

# ...Australian Ballot...

Review of Nebraska's Experience with the Modern Ballot.

During the preceding five weeks The Independent has devoted more than the usual amount of space to the discussion of Nebraska politics. Now that the state campaign has ended it can return to its former policy of giving more space to questions of national importance. But at this time it seems advisable to relate a little history of the ups and downs of the so-called Australian ballot in Nebraska, a matter of interest to those outside as well as those inside the state.

The populist legislature of 1891 enacted the first Australian ballot law. It provided for alphabetical arrangement of the names of candidates under each office heading, with the party name to the right. Voting was done by making a cross in ink at the right of the party name.

This law received a number of judicial interpretations which need not here be recounted, but remained on the statute books until repealed by the populist-democratic legislature of 1897. The Belgian or "blanket" form was then adopted, with separate column for each party, with party emblems, circles for straight voting, etc. From a populist standpoint, this change was undesirable; but the democratic members from Omaha urged it because, as they claimed, many of their voters were not sufficiently educated to vote the original form, which, because of its alphabetical arrangement, was irregular in arrangement as to political parties. For example, Henry Adams, the populist candidate for governor, would head the group under "Governor;" but Eric Adamson, the republican candidate, would come first under the head of "Lieutenant Governor;" and an illiterate voter could not be instructed to make his cross after the first name, or the second name, in each group in order to vote straight.

The ballot of 1897 lasted two years. Then the republican legislature of 1899 changed back to the original form, but provided that the arrangement should be uniform under each head, stating that "The party polling the highest number of votes at the last general election for the head of the state ticket shall have the right of its nominee immediately beneath the name of the office for which such candidate was nominated;" and so on. It provided also for group-voting in the case of presidential electors.

The ballot of 1899 also lasted two years. The republican legislature of 1901 amended it by adding party names and party circles, to be placed at the top of the ballot, so that a straight party ticket might be voted by making a cross in the party circle. The section of the law providing this said—

"At the top and left side of the ballot shall be printed in black-faced capital type, not less than one-eighth of an inch high, the name of each party having candidates on the ballot; and to the right of each party name, a circle one-half inch in diameter, with leaders connecting the party name to the circle."

Notwithstanding the fact that this provision is written in the singular number, the 1901 amendment provided a tentative form of ballot, known as "Schedule A," in which the party names and party circles were shown in this manner:

### Sample Ballot.

To Vote a Straight Ticket make a cross within your party circle

- REPUBLICAN.....○
- DEMOCRATIC.....○
- PEOPLE'S INDEPENDENT }.....○
- PROHIBITION.....○
- SOCIALIST.....○

County clerks in making up the official ballots are charged to conform to this schedule as nearly as may be. Of course, the party names in this schedule might just as well have been "Horizontal," "Perpendicular," "Tangent," "Reverse Curve," etc., as what they were. It was merely the form of ballot, and not the party names or other contents, which the legislature presumably intended to show. As a matter of reasonable probability, however, there is little doubt that the combining of two separate parties and making one circle do duty for both, was done purposely to cause confusion and trouble for both populists and democrats.

The associate editor of The Independent was chairman of the populist state committee in 1901 and, feeling sure that the schedule could not pre-

vail over the plain wording of the section, brought an action in mandamus in the supreme court of Nebraska against the county clerk of Lancaster county to compel him to prepare the ballot substantially as follows:

### Sample Ballot.

To Vote a Straight Ticket make a cross within your party circle

- REPUBLICAN.....○
- PEOPLE'S INDEPENDENT.....○
- DEMOCRATIC.....○
- PROHIBITION.....○
- SOCIALIST.....○

The writ of mandamus was allowed (See 62 Neb. 817), but was never actually issued and served. The clerk prepared the ballots in proper form that year and again in 1902—and thereby hangs a tale.

Few republicans in Nebraska had any hope of carrying the state in 1900, or, at any rate, not until very late in the campaign. When the republican convention was held, all the shrewd pie-eaters hung back, seeing a chance to reward by a—as it then seemed—forlorn hope nomination a number of third and fourth rate political heelers who were clamoring for recognition. They got it; and thanks to Mark Hanna's big check and the voters it helped to get back from the ends of the earth, they were elected.

Among the political accidents of that year was one George W. Marsh, who was elected secretary of state. As such officer it is his duty to certify to county clerks the state and congressional nominations filed with him. No particular form is prescribed by statute, and the rule has been to arrange the information in the form of a ballot. This saves the county clerk some trouble, because all he needs to do is to add below the legislative, judicial, county and precinct nominations in similar order—and his "copy" is ready for the printer. When the ballot suit came up over the correct form of printing party names and circles, Secretary Marsh was represented at the trial by the deputy attorney general. He was not a party to the suit, but by courtesy was allowed to practically intervene and become one of the respondents. This the relators permitted without objection because the secretary of state claimed his object was to learn the law and follow it in his certifications to the county clerks.

It will be remembered that in state matters the populists and democrats have nominated the same candidates since and including the year 1896, holding, however, separate conventions and making separate certificates of nomination to the secretary of state. Both the "People's Independent" party and the "Democratic" party have maintained separate organizations. In some of the counties they do not nominate the same candidates for county officers; and in very many of the precincts only one of the parties puts up a precinct ticket. Accordingly, a ballot prepared in accordance with "Schedule A" meant more or less loss for the fusionists, because a cross marked in the hybrid circle would not count as a vote for any candidate who had not been nominated by both parties. Or, if it be held that the party circle is single, then the party would be the "Democratic People's Independent" and no candidate of either the plain "People's Independent" or the plain "Democratic" could lawfully claim for himself a straight vote cast for the "Democratic People's Independent" party.

So Secretary Marsh was interested in helping the county clerk (a republican) resist the mandamus suit, which, however, went against them. The opinion was written by the then chief justice, Hon. T. L. Norval, a republican. Most populists and democrats then felt that the matter had been settled and thought no more about it. But The Independent's experience with republican state officers causes it to watch them all the time. With a few notable exceptions, none of them will hesitate to violate the law, or procure others to do so, if a partisan advantage can be gained.

In the fall of 1902 The Independent discovered that Secretary Marsh had sent out his certificate to the county clerks again in the form of a ballot—and with the illegal "Schedule A" form at the top! Now, the county clerk is the officer charged with the

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duty of preparing the official ballot in legal form, and upon him must fall the odium of preparing it wrong and putting the taxpayers to additional expense for mandamus suits and the inevitable reprinting. But, although he violated no law himself, Secretary Marsh is the man who ought to bear the blame. He knew that the average republican county clerk always looks to some one above him to learn what to do; he knew that his certificate was a hypnotic suggestion to the county clerk to print the official ballots that way. And most of them did so, unless restrained, as many of them were, by the orders of some court.

When questioned about the matter last year, Secretary Marsh added lying to his other doubtful accomplishments, by saying that he "forgot about" the supreme court's decision. Howbeit, The Independent was not deceived and determined to watch His Political Acclendency. At its suggestion the populist state committee this year served notice upon every county clerk in the state, calling attention to the decision and demanding that the people's independent party be accorded a separate line and separate party circle.

The Independent had guessed correctly. The "peanut" politician again made his certificate of nomination in the form of a ballot, and again copied the interdicted "Schedule A." And, strange to say, the very county clerk against whom the writ had been granted, slavishly adopted the secretary's suggestion.

This necessitated another mandamus suit, which was again brought in supreme court. Of course, it could have but one result—another writ. This time the plea of "no use to issue the writ—I'll obey without it," did not go. It was duly issued and served last Saturday upon the exceedingly forgetful gentleman!

There is no doubt that the secretary of state, the republican state chairman, and other prominent republicans in Nebraska, deliberately plotted to bring about this violation of law in every county they possibly could. If there were any possible way to impeach the secretary for his part of the dirty work, The Independent would be glad to do its share to bring it to a successful issue. But like the gifted rascal in one of Ouida's stories, Secretary Marsh is not fool enough to break the law himself. But he makes it easy for mullet head county clerks to fall into this neat little trap! If any one suffers, they must; he is safe.

The Independent is not informed at this writing as to how many county clerks violated the law. But it suggests that wherever it was done, impeachment proceedings should be begun against the clerk without delay. The way to check the republicans in their persistent anarchy is to give them a touch of law.—D.

Mention The Independent.

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W. M. Morning and John J. Ledwith, Attorneys, Rooms 310-312, Richards Block

### NOTICE OF SUIT

In the District Court of Lancaster County, Nebraska, Mary Elizabeth Marr, plaintiff vs. James Wesley Marr, defendant, to James Wesley Marr, non-resident defendant.

You are hereby notified that your wife, Mary Elizabeth Marr, has commenced an action against you in the District Court of Lancaster County, Nebraska, to obtain an absolute divorce from you on the ground of willful desertion and abandonment on your part for more than two years last past and also for the reason of non-support, and to obtain the custody of your two children, Edith Belle Marr and George Roy Marr. You are required to answer the plaintiff's petition in said action on or before the 30th day of November, 1903, or the allegations thereof will be taken as true and decrees rendered accordingly.

MARY ELIZABETH MARR, Plaintiff.  
By W. M. Morning & John J. Ledwith, her attorneys.

### Milton Schwind—Attorney

### PETITION FOR DIVORCE

In the district court of Lancaster county, Nebraska, Anna Waerner, plaintiff, vs. Frank Waerner, defendant.

To Frank Waerner.  
You will take notice that I have this day caused a petition to be filed against you in the district court of Lancaster county, Nebraska, praying a divorce from you and the custody of our minor child, Eddie, on the ground that you have deserted me for more than two years last past, and on the ground that you have neglected and refused to furnish me with reasonable support, you being of sufficient ability so to do. That unless you answer said petition on or before Monday, November 23, 1903, you will be in default, and said petition will be taken as confessed, and judgment entered accordingly.  
Lincoln, Nebraska, October 7, 1903.  
ANNA WAERNER,  
Milton Schwind, Attorney for plaintiff.