

# “An Incomplete History of the Establishment of Courts in Minnesota”\*

by

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At a banquet held by the Hennepin County Bar Association more than one year ago, I became reminiscent and related a few incidents of my early experience in the Courts of Northern Minnesota, as we are apt to call that part of our State lying North of the twin cities, when, as a matter of fact, the center of the State is more than one hundred twenty-five miles north of St. Paul and Minneapolis. My few hastily

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\* MLHP editor's note: This essay is incomplete. Its author, Loren Warren Collins, died before he could finish it. It was to be a longer, written version of a speech he gave in 1911 to the Hennepin County Bar Association on the history of the bench and bar in Minnesota. His son, Louis L. Collins of Minneapolis, gave a thirteen page, typewritten draft of the paper containing his father's handwritten additions and corrections to the Minnesota Historical Society on January 9, 1913. The paper that follows contains all the author's handwritten changes. His punctuation, spelling and the order of his paragraphs have not been altered. It is reproduced with the written permission of the Minnesota Historical Society.

Collins was born on August 7, 1838, and died on September 27, 1912. He served as associate justice of the Minnesota Supreme Court from November, 1887, when he was appointed to the court by Governor McGill, to April, 1904, when he resigned to run for governor on the Republican ticket. For an account of his unsuccessful candidacy, see "The Dunn-Collins Contest for Governor in 1904" in Harlan Page Hall, *H. P. Hall's Observations, Being More or Less a History of Political Contests in Minnesota From 1849 to 1904* 317-344 (1905). For biographical sketches of Collins see "Loren Warren Collins," in Marion D. Shutter and J. S. McLain, eds., *Progressive Men of Minnesota* 32 (1897); "Loren Warren Collins," in Hiram F. Stevens, I *Bench and Bar of Minnesota* 129-130 (1904); and Russell Gunderson, *History of the Minnesota Supreme Court* §XIII (1939). A memorial to Collins appears at 15 *Minnesota Historical Society Collections* 757-762 (1915). In addition to the present essay, Collins wrote an 86 page, posthumously published autobiography, *The Story of a Minnesotan* (1913), and a 22 page military memoir, *The Expedition Against the Sioux Indians in 1863 Under Gen. Henry H. Sibley* (1895). He also wrote a tribute to a friend, "David Lansing Kinsburg," 15 *Minnesota Historical Society Collections* 779-800 (1915).

prepared remarks led to a request from our very active Secretary that I prepare an address on Judicial History and add to it some reminiscences of a personal character, and here I am. Possibly in extenuation of my audacity, I might say that I came to Minnesota Territory in 1854 and have personally known all of our Supreme Court Justices with but three exceptions, and these in Territorial days, and have also enjoyed the acquaintance of every District Judge in the State, and also that of the gentlemen who presided in the Courts of Common Pleas, the few years that such courts existed. For the sake of conciseness as well as for consecutiveness, I shall first become a historian and then take up some of the events in which I participated after locating at St. Cloud, fresh from the Army after three years service and mighty fresh in my profession.

In the fall of 1856, after spending a few months in my native State, Massachusetts, I returned to my father's family at the townsite of Lewiston, on the Cannon River, Dakota County, about five miles below Northfield. There was a pestiferous Justice of the Peace there and he made litigation in his Court very active; two or three law-suits a week were the rule and we had two pettifoggers who usually appeared before him. Although I was very young, I soon took part, a very small part, I now remember, in these suits and naturally drifted into the study of law, aided by Honorable Seagrave Smith, who then resided at Hastings, one of the members of the firm of Smith, Smith & Crosby. Lewis Smith, a New Hampshire man, was the senior member. Seagrave was from Connecticut, while Crosby was from Vermont, all good lawyers and their firm was the leading firm in Hastings. In 1861, I went into their office as a student. In January, 1862, the firm dissolved and after that I was with Judge Crosby until I enlisted in August of that year. At the terms of Court in Hastings, I met nearly all of the St. Paul attorneys as they attended regularly all terms. After mustering out of the service in August, 1865, I spent six months in Alabama as a Treasury agent, where I had been stationed three months while in the Army. I located for the practice of law at St. Cloud going there in May, 1866, and was in active practice there until April, 1883, and then succeeded Honorable James M. McKelvey as Judge of the District Court, 7th Judicial District, holding that position until November, 1887. So you will see that my opportunities

for making acquaintances among the lawyers of those early days were excellent.

As before stated the 7th Judicial District had just been created, the Act taking effect August 1st and this district really covered more than half the State, in area, with not to exceed 16,000 white people. Terms of Court had previously been held in Stearns, St. Luis, Benton, Morrison and Otter Tail, but not to exceed two in number in each County. Lawyers were not abundant; we had seven in St. Cloud, one at Sauk Center, two in Sauk Rapids, one at Little Falls and two at Duluth. In passing I may say that I am the sole survivor of these gentlemen, thirteen in number, Judge McKelvey held his first term in St. Cloud in 1866, but at his request Judge Vanderburgh went there from Minneapolis and tried the only jury case on the Calendar.

The contention was over the quality of a barrel of whiskey, which a Milwaukee dealer had sold a St. Cloud Merchant and the jurors, loyal, of course, to their friend, the merchant, in times when credit could not easily be obtained, found in his favor, much to the disgust of the St. Paul lawyer, who represented the Milwaukee concern.

So much by way of preliminary, and I now take up judicial history, much of which is recorded, but in many different places. My purpose is to put it in concise narrative form.

The Organic Act creating a Minnesota Territory was passed by Congress, March 3, 1849. The judicial power was, vested in a Supreme Court, composed of a chief and two associate Justices, in District and Probate Courts and in Justices of the Peace. The territory was to be divided into three Judicial Districts, the Court in each District to be presided over by one of the Supreme Court Justices. A temporary division and assignment of the justices was to be made by the governor. President Taylor who had just been inaugurated, appointed Aaron Goodrich of Tennessee, Chief Justice, David Cooper of Pennsylvania and Bradley B. Meeker of Kentucky, Associate Justices. On the 11th day of June, 1849, the Governor, by proclamation, divided the territory into three districts, St. Croix the only organized county being denominated the first with its county seat at Stillwater and Chief Justice Goodrich presiding at the terms of Court, two in number annually. The west line of St. Croix County

was somewhat indefinite but all west thereof north of the Minnesota river was constituted the 2nd district with Justice Meeker presiding, at St. Anthony Falls, then a village on the east side of the Mississippi river, now a part of Minneapolis, and the balance, all lying south of the Minnesota river, was made the 3rd district with the seat of Justice at Mendota, Judge Cooper presiding.

The records are not very complete as to what business was transacted at the terms of Court, two in number held annually in each of these Judicial Districts, but if tradition is accurately handed down, nothing was lost by the omission of the Court Clerks to keep full minutes of the proceedings.

There seems to have been a recall for judicial appointments in the early days for after a strenuous career on the bench, Goodrich was removed by President Fillmore and on November, 13, 1851, James Fuller of New York was appointed Chief Justice. The Senate refused to confirm the selection and on December 16th, Henry T. Hayner, also of New York, was appointed to the place. It is asserted that Hayner was never in the Territory but this is erroneous. He came, held at least one term of district court and returned East. He never sat with his associates en banc as a Supreme Court, and on April, 5, 1853, was removed by President Pierce, being succeeded by William H. Welch (who had resided at St. Paul a few months) as Chief Justice, and at the same time A. G. Chatfield of Wisconsin and Moses Sherburne of Maine were appointed to succeed Cooper and Meeker. Chief Justice Welch resigned in 1857 and in 1858 Rensselaer R. Nelson and Charles E. Flandreau, both of New York, succeeded Chatfield and Sherburne as Associate Justices. It will be remembered that on the organization of the State, Judge Nelson was elevated to the Federal Bench, serving faithfully until 1896, when he retired, the senior Federal Judge in the United States in time of service.

In the course of my research as to Territorial Justices, appointed by the Presidents, my attention was called by Associate Justice Calvin L. Brown, to an act of the Territorial Legislature, Chapter 8, Extra Session 1857, whereby the Justices were assigned to the three Judicial Districts before mentioned, which act superseded the Governor's proclamation of 1849. I believe that if I should now ask you the question, Did you ever hear of the appointment of a territorial Judge

by the name of John Pettit, not one would answer in the affirmative. His name has never been mentioned by our historians, but if you will turn to the chapter in question, you will find that Chief Justice Welch was thereby assigned to the 1st District, R. R. Nelson to the second, while to the third, John Pettit, (observe the wording) "Or such person as may hereafter be appointed Associate Justice of the Territory", was assigned to preside. I made diligent inquiry in the State concerning Pettit but could learn nothing, but, through the assistance of Senator Nelson, ascertained that soon after the sine die adjournment of the 34th Congress, on the 14th day of March 1, 1857, the term of Judge Chatfield expired and thereupon John Pettit of Indiana was given a recess appointment by President Buchanan, his commission bearing date, April, 21, 1857. He declined the appointment, as appears from a communication from President Buchanan of date May 6, 1858, to the Senate, nominating Chas. E. Flandreau for the place. It is evident that Pettit never came to the Territory.

It is gratifying to discover and make permanent a bit of history which seems to have escaped notice heretofore.

By the Revision of the State Laws in 1866, the State was divided into seven Districts; the seventh being comprised of that part of the first and fifth Districts lying north of Wright County, with a line extending easterly to Isanti County then North and East along the West line of Kannabec and the North line of Pine to the Eastern line of the State and Westerly it extended to Dakota Territory.

It embraced the counties of Stearns, Sherburne, Benton, Morrison, Crow Wing, Aitkin, Cass, Douglas, Todd, Mille Lacs, Polk, Stevens, Traverse, Pembina, Clay, Andy Johnson, Otter Tail, Wadena, Becker, Pope, St. Louis, Carlton, Itasca and Lake; twenty-four in number and, in area, practically two thirds of the State.

According to the census in 1860 there were then, \_\_\_\_\_ white inhabitants in the seventh District. Their number when enumerated in 1910 had increased to about six hundred thousand.

James F. McKelvey was the first Judge of this District, appointed by the Governor, August, 1, 1866.

At the Legislative session in 1870, the State was divided into nine Districts. The eighth being composed of the counties of LeSeuer, Scott, Carver, Sibley and McLeod.

L. M. Brown being the first Judge.

The ninth District was composed of Nicollet, Redwood, Brown, Renville, Chippewa, Big Stone, Meeker, Lincoln, Monongalia, Kandiyohi and Lac Qui Parle Counties.

M. G. Hanscome, Judge.

At the session of 1872, the tenth District was created, composed of Houston, Fillmore, Mower and Freeborn Counties,

Sherman Page being the first Judge.

In 1874 the northern part of the State had so developed that a new District, the eleventh, was formed along the line of the Northern Pacific road, then building westerly from Duluth. This was composed of the counties of Crow Wing, Aitkin, Cass, Polk, Pembina, Clay, Wadena, Becker, St. Louis, Carlton, Itasca, Lake and Traverse.

O. P. Stearns was the first Judge.

At the session of 1875, the twelfth District was established being the counties of Meeker, Kandiyohi, Stevens, Traverse, Wilkin, Swift, Chippewa, Lac Qui Parle, Yellow Medicine and Big Stone.

John H. Brown, father of Associate Justice,  
Calvin L. Brown, being the first Judge.

The Southwestern part of the state developed rapidly and was organized in 1885 as the 13th district, embracing the counties of Jackson, Nobles, Rock, Pipestone, Murray and Cottonwood with A. D. Perkins as the first Judge.

In 1887 three new districts were created. The counties of Becker, Clay, Norman and Beltrami were constituted the 14th Dist with Ira B. Mills as Judge. The counties of Aitkin, Crow Wing, Cass, Itasca, Wadena and Hubbard were made the 15th District with C. B. Sleeper as Judge, and the counties of Big Stone, Stevens, Traverse, Wilkin and Grant were constituted the 16th District with our present Associate Justice Calvin L. Brown as District Judge. It will be noticed that in twenty-one years the northern part of the State had so

grown in population that the old seventh district had been divided into five judicial districts and personal experience in that section leads me to say that the district Judges were extremely busy men.

By an act of the Legislature in 1897 the counties of Faribault, Jackson and Martin were made the 17th district with John H. Quinn as Judge. The same year the 18th district was created composed of Anoka, Wright, Isanti and Sherburne Counties with James C. Tarbox as Judge.

In 1907 the 19th district was brought into existence with P. H. Stalberg as Judge, embracing the counties of Washington, Kanabec, Pine, and Chisago all taken from the 1st district, and leaving but two counties therein, Dakota with a population of less than 25,000 and Goodhue with less than 32, 000 people and a District Judge in each County.

Minnesota Territory had three Chief Justices and five associate Justices between 1849 and 1858. When we became a State and a Supreme Court was created LaFayette Emmett, who had been the Territorial Attorney General for five years, was elected Chief Justice, Isaac Atwater and Charles E. Flandreau was elected Associate Justice. Emmett removed to New Mexico in 1885, where he died in 1906. Atwater remained in this State, dying the same year. Flandreau also remained in this State passing away in 1903. I call attention to the fact that these three men survived many of their successors on the Supreme Bench and that Atwater and Flandreau were Minnesotians, hale, hearty and greatly respected until death came in the fullness of their years

The State Supreme Court has had seven Chief Justices, the present Chief being the sole survivor. Of the Associates, twenty-four in number, ten are living at this time. I shall say but little concerning the immense amount of work performed by these gentlemen, for personal reasons. The first volume of Reports contains all of the opinions written by the Territorial Justices sitting as a Supreme Court. The first is *Desnoyer v. L Hereau*, opinion written by Judge Meeker. The second is *Chouteau v. Rice*. Opinion by Judge Cooper, Chief Justice Goodrich dissenting, a very customary thing for him to do as appears from the first volume. There were 161 cases reported, the entire work

of the court from 1849 to 1858, but in a large percentage proforma orders only were filed.

The second volume contains the first work of the State Supreme Court and covers the opinions from 1858 to 1860, numbering ninety eight. As might be expected the calendars became larger very rapidly. When I became a member of that body in 1887, the October calendar contained 168 cases, the largest of all preceding it. The business brought before the tribunal developed so that at the October term of 1894 there were 378 cases and for the first time in our history a large number had to be continued. But inside of eighteen months this court had taken care of the work and entered upon a new term without unfinished business. Much criticism was heard, especially by attorneys, because the members of the court accomplished so much the charge being that the opinions were written hastily and as a consequence without proper consideration. My only answer is that the opinions filed during this period of congestion show that the charge of undue haste in their preparation was not justified.

Chief Justice Gilfillan served by appointment about six months in 1869 and again by appointment and election from March 1875 to January, 1894, practically twenty years, a longer period than any other occupant of that place. The present Chief has served since January, 1895, about seventeen years, and at this time stands second in length of service. Chief Justice McMillan served the shortest term, having been elected United States Senator in 1875, while Chief Justice.

Justice Berry was the veteran Associate Justice of the Supreme Court, holding the position from January, 1865 to the day of his death, November 8th, 1887, twenty-two years.

Justice Mitchell comes next in point of service; nineteen years are placed to his credit at a time when the business of the court, was at its high water mark.

By the Constitution the State was divided into six Judicial Districts and by Act of Legislature, 1858, the salaries of the District Judges fixed at Two Thousand Dollars a year.

The first District comprised the counties of:



Washington, Chisago, Anoka and St. Louis; S. R. J. McMillan, Judge, afterwards Chief Justice of the Supreme Court and later United States Senator for two terms.

Second District:

Ramsey; E. C. Palmer, Judge.

Third District:

Wabashaw, Olmsted, Houston, Filmore and Winona; Thomas Wilson, Judge, afterwards Chief Justice of the Supreme Court.

Fourth District:

Stearns, Wright, Meeker, Carver, Hennepin, Benton, Morrison, Crow Wing; James Hall, Judge.

Fifth District:

Waseca, Dodge, Mower, Freeborn, Rice, Goodhue, Dakota, Scott and Steele, N. M. Donaldson, Judge.

Sixth District:

McLeod, Sibley, Le Seuer, Nicollet, Blue Earth, Faribault, Brown and all other counties not included in other Districts; L. Branson, Judge.

In the year 1867, the District Court of Ramsey County, with but one Judge, found itself overwhelmed with business and as the Constitution of the State then provided for but one Judge for each District, no additional magistrate could be elected to preside in any district court. However the constitution provided for other Courts which be given like jurisdiction and so in March, 1867, a Court of Common Pleas for Ramsey County was authorized by an Act of the Legislature, William Sprigg Hall was the first Judge of that Court. In 1872 Hennepin County Court found itself in the same plight, large and increasing calendars and with but one Judge, so a Court of Common Pleas for Hennepin County was authorized by the Legislature in March, 1872. The first Judge was A. H. Young. Later, in 1875, there came a constitutional amendment which allowed the election of more than one District Court Judge in each District and also provided for the abolishment of Common Pleas Courts and the transfer of the Judges and the business thereof to the District Courts. In 1877 these courts,

in both Ramsey and Hennepin Counties, were abolished by the Legislature and the business thereof transferred to the District Courts of those Counties. The Courts of Common Pleas had served an excellent and absolutely necessary purpose which had ceased to exist and hence they disappeared.

The District Court work has been performed in a careful and painstaking manner. Twice only have impeachment proceedings been instituted against Judges, and in those two instances, one resulted in an acquittal by the Senate. In the other case there was conviction after forty-five days trial, the result being removal from office. I am glad to say that in neither case was there a charge of dishonesty in the official career of the accused.

The total number of Judges serving in District Court since we became a State is one hundred and twenty six. Of these gentlemen sixty seven are living, thirty eight have passed away and that is the exact number now serving as District Judges.

To Judge F. M. Crosby, who died in the harness in 1910, belongs the honor of having served the longest period District Judge. He commenced work January, 1, 1872, and served thirty eight years. Judge Brill has been District Judge since 1876 and has now served thirty six years. Judge Wilkin, who died in office in 1879, served thirty-two years. Judge Vanderburgh commenced as District Judge January, 1859, and served in that capacity until 1882, a period of twenty-three years and then became Associate Justice of the Supreme Court serving until 1894, in all twelve years. His full term in a judicial capacity was thirty-five years. Judge Wm. L. Kelly has been on the District Bench since March, 1887, twenty five years. Thomas S. Buckan served thirty-one years and several other gentlemen have performed the duties of District Judges twenty years each.



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