

PIONEER MEDICINES.

A better picture of the times can often be obtained by a description of the health treatments and medicines customarily used. And don't get the notion that the "sturdy pioneer" never needed a doctor.; though most often unless the illness was desparate, home remedies were used. Some of ~~th~~ these remedies were bordered on the rediculous but many had in them some true remedial qualities.

One of the principal causes of illness was "fever and ague". As late as the seventies it was said that not a man, woman or child in Missouri or Kansas escaped a full summer without a bout with this pest. And it was one which reduced physical fitness for a long period of time. The home remedy for this was found in a scrubby tree called the wafer ash. The fruit of this tree was in clusters of thin round seed capsules about the size of a quarter of a dollar. These seeds were gathered ~~in~~ a large bottle or jar ~~filled~~ and whiskey poured over them. It created a vilely ~~in~~ bitter brew, and did seem ^{to} "break" the fever. This was in use long after the efficacy of that other bitter drug, quinine, had been discovered by Dr. Sappington at Arrow Rock, Mo.,

A remedy for coughs and colds was "skillet bark tea". Since most of the early cooking was done in an iron skillet or spider, and since the fuel which did the heating was wood, the bottom of the nessel would soon be overlaid with a thick black crust. This crust would be knocked off and steeped and taken freely. How it was ever discovered is hard to tell; but in truth this was really an excellent remedy; for the crust from the wood smoke was largely creosote, one of the present ingredients of most commercial cough remedies.

Preventive medicine was something else.

The standard protection of all school children and one which I had to endure to my sorrow many a day was a shamois skin bag, filled with asafetida, and worn on a string around the neck. This stuff, the sap ~~of~~ from the roots of several types of large oriental plants, was the vilest smelling mess one can imagine; especially when the wearer got too close to the school room wood burning stove. Wearing it, one got used to the scent and since about all the children wore them there was not too muc~~h~~

The inner bark of the wild cherry tree was also used in making cough
-2-
joint suffering. If it didn't drive off germs they were the only things
immune. end of the cooking.

One of the greatest proofs of the strength of mental suggestion arose
from the remedy for a child's sore throat. At night take the child's
own long wollen stocking, and while yet warm wrap it closely around his
throat and fasten it in place. I don't know whether this remedy was
more efficacious toward the end of the week but it might well have been.

Almost every one has at some time or another come in contact with
safrass root tea. I still enjoy a cup of it in the spring time. It's
function was to "thin winter blood". It might well be that it does have
some tonic qualities which we do not need now. For remember in those days,
after frost ^{EXCEPT} cabbages and root crops there was absolutely no fresh
fruits or vegetables in the diet. Perhaps this fragrant juice did have some
inherent medicinal qualities.

The desire for a sylph like figure is no new thing to woman kind.
The pioneer woman, even when she had little opportunity for social affairs
still wanted to retain her youth and figure. Some of the pioneers had noticed
that in the fall the blue jays and robins which fed largely off the ripe
berries of the poke weed got slimmer and slimmer so many of the women folk
brewed these berries and drank the mixture. Whether it worked I am not able
to say. These same berries were the wones children used to make red ink
and some times to colour lips and cheeks. The juice produced a thick

Cuts or burns were treated with a salve made by scraping the inner bark
of the elderberry bush and cooking it in mutton tallow, then straining out
the bark and applying it freely under dressing. It turns out that this bark
contained hamamillis, a drug still used in some lotions and ointments.

The woods contained May apple, a low plant which flowered and bore
a delicious fig like fruit in early summer. The root of this plant was
largely used as a cathartic, but was so violent in its action that it had to
be used with great care.

Another product of the woods was golden seal and ginseng. These are
still gathered in Missouri and shipped in trade to the orient where they are
highly prized. I don't know of them being used much locally.

Every woman had growing in her garden a clump of tansy. No home was
without it. And a bitter brew was made from the curly leaves and drunk
as a specific for all feminine ills.

But not all the remedies were based on experiment or reason. Some were pure magic.

People of those days were much afflicted with wens. To save you ~~humbly~~ looking that up, Webster says the word wen means a fatty, movable tumor. People seemed to have frequent occurrences of this complaint, mostly in the scalp and which were reputedly very painful. For this the standard remedy was to await the night of the full moon, and then standing in the full moonlight to rub the wen three times, repeating this phrase, "Wen, wen, go away. As this moon wanes do you vanish too." I have heard some of the old timers say this inevitably brought relief and the wen did not return. Possibly a good example of the power of mind over matter.

A standard remedy for rheumatism was to take a dirty dish rag, why dirty I do not know, and bury the same in the ground. As the dish rag rotted the difficulty would disappear.

Stores were full of patent medicines with the most outlandish promise of healing. One was a preparation which was boldly advertised on the ~~mat~~ bottle as " cure for consumption". That remedy is still on the market as a cough syrup, with the claim of cure eliminated. Sadly many relied on such nostrums to their everlasting sorrow.

But don't say smugly to yourself, "How stupid those old timers were!" for the remedies of the general practitioner were not much better. The materia medica of the old time doctor consisted largely of calomel, salts and quinine. Surgery was limited to external injuries. And to be a fine specific the sole requirement seems to have been to be abominably nasty. There were few medical school graduates. Most doctors were trained by apprenticeship in the office of some practicing physician. It was only in the late 19th. century that research began to actively concern itself with new drugs and new methods. I wonder if some of our standard treatments now will seem as ridiculous a hundred years hence.

Chapter 2.

CASE AND COMMENT.

The nature of law practice, as far as actual court room procedure is concerned, has changed drastically since the start of world war two. Up to that time the employment of an attorney is a case meant but one thing, an active and determined confrontation in a court of law. Some times this was before the Judge, in equity cases, some times before the Judge alone by agreement or before a judge and jury, in other civil or criminal cases. And the lawyer retained knew what was expected of him. At present a whole new generation of lawyers has appeared; and the tendency now, as I have said before, is for settlement and compromise, which may be good business, but is a lot less fun.

We older practitioners, ~~can~~ but regret that great era when the Court room was the most fascinating entertainment available. Great reputations for oratory were won and lost. Now the lawyers have to compete with a myriad forms of entertainment and of news dissemination. The great individual has almost ceased to exist. Even in politics the matter is conducted on a business basis rather than of neighborliness or friendship.

Perhaps you might be interested in some of the battle fields of my former years. One of which I wish to tell you first is the story of the ~~complicated~~ perpetual client.

I was sitting in my office one summer afternoon, when the door was cautiously opened, and in stepped ~~defid~~ly about the largest and certainly the blackest negro I had ever seen. He approached my desk, and gulped out, "Mister if I paid you your charges would you git a divorce for my lady friend?" Knowing no reason forbidding it I agreed and we thereupon made an appointment for her to appear and have me prepare her petition. At the appointed hour there came in a small, rather pretty young white woman. She named herself as the "lady friend" and again seeing nothing to prevent I prepared the necessary papers and filed them and later presented the case and obtained her the decree.

In Kansas there was a peculiar condition as to the office of Justice of the Peace. The State desiring to end the abuses of the Justice Courts, established in all the larger towns a "City Court" having about the same jurisdiction as the old justice courts. But the

office of Justice of the Peace being set out in the state constitution, it could not be abolished by the Legislature; so to accomplish the same thing it removed from the Justice jurisdiction of all criminal cases and in all civil matters concerning matters of the ~~value~~^{amount} of one dollar and over. Then gave these cases to the City Courts. That left the office of Justice of the Peace still existing but for all practical purposes without trial authority. However this still left the Justice with certain powers that ^{it} could be quite advantageous to be able to exercise; among these were power to issue subpoenas and call in witness and hold hearings in the taking of depositions, which a Notary Public in that state could not do. It also left the Justice with the power to perform marriage ceremonies. This office was filled always by appointment, not one ever filing for election. At that time I had held such an office.

In Kansas in every divorce case the decree ~~does~~^{does} not become final until six months after the rendition.

Six months to the day after the decree, I came my colored client again, asking me this time if I would come to his home Sunday afternoon and marry him and my former divorce client. Such a marriage was perfectly legitimate and proper in Kansas so I consented. The man's home was a very nice frame home in Tennessee Town area of Topeka. This district had arisen when a former governor of Kansas seeking to retain his office, imported into Topeka a large group of colored men and their families from Tennessee and settled them in this district, which was then way out from the main town. Later when the town grew all about it, it turned out to be one of the most desirable locations for a residential area and every effort was made to freeze out or buy out the occupants to no avail. The city paved streets, put in sewer and water, created park districts all at the expense in taxes of the property owners. But they held tight and I assume still hold tight what in the war against them became one of the best improved parts of the city.

There was quite a gathering of both races that afternoon and the ceremony went off perfectly.; and I thought to myself, well, that's the last I'll see of them. But I counted without calculation of what might happen. A very poor way to vision the future.

About two months after the wedding I had an urgent call from the county jail to come over and consult with one of the prisoners. It turned out to be my coloured client; and I found him charged with first degree murder in the death of his wife. He claimed that it was suicide. The State claimed that he had held his wife and forced chloroform down her throat until she suffocated. The medical experts claimed that she could not have committed suicide by voluntarily drinking the chloroform as the first swallow would have paralyzed her throat making it impossible for her to have drunk the amount of the drug which the autopsy had found present in her body. We tried the case to the jury and his testimony was that he and his wife had quarrelled and that she was desperate about her position as his wife, and seized the bottle and swallowed before he could prevent it. I wasn't in the jury room of course but they brought in a verdict of "not guilty." This time it was the last time I ever saw the man and I never knew what had ~~become~~ ^{became} of him.

From eighteen fifty on well into the twentieth century, the rail roads were first pushing their construction from the Mississippi westward to the Pacific, and then in maintaining the lines under the traffic which grew heavier and heavier until after the first world war. Many, if not most of these roads in the Mississippi valley were built on railroad ties cut in the forests of Missouri, eastern Kansas and Arkansas. There also was much expansion in the cutting and sale of native timber; the great white oak timbers being especially sought in heavy construction. This industry gave employment to hundreds of men engaged in it exclusively, and to many farmers who would cut and hew out ties and use them as a means of taking a load to town which they might sell and help with their purchases, on any of their trips to town, rather than to drive in with an empty wagon.

The regular timber ^{MEN}men, engaged in this work as their sole occupation were wonderfully clever with their cutting tools. They could cut down a large tree, saw it into required lengths, split into as many sections as possible and then shape them beautifully with broad axe and chopping axe. To shape them they would cut notched at proper intervals with their double bitted chopping axe and then hew off the excess wood between their notches with the broad axe. These chunks of wood when hewed off

were called juggles and were used as ready made fuel in the kitchen stoves. The ties were beautifully squared and smooth; and were worth at the buyers yards in town any where from 25¢ to \$1.25. The smaller were the ordinary cross ties. could be cut from smaller trees, and constituted the main product, The larger "switch ties" which had to underpin the double track at a point where a switch was created, and had to be almost double the length of the ordinary tie.

In the river towns where there was no rail road the ~~ties~~^{TIES} were accumulated on the riverbank, and were made into rafts in the ~~water~~^{WATER} by nailing across them long light poles, nailed firmly to each tie in the raft. The tie men then moved this raft down stream, riding it and pushing with poles until they reached a rail head. They had to be hardy men, for the green ties didn't ride too high in the water and the men were usually immersed up to the knee. At night they would tie up at some gravel bar, go ashore and build their camp fire and dry out and prepare their meals which usually consisted of large biscuits or loaves baked on a wooden slab stood in the direct heat of the camp fire, accompanied by crisp slices of "fat back" a dry salted piece of fat pork, fried in a spider, and coffee strong enough to float an egg. The spider by the way was a skillet or frying pan of cast iron, with three or four ~~two~~ inch legs so that it could be stood directly in the camp fire coals without other support. I tell you at length about these men so you may realize the kind of man it was necessary for a river man to be, ~~strong~~ strong, fearless and very much a man.

The case of which I would tell you next is the case of one of these men who we will call Bill.

Bill had been operating a small one man saw mill on the premises of a rather quarrelsome hill farmer. He had finished all the sawable timber on this man's farm, and had removed his engine and saws, but had left a large stack of native limber near the farmers' barns. It was left under the agreement that Bill might haul it away at his own convenience and the farmer had been paid in full for his timber. Then for no known reason the farmer began demanding that it be removed at once, his excuse being that it had become a nesting place for rats which were damaging his feed bins. Bill was delayed in removal and the

air between the two became rather electric.

Finally one day Bill assembled several of his cronies with farm wagons and they started to pick up the lumber. Bill had heard that the farmer had made threats as to giving him a beating, and had demanded further pay before he would let the ~~logs~~^{LUMBER} be removed; and fearing trouble had put a loaded revolver in his pocket. He drove the lead team and as they approached the farm yard saw the farmer standing by a large gate post at the yard entrance.

They drove up and started to the gate, and here the stories diverge. The witnesses who testified for the State, being the widow of the farmer and a boy living there, claimed that Bill had advanced, gun in hand and shouting curses at the deceased, had begun to fire at him, shooting him down in cold blood. Bill took the stand and testified that as he approached the gate the farmer had stepped back to where there was a large pile of good sized rock and began throwing them with all his might; that he crouched down, and that the farmer gathering a hand full of rocks, came running at him cursing and attempting to brain him with the rocks. Then at the wind up of his testimony these words; "He skeered me, and I riz up and fired the gun and hit him smack in the right eye where I had aimed." This rather cold blooded statement left me somewhat alarmed, but we had been able to introduce evidence of disinterested witnesses as to threats which they had communicated to Bill, and the jury brought in a verdict of manslaughter and assessed his punishment at a fine of \$500.00 which he was glad to pay.

Henry Wilmer was a retired river-boat engineer; ~~german~~^{german}, as were so many of the people living along the Missouri river. On retirement he had come to the hills and bought a small farm of about forty acres, on a clear hill stream, with a good road for about two miles to a good trading town. There he settled in a comfortable home, and planted his land to a vineyard of wine grapes such as were used by the famous German wine cellar along the river. He made wine in abundance, but none to sell. He wanted his friends to visit him and the ~~the~~ jug was always on hand.

Such a paradise could not last. A power company desiring to produce electric energy for city customers, started to create a large body of water to operate a hydro-electric plant. In building this artificial lake they took none of Wilmer's land, but they did flood his road so he could

no longer drive to town. At his request I filed for him a damage action for the lessening of the value of his farm by cutting it off from market. The case was tried in an adjoining county. All went well in the trial and I called Mr Wilmer as the final witness for his side. In my examination I asked him about his trips to market, and how he now got there; in reply he said he had to go by row boat. I then asked him how long it took him to make the trip.

The old man settled himself in his chair, and holding his arms out in the position of rowing, pulling them back and forth answered:

"Ven de vint is right, four hundren strokes"

Then with increasing effort, "Ven de vint iss wrong nine hundred und seventy schtrokes"

I asked him then,

"Mr. Wilmer, where do you live now?"

To this question the attorney for the power company quickly objected and his Honor replied, "Why not? Certainly any man has a right to have the record show his home address. Go on and answer."

Then to my huge delight, and to the utter dismay of opposing counsel came the reply:

"Pefore dis lake vent in, I lif on my little farm. Now I lif in de county poor farm."

All the objections and argument of counsel could never remove the sting of this answer and the jury when out argued only about ten minutes and then returned a verdict for every penny sued for. My only ^{disappointment} was that I hadn't asked for three times as much.

This same old man failed to say that his home at the poor farm was given him as part of his pay for operating the farms heating plant. He was a very unusual character. After his death they found among his effects and complete table of logarithms worked out in an old school pencil tablet to a degree far beyond that contained in the highest text book.

Then there was the case of the pile of bones.

A farmer of this county had disappeared some two years prior to the events I will narrate. His absence was a matter of considerable speculation among his friends and neighbors. I always thought I knew the true

answer. He had been a long time client of mine and had a habit as so many do, of unloading their personal problems on their lawyer. His were quite acute. His wife had become mentally ill; and had been under treatment at a state hospital. And let me here remind you that our state hospitals even at that time were wonderfully efficient and benevolent institutions. But the woman's family still imbued with the idea that it was a disgrace to be treated for mental illness, insisted on her return and so besieged the husband ^{THAT HE} ~~and~~ finally allowed them to bring her home before she had ^{FULLY} ~~A~~ recovered. After her return she relapsed into her old condition and her family again interfered not only in her case but as to her children. The man himself told me that he had reached the breaking point ~~and that~~ that his only recourse was to leave and never return. So I was not too greatly surprised when he disappeared.

About two years after his disappearance, some children picnicing in a remote part of the forest some fifteen miles from town, notice a ~~pile~~ pile of bones near a small stream at the foot of a deep ravine. On closer inspection they discovered that the whitened bones were that of a human being, and hastened back to town to notify the Sheriff.

The matter became quite a cause celebre both because of the shock to the finders, but also of the supposedly scientific detective work by the rural sheriff and the prosecuting attorney of the county. It received much publicity and when the trial was reached one of the larger detective magazines had its feature writer on hand and was prepared to give the trial national publicity.

Of course the greatest hill the prosecution had to climb was to identify the bones with the vanished farmer. This the State attempted to prove by testimony of anatomy faculty members at the Missouri University Medical school; and they made a gallant attempt, testifying in no uncertain terms that these old bare, whitened bones, scarred by teeth marks of wild animals, were those of a white man of a certain height and approximate weight which of course fitted the description of the absent man. Another witness testified that he had seen the missing man riding with the defendant at about the date of his disappearance, and on a road which might have led to the area where the bones were found. They picked as defendant a neighbor who had rented the tenant farm ~~at the~~

which had been occupied by the missing man. That was supposed to have supplied the motive for the murder. They also stressed a few hand tools which were found among the bones, all badly rusted and being of a sort apt to be carried by any farm worker. The state Attorney General sent one of his trial force to assist the local prosecutor and they surely squeezed every drop of juice possible out of the meager evidence. But a hard headed jury took only about half an hour to return a verdict of not guilty. And so the Prosecuting Attorney failed to get face spread over a detective magazine along with the incūstrious sheriff, whose local nick name became SNOOPY. The feature writer and his camara man, folded up the tools of their trade, and the matter became forgotten history.

An amusing thing happened many years ago to a colleague in a near by county.

His story is that one day a rather elderly coloured lady came to his office and employed him to procure her a divorce. Since her ground for divorce was desertion the petition was drawn rather broadly to cover that cause and service was had by publication.

On the appointed day the plaintiff appeared in Court with her two formal character witnesses and the plaintiff being placed on the witness stand her attorney proceeded with his examination. "This" said my friend "is going to be a clear case of a man not knowing when to quit questioning."

The testimony was about like this:

Q. Please state your name to the Court.

A. Mary Thompson.

Q. Mary have you lived in Missouri for over a year and at the time this case was filed did you live in this county?

A. Yes sir.

Q. You allege in your petition that your husband deserted you without cause, when did he leave?

a. Nine years ago last labour day.

Now said my friend, I had a perfect case and all I had to do was to put on my character witnesses and that was all, but I had to be smart and keep on asking.

Q. Mary, have you any children?

A. Yes indeedy. I has seven.

Still I had to go on asking fo~~ol~~ questions.

Q. What are their ages?

A. The youngest is two and the oldest 11.

The judge turned to my friend and remarked, "Bill i believe this woman really needs a divorce. Decree granted."

So I leared the basic rule which all good tiral lawyers must learn There is a time to speak and a time to femain silent, a time to probe and a time to let well enough alone,

In this state there is a rule that where man and wife take into their homes a child under promise of adoption, and he rmain in the home, performing all the acts of a dutiful child, even thogh the adoption never takes place, tthe child will be held to have carried out his part of the bargain and the law will not let him be defrauded by the adoptive parents failure to carry out their part. The natural justice of this ruling is patent.

I want to tell you this little tale to show you the strange workings of the human heart.

John and Mary Briggs, took into their home a lad of seven years. He did remain in thatbhome, calling Mary mother and John father and being called and introduced by them as our son. They took out insurance in his name and it was gecognized as a ~~devoted~~ **DEVOTED** family. John died and the son stayed on in the home caring for his mother as long as she lived.

At Mary's deathan elderly brother of hers appeared and laid claim to all her property, as her sole blood heir. To meet this situation we filed an action in the Circuit setting up the facts and asking that young John who had been even called by the adoptime father's name be declared the lawful adoptive son and heir. This was hotly contested and the brother used every means available to show there was no contract of adoption. Under our rule, the so called Dead Man's Statute, a claimant against an estate is not permitted to testify in his claim, so young John's lips were sealed; and we had to rely on circumstances. The evidence was so strong that the Court sustained our petition and directed an order to that effect to the Probate Court where Mary's estate

was under administration.

Both sides met with the probate judge in his chambers. Before anything else was said, young John spoke out:

"Uncle Ned, now I have won this case. That was all I wanted to do. Just to prove that Father and Mother and I were really and truly a family. You are old and you need a home, let's both take the home place and live there together. I don't suppose I'll ever marry and any way all I need is a place to stay. You can call the place yours if you wish."

All the rest of us stepped outside and closed the door; and in a moment the two came out, each wet eyed, and arm in arm left the Court House. They lived together happily each caring for the other, after Uncle Ned's death young John lived there alone for many years, finally going to his own death in peace.

The next case I wish to relate, is amusing more because of the reaction of a loser, than anything else.

It was in the good old days of the "Noble Experiment" and Whiney Jake was a moonshiner, deep in the hills on a secluded creek. He had a quarrel with one of his neighbors, and had made threats against him, and as the neighbor was on the public road near James gate entrance he was shot and killed. The State claimed that the killing was the result of a long standing feud between the two men. I was employed by the family of the deceased to assist the Prosecuting Attorney. The evidence was rather conflicting, as was to be expected, but it seemed clear enough to me to warrant a conviction. The defendant, though represented by one of the ablest trial lawyers in the district was convicted of second degree murder and sentenced to a term of twenty years in prison. After the sentence was pronounced, the defense lawyer and his client were in a conversation in the Sheriff's office where several of us standing in the hall way couldn't fail to hear it all,

His attorney was urging Jake defendant to appeal to the Supreme Court, and finally got this answer: in Jake's whiney high pitched voice;

"No, Mr. Bob. Youse already got a mortgage on my little ol' farm for probably more than the old woman will ever be able

to pay off. No , Mr.Bob, I ain't goin to take no appeal. I shore thanks you s did for me," and then in an aside full of deep feeling, "But it was shore damn little."

This was one of the few case in my practice when it might be said that I took both sides of the case.

About a year after his imprisonment certain evidence came into my posession which showed without much question that the state's witnesses had lied and that Jake realy had been framed.

I took this evidence to the trial judge and with his permission placed it before the Parole Board and Jake was paroled and later pardoned and went back to his little ol' farm and lived out thebalance of his life in peace.

to pay. No, Mr. Bob. I ain't going to take no appeal. I sure thanks
you for all you've done for me, then with a tone of deep feeling.

An old German farmer named Friedenhoff and his wife Mary lived frugally for many years on a small farm not far from town. By careful planning and hard work they had accumulated what for this area was quite a substantial estate. They had raised their children and were blessed by all of them except for one son Jack who was wild and unmanageable. This too was in the days when the Volstedt act was still the law of the land, and Jack found moonshining a profitable venture. His father, Gus, was much opposed to law violation, and stood well in the community.

One day the officers finally closed in and caught Jack red handed. The local paper immediately published an account of the raid, but in some way had it that it was the father Gus whose still was raided. Of course this outraged Gus. He had never been arrested in his life; and he immediately employed counsel and brought a libel suit for a tidy sum. The lawyer whom he employed was of German descent and when excited spoke with a decided German accent as did Gus. Gus was on the witness stand and in his attempt to show the mental pain and anguish suffered by Gus, produced the following dialogue.

Q. Mr. Friedenhoff, after this piece appeared in the paper how did the people look at you?

A. Vy Mister Schmidt dey look on me down.

There was a titter, and a swift smile on some of the jurors faces.. Mr. Schmidt's face flushed, and his accent thickened.

Q. No, No. Mr. Friedenhoff: Ven you go by parties and picnics and places, how dey treat you?

A. Mr. Schmidt dey not treat me at all, not even a little bottle red soda pops.

By that time even the judge was chuckling, and the examination ceased.

The Court instructed the jury that since the paper charged Friedenhoff with a felony, that it was libel per se and they must bring in a verdict for him, they to determine

what they considered the reasonable amount of his damages. They promptly returned a verdict for the plaintiff in the sum of one dollar.

We knew that the plaintiff's attorney had taken the case on a 50% contingent fee, and it was a long time before attorney Schmidt ceased to be asked of how he had spent the fifty cents he earned in a four day trial.

They were two hill farmers, who lived on adjoining farms in the timbered part of the county. Let's call them A and B. A owned a field without road access and the only way he could get to tend his crops was by a right of way granted him by B where he entered the gate to B's land and then by an unmarked trail across B's land and through another gate to his own ground. The ground over which this trail led was used only as a timber pasture. For some reason or other B became angry at A and ordered him to stay off the road and posted himself to guard it. A feeling he must get to his crop which needed attention badly, started to open the gate. He claimed that he always carried his shot gun on these trips as he frequently could shoot a squirrel in the timber to add to his rather scanty diet. This time, just as he had his hand on the gate latch B rose from behind some bushes swinging a base ball bat. A's story was that he fired his shot gun into the ground just to scare B off; and that firing from the hip without aiming, the kick of the gun threw the muzzle up and the full charge struck B in the leg. A rushed him promptly to the doctor and he was transferred to a hospital in a neighboring city where he died in a few days from infection of the wound. The facts in evidence bore out A's word, for the greater part of the charge that missed B found lodgment in the bottom board of the gate, and certainly if he intended to kill he would not have aimed the gun at B's feet. A trial resulted in a verdict of involuntary manslaughter and a small fine which A readily paid.

Now a little touch of humour; which also had its rather ~~sad~~ poignant touch of sadness.

Old Tony and his numerous brood lived near my home in a small rural town.

He was one of these rather simple, harmless creatures, completely illiterate, but willing to work at any task he might find, and his family were kept by him successfully, though there were no government subsidies in those days. He stood very well among his neighbors, and his children, all fat comically featured chaps were always kept scrubbed and polished.

This little town had an ordinance requiring the licensing of all dogs. Now like most of his type, Tony was an easy mark for every dog that stopped at his door, and he always had three or four hanging around, most likely to be "pot licker" hounds. Yet he never in his life paid a dog tax. In some way when the town Marshal made his rounds Tony would deny owning any dogs, and there would be no dog in sight, and as soon as the Marshall was well on his way down the street there would miraculously appear several of the beasties galloping about Tony's door yard.

After many trips, an chastisement by the Mayor for not making Tony obey the ordinance, the Marshall became fully fed up. The next time he went for the tax no one was home, but the door was ajar and he stepped inside, to be greeted with a growl from some thing under the bed. Stooping down and looking he saw crouching there three black and tan hounds. By this time he had taken all he wanted to; and being somewhat high tempered, pulled out his faithful 45 and shot all three dogs and left them under the bed and went on his way.

Naturally when the family returned home there was a howl of resentment. Tony objected to the infraction of the sacredness of his home and Mrs. Tony was outraged at the mess on the floor of her immaculate room. And they forthwith sought legal advice.

The Mayor who was himself rather a crusty old gentleman, decided to back up the Marshall and so Tony went to a near by city and employed a firm of lawyers there to file a damage suit for him against the Marshall and the town.

This was where I got my first case after moving to that County. The Mayor and town Board, retained me to defend the suit. I was at a loss to know just what defense to make, for it was a

clear violation of Tony's rights. And so I told the Mayor that unless they could settle with Tony some way, they might stand the chance of having a substantial verdict rendered against them. The Mayor agreed, and told me to go ahead and prepare for trial and he'd see what he could do and try to have something ready for me at the hearing.

Everything progressed in the normal manner. The attorneys for plaintiff opened with their statement making everything look as black as they could. My opening statement was very brief and we went on to qualify a jury. The Mayor had not yet appeared but he had told me to go ahead and let the plaintiff start and he would get in before his examination was finished.

Several witnesses were examined, and then the attorneys placed the plaintiff on the stand and began his examination. They really had a field day picturing the terrible nervous shock to the plaintiff, how his feelings had been outraged, and the loss and damage to his household effects and the loss of three very valuable fox hounds. For mind you when you cross a pot liker hound with violence and death it immediately becomes a blue ribbon winner with a pedigree back 500 years.

They finished with Tony and with rather superior smile said "You may cross examine"

Just as I was wondering what my first question should be the Mayor who had slipped into a seat just behind me, leaned over and ^{said} ~~asked me to~~ show him this, handing me a sheet of ordinary tablet paper with writing on it.

I handed it to Tony and asked him if he knew what that paper was, and looking it over wisely he said "That seems to me to be the paper that the Mayor read to me when he gave me that dollar and on which I put my mark. The plaintiff's attorneys fought to exclude the paper which was really a full release of any damages for the sum of one dollar which the plaintiff admitted he had received and spent.

Well, it is a hard task to get a rural jury to decide against a town or a public officer, for that is striking at each man's own pocket book. This paper gave the jury the excuse they

to decide against the plaintiff and they very promptly returned a verdict for the defendants.

It is my understanding that the town did later give Tony quite a handsome present, but the two out of town attorneys didn't share therein.

8 You have heard many stories about the justice courts and I want to conclude these tales with a bit of J.P. practice. Courts of lower jurisdiction have always been the subject of ridicule. Even Will of Avon had to take a dig in his day. Remember the discussion of the two grave diggers in Hamlet, one of them made the remark, "An' that's the law", to which the other replied "Aye ^{CROWNERS} Crooners Quest law." Crowner being the officer who investigated for the crown, and whose title we have corrupted into Coroner. In our day it is the J.P. who plays the busson. I knew an old J.P. in this County, and in conversation with him one day, asked him, "Judge why do you never decide a case in favour of a defendant" To which he gave the classic reply "Shucks, no defendant ever filed a case in my court til yet."

One day I was trying a case before a J.P. and a jury in a neighboring small community. Now in this state, the J.P. had no power to instruct a jury. They were complete judges not only of the evidence but of the law as well. The case arose over the interpretation of a certain statute and the plaintiff's attorneys arrived with a dozen or more Supreme Court and Appellate Court reports. After the evidence was in plaintiff's attorneys read opinion after opinion from Appellate Courts construing the statute and none of which were favorable to my client. I made only a very brief address as follows:-

Gentlemen of the jury, you have heard a lot of reading by the other lawyers and I want to call your attention to just one thing, every one of those cases starts out with these words "OPINION BY Judge _____. Now he gives you in these books what his opinion of the law is. You read that law and you being the judges of the law in this case, you make up your own opinion of what it means."

This they promptly did and gave my man the verdict.

The opposing counsel who were my very close friends gave me a hard time about my unethical acts, but it was all in good fun and no one was really much harmed .

One day when my elder son was a lad of about six I took him with me to a neighboring town, going by train, and trying a case in which I caught the young man who was plaintiff in so many discrepancies in his testimony that he finally broke down into a childish rage and tears. My son wouldn't speak to me all the way home, now for much of the day after. He said I was nasty mean to to that poor boy.

In the older days men tried law suits about everything, and frequently the costs of the case were many times the value of the matter in suit. Men made it a point of honour to defend to the last ditch their actual or supposed rights. And when the *causis belli* was a dog it reached the highest point of emotional reaction. To begin with, the dog was a member of the family, frequently the protector of the wife and children. And not only that, but a good stock dog could earn many times his keep in helping a farmer handle his stock, which in those years roamed at will over the public range. And in the winter a farmer with a couple of good "Tree" dogs could add to his income in a barren time of the year extra money by hide hunting, possum and coon and wolf, some times from a hundred to as high as close to a thousand dollars. So these dogs became valuable property.

One farmer in the extreme southwest part of the county had bought and trained a dog for using in stock handling. It was a friendly young dog that would make up with any one who showed it attention. One day it broke rules and followed the farmer on his trip to town. He drove his team into the feed yard, unhitched them and put them in a stall and fed them and then discovered the dog under the wagon. Since he had quite a bit of shopping to do he gave the dog orders to "Stay" which he had always obeyed and left the yard to go to the stores. It took him a couple of hours to get his shopping done, and when he returned the dog was no where to be found. Some of the people who had their wagons in the yard said they thought they remembered seeing him following a wagon leaving town

and traveing east.

The owner proceeded to hunt but it was months before he found what he thought was his dog, and I must admit that it had every appearance of being the same animal. The farm it was on was about 12 miles due east of the owners farm. The man in whose yard the dog was found denied that it had followed him and asserted that this dog was one he had bought as a pup. The owner at once came in and employed me to file a replevin action to get back his property. This was in the winter time and the case was filed before a J.P. some 18 miles from my home town. The defendant employed a very famous country lawyer from the hills south of where the case was filed. We tried it in a small one room school house, by the light of lanterns and again there was a jury. It was bitterly cold and the ground was inches deep in sleet so that we slithered and slipped in our Model Ts and nearly failed to make it. But we put on our evidence and opposing counsel made his argument. What was rather odd about this was that every time opposing counsel made a telling point one or more of the jurors would shout "Hit im agin Barney, hit him agin!".

I was never much in doubt about what that jury would do and they didn't dissappoint me. I at once took an appeal to the circuit Court and at that trial the jury found for the plaintiff and returned the dog.

What I said about these trials and their expenses held true in this case. The defendant had over a hundred dollars in Court costs to pay, beside his attorneys fee, and both sides lost enough time to pay for several dogs. But honour had been vindicated.

I afterward learned to know the defendant well, and we became very good friends; and I have often wondered if this was truly the plaintiff's dog or had the defendant bought it as he said.

I have told you these tales so you might see a bit of rural practice. There was in addition many many rather tiresome law suits covering real property, business transaction, divorces and the like. A variety the city lawyer never sees, confined as he is to one type of practice. To the Country lawyer they were not only a livelihood, but a great and fascinating game.

Chapter 3

1.

My first personal and unaided involvement in litigation having news value, came about in a rather unusual and unexpected way.

To get the background we must go back to the Worlds Fair at St. Louis in 1903. One of the most widely discussed and written about exhibits was one of a new medical procedure which had just come into use. That was the adoption of the incubator to the care of a prematurely born child. One such child, in her glass walled incubator was on display throughout the entire time at the fair, and was the constant topic of conversations and feature stories in the press. Her growth was a matter of public interest and was followed pretty well in nation wide coverage.

The baby was the child of a young woman from Lawrence, Kansas, and at the close of the fair was given by the mother into the foster care of Stella Barclay, a non resident of Kansas. There was no adoption.

Time passed, and the mother had established a home in a suburb of Topeka, together with her mother. She sought and obtained possession of the child then about five years old, to the great grief and over the vigorous objections of the foster mother.

Then in the summer of 1909 the whole matter was placed on my inexperienced shoulders.

I was serving my second year as assistant County (Prosecuting) Attorney at Topeka. It was mid summer and hot and there was little work in the office, Courts being at recess. It seemed good then to my Boss for him ^{self} and the first assistant, I being the lowly second in line, to take a short vacation and leave me to take over.

It was at this time that the foster mother decided to take the law into her own hands and get the child out of Kansas and resist its return. To that end she went to Kansas City and employed a private detective, one F. H. Tillotson a retired Captain of the Kansas City Police force who had opened a private detective agency, to provide the means of abduction.

One August 21st., 1909, Mrs. Barclay, accompanied By Tillotson and two of his men, Gentry and Randolph set out from Kansas City in a rented car which was by two specially chosen drivers, who however knew nothing

of the purpose of the expedition?

*2- nor did Mrs Barclay's husband
who remained at home.*

This was of course long before any marked or improved highways existed any where in the midwest. One chose his own trail as carefully as he could over existing country roads. En route to Topeka the kidnapers went through Lawrence and continued on the roads along the North bank of the Kaw River. At Topeka they drove directly to the mother's home.

They found on arrival that the mother was not at home. Thereupon the three detectives rushed into the house, pushed aside the grandmother and an elderly cousin of the grandmother ^{WHO WAS VISITING HER,} and carried the screaming child to the automobile and fled in a cloud of dust.

For the return trip, hoping to distract attention, the kidnapers decided not to take the direct route back but to go some forty miles North before striking East, and that way to reach the city of Leavenworth and go south from there to Kansas City, and driving thence East could be well across the state their course unknown and reach Illinois before any action could be taken to halt them.

Not many minutes after the abduction the grandmother did reach a phone and communicate with the Sheriff, and shortly thereafter she and others of the family and officers were filling my office with complaint and me with I must confess a great deal of ^a feeling of inadequacy. I got the Statutes and read rapidly the nature of the charges and the method of their enforcement and started to work. I was all alone in more ways than one. Our office secretary, who was the wife of the other assistant had accompanied him on his vacation. I had only the most meager of ability on a type writer but being quite sure no Court would appreciate a legal document prepared in my always more or less illegible handwriting, started in on a long afternoon of laborious pick and hunt.

In the mean time wires were sent to officers along the most probable routes for the escapees. But they had a long head start and we feared we would never be able to apprehend them either in Kansas or one of the adjoining states. Then the hand of providence dealt us another card. We did not know it at the time but it would have made no change in our efforts. What happened was that they made good their escape well on their way toward Leavenworth, when their over loaded and over pushed automobile quit. They stated later that what they called "The contortion rod" broke. Just what that

was I do not know, but have always assumed when I in after years had an automobile of my own, that it was the propeller shaft, which on ~~may~~ ^{many} of the older cars of that date was an open ~~iron rod~~ running from the rear of the engine housing back to enter the differential. At any rate they were delayed over half a day, and didn't reach Kansas City until nightfall; and there they found a reception committee awaiting them.

The young girl was returned to her mother and the kidnapers Tillotson, Gentry and Randolph lodged in jail. They refused to waive extradition and another dilemma was presented to me. I knew that Tillotson would use all his influence as a retired Police Captain with considerable political pretiege to avoid being sent back, so I spent the balance of the day in boning up on extradition, prepared my papers to obtain the same and at the first instant the next morning procured the required files and the governor's warrant and so advised the officers in Kansas City. The case had hit the papers, and with a resounding front page splash, so Tillotson's standing did him little good. Before noon I was on my way to Jefferson City, and at an early hour ^{NEXT DAY} presented my claims to Hon. Herbert S. Hadley, a fellow Kansan and Republican who had the astonishing victory of being elected governor of Missouri in 1908. The requisition was promptly honoured and I returned to Kansas City where we had to meet a habeas corpus action in the circuit court. After a brief hearing before Hon. E. E. Porterfield, the habeas corpus was denied and the male defendant delivered to the Kansas Sheriff. No prosecution was had of Mrs. Barclay who was the moving spirit, the officers sympathizing with her distress at the loss of the baby she had so long considered her own. Her husband *as I have noted before* had had nothing to do with the affair and his name was never mentioned.

One thing I did acquire was a lasting friendship for a very able and kindly jurist, judge E. E. Porterfield, who after I moved to Kansas City and continued practice there was consistently kind and helpful.

The three male defendants were released on bond, and later, after a change of venue to another county ^{by}, were tried and convicted and given penal terms.

At this point my connection with the case slipped, much to my relief back into its proper perspective. The prosecutor and deputy number one

returned from their vacations and took over and while I continued in the case until its end it was in my normal and less responsible post. But the lessons I learned in extradition procedure have always remained with me, clear and bright; far more than any lesson learned in a more usual manner.