

**HISTORICAL**

\*In the rapid growth as a territory and state, little or no attention has been bestowed on matters of history, and historical records of any kind are very scarce. Anent the period in which the transition from territorial to state government occurred—the most important epoch in the short life of the state there is a special dearth of authentic records, and for the incidents and experiences of this time one has to rely largely upon the personal reminiscences of those who were fortunate enough to have been residents of Nebraska prior to the adoption of the constitution of 1866. The dates are easily enough arrived at, but there is little other accurate data on record. The early history of the supreme court did not escape the general neglect, and if this brief sketch does not abound in details and particulars it is partly due to the remissness of the early Nebraskans. To give a clear idea of the supreme court of to-day, it is necessary to go back to the beginning and trace its history down to the present time. In the original constitution, approved February 9, 1866, it was provided that the supreme court of the state should consist of a chief justice and two associate justices, each to receive a salary of \$2,000 per annum. These judges, it was also provided, should hold the district courts of the state. The state was then divided into three judicial districts. The first district comprised the counties of Richardson, Nemaha, Otoe, Johnson, Pawnee, Gage, Jefferson, Saline, Fillmore, and Nuckolls; the second comprised the counties of Cass, Sarpy, Douglas, Saunders, Lancaster, Seward, and Butler; and the third included Washington, Dodge, Platte, Cuming, Burt, Dakota, Dixon, Cedar, L'Eau-qui-Court, Kearney, Lincoln, Hall, and Buffalo. Each judge had one of these districts assigned to him by enactment of the legislature, and when the supreme court was not in session at the state capitol, most of the time of the judges was spent in making the rounds of their respective circuits. As the district courts were held alternately in the different counties, the judges were kept very busy, although in the early days the dockets were not overburdened with cases. During this period there were only two railroads in the state. The towns along the Missouri river were most of them accessible by rail, but the inland towns were only reached by long and dreary stage rides over the sparsely settled prairies. Many an interesting story is told of these journeys, and while the lot of the circuit riders was not an easy one, their life was relieved by frequent amusing experiences. Law, as it was known and practiced in Nebraska the first five years after the organization of the state, was not a remarkably profound study, and some queer things were enacted in the court rooms of the pioneer days. Judge Maxwell is the only member of the present supreme court who was on the bench under the old regime, and the hardships and crudities, as well as the peculiarities and strange occurrences of the pre-amendment days, are still fresh in his mind. The judges then, as now, served six years, and although the legislature has since had the power to increase the number, this privilege has never been exercised. (A strong effort was made in this behalf at the last session of the legislature, but it was unsuccessful.) The supreme court, until the new capitol was built, held its sessions in dingy and uncomfortable quarters in the old clap-trap state house. Work in

\*NOTE.—The above, written by the editor of THE COURIER some years ago, is taken from the Proceedings of the State Historical Society.

the court of last resort did not at first accumulate very rapidly, as the records show that only twenty cases were filed for trial in the year 1868. It was several years before the number exceeded fifty. Beyond the clerk of the court, no assistants were allowed, and the judges seem to have had no difficulty in keeping up with their work. Indeed, it is probable that the labor in connection with the district courts was much more arduous than that of the higher tribunal.

The first supreme bench was composed of Oliver P. Mason, George B. Lake, and Lorenzo Crounse. Mason enjoys the distinction of being the first chief justice, although not elected to the office. In those days the chief justice was not chosen in rotation as now, but was elected to the office. William A. Little, a democrat, was nominated and elected chief justice. He died, however, before he could take his office, and Governor Butler appointed Mason, of Nebraska City. Lake and Crounse were elected in 1867. Daniel Gantt and Samuel Maxwell went to the bench in 1873. Lake was re-elected. Amasa Cobb was elected in 1878. Maxwell was re-elected in 1882, and M. B. Reese ascended the bench in 1884. Of the above all are now living, with the exception of Gantt, of Nebraska City, who died in 1878, while on the bench. Mason afterwards became a railway commissioner and is now living in Lincoln; Lake is engaged in practice at Omaha; Crounse, after leaving the bench, was appointed clerk of the supreme court, and was afterwards elected to congress. He represented the state in the house at the time when Nebraska was only allotted one congressman. He was also, upon the expiration of his term, appointed United States revenue collector, and is now residing at Blair. The others are still serving on the bench.

The convention of 1875 made very important changes in the constitution, some of which have been since deplored. Instead of being elected uniformly for a term of six years, it was provided that the judges should be classified by lot, so that one should hold his office for two years, one for four years, and one for six years. The judge having the shortest term to serve, not holding his office by appointment or election to fill vacancy, was made chief justice. This arrangement, as provided in the constitution, applied only to the judges elected at the first election after the adoption. Thereafter one judge has been elected every two years. Provision was also made for the division of the state into six judicial districts and for the election of judges for the same, thus relieving the supreme court judges of double duty. (The districts have since been doubled in number.) The salary, \$2,000, was increased to \$2,500, and provision was made for the appointment of a reporter who should also act as clerk of the supreme court and state librarian.

Under these new conditions affairs speedily assumed a more business-like shape, and the court was thereby enabled to meet the increasing demands of the fast growing state. The court, as

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at present constituted, consists of Chief Justice M. B. Reese and Associate Justices Maxwell and Cobb. These judges have served in a trying time, a time when a radical change in the affairs of the judiciary had taken place immediately previous, and when the great inflow of population, with the consequent increase of litigation, imposed heavy burdens on the court. They have been compelled to work without ceasing, summer and winter, and the onerous duties which have fallen to their lot have been performed most expeditiously. To-day there are few states in the union in which the supreme court calendar is as clean as in Nebraska. The court is now only about 200 cases behind and can be said to be virtually up to date. If the rules are complied with an attorney can be sure of a hearing within six months from the filing of the papers, and cases frequently come up for trial in a much less time. From twenty cases in 1868, docket entries multiplied until the number of new cases filed for trial during the current year will be between 350 and 400. There has been a gradual increase since the organization of the court, with the exception of a period of about two years following the session of the legislature in 1885, when a law was passed providing that printed abstracts of all cases filed should be supplied for the convenience of the judges. This entailed a heavy expense and had the effect of diminishing the number of docket entries. When the objectionable act was repealed the cases began to increase again. Cases are now heard by districts, and they are so arranged that all the cases from one county are docketed together, enabling an attorney interested in several suits to appear in them all without making more than one trip to the capital. Two terms are held each year, one commencing in January and the other in September. During the term the court is generally in session four days of each week, business commencing at 8:30 o'clock a. m. After the adjournment in the afternoon the judges remain in the building frequently as late as 6 or 7 o'clock, finishing the day's work and preparing for the morrow. They are now allowed private secretaries, who each get \$4 per day for time actually employed, and when not on the bench the judges are at work on opinions, the transcribing of which constitutes the principal duty of the secretaries. Judge Reese has modern ideas and uses a phonograph in dictating, his clerk afterwards transcribing with the aid of the machine. Judges Maxwell and Cobb both dictate to long-hand writers. The office of supreme court judge in this state is far from being a sinecure, as every one knows who has had occasion to be about the court room.

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