

JUDGE MITCHELL'S COURT CALENDARS: MARCH 13-18 & OCTOBER 16-20, 1879.

FOREWARD

BY

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The proceedings of the Winona County District Court during five days in March 1879 and another five days in October 1879, were reported in *The Winona Herald*. They provide a glimpse of the work of a trial judge in a rural county almost one hundred thirty years ago.¹

Thirty-two cases came before William Mitchell, the trial judge, during March 13-18, and another fifty-five during October 16-20. By this time, Mitchell had been on the bench for over five years.²

Slightly less than half the cases on both the March and the October calendars were criminal prosecutions. Trials in Mitchell's court rarely lasted longer than a day. Sentencing occurred a few days after the jury returned a guilty verdict.

The county attorney did not bring shotgun charges against a defendant and there does not seem to have been any plea bargaining. During the five days in October, for instance, six prisoners were ordered released from jail without being charged with a crime; four indictments were dismissed on motion of the county attorney for lack of evidence; there were two guilty pleas,

¹ Each week *The Winona Herald* published an article describing the proceedings in the district court. The five day periods in March and October, 1879, were selected at random.

² Mitchell began serving on the district court on January 4, 1874.

two not guilty verdicts, and one guilty verdict.

Most of the types of cases on Mitchell's calendar are heard by district court judges today—one exception being criminal seduction. But the converse is not true—trial judges today hear cases Mitchell rarely did. Divorce suits—renamed “family court cases” in the 1970s—and personal injury cases are not on his docket.

Mitchell seems to have been a somewhat lenient sentencer, frequently sending men convicted of theft to the county jail for several months, and creative one, at least in the case of the “young Dane,” who was given a choice of serving a prison term of one year and being released in the dead of winter or a longer term which would expire when spring arrived:

Thorald W. Scheppegrell, the young Dane who stole some twenty-five dollars from the Rev. Charles F. Garvin, of Stockton, about Christmas time in December last, as arraigned for larceny and plead guilty.

The Court gave the prisoner the choice of one year in the State prison—which with the usual deduction of sixty days for good behavior would let him out about the 1st of January—or fifteen months, which would make his term of imprisonment end in the Spring. The defendant chose one year, and was thereupon sentenced for that time.³

³ Mitchell's offer to Scheppegrell brings to mind O. Henry's short story, “The Cop and the Anthem.” In this tale, each autumn for many years, Soapy had committed a petty crime for which he was sent to “the Island” for the winter. Now, as winter approached and the nights on park benches got colder, he plotted to carry out his “hibernatorial ambitions”—he threw a cobblestone through a shop window but was not arrested even though he confessed; he ate a hearty meal at a restaurant and would not pay for it, yet the waiter did not call the police; he insulted a young woman but her retort was as brazen as his. As night closed in, he found himself outside an old church. As he listened to the “anthem” played by the organist, a “strong impulse moved him to battle with his desperate fate”; he decided to “pull himself out of the mire” and “make a man of himself again”; but suddenly:

On March 15, 1879, Mitchell decided to make a “test case” out of *State v. Kuhnert*. As reported in the *Herald*:

The case of the State vs. Kuhnert for selling liquor license in the town of Hillsdale, came up, and it was decided to make a test case of it and send it to the Supreme Court to see if the ruling of that Court in the Kasson case was applicable to cases arising in townships that had voted no license under the general law.

The defendant, Kuhnert, pleaded not guilty, admits the selling and that she had no license. The Court imposed a fine of \$25.00, to stand committed until further order of the Court.

Only a trial court judge with considerable self confidence—and Mitchell had a superabundance of this quality—would tell a party to appeal his order so that a higher court can clarify the law. Apparently, however, Kuhnert did not share Mitchell’s juridical interests because the *Minnesota Reports* do not contain any ruling involving a party named Kuhnert in the years 1880-1882.

On October 16, Mitchell granted a seemingly innocuous motion by the county attorney:

Ordered, on motion of A. N. Bentley County Attorney, that Robert Taylor, Esq., be and hereby is appointed assistant County Attorney, to act in place of

Soapy felt a hand laid on his arm. He looked quickly around into the broad face of a policeman.

“What are you doin’ here?” asked the officer.

“Nothin’,” said Soapy.

“The come along,” said the policeman.

“Three months on the Island,” said the Magistrate in the Police Court the next morning.

the County Attorney in an business or proceeding before the Grand Jury or in Court at the present term of this Court, when requested so to do by either the County Attorney or the Grand Jury.

To understand this order we must go back to the second day of the October term, Tuesday, October 14th. That day, as reported by the *Herald*, County Attorney Bentley asked Mitchell to appoint what today is called a “special prosecutor” to investigate rumors about Bentley’s conduct in the case of State vs. Blackenhorn. Here is the *Herald’s* report:

TUESDAY, OCTOBER 14.

The grand jury was called and charged by the court. J. L Blair was appointed foreman. In the course of his charge to the grand jury, Judge Mitchell said that in addition to the examination of the usual business which would come before them, it was also within the province and duty of the grand jury to inspect the jail and to examine into the official conduct of public officers of the county. At the close of the charge Mr. Bentley, the County Attorney, rose and said that in view of certain rumors and charges afloat regarding his conduct in the case of the State vs. Blackenhorn he felt some delicacy in proceeding with the business of the county without having an investigation. He desired that the Court should appoint an attorney to conduct the inquiry and if necessary let him be paid out of the salary of the County Attorney. Judge Mitchell replied that he would make the appointment as desired at a future day.⁴

The grand jury did not waste time. On October 18, it absolved Bentley of any wrongdoing. According to the *Herald*:

⁴ *Winona Herald*, October 17, 1879, at 2.

In the matter of the reduction of bail in the State against John Blakenhorn on application of Charles Niedenhofen, and of the connection of the County Attorney therewith, the Grand Jury reported that “the charges against the County Attorney cannot be sustained by any evidence presented to us.”

The following articles appeared first in *The Winona Herald* on March 21, 1879, and October 24, 1879. They are complete though reformatted. There were many errors in these newspaper accounts—misspelled words, inconsistencies in style (*vs.* was usually italicized, but sometimes not), while the day of the week may have been accurate, the day of the month was sometimes wrong. Glaring errors have been corrected.

To supplement the *Herald's* accounts, the sentences in several cases are described in footnotes. They were reported in *The Winona Daily Republican* on October 24 and 25, 1879.

THE WINONA HERALD

FRIDAY, MARCH 21, 1879

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DISTRICT COURT

HON. WM. MITCHELL, PRESIDING J. M.
SHEARDOWN, ESQ., CLERK,

THURSDAY, MARCH 13th.

The Grand Jury having finished their business were excused.

On Thursday afternoon Charles D. Loring was arraigned for stealing a valise and some clothing from the American House on the 8th of November last. J. W. Dyckson, Esq., was appointed counsel, and entered a plea of not guilty.

Thorald W. Scheppegrell, the young Dane who stole some twenty-five dollars from the Rev. Charles F. Garvin, of Stockton, about Christmas time in December last, was arraigned for larceny and plead guilty.

The Court gave the prisoner the choice of one year in the State prison—which with the usual deduction of sixty days for good behavior would let him out about the 1st of January—or fifteen months, which would make his term of imprisonment end in the Spring. The defendant chose one year, and was thereupon sentenced for that time.

John Blankenhorn, jr., was indicted for larceny in a shop, being charged with stealing two silver watches from H. H. Harrison on the 9th of October last. The defendant not responding when his name was called his bail was declared forfeited. The bondsmen are Charles Niedenhofen and Charles Stark.

Judge Barber, under instruction of the new city government of St. Charles, moved that the cases against Frank Feefer, Dennis Carter and Martin Ludwig, charged with selling liquor without license, be dismissed, and the court so ordered.

No indictments being found against Hans Martin, held for assault, Edward Haley for larceny, and John W. Burgess for seduction under promise of marriage, on motion of the County Attorney, A. N. Bentley, Esq. the defendants were ordered discharged from custody.

FRIDAY, MARCH, 14th.

The case of Daniel McSherry & Co. *vs.* Simpson & Wilson was on motion of plaintiff dismissed without costs to either party.

Charles Schorb *et al.* *vs.* John D. Rollins; a motion of defendant to dismiss was denied.

In the matter of laying out a highway in Hillsdale and Rollingstone and the assessment of damages to L. Coleman an appeal was taken on behalf of seven taxpayers from the decision of the Commissioners awarding Mr. Coleman \$900 damages. Robert Taylor, Esq., appeared for Coleman, and moved that the appeal be dismissed.

Wayne Packard *et al.* *vs.* John O'Dea; tried by the Court; decision reserved.

Peter Erpelding, respondent *vs.* Henry Kahler, appellant; tried by the Court.

In the case of Davis & Medary *vs.* N. H. Swift; judgment was given to plaintiff, findings to be drawn.

James Burke *vs.* James Tisdale; judgment that plaintiff is entitled to the possession of the property described in the complaint.

Reuben Brown *vs.* Lewis & Sons; judgment for plaintiff.

William Rhind, respondent, *vs.* John O'Dea, appellant; tried and submitted.

SATURDAY, MARCH 15th.

E. S. Mues, respondent, *vs.* Adam Simon, appellant; dismissed on motion of defendant.

William Rohweder *vs.* M. Schweitzer *et al.*, action dismissed as to all defendants except Schweitzer, and judgment given against Schweitzer for amount demanded in the complaint.

Wm. Rohweder *vs.* M. Schweitzer *et al.*, by consent referred to Thomas Simpson, Referee, to try and report judgment.

C. H. Porter *vs.* M. Schweitzer, Schneider Bros., garnishee; tried and submitted.

The case of the State *vs.* Kuhnert for selling liquor license in the town of Hillsdale, came up, and it was decided to make a test case of it and send it to the Supreme Court to see if the ruling of that Court in the Kasson case was applicable to cases arising in townships that had voted no license under the general law.

The defendant, Kuhnert, pleaded not guilty, admits the selling and that she had no license. The Court imposed a fine of \$25.00, to stand committed until further order of the Court.

Adjourned till March 17th, at 10 o'clock a. m.

MONDAY, MARCH, 17th.

The trial of Charles D. Loring, indicted for larceny for stealing a valise and some clothing from a room in the American House last Fall, occupied the forenoon and a portion of the afternoon; A. N. Bentley, Esq., for the prosecution; J. W. Dyckson, Esq., for the

defense.

The jury after being out about ten minutes returned a verdict of guilty.

The trial of Joseph Hand and Joseph Reynolds, charged with larceny, resulted in the jury finding both defendants guilty.

They were sentenced for fifteen days each in the county jail.

TUESDAY, MARCH 18th.

The trial of Clement Engle, charged, with an assault on Mrs. Berthe in the town of Homer, on the 13th of November last, was called on Tuesday morning.

A. N. Bentley, Esq., appears for the prosecution and C. H. Berry, Esq., for the defense.

State of Minnesota *vs.* Geo. W. Warner, action dismissed and the bail of the defendant discharged

The following cases were placed upon the calendar and the judgment of the Court below affirmed:

Homer. Waldron *vs.* Shepard & Cummings and W. H. Dill, garnishee;

Clark & Loveaday, respondent *vs.* Shepard & Cummings, W. H. Dill, garnishee;

Adams & Flowers, respondents, *vs.* Shepard & Cummings, W. H. Dill, garnishee.

E. F. Curtis *vs.* Shepard & Cummings, W. H. Dill, garnishee.

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THE WINONA HERALD

FRIDAY, OCTOBER 24, 1879

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DISTRICT COURT

HON. WM. MITCHELL, PRESIDING — J. M.
SHEARDOWN, ESQ., CLERK,

THURSDAY, OCTOBER 16.

In the case of Cassendana Remore *vs.* M. Sullivan *et al.* the jury returned a sealed verdict in writing as follows: “Was the deed from plaintiff to defendant, M. Sullivan, of the real estate described in the complaint procured from plaintiff by defendant, John Bolton, by duress? Answer — Yes.”

The case of E. F. Curtis *vs.* D. J. George, tried on Wednesday, resulted in a verdict for the plaintiff for the sum of \$556.

Schroth & Ahrens *vs.* Peter Kilburg; no appearance by defendant; judgment ordered for plaintiffs.

E. P. Bacon & Co. *vs.* J. Lewis, suit for balance claimed on account of commissions. The defense was that the business transacted by the plaintiffs was for J. S. Lewis and not for his son J. Lewis; in other words that the suit had been brought against the wrong party. The jury found for the defendant.

The prisoners Payne, Vaughn and Richman arraigned on Wednesday for different offenses appeared and plead not guilty.

Wm. Ayers arraigned on the charge of larceny in a dwelling house, committed in the house of Dennis Cater in the City of St. Charles,

on the 6th of August. The defendant, by his attorney, J. W. Dyckson, Esq., asked and was granted the usual time to plead.

Truman Wing and Oscar Bundy were arraigned on the charge of larceny, for stealing a cow from John Cripps in the town of Homer on the 16th of June. Their Attorney, M. B. Webber, Esq., asked the usual time to plead.

Thomas Mea was arraigned on a charge of larceny in a dwelling house, for stealing some clothing from the house of Charles Bundy, in the city of Winona, on the 21st of August. His attorney, Mr. Dyckson, asked the usual time to plead.

Joseph Baker and John Hughes were arraigned for the crime of shop breaking in the night time, for breaking into the house of Jacob Stein, at Stockton, on the 25th of August. W. B. Phelps, Esq., was appointed counsel for Baker and took the usual time to plead. Hughes plead guilty.⁵

Mason & Pritchard vs. Conrad Bohn, suit for mason work done on a building at Plainview. The defense claims that the contract was let to Pritchard and not to Mason & Pritchard.

The following order was filed by Judge Mitchell, on Friday morning, the order to date from the beginning from the present term:

Ordered, on motion of A. N. Bentley County Attorney, that Robert Taylor, Esq., be and hereby is appointed assistant County Attorney, to act in place of the County Attorney in an business or proceeding before the Grand Jury or in Court at the present term of this Court, when requested so to do by either the County Attorney or the Grand Jury.

⁵ Mitchell sentenced John Hughes to “the State prison for one year.” *The Winona Daily Republican*, October 25, 1879, at 3.

FRIDAY, OCTOBER 17.

Geo. W. Payne was arraigned on an indictment for larceny in a dwelling. His attorney, J. W. Dyckson, Esq., asked the usual time to plead.

Charles Brooks was arraigned for breaking jail. A. H. Snow, Esq., was appointed counsel and the usual time given to plead.

A. W. Cross was charged with buying stolen property. His attorney, W. B. Phelps, Esq., asked the usual time to plead.

Geo. W. Payne was charged with breaking jail—making three indictments found against him. His counsel, Mr. Dyckson, asked the usual time to plead.

Wing and Bundy, heretofore arraigned, entered pleas of not guilty.⁶ Baker, Ayers and Mea also plead not guilty.

The Grand Jury on Friday afternoon went out to inspect the Poor Farm.

The jury in the case of Mason & Pritchard vs. Conrad Bohn returned a verdict for the plaintiffs in the full amount of their claim with interest at 7 per cent., amounting to \$197.36.

Fritz Kroenig vs. Henry Pietch; suit on a promissory note to an amount of upwards of \$300; tried and given to the jury on Saturday morning.

SATURDAY, OCTOBER 18.

Elizabeth Fuller, administratrix, &c., vs. H. B. and Mary E. Waterman; suit on promissory note.

⁶ Mitchell sentenced Truman Wing to “fifteen months in the State prison.” *The Winona Daily Republican*, October 25, 1879, at 3. Mitchell sentenced Oscar Bundy, “who plead guilty to participating in the same transaction...to four months in the county jail.” *Id.*

In the matter of the reduction of bail in the State against John Blakenhorn on application of Charles Niedenhofen, and of the connection of the County Attorney therewith, the Grand Jury reported that “the charges against the County Attorney cannot be sustained by any evidence presented to us.”

The Grand Jury was dismissed subject to call at any time.

A special venire for ten jurymen was ordered, returnable on Monday, October 20th, at 2 o'clock p. m.

George W. Payne plead not guilty to the charge of larceny in a dwelling and also to the charge of jail breaking.

Charles Brooks and William Black, also indicted for breaking jail, plead not guilty.

A. W. Cross, charged with buying stolen property, plead not guilty.⁷

Daniel Quail, who has been in custody charged with robbing Pat

⁷ Cross's subsequent trial was reported in *The Winona Daily Republican*:

The trial of A. W. Cross, charged with buying a stolen cow, was concluded. The jury, after being out several hours, brought in a verdict of guilty and assessed the value of the cow at \$18. The amusing feature of the case is that the cow is the same one which Truman Wing stole and for which he was convicted, the jury then fixing the value of the cow at \$25. Another jury how comes in and values the cow at \$18, probably upon the theory that a stolen cow was worth less than before she was stolen.

The Winona Daily Republican, October 24, 1879, at 3. The next day, Mitchell sentenced Cross: “A. W. Cross, for buying the stolen cow above mentioned, was fined \$100 and to stand committed to the county jail until the same should be paid, not exceeding three months.” *The Winona Daily Republican*, October 25, 1879, at 3.

White, was ordered to be discharged, no indictment having been found against him.

State *vs.* Joseph Stefter; dismissed.

State *vs.* Richard Cushing; dismissed.

The following prisoners were discharged no indictments having been found: James Williams and John Moor, charged with an assault with intent to murder; Emil Kahler, charged with assisting prisoner to escape from an officer. Benjamin Lewis Clay, alias "Ginger," charged with larceny from a shop; Henry Long, charged with breaking into a house with intent to rob.

In several actions of the State against various parties for failure to pay personal taxes judgments were ordered as follows: William Hamilton, \$9.30; C. and C. E. Kendall, \$26.30, Abijah Morey, \$10.45; James Burke; 21.05; Robert Wood, \$13.40; J. T. Blair 12.15; Conrad Maire, \$18.95; Ann C. Simpson, \$155.50.

MONDAY, OCTOBER, 20.

The trial of the case of Elizabeth Fuller, administratrix, *vs.* H. B. Waterman *el al.*, was concluded. The Jury retired at noon and after being out a few hours, returned a verdict for the defendants.

The trial of George Payne known as the diamond thief, took place on Monday afternoon. He was indicted for burglary for stealing a diamond ring from the house of Rebecca Reynolds in Winona. The Jury was out some two hours and returned about 8 o'clock with a verdict of guilty. Among the interesting evidence offered was a letter which Payne had written to a friend in Chicago, telling of his success up this way. The letter was obtained by Captain Frank Hatch at the time he arrested Payne in La Crosse and which Payne had not yet mailed. This letter goes on in a very cool way to describe how Payne and his gang were running their thieving business in collusion with a freight conductor on the River Division between La Crosse and St. Paul. He wrote that they had stolen

some twenty-five dollars from one individual and were then on the lookout for a rich drover, who, the conductor said, had more money than brains and would be down on the next train. This letter was a bad give-away not only for Payne but for the freight conductor.⁸

TUESDAY, OCTOBER 21.

The trial of Thomas Mea, for stealing a suit of clothes from the Tremont house, took place on Tuesday morning.

The jury in the case returned a verdict of guilty.⁹

The trial of William Black charged with breaking jail occupied the balance of the day and was given to the jury in the evening.

The jury in the case of William Black, indicted for breaking jail, was out until about 11 o'clock, when they returned a sealed, verdict of not guilty. Black was accordingly ordered to be discharged. He was serving out a jail sentence, which had nearly expired. The testimony was not sufficient to show that Black used any force to break jail, although there was no question that he went out with the others after Payne had thrown the turnkey down.

⁸ *The Winona Daily Republican* described events on sentencing day, Saturday October 25, 1879. "On Saturday morning the prisoners convicted at the present term were brought in to be sentenced." It listed the sentence in each case. About Payne, it reported: "George W. Payne, the diamond thief, was sentenced to the State prison for four years. He simply remarked, 'Thank you,' as Judge Mitchell pronounced the sentence." However, the article concluded with a description of Payne and the other prisoners as they were led away:

The prisoners were taken back to jail, and, with the exception of Payne and Wing, seemed generally in very good spirits. Payne was downcast. Others manifested their satisfaction by dancing a break-down.

The Winona Daily Republican, October 25, 1879, at 3.

⁹ Mitchell sentenced Thomas Mea to "the county jail for four months." *The Winona Daily Republican*, October 25, 1879, at 3.

William Ayers, who stole money from Dennis Cator at St Charles, withdrew his plea of not guilty and entered a plea of guilty.¹⁰

The trial of Lee Vaughn, a colored man, charged with larceny from the person of another, committed in the city of Winona on the 8th of August last resulted in a verdict of not guilty.

State vs. Charles Brooks; dismissed on motion of the County Attorney for want of sufficient evidence to convict of the charge of jail breaking.

State vs. Joseph Baker; dismissed. Baker was arrested on a charge of robbing the house of Mr. Stein at Stockton, but the facts disclosed were that he was outside asleep under the bushes, while his partner Brooks entered the house. ■

ΘΩΘΩΘ

Posted MLHP: December 2008.

¹⁰ Mitchell sentenced William Ayers to “the county jail for six months.” *The Winona Daily Republican*, October 25, 1879, at 3.