

Judge Henry B. Hendershott

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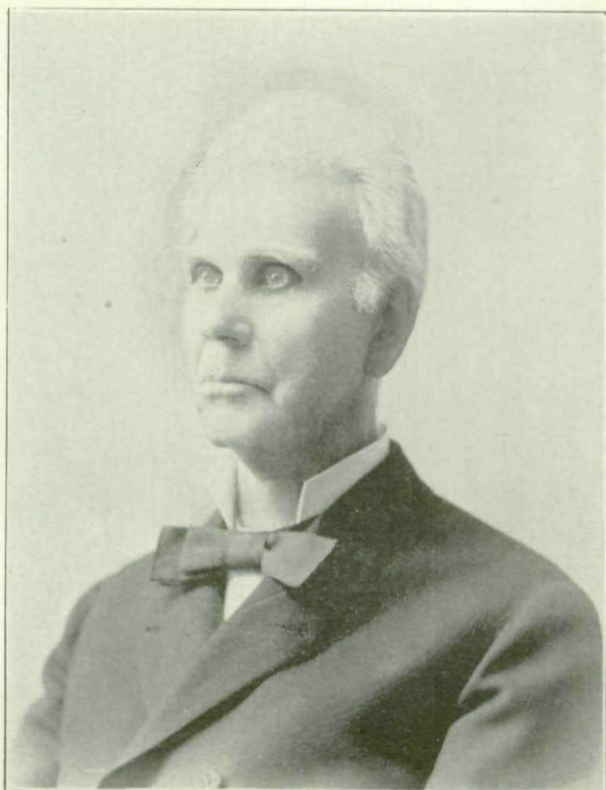
JUDGE HENRY B. HENDERSHOTT.

BY HON. EDWARD H. STILES.*

The recent death of Francis Springer who, as a member of four legislative assemblies of the Territory and two of the State, president of the Constitutional Convention of 1857, and many years a judge in his judicial district, rendered conspicuous service in laying the foundations and shaping the jurisprudence of Iowa, forcibly reminds us that nearly all of the individual links that bind us to its early history are broken. Scarcely any remain. The subject of this sketch, Henry B. Hendershott, is now, I believe, the only surviving district judge of the period during which he presided over the second judicial district. In his eighty-third year, with a personal history glorified by pure living and useful services to the Territory and State, he calmly watches the lengthening shadows.

His career adds another instance to the strong and self-made men who braved the hardships of pioneer life to make Iowa what she is. It is well worthy of study as an inspiring example to young men without means who are emulous of honors and success. It is also worthy of permanent preservation in the archives of the State in order that perpetual honor may be done to the memory of one who has served it so faithfully and well. He was decidedly a child of the frontier, and in essential respects may be said to have been a resident of four different Territories during his earlier years. For though born in Ohio after it became a State, it was only a short period after its emergence from a territorial

*Hon. Edward H. Stiles was for many years a resident of Ottumwa. During this time he was elected to the Iowa House of Representatives for the session of 1864, and to the State Senate in the autumn of 1865. He served in the regular session of 1866, but at the general election that year was chosen Reporter of the Supreme Court of the State, and resigned the Senatorship. He was re-elected in 1870 and held this position until January, 1875. His Reports fill 16 octavo volumes in the Iowa State Library. He soon after removed to Kansas City, where he still resides. He is at present Master in Chancery of the U. S. Circuit Court for the Western District of Missouri.



Truly Yours,
H. B. Hendershott.

JUDGE HENRY B. HENDERSHOTT.
From a recent photograph.

condition and while it was yet for the most part a wilderness. It was admitted in 1802, and had then a population, including whites and negroes, of only some forty thousand people. He was born in the wilds of Miami county in 1816. In the fall of the same year the family moved to the then Territory of Illinois, the subject of this sketch being carried in his mother's lap on horseback, while the other members of the family traveled, and carried their personal effects, in wagons.

Those of us who have had some experience in making their way with wagons through primeval regions, will readily appreciate the great difficulties and hardships which must have been incident to such a journey through the western part of the new Ohio, through the forests and across the streams and gullies of the then Indiana Territory, and until the destination in the Illinois Territory was reached. Twenty years afterward, in 1836, the family again moved, this time to the Territory of Wisconsin, settling in Burlington. In 1838 Iowa Territory was organized out of that portion of Wisconsin Territory, Burlington became its capital, and the Hendershott family residents of a new Territory.

In the third session of the Territorial Assembly, convened at Burlington November 2, 1841, his father, David Hendershott, was a member.

The early years of our subject—from 1816 when, as we have seen, the family moved to Illinois Territory, to 1836, when they moved to Wisconsin Territory—were passed in Illinois, amid the scenes and privations of frontier life. Educational opportunities were extremely limited. Schools were few and far between. The nearest one some three miles distant from the Hendershotts, and open only for a few months during the winter. To attend it punctually at that distance through the snows and storms of an inclement season required no ordinary amount of resolution. But young Hendershott, inspired by a thirst for knowledge and a determination to reach worthy accomplishments, so studiously availed himself of the humble means offered, that at the age of nineteen he felt himself competent to enter Illinois College, located at Jacksonville. To this point he accordingly bent his steps, on

foot, alone, and with only a few dollars in his pocket. In this plight he presented himself before the University, told his humble story to the faculty, and desired to be given an opportunity to pay his way through the institution by the results of his own labor. The faculty, of which Edward Beecher was president, were so struck by the heroism of the lad that they resolved to lend him all the aid and encouragement in their power. Here he remained for two years, alternating between labor and study, never, I am told, falling behind his classes, and proving himself a close student. In the meantime the family had made the removal already stated to Burlington, where at the end of his college term, the son entered upon the course of his legal studies under the supervision of David Rorer and M. D. Browning, both of whom were distinguished lawyers. Charles Mason, in my judgment one of the greatest men who have figured in Iowa history, was one of the Judges and Chief Justice of the Territorial Supreme Court, and ex-officio Judge of the District Court of Des Moines county. His attention was attracted to young Hendershott and he appointed him deputy clerk of the latter court, a position he retained for two years, pursuing his legal studies in the meantime. In 1841 he was admitted to the bar. In 1844 he came to Ottumwa where he has since continuously resided for a period of more than fifty-five years. It had but recently been the seat of an Indian village, the Indians having departed the preceding May under the terms of the treaty. It is now a flourishing city of some 20,000 inhabitants. Judge Hendershott took a prominent part in laying its foundations as he did those of the county. He has always been an honor to the city he helped to build, and its people, irrespective of politics, religion or race, hold him in affectionate esteem. For a short time prior to his coming to Ottumwa, Hendershott had resided in the same county at Agency City, so called because it had been the seat of the Sacs and Fox Indian agency prior to the departure of the Indians May 1, 1843. Recognizing his superior fitness for the position Judge Mason had, in the February previous to his removal to Ottumwa, appointed him chief clerk of

the United States District Court of Wapello county, of which Mason was the judge as well as that of Des Moines county, of which Hendershott, as we have seen, had, while living at Burlington, been deputy clerk. The functions of the court were dual. It acted on behalf of Iowa, in administering the laws of the Territory, and on behalf of the United States, in administering the laws of Congress. At the time of Hendershott's appointment as chief clerk (February, 1844) the county of Wapello had not been organized, and under the act it became his duty as clerk, aided by the sheriff, to organize it, and it was done on the 1st of March, 1844. The first term of the court was held at Ottumwa the following September. Hendershott was its first clerk, and its first judicial entries are embalmed in his familiar handwriting. In 1845 he was appointed by the Governor of the Territory, James Clarke, prosecuting attorney for the seventh district. In 1847 he was appointed by the late Gen. George W. Jones, the surveyor-general of Wisconsin and Iowa, deputy surveyor, and as such subsequently surveyed and sub-divided six townships of government land into sections. In 1848 he was appointed by the Supreme Court of the United States the commissioner on the part of Iowa, to act with a like commissioner appointed on the part of Missouri to ascertain, fix and settle the vexed question of the boundary line between Iowa and Missouri, which had been fruitful of disputes, bad blood between the States, and finally of what is known as the "Missouri War." The decision and report of Judge Hendershott and his co-commissioner on the part of Missouri, W. G. Minor, were accepted as a final settlement of the controversy.

In 1850 he was elected State Senator from the district comprising the counties of Wapello, Monroe, Lucas and Clarke. He was a conspicuous member of the judiciary committee, and many of the provisions of the Code of 1851, I am credibly informed, emanated from his highly judicial and painstaking mind.

In 1857 he was elected District Judge of the second judicial district, and so conspicuous were his services and ability

in that position, that he was regarded as one of the very best judges the State ever had. He had before him as practitioners highly qualified to judge of his merits, such distinguished lawyers as Jonathan C. Hall, Joseph C. Knapp, George G. Wright, Christian W. Slagle, David Rorer, Henry C. Caldwell and James F. Wilson. He was on the bench when I was admitted to the bar, now upwards of forty years ago. It has since been my fortune to appear before many courts both in Iowa and Missouri, and my observation has but confirmed my high estimate of Judge Hendershott as a trial judge, possessing in an extraordinary degree those peculiar qualifications that go to make up a model in that respect. I believe every lawyer of discernment and experience will concur with me in the opinion that the most common weakness in such a judge is an inclination to talk too much, to display his own astuteness, and not be what is termed a good listener. From these causes I have known many lawyers highly successful at the bar prove sorely disappointing on the bench. Such was the case with Lord Brougham, as shown by the following remarks of Greville in his memoirs or "Journals" of that period: "Brougham," says he, "is a bad presiding judge, for he will talk so much to the counsel, and say pungent things which elicit rejoinders and heat. The extreme gravity and patient attention of old Eldon struck me forcibly as contrasted with the flippant and sarcastic interruptions of Brougham."—[Greville's Journals of the Reigns of George IV and William IV, Vol. 2, page 239.]

On the same subject Lord Bacon tersely says: "Gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal. It is no grace for him to question first to find out that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent information by questions, though pertinent."

Judge Hendershott was as free from these faults as any man I have ever seen on the bench, with the possible exception of Judge George W. McCrary whose memory is dear to every Iowa lawyer. He was a good listener, patient of in-

vestigation, and his integrity as spotless as the snow. In addition he was always dignified, calm, urbane, and courteous; as fine a specimen of the old-fashioned courtly gentleman as Iowa ever had or ever will have. With young men he was especially patient and encouraging. He doubtless remembered with gratitude how much he himself owed to the kindness of the college faculty at Jacksonville. The recollection of his own early struggles, the memories of that rugged pathway that had led him through the unbroken wilderness, had not failed to make him gentle.

It would have been a public benefit to have kept him on the bench as long as he was willing to serve. But politics and the almost constant minority of the party to which he belonged prevented it. In 1876 he was the Democratic nominee for Congress in his district, and in 1881 for Judge of the Supreme Court of the State.

Viewed purely as a lawyer and in the light of a successful practice of nearly fifty years, he deserves to be ranked high amongst those justly entitled to the name. He was well grounded in all the fundamentals of the law. His preparatory course had been thorough, and throughout his entire professional career he remained a close and conscientious student. He kept well abreast with legal reforms and legal literature. His law library was among the largest in the State. No decision made by the Supreme Court nor statute passed by the legislature, escaped his observation. In his practice, which was large, he displayed the most indefatigable industry, and always appeared in the professional arena fully equipped to meet all the emergencies likely to arise in the case. Naturally intuitive and alert, it was difficult to mislead him. Not fanciful or brilliant, but strong in facts and preparation. Energetic and forcible as an advocate, but not eloquent. Unable to sway by the mere force of oratory, but formidable as an adversary on all occasions by reason of his methods, his learning, and skill.

He is now a very old man. In a recent visit to Iowa, I saw and was touched by the helplessness of his condition. To the infirmities of age are added those resulting from

an accident occurring several years ago, which shattered one of his legs and confines him to a bed of pain. There he serenely awaits the final summons, attended upon by a son as faithful as Æneas was to old Anchises, and by his devoted wife to whom he was married considerably more than half a century ago.

In his passing, which cannot in the nature of things be far distant, there will be removed from the scanty remnant left one of the most historic personages of the early time. I trust he will survive to see, and perhaps be gratified by, this humble tribute of one who will always venerate his memory.

NOTE.—Mr. Stiles submitted a copy of the above article to Hon. Henry Clay Caldwell, a former resident of Van Buren county, Iowa, and now one of the distinguished U. S. Judges of the Eighth Circuit, who wrote as follows, heartily concurring in what the writer had so lucidly set forth:

I have just read your admirable sketch of the life of Judge Hendershott. The best thing about your eulogy is that it is deserved. It is one case where dry facts constitute an eloquent eulogy. I have myself thought that excepting Judge Dillon, Judge Hendershott was the best nisi prius judge I ever saw on the bench. The man who has had an honorable and successful career at the bar extending over half a century and who during the same period, has held numerous and important positions of public trust the duties of which he discharged so successfully and acceptably as to be absolutely impervious to just criticism is much more than a common man. You have but to look back over the career of the men you have known to realize how few there are who sustain themselves in public life and maintain an unsullied private life for such a long period and then you will realize that one who has had an honorable and successful career in public office and maintained an unsullied private life for half a century—without a slip or blot of any kind—deserves all the praise you bestow upon him. No weak man, no bad man however able, and no common man however honest, can have such a career. I can suggest nothing to add to your sketch of Judge Hendershott; it is perfect.

WE NOTICE that every boat on her return trip is loaded to the guards with the produce of our fruitful country—pork, lard, bacon, flour, wheat, hides, etc., etc. There is an unusual amount of freight for shipment on the Upper Mississippi this season.—*Democratic Enquirer, Bloomington, (now Muscatine) Iowa, March 24, 1849.*

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