to the ears of Miss Louisa Massey. The death of her eldest brother, Woodbury Massey, and the thought of another brother falling a victim to the malice of the Smiths so aroused her that she determined to take the affair into her own hands. The bullet from her pistol, however, struck a large wallet “and so wasted its force that it did not penetrate the vital parts of the body.” Miss Massey made good her escape and it is said that the “Legislature of Wisconsin, whose jurisdiction at that time extended over the Black Hawk purchase, in dividing the territory into counties, named one Louisa, after the christian name of this young lady, as a token of respect for her brave act”.

Civil cases in early Iowa were also sometimes settled by unique methods. The earliest civil suit in Davis County is said to have been brought before a justice of the peace appointed by the Governor of Missouri before there were any Iowa officers in the county. On the day set for the hearing the whole neighborhood turned out to see the trial, swap horses, and drink whisky according to the custom. As the time for the trial approached, the parties to the dispute became alarmed, not knowing what turn events might take once the case was in “the hands

of the law". So a compromise was reached by which it was agreed to leave the matter to three of the settlers who were empowered to decide how much, if any, the defendant must pay. The decision having been reached the settlers witnessed the actual transfer of property, both parties "treated" the crowd, and "all returned to their homes well pleased with the turn the suit had taken."

In due time, however, courts of a more formal nature were established. These early tribunals were rather imperfect in organization and their procedure was often faulty. The pioneers themselves were not much more concerned with intricacies of the law than with niceties of social etiquette. As a matter of fact, institutions of government are seldom other than a reflection of their makers.

When the first district court in Davis County was organized, "the Judge directed the Sheriff to summon twenty-four good and lawful men to sit as a petit jury for the term". Since there was "but little business requiring the intervention of a Court at that time, this term remained in session but one day". No grand jury was impaneled.

This session of the district court was held in a new, one-room cabin, which made it necessary for the jury to retire to the "hazel brush" some fifty yards away. It seems, however, that the settlers were more concerned over the matter of providing a "grocery" than in securing proper accommodations for the court. A temporary shed was erected

against one side of the hotel and within, behind a "split puncheon" bar, was placed a barrel of whisky. Indeed, the holding of court appears to have been a gala occasion, for those who came "remained several days after the court had gone, amusing themselves by wrestling, running foot and horse races, swapping horses", and the like.

The formalities of legal procedure were often slighted in the early days. According to one account Joseph Williams, one of the first judges of the Territory of Iowa, sat in "a large split-bottom chair under a spreading burr oak" and held his first court in Cedar County. He first proceeded to select a sheriff and chose "the longest, leanest, lankest, ugliest-looking man in the crowd"—the sort of man who "had a long beard, and when his mouth was closed no opening was visible, and when he spoke it looked like a hole in a buffalo hide." Here the "grand jury sat down on the ground on the right, and the petit jury on the left." After the grand jury had been impaneled and a bailiff duly sworn, the jury was sent off to do its work. The jury room in this case was "a large rail-pen". The grand jury, however, got into an altercation and the bailiff reported the situation to the judge, who sent the jury home because he objected to having "the county disgraced."

Extraordinary methods were sometimes employed in the trials in early Iowa — methods that appear to have been not only humorous but effective. A law-

yer of ready wit usually won the audience and sometimes the court. In one such case it appears that the prosecuting attorney was having a difficult time in securing the desired answers from a rather obtuse or wary witness relative to the kind of whisky he had purchased. Finally the witness was asked "how it tasted". The court, in response to an objection, ruled the question to be improper and inquired of the attorney in some asperity why he put such a question. "Well, your honor," replied the attorney, "I was unable to make the witness tell what kind of liquor he bought, but I thought if he would tell how it tasted, *the court would be able to determine for itself!*" The ruling of the judge was thereupon reversed.

Among other instances of legal misconceptions the case might be mentioned in which a grand jury refused to bring a true bill against the steamboat *Bee* because the boat could not be brought into the jury room. Then there was the case of an action for replevin in which the parties joined issue upon a plea of "not guilty" and as the result of a jury trial the defendant was assessed one cent.

Attorneys in an early day appear to have been most zealous in attempting to safeguard the interests of their clients by resorting to sharp practice, distortion of the facts, and emotional appeals. Indeed, the old records are replete with such cases.

One such affair is related as having occurred in which the grand jury had found a "true bill"

against a man for resisting an officer. The accused was promptly arrested and gave the required bond for his appearance at the next term of court. When the defendant failed to appear at the proper time the court declared the bond forfeited and entered judgment in the usual manner against the sureties. The counsel employed by the bondsmen advised that the accused be sought and produced in court, after which the default could be set aside. Feeling that the case would probably result disastrously for his clients the attorney resorted to a ruse. The defendant "was wrapped up in blankets and quilt, with handkerchiefs wound about his face and neck, in which condition he appeared at the door of the court room." The attorney, who was on the lookout, addressed the court and stated that inasmuch as the accused had now appeared the default should be set aside, and since the accused was just breaking out with smallpox he hoped that the court would act without delay. This the court did crying, "Away with him! away with him!" The defendant "passed from the room, mounted his horse and left the county; the court set aside the default, and dismissed the case". In this manner the accused was cleared, and the "sureties released from further liability." Resisting an officer was evidently not considered a very serious offense and the whole affair was regarded as a good joke.

Success, however, did not always attend an attorney's efforts to mislead the court and to play upon

the sympathies of the jury. At least one such case is related as having occurred in which a wood cutter had a claim against another man who was resisting suit in the district court. The plaintiff's lawyer sought to stir up sympathy in both the jury and the audience by maintaining that his client was an honest man and that he had "a wife and a large family of little children at his humble home in Keokuk, dependent upon his daily sweat and toil." When the jury retired to reach a verdict the first ballot stood eleven to one for the plaintiff. On being asked why he favored the defendant the odd member of the jury said that he too had intended to vote for the plaintiff until the attorney had made the sympathetic appeal in behalf of the "wife and children". But knowing that the plaintiff kept "batch" and was unmarried he was inclined to believe the whole claim a fraud. This changed about half of the jury, they disagreed, and were discharged. The case never came before the court again.

Since those pioneer days many changes have come about, particularly in the methods and machinery for securing justice. The more diversified system of courts, the highly developed rules of procedure, the more commodious courthouses, and the better trained judges exist in marked contrast to the meager facilities and summary methods of the early days.

GEO. F. ROBESON



## Comment by the Editor

### JUSTICE

Thomas Jefferson believed that "justice is instinct and innate, that the moral sense is as much a part of our constitution as that of feeling, seeing, or hearing". Of the truth of this statement there are many proofs. It is the very essence of sportsmanship. Righteousness, being a tenet of religion, is as universal as divine influence. Without a highly developed ethical sense in the rank and file of common folks, political democracy could not endure, for the principal end of civil society is justice. To "establish justice", reads the preamble to the Constitution of the United States.

Nowhere has the hypothesis of inherent rectitude been more clearly demonstrated than among American pioneers. It was from such people that Theodore Roosevelt learned the doctrine of the "square deal".

Whether the rough and ready settlers' love of justice was born of a natural yearning for the right or, as a skeptic suggests, was "nothing more than the fear of suffering injustice" is immaterial. The fact remains that before established law and government were formally extended to these people they had already formulated and administered rules of

conduct for the maintenance of justice among themselves. They required strict observance of their extralegal regulations in the name of common fairness.

It is one thing to be beyond the law and quite another to be above it. The squatters lacked legal protection, but they were law-abiding. While they may have been contemptuous of mere legality, they had great respect for equity and authority. They would have agreed heartily with William Penn that "justice is the insurance which we have on our lives and property; to which may be added, and obedience is the premium which we pay for it."

J. E. B.

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