

Roots in river city

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School integration had a humble start here

(EDITOR'S NOTE: This is the first of two stories marking Black History Month that examine the historical efforts of Ottawa to provide for an equal education for all its children.)

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Herald Staff Writer

One of the cornerstones of equality between blacks and whites was laid in Franklin County.

The exploits of the abolitionist John Brown, who led the Pottawatomie Creek Massacre and other exploits in this area during the Border Wars of the 1840s, are well documented and famous. So is the influence of the Border Wars in leading to the Civil War.

What isn't so famous is a court case involving the Ottawa Board of Education, District No. 30, and the black residents of the city that occurred in 1881. Two rulings were issued. The first, in Franklin County District Court, was appealed to the Kansas Supreme Court, for which an Ottawa man, Associate Justice Daniel M. Valentine, wrote the majority opinion. Both appear to be landmarks in the early days of integration.

At the time of the rulings, white students attended classes at Central School, which stood at Fifth and Main where Ottawa Middle School now is, and a former school in the 300 block of Walnut. The black children attended classes in the White School House, which apparently was located somewhere on the property now occupied by Peoples National Bank. The frame building originally had been the Cumberland Church in Ottawa's earliest days. Only grades one through six were segregated, but many children — including most of the blacks — left school to go to work after sixth or seventh grade.

Andrew Kull, a law professor at Emory University, Atlanta, Ga., has been research-

ing early desegregation cases, including the Ottawa case, for a book, "The Colorblind Constitution" that will be published by Harvard University Press in August. He highly touts the two rulings on Leslie Tinnon vs. the Ottawa Board of Education. Leslie was a boy, and his father, Elijah, had pressed the case on behalf of all the black people of Ottawa.

Kull told *The Herald* in a telephone interview this week that there aren't many lawsuits involving integration this early in the country's history, and just a handful involve segregated schools.

The 14th Amendment, providing that no state shall abridge the privileges or immunities of citizens, deprive any person of life, liberty or property without due process or deny equal protection under the laws, was ratified in 1868. Kull said that while one might think today it would be obvious that this amendment would argue against segregation, that wasn't the case in the 1870s and 1880s.

"It turns out that it was relatively rare to put these arguments in constitutional terms," he said. "They were argued more under state laws."

That's why the ruling by Franklin County District Court Judge Nelson T. Stephens is so unusual, Kull said. Stephens served here as the district court judge from 1876 to 1884.

"It's one of the few cases where a constitutional argument is raised," Kull said, adding, "It appears to be the first case anywhere about school segregation using the 14th Amendment."

Associate Justice Valentine, who previously served as Franklin County District Court Judge from 1865-1869 and still resided in Ottawa, argued in the State Supreme Court's majority opinion for the integration of the schools on the basis that the state legislature had not provided second-class cities with the

right to segregate schools. That right was given only to first class cities, of which there was only one at the time the law was passed: Leavenworth, the former pro-slavery capitol of Kansas.

Both rulings cite the important integration cases that have led the nation: The Slaughter-House Cases and *Strauder v. West Virginia*. These same cases are cited in *Brown v. the Topeka Board of Education*, the 1954 case that went to the U.S. Supreme Court and which struck down the "equal but separate" doctrine.

The "equal but separate" doctrine, which wasn't recognized by the U.S. Supreme Court until 1896, was essentially the argument of the Ottawa school board and its attorney, H.C. Mechem. The plaintiffs' attorney was John W. Deford, who argued the 14th Amendment. Both attorneys were from Ottawa.

Here is a portion of Judge Stephen's words in the ruling he issued in January 1881, on *Tinnon v. the Ottawa Board of Education*. He is quoted from the Jan. 19, 1881, edition of the *Ottawa Daily Record*, which had printed the entire ruling on Page 2 that day:

"In the case at bar the School Board of the city of Ottawa have enacted a rule within the letter of the authority given them by the State law; that rule is the legislation of which the relator complains. It is a rule plainly discriminating against the relator on account of his race or color, pointing out himself and others of his class, by reason of their color, as not being eligible to school privileges with white children.

"It is no answer to the proposition to say that white children are excluded from the African school room. It is evident as to the purpose of the rule. Under the construction the Supreme Court of the United States has put upon the 14th Amendment of the constitution it is evident to every mind that the Legislature of the State of Kansas had no power to confer authority upon the School Board of the city of Ottawa to make the order

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complained of. The rule itself is a violation of the rights conferred by the 14th Amendment, and is inoperative and void."

Valentine's majority opinion for the State Supreme Court, issued in July 1881, reinforced the state law that prohibited segregation in cities of less than 15,000 population, the same law attacked in *Brown v. the Topeka Board of Education*. Some of Valentine's thoughts would be reflected in the 1954 case. . . 73 years later:

"The tendency of the present age is not to make any distinctions with regard to school children, except to classify them with reference to their studies and place them in the classes in which they properly belong. All kinds of children are usually allowed to go to the same schools, and all kinds of children are usually placed in the same classes. Boys and girls are allowed to go not only to the same schools, but are also placed in the same classes, and even colleges are now opening their doors for the education of both sexes; and is it not better that this should be so? Is it not better for the grand aggregate of human society as well as for individuals, that all children should mingle together and learn to know each other? At the common schools, where both

sexes and all kinds of children mingle together, we have the great world in miniature; there they may learn human nature in all its phases, with all its emotions, passions and feelings, its loves and hates, its hopes and fears, its impulses and sensibilities; there they may learn the secret springs of human actions, and the attractions and repulsions, which lead with irresistible force to particular lines of conduct. But on the other hand, persons by isolation may become strangers even in their own country; and by being strangers, will be of but little benefit either to themselves or to society. As a rule, people cannot afford to be ignorant of the society which surrounds them; and as all kinds of people must live together in the same society, it would seem to be better that all should be taught in the same schools.

" . . . If the board has the power, because of race, to establish separate schools for children of African descent, then the board has the power to establish separate schools for persons of Irish descent or German descent; and if it has the power, because of color, to establish separate schools for black children, then it has the power to establish separate schools for red-headed children and blondes. We do not think that the board has any such power."

Next: Did Ottawa practice what the courts preached?