Morton's History of Nebraska

Authentic, Complete

CHAPTER VII CONTINUED (28)

From the Nebraskian of July 2, 1856, we learn that at a meeting of the claim club of Omaha, of which J. W. Paddock was now president and Dr. Geo. L. Miller secretary, Mr. Poppleton, for the committee, reported resolutions, the preamble of which recited that it had come to the knowledge of the club "that divers evil-disposed persons will attempt by a secret pre-emption to steal from their neighbors lands assured and pledged to them by the laws of this association." They therefore resolved that:

"Whereas, If any person shall file a declaration of intention to pre-empt or take any other step to secure a pre-emption upon lands not his own according to the laws and regulations of this association, this association, at the call of the Captain of the Regulators, will proceed to the premises on which such a statement has been filed or such steps shall have been taken, investigate the matter, and if such shall appear to be the fact compel the party filing such statement to enter into bonds to deed by warranty deed to the respective owners all lands not his own included within the limits of such pre-emption or leave the country."

The federal principle of these claim clubs is illustrated by the proceedings of a county convention held in Omaha which was composed of delegates from Bellevue, Florence and Omaha. Andrew J. Hanscom was chairman and Silas A. Strickland secretary of the convention, which resolved that,

"When the lands are offered for sale each association shall elect its own bidder for bidding in lands comprised within its limits for the respective owners; and at such sale we hereby agree to attend en masse, and there remain from the opening of the same until the close thereof, and protect said bidder, to any extremity if necessary, in securing said lands at $1.25 per acre."

The convention further declared "that we will not hereafter recognize suits at law relative to claim matters."

The pre-emption act of 1841, which was in force at this time, limited its application to citizens, and those who had declared their intention to become citizens of the United States, and in particular to heads of families, widows and single men over the age of twenty-one years. Any one of these classes might settle on a tract of land, not exceeding one hundred and sixty acres, the Indian title to which had been extinguished, and which had been surveyed, and afterward by a proper showing he would be entitled to enter the land. Some of the claim clubs referred to were in operation from one to two years before the lands their members claimed had been surveyed, and doubtless the Indian title had not been extinguished in all cases. The act of the legislature validating the acts of the claim clubs contravened the federal statute, and no doubt its attempt to invest the clubs with legislative powers was without constitutional warrant. In turn the Douglas county convention of clubs, by the resolution just quoted, sought to override or annul that part of the legislative act which provided that, "Any claimant may protect and defend his possession by the proper civil action." Iowa had gone before Nebraska in this bold and original adoption of means to immediate ends and local wants:

"This occupation of land which had been recorded by the association was declared to be legal by the territorial legislature. But this decision was clearly contrary to the intent of the act of 1807. It was sanctioned, however, by a decision of the supreme court of the territory in a test case during the year 1840. Iowa, by this virtual annulment of the United States statute showed that independence characteristic of the commonwealth by which it became a state."

It is interesting to note that these claim clubs were in operation at Burlington, Iowa, before there was any government, except by voluntary local organization, as well as before the lands had been surveyed; and, besides, occupation of these lands was in violation of the federal acts of 1807 and 1833. "On their way to the western prairies settlers did not pause to read the United States statutes at large. They outran the public surveyors. Soon after the close of the Revolutionary war they began to violate the ordinance of 1785 by settling on the public lands without obtaining titles. Later they ignored the act of 1807; and it is doubtful that the early settlers of Iowa ever heard of the act of March 2, 1833. Some were bold enough to cross the Mississippi and put in crops before the Indian title had expired. Hundreds of thousands of settlers from every part of the Union thus squatted on the national commons, all without the least vestige of legal right or title."

In both Nebraska and Iowa the squatters on lands were fully protected by the unauthorized, if not positively illegal rules and promises of the claim clubs. Mr. James M. Woolworth was able to write in 1857: "These regulations afford pretty safe possession to the actual settler; although it can hardly be doubted that the law of the territory conferring legislative authority on the clubs is unconstitutional."

The testimony from Iowa is more emphatic: "When the land was placed on the market by congressional authority the decrees of the associations were completely enforced. No difficulty was experienced on the part of the original claimants in securing, through their special delegates, at a nominal rate, the lands which they had taken."

In speaking of the efficacy of these invalid laws Mr. James M. Woolworth said: "Still public opinion is more than law." That was a sage observation of a man only twenty-eight years old, and it was more than a hint of the distinguished jurist of riper years. He might have cited in contrast the prohibitory liquor law of the first session, which had been a statute for two years only to vividly illustrate the converse proposition that a valid law without public opinion behind it is a dead letter.

Part fourth of the laws of the first session contained ten enactments for locating and establishing as many territorial roads as follows: From Omaha City to Cedar Island in the Platte river; from Plattsmouth to Archer and the Kansas line; from some suitable point on the north bank of the Platte river to Dakotah; from Pawnee to Nebraska Center; from Brownville to Marshalls Trading Point on the Big Blue river; from Tekamah to Pawnee; from Florence to Fontenelle; from Nebraska City to Grand Island; from Bellevue to Catharine, in Cuming county; and from De Soto to Pawnee. Some of these laws simply named the termini of the proposed road, the three commissioners, and the time and place of their meeting to begin the work. Others specified the compensation of the commissioners and of the surveyor they were authorized to employ, and provided that these expenses should be paid pro rata by the counties through which the road passed, and that the survey of the line should be recorded in each of the counties. The enactment for the Plattsmouth-Archer road was exceptional in providing that, "It shall be the duty of the probate court of each county through which said road may pass to open and keep the same in good traveling order to the width of thirty feet." As probate judges were by statute charged with "the management of all county business' it is presumable that the power to open these roads lay in them.

As the territory had not been surveyed at this time the general law passed at this session of the legislature for establishing township, county, territorial and state roads provided that they should be surveyed by the commissioners appointed to establish them, who should carefully note the course, distance and general topography of the country adjacent to such line.

"To perpetuate such survey the surveyor shall cause to be planted or driven in the ground marking such line good and permanent stakes of durable wood, and such stakes shall have a height when so planted of not less than three feet and a face of not less than three inches, and they shall be planted at intervals of not more than three hundred yards, and at every angle in such line, and at the end of every mile (which last named shall be numbered from the starting point) there shall be planted a posat at least four inches square and four feet in height. All mile stakes shall be lettered and numbered with durable paint or with an approved instrument."

The act provided that all public roads should be sixty-six feet wide, and this width has been adhered to down to the present time.

The enactments of part five define the boundaries and establish the seats of justice of the eight original, and sixteen additional counties, none of the first eight, however, retaining its original form; and the name of Pierce was changed to Ottoe and Forney to Nemaha. The county seat of Burt was fixed at Tekamah; of Cass, at Plattsmouth; of Dodge, at Fonetenelle; of Douglas, at Omaha City; of Nemaha, at Brownville; of Ottoe, at Nebraska City; of Richardson, at Archer; and of Washington, at Ft. Calhoun. All of these counties exist at the present time under the same name, and in the same general location, but not one of them with the same boundaries. Four—Dodge, Nemaha, Richardson and Washington—have changed their county seats. Fontenelle is a mere hamlet in Washington county. It has no railroad connection; it lost the county seat in 1860, and gave up its long struggle to establish Nebraska University in 1873. Brownville, then of metropolitan pretensions, is now a distinctively way station; Archer has been wiped from the map; but Ft. Calhoun remains as a flourishing little village in Washington county.

It is an interesting fact, which indicates the progress of the survey at the time, that Richardson county alone is bounded by numbers, that is, township, range, etc. The east line was the middle of the main channel of the Missouri river extending from the Kansas line "until it intersects the line dividing townships 4 and 5 north, provided said line does not intersect the Missouri river above the mouth of the little Nemaha." But since the line dividing townships 4 and 5 north intersected the Missouri river several miles above the mouth of the little Nemaha, and the southern line of Nemaha county was to run due east along the north border of Richardson, there was a small triangle between the Missouri river and the little Nemaha where it enters the Missouri, technically left out of both counties.

Of the sixteen new counties, those which survive in name and include a part of their original territory, though greatly changed in boundary, are Buffalo, Cuming, Dakota, Gage, Lancaster, Saline, Pawnee and York. Blackbird, Clay, Greene, Izard, Jackson, Johnston, Loup and McNeale have disappeared from the map. Clay and Loup remain in name, but far west of their first location. The present Clay county was established in 1867. There was a beginning of a town or village, at Blackbird City, Nebraska Center, Catharine and Pawnee, the designated county seats respectively of Blackbird, Buffalo, Cuming and Loup counties, but they have all disappeared. The site of Pawnee, the designated capital of Loup county, is covered by the present city of Columbus. Neither Clayton, the designated county seat of Clay, Hunton, of Izard, nor Manitou, of McNeale county ever existed except in name. For some reason not obvious the legislature specified that the name of the prospective capital of Johnston county should be Frances; but with obvious regard for congruity it also provided that the seat of justice of Jackson county should be Jacksonville; of Saline, Saltville; and of Pawnee, Pawnee Village. Despite the promising strength and preservative vigor of a Jacksonville and a Saltville, which should have yielded something more than a name, neither of these pretentious paper capitals ever had a local habitation. The several acts establishing Gage, Greene, Lancaster and York counties named the commissioners who should locate the county seats.

All of these counties were included in judicial districts by the act of the first legislature, and by the act of 1857 Lancaster is put in the first, and Clay in the second judicial district. The governor appointed the necessary county officers in the first instance who served until the first general election provided by the act of the first legislature, held in November, 1855. A sheriff, judge of probate and register of deeds were appointed for Blackbird county in the spring of 1855; but the county was never included in an apportionment of representatives, and no election returns from it are recorded. Neither Jackson, Johnston, Loup nor McNeale county appears to have performed any organic function; but though Izard was never assigned representation in the legislature, it voted at the general election of 1859, and, like Monroe county, thereby caused much scandal in the congressional contest which ensued. Blackbird county was absorbed by Dakota county and the Omaha reservation in 1855-56; Clay by Gage and Lancaster in 1864; Greene and Izard were changed in name to Seward and Stanton, respectively, in 1861-62; Jackson and Johnston were absorbed by Nemaha, Clay and Saline, and Loup and McNeale by Izard, Madison, Monroe and Platte in 1855-56. The place of the former Izard was taken by Dixon and Pierce counties. The counties of Gage and Johnston elected local officers in 1857. Dakota county voted, in addition to the original eight counties in 1855, but was not apportioned for representation, while Pawnee was apportioned, but is not found in the election returns of that year. Clay, Cuming and Lancaster were apportioned in 1856, but apparently did not vote that year. Clay, Dakota, Gage and Pawnee voted at the general election of 1857, and all were apportioned. Buffalo, Cuming Lancaster and Saline do not appear in the general election till 1859, and York's first appearance was in 1870.

Part sixth is devoted to thirty-two special acts of incorporation. Two of the companies were incorporated for the manufacture of salt; one of them to carry on business "at a place they may select within five miles of a saline spring in Otoe county," the name of the place to be Nesuma; the other to manufacture salt "from the salt springs near Salt creek." The Platte Valley & Pacific Railroad Co. was incorporated for the purpose building a railroad and telegraph line from the Missouri river at Omaha City, Bellevue and Florence up the north side of the Platte river to the west line of the territory, with power to connect with other roads or extend its own line where the laws of other states and territories should permit. The Missouri River & Platte Valley Railroad Co. was empowered to construct a road from Plattsmouth by way of Ft. Kearney and Ft. Laramie to the western limits of the territory.

The Nebraska Medical Society was incorporated with Dr. George L. Miller—who was, however, destined to an important career in the wider field of journalism and politics—at the head of the list of incorporators. Three educational institutions were also chartered, namely, Nebraska University, at Fontenelle, Simpson University, at Omaha City, and the Nebraska City Collegiate and Preparatory Institute at Nebraska City. The extreme paucity of the real resources of these institution-builders doubtless stimulated a more or less unconscious attempt to make up for the serious deficiency with imposing and pretentious names. The first named university was the only one actually put in operation; but, as if predestined, after an almost vain continuous struggle, creditable only to the courage and fortitude of its abettors, it yielded its life in 1873.

TO BE CONTINUED

"CARVE DAT 'POSSUM."

Hunting in the Tennessee Woods —the Hunt Always by Night.

Indigenous as is the persimmon to Virginia and Tennessee soil, so also is the opossum—that rather luscious animal of the marsupial tribe—when properly baked and browned.

The tenderness and richness of the meat of the opossum, when prepared as most women of this southern country know how to prepare it, affords one incentive for opossum hunting as it is indulged in in the inviting forests of Tennessee and Virginia during the late fall and winter months. But this is by no means the only reason that the chase after the opossum is fascinating.

The hunt is always conducted by night and the season for it, beginning late in the fall, is one of the most charming seasons of the year in the southern climate. It comes on just after the first big frosts which strip the trees of their wealth of foliage and mellow the fruit upon which the opossum delights to feast—the persimmon.

The most perfect evening for a hunt is when the haze of Indian summer hangs like a bridal veil between earth and sky, imparting to the latter a fascination that elicits a feeling of good cheer and good will in even the most stoical souls. The moon climbs up a cloudless sky, enveloped in this autumnal haze, and early in the night the white frosts begins to glisten on the dead leaves that cover the ground. The woodlands are so still that the well-trained dog can hear the stealthy tread of the opossum apparently 300 yards or more away.

On such an evening the hunters enter the forest, usually penetrating the wooded region for some distance before there is a pause. Meanwhile the dogs or hounds are off, eager to catch a scent of the first opossum that has ventured from his hiding place.

There is a marked difference in the aptness of dogs for "treeing" opossums. Some are quick to scent a trail and quick to run the game to a tree, while others are stupid and make the night's hunt a drag. Still other dogs do not seem to have the instinct for scenting opossums and never learn how it is done.

In a properly wooded region, where there is no lack of persimmons and poke berries, in either Tennessee or Virginia, it is a very stupid dog that is longer than half an hour in "treeing" the game. Frequently the opossum is trailed to a persimmon tree, but more frequently if the dogs are apt, he is overtaken on the way and is compelled to climb the nearest tree in order to escape from the eager hounds.

One of the most interesting features of the hunt is the anxiety of the well trained dog. With every step of the trail from the moment he scents the game, his eagerness is intensified. The hunters, who frequetly huddle in the leaves, awaiting developments, and endeavoring to extract as much warmth as possible from their lantern know when the dogs have struck the trail by faint yelps or bays that come at first only at intervals. The nearer the dog approaches the game the more frequent the yelps, until finally, when the game is "treed," loud and incessant yelps, triumphant in tone and long drawn out, resound throughout the woods. The hunters understand perfectly the meaning of this. There is no deception; no mistake; the game has been located. Springing from their beds of leaves, the hunters are off with a bound for the scene.

If the tree is a small one and contains from two or three opossums, it is regarded as a successful trail. If, however, it chances to be a big tree, the hunters are sadly disappointed after a period of excited anticipation; for it is almost invariably the rule that the big, fat opossums climb the smaller trees and are readily reached, while the little blue specimens that would scarcely be worth putting in the pot usually climb the biggest trees they can find.

The disappointment would not be so great but for the fact that, no matter how large the tree, the game must be shaken down. Nothing gratifies the faithful dog so much as to know that the game is in custody. Like the man from Missouri, he has to be "shown." Otherwise the dogs will be discouraged, and will not be likely to have any more luck during the night. The big tree situation invariably vexes the hunters, for it is not such an easy matter to climb to the top of one of the tallest oaks in the forest; but it becomes the duty of some one in the party to bring the game down, no matter how thick through the tree is, nor how tall, nor how scarce of limbs. There have been instances in which the tree was so scarce of limbs that the extravagance of chopping it down became necessary in order that the hunt might not be spoiled.

When the game is shaken from the tree it is necessary to prevent the dogs from injuring it, for if not interfered with they would soon tear it to pieces with their teeth.

When he falls to the ground the opossum, exercises his cunning in an effort to deceive, coiling himself up into a circle and lying in a state of sullenness as if to create the impression that life is extinct. But after he has been picked up by the tail and carried a little distance he gets over this feigning and wiggles about as though half afraid and half anxious for the acquaintance of his captors.

Usually the eagerness and anxiety of the dogs is more than half the fun of the chase. The nights are usually very chilly during the opossum hunting season, and but for the constant anticipation of big game and the good natured stories that are related as the hunters lie in the leaves, the chilliness of the atmosphere might become in a manner unbearable.

The hunt for deer and birds and various other kinds of game is fascinating, of course, to whoever likes the chase, but there is no other quite so unique and quite so much in a class to itself as that of the hunt for the opossum in the stillness of autumnal nights, with the glamour of the moonlight playing over the deep silence of the delicious ripeness that tempts the game from its quaint lodging places in the forest.

The Passing of the "Strenuous Life."

Do you remember when the head of the nation first inspired us with the strenuous idea? We heard, or read the word, and when the small boy asked us what it meant, we cleared our throat and told him not to bother us. When he wasn't looking we opened the library and found out ourselves. We read and we talked—especially we talked the strenuous existence; we got up devilishly early in the winter, pounded ourselves on the chest, took cold baths, ran around the block and prepared ourselves to be President, too, some day.

But it didn't last. To be born strenuous is one thing. (It isn't your fault, and you can't legitimately take any credit for it.) To acquire strenuousness is another thing; it takes lots of will power—especially when there's ice on the bathroom windows just before you plunge in. And to have strenuousness thrust at you, over you and upon you, is still another thing. It is a thing you can't talk yourself into liking for any length of time—unless you are an insurance solicitor with winning ways.

The novelty of the strenuous life wore off. You remember how. You got up later, you turned a little warm water into the cold for the bath; you walked one block in place of ten; and the woodpile grew lichen-covered from neglect.—E. J. Appleton in the Bohemian.

If the Tree Falls What Becomes of the Ivy?

We hear a great deal about the modern girl developing mannishness, independence, and losing her femininity. A great many people are much alarmed because girls are not trained, as formerly, in womanly gentleness.

It is a beautiful figure of speech to describe the feminine character as the ivy which clings to the masculine oak for support, and in return covers and beautifies its hideous knots and scars.

But if the oak falls, what becomes of the ivy?

There is too much of this ivy clinging and beautifying idea in training girls. They should be taught that it is just as necessary to be independent, to be self-supporting, as to be able to cling and beautify. In other words, they ought to be able to stand alone if the tree falls, and not go down with it. —Success Magazine.

You can get along faster by going around a crowd than trying to push through it.

The sun never sees the dark side of anything.