

Fencing the Prairies

by

W. M. Richards

This is the story of fencing in Kansas. To understand why the problem was so important in the state, one has only to consider some facts regarding the climate and geography peculiar to Kansas. Here conditions were different and more difficult than any encountered in America up to the time Kansas was organized as a territory and opened for settlement in 1854.

Pioneering in America moved westward from Plymouth, Jamestown, and St. Augustine with few abrupt breaks until it reached a line running north and south, approximately seventy-five miles west of the western boundary of Missouri. Of course there were some natural conditions such as the Appalachian Mountains and some large rivers which had to be reckoned with. Each new frontier, however, was much like the one to the east until this line was reached. From there on west, conditions changed rapidly. There is more difference between Central Kansas and Missouri than there is between Missouri and Virginia. West of this line, pioneers had to learn many things anew. Different geographical conditions made necessary different crops, new methods of cultivation of crops, and new kinds of homes.

The scarcity of trees was a major handicap. Except in the extreme eastern section and along the larger rivers and creeks, trees were almost nonexistent. It is true that a few trees, especially the cottonwood, were found in all sections of the state. But the cottonwood was not of much use except for shade. It did not make good fuel. It deteriorates so rapidly that it could not have been used for fences even if it had been more abundant. It could not be used for building log cabins. As a result, most of the pioneers were forced into trying other materials for fences and buildings. Had Abraham Lincoln been reared in Kansas he might have acquired a reputation as a builder of sod houses but he would never have been known for rail-splitting for there were no rails to split.

Fortunate indeed was the pioneer who could obtain a few rails to make a small pen where his cows could be enclosed at night. By day the cows were herded to keep them from the crops. Horses were tethered by night and those not kept in stables were herded by day along with the cattle. Because of the lack of fences, many young horses got away and were never recovered. Each issue of every local newspaper contained advertisements for horses which had escaped. Few were recovered. They roamed the prairies and most of them eventually joined herds of wild

horses which were plentiful for years after pioneering began in this section. The need for fences was indeed great.

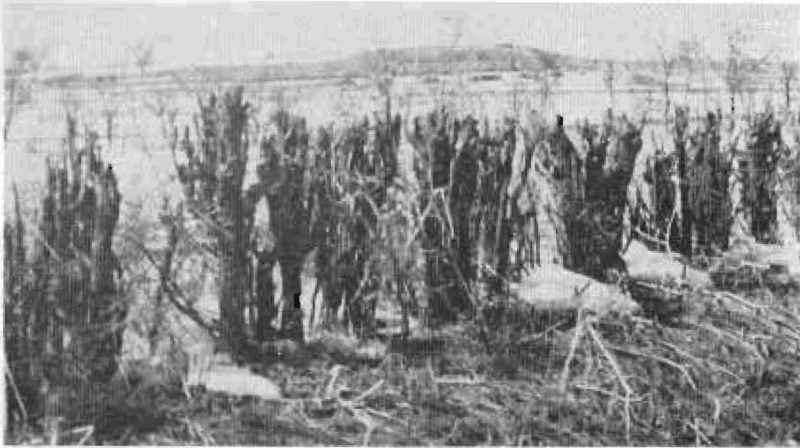
Fortunately for the purpose of research on fencing, the period of rapid settlement in Kansas, 1863-1886, was also the time when the Grange movement was at its greatest strength in the state. Grange meetings were held in all sections of the state and proceedings were reported in newspapers and other periodicals. Copies of these publications have been well preserved by the Kansas State Historical Society at Topeka.

Perhaps the best single source of information is to be found in the files of the *Kansas Farmer*, which was established in 1863 and continued publication throughout the period when fencing was the number one problem in Kansas. This publication was the official organ of the Kansas State Grange. The writer examined every issue of this periodical and found more material written about fencing and fencing needs than about any other one problem. In fact almost every issue of this monthly publication, from its establishment in 1863 until the final solution of the problem in 1886, has some mention of this very important need. The findings from this source have been checked and supplemented by information furnished by the Research Department of the American Steel and Wire Company of Cleveland, Ohio, and the United States Patent Office records.

A Mr. Williams of Jackson County, writing for the *Kansas Farmer* in 1863, said, "When I took a notion to come to a prairie state, I was aware that the problem of fencing would be a difficult one to solve." He felt that the only answer was board fences. That may have been a partial answer for Jackson County. This county is far enough east to be in the area of more abundant rainfall, and it is in the glaciated section of Kansas where trees were more plentiful and where there were local saw mills. His sug-



Stone fences in Wabaunsee County (Note differences in the laying of the top stones)



Cut Osage Orange hedge, Elk County

gestion was no answer at all for pioneers further south and west where there were no native trees. Boards could not be transported by rail for there were no railroads. The only means of transportation was by farm wagons and horses. A team of horses could average three miles an hour pulling a one ton load across the prairies. To transport boards even forty miles to fence a 160 acre farm would be a tremendous undertaking.

The meeting of the Kansas State Grange, as reported in the *Kansas Farmer* on January 1, 1864, was devoted largely to a discussion of fencing problems. White willow hedge fences were recommended. Two advantages were claimed for this type of fence: (1) "If white willows are planted eighteen inches apart and topped at a height of four feet, they will make a fence which will turn all domestic animals." (2) "Such a fence can be grown in four years."

The recommendation was tried by some pioneers but it proved to be misleading as it was based upon experiences in states further east where climatic conditions were different from those of Kansas. White willows simply could not withstand the dry weather, the heat, or the soil of Kansas except in the extreme eastern sections. It did not make an effective fence. Then, too, the type of cattle raised in the west were more difficult to restrain than eastern bred animals. This type of hedge fencing was soon abandoned as wholly impracticable and ineffective.

Three months later, in the March 1, 1864, issue of the *Kansas Farmer*, there appeared an article advocating stone fences. The author said, "If stones are available within one and a half miles, four men can build four rods of fence a day. It is recommended that stone fences be two and one half feet at the bottom and one and one half feet at the top. They should



Stone fence in Eastern Kansas (Courtesy of Kansas State Historical Society)

be five feet high." This was a good plan for those who lived where stones were available. Hundreds of miles of stone fences were built in Kansas prior to 1886 and many of those are still in use. Only two tools were used in building these fences: a crowbar to pry the rocks out of the ground and a sledge hammer to break them. The balancing of a rock and then the tapping of it in order to break it so the edge was straight became quite an art. But there were many places in Kansas where stones were not available within a mile and a half, or even within twenty miles. Homesteaders in these sections had to look to other sources for fences.

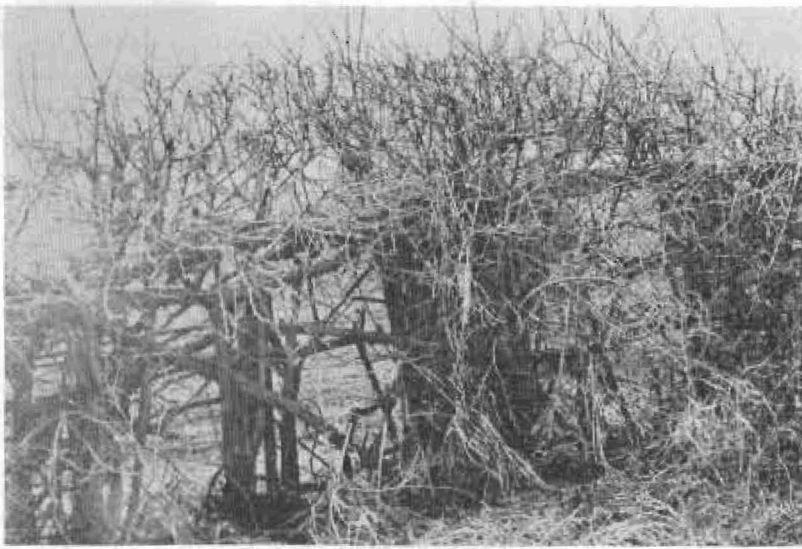
In the same issue of the *Kansas Farmer*, mention was made of Osage Orange hedge fences but four objections to these were raised:

- (1) "The ground must be in a good state of cultivation when plants are set."
- (2) "The plants must be cultivated for at least two years after setting."
- (3) "Seed costs \$40 a bushel and at that price it is hard to get."
- (4) "The young plants must be protected from rodents and livestock until they develop hard thorns."

A Mr. Dietrick of Doniphan County said he had no doubts about Osage Orange as there were some such fences in his county which had proved their value. Mention was also made of wire fences (smooth wire), but the president of the Grange could find no one who spoke well of them.

In the April, 1864, issue of the *Kansas Farmer*, there appeared an article by a Mr. Townsend stating that "White hawthorne hedge makes a good practical fence. A good many farmers in my section are planting such hedges." The writer has been unable to determine where Mr. Townsend lived, but it is likely to have been in the northeastern part of the state since that is the only place where remains of white hawthorne hedges can be found.

Much was written about fences during the two year period of 1865 and 1866, but only a few articles will be mentioned here. In February, 1865, there appeared an article on how to make a close hedge using Osage Orange (or hedge apple) plants. "Set your plants two feet apart and let them alone, except to keep grass and weeds away from the roots until they are five or six years old or are two and a half inches in diameter. In the spring before the sap starts take a sharp axe and cut the plants or bushes, as they will then be, three fourths off. Lay down each bush on the last one cut. The cutting must be done on one side only leaving the bark uninjured on the other side. Do not be afraid to cut them near enough off to allow them to bend down easily as an inch of bark will keep the ordinary sized bush alive. The body of the plant should be about four inches from the ground. Sprouts will start up from the roots and run through the lap, making a fence that no rabbit can pass through."



Osage Orange hedge, Sedgwick County (Note lapping over of branches)

This article was answered in the September issue by William Waxwill of Lanesfield, who said, "A better plan is that of planting six inches apart and then cutting about June 1 at five inches and thereafter at intervals of six inches. If kept well cultivated it will turn out to be a good fence in the fall of the third year."

An editorial in the *Kansas Farmer* in the fall of 1865 recommends the Osage Orange hedge as an excellent fence for four reasons:

- (1) "It is easily acclimated to all sections of Kansas as it grows wild along the banks of streams in the southern part of the state."
- (2) "It is valuable for timber—durable as black locust, and not attacked by borers."
- (3) "Seeds are again available at a reasonable price."
- (4) "It is next best to stone fences."

In the October issue of the *Kansas Farmer*, Osage Orange plants were advertised for sale at \$5 per thousand.

There were many articles and editorials which indicate rather positively that Osage Orange hedge was well out in front as a fence at the close of the year of 1866.

On February 20, 1867, Governor Crawford signed a bill which passed both houses of legislature entitled "An Act to Encourage the Growing of Hedge and the Building of Stone Fences." The bill provided a bounty of two dollars for each four rods of fence when it would resist stock from passing. Both white hawthorne and Osage Orange were included. Since

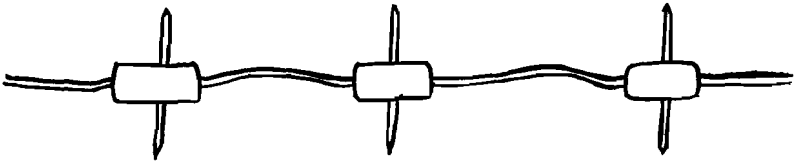
enough plants to plant a rod of Osage Orange fence cost only seven cents, the bounty provided the farmer an income of approximately forty cents a rod for building fences. This caused many farmers to fence and cross-fence their farms with Osage Orange hedge.

In the August, 1868 issue of the *Kansas Farmer*, there appeared an editorial which said, in part, "Many of the best minds of the state have been devoted to this subject [fences]—yet no plan has been received to form and shape the public mind as must be done before being crystallized into statute laws." The editor advocated making Osage Orange a legal fence from the time of planting.

The legislature of 1871 extended the bounty on Osage Orange and hawthorne fences and also on stone fences, making the county assessor the judge of the merits of the fence for the purpose of receiving the bounty. This same legislature designated as a legal fence three wires (smooth wire) stretched upon posts one rod apart, although there was no bounty for the wire fence.

But a competitor soon entered the field. In the June 1, 1874 issue of the *Kansas Farmer*, there appeared an advertisement for the Haish's "S" barb wire fencing. In the June 30 issue, there was an advertisement for Kennedy patent wire barbs to be attached to smooth wires. In the March 28 issue, an advertisement appeared for Barnes Fence Strip. These were followed by many others in 1876 and 1877. Since advertisements and the use of barb wire seemed to explode in Kansas during the period from 1875 to 1877, it might be interesting to turn attention to the history of this product.

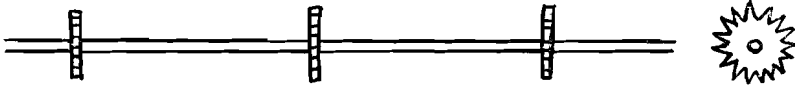
Lucien B. Smith was the first person to obtain a patent for a wire fence equipped with projecting points or barbs. This patent was issued June 25, 1867. No fences were ever marketed on the basis of this patent.



Lucien B. Smith's Patent, June 25, 1867

The second patent registered in the U.S. Patent Office was to William D. Hunt on July 23, 1867. This was for a wire equipped with spur wheels. Hunt and Smith were immediately involved in litigation. Hunt was awarded the priority of invention and thus was legally recognized as the inventor of barb wire. His was an effective fence but difficult and costly to construct. Since Hunt had no capital, less than one mile of this fence

was manufactured. Hunt sold his patent rights to Charles Kennedy for \$175. This patent was reissued and held to be of great basic value.



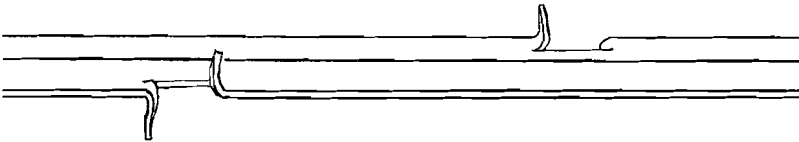
William D. Hunt's Patent, July 23, 1867

The third in the field of barb wire inventors was Michael Kelly, whose patent was registered on February 11, 1868, just seven months after the Hunt patent. Kelly and Hunt were brought into litigation, but the court declared that the two wires were so different that there was no infringement of rights.

The Kelly patent was for the elongated, flat, diamond barb. This wire was manufactured by the Thorn Wire Hedge Company of Chicago and was without competition for several years, except for the Kennedy barbs which were to be attached to smooth wire by hand. As much as a thousand miles of this Kelly patent fence was sold to railroads in a single year. Perhaps more than that was sold to farmers. It can still be found in use in every section of Kansas.

In the July, 1875 *Farmer*, advertisements appeared for other types of barbs to be attached by hand to smooth wires. In the same issue there appeared an advertisement for Spiral Barbed Iron Fence. This type was the favorite of the St. Louis and San Francisco Railroad when it fenced a right of way across Kansas. Some of it was also sold to farmers. Much of it is still in use.

On March 28, 1875, the Barnes Fence Strip was advertised in Kansas. It was claimed that this fence was more "apparent to sight" than any other metal fence. It was a heavy fence, hard to handle, and not very effective—yet many miles of it were sold in Kansas.

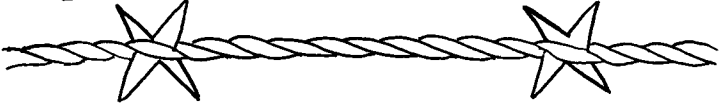


Barnes Fence Strip

The next two patents were registered in the same year, and each inventor, Jacob Haish and Joseph Glidden, obtained several patents before his product came on the market in quantities. Jacob Haish obtained his last patent on August 31, 1875. This was for the famous Haish's "S" barb which was an excellent fence and a good seller for many years. Much of it is still in use in the state.

[April 15, 1880.

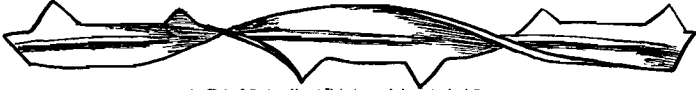
Scutt's Patent Four Pointed Steel Barbed Cable Wire THE BEST AND CHEAPEST FENCE!



LICENSED UNDER ALL THE BOTTOM PATENTS.

Double the protection offered by any two-pointed barbs, and by actual tests the strongest, lightest and, consequently, the cheapest wire ever made. For information, address
Mention this paper. 103 106 **H. B. SCUTT & CO., Buffalo, N. Y.**

THE BUCK-THORN IS THE BEST BARBED FENCE IN THE WORLD.



[Patented in the United States, Great Britain, and the principal Countries of Europe.]

Manufactured by **THE T. V. ALLEN MANUFACTURING CO., Trenton, N. J.**
IT IS EFFECTIVE, SAFE AND STRONG; HANDSOME, LASTING AND CHEAP.

IT IS NOT WIRE, and no wire enters into its construction. It is a SOLID, RIBBED STRIP OF STEEL, rolled, not drawn, with SHORT, LANCE SHAPED POINTS, one inch apart. It is VERY STRONG, and PRESENTS THE LARGEST POSSIBLE SURFACE TO VIEW. AN ANIMAL CAN SEE IT PLAINLY. It makes an unequalled SHEEP FENCE, the barbs being lance shaped like WOOL SLIPS OFF and is not pulled out.
It is Easy to Build and simple to Repair. Any Bright Farmer's Boy, or Smart Farm Hand, can Run the Job.
ASK SAMPLE and CIRCULAR describing and illustrating it fully, FREE to all applicants.

Most Points to the Pound.
One Pound to the Rod.

KELLY STEEL BARB WIRE

Oldest and most reliable Barb Wire made.

Lightest.



Strongest

Absolutely Rust Proof.

Steel Wire.
Steel Barb.
Sharp Point.
Oil Paint.

Patented 1868, and licensed under all Patents.

SUSTAINED BY THE COURTS.

Kelly wire now sold cheap as any wire made under the Patents. One dealer only wanted in each town.

Adopted by Farmers, Ranchmen, Railroads.

THORN WIRE HEDGE CO., Sole Manufacturers, Chicago, Ill.

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CHAMPION BARB WIRE!

(Pat. Nov. 4th, 1879.)

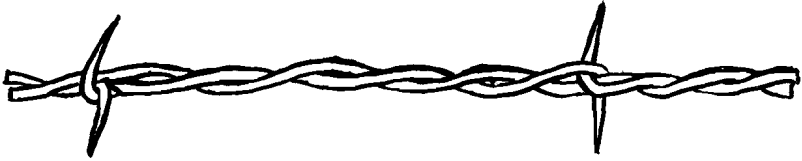


Infringes no patents. Galvanized after being made, it is Indestructible.

Is the most visible and effective.

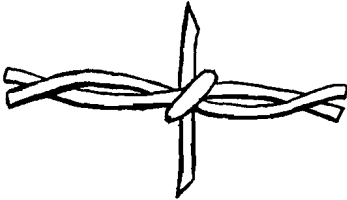
and the Least Dangerous Barb Wire known. "A rod for every pound." Send for circular and sample to
HAZARD MANUFACTURING CO.,
No. 87 Liberty Street, New York.

Newspaper advertisements of 1880 (Courtesy of Kansas State Historical Society)

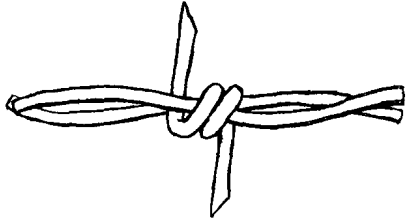


Jacob Haish's first patent, January 20, 1874

The fence which proved to be the best seller of all for many years, if not for all time, was the Glidden two-point wire barb, patented on August 22, 1876, by Joseph Glidden. Because of its light material and ease of manufacture, it was sold at a lower cost than other fencing. Moreover, it is a very effective fence.



A Glidden patent of 1874



Modern Glidden barb. American Steel and Wire Co.

On March 26, 1879, there appeared an advertisement for American Barb Fence. This was a new departure in that this fence consisted of a steel wire enclosed in a barbed metal strip. It was a costly fence and difficult to put in place. The metal strip held moisture; hence rust caused it to deteriorate readily. Yet many miles of it were sold in Kansas.

The Lyman four-point barb came on the market in February, 1881. It was a very effective fence and was the forerunner of many types of four-point barbs. Much of it is still sold in Kansas.



Lyman four-point barb

Washburn and Moen Manufacturing Company tried to get a monopoly in the barb wire market. First Washburn and Moen acquired half interest in the Barb Wire Fence Company of DeKalb, Illinois. By this pur-

chase, they acquired all the Glidden patents, past, present, and future. They then acquired the Hunt, Smith, and Kennedy patents. These deals gave them the legal title to the invention of barb wire. Next they went after the Haish patent, which they finally acquired. Later they also bought the Kelly and Lyman patents. After Washburn and Moen had acquired the monopoly, the plant at DeKalb, Illinois, manufactured barb wire for the western trade while the plant at Worcester, Massachusetts, manufactured fence for eastern and southern markets.

This monopoly caused other inventors to get busy. Soon there broke out a rash of new types of wire, new types of barbs to be attached to smooth wire, and machines which were sold to farmers so they could make their own wire. These machines were held not to be an infringement of patent rights since these fences were not sold after being made. These machines for "home-made" barb wire, barbs, and tools for placing barbs on smooth wire were second in importance only to the invention of barb wire itself. The Comanche Cattle Pool attached barbs to 250 miles of smooth wire with hand tools. This, of course, was one of the larger operations, but almost every farmer attached some barbs to smooth wire with hand tools.

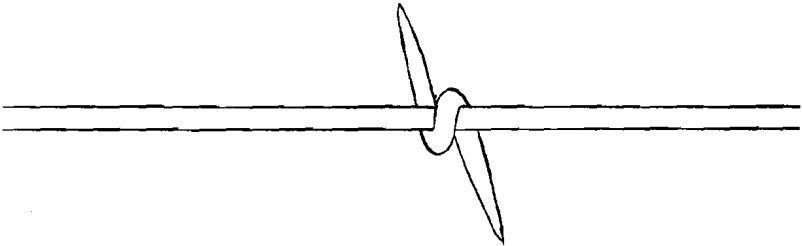
The DeKalb branch of the Washburn and Moen Company continued to acquire patents. By 1881, this company possessed ninety patents. By 1892, when the matter of fencing with metal fences was stabilized, the company had 400 patent rights. Of course many of these were never used and many had only small production. The barb wire with a block of wood is a good example of a patent which never reached high production, although there were several miles of this fence in Kansas.

Slowly but surely, fencing with barb wire supplanted the setting of Osage Orange fence. There was much opposition to barb wire because of the injury it could do to horses. Several attempts were made to have it outlawed but such measures were never able to get by the legislature. An editorial in the *Kansas Farmer* of May 24, 1882, said, "Barb wire should not be called a fence but a nuisance which should be outlawed." An article from the New York Shoe and Leather Company was copied in the *Kansas Farmer* in 1882: "Injuries to hides of cattle grazed in pastures fenced with barb wire is so great as to render the top grain useless in many cases." But the popularity of barb wire weathered all storms of opposition.

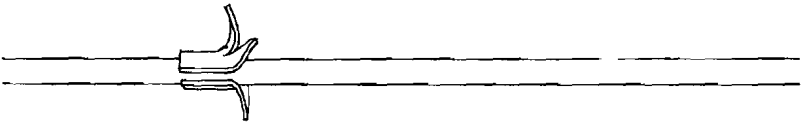
Cattlemen fenced large tracts of government land to keep homesteaders out. President Cleveland issued a directive to all United States marshals to arrest, and to all United States district attorneys to prosecute anyone who fenced government land. This was a hot issue until the blizzard of 1886 put many cattlemen out of business. Before they could recuperate, homesteaders moved in and fenced their claims. The open range disappeared.

Osage Orange fences and barb wire fences supplemented each other in a very effective way. Barb wire fences require posts. Osage Orange fence posts are the most durable of any wood posts in America. Today there are Osage Orange posts which have been in use for well over half a century and are still rendering good service. By 1890, a good unsplit Osage Orange post six inches in diameter at the middle would sell for twenty cents on the market. Cutting a large tree out of an Osage Orange fence did not destroy the fence. If the brush from the tree was pushed back into the gap made by the cutting of the tree, sprouts from the roots would come up through the brush the next spring. These sprouts, fed by the already established root stock, grew rapidly, and the effectiveness of the fence was unimpaired. Thus, farmers who received a bounty for planting Osage Orange fences received an income from the sale of posts and still had their fences.

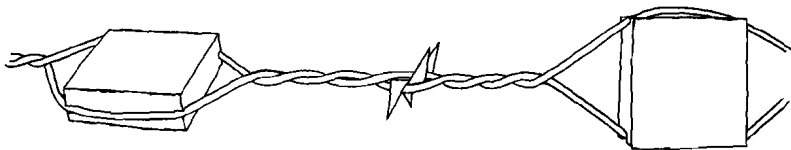
And so, here we have a brief and somewhat sketchy account of the fencing of the Kansas prairies. The day of the white hawthorne fence has long since passed; that of the Osage Orange is passing rapidly. Barb wire continues to be popular, and probably will remain so for many years to come.



One example of a hand-barbed wire using a staple for the barb



Charles Kennedy patent for barbs to be attached by hand



Barbed wire using wood blocks to protect livestock from injury

More Fence Facts

As W. M. Richard says, the day of the white hawthorne fence has passed, and the day of the Osage Orange is passing rapidly. Sixteen years ago, in the March 27, 1944 issue of The Wichita Eagle, Victor Murdock wrote a special article on the disappearance of the Osage Orange hedge fence:

FEATURE OF LANDSCAPE AROUND EARLY WICHITA THAT HAS NOW FADED OUT

One not infrequent feature of the frontier landscape in the environment of early Wichita has faded from sight, namely the Osage Orange nursery. It lingered long, but passed at last. Such a nursery started as a square or oblong patch of seedlings. Through the years these grew apace and the patch became a thicket. In the course of time this thicket thinned, the larger trees choking out the smaller ones. In the end the surviving trees succumbed to the farm demand for firewood and fence posts with the climax coming in this part of Kansas about ten years ago.

While seedlings from these early day nurseries still can be seen, grown old and gnarled, in farm hedges in this section, many of these too have reached an age and size that eliminates more and more of them every year, a chapter in a long, interesting story that opened over seventy years ago in this then new country. The opening chapter was marked by the quick popularity of the Osage Orange hedge among the prairie pioneers. For one thing fence material for the Sedgwick county prairie farm was decidedly scant in rail and rock. Sod fences were banned, the prejudice against them being carried in the simile, "as ugly as a mud fence." Wire, before the barb era, was expensive. A hedge could be grown and while it might not prove "hog tight, horse high and bull strong," it looked good in the green seasons and then, as well as in Winter time, it identified the boundary of the homestead in a time when many section roads were indistinguishable from farms. All over this county landholders turned to the Osage Orange hedge and it was to meet this demand that nurseries, to supply the seedlings, were started, a portion of the farmers preferring to put in the plants rather than the seed.

The utilization of Osage Orange apparently started with the Osage Indians who made bows of it. The French explorers therefore called it bois d'arc (wood of the bow). It grew well in southern Missouri, Indian Territory, Arkansas, Texas, but the opinion prevailed that it would winter-kill

farther north. Consequently when in 1845, Professor J. B. Turner of Jacksonville, Illinois, reported that he had grown successfully a hedge of it for six years he was setting the stage for the enthusiastic adoption of the plant in prairie regions. . . .

A description has come down outlining the Texas process by which the seed was secured from the "apple" or the "orange" around the year 1870. The big green balls were gathered and put in piles, remaining there till rotten. After that the sides were cut away and the core was placed in a wooden mill operated by horsepower. After being ground the pulp was transferred to a trough with holes in the bottom. Here the seed was washed three or four times and then spread out on a scaffold to dry, it being necessary to stir the seeds to keep them from moulding. It took about one thousand apples to make a bushel of seed. Four or five hands could get out ten bushels of seed a day. The apples usually could be bought at \$1.50 a thousand and there was profit in the operation in selling the seed at \$25 per bushel.

Popular sentiment in the reaction that followed the boom in the Osage Orange hedge in this section when it occurred was marked by a contention that a thriving hedge fence drained the fertility of the tillable land near it. Frequently lines of hedges were grubbed out, but on doing this often a farmer would leave a few trees to stand like sentinels along the border where the thick hedge once held forth. Some of those ancient sentinel trees are still standing in evidence of the long life of this plant. . . .

With our own eyes we can observe the fencing trends of today; we can make our own reports of conditions as they are now. But let's move back eighty or ninety years and see through others' eyes the circumstances and the problems existing then. In an essay read at the Second Annual Meeting of the Kansas State Horticultural Society in 1872, S. T. Kelsey of Pomona gave some good advice and some careful directions to settlers. He also voices his rather vehement feelings about the fence law then in effect.

. . . Most of the citizens of Kansas came here to make homes on the prairies. The land is easily secured. A little money buys a quarter section. But to get the quarter section in a condition to supply the wants of a family and make a pleasant home, such as every family ought to have, requires years of careful, well-directed effort, and as usually done, it requires a large amount of money.

How to make such improvements in the best and cheapest manner--to use our money and our time so as to bring the best returns in money, in comforts, in happiness--are questions in which all are more or less interested, and I offer the following remarks with the hope that it may aid some who are striving to work out a solution to these questions, and make homes on the prairies.

The first consideration in improving a farm is to get it secured against outside intruders.

A law most short-sighted, partial, unjust and ruinous—a disgrace to our statute books, and a blighting curse to the prosperity and progress of our State—obliges every man to fence against all the lawless herds that may be turned upon the prairies, before he is protected in his right to the use of his own land, that he has bought and paid for with his own money.

It is to be hoped that the law may soon be changed, so as to give every man the use of his own land and the privilege of fencing as he pleases, so that he shall restrain his own animals from intruding upon the property of others, but until such change is made the farm must be protected by an outside fence.

The premises once secured to the owner by a more just law, or a strong fence, the next thing should be to consider, for his own convenience and benefit, the division of the farm into suitable fields; and if the outside fence is made of any decaying material, provision should be made for a permanent fence to take its place.

For all such permanent fences the Osage Orange hedge stands pre-eminent. Its merits are so well known that I need not stop to discuss them.

The temporary outside fence, *if one must be built*, should be at least six feet outside the line, to give room for growing the hedge.

Having decided how the farm shall be divided, and where all the permanent fences will be needed, the next thing is to lay out the hedge rows, which can be done by sticking a row of stakes in a straight line. On ground not too much broken, four to six stakes, eight feet high, are sufficient for one-half mile. These stakes should be set from six to eight feet one side of the line intended for the hedge. By this row of stakes any ordinary plowman will make a very straight furrow. As each stake is passed set it over the same distance to the other side of the hedge line, plow back to the row thus made and then finish out the land, leaving a dead furrow in the hedge line. I prefer to break in May or June, but I have succeeded well with breaking done in the latter part of summer or fall, and even in spring. It is generally cheaper and better for the farmer to buy his plants of the grower, who makes that a specialty, than to attempt to grow them himself, and as growers are mostly well posted I need not stop to give directions for growing the plants.

Plant in the spring, any time during the month of April or the first of May, when the ground is in good order. Don't plant when it is too wet. Prepare the ground by plowing deep, throwing the furrows to the center, after which harrow down smooth, and it is ready for planting.

Now stretch a cord the size of a clothes line; track it, throw it to one side, and it leaves a mark to plant by. Plant with steel spade with blade thirteen inches long and three inches wide. Use none but good strong

plants. Cut them so that the roots shall be eight inches long and the tops six. Press the spade in on the mark of the line the full length of the blade; push it a little forward, and a boy with a handful of plants slips one down in the opening two inches deeper than it stood before; pull the spade out and putting it in two inches from the opening press the earth firmly to the roots, fill up the opening and the work is done. A good man and boy will in this way plant one-half of a mile of hedge per day. Set the plants one foot apart in the row. Cultivate well the full width of the plowing till the hedge is grown. The first fall throw a furrow to the hedge on both sides, and level down in spring. Soon as the plants are started the second spring, replace old dead ones with extra strong plants. I would do no cutting till the third, fourth or fifth year, then plash by cutting each plant half off and bending down into the row, so that it shall rest on the one last cut. The young shoots will then grow up from the roots and along the stem, making with the old plants an impassable barrier to all farm stock. After the hedge is plashed it should be cut back annually to about four and one-half feet high in a pyramidal form, so that a cross section would appear like a capital A, with base equal to height. [Sic]

In four or five years any prairie farm may be enclosed and divided with fences that will be strong, tight and durable, at a very small out-lay and a few days labor each year.

If a wind-break is required, the plants may be set six to eight inches apart, cultivated well and allowed to grow up as they will. It makes a good fence to turn all large stock, but to my eye it is an unsightly object.

The Osage Orange seems to be at home in our soil and climate. It grows rapidly, endures our driest summers and our coldest winters.

The gophers are easily destroyed by trapping or poisoning, and I know of no other enemy or any disease that injures it seriously.

With a little forethought and effort, I am confident that in less than 15 years, with the Osage Orange hedge, we can and will have the best fenced State in the Union, at one-third the cost of fencing with dead wood in counties where timber is most abundant

An article in the Fourth Annual Report of the State Board of Agriculture for the year ending November 30, 1875, also shows a concern with the subject of fences and the injustice of the fence laws and herd laws as far as the crop farmers were concerned. This report includes another passionate essay by S. T. Kelsey.

THE COMMON AND STATUTE LAW IN RELATION TO FENCES

The owner of real estate is entitled to the exclusive possession of his property. No one else has any right, without his permission, in the land. This is the elementary common law doctrine. Hence it follows that if any

other person disturbs the possession of the owner, either by entering upon the land himself, or by allowing his cattle to do so, he is a trespasser, and liable for all damages.

At common law, then, no person had any right to pasture his cattle on the land of another. The only apparent exception was the right of common; but our Supreme Court has decided that no such right exists or can exist under the laws of Kansas. The common law of England is in force in this State, by statute, as modified by constitutional and statutory law, judicial decisions, and the condition and wants of the people. General Statutes, 1127, sec. 3.

At common law, the owner of land is the owner of everything attached to it, for an indefinite extent upwards or downwards. He has the exclusive right to possess and enjoy it unmolested and undisturbed. He is not obliged to fence against the cattle of other persons. The owner of the cattle is obliged to keep them on his own premises at his peril; and if they stray or wander on the land of his neighbor, whether his neighbor's land is fenced or not, he is liable for the damages committed while there. This is the doctrine of our Supreme Court, as laid down in the *Union Pacific Railway Company vs. Rollins*, 6 Kan., 175. It is elementary, and may be found in all elementary writers.

Has the common law in this respect been repealed, or is it still in force? One thing is certain, and that is, that we have no law authorizing one man to pasture his cattle on the land of his neighbor. That would be beyond the power of the Legislature to do, for it would be giving one man a right to another's land without his consent. We have no law that attempts to do it. On the contrary, it may be asserted, that if a man herds his cattle on a vacant, unoccupied quarter section of land, that belongs even to a non-resident of this State, the owner may recover of that person all that the grass on said land is worth.

This was the theory on which the case of *Powers vs. Clarkson*, 11 Kans., 101, was tried, and is assumed to be the law. In the case of *Powers vs. Kindt*, 13 Kans., 74, the plaintiff was allowed to recover damages against the defendant for gross negligence, in allowing his cattle to be herded near the corn field of the plaintiff, where they would in all probability break into his corn field.

Not only does the law recognize the right of the owner of unfenced land to the grass growing thereon, but it protects him in the criminal code. Chapter 113, General Statutes, makes it a misdemeanor for any person to cut down or carry away the grass, in which he has no interest or right, standing, lying or being on land not his own, and subjects the party to a fine not exceeding \$500; and the same statute gives the owner a right of action against the offending party for treble the value of the grass. Hence it may be seen, that the policy of the law is to protect the owner of land in his right to the grass growing thereon.

As a conclusion of this subject, it may be remarked, that no one under the common or statute law of the State of Kansas has any right, title or interest in the grass growing on the land of another, and that he has no right to pasture his cattle on his neighbor's land, or to cut the grass growing thereon.

FENCE LAWS

We come now to consider the effect that the laws in relation to fences have had on the exclusive right of the owner to his land. In the first place, no fence law has ever attempted to give to any man the right to pasture his cattle on the land of another.

The first act of the Legislature on the subject was passed February 27, 1860.

This law required, that when the lands of two persons join and both parties shall use the same, that it shall be the duty of each to build one-half of the line fence. Laws of 1860, page 123. The same Legislature legalized wire fence.

On the 13th of May, 1861, the Legislature passed another act on the subject of division fences. It provided in detail the manner in which division fences shall be maintained, and the procedure by which one party can compel the other to build his share of the fence. Section 7 (compiled Laws, 553), contains the provision: "If any person, liable to contribute to the erection of a separation or division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred, but shall be liable to pay to the party injured all such damages as shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the said land, to be ascertained and appraised by two resident freeholders."

The General Statutes (chap. 40) contain the present law on the subject of fences. In the first article of said chapter is contained the declaration that all fields and enclosures shall be enclosed with a fence sufficiently close, and goes on to state and declare what shall constitute legal fences. Article II provides as to who shall be fence viewers, and gives them duties and compensation. Article III requires the owner of adjoining lands to keep up and maintain partition fences, and provides how the same shall be built, and the manner of compelling parties to build fences. Article IV substantially re-enacts section 7 of the Laws of 1860, above quoted. It also provides the manner in which damages done by cattle shall be ascertained and collected. The effect of the legislation of Kansas, so far as it modifies the common law in relation to fences, is as follows: Unless a party shall maintain a lawful fence, he does not take such care of his own land and

crops as to enable him to recover damages which might have been avoided had he kept up a good fence.

This is the view of our Supreme Court as laid down in the case of *Union Pacific Railroad vs. Rollins* above cited. In other words, the Legislature does not make it right or lawful for any man to pasture his cattle on his neighbor's land, but says, if a man will not maintain a lawful fence, he cannot be heard to complain if the cattle of an adjoining owner escape on to his land.

In the case of *Larkin vs. Taylor*, 5 Kans., 433, the Court decides that the law of this State as to enclosures, makes the party having a fence insufficient in law guilty of negligence, and he cannot recover for injuries done to his crops by stock running at large and roaming upon his land through such insufficient fences; nor can such a party recover, even if the owner of the stock was himself charged with negligence, unless it amounts to a wilful, wanton, or malicious want of care. In the opinion in the case, the Court seems to intimate that in case the acts of the parties are such as to show a wilful intent to commit a trespass, that the owner may recover even if he had no sufficient fence.

HERD LAW

The first step of the Legislature toward restraining the common law in relation to fences, was by an act of the Legislature approved February 25, 1870 (chapter 115, Laws of 1870), entitled "An act to provide for a Herd Law in the counties of Saline, Ottawa, Cloud, Cherokee and McPherson." This law prescribes that if the owner of stock of any description shall allow the same to trespass on the premises of another person, such owner shall be liable in damages for any injury sustained by reason of the trespass. The act also gave a lien on the animals for damages.

This act was before the Supreme Court in the case of *Darling vs.*, 7 Kans., 592. The Court held the act to be unconstitutional and void, for the reason that it was in conflict with the general fence law of the State, and was obnoxious to the provisions of the Constitution, that all general laws should have a uniform operation throughout the State. This put an end to all special acts of the Legislature on the subject.

By act of February 24, 1872, the Legislature passed a general herd law. It provides that the county commissioners of the different counties shall have power to direct, by an order, what animals shall not be allowed to run at large within the bounds of their counties. The act also provides that the order shall be entered on the records of the board, and requires it to be published. It also gives a lien on the animals for all damages done. The law also provides for the manner in which the lien can be enforced. This law has been declared constitutional by the Supreme Court. This law was amended by act of the Legislature, approved March 7, 1874; Laws of

1874, page 203. This law requires that the county commissioners, on a petition of two-thirds of the legal voters of the county, shall make an order prohibiting stock of all kinds, or of any kind, from running at large. The act makes it a misdemeanor for any person to violate its provisions, besides being liable, civilly, for damages done. This is the present law of Kansas in relation to stock running at large. The Supreme Court has decided that the order of the county commissioners must apply to the whole county, and cannot be confined to one or more townships.

The following is what S. T. Kelsey, formerly an active member of this Board, has to say on the subject of fences:

“. . . The present law in Kansas (except where the county commissioners of any county order it otherwise), is, that the growing crops on a man's farm may be legally eaten up or destroyed by other people's livestock, unless a fence shall be built around his land which a legislature has chosen to call a legal fence. We can easily see why, when the timbered States of the East were first settled, this custom of fencing-in the farm crops should have been adopted. It was a task requiring many days, or even years, of hard labor to chop down and clear off the timber from a ten-acre lot, and the fencing would only use up a part of the timber, which must in some way be disposed of, while the large tracts of woodland could only be used to furnish pasturage for the cattle. As the timbered lands of the East were cleared, and the prairies of the West opened for settlement, fencing material became scarce and high-priced. . . . The present fence law, in most of the States, is simply a blind clinging to an old custom, which was good and useful in its time, but has outlived its usefulness, and should be placed on the retired list.

“The livestock should be fenced in, or otherwise cared for by the owner of such stock, and he should be liable for any damage they may do to the property of other persons, through his neglect to care for them. Where the burden of fencing against stock is upon somebody else, and not upon the owner, many of the stock owners care not whether stock is orderly. Thousands of breachy cattle are annually turned out upon the prairies, and, as soon as the grass gets a little dry, they break down the fences and destroy the farmers' crops.

“In the fall of 1867, I wrote to many of the leading agriculturists in Kansas, asking them to state the proportion of crops destroyed by stock in their localities during the year. They put it at from 10 to 40 per cent., the average being over 20 per cent. I am now living in a county (Reno) where the stock law is enforced, and I am confident that the damage to the crops by stock will not amount to 7 per cent. The difference is, that every man there is compelled to care for his own stock, and so it is all cared for; and I am satisfied that the cost of fencing-in, or herding the stock, is not so great as the cost of hunting, loss from strays, and stealings of stock that is

allowed to run at large. The settlers, being protected in their right to the use of their own lands, are putting them in cultivation to grow provisions for their families, and are planting out hedges, which will soon make permanent fences, at a trifling cost compared with building fences immediately of expensive material, most of which must be bought and freighted from a distance. Without the herd law, these hedges could not be safely and successfully grown, as stock will browse down the plants, and trample and wallow upon the rows until, in nine cases out of ten, no matter how well tended otherwise, they will ruin the hedge if allowed to have access to it.

“An extensive stock owner, whose herds ranged over one-third of a county, once said to me, ‘I care nothing about the extra cost of herding, for I always expect to herd my cattle; but get a herd law, and we should soon have a settler on every quarter section of land in the county, and there would be no herding ground left.’ And right here is the whole difficulty. A few men want to keep back the settlements, and oblige all who wish to cultivate the soil—the men who are doing most to settle up and develop the country, and who have the heaviest burden of taxes to pay—to expend more than all the stock in the county is worth to fence in their crops, and give free range to the stock owners, who need not own or improve, or pay taxes upon a single acre. But people are beginning to believe, that when they have bought a piece of land, and paid for it, and pay taxes upon it, they ought to own the land, and the crops growing thereon, and be protected in their rights to do with it as they please, providing that nothing which they do, or grow, or keep on their farms, shall interfere with other people in their rights to enjoy the same privilege.

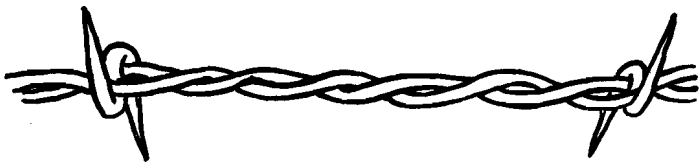
“We are told that the stock business is the best paying business in the country and the laws should therefore encourage it. Now it does seem that if it is a good business, as everybody appears to believe it is, it should be able to compete with other branches of business in a fair competition; and surely without any such special favor as a law obliging people who choose to follow other branches of business to expend their money in protecting their own premises, in order that the stock man may have the free range of pastures he does not own, and feed that costs him nothing.”

There are, according to the assessors' returns, in the State, 703,428 rods of stone fence, which have cost \$1,662,792.09. Rail fences, 8,550,315 rods; cost, \$11,436,358.73. Board, 2,825,116 rods; cost, \$3,912,969.29. Hedge, 5,822,408 rods; cost \$3,019,051.10. Wire (estimated), 1,205.20 rods; cost, \$893,220. Total number of rods of fence in the State, 19,106,467; aggregate cost of same, \$20,924,391.21. The value of farm product for 1875, is \$43,970,494.28; while the value of live stock is only \$28,610,269.46. Ten per cent. on the fence investment adds \$2,092,439.12. As much more should be added for natural wear and tear, except for stone

and hedge. The cost of the latter is not properly chargeable, however, to the fence account; or, if it is, it should have proper credit for its compensating influence as wind breaks, influence upon climate, etc., the same as artificial forests.

These reports, of course, took place before barbed wire had come into use. However, in 1875 advertisements for the new wire began to appear in the newspapers. The following item, in fact, got front page coverage in the Kansas Farmer on June 30, 1875.

Barbed fences have been so thoroughly tested during the past year, that they have ceased to be experimental. There is no material in present use in the West that can combine so perfectly the requisites of a good fence, viz.—durability, strength and cheapness as the “Barbed Wire.” When the Barbs are perfectly secured, the fence is absolutely stock proof. Cattle, horses or sheep never make a second attempt to go through it. The superiority over all other Barbed Wire, claimed by the inventor and manufacturer of Haish’s “S” Enamelled lies in the fact that the Barb passes around both wires and cannot be turned out of position, and that the coating of Enamel renders the wire impervious to water.



It is made from two strands of No. 12 wire twisted but slightly (to avoid weakening), and with “S” Barbs cut from the best annealed wire, attached as shown in the accompanying cut. It weighs 17 to 18 ounces per rod, and is coiled upon spools of fifty to one hundred rods each. It is readily wound or unwound, is put in position upon the posts with great rapidity, and can be tightened with an ordinary stretcher. Posts may be set twenty to thirty feet apart.

The manufacturer says of this Fence: “It is the cheapest made, snow and wind will have no effect upon it. Two wires are guaranteed a safeguard and protection against the encroachments of cattle. If the Haish’s ‘S’ Barbed Fence Wire will not do all it is recommended to, return it to the dealer you purchased it from and your money will be cheerfully refunded.” Price eighteen cents per pound.

It will be for sale by the hardware trade generally throughout the Northwest. For the convenience of dealers the manufacturers have placed a large stock with Hibbard, Spencer & Co., corner Lake and Wabash, Chicago.

In 1883 the State Legislature made barbed wire fences legal with the following bill:

CHAPTER CXIII.
BARBED-WIRE FENCE
(Senate Bill No. 65)

An Act to constitute a legal barbed-wire fence.
Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That in addition to the fence now declared by law to be a legal fence, the following shall be a legal fence: A barbed-wire fence, of not less than three wires, with third wire from ground not less than forty-four inches, nor more than forty-eight inches from the ground, and bottom wire not more than twenty-four inches nor less than eighteen inches from the ground, with center wire equidistant, or nearly so, between upper and lower wires; said wires to be well stretched and barbed, barbs to average not more than nine inches apart; said barbed wire to be composed of two wires not smaller than No. 13, or one wire not smaller than No. 9 wire, to be securely fastened to posts which shall not be more than two rods apart, and not less than twenty inches in the ground, and set in a workmanlike manner or the posts may be not more than forty-eight feet apart with slats placed perpendicularly, not more than twelve feet apart, between the posts, and fastened to the wires by staples, or with holes in the slats: *Provided*, that in townships or counties where hogs are allowed to run at large, there shall be three additional barbed wires, the lower one of which shall not be more than four inches from the ground, the other two to be placed an equal distance apart, or nearly so, between this and the lower wire as required above.

SEC. 2. This act shall be in force and take effect from and after its publication in the statute book.

Approved March 6, 1883.

I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office.

JAMES SMITH, Secretary of State.

Since we have read rather definite instructions on how to plant and care for hedge apple fences, it seems appropriate to find out a bit about the "do it yourself" methods of barbed wire fences. Up until the early decades of this century some barbs were put on already existing wire fences by hand. A barbing tool that looked like a big pair of pliers was used. One kind had long wooden handles and jaw-like crimpers on the end. This tool was about twelve inches long. A staple was put in the "jaws." The staple was then put over the fence wire and the handles were closed. This made the staple, or barb, bend around the wire tight, with the two pointed ends sticking out.

When barbs were put on smooth single wire, one man could do the job working by himself. However, when barbs were put on twisted wire fences, two people had to work together. One person had to hold apart the twisted wires so the staple could be clamped on one of the wires by the other man.

Another common type of hand barbing tool was all metal and was only slightly larger than a pair of square-nose pliers. The operation of this type was the same as the other, but its size made it a little easier to handle.

COW POKES

By Ace Reid



No, it ain't exactly where you said put it, but jist look.
We didn't have to dig one post hole!

As for putting up a barbed wire fence from the beginning, there are undoubtedly as many methods as there are people who have done it. Recognizing the many possible variations, Mrs. Helen Neumann of Wichita, in an interview in March of 1960, gave us the fundamentals of putting up a fence as her father had done it thirty years ago.

How do you put up a barbed wire fence? Well, first you have what you call a "deadman." You put it at the corner posts of your fence.—But I guess if you want it from the *beginning*, we'd better start with the beginning instead of with the deadman.

Well, after dad had decided where he wanted the fence, the boys went out and dug the holes for the posts. Dad was pretty particular about his fences, so he wanted the posts set only about ten feet apart and three feet deep. Some of the farmers around there [Anderson County] would sharpen their posts on one end (especially if they were using hedge apple

posts) and would pound them into the ground without digging holes. But dad never drove a post; he always set them in post holes.

Anyway, dad and the boys would go out and dig the holes with the post hole auger. The one we had in the '30's was operated by hand, but now there are augers that can be operated with power from the tractor. After they got the holes all dug, they'd drive around with a wagon load of posts and throw one off at each hole. Dad always used railroad ties for posts. (Whenever the railroad had to replace ties, dad would go up and tell them he needed the old ones for posts. They were free since the railroad couldn't use them any longer. You had to speak for them early, though, or some other farmer would get them.)

They put a whole tie at each corner, but the boys usually split the ties for the rest of the posts. They went along setting the posts in the holes. Us kids always had to hold the posts straight while dad lined them up with his eye. My! How we hated that--standing there sometimes for as long as ten or fifteen minutes, leaning the post a little bit to the left, then to the right, then back just a little. Finally when dad was satisfied, the dirt was put in the hole around the post and tamped down real hard so the post couldn't wiggle.

Well, about the deadman: One or two deadmen were put at every corner post in order to steady it. A hole was dug about six or eight feet from the corner post and two or three feet deep. A pretty heavy wire was wrapped around the deadman, a great big rock, or a big piece of scrap metal like an old plow or a hunk of rail. Then the deadman was put into the hole and buried. The earth was tamped down solid. The two long ends of the wire were brought up around the corner post and twisted together so they became very taut. This way, the guy wires attached to the deadman held the corner post so it wouldn't be loosened by the tension from the fence wires.

After the corners were braced, either by deadmen like dad used or by wooden cross-braces, and all the other posts were in firm, they began to put the wire up. They'd tie and steeple [The dictionary says "staple," but a lot of people in the eastern half of the state call it "steeple."--Ed.] the barbed wire to a corner post. Then they'd unroll a hundred feet or so and tack it loosely on the posts with steeples. With a curved bar that most people call a "wrecking" bar, they'd tighten about sixty feet of wire at a time. While dad kept the wire taut by bracing the bar against a post, one of the boys would come along and pound the steeple in tight on each post. When that was done, they'd move on for another sixty or seventy feet. When they got to the end of one roll of wire, they'd splice the ends to another roll and keep on going.

When they finished with the bottom wire clear around the field, they started on the next wire up, and so on. I think they measured with the

hammer handle for the distance from the ground to the bottom wire, and between the other wires. I don't know the exact distance, but I know they sure never fiddled around with a ruler or a yardstick out there in the field.

Of course everybody didn't put up fences like dad did. Some people used regular wire stretchers like the block-and-tackle or the ratchet type stretcher—but dad just used that old wrecking bar method. He put up awfully good fences with it too!

Now a word about posts. We already know that Osage Orange posts were used, and railroad ties, and nowadays, manufactured metal posts. It is easy enough to visualize how to load up a wagon with discarded ties, or how to saw down some trees for posts. Stone posts were another matter, though. According to Harry Falen of Morris County, getting stone posts wasn't too difficult—if you knew exactly how. They used to go to the old stone quarry and clean off a ledge of rock. They measured off the length of the post they wanted. Then they took thin wedges and put them six inches apart along the length of the stone. Each wedge was tapped with a hammer until the correct depth and length of the post was reached. When the workers were through “tapping out” their posts, they simply picked them out of the ledge of rock and took them home. It sounds simple, doesn't it!

One more thing ought to be mentioned about posts before we leave them. From Ford County comes the belief that fence posts should be set in the dark of the moon rather than when the moon is full. If they are set in the dark of the moon, the posts will remain firm; if they are set in the light of the moon, they will soon become loose and wobbly. Not everybody believes this is true, but some people swear that it is.

Well, whether the talk is about stone posts, hedge posts, or railroad tie posts; about “barb wire,” “bob wire,” or “barbed wire”; about “Osage Orange,” “hedge apple,” or “hedge ball”; about mud, stone, hedge, rail, or wire fences, fences really are fascinating. And by now everyone should be able to answer the old riddle, What is it that runs all around a farm but never moves?

Vol. 1, No. 1, *Men Against The Frontier*, February, 1957:

Vol. 1, No. 2, *The Red Man Lives*, May, 1957:

Vol. 1, No. 3, *Buffalo: Lord of the Plains*, August, 1957:

Vol. 1, No. 4, *To Live in Symbols*, November, 1957:

Vol. 2, No. 1, *Trails of Steel*, February, 1958:

Vol. 2, No. 2, *That a State Might Sing*, May, 1958:

Vol. 2, No. 3, *A Myth Takes Wings*, August, 1958:

Vol. 2, No. 4, *Kansas: Study in Contrasts*, November, 1958:

Vol. 3, No. 1, *Kansans Talk Tall*, February, 1959:

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Vol. 4, No. 2, *Fencing the Prairies*, May, 1960:

W. M. Richards, “Fencing the Prairies.”

REFERENCES AND ACKNOWLEDGMENTS

"Facts and Fiction":

Best thanks to collectors of oral material in this issue: Alfred Agnew, Terry Scholten, Elma Rust, Chester A. Green, Joseph Sahlberg, Sara J. Falen, Veronica Thennes; and to the *Kansas Historical Quarterly* of 1939 for the reprint of the 1860 news story.

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Information on putting up a fence in the 1930's from an interview with Mrs. Helen Neumann, Wichita, March 27, 1960.

Line drawings of wire types, courtesy of *The Panhandle-Plains Historical Review* (1958), W. M. Richards' collection, and the Department of Art, Kansas State Teachers College.

"Cowpokes" cartoon, courtesy of its creator, Mr. Ace Reid.