

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-E

DOCUMENTS RE:

ASSOCIATE JUSTICES
MOSES SHERBURNE and
RENSSELAER R. NELSON

Compiled

by

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PART TWO-E
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MOSES SHERBURNE

Term: April 6, 1853, to April 5, 1857.
Served: June 6, 1853, to April 5, 1857.

1. April 5, 1853: President Pierce nominated Sherburne.

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 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 Session, Tuesday, April 5, 1853, at 147.

2. April 6, 1853: Senate confirmed Sherburne.

Mr. Stuart, from the Committee on the Judiciary, to whom were referred, the 5th instant, the nominations of William H. Welch, Andrew G. Chatfield, and Moses Sherburne, reported.

....

Whereupon...

....

Resolved, That the Senate advise and consent to the appointment of the said persons, agreeably to their nominations respectively.

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Session, Wednesday, April 6, 1853, at p. 149.

3. April 6, 1853: President Pierce signed Sherburne's commission.

This commission was recorded from the confirmation,
the commission having been sent off by my predecessor
without having been recorded. /s/ s Heim (?)

/s/ Franklin Pierce

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, uprightnes, and learning, of Moses Sherburne, I have nominated, and, by and with the advice and consent of the Senate,*

Do appoint him to be an Associate 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 Moses Sherburne, 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 sixth day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America, the seventy-seventh.*

By the President, /s/ Franklin Pierce

/s/ William S. Marcy, Secretary of State.

This commission was recorded from the confirmation; the commission having been first approved by my predecessor without Franklin Pierce, having been recorded.

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 *Moses Sherburne*, I have nominated, and by and with the advice and consent of the Senate

Do appoint him to be an Associate Justice 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 *Moses Sherburne*, 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 hereto affixed.

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

By the President.

Franklin Pierce

William L. Marcy

Secretary of State.

RENSELAER R. NELSON

Term: April 21, 1857, to May 24, 1858.

Served: March 1857, to May 24, 1858.

1. April 21, 1857: President Buchanan made a recess appointment of “Renssalaer” R. Nelson to be an associate justice of the territorial court.

/s/ James Buchanan

PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Renssalaer R. Nelson,*

I DO APPOINT him to be an Associate Justice of the Supreme Court of Minnesota Territory;

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 Rensselaer R. Nelson, 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 twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America, the eighty-first.*

By the President, /s/ James Buchanan
/s/ Lewis Cass, Secretary of State.

James Buchanan,
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

Rensselaer W. Nelson,

*I do appoint him to be Associate Justice of the
Supreme Court of Minnesota Territory;*

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 *Rensselaer W. Nelson,* 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 *Twenty-first* day of *April*, in the year of our Lord one thousand eight hundred and *fifty-seven*, and, of the Independence of the United States of America, the *Eighty-first*.

L.S.

James Buchanan

By the President:

Lewis Cass,

Secretary of State.

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. Nelson's first name was misspelled by the President.

President Buchanan’s recess appointment of Nelson was made when the Senate was not in session. The First Special Session of the 35th Congress was held from March 4, 1857, to March 14, 1857; it then was in recess from March 14 to December 6, 1857, during which Buchanan made Nelson’s recess appointment; Congress’s First Regular Session lasted December 7, 1857, to June 14, 1858. See dates of the sessions of Congress in *Journal of the Executive Proceedings of the Senate of the United States of America*, 35th Congress (1857-1859), note 28, Pt. One.

2. May 11, 1857: Nelson took oath of office before Gov. Samuel Medary.

Territory of Minnesota }
County of Ramsey }

I, Rensselaer R. Nelson do solemnly swear that I will support the Constitution of the United States and that I will faithfully discharge the duties of Associate Justice for the Territory of Minnesota to the best of my ability, So help me God.

/s/ Rensselaer R. Nelson

Subscribed & sworn to
Before me this 11th
day of May A. D. 1857

/s/ S. Medary
Governor of M. T.

Nelson’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.

3. May 6, 1858: President Buchanan sent nomination of “Rennsalaer” R. Nelson” to Senate to succeed Sherburne.

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

To the Senate of the United States:

.....

I nominate Rennsalaer R. Nelson, of Minnesota T., to be associate justice of the supreme court of the said Territory, the same having been appointed by me during the recess of the Senate, vice Moses Sherburne, whose commission had expired.

JAMES BUCHANAN.

May 6, 1858.

Journal of the Executive Proceedings of the Senate of the United States of America, 35th Congress, First Session, Monday, May 10, 1858, at 403. Nelson’s first name is misspelled in the original.

3. May 15, 1858: the Senate tabled voting on confirmation Nelson.

Mr. Pugh, from the Committee on the Judiciary, to whom were referred the nominations of William B. Gere, W. H. H. Tison, William H. Welch, Charles E. Flandrau, and Rennsaleer R. Nelson, reported.

On motion by Mr. Pugh,

Ordered, That the nominations of William H. Welsh, Charles E. Flandrau, and Rennsaleer R. Nelson lie on the table.

Journal of the Executive Proceedings of the Senate of the United States of America, 35th Congress, First Session, Saturday, May 15, 1858, at p. 415. Again, Nelson's first name is misspelled in the original.

4. May 24, 1858: Nelson's term as associate justice expired when Minnesota becomes a state.

The term of a recess appointee expires on the last day the Senate is in session. For Nelson, that normally would have been June 14, 1858, but for the intervening statehood of Minnesota on May 24, 1858.



The entries on Rensselaer R. Nelson would not be complete without noting the curious timing of the events leading to his becoming a federal district judge, a position he held until 1896, when he resigned.

On May 20, 1858, President Buchanan nominated Nelson, who was a justice on the territorial supreme court, to be U. S. District Court Judge, and on May 30, 1858, the Senate received that nomination and voted to confirm it:

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

To the Senate of the United States:

.....

I nominate Rensselaer R. Nelson, of Minnesota, for appointment as district judge of the United States district court for the district of Minnesota.

JAMES BUCHANAN.

May 20, 1858.

.....

On motion by Mr. Rice,

The Senate, by unanimous consent, proceeded to consider the nomination of Rensselaer R. Nelson, Eugene M. Wilson, and William B. Gere; and...

Resolved, That the Senate advise and consent to the appointment of said persons, agreeably to their nominations respectively. ...

Journal of the Executive Proceedings of the Senate of the United States of America, 35th Congress, First Session, Thursday, May 30, 1858, at pp. 420-21.

After Nelson's confirmation on May 30th, the issuance of the presidential commission would normally have been the next step, but that had already occurred on May 20th:

/s/ James Buchanan

PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Rensselaer R. Nelson, of Minnesota State nominated and by and with the advice and consent of the Senate*

I DO APPOINT him to be District Judge of the United States District Court for the District 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 Rensselaer R. Nelson, during good behavior.

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 20th day of May, in the year of our Lord one thousand eight hundred and 58, and of the Independence of the United States of America, the 82nd.*

By the President, /s/ James Buchanan
/s/ Lewis Cass, Secretary of State.

James Buchanan
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, uprightnes, and learning, of

*Russell R. Nelson of Minnesota. I have nominated
and by and with the advice and consent of the Sen.*

DO APPOINT him to be District Judge of the United
States District Court for the District of Minn.

and do authorize and empower him to execute and fulfil the duties of that office, according to the Consti-
tution 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
Russell R. Nelson during good behavior.

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 *20th* day
of *May*, in the year of our Lord one thousand
eight hundred and *58*, and, of the Independence
of the United States of America, the *82nd*

By the President:

James Buchanan

Lewis C. G.

Secretary of State.



This odd chronology is a perfect example of a contingent judicial vacancy—the contingency being the date of the organization of the new state government. By mid-1857, it was clear that Minnesota would become a state. The Enabling Act was passed on February 26, 1857. Voters in Minnesota Territory approved a new constitution and elected Governor Sibley and other officers on October 13, 1857.¹ The Act of Admission was passed on May 11, 1858. All that remained was for officials of the new state government to take their oaths of office and begin work. This they did on May 24, 1858, at which point the territory ceased to exist.

President Buchanan issued a commission to Nelson on May 20, 1858, probably because Justice Department officials, with admirable foresight, advised him that a United States District Court Judge should be in office when Minnesota’s territorial status ended.² If the President waited until after the Senate confirmed Nelson to issue a commission, it might have taken two or even three weeks before he received it. And so, to reduce the time when there was no federal judge in the new state, the President commissioned Nelson on May 20, 1858, ten days before the Senate confirmed his nomination. The President and his advisors, of course, assumed that Nelson would be available to take on his new responsibilities.

The conclusion of this story of official foresight and good intentions is told—and Nelson’s whereabouts disclosed—in the following handwritten memorandum found in the files of the Justice Department that pertain to Minnesota Territory—more precisely, those files that concern the payment of salaries of absentee jurists, a nagging problem that was present right up to the final days of the territory. The author of the memorandum is not known.

¹ Section 13 of the Schedule to the 1857 Constitution provided:

Upon the second Tuesday, the 13th day of October 1857, an election shall be held for members of the house of representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designed in this constitution, and also for the submission of this constitution to the people for their adoption or rejection.

² Section 3 of the Act of Admission provided, “the said state is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Iowa, shall be established...”

R. R. Nelson District Judge,
& E. M. Wilson District Attorney for
Minnesota, left the Territory under
the supposition that the Hunters' existences had expired by the admission of the state, and that their terms of office was ended. Now by law they have forfeited their offices unless excused by the President.

The facts of the case having been sent to the President, he replies to Gov. Medill, that he must certify whether he thinks the facts good ground of excuse. Gov. Medill declines taking any responsibility in the matter.

Had it not been for the mistaken supposition Nelson & Wilson would have obtained leave of absence.

Roll 8, microfilm of U. S. Territorial Papers. Territory of Minnesota:
Justice Department records in the Minnesota Historical Society.

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