

“THE BENCH AND BAR OF RAMSEY COUNTY, MINNESOTA”

PARTS I & II

by

CHARLES E. FLANDRAU

FOREWARD

by

Douglas A. Hedin
Editor, MLHP

Those interested in the legal history of nineteenth century Minnesota may ask themselves several questions as they begin reading the few memoirs, articles and book chapters written by judges and lawyers of that period: Who are these people? Why have I never heard of them?

These were not the questions Charles Flandrau asked himself when he wrote the following articles that appeared in the January and March issues of the *Magazine of Western History* in 1888, but he was motivated by a related concern: he did not want the men who practiced law and ruled from the bench in St. Paul in the territorial era to be forgotten. And so, like the memoir of the soldier who lists each of his fallen comrades, Flandrau names as many of the lawyers and judges who practiced in the 1840s and 1850s as he could. He knew these men. Some were friends, all were colleagues. He wrote from memory about this period, “the materials for which rest mainly in the recollection of a very few living men.” He was one of those survivors, and he was determined, as his generation of founders died off, to preserve it for posterity. On a practical level, he wrote for the readers of the *Magazine of Western History*, but it is likely that few of them resided in Minnesota and even fewer were interested in lawyers and judges in antebellum Minnesota. Clearly, he aimed at a much larger and more distant audience—future generations of Minnesotans who are interested in the early history of their state.

Because The Minnesota Legal History Project has posted several articles on Minnesota's legal history that appeared first in *Magazine of Western History*, we shall digress here to discuss this journal. It was published monthly from 1884 to 1893, first from Cleveland, later from New York. In the beginning, as its name suggests, it emphasized the histories of western states. In the January, 1888, issue of the magazine, which included the first of Flandrau's articles on the Ramsey County legal scene, there also appeared "Origin of the Ohio School System," "Reminiscences of Wisconsin—1842-1848," "The First Teacher of Minnesota," "Recollections of Cleveland—Her Builders and Buildings," "The Ancient Ohio Mounds," "St. Joseph, The Queen of the Missouri Valley," and "The Historical Society of Utica, New York," among others. But about this time the quality and reliability of articles in this periodical began to decline, and eventually it ended, in the words of historian Frank Luther Mott, "by going off to New York and falling into evil ways."¹ Mott, author of the five volume, *A History of American Magazines*, gives a thumb nail sketch of the *Magazine of Western History*:

William W. Williams was the founder and editor until 1887. It published histories of western states, proceedings of historical societies, lives of pioneers, etc., including a good deal of Ohio material. Henry James Seymour's history of Pittsburgh appeared serially in 1885, C. W. Butterfield's histories of Ohio and Wisconsin in 1886-87, W. H. Venable's "Early Periodical Literature of the Ohio Valley," in 1888, and a railroad series in 1889. In October 1886 it became "the exponent of the Wisconsin Historical Society," edited at Madison and Cleveland, and "largely made up of matter relating to the Northwest." James Harrison Kennedy became editor in 1887, however, and moved it the next year to New York. It abandoned the West as a specialty, and in November 1891 became the *National Magazine*, "a journal devoted to American history," ending April 1893. But unscrupulous publishers later used the name for issues of a pretended magazine with

¹ Frank Luther Mott, 3 *A History of American Magazines, 1865—1885* 262 (Cambridge: Harvard University Press, 1938). Mott was Director of the Journalism Department at Iowa State University.

contents taken from books and advertising improvised in order to get would-be notables to pay for steel portraits which were inserted in “ghost magazines” never sold or distributed. Some such issues of the *National Magazine* were printed as late as 1897.²

When Flandrau began contributing articles to *Magazine of Western History*, he still was practicing law. Though he describes individual lawyers in the following articles, his profiles are not vivid or insightful. He is not interested in describing changes in the legal profession during his decades of active practice. His stock-in-trade is the anecdote. He is a raconteur, whose stories interest us because he was an important political figure as well as a member of both bench and bar in the state’s formative era. Regrettably, however, he never wrote much about his actual work as an associate justice on the Territorial Supreme Court in 1857 and 1858, or on the Minnesota Supreme Court from 1858 to 1864.

There is a “good old days” aura in Flandrau’s two articles. He writes, “Much more interest usually attaches to the early days of a country when everything is fresh, free and disorderly, than to the more regular proceedings of courts and lawyers in after times, when judicial work is conducted in a manner which robs it of the possibility of humor, romance or adventure.” He probably would not deny that nostalgia was a feature of his articles or, more accurately, his remembrances. In a memorial service to Flandrau in 1903, Rensselaer R. Nelson recalled him reminiscing about practicing law during the “early days”: “He told me that the happiest experiences of his professional life at that time were when the court was held at places where there were no law books, and no musty precedents could be cited. Counsel had to rely upon their knowledge of legal principles and grasp the salient points as the cause progressed.”³ Even on the bench, he sought the freedom of the frontier—he openly distained precedent that would confine him from reaching a result he felt was just. In *Selby v. Stanley*, an 1860 mortgage foreclosure proceeding, he wrote:

In a new state like our own, we enjoy the advantage

² *Id.* at 262, n. 206.

³ Remarks of Judge Rensselaer R. Nelson, *Proceedings in Memory of Associate Justice Flandrau*, 89 Minn. Rep. xxi, xxxii (1904).

of all the light which has thrown upon questions, without being tied down by precedents which are admitted to be founded in error; and, therefore, we are free to select, as the basis of our decisions, whatever may appear to be founded on principle and reason, rejecting what is spurious and unsound, even if dignified by age, and the forced recognition of more learned and able judges.⁴

While the title of Flandrau's articles is "The Bench and Bar of Ramsey County," he concludes the second with a long profile of Gordon E. Cole, who resided in Faribault, not St. Paul. What likely happened is that Flandrau submitted separate articles on the Ramsey County legal scene and on Cole about the same time, and the editor of the magazine just tacked the latter onto the end of the former.⁵ Regardless of his residence, it is clear that Cole was a remarkable man, whose accomplishments were many.⁶

"General" Cole, as Flandrau occasionally calls him, did not fight in the Civil War. He was the state's second attorney general and held office for three terms during the war years, from January, 1860, to January, 1866. After leaving office, he served in the legislature, and in numerous civic organizations. Residing in Faribault, he built up a huge law practice that required him to establish a branch office in St. Paul.⁷ He died in London on October 4, 1890, "while on his way to Carlsbad in the hope of regaining health there."⁸ The *Minneapolis Journal* announced his death:

⁴ *Selby v. Stanley*, 4 Minn. 34, 42-3 (Gil. 65) (1860).

⁵ Other profiles were published separately in *Magazine of Western History*. E.g., Flandrau's profile of Isaac Atwater had appeared separately in the July, 1888, issue, and Isaac Atwater's profile of Eugene M. Wilson appeared separately in the August, 1888, issue.

⁶ For additional biographical information about Cole, see *A History of the Office of the Attorney General* 11 (St. Paul: State of Minnesota, 1997); "Hon. Gordon Cole," in *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men: Minnesota Volume* 442-446 (New York: American Biographical Publishing Company, 1879); C. C. Andrews ed., *History of St. Paul, Minn.* 255-56 (Syracuse, N.Y.: D. Mason & Co., 1890); and "Gordon Earle Cole," 14 *Minnesota Historical Society Collections* 133 (St. Paul: Minnesota Historical Society, 1912).

⁷ His firm in St. Paul was Cole, Bramhall & Morris. See C. C. Andrews ed., *History of St. Paul, Minn.* 256 (Syracuse, N.Y.: D. Mason & Co., 1890).

⁸ *8 Collections of the Minnesota Historical Society* 521 (St. Paul: Minnesota Historical Society, 1898).

GORDON E. COLE DEAD

Demise of a Prominent Minnesotan in England

A SHORT SKETCH OF HIS LIFE

The Body to Be Taken to Faribault for Intern-
ment—His Public Career

Special to the Journal.

Faribault, Oct. 4.—A Cablegram was received here this morning from London announcing the death of Hon. Gordon Earl Cole, of this city, of dropsy. He was 57 years of age. The family will sail for America with the body on Oct. 8.

Mr. Cole sailed for London Sept. 18, and was accompanied by his eldest daughter, Miss Kate Cole, and Maedames Archibald and Kauffman, of this city. He had been quite seriously ill of liver trouble and nervous prostration, but had partially recovered when the disease assumed a dropsical form and his physicians, Dr. Wood, of this city, and Dr. Senkler, of St. Paul, advised a trip to Europe and a visit to the celebrated Carlsbad springs of Germany. He had scarcely reached London when the news came of his serious illness. He died at 152 Harvey st, London, a private hospital, in charge of Dr. Johnston Hutchinson, to whom Mr. Cole was recommended by Drs. Wood and Senkler. The sad news has caused universal grief this city.

Gordon E. Cole was born in Berkshire county, in Massachusetts, June 18, 1883. He was educated at the Sheffield academy and graduated at the Law School of Harvard College in 1854. After practicing for two years in his native town he came to

Minnesota and settled in Faribault in 1847. In 1859 he was elected attorney-general and served three consecutive terms. He also served one year as state senator, and at the time of his death was a member of the board of regents of the state university. He has held many positions of honor and trust. He was married in 1855 to Stella C. Whipple, of Vermont. She died in 1872, leaving three children. In 1874 he was married to Kate D. Turner, of Cleveland, O.⁹

The *St. Paul Pioneer Press* paid a lengthy tribute to Cole the next day:

MINNESOTA'S LOSS

By the death of the Hon. Gordon E. Cole the State of Minnesota loses one of her most distinguished and public-spirited citizens. It has happened infrequently that some of the boldest spirits and best minds of the nation were found in the frontier communities of the West. The restlessness of ambition is satisfied by the admixture of uncertainty and adventure attendant on the building of a new commonwealth and by the opportunities for public service and public distinction which such a community offers. Among the band of men of high ability who have left their mark upon the history and the progress of this state, Gordon E. Cole held a justly honored place. In his profession he was more than usually eminent. His early recognized force as a lawyer caused his selection as attorney general of the state, and in this position his opinions and his advice had no small share in shaping the course of Minnesota legislation. Even more important than this, perhaps the most distinguished of all his public services, was his part in the settlement of the old bond controversy. As a member of the state legislature, as a citizen of Minnesota and as a valued counsel, Mr. Cole's efforts were bent, early and late, to secure such adjustment of the bond issue as would satisfy substantially the ends of justice and do no

⁹ *Minneapolis Journal*, October 4, 1890, at 2.

wrong to the people, while saving the honor of the state. Of the comparatively small number of persons who were conspicuously prominent in the final wiping from out escutcheon of the repudiation stain, few deserve a higher meed of praise than he.

But it was not alone as a public official, nor even as a participant in the settlement of a great public controversy, that Gen. Cole set his mark upon this commonwealth and laid it under a debt of gratitude to his memory. He exercised that other sort of influence, not easy to analyze or define, which is what we mean by speaking of a man of public spirit. He was one of those who took cognizance of the higher and finer issues of the day. He was able to look ahead, and was more successful in shaping a winning policy for the future than in captivating an audience of the present. He had no little share of political prescience; and it pleased him better to exercise a silent but potent influence upon men and policies than to stand bedecked with public honors in the place of dignity. Two instances will illustrate this. He was one of those who earliest saw the danger that the strong temperance sentiment of this state might run to the prohibition extreme, and who understood and measured the efficiency of high liquor policy. Probably to him as much as to any other man we are indebted for the enactment of the high license law which has proved itself so admirable a method of dealing with an evil that we cannot efface. Less noted but hardly less important is his work as a leading spirit of the prison reform movement. Comparatively little public comment followed upon this labor of his; but he had studied the prison problem, he had watched the progress of efforts at reform in other states, and he was earnestly intent upon placing Minnesota in the front rank here, as he had assisted her to lead in all other branches of public charity and reform work. The new state reformatory at St. Cloud stands as one of the monuments of his tireless and

enthusiastic life work.¹⁰

As noted in this editorial, Cole opposed prohibition but favored regulation of the liquor industry. In his profile, Flandrau quotes the *St. Paul Pioneer Press's* account of an anti-prohibition speech Cole delivered in the state senate. Flandrau obviously concurs with Cole.¹¹ This is one of the few times Flandrau refers to a contemporary social or political controversy in his historical writings.

The following articles were some of Flandrau's earliest writings on the state's history. In a memorial service to him at the Minnesota Supreme Court on October 6, 1903, Justice Loren Collins remarked, "His literary ability was of a high order, but the demands of a large and successful law practice prevented its development to any great extent."¹² The accuracy of this assessment must be questioned. It seems that toward the end of his life, once Flandrau started writing, he could not stop. He wrote and he wrote and when he finished a piece, he started up again. Besides articles for *Magazine of Western History*, he wrote several papers for the Minnesota Historical Society including, "Lawyers and Courts of Minnesota Prior to and During Its Territorial Period"¹³ and "State-Building in the West,"¹⁴ both published in 1898. He also wrote the 497

¹⁰ *St. Paul Pioneer Press*, October 5, 1890, at 4.

¹¹ There are numerous references in Flandrau's writings to his enjoyment of alcohol. For instance, in a chapter entitled "The Hardships of Early Law Practice" in *The History of Minnesota and Tales of the Frontier*, Flandrau described spending one night in Utica, Minnesota, which consisted of one log house. "Our march that day had been a long and tiresome one and I felt as if a good drink of whisky would be very supporting and acceptable, our supplies in that line having become exhausted by reason of the unexpected length of time consumed in our journey; but the prospect of getting one was anything but promising." It was then that he met "the famous Bill Lowry." "My friend, won't you take a drink?" Lowry asked Flandrau. "From what I have said, it is unnecessary to record my answer," Flandrau wrote. "We spent the greater part of the night in pleasant social intercourse, drawing inspiration from the depths of the demijohn, which had seemed so far removed from my grasp but a short time before." *History of Minnesota and Tales of the Frontier* 326-27 (St. Paul: E. W. Porter, 1900).

¹² Remarks of Associate Justice Loren Collins, *Proceedings in Memory of Associate Justice Flandrau*, 89 Minn. Rep. xxi, xliii (1904).

¹³ 8 *Minnesota Historical Society Collections* 89-101 (St. Paul: Minnesota Historical Society, 1898) (this is a printed version of an address Flandrau gave at the annual meeting of the Minnesota Historical Society on January 13, 1896).

¹⁴ 8 *Minnesota Historical Society Collections* 463-494 (St. Paul: Minnesota Historical Society, 1898).

page *Encyclopedia of Biography of Minnesota, Minnesota*¹⁵ and the 408 page *History of Minnesota and Tales of the Frontier*,¹⁶ both published in 1900. His most dramatic writings describe his experiences during the Sioux Uprising of 1862.¹⁷

Flandrau's two-part history of "The Bench and Bar of Ramsey County, Minnesota" may be read with Hiram Stevens's "The Bench and Bar of St. Paul," which was published two years later in *History of St. Paul, Minnesota*, edited by C. C. Andrews.¹⁸ Even more than the second of Flandrau's two articles, Stevens's is a monotonous roll call of lawyers who practiced in St. Paul—page after page of short paragraphs describing each lawyer's birth place, education, and practice.

The first of Flandrau's articles appeared on pages 328 through 336 of the January, 1888, issue of the *Magazine of Western History*, the second on pages 58 through 69 of the May, 1888, issue. The MLHP has reformatted these articles. The original page breaks have been added. The articles that follow are complete. Flandrau's punctuation and spelling have not been altered. ■

¹⁵ *Encyclopedia of Biography of Minnesota, Minnesota* (Chicago: Century Publishing and Engraving Company, 1900). He probably engaged more in editing than in researching and writing this book. It consists of short profiles of prominent men, who may have written the first drafts, which Flandrau then edited.

¹⁶ *The History of Minnesota and Tales of the Frontier* (St. Paul: E. W. Porter, 1900).

¹⁷ There are several versions. See Charles E. Flandrau, "Narrative of the Indian War of 1862-1864, and Following Campaigns in Minnesota" in *1 Minnesota in the Civil and Indian Wars, 1861-1865* 727-818 (St. Paul: Pioneer Press Co., 1890), Charles E. Flandrau, *The History of Minnesota and Tales of the Frontier* 123-193 (St. Paul: E. W. Porter, 1900); and Charles E. Flandrau, "The Battle of New Ulm" in Russell W. Fridley, Leota M. Kellett & June D. Holmquist eds., *Charles E. Flandrau and the Defense of New Ulm* 32-50 (New Ulm: The Brown County Historical Society, 1962).

¹⁸ Hiram Stevens, "The Bench and Bar of St. Paul" in C. C. Andrews ed., *History of St. Paul, Minn.* 247-298 (Syracuse, N. Y.: D. Mason & Co., 1890).

MAGAZINE OF WESTERN HISTORY.

Vol. VII.

JANUARY, 1888.

No. 3.

THE BENCH AND BAR OF RAMSEY COUNTY, MINNESOTA.

Ramsey county is the lineal descendant of the county of St. Croix, which the territory of Minnesota inherited from the territory of Wisconsin when the latter territory became a state of the Union. It is one of the original counties established by the first legislature which convened in the territory, and was created by act of October 27, 1849. It has always been the leading county of the territory and state in population, wealth, commerce and social influence, as well as containing the capital of both territory and state, and since the admission of Minnesota into the Union the circuit court of the United States has always been held at St. Paul, the principal city of the county. With all these elements of power and advantage, it is not surprising that the bar of Ramsey county, regarded collectively, has always been the most prominent and influential of any in the commonwealth. From the earliest days in its history it has had inscribed upon its rolls the names of many men who would adorn the bar of any state as well for learning and ability as for high and honorable standing in the profession.

The industries and capital of St. Paul having been, during all the earlier period of its existence and up to quite a recent date, devoted almost exclusively to commerce and finance, were much more prolific of important litigation than the manufacturing, lumbering, and the agricultural interests of other portions of the state. It is a well ascertained fact that any given amount of capital invested in the various branches of business which combine to create commerce, will be productive of more litigation than three times the amount engaged in any kind of manufacturing. It is quite natural, therefore, that about the financial and commercial centre of the state should be found the leading representatives of the bar, and this is said without

any disparagement of the individuals who compose the bars of other counties of the state, many of whom are second to none in Ramsey county, or, we can truthfully say, in the entire northwest.

In treating of the bar of this county we will divide the subject into two periods : the traditional, the materials for which rest mainly in the recollection of a very few living men, and the record period, which covers the time since the methods of civilization superseded those of the rude frontier.

Much more interest usually attaches to the early days of a country when everything is fresh, free and disorderly, than to the more regular proceedings of courts and lawyers in after times, when judicial work is conducted in a manner which robs it of the possibility of humor, romance or adventure. We shall, therefore, endeavor to record the history of the traditional period as fully as the facts attainable will permit.

Henry H. Sibley, now a distinguished citizen of St. Paul, was undoubtedly the [329] first person who ever engaged in the practice of the law in any part of what is now the state of Minnesota. In 1835 and 1836 he resided at St. Peter's, now Mendota, in Dakota county, and was connected with one of the great fur companies which occupied the country at that time. He was not then admitted to the bar, but being a young man of fine ability, and having familiarized himself with the principles of the common law, and there being no one else in the country who made any pretensions in that direction, the necessities of the situation induced him to hang out a shingle announcing himself as an attorney and counselor at law. Even tradition does not inform us that Mr. Sibley ever tried a case, as there were no courts nearer than Prairie du Chien, except the one held by himself as a justice of the peace, which we will speak of hereafter. General Sibley still retains the professional sign he put up fifty-one years ago. It is ornamented with a bullet hole, which was accidentally made in it from the careless handling of a gun by someone, indicating that powder and lead were more in vogue in those days than the wordy weapons of the profession.

General Sibley was also the first judicial officer who ever exercised the functions of a court of law in any part of the new state of Minnesota. He was commissioned a justice of the peace in 1835 or

1836 by Governor Chambers of Iowa, with a jurisdiction extending from twenty miles south of Prairie du Chien to the British boundary on the north, White river on the west, and the Mississippi on the east. When he committed an offender for a crime of sufficient magnitude to preclude his trying and sentencing him, there was no place to send him except Prairie du Chien, which often involved the necessity of holding him for a long time before an opportunity would occur to dispose of him. Tradition says that this magistrate would sometimes, in cases of pressing urgency, extend his jurisdiction into Wisconsin, on the east side of the Mississippi, one instance of which is well authenticated : A man named Phalen, from whom the lake which supplies St. Paul with water took its name, was charged with the murder of a discharged sergeant from the United States army, named Hayes. The murder was committed on the east side of the Mississippi in Wisconsin. Justice Sibley held the examination, committed the offender to jail at Prairie du Chien, and he was duly forwarded and no questions asked by anyone. After the organization of our territory, General Sibley was duly admitted to the bar.

Prior to the admission of Wisconsin into the Union, which occurred on the twenty-ninth day of May, 1848, all the country west of the St. Croix river and east of the Mississippi was a part of the county of St. Croix, in the territory of Wisconsin, which was a fully organized county for judicial purposes, having its district court and all proper county officials. The first attempt at holding a term of the district court west of the St. Croix was in 1842. Joseph R. Brown had been appointed clerk of the court and had his residence on the bank of Lake St. Croix, at the point where now stands the city of Stillwater. Mr. Brown was not a lawyer, but he was a man of extraordinary ability, enlarged experience on [330] the frontier and among the Indians. His versatile talents fitted him for anything he undertook, and there were very few things, from playing the fife in the army to editing the leading newspaper in St. Paul, and framing the state constitution, that he did not take a prominent part in. He was among the first lumbermen on the St. Croix, Indian trader with the Sioux, member of the legislature of both Wisconsin and Minnesota territories, United States agent for the Sioux, editor of the *St. Paul Pioneer* and other papers, and a member of the constitutional convention that framed our present state constitution, and in every important position he held he displayed marked ability. His last

undertaking was the invention of a steam motor to traverse the western prairies. On this idea he expended large sums of money, but died before bringing it to a state of practical utility.

In 1842 Judge Irwin, then one of the territorial judges of Wisconsin, came up the river from Prairie du Chien to hold a term of the court which had been appointed for St. Croix county. He landed at Fort Snelling, and could find no one who could give him any information about localities, or anything concerning the court, until he reached the trading house of Norman W. Kittson, which was situated a mile or two above the fort, at Big Spring, and near where the St. Louis house subsequently stood. Mr. Kittson gave him the address of Joseph R. Brown, the clerk of the court, and furnished him a horse on which to reach Stillwater. After a weary journey he arrived at Lake St. Croix, but could find neither habitation nor human being until he discovered a log house, which was occupied by Joseph R. Brown, the clerk of his court. Either Brown had not been informed of the contemplated term or had forgotten it, but at all events no preparations had been made for holding it, and the disgusted judge took the first chance down the river, swearing it was the last time he would ever answer a summons to St. Croix county. Tradition, says that Brown, being of a speculative turn of mind, had procured the appointment of the term for the purpose of advertising the country and luring immigration to his region.

Five years elapsed before another attempt was made to hold a term of court in St. Croix county. In June, 1847, the district court convened at Stillwater, Judge Dunn, then chief-justice of Wisconsin territory, presiding. Much interest was felt in this term on account of the trial of the Indian chief "Wind," who was charged with murder. Many noted attorneys of Wisconsin took advantage of this opportunity to visit the remote county of St. Croix. Among those who attended the court were : Benjamin C. Eastman of Platteville; Frank Dunn, Samuel J. Crawford, Moses M. Strong of Mineral Point ; Thomas P. Burnette of Patch Grove ; Hiram Knowlton of Prairie du Chien, and others.

Judge Dunn appointed Samuel Crawford prosecuting attorney for the term, and Benjamin C. Eastman to defend the prisoner, "Wind." The trial was had and the chief acquitted. This was the first jury trial that took place within the present limits of Minnesota, as well as the first

criminal trial in a court of record, and this term was the only one ever held [331] within the limits of the state while it was part of Wisconsin.

When Wisconsin was admitted into the Union in May, 1848, its western boundary was the Mississippi river up to the mouth of St. Croix, and the lake and river St. Croix beyond that point. The adoption of this boundary left all the territory west of the St. Croix and east of the Mississippi without any government. Stillwater was then something of a settlement, having the largest population of any place west of the new state, included in which were some lawyers. Morton S. Wilkinson had been living there since early in the year 1847. Henry L. Moss located there in April, 1848.

Morton S. Wilkinson is a native of New York and a man of great natural ability and brilliancy. As an advocate he has few equals. His figure is tall and commanding ; his features are thin, marked and intellectual. He has been in the practice of his profession ever since his arrival at Stillwater, and has filled many positions of honor and trust, and has always performed all his public duties with ability and fidelity. He was once register of deeds of Ramsey county. Has been in both branches of the local legislature. Was United States senator and member of the house of representatives from the state of Minnesota. He practiced for many years as a member of the Ramsey county bar ; lived for some time in Mankato and now resides at Wells, in Faribault county, and was county attorney there. Mr. Wilkinson enjoys excellent health and has the prospect of a long life before him.

Henry L. Moss was appointed United States district attorney for the territory of Minnesota at its organization, and held the office during the administration under which he was appointed, and until Governor Gorman succeeded Governor Ramsey, performing its duties with ability and success. Mr. Moss is a good lawyer and has seen much practice in the early days of the territory and state. He removed to St. Paul from Stillwater about the time of the organization of the territory, and at one time was engaged in the practice of his profession with Lafayette Emmett, the first chief-justice of the state. For many years Mr. Moss has not practiced, but has devoted his attention to the business of insurance, in which he is now largely engaged. He resides in St. Paul, and is in vigorous health.

On account of the uncertainty created by the anomalous condition of things existing in the strip of country embracing Stillwater and St. Paul, as to whether it was within any political jurisdiction or had any government, no courts were held west of the St. Croix, not even justices' courts, during the year 1848. To remedy this difficulty, the leading citizens met for consultation in the month of August, 1848, and adopted the theory that the admission of a part of the territory of Wisconsin as a state did not necessarily disorganize the remnant. They opened correspondence with John Catlin of Madison, Wisconsin, who was secretary of the territory of Wisconsin at the time of its admission as a state, and who had become *ex-officio* governor, on the election of Governor Dodge to the United States senate, and invited him to come to Stillwater and proclaim the government of [332] the territory to be in force over the remnant of it which was left. Accordingly, in the month of September, 1848, Governor Catlin, with his family, removed to Stillwater and assumed the position of chief magistrate of the territory of Wisconsin, and issued his proclamation for the election of a delegate to congress. An election was held in November following, and Henry H. Sibley was chosen. He was admitted to a seat in congress, and the next year the territory of Minnesota was organized, as we shall see hereafter.

The first effort that was ever made toward the erection of a court-house in the territory was in Stillwater, in December, 1847. The following subscription paper was circulated, with the success which it bears on its face. It shows that even in that very early day the inhabitants were public-spirited according to their means :

We, the undersigned, hereby agree to pay the amount set opposite our respective names, to be invested in a court-house and jail in the town of Stillwater, to be built according to a plan submitted by Jacob Fischer, provided the county of St. Croix will pay the balance of the cost of said building after deducting \$1,200; which amount we propose to raise by this subscription and pay the same to the holder of this paper as may be required for the progress of the building.

Stillwater, December 18, 1847.

John McKusick.....\$ 400.00

| | |
|-------------------------------------|-------------|
| Jacob Fischer..... | 50.00 |
| Churchill & Nelson..... | 200.00 |
| Orange Walker for Marine L. Co..... | 100.00 |
| W. Holcombe..... | 50.00 |
| John W. Brewster..... | 50.00 |
| John Morgan..... | 20.00 |
| William Cave..... | 25.00 |
| William Stanchfield (paid)..... | 50.00 |
| A. Harris..... | 25.00 |
| Jesse Taylor..... | 25.00 |
| Wm. Willim..... | 25.00 |
| C. Carli..... | \$25.00 |
| A. Northup..... | 100.00 |
| Nelson McCarty..... | 13.00 |
| M. S. Wilkinson..... | 15.00 |
| | \$ 1,175.00 |

Quite a number of the subscribers to this enterprise are still living and will be recognized by the old settlers. The court-house was erected on the summit of one of the hills in Stillwater, and the first court of 1849 was held in it.

The only evidence we have been able to find of any legal proceedings being had in St. Croix county in 1848, is the record of a writ of attachment issued out of the district court at the suit of Thomas H. West against Anson Northup for the recovery of \$3,100 39-100. It is attested in the name of the Honorable Charles Dunn, judge of the district, on the fifteenth day of May, 1848, and signed by Joseph R. Brown, "Clerk D. C. S. C. C. W. T.," which, interpreted, means "clerk of the district court of St. Croix county, Wisconsin territory." To this writ is a return of the sheriff, John Morgan, of service.

Nothing further appears to have been done in the suit, and it is quite reasonable to suppose that Mr. Northup was armed with a good and sufficient defence, or the uncertainty of the jurisdiction of Wisconsin over the county deterred the prosecution.

On the third day of March, 1849, the organic act creating the territory of Minnesota was passed by congress. It is entitled, "An act to establish the Territorial Government of Minnesota." The President of the United States appointed Alexander Ramsey governor of the

territory ; Charles K. Smith, secretary ; Aaron Goodrich, chief-justice ; David Cooper [333] and Bradley B. Meeker, associate justices ; Alexander Mitchell, marshal ; and Henry L. Moss, United States attorney.

At the time of the passage of this act the only attorneys residing in what is now Ramsey county were David Lambert, William D. Phillips and Bushrod W. Lott, all of St. Paul. David Lambert was admitted to the bar of New York, and came from Madison, Wisconsin, to St. Paul in 1848. He was a man of fine ability, but his career was short. He was drowned from a steamboat on the Mississippi river, in November, 1849, aged about thirty years.

William D. Phillips was a native of Maryland, and was admitted to the bar of that state. He came to St. Paul in 1848, and was the first district attorney of the county of Ramsey. He was elected to this office in 1849. He continued in the practice of his profession at St. Paul until the election of President Pierce, under whose administration he received an appointment to a clerkship in one of the departments at Washington. He never returned to St. Paul and is supposed to have died many years ago.

Mr. Phillips was a very eccentric person, and many anecdotes are related of him. On one occasion an opposing attorney, who had very recently arrived in the territory, in the trial of a cause, cited a clause of the statutes against him and endeavored to put a construction upon it, which Phillips controverted. In the discussion which followed, the new attorney made some classical allusion, in which the names of Cicero or Demosthenes occurred. Mr. Phillips, in replying, became very much excited, and, rising in a flight of eloquence, he said :

The gentleman may be a classical scholar. He may be as eloquent as Demosthenes. He has probably ripped with old Euripides, socked with old Socrates, and canted with old Cantharides, but, gentlemen of the jury, what does he know about the laws of Minnesota?

As illustrative of his possessing in a high degree the quality which every lawyer is popularly supposed to excel in, that of never forgetting to charge for services performed, on one occasion Henry

M. Rice presented him with a lot on Third street, on which to erect an office, and when he presented his bill for services there was an item of four dollars for drawing the deed.

Bushrod W. Lott was a native of New Jersey. He removed to Illinois when quite young, and was admitted to the bar of that state. He commenced the practice of law in St. Paul, in 1848. He has been a member of the house of representatives, in the legislature several terms, United States consul at Tehuantepec, and has held other public trusts. Mr. Lott did not practice his profession for many years, and died about a year ago.

Soon after the passage of the act establishing the territorial government of Minnesota, the officers appointed to organize it made their appearance, and on the first day of June, 1849, Governor Ramsey issued his proclamation declaring the territorial government duly organized.

The organic act by section 9 provided "that the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief-justice and two associate justices, and two of whom shall constitute a quorum, and who shall hold a [334] term at the seat of government of said territory annually." "The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such times and places as may be prescribed by law and the said judges shall after their appointment respectively reside in the district which shall be assigned to them."

The act then proceeds to define many matters pertaining to the courts, their jurisdiction, and the administration of justice, which are not of sufficient interest to be further quoted here.

In pursuance of this law the governor, on the eleventh day of June, 1849, issued a proclamation dividing the territory into judicial districts, and assigning the judges to them. The county of St. Croix alone was erected into the First district and Chief-Justice Aaron Goodrich was assigned to it ; all the rest of the territory was divided into the Second and Third districts, and Judge Meeker was assigned to the Second and Judge Cooper to the Third.

In the same proclamation the governor appointed the first term of the district court for the first district to be held at Stillwater on the second Monday of August, 1849, to continue one week, and the second term in said district to be held at the same place on the second Monday of February, 1850, also to continue one week.

In pursuance of this proclamation the court was held, Chief-Justice Goodrich presiding, assisted by Judge Cooper. The following editorial notice of the same appears in the *Chronicle and Register*, published at St. Paul on August 25, 1849 :

The court for the First judicial district, Honorable Aaron Goodrich presiding, assisted by Honorable David Cooper, closed its first term on Saturday last after a laborious sitting of six days. Considerable more business was brought before the court than had been anticipated. Thirty-five cases stood upon the trial docket at the opening of the term. The proceedings were for the first two or three days somewhat crude, owing to the assembly of a bar composed of persons from nearly every state in the Union holding all their natural prejudices in favor of the practice of the courts they had recently left, and against those of all other places in Christendom. . . . The grand jury found ten bills during their session, as follows : One for assault and battery with intent to maim, one for perjury, four for selling liquor to Indians, and four for keeping gaming houses. Only the first was tried, the others lying over until the next term.

The article speaks in high praise of M. S. Wilkinson, who was the prosecuting attorney, and of the hospitality of the people of Stillwater.

This was the first court ever held in Minnesota. The record of this term discloses that it was opened on Monday, August 13, 1849. That there were present : Honorable Aaron Goodrich, judge of the First judicial district of Minnesota territory, presiding ; Alexander M. Mitchell, United States marshal ; Henry L. Moss, United States

district attorney ; Morton S. Wilkinson, district attorney, St. Croix county ; John Morgan, sheriff, St. Croix county ; Harvey Wilson, clerk United States district court, St. Croix county ; William Henry Forbes, interpreter.

On the first day of this term, the following named attorneys were admitted to practice : Morton S. Wilkinson, Henry L. Moss, David Lambert, H. A. Lambert George Goble, John A. Wakefield, Hiram Knowlton, Charles K. Smith, Alexander M. Mitchell, John S. Goodrich, William [335] Phillips, Edmund Rice, Ellis G. Whittall, and Samuel H. Dent. Of these gentlemen the following were residents of St. Paul: The two Lamberts, Messrs. Wakefield, Smith, Mitchell, Phillips, Rice, Whittall and Dent.

On the second day the court admitted Putnam B. Bishop and Lorenzo A. Babcock.

On the fourth day Alexander Wilkin and Bushrod W. Lott were admitted, also Messrs. Bishop, Wilkin and Lott of St. Paul, and Mr. Babcock of Sauk Rapids.

On the fourth day an indictment was returned by the grand jury against William D. Phillips, the attorney of whom we have previously spoken, for an assault with intent to maim. The case was tried and a verdict rendered against Mr. Phillips for an assault, and he was fined twenty-five dollars.

This being the first indictment ever found and tried in Minnesota, and being against an attorney of the court, it possesses some historic interest. Mr. Phillips, in an altercation with the prosecuting witness, drew a pistol on him, and the question in the case was whether the pistol was loaded or not. The witness swore that it was, and that he could see the load. The prisoner, as the law then stood, could not testify in his own behalf, and there was no way for him to disprove this fact. He, however, always felt very much aggrieved at the verdict against him, and explained the assertion of the witness, that he *saw* the load, in this way. Mr. Phillips said he had been around electioneering for H. M. Rice, against Mr. Sibley, and from the unsettled state of the country he found it difficult to get his meals regularly. So he carried crackers and cheese in his pockets, and the pistol being in the same pocket, a piece of the cracker got into the

muzzle of the pistol, and the fellow was so scared that he thought the pistol was charged to the brim.

On the sixth day of the term Samuel H. Quay and Laysel B. Wait were admitted to practice.

Mr. Quay was one of the publishers of the Minnesota *Register* in St. Paul, and Mr. Wait was at the time of his admission a resident of Stillwater, but for many years after of St. Paul, and engaged in various mercantile pursuits. Neither of these gentlemen ever practiced law that can be discovered.

At this term our much respected citizen, Mr. Nathan Myrick, was indicted for selling liquor to Indians. This affair grew out of a seizure of Mr. Myrick's goods, as an Indian trader, by Captain Monroe of the United States army, for an alleged breach of the trade and intercourse laws. Mr. Myrick was arrested by Captain Monroe, and held a prisoner one night, and then released. The difficulty was amicably adjusted between Mr. Myrick and the captain, and, so far as the former was concerned, would have been allowed to drop, but when the indictment was found, Mr. Myrick at once, by Masterson & Simons, his attorneys, commenced an action against Captain Monroe for false imprisonment, and recovered a judgment of \$666.66, which the government subsequently paid, thus fully vindicating Mr. Myrick from any infraction of the laws. The indictment was never tried.

Mr. Harvey Wilson, who figures as the [336] clerk of the first court ever held in Minnesota, continued to hold the office, the clerk of the district court of Washington county, continuously from the organization of that county in 1849, to the time of his death about nine years ago.

Alexander Wilkin admitted at this term, was an elder brother of Judge Westcott Wilkin, at present and for many years past the honored judge of the district court of Ramsey county. He had been an officer in the United States army in the Mexican war, and was always called in the olden time "Captain Wilkin." He was a man of small stature, but indomitable will and energy, and uncompromising integrity. The captain was quick to resent an affront, and in the free and fighting days of the territory, had several personal encounters

with parties who had given him offense, but happily none of them resulted seriously to either party.

The captain operated largely in real estate and acquired a considerable quantity of valuable lands. He was appointed secretary of the territory to succeed Charles K. Smith, and performed the duties of that office until the election of President Pierce. He was an officer of the celebrated Pioneer guards, the first military organization formed in the territory. He visited Europe during the Crimean war in 1854, and traveled extensively, and when the civil war commenced in this country in 1861, he went to the front as an officer in the First Minnesota regiment. He was soon promoted through various grades to the command of the Ninth Minnesota, and after participating in many of the battles of the war, and exhibiting a high degree of valor and skill as a military leader, he was killed at the battle of Tupelo. Colonel Wilkin is remembered by all who enjoyed his acquaintance, with great respect and affection. He did not engage in the practice of law very extensively.

In September, 1849, Michael E. Ames located in Stillwater and opened a law office. Mr. Ames soon after removed to St. Paul, where he practiced his profession until his death. He was a native of Vermont, but came to Minnesota from Baraboo, Wisconsin. Mr. Ames was one of the leading members of the bar of Ramsey county. He was a persuasive orator and a successful advocate.

Edmund Rice, who was admitted at the first term of the court, is a native of Vermont, but immigrated to Minnesota from Michigan. Mr. Rice devoted himself to the practice of the law up to about the year 1856, when the railroad interests of the state began to assume prominence. He took a lively interest in railroad matters from that date, and has since almost exclusively devoted himself to those enterprises, building the first roads ever constructed in this territory. He has been president of several of the leading railroad companies and well deserves to be styled the father of railroads in this state, so far as relates to bringing the system from theory to actual construction and operation, while the conception of the system and the securing of the great land grants largely belongs to his brother, Henry M. Rice, for a long time delegate and United States senator from Minnesota. Mr. Edmund Rice has always enjoyed the confidence and warm friendship of the people of Minnesota to [337]

a degree hardly equaled by any other man and may be said to-day to be the most popular as well as one of the handsomest men in the state. He was chosen mayor of St. Paul by an unusually large majority, after filling many offices of trust and honor invariably with satisfaction to his constituency, and is at present a member of congress from this state.

Charles E. Flandrau

[To be continued.]



MAGAZINE OF WESTERN HISTORY.

Vol. VIII.

MAY, 1888.

No. 1.

THE BENCH AND BAR OF RAMSEY COUNTY, MINNESOTA.

II.

George L. Becker arrived in St. Paul in the year 1849 and was an active practitioner and successful lawyer up to the advent of the railroads, when he became interested in those enterprises and has been very prominently connected with them down to within a year or two, during which period he has not been in the practice of the law. Mr. Becker is now one of the state railroad commissioners. No man in the state is more worthy of the high esteem in which he is held by all classes of people than Mr. Becker. While possessing fine culture and elegance of deportment, his chief characteristic is a bold honesty, based upon the solid foundation of superior common sense. He is still a resident of St. Paul, but engaged in extensive agricultural operations in Brown's valley and eastern Dakota.

William P. Murray, a native of Indiana, also came to St. Paul in 1849, and has been actively engaged in practice ever since. Mr. Murray is an astute, quick witted man. He has been a member of the Minnesota legislature probably oftener than any man in the state. He is thoroughly versed in everything pertaining to the interests of St. Paul and Ramsey county, and ably represents those interests in the legislative and municipal councils. Mr. Murray has been several years city attorney of St. Paul and now fills that office, which withdraws him from general practice.

Judge Goodrich, the first chief-justice of the territory, was a native of New York, but was appointed from Tennessee. Being assigned to the first district, he took up his residence in St. Paul and continued to reside in that city until his death, only a short time ago, at a very ripe old age. After the expiration of his judicial term he was engaged in some important cases, but never devoted himself to the practice of his profession. His inclinations were arch geological and literary. He is the author of a curious and interesting work, the principal object of which is to prove that Columbus did not discover America. The judge was appointed secretary of the American legation at Brussels, one of the most

refined and polite courts in Europe, and filled that pleasant position for eight years, improving the opportunity to expand his knowledge of paleology by profound researches through the libraries of Europe.

The judge was deeply learned in all sorts of biblical lore and familiar with scriptural names. On one occasion, when defending a Sioux Indian by the name of Zu-a-za, on a charge of murder, the name troubled the judge and he called him all through the argument "my client, Ehasuerus."

[59] Judge Cooper, at the end of his official term, settled down to the practice of the law in St. Paul and continued his work up to June, 1864, when he emigrated to Nevada and located at Austin, on Reese river. He practiced there several years and went to Salt Lake City, where he died several years ago.

Judge Cooper was a very industrious and painstaking lawyer, but irascible in the highest degree ; he so fully identified himself with the cause of his client that fair criticism from the opposite counsel of the merits of the case would be construed almost in a personal affront, and he never forgave a judge who decided against him. With all these peculiarities, the judge had a very genial side in his nature. The writer passed nearly a month with him, shut up in an ocean steamer, occupying the same state-room, and takes pleasure in testifying to the fact that a more agreeable companion would be hard to find.

One of the judge's habits was to wear the old style fine cambric shirts with frills up the bosom and at the cuffs. The singularity of this dress was made much more conspicuous from the contrast it presented to the careless attire of the people of 1849, and even later years. He was known as a gentleman of the old school.

Henry F. Masterson and Orlando Simons arrived in St. Paul June 20, 1849. They were both from the state of New York, and were admitted to the bar of that state. They were partners before leaving New York, and continued the firm here by the name of Masterson & Simons. These gentlemen composed the first law firm ever established in Minnesota, and they remained together up to the year 1875, when the number of the judges of the court of common pleas of Ramsey county having been increased to two, Mr. Simons was appointed by the governor one of the judges of that court. He was subsequently transferred by statute to the district bench and then elected by the people to the latter position and now fills it to the entire satisfaction of the bar, enjoying the confidence of the people and being the terror of

all wrong-doers. Judge Simons has long been a close student of the law and is endowed with a clear, logical brain. He is as free from bias, partiality, timidity or a fear of being criticised as a granite monument in a secluded church-yard. He has most of the attributes of a great judge.

Henry F. Masterson, like most of the young lawyers who came to the far west in those early times, was not possessed of much worldly means—in fact he had none. As the outlook for law business was not promising, he manfully went to work in a saw-mill at the Falls of St. Anthony, and in the construction of Fort Ripley, then Fort Gaines, earned sufficient money to start himself in the practice of his profession. Mr. Simons and himself then opened an office in St. Paul, where Mr. Masterson continued to practice until his death, some years ago. He was a good lawyer, a profound thinker and always got to the bottom of his cases. Mr. Masterson has been engaged in much of the important litigation of this judicial district and was for years the attorney for the St. Paul & Pacific Railroad company. He was a very genial and companionable gentleman, and delighted in reminiscences [60] of what we have called the "traditional period" of Minnesota. The writer is indebted to Mr. Masterson for many of the facts contained in this paper.

The second law firm that was formed in Ramsey county was composed of Edmund Rice and Ellis G. Whitall, under the name of Rice & Whitall. Late in the year 1849 George L. Becker entered this firm, which was from that time known as Rice, Whitall & Becker. Mr. Whitall removed to St. Anthony and opened an office in that place, which was the first law office there. Mr. Whitall left the country about 1852 and never returned.

Mr. Lorenzo A. Babcock, of whom we have before spoken, was a native of Vermont, and admitted to practice in that state. He arrived in Minnesota early in the spring of 1849, and settled in Sauk Rapids. He was elected to the first legislature, and was the first attorney-general of the territory, He removed to St. Paul in the latter part of 1849, and practiced his profession there until his death.

Mr. Putnam P. Bishop was at one time a partner of William D. Phillips, in St. Paul. We learn that he is still alive, and has become a Baptist clergyman.

Mr. Samuel H. Dent was from Kentucky. He was a justice of the peace

in 1849 and 1850.

In the year 1850 law business improved, and several new lawyers arrived. Associations began to be formed among attorneys. The firm of Babcock, Ames & Wilkinson was formed, Mr. Babcock representing the firm in St. Paul, and Messrs. Ames and Wilkinson residing at Stillwater. Rensselaer R. Nelson, a son of Judge Samuel Nelson of the supreme court of the United States, arrived in 1850. He had been admitted in New York, and practiced a short time at Cooperstown. He formed a partnership with Captain Wilkin, and practiced until he was appointed associate justice of the supreme court of the territory in 1857. He held this office until the admission of Minnesota into the Union, when he was appointed United States district judge of the district of Minnesota, which district then, and still, embraces the entire state. He has held this position ever since. Judge Nelson presided at several sessions of the district court of the territory, and sat with Chief-Justice Welch and Associate-Justice Flandrau at the last term of the supreme court ever held in the territory, in January, 1858. He appears in the first volume of the 'Minnesota Reports' as rendering the opinion in the case of *Foster vs. Bailey et all*, reported at pages 436 to 441.

Judge Nelson is a well-trained lawyer; is endowed with a good, sound mind and body. His administration of justice has been characterized by impartiality, fearlessness and vigor. He is prompt in deciding matters that are submitted to him, and is esteemed by the bar for his urbanity, sterling integrity and painstaking endeavors to decide justly and according to law and precedent. In the domain of equity he is quick to detect fraud, artifice or oppression, and energetic in thwarting their designs upon the rights of the innocent.

As district judge he possesses circuit powers, and quite frequently the entire [61] duties of the circuit devolve upon him. The state has every reason for congratulation in having such a competent and honorable judge to administer the Federal side of its judicature.

Jacob J. Noah, a son of the once famous Mordecai Manassa Noah of New York newspaper notoriety, located in St. Paul in 1850. Mr. Noah is a very remarkable man in various ways. He is an excellent musician., speaks French like a Parisian, is a competent art critic, a fair essayist on almost any subject, more at home on polemical theology than most priests, a very good lawyer, a capital actor, and, in a word, an accomplished gentleman. He lived for some time at Mendota, was the first clerk of the supreme court of the state, and left

the impress of his beautiful penmanship indelibly upon its records. He left the state about the time of the breaking out of the Rebellion, served in the Union army, carpet-bagged extensively in Tennessee, and has resided in Washington ever since. An amusing anecdote is related of him when practicing at Mendota. One of our present distinguished lawyers had just arrived, and had business at Mendota before a justice of the peace. He was for the defence and Mr. Noah for the plaintiff. After reading the complaint he demurred to it, and delivered a very able argument in support of his demurrer. The justice was a stately-looking, gray-headed man, and as the attorney became eloquent he would throw out signs of appreciation, bowing occasionally, as if in acquiescence. When the counsel was through, he thought he had made a good argument and convinced the court, when, much to his surprise, Mr. Noah commenced addressing the court in French, whereupon he objected, saying that the law required the proceedings to be conducted in English and that he did not understand French. "Oh, yes," said Mr. Noah, "I was only telling the court what you had been saying." "Well, sir," said his adversary, "I think I made myself sufficiently clear, and need none of your interference." "That is true," said the major, "you made an excellent argument, but the court don't understand any English," which was a fact. The major's adversary threw up the sponge.

Mr. Allen Pierce from Mississippi, formerly a law partner of Henry S. Foot of that state, located in St. Paul in 1850, for a short time, but removed to Willow River (now Hudson), Wisconsin.

Phillips and Bishop also formed a partnership in the year 1850, at St. Paul.

Charles J. Hennis from Philadelphia, arrived in 1850. He opened a law office, but was more of a newspaper man than a lawyer. He was either an Irishman or of Irish descent. He was a very eloquent speaker and able writer. The mention of his name awakens recollections of wit and cleverness rarely met with in these humdrum days of all work and no fun. He died after a brief sojourn in St. Paul.

William Hollinshead of Philadelphia arrived in St. Paul in 1850. He was an able man and good lawyer, and for several years was regarded as at the head of the Ramsey county bar. On March 4, 1851, he entered into partnership with Edmund Rice and George L. Becker, forming the firm of Rice, Hollinshead & Becker, which was as long as it lasted the most [62] prominent law firm in Minnesota. Mr. Hollinshead married a

sister of Henry M. and Edmund Rice. He left several children, one of whom, Edmund R. Hollinshead, became a lawyer and practiced in St. Paul until his death. Mr. Hollinshead was a very impressive speaker and carried great weights with courts and juries.

C. S. Todd of Kentucky was one of the arrivals of 1850. It was never supposed that he came to stay but to gain a residence for a special purpose. His sojourn was brief, but being a member of the Ramsey county bar, we mention, him.

William G. LeDuc came to St. Paul in 1850. He did not do very much at the practice. He was in the book and stationery business. Mr. LeDuc was in the quartermaster's department of the Union army during the Rebellion, and during President Hayes' term was commissioner of agriculture. Mr. LeDuc has demonstrated that the soil of America, manipulated by Yankee ingenuity, surpasses the Celestial empire in the production of tea.

In 1851 Pierce and Murray entered into partnership in St. Paul.

Mr. John F. Lehan, an Irishman, opened a law office in St. Paul. He was more devoted to politics than law and remained but a short time.

George W. Prescott and D. A. J. Baker, both from the state of Maine, opened a law office in St. Paul as Prescott & Baker. Mr. Prescott was afterwards clerk of the United States district court, and is now a Baptist clergyman. Mr. Baker still resides in Ramsey county, but does not practice law.

DeWitt C. Cooley, a native of New York and a member of the bar of that state, settled in St. Paul in 1851. He had practiced in Texas and other southern states before coming to Minnesota. He practiced in St. Paul for a number of years, forming a partnership with Justin I. McCarthy, and was the second district attorney of Ramsey county. Mr. Cooley left the state at one time and resided in Pennsylvania for many years, but returned to St. Paul and has resided there for the past eight or ten years. He, however, has not been in practice.

Lafayette Emmett of Ohio came to St. Paul this year and opened a law office. He was at one time in partnership with Henry L. Moss, and again with James Smith, jr., as Emmett & Smith. He was attorney-general of the territory during the administration of Governor Willis A. Gorman, and was the first chief-justice of the state, being elected at the first election, in 1857, and serving a term of seven years. Judge

Emmett is an able lawyer and made an excellent judge. His judicial record is contained in the 'Minnesota Reports,' from volume two to volume nine inclusive, and it is one which will bear creditable comparison with that of any judge who has ever sat upon the supreme bench of Minnesota. The judge removed to Faribault some years ago, and now lives in New Mexico.

On the eighteenth of September, 1851, R. R. Nelson entered into partnership with Isaac Van Etten. Mr. Van Etten came from New York to St. Paul. He died many years ago. This firm was of very brief duration; it did business as "Ames & Nelson."

On the twenty-fifth of November Captain Wilkin formed a partnership with Isaac Van Etten, under the firm name of "Wilkin & Van Etten."

T. P. Watson, a Frenchman from Detroit, arrived this year in St. Paul; also, A. L. Williams of New York, who had been in practice in Wisconsin before coming to Minnesota. These gentlemen formed a partnership as "Williams & Watson." Henry L. Moss moved over from Stillwater to St. Paul this year. Charles Willis of Ohio settled in St. Paul this year. For many years Mr. Willis has withdrawn from active practice and has devoted himself to the management of his private affairs. He is an esteemed citizen and the father of John W. Willis, a young lawyer of great promise.

On the first day of July of this year Mr. Moss and Lafayette Emmett formed a partnership as "Emmett & Moss."

George D. Rice, a brother of Henry M. Rice and Edmund Rice, arrived this year; he can hardly be said to have entered into practice. He returned to Michigan.

William H. Welch, a native of Connecticut, graduate of Yale college and law school, arrived in 1850, and should have been classed in that year. He lived some time at St. Anthony, while it was part of Ramsey county, and subsequently at St. Paul. He was appointed chief-justice of the territory by President Pierce, served four years and was re-appointed by President Buchanan, serving until the admission of the state. Judge Welch was a well-read lawyer and very much esteemed. He has been dead many years.

Isaac V. D. Heard, a native of New York, came to St. Paul April 29, 1852. For a time Mr. Heard acted as clerk for Alexander Wilkin, then

secretary of the territory. He was elected district attorney for the county of Ramsey in 1855, and held that office by successive reëlections for eight years, and performed its duties with marked ability and success. Subsequently he was city attorney of St. Paul for about three years. Mr. Heard was in the Sioux war of 1862 as an officer on the staff of General Sibley, and was one of a party sent by the general to the relief of the besieged at New Ulm. They charged into the town, expecting to meet the Indians, but found the place absolutely deserted, Colonel Flandrau, after defeating the Indians, having taken all the inhabitants to Mankato. Mr. Heard acted as recorder and judge advocate of the military commission which tried the Sioux prisoners, and wrote a book descriptive of the war of 1862, called the 'History of the Sioux War.' Mr. Heard is a sound lawyer and enjoys a fine practice. He has been engaged in many of the most important trials, civil and criminal, that have taken place in this county, and always with credit to himself and the profession.

Daniel Breck, a Kentuckian, settled in St. Paul for the purpose of practicing law this year. He unfortunately killed a man, after a short residence, and departed. While here he formed a partnership with A. L. Williams as Breck & Williams.

John Esais Warren of Troy, New York, removed to St. Paul in 1852. Mr. Warren, although an educated lawyer, was more devoted to literature than law. He has traveled extensively and acquired a varied knowledge. Being a man of large means, [64] he took the world quite easily, following the bent of his inclinations. He was the author of a work on Spain and a book called 'Para, or Adventures on the Amazon.' He took a lively interest in public affairs and was at one time mayor of St. Paul and United States district attorney of the territory. Mr. Warren, after leaving St. Paul, resided in Chicago, where he became extensively engaged in the real estate business. He is still a resident of that city. There are many citizens of St. Paul today, including the writer, who delight to recall the sumptuous hospitality of Mr. Warren's home, made doubly attractive by the merry brilliancy of his charming wife. In the year 1852 Mr. Warren formed a law partnership with Mr. Joseph Wakefield, who settled in St Paul the same year. The firm name was Wakefield & Warren.

To give the reader some idea of the remoteness of this region from the outside world prior to and at the time of the organization of the territory, we will state that the Organic act was passed March 3, 1849,

but the news of its passage and the appointment of territorial officers was not known in Minnesota until the ninth of the next April; and when General Taylor was elected President of the United States in November, 1848, the first information of the result of the election that reached Stillwater was on the third day of January, 1849.

We have thus far gone into particulars concerning the individual members of the bar of Ramsey county and its predecessor, the county of St. Croix, because, as we said before, the greater interest attaches to the pioneer times that form the nucleus or germ of the after and more stately growth. We will be necessarily compelled to be more general in our consideration of the subject after the year 1852. The growth of Ramsey county was very rapid from 1852 to 1858, and many lawyers were attracted to the capital city of the territory. There came, before the admission of the state, Willis A. Gorman, the second governor of the territory ; Westcott Wilkin, at present the senior judge of the district court ; E. C. Palmer, the first judge of the district court after the admission of the state ; William Sprigg Hall, the first judge of the court of common pleas of Ramsey county ; S. J. R. McMillan, afterwards associate justice of the supreme court of the state, chief-justice of the same court, and United States senator for two terms ; Charles E. Flandrau, one of the associate justices of the supreme court of the territory and state, and at one time Indian agent for the Sioux of the Mississippi ; Horace R. Bigelow, for a long time past the honored president of the Bar Association of Ramsey county ; Greenleaf Clark, regent of the State university and associate justice of the supreme court; John B. Brisbin, mayor of St. Paul, president of the territorial council in 1856, and reporter of the supreme court ; J. Traverse Rosser, secretary of the territory during Governor Gorman's administration; Alexander C. Jones, judge of probate and United States consul to Nagasaki in Japan, and now United States consul at Chin Kiang, China ; John Penman, originally a Methodist preacher, turned lawyer, and was judge of probate of Ramsey county ; John B. Sanborn, who fought his way to the rank of major-general of volunteers in the Union army ; Morris Lamprey, regent of the State university ; Oscar Stephenson, judge of probate of Ramsey county; Harvey Officer, reporter of the supreme court; Lorenzo Allis, John M. Gilman, James Smith, jr.; George L. Otis, who was once honored by the democracy of the state with the nomination for governor ; Henry J. Horn, W. P. Warner and many more gentlemen whom space forbids us to particularize.

Since the admission of the state, which occurred May 11, 1858, the bar of Ramsey county has increased in fair proportion to the growth of the county, and many brilliant and able men have been enrolled among its members, prominent among whom is Cushman K. Davis. Mr. Davis is a well-trained lawyer; has received a thorough education both in law and the general branches of study. He possesses an extraordinary fluency of speech and brilliancy of conception and expression. He is an eloquent and forcible speaker, a graceful writer and a close student. Mr. Davis has, by the simple force of his ability, attained a high position at the bar of this state, and bids fair to achieve a National reputation as a lawyer. He has been for one term governor of the state, and administered its executive affairs with marked ability. Governor Davis is still a young man, and is now United States senator from this state.

George B. Young was appointed by Governor Davis to fill a vacancy on the supreme bench. He resided in Minneapolis at the time of his appointment, and was scarcely known in Ramsey county. His incumbency of the office was brief, but of sufficient duration to introduce him to the public as a lawyer of ability and promise. When he retired from the bench he commenced practice in St. Paul, and has since been engaged in some of the most important litigation in the state. Judge Young may be classed among the first lawyers of the state.

William P. Clough, who for some time practiced in Rochester before coming to St. Paul, is another member of the bar who deserves special mention for his ability and industry in the practice of his profession. Mr. Clough possesses a clear mind, quick to perceive the strong points of a case, and an ingenuity that makes the most of the weak ones. He presents a case with great force to either a court or jury. Mr. Clough has devoted his latter years to railroad law, representing the Northern Pacific railroad many years, and now the St. Paul, Minneapolis & Manitoba.

W. W. Irwin deserves special mention as a member of the Ramsey county bar. He is a man of genius in his way ; eccentric to the last degree; brilliant in conception and execution; an orator of considerable force. Independent of all social conventionalities, he appears here, there, anywhere, like a comet with no ascertained orbit. He creates amazement by the suddenness of attacks and retreats. His methods differ from those of all other men. His system is his own. He

is a success in the line he has adopted in the profession—that of a criminal lawyer. He enjoys a reputation in this *role* that extends beyond the limits of the state. Few criminal trials of any magnitude have taken place in this state or the [66] adjoining territories of late years that Mr. Irwin has not been engaged in for the defence, and his success has been extraordinary.

HONORABLE GORDON E. COLE.

The subject of this paper, Honorable Gordon E. Cole of Faribault, Minnesota, has occupied a very large place in the history and development of this state, and is well worthy of a more extended notice and recognition than is possible in a magazine article. General Cole's past life has been one of well directed intelligence, ability, industry and integrity. A more active and fruitful career will be hard to find among the men of the west who have confined their sphere of operations principally to private concerns, and have not sought notoriety in public life. While General Cole has largely devoted himself to matters pertaining to his profession, he has been frequently honored by his fellow-citizens by the bestowal of high and important public positions, in all of which he has displayed an ability and devotion to duty which has honored both the office and the incumbent.

It will be our endeavor, in presenting the leading features of our subject's life and his personal characteristics, to classify them as personal, general, professional and political. Mr. Cole was born in Cheshire, Berkshire county, Massachusetts, on June 18, 1833, his present age being nearly fifty-five years. He is the son of Doctor Lansing J. Cole, his mother's maiden name being Laura Brown. His preparation for college was chiefly at the Connecticut Literary institution at Suffield, Connecticut. He then entered the law office of Governor George N. Briggs of Pittsfield, Massachusetts, and after some time of study therein, he continued his legal studies in the office of Gamwell & Adam; took an eight months' course at the State and National Law school at Balston Spa, Saratoga county, New York, and graduated from the Dane Law school of Harvard university in 1854, with the title of LL. B. How well he improved his early opportunities of acquiring his profession will fully appear when we treat of that branch of his career. As soon as qualified, Mr. Cole opened a law

office in Cheshire, Massachusetts, where he practiced for about two years.

In August, 1855, he married Stella C. Whipple of Shaftsbury, Vermont, and emigrated to Minnesota in the fall of 1856, and in January, 1857, he settled in Faribault, Rice county. At this time Faribault was a very small settlement, and at the present date has not attained metropolitan growth, although one of the most prosperous and cultured of our smaller cities, being the seat of the Episcopal bishop of the diocese of Minnesota, and containing many fine educational institutions of that church and some of the charitable establishments of the state. Mr. Cole commenced the practice of the law under the somewhat adverse conditions of the confined surroundings of the situation he had selected, but such was the extraordinary ability which he displayed in the conduct of his business that he very soon became recognized throughout the state as one of its leading and successful lawyers, and for many years enjoyed a practice as extensive and lucrative as that of any attorney in the commonwealth. While his legal headquarters were solely in Faribault, his practice extended to many celebrated causes in other parts of the state, including the capital city and the great manufacturing centre at Minneapolis. Conspicuous among these cases was that of the great Cochran patent suit, involving the right to use the improved modern plan of making flour, in which Mr. Cole represented the Minnesota Millers' association and George Harding of Philadelphia the National Millers' association. The case was argued at St. Louis before Judges Dillon, Treat and Nelson of the Federal bench, and was gained by the millers. The writer knows of no litigation that has occurred in many years which was so important to the prosperity of the northwest as this, and to Mr. Cole's devotion and ability is largely due the triumph achieved.

Mr. Cole also represented the trustees of the Southern Minnesota Railroad company and the St. Paul & Pacific Railroad company in the settlement of their important and complicated accounts.

His practice and studious habits had greatly familiarized him with the construction of governmental land grants, and his services were sought in many of these celebrated causes, prominently that of *Barney vs. The Winona & St. Peter Railroad company*, involving some two hundred thousand acres of land, which has recently been successfully concluded in favor of Mr. Cole's clients, and he now represents the

Dwight Land company and many other purchasers of indemnity land from the Northern Pacific Railroad company, the title to which the United States government, under the pressure of prevailing agrarian ideas, is endeavoring to take from the purchasers. Mr. Cole quite recently presented the claims of his clients in an elaborate argument before the attorney-general of the United States. In 1881 he was attorney for Selah Chamberlain in his claims against the state arising out of the old state railroad bonds, which proceedings resulted in the satisfactory adjustment of that very troublesome question. Mr. Cole addressed the legislature on the subject, and made the most able, elaborate and protracted argument before the supreme court on the constitutionality of the legislative action that was ever submitted to that tribunal. The decision of this case relieved the state from the stain of repudiation.



Gordon E Cole

Some years ago General Cole occasionally appeared in the defence in important criminal trials, the most noted of which was that of Charles Lamb, tried in the United States circuit court, in which Mr. W. W. Irwin assisted in the preparation of the evidence and gave

promise of the great ability which he has since displayed in the trial of criminal causes. Although very successful in this line of his profession, Mr. Cole has practically abandoned it, preferring the more intellectual and agreeable features of the civil branch of the profession. In January, 1881, finding that his business had assumed such proportions that an office at the capital was essential, he opened one in St. Paul and has ever since maintained it as the centre of his operations, retaining, however, his residence in Faribault. General Cole may now be congratulated on enjoy[68]ing a position in his profession, both as to high standing and lucrative results, surpassed by none and equaled by few in this now great state. Although absorbed with professional duties, General Cole did not wholly ignore the demands of the people upon his services in a public capacity. In 1859 he was elected attorney-general of the state and held the office for three successive terms, and until January, 1866. In 1865 he was appointed by the state legislature one of the commissioners for the revision of the statutes.

In 1866 he was elected a member of the state senate and was chairman of the joint committee on revision of the statutes, and during the contest for the election of United States senator, which resulted in the choice of Honorable S. J. R. McMillan, he was for several days the leading candidate of the Republicans for that high position.

In 1879 he was elected mayor of Faribault by the united vote of both parties.

In 1883 he was elected a member of the house of representatives in the state legislature, and was again voted for by members of both houses for the position of United States senator, Mr. D. M. Sabin, however, by an unexpected combination, being the successful competitor.

While serving in the legislature in 1883, the question arose of submitting to the people an amendment to the constitution prohibiting the manufacture or sale of spirituous liquors within the state. Many members who were opposed to prohibition were, however, willing to let the people assume the responsibility of its incorporation into the polity of the state. Not so Mr. Cole, being a man of convictions, based on intelligent observation and investigation, and being independent enough to express them, and knowing that such sumptuary laws are vicious to the core and productive alone

of the fruit of bitterness and contention, he delivered a speech against the measure which took the house by storm. The best idea that can be conveyed to the reader of its character and effect is found in a brief comment upon it which appeared in the leading paper of St. Paul—the *Pioneer Press*—the next morning, which is copied here, the importance of the subject fully justifying it:

SHALL THE STATE PROHIBIT ?

The Minnesota house of representatives was the battle-field, Wednesday afternoon, of the prohibition question. The friends of the measure, which was a proposed amendment to the constitution, providing for a vote on the prohibition principle at the general election in 1884, felt sanguine of success. When the debate had opened, General Gordon E. Cole, who had not been expected to speak on the issue, took the floor and delivered the following speech, which was so happily put that in a short time every foot of standing room in the chamber was occupied. General Cole's brilliant wit and sparkling anecdotes kept his audience at a fresh pace with his logic, and he scored point after point against the moral and legal hollowness of prohibition as advocated by the Prohibitionist party in this country. A short-hand writer who was present reported the speech *verbatim*, which will be a lasting gratification to all who heard it. The defeat of the amendment was doubtless a direct result of General Cole's speech.

To prove the great interest which General Cole takes in matters outside of his professional duties, and to which attach no pecuniary profit, and to show his indefatigable industry, we will enumerate some of the many positions which for long years he has filled, and now fills, [69] both political and otherwise. He is now secretary and trustee of St. Mary's hall, Bishop Whipple's boarding school for girls, at Faribault; he is vestryman of the Episcopal church at Faribault; he is treasurer of the Minnesota Church foundation, a corporation having in charge endowment funds and lands of the Episcopal diocese of Minnesota; he is trustee of the incorporation of the Episcopal diocese of Minnesota; he is president of the Tariff Reform League of Minnesota ; he is president of the board of

managers of the State reformatory; he is a regent of the State university and lecturer before that university on the law of corporations; he was the first president of the State Bar association; he is vice-president for Minnesota of the National Bar association; he is a member of the advisory board of the State Agricultural society; he is a member of the executive council of the State Historical society.

In politics, General Cole has always been ranked as a Republican, but whenever his party assumes positions which do not meet his approval, he does not hesitate to say so and to advocate his own views on such matters, He does not believe in a protective tariff; and as president of the Tariff Reform League of Minnesota, he openly contests the principles of his party on this now all engrossing issue.

In 1886 he was chairman of the committee on resolutions in the Republican State convention of Minnesota, which declared for high license and a reduction of the tariff, and he drafted the high license law, now in effect, at the request of the legislative committee having that matter in charge.

In 1886, at the request of the board of corrections and charities, he investigated the subject of prison reform and delivered an address before that body in the hall of the house of representatives, and was made chairman of a committee to secure legislation in accordance with the suggestions of that address, and drew the first and existing law providing for a state reformatory, and in 1887 he was elected by the legislature a member of the board of managers of that institution, for the longest term prescribed by the law.

In addition to this multitude of duties, General Cole has delivered many political addresses and literary lectures, never allowing these incidental matters, in any way, to conflict with his professional and practical business affairs. Unlike most lawyers, who are said "to work hard, live well and die poor," General Cole has acquired a handsome competence by his industry and sagacity, and it is the sincere hope of his many friends that he may long live to enjoy it.

In June, 1874, his wife died, leaving three daughters, and in 1876 he was again married to Kate D. Turner of Cleveland, Ohio. General Cole possesses most of the elements of success in the legal profession. He has a very copious vocabulary to draw upon, and his delivery is easy and fluent. He is thoroughly well grounded in the

principles of the science he professes. He has immense industry and quick wit to assist in extricating him from the surprises incident to and inseparable from forensic encounters.

As an example, the rising generation cannot select a safer standard than the past life of our esteemed fellow-citizen, General Gordon E. Cole.

Chas E. Flandrau.



Posted MLHP: January, 2008.

Revised: June, 2008.

