

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.

FALLS CITY'S MUNICIPAL BONDS

When I determined to write my recollections of people and events in the early days, I intended to confine myself to the territorial period of Nebraska history, and close with the admission of the state into the Union and its habilitation as an independent political autonomy, which was not complete until the close of the first session of the legislature under the constitution, which met at Lincoln, the new capital, in the winter of 1869.

A circumstance, which will sufficiently appear as this paper progresses, has induced me to make a slight alteration of my original plans and in this instance to write of some matters of public interest that occurred a few years after Nebraska had ceased to be a territory, and to which public attention has been called by a recent publication in one of our local newspapers.

It is from the pen of Mr. A. R. Keim, who has passed at least forty years of his life in Falls City, and as he is not probably much above the age of fifty, his residence here covers therefore, the greater part of his earthly existence. The subject of his editorial in the Falls City Journal, of which I am informed he is editor, of the date of May 19th, instant, was certain municipal bonds alleged to have been issued by the city of Falls City about thirty-six years ago, to assist in building our present county court house; and certain bonds of the school district, in which Falls City was then, and yet is, located, upon which to procure money to build a school house, and which were issued two years after the court house bonds were issued and put on the market.

The issue of those bonds and the circumstances attending the transactions from their inception, and what followed, are entirely consonant with my general purpose in writing these reminiscences, and though events of a time I did not expect to write about, I embrace this opportunity to give to the public the real and indisputable facts concerning them, which Mr. Keim has not done.

The editorial I refer to commences thus:

"Falls City has an easy fashion of voting bonds and also a convenient way of repudiating them."

This statement has not the slightest foundation in fact, and it is the purpose of this article to make that plain to the "new comers in town and some young people" (I use Keim's own words) "who have grown up who have never heard of our escapades in that respect." It is not a commendable bird that will foul its own nest, and even if what he has written about Falls City were true, which it is not, it comes with a bad grace from one like himself, who has passed most of his life in the town, and whose father and uncle were among the most influential business men in the city at the time the bonds he mentioned were issued, and were the active financial agents in the disbursement of the funds received from their sale in furtherance of the enterprises they were intended to promote, to make a wholesale charge of dishonesty against the people of the town including his own flesh and blood. But that aside I make a further quotation from his editorial of the 19th:

"This is ancient history and the story no doubt will be fully and interestingly told by the 'Wayfarer.'"

Whether interestingly told or

not, I accept the task, and will proceed to give the facts as I know them to exist, and which others in Falls City at this moment, know quite as well, to be named as I proceed.

At the session of the legislature in the winter of 1873, an act was passed authorizing "Falls City precinct to issue bonds to aid in the construction of a court house for Richardson county" in the sum of \$15,000. That act was prepared by Mr. E. S. Towle, who was a member of that legislature, and passed into a law through his active exertions. Mr. Keim is tolerably correct when he said that the object of the law was to permanently locate the county seat at Falls City, and end the long drawn out fight, which had disturbed the peace and quiet of the people for more than fifteen years. I was not in the country at the time, but Towle informs me that he introduced and passed that act at the earnest solicitation of all the business men in Falls City, including the proprietors of The Falls City Bank, Mr. C. L. Keim and Mr. H. B. Grable, father and uncle of A. R. Keim, our city's present critic. The bonds were issued accordingly and sold in the market, and I am told by Mr. John Hinton, who was also a banker in the town at the time, that the money was disbursed through the Keim and Grable bank, gentlemen who were as anxious to promote the welfare of the city as any two men who ever lived in it. In the course of a year and a half perhaps, the court house was completed and formally presented to the county and the apparently interminable struggle over the county seat question was in fact ended forever.

Matters stood in that attitude till the 2nd day of July, 1877, when an action was commenced in the district court of our county by Judge E. S. Dundy, an extensive property owner in Falls City precinct, against Richardson county, to enjoin the collection of certain taxes that were alleged to have been illegally levied, among which was the tax to pay interest on the court house bonds.

I have the record of that case before me, and besides I was attorney for the plaintiff and my knowledge of what was done therein is full and complete. On the hearing in the lower court the contention of the plaintiff as to certain matters of tax, was sustained, but as to the court house bond tax, his bill was dismissed. From that decree an appeal was taken to the supreme court, where it was very fully argued on both sides, and on the 22nd day of April, 1879, an opinion was handed down by the court sustaining the district court in all its ruling in the case, except as to the court house bond tax, and as to that the decision below was reversed, the tax held illegal and the bonds issued by the precinct absolutely void, and for the following reason—I quote from the opinion of the court speaking by Judge Maxwell:

"The court house tax was levied for the payment of the bonds issued under a special act of the legislature, approved February 14, 1873, 'to authorize Falls City precinct to issue bonds to aid in the construction of a court house for Richardson County.' * * *

Have such bonds any validity under our constitution? Sec. 1, Art. VIII of the constitution of 1867, prohibited the legislature from passing any special act conferring corporate powers. This being the case, the

act in question conferred no authority whatever to issue the bonds in question, and they were absolutely void in whomsoever hands they may be."

That was all the litigation that was ever had over these bonds. The validity of the tax levied to pay interest on them was not attacked by Falls City, or by Falls City precinct, but by a taxpayer. He had a right to do so, and the court had jurisdiction to decide the point.

Of course that decision did not bind the holder of the bonds for he was not a party to the suit, and besides the bond holder had a double remedy, for if the bonds were void for the want of power in the municipality to issue them, he could throw them aside and proceed against the municipality as for money had and received, and the courts have uniformly in all proper cases allowed a recovery.

Void bonds cannot be issued, money obtained by a sale of them and the money kept by the municipality simply because the bonds are unenforceable as valid securities. The bonds are not the debt, but only the evidences of the debt. No suit was ever brought on the bonds against Falls City precinct, or against any other corporate entity, nor was any action instituted for the money obtained from their sale.

The holder of the bonds is alone to blame for the non-attempt to enforce the obligation of Falls City precinct to repay the money it had received from the sale of its void court house bonds. The right of action to enforce that obligation became barred by the statute of limitations by such delay of the bond holder, and that is all there is of it. Nobody repudiated anything, nor could it be done by anybody, or corporate municipality. It is a thing impossible

in our government.

Now as to the school bonds issued two years later under another special act of the legislature empowering School District 56, the one in which Falls City was and is yet located. I have conferred with Mr. J. R. Cain, Sr., who was a member of the school board at the time, and he remembers the facts substantially as I do. Bonds to the amount of \$20,000 were issued by the school district under the authority of the special act above mentioned, and a contract let to J. H. Burbank to build the school house. The bonds were in the Falls City Bank. This was sometime in the year 1875, probably about mid-summer. Before the school board could negotiate a sale, it was discovered that there was some doubt as to their legal validity, and talk of an injunction proceeding to prevent their sale was rife on the street. This somehow came to the knowledge of the contractor, Burbank, and by some means unknown to me, and Mr. Cain says was unknown to him and the other members of the school board, Burbank procured possession of the bonds from the bank, spirited them away to St. Joseph, Missouri, and sold them, but for what price nobody, I think, but himself in Falls City, ever knew. This gave fraudulent currency of those securities in the market. The board was powerless. The contract was already let and the bonds were sold. A strong pressure was brought on the board to let matters proceed. The country had been eaten up by grasshoppers, the people were idle, and no prospects ahead. In that state of public necessity it was urged that the expenditure of fifteen or twenty thousand dollars among the people for material and labor would be a godsend to

the community and the argument prevailed. Later, when it was ascertained that the building was built in a flimsy and unsubstantial manner, some of the board rebelled, and all were dissatisfied. Mr. Robert Clegg, a member of the school board, now deceased, but who is remembered by our people as one of our most active men of affairs, was determined to probe the whole business to the bottom. He had become convinced that the bonds were void, and that the school district had been swindled in their sale; and besides he didn't like the house Burbank had built, and he set on foot a scheme of his own to have an adjustment of matters between the bondholders and the school district, on a basis of equality and fair dealing. To that end he purchased one of the detached coupons from a school bond and brought suit on it in the district court against the school district. It was intended as a test case. The court held that the coupon and the bond from which it had been detached were void for the reason that the act under which they were issued conferred corporate power on the school district against the express prohibition of the constitution. In order to have an authoritative judicial expression on the subject, Mr. Clegg carried the case to the Supreme court, where the judgment below was affirmed. That case is reported in Volume 8, Nebraska reports, at page 178. The Dundy case against Richardson county is reported in the same volume at page 508. The school board was then in position to talk to the holders of the bonds and said to them substantially this: "The bonds are legally void, but we don't want something for nothing, we are willing to pay you what the school house is worth." And

they did, and it was received in full acquittance of the obligation.

It is proper to say that a like holding on the question of illegality of the school bonds was had in the United States Circuit Court at Omaha, a short time before and which was later affirmed by the United States Supreme Court at Washington. Clegg wanted a decision by our own Supreme Court.

It will thus be seen that there was no repudiation by Falls City, or by any other corporation, of either bonds or debts, and besides Falls City did not issue any of those bonds. As the holders of the precinct court house bonds never made any effort to enforce them, or to recover the money paid for their purchase, it is impossible now to say whether the court would have allowed a recovery as for money had and received. There was already authority in the Internal Improvement act of 1869, for a precinct to issue bonds to aid in works of internal improvements—and our supreme court has decided that a court house is such a work—but it required a vote of the people, while this one did not. It is not profitable to speculate as to probabilities. The bondholders never put the matter to a test and that, as one William Shakespeare once said, is the end of the heart-ache.

It should be remembered that a people or a community has its life precisely like its component individuals, and that this aggregate life is as much an individuality, as though the whole mass, great or small, were a single person, and may be made the subject of detraction and unfriendly criticism in the same way.

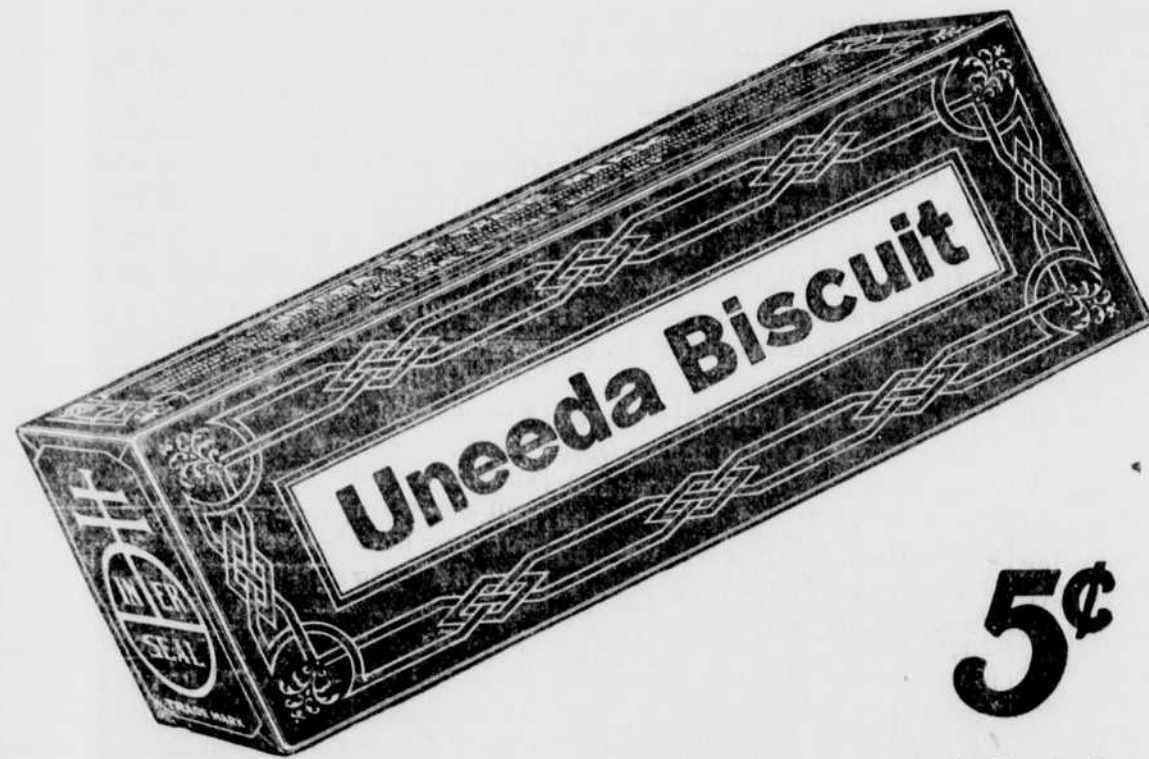
In any case, the censor of the public morality should be certain of his facts before he charges business immorality on a whole community.

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