“The Lawbreakers of Redwood County”

BY

WAYNE E. WEBB & J. I. SWEDBERG

FOREWORD

By

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Editor, MLHP

Harold Schechter concluded his Introduction to The Library of America’s anthology of true crime stories with these observations about why people read them:

> People read about true crime for many reasons and on many levels. Some readers identify with the victims and are moved to pity and terror by their plight; some identify with those who pursue the criminal, and are either reassured by the criminal’s capture and punishment and the restoration of order, or (when such a resolution is not forthcoming) are forced to confront the limits of human power in the face of unleashed malevolence. Such unsolved crimes generate the eeriest spell of all, as evidenced by the enduring public fascination with Jack the Ripper. It would be naïve to deny that an identification with the evildoer, however covert or repressed, can also be a powerful factor in the genre’s hold, although deep curiosity about those who commit evil is hardly synonymous with identification. Beyond all else, true-crime writing acknowledges the disturbing persistence of the most

> frightening and destructive capacities of the species. Sometimes that acknowledgment results in art of a high order; sometimes merely in news reporting we find impossible to ignore. We attend to what it tells us as we would to an account of a natural disaster or a freakish anomaly—except that the disaster, the anomaly, is all too human.[1]

These thoughts may explain why many readers will be interested in the following accounts of crimes committed in Redwood County from the 1860s through the 1950s. These accounts do not fall within the genre "true crime" because of their brevity. Nevertheless, they describe actual crimes and provide enough background to permit us to imagine the causes of criminal behavior—passion, lust, jealousy, revenge, anger, avarice, numerous other moral weaknesses and faults as well as the irresponsibility of youth.

Two capital cases that arose in the county were appealed to the United States Supreme Court. John Gut, found guilty of murder, challenged the constitutionality of a statute permitting a change of the venue of his trial in an appeal to the Supreme Court in 1869. It ruled against Gut, but his life was spared by Governor Horace B. Austin, who as a district court judge had presided over his trial and imposed the original death sentence.[2] In 1890, the Supreme Court rejected Clifton Holden's constitutional challenge to the law under which he was sentenced to hang—colloquially known as the "John Day Smith Law." [3] Governor William R. Merriam commuted his sentence to life imprisonment. The complete opinions of the Supreme Court in *Gut v. State* and *Holden v. Minnesota* are posted in the Appendix.

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[1] Harold Schechter, Introduction to *True Crime: An American Anthology* xi, xx (New York: The Library of America, 2008).
[2] *Gut v. State*, 76 U. S. (9 Wall.) 35 (1869).
[3] *Holden v. Minnesota*, 137 U. S. 483 (1890).

"The Lawbreakers" appeared first as Chapter 41, pages 459 through 490, in Wayne E. Webb and J. I. Swedberg's *Redwood: The Story of a County*, published by North Central Publishing Company of St. Paul in 1964. The MLHP has reformatted the chapter. Page breaks have been added.

The chapter had one footnote, a reference to an unsuccessful bank robbery in Wanda in March 1963.[4] The authors describe several criminal cases which were appealed to state or federal courts, and citations to those cases and other publications appear in new, numbered footnotes added by the MLHP.

"The Lawbreakers" may be read in conjunction with Alfred C. Dolliff's "Courts, Cases and Attorneys of Redwood County," in Franklyn Curtiss-Wedge I *The History of Redwood County, Minnesota* 465-488 (Chicago: H. C. Cooper Jr. & Co., 1916).

[4] That footnote appeared originally on page 477. It is marked with an asterisk at 28 below.

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R E D W O O D

The Story of a County

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REDWOOD COUNTY BOARD OF COMMISSIONERS

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*T*he *L*awbreakers*

It took three trials to convict him of murder and two ropes to hang him. That was William Rose, hanged October 17, 1891 on a gallows in a Redwood Falls alley, the only man to die for a crime in Redwood county.

Not that Redwood county was free of crime and violence. Omitting the uprising, there were listed 20 violent deaths at the hands of other persons in the county's first century. Seven people were killed in 1917, three in 1888, two in 1897, four in 1899, two in 1909, and the others one per year.

There were 13 successful or attempted bank robberies—four in 1950—numerous assaults, larcenies, embezzlements, burglaries, frauds, forgeries, arson, bootlegging and most of the other crimes that can be committed by man, making headlines from time to time.

Because of their violence, however, murders usually got the most attention.

Redwood Falls church goers were witnesses to a shooting fray on the northeast corner of Mill (then the principal business street) and Third streets July 19, 1885 when Israel I. Alexander (court records say Samuel I. Alexander) exchanged shots with Thomas Petit, whom he accused of alienating his wife's affections, and then gunned down his father-in-law, Charles Mowers.

According to *The Redwood Gazette*, Mrs. Alexander stated after the killing that her husband had abused her, and that she was afraid of him. They had lived together in Redwood Falls the spring of 1883 [460] after she had come here with her parents from Todd county, but then she returned to her parents' home. Petit had lived with the Mowers since childhood.

Fatal events began when Alexander stepped out of the Canada House, a boarding hotel at the northeast corner of Chestnut and Mill, and came face to face with Petit, who ran when Alexander drew a pistol and started firing. Though he stumbled and fell, Petit amazingly remained unhit as he scrambled to his feet and continued his flight. At a distance, he returned the fire equally ineffectually and then ran to Mower's house. Alexander calmly reloaded his weapon as by-passers gaped.

When Petit and Mowers' son went in search of Sheriff M. B. Abbett, Mowers entered the scene by deciding to keep an eye on Alexander until he could be arrested. He apparently also was armed. The two men met, and cautiously eyeing each other walked down Mill street several yards apart. Suddenly Alexander turned, advanced toward Mowers and shot. Mowers went down crying, "Murder!" Alexander promptly put three more bullets into the fallen man. Abbett caught up then and took the victor of the fight into custody. The *Gazette* editor flailed the populace in his newspaper for not attempting to stop the shooting.

There was no lack of eye witnesses when the trial began; but the jury obviously felt the man had some justification, for the verdict was "not guilty." There were a few choice words about that decision in the newspaper, too.

The fatal year of 1888 got its start on violence April 24, when John Gorres, described as "a prominent farmer living in Willow Lake township," killed his hired man, John Rosenkranz, with a pitchfork, reportedly while "much the worse for liquor." The charge was re-

duced from first degree murder to manslaughter, and Gorres had served 6½ years of hard labor at Stillwater State Penitentiary when Gov. W. R. Merriam pardoned him.

William Rose had a companion during much of his ordeal under trial for the August 22, 1888 murder of Moses Lufkin in Gales township. He was Clifton Holden, arrested that November 23 for the murder of Frank Dodge near Redwood Falls. Parts of both trials were [461] conducted over the same periods of time. The prisoners, handcuffed together, were shuffled between Redwood county courthouse and Brown county jail. (There was only a village lockup in Redwood Falls.) Both trials were masses of conflicting testimony; both men were found guilty on circumstantial evidence; both were sentenced to be hanged. The difference is that Rose did hang.

The scene of the Gales township murder was the Elisha Slover farm. Moses Lufkin, Mrs. Slover's uncle, had sold his farm and was staying temporarily with the Slovers. It was about 8:15 P.M. Lufkin sat on a lounge in the living room, Slover testified, and also in the room were he, his wife and two of their daughters, Clara and Tennessee. Suddenly a shot rang out. Lufkin slumped. Others dashed into the room. "Help, quick!" Lufkin moaned, "I am shot through the body, killed deader than hay." He fell to the floor. Slover said that he dashed to the open window that had a freshly-made bullet hole in the screen, and in the moonlight saw a man fleeing toward the farm yard grove. He thought it was Rose, Slover said, a Murray county farmer he knew well. And on that testimony Rose was arrested for first degree murder and in November was placed on trial.

Cyrus Wellington, a prominent St. Paul lawyer, and F. S. Brown, Tracy, set to defend Rose. For the state was county attorney M. M. Madigan, assisted by J. E. Child, St. Paul. Judge was B. F.

Weber of New Ulm.[5]

Motives were brought out in that first trial. There was bad blood between the Lufkin and Rose families; in fact Lufkin at his death was waiting the outcome of a slander suit against William's parents. Then there was Grace Lufkin, Moses' daughter. Whether Lufkin had ordered the 27-year-old William to stay away from his 20-year-old daughter because she didn't return his affection, or because she returned it too wholeheartedly, isn't clear; but the result was that Grace had been sent to Chicago to live with a married sister to get her away from Rose.

Evidence there was little, however. Slover would not positively identify Rose, and two other "witnesses" could testify only that they had seen early that evening a man built like Rose riding a buckskin horse, resembling Rose's, north in the direction of Slover's farm. The final evidence was foot prints beneath the window through which the bullet had been fired, prints in which a pair of Rose's shoes fit. [462]

Most of Rose's alibis were more damning than the evidence. He had ridden to his uncle's farm, he said, to deliver a box of bullets. His uncle corroborated that, but denied wanting the bullets or knowing why they were brought. (Only Rose's relatives testified for him.) As for the shoes that fit the prints, his mother explained that she had worn them that night while milking cows. The best evidence in Rose's favor seemed to be that the prints of the horse believed ridden by the' murderer showed unshod hoofs; and Rose's horse was shod in front.

The jury was out 2½ days and three nights without making a decision. A new trial was scheduled for May 9, 1889.

The murder of Dodge and subsequent arrest of Holden while the

[5] The reference is to Judge Benjamin F. Webber (1833-1906).

jury was deliberating was frequently stated by Wellington as the reason Rose did not win acquittal that first trial, that the jury felt murder could not be allowed to be so rampant. The *Gazette* later punched a hole in the theory with the declaration that jurors were not told about Holden until after they had been dismissed.

The second trial went over the same points as the first, except that the state produced witnesses to show that Rose had threatened Lufkin's life. Slover again would not positively identify Rose. Again the jury split, this time "remaining out from Thursday evening to the following Tuesday afternoon."

The third trial began November 12, 1889. William W. Erwin was brought in from St. Paul to aid the defense. Well known then for his defense in homicide cases, Erwin became Minnesota's greatest criminal lawyer of that century. But the Rose case stumped him. Slover finally came through with the positive identification, and the jury unanimously voted a guilty verdict. Judge Weber intoned, "To be hanged by the neck until dead." Gov. Merriam was to set the date.

Maintaining his innocence throughout, Rose had two more years to wait to die. And in that interval Grace Lufkin met death by slashing her throat with a razor in May 1890.

A new trial for Rose was denied and the date of execution set for April 11, 1890, but an appeal pending with the state supreme court prompted a change. After the appeal was denied, Gov. Merriam chose to wade through the testimony himself, but it was to no avail for Rose. Time to die: 4:55 A. M. October 16, 1891. On the fifteenth, Rose wrote a note to his parents affirming his innocence and his faith in [463] God. He had had his photograph taken that day in N. B. Andersen's Redwood Falls studio, and he asked that some copies be given to persons he named. One was to a young woman he had met in the New Ulm jail, "if she wishes it." The girl had been confined for some petty offense, and she and Rose visited whenever allowed. She reportedly created quite

a scene when denied to see him before his last trip to Redwood Falls.

Jailers awoke him at 4 A. M. and he quietly prepared to go. A new state law forbade any except official witnesses from viewing an execution, but a large crowd, including Twin City newsmen, gathered outside the enclosure housing the gallows, located in the alley northwest of the courthouse where the village jail then stood. "Watch Slover," Rose told them in a short, last speech before climbing the steps. The noose went around his neck. "Do your duty, Sheriff," he told Charles Mead.

The trap sprang. The rope jerked Rose into unconsciousness, then snapped, dropping the man to the ground. Quickly, the grandfather of George Matson, county sheriff in 1962, slung Rose over his shoulder and carried him back up the steps. A new rope was procured, tightened around his neck, and back through the trapdoor he dropped. The body was taken to Tracy for burial. A *Minneapolis Tribune* reporter, who with others had been denied witnessing the hanging, described it as "more like a hog killing than a judicial execution." Stated the *Gazette*: "Heaven forbid that Redwood county have another murder or execution soon . . ." [6]

The Rose case didn't end there, however. There was that matter of "Watch Slover." In his petition to the governor for clemency, Rose had mentioned $1,500 that Lufkin had that never was accounted for. And though it was never proved that Lufkin had had that much money (sometimes it swelled to $3,500 as the story developed), and definitely this suspicion of Slover did not come out in the trial, people couldn't let that thin doubt of Rose's guilt die.

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[6] For other accounts of Rose's execution, see two books by John D. Bessler: *Death in the Dark: Midnight Executions in America* 102-4 (Boston: Northeastern Univ. Press, 1997), and *Legacy of Violence: Lynch Mobs and Executions in Minnesota* 125-129 (Minneapolis: University of Minnesota Press, 2003); and his earlier article, "'The Midnight Assassination Law' and Minnesota's Anti-Death Penalty Movement, 1849-1911," 22 *William Mitchell Law Review* 577, 638-640 (1996).

In January, 1900, that doubt suddenly bloomed into a belief in his full-scale innocence. An unidentified Vesta woman had received a letter from an unidentified Tracy woman who had heard about a telegram stating that Slover on his deathbed in California, where he moved a few years after the trial, confessed to Lufkin's murder. But [464] within a week the mouths of everyone, who had immediately asserted they had believed Slover guilty all along, clamped tightly shut when Slover turned up, very much alive, and not in California but in Salem, Ore.

Rose's was not the final execution in Minnesota, as was the belief here after time had erased most of those living here then, but whoever had to do with his trial and hanging probably wished with all their hearts that the hanging before his had been the last.

Frank Dodge was found with a bullet hole in the back of his head November 24, 1888 in a Bridge street ditch "near the site of the old creamery" on the east edge of Redwood Falls. One of those called to identify the corpse was Clifton Holden, a cousin of Dodge who had come recently from his home at Rochester. Holden admitted being with Dodge the evening before and then told such conflicting stories that he was charged with the murder.

Rose was taking up the court schedule that fall, and Holden did not come to trial until May 15, 1889. Despite no witnesses, no motive, and Holden's denial, the jury found him guilty 13 days later, but tacked on a recommendation of mercy.

It would have been difficult to have believed anything Holden said. He apparently had come to Morton to visit relatives, and while in the area had looked around with the idea of starting a butcher shop. Giving that up, he planned to return to Rochester on the early morning train November 24. Dodge, a Redwood Falls barber, was making a round trip from Morton to Redwood Falls that night and asked Holden to accompany him. They were seen together enroute to Redwood Falls, but no one other than Holden could remember seeing Dodge alive after that.

Holden's first story was that he had left Dodge with strangers in Redwood Falls, headed alone for Morton, changed his mind and then came back. His second story was that Dodge became despondent over his treatment by a Fairfax woman, grabbed the revolver Holden had drawn to shoot a dog following the buggy, and shot himself while holding the gun in his left hand. Not knowing what to do, Holden explained that he threw the gun in the Minnesota river, left Dodge beside the road and checked into the Exchange Hotel. The fact that Dodge [465] was righthanded and the near impossibility of shooting one's self in the back of the head made that story improbable.

Moves for a new trial, appeal to the state supreme court [7] and other legal maneuvers delayed sentencing until February 18, 1890 when the judge pronounced that his decision was death. Holden had a few words to say to the court. In fact he talked for nearly 45 minutes, "showing that he was a cunning, bold and untruthful fellow with an excellent memory, pleasant voice, one who could easily mislead the unthinking and uninvestigating," the *Gazette* reported. Part of Holden's expostulation was that blood on his coat (including the back) and shoes (earlier he had said that was hog's blood), on the buggy seat, wheels, reins and buffalo robe had come from a nose bleed he suffered after leaving Dodge in Redwood Falls.

Still the evidence was circumstantial, and then perhaps Gov. Merriam felt, as a juryman explained, (in opposite view of the *Gazette*)

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[7] *State of Minnesota v. Clifton Holden*, 42 Minn. 350 (1890) (Dickinson, J.). The U. S. Supreme Court rejected a constitutional challenge to the sentencing law in *Holden v. Minnesota*, 137 U. S. 483 (1890), which is posted in the Appendix at 47-61.

For other accounts of the *Holden* case, see two books by John D. Bessler: *Death in the Dark: Midnight Executions in America*, supra note 6, at 56-9, and *Legacy of Violence: Lynch Mobs and Executions in Minnesota* , supra note 6, at 129-32, and his article, "'The Midnight Assassination Law' and Minnesota's Anti-Death Penalty Movement, 1849-1911," supra note 6, at 643-48.

"…we supposed he was not a very bright fellow, and some of us were opposed to capital punishment." The governor changed the sentence to life imprisonment. Railing against his escape from death, which he said he preferred to imprisonment, Holden was taken to Stillwater penitentiary May 11, 1891. In January, 1900 he was judged insane and removed to the state asylum at Rochester, a trip completely different from the one to Rochester interrupted by Dodge's death 12 years before.

Mrs. John O'Connell was indicted for murdering her husband July 31, 1897 in Westline township and then trying to burn the house which contained his corpse. Her son, James, apparently in his early teens and the oldest of the nine O'Connell children, shared the indictment, but his alleged part in the affair was never stated. According to Mrs. O'Connell's statement, her intoxicated husband had begun beating her, as neighbors testified he frequently did, finally driving her from the house. She returned, and again he attacked her. This time, however, she hit back with a wagon king pin, continuing to strike him until he fell. She took the children out of the house, but denied remembering anything from then until her arrest, including knowledge of the intended cremation.

The boy was released from custody, the *Gazette* stated August 12, 1897, and Mrs. O'Connell planned to plead justifiable homicide. Nei-[466]-ther the newspaper nor court records reveal the jury's verdict, but it obviously was acquittal of some sort. O'Connell's relatives tried to lynch the woman and her son, the *Gazette* reported shortly after their arrest, forcing constant protection by the law.

A long-standing quarrel between Gustav Metag and Frederick Kuehn resulted in Kuehn's death in Sherman township August 29, 1897. A bachelor, Kuehn had rented his land on shares to Metag although he continued to live on it in a shanty, ". . . the poorest excuse for a human abode that is located in Redwood county, made of cheap boards and with old-styled hinge swinging door, and but dismal holes through which the light sends its rays."

Proper setting for a murder, the *Gazette* implied.

Testimony brought out that Kuehn didn't like the way Metag farmed and three times had driven him off the farm, once with a gun. Kuehn had threatened to beat him up, Metag said, and he took to carrying a gun for protection. Metag had sent his son over to Kuehn's that fatal day to tell him they were going to start threshing the next day, but Kuehn sent back the message that there would be no threshing until after fall plowing. Over to his rented land went Metag and the boy in a buggy. Hot words followed. Kuehn told Metag to get out of the buggy so he could thrash him. Metag jumped out, and when Kuehn raised an arm as if to strike him, Metag drew his gun and rapidly fired four bullets from a range of two feet. Two bullets entered Kuehn's body, another grazed his head and the fourth missed.

Metag went almost immediately to Morgan and surrendered there to Sheriff Edward A. Pease. In May, 1898 he was found guilty of first degree murder and sentenced to life at the Stillwater prison. On January 28, 1914 the sentence was reduced to 30 years, making parole possible, and he was released the following March.

Frank E. Babcock, a Sheridan township farmer, on October 25, 1899 shot to death his wife and two young sons in the farm yard, his 14-year-old son in the field where he was working and then took his own life.

In Delhi township September 2, 1909 Willis D. Tibbetts, a widower, beat to death his daughter, Dorothy, and Cecil Morton, daughter of his housekeeper, then set afire piles of hay with which he had covered the bodies as they lay in the house. Summoned by a Tibbetts boy (two [467] young children were away with the housekeeper), who had seen the flames in the house, neighbors ignored the moaning murderer as they fought the fire. When it was out, they discovered the bodies, and the search for the berserk man found him hanging from a halter strap in the barn.

Ira Pratt died in North Redwood November 6, 1911 after being slugged with a billy club by bartender Virgil L. Mallet in the saloon there during an argument. Apparently believing Mallet's blow wasn't the sole consideration, authorities reduced a first degree murder charge to first degree manslaughter, and then January 15, 1911 a jury found Mallet guilty of third degree manslaughter. He served three months in the county jail for the crime.

On a wet, mud-isolating March 24, 1917 a young Clements farmer, William A. Kleeman, killed with an ax, as they slept, his wife, Maud, and five children, ages one month to five years. A rural school teacher who stayed with the Kleeman's returned later that day from a weekend visit to find Kleeman dangling from a rope in the kitchen and the six other corpses in their beds. She summoned help by telephone, but because of the mud, she was forced to spend some time on the ghoulish scene before anyone else could reach the farm.

The alley behind the Redwood Falls hospital, later the city hail, was the scene of a fatal shooting before dawn on a Sunday, June 24, 1917, and the city police chief was a witness. William Rosendahl, 44, and Charles E. Lamberton, 51, had been business rivals in the bus and transfer line, though Rosendahl then had an automotive concern. There apparently were other differences. The fatal night, witnesses said, the men "opened up a discussion of the enmity which has been existing between the two men for several years." A challenge to fight was flung, and the two men headed up the alley toward a clump of trees. Police Chief Carl Byram had earlier noted the argument and followed the pair into the alley. He was 70 to 100 feet behind them, he testified, when "they stopped and Rosendahl stepped back and threw up his hand and shot. Lamberton stood there with his hands to his side." The first shot had missed, it was proved later, but the second caught Lamberton in the neck. A doctor and nurse came immediately, but efforts to revive the wounded man were futile. Byram shot once into the ground as a warning, but Rosendahl

ran, [468] firing once in the policeman's general direction. He hid behind a tree and Byram cuddled up to a telephone pole. The policeman shot again, this time aiming at the fugitive. When no answer came, Byram moved to the tree and took away Rosendahl's gun. "I shot him," Rosendahl said. Replied the chief, "Yes, I guess you did."

Convicted of second degree murder, Rosendahl was sentenced to life imprisonment. Twenty years later, however, the sentence was commuted, and June 1, 1937 William Rosendahl was released with the stipulation that he leave the state.

Hall Green, a 26-year-old Negro Paxton township farm hand, was given a life sentence for the shotgun slaying April 8, 1921 of Leslie Joslin beside a road two miles east of Redwood Falls. Never were details of a modern crime more skimpy. Court records reveal none of the testimony and newspaper accounts handled the subject as if it were too sordid to touch. The *Gazette* labeled the motive "jealousy," stating only that the murder occurred when Joslin, whose parents lived in Morton, was returning to the home of an uncle (not identified) with whom he lived, after spending the evening with a neighbor. A sidelight of the trial was the arrest of Green's brother, Henry, "on evidence brought out in the trial." Henry subsequently was convicted of rape and joined Hall in the penitentiary. Hall was granted an unconditional release May i6, 1960.[8]

A despondent Balaton, Lyon county, farmhand killed his sweetheart January 13, 1941 on a Walnut Grove area farm where she worked, but lost his nerve when he tried to turn the pistol on himself. "She went home from a dance with another fellow and I took it so bad I just couldn't stand it," he explained afterward.

[8] These cases are the subject of a novel, *And Justice For None* by Evelyn Fesenmaier with Greta Bishop (Milwaukee: In-Your-Hand-Books Publisher, 2002), which was reviewed for the MLHP by John Isch.

Everett L. Johnson, 28, drove out to the home of Mrs. E. A. Randolph four miles southeast of Walnut Grove late in the afternoon to see Gale Wendorff, 20, of Tracy before he committed suicide, the Gazette quoted him as saying. He got her out of the house on a ruse, but his talk of suicide frightened her and she ran for the back of the house. He headed around the other side and caught her. His story was that as he held her, he tried to shoot himself, but she grabbed his wrist. The gun exploded, sending a bullet through her left temple. Johnson fled in his car. Later he stopped to finish the job he had started, but "My muscles wouldn't work." To see how badly hurt the [469] girl was, he telephoned the farm home, using an assumed name, and asked for her. The doctor answered, saying that she was only scratched and was being taken to the Tracy hospital. That is where Redwood county Sheriff L. J. Kise slapped the handcuffs on him the next morning. He had fallen into the trap set up by the quick-witted doctor. Kise identified Johnson by the description of the car Miss Wendorff's employers had given, for they had not gotten a good look at Johnson. He was committed to life imprisonment, a sentence he still was serving in 1962

There were at least four instances when murder was suspected but nothing ever was proved. *History of Redwood County* relates that Edward McCormick was found dead "in the early seventies" in his home where he lived alone and that an autopsy showed death due to strychnine poisoning. "His brother, Patrick, was held for several months, but was discharged for lack of evidence." There is no record of the case in courthouse files, so apparently no indictment was ever brought, and county newspaper files do not go back that far. An Ed McCormick settled in Redwood Falls in 1864 but whether or not be is the one who died is not known.

On May 6, 1899 the body of Henry Hanson, a farm laborer, was found in several pieces scattered along the railroad track near San-born. A study of the man's earlier actions showed that he probably was not drunk (on the theory he may have staggered

onto the tracks), and it also was pointed out that simply being struck by a train did not result in such a degree of mutilation, nor did the engineer know he had hit anyone. Suspicions were aroused for a time.

Near Vesta April 29, 1930 a farmer burned a straw stack and in the ashes discovered the partly cremated remains of a man. Dr. A. W. Hubbard, county coroner, was of the opinion a murder had been committed because the skull appeared to have been bashed in. An attempt was made to link the corpse to a car that had been set afire and pushed into the Redwood river near Redwood Falls. The flaming car mystery was cleared up, however, with the location of the owner and apprehension of a youthful vandal, and the corpse in the straw stack was forgotten.

In May, 1932 the dead and mutilated body of a premature baby was found wrapped in newspapers on a Minnesota river bank, Red-[470]-wood county side, under the Morton highway bridge. Clear evidence was never found.

Because Redwood county was attached to Brown county for judicial purposes until 1872, several minor cases from here were tried there, and for the same reason Redwood county became involved in two Brown county murder cases.

First case began January 26, 1867 when Andreas (Andrew) Schmidt, a Renville county resident, bludgeoned to death Gertrude Roehl, wife of William Roehl, a Segal township farmer for whom Schmidt was doing chores while he was on a trip to Mankato. Schmidt was arrested four days later and a coroner's jury convened immediately. The case is interesting historically, for its file contains a confession written for Schmidt in German and signed by him, and the hand-written testimony of witnesses. Why this case was transferred to Redwood county is not clear, but it became file number one in Redwood county criminal court. The trial never was held, however, for Schmidt hanged himself with a rope fashioned from his shirt and trousers and suspended from

the stove pipe in his New Ulm jail cell June 17, 1867.

The Schmidt case dissolved into the second one from Brown county involving Redwood county; for the day after the suicide, a grand jury convened before district Judge Horace B. Austin in the second story of Capt. Louis Robert's general store in Redwood Falls to consider evidence against 12 men bound over on charges of lynching two Mankato men in New Ulm Christmas day, 1866. These were the infamous Christmas murders.[9]

Background on the case: Charles Campbell (also called Alexander Campbell) and George Liscom, white trappers, dressed in buckskins and swarthy from long out-door exposure, stopped in a New Ulm saloon Christmas day, 1866 to observe the holiday with local residents. Liscom didn't drink but he joined the fun, and when the brawl started— how it began is vague — his head was laid open by a hatchet in the hand of John Spenner, a popular young hero of the New Ulm defense during the uprising and with whom the trappers had been friendly that afternoon. To protect his companion, Campbell plunged his knife into Spenner. The sheriff arrived at that point and hauled Campbell and the barely-conscious Liscom off to jail. Spenner died in the saloon and the cry went around that two half-breeds had killed [471] the popular man, and that one was the brother of John Campbell, (which he was not) lynched the year before by a Mankato kangaroo court.

A mob congregated in the dusk at the jail, found the doors open, dragged the men out, beat them with sticks of wood, stabbed them and then hanged them from a ladder leaned against the jail. That night someone cut down the bodies and stuffed them under the ice on the Minnesota river where a contingent of Mankato residents, including Campbell's real brother, found them December 28 without a bit of help from New Ulmites.

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[9] For a longer account of the "Christmas Murders," see Walter N. Trenerry, *Murder in Minnesota: A Collection of True Cases* 42-52 (St. Paul: Minnesota Historical Society, 1962).

In fact when state attorney general William Colville, leader of the First Minnesota in its history-making charge at Gettysburg in 1863, went to the Brown county city to personally investigate the goings-on, he found people there so tightlipped he proposed holding the grand jury hearing at Redwood Falls because he felt the men would go scot free if tried by Brown county men. His belief was supported when the New Ulm justice attempted to discharge most of the defendants in a preliminary hearing.

When the grand jury met above Robert's store that June day, Colville had as prosecution assistants Col. Samuel McPhail, Redwood county attorney, Major S. A. Buell, Brown county attorney, and a Mr. Wallin of St. Peter. For the defense was Charles Flandrau, the famous "saviour of New Ulm" during the uprising, Judge Isaac Atwater of Minneapolis; Mr. Clothier, New Ulm, and Mr. Dorman, St. Peter. On the bench was Austin, who like Spenner and Flandrau and Charles Roos, New Ulm justice of peace, and several of the accused, had fought in defense of New Ulm. J. S. G. Honner, Redwood Falls, was jury foreman, but the majority of the grand jurors were Brown county men.

The accused had a strong following. Reported the *Mankato Record* June 29, 1867, "The attendance from Brown county was very large, numbering probably about one hundred and fifty persons, who were all camped together on the prairie, and styled 'Camp New Ulm'—grand and petit jurors, prisoners, and counsel all together." The camp had a larger population than two-year-old Redwood Falls.

The grand jury spent a week considering the case, the *Record* continued, "and finally appeared in court and reported no indictments. When their report was handed to the judge, he seemed astonished, [472] looking at it for almost five minutes . . ." Judge Austin dismissed the jury but ordered another one called in the fall, and he could continue calling juries, he proclaimed, "until the accused are tried, and if guilty, properly punished."

The new jury began deliberations September 17. Judge Austin again presided; the defense remained the same, but Francis R. E. Cornell had succeeded Colville as attorney general and Buell and Wallin had withdrawn. Only McPhail remained of the original prosecutors. Jury foreman was B. H. Monroe, Redwood Falls. This time 12 men were indicted for the first degree murder of Campbell, but one stood out from all the rest. He was John Gut, an AWOL soldier from Fort Ridgely who had been seen inciting the mob before the lynchings and then stabbing the bodies after they were dead. He also was the only one not on bail, not because he was deemed more dangerous than the others or that he had earlier escaped from custody and had to be brought back, but because he was the only one who couldn't raise $4,000 bail money.

Trial was rescheduled for St. Peter on Flandrau's charge that the Yankees of Redwood county would be prejudiced against the accused, all of whom were Germans. And there Gut became the scapegoat for the entire tragedy: for by the time he was found guilty the following February, he was the only one of the dozen still in custody. One by one the others had given Brown county authorities the slip.

Flandrau based his defense of Gut on the man's mistaken belief that Campbell and Liscom were half-breeds, and that their killing could not only be laid to the understandable animosity New Ulmites held toward Indians, but also because the state had put a bounty on Sioux scalps. Then there was the matter that Gut wanted to avenge his "best friend," and the added point that he had an unsound mind (he had once tried to kill his mother). The jury recommended clemency, but Judge Austin, who had denounced his former commanding officer's theory on justifiable killing of half-breeds, gave the death sentence.

Flandrau's appeals for his client went to the state supreme court;

he was overruled.[10] They went to the federal supreme court; Austin again was upheld.[11] By that time it was February, 1870, four years since the incident, and the most ironic aspect of the entire case developed. Judge Austin the month before had become Governor Austin, and he [473] overruled his former act, commuting Gut's sentence to life imprisonment.[12] In 1873 the sentence was reduced to 10 years, beginning in 1867 on the date of Gut's arrest. In his later decision, Gov. Austin noted that Gut alone had had to bear the guilt for the entire affair.

Outside of the strange aspects of the case and the fact that it reached the highest tribunal in the land, it is important to Redwood county history because that grand jury in the tiny frontier village of Redwood Falls in September, 1867 made the first indictments ever instituted against alleged lynchers in Minnesota.

Assaults that brought injuries short of death also have occurred from time to time. These are four of the more prominent cases in county history.

Sixteen-year-old Henry Schat of near Morgan was indicted November 2, 1887 for first degree assault for discharging a pistol bullet that day that furrowed down through the face of six-year-old Arthur Conlile, tearing out his eye and jaw on one side. The jury convicted the youth of third degree assault, and he was sentenced to an indefinite term in reform school. Young Schat had ridden into the field being plowed by John Conlile and stopped to talk to the two Conlile youngsters who had followed their father. John called his older boy, an eight-year-old, away, hoping the six-year-old would follow, for the boys' mother had "whipped" them only that morning for being with Schat. Arthur didn't leave,

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[10] *State of Minnesota v. John Gut*, 13 Minn. 391 (1868) (Wilson, C. J.).

[11] *Gut v. State of Minnesota*, 76 U.S. (9 Wall.) 35 (1869). Justice Field's opinion is posted in the Appendix below.

[12] Horace B. Austin (1831-1908) served as judge for the Sixth Judicial District from January 1865 to October 1869; in the general election in November of 1869, he was elected Governor and served in that office from January 1870 to January 1874.

though, staying to watch Henry show off his pistol. It went off within inches of the boy's face.

In Honner township December 1, 1918 Herbert Seebeck, nearly deaf and mute, attacked his parents, Mr. and Mrs. A. F. Seebeck, stabbing both with a "sharp-tined" weapon. It was completely out of character for the young man, 25 years old; consequently a light sentence of one year at Stillwater was imposed.

There is a sequel to Seebeck, however. In Spencer, Iowa, June 25, 1956 he stabbed to death his brother-in-law, A. C. Hagberg, and with a revolver killed his sister, Carrie. He had lived with the Hagbergs many years, first on the Seebeck farm after the death of his parents, then in Spencer.

Gustantinio Allanes (Gust. Allan) "shot at with the intent to kill his wife Fern Allan" July 16, 1932 on her mother's farm near Lamberton. The couple were estranged, and Allan gave as his motive that [474] his wife would not give him a divorce. He had come up from Sioux City, Iowa to see her. As she sat by the river fishing with three others, Allan shot at her five times. Only two shells went off, however, one bullet penetrating her chest, the other her back as she lay on the ground. Allan fled on foot, caught a ride from Sanborn to Windom and there was arrested. He was sentenced to up to 10 years in the Stillwater prison. Lauritz (Louie) J. Kise, Redwood county's "flying sheriff," took Allan to prison by plane, the first such instance in state history, The *Gazette* observed, making much of Allan's being "flown to the coop."

On March 29, 1933 Ernest Weber, Sanborn, from where he lay ill in bed, wounded his sister-in-law, Mrs. Carl Weber, with a rifle bullet as she bent over in a closet in an adjoining room and then put a bullet in his own head. The missile fired at Mrs. Weber penetrated her skull and lodged in her neck, where doctors decided to leave it rather than risk an operation. The wounded woman remained in the hospital only a week. No motive was attached to the attempted murder and successful suicide.

A prowler wounded three Clements men July 16, 1931 when they attempted to capture him. All in their twenties, Peter Elbert, Harvey Schons and Leo Steffi interrupted the burglar at the Edward Steffi farm near Clements. In his successful getaway the man shot Elbert in the back and abdomen, Schons in the foot, and with another bullet grazed Steffi.

Kise would have made a good running as candidate for busiest sheriff in Redwood county's history. He not only served the longest term—24 years, 1919–1942 (George Matson, Kise's successor, would have tied that record if he finished the term to which he was elected in November, 1962)—but also was in office during the depression years when crime was a way of life, and during prohibition when arrests for making, selling and transporting illegal booze were more frequent than pay days. To help him keep up, Kise maintained an airplane, piloted by Jack Robinson, an aviation pioneer in the county. That airplane got frequent use in searching for bank robbers and other criminals, not only in Redwood county but throughout the upper midwest. Kise had bloodhounds, also, the only ones used in the state for criminal apprehension at that time, and the numbers of [475] crimes in the 1930's put great demand on their services. Usually Kise flew the dogs to the locations.

Harry Beatty served as deputy most of Kise's years in law enforcement.

Kise couldn't even stay away from crime while on vacation, once making the nation's newspapers as "hero of the hour" in Glendale, California. Visiting there in the winter of 1931–32, the sheriff happened to be in a drug store during a holdup and had to stand in humiliation with other customers with his hands above his head as the cash register was rifled by two gunmen. Later while watching the Rose Bowl parade, he spotted one of the men in the throng, but lost him. Again later, he saw both of them in a night club, and this time they sat still long enough for him to summon

police, who made the arrest. The pair turned out to be convicted murderers who had escaped from Kansas state prison

Bank robberies were Kise's biggest headaches, especially in 1930 when four of them made the headlines It started that year on March 26 when two young men stepped into the Sanborn bank five minutes before noon closing, ordered bank president F. E. Gleason, cashier W. D. Yaeger and a customer, Dr. C. H. Boelke, to lie on the vault floor, and walked out with between $4,000 and $5,000. One of the robbers remained at large less than a week. County attorney Leon H. Brown saw a picture of a young criminal picked up in Minneapolis, and on a hunch went into the cities, confronted Nicholas G. Carey and got his confession. Returned to Redwood county for trial, the Minneapolis man received a sentence of five to 40 years in Stillwater prison.

Carey implicated Jerome J. Bliss as his accomplice, and that bandit was interrupted at work on a bank near Alma, Wis., May 3 He fled, temporarily eluding pursuers Kise's bloodhounds were called for, and since the sheriff was busy elsewhere that day Brown and the hounds' caretaker, A. B. Coan, flew them to the neighboring state. Several groups took up the search. Coan's hounds traced Bliss to a farmhouse; and when possemen declined to shake him from his lair until more help arrived, Coan went into the house alone, disarmed Bliss at gunpoint and led the robber out with a dog chain around his neck. [476]

The Clements bank was hit by a "loner" May 7. Using standard procedure, he walked in about 2:45 P.M., herded president C. D. Jensen, bookkeeper James Rasmussen, and customer Tony Thomas into the vault, scooped up $2,000, or thereabouts, and fled. A fellow named Sigurd M. Swenson later was charged with the crime and indicted that November. But his alibi that he was in a Bloomington hospital the day of the crime exonerated him.

Two bandits got $1,500 from the Delhi bank October 29, after or-

dering cashier Harold Butcher and bookkeeper Ardmer Pederson onto the floor. To illustrate that catching hit and run bandits was made difficult by the confused descriptions of witnesses, the *Gazette* commented about the Delhi robbery: “From reports given the sheriff’s office, (the getaway car) might have been either a Plymouth, Erskine, Pontiac or Oakland car with a blue body, and yellow or green or red or orange or blue wire wheels.”

Banker Andrew Christianson and Edward Galle were locked into the Milroy bank vault November 14 by a lone robber who made off with $400, all the bank had on hand that day. The prisoners freed themselves and Galle took off in pursuit of the crooks, but his car ran out of gas three miles south of town.

Two bandits hit State Bank of Vesta March 3, 1931. Cashier D. L. Thompson first became aware of the robbery when he felt a gun jammed into his ribs. From then the action went swiftly. With Thompson and bookkeeper Wilma Rust forced to lie on the floor, the pair quickly grabbed up $1,500 cash and $5,000 in negotiable bonds. Before making their successful getaway, they moved the bank employees into the vault.

The biggest crime haul in county history came September 23, 1932 when five men worked with precision to relieve Redwood Falls State Bank and Trust company of $30,850.79 in cash and $4,000 in traveler’s checks. Dressed in overalls, a costume affected by most of the county’s bank robbers in this era, four of the gang entered the bank at 9:15 A.M., and forced five employees—A. F. Hassenstab, Mona Leavens, G. R. Engeman, E. R. Whiting, and H. F. Peterson—to lie on the floor. They carried their bags of loot out the back door to their car parked in the alley. Matilda Buchholz, employed in Fox Millinery next to the bank, saw the busy men hurrying back and forth with their bundles. “If we had a gun we could shoot them,” she remarked. [477]

The head of an overall-clad figure was stuck into the doorway.

“Oh, you wouldn’t shoot us, would you?” asked the eavesdropping sentry.

Hassenstab and Miss Leavens left town with the bandits, one standing on each running board of the getaway car, pistols pushed against their stomachs. Two miles south of town, the pair was set free.

Alerted by Miss Buchholz and Mrs. Cora Fox, Kise sent up his airplane and got several cars out in hot pursuit. He figured the escape route went through Morgan, for it was there that roofing nails strewn on the highway flattened a tire on his car. “Tire repairmen did a rushing business,” the *Gazette* observed.

Four of the culprits were caught in Minneapolis that December after a robbery there that resulted in a killing. They also were wanted for murder in Missouri, and those two cases pushed their relatively minor Redwood Falls robbery into the background.

The city got another bank scare in June, 1934 when a stranger asked questions about bank hours. The FBI was notified, and three persons who had seen the stranger picked out the same picture from a stack the bureau men brought. . .that of John Dillinger, the nation’s public enemy number one. Local and federal officers immediately staked out the bank, but whether or not the witnesses were correct will never be known, for nobody showed up.

Revere bank also felt the heavy hand of thieves in 1932, but the modus operandi differed. The night of July 11, an explosion shook the town. Nitroglycerin had been used in an attempt to blow the vault, but the structure held and the bandits had to flee empty handed from gathering citizens.

Similar robberies appeared in a rash at that time, with elevator and post offices safes getting the nitro treatment. It was probably

an amateur who mismeasured the ingredients in a Vesta blowup in May, 1932. The blast demolished John B. Schiller's service station.

The front doors of Wanda State bank were pried open December 15, 1934, but nothing was disturbed.

That bank was the target again in the spring of 1939.* One night a Wanda resident was awakened by the sound of running water and discovered some men filling cream cans. They fled and the FBI was called in. The operation, federal men said, was like that of the "Cream [478] Can" gang which used cans of water for cooling safecracking tools. When a cache of tools was found near Clements in a straw stack, a stake out was put on duty. The gang returned, but apparently became suspicious and left the county. Three gang members were caught that May in the Austin-Owatonna area after trying to rob the bank at Sergeant, and four others were picked up in November for a St. Paul burglary.

When the decade closed, Redwood county banks resembled Fort Knox for security. Clerks worked behind high steel-lined partitions that had bullet-proof glass and on top were electric wires and steel spikes. Workers were equipped with gas masks in banks that kept tear gas bombs on hand.

After the '30's county banks were bypassed by criminals for more than 20 years, until modern architecture had replaced security gimmicks and insurance was ready to sooth financial loss. On December 21, 1961, the date of the county's last bank holdup before 1962, a lone man appeared in the Vesta bank at noon, flashed what looked like a toy pistol and ordered employee Mrs. Milton Marquardt to empty cash drawers into a brown paper sack. She obliged, stuffing in about $1,500; but when she was instruct--ed to open the vault, she fled from the building, taking the sack

* Wanda bank was entered in March, 1963, but robbers were unable to crack the vault.

of money with her. The would-be-robber followed her out the door, headed for his car and roared out of town. Notified immediately, Matson was on the scene in minutes, but he had no better luck than Kise had had in his numerous hunts for bank specialists.

Vesta was the only county town to be hit three times by bank bandits. Back on June 2, 1903, according to the reconstruction of the county's first bank robbery, three men walked into the village from Echo, stood around on the bank corner until after midnight, broke a pane of glass in the door to gain entrance, and set off two explosions that tore open the safe and blew part of the bank into the street. The explosions were heard, but no one attached any importance to them.

Then scooping up $2,500 in cash and $30,000 in notes, stored in two files, the men made off in a buggy pulled by Arthur Athey's "rapid driving team of bay horses," which they had conveniently stolen. South of Milroy, the team was turned loose on the prairie. Most of the notes, $24,000 worth, were picked out of the Cottonwood river. The rest were believed in the river, also, but that the box which held them either sank or floated downstream. [479]

So closely was that operation duplicated in Wabasso the following September 4, that the probability is great that the same men did both jobs. A difference, however, was that the explosion in the Wabasso bank only dented the steel lining of the vault, and set off the alarm. As at Vesta, the burglars fled with a stolen team, this one from Leo Altermatt, which was abandoned at Lamberton.

Bandits were more successful with the Wabasso bank in March, 1923. With an acetylene torch, they cut a hole in the vault so a man could reach in and manipulate the lock. They got $60 in cash and some Un-registered Liberty bonds. Citizens who tried to notify the sheriff discovered telephone and telegraph lines had all been cut.

A Morgan bank was broken into July 9, 1921, but burglars were thwarted when the electrical alarm roused village residents who quickly armed themselves and began tracking the fleeing culprits. They caught up with one, Ben Roy, in a grove outside of town. He confessed that he was the look out and that the other three members of the gang had escaped. He got 3 ½ years in Stillwater prison for his efforts.

The plot of the great Seaforth bank robbery of 1910 reads like a Keystone cop episode, except that the guns and the money were real. Seaforth residents were aroused from their beds about 1:30 A.M. April 7 by an explosion that shook the town. Word went around quickly that the bank was being robbed, and many went down to watch. Willie Stanek was watching through the front window of Stanek Hardware when Arion Stanek came in through the back door carrying a lighted lantern. A bullet crashed through the glass in the front door, inches from Willie's head. Arion doused the lantern. Mrs. Jake Becvar also dashed into the hardware despite the shot and the shout to her to get back where she came from.

About 15 minutes after the first blast came the second. Stanek's plate glass window cracked. "Give it another one," someone in the bank said plainly enough to be heard by the onlookers. Wham! The third blast sent the hardware window crashing out of its frame. "Did you get it?" came from the bank. "Three sacks full," was the reply.

Three bandits with $2,400 in loot piled out of the bank and into M. M. Stewart's wagon which they had stolen in Delhi. There was no pursuit, and the robbers had shrewdly cut telephone and telegraph wires into the village before commencing work. Villagers had made no attempt to halt the robbery, the Seaforth correspondent wrote in [480] the *Gazette*, because the night was dark, the bandits meant business, and as one onlooker put it, "My wife would rather have a live coward than a dead hero."

Sheriff Baltazzar C. Schueller had a hunch that the bandits might have found the nearly $1,000 in gold and silver they had stolen too heavy for easy conveyance and would have to return for it. Consequently he alerted several people to be on the lookout for strangers asking directions to Belview, where Stewart's horses and wagon had been abandoned, or Delhi. Sure enough, early the morning of April 14, Redwood Falls garageman Frank Japs was roused from bed by two strangers in a motor car who requested the route to Delhi. After giving directions, Japs informed Schueller who in turn notified his deputy in Belview, A. O. Gimmestad, and another in Delhi to be on the lookout. Schueller's deductions were uncanny. In Belview Gimmestad watched the car stop. A man got out, appeared to retrieve something from the ground, jumped back into the vehicle, and headed east. An attempt was made to stop the car in Delhi, but ineffectual shots only hastened it on its way.

Schueller was waiting in Redwood Falls for word from his deputies, but it came too late. As soon as he did get the telephone call, he buckled on his revolver and headed alone on foot toward the Redwood river bridge, a strategic spot for a roadblock. A. C. Burmeister volunteered to give him a ride, but just as they got to the bridge, the fugitives sped across and on by. Schueller and Burmeister took off in pursuit, catching up at the end of a blind field driveway in the south end of town.

Schueller arrested the pair and was taking them to Burmeister's car when somehow one prisoner got the drop on him, holding a gun to his head. The sheriff shucked his revolver quickly enough, but when ordered to lie on the ground, he rebelled and escaped in a flurry of shots. He reached a nearby farmhouse and telephoned for his deputy, Henry Holdhouse.

Meanwhile the man with the gun searched Burmeister for weapons, then shot a tire on his car and disabled the engine so he could not pursue The ex-prisoners jumped back into their own

car and left. The chase still wasn't over, however. Holdhouse in Jap's car met the pair, turned around and tried to overtake them He finally did when [481] their vehicle became overheated and stopped. The driver quickly surrendered, but the other got away by running, carrying a suitcase with him. Redwood Falls national guard, Company L, next got into the act by arming and carrying on an extensive search. It was a clean getaway

The surrendered driver, it turned out, was a professional chauffeur, hired only to drive out here, not knowing the purpose of the trip until his arrival and then being cowed by his employer's gun.

A man named Charles Adams was arrested that summer and charged with being one of the Seaforth robbers. He proved, however, that he had been in Wisconsin that day, and the court released him in January, 1911.

Redwood county's biggest case of arson also took place in Seaforth. Two Sanborn real estate men, T. H. Jordan and M. E. Garvey, bought the former Gustav Drews Hotel in the Sheridan township village February 1, 1915, from Alvin Longbottom, trading him North Dakota farm land for it. They insured the hotel for $3,000, then on March 22, the partners dealt with J. W. Keyes, drawing up papers in the Seaforth bank showing that Keyes had paid $1,000 and promised to pay $1,000 annually until the $10,000 purchase was met. Jordan and Garvey stayed on at the hotel, however.

Sometime about midnight April 4, Easter Sunday, it was discovered that the hotel was burning Frank Smetak, still a Seaforth resident in 1962, was one of the first in the building to awaken. With lantern in hand he hurried down the halls shouting people out of their beds. The hotel burned to the ground.

People got suspicious and soon Keyes, Jordan and Garvey were under arrest, charged with first degree arson. According to

Keyes' testimony, he had been offered $750 by Jordan to burn the building, and that he started the fire with paper and kereosene in a cold air shaft. No money had exchanged hands in the transaction of Keyes' buying the hotel, for the supposed purchase had been merely a ruse to throw off authorities who might investigate the fire. Garvey was Jordan's dupe, the jury decided, and set him free. Jordan and Keyes each received penitentiary sentences. Two years after the fire, Garvey was indicted again, this time for perjury in connection with his testimony in the arson case. But again the jury decided he was innocent. [482]

There have been a smattering of unusual criminal cases in county history. In 1894, a young man with the true-blue name of U. S. Grant proved to be anything but like the famous American with that name. Indicted on five counts, Grant finally was given seven years of hard labor at Stillwater prison for forging a warranty deed in an attempt to defraud a widow who also claimed an unusual name, Aizina Wylly.

A train crash April 29, 1920 near Lamberton that killed five persons and seriously injured 12 resulted in manslaughter charges against Dan Carroll, Winona station agent who allegedly had arranged for the two trains to meet at Lamberton instead of Sanborn, as was the usual case, but neglected to get the required conductor's signature approval; and against Joseph Tauer, Sanborn telegrapher, blamed for not informing the westbound train engineer of the change. Both men were acquitted in district court here.

On November 19, 1957 three Cottonwood county youths, brothers, Gerald, August and Charles Falk, were indicted on charges of kidnapping a 14-year-old Lamberton boy. The boy told authorities that the trio had forced him into their car November 8, made him drink whiskey and then dumped him out near his home. The boy was found "stiff as a board" in a neighbor's backyard, unconscious from whiskey and the cold. From the boy's

description of his assailants, the Falks were picked up and lodged in Redwood county jail. August and Charles, illiterates, scrawled their names on confessions; Gerald, the oldest and most educated, did not sign.

The trial progressed. Deputy Vince Bestick took the witness stand to explain how he had read the confessions to the youths before they signed. Court adjourned that day before he finshed. County attorney Bob B. Ebbesen, prosecutor, cut Bestick's testimony short the next morning and called the boy back to the stand. The day before he had dramatically stood up in court and pointed out Gerald Falk as the one who had dragged him into the car. This day, however, he talked in small tones, admitting under Ebbesen's questioning that he had completely fabricated the story. That he had stolen his father's liquor and had gotten drunk. That he had never seen the Falks before the first day of the trial. The case had broken on a tip called into Ebbesen the night before.

"We were plenty worried," Gerald Falk admitted later. It was Redwood county's biggest kidnapping case. [483]

Shades of the old, wild, wooly west. Four Morgan men, two of them as bearded as their grandfathers had been in 1880, formed a posse June 2, 1958 and hauled down three fleeing burglars who had been hiding out on an abandoned farm across the line in Brown county. Bearded Vernon Jacobson and Ruben Beilke, preparing for Morgan's Beard and Bustle Days celebration, Ruben's father, August, and Lloyd Schroeder, were among those assisting Brown county sheriff's department in staking out the farm place where strange goings-on had been noted.

Late that night as a car turned into the long driveway, the stake outs began closing in. Suddenly the car headed across the field and back to the road. The four Morgan men jumped into their vehicle. With Jacobson driving, Ruben Beilke firing a shotgun and

his father loading, the chase gained momentum up to 90 miles an hour. Straight into Morgan, a six-mile jaunt, went the cars, bumper to bumper. Around the streets of the village they raced, but as they headed north out of town with Jacobson still clinging within yards of them, the three culprits stopped and gave up. Beilke had hammered out the rear window of the car with shotgun blasts. The driver had a slight wound in his right arm.

Only the night before, the trio had looted two Morgan business places. That was enough for first degree grand larceny charges, and Brown county authorities turned them over to Matson. In district court in Redwood Falls, Calvin Christensen, a former Morgan youth, drew two to 20 years at St. Cloud reformatory, and Dennis Aspaas, Willmar, got up to 10 years with the youth conservation commission. The third member of the gang was a 17-year-old girl who was turned over to juvenile authorities in Kandiyohi county, her home.

The Morgan quartet went happily home, having added the biggest bit of realism any old-time celebration could have.

Deputy Harry Beatty took part in a shooting chase in June 1932. Learning that Clare Wasson, an escaped Colorado convict was heading east, Beatty and a law officer from Iowa staked out a farm about six miles west of Redwood Falls where lived a distant relative of Wasson's. The convict saw the men, however, and headed at a high speed east over state highway 14 (later number 19). Shots were exchanged several times during the course of the chase, but a final bullet stopped [484] Wasson's car on the Redwood Falls bridge and the fugitive surrendered.

Remembering the effectiveness of the Morgan posse, Wabasso residents set up a "vigilante" group in late 1958 to patrol the streets in an attempt to halt a rash of burglaries there, though the series of minor crimes was not confined to the New Avon township village. Most of the burglaries were solved when Donald

Turbes, a Waterbury township youth, confessed after getting caught in Bemidji for a robbery there. He counted up 20 burglaries in Redwood county that he committed in 1958, getting mostly goods such as tires and tools. Nearly all of his loot was recovered from a vacant house southwest of Wabasso. His sentence was two to 10 years at St. Cloud reformatory.

Bernard Hasse, a New Ulm youth, got what was probably the largest single haul from an individual in country history—$2,600 from Hugo Meyer, a Three Lakes township farmer, May 31, 1936. He had worked for Meyer at one time and knew where the farmer kept his strongbox. Meyer remembered the youth and inquiries proved he had been in the neighborhood the day of the robbery. Haase was arrested in a New Ulm garage where he was negotiating to buy a car. He served three years at St. Cloud.

What is the value of a horse compared to an automobile when it comes to stealing them? Leon Densmore stole a $75, four-year-old gelding from Porter L. Gibbs in Brookville township June 12, 1878 and drew three years of hard labor at Stillwater prison. In 1885 Charles Addington and Frans Martinson stole two $125 mares, a $30 harness and a $35 buggy in Lamberton, and each received the same sentence as Densmore. In 1915 Charles Dillon committed the same crime in Redwood Falls, except for taking only one horse, and drew 1½ years. In 1929 in Walnut Grove, Clyde West stole a 1926 Buick valued at $486, for which he also drew 1½ years.

A comedy of crime started when Marshall and Frederick Groves came to Redwood Falls from Sioux Falls, S. D. in 1932. They took a room in George Willcox's house, and then about 7:30 in the morning of May 9 they walked downtown, pointed a loaded revolver at Gilbert Johnson, manager of Gamble-Skogmo store, heisted $35 from the cash register, locked Johnson in the basement and hightailed it out the back door, through the alley and down Mill street. Johnson called Kise as soon as he got out of

the basement, and the sheriff went im-[485]-mediately to Willcox's house. The Groves brothers had had a slight delay in getting away; they took time to hire a driver to take them to Windom. Kise hauled three men out of a car in front of Willcox's and asked Johnson to identify them. He pointed out Freddie, and the other two were the innocent driver and his friend. Marshall was still in their room with the revolver, Freddie said. Kise and L. E. Backer, who went along to help, broke into the second story room and, while Kise wrestled with Marshall, Backer took his gun. The youth managed to get away from the sheriff and ran down the stairs. He saw Freddie in a car and crawled in with him. It was Kise's. Beatty covered them both. At the trial when asked why he got into the sheriff's car, Marshall remarked, "I wanted to help him out a little." Marshall, who gave his occupation as wrestling, said he was 18 or 19; Freddie, 17, who claimed to be a boxer, said Marshall was 20. Both got up to 20 years for the robbery, and Marshall had an extra "not to exceed seven years" for assaulting Kise. When they left the courtroom, Freddie "smiled broadly." Marshall "looked straight ahead." He probably was groggy. When the sentence was read, he had fainted.

A professional criminal, Sidney V. Whitlock, held up George J. Alexander in his gas station in Redwood Falls July 30, 1931, getting seven gallons of gas and $27 in cash. Kise caught up with him in Strawberry Point, Iowa, and slapped him in the county jail to await trial. Whitlock wouldn't wait, however, and October 10 cut his way out the fire escape, stealing Gene Charlebois' car to make his getaway. The car was found in South Dakota, and nine months after his escape Whitlock was picked up in Dubuque, Iowa. Kise brought him back again. And this time he stayed until after his trial. Whitlock's break was the last from the county jail, but there had been others before.

Joe Jettland got out April 27, 1930 when Beatty opened his cell to get the supper dishes. He just "dodged around Beatty and dashed out." Kise's bloodhounds traced him three miles east of town, but

the escape was temporarily successful; he finally was caught in Geneva, Ill. His crime had been rather novel. He and three others were convicted of stealing the several-tons heavy figurehead of the U.S.S. Minnesota which had been placed in Ramsey State park as a state military relic. Piece by piece, the bronze figure had been taken to St. Paul and sold to a junk dealer.

John Steele, a convicted forger, got away from Beatty October 23, [486] 1928 during an inter-cell transfer. The bloodhounds tracked him to Morton and six hours after the escape be was back in jail.

In 1902 Henry Kestelmeyer and Joe Patterson got out by throwing a blanket over the head of Deputy W. S. Crooks as he checked the cells. Earlier they had used a broom handle to lift the bolt on their cell, usually manipulated out of reach of the cells by the jailer. Kestlemeyer was awaiting trial for involvement in a $7 burglary of a Walnut Grove saloon. Patterson was doing a 90-day sentence for disorderly conduct in Vesta. Neither were caught.

Silas Boyer of Revere walked away September 11, 1901 while Sheriff Alvin Small was on duty. He was confined while waiting a grand jury action on a charge of assault.

Frank C. Pease worked open the door of the cell lobby where he was confined September 8, 1900 and simply walked out when Deputy E. P. Byram left the main door open as he checked cells. Out on Saturday, back on Monday. Coincidently, Edward Pease was sheriff at the time, though no mention is made of a relationship between the two men.

Byram was an unlucky jailer whose prisoners seemed to have been obsessed with escape. On July 24, 1900 three men got out through the upstairs fire escape. They were Albert Kighlinger and Fred Wenholz, charged with a Vesta saloon burglary, and Sidney E. Daily, boarded here by Renville county authorities while waiting trial on pickpocket charges.

Four others almost made it the year before, but Byram spotted that one in time. An attempt had been made to cut out through the south wall October 1 with two knives and a small iron rod.

Another jail escape artist involved in Redwood crime was Ernest Swenson. Three times he got out of the Pipestone county jail and each time he was picked up in Redwood county and returned. He was to serve a 90-day jail sentence here for hog theft when his Pipestone term ended, but each jail break added time until finally he was committed to Stillwater state prison for four years.

Embezzlements ranked high among popular crimes in Redwood county, but most of them were of a minor nature, and several charges turned out to be the result of poor bookkeeping. Like bank robberies, however, embezzlement (the charge is actually larceny) was profitable, with goodly amounts taken but scant penalties paid. Banks in Red--[487]-wood Falls, Morgan, Wabasso and Lamberton were involved in major embezzlement cases.

One of the County's most prominent citizens, O. B. Turrell, and his son, Robert, were indicted for shady operations in Citizens State Bank in Redwood Falls in 1895. Turrell had been one of the county's largest landholders in the 1870's; he had served as a county commissioner and a state representative; but after suffering financial reverses, he went to work in the bank. At the time of the indictments, he was cashier and his son, assistant cashier. O. B. was indicted on three counts of receiving deposits in an insolvent bank (Citizens State was involved in long, complicated suits due to insolvency), but finally he was found innocent by the jury in two cases and the third was dismissed on insufficient evidence.

Robert was not so fortunate. His indictment was for a shortage of $3,000 in 1893, during a manipulation of notes. He admitted the shortage, denied being responsible, and the jury found him guilty

of taking $1,195. Sentenced May 15, 1896 to Stillwater under the "reformatory plan," he was out on parole by the following October.

Lamberton and Morgan were rocked by scandal in 1924, when three of State Bank of Lamberton's officers and the ex-president of Farmer's and Merchant's Bank of Morgan were all indicted on grand larceny charges. All four had been popular men, prominent in their communities—L. Redding, vice president; Otto J. Schmid, cashier; and L. J. Wilt, assistant cashier, Lamberton; and J. C. Jackson, Morgan.

Charges against Schmid and Wilt were soon dismissed for lack of sufficient evidence, but Redding and Jackson were tried for shortages of several thousand dollars in their respective banks. Redding owned several farms in the Lamberton vicinity, was president of the Revere State Bank and had gained a wide reputation for his business ability. He was "one of the most accurate bankers in the state," the *Gazette* reported in 1901, 23 years before his indictment, after the editor had chatted with state bank examiners. The jury had a different opinion, however. It found him innocent of embezzlement on the assumption that he had simply made several very bad loans. In a change of tone (and also editor) from its long-before statement, the *Gazette* commented that Redding was acquitted because he had "no intent to steal, his intention being to replace the funds taken from the bank." Jackson was brought back from California, where he had lived two [488] years previously, to be found guilty of embezzling $1,700. (Original figure was $13,000.) Several other charges, including forgery, were dropped and he drew a sentence not to exceed two years. He had come to Morgan in 1906 and bought into the bank. He had a wide-spread real estate business, had been president of the village council and clerk of the school board. His was one of the finest homes in Morgan, and his family spent the summers in their cabin on Green Lake. Jackson was probably the most influential man convicted of a major crime in Redwood county.

County treasurer E. C. Riebel received a one to seven-year

sentence at Stillwater in 1959 for embezzling an estimated $25,000 of county tax funds over a four-year period. Crippled by polio since childhood, Riebel had tried for the office three times before his election in 1954, and had won re-election in 1958. Also implicated in the crime was Otto H. Smid, deputy treasurer at the time of Riebel's election, and for about two years under him. Redwood Falls city clerk when auditors turned up the shortage, Smid confessed and reportedly made restitution of about $2,500, the total amount he had taken. Statute of limitations had run out on embezzlement charges against Smid, but he was convicted of being accessory to a felony for aiding Riebel in a cover up in 1958. His five-year sentence was stayed.

William H. Hawk, clerk of district court, was indicted in 1880 for misappropriating funds left in his custody "by a private citizen." Charges were dismissed two years later, however, on the grounds that as a county officer he was not the proper depository of the money and therefore not responsible. That he had taken the money for his own use was not denied. Hawk was a pioneer of Sundown township, a member of the first town board there, and had served as a county commissioner in the early 1870's.

Michael M. Madigan came to Lamberton to practice law in 1879, and that same year served as the village's first council president and as county superintendent of schools. He took office as county attorney January 4, 1887 and was the county's prosecutor in the convictions of the three murderers of 1888, Gorres, Rose and Holden, a record no other county attorney approached. But Madigan himself came afoul of the law April 5, 1893 when before a notary public he swore in an affidavit that he represented Peter N. Romnes in a $500 suit against [489] Halver T. Helgeson and Ole H. Mogen, all of Belview. An antedated check for that amount had already been made out by the two men, partners in an insolvent Belview store, on Madigan's advice and after signing the affidavit he obtained a writ of attachment on the check.

The lawyer was charged with perjury before the notary public, and during the trial at New Ulm Madigan requested change of venue —it was brought out that Romnes had no money owed him and that he had not hired Madigan to represent him. It was a case that had more undertones than a poor painting job, but Madigan was found guilty and sentenced to three years and three months at Stillwater state prison. He appealed without avail to the state supreme court.[13] S. L. Pierce was appointed to finish Madigan's fourth term as county attorney.

After he served his sentence, Madigan returned to Redwood Falls and renewed his law practice. Still rankling at what he considered an injustice, he instigated action to have his conviction set aside. Judge Weber—who also had sentenced the three murderers Madigan helped convict—denied the move, and again Madigan appealed to the state supreme court.[14] This time he not only lost his case there, but the state bar association disbarred him from law practice in Minnesota. He moved to Seattle, Washington, and was accepted by the bar association there.

The criminal side of a county's populace is the least pleasant of all aspects of history; nevertheless it is as much a part of the pattern of development as any other, and crimes serve to mold proportionately their share of the history just as do the deeds of honor.

The sheriff and his deputies were the only law enforcement men county government required until 1959 when an agreement was reached with Renville county to share its probation and juvenile officer, Robert J. O'Brien. He still held the job in 1962.

Redwood county had 18 sheriffs in its first 100 years, and 13 of those served during the first half century. John R. Thompson, one

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[13] *State of Minnesota v. Michael M. Madigan*, 57 Minn. 425 (1894) (Canty, J.).

[14] *State of Minnesota v. Michael M. Madigan*, 66 Minn. 10 (1896) (per curium, Canty J., concurring).

of the first Redwood Falls stockade settlers, was sheriff number one, serving April 19, 1865 to January 2, 1866. He and Charles W. Mead were the only ones to serve unconsecutive terms.

After Thompson's first term: (Office was taken the first week of January unless otherwise stated.) Norman Webster, 1866—68; Thompson, [490] January 1–March 2, 1868; Charles P. Griswold, March 2, 1868–70; Thomas McMillan 1871–75; James Durtnal 1876–77; David B. Whit-more 1878–79; A. L. Gale 1880–81; Melville B. Abbett 1882–86; Charles W. Mead, 1887–92; Casper Blethen 1893–April 9, 1895; Mead, April 9, 1895–96; Edward A. Pease, 1897–1900; Alvin Small 1901–02 Baltazzar C. Schueller 1903–12; Frank J. Hassenstab 1913–18; Lauritz J. Kise 1919–42; George J. Matson 1943–. ■

APPENDIX

REDWOOD COUNTY CASES DECIDED BY U. S. SUPREME COURT

Case Pages

Gut v. State

76 U.S. (9 Wall.) 35 (1869)

1. A law of a state changing the place of trial from one county to another county in the same district, or even to a different district from that in which the offense was committed or the indictment found, is not an *ex post facto* law, though passed subsequent to the commission of the offense or the finding of the indictment. An *ex post facto* law does not involve, in any of its definitions, a change of the place of trial of an alleged offense after its commission.

2. The decision of the highest court of a state that an act of the state is not in conflict with a provision of its constitution is conclusive upon this Court.

Error to the Supreme Court of Minnesota. The case was thus:

A statute of Minnesota, in force in 1866, required that criminal causes should be tried in the county where the offenses were committed. The offense charged against the defendant was committed in December of that year, in the [36] County of Brown in that state. At that time, four other counties, which were unorganized, were attached to Brown County for judicial purposes. On the 9th of March, 1867, a statute was passed by the legislature of the state authorizing the judge of the district court, in cases where one or more counties were attached to another county for judicial purposes, to order, whenever he should consider it to be in furtherance of justice, or for the public convenience, that the place of holding the court should be changed from the county then designated by law to one of the other counties thus attached.

Under this act the judge of the district embracing Brown County ordered that the place of holding the court should be changed from that county to the County of Redwood, within the same district, and the change was accordingly made. The court subsequently held its sessions in Redwood County, where the

defendant, in September, 1867, was indicted for murder in the first degree. The plea of not guilty having been interposed the case was transferred, on his motion, to Nicollet County, in an adjoining district, where he was tried, convicted, and sentenced. On appeal to the supreme court of the state, the judgment was affirmed, and the case was now brought to this Court under the 25th section of the Judiciary Act.

Mr. E. M. Wilson, for the plaintiff in error, contended in this court, as it was also contended in the court below, that the act of Minnesota, under which the court was held in Redwood County, and the grand jury were summoned, was unconstitutional so far as it authorized an indictment or trial there of an offence previously committed in Brown County; that it was in effect an *ex post facto* law, and, therefore; within the inhibition of the Federal Constitution.

Mr. F. R. E. Cornell, Attorney-General of Minnesota, contra.

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court as follows:

The objection to the act of Minnesota, if there be any, [37] does not rest on the ground that it is an *ex post facto* law, and therefore within the inhibition of the federal Constitution. It must rest, if it has any force, upon that provision of the state constitution which declares that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law."

But the supreme court of the state has held that the act in question is not in conflict with this provision; that the act does not change the district, but merely the place of trial in the district, which is not forbidden. And it appears that jurors for the trial of

criminal offenses committed in one of the counties of the several attached together for judicial purposes, are chosen from all the counties; and that this was the law before, as it has been since the passage of the act which is the subject of complaint. Therefore the defendant, had he not secured, by his own motion, a change of venue, would have had a jury of the district in which the crime was committed, and which district was previously ascertained by law.

The ruling of the state court is conclusive upon this Court, upon the point that the law in question does not violate the constitutional provision cited.[1]

Undoubtedly the provision securing to the accused a public trial within the county or district in which the offense is committed is of the highest importance. It prevents the possibility of sending him for trial to a remote district, at a distance from friends, among strangers, and perhaps parties animated by prejudices of a personal or partisan character; but its enforcement in cases arising under state laws is not a matter within the jurisdiction of the federal courts.

A law changing the place of trial from one county to another county in the same district, or even to a different district from that in which the offense was committed, or the [38] indictment found, is not an ex post facto law, though passed subsequent to the commission of the offense or the finding of the indictment. An ex post facto law does not involve, in any of its definitions, a change of the place of trial of an alleged offense after its commission. It is defined by Chief Justice Marshall, in *Fletcher v. Peck*,[2] to be a law, "which renders an act punishable in a manner in which it was not punishable when it was committed," and in *Cummings v. Missouri*,[3] with somewhat greater fullness, as a law "which

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[1] Randall v. Brigham, 7 Wall. 541; Provident Institution v. Massachusetts, 6 Wall. 630.

[2] 10 U. S. (6 Cranch) 138.

[3] 71 U. S. (4 Wall.) 326.

imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence, by which less or different testimony is sufficient to convict than was then required."

The act of Minnesota under consideration has no feature which brings it within either of these definitions.

Judgment affirmed.

Holden v. Minnesota

137 U.S. 483 (1890)

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

Section 4 of the Minnesota statute of April 24, 1889, Gen. (Laws Minn. 1889, c. 20,) providing that in case of sentence of death for murder in the first degree, the convict shall be kept in solitary confinement after the issue of the warrant of execution by the governor, and only certain persons allowed to visit him, is an independent provision, applicable only to offenses committed after its passage, and is not *ex post facto*.

Section 7 of that statute, which repeals all acts or parts of acts inconsistent with its provisions, does not repeal the previous statute which prescribes the punishment of murder in the first degree by death by hanging, and that the execution should take place only after the issue of a warrant of execution.

Section 3 of that statute, which requires the punishment of death by hanging to be inflicted before sunrise of the day on which the execution

takes place, and within the jail or some other enclosure higher than the gallows, thus excluding the view from persons outside, and limiting the number of those who may witness the execution, excluding altogether reporters of newspapers, are regulations that do not affect the substantial [484] rights of the convict, and are not *ex post facto* within the meaning of the Constitution of the United States even when applied to offenses previously committed.

The provisions of a statute cannot be regarded as inconsistent with a subsequent statute merely because the latter reenacts or repeats those provisions.

The case of *Medley*, *Petitioner*, 134 U. S. 160, distinguished from this case.

The statutes of Minnesota authorizing the governor to fix by his warrant the day for the execution of a convict sentenced to suffer death by hanging are not repugnant to the constitutional provision that no person shall be deprived of life without due process of law, it being competent for the legislature to confer either upon the court or the executive the power to designate the time when such punishment shall be inflicted.

This was a petition for a writ of *habeas corpus*. The writ was denied by the court below, from which judgment the petitioner appealed. The case is stated in the opinion.

Mr. Charles C. Willson, for petitioner, appellant.

Mr. H. W. Childs, opposing, and Mr. Moses E. Clapp, Attorney General of the State of Minnesota, was with him on the brief.

MR. JUSTICE HARLAN delivered the opinion of the Court.

By an indictment returned May 15, 1889, in the District Court of Redwood county, Minnesota, Clifton Holden was charged with the crime of murder in the first degree, committed in that county on the 23d day of November, 1888. Having been found guilty, and a motion for a new trial having been overruled, he prosecuted an

appeal to the supreme court of the state. That court affirmed upon the merits the order denying the motion for a new trial, and remitted the case to the district court. *State v. Holden*, 42 Minn. 350. In the latter court it was adjudged February 18, 1890, that, as a punishment for the crime of which he had been convicted, Holden be confined in the common jail of Brown County (there being no jail in Redwood County), and that thereafter, and after the lapse of three calendar months from the date of the sentence, and at a time to be designated in the [485] warrant of the governor of the state, he be taken to the place of execution and hanged by the neck until dead. Gen. Stat. Minn. 1878, c. 117, § 1.

On the 21st of May, 1890, the governor issued a warrant to the sheriff which, after reciting the judgment, commanded and required him to cause execution of the sentence of the law to be done upon the convict on Friday, the 27th day of June, 1890, before the hour of sunrise of the day last named at a place in the County of Redwood, to be selected by such officer, "conformably with the provisions of section 3 of an act entitled 'An act providing for the mode of inflicting the punishment of death, the manner in which the same shall be carried into effect, and declaring a violation of any of the provisions of this act to be a misdemeanor,' approved April 24, 1889."

The accused, being in custody under the above judgment and warrant, presented to the Circuit Court of the United States for the District of Minnesota his written application for a writ of habeas corpus based upon the ground that he was restrained of his liberty in violation of the Constitution of the United States. The writ was issued, and the officers having charge of the accused made a return to which the petitioner filed an answer. The Attorney General of Minnesota appeared on behalf of the state, insisting that the detention of the petitioner was not in violation of the supreme law of the land. Upon final hearing, the application for discharge was denied. From that order the present appeal was taken under section 764 of the Revised Statutes as amended by

the Act of March 3, 1885, 23 Stat. c. 353, p. 437.

The principal question before us depends upon the effect to be given to the act, referred to in the governor's warrant, of April 24, 1889. That act is as follows:

"§ 1. The mode of inflicting the punishment of death shall in all cases be hanging by the neck until the person is dead."

"§ 2. Whenever the punishment of death is inflicted upon any convict in obedience to a warrant from the governor of the state, the sheriff of the county shall be present at the execution, unless prevented by sickness or other casualty, and [486] he may have such military guard as he may think proper. He shall return the warrant with a statement under his hand of doings thereon as soon as may be after the said execution to the governor, and shall also file in the clerk's office of the court where the conviction was had an attested copy of the warrant and statement aforesaid, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence."

"§ 3. The warrant of execution shall be executed before the hour of sunrise of the day designated in the warrant and within the walls of the jail in all cases where the jail is so constructed that it can be conveniently done therein, but when the jail is not so constructed, the warrant shall be executed within an enclosure which shall be higher than the gallows, and shall exclude the view of persons outside, and which shall be prepared for that purpose, under the direction of the sheriff, in the immediate vicinity of the jail; or, if there be no jail in the county at some convenient place at the county seat, to be selected by the sheriff."

"§ 4. After the issue of the warrant for execution by the governor, the prisoner shall be kept in solitary confinement, and the following persons shall be allowed to visit him, but none other, viz., the sheriff and his deputies, the prisoner's counsel, any priest

or clergyman the prisoner may select, and the members of his immediate family."

"§ 5. Besides the sheriff and his assistants, the following persons may be present at the execution, but none other: the clergy man or priest in attendance upon the prisoner, and such other persons as the prisoner may designate, not exceeding three in number, a physician or surgeon, to be selected by the sheriff, and such other persons as the sheriff may designate, not exceeding six in number, but no person so admitted shall be a newspaper reporter or representative. No account of the details of such execution, beyond the statement of the fact that such convict was on the day in question duly executed according to law, shall be published in any newspaper."

"§ 6. Any person who shall violate or omit to comply with any of the provisions of this act shall be guilty of a misdemeanor. " [487]

"§ 7. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

"§ 8. This act shall take effect and be in force from and after its passage." Gen. Laws Minn. 1889, c. 20, p. 66.

The contention of the appellant is that by the law of Minnesota, in force when the alleged crime was committed and up to the passage of the Act of April 24, 1889, the punishment for murder in the first degree was death, without solitary confinement of the convict; that the act of that date, adding the penalty of solitary confinement between the date of the governor's warrant and the execution, would, if applied to previous offenses, be *ex post facto* in its nature, and therefore was inconsistent with the prior law, and that inasmuch as that act made no saving as to previous offenses, and repealed all acts and parts of acts inconsistent with its provisions, there was no statute in force, after the 24th of April, 1889, prescribing the punishment of death for murder in the first

degree committed before that date. While this may not be expressed in terms, it is in fact the contention of the appellant, the argument in his behalf necessarily leading to this conclusion, for he insists that the repeal by the seventh section of the act of 1889 of all prior inconsistent laws was an act of complete amnesty in respect to all offenses of murder in the first degree previously committed, making subsequent imprisonment therefor illegal. Whether such was the result of that act, interpreted in the light of prior statutes, is the principal question on this appeal.

By the General Statutes of Minnesota in force at the close of the legislative session of 1878, it was provided (c. 94) that the killing of a human being without the authority of law and with a premeditated design to effect the death of the person killed or any human being was murder in the first degree, § 1, and that whoever was convicted thereof should suffer the penalty of death, and be kept in solitary confinement for a period of not less than one month nor more than six months, in the discretion of the judge before whom the conviction was had at the expiration of which time it became the duty of the governor to issue his warrant of execution. (Gen. Stat. 1878, § 2, pp. 882-3). Other sections of the same [488] chapter were as follows: "§ 3. The penalty of death as a punishment for crime is hereby abolished in this state, except in the cases provided for in section two of this act, and hereafter the penalty for the crime of murder in the first degree shall be as prescribed in sections two and three of this act. (1868, c. 88, § 1.) § 4. Whenever, upon the trial of any person upon an indictment for murder in the first degree, the jury shall have agreed upon a verdict of guilty of such offense, such jury may also determine in the same manner that the person so convicted shall be punished by death, and, if they so determine, shall render their verdict accordingly, and in such case the person so convicted shall be punished by death, as prescribed by section two of chapter ninety-four of the General Statutes for the punishment of murder in the first degree. (Id. § 2.) § 5. Whoever shall be convicted of murder in the first degree, if the jury upon whose

conviction the penalty is inflicted shall not by their verdict prescribe the penalty of death, shall be punished by imprisonment at hard labor in the state prison during the remainder of the term of his natural life, with solitary confinement upon bread and water diet for twelve days in each year during the term, to be apportioned in periods of not exceeding three days' duration each, with an interval of not less than fourteen days intervening each two successive periods. (Id. § 3.) § 6. The provisions of this act shall not apply nor extend to an act done nor offense committed prior to the passage hereof, but the provisions of law now in force, and applicable to the crime of murder in the first degree, as well in respect to the penalty affixed to the commission of such crime as in all other respects, shall be and remain in full force and effect as to any such offense heretofore committed. (Id. § 4.) § 7. That in all cases where the time of imprisonment is during life, solitary imprisonment in the state prison is hereby abolished, except for prison discipline. (1876, c. 79, § 1.)”

By chapter 118 of the same General Statutes it was provided: "§ 3. When any person is convicted of any crime for which sentence of death is awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to [489] the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict until a warrant is issued by the governor, under the seal of the state, with a copy of the record thereto annexed, commanding the sheriff to cause the execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict. § 4. The judge of the court at which a conviction requiring judgment of death is had shall, immediately after conviction, transmit to the governor, by mail, a statement of the conviction and judgment, and of the testimony given at the trial.”

"§ 11. The punishment of death shall, in all cases, be inflicted by

hanging the convict by the neck until he is dead, and the sentence shall at the time directed by the warrant be executed at such place within the county as the sheriff shall select. § 12. Whenever the punishment of death is inflicted upon any convict, in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless prevented by sickness or other casualty, and he may have such military guard as he may think proper. He shall return the warrant, with a statement under his hand of his doings thereon, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had an attested copy of the warrant and statement aforesaid, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence."

The next statute in point of time was that of March 3, 1883, entitled "An act prescribing the punishment of murder in the first degree." It provided that "Whoever is guilty of murder in the first (1st) degree shall suffer the punishment of death: *Provided* That if in any such case the court shall certify of record its opinion that, by reason of exceptional circumstances, the case is not one in which the penalty of death should be imposed, the punishment shall be imprisonment for life in the penitentiary." That act repealed sections three, four, five, and six of chapter 94 of the General Statutes of 1878, as well as [490] all acts and parts of acts inconsistent with its provisions. Minn. Sess. Laws 1883, c. 122, p. 164.

Then came the Act of March 9, 1885, establishing a Penal Code, and which went into effect January 1, 1886. It contained, among others, the following sections: "§ 152. The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when perpetrated with a premeditated design to effect the death of the person killed, or of another." "§ 156. Murder in the first degree is punishable by death: *Provided* That if in any such case the court shall certify of record its opinion that, by reason of

exceptional circumstances, the case is not one in which the penalty of death should be imposed, the punishment shall be imprisonment for life in the state prison." "§ 541. Chapters ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, and one hundred one of the General Statutes of 1878, and all acts and parts of acts which are inconsistent with the provisions of this act, are repealed so far as they define any crime or impose any punishment for crime, except as herein provided." Gen. Stat. Minn., Supplement 1888, vol. 2, 969, 971, 1050. It is important to be here observed that chapter 94, thus repealed, authorized (§ 2) the keeping of one convicted of a capital crime in solitary confinement for a period of not less than one nor more than six months, in the discretion of the judge before whom the conviction was had.

Such was the state of the law in Minnesota at the time of the commission by Holden of the crime for which he was indicted and convicted. As the Penal Code did not repeal chapter 118 of the General Statutes of 1878, except so far as the provisions of the latter were inconsistent with that Code, it is apparent that at the time his offense was committed, the punishment therefor was, as prescribed in that chapter, death by hanging, and that his execution could not occur until a warrant for that purpose was issued by the governor. These provisions were not repealed by the Act of April 24, 1889. In respect to the first and second sections of that act, it is clear that they contain nothing of substance that was not in sections [491] eleven and twelve of chapter 118 of the General Statutes of 1878. And it is equally clear that the provisions of an existing statute cannot be regarded as inconsistent with a subsequent act merely because the latter reenacts or repeats those provisions. As the act of 1889 repealed only such previous acts and parts of acts as were inconsistent with its provisions, it is inaccurate to say that that statute contained no saving clause whatever. By necessary implication, previous statutes that were consistent with its provisions were unaffected.

In reference to the third section of the act of 1889, it may be said that while its provisions are new, it cannot be regarded as in any sense *ex post facto*, for it only prescribes the hour of the day before which, and the manner in which, the punishment by hanging shall be inflicted. Whether a convict sentenced to death shall be executed before or after sunrise, or within or without the walls of the jail, or within or outside of some other enclosure, and whether the enclosure within which he is executed shall be higher than the gallows, thus excluding the view of persons outside, are regulations that do not affect his substantial rights. The same observation may be made touching the restriction in section five as to the number and character of those who may witness the execution and the exclusion altogether of reporters or representatives of newspapers. These are regulations which the legislature, in its wisdom and for the public good, could legally prescribe in respect to executions occurring after the passage of the act, and cannot, even when applied to offenses previously committed, be regarded as *ex post facto* within the meaning of the Constitution.

The only part of the act of 1889 that may be deemed *ex post facto,* if applied to offenses committed before its passage and after the adoption of the Penal Code, is section four, requiring that after the issue of the warrant of execution by the governor, "the prisoner shall be kept in solitary confinement" in the jail, and certain persons only be allowed to visit him. The application for the writ of *habeas corpus* states that the appellant is kept in solitary confinement, but this was denied in the return to the writ, and there is no proof in [492] the record upon the subject. *Crowley v. Christensen*, 137 U. S. 86, 94. The appellant insists that we must presume that the officers holding him in custody have pursued the statute of 1889, and, consequently that he is kept in solitary confinement. No such presumption can be indulged without imputing to the officers charged with the execution of the governor's warrant a purpose to enforce a statutory provision that

cannot legally be applied to the case of the appellant. Even the governor's warrant furnishes no ground for such a presumption, because it did not require that the convict be kept in solitary confinement, but only that the judgment and sentence be carried into effect conformably to the third section of the act of 1889, which section, we have seen, has no reference to the mode of confinement.

We have proceeded in our examination of the case upon the ground that the prior statutes requiring the punishment of death to be inflicted by hanging, and the issuing by the governor of the warrant of execution before such punishment was inflicted, were consistent with, and were not repealed by, the act of 1889, and therefore so far as the mere imprisonment of the appellant and his execution in conformity with prior statutes were concerned, they could both occur without invoking the provision in the act of 1889, requiring solitary confinement after the warrant of execution was issued. This view, appellant contends, is not in harmony with the decision in *Medley Petitioner*, 134 U. S. 160, where it was held that the effect of a clause in the Colorado statute, repealing all acts and parts of acts inconsistent with its provisions, was to bring Medley's case under that statute in *all* particulars of trial and punishment, except so far as the legislature had power to apply other principles to the trial and punishment of the crime of which he was convicted.

There are material differences between the Colorado and Minnesota statutes. The former provides that "the punishment of death must, in each and every case of death sentence pronounced in this [that] state, be inflicted by the warden of the state penitentiary," etc. §1. It also contains this provision: "Whenever a person [be] convicted of crime the punishment whereof [493] is death, and such convicted person be sentenced to suffer the penalty of death, the judge passing such sentence shall appoint and designate in the warrant of conviction a week of time within which such sentence must be executed. Such week so

appointed shall be not less than two nor more than four weeks from the day of passing such sentence. Said warrant shall be directed to the warden of the state penitentiary of this state, commanding said warden to do execution of the sentence imposed as aforesaid upon some day within the week of time designated in said warrant, and it shall be delivered to the sheriff of the county wherein such conviction is had, who shall, within twenty-four hours thereafter, proceed to the said penitentiary and deliver such convicted person, together with the warrant as aforesaid, to the said warden, who shall keep such convict in solitary confinement until infliction of the death penalty." § 2. These provisions indicate the purpose of the Legislature of Colorado that that act -- no matter when the offense was committed -- should control in every case *tried* after its passage in which the sentence of death was imposed. It was evidently intended that it should cover the whole subject of the trials and sentences in capital cases, as well as the mode of inflicting the punishment prescribed. It was so interpreted by the state court, for, although Medley's crime was committed before the passage of the Colorado statute under which he was tried, the imposition of solitary confinement was part of the very judgment and sentence against him. Thus interpreted, this court held the Colorado statute to be a legislative declaration that it was not fit that the existing law remain in force, and consequently that it abrogated all former laws covering the same subject, and was *ex post facto* when applied to prior offenses.

No such case is before us, and no such construction of the Minnesota statute of 1889 is required. The sentence against the appellant did not require that he be kept in solitary confinement. Nor did that statute cover the whole subject of murder in the first degree, or prescribe the only rules that should control in the trial and punishment for crimes of that class. It did not touch the judgments to be pronounced in [494] such cases, nor interfere with the power of the governor to issue a warrant of execution. The provisions of the previous law, as to the nature of the

sentence, the particular mode of inflicting death, and the issuing by the governor of the warrant of execution before the convict was hung, were therefore not repealed, although some of them were reenacted or repeated in the statute of 1889, and other provisions, relating merely to the time and mode of executing the warrant, but not affecting the substantial rights of the convict, were added. Indeed, as the act of 1889 does not itself prescribe the punishment of death for murder in the first degree, the authority to inflict that punishment, even for an offense committed after its passage, must be derived from the previous law. The only interpretation of that act that will give full effect to the intention of the legislature in respect to the prior unrepealed law relating to sentences of death for murder in the first degree committed before its passage is to hold, as we do, that its fourth section, prescribing solitary confinement, is an independent provision, applicable only to future offenses, not to those committed prior to its passage.

In this view, and as it does not appear that the appellant is kept in solitary confinement, there is no ground upon which it can be held that his mere imprisonment, in execution of the sentence of death, is in violation of the constitutional provision against *ex post facto* laws. That sentence, the subsequent imprisonment of the convict under it, without solitary confinement, and the warrant of execution are in accordance with the law of the state as it was when the offense was committed, and do not infringe any right secured by the Constitution of the United States.

Much was said at the argument in reference to section 3 of chapter 4 of the General Statutes of 1866, declaring that "Whenever a law is repealed which repealed a former law, the former law shall not thereby be revived unless it is so specially provided, nor shall such repeal affect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the law repealed." This section was admitted to be a part of the law [495] of Minnesota at the time

the appellant's offense was committed and when the act of 1889 was passed. On behalf of the State it is contended that the former law for the punishment of murder in the first degree is to be read in connection with that section. We have not deemed it necessary to consider whether that section is applicable to capital cases or to determine whether the punishment of death is, within its meaning, a "penalty." Independently of that section, and for the reasons stated, we hold that the act of 1889, although applicable to offenses committed after its passage, did not supersede the prior law prescribing, as the punishment for murder in the first degree committed prior to April 24, 1889, death by hanging, to be inflicted after the issue by the governor of a warrant of execution.

Among the assignments of error by the appellant is one to the effect that "The judgment of the State District Court that he be hanged at a time to be fixed by the Governor of Minnesota was not a valid exercise of judicial authority or due process of law thus to deprive him of life at such time as the executive should arbitrarily appoint." We do not understand the counsel of the appellant to press this point. But as this assignment of error has not been formally withdrawn, and as human life is involved in our decision, it is proper to say that under the law of Minnesota at the time appellant committed the crime of which he was convicted as well as when he was indicted and tried, the day on which the punishment of death should be inflicted depended upon the warrant of the governor. It is competent for the State to establish such regulations, and they are entirely consistent with due process of law. The court sentenced the convict to the punishment prescribed for the crime of murder in the first degree, leaving the precise day for inflicting the punishment to be determined by the governor. The order designating the day of execution is, strictly speaking, no part of the judgment unless made so by statute, and the power conferred upon the governor to fix the time of infliction is no more arbitrary in its nature than the same power would be if conferred upon the court. Whether conferred upon the governor or the court, it is arbitrary in no [496]

other sense than every power is arbitrary that depends upon the discretion of the tribunal or the person authorized to exercise it. It may be also observed that at common law the sentence of death was generally silent as to the precise day of execution. *Atkinson v. The King*, 3 Bro. P.C. 2d ed. 517, 529; *Rex v. Rogers*, 3 Burrow 1809, 1812*; Rex v. Doyle,* 1 Leach, 4th ed. 67*; Cathcart v. Commonwealth*, 73 Penn. St. 108, 115; *Costley v. Commonwealth*, *Commonwealth v. Costley*, 118 Mass. 1, 35. Of course, if the statute so requires, the court must, in its sentence, fix the day of execution. Equally must it forbear to do that if the statute confers upon some executive officer the power to designate the time of infliction.

Judgment affirmed.

MR. JUSTICE BRADLEY and **MR. JUSTICE BREWER** concurred in the judgment.

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