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David McDonald (1842-1853)

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### David McDonald

Flora McDonald Ketcham

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# David McDonald

By his Daughter

FLORA McDONALD KETCHAM

David McDonald was born in Bourbon County, Kentucky, on May 4, 1803. He lived with his father on a farm till he was fourteen years of age, working through the crop season and going to a country school in winter. Nothing was taught there but reading, writing, geography, and arithmetic.

In an autobiographical sketch are found these comments relative to his later education:

I think no one could beat me spelling. My parents were proud of my attainments. . . . After we moved to Indiana in 1817, I never went to school but 12 weeks more. 12 weeks I studied English Grammar and Blair's Rhetoric at the school of Cyrus McIntire, a young Presbyterian clergyman, in the town of Washington. What ever else I have learned, I have learned without a teacher.

At Washington, Daviess County, Indiana there was, about 1819 or 1820, a small County Library, I worked for a dollar, and paid it to the Library for the use of books; and I read nearly all the books in it. Among these were Hume's England, Rollin's Ancient History, Josephus, The Spectator, Pope's Works, Robertson's History, Swift's Work and a few novels. Mornings, evenings and at noon when the horses were resting from the plough, I devoured these volumes. This first fixed my taste for reading, though long before I had read over and over again Milton's Poetic Works. I believe Milton was the first poet I ever read and admired. . . .<sup>1</sup>

David was one of twelve sisters and brothers, and he speaks of them all as loving books and poetry. He speaks of his father as being of brilliant wit and well educated for a farmer. There is a touch of poetic beauty in the description which he gives of his life after his father had migrated to Indiana:

The farm was wholly unimproved, wild woods and wild prairie. On the south was a sparse settlement, on the north an unbroken wilderness. We pitched our tents in the woods; in two days or three we had a log cabin built; in two or three weeks we had twelve acres of prairie land planted in corn. Our cows furnished us rivers of milk. The woods furnished us venison abundantly. The land flowed with milk and honey. Soon the prairies were red with strawberries. Then came wild raspberries and blackberries and grapes and plums. And so we fared sumptuously every day. And then it was all so romantic: the wolves howled and the whip-

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<sup>1</sup>Autobiographical sketch. On July 20, 1860, Judge McDonald wrote a brief account of his life to that date. Sometime during the latter part of 1868, he added nine pages to the thirty-six which he had written in 1860.

poorwill chanted around us every night; and what sport we daily had in hunting the deer and turkeys and bees. In fine we soon had a good farm opened, and everything comfortable around us.<sup>2</sup>

This generous and aspiring youth whose studies placed him ahead of his playmates soon felt a desire for something beyond, and a determination to go higher. After he reached manhood he was occupied with preaching and school teaching. He wished a wider field of duty than the simple round of duties on his father's farm. On October 21, 1828, he was married to Mary R. Miller. Of his situation and prospects at that time he says:

I was then a schoolmaster in Washington, Indiana. I was worth about \$100, she [his bride] about \$50. We went to housekeeping in Washington in November 1828. About that time a young lawyer residing there advised me to study law, and offered me the use of his books for that purpose. . . . and on the first day of January 1829, I commenced studying law. During that year I studied eight hours per day and taught a school.

In Feb. 1830, I got a license to practise in the Circuit Courts. Immediately I opened a law office in Washington. The first year was most discouraging; I lost nearly all my cases; and my fees amounted to only about \$250. But after that year, I had plenty of business and fair success.<sup>3</sup>

Mr. McDonald was in Indianapolis as a member of the Legislature during the session of 1833-1834. He felt that it was time very uselessly spent and never wished to go back. At that early date there seem to have been irregularities among those gentlemen who were in politics that disgusted him. He was elected Judge of the tenth Circuit Court of Indiana in 1838 which place he led for fourteen years. He moved to Bloomington, one of the ten county seats within his Circuit, in 1841. He was the first professor of law at Indiana University. In regard to this he states: "My connection with the university was highly advantageous to me, as it brought me [into] intimate [contact] with that great and good man, Dr. Andrew Wylie, and with other learned men." During that time he picked up a good deal of learning and studied Latin without a teacher.

An article in the *Indiana Daily Student*, written by William Pitt Murray, now dead, includes the following:

<sup>2</sup> Quoted by Albert G. Porter in his review of McDonald's life at the funeral of the Judge. See *Indianapolis News*, Aug. 27, 1869.

<sup>3</sup> Autobiographical sketch.

The teachers in the Law department were the Hon. David McDonald, judge of the Court of Common Pleas of the Bloomington District and Judge William T. Otto, of the New Albany District. And now after fifty years, I revere and honor the memory of these men with love and affection. It was their ambition to make lawyers out of their students, who would rank among the first in the country; I admit that the material was not always first-rate. Judge McDonald was one of the kindest men that ever lived, and if the members of his class had been his own sons he could not have taken more interest in them,—in his class room a strict disciplinarian; outside, a boy with us. . . . The Judge every two or three weeks would at the close of his Friday lecture say: "Gentlemen I will be at home tomorrow evening." We knew that this meant a dozen or more village girls would be there.<sup>4</sup>

When Judge McDonald retired from Indiana University, he was honored with a degree. "That Institution, against my positive remonstrance," he wrote later, "conferred on me the degree of LL.D.—I never thought I was entitled to any such honor."<sup>5</sup> During 1855-1856, the Judge was a member of the Board of Trustees of Indiana University.

He had moved to Indianapolis in 1854, soon after which his name appeared as one of the firm of "McDonald and Porter." Albert G. Porter, his law partner, was one of his oldest friends. In 1856 the Trustees of Asbury University at Greencastle elected him president of that College. In regard to this he asserts: "Indeed I never desired College honors, having never received a collegiate education."<sup>6</sup>

Judge McDonald made several trips to Washington, each time keeping a diary. His first trip to the national capital was taken in 1858. His diary record is interesting after seventy-four years. Today it seems strange to read: "My journey through Ohio today showed a poor, marshy country. I saw no improvements and no farms equal to the best in Indiana." At times in Ohio, the train made forty miles an hour. When running along the Juniata River in Pennsylvania, the rate was thirty miles an hour. All the way from Pittsburgh to Harrisburgh the traveler considered the country to be wretched, with not a good farm to be seen, and "miserable

<sup>4</sup> *Indiana Daily Student*, Dec. 8, 1898. Among additional items presented by Murray in his communication, he explained that the law students at Indiana University paid tuition from which the law professors received their sole compensation, as no salaries were paid to them by the University.

<sup>5</sup> Autobiographical sketch.

<sup>6</sup> *Ibid.* Preceding the above statement, Judge McDonald gave reasons for declining the offer of the presidency: "I declined the offer because I was not an orthodox Methodist, and because my wife was no Methodist at all." Mrs. McDonald was a Presbyterian. Judge McDonald held Unitarian beliefs, though he was a member of a Methodist church.

patches enclosed with wretched crooked rail fences." This was three quarters of a century ago and time and toil have transformed all that unattractive picture.

On December 28, 1858, McDonald visited the Supreme Court rooms. He recorded his first impressions: "After sitting there a while, the judges marched in headed by the Chief Justice. They wore black gowns. The impression the first sight of them gave me was that of weary, worn out, feeble old men whose places would be rather in chimney corners than here." The Hoosier attorney was then seeking the privilege of practising before the federal courts. In regard to this, he wrote of the outcome: "Mr. Richard Thompson moved the admission. The Chief Justice assented. I walked forward looking as big as possible. The clerk swore me—charged me \$6.50. I paid it—took my seal and license—and went to dinner!"<sup>7</sup>

Of the Judge's visit to Washington an entry of January 1, 1859, sounds familiar:

I staid at Brown's Hotel till 12 M. Then with J. Hughes I went to the President's. Everybody was there. With the crowd, hat in hand, we pressed along from room to room till we were in the Presence. Here he was—James Buchanan—a large, tall, gray-haired majestic looking old man. He shook my hand cordially, was "very glad to see Judge McDonald of Indiana" indicated for me to pass on—and all was over. Then his Niece, Miss Lane, took me by the hand, said pretty cordial things—we then pressed on and soon found ourselves outside again.<sup>8</sup>

In 1862, McDonald made application to President Lincoln for the place of federal judge for the Indiana District. He made his address directly to Mr. Lincoln and his letter asking for the place is unique for its frankness and independence. To Mr. Lincoln, he wrote:

I desire to be appointed United States District Judge to fill the vacancy occasioned by the death of Judge Huntington. A gentleman professing to know, lately told me that no one could get an office from you without personally seeing you. I do not believe it. I cannot suppose you so weak as to favor the most boisterous beggar. I shall, therefore not annoy you with my presence. Indeed, my patriotism has not led me either to besiege the house of the President at Springfield or to lay wait for you at the White House. This omission will not, I hope, operate un-

<sup>7</sup> Diary of David McDonald. The Judge made trips to Washington D.C. in 1858, 1862 and 1864. In each instance, he kept a rather full journal of the journeys to and fro and of his stay in the national capital. These journals are preserved in the family. The first trip extended from Dec. 14, 1858 to Jan. 7, 1859; the second, from June 9 to June 19, 1862; the third, from Sept. 5 to Sept. 11, 1864; the fourth, from Dec. 1 to Dec. 15, 1864.

<sup>8</sup> Diary, Jan. 1, 1859. The J. Hughes mentioned was James Hughes of Bloomington, Indiana, then a Democratic member of the national House.

favorably to my present application. None of those who, like houseflies have followed you for the last two years withersoever you went, have felt more regard for you than I have,—nor can I see that because you have already given distinguished place to one or two citizens of Indiana, you ought therefore to favor them a second time. I was a Henry Clay Whig as long as whiggery lasted. When it died I went to the Republicans as the best thing I could do. You may remember that I rode sixty miles from a court where I met you to vote for Henry Clay. I have never committed the sin of democracy giving all my efforts to my profession. I have not been much of a politician and while I concede that politicians ought to be preferred in politics, I claim for those who have followed the law only a like preference in judicial office. I am too modest to mention my attainments in the law and too proud to plead poverty. I hope you will appoint the best man. But if you fail to appoint me, I shall be sorry both on your account and on my own.<sup>9</sup>

This letter did not result in the appointment of Judge McDonald. Caleb B. Smith resigned his place as Secretary of the Interior to accept the vacant judgeship. When Smith died in January, 1864, the Hon. Albert S. White<sup>10</sup> was appointed to the coveted place on the bench. Early in September, 1864, Judge White died. This time, McDonald journeyed eastward to confer directly with the President. He left Indianapolis on September 5, carrying with him a few hastily collected recommendations. After reaching the capital, he obtained possession of certain other testimonials that had been filed with the Attorney General in 1862. Armed with these he called on Lincoln. The judgeship was not promised, but the applicant left for his home feeling hopeful.<sup>11</sup>

The first interview with the President occurred on September 9. A few weeks later, in December, 1864, Judge McDonald once more traveled to Washington in war-time. Though of opposite politics, Senator Thomas A. Hendricks interested himself in his fellow Hoosier. The Senator and the Judge went together to see Lincoln at 2:30 P.M. on December 6, but, though they waited until sundown, they were unable to gain an audience. In the evening of the same day, they met with success. The Judge's diary gives a brief account of this White House visit:

At about 8 o'clock P.M. Senator Hendricks and I went again to the

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<sup>9</sup> Copy of letter to President Lincoln.

<sup>10</sup> Albert S. White had served in Congress from Indiana in both House (1837-1839) and Senate (1839-1845). He was commissioned United States Judge for the District of Indiana on Jan. 18, 1864. He died on Sept. 4, 1864.

<sup>11</sup> Diary, Sept. 9, 1864.

President's House. After waiting a long time Hendricks was called in. He had a long talk with the President about me. Then I was called in. The President said he had thought of making me judge in McLean's place. This he said was at the request of Bishop Simpson. Afterwards he said he had thought seriously of me when he appointed Smith, and also when he had appointed White. He said he cared nothing about recommendations: He said in fine, everything from which I might infer that he would appoint me without promising it directly. I feel sure he will do it. Yet the doubt and uncertainty are painful.<sup>12</sup>

Senator Henry S. Lane was, of course, interested in the appointment of a federal judge for the Indiana District. When Judge McDonald first encountered Lane, he did not get much comfort from him. In regard to the attitude of the Senator, McDonald records: "He says he has recommended several of us to the President for the judgeship and now having done his whole duty, he says he leaves it to the President to do his!!!" Several days passed after Hendricks had taken McDonald to see Lincoln with no developments. Meanwhile Judge James Hughes, once a bitter enemy but now a close friend of McDonald, was without success constantly making attempts to see the President. On Monday, December 12, Lane was privileged to carry good news to his able but anxious constituent:

I went to the Capitol this morning. There I met Judge Wright and Dan Mace. They hinted to me that I would be appointed Judge that day. Then Henry S. Lane came to me looking wise. He spoke thus "The President sent for me this morning. I went. He asked me if there was any good reason why McDonald should not be appointed as Judge? I answered, none in the world. Then said the President, I will appoint him."<sup>13</sup>

On the way home, the car in which Judge McDonald was riding left the track, broke loose from the train and turned over. This accident occurred during the night and great confusion reigned for several minutes. No one was seriously injured. McDonald and his fellow passengers succeeded in getting out of the car and, having successfully avoided other dangers, were soon on board the train again, which had returned to the scene after running a short distance down the line. Mc-

<sup>12</sup> *Ibid.*, Dec. 6, 1864.

<sup>13</sup> *Ibid.*, Dec. 12, 1864. Hughes was appointed a Judge of the United States Court of Claims by Buchanan in 1860. He supported Breckinridge for President in the contest of that year. After the formation of the Confederacy he was an ardent Union man. He retained his judgeship until the end of 1864, when he resigned. It is hard to identify the Judge Wright mentioned. Joseph A. Wright may have been in Washington between the time of his service as a Commissioner to the Hamburg Exposition and his second mission to Prussia, but he was not a Judge. Daniel Mace of Lafayette, Indiana, who had been a member of the national House from 1851 to 1857 was temporarily in Washington in December of 1864.

Donald had lost his cane and his new \$13 hat was "smashed into a cocked hat", but otherwise he was safe. "I was joyful", he wrote, "nearly as thankful as yesterday when I learned that 'Uncle Abraham' had made me a U.S. Judge."<sup>14</sup>

In 1868, about a year before his death, Judge McDonald declared that he considered his appointment as District Judge the "most fortunate circumstance" in his life. For ten years, he had practised his profession in Indianapolis. These were strenuous years, and his work had become a heavy burden. As Judge, he promised himself "many happy years of easy work and leisure." He lived but little more than four and one-half years after his selection to the District Judgeship, however, years of hard labor, ill-health and other afflictions.<sup>15</sup>

In April, 1866, he was taken with some form of spinal disease which sadly affected him. Sometimes he was unable to attend to official business and never without suffering. He died on August 25, 1869, of what would today be called typhoid-dysentery. Medical science could now have controlled it readily. He not only performed the arduous duties of his judicial station, increased fourfold after the passage of the Bankrupt Law, but actually engaged in the formidable task of revising and preparing his judicial opinions in important cases for publication. When urged to desist from this great labor and take a journey for his health, he showed impatience and declared his duties were not burdensome and that he was not at all overworked. He had learned to work so incessantly that the briefest respite from labor seemed to him like idleness. He loved his profession with a devoted love and revered the memory of great men who had made that profession illustrious. In his hours of relaxation he would turn with fondness to the names of great lawyers whose memory he tenderly cherished.

At the funeral of Judge McDonald, his friend and law partner, Albert G. Porter, gave a sketch of his life. "Delicacy", declared Mr. Porter, "does not compel us to suppress the mention of any vice. His life was stainless." The father of the Judge died when the latter was fourteen years of age. His last words to the boy were, "My son, be a good man." He kept the injunction laid upon him. The corner stones of his character, as listed by Porter were: "Integrity, Honor, Magnanim-

<sup>14</sup> *Ibid.*, Dec. 13, 1864.

<sup>15</sup> Autobiographical sketch.

ity, Truthfulness." As a lawyer, the speaker claimed that, "in clearness of statement, in closeness of reasoning, in logical analysis, in the art of persuasion, perfect in the seeming absence of that art, the power of winning juries and leading them to adopt his own conclusions, he never, though he did not aspire to the distinction of an orator, was surpassed at the Indianapolis Bar." As a judge, he was noted for his learning, his impartiality, and his courtesy, especially to young lawyers, who practised before him.

The committee selected from among the lawyers who practised before Judge McDonald's Court drew up and reported the following resolution:

Resolved, That the Bar of this Court held in deepest veneration the character and services of the late distinguished Judge, that they remember with admiration and gratitude the ripe learning, the scrupulous impartiality, the inexhaustible patience, the unwearying industry and the spotless integrity, which he brought to the discharge of his judicial duties . . . .

In 1856 Judge McDonald published what he called *McDonald's Treatise*. It was a work designed for the use of those local officials, so important in that day, justices of the peace and constables. The work proved to be very valuable to lawyers as well, and was reprinted several times. Whether regarded as a Circuit Judge, a professor of law, a practising lawyer, a writer, or a federal District Judge, David McDonald was a distinguished man. His success was the more remarkable when it is remembered, "how without teachers he became a scholar; how without books of his own, he became an adept in literature, and how by his energy, talent and perseverance, he became justly eminent as a lawyer and jurist."<sup>16</sup>

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<sup>16</sup> From the funeral sermon of the Rev. C. N. Sims. For an account of the funeral services, see the *Indianapolis News*, Aug. 27, 1869.