

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.

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