

## State of Kansas v. State of Colorado : abstract of complainant's testimony

### Section 3, Pages 61 - 90

A summary of testimony given by Kansas residents in the State of Kansas v. State of Colorado U.S. Supreme Court case. The court case centered upon Kansas' claim that Colorado irrigators were using more than their fair share of water from the Arkansas River. In their testimony, numerous Kansans commented on the decline in the flow of the Arkansas River between 1870 and 1900. In 1907, the court decided the case in Colorado's favor, refusing to order Colorado to restrict its use of Arkansas River water. However, the court left open the possibility that at some point in the future the economic damage caused to Kansas by Colorado's use of the river might give Kansas the right to relief. Under this doctrine of "equitable apportionment" of economic benefits from water resources, Kansas sued Colorado in 1943. This suit led to the negotiation of the Arkansas River Compact which was approved by Congress in 1949. Kansas sued Colorado again in 1986 claiming that Colorado violated the terms of the compact. The court ruled in Kansas' favor.

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Spring Creek. It was about a half mile from my house. There was plenty of water in that when I first went there, but it got weaker and weaker until finally there was no water except in two or three holes on my farm. During the early years there used to be fish in this creek, but of course there have been none there lately. During the early years there was always water there for my stock, later on the water disappeared in the holes entirely. I then took a spade and dug down about 18 inches and sunk a barrel, and the water came in a few inches deep in the barrel, and the stock would kneel down and drink out of that hole. Then the water went dry in the barrel. I then dug a hole about three feet deep, and did not come to any water. I could get water no longer and had to abandon the pasture. The water disappeared in my pasture about the time that the water went out of the river. When there was water in these holes it was always on a level with the water in the river; and when the river went down the water in the pasture dried up.

I have noticed another change: when I first came to this country we used to have a general rise, which came from the snow in Colorado, but in the last few years we do not have these rises like we used to have then. During those early years from June until September we had a big river here, but from some cause or other it has disappeared and we do not have those big rivers like we used to, unless we have rains as we have been having this year. During those early years I did not ford the river because I was unable to do so. I have seen the water get into the wagon box and wash it off the wagon and get them into trouble. I attempted to cross the river at one point when on horseback and had to swim my horse. The ferry was a flat-bottomed boat and was attached to a rope stretched from one side of the river to the other. It would carry four horses and a loaded wagon. The creek that I spoke of is eight or nine miles long. The approaches to the bridge were not placed in the channel of the river, but were out on the bank. Pilings were driven down, the bridge placed perhaps ten feet above the river, and the approaches stopped back perhaps 100 feet from the bank.

into the Walnut river because they get a greater fall than through



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P. H. FRANKY, ARKANSAS CITY, KANSAS.  
Arkansas City, Aug. 22, 1904. Pages 747 to 795 of the record.

I have lived in Arkansas City, Kansas since 1880. The Arkansas river flows south on the west side of Arkansas City, then makes a sharp bend and flows east and even a little north, and then turns to the south and east, into the territory. Arkansas City is located in this bend of the river on the east and north side. I came here in 1880 to construct the canal that was dug through the city. The Walnut river flows south and empties into the Arkansas river about 2 1/2 miles south-east of the city. This canal begins on the east bank of the Arkansas river about 2 1/2 miles north of the city; runs through the south part of the city; and empties into the Walnut river about two miles and a half above the place where the Walnut flows into the Arkansas. This canal is about five miles long. The canal was dug in 1881 and was somewhat extended in about 1886 or 1887. It was fifteen feet wide at the bottom with a 1 1/2 foot slope on the sides. The canal was dug for the purpose of furnishing water power to run mills that were constructed along the canal. The Arkansas Milling Company has a mill there now. Other mills were constructed but some of them have been removed. There was a wind mill factory and chair factory, and a corn mill, and a planing mill, all run by this water power. The Electric Light plant is located at the foot of the canal, and there was a foundry on the canal. I think the first mill was completed in 1882, and when first constructed, all of these manufactures got their power from the canal. I think Mr. Ayers built the pump mill there in 1882. The next, I think, was the planing mill; the next, I believe, was the chair factory and the mattress factory; and then the wind mill factory; and then the electric light plant. They were all built within four or five years after the canal was completed, and got their power from the canal. The canal was dug for this purpose. The canal emptied into the Walnut river because they got a greater fall than though



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it had emptied into the Arkansas river. The canal gets its supply of water from the Arkansas river. The water after it passes through the canal, goes into the Walnut river, and from there back into the Arkansas river.

When I came here in 1880 I crossed the river on the ferry. The average flow of the river during the dry season of the year, excluding the months of May, June and July, during the first years after I came here, was greater than what it has been during the same seasons of the year for the last few years. The year 1904 has been exceedingly wet. The amount of water in the canal has greatly diminished as compared with the amount of water in the canal during these first years. About the year 1887 we had to dig new channels to let the water come into the mouth of the canal from the river--that is, the water in the river had subsided so that we had to get out and dig new channels to get water into the mouth of the canal. The deepening of these channels was repeated once or twice in order to get more water,--the water having failed to come onto the mouth of the canal as it did originally. When I first ~~excavated~~ <sup>dug</sup> that canal in 1881, I could sink a barrel in the bottom of the grade anywhere and get good water for drinking purposes. The water would come up to about one foot below the bottom of the canal. In the fall of 1903 I had occasion to dig down on the line of the canal and found no water on top of the rock; before that I could find water there. The lower part of the city was underlaid with water from the river.

I was appointed street commissioner of the city from 1886 to 1887, and have been serving as street commissioner most all the time since. In other ways I have observed that the water level in the city has changed since these early days. In about 1887 or 1888 I dug a ditch to drain to holes in the west part of the city, and for my level I took the top of the water as ascertained by digging down. I followed the water for the level of my grade. This last spring, before any high water, I went over the same ditch and did not find any flow of water as I did when I dug the ditch. By digging down I should say the water level had gone down three feet anyway.

In the year of 1880 I saw a boat come down the Arkansas river. I was then at Gueda Springs. It is seven miles <sup>above</sup> ~~below~~ this city, on



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the river. The boat passed Gueda Springs and seemed to be loaded, but I could not say what it was loaded with. I heard the people talking about the loading up of the "Aunt Sally" with flour, at the foot of the canal. This was in 1886 or 1887. This flour was ground at the grist mill that is now the Arkansas City Mill. Mr. James Hill was a stockholder in this boat I think. Mr. Hill was the projector of this canal and I built this canal under his supervision, and he erected the first mill upon it which is now known as the Arkansas City Milling Co. During those years they used a steam boat to ship the product of their mill from this city, and after the railroads came they also used railway transportation. The flow of the river is not nearly as great now as it was during the first five or six years that I knew it. I did not see the steamboat that went down the river past Gueda Springs, come back again. The boat was perhaps forty feet long. This was not the boat called the "Aunt Sally."

We put a kind of dam in the river to turn the water into the canal. It was made of brush, rock, mattresses, etc. We had a great deal of trouble with it because it washed out. We then put in a crib dam which is there yet. The head-gate of the canal, at the present time, is about a mile above the place where the original head-gate was located. The canal was extended in order to get more water. In the later years the mills on the canal here used steam a part of the time. They got out of water and then had to resort to steam power. The big mill and the Electric Light Plant have both put in steam power because there was not sufficient water to run them. I have myself, seen that they had to shut down during the summer for want of water. There is but a very little water in the river below the mouth of the canal during the summer season now, very nearly all of it passes through the canal. The flow of the water in the river has dropped off at least one-half since 1890. In 1880 there was a ferry boat here, and one at Gueda Springs also. There are four bridges across the Arkansas river near Arkansas City, and two across the Walnut. The channel of the Arkansas river in the dry season of the year, is not more than one-half as wide as it was during the '80's. It must have been about 1882 when I saw the steamboat go down the river past Gueda Springs. The boat called the "Aunt Sally" was



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loaded at the mouth of the Walnut and below the bridge across the river. There are also two railroad bridges across the Arkansas river near the city. When the flood is very high in the Walnut river the water backs up and interferes somewhat with the water power in the canal, and this lasts until the flood in the Walnut river runs down. The flood of the present year of 1904 was the greatest we have ever known, and this flood in the Walnut river lasted only four or five or six days to such a height as to interfere with the water in the canal. I think the steam power was put in all of these mills built on the canal about six or seven years ago. It was put in because they could not have power enough with it, and was because of lack of water in the Arkansas river. I remember one time during the dry season that I stepped across the water in the Arkansas river. The water level in the lower part of town has become lower. It has become lower because the water in the river has sunk away. During the first years that I knew the river it was navigable for small steamers during the greater portion of the year. None of the six bridges across the Arkansas river near this city have any draw bridges in them. There are two railroad bridges and four wagon bridges. It was below the headgate of the canal that I found the water in the river so narrow that I stepped across it a few years ago. In 1880 Arkansas City did not have more than 1500 inhabitants; a few years later they claimed 10 or 11 thousand.

I commenced digging the canal through this city on the 28th day of February, 1881, and completed it just one year from that date. The bottom of the canal was 15 feet wide when completed, and the sides had a slope of a foot and a half to a foot rise. The width of the canal at the top, when full of water, is about 39 feet. When the canal is flowing full of water it is four feet, nine inches deep at one point, and four feet, six inches at another point.

I recognize Exhibit A-7 as a picture of the tail-gates at the foot of the canal before completion. This is a photograph taken in 1881.

I recognize Exhibit A-8 as a picture of the men working on the tail-gates after the canal was completed. The building shown in this picture is the first mill constructed on the race. This

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picture was also taken in 1881, and \$22.00 an acre for my bottom lands when I bought it in 1884, and bottom lands were selling for about double what the uplands were selling for. I had owned both bottom and uplands in Sedgewick County, and I had found there was a big difference in bottom and uplands in production. For the last six years I have had to quit raising corn on these bottom lands, because it does not mature and simply burns up. The moisture in the ground does not exist and I cannot account for the change in any other way. This change commenced along about 1889 to 1891. I have noticed the fall of the river, as any person would living along there. I noticed it going down and getting lower all the time. When I first settled there, when the bridge went out, I could not get across the river for a whole summer. This was about 1884 or 1885. I remember one time when this bridge was out for five or six months. There was so much water in the river then that we could get across only occasionally. Since those years there has been no difficulty in crossing the river any place you wanted to cross below me. About 1890 the diminished flow in the river became very noticeable, now the river is not more than fifty per cent as deep as it used to be. I have noticed this

JOHNSON KELLER, ARKANSAS CITY, KANSAS.  
Arkansas City, Aug. 22, 1904. Pages 796 to 829 of the record.  
same time that the water in the river began to go down.

When I bought my land in 1884 there were three strong, running ~~streams~~ <sup>springs</sup> upon it. They kept running until about 1890 when they commenced to get lower. Two of these ~~streams~~ <sup>springs</sup> as a natural flow and the water was very good. I noticed in the bottom lands at the same time that the water in the river began to go down.

I live on the Arkansas river, nine miles S. E. of Arkansas City. I bought 240 acres of land there in 1884 and have lived there ever since. Eighty acres of this land is first bottom lands, contiguous to the river, and the balance of the land is second bottom land, about 22 feet higher than the first bottom lands. Prior to 1890 the principal crops that I raised on the first bottom lands were corn, potatoes, and such things. We then raised satisfactory crops. We then did not depend upon the rain fall to make our corn crop, but could get a crop without much rain. The water was close to the surface of the ground, and kept the crops alive and matured them, but back on the uplands they often burned up. Between the productiveness of the bottom and the uplands, during those years, taking one year with another, there was about





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fifty per cent difference. I paid \$22.00 an acre for my bottom lands when I bought it in 1884, and bottom lands were selling for about double what the uplands were selling for. I had owned both bottom and uplands in Sedgwick County, and I had found there was a big difference in bottom and uplands in production. For the last six years I have had to quit raising corn on these bottom lands, because it does not mature and simply burns up. The moisture in the ground does not exist and I cannot account for the change in any other way. This change commenced along about 1889 to 1891. I have noticed the fall of the river as any person would living along there. I noticed it going down and getting lower all the time. When I first settled there, when the bridge went out, I could not get across the river for a whole summer. This was about 1884 or 1885. I remember one time when this bridge was out for five or six months. There was so much water in the river then that we could get across only occasionally. Since those years there has been no difficulty in crossing the river any place you wanted to down below me. About 1890 the diminished flow in the river became very noticeable. Now the river is not more than fifty per cent as deep as it used to be. I have noticed this in crossing with wagons. I noticed on the bottom lands at the same time that the water in the river began to go down.

When I bought my land in 1884 there were three strong, running springs upon it. They kept running until about 1890 when they commenced to get lower. Two of these springs fed a natural fish pond that covered about an acre and three-quarters, that we rowed around in in boats; and we stocked it with fish of different kinds, and it supplied us and all the neighborhood with fish the year round. About 1890 it began sinking away. One of the springs was entirely dry and the two springs that kept the pond kept going down and down until they went dry. The fish all died in the pond. There must have been eight or ten wagon loads of fish there when it went dry that year. I think this was in the fall of 1891 that it went entirely dry so there was no water in it. It was the year the strip opened. There is no water in the fish pond now. This year has been exceedingly wet, and on account of the immense rains there has been a little water running in the springs.





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The second year after I moved to these premises I dug a well about ten rods from my dwelling, fifteen feet deep. It lasted for a few years and then kept going down and down and I had to dig it deeper, and now I have put it down 30 feet deep in order to get the same amount of water I did at 15 feet in the same well when I dug it first.

When I purchased this land I had learned by experience that bottom lands were the most valuable and productive; now, with the experience I have had, I should avoid buying bottom lands even at the same price good upland is selling for. In those early years the bottom land was the most productive and valuable, but it is not so now. When I bought my place I tried to dig a drain from the fish pond to carry off the surplus water that might flow into it, and by going down a little ways below the level of the fish pond I thought I could dig a basin and let the water run into it, but I could not do this for when I would dig down about four or five feet I came right onto a body of water, the level of which was even with the level of the water in the pond, and I found it was impossible to drain it in that direction. Since the water has gone down in the pond I have never been able to find any water so close to the top of the ground in that basin in all the digging that I have done.

By common observation in crossing the river in wagons, I know that the river has gone down from what it was during the first years that I came here, but I have made no actual measurements. The farm that I bought was known as the best corn land, and I bought it for that reason. The first bottom lands run back at my place on the west side of the river about 100 rods; then the land rises gradual until it gets to the uplands. When I came here first the main spring that fed my stock seemed to boil right up out of the land. After the springs began to go down we had to lower the spring and sink a tank in it in order to hold the water. My first bottom lands are about ten feet lower than my second bottom lands, and these springs are located about 90 rods from the river and are on higher land than the river at an ordinary flow. My bottom lands are not worth any more than when I bought them, although land in general has advanced; and in my judgment the bottom land is not



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worth as much now as what I paid for it. During the high water of 1877 my bottom lands overflowed a little, but it did not injure their productiveness. The high-water mark of the flood in 1904 was not as high as the high-water mark of the flood in 1877. The well that I dug at first 15 feet deep and now have it down 30 feet deep goes dry nearly every fall. This well is located on second bottom land just S. E. of my house. On my first bottom lands the level of saturation would be perhaps about six feet below the surface of the soil. My first bottom lands are a sandy loam, neither very black nor yet very sandy. The springs on my land were not affected in their flow by the rain fall, unless the river rose. The water in the springs seems to come with the river. Upland in my neighborhood is now worth 25 or 50 Dollars an acre, according to improvements. The falling off in the production in my bottom lands is due to the failure in the moisture that is needed, and not to the fact that the land has been cropped every year. The water level was about six feet below the surface of the bottom lands, when I bought my premises, and the ground was moist from the surface and from a place at least plow deep down to this water level, and kept getting moister and moister all the way down.



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JOHN MYRTLE, ARKANSAS CITY, KANSAS.  
Arkansas City, August 22, 1904. Pages 830 to 838 of the record.

I am over 70 years old and have lived in Arkansas City since 1883, and have been well acquainted with the Arkansas river through Sedgwick County and Cowley County since June, 1871. During the first 15 years that I knew the river in the dry season, the average flow was much more than it has been in recent years. During the early years the river flowed full out to the banks, and during the recent years it has been much lower than it used to be. We have not near the water we used to have along in the '70's and '80's, and now it sometimes hardly flows at all. This falling off in the flow of the river began about 1888 or 1889, and seemed to be rather gradual from some cause. When I first came here we had no bridges across the river and we had either to ford the river or else to ferry it. The river during the winter season now is fully one-half less than what it was when I first knew it; and during the summer months it is nothing like the flow at that time. We had a tremendous flood in 1877, but I was not here in 1874, being on a survey in the Indian Territory.

The old Ayers Grist Mill was using water power from the canal as early as 1883.

That steamboat came up the Arkansas river from Little Rock, and the photograph was taken of the boat in the Walnut river, near its mouth. That steamboat came up from Little Rock and went back, and I was the means of getting the boat up here. That photograph was taken on the fourth of July, 1878; the boat having landed here on June 30, 1878.

I had a scheme on hand to try to make the Arkansas river navigable, and assisted in getting the appropriations made by Congress for that purpose, and have the letters somewhere from Ingalls, Ryan, and Plumb upon that subject.

The "Aunt Sally" was a boat about 125 feet long. The question of utilizing the current of water in the Arkansas river has been continuously advocated since 1870 by the agricultural people of

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Cowley County, Sumner County, and Sedgewick County. During the fall I. N. BONSALL, Clerk and J. C. Winton, of ARKANSAS CITY, KANSAS. Arkansas City, Aug. 22, 1904. Pages 839 to 842, 853 to 874, down the river bound for Little Rock. 1045 to 1046 of the record. and later Walton equipped a ferry boat with a ten horse power engine and made several trips up and down the river for a distance of 60 miles. I am over 70 years old and have lived in Arkansas City since July 23, 1872. For the last several years I have been a photographer, and previous to that a civil engineer. I have been acquainted with the average flow of the Arkansas river during the dry season of the year during all these years, and for the last ten years, the flow of the river during the dry season is about one-fourth what it used to be. I have had opportunity of noticing the river every few days during all the time I have lived here, and it was along about 1887 or 1888 that I began to notice that the flow of the river began to decrease.

I have seen steamboats on the Arkansas river at this city. I wrote the article found on page 159 of the Biennial Report of the State Board of Agriculture for the State of Kansas for the years 1877 and 1888 entitled "Navigation of the Upper Arkansas River." The facts stated in that article are true. The cut found of page 161 is from a photograph of the steamboat called the "Aunt Sally", which photograph was taken by myself, and I have the original here. Exhibit A-6 is an enlarged photographic copy of this original photograph. This steamboat came up the Arkansas river from Little Rock, and the photograph was taken of the boat in the Walnut river, near its mouth. That steamboat came up from Little Rock and went back, and I was the means of getting the boat up here. That photograph was taken on the Fourth of July, 1878; the boat having landed here on June 30, 1878. I was on the "Aunt Sally" for about 50 miles.

I had a scheme on hand to try to make the Arkansas river navigable, and assisted in getting the appropriations made by Congress for that purpose, and have the letters somewhere from Ingalls, Ryan, and Plumb upon that subject. \$4,000 was soon submitted.

The "Aunt Sally" was a boat about 125 feet long. The question of utilizing the current of water in the Arkansas river has been continuously advocated since 1870 by the agricultural people of





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Cowley County, Sumner County, and Sedgwick County. During the fall of 1875 A. W. Berkey and A. C. Winton, of Cowley County, built a flat-boat at Arkansas City, loaded it with flour and started down the river bound for Little Rock. In the summer of 1878 W. H. Speer and Amos Walton equipped a ferry boat with a ten horse power engine and made several trips up and down the river for a distance of 60 miles from Arkansas City. This boat was 50 feet long, 16 feet wide, and drew ten inches of water. They visited Grouse Creek, Walnut river, Salt City, the Kaw Agency, Oxford, and other points along the river. At Oxford a public reception was tendered its officers and crew. These experimental trips were all made while the river was at its lowest stage, and prior to the annual rise. The steamer "Aunt Sally" was a tug boat built for the deep, sluggish ~~badly~~ of the Arkansas river, and was used in the local cotton trade there. The boat, when it landed at Arkansas City, was commanded by Captains Lewis and Baker, with Mr. Chapman as pilot. The officers reported sufficient water and a safe current for light draft steamboats and the entire distance, and expressed themselves of the opinion that a boat built especially for the purpose could run regularly between the two states every day in the year.

Soon after the "Aunt Sally" returned south, Henry and Albert Pruden and O. J. Palmer, of Salt City, Sumner County, started for Little Rock with a flat-boat loaded with 700 bushels of wheat. This wheat was sold in Little Rock. On November 6, 1878, Cyrus Wilson launched the "Cherokee", which boat he had built at Arkansas City. This was the first steamboat ever built in Kansas. This boat was 85 feet long and 16 feet wide and two, twenty horse power engines, and when loaded drew 16 inches of water. The shallowest water found on the bars between Wichita and Little Rock was 18 inches. I was a passenger on the "Aunt Sally" for about 50 miles on her trip down the river. The opposition to the plan of navigating the Arkansas river came from the A. T. S. & F. R. R., which was not built in here at that time, and then ended at Wichita, but the proposition to bond the County for \$144,000 was soon submitted to build the Santa Fe road to Arkansas City. There were then no railroad bridges built across the river, or other obstructions to navigation. I saw these boats built here at Arkansas City, and was at the launching of them, and saw the "Cherokee" launched. The



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"Kansas Millers" was a boat that the Milling Company bought in Ohio and brought it up the river as far as to River Falls; where the machinery gave out and the boat was sold. I made one trip from Harmond's Fort here down to the Kaw Agency on the boat we fixed up here; and made another trip up to Oxford. Both these trips were made at low water. That boat made several trips up and down the river. The reason the "Aunt Sally" did not make any return trip to this state was because the Santa Fe R. R. did not want any navigation on this river. The boat went down the river without any trouble at all. We hired the "Aunt Sally" for three or four days to run up and down the Walnut river, and on Fourth of July had a big excursion, and it was during that excursion that I took the picture shown in Exhibit A-6. There is just as much water, so far as I can see, in the Walnut river now as there was then. The "Aunt Sally" came up the Arkansas river to the mouth of the Walnut and then entered the Walnut river. The people were not put on the boat for the purpose of having there pictures taken, but were there simply to enjoy themselves in riding up and down the river. The barge built by the Pruden boys started from the Summit Street bridge, and went down the river loaded with wheat or flour. I saw this boat; it was about 25 feet long, 16 feet wide, and drew about four feet of water. The bonds to the Santa Fe railroad were voted; the road was built in here; and after that I do not know of any attempt made to navigate the river. I do not recall when Congress passed any act providing for the appointment of the commission referred to in the article published in the Agricultural Report for 1877 and 1878, but I remember that some government engineers came down the river in boats and stopped here. They measured the flow and the width of the river and calculated the volume of water that was passing and the speed of the current, and made their report to Congress. This was after I wrote the article appearing in the Agricultural Report for 1877 and 1878. The substance of their report was favorable, and I saw a report communicated to me from the engineer in charge of this work at Little Rock. After this report was made by the government engineers to Congress the appropriations were made for making the river navigable between here and Wichita. I was in constant communication with the men at Little Rock, in reference to the navigability of





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the Arkansas river. He asked me to give him the amount of commerce we could furnish on the river, and I secured reports from the County Clerks of Sumner and Sedgwick Counties of the amount of wheat and corn and such things as that that would naturally go down the river for a market, and I sent that report to Congress, and it was after this that the appropriation was made and spent on the river between here and Wichita. I do not know whether this commission made any report as to the navigability of the river without any improvements being made to make it navigable. Exhibit A-6 is an enlargement of the original picture that I took on July 4, 1878.



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W. M. SLEETH,

ARKANSAS CITY, KANSAS.

Arkansas City, Aug. 22, 1904. Pages 843 to 851 & 1039 to 1044.

I have lived in Arkansas City 34 years; ever since 1870. My business is looking after the interests of the Land and Improvement Company, the Gas and Electric Light Company, the Street Railway Company, and the Water Power Company. I have been connected with the Water Power Company ever since it was built in the spring of 1881. The Company was chartered on December 17, 1880. The canal was dug through Arkansas City in the spring of 1881. The water was turned in and the Water Power Company proceeded with its business conveying water for power, sometime during the year 1881. The Water Power plant consists of a ditch and dam and the tail race that discharges the surplus water. The dam is across the Arkansas river about three miles and a half up the river and north-east from this city. We got our supply of water from the Arkansas river. This canal when first built was about 15 feet wide on the bottom, with a slope of two to one on the sides. This canal was built to furnish power for the flour mill, the electric light plant, the Kirkwood Engine Factory, and the chair factory. The chair factory has not been operated for a number of years. The other plants ~~maintained~~ <sup>mentioned</sup> all depend upon that water power for power in operation, when there is water sufficient for that purpose. During the last ten or twelve years, however, there has not been water sufficient to furnish power. The flour mill has had to stop because of lack of water to furnish the power. The planing mill had to stop, and has been removed, and all the plants that are still there have had to put in steam machinery in order to furnish power when there is not sufficient water in the canal to furnish them water power. Because of my connection with this water power plant I have had occasion to observe the flow of the river almost daily since 1881, especially during the summer and fall months. There is a shortage of water giving a less flow. Frequently during the last seven or eight years this canal would carry the whole flow of the river during the summer and fall of the year. This has been the condition only since about 1890, and prior to that time the canal could





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not carry the whole flow of the river. During the last ten years we are short of water power at least one-fourth of the time, and then must resort to steam power in these mills. I think we extended the canal, enlarging the intake about the year 1887, and got a better place for the headgates and dam than we had below.

We reached our maximum of power in about the year 1894, and then shortly after that the power began to fail from lack of water. The flouring mill was the largest consumer of water power, and they have all had to put in steam to supply power when there is not sufficient water. The ice interfered very little with the water power, and it did not last long. The flouring mill burned in June, 1904 and was at once rebuilt and they are not relying on the water power. The electric light plant has heretofore relied wholly on the water power, but they are now putting in steam power. The floods in the Walnut river might affect the water power in the canal during the spring or summer months for a day or two at a time, but I do not think it ever lasted for a week. The water power in all these institutions has had to be supplemented with steam power because of the insufficiency in the water supply during the late years. This shortage of water requiring the supplement of steam power has been increasing during the last ten or twelve years, and is now for longer periods during the fall of the year.

The Water Power Company has leased to the Arkansas Milling Company 300 horse power, and to the Electric Light Company about 150 horse power. The canal has a maximum <sup>fall</sup> of 22 feet. We have leased to the Wind-mill Company 25 horse power. These are all that are taking power from the Water Power Company now.

Exhibit A-6 1/2 is a copy of the charter of the Arkansas Water Power Company, chartered December 17, 1880.

As soon as the water came down the river, the water power of the Arkansas river, because of the failure of the water supply the falling off of the receipts from the sale of power from the canal has become very material. I am now superintendent of the water works and have known the Arkansas river since the first time I crossed it in 1882, and during the '80's I never saw the river dry, and when we could ford it at all it would come up about to the bed of the buggy and



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L. E. WOODIN, ARKANSAS CITY, KANSAS.  
Arkansas City, Aug. 22, 1904. Pages 878 to 885 & 1069 to 1074.

I came to Arkansas city in September, 1882 and have lived here permanently since 1890. During the ten years after 1882 I forded the Arkansas river a great many times, and during the last ten years I have also forded it a great many times, and during these later years the flow of the river has been considerably less. From 1890 to February, 1901, I was Secretary of the Arkansas City Water Power Company, and am well acquainted with the canal built by that company. The canal is about 5 1/2 miles long. The canal was built for the purpose of running water from the Arkansas river into the Walnut river to furnish power to run the mills at the foot of the canal. The plants using water from the canal for power purposes were the Arkansas City milling Company, the Roberts Planing Mill, the Kansas Mattress Company, the Arkansas City Gas and Electric Light Company, the Kirkwood Wind Engine Company, and the Plummer Chair Company. The ones that are left of these plants, except the milling company, are still using water power, and they <sup>have</sup> ~~had~~ had to put in an auxiliary steam plant to use during the dry season. Frequently during the last few years they have had to use their steam plant. The auxiliary steam plant was put in because of the low water in the canal which was caused by the diminution in the flow of the river. The diminution in the flow of the river became material along about 1893 or 1894, and we then became alarmed about the shortage of the water. Since these years, below the dam, there has practically been no water in the river. The canal has taken every drop of it, and during the dry season of the year it will take the entire volume of the Arkansas river. Because of the failure in the water supply the falling off of the receipts from the sale of power from the canal has become very material. I am now superintendent of the water works and have known the Arkansas river since the first time I crossed it in 1882, and during the '80's I never saw the river dry, and when we could ford it at a l it would come up about to the bed of the buggy and





## State of Kansas v. State of Colorado : abstract of complainant's testimony

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would be near the same dept<sup>h</sup> all the way across. Since those early years I think the flow of the river has fallen off one-half. It is purely on account of low water why the plants on the canal have been compelled to put in steam power. The milling company that has had to put in steam power has never been bothered by any back water from the Walnut river at all. The only plants that have ever been bothered by this back water are the electric light plant and the others instituted on that part of the canal.

This canal when supplied with water to its capacity would furnish 1000 horse power. We have actually furnished to the parties using the same 425 horse power. This is the exact amount as shown by the reports made to the stockholders of the company. Of this, 300 horse power was furnished to the Arkansas City Milling Company, 50 horse power to the Arkansas City Gas and Electric Light Company, 25 horse power to the Kansas Mattress Company, 25 horse power to the Wind Engine Company, and 25 horse power to the Plummer Chair Factory. The leases for the above amount were in force when I became identified with the company in 1890, and were all made prior to that year. We furnished this full amount under these leases when we had water sufficient; but when there was low water we were compelled to deduct for the low water.



## State of Kansas v. State of Colorado : abstract of complainant's testimony

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ALBERT H. DENTON,

ARKANSAS CITY, KANSAS.

Arkansas City, Aug. 23, 1904.

Pages 887 to 909 of the record.

I was born in 1872 on a farm on the Arkansas river, three miles South-East of Arkansas City. I lived there until 1892 when I moved to Arkansas City, and have lived there ever since. I am now cashier of the Farmers' State Bank. During these years down to 1892 after I became old enough to remember I expect I saw the river every day, and have been well acquainted with the flow of the river since 1892. During the last ten years during the dry season of the year the flow of the river is not over one-quarter as large as it was during the '70's. During the later '70's I often went swimming in the river, and the average depth would be at least 2 1/2 feet and flowed from bank to bank. The average flow of the river now would not be over 15 inches. During the dry season of the year in the '70's I never knew the river to be dry, and we always had high water in June. During those early years we crossed the river there by ferry, fording, or on a bridge, but we could not generally ford it. I remember that during the fall of 1879, while I was living on the farm on the south side of the river, we had raised considerable wheat that year, and we sold it to Mr. Newman, then a miller on the Walnut river. We boated that wheat across the river in a skiff, in sacks, and then hauled it to the Newman mill. During those early years I have often seen persons ford the river on horseback, and have seen them swim the river, and have forded it myself when it was belly deep. During the late years in the fall of the year there has not been water enough in the river to swim a common fox terrior dog. I remember that during those early years on my father's farm, back from the river a distance, we dug a well 53 feet deep, and we got four feet of water in the well. Since then that well has gone dry. Then we drove a pipe down six feet and we found no water; then we drove the point down ten feet further and we got a good supply of water, and there is plenty of water in that well yet. This well is on the side of a hill about a half mile back from the river.





## State of Kansas v. State of Colorado : abstract of complainant's testimony

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During the '70's the bottom lands were always considered much better for raising corn than the uplands because we got the benefit of the underflow from the river, but during the later years we do not get as good crops on the bottom lands as in the earlier years. Arkansas City is located four miles north of the Oklahoma Territory line. My father's farm consisted of 280 acres, all bottom lands except 30 acres. When we dug the well 53 feet deep we supposed we found water on the level with the water in the river. We own that farm yet. The first bottom lands vary in width through Cowley County, and perhaps would average a mile and a half wide. The place where we took the wheat across the Arkansas river in boats, was below the place where the Walnut river enters the Arkansas river. The Walnut river is a short, local stream, and I think flows as much water as it did in the '70's. It heads in Butler County. The Arkansas river has not diminished as much in the winter time as in the summer time, but there is now less water at both times. During the first early years of my experience on the farm there were only a few months in the year when we could ford the river, and since 1890 there have been only a few months when you could not ford it. During the months from December to March, since 1890, the river has fallen off at least one-half. I have noticed no change in the flow of any of the short streams flowing into the Arkansas river. Farm lands all through this county have increased in price owing to the increased population, the demand of the people for farms, and more people with money.



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JAMES BENEDICT, ARKANSAS CITY, KANSAS.  
Arkansas City, Aug. 23, 1904. Pages 910 to 921 of the record.

I am 70 years old and came to Arkansas City in the fall of 1870, and have lived here ever since. I am now in the real estate and insurance business. I own a small piece of land just south of the river, and I pre-empted land on the Walnut. I am acquainted with the bottom lands along the Arkansas river. Perhaps the average height of the first bottom lands above the river would be about ten feet. During the early years I crossed the Arkansas river hundreds of times, either by fording it or was ferried over before the first bridge was built. During those early years in the dry season of the year I was afraid to ford the river at almost any time, on account of the deep water. I forded the river the river in August, I think in 1877 or 1878. The water came over my pony's back in crossing the river. During those years in the dry season the water would average from 2 1/2 to 3 feet from bank to bank. Recently during the same season of the year the water has been about 1/3 to 1/2 of what it used to be. This diminution in the flow of the water began in the latter part of the '80's. During the years from 1872 to 1880 there was a well located on Fifth Ave. Sometime later this well caved in and was filled up. A short time ago Mr. Fitzpatrick dug a well as near as he could to the place of the old well and went down to where the vein of the water used to be, and he found no water at all. The ferry was established in 1870 and was kept up until the bridge was built in 1874.

I remember distinctly having seen the "Aunt Sally" when it came up from Little Rock. We used it for an excursion all day on the Fourth of July. We chartered the boat all day on the Fourth of July, and the boat was crowded every trip it made. It remained here probably a week or ten days and then went down the river to Little Rock. It was brought up here to see whether the river was navigable. I invested \$200.00 in the boat called "Gen. Wiles." It was built in Ohio and started up the river from Fort Smith for this place. The engines gave out and it did not reach this city, I remember the "Cherokee", which was built here. It had steam





## State of Kansas v. State of Colorado : abstract of complainant's testimony

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power and was intended to run up and down the river with wheat. We had no other means at that time of getting our wheat to market, except by wagon to Wichita. These boats and other boats also were used for the purpose of freighting down the river. There was a little boat run for awhile called the "Necedah", and one also called the "None Such" which came up the river and then went back down the river. The boat called the "Kansas Millers" was ~~built~~<sup>brought</sup> here. It had steam power and was built for trading down the river the same as the rest. There were some barges built here for freighting wheat down the river. There were some flat-boats loaded with wheat and went down the river from the place.

I remember the Government snag boat. They started from Little Rock and came up as far as the Pawnee Agency. I was down there and stayed with Captain Evans a few days and he told me about the appropriations. I think the Arkansas river was navigable for smaller steamboats for six or eight months of the year. I do not think the flow in the Walnut river has decreased any since I came to this country. The "Kansas Millres" must have been 60 feet long and perhaps 20 feet wide, was equipped with steam power and would draw 18 or 20 inches of water.

## State of Kansas v. State of Colorado : abstract of complainant's testimony

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R. J. STEVENSON, ARKANSAS CITY, KANSAS.  
Arkansas City, Aug. 23, 1904. Pages 945 to 968 of the record.

I have lived on the Arkansas river, two miles east and one mile south of Arkansas city since 1870. I own 100 acres of bottom land where I live. My land is above the place where the Walnut flows into the Arkansas river. The surface of my land is about eight feet above the bed of the Arkansas river. I see the river every day. For the last few years there has been between three and four feet less water in the flow of the Arkansas river on an average during the months from July to October of each year than there was during the first years after I came here, through the same season of the year. During the last two or three years where I cross it, there has been about 15 inches to two feet of water, and in the same place during the '70's and '80's there used to be from three to four feet of water. The average flow of the river is not more than one-half what it was in the '70's, and the river now is not more than two-thirds as wide as it used to be.

When I came here in 1870 we crossed the river by ferry, and during those early years there were only about three months of the year in which we could ford it at all. We began to notice the decrease in the flow of the river along in the '90's, and it has been getting less ever since.

I dug a number of wells in the '70's, some of them of the first bottom and others on the second bottom. On the first bottom we found water at about eight feet deep, and on the second bottom from 12 to 15 feet deep. The soil on the first bottom where we dug these wells was generally moist entirely to the surface. In 1901 I dug a cistern on the first bottom and in going down 12 feet we struck no water and the soil was dry where we found it moist when we dug the wells in the '70's. This moisture in the soil from the sub-irrigation, while it lasted, was a great benefit to our corn, and we could raise a good crop of corn. The corn crop on the bottoms in those early days was a great deal better than the corn crop further back on other lands. Our bottom lands now do not yield as





## State of Kansas v. State of Colorado : abstract of complainant's testimony

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good a corn crop as they did in those early days. The decrease in the yield of corn on the bottom lands is very marked, and is due to the dropping of the underflow, which was fed by the Arkansas river. We noticed the decrease in our corn crop at the same time we noticed the falling off in the flow of the river.

I have been farming ever since I came to this country in 1870. I proved up my land and have the patent out home now. The level of the water in the river is from 15 inches to two feet lower than it used to be. During the floods of 1877 and 1904 the water overflowed my first bottom lands and killed some of my crops. I remember the year of 1874 which was the grasshopper year. The river that year was lower than it had been, but was not dry by any means, and not as low as it has been a good many years since that time. I have heard of the underflow and the sub-irrigation beneath the bottom lands ever since I came here and the lowering of this underflow began to be noticed about 1890, and has been decreasing ever since. I did not raise as good crops in 1902 and 1903 as I did in the '80's. In 1901 the main stream of the Arkansas river was dry, while the average flow during the '70's was about 2 1/2 to three feet. I do not know how deep corn roots go to find moisture, but land with the underflow at 16 feet below the surface is better than though the underflow was 32 feet below the surface. I have noticed that when the water was highest in the river was when we had the best corn crops. The water in the wells that I dug on my place would rise and fall with the rise and fall of the water in the river. The amount of water in the river would affect not only the wells on the bottom lands but also the wells back further from the river. When the water in the river was high the water in the wells would rise, and when the water in the river would go down, the water in these open wells would go down.



## State of Kansas v. State of Colorado : abstract of complainant's testimony

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W. H. SPEERS, is in 1872. ARKANSAS CITY, KANSAS.

Arkansas City, Aug. 23, 1904. Pages 969 to 995 of the record.

I am 67 years old and have lived in the vicinity of Arkansas City ever since 1870. I have been in the milling business, and by trade am an engineer. I have run engines at mills, on ferry boats, and on steamboats. We own 110 acres of bottom land on the north side of the Arkansas river in the south part of the city. This land would average from seven to twelve feet above the level of the river. I proved this land up in 1870, and got the deed in 1872. I have been acquainted with the Arkansas river all these years, and run a saw mill in the south-east part of town from 1870 to 1874. The saw mill was located near where the flouring mills are now located. I brought the machinery into this country and set it up. They hauled logs to this saw mill from all around here and I sawed them into lumber and sold it to anybody that wanted it. The average flow of the river during the dry season of the year, excluding the months of when there was high water, for the first fifteen years that I knew the river, was about 30 inches deep, and it run from 500 to 800 feet wide. During the last ten years in the same season of the year the water would not be more than 12 or 15 inches deep, and I have often seen it dry. During the first 10 or 12 years I never saw it dry.

During the first 10 or 15 years that I occupied my premises we raised mostly corn and some potatoes, but since the water has fallen off in the river we have not been able to get more than about one-half as many bushels of corn to the acre as we did at first. I helped establish the ferry boat across the Arkansas river in the fall of 1870, where the 4th Street bridge is now. Before that time they tried to ford the river but sometimes they had to swim. The river in those days was fordable only a few days at a time. I operated the ferry boat until the 4th Street bridge was built. That ferry boat got away from me and went down the river. After the flood of 1877 Amos Walton and I built another ferry boat to carry people and teams and horses across the river. The bridge was then washed out and there was generally too much water for





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them to ford the river. We ran this ferry boat until the 6th Street bridge was put in in 1879. During those times the river was fordable only once in a while, even in the fall of the year.

After the 6th Street bridge was put in Amos Walton and I took this ferry boat and put an engine on it and built a water-wheel and ran the boat up and down the river. I have had some experience in running steamboats on the Mississippi river. We ran this steamboat up the river as far as Oxford--40 or 50 miles up the river--and down as far as the Kaw Agency--about 35 miles down the river. I remember when the boat called the "Aunt Sally" was here. It came to be loaded with wheat and I remember that it was used as an excursion boat on the Fourth of July. The picture shown on page 160 of the Kansas State Agricultural Reports for 1877 and 1878 and the picture introduced as Exhibit A-6 are photographs of that boat while used on that excursion. I remember the boat called the "Cherokee", which was built here by John McClosky, about 1879 or 1880. It was a steamboat with a stern wheel. It was loaded with wheat here, and started down the river for Fort Smith, Arkansas. John McClosky, Amos Walton and Perry Woodin went down the river in that boat, Woodin being the pilot.

I also started the boat called the "None Such" which came up the river from Dardenelle, Arkansas, and took on a load of wheat and went down the river.

I also remember the boat called the "Kansas Millers", which was built in St. Louis and brought up here by the milling company to run flour and mill stuff down the river. It was a steamboat with a stern wheel. This must have been in about 1882 or 1883.

I also remember that William Burkey and Winton built a barge here and went down the river with a load of flour. Mr. Burkey lives here in town now.

I have heard of other barges that were built here to take potatoes down the river, but I do not remember that I saw them.

We sold a boat to Henry Pruden and Palmer--he lives five miles west of here. They loaded it with wheat and started down the river for Fort Smith. We put a couple of hundred dollars into the boat called the Gen. Wilder, but that boat did not get up the river as far as this city because their engine was not powerful enough. I have heard of other boats coming down the river from above, but

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I did not see them. During those years we always thought that the river was navigable for light boats during probably six months in the year.

From general information it is known that the river is now navigable up to near the mouth of the Cimarron, up above Fort Gibson.

The captain of the "Aunt Sally" made a contract for our ferry boat, that we put the engine on to run down the river, to buy it and load it with wheat when it went out. The Winfield fellows came down here and he went to Winfield and hobnobbed around a day or two and said that he could not buy the barge, and he did not take the load of wheat. The Santa Fe railroad came in here about that time and they never tried to ship any more down the river.

About 1890 I noticed that there had been a perceptible diminution in the flow of the river as compared with the former years.

I remember that U. S. Government Engineer, McClelland, came down the river from Wichita in a boat and laid in supplies here to go through the territory, and on down to Fort Smith. He had been measuring the river from Wichita down. He said to me that with work on the river he thought a boat could run up here as much as six months in the year. There were three men in his party, and the boat they had was built somewhere above here.

I think the "Kansas Millers" went out of here with two barges after the railroad reached this point. I understood the government had appropriated money for the improvement of the river at this point about this time. It was claimed that no steamboat could go up the river past this place because the current of the river was too swift. It was for this reason that Amos Walton and I and some other parties put up the money and fixed up the ferry boat with an engine and stern wheel and carried passengers up and down the river. This boat was 50 feet long and 16 feet wide.

I remember the year 1874; it was the dryest year we had ever had, and about August the grasshoppers came along and ate up everything we had grown.

I think the river was navigable at its common stage in the '70's for boats that would draw 30 inches of water. The "Kansas Millers" went down the river two or three times and came back.





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think the "Kansas Millers" drew about 30 inches of water when loaded and about 12 inches of water when empty.

I have heard that boats have come up the river this side of Port Gibson within the last few years, but I do not know this of my own knowledge.

The "Kansas Killers" made several trips down the river from this place and back again, and on one of these trips I went as the engineer of that boat. Pete Yont was the fireman, and he is now working for the Santa Fe railroad at the round house. Mr. C. H. Searing went along with us on that trip. There were several persons also on the boat. On the trip I made down with them I came back with the boat. We came back in about a day and a half.

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E. J. HOYT, Leadville, Colorado, vs. ARKANSAS CITY, KANSAS. Deed  
Arkansas City, Aug. 23, 1904. Pages 997 to 1014 of the record.

I have lived in this city since 1870 and have been familiar with the Arkansas river since that time. I pre-empted government land here and had a ranch up the river, and was often hunting and trapping on the river at that time. I have hunted and trapped on the river from the head of this river, 15 miles above Leadville, Colorado, down to Fort Gibson. In hunting and trapping up and down the river I have crossed it frequently. From 1870 to 1888 or 1889 it was a good sized river, and in crossing we had to swim our horses a great deal of the time. Of course I crossed at the Indian crossings, and I used to hunt for these rock crossings, and we usually had to swim our horses before we got across at all times of the year. Whether we had to swim our horses or not depended somewhat on the size of the horse, for if we were using Indian ponies we would have to swim them, but if we had a long-legged horse he might go through and wade along in the lowest water. The rock crossing right above this town is one of those that I mentioned. Since about the year 1890 the average flow of the river during the months from July to October has been about one-fourth what the average flow was during the same season in the '70's. I commenced to notice this decrease along about 1890. I was at the sources of the Arkansas river in 1880, and went overland prospecting during the Leadville boom. I crossed the river at Great Bend and struck the river at Dodge City and Coolidge and other places. I left this town on that trip the last of April, and made the trip in about 30 days. On this trip I was in that country about three years. I had a ranch in this country from 1870 to 1874, but in the fall of 1874 gave it up to the grasshoppers. Since 1890 I have noticed that the river has fallen, and think there is now not much over one-fourth as much water as there was in 1870; that is the way I sized it up. This is above the mouth of the Walnut, and the places where I have noticed the river the most in these late years are below the head of the canal.





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When I was at the headwaters of the Arkansas river in 1880 there was considerable timber along the banks, but I have not been there since 1883. While I have more particularly observed the lack of water in the river below the head of the canal at this city, yet from my observations I know that the river has fallen off above that canal as well as below.

ELIAS NEFF,

ARKANSAS CITY, KANSAS.

Arkansas City, Aug. 23, 1904.

Pages 1015 and 1016 of record.

I have lived in Arkansas City about 20 years. I came from Indiana to Kansas in 1883, lived at Winfield about six months, and then came to this city in February, 1884. When I came to this city I do not remember whether the canal was completed or not, but the canal was there, and that was one reason why I came here. I thought that canal would be of some advantage to the town.

I am well acquainted with this city and all of its institutions here. The canal through this city was constructed in 1881. Mr. D. A. Ayers and James Hill each built a flour mill on the canal right after it was finished. The canal was constructed for the purpose of furnishing water power, and these flour mills took water from this canal. The canal is about 4 1/2 miles long and empties into the Walnut river, and the water then flows into the Arkansas river. The first mill was a frame building. William Speere built a stone flouring