

APPALLING FIGURES.

A Republican Newspaper Shocked at Railroad Decisions of the Supreme Court.

Almost Every Case Decided in Their Favor.

The following article appeared in the Lincoln Evening News September 13, 1894, a republican daily with the largest circulation of any paper in Lancaster county, under the title of "Appalling Figures."

A correspondent takes exceptions to the recent statement made by the News that a majority of people have lost in a measure their respect for the justice and integrity of our courts, and insist that the News must have been in error when it stated that in the past eighteen years but two or three personal damage cases to which the railroad companies were parties had been decided adverse to the corporations. The records of the courts for the past twenty-five years are altogether too voluminous for the News to scan them for the purpose of corroboration of the statement, which was made on the authority of a reputable lawyer of this city; but it has taken the record of one company—the Burlington, admittedly the most powerful corporation in the state—for the past five years merely as an illustration. In that time the Burlington has been a party to twenty-one cases, and the results lead one to wonder if the corporation is always right and judge, jury and plaintiff always wrong. Here is the list of cases:

No. 1. C. B. & Q. vs. Moore, action for money paid to a garnishee of an employee's wages who lived in Nebraska and was sued in Iowa. Moore secured judgment below against the company for paying wages exempt by law. The company appealed. Judgment reversed.

No. 2. 27th Neb., page 673. Action by administrator for killing employe. Plaintiff had judgment below. Co. appealed. Judgment reversed.

No. 3. Koenig vs. C. B. & Q. 27th Neb., page 669. Action by plaintiff for laying a railroad track across his garden in the city of Lincoln. Co. recovered below. Koenig appeals. Judgment reversed by Judge Maxwell.

No. 4. C. B. & Q. vs. Hogan. Action for killing stock. Hogan recovered damages. Co. appealed. Judgment reversed.

No. 5. 28th Neb. p. 118. Action for killing cow. Plaintiff got judgment for \$20. Co. appealed. Judgment affirmed.

No. 6. 30th Neb. 197. Action for killing stock. Judgment for Co. below. Plaintiff appealed. Judgment affirmed.

No. 7. C. B. & Q. vs. Krikske, 30th Neb. 215. Action for malicious prosecution. Krikske recovered. Co. appealed. Judgment reversed.

No. 8. C. B. & Q. vs. Hogan, 30th Neb. p. 696. Action to require Co. to fence line. Judgment for Hogan. Co. appeals. Judgment reversed.

No. 9. C. B. & Q. vs. Goracke, 32d Neb. p. 90. Action for killing cow. Judgment for \$20. Co. appeals. Judgment affirmed.

No. 10. C. B. & Q. vs. Barnard, 32d Neb. p. 306. Action for killing brakeman. Ptf. received judgment. Co. appealed. Judgment reversed.

No. 11. C. B. & Q. vs. Gustin, 35th Neb. p. 86. Action on tender of \$1.25. Gustin recovered. Co. appealed. Affirmed.

No. 12. Anderson vs. C. B. & Q. 35th Neb. p. 95. Action for killing brakeman. Ptf. got judgment for \$1. Co. appealed. Affirmed.

No. 13. A. & N. R. R. Co. vs. Forney, 35th Neb. p. 607. Action for damages for taking right of way. Forney recovered below. Co. appeals. Reversed.

No. 14. C. B. & Q. vs. Merrick Co, 36th p. 176. County sues for taxes. County recovers. Co. appeals. Affirmed. Merely a question of whether the taxes were to be paid to the county or the state.

No. 15. C. B. & Q. vs. Landauer, 36th p. 642. Action for injuries. Ptf. recovers \$5000.00. Co. appeals. Reversed.

No. 16. C. B. & Q. vs. Anderson, 56 N. W. 794. Ptf. recovered below. Co. appeals. Reversed.

No. 17. C. B. & Q. vs. Graven, 56, N. W. 798. Action for killing child. Ptf. recovered. Co. appealed. Judgment reversed.

No. 18. Woolsey vs. C. B. & Q. 58 N. W. 444. Action for killing decedent. Defendant recovered below. Ptf. appeals. Judgment affirmed.

No. 19. C. B. & Q. vs. Wymore 58th N. W. 1120. Action for killing ptf's husband. Ptf. recovered. Co. appealed. Reversed.

No. 20. Oliver vs. C. B. & Q. 59th N. W. 351. Co. recovered below. Oliver appealed. Affirmed.

No. 21. C. B. & Q. vs. Olsen 59th N. W. 354. Olsen recovered judgment for \$4500.00 for loss of leg. Co. appealed. Reversed.

Of these twenty-one cases four were appealed by the plaintiffs in the lower courts; of these one was reversed and three sustained. Seventeen of these cases were appealed by the railroad company; and of that number the judgment of the lower court in favor of the plaintiff was reversed in twelve, while but

four were sustained. In this connection it should be stated that in the cases decided adverse to the railroad the amount of the judgments involved was exactly \$41, while in the other cases the amount of the judgments against the company which were set aside was up in the thousands. Is there not sufficient justification in these appalling figures for the feeling that is steadily growing against the ascendancy of corrupt corporate influence in party circles and for a purgative and purification of the courts. They are proof positive that there is something wrong with the courts, as nothing save a perverted sense of justice, could account for such one-sidedness in judicial decisions.

Norval Nominated by Acclamation

There is nothing surprising or unexpected in the unanimous nomination of Chief Justice Norval as candidate for re-election. Since the nomination for this office has been discussed, it has been known that Judge Norval was the favorite of the railroad corporations for this place, and that they had given out orders for his triumphant nomination. Every man who was prominent in the convention as chairman, speaker and platform writer was a persona grata with the railroads, testifying as railroad pet to the origin of the nomination. And not a word was said by any of the speakers or in the platform, which could convince a voter that the candidate for the judgeship was the right man for the position. They all avoided this point carefully and discussed only in their speeches and in their platform the national issues and the position of the republican party regarding the tariff and money questions, which have nothing at all to do with the election of a judge.

The election of a judge, as acknowledged by all sensible and impartial men is a non-partisan matter and should not be influenced by national politics or railroad preferences. Besides learning and honesty the main quality of a judge and especially a judge of a supreme court is

ABSOLUTE INDEPENDENCE. From the dangerous corporation power, which according to the testimony of a member of the U. S. supreme court is threatening the health and perhaps the life of our whole country.

In this respect Maxwell is greatly superior to Norval, and all people, who want to save our country from this danger, ought to prefer Maxwell to whatever political party they may belong.—Grand Island Independent (Rep.)

President Wm. E. Chancellor of the Lincoln Polytechnic Institute is becoming very well known in the state as a lecturer and public speaker. He is interested especially in radical educational and political reform and has made especial study of technical education in the one field and of Swiss direct legislation through the initiative and referendum in the other. He is to make several lecture tours in the Midland states, and is reported to have sixty or seventy engagements before the first of January.

Maxwell on Silver. The interview was in part as follows: Q. Judge Maxwell, have you any objections to giving your views on the silver question?

Judge Maxwell—I have not. From the first I have been an open and outspoken advocate of the free coinage of gold and silver. Both have been used as money by every civilized nation from the earliest history of the world until 1822, when the British Parliament demonetized silver.

Q. Do you see any reason for changing the ratio?

Judge Maxwell—I do not. The single standard people have made every effort, since they accomplished the repeal of the legal tender act, to deprecate silver and run the price down. If gold were treated in the same manner as silver, the price would certainly be depreciated. But with the unlimited coinage of silver it will be at par. I am certainly in favor of the unlimited coinage of silver at the ratio of 16 to 1. Had the act making silver legal tender not been repealed, no question would have been raised as to the ratio.

Q. What do you think the remedy should be?

Judge Maxwell—The remedy for the present distress is to open every mine in the country in the country and coin all the gold and silver that can be obtained for coinage. * * * We need to have some money in circulation that a few men cannot corner it all, and bring widespread distress upon the country at large. We need legislation for the whole people and not for the privileged few, who already have more than any individual could wish for, and who, it will be seen from history, at all times have been legislated in favor of.

—Fremont Leader, May 4, 1894.

The above is Maxwell's opinion given publicly more than a year ago.

Since the days of Henry VIII there has never been a court open to such an arraignment of its record as that of the supreme court of Nebraska. It does not need argument to show the blackness of that record. The decisions printed in the official reports are all that one needs to make him turn with horror away from it. It is an ineffaceable record of shame and can never be blotted out. If the people want it continued until all respect for our courts is obliterated, they only have to continue the same judges in office.

MRS. ELIA W. PEATTIE.

Candidate For Regent For the State University.

There have been various little biographies written in books of Mrs. Elia W. Peattie, but the reader may wish a little summary of facts easily remembered. She was born in Kalamazoo, Mich., in 1862, while her father was in the war. He was one of those who enlisted at the first call for troops, serving till his discharge for disability incurred from a wound. Her people were pioneers first in New Hampshire, then in Michigan, and have always been identified with the latter state. The first governor of Michigan, the first chief justice, were relatives of hers. Her own life up to the age of 21 was that of most American girls who have parents of moderate means. She lived at home, attended the public school, learned housekeeping, etc. When she was ten years of age her father, Frederick Wilkinson, removed to Chicago, and she grew up in that city. When she was twenty-one she married Robert Burns Peattie, a newspaper man, and they have always worked together more or less in a literary way. They have three children, two boys and a girl. For over six years they have lived in Omaha, associated, as many of us know, with the World Herald. Mrs. Peattie's ambitions, outside of those connected with her home, have been to be known as a writer of good and simple fiction. She has a history of the United States for young people (which is not wholly fiction), a book for children "With Scrip and Staff"—a tale of the children's crusade—and she has written for St. Nicholas, Wide Awake, the Century, Scribner's, Harper's Weekly, and many other periodicals. On the Chicago newspapers she served an apprenticeship in newspaper work, doing almost every sort of reporting, and in Omaha has done editorial and special work, especially along the lines of writing for women and of literary criticism. She does not pose as a servant of the public, although she might be counted so because of the many efforts on her part to assist in securing protection for helpless women and in forming clubs for their higher education. She has labored for various reforms for the betterment of the condition of women, and her belief in the esthetic development of life as much as in its practical development has been so strong, that if she has done any one thing in this state it has been to turn the attention of women to good books, good pictures, good music, and to leave behind those comparatively low standards which inevitably exist in a state still in the furore of its pioneer activity. Such things may not count for much in a political campaign, but they count higher up. She has made a great point of standing for absolute religious liberty, and has been considerably misrepresented on that account. It was that which lost her the election to a membership on the Omaha school board. She has lectured a good deal in the state on literary subjects, but the lectures were only a means to an end, and she does not wish to be known as a public lecturer. The lectures were for charity or for educational institutions, with two or three exceptions. There is no person in the state better qualified to occupy the position of Regent of the University than Mrs. Elia W. Peattie.

MR. JAMES H. BAYSTON.

Candidate For Regent For State University.

James H. Bayston was born on a farm in Cook county, Illinois, in 1858. He attended the public schools of that county and in the city of Chicago; also the Cook County Normal school. At the age of 20 years he taught his first term of school. He moved with his parents to this state in 1878.

Mr. Bayston moved to Red Willow county ten years ago and preoccupied a farm, engaging in the occupation of farmer several years. He taught school for five years; has been principal of the Bartley schools and was principal of the West Ward schools in McCook when he was elected county superintendent of Red Willow county four years ago. He did not seek a re-nomination to that office this fall, as the sentiment of the party is against third term nominations. He is an earnest worker in the cause of education and the following tribute from the papers at his home show the appreciation and esteem in which his work has been held by those most qualified to testify. The McCook Tribune, Rep., says: "The Tribune congratulates J. H. Bayston, our county superintendent, upon his recognition at the hands of the Populist state convention."

The Indiana Reporter, Rep., has this: "James H. Bayston, of this city, received the nomination for Regent of the State University in the Populist state convention. We know of none who would do more honor to the place than Mr. Bayston." And last—but not least from the North Western Journal of Education, September number, Lincoln, Neb., "Superintendent J. H. Bayston, of Red Willow county, has been nominated by the Populists for University Regent. Superintendent Bayston is one of the most capable and level-headed superintendents in Nebraska, and if elected the interests of the University will not suffer."

ROBBING AT THE PENITENTIARY.

Held "It is Not a Misdemeanor in Office."

Maxwell Dissents and Says "the Public Officer Should be Faithful to the State."

It was this same Norval and Post that exonerated the gang of hoodlums in the famous impeachment case of the State vs. Hastings et. al. This case is too well known to need much comment. The following extracts will be sufficient to indicate the line of argument used by Judges Norval and Post. In the syllabus of the case, these two judges say "The legislature of 1891 appropriated \$40,000 for the building of a cell house at the penitentiary by days work. The board of public lands and buildings having said buildings in charge, selected for superintendent of construction one Dorgan, known to be the agent and manager of Mosher, the lessee of the prison labor, with the understanding that he would have to contract with Mosher, as principal, in behalf of the state for the necessary labor and fix the price to be paid therefor. * * *

"HELD, (by Norval and Post) that the action of the board in selecting Dorgan as the representative of the state, while highly censurable as unbusinesslike and wanting in that intelligent regard for the interest of the public, which the state exacts from its officers, was, at most, an error of judgment, not amounting to a misdemeanor in office." To this Judge Maxwell dissents. To shorten the reasoning, it might be suggested that the court simply decided that it was an error of the head and not of the heart. Those gentlemen never intended to rob the state! In another paragraph the same Judges Norval and Post say "through the neglect, incompetence, or fraud of a superintendent (Dorgan), the state was charged for building material greatly in excess of the reasonable or market value thereof, and for labor which had not been performed. The bills rendered therefor were presented in the usual course of business and allowed by the board of public lands and buildings, acting in good faith and in the belief that such claims were legitimate charges against the state. HELD, that the allowance of such claims is not a misdemeanor in office for which the members of the board are impeachable." To this Judge Maxwell dissents. If the future developments indicate that this board acted in good faith, the state would be considerably more prosperous if it had more citizens in bad faith. The opinion in this case is too long to print, covering, as it does, fifty-seven pages.

Judge Maxwell in commenting upon the acts of the officers that were on trial said that "a public officer like any other servant should be faithful to his employer, should see that in all matters under his control the master shall not be defrauded; in other words, he shall be faithful to his trust not as an eye servant, but in the sight of God; that is in fact the oath which each officer takes to faithfully perform his duty. Our public institutions should be conducted on business principles and without fear, favor or favoritism, and no money should be drawn from the treasury except in strict pursuance of law. If the courts should approve or even condone the conduct of the respondents in these cases, the influence of the decision will be felt in every department of business in the state as tending to warrant the sense of faithlessness of public officers and employees, and in every way prove detrimental to the best interests of society. There are an abundance of men in the state who can, and if the opportunity is given by their selection to the offices filled by the respondents, will faithfully look after the interests of the state; and as the respondents have failed in that regard, the charges are well taken and should be sustained. I therefore vote guilty as charged. I fear the result of the decision if adhered to will be to open the door to the grossest frauds in the public institutions of the state. A number of the witnesses for the state testified as if under constraint and there seemed to be powerful influences effecting some of them aside from the immediate friends of the respondents at work in their favor. The respondents of course are not responsible for these influences, but it is my duty to mention them."

The following illustrations will give you something of an idea of the size of the frauds that had been perpetrated by the gang: The Whitebreast Coal & Lime company of Lincoln, delivered to the Insane Asylum, in the month of November, 1890, 642,000 pounds of coal, the board for the same month O. K'd bills to the company for 1,241,900 pounds.

For December, 1890, the company delivered 662,000 pounds; the board paid for 1,480,000 pounds.

For January, 1891, the company delivered, 378,700 pounds; the board O. K'd bills for 1,086,000 pounds.

For February, 1891, the delivery was 497,300 pounds; and the board paid for 240,000.

If all the figures were given, it would make a book as large as Webster's Dictionary.

The story of the prices and quantity of stone "plugged to size" that went into the cell house without any exaggeration, would exceed anything that Mark Twain or Bill Nye could reach in their palmiest days.

It was largely due to the same influences that controlled in the above decisions that Norval was so unanimously nominated and that the corporation sheets in this state are so enthusiastic in their support of Norval and so bitter in their denunciations of Maxwell. These men realize that no matter what the political complexion, the interest and integrity of the judges of the various district courts may be, that if they have in their power and under their control the supreme court of the state it is only a question of time required for filing the necessary papers until they can have a decision, satisfactory in all its details.

Maxwell More Vigorous than Post and Norval.

It is being urged by the railroad republican press against Judge Maxwell's candidacy that he has already drawn \$50,000 in salary from the state of Nebraska. They cannot say that he ever received a penny that he did not earn and was not legally and rightfully entitled to. He served 20 years on the supreme bench, and as is customary the state of Nebraska paid him the prescribed salary of \$2,500 per year. The state of Nebraska has more than value received for every dollar it has paid to Samuel Maxwell as the following figures will show:

During the 12 years that Judge Cobb was on the bench he drew \$30,000 from the state and wrote 727 opinions. This means that each opinion written by Cobb cost the state \$41.26. Maxwell in the last 12 years on the bench, when according to the republican press he must have been very old, wrote 1,443 opinions almost twice as many as Judge Cobb. Maxwell's opinions for 12 years cost the state \$20.79 apiece, or \$20.47 less on each opinion than those of Judge Cobb. Judge Norval, during the time he has been on the bench, nearly six years, has written up to February 19, 1895—457 published opinions which have cost the state as near as can be calculated \$30.60 each or \$9.81 more on each opinion than Maxwell. Judge Reese is the only man that ever did anything like the work that Maxwell did. Had Maxwell and Reese remained on the bench and another man elected that would have done the work they did, there would never have been any need of the present supreme court commissioners, thus saving the state \$7,500 annually that is paid them as salary. It is true that the commissioners were appointed during Maxwell's term; but it became necessary because the other judges did not write one-half the amount of opinions that Maxwell did as the following figures show:

In volume 34, Nebraska supreme court reports Maxwell wrote 98 of the opinions, Norval 43, Post 26. In volume 35 Maxwell wrote 75, Norval 44, Post 40. In volume 36, Maxwell 99, Norval 35, Post 23. Volume 37, Maxwell 27, Post 12, Norval 15. Volume 38, 1893, Maxwell retired before the volume was complete, but wrote 29 opinions while Norval, in the entire volume, wrote 26, Post 19, Harrison 1. Total in two years: Maxwell 299, Post, Norval and Harrison combined 284.

Since Maxwell retired his health has been excellent and he is physically as strong today as far as anyone can see as he was ten years ago. He has written his most important law book which he has ready for the press and has revised nearly all of his former publications in the last four years. It is all pure vilification, this insinuation against the judge's age and health.

Incappable and Was Retired.

A number of republican papers of the state are asking why the populists claim the republican party to be corrupt and then turn around and nominate Judge Maxwell, who they claim is a republican, for the office of judge of the supreme court. And it is noticed the paragraph is appearing simultaneously in the weeklies and that the same paragraph appeared in a certain daily a few days before. It should be borne in mind that Judge Maxwell is of the brand that could not be used by the republican ring of the state and was turned down. That he is a man who is not corruptible by partisan machines and for this reason was retired. Judge Maxwell can be cited as a good man by the republican writers but he can not be used as a sample of republican honesty. For his honesty and integrity he was given the leave out; the claim that his age was against him is all bosh. Will some of these republican editors please hold up as examples Mosher, Dorgan, Hilton, and a few more of that stripe? Or will they point with pride to Maxwell and leave these other samples alone? Maxwell is a good man and the republicans of the state are forced to admit that he is such even if they do oppose his election because they know he cannot be induced to support political tricksters and defectors to the state.—North Bend Argus.

JUDGE MAXWELL'S AGE.

He is Younger Than Most of the Great Leaders of the Republican Party.

He is Fourteen Years Younger Than Gladstone When He Ruled England.

Eight Years Younger Than Bismarck When He Formed the German Empire.

Judge Maxwell is either younger or but a year or two older than most of the great national leaders of the republican party. He is two years younger than John Sherman, fifteen years younger than Senator Morrill and but one year older than Senator Hoar.

These three great leaders have more influence on party management and on legislation than any three men in the republican party. If they are not unfitted on account of their age from performing the duties of offices requiring much harder work, and which in every way are vastly more important than is a supreme judgeship in the state of Nebraska, how does it come that Judge Maxwell, who is fifteen years younger than one of them, two years younger than another, and only one year older than the third, is disqualified by age?

When the republican editors of Nebraska begin to say that Senator Hoar is in his dotage and that John Sherman is a senile old man and ought to retire to private life, they will have some excuse for writing squibs about Judge Maxwell's age.

The fact is that the men who are most active and influential in guiding the great parties and in formulating legislation in the United States are all older than Judge Maxwell, or about his age. John Sherman is 72, Senator Morrill 85, Senator Hoar 69, Senator Fry 64, Senator Stewart 68, Senator Jones 65, Senator Morgan 71, Senator Pugh 75, Senator Allison 64, Senator Palmer 78, Senators Cameron and Quay 62, Representative Walker of Massachusetts, the most active fighter for the gold standard and national banks in the whole House, is 76, while Randall of the same state is 71. Senators Harris of Tennessee and Turpie of Indiana are so old that they are ashamed to put their ages in the Congressional directory.—Lincoln Independent.

Wm. E. Gladstone was premier of England at 84 and Bismarck was chancellor of Germany at 78; Victoria is queen of England at 76; Gov. Morton of New York, who is mentioned as a republican candidate for president, is 72. The list might be extended indefinitely.

The last two years he was on the bench Judge Maxwell did more work than both his associates, Post and Norval, as shown by the official records; and the two years he has been off the bench he has written the most important law book of his life. Do these things indicate senility?

Age is honorable; and age and ripe experience are needed on the bench.

The Nation's Enemy.

At Washington, on February 15, 1878, when speaking on the silver question, John J. Ingalls, republican United States Senator from Kansas, said:

"No people in a great emergency ever found a faithful ally in gold. It is the most cowardly of all metals. It makes no treaty it does not break. It has no friends it does not sooner or later betray."

Armies and navies are not maintained by gold. In times of panic and calamity, shipwreck and disaster, it becomes the agent and minister of ruin. No nation ever fought a great war by the aid of gold. On the contrary, in the crisis of the greatest peril, it becomes the greatest enemy, more potent than the foe in the field; but when the battle is won and peace has been secured, gold reappears and claims the fruits of victory. In our own civil war it is doubtful if the gold of New York and London did not work us greater injury than the powder and lead and iron of the rebels.

It was the most invincible enemy of the public credit. Gold paid no soldier or sailor. It refused the national obligations. It was worth most when our fortunes were the lowest. Every defeat gave it increased value. It was in open alliance with our enemies the world over, and all its energies were evoked for our destruction.

But as usual, when danger had been averted and the victory secured, gold swaggers to the front and asserts the supremacy.

To show Judge Maxwell's standing in the east it might be mentioned that he lectures every year before the law school of the University of Michigan at Ann Arbor. His law books are standard in very many of the eastern colleges. He also lectures before the law department of the university of Nebraska.

Printed by THE LINCOLN INDEPENDENT, the populist paper. Trained newspaper men gather the news. Economic and literary matter by writers of national reputation.