

Chapter 18 (11-01-11)

**“What doth the Lord require
of thee, but to do justly,
and to love mercy, and
to walk humbly with thy God?”
Micah 6:8, *Old Testament Bible, KJV***

Was Davis Floyd a great lawyer and judge?

What was the significance of Record
Book A in the Floyd Circuit Court
in New Albany, Indiana to Judge Floyd?

What was Judge Floyd’s attitude
towards black litigants in his court?

In *Courts and Lawyers of Indiana* published on the 100th anniversary of the organization of the State of Indiana, Davis Floyd is described as follows: “He was not a great lawyer, but seems to have been a satisfactory Judge, due perhaps to his strong personality and firm character.”

Indiana’s First Constitution

Floyd was a member of the Constitutional Convention of 1816 which drafted and passed Indiana’s first Constitution. It provided for State Circuit Courts. Sect. 3rd of Article V said:

Sect. 3rd. The Circuit Courts shall each consist of a President, and two associate Judges. The State shall be divided by law into three circuits, for each of which, a president shall be appointed, who during his continuance in office, shall reside therein. The President and associate Judges, in their respective Counties, shall have Common law and chancery Jurisdiction, and also complete criminal Jurisdiction, in all cases and in such manner, as may be prescribed by law. The President alone, in the absence of the associate Judges, or the President and one of the other shall be competent to hold a Court, as also the two associate Judges, in the absence of the President shall be competent to hold Court, except in capital cases, and cases in chancery, provided, that nothing herein contained, shall prevent the

General Assembly from increasing the number of circuits, and Presidents, as the exigencies of the State may from time to time require.

Constitution Making in Indiana, p. 104.

§16 of Article XI said:

The following officers of Government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen than as follows--The Governor one thousand dollars. The Secretary of State, four hundred dollars. The Judges of the supreme court eight hundred dollars each. The Presidents of the Circuit Courts eight hundred dollars each....

Constitution Making in Indiana, p. 119.

Second Judicial Circuit of Indiana

In 1816 the Second Judicial Circuit included Clark (Charlestown), Jackson (Brownstown), Washington (Salem), Orange (Paoli), and Harrison (Corydon) Counties. The first President Judge of the Second Circuit was David Raymond. He was an attorney from Vincennes but served less than one year. It is not known what happened to him. He held his first court in Charlestown, Clark County, beginning on the third Monday of April 1816. His associate Judges were William Goodwin and John Beggs. Beggs had been the Chairman of the Clark County Anti-Slavery Committee in 1807 on which Floyd served as the Secretary. The two anti-slavery men also served on the Constitutional Convention together in 1816.

On October 13, 1817, the General Assembly appointed Floyd to fill the unexpired seven-year term of President Judge Raymond. Earlier that year Floyd's friend, William Prince, had been appointed to fill the unexpired term of the President Judge of the First Judicial Circuit. Prince would serve less than one year. Floyd would serve out the seven-year term but then several events caused him to leave Indiana and seek his fortunes elsewhere.

New Counties Meant New Courts

It seems that each General Assembly was creating new counties, which created the necessity to create new courts and to attach them to the old circuits or to create new ones. In 1818 Jefferson County (Madison) was added to the Second Circuit. Later the same year Crawford County (Mt. Sterling) was added to the Second Circuit, making a total of six counties in the Second District. A Fourth Circuit was also added that year.

On January 2nd, 1819 several new counties were created and had to be divided up among the Circuits. One of these counties was Floyd. On January 9th, 1821 Bartholomew County was created and added to the Second Circuit. That meant that President Judge Floyd presided over the Courts of Harrison, Floyd, Clark, Jefferson, Washington, Scott, Jackson, Jennings, and Bartholomew Counties, a total of nine. Later that year a Fifth Circuit was added and Bartholomew County was switched to the First Circuit.

On the Circuit Trail

President Judge Floyd consumed a lot of hours on horseback. In 1817 he was 43 years of age and had to be in good health to ride the miles among the various county seats.

Not only the judges but also the lawyers spent a lot of time in the saddle. The following excerpt from *Courts and Lawyers of Indiana* demonstrates the hardships of "riding the circuit:"

These few cases...show...how widely the lawyers of that day traveled. The leaders were known throughout the state, though, with one or two exceptions, it can hardly be said that those more learned in the law traveled so widely. Perhaps a score of men could be named who were

especially noted for their itinerancy. Without attempting to make a full list, the following might be named: Davis Floyd....

A band of them, usually a half score, in number, looked not unlike a detachment of rangers. Each carried large saddle bags, containing his library on one side and his commissariat on the other. A large, heavy blanket, tightly rolled, was tied on the back of the saddle. A heavy overcoat, used to keep out the cold and rain or, as a coverlet, if need be, was either worn or carried; most of them wore high beaver hats, in various stages of dilapidation--a more uncomfortable or inconvenient article to a horseback rider, especially along a narrow trail, could not be invented.

They usually traveled single file along the narrow trails. Their horses were in many cases as well trained as those of cavalry. Without much guidance by the riders, they picked out the most available paths, dodging the mud, rocks, brush and other obstacles. The chief difficulty was that in choosing good footing the horses, frequently Indian ponies, had no regard for the overhanging boughs, which seemed to have a penchant for knocking off the tall beaver hats. Rivers and swollen streams were merely inconveniences. The horses were trained to swim them and, so far as the writer has noticed, no fatal accident happened to Indiana circuit riders on this account. There were no bridges till about 1830. All streams in the state were crossed readily by swimming except the Wabash and main White River. These were crossed by ferry, though the horses usually swam by the canoe that carried the master.

Very little camping out was done by the circuit riders of Indiana. By the time a county was ready for a Circuit court there were enough settlers on the ground to take care of the Judge and lawyers. This remark does not apply to jurors and witnesses, however, who often, if not usually, camped near the court house. Indiana has always been plentifully supplied with taverns, so far as number was considered. The lawyers were always welcomed by the tavern keeper because they rarely complained. Being used to rough fare, they took what was offered them, which was always the best to be had, paid for it without murmur and went their way.

They were a jolly good crowd, without being rough. Occasionally a game of poker was indulged in and not infrequently a good-natured "rough house" was pulled off, but the usual custom was to pass the time in social, especially political conversation, where wit and humor were the large factors. Innocent jokes were often perpetrated. When time came to retire, if there was nothing better, the lawyers spread their blankets and cloaks on the floor and, with their feet to the fire,

lay down at least to sound sleep if not to pleasant dreams. They joined with full-grown appetites in devastating the corn bread, roasting ears, pork, squirrel, venison or whatever came on the table. Nothing pleased a tavern keeper or his wife so much as to see “real folks” eat the homely victuals appreciatively; the more they ate the more welcome the next time. “Bub” and “Sis” [the tavern keepers’ children] were not neglected. The lawyers always found a penny for them in exchange for little chores such as cleaning and oiling boots, currying horses, an extra cup of tea or coffee; so that even these looked joyfully forward to the time when the “big lawyers” again passed that way.

Courts and Lawyers in Indiana, pp. 156-157.

President Judge Floyd reportedly experienced an incident on the circuit trail. In William Floyd Tuley’s book, *Tuley Family Memoirs and the Floyd Family Connection* published in 1906, biographer Tuley had the following to say about Judge Floyd:

Judge Floyd, although opposed to slavery, was a man who liked the official pomp and attention. He had a negro servant with the high sounding name Pompey, but the Judge called him Pottowatamie. He never travelled without his black attendant. One day while traveling the wilds of Indiana he was thrown from his horse while crossing a swollen creek. The Judge called lustily for Pompey to come quick to the rescue, else he would drown, to which the servant responded, but it was a fierce struggle to save the portly Judge from a watery grave. Thereafter Pottowatamie not only shared his master’s confidence but his good red liquor.

Tuley, *Tuley Family Memoirs and the Floyd Family Connection*, p. 71.

It is likely that President Judge Floyd traveled with the lawyers as they made their way from county to county. Floyd would have been well acquainted with the lawyers who appeared and practiced in his courts. Before becoming president judge of the Second Judicial Circuit, he would have traveled and tried cases with the lawyers as one of them. A case that he participated in at the November 1815 term of the Territorial court in Perry County is reported on in *Court and Lawyers of Indiana*. The case was a slander case, popular in

Southern Indiana at the time, entitled *Crist vs. Connor*. Judge Isaac Blackford of Vincennes was the presiding judge and William Prince from Princeton represented the plaintiff, the complaining party, and Floyd represented the defendant, the alleged slanderer. There is no doubt that at the conclusion of this case after the parties and witnesses had dispersed, Judge Blackford and the two lawyers adjourned to a local tavern and ate a scrumptious meal and downed some rounds of red liquor. Judges and lawyers were a tight group out of necessity in the wilds of Indiana.

Judge Isaac Naylor began practicing law in 1818. He said at the time Indiana was devoid of any roads or bridges and he had to swim streams on horseback, whenever they were too high to ford. He also described the influence of alcohol and gambling on the legal profession:

When I commenced the practice of law in the spring of 1818 I found the besetting sin of the members of the bar to be intemperance and gambling. About nine-tenths of the members of the bar were slaves and victims of these vices. Many of these men were distinguished by their talents and legal attainments. It is a melancholy reflection to me that almost all these men have gone prematurely to their graves, at a period when their profession and usefulness should have been in the meridian of splendor. I escaped the blighting and destructive influences of these vices by early moral training by religious parents. I am pleased to state the fact that not more than one in twenty of the members of the bar of this circuit is guilty of intemperance or of gambling. The great moral and social reform of the last few years has done a mighty and glorious work among the bar of Indiana.

This reform is essential with, and necessary to the proper standing and character of the honorable profession. They grow and flourish only in the soil of civil and political liberty. They find no place in the region of despotism; they gave an irresistible impetus to the cause of our glorious Revolution. Twenty-four of the fifty-six immortal signers of the Declaration of Independence were lawyers. How indispensable, therefore, is the obligation of the members of the bar to obey moral and physical laws of man's nature. The victims of intemperance and gambling are the most abject slaves in all God's moral universe.

These vices are usually the first steps in the pathway of infamy, and the heralds of the inevitable ruin of their victims.

Naylor, Isaac, "An Autobiography," *Indiana Magazine of History*, Vol. IV, No. 3, Sept., 1908, pp. 139-140.

Record Book A of the Floyd Circuit Court, New Albany

Recently, *Record Book A* of the Floyd Circuit Court for the period of 1819 to 1821-22 surfaced and was available to inspection by the author. The book has been rebound with the original sheets numbering 525. Most of the handwriting is legible, and some unqualifiedly artistic. Unfortunately, the other book or books covering the balance of President Judge Floyd's term have not surfaced. The Court first met at the residence of Seth Woodruff, a local lawyer in New Albany, who would later become one of the two associate judges in Floyd County.

Seth Woodruff

Seth Woodruff, Esquire, had a colorful history in New Albany. He must have been a hothead in the beginning of his career but mellowed later. The *Record Book* at page 31 shows that he was sued for assault and battery. The plea or indictment read that Seth Woodruff "with force and arms an assault did make in and upon the body of one William Underwood in the peace being and him the said William did then and there beat bruise wound and ill treat and other wrongs and injuries then and there to the said William to the great Damage of said William contrary to the form of the statute in such cases made and provided and against the peace and Dignity of Indiana." A jury heard the case and returned a verdict stating: "We the Jury find the Defendant [Seth Woodruff] guilty and assess his fine one cent." The jury must not have thought that William Underwood's injuries were that severe or maybe they thought he deserved what he got. Later Seth Woodruff was sued for slander by Joseph Jenkins who operated a "house of entertainment" in New Albany. Woodruff allegedly slandered Jenkins when he said the he "is a bankrupt insolvent and there are

debts enough against him on my docket [meaning the docket of the said defendant as a Justice of the Peace] to break up his house (meaning the plaintiff's said inn and house of entertainment) that he cannot give security for twentyfive Dollars yet..." Apparently, Jenkins, who was a non-resident of Indiana, could not raise the money to pay security for the costs and the case was dismissed by President Judge Floyd. The Court went on to rule that Woodruff was entitled to "recover against the Plaintiff [Jenkins] his Cost and charges by him about his defense in his behalf expended." Apparently, Woodruff was right about Jenkins since at least two "debt" suits or collection cases were filed against Jenkins later. One claimed that he owed the creditor \$117.25 and the other \$119.10. Jenkins won the first case but lost the second one. Seth Woodruff became one of Floyd County's associate judges on May 8, 1820.

"in mercy"

Judge Floyd would follow all of his entries where a ruling was made against a party with the words, "in mercy" and then he would add the letters "fi" with a circle around them like the "@" symbol which is a part today of all e-mail addresses. There were a lot of collection cases in *Record Book A*. Among other cases were assault and battery, slander, trespass, false prosecution, wrongful cutting of someone else's timber, domestic and foreign attachments, counterfeiting, thefts, and divorce. There was one sodomy case where the defendant was convicted with committing sodomy with a mare (female horse). The court also acted as a Chancery Court in matters involving deceased persons.

New Albany in 1819

In 1821 the site of the Court was moved from Seth Woodruff's home to the Presbyterian meeting house. There are some good descriptions of New Albany

at the time President Judge Floyd began attending court there. On October 27th, 1819 William Faux wrote in his journal:

October 27th, 1819.---At sun-rise I left Louisville, in Colonel Johnson's carriage and pair [two horses], for Vincennes, in Indiana, well pleased to turn my back on all the spitting, gouging, dirking, duelling, swearing, and staring, of old Kentucky.

I crossed the Ohio at Portland, and landed in New Albion [Albany], a young rising village, to breakfast, where, for the first time in America, I found fine, *sweet*, white, home-baked bread. The staff of life is generally sour, and, though light and spongy, very ill-flavoured, either from bad leaven, or the flour sweating and turning sour in the barrel.

Lindley, Harlow, *Indiana as Seen by Early Travelers*, Indiana Historical Commission, Indianapolis, Indiana 1916, p. 291; from Faux, W., *Memorably days in America; being a journal of a tour of the United States*, 1823, pp. 203-268.

In 1816 the Presbyterian Societies of New England sent Isaac Reed to Indiana as a missionary or itinerate preacher. On October 4th, 1818 he wrote the following letter from New Albany to a friend:

My dear C-----,

I have been steadily in this place, visiting the people, preaching, and attending to ministerial duties near five weeks. I have preached twice every Sabbath, till the present, when the Rev. Mr. Fowler preached in the morning, and administered the sacraments of the Lord's Supper. I have attended one evening prayer-meeting each week. I have also attended several funerals. The last has been the most sickly month in the year; many have been ill, and six or seven have died since I came here.

This is a new place, having been laid out into town lots but five years [New Albany was founded in 1813]. At that time it was thickly covered with heavy timber. It is now rude in appearance, and has few good houses, but is fast improving, and contains 700 inhabitants; its situation is eligible, being high above the river, and lying along its bank. The surrounding country is of a rich soil, but thinly settled, and little improved. The town is two miles below the Falls of the Ohio; its religious character is low, but gaining. There are two small societies, a Presbyterian and a Methodist.

Later, Rev. Mr. Reed wrote about New Albany as follows:

At New-Albany I became located in October, 1818. The engagement was for one year. The salary was \$500 [which seemed like a good salary since Judge Floyd was paid \$700]. As a place, its morals were low, its general society was rude, and much of it profane. There were some pious persons, but their number was small, and even these were not well known to each other, nor united. There was a small Presbyterian church of fifteen members, and a small Methodist society. The inhabitants were from various parts of the older settled country:---some were from Connecticut---more from New Jersey, some from Massachusetts, some from Pennsylvania, numbers from Kentucky, and some from Ireland. The place itself was about five years old, but its inhabitants had been very few til within two years: it had now a steam saw-mill, several stores, mechanics' shops, &c., and a boat yard for the building of steam-boats. Over most of the town-plat, lay thickly, the large trunks of trees which had been felled, but not removed. This plot is upon bottom lands of the Ohio river, a mile and a half below the falls. The forest trees had been thick and large, and many of the poplars of immense size.

Lindley, *Indiana as Seen by Early Travelers*, p. 463; from Reed, *The Christian Traveler*, pp. 70-94.

Washington County

In a *History of Washington County, Indiana* originally published in 1884, it was written:

The Second Judicial Circuit under the Territorial rule was in operation a little over three years [1814-1816], and what at this date seems very remarkable, is that, during that brief period, seventy-three indictments for assault and battery were returned into court by the several grand juries. It would seem that those three years were part of the "Fist-and-Skull Age." Another thing was very noticeable is the great number of applications for divorces in a country so new. Also, slander suits were unpromisingly numerous. In those early times there must have been many liars and tattlers. Another point demanding very special attention, and worthy of being told often, and far and wide, is that during the three Territorial court years,, in the then widely extended territory of Washington County, not a single case of murder or manslaughter occurred....

At the Washington Circuit Court held at the court house in Salem, on Monday, the 10th day of November, 1817, Associate Judges Godlove Kemp and Samuel Huston opening court, Davis Floyd presented his commission from Jonathan Jennings, Governor of the State of Indiana, as Circuit Judge of the Second Judicial Circuit of Indiana, and having been duly qualified thereupon took his seat as Presiding Judge of the Court.

History of Washington County, Indiana, A Re-production of the Original "History of Lawrence, Orange and Washington Counties," 1884, Stout's Print Shop, Paoli, Indiana 1965, pp. 737-738.

In a document entitled *History of Washington County, Indiana 1916-1976*, compiled under the auspices of the Washington County Historical Society, Salem, Indiana, Davis Floyd was identified as the President Judge from October 13th, 1817 until December 18th 1823. That would be consistent with an entry in *The Hoosier Journal of Ancestry in Washington County*, that Floyd was admitted to practice law in the Washington Circuit Court on April 14th, 1817.

Crawford County

In an article in the *Indiana Magazine of History* entitled "Crawford County," the magazine reported on the organization of the first court in Crawford County, Indiana:

The first session of the circuit court of Crawford county convened at Mount Sterling, August 1, 1818. Hon. Davis Floyd, Judge Green, and James Glenn composed the court. Since there was no courthouse in Mount Sterling then, James Brasher let the judges use his new log house. This house was too small to accommodate all of the jurors, hence they sat around on logs in the yard.

Sheriff Daniel Weathers was present and returned the names of the...men for a grand jury....

These men elected [a]...foreman. After due consideration the jury returned a bill against James Ouley for murder in the first degree. The evidence showed that Ouley had followed William Briley through the woods for some distance and had then shot him in the back about where his suspenders crossed.

The ball came out of his neck making a wound about 8 inches deep. Briley died almost instantly and Ouley escaped with his horse and about 75 cents in money.

Briley lived near the present town of English. He had left home with a sack of wool and going to Corydon to get the wool carded [a process to smooth the wool done by hand or by paddles]. He was traveling on the Governor's Old Trail which ran from Corydon to Vincennes. The exact spot where the shooting occurred cannot now be located. It happened near the top of White Oak hill in what was then Whiskey Run township.

This act occurred July 1, 1818. Some men happened by and found Briley. They started to carry him to his cabin over on Dog creek. After they had gone about two miles they decided that they would bury him there. So a grave was dug and the body was buried just as the men had found it. Briley had no person living with him and Ouley might have escaped if he had hidden the body.

The news spread rapidly and the whole community was aroused. The only evidence against Ouley was that he had disappeared from home that same day on which the man Briley was killed and that some woman had seen him following Briley through the woods.

Jonathan Chambers and Zedekiah Lindley who were prominent men volunteered to catch Ouley. These men had no warrant for his arrest but they were experts in catching horse thieves and felt sure that they could catch Ouley if he could be found anywhere. So they traveled all over southern Indiana but did not find him. They then crossed the Ohio river near Mauckport and began hunting for him in Meade county, Kentucky. After a two weeks' tramp they came to the town of Brandenburg and decided to give up the hunt and let him go. While stopping at the tavern one day they saw men hauling cord wood into town. From these men they learned that there was a wood cutter out in the forest who had come there from Corydon a short time before. That night Chambers and Lindley crept up and caught Ouley in his cabin. They brought him back to the old block house near Marengo and chained him to the logs in the house and guarded him day and night till the trial came off on the first day of August

The bill returned by the grand jury read:

James Ouley late of Crawford county, a yeoman [a farmer who cultivates his own land] not having the fear of God before his eyes, but moved and seduced by the spirit of the Devil on July 1, 1818, with force and arms

in Whiskey Run township in and upon William Briley in the peace of God then and there being willful and of malice a fore thought did make and against James Ouley with a certain rifle gun of the value of \$10 loaded with gun powder and a certain leaden bullet with which gun the said Ouley did shoot William Briley in the back and the ball came out in neck making a wound about 8 inches deep from which wound Briley died almost instantly.

The trial began at once. Ouley pleaded not guilty and demanded that the county furnish him an attorney. The court appointed Henry Stephens and Harbin Moore to defend while William Thompson was appointed prosecuting attorney for that session of the court.

Daniel Weathers, the sheriff, had a large number of men present from which...were selected...a petit jury....

The trial was conducted out of doors in the woodyard. The jurors who were among the best men in the county were sworn to hear the evidence and decide the case. After all the evidence was in and the court instructed the jurors, the jury retired to consider the evidence. After some time the jury returned a verdict and placed his sentence at death.

The council for defense asked for a new trial on these grounds: 1. That the verdict was contrary to the state law; 2. That the evidence was not sufficient; 3. The conduct of the jurors was not proper; 4. That outsiders talked to the jurors during the trial; 5. That Elisha Lane had expressed his opinion before the trial began [Mr. Lane was one of the petit jurors]; and 6. That one of the jurors was too much indisposed to pay the proper amount of attention that such a case demanded. The juror in question was said to have been asleep.

The court not being fully advised adjourned till the next day when it refused the defendant a new trial and asked him if he had any further reason why sentence of death should not be passed upon him. He asked the court to arrest the judgment of the jurors on these grounds: 1. That he was a sheelright made the evidence uncertain; 2. That the bill did not have the name of the state or county on it.

The court overruled the argument and passed this sentence upon him:

That he should be kept in the old block house in the custody of the sheriff till October 1, 1818, when he should be taken out on the same road or on what ever

new road might be laid out by that time in one half mile of Old Mount Sterling, and between the hours of 10 a.m. and 2 p.m. and hanged by the neck till dead.

Sheriff Weathers took the prisoner back to the block house and chained him to the logs. Men kept guard over him day and night. Yet he attempted to gnaw out. Years afterwards when the block house was torn down one could see the place where he had gnawed with his teeth on the logs of the block house.

Cornelius Hall who was a carpenter, volunteered to make a casket for Ouley. On the day of the execution the coffin was put into a wagon and Ouley was chained and hauled back to Mount Sterling and hanged. He was buried in the old field near the site of the hanging. His grave was marked for a long time but now no trace of it can be found. Henry Batman who cleared the old field in 1900 said that he found a spot of clay near the road about three feet by six and that that must have been the dirt which was thrown up from the grave.

There was not much direct evidence against Ouley in the case but the jury was sure that he was guilty. So they wanted to make an example of him for the rest of the outlaws who lived in the county.

Pleasant, H. H., "Crawford County," *Indiana Magazine of History*, Vol. XVIII (18), No. 2, June, 1922, pp. 137-140.

Floyd County

The following is the first entry in the records of the Floyd Circuit Court;

Be it remembered, that this, the 10th day of May, A. D. 1819, being the day appointed by an act of the Assembly, entitled as act to amend the act entitled an act to divide the State of Indiana into four circuits, and to fix the time for holding courts; and an act entitled an act for the formation of a new county out of the counties of Harrison and Clarke, which last-mentioned act directed that the court should be holden at the house of Seth Woodruff, Esq., in the town of New Albany, on the day and year mentioned.

The Honorable Davis Floyd, president of the second circuit, appeared, and

Present the Honorable

Davis Floyd

Record Book A, Floyd Circuit Court, p. 1.

There are several cases in *Record Book A* in the Floyd Circuit Court over which President Judge Floyd presided which are particularly interesting because of the facts.

State of Indiana vs. Asa M. Davis

Record Book A, Floyd Circuit Court, pp. 209-212.

At the September 1820 term of the Floyd Circuit Court a grand jury returned an indictment for perjury charging Asa M. Davis, a yeoman, of stating under oath that "he was acquainted with Obadiah Wilson and Charlotte Reed and that he believed them both to be colored persons and that he believed them to be Lawful age and that he Knew of no Lawful reason why the said parties...should not be married." The indictment went on to state that "in truth and in fact the said Charlotte Reed...was not at the time of making the said affidavit by said Asa M. Davis nor is she a colored person, but said Charlotte Reed was...and now is wholly entirely and altogether a white person...." At the time it was illegal for a colored person to marry a white person and Mr. Davis had allegedly signed under oath the necessary affidavit for them to marry. Subpoenas were issued twice by the Court requiring Mr. Davis to answer the perjury charge. The sheriff never found Mr. Davis whereas the Prosecuting Attorney finally announced to the Court "he will no more Prosecute the Defendant in this behalf." That ended the unpleasant matter for both Mr. Davis and the bride and groom who apparently were perfectly happy in the union. President Judge Floyd was probably pleased about the outcome.

State of Indiana vs. George McDougal et al

Record Book A, Floyd Circuit Court, p. 271-274.

On May 15th, 1819 Jack Gamble filed a declaration or complaint against four men for trespass, assault and battery, and false imprisonment. Gamble was “a man of color” and charged the four men “with [using] their fists and with sticks switches and whips with great force and obedience did cruelly whip beat bruise wound and ill treat in so much where his life was thereby then and there greatly despaired of By reason of which said whipping and beating the said Plaintiff was hindered and prevented from doing and performing his usual labour and became and was sick sore and lame for a long time to wit for the space of ten weeks, then next ensuing--And the wrongs and injuries to the said Plaintiff then and there did to the great Damages of the said Plaintiff and against the peace and dignity of the State of Indiana....” He prayed for damages in the sum of \$600.00. At the conclusion of the trial the jury returned the following verdict:

We the Jury find the Defendants [Abner] Scribner and [Rowland S.] Strickland not guilty. We also find the Defendants [George] McDougal and [Joseph W.] Green guilty as set forth in the Plaintiff’s Declaration & do assess the plaintiffs damages at thirty three Dollars.”

President Judge Floyd then ordered the Plaintiff to recover \$33.00 from the two defendants with interest at 6% per annum from that date and the costs and expenses of his suit. It is difficult to tell from the proceedings in the *Record Book* whether the suit was a criminal indictment or a civil suit. However, it was listed in the index in the back of the *Record Book* as a civil suit. It is unknown whether Mr. Gamble ever collected his money but there is no record of him pursuing the recovery and it is unlikely that President Judge Floyd would have allowed the two guilty men to escape payment.

Lewis Carter vs. Joshua Wilson et al
Record Book A, Floyd Circuit Court, pp. 296-301.

On May 13th, 1820 Lewis Carter, "A man of colour," filed a trespass suit against four men. He claimed they "pulled and dragged about him...and then and there gave and struck [him]...a great many violent blows and strokes and also then and there forcibly and violently pulled and dragged [him]...from the dwelling home of him...into a Public highway and then and there forced and obliged him to go in and along the public highway aforesaid to the House of the said Defendant Joshua Wilson...and then and there imprisoned [him] and detained him in person there without any reasonable or probable cause whatever for a long space of time, to wit, the space of six days...." Mr. Carter sought damages in the sum of \$1,000.00. The defendants claimed as a defense that the crime was not committed in Indiana but in the State of Kentucky since Mr. Carter was "being held and reputed a Slave in Kentucky by James Carter, his master and owner...." Joshua Wilson claimed that he purchased Lewis Carter from James Carter for \$400.00 and that "he was justified by the Laws of Kentucky in doing this...." The *Record Book* then sets forth a copy of the Bill of Sale. By way of a reply to the defendants' defense, Lewis Carter claimed that he was never a slave in Kentucky, that for the last six years he had resided in Indiana, and that James Carter was never his master and owner. A jury was empanelled, heard the evidence, and returned the following verdict:

We the Jury do find for the Plaintiff in Damages the sum of Two Hundred Dollars.

President Judge Floyd then ordered that Lewis Carter recover \$200.00 from the four defendants plus interest at 6% per annum and his costs and expenses of suit. This was probably a case of mistaken identity. The Bill of Sale only identified Lewis Carter as "Lewis," and it was dated November 17, 1818. However, it was not uncommon for a slave to adopt the last name of his or her master and owner. But even if it was not a case of mistaken identity, the jury

and judge sided with Lewis Carter. President Judge Floyd and his associate judges would have a great influence over the members of the jury in the form of the legal instructions given to them by the judges. It would be easy for the judges to send the wrong message to a jury. Floyd was an anti-slavery man and most of his dealings with "people of colour" were honorably conducted. He saw to it they were treated fairly and with mercy. \$200.00 was a huge sum of money. Remember the governor was paid \$1,000.00 annually and President Judge Floyd, \$700.00. Circuit court judges in Indiana today earn approximately \$125,000.00. That means that compared to President Judge Floyd's salary in 1820 with his counterpart today, that Lewis Carter's recovery had a value of approximately \$36,000.00 which is a substantial sum in these days. President Judge Floyd required the defendants to post bond for the unpaid recovery. They were given five months to pay the \$200.00. There is no direct evidence that it was paid. There is no doubt that the four men were bounty hunters.

But the story does not end there. The defendants later filed a special plea and Lewis Carter demurred to the plea. The demurrer meant that the plea did not contain sufficient facts to support the claim. President Judge Floyd overruled the special plea and sustained the demurrer. Some time later the parties consented to the dismissal of the case. In all likelihood the parties settled the matter because President Judge Floyd again awarded Lewis Carter his costs. It would appear that costs and expenses not only included court costs but also the costs for the attorney representing Lewis Carter.

The name of Joshua Wilson will be encountered again in the next chapter.

Bartholomew County

The following article from another issue of the *Indiana Magazine of History* shows the presence of Judge Floyd at the first session of the Bartholomew Circuit Court:

The 5th session of the General Assembly of the state of Indiana met at Corydon on Monday, the 27th of November, 1820, and it was at this term on January 8, 1821, that Bartholomew county was formed, after a vigorous fight caused by the absorption of the northern three miles of the county of Jackson....

The courts were authorized to sit 12 days in Jefferson and Clark and the other courts of the circuit [Scott, Floyd, and Bartholomew], but six days.

At this Assembly Judge Davis Floyd was elected judge of the Second Judicial circuit.

At a special election held on the first Monday in April, 1821, John Pence and Ephraim Arnold were elected associate judges in and for our new county

The record as recorded in the first order book of Bartholomew county circuit court shows the absence of the president judge at the first day of the July, 1821, term and we have it from tradition that there was a summer freshet of the streams at that time, which was the cause of the non-appearance of Judge Floyd at the opening day of the first term of the Bartholomew circuit court...

Judge Floyd is present the following day and the Bartholomew circuit court is declared duly opened for the transaction of such business as comes before it.

Judge Davis Floyd was a prominent character of the territorial days of Indiana. He had been a soldier in the Revolutionary War, and had an intimate acquaintance with Aaron Burr, and became for a short time one of his converts. Later Judge Floyd paid a penalty for his connection in the Burr Conspiracy, by being imprisoned one-half hour.

Later he was appointed treasurer of Indiana territory, and at one period of history had been elected by the General Assembly as presiding judge of the Second Judicial circuit.

Pence, George, "Philip Sweeter and His Times," *Indiana Magazine of History*, Vol. XXIII (23), pp. 378-379.

The rest of the description of Judge Floyd which was quoted at the beginning of this chapter reads:

Judge Davis Floyd was one of the most interesting characters in early Indiana. He was one of the early settlers at Clarksville, where he opened a tavern as early as 1801. He was licensed as a Falls pilot at the same time. He was connected with the courts from their earliest organization. He took an active part in aiding Burr, for which he was brought to trial for treason. He was fined ten dollars and imprisoned three hours. In the anti-slavery struggle he took an active part against slavery. He served in the territorial and state Legislature frequently. It is said that he designed our present state seal. About 1815 or 1816 he moved to Corydon, and represented Harrison County in the first General Assembly. After serving out his seven-year term, President Monroe sent him on a government appointment to Florida, from which it is thought he never returned.

Courts and Lawyers in Indiana, Vol. I, pp. 62-63.

Whether he was a "great lawyer" or great judge is for the readers of this book to decide for themselves.

Books and references relied upon other than those cited in this chapter:

None

Images:

None