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## Who Have The Power?\*

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"Because the good old rule  
Sufficeth them, the simple plan,  
That they should take, who have the power,  
And they should keep who can."  
—Wordsworth.

The time is 1858. The stage is the western slope of the Rocky Mountains between the parallels of thirty-seven degrees and forty-one degrees north latitude. The actors are members of various Indian tribes, particularly the Cheyennes and the Arapahoes, and occasional white men. The first white settlers were lured to the region by the fur trading opportunities; the next few disappointed stragglers returning from the gold fields in California; and then follow the hordes from all sections of the country burning with the gold fever, induced by flamboyant and extravagant stories of the discovery of gold in the Pike's Peak region.

The political background is significant. The Dred Scott decision had just been handed down. The question of slavery was shaking the very foundations of the Union, Abraham Lincoln and Stephen A. Douglas vying for election to the United States Senate from the State of Illinois, were engaged in their debates concerning the bearing of the slavery question upon the asserted right of secession—one contending that a nation divided against itself cannot stand, the other asserting the possibility of compromise. The compromise idea prevailed and Douglas was elected. But the problem was by no means settled and the people were agitated by every new territorial addition to the Union, concerned as to whether it would strengthen one side or the other.

At this time, however, what we now know as Colorado did not contribute to their concern. It was then as it had been described by Daniel Webster twenty years before "A vast and worthless area—a region of savages and wild beasts, of deserts, shifting sands and whirlwinds of dust, of cactus and of prairie dogs." For convenient reference it was known on the crude maps of the time as falling within the Territories of New Mexico, Utah, Nebraska

\*This is the address given before the State Historical Society of Colorado at the Annual Meeting December 13, 1938. Mr. Stearns is Dean of the Law School of the University of Colorado.—Ed.

and Kansas. This, however, meant little because government is a device for the control of human society and where there is little or no society to control, government has scant function.

Then came the discovery of gold by the Russell party, by George A. Jackson, and by John Gregory, a lazy fellow from Gordon County, Georgia. The effect was inevitable. If the estimates of early historians may be believed the eastern slope of the Rocky Mountains acquired a population of 30,000 people in one year. Even though these estimates may be exaggerated, the fact remains that the area was transformed from an uninhabited wilderness to a teeming ant hill of diggers and carriers.

Again we must remind ourselves that the major concern of the people in the East was the state of the nation and no concern was had for the social and governmental needs of the new settlers. Small wonder then that they should apply the principle of self-determination, organize their own area into what we know as the Territory of Jefferson, and implement their government with the inherited Anglo-Saxon devices of executive, legislative and judicial offices. But the average miner was not concerned by the larger aspects of the territory's government as evidenced by the relatively small vote polled in the territorial elections. He was, however, concerned with the impulse which brought him here, the finding of "colors," the location of his claim, the right to pursue his work without molestation, and the preservation of his property from the deprecation of others. When we consider the eagerness of these others in their quest for the prize, we observe the inevitable conflict of interests which characterizes any human society consisting of more than one person. This conflict of interests must be resolved and provision made for the settlement of its inevitable disputes. Small wonder again that these men should provide some device for their ordered existence. The answer lay in the formation of the "claims clubs," which were then developed into the mining districts with their direct and forthright methods of fixing claim boundaries and providing for the settlement of disputes of a civil and criminal nature. I shall not enlarge upon these governmental forms and the method of their administration for they are already well known to you through the writings of able historians.

It is true that these agencies of government were spontaneous, born of the needs of human beings, but they cannot be said to have issued full grown from the minds of the miners. As Professor Percy Fritz has ably pointed out in a recent article in the *Colorado Magazine*, a small but significant group of the settlers had come from the mining districts in California where similar problems had arisen and were similarly dealt with. The tools of the social order were known to enough of these men so that they could be used

again to build the structure of an ordered community. A reference to the original miner's court docket of the Gregory District for the period from November 18, 1859, to January 31, 1860, discloses a close familiarity with legal process. Attachment, garnishments, defaults, judgments, injunctions, non suits, and motions for new trial—all these appear in this early record of a little more than two and one-half months.

There is, however, one circumstance bearing upon these early settlements which is worthy of more than passing notice. It has become almost a truism to refer to these settlers of the eastern slope as trespassers occupying their claims and holdings by illegal or by extra-legal means. Contemporary statesmen in solemn debate in Congress have thus described them. Learned scholars, familiar with documentary history of the times have repeated these expressions. Might it not be worth our while for a few moments to inquire into the bases for the statements and, if we may be so bold, to question their accuracy.

In considering the subject then let us follow the story of this area in its relation to sovereign authority and legal ownership. What is now Colorado from the summit of the Rocky Mountains to its present eastern boundary fell within the area acquired by the Louisiana Purchase in 1803. By the terms of the Treaty, the United States Government acquired complete and absolute sovereignty based upon the internationally recognized right of discovery and conquest. The title to the territory is directly traceable from France to Spain, from Spain to France, and from France to the United States by purchase and payment. It thus became a part of the public domain of the United States, subject to control and disposition on such terms as the Congress might from time to time prescribe.

The treaty for the cession of Louisiana to the United States provides (Article III) that the inhabitants of the ceded territory shall be admitted as soon as possible to the enjoyment of all rights, advantages and immunities of citizens of the United States; "and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and religion which they profess." Of course, it is impossible for us to know what "property" the Indians claimed in this area in 1803. Their conception of property is highly communistic; they are a nomadic people, and to assume that they claimed and asserted a property ownership in the title to the land of this area is a large assumption.

The Louisiana Treaty in Article VI, provides that the United States shall execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians. I cannot find, and seriously doubt the existence of, any treaty re-

specting this area which Spain may have executed with Indian tribes.

It, therefore, seems reasonable to assume that the title to this portion of the Louisiana Territory was acquired by the United States Government free and clear from any vested legal rights to specific areas which the Indians may have possessed. At the most, the Indians claimed a vague right of occupancy for hunting and grazing purposes and in this area, at least, their uses did not extend below the surface.

It then remains to consider what affirmative Acts of Dominion were exercised by the United States Government after 1803. There were a few inconsequential shufflings of territorial assignment between 1803 and 1850, but the first significant exercise of real control over this area occurred September 9, 1850, when the Territory of New Mexico was created by Act of the Thirty-first Congress. The boundary of the territory was defined as follows: "Beginning at a point in the Colorado River, where the boundary line with the Republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west of Greenwich; then north with said degree of longitude to the parallel of the thirty-eighth degree of north latitude; thence west with said parallel to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence west with said parallel to its intersection with the boundary line of the State of California; thence with said boundary line to the place of beginning." The Act further provided for the local authorities to determine their capital and the local authorities, pursuant to this Act, retained their ancient capital of Santa Fe.

The same Congress created the Territory of Utah and defined its boundaries as follows: "On the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude." It then authorized the local authorities to select their capital which they did by designating Salt Lake City.

The next significant Act relating to the area was the Treaty of Fort Laramie, negotiated with certain Indian tribes, September 17, 1851, which will shortly be discussed in greater detail.

Then came the Act of the Thirty-third Congress on May 30, 1854, creating the Territories of Nebraska and Kansas. The Territory of Nebraska was first provided for and its boundaries de-

defined as follows: "Beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning." The Act then further provided that the local authorities designate a capital which they did by fixing Omaha.

Later on in this same Act, Congress created the Territory of Kansas and defined its boundaries as follows: "Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning." The local authorities were then authorized to designate a capital which they did by fixing first Pawnee and then Leavenworth.

It thus appears that this area of the public domain which we now know as Colorado fell into four political subdivisions: the Territory of New Mexico, the Territory of Utah, the Territory of Nebraska and the Territory of Kansas, in the order named. Our eastern slope is concerned primarily with the latter two divisions. That portion lying south of the fortieth parallel (which is the present southern boundary of the City of Boulder) lay in the Territory of Kansas; that portion north of the fortieth parallel lay in the Territory of Nebraska.

After the creation of the Territories of New Mexico and Utah, and before the creation of the Territories of Nebraska and Kansas, one of the most colorful events in our entire western history occurred in the vicinity of old Fort Laramie on the Oregon Trail. Dr. Hafen has discussed it with all of its throbbing interest in his admirable volume recently published on the history of Fort Laramie. There were gathered in varying numbers, representatives of the Sioux, Gros Ventre, Assiniboin, Black Foot, Crow, Cheyenne, Arapaho and other tribes, that met in solemn conclave with Colonel D. D. Mitchell, then Superintendent of Indian Affairs, together with his interpreter, Thomas Fitzpatrick, who for more than twenty years had been a trapper and a guide in the mountain region, and

who had been appointed as the first agent of what were known as "the wild tribes of the great western prairies."

The increasing traffic along the Oregon Trail had resulted in the impoverishment of the country and growing resentment among the Indians. Fitzpatrick was anxious to accomplish a treaty with these Indians in order to check this growing resentment, and keep the peace. His position is reflected in the report of Orlando Brown, Commissioner of Indian Affairs, November 30, 1849. "These Indians, who have so long roamed free and uncontrolled over the immense prairie extending west to the Rocky Mountains, and who consider the whole country as their own, have regarded with much jealousy, the passing of so many of our people through it, without any recognition of their rights, or any compensation for the privilege." (23 Congressional Globe, appendix 25). The first bill for funds to provide for a treaty council failed of enactment, but the matter was again urged by the Commissioner of Indian Affairs in his report of November 27, 1850. He observes, "It is much to be regretted that no appropriation was made at the last session of Congress for negotiating treaties with the wild tribes of the great western prairies." (25 Congressional Globe, appendix 28). Pursuant to the recommendation, Congress, in February of 1851, appropriated \$100,000 for the holding of a Treaty Council at Fort Laramie on September first following. It lies not in the province of this brief paper to describe that historic event, but you will be the loser if you do not read Dr. Hafen's interesting account.

Official recognition is made of it in the report of the Commissioner of Indian Affairs November 27, 1851 (29 Congressional Globe, appendix 32). "A delegation of Shoshonees, or Snake Indians, a disaffected and mischievous tribe infesting one of the principal routes of travel from Oregon and California, was conducted by the agent to the Grand Council recently held at Fort Laramie with the wild tribes of the prairies. These Indians were not considered by the superintendent as embraced in his instructions, and were, consequently, not parties to the treaty negotiated with the other tribes. The delegation, however, were kindly received, suitable presents were bestowed upon them, and they returned to their people with more kindly feelings to the Government and the whites."

The other tribes referred to who were parties to the treaty were numerous, but our concern is centered upon the Cheyennes and Arapahoes. The Treaty provided for the preservation of peace, the establishment of roads, the protection of the Indians, the obligation of the Indians to make restitution for depredations on the whites and by Article 7, the payment of the annual sum of \$50,000

for ten years by the United States to the Indian nations, with the optional privilege to the President to extend the payments for five more years. The Treaty assigned certain areas to the several Indian tribes and the area assigned to the Cheyennes and Arapahoes is as follows: "The Territory of the Cheyennes and Arapahoes, commencing at the Red Butte, or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the head-waters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fe road; thence in a northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning."

The official text of this treaty is not to be found in the United States Statutes at Large. A search, however, reveals this interesting foot note in 11 United States Statutes at Large, page 749, under the heading, "Treaty of Fort Laramie." "This treaty was concluded September 17, 1851. When it was before the Senate for ratification, certain amendments were made which require the assent of the tribes, parties to it, before it can be considered a complete instrument. This assent of all the tribes has not been obtained, and, consequently, although Congress appropriates money for the fulfillment of its stipulations, it is not yet in a proper form for publication. This note is added for the purpose of making the references from the Public Laws complete, and as an explanation why the treaty is not published."

The full text of the Treaty but without signatures appears in Volume 35, Senate Documents, page 440, and is preceded by this statement: "The following Treaty *though never ratified or printed*, is sometimes referred to in appropriations and in other treaties; for instance, the treaty with the Sioux-Yankton tribes, proclaimed February 26, 1859."

It thus appears that this Treaty recognizing the rights of the Cheyennes and Arapahoes to this area was never ratified *formally* by the United States Senate. It was submitted to the Senate and certain amendments were made which called for further assent by the Indians. However, Fitzpatrick was instructed to follow up the Indian tribes and obtain their approval to the Senate's Amendment, which was to change the period of annuity from fifty years as originally negotiated to the compulsory ten years and optional five years discussed above. This he did in the summer and fall of 1853. He located the Cheyennes and Arapahoes on the south Platte in the vicinity of Fort St. Vrain. He explained the amendments, received the approval of the Indians to the amendments and then distributed the goods and provisions to the amount of the annuity figure (Hafen and Ghent, *Broken Hand*, 256). The instrument, however,

was not thereafter formally ratified by the Senate or proclaimed in the manner usual for treaties.

It may seem like undue emphasis upon legal forms, but this fact must be noted. Section 2 of Article II of the Constitution of the United States provides "that the President shall have the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; \* \* \*"

The uniform practice in the enactment of treaties is for the negotiated treaty to be submitted to the Senate and then for the Senate (two-thirds of the senators present concurring) to advise and consent to the ratification of the treaty. Whereupon the President of the United States expressly accepts, ratifies and confirms the treaty. Since he alone, with the approval of the Senate, is given this power by the Constitution, such a method is more than a legal form. Unless these essentials exist, the treaty is without legal efficacy. The Treaty of Fort Laramie was not ratified in this manner.

The next question to be considered is whether or not the subsequent reference to it in the Acts of Congress constituted a ratification by inference, if such is possible.

The first session of the Thirty-second Congress by Act approved July 21, 1852 (28 Congressional Globe, page vii), contained the following appropriation "for the payment of annuities (and the transportation of the same) to certain tribes of Indians in accordance with the seventh article of the Treaty made at Fort Laramie, on the seventeenth of September Anno Domini, eighteen hundred and fifty-one, \$60,000. And the Secretary of Interior is hereby authorized to purchase the provisions, merchandise, domestic animals, and agricultural implements, to be delivered in payment of the annuity first payable under the seventh article of said treaty, without previous advertisement, if such purchases can be so made on reasonable terms."

In the second session of the Thirty-second Congress, under date of March 3, 1853 (30 Congressional Globe, page 1116 et seq.), Senator Stephen A. Douglas, from Illinois, in discussing the Nebraska-Kansas Bill comments upon the fact that certain Indian tribes have received grants of land subject to the stipulation that they will never be embraced within any state or territory. He contended that this is not an impediment to the creation of these territories for the reason that the Bill providing for their creation specifically exempts the rights of Indians to certain lands until such rights shall have been extinguished by treaty. The discussion refers to lands in the eastern part of the territory which were specifically included in treaties of this nature. No mention is made of

any grant to Indians in this area nor is any mention made to the unratified Treaty of Laramie.

In his report of December 4, 1852 (31 Congressional Globe, page 18), to the senate and the house, the Secretary of the Interior makes this significant statement: "In consequence of the rejection of all the treaties which had been negotiated with the Indian tribes resident in California and Oregon, our relations with them are of a very unsettled and precarious character. It is believed that these treaties were rejected, not so much on account of objections to their details as to the leading principles embraced in them, which secured particular districts of country for the exclusive occupancy of the Indians. Until the senate shall have announced some line of policy to be pursued on that subject, it would be worse than useless to attempt further negotiations."

This seems to give a clew to the reason for the rejection of the Treaty of Laramie, although that Treaty is not specifically mentioned by name. By Bill approved March 3, 1853 (31 Congressional Globe, page 359), the second session of the Thirty-second Congress made the following appropriation: "For the payment of the third of the installments in provisions, merchandise, et cetera, and the transportation of the same to certain tribes of Indians per the seventh article of this Treaty of Fort Laramie of the seventeenth of September, 1851, \$60,000; provided, *that the same shall not be paid until the said tribes of Indians shall have assented to the amendments of the Senate of the United States to the above recited treaty*" (Italics mine).

It will be noted that the first appropriation made no mention of the Senate's amendments and it will further be noted that the appropriation just referred to is for the third, not the second, installment of the annuities.

We then turn to the Journal of the first session of the Thirty-third Congress and find, under date of September, 1854 (34 Congressional Globe, page 2345), the following appropriation: "For the second and third of the installments of provisions and merchandise, in addition to former appropriations, for payment of annuities and transportation of same to certain tribes of Indians, per seventh article of the Treaty at Fort Laramie of seventeenth of September, eighteen hundred and fifty-one, \$24,000. For the fourth of ten installments in provisions and merchandise, for payment of annuities and transportation of the same to certain tribes of Indians, per seventh article of the Treaty at Fort Laramie of seventeenth of September, eighteen hundred and fifty-one, \$72,000."

The foregoing appropriation makes additional provision for the second and third annuity installments and complete provision for the fourth annuity installment under the treaty but does not

make any mention of the required acquiescence by the Indian tribes in the senate amendments. It seems clear on the record that the Indians did not acquiesce in these amendments and that the senate never ratified the treaty. It seems equally clear that Congress has continued the appropriations without regard to the modifications.

I have traced the record of payments through the appropriation bills and find that they were definitely continued and that upon the completion of the tenth payment, the President exercised the optional privilege of extending the payments for five more years.

Moreover, by the terms of the treaties with the Cheyennes and the Arapahoes of 1861 and 1865, further provisions for their support on the reservation was made.

Thereafter, and on April 26, 1854, (33 Congressional Globe, page 994), Senator Stuart, from Michigan, in a debate on the Indian appropriation bill calls attention to the fact that the only organized territories in that area east of the Rockies were New Mexico and Minnesota, and emphasizes that the rest of the land is in an unorganized territory and available for Indian grants. His purpose was to place this area under the control of the Commissioner of Indian Affairs and was opposed by Senator Douglas (Illinois) and Senator Sebastian (Arkansas).

In his report of November 9, 1853, (35 Congressional Globe, page 28), the Commissioner of Indian Affairs comments upon the continued aggravation of relations with the Indians on the emigrant routes to California and Oregon, by reason of the failure of Congress to take cognizance of the recommendations of the Department for the removal of the Indians from the immediate vicinity of the area.

The ratified treaty with the Yankton-Sioux in 1858 (35 Senate Documents, page 586), is a settlement with certain tribes of Sioux Indians whereby these Indians give up certain territorial rights and agree to reside on their assigned reservation within one year. In Article I, the following words appear "They (the Indians), also, hereby relinquish and abandon all claims and complaints about, or growing out of any and all treaties heretofore made by them, or other Indians, except for annuity rights under the Treaty of Laramie of September 17, A. D. 1851." Article 14 of the Treaty releases the United States from all liability except the annuity payments under the Treaty of Laramie. This Treaty with the Yankton-Sioux was ratified February 16, 1854, just prior to the time when the big settlement in Colorado arose.

Of course, under the terms of the Laramie Treaty, the area with which we are concerned was assigned to the Cheyennes and Arapahoes. Whatever rights were acquired in our eastern slope

region were specifically relinquished by the two Treaties between the United States and the Cheyennes and the Arapahoes concluded on February 18, 1861, at Fort Wise and October 14, 1865, at Little Arkansas River. By the terms of the Fort Wise Treaty the Indians relinquished all claim to land except a reservation in the southern part of the state. The Little Arkansas River Treaty was negotiated by the late Judge John B. Sanborn, Kit Carson, William Bent and others. By its terms the Cheyennes and Arapahoes relinquished specifically their claim and rights in the country bounded as follows, viz.: "beginning at the junction of the north and south forks of the Platte River; thence up the north fork to the top and principal range of the Rocky Mountains or to the Red Buttes; thence south along the summit of the Rocky Mountains to the head waters of the Arkansas River; thence down the Arkansas River to the Cimarron crossing of the same; thence to the place of beginning; which country they claim to have originally owned and never to have relinquished."

The annuity provisions of the Treaty of Laramie were unquestionably observed but there was no grant of title to the Cheyennes and Arapahoes. Whatever claims the Indians had to the land seem to be based not upon the Treaty, but upon their ancient right of original ownership. Of this right or its extent we have no actual knowledge. If it existed in 1803, then it was covered by the Louisiana Purchase Treaty and continued until the Indian Treaty of Fort Wise in 1861, when it was relinquished by the Indians. Upon this assumption the claims of the miners between 1858 and 1861 were probably invalid until validated by the Federal Mineral Act of 1866.

If, however, the Indians had no valid right to specific land or to the minerals below the surface then the claims of the miners had a more solid foundation. But what was this foundation? There was no affirmative right to explore and mine for minerals until 1866. It seems to me that they acquired an inchoate or qualified right of *possessio pedis* which ripened into a full title by the passage of the Act of 1866.

No doubt the uncertainty of the legal status of their claims disturbed the miners. Since many of them were men of education and experience they probably appreciated the fact that while their settlements and diggings were not specifically prohibited, still they had no affirmative legal authority. At any rate when the legislature of the Territory of Jefferson met in November of 1859, one of the first acts passed was the following, approved December 7, 1859:

"An Act to give legality to Decisions of Miners' Courts and Meetings and for other purposes:

“Section 1. Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—That the rules, laws, and regulations heretofore established by the miners and inhabitants of the gold region of this Territory, and the decisions of their various courts and meetings made in pursuance thereof, and not inconsistent therewith, are hereby legalized and declared valid.

“Section 2. That all sales, transfers and alienations heretofore made by the miners and others, of claims for mining, and lots for building purposes, in accordance with the regulations in the various mining districts and precincts in which they are situated, are hereby declared legal and valid.”

Of course, the Act of the Territory of Jefferson had no legal significance so far as the authenticity of its origin was concerned. It indicated, however, a state of mind on the part of the miners and a desire to do everything in their power to assure the legality and validity of the claims which they had located.

On February 27, 1865, an Act of Congress was passed (13 Stat. 441, Ch. 64) which recognized the miners' rights to some extent. It says “that no pending action between individuals in any of the courts for the recovery of a mining title, or for damages to any such title shall be affected by the fact that the paramount title to the land on which such mines lie is in the United States, but each case shall be judged by the law of possession.”

However, it was not until the Act of 1866 (14 Stat. 251 c. 262) that the claims of the miners were perfected against the paramount title of the government. This Act provided “that the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.”

The effect of this Act is described in Lindley on Mines, (Vol. 1, 2nd Ed., section 55), as follows: “What had theretofore been technically a trespass became thence-forward a licensed privilege.” But if it was a trespass, against whom did it run? Against the Indians? I doubt it, because of the failure of ratification of the Treaty of Fort Laramie. Certainly not after the Treaty of Fort Wise in 1861. Against the Government? Possibly, but why then did the Government encourage migration to the west, establish garrisons for the protection of the settlers and provide military escorts for the caravans?

In any event the picture with all of its lights and shadows is a part of our history. The tide of Empire moves west. The Indian, once free to roam the plains and mountains at will, is now forced into the narrow confines of a reservation. The trapper becomes the guide. The miner settles the wilderness and forges a law-abiding community by his cultivated intelligence and his indomitable will, without the aid of governmental sanction. Time marches on and Colorado becomes a commonwealth.

## Fort Garland, Colorado

MAJOR JOHN H. NANKIVELL, *Infantry, U. S. Army.*\*

“Eight thousand feet above sea-level, at the foot of snow-covered mountains, towering six thousand feet higher, on the western slope of the Rocky Mountain Range, in about 106 longitude and 37 latitude—a favorite range for the indomitable Utes, and a favorite haunt for elk, deer, bear, panther, and beaver, difficult of access from nearly all directions—Fort Garland, Colorado, though the point of strength and the protecting hope of many a small settlement and isolated rancho flourishing on those sweet trout streams, the Trinchero and Sangre de Cristo, has eminent right still to be called a frontier post.”

So wrote one George Gwyther, M. D., in 1870,<sup>1</sup> and today Fort Garland still stands on the self-same location “at the foot of snow-covered mountains,” but the “indomitable Utes” and the bears and the panthers have gone, and the old post is now minus several of its original buildings; nevertheless, it requires but little imagination to bring back memories of those days when the blue-clad garrison occupied the now silent quarters, and the fort was alive with the daily routine of a frontier outpost. Memories, too, of Kit Carson, Tom Tobin, General Mackenzie and of others equally notable who have added to the glamor and romance of the old post by their service there.

In these days of magnificent highways and the ubiquitous automobile, Fort Garland is no longer “difficult of access from nearly all directions,” and is, in fact, readily reached from Walsenburg, Colorado, over La Veta Pass, by U. S. Highway No. 160. The old post is located on the southern edge of the town of Fort Garland in Costilla County, Colorado, and despite its age and the lack of

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<sup>1</sup>“A Frontier Post and Country,” by George Gwyther, M.D., in *Overland Monthly*, Vol. V, Dec., 1870.

permanency of the materials with which it was originally constructed (mainly adobe), it is in a remarkable state of preservation, and with its wealth of historic associations it should be better known to all those who are interested in Colorado's pioneer days.

Fort Garland was established in 1858 to replace Fort Massachusetts, which was built in 1852 six miles to the north on Ute Creek, but which had to be abandoned because of its unfavorable strategical and tactifful location in the canon.<sup>2</sup> To again quote Dr. Gwyther: "Six miles above the post (Fort Garland), at the apex of a triangle whose sides are tall mountain ridges, lie the remains of old Fort Massachusetts, built at the entrance of a canon whose sloping points reached almost to the garrison buildings; and these were jocularly reported to have been built, in some new-born zeal for the Red Man, sufficiently near to facilitate his attacks upon the garrison. The mistake of the location was seen in time, was abandoned, and Fort Garland reigneth in its stead."

The location of the new post of Fort Garland commanded the mouths of the canons of Ute and Sangre de Cristo creeks, and also controlled the roads passing through the canons. These roads joined about eight miles farther northeast, continued on over Sangre de Cristo Pass and on to the main road on the east side of the mountain range. Protection for the settlers of the San Luis Valley and of the roads in the valley running south to Taos, New Mexico, from marauding Ute and Apache Indians were considered the primary missions of the garrison.

The actual building of Fort Garland was accomplished by Company E, U. S. Mounted Riflemen, and Company A, 3d U. S. Infantry, under command of Captain Thomas Duncan of the Mounted Riflemen, and Section IV of General Orders No. 7, War Department, Washington, D. C., June 24, 1858, directed that "The new post recently established near Fort Massachusetts, New Mexico,<sup>3</sup> will hereafter be known as *Fort Garland*." The fort was named in honor of Colonel and Brevet Brigadier General John Garland, 8th U. S. Infantry, then in command of the Department of New Mexico. As originally constructed, the post provided accommodations for two companies of an approximate strength of seven officers and 100 enlisted men, and subsequent building activities changed the basic plan very little. Fort Garland reached the heyday of its existence in the late "Seventies," and a description of the post, as it existed about that time, extracted from the report of the Surgeon General of the Army for 1875, might well be given now in order to avoid repetition later. The report follows:

<sup>2</sup>See "Fort Massachusetts, First U. S. Military Post in Colorado," by Col. M. L. Crimmins, in the July, 1937, issue of the *Colorado Magazine*.

<sup>3</sup>The boundary of New Mexico in this locality then extended north as far as the 38th parallel.

#### Fort Garland.<sup>4</sup>

The post consists of a parallelogram, inclosing a parade, with quarters for officers and men, arranged on its several sides.

The barracks are two buildings, one story high, built of adobe, with mud roofs; each is 119 feet 6 inches by 33 feet 3 inches, and is 15 feet 4 inches to the center of the roof, which slopes toward the parade.<sup>5</sup> The interior is plastered with mud, and whitewashed with lime; contains the company office and store-room, 20 feet 8 inches by 33 feet 3 inches; two squad-rooms, 37 feet 6 inches by 33 feet 3 inches, and the kitchen, 24 feet 6 inches by 33 feet 3 inches. The latter is also used as a mess-room. Each barrack is intended to accommodate one company. The squad-rooms are warmed by stoves and open fire-places, and lighted by four large windows, two at either end of the room, by which ventilation is also procured.

The air-space per man, for a company of 50 men, is about 1,100 cubic feet. The dormitories are furnished with single iron bedsteads of the usual pattern.<sup>6</sup> As there are no wash or bath rooms, ablutions are made in the squad-rooms or in the open air.

The sinks are wooden buildings placed over an acequia, through which a large volume of water constantly flows, carrying *debris* into Ute Creek, below the post.

A spacious kitchen and mess-room for each barrack is furnished with a large cooking-stove and open fire-place, and fully meets all demands. Quarters for the band are in the building west of the general barracks and parade-ground. This building is very imperfectly constructed, being divided into a number of poorly lighted and ventilated compartments, some of which are without floors.

Married soldiers are quartered in a building of much the same character, situated to the east and north of the general inclosure, at a distance of about 100 paces.

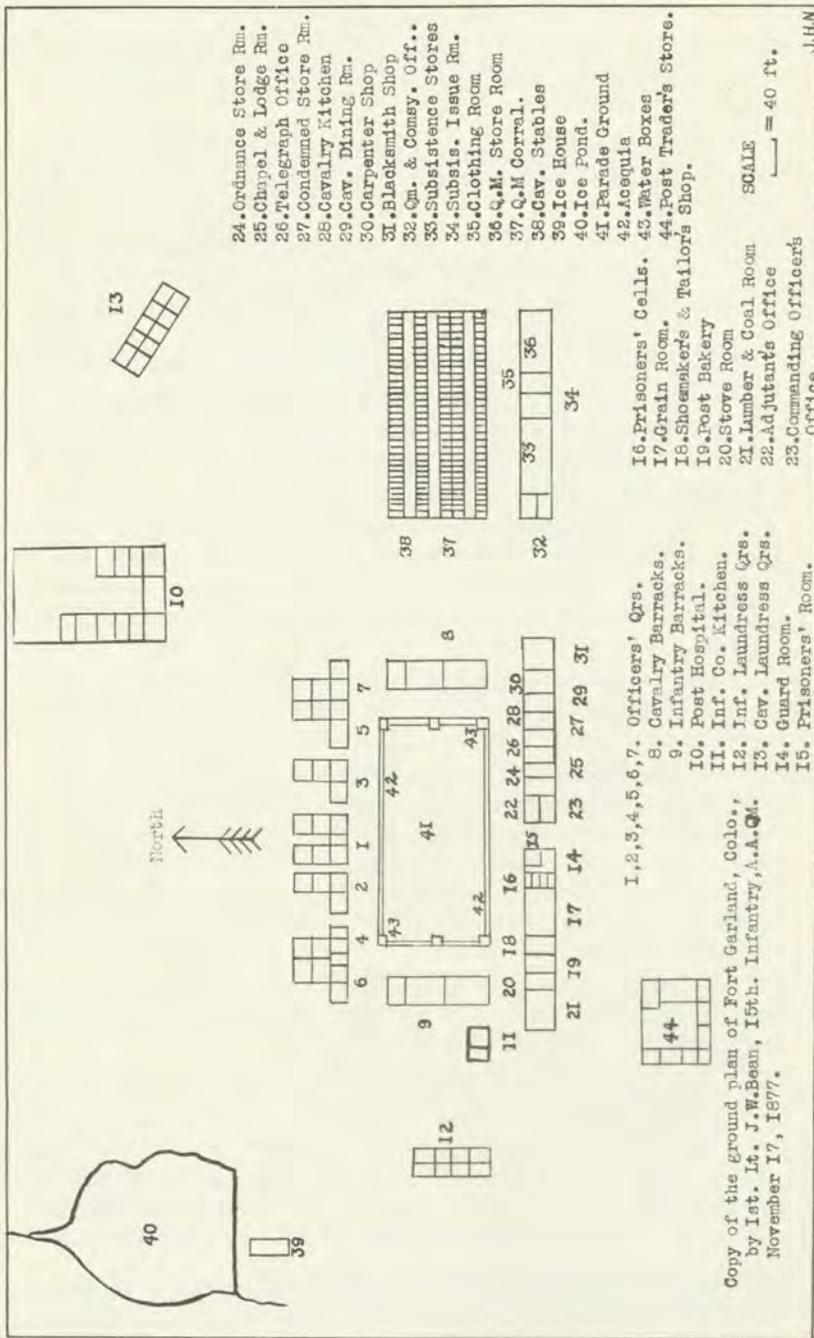
The officers' quarters extend along the north side of the parade, are seven in number and built of adobe.

The rooms are ceiled with pine boards and covered with earth, after the old Mexican custom. They are well lighted and ventilated; have large, open fire-places and boarded flooring. On the south side of the parade are two long buildings

<sup>4</sup>See accompanying plan.

<sup>5</sup>The infantry barracks occupied the west side of the parade, and the cavalry barracks the east side.

<sup>6</sup>These iron bedsteads had but recently been issued; the original sleeping accommodations were double *wooden* bunks.



GROUND PLAN OF FORT GARLAND, 1877

used as offices and store-rooms.<sup>7</sup> In one of these is the guard-house, which is badly arranged, being cramped as to space, and ill ventilated. The cells in its rear are ventilated only by a small opening in the roof—no arrangements for floor ventilation existing.

The guard-room is warmed by means of a large stove, and the prison-room by an open fire-place; there are no means provided for heating the cells, and in the winter the occupants suffer from extreme cold.

The hospital-building is situated north of the post, and to the left and rear of the officers' quarters. This building was put up in 1866, and the adobes used were not properly dried before the walls were built. The meteorological register shows the season in which the work was performed to have been unusually wet and stormy. The beams used were too small and set too far apart to bear properly the weight of the roof. When the walls commenced to settle, which was soon after the completion of the building, and when the post was garrisoned by New Mexican volunteers, no care seems to have been taken properly to repair the damage. In the wards, kitchen, and dining room, the majority of the beams are broken, requiring supports to be placed under them; and in the largest ward no less than five of these supports are required. The rear wall of the plazita, which is 20 feet in height and 2 feet in thickness, require supports to be placed against it from the outside. Of the two wards, each containing six beds, the larger has a superficial area of 97.22 feet, and an air-space of 1,069.44 feet to each bed; the smaller has an area of 84.22 feet, and an air-space of 926.85 feet. The dispensary is well arranged and adapted to the purpose. There is no bath-room in the hospital; a small room is used as a lavatory. A small wooden building, standing over a deep pit, is the hospital water-closet; its drainage is good, and it is constantly disinfected by lime.

The post bakery is a room 21 feet 8 inches by 29 feet 5 inches, containing two ovens built of adobe, having a capacity of one hundred rations at a baking.

The stables are situated 126 feet due east from the post, and consist of three long corrals built of adobe, each 229½ by 44½ feet. These corrals contain long sheds, which are used as stables for public animals, and inclosed stables for officers' horses. The space between the sheds is raised and the floors of the sheds slope from within out. In the rear of each shed

<sup>7</sup>A plan of the post dated October 10, 1871, shows that these two buildings were then used as mess buildings for the infantry and the cavalry. The post guard room was in the east end of the infantry mess building and the adjutant's office in the west end of the cavalry mess building.

is a wooden drain sunk to the level of the ground, and empties upon a gravel-bank east of the corral.

The water-supply is excellent in quantity, being obtained from the Ute Creek by an *acequia*; it flows around the parade, at each corner of which is a well. The water is pure and cold, flowing from the rocky sides of the Sierra Blanca over a rocky, sandy bed directly into the post.

There are no means of extinguishing a fire at the post beyond buckets and ladders and two of "Babcock's fire-extinguishers." The drainage of the post is naturally perfect, being built upon a large gravel-bed, which has little or no covering, and through which water is reached only at a great depth.

There is no artificial sewerage at the post.

Another report from The Surgeon General's Office contained the following additional information with respect to the fort:<sup>8</sup>

On the Sangre de Cristo Creek very fine bathing and swimming arrangements have been established. For winter bathing no arrangements have been made.

The post garden consists of about 6 acres of ground, one-half of which is devoted to enlisted men; the balance to officers and the hospital. They are cultivated by a detail from the garrison, and all garden produce that requires but a short season can be raised here.

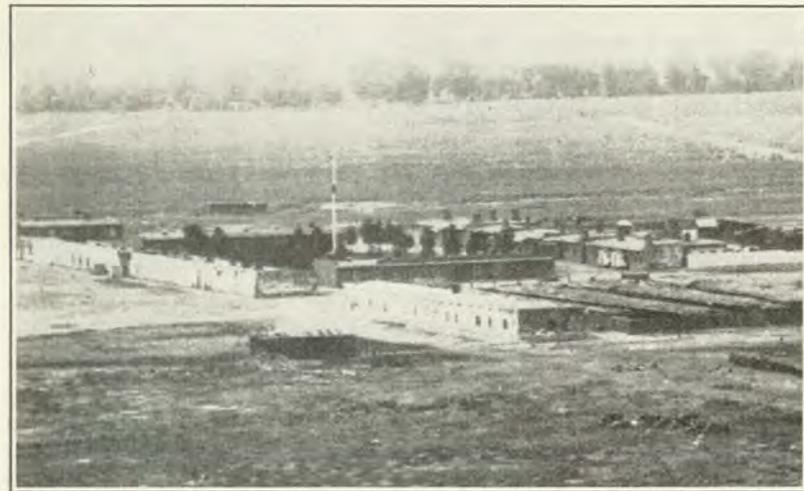
As no furniture can be obtained for the barracks and quarters, only such is used as can be made at the post.

Government wagons or private conveyances are the only means of communication with the Kansas Pacific Railroad, the terminus of which is now distant from the post some 210 miles. For the past year the communications have been constant; in winter and spring it is liable to interruptions from snow on the Sangre de Cristo Pass, and in summer by Indians between the Arkansas River and the railroad. The Arkansas River having been bridged at several points, floods do not now obstruct transportation. The receipt of official mail matter at the post has been much delayed; in some instances communications from department headquarters, although mailed direct, are a month or six weeks in reaching this place; the same frequently occurs with communications from Washington.

The inhabitants of the surrounding country are Americans—strong and hardy frontiersmen—and Mexicans. The population of this park (San Luis) is estimated at about 5,853 souls.

<sup>8</sup>Circular No. 4, Surgeon General's Office, W.D., Washington, D. C., Dec. 5 1870.

The Fort Garland military reservation comprised a tract of land about six miles square with the post buildings approximately in the center, and was a part of the Trinchera Estate of the Sangre de Cristo or Beaubien Grant. The country abounded in wild animals—black, cinnamon and grizzly bears; elk, deer, antelope, panther, wild cat, gray wolf, coyote, and mountain sheep—and the streams were well filled with trout, beaver, otter and mink; truly a sportsman's paradise. However, life at Fort Garland was not all



—Photo from Signal Corps, U. S. Army.  
FORT GARLAND, COLORADO (About 1880)

“beer and skittles” and the joys of the chase as we shall presently see; in the meantime let us briefly review the history of the old post.

From the establishment of the fort in 1858 until July of 1860 the original garrison of one company of the Mounted Rifles and a company of the 3d U. S. Infantry remained at Fort Garland; on July 28th they were relieved by Companies A, F and H, 10th U. S. Infantry, under command of Major E. R. S. Canby.<sup>9</sup> The 10th Infantry had formed part of the expedition to Utah under command of Colonel A. S. Johnston during the so-called “Mormon War,” and the detachment of Major Canby had marched from Camp Floyd, U. T., (near Salt Lake City), to Fort Garland, C. T., a distance of

<sup>9</sup>Major, later Brigadier General, Canby, commanded the Federal forces in New Mexico during the Confederate invasion of 1862. He was treacherously killed by Modoc Indians when holding a conference with them near the “lava beds” of northern California, on April 11, 1873.

640 miles. In August, 1860, Company A, 10th Infantry, left the post to take part in an expedition against the Navajos, and for station in Arizona.

Some few months after the commencement of the Civil War in 1861, the companies of the 10th Infantry at Fort Garland (less detachments) were relieved and joined Canby's command at Fort Craig, N. M. A small detachment of the regiment remained at the post for a few months after the arrival of Dodd's and Ford's companies of Colorado Volunteers late in December, 1861. These two companies were mustered in to the Federal service at Fort Garland as Companies A and B, 2d Colorado Infantry Volunteers, on December 14th and 24th, respectively, and early in 1862 also left the fort to join Canby in New Mexico.<sup>10</sup>

Apropos of the stay of Ford's company at Fort Garland, Mrs. Ellen Williams in her very interesting book, *Three Years and a Half in the Army, or History of the Second Colorados*, records the following: "Major Whiting, the officer in command at Fort Garland, was one of the regular army, and decidedly rigid, anything out of the old military order greatly annoyed him. As recruiting (for the Colorado Volunteers) had been such a sudden event it had been impossible to procure military clothing fast enough, and so the raw recruit was easily known there by the mixture of his garments, part citizen, part soldier. Among other things, overcoats were scarce articles; expecting to get them at the fort, and fine weather when leaving Canon City did not show their necessity. One old grey overcoat was all Company A could muster. At one corner of the garrison, where a guard had to walk his beat, it was extremely cold, a draft cutting through all the time, consequently the old grey overcoat was called into requisition, to the infinite disgust of the Major, who turned to the orderly, Pat Ford, asking him if the same man was always on guard, and received for an answer, 'No, be jabers, but the same coat kivers the whole company now'."

During the Civil War the garrison of Fort Garland consisted principally of Colorado and New Mexico Volunteers, practically all of the regulars having been withdrawn for service elsewhere in the Union Army. Many noted frontiersmen had settled near the post at this time, and some of them were occasionally employed as scouts and guides; among these was Tom Tobin, a contemporary of Kit Carson, and one of the most famous of Colorado's frontiersmen. The story of his extermination of the Espinosa gang in 1863 is part

<sup>10</sup>Dodd's Company A arrived in New Mexico in time to take part in the battle of Valverde Feb. 21, 1862, and in which it acquitted itself with conspicuous gallantry.

and parcel of the traditions of old Fort Garland and, briefly, is as follows:

The Espinosas, two brothers and their nephew, because of some alleged wrong, had sworn to kill all Americans that they could, and in pursuance of this threat they created a reign of terror on the old Tarryall trail and in South Park by killing wherever they caught a man alone. They waylaid cabins, roads and small mining camps and murdered ruthlessly whenever they had the opportunity. Poses and military patrols were sent after them, but without success; finally a posse of miners cornered them near the present site of Cripple Creek and in the ensuing fight killed one of the brothers, the other escaped and was later joined by his nephew in the San Luis valley. This precious pair continued the murderous career, and later made for the Sangre de Cristo Mountains. Lieutenant Colonel Samuel F. Tappan, 1st Colorado Cavalry, was then in command at Fort Garland, and learning of the presence of the Espinosas on the Sangre de Cristo road sent for Tom Tobin. The colonel's instructions to the old frontiersman were brief, and can best be given in Tom's own words: "Colonel Tappan then told me he wanted me to go after them. I then told him I would go. He said if I would go capture them and bring their heads to him, he would see I was recompensed for it, for me to be careful and not make a mistake and bring other parties \* \* \*"<sup>11</sup>

Tobin set out from Fort Garland with a detachment of one officer and fifteen soldiers on September 7th, and after some exceedingly clever scouting and tracking finally discovered the murderers. A chase ensued, and the bandits escaped; however, Tobin again located them and this time the old frontiersman used his rifle to good effect by killing both bandits. Their heads were cut off and the detachment returned to Fort Garland with its gory trophies. To again quote Tom Tobin: "I rode up in front of the Commanding Officer's quarters and called for Colonel Tappan. I rolled the assassins heads out of the sack at Colonel Tappan's feet. I said, 'Here, Colonel, I have accomplished what you wished. This head is Espinosas. The other is his companion's head and there is no mistake made.'" Tobin finally collected his reward for killing the bandits, but it took him about twenty years or more to do so.

At the close of the Civil War several of the volunteer organizations were retained in the Federal service during the period of readjustment pending the return of the regular army to garrison the frontier posts. One of these organizations was a regiment of New Mexico Volunteers commanded by Kit Carson, the famous scout.

<sup>11</sup>"The Capture of the Espinosas" by Thomas T. Tobin, *Colorado Magazine*, March, 1932, pages 59-66.

Carson was Colonel and Brevet Brigadier General, and during the war had rendered notable service in New Mexico against the Navajo Indians. During the year 1866 Colonel Carson was ordered to Fort Garland with a detachment of his regiment for station. At this particular time the Utes were in a dangerously ugly mood, and the settlers of the San Luis valley were in a perilous situation as a consequence. No better choice for the command of Fort Garland could have been made at such a critical period; Kit Carson was thoroughly familiar with the Indian character, spoke their language and had a powerful influence over their leading men, particularly Chief Ouray.

Dr. Gwyther, who was a medical officer at Fort Garland at the time of Colonel Carson's tenure of command, says: "In any dispute with them (the Indians), when violence seemed inevitable, all could be allayed by offering to send for 'Kitty,' as they termed him; and it was a study to see him sitting, surrounded by them, talking as kindly and familiarly as to his own children, rolling cigarettes and passing the tobacco around, all the while laughing, joking, talking Spanish or the Ute tongue, with such abundant gesticulations and hand-movements, that it seemed to me he talked more with his hands and shoulders than with his tongue. I remember more than one imminent peril averted from the settlements, solely by Carson's influence."<sup>12</sup> On two well authenticated occasions at least Carson's intimate knowledge of Indian psychology averted open war, and saved the settlements from devastation. Carson's family, a wife and six children, accompanied him to Fort Garland and, to quote General Sherman, "the boys and girls were as wild and untrained as a brood of Mexican mustangs."<sup>13</sup>

During September of 1866 Lieutenant General W. T. Sherman visited Fort Garland on an inspection trip and while there held a council with Ouray and other Ute chiefs. As a result of this council comparative peace reigned in the San Luis valley for several years thereafter. General Sherman later paid tribute to Carson's powerful influence for peace in the councils.<sup>14</sup> The New Mexican Volunteers were mustered out in the summer of 1867 and Kit Carson left with his family for his new home near Fort Lyon in the Arkansas valley, where he died on May 24, 1868, at the age of 58 years.

On the departure of the volunteers Fort Garland was again garrisoned by regular troops, sometimes entirely by infantry or by cavalry and at other times with a company of infantry and a troop

of cavalry. The War Department records indicate that following the regarrisoning of Fort Garland entirely with regulars and until its abandonment in 1883, detachments of the following regiments served at the post at various times: 2d, 3d, 4th, 7th, 8th and 9th Regiments of Cavalry, and the 5th, 10th, 14th, 15th, 19th, 22d and 37th Regiments of Infantry. During the eventful period following the Meeker massacre at the White River Agency and Thornburgh's reverse on Milk Creek in 1879,<sup>15</sup> and the subsequent removal of the Uncompahgre Utes to a new reservation in Utah in 1881,<sup>16</sup> the garrison was considerably increased by additional troops ordered there from other posts in the Military Division of the Missouri. Colonel (Brevet Brigadier General) R. S. Mackenzie, 4th U. S. Cavalry, was in command of the troops concentrated at Garland, and eventually his force reached a total of approximately 1500 officers and men. The accommodations at the old post were of course entirely inadequate for a force of this size, and all of the incoming troops went into camp near the fort pending their departure for the Uncompahgre Valley.

Following the removal of the Utes from Colorado to Utah, the garrison at Fort Garland was again very much reduced and on October 2, 1883, Major General John Pope, commanding the Department of the Missouri, recommended in his annual report to the War Department the abandonment of several army posts in his department, among which was mentioned Fort Garland. Prompt action followed this recommendation, and on November 30, 1883, Fort Garland was finally abandoned as an active military post of the United States Army; its last garrison was Company A, 22d U. S. Infantry, under command of Captain Javan B. Irvine, and on departure from Fort Garland the company took station at Fort Lewis, Colorado.

Life at a frontier post in the period from the "Fifties" to the "Eighties" was not, as I have already mentioned, "all beer and skittles," and I take this opportunity to relate the experiences and reactions of a civilian who visited Fort Garland in the "Seventies":<sup>17</sup>

Garland is one of the oldest military establishments in Colorado, and one of the pleasantest, though its red adobe or sundried brick buildings are in a state of increasing and unprepossessing dilapidation. Its officers are renowned for their hospitality to strangers, and during our visit it had, as the headquarters of a regiment, an excellent band expert in play-

<sup>12</sup>Gwyther, *Ibid.* See also *Colorado Magazine*, Sept., 1929, pages 179-183.

<sup>13</sup>*Kit Carson*, by S. Ellis, page 248.

<sup>14</sup>*Ibid.*, 249.

<sup>15</sup>See the *Colorado Magazine* for May, 1936, pages 90-110.

<sup>16</sup>*Ibid.*, March, 1934, pages 56-61.

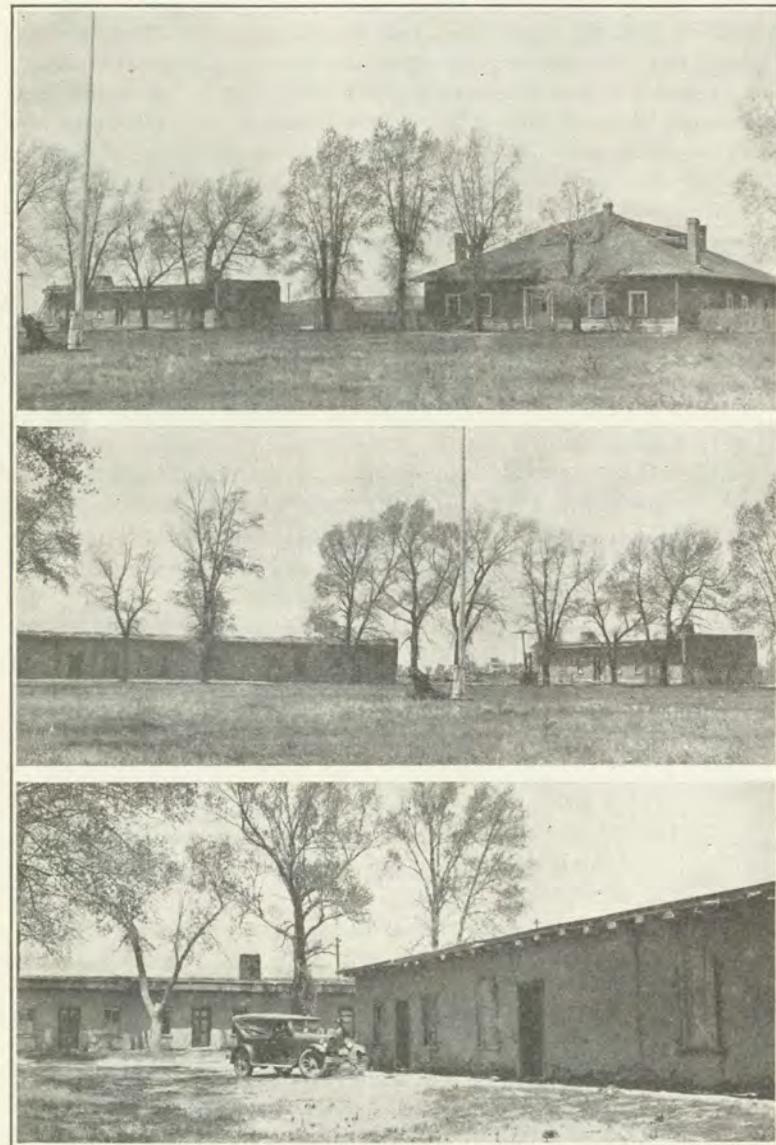
<sup>17</sup>"Life at a Frontier Post," by William H. Rideing, in *Appleton's Journal*, Vol. XV, pages 564-565.

ing the liveliest and latest of popular airs. Civilization and the railway approach no nearer than Pueblo, eighty miles north, and chance travelers on the road and a semi-weekly mail are the only links between the exiles and the far-distant, familiar world. Nevertheless, not an item of discipline is omitted. The reveille is beaten at the same moment, accounting for the difference in time, that it rumbles over the waters of New York Bay. Guard is mounted and relieved by officers in the fullest and neatest dress, and to the most inspiring music, even though six men are all the force the post can muster. Reports are submitted and received with the same pomp and circumstance as are observed in the mightiest army, and the sentries challenge, with unremitting vigilance, all who pass the gates. The only variation to these exacting formalities is when intelligence arrives of Indian depredations, and a company of cavalry is sent out; or when the guardhouse is broken and a prisoner escapes. Desertions are frequent, and, overlooking the *entente cordiale* that ought to exist between officers and men, we cannot wonder at it, however much we may condemn it. Frontier life suggests, I know, a sort of poetic expansiveness to the inexperienced, but to the soldier it usually involves, except in the case of an Indian war, a career of humdrum routine.

The confinement, the dull surroundings, the want of change and excitement must become unbearable, especially to the untutored mind, and not a few soldiers run the risk of the disgrace and severe punishment attending capture of a chance of freedom, not scrupling to force a government mule or horse into the enterprise if one can be obtained.

There is one pleasant feature about Fort Garland. The log and adobe houses of the *rancheros* do not in the least exceed the Spartan limit of a few chairs, a table, and a chromo in the matters of decoration or luxury. But the officers contrive to crowd many significant little evidences of refinement into their incommensurable quarters, notwithstanding the difficulty of obtaining anything except the mere necessities of life. The rooms are in some instances carpeted, with buffalo-ropes and bear-skins, while the walls are adorned with guns and relics of the chase. To members of our expedition coming out of the field this revelation of domesticity and comfort proved a grateful change from the hardships of an American explorers' camp.

Strangers from the outside world do not often find their way to Fort Garland. Occasionally a solitary "prospector"



VIEWS OF FORT GARLAND BUILDINGS IN 1934

Upper: Part of Officers' Row. Building at right once occupied by Col. Kit Carson and family, later remodeled by W. H. Meyer.

Middle: Looking toward northwest corner of parade ground. Infantry quarters at left.

Lower: Northeast corner of parade ground. Cavalry barracks at right.

goes by, the whole of his present wealth represented in the pickaxe, spade, pan, gun, and provisions, heaped up on the back of a little donkey or mule—his future and greater wealth lying in the gaunt mountains of the San Juan, to which he is bound. A band of beggarly Utes, Apaches, or Navajoes, rides in; a Mexican bull-team, heavily loaded with wool, rumbles along the road to the north; a pair of stockmen trot off toward some neighboring ranch, delaying a moment at the sutler's store to try his whiskey; or an emigrant wagon, with a family of freckled children and women involved among a load of furniture, makes for the south. These are real travelers, not the common-place tourists who are whisked along our modern highways in drawing-room coaches, but people bound on long journeys attended by uncertainties of time and distance, the haphazard and danger that made a traveler an object of wonder in the old days. And as we watched them growing more indistinct in the trail of smoky dust produced by their animals, we cannot help feeling a keen personal interest in them, . . .

Much comfort at a frontier post depends on the character of the sutler's store, and that at Fort Garland is one of the best, including in its stock every imaginable and many unimaginable articles, from Wiltshire hams to Mexican spurs, patent medicines to buffalo robes, stationery to saddles, and ammunition to cosmetics. The customers are also heterogeneous, including the officers and men of the fort, the passing emigrant and Indians, the miners and ranchmen, and the Mexican *senoritas*, the chief weakness of the latter lying in articles of Philadelphia perfumery and Birmingham jewelry.

The sutler adds to his proper functions those of postmaster, and over his desk we found the following table of the arrival and departure of mails:

Monday—Eastern arrives.

Tuesday—Western arrives.

Wednesday—Eastern closes.

Thursday—Western closes.

Sunday—The postmaster will put on clean clothes.

N. B.—The above is subject to all and every change.

Under this admission of uncertainty some one had rulely written in regard to the last paragraph: "The clothes? I doubt it!"

While we sat on the bench in front of the sutler's store one evening, the old fort was transformed into a very pretty object under the magical influence of the brilliant sunset. The surrounding sandy plain melted into gold, and the mountains

were flooded with purple. A pale star rose over the eastern ridges, and while in the west the sky was glowing with gorgeous colors, in the east the light was expiring in a deepening blue. But it's only for a moment in a summer's day that Garland looks inviting, and as we left it to resume our course we again pitied the men condemned to live the year round in this lonely spot.

Mr. Rideing does not, on the whole, paint a very happy picture of life "in the good old days" at Fort Garland, and for a somewhat different viewpoint I quote the following from General James Parker's book, *The Old Army Memories*.<sup>18</sup>

I remember that in spite of drills, life was not all drudgery. All my companions, the young lieutenants of the command, Wentz Miller, Jug Wood, Joe Dorst, Squire Mason, Sandy Rogers, Murray, Wilder, McDonald, Wheeler and Richards, found time for numerous diversions. There were deer and duck in the vicinity, horse racing was a favorite sport, foot races were indulged in. We constructed a primitive gymnasium where we held numerous events. At night it was cold on the mountain plateau, but in our fireplace great pinon logs crackled, throwing out an aromatic odor. There was much singing under the leaderships of Dr. Munn, our surgeon, and Colonel Beaumont, commanding officer of the cantonment. There was considerable card playing, while some of the officers, more studious, utilized the evenings to improve their minds by study. No women were present with our command.

Upon its abandonment by the army in 1883 Fort Garland reverted to the Trinchera Estate, the original owners of the grant on which the post was located. About 1915 the property was purchased by State Senator W. H. Meyer for a home, and on his death in 1925 was willed to his housekeeper, Mrs. Lascassen, who maintained the place a short time and then sold it to a Mr. Motz an agent for the Denver and Rio Grande Railroad. Mr. Motz also made his home at the old post until 1928, when he sold the property to the Fort Garland Historical Fair Association, a non-profit organization which plans to repair and restore the buildings as a historical landmark and when funds are available to establish a museum.

For a time after its abandonment the hospital building was used as a general store by "Billy" Carson, son of the famous old scout who had once commanded Fort Garland. When the property was acquired by Senator Meyer he remodelled the old com-

<sup>18</sup>General Parker was then a lieutenant in Colonel Mackenzie's regiment, the 4th U. S. Cavalry.

manding officer's quarters, adding an A roof. The buildings on the south side of the parade were removed several years ago.<sup>10</sup>

Old Fort Garland as it stands today is a place decidedly valuable in historic interest for Colorado, and is well worthy of every effort being made to preserve the old buildings and to receive from the national government the privilege of being designated as a national historic monument.

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## Pendants from the San Francisco River, New Mexico

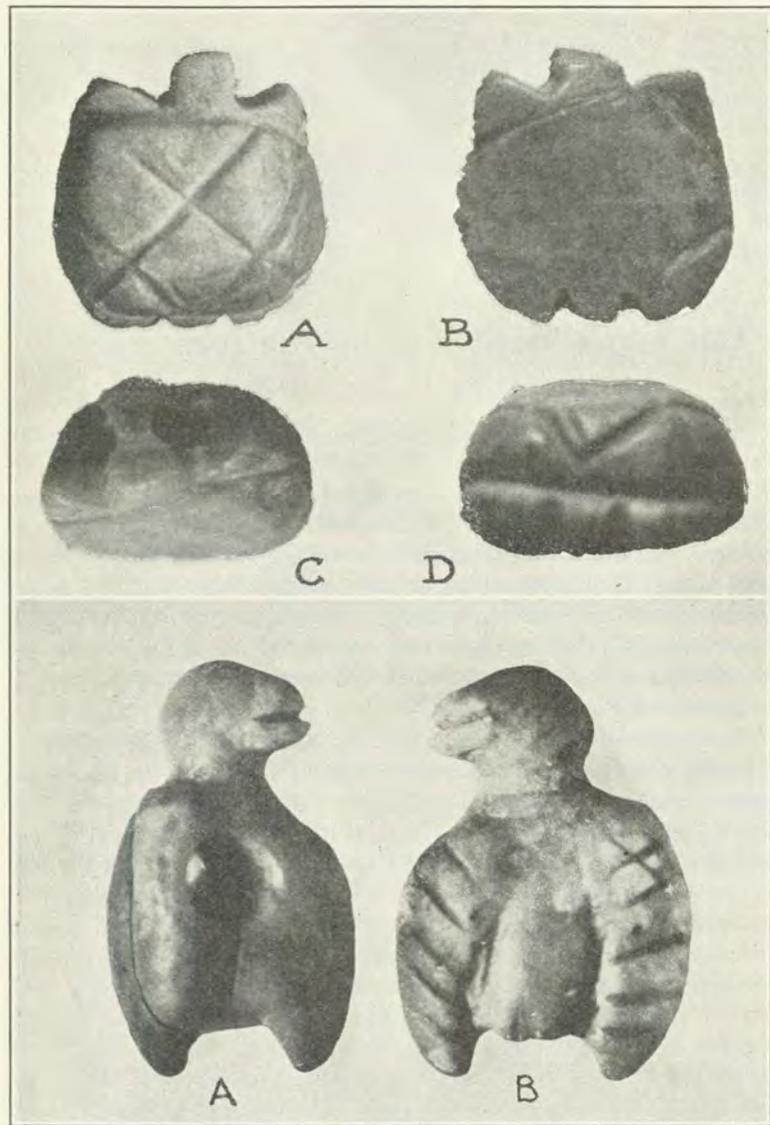
VICTOR F. LOTRICH

Pendants are fairly common in the ruins of the Southwest. Many living forms are represented, notably, frogs, birds, lizards, rabbits, etc., in addition to the geometric designs, such as the circle and the rectangular block. The materials from which they are fashioned are principally, marine shells, turquoise, lignite, gilsonite, selenite, sandstone, soapstone, and walnut shells. A few specimens have been found completed as mosaics. Of these the most famous are the two frogs, one from Pueblo Bonito, New Mexico,<sup>1</sup> the other from Chaves Pass, Arizona.<sup>2</sup>

Most of the specimens are uncovered during the course of an excavation, but occasionally they are picked up as surface finds. The two pendants, figured in the accompanying plate, are specimens that have been taken from the surface, some miles apart, along the canyons of the San Francisco River, New Mexico. Because of their material, size, life form, and general interest, we are here presenting their figures, and their description.

The turtle, upper figures A, B, C, D, is carved in a green jade, streaked and spotted with blue. It has been ground down to its present size, polished, and the incising done with hard stone. The perforation, for suspension, figure C, was drilled in the neck, following along the angle of the projected front feet. Figure D shows the method of separating the upper shell from the back feet and tail. The shape of the turtle approaches a square, being 11/16 of an inch in length and width. Its depth is 3/8 of an inch. The head is 1/8 of an inch square.

The thunderbird, lower figures A, B, is carved from a piece of greenish soapstone. It has been mainly ground down to its present form. The incising is very limited, being present only in



PENDANTS FROM MIMBRES AREA  
(Enlarged four times)

Upper: Turtle—A, front; B, back; C, top, showing perforation; D, bottom.  
Bottom: Thunderbird—A, back, showing perforation; B, front.

<sup>1</sup>All of the information respecting the history of Fort Garland since its abandonment by the army was kindly furnished the author by Professor Frank C. Spencer, Adams State Teachers College, Alamosa, Colorado.

<sup>2</sup>George H. Pepper, "Pueblo Bonito," Plate I, *Anthropological Papers of the American Museum of Natural History*, Vol. XXVII.

<sup>3</sup>J. W. Fewkes, "Two Summer's Work in Pueblo Ruins," Plate XLIV, *Bureau of American Ethnology*, 22nd Report, Part I.

the beak, wings, and the separation of the wings from the body. Peculiarly, the beak is a lighter color from the rest of the figure. There are indications of a blue paint in the incisions. The perforation occurs on the extension on the back of the bird. The thunderbird is  $1\frac{1}{8}$  inches long,  $\frac{13}{16}$  of an inch wide, and its greatest depth is  $\frac{1}{2}$  of an inch.

As to the probable use of the ornaments, due to the circumstances of their findings, it is very difficult to say. It is possible that they are ceremonial in nature, or they may merely be a fancy piece of jewelry.

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## Late Indian Troubles in the San Juan Country

An Account Written by Mrs. C. N. Cox in 1881\*

In the extreme southwest of Colorado, and in the very heart of the Rocky Mountains is a vast extent of country known, in the soft accents of the Spanish language, as the San Juan. Range upon range of mountains lift their snow-covered summits within its territory. Murmuring brooklets, cascade and waterfalls of foaming spray mingle their eternal harmonies through wild and mysterious canons, in shadow and in sunlight. Gentle rivers wind in silver threads through valleys fair and fertile, while through all, and around all, far above dark passion and angry strife, dwells the undisturbed rest and harmony of God's eternal peace.

Lying between the Reservation of the White River Indians on the north, and that of the Southern Utes on the south, the San Juan Country became naturally a place of rendezvous for the numerous Indian tribes of those regions and, with its many natural advantages and abundance of game, was appropriated by them as a summer hunting ground. Of late years, into the fair and fruitful valleys, white settlers have found their way, establishing homesteads, and raising immense stocks and herds which roam over many miles of country, subsisting on the rich, natural pasturage. Parties of revengeful and marauding Indians have, however, rendered life and property extremely insecure, and from time to time have pillaged and murdered to a most alarming extent; and, early in June last, these deeds of violence reached their culmination, in the valley of the Dolores.

In that fair season, when the very air breathed peace and quiet, when honest hearts and honest hands were busily employed, came

\*This manuscript was given to the State Historical Society some years ago, by the daughters of Mrs. Cox. The story, written at Rico, Colorado, in December, 1881, reflects the feeling of endangered pioneers, and exhibits the writing style of the period.—Ed.

the terrible news of savage cruelty and outrage committed at a place called May's ranch, within thirty miles of the mining camp of Rico. Three men had been killed, houses burned, and stock driven off. Mr. May, who was an eye witness of the terrible tortures inflicted upon the victims, two of whom were his brothers, effected his escape and, hastening to Rico, made known the sickening truth. As the murdered men were known personally in that region, hearts were immediately filled with sympathy, and fired with indignation and revenge. The news spread rapidly to the surrounding towns and camps, and, by the following dawn, two hundred and fifty men, well armed and mounted, were rapidly proceeding to the place of the outrage. Arriving there, a scene of desolation and horror met their eyes, such as sickened even the bravest hearts. The bodies of the men were found, one charred beyond recognition, another riddled with bullet holes, and a third showing traces of the most inhuman torture.

The Indians had fled, but the thoroughly aroused men, following their narrow trail, pushed on hotly in pursuit. Almost without hope, the day was closing upon them, when upon a knoll, some distance before them, an Indian pony was seen grazing. A great shout rose from the party, there seeming to be little doubt that the band of Indians whom they were so eagerly pursuing was encamped for the night, upon the other side. Proceeding with great caution, and prepared for an attack, the place of supposed encampment was reached, but seemed only to mock them with its emptiness and solitude. The abused, disabled and discarded pony furnished only a slight trace of the fleeing party. Convinced now that further pursuit that night was useless, and rest imperative, both for themselves and animals, a camp fire was lighted, soldier's food prepared, and soon after, sleep overcame all.

Another dawn found them again proceeding rapidly but cautiously along the valley of the Mancos, where they came unexpectedly upon the dwellings of settlers, by whom they were joined, and from whom they learned that the Indians had been reinforced along the way, until their band numbered two hundred and fifty braves, beside their squaws, and that white settlers along the line of flight had suffered severely from loss of stock, and many had been killed. Fired anew by this fresh evidence of savage cruelty, and aroused to greater energy, they urged their wearied horses to their utmost, until night again closed the fruitless search. But another morning brought different results, for, after advancing about a mile and a half, our mountaineers came suddenly upon the entire Indian party, whom they found in great confusion, and totally unprepared for an attack. The fury-blinded men, regardless of com-

mands or of prudence, fired recklessly hither and thither, while braves, squaws and papooses mingled their voices in a series of prolonged shrieks and cries, such as his Satanic Majesty himself might be a stranger to, and at the same time pushing on as rapidly as the confusion allowed.

The Indians, in their sudden flight, left cattle, sheep and horses, tents, furs and blankets, the latter of which were collected and burned, and the former—their plunder of several days—guarded by a party of a half dozen men, who remained there for that purpose. All morning the pursuit was hot and close, and the reckless men forgot savage cunning, forgot that every inch of ground was to the braves as a well read book, while to themselves it was totally strange and unknown. The peculiar rocky formation, and rapidly changing character of the country were alike unnoticed, until, in a canon hundreds of feet in depth and miles in length, with Indians guarding the entrance, Indians above and on all sides, they found themselves in well-planned ambush.

A fight for life and liberty commenced, and though the whites were no match for the Reds in artifice, yet in real bravery and correctness of aim, far excelled them. The Indians, concealed in bushes and rocks, fired into the brave but bewildered party who, with ready tact, immediately dismounted and, concealing themselves and horses a la mode, maintained their ground. Fighting continued until darkness prevented, and was renewed in the morning. Under shelter of the night, one man succeeded in escaping to Ft. Lewis, a military post some twenty miles distant, and, after stating the condition of affairs and obtaining promise of aid, proceeded to Rico for reinforcements. A small detachment of soldiers was immediately sent to Lost Canon, who, on arriving there, opened fire upon the Indians who held its entrance, forcing them back within range of the imprisoned men, who, seeing deliverance near, regained their horses, fired into the terrified Indians from all sides; and dashed through the gorge to the open ground, and hastened with their wounded comrades to the Fort.

The Indians, after recovering from their fright, strove to regain their stock, and came unexpectedly upon the small force left to protect it, but found them so well prepared—substantial breastworks of earth having been thrown up, and rifles held in readiness—that they were obliged to seek satisfaction in retreat, and in killing such unprotected animals as, by chance, came within their range. Reinforcements from Rico soon arrived at the Fort and, in company with the rescued party and a portion of the military, proceeded from there to Lost Canon, prepared for another and possibly more severe encounter. The Savages were overtaken ere the scene of the former battle was reached, and were pushed de-

terminedly before, into the narrow gorge, followed closely by the main body of soldiery, while the bold mountaineers, quick to learn, discarding horses and clambering upon rocks, opened fire upon the cunning but defeated braves. Borne down by a power too strong to resist, and terrified beyond words at their impending fate, they turned and fled with the swiftness of frightened animals, pursued by a small party of whites, through the mysterious windings of that unknown canon, into more open ground, and on and on, into the wilds of Arizona.

Those who remained in the gorge began, now, a search for the bodies of their missing companions, which, when found, received the last sad attentions from those by whose side they fell. The Indians, in killed and wounded, far exceeded the whites in number, and one of the chiefs afterward, speaking of the encounter, sadly remarked that they could not speak in regard to it for their loss had been so great, that the customary war-dance had been omitted.

When the reinforcements left Rico, the town was almost un-manned and unarmed, no danger seeming apparent, and great was the consternation of its inmates when news reached us that bands of well-armed Indians were crossing and recrossing their old trails—their means of communication between the two Reservations—not far to the rear of our homes. That one of their bands was led by a Mormon spy, and another by a miserable negro, well known in Rico, and that one hundred braves were encamped up the River, not ten miles from us, and their numbers constantly increasing. On the tops of all the peaks for many miles around, Indian signal fires were lighted, woods were ablaze, and although in the newness and freshness of June, 'twas like the haziest of Indian summer weather.

Of the horrible fears and expectancy of an attack at any time, none but those who experienced it can know. Places of hiding and safety were decided upon for the women and children, and the few men who remained held a town meeting to decide upon a course of action. Two men, in the dead of night, were sent fifty miles for ammunition. The government rifles were distributed in different homes, pickets were stationed at various places, while each individual held himself in readiness for the worst. The danger, however, did not increase. Troops were sent from Ft. Lewis, who persuaded the Indians to return to their hunting grounds, and the lurking fear, generally, gave way to a feeling of security. It was doubtless the intention to sweep down upon us at a time when the defense of the town was considerably weakened, and, for that purposes, spies were employed that could easily come among us without danger of detection, but were deterred in this purpose by the prompt and active measures resorted to.

The band of brave mountaineers returned a week or so after, bearing their wounded companions, some of whom, after long days and nights of pain, sank into the eternal sleep, in which were wrapped alike the fallen foe and comrade. Most touching and thrilling incidents occurred, to impress the sad events forever on the memories of those so nearly connected with them. The settlers recovered a considerable portion of their stock, but their dead came not again, nor could they raise from the ashes, their ruined homesteads.

Such was a beginning of the San Juan Indian troubles in June, 1881. Horrible outrage still continues. Settlers and ranchmen are unsafe, and too often the victims of fiendish cruelty. Hearts are wrung, and homes desolated, while the Savage authors of such outrage, seeking fresh violence, stalk abroad, untroubled by conscience, and unimpeded by law.

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## The Cold Water Doctor

GEORGE H. KING\*

Many good stories of pioneers and pioneer days will forever remain untold. For a long time I have had one in mind that impresses me as being too good to meet such a fate. It was related to me by Mr. Asa Middaugh, a fifty-niner, who was one of Colorado's prominent citizens up to the time of his death a number of years ago. For many years he made his home in the San Luis Valley where he was interested in the various industries of that fertile country.

With his brother, Mr. Middaugh arrived at the frontier settlement which is now the city of Denver. They built a small cabin on the banks of the Platte River near where the Denver & Rio Grande Western Station, Burnham, now stands. This cabin contained but one room and was furnished after the fashion of such homes in those pioneer days. It had two sleeping bunks, a stove, a cupboard, some chairs or stools, a wash stand or bench on which rested the pail of water used for drinking and cooking purposes, and a wash basin beside the bench.

Early one fall Mr. Asa Middaugh was taken sick with what was known at that time as mountain fever, now known as typhoid fever. There was no hospital in the settlement. His brother was the nurse, and a good one too, for he obeyed the orders given by the doctor. The doctor was a little German of the old school. At that time the treatment was to let the fever burn out by letting it run

its course. A patient was denied any cooling drink or the application of cooling cloths or ice bags to the head or body. Asa was a very sick man. These cooling remedies were denied him. The doctor came once or twice a day and his brother was day and night nurse.

One night when the fever was at its height the doctor came on his usual visit. Turning to Asa's brother as he was leaving he said: "Tonight vill be de turning point for Asa. If he lives through the night he vill get vell. Give him no vawter." There Asa lay burning with fever and almost to the stage of delirium. The night came on and Asa's brother, about exhausted with his constant vigil, got into his bunk to take a short nap, but went fast asleep, but not before he had taken the precaution to throw out all the water in the pail and even that in the wash basin.

Asa, almost famished for want of a drink, watched this proceeding with much concern. After his brother had gotten into the deep sleep of exhaustion, Asa made up his mind he was going to have a drink of water if it was possible to get it. Getting out of his bunk in his night gown he went to the door and opening it saw there had been a light snow, but enough to cover the ground completely. So desperately did he want water he determined to get it by going to the banks of the Platte, a hundred feet away. This he did, and laying down on his stomach at the river's edge he drank his fill of the clear cold water, and went back to bed and to sleep.

He was awakened the next morning by the arrival of the doctor, who seeing him awake and active remarked: "Ah, Asa is bedder. He vill live. You gave him no vawter." Asa, overhearing this, replied that he did have water, and told what he had done in the night. The doctor laughed and said: "If you had done that you would be dead." Asa insisted and told them to look for his foot prints in the fresh snow leading to the river. They looked and saw the foot prints and the place where Asa had laid down to drink. The doctor and the brother came back.

The doctor looked at Asa, and then at his brother, and then remarked: "Vell py Gott! From now on ich bin a cold vawter doctor."

\*Mr. King, Colorado pioneer, contributed an article, "My First Trip East" (in 1868), to the *Colorado Magazine* of March, 1937.—Ed.