

## On the Bench

In the fall of 1836 a bride and groom came by boat down the Ohio River, up the Mississippi, and landed at the pioneer village of Prairie du Chien. The groom, Thomas S. Wilson, a young attorney, had been advised to locate either at Mineral Point or at Dubuque. He visited the former place to consider its advantages. On his way back to Prairie du Chien he alighted from his horse at one of the Platt mounds and tossed up a dollar, saying to himself, "If heads turn up, I will go to Dubuque; if tails, to Mineral Point." The coin turned heads up and he located at Dubuque.

During the following year, 1837, another young attorney, Charles Mason, came westward and located at Burlington, which was then the capital of the Territory of Wisconsin. Mason was a native of New York, a graduate of the United States Military Academy at West Point in 1829 with the honor of first rank in the class of which Robert E. Lee was likewise a member. Upon graduation Mason became an instructor at West Point. Two years later he resigned to study law in New York City, where he also practiced law for a time. While in New York he became a contributor to the *Evening Post* and edited the paper while the regular editor, William Cullen Bryant, was absent on a tour of Europe.



Thus as a student, lawyer, and editor he was employed until 1836. In the fall of that year he came to Belmont, Wisconsin, and the following year located at Burlington.

When the Territory of Iowa was organized in 1838, President Martin Van Buren appointed Mason as Chief Justice of the Supreme Court of the Territory, and named Thomas S. Wilson as one of his associates. The third member of the court was Joseph Williams, a native of Pennsylvania. Off the bench, Judge Williams was indeed a unique character — jovial, popular, versatile, and entertaining. Interesting stories are told of his ability as a ventriloquist and an entertainer, of his dexterity and gallantry. Indeed, it is reported that when his first term as judge expired he was reappointed through the influence of gallantry displayed in a chance meeting with the President's wife. But notwithstanding his marked social characteristics, Williams was able to maintain a high degree of dignity on the bench and to attain a place of high standing among the members of the Iowa court.

Very soon after the organization of the Territorial court an interesting case was presented for adjudication. Ralph, a slave in Missouri, had contracted with his master for freedom and had come to the free soil of Iowa. Having failed to fulfill the contract he was seized by order of his master and an attempt was made to take him back to Missouri and slavery. Ralph sued for freedom on the



ground that having lived on free soil he had become free.

The case is strikingly similar to the Dred Scott case, which came before the Supreme Court of the United States a decade later. Scott, like Ralph, had been a slave in Missouri and was taken by his master to the free State of Illinois. Later he was returned to Missouri where he sued for his freedom, but without success. Chief Justice Roger B. Taney in rendering the decision declared that at the time of the adoption of the Constitution negroes were considered as property, that as persons they were so inferior that "they had no rights which the white man was bound to respect," and accordingly Scott was denied his freedom.

The Iowa court, however, in rendering its decision took a more tolerant view. It declared that slavery did not and could not exist in Iowa and that, if a slave with his master's consent became a resident of free soil, he could not thereafter be regarded as a fugitive. So Ralph was given his freedom.

Other important cases came before the Iowa court during the Territorial days, but in the light of subsequent events — the Civil War, the abolition of slavery, and the passage of the Fourteenth Amendment — probably no other decision rendered during that period is more significant than the Ralph case which stands as a tribute to the wisdom and foresight of the Iowa court, a beacon lighting the way to liberty and justice.



When Iowa became a State in 1846, John J. Dyer, a man of marked legal ability, was appointed United States District Judge for Iowa. Ten years later Judge Dyer was succeeded by James M. Love, who served the entire State as Federal District Judge until 1882, when the Judicial District constituting Iowa was divided. Judge Love continued to occupy the bench in the Southern District for an additional period of nine years. In 1891 John S. Woolson became Judge of the Southern District, serving for a period of eight years. He was followed in 1899 by Smith McPherson, who in 1915 was succeeded by Martin J. Wade.

When the State was divided into two districts in 1882, Judge Oliver P. Shiras was assigned to the Northern District, where he served for more than twenty years. In 1903 Henry T. Reed became Judge of this District, serving until 1921, when he was succeeded by Judge George C. Scott. Under the leadership of these judges the United States District Court for Iowa has rendered many important and interesting decisions.

One of these cases arose in connection with a land claim at Dubuque. Julien Dubuque at one time claimed a strip of land twenty miles long and nine miles wide along the west bank of the Mississippi, including valuable lead mines and the site of the present city of Dubuque. Having become indebted to Auguste Chouteau, Dubuque in 1804 conveyed to Chouteau an undivided seven-sixteenths of his es-



tate, and the following year Dubuque and Chouteau filed a claim with the government for possession of the land. Thereafter, for a period of forty-eight years the claim was bandied about before councils, commissions, cabinets, congresses, and courts higher and lower, "the decisions sometimes being one way sometimes another, but none of them ever agreeing". Finally, the case, in the form of ejectment against Patrick Molony, who was occupying part of the disputed claim, came before Judge Dyer and a decision was rendered in favor of Molony. Appeal was taken to the Supreme Court of the United States where the judgment of the lower court was affirmed. The case of *Chouteau v. Molony* as it appears in the court records was in its day "one of the most celebrated cases in the whole United States". Judge Dyer, small in stature but large in soul, had the reputation of being "one of the purest men that ever graced our bench."

Judge Love who succeeded Judge Dyer was a man of wide experience, profound knowledge and unusual legal attainment. He read very widely in history, literature, and law. Frequently when there was a lull in judicial proceedings, or when court adjourned before the appointed hour, he would secure a book and read during the interim. He has been characterized as being "grave without austerity, severe in his Republican simplicity of habits, without a touch of asceticism, dignified and yet always accessible, reserved and retiring among stran-



gers, yet ever genial among his acquaintances and friends, a good talker and a good listener, appreciating a good anecdote and knowing full well how to tell one". As a judge he had few peers. During the thirty-five years of his service on the District Court Bench, only three of his numerous decisions were reversed by the Supreme Court.

Judge Shiras, like his predecessor, was a man of wide experience, and high intellectual attainments. "His mind was naturally reflective; resembling not the shallow brook that babbles on its way, but rather the deep and silent stream that flows with resistless current to the sea".

Judge McPherson is characterized as "the personification of good-fellowship", a man who "carried a warm and sympathetic heart" under a rather brusque exterior. He was kind to the poor, compassionate for the oppressed, and generous to a fault. Of him it could be written, as Webster once said of most good lawyers, he "worked hard, lived well and died poor".

In July, 1862, Congress reorganized the circuits of the United States Circuit Court and included Iowa in the Ninth Judicial Circuit. Samuel F. Miller, a resident of Iowa and a member of the United States Supreme Court, was at that time assigned to the Ninth Circuit and authorized to hold court in Des Moines. After Iowa was transferred to the Eighth Circuit Justice Miller was assigned to that circuit.



As a Justice of the Supreme Court of the United States, Samuel F. Miller is perhaps the most renowned of all Iowa judges. Indeed, his contemporaries maintained that he was "the greatest constitutional lawyer on the Supreme Bench since the time of John Marshall". Of the many important decisions rendered during his term of service on the Supreme Court none is more significant than that of the famous "Slaughter House Cases". This was the first important judicial interpretation of the Civil War amendments, particularly the Fourteenth. In these cases the court held that the State of Louisiana could grant to a corporation the exclusive right to establish and maintain stockyards and slaughter houses within the city of New Orleans, and could close all other such yards within the territory — this being a proper exercise of the police power of the State. Justice Miller, himself, recognizing the importance of such a decision, and in rendering the opinion said: "No questions so far-reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States, and the several States to each other and to the citizens of the State and of the United States, have been before this court during the official life of any of its present members."

In 1869 the work of the Circuit Court was separated from that of the Supreme Court, the office of Circuit Judge was created, and John F. Dillon was



named as the successor of Justice Miller as Judge of the Eighth Circuit Court. Judge Dillon had been a member of the Supreme Court of Iowa. His knowledge of the law was profound. After serving on the Circuit Bench for nine years he resigned to go to New York City, where he became Professor of Law at Columbia University and America's foremost authority in the field of municipal corporations. As a judge his superior knowledge of the law and his judicial attitude of mind was known and recognized by jurists and lawyers everywhere. It has been said that his judicial decisions and his writings "are cited as authority in the rude court rooms of the frontier and in the classic walls of Westminster Hall."

During the fifty years which have elapsed since Judge Dillon's resignation, in 1879, only three Iowa judges — George W. McCrary, Henry C. Caldwell, and Walter I. Smith — have occupied positions on the bench of the Circuit Court. In 1891 the Circuit Court of Appeals, composed of the circuit judges, was created. When the Circuit Court was abolished in 1911, Judge Smith continued on the bench of the Circuit Court of Appeals. William S. Kenyon succeeded Judge Smith in 1922. These men have come to the bench after years of distinguished service in other fields. On the bench they have proven themselves worthy successors to the office once so ably filled by Miller and Dillon.

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