

The Supreme Court in Session

On November 28, 1838, Theodore S. Parvin wrote in his diary: "This afternoon the supreme court of the territory organized, with Judges Mason, Williams and Wilson present." The organic statute creating the Territory of Iowa had provided that "the judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of peace" and stipulated that the Supreme Court was to hold an annual session at the seat of government. In accordance with this requirement, the Iowa legislature provided that "the first session of the supreme court of the Territory shall be held at the city of Burlington, on the twenty-eighth day of November one thousand eight hundred and thirty-eight."

Consequently, on the designated day, Chief Justice Charles Mason, and Associate Justices Joseph Williams and Thomas Wilson assembled in Burlington. According to Theodore Parvin, the court met "in the parlor of the home of one of the pioneers, the good lady having put her house in order for the purpose." At this first meeting Thornton Bayless was appointed Clerk and Charles Weston was named Reporter.

The Territorial statute of November 28th provided that attorneys practicing in the district courts might be authorized to plead before the highest tribunal. And so, the *Iowa Territorial Gazette* on December 1st reported that twenty members of the bar had been admitted to practice before the Supreme Court. These lawyers were: William B. Conway, William H. Starr, W. Henry Starr, M. D. Browning, James W. Grimes, David Rorer, Stephen Whicher, G. W. Teas, Stephen Hempstead, Isaac Van Allen, J. B. Teas, S. C. Hastings, Philip Viele, T. S. Parvin, R. P. Lowe, Alfred Rich, J. W. Woods, B. Rush Petrikin, Irad C. Day, and Charles Weston. Besides this preliminary organization, no further business seems to have been transacted.

The first judiciary act was only a temporary measure for the purpose of effecting the organization of the court. On January 21, 1839, the Legislative Assembly enacted a statute definitely "fixing the terms of the Supreme and District Courts of the Territory of Iowa". As a result, the Supreme Court was authorized to meet at the seat of government "on the first Mondays in July and December".

Thus, on Thursday, July 4, 1839, the *Iowa Patriot* of Burlington briefly noted that "the Supreme Court of Iowa commenced its Session in this city

on Monday last. Hon. Charles Mason, C. J. and his associates, Hon. Jos. Williams and Hon. T. S. Wilson, presiding." W. J. A. Bradford was named Reporter because Charles Weston had become United States District Attorney. According to James W. Woods, a contemporary lawyer, Bradford was "a walking encyclopedia of law and had read everything."

The "first *business session*" of the Territorial Supreme Court was not a long one. According to the *Iowa Territorial Gazette*, there "were some 25 causes upon the calendar for argument most of which were not disposed of finally. Many of them were continued to the next term by consent, and otherwise." Consequently the session lasted only four days. Court adjourned on July 4th until the first Monday of the following December.

Bradford's report of the July session, published in 1840, and the later compilation (1847) by Eastin Morris (who was the successor of Bradford) contain only one decision — in the case of *Ralph*. However, the *Iowa Patriot* on July 11th discussed the litigation of the "Town of Rockingham *v.* The County Commissioners of Dubuque County." This case, it seems, was an action for a writ of mandamus ordering the county commissioners to enter into their minutes a record of the vote on August 6, 1838, for the seat of justice of

Scott County. Instead of granting the petition, the Supreme Court ordered an alternative mandamus "to make the record of the votes declared by the Sheriff according to the regulation of the statute, or to show cause if they have not, why they do not make it."

Far more important was the decision of the court in the case of Ralph. This action was so epoch-making that Associate Justice Wilson, when the case was first brought before him in the Dubuque district court, transferred the controversy to the Supreme Court. The two Burlington newspapers, aware of the significance of the decision, apparently competed for the opportunity to print the opinion of Chief Justice Mason. At least Editor Edwards of the *Patriot* bitterly complained that by "some species of locofocoism or favoritism it was placed in the hands of the Gazette editor, who no doubt felicitates himself in obtaining the first publication of this immensely important document."

The decision of the Iowa court in this momentous slavery dispute provided a precedent for Justice Benjamin R. Curtis's dissent in the Dred Scott case. The question was: did a negro slave become free by residing in free territory? Chief Justice Mason stated that, in the unanimous opinion of the court, since slaveowner Montgomery

had permitted Ralph to enter Iowa, the negro was not a fugitive and was therefore free because he was residing in a free Territory.

For thirteen years this opinion in the case of Ralph remained a precedent for the settlement of similar disputes. Not until 1852, did the Supreme Court of Missouri reverse this rule by declaring that Dred Scott did not gain his freedom by residing in a State where slavery had been excluded by the Missouri Compromise. In general, however, both public and judicial opinion clung to the doctrine that slavery was sectional and could not exist legally in free territory. Then, in 1857, the Supreme Court of the United States repudiated the established rule and destroyed the hope of limiting human bondage in America to the region designated in the Missouri Compromise. In spite of the vigorous dissent of two justices, the rule enunciated in the Ralph case was reversed until the question was finally settled by the constitutional abolition of slavery.

The *Iowa Patriot* commenting on the Ralph case had said: "This decision will doubtless secure the approbation of all who profess to be the friends of humanity and law throughout the country, and obtain for the Judiciary of the infant Territory of Iowa a name abroad, which could not, under other circumstances, have been gained."

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