

“CHARLES DUNN”

BY

PARKER McCOBB REED

FOREWARD

BY

DOUGLAS A. HEDIN
EDITOR, MLHP

In December 1888, Charles E. Flandrau published an article in the *Magazine of Western History* in which he described “the first criminal trial” in what became the state of Minnesota:

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 within the limits of the state while it was part of Wisconsin.¹

¹ Charles E. Flandrau, “The Bench and Bar of Ramsey County, Minnesota” (Pt. I), 8

Dunn appointed both the prosecutor and defense counsel.² Because the bar was so small, this was not unusual. Of the two lawyers appointed by Dunn, Samuel Crawford went on to have an illustrious career while little is known of Benjamin C. Eastman, the defense lawyer.³

A more complete account of these proceedings appears in a recent biography of Joseph R. Brown, one of the truly remarkable figures in the state's history, by Nancy and Robert Goodman.⁴ Brown, who already was justice of the peace, was appointed clerk of court by Dunn, and ordered to prepare for the opening of court on June 14, 1847. Brown prepared a jury slate and bought a desk. Dunn arrived on the 14th with an unexpectedly large entourage:

Not only [Dunn], but every potential office holder and eager lawyer in the western part of Wisconsin—and his wife—was on the steamboat that arrived at Stillwater June 14. Ben Eastman, Thomas P. Burnett, Daniel G. Fenton. Alfred Brunson, Wyrarn Knowlton and Nelson Dewey, among others, made rather a pleasant party of it. A considerable percentage of these travelers entertained notions of getting appointments in the new territory and had frankly come to look over the situation. The resources of Stillwater, which constituted of but one street three blocks long stretching from John McKusick's mill and store to Anson Northrup's Cosmopolitan Hotel (already stuffed with hopefuls) must have been severely strained to accommodate them all, not to mention the contingents from St. Paul, Marine, Red Rock

Magazine of Western History 328, 330-31 (January, 1888). For other accounts of the trial, see Charles E. Flandrau, *The History of Minnesota and Tales of the Frontier* 55 (St. Paul: E. W. Porter, 1900), a one paragraph account of the trial more fully described above; and "Minnesota's First Court Case Was An Impromptu Procedure," 17 *The Hennepin Lawyer* 46 (1948), the shortest account of the case.

² During the nineteenth century, criminal defendants in this state invariably were represented by counsel, sometimes hired, others times appointed.

³ For a biographical sketch of Crawford, see Parker McCobb Reed's *History of the Bench and Bar of Wisconsin* 70-1 (Milwaukee: P. M. Reed, Pub., 1882).

⁴ Nancy Goodman & Robert Goodman, *Joseph R. Brown: Adventurer on the Minnesota Frontier, 1820-1849* (Rochester: Lone Oak Press Ltd., 1996). © Nancy and Robert Goodman.

and other points who crowded into the town

Judge Dunn opened court on Tuesday, a day late, in the only meeting room in town, the room over McKusick's store across the street from the mill that continued to whine and rumble all day long. The court lasted just four days, much of the time being taken up with organization, jury selection and the making of new voters from among the foreign-born (including Chris Carli, Jim Clewet and Vital Guerin) by taking their affidavits of intent to become citizens in open court. By Wednesday they were ready to get down to the main business, the trial of Notin, a Chippewa Indian, for the murder of Henry Rust, a whiskey seller.

Rust had distributed his wares on the Snake River not far from Elam Greeley's Ann River lumber camp. He had been shot during a drunken brawl, a tragedy precipitated by the spirits he had sold the Indians. This episode quite properly scared the loggers, who determined to put an end to commerce in whiskey. Taking courage in hand they proceeded en masse to the whiskey store to retrieve Rust's body and collar the Indians involved. Before the eyes of the now-sober Chippewa they knocked in the heads of the remaining whiskey barrels and fired the cabin, the spilled spirits greatly aiding the conflagration. After Sheriff William Folsom had secured the accused Indians, the group of vigilantes marched on to other whiskey shops in the vicinity, destroying the article as they found it and scaring off a number of other entrepreneurs. This was considered the moral and just thing to do and no one thought to take action against the loggers. Notin was the only one brought to trial. After one day of deliberation, the jury, who may have considered it poetic justice, found Notin not guilty of murder. At the insistence of the lumbermen a criminal charge was also brought against Rust's employer and supplier, Andrew J. "Jack" Drake (since Rust was now beyond reach) for selling liquor to Indians. Drake was quickly found guilty and fined \$40, and the court adjourned until the second Monday in December.

Unfortunately for the county, this highly gratifying district court was not repeated for several years. December 13 came, with a jury panel selected and four cases on the docket (one of which was Jack Drake suing Elam Greeley for trespass), but no judge appeared, and Clerk Brown was forced to adjourn the session. The same thing happened the following June. St. Croix County saw no regular court until August 1849 when Minnesota had finally become a territory.⁵

When the two accounts are compared, Flandrau's limitations as a historian become apparent. To him the murder trial was of paramount interest because it was the "first jury trial" and the "first criminal trial in a court of record" held within the "present limits of Minnesota."⁶ The Goodmans, in contrast, place Dunn's court session in a larger social context—it was an irresistible attraction and opportunity for a boatload of office seekers; it may have been the first citizenship proceeding in a federal court in the future state; and in the trial itself, irresponsible whiskey sellers were as much on trial as the defendant. Moreover, the Goodmans used Notin's given name, not the anglicized version.⁷

Charles Dunn will never be more than a footnote in Minnesota's legal history. He held only one court session in that part of Wisconsin Territory that later became Minnesota, but those proceedings provide

⁵ Id. at 260-261.

⁶ Rev. Neill wrote, "The first murder case was brought before Judge Cooper, at the February [1850] term of the court, in Stillwater," but clearly he was thinking of "court" as being the system newly created after Minnesota became a territory. Edward Duffield Neill, *The History of Minnesota: From the Earliest French Explorations to the Present Time* 525 (Philadelphia: J. B. Lippincott & Co., 1858)(reprint: Michigan Historical Reprint Series, 2008).

⁷ In an email to the MLHP, Nancy Goodman explains: "Notin was apparently the preferred spelling at the time for the Ojibwe Indian known to the whites as The Wind. It appears that way in the 1848 St. Croix County District Court Calendar and docket. William H. C. Folsom, the St. Croix County sheriff at the time, and the author of *Fifty Years in the Northwest* (St. Paul: 1888), from whom we derived much of that passage called the man Nodin—which may be a matter of hearing the voiced/unvoiced consonant." Email dated December 15, 2008, quoted with the permission of Ms. Goodman

views of many facets of frontier society, including of course how a criminal trial was conducted.

The following profile of Dunn appeared first on pages 40-42 of Parker McCobb Reed's *History of the Bench and Bar of Wisconsin* published in 1882.⁸ Though reformatted, it is complete. The author's spelling and punctuation have not been changed.

The lengthy excerpt from Nancy and Robert Goodman's copyrighted biography, *Joseph R. Brown: Adventurer on the Minnesota Frontier, 1820-1849*, is posted with their permission.

Since that book was published, the Goodmans have also written and published *Paddlewheels on the Upper Mississippi: 1823 – 1854* (Stillwater: Washington County Historical Society, 2003), the story of how steamboats promoted the settlement of the West. They followed that up with a comprehensive *History of Washington County: Gateway to Minnesota History* (Stillwater: Washington County Historical Society: 2008), published to coincide with the state's sesquicentennial. Nancy Goodman is a board member and Robert Goodman is the bookkeeper of the Washington County Historical Society. ■

⁸ For other biographical sketches of Charles Dunn, see Allen Johnson & Dumas Malone eds., 3 *Dictionary of American Biography* 520-1 (New York, Charles Scribner's Sons, 1931); and 30 Wis. 21-39 (1873)(memorials before the Wisconsin Supreme Court following Dunn's death on April 7, 1872).

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BIOGRAPHY

JUDGES TERRITORIAL COURTS.

CHARLES DUNN, Belmont, was born December 28, 1799, at Bullett's Old Lick, Bullett county, Kentucky, which is about sixteen miles east from Louisville. He was the eldest of a family of five sons and four daughters, and at the age of nine years was sent to school at Louisville for about nine years, when he was called home and sent on a business tour to Virginia, Maryland and Washington. Upon his return home he read law a short time with Worden Pope, a distinguished lawyer of Louisville; and afterward he proceeded to Frankfort and continued his law reading for about two years with the eminent John Pope, then secretary of state, and who was the first law professor in the Transylvania University at Lexington.

He then went to Illinois and arrived at Kankakee, then the capital of the state, in May 1819, where he completed his studies under the direction of Nathaniel Pope, district judge of the United States for district of Illinois. In 1820 he was admitted to the bar, Sidney Breese being admitted at the same time. He then commenced practice at Jonesboro, Union county, Illinois. In 1821 he married Miss Mary E. Shrader, daughter of Judge Ostro Shrader, who had been a United States judge in Missouri territory. He remained in practice at Jonesboro for several years, and then removed to Golconda, Pope county, Illinois

For two years he was engrossing clerk for two sessions for the House of Representatives of the Illinois legislature, and for five years chief clerk of the House. In 1829 he was appointed, by Governor Ninian Edwards, acting commissioner of the Illinois and Michigan canal, and with his associates on the commission, Edward Roberts and Dr. Jane, surveyed and platted the first town of Chicago.

The first town lots of this embryo metropolis were sold by the commissioners in behalf of the state in the latter part of 1829, and the

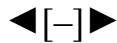
sales continued in 1830 and 1831, during which years the survey of a railway line was made and reported. In the early part of 1832 Indian troubles commenced, and a requisition was made upon the state authorities for troops to engage in service against the hostile Indians led by Black Hawk. Three brigades of volunteers responded to the call, and Mr. Dunn entered the service as captain of a company which he raised in Pope county, where he then resided.

His company was assigned to the second regiment, which was commanded by Colonel John Ewing, and attached to the first brigade, which was commanded by General Alexander Posey.

Soon after an engagement with the Indians, Captain Dunn became the victim of a blundering mistake on the part of a sentinel, in what is now the town of Dunn, in Dane county, by which he was severely, and it was thought mortally, wounded. On approaching the sentinel by Captain Dunn, the sargeant of the guard and the relief sentinel, the sentinel on duty, instead of hailing them as he should have done, became alarmed and fired at the group at the distance of about ten paces, severely wounding Captain Dunn in his right groin. He was taken back to Fort Dixon, where he was confined by his wound until after the war was ended by the battle of Bad Axe.

As soon as he was sufficiently recovered he returned to his home, and in the spring of 1833 acted as assistant paymaster in paying off the first brigade, and during that year resumed the practice of his profession. In 1835 he was elected a member of the house of representatives of the state legislature from Polk county, and was chairman of the committee on the judiciary during the session. Upon the recommendation of the Illinois delegation in congress, and the delegate for the territory of Wisconsin, George W. Jones, he was appointed by President Jackson, in the spring of 1836, chief justice of Wisconsin. He arrived at Mineral Point, July 4, 1836; was then and there sworn into office, which held until the organization of the state judiciary. The last term of his court was held at Mineral Point in October 1848. He was a member of the second constitutional convention from La Fayette county, was chairman of the committee on the judiciary of that body, and took a leading part in framing the constitution of the state, which was adopted by the people.

Subsequently he was elected state senator for the district composed of the county of La Fayette, and served in that capacity during the sessions of that body in 1852 and 1853, and was chairman of the committee on the judiciary during both of those years. On the expiration of his term of office as chief justice he returned to the practice of the law in La Fayette and adjoining counties. Judge Dunn was regarded one of the most eminent among those who have been in the profession of the law in Wisconsin. While chief justice his judicial studies were especially onerous, as, during the greater time he was on the bench, his district, as circuit judge, was the most populous and important in the territory, and produced, it is believed, the greatest amount of litigation. His judicial and official duties were performed with rare ability, fidelity and integrity; and during his residence of thirty-five years in Wisconsin, always commanded, both in public and private life, the confidence and esteem of all classes of people. To near the time of his death in 1872, at the advanced age of seventy-two, he continued in vigorous practice of his profession at Belmont, and was at that time the oldest lawyer in the state. ■



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