

Kearney, Neb., Aug. 11, 1911

# To the Voters of Nebraska

If I were not a candidate and if you were not a voter I would not venture to tell you anything of my personal history. It would be presumption in me to ask you to give any time to it, except for your interest as a voter and a citizen and a member of the governing body. The supreme judges of the state may hold the lives, liberty and property of the people within their keeping, subject only to restrictions frequently not clearly understood, and they often make mistakes and sometimes do wrong through constitutional infirmity or unfortunate environment. It is perhaps nearly as much to your interest to know something of the raising, culture, tendency, mental and moral soundness of our judges of the supreme court as it is to know something of the financial soundness of the banks and other institutions with which you do business, and of the tendency and character of the people who manage and control them.

I am a candidate for the republican nomination for judge of the supreme court as one of the three republican candidates to be selected August 15th, by republicans to run against three democratic candidates selected on the same day by democrats, and the final race is to be, as you know, at the November election between three republicans on the republican side against three democrats on the democratic side.

There are eight republican candidates running against each other and seeking the republican nomination. Only three of these can be nominated because there are only three offices to fill and therefore five of the republican candidates must be defeated. I am naturally seeking to be one of the three republican candidates who are nominated. The seven republicans who are running against me all live in the southeast corner of the state except Macfarland of Omaha. I am the only republican candidate from the west two-thirds of the state. All of the seven supreme court judges live in the east third of the state. All the republican candidates live there too. There has never been a supreme court judge nominated and elected in the territory included in the west two-thirds of the state. After Governor Holcomb's term as governor had expired, he was nominated by a convention and elected by the people, but at that time he resided at Lincoln and was in business there, and so did not belong to the west.

There are no longer any conventions to nominate candidates, as you are well aware. Before the adoption of the new way, the way of the primary, a man's neighbor boosted him in the convention if he was a candidate and those who were not his neighbors boosted somebody else, and there was more or less exaggeration of good qualities and fitness along with some slight criticism, and there seldom was a nomination by a convention without a respectable body of men vouching for the ability and fitness of the candidate and his availability at the election as a strong man who would poll the party vote or more. Men who are active in politics and who engage in party campaigns and who make speeches at political meetings from one end of the state to the other, and whose names are constantly in the newspapers in connection with party measures, may be known to the public, at least to a certain extent, but how do the public know much about a busy lawyer who is seldom seen out of the court-room or out of his office? Have the public any special interest in the ordinary "grind" of the courts. Do the public care more for the business of the lawyer trying civil cases, such as suits on notes, the administration of estates, ordinary damage cases, etc., etc., than they do of the occupation of the farmer, the merchant, the mechanic or the banker?

Often the good lawyer is a plodder, just a hard working plodder. Do the people know or care any more about his plodding than they care about the plodder of any other occupation? Do the people study law? How do they know when a judge is qualified or fit to be trusted, or anything else about him touching his profession? Do they know anything about the lawyer who aspires to be judge unless he tells them? and if the newspapers do not know, or for some other reason fail to tell the people and the candidate himself fails to tell them, then how shall the citizen exercise his intelligence in selecting men to determine who shall live and who shall die, and who shall be deprived of liberty, and who shall go free, and who shall have judgment rendered against them, and who shall not? How many of your neighbors who are not lawyers even know the names of the supreme judges, let alone their fitness for the position that they hold?

The necessity of the case must be my excuse for telling you something of myself. You know little or nothing about me, unless I tell you, and yet I have been a busy lawyer and a judge among the people of my state and I have lived in the state more than forty-one years. I have done little political speaking although I have tried many cases. As a lawyer I have done the legal business of a country community. I have represented the country banker in prosperity. At that time I have looked after his collections and his cases in court. If trouble came upon the whole country because of drouth or crop failure and he and his business were in danger, then, I was a modest sympathizer and an earnest helper. While I have always been the business man's attorney, I have at the same time had a clientele of poor people who got in trouble perhaps oftener than they should. I have helped them the best I could and if the trial was unfair and the result unfortunate then I have not hesitated to spend my time and often a little money in going to the supreme court to seek a new trial.

I make friends of my clients. Some of them who began with me thirty-five years ago are still my clients and still my friends.

I was born in Ohio, February 20, 1843, on the little farm that belonged to my grandfather, William Hamer. The first home was a log cabin. By and by a hewed log cabin addition was built. Afterwards father built a better home for himself in town, Fostoria. When I was about ten the family moved from Seneca county, Ohio, to Carroll county, Indiana. There I grew to man-

hood. I was a strong and industrious boy early in life. I helped father and his two brothers, David and Daniel, to clear their farms. I also worked out by the month at the rate of thirteen dollars per month for nearly a year. I helped make rails and build fence. I also cut many sawlogs. I helped father dig a ditch through his farm that was one hundred and twenty rods long.

At eighteen I began to teach school. Before I was twenty-two I had purchased from father's youngest brother, Daniel, a little farm of one hundred and twenty acres. I had also taught school during the winters, when I was eighteen, nineteen and twenty. I studied law at Indianapolis and was admitted to the supreme court there with the law class. I was next to the youngest man in the class. Before I went to the law school I had engaged in frequent debates and had written numerous short essays which were read at our literary society.

At the law school we had a moot court. I was at once active in it. I also wrote a long essay on "Contracts." Judge Samuel E. Perkins of the Indiana supreme court, dean of the law school, was complimentary to me and gave me much encouragement to pursue my legal studies. I was very fond of literature and I read much of it. My legal studies were a great pleasure to me.

I was married in December, 1869, to Miss Rebecca A. McCord. Her father owned a farm adjoining the county seat of Carroll county, Delphi, and the young lady was the teacher of the district school at the little school house on top of the hill where the debating and literary society met.

After looking over Minnesota and Iowa with a view to selecting a place to practice law I arrived in Omaha in December, 1869.

I went over to Lincoln in about three weeks and at once put out my "shingle" as a lawyer. I first occupied desk room in a real estate office, but in about two months I was the owner of a little wooden building at the west side of Tenth street and this immediately became my office. Lincoln was a little town then, and it only took me four or five months to get acquainted and to get started as a lawyer. I was soon busy in the probate court and before the justice of the peace and in the U. S. Land Office. I also had five or six cases at the first term of the district court held after my arrival. The trials in the district court were rather hotly contested and these trials helped to get me more business.

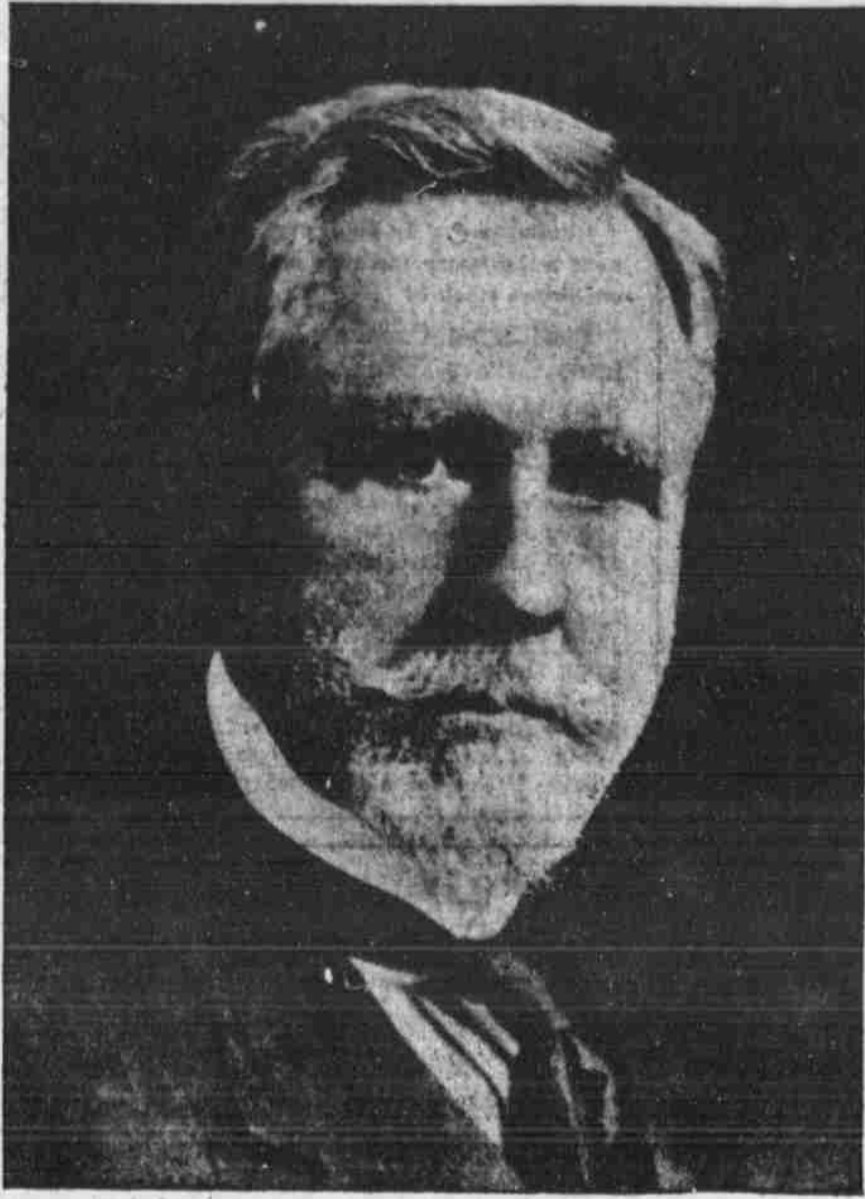
After I had been at Lincoln about a year Alexander H. Connor, a prominent lawyer and politician of Indianapolis, came along and he and I formed a partnership under the firm name of Hamer & Connor. Mr. Connor was able to buy law books for the use of the new firm and we were soon very busy. We did well enough in a professional way but we wanted land to better our financial condition. I went to Kearney to see if we could get it. On the way I stopped at Grand Island and made a plat of the public lands about the proposed city of Kearney. On the morning of the 30th of May, 1872, I went up to Kearney. I walked from Buda, the next station east. It was five miles. There was one little dwelling house near the town site of Kearney. I got breakfast there.

By reference to the plat which I had made at Grand Island, I discovered two tracts of land that might be taken under the homestead or pre-emption law. After dinner I borrowed a spade and immediately began to dig a cellar on one of these tracts. I reported finding the other tract to Mr. Connor and he settled on it and acquired title to it.

On the 29th day of June, 1872, my wife and I left Lincoln for the new home in Kearney. We went by way of Omaha. It took all day to go from Lincoln to Omaha then. There were two channels of the Platte river to cross in boats and there was quite a ride on an island in the river over a very rough wagon road. The conductor stopped the train for us at the point where Kearney was to be. Trains did not stop there. It took all day to go from Omaha to Kearney. We started early in the morning and it was 7:30 in the evening when we left the train. We at once moved into the little house on our claim and we lived there nineteen months. The house was 12x16 and contained one room.

We built a small dwelling house on our lots in Kearney. It was then the best house in town, although it only cost \$825.00. We still occupy the same lots. Our children were born and raised there. We built a better house.

Pretty soon after our arrival in Kearney I went to Mr. Dart, the owner of the little store. I asked him whether there was room in his little store for a law office. He said, "Room, room, why there is just lots of room," and he went over to the northwest corner of the little building and said: "Here, you can put your office in this corner." I got a rough board for a table and I fastened one end of it to the wall of the building and put an empty barrel under the other end.



FRANCIS G. HAMER.

thereafter I was twice elected. I was elected first over Judge John Barnard by a majority of about 1,700 votes, and the second time I was elected over Judge William L. Greene by a majority of 4,196 votes. When the populist wave came along Judge Silas A. Holcomb ran against me and defeated me by a majority of 13 votes, according to the official count. The district had been cut down so that it only included Buffalo, Sherman, Custer and Dawson counties.

Immediately after my defeat by Judge Holcomb I formed a partnership with Judge H. M. Sinclair and Senator Norris Brown, under the firm name of Hamer, Sinclair & Brown. I have steadily and industriously practiced law ever since that time. I have tried cases in very many of the counties of the state. I was successful in the first important cases in which I was employed and I have always had plenty of work to do as a lawyer. My term as district judge ceased on the 6th day of January, 1892.

After Mr. Connor and I removed to Kearney we were soon busy with small professional matters. The new settlers were generally poor. We tried a good many little civil cases and we were for the defense in nearly all the criminal cases. Mr. Connor was an eloquent and forcible advocate and he was a tactful lawyer and an excellent judge of men. If we were beaten in the district court then we went to the supreme court. I generally prepared the briefs in the supreme court and often spent a month or more in writing one brief. Our business grew and we soon had cases in many of the state district courts and we also had important business in the U. S. circuit and district courts.

The most important case I have ever had was an irrigation case at Chadron, Nebraska. In this case there was a mill owner who contended that all the water in the White river should come down to his mill and be used to turn his mill wheel. I represented the irrigators who desired to take water out of the White river above the mill and to apply it to the fields for the purpose of raising crops. Notwithstanding the legislation on the subject the supreme court held that there was no right to take the water out of the stream. I wrote nine hundred pages of brief and filed two motions for rehearings and occupied two or three years in persuading the supreme court to take it back and let the people have the water for irrigation.

I made a long fight in the state court and in the U. S. supreme court for the purpose of having the doctrine established that surveyed lands in the Platte river, which have never been appropriated could be taken by homestead settlers. It was my contention that land of this character should be allowed to be taken by the first settler who in good faith went upon the land and asked to have it surveyed. The Nebraska supreme court beat me. It seemed to hold that the unsurveyed land which had not been appropriated belonged to the surveyed land which had been appropriated. The decision of the Nebraska supreme court was not in the highest interest of homestead settlers. It was in the interest seemingly of the men who desired to take more land than had been surveyed. When I took one of these cases to the U. S. supreme court, that court did not squarely pass on the question. It held that it was for the land department to say whether it would survey the unsurveyed islands.

It would seem that so long as there are unappropriated, unsurveyed public lands in the Platte river, that they should be allowed to be taken by the settler who goes upon the land in good faith and that the government should in all cases direct a survey of the unsurveyed lands and permit the homestead settler to make his homestead entry and to acquire title to the unappropriated land.

By dint of a very long struggle I got one of these islands for one of my clients.

When judge of the district court I was averse to permitting the hanging of insane persons, but in two cases where insanity was alleged on behalf of the prisoners, after conviction, I ordered juries to be impaneled to try the question of sanity and when the verdict in each case was returned showing that the convicted man was then sane, I made the order in each case under

Then I got an empty nail keg and over the end of the nail keg I placed a sheep skin. In this way I had a desk and a chair. I used the board for a desk and the nail keg for a chair. I had an old copy of the Revised Statutes of Nebraska and a book called "Ram on Facts." I put these books on my desk. This was my first law office at Kearney.

I was a candidate in the republican state convention for the nomination of the judge of the supreme court in the summer of 1883. At that time there were three supreme judges and there was only one judge to nominate. I was the high man in the convention for six or seven ballots, although I came from the west. Judge Reese of Wahoo, was nominated and that fall he was elected.

In December, 1883, I was appointed by Governor Dawes as judge of the district court to fill a vacancy and thereafter I was twice elected. I was elected first over Judge John Barnard by a majority of about 1,700 votes, and the second time I was elected over Judge William L. Greene by a majority of 4,196 votes. When the populist wave came along Judge Silas A. Holcomb ran against me and defeated me by a majority of 13 votes, according to the official count. The district had been cut down so that it only included Buffalo, Sherman, Custer and Dawson counties.

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which these men were executed. One of the cases was that of Haunstine at Broken Bow and the other was the case of Reynolds at Sidney. Both were tried before me. Haunstine had stolen a clock from a school house and when he was arrested by the constable and school director he watched his opportunity and killed them both. Reynolds killed his prospective father-in-law and brother-in-law, because they failed to pay him a small sum of money, which he claimed that they should refund to him. A special jury in each case found these men to be sane before they were executed.

A man in Kearney left his wife and three little girls and went down to live with a woman in Chicago. Before he went he put his farm in his brother-in-law's name so that the wife might not bring suit for a divorce and for alimony for the support of herself and three little girls. After the man went to Chicago there was no opportunity to get personal service upon him in Nebraska. The woman could only get service upon him by the publication in the newspaper. Some time after the husband abandoned the woman she brought an action against him in Buffalo county district court for a divorce and alimony for the support of herself and the little girls. She obtained service by publishing a notice in a Buffalo county newspaper. As judge of the district court I granted the woman alimony and ordered the property sold for the satisfaction of the judgment. When I was told by counsel for the runaway husband that a decision had been previously rendered by the Nebraska supreme court, to the effect that service by publication was not sufficient in such a case and that the decree for alimony could not be rendered, I held that there ought to be some sort of relief for the wife and her children and if there was no relief in a case of this kind, then any unprincipled fellow who wanted to might run away from his wife and children and desert them and refuse to support them and that if he could do so successfully, then he would be bigger than the law and the courts and the government. In a suit by the runaway husband and the brother-in-law to cancel the decree which had been rendered in the first case, I decided that under the decision of the supreme court I had been without jurisdiction to grant the decree for alimony and that that part of the decree which allowed the woman alimony was invalid because of the decision of the supreme court concerning the matter of obtaining service by publication in the newspaper; but I said to the two plaintiffs and their counsel that equity contemplated that they had come into court with clean hands and that they could not come into court and ask the court to help them unless they were there for a lawful purpose, and I said that since the man who is charged with running away is in court by his counsel asking to set aside the decree, it is proper that I should inquire what amount of alimony should be given to the wife for the support of herself and her children. Then I proceeded to take testimony and after I had heard the testimony, I made an allowance to the wife of what I considered to be a proper amount of alimony and I ordered the premises sold for the payment of it. It was most strenuously argued by counsel for the runaway husband and the brother-in-law who was attempting to help him, that the whole proceeding was without jurisdiction and that no valid judgment had been rendered or could be rendered affecting the property. On appeal to the supreme court by the runaway husband and his brother-in-law my decision was sustained. This had not been the law in Nebraska, as I understand it, before my decision. (Johnson vs. Johnson, 31, Neb. 385.)

I have received much encouragement from many members of the bar and if I had not received such encouragement I should not now be a candidate. Leading business men have also assured me of their sympathy and their help at the primary and at the polls. Of course many of the common people are for me and do not hesitate to say so.

I served as district judge from December, 1883, until January, 1892. The judicial district at the time of my appointment and at each election covered a territory extending from the east line of Buffalo and Sherman counties to Wyoming on the west and I held court at Kearney, Loup City, Broken Bow, Lexington, North Platte, Ogalala, Gandy, Grant, Chadron and Rushville. The district was about 300 miles long by an average width of 150 miles. Many important civil and criminal cases were tried before me.

When district judge I kept the work up. Towards the end of my second term I had to work about 42 weeks in a year and there were frequent evening sessions, owing to the great increase in the business.

If elected as one of the judges of the supreme court I shall make every effort possible to help keep up the work and I shall do my best to enforce the law as I understand it.

I believe in the careful and unfaltering protection of human life and human liberty by the courts.

I believe in the equal and efficient protection of all classes of property by the courts.

I do not believe in new trials for technical reasons alone. There should be a new trial, however, when the district court has denied a fair trial.

I desire to urge this as the opportunity of the eastern part of the state to recognize the west by the nomination of at least ONE republican candidate for supreme judge, and I further desire to urge this as the opportunity of the west to get one of the supreme judges.

Is just one judge in seven too many for our share, considering that we have two-thirds of the territory of the state?

My friends tell me that if I am nominated at the primary in August that I shall be elected at the election in November by a very substantial majority. I believe their statement.

Please try to get everybody to turn out at the primary.

FRANCIS G. HAMER.