

Reminiscences of a Wayfarer

Some of the Important Events of the Pioneer Days of Richardson County and Southeast Nebraska, as remembered by the writer, who has spent fifty-one years here.

JUDGE LYNCH HOLDS COURT

The flood in the Nemaha was a revelation to the people. No one appeared to have any idea that the stream was subject to such freshets and the prestige of bottom land over those on the high ground, suffered materially. There has never been any considerable farming done in the valley of the Nemaha east of Salem. A considerable part of it is utilized for pasture and for grass land, but even that is of doubtful utility as floods are liable to come at any time and the grass harvests have been destroyed time out of mind by such freshets.

About the time this flood occurred, some lawless persons, either the same night, or the night before, relieved several of our people of some of their horses, and fled with them into Kansas. As soon as the word got about and a party could be organized for pursuit, Wilson M. Maddox, young William Goolsby, son of William G. Goolsby on the Muddy, and some others constructed a raft of some kind, crossed over to the south bank of the Nemaha, and pursued the thieves until they captured four persons they believed to have been engaged in the depredations and returned with them to Archer. No attention was paid to territorial lines or to the law of congress regulating the extradition of fugitives from justice escaping from one territory or state into another, but regardless of all these the pursuing party I mentioned captured their men and brought them into Nebraska for punishment. To that end word was passed through the neighborhood, and nearly all, if not all, the leading citizens in the vicinity assembled at Archer to consider what should be done in the way of ascertaining the guilt of the persons accused and also to take order in the matter of their punishment.

There was no criminal code in the territory at the time, and in another part of this paper I will relate how that unheard of circumstance came about.

Two of those parties hearing that there was a lawyer at Falls City sent word to me to come over to Archer. I did so, and listened to their story and I became convinced that at least two of the parties were not guilty and so informed Mr. Maddox, and those he had called to his assistance in the neighborhood. It is a fact everywhere true in the west at that time, that the people held in greater detestation the offense of horse stealing than they did any other in the whole calendar of crime. This I think, is a fact well attested by the experience of all men who have passed any considerable time on the frontier.

I shall give the name of but one of the parties accused, as it is possible the others may have some friends in the country and I have no disposition to wound their feelings by what I here relate of a disagreeable incident, in which they were in no way involved, and which may have been a mistake from the beginning.

The man whom I thought to be guilty without any doubt, was named Sam Thomas. He was a young man of bad repute and had been in the Kansas troubles from their inception, and it seems, had graduated in the art of horse stealing. He was certainly an adept. There was no particular organization of a court such as is known to be presided over by his honor Judge Lynch, or resort to a committee of inquiry or farcical trial by jury, but the people

consulted and talked among themselves and with me very freely, very candidly, and they finally becoming satisfied I was right as to two of the party, let them off, but the other two, one besides Sam Thomas, were condemned to be whipped—fifty lashes for Thomas and twenty-five for the other one. This was my first appearance in any court in Nebraska, and it was about as revolting an experience as anybody would care to undergo.

I had heard and read of Judge Lynch's court, but had never seen it in operation. I had also heard and read much of mobs, disorderly and unlawful assemblages, the ostensible objects of which were to administer summary punishment for infractions of the law without waiting for the regularly constituted authorities to take action in the premises, but this was the first of the kind that ever came under my observation, and in fact, it was the last of the kind.

There was nothing violent in the conduct of the men assembled on this occasion, and those of the men present whom I remember, I knew to be then, and for the rest of their lives afterwards, as good citizens and as orderly members of the community as could be found anywhere. They talked the matter over very seriously and in the light of the circumstances surrounding them and their property. At that time there was no law or code, nor other public protection for life or property in the commonwealth of the territory, and they were left without any protection from depredations of the kind they were that day considering, other than

Some of the accounts I had read of man's inhumanity to man in the darker ages of the world, came vividly before my imagination. The instruments of torture that man's cruelty to his fellows have invented—the thumb screw, the boot, the breaking on the wheel, suggested themselves to me while this terrible ordeal was in progress of enactment before my eyes.

Among the five who administered punishment to Thomas, one of them, whose name I will not mention, touched the poor, writhing, quivering, tortured body so lightly that a fly would not have been destroyed by any of his strokes. This man was not loud in his profession of religion, if indeed he made any profession of the kind at all, nor was he demonstrative in any way touching the comfort and well being of those about him, but the whole nature of the man was laid bare to me in the mode in which he pretended to whip that outcast. The criminal was a lawless man and all that, but at the same time he was a human being with the image of his great creator stamped upon him, and it was consideration for the being who bore that image, and not the horse thief, that controlled the strokes of the man I refer to.

The next man to the fore and the last of the detail, was a certain Mr. Wright, whom I had seen about Falls City during my brief residence there, and whom I had frequently observed at public religious services, where he was prominent in all that went forward, and withal rather loud in his devotions, so loud indeed, that I had become possessed of some doubt as to the sincerity of his professions, but as I had no disposition to sit in judgment on a matter that was to be settled between him and a higher authority, I am not sensible that I thought much about

And from that hour forward, and during the whole of his life afterwards, I honored the man for his humanity. In the hush that fell upon that infuriated company, concerned for the safety of their property rights, and for the good order and well being of the community at large, at this sudden assertion of that feeling of mercy that distinguishes the civilized from the savage, that one "touch of nature that makes the whole world kin," there was produced among them a strange commotion, confused and indefinable, but as potent as though each had heard the voice that once declared, and is always declaring, "Blessed are the merciful, for they shall obtain mercy." The feeling produced in me has never passed away.

The balance of that gruesome function was performed in a kind of perfunctory way, and all departed feeling, I little doubt, as I felt, that the less of such exhibitions among the people, the better it would be for the general public morality. From that day to this, mob law has but once since been resorted to in this county.

One man had been hung a few days before at St. Stephen for the same offense, but it was the last. Some years later three or four road agents of the kind I have described, were hanged by a mob at Table Rock in Patee County. Some stir was made about it, and Judge Dundy directed the Grand Jury to investigate the transaction, but nothing came of it, and mob violence ceased in that county.

At the time of which I write, and for a year and a half before, Nebraska was without a Criminal Code. The territorial legislature at a previous session repealed the Code adopted at the first session in 1855.

The reason for that repeal as given in the last published history of Nebraska, is only parti-

stitutions, and were in violation of an act of congress, but whether that fact was known or not, there is little doubt of their being smart schemes for making money out of a thoughtless public, but if they violated any law, it was the act of congress passed many years before, in which it was provided:

"That no act of the Territorial Legislature of any of the territories of the United States incorporating any bank or any institution with banking powers or privileges, hereafter to be passed, shall have any force or effect whatever until approved and confirmed by congress."

This act was passed in connection with the abrogation by congress of similar laws in the territory of Florida. If those Nebraska chartered banking institutions were in violation of any law, it was this, and as none of the laws of the territory, authorizing them were ever approved by congress, but were put in operation in defiance of it, they were illegal institutions, and every man connected with them was liable to indictment and prosecution in the United States courts, and the repeal of the Nebraska criminal code, could afford them no immunity.

If any frauds were committed by their means the criminal laws of the general government were ample for the punishment of the offenders, and if justice miscarried by reason of unfaithful officers neglecting their duty in that behalf, the fault can not be atoned for at this late date, by laying the blame on a dead man who was not one of those defaulting officers.

It was certainly competent for the legislature to pass banking laws, but it was not competent for those laws to be put into effective operation until they were approved by the congress of the United States. Certainly, before they could be so approved they had to be passed by the local legislature, and in the doing of that, there was obviously no fraud. If any were committed afterwards by putting the banks in operation before the legislation of the territory was approved by congress, it is nowhere shown that Judge Bradford was connected with them. It seems to me a very great injustice has been done to the memory of Judge Bradford, whether intentionally or not is not for me to say. I only know the interference suggested is not justified. Perhaps that history would not have been written in its present shape if the author had known that such legislation required the approval of the American congress before it even had the semblance of law about it.

I had the pleasure of a personal acquaintance with Judge Bradford from the spring of 1859 till I saw him last in life at the city of Washington in 1869. He left Nebraska some time in the decade of 1860 and was shortly afterwards appointed one of the United States judges for the territory of Colorado and when I saw him in 1869, he was representing that territory in congress as its accredited delegate. He was a citizen of high character in every community where he resided at any time during his whole life, and never until I saw it in the history of Nebraska have I heard or read anything derogatory of his character as a citizen or public servant. I honored the man in his life and I honor his memory in his death and it is in vindication of that memory and of the truth of history, that the foregoing is written.

The repeal of the criminal code saved the neck of the man Hargus, but it furnished no immunity from prosecution to persons engaged in illegal or fraudulent banking. Offenders in that particular, if such there really were, could not have been punished, under the circumstances, in any but federal jurisdiction.

I do not excuse Judge Bradford for his share in the repeal

of the criminal code. It was a great social and legal wrong, but like many other criminal lawyers might do, under like circumstances, he justified the act as a means of saving the life of his client. It was one of doubtful professional morality to say the least of it.

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The Flood

the force they were able to bring to bear in their assembled character. Up to that time there had never been but one court held in the county, and there was not another one till in March, 1859. It looked like a cruel piece of business, and it was, disassociated from the idea of punishment for lawlessness.

The victims were bared from the waist up, their feet tied together and their hands securely tied to the wheel of a wagon, with their bodies slightly bent over while receiving punishment. In the case of Thomas, it was arranged for five men to give him ten lashes apiece and in the administration of the punishment I had an excellent opportunity to judge of the nature of the men who inflicted the punishment. The instrument of torture used was a green hickory withe probably four feet in length and half an inch in diameter at its thickest part. This terrible weapon, in the hands of a strong man, applied with his full force to the naked back of a human body was a sight I hope never to see again while I remain in the world. I refrain from giving a particular description of the strokes as they were applied to those unfortunate men. The remembrance is too terrible to put on paper.

He was one of a specific kingdom come class that are to be found wherever men are found on earth, who arrogate to themselves the whole job of reforming the world, without taking into account the probably unimportant fact that they need about as much reformation as anybody else; but as we are all a little disposed to excuse in ourselves what we condemn in others, we may conclude they are not entirely singular in that behalf, and the charitable view perhaps, is, that in the economy of the inscrutable they perform some purpose not clear to the finite ken, and like all other things in nature, have their existence from inexorable and absolute necessity.

At the call of the master of ceremonies, he stepped forward, took the instrument of torture, and with his whole force laid it across the back of the already bleeding and maimed victim, each stroke being harder, if possible, than the one preceding till Uncle William Goolsby, his eyes flashing with uncontrollable anger and indignation, caught the hand of the murderous monster and wrenched the whip from his grasp, saying "Stop, you brute, there is enough of this," and throwing it on the ground ordered the man untied.

ally true. In that work it is recited that the repeal was brought about at the instance and largely by reason of the preponderating influence of a lawyer at Nebraska City; and while the account mentions a terrible murder that had occurred in Otoe county in which one Hargus had slain a man of the name of Lacy, in a cowardly, brutal, and cruel manner, the inference is sought to be given that the repeal of the criminal code was not so much to assist this murderer to escape punishment for his crime, as it was to assist some smart financial operators at Nebraska City and elsewhere in the territory, to escape punishment in connection with the wildcat banks that had been chartered by the legislature at a time previous. The lawyer's name given in that history is A. A. Bradford, then a citizen of Nebraska City. The murder of Lacy and the prosecution of Hargus is mentioned in connection with the bank frauds so called in that history, but the inference suggested by the writer is not justified as will presently appear. Now I happen to know that at that time, it was not even suspected, that any fraudulent banking had been done in the territory; but it might have been known that they were illegal in