

JOHN HARRISON BROWN

(1824 - 1890)

The first volume of *The History of Chippewa and Lac qui Parle Counties, Minnesota*, published in 1916, contained a short chapter on the “bench and bar” of Lac qui Parle County, which lay within the Twelfth Judicial District. The opening paragraph of that chapter listed the major public events of the life of the first judge of the district, John Harrison Brown, in five sentences:

Upon the creation of the [twelfth] district by the Legislature in 1875 John H. Brown, of Willmar, was appointed district judge by Gov. Cushman K. Davis and continued in that office by subsequent elections until his death, on January 20, 1890. Judge Brown was a native of Vermont, born at Rutland on May 1, 1824, and moved to Minnesota in June, 1855, settling at Shakopee. He was admitted to the bar the following year and practiced his profession at Shakopee until 1871, when he moved to Willmar, where he spent the rest of his life. Before his appointment to the bench Judge Brown held numerous offices of trust, both at Shakopee and at Willmar, having been county attorney of both Scott and Kandiyohi counties and was also judge of probate of the latter county. He also held city and school-district offices and otherwise took an active and sincere interest in public affairs in general.¹

As we retreat closer to Brown’s lifetime, we learn more about him, how he carried out his responsibilities, and what he expected from his community. He died on Monday, January 20, 1890, and on Tuesday, the state’s most prominent paper, *The St. Paul Pioneer Press* carried the report of his death on its front page:

¹ L. R. Moyer & O. G. Dale, I *History of Chippewa and Lac qui Parle Counties, Minnesota* 534 (Indianapolis: B. F. Bowen & Co. Inc., 1916). This chapter is posted separately on the MLHP.

JUDGE J. H. BROWN DEAD.

An Able and Well Known Minnesota
Jurist Passes Away.

Willmar, Special, Jan. 20.—Hon. John H. Brown, judge of the Twelfth judicial district, died at his home this morning of failure of the heart.

John Harrison Brown was born in Rutland county, Vt. in 1824. He received an academic education; he came to Minnesota in 1855 and located in Shakopee, where he lived until 1871, and served two terms as county attorney of Scott county. In May, 1864, he was appointed assistant quartermaster of the United States volunteers, with the rank of captain, and served as such until the close of the war. He moved to Willmar in 1871, where he has since lived. He served as county attorney and judge of probate of Kandiyohi county. In 1875 he was appointed judge of the Twelfth judicial district by Hon. C. K. Davis, which office he has since held, and was elected thereto without opposition three times. He was a prominent Mason, and was grand master of the state in 1887 and 1888. He was one of the ablest jurists in the West.

The *Litchfield News Ledger* reported Brown's death in its January 23rd issue. In keeping with the journalistic style of the times, it reprinted in full the biographical profile from the *Pioneer Press*:

Judge John H. Brown, Dead.

A telegram to friends in this city last Monday morning brought the sad news that Judge John H. Brown had passed away, of failure of heart, after an illness of but a few days. It may be truly said that no man in the State had more warm personal friends than Judge Brown. He was loved, honored and respected by all who knew him. As a jurist he was acknowledged to be the peer of any man in the northwest and in his death the twelfth judicial district suffers a loss that she may never be able to repair. The funeral will be held at Willmar tomorrow afternoon, and will be conducted by the Masonic fraternity of which he was one of the most prominent and respected members. Golden Fleece Lodge, of this city, will attend as a body and the ceremony will be conducted by the Grand Lodge of the State of which he was a Past Grand Master. From the Pioneer Press of Tuesday we obtain the following biographical sketch of Judge Brown's life:

"John Harrison Brown was born in Rutland county, Vt., in 1824. He received an academic education; he came to Minnesota in 1855, and located in Shakopee, where he lived until 1871; and served two terms as county attorney of Scott county. In May, 1864, he was appointed assistant quartermaster of United States Volunteers, with the rank of captain, and served as such until the close of the war. He moved to Willmar in 1871, where he has since lived. He served as county attorney and judge of probate of Kandiyohi county. In 1875 he was appointed judge of the twelfth judicial district by Hon. C. K. Davis, which office he has since held and was a elected thereto without opposition three times. He was a prominent Mason, and was a grand master of the state in 1887 and 1888. He was one of the ablest jurists in the west."

On January 23rd, *The Willmar Republican Gazette* noticed Brown's death on its front page. It speculated that "had he lived and his health been spared, [he] would undoubtedly have been elevated to the supreme bench." Given his age, this was not likely. The *Gazette*, unlike other papers, listed Brown's surviving family, among whom was "C. L. Brown, judge of the 16th district." Calvin Luther Brown served as a district court judge from 1887 to 1899, when he was appointed by Governor Lind to be Associate Justice of the Minnesota Supreme Court. He served in that capacity until 1913. He was elected Chief Justice in November 1912, and held that office from 1913 until his death on September 24, 1923.

The Willmar Republican Gazette

WILLMAR, KANDIYOHI COUNTY, MINNESOTA. JAN. 23, 1890

DIED -

BROWN - At his Home in Willmar, Minn., on Monday, Jan. 20th, 1890 of blood poisoning, Hon. John H. Brown, Judge of the Twentieth District of Minnesota, aged 63 yrs, 9 mos.

In the death of Judge Brown this village loses one of its oldest residents; one who had been closely identified with it from early days, and who was ever ready to do all in his power to forward its best interests; one who was known and respected by those intimately acquainted with him. The Twentieth judicial district, over which he so long presided loses an able judge—one whose place it will be difficult, we might say, impossible, to adequately fill. He was profoundly read in the law, and enjoyed in a remarkable degree the confidence and respect of the bar of his district, who had unbounded faith in his legal knowledge, and in the honesty and fairness of his rulings and decisions. The State loses one of its prominent jurists who had come to be regarded as without a peer among the district court judges, and who had

he lived and his health been spared, would undoubtedly have been elevated to the supreme bench. The loss to his family need not be touched upon; their sorrow is sacred; it need only be said that the heartiest sympathy of this entire community goes out to them in their great bereavement.

The deceased was taken seriously ill in October, 1868, while attending court at Granite Falls, and for more than a year was unable to sit on the bench, during a considerable portion of which time he was a great sufferer. He recovered sufficiently some three months since to again take up his judicial labors, and held terms of court in Swift, Meeker and Kandiyohi counties; but his health was so impaired that he was stricken down again about ten days ago. It was hoped even then that he would get up once more, and up to even the last day of his life there seemed to be good grounds for belief that he would recover; but disease had so strong a hold upon him that he could not rally, and at an early hour Monday morning he passed to his eternal rest.

He leaves wife, three sons and four daughters: C. L. Brown, judge of the 16th district; H. W. Brown of Argyle; F. K. Brown, of Benson; Mrs. G. W. Tyler and Mrs. F. G. Handy, of Willmar; Mrs. C. H. Sherwood, of Benson; Mrs. E. W. Lewis, of Duluth.

Funeral services will be held Friday afternoon at the residence. He will be buried with highest Masonic honors, under the direction of the officers of the Grand Lodge, A. F. & A. M. of Minnesota, the deceased having been Grand Master of the Lodge in 1887 and 1888. The funeral will be the largest ever held in this vicinity, and probably one of the largest ever held in Minnesota. Large delegations from the principal towns in the 12h district will be here, as well as many prominent Masons and others from all parts of the state. As a special mark of respect, President Williams publishes a request that all business houses in the village be closed between the hours of 11:30 a. m. and 4 p. m. on the day of the funeral.

The following is a brief biographical sketch:

John Harrison Brown was born in Rutland county, Vermont, in 1824; he received an academic education; settled in Minnesota in 1855, residing in Shakopee, Scott county, until 1871; served two terms as county attorney of that county. In May, 1864, he was appointed assistant quartermaster of United States Volunteers with the rank of captain and served as such until the close of the war. He moved to Willmar in 1871; served two terms as county attorney and one as judge of probate of Kandiyohi county. In 1875 he was appointed judge of the Twelfth judicial district, and was afterwards elected thereto three times without opposition. In 1887 and 1888 he served as Grand Master of the Grand Lodge, A. F. & A. M. of Minnesota.

The *Gazette* then paid a lengthy but fitting tribute to Judge Brown by reprinting his decision in the case of *John M. Rains v. The Town of Willmar*. This ruling, dated January 6, 1890, may have been his last. Rains, it turns out, was a physician who administered medical care to Mary Hendrickson, “a poor and destitute person,” from April 1, 1888, to February 1889. The town of Willmar had refused to help her. Rains sued the town for \$60, the fair value of his services, under an 1883 state law authorizing Kandiyohi County to provide relief for poor persons. Brown held that Willmar was not liable, but strongly suggested that the county would be.

Brown’s ruling, which occupied three columns on page 4 of the *Gazette’s* January 23rd issue, follows. It has been reformatted. His spelling, grammar, punctuation and citation style have not been changed.

DISTRICT COURT DECISION.

The following is the full text of the decision of the late Judge Brown in the case of John M. Rains, Plaintiff, vs. The Town of Willmar:

This cause is now before this court upon the defendant's demurrer to the plaintiff's complaint.

The demurrer specifies two grounds.

1st. That the complaint does not state facts sufficient to constitute a cause of action.

2nd. That there is a defect of parties defendant.

I am unable to discover any such defect and none has been pointed out to me.

The first ground was particularly relied upon on the argument. The complaint, after alleging the corporate capacity of the defendant town and the fact that plaintiff is a practicing physician, alleges certain facts which it is claimed show that the defendant town is legally chargeable with the care and support of its poor; averring, among other things, that the special act of the legislature of 1883 (chap. 27) providing that each town in Kandiyohi county shall support its own poor was, pursuant to its terms, duly submitted to the legal voters of said county, and by them approved and accepted; and then sets up a state of facts substantially as follows: That on or about April 1st, 1888, one Mary Hendrickson, a poor and destitute person, having no legal residence in the State, come into the corporate limits of the defendant and while here became sick and was in a suffering condition from sickness and poverty and required public aid and support as well as medical attendance and care to save her life. That she had no relatives to whom she could apply for assistance. That she applied to the proper officers of the defendant town for such aid as she was so in need of, and that the said officers refused to grant her any such aid, assistance or support whatever. That the plaintiff as such physician attended the said poor person professionally from April 1st, 1888, to February, 1889, which he avers to be of the value of \$60.00.

The question, therefore, is squarely presented whether the defendant, under these circumstances, is liable to the plaintiff, or, in other words, whether the town of Willmar is legally chargeable with the care and support of a poor person in the condition and under the circumstances mentioned.

There can be no question that under the general law of the state prior to the passing of the special act of 1883 above referred to, the county of Kandiyohi would have been chargeable with that duty. (Secs. 11 and 12, chap. 15 Gen. Stat. 1866). Sec. 1 provides that all persons shall be received and cared for upon the order of the county commissioners or of a commissioner of the proper district, and it would seem that this should be done in a proper case without any inquiry as to residence, in the first instance; but such persons may be afterwards discharged by the board upon being satisfied that such person is not legally chargeable upon such county.

Section 12 seems to cover more completely a case like the one under consideration. It provides that "Whenever application is made to a county commissioner by or on behalf of any person in his district for public relief or support, and reliable information is furnished that such person is in a suffering condition from poverty, and requires public assistance or support, said commissioner shall inquire into the condition and necessities of such person, and if satisfied that such person is in actual need of, and is a proper subject for public relief or support, and is legally settled in said county, or has no legal settlement in this state, said commissioner shall make an order in writing, signed by himself officially, directed to the overseer of the poor of said county that such person be received into the charge of the poor, and furnished suitable support," "and said overseer shall on delivery to him of such order and presentation of such poor person, receive said poor person into his charge and provide him with suitable support at the expense of said county until the further order of the board of county commissioners."

Nor do I apprehend that there can be any question that the towns would be chargeable with the same duty under the special act of 1883, were it not for the proviso in section 5 of that act.

In *Fenholt v. Freeborn county* 29 Minn. 158 the Supreme Court, speaking of the special act of the legislature of 1875 providing for the support of the poor by the towns in Freeborn county, say that “This act clearly amounts to a repeal of the general law so far as Freeborn county is concerned.”

The same language would apply to this case and to the special act for Kandiyohi county of 1883 but for the proviso above mentioned, (which is quoted below), but with this proviso the case is decidedly different, for no such proviso appears in the Freeborn county act.

This Kandiyohi county act (1883) would seem to provide generally for the support of the poor by the towns, until by reading it in regular order, we reach section 5.

Section 1 declares “That each township in the county of Kandiyohi shall provide for the support of all poor persons in the town.”

Section 2 provides that “The electors of each town in said county shall, at their annual town meeting in each year, vote to raise such sum of money for the support of the poor as they may deem expedient.”

Section 3 provides that “applications for aid shall be made to the board of town supervisors.”

Section 4 requires that the county treasurer to refund to the several towns all funds for the support of the poor which may belong to, or which has been collected from each respectively.

Section 5 is as follows; “The general laws of this state as to residence of poor persons in order to obtain aid from counties, shall apply to townships in Kandiyohi county, and the rule applied to residence in the county shall apply to residence of poor in the town.”

Now had the section ended here I could not have doubted for a moment that the towns were chargeable in all cases for the support of the poor, and that the defendant would be liable in this case; but now comes the proviso as follows; “Provided, that no poor person or pauper shall be entitled to aid from such towns unless he or she shall have been a resident therein for at least one year.” (2 years in the original act, but by amendment of 1885 changed to one year).

This proviso tends in a measure to confuse the whole scheme of the law; and render doubtful that which ought to be most clear, for it is evident that the law making power either intended to leave out and entirely unprovided for, all poor persons who had not resided in any town in Kandiyohi county for the space of one year, or else it intended to leave this still as a charge upon the county, where it was by the general law; for it is presumable that there may be a considerable number of this class, taking those coming from other states and from foreign countries, and even persons may have been residents of the county for years and still not have resided in any particular town for one year, such for instance as farm and other laborers and other floating population.

Which view then, shall be taken? Is it possible that the legislature intended to exclude entirely all poor persons however needy, from this public charity, simply because they have not resided in any particular town in Kandiyohi county for one year? It has been as established public policy of this state ever since it had an existence, to take care of the poor and relieve their suffering in all proper cases. Shall we then adopt a construction of a statute of doubtful meaning which would entirely reverse this settled policy as to a class of

people? Shall we say that the legislature intended that poor and destitute persons shall be permitted to die for want of food, raiment or shelter or for want of medical attendance in their sickness?

This would be a sad commentary on the civilization of the nineteenth century, and if the draftsman who formulated this proviso, really intended this effect, he must either have forgotten, or else was never properly instructed in the declaration, "The poor, always ye have with you," although it was made by the great author of the "Sermon on the mount," of whom it was said, "Never man spake like this man;" and although after the lapse of centuries it is found to be just as applicable to the conditions of the human family as when spoken. I am unwilling to adopt this view of the proviso and will not if there is any other reasonable construction to put upon the law as a whole. I am of the opinion that the proviso referred to, affects and qualifies all of the act which precedes it as well as section 5, and that its effect is the same as it would have been had section one read as follows: "That each township in the county of Kandiyohi shall provide for and support all poor persons in the town, except such as shall not have resided therein for one year."

This would of course leave all others to be provided for under the general law as it then existed, and seems to me would be in harmony with both the special act and general law.

It is of course improper to undertake to decide that the county would in any event be liable upon the supposed cause of action set up in this complaint, for the reason it is not a party to this action and has not been heard, but as we have seen the general law declares that a person in the condition in which the complaint shows the said Mary Hendrickson to have been, shall receive certain limited aid and support, and the special act does not declare that he or she shall not, but only that he or she shall not receive it from the towns.

By the very terms of the special act, it follows that the town is not liable in this action.

Whether or not the county can be made liable in such a case, where a proper demand upon its authorities has been made, is a question to be decided when the case arises.

The order in this case is that the demurrer to and the same is hereby allowed and sustained.

Dated January 6th, 1890.

John H. Brown,
District Judge.

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