THE SUPREME COURT OF MINNESOTA

Parts I and II

By

CHARLES B. ELLIOTT

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FOREWORD

By

Douglas A. Hedin
Editor, MLHP

The first history of the Minnesota Supreme Court was published in two installments in *The Green Bag*, a popular lawyer's magazine, in the spring of 1892. The author was thirty-one year Charles Burke Elliott, a judge on the Minneapolis Municipal Court. His court history is a series of sketches of the men who served from the establishment of the Territory in 1849 to 1892. He describes his historiography at the outset:

> I do not propose here to attempt such a minute study of the history of the court, as there is another view from which the subject may be approached which is scarcely less important. The personal element enters largely into the history of jurisprudence. The flow of law must be through a personal medium, and during its passage the law of refraction is liable to influence the result.

Most court histories follow this methodology— short biographies of the women and men who served on the court are interspersed with discussions of important cases, doctrinal shifts,

new constitutional issues and other matters.[1] Elliott's history, typical of the period, consists almost exclusively of biographical sketches of the judges. Too frequently, lawyers (or judges) who use the "personal element" when writing court histories heap excessive praise upon the justices; they become cheerleaders, to the detriment of their "scholarship." Elliott is a booster. About Aaron Goodrich, he writes:

> **During the three years he sat as Chief Justice he seems to have given general satisfaction, although, by reason of his short period of service and the limited amount of business transacted, he failed to leave any impression on the jurisprudence of the State.**

In fact Goodrich was the worst justice in the history of the court. There was such widespread dissatisfaction with his behavior that President Fillmore cashiered him on October 21, 1851. About the justices who served from 1849 to 1892, Elliott writes: "The average membership of the court in character and learning has been high…" But there were a few mediocrities during those first four decades, as there have been now and then ever since.

It is useful to ask why he wrote this history—and for whom? He was a prolific writer, and published dozens of articles and books during his lifetime. He knew that no history of the court had been published before. True, he relied on previously published articles and did little archival research—but his was the first.

He was ambitious and wanted a wide audience for his article. *The Green Bag* was a popular magazine for the legal community in the 1890s. In his history of American magazines, Frank Luther Mott describes it:

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[1] E.g., Jeffrey Brandon Morris, *Establishing Justice in Middle America; A History of the United States Court of Appeals for the Eighth Circuit* (Univ. of Minn. Press, 2007). Professor Morris, a more sophisticated and thorough historian than Elliott, divides the history of the Appeals Court into periods, usually several decades long, and always includes penetrating sketches of the judges who served during each era.

> The Green Bag (1889—1914) was the unique magazine devoted to the lighter side of the law. Its subtitle for its first three years was "A Useless but Entertaining Magazine for Lawyers"; afterward a more inhibited editor deleted the word "Useless." This Boston illustrated monthly printed accounts of causes célèbres, anecdotes and facetiae, verse, biographies, and news of law schools. In its later years it lost much of its lightness.[2]

He knew that lawyers in Minnesota would read his article, and his reputation as a serious scholar would grow. He also had a smaller, select audience in mind: the justices themselves. They surely read his history of their court and the sketches of themselves, something he desired.[3] Indeed, the following passages seem aimed directly at the current members of the court.

> The court is the balance-wheel of the political system; its steady wisdom operates as a break upon the hurried action of the people and their legislative

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[2] Frank Luther Mott, 4 *A History of American Magazines, 1855-1905* 347 (Harvard Univ. Press, 1957)(citing sources). The Lawbook Exchange echoed Mott in this description of a partial set it offered for sale:

> As its subtitle suggests, *The Green Bag* is full of colorful anecdotes, humorous verse, curious cases and other diversions. It is also a useful resource for the legal historian, one that offers book notices and reviews, biographies of contemporary legal figures based on first-hand accounts, obituaries, studies of current events, professional notices, profiles of law schools throughout the United States and other important source material. F. W. Maitland, Louis Brandeis and Theodore Dwight are among the many important jurists who contributed to this journal.

The Lawbook Exchange, Ltd., *Law & Legal History Catalogue 50* 16 (2007).

[3] The state law library subscribed to *The Green Bag*. See E. A. Nelson & Charlotte A. Dure, *Law Book Catalogue of the Minnesota State Library* 347 (1903). This catalogue lists four books by Elliott:

> The Principles of the Law of Public Corporations (1898).
> Practice at Trial and on Appeal in Minnesota (1900)
> A Treatise on the Law of Private Corporations (1900).
> Treatise on the Law of Insurance (1902).

Id at 51.

representatives while acting under the pressure of public excitement.

. . . .

The legislature may, in the plenitude of its wisdom and power, enact a statute for a certain purpose; but whether in fact such statute will ever become the law of the land may depend upon the mental peculiarities of the members of the court which is called upon to construe and apply it to the multifarious circumstances of life. There are few statutes which a court may not construe into a nullity. So every court has its peculiarities, which are but the reflections of the personal characteristics of the men who constitute it. "One judge of high moral perceptions and a tender and instructed conscience will see clearly the requirements of natural right in the case, or the correct application of written law or judicial precedents. Another judge, unscrupulous, passionate, unlearned, or vindictive, may utterly fail either to perceive or apply the right." [4]

. . . .

The body of the law now in force in this country is the work of the judges. . . . It is hardly too much to say that a great judge creates the laws which in theory he declares. In a contest between such a judge and the legislative power, his decisions will percolate through and ultimately undermine any legal structure the legislature may create.

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[4] For some reason, Elliott did not identify the source of this quotation. It is from Alfred Russell's presidential address to annual meeting of the American Bar Association in Boston on August 27, 1891. Russell's speech was titled "Avoidable Causes of Delay and Uncertainty in Our Courts" and was reprinted in 25 *American Law Review* 776, 789-791 (September-October, 1891).

The passage that Elliott found memorable is from an extended discussion by Russell on why judges with different backgrounds and interests may construe the same legislation in opposite ways. An excerpt from Russell's address which includes the quote is posted in the Appendix, pages 55-58.

What was going on outside Elliott's chambers that led him to see a "contest" between the legislature and the court? The answer: populism. He was alarmed by the populist revolt.

"The decade of the nineties," according to political historian Russell B. Nye, "was an angry decade." [5] Farmers, laborers and small merchants in Midwest states agitated for political action against railroads, shippers, elevator operators, banks and other corporations whose practices they found unfair, discriminatory, predatory and monopolistic. Some concluded that a third party was needed to bring about fundamental political and economic change. On February 22, 1892, a national convention of reform-minded dissidents was held in St. Louis. Ignatius Donnelly, the fiery Minnesota politician, author and lawyer, drafted the preamble to the platform which he read to the convention:

> **We meet in the midst of a nation brought to the verge of moral, political and material ruin. Corruption dominates the ballot box, the legislatures, the Congress, and touches even the ermine of the bench. The people are demoralized. Many of the States have been compelled to isolate the voters at the polling places in order to prevent universal intimidation or bribery. The newspapers are subsidized or muzzled; public opinion silenced; business prostrate, our homes covered with mortgages, labor impoverished, and the land concentrating in the hands of capitalists. The urban workmen are denied the right of organization for self-protection; imported pauperized labor beats down their wages; a hireling standing army, unrecognized by our laws, is established to shoot them down, and they are rapidly disintegrating to European conditions. The fruits of the toil of millions are boldly stolen to build up colossal fortunes, unprecedented in the history of the world, while their possessors despise the republic and endanger liberty. From the same prolific**

[5] Russell B. Nye, *Midwestern Progressive Politics: A Historical Study of Its Origins and Development, 1870-1958* 74 (Michigan State Univ. Press, 1959).

womb of governmental injustice we breed two great classes—paupers and millionaires. The national power to create money is appropriated to enrich bondholders; silver, which has been accepted as coin since the dawn of history, has been demonetized to add to the purchasing power of gold by decreasing th value of all forms of property as well as human labor, and the supply of currency is purposely abridged to fatten usurers, bankrupt enterpriser and enslave industry. A vast conspiracy against mankind has been organized on two continents and is taking possession of the world. If not met and overthrown at once it forbodes terrible social convulsions, the destruction of civilization, or the establishment of an absolute despotism.

In this crisis of human affairs the intelligent working people and producers of the United States have come together in the name of peace, order and society, to defend liberty, prosperity and justice.

We declare our union and independence. We assert one purpose to support the political organization which represents our principles.

We charge that the controlling influences dominating the old political parties have allowed the existing dreadful conditions to develop without serious effort to restrain or prevent them. They have agreed together to ignore in the coming campaign every issue but one. They propose in drown the cries of a plundered people with the uproar of a sham battle over the tariff, so that corporations, national banks, rings, trusts, "watered stocks," the demonetization of silver, and the oppression of usurers, may all be lost sight of. They propose to sacrifice our homes and children upon the altar of Mammon; to destroy the hopes of the multitude in order to secure the corruption funds from the great lords of plunder. We asset that a political organization, representing the

> **political principles herein stated, is necessary to redress the grievances of which we complain.**
>
> **Assembled on the anniversary of the birth of the illustrious man who led the first great revolution on this continent against oppression, filled with the sentiments which actuated that grand generation, we seek to store the government of the republic to the hands of the "plain people," with whom it originated. Our doors are open to all points of the compass. We ask all men to join with us and help us.[6]**

To historian John D. Hicks, Donnelly's preamble was "a unique and startling document, which not only carried with it a ringing denunciation of the existing ills of society but also, inferentially, the promise of a third party to remedy these ills."[7] And so it came to be: the "People's Party," was formed shortly thereafter, and fielded candidates in the presidential election that autumn. Donnelly himself ran for governor of Minnesota and lost by a wide margin.[8]

It was against this background of angry demands for radical change that Elliott included a veiled call to action by the justices in his court history, published in the spring of 1892. What did the justices think of his description of their court as a "brake upon the hurried action of the people and their legislative representatives while acting under the pressure of public excitement" and his suggestion that they may "construe [a statute] into a nullity" and can "undermine" actions of the legislature through their rulings? The answer is, not much.

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[6] Martin Ridge, *Ignatius Donnelly: The Portrait of a Politician* 295-6 (Univ. of Chicago Press, 1962). To Ridge, the preamble "focused on the very essence of the movement." Id.

[7] John D. Hicks, *The Populist Revolt: A History of the Farmer's Alliance and the People's Party* 227 (Univ. of Minn. Press., (1931)

[8] The results of the gubernatorial election on November 8, 1892:

> Knute Nelson (R).....109,220
> Daniel Lawler (D).....94,600
> Ignatius Donnelly (People's).....39,862
> William J. Dean (Prohibition).....12,239

After a meticulous examination of decisions of the Minnesota Supreme Court from 1880 to 1925, Professor Carol Chomsky of the University of Minnesota Law School concluded:

> **This review suggests that, in most areas, the court was deferential to the regulatory efforts of the legislature, both in statutes and in reviewing them for constitutionality. Unlike the United States Supreme Court, the Minnesota Supreme Court only rarely overturned a statute for violating liberty of contract or the requirements of substantive due process. Only when the legislature appeared, to be granting special privileges or making what appeared to be grossly arbitrary distinctions among businesses did the court place limits on legislative prerogatives. Such cases were rare. The Minnesota Supreme Court was much more receptive to state efforts to rein in big business and to accommodate the needs of employees and customers than was United States Supreme Court. Indeed, when the Minnesota court placed limits on the legislature, it generally did so because of decisions of the United States Supreme Court, which it appeared to follow reluctantly.**
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> **The picture that emerges of the Minnesota Supreme Court contrasts with the portrait of the United States Supreme Court during the same period. While recent reevaluations demonstrate that the United States Supreme Court was not as hostile to regulatory legislation as once thought, the Court nonetheless placed significant roadblocks in the path of state and federal legislatures that were intent on reform. The Minnesota Supreme Court employed the same doctrines of liberty of contract and substantive due process, but applied them in a manner that facilitated reform efforts.[9]**

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[9] Carol Chomsky, "Progressive Judges in a Progressive Age: Regulatory Legislation in the Minnesota Supreme Court, 1880-1925," 11 *Law & History Review* 383, 394 (1993).

Elliott wrote his court history in the second year of his term on the Minneapolis Municipal Court, 1890-1893; he later served on the District Court in Minneapolis, Fourth Judicial District, 1893-1905, on the Supreme Court of Minnesota, 1905-1909, as Associate Justice of the Supreme Court of Philippines, 1909-1912, and as member of the faculty, University of Minnesota Law School, 1898-1909. He died on September 18, 1935, in Minneapolis, at age seventy-four.[10]

HON. CHARLES B. ELLIOTT,
Judge Hennepin County District Court.

Elliott's history appeared in two issues of *The Green Bag*, Part I on pages 113-123 of the March 1892 issue, and Part II on pages 161-173 of the April issue. They are complete though reformatted; the portraits of the justices are rearranged; case names italicized. Elliott's original footnote (on page 31) is in Times New Roman **type, while the MLHP's footnotes are in Arial Rounded AT Bold.**

[10] **The photograph on this page is from 2 *Minnesota Law Journal* (January 1894).**

THE GREEN BAG

An Entertaining Magazine for Lawyers

EDITED BY HORACE W. FULLER

VOLUME IV

COVERING THE YEAR

1892

THE BOSTON BOOK COMPANY

BOSTON, MASS.

THE SUPREME COURT OF MINNESOTA.

BY HON. CHARLES B. ELLIOTT, *of Minneapolis*.

I.

THE history of the highest court of a State is not the least important part of the history of the Commonwealth. Although the least showy, the judiciary is by far the most efficient instrument in forming and developing the characteristics which distinguish the people of one community from those of another. To write a true and complete history of the Supreme Court of a State would require a minute study and analysis of its decisions affecting private as well as public rights. These decisions become the measure of business morality, and thus powerfully influence and direct the every-day life and habits of the people. The court is the balance-wheel of the political system; its steady wisdom operates as a break upon the hurried action of the people and their legislative representatives while acting under the pressure of public excitement.

I do not propose here to attempt such a minute study of the history of the court, as there is another view from which the subject may be approached which is scarcely less important. The personal element enters largely into the history of jurisprudence. The flow of law must be through a personal medium, and during its passage the law of refraction is liable to influence the result. The legislature may, in the plenitude of its wisdom and power, enact a statute for a certain purpose; but whether in fact such statute will ever become the law of the land may depend upon the mental peculiarities of the members of the court which is called upon to construe and apply it to the multifarious circumstances of life. There are few statutes which a court may not construe into a nullity. So every court has its peculiarities, which are but the reflections of the personal characteristics of the men who constitute it. "One judge of high moral perceptions and a tender and instructed conscience will

see clearly the requirements of natural right in the case, or the correct application of written law or judicial precedents. Another judge, unscrupulous, passionate, unlearned, or vindictive, may utterly fail either to perceive or apply the right." [11]

The body of the law now in force in this country is the work of the judges. Mansfield, before the days of legislative fecundity, created the commercial law of Great Britain; Marshall created a system of constitutional law very different from that contemplated by the constitutional convention which constructed his text, or the successive congresses which sought to embody their ideas in statutes. It is hardly too much to say that a great judge creates the laws which in theory he declares. In a contest between such a judge and the legislative power, his decisions will percolate through and ultimately undermine any legal structure the legislature may create.

Minnesota is as yet a new State, and its Supreme Court of Judicature is without traditions. No ancient portraits of famous judges in wig and gown look down upon their successors. Portraits indeed hang upon the walls of the courtroom, but they are of men who have recently passed away, or of those whose voices are still heard before the court. The history of the State is encompassed by the life of a single generation, and the founders of the commonwealth are still with us in the flesh. One member of the territorial court is a leader of the bar to-day, while another is a distinguished Federal judge.

Minnesota has had no judicial monarch, no monarchy of a single mind to interrupt the republic of judges. The average membership of the court in character and learning has been high, and to almost every member may truly be applied the eloquent language of Bishop Home: "When he goeth up to the

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[11] This quotation is from Alfred Russell's presidential address to annual meeting of the American Bar Association in Boston on August 27, 1891. Russell's speech was titled "Avoidable Causes of Delay and Uncertainty in Our Courts" and was reprinted in 25 *American Law Review* 776, 789-791 (September-October, 1891).

An excerpt from Russell's address which includes this quote is posted in the Appendix at 55-58.

judgment-seat he putteth on righteousness as a glorious and beautiful robe, to render his tribunal a fit emblem of that eternal throne of which justice and mercy are the habitations."

On the 23d of December, 1846, Morgan L. Martin, the territorial delegate from Wisconsin, introduced into Congress a bill for the creation of the Territory of Minnesota; but it was not until the 3d of March, 1849, the day before the inauguration of President Taylor, that the bill organizing the new Territory was finally passed and became a law.

Section 9 of the Organic Act provided "that the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts, by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively reside in the district which shall be assigned to them."

On the 19th day of March, 1849, President Taylor appointed the members of the first territorial Supreme Court. Governor Ramsey reached St. Paul on the 27th day of May, 1849, and on the first day of the following June issued a proclamation declaring the new government duly organized, with the following officers: Alexander Ramsey of Pennsylvania, Governor; C. K. Smith of Ohio, Secretary; Aaron Goodrich of Tennessee, Chief-Justice; David Cooper of Pennsylvania and B. B. Meeker of Kentucky, Associate Justices; J. L. Taylor, Marshal; and H. L. Moss, United States Attorney. On the 11th day of the same month the Governor issued a second proclamation, dividing the Territory into judicial districts in accordance with the requirements of the Organic Act.[12]

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[12] The Governor's Proclamation is posted in the "Territorial Courts and Lawyer" category of the archives of the MLHP.

The first district was composed of the county of St. Croix alone, and to this was assigned the Chief Justice. The second district comprised the region north and west of the Mississippi River, and north of the Minnesota River, and of a line running due west from the head-waters of the Minnesota River to the Missouri. To this district Judge Meeker was assigned. The third' district, to which Judge Cooper was assigned, comprised the country west of the Mississippi River and south of the Minnesota River. The same proclamation provided that terms of court should be held, to continue one week, — in the first district at the village of Stillwater on the second Monday, in the second district at St. Anthony Falls on the third Monday, and in the third district at Mankato on the fourth Monday, of August, 1849. Thus was the wilderness organized, and the machinery for its government provided. It was an illustration of the modern practice of transplanting the entire machinery of government in advance of the governed. The land was little more than a wilderness. The entire population, exclusive of Indians, could not have exceeded one thousand. The census taken four months after the passage of the law organizing the Territory, and after the rush of emigrants had set in, showed four thousand six hundred and eighty souls, of which three hundred and seventeen were connected with the army. West of the great river the Indians held undisputed sway, from the southern line of the State north to the embryonic city of St. Paul. The banks of the Mississippi could show but two or three habitations of white men. St. Paul contained one hundred and fifty inhabitants and thirty buildings. But these few pioneers were buoyant and hopeful of the future. "The elements of empire were plastic yet and warm, awaiting but the moulding hand of the thousands soon to come." On the 28th of April, before the arrival of the territorial officers, "with but a handful of people in the whole Territory, and a majority of these Canadians and halfbreeds," the first issue of the first newspaper ever published in Minnesota saw the light. It could not be called a metropolitan sheet, and it was issued under somewhat discouraging as well as unusual circumstances.

Some of the conditions ordinarily supposed to be necessary to journalistic success were wanting, as the editor informs us that

he "had no subscribers. The people did not want politics, and we had none to give them. We advocated Minnesota, morality, and religion from the beginning." We are also informed that the first number of the paper was printed in a building through which "all out-doors is visible through more than five hundred apertures; and as for type it is not safe from being pied on the galleys by the wind." About the time the new judges reached the field of their future labors, this paper was urgently advising settlers then swarming into the Territory to bring with them tents and bedding.

It was to this crude and unformed community, planted in the depth of the wilderness, near the roaring falls of St. Anthony of Padua, that Chief-Justice Goodrich and Justices Meeker and Cooper came early in 1849, bearing with them the commissions of President Taylor enjoining them to administer justice to the inhabitants thereof, and charged with the duty of laying the foundation of the jurisprudence of the great State of the near future.

AARON GOODRICH.

The first Chief-Justice was born in Cayuga County, New York, on the 16th day of July, 1807. In 1815 his father moved to western New York, where the son spent his minority upon a farm, receiving such education as could be conferred by the country schools. After reading law for a time, he removed to Tennessee, where his legal studies were completed and practice commenced. In 1847 and 1848 he was a member of the State Legislature, being the only one who ever represented the district. During the three years he sat as Chief Justice he seems to have given general satisfaction, although, by reason of his

short period of service and the limited amount of business transacted, he failed to leave any impression on the jurisprudence of the State. His inclinations seem to have been rather literary and archaeological than legal. After retiring from the court,[13] he devoted his time to such studies until 1861, when he was appointed by President Lincoln to the position of Secretary of Legation at Brussels, where he remained until 1869.

Upon the organization of the State in 1858, Judge Goodrich was appointed a member of a commission charged with the duty of preparing and reporting to the Legislature a Code for the State. Although favoring liberal rules of practice, as was evidenced by his dissenting opinion in the first case decided by the Supreme Court, he was a firm believer in the saving grace of the common law and on this commission opposed the adoption of the code system. His views were embodied in an elaborate minority report.

One of the reasons given for his dissent was the excessive cost of justice under the code system. Its popularity with the lawyers was compared to that of Diana with the jewellers of Ephesus, — "Know ye not by this our craft we beget our wealth?"

In 1860 he was a member of a commission to prepare a system of pleading and practice, with instructions to report within a few days. An elaborate report was laid before the Legislature within the time, which creates a suspicion that the Chief-Justice, like Franklin, was in the habit of carrying systems of government in his pocket, ready for any emergency that might arise.

The principal result of his labors while in Europe was a work entitled "A History of the Character and Achievements of the so-called Christopher Columbus," which was published in Philadelphia in 1874. This is a work of considerable interest and

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[13] In fact, Goodrich was dismissed by President Fillmore for incompetency. See Douglas A. Hedin, "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 One: Introduction" 20-25 (MLHP, 2009-2014).

ingenuity. It is sought to be shown that the great Christopher's real name was Criego, and that while pursuing the honorable career of a pirate of many years' experience, he came into the possession of the log of some worthy mariner who had been gathered to his fathers, and thereupon set up as a great discoverer.[14]

Judge Goodrich was an active partisan of Seward, and labored and voted for him for President in the Convention of 1860. After his return from Europe he continued to reside in St. Paul until his death. John Skinner Goodrich, a brother of the Chief Justice, was a judge of the Supreme Court of Michigan in 1850, and two other brothers were members of the Senate of that State.

Bradley B. Meeker was born at Fairfield, Connecticut, in 1813. Although descended from Robert Meeker who established the town in 1650, the father of Bradley was in poor circumstances, and unable to give his children an education. After many struggles with adverse circumstances, the youth came under the notice of Governor Thomlinson, under whose patronage he was sent to Weston Academy and subsequently to Yale College. After leaving college he settled at Richmond, Madison County, Kentucky, where he commenced the study of law while engaged in teaching as a means of support.

After admission to the bar in 1838, he practised his profession at Richmond until 1845, when he removed to Flemingsburg in the same State. Here he soon became a leader in the movement for a constitutional convention for the revision of the State Constitution.

Through the influence of John Bell, President Taylor appointed Mr. Meeker one of the Associate Justices of the Territory of Minnesota. This position he held, performing the duties with

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[14] Goodrich's exposé of Columbus is posted in the "Territorial Courts and Lawyers" category in the archives of the MLHP. For other tales of his eccentricities, see "Aaron Goodrich, 'Early Courts of Minnesota' and Recollections of Goodrich by William P. Murray, Edward Sullivan, Charles Francis Adams Jr., Carl Schurz, Thomas McLean Newson, Concluding With Goodrich's Self Portrait" (MLHP, 2010-2015).

credit, until the commencement of the Pierce administration in 1853, when he was succeeded by Moses Sherburne. Judge Meeker wrote but seven decisions, all of which appear in the first volume of the Reports. After leaving the bench he never engaged in active practice, but devoted himself to real-estate transactions, with indifferent success, although he finally accumulated a competence.[15] He was active in the life of the new community, was somewhat eccentric in his habits, and seems to have been in demand as a public speaker.

BRADLEY B. MEEKER.

He was a member of the Democratic wing of the Constitutional Convention of 1857, and there advocated an appointive judiciary. During the year 1857 the people of the Territory were suffering from "hard times;" and Judge Meeker advocated a plan which he thought would relieve debtors and at the same time make Minnesota a haven of rest for the financially troubled of other lands. In November of that year he wrote to a member of the Legislature a letter from which I quote the following : —

> "You are now in a position to do Minnesota good service, and I know you well enough to know that you will do all in your power to promote her best interests. Now, something must be done, or northern Minnesota will be a pauper

[15] E.g., Henry Titus Welles, "The Meeker Dam" (MLHP, 2008-2011)(published first, 1899).

country within two years. I have thought much about the matter, and have at last fallen upon the following relief measures. In the first place, I want you to pass a law prohibiting all our courts of justice from rendering any judgments for debts due by contract or judgment contracted or rendered out of Minnesota for the term of five years from the passage of such law. Now, the effect of such a legislative act would be this: all the embarrassed men of business, whether manufacturers, merchants, or mechanics, would wend their way with their families and friends to Minnesota in the spring, where they could enjoy legal repose from the demands of their creditors, and establish themselves anew. This step, so merciful in these days of pecuniary depression and oppression, would revise emigration again to Minnesota, and fill it with enterprise and money."

Judge Meeker lived in Minnesota but a short time after retiring from the bench, and died while temporarily stopping at a hotel in Milwaukee, Wisconsin, in 1873.[16]

David Cooper was born July 22, 1821, at a place known as "Brooks Reserve," in Frederick County, Maryland. In 1831 the family removed to Gettysburg, Pennsylvania, for the purpose of giving an elder brother James, subsequently United States Senator from Pennsylvania, an opportunity to pursue his legal studies. After a short time spent at Pennsylvania College, David Cooper commenced the study of law in the office of his brother at Gettysburg. After being admitted to practice, in 1845, he removed to Louistown, in Mifflin County, where he soon became known as a very successful lawyer. After a legal and political career somewhat brilliant for so young a man, Mr. Cooper was, at the early age of twenty eight, appointed one of the first Associate Justices of the Supreme Court of Minnesota.

Judge Cooper seems to have been rather a difficult person to get along with, and soon made many enemies. His ability was

[16] See John Fletcher Williams, "Memoir of Judge B. B. Meeker" (MLHP, 2009-2012).

unquestioned, but his irascible temper was the cause of much trouble to himself and his friends. Judge Flandrau writes : —

> "Judge Cooper was a very industrious and painstaking lawyer, but irascible in the highest degree. He so fully identified himself with the cause of his client, that fair criticism from opposite counsel of the merits of the case would be construed into a personal affront, and he never forgave a judge who decided against him. With all these peculiarities, the judge had a very genial side to his nature."

The conduct of certain Federal officers gave rise to bitter complaints. In January, 1851, a local paper printed a savage article on "Absentee Office-Holders," in which Cooper was characterized as a "profligate vagabond." This abusive publication led to a street encounter between the editor and a brother of Judge Cooper.

DAVID COOPER.

Like Meeker, Cooper was eccentric. He was a gentleman of the old school, and to the end of his life wore the ruffled shirt and laced cuffs of a past generation. After retiring from the bench in 1853, he practised law in St. Paul until 1864, when he removed to Nevada. The career commenced so auspiciously amid the brilliant successes of youth ended in darkness in an inebriate asylum at Salt Lake City.[17]

In accordance with the

[17] See John Fletcher Williams, "Memoir of Judge David Cooper" (MLHP, 2009-2012).

Governor's proclamation, the first term of the district court was organized in St. Croix County, August 2, 1849, at the village of Stillwater. This was the first court ever held in Minnesota. Chief-Justice Goodrich presided, and Judge Cooper sat as an associate.

As usual, the lawyers had preceded the courts, and had evidently been kept waiting for some time, as the paper announced that "about twenty of the lankest and hungriest were in attendance." We find the following account of this first court in the "Chronicle and Register" for August 5: —

> "The proceedings were for the first two or three days somewhat crude, owing to the assembling of a bar composed of persons from nearly every State in the Union, holding all their natural prejudices in favor of the courts they had recently left, and against those of all other places in Christendom. But by the urbanity, conciliatory firmness, and harmonious course taken by the court, matters were in a great measure systematized, and business finally despatched to the satisfaction of all concerned. The industry and impartiality of the court were matters of commendation on all sides."

The editor then proceeds to compliment the prosecuting attorney upon his ceaseless energy and firmness, and the landlord and citizens of Stillwater upon the sumptuous hospitalities extended to the visiting citizens. One startling feature of the great event duly chronicled was the fact that one of the jurymen wore boots.

In the second district the court convened "at the house of Mr. Bean, on the west bank of the Mississippi, at the falls of St. Anthony." The grand jury was duly sworn; and it is interesting to know that Mr. Justice Meeker's charge was able, and "characterized by sound legal and philosophical lore."

After retiring to "the old mill in the vicinity for deliberation," it was found that the community had failed to provide them with

any derelictions to investigate; and the term of court came to a sudden close, with nothing to render it memorable other than its position chronologically in the legal history of what is now the city of Minneapolis.

Much ceremony attended the launching of the judicial ship in Mr. Justice Cooper's district. A spacious warehouse was fitted up and gorgeously decorated for the occasion. Governor Ramsey and Chief-Justice Goodrich occupied seats with the presiding justice. Justice Cooper's charge to the grand jury was a somewhat flowery and elaborate affair. After listening to its flowing periods, our editor decided that, although a young man, the Justice possessed "a discriminating mind, competent knowledge of the law, suavity of manners, and much personal dignity. Minnesota may be proud of her judge." It was subsequently discovered that but three of the members of the jury could understand the English language; and possibly to prevent the utter waste of judicial eloquence, the charge was printed in full in the next issue of the village newspaper.

The first term of the Supreme Court was held at the American House in St. Paul, on Monday, July 14, 1850, Chief-Justice Goodrich and Justice Cooper being present. About this time a certain Englishman named Edward Sullivan made a tour through the Northwest, and, as is common with such travellers, published his "impressions." From this book, entitled "Rambles and Scrambles in North and South America," I quote the following picturesque bit: —

> "The Chief-Justice of Minnesota was holding his session at St. Paul. The bar of the hotel was the court-house. The Judge was sitting with his feet on the stove on a level with his head, a cigar between his lips, and a chew as big as an orange in his mouth, and a glass of some liquor by his side. The jury were in nearly the same elegant position in different parts of the room; and a lawyer, sitting across a chair and leaning his chin on the back of it, was addressing them. The prisoner was sitting drinking and smoking, with his back to the judge, and looking the most respectable

and least concerned of the party. Although it struck me that there might be a good deal of justice, there was very little dignity, in the application of the law in Minnesota."

The learned writer then proceeds to enlarge on the usual topic, the weakness of an elective judiciary, and attributes the lack of dignity in the Minnesota Court to the fact that the judges were elected by "a majority of the members of the House of Assembly." This latter learned observation on the method of electing Federal judges seems to corroborate the contention of the Chief-Justice that Mr. Sullivan's description of the court was purely apocryphal. It appears that by this time there was no occasion for the journalist to lament the lack of "politics" in Minnesota; and the Chief-Justice always contended that the description of his court was furnished the traveller by political enemies who were seeking to undermine him at Washington.

WILLIAM H. WELCH.

Political excitement ran high in the Territory in 1851, and factional quarrels led to the resignation of Chief-Justice Cooper (sic).[18] He was succeeded, Nov. 13, 1851, by Jerome Fuller of New York, who served until Dec. 16, 1852, when he was succeeded by Henry Z. Hayner. It seems impossible to acquire any information about Hayner, who was Chief-Justice from Dec. 16, 1851, to April 7, 1852. He never presided, and it is believed that he never came to Minnesota.[19]

[18] Associate Justice Cooper left office when his term expired; he was not reappointed by President Pierce. For the politics of the selection of territorial justices, see Douglas A. Hedin, "'Rotation in office' and the Territorial Supreme Court." (MLHP, 2010).

[19] In fact, Hayner came, held court and issued an important advisory opinion to the legislature. See Douglas A. Hedin, "Advisory Opinions of the Territorial Supreme Court, 1852-1854" 18-21, 38-40 (MLHP, 2009-2011); and Douglas A. Hedin, note 13, at 40-43 .

When the Pierce administration came into power, March 4, 1853, all the Federal officers in the Territory were removed. On April 7 William H. Welch became Chief Justice, and Andrew G. Chatfield and Moses Sherburne Associate Justices. The new Chief Justice was a native of Connecticut, and a graduate of Yale College and Law School. He came to Minnesota in 1850, residing first at St. Anthony and subsequently at St. Paul. After serving four years under the appointment of President Pierce, he was reappointed by President Buchanan, and remained in office until the organization of the State government in 1858.

Andrew Gould Chatfield was born at "Butternuts," Otsego County, New York, Jan. 27, 1810. His parents were natives of Connecticut, and of good Revolutionary stock. His maternal grandmother was a member of the Ruggles family, a name well known in the legal and political history of the Empire State. Enos Chatfield, the father of the Judge, removed from Connecticut to New York, where he accumulated some property, but lost it through a defective title.

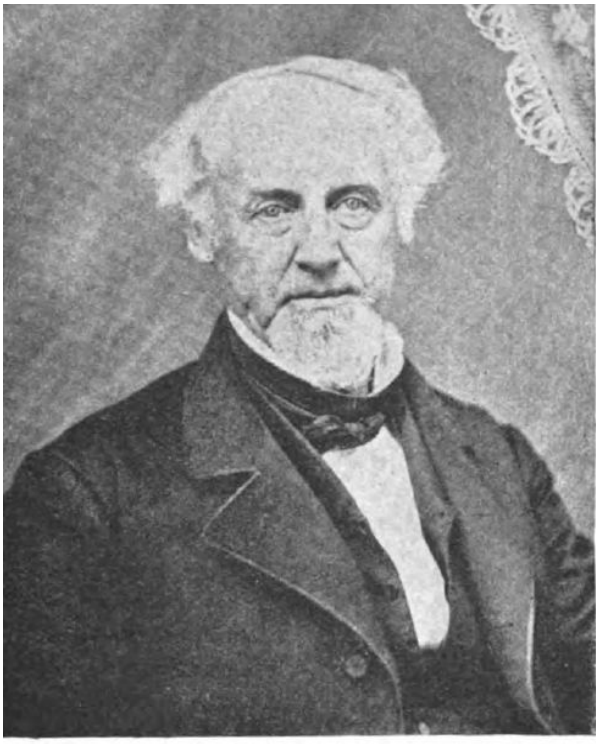
His children were thus thrown upon their own resources. After acquiring the rudiments of an education by private study in the fitful light of the historical pine-knot after laborious days of farm labor, Andrew went to Hamilton Academy, where he remained for sometime. At the age of twenty one he removed to Steuben County, New York, and commenced the study of law in the office of Henry F. Cotton at Painted Post. In 1833, after three years' study, he was admitted to the bar of the county court. During the same year a partnership was formed with James Birdsell, and the practice of law commenced in the village of Addison in Steuben County.

In November, 1838, Mr. Chatfield was elected a member of the Legislature as a Democrat, to which party he faithfully adhered during his long life. He soon became prominent as a leader of his party, and was re-elected for three successive terms.

In 1841 he served as chairman of a committee to investigate the affairs of the Erie Railway, a corporation which had received State assistance in the form of a loan of $3,000,000.

At the completion of his duties on this committee, Mr. Chatfield returned to private life and the practice of his profession. In 1845 he was again elected to the Assembly, where during the session of 1846 he served upon a committee, of which Samuel J. Tilden was chairman, charged with the duty of devising a plan for the settlement of the difficulties between landlords and tenants which had given rise to the "anti-rent" riots.

This report was an important event in the history of the anti-rent troubles. During the same session Mr. Chatfield served as chairman of the Judiciary Committee and Speaker, to fill a temporary vacancy caused by the extended absence of the regular Speaker. At the close of the session he was appointed one of a committee to investigate the alleged frauds in connection with the enlargement and repairs of the various canals of the State. For the greater part of a year he devoted himself to the arduous duties which devolved upon this committee. Mr. Chatfield was also a member of the Constitutional Convention of 1846. At this time perhaps no young man in political life in that State stood higher or had more brilliant prospects; but the ten years of public service had left but little time for the accumulation of money, and the necessity of providing a competence for his family induced a removal to the new West. He settled at what is now Kenosha, Wisconsin, and was soon elected county judge, which office he held but for a short time.



ANDREW G. CHATFIELD.

In 1853 Judge Chatfield, while in attendance upon the Supreme Court at Washington, met Gen. H. H. Sibley, then delegate from

Minnesota. Sibley's glowing description of the new land filled him with a desire to locate within its bounds, and as the Federal offices were then being filled by President Pierce, Mr. Chatfield was, upon the recommendation of General Sibley, appointed one of the Associate Justices of the Supreme Court of the Territory.

His commission was dated April 7,[20] and in June following the new Justice removed to Mendota, and entered upon the duties of his office. Judge Chatfield held the first court in almost every county then organized west of the Mississippi River.

His journeys from county to county were made upon horseback, and along the "Indian trail," then the only highway through the greater part of the huge judicial district. On one of these journeys his eye was attracted by the wonderful beauty of the prairie bordering on "Roberts Creek" adjoining the "Big Woods," and he resolved to make the spot his future home. A town was soon after surveyed, and named Belle Plaine. A stock company was formed, and for some time it seemed that the projectors of the new town would realize the fortune their enterprise deserved. But the crisis of 1857 brought disaster, and an assignment for the benefit of creditors followed. Judge Chatfield retired from the bench in 1857, and resumed the practice of the profession.

"During his term in Minnesota," writes Mr. J. F. Williams, "he had become widely acquainted with the people of the Territory, and was much respected by them as an upright citizen, a learned lawyer, and a gentleman of high honor and cultivated mind. As years rolled on, they brought him increasing honors from a widening circle of friends. Wherever he went his venerable and dignified appearance made him an object of respect. His large experience of men and public affairs, and his quick perception made him an agreeable companion."[21] He frequently attended

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[20] It is actually dated June 6, 1853. See Douglas A. Hedin, "Documents Regarding the Nominations of the Territorial Justices: Part Two-D. Documents re: Chief Justice William H. Welch and Associate Justice Andrew G. Chatfield," 11-12 (MLHP, 2009-2010).

[21] This is an excerpt from John Fletcher Williams, "Memoir of Judge Andrew G. Chatfield" (MLHP, 2009-2012)(published first 1947).

the conventions of his party in the State; and although not taking a very active part in politics, his advice was always eagerly sought. At various times he received the nominations of his party for Chief-Justice, Attorney-General, and Member of Congress; but in the then condition of parties in the State an election upon the Democratic ticket was hopeless.[22] At an advanced age Judge Chatfield was again raised to the bench. In 1870 he was appointed Judge of the Eighth Judicial District of the State, which position he held until his death, Oct. 3, 1875, at his rural home in Belle Plaine. Over his grave there stands a granite monument bearing this inscription : —

> **"The able and upright Judge, the honest man. Erected by the bar of the State."**

Moses Sherburne was appointed one of the Associate Justices by President Pierce in 1853. He was a native of Maine, having been born at Mount Vernon in March, 1808. After being admitted to the bar, he located at Phillips, where he resided until his removal to Minnesota. At the time of his appointment he had filled a judicial position for many years. He took his seat at the January term, 1854, and served until 1857. After retiring from

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[22] **Here are the results of Chatfield's three unsuccessfully campaigns for higher office in the 1860s:**

First Congressional District (November 4, 1862)

William Windom (Republican.....7,449
Andrew Chatfield (Democrat).....5,355

Chief Justice (November 8, 1864)

Thomas Wilson (inc. & R).....25,216
Andrew G. Chatfield (D).....17,175
Write-in.....55

Attorney General (November 5, 1867)

Francis R. E. Cornell (R).....34,657
Andrew G. Chatfield (D).....28,918
John Friedrichs.....408
Emil D. Munch (R).....393
Write-ins.....13

the court, he continued to reside in St. Paul, and practised law with much success until his death in 1868. Judge Sherburne was a man of more than average ability. He was an influential member of the Constitutional Convention of 1857, and in 1858 was a member of a com-mission appointed by the Legislature to revise the general laws of the State. He was an eloquent speaker, and won for himself the title of "the old man eloquent."

MOSES SHERBURNE.

One of the first acts of President Buchanan's administration was the appointment of Rensselaer R. Nelson and Charles E. Flandrau as Associate Justices of the Supreme Court of the Territory, in place of Justices Sherburne and Chatfield.

The names of Nelson and Flandrau are closely identified with the judicial and political history of the Territory and State.

Judge Nelson was born in Coopertown, New York, on the 12th day of May, 1826. His father, Samuel Nelson, was for many years one of the most eminent judges of the Supreme Court of New York, and later Associate Justice of the Supreme Court of the United States.

Young Nelson inherited his father's legal ability. Graduating from Yale in 1846, he soon after entered the law office of James R. Whiting in New York City, but completed his studies at Coopertown, where he was admitted to the bar in 1849.

After a short time spent at Buffalo, Mr. Nelson decided to try his fortune in the far West; and the 12th day of May, 1850, saw the future jurist climbing the long pair of rickety stairs which led from the steamboat landing to the upland, where a few cheap

frame and log houses, stumps, rocks, and ungraded streets indicated the future city of St. Paul.

The young lawyer's first interview with a leading citizen was far from encouraging. Hearing that the young man had designs of practising law in St. Paul, the gentleman was deeply moved with compassion. "My dear young man," said he, "I sincerely pity you. We have a population of six hundred; and fifty of them are lawyers, the most of them starving. I advise you to take the next boat East, because you have no chance here. We have too much trouble with the lawyers here already." [23]

R. R. NELSON.

Mr. Nelson did not take the well-meant advice, but opened an office, and continued to practise his profession until 1854, with a good measure of success. In 1853 he had the honor of refusing a nomination as delegate to Congress. In 1854 he removed for a short time to Superior, Wisconsin, where he took an active part in the organization of the new county of Douglass, and held the office of District Attorney.

Returning to St. Paul in 1855, the practice of the law occupied his attention until 1857, when he was appointed an Associate Justice of the Supreme Court, and immediately entered upon the duties of the position.[24] Judge Nelson served until Jan. 1, 1858, when the territorial court was superseded by the State

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[23] This is a myth. No lawyer was starving in Minnesota Territory in 1850 or thereafter. The seasoned "leading citizen" was pulling Nelson's leg. See Douglas A. Hedin, "Lawyers and 'Booster Literature' in the Early Territorial Period." 19-20, note 53 (MLHP, 2008).

[24] For an account of his nomination against the backdrop of the *Dred Scott* decision, see Douglas A. Hedin, "'Rotation in Office' and the Territorial Supreme Court" 56-64 ({MLHP, 2010).

court. But one general term of the court was held after Judge Nelson's appointment, and but two opinions written by him appear in the Reports. This, however, conveys but a very inadequate conception of the amount of judicial work done by him during his brief term of service. A large amount of chamber work devolved upon him as the judge of the district court residing at the capital; and it was in this capacity that he rendered a decision in one of the *causes célébres* in the early history of the State.

THE SUPREME COURT OF MINNESOTA.

By Hon. Charles B. Elliott, of Minneapolis.

II.

THE location of the seat of government is a great event in the history of a Territory or State. The territorial capital of Minnesota had been located at the village of St. Paul; but in 1856, through some occult influence, the Legislature suddenly passed an act providing for its removal from St. Paul to St. Peter.

In the course of the contest an application was made to Judge Nelson for a writ of mandamus to compel the territorial officers to remove from St. Paul. Great interest was felt in the decision of this question. Judge Nelson denied the application. The opinion, delivered at chamber, does not appear in the Reports; but the manuscript is preserved in the records of the State Historical Society, and is an interesting record of one of the most exciting events in the history of the Territory.[25] The decision was based upon the ground that the Legislature had exhausted its power and authority to locate the seat of government by previous legislation.

On the 11th day of May, 1858, President Buchanan nominated Judge Nelson as Judge of the United States District Court for the district of Minnesota, and the nomination was at once confirmed without the reference of his name to a committee.[26] From that time to the present, Judge Nelson has ably discharged the onerous duties of the high position to which he was called, and is now the oldest judge in point of service on the Federal bench.

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[25] Since the above was written, I am informed that the manuscript was destroyed by fire.

[26] **His presidential commission was actually signed before the Senate voted to confirm his nomination. For an explanation of this curious scenario, see Douglas A. Hedin, "Documents Regarding the Nominations of the Territorial Justices: Part Two-E. Documents re: Associate Justices Moses Sherburne and Rensselaer Nelson." 10-14 (MLHP, 2009-2010**

Charles E. Flandrau was born in New York City in 1828, and obtained his early education at Georgetown, D. C. At the age of thirteen he made an attempt to obtain a midshipman's warrant in the navy, but was unsuccessful on account of his extreme youth. Determined upon a seafaring life, he shipped before the mast, and in that capacity made several voyages, occupying in all three years.

By this time the life of a common sailor had lost its charm, and we soon after find the young man in New York City learning the business of mahogany sawing. After three years spent in this business, he decided to study law, and entered the office of his father, with whom he afterwards formed a partnership which continued until 1853. But progress was too slow, and the attractions held out by the recently created Territory of Minnesota were sufficient to draw him to the Northwest. In the latter part of November, 1853, the firm of Bigelow & Flandrau opened an office in the village of St. Paul.

CHARLES E. FLANDRAU.

The practice of law in Minnesota in those days was neither arduous nor particularly lucrative. Railroads, corporations, and the various aggregations of capital which now furnish employment for lawyers, were then unknown. The probate courts were without work. Criminal and commercial law occupied almost the entire attention of the courts. The lawyers took such practice as came to them in the courts and land offices, and in the mean time speculated in real estate. Consequently in 1853-1854 we find Mr. Flandrau engaged in exploring the Minnesota valley, and negotiating for the purchase of lands for capitalists.

Impressed with the future of this region, and not being burdened with practice in St. Paul, he concluded to locate at Traverse des Sioux, then the only settlement in that part of the Territory. Business still failed to come, and the young lawyer engaged in the somewhat unusual practice of attracting the wolf to his door. A dead pony placed within easy range of the window of the law office attracted the prairie-rovers, and supplied the young lawyer with a species of practice probably not the least remunerative that came to that poor office in the wilderness. A paternal government (possibly as a delicate method of assisting a poor but proud profession) paid a bounty of seventy-five cents per scalp. But times grew brighter as emigration came that way, and Mr. Flandrau remained at Traverse des-Sioux until 1864.

For a time he held the office of clerk and district attorney of Nicollet County. In 1856 he served one term in the territorial Council, but resigned before the end of the term. In 1856 he was appointed by President Pierce agent for the Sioux Indians, but resigned this position after about a year's service, and was again elected a member of the territorial Legislature.

On July 17, 1857, President Buchanan appointed Mr. Flandrau Associate Justice of the Supreme Court of the Territory. But one general term was held during his term, and no opinions appear in the reports of the period written by Judge Flandrau. He held several terms of the district court, and became noted for the rapidity with which he despatched business. At the convention of the Democratic party held in 1857 for the nomination of State officers under the new Constitution, Judge Flandrau was nominated and subsequently elected an Associate Justice of the Supreme Court for a term of seven years.[27]

Judge Flandrau's decisions during these seven years are found in Volumes II to IX inclusive of the State Reports. He apparently

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[27] This is the result of the election for associate justice on October 13, 1857:

Isaac Atwater.....18,199
Charles E. Flandrau.....18,110
John M. Berry.....17,052
Harrison A. Billings.....17,026

did more than his share of the work; and some of his decisions display not only great industry and untiring research, but unusual ability and learning. In the case of *Mason vs. Callender*, 2 Minn. 359 (302), he wrote a decision which covers twenty-six pages of the Report, and is an elaborate commentary upon the law and morals of interest. This case is followed by the court in *Dyer vs. Slingerland*, 24 Minn. 267, while stating that a contrary rule would meet with their approval if the question were an open one.

Judge Flandrau rendered distinguished service to the State during the Sioux outbreak in 1862, and was in command at the battle of New Ulm. In commemoration of this battle, a monument has recently been erected, upon which is a fine medallion portrait of the commander. In the spring of 1864 Judge Flandrau resigned his position as Associate Justice, and went to Nevada, where he entered into partnership with his former associate Judge Atwater.

After a year spent in Nevada, he removed to St. Louis, where he remained for a short time, but soon located at Minneapolis. In 1865 he was the Democratic candidate for Governor of Minnesota, but was defeated by William R. Marshall.[28] In 1869 he was the candidate of the same party for Chief-Justice against C. G. Ripley, but the latter was elected.[29] In 1870 Judge Flandrau returned to St. Paul, and is now in active practice as a member of the firm of Flandrau, Squires, & Cutcheon.

The record made by the territorial Supreme Court is eminently respectable, and but few of its decisions have been in terms

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[28] This is the result of the election for governor on November 5,1867:

William R. Marshall (R).....34,874
Charles E. Flandrau (D).....29,502

[29] This is the result of the election for Chief Justice on November 2, 1869:

Charles G. Ripley (R).....25,899
Charles E. Flandrau (D).....22,206
E. O. Hamlin.....,1,440
Write-in.....492

overruled. During its life, from June 1, 1849, to May 24, 1858, there were filed one hundred and sixty-one decisions, all of which are reported in the first volume of the State Reports.[30] Naturally the greater number are devoted to questions of pleading and practice, and the various proceedings common in a new country, where the courts are chiefly engaged with questions of a commercial character. The adjective as distinguished from the substantive law principally engaged the attention of the court. The judicial machinery had to be put in running order, and the bar instructed in the arts of applying the science of the law.

The administration of justice was in a chaotic condition, and many of the important questions had to be decided on first impression and without a guiding precedent.

The first decision filed by the territorial court was in the case of *Desnoyer vs. L'Heraux*. This was an appeal from the decision of the Chief-Justice sitting as district judge, who had instructed the jury that upon an appeal from a justice's court, "if the evidence offered by the plaintiff would warrant a recovery, they would find for the plaintiff without reference to the declaration." This instruction was held erroneous. The case is of no importance; but the following language from a dissenting opinion of Chief Justice Goodrich is of interest:—

> **"When I reflect that Minnesota is now in its infancy, and that its jurisprudence may be seriously affected by the strict construction and rigid adherence to ancient forms and technicalities recognized by this court, and in view of the great legal reforms going on in Europe and America, I am admonished, by evidence not to be mistaken, that the time has arrived in which laws are to be made and administered for the furtherance of substantial justice."**

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[30] The decisions of the Territorial Supreme Court are published in "Reports of Cases Argued and Determined in the Supreme Court of the Territory of Minnesota." (MLHP, 2016)(published first, 1858). It can be found in the "Territorial Courts and Lawyers" category in the Archives of the MLHP.

The Constitution of the new State, which was adopted Oct. 13, 1857, provided that the judicial power of the State should be vested in a supreme court, district courts, probate courts, justices of the peace, and such other courts inferior to the supreme court as the Legislature might from time to time establish by a two-thirds vote. The Supreme Court should consist of a chief-justice and two associate justices; but the Legislature might, when it should be deemed necessary, increase the number of associate justices to four. It should have original jurisdiction in such remedial cases as might be prescribed by law, and appellate jurisdiction in all cases both in law and equity. There should be no trial by jury in the Supreme Court. There should be one or more terms in each year at the capital, and terms might be provided for in the several districts by the Legislature upon a two-thirds vote. The sessions of the court have always been held at the capital. The court consisted of three members until 1881, when the number of Associate Justices was increased to four. The Judges are elected by the electors of the State at large. The first Chief-Justice after the organization of the State in 1858 was Lafayette Emmett, with Charles E. Flandrau and Isaac Atwater for associates.

LAFAYETTE EMMETT.

Judge Emmett was born, May 8, 1822, at Mount Vernon, Knox County, Ohio. He resided there with his parents during his minority and early manhood, receiving a common-school education. His father was of

Irish and Scotch parentage, his mother of German and English stock, — for several generations natives of this country. His grandfather Emmett was a soldier of the Revolution, and served under General Morgan at the battle of the Cow Pens. His father served under General Cass during the War of 1812.

In 1839 Mr. Emmett entered the office of Columbus Delano, subsequently Secretary of the Interior, and remained there until 1843, when he was admitted to the bar. Three years later he was elected prosecuting attorney of his native county, and served one term. He was married in 1850, and removed to Minnesota in 1851. Upon the advent of the Pierce administration, Mr. Emmett became Attorney-General of the Territory, by appointment of Governor Gorman, and continued to hold the office under Governor Medary. He was a member of the Constitutional Convention, and was elected Chief Justice at the first election of State officers. After serving a full term of seven years, he again opened an office in St. Paul. In 1872 he removed to Faribault, Minnesota, and subsequently, in 1874 (sic), became the Democratic candidate for Chief-Justice, but was defeated with his party.[31] Since 1885 Judge Emmett has resided in Las Vegas, New Mexico. His judicial record is found in Volumes II to IX inclusive of the Reports, and will bear creditable comparison with that of his predecessors or successors.

Isaac Atwater was born, May 3, 1818, at Homer, Cortland County, New York. His early life was spent on a farm. At the age of sixteen he went to Auburn to attend an academy. After enduring many hardships not necessary to describe in detail, but common to the life of a poor student, a solid pecuniary basis was secured by the appointment to a position as gardener at a salary of five dollars a week. After a period of teaching, the portals of Yale were reached in 1840, and from this institution he was graduated four years later. Three years were spent in securing a diploma from the Yale Law School. After a short time

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[31] **The results of the election on November 2, 1875, were:**

James Gilfillan (R. & inc.).....47,010
Lafayette Emmett (D).....34,623

spent in practice at Buffalo, he removed to Minnesota and opened an office in St. Anthony. The Legislature of 1850 elected the young lawyer a Regent of the State University. As a member of the Board of Regents, and as its Secretary and Treasurer, he was largely instrumental in securing for the University the beautiful site it now occupies, and in laying the foundation of the great institution which now confers honor upon the State.

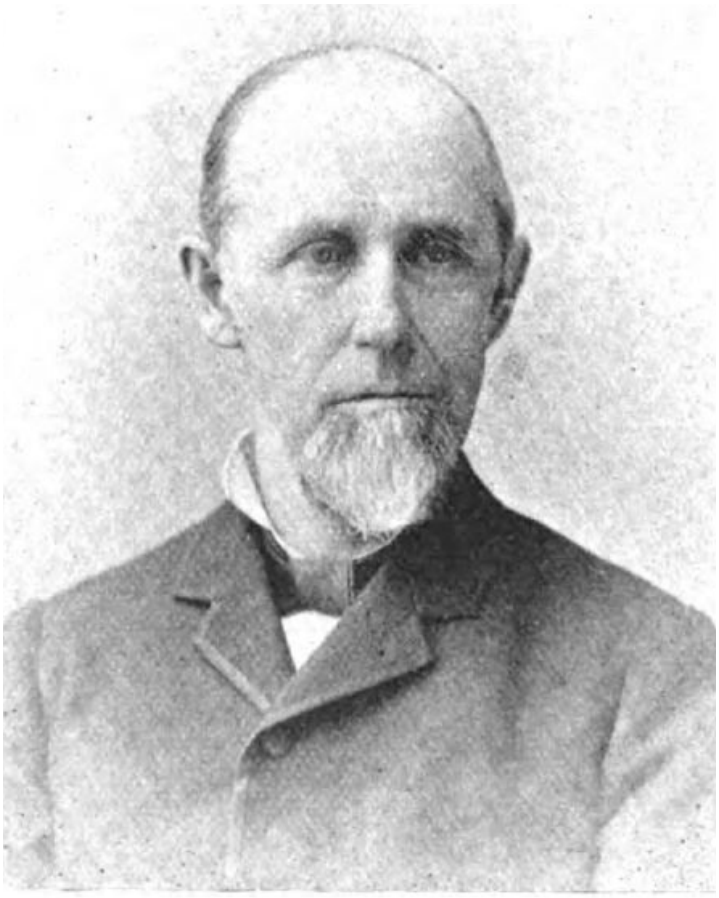
ISAAC ATWATER.

In 1852 Mr. Atwater was appointed by Governor Ramsey to the position of Reporter of the Supreme Court of the Territory. In 1853 he was elected district attorney of the county of Hennepin. In 1857 at the first State election he was elected one of the associate justices of the Supreme Court, and entered upon the duties of the office early in 1858. In 1864 he resigned, and removed to Carson City, Nevada. After a few years spent in this frontier town, he returned to Minneapolis, where he has since resided. Since retiring from active practice, Judge Atwater has devoted much time to labors of a municipal and educational character, and has held many offices of trust. His judicial record is found in Volumes II to IX of the Reports.

Chief-Justice Emmett was succeeded by Thomas Wilson. Judge Wilson was a member of the Constitutional Convention of 1857, and upon the admission of the State became the first Judge of the Third Judicial District, serving until July 1, 1864.

He was born in Tyrone County, Ireland, May 6, 1827, and came to this country when a child. He graduated from Alleghany Col-

lege, Meadville, Pennsylvania, in 1852. After three years spent in the study of the law, he was admitted to the bar at Meadville, and at once located at Winona, Minnesota, where he soon became known as a successful lawyer. Upon the resignation of Judge Flandrau in 1864, Governor Miller appointed Judge Wilson to fill the vacancy. On the 1st of January following, he became Chief Justice by election, and remained in office until July 14, 1869, when he resigned. Since returning to active practice. Judge Wilson has been universally recognized as one of the leading lawyers of the State.



THOMAS WILSON.

Originally a Republican, he became a Democrat in 1872, and is now one of the leaders of that party in the State. In 1887 he was elected a member of Congress from the first district, and served one term.[32] In 1890 he was the Democratic candidate for Governor of the State, but was defeated by Governor Merriam.[33]

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[32] Results of the election in the First Congressional District on November 2, 1886:

John A. Lovely (R).....14,663
Thomas Wilson (D).....17,491
D. H. Roberts (Prohibition).....1,458

[33] Results of the election for governor on November 4, 1890:

William R. Merriam (R).....88,111
Thomas Wilson (D).....85,844
S, M, Owen (Alliance).....58,513
Jas. P. Pinkham (Prohibition).....8,424

John McDonough Berry was born at Pittsfield, in Merrimac County, New Hampshire, on the 18th day of September, 1827, and died at Minneapolis on the 8th day of November, 1887, after twenty-three years of continuous service as an Associate Justice of the Supreme Court. Judge Berry was prepared for college at Phillips (Andover) Academy, and graduated from Yale College with the Class of 1847. Three years later he was admitted to the bar, and began practice at Alton, Belknap County, where he remained for two years. After a short stay at Janesville, Wisconsin, he located at Faribault in 1853, where he continued to reside until his removal to Minneapolis in 1879. He served as a member of the lower house of the territorial Legislature in 1856, and of the State Senate in 1862, being chairman of the Judiciary Committee each term. During the years 1860 and 1861 he was a member of the Board of Regents of the State University. In 1864 he was elected a Justice of the Supreme Court, and qualified and took his seat in 1865.[34]

JOHN M. BERRY.

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[34] The results of the election on November 8, 1864, were:

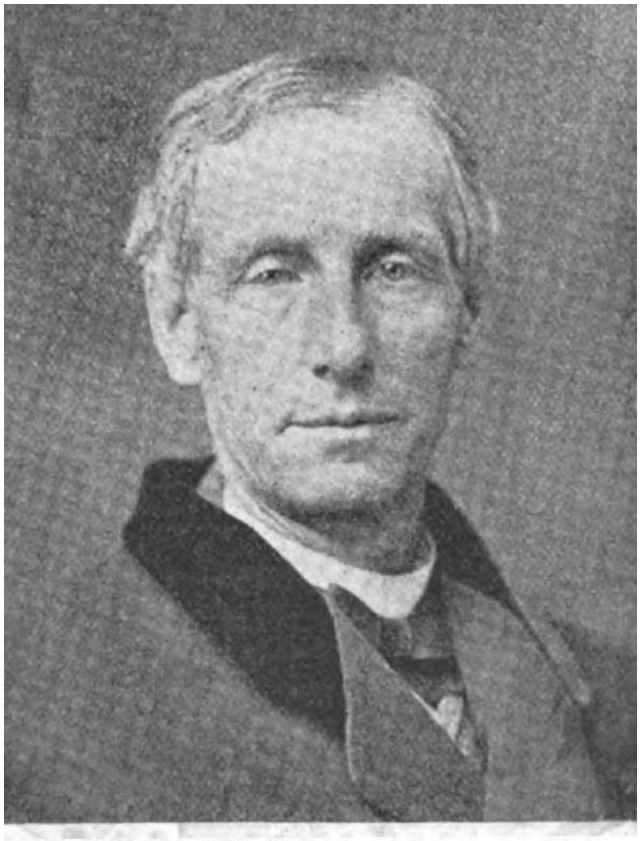
Samuel J. R. McMillan (inc.).....24,994
John M. Berry.....24,951
E. O. Hamlin.....17,351
E. T. Wilder.....17,345

This was a top two election for seven year terms beginning January 1, 1865, and ending January 1, 1872.

His first reported opinion is in the case of *Bidwell vs. Madison*, 10 Minn. 1 (13); and the last in *Wyvelle vs. Jones*, 37 Minn. 68, filed June 8, 1887.

Judge Berry's term of service was longer by many years than that of any other member of the court, and the twenty-seven volumes of the Reports evidence the fidelity, industry, and learning with which he discharged the duties of his high office. His influence in moulding the jurisprudence of the State has been greater than that of any other one man. Patient, judicial, impartial, and clear-sighted, he was a safe and a wise judge. He was always careful and painstaking in the examination of cases before him, and devoted to their consideration great labor and research.

He was a diligent and careful student, not only of the books of the law, but also of general literature. Having received the best classical education the country could give, he never lost his love for what is best in ancient and modern literature. Judge Berry took the State Law Library under his personal supervision, and devoted much time and attention to the selection and classification of its books. In ancient Egypt the president of the judges wore suspended about his neck by a gold chain a small image made of precious stones. The name of this image was Truth, and the decisions of the court bore its impress. Although Mr. Justice Berry wore no



CHRISTOPHER G. RIPLEY.

outward emblem of precious stones, he too placed the stamp of truth and justice upon his work.

Upon the resignation of Chief-Justice Wilson in July, 1869, James Gilfillan was appointed as his successor, with the general understanding that he should be the candidate of his party at the next election; but the Republican convention which met in September of that year nominated a comparatively unknown man for that position. Prior to that time the higher judicial offices had been, by consent of all parties, kept out of politics. In this instance this salutary rule was broken, and the nomination of Christopher G. Ripley, of Fillmore County, was the result of political trading in the convention. As Mr. Ripley was not well known, his nomination caused much dissatisfaction throughout the State, and he was the subject of very bitter attack by political enemies.

The St. Paul "Daily Pioneer," the leading Democratic paper of the State, referred to him as a "fourth-class country petti-fogger, fitted possibly to conduct a limited practice in a justice's court," and asserted that a party which would afflict such nominations upon the people "ought to be debarred from holding conventions." The Democrats nominated Judge Flandrau, but Ripley was elected by a large majority.[35]

Christopher Gore Ripley was born in Waltham, Massachusetts, on Sept. 6, 1822. His father was Rev. Samuel Ripley. His mother, Sarah Alden Bradford, was a direct descendant of Governor Bradford of Plymouth Colony, and of John Alden. After graduating from Harvard University, and also from the Law School, Mr. Ripley continued the study of the law in the office of Franklin Dexter of Boston. In 1855 he removed to Minnesota, and located first at Brownsville and later at Chatfield, where he continued to live until 1874. Judge Ripley was a quiet, scholarly gentleman and a good lawyer; but during his term as Chief-Justice he was

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[35] **Results of the election on November 2 1869:**

Charles G. Ripley (R).....25,899
Charles E. Flandrau (D).....22,206
E. O. Hamlin.....1,440
Write-in.....492

suffering from ill-health, which prevented him from acquiring the reputation which doubtless he otherwise would have established. In 1874 he resigned, and returned to his former home in Massachusetts, in the hope of regaining his health, but died at Concord in 1881.

Samuel J. R. McMillan, who succeeded Ripley as Chief-Justice in 1874, was born at Brownsville, Pennsylvania, Feb. 22, 1826. After graduating at Duquesne College in 1846, he entered upon the study of the law, and was admitted to the bar in 1849. In 1852 he located at Stillwater, Minnesota, where he engaged in practice until elected Judge of the First Judicial District at the first State election.

S. J. R. McMILLAN.

This position he held until July 6, 1864, when he was appointed Associate Justice of the Supreme Court. Upon the resignation of Chief-Justice Ripley, Governor Davis appointed Judge McMillan Chief-Justice, and George B. Young Associate Justice, to fill the vacancy thus created. Judge McMillan was Chief-Justice from April 7, 1874, to March 10, 1875, when he was elected United States Senator, to succeed Alexander Ramsey. He served as Senator two terms, but was defeated for a third term by Dwight M. Sabin, and is now engaged in the practice of law at St. Paul.

George B. Young and Greenleaf Clark were members of the court for a short time by appointment. Judge Young was appointed April 6, 1874, and retired Jan. 11, 1875. He was born in Boston in 1839, and educated at the Boston Latin School and Harvard University, graduating from the academic department at Harvard in 1860, and from the Law School three years later. After a period of practice in New York City, he came to Minnesota and located in Minneapolis about 1870. His appointment was a great surprise to the bar and the community. When Chief-Justice Ripley retired from the bench, it was generally conceded that his successor should come from Minneapolis, and the people of that city almost unanimously united in recommending F. R. E. Cornell for that position. Much to the astonishment of the public, Governor Davis named Associate Justice McMillan as Chief-Justice, and George B. Young as McMillan's successor.

GEORGE B. YOUNG.
(From a photograph taken while he was on the bench).

Mr. Young had resided in the State but about four years, and Mr. Cornell's friends were very indignant that he should be passed over, and the great professional prize given to so young a man. "Governor Davis has committed an enormous blunder," wrote the editor of a Minneapolis paper, "or else he is a prophet and the people of Hennepin County are fools." In the light of Judge Young's subsequent brilliant career at the bar, many people now

believe that the Governor was endowed with at least a measure of prophetic vision. In the few months of his term Judge Young gave ample evidence of fine judicial ability. At the November election Mr. Cornell was elected, and Judge Young returned to the bar. In 1878 he was appointed by the Legislature to revise the statutes of the State, which service he performed in a manner very satisfactory to the bar of the State. He is at present the official reporter of the decisions of the Supreme Court, and lecturer on the Conflict of Laws in the Law Department of the University of Minnesota.

F. R. E. CORNELL.

F. R. E. Cornell was born in Coventry, Chenango County, New York, Nov. 17, 1821. He was graduated from Union College in 1842, and was admitted to the bar of the Supreme Court at Albany in 1846. Immediately thereafter he commenced the practice of law at Addison, Steuben County, where he remained until 1854. He was a member of the State Senate of New York for 1852 and 1853. In the year 1854 he removed to Minneapolis, which was his home until his death.

Judge Cornell was a member of the State Legislature in 1861, 1862, and 1865, and Attorney-General of the State from Jan. 10, 1868, to Jan. 9, 1874. In November, 1874, he was elected Associate Justice of the Supreme Court, and qualified and took his seat on the 11th of the same month. He died in Minneapolis on the 23d day of May, 1881.

Judge Cornell was an able lawyer. I cannot better characterize him than by quoting from an address delivered by the late ex-Attorney-General Gordon E. Cole, himself one of the ablest lawyers of the Northwest: [36]

> **"My opportunities for forming a correct estimate of his character and talents I believe to have been unusual, meeting him at the bar, first as prosecuting officer while he was engaged in the defence, afterwards when he had become Attorney-General and prosecutor, and I was employed for the defence. In later years I had the good fortune to be associated with him in a very important civil case in the Federal courts, until, at the close of the litigation in the trial court, he was removed from the case by his appointment to the Supreme Bench. In the subsequent progress gf the cause in the Supreme Court of the United States, he was succeeded by a gentleman who then stood, and still stands, at the head of the bar of the country, with a reputation and fame only circumscribed by the territorial boundaries of the nation. The opportunities of measuring Judge Cornell's powers by contrast with those of the highest, I believe I did not abuse. I do not think that my judgment was swayed by personal friendship. At any rate, it was deliberately formed, and has been since carefully reviewed; and I then thought, and still think, that in every attribute which contributes to form,' the character of a great lawyer, Judge Cornell was the peer of his successor, and that a reversal of opportunities would have produced a corresponding reversal of station, fame, and reputation. The salient feature of Judge Cornell's character as a lawyer was the unerring certainty with which his mind glided from premise to conclusion. I have often had occasion to note and to admire the rapidity with which, with almost the precision of intuition, he would arrive at the correct solution of a difficult legal problem then first**

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[36] This is an excerpt from General Cole's eulogy of Justice Cornell at memorial proceedings before the Supreme Court on Jun 10, 1881. For the complete services, see *Testimony: Remembering Minnesota's Supreme Court Justices* 89-95 (Minn. Sup. Ct. Hist. Soc., 2008).

submitted to his attention; the comprehensive glance with which he would instantly sweep the entire subject, and grasp all its qualifications and limitations. While his high character and standing in the State made him the constant recipient of civil honors . . . and his position was always conspicuous, yet a marked characteristic of the man was his innate modesty. In self-conceit he seemed absolutely wanting, and yet no man that I ever knew had a more constant and abiding confidence in himself. No man who has ever embellished and adorned the bench or official position in this State was ever more conspicuously distinguished for the perfect purity of his public and private character than our lamented friend."

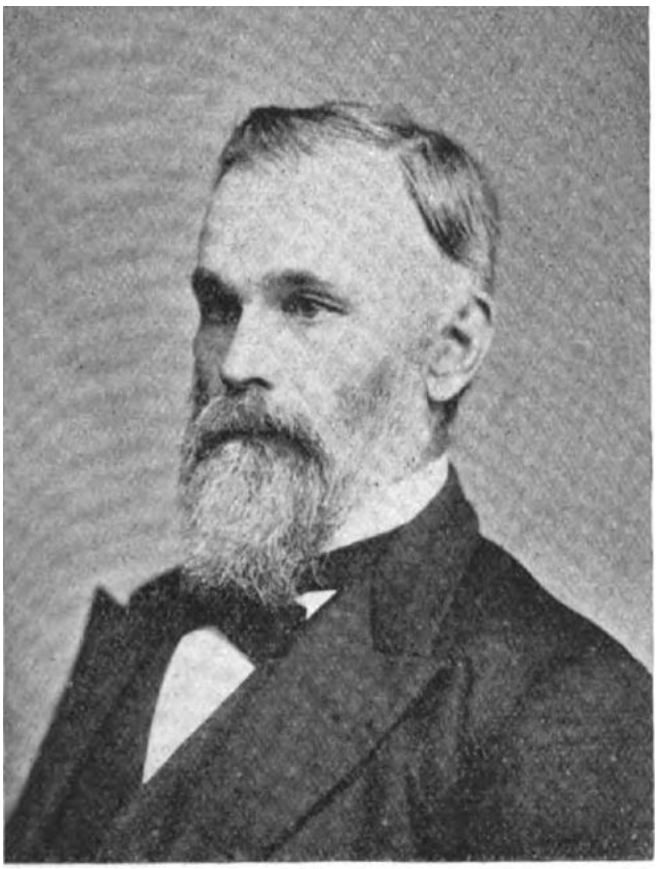
GREENLIEF CLARK.

Greenleaf Clark was appointed one of the additional Associate Justices for which pro-vision was made by the law of 1881, and served from March 14, 1881, to Jan. 12, 1882. Judge Clark is a native of New Hampshire, and is a graduate of Dartmouth College and the Harvard Law School. He came to Minnesota in 1858, and has ever since, except while on the bench, been engaged in practice in St. Paul. He is a member of the Board of Regents of the State University, and has devoted much time and careful attention to the affairs of that institution. [37]

[37] Clark was appointed to the Court by Governor Pillsbury in March 1881. He was defeated in the "top three" election on November 8 ,1881, coming in last in a field of four:

William Mitchell (inc.).....102,373
Daniel A. Dickinson (inc.).....101,413
Charles E. Vanderburg.....65,015
Greenleaf Clark (inc.).....38,582

The Court as at present constituted is: James Gilfillan, Chief Justice, and Charles E. Vanderburg, William Mitchell, Daniel A. Dickinson, and Loren W. Collins Associate Justices.



JAMES GILFILLAN.

Chief Justice Gilfillan was born at Bannockburn, Scotland, March 9, 1829, and was brought to the United States by his parents before he was a year old. Dr. Johnson's remark concerning Lord Mansfield may also be applied to the Chief-Justice.

The family settled at New Hartford, Oneida County, New York, where the son labored upon a farm until sixteen years of age. He commenced the study of the law in Chenango County, and subsequently attended a law school at Balston Spa. After being admitted to the bar in 1850, Mr. Gilfillan went to Buffalo, where he remained until 1857.

In the spring of that year he removed to Minnesota, and was engaged in the successful practice of his profession until the commencement of the Civil War. In 1862 he entered the military service as Captain of Company Seventh Minnesota Infantry, and served the first year upon the frontier, guarding the Sioux Indians. In 1863 he went South, and served with the Seventh

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Write-in.....117

This was the last election in an odd-numbered year.

Regiment until he became Colonel of the Eleventh Minnesota, which he led until the close of the war.

In July, 1869, Colonel Gilfillan was appointed by Governor Marshall to fill the vacancy caused by the resignation of Chief Justice Wilson. Christopher G. Ripley was elected Chief-Justice in the autumn of 1869, and on the 7th of January Judge Gilfillan retired, and resumed the practice of the law in St. Paul.

In March, 1875, Chief Justice McMillan was elected United States Senator, and Mr. Gilfillan was appointed by Governor Davis to fill the vacancy. In the November following he was elected for the full term of seven years, and has through successive re-elections remained in office until the present time. In 1881 the court was called upon to decide a question of vast importance to the State. Minnesota in its early history, like almost all the Western States, recklessly loaned its credit for the encouragement of railway building. The first Legislature of the State passed what is known as the Five Million Loan Bill, and under it bonds were issued to the amount of $2,275,000.

But little work was done toward the construction of the roads, although the State subsequently obtained title through fore-closure proceedings to about two hundred and fifty miles of graded road, the franchises of the companies, and about five million acres of land. The dissatisfaction growing out of the issue of these bonds finally crystallized in a movement for repudiation, and in 1860 an amendment to the Constitution was adopted which prohibited the passage of any law levying a tax or making other provision for the payment of the principal or interest on the bonds without a reference of the same to the people.

Here the matter was allowed to rest until about 1877, when a movement was made toward a readjustment of the dishonored bond. In 1881 the Legislature passed a law providing for the adjustment of the bonds which designated the judges of the Supreme Court as a commission to make a settlement. This act was held unconstitutional in *State vs. Young*, 29 Minn. 474, as

impairing the obligation of a contract, and as an attempt on the part of the Legislature to delegate its legislative powers. The decision was a very elaborate one, and was written by Chief-Justice Gilfillan.

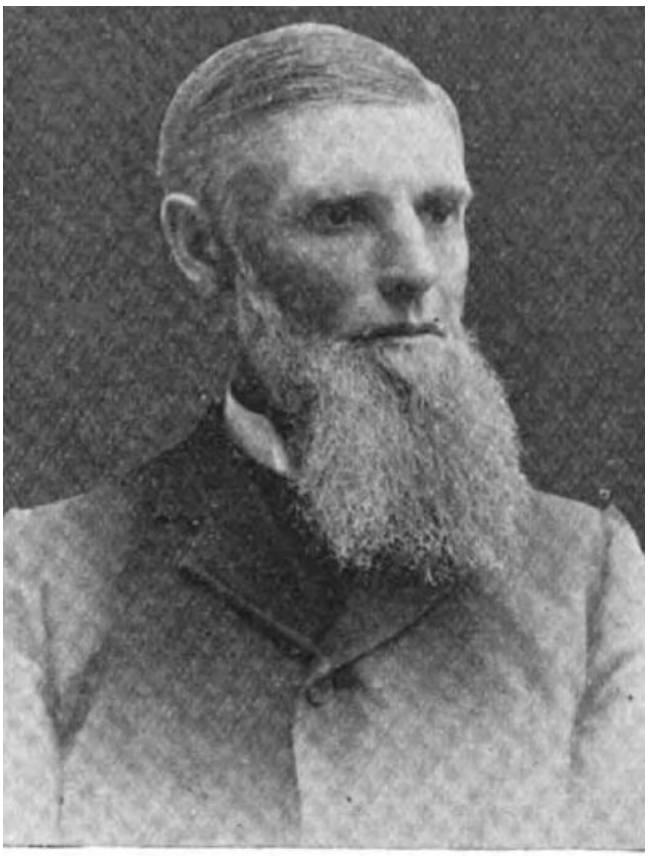
Subsequently, in *Secombe vs. Kittelson*, 29 Minn. 555, in a decision written by Mr. Justice Mitchell, the validity of the amendment to the Constitution under which the bonds were originally issued was upheld, and the bonds were ultimately paid, under an arrangement equally satisfactory to the holders and to the people of the State.

CHARLES E. VAUDERBURGH.

Charles E. Vanderburgh became a member of the court in November, 1881, after an extended term of service as a Judge of the Fourth Judicial District. Born at Clifton Park, Saratoga County, New York, Dec. 2, 1829, his early youth was passed after the fashion of the average American boy of the period. The multifarious duties of a farmer's boy, the educational facilities of a district school, the discipline of character through the responsebilities of a teacher, the private study of the law under the direction of a friendly attorney, and at last the bar,—how many men famous at the bar have trodden this thorny pathway to success and honor!

Judge Vanderburgh was admitted to the bar of New York in January, 1855, and in the following year removed to Chicago. After remaining there a short time, he continued his journey northwest, until he reached Minneapolis, where he formed a partnership with F. R. E. Cornell. The new firm soon acquired a

large and successful business, which continued until 1859, when Mr. Vanderburgh was elected district judge. This position he held until January, 1882, when he became a member of the Supreme Court.[38] He has been a resident of Minneapolis since 1856, and is very active in work connected with the church and Sunday-school.



WILLIAM MITCHELL.

William Mitchell was born near Drummondsville, County Weldon, Province of Ontario, Nov. 19, 1832. Removing to the United States in early life, he received his education at Jefferson College, Pennsylvania, from which institution he graduated in 1853. After two years of teaching in an academy at Morgan town, West Virginia, he commenced the study of the law and was admitted to the bar in 1857. In the spring of the same year Mr. Mitchell located at Winona, Minnesota, where he was engaged in the practice of the law until elected Judge of the Third Judicial District. This position he held from Jan. 8, 1874, until March 14, 1881, when he was appointed by Governor Pillsbury one of the additional associate justices of the Supreme Court for which provision was made by the law of 1881. Judge Mitchell served one term as a member of the Legislature in 1859. Although a Democrat in politics, his ability and universally recognized fitness have kept him in office in a Republican community without opposition.

[38] For the results, see note 37.

D. A. DICKINSON.

Daniel A. Dickinson is a native of Vermont, and was born at Hartford, Oct. 28, 1839. Having lost both his parents, his youth was spent under the guardianship of his grand-father at Mendon, New Hampshire. After graduating from Dartmouth College in 1860, he read law with Smith M. Reed at Pittsburgh, New York. Admitted to the bar in 1862, he immediately entered the naval service, and served as paymaster until 1865. After three years' practice at Pittsburgh, he removed to Minnesota and vacated at Mankato, where he practised law until January, 1875, when he became Judge of the Sixth Judicial District. This position he held until June 3, 1881, when he was appointed by Governor Pillsbury as the successor of Mr. Justice Cornell.[39]

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[39] He was elected in 1881, re-elected in 1886, but defeated in 1892 Each was a "top three" election, the results of which were:

Election November 8, 1881:

William Mitchell (inc.).....102,373
Daniel A. Dickinson (inc.).....101,413
Charles E. Vanderburgh.....65,015
Greenleaf Clark (inc.).....38,582
Write-in.....117

Election November 2,1886:

William Mitchell (inc.).....195,540
Daniel A. Dickinson (inc.).....193,945
Charles E. Vanderburgh (inc.).....185,938
C. E. Shannon.....8,927
J. McKnight.....8,873
J. W. Cochran.....8,863
Write-in.....58

Loren Warren Collins was appointed by Governor Merriam to fill the vacancy caused by the death of Mr. Justice Berry. Judge Collins was born at Lowell, Massachusetts, in 1838, and came to Minnesota in 1854. He entered the army August 9, 1862, and served throughout the war, being brevetted Captain, March 30, 1865. After the war he commenced the practice of the law at St. Cloud, and was county attorney of Stearns County for ten years. Judge Collins belongs to that small class of men whose light cannot be concealed beneath the political bushel of an opposition political party with a large normal majority. He was a member of the Legislature in 1881 and again in 1883, and served as one of the managers of the impeachment proceedings which resulted in the removal from office of E. St. Julian Cox, Judge of the Ninth Judicial District. On the 17th of April, 1883, he was appointed Judge of the Seventh Judicial District, which position he held at the time of his appointment as a member of the Supreme Court in 1887.[40]

LOREN W. COLLINS.

Election November 8, 1892:

William Mitchell (R., D. & Pro.)(inc.).....165,541
Daniel Buck (D. & Peoples')……..113,194
Thomas Canty (D. & People's)……109,166
Daniel A. Dickinson (R. & Pro.)(inc.).....101,148
Charles E. Vanderburgh (R. & Pro.)(inc.)...100,064
William N. Davidson (Peoples')……42,084

[40] He was elected to a six year term in 1888 and re-elected in 1894 and 1900. The results of these elections are:

The Clerk of the Court is an elective officer, the term of office being four years. The incumbents of the office have been, with the dates of their election, James K. Humphrey, 1850; Andrew J. Whitney, 1853; George W. Prescott, 1854; Jacob J. Noah, 1858; A. J. Van Vorhes, 1861; George F. Potter,1864; Sherwood Hough, 1867; Sam. H. Nichols, 1876; J. D. Jones, 1887; Charles P. Holcomb, 1891.

The Attorney-General of the State is an executive officer; but the office is so intimately connected with the Supreme Court that I give a list of the distinguished lawyers who have held the office: Lorenzo H. Babcock, 1849; Lafayette Emmett, 1853; Charles H. Berry, 1858; Gordon E. Cole, 1860; William Colville, 1866; F. R. E. Cornell, 1868; George P. Wilson, 1874; Charles M. Start, 1880; W. J. Hahn, 1881; Moses E. Clapp, 1887.

The official Reporters of the court have been William Hollinshead, 1851; Isaac Atwater, 1852; John B. Brisbin, 1854; M. E. Ames, 1856; Harvey Officer, 1857. Mr. Officer was reappointed in May, 1858, and held until Jan. 30, 1865, when he was succeeded by William A. Spencer, who held the office until June 15, 1875, when the present incumbent, George B. Young, formerly a judge of the court, was appointed. The Reporter has always been appointed by the court, and receives a salary from

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Election November 6, 1888:

Loren W. Collins (R & inc.).....148,785
George W. Batchelder.....101,937
G. S. Livermore.....569
Write-in.....76

Election November 6, 1894:

Loren W. Collins (R. &inc.).....62,701
John W. Willis (D. & Peoples').....113,019

Election November 6, 1900:

Loren W. Collins (R & inc.).....192,427
Write-in.....59

Collins (1838-1912) did not complete his term. He resigned on March 31, 1904, to seek the nomination of the Republican Party for governor. He was not nominated.

the State. The copyright of the books belongs to the State. The Reports have now reached Volume 46, and are increasing at the rate of about four a year. In addition to the original edition, there is a reprint of the first twenty volumes, with annotations by Chief Justice Gilfillan. By the practice of the court based on General Statutes, 1878, c. 63, sec. 4, the headnotes in each case are prepared by the judge writing the opinion.

Several of the members of the court have at various times been engaged in the work of compiling and revising the statutes of the State. Judge Young's revision of 1878 has already been referred to. By an act of March 13, 1858, Aaron Goodrich, Moses Sherburne, and William Hollinshead were appointed a commission to compile and arrange the public laws then in force, including the revision of 1851.

Two reports were made by this committee, — one signed by Sherburne and Hollinshead, and the other by Goodrich, — but neither was accepted by the Legislature. Judge Sherburne and Mr. Hollinshead afterwards prepared and published a compilation of the general laws as a private enterprise.

In 1863 the Legislature appointed S. J. R. McMillan, Thomas Wilson, Andrew G. Chatfield, and E. C. Palmer a commission to revise the laws, with instructions to lay their report before the session of the Legislature of 1864. Judge Chatfield declined to serve as a member of the commission, and the magnitude of the work was such that no report was made in 1864, and the committee was given more time.

When Judge McMillan and Judge Wilson became members of the Supreme Court, they withdrew from the commission, and the work was completed by Mr. Palmer and Gordon E. Cole. ■

Appendix

As noted Elliott quoted a passage from Alfred Russell's presidential address to annual meeting of the American Bar Association in Boston on August 27, 1891. It was reprinted as "Avoidable Causes of Delay and Uncertainty in Our Courts," 25 *American Law Review* 776 (September-October, 1891).

Russell covered many subjects in this paper—that juries are not needed in civil cases, a court opinion should have citations and there are too many dissents. What caught Elliott's attention was his discussion of how judges with dissimilar personal backgrounds and temperaments may interpret a statute in contrary ways. It is tempting to speculate that Russell influenced Elliott's historiography. This is an excerpt from pages 789-791, with the quote italicized:

> **In our courts, there is no such thing as law in the abstract, common, code, or statute, having any direct and operative force in disposing of the rights of litigants, except by and through the utterances of judges. Law, in courts, is always in the concrete. There are, indeed, great numbers of printed books of statutes and precedents respecting the conduct of men, and which give instructions to judges as to their decisions; but the judges, in construing, interpreting and applying the law, perform a function which very closely resembles the making of the law, although, professedly, a declaring of the law.**
>
> **I have said there is no law in court except the utterance of the judge. We remember the rejoinder to the Bench, attributed to Mr. Bartlett, "It was law until your Honor just spoke." Hence also comes the favorite Hibernicism of the experienced lawyer: "Counsel never know what a judge will do till he has done it, and he doesn't know himself."**

The judge is guided largely by what he has heard from the bar, who lay the case before him, with a suggestion of the *ratio decidendi,* or principle of law applicable. The bar find the principle in the dictates of reason, in enactments and constitutions, in adjudicated cases, and in treatises which discuss all these. What does the judge announce to be the law of the case? Necessarily that which he thinks to be the law. One judge may think one thing, and another in another thing, in the same case. Hence, another maxim of the experienced lawyer: "That your case depends on what Judge you get before." *One judge, of high moral perceptions, and with a tender and instructed conscience, will see clearly the requirements of natural right in the case, or the correct application of written law, or judicial precedents. Another judge, unscrupulous, passionate, unlearned or vindictive, may utterly fail either to perceive or apply the right.*

Inasmuch as, in respect to statute law, including, of course, codes, the intention of the lawmaker constitutes the law, so that a thing may be within the terms and not within the meaning, or within the meaning and not within the terms, the discovery and declaring of the intention rests upon the bench. Lieber says that no statute ever resisted in the end the unfavorable opinion of the profession, who induce the bench by acute interpretation to evade and undermine it. One judge, with a large knowledge of history and politics; with a happy temperament, neither conservative nor inventive; nor a recluse, but a man of affairs; without bias; inviting argument, may find one meaning in a statute or code. Another judge, too much addicted to the studies of the closet, with proclivities, natural or acquired, leading to preconceptions; a born partisan, unable to weigh conflicting arguments, may find a totally opposite meaning. The varying views of the

members of the Federal Supreme Court as to the meaning of the framers of the recent amendments present an illustration. It is probable that the draughtsmen of the Fourteenth Amendment would hardly recognize their handiwork in some of the cases which interpret it; and that, if any of those men had been on the bench, a different conclusion might have been reached as to the civil and political rights arising from that amendment.

One judge, of great natural endowments, severe training, long experience, adequate learning, untiring diligence, of a discriminating mind, and with a proper sense of the great trust reposed in him, when he examines the written law, the adjudications, the treatises, and the arguments presented to him, will almost certainly reach the very right. Another judge, of small mental power, unschooled, untried, indolent, slow of perception, and, perhaps, in addition, arbitrary, conceited and ill-tempered, may lay down law known neither to gods nor men.▪

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Related Articles

Clark Bell, "The Supreme Court of Minnesota." (MLHP, 2010-2016) (published first, 1899).

George F. Longsdorf, "The Supreme Court of Minnesota." (MLHP, 2015) (published first,1912).

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Posted MLHP: May 1, 2016.