The North Dakota Bar of the Pioneer Days

by

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The following recollections of lawyer A. W. Ames were published in the April 1923 issue of *The Quarterly Journal of the University of North Dakota*. They cover the 1880s, the last decade that North Dakota was a territory. It was organized as a territory on March 2, 1861 and admitted to the Union on November 2, 1889.

These recollections of practicing law in North Dakota in these "pioneer days" could easily have been written about practicing law in rural Minnesota from the 1860s to the 1890s.

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The history of the Bar of Territorial Days begins, as I knew it, in 1880. The region, now comprising the counties of Traill, Steele, and Griggs, was then one county, Traill. What now comprises the counties of Pembina, Walsh, Nelson, and Grand Forks, were then Grand Forks and Pembina. To the south of these to the state line similar dissolution of large counties has taken place. Except along the Northern Pacific road westward, the extreme western border of the counties mentioned composed the settled portion of what is now North Dakota. The land comprised within these counties was nearly all public domain. The settler's log cabin or claim shanty was visible on every quarter section, but the title to the lands was in the United States. The task, great in proportion but simple in accomplishment, of securing title, to the settler from the government, of innumerable "claims", as the holdings were called, offered a remunerative practise when applied to the bar as a whole, never since, nor ever again, to be equaled. The process of "proving up", securing title from the government, required but a small degree of "learning", as lawyers use the term, but considerable care and pains. As the railways extended the frontier, and empire building went on, every stopping place of a train, was "a town" and had its bar. The term "bar" pictured two great phases of advancing civilization, both indispensable to the farmer and both having romantic history, but we are concerned with only one.

The remunerative character of the "practise" attracted lawyers of most varied erudition. Admission to the bar was then a species of humor. I have seen a "class" of business men and farmers arrayed in court to be "sworn in" to practise the profession of the law, many of whose members could not render in straight English the oath they took, or give an elucidation of the difference between the statutes and Blackstone's Commentaries. The principal object of this was to avoid jury duty that took a man far from home.

Those who intended the law, for a temporary or life-time pursuit, at once got profitable occupation. It was, however, confined to the land practise, as then called. This so taxt the time and efforts of each practitioner that, even if he was zealous for a professional future, he found little time for study or practical experience in gen-

eral practise. But their work yielded returns far beyond their dreams of success as lawyers. I have known the work of some offices to yield from $300 to $1200 a month the year round. Hence the famous expression, "doing a land office business", as applied to a vocation yielding rich profits.

There was a branch of practise, connected with public land business, that called for the tact and equipment of the trial lawyer. Claims were often contested. There was the professional "claim jumper", a wayfarer who watcht for the delinquencies of the settler, and for a reasonable requital would point out opportunities to contest or "jump" a claim. The activities of this representative often put him into the class of undesirable citizens. His lack of social opportunities, altho sustaining a good business, required frequent change of abode, if he was not permanently put to rest by the marksmanship of a wronged settler, which sometimes occurred. The contesting of claims in the local land office and appeals to the Interior Department often required a higher class of legal service, and a specialty of this kind of litigation often developt lawyers of eminent ability. Of this class, in the past, may be put many of deserved merit, among these Judge Guptil of the Juvenile Court, F. B. Morrill and John J. Skuse, long removed from our state but still in active practise.

There was another sacred duty of the early lawyers—money for farm loans was scarce then. Banks were few and there was no capital in the territory. The lawyer was closely connected with the completion of the settler's title to the public lands, and proving up and making a loan were inseparable. The counsellor was on the spot with the money. He could easily get supplies for mortgages, Dakota lands being popular security in all markets. The lawyer was paid a commission for getting the loan, usually 10 per cent of the face. This was always added to the expense of the proof.

As to the fortunes and destiny of the lawyer of that period much might be said, but little will suffice. The reign of easy money begets profligacy. Many fell into dissipation. Many did not long survive their phenomenal triumph over fortune. Professional standing counted but little then. There was no public sentiment to measure it and tune it to modern standards. Adeptness in getting hold of the farmer was the main feature. The rough-neck excelled the trained practitioner. As each client had but one inning—the occasion of his proving up—and future patronage was not in contemplation, at the end of the game the resources of the farmer were measurably lightened and passed over to his learned counsel. After a swift career the latter sought the next frontier. After all the

frontiers were absorbed, he passed to that potentate to whom the less godly consign the authors of their perplexities. *Facilis descensus Averno.*

Others husbanded their gains. Not suited by nature or training to become useful attorneys, some of them drifted into banking, closely allied to the loan feature of their former business. These became the bankers of the new state. I could name many now surviving who laid the foundations of their careers in these hardy days of the territory. Some arose to distinction in the large financial centers in and out of the state. Some are gone; some reside in Hollywood, Long Beach, and Redondo Beach, and other coastal points, where wealth seeks retirement for declining years.

But for the real lawyer: actual litigation outside the larger centers was small and of a petite character. What now comprises North Dakota was once a judicial district of the territory with one judge. The area that he covered would admit his presence in a county once in three years. Appeals were hardly thought of. Yankton, the seat of the Supreme Court of the territory, was too distant except for cases of great magnitude. But the lawyer who dreamed of a lusty future held to his course. The admission to statehood was delayed by political considerations. The larger field of practise promist by statehood, with its court conveniences, trial and appellate, was long deferred. But the courts multiplied in territorial days. New districts and judges were furnisht. Terms were more frequent. Advancing settlement, increasing prosperity of the farmer, growth of towns, furnisht a field where merit counted. The land lawyer was no more. Change in the political complexion of the national administration brought statehood to a long waiting people, who received the event with unbounded joy. It was no irreverence in the territorial legislature, when a telegram announst that President Cleveland had signed the Enabling Act, providing for the admission of North and South Dakota, that its members from both states some, perhaps, not personally acquainted with the tune and lines of that sacred hymn, arose and sang the doxology. Never did a body more sincerely "praise Father, Son, and Holy Ghost."

Litigation increast as better facilities for administration of justice were afforded. Towns grew, business increast and became more complex, giving rise to controversies. The lawyer who stuck to his post at the first seat of his location and sought advancement professionally began to rise. The transition from territory to state furnisht interesting problems requiring study and research. To the industrious this brought a practise that was real law business.

Of the surviving pioneer lawyers, many have attained distinction. Some with growing experience moved to larger communities, took their places beside those of larger standing, and commanded a greater field of work. Of the fittest survivals some reached higher stations, and furnisht incumbents to the offices, Attorney General, U. S. District Attorney, Judges of the District and Supreme Courts, Governor, and other places of honor. As incumbents of such positions they have attained honor and distinction. It is a pride to the remnant of the primitive bar of this state to witness the advance of their fellows and once associates in the crude beginnings of the practise.

The larger cities had a bar of eminent lawyers, many from New York, noted for their high professional training. These traveled the entire state to "assist" those of lesser experience. In their ranks were specially skilled "criminal lawyers", making a specialty of criminal defense. Some have passed away, leaving a record that honored the profession. In the pioneer days homicide cases were frequent. The writer, making no specialty in this work, has figured in eight. Capital cases were not of the sensational kind, altho of widely varying nature. Some reached the supreme court of state and territory, and occasioned the establishment of novel and vital principles of jurisprudence of the state. Territory vs. Bannigan, from Bismarck, and Territory vs. O'Hare from Traill County, may be mentioned. The latter was the first case, civil or criminal, ever presented to the new Supreme Court of the State, and in it the writer has the honor of being the second to address that tribunal on the first day of its history. In criminal law it is the most quoted case in our courts. Among those remembered for their skill, ability, renown, and eloquence in this class of cases are the late M. W. Green, W. P. Miller, of Fargo, now passed from this life, and M. A. Hildreth and Taylor Crum. The late Judge John M. Cochrane may be classed with these. Still surviving are Tracy R. Bangs and George A. Bangs, to whom may also be added Ed. Sinkler of Minot.

One showing of the advancement in efficiency of those who survived the olden days as real lawyers, was their later independence of these "senior counsel" or "of counsel", as those called to assist (and the real triers of the cases oftentimes), were called. They began doing their own work in court, conducting alone real litigation which succeeded the land business. The results in the main attest their real worth.

The beginner of today has no such opportunities as those of

1879-80. Then a living and an early marriage with the "girl back East"—there were none here then—were assured at the start, by the land and loan business. We find the profession as crowded here as well as elsewhere, even at the top. No post doing easy work in the law office is afforded the novice now. He is no longer hired to copy "the pleadings" nor, like Sir Joseph Porter K. C. B. the Pinafore hero, to "copy all the letters in a big round hand." The girl stenographer has the "law clerk's" job and is the only help in working hours as well as the diversion of her employer in his slack moments. The beginner must win fame by hook or crook, accident or favor, before the lucrative period sets in. The North Dakota girl—her Eastern sister is not in it any more—must wait. The new experimenter with the law can well envy the old duffers I have pictured, and say, "anyone could do that." It would be interesting to view, if we could, who of the somewhat eminent lawyers (there are a few left), beginning with the settlement stage of the territory would have made good under present-day conditions. It would be equally interesting to know how the retired millionaire farmer, who started at the same time, would handle present-day farming.

Thus I have given, in a sketchy way, a picture of the early adventurers in practise. Most of us, with determined will and ambition, having studied the lives of the lawyers of the earlier period of the country, thought the frontier the place to lay the start of an honored race for the higher things. We saw little future in our homeland and ventured into the wilds of Dakota. Richard III. might have said of us, as of Richmond's following, "whom their o'ercloyed country had spewed forth." A review of our experience is entertaining to us but perhaps a little hard to present with all its romance. Of these early challengers of fortune, of scholarly habits and persistence, vim and enterprise, many achieved much. The larger portion have gone on before. Their records still live, tablets of honor and lofty views. It was not altogether that "professional honor", proverbial among its members, that his word must be as good as his bond.

As far as my experience goes with the new lawyers of this generation they seem to honor the creeds and traditions of their calling. This is indispensable to their success and standing. The opportunities ahead are as great as those of the earlier days but call for higher equipment. They can easily draw on their predecessors of the pioneer days, who have come forward with honor to the later scenes of action, and there find much to boost them on their way.