

"Reminiscences of the Establishment of the Territorial Courts, Judges, Justices and Members of the Bar of Winona County"

By

Justice William Mitchell

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Foreword

By

Douglas A. Hedin

Editor, MLHP

On Friday evening, August 30, 1889, an address written by Associate Justice William Mitchell was read to the Winona County Old Settlers' Association by his former law partner, William H. Yale. The subjects of Mitchell's paper were the judges and lawyers of the territorial period, 1849 to 1858. He went beyond that decade only to note someone's war service or death. To prepare his "historical sketch," he apparently examined the early docket books and records of Winona county courts (but not the archives of the State Historical Society), old newspapers and perhaps conferred with other early settlers. Otherwise, he wrote from memory, and with acuity.

Mitchell arrived in Winona on April 6, 1857. He was twenty-four and a half years old, and a member of the Virginia bar. In the following years, he practiced with Eugene M. Wilson, William Yale – called "the Governor" by Mitchell because he was Lieutenant Governor from 1870 to 1874 – and with future U. S. Senator Daniel S. Norton. He served one term in the legislature and as county attorney. He was elected to a seven-year term on the Third Judicial District court in November 1873, and re-elected in 1880. Appointed to the state supreme court in March 1881, he

was elected to a full term that November, and re-elected in 1886.¹ Thus, when he composed this address, he was in the middle of his second term. He was almost fifty-seven years old.

It is one of the few times we hear him speak on something other than a court case—in other words, here we have William Mitchell off the bench. As he talks about the Winona legal fraternity in the territorial era, he also reveals something of himself. In that respect, it is advisable to recall a lawyer’s adage: what someone (client, opponent, witness, judge) does not say is sometimes as important as what is.

We do not know why he did not deliver it in person. The October term of his court was still five weeks away.² He may have been residing in St. Paul, and felt he could not take off two or three days to travel from St. Paul to Winona and back.³ Or he may have had personal reasons. He was comfortable with the solitary and scholarly life of the appellate judge, and might not have liked being the center of attention at such a gathering. And he may have wished to avoid hearing many old stories (“Do you remember the time...?” and “I remember when you...”).

He wrote this paper with nearly same the care he gave a decision of his court (it is unlikely that he knew how to type at this time). That he wrote it at all is somewhat unusual. Most speakers to a group of old timers would have scratched out a few notes and talked extemporaneously. When he gave the paper to William Yale he probably included instructions to give it to the

¹ He was re-elected 1892, but was defeated in 1898, his term ending in January 1900. For the voting in these elections, see “Results of the Elections of Justices of the Minnesota Supreme Court, 1857-2010” 24-32 (MLHP, 2012).

² The October Term began on the first Tuesday in October. Stat. ch. 63, §6, at 631 (1883). On August 20, Mitchell’s last opinion from the April term was released. *Ludlum v. Rothschild*, 41 Minn. 218, 43 N. W. 137 (1889) (the defendant’s last name is misspelled Rothchild in West’s Northwestern Reporter).

³ A “report of letters of regret” from nine men who had been invited but could not attend was read at the meeting. Mitchell was not listed. *Winona Daily Republican*, Friday, August 30, 1889, at 3.

local newspaper because he wanted it published (or he may have given it to the paper himself). The *Winona Daily Republican* reprinted it *in toto* in the evening edition.

There are no traces of nostalgia or sentimentality in his address.⁴ There is nothing to suggest he ever thought of “the good old days.” He did not heap excessive praise on the lawyers he practiced with and the judges he appeared before three decades earlier, yet he spoke warmly of each. Most impressive is his ability to reveal aspects of the personalities and habits of several in a sentence or two. These passages are incisive, each adjective chosen with care.

Humor is also absent. At a gathering of surviving settlers, a speaker is expected to tell a few funny stories. About Justice of the Peace Samuel Cole, Mitchell said, “Anecdotes and amusing incidents in his court, if written, would fill a book.” But he did not tell one. According to the newspaper, his address “was listened to with deep interest by all present.”⁵ In contrast, immediately afterward, Thomas Simpson “spoke of the personal acquaintance he had with several of the characters mentioned in

⁴ There was plenty of nostalgia in the reminiscences of other speakers, as for example, C. F. Buck, whose remarks were quoted in the newspaper:

He had not thought much of the courts and the lawyers but he had thought a good deal of the old settlers, and the more I have thought of the old settlers the more I have liked them. There is something about old settlers that makes them stick together. No matter if they do not agree in matters of religion or politics, there is a feeling among them that never entirely died out. It was the old settlers that spied out this land and made it known to all people as a habitable land. It was the pioneer—the old settler—that built the first permanent habitation—a beginning of the organization of the society on the basis of law and order. These things take us back a good many years in the life of the settler....

Id.

⁵ Id.

[Mitchell's] historical address." He then told several stories, including one about Cole, and after each, the audience laughed.⁶

If nostalgia, sentimentality and humor are missing, so too is Mitchell himself. His one personal reference is cryptic: "As for myself, I will merely say that I am still here."

But perhaps there is more of him than he realized. He researched, wrote and honed his address like a court opinion, but would not deliver it in person, yet took steps to have it preserved. He may have been thinking of how someone in the far future would read his recollections. He would enlighten the audience but could not bring himself to entertain it with humorous anecdotes, a task he left to others.⁷ A shrewd judge of character, he had fond memories of his brethren of the bar, and admired several, but did not call any "great" because he knew they were not. He lived in the present, with an eye on the future, and did not romanticize the past one bit. William Mitchell without his robes appears serious, well-disciplined, very perceptive, solitary and emotionally distant, a private man with an austere personality.

⁶ Simpson's first anecdote gives a flavor of others told at the meeting:

One incident I particularly recall. A young man who was a telegraph operator came into my office one morning after a murder had been committed in town. The operator had refused to let his instrument be used for certain purposes in connection with ferreting out the offender, and had thereupon been arrested. We visited the office of Judge Cole, who met us coldly. After a few words in regard to the matter, the young man ventured to question the jurisdiction of the court over a telegraph operator for such a purpose as the one in question. "That may be, young man, but before you get through with this court you will find it is h---I on telegraph operators." [Laughter].

Id.

⁷ At the outset of his address he declared, "I shall merely attempt an historical sketch of the early bar and courts, leaving the more interesting subjects of anecdote and personal reminiscences mainly to subsequent speakers of the evening." Page 8, below.

His complete address was published twice after it was read to the Old Settlers' Association on August 30, 1889: in the evening *Winona Daily Republican* that very day,⁸ and eight years later in *Winona (We-No-Nah) and Its Environs on the Mississippi in Ancient and Modern Days*, a book "written for and under the auspices of The Winona County Old Settler's Association" by LaFayette H. Bunnell.⁹

Almost a quarter century later, Judge Arthur Snow borrowed or paraphrased whole sentences for his chapter on the bench and bar for a county history. Snow did not acknowledge or cite Mitchell. Footnotes were not common in those days. Here is Mitchell's sketch of Chauncey Waterman, followed by Snow's:

Judge Waterman's professional career is so connected with that of Gen. Berry in the memories of all the old settlers that a history of one is a history of both. Born in Rome, N. Y., in 1823, a graduate of Hamilton college and of Harvard law school, he was a ripe scholar as well as an able lawyer. I think I shall not be considered invidious in saying that he was considered the best read and thoroughly posted lawyer at the Winona bar. I recollect well that in early days he was considered by all of us as an infallible authority in all matters of practice and pleading. He was a great reader and proficient linguist. He was thoroughly posted in all the best literature of the times, being one of the very few lawyers who kept up their general reading after engaging in the active practice of their profession. Being not only learned in the law but of quick, clear perception and of an

⁸ Id. at 4.

⁹ LaFayette H. Bunnell, *Winona (We-no-nah) and Its Environs on the Mississippi in Ancient and Modern Days* 495-510 (1897).

eminently fair and judicial frame of mind, when he was elected to the bench in the Fall of 1871, all his friends looked forward to a brilliant career for him in his new position. He was on the bench just long enough to prove that they were not mistaken in him when his career was cut short by sudden death in February, 1873.¹⁰

Now compare Judge Snow's sketch:

C. N. Waterman, born in Rome, N. Y., in 1823, a graduate of Hamilton college and Harvard law school, was a ripe scholar as well as an able lawyer. He was considered the best read, most thoroughly informed lawyer at the Winona bar. He was a wide reader and proficient linguist. He was thoroughly informed in all the best literature of the times, being one of the very few lawyers who kept up their general reading after engaging in the active practice of their profession. Being not only learned in the law but of quick, clear perception and of an eminently fair and judicial frame of mind, when he was elected to the bench in the fall of 1871, all his friends looked forward to a brilliant career for him in his new position. He was on the bench just long enough to prove that they were not mistaken in him when his career was cut short by sudden death in February, 1873.¹¹

Appropriation without attribution—what we call plagiarism—was not unusual at this time.¹² Mitchell himself probably would not have been offended.

¹⁰ Page 22, below.

¹¹ Arthur H. Snow, "The Bench and Bar of Winona County" 18-19 (MLHP, 2010-13) (published first, 1913)

¹² For other examples posted on the MLHP, see Henry A. Castle, "The Bench and Bar of St. Paul and Vicinity" (MLHP, 2009) (published first, 1912), where he borrows long passages from Charles Flandrau's "Bar and Courts of Ramsey County" published in a county and state history in 1881. Flandrau quoted lines

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The text of the following address is complete. The title has been added by the MLHP. A few changes to punctuation have been made. It has been reformatted. Bracketed comments on pages 20, 22 and 27 were added by Bunnell. Footnotes are by the MLHP.

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"Reminiscences of the Establishment of the Territorial Courts, Judges, Justices and Members of the Bar of Winona County"

By

Justice William Mitchell

Mr. President and Fellow Citizens: The subject assigned me, as expressed in the resolutions adopted by this association, is "Reminiscences of the establishment of the Territorial Court in the state and county, events connected with the same, places of holding courts, names of judges, justices and members of the bar." This confines me to the time prior to the formal admission of the State on May 11, 1858, leaving the history of the bar and

from Shakespeare that Cushman Kellogg Davis used in his famous defense of Judge Sherman Page in 1878. See Charles E. Flandrau, "Contempt of Court" 3-5 (MLHP, 2008-2011) (published first, 1895). Erroneous dates of the terms of the justices of the territorial supreme court, first published in 1870, were repeated by many authors for more than a century. See Douglas A. Hedin, "Introduction" to "Documents Regarding the Terms of the Justices of the Territorial Supreme Court: Part One" 6-14 (MLHP, 2009-2012).

courts of the county since that date to be treated by another historian on some future occasion.

I would have been glad if this task had been assigned to some one more capable of doing justice to the subject, and more conversant personally with these matters than myself. The lapse of nearly a third of a century, the death of most of those who were officers of the courts in those early days, the almost entire absence of any official records of their proceedings, and my own want of opportunity to consult the archives of the State Historical society, have presented unexpected difficulties in the preparation of this article. For such omissions or errors as I may be guilty of I therefore crave your kind indulgence. I shall merely attempt an historical sketch of the early bar and courts, leaving the more interesting subjects of anecdote and personal reminiscences mainly to subsequent speakers of the evening. And in treating the subject I shall follow a topical rather than a chronological order, giving first an outline history of the different courts, and then of the bar.

The fame of judges and lawyers, usually very limited even during their lives, fades away very rapidly after their decease. The great mass of people know but little of either the nature or extent of their labors. Many a brief and judicial opinion which involved weeks or even months of exhaustive research and profound study has been scarcely ever heard of or read, except by those interested in the case in which it was prepared or delivered. And yet, in all ages and in all civilized communities the legal profession has taken the lead in framing the laws and moulding the institutions of the country. The leading lawyers of a new territory during its formative period have invariably given shape to the laws and political institutions of the future State. The ascendancy of lawyers from Virginia and other border states in the young territories of Ohio, Indiana and Illinois gave form to the laws and legal practice of those States, which neither the lapse of time nor the subsequent stream of immigration from New England and other northern States has materially changed. The similarity of the statutes and code of practice in this State to-day

to those of New York, attests the predominance of lawyers from the Empire State in this territory. It was therefore eminently fitting that this association should devote one evening to the consideration of the courts and bar of territorial days. And no occasion could have been more appropriate for this than the present, when we are about to vacate forever this sacred, although homely old temple of justice in which a Wilson, a Barber and a Waterman, and others of later days have presided and whose walls have resounded with the legal arguments and forensic eloquence of Sargeant, Franklin, Lewis, Norton, Waterman, Keyes, Berry, Wilson Yale, Simpson, Barber, and many other younger but no less able jurists. But time will not permit to longer indulge in these reflections.

POLITICAL HISTORY OF WINONA COUNTY.

As you are aware, this part of the State has been successively a part of the district of Louisiana and of the territories of Missouri, Michigan, Wisconsin and Iowa before the organization of the territory of Minnesota; so that the eminent and venerable Gen. Sibley, during his residence at Mendota, was a citizen of Michigan, Wisconsin and Iowa in succession, although all the time living in the same house.

While this was a part of Michigan it was included within the extensive and somewhat indefinite boundaries of Crawford county, created in 1819, but it was not until after the organization of the territory of Minnesota in 1849, that there was either political organization or permanent white settlements within what is now Winona county.

Prior to the organization of the territory in 1849 there was but one organized county within what is now the State of Minnesota, viz: St. Croix county, Wisconsin, with its county seat at Stillwater. It was there that the first court house was ever erected in the state, in 1847; and the first court ever convened within the limits of the present State was held there in June, 1847, by

Judge Dunn, then Chief Justice of the Supreme court of the territory of Wisconsin.¹³

TERRITORIAL COURTS.

By the organic act, the judicial power of the territory was vested in very nearly the same system of courts which we subsequently adopted for the State, viz: A Supreme court, District courts, courts of Probate and Justices of the Peace. The Supreme court was to consist of three judges, and the territory was to be divided into three judicial districts, and a District court was to be held in each by one of the Supreme court judges at such places as the Territorial Legislature should designate.

In October, 1849, the first Territorial Legislature divided the territory into nine counties, only three of which, Washington, Ramsey and Benton, were organized. Among the unorganized counties was Wabasha, which included all of the territory south of the mouth of the St. Croix river through to the Missouri. It was attached to Washington county for judicial purposes.

On March 5, 1853, Fillmore county was created out of a part of this territory, and included all of what is now Winona county. This, with the other counties west of the Mississippi, was constituted the Second judicial district, and assigned to Judge Cooper. On February 7, 1854, Fillmore county of which Winona was still a part, together with Goodhue, Washington and Chisago, was constituted the First judicial district, and assigned to Judge Welch. But on the 23rd of the same month, mainly through the efforts of our fellow citizen, Hon. O. M. Lord, then the member of the Territorial Legislature from Fillmore county, and the late H. D. Huff, Winona county was created, with its present boundaries and with the county seat at Winona.

¹³ Parker McCobb Reed, "Charles Dunn" (MLHP, 2008).

SUPREME COURT.

The first Supreme court of the territory consisted of Aaron Goodrich, of Tennessee, chief justice; David Cooper, of Pennsylvania, and B. B. Meeker, of Kentucky, associate justices — all appointed by President Fillmore.¹⁴ The first term of the Supreme court was held in the old American house in St. Paul, on the second Monday of January, 1850. The second and third terms were held in the Methodist church in St. Paul, on the first Mondays of July, 1851 and 1852, respectively. In 1853 and 1854 this court held its sessions in the court house in St. Paul. All subsequent terms were held in the capitol.

In November, 1851, Jerome Fuller was appointed chief justice in place of Aaron Goodrich, and presided at the July term of 1852; but his appointment was not confirmed by the Senate, and he left the territory soon afterwards. In December, 1852, Henry Z. Hayner was appointed chief justice in place of Judge Fuller, but he was here only a short time and never presided at a term of court.

On the accession of President Pierce in the spring of 1853, W. H. Welch of Minnesota was appointed chief justice and Moses Sherburne of Maine, and A. G. Chatfield of Wisconsin associate justices in places of the appointees of President Fillmore.

Upon the accession of President Buchanan in 1857, R. R. Nelson and Charles E. Flandrau were appointed associate justices in place of Sherburne and Chatfield, but Judge Welch continued as chief justice until the admission of the State.

The last term of the Territorial Supreme court was held in January, 1858, after which it was superseded by the Supreme

¹⁴ The politics behind presidential nominations, removals and appointments to the Territorial Supreme Court are discussed in Douglas A. Hedin “‘Rotation in Office’ and the Territorial Supreme Court” (MLHP, 2010).

court of the State, composed of Lafayette Emmett, chief justice, and Isaac Atwater and Charles E. Flandrau, associate justices. The decisions of the territorial court, reported by William Hollinshead, Isaac Atwater, John B. Brisbin, Michael E. Ames and Harvey Officer, are to be found in the first volume of Minnesota Reports. All the judges of this court are dead except Nelson and Flandrau, the former of whom has so long and so ably served as United States District Judge for the district of Minnesota, and the latter, after achieving a high reputation for himself upon the Supreme bench of the State, resumed the practice of law, in which he is still engaged, in St. Paul, having long occupied a place in the front rank of his profession.

DISTRICT COURTS.

The first District courts in the territory were held in August, 1849, at Stillwater, on the 13th of the month, Judge Goodrich presiding; at the Falls of St. Anthony, in the old Government mill, on the 20th of the month, Judge Meeker presiding; and at Mendota in the old stone warehouse of the fur company, on the last Monday of the same month, Judge Cooper presiding. This was, I believe, the first court of record ever held in Minnesota west of the Mississippi river. The same historian who tells us that many of the jurors did not understand English, and that W. H. Forbes acted as interpreter, also tells us that the charge of Judge Cooper to the grand jury was "lucid, scholarly and dignified." Those who recollect that dignified gentleman of the old school, with his frilled shirt bosom, will appreciate the idea of his delivering such a charge to Indian half-breeds and French traders.

The first term of the District court ever held within what is now Winona county was held in the old Winona house, on Front street, in this city, in June, 1853, Judge Welch presiding; William B. Gere, clerk, and John Iams, sheriff. I cannot find either here or in Fillmore county any record whatever of the proceedings of this

term, and I imagine very little if any business was transacted.¹⁵ The following winter Fillmore, county was divided and Winona county organized, as we have already stated, but for some reason no term of court was held here in 1854.

The second term of court was held in what was known as the old Hancock building, on the corner of Fifth and Walnut streets, in this city, in August, 1855, Judge Welch presiding; John Keyes, clerk, and John Iams, sheriff. There are no minutes of the proceedings of this term, and the only record I find concerning it is in the register of actions, from which it appears that eight indictments were found for selling spirituous liquor to Indians, or for introducing spirituous liquor into the Indian country — seven against Stephen M. Burns of Mt. Vernon and one against Asa Hedge of Winona. The principal case of the term — that of the United States vs. Elijah Sillsbee, for shooting H. D. Huff in the Spring of 1854 — was continued owing to the illness of the defendant, and was never brought to trial.

I have been unable to find anything to show that any court was held in 1856. The last term of the Territorial District court in this county was held August 31, 1857, in the Huff House hall, situated on the second story of the hotel, immediately over the dining room, Judge Welch presiding, John Keyes, clerk, and Chas. Eaton, sheriff. This was the first term at which any considerable business was transacted, and the first of which any minutes of the proceedings were kept. They are recorded in excellent shape in the handwriting of C. N. Waterman, deputy clerk. The term lasted some ten days, but no cases were tried of any special importance.

The oldest action in the District court, as shown by the files, was that of F. J. B. Crane against H. S. Hamilton, commenced in 1853,

¹⁵ *A History of Wabasha County*, subtitled *Also a History of Winona County*, published five years earlier, describes this court session and places Andrew Chatfield on the bench. See “Judge Chatfield’s First Court Session in Winona County” (MLHP, 2008-2009) (published first, 1884).

upon a promissory note. As showing that dilatory and sham answers were not unknown to the bar of that early day, and were interposed even by clergymen, it may be stated that the answer in the case was that "as to "whether the plaintiff was the lawful owner and holder of the note," and "that the defendant was justly indebted to him thereon," the defendant "had not sufficient knowledge or information to form a belief."

The first action commenced after Winona county was organized was in September, 1854, by Squire J. Barrett, of La Crosse, against the proprietors of Minneoah, to enforce a lien for material furnished to build a hotel, and brings up reminiscences of the time when Minneoah was the rival of Winona.

In territorial times the clerk of the court was appointed by the judge. The first clerk of the District court of Fillmore county of which Winona was then a part was W. B. Gere, who served as such at the June term of 1853. Soon afterwards our fellow-townsmen, Grove W. Willis, who came here in June, 1853, was appointed clerk by his friend, Judge Chatfield, with whom he came to this State from Wisconsin. Mr. Willis served as clerk until Winona county was organized in the Winter of 1854, when he removed to Chatfield, then the county seat of Fillmore county, in which he continued clerk of the court until 1859. In the spring of 1854 Judge Welch appointed M. Wheeler Sargeant, clerk. Mr. Sargeant was therefore the first clerk of the court in this county after its organization. Although he held the office until July, 1856, there is not to be found a single entry in any book of records during his entire term of office. The only thing on file to show that he ever was clerk is his endorsement of filing on some half a dozen papers. Doubtless there was very little to record, but those of us who knew Mr. Sargeant will readily understand that he was not a man who was likely to be very methodic in keeping official records. In July, 1856 Judge Welch appointed John Keyes clerk in place of Mr. Sargeant, and he continued to hold the office until superseded in May, 1858, by H. C. Lester, the first clerk of the court under the State organization.

When Fillmore county was organized in 1853, John Iams was appointed sheriff and held the office until Winona county was organized in 1854, when he was elected sheriff in April of that year, and served until succeeded in January, 1856, by Charles Eaton, who served until January, 1858, when he was succeeded by F. E. Whiton, the first sheriff under the State.

Mr. Iams was a carpenter by trade, who came here from Indiana, and was a member of the Western Farm and Village Association. He was a most worthy man, but I apprehend the duties of the office were not then either onerous or remunerative. The most memorable event of his official career was the pursuit of E. H. Johnson up to Chimney rock in the spring of 1853, to arrest him for shooting Isaac W. Simonds. Mr. Iams moved west about 1860, and has been dead, I understand, for quite a number of years. Mr. Eaton is living in St. Paul, of which city he has been for many years an honored citizen.

I cannot ascertain who, if any one, was county attorney (then called district attorney) in 1853, while we were a part of Fillmore county. At the election in April, 1854, authorized by the act organizing Winona county, our townsman, Hon. C. F. Buck, was elected district attorney, and has therefore the honor of having been the first incumbent of that office. He was succeeded in January, 1856, by Edwin M. Bierce, who held the office during 1856 and 1857, until succeeded by Sam Cole, as "prosecuting attorney" for the Third judicial district under the State organization. I might say, in passing, that the office of "prosecuting attorney" was abolished in 1860, when we adopted the present system of county attorney.

I ought not to close the subject of the Territorial District court without a word of tribute to Hon. Wm. H. Welch, our first and only judge of that court. While not a man of great learning or ability, he was eminently judicial in his temperament and manner, and commanded universal confidence in his integrity. The comparative good order and decorum which characterized our judicial affairs at that early day was largely due to Judge Welch. He died

at his home in Red Wing some years after his retirement from the bench.

PROBATE COURTS.

In territorial times the business of the Probate court was very small. The early settlers being usually young men, deaths were not so frequent as now, and what few did die had not had time to accumulate large estates.

The first record in the Probate court in this county bears date March 30, 1856, and consists of the petition of A. B. Smith for letters of administration upon the estate of Asa C. Brundage.

When Fillmore county was organized in the spring of 1853 Andrew Cole was appointed probate judge, but he never seems to have been called upon to exercise the functions of his office. At the election in the Fall of 1853 H. B. Waterman of Minnesota City was elected to the office, but as Winona county was created the following February he was never, so far as I can learn, called upon to act. At the election in April, 1854, Andrew Cole was elected, and was therefore the first probate judge of Winona county. He held the office until January 1, 1856, but transacted no business, or, if so, he made no record of it. A. P. Foster was elected to the office in the Fall of 1855, and succeeded Mr. Cole in January, 1856. Mr. Foster resigned in October, 1856, and returned to New York, when Sam. Cole was appointed to fill the vacancy (hence his title of "judge.") Mr. Cole held the office during the remainder of 1859, when he was succeeded by E. H. Murray, who held it during the years 1857 and 1858, most of the work, however, being performed by John Keyes, who acted as clerk.

JUSTICES' COURTS.

Justices' courts in Winona county antedated any other court. Justices of the peace were appointed by Gov. Ramsey while we were still a part of the unorganized county of Wabasha. There is

no record (at least here) of the appointment or election of justices until after the organization of Winona county in 1854. But, according to my most reliable information, in 1852 Gov. Ramsey appointed as justices, Thomas K. Allen and H. B. Waterman of Minnesota City; John Burns, who resided at the mouth of Burns valley on the well-known "Burns farm," and George M. Gere of Winona Prairie. I have been unable to ascertain positively which of those was first commissioned, but it is claimed that Mr. Allen was first appointed and that he had to go to St. Paul to qualify, there being no one nearer who was authorized to administer to him the oath of office. When Fillmore county was organized in 1853, I am informed that the same justices continued in office.

At the election in the Spring of 1854, after Winona county was organized, S. K. Thompson, George H. Sanborn, A. T. Pintler, A. P. Hall, S. E. Cotton and Wm. Hewitt were elected, and qualified as justices of the peace. The records of the clerk's office show that H. B. Waterman of Minnesota City, Benjamin Langworthy of St. Charles, J. W. Bently of Utica and John L. Blair of Saratoga qualified and filed their bonds in January, 1855, but whether elected in the Spring or in the Fall of 1854, I am not certain — probably the latter. G. R. Tucker, so long a justice in this city, was first appointed in August, 1856, to fill a vacancy. The names of the justices in the county during the years 1855, 1856 and 1857 are of course so numerous that time will not permit an enumeration. We find among them such well-known names of old settlers as Joseph Cooper, E. B. Jewett, Robert Pike, Jr., Rolla Banks, Jabez Churchill, Loren Thomas, John C. Norton, and many others.

Neither will time permit a biographical sketch of these early justices. I shall only refer to the four appointed in 1852. Mr. Allen, I think, never exercised the functions of the office to any great extent. He now resides in La Crosse and is a highly esteemed clergyman in the Episcopal church.

Mr. Waterman still resides near Minnesota City with his sons. A lawyer by education and a man of extensive reading and much general information, he was continued in the office of justice of the peace by the suffrages of his fellow townsmen for some twenty years. The first case on his docket was Jacob S. Denman against some member of the Western Land and Village Association.

John Burns, after whom Burns valley was named, was a fine type of a generous and humorous Irishman. His quaint expressions and droll wit were greatly enjoyed by those who attended his court, and are still pleasantly remembered by the old settlers. Without any special knowledge of law, he decided his cases from an intuitive sense of justice. Of unquestioned integrity, he was respected by all. He died on his farm in March, 1870.

George M. Gere came here from La Crosse in 1852, but moved to Chatfield in the Spring of 1854, and hence was a resident of Winona only about two years. He died in Chatfield in 1868 or 1869.

THE BAR

As the title to the land in Winona county was not acquired from the Indians until 1855, there was little or no legal business here prior to that time. About all there was of it was an occasional suit before a justice. And ever after the land office was established here, there was no law business to speak of except what centered in and around that office growing out of contested pre-emption claims. Every one was after land, and the fever of speculation ran high. "Claim jumping," resulting in fights, and contests before the land office, was not infrequent. In these contests the most successful lawyer was he who was fortunate enough to have a good understanding with the land officers. People were no worse then than now, but no man, they say, can stand more than a certain pressure to the square inch, and the eager greed for land was so strong and the excited speculative spirit so intense that the trial of these "contested claim cases"

was too often attended by reckless swearing and even bold perjury. As illustrating how common this was, and how generally it was understood, an anecdote is told of Hon. Chris. Graham, who was register of the United States land office at Red Wing, and who is still living in that city enjoying an honorable old age. He was taking testimony in one of these claim contests, when one of our old-fashioned thunderstorms came up. He immediately folded up the papers and announced the further hearing of the case adjourned until the next morning.

The attorneys, who were from St. Paul, protested, saying that it would greatly inconvenience them to stay over, and urged that the trial go on that day. Mr. Graham replied: "Gentlemen, I am sorry to discommode you, but it is my rule never to take evidence in this class of cases when "it is thundering and lightning."

The first attorney to locate in Winona, and indeed in Southern Minnesota, was Andrew Cole, who came here from La Crosse in the Fall of 1852. He was quite active in the public affairs of the town in those early times, and one of the prominent attorneys in the justices' suits before Squire Burns, S. K. Thompson and other justices of that day. Mr. Burns had great confidence in the legal ability and opinions of Cole — so much so that it is said he sometimes jokingly spoke of Cole as the "court" and himself as the "squire." However, Cole did not get along so well with George H. Sanborn, another early, justice, with whom he had occasional altercations in court. It is said that Sanborn resigned and laid aside the judicial ermine for the express and avowed purpose of whipping Cole. The whipping, however, never occurred. Mr. Cole remained here until 1857, when he moved east and located at Poughkeepsie, N. Y., where he still resided the last I heard of him.

In 1853 C. F. Buck, Grove W. Willis, John Keyes and M. Wheeler Sargeant arrived and located here — Willis, Sargeant and Keyes in Winona and Buck in Homer, then a rival of Winona. Mr. Willis came here in June, 1853, from the State of Wisconsin, where he was admitted to the bar in 1848. He was soon afterwards

appointed clerk of the court for Fillmore county, and, as has been already stated, removed to Chatfield in the Spring of 1854. After vacating that office in 1859 he entered the practice of the law in Fillmore county in which he continued until he returned to Winona in 1873, where he still enjoys an honorable and green old age. Therefore, with the exception of H. B. Waterman, of Minnesota City, who came here in 1852, Mr. Willis is now the oldest resident member of the bar in this county. [Mr. Willis died August 22, 1897, at the age of 86 years.]

Mr. Buck, originally from Erie county, New York, came here in September, 1853, from Kane county, Illinois, where he had been admitted to the bar. He engaged for a time in the practice of his profession, and was elected the first district attorney in 1854, but he had no special taste for the dry details and narrow technicalities of the law and soon engaged in more congenial pursuits. His long subsequent career is too well known to need to be repeated. After filling numerous important public trusts with ability and fidelity, he is still among us in the flesh, and so well preserved that he bids fair to outlive us all.

John Keyes came to Winona in 1853 and settled on the lower end of this prairie where his family still reside. He was engaged in the practice of law at first alone, and subsequently and successively as a member of the firms of Sargeant, Franklin & Keyes, Franklin & Keyes, and Keyes & Snow, until his death in December, 1876. Born in Windham county, Vermont, in 1818, removing to Michigan at an early age, where he lived until he came to Winona, with the exception of three years spent in California. Mr. Keyes was a man of great integrity of character, of positive views, but courteous to everyone, and respected by all who knew him. Not an advocate, although a man of ability and learning, he shunned the contests of the courtroom and preferred work in his office, where he was always found a safe counselor.

Mr. Sargeant, who had been engaged with William Ashley Jones during the Fall in a surveying party, came to Winona in December, 1853, and from that time until his death in March,

1866, was with the exception of the time he was in the army as a paymaster, continuously engaged in the practice of his profession, first alone and then as a member of the firms of Sargeant & Wilson, Sargeant, Wilson & Windom, Sargeant & Windom, Sargeant & Franklin, and Sargeant, Franklin & Keyes. Born in Danville, Vt., in 1822, and educated at Dartmouth college, in general information and range of reading and study Mr. Sargeant had few equals in the State. Though possessing certain eccentricities of manner and habit, he was the soul of honor and integrity. Proud in spirit, undemonstrative, extremely sensitive and sympathizing but little with the outward conventionalities of society, he was often misunderstood. To those not penetrating through the crust of his character he might seem at times cold and almost unfeeling. On the contrary he was at heart exceedingly tender and sensitive.

So far as I can ascertain there were no additions to the bar of Winona county in 1854.

The year 1855, however, brought numerous accessions, some of whom afterward became eminent in the history of the State and Nation. Judge Thomas Wilson, a native of the Green Isle, whose boyhood was spent in Pennsylvania, where he also received his education, came to Winona in April, 1855, and has been with us ever since. His services in the constitutional convention, on the district bench, as chief justice of the Supreme court, in the State Legislature and in the halls of Congress, and his achievements in the practice of his profession, are familiar to you all.¹⁶

General (now Judge) C. H. Berry settled in Winona in the early summer of 1855 and was followed in the early Fall of the same year by Judge C. N. Waterman, his old law partner in Corning, New York, and continued the partnership of Berry & Waterman, which was for many years one of the most prominent law firms in

¹⁶ For his bar memorial in 1910, see "Thomas Wilson" in *Testimony: Remembering Minnesota's Supreme Court Justices* 50-53 (Minn. Sup. Ct. Hist. Soc., 2008).

the State. This partnership continued until Mr. Waterman was elected to the District bench in the Fall of 1871), and was, at the time of its dissolution, probably the oldest law firm in the State.

Gen. Berry's successful career in his profession and his valuable public services as Attorney General of the State, as a member of the State Legislature and of various educational and charitable boards in the State, are also too familiar to require repetition. He now adorns the bench as associate justice of the Supreme court of Idaho, and although now absent we still claim him as a Winonian and one of us. [Judge Berry is now of the firm of Berry & Morey of Winona.]¹⁷

Judge Waterman's professional career is so connected with that of Gen. Berry in the memories of all the old settlers that a history of one is a history of both. Born in Rome, N. Y., in 1823, a graduate of Hamilton college and of Harvard law school, he was a ripe scholar as well as an able lawyer. I think I shall not be considered invidious in saying that he was considered the best read and thoroughly posted lawyer at the Winona bar. I recollect well that in early days he was considered by all of us as an infallible authority in all matters of practice and pleading. He was a great reader and proficient linguist. He was thoroughly posted in all the best literature of the times, being one of the very few lawyers who kept up their general reading after engaging in the active practice of their profession. Being not only learned in the law but of quick, clear perception and of an eminently fair and judicial frame of mind, when he was elected to the bench in the Fall of 1871, all his friends looked forward to a brilliant career for him in his new position. He was on the bench just long enough to prove that they were not mistaken in him when his career was cut short by sudden death in February, 1873.

¹⁷ For his memorial in the supreme court, see "Proceedings in Memory of Charles H. Berry, First Attorney General of the State of Minnesota," 79 Minn. l-ixv (1901).

Hon. William Windom, then of Mt. Vernon, O., was in Winona in the summer of 1855 looking over the ground, but I believe did not permanently settle here until December, 1855, when he became a member of the law firm of Sargeant, Wilson & Windom, of which and of the subsequent firm of Sargeant & Windom he continued a member until his election to Congress in the Fall of 1859. Mr. Windom, although then comparatively young, was already an able lawyer and a fine advocate. His subsequent career as a statesman in Congress and the United States Senate and as Secretary of the Treasury has given him a more than national reputation that cannot be enhanced by anything I might say here.

Hon. Thomas Simpson, then quite a young man and a surveyor by profession, became a citizen of Winona in December, 1855, and, as you all know, was for several years engaged in the management of his large landed and moneyed interests in this part of the State. Although not then a lawyer he is entitled to a place in the territorial bar, having been admitted in April, 1858, about a month before the admission of Minnesota as a State. His public and professional career and his liberal public spirit, which has made him active in every good work for so many years, require no eulogium.

The same year there came from Meadville, Penn., a native of Greene county in that State, a man who was one of the historic characters of early Winona — Sam Cole, so many years justice of the peace in this city. Anecdotes and amusing incidents in his court, if written, would fill a book. Tall, but of rather slender build, his bald head and long, heavy beard gave him a very dignified and venerable appearance. It is said that some Sunday school children who met him on the street on one occasion thought it must be the Apostle Paul. Of limited natural ability and rather superficial acquirements, he had a remarkable faculty of looking wise. With just enough knowledge of the law to make him familiar with its technical words and phrases, he was accustomed to make a show of learning by parading them on all occasions. But with all his foibles he made a good justice, and notwithstanding his weakness he was good-natured and kind-

hearted. Like many an early settler in a new country, when business settled down to more methodic habits, he lost his hold and moved to Missouri. There he became at one time so reduced in circumstances as to be compelled to work on a railroad as a section hand. A gentleman, principal of the public schools in St. Louis, who had known Cole in Pennsylvania, told me that he came to him on one occasion in absolute want and destitution. This gentleman furnished him with some clothing and gave him temporary employment in teaching a negro evening school. Soon after he was taken sick and died in a hospital in that city, the recipient of public charity. Poor Sam ! Peace to his ashes !

There also came to Winona county in 1855, another lawyer whose name should not be passed by without mention. I refer to the fiery, impulsive, eloquent, generous, chivalric Samuel S. Beman, who settled first in Saratoga, but afterwards in St. Charles, where he died in May, 1882. Born in Georgia in 1822, and a half brother of the equally fiery William L. Yancey, Beman was in temperament a thorough Southerner. He could flay an opponent alive with the biting sarcasm and invective of his burning eloquence, but he was the soul of honor, generous and magnanimous to a fault. Weighed down by physical infirmities from his birth, his body was too frail a tenement for the bright intellect within, and poor health did not permit of the regular practice of his profession.

My intention was not to mention any one who was not a member of the bar before the admission of the State, but I feel justified in making an exception in the case of the gallant and lamented Col. John Ball, who came here in 1855, although not admitted to the bar until 1860. He never engaged in the practice, for soon afterwards, at the call of his country, he enlisted as a private in Company K of the gallant old First regiment of Minnesota volunteers, in which he served with signal and marked distinction and bravery, as he also did in the Eleventh Minnesota volunteers, of which he was most of the time acting colonel. At the close of the war Col. Ball, impaired in health, returned to

Winona, where he resided until his death in 1875. The bravest of the brave, his remains rest peacefully in Woodlawn.

Hon. E. M. Wilson came here from Virginia just before the land sale in the Fall of 1855, and during the year 1857 was the senior member of the law firm of Wilson & Mitchell. In 1858 he removed to Minneapolis, of which he has ever since been one of the most prominent citizens. His professional and political career has given him a, more than State-wide reputation. Although he has long since ceased to reside here, he has a warm personal friend in every old settler of Winona. ¹⁸

Another attorney who came to Winona in 1855 is A. J. Olds. He afterwards settled in Quincy, Olmsted county, but subsequently removed to St. Charles, of which he has been an honored citizen for many years.

Among those who came here in that year was our friend E. A. Gerdtzen, who settled in Winona in October, 1855. Although he had studied law in the universities of Kiel and Berlin in the old country he was not formally admitted to the bar here until 1864. His seventeen years' service as clerk of the District court was the longest tenure of office in Winona county except that of Judge Story, who has held the office of probate judge for over twenty years.

Edwin M. Bierce came from Meadville, Penn., to Winona in 1855, and was for a time a law partner of Judge Lewis. He was elected district attorney of the county for one term, and also served in the legislature of 1857, but left the State soon afterwards somewhat under a cloud. He went to Texas, but I regret to say that I believe a change of climate was beneficial. It is generally understood that he died there many years ago.

The additions to the Winona county bar in 1856, as nearly as I can ascertain, were Judge Abner Lewis, Hon. H. H. Johnson,

¹⁸ "Eugene M. Wilson (1833-1890)" (MLHP, 2008).

Daniel S. Norton, Morris A. Bennet, H. W. Lamberton and Jacob Story. Time will permit of special mention of only those who have deceased.

Judge Lewis, born in Eutland county, Vermont, in 1801, came here from Chautauqua county, New York, where he had spent most of his previous life and where he had been elected to Congress in 1844, and in which he had served many years as county judge. He died here in October, 1879, at the ripe age of 78. The writer of his obituary notice truly said of him: — "His honest, upright life left a memory that speaks a eulogy in itself. A man of fine attainments, a gentleman of kind heart and genial manners, modest and unostentatious, he was universally beloved." ¹⁹

Daniel S. Norton came west in 1855 from his native town of Mt. Vernon, O., with his old law partner William Windom, and located at first in St. Paul, but moved to Winona in the Spring of 1856. In his day Mr. Norton was one of the most prominent men of the State. Having been twice elected from this county to the State Senate and once to the State House of Representatives, he was in January, 1865, elected to the United States Senate, in which he served until his death in Washington in July, 1870. To be appreciated he had to be intimately known, and the highest eulogium that could be passed on him is that he was held in the highest esteem by those who knew him best. Naturally reticent and reserved, and entertaining an honest contempt for those tricks by which demagogues pretend friendship for the people; he was never particularly popular with the great mass of men. His strength lay in the strong attachment and loyal devotion of his personal friends. As a lawyer he was the soul of honor, true alike to his client and the court. In all my professional experience, I never knew a lawyer who more thoroughly disdained anything like artifice or sharp practice in the management of a cause. He was a true man and a devoted friend.

¹⁹ "Abner Lewis (1801-1879)" (MLHP, 2008-2011).

The first death in the Winona county bar was that of Morris A. Bennett, who died April 23, 1861, a brother of Mrs. Judge Wilson of this city and of the late Thomas E. Bennett. Morris A. Bennett was born in Rome, N. Y., in 1833, and hence was only about 28 years old at the time of his death. Finely educated, of a high order of natural talents, endowed with a splendid physique and genial, pleasant manners, he had before him a bright promise of a brilliant career, when he was suddenly cut down in the full strength of his young, vigorous manhood, and his spirit took its flight just as the echoes of the bombardment of Fort Sumter were calling the sons of the North to arms for the preservation of the Union.²⁰

Col. H. H. Johnson, whose name will long be remembered as the president of the Transit (now Winona & St. Peter) railroad company, is held in warm remembrance by all the old settlers of Winona. He removed many years ago to Owatonna, where he still resides, spending an honorable old age in the home of his son-in-law and daughter, Colonel and Mrs. Clark Chambers.

I am not sure whether George H. Bemis, for a time the law partner of Judge Lewis, came here in 1856 or 1857. He remained here only two or three years, when he returned east.

Although Judge Story graduated at the Harvard law school, studied in the office of Rufus Choate and practiced law in Boston several years before coming west, yet he never engaged in the practice of his profession in Winona. But by reason of his long official career as city justice, and for nearly twenty-one years as judge of the Probate court, he is most thoroughly identified with the bar of Winona county. May he live as probate judge for many years to come. [Judge Story served 22 years in all, from January 1, 1869, to January 1, 1891.]

Mr. Lamberton's time has been so fully occupied with his large and varied business interests that he has never given much

²⁰ "Morris A. Bennett (1833-1861)" (MLHP, 2008-02013).

attention to the law, but as showing what he might have achieved in that line, it may be said that the only time he ever aspired to professional honors he was eminently successful, having been triumphantly elected city attorney of Winona on the temperance ticket, in the Spring of 1857, over D. S. Norton, the Republican candidate.²¹

The late John M. Cool, so long a prominent and honored citizen of St. Charles, where he died in September, 1875, came to this county in 1856, but was not admitted to the bar until subsequent to 1858.

Henry C. Lester, a man of fine education and varied accomplishments, was admitted to the bar in New York upon coming west, but never engaged in the practice in this state. Elected the first clerk of the District Court under the state organization, he resigned in April, 1861, and enlisted in the First Regiment of Minnesota Volunteers, in which he was commissioned captain of Company K. His previous brilliant military career was brought to an unfortunate close at Murfreesboro in July, 1862. The criticism to which he was subjected on account of his surrender on that occasion cast a cloud over his future life which he felt very keenly. Proud in spirit, he said little, but felt he was unjustly censured, and sought earnestly, but in vain, for a court of inquiry. I have neither the inclination nor ability to discuss the merits of his military conduct, but it is but due to one who was a valued friend and with whom I was intimately acquainted to say that, whatever might have been his defects as a military leader, I know that he was not wanting in personal courage. He soon afterwards returned to New York, and the last I knew of him he was living in Brooklyn.

The only additions to the bar in 1857 that I now recall were Gov. Wm. H. Yale and myself. The governor and I started west about the same date, but he made the best time and beat me here, I believe about ten days. Of his long and successful career, in

²¹ "Henry Wilson Lamberton (1831-1905)" (MLHP, 2011).

which he has been so prominently connected with the affairs of this city, county and state, both officially and as a private citizen, there is no occasion that I should speak to citizens of Winona county. As for myself, I will merely say that I am still here.

There are members of the bar, such as the lamented Franklin, among the dead, and Hill, of St. Charles, and others among the living, who came here subsequent to May, 1858, but so long ago that their names sound so like those of old settlers that I would gladly have referred to them if within my theme and if time permitted. But this article, already far too long, must close. Doubtless I have made some omissions and fallen into some errors. For these I again ask your kind indulgence.

Members of the bar of Winona county, ten of our number already sleep in Woodlawn. Those of us who were here in the days of the territory must, in the course of nature, soon follow. Old settlers of Winona county, our ranks are being rapidly thinned. The present busy age has very little time to devote to reminiscences of the past. The eager, restless genius of business is constantly saying: "Let the dead bury their dead, follow thou me."²² But so long as two of our number survive, let us maintain this organization and thus continue old acquaintances with each other and keep green the memory of those who have gone before. □

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²² **St. Matthew 8:22.**

RELATED ARTICLES

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