

“Bench and Bar of Dakota County ”

BY

FRANCIS M. CROSBY

FOREWARD

BY

DOUGLAS A. HEDIN
EDITOR, MLHP

The first of the twenty-seven “contributors and revisers” listed on the title page of the first volume of a two volume history of Dakota and Goodhue Counties published in 1910 is “Hon. Francis M. Crosby.” The author of the chapter that follows, entitled “Bench and Bar,” is not listed in that book but it can be assumed that it was written by or with Crosby’s assistance. The remarkably flattering profile of Crosby that appears in this chapter also suggests that he wrote it. In any event, for purposes of the MLHP, Crosby is credited with being its author.

Francis Marion Crosby was a judge, who served a very long time—over thirty-eight years. In the last paragraph of his incomplete history of Minnesota courts, ex-Justice Loren W. Collins said this about Judge Crosby:

To Judge F. M. Crosby, who died in the harness in 1910, belongs the honor of having served the longest period District Judge. He commenced work January, 1, 1872, and served thirty eight years.¹

Crosby died on November 15, 1910, in Hastings. The following day the city’s leading newspaper, the *Daily Gazette*, announced his passing on the front page:

¹ Loren W. Collins, *An Incomplete History of the Establishment of Courts in Minnesota* 10 (1911)(the article is posted on the MLHP).

Obituary.

Judge Francis M. Crosby died at his home in this city yesterday morning of heart failure after a brief illness, the announcement creating a profound sensation in the community of which he had been a prominent factor for over half a century. He was born in Wilmington, Vt., Nov., 13th, 1830, received an academic education, taught school and studied law from 1847 to 1855, when he was admitted to the bar, beginning practice in his native town, besides being a member of the Vermont legislature in 1855-6. In May 1858, he removed to Hastings, at once taking front rank among the bar of Dakota County. He was judge of probate in 1860-1, city attorney in 1862 and 1868, member of the board of education 1866-71, and entered upon his duties as judge of the first district in January, 1872, literally dying in the harness after an efficient service of nearly thirty-nine years, an unparalleled record in the history of Minnesota. Undoubtedly he was the ablest district judge in the state, and his decisions were rarely reversed in the higher courts. In politics he was a republican, but not a partisan, and in early life was an active member of the masonic fraternity, presiding over Dakota Chapter No. 7 and Vermillion Chapter No. 2. He was an ex-president of the Minnesota Society of the Sons of the American Revolution. Judge Crosby was married to Miss Helen M. Sprague, May 30th, 1866, who died Nov 16th, 1869, leaving a son, Frank, N., now of New York. Oct. 23d, 1872, he was married to Miss Helen S. Bates, who died in 1909. He leaves two daughters, Marion E., of this city, and Mrs. E. L. Prescott, of Portland, Or. The date of the funeral has not been announced.²

This chapter appeared on pages 208-223 of this two volume history of Dakota and Goodhue Counties. Though reformatted, the chapter is complete. The original page breaks have been added. The author's spelling and punctuation are unchanged.

² *Daily Gazette*, November 16, 1910, at 10.

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IN

**HISTORY OF
Dakota and
Goodhue Counties
MINNESOTA**

Illustrated

EDITOR-IN-CHIEF

FRANKLYN CURTISS -WEDGE

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VOLUME I

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CHAPTER X.

BENCH AND BAR.

Henry H. Sibley—Reminiscences—Anecdotes of the Early Courts Territorial Courts—State Courts—Judge David Cooper—Judge Andrew G. Chatfield—Judge Charles E. Flandrau—Judge N. M. Donaldson—Judge S. J. R. McMillan—Judge Charles McClure—Judge F. M. Crosby—Judge William M. McClure—Judge Hollis R. Murdock—Judge W. C. Williston—Members of the Bar—The Court House Picture Gallery.

Henry H. Sibley, living at Mendota, was the first officer of civil justice in this county. He received his appointment as a justice of the peace, first from Governor Porter, of Michigan, and later from Governor Chambers, of Iowa. In writing of his early experiences, General Sibley has given us some amusing as well as enlightening side views of frontier justice. A selection from his manuscript is as follows:

“It may seem paradoxical, but it is nevertheless true, that I was successively a citizen of Michigan, Wisconsin, Iowa and Minnesota territories, without changing my residence at Mendota. The jurisdiction of the first named terminated when Wisconsin was organized in 1836, and in turn Iowa extended her sway over the west of the Mississippi in 1838. When the latter was admitted as a State, with very much diminished area, the country lying outside of the state boundaries was left without any government until the establishment of the Minnesota territorial organization placed us where we now are. It was my fortune to be the first to introduce the machinery of the law, into what our legal brethren would have termed a benighted region, having received a commission of justice of the peace from the governor of Iowa territory, for the county of Clayton. This county was an empire of itself in extent, reaching from a line some twenty miles below Prairie du Chien, on the west of the ‘Father of Waters’ to Pembina, and across to the Missouri river. As I was the only magistrate in this region and the county seat was some 300 miles distant, I had matters pretty much under my own control, there being little chance of an appeal from my decisions. In fact, some of the simple-minded people around me firmly believed that I had the power of life and death. On one occasion I issued a warrant for a Canadian who had

committed a [209] gross outrage and then fled from justice. I dispatched a trusty constable in pursuit, and he overtook the man below Lake Pepin and brought him back in irons. The friends of the culprit begged hard that he should not be severely punished, and, after keeping him in durance vile for several days, I agreed to release him if he would leave the country, threatening him with dire vengeance if he should ever return. He left in great haste and I never saw him afterwards.

“In my own county of Dakota, at a later period, we had some bright and shining lights among those who held commissions as magistrate. One case of assault and battery was tried before a justice at Mendota, who was a very worthy, upright Frenchman, but indifferently versed in the English language. One of the leading members of the bar was imported from Ramsey county for the defense. He made a powerful and logical argument for the prisoners, of at least an hour’s duration. I was sitting in my office next door to the court room, when the justice entered hastily and said to me in French: “That infernal lawyer has been talking to me until I am tired and I have not understood one word in ten that he has said,” and he asked me what he should do. I told him he had heard the evidence and should be governed thereby in his decisions, and not to pay any attention to the speech, and I believe he did decide properly. When I told the counsel afterwards that he had thrown much eloquence and erudition to the winds, he was astounded, ‘For,’ he said, ‘the justice never took his eye from me while I was speaking, and I flattered myself upon having produced a profound impression.’ Another justice, not a hundred miles from Kaposia, was called upon to decide between two adverse claimants, who agreed to waive the rights to a jury trial. After hearing the evidence, the magistrate decided in favor of the plaintiff, whereupon the defendant accused him of partiality and injustice, and the dignity of the bench came very nearly being seriously compromised by a fisticuff between the court and the party who considered himself aggrieved, An appeal was taken to the district court by the defendant, and when the writ was served upon the justice, ordering him to produce a transcript of his docket and other papers in the case, instead of complying with the mandate of the court, he sat down and committed to paper a long and elaborate address to the judge, setting forth that the appelland had abused him, that he was a mean scamp generally, and concluded by stating to his honor that he had erred in granting the appeal, and if he wanted the papers in the case he might look for them., as he, the justice, would have nothing

further to do with it. That paper ought to have been secured for the Historical Society. It was duly dispatched to the judge and I heard it read by the [210] clerk, and I much doubt if ever a document produced a greater sensation from the files, doubtless by some one who had a laudable desire to become learned in the law.

“I had the honor of being the foreman of the first grand jury ever impanelled on the west of the Mississippi river, in what is now the State of Minnesota. The court was held at Mendota, Judge Cooper being assigned to that district. His honor delivered a written charge of considerable length, and really it was an able and finished production. Unfortunately, out of the twenty odd men who composed the jury but three, if I recollect rightly, could speak English, the rest being Frenchmen, who were, to a man, profoundly ignorant of any language but their own. As a matter of course, they were highly edified while engaged in listening to the judge’s charge.

“Major Joseph R. Brown, lately deceased, who has been already mentioned, resided at an early day at Grey Cloud Island, on the Mississippi, in the county of St. Croix, now Washington. He, too, was a justice of the peace and on one occasion was called upon to decide between two Canadian Frenchmen, named Parant and Le Claire, who claimed the same piece of land at Pig’s Eye, a few miles below the city of St. Paul. Brown was in a dilemma, as he doubted his authority to decide questions of title to land, yet he was unwilling to allow the dignity of his official station to be lowered in the estimation of the simple people around him, by avowing a want of jurisdiction in the premises. He therefore listened, to the evidence, pro and con, and, having ascertained that the claim had not been staked out, he cut the Gordian knot of legal uncertainty by deciding that the land would be awarded to the party who should first arrive on the ground, and stake it out. The decision was accepted as being in accordance with law, and neither of the men being the owner of a horse, a foot race of more than eight miles ensued between them. LeClaire being the fleetest runner succeeded in placing his land marks in the presence of witnesses before the arrival of his panting competitor. The latter made no further contest, and Le Claire proceeded to preempt the tract, and lived upon it for several years and finally died there. This by no means is the only instance in which superior rapidity of movement was the means of securing a valuable preemption, but it is believed to be the sole case in the history of the Northwest in which speed of

foot was made to decide a legal question in obedience to the fiat of a magistrate.”

Another historian in writing of the early courts of Dakota county has related the following incidents:

“The early courts of Dakota county, as of all other new counties of the state, were characterized with some peculiarities [211] which have wholly disappeared at the present day from the administrative routine of justice. A due degree of order and decorum is more easily preserved now, than then, and contempt of court is both more sharply defined and less frequently indulged in. In those days when a recess for a few minutes was moved, it was always carried, and was fully understood as granting an opportunity, for court, bar, jury and spectators to quench the thirst incident to almost all early legal labors.

“In those days, furthermore, the rights of the attorney’s person, were not so carefully protected, as at present, and it was far more dangerous for one attorney to give the lie to another, though couched in the most elegant terms which are sometimes heard in the court-rooms of today. Though their zeal in this respect sometimes seriously interrupted all judicial proceedings, it must be confessed that the old time lawyers had an amazing and highly creditable respect for their reputations for truth and veracity. When this was called in question, it is related, that even at Hastings, the ponderous inkstand was made to supplement nature’s weapons, and the assembled spectators were occasionally treated to rare exhibitions of pugilistic defense. It is further related that one brother in the law, at a justice trial in Hastings, after first sufficiently afflicting his slanderous opponent with stripes, proceeded to wedge him into the narrow window of the court-room in such an indignified manner that he could neither get further in nor out.

“Now it happened that the victorious assailant in this ease was prosecuting attorney for the county. He immediately complained of himself, obtained a conviction and was fined five dollars. The money was paid, and no sooner paid than the culprit demanded five dollars for his fee as prosecuting attorney. Whether in accordance with the law and usage of the case or not, the “court.” deferentially handed back the five dollars, which the jubilant attorney pocketed, and departed with a lurking drollery in his eye.

Similar instances might be narrated at length, and cases where ignorance of the law, or hilarious disregard for its minor technicalities, placed positions, are not wanting. Peculiarities of pronunciation or the misuse of words, both on the part of the “court” and of the members of time bar, gave rise to many little incidents which are still remembered. On one occasion when a statement was made by an attorney, the opposing counsel cried out, “Your Honor! Your Honor! that allegation is wholly false.” “Order! Order!” shouted his honor, “the court believes that the allegation is false, and that a ‘ir alligator knows it!”

“Certain lawyers, shrewd fellows as they were, on becom-[212]-ing fully acquainted with them, would sometimes take cruel advantage of the intellectual weaknesses or the peculiar foibles of the justices, and no doubt the decisions, in more than one justice trial have turned on this issue. Yet, fairness and sense supplied many deficiencies of profundity and education. An inability on the part of the justice to speak or to understand English, has proven to be a matter of serious moment. For illustration there was the Graham-Ramsey suit of 1854. Mr. Graham wished to obtain possession of Vermillion falls, which Mr. Ramsey considered as his. The case was brought before Hippolite Dupuis, a Frenchman, early prominent in the county, its first treasurer, and who died at Mendota. Major J. J. Noah, later of Washington, D. C., was attorney for Mr. Graham, and John B. Brisbin, Esq., later of St. Paul, was counsel for Mr. Ramsey. The trial proceeded, witnesses were examined, and the time for argument had arrived. Mr. Brisbin was the first to present his case to the “court,” and in an elaborate argument of two hours’ length battled for his client. Facts, logic, wit, energy, force and eloquence were all marshalled in an imposing array, and brought to bear upon the apparently sympathetic justice. Mr. Brisbin always said afterward, that he considered that argument the crowning effort of his life; and that as he sat down, perspiring all over, and filled with hope at the numerous assentations of the court, he had not the remotest doubt but that he was “unchangeably fixed.”

“But alas! even before he has resumed his seat, the court began to address the opposing counsel excitedly in French, and the opposing counsel to reply in the same language. “I object!” said Mr. Brishin, in astonishment. “But,” said he, in later days, when relating the incident, “I absolutely collapsed the

next minute, when Major Noah said glumly in explanation, “Excuse me. Mr. Brisbin, no advantage is meant, but as the judge can’t understand a word of English, he was simply asking what you had said.” It is unnecessary to state in whose favor the case was decided.”

March 3, 1849, the Territory of Minnesota was created by Act of Congress. By that act the judicial power of the territory was vested in a supreme court, district courts, probate courts and in justices of the peace. It was provided by that act that the territory should be divided into three judicial districts and that a district court should be held in each of the said districts by one of the justices of the supreme court at such times and places as might be prescribed by law. It was also provided that temporarily or until otherwise provided by law, the governor of said territory might define the judicial districts of said territory, and assign the judges who might be appointed for [213] said territory, to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of the judicial districts by proclamation.

Governor Ramsey arrived at St. Paul, May 27, 1849, and on June 11, issued his proclamation dividing the territory into three judicial districts. The third district had no definite boundaries, but in general included all that part of the territory south of the Minnesota, and south to the Mississippi from where it receives the waters of the Minnesota to the Iowa line. This included Dakota county. Court was ordered to be held at Mendota on the fourth Monday in August and the fourth Monday in February.

At the first session of the territorial legislature, only Washington and Benton counties were fully organized, for all county purposes. The other counties in the territory were attached to some one of these counties for judicial purposes. Dakota county was attached to Ramsey county for that purpose. March. 5, 1853, Dakota county was fully organized and terms of court were appointed to be held therein, on the second Monday of September in each year, and Hon. David Cooper was assigned as judge thereof. Rice county was attached to Dakota county for judicial purposes.

By act of March 5, 1853, it was made the duty of the first board of county commissioners to locate the county seat. The board accordingly selected

Kaposia, but in about a year, the same board moved the county seat to Mendota, where the commissioners met, February 6, 1854.

Judge Cooper held court in Mendota, the fourth Monday in August, 1849. H. H. Sibley was foreman of the grand jury, the first ever empaneled west of the Mississippi, in Minnesota. Judge Cooper delivered a written charge, able and finished, but as appears in General Sibley's reminiscences, only three of the twenty odd men composing the jury understood a word of the language he was speaking. Major Forbes served as interpreter through the term, but no indictments were found. The court was organized in a large stone warehouse belonging to the Fur company. Judge Cooper's term of office was from June 1, 1849, to April 7, 1853.

The first district court for the county of Dakota was held in Mendota on the second Monday of September, 1853 (September 12) as appointed to be held by the law organizing the county. Judge Andrew O. Chatfield (who went on the bench April 7, 1853) presided. The officers of the court present were: W. W. Irwin, marshal of the United States for the district of Minnesota; J. O. Dow, district attorney; A. R. French, sheriff of Dakota county; J. J. Noah, clerk; represented by Dwight Downing, his deputy. Edmund Brisette was appointed interpreter and [214] James McShane, crier. Henry H. Sibley was foreman of the grand jury. The grand jurors were: Henry H. Sibley, James McBoal, Claude Cournoyer, James M. Griggs, Thomas Odell, Baptiste Cudet, James Locke, Patrick Quigley, William L. Batley, Louis Martin, Henry Coleff, George Faribault, Andrew Robertson, O. P. Bromley, John W. Brown, Elias Cope, Horace Dresser, William Bissell, Michael Lemell and Francis Gamell. The petit jurors were: James Thompson, Peter M. Califf, Albert Webster, Warren Woodbury, John McShane, Patrick A. Moran, Duncan Campbell, Louis Fourcier, Hugh Kirkpatrick, Sylvester M. Cook, George Bell, David Cope, William Quinn, Baptise Campbell, Peter St. Antonie, Norbest Paquin, Joseph Gervais, Louis Lendivche, Alexander McCloud, Franklin J. Bartlett, Joseph R. Brown, Anable Turpin and James Bruce.

The grand jury was in attendance six days and the petit jury five days.

On March 6, 1854, Judge Chatfield ordered a special term of court to be held, on the thirteenth day of April, 1854, in said county; and a panel of

grand and petit jurors to be drawn and summoned for the same. The special term was held on that date at Mendota and the officers present were: Andrew G. Chatfield, judge; Andrew J. Whitney, acting United States Marshal; Franklin J. Bartlett, sheriff; J. J. Noah, clerk. Dr. Thomas Foster was appointed foreman of the grand jury. The grand jury was in attendance four days, and there is no record that it found any indictments. The petit jury was in attendance, but there is no record of the trial of any case by it.

The next general term of the district court for Dakota county was held at Mendota, August 28, 1854. The officers present were; Andrew G. Chatfield, judge; W. W. Irwin, marshal; F. J. Bartlett, sheriff; J. J. Noah, clerk. Two indictments were found by the grand jury against James Grant for selling liquor without a license, both of which were dismissed on motion of the defendant's attorney. One civil case was tried by the jury at this term. The jurors were in attendance four days and the court was in session six days.

The next term was held at Mendota, February 26, 1855. The officers present were: Andrew G. Chatfield, judge; A. C. Jones, marshal; F. J. Bartlett, sheriff; J. J. Noah, clerk; J. C. Dow, prosecuting attorney. This term was in session five days. No indictments were returned and no jury cases were tried.

The next term was held at Mendota, August 27, 1855. The officers present were: Andrew G. Chatfield, judge; A. C. Jones, deputy United States marshal; Norman Eddy, United States district attorney; F. J. Bartlett, sheriff; J. J. Noah, clerk. A. M. [215] Hayes was appointed by the court, as district attorney for the term. Court was in session six days.

The next term of the court was held at Mendota, February 25, 1856. The officers present were: Andrew G. Chatfield, judge; W. W. Irwin, United States marshal; Norman Eddy, United States district attorney; B. F. Parker, Prosecuting attorney; John Devlin, sheriff; J. J. Noah, clerk. The term was in session seven days.

The next term was held at Mendota, August 13, 1856. The officers present were: Andrew G, Chatfield, judge; John Devlin, sheriff; J. J. Noah, clerk. The term was in session eight days. John J. McVay was admitted to the bar at this term.

Judge Chatfield's term expired, April 23, 1857, and he was succeeded by Judge Charles E. Flandrau, whose distinction as a soldier, citizen and, historian was equal to his reputation as a jurist.

A special term of court was held in Smith's Hall, Hastings, August 31, 1857, and was in session one day. The officers present were: Charles E. Flandrau, judge; George S. Winslow, clerk; Edward F. Parker, district attorney.

A general term of the district court was held in Burgess hall, Hastings, December 27, 1857. The officers present were: Charles E. Flandrau, judge; George S. Winslow, clerk; B. P. Parker, district attorney; John Devlin, sheriff. This term remained in session until January 15, 1858.

By an act of Congress passed February 26, 1857, the people of the territory of Minnesota, were authorized to form a constitution and state government, preparatory to their admission into the Union, and it provided for the election of delegates on the first Monday in June, 1857, to a constitutional convention to be held on the second Monday in July, 1857. Such a convention was held and a constitution formed, on August 29, 1857, which was submitted to a vote of the people at an election held on the thirteenth day of October, 1857, and adopted.

That instrument provided that every free white male inhabitant over the age of twenty-one years, who had resided within the limits of the state for the ten days previous to the day of said election, might vote for all officers to be elected under the constitution at such election, and also for or against the adoption of the constitution. It also provided for the election at such election time, of members of the house of representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature and all other officers designated in that constitution. It also, for the purposes of first election, divided the state in senatorial and representative districts. Dakota county was constituted the third, senatorial and representative district and was given two senators and five representatives. The constitution also divided the state into six judicial districts until the legislature should otherwise provide. The counties of Washington, Chisago, Anoka, Pine, Buchanan, Canton, St. Louis and Lake were made to constitute

the first judicial district and the counties of Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower and Freeborn the fifth judicial district.

At the election, Hon. S. J. R. McMillan was elected judge of the first judicial district, and Hon. N. M. Donaldson, of Owatonna, judge of the fifth.

The first term of the district court that was held in Dakota county after Minnesota was admitted as a state was held in Burgess Hall, in Hastings, on November 1, 1858. The officers present were: N. M. Donaldson, judge; John Devlin, sheriff; George S. Winslow, clerk; O. F. Perkins, prosecuting attorney for the fifth judicial district. At this term of court, George Royce was indicted for the murder of his father on July 4, 1858, but he was not then tried.

The second term was held at Burgess Hall, on June 6, 1859. The officers present were: N. M. Donaldson, judge; John Devlin, sheriff; George S. Winslow, clerk; O. F. Perkins, prosecuting attorney; Seagrave Smith, district attorney. On June 7, the court ordered the sheriff to cover the floor with sawdust and that the clerk draw a certificate therefor. George Royce was tried for murder at this term and was acquitted. His trial commenced June 8 and was concluded on June 15. He afterward enlisted in Co. H, First Minn. Vol. Inf., and was killed at the battle of Antietam.

The third term was held on November 9, 1859. Hon Thomas Wilson, of the third judicial district presided. John Devlin was sheriff; George S. Winslow, clerk and Seagrave Smith was prosecuting attorney. This term, which was the last held with Dakota county as a part of the fifth district, continued in session until November 17.

By an act of the legislature passed February 6, 1860, the counties of Goodhue and Dakota were detached from the fifth judicial district and attached to the first judicial district. The county of Anoka was detached from the first judicial district and attached to the fourth judicial district.

Judge S. J. R. McMillan held eight general terms of court in Dakota county. The first term commenced March 27, 1860, and continued, to April 5, 1860. The second term commenced September 18, 1860, and continued to September 27, 1860. The third term commenced March 26, 1861, and

continued to April 9, 1861. The fourth term commenced September 17, 1861 and [217] continued to September 21, 1861. The fifth term commenced March 25, 1862, and was adjourned April 5, 1862. The sixth term opened September 16, 1862 and adjourned September 19, 1862. The Seventh term opened March 24, 1863 and adjourned April 3, 1863. A term appointed to be held on September 15, 1863, was opened by the clerk, and the judge not appearing was adjourned until the next day. The judge not appearing on the second day, court was adjourned without day. The eighth term opened on June 21, 1864, and adjourned on June 30, 1864. Judge McMillan also held two special terms of court in Dakota county, one on January 17, 1862, and the other on April 6, 1864. July 5, 1864, Judge McMillan resigned as district judge, to accept the office of judge of the Supreme court to which he had been appointed and Hon. Charles McClure of Red Wing was appointed as judge of the first judicial district. He was elected to that office at the election held in November, 1864, for a term of seven years commencing on the first Monday in January, 1865, which term he fully served out.

The first term of the court held by Judge McClure in Dakota County opened January 10, 1865. At this term Thomas Eagan was tried for murder and acquitted. His trial commenced January 25, 1865, and the verdict of the jury was rendered February 3, 1865.

By an act of the legislature approved February 3, 1860, the counties of Lake, Canton and Buchanan were attached to St. Louis County for judicial purposes.

By an act approved March 5, 1860, Mahnomen county was detached from the first judicial district and attached to the fourth judicial district.

By an act approved March 8, 1861, Buchanan county was attached to and made a part of Pine county subject to its adoption by the voters of Pine County. It was adopted. The territory is what is now the northern part of Pine county.

By an act approved February 28, 1863, it was provided that a term of the district court should be held in St. Louis county on the first Monday in August, 1864, and biennially thereafter. By the revised laws of 1866 the seventh judicial district was created, and the counties of Carleton, St. Louis

and Lake were made a part thereof. By an act approved March 13, 1858, the county of Kanabec was established subject to its adoption by the electors of Pine county which it received.

By an act approved, August 12, 1858, Kanabec county was attached to Chisago county for judicial purposes and by the same act, Isanti county was attached to St. Louis county for the same purpose. That act provided for a term of court to [218] be held in St. Louis county on the first Monday in August in each year.

By an act approved April 11, 1907, the counties of Kenabec, Pine, Chisago and Washington, were detached from the first judicial district and created into the nineteenth judicial district.

JUDGES' PORTRAIT GALLERY.

One of the sights shown the visitors at the Dakota County Courthouse is the picture gallery which adorns the walls of the courtroom. The portraits are those of Governor Sibley and Judges Chatfield, Flandrau, Donaldson, McMillan, McClure, McCluer, Murdock and Williston. These portraits are placed in the gallery after the judge has retired from holding court in the room.

Henry Hastings Sibley is the central figure in the gallery, as he was the first person authorized to exercise any judicial authority in Dakota county, and foreman of the first grand jury. His biography appears elsewhere.

Andrew G. Chatfield served from April 7, 1853, to April 23, 1857. He was born in Butternuts, Otsego county, New York, January 23, 1810. He was appointed territorial judge in 1853 by President Pierce, and his term expired as above. He was judge of the Eighth Judicial District at the time of his death, which occurred October 3, 1875.

Charles E, Flandrau was born in New York city July 15, 1828. In 1859 he was appointed territorial judge by President Buchanan, and held the office until Minnesota was admitted as a state.

N. M. Donaldson was born in Washington county, New York, and came to Minnesota from Wisconsin in 1856, settling in Owatonna. He was elected judge of the Fifth Judicial District at the first state election, and held the office fourteen years.

Samuel James Renwick McMillan was born in Brownsville, Pa., February 29, 1826. He received a collegiate education and studied law in the office of Edwin M. Stanton. He was admitted to the bar in 1849. He came to Stillwater in 1852, and removed to St. Paul in 1856. At the first state election held under the state constitution he was elected judge of the First Judicial District, and held that office until July, 1864, when he resigned to accept the office of judge of the Supreme Court, to which he had been appointed. He was elected to that office at the November election in 1864 for a term of seven years. He was reelected, and held that office until he was elected United States senator for the full term commencing March 4, 1876. He was reelected United States senator for another full term, and died at St. Paul, October 3, 1897. [210]

Charles McClure was born in Greenbrier county, Virginia, in 1804, and was admitted to practice in his native state in 1829. He settled in Red Wing in 1856. He was appointed judge of the First Judicial District to fill the vacancy occasioned by the resignation of Judge McMillan. At the November election held in 1864 he was elected to that office for a term of seven years, and served the full term. A more complete biography appears in the second volume of this work.

William Monroe McCluer was born, in Franklinville, N. Y., August 6, 1831, and graduated from the State & National Law School at Poughkeepsie, N. Y. He came to Stillwater in 1856, and practiced law there until he was appointed second judge of the First Judicial District, an office created by the legislature at the extra session held in 1881. He was elected to that office at the election in 1882 and again in 1888. He died August 3, 1890.

Hollis P. Murdock was born in Gouverneur, N. Y., August 15, 1832. He graduated at Williams College, Williamstown, Mass., in 1854, and settled in Stillwater in 1855. He was appointed judge of the First Judicial District to fill the vacancy occasioned by the death of Judge William M. McCluer, in 1890. He died January 14, 1891.

William C. Williston was appointed judge of the First Judicial District in 1891 to fill the vacancy occasioned by the death of Judge H. P. Murdock. He was elected to that office in 1892, and was reelected in 1898 and 1904. He died June 22, 1910. His biography appears elsewhere.

Albert Johnson, of Red Wing, is Judge Williston's successor. As he is still holding court, his portrait does not appear in the gallery.

Francis M. Crosby has been on the bench since January 1, 1872. His biography and portrait appear elsewhere in this work.

Following is a list of the elder members of the bar of Dakota county, who had in 1880 removed or died, the states from which they came, and the dates of their admission: J. J. Noah, New York, 1853; J. C. Dow, New Hampshire, 1853; Archibald M. Hayes, New Hampshire, 1854; (deceased); Edward F. Parker, Pennsylvania, 1856; Charles W. Nash, Iowa, 1856; Lewis Smith, New Hampshire, 1856; Eli Robinson, Wisconsin, 1856 (deceased); John B. Lea, Mississippi, 1856 (deceased); Wm. K. Rogers, Ohio, 1857; Philander Hartshorn, New York, 1857 (deceased); Amos H. Norris, New York, 1857; Seagrave Smith, Connecticut, 1857; Alexis Bailly, Canada, 1857 (deceased); William B. Leach, Vermont, 1858; Isaac M. Ray, Indiana, 1858 (deceased); Aaron H. Nelson, 1859; Thomas R. Huddleston, England, 1859; James W. Paxton, Pennsylvania, 1859; Ara [220] Barton, New Hampshire, 1859; H. S. Jennings, Iowa, 1863; Allurahad C. Chamberlain, Vermont, pensioner of 1812 (deceased); Julius B. Searles, Ohio, 1864 (deceased); Richard H. Montgomery, Illinois, 1865; E. A. Gove, New Hampshire, 1866; James B. Young; P. M. Babcock, New York, 1866; Andrew P.. Fitch, Indiana, 1866; Edwin Parliman, New York, 1874 (deceased); Frederick H. Dodge, New York, 1878.

In 1880 the bar of Dakota county was represented by the following gentlemen, arranged according to the date of their admission: Orin T. Hayes, W. G. LeDuc, John R. Claggett, Ignatius Donnelly, William Hodgson, Lorenzo Van Slyck, Roswell Judson, Jasper N. Searles, William H. DeKay, James A. Duffy, Charles W. Crosby, W. DeW. Pringle, Joseph Donaldson, Albert Schaller, Daniel T. Chamberlain, William H. Adams, George Barbaras, W.

H. Leavitt, William Hagerty, Edward C. Stringer, McNeil V. Seymour and P. E. Leonard.

The bar of Dakota county at the present time is represented by the following: Hastings—William Hodgson, Charles S. Lowell, W. DeW. Pringle, Ernest Otte, William H. Gillitt, James M. Millett, W. H. DeKay, Albert Schaller and E. A. Whitford. South St. Paul—P. H. O’Keefe, W. L. Converse, D. L. Grannis and H. L. Goodwin. Farmington—Earl C. Wilmot and A. B. Rietz.

Francis Marion Crosby, son of Eliel Crosby and Thankful Allen Crosby, was born in Wilmington, Vt., November 13, 1830. His early life was spent on his father’s farm, adjoining Lake Raponda. He was educated in the district and select schools of his native town and Mount Ceaser Seminary, Swansey, N. H. During the winter of 1847 and 1848 he taught school in Searsburg, Vt., and boarded around, as was the universal custom in those days, and received only twenty dollars for fifty-two days’ service. He also taught school the winters of 1848-49, 1849-50, and 1850-51 in the Averell, Upper Intervale and Lawton districts in Wilmington. The winter of 1851-52 he taught in Old Swansey, N. H., and the winters of 1852-53, 1853-54 and 1854-55 he taught the village school in Unionville, Swansey, N. H.

He studied law in the office of Hon. Oscar L. Shafter at Wilmington and Hon. Daniel Roberts at Manchester, Vt., and was admitted to the bar at Bennington, Vt., in December, 1855. Soon thereafter he formed a co-partnership in the practice of law with Hon. Stephen P. Flagg at Wilmington, which continued until April, 1858, He represented the town of Wilmington in the Vermont house of representatives for the years 1855 and 1856. He left Wilmington for Minnesota in May, 1858, and settled at Hastings in June, 1858, where he has since resided.

Judge Crosby served as judge of probate of Dakota county, [221] Minnesota, for the years 1860 and 1861. At the general election held in November, 1871, he as elected judge of the district court for the First Judicial District of Minnesota and entered upon the duties of that office January. 1872. He was re-elected to that office at the elections held in November, 1878, 1884, 1890, 1896, 1902 and 1908. His last election was for a term of six years.

May 30, 1866, he married Helen Mar Sprague, of Cooperstown. N. Y., who died November 16, 1869, leaving one son, Frank Noble Crosby, born May 5, 1867, who is now, 1909, practicing law in New York City, October 23, 1872, he married Helen Sophia Bates of Cherry Valley, N. Y., who died in 1909. Their children are: Howard Walworth Crosby, born June 26, 1874, who died at Paris, Tex., November 22, 1907; Marion E. Crosby, born May 29, 1875, now residing at Hastings, Minn.; Helen B. Crosby, born November 15, 1876, who married Edward L. Prescott, June 17, 1896, and is now residing at Portland, Ore.

Judge Crosby has served in many capacities of both public and private trust and honor not mentioned above. He is a lineal descendant of Stephen Forbes and Ebenezer Allen, Massachusetts revolutionary soldiers, and is ex-president of the Minnesota Society of the Sons of the American Revolution. He is also a member of the Society of Colonial Wars.

Judge Crosby is a man of firm convictions, stern and upright character. He is never lenient with himself and measures himself with stern impartiality. Others he treats with a kindly and winning courtesy and consideration that show the amiable qualities of the man.

His learning and knowledge of the law are profound. His decisions are founded upon the immutable principles of the law. He is not a slavish follower of precedent, unless it be the decision of a court whose authority he is bound to recognize.

The court presided over by him is not only a court of law but a court of justice, in which immaterial issues and technicalities are brushed aside so that right and justice may prevail.

Judge Crosby's cast of mind and clearness of apprehension are most strikingly displayed in his conduct of cases tried to a jury. His aim in these cases is to dispense with everything that may befog the jurors or distract their attention from the issues which they are called upon to try.

In presenting a case to the jury he does it in such clear and simple language that what seemed a difficult task to the juror becomes one easily within his grasp and comprehension. This is done by reducing all elements of the case

to one or two simple propositions upon which the rights of the parties depend. These propositions are presented to the jury in simple but forcible language. [222]

His charge to the jury is generally brief, concise and at the same time exhaustive; so much so that it is on very rare occasions that a jury in Judge Crosby's court fails to understand the charge or comes into the court for further instructions.

The young practitioner who commences his forensic duties in the court presided over by Judge Crosby is peculiarly fortunate. A young attorney practicing in his court receives such kind and considerate treatment at the hands of the judge that he is encouraged in his efforts to advance his profession. His mistakes are overlooked, and, so far as is consistent with right and justice, are corrected or permitted to be. His inexperience is no handicap as against an older member of the bar, and his client will have no cause to complain of any omissions of matters purely technical which the court has the authority to overlook. The highest and most considerate courtesy is extended to him.

There have been occasions when a young lawyer in the first flush of an eager enthusiasm has been permitted to argue questions and cite authorities on elementary propositions merely because the court did not desire to dash the enthusiasm of the beginner.

Judge Crosby throughout his life has been an upright and impartial judge and kind friend and an eminent and patriotic citizen. His ideals have ever been high, his influence with the bar and laity of his district has always been toward the upright, honest and impartial administration of the law. He is a firm believer in the participation of the citizen in the administration of the law, both as a grand and as a petit juror, and this conviction he fortifies by an experience at the bench and bar which is not equaled in length of time by any judge now living in the state.

Notwithstanding his long service at the bar and on the bench, Judge Crosby is still hale, hearty and vigorous as a man of fifty-five years of age. A splendid physique, the legacy of a vigorous, right-living Vermont ancestry, enables him to bear lightly his added years, and time as it passes only adds

to the keenness of his intellect and mellows the good qualities of his mind and heart.

Stephen Gardner, now deceased, whose name is perpetuated in the Gardner Mills, was one of the men who assisted in the upbuilding of Hastings and Dakota county, and his memory will ever be held in the high esteem that his staunch character and altruistic spirit so richly deserved. He was born at Bolton, Mass., December 7, 1806, being the oldest of a family of eleven children. His father, Stephen Partridge Gardner, was a direct descendant of Thomas Gardner, who came to this country from [223] England in 1638 and settled at Roxbury, Mass. His mother, Achsah (Moore) Gardner, was also of New England ancestry. The subject of this sketch was carefully educated and prepared for Harvard University, being fitted to enter at the age of twenty-one years. He decided, however, that his talents were suited for a business rather than for an academic career, and consequently he started in life for himself in December, 1827. He spent the first winter in various parts of New England and in the spring of 1828 went to Pittsburg, Pa., where he found employment in the salt works. The following year he took a trip in a flatboat down the Ohio and Mississippi rivers to New Orleans, but fell victim to a southern fever and was obliged to spend some time in a hospital at St. Louis, his health, even after his leaving the hospital, being such as to forbid his returning to Pittsburg. In the spring of 1831 he volunteered in the United States service for forty-five days and served in the Black hawk War. In 1832 he laid the foundations of his future prosperity by selling wood to steamboats on the Mississippi. Having secured this start he engaged in the mercantile business at Columbia, Ill. He also interested himself in milling, running both grist and saw mills, first by ox power and later by steam. During this period he served ten years as postmaster. In 1864 he came to Hastings and purchased the mill site and about one hundred acres of land at Vermillion Falls. Here he erected the now historic Gardner Mill, a stone structure, which is now one of the landmarks of Minnesota. In addition to his milling interests he had extensive real estate holdings and founded the First National Bank of Hastings, being its president until his death, March 11, 1889. Mr. Gardner was married at Griffin, Ga., June 28, 1850, to Louisa Stanton Ingalls, born at West Granville, N. V., February 22, 1820. She died February 7, 1885. To this union were born six children Achsah Moore, now Mrs. Charles Espenshield; Stephen Partridge; Abbey Ingalls, now Mrs.

Samuel Mairs; Clara Louise, now Mrs. John P. Duncan; George Washington and Frederick Stowe.



MLHP EDITOR: In the second volume of this joint history of Dakota and Goodhue Counties, profiles of Judge William C. Williston and his former law partner, Eli T. Wilder, appear:

William C. Williston (1830-1909) ³

Hon. William C. Williston, now deceased, was one of the most eminent of Minnesota jurists, occupying the bench of the First Judicial district from 1891 until the time of his death, June 22, 1909. He was born at Cheraw, Chesterfield county, South Carolina, June 22, 1830, son of William K. and Annis (Chapman) Williston, the former of whom was a native of Simsbury, Conn., and the latter of South Hampton, Mass. The parents went to South Carolina in the late twenties, and there the father engaged in the mercantile business. In 1834 the family removed to Chardon, Geauga county, Ohio. There the mother died in 1863, and the father came to Red Wing, where he ended his days. During his boyhood, William was an apt pupil in the schools of his neighborhood, and early entertained the idea of studying for the legal profession. Such an opportunity later presented itself, and after several years of training in the office of Riddle & Thrasher, of Chardon, Ohio, he was admitted to the bar in 1854. His first practice was as a junior partner in the office of his preceptors, the firm name being Riddle, Thrasher & Williston. Two years later Mr. Williston left Chardon and came to Red Wing, becoming a partner in the firm of Wilder & Williston in 1859. In 1862 the Civil War had broken out, and repeated calls for volunteers were being sent to the northern states. Desiring to be of service to his country, Mr. Williston raised a company of volunteers, of which he was elected captain. This company was organized in August, 1862, with the expectation of doing service in the

³ Franklyn Curtiss-Wedge, ed., II *Histories of Dakota and Goodhue Counties, Minnesota* 88-89 (Chicago: H. C. Cooper, Jr., & Co., 1910).

South, but the outbreaking of the Indian outrages caused a demand for lighting nearer home. Going into service as Company G, Seventh Minnesota Volunteer Infantry, Captain Williston's command was ordered with the rest of the regiment on an expedition against the Indians. The regiment engaged in the battle of Wood Lake, September 22, 1862, and was stationed at frontier posts until May, 1863, when again ordered on an Indian expedition, engaging the Reds in battle July 24, 26 and 28, 1863. Company G was then ordered to St. Louis, Mo., October 7, 1863, where Captain Williston remained till the spring of '64, when he tendered his resignation and after its acceptance returned to Red Wing, where he resumed his practice with Judge Wilder. In 1872 he entered into partnership with O. M. Hall, this arrangement continuing for several years. His first appointment as district judge came in 1891 from Governor William R. Merriam. He was elected to the position in 1892, and then successively re-elected until his death. His associate on the bench was the Hon. F. M. Crosby, of Hastings. Judge Williston represented the county in the legislature in 1873-74, served in the senate in 1876-77, was clerk of the city schools seventeen years, and city attorney several terms at various times. He was an independent voter, a communicant of the Episcopal Church for fifty years, and a member of the Masons. William C. Williston was married in 1854, at Chardon, Ohio, to Mary E. Canfield, of that place, daughter of Austin and Lodemia (Benton) Canfield. To this union were born two sons and two daughters. William F. C. is deceased. Julia W. is the wife of John H. Rich of Red Wing. Annie C. is the wife of Louis Phelps, now of Wyoming. Eugene, the youngest son, died in infancy.

ELI T. WILDER (1813-1904) ⁴

Judge Eli T. Wilder, whose name will always stand for that which was sturdy and good in pioneer life, was born in Hartland, Conn., November 27, 1813. There he spent his early boyhood, and attended the district schools. In 1837, at the age of nineteen, he moved to Ashtabula, Ohio, later going to Paynesville, in the same state, where he commenced the practice of law. In the early fifties he was elected judge of the court of common pleas of that

⁴ *Id.* at 96.

district, a position he filled faithfully and honorably. In 1855 he started a real estate office in Dubuque, Iowa, with offices in several adjoining villages and town. It was in 1856 that he took up his home in Red Wing. Arriving here, he continued the land business and again took up the practice of law. In this profession he associated himself with Judge W. A. Williston, the firm name being Wilder and Williston. He was one of the first members of Christ church, of Red Wing, presented that church with a beautiful altar, and devoted the latter years of his life largely to church work. He was one of the first wardens and continued in that position until the time of his death. At one time Judge Wilder was persuaded to run for congress on the Democratic ticket, to which party he paid his political allegiance. He died at his home here, June 3, 1904. Judge Wilder was first married to Julia W Wakefield, of Connecticut, who died in 1866. In 1868, at Waterloo, N. Y., he was married to Larissa Kendig, who survived him. At the time of his death it was said of him.: “Judge Wilder was an ideal citizen, honest and upright in all his dealings, and always taking a deep interest in the welfare and progress of the city.”



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