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THE CIRCUIT COURTS OF IOWA

BY GORDON L. ELLIOTT

Many residents of Iowa do not know that there was once a Circuit Court in this state. Of those who know that fact few have any real information about its life story—the reason for its creation, its jurisdiction, or why it was abolished.

The Circuit Courts of Iowa existed for eighteen years, and handled something like 100,000 cases. It was a court of record, and during all but the first four years had a shorthand reporter. Sixty-nine lawyers graced its bench. The last survivor, Hon. J. H. Henderson of Indianola, later Commerce Counsel of Iowa, passed away within the year.

Extinct for over fifty years, not more than two score lawyers are now living who practiced in the Circuit Court. Most lawyers know there was such a court by seeing the name in the older volumes of the *Iowa Reports*, a mention of it in a county history, or the portraits of former judges displayed in the various court rooms. Once in a while they run across the musty, longhand written, ink-faded dockets and journals of the Circuit Court in some remote corner of the vault attached to the Clerk's office, for the Clerk of the District Court is now the legal custodian of these records. The abstracters are almost the only ones who have occasion to examine them.

The Constitution of 1857, which was in force in 1868, provided that

The District Court shall consist of a single Judge (Art. V, Sec. 5.)

The State shall be divided into eleven Judicial Districts; and after the year Eighteen hundred and sixty, the General Assembly

may reorganize the Judicial Districts and increase or diminish the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District or one Judge of either Court, at any one session; and no re-organization of the districts or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time. (Art. V, Sec. 10.)

The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, etc. (Art. V, Sec. 13.)

The 12th Judicial District was established in 1864.

But with the great increase in population in Iowa immediately following the Civil War, twelve district judges were unable to handle the business in the courts of the state expeditiously. Congestion was much greater on the civil side than on the criminal. To create more judicial districts in order to get more district judges would bring in an unnecessary number of District Attorneys, because the principal duty of the District Attorney was to attend the sessions of court in the various counties of the district, assist the Grand Jury, and prosecute the criminal cases pending.

ESTABLISHMENT OF THE CIRCUIT COURT

The Constitution prohibiting more than one district judge in a district, the 12th General Assembly in 1868 solved the problem by establishing Circuit Courts. Each district was divided into two circuits, with a judge for each circuit. Effective on the first Monday in January, 1869, the number of trial judges in the state was thus increased from twelve to thirty-six, each of the twelve judicial districts then having one district judge and two circuit judges.

With the trebling of judges it was soon found there were more judges than necessary to take care of the litigation coming into the courts, and after four years the legislature, in 1872, reduced the number of circuits one-half by making

the boundaries of the circuits the same as the boundaries of the districts. The same legislature established the 13th Judicial District, so that beginning January, 1873, the state had thirteen district judges and thirteen circuit judges.

The legislature of 1872 also passed a law providing for official shorthand reporters in both the district and circuit courts. No doubt the reduction in circuit judges was influenced by the feeling that the introduction of shorthand reporting would speed up the trials to the extent that the same amount of business could and would be transacted in much less time. This was true because before shorthand reporting, the only record made of testimony given was the written notes of the attorneys and the judge. At important places in the trial it was necessary to delay proceedings until these longhand notes could be made. The record on appeal was arrived at by "settling the bill of exceptions." The attorneys went over their notes and agreed what the record was, or, in the event of dispute, the matter was settled by the judge from his notes and recollection.

The Seventies were stirring times in Iowa. More and more people from the states to the east moved in and became residents. The removal of the state capital from Burlington to Iowa City and then to Des Moines indicates the westward movement of the population center to approximately the geographical center. But court business does not quickly follow increase in population. On the civil side it grows out of disputes over property and is greater where the values are enhanced, where residence has been longer, where estates are to be settled, where titles become complicated, where industry is established and takes its heavier toll in accidents than does a strictly agricultural area. Consequently, no rule of thumb which gave two judges to each district would work. The districts might have the same number of counties, their population might be approximately the same, and still the litigation in one district might be twice or three times as much as in another.

Two judges were not enough in some of the districts, and the legislature came to the relief of the districts where

the court dockets were heaviest by doing the only thing within its power—restoring or adding circuit judges by again dividing the "heavy" districts into two circuits. A second circuit judge was given to the First, Fifth, and Seventh districts in 1878, still another to the Fifth in 1882 by an act which provided one additional circuit judge to every circuit in the state having a population in excess of 22,300 or more by the United States census of 1880; and to the Second, Fourth, and Sixth districts in 1884.

In 1876 the 14th District was established. These changes brought the total number of trial judges in the state in 1885 up to thirty-five—fourteen district judges, one district with three circuit judges, five with two circuit judges, and eight districts each having a single Circuit judge.

The Constitution was amended in 1884 by striking out the provision for the election of District Attorneys and substituting one for the election of county attorneys. The legislature was also given authority at any regular session to divide the state "into the necessary judicial districts for district court purposes."

With the power given to the legislature to provide additional district judges in the several districts as needed, the necessity or reason for the Circuit Court no longer existed. So two years later the 21st General Assembly abolished the circuit courts, and reorganized the state into eighteen judicial districts—three have since been added—with forty-four judges, effective January 1, 1887. At the present time there are seventy district judges in Iowa.

JURISDICTION OF THE CIRCUIT COURT

The act passed in 1868 gave to the circuit courts original and exclusive jurisdiction of probate matters, of the issuing of marriage licenses, of all matters formerly under the jurisdiction of the county judge or county court, and of appeals from justices' and mayors' courts.

The circuit courts were given concurrent jurisdiction with the district court in all civil actions at law, the foreclosure of mortgages, trust deeds and contracts for the sale of real estate, partition, assignment of dower, and appeals under statutes of eminent domain.

No Grand Jury was impaneled in the Circuit Court, but indictments for misdemeanor found in the District Court might be tried, with the consent of the defendant, in the Circuit Court. Cases might be transferred from one court to the other in the same county by consent of the parties.

The salary of each circuit judge was fixed at \$1,500 per year.

After the law had been in effect two years, the 13th General Assembly prescribed that "no jury shall be summoned except for the first and third terms thereof except by written direction of the judge."

The original act also provided for not less than two nor more than four General Term Sessions in each district, at which the district and circuit judges should sit *en banc* for the purpose of making rules of practice, and as an appellate court for the hearing in the first instance of all appeals from the judgments or orders of either the District or Circuit court of said district. Appeals from the General Term Sessions were to the Supreme Court.

An intermediate appellate court proved unpopular, and the 13th General Assembly in 1870 repealed all of the sections relating thereto and restored the right of appeal direct to the Supreme Court. The repealing act became effective on publication, April 1, 1870. Thus the General Term Sessions were in existence only fifteen months. During that period of time, however, over 100 appeals from the General Term Session were taken to the Supreme Court. They are reported in the *Iowa Reports* from volumes 27 to 34 inclusive, and bear a sub-title in the following form: "Appeal from General Term, Second District (Monroe)."

In the Code of 1873 the law with reference to the jurisdiction of the District and Circuit Courts was re-written in the following language:

Sec. 161. The district court shall have and exercise general original jurisdiction, both civil and criminal, where not otherwise provided, and appellate jurisdiction in all criminal matters. Such court shall have a general supervision over all inferior courts and officers in criminal matters, to prevent and correct abuses where no other remedy is provided.

Sec. 162. The circuit court shall have and exercise general original jurisdiction concurrent with the district court in all civil actions and special proceedings, and exclusive jurisdiction in all appeals and writs of error from inferior courts, tribunals, or officers, and a general supervision thereof in all civil matters, to prevent and correct abuses where no other remedy is provided.

In the Code of 1873 the salary of the judges of the Circuit and District Courts was fixed at \$2,200 per year. When the Circuit Court was abolished the salary of the District Judges was increased to \$2,500 per year.

THE CIRCUIT COURT IN POLK COUNTY

The first entry appearing in the Journal of the Circuit Court in and for Polk County reads as follows:

January 18th, 1869.

Now on this day comes the Honorable John Mitchell, sole judge of the 1st Circuit of the 5th Judicial District Iowa and files the following commission in words and figures, to-wit:

State of Iowa

Executive Department

To all whom these presents shall come—Greeting:

Whereas JOHN MITCHELL has been duly elected to the office of Circuit Judge of the first (1st) circuit of the fifth Judicial District of the State of Iowa to fill such office from the first Monday of January, A.D., 1869 to the first Monday of January, A.D., 1873.

Therefore, know ye that in pursuance of law I, SAMUEL MERRILL, Governor of the State of Iowa, in the name and by authority of the people of the State do hereby commission him to said office with full powers and authority to execute and fulfill the duties thereof according to law, and to enjoy all the rights, authorities, privileges, and emoluments thereto legally appertaining for the full term for which he has been elected, unless this

commission be sooner revoked or annulled by lawful authority. In testimony whereof I have here unto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines this twelfth day of December, A.D. 1868 in the ninety-third year of the United States and the twenty-second of the State of Iowa.

By the Governor: SAM MERRILL
Ed Wright, Secretary of State.
(SEAL)

And the last entry in the Journal of the Circuit Court in and for Polk County reads:

December 31, 1886.

Ordered that court adjourn Sine Die.

Josiah Given)
J. H. Henderson) Judges

During the eighteen years of the existence of the Circuit Court, 12,116 cases were filed therein in Polk County, 8,585 in law and 3,531 in equity, the journalized entries of which cover 30 volumes, 22 in law and 8 in equity.

WHAT BECAME OF THE CIRCUIT JUDGES

Of the sixty-nine circuit judges in Iowa one-third advanced to higher courts. Seven—McDill, Forrey, Winslow, Wilson, Bagg, Ruddick and Loofbourow—became District Judges during the eighteen-year period of the court. Thirteen—Phelps, Traverse, Stuart, Wakefield, Given, Henderson, Lewis, Leffingwell, Granger, Miracle, Cleland, Conner and Macomber—went to the District Court upon the abolition of the Circuit Court, and two others—Sloan and Ney—were later advanced. Judge William E. Miller was appointed to the Supreme Court from the Circuit Court. Judges Given and Granger, after serving on the District Bench, were also elevated to the Supreme Bench. And Judge Given, after his retirement from the Supreme Bench, served a short time as District Judge in Polk County by appointment.

Nine Circuit Judges—Given, Connor, Winslow, Benson, Barker, Granger, Bradley, Cleland and Conner—had also served as District Attorney before they went on the bench.

Twelve Circuit Judges lost their positions in 1872 when the number of circuits was reduced, and were not re-elected. Others were succeeded during the life of the court for one cause or another.

The judicial careers of eight Circuit Judges—Jeffries, Chaney, McCallum, Calivert, Crozier, French, Hedges and Utt—ended when the court was abolished.

CROZIER V. LYONS, AUDITOR OF STATE

Judge Crozier brought an action to test the validity of the act abolishing the Circuit Courts, claiming that the office of circuit judge had not been abolished by any act of the legislature, and that he was still entitled to the salary affixed to said office. He demanded of the defendant, the Auditor of State, a warrant for such salary for the month of January, 1887. The auditor refused to issue the warrant, and

... The act did not in terms abolish the office of circuit judge, and the question to be determined is, was the office abolished by the provisions of the statute above cited? ... The legislature had power to abolish the office of judge of the circuit court In our opinion the above cited sections operate as a repeal of the law creating the office of circuit judge.

... It is true, as claimed by counsel, that the judges of the circuit court had other duties to perform, not connected with the holding of court to appoint commissioners of insanity, to inspect jails, to send children to the reform schools, to inquire into the question as to the insanity of persons in confinement, etc. When the courts and circuits were abolished, there were no judges of the courts to perform these duties, and exercise these powers.

In our opinion the demurrer to the answer was properly overruled.

thereupon Crozier commenced an action of *mandamus* to compel the auditor to issue the warrant. The defendant auditor asserted in his answer that he had no authority to issue the warrant because the office of circuit judge had

been abolished by act of the legislature. There was a demurrer to the answer, which was overruled by the District Court, and the plaintiff appealed. The Supreme Court, in its opinion affirming the action of the lower court (72 Iowa 401) said, among other things:

JUDGES OF THE CIRCUIT COURT

(Figures in parentheses indicate Circuits.)

First District

- (1) Lee and Henry Counties: John B. Drayer, 1869-1880; William J. Jeffries, 1881-1886.
- (2) Des Moines and Louisa Counties: John C. Power, 1869-1872. (Included in First Circuit, 1873-8) Charles H. Phelps, 1878-1886.

Second District

- (1) Van Buren, Wapello and Davis Counties: Robert Sloan 1869-1880; Henry C. Traverse, 1881-1886. Dell Stuart, 1885-1886. (Additional judge added by 20th G.A.)
- (2) Appanoose, Monroe, Lucas and Wayne Counties: Henry L. Dashiell, 1869-1872. (Included in First Circuit, 1873-1886.)

Third District

- (1) Page, Montgomery, Fremont, Mills and Pottawattamie Counties: (1873 - Fremont, Mills and Pottawattamie Counties transferred to 13th District): R. L. Douglas, 1869-1872; J. W. Hewitt, 1873-1878; D. D. Gregory, 1878-1884; John Chaney, 1885-1886.
- (2) Clarke, Decatur, Union, Ringgold, Adams and Taylor Counties: (1872 - All counties transferred to First Circuit) J. W. McDill, 1869-1870; Samuel Forrey, 1870-1872.

Fourth District

- (1) Harrison, Shelby, Crawford, Monona, Woodbury, Ida, Cherokee, Plymouth, Sioux, O'Brien, Osceola and Lyon Counties: (1873, Shelby and Crawford Counties transferred to 13th District. 1877, Ida County transferred to

14th District) Addison Oliver, 1869-1874; J. R. Zuver, 1874-1884.

- (1) Lyon, Osceola, O'Brien, Sioux and Plymouth Counties: David D. McCallum, 1885-1886.
- (2) Woodbury, Monona, Harrison and Cherokee Counties: George W. Wakefield, 1885-1886.
- (2) Sac, Calhoun, Humboldt, Pocahontas, Buena Vista, Clay, Palo Alto, Kossuth, Emmet and Dickinson Counties: (All counties in this circuit included in original First Circuit, 1873-1876. Beginning January 1, 1877, 14th District constituted from these counties and Ida County.) Jared M. Snyder, 1869-1872.

Fifth District

- (1) Warren, Polk and Dallas Counties: (1872, Madison, Adair and Guthrie Counties added. 1878, Madison, Adair, Guthrie, and Dallas Counties transferred to Second Circuit.) John Mitchell, 1869-1880; Josiah Given, 1881-1886.
William Connor, 1883-1885; Ripley N. Baylies, 1885; J. H. Henderson, 1885-1886.
- (2) Madison, Adair, Cass, Audubon, Carroll, Greene and Guthrie Counties: (1873, Cass, Audubon, Carroll and Greene Counties added to 13th District; remaining Counties added to First Circuit. 1878, Madison, Adair, Guthrie and Dallas Counties placed in Second Circuit.) Frederick Mott, 1869-1872; S. A. Callvert, 1878-1886.

Sixth District

- (1) Washington, Jefferson, Keokuk and Poweshiek Counties: Lucian C. Blanchard, 1869-1880; William R. Lewis, 1881-1886.
- (2) Mahaska, Marion and Jasper Counties: H. S. Winslow, 1869-1870; Stephen M. Lindley, 1870-1872. (Included in First Circuit, 1873-1884.) John A. Hoffman, 1884; George W. Crozier, 1885-1886.

Seventh District

- (1) Scott and Muscatine Counties: Henry H. Benson, 1869-1872; Daniel W. Ellis, 1873-1880. Clinton and Jackson

Counties: (1878); Charles W. Chase, 1881-1884; A. J. Leffingwell, 1885-1886.

- (2) Clinton and Jackson Counties: George B. Young, 1869-1872. Daniel W. Ellis, 1872. (Included in First Circuit, 1873-1878.) Scott and Muscatine Counties (1878): DeWitt C. Richman, 1878-1883; Nathaniel French, 1883-1886.

Eighth District

- (1) Benton, Tama, Iowa and Johnson Counties: William E. Miller, 1869-1870; George R. Struble, 1870-1872; W. J. Haddock, 1872; John McKean, 1873-1880; Christian W. Hedges, 1881-1886.
- (2) Cedar, Linn and Jones Counties: Sylvanus Yates, 1869-1872. (Included in First Circuit, 1873-1886.)

Ninth District

- (1) Dubuque and Delaware Counties: Winslow T. Barker, 1869-1872; David S. Wilson, 1872; B. W. Poor, 1872; Sylvester Bagg, 1873-1878; Benjamin W. Lacy, 1879-1883; John J. Ney, 1884; W. H. Utt, 1884-1886.
- (2) Buchanan, Black Hawk and Grundy Counties: Sylvester Bagg, 1869-1872. (Included in First Circuit, 1873-1886.)

Tenth District

- (1) Allamakee, Winneshiek and Howard Counties: Martin W. Burdick, 1869-1872; Charles T. Granger, 1873-1886.
- (2) Clayton, Fayette and Chickasaw Counties: Benjamin T. Hunt, 1869-1872; (Included in First Circuit, 1873-1886.)

Eleventh District

- (1) Marshall, Story and Boone Counties: Henry Hudson, 1869-1872; John H. Bradley, 1873-1880; David D. Miracle, 1881-1886.
- (2) Hamilton, Franklin, Hardin, Wright and Webster Counties; S. L. Rose, 1869-1872. (Included in First Circuit, 1873-1886.)

Twelfth District

- (1) Bremer, Floyd and Butler Counties: George W. Riddick, 1869-1870; Robert G. Reiniger, 1870-1884; J. B. Cleland, 1885-1886.

- (2) Mitchell, Worth, Winnebago, Hancock and Cerro Gordo Counties: Harvey N. Brockway, 1869-1872. (Included in First Circuit, 1873-1886.)

Thirteenth District

(Created by 14th G.A., 1872.)

- (1) Fremont, Mills, Audubon, Pottawattamie, Cass, Crawford, Shelby, Carroll and Greene Counties: Thomas R. Stockton, 1873-1876; C. F. Loofbourow, 1877-1883; Joseph Lyman 1884; James P. Conner, 1884-1886.

Fourteenth District

(Created by 16th G.A., 1876)

- (1) Calhoun, Ida, Sac, Buena Vista, Pocahontas, Humboldt, Kossuth, Palo Alto, Clay, Dickinson and Emmet Counties: John N. Weaver, 1877-1884; J. H. Macomber, 1885-1886.

—*Gordon L. Elliott, of Des Moines, member of the bar and Shorthand Reporter in the Polk County District Court for over thirty years, has long been a close student of legal and judicial history.*

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