

Documents Regarding the Nominations, Confirmations,
Recess Appointments, Commissions,
Oaths of Office, Removals, and Terms of the Ten
Justices who Served on the Supreme Court of
Minnesota Territory,
1849-1858

PART TWO-C

DOCUMENTS RE:

CHIEF JUSTICES
JEROME FULLER
and
HENRY Z. HAYNER

Compiled

by

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2009–2010

PART TWO-C

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Documents regarding and Chief Justice Welch and
Associate Justice Chatfield are posted in
PART TWO-D

Documents regarding Associate Justices
Sherburne and Nelson are posted in
PART TWO-E

And documents regarding Associate Justice Flandrau and
Pettit's Commission are posted in
PART TWO-F.

SOURCES

The *Journal of the Executive Proceedings of the Senate of the United States of America* can be found online. It is an invaluable source for the dates of Presidential nominations and removals and proceedings in the Senate on those nominations. The excerpts from the *Executive Journal* that follow have been reformatted. Punctuation, spelling and grammar are not changed.

The commissions of Justices Goodrich, Cooper, Meeker, Fuller, Hayner, Welch, Chatfield and Sherburne are taken from Vol. 1, Book of Commission of Judges (Jan. 26, 1837—Dec, 11, 1856), Record Group 59, Stack Area 250, Row 48, Compartment 3, Shelf 3, National Archives (Archives II Reference Section), College Park, Maryland.

The commissions of Justices Nelson and Flandrau are taken from Vol. 2, Book of Commission of Judges (Feb. 4, 1856—Jan. 21, 1879), Record Group 59, Stack Area 250, Row 48, Compartment 3, Shelf 3, National Archives (Archives II Reference Section), College Park, Maryland.

The commissions of the justices, including John Pettit's recess commission, can also be found on Roll 8 of the microfilm copies of U. S. Territorial Papers. Territory of Minnesota Records: Justice Department records in the Ronald M. Hubbs Microfilm Room at the Minnesota Historical Society.

The original oaths of office of the ten territorial justices are filed in a manila folder marked "Territorial Secretary: Bonds and Oaths—Territorial Offices" in the box of "Territorial Records of the Territorial Secretary" at the Minnesota Historical Society. The handwritten oath of each territorial justice has been retyped and appears in the entry for each justice in PART TWO. Misspellings and abbreviations have not been changed. Copies of the original, handwritten oaths are in PART THREE-A.

JEROME FULLER

Term: October 21, 1851, to August 31, 1852.
Served: November 24, 1851, to August 31, 1852.

1. October 21, 1851: President Fillmore made a recess appointment of Jerome Fuller to be Chief Justice of Territorial Supreme Court, thereby removing Aaron Goodrich.

/s/ Millard Fillmore

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETINGS:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Jerome Fuller, of New York,*

I **Do appoint him** Chief Justice of the Supreme Court of the United States for the Territory of Minnesota,

and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, AND TO HAVE AND TO HOLD, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said Jerome Fuller, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN *under my Hand, at the City of Washington, the twentieth first day of October, in the year of our Lord one thousand eight hundred and fifty one, and of the Independence of the United States of America, the seventy sixth.*

By the President, /s/ Millard G. Fillmore

/s/ J. J. Crittenden, Acting Secretary of State.

Willard Fillmore

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PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of

Samuel Fuller, of New York,

I Do appoint him *Chief Justice of the Supreme Court of the United States for the Territory of Wisconsin,*

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said

Samuel Fuller, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my Hand, at the City of Washington, the *fourth* day of *April*, in the year of our Lord one thousand eight hundred and *fifty-two*, and of the Independence of the United States of America, the *seventh*.



Willard Fillmore

By the President.

J. J. Crittenden Secretary of State

Vol. 1, Book of Commission of Judges (Jan. 26, 1837-Dec, 11, 1856), Record Group 59, Stack Area 250, Row 48, Compartment 3, Shelf 3, National Archives (Archives II Reference Section), College Park, Maryland.

2. October 25, 1851: Fuller took oath of office in Albany County, New York.

State of New York }
County of Albany } ss

I Jerome Fuller do solemnly swear that I will administer Justice without respect to persons, and do right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Chief Justice of the Supreme Court of the United States for the Territory of Minnesota, according to the Constitution and laws of the United States so help me God.

Subscribed and sworn to } Jerome Fuller
this twenty fifth day of }
October 1851, before }
S. Nelson.
As. Justice
Sup Ct. U. S.

Fuller's first oath is filed in a folder marked "Territorial Secretary: Bonds and Oaths—Territorial Offices" in the box of "Territorial Records of the Territorial Secretary" at the Minnesota Historical Society.

3. November 24, 1851: Fuller took the oath in St. Paul before Henry A. Lambert, Judge of Probate Court for Ramsey County.

Territory of Minnesota }

County of Ramsey } ss: I Jerome Fuller do solemnly swear that I will support the Constitution of the United States and faithfully discharge the duties of the office of Chief Justice of the Supreme Court of Minnesota Territory to which have been appointed. So help me God.

Subscribed and sworn to this } Jerome Fuller
24th day of November 1851.
by the same Jerome Fuller
before me.

Henry A. Lambert
Judge of the Probate Court
of the County of Ramsey.

Fuller's second oath is also filed in the folder marked "Territorial Secretary: Bonds and Oaths—Territorial Offices" in the box of "Territorial Records of the Territorial Secretary" at the Minnesota Historical Society.

4. December 19, 1851: President Fillmore sent nomination of Fuller to Senate for a full four year term.

The following messages were received from the President of the United States, by Mr. Fillmore, his secretary:

.....

To the Senate of the United States:

I hereby nominate the persons herein named for the offices to which they were appointed during the last recess of the Senate:

Jerome Fuller, of New York, to be chief justice of the supreme court of the United States for the Territory of Minnesota in the place of Aaron Goodrich, removed.

.....

MILLARD FILLMORE.

Washington, December 19, 1851.

Journal of the Executive Proceedings of the Senate of the United States of America, 32nd Congress, First Session, Saturday, December 20, 1851, at 341-42.

5. February 12, 1852: Senate received the confidential opinion of Attorney General Grittenden dated January 23, 1851, on whether President Fillmore lawfully removed Aaron Goodrich on October 21, 1851. Apparently, the Senate did not want to consider the nomination of Jerome Fuller, who had been nominated to replace Goodrich, unless the latter's removal was constitutional.

Mr. Butler, from the Committee on the Judiciary, to whom was referred, the 20th December last, the nomination of Jerome Fuller, reported.

Mr. Butler presented a copy of the opinion of the Attorney-General of the United States submitted to the President on the subject of the said nomination and in relation to the removal of Territorial judges appointed for four years.

On motion by Mr. Chase,

Ordered, That the said opinion of the Attorney-General be printed in confidence for the use of the Senate.

Journal of the Executive Proceedings of the Senate of the United States of America, 32nd Congress, First Session, Thursday, February 12, 1852, at 367.

The Attorney General's opinion which the Senate received was that of John J. Crittenden to President Pierce dated January 23, 1851, on "Executive Authority to Remove the Chief Justice of Minnesota," 5 *Op. Att'y Gen.* 288 (1851). It is posted in Pt Three, at 26.

6. August 4, 1852: Senate postponed deliberation on Fuller’s nomination.

The Senate proceeded to consider the nominations of Jerome Fuller, John Curry, and Francis W. Rice; and,

On motion by Mr. Gwin,

Ordered, That they be severally postponed until to-morrow.

Executive Journal, 32nd Congress, First Session, Wednesday, August 4, 1852, at 433.

7. August 30, 1852: Senate refused to confirm Fuller.

The Senate resumed the consideration of the nomination of Jerome Fuller; and

Resolved, That the Senate do not advise and consent to the appointment of Jerome Fuller, of New York, to be chief justice of the supreme court of the United States for the Territory of Minnesota, in the place of Aaron Goodrich, removed.

Executive Journal, 32nd Congress, First Session, Monday, August 30, 1852, at 449.

There is a mistake in the chronology of votes reported in the *Executive Journal* on August 30, 1852. The *Journal* recorded the Senate as receiving President Fillmore’s nomination of Henry Z. Hayner to replace Jerome Fuller (p. 447) before it voted against confirming Fuller as chief justice (p. 449).

8. August 30, 1852: President Fillmore nominated Henry Z. Hayner to be Chief Justice “in place of” Fuller.

To the Senate of the United States:

I hereby nominate Henry Z. Hayner, of the State of New York, to be chief justice of the Territory of Minnesota, in the place of Jerome Fuller, whose commission will expire with the present session of the Senate.

MILLARD FILLMORE.

Executive Chamber, August 30, 1852.

Executive Journal, 32nd Session, First Session, Monday, August 30, 1852, at 447.

9. August 31, 1852: Fuller's recess appointment expired when the Senate adjourned.

The Senate adjourned on Tuesday, August 31, 1852. *Executive Journal*, 32nd Congress, First Session, Tuesday, August 31, 1852, at 647.

The term of a recess appointee ends on the last day the Senate is in session; for this session, the Senate's last day was August 31, 1852, and that was when Fuller's term ended. In an opinion dated April 16, 1830, Attorney General John MacPherson Berrien wrote, "A commission by the President during a recess of the Senate continues until the end of the next session of Congress, unless sooner determined by the President, even though the individual commissioned shall have been meanwhile nominated to the Senate, and the nomination rejected." "Commissions Granted During Recess of Senate," 2 Op. Att'y Gen. 336 (1830).

Thus, the term of a recess appointee could end earlier than the end of the next Senate session if that person died, was removed by the President or if the position was abolished, which is what happened to Territorial Chief Justice Welch and Associate Justices Nelson and Flandrau on May 24, 1858, when Minnesota Territory ceased to exist and the State of Minnesota came into being.

HENRY Z. HAYNER

Term: August 31, 1852, to April 5, 1853.
Served: October 6, 1852, to April 5, 1853.

1. August 30, 1852: President Fillmore sent nomination of Henry Z. Hayner to the Senate.

The following messages were received from the President of the United States, by Mr. Fillmore, his secretary:

.....

To the Senate of the United States:

I hereby nominate Henry Z. Hayner, of the State of New York, to be chief justice of the Territory of Minnesota, in the place of Jerome Fuller, whose commission will expire with the present session of the Senate.

MILLARD FILLMORE.

Executive Chamber, *August 30*, 1852.

Executive Journal, 32nd Congress, First Session, Monday, August 30, 1852, at p. 447.

2. August 31, 1852: Senate confirmed Hayner.

Mr. Downs, from the Committee on the Judiciary, to whom was referred, the 30th instant, the nomination of Henry Z. Hayner, reported.

Whereupon

Resolved, That the Senate advise and consent to his appointment, agreeably to the nomination.

Executive Journal, 32nd Congress, First Session, Tuesday, August 31, 1852, at p. 452.

3. August 31, 1852: President Fillmore signed Hayner's commission.

/s/ Millard Fillmore

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETINGS:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Henry Z. Hayner, of New York, I have nominated and by and with the advice and consent of the Senate*

Do appoint him to be Chief Justice of the Supreme Court of the United States for the Territory of Minnesota,

and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, AND TO HAVE AND TO HOLD, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said Henry Z. Hayner, for the term of four years from the day of the date hereof.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN *under my Hand, at the City of Washington, the thirty first day of August, in the year of our Lord one thousand eight hundred and fifty two, and of the Independence of the United States of America, the seventy seventh.*

By the President, /s/ Millard Fillmore

/s L. S./ Dan. Webster. Secretary of State.

Millard Fillmore

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PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of

Henry B. Mayson, of New York, I have now in advice and by an order the advice and consent of the

Senate Do appoint him to be Chief Justice of the Supreme Court of the United States for the Territory of Minnesota;

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said

Henry B. Mayson, for the term of four years from the day of the date hereof.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my Hand, at the City of Washington, the *thirtieth* day of *August* in the year of our Lord one thousand eight hundred and *fifty two*, and of the Independence of the United States of America, the *twenty seventh*.

Millard Fillmore,

By the President.

L. S. /

Sam Webster,

Secretary of State.

Vol. 1, *Book of Commission of Judges* (Jan. 26, 1837-Dec, 11, 1856), Record Group 59, Stack Area 250, Row 48, Compartment 3, Shelf 3, National Archives (Archives II Reference Section), College Park, Maryland.

4. On October 6, 1852: Hayner took oath of office before Orlando Simons, a justice of the peace.

Territory of Minnesota }
Ramsey County } ss: Be it Remembered that on the sixth day of
October 1852 before me personally appeared Henry Z. Hayner who being
by me duly sworn made oath, that he would support the constitution of the
United States and that he would faithfully discharge the duties of the
office of Chief Justice of the U. S. for the Territory of Minnesota,
Orlando Simons
Justice of the Peace

Hayner’s oath is filed in a folder marked “Territorial Secretary: Bonds and Oaths—Territorial Offices” in the box of “Territorial Records of the Territorial Secretary” at the Minnesota Historical Society.

5. On April 5, 1853, Hayner was “removed” when President Pierce nominated William H. Welch to be Chief Justice.

The following messages were received from the President of the United States, by Mr. Webster, his secretary:

.....
To the Senate of the United States:

I nominate William H. Welch to be chief justice of the United States for the Territory of Minnesota, in place of Henry Z. Hayner, removed.

I nominate Andrew G. Chatfield to be associate justice of the United States for the Territory of Minnesota, in place of David Cooper, whose commission has expired.

I nominate Moses Sherburne to be an associate justice of the United States for the Territory of Minnesota, in place of Bradley B. Meeker, removed.

FRANKLIN PIERCE.

Washington, *April 5*, 1853.

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Sess., Tuesday, April 5, 1853, at 147.



Posted MLHP: December 28, 2009.
Revised March 12 & April 23, 2010.

/s/
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me