PROCEEDINGS
in the
TERRITORIAL DISTRICT COURTS,
APRIL, MAY, JUNE, SEPTEMBER, OCTOBER & NOVEMBER
1851,
as reported in territorial newspapers.

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A. Introduction.

By

Douglas A. Hedin
Editor, MLHP

> Do you remember how she always read [*The Times*], smilingly? I don't think she could have borne life without the Court Calendar. 'It rivets me,' she used to say. 'Rivets me.'
>
> Jane Gardam, "The Tribute" [1]

In the nineteenth century, articles about local court proceedings were important features of Minnesota newspapers. For the journalist, the courthouse usually was within walking distance, lawyers' arguments easily understood and most trials so short they could be described in a paragraph or two. For the reader, lawsuits were fodder for gossip, the litigants and lawyers well known, sometimes neighbors, the trials entertaining, even "riveting." A century and more later, historians examine these newspapers to explain how a system of civil and criminal justice was introduced into a territory that was home to native tribes but governed by energetic sometimes rapacious white settlers under legislation passed by a Congress hundreds of miles away, to appraise the ability of a particular judge, for insights into the practice of law, to understand the behavior of juries, for signs of societal, cultural and economic change reflected in litigation, and much more.

Under the Organic Act, which created Minnesota Territory in 1849, supreme court justices also served as district court or trial judges. Chief Justice Aaron Goodrich was assigned to the first judicial district, Associate Justice David Cooper to the second and Bradley B. Meeker to the third.[2] In 1851, they presided over six sessions of the district courts.

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[1] "The Tribute" in *The Stories of Jane Gardam* 102 (Europa Editions, 2014).

[2] The dates of the district courts were set by the Legislative Assembly and were published in the *Minnesota Democrat*:

Time of Holding the Courts of
Minnesota Territory.

In 1851, the Territorial Legislative Assembly adopted a Civil Code, which was an entirely new set laws on practice and procedure in civil cases. [3] It was a variation of the Field Code, named after David Dudley Field of New York.[4] The code went into effect September 1, 1851,[5] but copies had not been distributed in time for the district court sessions that autumn. As a consequence, Judge Cooper did not hold court in Washington County in October because he did not have a copy of the new code, and Judge Meeker also declined in Benton County in November. Chief Justice Goodrich, however, proceeded to hold court in Ramsey County in September 1851. This was the last time he held court.

The account of this session reveals how controversial the Chief Justice had become. After the April session of that year, the *Minnesota Pioneer* praised him for his "impartiality and promptness." By September the *Minnesota Democrat* had come to loath Goodrich, and it ridiculed his behavior during trials in St. Paul that month. As the result of complaints by citizens that had

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> 1st Judicial District, embracing Ramsey County and the counties Dakota, Wahnata and Washington, attached to Ramsey county for judicial purposes. Seat of Justice St. Paul. Time of holding court, second Monday in April and September of each year. Chief Justice Aaron Goodrich, presiding.
>
> 2d Judicial District, Washington county and the countries of Itasca and Wabashaw, attached to Washington for Judicial purposes. Seat of Justice Stillwater. Time of holding court, second Monday of May and October. Hon. David Cooper, presiding.
>
> 3d Judicial District, Benton county and the county of Pembina attached to Benton county for Judicial purposes. Seat of Justice Sauk Rapids. Time of holding court, second Monday of June and November. Hon. B. B. Meeker, presiding.

Minnesota Democrat, May 27, 1851, at 4. According to the 1850 census, there were only 6, 077 white residents in Minnesota Territory.

[3] Minn. Rev. Terr. Stat., c. 70, at 328 (1851). The first two sections provide:

> Sec. 1. The distinction between the forms of actions at law, heretofore existing, are abolished; and there shall be in this territory hereafter, but one form of action at law, to be called a civil action, for the enforcement or protection of private rights, and the redress of private wrongs; except as otherwise expressly provided by statute.
>
> Sec. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

[4] Minnesota Territory was the sixth jurisdiction to adopt a variation of the Field Code. Charles M. Hepburn, *The Historical development of Code Pleading in England and America* 98 (Law Book Exchange, 2004)(published first, 1897).

[5] Minn. Rev. Terr. Stat., c. 137, §1, at 578 (1851).

been festering since the previous year, he was replaced on October 21, 1851, when President Fillmore made a recess appointment of Jerome Fuller as chief justice of Minnesota Territory. [6]

If the conduct of Goodrich seems odd or even amusing, that of Judge Bradley Meeker in the June session in Benton County was exemplary. On his docket were prosecutions of several white settlers for introducing liquor into lands reserved for Indians in violation of federal and territorial law.[7] Defense counsel argued that the statute required intent to sell to the natives but Meeker ruled otherwise; that Indian witnesses "as a nation" were disqualified from testifying, but Meeker ruled determinations of competency must be made on an individual basis; that one prosecution witness who purchased liquor and whose father was French and mother Winnebago was not an Indian within the law, but Meeker ruled that "in legal contemplation, the progeny followed the condition of the mother, and the child of a Winnebago squaw was a Winnebago Indian." At this time, arguments over admissibility of evidence were made in the presence of the jurors (decades later, they were removed from the courtroom while such arguments were made). The evidence was so strong in the first cases that Meeker ruled the jurors had a "duty to find a verdict of guilty." But in a classic case of jury nullification, a verdict of not guilty was returned. [8] The district attorney then dropped other prosecutions "deeming a conviction impossible." Later prosecutions ended in hung juries.

But that was not the end of the story. Meeker returned to the subject of illicit sales of liquor to natives in a talk that concluded the short court session in Benton County in November. According to a letter to the editor of the *Minnesota Democrat*:

> [He made] some able and excellent remarks, commented at some length upon the evils resulting to the citizens of Benton County, from the sale of ardent spirits to the Indians. He regretted to know that this mischievous practice was carried on to a

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[6] Douglas A. Hedin, "Documents Regarding the Terms of the Justices of the Territorial Supreme Court: Part One: Introduction" 20-25 (MLHP, 2009-2012).

[7] The territorial courts applied two sets of laws: federal laws, enacted by Congress, and territorial laws passed by the Territory Legislative Assembly. Sometimes they overlapped and addressed the same subject matter.

[8] The following year, Chief Justice Jerome Fuller directed a verdict in *West v. Northrup*, a civil case, in Ramsey County District Court, but the jury disregarded his instructions and returned a baffling verdict. See "Chief Justice Jerome Fuller (1808-1880)" 14-16 (MLHP, 2016).

considerable extent at this time, in the country. It was in direct violation of the law of the Territory, which the best interests of the county require to be strictly observed. As a citizen of the county, he hoped to see the law on this subject rigidly enforced; and the evil practice of selling spirits to the Indians soon wholly abandoned.

Benton County, for the productiveness of its soil, its admirable adaption to agricultural purposes, the abundance which it yields the husbandman for his labors, is unsurpassed by any region of country in the whole north west. With such unequalled, natural advantages of soil, and of situation, nothing can prevent the county from becoming densely populated, if the fears so general expressed abroad of the conduct of the drunken Indians occasioned by the sale of ardent spirits to them by some of our citizens, were removed.—This is urged as an objection to the county to emigrants who have come to the Territory in quest of farming lands. His Honor expressed himself happy in the belief, that the citizens of the county were beginning to look at the subject in its true light, and that a determination was being manifested, to arrest the evil by yielding their prompt co-operation and support in the enforcement of the law. The county is yet anew, but there is a rapid accumulation here in energy and enterprise. The evils incident to a new country will soon disappear.

It is unusual for a judge to speak like this, but Meeker must have felt that the courtroom spectators needed to hear a sermon about their future. He appealed to their better nature and self-interest to follow the law, while exuding the limitless optimism about Minnesota's future held by all early settlers.

Another unusual case involved attempts by soldiers stationed at Fort Snelling to be released from military service. Upon their application, Probate Judge Henry Lambert issued writs of habeas corpus to Colonel Francis Lee, Commandant of the Fort, but he refused to comply, leading Lambert to issue a warrant for his arrest. At this point Chief Justice Goodrich intervened, quashed the writs and ordered Lee discharged.[9]

[9] Henry A. Lambert (1817-1870) was elected Probate Judge of Ramsey County on November 26, 1849, defeating Bushrod W. Lott, 183 to 126. On October 12, 1852, he was re-elected, defeating future Territorial Chief Justice, William Welch, 182-179. J. Fletcher Williams, *A History of the City of St. Paul and of the County of Ramsey, Minnesota* 244, 331 (1876).

On the dockets were numerous collection cases. At this time, individuals made loans to other individuals as there were no banks in the Territory (banking houses would open a few years later and would fail in the Panic of 1857). Lenders required co-signors or guarantors of the loans or that borrowers have collateral or security. Upon default, the creditors tried to attach the assets of the borrower or sue the guarantor, but this lead to court hearings over the wording of the application for a writ of attachment, how much of the promissory note remained unpaid and an array of other defenses raised by the debtor.[10] Cases involving creditors' rights were important because if Minnesota Territory became known as a debtor's haven, it would be difficult to attract capital from Eastern and English investors. [11]

The territorial trial bar was small. In their articles about court proceedings, the newspapers usually listed the lawyers for the litigants, and the same ones appear in case after case. In these articles we see the beginnings of lawyers and judges who would become important figures in the legal history of the

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[10] The 1851 Code set out the requirements for a warrant of attachment:

> Sec. 134. In an action for the recovery of money, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as the plaintiff may recover.
>
> Sec. 135. A warrant of attachment must be obtained from a judge of the court, or from the clerk thereof, in which the action is brought.
>
> Sec 136. The warrant may be issued whenever the applicant, or some other person, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim, and the ground thereof, and that as the applicant verily believes the defendant is either, 1. A foreign corporation: 2. Not a resident of this territory, or has departed therefrom with the intent to hinder and delay his creditors, or to avoid the service of a summons, or that the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of his property so as to hinder or delay his creditors, or that the debt was fraudulently contracted, or that the applicant is afraid of losing his debt.
>
> Sec. 137. Before issuing the warrant, the judge or clerk shall require a written undertaking on the part of the plaintiff, with sufficient surety to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars.

Minn. Rev. Ter. Stat., c. 70, §§134-137, at 346 (1851).

[11] See also Douglas A. Hedin, "Lawyers and 'Booster Literature' in the Early Territorial Period" 25-29 (MLHP, 2008).

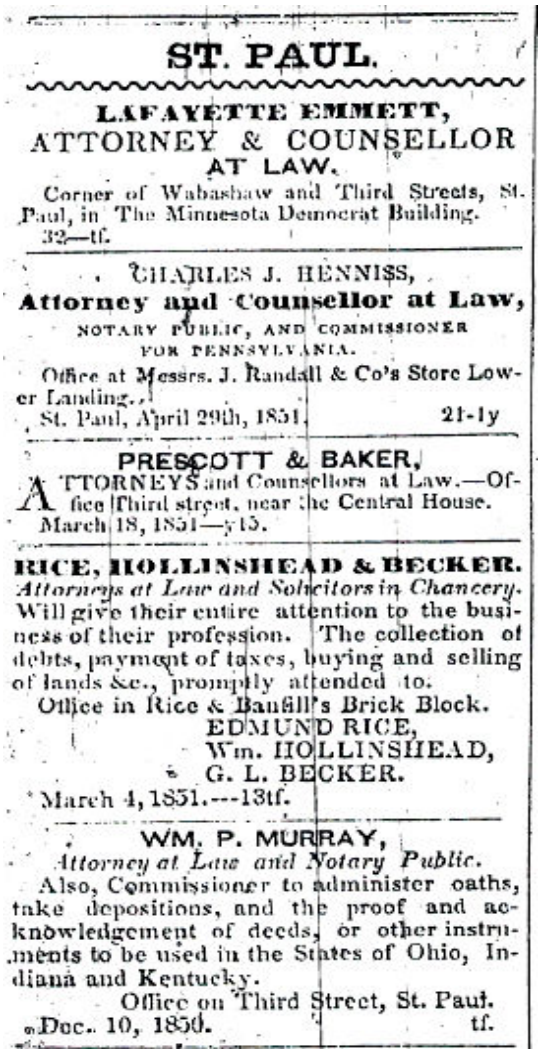
state. In the issue of the *Pioneer* on June 24, for example, there is a short notation that Rensselaer R. Nelson and Lafayette Emmett were admitted to practice. Nelson served as judge of the federal district court in Minnesota from 1858 to 1896, while Emmett was Chief Justice of the Minnesota Supreme Court from 1858 to 1865.

In 1851 and throughout the nineteenth century, lawyers advertised by placing their business cards in the newspapers. Examples are posted below.

Newspaper articles about the district court sessions held in 1851 in Minnesota Territory follow. They have been reformatted. Original spelling and punctuation have been retained. The names of some cases are bolded. Footnotes are by the MLHP.

* * * *

B. Lawyers' Business Cards in Territorial Newspapers in 1851



ST. PAUL.

LAFAYETTE EMMETT,
ATTORNEY & COUNSELLOR AT LAW.
Corner of Wabashaw and Third Streets, St. Paul, in The Minnesota Democrat Building.
32—tf.

CHARLES J. HENNISS,
Attorney and Counsellor at Law,
NOTARY PUBLIC, AND COMMISSIONER FOR PENNSYLVANIA.
Office at Messrs. J. Randall & Co's Store Lower Landing.
St. Paul, April 29th, 1851. 21-1y

PRESCOTT & BAKER,
ATTORNEYS and Counsellors at Law.—Office Third street, near the Central House.
March 18, 1851—y15.

RICE, HOLLINSHEAD & BECKER.
Attorneys at Law and Solicitors in Chancery.
Will give their entire attention to the business of their profession. The collection of debts, payment of taxes, buying and selling of lands &c., promptly attended to.
Office in Rice & Banfill's Brick Block.
EDMUND RICE,
Wm. HOLLINSHEAD,
G. L. BECKER.
March 4, 1851.—13tf.

WM. P. MURRAY,
Attorney at Law and Notary Public.
Also, Commissioner to administer oaths, take depositions, and the proof and acknowledgement of deeds, or other instruments to be used in the States of Ohio, Indiana and Kentucky.
Office on Third Street, St. Paul.
Dec. 10, 1850. tf.

ORLANDO SIMONS,
ATTORNEY and Counsellor at Law, St. Anthony street, St. Paul.—The entry of lands on military warrants promptly attended to.
Dec. 10, 1850. tf.

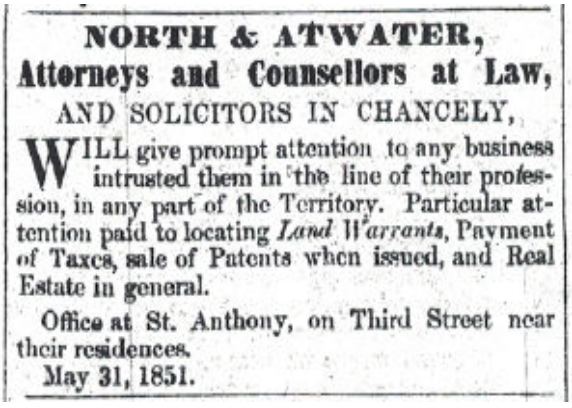
H. F. MASTERSON,
ATTORNEY and Counsellor at Law, St. Anthony street.—The entry of land on military warrants, promptly attended to.
Dec. 10, 1850. tf.

W. D. PHILLIPS.
ATTORNEY at Law, Notary Public, Land Agent and Commissioner for taking depositions and the acknowledgment of deeds for the states of Iowa, Illinois, Indiana, Missouri and Wisconsin. Persons in the States who have obtained Land Warrants under the act of Congress aproved September 28, 1851, can have the same located in Minnesota, by forwarding a power of Attorney and the warrant to *W. D. Phillips.*
Office near the American Hotel.
St. Paul, March 4, 1851.—13tf.

L. A. BABCOCK,
ATTORNEY and Councellor at Law: St. Paul Minnesota Territory, will attend to the location of land warrants, payment of taxes, etc.
Feb. 25.—y12.

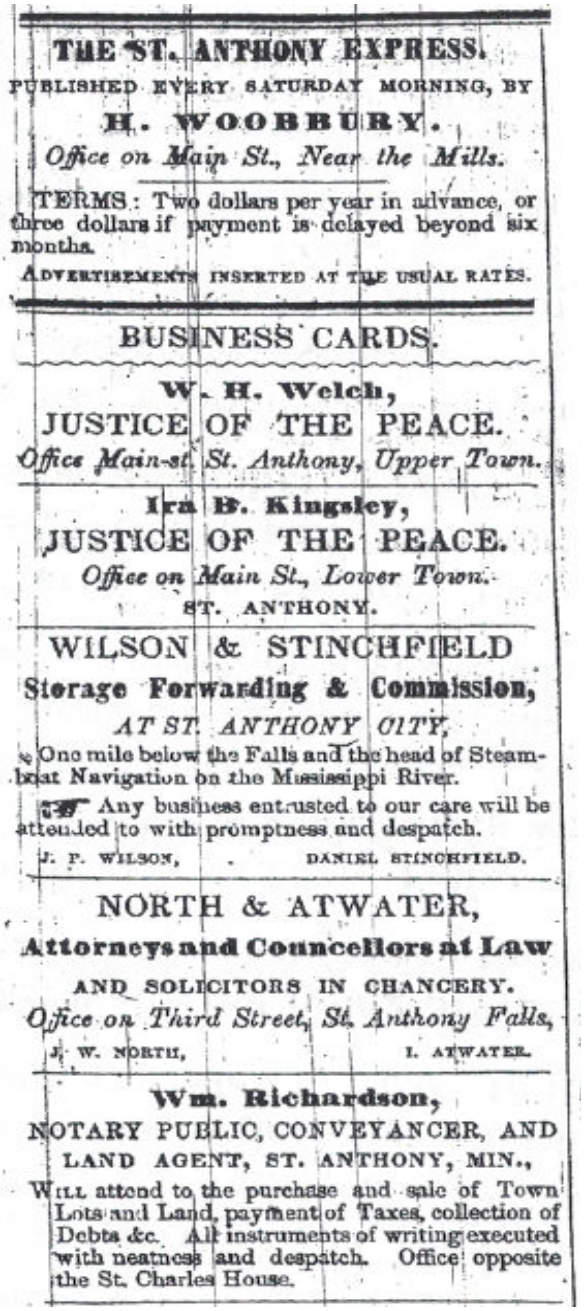
ALEXANDER WILKIN. RENSSELAER R. NELSON.
WILKIN & NELSON,
ATTORNEYS and Counsellors at Law and General Land Agents, St. Paul, Minnesota Territory.
Dec. 10, 1850. tf.

W. G. LE DUC,
Attorney and Counsellor at Law.
Will promptly attend to any business entrusted to his care.
Office corner of Third and Roberts Street, St. Paul, Dec. 10, 1850. tf.



NORTH & ATWATER,
Attorneys and Counsellors at Law,
AND SOLICITORS IN CHANCELY,
WILL give prompt attention to any business intrusted them in the line of their profession, in any part of the Territory. Particular attention paid to locating *Land Warrants*, Payment of Taxes, sale of Patents when issued, and Real Estate in general.
Office at St. Anthony, on Third Street near their residences.
May 31, 1851.

Credits:
Top: Minnesota Democrat, July 29, 1851, front page (enlarged). These cards were originally in a long, single column on the left side of front page.
Bottom: St. Anthony Falls Express, August 2, 1851, at 3 (enlarged).



THE ST. ANTHONY EXPRESS.

PUBLISHED EVERY SATURDAY MORNING, BY

H. WOOBBURY.

Office on Main St., Near the Mills.

TERMS: Two dollars per year in advance, or three dollars if payment is delayed beyond six months.

ADVERTISEMENTS INSERTED AT THE USUAL RATES.

BUSINESS CARDS.

W. H. Welch,
JUSTICE OF THE PEACE.
Office Main-st. St. Anthony, Upper Town.

Ira B. Kingsley,
JUSTICE OF THE PEACE.
Office on Main St., Lower Town.
ST. ANTHONY.

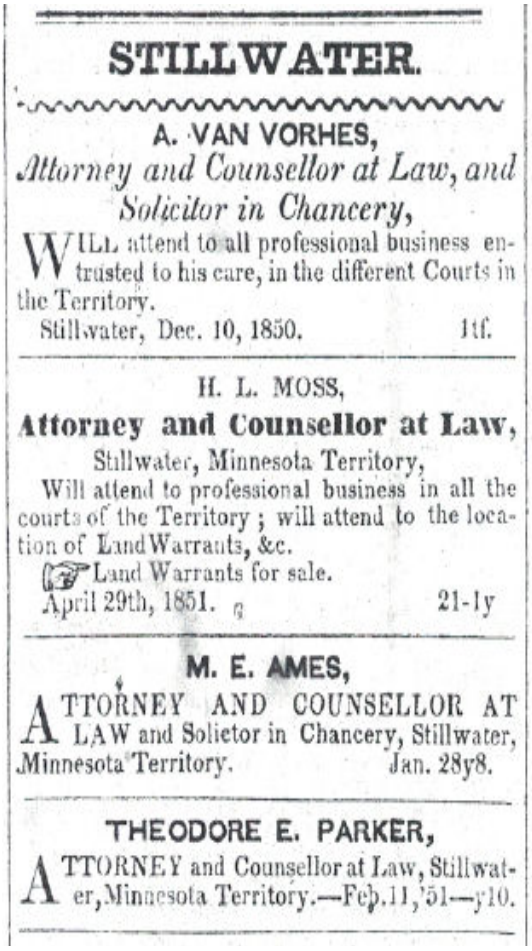
WILSON & STINCHFIELD
Storage Forwarding & Commission,
AT ST. ANTHONY CITY,
One mile below the Falls and the head of Steamboat Navigation on the Mississippi River.

☞ Any business entrusted to our care will be attended to with promptness and despatch.

J. P. WILSON, DANIEL STINCHFIELD.

NORTH & ATWATER,
Attorneys and Councellors at Law
AND SOLICITORS IN CHANCERY.
Office on Third Street, St. Anthony Falls,
J. W. NORTH, I. ATWATER.

Wm. Richardson,
NOTARY PUBLIC, CONVEYANCER, AND LAND AGENT, ST. ANTHONY, MIN.,
Will attend to the purchase and sale of Town Lots and Land, payment of Taxes, collection of Debts &c. All instruments of writing executed with neatness and despatch. Office opposite the St. Charles House.



STILLWATER.

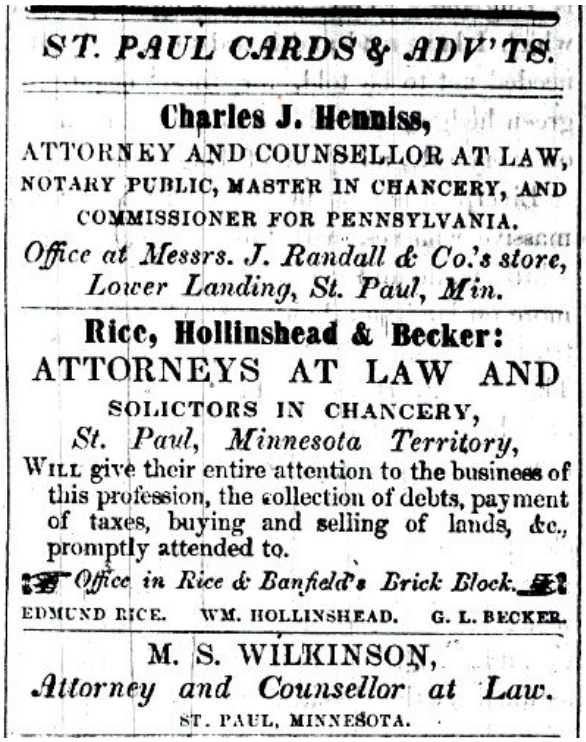
A. VAN VORHES,
Attorney and Counsellor at Law, and Solicitor in Chancery,
WILL attend to all professional business entrusted to his care, in the different Courts in the Territory.
Stillwater, Dec. 10, 1850. 1tf.

H. L. MOSS,
Attorney and Counsellor at Law,
Stillwater, Minnesota Territory,
Will attend to professional business in all the courts of the Territory; will attend to the location of Land Warrants, &c.
☞ Land Warrants for sale.
April 29th, 1851. 21-1y

M. E. AMES,
ATTORNEY AND COUNSELLOR AT LAW and Solictor in Chancery, Stillwater, Minnesota Territory. Jan. 28y8.

THEODORE E. PARKER,
ATTORNEY and Counsellor at Law, Stillwater, Minnesota Territory.—Feb.11,'51—y10.

Credits:
Left: St. Anthony Express, June 7, 1851, front page (enlarged).
Right: Minnesota Democrat, October 14, 1851, front page (enlarged).

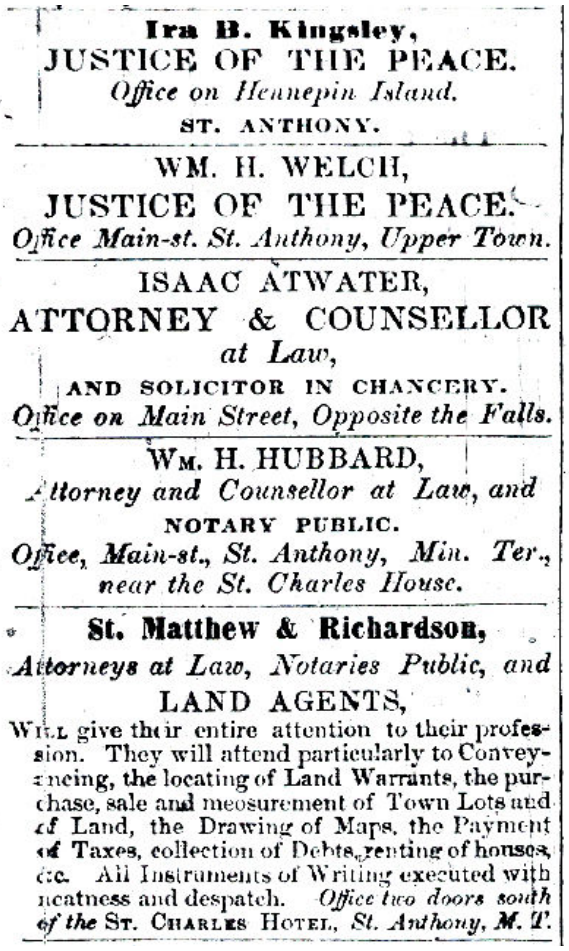


ST. PAUL CARDS & ADV'TS.

Charles J. Henniss,
ATTORNEY AND COUNSELLOR AT LAW,
NOTARY PUBLIC, MASTER IN CHANCERY, AND
COMMISSIONER FOR PENNSYLVANIA.
Office at Messrs. J. Randall & Co.'s store,
Lower Landing, St. Paul, Min.

Rice, Hollinshead & Becker:
ATTORNEYS AT LAW AND
SOLICTORS IN CHANCERY,
St. Paul, Minnesota Territory,
WILL give their entire attention to the business of this profession, the collection of debts, payment of taxes, buying and selling of lands, &c., promptly attended to.
☞ *Office in Rice & Banfield's Brick Block.* ☜
EDMUND RICE. WM. HOLLINSHEAD. G. L. BECKER.

M. S. WILKINSON,
Attorney and Counsellor at Law.
ST. PAUL, MINNESOTA.



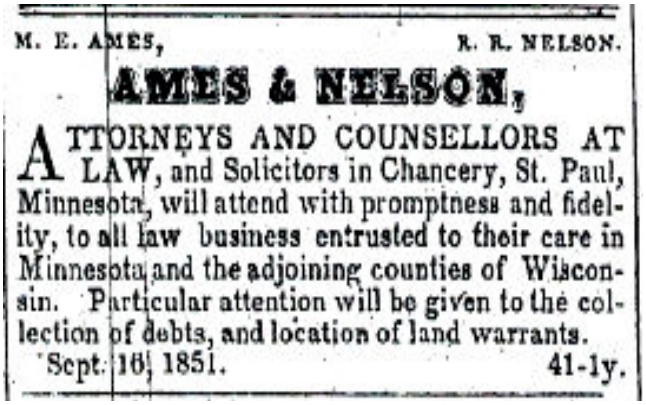
Ira B. Kingsley,
JUSTICE OF THE PEACE.
Office on Hennepin Island.
ST. ANTHONY.

WM. H. WELCH,
JUSTICE OF THE PEACE.
Office Main-st. St. Anthony, Upper Town.

ISAAC ATWATER,
ATTORNEY & COUNSELLOR
at Law,
AND SOLICITOR IN CHANCERY.
Office on Main Street, Opposite the Falls.

WM. H. HUBBARD,
Attorney and Counsellor at Law, and
NOTARY PUBLIC.
Office, Main-st., St. Anthony, Min. Ter., near the St. Charles House.

St. Matthew & Richardson,
Attorneys at Law, Notaries Public, and
LAND AGENTS,
WILL give their entire attention to their profession. They will attend particularly to Conveyancing, the locating of Land Warrants, the purchase, sale and meosurement of Town Lots and of Land, the Drawing of Maps, the Payment of Taxes, collection of Debts, renting of houses, &c. All Instruments of Writing executed with neatness and despatch. *Office two doors south of the* ST. CHARLES HOTEL, *St. Anthony, M. T.*



M. E. AMES, R. R. NELSON.
AMES & NELSON,
ATTORNEYS AND COUNSELLORS AT LAW, and Solicitors in Chancery, St. Paul, Minnesota, will attend with promptness and fidelity, to all law business entrusted to their care in Minnesota and the adjoining counties of Wisconsin. Particular attention will be given to the collection of debts, and location of land warrants.
Sept. 16, 1851. 41-1y.

Credits:
Top 2: St. Anthony Express, November 8, 1851, front page (enlarged)
Bottom: Minnesota Democrat, October 7, 1851, front page (enlarged).

C. First Judicial District, Judge Aaron Goodrich, April 24, 1851.

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MINNESOTA PIONEER

St. Paul, Minnesota Territory

April 24, 1851 Page 2

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The Spring Term of the District Court of this (Ramsey) County, was commenced last week on Monday, in Mazourka Hall. There were one hundred and twenty cases on the docket, and every jury cause that was ready for trial, was disposed of the first week; and all causes except on the Chancery side disposed of for the term. Our citizens are much gratified with this promptness in dispensing justice, especially as the county saved an expense of several hundred dollars, by dismissing the jury at the end of the first week, as the expenses of a jury for a longer term falls upon the county. We have heard high commendations of the impartiality and promptness of Judge Goodrich, during the present term of the Court; we cannot refrain from the remark that the Saint Paul bar is decidedly improving; we ought now to say, the bar of Ramsey County.

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MINNESOTA PIONEER

St. Paul, Minnesota Territory

May 1, 1851 Page 2

At the term of the United States Court for the First Judicial District, Abram M. Fridley, Esq., was admitted to practice as an Attorney and Counsellor at Law, and Solicitor in Chancery of said Court.

D. Second Judicial District, Judge David Cooper,
May 12, 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

June 3, 1851 Page 2

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District Court Second Judicial District.

The May term of this court commenced at Stillwater on Monday the 12th inst. The number of causes upon the docket was large to an unprecedented degree. There were no jury trials, the suits involving issues of fact having been continued. The arguments upon the issues in law were numerous and protracted. In consequence of the illness of Judge Cooper, the court was adjourned from the 17th to the 26th, when it again met and disposed of the unfinished business. There was but little of public interest in any of the adjudications. We annex some of them.

Daniel McLean vs. John H. Brewster. This was a motion to quash an attachment on the ground of insufficiency of the affidavit. The intention of the defendant was stated upon the belief of the plaintiff, the fact upon which such belief was founded, was the statement of the defendant himself, without alleging to whom made. The court held the affidavit sufficient under the statute and overruled the motion. Rice, Hollinshead & Becker, and Van Vorhes for plaintiff; Ames and Bartlett for defendant.

Moses Kays vs. William Woodruff. This was a suit originally brought before Justice Leavitt at Point Douglass. The defendant went with the necessary affidavit and sureties to the Justice after judgment, for the purpose of talking an appeal to the District Court. The justice refused to allow the appeal. The defendant then applied to the court for a rule to compel the allowance, which was granted, and the justice ordered to return the record and other proceedings conformably to the statute. Bartlett for plaintiff. Rice, Hollinshead & Becker for defendant.

Henry M. Rice vs. John R. Fish. This was a motion to quash an attachment on the ground that the amount of indebtedness was not stated with sufficient certainty. The plaintiff stated that the defendant was indebted to him in the

sum of $250, "as far as he can now state." The court held this sufficient and overruled the motion. Rice, Hollinshead & Becker for plaintiff; Nelson for defendant.

Henry T. McCloskey vs. Lewis Buford. This was a motion to quash an attachment on the ground that the facts set forth in the affidavit were stated upon the knowledge and belief of the affiant. Motion sustained and attachment quashed. Babcock, Allen & Semmes for plaintiff; Moss & Nelson for defendant.

Joseph O. Cooper vs. John H. Brewster. The Judge being related to the plaintiff in this case, it was transferred to Ramsey county. Rice, Hollinshead & Becker and Van Vorhes for plaintiff; Bartlett for defendant.[12]

John McPherson vs. Jonathan F. McKusick. This was a motion to quash the attachment on the insufficiency of the affidavit. Motion sustained and writ quashed. Van Vorhes for plaintiff; Bartlett and Ames for defendant.

William Leith vs. John H. Brewster. This was a certiorari directed to H. K. McKinstry, Esq., justice of the peace. Numerous points of exception were made to the proceedings of the justice. The principal question was as to what constituted a delivery of logs. The court held that merely giving in sight of a ponderous article with the vendee, and pointing to it as his property was in legal contemplation a delivery. Judgment of the justice affirmed. Rice, Hollinshead & Becker for plaintiff; Bartlett for defendant.

Lewis Buford vs. Jacob Fisher. This was a certiorari directed to Albert Harris, Esq., justice of the peace. The exception was that the justice had erred in refusing an adjournment on affidavit of the absence and materiality of a witness. Judgment reversed. T. E. Parker for plaintiff; Bartlett for defendant.

Board of County Commissioners vs. Moses J. McCoy. Certiorari. The same question. The deposition of the absent witness having been taken, the judgment in this case was affirmed.

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[12] Minn. Ter. Rev. Stat., c. 66, §5, at 288 (1851) provided:

> Sec. 5. No judge of any of the courts of record of this territory, shall sit in any cause in which he is interested, either directly or indirectly, or in which he would be excluded under the common law from sitting as a juror.

The case ended up in the Territorial Supreme Court. *Cooper v. Brewster*, 1 Minn. 94 (1852) (Fuller, C. J.).

Rowell vs. Joseph Medley and Jacob Fisher. This is a proceeding in Equity. An injunction was issued to restrain proceedings upon a mortgage given by complainant to defendant, Medley. The defendants filed full answers and moved to dissolve the injunction. The complainant filed 35 exceptions to the answers for impertinence, scandal and insufficiency. The defendant, Medley, filed a Cross Bill, praying a foreclosure of his mortgage. The complainant pleaded the injunction in bar of the cross bill. The suit is pending upon allowance of the exceptions. Bartlett and Ames for complainant; Moss, Rice Hollinshead and Becker for defendant.

Pierre Chouteau, Jr., and others vs. Henry M. Rice and others. This is a proceeding in equity arising out of difficulties between the complainant and some of the defendants who had been largely engaged in the Indian trade as partners. The defendants pleaded the articles of dissolution and release in bar of the bill. The complainant asked leave to file a supplemental bill. Ames and Nelson for complainants; Rice Hollinshead & Becker and Wilkin for defendants.[13]

The Grand Jury declined talking any action in relation to the attack upon the Steamboat Dr. Franklin No. 1, a short time since, by a number of citizens of Stillwater. The cause of the outbreak was the misconduct of the deck hands on board of the boat.[14]

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[13] In the October 1851 term, Judge Cooper permitted Chouteau's "supplemental bill" to be filed. The defendants' demurrer was overruled by him. See page **23.** The case was appealed to the Supreme Court. Justice Cooper, for Justice Meeker and himself, dismissed the appeal. *Chouteau v. Rice*, 1 Minn. 24 (1851) (Goodrich C. J., dissenting). It can be found in *Reports of Cases Argued and Determined in the Supreme Court of the Territory of Minnesota* 24-39 (1858) (MLHP, 2016).

[14] *The St. Anthony Express* summarized this term in one paragraph:

> At the May Term of the District Court in the Washington Co., but little business was done, nor was there much to do.—There were no jury trials and no indictments by the grand jury. There were only twenty-five cases on the docket, of which fifteen were put over to next term.

May 31, 1851, at 2.

E-1. The Borup Habeas Corpus Proceeding,
Chief Justice Aaron Goodrich,
June 1851.

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MINNESOTA DEMOCRAT
St. Paul, Minnesota Territory
June 10, 1851 Page 2

The Democrat says that Dr. Borup's friend, Judge Goodrich discharged him from imprisonment on a habeas corpus. Discharge him. Of course he did. Why a magistrate who would hand over a defendant, upon such a state of facts, under any existing law, does not know enough to bind buck wheat at straw!—*Pioneer*.

THE HABEAS CORPUS. —The facts preceding this case are as follows: Mr. Kittson purchased a claim of a quarter section of land, and for a legal and valuable consideration gave possession and a deed for it to Mrs. Crevere. Mr. Kittson subsequently entered the land and thereby perfected his title, the benefit of which in law, inured to the assignee. Mrs. Crevere, with her husband, has continued in uninterrupted possession of the land for a number of years. Mr. Kittson's deed is not now in the possession of the Creveres. Dr. Borup is the agent for Mr. Kittson, or has a verbal agreement for the purchase of the land, in whole or part. He has proceeded to survey it and sell lots, upon some of which, buildings have been erected, although forbidden by Crevere and his wife. Dr. Borup attempted to buy them off. They rejected his offers. He then caused his Surveyers to enter their enclosure and stake out lots, thereby trampling down and *destroying* their growing crops.

The Creveyers went before Esquire Simons and made affidavit that Dr. Borup was destroying their property, &c. Dr. Biorup was arrested and brought before the Justice to answer this charge, which was fully sustained. The Crevers testified that they feared personal violence. In obedience to the plain letter of the law, Esquire Simons required Dr. Borup to give bonds in the sum of $300, *to keep the peace*. The Doctor refused to give bonds and was therefore committed. — We defy the Pioneer to show that the Magistrate committed the slightest error in law, or jurisdiction.

The act of Judge Goodrich in discharging Dr. Borup on a writ of Habeas Corpus, *may* be legal and proper, but we fail to see it. — We understand that the Attorneys of Crevere have demanded a written statement of the

reasons for the Judge's decision, and when that shall have been put on file, we will, perhaps be more enlightened.

It is not true that the question of title to lands is involved in this class of cases. Even an unquestionable title will not shield an owner from punishment, if he commit any trespass or violence upon his own lands, while they are in the possession of another. To dispossess the wrongful tenant he must call in the aid of the law—even though he were a Girard,[15] or President of the United States.

Among savages, as among the Sioux Indians, every man is law, judge and jury, to redress his own grievances. But it is not so in civilized countries, where no one is allowed to take the law in his own hands, unless, as in this case, a Judge can be found, who, like Judge Goodrich, will grant that privilege to his particular *friends*.

To illustrate the enormity of Judge Goodrich's decision, and the baseness of the Pioneer's attack on the Magistrate, because he faithfully discharged his duty, suppose that Dr. Borup were in possession, as he now is, of his own mansion, and a band of poor Frenchmen were to invade his splendid gardens, trampling down his beautiful flowerbeds, and frightening his wife and children, —O, dear, what an outrage *that* would be. The Pioneer would then call lustily on all the Magistrates in the Territory to compel the rascals to enter into bonds to keep the peace, and although the offending Frenchmen might *own* Dr. Borup's premises, *by an undisputed title*, we do believe that Judge Goodrich could not be persuaded by all the lawyers in the West, to discharge the offenders form custody, if they refused to give bonds to keep the peace. For such a discharge would be legal permission from the highest Judicial officer in the Territory, to repeat the offence with perfect impunity. —And what is the legal difference between the case of Crevere & Borup, and the one we have supposed for illustration?

[15] This refers to Stephen Girard (1750-1831), an immensely wealthy Philadelphia banker.

E-2. The Lee Habeas Corpus Proceeding, Chief Justice Aaron Goodrich, June 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

July 1, 1851 Page 2

HABEAS CORPUS.—Considerable interest has been manifested by some of our citizens in reference to a recent decision of Judge Goodrich. It seems that a number of soldiers of the garrison, at Ft. Snelling, believing that the terms of their contract of enlistment had been violated, and that they therefore were entitled to their discharge form service, applied to the Judge of Probate, of this county, for a writ of *habeas corpus* by which the whole matter could be tested. Judge Lambert issued the writ directed to Col. Lee, Commandant at Ft. Snelling, commanding him to bring said soldiers before him, at his office in St. Paul, together with the cause and manner of their detention. The Col., under the advice of counsel, refused to obey said writ; wherefore, Judge Lambert issued an attachment for him to enforce obedience to said writ and also a precept to bring the soldiers before him to enquire into the cause of their complaint. The officer to whom the writ of attachment was directed, arrested Col. Lee at St. Paul, and Judge Goodrich, upon application, issued another *habeas corpus*, directing the office to bring Col. Lee before him at *chambers*, to enquire into the cause of his detention. Upon the hearing of this last writ, Judge Goodrich decided that the writs of *mere Territorial courts* did not run into the "Military Reserve;" and considering Judge Lambert as *merely* a Territorial or county officer, Col. Lee was not bound to respect his writ of *habeas corpus*, and accordingly discharged him from the custody of the Marshall, under this write of attachment for contempt of Judge Lambert's authority. [16]

[16] The controversy ended up in the Territorial Supreme Court, which held that a probate judge did not have power to issue writs of habeas corpus. In *Ex parte Francis Lee*, 1 Minn. 60 (1851), Justice Copper, for a unanimous court, issued a writ of prohibition restraining Probate Judge Lambert from proceeding under writs of habeas corpus issued by him for the purpose of discharging soldiers in the United States Army stationed at Fort Snelling.

F. Third Judicial District, Judge Bradley B. Meeker
June 9- 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

June 24, 1851 Page 2

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Third Judicial District.

The June term of the District Court for this District commenced pursuant to the Statute, on the 9th inst. Hon. B. B. Meeker, presiding.

On motion of Wm. Hollinshead, Esq., Rensselaer R. Nelson, and Lafayette Emmett, Esquires, were admitted to practice as attorneys and counsellors.

The following gentlemen appeared and were sworn as members of the Grand Jury:

> Lorain Jones, Foreman, O. H. Kelly, Philip Beauprey, S. H. Axtell, Charles Donleuy, Alexander Paul, Thomas C. Porter, John McGillis, Nathan Myrick, John T. Chapman, Christopher Davis, James T. Chapmam, Christopher Davis, James Keough, A. Downey, George Powers, S. B. Lowery, and George W. Sweet.

His Honor Judge Meeker, in a clear, forcible and eloquent charge, illustrated the importance of the duties of the jurors, and explained the mode of their proper performance. He enlarged upon the advantages of the county, its fertility, beauty, location, markets, etc.; and urged them as stimulents to a patriotic and faithful discharge of public duty. In an impressive manner he showed how valueless are all earthly blessings, without a government of laws, promptly, wisely, and energetically administered; and urged the jurors and others in attendance, to a ready and cheerful attention to the offices imposed upon them as good citizens.

Judge B. has evidently cast his lot for weal or woe, amongst the people of Benton, and realizes to its full extent, his responsibilities as a judge and a citizen. It is to be hoped that his advice will be taken, as, if it is, Benton will inevitably surpass most of the other counties of Minnesota in agricultural wealth.

During the vacation a notice was served by Philip Beauprey, upon Edwin A. C. Hatch, intimating an intention to contest his election as Commissioner of Public Buildings, &c., which notice was not returned to the District Court in conformity with the statutes.

Mr. Beauprey appeared by his counsel, R. R. Nelson and M. S. Wilkinson Esq'rs, and asked for a rule on Mr. Hatch, requiring him to show cause why an information in the nature of a Quo Warranto should not be filed against him. The affidavit of Mr. Beauprey was filed, setting forth as the ground upon which the right of Mr. Hatch to his office was contested, that he (Mr. H.) was not, at the time of his election, a citizen of the county of Benton,—that Thomas A. Holmes, a citizen of Ramsey county acting as judge of the election in Elk River precinct, and the many of the votes cast for Mr. Hatch were illegal, because they were cast by citizens of Ramsey county. A rule was granted returnable on the first day of the next November term.

The correctness of the allegations in the affidavit of Mr. Beauprey, will depend upon the establishment of the point in the Mississippi river, where the line between Benton and Ramsey counties commences. It is urged by the counsel of Mr. Hatch, that there is no law requiring a voter to be a resident of the county where his vote is cast, and that there is no requirement in the statute providing for the election of Commissioners of Public Buildings, that a candidate shall not be eligible, unless he shall reside in the county or district which he is elected to represent. It is also denied that either Mr. Hatch or those who voted for him, were citizens of Ramsey county. The whole questions as to the legality of the proceeding will probably come up before the court, and be discontinued in the form of a demurrer to the information, if one should be filed.

Indictments against Joseph Laport and Benton H. Henry, for selling liquor to the Indians, were presented by the Grand Jury. Information arrived on the 10th, of the escape of the Sioux Indians from custody, whilst on their way to the place of trial. Twenty-six soldiers could not keep six Indians, unarmed and handcuffed, in custody. Nor could they catch them after they had escaped, notwithstanding they were chained together. Of course they tried.

United States	}	Indictment for introducing
vs.	}	spirituous liquor into the
Wm. Mayhall,	}	Indian country.
Perry Frizzell.	}	

H. L. Moss, District Attorney, and Wm. Hollinshead for the United States.
M. S. Wilkinson and R. R. Nelson, for Defendants.

The indictment in this case is founded upon the 2d section of the act of Congress of March 3, 1849 (sic), which provides that "any person who shall introduce, or attempt to introduce any spirituous liquor or wine into the Indian country, except such supplies as may be necessary for the officers of the United States, and the troops of the service under the direction of the War Department, such person on conviction thereof before the proper district court of the United States 'shall be subject to imprisonment not exceeding one year, &c.' "[17]

The defendants were arrested in the Indian country, near Crow Wing. They were lying down at the time of their arrest, and had four gallons of whiskey, which they had brought with them, concealed among the bushes near by;

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[17] Here is the complete text of Section 2, passed in the second session of the 29th Congress:

> Sec. 2. And be it further enacted, That the twentieth section of the " Act to regulate Trade and Intercourse with the Indian Tribes, and to preserve Peace on the Frontiers," approved June thirtieth, eighteen hundred and thirty-four, be, and the same is hereby, so amended, that, **in addition to the fines thereby imposed, any person who shall sell, exchange or barter, give, or dispose of, any spirituous liquor or wine to an Indian, in the Indian country, or who shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as may be necessary for the officers of the United States and the troops of the service, under the direction of the War Department, such person, on conviction thereof before the proper District Court of the United States, shall in the former case be subject to imprisonment for a period not exceeding two years,** and in the latter case not exceeding one year, as shall be prescribed by the court, according to the extent and criminality of the offence. **And in all prosecutions arising under this section,** and under the twentieth section of the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved June thirtieth, eighteen hundred and thirty-four, to which this is an amendment, **Indians shall be competent witnesses.**

Act of March 3, 1847, c. 66, §2, at 203 (emphasis added). The Territorial Code also prohibited the sale of liquor to Indians, who were declared competent witnesses in trials under that law:

> Sec. 5. Indians are hereby declared to be competent witnesses in cases arising under the provisions of this chapter; but the same objections may be made to their competency, and the same rules shall govern in the admission of their testimony, that may be made, and that govern, as to other witnesses.

Minn. Terr. Rev. Stat., c. 21, §5, at 131 (1851). The chapter was titled "To Provide Against the Traffic in Ardent Spirits with the Indians."

they admitted the ownership of the whiskey when taken into custody, but alleged that they had brought it with them for their own use.

The defendants' counsel urged that the word "introduce" in the statute, meant to take for the purpose of distribution. On the part of the prosecution, it was contended that any introduction, by any person, and for any purpose, save that excepted in the statute, was an indictable offence under the statute.

Judge Meeker held that the law creating the offence defined the offence, and it cannot be evaded by construction. The law requires no intention—says nothing about the intent, and the question of intention is entirely out of the case. If the jury are satisfied that the prisoners *introduced* spirituous liquor into the Indian country, it was their duty to find a verdict of guilty. The jury retired for a few minutes and returned a verdict of *not guilty*. The district attorney then entered a *nol pros*. in each of the other presentations for like offences, deeming a conviction impossible.

United States }
vs. }
Joseph LaPort. }

This was an indictment against the defendant for selling liquor to the Winnebago Indians. The Indians to whom the liquor was sold, were the only witnesses on the part of the prosecution. The judge administered the oaths in the form of a promise, in the presence of the Great Spirit. The evidence given by the witnesses, with the most positive character, as to the time, place, and circumstances, clearly proving, as far as Indian testimony can prove, that the defendant had sold them liquor at various times.

The defense was, that no reliance could be safely placed upon the statements of the Indians. Witnesses were called to prove the character of Indian testimony generally, that as a nation they were unworthy of belief.

The judge held that the character of the witnesses at the bar for truth and varacity only, could be inquired into and rejected any evidence impeaching Indians as a nation. The jury in this case being unable to agree, were discharged by the court.

Wm. D. Phillips, Esq. for prosecution. Wm. P. Murray Esq. for defendant.

United States }
vs. }
Milton J. Hendry. }

Indictment for selling liquor to Indians. The fact of the selling was proved by the Indian to whom the liquor was sold by the defendant.[18] On cross examination of the Indian who bought the liquor, it appeared that he was not full blood—that his father was a Frenchman, and his mother a Winnebago squaw—that he had lived with his father eight years in Chicago, where he had been to school and learned the English language. This was seized upon by the defendant's counsel as a conclusive bar to the prosecution, and argued with great force and ability, that the person to whom the liquor was alleged to have been sold was not an "Indian" within the meaning of the statute.[19]

Judge Meeker charged the jury that in legal contemplation, the progeny followed the condition of the mother, and the child of a Winnebago squaw was a Winnebago Indian, to all intents and purposes. That the statutory provision that persons of mixed white and Indian blood who shall have

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[18] The following commentary appeared in the *Democrat* a week later:

> At the late term of the court in Benton County, 'Frank," a Winnebago Indian, was called as a witness on behalf of the prosecution in the case of U. S. vs. Hendry. The attornies for the defendant examined the witness on *voire dire*, as to his understanding of the nature of an oath. His answers were singularly appropriate and intelligent.
>
> He said he understood the oath to be a solemn thing, binding him to tell what is true. And on being asked what would be the consequence of his stating that which in untrue, he replied that he would be punished as the whites are who swear false; and, although it might not be found out, yet, if he told a lie, he would not go to the place where good Indians go after death. Judge Meeker then admitted him to testify, administering the oath in the form of an appeal to the Great Spirit.
>
> Indians must necessarily be frequently called as witnesses in our courts, for the furtherance of justice, and we know of no law to exclude them, although the statute making them competent witnesses in certain cases, would seem to imply their incompetency in cases not provided for. We therefore refer to the event above alluded to, as an instance of Indian intelligence altogether unexpected, and as an interesting item in legal practice on the frontier.

Minnesota Democrat, July 1, 1851, at 2.

[19] This is a reference to the last proviso in the law establishing qualifications for voting:

> That nothing in this chapter shall be so construed as to prohibit all persons of mixed white and Indian blood who have adopted the customs and habits of civilization from voting.

Minn. Terr. Rev. Stat., c. 5, §1, at 45 (1851). The chapter is titled "Qualifications and Disabilities of Elections."

assumed the habits and dress of white men, shall enjoy the privileges of citizens, would not apply to this case, the witness for the prosecution, not having complied with the condition of the statute.

The jury, after being absent some time, returned to court and reported that they could not agree upon a verdict, and were discharged. W. D. Phillips for prosecution, L. Emmett and W. P. Murray for defendants.

The prosecution against the Winnebago Indians commenced at the last term, were continued. The defendants were present with their counsel, and ready for trial, but the cases were postponed at the instance of the prosecution.

Indictments were found by the Grand Jury against a number of persons for assault and battery, selling liquor without license &c., and against the Sioux Indians for murder of Schwartz, which were continued until next term.

Much business was necessarily continued on account of the absence of witnesses &c.

The following presentment was then made, whereupon the Grand Jury was discharged, with the thanks and commendation of the court, and the court adjourned to the second Monday in November next:

PRESENTMENT [20]

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[20] Grand juries could return indictments and presentments. The statute distinguished the two:

> Sec. 32. An indictment is an accusation in writing presented by a grand jury, to a competent court, charging a person with a public offence.
>
> Sec. 33. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offence has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

Minn. Terr. Rev. Stat. c. 116, §§32–33, at 539 (1851). The next chapter titled "Presentment and Proceedings Thereon" dictated how a presentment is made to the court. Here are the first two provisions:

> Sec. 46. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.
>
> Sec. 47. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and must be filed with the clerk.

The jurors of the Grand Jury inquiring for the Third Judicial District of the Territory of Minnesota, make the following presentment in reference to the present and contemplated road from St. Paul to Crow Wing:

They deem it a matter of just complaint that, notwithstanding the general government has appropriated the sum of $40,000 for the construction of roads in the Territory, and is ever ready to appropriate more, still the road along the valley of the Mississippi—the road most important and most used, whether for travel or transportation, is left in an unsafe and almost impassable condition. They cannot comprehend the wisdom of a policy which directs the public funds to the laying out of imaginary lines, through swamps and forests. Frequented only by Indians, and leaves unimproved and untouched the roads constituting the only communication between the flourishing settlements of the Territory, and the only mans of conveying the military and Indian supplies to the proper places of distribution.

They think that white men—men of business and enterprise—men who by their industry, increase the wealth and promote the prosperity of the country, ought to have good roads made for them, before thousands re expended in blazing trees upon Indian lands, or paying companies of surveyors for wandering in the unfrequented parts of the Territory.

A tithe of the money, now uselessly wasted, would bridge the streams—drain the marshy places abate the hills, and make perfect in all respects the road, which the people of this district travels frequently, and which is so necessary to the Government. Why should the inhabitants of a Territory, so bountifully supplied with the means by the General Government, be compelled, in a journey of 150 miles, to swim their horses, take their wagons and loads across streams by piecemeal, and endanger their lives in encountering obstructions, which a small fraction of the sum appropriated for their benefit, would effectively remove?

They have heard that men have been for a long time and are now engaged in surveying roads; but no improvement is apparent where improvement is most needed. What are they doing? Does it require so much time and labor and money to determine where a road up the Mississippi shall go, when it really has been established by nature, as the plain and practicable route, and entirely the most eligible, whether convenience or beauty is regarded?

Minn. Terr. Rev. Stat., c. 117, §§46-47, at 540 (1851).

Surveyors have haunted the tamarack swamps, and dodged about among the oak openings of Benton county, but no other impression than surprise that they have been here, has been awakened by their presence. They may have had a pleasant rural excursion, and enjoyed for a brief period, the agreeable climate and fine sporting of Minnesota, but this has not bridged Elk, Rum, Platte, Swan, and other rivers; nor has it removed the hills nor drained the marshes which are now among us. This has not diminished the expenses of the Government for transportation, nor promoted the settlement of government lands, nor relieved the teamster from the hardships he had had to encounter, and still has to endure.

Until something *practically useful* is accomplished, the Grand Jury cannot look upon all this parade of surveyors and their equipage, as *humbug*, and a gross misapplication of the funds of the government.

The Grand Jury are astonished that a new road is contemplated, to run though the county back from the river. The route of the road now is so clearly the best that it is scarcely credible that it is to be substantially such a route as to that which is said to have been prepared. The first settlements have been made in the valley of the river, and for all time to come, the mass of the population will concentrate along the line of the present road. To run a road therefore, through the interior and unsettled parts of the country, abounding in swamps and other obstructions, would be to disregard the convenience of the present settlers, and depart from the course marked out by nature and public policy. All that is asked, is that the Government will *make the present road good*. This can easily and cheaply be done. No disinterested person can object to the route.

In its present state, the road is a nuisance, but not half so great a nuisance as a new road would certainly be, if located in accordance with what is said to be the determination of the *scientific* corps of Engineers sent out here by the Government.

Lorain Jones, Foreman
S. B. Lowery, Christopher Davis,
Geo. W. Sweet, O. H. Kelly,
Philip Beauprey, N. Myrick,
Geo. Powers, S. H. Axtell,
Alexander Paul, John T. Chapman,
Thomas C. Porter, John McGillis,
James Keough, Arch'd Downie,
Charles Donley.

G. First Judicial District, Chief Justice Aaron Goodrich, September 8-15, 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

September 16, 1851 Page 2

The September Term of the District Court for the County of Ramsey, and 1st. Judicial District of this Territory, commenced on Monday the 8th, inst. Chief Justice Goodrich presiding.

The Court sits in a new brick building, in the lower town, recently erected by Judge Goodrich for a store, and rented to the government temporarily.

The grand jurymen summoned did not attend in sufficient numbers to form a panel.

The Court after hearing numerous motions of course, of no public interest, adjourned until Tuesday morning.

Tuesday 9th.

The Sheriff, after an ineffectual effort to obtain a grand jury from those regularly summoned, was directed to call the requisite number from the bystanders.

The following gentlemen were then called, and sworn as member of the grand jury:

HENRY JACKSON *Foreman.*

Simeon P. Fulsom,	William Hartshorn
Corodan D. Bevans,	William H. Townshend,
George M. Farrington,	Joseph M. Marshall,
O. B. Bromley,	William Beaumett,
Isaiah B. De'Weber,	Alex. R. McLeod,
John Trower,	John P. Owens,
J. W. Brinsmade,	David C. Murray,
Joseph Campbell,	Ferdinand Monti,

Hugh Kirkpatrick.

Judge Goodrich in his charge stated that brevity seemed to be the distinguished characteristic of the new code. That it has been usual in this

Territory to make long charges, and after the ecclesiastical plan to place the whole matter upon record; although this court had never been celebrated for long charges. He expressed some doubt as to whether it was his duty to call the attention of the jury to the statutes of Wisconsin Territory as formerly required bylaw. He reads to the jury the provisions of the new code, relative to grand juries. [21] The Judge said this much, gentlemen, I have read to you, and I believe it is all that my duty requires. It is not necessary for me to tell you that it is your duty to find a bill for indictment against a man for murder, arson, perjury and such crimes. I believe that your own good sense will lead you to acknowledge of your duty. You can retire and continue your sittings as long as the public interests may require. The grand jury then retired.

The United States of America vs. Elijah Murray.—The defendant in this prosecution was indicted at the last term for the crime of incest alleged to have been committed in June 1850, with Susannah C. Murray his niece, a daughter of his brother; a young girl aged about 18 years. He is a feeble man over 54 years of age, and has been for several years, suffering under the consequences of an attack of palsy. The extreme improbability of the charge, and the general belief in its injustice, awakened a strong public sympathy for the accused, and at the time of the calling of the case for trial, the court room was crowded by curious and interested spectators.

Wm. D. Philips Esq. prosecuting attorney, and Wm. P. Murray appeared as counsel for the prosecution, and M. E. Ames, and George L. Becker Esquires, for the defendant.

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[21] The statute on grand juries provided:

> Sec. 25. The grand jury being impanelled and sworn, must be charged by the court; in doing so, the court must read to them the provisions of chapter one hundred and sixteen, from section twenty-nine, to section forty-five, both inclusive, and must give them such information as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury, the court need not however charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute.
>
> . . . .
>
> Sec. 29. The grand jury has power and it is their duty to inquire of all public offences committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next two sections.
>
> . . . .

Minn. Terr. Rev. Stat., c. 115, §25, at 538; c. 116. §29, at 538 (1851).

A jury was empanelled and sworn, and Mr. Phillips opened for the prosecution by reading the indictment, and the statute of the Territory of Wisconsin, pursuant to which it was framed, and by commenting upon the character and enormity of the offense which he expects to prove by the testimony.

Susannah C. Murray the prosecutrix was then called and sworn. The details of her testimony are unfit for publication.

During the progress of the examination of this witness, it was somewhat amusing to see the consumption of some two hours of time in "suggestion" of one of the counsel, and in "apprehensions" and "remarks" of the Judge. Like a couple of players at the game of battledoor and shuttlecock [22] the one "suggested" and the other "apprehended" and "remarked," pitching words to and from each other with infinite zeal, and greatly to their own enjoyment apparently, although the sport did not seem to be appreciated by the jury and audience, and indeed, one dull, surly fellow had the bad taste to say it was a "bore." Next to a talking lawyer, the greatest nuisance in a court is a talking judge. It is the business of him who presides in a court of justice to hear and decide, neither of which requires the use of much language, and every word uttered by the bench that is not essential to a clear expression of a decision or to the elucination of testimony and argument, is out of place.

Much eloquence was displayed by the prosecuting attorney, and the counsel for the defence, and "the court" all about a "green veil" which covered the face of the witness, and which the counsel wanted to have raised, but which the counsel for the prosecution wanted to have remain where it was. The court decided that the veil should be raised, but the young lady moved, doubtless by modesty, disregarded the requirement of the court, and so the veil stayed over her face, the statute not providing for the execution of such a judgment.

[22] *Encyclopædia Britannica*: "Battledore and shuttlecock, children's game played by two persons using small rackets called battledores, which are made of parchment, plastic, or rows of gut or nylon stretched across wooden frames, and shuttlecocks, made of a base of some light material, such as cork, with trimmed feathers fixed around the top. Players try to bat the shuttlecock back and forth as many times as possible without allowing it to fall to the ground. Ancient Greek drawings represent a game almost identical with battledore and shuttlecock, and it has been popular in China, Japan, India, and Thailand for at least 2,000 years. It has been played in Europe for centuries. Badminton is a further development of the game."

Wednesday, 10th.

The examination of Susannah C. Murray, was continued and concluded this morning through a tempest of chatter and noise, interspersed with the cooling influence of a pretty copious shower which found its way through the new tin roof of his honor's temporary court house, with about as much readiness it would have passed through a sieve. The parties and witnesses in attendance, must have felt grateful to the officers of the government for providing them with such comfortable accommodations. [23]

Emily Murray, sister of the prosecutrix, and Mrs. Hannah Murray her step-mother were called as witnesses for the prosecution. Their testimony is necessarily omitted.

The case of the United States was here closed and G. L. Becker Esq. opened for the defence.

A number of witnesses were called who impeached the testimony of those examined on the part of the government. The case was argued with zeal and ability by counsel for the prosecution and the prisoner respectively, and at a late hour in the evening, Judge Goodrich charged the jury. His charge was regarded as favorable to the defence.

Thursday 11th.

The jury in the case of the **United States vs. Elijah Murray**, came into court this morning and rendered a verdict of NOT GUILTY, this confirming the opinion previously entertained by the public that the charge was the result of a diabolical conspiracy an opinion only modified by the inability of men to believe that human depravity could be as utterly lost to all that is decent.

Mr. Murray was forthwith discharged, and enjoyed the sympathy and congratulations of all who witnessed the proceedings of the trial. [24]

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[23] The following appeared in a chronology of events in 1851 in J. Fletcher Williams, *History of the City of Saint Paul, and the County of Ramsey, Minnesota* 293 (1876):

> The District Court of Ramsey County (Judge Goodrich) was held that spring in Mazurka Hall. The roof was fire-proof, but not water-proof, a heavy rain deluging the court while in session, and rendering umbrellas necessary.

[24] The result was also reported in the *Minnesota Democrat*:

> TRIAL FOR INCEST.—An old man with the palsy was tried for incest, last week, in our District Court. The jury were satisfied that the defendant had had a paralytic stroke, "and hadn't had anything else" (to use a Western-ism,) and so acquitted him.

September 18, 1851, at 2.

United States vs. Calvin A. Tuttle.—This case was called for trial and concluded to day. It was an indictment against the defendant found at September Term 1850, for breaking down a fence upon the land of Edgar Folsom near St. Anthony.

The defence was that the fence was upon the land of the defendant and not on that of Mr. Folsom.

Wm. D. Phillips Esq. prosecuting attorney, and Isaac Atwater and J. W. North Esquires for the prosecution. Rice, Hollinshead, and Becker for the defence.

Friday, 12th.

The jury in the case of the **United States vs. Calvin A. Tuttle** returned a verdict of Guilty. The defendant's counsel, when the court expressed a desire to sentence the defendant, who was not present at the trial, intimated an intention to move for a new trial. The motion the court overruled in anticipation and before any reasons were filed or any motion made, on the ground as stated by the Judge, that a new trial would take up too much time !

Nathan Myrick vs. James Munroe.—This was an action of trespass, brought by the plaintiff against the defendant to recover damages for an assault and battery and false imprisonment.

Capt. Monroe the defendant, was in command of a company of soldiers stationed a Ft. Snelling, and pursuant to the request of Gov. Ramsey, and the command of his superior officer, went to Benton County in 1849, in search of persons selling whiskey to Indians. Mr. Myrick was trading at Little Rock at the time and was arrested by order of Capt. Munroe, and detained in custody for a short time. The imprisonment and assault were merely nominal. The object of the plaintiff in the case appeared to be to vindicate himself from the imputations of selling liquor (which was unjustly made) rather than to obtain money. Some evidence of special damage in the way of injury to the plaintiff's business was however given.

The case went to the jury at a late hour in the evening.

H. F. Masterson, G. L. Becker and Edmund Rice Esquires for plff. H. L. Moss and Wm. Hollinshead Esqs. For defendant.

Saturday 13th.

Myrick vs. Munroe. The jury in this case returned a verdict in favor of the plaintiff for $616.66 2/3. The defendants counsel gave notice of an intention to move for a new trial, which as in a former case was overruled before the motion was made. In this case sound reasons for a new trial

existed, arising out of the conduct of the jury in making up the verdict; but the peculiar ruling of the court deprived the defendant of any opportunity to avail himself of them. [25]

United States *vs*. William Constance. — Indictment for selling spirituous liquor to wit: Brandy to John Cyphers on 11th August 1850 in less quantity than a quart and without license, verdict not guilty. Some amusement was afforded by the ineffectual effort of the prosecuting attorney to obtain a conviction in the case. Lawyers, merchants and others of the most dignified of our citizens were called as witnesses, and among them was a president of a temperance society, and some officers of the St. Paul Division. The memories of the witnesses being bad, they could not testify with distinctness to the allegations of the indictment, and the prosecution broke down amid considerable merriment. The court was unusually quiet, and consumed an extraordinary quantity of apples.

Monday 15 th.

William Hartshorn vs. Edmund Rice and James C. Porter, Admrs. of the Estate of James Green deceased.

Action to recover the amount of a promissory note. Defence that Plff. Had not the legal interest in the note, and that, if he had, it had been paid.

In the course of the trial of this cause a collateral question arose as to whether the receiver appointed in a case in chancery in which Hartshorn was a defendant was not the proper person to receive the amount of the note. Court busy reading a newspaper. Pause in the cause. Court looks up and wants to know what is the matter. Difficulty explained. Court chatters for an hour and a half giving dissertation upon any thing in general and nothing in particular, and winds up by ordering the receiver to embody the ideas of the court in an order. Receiver looks puzzled, and considering the case desperate asks that the clerk perform the duty—Clerk avows his inability. Cause goes on in the midst of confusion. Court walks off to get an apple—

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[25] In its report of the verdict, the *Minnesota Pioneer* had a different spelling of the names of the parties:

> False Imprisonment.—N. Merrick, of Benton county, recovered damages of $600 and costs , last week, in the District Court of Ramsey county, against Capt. Monroe, U. S. A., for false imprisonment (handcuffing Merrick, who was arrested on a charge of selling whiskey to the Indians, Merrick being seized on the east side of the river, and not within the limits of Indian territory.

Minnesota Pioneer, September 18, 1851, at 2.

Cause stops, Court comes back and wants to know what is the matter—objection explained—Court chatters half an hour—Cause proceeds—Court puts its feet on the table—resumes the newspaper and apple.[26]

. . . .

Not mentioned in this newspaper article is Judge Goodrich's dismissal of a murder charge against Standing Lodge during the September 1851 term. The case was described by J. Fletcher Williams in his history of St. Paul published in 1876:

A Case of Indian Justice.

> If I have not related already too many stories about Indians, there is one curious incident, almost romantic in its character, that should be chronicled here. One day this spring (April 4 [1851]) some boys came into town, and reported to Judge Goodrich that a dead Indian was lying in the bushes back of the brick yard, about where Alderman Gates A. Johnson's residence now is. Sheriff Lull, being notified, summoned the Coroner and one or two other officials, and proceeded to the spot. Sure enough, there was a dead Winnebago Indian, who was well known about here those days, by the name of "Dr. Johnson," and examination showed that he had died from a stab. As he had been seen a day or two before with some other Winnebagoes, the probability was that they had given him his quietus, and, as there was an encampment of those Indians not far off, a file of soldiers was sent to the spot, to arrest the murderer, if he could be found. They proceeded to the encampment, and found some of the red-skins quietly cooking their evening meal. The officer in charge of the squad asked one of them, *Che-en-u-wzhee-kaw*, or Standing Lodge, if he knew anything of how their brother "Lo" had met his end, when Standing Lodge very coolly and unconcernedly replied, "I killed him!" On further questioning him, he stated that the dead

[26] The *St. Anthony Express*, a rival weekly, snipped at the *Minnesota Democrat* for this piece in its issue on September 27, 1851:

> Does the Supreme Court Reporter "do" the exceedingly witty, dignified, and able Reports of the District Court, which grace the columns of the *Democrat* ? His exhibition of personal spite, against the Court is amusing—nothing else, may perhaps increase his reputation as Reporter.
>
> By the way, the Reporter seems to have bad luck with the *juries* this term, as well as the Court. How does that happen?

Indian had committed some crime or offense, which, according to the Indian code, merited death, and that he, the speaker, had been selected to give him his quietus, which he did.

There seemed no other way than to apprehend the self-confessed murderer, and ascertain whether the statutes in such case made and provided would not cover his crime, as equally as if one white man had killed another. So the officer told Standing Lodge to come along. The Indian made no objection, but very quietly followed the officers to town. That night he slept in Sheriff Lull's carpenter shop, the jail not being tenable yet, and made no efforts to escape. Next day, a sort of preliminary examination was held. Standing Lodge never denied his guilt, but always said, "I did it," when asked. Some urged to let him go, as it would only expose the county to considerable cost to imprison and try him, and it was scarcely worth while to take note of all the quarrels and murders among the Indians, as they were occurring every few days, and but few cared much how many Indians were killed. Others thought it ought not to be passed thus. Finally it was agreed to lay the case over until the grand jury met, about the middle of the month, and meantime, to avoid boarding Mr. Lo at public expense, to dismiss him on his own recognizance. This was explained to Standing Lodge, and he promised to be on hand when court met. He asked how many days it was, and, on ascertaining, took some sticks and cut notches in them, one for each day, and depositing them in his pouch, started off' to join his hand, who were hunting muskrats.

Scarcely any one ever expected to see Standing Lodge again. But, sure enough, on the first day of court, there he was, sitting on the steps, awaiting his fate, whatever it might he. Billy Phillips, the Prosecuting Attorney, was unable to attend to business all that week, so the grand jury did nothing. Yet the Indian was in attendance promptly every day, and slept at night on the shavings in Lull's shop. Had he run away, no one would have objected, but he said he had given his word to be there, and must do so. He even complained, finally, that he was not tried.

Finally the case was called by the grand jury, and, though opposed by some, an indictment was found and returned. The

case was never brought to trial. It was shoved over to the September term. Standing Lodge meantime being out at large, on his own recognizance, with his bundle of notched sticks as an almanac showing him what day to return. When the September term began, he was again on hand, but Judge Goodrich, finding there was no intention to prosecute him, ordered the case to be dismissed. Standing Lodge was informed he could go his way. He shook hands with the officers as unconcernedly and stolidly as ever, folded, his blanket around him, and marched oft', an imperturbable stoic. There was really something noble about the fellow, a poor pagan and murderer, though he was, and the incident serves to illustrate one of the curious phases of our early days. [27]

[27] J. Fletcher Williams, *A History of the City of St. Paul and of the County of Ramsey, Minnesota* 288-290 (1876); see also Jane Lamm Carroll, "Native Americans and Criminal Justice on the Minnesota Frontier" *55* Minnesota History *47*, 50-1 (Summer 1996) (citing Williams and other sources).

H. Second Judicial District, Judge David Cooper,
October 13-15, 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

October 21, 1851 Page 2

District Court, Washington County,— The October Term of this court commenced at Stillwater on Monday the 13th, inst. Hon. David Cooper presiding.

The Legislature having thoughtlessly fixed the time of the commencement of the term on the day before the period of the general election, the court necessarily adjourned until Wednesday the 15th inst. In order to vacate the room for the holding of the election, and to enable the jurors, parties and witnesses, top attend to their respective precincts for the purpose of voting.

On Wednesday the court met and the names of the grand and petit Jurors in attendance were called.

The attorneys prosecuting on behalf of the United States and the County having stated that there was no criminal business requiring the attention of the Grand Jury, the gentlemen summoned were dismissed.

Judge Cooper stated, that inasmuch as all of the laws formerly in force in the Territory had been repealed by the action of the last Legislature assembly, and as the code which had been adopted instead thereof, had not yet been published in an authentic and reliable form, he deemed it his duty to himself, and to suitors in court, to decline accordingly until properly informed as to the law by which we are governed. The members of the bar present acquiesed unanimously in this view of the matter, and no cases were taken up, except that of **Chouteau vs. Rice**, which being a proceeding in Equity is not effected by the provisions of the code. The demurrer to the supplemental bill filed by the complainants was argued by Wm. Hollinstead and Alexander Wilkin, Esqs. For the demurrer, and M. E. Ames and R. R. Nelson Esqs contra.

Held under advisement.[28]

[28] The defendants' demurrer was overruled by Judge Cooper, and an appeal taken to the Supreme Court, which, per Chief Justice Fuller, affirmed Cooper's ruling, and remanded the case to the District Court. *Chouteau v. Rice*, 1 Minn. (Gil. 83) 106 (1852).

I. Third Judicial District, Judge Bradley B. Meeker, November 10, 1851.

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MINNESOTA DEMOCRAT

St. Paul, Minnesota Territory

November 18, 1851 Page 2

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BENTON COUNTY COURT—Judge Meeker declined holding court, because he had not been able to procure a complete copy of the new code and therefore did not know what the law was. See the "Benton" correspondence.

. . . .

BENTON COUNTY COURT.

Mr. Editor:

The District Court of the third Judicial District, met at this place on Monday the 10th inst.—Hon. Bradley B. Meeker presiding. The lawyers present having been called, his honor addressed himself to them. He said heretofore, we had been practicing under the foreign laws—the laws of Wisconsin. He understood a new code of Practice had been provided for this Territory by the Legislative Assembly. Though he believed it, he had as yet no Judicial knowledge of the fact. As Judge of this court, he could know nothing of it. The so-called new code had not yet been published in an authentic and reliable form. The laws formerly in force in this Territory had been repealed by the action of the last Legislative Assembly. The new law, except in fragmentary parts, of which as Judge, he could take no notice, were not published; very reluctantly, and contrary to his expectations, he could therefore, decline acting until properly informed as to the law by which he was to be governed. No one could regret the necessity which compelled him to this course, more than himself. There were many important cases on the dock to be tried—some that demanded immediate action. His honor stated that he didn't know if this court could act at this Term. He understood the new code to be voluminous, requiring much time, and many hands to arrange and publish it in due form. Perhaps its completion could not have been expected by this time, though he had believed that he should have received it before the day fixed for this court.

His Honor stated, that under the Laws of the United States, which were in force in this Territory, with or without Territorial enactments, he should order a *venere* to issue to the Marshall for a Grand Jury. Whereupon the names of sixteen persons were called who took their seats accordingly.

Having succinctly stated to the jury, the situation in which the court was placed by reason of the non-publication of the new code, and having informed them that he had not been called to engage in any business at this time; his Honor in some able and excellent remarks, commented at some length upon the evils resulting to the citizens of Benton County, from the sale of ardent spirits to the Indians. He regretted to know that this mischievous practice was carried on to a considerable extent at this time, in the country. It was in direct violation of the law of the Territory, which the best interests of the county require to be strictly observed. As a citizen of the county, he hoped to see the law on this subject rigidly enforced; and the evil practice of selling spirits to the Indians soon wholly abandoned.

Benton County, for the productiveness of its soil, its admirable adaption to agricultural purposes, the abundance which it yields the husbandman for his labors, is unsurpassed by any region of country in the whole north west. With such unequalled, natural advantages of soil, and of situation, nothing can prevent the county form becoming densely populated, if the fears so general expressed abroad of the conduct of the drunken Indians occasioned by the sale of ardent spirits to them by some of our citizens, were removed. —This is urged as an objection to the county to emigrants who have come to the Territory in quest of farming lands. His Honor expressed himself happy in the belief, that the citizens of the county were beginning to look at the subject in its true light, and that a determination was being manifested, to arrest the evil by yielding their prompt co-operation and support in the enforcement of the law. The county is yet anew, but there is a rapid accumulation here in energy and enterprise. The evils incident to a new country will soon disappear.

The court thanked the jurors for the promptness and alacrity with which they had responded to its summons. Whereupon they were discharged. — There was not, I understand, the usual number of lawyers from St. Paul. Messrs. Wilkinson, Rice, Phillips, and Willis, were present, all of whom I believe, had business in court. On motion of Wm. D. Phillips, Esq. Wm. H. Wood Esq. District Attorney of Benton County, was admitted to practice in this court.

Yours etc.
Benton. [29]

[29] In his recollections of the territorial era , William Pitt Murray wryly recalled a similar ruling by Judge Meeker in another case, not identified by name or date:

J. Conclusion

For good and obvious reasons, most court-centered legal history centers on the work of appellate courts, especially supreme courts. But to understand what happened at the peak of the judiciary during a particular period, it is helpful to know what was going on in the trial courts, the ones closest to the people.

The premise of this article is that the work of the judges on the territorial district courts was more important — far more important — than their work on the Supreme Court. In 1851, the Territorial Supreme Court met once, in July, and decided nine appeals.[30] Those judges knew the needs of the new territory and how to meet them better than those of us researching the legal history of the state in the early 21st century ever can.

The trial court dockets of 1851 reveal a frontier territory undergoing tremendous change. Judge and lawyers were required to master a new code of procedure; judges were frustrated by the refusal of jurors to convict fellow settlers of clear violations of law; a grand jury demanded improved roads; and there was the familiar problem of adjusting the legal system to accommodate and accept individuals of a different race, religion and culture.

> Judge Meeker made himself famous as a judge of great learning and research by reason of a decision he made at a term of the District Court held at Sauk Rapids, where a demurrer had been interposed to an indictment, on the ground that the law under which it had been found had never been published. Notwithstanding the fact that the law had been published in the newspapers and distributed in unbound copies in book form, the judge held that, to make a legal publication, the law not only had to be printed but published in bound volumes. In justice to his memory, I must say that he did not insist upon their being bound in calf.

William Pitt Murray, "Recollections of Early Territorial Days and Legislation" 12 Minnesota Historical Society Collections, 103, 108 (1908).

[30] The Territorial Supreme Court's opinions were collected by Harvey Officer, a St. Paul lawyer, and published as the first volume of the *Minnesota Reports* in 1858. See "Reports of Cases Argued and Determined in the Supreme Court of the Territory of Minnesota, from the Organization of the Territory until its Admission into the Union in 1858." (MLHP, 2016). The Court's eight rulings issued during the July1851 term are on pages 2-71.

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