



JUDGE WILLIAM H. McHENRY, SR.

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ONE of the pioneers who became prominently identified with county and city affairs was William H. McHenry, Sr., who, as his name indicates, was of Irish descent. His ancestors settled in Maryland long before the Revolutionary War, becoming quite prominent. Fort McHenry was named for one of them.

He came here in August, 1848, from Indiana. There were no bridges, and he forded the river, went up to Beaver Creek, about six miles northwest, selected a claim near the creek, built a cabin, and became (sic) a citizen. In his youth, he was deprived of the opportunity to get a liberal education, but he secured the best afforded by the common schools. His greatest proficiency was in mathematics, and he became a surveyor, which was of great benefit to the Beaver Creek Settlement especially, and settlers generally, in locating, fixing the boundaries and corners of their claims. It was during much excitement over claims. For months, speculators and land-seekers from the East had swarmed over the county, making selection of lands, evidently anticipating the time when it would be offered for sale by the Government, and in the absence of a real settler or claim-holder, from sickness or other cause, they could bid it off regardless of all rights of the settler. McHenry quickly saw the danger to his settlement, and at once began an organization for the protection of their claim rights. There were no laws, Territorial or Federal, applicable thereto, so, as he used to put it, "We became a law unto ourselves." A stranger seen going over the country had to be careful not to meddle with land claims, and if suspected of any scheme for jumping a claim, he was not safe until he got out of the country. At a meeting of settlers, McHenry, Tom Baker, and Thomas Watson were appointed to prepare Regulations for the Settlers' Club, which was done as follows:

"One.—There shall be a committee of three to settle all disputes between settlers as to claims, boundary lines, etc.

“Two.—That there be a Secretary, whose duty shall be to register in a book the name of every man, and description of land, each wants bid off at the land sale in Iowa City; that the Secretary shall attend such land sale, and bid off the land in the name of the man registered as claimant; that it should be the duty of settlers to attend the land sales in a body, and there knock down and drag out any man other than the said Secretary who attempts to bid on the settler’s home.”

The claims made by settlers were considered by each and all as sacred, and not to be interfered with, but to be upheld and enforced at all hazards. Those “Club Laws,” as they were called, were peculiarly adapted to the conditions present. They originated in the “eternal fitness of things,” and that class of natural rights not enumerated in the Constitution, Federal or otherwise. In their enforcement, Lynch was often the presiding Judge. His judgments were swift, sure, and certain, from which there was no appeal, no venue, no delay.

Subsequently, a more formal Club was formed, embracing the whole county.

During the first two years of his residence, McHenry did considerable surveying for the Government in other counties. In 1851, he was elected Justice of the Peace, and served two terms. In the meantime, he resumed the study of law, which he had commenced in 1845, but was unable to complete, and in 1851, he was admitted to the Bar of Polk County, and divided his time between sporadic law cases and surveying.

In 1853, he was elected Sheriff, and as such, arrested Pleasant Fouts, who committed the first murder in Polk County, which occurred in August, 1854.

Fouts and his wife lived in discord, and after a quarrel one day, they agreed to separate. He rented their house and went away, but after several months returned, and persuaded his wife to live with him again, and a tent was put up near the house to await the vacation of it by the family who had rented. One evening, Fouts came home, secretly approached his wife while she was at work, and stabbed her. She escaped from him and fled into the house, reeking with blood. Fouts followed her, the bloody knife in hand,

renewed the attack, and cut her throat. She died in a few moments. He fled, but was soon arrested, indicted for murder in the first degree, and arraigned for trial in October, when Curtis Bates and "Dan" Finch, his lawyers, pleaded, "Not Guilty," and asked a change of venue, which was granted, and Jasper County was the county assigned for the trial. When the case came on there, a further venue was asked, and it was sent to Warren County, where, after a very tedious trial, Barlow Granger, Prosecuting Attorney, assisted by Lewis Todhunter, appearing for the state, the jury rendered a verdict of, "Guilty of murder in the first degree."

A motion was made for a new trial, but denied by the court, who ordered that "the defendant be hung by the neck till he is dead, and that the execution of said defendant take place at some public and convenient place within one mile of the town of Indianola, within the County of Warren, on the Fifteenth day of December, A. D. 1854, at one o'clock of that day."

Fouts was remanded to the custody of McHenry, and the case taken to the Supreme Court, for error in the indictment. The claim was sustained, the offense changed to that of "murder in the second degree," and the penalty fixed at imprisonment for life in Fort Madison Penitentiary. McHenry took him by stage coach to Iowa City, and thence, upon the decision of the Supreme Court, to the Penitentiary, where he remained twenty-three years, and died. After his death, his two daughters employed McHenry to settle his estate, and the proceeds were delivered to them.

While he was Sheriff, he was often entrusted with large sums in gold, for the purchase of land, because of his extensive knowledge of the country. He would make the selection, survey it, fix the boundaries, executing the trust with scrupulous exactitude.

In 1856, he was elected County Drainage Commissioner, whose duty it was, in case a person desired to drain his land, and cross the land of another, and they disagreed as to terms, to examine the premises, give the parties a hearing, and fix the damage that might accrue.

It was during this year occurred the memorable contest between the East and West sides over the location of the State House. The Commissioners appointed by the Legislature to make the location employed McHenry to make a survey of the grounds they selected.

On the Twenty-second of April, the West Siders raised a subscription of one hundred and twenty-five thousand and eight hundred dollars, as a bonus to be given, together with ten acres of land, to the state, provided the Capitol was located on the West Side, and the Commissioners were notified thereof. The subscription committee was informed that they would be given a hearing the next morning, and the subscription be considered, but when the hour for the hearing arrived, the West Siders were informed that the location had been fixed. McHenry was called as a witness before a committee of the Legislature to show that the Commissioners had completed their real estate deals, divided the swag, as the West Siders claimed, and located the Capitol several days before hearing from the West Side. His testimony was as follows:

“Question.—Did you reside in Des Moines at the time of the location of the Capitol, in 1856, and were you called upon to survey the ground upon which the Capitol is located, and other public grounds? If so, state what time you were called upon, what time you made the survey, and what time you first heard the location was made.

“Answer.—I did live here. I was called upon to survey the Capitol grounds, I think, on Monday, April Twenty-first. I can't say when I first heard of the location, but it was before I made the survey.

“Question.—What grounds did you survey, and how long did you continue in the employ of the Commissioners?

“Answer.—The first survey was on Capitol Square, the next was one designated on Bausman's map as 'State Grounds,' the next was on the south side of the Raccoon River. I was employed three or four days.

“Question.—Do you recollect making an appointment with Judge Crookham to make a survey on the south side of the Raccoon River?

“Answer.—I do.

“Question.—Did you do any surveying for Judge Crookham (one of the Commissioners) on his private account, or in any way, except as on public grounds?

“Answer.—I never did.”

In November, 1856, McHenry was elected a member of the Town Council of Fort Des Moines, and served until April following, when the town became incorporated as a city and he was elected Mayor.

In 1857, McHenry turned his attention to law practice. His wide acquaintance with people throughout the country, his genial, social temperament, integrity, and veracity won him an immense clientele.

He was not brilliant, but solid, sensible, deliberate, methodical, and reliable. His sympathies were always for the common people, the unfortunate, "the under dog in the fight." His practice was largely in the Criminal Court, and he became the proverbial defender in criminal cases. If a person got within the meshes of law, "Old Bill McHenry," a soubriquet often applied to him, not reproachfully, but as a mark of distinction, of trust, and abiding faith, for there was another "Bill McHenry," his son, a rising young lawyer, now a popular, estimable Judge of the District Court—was secured to get him out. To a client, he was true as steel. The question of fee seldom entered his head. As a rule, his clients were the unfortunate, the poorer class, seldom capitalists or corporations. He was extremely liberal. If his client had no money, it was all the same, hence he never became rich.

As an advocate before a jury, he had few equals. All he wanted was a body of good, sensible men—farmers, if possible—in the box. He never indulged in hifalutin (sic) language, was never spectacular, never emotional, never "played to the gallery." He planted himself in a law of Justice, Equity, and Humanity, and, in his plain, original, unique way, with a vocabulary all his own, abjuring technicalities, despising shystering, he was a powerful pleader.

In 1870, he was elected City Solicitor, with J. P. Foster, a Republican, Mayor, and a Republican majority in the Council.

In 1875, he was elected Alderman for the Second Ward, and re-elected in 1876.

In 1878, he was nominated for Judge of the District Court, by the Democrats. There had not been a Democrat elected to that office in the county for twenty years, and his election was deemed impossible, but he had so ingratiated himself into the confidence

and good-will of the people, he was elected by a large majority, and so admirably did he administer justice, he was re-elected.

In criminal cases, his humanity, sympathy, kindness of heart, and desire to temper justice with mercy, often carried him to the verge of liberality in his decisions. Criticism by the more astute members of the Bar and outsiders availed nothing. He went on, in his rugged, uncommon way, dispensing the Gospel of Justice, Equity and Humanity to the end. In the more abstruse questions of law, he made as good a guess at the solution as the more finished graduates of law schools, and he left the bench with high commendation for his probity and integrity.

He was an enthusiastic member of the Old Settlers' Association, never missed its gatherings, and often entertained the crowd with his large fund of incidents and stories pertaining to early days. He used to tell one on Martin (X) Tucker, who kept the first tavern in the town. Tucker was a pompous, illiterate character, and was known all over the country as "Martin X." His often boasted shrewdness was in detecting schemes of sharpers who floated into town. One day, a down-East Yankee came to the tavern—the town had not got to the "hotel" stage. A few days after his arrival, Martin began quizzing him about Yankee tricks, and asked him to relate some of them. He evaded, but said he would do so later. Soon after, he was missing, and his bill unpaid. Several weeks after, Martin received a letter from him, asking his opinion of Yankee tricks.

Politically, McHenry was a Democrat, of the unterrified variety. He took an active part in all political campaigns. On the stump, his quaint, original speeches were always in demand, and drew the crowds, for they knew what would be coming. He never toyed with "isms," or went off in tangents, but kept within the landmarks of the old party.

He was patriotic, and popular as a Fourth of July speaker, but he kept the "Bird of Freedom" close to the earth, never flying it beyond the vision of the common people, never exploiting rhetorical pyrotechnics.

He was public-spirited. His wide experience in various departments of civic life, his judicial training and conservatism, were helpful to the community in many ways.

He died in 1893, leaving no heritage but the record of a useful, helpful life, and sons and daughters who have won public esteem and preferment.
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by L. F. Andrews

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