



JUDGE C. J. McFARLAND

JUDGE C. J. McFARLAND

ONE of the most unique and noted characters of the very early days in Polk County and Des Moines was Cave J. McFarland, the second Judge of the District Court, who stands out the most prominent in the judicial history of the state of any man connected therewith.

A native of Ohio, he came to Iowa when in the full vigor of early manhood; was of strong, athletic physique, which made him especially attractive anywhere; was social, convivial, and of pleasing manner. He stopped in Lee County, opened a law office, and was soon after elected County Attorney.

In 1851, he was elected Representative to the Legislature from that county. During the session, P. M. Casady, Senator from Polk County, prepared a bill creating the Fifth Judicial District, and when it went to the Lower House, McFarland opposed it, declaring it was simply "a scheme to give some poor lawyer up at Des Moines a salary of a thousand dollars a year as Judge." The bill, however, passed. Polk County, then, for election and judicial purposes, embraced the whole northwest part of the state west of Hardin County. Under that act, William McKay was elected the first Judge in the district.

In 1853, McFarland went to Boonesboro [sic], resumed his profession, secured a good practice, and became quite popular.

In 1854, at the Judicial Convention of the Democrats, to nominate a successor to McKay, P. M. Casady was a candidate, and McFarland also turned up for that "salary of a thousand dollars a year." The Whigs renominated McKay. Casady was elected by a large majority, qualified and received his commission, but soon after was tendered the office of Receiver of the United States Land Office, by President Pierce, which he accepted and resigned the judgeship without holding a session of court, greatly to the regret of the people, and especially members of the Bar, for, had he

served, the unenviable notoriety and disgrace which came to the court would have been avoided.

Stephen Hempstead, of Dubuque, was then Governor. The Democrats unanimously recommended "Dan" Finch as successor to Casady, but the Governor, having Congressional aspirations, his term nearing its end, evidently wanted to get his fences in the best possible condition to corral the most votes, and he appointed McFarland, giving as a reason that in the convention which nominated Casady, he had the next highest vote, and was therefore the logical candidate. Whatever may have been the reason, Hempstead never got to Congress.

At the next Judicial Convention of the Democrats, Polk County voted for Curtis Bates; Marion County, under the leadership of William M. Stone, for George May Boone County for McFarland. The contest was protracted and hot, but finally resulted in the nomination of McFarland by a majority of one vote.

The Whigs nominated William W. Williamson, of Des Moines. The contest was a vigorous one. The northwest portion of the district was sparsely settled. Election precincts were indefinitely defined, or not at all. The voters of a settlement got together and fixed an imaginary line for a precinct, and then voted where they pleased. When the returns came in, Williamson was declared to be elected, by less than a dozen majority, and he was given his commission.

John Hull, a big politician in early days, in Boone County, and other friends of McFarland, contested the election, on the ground that it was void by reason of unlawful practices and gross irregularities in the proceedings. An investigation was made by the Board of Canvassers, and the votes were recounted. It was shown that most of the returns were made on pages torn from blank books, on loose, variegated sheets of paper, unauthenticated by signature, oath, or otherwise, of anybody as judges of election, or in what precinct the votes were cast that Williamson received several votes in Minnesota, or at least outside of the district that the one majority vote which nominated McFarland was cast by proxy for an alleged county which had no existence. The Board threw out the votes cast for Williamson in Minnesota, and gave the majority

to McFarland. Williamson's friends appealed to the Supreme Court, where it was held that, while there were irregularities in the manner of election, no fraudulent action had been shown; that the intent and purpose of the voter must be accepted [sic], and the decision of the Canvassing Board was affirmed.

McFarland was one of the finest specimens of physical manhood six feet in height, weighed nearly two hundred pounds, of symmetrical form, of gigantic strength, which he was ever ready to demonstrate if occasion required, dressed finely, and wore a heavy, black, glossy beard. He was fearless, dissipated, humorous, kind-hearted, sympathetic and reckless; had many faults, yet many virtues, which, with those knowing him best, outweighed his frailties. As a Judge, he was eminently just, ever inclined to disregard the letter of the law if thereby exact justice could be obtained. His sympathies were always with the weak. A client with a better lawyer got little advantage therefrom, for the Judge would find some way to overcome it and help the weaker side.

His faith in a jury was implicit. It was his rule to sustain them, and overrule all motions to set aside verdicts. He studied the case before him, and so soon as he was satisfied where the equities rested, to that side he gave the influence of the court. His decisions were rarely reversed. Exact justice was his dominant desire, regardless of technicalities, lawyers, and often the law itself. The lawyers of the district were loaded with proof of that.

Probably no one knew the Judge better than "Dan" Finch, one of the foremost lawyers of the state. They were strong personal friends, traversed the circuit in a buggy, stopped at the same hotel, ate at the same table, and slept in the same bed, which, supposedly, would give "Dan" an advantage in court, but when on the bench, personal friendships had no weight, and "Dan" often declared that the Judge took especial delight in ruling against him. On one occasion, he was trying an important case at Marietta, then the County Seat of Marshall County, as attorney for the plaintiff. Important financial interests, as well as close points of law were involved. It occupied several days, running to the closing hours of the last day of the term. The trial had not progressed far before he discovered that not only four big lawyers, but the court, was

against him. He finished his final speech to the jury about nine o'clock in the evening, when the Judge at once began orally to instruct the jury. The law then required such instructions to be given in writing on demand of either party. "Dan" concluded that the Judge's speech was more like that of a lawyer than an impartial Judge. He arose and called the attention of the Judge to the statute, and requested that the instructions be reduced to writing, to which he replied: "Daniel, take your seat." "Dan" sat down, and the Judge resumed his speech. "Dan" arose again and repeated his demand, to which the Judge retorted: "Daniel, sit down, and stay there. Mr. Sheriff, if he arises again, take him to jail and keep him there until further orders." "Dan" was up in an instant, called the attention of the members of the Bar present to his demand, as he might need their affidavits in further proceedings, and sat down. A moment after, the Judge said to the Clerk: "Give me some paper, a pen and ink, and I will give that d—d young man more written instructions than he wants." The instructions were very short, and substantially told the jury to find for the defendant.

The Judge and "Dan" then went to their room at the tavern, to wait return of the jury, and sat down. After a long silence, the Judge said: " 'Dan,' don't you think you made a d—d fool of yourself?" to which "Dan" retorted: "I know you have," which made the Judge mad. He declared he would mash "Dan's" head, and started for him, when the Sheriff appeared and announced that the jury had agreed upon a verdict. They returned to the Court House, where the verdict was found to be for "Dan." The defendant's attorney made a strong appeal for a new trial, where-upon "Dan" simply reminded the Judge of his rule respecting verdicts. The Judge hesitated a few moments, and then said: "The verdict is a d—d outrage, but I will stick to the rule; the motion is overruled." Returning to their room, the Judge said: " 'Dan,' don't you think we both made d—d fools of ourselves?" to which "Dan" retorted: "The jury did not say I have." "Well, let's take a drink and say no more about it," said the Judge.

On another occasion, at the first court held in Webster County, in a new, incomplected log building, without door, windows or roof;

a rough pine table had been provided for the court and lawyers, and slab seats for the jury and spectators. A new Sheriff had been elected, who was present—a well dressed, portly individual, topped out with a plug hat, which he placed on the table beside "Dan." Being wholly ignorant of court duties, he asked the court for instructions, which were written out respecting opening court. He folded them carefully and placed them in his hat. The temptation to "Dan" was too great. Purloining the paper, he wrote another and put it in the hat. At the proper time, the court directed the Sheriff to open court. He went to the opening for a door and roared out:

"Hear, ye! Hear, ye! All who have grists to grind in this mill, bring them in forthwith."

"Hold on, there, Mr. Sheriff. What in h—l is that stuff you are reading," roared the Judge.

"Your Honor, it is the paper you gave me," replied the Sheriff.

The Judge turned to "Dan," who was diligently looking over his papers, and said: " 'Dan' Finch, that is some of your d—d work; I know it is."

On another occasion, the court was in session at Marietta, in a log cabin. A lawyer named Wood, or "Old Timber," as he was known all over the district, and noted for his fog-horn voice, was making his speech, when a man rode up, and hitched his mule near the open door. "Timber" was reaching the climax of his argument, when the mule burst forth with unearthly hee-haws. The Judge roared out: "Hold on, there, Timber; one jackass at a time is enough for this court."

On another occasion, at Newton, Harvey J. Skiff, a well-known old-time lawyer, and a Captain in General Crocker's regiment during the Civil War, was vigorously contesting a motion, when the Judge ordered him to sit down, which he did not do, whereupon the Judge ordered him to be fined. "Fine and be d—d," retorted Skiff. The Judge then ordered the Sheriff to take him to Des Moines and commit him to jail until further orders, but he soon discovered there were not enough officers in Jasper County to do it, and the matter was dropped.

With all his faults and frailties, the Judge had a warm heart. His sympathies were easily aroused, were deep and abiding. He

was confiding, and thus liable to be deceived. As an instance, a young fellow giving the name of Isaac Francisco had been indicted in Dallas County for horse stealing. He was a stranger, without money or friends, quiet, genteel, appeared the picture of innocence and the victim of untoward circumstances. The court requested "Dan" to defend him. In his own defense, the fellow told so plausible a story and so impressed the jury that, although they gave a verdict against him, they recommended him to the mercy of the court. When the Judge called him up for sentence, he said, with tears rolling down his cheeks, he wished he had the power to save so manly appearing a young man from the penitentiary. He then sentenced him to the penitentiary for one day. Immediately, the Judge, Grand Jury, Petit Jury, and every lawyer present, signed a petition to Governor Grimes for a pardon. The Judge then directed the Sheriff to go *via* Burlington and present the petition to the Governor, which was done, and the Governor pardoned him. Three years after, a man charged with a heinous crime committed in Hardin County was brought to the Des Moines jail for safe keeping. He sent for "Dan" to take his case. He was a fine appearing fellow, well dressed, said he had money coming to him, gave his name and residence. "Dan" looked him over carefully, and decided to sleep over it. During the night, he concluded the fellow was his old Dallas County client, over which the Judge had shed his tears. The next morning, he accosted him with: "Good morning, Isaac." He replied that his name was not Isaac, but "Dan" quickly convinced him that he knew him, whereupon he confessed the whole matter. That night he broke jail, and was never heard of again.

The Judge was rigidly opposed to unnecessary and useless court expenses, and cut them off wherever possible. In Marion County, a petition was filed by a man for a divorce. When the time came for the hearing, the man, his lawyer and a score of witnesses were present. The Judge, looking over the aggregation, asked the lawyer what he wanted of so many witnesses. "To prove the allegations in our petition," was the reply. "Take your decree; I know the defendant," said the Judge.

At another time, a fellow had been captured at Fort Dodge with a horse in his possession he had stolen. The Judge happened to

be at Homer, the County Seat, and was told of the arrest. It was not court time, but he directed that the prisoner be brought to Homer at once, with the witnesses, which was done. He then directed the Sheriff to call in a Grand Jury. An indictment was found, when the Judge called him up and said to him: "Now, young man, if you plead guilty, I will send you to the penitentiary for only one year, but if you don't, and put the county to the expense of trying you, I will send you to the 'pen' until your hair turns white." The fellow pleaded guilty, received the sentence, and served the time.

Such a proceeding would probably not be affirmed by our present Supreme Court, but a little of it nowadays would be beneficial in many ways. It would save a vast amount of money and expenses, and secure swift punishment of crime. The summary methods of dealing with horse thieves and claim-jumpers by pioneer settlers' Vigilance Committees put a quietus on that sort of rascality, for the culprits, if caught, knew what was coming to them.

The Judge was chairman of the Iowa delegation to the National Convention which nominated Buchanan for President. His fine personal appearance, athletic physique, and heavy, glossy beard made him a conspicuous mark. A press correspondent describing the personnel of the delegations wrote of him as "a man with a flourishing crop of whiskers, whose luxurious growth doubtless exhausted such a large proportion of nutriment as to greatly affect the nerve center of the brain." When the Judge read it, he was furious, and declared he would "wipe the streets with his d—d carcass" if he could find him, but he did not find him.

The Judge was patriotic. Immediately after the Spirit Lake Massacre, rumors came that the Indians were returning and murdering the settlers on their way. The settlers at once began organizing militia for defense, the Governor sending guns and ammunition therefore [sic]. The Judge joined a company of one hundred mounted men from Boone County, armed and equipped for battle. Arriving at Webster City, they were met by the entire populace, when the Judge, arising in his saddle, exclaimed with his loudest voice: "The Boone Tigers are here. Bring on your Indians, and we will lick h—1 out of them."

Seen upon the street, in a black frock coat, the skirts of which connected with high-topped boots, a stove-pipe hat, covering a big, round face, of changeable color, the Judge was sure to arrest the attention of a stranger, and elicit the query: "Who's that?" to be answered: "Judge McFarland, of the District Court."

He was a good judge of whiskey, and, good or bad, could never "pass it" without "turning it down," and, when overloaded, it developed that keen sense of humor which inspired the many incidents related of him. It would be unjust to his memory, however, to omit mention of his many good qualities, which, to those who knew him well, offset his uncouth ways and unfortunate habits, for he was really a man of social instincts, and manners of a gentleman. His virtues were all extrinsic, his faults intrinsic, and in combination so strong as to be rarely found in one individual. I know of no person who ever questioned his integrity, whether on or off the bench. What he lacked in legal acquirement, was compensated by intellectual capacity, stalwart common sense, and love of exact justice, with which he was as well qualified to give as correct a guess—Iowa jurisprudence being then in its infancy, and precedents few—at the law and equities of a case as the average university lawyer of to-day. While appeals from him to the Supreme Court were innumerable, he was rarely reversed.

He died a horrible death, as the result of his bibulous habits.

January Twenty-eighth, 1906.

Transcribed from:

PIONEERS OF POLK COUNTY, IOWA AND REMINISCENCES OF EARLY DAYS

by L. F. Andrews

Volume I

Des Moines, Baker-Trisler Company, 1908