



## Divorce in Seward County, Nebraska, 1869-1906

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Article Summary: Some 294 divorce cases were filed in the Seward County District Court from 1869 to 1906, a period that allows comparison with statewide and national data. Court records not only provide insight into several facets of the divorce process—sex of petitioners and awardees of decrees, length of marriage prior to divorce, alimony, awards of child care and custody, and restoration of maiden names—but also reveal the “human” experience of fractured marriages.

### Cataloging Information:

Names: Theophilus L. Norval, Marquis Ashton, Sara Ashton, Dan Coleman, Harry Jones, Emma Jones, Beata Mueller, Michael Mueller, Maggie Devore, James Devore, William Newell

Nebraska Place Names: Seward (Seward County)

Keywords: alimony, child custody, restoration of maiden names, adultery, cruelty, desertion, use of alcohol, failure to support, physical incapacity

Photographs / Images: Main Street, Seward; first Seward County Courthouse; Seward town square before the courthouse was built; interior of Fred Trute’s liquor store, Seward; north side of Seward town square, 1900; Theophilus L. Norval; Harry Jones; Norval’s home in Seward; unidentified man and woman in Seward; Harry and Emma Jones’s house; present Seward County Courthouse

Tables: 1. Marriage Licenses Issued and Divorce Decrees in Seward County, 1872-1906; 2. Number of Marriages and Divorces in Seward County, 1887-1906; 3. Length of Marriage Prior to Divorce Nebraska and Seward County, 1867-1906; 4. Causes of Divorce in Seward County, 1869-1906 Instances Recorded in Petitions; 5. Causes of Divorce: Nebraska and Seward County Compared, 1887-1906







# DIVORCE

## IN SEWARD COUNTY, NEBRASKA

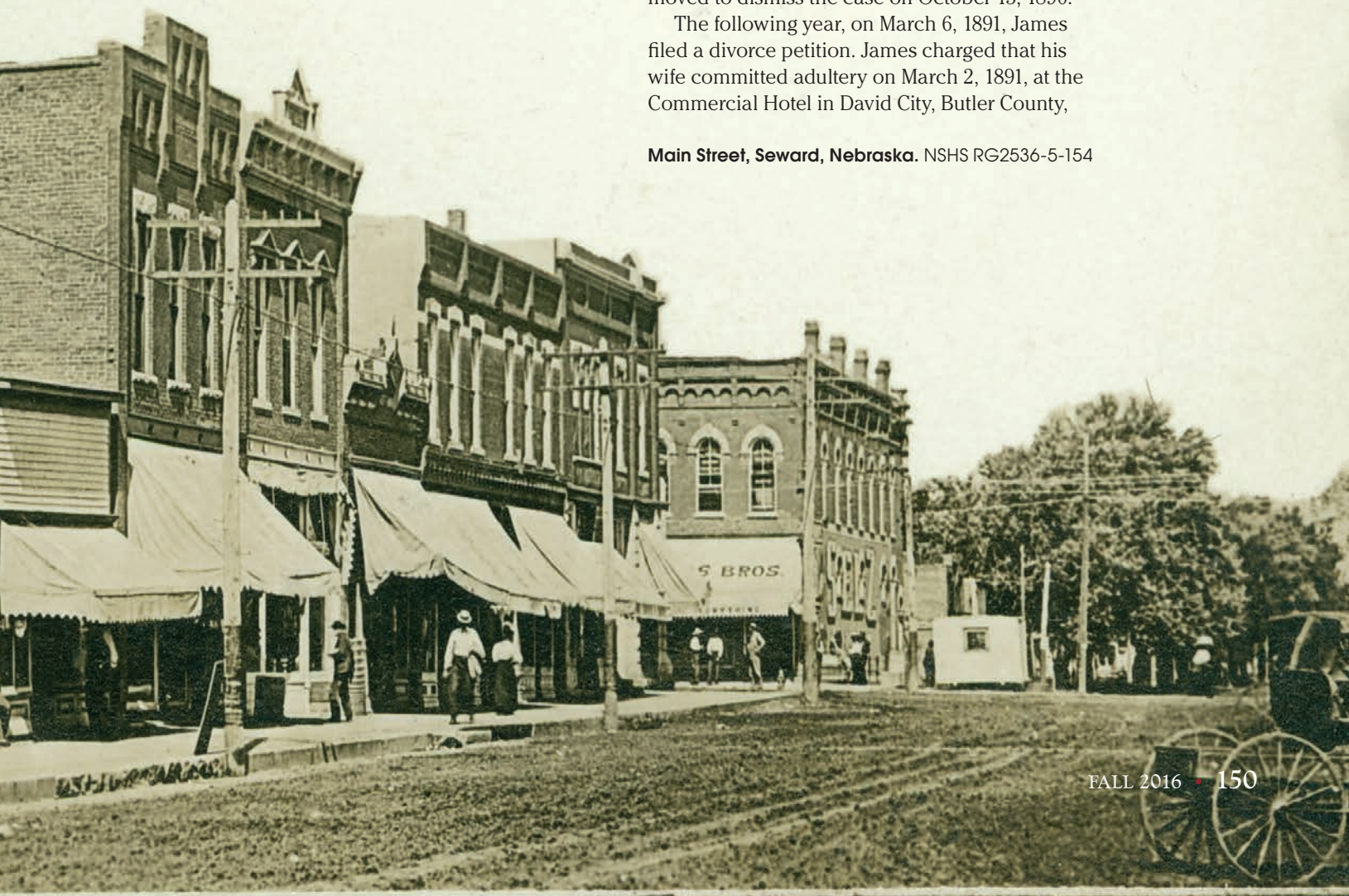
### 1869-1906

BY JERRALD K. PFABE

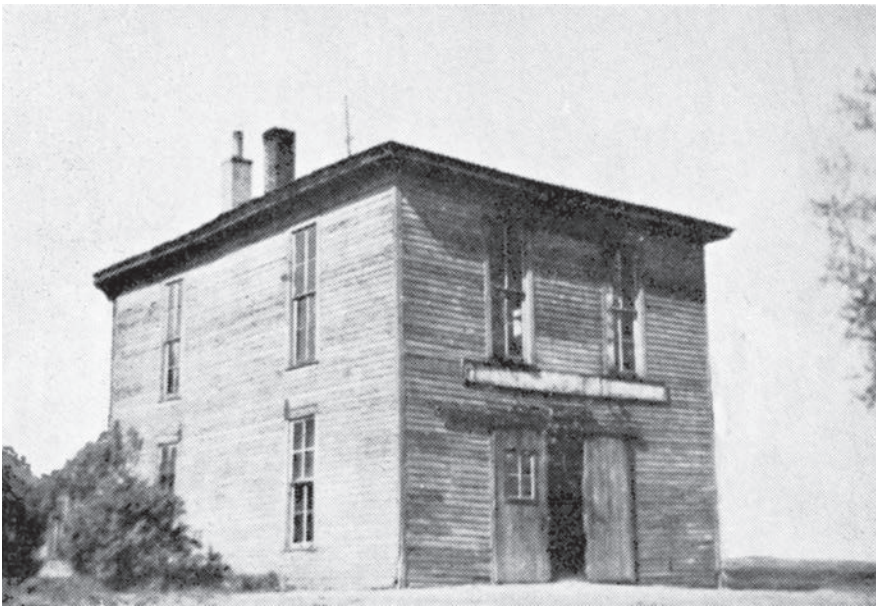
On April 19, 1890, Maggie Devore filed a petition for divorce from her husband James Devore, initiating what proved to be among the most complex divorce procedures in Seward County from 1869 to 1906, the years of this study. Maggie charged James with extreme cruelty, accusing him of striking and knocking her down. She asserted that he had a violent, ungovernable temper, aggravated by intoxication, and used vile and abusive language toward her, such as “damned old whore.” James answered that Maggie engaged in adulterous conduct, claiming that she was “willing to lie down in the street with any man.” He accused her of giving him a venereal disease that he had contracted in January of 1890. She denied the charges, arguing that he just wanted to disgrace her. For unknown reasons, Maggie, the plaintiff, moved to dismiss the case on October 13, 1890.

The following year, on March 6, 1891, James filed a divorce petition. James charged that his wife committed adultery on March 2, 1891, at the Commercial Hotel in David City, Butler County,

Main Street, Seward, Nebraska. NSHS RG2536-5-154







**The first Seward County Courthouse, built for \$1,400 after Seward became the county seat following an 1871 special election. The building is shown here after the county sold the building to a local blacksmith in 1880s. After that, county offices had no permanent home until the current courthouse was built in 1905-07. NSHS RG2536-5-17**

with an unknown man. Maggie responded with an answer and cross petition, denying each allegation and repeating her previous charges against him. Furthermore, she claimed that he refused to provide her with support and maintenance.

On April 4, 1891, James Devore replied to his wife's answer, denying each charge. Referring to Maggie's 1890 petition, he noted that he and his wife had requested a dismissal in that divorce suit and that she had continued to cohabit with him until March 2. By doing so, he contended, she forgave the charges she had made against him earlier. He admitted that he had contracted a "loathsome venereal disease," again claiming that he could have contracted it only by cohabiting with his wife.<sup>1</sup>

That complicated story, to which we will return for its surprising outcome, is but one of the 294 divorce cases that were filed in the Seward County District Court from 1869 to 1906.<sup>2</sup> This study examines all of those cases, describing the major causes of divorce and the outcomes of the complaints. It examines several facets of the divorce process—sex of petitioners and awardees of decrees, length of marriage prior to divorce, alimony, awards of child care and custody, and restoration of maiden names. When possible, it compares the statistics with those of the state of Nebraska and the nation. Finally, it moves beyond statistics, as useful as they are, to examine the "human" experience of fractured marriages as revealed in petitions, answers, and court proceedings.

This research reveals that Seward County generally reflected the patterns of divorce in the state of Nebraska, specifically in terms of causes that precipitated divorce and the length of marriages prior to a decree of divorce. It did not stand out as significantly different from the state. As to the United States, Seward County was quite similar in terms of gender identity of petitioners of

divorce, but highly divergent in the frequency of divorce. Although the county was not unique, such a case study has value in assisting us to understand some of the dynamics at work in troubled marriages in Nebraska in the latter decades of the nineteenth century and the early years of the twentieth century.

### **Seward County lies directly west**

of Lancaster County, home of the capital, Lincoln. Its current boundaries were established in 1856, when Nebraska was still a territory. Initially named Greene County, the county was renamed after William Seward, a leading antislavery politician and Secretary of State in the Lincoln Administration. Before 1869 judicial matters for Seward County were handled in Lancaster County.<sup>3</sup>

In October 1865 Seward County began the process of political organization with the election of its first board of county commissioners. Only twenty-four votes were cast. The first district court met in Milford in November 1869, with George B. Lake the first judge, Thomas West the first county clerk, and Frank Ellsworth the first district attorney. During that session the district court issued its first divorce decree. Beginning in the spring of 1871 the district court met in Seward.<sup>4</sup>

The territorial legislature of Nebraska established the basic framework for divorce in 1855-56. This framework continued with only minor changes throughout the period studied in this project. Nebraska accepted the basic concept of "fault divorce" used in varying ways throughout the United States at that time. Divorce in Nebraska could be granted for the following causes:

1. imprisonment for life; no pardon would restore the pardoned to conjugal rights;
2. adultery by either party in the marriage;
3. physical incompetence at the time of the marriage;
4. imprisonment for three or more years;
5. willful abandonment without good cause for at least two years;
6. habitual drunkenness;
7. extreme cruelty and/or violence;
8. failure by a husband of sufficient ability to provide for his wife suitable maintenance or who "grossly or wantonly and cruelly" refuses or neglects to do so.

Nebraska statutes required that the complainant, or petitioner, must have lived in the territory or state for at least six months. The

law gave the district court the power to decide the distribution of property, child custody, alimony, and to require a husband to pay for costs to enable his wife to carry out the cause. Nebraska law permitted both absolute divorce and “bed and board divorce,” a legal separation in which the husband was to provide support for his wife. There were no cases of the latter in the county during the years of this study.<sup>5</sup>

The divorce procedure began with the filing of a petition by the plaintiff with the district court. The petition affirmed the residency requirement, cited the date and place of marriage, and explained, usually in standardized legal language, the reasons the plaintiff was seeking a divorce. Then a request for “precipe”—a request by the plaintiff to a court officer to issue a writ—and/or summons was issued, often on the same day that the petition was filed. The sheriff would attempt to deliver the summons, which stated that the defendant had a specific period of time to answer the petition and file a counter-petition. The summons stated clearly that if the defendant did not respond, “such petition will be taken as true, and judgment rendered accordingly.”<sup>6</sup> If the summons could not be served, notice of the petition and its complaints would be published three times in a local newspaper, “hanging out the dirty laundry” of the defendant, so to speak. The plaintiff could reply to an answer and file an expanded petition. In some cases the plaintiff and/or the defendant would have depositions from friends or relatives filed on his or her behalf. For defendants who took no action, the court normally issued a default, accepting the petition’s complaints as valid. Finally there would be a court hearing. (Court records from those years do not provide stenographic accounts of what transpired at the hearings.) The judge then issued a decree of divorce, or, in some cases, dismissed the cause.

In Seward County from 1869 to 1906, 206 of the 294 petitions seeking a divorce (70 percent of the total) were filed by wives; 88 (30 percent) were filed by husbands. These percentages are similar to those statewide in those years in which 71.8 percent of the petitions were filed by wives and 28.2 percent originated with husbands.<sup>7</sup>

Of these 294 divorce petitions filed with the Seward County District Court, 239 resulted in divorce decrees. In all but eight decrees the decisions were awarded to the plaintiffs. Historian Glenda Riley notes that in the years

1867-86, women obtained two-thirds of the divorces in the United States, a figure similar to the 63 percent in Seward County. Forty-three of the Seward cases resulted in dismissal, usually based on a motion by the plaintiff. Twelve cases were discontinued. In discontinued cases, after the petition was filed, there is no further documentation in court records such as the Appearance Docket or the Court Journal. We know nothing about why the plaintiff did not pursue his or her cause. Inability to pay court and attorney fees could be a possibility, but this is only conjecture. Default, also called uncontested, cases were common. From 1869 to 1906, 185 of those 239 cases, or 77.4 percent, were defaults. This same percentage holds true for the period 1887-1906, during which 79.8 percent of cases in the entire state were uncontested. Nationally 15.4 percent of divorce cases were contested, contrasted to 22.6 percent in Seward.<sup>8</sup>

From the filing of a petition until a decree of divorce, the judicial process had a mean length of only 3.7 months, with 52 percent of the cases concluded in two months or less. Of cases involving default, 57 percent were decided in less than two months. Cases that involved answers, cross petitions, replies, and depositions prolonged proceedings. Twenty-six of the divorce cases required seven or more months. The longest process was thirty-five months.<sup>9</sup>

The percentage of marriages that ended in divorce is difficult to measure. Historians and sociologists have used different methods to measure this. An imperfect but still useful tool is to compare the number of marriage licenses issued in Seward County with the number of divorce decrees granted in specified years.<sup>10</sup> The following table shows this comparison in five-year periods.

**TABLE 1: Marriage Licenses Issued and Divorce Decrees in Seward County, 1872-1906<sup>11</sup>**

Years	Marriage Licenses Issued	Divorce Decrees Granted	Percentage of Divorce Decrees to Marriage Licenses
1872-76	298	14	4.7
1877-81	402	24	6.0
1882-86	590	42	7.1
1887-91	649	40	6.2
1892-96	588	35	6.0
1897-1901	674	43	6.4
1902-06	712	39	5.5

We can also compare the number of divorces with the number of marriages from 1887 to 1906. These numbers are similar to those of marriage licenses, but slightly lower.

**TABLE 2: Number of Marriages and Divorces in Seward County, 1887-1906**

Years	Marriages	Divorce Decrees Granted	Percentage of Divorce Decrees to Marriages
1887-91	638	40	6.3
1892-96	578	35	6.1
1897-1901	669	43	6.4
1902-06	702	39	5.6

Glenda Riley asserted that in the 1880s one in fourteen marriages ended in divorce, and that by 1903 the number had risen to one in seven. If this is accurate, then Seward County's rate is considerably lower, especially for the latter years. Seward did not experience that sharp increase in the incidence of divorce from the 1880s to 1902-06. Seward's divorce rate from 1882 to 1891 averaged 6.6 percent of marriages.<sup>12</sup>

How long did marriages last prior to divorce? In Seward County marriage length ranged from four-and-one-half months to almost forty-one years. Barbara Reidmeier filed a petition for divorce on May 10, 1888, less than two months after she married George Reidmeier on March 21, 1888. The court granted her a divorce on August 6. She had brought four minor children from a previous marriage to her new marriage. She complained of extreme cruelty on the part of her husband: assault, beatings, and a threat to burn down their house and to kill her and injure her children. Her husband denied these allegations and claimed that his wife had a violent and uncontrollable temper, that she struck him with a water basin, that on occasion she refused to prepare meals for him, and that she tried to drive him out of the house. Barbara, in turn, denied these allegations. The district court sided with her and granted her the divorce.

On the other end of the marriage continuum, Isabella and Joseph Silvers had been married almost forty-one years. She charged her husband with verbal cruelty, stating that he had a violent temper, that he used vile language in the presence of their adopted child, and that he called her "old slut" and "no more than an old nigger." Joseph did not answer her petition. The court declared default against him and awarded the plaintiff the divorce, alimony, and child custody.<sup>13</sup>

**Seward town square before the courthouse was built.**  
NSHS RG2536-5-35





**TABLE 3: Length of Marriage Prior to Divorce Nebraska and Seward County, 1867-1906<sup>14</sup>**

Nebraska			Seward County		
Years Married	Divorces	Percent of Total		Divorces	Percent of Total
0-2	2668	14.0		25	10.6
2-4	3335	17.4		48	20.3
4-6	2698	14.1		22	9.3
6-8	2054	10.7		27	11.4
8-10	1615	8.4		17	7.2
10-12	1347	7.0		28	11.9
12-14	1060	5.6		17	7.2
14-16	786	4.1		5	2.1
16-18	688	3.6		10	4.2
18-20	590	3.1		7	3.0
20+	2284	12.0		30	12.7
<b>Totals*</b>	<b>19125</b>			<b>236</b>	

*\*Does not include 620 marriages of unknown length for the state, and three marriages for the county.*

Table 3 allows us to compare the length of marriage prior to divorce in the state of Nebraska and in Seward County. The percentage of marriages of fewer than two years was higher in Nebraska than in Seward County (14 percent to 10.7 percent), but the difference was essentially equalized by the end of four years of marriage. Seward had a much lower percentage than Nebraska in the four to six year period, but a much higher figure in the ten to twelve- year range. A slightly higher percentage of longer-term marriages, twenty years-plus, ended in Seward than in the state as a whole. The median length of marriage prior to divorce in Nebraska was about 9 years, in Seward County 7.75 years.<sup>15</sup> Overall, differences between the two entities were not striking.

However, some major differences appear when comparing mean length of marriage before divorce from selected years of Seward County and the United States as a whole. In 1887 the length of marriage before divorce in the United States was 8.0 years. In Seward County from 1887 to 1891 it was 11.0 years. The national average in 1905 was 8.3 years, while in Seward from 1902 to 1906 it was 11.3 years. Marriages tended to last longer before divorce in the county than they did throughout the nation.<sup>16</sup>

An unanticipated facet of Seward County divorce cases was repeated efforts to gain a divorce after an unsuccessful first attempt. Nine couples in Seward County were involved in this duplicated process. In November 1873 Julia Leggett petitioned for a divorce from James Leggett on grounds of cruelty and refusal to support. The case was summarily dismissed. Two years later James filed for divorce on grounds of abandonment. James was awarded a divorce on default.<sup>17</sup> In November 1880 Theresa Heflin sued her husband George on grounds of desertion. The court decided that George was not guilty. Four months later Theresa renewed her desire for divorce, again on grounds of desertion as well as failure to support. This time she gained her divorce on default.<sup>18</sup> Flora Hale petitioned twice (1889 and 1890) for divorce from her husband Isaac, also on grounds of desertion.<sup>19</sup> In 1894 David Stall sought divorce from his wife Fannie, claiming that she had committed adultery and was cruel. The court dismissed his case. Six months later Fannie entered a petition against David on grounds of cruelty. She won her case and was awarded custody of their two children.<sup>20</sup>

Sarah Ashton filed for divorce from Mark (or Marquis) in June 1897, but moved dismissal. Less than a month later, her husband Marquis petitioned



**Interior of Fred Trute's  
liquor store, Seward.**  
NSHS RG2536-5-10

for termination of their marriage, charging her with having a violent temper, using obscene language, and committing adultery. The court granted him a divorce.<sup>21</sup> Millie and Willis Shattuck went through three cases before their marriage was terminated. In the first she stated that her husband insisted that she have an abortion, which she refused to do; then he did not provide support for her and the child. Although Willis was in default, Millie moved to dismiss the case. Almost two years later, in 1900, Willis sought a divorce because of willful desertion, but in less than a month he requested dismissal. On the same date that the case was dismissed, Millie filed a divorce petition, claiming that Willis had deserted her and failed to provide support. Default was ordered against Willis, and Millie secured her divorce.<sup>22</sup>

An aggregate summary of the causes for divorce as stated in the petitions of the individuals, primarily wives, who filed for divorce in Seward County from 1869 to 1906 is provided in Table 4.

**TABLE 4: Causes of Divorce in  
Seward County, 1869-1906  
Instances Recorded in Petitions<sup>23</sup>**

Adultery	48*
Desertion	104
Failure to Support	110
Cruelty	129
Imprisonment	4
Excessive use of alcohol	38
Physical Incapacity	2

*\*Of the 48 instances of alleged adultery, 31 of the petitioners identified the wife as the guilty party, and 17 identified the husband. In some cases the defendant in his/her answer also accused his/her spouse of adultery.*





Clearly these causes far exceeded the number of divorce petitions. Most petitioners claimed more than one reason for seeking a divorce. For example, in the thirty-eight petitions that complained about excessive use of alcohol, twenty-four also accused the defendant of excessive cruelty, an expected

combination. The most common causes cited were cruelty, failure to support, and desertion or abandonment. Other factors were far less frequent.

Table 5 compares the causes of divorce in the county with those in the state of Nebraska as a whole from 1887 to 1906.

**North side of Seward town square, 1900.**  
NSHS RG 2536-5-53

**TABLE 5: Causes of Divorce: Nebraska and Seward County Compared, 1887-1906**

Cause	Nebraska	Percentage	Seward County	Percentage
Adultery	1436	8.7	16	10.2
Cruelty	4147	25.2	50	31.8
Desertion	5677	34.6	47	29.9
Excessive use of alcohol	623	3.8	12	7.6
Failure to Support	2489	15.2	22	14.0
Physical incapacity	0	0	1	0.63
Combination of causes	2044	12.4	6	3.8
Unknown	0		3	1.9
<b>Totals</b>	<b>16416</b>		<b>157</b>	

Theophilus L. Norval, attorney and judge. He and his brother, Richard S., also a lawyer, were involved in many local divorce cases. T. L. Norval served as district court judge from 1883 to 1889, when he was elected to the Nebraska Supreme Court. From Andrew Wolfenbarger, *Nebraska Legislative Year Book for 1897* (Lincoln, NE: 1897), 217.



Comparison of Nebraska statistics on causes of divorce is difficult because of differences of reporting found in the Census Bureau study and the Seward County petitions. The above statistics for Nebraska, except for the last line before totals, show single causes, with combinations of causes making up 12.4 percent of the total. However, in Seward County, combination as “principal cause” made up 3.8 percent of the petitions. There were no instances of excessive use of alcohol as the single cause of divorce in Seward County from 1887 to 1906, yet excessive use of alcohol appeared as one of the complaints in thirty of the divorce petitions during those twenty years. It is unclear whether lawyers in counties outside of Seward approached the writing of petitions differently, whether plaintiffs tended to mention only one factor, how the Census Bureau agents compiled their information, or whether the situations simply were different. In an attempt to make the statistics more comparable, this study used the first cause listed in the petition, or the cause listed in the Court Journal, as the principal cause, even though other causes were listed in the petitions. Some general parallels are apparent in the incidence of adultery, desertion, cruelty, and failure to support.<sup>24</sup>

**The cumulative statistical** information regarding divorce is revealing. However, it fails to disclose the “personal/human” elements of divorce cases. Examination of selected divorce cases based on specific causes aids understanding of what was happening in troubled marriages in Seward County. It is important to remember that the petitions and answers are personal accounts, which may not be fully accurate. When a defendant answered a petition, one of the common assertions was that he or she “denies each and every allegation.” Clearly, someone was not telling the truth. First, we will consider cases in which adultery was one of the causes.

Adultery was a factor in forty-eight of the cases. The first divorce decree issued by the new Seward County District Court was for Catherine Coon, who charged her husband with committing adultery with Anna Smith in York County.<sup>25</sup> Several of the petitioners identified the individuals with whom their spouses had committed adultery: the wife of Amos Burnett with Charles Sharke—in three different locations; the husband of Mary Landon with Louisa Lake. Charles Hildreth accused his wife of both adultery with a number of men and involvement in a house of prostitution on Roberts Street, an operation raided by the local police. Charles Peterson complained that his wife Minnie had committed adultery with C. A. Nichol and others, and that she now was an “inmate” in a “sporting house” in Lincoln.<sup>26</sup>

Marquis Ashton accused his wife Sarah of keeping company with other men. She denied the allegations; her fifteen-year-old daughter defended her mother in a deposition. However, a son of the couple, in another deposition, said that he saw his mother removing her clothes, getting into the bathtub, and being bathed by Dan Coleman. At another time he saw Coleman kissing and fondling his mother, and that on other occasions he carried notes from his mother to other men.<sup>27</sup>

There were two cases in which husbands—Elmer Trabert and Charles Palmer—were unaware before they married that their wives were pregnant by other men. Palmer said his wife gave birth to a child six months after their wedding, but that he was not the father.<sup>28</sup>

Charges of extreme cruelty, violence, and threats of violence frequented the petitions of spouses seeking divorce. Accusations of the use of vile and vulgar language were common. Some of the crude expressions were: “A Goddam bitch”; “God damned fool”; “a good for nothing bitch”; “a



God-damned old cheap screw”; “A God-damned rotten bitch”; and “a lying devil.”<sup>29</sup>

Charles Hodge claimed that when he was sick in 1876, his wife refused to care for him and said that if did not die soon, she would kill him.<sup>30</sup> Other plaintiffs complained of threats of being killed.<sup>31</sup> Threats often became actual violence. The husband of Ida Rodgers pushed his pregnant wife down an embankment, causing, she said, a premature birth. She also accused him of hitting her on the head with a poker. Mary Rank stated that she was about to give birth when her husband threw her on the bed and forced her to have sex with him and that shortly afterwards he forced her to load hay while she was still nursing their child.<sup>32</sup>

Olive Myers said that after she became pregnant in January 1894, her husband forced her to take medicine to cause an abortion. On May 26 a physician came to their house to perform an operation on her. She stated that the next day the same physician took a “vitalized embryo.” Olive feared her life would have been in danger if she had refused the procedure. Her husband told her that if she became pregnant again she would have to have another abortion.<sup>33</sup>

Religion was a central cause of friction between Mary Ellen and Charles Flack. Charles objected to his wife joining the United Evangelical Church in Beaver Crossing. He threatened to leave her if she joined. She persisted and was baptized at the church, whereupon her husband threatened to hit

her and called her vile names in the presence of their children and household guests.<sup>34</sup>

Somewhat less dramatic was the case of Harry and Emma Jones. Harry, president of Jones National Bank in Seward, said that Emma was sociable prior to their marriage. Before their wedding he built her a fine new house, which still stands, recently restored. Harry claimed that her personality changed after they married. According to him, she withdrew from society and would not go on trips or visit his relatives. She locked the doors of the house and would not receive callers. She refused to care for his sick mother. In her answer to the petition, Emma Jones denied her husband’s allegations. She said that she had not traveled with her husband because he would not take her along, although she was willing to accompany him. She claimed that he had refused to take her to the theater and other entertainments, and that he had deprived her of the right to control and manage their house. Despite her answer, the court awarded the divorce to Harry Jones, but required him to pay his ex-wife alimony of \$16,500.<sup>35</sup>

Petitions for divorce based on abandonment or desertion were numerous but typically brief, offering little detail. In her petition, Mabelle Bishop stated simply, “The defendant disregarding his duties as a husband on the 5<sup>th</sup> day of March 1895, willfully abandoned the plaintiff and for more than two years past has been willfully absent from



**A young Harry Jones before he was married. Years later, when he was a bank president, the court granted his petition for divorce but he was required to pay alimony of \$16,500. Author’s collection**



**Attorney Richard. S. Norval’s home in Seward.**  
Courtesy of Mark Kolterman, Seward



**Unidentified man  
and woman in Seward.**  
NSHS RG2536-5-154

her without reasonable cause.” These petitions faithfully followed the legal requirement that the desertion had to have occurred at least two years prior to filing for divorce. One unusual instance of desertion was that experienced by Isabel Johnson. Her husband Orion deserted her and their children while they were on a train returning from Sacramento, California.<sup>36</sup>

Physical incapacity appeared as a cause of divorce in only two cases. William Berdolt claimed that his wife Monnie was physically incapable of consummating their marriage through sexual intercourse. By common agreement of the two parties the court appointed two physicians to examine her. Their report concluded that there was no physical problem and that Monnie was capable of “entering marriage and performing her duties.” The court found in favor of the defendant and awarded her a divorce plus a sizable alimony.<sup>37</sup>

The plaintiff in an unusual case was Beata Mueller, a German immigrant who moved from Minnesota to Seward County in response to an

advertisement to be a housekeeper for Michael Mueller, a nearly blind seventy-year-old who was in poor health. She worked for seven weeks and then they married. In her petition she said that Michael accused her of trying to poison him and having illicit intercourse with the defendant’s son. In his answer, he denied the charges and argued that she married him to get a large alimony. In her amended petition, Beata contended that Michael was not sexually able to consummate the marriage. In his amended answer, he charged her with committing adultery in the Arlington Hotel in Lincoln and at other times. The court found in favor of the defendant Michael in this case and rejected Beata’s request for alimony.<sup>38</sup>

**In addition to analyzing the** causes for divorce in Seward County, the outcomes of divorce decrees, namely alimony, child custody, and restoration of maiden names were also examined.



Nebraska law allowed for possible support for the wife and minor children during divorce proceedings and following divorce decrees. It gave the county district court considerable discretion and freedom in these matters. The court could require the husband to pay necessary costs that his wife incurred during the legal process, such as attorney's fees and court costs. After divorce the wife was entitled to immediate possession of all her real estate, except when she had committed adultery. The court had the prerogative to restore to the woman all or part of the real estate that came to the husband "by reason of marriage," or it could award to the wife the value of the real estate. If the wife's property was inadequate to support her and any minor children awarded to her custody, the court could assign her part of the "personal estate" of the husband, except when the wife was guilty of adultery. Normally the amount of support was for the court to decide. Finally, when alimony was granted, the court could require sufficient security from the husband, such as a lien on property, to assure that the wife would receive the payment the court awarded her.<sup>39</sup>

Of the 206 petitions for divorce filed by wives, only fifty-five of the women requested alimony or payment of attorney fees and court costs. In their petitions, many of the plaintiffs provided detailed information on the real and personal property owned by their husbands to support their request for alimony. The district court awarded alimony and/or child support in forty of those cases but denied it in fifteen. In two of the denied requests, adultery on the part of the woman disqualified her for alimony, but the court did allow payment to these women for court costs.<sup>40</sup> In other cases records do not explain why the court did not grant alimony.

There are striking contrasts between U.S. and Seward County alimony patterns. In the period 1887-1906, the percentage of divorce cases nationally in which wives requested alimony was 13.2 percent; in Seward County it was 26.1 percent. In the U.S. the percentage of cases where alimony was refused was only 4 percent; in Seward County it was 24 percent.<sup>41</sup>

Alimony awards granted by the court varied significantly. In some cases it allowed funds only for court and attorney costs, but no alimony.<sup>42</sup> Some alimony grants were quite small, such as \$50 to \$100. Most ranged between \$200 and \$1,000.<sup>43</sup> A few were more substantial. Almena Lull received \$2,800. In her petition she stated that her husband owned property worth \$10,000. Monnie Berdolt

was granted \$5,000 cash plus household furniture valued at about \$1,000. She was one of the very few defendants to whom the court granted a decree of divorce. Barbara Conner received just over \$5,000, some household goods, and free home occupancy for a short time. Emma Jones received the largest alimony granted, \$16,500, even though she was the defendant in the case and her plaintiff husband was awarded the decree.<sup>44</sup> Overall one receives the impression that the court was not generous in its awards of alimony and child support. Nebraska law, as was true of laws of other states at that time, accepted the principle that husbands had the duty to support their wives, but grants of alimony usually were inadequate for the maintenance of the divorced wife and her children.<sup>45</sup>

Closely related to the issues of alimony and child support was that of custody and care of minor children. The Nebraska territorial legislature in 1855-56 addressed this question by giving the court power to determine child custody and care.<sup>46</sup> In 123 divorce cases, the plaintiffs requested the custody and care of minor children. In 100 (82.6 percent) of the cases the mother was granted custody. The father received custody in nineteen (17.4 percent) of the cases. The court did not respond to the request in two cases. In many of the petitions which requested custody the plaintiff included a "stock phrase" that the defendant was a person of vile and vulgar character and unfit to be a parent. This predominance of maternal custody mirrored the national culture that considered the mother as the appropriate custodial parent.<sup>47</sup> In a few divorce decrees the court divided custody between father and mother. Albert McKay received the custody of his two older children while his wife Mary was the custodian of the youngest child. Eva Franke was granted care of four of the couple's children, with the fifth child going to the father, Robert. Dolly Blanchard received custody of her young son until he was fourteen years old, after which he was to be under the care of his father, Joshua.<sup>48</sup>

In twenty-seven of the one hundred cases where the mother was to be the custodian and in three where the father was awarded the children, the court placed strict limits on the relationship of the non-custodial parent, declaring that there be no interference or meddling in the care of the child. In sixteen of those cases, extreme cruelty was one of the complaints against the defendants in the petitions. Late in the period studied, the court began to grant visitation rights to a few non-custodial fathers to maintain relationships with their children.<sup>49</sup>

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Almost one-quarter of the women who were plaintiffs sought restoration of their maiden name; the court generally was willing to grant that request. With no explanation the court either rejected or ignored five requests. There are some general broad tendencies among these petitioners. Twenty-seven, or 69 percent, did not have children. Twenty-three, or 60 percent, were married five or fewer years. However, many of the women did not fall into either category. Margaret Pett, for example, had been married twenty years, had three children, and still asked for a return of her maiden name.<sup>50</sup>

**We return briefly to the Devore** case that introduced this study. On April 9, 1891, during the couple's second divorce proceeding, the court ordered James to pay Maggie immediately \$100 for her defense costs. She brought a motion to the court on June 16 for a continuance, claiming that her husband did not carry out the order of April 9. She stated that the clerk of the district court refused to issue an execution of the order because he had no authority to do so. Maggie, the defendant, said that without the \$100, she could not have depositions taken from witnesses in David City on her behalf. Most important was the potential deposition of William Newell who was at the Commercial Hotel when Maggie allegedly committed adultery. On the same date, June 16,

she submitted an affidavit that asserted that if Newell could be present, he would testify that she had been sick and confined to her room. In another affidavit on that day, W. H. Miner affirmed that he saw Newell ready to leave on a train from David City and that he would be gone for ten to twelve days.

In an earlier affidavit from April 8, however, W. W. Hageman said that he borrowed \$100 from Maggie and that he was paying interest on it. He renewed the note on January 10, 1891. He stated that Maggie Devore told him about the pending divorce case and asked that he put the note in the name of her minor son, fearing that the authorities would require her to use the money for her defense if they found the note in her name. The district court rejected the motion for continuance.

On June 17, 1891 the district court ruled on the case, with both the plaintiff James and defendant Maggie present. The court determined that the evidence showed that Maggie had committed adultery with William Newell at the Commercial Hotel in David City. It found James DeVore not guilty of any of the charges made against him. The judge annulled the marriage, and because the defendant had committed adultery, she was barred from any claims on the plaintiff and would receive no alimony.<sup>51</sup>

In summary, Seward's divorce history from 1869 to 1906 was similar to some state and national

Harry and Emma Jones's house, mentioned in the divorce petition, was built in 1889-90 and is now listed on the National Register of Historic Places. Author photo







The present Seward County Courthouse was completed in 1907, just after the time period of this study. Built in the Classical Revival style, it is listed on the National Register of Historic Places. NSHS RG2536-5-142

trends. For example, the overwhelming majority of petitioners were wives, and they were awarded a substantial portion of the divorce decrees. The percentage of default cases in the county and the entire state from 1887 to 1906 was similar. The length of marriage prior to divorce in Seward and the state of Nebraska was generally parallel. Those women who had minor children typically received custody of them, again reflecting state and national patterns and cultural assumptions.

There were some contrasts. Seward's marriages prior to divorce tended to last longer than the national average. Seward's divorce rate was far lower than national averages. The percentage of contested (non-default) divorces was higher in the county than in the nation. Finally, the percentage of plaintiff wives who sought alimony was almost twice as high as in the United States, but the percentage of cases in which alimony was refused was much higher in Seward County.

When couples married, we can assume that it was a joyful, hopeful occasion and that the newlyweds anticipated years of happiness together. Unfortunately, in a small percentage of marriages that was not the case. Instead, married life brought troubles, disappointments, threats, and even physical injury. Seward County's divorces involved all of the causes of divorce that Nebraska law allowed. ■

## NOTES

<sup>1</sup> District Court of Seward County, Case File 1313; District Court of Seward County Journal, volume 5, 2, Case File 1423; Court Journal 5, 124, 161; Seward County District Court Record Book 12, 364-78. The key primary sources for this research are in the Office of the Clerk of the District Court of Seward County. The principal materials are: Case Files for each case, which contain petitions, answers and cross petitions, depositions and related materials; Appearance Dockets which provide a brief chronology of each case from petition to decree; Court Journals, which present the court's findings and decisions; and Record Books, which provide a full account of the case proceedings, from petition to decree. Unfortunately Record Books do not include every case. Hereafter in this study we will use the following abbreviations: CF for Case File; AD for Appearance Docket; CJ for Court Journal; and RB for Record Book.

<sup>2</sup> These time limits were chosen to correspond to those in the exhaustive study of the U.S. Bureau of the Census, Department of Commerce and Labor, Bureau of the Census, S. N. D. North, Director. *Special Reports: Marriage and Divorce, 1867-1906*, Part II—General Tables (Washington: Government Printing Office, 1908). This work makes possible some comparisons of divorce in Seward County with Nebraska statewide statistics and national data.

<sup>3</sup> Jane Graff, *On the Bend of the River: The Story of Seward and Seward County, Nebraska*, Edited by Stephen J. Korinko (Henderson, NE: Service Press, 1967), 2-6; W. W. Cox, *History of Seward County Nebraska and Reminiscences of Territorial History*, 2<sup>nd</sup> ed. (University Place, NE: Jason L. Caplan, 1905), 2-8; John H. Waterman, *General History of*

*Seward County, Nebraska* (Beaver Crossing, Nebraska: n.p., 1914-1920), 139.

<sup>4</sup> Graff, *Bend of the River*, 11; Cox, *History*, 339-40.

<sup>5</sup> *Laws, Resolutions and Memorials Passed at the Sessions of the Territorial and State Legislatures of Nebraska, Vol. 1* (Lincoln, NE: Journal Company, State Printers, 1885), 277-80, 880-82; *Laws, Resolutions and Memorials Passed by the 11<sup>th</sup> Session of the Legislative Assembly of the State of Nebraska* (Omaha: Omaha Daily Republican, State Printer, 1875), 79-80. When wives were the guilty party in cases of adultery, they were not entitled to alimony. Glenda Riley notes that divorce statutes in Iowa in 1842-43 listed eight reasons for divorce, similar to that of southern states and to what Nebraska would adopt a few years later. *Divorce: An American Tradition* (New York, Oxford University Press, 1991), 47. Laws in early in U.S. history obliged husbands to support wives and their families. See Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: The University of North Carolina Press, 1986), 76-77, and Lenore J., Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985), 2. By 1842 Ohio had adopted an almost identical list of causes of divorce; see Martin Schultz, "Divorce in Early America: Origins and Trends in Three North Central States," *The Sociological Quarterly*, 25, no. 4 (1984): 517.

<sup>6</sup> CF 1715.

<sup>7</sup> Aggregate statistical summaries for Seward County have been derived from the documentary materials described above in the Office of the Clerk of the District Court, hereafter cited as District Court Records; *Marriage and Divorce*, 558; *Time* magazine reported that in recent years the same pattern continues, with 69 percent of divorce proceedings being initiated by the wife. *Time*, Sept. 7-14, 2015, 10.

<sup>8</sup> *Marriage and Divorce*, 174; Riley, 79; Alexander A. Plateris, *100 Years of Marriage and Divorce Statistics: 1867-1967: A Century of Data*. (Rockville, MD: U.S. Department of Health, Education, and Welfare, 1973), 19.

<sup>9</sup> District Court Records.

<sup>10</sup> Based on records in the Office of the Seward County Clerk and District Court Records.

<sup>11</sup> I did not include the three cases from 1869 through 1871 because the Seward County District Court did not issue its first divorce decree until 1869; there was not a full five-year period to include.

<sup>12</sup> District Court Records; *Marriage and Divorce*, 809; Riley, *Divorce*, 94, 100. I used the years 1887-1906 because the Census Bureau included only these years.

<sup>13</sup> CF 1098; RB 9, 213-19; CJ 4, 279.

<sup>14</sup> District Court Records; *Marriage and Divorce*, 584.

<sup>15</sup> The calculation of the median length of marriage prior to divorce in the state of Nebraska is less precise than that of Seward County. I was able to calculate the length of marriage in Seward County by using each case. For Nebraska I had to use aggregate figures based on two-year categories.

<sup>16</sup> Plateris, *100 Years*, 14.

<sup>17</sup> CF 130, 144; RB 1, 277-81; CJ 1, 164.

<sup>18</sup> CF 567, 595; CJ 2, 468, 518.

<sup>19</sup> CF 1174, 1286; CJ 4, 580, 585.

<sup>20</sup> CF 1715, 1756; AD C, 66; CJ 6, 221.

<sup>21</sup> CF 2040, 2049; AD D, 64, 74; CJ 7, 269. Sarah Ashton used the shortened form of her husband's name, Marquis, in her petition.

<sup>22</sup> CF 2094, 2227, 2230; AD D, 260; CJ 7, 339, 385; CJ 8, 52.

<sup>23</sup> District Court Records.

<sup>24</sup> District Court Records; *Marriage and Divorce*, 44-45, 126-27, 174.

<sup>25</sup> CF 7.

<sup>26</sup> CF 307, 545, 1436, 2180.

<sup>27</sup> CF 2049.

<sup>28</sup> CF 2158, 2363.

<sup>29</sup> CF 1650, 1805, 2345, 1505, 2134; Glenda Riley notes that by the second half of the nineteenth century, many judges believed that a husband calling his wife "whore" and "slut" constituted cruelty. *Divorce*, 82.

<sup>30</sup> CF 547.

<sup>31</sup> CF 1720, 1779, 2159.

<sup>32</sup> CF 82, 83.

<sup>33</sup> CF 1872. Note: this case was discontinued. The summons was not served due to non-payment of fees.

<sup>34</sup> CF 2159.

<sup>35</sup> CF 2271.

<sup>36</sup> CF 2302, 761.

<sup>37</sup> CJ 6, 338, 360.

<sup>38</sup> CF 2324, CJ 8, 295, 303, and 305.

<sup>39</sup> *Nebraska General Laws*, 1864, 881.

<sup>40</sup> CF 2324; CJ 5, 124, 161; RB 12, 364-78; CF 2324; CJ 8, 295, 303, 305.

<sup>41</sup> District Court Records; Plateris, *100 Years*, 19.



<sup>42</sup> RB 12, 364-78; CJ 5, 124, 161; CJ 8, 542; CJ 8, 295, 303, 305.

<sup>43</sup> District Court Records; CJ 4, 556; CJ 7, 552; CJ 8, 581.

<sup>44</sup> CJ 6, 360; CJ 8, 63, 230, 670.

<sup>45</sup> Joan Hoff, *Law, Gender and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991), 133; Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: The University of North Carolina Press, 1986), 76-77; Lenore J. Weitzmann, *Divorce Revolution*, 2, 11; Riley, *Divorce*, 49-50.

<sup>46</sup> *Laws, Resolutions, and Memorials, Vol. 1*, 278.

<sup>47</sup> District Court Records; Weitzman, *Divorce Revolution*, 11.

<sup>48</sup> CJ 2, 189-90; CJ 7, 327-28; CJ 8, 177.

<sup>49</sup> CJ 7, 327-28; CJ 8, 143-44, 370.

<sup>50</sup> District Court Records; RB 1, 146-52.

<sup>51</sup> CF 1423; CJ 5, 124, 161; RB 12, 364-78.

