

3-1-1971

# The public life of Elmer S. Dundy, 1857-1896

David H. Price

*University of Nebraska at Omaha*

Follow this and additional works at: <https://digitalcommons.unomaha.edu/studentwork>

---

## Recommended Citation

Price, David H., "The public life of Elmer S. Dundy, 1857-1896" (1971). *Student Work*. 532.  
<https://digitalcommons.unomaha.edu/studentwork/532>

This Thesis is brought to you for free and open access by DigitalCommons@UNO. It has been accepted for inclusion in Student Work by an authorized administrator of DigitalCommons@UNO. For more information, please contact [unodigitalcommons@unomaha.edu](mailto:unodigitalcommons@unomaha.edu).



THE PUBLIC LIFE OF  
ELMER S. DUNDY  
1857-1896

A Thesis  
Presented to the  
Department of History  
and the  
Faculty of The Graduate College  
University of Nebraska at Omaha

In Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts

by  
David H. Price  
March 1971

UMI Number: EP73170

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI EP73170

Published by ProQuest LLC (2015). Copyright in the Dissertation held by the Author.

Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against unauthorized copying under Title 17, United States Code



ProQuest LLC.  
789 East Eisenhower Parkway  
P.O. Box 1346  
Ann Arbor, MI 48106 - 1346



Accepted for the faculty of The Graduate College of  
the University of Nebraska at Omaha, in partial fulfillment  
of the requirements for the degree Master of Arts.

Paul L. Beck History  
Chairman Department

Graduate Committee

Bernard D. Kleska Political Science  
Name Department

Harold A. Palstrom History

Frederic W. Adams History

---

---

## PREFACE

These past months of unearthing and recording the legacy of a historical figure have been a tremendous challenge, particularly since the subject has been overlooked by previous writers. The challenge has produced a reward that is difficult to measure but one that has afforded notable personal satisfaction to me. It has been an experience that I am anxious to duplicate in the future.

A word about the subject, Judge Elmer S. Dundy, and about my goals and method in producing this thesis is probably in order. Dundy was, to say the least, one of the most interesting figures in the politics of Nebraska from the territorial days through the first thirty-odd years of her history as a state. As a jurist, he gained a wide reputation and an enviable record in dealing with matters coming before his bench. He has been treated in a less than favorable light by some historians, and he has been completely neglected by others. He was a controversial man, possessing firm convictions and the courage to express them. He was involved in many of the issues of his day, as an active participant and partisan campaigner. He deserves recognition, and it is the purpose of this thesis to focus on the man and his relationship to events that have shaped the history of the region.

Research into the public life of Elmer Dundy has been somewhat hampered by the fact that no personal papers could be located, nor could any descendants be found who might cast some illumination on his life. Official records are available, however, and through them one can clearly see the obvious involvement of the man in the affairs of state and nation. Public documents, coupled with an examination of the press of the period, and the manuscripts and reminiscences of his contemporaries have provided much of the source basis for this thesis. Works by regional historians have been useful in the main for tying the man to the event, as little elaboration is included in most of their materials.

In treating Dundy as a partisan politician and jurist, I have tried to portray his roles in the shaping of the political institutions of the period. I have purposely included considerable detail and recorded names of other individuals to an extent that may seem to be superfluous at times. My object in doing so is to link Dundy with others of his day in the hope that it may benefit other writers in the future. (I wish previous historians had been so kind; it would have made my own research much easier.) With the same thoughts in mind, I have been generous in the supplemental detail in footnotes where I felt it appropriate. I willingly assume the responsibility for any distraction that I may have imposed upon the reader by my method.

In treating the judicial career of Judge Dundy, it has been necessary to select certain materials for inclusion and leave out some others. There are vast stores of court records both at Omaha and at the Federal Records Center in Kansas City, Missouri. In deciding what to include, I have largely relied upon the popular attention that individual cases received in the press. I have also drawn quite frequently from certain secondary sources in linking my subject to particular cases that they felt to be of importance. I have leaned quite heavily on the particular "western" problems of railroads and Indians and have neglected to include many civil and criminal cases that others may find interesting. If my selection seems to the reader to be arbitrary, then I must agree, but I do not apologize. The responsibility is mine alone.

To certain institutions, agencies, and persons I owe large debts of gratitude. To the American taxpayers, who through the Department of Army have made this all possible, I render heartfelt thanks and sincerely hope that the results of my efforts here at this University are worthy of their confidence. The University of Nebraska at Omaha deserves my special acknowledgement for having such an objective and liberal approach to adult education. I have received, in addition to the knowledge gained from a highly competent and professional staff, a broader, more understanding attitude that I personally feel will make me, as a soldier, more attentive and responsive to the people in whose Army I willingly serve.



Dr. Paul Beck of the Department of History has furnished encouragement and direction during this entire effort. In addition, he has provided an inspiring example in teaching that is difficult to assess in descriptive terms, but one that I shall certainly strive to emulate. My typist, Mrs. Ruth Wright, has been most helpful in the preparation of this manuscript and deserves a special note of thanks. Other persons, without whom I can truthfully say that this thesis would not have been possible, include: Mr. James Potter, archivist, and the staff of the Nebraska State Historical Society; Mr. William Olson, of the United States District Court at Omaha; and the staff of the Gene Eppley Library.

Last, but not least, I wish to thank my son, David, eleven, for his critical analysis of my work at periodic intervals, and my daughter, Beth, ten, who wondered when it would all be over. To my wife, Katrina, I really owe this whole project. Her patient understanding of my tropistic attraction to the libraries of Omaha and Lincoln during these past months, and her well-placed "boots" at times when things seemed to bog down were exactly what I needed to bring this effort to fruition.

University of Nebraska at Omaha

David H. Price

March, 1971.

TABLE OF CONTENTS

	<u>PAGE</u>
PREFACE . . . . .	iii
Chapter	
I. THE EARLY YEARS, 1830-1858. . . . .	1
Family Background	
Early Public Life	
Migration to Nebraska	
The Contest for Archer	
The Campaign for Election to the Council	
II. ISSUES AND ANSWERS, 1858-1860 . . . . .	16
County Seat Controversy	
South Platte Annexation Movement	
Wildcat Banking	
Censure by the Council	
Slavery	
III. PARTY POLITICS AND PATRONAGE, 1860-1868 . . . . .	43
Dundy-Fleming Contested Election	
Daily-Morton Contested Election	
Appointment to Territorial Judgeship	
Censure by the Douglas County Bar	
Territorial Justice	
Political Matters	
Nebraska Statehood	
Appointment to United States Judgeship for Nebraska	
IV. JURIST - POLITICIAN - PUBLIC FIGURE, 1868-1879. . . . .	72
Court Organization and First Sessions	
McMurty Murder Trial	
Impeachment of Governor Butler	
Press Criticism of Court Officers and Practices	

Senatorial Election of 1871  
Senatorial Campaign of 1875  
Charges of Corruption at Court  
The Federal Court and the Railroads  
United States v. Crook (Standing Bear's Case)  
Courthouse Bonds Issue  
Grasshopper Relief

V. RETREAT TO RESPECTABILITY, 1880-1896 . . . . . 108

Senatorial Campaign of 1881  
Murder of Watson B. Smith  
Dundy Moves to Omaha  
Indian Litigation  
Railroad Cases  
Outdoorsman  
Personality and Courtroom Manner  
Death

CONCLUSION . . . . . 137  
APPENDIX . . . . . 143  
SELECTED BIBLIOGRAPHY. . . . . 147

## CHAPTER I

### THE EARLY YEARS, 1830-1858

The passage of the Kansas-Nebraska Act in 1854 signalled the official opening of a new country, a virgin land from which the hardy and aggressive could carve their share of success. The settlers came for various reasons. More than a few came to make their political fortunes. Among this group was Elmer Scipio Dundy, a young man of twenty-seven who arrived in the territory with little more than the clothes on his back, a few law books and a fiddle.<sup>1</sup> These meager beginnings would soon be increased to considerable personal wealth, and before his death nearly four decades later, he had contributed in no small measure to shaping the face of the political entity that was late nineteenth-century Nebraska.

Elmer Dundy was more than a commonplace young lawyer caught up in the turbulent swirl of early Nebraska politics. He was headstrong yet long-headed, and he knew how to get what he wanted. His methods in attaining success after success for both himself and those whose cause he championed aroused the jealous contempt of his adversaries. The latter's shouts of

---

<sup>1</sup>Lewis C. Edwards, History of Richardson County, Nebraska (Indianapolis: B. F. Bowen and Company, Inc., 1917), p. 221. (Hereinafter cited as Edwards, Richardson County.)

indignation echoed through the country's press and reached even into the halls of the United States Congress.<sup>1</sup> These ominous attacks have lingered persistently, even to the extent that the Dundy name is hardly known to Nebraskans.

The genealogy of the Dundy family is obscured by records that are less than adequate. Elmer's ancestry is reported to be of protestant German background, his forebears having settled in eastern Pennsylvania and Maryland in the seventeenth century.<sup>2</sup> The facts of the family's migration to the wilds of northeastern Ohio are a matter of conjecture, as the records are quite sparse.

It can be established with reasonable certainty that one Soloman Dundy was a resident of Fowler Township, Trumbull

---

<sup>1</sup>Dundy's political methods thoroughly aroused the ire of his opponents. He was attacked vehemently by the partisan presses seeking to push the Democratic party line. His life was threatened on more than one occasion. Dundy was a bitter opponent of J. Sterling Morton, et al. The latter's contested election in 1860 saw Dundy as a key witness for Samuel G. Daily in heated debates before the United States House of Representatives. These issues will receive due attention in the course of this study.

<sup>2</sup>Edwin S. Towle, "Judge Elmer S. Dundy," Proceedings and Collections of the Nebraska State Historical Society, second series, V (1902), 83. Documented source material on Dundy's life prior to emergence on the Nebraska political scene is scarce. Towle was a friend and contemporary of Dundy. His information was probably taken directly from the man himself. For another contemporary work see A. C. Edmunds, Pen Sketches of Nebraskans (Lincoln: R. & J. Wilbur, 1871), pp. 399-400. (Hereinafter cited as Edmunds, Pen Sketches.) Also J. Sterling Morton and Albert Watkins, Illustrated History of Nebraska (3 vols.; Lincoln: Jacob North & Company, 1907), I, 352. (Hereinafter cited as Morton and Watkins, Illustrated History.)

County, Ohio, as early as 1820, and that he was Elmer's grandfather. Census records indicate that his wife was alive and that he had a young male, ten to sixteen years of age, residing in his household.<sup>1</sup> It is relatively safe to assume that the young man was William Dundy, Elmer's father-to-be. William Dundy married Polly Hummason in July, 1829. Soloman Dundy provided his consent for his minor son's marriage. Both bride and groom were eighteen years old.<sup>2</sup>

William and Polly witnessed the birth of their first-born son, Elmer Scipio, on March 5, 1830.<sup>3</sup> Elmer grew up on his father's farm and is reported to have pursued the normal outdoor-oriented life of a rural lad. He served for a short time as an apprentice to a tanner and supposedly gained

---

<sup>1</sup>Ohio, 1820 Census, no page given. The entry described refers to Soloman DUNDEN, probably a misspelling of the surname, as later records show land purchase and sales in the name of Soloman DUNDY. See Trumbull County, Ohio, Deed Records, Vol. R, p. 381 and Vol. X, no page given. This information furnished by John F. Gessner of Cortland, Ohio, in letter to the author dated July 21, 1970. (Hereinafter cited as Gessner letter.)

<sup>2</sup>Trumbull County, Ohio, Marriage Records. Photo copy furnished by Trumbull County Recorder's Office, Warren, Ohio, in letter of August 3, 1970.

<sup>3</sup>Towle, "Judge Elmer S. Dundy," p. 83. Dundy's birth-date is probably correct as stated. The Ohio Census for 1830 lists William Dundy as a resident of Fowler Township. Residing with him was one female fifteen to twenty years of age (probably his wife), and one male under five years of age, thought to be Elmer. Information furnished by Kermit J. Pike of The Western Reserve Historical Society, July 22, 1970, and by Gessner letter. Messrs. Gessner and Pike were unable to find any further trace of William Dundy and family in any of the Ohio and Pennsylvania census records after 1830.

considerable skill in that endeavor.<sup>1</sup> But, while he enjoyed the energetic pursuits of fishing and hunting, his major interest lay in an unquenchable thirst for education. Available evidence indicates that he was quick-witted and dedicated to his studies. He had to be, for by his eighteenth year he was teaching.<sup>2</sup>

Elmer's family moved to Clearfield County, Pennsylvania, sometime during the period 1848-1850. At this point, all trace of William Dundy and his family, excepting Elmer, is lost. Elmer evidently did not live with his family but moved in with a blacksmith in Florence Township. He began teaching in the county schools soon after his arrival.<sup>3</sup> Dundy taught for several terms and later was raised to the position of principal of the Clearfield city school system.<sup>4</sup>

While involved with his teaching and administration duties, he became interested in the law and worked as an understudy to Honorable William A. Wallace, a young lawyer destined to become one of the leading governmental figures of his state and nation. Dundy also gained the favor of another

---

<sup>1</sup>Towle, "Judge Elmer S. Dundy," p. 83.

<sup>2</sup>Edmunds, Pen Sketches, p. 400.

<sup>3</sup>Pennsylvania, 1850 Census, no page given. Information furnished by Kermit J. Pike in letter of August 8, 1970. Entry shows Elmer Dundy, twenty years of age, a teacher, residing with James Hoff, a blacksmith.

<sup>4</sup>Towle, "Judge Elmer S. Dundy," p. 84. Morton and Watkins, Illustrated History, I, n. 5, 352.

Clearfield resident, William Bigler, governor of Pennsylvania, 1852-1855, and later member of the United States Senate, 1856-1862. Dundy's determined efforts toward the study of law reached fruition in 1853 when he was admitted to the Clearfield bar after what E. S. Towle described as "a severe examination in open court."<sup>1</sup> After receiving his license, he practiced law at Clearfield, gaining a considerable reputation as evidenced by his election to the position of justice of the peace.<sup>2</sup>

At twenty-six years of age, Elmer Dundy turned his eyes westward. The factors that may have influenced his migration to Nebraska in midsummer of 1857 are not known. That he had decided to place his hopes for fortune in the political arena can be established by his early involvement in crucial and

---

<sup>1</sup>Towle, "Judge Elmer S. Dundy," p. 84. Towle seems to stress the high esteem in which Dundy was held by both Bigler and Wallace. He states that Bigler was influential in getting President Johnson to appoint Dundy to the office of United States District Judge for Nebraska in 1868. Bigler's gubernatorial administration saw significant improvement in public education. Dundy's success in the field of education may have been affected by Bigler. Later, while in the national Senate, 1856-1862, he was in a position to assist Dundy in his lobbying attempt concerning the survey of the half-breed tract. Research into these matters has failed to reveal concrete examples of connection between Bigler and Dundy in the latter's political fortunes. Biographical information on William Bigler may be found in "Bigler, William," U.S., Congress, House, Biographical Dictionary of the American Congress 1774-1961, House Doc. 442, 85th Cong., 2d sess., 1961, p. 553. On William A. Wallace see p. 1768 of same work. Dundy's admissions to the Clearfield bar is also discussed in Edmunds, Pen Sketches, p. 400.

<sup>2</sup>Towle, "Judge Elmer S. Dundy," p. 84.



hotly-contested issues. Dundy's first port of call in Nebraska Territory was at Nebraska City. He remained there only a short time, but during that time he made the acquaintance of Judge Samuel W. Black, who was then serving as one of Nebraska's territorial judges. Judge Black occupied the bench of the second judicial district, a post to which Dundy himself would be appointed in later years.<sup>1</sup>

Dundy traveled with Judge Black to the little village of Archer, in Richardson County. The young lawyer decided to stay in Archer and soon had made the acquaintance of another prominent pioneer and frontier judge, John C. Miller, who at that time was serving as, "landlord, probate judge, and general adviser in all things."<sup>2</sup>

The village of Archer was some two years old when Elmer Dundy arrived. It was laid out by its founders in July, 1855.<sup>3</sup> The Articles of Association of the Archer Townsite Company stated the purpose of its existence: ". . . to

---

<sup>1</sup>Ibid., p. 85. Samuel W. Black was appointed to the territorial bench in April, 1857, and remained at that post until early 1859 when he resigned to accept President Buchanan's appointment to the territorial governorship. Black is another of the long list of politically prominent figures with whom Dundy was associated. A concise biographical sketch of Black may be found in Morton and Watkins, Illustrated History, I, n. 2, 456-57.

<sup>2</sup>Towle, "Judge Elmer S. Dundy," pp. 85-86.

<sup>3</sup>Richardson County, Nebraska, Register of Deeds, Deed Record, Ledger Books A, B, and D, pp. 50-55, cited by Edwards, Richardson County, p. 223.

purchase claims for the purpose of establishing the seat of justice for the county of Richardson, Nebraska Territory."<sup>1</sup> An original settler described the place as it was in 1857: "There were two general stores, two hotels, a blacksmith shop, and a number of dwellings."<sup>2</sup> Dundy undertook the practice of law in Judge Miller's court, commonly held in the barroom of a large log-constructed tavern owned by the judge.<sup>3</sup>

The town of Archer seemed to have outstanding prospects for success. The first Territorial Legislature had appointed Archer to be county seat for Richardson County.<sup>4</sup> The only nearby settlement of any consequence that might provide competition for Archer was Salem, some eight miles to the westward. Archer's optimism was short-lived, however. In autumn, 1857, the citizens learned that their town was located within the boundaries of an Indian reservation, commonly referred to as the half-breed tract. The cause of the whole problem was an erroneous survey done by John McCoy in 1838. Archer's founders had based their whole enterprise on the McCoy line, carefully choosing their townsite just outside the Indian

---

<sup>1</sup>Ledger Book D, p. 6, cited by Edwards, Richardson County.

<sup>2</sup>Isaac Crook, "Early Political Items," printed in Edwards, Richardson County, pp. 723-24.

<sup>3</sup>Ibid., p. 724. Towle, "Judge Elmer S. Dundy," pp. 85-86.

<sup>4</sup>Edwards, Richardson County, p. 149.

lands. Their dreams were dashed when that line was found to be fraudulent.<sup>1</sup>

Charles McDonald, a delegate to the Territorial Council from Richardson County, and a resident of the rival township, Salem, seized upon the opportunity to secure the county seat as a political plum for his hometown. He introduced legislation that, if enacted into law, would result in the immediate removal of the county seat from Archer to Salem on the basis that the former was in fact within Indian territory.<sup>2</sup> The legislation introduced by McDonald was passed, to the special chagrin of the citizens of Archer, who had been largely responsible for electing McDonald in the first place.<sup>3</sup>

---

<sup>1</sup>Ibid., p. 150. For a most definitive and well-documented work on the half-breed tract, see Berlin B. Chapman, "The Nemaha Half-Breed Reservation," Nebraska History, XXXVIII (March, 1957), 1-23. (Hereinafter cited as Chapman, "Half-Breed Reservation.") Not all sources agree on the situation of the half-breed lands, a problem which to this day affects land disposition in Richardson County. See also Morton and Watkins, Illustrated History, I, 378-83. C. O. Snow, "History of the Half-Breed Tract," Nebraska History, XVI (January-March, 1935), 36-48. Edwards, Richardson County, pp. 125, 136-37.

<sup>2</sup>Nebraska Territory, Council, Council Bills 53, 133, 3d Sess., Jan. 19, 1857, Feb. 10, 1857, Journal, pp. 54, 137. See also Isham Reavis, "Reminiscences of a Wayfarer," printed in Edwards, Richardson County, p. 690. (Hereinafter cited as Isham Reavis, "Reminiscences," in Edwards, Richardson County.)

<sup>3</sup>Nebraska Territory, An act to provide for the county seat of Richardson County, Laws of Nebraska, (1857), pt. 6, pp. 280-81. Isham Reavis, "Reminiscences," in Edwards, Richardson County, p. 690.

With the loss of the county seat, the settlers also faced possible eviction and loss of their homes. The citizens of Archer reacted in typical frontier fashion. A citizens' meeting at Archer was held on September 28, 1857. The people declared their determination to resist. A stirring resolution was adopted: "We will continue to hold and to occupy our lands at all hazards, and will be driven from them only by a superior force unless our rights are investigated by the highest courts of the United States."<sup>1</sup>

Elmer Dundy was extremely popular with the Archer town-folk. He was the town's social organizer and chief fiddler, as well as a young man of boundless ambition and ability.<sup>2</sup> He contracted with the citizens to go to Washington, to the seat of government, and there to lobby for restitution of the McCoy line, however erroneous, in order to save their claims and their town.<sup>3</sup>

---

<sup>1</sup>Chapman, "Half-Breed Reservation," p. 13.

<sup>2</sup>Margaret M. Maddox, "Early Christmas Days," printed in Edwards, Richardson County, pp. 737-38. This brief account is but one of several references to Dundy's social popularity and fiddling ability.

<sup>3</sup>David D. Reavis, "Through the Years in Falls City," Falls City Journal, June 6, 1934, p. 4. (Hereinafter cited as David Reavis, "Falls City," Journal.) This work was a series of articles appearing during May and June, 1934, and is largely based on the writings of Isham Reavis, the author's father. Edwards, Richardson County, p. 221.

Dundy's trek began sometime after Christmas, 1857.<sup>1</sup> His activities while in the national capital cannot be traced, but his contemporaries thought him successful in persuading Fenner Ferguson, Nebraska's territorial delegate to the Congress, to argue for the reestablishment of the old McCoy line of 1838.<sup>2</sup> Ferguson did so successfully. The necessary legislation was passed on June 12, 1858.<sup>3</sup>

While this action saved Archer legally, it came too late. Dundy returned to Nebraska in the summer of 1858, only to find that the leading residents of Archer had moved to other areas of settlement in Richardson County. Judge Miller had resigned as probate judge and his replacement had removed the county offices and records to Salem, the new county seat.<sup>4</sup> Though some settlers did stay in their homes at Archer, the future of the town was sealed in eventual doom. Dundy's victory was an empty one indeed, but the young lawyer could not be counted out.

---

<sup>1</sup>Maddox, "Early Christmas Days," printed in Edwards, Richardson County, pp. 737-38. Places Dundy at Archer during Christmas, 1857.

<sup>2</sup>U.S., Congress, House, Fenner Ferguson, Delegate from Nebraska Territory speaking for Sec. 13 of the Civil Appropriations Bill, 35th Cong., 1st Sess., June 9, 1858, The Congressional Globe, XXXVI, 2806.

<sup>3</sup>Act of June 12, 1858, Statutes at Large, XI, Sec. 13, 327. See also Nebraska Advertiser (Brownville, N. T.), July 15, 1858, p. 2.

<sup>4</sup>Isham Reavis, "Reminiscences," in Edwards, Richardson County, pp. 690-91.

Elmer Dundy removed to Falls City, a budding settlement of about twenty-five persons in 1858.<sup>1</sup> Falls City had been founded by an active abolitionist element that included in its number James Lane, of Kansas fame.<sup>2</sup> The underground railroad utilized Falls City as a way-station; indeed the barn of its leading citizen, David Dorrington, was used to hide runaway slaves.<sup>3</sup> Falls City was to become a hot-bed of abolitionist sentiment in Richardson County, sentiments not necessarily shared by its sister settlements. Into this cauldron of boiling emotions, Elmer Dundy leaped headlong. He was extremely popular with the recently organized anti-slavery party commonly known as Black Republican. His oratory became practiced and well-known through public speaking engagements such as the Fourth of July celebration at Nemaha

---

<sup>1</sup>A. T. Andreas, History of the State of Nebraska (2 vols.; Chicago: Western Historical Co., 1882), II, 1314. (Hereinafter cited as Andreas, Nebraska.)

<sup>2</sup>Edwards, Richardson County, p. 675. Harold Prichard, "The 100-year Story of Falls City," Falls City Journal, Historical Edition, August 26, 1957, sec. B, pp. 2B-5B. (Hereinafter cited as Prichard, "100-year Story.") Prichard developed his work especially for the centennial celebration at Falls City. He based his information primarily on the writings of Isham and David Reavis and to a lesser extent on other contemporary accounts. So much writing has been done on early Falls City that the separation of truth from legend is difficult if not impossible. Prichard's work does not help to rectify this situation. See also Isham Reavis, "Reminiscences," in Edwards, Richardson County, pp. 685-88.

<sup>3</sup>A. R. Keim, "John Brown in Richardson County," Transactions and Reports of the Nebraska State Historical Society, II (1887), 110-11.

Falls in 1858.<sup>1</sup> His first task was to subdue Charles McDonald and hopefully bring the county seat to Falls City in the process.

Dundy set out to wrest McDonald's Territorial Council seat from him without delay. The election was to be held in August, 1858. At that time, Pawnee and Richardson Counties were one legislative district, represented by one Councilman and three delegates in the lower house. Dundy planned his campaign to gain maximum votes for his candidacy. He elected to run as a Democrat, although it is quite probable that his sentiments were with the infant Republican, or fusionist, organization. He filed for election from Archer precinct; his opponent, also a Democrat, filed from Salem.<sup>2</sup>

The people who had associated their fortunes with Archer were solidly against the hated McDonald. Indeed, the eastern portion of Richardson County was solidly behind Dundy. The Salemites stood firm behind their candidate. Two other men announced for candidacy to the Council seat, but neither

---

<sup>1</sup>Isham Reavis, "Reminiscences," in Edwards, Richardson County, p. 693. The town of Nemaha Falls suffered a watery demise in a tremendous inundation that triggered a flash flood of the Nemaha River only a few days after Dundy delivered his speech. See also David Dorrington, "The Inundation of 1858," July 28, 1875, printed in Edwards, Richardson County, pp. 711-12. And Rulo Western Guide, July 16, 1858, pp. 2, 4; Aug. 13, 1858, p. 2.

<sup>2</sup>David Reavis, "Falls City," Journal, June 12, 1934, p. 5.

attained more than also-ran status in the wake of the Dundy-McDonald contest.<sup>1</sup>

The key to the election, as Dundy saw it, was a colony of Methodist settlers at Table Rock, in Pawnee County. Dundy went all out to gain the support of this group by playing the role of a great friend of religion. He also emphasized his Pennsylvania background. Since most of the Table Rock settlers were of similar geographic origins, he gained considerable rapport with them. Dundy managed to retain the sentiment of a district sharply divided on the slavery issue by carefully phrasing his remarks on the subject. The same technique was used on the equally volatile prohibition issue. Isham Reavis, a newcomer to Falls City in that fateful summer, gave this analysis of the Dundy campaign:

Dundy was a crafty fellow and up to political snuff with the best of them, and so managed his cards as to get the support of all those antagonistic and warring elements in sufficient numbers to beat his two opponents with a very satisfactory majority. It requires some kind of political ability not easily described, to yolk up the moral sentiment of the country represented by the churches . . . with that other element represented by those devil's recruiting offices, the saloons, and get the support of both.<sup>2</sup>

---

<sup>1</sup>Isham Reavis, "Reminiscences of a Wayfarer," Falls City Tribune, April 9, 1909, p. 2. (Hereinafter cited as Isham Reavis, "Reminiscences," Tribune.) From a series of articles under that title appearing at scattered intervals in the periodical listed above. Several of these writings are the same as those selected for printing in Edwards, Richardson County. A contemporary newspaper lists W. P. Loan and P. M. Rogers as candidates for the Council seat along with Dundy and McDonald. Nebraska Advertiser (Brownville, N. T.), July 15, 1858, p. 2.

<sup>2</sup>Isham Reavis, "Reminiscences," Tribune, April 9, 1909, p. 2.



In summary, Dundy's ingenious campaign was waged on the surface over the issues of slavery and prohibition, while the burning issue of the day, the location of the county seat, was skillfully kept in the background.<sup>1</sup>

Isham Reavis's reference to Dundy's "satisfactory majority" notwithstanding, certificates of election were issued to both Dundy and McDonald. The latter was seated on the opening day of the Legislature.<sup>2</sup> Dundy was also granted a seat, to be used at his discretion, since he was contesting the election and the outcome was uncertain.<sup>3</sup> Two members of a committee of three, appointed to examine the cases of both contestants, reported on September 27, 1858 that they had not been able to reach a conclusion in the matter. A minority report was rendered by Councilman Mills S. Reeves recommending that the seat be given to Dundy on the basis that the vote of the St. Stephens settlement had not been counted by the election canvassers. He asserted that if those votes had been counted Dundy would have attained a majority of forty-four votes. The Council gave both contestants ten more days to complete preparation of their arguments.<sup>4</sup> On October 7, McDonald

---

<sup>1</sup>David Reavis, "Falls City," Journal, June 12, 1934, p. 5.

<sup>2</sup>Nebraska Territory, Council, 5th Sess., Sept. 21, 1858, Journal, p. 5.

<sup>3</sup>Ibid., p. 7.

<sup>4</sup>Ibid., Sept. 27, 1858, pp. 28-30.

abdicated, contending that he had not been allowed sufficient time to prepare his case.<sup>1</sup> At twenty-eight years of age, Elmer S. Dundy won his first political campaign. His triumph may be termed an important stepping-stone to greater political success for himself and Falls City, as well as an excellent training vehicle for bitter campaigns to come.

---

<sup>1</sup>Ibid., Oct. 7, 1858, p. 74.

## CHAPTER II

### ISSUES AND ANSWERS, 1858-1860

Elmer Dundy's ascension to the thirteen-member Council in the autumn of 1858 threw him into the whirlpool of turbulent and emotion-charged issues that confronted territorial Nebraska in the critical years and months prior to the War of the Rebellion. The slavery issue not only affected the nation's South and East, but extended its tentacles into Nebraska as well, polarizing opinion and dividing its settlers. Copperheads were active and talk of secession was not uncommon.<sup>1</sup> The plight of nearby Kansas and Missouri fanned the flames of conflict, regardless of what legal and moral position the participants favored. The birth of an active

---

<sup>1</sup>Considerable works have been published concerning sentiments in Nebraska on the national issue of slavery. Charges of copperhead have been registered toward such distinguished Nebraskans as J. Sterling Morton. The Morton papers, on file at the Nebraska State Historical Society, show Morton's association with pro-slavery advocates. See letter, A. M. Acton to J. Sterling Morton, March 3, 1861, Nebraska State Historical Society, Lincoln, J. Sterling Morton Papers, Microfilm ed., Roll 2. (Hereinafter cited as Morton Papers.) Morton was a contemporary of Dundy, and normally a hostile opponent of the latter's principles and methods. His name will reappear at several intervals throughout this study. For biographical information see James C. Olson, J. Sterling Morton (Lincoln, Univ. of Nebraska Press, 1942).

Republican party in Nebraska served to further divide the territory's political factions.<sup>1</sup> Charges of "Black Republican" and "nigger-worshipper" were rampant in the Democratic press.<sup>2</sup> The general scarcity of money following the Panic of 1857 was the dominating factor in the gloomy economic situation all along the frontier, and Nebraska Territory was no exception. The collapse of the wildcat banking schemes triggered the subsequent downfall of the entire financial system in the territory. There was no money to be had. J. Sterling Morton asserted that there was less than \$2.50 per capita in circulation in the territory in January, 1858.<sup>3</sup> The location of the capital at Omaha City, a reflection of political bias in favor of those settlements north of the Platte River, split the territory on a geographic basis. This sectionalism played a key role in the politics of the period, to the extent that annexation of that region south of

---

<sup>1</sup>James C. Olson, History of Nebraska (2d ed.; Lincoln: University of Nebraska Press, 1966), p. 120. (Hereinafter cited as Olson, History of Nebraska.)

<sup>2</sup>The most active Democratic newspaper in the territory was The Nebraska City News. Its editorial policy was strictly anti-Republican, reflecting the views of J. Sterling Morton, who headed the News off and on throughout his life. Name-calling was in vogue for partisans of both factions and should be considered as an integral part of the jargon of the times. See also Olson, History of Nebraska, p. 119. Edson P. Rich, "Slavery in Nebraska," Transactions and Reports of the Nebraska State Historical Society, II (1887), 100.

<sup>3</sup>Nebraska Territory, Council, Address of J. Sterling Morton, 6th Sess., Jan. 3, 1860, Journal, p. 174. See also Olson, History of Nebraska, pp. 94-95.

the Platte River to Kansas became a seriously considered possibility.<sup>1</sup> Last, but certainly not least, local issues were tense and volatile. In Dundy's own Richardson County the location of the county seat took months of bitter electoral conflict and actual bloodshed to resolve. The problems to be dealt with must have seemed insurmountable to the young legislator, but the record shows that he was anything but overwhelmed. Indeed, he contributed vigorously and effectively to the development of solutions to the diverse dilemmas facing his young homeland.

The county seat controversy in Richardson County is an excellent issue from which to examine Elmer Dundy's political method. It will be remembered that the seat of justice had been removed from Archer to Salem by legislative acts on February 13, 1857, and that, by the provisions of those laws, an election was to be held in April, 1857, permanently to decide the location.<sup>2</sup> No available evidence indicates whether the election called for was ever held, but it can be reasonably assumed that one was held and that no one settlement was favored by a majority of the votes cast.

---

<sup>1</sup>Olson, History of Nebraska, pp. 94-95.

<sup>2</sup>Nebraska Territory, An Act to Provide For the County Seat of Richardson County, Laws of Nebraska (1857), pt. 6, pp. 280-81. The legislation cited is in fact two laws, listed one after the other, and enacted the same day. The second law is entitled Supplementary to An Act to Provide for the County Seat of Richardson County.

A review of Richardson County's principal settlements and political situation in the summer of 1858 is in order to correctly view the county seat fight in its proper perspective. The county was experiencing an impressive growth. In 1860, its population had grown to 2,834, an increase of nearly 400 per cent over the recorded number of persons in 1856.<sup>1</sup> The county's political situation was volatile, a fact that can be substantiated by the Dundy-McDonald election struggle that fateful summer, the activities of the underground railroad, and frequent contacts with the troubled Kansans to the south.

David Reavis described Rulo as the county's principal town at the outset of the struggle.<sup>2</sup> It had the advantage of being a Missouri River town and, as such, was important as a port of entry into the territory as well as the county. It was a half-breed town, lawless and wild in nature, as were the river settlements of St. Stephens, Yancton, and Arago.<sup>3</sup> Abel D. Kirk, one of the former residents of Archer, a lawyer and

---

<sup>1</sup>U.S., Department of Interior, Population of the U.S. in 1860, compiled from the original returns of the 8th Census by Joseph C. G. Kennedy, pp. 554-55. The population of the principal towns involved in the county seat conflict as reported in 1860 were: Arago, 193; Falls City, 472; Rulo, 440; Salem, 694; St. Stephens, 404.

<sup>2</sup>David Reavis, "Falls City," Journal, June 4, 1934, p. 4.

<sup>3</sup>Ibid., June 8, 1934, p. 5. This issue contains Isham Reavis's eyewitness description of his impressions of Rulo and St. Stephens in summer, 1858.

contemporary of Dundy's, moved to Rulo in 1857. Early in 1858, he and an associate began publishing the Rulo Western Guide, the first newspaper to be published in the county.<sup>1</sup> The Guide became a vocal anti-Falls City organ as the controversy progressed.<sup>2</sup> Rulo was a leading contender for the county seat prize.

Salem occupied the position of political advantage having been awarded the county seat to hold until the issue could be settled. Charles McDonald, at that time defending his Council seat against Dundy, probably reflected the Democratic leanings of that town.

Falls City was different. Since its founding, it had been the scene of abolitionist sentiment. From its birth the seed of Republicanism had grown steadily. Falls City obtained a newspaper shortly after A. D. Kirk established the Guide at Rulo. J. Edward Burbank was its publisher and Sewell Jamison the editor. It was called appropriately The Broad Axe of Freedom, or the Grubbing Hoe of Truth. The Axe's mottoes were: "Hew to the mark, let the chips fall where they will. There is a destiny which shapes our ends, rough hew them as we will;" and, "Neutral in all things, independent in

---

<sup>1</sup>Edwards, Richardson County, pp. 404-06.

<sup>2</sup>Few copies of the Rulo Western Guide have been preserved for study. Those that are available are on microfilm at the Nebraska State Historical Society at Lincoln. See also David Reavis, "Falls City," Journal, June 12, 1934, p. 5.

nothing."<sup>1</sup> Despite its declared neutrality, a facade from the start, the Axe was soon firmly within the Republican camp, and was an avid supporter of Falls City.<sup>2</sup>

The battle lines were drawn in the summer of 1858. Dundy's triumph over McDonald was at the same time an intermediate victory for Falls City. In the territorial capital an unusual occurrence took place. William C. Fleming, a representative from Richardson County in the House, introduced on September 30, 1858, "a bill for an act to establish permanently the county seat of Richardson County, by a vote of the people."<sup>3</sup> Governor William A. Richardson signed the bill into law on

---

<sup>1</sup>MS, believed to be an original account of the coming of the Broad Axe to Falls City, by its publisher, J. Edward Burbank. The manuscript contains four pages, is obviously incomplete, and is neither signed nor dated. This manuscript, along with several other significant documents relating to the county seat strife and early Falls City, is in the private collection of Mrs. Mary Beadwell of Falls City, Nebraska. (Hereinafter cited as Beadwell Collection.) The authenticity of the manuscript is supported by similar information published in Edwards, Richardson County, p. 407.

<sup>2</sup>As with the Guide, too few issues of the Broad Axe have been preserved to make any judgments as to its editorial policy. The Broad Axe was under the sponsorship of Kansas abolitionist James Lane and J. Edward Burbank, both staunch Republicans in later days. One source asserts that Dundy himself edited the paper for a time. See Edwards, Richardson County, p. 754. In 1860, the Broad Axe came out for Dundy in another contested election and will be so cited later in this study. The copies of the Broad Axe that have been preserved are on microfilm at the Nebraska State Historical Society, Lincoln. See also David Reavis, "Falls City," Journal, June 12, 1934, p. 5.

<sup>3</sup>Nebraska Territory, House, H.B. 14, 5th Sess., Sept. 30, 1858. Journal, p. 46.



October 3, 1858, before it was even introduced in the Council.<sup>1</sup> This choice bit of territorial law-making may have been a factor in McDonald's decision to give up his seat to Dundy four days later.

The provisions of the Act of October 13, 1858 called for an election to be held on December 6, of that same year. If no one town accumulated the majority of the votes, the field would be reduced to the four receiving the most votes. Subsequently, if that election proved inconclusive, the contestants would be further reduced to two. The county clerk was to be the final authority in deciding the winner in the event of a contested election in the final run-off.<sup>2</sup>

The first election was held as scheduled. The results were inconclusive and the four towns receiving the most votes were designated for another attempt on December 25, 1858.<sup>3</sup>

---

<sup>1</sup>Nebraska Territory, An Act to Establish Permanently the County Seat of Richardson County, by a Vote of the People, Laws of Nebraska (1858), pp. 394-95. (Hereinafter cited as Nebraska Territory, Act of Oct. 3, 1858, Laws, pp. 394-95.) The original act is on file at the Nebraska State Historical Society. The signatures of heads of both Council and House are affixed, as well as that of Gov. Richardson. The bill (H.B. 14) was introduced in the Council on Oct. 16, 1858, thirteen days after it had been enacted into law. The Council passed the bill by unanimous vote on Oct. 19, 1858. See Nebraska Territory, Council, 5th Sess., Oct. 16, 1858, Oct. 19, 1858, Journal, pp. 111, 128.

<sup>2</sup>Nebraska Territory, Act of Oct. 13, 1858, Laws., pp. 394-95.

<sup>3</sup>Richardson County, Nebraska, Minutes of County Commissioners meeting held at Salem, Dec. 9, 1858, no page given, printed in Edwards, Richardson County, p. 156. Edwards has

Again, none of the four towns won a majority. Rulo and St. Stephens were eliminated, however, and the struggle was narrowed to Salem and Falls City. The run-off between these two towns was scheduled for January 10, 1859.<sup>1</sup>

The mayor of Falls City immediately moved to clinch the January election for Falls City by offering to construct "a two-story brick or concrete Court House, thirty by fifty feet in dimension and to cost not less than (\$3,000.00) three thousand dollars . . ." if the people of Richardson County would only select Falls City at the polls.<sup>2</sup>

The tension was thick in the air over the proceedings of the January election. The Guide and Broad Axe hurled vindictive insults at each other. Representatives of the two contending towns were appointed to watch the election procedures throughout the county. Whiskey ran freely. Several fights broke out. When the votes were counted, Falls City was the winner by a slim majority, but when the county commissioners announced their final findings, they declared the

---

reproduced, verbatim, certain vital records concerning the county seat fight in his work. These records have since been lost and are no longer available for examination.

<sup>1</sup>Richardson County, Nebraska, Minutes of County Commissioners meeting held at Salem, Dec. 27, 1858, no page given, printed in Edwards, Richardson County, p. 156.

<sup>2</sup>Letter, John A. Burbank to citizens of Richardson County, Dec. 29, 1858, printed in Edwards, Richardson County, pp. 156-57.

election a tie, having rejected the votes cast in St. Stephens and Speiser precincts.<sup>1</sup>

Mayor Burbank filed notice that Falls City would contest the election before the county clerk without delay. The grounds for contest were basically that the election canvassers had acted illegally in rejecting the votes of the St. Stephens precinct, in which Falls City had received a large block of votes.<sup>2</sup> Falls City was represented by three of the most distinguished jurists in the history of the region, O. P. Mason, Isham Reavis, and Elmer Dundy, the latter having recently returned from the Legislature. Isham Reavis's account of the trial proceedings indicates the extreme prejudice harbored by the Salemite officials against Falls City, and reckons it impossible that the latter could get a fair hearing in such an atmosphere. He heaped admiration and praise on Dundy for fighting bravely for Falls City throughout the proceedings in spite of a bout with fever and chills. Despite Dundy's efforts, the Salemite county clerk, James T. Wright, found in favor of Salem in mid-February, 1859.<sup>3</sup>

---

<sup>1</sup>David Reavis, "Falls City," Journal, June 12, 1934, p. 5.

<sup>2</sup>MS, Notice of contest, Falls City v. Salem, John A. Burbank, Mayor et al. to Samuel A. Roberts, mayor of Salem, January 27, 1859, Beadwell Collection. The Beadwell collection contains some twenty pages of original testimony in the hearings before the county clerk.

<sup>3</sup>Isham Reavis, "Reminiscences," Tribune, June 4, 1909, p. 2.

Dundy spent the remainder of a most severe winter with Isham Reavis at Jesse Crook's hotel in Falls City. The tenants were reduced to eating only corn bread for over three months. Reavis calculated that the residents of Crook's hotel had consumed over 320 acres of corn bread during the period.<sup>1</sup>

When spring came, Crook's hotel was the center of activity in planning for the next move to wrest the county seat from the Salemites. Elmer Dundy, the key strategist for the Falls City group, decided that it would be necessary to replace the present county clerk, who had ruled so unfairly in the late contest. The opportunity came in the August elections. Dundy skillfully arranged the slate of candidates along bipartisan lines and carefully selected candidates from throughout the county. His entire slate was elected in a masterful political coup d'etat that was to have far-reaching effect on the future of Falls City.<sup>2</sup>

The sixth session of the Territorial Legislature convened on December 5, 1859. On December 28, J. Edward Burbank, one of the delegates from Richardson County in the House, introduced a bill that called for the immediate removal of the county seat offices and records to Falls City. The bill

---

<sup>1</sup>Ibid.

<sup>2</sup>David Reavis, "Falls City," Journal, June 15, 1934, p. 6.

also ordered another election or series of elections to determine the final location, much as had the laws of the previous year. The first election was to be held on the first Monday of April, 1860, between all towns contending for the prize.<sup>1</sup> The legislation was pushed through the House by Burbank and the other Richardson County representatives.<sup>2</sup> After passage in that body, Dundy skillfully maneuvered it to passage in the Council.<sup>3</sup>

The county officials at Salem, having received a stunning rebuke of their questionable methods of holding on to the county seat, converged on Governor Samuel Black in an effort to get him to veto the bill. These petitioners complained that if Falls City got the county seat, their Republican sentiments would cause political havoc throughout the territory. Governor Black apparently agreed to veto the bill but later enacted it into law in the closing minutes of the Legislature, January 13, 1860.<sup>4</sup>

---

<sup>1</sup>Nebraska Territory, House, H.F. 118, 6th Sess., Dec. 28, 1859, Journal, p. 146. Also, Nebraska Territory, An Act For the Location of the County Seat of Richardson County, by a Vote of the People, Laws of Nebraska (1860), pp. 145-46. (Hereinafter cited as Nebraska Territory, Act of January 13, 1860, Laws, pp. 145-46.)

<sup>2</sup>Nebraska Territory, House, 6th Sess., Jan. 4, 1860, Journal, pp. 225-27.

<sup>3</sup>Nebraska Territory, Council, 6th Sess., Jan. 9, 1860, Journal, pp. 266-67.

<sup>4</sup>Nebraska Territory, Act of January 13, 1860, Laws, pp. 145-46. Harold Prichard's centennial article asserts that Dundy was directly responsible for forcing Gov. Black

The removal of the county seat from Salem to Falls City does not appear to have taken place as directed by the new law.<sup>1</sup> The election was held as directed early in April, but again, no one town received the majority of votes legally required so a second election was set for mid-month between Salem, Falls City, Rulo, and Arago.<sup>2</sup>

The election of April 16 was a violent foray of gun-fights, drunkenness, and other miscellaneous malpractice that must have had few equals in the annals of the wild west. One of the men from Rulo sent to watch the election at Falls City was shot and killed. Dundy's little brick office was the polling place for Falls City precinct. The young lawyer barely escaped death himself, suffering a gunshot wound in the nose. As in the past, whiskey was in heavy use in the immediate vicinity of the polls. Some of the Rulo men threatened to burn Falls City to the ground after the election.<sup>3</sup>

---

to sign the bill into law by his refusal to support a measure that the Governor wanted passed until the county seat bill was acted upon. Prichard, "100-Year Story," p. 5B.

<sup>1</sup>Prichard, "100-Year Story," p. 5B. Prichard states that the seat and records were moved to Falls City but this is doubtful. Edwards, Richardson County, p. 157, shows verbatim minutes of the county commissioners' meeting held at Salem on March 7, 1860 to plan the election to be held in April, 1860.

<sup>2</sup>Richardson County, Nebraska, Records of County Commissioner's Court, no page given, printed in Edwards, Richardson County, p. 158.

<sup>3</sup>David Reavis, "Falls City," Journal, June 16, 1934, p. 4. Letter, A. D. Kirk to J. Sterling Morton, May 2, 1860, Morton Papers, microfilm ed., Roll 2.

Falls City and Rulo won the honors to be the final contestants in the struggle. The next election was set for May 22, 1860. The air of tension hung heavy on election day. Flags of truce protected the poll-watchers of the two rival towns observing the election proceedings at the polling places. J. T. Adams later stated that he was so drunk he didn't know for whom he had voted, and that he had voted at both Falls City and Rulo.<sup>1</sup> H. T. Potter, on behalf of Rulo, testified that David Dorrington, one of the judges of election at Falls City, was intoxicated, and that bottles of liquor were readily available to the voters at the polling places. He further asserted that Dorrington offered to bet that Falls City would be the county seat whether it got the most votes or not.<sup>2</sup> Addison W. Butt, a settler voting in Speiser precinct, testified that he had been offered whiskey to vote for Rulo at the polling place.<sup>3</sup> George Bowker was accused of ballot box stuffing in the interest of Rulo.<sup>4</sup> Other testimony stated that Missourians had crossed the border to cast

---

<sup>1</sup>MS, Statement of J. T. Adams, n.d., Beadwell Collection.

<sup>2</sup>MS, Depositions of Witnesses on Behalf of Defendant, Rulo, July 26, 1860-Aug. 3, 1860, p. 14, Beadwell Collection.

<sup>3</sup>MS, Evidence of Addison W. Butt, n.d., Beadwell Collection.

<sup>4</sup>MS, Evidence of Welling Northern, June 9, 1860, Beadwell Collection.

votes in the interest of both Falls City and Rulo.<sup>1</sup> S. H. Schuyler, representing Falls City in Rulo, insisted that there had been malpractice in the selection of election officials at Rulo.<sup>2</sup> In the end, Rulo received the most votes. Dundy and Isham Reavis, acting as attorneys for Falls City, immediately began their contest of the election. A Falls City citizen filed notice of contest on May 26, 1860.<sup>3</sup> The grounds were charges of malpractice in Rulo and by the citizens of that town in conducting their election. Rulo answered the challenge on more or less the same grounds.

Here the seeds of strategy, developed so carefully at Crook's hotel some months before, began to bear fruit. It will be remembered that Dundy had managed the election of a new county clerk, who was, of course, sympathetic to the Falls City cause. That official, A. J. Deshazo, dutifully received the cases presented by Dundy and Reavis as well as those of the attorneys for Rulo. Meanwhile he collected the depositions of witnesses and forthwith found in favor of Falls City, rendering his decision on August 13, 1860.<sup>4</sup>

---

<sup>1</sup>MS, Evidence of I. L. Hamby, July 5, 1860; and of T. V. Thomas, Depositions of Witnesses on Behalf of Defendant, Rulo, MS, pp. 5-6, Beadwell Collection.

<sup>2</sup>MS, Evidence of S. H. Schuyler, June 14, 1860, Beadwell Collection.

<sup>3</sup>MS, Notice of contest, William Coleman, filed with County Clerk on May 26, 1860, Beadwell Collection.

<sup>4</sup>Richardson County, Nebraska, Official Records of County Clerk's Office, August 13, 1860, printed in Edwards, Richardson



Deshazo's decision brought the county seat contest to an end. The threats of violence and destruction from Rulo soon died down as attention was diverted to the national issues of secession and war and the ever-present poverty that hung over the territory. One must give Dundy the major credit for securing the county seat for Falls City. In doing so, he united the loyalty of that town behind him, but, at the same time, he made so many enemies throughout the county that he barely regained his seat on the Council.<sup>1</sup> So despised was he that the Rulo men threatened to lynch him on sight should he ever show his face in that town.<sup>2</sup> Success was becoming a habit with Elmer Dundy, however, and he was not one to let hostile threats divert him from other issues that demanded attention within his territory.

As a resident of the region south of the Platte River, Dundy felt strongly about the welfare of that section of the territory. There were smouldering issues underlying the

---

County, p. 160. For a description of the Falls City-Rulo contest see David Reavis, "Falls City," Journal, June 19, 1934, p. 2; June 20, 1934, p. 3; June 21, 1934, p. 4; June 22, 1934, p. 3. The Beadwell Collection of original MSS contains approximately 75 pp. of witness statements, records, etc. on the May 22 election. It was the owner's impression that the MSS had not been used previously in any historical work on early Richardson County.

<sup>1</sup>Dundy's struggle for reelection will receive due attention later in this study.

<sup>2</sup>Letter, A. M. Acton to J. Sterling Morton, Mar. 3, 1861, Morton Papers, microfilm ed., Roll 2.

obvious differences in interest between those lands north and south of the Platte, issues as old as Nebraska Territory itself. Elmer Dundy arrived on the scene just in time to play a significant role in the proceedings.

The various sectional problems plaguing Nebraska Territory were anything but individual matters to be taken lightly. The Platte River was virtually impassable and, as such, was a natural obstacle to communication between the two sections. The dismemberment of the fourth session of the Territorial Legislature early in 1858 cast further shadows of doubt over the already dissatisfied South Platte residents as to the effectiveness of the government at Omaha City.<sup>1</sup> The obvious political bias demonstrated by Governor T.B. Cuming and others in favor of the less populous North Platte was most distasteful to the southern Nebraskans.<sup>2</sup> These feelings of distrust were bolstered by the warm receptiveness of some Kansans to the idea of extending their boundary northward to the Platte River, an idea that had been parlor talk in South Platte for a few years.<sup>3</sup> Some visionary Nebraskans looked with glee at

---

<sup>1</sup>Morton and Watkins, Illustrated History, I, 401.

<sup>2</sup>Olson, History of Nebraska, p. 84.

<sup>3</sup>Daniel W. Wilder, Annals of Kansas (Topeka: George W. Martin, Kansas Publishing House, 1875), p. 161. On Jan. 27, 1858, Cyrus K. Holliday, a member of the Kansas Territorial Council, introduced a resolution asking for the annexation of that part of the Territory of Nebraska lying south of the Platte River. Earlier in 1858 the Lawrence Legislature adopted a similar resolution and memorialized Congress to that effect; see Laws of Kansas (1859), p. 651, cited in Morton and Watkins, Illustrated History, I, 404.

annexation to Kansas as a route to quicker statehood.<sup>1</sup>

The whole sectional issue came to a head early in 1859. A mass meeting was held at Nebraska City on New Year's Day.<sup>2</sup> Five days later, a larger and more representative group of delegates met in convention at Brownville for one purpose-- to discuss the possibility of secession from Nebraska and subsequent annexation to Kansas. Elmer Dundy attended the Brownville convention. Apparently his reputation as an up-and-coming young politician preceded him. He was appointed, along with Robert W. Furnas and Jefferson B. Weston, to compose an address to the people of the South Platte counties and Kansas relating the resolutions adopted at the convention.<sup>3</sup>

The convention acted swiftly and deliberately. A memorial to the United States Congress was prepared requesting an enabling act that would allow the South Platte region to be annexed to the proposed state of Kansas. The memorialists declared their reasons for the request and closed by stating that they considered themselves acting under the auspices of the Constitution. Elmer Dundy was one of the signers of that memorial.<sup>4</sup> A few weeks later, the Governor of Kansas

---

<sup>1</sup>Morton and Watkins, Illustrated History, I, 401.

<sup>2</sup>Ibid., p. 399.

<sup>3</sup>Nebraska Advertiser (Brownville, N. T.), Jan. 6, 1859, p. 2.

<sup>4</sup>U.S., Congress, Senate, Memorial of the Citizens of Nebraska Territory Residing South of the Platte River in Convention Assembled at Brownville, January 5, 1859, Territorial

transmitted a joint resolution passed by the Kansas Territorial Legislature to President James Buchanan expressing sentiments similar to their South Platte neighbors.<sup>1</sup>

More mass meetings were held in the spring of 1859. Dundy was an active participant. He was one of three officials designated by the secessionists to organize an election within Richardson County. The election was to assess the feelings there and, at the same time, to elect delegates to represent the South Platte region at the Kansas constitutional convention to be held at Wyandotte in June, 1859.<sup>2</sup>

Delegates from Nebraska were seated at the Wyandotte convention on July 12, 1859. They were allowed to argue their case but were denied the right to vote. The annexation cause was decisively defeated on July 22. The Nebraska delegates returned home furious at the decision of the Kansans. Several issues have been cited as reasons for the rejection of the annexation at a time when it seemed to have popular support in both territories. Probably the most plausible was the Kansans' fear of entangling alliances at a critical juncture just prior to their admittance as a state.<sup>3</sup>

---

Papers of the U.S. Senate, Nebraska Territory, Feb. 12, 1853-Jan. 9, 1867, RG 46, National Archives and Records Service, microfilm edition, roll 16.

<sup>1</sup>F. G. Adams, ed., "Executive Minutes and Correspondence of Gov. Medary's Administration," Transactions of the Kansas State Historical Society, V (1891-1896), 600-01.

<sup>2</sup>Morton and Watkins, Illustrated History, I, 400-01.

<sup>3</sup>Ibid., pp. 401-06.

Whatever the reasons for its failure, the annexation effort had been struck a death blow. It would take a while in dying, but the course of events of the 1860s would never again allow it to rise as a potent movement. The lull in the debate did not relieve the sectional tensions in Nebraska Territory, however. If anything it merely provided a brief respite at the close of a series of events that might well have split the territory asunder.

As a territory, Nebraska possessed no special immunity to those growing pains typical of most American frontier regions. One of the most pressing problems confronting her in 1858 was the general lack of money in circulation in the territory. Wildcat banks operated in Nebraska under charters granted by the early Territorial Legislatures. Their semi-worthless script answered the cry of the people for cheap money for some years. These wildcat notes did provide a medium of exchange for basic commerce, but their foundation was shaky or non-existent, causing the overall banking situation in Nebraska to be less than satisfactory.<sup>1</sup>

Most responsible officials recognized the problem. Governor Richardson announced in his opening address to the fifth session of the Territorial Legislature that he was ordering action calculated to bring about forfeitures on

---

<sup>1</sup>Olson, History of Nebraska, p. 94. See Morton and Watkins, Illustrated History, II, 1-38, for an illuminating discussion of territorial banking.

fraudulent bankers.<sup>1</sup> The members of the fifth session, of which Dundy was a newly-elected member, were in agreement with Governor Richardson, being similarly inclined toward a more conservative view on banking. As a result, the Legislature considered only one new bank charter for issuance.<sup>2</sup>

George E. Scott introduced a bill in the Council for the incorporation of the State Bank of Nebraska on October 20, 1858.<sup>3</sup> After study by a select committee, two members rendered a majority report in favor of the new bank.<sup>4</sup> Dr. George L. Miller, even then a powerful Democrat on the territorial political scene, offered a minority report opposing the bill.<sup>5</sup> Three days later, Miller asserted that "improper means were being used to pass the bank bill."<sup>6</sup> An investigating committee was appointed to look into the matter.

The report of the investigating committee confirmed Miller's allegations. Indeed, George E. Scott, the very Councilman who introduced the bill in the first place, was discovered to have attempted to bribe certain members of the

---

<sup>1</sup>Nebraska Territory, Council, Address of Governor William A. Richardson, 5th sess., Sept. 22, 1858, Journal, p. 13.

<sup>2</sup>Morton and Watkins, Illustrated History, II, 13.

<sup>3</sup>Nebraska Territory, Council, 5th Sess., Oct. 20, 1858, Journal, p. 136.

<sup>4</sup>Ibid., Oct. 25, 1858, p. 164.

<sup>5</sup>Ibid., Oct. 25, 1858, pp. 163-64.

<sup>6</sup>Ibid., Oct. 28, 1858, pp. 180-81.

Legislature to gain support for the measure. The fact that he was drunk when he attempted the bribes was held to be no excuse. Elmer Dundy, when questioned by the committee, stated that he had been offered a gold watch for his vote on the bill, but that he had turned down the offer. For some reason known only to him, Dundy absolutely refused to reveal the name of the person who tried to bribe him. He did not rest on the Fifth Amendment. He just refused. His immovable position on the matter thoroughly infuriated the investigating committee, and he was severely criticized for his non-cooperation.<sup>1</sup> Later, the Council adopted resolutions severely castigating Dundy and Scott, and called for a reprimand of the former if he did not respond to the question of the committee. Evidently Dundy was reprimanded.<sup>2</sup>

The bank bill came up for consideration again on November 3 but was defeated with Dundy's support. This was the last of the wildcat schemes. It died in the Council where it had been born.<sup>3</sup>

---

<sup>1</sup>Ibid., Oct. 29, 1858, pp. 183-84, 192-94. Dundy later testified that the resolution castigating him as printed in the Journal was not the one passed by the Council. He claimed that it had been changed while in the hands of J. Sterling Morton, the Secretary of the Territory. See U.S., Congress, House, Evidence and Other Papers Submitted in the Contested Election of Samuel G. Daily v. J. Sterling Morton as Delegate From the Territory of Nebraska in the Thirty-Seventh Congress, Misc. Doc. No. 4, 37th Cong., 1st sess., 1861, House Miscellaneous Documents, p. 47.

<sup>2</sup>Ibid., Oct. 30, 1858, p. 196.

<sup>3</sup>Ibid., Nov. 3, 1858, p. 257. Morton and Watkins, Illustrated History, II, 16.

The young lawyer had been given a rude welcoming to the Council, having fought the political machine to gain his seat in the first place, and then, only weeks later, to have the wrath of his senior contemporaries brought down around his ears. Although he would be periodically reminded of the gold watch episode in years to come, there is no evidence that it affected him in the least; although it is likely that it drove him further toward the Republican camp.

The Legislature had more problems to consider than just local and territorial matters. The question of slavery had been an issue, however dormant at times, since the formation of the territory.<sup>1</sup> As the war clouds gathered, so did the rumblings and agitation for positive action on the part of territorial lawmakers.

On November 1, 1858, Samuel G. Daily, a member of the House from Nemaha County, introduced a bill for an act to abolish slavery in Nebraska Territory.<sup>2</sup> After study, a select

---

<sup>1</sup>Morton and Watkins, Illustrated History, II, 39. This source contains a well-documented discussion of the manipulation of the slavery issue by territorial partisans, on pp. 39-55. Also, Edson P. Rich, "Slavery in Nebraska," Transactions and Reports of the Nebraska State Historical Society, II (1887), 92-108.

<sup>2</sup>Nebraska Territory, House, 5th Sess., Nov. 1, 1858, Journal, p. 199. Samuel G. Daily, one of the first Republicans in Nebraska Territory, played a major role in Dundy's political fortunes according to some sources, particularly in Dundy's appointment to be a Territorial Judge by President Lincoln in 1863. Dundy intrigued politically with Daily throughout the early 1860s. His involvement will be so cited later in this study. For a brief biographical sketch see Morton and Watkins, Illustrated History, I, 405-06.



committee rendered a majority report stating that such a measure was ". . . clearly in keeping with the spirit of the age, . . ." and further avowed ". . . this territory is as much a slave territory as South Carolina or Georgia."<sup>1</sup> The minority report represented the Democratic point of view. It accused Daily of political opportunism in bringing such a matter before the House when other pressing territorial measures were awaiting action. This latter report cited the dissension in Kansas over slavery and closed with a recommendation that it be indefinitely postponed.<sup>2</sup> Despite the Democratic opposition, Daily's bill passed the House on November 4.<sup>3</sup> When the bill reached the Council, it was postponed indefinitely. Elmer Dundy alone voted against its postponement.<sup>4</sup>

The sixth session, convening on December 5, 1859, experienced a similar movement early in its proceedings. Turner M. Marquette of Cass County introduced a measure similar to

---

<sup>1</sup>Nebraska Territory, House, Mr. Daily rendering majority report on H.B. 131, "a bill for an act to abolish slavery in the Territory of Nebraska," 5th Sess., Nov. 2, 1858, Journal, pp. 222-23.

<sup>2</sup>Ibid., Mr. Rankin rendering minority report against H.B. 131, pp. 223-24.

<sup>3</sup>Ibid., Nov. 4, 1858, pp. 247-48.

<sup>4</sup>Nebraska Territory, Council, 5th Sess., Nov. 4, 1858, Journal, p. 271.

Daily's abortive attempt of the previous year.<sup>1</sup> Marquette's bill called for the abolition of slavery, but since he had no ready proof that it even existed in the territory, the reference to "abolition" was dropped in favor of "prohibition," the latter being a more accurate and acceptable term.<sup>2</sup> The bill was passed on December 17, but, as in the previous year, it was postponed indefinitely in the Council. This time Dundy was not alone in voting to consider the bill. Four of his fellow Council members voted along with him, demonstrating a rising tide of anti-slavery sentiment in the Council.<sup>3</sup>

Further proof of the Council's new feelings was that, simultaneous with the activities in the House, it had anti-slavery measures of its own pending. William H. Taylor introduced a bill on December 9, "to abolish and prohibit slavery or involuntary servitude."<sup>4</sup> The battle in the Council shaped up along party lines. Taylor pointed out that several prominent Nebraskans owned slaves in the territory, completely destroying the Democratic premise that it did not exist. He pleaded his case effectively, citing Stephen A. Douglas's theory of popular sovereignty and closed by expressing his

---

<sup>1</sup>Nebraska Territory, House, 6th Sess., Dec. 8, 1859, Journal, pp. 45-46.

<sup>2</sup>Ibid., Dec. 16, 1859, pp. 94-95.

<sup>3</sup>Nebraska Territory, Council, 6th Sess., Dec. 20, 1859, Journal, p. 80.

<sup>4</sup>Ibid., Dec. 9, 1859, p. 39.

amazement that so-called Douglas Democrats could oppose the measure.<sup>1</sup>

Foiled by Taylor's conclusive proof that slavery did exist, the Democrats conceded that point and admitted that they had knowledge of six and one-half slaves in the South Platte region. They added that the condition of these slaves was completely voluntary on their part. Their argument seemed to conclude that slavery in Nebraska was better than freedom elsewhere. Dr. George L. Miller, in stating the weakened and illogical Democratic position, returned to the attack on the uselessness of the measure and the ruthless politics of its advocates.<sup>2</sup>

A compromise was reached in the Council with the adoption of joint resolutions on the slavery matter.<sup>3</sup> But, when the resolutions got to the House, they were modified into a bill and passed. The Council then passed the bill, and it was submitted to the Governor for enactment into law.<sup>4</sup> Governor Black vetoed the proposed law on January 9, 1860.<sup>5</sup> It was

---

<sup>1</sup>Ibid., Mr. Taylor speaking in favor of C.B. 2, "a bill for an act to prohibit slavery or involuntary servitude," Dec. 12, 1859, pp. 43-46.

<sup>2</sup>Ibid., Dr. Miller speaking against C.B. 2, pp. 46-48.

<sup>3</sup>Ibid., Dec. 21, 1859, p. 90.

<sup>4</sup>Ibid., Jan. 3, 1860, p. 139; and, Nebraska Territory, House, 6th Sess., Jan. 3, 1860, Journal, p. 197.

<sup>5</sup>Nebraska Territory, Council, 6th Sess., Jan. 9, 1860, Journal, pp. 260-66. The text of Black's veto message demonstrates the wide ideological gap between Douglas and Buchanan

hopeless to get the bill passed over the veto in January, 1860, but the eventual outcome was inevitable. A similar measure was enacted into law over Governor Black's veto during the seventh session.<sup>1</sup>

The preceding discussion is intended to provide insight into the growing anti-slavery sentiment among Nebraskans as the Civil War approached, in the belief that the slavery issue was the vehicle for the effective establishment of the Republican party in the territory. It is certain that Nebraska was never in any practical danger of becoming a slave state. The slavery issue did provide, however, a convenient, relatively safe, ideological weapon for those political opportunists bold and adroit enough to wield it to their own advantage. Elmer Dundy cast his ambitions for political fortune in the Republican forge, as did others during the years 1858 to 1860. While one could hardly be sure of the party affiliation or affections during the fifth session, by the sixth it was definite enough to positively identify personalities with parties.<sup>2</sup>

---

Democrats during the period, according to Morton and Watkins, Illustrated History, II, 47.

<sup>1</sup>Nebraska Territory, An Act to Prohibit Slavery, Laws of Nebraska (1861), Jan. 15, 1861, pt. 1, pp. 43-44.

<sup>2</sup>Nebraska Advertiser (Brownville, N. T.), Dec. 29, 1859, p. 2. Robert W. Furnas described the make-up of the Legislature. House: 26 Democrats; 13 Republicans. Council: 10 Democrats; 3 Republicans.

Elmer Dundy was off to an impressive start as a territorial official. During his first term in the Council, he introduced over forty bills ranging in scope from highly localized internal improvement measures for his home county to issues at the territorial level such as revision of election proceedings and schedules for court sessions. He favored the establishment of colleges and seminaries and obtained legislation for the incorporation of towns and town companies. Dundy received a sound practical education in territorial politics and probably chose many of his political friends during his first two years on the Council. His Council experience, coupled with his active law practice and unbounded personal ambition, would be necessary in the struggles to come. The next few years would thoroughly tax his supply of political savvy and partisan friends.

## CHAPTER III

### PARTY POLITICS AND PATRONAGE

1860-1868

Elmer Dundy's political fortunes skyrocketed during the years from 1860 to 1868. Having chosen the Republican party as his political affiliation, he engineered success after success for its candidates and for himself. Where political opportunity was found, there also was Dundy lurking nearby, scheming to turn it into personal advantage. He suffered a narrow escape from ruin in the elections of October, 1860. The loyalty of his partisan friends was strained, but in the end they sustained him. By skillfully playing his political cards, he rose to the very top levels of the Nebraska Republican hierarchy and was rewarded with a seat on the United States Court for the second judicial district of the territory. During the manipulations by prominent Republicans to gain statehood for Nebraska, he was wary and watchful, but remained mostly in the background. He then surprised everyone by securing for himself the first United States District Judgeship for Nebraska, a position that he held to his death nearly thirty years later. Dundy's ascension to high office in such a short period was, and will probably always be, a

controversial topic among historians. Most of the lobbying and bargaining that took place was behind the scenes and is regrettably lost. An examination of the facts that are available, however, provides a meaningful insight into the events of the period and the roles which Dundy played in the history of Nebraska.

With the passing of the summer of 1860, the bitter settlement of the county seat contest in Richardson County was concluded in a dramatic Dundy-led victory for Falls City. Amid threats against his life and a general hatred for himself outside Falls City, Dundy announced his intent to run again for his seat on the Council. His opponent was William C. Fleming, a Salem Democrat, who had served in the House during the last session.<sup>1</sup>

The election was held on October 9, 1860. Much the same atmosphere prevailed as in the volatile county seat elections of months past. Dundy actually received less votes than Fleming, but the Falls City election officials under the supervision of the county clerk, A. J. Deshazo of course, gave the certificate of election to Dundy. In so doing, Deshazo threw out the votes of three election precincts on the half-breed tract on the grounds that it was a reservation and the people thereon possessed no right to vote. This premise was extremely weak. Election precincts existed under

---

<sup>1</sup>David Reavis, "Falls City," Journal, June 23, 1934, p. 3.

law on the half-breed tract, and some of the residents had been voting effectively for some time. They voted in the August, 1858, election which placed Dundy on the Council in the first place.<sup>1</sup> In fact, Dundy was seated in 1858 because Charles McDonald had not been able to develop an argument to explain why the votes cast at St. Stephens precinct were not counted. St. Stephens rested squarely within the half-breed tract. Evidently, precedent was not a strong consideration as far as Dundy and Deshazo were concerned.

William Fleming filed notice of contest without delay. Charges of fraud and ballot-box stuffing were hurled against Dundy and the Falls City group. James Buchanan, one of three judges of election at Falls City and a Democrat, wrote J. Sterling Morton of frauds perpetrated by David Dorrington and S. H. Schuyler, the other two judges. Buchanan stated that they changed votes and stuffed the ballot-box where necessary to secure a heavy vote for Dundy.<sup>2</sup> William C. Fleming confided in Morton that he had uncovered "gross frauds" in favor of the Republicans in Pawnee County, which along with Richardson made up the representative district. His letter vividly described the tense political atmosphere in Richardson County

---

<sup>1</sup>Ibid. Also, Nebraska Territory, Council, Thomas W. Tipton rendering majority report of the committee on privileges and elections concerning the Dundy-Fleming contested election, 7th Sess., Dec. 26, 1860, Journal, pp. 68-69.

<sup>2</sup>Letter, James Buchanan to J. Sterling Morton, Oct. 27, 1860, Morton Papers, microfilm ed., roll 2.



as well as the fierce animosity of some of the people toward Dundy and his clique:

We have an interesting time in taking testimony here in the contest between me and Dundy. The board is composed of two of Dundy's tools and John W. Brinnegar. The board never fails to decide every controversial point in Dundy's favor. . . . Dundy's only hope is to patch up a mere pretext for obtaining the seat and expects that his partisan friends on the Council will sustain him right or wrong. Should Dundy succeed I greatly fear that it will lead to serious consequences in this county. Two thirds of our people are determined that Dundy shall not take and hold that seat. . . . They swear that the town of Falls City shall cease to be a harbor for thieves and scoundrels. They will destroy it.<sup>1</sup>

The Democratic press, both north and south of the Platte River, soon vented its emotions toward the Dundy-Fleming contest. The Democracy was losing ground throughout the territory and its organs were particularly vengeful in their attacks on Dundy. The Daily Omaha Nebraskian announced on October 27 that Fleming had won.<sup>2</sup> Soon after, the post-election shenanigans in Richardson County caught the attention of the Nebraskian editors, causing the attack to be pressed even more severely. A letter from "Truth" to the Nebraskian was carried both in that organ and in its South Platte counterpart, The Nebraska City News. "Truth" claimed to be a Salemite. He accused A. J. Deshazo and the deputy county

---

<sup>1</sup>Letter, William Fleming to J. Sterling Morton, Nov. 22, 1860, Morton Papers, microfilm ed., roll 2.

<sup>2</sup>Daily Omaha Nebraskian, Oct. 27, 1860, p. 2.

clerk of Pawnee County of collusion in throwing out the votes of the half-breed tract.<sup>1</sup> That Pawnee County official was none other than David Butler, who would cut a wide swath through Nebraska politics in later years.<sup>2</sup> The News printed a letter from "KADEA" in its November 17 edition, charging that Deshazo had lost the stomach for the fraudulent role required of him by the Falls City clique and had pleaded sick, asking Dundy himself to decide the case. Dundy, it was asserted, obliged by promptly issuing himself the certificate of election. "KADEA" stated that "Mr. Dundy is, or has been, the board of county commissioners, county clerk, and sheriff of this county for some time, indirectly; . . ."<sup>3</sup> The News and Nebraskian continued to slash at Dundy's character. The

---

<sup>1</sup>Nebraska City News, Nov. 10, 1860, p. 2. The same letter was printed in the Nebraskian, n.d., no page given.

<sup>2</sup>Ibid. "Truth" referred to Butler as the deputy county clerk and stated that he was a "Dundy tool." Butler was afterwards involved in the investigation into the Morton-Daily contested election. His signature appears on several depositions in the evidence submitted to the House. See U.S., Congress, House, Evidence and Other Papers Submitted in the Contested Election of Samuel G. Daily versus J. Sterling Morton as Delegate from the Territory of Nebraska in the Thirty-Seventh Congress, Misc. Doc. No. 4, 37th Cong., 1st sess., 1861, House Miscellaneous Documents, pp. 1-161. Butler was politically aligned with the Republican party and later became the first governor of the State of Nebraska. His frequent involvement with Dundy during the years will be treated in the course of this study.

<sup>3</sup>Nebraska City News, Nov. 17, 1860, p. 2.

latter referred to him as "an unprincipled Black Republican pot house politician."<sup>1</sup>

The Republican press did not defend the Dundy case with a vitality comparable to the Democratic attack. Of course The Broad Axe was solidly behind Dundy, its editor being one of the Falls City clique, but The Nebraska Republican, an Omaha organ, quietly reported that Dundy had been elected and let the matter drop.<sup>2</sup> The Nebraska Advertiser, under the editorial guidance of Robert W. Furnas, refused to answer the probes of its rival, the News, concerning the matter. The Brownville organ did state its opinion that the half-breed tract was not a part of Nebraska Territory but an Indian reservation, without any voting rights whatever.<sup>3</sup> Dundy's press seems frighteningly weak in comparison with the Nebraskian and the News.

Dundy proved that he could be successful without the support of either press or populace. He was seated on the Council when it opened its seventh session on December 3,

---

<sup>1</sup>Daily Omaha Nebraskian, Nov. 1, 1860, p. 2.

<sup>2</sup>Broad Axe, (Falls City, N. T.), Nov. 20, 1860, p. 2; Jan. 1, 1861, p. 2; Jan. 3, 1861, p. 2; Jan. 15, 1861, p. 2. While its support of Dundy can hardly be doubted, its coverage of the contested election tends to be very objective, reflecting little of the emotional outbursts of the Democratic press. Nebraska Republican, Oct. 10, 1860, p. 2.

<sup>3</sup>Nebraska Advertiser, (Brownville, N. T.), Dec. 27, 1860, p. 2.

1860.<sup>1</sup> Opening day provided Dundy his first opportunity to officially declare his disrespect and animosity toward J. Sterling Morton. Morton, then acting as Secretary of the Territory, was called in to administer the oath of office to the Council. When Morton proffered the oath, Dundy refused it contemptuously:

I have often been sworn but I have not yet taken an oath. I desire to say to the Secretary that neither he nor any other man, can cram an oath down my throat, so help me God. It is an insult to which I will not submit, and Secretary Morton and his friends and admirers shall find that they cannot insult me with impunity.<sup>2</sup>

Governor Samuel W. Black had to be called to the Council to affirm Dundy.<sup>3</sup> Dundy's threat was sincere and was not overstated. In the coming months and years, J. Sterling Morton would feel the full brunt of Dundy's hostility. During the decade of the sixties, there would be fierce competition that would, in each and every instance, result in triumph for Dundy and his party over the Nebraska Democracy led alternately by Morton and Dr. George L. Miller.

---

<sup>1</sup>Nebraska Territory, Council, 7th Sess., Dec. 3, 1860, Journal, p. 3.

<sup>2</sup>Daily Omaha Nebraskian, Dec. 8, 1860, no page given. Printed in Morton and Watkins, Illustrated History, I, 440.

<sup>3</sup>Nebraska Territory, Council, 7th Sess., Dec. 3, 1860, Journal, p. 4.

William Fleming's notice of contest was introduced into the Council on December 6.<sup>1</sup> The fears that he had confided earlier to Morton were soon realized. One of the first actions of the Council was to bar the editor of the Nebraskian from the Council chambers for his printed assaults on Dundy and the Republican members in general.<sup>2</sup> On December 26, the contested election was reported out of the Committee on Privileges and Elections. Councilman Thomas W. Tipton presented the majority report to the Council. Tipton attested that the votes of the half-breed tract were illegal but chose not to decide the case on that premise. He pointed out that Dundy had proved that several foreigners, mostly Canadians and Germans, had voted for Fleming. He placed upon Fleming the responsibility for proof that these persons were eligible to vote. He also pointed out that several voters had cast ballots for Fleming outside their precinct, contrary to election laws then in effect. Tipton concluded his report by criticizing the methods and procedures used by Fleming in contesting the election. He inferred that Fleming had been "careless and negligent" and therefore should be prepared to take the consequences. His summation declared that "without any reference to the half-breed reservation . . . , your

---

<sup>1</sup>Ibid., Dec. 6, 1860, p. 35.

<sup>2</sup>Ibid., Dec. 17, 1860, pp. 55-56.

committee are of the opinion that William C. Fleming is not entitled to a seat in this Council."<sup>1</sup>

John B. Bennett presented the case for Fleming the next day in the form of a minority report. The half-breed tract was not, according to Bennett, an Indian reservation, nor was it ever intended to be; therefore, those votes could be legally counted for Fleming. Bennett then launched into accusations of ballot-box stuffing at Falls City. He attacked the premise that Fleming must prove the right of the foreigners to vote. As to the allegation that some Fleming supporters had voted outside their precincts, he charged that Dundy himself was guilty of that offense. Bennett rested his case on the legality of the votes from the half-breed tract and the rejection of the entire Falls City vote on grounds of fraud.<sup>2</sup>

The Dundy-Fleming contest was decided on December 28. The vote of the Council resulted in a six-to-six tie. The members then elected to allow the decision of the President, William H. Taylor, to decide the issue. Since Taylor had voted for Dundy, the case was closed.<sup>3</sup> It had been a test of

---

<sup>1</sup>Ibid., Thomas W. Tipton rendering the majority report of the Committee on Privileges and Elections concerning the Dundy-Fleming contested election, Dec. 26, 1860, pp. 68-73.

<sup>2</sup>Ibid., John B. Bennett rendering the minority report of the Committee on Privileges and Elections concerning the Dundy-Fleming contested election, Dec. 27, 1860, pp. 74-79.

<sup>3</sup>Ibid., Dec. 28, 1860, pp. 109-10.

both conscience and party loyalty. With the exception of only one man, John M. Thayer, the Republicans had stood fast behind their cohort.<sup>1</sup> Elmer Dundy had climbed one rung higher on the ladder of success.

Dundy's case might have received more attention in the territory but for another hard-fought election that took place simultaneously. Samuel G. Daily, incumbent Republican delegate to the United States Congress, was involved in an extremely close battle at the polls against J. Sterling Morton, golden boy of Nebraska's waning but vocal Democracy. Initial returns from the October 9 election showed a slim majority for Morton, and, on the basis of those returns, Governor Black issued a certificate of election to the young Democrat.<sup>2</sup> Daily immediately filed notice that he would contest the election, cheered on by bitter attacks on the governor and the Democrats by the Republican press.<sup>3</sup> Later on, Governor Black uncovered gross frauds in the election proceedings in L'eau Qui Court County, which had returned a large majority for Morton. Black promptly issued a subsequent certificate of election to Daily without Morton's knowledge.

---

<sup>1</sup>John M. Thayer was an adversary of Dundy for as long as he was active in Nebraska politics. He felt the full wrath of Dundy's vengeance in the senatorial election of 1875, which will be treated later in this thesis.

<sup>2</sup>Morton and Watkins, Illustrated History, I, 446.

<sup>3</sup>Nebraska Advertiser, (Brownville, N. T.), Nov. 8, 1860, p. 2; Nov. 15, 1860, p. 3.

Both candidates set out for Washington to take their seat in the special session of Congress. Apparently Daily was first to present his credentials and was seated. Morton reported to the House only to find that the seat for which he held a certificate of election was still held by the Republican incumbent!<sup>1</sup>

Dundy was probably as inspired by his hatred for J. Sterling Morton over his recent involvement in the Fleming contest, the old bank bill affair, and the oath incident, as he was by the Republican standard-bearer, Daily. At any rate he leaped to Daily's cause and entered his employ as an attorney. He traveled over the territory during the winter months of 1860-1861, gathering depositions and evidence in Daily's behalf.<sup>2</sup>

Dundy was called upon to testify as a witness during the proceedings. His character and reputation were assailed

---

<sup>1</sup>Addison E. Sheldon, Nebraska, The Land and the People (3 vols.; Chicago and New York: The Lewis Publishing Company, 1931), I, 307-08. (Hereinafter cited as Sheldon, Nebraska.) Morton and Watkins, Illustrated History, I, 444-55 provides detailed coverage of the Morton-Daily contest. Sheldon will be cited, however, because the method of presentation is clearer in his work.

<sup>2</sup>Letter, William Fleming to J. Sterling Morton, Nov. 22, 1860, Morton Papers, microfilm ed., roll 2. The entire text of the evidence gathered in the Morton-Daily case is included in U.S., Congress, House, Evidence and Other Papers Submitted in the Contested Election of Samuel G. Daily versus J. Sterling Morton as Delegate from the Territory of Nebraska in the Thirty-Seventh Congress, Misc. Doc. No. 4, 37th Cong., 1st Sess., 1861, House Miscellaneous Documents, pp. 1-161.



without mercy by the Morton attorneys. They dug deeply into his role in previous contested elections, his participation in the county-seat struggle, and his relative unpopularity in some parts of Richardson County. Falls City was labeled as a "hotbed" of " . . . itinerant abolition emissaries and negro thieves, who make [it] their headquarters and chief place of rendezvous . . ." Dundy countered questions and allegations about the underground railroad in Falls City by declaring that he knew only of James Buchanan, a Democrat and friend of Morton, as being involved in such an activity. Dundy made the following statement as to his personal political philosophy under cross-examination by Morton's attorneys:

I am a conservative republican; I am in favor of the Constitution as it is; opposed to any amendments; in favor of the preservation of the Union at any cost and at all hazards.<sup>1</sup>

All the evidence was placed before the House of Representatives in July, 1861. Debates, however, did not take place until nearly a year later. After all, the nation was torn by rebellion, and the Congress had vital business to attend to rather than getting overly excited about two squabbling politicians from far-off Nebraska. When the issue was taken up, both contestants had champions to speak in their behalf. Morton had the able support of William A.

---

<sup>1</sup>See Dundy's testimony as witness for Daily in the House Document cited above, pp. 40-49.

Richardson of Illinois, Daniel W. Voorhees of Indiana, and George H. Pendleton and Clement L. Vallandigham of Ohio. Daily's defense was managed by Henry L. Dawes of Massachusetts, chairman of the committee on elections.<sup>1</sup>

Dundy was the target of a considerable portion of Morton's articulate oratory in presenting his case. He assailed Dundy's character and reputation and criticized his method of impeaching key Morton witnesses with damning evidence concerning their personal shortcomings. Morton did not stop until he had thoroughly mutilated the Dundy image with this scalding description of the man:

This Dundy is between thirty and thirty-five years of age, comparatively a young man, yet notorious in the community, afraid, as he admits in his own evidence, to visit a town in his own county, because an outraged community have threatened his life; eminent for having sworn falsely before a committee of investigation of the Legislative Assembly, and impeached in this case. He is one of those smooth, slippery beings that glide into corruption and rascality as snakes into slimy matter; his head is so full of base schemes that hair already refuses to hide its deformities; his very walk a sort of dodge--the sheriff quickstep; his voice villainously vicious; his mean eye cast down; all his features cadaverous and miserable; his face is indorsed "without recourse" by the hand of God himself. Had I a full-length photograph of this man to exhibit, his<sup>2</sup> testimony would be impeached by its contemplation.

---

<sup>1</sup>Sheldon, Nebraska, I, 307-08. The debates in the House are contained in: U.S., Congress, House, Nebraska Contested Election, 37th Cong., 2nd Sess., May 7, 1862, Congressional Globe, XXXII, pt. 3, 1995-2010.

<sup>2</sup>U.S., Congress, House, Nebraska Contested Election, 37th Cong., 2nd Sess., May 7, 1862, Congressional Globe, XXXII, pt. 3, 2003-004.

Morton's contest was unsuccessful despite his personal oratory and the efforts of his supporters.<sup>1</sup> He probably failed to realize the Republican strength in the House. Morton was down, but he could not be counted out. He had considerable popular support and a tireless personal ambition comparable to that of his enemy, Dundy. The difference between the two, at that point in time, appears to be the consistency of Dundy in being on the winning team. For a frustrated Morton, that must have been difficult to accept.

Daily's relationship with Dundy became even closer during the months to come. The influence of the former in Washington was considerable already, and with the Republican ascendancy in the national legislative and executive branches, political patronage was sure to follow. In a letter to Abraham Lincoln in April, 1861, Daily requested appointments to important Nebraska posts for his fellow Republicans. Dundy was among those being recommended for a position, that of Receiver of the United States Land Office at Nebraska City.<sup>2</sup> Though he was never chosen for that office, he could rest assured that

---

<sup>1</sup>Ibid., pp. 2009-010. The House refused to decide the issue directly but voted 69 to 48 to lay the subject on the table, which resulted in Daily retaining his seat.

<sup>2</sup>Letter, Samuel G. Daily to Abraham Lincoln, President of the United States, April 4, 1861, p. 5. Filed at Legislative, Judicial, and Diplomatic Records Division, National Archives and Records Service, RG 59, Washington, D.C. Photocopy furnished by that office.

his loyalty would stand him in good stead in future considerations.

Elmer Dundy went to the Republican convention at Omaha on August 20, 1862, with proxy for all eight delegate votes from Richardson County.<sup>1</sup> He was elected chairman of the convention, an event that indicates his ascension to the top circle of Republican leaders.<sup>2</sup> Dundy managed the campaign of his ally, the incumbent Samuel G. Daily, who had a rough time of it, being opposed by the very respected William H. Taylor of Otoe County, and other hopefuls. Daily emerged triumphant only after Taylor dropped out of the race following the forty-sixth ballot.<sup>3</sup>

Taylor's withdrawal from the contest at the convention was a bitter one that produced vindictive action on his part. He fought vigorously against Daily during the latter's campaign against the Democratic opponent John F. Kinney. Taylor distributed a pamphlet exposing the bargain, corruption, and bribery of the Dundy-managed Daily campaign in the convention. Taylor assailed Dundy's character in the most ignoble terms and accused certain Daily supporters of furnishing whiskey

---

<sup>1</sup>Nebraska Tri-Weekly Republican, (Omaha City, N. T.), Aug. 20, 1862, p. 2.

<sup>2</sup>Ibid., Aug. 25, 1860, p. 2.

<sup>3</sup>Sheldon, Nebraska, I, 317. People's Press, (Nebraska City, N. T.), Aug. 28, 1862, p. 2.

and money to those who would vote for their candidate. He went on to charge the Daily group with fraud and bribery in obtaining the delegate votes of Nemaha and Richardson Counties. Taylor was particularly critical of the procedures used in electing prospective convention delegates in Richardson County. He accused Dundy and David Dorrington of gross dishonesty in changing the method of selecting delegates at the last minute without allowing the people sufficient time to react. Taylor alleged that Dundy had misused his powers as convention chairman in the interest of Daily, and concluded with an acidulous rebuke of the latter's activities while serving as Territorial Delegate.<sup>1</sup>

Taylor was joined in his rebuke of Daily by The Nebraska City News which charged Falls City with corruption in the conduct of the general election in October. The News asserted that Dundy and Daily were promising commissions in a cavalry regiment soon to be formed as bribes to gain voter support.<sup>2</sup> All the furor, however justified it may have been, proved to be of no avail as Daily won handily. For the first time

---

<sup>1</sup>William H. Taylor, Address to the Citizens of Nebraska Territory Against the Re-Election of Hon. Samuel G. Daily to Congress, Sept. 1, 1862, pp. 1-8. Published in pamphlet form. Original copy on hand at Nebraska State Historical Society, Lincoln. Dorrington's answer to Taylor may be found in: Public Letter, David Dorrington to William H. Taylor, printed in People's Press, (Nebraska City, N. T.), Sept. 25, 1862, p. 2.

<sup>2</sup>Nebraska City News, Oct. 18, 1862, no page given; excerpted in Morton and Watkins, Illustrated History, I, 473.

since 1854, a delegate took his seat in Congress without contest.<sup>1</sup>

At this juncture, Dundy's political career took a new turn. For unknown reasons, he chose not to run for the Council in 1862. Perhaps his influence among the Republicans was somewhat shaken after such formidable attacks upon his character and political method as had been levied by both Republicans and Democrats alike. He may have had a hand in the election of his successor to the Council, David Butler--the infamous deputy county clerk of Pawnee.<sup>2</sup> It seems safe to conclude that Dundy decided to cast all his lots with the success of Daily, in hopes of securing a lucrative appointment.

Dundy was not to be disappointed. Judge Joseph C. Streeter, presiding United States Judge for the second district, died in February, 1863.<sup>3</sup> As a result of Daily's influence at the national capitol, Dundy was appointed to fill the post on June 2, 1863.<sup>4</sup>

Nebraska Territory was authorized three federally appointed associate justices. The Territorial Legislature

---

<sup>1</sup> Ibid.

<sup>2</sup> People's Press, (Nebraska City, N. T.), Oct. 27, 1862, p. 2.

<sup>3</sup> Nebraska Tri-Weekly Republican, (Omaha City, N. T.), Feb. 23, 1863, p. 2.

<sup>4</sup> Edmunds, Pen Sketches, p. 400.

defined the geographic boundaries of their jurisdiction. Dundy's district encompassed all the region south of the Platte River and was composed of one-half the organized counties of the territory. The three associate justices met once a year at Omaha to form the Territorial Supreme Court to handle appeals or matters brought before it under writs of error. There were few appeals in those days. The expense was usually too high to manage, and since the district judges, in bank, comprised that higher court, appeals must have seemed a waste of time and money. Dundy's appointment was for four years, and he seems to have discharged his duties admirably during his tenure of office.<sup>1</sup>

Dundy's appointment to the territorial bench brought forth the jealous wrath of an unsuccessful candidate for that position. Oliver P. Mason of Nebraska City had aspired to the post and had been thoroughly disappointed at Dundy's selection over him. He found his opportunity to get even

---

<sup>1</sup>The Kansas-Nebraska Act, Statutes at Large, X, sec. 9-10, 280-81 (1854). Erwin C. Surrency, "Federal District Court Judges And the History of Their Courts," Federal Rules Decisions, XL (St. Paul, Minn.: West Publishing Company, 1966), p. 236. Towle, "Judge Elmer S. Dundy," pp. 87-88. An excellent brief description of the territorial court system may be found in: Fred W. Hons and Delbert A. Bishop, compilers, Preliminary Inventory [of] Records of the United States District Court for the District of Nebraska (Kansas City: Federal Records Center, [unpublished, reproduced for staff use only], Jan. 1967), pp. 3-4. (Hereinafter cited as Hons and Bishop, Inventory of U.S. District Court Records [Nebraska].)

soon after Dundy and William Pitt Kellogg held the term of supreme court at Omaha City in the autumn of 1863. Certain of Dundy's attorney friends at Nebraska City desired to express their opinion as a bar, regarding the relative efficiency of the Dundy court which had recently adjourned. These persons were anxious to pass resolutions complimenting Dundy on his judicial ability. The resolutions were to be forwarded to Washington to urge the speedy confirmation of Dundy by the Senate. Mason and his cohorts effectively blocked the passage of those resolutions and assailed Dundy's character in the most severe terms even for the jargon of that period. Dundy was not without supporters, however, and their testimony in his behalf was by far the more logical and astutely stated. Mason was criticized for his jealous attempt at vengeance. Even William H. Taylor spoke favorably of Dundy. Logic was not the order of the day, however, and Dundy's reputation received another serious blow.<sup>1</sup> He did receive some consolation from resolutions passed by the bar of Douglas County a few days later, expressing their confidence in his ability and judgment. The Omahans declared their disapproval of the activities of the Otoe County bar in censuring Dundy.<sup>2</sup>

---

<sup>1</sup>Nebraska Daily Press, (Nebraska City, N. T.), Nov. 12, 1863, pp. 2-3.

<sup>2</sup>Ibid., Nov. 20, 1863, p. 2.



Mason did not relinquish his pressure on Dundy after his relative success at the Otoe County bar. He introduced a resolution in the Council, advocating that Dundy's appointment by President Lincoln ought not to be confirmed in the Senate.<sup>1</sup> It was never pressed to a vote but was an indication of the animosity of some South Platte Republicans toward "the Dominant D's--Samuel G. Daily and Elmer S. Dundy."<sup>2</sup>

This writer has been unable to locate detailed information concerning the tenure of Dundy on the territorial bench. The press of the period was much too involved with the War of the Rebellion to print much information on the activities of the court, and the official records cast very little light on the events that must have been a vital part of each case. Information on the proceedings in the Dundy court studied by this writer involved to a large degree the selling of spirituous liquors to the Indians. There are very few records of the second district prior to the appointment of Dundy to the bench, and those compiled by the Judge himself, while definitely more complete, are still much too limited

---

<sup>1</sup>Nebraska Territory, Council, 9th Sess., Jan. 11, 1864, Journal, p. 56. The Nebraska Advertiser, (Brownville, N. T.), Feb. 4, 1864, p. 2, announced the Senate's confirmation of Dundy.

<sup>2</sup>Sheldon, Nebraska, I, 324.

and brief for effective research.<sup>1</sup> Perhaps the fact that Dundy did keep some records is an indication of an improvement in the administration of the business of the court. The officers of the second judicial district included: Rienzi Streeter, clerk; James Sweet, special United States District Attorney; and Phineas W. Hitchcock, United States Marshal.<sup>2</sup> The dearth of existing information precludes any accurate judgment as to the judicial competence of Dundy or his interpretation of the law during the territorial days.

The Nebraska Republicans decided to disband and reorganize under the Union party label in early 1864. It is not known whether or not Dundy attended that party's conventions in May and August, 1864, but his old ally Daily attended as an alternate delegate. The Nebraskian saw the hand of Daily in the selection of Phineas W. Hitchcock as the Union party's candidate for delegate to Congress.<sup>3</sup> Hitchcock was opposed by the Democratic candidate, Dr. George

---

<sup>1</sup>Records of the United States Courts for the District of Nebraska have been transferred to the Federal Records Center in Kansas City, Mo. See Hons and Bishop, Inventory of U.S. District Court Records (Nebraska), pp. 5-6.

<sup>2</sup>U.S., District Court of Nebraska Territory, 2d Judicial Dist., 1862-1867, Complete and Final Record Book, p. 79. James Sweet later became notorious as the state treasurer during the fiscal scandals of Governor David Butler's administration.

<sup>3</sup>Morton and Watkins, Illustrated History, I, 491.

L. Miller of Omaha. The former won by a large margin.<sup>1</sup> Republican control of the Nebraska political scene was as real under the Union label as it had been under its original title. Through it all, Elmer Dundy was evidently satisfied to wait in the wings for a later opportunity in which to play his hand.

This wariness on Dundy's part continued through the dubious activities of the pro-statehood Republicans in the years between the war and Nebraska statehood. He seems to have been where the action was, but his top-billing had given way to other Republican or Union party members. He was described as unfriendly to the reconstruction policies of President Andrew Johnson in July, 1866.<sup>2</sup> As he waited and watched, he observed his contemporary on the bench, William Pitt Kellogg, join with his old adversary, O. P. Mason, to construct and manipulate passage of the new state constitution required for entry into the Union.<sup>3</sup> He may have been influential in the selection of his protege, David Butler,

---

<sup>1</sup>Ibid., p. 493.

<sup>2</sup>Omaha Weekly Herald, July 13, 1866, p. 2. Dundy's secretive manner must have been difficult to diagnose. Only four months earlier the Herald had placed him on the side of presidential reconstruction. See Morton and Watkins, Illustrated History, I, 517.

<sup>3</sup>Sheldon, Nebraska, I, 338-51. Dundy does not appear to have been in the forefront of the statehood movement, but he was alleged to be a firm supporter. See p. 351.

as the Union party's nominee for Nebraska's first state governor.<sup>1</sup> No doubt it gave him great pleasure to see Butler go on to triumph at the polls over his old enemy, J. Sterling Morton. Dundy's participation in the turbulent political events of 1866 cannot be studied in detail because data are insufficient to link him to the events. It has been alleged that Dundy aspired to a senatorial seat in the elections of 1866 prior to statehood.<sup>2</sup> This is doubtful. There is nothing in the press or in official records to indicate any such intention. One historian states that Dundy was the "acknowledged tactician of the Republican phalanx, while the prolific brain and heavy executive hand of Butler was everywhere efficiently employed."<sup>3</sup> John M. Thayer and Thomas W. Tipton, both military leaders during the War of the Rebellion, were chosen to be Nebraska's first senators.<sup>4</sup> Perhaps Morton and Watkins gave as correct an interpretation of his activities during this period as was possible:

Dundy "The Cautious," but of the longest head, kept more in the background, and his productive cunning in this instance presently brought him

---

<sup>1</sup>Morton and Watkins, Illustrated History, I, 517, 517n-518, 518n.

<sup>2</sup>Towle, "Judge Elmer S. Dundy," p. 89.

<sup>3</sup>Andreas, Nebraska, I, 126.

<sup>4</sup>Nebraska Legislature, Senate, 1st Sess., July 11, 1866, Journal, p. 24.

the appointment to the federal district bench by President Johnson and confirmation by a clashing Senate.<sup>1</sup>

Dundy's campaign for nomination to the federal bench in the new state was a hard-fought and bitter contest. The decisive engagements which must have taken place in closed unrecorded caucus, have effectively thwarted thorough examination by historians. A study of the writings of the territorial press appears to be the best way to investigate the issue.

As early as April 5, 1867, only weeks after Nebraska's entry into the Union, The Nebraska City News reported that William F. Lockwood, justice of the third district since 1861, had been appointed to the federal judgeship.<sup>2</sup> The Omaha Weekly Republican expressed relief when the "copper-head" Lockwood was denied the position by the Radical Senate.<sup>3</sup> It seemed certain to the editor of the Republican that a man of their own political inclination would be appointed.

The News conceded the probability that a Republican would be successful in securing the position. That organ denounced the alleged appointment of a gentleman from Indiana and expressed tacit support for either Oliver P. Mason or George B. Lake. They even made reference to Dundy as a possible candidate, but their tone was more sarcastic than

---

<sup>1</sup>Morton and Watkins, Illustrated History, I, 546.

<sup>2</sup>Nebraska City News, Apr. 5, 1867, p. 2.

<sup>3</sup>Omaha Weekly Republican, May 31, 1867, p. 2.

serious: "Dundy's appointment next after that of a Democrat, would make our party the most political capital. His rottenness is good radicalism."<sup>1</sup> The Republican announced the appointment of Lake on Christmas Day, 1867. This organ was so cocksure of Lake's position that its editorial staff began to speculate as to who would replace him on the bench of the State Supreme Court.<sup>2</sup> The Nebraska Commonwealth, a young Lincoln newspaper, echoed the Republican's announcement, but later both papers had to admit that their intelligence had been premature. The Commonwealth expressed some sympathy for the Senate in having to make such a difficult choice, and a later issue went even further to list other prominent gentlemen as possible recipients of the position. Experience Estabrook, Clinton Briggs, Champion S. Chase, John Sahler, and J. E. Kelley were among those listed.<sup>3</sup> Elmer Dundy was not one of them. The organs of his own Republican party obviously failed to consider him a serious contender for the prize.

On February 5, 1868, the Republican announced without enthusiasm that Colonel Henry G. Worthington had been

---

<sup>1</sup>Nebraska City News, Dec. 4, 1867, p. 2.

<sup>2</sup>Ibid., Dec. 23, 1867. Omaha Weekly Republican, Dec. 25, 1867, p. 4.

<sup>3</sup>Nebraska Commonwealth (Lincoln), Jan. 11, 1868, p. 2. Omaha Weekly Republican, Feb. 5, 1868, p. 2.

appointed.<sup>1</sup> Worthington evidently had the support of Senator Thayer, but in Nebraska he was generally considered to be an itinerant carpetbagger.<sup>2</sup> Worthington withdrew his name from consideration in March. The Omaha Daily Herald, a Democratic organ under the editorial guidance of Dr. George L. Miller, asserted that Lake, Dundy, and Mason had "filed vile and indecent charges" against him.<sup>3</sup> The Democrats, who first supported Lake and then Mason, bitterly opposed the nomination of Worthington and let the President know their feelings in no uncertain terms. Their final candidate for the position was James M. Woolworth, a prominent Omaha lawyer and friend of both Miller and Morton.<sup>4</sup> Woolworth was never a strong contender.

The Commonwealth expressed exasperation with the whole affair and declared it was "ready to welcome any sound Nebraska Republican of fair legal attainments to the position, . . ."<sup>5</sup> The situation became further befuddled by the

---

<sup>1</sup>Omaha Weekly Republican, Feb. 5, 1868, p. 2.

<sup>2</sup>Morton and Watkins, Illustrated History, III, 36, 37n.

<sup>3</sup>Ibid., pp. 36n-37n.

<sup>4</sup>The leaders of the Nebraska Democracy carried on an active correspondence with the Chief Executive concerning the appointment controversy. See telegrams addressed to President Andrew Johnson from J. Sterling Morton, Dec. 6, 1867; George L. Miller, Dec. 16, 1867; Morton, Dec. 18, 1867; Morton, et al., Jan. 13, 1868; Morton, Miller, et al., Jan. 30, 1868, and Feb. 3, 1868. The Andrew Johnson Papers, Library of Congress, microfilm edition, 1963, roll 41.

<sup>5</sup>Nebraska Commonwealth (Lincoln), Feb. 22, 1868, p. 2.

entrance of still other politicians into the public view as possible contestants. The names of John I. Redick and a gentleman named Pottenger, of Plattsmouth, were tossed into the air by a frustrated press.<sup>1</sup> It was all to no avail. When the scramble was finally decided, it was none other than the wily Elmer Dundy who emerged victorious.

It is safe to say that no one, except possibly himself, expected Dundy to get the office. The Republican announced his appointment rather unenthusiastically but went on to say that his success would be to the special chagrin of the copperheads (Democrats) because of his stalwart Republicanism.<sup>2</sup> The News quickly answered that neither the Republican nor Dundy should flatter themselves on the hatred of the Democrats, who would not waste their time on them. Dundy's gold watch escapade concerning the old bank bill was again thrown into his face.<sup>3</sup> The Herald pitched into a caustic display of amazed sarcasm and chided the Republicans who were probably as surprised as the rest of Nebraska: "The ghost of the Richardson County reprobate affrights the souls of divers and sundry adversaries. It is a shell thrown into their [Republican] camp. . . . It is a delightful muddle." The

---

<sup>1</sup>Morton and Watkins, Illustrated History, III, 36n.

<sup>2</sup>Omaha Weekly Republican, Apr. 15, 1868, p. 2.

<sup>3</sup>Nebraska City News, Apr. 17, 1868, p. 2.



"Herald heaped ridicule upon the helpless Nebraska Senators, Thayer and Tipton: "Dundy threatens death and destruction to any Senatorial axe-grinder who shall come across his path in the journey to the United States Judgeship. . . ." The Herald announced Dundy's confirmation amid claims of great rejoicing among the infamous whiskey and Indian rings. An amused farewell was bid to the many "scramblers" who had sought the prize in vain.<sup>1</sup>

Little can be said concerning Dundy's tactics in attaining the appointment. The doors of history are probably forever closed on the secret bargaining that must have taken place. Government documents do not even mention the appointment, nor even the fierce controversy that supposedly occurred between the President and the Senate in consideration of the unsuccessful candidates. Dundy is known to have been in Washington at the time, but his movements there cannot be traced.<sup>2</sup> The influence of prominent statesmen cannot be proved. William Bigler was no longer in the Senate, but Edwin Towle asserted that he was important in

---

<sup>1</sup>Omaha Weekly Herald, Apr. 8, 1868, pp. 1-2; Apr. 15, 1868, p. 2.

<sup>2</sup>Letter, Elmer S. Dundy to President Andrew Johnson, Apr. 14, 1868, The Andrew Johnson Papers, microfilm ed., roll 41. Dundy's letter expressing thanks for the appointment was written in Washington, D. C.

Dundy's nomination.<sup>1</sup> Samuel G. Daily was dead. Senator John M. Thayer is known to have supported another aspirant at least during the initial stages; he may have had some influence in Dundy's behalf after the withdrawal of Worthington.<sup>2</sup> It is not known what Senator Tipton's sentiments were on the matter. It is known that petitions in Dundy's favor were circulated in Peru, in Nemaha County, but it is doubtful that any widespread effort took place in the state; if it had it would have drawn more attention in the press.<sup>3</sup>

Elmer Dundy, with no support from press, party, or populace, had engineered another fantastic political coup. For lack of available evidence to the contrary, the just laurels must be awarded to him alone. Dundy, at thirty-eight years of age, had reached the top rung on his ladder of success. His tenure on the United States bench would last until his death nearly thirty years later. His judicial decisions and interpretations were to have a profound effect upon the laws of the land and on the growth and welfare of Nebraska.

---

<sup>1</sup>William Bigler did correspond with Johnson during his presidency, but no mention of Dundy occurs within these letters that have been preserved. See Library of Congress, Index to the Andrew Johnson Papers, President's Papers Index Series (Manuscript Division, reference dept.: Washington, D.C.: Library of Congress Press, 1963), p. 8. Towle, "Judge Elmer S. Dundy," p. 83.

<sup>2</sup>Morton and Watkins, Illustrated History, III, 37n. Sheldon, Nebraska, I, 401.

<sup>3</sup>Nebraska City News, Apr. 6, 1868, p. 2.

## CHAPTER IV

### JURIST - POLITICIAN - PUBLIC FIGURE

1868-1879

The appointment of Elmer Dundy to the federal district bench brought to the man a new dimension of power from which to affect the course of history. The 1870s were productive, if sometimes stormy, years of judicial service on Dundy's part. The pestilence of written assaults from the press on his character and court was a periodic nuisance, but there is no evidence that it really bothered him. After all, he was quite used to it by the seventies. The activities of the press seemed to intensify as Dundy maneuvered for political advantage from time to time. In no way was his appetite for political power satiated by his new appointment. True, much of his political agitation was behind the scenes, but his extensive lobbying and participation in power plays impacted with no mean result on the political face of Nebraska. The seventies witnessed several important judicial decisions that affected virtually all Nebraskans in one way or another. The railroads, though a great benefit to the state, were rapidly becoming targets of popular animosity. The conflicts between the two were arbitrated for a large part by the

federal court of which Dundy was a key figure. The close of the decade brought the most well-known decision of Dundy's judicial career, in the trial of Standing Bear, chief of the Poncas. Despite the demands of a prestigious position on the bench and frequent indulgence in politics, Elmer Dundy was also involved in active public service that involved little or no profit to himself. Apparently his involvement was completely unselfish and performed only in the interest of his fellow men. The 1870s were probably the most diversified and productive of Elmer Dundy's life.

The State of Nebraska was constituted as one judicial district on March 25, 1867. Its officers, a district judge, a marshal, and a district attorney were to be appointed by the President with the advice and consent of the Senate.<sup>1</sup> General Silas A. Strickland was appointed as district attorney and Casper E. Yost appointed marshal soon after statehood, but no judge was designated until April, 1868.<sup>2</sup> The annual salary of the district judge was fixed by law at \$3,500. Sessions of district court were to be held at Omaha on the first Mondays of May and November each year. The session of the United States Circuit Court would be held at the same

---

<sup>1</sup>An Act to Provide for a District and a Circuit Court of the United States for the District of Nebraska, Statutes at Large, XV, sec. 1, 5 (1867). (Hereinafter cited as Act of March 25, 1867, Statutes.)

<sup>2</sup>Morton and Watkins, Illustrated History, III, 36n.

time pursuant to the same law. Nebraska was designated a member of the Eighth Judicial Circuit. Until a judge could be appointed for the new district the district judge for Iowa was to act.<sup>1</sup> The Supreme Court justice responsible for the eighth circuit was Samuel F. Miller.<sup>2</sup> Judge J. M. Love of Iowa organized the first United States Court for Nebraska in May, 1867,<sup>3</sup> and Judge Miller himself visited Omaha to hold circuit court the following November.<sup>4</sup> Elmer Dundy first convened the court in May, 1868, only weeks after his appointment.<sup>5</sup>

A significant change in the judicial system occurred as a result of a law passed in April, 1869. Rules requiring Supreme Court justices to hold court in the several judicial circuits were relaxed. Federal judges were appointed for each of the several circuits. Courts at the circuit level

---

<sup>1</sup>Act of March 25, 1867, Statutes, XV, sec. 4, 2, 7, pp. 5-6 (1867).

<sup>2</sup>U.S., Supreme Court, A Complete Indexed Digest of the United States Supreme Court Reports from the Organization of the Court in 1789 to October Term, 1894 (4th ed.; 3 vols.; Rochester, N. Y.: The Lawyers Cooperative Publishing Co., 1894), I, vi, lxxiii-lxxvi.

<sup>3</sup>Omaha Weekly Herald, May 10, 1867, p. 2. During the initial session held by Judge Love, Dundy was admitted to practice on June 27, 1867. U.S. Court records, Omaha, Journal of Admission to Practice 1867-1911.

<sup>4</sup>Omaha Weekly Herald, Nov. 14, 1867, p. 2. Omaha Weekly Republican, Nov. 13, 1867, p. 3.

<sup>5</sup>Omaha Weekly Republican, May 13, 1868, p. 3.

could be convened and cases heard by the justice of the Supreme Court assigned to that circuit, or the circuit court judge, or by the district court judge, or by any combination of the above, or by any one judge alone. The annual salary of the circuit court judges was set at \$5,000. Justices of the Supreme Court were required to attend at least one term of the circuit court in each district of his assigned circuit during a two-year period.<sup>1</sup> John F. Dillon, chief justice of the Iowa Supreme Court, was nominated by President Grant to fill the position of judge for the eighth circuit.<sup>2</sup> Judges Dillon and Dundy made up what was, in essence, a judicial team for many terms of federal court held in Omaha during the 1870s.

The first case tried in the Dundy court to draw widespread popular attention throughout the state concerned the murder of one Edward McMurty near Columbus, Nebraska, in May, 1869. Four Pawnee Indians were charged with the murder. The case was brought before Judge Dundy in November. The case of the government asserted that the Indians, whose tribe was at peace with the authorities, had left the

---

<sup>1</sup>An Act to Amend the Judicial System of the United States, Statutes at Large, XVI, 44-45 (1871).

<sup>2</sup>Nemaha Valley Journal (Falls City), Dec. 16, 1869, p. 1. Brief biographical information on Dillon may be found in "Dillon, John Forrest," The National Cyclopaedia of American Biography, 1898, I, 268-269.

reservation and with malice aforethought had killed McMurty and mutilated his body. Champion C. Chase handled the defense of the Indians. He was hampered in that he could not adequately communicate with his clients. In court, Chase wondered openly if this were not the first time that Indians had been tried according to proceedings established by and for white men. He expressed doubt that the Indians could get a fair trial under the circumstances.<sup>1</sup>

The trial lasted five days. Judge Dundy's charge to the jury was long and eloquent. The evidence against the Indians was anything but complete and highly circumstantial. There were no eyewitnesses. The jury found the defendants guilty. On the way back to their cells one of the Indians successfully escaped but was later recaptured. Judge Dundy declined to pronounce sentence during that term of court. The case had more extensive implications than were evident on the surface, and he undoubtedly knew it.<sup>2</sup>

Judges Dillon and Dundy convened the May, 1870, term of court at Simpson's Hall in Omaha. The four Indians were still without sentence for their crime. Judge Dillon rendered an opinion that had a profound effect upon criminal proceedings involving Indians in Nebraska. He ruled, on the basis of several precedents, that since the crime was

---

<sup>1</sup>Omaha Weekly Herald, Nov. 10, 1869, p. 3.

<sup>2</sup>Ibid., Nov. 17, 1869, p. 4; Nov. 24, 1869, p. 1.

perpetrated within the borders of the state, and since the Indians were at peace at that time, that the federal court had acted without jurisdiction over the matter. If the Indians were to be tried and punished, the state would have to do it. He then delayed the release of the Indians for twenty days to allow the state to take action. Judge Dundy concurred in the decision.<sup>1</sup>

Despite the ruling for a twenty-day confinement as ordered by the federal court, the Indians remained in custody until October, 1871. The state never really got the case to court, and the Indians ultimately had to be released. The Omaha Herald periodically reminded the public of their plight and probably aroused some sympathy in their behalf by the time they were finally freed.<sup>2</sup> The involvement of the Herald should be noted, for later in the decade that organ played a prominent role in the trial of Standing Bear, a case of far-reaching implications for the nation as a whole.

As stated earlier, Elmer Dundy continued to wield considerable influence in political matters after his appointment to the federal bench. Surely the most discussed political

---

<sup>1</sup>Ibid., May 11, 1870, p. 1. The official record of the case is found in United States v. Sa-coo-da-cot alias "Yellow Sun," et al. Case No. A284-A285, U.S. Circuit Court Records, Omaha, 1869. The complete case file, supposedly stored at the Federal Records Center, Kansas City, Mo., could not be located. It is feared that it has been lost.

<sup>2</sup>Omaha Weekly Herald, Nov. 9, 1870, p. 2; Nov. 30, 1870, p. 2; Nov. 1, 1871, p. 5.



event of the early 1870s was the impeachment of Governor David Butler in the early months of 1871 on charges of mismanagement of state monies and other real and attempted frauds on the citizenry of the state. Dundy was heavily involved in the intrigue accompanying the initial stages of the proceedings against Butler, but his involvement was shrouded in secrecy at the time and was evidently known only to a few of his closest associates. The part played by Dundy in the impeachment drama became known years later.

Ebenezer E. Cunningham, a state senator from Richardson County at the time of the proceedings against Butler, revealed the role played by Dundy in a letter to the editor of the Morton and Watkins' Illustrated History of Nebraska in 1905. Cunningham stated that he and Dundy had attended the Republican State Convention in August, 1870, as delegates representing Richardson County. Dundy had no desire to see Butler renominated for governor. The delegation from Richardson County was ever mindful of the attempts being made by that county to secure a railroad. Butler's chief opponent was Robert W. Furnas of Brownville, Nemaha County. Dundy and Cunningham could not support Furnas for fear of losing railroad possibilities to a neighboring county. When the final vote was taken, Dundy and Cunningham reluctantly cast the deciding ballots electing Butler. The choice seems to have been to decide which of the two candidates was least offensive to the interests of Richardson County.

Cunningham went on to say that he and Dundy had roomed together in Omaha during the following winter. During that period they and two others, after discussing the allegations against Butler, decided that something had to be done, both in the interest of the state and of the Republican party. Dundy drew up a joint resolution calling for legislative investigation. He requested that one of the men present make copies from his draft, because he felt that he could not become implicated with the activities sure to follow. Copies were then distributed to members of both legislative houses. The Dundy resolution may or may not have been a major factor in the birth of the impeachment proceedings as Cunningham has indicated. The resolution calling for an investigating committee, as introduced in the State Senate on January 30, 1871, is similar in spirit and intent to that proposed by Dundy.<sup>1</sup>

Butler was removed from office as a result of his illicit activities. It is ironic that David Butler, of previous repute as deputy county clerk of Pawnee County (the same official who helped Dundy retain his seat on the Council despite an insufficient popular vote), was only ten years later stricken down by his old patron. The rift that

---

<sup>1</sup>Morton and Watkins, Illustrated History, III, 52n-53n. The original copy of the resolution drawn up by Dundy accompanied Cunningham's letter to the editors. Nebraska Legislature, Senate, 8th Sess., Jan. 30, 1871, Journal, p. 107.

must have developed between Dundy and Butler prior to 1870 would be interesting to examine. The evidence that is now available offers no clue as to what factors caused the split between the two men.<sup>1</sup>

The Omaha Herald newspaper was highly critical of the federal judiciary during the early seventies. Their sarcastic accounts of the Dundy nomination have already been mentioned. The Herald was equally vindictive in their appraisal of the appointment of General Silas A. Strickland. The new district attorney had scarcely a moment's peace from the stinging slanders published in the Herald during the early 1870s. He was linked to the "whiskey ring" and "land-grabber" elements and accused of being a key member of the clique responsible for Republican nominations in Nebraska.<sup>2</sup> Strickland's resignation in 1871 may or may not have been influenced by the Herald. In any event, James Neville,

---

<sup>1</sup>The break between the two men probably occurred in the late 1860s as Andreas linked the two as working for common interests during the senatorial elections of 1866. Andreas, Nebraska, I, 126. Morton and Watkins, Illustrated History, III, p. 10, shows a common interest in a railroad enterprise. And, Edwards, Richardson County, pp. 166-67, indicates that Butler was a guest in the Dundy home at Falls City in 1867, and that Dundy actually prepared the new governor's first address to the State Legislature.

<sup>2</sup>Omaha Weekly Herald, July 22, 1868, p. 2; Sept. 30, 1868, p. 1; May 26, 1869, p. 2.

Strickland's successor,<sup>1</sup> was the target of far less criticism from the Democratic press.

Early in the decade the Herald accused the federal court of unnecessary prosecution of citizens on false charges trumped up to increase the fees of the United States marshal.<sup>2</sup> Similar accusations arose again in 1872.<sup>3</sup> Whether under pressure or not, the Dundy court went through its first two marshals quite rapidly. Casper E. Yost was appointed to the position on May 8, 1867; Joseph T. Hoile replaced him on July 12, 1869; and William Daily was appointed to replace Hoile on July 8, 1872.<sup>4</sup>

The practices of the Dundy court were sometimes questioned. Certain persons approached the Herald on such issues in 1873. The interested parties alleged that the Dundy court habitually subjected defendants to trial by jury even after they had pleaded guilty. The jury trial was depicted as a vehicle for increasing the fees of District Attorney Neville. Dundy advised the Herald that such was the case but for

---

<sup>1</sup>One writer credits Sen. Phineas Hitchcock with securing the appointment of Neville. Alfred R. Sorenson, The Story of Omaha From the Pioneer Days to the Present Time (Omaha: National Printing Company, 1923), pp. 345, 381. (Hereinafter cited as Sorenson, Story of Omaha.)

<sup>2</sup>Omaha Weekly Herald, Jan. 18, 1871, p. 1.

<sup>3</sup>Ibid., Feb. 28, 1872, p. 2.

<sup>4</sup>U.S., Congress, House, Expenses of the United States Courts for Nebraska, House Report No. 104, 43rd Cong., 2d Sess., 1874, House Reports, p. 1.

different motives. He explained that the practice was sometimes used to protect those who might be charged with two or more similar offenses, such as a charge of selling whiskey without a license and for failure to have a license posted in the establishment where the liquor was being sold. Dundy explained that the defendant might be tried for the lesser offense, found guilty, and so punished. The jury trial protected the prisoner against future indictment and in the long run saved the government considerable expense. The Herald graciously accepted Dundy's explanation.<sup>1</sup> The wily judge was probably less disturbed by the Herald's scathing editorials than either marshals or district attorneys during the early 1870s.

Dundy escaped criticism from the press during the senatorial elections at Lincoln in January, 1871, a fact which is probably indicative of his careful efforts not to draw attention to himself rather than of his non-involvement. The Falls City press praised him for his "usual good sense" in not voicing emotional preference for any candidate, thereby protecting the reputation of his high office.<sup>2</sup> Nearly eighteen months later, however, the Herald asserted that they had obtained proof that Phineas Hitchcock had bought and paid for two votes that decided the election conclusively in

---

<sup>1</sup>Omaha Weekly Herald, Nov. 14, 1873, p. 2.

<sup>2</sup>Nemaha Valley Journal (Falls City), Jan. 26, 1871, p. 26.

his favor. The Herald claimed that Dundy had been present at the transaction and called for his impeachment.<sup>1</sup> The clamor in the press died down after awhile, and nothing was ever done about the charges.

The height of Dundy's political maneuvering during the 1870s took place in the senatorial election of 1875. As early as March, 1874, the Herald predicted that Dundy was scheming to gain the seat of Thomas W. Tipton.<sup>2</sup> In June, the Herald questioned the motives behind his candidacy, referring to his lifetime position on the bench. An editorial hailed the "sage of Richardson County" as the most feared man in the race, because of his proven ability to get himself elected or appointed to just about any position he desired.<sup>3</sup>

Dundy's chances for election may have been quite good. The Nebraska City Press informed the Herald that Dundy was extremely popular in Otoe County and would surely receive their legislators' votes.<sup>4</sup> A letter from a Falls City citizen to the Republican placed Dundy third in popularity behind Thayer and Furnas.<sup>5</sup> The Republican opposed Dundy's

---

<sup>1</sup>Omaha Weekly Herald, July 24, 1872, p. 1.

<sup>2</sup>Ibid., Mar. 6, 1874, p. 2.

<sup>3</sup>Ibid., June 12, 1874, p. 4.

<sup>4</sup>Ibid., Aug. 28, 1874, p. 2.

<sup>5</sup>Omaha Weekly Republican, Oct. 10, 1874, p. 2.

candidacy and, like the Herald, questioned the propriety of his campaign while occupying a lifetime position on the federal bench.<sup>1</sup> In the same issue, an article from the Pawnee Republican called upon Dundy to resign if he wanted to run for office.<sup>2</sup> Despite his relatively poor press, his wariness during the past few years probably worked to his benefit, allowing time for old political wounds to heal, and his prestigious position must have been to his advantage.

In the weeks just prior to the election, a political ploy was initiated with obvious intent to destroy Dundy's chances. A letter from a prominent Nebraska figure to Samuel S. Cox, a member of the United States House of Representatives from New York, requested a congressional investigation into the United States Court in Nebraska.

The following is an excerpt from that letter:

The Court here has been operated notoriously, as a machine in politics. It has been expensive to the good peoples of the U.S. The U.S. Marshal's accounts would be interesting to the public. They must have been approved by the Judge, who is this winter an aspirant to the U.S. Senate. Can you raise a committee to investigate?<sup>3</sup>

Cox introduced such a proposal into the House on December 11, 1874, and an investigation was ordered under the

---

<sup>1</sup>Ibid., Nov. 28, 1874, p. 2.

<sup>2</sup>Ibid.

<sup>3</sup>Letter, J. Sterling Morton to Samuel S. Cox, Nov. 25, 1874, Morton Papers, microfilm ed., roll 47.

auspices of the Committee on Expenditures in the Department of Justice.<sup>1</sup> The Cox investigation was immediately splashed across the pages of the Herald.<sup>2</sup> Thayer was blamed for the ruse initially but denied it.<sup>3</sup> Later, immediately before the election, the originator was exposed. J. Sterling Morton, himself an also-ran in the senatorial election, had written the letter to Cox.<sup>4</sup>

The election commenced on January 19, 1875. Dundy was a strong front-runner and led Thayer by one vote after the third ballot. The fourth ballot, taken on January 21, saw Thayer creep ahead. Dundy then realized that his opponents were too formidable. He released his supporters and in a speech urged them to vote for Algernon S. Paddock, who had run a poor third throughout the race. The supporters of Dundy were more anti-Thayer than for anyone else, and they did so without hesitation. Paddock was elected on the next ballot.<sup>5</sup> Samuel Chapman, a member of the legislature during

---

<sup>1</sup>U.S., Congress, House, 43d Cong., 2d Sess., Dec. 11, 1874, Congressional Record, III, pt. 1, p. 64.

<sup>2</sup>Omaha Weekly Herald, Dec. 18, 1874, p. 4.

<sup>3</sup>Ibid., Dec. 25, 1874, p. 4.

<sup>4</sup>Ibid., Jan. 15, 1875, p. 2. Omaha Weekly Republican, Jan. 23, 1875, p. 1, labeled the Morton letter "political assassination."

<sup>5</sup>Nebraska Legislature, Senate, 11th Sess., Jan. 16, 1875-Jan. 22, 1875, Journal, pp. 167-183. Omaha Daily Bee, Jan. 22, 1875, p. 1. Omaha Weekly Herald, Jan. 29, 1875, p. 4.



that fateful election, disclosed some of the intricacies of the power play as he saw it. In a letter to Samuel Maxwell, Chapman claimed that he and one other had engineered the whole thing. His letter is excerpted as follows:

When the time came we swung the whole Dundy vote to Paddock and made one of the most complete and sudden routes [sic] ever known in our politics. One moment Thayer was elected [,] the next by a skillful maneuver he was left without a Corporal's Quord [Quorum(?)]. It was a famous victory.<sup>1</sup>

One fact was made clear by the election of Paddock to the Senate. The stranglehold on Nebraska politics so long held by the Republicans was weakened by the defeat of Dundy and Thayer. While it was not a Democratic victory, it was certainly not a triumph for the old-line Republicans. Paddock was a more liberal choice than either Dundy or Thayer and was distinctly more acceptable to the long-suffering Democrats.<sup>2</sup> J. Sterling Morton was elated at the defeat of his old adversary. He offered warm congratulations to Paddock. " . . . your success is the dawn of destruction for the rotten rascals who have long managed affairs in

---

<sup>1</sup>Letter, Samuel M. Chapman to Samuel Maxwell, Jan. 23, 1875, Nebraska State Historical Society, Lincoln, Samuel Maxwell Papers, 1853-1901, microfilm ed., roll 2. (Hereinafter cited as Maxwell Papers.) Chapman's words may be descriptive but they are also puzzling. Only three months before he confided to Maxwell that he did not think Paddock capable enough for the job. See Letter, Chapman to Maxwell, Oct. 24, 1874, Maxwell Papers, microfilm ed., roll 2.

<sup>2</sup>Morton and Watkins, Illustrated History, III, 148-49.

Nebraska."<sup>1</sup>

The tactical assault by Morton on the Dundy court must be recognized for what it was. Its effectiveness on the election cannot be readily assessed. The investigation was concluded on January 18, 1875, and the committee reported that they could find "nothing suspicious in the accounts." No specific charges of fraud were ever brought before the committee, and only vague allegations accompanied the original Cox resolution.<sup>2</sup> Morton was not ready to let the matter drop, however. On February 2, 1875, he wrote to George L. Miller of Omaha advising the latter that they (Morton and Miller) should press the Dundy investigation in hopes of gaining an impeachment.<sup>3</sup> Nothing further seems to have been done in that respect. Dundy, who in so many instances had challenged the aspirations of Morton, had become the recipient of the latter's counterattack. There are no further evidences of animosities between the two. Perhaps both men felt that this last event served to even the score.

---

<sup>1</sup>Letter, J. Sterling Morton to Algernon S. Paddock, Jan. 25, 1875, Morton Papers, microfilm ed., roll 48.

<sup>2</sup>U.S., Congress, House, Expenses of the United States Courts in Nebraska, House Report No. 104, 43rd Cong., 2d Sess., 1874, House Reports, pp. 1-2.

<sup>3</sup>Letter, J. Sterling Morton to George L. Miller, Feb. 2, 1875, Morton Papers, microfilm ed., roll 47.

The 1870s were years of railroad building in Nebraska. The two largest companies, the Burlington and Missouri River Railroad Company and the Union Pacific Railroad Company had received large grants of land from the federal government to assist in the building of their lines. The state joined the federal government and contributed land of its own to the railroads. The individual settlers, anxious for the railroads to pass close to their holdings organized within their counties and voted bonds to further subsidize the railroads. At the beginning of the decade, the railroads were the owners of millions of acres of land in Nebraska, and controversies arose as to the counties' rights to tax those lands.<sup>1</sup>

The railroaders felt that their lands could not be taxed until they had been disposed of to individual settlers through actual sales. The counties disagreed. They saw the railroad companies as sources of great wealth and were eager to trap that wealth to make public improvements and to pay the interest on their bonded indebtedness. The two interests were at odds at the outset and the recourse for each was through the courts.<sup>2</sup>

---

<sup>1</sup>Ray H. Mattison, "The Burlington Tax Controversy in Nebraska Over the Federal Land Grants," Nebraska History, XXVIII (April-June 1947), 110-12. (Hereinafter cited as Mattison, "Burlington Tax Controversy.")

<sup>2</sup>Ibid., 113.

In 1869, the Union Pacific, after being assessed by Lincoln County for taxes, sued in United States Circuit Court for a restraint from paying. Their attorneys asserted that the company was in fact acting as a government agent in their railroad building effort and therefore was not subject to taxation. Judge Dillon, with Dundy concurring, ruled in favor of the county in May, 1871.<sup>1</sup> The Omaha Republican hailed the decision as "the most important that was ever delivered in the state."<sup>2</sup> The United States Supreme Court upheld the lower court's ruling in December, 1873.<sup>3</sup> Railroad lands could be taxed by local authorities. The counties had received a valuable decision from which to press the railroads for taxes.

Next to be determined was the question of when in the process of events the lands could legally be taxed by the local authorities. In some instances, primarily with the Union Pacific, the companies had not yet received patents to

---

<sup>1</sup>Union Pacific Railroad Company v. William S. Peniston, Treasurer of Lincoln Co., Case No. 36B. U.S. Circuit Court Records, Omaha, 1871. (Hereinafter cited as U.P.R.R. v. Peniston of Lincoln Co.) And/or same case, 24 Federal Cases 631 (1871), as cited in Leslie E. Decker, Railroads, Lands, and Politics, the Taxation of the Railroad Land Grants, 1864-1897 (Providence, R.I.: Brown University Press, 1964), pp. 17-18. (Hereinafter cited as Decker, Railroads, Lands, and Politics.)

<sup>2</sup>Omaha Weekly Republican, May 10, 1871, p. 1; text of decision on p. 4.

<sup>3</sup>U.P.R.R. v. Peniston of Lincoln Co., 18 Wallace (U.S.), 5 (1873).

their lands because they had not paid the cost of surveying, selecting, and conveying them pursuant to the terms of their charters.<sup>1</sup> The United States Supreme Court held in 1873 that the railroads' federal land grants were not subject to taxation until such fees were paid.<sup>2</sup> This decision left a valuable loophole through which the railroad could maneuver to avoid payment of taxes.<sup>3</sup>

The Union Pacific sought an injunction in the United States Court at Omaha which would restrain the counties from taxing certain of their lands, as yet unpatented. Judge Dundy granted that injunction in July, 1873.<sup>4</sup> The Republican reacted immediately and indicated its profound dissatisfaction with Dundy's action.<sup>5</sup> The Herald, in an expression of pro-railroad sentiment, indicated its preference to let the matter rest with the courts.<sup>6</sup> In July, 1874, Judges

---

<sup>1</sup>Union Pacific Act, Statutes at Large, XIII, Sec. 21, 365, 1864. Mattison, "Burlington Tax Controversy," 117. Also Decker, Railroads, Lands, and Politics, p. 19.

<sup>2</sup>Kansas Pacific Railway Company, Plff. in err. v. John H. Prescott; and Same v. Charles C. Culp, 16 Wallace (U.S.), 603, 83 L.Ed. 373 (1873). Decker, Railroads, Lands, and Politics, pp. 18-19.

<sup>3</sup>Mattison, "Burlington Tax Controversy," 114.

<sup>4</sup>Decker, Railroads, Lands, and Politics, p. 19. And 24 Federal Cases 638 (1873) cited therein.

<sup>5</sup>Omaha Weekly Republican, Aug. 16, 1873, p. 2.

<sup>6</sup>Omaha Daily Herald, Aug. 15, 1873, p. 2.

Dillon and Dundy heard the cases of the Union Pacific and those of the Burlington. In Union Pacific Railroad Company v. Edward C. McShane, treasurer of Douglas County, the court held that the unpatented lands could not be taxed.<sup>1</sup> One year later the Supreme Court upheld Judge Dillon's decision.<sup>2</sup> The Burlington cases involved the suits of one Horatio H. Hunnewell, a non-resident stockholder, against several counties to gain exemption from the payment of taxes on that company's patented lands.<sup>3</sup> Judge Dillon held that the counties could tax the Burlington land, because the patents had been received. Both decisions were upheld by the highest tribunal in January, 1875.<sup>4</sup> The Republican congratulated the counties on their victory and expressed regret that those so involved with the Union Pacific did not achieve similar success.<sup>5</sup>

---

<sup>1</sup>Union Pacific Railroad Company v. Edward C. McShane, Treasurer of Douglas Co., Case 282B, U.S. Circuit Court Records, Omaha, 1873. (Hereinafter cited as U.P.R.R. v. McShane of Douglas Co.)

<sup>2</sup>U.P.R.R. Appt. v. McShane of Douglas Co., 22 Wallace (U.S.), 444, 22 L.Ed. 752 (1875).

<sup>3</sup>Mattison, "Burlington Tax Controversy," p. 115. Decker, Railroads, Lands, and Politics, p. 21.

<sup>4</sup>Decker, Railroads, Lands, and Politics, p. 21. And, Horatio H. Hunnewell, Appt. v. County of Cass et al., 22 Wallace (U.S.), 464, 22 L.Ed. 755 (1875). Mattison, "Burlington Tax Controversy," pp. 114-17.

<sup>5</sup>Omaha Weekly Herald, July 11, 1874, p. 1.

Armed with the McShane decision, the Union Pacific brought suit against several counties to recover taxes that they had previously paid on unpatented lands. They were unsuccessful. One of the cases was carried to the Supreme Court, but the decision of the United States Court at Omaha was again sustained.<sup>1</sup>

The decisions of the Supreme Court in the Hunnewell and McShane cases settled the question regarding taxability of patented railroad lands by local authorities. The problem still existed, however. The focus for some counties shifted to the collection of taxes on the Burlington's "lieu lands," that they had received from the government after it was ascertained that the Union Pacific and Burlington grants overlapped in several locales. These lands lay outside the twenty-mile limit. By 1877, the counties had been completely unsuccessful in collecting any taxes whatsoever on the "lieu lands." The matter was again taken to the courts, and injunctions were issued preventing the counties from holding tax sales on the Burlington lands after the company's refusal to pay. The company actually had some reason other than simple refusal. The titles to these lands were in question. The validity of the patents was under investigation in a

---

<sup>1</sup>Decker, Railroad, Lands, and Politics, p. 20. And, The Union Pacific Railroad Company, Plff. in Err. v. The Board of County Commissioners of the County of Dodge, 8 Otto (U.S.), 541, 25 L.Ed. 198 (1879).

series of court actions dating from as early as 1873. After 1877, the Burlington elected to try to have their taxes cancelled by the counties and offered such bribes as public improvements, increased land sales, and funds, all of which being of far less value than the taxes due. These compromises resulted in injunctions granted by the federal court which were mutually agreed upon by both county and railroad and which made the taxes void and uncollectible.<sup>1</sup>

The Union Pacific experienced difficulties with settlers attempting to preempt the unsold lands of the railroad. In this the settlers were supported by the Department of Interior. That company brought suit against one William H. Platt, an individual who had preempted a quarter-section of company land. The case was taken to the Supreme Court after Judges Dillon and Dundy had ruled for the company, and the high tribunal affirmed the lower court's decision.<sup>2</sup>

Judges Dillon and Dundy played roles of singular importance to the combined interest of state and railroad. Their decisions to hear the cases together brought with it the additional prestige of a circuit court hearing and the acknowledged prowess of Judge Dillon in the interpretation of the laws applicable to relations between governments and

---

<sup>1</sup>Mattison, "Burlington Tax Controversy," pp. 111-12, 118-25.

<sup>2</sup>William H. Platt, Appt. v. The Union Pacific Railroad Company and Frederick L. Ames, 9 Otto (U.S.), 48, 25 L.Ed. 430 (1879). Decker, Railroads, Lands, and Politics, p. 23.



railroads.<sup>1</sup> The railroads probably chose the federal court route to settlement rather than risk their interests in the state courts whose justices were elected by the people.<sup>2</sup> The future of the railroad and Nebraska lay squarely upon the shoulders of the federal courts. The states were admittedly helpless.<sup>3</sup> The railroad problems of Nebraska were not all solved in the decade of the seventies. With increased settlement and more and more miles of track came other problems that would thoroughly tax the judicial competence of the United States Court of which Dundy was a member.

The most well-known single event in the judicial career of Elmer S. Dundy is his renowned decision in the Ponca habeas corpus case, popularly known as the case of Standing Bear. The Ponca Indians were a peaceful, agricultural group of Indians who had for years occupied a reservation near the

---

<sup>1</sup>Dillon wrote extensively about legal matters before, during, and after his tenure as U.S. Circuit Judge. He resigned his post in May, 1879 to accept a position as general counsel for the Union Pacific Railroad Company. An interesting sidelight is that the President of that company was one Sidney Dillon. Both men were born in Northampton, Montgomery Co., N. Y., but sources list the first names of the parents as different. Both Sidney and John moved with their families to Davenport, Iowa, in 1838. The available evidence indicates to the writer that the two were probably half-brothers or cousins. See "John F. Dillon" and "Sidney Dillon," Dictionary of American Biography, 1930, V, 311-12.

<sup>2</sup>Mattison, "Burlington Tax Controversy," p. 115n.

<sup>3</sup>Message of Governor Furnas to the Legislative Assembly of Nebraska, 1875, 22; cited in Ibid., 119.

mouth of the Niobrara River in Nebraska. Their titles to that land were guaranteed by treaty in 1867.<sup>1</sup> In 1868, the United States government took those lands away from the Poncas and awarded them to the more powerful Sioux Indians,<sup>2</sup> who for years had been hostile to the Poncas but had in recent years coexisted on mutual pledges of friendship. The Poncas were forcibly removed from their reservation in 1877 to lands set aside for them in Indian Territory. The removal of the Poncas was extremely costly. Within a year, disease and hunger had killed 158 of the 700 who began the trek southward.<sup>3</sup>

Standing Bear was a Ponca chief. He suffered the loss of his wife's mother, grandmother, and two of his daughters, either on the long overland journey or shortly after arrival in the new land. The last straw for Standing Bear was the death of his only son. He packed the remains of his son, and, with approximately thirty followers, set out for his old homeland in January, 1879.<sup>4</sup>

---

<sup>1</sup>U.S., Congress, Senate, Removal of the Ponca Indians, Sen. Report No. 670, 46th Cong., 2d Sess., May 31, 1880, Senate Miscellaneous Reports, pp. I-II.

<sup>2</sup>Ibid., p. V.

<sup>3</sup>Ibid., pp. VIII-XV. James T. King, "A Better Way: General George Crook and the Ponca Indians," Nebraska History, L, (1969), 241-42. (Hereinafter cited as King, "Gen. Crook and the Poncas.")

<sup>4</sup>Stanley Clark, "Ponca Publicity," The Mississippi Valley Historical Review, XXIX, (Mar. 1943), 496.

Standing Bear and his fellow travelers arrived at the Omaha agency in March. They were welcomed warmly by the resident Indians and soon settled down to establish homesites and plant crops.<sup>1</sup> Upon notification that the Ponca band had returned to Nebraska, Secretary of the Interior Carl Schurz transmitted a request to the War Department that "the nearest military commander be instructed to detail a sufficient guard to return these Poncas to the Agency where they belong."<sup>2</sup>

The plight of the Poncas came to the attention of one Thomas H. Tibbles, an Omaha Herald newspaperman, by way of General George Crook, the commander charged with carrying out the orders from Washington. General Crook was sympathetic to the Ponca cause but was without recourse. He had to obey the order. Tibbles was persuaded to try to do something to obtain justice for the Poncas. The reporter interviewed Standing Bear and others while they sat in confinement at Fort Omaha and subsequently splashed their heart-rending tale of injustice across the pages of the Herald.<sup>3</sup> Tibbles

---

<sup>1</sup>Ibid.

<sup>2</sup>Secretary of Interior to Secretary of War, Washington, D.C., March 7, 1879. Copy in LR, Dept. of the Platte. NARS RG 98. Cited in King, "Gen. Crook and the Poncas," p. 242.

<sup>3</sup>Thomas H. Tibbles, Buckskin and Blanket Days (New York: Doubleday and Co., Inc., 1957), pp. 193-96. Tibbles relates an original account of the meeting between him and Crook. See also, King, "Gen. Crook and the Poncas," pp. 242-45. Also, Omaha Herald, Mar. 30, 1879, p. 5, and Apr. 1, 1879, pp. 4-5.

also appealed to the Omaha clergy. That group sent written petitions to Washington, and their pulpits rang with the Indians' tale of woe.<sup>1</sup>

Tibbles enlisted the assistance of two of Omaha's most prominent lawyers, Andrew J. Poppleton and John L. Webster, to examine what, if any, legal action could be taken. The two elected to sue out a writ of habeas corpus in federal court on the grounds that the Indians had been illegally detained and confined by General Crook. Judge Dundy, who had been in the wilderness hunting bear, granted the writ on April 8, 1879. Genio M. Lambertson, United States District Attorney, prepared the case for the government. Judge Dundy agreed to hear the case on April 29.<sup>2</sup>

The testimony comprised the better part of two full days.<sup>3</sup> It was a classic courtroom scene. The defendant, General Crook, wore his highly decorated and bemedaled uniform and was surrounded by an impressive staff of officers. Standing Bear was resplendent in his tribal chieftain's

---

<sup>1</sup>Clark, "Ponca Publicity," pp. 496-97.

<sup>2</sup>Ibid. King, "Gen. Crook and the Poncas," p. 247.

<sup>3</sup>Much of the testimony taken in the case may be found in: Zylyff [Thomas H. Tibbles], The Ponca Chiefs (Boston: Lockwood, Brook and Co., 1880); And in United States ex. rel. Ma-chu-noh-gha, et al. v. George Crook, Brigadier General, U.S.A., Commanding General, Dept. of the Platte, Case No. 136E, U.S. Circuit Court Records, Omaha, (1879). Trial proceedings also printed in Omaha Herald (daily edition), May 2, 1879, p. 8; May 3, 1879, p. 8.

array.<sup>1</sup> The government's case, presented by District Attorney Lambertson, was based on the proposition that an Indian was not entitled to rights enjoyed by full-fledged citizens under the law and therefore was without authority to sue in court. The Poncas' case asserted that there was no legal authority for forcibly removing them from one place to another and that the Indian, having abandoned his tribal relations, was entitled to the citizenship rights guaranteed by the Fourteenth Amendment and that those rights included that of suit in the courts.<sup>2</sup> Tibbles, recognizing the favorable effect that a plea from Standing Bear himself would have on the case, requested that the chief be allowed to speak in his own behalf. Judge Dundy candidly asked Tibbles if Standing Bear had been admitted to the bar, and then, in a whisper, adjourned the court. Standing Bear rose to speak, not to a court of law, but to an assemblage of persons; probably neither he nor the majority of his audience knew that.<sup>3</sup>

The oration of Standing Bear has been hailed by many as a most eloquent expression of the love of liberty and individual rights for all men. General Crook sat with his head in his hands as the chief spoke. Judge Dundy's face became

---

<sup>1</sup>King, "Gen. Crook and the Poncas," p. 247.

<sup>2</sup>Omaha Herald, May 3, 1879, p. 8.

<sup>3</sup>Tibbles, Buckskin and Blanket Days, p. 200.

streaked with tears. Women sobbed uncontrollably. Standing Bear had made his point.<sup>1</sup>

Judge Dundy rendered his momentous decision on May 12, 1879. In a long and eloquent opinion he outlined the case as he saw it. He closed his remarks by stating the five points of his decision:

First--That an Indian is a person within the meaning of the laws of the United States, and has therefore, the right to sue out a writ of habeas corpus in a Federal court and before a Federal Judge, in all cases where he may be confined or in custody under color of the authority of the United States, or where he is restrained of liberty in violation of the Constitution or laws.

Second--That Gen. Crook, the respondent, being commander of the Military Department of the Platte, has custody of the relators, under color of the authority of the United States, and in violation of the laws thereof.

Third--That no rightful authority exists for removing by force any of these Poncas to the Indian Territory, as Gen. Crook has been directed to do.

Fourth--Indians possess the inherent right of expatriation as well as the more fortunate white race, and have the inalienable right to life, liberty, and the pursuit of happiness so long as they obey laws and do not trespass on forbidden ground.

Fifth--Being restrained of liberty under color of the authority of the United States and in violation of the laws thereof, the relators must be discharged from custody, and it is so ordered.<sup>2</sup>

---

<sup>1</sup>Ibid., pp. 200-03. The text of Standing Bear's remarks may be found in Omaha Herald, May 3, 1879, p. 8. See also King, "Gen. Crook and the Poncas," pp. 248-49. And, Sheldon, Nebraska, I, 117.

<sup>2</sup>Zylyff, The Ponca Chiefs, pp. 107-27. The decision was also printed in The New York Times, May 14, 1879, p. 1.

It was truly a notable decision and one that has never been challenged in the Supreme Court.

The nation's press was soon to respond to the Dundy opinion. The Herald praised the decision and its author. "The voice of judicial justice to the original owners of the American soil has never been fairly [expressed(?) ] in our country until it went up from the lips of Elmer S. Dundy."<sup>1</sup> The St. Paul Pioneer Press recognized that the decision was not favorably received in some quarters. The Press openly wondered if it was not too soon to begin awarding rights to Indians, but rationalized that if the Negroes were entitled to them the Indians probably were too.<sup>2</sup> It seems that some easterners had misconstrued the meaning of the decision as awarding civil rights to Indians. To clarify the situation, The New York Times printed the explanation of Judge Dundy, outlining the legal basis for his decision:

There is no law of the United States or treaty stipulation setting apart a reservation in the Indian Territory for the Indians, nor for removing them thereto, or keeping them thereon. They cannot be removed and kept there by force, for the one reason that no law or treaty authorizes this to be done, and the decision is based on that idea alone. It is not claimed in the opinion that Congress might not authorize this, nor that a treaty could not be made which would justify a resort to force, but simply that no such authority has ever been conferred so far as these particular Ponca Indians are concerned.

---

<sup>1</sup> Omaha Herald, May 15, 1879, p. 4.

<sup>2</sup> Ibid., May 18, 1879, p. 2. Press article printed therein.

Of course, it is not claimed that the same rules would apply to Indian tribes having reservations to which their treaties require them to remove and remain thereon.<sup>1</sup>

The Times made it clear that Dundy had not intended to bestow full rights of citizenship on the Indians. It was emphasized that the decision applied only to the peaceful Poncas, and the Times asserted that the Poncas undoubtedly understood that "the Indian is as good as white man as long as he behaves himself."<sup>2</sup>

Whatever the impact of the Ponca decision on American legal thought, it did provide a convenient stepping stone for other Indians in seeking to secure the rights of their white brothers in the next decade, and the Dundy court would again serve as an open forum for the red man's grievances. Humanitarian campaigns aimed at touching the hearts of white America were launched and conducted by Tibbles, his Indian wife "Bright Eyes," Standing Bear, and others of the red race.<sup>3</sup> The publicity that attended the trial and the subsequent Indian "victory" was probably a key factor in the success of their efforts. Perhaps it is in that moral endeavor that the most meaningful results of the Standing Bear episode were realized.

---

<sup>1</sup>The New York Times, May 20, 1879, p. 1.

<sup>2</sup>Ibid., May 21, 1879, p. 4.

<sup>3</sup>Tibbles, Buckskin and Blanket Days, pp. 204-47. King, "Gen. Crook and the Poncas," pp. 250-55. Clark, "Ponca Publicity," pp. 498-516.



Elmer Dundy participated in several other aspects of public service to his state and to Richardson County during the seventies that can be only mentioned herein due to lack of available data. He was a member of the first board of trustees for Brownell Hall, an Episcopal school for girls.<sup>1</sup> He was one of the earliest founders of the State Historical Society and was elected to the position of second vice president in 1878. He served in that position until 1887.<sup>2</sup> He held the first term of federal court in Colorado at Denver in December, 1876.<sup>3</sup> He built one of the largest and most beautiful homes in the state at Falls City in 1874, which still stands today.<sup>4</sup> His prominence in the community and in the state was undoubtedly affected by his political position and large property holdings. At one time he owned

---

<sup>1</sup>James W. Savage, John T. Bell, and Consul W. Butterfield, History of the City of Omaha, Nebraska and South Omaha (New York: Munsell and Company, 1894), p. 317. (Hereinafter cited as Savage, Bell, and Butterfield, History of Omaha.)

<sup>2</sup>Nebraska State Historical Society. Proceedings and Collections of the Nebraska State Historical Society, 2d series, I (1894), 228.

<sup>3</sup>George E. Lewis, Bench and Bar of Colorado (Denver: Bench and Bar Publishing Co., 1917), pp. 33-34.

<sup>4</sup>J. Q. Magie and C. H. Jones, A History and Historic Sites Survey of Johnson, Nemaha, Pawnee, and Richardson Counties in Southeastern Nebraska (Lincoln: Nebraska State Historical Society, 1969), pp. 122-23. Dundy's old home is presently used as a convent, housing the faculty of the parochial school in Falls City. It has been in the hands of the Catholic Church since March 2, 1891. Richardson County, Nebraska, Register of Deeds, Deed Record, LII, 562. David Reavis, "Falls City," Journal, June 23, 1934, p. 3.

almost one-half of the land on which the present-day Falls City stands.<sup>1</sup> The amount of personal wealth is difficult to estimate but he was certainly a man of comfortable means.

Dundy again had the opportunity to show his loyalty to Falls City during the decade. Richardson County was in need of an adequate courthouse. Spurred on by Falls City supporters, an election was held throughout the county in May, 1872, to authorize the issuance of bonds to subsidize the construction of a new courthouse in Falls City. The election failed to secure a majority probably because the memories of the bitter county seat struggle still lingered in many minds. Those voting against the bond issue should have realized that the powerful residents of Falls City would stop at nothing short of complete success.<sup>2</sup>

Having been defeated at the polls, the Falls City men, through one of their representatives in the legislature,

---

<sup>1</sup>The writer did not make a detailed study of Dundy's land holdings, but a careful perusal of the land records available shows that he participated quite heavily in the buying and selling of land in Richardson County. There is no reason to believe that he did not make a considerable profit in his dealings. Much of his land was located in and around Falls City. See Richardson County, Nebraska, Register of Deeds, General Index to Deeds, I-VII. Idem., Deed Record, Vol. B VI, IX-XII, XLIV, Idem., Mortgage Records, I. Because of the nature of these records, no pagination is included herein. All of the above are located in the Richardson County Courthouse, Falls City, Nebraska. See also U.S. Land Office, Entry Books CXLIX, 121, 124, 135, filed at Nebraska State Historical Society, Lincoln.

<sup>2</sup>Edwards, Richardson County, pp. 164-65.

secured enactment of a law allowing Falls City precinct alone to vote the bonds for the new courthouse without the consent of the rest of the county.<sup>1</sup> Balloting took place in Falls City one year to the day after the county had defeated the measure. The election resulted in a majority of the votes being in favor of the bond issue.<sup>2</sup>

Bonds in the amount of \$15,000 were issued to subsidize the courthouse construction. The courthouse was built with rock from the Dundy quarries (located south of town) and presented to the people.<sup>3</sup> Taxes were to be levied on the citizenry to pay the interest on the bonded indebtedness of county administration. When the county took such action, Dundy resisted and commenced an action in the state courts to enjoin the collection of certain taxes that he charged had been levied illegally. Taxes to retire bonds providing for the courthouse construction were among those that Dundy held to be objectionable.

---

<sup>1</sup>Ibid. Edwin S. Towle introduced the bill and pushed it to an early passage. See Nebraska Legislature, House, 9th Sess., Feb. 11, 1873, Journal, pp. 308-09; Feb. 12, 1873, p. 334; Feb. 18, 1873, p. 432. Also, Nebraska Legislature, An Act to Authorize Falls City Precinct, in Richardson County, to Issue Bonds to Aid in the Construction of a Courthouse for Richardson County, Laws of Nebraska (1873), pp. 80-81.

<sup>2</sup>Edwards, Richardson County, p. 165. Isham Reavis, "Reminiscences," Tribune, May 28, 1909, p. 2. The latter is a brief but complete account of the affair as it pertained to Dundy.

<sup>3</sup>Isham Reavis, "Reminiscences," Tribune, May 28, 1909, p. 2.

When the matter reached the district court, Dundy was granted some relief, but the tax to retire the courthouse bonds was dismissed. Dundy then appealed to the State Supreme Court. Judge Samuel Maxwell, in a ruling issued on April 22, 1879, reversed the lower court's dismissal of the courthouse bond taxes, holding them illegal. Judge Maxwell indicated in his opinion that the legislature's action in authorizing Falls City to issue bonds for a courthouse was illegal under the state constitution. Judge Maxwell asserted that such authority must come from a popular expression of the people by election, not by any act of the legislature. The matter was never contested by any other citizen, and with the passage of time, the statute of limitations prevented it from ever coming up again.<sup>1</sup>

A. R. Keim, in an article in a local journal in 1909, insinuated that the whole matter of courthouse building, and its inherent bond issue, smacked of collusion and inferred that the participants in the conspiracy knew full well that the bonds would be repudiated. Isham Reavis, the lawyer representing Dundy in the case and the author of the article from which this information is extracted, asserted that this was not true at all.<sup>2</sup> What is one to believe? On the face

---

<sup>1</sup>Ibid., Elmer S. Dundy, Appellant, v. The Board of County Commissioners of Richardson County, Appellee, 7 Nebraska Reports, 508-20, (1879).

<sup>2</sup>Isham Reavis, "Reminiscences," Tribune, May 28, 1909, p. 2.

of the matter the facts remain. Falls City got its courthouse by less than legal methods, and through the efforts of Elmer Dundy, the county government never had to pay back its bonded indebtedness. The decision as to whether the Falls City clique or Elmer Dundy was guilty of any dishonest practice must rest with the reader.

The descent of swarms of grasshoppers on to the plains of Nebraska in the 1870s devastated farmlands and caused near financial collapse and extremely hard times for those engaged in agriculture. Reacting to the scourge of insects, Governor Robert W. Furnas organized the Nebraska Relief and Aid Society of private citizens in 1874. Elmer Dundy was representative from Richardson County in the organization.<sup>1</sup> As a member, his task was to collect and distribute relief monies, clothing, and food to destitute citizens. There is too little information to make an accurate judgment about the accomplishments of the State Aid Society or of Dundy's individual efforts, but his appointment to the position is indicative of the confidence in his ability as felt by

---

<sup>1</sup>Morton and Watkins, Illustrated History, III, 322. Sheldon, Nebraska, I, 493-95. The writer could locate no detailed studies or publications on the State Aid Society, or of the extent of Dundy's participation. It appears to have been completely divorced from any state offices and was evidently an organization run completely by private citizens. A great wealth of material in the form of scrapbooks containing newspaper clippings, etc. may be found in the Robert W. Furnas collection, MSS, filed at the Nebraska State Historical Society, Lincoln.

Governor Furnas. Other scattered bits of information indicate that Dundy was a leading figure in grasshopper relief outside the auspices of the State Aid Society in offering legal counsel and material aid to the relief of his ravaged neighbors.<sup>1</sup>

The 1870s were years of fruitful public service both on and off the bench for Elmer Dundy. In 1873, a county was organized in the southwestern corner of the state and given his name as a tribute to his efforts.<sup>2</sup> What prestige he may have lost at the polls in 1875, he had regained by the end of the decade. He was still the target of criticism from some quarters, and to date he had never really enjoyed the widespread esteem of the state as a whole. One fact is certain, however. Dundy was one of the towering figures of his state, both as a jurist and as a political figure.

---

<sup>1</sup>Edwards, Richardson County, p. 632.

<sup>2</sup>L. L. Fitzpatrick, Nebraska Place-Names (Lincoln: University of Nebraska, 1925), p. 58.

## CHAPTER V

### RETREAT TO RESPECTABILITY

1880-1896

The period from 1880 to 1896 is most adequately presented as the closing chapter in the public life of Elmer S. Dundy. The period witnessed a sudden transition from controversial political activist to respected and reserved jurist. A final attempt by Dundy to obtain the long-sought-after senate seat ended in frustrating failure early in the decade. This defeat marked one of the most significant turning points in his life. He shrank from political intrigue and consolidated his position on the federal bench, a position that had already brought him widespread respect, climaxing in the wake of the celebrated Standing Bear episode in 1879. The Dundy image in the press was no longer synonymous with political schemes and power plays. The Dundy name continued to make the newspapers but in a more respectable light, as the citizenry of Nebraska came to know the man for his ability and fairness in meting out justice rather than as a determined stop-at-nothing politician on the way up. This closing chapter will present Dundy's ambitious entrance into the politics of the 1880s, his

frustration at defeat, and his withdrawal to the bench, there to serve ably until his death in 1896. The writer will present this latter period by a method other than the general chronological sequence utilized up to now in this thesis. Material will be presented which is intended to focus on the judicial character, courtroom manner, and reputation of Judge Dundy, particularly as seen through the eyes of his contemporaries. This is done in the conviction that the impressions that he made upon the men of his time have an equally important impact upon history as the volumes of courtroom decisions that may be attributed to the Dundy court.

On December 11, 1880, William Daily, having served as United States Marshal since 1872, resigned his office in a touching ceremony in the judge's chambers.<sup>1</sup> He had done a good job; even the Herald said so.<sup>2</sup> In less than a month the State Legislature would vote to replace or reelect Algernon S. Paddock to the United States Senate. It seems clear that Daily was to manage the campaign of his mentor, Dundy, in his second effort to gain the senatorial position. Years before, Dundy had joined forces with Samuel G. Daily, and together they had achieved some quite satisfying results. Perhaps Dundy visualized a similar entente with Samuel's brother, William.

---

<sup>1</sup>Omaha Bee (evening edition), Dec. 13, 1880, p. 4.

<sup>2</sup>Omaha Herald (weekly edition), Dec. 17, 1880, p. 6.



The senatorial race of 1880-1881 was, as in the past, a Republican affair. J. Sterling Morton conceded as much in a letter written in October, 1880:

. . . [There is] no hope in Nebraska for 1880 of electing any Democrat to the United States Senate. That high position has become an article of commerce. . . . The men who can and will pay the most cash for seats get them.<sup>1</sup>

In April, 1880, the Herald predicted quite accurately the gloomy situation for the Democrats. That organ picked Dundy, Paddock, and Charles Van Wyck as "the political triangle in the Senate race," and singled out Dundy as Paddock's strongest competitor.<sup>2</sup> The Republican, never a strong Dundy supporter, carefully avoided open advocacy of any candidate but printed candid articles from other newspapers throughout the state which seemed to suit their purpose. Excerpts from the Knox County News hinted at a possible scheme between Dundy and Arthur J. Weaver of Falls City, whereby the latter would be appointed to the federal judgeship should Dundy be elected to the Senate. The News heaped words of admiration on Dundy, the jurist, but then criticized him for running for the Senate while holding his place on the bench. An article from the Pawnee Republican indicated that their delegation was as yet undecided as to

---

<sup>1</sup>Letter, J. Sterling Morton to William Sineman [?], Oct. 31, 1880, Morton Papers, microfilm edition, roll 48.

<sup>2</sup>Omaha Herald (weekly edition), Apr. 16, 1880, pp. 4, 6.

whether Dundy or Paddock would be their man.<sup>1</sup> As the new year broke over Nebraska, the senatorial race was shrouded in doubt as to who the victor might be.

Dundy checked into the Commercial Hotel at Lincoln with the other senatorial aspirants in early January to await the opening of the legislative session.<sup>2</sup> The Herald described the waiting game being played by the wily judge:

Judge Dundy, while no doubt intending to be a candidate, and having his warm and earnest supporters, maintains an air of studied indifference as to the Senatorial lightning striking him. Weaver and [O.P.] Mason . . . , are both candidates . . . , and would doubtless be willing to throw the limited support they may secure to Dundy, in consideration of the opportunity . . . to compete for the vacant judgeship.<sup>3</sup>

No matter whether the Herald's allegations were true or not, no such shift of support to Dundy materialized. The legislature began meeting in joint convention for the purpose of senatorial election on January 19. The results of the first ballot showed: Paddock, 39 votes; Dundy, 12; Weaver, 15; other candidates, 32.<sup>4</sup> The balloting continued with little change for the next two days.<sup>5</sup> On the morning

---

<sup>1</sup>Omaha Weekly Republican, Dec. 31, 1880, p. 5.

<sup>2</sup>Ibid., Jan. 14, 1881, p. 4.

<sup>3</sup>Omaha Herald (weekly edition), Jan. 7, 1881, p. 5.

<sup>4</sup>Nebraska Legislature, Senate, 16th Sess., Jan. 19, 1881, Journal, pp. 160-61.

<sup>5</sup>Ibid., Jan. 20-21, 1881, pp. 166-73, 179-91.

of January 22, the decisive moment came. After the first ballot was taken, William Daily announced that he wished to change his vote from Dundy to Paddock.<sup>1</sup> Confusion struck the Dundy supporters, and they hurriedly changed their votes to other candidates, thinking Daily's action was the beginning of a plan to swing the entire Paddock vote to their man on the next ballot.<sup>2</sup> No one candidate gained a majority on that ballot, and the befuddled legislators recessed to hold caucuses.<sup>3</sup>

Dundy was "filled with grief and indignation" at the action of his campaign leader, Daily.<sup>4</sup> He vigorously denied any knowledge of the plot.<sup>5</sup> The broken judge gathered his supporters and urged them to go into the Republican caucus with an open mind and to steadfastly support whomever the chosen candidate might be.<sup>6</sup> The Dundy men followed the instructions of their leader to a man and, upon return to the hall, cast their votes for Charles Van Wyck. Their

---

<sup>1</sup>Ibid., Jan. 22, 1881, pp. 195-96.

<sup>2</sup>Omaha Herald (weekly edition), Jan. 28, 1881, p. 4.

<sup>3</sup>Nebraska Legislature, Senate, 16th Sess., Jan. 22, 1881, Journal, p. 196.

<sup>4</sup>Omaha Bee (evening edition), Jan. 24, 1881, p. 1.

<sup>5</sup>Ibid., Omaha Weekly Republican, Jan. 28, 1881, p. 5.

<sup>6</sup>Omaha Weekly Republican, Jan. 28, 1881, p. 5.

vote, along with other anti-Paddock factions, elected Van Wyck to the Senate.<sup>1</sup>

The Dundy camp was bitterly stung by the judge's defeat. Much comment and consternation was directed toward William Daily and his political ability. Daily sobbed denials of his responsibility and said that Phineas Hitchcock had spread rumors that Dundy had withdrawn from the race prior to the morning ballot. Hitchcock denied it, blaming Daily. Others seemed to know but refused to comment as to the purpose of the scheme which destroyed Dundy.<sup>2</sup> The Republican blamed the inept Daily for faulty management of the Dundy effort.<sup>3</sup> In a blistering editorial, the Republican queried: "Who killed Cock Robin? Here lies Cock Robin in the person of the senatorial boom of our eminent and respected judge, as dead as a smelt . . . yet no proud sparrow comes forward and acknowledges the bloody deed."<sup>4</sup> The Republican was right. "Cock Robin" was dead and dead were his hopes of ever gaining a senatorship. Dundy, the

---

<sup>1</sup>Nebraska Legislature, Senate, 16th Sess., Jan. 22, 1881, Journal, pp. 200-01. Morton and Watkins, Illustrated History, III, 197-98.

<sup>2</sup>Omaha Weekly Republican, Jan. 28, 1881, p. 4.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid. Samuel Maxwell expressed pity for Dundy for having been betrayed by his so-called friends in a letter soon after the election. See Letter, Maxwell to Samuel M. Chapman, Jan. 26, 1881, Nebraska State Historical Society, Samuel M. Chapman Papers, 1866-1906, microfilm edition, roll 5.

political activist and die-hard campaigner, had been frustrated for the last time in his quest of the national Senate. Never again would he seek elected office, but he would content himself with his lifetime position on the bench.

Autumn, 1881, was a period of tense excitement in Omaha. The subject on many lips was prohibition, an emotional topic that had been in the forefront on several occasions since the very beginnings of Nebraska Territory. Earlier in the year, the legislature enacted the "Slocumb Law" which placed severe restrictions on saloon keepers and all other purveyors of alcoholic beverages. Liquor dealers in Omaha were up in arms in protest to the increase in the annual cost of a liquor license from \$100 to \$1,000.<sup>1</sup>

Colonel Watson B. Smith, clerk of the United States Court, was a leader of the prohibitionist movement. Smith worked tirelessly for strong enforcement of the high license law. On November 5, 1881, he was shot and killed outside his office door in the post office building. The shooting took place late at night and probably occurred as Smith, who had been working late, was leaving his office. The Omaha press screamed its outrage at this brutal act toward one of the city's most popular gentlemen and clamored for an all-out

---

<sup>1</sup>Savage, Bell, and Butterfield, History of Omaha, pp. 175-77.

effort to apprehend the unknown assassin.<sup>1</sup> The Herald and Republican all but openly accused the saloon keepers of the crime, several of whom had supposedly threatened Smith's life.<sup>2</sup>

The enraged public was sure they had a genuine suspect the following month. August F. Ardnt was accused of threatening the life of Judge Dundy unless he returned a favorable ruling in his suit against the Union Pacific Railroad Company. The threats were not made directly to the judge, but to several of his immediate friends who relayed the information that his life was in danger. Dundy called the counsels for both Ardnt and the Union Pacific together and advised them of the threats and offered to remove himself from the case. Both counsels elected to let Dundy try the case regardless of the circumstances.<sup>3</sup> Judge Dundy ruled in favor of the railroad company anyway.<sup>4</sup> Ardnt was later tried and found guilty of making the threats against Dundy's life,<sup>5</sup> but no link could be found between Ardnt (the

---

<sup>1</sup>Ibid., p. 177. Omaha Herald (weekly edition), Nov. 11, 1881, p. 2. Omaha Bee (evening edition), Nov. 5, 1881, p. 8. Omaha Weekly Republican, Nov. 11, 1881, p. 5.

<sup>2</sup>Omaha Herald (weekly edition), Dec. 23, 1881, p. 4. Omaha Weekly Republican, Nov. 11, 1881, p. 5.

<sup>3</sup>Omaha Herald (weekly edition), Dec. 23, 1881, pp. 4-5.

<sup>4</sup>Ibid.

<sup>5</sup>Weekly Nebraska State Journal (Lincoln), Jan. 20, 1882, p. 8. The case was tried before Judge Foster of Kansas. Ardnt was sentenced to three months confinement.

scapegoat of the press) and the murder of Smith.<sup>1</sup> The death of Smith remains an unsolved mystery.

The sudden demise of Watson B. Smith allowed Dundy to make some changes in his office. Elmer D. Frank, a relative of his wife, was appointed to fill the vacant circuit court clerk position. Frank had been serving as clerk of the district court for nearly two years and now occupied both positions. One year later, in December, 1882, Dundy appointed his son, Elmer, Jr., to the position of district court clerk. Despite the fact that these appointments made the United States Court virtually a "family affair," there was no uproar in the press. In fact, the newspapers that gave any coverage at all to the appointments issued rather warm words of welcome to both Frank and Elmer, Jr.<sup>2</sup>

The resignation of John F. Dillon as circuit court judge in May, 1879, caused a vacancy in that position. George McCrary, former United States Senator, resigned his position as Secretary of War under President Hayes to accept

---

<sup>1</sup>Omaha Herald (weekly edition), Dec. 23, 1881, p. 7.

<sup>2</sup>Globe-Journal (Falls City), Nov. 26, 1881, p. 3. Falls City Journal, Dec. 1, 1882, p. 5 (article reprinted from Omaha Herald, n.d., no page given). "The Late Judge Dundy's Ways," The American Lawyer, V (1897), 123. (Hereinafter cited as "Judge Dundy's Ways," American Lawyer.) Same article also in "Peculiarities of Judge Dundy," The Albany Law Journal, LIV (1896-1897), 348-49.

the circuit judgeship. Judge McCrary served until 1884.<sup>1</sup> Upon his resignation, David J. Brewer was appointed to the eighth circuit. Judge Brewer was appointed to the United States Supreme Court in 1889.<sup>2</sup> Henry C. Caldwell succeeded Brewer at the circuit court in 1890.<sup>3</sup> These three prominent jurists held court with Dundy in the District of Nebraska and, like Judge Dillon before them, brought a wealth of judicial competence to the bench.

Court business absorbed a great deal of Dundy's time during the remaining years of his life. In 1878, a law was passed authorizing him to hold a term of court at Lincoln every January in addition to the May and November sessions in Omaha.<sup>4</sup> For years, Dundy had kept his home at Falls City. Perhaps the distances involved and the separation from his family caused by the heavy volume of court work were factors in his decision to move to Omaha in the early 1880s. He completed a lovely residence at Twenty-ninth and Leavenworth

---

<sup>1</sup>"McCrary, George Washington," U.S., Congress, House, Biographical Directory of the American Congress, 1774-1961, House Doc. 442, 85th Cong., 2d Sess., 1961, p. 1290.

<sup>2</sup>"David Josiah Brewer," U.S., Supreme Court, A Complete Indexed Digest of the United States Supreme Court Reports from the Organization of the Court in 1789 to October Term, 1894 (4th ed.; 3 vols.; Rochester, N. Y.: The Lawyers Cooperative Publishing Co., 1894), I, xcvi.

<sup>3</sup>"Caldwell, Henry Clay," The National Cyclopaedia of American Biography, 1909, XI, 478.

<sup>4</sup>Act of June 19, 1878, Statutes at Large, XX, 169 (1878).



Streets in the John I. Redick addition in 1884, and, that same year, sold his home at Falls City.<sup>1</sup>

The aftermath of the Ponca case brought the plight of the Indian into public view throughout much of the nation, and Nebraska was no exception. Two significant cases involving Indians came before the United States Court in the 1880s that served to test the extent of the white man's benevolence toward their red brothers. Both cases were ultimately decided in the United States Supreme Court.

John Elk, an Indian and bona fide resident of Omaha and of Nebraska, attempted to register to vote in a local election on April 5, 1880. The registrar, one Charles Wilkins, refused to allow him to register on the basis that Elk was an Indian and therefore not a citizen of the United States. Elk filed a suit against Wilkins for \$6,000 in United States Court.<sup>2</sup> A. J. Poppleton and J. L. Webster served as his attorneys. District Attorney Lambertson acted as counsel for Wilkins.<sup>3</sup>

---

<sup>1</sup>Douglas County, Nebraska, Register of Deeds, Deed Record, Vol. A-XXII, 588-89. Dundy's property was listed in his wife's name. Elmer D. Frank owned adjacent property. Sorenson, Story of Omaha, p. 377. Savage, Bell, and Butterfield, History of Omaha, p. 235. Towle, "Judge Elmer S. Dundy," 92.

<sup>2</sup>John Elk, Plff. in err. v. Charles Wilkins, 112 U.S. 94, 28 L. Ed. 643-44 (1884). (Hereinafter cited as Elk v. Wilkins.)

<sup>3</sup>Savage, Bell, and Butterfield, History of Omaha, p. 275.

In the defendant's behalf, Lambertson filed a demurrer which stated:

1. That the petition [Elk's] did not state facts sufficient to constitute a cause of action.
2. That the court had no jurisdiction of the person of the defendant.
3. That the court had no jurisdiction of the subject of the action.<sup>1</sup>

Judges McCrary and Dundy examined the case and agreed to sustain the demurrer since the defendant's lawyers wanted the case to go to the Supreme Court anyway.<sup>2</sup>

The plaintiff's lawyers then sued out a writ of error to the United States Supreme Court basing their case on the first section of the Fourteenth Amendment to the Constitution by which "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." The writ also claimed the right of citizens to vote as guaranteed by the Fifteenth Amendment.<sup>3</sup>

The high court, in a ruling based on several precedents, ruled against the plaintiff.<sup>4</sup> Mister Justice Gray,

---

<sup>1</sup>Elk v. Wilkins, 28 L. Ed. 644.

<sup>2</sup>Elk v. Wilkins, Case No. 330E, U.S. Circuit Court Records, Omaha, 1880. These records contain a letter from McCrary to Dundy indicating that he knew the intent of this test case.

<sup>3</sup>Elk v. Wilkins, 28 L. Ed. 644-45.

<sup>4</sup>Ibid., 649.

in delivering the opinion, upheld the U.S. v. Crook decision in that any person, whether a citizen or not, had the right to habeas corpus. He then pointed out quite clearly that Dundy had not conferred citizenship on the Indian in that celebrated case. Indeed, Dundy had concurred with Judge McCrary in the case now before the court.<sup>1</sup> The decision in the Elk v. Wilkins case should have dispelled any notion of citizenship for Indians such as was stirred up in the Standing Bear case. It was of no consequence that an Indian had severed his tribal relations or that he might be considered a bona fide resident of a state. Mister Justice Gray made it quite clear that "To be a citizen of the United States is a political privilege which no one, not born to, can assume without its consent in some form."<sup>2</sup>

In 1888, a family of Sioux Indians, heirs of one Sophia Felix, filed a suit at equity in United States Court to recover title to 120 acres of highly valuable land within the city of Omaha. Pierre and Elizabeth Felix, the principal plaintiffs in the case, alleged that a real estate promoter, one Matthewson T. Patrick, had swindled Sophia Felix out of that land in 1860. The plaintiffs claimed that they had only recently severed their tribal relations, therefore the long period of time before bringing suit in federal

---

<sup>1</sup>Ibid., 648.

<sup>2</sup>Ibid.

court.<sup>1</sup> In the meantime, the land in the hands of Patrick had been developed and had increased in value from \$150 in 1861 to well over \$1,000,000 in 1888.<sup>2</sup>

The case was heard before Judges Brewer and Dundy at the November term in 1888. Dundy stated that he could not participate in the decision because he had learned "to his disgust," that one of the real estate dealers involved had recently sold some of the land to "an inexperienced member of my family." He did indicate officially that he was in complete agreement with the action of Judge Brewer in sustaining the demurrer offered by John L. Webster, counsel for the defendant.<sup>3</sup> Webster used as basis for his demurrer the time lapse of twenty-eight years, asserting that the claim was too old to consider. Judge Brewer agreed and in his decision indicated that in view of the vastly increased value of the land, it would be improper and completely intolerable to consider such a demand as that offered by the plaintiffs.<sup>4</sup>

---

<sup>1</sup>Pierre Felix, et al., Appts. v. Matthewson T. Patrick, et al., 145 U.S. 317, 36 L. Ed. 719-22 (1892). (Hereinafter cited as Felix v. Patrick.)

<sup>2</sup>Felix v. Patrick, 36 L. Ed. 727.

<sup>3</sup>Felix v. Patrick, Case No. 167M, U.S. Circuit Court Records, Omaha, 1888. Records contain a statement signed by Dundy asserting these facts.

<sup>4</sup>Ibid., Decision of Judge Brewer.

The case was appealed to the Supreme Court. The opinion, rendered by Mister Justice Brown, affirmed the decision of Judge Brewer to dismiss the case.<sup>1</sup> He questioned the motives of the plaintiffs in waiting so long to sue and wondered at their sudden burst of intelligence, having come so soon after their citizenship. The learned justice then pointed out that while the plaintiffs may not have been able to sue in federal court because of their tribal status, they had had ample opportunity to sue in state courts. He stated clearly that the case for the plaintiff offered no sufficient reason for not knowing about the fraud earlier.<sup>2</sup> Justice Brown did not deny that an unlawful appropriation had been perpetrated by Patrick, but he expressed fears that if the court ruled for the plaintiff it would offer sanction to similar actions throughout the West, placing innumerable titles and claims in question.<sup>3</sup>

As iron rails extended over Nebraska during the eighties and the state government groped at means to regulate them,<sup>4</sup> the federal court again became a focal point in the settlement of disputes involving railroads. It was a period of frantic construction of new auxiliary lines by both the

---

<sup>1</sup>Felix v. Patrick, 36 L. Ed. 727.

<sup>2</sup>Ibid., 726.

<sup>3</sup>Ibid., 727.

<sup>4</sup>Sheldon, Nebraska, I, 627-30, 646, 650, 705-07.

Burlington and the Union Pacific. Many times these lines were built far in advance of settlement. Competition caused duplication of effort and an overall reduction in the efficiency of rail service.<sup>1</sup> Many citizens viewed the large companies with disdain. Their rates always seemed to be exorbitant, and every local politician was suspected of being controlled by either one line or the other.<sup>2</sup> In a smoldering air of distrust such as existed in the state, disputes would most certainly arise, and on many occasions, these quarrels found adjudication in Judge Dundy's court.

The Chicago, Burlington, and Quincy Railroad Company was smitten with a large scale walkout of engineers and firemen in February, 1888.<sup>3</sup> The workers were organized into brotherhoods that cut across company lines. Engineers on other lines refused to move Burlington cars.<sup>4</sup> If the strike continued, railway transportation would be severely affected.

---

<sup>1</sup>Nelson Trottman, History of the Union Pacific, A Financial and Economic Survey, Vol. XI of Library of Early American Business and Industry (20 vols.; New York: Augustus M. Kelley, Publisher, 1966), p. 192. (Hereinafter cited as Trottman, Union Pacific.)

<sup>2</sup>Richard C. Overton, Burlington Route, A History of the Burlington Lines (New York: Alfred A. Knopf, 1965), p. 184. (Hereinafter cited as Overton, Burlington Route.)

<sup>3</sup>Overton, Burlington Route, p. 211. Note: The Burlington and Missouri line was consolidated with the Chicago, Burlington, and Quincy Company in 1880 and assumed the latter's name. Because the line was still popularly known as "Burlington" during the period, that title will be utilized in this thesis.

<sup>4</sup>Omaha Republican, Mar. 7, 1888, p. 8; Mar. 9, 1888, p. 8.

In Nebraska, the Union Pacific officials did little to force their engineers to handle Burlington cars.<sup>1</sup> Perhaps they feared that the strike would extend to their own lines.<sup>2</sup> The Burlington turned to the federal courts in the states where the strikes and boycotts were crippling their operation.<sup>3</sup>

Judge Dundy issued a temporary injunction to the Union Pacific company on March 9, 1888, restraining them from interfering with the Burlington dispute in any way.<sup>4</sup> Reluctantly the Union Pacific began handling Burlington freight, but by March 14, their engineers had announced that they would move no more Burlington cars.<sup>5</sup> Dundy's order, as far as the brotherhood was concerned, was "nonsense."<sup>6</sup> If the court ordered them to handle Burlington cars, they would strike.<sup>7</sup>

---

<sup>1</sup>In a letter to Union Pacific engineers an official of the company stated that the company could not boycott the Burlington. If it was done, the engineers would have to do it and assume full responsibility. See Ibid., Mar. 8, 1888, p. 8.

<sup>2</sup>Overton, Burlington Route, p. 211.

<sup>3</sup>Ibid., pp. 211-12.

<sup>4</sup>The Chicago, Burlington, and Quincy Railroad Company v. The Union Pacific Railway Company, et al., Case No. 169M, U.S. Circuit Court Records, Omaha, 1888. (Hereinafter cited as C.B. & Q. v. U.P., Case No. 169M.)

<sup>5</sup>Omaha Daily Herald, Mar. 10, 1888, p. 1. Omaha Republican, Mar. 14, 1888, p. 2.

<sup>6</sup>The New York Times, Mar. 11, 1888, p. 2.

<sup>7</sup>Omaha Republican, Mar. 14, 1888, p. 2.

Arguments for both companies were heard in the Dundy court. On March 17, the judge rendered his decision. He prefaced his remarks with a statement that he had noted the pointed accusations in some newspapers that he was a tool of one company or the other. He announced that his decision would be his, and his alone, in his official capacity, regardless of newspaper opinion. Judge Dundy then proceeded to read his decision. The injunction would stand. Prayers from the Union Pacific to keep their engineers on the job by injunction were denied. As far as Dundy was concerned, he saw suits for breach of contract as the company remedy should the brotherhood elect to quit work. The responsibility to keep the Union Pacific engineers from obstructing the operations of the Burlington was placed squarely on the shoulders of the company.<sup>1</sup>

The New York Times scoffed at Dundy's logic concerning his refusal to force men to work by injunction:

Telling a railroad company to sue its engineers for damages and calling that process a "remedy" is more suitable to a western humorist than a western judge.<sup>2</sup>

The Bee viciously slandered Dundy for his decision and blatantly accused him of near scandalous behavior. That organ

---

<sup>1</sup>C.B. & Q. v. U.P. Case No. 169M. Text of decision printed in Omaha Republican, Mar. 18, 1888, p. 2.

<sup>2</sup>The New York Times, Mar. 18, 1888, pp. 4-5.



asserted that he was in debt to the railway corporations.<sup>1</sup> The Republican leaped to his defense and, in an unusual display of sentiment for the man, cast highly laudatory compliments toward his character, courage, and fairness.<sup>2</sup> Judge Dundy's decision in sustaining the injunction, coupled with similar actions in federal courts in other districts, soon broke the boycott. Though the strike did not end completely for months to come, an intermediate objective was reached, and the conflicting parties were brought just that much closer to settlement.<sup>3</sup>

The ill-feeling between state and railroad, fostered on the large part by the former's attempts to extend control over the latter, reached a climax with the passage of the Newberry Law by the Nebraska Legislature on April 12, 1893. The law was to take effect on August 1, of that same year. It gave the state the right to fix freight rates by which the companies were compelled to abide.<sup>4</sup> The Burlington line

---

<sup>1</sup>Omaha Daily Bee (morning edition), Mar. 19, 1888, p. 4.

<sup>2</sup>Omaha Republican, Mar. 18, 1888, p. 4; Mar. 20, 1888, p. 4.

<sup>3</sup>Overton, Burlington Route, pp. 212-13.

<sup>4</sup>Ibid., p. 223. Nebraska, An Act to Regulate Railroads, to Classify Freights, to Fix Reasonable Maximum Rates to be Charged for the Transportation of Freights upon each of the Railroads in the State of Nebraska and to Provide Penalties for the Violation of this Act, Laws of Nebraska (1893), pp. 164-348.

estimated that it would incur a loss of one million dollars annually under the law.<sup>1</sup> Fortunately for the companies, they had a brief period in which to react.

Spurred by the president of the Burlington Line, Charles Perkins, three railway companies took their case to Judge Dundy's court. On July 28, he issued an injunction temporarily restraining the state from putting the law into effect.<sup>2</sup> His action was upheld by Justice Brewer, Supreme Court Justice responsible for the eighth circuit who heard the case while holding circuit court at Omaha in June, 1894. Justice Brewer forever doomed the Newberry Law on the following basis:

. . . [it] deprives these property owners of all chances to make profit which result from private control of business, and compels them to pay out of their pockets all the losses which result in enforcement of an absolute system [of rates].<sup>3</sup>

Judge Dundy's temporary injunction, backed up by Justice Brewer's opinion, began the proceedings of one of the most important court victories for the railroad. Appeals

---

<sup>1</sup>Overton, Burlington Route, p. 223.

<sup>2</sup>The Chicago, Burlington, and Quincy Railroad Company v. George Hastings, Atty. Gen., et al., Case No. 55Q, and Oliver Ames v. Union Pacific Railway Company, et al., Case No. 59Q, and George Smith, et al. v. Chicago and Northwestern Railway Company, et al., Case No. 60Q, U.S. Circuit Court Records, Omaha, 1893.

<sup>3</sup>Ibid. All three cases were treated in Judge Brewer's opinion, and are filed together as one case file.

from Nebraska brought the cases to the United States Supreme Court which resulted in the famous decision in Smyth v. Ames rendered in 1898. While state legislatures might fix rates, the reasonableness of such rates "can not be so conclusively determined . . . that the matter may not become the subject of judicial inquiry."<sup>1</sup>

The Union Pacific Railway Company also experienced unique problems during the period. In January, 1891, Judge Dundy settled a matter concerning the use of the railroad bridge between Omaha and Council Bluffs after the Union Pacific had attempted to close it to other lines.<sup>2</sup> Later, in 1893, when the company sank into insolvency, three of its stockholders went to the Dundy court for relief. On October 13, 1893, he heard their case and subsequently took the company into judicial custody and appointed five receivers.<sup>3</sup> During the period of receivership, Judge Dundy granted several requests of the company to relieve their burden,

---

<sup>1</sup>Constantine J. Smyth, Attorney General, et al., Constituting the Board of Transportation of Nebraska, et al., Appts., v. Oliver Ames, et al., Same v. George Smith, et al., Same v. Henry L. Higginson, et al., 169 U.S. 466, 42 L. Ed. 842 (1898).

<sup>2</sup>Chicago, Milwaukee, and St. Paul Railway Company v. Union Pacific Railway Company, Case No. 196"0", U.S. Circuit Court Records, Omaha, 1891. Savage, Bell, and Butterfield, History of Omaha, pp. 301-02.

<sup>3</sup>Trottman, Union Pacific, pp. 249-50. The New York Times, Oct. 14, 1893, p. 1. Morning World-Herald (Omaha), Nov. 14, 1893, p. 7.

such as reducing the wages of Union Pacific employees<sup>1</sup> and relieving the company of the obligation to operate auxiliary branches that were not turning a profit.<sup>2</sup> The master in chancery for the District of Nebraska that handled the Union Pacific interests was none other than his own son, Elmer, Jr.<sup>3</sup> Judge Dundy and court apparently served as a source of genuine and competent judicial authority in railroad matters throughout the 1880s and until his death in 1896.

During periods of inactivity in court business, Dundy was anything but idle. He engaged in farming.<sup>4</sup> He established quite a reputation as a hunter and outdoorsman. He organized frequent hunts in pursuit of big game in the Rocky Mountains and on the plains.<sup>5</sup> In 1872, Judge Dundy, John Lee Webster, District Attorney Neville, and Watson D. Smith, embarked on a buffalo hunt accompanied by none other than William F. Cody. A cavalry unit escorted the distinguished party, a common practice during those days. During the hunt,

---

<sup>1</sup>Commercial and Financial Chronicle and Hunt's Merchants' Magazine (weekly newspaper), Feb. 3, 1894, LVIII, 224. Judge Dundy's order was later set aside by the circuit judge. See Ibid., April 7, 1894, LVIII, 603.

<sup>2</sup>Ibid., n.d., LIX, 117, 740. Cited in Trottmann, Union Pacific, p. 251.

<sup>3</sup>The New York Times, Feb. 6, 1907, p. 9.

<sup>4</sup>Evening Post (Lincoln), Oct. 29, 1896, p. 1. Andreas, Nebraska, II, 1314.

<sup>5</sup>Towle, "Judge Elmer S. Dundy," 93.

Cody lassoed a buffalo and in the process broke one of its legs. He then amputated the injured part with a large knife and saw. He completed his surgery by cauterizing the open wound with a hot iron.<sup>1</sup> On another hunt, one year later, Dundy killed eighteen buffalo in one outing while hunting with E. L. Bierbower and others.<sup>2</sup> His periodic forays into the wilderness were anything but tame. He broke a leg while hunting in 1872,<sup>3</sup> and a few years before his death, sustained a similar injury while tobogganing in South Dakota.<sup>4</sup> He often challenged bear on his hunts and is credited with killing sixty-six of the animals, the last only weeks before his death in 1896.<sup>5</sup>

Any written attempt to portray the public life of Elmer Dundy would be incomplete without presenting some of the views of his contemporaries concerning his distinguished career in the courtroom. Judge Dundy was an interesting

---

<sup>1</sup>John Lee Webster, "The Last Romantic Buffalo Hunt on the Plains of Nebraska," in Nebraska Pioneer Reminiscences, D.A.R., Nebraska (Cedar Rapids, Iowa: The Torch Press, 1916), pp. 326-31. Cody also reported this incident in his writings. See William F. Cody, Story of the Wild West and Campfire Chats (Philadelphia: Historical Publishing Co., 1888), pp. 642-43.

<sup>2</sup>Frank J. Burkley, The Faded Frontier (Omaha: Burkley Envelope & Printing Company, 1935), p. 410.

<sup>3</sup>Omaha Weekly Herald, Dec. 18, 1872, p. 1.

<sup>4</sup>Omaha Daily Bee (morning edition), Oct. 29, 1896, p. 8.

<sup>5</sup>Morning World-Herald (Omaha), Oct. 29, 1896, p. 1.

character, both on and off the bench. Much information pertaining to his image off the bench has been presented thus far in this thesis, but the antics and traits he displayed inside the courtroom are also interesting and worthy of note. Official court records convey nothing of the personal courtroom manner of the man. Fortunately, several of his contemporaries were impressed by his decorum, or lack of it, and chose to record it in writing.

Fairness was the trait most commonly attributed to Judge Dundy. In those days, it seems that fairness was equated to merciful treatment of the individual defendant as he stood before the court. If the defendant was an acquaintance of Judge Dundy, or if his reputation in the past had been unspoiled, he could count on a light sentence. The judge sentenced a friend of some years, one Edward Parker, to a very light fine for robbing a mail sack and told him to pay it as soon as he could.<sup>1</sup> He was equally considerate of those frontiersmen caught cutting wood for fuel on Indian reservations.<sup>2</sup> In these latter cases, the harshness of the frontier and the Nebraska winter must have been his considerations in pronouncing sentence.

---

<sup>1</sup>Omaha Weekly Republican, Jan. 28, 1881, p. 10.

<sup>2</sup>David Reavis, "Falls City," Journal, June 25, 1934, p. 3.

David Reavis recalled a case where Judge Dundy's compassion may have taken on an extralegal aspect. He reported that, in 1890, a father had tried to gain custody of his young daughter from her grandparents with whom she had been living since the untimely death of his wife. The judge performed his duty as he saw it under the law and in a tearful courtroom scene gave the child over to the father. The father and sorrowful daughter departed Omaha by train shortly after the trial, but when the train got to Council Bluffs, a strange thing happened. Several persons who had been in court that day stopped the train and forcibly removed the child from the father and passed her out through a car window. The train then departed with the father on board. The little girl lived with the grandparents from then on and was never bothered again. Reavis insinuated that Dundy was at least cognizant of the goings-on and may have instigated the whole thing; after all, Council Bluffs, Iowa, was out of his jurisdiction.<sup>1</sup>

On some occasions the punishment did not seem to fit the crime. Charles W. Mosher was a Lincoln banker and businessman. A bank which he operated collapsed in 1893, with a loss to his patrons of more than \$1,000,000. He came before Judge Dundy's court that same year on charges of embezzlement and falsification of records. Mosher's case

---

<sup>1</sup>Ibid.

was much publicized in the press, with the Herald being particularly vindictive toward the man.<sup>1</sup> Even the attorney general at Washington, D.C., became involved.<sup>2</sup> Judge Dundy heard the case and passed sentence. Mosher was sentenced to only five years imprisonment " . . . just because he [Judge Dundy] liked the man, and had trained with him in politics."<sup>3</sup>

Attorneys of the Omaha and Lincoln bars knew that the judge had his favorites. They often schemed to get their cases to the Dundy court, particularly if it was the case of an individual versus a corporation or a touching personal injury case. It seems evident that the judge had a reputation for favorable consideration of individual defendants and of his pet attorneys.<sup>4</sup>

Judge Dundy's strange humor was also a widely known characteristic. Alfred Sorenson recalled a case of alienation of affections brought before Judge Dundy:

. . . the defendant was about the homeliest and most repulsive looking man that was ever permitted to roam at large. Judge Dundy sent a bailiff to summon Frank T. Ransom into the presence of the court. When Ransom entered the court room the

---

<sup>1</sup>Morning World-Herald (Omaha), May 10, 1893, p. 8; May 18, 1893, p. 5; May 23, 1893, p. 4.

<sup>2</sup>Ibid., May 23, 1893, p. 4.

<sup>3</sup>"Judge Dundy's Ways," American Lawyer, V, 123.

<sup>4</sup>Ibid.



judge beckoned to him to take a seat beside him on the elevated platform.

"Frank, I have summoned you here to take a good square look at that thing over there," said the judge, pointing to the defendant; "and I want your opinion as to whether a jury would be satisfied in rendering a verdict against him for the alienation of the affections of any woman?"

"Most assuredly not," replied Ransom, "and if you think the jury would give the plaintiff damages you would be justified in taking the case from the jury on the ground of no cause of action."

"Upon your opinion I am willing to let the jury decide," said the judge.<sup>1</sup>

Judge Dundy was a man of eccentric courtroom manner. He has been described as an autocrat, in complete command of the proceedings before him. He never hesitated to interrupt when the urge struck him, even to the point of personally arguing the case to the jury.<sup>2</sup> His eccentricities also included scoffing at rather revered judicial practices:

He denounced as mummery the opening of court by the "Oyez" of the bailiff, and refused to permit it in his court. He formulated an etiquette of his own, however. No attorney crossed the courtroom when court was in session except on tiptoe, and then at the risk of being vigorously called down. No one, not even his clerks, dared take the trial docket from his desk or remove any papers therefrom while court was in session. It was the Judge's delight to administer a call-down to a pompous lawyer from another district while in the midst of some learned argument, and the subordinate officers, District-Attorney, Marshal, clerk and all,

---

<sup>1</sup>Sorenson, Story of Omaha, p. 377.

<sup>2</sup>"Judge Dundy's Ways," American Lawyer, V, 123.

trembled whenever the Judge roared--which was his usual method of declamation whenever addressing jury, counsel or officers.<sup>1</sup>

He despised pompous courtroom practices. The court was not required to rise when he entered, nor were strict standards of dress enforced.<sup>2</sup>

Elmer Dundy was not a hypocrite. He was a man of strong convictions, and he had the courage to stand by them and voice them whenever he thought it necessary. This conviction coupled with his loyalty to certain friends often cast him in a less than favorable light with some persons and groups.<sup>3</sup> To adverse public opinion he paid little attention, however.<sup>4</sup> He had learned this lesson well, particularly in his stormy ventures into the politics of early Nebraska.

Judge Dundy did not possess an extensive knowledge of the law as gained from a refined academic environment. His greatest assets, according to the members of the bar that practiced before him, were common sense and quick judgment. He was widely acclaimed by his fellow lawyers and enjoyed the respect of Samuel F. Miller and David J. Brewer, associate

---

<sup>1</sup>Ibid.

<sup>2</sup>Morning World-Herald (Omaha), Oct. 29, 1896, p. 1.

<sup>3</sup>Semi-Weekly State Journal (Lincoln), Oct. 30, 1896, p. 5.

<sup>4</sup>"Judge Dundy's Ways," American Lawyer, V, 123.

justices of the United States Supreme Court, who knew him well.<sup>1</sup> He was thoroughly committed to the bench. Though he often held court in other states for other federal judges and often served as circuit judge, he never once asked for relief himself.<sup>2</sup> Courage, conviction, dedication, and common sense must have been adequate compensation for his lack of formal education.

A legal associate, in writing a history of Omaha, described him in this fashion:

Judge Dundy has made an able, upright judge; has administered the law, as he has seen it, in a dignified and impartial way; and is one of the most pleasant and affable gentlemen to associate with that there is within the boundaries of the State.<sup>3</sup>

Elmer S. Dundy died at his home on October 28, 1896. He was sixty-six years old. The cause of death was recorded as apoplexy.<sup>4</sup> His health had been failing for some time.<sup>5</sup> He was a man of many talents--pioneer, frontier lawyer, outdoorsman, political leader, and distinguished jurist. His death was a loss to both Nebraska and to the nation.

---

<sup>1</sup>Omaha Sunday Bee, Nov. 8, 1896, p. 13.

<sup>2</sup>Semi-Weekly State Journal (Lincoln), Oct. 30, 1896, p. 5.

<sup>3</sup>Savage, Bell, and Butterfield, History of Omaha, p. 235.

<sup>4</sup>Douglas County, Nebraska, Dept. of Health, Ledger of Certificates of Death, Vol. III, no page number.

<sup>5</sup>Omaha Daily Bee (morning edition), Oct. 29, 1896, p. 8.

## CONCLUSION

Elmer S. Dundy was a principal figure in the shaping of the political face of Nebraska both in the territorial period and early statehood days. His is a legacy that has been largely ignored by regional historians. Perhaps this is due to personal animosity created as a result of political differences between the man and contemporaries who recorded the early days of Nebraska. He may also have been the innocent victim of the arbitrary but sometimes unavoidable selection of materials with which those historians have chosen to work. Whether the reason for his relative obscurity is either of these or both is not important. The fact that he lived a valuable life and contributed in significant measure to the political beginnings of the region is relevant and worthy of presentation as local history.

Elmer Dundy arrived in Nebraska when the territory was young. Its settlements were nestled against the vital artery that was the Missouri River. It is not known what brought him to Nebraska, but it seems quite evident that he came with the intent to cast his fortunes in the political forge. It was a turbulent and trying environment that

would tax the mettle of any adventurer inclined to make his way there.

He began his ambitious pursuit of success by representing the interests of frontier Archer, in Richardson County, at the nation's capitol. While only twenty-eight years of age, he was elected to the Territorial Legislature over a formidable but less determined opponent. He performed meaningfully on the Council and fought valiantly for his constituency against all who opposed its interests, whether inside or outside the capitol walls. His own people of Falls City attributed the responsibility of locating the county seat in their town to the almost single-handed efforts of Elmer Dundy. From the first, his political principles and method made him a favorite of the young Republican party; while, at the same time, he became a hated enemy of the waning Nebraska Democracy. During those early years, Elmer Dundy charted a determined course that ultimately brought him to a rendezvous with political success.

Although the student of today lacks personal memoirs or writings of Dundy from which to verify conclusions, it is an undeniable fact that he knew how to get what he wanted in the political arena. He was viciously attacked on several occasions for his dubious methods that seemed to bring him such repeated successes. There is little reason to doubt, in the face of such evidence, that he was just as ruthless as his opponents argue, but it is also quite probable that

the emotional remarks of his assailants were often aroused by an intense jealousy on their part. The fiery jargon of the press being what it was in that day, perhaps his image was only slightly worse than some of his opponents.

It seems clear that Dundy ascended to the territorial judgeship as a result of an alliance with the groundswell of Republican party activity in Nebraska and particularly with Samuel G. Daily, its most prolific proponent. It is also probable that the influence of Dundy was ebbing in his home county during the early 1860s and that he could not have captured another elected office even if he had desired one. The patronage of the new party in power and the relative security of a federal judgeship must have offered Dundy a safe haven and new base of power from which to maneuver for political advantage.

In the opinion of this writer, Dundy set out to gain appointment to the United States district bench soon after statehood with much the same thoughts in mind. He must have considered the future when he assumed the bench. His political appetite was by no means satisfied by the appointment, as later events clearly demonstrated.

In 1875 and 1881, he tried unsuccessfully to win a seat in the United States Senate. Although he was honored with a sizable following in each race, he was thwarted by intricate power plays that sapped his support and left him hopelessly defeated in the end. His retreat from the

active political arena after 1881 may well have been the result of a damaged ego, for one so accustomed to winning could not help but feel more sensitively the sharp sting of defeat.

Dundy garnered the most respect and esteem of his public life as a jurist. His common sense and practical application of justice during the three decades that spanned the meager frontier beginnings of the state to the complex network of rails that crisscrossed the region were by all appearances equal to the task. His dedication to the bench in the years after 1881 was truly remarkable. His prowess as a judge was widely recognized by his contemporaries of the bench and bar of his state and of the eminent officials of the federal judiciary, despite the eccentricities so widely attributed to his courtroom manner.

With regard to the role of the Dundy court and the evolution of Nebraska and the nation, it has been the purpose of this thesis to present selected cases, not in the detailed interpretation of a learned legal treatise but merely to acquaint the reader with some of the types of adjudication in which Dundy participated. Specific conclusions as to the judicial competence of the man are beyond the scope of this paper, but from this writer's point of view, the overall appraisal of Judge Dundy through the eyes of his legal associates was highly complimentary. Persons who question the impact of the dictum of United States v.

Crook on the Indians' progress toward the realization of adequate civil rights are invited to devote study and attention to it. Similar studies are also needed in the vast area concerning the role of the lower United States courts regarding the growth and/or impediment of railroad enterprise in the region during the latter third of the nineteenth century. Whatever the result of such inquiries, the presence of one Elmer S. Dundy on the federal bench will be a constant factor that must be considered. The pen with which he made a person of the likes of Standing Bear, struck down the Newberry Law, assumed custody of the Union Pacific Railway Company, and rendered countless other valuable decisions has sketched indelible letters on the rolls of history.

Within a few short years after Dundy's death, the entire family, under the parental guidance of his wife, and probably under the influence of substantial economic success of his son, sold their homesite in Omaha and moved to New York City. The bodies of the old judge and a daughter who died in early childhood were exhumed and taken from the soil of Nebraska to rest in a strange and faraway state.<sup>1</sup> Elmer

---

<sup>1</sup>Letter, Bradley Gramprey, Supt., Moravian Cemetery, Staten Island, N. Y., to author, Sept. 22, 1970. Dundy and daughter were removed from Omaha to the Moravian Cemetery on Jan. 30, 1902. Also buried in neighboring plots are his wife, son, and an older daughter (May). (Hereinafter cited as Gramprey Letter.)



Dundy had come and gone, but not without letting most of the citizens of his chosen state know that he had been there. Albeit sometimes forgotten, he deserves to be listed with the founding fathers of Nebraska.

## APPENDIX

In describing the public life of a prominent figure, it is sometimes easy to forget that the subject was a person, with very real and human experiences such as all men are bound to have and feel. Elmer S. Dundy was no different. He was a family man, and although it cannot be demonstrated from available evidence, his family undoubtedly played a large role in his life.

Dundy married Mary H. Robison, a native of Ohio, at Omaha on June 17, 1861. They were married at the home of the bride's father by the Reverend Henry W. Kuhns, of the Lutheran faith. The ceremony was witnessed by William Pitt Kellogg, William F. Lockwood, and Eleazer Wakeley, at that moment the jurists who made up the federal judiciary of Nebraska Territory.<sup>1</sup>

Four children were born to Elmer and Mary Dundy. A son, Elmer Jr., was born on March 31, 1862.<sup>2</sup> Three daughters

---

<sup>1</sup>Douglas County, Nebraska, Record of Marriage Licenses, 1856-1864, no page number. Ledger entry shows license issued on June 17, 1861, and ceremony performed same day.

<sup>2</sup>The New York Times, Feb. 6, 1907, p. 9.

followed in the next few years--Mary Mae, Luna, and Enid Alva, who died in 1866 at one year of age.<sup>1</sup> None of the Dundy family survives today, and there are no known relatives residing in Nebraska.

Elmer S. Dundy, Jr., "Skip" as he was commonly called, reportedly attended the University of Nebraska<sup>2</sup> and, as was stated in the text, served as clerk of his father's court. He evidently had a talent for things financial and successfully entered into the production of amusement shows. He had the "Infant Incubator" concession at the Trans-Mississippi Exposition in 1898.<sup>3</sup> At the Exposition he met Frederic W. Thompson, and the two formed a partnership. Soon they were in New York.<sup>4</sup> They constructed amusements at the Pan American Exposition in 1901. Together, they built the largest amusement enterprise in the world at that time. It opened at Coney Island in 1903, and was named

---

<sup>1</sup>David Reavis, "Falls City," Journal, June 25, 1934, p. 3. Sources cannot agree on the names of two of Dundy's daughters, Mary Mae and Enid Alva. Several spellings are found in various sources. The two mentioned in the text are taken from the records of the Moravian Cemetery, where they are buried. They are thought to be as accurate as possible, as there are no birth records for the years of their birth at Falls City, Nebraska.

<sup>2</sup>The New York Times, Feb. 6, 1907, p. 9. This report may be true, but his name could not be found in the university directories of the period.

<sup>3</sup>George Leighton, Five Cities, The Story of Their Youth and Old Age (New York and London: Harper and Bros., 1939), p. 187.

<sup>4</sup>David Reavis, "Falls City," Journal, June 25, 1934, p. 3.

Luna Park after one of the Dundy girls. The Hippodrome was also a Thompson-Dundy enterprise.<sup>1</sup> "Skip" Dundy died suddenly on February 5, 1907 at his mother's apartment on Broadway, in New York City.<sup>2</sup>

Mary or Mae, as she was popularly known, attended Brownell Hall school<sup>3</sup> and was evidently active in the Omaha social life of the day.<sup>4</sup> She served as Queen of Quivira at the State Fair of 1896, sponsored by Ak-Sar-Ben. Her royal partner was none other than Caspar E. Yost, first United States Marshal to serve under Judge Dundy after Nebraska achieved statehood.<sup>5</sup> Mae later became Mrs. George Lee.<sup>6</sup> She died in 1944, and was buried with her father, mother, brother, and sisters in New York.<sup>7</sup>

The death of his infant daughter, Enid, while Dundy was a resident of Falls City, touched him deeply. He buried her

<sup>1</sup>"Thompson, Frederic Williams," The National Cyclopaedia of American Biography, 1926, XIX, 105-06. The New York Times, Feb. 6, 1907, p. 9.

<sup>2</sup>The New York Times, Feb. 6, 1907, p. 9.

<sup>3</sup>J. M. Wolfe, Omaha City Directory, 1879-1880 (Omaha: Herald Publishing House, 1879), p. 141.

<sup>4</sup>Omaha Bee (evening edition), Apr. 10, 1880, p. 2.

<sup>5</sup>Arvid E. Nelson, Jr., The Ak-Sar-Ben Story (Lincoln: Johnsen Publishing Company, 1967), p. 37.

<sup>6</sup>Ibid., p. 337.

<sup>7</sup>Gramprey Letter.

in the family garden and built a small cottage over the grave.<sup>1</sup> Later, she was moved to Omaha, and then with the body of her father was taken to New York in 1902.<sup>2</sup>

Luna Dundy became the wife of Henry B. Newman of Bayonne, New Jersey, and went there to live. She died on January 27, 1906.<sup>3</sup> Mary, the wife of Dundy, moved to New York in 1902, after her son's success in show business. She outlived all her children but Mae, succumbing in December, 1918. Mary Dundy was buried next to her husband in the old Moravian Cemetery, on Staten Island, New York.<sup>4</sup>

The author made several attempts to contact any descendants of Elmer S. Dundy by mail but received no favorable responses. Several letters were returned due to outdated addresses. Whether any remnants of his family exist anywhere in the country today is unknown. It is really too bad, for any descendants would have an ancestor of whom they could be justly proud.

---

<sup>1</sup>David Reavis, "Falls City," Journal, June 25, 1934, p. 3. Edmunds, Pen Sketches, pp. 401-02.

<sup>2</sup>Gramprey Letter.

<sup>3</sup>The New York Times, Feb. 6, 1907, p. 9. Gramprey Letter.

<sup>4</sup>Gramprey Letter.

## SELECTED BIBLIOGRAPHY

### Public Documents

#### 1. FEDERAL

##### A. Statutes<sup>1</sup>

An Act to Organize the Territories of Nebraska and Kansas.  
Statutes at Large, Vol. X (1854).

An Act Making Appropriations for Sundry Civil Expenses of  
the Government for the Year Ending June 30, 1859.  
Vol. XI (1858).

Union Pacific Act. Statutes at Large, Vol. XIII (1864).

An Act to Provide for a District and a Circuit Court of the  
United States for the District of Nebraska. Statutes at  
Large, Vol. XV (1867).

An Act to Amend the Judicial System of the United States.  
Statutes at Large, Vol. XVI (1871).

An Act to Provide for the Holding of a Term of the District  
and Circuit Courts of the United States at Lincoln,  
Nebraska. Statutes at Large, Vol. XX (1878).

##### B. General

U.S. Congress. House. Biographical Directory of the American  
Congress, 1774-1961. House Doc. 442, 85th Cong., 2d Sess.,  
1961.

\_\_\_\_\_. House. Evidence and Other Papers Submitted in the  
Contested Election of Samuel G. Daily versus J. Sterling  
Morton as Delegate From the Territory of Nebraska in the  
Thirty-Seventh Congress. Misc. Doc. No. 4, 37th Cong.,  
1st Sess., 1861. House Miscellaneous Documents. pp.  
1-161.

---

<sup>1</sup> Arranged chronologically.

- \_\_\_\_\_. House. Expenses of the United States Courts for Nebraska. House Report No. 104. 43rd Cong., 2d Sess., 1874. House Reports. pp. 1-2.
- \_\_\_\_\_. House. Fenner Ferguson, Delegate from Nebraska Territory speaking for Sec. 13 of the Civil Appropriations Bill. 35th Cong., 1st Sess., June 9, 1858. Congressional Globe, XXXVI, 1806.
- \_\_\_\_\_. House. Nebraska Contested Election. 37th Cong., 2d Sess., May 7, 1862. Congressional Globe, XXXII, pt. 3, 1995-2010.
- \_\_\_\_\_. House. 43d Cong., 2d Sess. Dec. 11, 1874. Congressional Record. III, pt. 1, p. 4.
- \_\_\_\_\_. Senate. Memorial of the Citizens of Nebraska Territory Residing South of the Platte River in Convention Assembled at Brownville, January 5, 1859. Territorial Papers of the U.S. Senate, Nebraska Territory, Feb. 12, 1853-Jan. 9, 1867. RG. 46. National Archives and Records Service. microfilm edition. roll 16.
- \_\_\_\_\_. Senate. Removal of the Ponca Indians. Sen. Report No. 670. 46th Cong., 2d Sess., May 31, 1880. Senate Misc. Reports.
- U.S. Court Records. Omaha. Journal of Admission to Practice, 1867-1911.
- U.S. Department of Interior. Population of the U.S. in 1860. Compiled from the original returns of the 8th Census by Joseph C. G. Kennedy. Washington, D.C.: Government Printing Office, 1864.
- U.S. District Court of Nebraska Territory. 2d Judicial District. 1862-1867. Complete and Final Record Book.
- U.S. Land Office. Entry Book. CXLIX, 121, 124, 135. Filed at Nebraska State Historical Society. Lincoln.
- U.S. National Archives and Records Service. Legislative, Judicial, and Diplomatic Records Division. RG. 49. Letter, Samuel G. Daily to Abraham Lincoln. April 4, 1861.
- U.S. Supreme Court. A Complete Indexed Digest of the United States Supreme Court Reports from the Organization of the Court in 1789 to October Term, 1894. 4th ed. 3 vols. Rochester, N.Y.: The Lawyers Cooperative Publishing Co., 1894. I.

## 2. TERRITORIAL

A. Statutes<sup>1</sup>

Nebraska Territory. An Act to Provide for the County Seat of Richardson County and Supplementary to an Act to Provide for the County Seat of Richardson County, Laws of Nebraska (1857).

\_\_\_\_\_. An Act to Establish Permanently the County Seat of Richardson County, by a Vote of the People. Laws of Nebraska (1858).

\_\_\_\_\_. An Act for the Location of the County Seat of Richardson County, by a Vote of the People. Laws of Nebraska (1860).

\_\_\_\_\_. An Act to Prohibit Slavery. Laws of Nebraska (1861).

## B. General

Nebraska Territory. Council. 5th Sess. 1858. Journal.

\_\_\_\_\_. Council. 6th Sess. 1859-1860. Journal.

\_\_\_\_\_. Council. 7th Sess. 1860-1861. Journal.

\_\_\_\_\_. Council. 9th Sess. 1864. Journal.

\_\_\_\_\_. House. 5th Sess. 1858. Journal.

\_\_\_\_\_. House. 6th Sess. 1859-1860. Journal.

## 3. STATE AND LOCAL

## A. Statutes

Nebraska. An Act to Authorize Falls City Precinct, in Richardson County, to Issue Bonds to Aid in the Construction of a Courthouse for Richardson County. Laws of Nebraska (1873).

\_\_\_\_\_. An Act to Regulate Railroads, to Classify Freights, to Fix Reasonable Maximum Rates to be Charged for the Transportation of Freights upon each of the Railroads in the State of Nebraska and to Provide Penalties for the Violation of this Act. Laws of Nebraska (1893).

---

<sup>1</sup> Arranged chronologically.



## B. General

- Nebraska. Legislature. House. 9th Sess. 1873. Journal.
- \_\_\_\_\_. Legislature. Senate. 1st Sess. 1866. Journal.
- \_\_\_\_\_. Legislature. Senate. 8th Sess. 1871. Journal.
- \_\_\_\_\_. Legislature. Senate. 11th Sess. 1875. Journal.
- \_\_\_\_\_. Legislature. Senate. 16th Sess. 1881. Journal.
- \_\_\_\_\_. Supreme Court. Elmer S. Dundy, Appt., v. The Board of County Commissioners of Richardson County, Appellee. 7 Nebraska Reports, 508-20. 1879.

Douglas County, Nebraska. Clerk. Records of Marriage Licenses, 1856-1864.

- \_\_\_\_\_. Dept. of Health. Ledger of Certificates of Death. Vol. III.
- \_\_\_\_\_. Register of Deeds. Deed Record. Vol. A-XXII, 588-589.

Richardson County, Nebraska. Register of Deeds. Deed Record Ledger Books A, B, D, LII, B-VI, IX-XII, XLIV, LII.

- \_\_\_\_\_. General Index to Deeds, I-VII.
- \_\_\_\_\_. Mortgage Records, I.

4. UNITED STATES  
COURT CASES

A. Supreme Court

- U.S. Supreme Court. John Elk, Plff. in Err. v. Charles Wilkins. 112 U.S. 94. 28 L.Ed. 643-53. 1884.
- \_\_\_\_\_. Pierre Felix, et al., Appts. v. Matthewson T. Patrick, et al. 145 U.S. 317. 36 L.Ed. 719-27. 1892.
- \_\_\_\_\_. Horatio H. Hunnewell, Appt., v. County of Cass, et al. 22 Wallace 464. 22 L.Ed. 752-55. 1875.
- \_\_\_\_\_. Kansas Pacific Railway Company, Plff. in Err., v. John H. Prescott; and Same v. Charles C. Culp. 16 Wallace 603. 21 L.Ed. 373-75. 1872.

\_\_\_\_\_. William H. Platt, Appt. v. Union Pacific Railroad Company and Frederick L. Ames. 9 Otto 48. 25 L.Ed. 424-30. 1879.

\_\_\_\_\_. Constantine J. Smyth, Attorney General, et al., Constituting the Board of Transportation of Nebraska, et al., Appts., v. Oliver Ames, et al. Same v. George Smith. Same v. Henry L. Higginson, et al. 169 U.S. 466. 42 L.Ed. 819-50. 1898.

\_\_\_\_\_. Union Pacific Railroad Company, Plff. in Err., v. The Board of County Commissioners of the County of Dodge, 8 Otto 541. 25 L.Ed. 196-98. 1879.

\_\_\_\_\_. Union Pacific Railroad Company, Appt. v. Edward C. McShane, Treasurer, etc., et al. and Edward C. McShane, Treasurer, etc. et al. v. Union Pacific Railroad Company. 22 Wallace 444. 22 L.Ed. 747-52. 1875.

\_\_\_\_\_. Union Pacific Railroad Company, Appt. v. William S. Peniston, Treasurer of Lincoln Co. 18 Wallace 5. 21 L.Ed. 787-98.

B. United States Courts,  
Nebraska

U.S. Circuit Court. Omaha. Oliver Ames v. Union Pacific Railway Company, et al. Case No. 59Q. 1893.

\_\_\_\_\_. Chicago, Burlington, and Quincy Railroad Company v. George Hastings, Atty. Gen., et al. Case No. 55Q. 1893.

\_\_\_\_\_. Chicago, Burlington, and Quincy Railroad Company v. The Union Pacific Railway Company, et al. Case No. 169M. 1888.

\_\_\_\_\_. Chicago, Milwaukee, and St. Paul Railway Company v. Union Pacific Railway Company. Case No. 196 "O". 1891.

\_\_\_\_\_. John Elk v. Charles Wilkins. Case No. 330E. 1880.

\_\_\_\_\_. Pierre Felix, et al. v. Matthewson T. Patrick, et al. Case No. 167M. 1888.

\_\_\_\_\_. George Smith, et al. v. Chicago and Northwestern Railway Company, et al. Case No. 60Q. 1893.

\_\_\_\_\_. Union Pacific Railroad Company v. William S. Peniston, Treasurer of Lincoln Co., Nebraska. Case No. 36B. 1871.

\_\_\_\_\_. United States, ex. rel. Ma-chu-noh-gha, et al. v. George Crook, Brigadier General, U.S.A., Commanding General, Dept. of the Platte. Case No. 136E. 1879.

\_\_\_\_\_. United States v. Sa-coo-da-cot alias "Yellow Sun," et al. Case Nos. A 284, A 285. 1869.

### Books

Andreas, A. T. History of the State of Nebraska. 2 vols. Chicago: Western Historical Co., 1882.

Burkley, Frank J. The Faded Frontier. Omaha: Burkley Envelope and Printing Company, 1935.

Cody, William F. Story of the Wild West and Campfire Chats. Philadelphia: Historical Publishing Co., 1888.

Decker, Leslie E. Railroads, Lands, and Politics, the Taxation of the Railroad Land Grants, 1864-1897. Providence, R.I.: Brown University Press, 1964.

Edmunds, A. C. Pen Sketches of Nebraskans. Lincoln: R. & J. Wilbur, 1871.

Edwards, Lewis C. History of Richardson County, Nebraska. Indianapolis: B. F. Bowen and Company, Inc., 1917.

Fitzpatrick, L. L. Nebraska Place - Names. Lincoln: University of Nebraska, 1925.

Leighton, George. Five Cities, The Story of Their Youth and Old Age. New York and London: Harper and Bros., 1939.

Magie, J. Q., and Jones, C. H. A History and Historic Sites Survey of Johnson, Nemaha, Pawnee, and Richardson Counties in Southeastern Nebraska. Lincoln: Nebraska State Historical Society, 1969.

Morton, J. Sterling, and Watkins, Albert. Illustrated History of Nebraska. 3 vols. Lincoln: Jacob North & Company, 1907 (I, II), and Western Publishing and Engraving Company, 1913 (III).

Nelson, Arvid E., Jr. The Ak-Sar-Ben Story. Lincoln: Johnsen Publishing Company, 1967.

Olson, James C. History of Nebraska. 2d ed. Lincoln: Univ. of Nebraska Press, 1966.

- \_\_\_\_\_. J. Sterling Morton. Lincoln: Univ. of Nebraska Press, 1942.
- Overton, Richard C. Burlington Route, A History of the Burlington Lines. New York: Alfred A. Knopf, 1965.
- Savage, James W., Bell, John T., and Butterfield, Consul W. History of the City of Omaha, Nebraska and South Omaha. New York: Munsell and Company, 1894.
- Sheldon, Addison E. Nebraska, The Land and the People. 3 vols. Chicago and New York: The Lewis Publishing Company, 1931, I.
- Sorenson, Alfred R. The Story of Omaha From the Pioneer Days to the Present Time. Omaha: National Printing Company, 1923.
- Surrency, Erwin C. "Federal District Court Judges and the History of Their Courts." Federal Rules Decisions. Vol. XL. St. Paul, Minn.: West Publishing Company, 1966.
- Tibbles, Thomas H. Buckskin and Blanket Days. New York: Doubleday and Co., Inc., 1957.
- Trottman, Nelson. History of the Union Pacific, A Financial and Economic Survey. Vol. XI of The Library of Early American Business and Industry. 20 vols. New York: Augustus M. Kelley, Publishers, 1966.
- Wakeley, Arthur C. Omaha: The Gate City and Douglas County, Nebraska. A Record of Settlement, Organization, Progress, and Achievement. 2 vols. Chicago: S. J. Clarke Publishing Company, 1917, I.
- Webster, John Lee. "The Last Romantic Buffalo Hunt on the Plains of Nebraska." Nebraska Pioneer Reminiscences. D. A. R., Nebraska. Cedar Rapids, Iowa: Torch Press, 1916.
- Wilder, Daniel W. Annals of Kansas. Topeka: George W. Martin, Kansas Publishing House. 1875.
- Zylyff. [Thomas H. Tibbles]. The Ponca Chiefs. Boston: Lockwood, Brook and Co., 1880.

Periodicals

1. Journals

Adams, F. G., ed. "Executive Minutes and Correspondence of Governor Medary's Administration." Transactions of the Kansas State Historical Society. V (1891-1896), 561-633.

Chapman, Berlin B. "The Nemaha Half-Breed Reservation." Nebraska History. XXXVIII (Mar., 1957), 1-23.

Clark, Stanley. "Ponca Publicity." The Mississippi Valley Historical Review. XXIX (March, 1943), 495-516.

Keim, A. R. "John Brown in Richardson County." Transactions and Reports of the Nebraska State Historical Society. II (1887), 109-13.

King, James T. "A Better Way: General George Crook and the Ponca Indians." Nebraska History. L (1969), 239-56.

Mattison, Ray H. "The Burlington Tax Controversy in Nebraska Over the Federal Land Grants." Nebraska History. XXVIII (Apr.-June 1947), 110-31.

Nebraska State Historical Society. Proceedings and Collections of the Nebraska State Historical Society. 2d ser. I (1894), 228.

Rich, Edson P. "Slavery in Nebraska." Transactions and Reports of the Nebraska State Historical Society. II (1887), 92-108.

Snow, C. O. "History of the Half-Breed Tract." Nebraska History. XVI (Jan.-Mar., 1935), 36-48.

Towle, Edwin S. "Judge Elmer S. Dundy." Proceedings and Collections of the Nebraska State Historical Society. 2d ser. V (1902), 83-95.

"The Late Judge Dundy's Ways." The American Lawyer, V (1897), 123.

"Peculiarities of Judge Dundy." The Albany Law Journal, LIV (1896-1897), 348-49.

2. Newspapers

Broad Axe. Falls City, Nebraska Territory. Nov. 20, 1860; Jan. 1, 1861; Jan. 3, 1861; Jan. 15, 1861; Jan. 15, 1861.

Commercial and Financial Chronicle and Hunt's Merchants' Magazine. New York weekly. Feb. 3, 1894; Apr. 7, 1894.

Daily Omaha Nebraskian. Oct. 27, 1860; Nov. 1, 1860; Dec. 8, 1860.

Evening Post. Lincoln. Oct. 29, 1896.

Falls City Journal. Dec. 1, 1882; June 4-25, 1934; Historical Edition, Aug. 26, 1957.

Falls City Tribune. Apr. 9, 1909; May 28, 1909; June 4, 1909.

Globe-Journal. Falls City. Nov. 26, 1881.

Nebraska Advertiser. Brownville, Nebraska Territory. 1858-1868. Issues cited: July 15, 1858; Jan. 6, 1859; Dec. 29, 1859; Dec. 27, 1860; Nov. 8, 1860; Nov. 15, 1860; Feb. 4, 1864.

Nebraska City News. 1860-1868. Issues cited: Nov. 10, 1860; Nov. 17, 1860; Oct. 18, 1862; Apr. 5, 1867; Dec. 4, 1867; Dec. 23, 1867; Apr. 17, 1868; Apr. 6, 1868.

Nebraska Commonwealth. Lincoln. Jan. 11, 1868; Feb. 22, 1868.

Nebraska Daily Press. Nebraska City, Nebraska Territory. Nov. 12, 1863; Nov. 20, 1863.

Nemaha Valley Journal. Falls City. Dec. 16, 1869; Jan. 26, 1871.

Omaha Bee Newspapers, 1872-1896. Issues cited:

Omaha Bee. evening edition. Apr. 10, 1880; Dec. 13, 1880; Jan. 24, 1881; Nov. 5, 1881.

Omaha Daily Bee. Jan. 22, 1875.

Omaha Daily Bee. morning edition. Mar. 9, 1888; Oct. 29, 1896.

Omaha Sunday Bee. Nov. 8, 1896.

Omaha Herald Newspapers, 1866-1896. Issues cited:

Omaha Daily Herald. Aug. 15, 1873; Mar. 10, 1888.

Omaha Herald. daily edition. May 2, 1879; May 3, 1879; May 15, 1879; May 18, 1879.

Omaha Herald. weekly edition. April 16, 1880; Dec. 17, 1880; Jan. 7, 1881; Jan. 28, 1881; Nov. 11, 1881; Dec. 23, 1881.

Morning World-Herald. Omaha. May 10, 1893; May 18, 1893; May 23, 1893; Nov. 14, 1893; Oct. 29, 1896.

Omaha Weekly Herald. July 13, 1866; May 10, 1867; Nov. 14, 1867; Apr. 8, 1868; Apr. 15, 1868; July 22, 1868; Sept. 30, 1868; May 26, 1869; Nov. 10, 1869; Nov. 17, 1869; Nov. 29, 1869; May 11, 1870; Nov. 9, 1870; Nov. 30, 1870; Jan. 18, 1871; Nov. 1, 1871; Feb. 28, 1872; July 24, 1872; Dec. 18, 1872; Nov. 14, 1873; Mar. 6, 1874; June 12, 1874; Aug. 28, 1874; Dec. 18, 1874; Dec. 25, 1874; Jan. 15, 1875; Jan. 29, 1875.

Omaha Republican Newspapers, 1860-1890. Issues cited:

Nebraska Republican. Omaha. Oct. 10, 1860.

Nebraska Tri-Weekly Republican. Omaha. Aug. 25, 1860; Aug. 20, 1862; Feb. 23, 1863.

Omaha Republican. Mar. 7, 1888; Mar. 9, 1888; Mar. 8, 1888; Mar. 14, 1888; Mar. 18, 1888; Mar. 20, 1888.

Omaha Weekly Republican. May 31, 1867; Nov. 13, 1867; Dec. 25, 1867; Feb. 5, 1868; Apr. 15, 1868; May 13, 1868; May 10, 1871; Aug. 16, 1873; Dec. 31, 1880; Jan. 14, 1881; Jan. 28, 1881; Nov. 11, 1881; Oct. 10, 1874; Nov. 28, 1874; Jan. 23, 1875.

People's Press. Nebraska City, Nebraska Territory. Aug. 28, 1862; Sept. 25, 1862; Oct. 27, 1862.

Rulo Western Guide. July 16, 1858; Aug. 13, 1858.

Semi-Weekly State Journal. Lincoln. Oct. 30, 1896.

The New York Times. May 14, 1879; May 20, 1879; May 21, 1879; Mar. 11, 1888; Mar. 18, 1888; Oct. 14, 1893; Feb. 6, 1907.

Weekly Nebraska State Journal. Lincoln. Jan. 20, 1882.

#### Manuscript Collections

Mary Beadwell Collection. Falls City, Nebraska. Original MSS related to early history of Richardson County, Nebraska.

Nebraska State Historical Society. Samuel M. Chapman Papers. 1866-1906.

\_\_\_\_\_. Robert W. Furnas Collection. MSS.

\_\_\_\_\_. Samuel Maxwell Papers. 1853-1901.

- \_\_\_\_\_. J. Sterling Morton Papers. 1849-1902.
- \_\_\_\_\_. Pamphlet. MS. Taylor, William H. Address to the Citizens of Nebraska Territory Against the Re-Election of Hon. Samuel G. Daily to Congress. Sept. 1, 1862. pp. 1-8.
- U.S. Library of Congress. The Andrew Johnson Papers. microfilm edition. 1963.

#### Bibliographical Aids

- Bakken, Douglas A., ed. Guide to the Microfilm Edition of the Samuel M. Chapman Papers, 1866-1906. Lincoln: Nebraska State Historical Society, 1966.
- \_\_\_\_\_. Guide to the Microfilm Edition of the Samuel Maxwell Papers, 1853-1901. Lincoln: Nebraska State Historical Society, 1966.
- \_\_\_\_\_. Guide to the Microfilm Edition of the J. Sterling Morton Papers, 1849-1902. Lincoln: Nebraska State Historical Society, 1967.
- Hons, Fred W. and Bishop, Delbert A., compilers. Preliminary Inventory of Records of the United States District Court for the District of Nebraska. Kansas City: Federal Records Center. Unpublished, reproduced for staff use only. Jan., 1967.
- Nebraska State Historical Society. A Guide to the Newspaper Collection of the State Archives. Bulletin No. 4. Lincoln: Nebraska State Historical Society. 1969.
- Parker, David W. Calendar of Papers in Washington Archives Relating to the Territories of the United States (to 1873). Washington, D.C.: Carnegie Institute of Washington, 1911.
- U.S. Library of Congress. Manuscript Division, Reference Dept. Index to the Andrew Johnson Papers. President's Papers Index Series. Washington, D.C.: Library of Congress Press, 1963.

#### Letters

- Gessner, John F. 206 W. Main St., Cortland, Ohio, to author. July 21, 1970.



Gramprey, Bradley, Supt. of Moravian Cemetery. P. O. Box 35, Staten Island, N. Y. to author. Sept. 22, 1970.

Pike, Kermit J., Chief Librarian, Western Reserve Historical Society, 10825 E. Boulevard, Cleveland, Ohio, to author. July 22, 1970, and Aug. 8, 1970.

Swoope, Walter M. 230 N. Front St., Philipsburg, Pa., to author. Nov. 2, 1970, and Nov. 24, 1970.

Trumbull County, Ohio, Recorder's Office, Warren, Ohio, to author. Aug. 3, 1970.

#### Other

"Caldwell, Henry Clay." The National Cyclopaedia of American Biography. 1909. Vol. XI.

"Dillon, John Forrest." The National Cyclopaedia of American Biography. 1898. Vol. I.

"Thompson, Frederic Williams." The National Cyclopaedia of American Biography. 1926. Vol. XIX.

Wolfe, J. M. Omaha City Directory, 1874-1880. Omaha: Herald Publishing House, 1879.