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The El Paso Claim Club, 1859-1862

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Claim clubs have received scant attention from the historical profession. A few sentences or at most a few paragraphs in the more general texts on the westward movement,¹ a short chapter in a book devoted to the history of the public land policies of the United States,² and an article in an early report of the American Historical Association on frontier land clubs,³ constitute the references that are readily available in the average library or indeed in any library.⁴ This indifference to the claim club reflects in part the indifference to the broader field of public lands administration. It is too frequently assumed that a summary of a law or series of laws will comprehend abuses, evasions and actual practices which accompany the administration of the law or laws. The claim clubs are a case in point. They existed in regions remote from law interpreting and law enforcing agencies and frequently beyond the physical limits of the law itself. They were extra-legal rather than illegal.⁵

Claim clubs came into existence because the settlers on the frontiers outdistanced the laws of the federal government as well as those of particular states and territories. They were protective associations designed to secure to the settler the possession of a particular tract of land against latecomers, speculators and even the government itself.⁶ They made it possible and practicable for settlers to take possession of portions of the public domain prior to the offering of the land at public sale. The Colorado claim clubs were organized before the land had been surveyed and indeed before it formed a part of the public domain, inasmuch as the Indian title to the land was not extinguished until two years after

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¹Frederick L. Paxson, *History of the American Frontier, 1763-1893* (New York, 1924), 388-390; Robert E. Riegel, *America Moves West* (New York, 1930), 384-385.

²Benjamin H. Hibbard, *A History of the Public Land Policies* (New York, 1924), 198-208.

³Benjamin F. Shambaugh, "Frontier Land Clubs or Claim Associations," *Annual Report of the American Historical Association* (1900), I, 69-84. Dr. Shambaugh has also contributed many articles on the claim clubs in Iowa to the several historical publications of that state.

⁴There is an article dealing with the Middle Park Claim Club in the *Colorado Magazine*, X (September, 1933), 189-194.

⁵Hibbard, *op. cit.*, 198.

⁶Shambaugh, *op. cit.*, 82.

the earliest claim clubs were established. These informal, extra-legal, protective associations bridged the gap for the settlers between settlement and proving up under the preemption act, by assuring them possession against all comers until the day that the tract was formally opened to settlement. They represent an attempt at an orderly solution of disputes and disagreements in communities which were without the usual agencies of law and order. As such they were in a real sense the forerunners of local governmental institutions in localities that were outside the limits of organized units of local government. They were the answer of the premature pioneer to a sluggish government. From this point of view claim clubs belong in the same general institutional group as the miners districts and the stock-growers associations.

The earliest reference to a claim association concerns one in Alabama which was organized in 1830 on the basis of a written agreement that bound each signer to aid in the protection of fellow signers against outside bidders when the land that they were occupying was offered at public sale.⁷ Most of the literature concerns the clubs in Iowa and Wisconsin. It was the general practice of those groups to retain a monopoly of bidding at public sales by preventing others from bidding and by having an official bidder buy the several tracts at the minimum price per acre. They also meted out stern punishment to claim jumpers and speculators and undertook to settle by arbitration disputes between members. It was characteristic of these early associations to have a written constitution, a definite group of officers, a panel of arbitrators, and a body of by-laws and regulations which governed the taking up and validating of claims on the public domain, or potential public domain.⁸

It is probable that the early settlers in Colorado were familiar with claim club technique. Those who comprised the membership of the El Paso Claim Club settled upon land that still belonged to the Indians. The whole area was included in the territory of Kansas, thus in legal documents the address of the parties is given as Colorado City, county of El Paso, territory of Kansas.

The Kansas Territorial legislature was not concerned with enacting laws for the guidance and regulation of claim clubs, in spite of the fact that some were organized in the eastern part. There is nothing in the connection with Kansas Territory which could have given a color of legality to the Colorado claim clubs.

The background of federal law is equally barren so far as settlement in this region is concerned. Section nineteen of the organic act of the territory of Kansas provides that "Nothing in

⁷*American State Papers, Public Lands*, VI, 187-188.
⁸Hibbard, *op. cit.*, 202-208.

this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, . . ."⁹

According to an Act of Congress passed a few weeks later, the lands in Kansas to which the Indian title had been extinguished were to become a part of the public domain and subject to the operations of the preemption act of 1841.¹⁰ Provision was made for settlement upon unsurveyed portions of the public domain, but settlement upon Indian land received no legal status. The members of the El Paso Claim Club, together with the other early settlers of Colorado, were simply trespassers upon unsurveyed Indian lands, without benefit of preemption and without recourse to law if their claims were jumped. It is only natural that they developed agencies of their own devising to protect their interests.

The civil code of the spontaneous and short-lived territory of Jefferson represented the point of view of the pioneers and legalized institutions which were extra-legal from the viewpoint of federal law. So few copies of this code are extant that some of its provisions relating to "Claims on Land" are embodied in this paper. They are as follows:

Section 103. The occupant of what is known as a valid claim or improvement upon the public lands, will be deemed to have the title and possession thereof to the extent of one hundred and sixty acres, unless he occupy the same by virtue of a contract as a tenant or lessee under the rightful owner of the claim.

Section 104. Such claim shall be considered valid when the taker-up who is the constructive occupant and has the constructive possession, or his assignee, has marked it out and so designated the boundaries thereof that they can be easily traced and readily known and has also complied with the laws of the territory.¹¹

A detailed discussion of all of the claim clubs that were organized in this state during the first years of settlement is not within the scope of this paper, but a brief mention of those that have come to the attention of the writer will serve to indicate that the El Paso Claim Club was not an unique organization. The following chronological arrangement is a tentative one: the El Paso Claim Club, the Arapahoe County Claim Club, the Farmers' Claim Association, the Platte River Claim Club and the claim district organized by the farmers in Cherry Creek Valley.

The first mention of the Arapahoe County Claim Club in the *Rocky Mountain News* is contained in the issue for August 13, 1859, and refers to a meeting of the club that was held on August 5th at which time a resolution was adopted providing that each

⁹*United States Statutes at Large*, 33 Cong., 1 sess. 283-284.

¹⁰*Ibid.*, 308.

¹¹*Laws of the Territory of Jefferson* (Omaha, 1860), 192.

claim holder in the club who held a claim for farming purposes had to break one acre of land or build a house sufficiently good to live in within sixty days. Either alternative would validate a claim for a year. The meetings held in February, 1860, were concerned with the course of action which the club should take toward the jumping of the Denver townsite¹² and with the adoption of the revised constitution.¹³ The preamble contains a brief justification for the existence of claim clubs. It reads,

Whereas it sometimes becomes necessary for persons to associate themselves together for certain purposes such as the protection of life and property; and as we have left the peaceful shades of civilization . . . we therefore associate ourselves together under the name of the Arapahoe Claim Club and adopt the following constitution.

The constitution proper lists the officers, their duties and manner of election, regulates the process of taking up claims and validating them and describes the boundaries of the club.

The Farmers' Claim Association was formed at a meeting held at a home near the mouth of Plum Creek, March 18, 1860. Again the preamble sets forth the purpose of the organization.

Whereas it has been found necessary in all new countries for the settlers upon the public lands to associate themselves together for self-protection: therefore in defense of our property and our families we do solemnly enact the following articles of agreement.

In this case the signers of the constitution agreed to protect every lawful claimant in the peaceable possession of his or her claim, to attend the public sales in a body after surveys were made and protect each other's claims at the sales, and after the sales to deed and re-deed to each other so that each claimant would secure his or her claim as held at time of sale. The regulations were somewhat more stringent than in the Arapahoe Club in that they required improvements worth \$100 within six months from date of claim.¹⁴

A notice of a meeting of the Platte River Claim Club at Fort Lupton was inserted in the issue of the *Rocky Mountain News* for June 13, 1860. This is the only information concerning it that was found in that newspaper.

A claim district was organized by the farmers in the Cherry Creek valley on November 6, 1860. This association permitted anyone over fifteen years of age to take a claim, and required that improvements worth \$50 were to be made within fifty days after date of claim and that \$25 worth be added during each succeeding quarter. It also permitted a man who had improved his claim to

¹²*Rocky Mountain News*, August 8, 1859.

¹³*Ibid.*, August 15, 1859.

¹⁴*Ibid.*, March 28, 1860.

the extent of \$100 to absent himself from it for a period of six months without penalty of forfeiture.¹⁵

The discussion of the El Paso Claim Club which follows is based largely upon the Record Book A of that organization. It is extremely unfortunate that the first part of the book is missing because it leaves the early history of the club in a state of uncertainty. The only other clue is contained in the issue of the *Rocky Mountain News*, for August 27, 1859. It states that

A meeting of the citizens of El Paso county was held on the 15th inst., in Colorado City, for the purpose of organizing a "Claim Club," for the protection of the rights of squatters on public lands; the jurisdiction of said club to be co-extensive with the boundary of El Paso County. Judge Wagoner was elected chairman, and W. P. McClure, Secretary. After the adoption of a liberal Constitution, a permanent organization was effected by the election of M. S. Beach, President; Lewis N. Tappan, Secretary and Recorder; H. M. Fosdick, Justice of the Peace; and C. Pursall, Constable. Seven Directors were elected, two of them being the President and Recorder; the others are Messrs. Fosdick, Wagoner, Persall, McClure and Clark.

On motion it was voted that the minutes be published in the *Rocky Mountain News*.

This indicates that the claim club was organized for the first time on August 15, 1859, but the record book contains information which points to the conclusion that there was a claim club in existence in this locality nearly six months prior to that time. There are frequent references to the "old Claim Club." The earliest date mentioned in connection with such a reference is contained in the statement filed by John I. Price on December 30, 1859. He states that the tract of land to which he referred was "Claimed and cabin built about the 1st of March, 1859, and recorded with the claim club in existence at that time."¹⁶ Again in a statement filed for record by Paul Miller he says that the foundation on his claim was laid on August 13, 1859, "under the regulations of the old claim club."¹⁷ It seems reasonable to conclude that there was a claim club in existence prior to the one that is described in the record book and prior to the notice contained in the *Rocky Mountain News*. Apparently it was in existence as early as March, 1859.

The minutes of the meeting in August, 1859, are not contained in the portion of the record book which is still extant. Moreover, there are no recordings prior to December 10, 1859. It is probable that this information was contained in the missing portion of the record book. This view is given some support by the closing sentence of the notice filed by the Colorado City Company which states that, "The said townsite was recorded in the records of the El

¹⁵*Ibid.*, December 5, 1860.

¹⁶*Record Book A of the El Paso Claim Club*, 74. Hereafter cited as *Record Book A*.

¹⁷*Ibid.*, 55.

Paso Claim Club formed in August, 1859, under the date of August 13, 1859.¹⁸

The minutes of four of the subsequent meetings of the club are contained in the record book. On December 20, 1860, the club met to hear the report of the committee on the Denver Claim Club laws. The report consisted of a proposed amendment to the constitution and on motion was approved unanimously. The amendment contains the following provision:

And all claimants shall have at least five (5) acres inclosed or fenced in a good and substantial manner, or its equivalent in fencing or ditching or by plowing and fencing one acre of land for agricultural purposes, or by living on the claim himself or having a tenant residing thereon under a written lease to be recorded in the Recorder's books, said improvements to be made within ninety days of recording.

Before adjournment a new article was adopted which made all controversies over dams and ditches referable to the Board of Directors for final settlement and an amendment to Article 2 which had been adopted the previous April was repealed.¹⁹

A meeting was held on March 9, 1861, at which time the only business recorded in the minutes was a motion by Mr. Housekeeper that the Messrs. Riddle, Iverson, Smith and Howbert be given until July 1st, to comply with the new regulations as to improvements. The motion was seconded but did not carry.²⁰

On March 23, 1861, a meeting was called to settle disputes over claims. Two claims were in dispute, one between H. Talcott and D. P. Dodds, the other between Wm. Campbell and Thomas Owen. On motion of M. S. Beach a new clause was added to the second article of the constitution which provided for the choice of a jury of twelve members of the club, three by each party, and six by the club. This was to be the method of settlement during the absence of any of the directors of the club.

The decision of the jury in the case of Campbell vs. Owen is stated in the following words: ". . . after hearing evidence from both sides the jury decided to award the claim to Wm. Campbell." In the other case ten of the jurors voted to award the claim to Talcott, two to award it to Dodd; as a result the case was not decided and the meeting adjourned until March 30, 1861. One interesting feature of this case is that the written agreement signed by both parties to abide by the decision of the El Paso Claim Club was the basis of the action.²¹

The last meeting for which the minutes are available was held on August 7, 1861. It was the annual meeting and the principal

¹⁸*Ibid.*, 63.
¹⁹*Ibid.*, 290-91.
²⁰*Ibid.*, 291.
²¹*Ibid.*, 19, 292.

business was the election of officers. Alexander M. Smith was elected president, M. S. Beach, recorder, and Messrs. Coplen, G. H. Tappan, Roberts, Crowell and Fosdick directors. Mr. Garvin and A. S. Cobb were the retiring president and recorder respectively. The meeting adjourned after adopting a motion that the terms of the newly elected officers expire on June 10, 1862.²²

The principal portion of the Record Book is devoted to the notices filed by members in which they describe their respective tracts of land and assert that they have taken the proper steps to assure the validity of their claim. The following typical entry indicates the character of the others:

Colorado City, Dec. 15th, 1859.

Wm. Henry Garvin claims within the jurisdiction of the El Paso Claim Club one hundred and sixty acres of land for farming purposes, described as follows, commencing at a stake on the northeast corner of said claim near the north end of the "Gypsum Quarry" so called about two miles north from Colorado City, and running from said stake west 160 rods, and immediately across the upper or north end of the "Red Rocks" so called, from thence at right angles running south 160 rods along the west line of the place known & designated as the "Garden of the Gods" from thence at right angles 160 rods east to a point near the north west corner of the claim known as M. S. Beach's claim on "Camp Creek" from thence at right angles in a north line to stake or place of beginning.

The said claim taken Dec. 12th/59 and the foundation laid immediately west of the large "Red Rocks" & as near the centre of said claim as may be.

Wm. H. Garvin

Witnessed by

M. S. Beach James Garvin

Recorded December 15th, 1859,
 H. J. Burghardt, Recorder.²³

There are approximately three hundred and twenty of these recorded claims to one hundred and sixty-acre tracts for farming purposes. These claims were recorded by two hundred and sixty different persons, two of them women, and several of them young men who had not yet attained their majority. Forty-seven of these took up more than one claim; the highest number of claims taken up by any one person was four. The constitution probably contained some limitation upon the number of tracts, therefore the persons who filed on more than one tract had to abandon their original one, relinquish it to someone else, or sell it outright. It is a matter of record that some members of the group followed the latter course and there are marginal notes opposite some of the recordings which state that the claimant relinquished his claim to a certain tract of land.

Approximately 50,000 acres of land or eighty square miles

²²*Ibid.*, 293.
²³*Ibid.*, 49-50.

were taken up by this group under the regulations of the El Paso Claim Club. This land was located for the most part in the valleys of the Fountain, Monument and Camp Creeks. The southernmost claim was located about twenty-four miles south of Colorado City, the northernmost twelve miles to the north. The claims extended approximately eight miles to the east and three miles to the west.

Inasmuch as this region was unsurveyed during the early history of the claim club the statements concerning locations had to be indefinite and based almost entirely upon natural, topographical features which in many cases had only a local and temporary significance. Quite naturally the streams furnished the most important data for descriptive purposes. The Fountain, Monument, Camp, Cheyenne, Squirrel, Bear and Little Fountain, were the ones most frequently employed. The Soda or Boiling Springs, the Garden of the Gods, the Red Rocks, the Grey Ridge, the Buttes to the east of Colorado Springs, the Big Valley, and the Gypsum Quarry were used on frequent occasions. The Colorado City-Denver City road and cut-off and the Colorado City-Fountain City roads appear quite often.

In contrast with these more definite and easily discernible landmarks there were many of a vague character. Some typical examples are: "on the stream running from Pike's Peak;" "about one mile south of two large cottonwood trees;" "being near two lone pine trees;" "in a ravine or valley that puts out of the bluffs;" "the line passing through a dead cottonwood stump about 100 yards east of a spring;" and "commencing at a black walnut stake 250 yds. from a small clump of oak trees."

The portion of the record book devoted to the recording of quit claim deeds reveals a number of interesting facts concerning the value placed upon the claims in this locality. Some thirty-seven or eight claims changed hands during the period of twenty-one months from February, 1860, to November, 1861. This certainly does not indicate a tendency toward speculation. A few claims such as the one which included the Soda Springs within its boundaries changed hands several times during this period.

The prices for claims ranged from \$1 which was obviously for the purpose of confirming the legal character of the transfer, to \$250 for a one-fourth part of the claim that included the Soda Springs.²⁴ A claim located above the springs changed hands at \$500 for a two-thirds interest.²⁵ Several claims adjoining the Colorado City townsite sold for \$500 each.²⁶ The average price for farming claims located some distance from Colorado City was about one hundred and ninety dollars or approximately \$1.20 per

²⁴*Ibid.*, 166.

²⁵*Ibid.*, 168.

²⁶*Ibid.*, 170, 188, 202.

acre. Thus the average price per acre was practically the same as the price established by the federal preemption law of 1841.

The form of the quit claim deed was the same in practically all of the recorded transactions. In many cases the signing of the deed was notarized. The following is a typical deed:

Kansas Territory
Arapahoe County

Know all men by these presents that I, Isaiah K. Long of Arapahoe County, and Kansas Territory have this day, for the consideration of one hundred and fifty dollars the receipt whereof in full is hereby acknowledged, Bargained Granted, sold, released, and Quit Claimed unto Henry Copen, the following described property or plat of ground, to wit: a certain farming claim of one hundred and sixty acres situated on the Fountaine Qui Bouille Creek about one mile below its junction with Monument Creek, being within the jurisdiction of the El Paso Claim Club and recorded in my name in the records of the said club on page 67, under date of December 22nd, 1859, being situated in Arapahoe County Kansas Territory, unto him the said Henry Copen his heirs and assigns, to have and to hold the above described property with all and singular the improvements thereto belonging, or in anywise incident. In testimony whereof I hereunto affixed my hand this Fifth day of September A D 1860.

Isaiah K. Long.²⁷

There were some claims taken up for purposes other than farming. Three of these related to coal lands. The first claim to coal lands was recorded in December, 1859, on the basis of a discovery made about a month earlier. The vein of coal was located on the east bank of Monument Creek nearly opposite the butte about one mile above "Red Rock Ranche," so-called.²⁸

On March 25, 1861, the Niagara Coal Company recorded a claim to a coal vein which outcropped on the east side of Monument Creek about four feet above the water line and about two miles above the "Red Rock Ranche." The vein was nearly two feet thick and eight or ten feet wide at the point of exposure. It was discovered by M. S. Beach on February 27, 1861. The notice recorded by the company concludes with the following sentence:

We claim the said vein wherever it may extend, in the name of the Niagara Coal Company and take this method to warn and advise all parties whomsoever, that we intend to open and work said vein and we thus publish our title and intention.²⁹

On the same day the Old Dominion Coal Company which included several of the members of the Niagara company claimed a coal discovery which had been made in December, 1860. This location was about two and one-half miles above Red Rock Ranch. The vein was about two feet thick and outcropped a distance of fifty

²⁷*Ibid.*, 67.

²⁸*Ibid.*, 50-51.

²⁹*Ibid.*, 158.

feet along the Monument. The document filed by this company was very similar to the one above.³⁰

Claims were also taken up for lumbering purposes.³¹ There were two principal "pineries" in operation during the history of the claim club. One was located south of the city,³² the other ten or twelve miles to the northeast. The latter was more widely known and was called the Squirrel Creek Pinery, both locally and in Denver. The Colorado City correspondent of the *News* referred to the pineries on several occasions. On February 22, 1860, he remarked that there was an abundance of fine timber, but a sawmill was badly needed. Early in March the Squirrel Creek Pinery was mentioned as a source of lumber for the houses of Colorado City. Later in the month he wrote to the effect that three sawmills were being set up, and on June 20, 1860, a news item contained the information that the Squirrel Creek Pinery was going to furnish the wood for the L. N. Tappan store.

Another phase of the attempt to exploit the natural resources of the region is indicated by the taking up of a claim for lime kiln purposes. This claim was located southwest of Colorado City in the mouth of Bear Creek Canon.³³

There is no reference to efforts to utilize the gypsum in the locality, although there are frequent references to the Gypsum Quarry.³⁴ Clay for brick and sandstone for building purposes were listed among the natural resources of the region about Colorado City, but no specific claims to land were made for the purpose of developing such industries.³⁵

The claiming of land for townsite purposes was a conspicuous feature of early frontier life and the El Paso Claim Club contained within its limits several areas which were staked out with the view to developing them into townsites. The first attempt to develop a town was made by a party from eastern Kansas led by a Mr. O'Donnell who laid out a town on a part of the site of present day Colorado Springs.³⁶ The name El Paso was given to the town because of its proximity to the pass. There seems to be a difference of opinion as to the exact location of the El Paso townsite. One author places it above the mouth of Monument Creek.³⁷ This does not coincide with a reference to it contained in the record book of the El Paso Claim Club. A claimant to a tract of land describes

³⁰*Ibid.*, 159.

³¹*Ibid.*, 60-61, 70.

³²Known locally as the "Big Mountain" or "South Pinery." *Ibid.*, 67, 82.

³³*Record Book A*, 281.

³⁴*Ibid.*, 49.

³⁵*Rocky Mountain News*, March 7, 1860.

³⁶J. C. Smiley, *History of Denver* (Denver, 1901), 191. The author states that El Paso never developed anything but one poor log cabin and a few tents. He also states that "Some of these men took up land claims on the Fontaine Qui Bouille just above El Paso."

³⁷Lillian R. Brigham, *Historical Guide to Colorado* (Denver, 1931), 65.

it as six miles east of Colorado City and two miles from the Fontaine Qui Bouille "in a valley about one mile east of the high buttes that adjoin the El Paso Townsite."³⁸ This would place the eastern edge of the townsite five miles east of Colorado City and thus east of all except the extreme southeastern corner of Colorado Springs.

On December 20, 1859, the Colorado City Company filed its claim to 1,280 acres of land "for the purpose of a townsite." The tract was located east of Camp Creek, on both sides of the Fontaine Qui Bouille, with the major part northeast of that stream. It was a rectangular area two miles in length along the creek and one mile in width across the valley. L. J. Winchester was president of the Company, Lewis N. Tappan was secretary and recorder.³⁹ Henry M. Fosdick prepared the plat of the city which is dated November 1, 1859.⁴⁰ The record book of the Colorado City Company indicates that there was a great deal of activity in the sale and purchase of lots.⁴¹

The Junction City Town Company was organized in June, 1860, with Hickory Rogers as president and N. N. Wethan as secretary. A claim was filed to a three hundred and twenty acre tract located "at the junction of the road leading from Colorado City to Fountain City and the road from Denver City to Fountain City via the Cherry Creek and Jimmy Camp route. . . . Said site taken February, 1858, and cabin built then to secure it."⁴² It is difficult to believe that the date given is correct. The location of the townsite must have been a short distance northeast of the present town of Fountain.⁴³ The venture apparently did not develop beyond the filing of the claim.

One of the most interesting documents in the record book is the agreement entered into by four members of the claim club which concerned the construction of an irrigation ditch. The agreement was made and recorded on August 24, 1860.⁴⁴ Henry M. Fosdick was the engineer selected to locate the dam and ditch. The parties to the agreement bound themselves in consideration of one dollar paid by each to the other to share equally in the expense and labor of constructing the ditch and dam. George Tappan was to furnish a team and plow; B. F. Crowell, F. A. Cook and James M. Tappan were to work an equal length of time. The project was to be for the exclusive use and benefit of the parties to the agreement. Each was to have the privilege of using as much water as

³⁸*Record Book A*, 80.

³⁹*Ibid.*, 62-63.

⁴⁰*Record Book of the Colorado City Company* labelled *Territorial Records: Unofficial, et passim*. The deeds state that he platted the town.

⁴¹This record book is kept in the vault of the County Clerk and Recorder, El Paso County.

⁴²*Record Book A*, 117.

⁴³Map of Colorado Territory (1862) by F. J. Ebert.

⁴⁴*Record Book A*, 173-176.

he wanted, when he wanted it, but no one could use more than one-fourth of the water if one of the other parties objected. Each engaged to share in the expense of maintenance equally with the rest, to prevent wastage of water and to co-operate in making the project a beneficial one to all concerned. The claims formed a six hundred and forty acre tract close to Cheyenne Creek and the dam was to be constructed at a point selected by H. M. Fosdick.

Space does not permit reference to the many other interesting facts contained in the claim club record book, but the task would be incomplete if brief mention were not made of some of the prominent members of the club. Melanethon S. Beach, a native of New Jersey, has been termed the foremost citizen of Colorado City.⁴⁵ He was active in the claim club, serving as recorder, and in the general life of the region. Benjamin F. Crowell, of Massachusetts, was editor of the *Colorado City Journal* and an outstanding leader in El Paso county affairs.⁴⁶ William Howbert and Irving Howbert were prominent members of the claim club.⁴⁷ The latter became county clerk and served for a long period of time. Later he participated in the mining and banking development of Colorado. Before his death, slightly more than a year ago, it is probable that he was the oldest surviving member of the claim club.

Lewis N. Tappan, a merchant from Boston, A. D. Richardson, a traveler and author, Rufus Cable, a lawyer from Kansas City, Richard Ed. Whitsitt, of Denver, N. G. Wyatt, A. D. Sprague, William Larimer, Jr., George A. Bute, Anthony Bott, William Henry Garvin, and B. F. Hall, were included in the membership of the club.⁴⁸

Travelers who passed through Colorado City noted the existence of the claim club and the presence of foundations for cabins which indicated that the tract of land upon which it was located had been claimed. One of these travelers remarked that,

Four notched logs laid in a square on the ground will keep a preempted quarter-section for a year being to all legal intents, as has been decided, sufficient earnest of the fact that the owner purposes building "a house suitable for human habitation." During our present stay we saw several such squares of logs; and they were quite as well respected by new comers as if they had been squares of infantry.⁴⁹

⁴⁵Irving Howbert, *Memories of a Lifetime in the Pike's Peak Region* (New York, 1925), 67.

⁴⁶*Ibid.*, 61, 67.

⁴⁷*Ibid.*, 50-51. *Record Book A*, 136-137.

⁴⁸*Record Book A*, 47, 49, 52, 56, 66, 75, 84, 106, 164, 165, 177, 196, 254.

⁴⁹Fitzhugh Ludlow, *The Heart of the Continent* (New York, 1870), 182. The *Rocky Mountain News* for April 25, 1860, contains the information that the valley of the Fontaine Qui Bouille was about a mile wide, very fertile and that "Claim shanties have been erected all along, indicating that the valley is claimed up. . . ." The valley of the Fontaine Qui Bouille is listed among those in which nearly all of the "claims" have been taken up by actual settlers in the *Report of the Secretary of the Interior for 1862*, 37 Cong., 3 sess., *House Ex. Doc. No. 1*, 113.

The Territory of Colorado was formed on February 28, 1861. Provision for county organization was made by the first legislature which met in Denver during the fall of the same year. The Indian title to the land was extinguished by the treaty of Fort Wise, February 18, 1861.⁵⁰ Provision was made for the survey of the land and on June 2, 1862, an act of Congress extended the provisions of the preemption law to the lands to which the Indian title had been extinguished, authorized the establishment of a land office in the territory and regulated the preemption of unsurveyed lands.⁵¹ With these developments the conditions which called the El Paso Claim Club into existence disappeared. Having played its part it too ceased to exist.

Mountain Men—"Big Phil, the Cannibal"

LEROY R. HAFEN

The Mountain Men of the fur trade period in the Rocky Mountain West were of many types. Among them were fine characters, examples of courage and achievement, whom we of today are proud to honor. Such men were Kit Carson, Thomas Fitzpatrick and Jedediah Smith. Others had come to the frontier to escape the reaches of the law, "leaving their country for their country's good." Of these may be numbered the subject of this sketch.

His real name was Charles Gardner,¹ but he was variously known among trappers and pioneers as "Mountain Phil," "Old Phil," "Phil Gardner," "Big Mouth" (among the Arapahoes), and "Big Phil, the Cannibal." His large size and his having come from Philadelphia account for most of the names applied to him. Edward Wynkoop, prominent Colorado pioneer, has left us our fullest account of this notorious character. When returning to "the States" from Denver in the winter of 1858-59, Mr. Wynkoop found shelter in the tepee of Old Phil at an Arapaho village on the South Platte River. He writes of him as "one of the most singular characters that ever was known on the plains or in the Rocky Mountains. All Indian tribes and all the hunters and trappers from the mouth of the Yellowstone to Arizona were acquainted with this strange individual. He was a white man, born in the city of Philadelphia, of gigantic stature and repulsive aspect. His own story was that he had been put in prison in Philadelphia

¹⁰*Eighteenth Annual Report of the Bureau of American Ethnology*, Part 2 (Washington, 1899), 824-825.

¹¹*Cong. Globe*, 37 Cong., 2 sess., Appendix, 358.

¹²Edward Wynkoop, "History of Colorado" (unfinished ms.), in possession of the State Historical Society of Colorado.

for some crime committed during the riots of 1844,² had escaped from prison and somehow made his way to the Rocky Mountains, where he joined an Indian tribe and had lived among them ever since. At the time of my first acquaintance with him, he had two Arapaho Indian wives and several children.

"He had been supposed to have committed every crime known, yet notwithstanding this had some few good traits in his character, proving what the writer firmly believes, that no created being is utterly and entirely depraved. Singular as it may appear, instances had been known where this man showed evidences of a good heart and generous disposition and it was said when he told a man he was his friend, he was never known to fail him. The night we found shelter in his lodge he treated us in the most kind and even tender manner, would not allow us to take care of our animals, prepare our food or perform any of those offices which were customary; compelled us to enter his lodge, rest by the fire on his buffalo robes and provided us with an abundance of food, while the next day he sent two Indians along to travel the whole day for the purpose of showing us a point where we could make a comfortable camp.

"All kinds of stories were told about this being, one of which was that having been sent by General Harney to Fort Laramie with dispatches, with a single Indian for his companion and orders to return immediately, the time of his return having passed to a considerable extent, it was supposed to them that he and his comrade had perished in consequence of there having been a fearful snow-storm after the time he was expected to have left Fort Laramie, but one day he was seen approaching the camp with something on his shoulder. When he made his appearance the question was asked, 'Where is the Indian that accompanied you?' 'That is all that is left of him,' he replied, throwing down a human leg which he carried.

"His story was that two days after they had left Fort Laramie, they encountered the snowstorm, lost the trail and wandered about until their provisions were exhausted. For days without food they soon commenced to feel the pangs of hunger and when in a starving condition he had noticed something in the manner of the Indian which aroused his suspicions and while keeping an eye upon his actions, caught the Indian while he was in the act of springing upon him with his knife in his hand. A struggle ensued which resulted in the death of the Indian. Famished with hunger, he had made a hearty meal off of the remains, and knowing that he could

²W. N. Byers, in a note written in connection with the George A. Jackson Diary (published in the preceding issue of this magazine) says that Gardner was "a leader in the anti-Catholic riots in and about Philadelphia, in which one or more convents were burned and other outrages perpetrated. To escape punishment he fled to the mountains."

not travel without provisions he had taken the two legs and started to find the camp which he had now reached. 'And you see,' he remarked with a chuckle, 'I have some provisions left.'

"The proper name of this peculiar individual was Charles Gardner, but he was known among the mountaineers as Big Phil. While the English of his Indian name was Big Mouth. For some reason not known, during Harvey's war with the Indians, he was the only white man who could travel in safety among them, and he rendered much service to the government by acting as a carrier, etc. I have heard it said by old mountaineers that he made his appearance so suddenly among the Indians, had such a singular aspect, was of such immense strength, with other peculiarities that they thought he was a being of another world. That they had some superstition in regard to him is undoubted.

"I found him nothing but a very large-sized specimen of a Philadelphia rough. He still retained the peculiar manner and language of what is known as the 'Jocky Style.' He told me the name of the fire company he had belonged to in Philadelphia; and when he found I was a native of that city, seemed overjoyed, asked me numerous questions and requested me to write him a letter to some of his friends there, which request I complied with and wrote at his dictation, and such a composition was never seen before. When the letter was sealed, I asked him how I should direct it and after a few moments hesitation he said: 'Now write just as I tell you.' Consenting to do so, he continued, 'Write down, To Charley LeClair or any of the family, Catherine St. below 5th, Philadelphia or Spruce St. Wharf, ask any oysterman.'

"I saw much of Big Phil in later years and he always seemed extremely glad to see me; coming from Philadelphia, I presume I was a kind of connecting link between him and those friends he never saw after his escape."

William F. Drannan, in his *Thirty-one Years on the Plains and in the Mountains*, tells of his contact with "Mountain Phil." Although Drannan's book is unreliable in various particulars, his story is given for what it may be worth. While he and "Uncle Kit" Carson were trapping in the late '40s, they came upon Mountain Phil at the site of present Denver. Phil asked to trap for Carson.

"'All right, Phil,' said Carson, 'I will give you a job, but you will have to stop alone, for none of my men will live with you.'

"'All right,' said Phil, 'Me and Kloock [his squaw wife] will be enough to stop in one cabin anyway.'³

³W. F. Drannan, *Thirty-one Years on the Plains and in the Mountains*, 97.

Early next spring Charlie Jones, one of Carson's men, visited Phil to see if he needed supplies. Upon his return, Jones remarked: "It seems that Mountain Phil has been faring better than any of us, for he has been able to kill his meat at camp, thereby saving him the trouble of having to get out and hunt for it."

"Johnnie and I did not understand what he meant by this. So, after hesitating a moment, Jones said: 'Boys, if I should tell you what I know about Mountain Phil, you would not believe it, but as sure as you live he has killed his squaw and eaten most of her, and he has left his camp.'"⁴

Little and Hanks, famous mail carriers between Salt Lake City and the Missouri River, came upon "Old Phil" on the North Platte in January, 1857. He and John Snead had been sent from Ash Hollow through the deep snow to Fort Laramie by Major Drips for fresh cattle. On their return, they were overtaken by the mail carriers. "They were wretched looking men; lean, lank and sunken eyed. With their poor diet, severe labor and exposure to cold, they were rapidly approaching the fate of the exhausted animals they had left strewn along their trail. . . . Mr. Snead said for several days he had been afraid to walk ahead of Old Phil in the trail for fear he would kill and eat him."⁵

When the pioneers of Denver laid out the town, they found Phil living with the Arapahoes in the vicinity. He accompanied George A. Jackson, pioneer prospector, to Fort Laramie in January, 1859, to get the mail for the men at the mouth of Cherry Creek. Jackson collected \$132 for the trip and gave \$50 of it to Phil.

"He owes Al Garwiteh \$100," says Jackson, "but won't give him a dollar; wants to save his money and buy whiskey—the old brute."⁶

James H. Pierce, a member of the Green Russell prospecting party of 1858, mentions Phil in his account of the beginnings of Denver. "We were getting our mail once a month from Fort Laramie," writes Pierce, "carried by Old Big Phil, an old mountain man who is said once to have eaten an Indian guide that he had out with him. He certainly was an extraordinary specimen of humanity. He could eat enough at one meal to do him three or four days and appeared to be perfectly healthy. His main support was raw meat."⁷

In the spring of 1860, some roughs perpetrated outrages on the Arapahoes encamped near Denver. John Poisal (father-in-law of Thomas Fitzpatrick), who was living with these Indians at the

⁴*Ibid.*, 104.

⁵James A. Little, *Biographical Sketch of Fervamor Little* (Salt Lake City, 1890), 48.

⁶Jackson's Diary, published in the *Colorado Magazine*, XII, 210.

time, reported that "Phil Gardner" and others were the offenders.⁸

W. N. Byers, Colorado pioneer, who knew Phil in 1859, has this to say of him: "He was noted for ruffianly disposition and acts. He made no secret of the fact that he had in emergency turned cannibal; said that he had killed and eaten two Indians and one white man (a Frenchman). Upon being asked about the taste of human flesh, he answered that the head, hands and feet, when thoroughly cooked, tasted good, not unlike pork. But the other portions of the body he did not like; it was too gristly and tough. The above was the story current about the Cherry Creek camps in the winter of 1858-9, and was not disputed by 'Old Phil.' It was repeated to me less than a month ago (1896) by a well known citizen of Denver who occupied the same cabin with 'Phil' a good portion of the winter named.

"Upon referring the subject to Captain [George A.] Jackson, he said that he did not believe that 'Old Phil' ever ate human flesh, but that he knew he was frequently referred to as 'Old Phil the Cannibal.' And this is his theory of the story. Upon a certain occasion before the civilized history of the northern mountain region began, it became necessary to send a very important message from some point in the far northwest to Fort Laramie. Old Phil, was employed at \$20 per day to carry the message, he was not acquainted with all the route and it was the dead of winter. He finally found an Indian who professed to know the way, employed him as a guide and they set out. After a few days' travel, he discovered that the Indian was completely lost. In his anger, he killed him and took his pony for a pack animal. In packing up, he cut off a leg of the Indian at the hip joint and added it to his pack. In course of time he found the way to Fort Laramie and delivered his message. The pack pony wandered about the stockade until Phil had made his report and came out to unpack him. The post loungers had already discovered the black and shrivelled foot of the Indian sticking out of the pack and watched with much curiosity to see 'Phil' unload. When he came down to won't have to gnaw on you any more.' He afterwards explained the leg he pitched it off to one side with 'There, D—n you, I that he had day after day sliced off portions of the flesh and thrown them away, which accounted for the mutilated and haggled condition of the leg. Either or neither story may be true or false. It is not difficult to believe that the man who would be guilty of either one might be capable of the other."⁹

⁸*Rocky Mountain Herald*, May 5, 1860.

⁹Byers' notes attached to the Diary of George A. Jackson (Ms.), in the Library of the State Historical Society of Colorado.

¹⁰*The Trail*, XIII, No. 12, p. 12.

Details are lacking as to the taking off of Big Phil. Edward Wynkoop wrote in 1876: "He was killed a couple of years ago in an affray in Montana."¹⁰

Rev. Jacob Adriance, Pioneer Colorado Minister

EFFIE L. BURRILL*

Rev. Jacob Adriance, born October 22, 1835, in Aurelias, New York, was the second son of Thomas and Margaret Adriance, sturdy New York citizens. He had many and varied experiences during the many years of his pilgrimage here.

Very early in life he felt the urge to a life of special service for his Master, which grew with prayer and the systematic reading of the Bible. Later the silent voice said to him, "The Lord wants you to go a long way from home and preach the Gospel." In view of his feeling unfit for the task he at first shrank back, but after varied experiences the following weeks, he finally said, "Yes, I'll go."

After spending three or four years on the farm, and learning the carpenter's trade, he, in April, 1857, found himself in Nebraska, hunting a place to locate where he might be helpful in assisting a pastor. No such opportunity was found but he was prevailed upon to take charge of a circuit with nine appointments. Upon investigation, only four of these were located and Rev. Adriance carried on there for the remaining months of that year, which, in his own words, "were filled with doubts, fears and triumphs as foundations were laid for others to build upon."

The Kansas and Nebraska Conference convened at Topeka, Kansas, in April, 1858. Having been recommended for a member on trial, Rev. Adriance, in company with nine other preachers, arrived at the conference after having ridden on horseback for six days in the rain. He was admitted on trial and appointed to Platte Valley Mission, consisting of twelve appointments. The circuit was two hundred or three hundred miles long and most of his going from place to place was done on horseback or afoot.

Corn bread, potatoes, and salt, the common food for settlers, was eagerly shared with the preacher and was richly enjoyed with thankfulness to the Giver of all good. Organizations were formed in some homes where services were held, the group often numbering not more than six members.

In April, 1859, conference met in Omaha and Rev. Adriance

*Wynkoop manuscript, *op. cit.*

*Mrs. Burrill, of North Bend, Nebraska, is a daughter of Rev. Jacob Adriance. In writing this sketch she used manuscript material left by her father and mother.—Ed.

was appointed to Rock Bluffs charge. One month later he was appointed to Pike's Peak and Cherry Creek, present Colorado.

In the fall of 1858, news of gold discovered at Cherry Creek had reached the western settlements and rapidly spread over the then western states. By spring of 1859, many hundreds of people were on their way to Pike's Peak. The Methodist Church authorities became interested in caring for the spiritual needs of these multitudes after locating. Rev. Wm. H. Goode, of Iowa, a man



REV. JACOB ADRIANCE

of wide experience in frontier work, was appointed to go and look over the work and provide ministers if advisable.

Rev. Adriance was appointed to accompany him and remain to carry on the work. They were thirty days enroute from Glenwood, Iowa, to Denver, arriving June 28. On July 3, 1859, at Auraria, now a part of Denver, Rev. Goode preached in the Pollock Hotel in the morning from Matt. 24:14, and Rev. Adriance, in the afternoon from John 3:16. The hotel was a log and frame building of small dimensions. Congregations were small but attentive. In response to an invitation to join the church Henry Reitz and Alexander Carter became members. These were the first organized religious services in the "Pike's Peak" country, although it is thought that Rev. Fisher, who had come for gold at the first excitement, preached the first sermon December, 1858, under a tree near

where the first bridge was built across the Platte. Trinity Methodist Church in Denver is the result of those first services.

The two worked together till early in August, 1859, when Rev. Goode returned to his work in the states, leaving Rev. Adriance in the field. As pastor and preacher, his territory included Denver and Auraria, Golden City, Arapahoe, Boulder City, Gold Hill, and Twelve Mile Diggings, also camps and travelers wherever they were to be found.

His home was not the palatial parsonage of today. Rev. Adriance rented a 12x14 log cabin, which had one window and door. Carpeting the ground floor with hay and providing primitive furniture of his own making, he was happy to call this home. In winter many church services were held in this cabin.

There was nothing settled, as people were continually moving. One Sunday he would have a goodly number of members and the next Sunday they would be gone and new people in their place, consequently the pastor found church work very difficult. Protracted meetings were held and Rev. Adriance was glad for this privilege of working for the Master, but at times he longed for ministerial companionship. Therefore he rejoiced at the approach of the session of the Kansas and Nebraska Conference at Fort Leavenworth, Kansas, March 15, 1860.

Rev. Adriance was appointed to Golden City and Boulder at this conference session. Three years had elapsed since he had seen the home folks, and being so far on the way, he went on to New York State. On April 26, 1860, he was married to Miss Fannie A. Rogers, daughter of a Methodist parson and a graduate of Cazanovia Seminary. After sad farewells to their dear ones they started on their long, long trip to their field of labor in Colorado. Leaving Chicago they journeyed to Quincy, Illinois, where they took a boat for Hannibal, Missouri, thence by rail to St. Joseph, Missouri, where they waited two days for a steamboat to take them to Omaha. Travel was slow, as the river was low and sandbars were numerous and they were four days making that part of the journey. They went by wagon to Fremont, Nebraska, where they visited the bride's brothers, E. H. and L. H. Rogers, who had been there since 1857.

After visiting there a short time Rev. Adriance and bride, in a prairie schooner, spent thirty-one days crossing the plains to Denver. On July 9, 1860, they began housekeeping at Golden City, Colorado, in a cabin much like the one he had used the year before in Denver, but now there was a dear helpmate. A home-made book-

case held the books they had brought from the East, and many a lonely, homesick miner was cheered and encouraged in spending hours perusing these books and papers which were shared freely with all who cared to come.

Prayer meetings and preaching services were held in this home many times and joy filled their hearts as they felt they were helping in the worthwhile things of life. They spent much time at Boulder and many other places on the circuit.

In the spring of 1861, they were sent to Central City, Colorado, Rev. Adriance finding seven appointments where services had been held the previous year. During the year he added several more, often preaching at four different places in one day. The pastor, calling on members during the daytime, often held evening services. That year he conducted a funeral service in a saloon, being offered the best drinks the place afforded before service began. These, of course, he refused, saying, "I never use it." Fourteen men were present and who knows but some soul was turned heavenward at that service.

On pastoral visits the young wife often accompanied the pastor, sometimes walking seven miles or more. When they went longer distances she rode the pony, he walking by her side. When stopping overnight with parishioners, their bed was sometimes aspen poles with a blanket on top.

There being so much coming and going and restlessness among the people, there could be little stability as to the church work. However, as a result of their labors some organizations have grown through the years and yet remain, carrying on in a marvelous way, namely: Trinity M. E. Church at Denver, First M. E. Church at Boulder, and others.

The one and one-half years following the conference of 1862, Rev. Adriance and his wife spent in New York State, because of his parents' anxiety about two sons who were in the war. The rest of the ministerial career of Rev. Adriance and wife was carried on in Nebraska, mostly north of the Platte River, where they served very large circuits, often requiring a month's time to cover the territory, traveling mostly on horseback. There were lonely days for the wife many times but the promise, "Lo I am with you always," and the consciousness of doing this for her Master cheered her heart.

Much could be written of the trials and triumphs of the intervening years but suffice it to say, there was joy in seeing souls saved and the work of the Kingdom growing.

Owing to poor health and his hearing becoming defective, due to exposure on these open prairies, Rev. Adriance felt his usefulness hampered and reluctantly asked for a superannuated relation at the Nebraska Conference, October, 1878. This was a sad experience, as he loved the work.

The family, a son, Emory R., and two daughters, Lillie E. and Effie L., located on a very productive farm in Dodge County. The farm was given to Rev. Adriance on a government land warrant by his father in 1862, and was located at that time. Here he and his good wife carried on very successfully till 1902, when impaired health made it necessary to retire from active labors. They moved to Fremont, and were near their youngest daughter, the writer of this sketch, the remainder of their lives.

All through the years, however, Rev. Adriance at intervals was called on to conduct funerals, perform marriage ceremonies or supply pulpits. He never accepted the annual dividend from the Conference Claimant's Fund. The home was always open to pastors and presiding elders and many were the blessings we received from these visitors.

Their one son, Emory Rogers Adriance, entered the ministry in September, 1891, and spent a few years of very effective work for the Master, but was called to his heavenly home February 20, 1900.

In 1900 Colorado Methodism, when celebrating their fiftieth anniversary, were loyal hosts to Rev. and Mrs. Jacob Adriance for the month of July in Denver, and many were the happy greetings received while in the haunts of earlier days.

The following November 13, 1909, Mrs. Adriance passed to her reward, in her sixty-ninth year. Rev. Adriance, after the death of his wife, spent the remaining years alternately with his daughters, Mrs. Lillie E. Goffe, in Long Beach, California, and Mrs. Effie L. Burrill in Fremont, Nebraska, where the end came December 18, 1922, at the age of eighty-seven years.

Rev. Adriance was a continual lesson in patience, being totally deaf for over thirty years, but never complaining of his affliction. Conversation could only be carried on by lip-reading or writing. His eyesight was fine to the last and he read a great deal, keeping well informed on news of the day, both secular and religious.

We feel sure the influence of the lives of Rev. and Mrs. Adriance and their deep consecration to things divine is continuing to be felt even yet, these many years after their activities ceased.

John Campbell, Chief Justice of the Supreme Court of Colorado

HORACE N. HAWKINS*

May it please the Court:

It is a pleasure, as well as an honor, to be permitted to speak for the members of the bar of Colorado on this occasion. I welcome the opportunity as a privilege. The lawyers of this state who are in attendance on this court today in such numbers that this large court room is filled to overflowing, are here through a sincere desire to give visible evidence of the respect and esteem in which the bar of Colorado holds a beloved member of this court, he who, because of his many years of service on this bench, has now the unprecedented distinction of being for the third time the Chief Justice of the Supreme Court of Colorado, and the distinction also of having sat longer on the state bench in Colorado than any other judge. In speaking as the representative of the bar I shall use no words of fulsome praise. None are needed, and if uttered, would, I know, be offensive to Judge Campbell's modest nature and disposition.

The members of the bar should know, and they do know, better than any other class of citizens, whether or not a judicial servant of the state, long on the bench, has been faithful to the trust reposed in him. It is entirely appropriate that we who know should publicly testify as to the conduct of a judge who forty-seven years ago became one of the judicial officers of this state, and who in all the long years of his service has kept free from spot or stain his ermine robe of office.

As the years speed on in their rapid flight, the shadows of death must eventually encompass us all. Of the ninety-eight members of the Colorado bar whose names appear on the briefs of cases decided in this court at its January, 1895, term—the term at which Judge Campbell became a member of the court—not twenty of the ninety-eight now survive.

Too often, far too often, we wait to give expression, by "storied urn or animated bust," of our high regard for one who richly deserves such regard. Often, far too often

"The crowns we withhold from the brows of the living
We proudly lay on the tombs of the dead."

We members of the bar of Colorado are thankful to Judge Campbell's associates on the bench for having given us this oppor-

*Mr. Hawkins, of the Colorado bar, delivered this address at the installation of Chief Justice Campbell, January 20, 1936.—Ed.

tunity to pay our just and respectful tribute to the Chief Justice of this court, who after many years of public service, is still living in all the vigor and keenness of his intellect.

And so the bar of Colorado, we who should know, we who do know whereof we speak, today give public testimony to the people of our beloved Colorado that he in whose honor we have gathered here today is most worthy to have bestowed upon him that simplest, yet highest encomium of praise that tongue has ever uttered: "Well done, thou good and faithful servant."

And now, having expressed the sincere sentiment of the bar of this state which I have been commissioned to express, having, as it were, "delivered the message to Garcia," perhaps I should close. But I am tempted to continue further. There are in this court room many young members of the bar, as well as students not yet admitted to the bar. They, of course, cannot know—at least not as well as we older members of the bar—the close and intimate connection which our Chief Justice has had for many years, even long before he became a judge of this court, with important public affairs of Colorado. They must of very necessity, through all the coming years of their practice, in connection with their legal work and in their battles in court, cite and quote from the opinions written in this court by Judge Campbell. They cannot try an irrigation case, or a mining case, or for that matter, almost any kind of a case, without studying the opinions written by Judge Campbell.

Mr. Henry McAllister, in a splendid address delivered before the Colorado Bar Association some time ago, stated that Judge Campbell had written 1,067 opinions of this court, including concurring opinions, but not counting *per curiam* or dissenting opinions. Since Mr. McAllister's address was made, Judge Campbell has written seventy additional opinions. These opinions of Judge Campbell are published in sixty-one of our ninety-six volumes of Supreme Court reports. In the course of the years that I have been at the bar I have read most, if not every one of these opinions, and not one of them gives evidence of having been hurriedly or hastily written.

These young men will be glad, I think, to have an older member of the bar say something more of the life of the man whose written words embodied in the law of this state will of necessity be quoted by them long, long after we older members of the bar have passed away. And so, if Your Honors please, I crave your indulgence still longer. Perhaps, forsooth, something said may encourage one of these younger men in his ambition to lead, like Judge Campbell, a life of useful service to his state.

It has been said that republics are ungrateful towards those who faithfully serve them. This is a superficial and an untruth-

ful statement. The life work of Judge Campbell and the regard in which he is held for his service speaks to the contrary. This meeting today attests to the contrary.

After Judge Campbell had graduated from the University of Iowa, the valedictorian of his class, and graduated in the law, again the valedictorian of his class, he located in Colorado Springs. Doubtless he had seen in his boyhood days the covered wagons go lumbering westward bearing the sign "Pike's Peak or Bust." The people of the then little city at the foot of the mountain must have seen that there was something in the young stripling who had come a stranger to a strange land, for a very short time after



CHIEF JUSTICE JOHN CAMPBELL

his arrival they conferred on him the position of city attorney. A short time later he was made attorney for the county of El Paso.

A few years later, in 1884—fifty-two years ago—he was elected as El Paso County's representative in the Fifth Session of the General Assembly of the State of Colorado. That was a day and time when statesmen were supposed to wear—and most of them did wear—long and flowing beards; but the legislator from El Paso County, when he came to Denver, was still a beardless youth. I am credibly informed that he then carried very few pounds of surplus flesh. His present corpulency (?) was later acquired.

It is interesting in reading the journal of the House of that

Fifth Session of the General Assembly, to note the prominent part played by the young man from Colorado Springs. I quote the very first entry on page 1 under date of January 7, 1885: "Hon. John Campbell, of El Paso, was elected Temporary Speaker." He was a member of its most important committee—the Judiciary Committee—and chairman of the then very important committee, the Committee on Public Buildings. The Journal shows the introduction by Judge Campbell of numbers of important bills, and their enactment into law. Numbers of those important acts are still upon our statute books. The system of judicial procedure of the new state was then in much chaos and confusion. The common law system had existed in territorial days and no very clear system had been established in its place. The representative from El Paso introduced and secured the passage of bills to clear up the confusion and make more certain and simple the procedure to be followed.

One thing that our present Chief Justice did as a legislator is especially interesting. There was then, as you know, no capitol building. The young man from Colorado Springs, as chairman of the Committee on Public Buildings, recommended for passage, a bill entitled "An Act to Provide for the Erection of a State Capitol Building at Denver." It provided for a structure to cost one million dollars. Under this act the capitol building in which we are gathered today was erected. The act provided that the building should be completed by the first day of January, 1890. However, it was not completed until over five years after that date, and not until Judge Campbell had been called to be a member of this court; and the building cost more than a million dollars.

The act contains this language: "Provided, however, that the erection of such building shall not be commenced or proceeded with upon any land or grounds until the title to the same is vested in the State of Colorado." The land on which our capitol stands, ten acres lying between Lincoln and Grant Streets, had been donated by Henry C. Brown to the Territory of Colorado in 1868 as the site of a proposed capitol building. The deed of conveyance contained no condition limiting the time in which the building was to be constructed. Eleven years after the conveyance had been made, and when the ten acres had become of great value, Brown attempted to revoke his gift. He took possession of the land and put a board fence around it. The state then brought in the district court an ejectment suit. There were three trials of the case. At the first trial the state won. At the next trial Brown won. At the third trial the state was successful. Four years before Judge Campbell came to the legislature, this court, in 1881, affirmed the judgment of the lower court, but Brown had renewed the battle in the federal court, and at the time the 1885 act was passed, the

litigation was pending at Washington in the United States Supreme Court. Hence the quoted proviso. In January, 1886, a final judgment was rendered against Brown. That part of the capitol grounds lying between Lincoln and Broadway was purchased by the state for \$100,000.

One feature of the act especially interests me. It provides, among other things, that the new building should contain "a Supreme Court room, with all rooms in addition thereto necessary for the judges and officers of said court." As I read this act which the young legislator from El Paso County reported out of committee, and which he was instrumental in having enacted into law, I wonder whether at that day and time he had a vision that in a few years he would be called upon to sit as a member of the court in the new capitol building. Perhaps he did have such a vision, because as I study his history I am of the conclusion that Judge Campbell was a very ambitious young man, ambitious in the right direction, ambitious that his life should be one of real service in his chosen profession to the people of his adopted state. "Each man makes his own place in this world—perhaps in the next."

That session of the legislature in which Judge Campbell served was, I think, a pivotal one in the political history of Colorado. The legislators were overwhelming Republicans in politics. At that session occurred the dramatic contest between two able and distinguished citizens who were rival leaders of the Republican party in Colorado, Senator Henry M. Teller and Senator Nathaniel P. Hill. Teller had been in the United States Senate and in the cabinet of President Arthur. Hill had served six years as United States Senator. He was the owner of the then principal Republican newspaper, the *Tribune-Republican*, later the *Denver Republican*. Amidst intense excitement the legislature elected Teller, and Hill was retired as a leader of the Republican party.

Senator Teller, on his return to Denver after Cleveland had been elected president, had earnestly desired to retire from politics and resume his law practice, but his friends persuaded him, against his inclination, to allow his name to be presented as a candidate, and Senator Teller was thus kept in the political arena. Later, as we all know, Senator Teller, after making a dramatic speech, bolted the Republican National Convention and joined hands with his hitherto political enemies, Thomas M. Patterson, Charles J. Hughes, Alva Adams, Charles S. Thomas, and T. J. O'Donnell—five great Democrats (Colorado's quintuplets)—in wresting Colorado from the control of the Republican party. When Teller joined Patterson, Hughes, Adams, Thomas and O'Donnell, and all six of them put their shoulders to the wheel, the wagon, of course, moved.

Senator Teller, remarkable as it may seem, was elected by the people of Colorado to the Senate, first as a Republican, and later as a Democrat. Had Senator Teller been allowed to retire from politics and resume his law practice, the historic and dramatic bolt at the Republican national convention at St. Louis might never have occurred, and Colorado might have still remained a rock-ribbed Gibraltar of Republicanism. I do not know what part the young legislator from Colorado Springs had in persuading his friend Senator Teller to remain in the political arena, and therefore do not know how far we Colorado Democrats are indebted to Judge Campbell on that score, but I do know that Judge Campbell has always been a very persuasive man.

The meetings of the Fifth Legislative Assembly of the State of Colorado were held in the old Barelay Block on Larimer Street. Although there was an elevator in the building, the General Assembly had been in session only a few days when Judge Campbell and his fellow legislators were debarred from the use of the aforesaid elevator, and forced to climb the long flight of stairs to the assembly room. The journal shows that on the seventh day of the session indignation on the part of the legislators reached a boiling point, and a resolution was adopted in Judge Campbell's branch of the legislature calling on the Secretary of State to investigate and report why the members of the House were thus so unceremoniously treated. On the next day a written report in response to the resolution appears in the journal. It is a unique document of historical interest, and well deserving of mention. The secretary reports that he had consulted the owners of the building, and that the reason that legislators had been shut off from riding on the elevator was that the lobbyists in attendance upon the legislature were so numerous that the occupants of the building could not get proper elevator service, and hence the legislature and its lobbyists had all been excluded from the use of the lift. The secretary further reported that the owners of the building said that if the legislature would devise some plan to keep the lobby off the elevator, the owners would be glad to have the legislators cease perambulating. Thereupon a motion was adopted instructing the sergeant at arms of the House to procure and furnish *elevator passes* to the members. I take it that Judge Campbell got his pass all right. Thus Judge Campbell and his legislature introduced into Colorado the well-known evil of riding on passes. Thus also is it shown that lobbying is not an evil of recent origin.

Members of our present-day legislatures might take a lesson from this incident as to how to deal with the members of the third house.

There appear to have been other evils in those days as well

as in these later days. The journal shows that a resolution was introduced for a committee to investigate discriminations in railroad rates against the people of Colorado, and to investigate charges that the corporations were undertaking to control legislation. A committee was appointed, and many witnesses were called to testify. However, as is usual, nothing very much resulted from the investigation.

The legislative hall in the rented building was not well provided with commodious desks, as is evidenced by a journal entry, which I quote:

"Resolved, That the sergeant-at-arms be and hereby is instructed to cause a shelf, eight inches in width, to be placed between the legs of each of the members' desks, about half the distance between the bottom of the desk and the floor of the hall, for the convenience of the members in disposing of their books, etc."

That the members of Judge Campbell's legislature were "mid-Victorians" is shown by certain of its laws. One was entitled "An Act Concerning Offenses Against Public Morality." It provided for a fine up to \$2,000 or jail imprisonment for any violation. It made it a crime for a newspaper or magazine to publish a picture of even a partly nude female, and a similar punishment for anyone having in his possession a newspaper or magazine containing such a picture, and "believe it or not," this act of 1885 is still one of our existing statutes, Sally Rand and her fan and bubble dances to the contrary notwithstanding. A seduction act passed at that session is still the seduction statute of Colorado. An act making it a jail offense to take any unmarried female of previous chaste reputation to any dance house or any other place of low resort is still in full life on our statute books.

Many other interesting details concerning this early session of our legislature might well be mentioned did time permit. It was a legislature composed of serious-minded men who conscientiously strove to enact laws for the welfare of the people of our newly created state.

The people of El Paso County must have been well satisfied with the work of their representative, because at the next election they sent him back to Denver as a member of the upper house.

The 1887 Senate Journal of the Sixth General Assembly reveals the same activity on the part of Senator Campbell which characterized him as a representative. He was a member of the Senate's most important committees: the Judiciary Committee, the Committee on State Affairs and Public Lands, the Committee on State Institutions and Public Buildings, the Committee on Privileges and Elections, and the Committee on Apportionment of Senatorial and Representative Districts. Time will not permit a review

of the large amount of work which the journal shows Judge Campbell to have performed in the Senate. Among other important laws enacted at that session was our present Code of Civil Procedure.

The people of Judge Campbell's home county must again have approved of his work, because on his return to Colorado Springs from the legislature he was elected judge of the District Court of the Fourth Judicial District, and for six years Judge Campbell rode the circuit. His legislative experience and practice at the bar had made him especially fitted for the new position to which he was called. An immense amount of important litigation came before him. With superb patience, unflinching courtesy, unostentatious modesty, and a keen and discerning intellect, he won the respect and regard of the members of the bar of this state.

It was inevitable that he should be called upon for still higher service, and so, at the end of his term as district judge, our Chief Justice received the deserved honor of being elevated to a position on this bench. In January, 1895, now forty-one years ago, Judge Campbell took his seat in this court, in the new capitol building which he had been so instrumental in having erected. At this point may I be permitted modestly to lay claim to being entitled to some degree of precedence in this court, ahead even of our Chief Justice, in view of the fact that I made my maiden appearance in this court a few days before Judge Campbell took his seat on this bench? I have the accidental honor of having opened the flood-gates of oratory with the first speech made in the new capitol building.

Since Judge Campbell came on this bench he has served in this court for a period of thirty-two years. When he became supreme judge he evidently began his work with the same zeal and industry that had characterized all his other service. The first published opinion of the court written at the January Term, 1895, found in volume 20 of the reports of this court, is an opinion by Judge Campbell. Incidentally, the case in which Judge Campbell wrote his first opinion was a liquor case. Since that opinion was written, forty-one years ago, national prohibition has risen, reigned and fallen, dragging down with it state prohibition; but liquor cases, as I am informed, still demand the attention of this court. They, like Tennyson's brook, flow on forever. Judge Campbell's service on this bench was broken in 1913, and he returned to the practice of law, only to be called back to the bench in 1922 by appointment on the death of Judge Morton S. Bailey. The voters promptly ratified his appointment by electing him to fill the vacancy caused by Judge Bailey's death, and then, in 1926, he was elected for another ten years. So, like Tennyson's brook, and liquor cases, Judge Campbell himself seems to go on as a judge forever.

During the time he was off the bench and engaged in practicing law, it was my good fortune to be associated with him in several cases, and to have abundant opportunity to see what manner of a practicing lawyer he was. I found him a glutton for work. The association was a perfect picnic for me, because Judge Campbell thoroughly briefed every possible question in the cases, and I had the unusual experience of not having to do much work. Judge Campbell's briefs were so good that at the conclusion of the trials we were able to say: "We have met the enemy and they are ours—two ships, two brigs, one schooner, and one sloop."

It is often said that the judicial temperament a judge acquires unfits him from thereafter making an effective practitioner. That was not my observation concerning Judge Campbell. As a practitioner he did not seem to be possessed of any remarkable degree of judicial temperament—no more, for instance, than I have. He fought valiantly for his clients. After seeing him in action as an advocate, it is my judgment that when we put Judge Campbell back on the bench we robbed the profession of a very strong practicing lawyer.

No review of the life work of Judge Campbell could be in any sense a just review without mention of the fact that prodigious as has been his judicial work, his labor has not been confined to judicial matters alone. For nearly a quarter of a century he was active in instructing the law students at our state university. *Who's Who in America* also records him as having been for forty years one of the trustees of Colorado College.

Much is said of the man who toils with his hands, and much should be said of and for him. He should ever be the object of our deep consideration. In his interest and in the interest of his family, and in the interest of society, we limit, and we should limit, his hours of labor. But he whom the world calls a workingman is not the only toiler in life. A conscientious judge upon the bench knows no limitation to the hours of his labor, and many times in the performance of his duty he burns the midnight oil. He, too, is a toiling workingman. We meet today to honor one who has toiled hard all his life.

Ever since the days of his young manhood Judge Campbell has had at his side as an inspiration to him in his work, sharing with him his joys and his sorrows, and bringing happiness to his home, God's greatest gift to man—a good and devoted wife, to whom he was married nearly fifty-five years ago.

Judge Campbell: In the name of the Bar of Colorado I express the wish and hope that you and Mrs. Campbell may have many, many more years of joy and happiness together.

The Public Printing of the First Territorial Legislature of Colorado

DOUGLAS C. McMURTRIE*

Most of the early public documents of Colorado Territory were printed by Byers & Dailey at the office of the *Rocky Mountain News*. But the printing of the House and Council journals and the laws of the first territorial legislature were printed by Thomas Gibson at the *Colorado Republican and Herald* office, although it appears that the legislature itself specifically awarded the printing to the *Rocky Mountain News* office, in the job printing division of which Edward Bliss and William N. Byers were associated.

The circumstances attending the distribution of this important patronage plum were unknown to me while my recent book on *Early Printing in Colorado* was in preparation, or I should have dealt with them in that volume. A few months ago, on a visit to Washington, I had opportunity to inspect the Colorado territorial records in the archives of the State Department. Among them I found a series of letters which throws light on the active competition between the Byers and Gibson organizations for the public printing of the first session of the territorial legislature. These letters provide full information as to how and why the legislative documents were printed by Thomas Gibson, contrary to the expressed wish of the legislature itself.

In the first letter in the series we find H. P. Bennet, Delegate of the Territory at Washington, writing as follows to Hon. Caleb B. Smith, Secretary of the Interior, under date of October 29, 1861: Sir:

I wish to inquire of your Department under the impression that is the proper one, of the power of the Secty of the Territory of Colorado to control the Legislative Printing and put it into other hands than those of the man whom the Legislature in joint convention elect to do it, subject to the limitations of as regard the compensation &c which are made by law.

We have a question of this kind on the tapis in our Territory and it is creating no little excitement. The Legislature quite unanimously elected Edward Bliss of the Rocky Mountain News Public Printer, and Secretary L. L. Weld, claims that he had prior to the opening of the session of the Legislature, given all the Legislature printing to Thomas Gibson of the "Herald" by a written contract to that effect.

All the parties to the transaction are good and loyal citizens, and the "News" man whom the Legislature elected is just as capable to do the Printing in good style as the Secty's Man Mr. Gibson.

The Legislature has given all their current printing as I am informed to their Public Printer and he has been doing it. Secty Weld all the time protesting that he would not pay for the work unless he paid Thos. Gibson his appointee, who did not do the work, and cannot get

*Mr. McMurtie, of Chicago, who is the author of the recent volume, *Early Printing in Colorado*, is the outstanding scholar devoting himself to the history of printing in America.—Ed.

it to do as the Legislature will not let him have [it]. Analogous cases I think are all on the side of the Legislature in this case.

Congress—State Legislatures, Political and religious Conventions, all control the printing of their proceedings, and even a town meeting by resolution usually designates who shall give publicity to what they have done.

As regards the consideration in this case that the Printing has to be done under the supervision of the secretary of the Territory, and paid for by him out of a fund placed in his hands for that purpose I would only say, there is nothing improper in permitting the Legislature, nearly unanimous in this instance, to select the man to do the work. I think the judgment of the entire Legislature, and their disinterestedness and patriotism, in such a matter can be trusted as against that of any one man, although he may be clothed with the authority of a Secretary of Colorado.

Justice to Secty Weld however compels me to say that I think he is entirely conscientious in his action in the matter and believe that he will be sustained by the Department, indeed claims that he acts from instructions from the Department.

I ask your early attention to the matter.

Very Respectfully,

H. P. BENNET

Bennet was obviously referred by the Secretary of the Interior to the Treasury Department, by which he was referred in turn to the Secretary of State, who had direct authority over the territorial officials.

So we find Bennet writing from Washington on the same subject to William H. Seward, Secretary of State, under date of November 12, 1861, as follows:

Sir:

I have been to the Treas'y Department with the Printing question which I had the honor of presenting to you in person the other day and I find that that Department has no authority over the Secretary of the Territory and has little to do with him except only in auditing his accounts, &c.

I am informed that the Sec'y of the Territory is more dependent upon the State Department than any other as through *it* he received his Appointment.

Now for the very good reasons I gave you the other day, and because of the manifest justice of the thing representing, as I do in this matter both the popular will and the desire of both branches of the Legislative Assembly of Colorado I earnestly desire, for the good of all concerned, and the strengthening and upholding of the loyal citizens of the Territory that your Department inform the Secretary of the Territory at once that it is the request and wish of the State Department that he decide between the "Rocky Mountain News" represented by Edward Bliss and the "Colorado Herald and Republican" represented by Thomas Gibson, the only two loyal papers published in Denver City in Colorado the Public Printing under his control.

With much respect I have the honor to be

Yours &c.

H. P. BENNET,

Delegate,

Col. T'ty

Enclosed with this letter was a draft of a letter from Secretary Seward to Lewis L. Weld, secretary of the Territory of Colo-

rado, also dated November 12, 1861. This was apparently a letter which Bennet proposed Seward should copy, sign, and dispatch to Weld. Apparently Seward did not write such a letter at the time, but he did write Weld on January 14, 1862, a similar letter, in somewhat modified form, instructing Weld to share the public printing as equally as practicable between the two local newspapers published in Denver.

The draft of the letter proposed by Bennet to Seward follows:

Sir, It is expected that the public printing for the Territory of Colorado will be equally divided between the two loyal papers published at Denver city, the Rocky Mountain News, and Colorado Herald.

Very truly yours,

Apparently Edward Bliss of the *Rocky Mountain News* office went to Washington early in 1862, taking with him an affidavit by Byers, and solicited Bennet, in view of the fact that all three major documents of the first legislative session had been given to Thomas Gibson for printing, to bring further pressure on the Secretary of State.

Delegate Bennet thereupon wrote William H. Seward, Secretary of State, under date of February 18, 1862, as follows:

Sir:

Herewith I hand you Affidavits of William N. Byers one of the Editors of "The Rocky Mountain News" and Charles A. Brassler both citizens of Denver Colorado giving the particulars of an interview had between the said William N. Byers and L. Ledyard Weld, in reference to your order for the division of the Territorial Printing of Colorado between the two loyal Newspapers published at Denver.

The affidavits are genuine, and I have no doubt of the entire truth of the statements therein made. I am also in possession of other evidence, not in form of affidavit, which proves conclusively that Mr. Weld has positively refused to obey the two orders sent from your Department, directing an "equal division of the Public Printing." Mr. Weld has given the "Laws of Colorado" to Mr. Gibson of the "Herald and Republican" including a Copy for the Spanish Edition of said Laws. Only the "House and Council Journals" now remain undisposed of, and the Copy for this publication will be, if it has not already been, furnished to Mr. Gibson of the "Herald and Republican."

Feeling that injustice has been done to the Editors of the "Rocky Mountain News" by the refusal of Mr. Weld to comply with the request sent to him from your Department, and believing that he will continue to misconstrue the said request, unless a *specific order* is forwarded to him, I respectfully ask that an order issue from your Department, directing the Secretary of Colorado to deliver the Copy of the "House and Council Journals" to the proprietors of the *Rocky Mountain News*, with authority to print.

I would also assure you of the support and approval of the People of Colorado Territory in any further action, even to the prompt removal of Mr. Weld that your sense of dignity may prompt you to take.

I have the honor to be very truly
Your Obedient Servant

H. P. BENNET,
Delegate

The affidavits by Byers and Brassler which Bennet transmitted read as follows:

I, William N. Byers do solemnly swear that I am the Senior Editor and one of the Proprietors of the "Rocky Mountain News," a newspaper published daily and weekly in the City of Denver, Colorado Territory, by the "News Printing Company," and that within a few days after the receipt of a copy of the letter of Hon. Wm. H. Seward, Secretary of State of the United States,—a copy of which letter is hereunto appended,—I called upon Hon. Lewis L. Weld, Secretary of the Territory of Colorado, at his office in the city of Denver, and then and there demanded of him one half of the public printing—regular and incidental—in and for, and belonging to the Territory of Colorado; which he refused to give me, or any assurance therefor. On the evening of the same day, before reporting his refusal to Washington, I addressed a note to Mr. Weld asking him if I should consider his answer of that day as final, taking into consideration the letter of Mr. Seward, of November 12, 1861, and all the circumstances and facts of the case. Mr. Weld sent in reply, "Tell Mr. Byers that I have no answer to make." On the 5th day of February, 1862, I again called upon Mr. Weld, and asked him for one half of the public printing as before. Mr. Weld replied that he had not changed his determination, and would not, under his present instructions from Washington. I then showed him the copy of Secretary Seward's letter, hereto attached, asking if he had not received the original of it. He replied, "Yes," and that he had since received another letter from Mr. Seward of similar import, but that he did not conceive that they applied to the printing in question at all. Mr. Weld further added that immediately upon the receipt of the first letter, in November, 1861, he had written to the Department at Washington, asking a definite answer upon the point, but had as yet received no reply, but expected it in a few days. In answer to my inquiries Mr. Weld said that the printing would continue to be done by Mr. Gibson, of the Herald, under the agreement that he had made.

Further this deponent saith not.

WILLIAM N. BYERS

Charles A. Brassler being duly sworn, deposes and says—I was present in the office of Hon. Lewis L. Weld, Secretary of Colorado Territory, on the 5th day of February, 1862, during the interview between that gentleman and William N. Byers; and that the substance of the conversation then and there held, between them, is correctly narrated in the affidavit of said William N. Byers herewith, which I have heard read, and further this deponent saith not.

CHARLES A. BRASSLER

Under the same date as Bennet's letter of transmittal of these affidavits (February 18, 1862), Edward Bliss of the *Rocky Mountain News* wrote at Washington to Secretary Seward as follows:

Sir: Although personally interested in the issue of this much agitated Printing question in Colorado Territory, I trust you will excuse me if I add a brief statement to that herewith presented by Hon. H. P. Bennet, the Delegate from our Territory.

The "News Printing Company" of which I am a member, is composed of true and loyal men, and the paper issued by them has always maintained a consistent and undeviating course in support of the Administration in power. The "News" is the oldest paper in Colorado, and enjoys the confidence and support of the Administration party of that Territory. At the recent session of the Legislature, the writer received almost a unanimous election as Territorial Printer—an expression obtained with the hope that Secretary Weld would respect the wish of the people, as uttered through their representatives.

On several occasions since the action of the Legislature, I have endeavored to effect some satisfactory arrangement with Secretary Weld, but all such efforts have failed. No other alternative is left than an appeal to the proper Department here. In behalf of the "News Printing Company" I now pray that such action may be taken as will prompt Secretary Weld to extend those favors to us that have been so long deferred.

We ask nothing unreasonable; and only that which the people of Colorado Territory earnestly believe to be our right.

I am, sir,

Very Respectfully
Your Ob't Servant
EDWARD BLISS

Apparently as the result of the presentation of these statements, the Secretary of State wrote peremptorily to Territorial Secretary Weld at Denver, under date of February 28, directing him to deliver copy of the House and Council journals to the *Rocky Mountain News* office for printing. No copy of this letter is in the files, but its purport is indicated by the reply eventually elicited from Weld.

On the letterhead of the "Executive Department, Colorado Territory: Secretary's Office," Weld wrote from Denver under date of March 12, 1862, a letter addressed to Secretary Seward, which was received in Washington on March 25.

In view of the fact that both houses of the legislature favored William N. Byers and the *Rocky Mountain News* and the high esteem in which the proprietors of this publication were locally held, the aspersions cast upon Byers and his newspaper in Weld's letter can only be regarded as an isolated partisan antagonism, engendered by political jealousy. Probably the key to Weld's attitude is found in the "virulent personal abuse" by the *News* of the federal officers of the territory, of which he was one.

The letter explains how and why Weld deliberately disregarded the expressed wishes of the legislature as to the public printing. His letter further tells us that on March 12, 1862, the Council Journal (No. 28 in my bibliography), which was dated 1862 on its title page, had been completed; but that the laws (No. 26 in my bibliography) and the House journal (No. 25 in my bibliography), both of which bear on their title pages the date of 1861, were still in press. We must, therefore, henceforth regard these two latter volumes as imprints of 1862 instead of 1861.

The text of the Weld letter to the Secretary of State read as follows:

Sir:

I have the honor to acknowledge the receipt of your communication of the 14th January last instructing me to share the public printing of Colorado Territory "as equally as may be practicable" between the two loyal newspapers published in this city. And also, of your favor of the 28th Feby (received by the last mail) directing me "to deliver the copy of the House

& Council Journals of this Territory to the proprietors of the Rocky Mountain News, with authority to print the same."

I beg leave respectfully to say in reply—that so far as the printing of the Laws of Congress is concerned, and the printing for other departments of the United States service is and has been concerned from the beginning until now, the work has not only been divided but in most respects, and so far as the establishment was capable of performing the labor the "News" has received by far the larger share. This has been done by order of Gov. Gilpin.

Regarding the printing immediately under my control I received definite instructions before my arrival in the Territory to assume my official duties, from the Department of the Treasury. I have endeavored to act in strict conformity with these instructions.

In accordance with a circular received from that Department, I made the necessary investigation and finally concluded a contract with Mr. Thomas Gibson the proprietor of the "Colorado Republican."

Early during the session of the Legislature, that body took into their own hands the decision of the question to whom the contract should be given, annulled so far as they could the contract I had made and gave the current printing to the "News." Thus depriving Mr. Gibson of at least a portion and that a very considerable portion of the benefits he had a right to expect from the Contract, and for which he had prepared & provided himself. Upon the adjournment of the Legislature, I placed the Laws as passed and the Journals of the two Houses into the hands of Mr. Gibson. These are now nearly ready for distribution. The Council Journal is already finished and the Laws & House Journal will be ready for distribution before this communication can reach you. The work has been well and faithfully performed.

There are other reasons entirely cogent in my opinion why the course I have taken is the only just & proper one. To those reasons I beg respectfully to call your attention.

1st. Mr. Gibson the proprietor of the "Republican" is an entirely faithful and enthusiastically loyal man, who has stood firm amid difficulties and dangers of no ordinary kind.

2nd. "The Rocky Mountain News" is not a sheet reputable in this community either for honesty of purpose or loyalty to the Government. Under an outside garb of devotion to the Union there is very strong reason to believe that it is venal to the last degree, and it has always been as it now is the open apologist for the worst and most dangerous class of people in our midst. Its columns daily abound in the most virulent personal abuse of the Federal Officers of this Territory, and one of the most prominent writers for its pages is a man who was driven from the City of St. Joseph, Missouri, as a rebel & a traitor.

I regret that I am obliged under the circumstances of the case to make these facts a matter of Public Record. I could add largely to them but it seems to me that they are entirely sufficient. They are conclusive to my own mind as reasons why there should be no change from the course I have adopted, besides as I have already stated, the work of the Public Printing for the current year is already performed.

As this question has assumed the importance it has, and has commanded so much of your attention I beg that you will have the kindness to examine the facts as I have presented them especially as my own faithfulness in office seems to be called in question in this regard. I believe that in this as in all other official duties I have endeavored honestly and faithfully to do only that which was in my most carefully matured opinion the best for the Public good & for the honor of the Public service.

I have the honor to be
With the highest respect
Your Obedient Servant

LEWIS LEDYARD WELD,
Secretary of Colorado Territory

In the printing of the documents of the second session, convened in July, 1862, the will of the territorial legislature was not again denied, and we find on the laws and the journals of both houses the imprint of "Denver: Rocky Mountain News Printing Company." This imprint also appears on the school law printed separately in 1862.

At the *News* office were also printed the legislative documents of the third and fourth sessions in 1864 and 1865. The printing of the fifth session in 1866 was split between two printers, the Council journal and laws going to David C. Collier at Central City and the House journal to O. J. Hollister at Black Hawk. The documents of several succeeding sessions were printed by Collier at Central City.
