

“ FILLMORE COUNTY BENCH AND BAR ” *

IN

HISTORY OF

Fillmore County

MINNESOTA

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CHAPTER XL.

BENCH AND BAR.

**Judges Who Have Presided on the Fillmore County Bench—
Early Courts—Sessions at Winona, Chatfield, Carimona and
Preston—Prominent Men Who Have Practiced in Fillmore
County—Notes of Some of the Early Lawyers—Fillmore
County Bar Association.**

Alexander Ramsey, first territorial governor of Minnesota, arrived in St. Paul, May 27, 1859. June 1, of the same year, by proclamation he declared the territory fully organized. June 11 he issued a second proclamation dividing the territory into three temporary judicial districts. The country west of the Mississippi and south of the Minnesota constituted the third district, with Associate Justice David Cooper on the bench. Fillmore county was at that time unsettled.

Territorial Judges William L. Welch and Andrew G. Chatfield held court in Fillmore county in territorial days. After the territory became a state, Thomas Wilson was judge of the judicial district embracing Fillmore county. Following him came Lloyd Barber and William Waterman.

In 1872 a new district was created composed of the counties of Freeborn, Mower, Fillmore and Houston, which became and has ever since remained the tenth judicial district.

At the fall election in 1872, Hon. Sherman Page, of Austin, was elected judge of the tenth judicial district and served as such during the full term of six years. He was an able man, a lawyer, lacking, perhaps, judicial temperament, but his absolute honesty and integrity was never called in question. He was always bent on dispatching business and had no patience with dilatory tactics or delay and seemed to have no comprehension between dilatory tactics and good faith grounds for delay. His idea or motto seems to have

been: "The case is called—you should and must be ready—no delay will be tolerated." At any rate, his methods were called in question on February 28, 1878, when impeachment proceedings were instituted against him in the legislature of Minnesota, which resulted in a trial which is part of the history of this state, and justifies no further comment in this article than the fact that he was acquitted. The charges [526] were preferred as stated, and in June the result was declared in his favor. A fair verdict, perhaps, would read that an able lawyer proved to be a failure as a judge. However, after the impeachment trial and at the following election, he was a candidate for re-election, with Hon. John Q. Farmer, of Spring Valley, Fillmore county, as opponent. The election was characterized by partisanship and many personal animosities engendered by the taking of sides in the impeachment trial, but it must be said to the everlasting credit of the partisans that, with very few and remote exceptions, the hatchet was soon buried and has never since been resurrected in the judicial history of this county or district. Judge Farmer was elected and served with credit to himself and supreme satisfaction to all the people of the district, until he voluntarily retired at the end of his second term, in spite of the urgent and practically unanimous request of the bar of the district and all of the people without respect to party. It has been said that Judge Farmer was not a student. He was. He was a student of human nature; he possessed good common sense; he had a good grasp of the law; he was well equipped by experience, precept and example to perform the work imposed upon a judge on the bench and take off his coat and do the work on the farm, and not only tell others how it should be done, but show them how to do it. This was Judge Farmer. He was an admirable man, loved and admired by everyone. What he did not know in the technical sense—and it must not be said with or by any certain authority that he did not possess all the technical knowledge essential to the station which he so highly adorned—he made up by the exercise of common sense and trying to reach and usually reaching the conclusion and result that what is law is justice, and what is not justice is not law, and his decisions were generally sustained by the appellate courts.

Hon. John Whytock, of Albert Lea, Minn., was elected to succeed Judge Farmer and served up to the time of his death. He was elected

to succeed himself, but died before his new term of office was appointed to begin. He was in every sense a fair-minded judge and well equipped for the position in a legal and intellectual sense, but owing to his imperfect hearing he always seemed to work at a disadvantage.

Hon. Nathan Kingsley, of Austin, Minn., was appointed by Governor Clough to succeed Judge Whytock, and by successive elections has held the position ever since. He is possessed of a keen and discriminating mind, a judicial temperament and that degree of impartiality essential to the position and the making of an ideal judge. He has served to the entire satisfaction of the bar and people of the district and has at all times been commended for his diligence and prompt disposition of all cases and matters presented to him or coming before him for judicial action.

EARLY COURTS.

The judicial history of Fillmore county has its beginning with May 28, 1853, when a list of grand and petit jurors for the June term of the District Court of Fillmore county was drawn at Winona in the presence of John Iams, sheriff, and George M. Gere, a justice of the peace. This list has been preserved and is as follows:

Grand jurors: James F. Toms, Myron Toms, Nathan Brown, Willard B. Bunnell, H. Carroll, Henry C. Gere, George M. Gere, William J. Luark, George H. Sanborn, Harvey Hubbard, Isaac Hamilton, O. S. Holbrook, William B. Gere, S. A. Houck, S. A. Putnam, H. B. Waterman, E. B. Drew, T. B. Allen, E. Chapman, A. A. Gilbert, A. P. Hall, Robert Taylor and O. M. Lord.

Petit jurors: John Evans, Erastus Murray, Edwin Hamilton, John C. Laird, A. B. Smith, George Clark, John Emerson, Allen Gilmore, H. B. Thompson, Jeremiah Tibbetts, Asa Pierce,—Fortune, Squire J. Bennett, Harry Herricks, Warren Rowel, James Kincaid,—Fletcher, Squire Isaac Day, James (Thomas ?) Campbell, Edward Thompson,—Webster, Peter Gove, O. H. Houck, J. S. Deman, Henry Stradling, William H. Coxyell, H. Hull, John Bentley, D. Q. Burley, J. Wilklain,

J. Wright, J. D. Follette, R. Thorp, Lewis Krutley, H. W. Driver and Alexander McClintock.

The venire for the grand jury was issued to Sheriff Iams, June 11, 1853, and was returnable June 27, 1853. H. Carroll and Nathan Brown could not be found.

The venire for the petit jury was issued to Sheriff Iams, June 11, 1853. Messrs. Fortune, Fletcher, Day, Campbell and Webster could not be found.

The first writ of attachment in Fillmore county was served June 20, 1853, attaching 1,838 logs and a quantity of staves and spokes in the case of M. Sipple against John Kripps for \$500.00.

The first session of the district court of Fillmore county assembled at the Winona house, in Winona, June 27, 1853, but as the judge was not present an adjournment was taken until the next day.

June 28, 1853, at Winona, with Andrew G. Chatfield on the bench, the Fillmore county court was organized. Andrew Cole was appointed district attorney for Fillmore county, and duly assumed the duties of the office. Sixteen grand jurors were present, and Franklin Blodgett and H. B. Stoll were summoned by the bench as talismen. [528]

S. A. Babcock, attorney for Erwin Johnson, appeared and challenged the panel of the grand jury, for the reason that it did not appear from the records of the court that the grand jurors were drawn in the presence of the officials designated by law. The court disallowed the challenge, and ordered that a certificate be signed by the justice of the peace and the sheriff, both of whom were present at the drawing of the panel. The grand jurors present were then drawn and sworn and retired for business.

As there was no business before the court the petit jurors in attendance were discharged and the court adjourned until the next day.

June 29, 1853, the court met and the grand jury came into the court at 2 o'clock in the afternoon. Having completed their business they were discharged by the court. Several of the grand jurors were missing at this session, and the judge ordered that an order be entered on the records of the court against them, requiring them to appear at the next term and show cause why they should not be fined for absence. The court then adjourned.

July 18, 1853, a writ of certiorari was issued in the case of G. Oleson against Stephen H. Burns, upon judgment in the above case before T. K. Allen, J. P., July 2, 1853.

The first bills against Fillmore county for court expenses were presented December 27, 1853. These were also the first bills of any sort presented to the county commissioners against the county. One was that of Grove B. Willis to the amount of \$93.00, for "office rent, wood and the like." The other was that of W. B. Gere to the amount of \$40.13 for "services as clerk of the court and office rent and the like."

These events, it must be remembered, transpired at Winona when Fillmore county included that place.

The first district court within the present limits of Fillmore county was held June 10, 1854, at Chatfield. Hon. William L. Welch, chief justice of the supreme court of the territory of Minnesota and judge of the judicial district embracing this county, was on the bench. The records state, "There was no court present." The judge at this session appointed Harley B. Morse district attorney for Fillmore county.

The only term of the district court held in Carimona was in July, 1855. Court was called at 4 o'clock on the afternoon of July 9, and, as Judge Welch was not present, an adjournment was taken until 9 o'clock on the morning of July 10. Judge Welch, being present, ordered a special venire to be issued for six jurors to complete the panel. Court then adjourned until the next morning. July 11, 1855, the court met, and, there [529] being no further business, the grand and petit jurors were discharged.

Old settlers say that in the early days a session of the federal court was held in what is now the Krause house, on the north side of River street, between St. Paul and St. Anthony streets, in the village of Preston, but nothing further seems to be known of the matter.

The first term of the territorial court held at Preston opened June 10, 1856, in a building occupying the present site of the Farmers and Merchants' Bank, on the south side of Main street, across from the present court house. Judge Welch was on the bench. Court adjourned until July 8, 1856, of the same year, when it met in the same place. E. A. McMahon and John N. Remier were admitted to practice in the supreme court of Minnesota territory on examination, and Henry C. Butler, John R. Jones and H. B. Morse were admitted on certificates from other states.

The only important criminal case was that of two men who had been committed by John Bateman, Esq., then a justice of the peace in the town of Bloomfield, accused of the crime of murder. The judge charged the grand jury that, in a new county like this, where there were no jails, nor very safe prisons, and where quarrels growing out of claim fights were necessarily incident to the then unsettled condition of affairs, it was not expected that the laws would be as rigidly enforced as in an old country, where every provision was made for strict enforcement of the laws. The grand jury took the hint that the judge did not expect that they would find indictments against them, and they did not. H. C. Butler, now deceased, for many years a leading citizen of Rochester, had been engaged as attorney for the defense. To show how confiding people were in those days, Judge Butler later related that the two men were taken in custody by the then sheriff, William H. Strong, who set them at work on a barn he was then building, allowing them to go where they pleased, but they never attempted to escape. Hon. John B. Jones was then prosecuting attorney of the county, elected in the fall of 1855.

Judge Welch also held a term of court at Preston in September, 1856. Judge Butler related afterward that he was on a committee to examine four candidates for admission to the bar, and that he was

attorney in three divorce cases, the whole session of the court lasting one hour.

The first term after Minnesota became a state was held in November, 1858, by Hon. Thomas Wilson, who held the office of judge of the district court until his appointment as chief justice of the Supreme Court in 1864. [530]

The First Appeal. The first case appealed from the district court to the Supreme court, from Fillmore county, was the case of Henry C. Gere, appellee, vs. John C. Laird, appellant, and the case was decided finally in favor of the appellant.

THE BAR.

Many notable men have practiced law as residents of Fillmore county. In order that their memory may be preserved, there is here appended a list of some of these advocates of justice:

Harley B. Morse, John R. Jones, H. C. Butler, E. A. McMahan, John N. Remier, C. G. Ripley, Edward Dexter, James M. Cavanaugh, Oliver Dairymple, C. G. Ripley, Gordon E. Cole, Nathan P. Colburn, Henry R. Wells, Henry M. Steele, James D. Farmer, H. A. Billings, Peter McCracken, John H. Kimberly, Simeon Smith, Richard A. Jones, C. Fay Willard, Josiah F. Marsh, George B. Dexter, Dryden Smith, John Q. Farmer, Grove W. Willis, Reuben Wells, — — Lindsey, R. A. Murray, H. D. Bristol, J. S. Sawyer.

The lawyers of the county at the present time are:

Preston. A. D. Gray, Richard E. Thompson, H. S. Bassett, John W. Hopp and Ludvig Gullickson.

Spring Valley. Burdett Thayer, R. J. Parker, Asa H. Burleson, Thomas Frankson and S. C. Pattridge.

Lanesboro. Sydney Anderson and A. G. Chapman.

Mabel. H. H. Hammer and J. C. White.

Chatfield. Joseph Underleak and E. W. Rossman.

Rushford. G. W. Rockwell.

The leading members of the Fillmore county bar in 1880 were as follows: J. D. Farmer, Burdett Thayer, Asa B. Burleson, Dryden Smith, Norman True, George E. Hibner, Spring Valley; Peter McCracken, Cherry Grove; E. C. Boyd, Wykoff; John R. Jones, N. Kingsley, Chatfield; O. Wheaton, Mabel; C. N. Enos, O. S. Berg, Rushford; B. A. Man, E. N. Donaldson, H. G. Day, Lanesboro; Reuben Wells, H. S. Bassett, N. P. Colburn, H. R. Wells, R. E. Thompson, A. D. Gray, Preston.

EARLY LAWYERS.

Harley B. Morse is believed to have been the first lawyer in Fillmore county. He came to Chatfield either in the latter part of 1854 or the early part of 1855. He removed to Colorado in the spring of 1860, and died there. He was a county judge in Colorado for many years.

John R. Jones was the second lawyer in Fillmore county. He came to Chatfield in the winter or spring of 1855. His honorable record as one of the earliest county attorneys of this county, as one of the early senators from this county, as a lawyer, a soldier and a citizen, are matters of county history.

H. C. Butler was the third lawyer in the county. He settled permanently in Carimona, August 9, 1855. He did not open an office until December, when he went to Elliota for lumber for his office door and book shelves, borrowed money from his friend, William H. Strong, to pay the freight on his library which came to Lansing, Iowa, on the last boat of the season, and commenced his first suit in the district court on January 1, 1856. He moved to Rochester in 1864 and died there. He was for several terms county judge of Olmsted county.

In the spring of 1856, when the United States land office was removed from Brownsville to Chatfield, Hon. C. G. Ripley and his partner, Edward Dexter, and Hon. James M. Cavanaugh and Oliver Dalrymple came to Chatfield.

C. G. Ripley became chief justice of the supreme court and died in his native town of Concord, Mass. Fillmore county is proud of

having had among her citizens one of the noblest of men, a profound scholar, possessed of fine literary tastes, analytical mind, quick and accurate perception, an exalted sense of honor, a kind heart, modest and unassuming; a profound lawyer, an upright judge and a public-spirited citizen. His memory is entitled to honor by the bench and the bar, and by the citizens, so long as merit shall command respect and esteem.

Edward Dexter returned to his native city, Boston, about the year 1862, and there spent the declining years of his life. He was in every sense a scholar, a gentleman, a man of superior mental powers and a liberal citizen.

James M. Cavanaugh, one of the first representatives in congress from the state of Minnesota, and afterward a representative from Montana, died at Leadville, Col., in the eighties. He was one of the most eloquent orators in the state, and highly esteemed by all.

Oliver Dalrymple, who came to Chatfield with 50 cents in his pocket, became one of the most extensive farmers of the Northwest.

Gordon E. Cole came to Chatfield in 1856, but removed to Faribault within two years thereafter. He was subsequently attorney general and one of the first lawyers of the state.

Nathan P. Colburn commenced the practice of law with H. C. Butler in Carimona in the fall of 1857, and removed to Preston in the spring of 1858. His honorable record as a member of the Constitutional Convention, and the first county attorney after Minnesota became a state, as a member of the legislature, as a [532] lawyer and a citizen, is universally known and appreciated. He died in 1908.

Henry B. Wells located in Chatfield in the fall of 1857. All know full well his history both as a resident of Chatfield and of Preston. An associate said of him: "Everyone is aware of the name and reputation Henry R. Wells has earned in his profession and business, and in his judicial capacity, and that he ought to have been judge of the district court." In 1859-1860 he was a member of the firm of Ripley, Wells & Cavanaugh. He was county judge two terms.

Henry M. Steele commenced the practice of law in the fall of 1857, in Spring Valley, but left this county in 1859 or 1860.

James D. Farmer commenced the practice of law about 1858, and continued in practice at Spring Valley until his death in 1892.

H. A. Billings, Grove W. Willis and Ruben Wells, attorneys at law, engaged in practice in the early days. Mr. Wells served in the state senate one year, was elected county attorney in 1862, moved to Preston, engaged as attorney in the pension business for over ten years and was court commissioner of Fillmore county for many years, up to the time of his death in July, 1892.

Peter McCracken was among the early members of the bar, but not until later did he take an active part in the trials of the district court. His record in the legislature, as a lawyer and as a citizen, is an honorable one.

John H. Kimberly came to Carimona, June 14, 1858, but removed to Hastings in 1859, and to New York City in 1861.

Simeon Smith came to Chatfield about the fall of 1857 and occupied an official position as paymaster in the army in 1862.

Richard A. Jones came to Chatfield in the fall of 1859, removed to Rochester in October, 1864, and died in Seattle, Wash., in August, 1888, at which time he was chief justice of the state of Washington.

C. Fay Willard came to Chatfield in 1859, and returned to Lowville, N. Y., in 1863, where he died a few years later.

Josiah F. Marsh practiced law in Preston about 1859 or 1860. He went into the army in 1862.

George E. Dexter came to Preston about 1863, removed to Charles City, Iowa, in 1873, and there died, August 28, 1894.

Dryden Smith came to Spring Valley from Decorah, Iowa, in 1859, was judge of probate and occupied minor offices.

John Q. Farmer came from Ashtabula, Ohio, to Spring Valley in 1861 to 1862, and served two terms as judge of the tenth judicial district. He served in both houses of the Minnesota legislature and was a prominent man in every respect.

Henry S. Bassett came to Forestville with his parents in 1853, and is a graduate of the University of Wisconsin. He commenced [533] practice in Preston in 1872, and continues to the present time. He is a close student, indefatigable in his practice and eminently successful as a lawyer. He served fifteen years as county judge.

Fillmore County Bar Association. At an early day there were few conventionalities or forms to be observed in handling cases in court, and the pleadings were usually of a motley variety, a mixture of logic, of traditional law nomenclature, usually with considerable common sense interlarded with more or less frontier slang. The justices court in particular was often the scene of drolleries and comical incidents of the most mirth-provoking character. The line as to who should or should not practice in these courts was not well defined. But about the year 1860 a bar association was formed at the court house, with Reuben Wells as president.* The constitution of this society was signed November 13, 1860, by the following: Simeon Smith, Reuben Wells, H. D. Bristol, Jones, Willard & Jones, Ripley, Wells & Cavanaugh, H. A. Billings, Henry C. Butler, N. P. Colburn, J. S. Sawyer, J. F. Marsh, Dryden Smith. ■

* See “The Minimum Fee Schedule of the Fillmore County Bar Association” (MLHP, 2011).

