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READING MATTER ON EVERY PAGE

THE ADVERTISER

BROWNVILLE, NEBRASKA, THURSDAY, JANUARY 15, 1880.

ESTABLISHED 1856. Oldest Paper in the State.

OFFICIAL DIRECTORY.

District Officers: S. W. FAIRBROTHER, T. C. HACKER. County Officers: JOHN S. STEVENS, County Judge; J. W. WATSON, District Clerk; WILLIAM H. HOOVER, Sheriff.

City Officers: Mayor J. W. WATSON; Police Judge W. E. HEDGECOCK; Treasurer J. H. HOOPER; City Clerk J. W. WATSON.

SOCIAL DIRECTORY.

Methodist Church, Episcopal Church, Lutheran Church, Baptist Church, etc. School Officers: J. W. WATSON, Superintendent; J. H. HOOPER, Teacher.

GRACERMAN PROVISION STORE

At The GRACERMAN PROVISION STORE OF T. L. JONES is the place to get Groceries, Provisions, Fine Cigars, Toilet Soap, Canned Goods, Fresh Butter, Etc., Etc., Etc.

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MARSH HOUSE

MARSH HOUSE, JOSEPH O'PELT, PROPRIETOR. Livery stable in connection with the house. Stage office for all points East, West, North & South. Conduces to the connection with all trains.

WANTED

WANTED: A competent black man to cook in the kitchen of the U. S. Soldiers' Home at Brownville, Neb. Address: INTERMEDICAL DEPT., U. S. ARMY, BROWNVILLE, NEB.

THE MATTER IN MAINE.

DECISION OF THE SUPREME COURT.

The Questions and Answers. BANGOR, Me., Jan. 3.—The following is the official text of the unanimous opinion of the Supreme Judicial Court, furnished and signed this afternoon, in answer to the questions submitted by the Governor:

BANGOR, Jan. 3. To the Hon. Almon Garrison, Governor of Maine.

The undersigned Justices of the Supreme Judicial Court have the honor to submit the following answers to the questions proposed:

Question 1.—When the Governor and Council decided that there is no return from a city on which representatives can be summoned to attend and take their seats in the Legislature, is it competent for the House of Representatives, if it shall appear that there was an election of such representatives in fact, to admit them to seats, though no return thereof was made and delivered into the office of the Secretary of State?

Answer.—No authority is given to the Governor and Council when there is no return to order a new election. When the seat of a Representative has been vacated by death, resignation, or otherwise, provision is made by Revised Statutes, chapter 4, sections 33, 34 and 37, for the filling of existing vacancies. By these provisions, whenever the municipal officers therein mentioned by any means have knowledge of the death of a Representative-elect, or of a vacancy caused in any other way, it is their duty to order a new election. If it appears to the House of Representatives that there was an election of Representatives in fact, they should admit them to their seats, though no return thereof was made to the Secretary of State. The Representative is not to be deprived of his rights because municipal officers have neglected their duty.

Question 2.—Is it competent for the Governor and Council to allow the substitution of other evidence in place of the returned copies of such lists as are provided in Art. 4, part 1, sec. 5 of the Constitution, to enable them to determine what persons appear to be elected?

Answer.—This refers to the substitution authorized by the act of 1877, chap. 212. The Constitution calls for the return that is regular in essential facts, and which truly represents the facts as described by it; but much of the constitutional requirements is directory merely. It does not aim at depriving the people of their right to suffrage or of their right of representation for formal errors, but aims at avoiding such a result. Where the constitutional requirement has not been fully or been defectively executed by the town officers, it is in aid of the constitutional provision to supply the omission or deficiency as nearly and as correctly as may be. Such is the purpose of the statute. It is competent for the Governor and Council to allow an erroneous return, or one that is informal or defective, to be aided and corrected by an attested copy of the record, as by the statute provided. The object of the constitutional provisions respecting election is to furnish as many safeguards as may be against fraud, either through fraud or mistake, correctly to ascertain and declare the will of the people as expressed in the choice of their officers and legislators. Hence the requirements that not only shall returns be made on the spot in open town meeting, but a record of the vote shall be made at the same time, and authenticated. In like manner, there is an error or omission in the return, what can be safer than to refer to the duplicate statement by record to correct it? This the statute of 1877, chap. 212, allows to be done; and, while the language is permissive, it falls within well known legal rule that, when public rights are concerned, a demand is clothed with the force of a duty, so clothed because it could not be doubted that high and honorable officials would not neglecting to avail themselves of all lawful means to declare the result of the election according to the actual fact, in obedience to the fundamental principles of popular government. The Governor and Council are bound by statute. It is mandatory upon them; it imposes a duty to the public that must be performed. Whether the act referred to contravenes the Constitution in allowing oral evidence to be received to show the intention of the voters in casting their votes is another part of the statute which we are not now called upon to consider. If unconstitutional in the latter respect, that would not affect the constitutionality of the other separate and independent provision.

Question 3.—Is a return signed by less than a majority of the Selectmen of the town or Aldermen of the city, valid, within the requirements of the same section?

Answer.—To this question we answer that, while the town may legally elect as many as seven Selectmen, the well-known practice is to elect only three, and in such cases a return to be valid must be signed by a majority of them, because by no possibility can a less number constitute a legal quorum. But the rule is otherwise with respect to the Aldermen of

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cities. Most of our cities are required by law to have as many as seven Aldermen, and none of them, we believe less than five. To constitute a quorum, it is only necessary to have a majority of the whole number present, and when such quorum is present a majority of the quorum may constitute the business. Supposing the number to be seven, four would constitute a legal quorum, and three being the majority, that quorum could legally act although the fourth should refuse to join them, or should oppose their action. Consequently, if the return from a city having five or seven Aldermen is signed by three of them, it may be a valid and legal return, because only four may have been present, and in such a case the being a majority of those present would be legally act, although the fourth should oppose their action and refuse to join them. When such report is laid before the Governor and Council they cannot know, and they have no right to assume, that the return is not valid. It is the duty of the Aldermen to be in session and examine the ward returns, compare and declare the votes, and of the clerk to make a record thereof. From that record, a certified copy of which is retained, the law presumes that a quorum of the Aldermen was present. The law with respect to a quorum and majorities is correctly stated in 5 Dane's Abridgment, 159, and 1 Dilloni's Municipal Corporations, sections 216 and 217. In the latter work it is said: "Copies composed of a definite number, provided, those present constitute a majority of the whole number, or, to use Mr. Dane's illustration, if the body consists of twelve members, seven is the least number that can constitute a valid meeting, though four of the seven may act, and so far as we are aware, the law is so stated in substance by all ancient and modern authorities."

The rule applicable to such cases is similar to that which applies to our House of Representatives. The whole number of Representatives established by law is 151. A majority (that is, seventy-six members), constitutes a quorum to do business. If there is actually that number present, and a majority of them (that is, thirty-nine members) vote in the affirmative, a valid law can thereby be enacted, or other business transacted. If not less than seventy-six members are present, then no business can be done except in adjournment or complete attendance of absent members. This is a familiar law, and illustrates the principle applicable to the aldermen of the cities, and shows how and why a return signed by less than a majority of the whole number may be, and so far as Governor and Council are concerned, is conclusively presumed to be valid. They have no right to go behind the returns.

Question 4.—A return by the Aldermen of a city which does not give the number of votes cast for each person voted for as a member of the Legislature, and does not show what persons were voted for as such members in any one of the several wards of such city, a valid return within the requirements of this section?

Answer.—We are not sure that we comprehend the full scope of this question. Our answer will meet all of its supposed purposes. It is immaterial whether the Aldermen returned to the Governor and Council the detailed vote of each ward separately, or whether they returned the result of all the votes of all the wards for each candidate together. Either mode is a satisfactory manner of reaching the same result. The substance only is sought for in such matters. Nor is it a material matter that, instead of returning all the names of persons voted for, there is a return of votes as scattering; provided that, however, such votes may be added or subtracted, some candidate, or set of candidates, appear to be chosen by a plurality of the votes thrown. The Governor and Council cannot officially know, nor have they the right to ascertain, that the votes returned as scattering were not actual ballots with the word "scattering" written thereon. Nor is the election of candidates to be chosen by a plurality of the votes to be defeated because the whole number of votes or ballots may be stated erroneously, or not stated at all. The constitution contains no such requirements, and the statutory provision in this respect is entirely unimportant and inapplicable to cases where a plurality of votes elects. It is a well-settled rule of the construction that, where the general terms of a statute embrace several subjects, but are found to be practically applicable to some of the subjects, and not to others, it is to be construed as embracing those subjects only to which it is practically applicable.

Question 5.—Are returns from towns or cities which are not attested by the Town or City Clerk valid within the same sections?

Answer.—Returns from towns and cities which are not attested by the Town, Plantation, or City Clerk are not valid. The attestation of the Clerk is a prerequisite to any action of the Governor and Council in counting the votes. [88 Maine, 588.] If, however, the Clerk should be absent, a Clerk pro tempore chosen or Deputy Clerk may be appointed under the statute of 1877, c. 17, and the amendment thereof by the act of 1879, c. 159. The return of such Clerk pro tempore or Deputy Clerk are to have the same force and effect as if signed by the Clerk.

Question 6.—Have the Governor and Council the right to reject the returns of an election of members to the Legislature required by the same section from officers from towns, which were not made, signed, or sealed up in open town meeting?

Answer.—The Governor and Council must act upon the returns forwarded to the Secretary of State. If they purport to be made, signed and sealed up in open plantation or town meeting, they constitute the basis of action of the Canvassing Board. No provision is found in the constitution or any statute of this State by virtue of which they would be authorized to receive evidence to negate the facts herein set forth. They therefore, have no such power. The statement of the municipal officers, in that respect, is conclusive.

Question 7.—Is a return of two persons purporting to be Selectmen of a town valid and sufficient evidence of the vote of the town, when it appears there were at the time of the meeting at which the election was had but two Selectmen of that town?

Answer.—When a majority of the Selectmen are absent from a meeting for election purposes, or, being present, neglect or refuse to act as such, and to do all the duties required of them, the voters at such meeting may choose so many selectmen pro tempore as are necessary to complete the number competent to do the duties. [R. S., c. 4, Sec. 20.] In case of death or removal of all the Selectmen, two would be sufficient and competent to act. The inquiry is if the return would be valid when there should be but two Selectmen at the time of the meeting at which the election was held. If the other Selectmen had deceased prior to the meeting, survivors might act, and their action would be legal. But the Canvassing Board are to be governed by the returns. Evidence would not be admissible to prove the fact that there were but two Selectmen of the town. The Governor and Council cannot officially know there were only two.

Question 8.—Can a person who is not a citizen of the United States at the time he is legally elected or constituted the Selectman of a town?

Answer.—A person not a citizen may be elected or constituted a Selectman, so that his official acts bind the town, and are valid so far as affects the public. Such an one would be an officer de facto, and clothed with apparent right. His acts would bind the town. [Dane vs. Derby, 51 Me., 9.] An officer de facto is one who comes into office by color of legal appointment or election. His acts in that capacity are valid, as far as the public is concerned, as the acts of an officer de jure. His title cannot be inquired into collaterally. [The People vs. Cook, 4 Selden, 89.] "Precise definition of an officer de facto," observes Bigelow, C. J., in Fitchburg Railroad Company vs. Grand Junction and Depot Company, 1 Allen, 557, "is one who comes in by forms of law, and acts under commission or election apparently valid, but in consequence of some illegality, incapacity, or want of qualification is incapable of holding office. Indeed, there is entire unanimity of opinion on this subject in all the States of the Union where this question has arisen, as well as in the courts of the United States, but the fact of allegiance is not allowed to be proved. This was determined in the Frenchville case, [64 Maine, 789], where it was shown that the clerk was an alien, who could neither read nor write the English language, and where almost every conceivable irregularity existed, yet the evidence outside of the returns was held inadmissible, nor would such fact have any effect if it appeared in any by the return itself.

Question 9.—If a ballot has a distinguishing mark in the judgment of the Governor and Council, such as would make it illegal under the statutes, have they the authority to disregard it in their ascertainment of what persons appear to be elected, where it appears by the official returns of the officers of the town that such vote was received by the Selectmen subject to their objection, and its legality referred to the Governor and Council for decision?

Answer.—The presiding officers are to determine whether the ballot offered has a distinguishing mark or figure, so that if rejected the voter may procure the ballot if he chooses, but with no exception can be taken, but if ballots have distinguishing marks or figures it is no part of the duty of the officers of the town to make any report or reference thereon. They should reject the ballot if offered, where it is within the prohibition of the statute. The statute prohibits the rejection of a ballot "after it is received into the ballot box." It is then to be counted. The Governor and Council have nothing to do with the vote regardless of the fact improperly set forth in the returns. They are never constituted a tribunal with judicial authority to determine what shall constitute a distinguishing mark or figure, nor can they legally refuse to open and count the votes returned. [51 Maine, 692.] When a ballot has been once received in a ballot box, neither the Selectmen nor Governor and Council can refuse to count it.

Question 10.—If the names of persons appear in the return without any number of votes being stated, carried out against them either in words or figures, is it the duty of the Governor and Council to treat those persons as having the same number of votes as

another person received for the same office, and whose name is placed first in the return, if they find dots under the figures or words set against such other person's name?

Answer.—If little marks or dots are placed under the figures or words of the first candidate's vote, returns should be counted where it appears by the letters or figures in the first line, and by ditto marks or dots in the following lines, that the same class of candidates received the same vote. There can be no ground for the rejection of the word ditto and its abbreviation "do," and dots or marks that stand for the word ditto are of common use, and have a perfectly well-defined meaning known to persons generally. That meaning should not be disregarded. We answer the question in the affirmative.

Question 11.—Have the Governor and Council a legal right to decide what kind of evidence they will receive, and what mode of proceeding before them shall be to enable them to determine the genuineness of returns required by the article and section of the constitution above mentioned?

Answer.—We assume that the "genuineness of the return" referred to relates either to the signatures of the officers signing or to the alteration of returns. The Governor and Council have no power to reject returns on either ground, unless an objection in writing is presented to them, setting forth that the signatures of such officers (or some one of them) are not genuine, or that the return has been altered after it was signed. Then notice thereof should be given to all persons interested, and where adjudicating upon the facts, the Governor and Council should be governed in the admission of evidence, in accordance with the law of this State. The witnesses should be duly sworn, that they may be punishable for the crime of perjury if they willfully and corruptly testify falsely. The Governor and Council have no right to reject returns for such cause without giving the parties interested therein a fair opportunity to be heard. The genuineness of the return in these particular is to be presumed, and this presumption remains until overcome by evidence produced as before said.

Question 12.—If the Governor and Council have before them two lists of votes returned from the same town differing materially from each other in the number of votes returned as cast for the same person, but identical in all other respects, both having been duly received at the Secretary's office, and they have no evidence to enable them to determine which is the true and genuine return, are they required to treat either of them as valid?

Answer.—When two lists of votes are returned to the office of the Secretary of State by the Clerk of any city, town, or plantation, and both are duly certified, the return first received at the office of the Secretary must be the basis of the action of the Governor and Council. If defective, or not a true copy of the record, it can be corrected or the defects supplied only in accordance with the provisions of the statute relating thereto. This government rests upon the great constitutional axiom that all power is inherent in the people. "It is a government of the people; by the people, and for the people; and, if administered in the spirit of its founders, it shall not perish from the earth." Its Constitution was framed to use the apt expression of one whose memory is enshrined in the hearts of his countrymen, "by plain people," and a "plain people" must administer it. The ballot is the pride as well as the protection of all. It is the trust instrument of the popular will. The official returns required from the municipal officers of the several plantations, towns, and cities are and will be made by "plain people," and made, too, in the hurry, and bustle, and excitement of an election. They are not required to be written with the scrupulous nicety of the writing-master, nor with the technical accuracy of a plea in abatement. Sentences may have been ungrammatical, spelling may deviate from recognized standards, but returns are not brought to naught because the penmanship may be poor, the language ungrammatical, or the spelling erroneous. It is enough if returns can be understood, and if understood, full effect should be given to their natural and obvious meaning. They are not to be strangled by idle technicalities, nor is their meaning to be distorted by captious and captious criticism. When the meaning is ascertained there should be no hesitation in giving it full effect. The language of Justice Morton, in Strong, post, 2 Pick, 484, is peculiarly appropriate to subjects under discussion. "What," he asks, "shall be the consequence of omission by the Selectmen or Town Clerk to perform any of these, their prescribed duties, and upon whom shall it fall?" For willful neglect of duty officers would undoubtedly be liable to punishment, but shall the whole town be disfranchised by reason of fraud or negligence of their officers? This would be punishing the innocent for the fault of the guilty. It would be more and more consistent to the genius and spirit of our institutions to inflict severe penalties upon misfeasance, intentional or accidental, of officers, but to receive votes whenever they can be ascertained with reasonable certainty. If no return or any imperfect one can be received, let it be supplied or cor-

Unparalleled Prosperity.

OMAHA, Neb., Jan. 2.—The annual report of the Omaha Board of Trade for 1879 of the commerce of Omaha and Nebraska shows an unprecedented growth, without a parallel in the history of this country.

The grain importation for the State in the past twenty-five years equals 1,000 per cent. The railroad mileage for the past year increased more than 40 per cent., with many new lines projected for the coming year. Looking forward with the present ratio of progress, which is fully substantiated by official statistics, a clear comprehension of the future of Nebraska may be gained when it is stated that this young commonwealth covers an area of upward of 48,000,000 acres of land, of which not to exceed 4,000,000 acres are under actual cultivation. Of this vast body of land it is estimated that upwards of 3,000,000 acres are susceptible of immediate and the highest cultivation for all fruits and cereals of the temperate zone. Since 1874 the grain product of the State has grown from 10,000,000 bushels to 100,000,000 bushels in 1879, taking as a basis the estimates at the Agricultural Department at Washington. In this connection is noted the marvelous increase of over 20,000,000 bushels in 1879 over the product of 1878.

By the same authority the increase in live stock is stated to be in the ratio of from 50 to 60 per cent. annually. The report of the swine crop of 1878 shows 300,000 head, as compared with 235,000 the previous year. The population of Nebraska has increased from 4,500 in 1855, to 900,000 in 1879, the increase in the past year being fully 100,000. The expansion of population, wealth, industries, and agriculture, the development of internal improvements, manufacturing, and railroads all give to Nebraska the lead in the list of States in the Union, showing a greater ratio of increase in these branches than in any other section. The ratio of progress in civilization has been greater during the decade just closed than in any portion of the world of the same extent.

As this paper will be sent to many people who think of moving to Nebraska, we will briefly refer to some of the advantages offered to immigrants in this part of the State.

Nebraska county is situated in the southeast portion of the State, on the Missouri river, twenty-four miles from the line dividing the States of Kansas and Nebraska. Thus located we have the most agreeable climate in the State, and as the country grows in age the climate becomes more genial and sudden changes in the weather less frequent. Snow falls are not great. Some winters we have frequent light snows which soon melt away; other winters we have scarcely any snow, and in winter, to date, there has not been enough to well cover the ground. Our rainfalls are bountiful and reasonable, and in years when other portions of the State and the West have suffered failures of crops on account of drought, this county has been blessed with rains and good crops. During a residence here of twenty-two years the writer hereof has seen but one failure of the corn crop attributable to drought; and even that year abundance was raised for home use. We have had experience in climates north, south and east of this, and we can assure our readers that the climate in Nebraska County is the best we have ever seen.

The soil in this county, as we have already indicated, is unsurpassed for fertility and productiveness. Of grain, corn is the principal product, wheat next; the average yield per acre, 50 bushels of the former and 15 to 20 of the latter, depending on kind and quality and cultivation. Other cereals—oats, barley, rye, buckwheat, etc.—are good crops. Of course, soil that will produce corn will bring forth all kinds of roots and vegetables in abundance.

And of fruit—who indeed, has not heard of Nebraska County? At a national pomological fair Nebraska apples took the first premium; and Nebraska takes the banner from all her worthy sister counties in a contest for

pre-eminence in fruit exhibits. We have many orchards and nurseries of the first order.

To recapitulate: Climate, agriculture, horticulture, in the three Nebraska stands in the front line. But one of the greatest blessings in good water, and this county has plenty of the best—springs, wells, and living streams and brooklets. The Little Nemaha river runs through the county from the northwest, emptying into the Missouri river near the southeast corner of the county. On this stream, within the county, are six first-class flouring mills, viz: K. Skeen's, F. E. Allen's, Homewood & Skene's, Hallett & Huddart's, Wm. Starr's, and Joseph Thompson's; all doing good business and making excellent flour.

Therefore, this being a corn country, with abundance of water, it is adapted to stock raising, and our farmers are noted—our stock by yeeray—for furnishing Chicago with the best hogs shipped to that market. And here we will diverge, by referring our readers of the East and South, to the report of Mr. Bailey, in another column, of the number of hogs he has shipped during the year '79, and amount of cash paid for them. His report shows well, yet, he is only one of several stock merchants in this county and State.

This is a prairie country—beautiful rolling prairie—yet in this county we have abundance of wood for fuel, and more than we had twenty years ago, for the innumerable forests planted by thrifty farmers twenty years ago are now trees that furnish cord wood, rail cuts and saw logs.

Stone quarries we have, apparently inexhaustible, furnishing building stone of the best quality.

There are no Government lands in this county for homesteading or pre-empting; but the best wild land improved can be bought exceedingly cheap. And people seeking homes in the great West, who do not desire to start anew amid the disadvantages and hardships attendant to homesteading on the frontiers, should see Nebraska County before they permanently locate.

Here we have the advantages of the best of schools, and school houses already built in every school district in the county, and churches and church buildings, of every denomination, in the towns, and many in the country. Of the towns in this county, there are several prosperous and growing.

Brownville is the county seat, located on the Missouri river, central north and south; contains a population of about 2,000, and is well supplied with merchants, grocers, all sorts of tradesmen and professionals. Has nearly everything but manufactures, which she wants and needs, and offers big inducements for their establishment here.

Sheridan is a new town situated about the geographical center of the county, ten miles west from Brownville, on the Nemaha river; has a most lovely tower; is a good business point; contains about 300 inhabitants, and by virtue of these things, especially her location, appears to be some day the stilt town of the county.

Peru is a steady old town 8 miles above Brownville, on the river. The State Normal school is located here, and for this reason is a desirable place to locate, especially for parents who have children to educate. Peru has about 1,000 inhabitants.

Nebraska City, located 5 miles below Brownville at the junction of the Little Nemaha with the Missouri river, is a town of about 400 population, and rapidly growing. It is now the southern terminus of the Nebraska Railway, which is owned by the E. & M. railroad company; and since the road has reached there, has improved wonderfully. Nebraska is the great corn depot of southeastern Nebraska, and is one of the best points in the State for any one to locate to do any kind of business; for as yet the country is ahead of the town, and nearly all branches of business or trades, are in demand.

Reader, Nebraska is truly a great and wonderful State; when you visit her, you will fall to see the best, if you neglect to visit, what the editor of the Omaha Herald says is the "Garden County."

For any further information, regarding prices of lands, farms, town property, business wants, or inducements, or any other matter, parties addressing William H. Hoover, clerk of the court and land agent; or Ex-Gov. R. W. Furnas, Brownville, Neb., will be promptly answered.

Truth and Honor.

Query:—What is the best family medicine in the world to regulate the bowels, purify the blood, remove costiveness and biliousness, aid digestion and tone up the whole system? Truth and honor compels us to answer, Hop Bitters, being pure, mild and harmless. See another column.—Tales from the Past.

A saloon-keeper having started business in a place where trunks had been made, asked a friend what he had better do with the old sign, "Trunk Factory." "Oh," said the friend, "just change the 'T' to a 'D,' and it will suit you exactly."

Thurlow Weed was eighty-one years old Saturday week. His health is remarkably good, and he continues to take a lively interest in all matters relating to religion, politics and the stock market.

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