

Pays Tribute to Samuel Maxwell in Law Journal

(Continued from Page 5)

ative offer in order to remain on the bench of the supreme court.

Another proposition presented by Maxwell at the convention was the appointment of one or more commissioners who were to see that the laws should agree with the provisions of the constitution. These commissioners were to be appointed by the supreme court. This proposal, however, was never placed in the constitution.

The question of yearly or of biennial sessions of the legislature was a much debated question at the convention. Maxwell favored biennial sessions on the ground that the general laws should not be changed oftener than once in two years and that the expense of holding legislative sessions would not justify more frequent meetings.

The part that Maxwell took in the debates of the convention disclose a clear insight and a profound understanding of constitutional fundamentals. His speeches had much to do with shaping the policies of the convention and many of his suggestions, which were not followed in the convention of 1871, were included in the later constitution of 1875. As chairman of the judiciary committee he had much to do with the shaping of the article on the judiciary. His work on other committees was significant. The proposed constitution, however, was defeated by the people by a vote of 8,627 to 7,986.

Maxwell's work in the territorial legislatures and the dominating part he played in the constitutional conventions of 1866 and 1871 has closely interwoven his life into the early political history of the state.

Election To The Supreme Court, 1872
Maxwell was elected a justice of the supreme court of Nebraska in 1872, holding this position continuously until 1875. His first term was to last six years, but was cut short due to the adoption of the constitution of 1875.

As the supreme court of the state was first organized there were three judges. In addition to performing the customary duties of a member of the supreme court, each judge was assigned to one of the three judicial districts into which the state was then divided. Maxwell was assigned to the Third District and moved to Fremont in order to reside in his district. When the supreme court was not in session the judges devoted their time in presiding over district courts in their respective districts. At this time there were only two railroads in the state. It was possible to reach the county seat towns along the Missouri River by rail but in order to get to the inland county seats towns it was necessary to make long trips in stage coaches. Thus a supreme judge spent much of his time in his judicial district.

Constitutional Convention of 1875
The constitutional convention of 1875 met at Lincoln on May 11. Judge Maxwell was a member of the convention, elected from Dodge County. The new constitution was similar to the one which had been proposed in 1871. Several changes were made in the judiciary article which affected the make-up of the bench. A provision was made for the division of the state into six judicial districts and for the election of district judges for each district. This decreased the work of the judges of the supreme court and enabled them to devote their time to work on the supreme bench. The three judges of the supreme court were to be elected at intervals of two years, each holding office for six years. The salary of the judges was also increased from \$2,000 to \$2,500.

Elections to all offices created by the constitution were to take place in the fall of 1875. There were some opposition to this, especially on the part of the friends of the incumbents of the supreme bench. Judge Lake, who at the time was serving as one of the justices of the supreme court, believed that the new election in the fall was "an unjust discrimination."

Nominations of 1875, 1881, 1887
Beginning with Maxwell was nominated by the Republican party for three consecutive terms as a judge of the supreme court. In the republican state convention of 1875, George Lake and Daniel Gantt were nominated on the first ballot and on the sixth ballot Maxwell was named as the third choice of the convention. These three republican candidates easily secured the election in the fall of 1875.

Judges were to hold office for six years, but one judge was to be retired at the end of each year. As the three judges had been elected at the same time, lots were drawn. Maxwell secured the supreme court, held office until 1881. On May 29, 1878, Chief Justice Gantt died and according to the constitution, Article VI, Section 6, Maxwell became Chief Justice.

Attempts to thwart Maxwell's re-nomination were made in the republican convention of 1881 by a small minority. A motion to vote on nominations for supreme judges by secret ballot instead of voting viva voce by the call of the counties was made and (after a debate lasting over an hour, was defeated by an overwhelming majority. The defeat of the motion ended any further opposition to Maxwell and he was nominated on the first ballot.

Efforts by a small minority of the party were made to defeat Maxwell in the republican convention of 1887. Candidates aspiring to the judgeship were active during the day of

the convention with the exception of Judge Maxwell. "No state convention," according to the World-Herald, "with so few offices to be elected ever excited so much interest as this one." Maxwell, however, although a candidate, continued his work at the capital and presided in the supreme court on the day of the convention. Details of organization were easily adjusted and the chief interest centered about the nomination for judge. Maxwell was placed in nomination by Judge O. P. Mason who said that the man he proposed as the republican candidate for justice of the supreme court was an old citizen, whose name was a synonym for honesty. When he said "His name is Samuel Maxwell," there was a tremendous ovation. J. E. Frick scolded the nomination on behalf of Dodge county. Other counties seconded the nomination. C. J. Dilworth, A. M. Post, M. P. Cook, and T. L. Norval were also placed in nomination as candidates for the position.

On the first ballot Maxwell lacked only four votes of securing the nomination. Several motions were made to nominate him by acclamation. The chairman of the convention however, called for another ballot. Maxwell was nominated on this ballot and his nomination was made unanimous. He was elected at the fall election and served to the end of the six-year term which ended in 1894.

Judge Maxwell's Third Term
Maxwell, from the time of Lincoln's election to the presidency in 1860, had affiliated with the Republican party. His connection with the party organization, however, had been rather perfunctory and passive. He never was an active participant in the party affairs nor was he a pronounced party partisan. Whether or not he was a rather clever politician in the matter of seeking and at the time receiving the popular acclaim of the people, irrespective of party affiliation, became a matter of much diversity of opinion during the latter period of his judicial career on the supreme bench of the state.

His dissenting opinion in the Thayer-Boyd case in 1891, in which James E. Boyd contested the election of John M. Thayer as governor caused much comment throughout the state in which public opinion was very much divided as to whether or not his dissent was an honest expression of his judicial convictions on the subject, or an appeal for the applause of a disturbed and somewhat turbulent and discontented element. He was entirely vindicated in his position, however, upon the reversal of the Thayer-Boyd case by the Supreme Court of the United States.

Within a very short time after the reversal of the Thayer-Boyd case by the Supreme Court of the United States, the supreme court of Nebraska handed down a decision in the impeachment cases, in which impeachment charges had been filed against certain state officers. The court dismissed the charges against all the officers. Judge A. M. Post, one of the ablest judges to ever occupy a position on the supreme bench, delivered the opinion of the court. Judge Maxwell refused to concur in the opinion. He submitted a written dissent, which bristled in bitter castigation of the accused officers. Again the charge was made that Maxwell was using his position on the bench to curry the popular favor and that his dissent was intended primarily for the attention of the adherents of the Populist party in the state.

These charges were without a doubt unfounded. The bitterness, however, which characterized the political campaigns of those days made possible the widespread circulation of the charges, resulting in the loss of certain elements of support in the Republican party, but at the same time making Maxwell particularly popular among certain of the leaders of the Populist movement.

Populist Convention of 1893
The Populist convention met on September 5, 1893, and was the first of the state conventions held that year. There was considerable talk about the nomination of Maxwell as the party's candidate for supreme judge. Several county delegations had been instructed for him. It was generally conceded, however, before the convention met, that Maxwell would be nominated by the Populists. The World-Herald said that the possibility of Maxwell's nomination "died of too much Rosewaterism."

Maxwell had previously been strongly supported by Rosewater and many of the delegates refused to support anyone who had ever had any connection with what they termed "Rosewaterism."

P. H. Barry of Greeley county nominated Maxwell at the convention. His nomination was received with applause from certain parts of the hall, but cries of "Let him announce himself" and hisses were heard from other parts of the hall. Mr. Randall of Hall county in nominating Judge Thompson said "the independents did not have to go to the enemy for a candidate." Maxwell's home county Dodge, cast four of its nine votes for him. On the informal ballot he received nineteen votes.

Dodge County Convention of 1893
The Dodge County Republican convention met in Fremont on September 8, 1893. J. E. Frick, a lawyer of Fremont, was a candidate for the republican nomination for the office of supreme judge. Maxwell was also a candidate. Both were residents of Dodge county. Frick made a vigorous campaign prior to the convention; the convention, Maxwell, as usual, remained inactive. L. D. Richards, who still resides at Fremont, presided over the convention. The delegates elected to attend the state convention were instructed by resolution of the convention to cast their votes for J. E. Frick as candidate for the office of supreme judge. The resolution said "in presenting his (Frick's) name, it is done with

no sense of disrespect for the Honorable Samuel Maxwell, who has faithfully served for twenty years and who will retire from the bench with the respect and confidence of his fellow citizens."

A resolution was offered that if at any time during the convention it became apparent that Mr. Frick could not secure the nomination and the vote of the Dodge county delegates would secure such a nomination for Mr. Maxwell, the delegates should cast their votes for the latter. This resolution was defeated by a vote of 75 to 30.

Republican State Convention of 1893
The pre-convention campaign of 1893 was unique in that the political interest was focused upon the nomination of a candidate for the supreme bench. The Republicans were aligned for or against Maxwell. As the time approached for the convening of the Republican state convention, the campaign developed into a personal attack on Maxwell. His party designation was played up by various newspapers of the state. "His views," asserted the Tecumseh Chieftain, "are so diametrically opposed to the views of the leading republicans that Maxwell's name should not be mentioned at the convention."

In response to an attack of the Fremont Tribune on his party loyalty, Maxwell openly declared his position. "If I am to be denied a re-nomination because I am not in full accord with the corporate tendencies and desires of Nebraska or because I have not... placed party first and conscience last, I shall cheerfully retire to private life... If returned to the bench, I shall discharge my duties as judge without taking into account the political advancement of any set of men."

Judge Maxwell refused to make any canvass for his re-nomination. He stated that his judicial reputation was "bound in calf" and could be found upon the shelves of every lawyer of the state. His failure to canvass for his nomination is outstanding when contrasted with the concerted efforts of other candidates seeking the nomination at the hands of the Republican party.

The convention convened at Lincoln on October 5, 1893. There seemed to be little doubt that if Maxwell were nominated he would easily secure the election in the fall. The repudiation of Maxwell in his home county and the consistent attack carried on against him by the newspapers had tended to arouse the interest of every section of the state.

The day before the convention met thirty-five county conventions of the state had expressed their choice for Maxwell. About one-half of this number, however, changed their vote after the balloting had continued for a short time. The opposition to him had been well organized before the convention met. Three hundred seventy-five votes were cast for him on the first ballot. This ballot marked the height of his strength and from then on the votes gradually shifted to Harrison who on the fourth ballot received enough votes to secure the nomination.

After Maxwell's defeat in the republican convention, attempts were made to nominate him by petition. He refused, however, to allow his name to go on the ballot. He openly supported Silas Holcomb, the Populist candidate, at the election. Several of the papers had stated that he was enthusiastically in favor of Harrison's election. He denied this in a letter to the Alliance Leader in which he said that he regarded Holcomb as the right man. Although he for some time previous had indicated a sympathy with the Populist movement, he now, for the first time, threw his support to a candidate nominated by that party. For Maxwell the step was short from the ranks of the Republicans to the ranks of the Populist. From the day of his defeat for the nomination of supreme judge in the Republican convention of 1893 he had been seriously contemplating aligning himself with the Populist movement. His political viewpoint more clearly coincided with the viewpoint of the Populists, and by 1895 he became prominently identified with the new party.

His name had been mentioned in the Populist convention of 1893 as the candidate of that party for judge of the supreme court. Again in 1894 his name had been proposed as governor of the state by prominent members of the party. This proposal, however, was never seriously considered at the Populist convention of 1894.

By 1895 the Populist party was already rapidly declining. It was therefore, necessary for this party to find a candidate that would not only draw a heavy Populist vote but would also secure a substantial vote from the other parties as well. "To the close observer the decline and fall of Populism was as plainly written on the wall as the handwriting of old, interpreted by the prophet," the Populist leaders felt that Maxwell, in addition to obtaining a large majority of the Populist vote, would attract no inconsiderable support from many Republicans.

Independent Convention of 1895
The state convention of the Populist party was held at Lincoln on August 28, 1895. Maxwell was previously stated that he would not be a candidate at the convention for the nomination of supreme judge. The delegates in attendance at the convention believed that Maxwell was the one man who, if nominated, could be elected at the fall election. At the time of the convention Maxwell had made no public statement in respect to his adherence to the principles enunciated in the party's platform. As a result of this, there was some opposition to his nomination at the convention. This opposition was led by Paul Underwood, who was a member of the convention and was known to stand squarely on the party's platform. This group, however, was decidedly in the minority. On the informal ballot Maxwell obtained

665 out of 707 votes. His nomination was then made unanimous by acclamation.

In his letter of acceptance he declared his position as follows: "The business of the state must be conducted on business principles and the same degree of integrity and accountability required as in a first class business establishment... If the court even indirectly sanctions the larceny or misappropriation of public funds, its influence will be felt in every department by lowering the standard of official duty..."

After Maxwell had accepted the nomination he was asked whether he would accept it as a Populist. To this he replied: "I think that question was not asked in the convention which nominated me." He treated his nomination as a non-partisan nomination. It was as a non-partisan candidate that he desired to present himself to the people.

Maxwell's nomination by the Populists contained an element weakness as well as of strength. Some of the Populists were unwilling to support him because he had not definitely accepted their platform. Partisan Republicans accused him of deserting his party, and thus refused to vote for him. At the Republican state convention, J. M. Thurston had denounced him "as one who unmindful of his obligations of gratitude, turned his back on the party, whose bread he had eaten for twenty years, when he failed to be re-nominated by it."

His nomination was a bit inconsistent with the previous stand of the Populist party in that party that party could have nominated him and forced the Republican party either to accept him or to suffer defeat. However, the majority of the Populists had at that time refused to go outside of the party to secure a candidate. In 1895 they were willing to accept a candidate who had been defeated by the Republicans two years earlier. This was a confession of weakness on the part of the Populists, for Maxwell had never publicly proclaimed his belief in their doctrines. Without a doubt, they realized that Maxwell was the only man who possibly carry the state for them.

The Campaign of 1895
The campaign was one of personalities. The Republicans argued that Maxwell was too old to assume the arduous duties of the bench. The State Journal asserted it to be poor policy to keep a man in office for than a generation. "This," it remarked, "is the chief fault with a monarchy."

The Populists replied that during the last two years that Maxwell had been on the bench he had written 299 opinions as compared with 284 opinions written by the other two members of the court, T. L. Norval and A. M. Post, and that, in addition to this work, he had rewritten the sixth edition of his work on Pleading Practice, which required the examination of some 8,000 cases.

Maxwell did little campaigning. He believed that his past record was sufficient proof of his judicial ability and official integrity. Besides Maxwell there were three other candidates in the field, T. L. Norval, Republican; C. J. Phelps, Silver Democrat; and T. J. Mahoney, Gold Democrat candidate.

Rosewater, of the Omaha Bee, threw his support to the Republican candidate, Norval. Rosewater had strongly advocated Maxwell's re-nomination in 1887 and in 1893 but had considered it unwise in 1895 for him to have accepted the Populist nomination. W. J. Bryan urged the election of Phelps.

Norval succeeded in polling the most votes in the election. The final vote was as follows: Norval, 79,156; Maxwell, 70,566; Mahoney, 18,635; Phelps, 10,214.

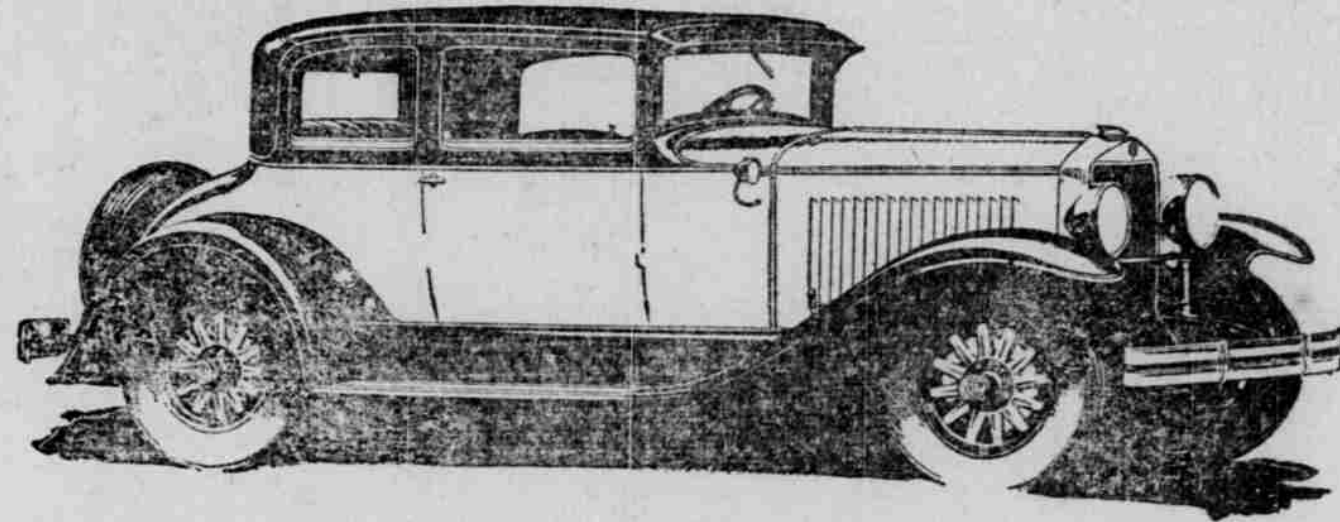
Several factors contributed to Maxwell's defeat in the election of 1895. The steady decline of the Populist movement brought about by the era of prosperity had caused many people to vote the Republican ticket. The fact that Rosewater, a Republican leader, withdrew his support from Maxwell and gave it to Norval, the Republican candidate, also weakened the Populist cause. A fusion between the Democrats and the Populists would probably have resulted in Maxwell's election.

Election of 1896
In 1896 Maxwell was nominated by the Populist party as its candidate for Congress from the Third Congressional District. Ross L. Hammond, editor of the Fremont Tribune, was nominated by the Republicans. The campaign in the Third District, as well as in all other congressional districts in the state, was extremely mild compared with previous campaigns. This was due to the fact that the presidential campaign of 1896 overshadowed all other political considerations. The Republicans again harped upon Maxwell's party desertion. It was pointed out that "if never occurred to him (Maxwell) that the policies of the Republican party were harmful to the people until it requested him to abandon the bench for a more able bodied man." Maxwell's friends claimed that he had been gradually drawn into the Populist movement, not because he had been defeated for the re-nomination in 1893, but because his ideas coincided more closely with those of the Populists. A week before the election Maxwell, in a letter to the World-Herald, declared himself in favor of free silver, and threw his support to Bryan for president.

Maxwell, although absent from the state during the campaign, carried both his county and district by substantial majorities. His victory was undoubtedly due to the fusion which had been effected by the Democrats and the Populists at the state.

Maxwell in the Fifty-fifth Congress
While in the Fifty-fifth Congress, Maxwell was never considered as one of the prominent members. He served on several important committees. He had declared himself in favor of free silver in the election of 1896.

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In Congress he urged its adoption of the double standard. He stated his belief to be that the coinage of gold and silver at the ratio of 16 to 1 would furnish sufficient money for the wants of the people, revive all kinds of business, and bring prosperity and happiness to every person in the land."

He favored a liberal pension for war veterans. He proposed an amendment to the pension bill raising the appropriation from \$140,000,000 to \$165,000,000. His proposal, however, was rejected by the House. As a member of Congress he consistently opposed any unnecessary expense in the conduct of governmental administration as he had done in the territorial legislatures, and constitutional conventions, of which he had been a member.

His services in the Fifty-fifth Congress marked the end of his political career. After the adjournment of this session of Congress, he retired to private life and during the intervening years spent his time in revising his writings until the time of his death in 1901.

PURCHASES HOSE CARTS

The hand-drawn hose carts that for many, many years served as the chief aid in the fire fighting apparatus of the Plattsmouth volunteer fire department, is to find a new home and once more serve to aid in the saving of property from destruction by fire, they having for a number of years been out of active service here since the purchase of the auto fire truck.

The installation of a water system at Union has resulted in that place having the opportunity for fire protection that they have badly needed for years and now having fire hydrants and a good water system will have a fire fighting organization and here is where the hose carts from this city will play a part. The village board of Union has made the purchase of two of the carts and which will serve very nicely in caring for the hose that will be used in the Union fire department and mean a great saving in property loss in time of fire.

The town of Union has had several fires in the past that would easily have paid for the waterworks system in the loss that was sustained and with the system of water service installed the town should have a reasonable safety from the fires that have in the past gutted whole sections of the town.

The hose carts that the Union board has secured from this city were the pride and joy of the fire department for many years and were used frequently in cart races and were other features at the tournament of the state firemen's association.

RETURNS HOME

From Tuesday's Daily—
Mrs. Ruth Thomsen who has been at Immanuel hospital at Omaha for the past two weeks, has so far recovered that she has been able to return home to this city and is now here to recuperate from her illness and operation. Mrs. Thomsen has had

a very serious operation and her many friends over the county will be delighted to learn that she is now so well on the way to complete recovery that she is able to be back home again.

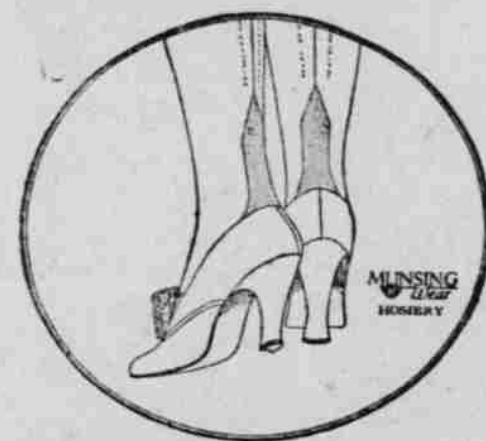
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