

Morton's History of Nebraska

Authentic, Complete

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CHAPTER VII CONTINUED (27)

The legislature prescribed the jurisdiction of the supreme and district courts and of justices of the peace, and the times and places for holding court, and divided the territory into districts. The first district comprised the counties of Douglas and Washington. The chief justice of the supreme court, Ferguson, was assigned to this district, and he was to hold two terms of court annually at Omaha City in Douglas county, and two at some place not designated in Washington county. The 2d district comprised the counties of Clay, Cass, Gage, Greene, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Richardson, Saline, and York. The act provided for two terms of court annually in Cass, Otoe, Nemaha and Richardson, and for terms in the other counties at such times and places as the judge should appoint. Associate Justice Harden was assigned to this district. The 3d district comprised the counties of Blackbird, Buffalo, Burt, Cuming, Dakota, Dodge, Izard, Jackson, Loup and McNeale. Two terms of court annually were to be held at "Fontenelle in Dodge county and at Tekamah." Associate Justice Bradley was assigned to this district. The unpreparedness of those times is illustrated by the provision that the court should be held at the court house in each of the counties "where there shall be a court house," and "where there shall be none" the sheriff shall provide a suitable place.

The act defining the duties of the judge of probate made that officer of formidable importance. He had the ordinary jurisdiction of a probate judge and of justices of the peace. Besides this he was accounting officer or auditor and general fiscal agent of the county. He had "authority to provide for the erection and reparation of court houses, jails and other necessary buildings for the use of the county," and to determine the amount of tax to be levied for county purposes, and cause the same to be collected. This dignitary and the sheriff appear to have been the lord high rulers of the county.

The act regulating elections provided for the election on the first Tuesday in November, 1855, and on the same day of every second year thereafter, of a delegate to Congress, county officers, consisting of a probate judge, register, sheriff, treasurer and surveyor; also a territorial treasurer, auditor and librarian, a district attorney for each judicial district and two justices of the peace and two constables for each precinct. Members of the house of representatives were to be elected on the day named every year. Members of the council were to be elected in 1856 and each second year thereafter. Another act provided for the admission to practice in all the courts of the territory of "any person twenty-one years of age who can produce satisfactory evidence of good moral character and pass examination before either of the judges of the district court or the judges of the supreme court." Beyond administering upon the moral estate of the applicant, which alone was specifically prescribed, the examining board was free to inquire and impose conditions touching his race, color, sex, previous condition and legal qualifications—all, one or none of them—as it saw fit.

At this first session a liberal law was passed exempting the property of married women from liability on account of the debts of husbands, but no general exemption of homesteads or other property was made. An interest rate of 10 per cent was fixed where no other rate was provided by contract, and the contract rate was left without limitation. A bill to exempt a homestead from forced sale was passed by the house by a vote of 14 to 5, but it was defeated by postponement in the council by a vote of 7 to 6. Later in the session another bill for the exemption of the homestead and other property of unmarried persons, after passing the house by a vote of 13 to 4, was also defeated in the council by postponement. But a law was passed exempting from forced sale on execution of real or personal property of married persons or heads of families to the value of \$500 and of unmarried persons to the value of \$200. The usual exemption of specific property was included in the code borrowed from Iowa. A law with the usual provisions regulating marriage was passed.

The law "to establish the common school system" conferred upon the territorial librarian the duties of territorial superintendent of public instruction, at a salary of \$200 a year, and provided for the organization and support of common or district schools. The county superintendent reported to the territorial superintendent all essential facts reported to him from the several districts in his county, had general superintendence of the schools, was required to visit them at least twice each term, was authorized to examine and grant certificates to the teachers, and apportioned the county school tax and paid it over to the districts. The district board of directors managed the affairs of the districts, and before employing teachers were required to examine them in the branches of reading, spelling, writing, arithmetic, geography, history of the United States and English grammar.

An act entitled "Claims on public lands," passed by the 1st legislature,

undertook to legalize neighborhood regulations as to claims and improvements on public lands, and provided for their registry in the office of the register of deeds of the county as the law of each neighborhood. A valid claim was limited in extent to 320 acres, and each claim was to conform "as near as may be to the lines of subdivision of the United States surveys," and the boundaries were required to be "marked, staked, or blazed." The act provided that the resident claim holders of each neighborhood should define its boundaries and record them in the office of the register of deeds. It is an interesting fact, which must be borne in mind for a proper understanding of the claims bill, that at the time it was passed no part of Nebraska had been surveyed and therefore no lands had been offered for sale or formally opened to settlement. We find Mr. Joseph Dyson urging, in support of his candidacy as a delegate to Congress in 1854, that he is in favor of a law which will "secure to actual settlers a temporary right to the lands they have improved until such time as they can dig out of the soil the amount of money necessary to enter them;" and that "it is a conceded point that the pre-emption law of 1841, in a great majority of cases, has been destructive to the interests of the pre-emptor," because "as soon as a person who has no capital files on a piece of land some individual who has more money than good principles will lay his money on the same land" in the hope that the pre-emptor will not be able to pay for it at the time specified by law. In order to protect himself from this menace he must borrow money "at 40 or 50 per cent per annum, which are the usual rates of interest in such cases."

By the law of Congress approved July 22, 1854, the president of the United States was authorized to appoint a surveyor-general for the territories of Nebraska and Kansas, and his office was to be located as the president should from time to time direct. This law provided that "all public lands to which the Indian title has or shall be extinguished" should be subject to the pre-emption act of 1841, also that Nebraska should constitute the "Omaha district," and Kansas the "Pawnee district." The first surveyor-general appointed under this act was John Calhoun, and his office was first located at Leavenworth, Kan. It was removed from Kansas to Nebraska City about June 1, 1855.

The second party to the first surveying contract for Nebraska undertook to establish the principal base line in the territories of Kansas and Nebraska, which was to begin at "the point where the 40th degree of latitude (the boundary line between Nebraska and Kansas) intersects the right bank of the Missouri river," and to run west 108 miles to the sixth principal meridian, which was the western border of the Omaha cession, and is now the western boundary of Jefferson, Saline, Seward and Butler counties. The parties to this contract were the surveyor-general and J. P. Johnson of Bond county, Illinois; it was dated November 2, 1854, and the work was to be completed by January 20, 1855. The next contract was made April 26, 1855, with Charles A. Manners of Christian county, Illinois, for establishing the guide meridian between ranges 8 and 9—the west line of Pawnee, Johnson, Otoe and Cass counties—and the Missouri river, and also to establish the 1st, 2d, 3d, 4th, 5th, 6th and 7th parallel lines. The third contract, dated September 26, 1855, with Bennet Burnam, was for subdividing townships 1, 2, 3, 4, north, range 12 east—the east tier of townships of Pawnee county, and the southeast corner of Johnson, and the southwest corner of Nemaha county. This contract was to be completed by December 1, 1855. Contracts for the first subdivision in Douglas county—including Omaha City and Florence—and in Otoe county were made October 31, 1855, to be completed by June, 1856.

The Council Bluffs Chronotype quotes the Nebraska City News of January 19, 1856, which reports rapid progress of the survey, saying that "early in the spring all of Nebraska between the guide meridian and the Missouri river will be surveyed and in the market." Maj. J. D. White had just returned to the city from the field, having completed a contract in the first division, and several companies were at work on the first, second, third and fourth divisions.

From this account of the first surveys it will be seen that all claimants of lands before the organization of the territory and for about two years after were merely squatters, without titles or surveyed boundaries of their landed possessions. But necessity had become the mother of invention of a practicable and efficient substitute for statutory rule or measure. The primary government of the territory was a pure democracy. The first formal territorial laws were those passed by the claim clubs. Though the earliest of these laws antedated the legislature, and had no constitutional origin or sanction, they were none the less actual or effective. This system was doubtless borrowed directly from Iowa, where it had been in vogue in a similar form. There is contemporary evidence that the rules of these clubs were enforced with equity and firmness—sometimes with the utmost severity—and that the settler who

came into this voluntary court of equity was protected in his substantial rights from the time he squatted on his claim until he made good his title when the lands were put on sale by authority of the federal law. The constitution and rules of the several clubs did not greatly differ in substance. The first claim association of Nebraska of which we have any record was organized at a meeting held under the "lone tree"—the western terminus of the Council Bluffs and Nebraska Ferry—on the 22d of July, 1854. Samuel A. Lewis was chairman and M. C. Gaylord secretary. In the preamble of a set of resolutions passed at the meeting is an interesting account of the relation of the ferry company to the projected town of Omaha as early as 1853. The second of these clubs of which we have any account is one whose preliminary organization took place at a meeting held at Traders Point, September 11, 1854. Samuel Allis presided and William Gilmour was secretary, and a committee was appointed to draft rules and regulations and report at a meeting to be held September 23. There appears to have been some discord—probably founded on jealousy—about this meeting, for the Palladium refused to publish its proceedings, and the Arrow of September 29 contains an account of a meeting held at Bellevue during the previous week, at which a new committee, appointed then and there, reported rules and regulations which were adopted. The Arrow of October 6 publishes the proceedings of a meeting, September 23, in "Big Grove," one mile west of the Omaha village, where the Papao Claim Association was formed. The Union Association was formed at a meeting at the residence of Mil. Cardwell, near Plattsmouth, March 20, 1855. The Omaha Claims Association was organized February 5, 1856, and the Elkhorn Claim Club, October 11, 1856.

John M. Thayer was president of the Omaha Claims Association, and Lyman Richardson was secretary. The fundamental resolutions, after reciting that "it has been found necessary in all new countries to league together to prevent lands being taken by speculators abroad or at home," and that "during the coming season lands will be greatly sought for by newcomers and land sharks," commit the club to the meeting out of justice in this admirably direct, determined and unmistakable manner:

"We whose names are hereto subscribed, claimants upon the public lands, do hereby agree with each other, and bind ourselves upon our honors that we will protect every lawful claimant in the peaceable possession of his claim, and that in case of his claim being jumped we will, when called upon by the Captain of the Regulators, turn out and proceed to the claim jumped, and there endeavor to have the matter settled amicably by an arbitration on the spot, each party to choose one arbitrator, and if they cannot agree they shall choose a third; but if it cannot be so settled then we will obey the captain in carefully and quietly putting the jumper out of possession and the claimant in."

"We further agree with each other that when the surveys have been made and the land offered for sale by the United States we will attend said sales and protect each other in entering our respective claims, each claimant furnishing the money for his said entry."

"After the sales we are to deed and re-deed to each other so as to secure to each claimant the land each has claimed," according to the lines now existing."

The burden was on the jumper of any part of a claim in different tracts to show the excess over 320 acres in the total claim by the regular survey.

Alfred D. Goyer, who had been a member from Douglas county of the first house of representatives, was unanimously awarded the formidable, if not dangerous title of captain of the regulators. The several associations in Douglas county were invited to meet the Omaha association in joint convention to establish more accurately the division lines, and for other purposes. Andrew J. Poppleton was an active member of this meeting, and Harrison Johnson, O. D. Richardson, Samuel E. Rogers, I. Shoemaker and A. D. Goyer were the committee on resolutions.

The Nebraskan of March 26, 1856, copies laws and boundaries of the club formed by the residents of the south part of Washington county. These laws provided that any person above sixteen years of age might hold a claim. The same journal of May 21, 1856, states that at a meeting of the Omaha Claims Association a resolution was passed requiring claimants to make improvements worth \$50, and "begin tomorrow." In order to hold their claims. At Secretary Cuming's instance a resolution was passed directing that a copy of the resolutions of February 5 be left with the register of the county, and every claimholder be required to sign them in order to come under their protection. This paper also contains an account of a summary eviction by the Omaha club. Four men had erected a cabin and prepared the foundations for three more on the "upper end of the town site," on the previous Saturday night. The "captain" had the work demolished promptly. It is stated that the jumpers intended to claim one hundred and sixty acres each, "worth in all at least \$15,000."

TO BE CONTINUED

How Heroes and Heroines Propose.

The bashful lover who shrinks from the ordeal of proposal, and cannot make up his mind how to put the fateful question most effectively, might do worse than study the pages of fiction, in which he will find a wide range of proposals for his guidance, and also get a stimulus to his flagging courage.

If he has a leaning toward the florid style of declaration he might copy the hero of a recent novel, who thus pours out his soul to the lady of his heart: "You ask me if I really love you. Why, my darling, does not my love cry out to you in every glance of my eyes, in every tremor of my voice? I have not known a moment since first we met when my love for you has not absorbed my soul. To be near you is heaven; not to see you is the greatest misery my life has known. I think of you, dream of you, live for you; your glance transports me to heaven, your touch thrills me, your voice is sweeter than any earthly music. Tell me, darling that you love me—ever so little; and I shall count myself the happiest man on earth."

If our lover feels himself unequal to soar to such heights of eloquence he might take as his model the hero of "Molly Bawn." "Darling," says Mr. Luttrell, "why are you so cruel to me? Surely you must care for me, be it ever such a little. To think otherwise would—but I will not think about it. Moll. Nay, you will marry me?"

"You must have known that I loved you from the first night," protested the "Little Minister" to Babbie. "No, you only amused me," she said, like one determined to stint nothing of the truth. "Even at the well I laughed at your vows." This wounded Gavin afresh, wretched as her story had made him, and he said, tragically, "You never cared for me at all." "Oh, always, always," she answered, "since I knew what love was; and it was you who taught me." Even in his misery he held his head high with pride. At least she did love him.

"Lucy, did you never dream of meeting me?" asked Richard Feverel of Lucy Desborough. "Oh, Richard, yes; for I remembered you." "Lucy, and did you never pray that we might meet?" "I did." "My own! My own forever! You are pledged to me? Whisper." "And you are mine!" "Lucy, my bride! my life!" The nightjar spins his dark monotony on the branch of the pine. The soft beam travels round them and listens to their hearts. Their lips are locked.

Lovers who cannot make up their mind to a straightforward proposal should be warned by Hiram Hey's experience in Halliwell Sutcliffe's "Shameless Wayne." "I've been thinking things, Martha," said Hiram, "sin' I saw thee look so bonnie-like this morn." "What sort o' things?" she asked, demurely, sweeping the table free of crumbs. "Well, what's wrong for a young 'un like th' maister is right enough for a seasoned chap like me," continued Hiram, smiling with wintry foolishness. "I'm rather backward in coming forward, tha sees, but it came over me t'other day that I mud varry weel look round and about me; and if I could find a wench—" "Aye, what then, Hiram?" He paused and shuffled his feet. "Why, there's niver no telling, niver no telling at all," he said, with an air of deep wisdom.

In vain did Martha exercise her arts to draw Hiram beyond this non-committal stage, until at last she became angry. "Well, best gotten owt to say?" at last she demanded, facing him abruptly. "Say? Well, now, I'm backward in coming forrad, as I telled thee—but th'art as snod set-up a wench as iver—" "Thanks for now! Good day, Hiram. Th'art backward! Good things, I'm thinking," said Martha, flouncing out into the yard.

Hiram should have taken a lesson from that other bucolic who, in a recent novel puts his faith thus unromantically, but boldly, to the test. When Dick, leaning against a pigsty, had suddenly felt himself compelled, he knew not why, to abruptly interrupt a discussion on the culture of tomatoes with the utterly inconsequent inquiry, "Daisy, will you be my wife?" Daisy, keeping her eyes steadily fixed the while on an elder porker, simply answered, "Yes, Dick." And therein lies the whole secret of an effective proposal—a straightforward, simple question, and an equally honest, direct answer.

"But," said the "Gentleman of France," the hero of Mr. Stanley Weyman's fascinating novel, to the lady whom he had loved so long, and now saw in all the splendor of court dress, "I do not see here the lady to whom I

came to address myself, and whom I have seen a hundred times in far other garb than yours, wet and weary, and disheveled, in danger and in flight. Has I have served and loved, and for her I have lived. I have had no thought that has not been hers, and I came to lay them at her feet. But I do not see her here."

"No, sir?" she answered in a whisper, her face averted. "No, mademoiselle." With a sudden brightness and quickness which set my heart beating she turned and looked at me. "Indeed," she said. "I am sorry for that. It is a pity your love should be given elsewhere, M. de Marsac—since it is the king's will that you should marry me." "Ah, mademoiselle!" I cried kneeling before her, for she had come round to the table and stood beside me. "But you?" "It is my will, too, sir," she answered, smiling through her tears.

But in fiction, as perhaps in life, the hero has no monopoly on proposals.

Could anything be more charming than Dolly Varden's self-surrender to Joe Willee, her diffident lover? "Dear Joe, I always loved you—in my heart I always did, although I was so vain and giddy. I hoped you would come back. I made quite sure you would. I prayed for it on my knees." And when Joe's arm, under such encouragement stole round her waist, Dolly exclaimed, in trembling accents, "And now at last, if you were sick, and shattered in every limb; if you were ailing, weak, and sorrowful; if, instead of being what you are, you were in everybody's eyes but mine the wreck and ruin of a man, I would be your wife, dear love, with greater pride and joy than if you were the stateliest lord in England."

Equally sweet is the scene in which John Ridd is crowned by the self-confessed love of Lorna Doone. "Then, like a woman," John says, "she came to me, seeing how alarmed I was. The hand she offered me I took, and raised it to my lips with fear, as a thing too good for me. 'Is that all?' she whispered; and then her eyes gleamed up at me, and in another instant she was weeping on my breast." And all that the shy and awkward lover could say, with Lorna trembling in his arms, was, "There is no other man in the world who could hold you so without kissing you."



Dress of Checked Mohair.

The fancy for narrow braid as trimming is shown in the model gown pictured. This frock in the original was of light blue mohair, criss-crossed by fine lines of white. The skirt was a very full gored circular, trimmed with stitched bias bands and an oddly cut front panel. The bodice was of the "jumper" sort, and was worn over a blouse of allover embroidered batiste.

When a submarine boat becomes disabled beneath the surface of the water and cannot raise its crew is in a bad predicament. To remedy the difficulty an inventor has contrived an auxiliary boat to be carried in the submarine and to be a part of it, practically, until needed. In time of accident the crew of the incapacitated submarine would enter the little craft and when the containing chamber has been flooded the bolts would be withdrawn and the vessel with its human freight would clear itself and rise to the surface.

Side Tracked.

Wigg—The last I saw of Youngpop, he was talking you to death about his baby. How did you get rid of him?

Wagg—Oh, some fellow came along who had just bought an automobile, so I introduced them and made my escape.—Philadelphia Record.

Your church contribution don't cut any ice unless you back it with a few prayers.