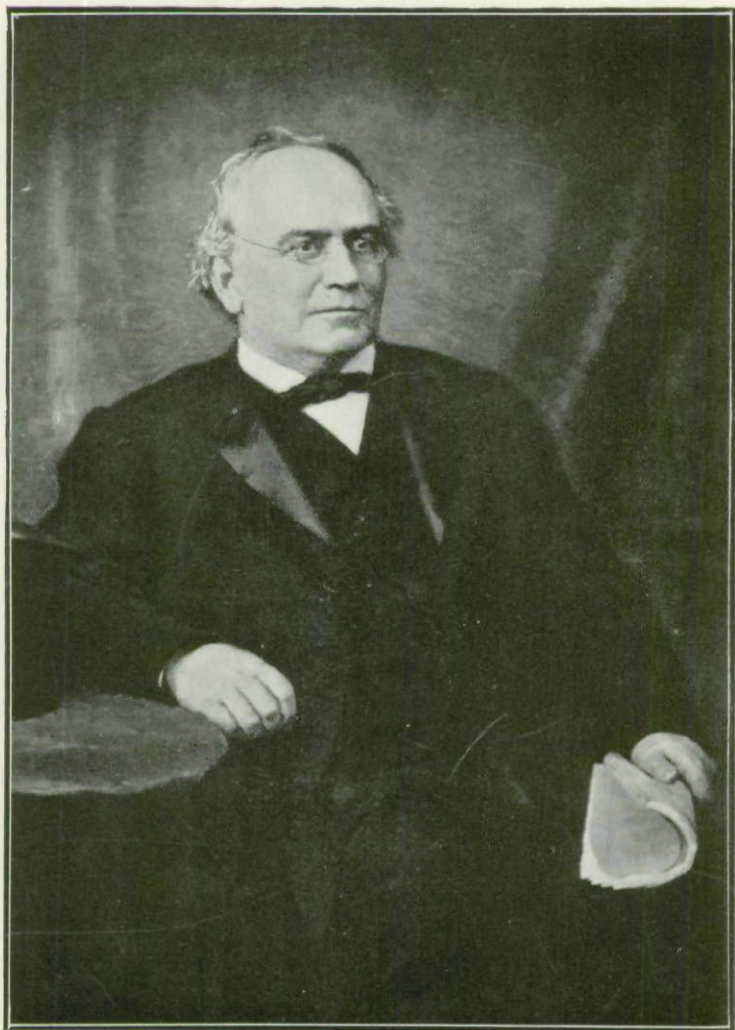


DAVID RORER.

BY EDWARD H. STILES.

The subject of this sketch I knew intimately. He used frequently to visit the Ottumwa Bar. I met him frequently elsewhere—the last time at his own house and fireside. I participated in the last case in which he personally appeared in the Supreme Court of Iowa. It was that of Wapello County vs. The Chicago, Burlington & Quincy Railroad Company, and is reported in 44 Iowa, 585. He was the general counsel of and represented the railroad company. I had for many years been its local counsel at Ottumwa, but this case was the heritage of ancient litigation growing out of stock subscriptions by the county, and owing to circumstances not necessary to explain, I represented the county. The case was a leading one and the questions involved difficult of solution. The judges were divided, and the opinion was carried by a bare majority. Of the lawyers who had participated in the trial below, he and myself were the only ones present. We both made oral arguments. He was then seventy years of age but his strong and well-sustained effort evinced no infirmities. His mental forces were unabated.

Taken all in all he was one of the most remarkable men I have ever known, and decidedly the most unique. He had been the compeer of all the distinguished men of the Territory and State and stood shoulder to shoulder with them. For politics he had neither taste nor adaptation. He was peculiar in appearance and manner. He was short in stature, with short arms and limbs, heavy set, well-rounded, very erect, and strongly built. His whole demeanor denoted great intensity of thought and action. His voice, naturally deep and sonorous, was capable of ascending and descending the gamut of sound quickly. His eyes, large, lustrous and keenly expressive, fairly scintillated when his action was excited. Though his figure, as indicated, was a little grotesque, his face and features were interesting and attractive, and his whole bearing indicated at once that he was a person of distinguished traits. His action



Yours very truly
David Rorer.

PIONEER JURIST, LAW WRITER.

and gestures when addressing the court or jury, were extremely animated and, if the term may be properly used, picturesque. He was perfectly *sui generis*. I never saw a man that resembled him. The *tout ensemble* of the person was without a model. He carried the green bag of the olden time lawyer on his arm for his books and papers, and never deigned to call the statement of plaintiff's cause of action, the "Petition", but always the "Declaration". He was an able lawyer and a highly gifted man. Though ordinarily affable and gracious, he was determined, self-willed, and, when heated, sometimes domineering. Nothing could quench his indomitable spirit. "Age could not wither, nor custom stale his infinite variety". Even when comparatively an old man he wrote and gave to the profession three highly prized works—*Rorer on Judicial Sales*, *Rorer on Inter-State Law* and *Rorer on Railroads*. The last, in two volumes, was written when he was verging close to eighty, and is used as a text-book in the Columbia College Law School and in that of the Wisconsin University. All are standard works, and prized as such throughout the English-speaking world, and will serve to carry his name into the future beyond most if not all of his personal associates at the bar.

The accompanying half-tone is from a photograph of an oil portrait painted in Paris by Seymour Thomas and considered a good likeness, but in my estimation it fails to perfectly exhibit the sprightly animation which pervaded his very being.

But let it not be supposed that because of his restless activity, he lacked the qualities of a patient student, for his works, his arguments, his writings demonstrate the contrary. The spirit of research was deeply founded in his nature. He had the instinct of the antiquary and the historian, and found time among his diversified labors, to collect much material and make several sketches for a history of the early Northwest—a work which, it is to be regretted, was left unfinished.

Though most of his life was spent in dealing with hard facts and the logic of events, so to speak, he was by no means deficient in aesthetic qualities. He loved the beautiful and the grand. He loved nature in all her various moods and forms.

He loved and remembered the lines of her poets. To illustrate: After completing our arguments in the case referred to in the opening of these remarks, we concluded to walk from the Capitol, instead of riding, to our hotel. We pursued a roundabout way and wandered into the environments of that part of East Des Moines. He pointed out the denuded hills once crowned with magnificent forests, as he had seen them nearly half a century before; where the old fort and the wigwam of the Indian had stood. As we advanced we saw ahead of us, smoke rising above the treetops. I wondered what was the cause, but in a moment he divined it in repeating the old familiar lines:

I knew by the smoke that so gracefully curl'd
 Above the green elms that a cottage was near;
 And I said if there's peace to be found in the world,
 A heart that was humble might hope for it here.

While he was a learned lawyer his researches were not confined to his professional work, for he was an omnivorous reader and had a well-developed taste for general literature. While as already indicated, he had a lively imagination and the high instincts that belong to great orators, he was not what would be termed an eloquent one, for his oratory had been mostly trained to logical courses; it was essentially of the argumentative kind; strong, heroic, devoid of vacuity. And yet implanted in him were the faculties of real eloquence, as the following scrap, which has been fortunately preserved, will show and than which, I think, but few rarer specimens of native eloquence can be found. A condemned man whom he had defended and against whom the evidence was overwhelming, being called up for sentence was thus addressed by the judge: "The prosecution has resulted in a conviction, after an able defense of counsel. If you have anything to say, before judgment, the Court will hear it." Whereupon Mr. Rorer, putting himself in the place of the condemned and speaking in the first person for him thus responded:

May it please the Honorable Court:—I am an old man, fast tottering down to the grave. The frosts of seventy-three winters, though they have not whitened my brow, have wrinkled my face, and chilled my heart with many sorrows.¹

Mine has been a chequered life; and now when about to be separated from my fellows, I may give a truthful version of the past.

(1) Though 73 years old, his hair was coal black.

I had a family—and a home—a rude home it is true, and a plain and humble family—but they were my all. The deceased robbed me of the one and invaded the sanctity of the other²—two small sons, a lovely daughter, and a wife—ah! a cherished wife. On returning to that home the day of the fatal deed, I learned the certainty of the maddening truth, and hastened to the field, my rifle still in hand. I know not why I went. I had no fixed design;—he met me with a club—I shot him—and though I claim not to have acted in defense, I do assert that there was mutual combat. You know the rest. I fled; my family followed; but for the fifteen years I lived at Lockland, I made no secret of the deed that I had done.³

Now, time has done its work. The government itself has changed;⁴ new laws are passed, and old ones are repealed; and those who then surrounded me have mostly passed away. A different people now are in the land. A different code of morals now prevails. But I drank liquor, it is said, and true it is I drank it; not to have done so then would have been the objection. Men high in station leaned upon the dram shops for support, and to treat one's fellow to the poisoning cup, was deemed proof positive of genteel training. I may not be held responsible alone, for the vices of society; it is enough that I have been their victim. Those days are passed, and that loved wife is gone—borne down with troubles, she sank into an early grave. That lovely daughter is now a hopeless cripple, wearing a haggard face. Of those two boys who should have been the prop of my old age, the one has gone to join his injured mother as witness against the dead destroyer of their peace⁵—the other—and my heart sinks within me when I say it, still lives—but not to me—with an ear deaf to my calamity, he comes not near me; but I forgive.⁶

To this Honorable Court, the jury, attorneys and officers, and to the people of this community, I return my humble thanks for their impartial bearing.

I have never been a criminal of choice, but rather the creature of circumstances, beneath the weight of which far better men than I have sunk. I may have been too jealous of mine honor but never have but once proved faithless to a trust. When my country's rights were invaded, I avenged them, and so I did mine honor.

With General Jackson in all his Creek campaign, I battled for my country and its laws. At the fast in the wilderness, I was there—⁷ at the fast of acorns, I was there—⁸at Emucfaw and Talladega,⁹ I was there; and when the shouts of victory drowned the cries of the dying at the Horse-Shoe, in the front ranks of my country, I was there; and then the name of him whom we call Jones,¹⁰ was but another

(2) McCardle, as Jones alleged, and the evidence tended to prove, had slandered Jones' family and cheated him out of his farm. (3) After killing McCardle, Jones fled to Lockland, Ohio, and there remained fifteen years before arrested. (4) The killing was in Iowa Territory, in 1840. The trial was in Iowa State, in 1855. The Government had changed. (5) Jones' wife and one of his sons had died, and the daughter was an invalid. (6) His remaining son refused to aid or come near him.

(7) Allusion is made to the starving condition of Jackson's army in the Creek wilderness. (8) Many of the troops ate acorns on arriving in the oak woods, just before meeting supplies. (9) Emucfaw, Talladega, and the Horse-Shoe Bend, were noted battle-grounds of Jackson, with the Creek Indians. (10) Jones was not his real name; he assumed it after leaving the army, for reasons not necessary to mention. The case was reversed in Supreme Court, by reason of change of government, and the prisoner discharged.

word for deeds of glory! But these things are of the past—a long life is nearly spent—the scene is changed—yet He alone who reads the human heart is, further than the formal sentence of the law, competent to judge me.

In the case of Ruel Daggs vs. Elihu Frazier *et al.*, tried to a jury in the District Court of the United States at Burlington, in 1850, before Judge Dyer, the proceedings in which, including the arguments of counsel, were happily preserved, and to which reference is made in the biographical sketch of Judge J. C. Hall printed in the April number of *The Annals* will be found an excellent specimen of his forcible style of oral argument. Though an emancipationist and a hater of the principle of slavery, he was, nevertheless, in favor of loyally supporting the constitutional provisions and the laws framed for its protection, so long as they remained on the statute book. The case was brought under the Fugitive Slave Law to recover the value of certain slaves who had escaped from their master in Missouri, and whom it was claimed he had been prevented from retaking by the acts of so-called Abolitionists in the Quaker settlement of Salem in Henry county. Judge Rorer represented the plaintiff, Judge Hall the defendants. Probably no two more powerful legal combatants ever met in an Iowa forum. Judge Rorer in his closing argument thus urged upon the jury the duty of the citizen to support the constitution and the law:¹

* * * * *

The passages referred to from this off-hand effort exhibit virile qualities that at once mark its elevation and stamp it with power. They serve to strikingly illustrate the characteristics of the man and the strength of his extemporaneous advocacy. They will also bear reading because of the vivid portrayal they give of the mutual troubles that Iowa and Missouri had, under the old regime, over the slavery question and the return of escaped slaves under the Fugitive Slave Law.

The specimens I have herein given of his oral efforts, are the only ones I have been able to obtain. His printed arguments are abundantly found, and if collected and published would be of value to the profession.

¹The quotations given by Mr. Stiles from Judge Rorer's Argument are omitted here, as they appear in this series of *The Annals*, Vol. 6, pp. 29-38.

But let us look at him on the other side of the slave question. He manumitted his own slaves, and in the first case to be found in the Iowa Reports, that of *In re Ralph*, reported in Morris, page 1, though a southerner and reared as a slave-holder, he espoused the cause of the slave Ralph, whom his master, under a contract between them, had permitted to come and live in Iowa, and by reason of which the Supreme Court, composed of three Democratic Judges, with the gifted Charles Mason at the head, declared Ralph to be a free man. And throughout our great civil war, he exhibited the greatest patriotism and loyalty. Early in the struggle he boldly advocated the emancipation of the slaves as the heroic remedy needed for the Nation's relief, and with all the firmness of his decided character.

The following incidents I obtained from members of his family and other authentic sources. He was born in Pittsylvania county, Virginia, in 1806. He descended from an ancient and honorable Swiss family, the Protestant branch of which settled in Lancaster county, Pennsylvania, anterior to the Revolution. He was the son of Abraham and Mary Cook Rorer. His father was a soldier of the Revolution and fought under Anthony Wayne at Stony Point, and on other fields. Soon after the Revolution the family removed to Virginia, where, as above stated, he was born. He studied law under Nathaniel Claiborne, of Franklin county, Virginia. He early resolved to try his fortune in the southwest, and in 1826, accompanied by a negro slave as servant, he made his way on horseback through the wilderness to Little Rock, Arkansas, where he concluded to settle; returning to Virginia to make his final arrangements, and coming back soon after to Little Rock—this time by horseback to Louisville, and thence by steamboat down the Ohio, and up the Mississippi, as far as Helena. He soon acquired a good practice in Little Rock, where he remained for ten years. But his profound discernment and a close study of the situation enabled him to foresee the gathering storm that was to burst upon us in the great Rebellion, and he determined to seek a new residence in the north. Carrying out that purpose, he removed to Burlington, where he arrived in March, 1836, and became one of the principal founders of that city, and intimately interwoven with its history and in-

terests. He saw and participated in its growth from a little hamlet of forty insignificant houses, to a populous and wealthy city. In the same year he built, on the southeast corner of Fourth and Columbia streets, not only the first brick building in Burlington, but in what is now Iowa. At that time it was a part of the Territory of Michigan; later it became a part of Wisconsin Territory, and in 1838, the Territory of Iowa. In the building of this house he laid the first brick himself, saying to the mason, "Let me show you how a lawyer can lay a brick." It was perfectly in accord with his quaint and lively characteristics. A picture of this house is in possession of the Historical Department of Iowa. In the following year the next brick building in the Territory was constructed at Dubuque. In 1841, he built the old homestead at the corner of Fourth and Washington streets.

As already stated, he was identified with the history of Burlington from its inception. The first meeting to incorporate the town was held at his office. He drew the first charter of the city. He assisted in laying out and naming many of its streets. He also drew the first ordinances, and in various ways aided in the organization and development of the city.

In 1839, he gave to and impressed upon Iowa the sobriquet of "Hawkeye." How this was brought about was clearly shown by an article in *The Burlington Hawk-eye* of November 21, 1878, in reply to an inquiry made by a correspondent on the subject. The inquiry and the article of *The Hawk-eye* will be found in the accompanying note.

To the Editor of *The Burlington Hawk-eye*, Mount Pleasant, November 21, 1878.

Will you oblige one who has not the time to look it up, and who has asked a number of people and found them all unable to tell, by advising him why Iowa is called the Hawkeye State. Respectfully yours, T.

The following is the article in *The Hawk-eye* replying to this inquiry: "The name 'Hawkeye' was first given to the residents of Iowa in 1839, and was first suggested by Judge Rorer of this city. The first mention of the name was in the *Fort Madison Patriot*, in 1838, a paper published by James G. Edwards, the founder of *The Hawk-eye*, at the suggestion of Judge Rorer. Mr. Edwards proposed in his paper that the people of Iowa adopt the name of 'Hawkeye.' This was done to prevent citizens of other states giving us a more opprobrious title, something similar to that by which the people of Missouri are frequently designated, even to this day. The name was not adopted at this time, however, but early in 1839, after Mr. Edwards had moved his paper to Burlington, the question was again discussed, and it was decided to write a series of letters to the papers then published in Iowa, and in which the people of Iowa were to be called 'Hawkeyes.' The first letter appeared in *The Dubuque Visitor*, the others in the several papers then published in the Territory. As these letters contained many criticisms of prominent men, including the public officers of the Territory, they created much interest, and the name 'Hawkeyes' was ever after adopted to designate the people of Iowa.

In a short time after this, Mr. Edwards changed the name of his paper to *The Hawk-eye*, in honor of the people of Iowa. This history of the name was procured from Judge Rorer, who had the honor of giving Iowa the title of the 'Hawkeye State.' "

While living in Little Rock he married Mrs. Martha Martin (*nee* Daniel). She died after their removal to Burlington, in 1838. They had two sons and two daughters, Daniel, Claiborne, Martha and Frances. Daniel became a lawyer, and died in Worthington, Minnesota, in 1902. Claiborne joined Walker in his expedition to Nicaragua, and was there killed in battle, in 1856. Martha married William Garrett, a pioneer of Burlington, and died there in 1893. Frances married Davis J. Crocker, a lawyer, and is now living in New York City.

In March, 1839, he married for his second wife, Delia Maria Viele, a sister of Philip Viele, who was one of the distinguished lawyers of Lee county and early Iowa. Mrs. Rorer died in November, 1888. Two daughters survive, Miss Delia M. Rorer, and Mrs. Mary Louisa Remy, wife of John T. Remy, of Burlington.

As hereinbefore stated he appeared in the first reported case heard in the Territorial Supreme Court, as the representative of the slave Ralph. In the first volume of the Iowa Reports (Morris) his name is attached to thirty-five cases. Thus commencing, it unceasingly runs through all the reports down almost to the date of his death—from 1839 to 1884—a period of forty-five years. As thus traced, his professional career was more lengthily continuous and his name attached to more cases, than that of any other lawyer who has appeared before the Iowa bar, and figured in its highest court. For the last twenty-five years of his life, his practice was more especially devoted to railroad litigation. He became the solicitor of the Burlington & Missouri River Railroad Company in 1858, and after its consolidation with and absorption by the Chicago, Burlington & Quincy Railroad Company, he was continued in the same position by that company; and as counsellor, down to the day of his death. He was regarded as an expert in railroad law, and the publication of his work on that subject served to make his fame in that respect national.

Judge Charles Mason, in a communication addressed to me, January 23d, 1882, thus refers to him:

Among my earliest acquaintances in Burlington, where I commenced housekeeping, in 1837, were David Rorer and James W. Grimes, who, as nearly as I can now remember, were the only members of the bar then residing there. The streets were full of stumps and brush, and surrounded by the primeval, unbroken forest. Mr. Rorer has always been a hard and devoted legal student, and though of late years he has withdrawn himself from the general practice, he has, during his time, devoted his talents to the preparation of works on different branches of the law, which I believe possess a high degree of merit. Gifted with a very acute mind, and possessing a more extensive library than most of his competitors, he has generally appeared in court provided with a copious list of authorities. I know of no one who seemed more fully to enjoy an investigation which taxed to the fullest extent his thoughtfulness and his industry, nor do I know of any who devoted himself more unreservedly to the interests of his clients.

His life came suddenly to an end in Burlington twenty-three years ago. The newspapers of the State paid proper homage to his memory as one of its principal founders. *The Chicago Tribune* thus spoke of him: "In the death of David Rorer who died suddenly at his home in Burlington, Iowa, Monday July 7th, at the ripe age of seventy-eight, the State of Iowa has lost one of her noblest citizens, and the American bar one of its ablest lawyers and most learned law writers."

His daughter, Miss Delia M. Rorer, to whom I had written for certain data, writes:

I well remember his frequent reference to you and the long-standing friendship that had existed between you. You ask me for suggestions in regard to his private and domestic life, and for the circumstances attendant upon his death. Love of home, family, friends, and his dear country, were the key-notes of his existence, and these were never heard to vibrate more appealingly than when seated with his family by the blazing logs of his own fireside. His sense of hospitality was large, and he was never more happy than when he and my mother entertained their friends in the old homestead. He often repeated the old lines:

"The world has little to bestow,
'Tis from ourselves our joys must flow,
And that dear cot our home."

He loved nature, the waving fields, trees, flowers, birds and music. The show and glitter of life had little attraction for him, but the beauties of nature and of art, touched him deeply.

His life was ended so suddenly, after one day's illness, that it seemed more like a transformation than real death. The sun that rose for him on the morning of July 7th, 1884, set with his dying breath. The previous week, when in apparently perfect health, he had twice said to me, how perfectly happy he was—such intense happiness that it seemed like a premonition.

Thus peacefully passed one of the most remarkable men the State has ever produced, in the glow of a mellow sunset that imperceptibly mingled with the horizon that separates the visible from the unknown.

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