

## JUDGE WILLIAM MCKAY

A PIONEER of Des Moines who took an active and influential part in the formative period of the town was Major William McKay, a graduate of a Kentucky military school, hence his title. He came in February, 1846, while the soldiers were here, and while Fort Des Moines was under military control, but considerably relaxed, settlers having been permitted to come in and take residences as best they could. He was a young man of culture, courtly manners, genial and attractive. He soon gained public attention, and was considered a very desirable acquisition to the little hamlet just entering into civic life. The entire population did not exceed one hundred, but was increasing rapidly.

The buildings were of log construction, and comprised those used by the soldiers of the garrison—it was not strictly a “fort.” They extended from the “Point,” at the junction of the rivers, one along Raccoon as far west as Fifth Street, and one along the Des Moines as far as Walnut Street. One of them stood in the rear of the old Demoin House, near Walnut, as late as 1869, and was occupied by “Uncle Tommy” French, a bachelor, a good carpenter, a good man, a good fisherman, who supplied his friends with the best of his catch.

The barrack buildings were quickly filled, and other cabins added.

At the first election in the county, on April Sixth, 1846, a Board of County Commissioners was elected, who had control of all county affairs. At the first meeting of the Board, April Thirteenth, the Major was elected Clerk of the Board, and soon after was appointed County Agent, and directed to sell at auction the houses, rails, and other property which the Government had transferred to the county. The sale was made July Sixteenth, and was a welcome event. Many families were living in tents, or “doubled up” in cabins, and they were anxious to get into better quarters,

and the barrack buildings were quickly sold, to some who afterward lived in more pretentious and costly houses, but not more contented and happy.

The pioneers were patriotic, and July Fourth, 1846, the day was celebrated with great enthusiasm. Anvils and big logs were substituted for cannon, as noise producers. A procession of men and women from the town and country, numbering about two hundred, was formed, headed by two fiddles—brass bands had not materialized—which marched to a small grove—there were plenty of them on the plateau at that time—where Tom Baker delivered an oration, the Major read the National Magna Charta, a big dinner was served; there were toasts and repartees, and a dance in the evening of a very hot day closed the first event of the kind in Polk County.

The first state Legislature, which convened at Iowa City, in November, 1846, decided to remove the Capital to a more central point, and appointed a lot of alleged Quakers to select eight hundred acres of public land, which Congress had donated for that purpose, to be the Capital, which they did, on an open prairie in Jasper County. They platted a town, sold lots, and named the "future Capital" Monroe City. The Major was Clerk of the Commission, and his record of proceedings was too exactly precise. It showed that four hundred and fifteen lots were sold on time payments for seven thousand, one hundred and ninety-eight dollars and twelve cents; that one thousand seven hundred and ninety-seven dollars and forty-three cents was received in cash; that their services and expenses were two thousand, one hundred and six dollars and fifty-seven cents; that two of the Commissioners bid off fifty-two lots and optioned big chunks of land lying roundabout, for future delivery. The whole business was so tainted with "skull-duggery," the Legislature repudiated it.

At the May Term of the District Court, in 1847, the Major was admitted to the Bar of Polk County, and was the first lawyer admitted thereto. He at once became very prominent and successful. On the adoption of the first state Constitution, Polk County was made the Fifth Judicial District, and at the April election, 1849, the Major was elected the first Judge of the District Court.

It is a curious fact that from 1846 to 1849, there was no official record of an election held in Polk County, the only evidence of such election being the record of proceedings and acts of public officers. The first evidence of the election of Judge McKay is his entries on the court docket at the May Term. It was not until 1851 that intelligible county records were kept. The first-comers were easy-going fellows. They didn't stand much on ceremony. There were not many of them; they knew each other well; they would get together, talk over matters, agree on some line of action, go and do it, and let it go at that. There was, however, ample prior official notice of an election to be held, for there were politicians in those days. For instance, County Clerk Lewis Whitten issued the following election notice:

"There will be elected at our next election [no date given] a state officer styled Superintendent of Public Instruction, a district officer styled a District Judge, and such county and township officers as are mentioned in the advertisement. We hope the Democrats will play the Whigs a strong game, and show that we have a majority in the county. It is said the Democratic candidate for Judge is the best lawyer in the state."

The election of Coroner Phillips, the first one elected, is another instance. There is no record to show that a successor was elected to him for sixteen years, yet in the interim the certificates of several persons as Coroner are on file in the county offices. He was an eccentric and somewhat bibulous character, and had an exalted opinion of his office. During the noted "Fleming War," he put the town under Martial Law. He went around to all the stores, ordered them closed and locked, to save the goods from pillage, and everybody to "arm themselves and be ready to act under orders." On another occasion, two Indians came to The Fort, got drunk, and one killed the other. Phillips was called. He came, turned him over, opened his eyes, and pronounced him dead, "dead as h\_\_l." Someone suggested the calling of a jury. "What in hell do you want of a jury?" said he. "He's dead, you know he's dead, and Miss Hays knows he's dead. Bury him, and go about your business."

That occurrence reminds me that the Miss Hays to whom Phillips referred was a somewhat boisterous character. She was once

brought before a Justice of the Peace, charged with assault and battery. The record of the case shows the following:

"On the oath of \_\_\_\_\_, warrant was issued on the 23d day of december. Warrant Returned on the 27th day of december, and the defendant brought, a venire issued and jury brought forth-with, and after the jury was sworn and their names called as follows to wit Thomas Leng, Henry Spong, J. P. Taylor, Samuel Hays, Aron Smith, Stephen Gosse, and witness Swor and examined the jury retired and brought in a verdict of guilty of manslaughter and judgement accordingly and commitment issued and the defendant sent to the county jail.

"\_\_\_\_\_  
"Justice of the Peace."

In April, 1850, when Fort Des Moines Lodge Number Twenty-six, Independent Order of Odd Fellows, was organized, the first instituted in the county, McKay was installed its Warden, and he was a prominent and influential member.

He was a firm believer in the religious creed of the Baptist denomination, and in February, 1851, at a meeting of fifteen of the faith, held in the Court House, he assisted in organizing the First Baptist Church, and he was elected one of the deacons. In January, 1848, the County Commissioners donated a lot to the church, conditioned that a meeting-house be erected thereon within two years, the lot to be held in trust by the Judge. The times were hard, the house was not built, and, to prevent reversion of the lot to the county, the Judge purchased it, and later, when ready to build, he donated the lot to the church.

The Judge was an ardent teetotaler, and avowed his temperance principles on all occasions, even in his political campaigns. In 1852, when North Star Lodge of Good Templars was organized, he was one of the charter members.

He loved the beautiful, whether in animal or still life. He fore-saw, in the broad prairies, running streams, and healthful climate of his adopted state the possibilities for horses, cattle, and grain. In 1853, a movement was inaugurated for the organization of the State Agricultural Society, and for holding the first State Fair, Iowa then being the only Free State not holding such a fair. The

Society was organized in December of that year, and the Judge was elected one of the three directors to represent Polk County.

In 1854, his second term expired, and he was a candidate for re-election. The Know-Nothing craze was rife, and the political atmosphere was breezy. P. M. Casady was the Democratic candidate. The district comprised the whole northwestern part of the state. McKay had become very popular during his four years' service. The fight between the East and West sides over the location of the State House was on, with "blood on the moon." Grimes was running for Governor against Curtis Bates, a prominent Democrat at The Fort, and the outlook portended a close contest. Casady having been State Senator two terms, and largely instrumental in securing the removal of the Capital to Des Moines, was widely known. He was not so good a talker on the stump as McKay, but he got close to the plain people, with his heart-to-heart talks and earnest, logical, convincing way of putting things. The situation demanded strategy—there's nothing like strategy in war. It was anything to beat the Whigs. Marshall County was in the throes of a county-seat contest. W. W. Miller and two others had been appointed to select a place for the county-seat, and they seem to have got in "cahoot" with one John B. Hobbs, for speculative purposes, and located it at Marietta. The court was held in a log building, one side of which was divided into horse stalls, so that Judge McKay's horse quietly munched hay and oats while court was in session. Marshalltown wanted the county-seat, and old "Hank" Anson, father of the well-known baseball player, inaugurated a movement to get it, invited Casady to assist, to which he responded, with the explanation to Des Moines friends that he was going up there to "visit among some old friends." He was received with great cordiality, given "the best in the house," and his horse put up in the "Court House stable." He hobnobbed with the old settlers, chucked the babies under the chin, while he told Miller and his confederates that they had made a mistake—Marietta was too low, wet, and undesirable for a county-seat. Marshalltown won the county-seat, and Casady won the judgeship, but immediately after his election he was appointed Register of the United States Land Office, carrying a better salary, and he resigned the judgeship without holding a court.

After his defeat, McKay returned to the practice of law, in a court presided over by a Judge, the very antithesis of all his moral sentiments, a Judge so eccentric in his habits as to become notorious—the well-known McFarland. Every lawyer of that day was loaded with incidents of his peculiarities. On one occasion, General Samuel A. Rice had an important case before him. The Judge came into court so groggy he couldn't see straight, and in ill-humor. The first business was the hearing of motions, which were presented by the lawyers, every one of which the Judge very curtly denied, without reason or explanation. When Rice's turn came, he very quietly presented his motion with the remark that he did so merely to "save a point," but as his Honor was overruling everything, he could not expect an exception in his case.

"No, you don't, Sammy; no, you don't," said the Judge, arousing himself from his somnolent condition. "This Honorable court has investigated that point, and you are sustained."

As the motion covered all the points he wanted to save, Rice won out.

Soon after his defeat, McKay was appointed a member of the River Land Commission, to represent the state in the final settlement of the tangled affairs of that master project of public improvement and river obstruction.

In 1857, he went to Kansas, where he died in 1859. In all his relations with civic or social life, he stood for the betterment of all.

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**by L. F. Andrews**

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