"BENCH AND BAR OF MOWER COUNTY"

BY

LAFAYETTE FRENCH

———————

FOREWORD

BY

DOUGLAS A. HEDIN
EDITOR, MLHP

A.

When writing profiles of lawyers for a chapter on the bar and bench of Mower County published in 1911, Lafayette French followed several rules of professional courtesy. He extolled the virtues and strengths of his contemporaries, but described dead lawyers or those who had moved from the county with a sharper pen. Thus, Samuel D. Catherwood, one of French's friends, "stands high in the rank of lawyers in southern Minnesota, and in the state. His life demonstrates what a young man who has fair ability, with industry and close attention to business can accomplish in a lifetime. Mr. Catherwood is in the prime of life and enjoys a lucrative business. He is a good all around lawyer." But C. J. Short, deceased, "lacked the force and energy necessary to make him a successful lawyer." Henry Weber, Jr., a probate judge, "is an exemplary citizen and his honor and integrity are beyond question," while C. C. Kinsman, deceased, was "a well read lawyer, but lacked force and aggressiveness." Otto and Carl Baudler "are clean, studious young men and they promise to be quite an acquisition to the bar." L. A. Pierce, in contrast, "was an able lawyer, but his desire for office and extravagant habits prevented him from

succeeding as a lawyer." John M. Greenman is "a pleasant gentleman and a good lawyer," while R. D. Dowdall, who practiced five or six years in Austin before moving away, apparently never learned that the cases a lawyer turns down are as important as the ones he takes and so, to French, he was "a strong trial lawyer, but was not discriminating enough and often appeared on the wrong side of a case." [1]

French was not the first law writer to treat the living more gently than the dead. Serjeant Robinson concluded his memoirs, *Bench and Bar: Reminiscences of One of the Last of an Ancient Race*, with the following:

> Exception may possibly be taken to my dealing almost exclusively with the dead, who proverbially 'can tell no tales,' by way of retaliatory *tu quoques*, nor can they defend themselves from the calumnies of the malicious; but I determined that my efforts should assume the tone of ancient rather than of modern history. I have always thought it an impertinence to discuss the conduct of living persons (especially of those in public positions) either in regard to imputed censure or lavish praise. There may no doubt be occasions when such a course may be specially called for; but I think they are entitled to immunity from criticism or remark so long as their duties are performed faithfully and well.
>
> I have great personal regard for many members of the Bench and the Bar, but I would instinctively shrink from alluding, in the face of the public, to their merits, as much as I would to their kindly and venial foibles, should they possess any—and there are few of us who are without weakness of some kind. They would be as shocked at receiving extravagant eulogy, as I trust I should be incapable of offering it. As I have before hinted, little trifling eccentricities, that in the estimate of a man's friends do not in the slightest degree interfere with their

[1] French did not share Dowdall's limitations. In an obituary of French, Nathan Kingsley recalled, "His judgment of a 'good case' was almost unerring." *Austin Weekly Herald*, November 6, 1912, at 1. The complete obituary can be found in "Lafayette French, Sr.," posted separately on the MLHP.

> affectionate regard for him, would, were he told of them, be resented by him as a malicious calumny. The dead have no such delicate sensibilities A little badinage, or what is vulgarly called chaff, does not affect them. Anyway, they must take their chance. But the characters of prominent men are public property. To be freely talked of when dead is the price they paid for their notoriety when living; but none the less do I think it a crime wilfully to do injustice to their memories. After all, I have thought it right to treat the living with respectful silence. Others, more competent than I am, will one of these days illustrate their characters at a time when it will be perfectly indifferent to them whether they are subjected to praise or blame.[2]

In keeping with this spirit, the author of a *History of Mower County, Minnesota*, published in 1884, profiled Lafayette French, then age thirty-six, as "one of the prominent attorneys of Austin," who "has acquired a good practice, is an able lawyer and a valuable citizen."[3] While flattering, this was an understatement of French's future. For most of the next thirty years, he was one of the preeminent trial lawyers in southern Minnesota.

Reflecting a common sentiment in the trial bar, French expressed more respect for lawyers who tried cases than those who did not or who had left the profession to go into business. He described his ex-partner, W. Crandall, who became an insurance agent, as "a fair lawyer, but the turmoil and strife of an active life in the legal profession was distasteful to him." W. W. Ranney, a probate judge in Austin, "has been more of an office than a trial lawyer. He is a good citizen and highly respected by all who know him." G. W. W. Harden "is a good lawyer but his work is confined mostly to commercial business and real estate."

---

[2] Serjeant Robinson, *Bench and Bar: Reminiscences of One of the Last of an Ancient Race* 321-2 (London: Hurst and Blackett, Ltd., 1889)

[3] *History of Mower County, Minnesota* 78-9 (Mankato: Free Press Pub. House, 1884). Chapters on the "Judicial History of Mower County" and "The Bar of Mower County" from this book are posted separately on the MLHP.

B.

French wrote vignettes of several notable cases, including a few in which he represented one of the parties, but he does not mention the case that almost ended his career. From July 1877, to October 15, 1878, he endured what may have been the greatest crisis of his professional life. By 1877, he had practiced law in Austin about six years. He had been elected county attorney and, in that capacity, appeared in many cases before District Court Judge Sherman Page. In his chapter on the Mower County legal community published in 1911, French recalled Judge Page:

> [A]t fall election [in 1872] the Hon. Sherman Page was elected judge of the newly created district. Judge Page held office during the term of six years. He was a man of marked ability and possessed of an analytical mind of large perception, and was quick to dispatch business, but he was too much of a partisan to be a judge. Naturally combative, quick to form conclusions, he took sides on every matter that came before him. He was a man of strong feelings, but when he did not allow his judgment to be warped by prejudice against the attorneys of parties of the cause before him he was a very able judge.

There is a sharpness to this profile that is absent from others that French wrote.[4] And for good reason. In July 1877, Judge Page commenced a campaign to ruin French. Page was inflamed by a petition that had circulated in the county demanding his resignation. William Watts Folwell described what happened next:

> Judge Page now took the extraordinary step of issuing, on May 31, 1877, without complaint or information, a warrant for the arrest of a deputy sheriff, one David H. Stimpson, who

[4] A devastating profile of Judge Page appears in chapter of short biographies of "Leading Citizens" that followed French's chapter on the bench and bar. It is posted below at 37-8. It is not known whether French wrote or edited this sketch.

> was to brought before Page to show cause why he should not be punished for contempt of court in publishing certain false and malicious statements concerning the judge of the district court for the tenth judicial district. Believing the county attorney, Lafayette French to be one of the conspirators who had circulated the libelous petition, Judge Page took charge of the proceedings in person. After examining the defendant and others under oath, the judge considered that it was doubtful that Stimpson had published the libelous statements and that he was but a subordinate actor in the play, influenced by stronger and guiltier characters. He therefore dismissed Stimpson on July 2. It is a fair inference, from Page's own testimony given later, that his object in the arrest and examination of Stimpson and others was to extort the names of the principal conspirators. On the same day that Stimpson was dismissed, Judge Page cited Lafayette French, county attorney of Mower County, to appear before him and answer to charges and specifications of misconduct in office, comparatively trivial but including one charge of publishing and circulating defamatory and libelous statements concerning the judge of the tenth judicial district. A hearing was had on July 10 and on the last day of that month Judge Page, having found the charges and specifications true, ordered that Attorney French be suspended from the practice of law until the adjournment of the next general term of the state supreme court.[5]

Page then certified this order to the state supreme court for confirmation, but the court refused and French was reinstated. Page thereupon induced an out-of-state ally to file a complaint against French, and that too was appealed to the supreme court. On October 16, 1878, the St. Paul *Pioneer Press*, which was waging its own vendetta against Page, reported the case's twisted procedural history and court's ruling.

---

[5] William Watts Folwell, III *A History of Minnesota* 402-3 (St. Paul: Minnesota Historical Society, 1969)(First published in 1926) (citing sources). Appendix 7 of this volume of Folwell's *History* is devoted to the Page impeachment case.

A BITTER DOSE FOR JUDGE PAGE.

His Information Against County Attorney French Dismissed by the Supreme Court, and Page's Friend Meigs Ordered to Pay the Costs.

Sherman Page, judge of the Tenth judicial district, received a crushing defeat in the supreme court yesterday, in the proceedings instituted by him to disbar and destroy Lafayette French, county attorney of Mower county. In July, 1877, Judge Page brought the county attorney before himself (Page) and tried him on various charges of alleged falsehood and unprofessional practices. Page acting as judge, jury, prosecutor and executioner, Lafayette French being defended by Mr. Geo. M. Baxter, of Faribault. Mr. Baxter was un-reserved in his opinion of the charges rested upon the flimsiest of all pretexts, but Page found French guilty, suspended him from the practice of law, and submitted the case to the supreme court for confirmation. Before the fall term of the supreme court closed in 1877 the matter had not been acted upon on account of the irregularities of the proceedings on the part of Page, and because it appeared that no one had ever appeared to make any complaint against Page. In other words, there was nothing before the supreme court but Sherman Page's own version of the proceedings. When the supreme court adjourned, Lafayette French was restored to his rights, and Page was compelled to find somebody to act as relator before the supreme court, to file the information, and start the proceedings anew. Page found his man in Tennessee, one A. E. Meigs, who came back to Minnesota to perform this duty, and then returned to his home in the South. The case having thus been properly before the supreme court, the matter was carefully considered, and yesterday Justice Cornell, in behalf of the court, ordered the

following record to be entered by the clerk:

> The cause being regularly on the calendar of the court at the October term, 1878, and having been set for hearing this 15th day of October, A. D. 1878, and having been regularly called for hearing on that day, and the respondent, by his counsel, having thereupon moved upon all the pleadings, proceedings and proofs herein, for the dismissal of said motion, it is ordered and adjudged that this proceeding against Lafayette French, respondent, be and the same is hereby dismissed, and that said respondent do recover from said A. E. Meigs, the informant, his costs and disbursements.

That order settles the business and completely vindicates Lafayette French, while Page will have the satisfaction of paying some three or four hundred dollars, unless his friend Meigs comes back from Tennessee, and pays them himself. Altogether, this is one of the most overwhelming reverses (and he has a good many of them) which has lately overtaken the notorious judge of the Tenth judicial district.[6]

Many months earlier, on January 22, 1878, twenty-six prominent citizens of Mower County, including French, petitioned the Minnesota House of Representatives to remove Page.[7] That body impeached Page on February 27th, but the Senate acquitted him in a celebrated trial that lasted the entire month of June.[8]

---

[6] *Pioneer Press*, October 16, 1878, at 7; reprinted in the *Mower County Transcript*, October 17, 1878, at 4. The *Pioneer Press* reported the docketing of the supreme court's dismissal order in its issue on October 16, 1878, at 3.

[7] *History of Mower County, Minnesota*, supra note 3, at 65 ("The first action towards the impeachment trial of Judge Sherman Page, was by the following citizens of Mower county: R. I. Smith, C. H. Davidson, A. A. Harwood, Lafayette French, D. H. Stimson, H. O. Basford and others, who drew up a petition, praying the Legislature to present articles of impeachment to the Senate against Sherman Page.").

[8] *History of Mower Count, Minnesota*, supra note 3, at 64-9; Folwell, supra note 5, at 405-7.

French does not mention his suspension by Page, nor his appeals to the Supreme Court. He may have felt that this was a minor matter that did not warrant space in his chapter. But he had another connection to Page that he does not mention: he apprenticed with Page's law firm after he arrived in Austin in 1871. Self-profiles of French—he almost certainly wrote or edited both of them—appeared in two histories of Mower County, one published in 1884, the second in 1911, and neither mention his apprenticeship with Page & Wheeler.[9] His omission of having "read law" with Page suggests he was highly sensitive, even embarrassed by this brief chapter in his career. But passions over Sherman Page diminished over time. Reporting French's death in 1912, the *Austin Weekly Herald* summarized his legal education: "He came directly to Austin and entered the employ of Page & Wheeler, a law firm with offices over the first National bank. That was in 1870. On September 28, 1871, he was admitted to practice, his certificate being signed by Judge M. N. Donaldson, as district judge." [10]

C.

French concludes his chapter on the bar and bench of Mower County with a summary of *Clay v. Chicago, Milwaukee & St. Paul Railroad Company*, 104 Minn. 1, 115 N. W. 949 (1908), which he describes as "probably the

---

[9] See *History of Mower County, Minnesota* 79 (Mankato: Free Press Pub. House, 1884) ("At the end of one year [French] entered the law office of Judge Holt of [St. Louis], and was admitted to the bar in 1870. He came to Austin and engaged in the practice of his profession the same year."); and his self-portrait in his chapter on the county bench and bar posted below at 19 ("In the early fall of 1871 Lafayette French came to Austin, and at the September term of court of that year was admitted to the bar.").

[10] *Austin Weekly Herald*, November 6, 1912, at 1. Three years after French's death in 1912, a profile of his son, also a lawyer, appeared in a multi-volume history of the state. Lafayette French, Jr., likely wrote or approved this profile, about half of which was devoted to his father. By this time, his son could write more frankly about his father's legal education: "In 1871, as a young man of about twenty four years, he came to Minnesota and settled at Austin, where he read law under the effective preceptorship of the well-known firm of Page & Wheeler and where he was admitted to the bar in 1872." "Lafayette French" in Henry A. Castle, II *Minnesota: Its Story and Biography* 858 (Chicago: Lewis Pub. Co., 1915).

most important civil case that was ever tried in this county" and it culminated in the "largest verdict in a personal injury case that the supreme court of this state has ever affirmed." Not surprisingly, French was one of the plaintiff's attorneys. Today *Clay* is interesting for reasons other than the size of the verdict, which is why French thought it so important.[11]

The supreme court's ruling in *Clay* did not break new ground. The case was tried in 1905, when railroads vigorously fought rules (usually setting rates) passed by state and federal regulators.[12] But here, the Chicago Milwaukee argued that its *compliance* with a regulation of the state Railway and Warehouse Commission barred Clay's lawsuit.

At this time, the roads marshaled numerous defenses to a claim by a worker injured on the job.[13] Because of the sheer number of injuries to railroad workers and the litigation that resulted, the Federal Employers' Liability Act was enacted on April 22, 1908, to provided relief to railroad workers injured or killed on the job.[14] Under the FELA, an injured worker still had to prove negligence to recover damages, but many defenses including contributory negligence and the fellow servant rule were abolished.[15] Tried in pre-FELA days, *Clay* looks like an antique.

---

[11] It appears ideal for further research into how a personal injury action was tried one hundred years ago—how highly skilled lawyers selected a jury, ordered their witnesses, marshaled medical experts, used exhibits, and gave closings.

[12] E.g., *Minneapolis & St. Louis R. Co., v. Minnesota*, 186 U. S. 257 (1902), affirming *State ex rel. Railroad & Warehouse Commission v. Minneapolis & St. Louis R. Co*., 80 Minn. 191 (1900), where the Minnesota Supreme Court held that rates set by the state Railroad and Warehouse Commission were constitutional.

[13] In their 91 page brief to the supreme court, defense counsel, S. D. Catherwood and Webber & Lees (with Charles E. Vroman, of counsel) alleged 35 "Assignments of Error." In response, the plaintiff's lawyers, Lovely & Dunn and Lafayette French, filed a 92 page brief. At that time, appellate briefs did not list citations in a Table of Contents; nevertheless it is obvious that both sides cited dozens of cases, many from foreign jurisdictions, including several English cases.

[14] 35 Stat. 65 (1908). This was the second FELA; the U. S. Supreme Court upheld it in *Second Employers' Liability Cases*, 207 U. S. 463 (1908). The first was passed in 1906 but declared unconstitutional by the Supreme Court in *Employers' Liability Cases*, 223 U. S. 1 (1912).

[15] 35 Stat. 65 (1908).

Clay is replete with cites to rulings of the U.S. Supreme Court, thereby revealing the effects of *Swift v. Tyson*, 41 U. S. (16 Pet.) 1 (1842), which instructed federal courts to develop a general commercial law separate from the laws of the state in which they were located. Federal courts soon took *Swift's* license to create a common law of torts. In an ironical development, the Minnesota Supreme Court occasionally adopted the federal common law on a commercial matter rather than develop its own.[16] With this background, *Clay's* deference to federal law becomes understandable ("The theory of the trial court in submitting both questions to the jury was clearly in accord with the opinions of the supreme court of the United States."). Resorting to a mixture of federal and state common law to decide a routine personal injury case, *Clay* again is a relic of a bygone era.

However, on another level—its surface, not its substance—it looks contemporary. The Minnesota Supreme Court released its opinion in *Clay* in March 1908. In some respects, it resembles opinions that court released in March 2008. While its paragraphs are lengthier and citation style is different, it has a modern appearance, especially when compared to the many citationless opinions issued by that court in the late nineteenth century.[17]

---

[16] Justice William Mitchell was explicit about this choice in *National Bank of Commerce v. Chicago, B. &. N. R. Co*., 44 Minn. 224 (1890), a case involving bills of lading:

> But on questions of commercial law it is eminently desirable that there be uniformity. It is even more important that the rule be uniform and certain than that it be the best one that might be adopted. Moreover, on questions of general commercial law the federal courts refuse to follow the decisions of state courts, and determine the law according to their own views of what it is. It is therefore very desirable that on such questions the state courts should conform to the doctrine of the federal courts. The inconvenience and confusion that would follow from having two conflicting rules on the same question in the same state, one in the federal courts and another in the state courts, is of itself almost sufficient reason why we should adopt the doctrine of the federal courts on this question.

[17] An article on the puzzle of the citationless opinions of the Minnesota Supreme Court in the late nineteenth century will be posted on the MLHP in the next few years.

Justice Edwin Jaggard begins *Clay* with a statement of facts that is long and detailed. "The car on which plaintiff was riding was nine and eight-tenths feet wide," Jaggard intones. A sharp edge of a platform projected to within "six to nine and one half inches" of a ladder the plaintiff was using. And so on. Regarding the defense that Clay should have known about the protruding hazard, Jaggard defers to the jury: "Plaintiff denied actual knowledge. It must be assumed that the jury believed him." Addressing the arguments of the defendant, he cannot restrain himself. He quotes numerous U. S. Supreme Court cases, sometimes naming the author ("Mr. Justice Day said…"; "Mr. Justice White said…"). He draws upon foreign authorities to support a point. At times he notes that the "general rule" on a matter is set forth in a particular opinion of a foreign court. In fact, he cites almost twice as many rulings of supreme courts of other states than his own. But, always, he discusses these authorities within the context of the particular facts of *Clay*.

The list of influences on the composition of a judge's opinion is long —precedent, lawyers' briefs, social background of the jurist, views of colleagues, the legal, political and intellectual climate of the day, and on and on. In *Clay*, the subtle influence of West Publishing Company may be discerned. West's Reporter System was launched on April 26, 1879, with the publication of the *North Western Reporter*.[18] The *Federal Reporter*, which included the decisions of Federal Circuit and District Courts, was announced in 1881, and the *U. S. Supreme Court Reporter* followed the next year.[19] It did not take long for lawyers to take advantage of this new resource (provided they were subscribers or had access to the *Reporters*), by weaving the rulings of other courts into their briefs. [20] And the courts

---

[18] William W. Marvin, *West Publishing Company: Origin, Growth, Leadership* 38 (St. Paul: West Pub. Co., 1969).

[19] Id. at 38-9.

[20] The company historian has described how the *Reporters* were received by practitioners:

> This assurance of a *national* scope for its Reporter System gave West Publishing Company a decisive advantage over its competitors and imitators. Moreover, the lawyers in many states were familiar with the earlier Reporters, including the Federal, and had recognized the great merits of the Reporter plan, giving them access to decisions of other states

responded accordingly. In this respect, *Clay* is the product of an appellate judge who appears to have used the *Reporters* with unrestrained exuberance. Decided thirty years earlier, it would not have looked like this.

D.

French's article appeared first as Chapter X, pages 78-95, of *The History of Mower County, Minnesota*, edited by Franklyn Curtiss-Wedge and published in 1911. Brief biographies of "Leading Citizens" appeared in a separate chapter in this book. Entries on lawyers and judges from that chapter follow French's chapter. These have been reformatted and page breaks added. Punctuation and spelling have not been changed.

The decision of the Minnesota Supreme Court in *Clay v. Chicago, Milwaukee & St. Paul Railroad Company*, 104 Minn. 1, 115 N. W. 949 (1908), is posted below at 39-53. It has been reformatted, and page breaks added.

French's article supplements an article on the Mower County bench and bar in *History of Mower County, Minnesota* published in 1884, and posted previously on the MLHP.

An article on the Lafayette French and his son is posted separately on the MLHP. See "Lafayette French Sr. (1848-1912) & Lafayette French Jr. (1887-1944)."

> all in a uniform system, of reporting and indexing. Indeed the Pacific Reporter, during its first, two years of publication, had as many subscribers in the North Western Reporter states as it had in the Pacific.

Id. at 43 (emphasis in original; footnote omitted).

THE HISTORY

— OF —

Mower County Minnesota

ILLUSTRATED

EDITOR-IN-CHIEF

FRANKLYN CURTISS-WEDGE

ASSISTED BY

John H. Skinner, Esq. Gertrude Ellis Skinner; Nathan F. Banfield, Esq.; Herbert L. Banfield, Esq.; Lafayette French, Esq.; Col. Arthur W. Wright; Arthur W. Allen, M. D.; Grace B. Sherwood; Lyman D. Baird, Esq.; Nicholas N. Nicholson, Esq.; L. N. Griffith, Esq.; Ralph E. Crane, Esq.; Jacob S. Decker, Esq.; O. J. Rhoades, Esq.; Col. Charles L. West; O. J. Simmons, Esq.; Rev. C. D. Belden; Prof. George A. Franklin; Jennie G. Keith; Mrs. Lyman A. Sherwood; George E. Anderson, Esq.; C. F. Greening, Esq.; Hosmer A. Brown, Esq.; Ralph Prescott. Esq.; L. W. Sherman, Esq.; William Nordland, Esq.; Henry Weber, Jr.; George Sutton, Esq.; Ferdinand G. Ray, Esq.; Lorenzo S. Chapman. Esq.; A. F. Stiles, Esq.; Mrs. Ralph E. Crane; Bert A. Johnson, Esq.; Paul C. Keith, Esq.; John C. Hawkins, Esq.; and many others.

CHICAGO
H. C. COOPER, Jr., & CO.
1911

CHAPTER X.

BENCH AND BAR.

Judicial History of Mower County—Judges Who Have Presided in the Courts of This District—Their Life, Ability and Characteristics—The Men Who Have Made Up the Bar of the County—Notable Cases That Have Been Tried Here—By Attorney Lafayette French.

Nearly forty years ago there came to this county a young lawyer, just starting his career, who at once took an active part in the stirring events which for so many years made Mower county the maelstrom of political and legal conflicts. He has continued to remain here, has filled various offices, and has always stood for clean, vigorous manhood in public and private life. As an attorney he is particularly gifted, having a thorough knowledge of the law, forensic abilities, acute perceptions and keen mind. Few lawyers in the state have tried as many cases before the higher courts, and none have won a higher percentage of important suits. In securing such a man to write of the Bench and Bar, the publishers of this work are especially fortunate, for aside from his other equipment, he came here only sixteen years after the arrival of the first Mower county attorney, and has since been in active practice. Therefore the following article by the Hon. Lafayette French will not only be of deepest interest at the present time, but will also be a valuable work of reference throughout the coming years.

THE BENCH.

By an act of the legislature passed March 1, 1858, the county of Mower was declared to be an organized county. Commissioners were appointed to establish the county seat, and later it was made a part of the fifth judicial district. Hon. N. M. Donaldson [79] was elected the first judge of the fifth judicial district, and the first term of court held in Mower county was September, 1858. When the fifth judicial district was organized there were but six judicial districts in this state. Judge Donaldson presided over the fifth judicial district until January 1, 1872, when his successor, the Hon. Samuel Lord, officiated. At the time of his retirement Judge Donaldson was a man well along in years. He possessed a good deal of dignity, candor

and fairness. There was little business during his term of office to transact in this county, and the suits involved were chiefly those for money demand. He resided at Owatonna, and died a few years after he ceased to be judge. Judge Samuel Lord, who was elected as Judge Donaldson's successor, lived at Mantorville, Dodge county, Minnesota, and held but two terms of court in this county. He was a fair judge and gave general satisfaction. In the winter of 1872 a new judicial district was created composed of the counties of Houston, Fillmore, Mower, Freeborn, and at fall election the Hon. Sherman Page was elected judge of the newly created district. Judge Page held office during the term of six years. He was a man of marked ability and possessed of an analytical mind of large perception, and was quick to dispatch business, but he was too much of a partisan to be a judge. Naturally combative, quick to form conclusions, he took sides on every matter that came before him. He was a man of strong feelings, but when he did not allow his judgment to be warped by prejudice against the attorneys of parties of the cause before him he was a very able judge. In the fall of 1878 the lower house of the legislature prepared articles of impeachment and he was put upon his trial in May, 1878, before the senate sitting as a court of impeachment. The prosecution lacked the requisite number of votes to convict him and he was acquitted. The charges consisted largely of allegations of "wrongful, malicious and oppressive conduct, while judge." After his impeachment trial he again was a candidate for election, but was defeated by Hon. J. Q. Farmer, of Spring Valley, Fillmore county. Judge Farmer continued to preside over the district for thirteen years, when he voluntarily and of his own motion retired from office. While Judge Farmer was not a student, he possessed a judicial mind, and was eminently fair. Jurors, suitors and attorneys in his court felt instinctively that they had been dealt with in all fairness. He was loved and esteemed by both the laity and the bar of his district. He was one of the most conscientious and fair-minded men that presided over the courts of this state. He was not a learned lawyer, did not profess to be, but he had a judicial mind with rugged common sense and a love of justice that [80] made him almost an ideal judge. There are few judges that were more universally loved and esteemed by the people of his judicial district than he. Judge Farmer, refusing to serve longer upon the bench, was succeeded by the election of the Hon. John Whytock, of Albert Lea, Freeborn county. He acted as judge for the full term of his office, six years, and at the November election he was re-

elected. In November, 1897, while holding court at Preston, Fillmore county, he was taken ill and a few weeks after died at his home in Albert Lea. Judge Whytock was a good lawyer and had many qualifications that fitted him for a judge, but he was hard of hearing, and considerably more so than he realized. There was some difficulty in transacting business before him. He did not hear all of the testimony and hence in ruling upon questions of the admissibility of evidence appeared to disadvantage, but he was a good man, intended to be fair, and aside from the defect of hearing, made a good judge. Governor Clough appointed as his successor the Hon. Nathan Kingsley, of Austin, Mower county, and he has been re-elected judge of this district without opposition to the present time. He has served with entire satisfaction to the bar and the people of this district. He is peculiarly fitted and qualified for a good judge. He has, in a marked degree, a judicial mind. He is studious, painstaking and careful and above all he possesses that candor and fairness which is becoming to a judge. Industrious, he is diligent in his search for the right, and his sense of justice is tempered by his mild and humane manner. Patience, studiousness and the love of justice are some of his distinctive characteristics. He is still the presiding judge. Judge Kingsley is also a prominent Mason, and is Grand High Priest of the Grand Chapter, R. A. M.

THE BAR.

The first attorney to establish himself in the law business at Austin was Ormanzo Allen, who came from Wisconsin, July 2. 1856. He continued to reside here until his death a few years ago. He was engaged in the trial of but few cases. He was an office lawyer and confined his labors to conveyancing and giving advice. He was an exemplary citizen, and at one time was considered quite wealthy, but in later years lost the bulk of his property in speculation.

The second lawyer to establish himself in Austin was Aaron S. Everest. He came from High Forest in August, 1856, and was formerly, it is believed, a resident of the state of New York, His education was limited, but he possessed a good deal of native ability and was naturally a good lawyer. He was quite active in politics while he resided in this county. In 1870 he removed [81] to Atchison, Kansas, where, in connection with his partner,

Mr. Wagner, he built up a large and lucrative business. He died some seven or eight years ago at Atchison, Kansas.

Another lawyer of considerable note was D. B. Johnson, Jr. lie came to Austin in 1856. He engaged in surveying and merchandising until the term of court held in September, 1858, when he was admitted to the bar. Like most lawyers he was engaged in politics, and held the offices of justice of peace, county attorney one term, and county auditor one term. In August, 1871, he was appointed one of the associate justices of the territory of New Mexico, but resigned in 1872. From 1858 until 1871 he was associated in the practice of law under the firm name of Cameron & Johnson. After his retirement from the bench in 1872 he was in practice alone until 1888, when he formed a partnership with S. D. Catherwood. Later in the eighties he was elected county attorney, and after his retirement from office moved to Portland, Oregon, where he died twelve or fifteen years ago. Judge Johnson was a man of more than the ordinary ability. He was possessed of a fair education and was quite studious. He possessed a quick and logical mind, and would have been a splendid trial lawyer if he had been more aggressive and possessed of confidence in his own ability. He was regarded as one of the ablest trial lawyers in the county,

C. J. Short came to Minnesota in 1856 and settled in Northfield, where he engaged in surveying. He was educated in the Vermont State University, where he graduated in 1855. He commenced the study of law in 1857, with Bachelor & Buckam, of Faribault, and in 1858 was admitted to practice. In the spring of 1859 he removed to Austin and formed a partnership with Ormanzo Allen, which continued for several years. He was elected county attorney in 1860 and held that office in 1860-61-62-63-65-66-69 and 70. He then moved to the town of Dexter, in this county, where he engaged in farming for six years. In 1881 he returned to Austin, where he resided until his death. He lacked the force and energy necessary to make him a successful lawyer. He was studious, and was reputed, in his day, to be the most scholarly lawyer at the bar.

George M. Cameron came to Austin, November 27, 1856. He was a Canadian by birth and educated in the district school and at the State University at Madison, Wisconsin. In 1858 he was admitted to the bar at

Austin to practice in the courts of Minnesota. He always enjoyed a good practice while he lived and was in practice. He was elected to the office of probate judge in 1860 and was again elected in 1876 and 1878. He was the first mayor of the city of Austin. He was honorable in his profession and ranked high as a trial lawyer. When not serving as probate [82] judge he was constantly in active practice until he retired in 1887. He possessed a logical mind and a keen perception of what a controversy in question was about. He was looked upon as an able and honest lawyer. The fact of his being repeatedly chosen to important offices testifies as to his popularity as a man and recognition of his worth as a citizen. He was engaged as chief or associate counsel in all of the important cases that were tried in this county while he was in active practice. He was kind and benevolent to the poor. His charges for his services were reasonable and just. In 1887 his mind gave way, and he remained on his farm near Brownsdale in this county until the time of his death.

In 1866 Sherman Page and E. O. Wheeler came to Austin and formed a partnership in the practice of law. Mr. Wheeler coming direct, it is believed, from New York, which was his home, Mr. Page coming from Decorah, Iowa. Prior to that he had been at Lancaster, Wisconsin, for a number of years engaged as superintendent of the schools of both Decorah and Lancaster. Mr. Page was originally from Vermont. The firm of Page & Wheeler continued until the election of Mr. Page as judge of this district in 1872. They did a large commercial business and also dealt largely in real estate. Mr. Wheeler was a fine office lawyer, as well as a good counselor. After Mr. Page was elected judge Mr. Wheeler continued the practice of law either alone or in partnership with his brother, R. B. Wheeler, until 1879, when he moved to Auburn, New York, to engage in the practice of his profession with Judge Howland of that city. Judge Page remained upon the bench until his term of office expired January 1, 1880. He practiced until 1882, when he removed to California. Judge Page was a forcible and pleasant speaker. As a trial lawyer he had few equals, if any, in the state.

L. Beauregard practiced law for a short time in Austin, He was a law student in the office of Aaron S. Everest and was admitted to the bar under his tutelage. He was elected county attorney, but subsequently had to resign the office, and he removed to Utah and from there to New Mexico.

In 1871 John M. Greenman came to Austin. He was a native of New York, but when a young man removed to the state of Wisconsin. He formed a partnership with I. N. Hawkins and the firm continued until 1873. In 1896 he formed a partnership with R. J. Dowdall. He has served as county attorney, city attorney and judge of probate. Except while holding the office of judge of probate Mr. Greenman has been in active practice and one of the prominent attorneys of this county. He is a pleasant gentleman and a good lawyer.

Mr. Hawkins discontinued the practice of law after the dis-[83]-solution of the firm of Greenman & Hawkins. Ho served as city attorney, and in 1873 was a candidate for senator but was defeated for that office. His defeat was due to the Grange movement, which swept the entire state, except that the Republicans elected their candidate for governor. Mr. Hawkins was suffering from a wound, which he had received in the civil war. He was a pleasant and amiable gentleman, and was a man possessed of considerable means. He removed from the state shortly after his defeat for the legislature.

In the early fall of 1871 Lafayette French came to Austin, and at the September term of court of that year was admitted to the bar. January 1, 1872, he formed a partnership with W. Crandall in the practice of law. In 1878 the firm was dissolved, Mr. Crandall retiring, for the purpose of going into the insurance business. Mr. Crandall was a fair lawyer, but the turmoil and strife of an active life in the legal profession was distasteful to him. Mr. French has continued in the practice of his profession until the present time.

In 1870, Eugene B. Crane opened an office and commenced the practice of law. He soon engaged in the real estate business. He remained in Austin for several years and afterwards removed to Minneapolis, Minnesota, where he is engaged in his profession.

W. H. Merrick studied law with his father in Milwaukee, Wisconsin. He came to Austin and engaged in merchandise. Some years later he was

admitted to the bar and practiced four or five years. In 1882 he removed to Portland, Oregon, where he now resides.

In 1875 or 1876 C. C. Kinsman came to Austin and opened an office for the practice of law. In the fall of 1878 he was nominated and elected county attorney. In January, 1880, he declined a renomination and was elected court commissioner. In 1881 he moved to Cumberland, Wisconsin, where he continued in practice until his death. He was a well read lawyer, but lacked force and aggressiveness. He was a gentleman of splendid habits and a good citizen.

In 1882 James D. Sheedy was admitted to the bar of this county. He served as justice of the peace and was in the office of Lafayette French about four and a half years, but the profession of the law was not lucrative enough and so, finally, he drifted into real estate and became connected with the Alliance Fire and Hail Insurance Company and afterwards became president of that company. The law was not to his taste. In his chosen field of labor he has been very successful and is a prominent worthy citizen.

In 1883 R. B. Wheeler, who succeeded the firm of E. O. Wheeler and R. B. Wheeler, removed to St. Paul. The firm of Richardson & Day succeeded to his business. [84]

Richardson & Day were young men who had graduated at our high school in Austin. They did a commercial and real estate business similar to that of R. B. Wheeler. They associated with them L. A. Pierce, who came from Auburn, New York, in 1887. Mr. Pierce was an able lawyer, but his desire for office and extravagant habits prevented him from succeeding as a lawyer. In the fall of 1887 W. E. Richardson and F. A. Day removed to Duluth in this state, where they continued to follow the law and real estate business.

In 1887 Arthur W. Wright and LaFayette French bought out the business of Richardson & Day and formed a co-partnership under the firm name of French & Wright, Mr. Wright looking after the real estate and loans of the office and Mr. French seeing to the law business of the firm. They continued in business until 1898, when the firm dissolved by mutual

consent, Mr. Wright succeeding to the business and Mr. French continuing the practice of law alone. Since then Mr. Wright has had a large business in commercial law and real estate. He was elected county attorney and re-elected without opposition for eight years, when he voluntarily withdrew as a candidate for that office. Perhaps the county was never more fortunate than in the selection of Colonel Wright for county attorney. For honesty, efficiency and ability the county has been well served. He is still in active practice, with many years of usefulness before him. He served as major in the Spanish American war and is one of the prominent men at the bar in this county. His correct life and high sense of honor and clean habits make him justly an ornament to the bar.

In 1886 or 1887 Nathan Kingsley and R. E. Shepherd moved over from Chatfield, Minnesota, to Austin. They opened an office under the firm name of Kingsley & Shepherd. The firm continued until Governor Clough, about twelve years ago, appointed Mr. Kingsley judge of the tenth judicial district. Both gentlemen were possessed of a high sense of honor and were leading attorneys here until the dissolution of the firm. The firm was continuously engaged on one side or the other of important litigation in this and adjoining counties. The firm did a successful business, Mr. Kingsley being especially strong as a trial lawyer. Upon the dissolution of the firm Mr. Shepherd was alone some two weeks and was succeeded by the firm of Shepherd & Catherwood. Mr. Shepherd was elected county attorney for two or three terms and made a good and efficient officer. He was a good lawyer and an enterprising citizen. He possessed a lovable nature, combined with wit and humor, that made him very popular with his brother lawyers. Some four or five years ago the firm was dissolved and he removed to Billings, Montana, where he engaged in the real estate and banking business, which was more congenial to his [85] taste than the practice of law. His partner, S. D. Catherwood, succeeded to the business of the firm. Mr. Catherwood spent most of his life in Austin or in the adjoining county of Freeborn. He is a graduate of the State University and not only possesses a good academic education, but is well grounded in the law. He was admitted to the bar in 1888, and has since been engaged in the practice at the city of Austin. He has been county attorney for three terms, and that is the only office he has aspired to. He has not engaged in any other business except the practice of law. He stands high in the rank of

lawyers in southern Minnesota, and in the state. His life demonstrates what a young man who has fair ability, with industry and close attention to business can accomplish in a lifetime. Mr. Catherwood is in the prime of life and enjoys a lucrative business. He is a good all around lawyer. One year ago he formed a co-partnership with J. N. Nicholsen, and the firm promises to be one of the strongest in the southern part of the state.

Mr. Nicholsen is a graduate of the Austin high school, read law in the office of Kingsley & Shepherd, and attended the law school at Ann Arbor, Michigan. He was thoroughly equipped for the practice of his profession when he was admitted to the bar in 1902. Shortly after his admission he formed a partnership with Frank E. Putnam at Blue Earth, under the firm name of Putnam & Nicholsen. The firm continued until 1909, when it was dissolved, Mr. Nicholsen coming to Austin and forming a partnership with S. D. Catherwood. The firm has a wide and extensive practice.

W. W. Ranney is a graduate of the law department in the State University of Iowa, in 1876. In 1878 he located at Grand Meadow in ‘this county, where he practiced his profession for a number of years. He then removed to Austin, where he was elected to the office of probate judge. He has been more of an office than a trial lawyer. He is a good citizen and highly respected by all who know him.

In 1882 Lyman D. Baird was admitted to the bar. He was city attorney of Austin in 1884. Since 1885 he has confined himself chiefly to the real estate business, in which he has been a decided success. Mr. Baird is considered a shrewd man of business and an enterprising and public spirited citizen, and one of the most progressive young men in the city of Austin.

In April, 1884, L. F. Clausen moved from Blooming Prairie to Austin, opened an office and engaged in the practice of law until about 1902, when he removed to North Dakota, where he is still engaged in the practice of his profession. Mr. Clausen was elected county attorney of this county a short time after moving here. He was born in Mitchell county, Iowa, in 1856, and is a son of [86] Rev. C. L. Clausen, the founder of the Lutheran church at Austin, and one of the earliest ministers of that denomination in Austin, Minnesota.

In 1896 R. J. Dowdall, a Canadian by birth, came to Austin and formed a partnership with J. M. Greenman for the practice of law. Mr. Dowdall was a gentleman of fine ability and came from a family of some prominence in Canada. He continued in the practice of law at Austin some five or six years, when he removed to the northern part of the state. He was a strong trial lawyer, but was not discriminating enough and often appeared on the wrong side of a case.

Ten years ago T. H. Pridham came to Austin and engaged in the practice of law until the summer of 1910. Mr. Pridham was industrious and painstaking in the business entrusted to his care. He was city attorney for six or eight years and resigned that office when he removed to Helena, Montana. He is a young man of good habits and quite promising in his profession.

In 1900 Fay W. Greenman was admitted to the bar. He is a son of J. M. Greenman and upon his admission became a member of the firm of Greenman & Dowdall, the name being changed to Greenman, Dowdall & Greenman. When the firm was dissolved and his father elected to the office of judge of probate, he practiced his profession alone. He graduated from the high school of Austin with honors. He is a young man of good habits, studious and industrious. In his social relations he is a most agreeable young man. In the ten years that he has been in practice he has built up a good business for a young man. He has tried a good many cases and many with credit to himself.

In 1909 Frank G. Sasse came to Austin from Fairmont, Minnesota, and formed a co-partnership with LaFayette French. Mr. Sasse graduated from the academic department of the State University with honor in 1898 and from the law department of that institution in 1900. He practiced his profession at St. Charles, Minnesota, for two or three years, when he removed to Fairmont where he formed a partnership under the name of Mathwig & Sasse. In the fall of 1908 he was elected county attorney of Martin county, but resigned the office when he moved to Austin to become associated with Mr. French. He is very studious and has all the qualifications for making a successful lawyer.

In addition to the lawyers of Austin there have been several at LeRoy village, Grand Meadow village and the village of Brownsdale. F. H. Goodykoontz was the first lawyer at the village of LeRoy, coming there in 1867 from Iowa. He formed a co-partnership with J. M. Wykoff. When the firm was dissolved he removed to Nora Springs, and from there to Mason City, Iowa, and in 1884 he moved to South Dakota. He was a lawyer [87] of a good deal of ability and his removal from the state was a decided loss to the profession.

J. M. Wykoff continued to do business alone, but his practice has been confined chiefly to real estate, conveyance and office work.

Joseph McKnight was admitted to the bar at Austin in 1882, together with J. F. Trask, E. J. Kingsbury and J. S. Bishop. They constituted the bar at LeRoy until about 1895.

G. W. W. Harden is a graduate of the law school of the State University, has been village attorney, and in 1901 was elected a member of the state legislature. He is a good lawyer but his work is confined mostly to commercial business and real estate. He is still in practice at LeRoy.

Judge Ranney was formerly at Grand Meadow, but being elected judge of probate, moved to Austin.

About 1878 George F. Goodwin opened an office at Grand Meadow. In 1880 or 1881 he was elected to the office of county attorney. He prosecuted, while county attorney, the case of the state vs. John A. Riley for attempt to murder Judge Page. He was assisted in that case by Hon. J. M. Burlingame, of Owatonna, Minnesota. In 1884 he removed to North Dakota and was elected attorney general of that state shortly after it was admitted into the Union. He held the office one term and then moved to Salt Lake City, Utah. He is a studious, painstaking young lawyer, and since leaving this state has gained considerable prominence.

Capt. A. J. Hunt came to Brownsdale village in 1873. He was formerly from Wisconsin. He opened an office and was engaged in the practice of law and dealt in real estate until 1888, when he moved to Georgia.

Otto and Carl Baudler are graduates of the Austin high school, and from the law department of the State University. They commenced the practice of law three years ago at Blooming Prairie, in Steele county. In 1909 they moved to Austin and opened an office. In the fall of 1910 Otto Baudler was elected county attorney of this county by a handsome vote. They are brothers and sons of William Baudler, who is one of the pioneers of Austin. They are clean, studious young men and they promise to be quite an acquisition to the bar. This comprises the lawyers who reside and practiced in Mower county.

In 1890 A. C. Page was admitted to the bar, since which time he has been in the office of L. D. Baird. He is a young mart of exemplary habits and is given more to real estate and collections than to trial practice. At present he is alderman at large in the city of Austin.

In 1903 Edward P. Kelly was admitted to the bar. For three years he read law under the direction of Lafayette French and [88] attended the Summer Law School at Ann Arbor, Mich., for two years. After his admission to the bar he formed a partnership with Lafayette French under the firm name of French & Kelly, which continued until 1905, when he removed to Carrington, N. D., where he is still engaged in the practice of law. Mr. Kelly is well equipped for the practice of his profession and from the time of his admission until the present time he has met with splendid success in his profession.

In 1907 Henry Weber, Jr., was admitted to practice law. He was located at Dexter, in this county, and continued in the practice until the fall of 1910, when he was elected probate judge of this county, which office he fills at the present time. Mr. Weber is an exemplary citizen and his honor and integrity are beyond question.

CIVIL AND CRIMINAL CASES.

This article would be incomplete without stating some of the most important criminal and civil cases with which the lawyers of this county were connected.

The first homicide case was that of Chauncey Leverich. Leverich was in a saloon in Austin in the month of August. 1856, and was killed by Horace Silver and William Oliver. Silver and Oliver were arrested for assault and battery and Silver fined $20.00 and Oliver $10.00. The prosecution was conducted by John Tift and the defense by Aaron S. Everest and O. Allen. When the defendants learned that Leverich would not recover, they paid their fines and left the country. Leverich died from the wounds he received a week later. The county was new and this case illustrates the crude way in which justice was administered in an early day.

In 1868 John and Oliver Potter and George and William Kemp with others were arrested for killing Chauncey Knapp. C. J. Short appeared for the state and John Q. Farmer, of Fillmore county, who afterwards became district judge of this district, and his brother, J. D. Farmer, appeared for the defendants. George and William Kemp were tried and acquitted. A change of venue was granted the Potters and the case sent to Fillmore county. Judge Donaldson was the presiding judge. None of the parties was ever punished for this foul murder.

In 1873 the case of the State of Minnesota against Ole Bang, charged with homicide, was tried. Bang was convicted of manslaughter and sentenced for four years in the state prison. The prosecution was conducted by E. O. Wheeler, the then county attorney. The defendant's counsel was Sherman Page. Judge Samuel Lord presiding. [89]

The most important criminal case was tried at the March term of the district court in 1881, the State of Minnesota vs. John A. Riley. Riley was charged with an attempt to assassinate Judge Sherman Page. George F. Goodwin was the then prosecuting attorney, and he was ably assisted by J. M. Burlingame, Esq., an able attorney from Owatonna. The defendant was represented by Lafayette French, G. M. Cameron, of this city, and W. W. Erwin, of St. Paul. Judge Daniel A. Dickenson, who was then district judge at Mankato and later one of the associate justices of the Supreme Bench, was called by Judge Farmer to preside in his place. The case was an important one. It probably created as much talk and newspaper comment as any case tried in the county. Judge Page, whom Riley was charged with attempt to assassinate, was a prominent person. Riley was brought by

Pinkerton's detective from the neighboring state of Wisconsin into Minnesota to answer to the charge. He was confined in a jail outside the county. The sentiment in favor of and against Page was intensely partisan. There was a great deal of feeling displayed during the trial by the attorneys and parties interested in the case. After a lengthy trial the jury brought in a verdict of "not guilty" and Riley was discharged from custody. The case was ably handled by the attorneys for the state. Mr. Erwin made the closing argument for the defense. He was then in his prime, forty or forty-five years of age, and had a great reputation as a criminal lawyer. Probably his argument was the finest ever made to a jury in this county. Two years ago he died in Florida.

In January, 1874, was tried the case of the State of Minnesota vs. W. D. Jaynes. The defendant was indicted on the charge of rape. The immediate parties stood high in social circles and the arrest of Jaynes created a great sensation in this county. The state was represented by Lafayette French, the county attorney, and Colonel Kerr, of St. Paul, and the defendant by E. O. Wheeler and Gordon E. Cole, of Faribault. Judge Page was presiding judge. The first trial resulted in the conviction of Jaynes, but a new trial was granted on the ground that the prisoner was not present in court but was confined in the county jail at the time the jury returned the verdict. The case was afterwards tried twice. The second time the jury disagreed and the third time Jaynes was acquitted. In the last two trials the state was represented by Lafayette French and M. J. Severance, of Mankato, and the defendant by Wheeler and Cole. During the trial there was an immense crowd, and only about half of the curious ones could get into the court house. M. J. Severance closed for the state and Gordon E. Cole for the defendant. They were both able lawyers and had a state wide reputation.

In June, 1898, the case of the State of Minnesota vs. Milt [90] Williams was tried. Williams was charged with the murder of one Flynn. Williams' mother kept a hotel in the city of Austin. Flynn and Williams had been drinking one evening, and while engaged in conversation with two girls who worked for Mrs. Williams, Milt shot Flynn. Williams was a young man, twenty six years of age, who had been petted and humored by his mother. He was mixed up in several fights before this one. The state was represented by S. D. Catherwood, who was then county attorney, and

Lafayette French. Greenman & Dowdall represented the defendant. Judge Whitock was the presiding judge. The trial lasted for several days. There was a good deal of excitement during the trial. The jury found the defendant guilty as charged in the indictment. Afterwards W. W. Erwin was called into the case and a motion made for a new trial and argued and the same denied by the court. An application to the pardoning board was made in behalf of Williams and Erwin succeeded in getting Williams' sentence commuted from murder in the first degree to murder in the second degree, and he was sentenced to the penitentiary for life. He and his counsel stipulated that no further pardon or commutation of his sentence would be asked for. Too much credit cannot be given to Mr. Catherwood, the then county attorney, in his management of the case. Flynn's body had been shipped to Buffalo within a day or two after the shooting and without Mr. Catherwood's knowledge. There were several things in the prosecution that would have prevented the conviction had it not been for the skill and industry displayed by the county attorney. The conviction of Williams, who had an unsavory reputation, was due to the efforts of Mr. Catherwood.

In 1900 John B. Anderson was indicted, charged with the crime of murder. Anderson was a farmer living in the town of Marshall, and had a wife and several small children. He killed his wife by beating her brains out with a flat-iron. When the neighbors discovered her she was lying on the floor in a pool of blood. A nursing child who had attempted to reach its mother's breast to nurse had crawled through this blood. Anderson was found concealed in a straw stack. It was a horrible crime and the community was very much wrought up. On his arraignment he entered a plea of not guilty. The state was represented by R. E. Sheperd, the then county attorney of this county, and the defendant by Lafayette French, who had consented to appear for Anderson through the entreaties of his friends. After a thorough investigation of the matter, the defendant's counsel became convinced that Anderson was insane at the time he committed the crime. He had fallen from a mast of a ship years before, receiving an injury to his head, from which he suffered thereafter. This injury to the brain, his counsel believed, had affected his mind to such an extent that he was not responsible for the act, but that he was a man that ought not to be turned loose, and for the protection of society ought to be confined in some safe place. After mature deliberation and a conference with the attorney general, it was deemed

advisable to have him withdraw his plea of not guilty and to enter a plea of guilty of murder in the second degree. The action of the court and the counsel in the disposition of this case was generally commended throughout the county.

In January, 1903, Frank W. Bell was indicted and charged with murder in the first degree. The state was represented by Col. A. W. Wright, the then county attorney, and S. D. Catherwood, and the defendant was represented by Lafayette French. Judge Kingsley was presiding judge. Bell was the station agent of the Chicago Great Western Railway Company at Elkton, in this county. A man by the name of Cole had shipped a car of lumber to Elkton to be unloaded and to be hauled by team near the village of Grand Meadow. Cole employed Nelson S. Green, with his team, to draw the lumber. The car had been at Elkton for several days and there was some demurrage charges against it. Green came after the lumber in the morning but Bell refused to break the seal and open the car until the demurrage charges were paid. Green was a large, muscular man, while Bell was a diminutive frail man. Green attempted to break the seal of the car and Bell tried to prevent him. Cole telephoned Green to break the seal and, if necessary, break Bell's head. Green picked up a piece of board for the purpose, it was claimed by the state, to break the car seal, but defendant claimed that it was for the purpose of striking Bell. Bell drew a. revolver and shot Green twice. Either shot would have proved fatal in time. Green died within a few hours afterwards. There was a great deal of feeling, Green being a prominent farmer, a Mason and a Grand Army man. It was almost impossible at the first trial to secure an impartial verdict. The jury rendered a verdict of guilty within a few moments after retiring. The defendant moved for a new trial, which was granted, and a special term held in March, 1903. On a second trial the defendant was acquitted. The trial of this case illustrates how easily public sentiment can be changed by a knowledge of the facts. At the beginning of the first trial the people clamored for the defendant's conviction, but at the second trial public sentiment had changed and he was acquitted. Bell was a weak man physically and mentally. He was unbalanced, and shortly after the last trial he became insane and was sent to an asylum in Michigan.

In 1871 the board of county commissioners of Mower county commenced an action against Sylvester Smith. Smith had been [92] county treasurer of the county for eight years. The system of bookkeeping in vogue in the several county offices was very lax and crude. Smith was considered an honest man by people who knew him, but an accountant hired by the county to examine the hooks found that he was short about $42,000. Suit was brought by the county against Smith to recover this sum. Page & Wheeler and Bachelor & Buckham were attorneys for the county and Cameron & Johnson, Gordon E. Cole and R. A. Jones appeared as attorneys for Smith. The case was referred to three referees, whom the court appointed to hear and try the case and report judgment. After a somewhat lengthy trial the referees so appointed found a judgment of about $20,000 against Smith. Smith appealed the case to the Supreme Court and the case was sent back for another hearing.[21] Mr. Page in the meantime had been elected judge of the District Court, and having been of the counsel was ineligible to sit and try the case. The parties agreed and the court appointed three other referees. The case came on for second trial, and Lafayette French, the then county attorney, E. O. Wheeler and Bachelor & Buckham appeared for the county, and Cameron & Johnson, Gordon E. Cole and R. A. Jones appeared for Mr. Smith. After a lengthy trial the referees reported judgment in favor of Mr. Smith. The county records were kept so imperfectly that it was impossible to tell whether Smith should be charged with the shortage or not. Smith was believed to be honest, and that the discrepancy of the books and shortage in his accounts were due to the loose manner of keeping the hook and accounts.

In 1870 a complaint was sworn out against Sherman Page for tearing up a sidewalk. A warrant was issued and placed in the hands of Allan Mollison, the then sheriff, for service. He went to the office of Page & Wheeler to make the arrest late one afternoon. After a scuffle and words with the defendant, who refused to go, the curtains were pulled down and Page lit his lamps. The sheriff then stepped to the window and called his deputy, Cobs Fenton, to assist him. He found the door leading to the office locked, and after calling to Page to unlock the door and a refusal on his part to do

[21] MLHP: The case is *Board of County Commissioners v. Sylvester Smith*, 22 Minn. 97 (1875)(Gilfillan, C. J.).

so, he knocked the door down and went in and arrested him. Mollison was sued by Page for false imprisonment, holding that as the charge was a mere misdemeanor he could not legally be arrested after dark. Fenton was sued for breaking the door and entering the office in an action of trespass. The case against Fenton came on for trial at the September term in 1871. Page & Wheeler were their own attorneys and G. M. Cameron and R. A. Jones, of Rochester, were attorneys for Fenton. The case came on for trial before Judge Donaldson and a jury. The case hinged largely upon the point [93] whether the arrest was in the night time. Mr. Page summed up for the plaintiff and R. A. Jones for the defendant. It is a comment on the crude manner in which the courts were conducted in those days to note that all the counsel did in the summing up of the case was to abuse each other. The jury after being charged returned a verdict in favor of the plaintiff for $600. Judgment was entered and later paid in full.

In 1884 a fire occurred at Brownsdale in the saloon and clothing store of George E. Rolph. The insurance companies, three in number, under a pretext that they were investigating the facts, required that Rolph submit to an examination, before a justice of the peace at Grand Meadow. The examination disclosed nothing but what the loss was a legitimate one and ought to be paid by the insurance companies, but they refused to pay it. Proofs of loss had not been made or-submitted to the companies. Later proofs of loss were made and served upon the companies. They were returned and rejected on the ground that they were not made within the time required by the policies. Suit was then commenced against the companies to recover the insurance. The companies answered and claimed that Rolph had set fire and destroyed the property; that he had sworn falsely in his statement in regard to the amount of property he had; that proofs of loss were not furnished in time as provided in the policies, and that the policies were void because he had no license to sell intoxicating liquors at the time. The case against the insurance companies came on for trial before Judge Farmer and a jury. Lafayette French appeared for the plaintiff and Laing & Molyneaux appeared for the defendants. The plaintiff had to rely for the most part upon a waiver. The jury found a verdict for the plaintiff in the three cases. One of the insurance companies, the Concordia of Milwaukee, after the trial, paid up the amount recovered against that company. The other two companies, the Milwaukee Mechanics' Mutual

and The German, of Freeport, made a motion for a new trial, which was denied, and the cases were taken to the supreme court on appeal. While the two civil suits against the companies were pending in the supreme court Rolph was arrested, charged with the crimes of arson and perjury. He had testified in the civil suits as to what property was in the building at the time of the fire and that he did not know how the fire took place. In the criminal cases of the state vs. Rolph, J. M. Greenman, the then county attorney, and J. W. Lusk, of St. Paul, appeared for the state and John A. Lovely and Lafayette French appeared for the defendant. The state claimed that Rolph fired the building, and that some of the property, a large amount of liquor, was removed by Rolph and buried upon the farm of one Warren. The insurance companies had hired Pinkerton de-[94]-tectives and they had found the liquor concealed on Warren's farm. Warren and his wife had made the confession to the detectives that they had assisted Rolph in concealing the liquor. Rolph was tried on the indictment charging him with perjury. Counsel for the state and for the defendant agreed to submit the case upon the evidence and the judge's charge, without argument, although it was well known that J. W. Lusk, who appeared for the state, was one of the most able and skillful jury advocates while John A. Lovely had a reputation for being a most eloquent and able advocate. The jury retired and returned a verdict of "Not guilty." The state dismissed the other indictments. The appeal cases of the insurance companies were likewise dismissed. The liquor, which had been found on Warren's farm by the detectives, was turned over to the county attorney to be used upon the trial of the case against Rolph. After the termination of the criminal cases the court entered an order for the county attorney to turn over the liquor to his counsel, who had taken a bill of sale of the liquor from Rolph. After the arrest the liquor was safely kept in the cellar of the county attorney. When the liquor was opened and counsel were ready to dispose of it, they found that the liquor had been drawn out of the casks and water substituted in its place. While considerable fun was had at the expense of the county attorney, no one thought seriously that he was responsible for disposing of the liquor.

Probably the most important civil case that was ever tried in this county was the suit brought by Louis Rex Clay, by his guardian ad litem, Ida B. Clay vs. the Chicago, Milwaukee & St. Paul Railroad Company and

Thomas H. Bennett, to recover damages, which the plaintiff sustained at the village of Lyle, Minnesota, on December 7, 1905. The case came on for trial at the January term, 1907. On the first trial the jury disagreed and the second trial of the case came on a few weeks later. At both trials the plaintiff, Louis Rex Clay, was unable to be present in court. On the suggestion of his counsel, the jury and the lawyers, clerk of court and the sheriff, as well as Judge Kingsley, who presided at the trial, adjourned to his father's residence and his testimony was given while lying in bed. He was paralyzed from his shoulders down. He was a mere skeleton and unable to use any part of his body from below his head, but his mind and intellect was as clear as it ever was. He entered the employment of the company in the fall of 1905 as a freight brakeman. He was struck by an elevated platform at the station of Lyle and was thereby swept from the west side of a coal car on which he was hanging and thereby injured. The plaintiff was a young man about eighteen years old, bright and intelligent. [95] His father was an old conductor in the employ of the company. The negligence charged in the complaint was that the company constructed and maintained the elevated platform in question in too close proximity to passing cars; that without any advice or instruction or information as to the dangerous character of the platform, he was directed and ordered to ride upon a gondola car of unusual width by this platform. The second trial lasted several days, and when the case was submitted to them the jury returned a verdict for $35,000 against the company. Eighteen days after the verdict the plaintiff died from his injuries. The company made a motion for a judgment, notwithstanding the verdict, and in case that was denied, for a new trial. Both motions were denied and the case was taken on appeal to the supreme court. Owing to the importance of the case the rule was suspended and counsel were allowed as much time as they wished for argument, and were unlimited as to the number of counsel who were to argue the case. The case was ably argued by counsel for the railroad-company, but after due consideration by the court the case was affirmed. In the trial the plaintiff was represented by Lovely & Dunn and Lafayette French, and the defendant by S. D. Catherwood and M. B. Webber, of Winona. On May 4, 1908, the company paid this verdict, which amounted to $37,857.93, the largest verdict in a personal injury case that the supreme court of this state has ever affirmed.

"LEADING CITIZENS"

John M. Greenman, for several years judge of probate of Mower county, was born in Steuben county, New York, April 15, 1837, son of Henry G. and Mary B. (Maxson) Greenman. He graduated from the Allegany College, at Alfred, Allegany county, New York, the institution being at that time known as the Alfred Academy. After graduating, he came west in 1852, and taught school two years in Milton, Wis. In 1856 he located in Olmsled county, this state, and combined farming with the practice of law, having in the meantime been admitted to the bar. In 1863 he went back to Milton, owing to failing health. In 1870 he came to Austin, in which town he has since lived. He at once took up the practice of law, served as city attorney several terms at different, times, and from 1880 to 1884 was county attorney. In 1902 he was elected judge of probate and served from January, 1903, to January, 1911. Judge Greenman is a Republican, a Mason, and a member of the B. P. O. E. and the M. W. A. He was married October 24, 1858, to Elizabeth Sturdivant, daughter of Peleg Sturdivant. This union has been blessed with three children. Henry and George are dead. Fay W., who was born in May, 1878, is a prominent attorney in Austin, now associated with his father in the practice of law, the firm being styled Greenman & Greenman. Henry G. Greenman was born in New York state, and married Mary B. Maxson, who was born in a lighthouse off from Long Island. They came to Wisconsin in 1852 and spent the remainder of their lives in Milton, in that state, Henry G. dying in 1863, and Mary B. in 1886. [pages 578-79]

. . . .

Baudler Brothers, one of the leading law firms of Austin, is composed of two live and energetic attorneys, Carl and Otto Baudler. They are both natives of this county, Carl being born March 6, 1879, and Otto, December 16, 1881. Their education was largely received in the public schools of Austin, Carl being graduated from the local high school in 1899, and Otto receiving his diploma two years later from the same institution. In 1901

Carl entered the law department of the state university, receiving his degree in 1904. Otto commenced the same course the year his brother graduated, and was admitted to the bar in 1907. The following year the brothers opened offices in Austin and have since met with much success in the practice of their profession being thoroughly conversant with all branches of law. The Democratic party claims their allegiance. At the November election, 1910, Otto was elected county attorney by the largest majority ever given a candidate in this county at a general election, notwithstanding the fact that the Democratic party is greatly in the minority He is the youngest county official Mower county, and one of the youngest in the state. The brothers are loyal members of the Austin Commercial Club. Their home is located at 1206 North Kenwood. William and Barbara (Faber) Baudler, parents of our subjects, are among the pioneers of county, now residing on their farm in section thirty-four, Lansing township. Their sketch appears elsewhere in this volume. [627-28]

. . . .

Frank G. Sasse, of the firm of French & Sasse, leading attorneys of Austin, was born in Utica, Winona county, Minnesota, July 1, 1871, son of John F. and Anna M. Sasse, natives of Germany. Frank G. received his early education in the schools of Winona county and graduated from the St. Charles high school in 1890. Then he taught school for two years, and with the money thus secured entered the University of Minnesota in the fall of 1902. Two years later he again started teaching, and after three years had secured sufficient funds to complete his course. In 1899 he graduated from the academic department of the University of Minnesota, with the degree of B. A. A year later he graduated from the law department of the same university, and was at once admitted to the bar. After practicing in St. Charles two years he went to Fairmont, Martin county, and there became a junior partner in the firm of Mathwig & Sasse. Mr. Sasse was elected county attorney of Martin county and served as city attorney of Fairmont. He resigned, however, to come to Austin in the fall of 1909. Here he became a partner of Lafayette French, the firm taking the name of French & Sasse. Since coming here Mr Sasse has allied himself with the Austin Commercial Club. While at college he was admitted to Phi Beta Kappa, an honorary fraternity. He is a Democrat in politics, and has affiliated himself

with the Masonic order, the K. of P., the M. W. A. and the Modern Samaritans. The subject of this sketch was married July 14, 1904, at Vernon Center, Blue Earth county, Minnesota, to Elrose Howard, of that place. This union has been blessed with one child, Lucille M., born May 26, 1905.

John F. Sasse and Anna M. Sasse, his wife, were natives of Germany. They came to America in 1849, located in New York state, and in the early sixties removed to Wisconsin. A few years later they located at Winona county, Minnesota, and there ended their days, the father October 4, 1908, and the mother April 15, 1908. [710-11]

. . . .

Henry Weber, Jr., the popular judge of probate of Mower county, is one of the leading men of the community, and being still a young man, his friends predict for him many more and still greater honors in the coming years. He was born in Grand Meadow township, May 14, 1861, and is the son of Henry and Julia Weber. He has always taken a keen interest in education and in the reading of books and the gaining of knowledge of a substantial nature. He studied law in the office of W. W. Ranney, of Austin, and after being admitted to the bar, he opened an office at Dexter and there enjoyed a good law practice until he took his present position on January 1, 1911. During his residence at Dexter he held many local offices, including those of president of the village council, member of the school board, and he still retains his position as president of the First State Bank of Dexter. He is a member of Dexter Lodge, No. 253, A. F. & A. M. The subject of this sketch married Hannah Rahilly, daughter of John and Ellen Rahilly. [836]

. . . .

Hon. Charles J. Felch, first judge of probate of Mower county, was born in Cattaraugus county, New York, January 1, 1818, son of Benjamin Felch, a native of New Hampshire. He was reared in his native state and in 1842 married Mercy G. Barrows, by whom he had four children. David F. M. enlisted in the Ninth Minneapolis Volunteer Infantry and died in a war hos-

pital. Benjamin F. died from injuries caused by being thrown from a horse. The two youngest died in infancy. Mercy Barrows Felch died in Wisconsin in 1850, and Mr. Felch was married, January 1, 1852, to Hannah L. Shelden, a native of Steuben county, New York. Two children blessed this union, Charles H., deceased, and Ella H. Mr. Felch came to Mower county in 1855 and purchased two pre-emption claims, one from Joseph Robb and the other from J. D. Gregory. These claims had been made in 1834. Mr. Felch was the first probate judge in this county, and in 1863 and 1867 sat in the senate of this state as representative from the district composed of Mower and Dodge counties. He was also elected county commissioner in 1870 and also for the succeeding term. He died November 1, 1893. [893-94]

. . . .

Sherman Page. It is not the purpose of this history to give at length the story of those incidents which disrupted Mower county and so greatly retarded her progress during the years from 1867 to 1881, generally known as the Page era. Sherman Page was born in Vermont; and came to Mower county from Decorah, Iowa. Before that he had lived in Lancaster, Wisconsin. Possibly a true estimate of the man Page will never be made. In personal appearance he is a well built, strong man of imposing presence, carrying with him, everywhere, a look of dignity which commanded the respect of the masses with whom he associated himself. He was a shrewd, forcible and pleasant speaker, as well as a sarcastic, vigorous writer. He also was possessed of a remarkable, well trained mind. His political career here started when he became county superintendent of schools. Soon thereafter and for many years, the county was divided into the Page and anti-Page factions. The fight was bitter and personal, and kept the county in a turmoil. It extended not only into politics, but into church and social life. His controversy over school matters, his historic tearing up of the sidewalks, his arrest, his arrogant assumption of authority in the temperance fight, his election to the judgeship and his impeachment are touched upon elsewhere. He ruled with the despotism of a Russian monarch. Those who were not for him, he considered his enemies. There was no half way course. He removed from office those who would not bend to his will. He decided cases to suit his prejudice, regardless of law or

justice. At last he was tried for misconduct on the bench. The lower house of the Minnesota legislature prepared articles of impeachment, but the vote in the upper house lacked the two-thirds majority necessary to convict. At the next election he again ran for office, but was defeated by John Q. Farmer, of Spring Valley. But the fight was not ended. Some time thereafter he was shot at while reading in his home. Again the courts were occupied with Page matters. But the alleged assailant was acquitted and the Page influence waned. In 1882 Judge Page removed to California. There he became a prominent citizen, although he in no ways abandoned his arrogant character. He now lives in retirement, but though he is now of venerable age, the papers still tell of his broils with his neighbors. Thus loved by his friends, feared by many, and hated by some, lives the man who will never be forgotten in Mower county. Whether his influence was for good or ill, only future generations can tell. [960-61]

. . . .

Arthur, Winfield Wright, attorney and military man, has taken an active part in the affairs of Austin and Mower county, and although he has already accomplished much in life, his friends predict a still broader future. He was born in Ohio, September 17, 1861, son of Cyrus and Marietta M. (Smith) Wright. He was educated in the common schools of his neighborhood, in the high school at Cambridge, Ill., and at Carleton College, Northfield, Minn. After following the banking business in the First National Bank, of Austin, he formed a partnership with La Fayette French in 1887, under the firm name of French & Wright, Mr. Wright for a time looking after the real estate end of the business. In 1898 the firm was dissolved, and Mr. Wright has since conducted an extensive law practice. He was county attorney eight years, after which he voluntarily withdrew. He was also city attorney of Austin a number years. In the business line he is president and director of the Austin Weed Exterminator Company and treasurer and director of the Alliance Fire Insurance Company of Minnesota. He is also a member of the American Bar Association and of the Minnesota Bar Association. In addition to this he belongs to the Masonic body, the Austin Commercial Club and other organizations, and was for a time a trustee of Carleton College, at Northfield, Minn. During the Spanish-American war Colonel Wright served as major of the Twelfth Minnesota Infantry, United States

Volunteers, and he is at present colonel of the Second Infantry, M. N. G., having gradually been promoted from the position of private in Company G, of Austin. The subject of this sketch was married May 25, 1885, to Agnes E. Clark, daughter of Henry D., and Nancy E. Clark, and this union has been blessed with two children: Winfield Clark, born in August, 1886, now with Farwell, Ozmun, Kirk & Co., of St. Paul, and Dean A., born in February, 1888, now with the Merchants' National Bank, of Billings, Mont. [974-75] ■

APPENDIX

CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF MINNESOTA.

IDA B. CLAY V. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

March 27, 1908.

Nos. 15,327—(99).

Liability of Railway.

While a railroad company has a right to construct its own road and to solve its own engineering problems in accordance with its own views and to determine what structures it will erect and at what places, it may not, without liability, thereby violate rules of law for the protection of passengers and employees.

Risk not Assumed.

It is the duty of a railway company to place its structures at a reasonably safe distance from its tracks, so as not to be dangerous to brakemen and other operatives upon the trains, or to warn them of such dangers if they exist. Its employees are not presumed to assume the risk of such perils, in the absence of notice. Johnson v. St. Paul, M. & M. Ry. Co., 43 Minn. 53, followed and applied.

Questions for Jury.

Plaintiff, a minor, with only two months' experience as a freight brakeman, during which he had stopped at a particular station at most six times, was climbing down the side of a gondola pursuant to the orders of the conductor, without warning of danger from railway struc-[2]-tures. He was struck by a platform five to nine inches distant from the side of the car, and injured. It is *held*:

1. That the following questions were properly submitted to the jury:

Whether the defendant was guilty of negligence "in regard to the location and construction of the freight platform, and in regard to ordering the plaintiff into a place of extraordinary hazard and danger without warning him" thereof, and

Whether plaintiff was guilty of contributory negligence, or assumed the risk, or had knowledge or notice of the peril to which he was exposed.

2. That the practical exoneration of the defendant conductor by verdict against the railway company only did not serve to conclusively show absence of negligence on the part of the railway company.

3. That no such violation of the master's rules was shown as to preclude recovery.

Death of Plaintiff after Verdict.

After verdict, plaintiff died. His mother, as administratrix, was substituted as plaintiff. It is held that section 4004, R. L. 1905, providing that, after a verdict, decision, or report of a referee fixing the amount of damages for a wrong, such action shall not abate by the death of either party, controls, and that section 4503 does not apply.

Verdict not Excessive.

The verdict of $35,000 for injuries which resulted in plaintiff's death is held not to have been so excessive as to indicate passion or prejudice.

New Trial.

Other errors considered, and held not to justify granting a new trial.

Action in the district court for Mower county to recover $50,000 for personal injuries. The case was tried before Kingsley, J., and a jury which returned a verdict in favor of plaintiff for $35,000. The plaintiff dying after the trial, the administratrix of his estate was substituted as plaintiff in his stead. From an order denying the alternative motion of defendant to vacate the verdict and to enter judgment in its favor notwithstanding the verdict or for a new trial, defendant appealed. Affirmed.

S. D. Catherwood, *Webber & Lees*, and *Chas. E. Vroman*, for appellant.

Lovely & Dunn and *Lafayette French*, for respondent.

JAGGARD, J.

Plaintiff was a head brakeman on a train of defendant and appellant railroad company. When the train arrived at the village of Lyle, [3] which is a station on that line of road, orders were given by the conductor to cut off the engine and a coal or flat car from the train, to go in on the side track, to load on some scrap iron, which was then alongside of the track, upon the flat car, and to put the car back into train for the purpose of being transported to its destination. The flat car was accordingly cut off by the plaintiff. The engine, with it coupled thereto, passed up beyond the switch, and then backed down upon the side track until the engine and the car

reached a box car which was standing upon the tracks at or in the vicinity of the elevator and coalhouse on the east side of the track. A coupling was made to this box car, and the engine and the two cars were then backed down to the point south of the depot and platform referred to, where the scrap iron was which was to be loaded upon the flat car. At that point the scrap iron was loaded onto the flat car, signals were given, and the engineer moved the engine forward again toward the switch at the north end of the side track. The conductor of the train, Mr. Bennett, stood upon the box car. His intention was, when the box car reached the point where it should be left, viz., the point from which it had been removed, that he would "spot" the car. Plaintiff was required to uncouple the box car from the flat car. The brake lever, an appliance which it became necessary for him to manipulate for the purpose of making the uncoupling, was located at the rear end of the flat car, and the handle of the lever was on the west side of that car—perhaps it is sufficiently accurate to say about the southwest corner of the car as it was then situated. There was a ladder and a stirrup, which were designed for the use of brakemen in climbing upon and getting down from cars of that character, and it appears that the plaintiff took a position upon this ladder for the purpose of performing his duty in uncoupling the cars, and when the car reached the platform which has been referred to he received the injuries, to recover damages for which he has brought this action.

This is substantially a part of the charge of the trial court. It will serve to clarify the record to amplify this statement. The platform in question was high enough to be on a level with the floor of an ordinary box car. There was testimony that there was only one other high platform on the Mason City division, and one on the I. & M. division. The car on which plaintiff was riding was nine and eight-tenths feet wide; [4] the ordinary car, nine and two-tenths feet wide. The edge of the platform was six feet from the center line of the house track. Its sharp corner projected within a few inches of the ladder rounds which plaintiff was using. According to one witness, the distance was five or six inches. There is an abundance of testimony that it was from six to nine and one half inches. When the accident occurred it was in the nighttime—dark. The platform lay in the shadow of an electric light, which light "caused it to be a dark place up in there. The light shines out from the front. It didn't give light to go around behind the depot at all.

It is a dark hole right in behind the buildings." When plaintiff was hurt the lamps were lighted. The buildings thus referred to in the testimony as being opposite the platform were so near the track that the ordinary car would pass within two feet of them. There were other structures to the north and south of the platform where plaintiff was hurt.

The jury was justified in finding, further, that the engine, a gondola, and a standard box car passed down the side track. The intention was to separate and leave the box car at the coalhouse beyond the platform. To accomplish this the conductor's directions were that the engineer should give the cars a start, and that plaintiff should uncouple the standard from the gondola while in motion upon a signal from the conductor. The conductor, standing on the box car, was to "spot" the standard at the coalhouse with the hand brake. The first time he gave the signal for slack, plaintiff did not succeed in making the uncoupling. The cars were then started again. Plaintiff was waiting for the signal by the conductor, and, so as to be sure this time to catch the slack, held onto the ladder and stood in the stirrup as previously described. He was not expressly commanded to assume this position, but so to do was reasonably in pursuance of the direction thus given.

Eighteen days after the verdict plaintiff died. His mother, as administratrix, was substituted herein. The alternative motion for judgment notwithstanding the verdict or for a new trial was denied.

1. The first question on the merits concerns the defendant's negligence. The trial court submitted to the jury two bases of negligence: (a) "In regard to the location and construction of the freight platform," (b) "in regard to ordering the plaintiff into a place of extraordinary [5] hazard and danger without warning him of the hazard to which he would be exposed thereby."

(a) The location of the platform, defendant insists, was a matter with which the jury had nothing to do, first, because the usual and proper location of the platform was, and is, primarily an engineering proposition, properly to be determined by the objects to be accomplished by its use and with just regard for the average safety of all employees whom it may concern; second, because the evidence in this case did not warrant the submission to the jury of such a case. The testimony tended to show that this platform had

a clearance distance from the track equal to that habitually employed by defendant and other companies. Such clearance distance as existed here was greater than is prescribed by the rule promulgated by the railroad and warehouse commission for platforms for unloading grain. It conformed in height to the requirements of the statute. Section 2708, G. S. 1894; section 2003, R. L. 1905. That under these circumstances defendant was not actionably negligent in the solution of its engineering problem we are referred to a line of authorities of which Tuttle v. Detroit, G. H. & L. Ry. Co., 122 U. S. 189, 7 Sup. Ct. 1166, 30 L. Ed. 1114, may be regarded as typical. At page 194 of 122 U. S., page 1168 of 7 Sup. Ct. (30 L. Ed. 1114), Mr. Justice Bradley said: "Although it appears that the curve was a very sharp one at the place where the accident happened, yet we do not think that public policy requires the courts to lay down any rule of law to restrict a railroad company as to the curves it shall use in its freight depots and yards, where the safety of passengers and the public is not involved; much less that it should be left to the varying and uncertain opinions of jurors to determine such an engineering question." See also Boyd v. Harris, 176 Pa. St. 484, 489, 35 Atl. 22 (cattle chute too close to a side track); St. Louis v. Burns, 97 Ill. App. 175, 178; Mobile v. Healy, 100 Ill. App. 586, s. c. 109 Ill. App. 531 (two railway tracks separated by too narrow a space); Illick v. Flint, 67 Mich. 632, 35 N. W. 708 (too narrow bridge).

This theory is plainly not applicable to the case at bar. No justification of compliance with statutory requirements as to clearance distance between the platform and cars was made out. No peculiarity of circumstance removed this case from the ordinary requirement of the [6] exercise of reasonable care to provide a safe place for work of servants. In general, a railroad has the right to construct its own road, to solve its own engineering problems in accordance with its own views, and, more specifically, to determine what structures it will erect and at what places. It by no means follows that it may disregard rules of law for the protection of the public, passengers, or employees. If on a track, over bridges, and through tunnels, on a scale current in early railroading, it were attempted to run modern trains, disaster would be as inevitable as liability would be certain. The fact that a platform in existence for half a century had proven safe and satisfactory has no tendency whatever to show that it would be safe one moment after a material change had occurred in conditions. If, in the case

at bar, the car had been a few inches wider, and had crashed into the platform and injured the switching crew and freight handlers on the platform, in the absence of contributory negligence or assumption of risk, a. case of actionable negligence would have been clearly made out. The proximity of the platform to the track may, as a matter of law, be negligence or careful, or the negligence of its erection may be a question of fact, according to the circumstances of each particular case. This case involved no engineering problem of technical character. As Judge Hammond said in 112 Fed. 888, 50 C. C. A. 591, approved in Choctaw, O. & G. R. Co. v. McDade, 191 U. S. 64, 67, 24 Sup. Ct. 24, 25, 48 L. Ed. 96: "It [the matter of erecting a waterspout so as to provide a safe clearance] is so simple a task, one so devoid of all exigencies of expense, necessity, or convenience, so free of any consideration of skill except that of the foot rule, and so entirely destitute of any element of choice or selection, that not to make such a construction safe for the brakeman on the trains is a conviction of negligence." And see 4 Thompson, Neg. § 4315. The authorities subsequently considered in connection with assumption of risk and contributory negligence fully sustain this view. It is to be immediately noted that Tuttle v. Detroit, G. H. & M. Ry. Co., supra, was called to the attention of the supreme court in argument in Texas & Pac. Ry. Co. v. Swearingen, 196 U. S. 51, 25 Sup. Ct. 164, 49 L. Ed. 382. A conclusion consistent with plaintiff's right to recover here was none the less reached.

[7] (b) Defendants insist that the hazard to which he was exposed was ordinary. The distinction between ordinary and extraordinary hazards is familiar, the ideas are simple, and the terms self-explanatory. It would avail nothing to enlarge upon them here. It is obvious that the proximity of the obstruction to the car would constitute an ordinary or an extraordinary hazard, as a matter of law or as a question of fact, according to the circumstances of each particular case. It would be stultification to hold here as a matter of law that a clearance distance of only six and one half inches between the platform and the ladder of the car on which a minor employee, without warning, was riding, pursuant to the direction of his conductor, was an ordinary hazard. The trial court was justified in submitting the matter to the jury.

2. The second question on the merits is whether as a matter of law plaintiff was guilty of contributory negligence, or assumed the risk, because he knew, or ought to have known of the hazard of the platform and to have apprehended its danger. There was testimony, defendant insists, that plaintiff had frequently been in position in which he had a clear and unobstructed view of that platform, and that on the very night on which he was hurt he was in position for observation, and he could by use of his lantern easily have seen the platform in question. Plaintiff's trip should have been one of continual and industrious discovery. He made it one of industrious blindness and indifference. Accordingly he should not be allowed to recover, even if his exposed position brought him unusually near the platform. McLeod v. New York, 191 Mass. 389, 77 N. E. 715, 114 Am. St. 628. And see Sisco v. Lehigh, 145 N. Y. 296, 39 N. E. 953; Chicago v. Clark, 108 Ill. 113.

The Michigan rule is quite clear that obstructions abutting side tracks "are usually necessary for the conduct of railroad business, and in making up trains brakemen and switchmen must be on the lookout for them. While, where they abut on the main track, and not in yards where trains are usually made up, servants of railroads may expect that such obstacles will not be placed in so close proximity to the track as to make them dangerous." See Pahlan v. Detroit, 122 Mich. 232, 81 N. W. 103; Phelps v. Chicago, 122 Mich. 171, 178, 81 N. W. 101, 84 N. W. 66. The Michigan cases have been criticized [8] as involving "a wire-drawn differentiation" (1 Labatt, Master & Servant, footnote, p. 151), and have been regarded as requiring the "limit of excessive diligence and caution" on the servant's part (5 Thompson, Neg. § 5561).

The theory of the trial court in submitting both questions to the jury was clearly in accord with the opinions of the supreme court of the United States. In Choctaw, O. & G. R. Co. v. McDade, 191 U. S. 64, 24 Sup. Ct. 24, 48 L. Ed. 96, a brakeman was killed as a result of being struck by an iron spout. Mr. Justice Day said (at page 68 of 191 U. S., page 25 of 24 Sup. Ct.): "The servant has the right to assume that the master has used due diligence to provide suitable appliances in the operation of his business, and he does not assume the risk of the employer's negligence in performing such duties. The employee is not obliged to pass judgment upon the em-

ployer's methods of transacting his business, but may assume that reasonable care will be used in furnishing the appliances necessary for its operation. * * * The charge of the court upon the assumption of risk was more favorable to the plaintiff in error than the law required, as it exonerated the railroad company from fault if, in the exercise of ordinary care, McDade might have discovered the danger. Upon this question the true test is, not in the exercise of care to discover dangers, but whether the defect is known or plainly observable by the employee. Texas & Pacific Ry. Co. v. Archibald, 170 U. S. 665."

In Texas & Pac. Ry. Co. v. Swearingen, 196 U. S. 51, 25 Sup. Ct. 164, 49 L. Ed. 382, a state of facts curiously similar to those presented on this appeal was presented. Plaintiff, a switchman, was injured by striking a scale box alleged to have been in dangerous proximity to the switch track down which plaintiff was riding on the ladder of a box car. He was looking for a signal from his superior, and had a lantern, substantially as here. The tracks and scale were "standard," with a space of less than two feet for the movement of a switchman between the side of a car and the scale box. Plaintiff knew the proximity of the scale box to the switch track, but did not closely inspect it or take measurements of the situation. Mr. Justice White said, inter alia, "that the dangerous contiguity of the scale box to track No. 2 and the extra hazard to switchmen therefrom was not so open [9] and obvious on other than a close inspection as to justify taking from jury the determination of the question whether there had been assumption of the risk. The plaintiff was entitled to assume that the defendant company had used due care to provide a reasonably safe. place for the doing by him of the work for which he had been employed and, as the fact that the defendant company might not have performed such duty in respect to the scale box in question was not so patent as to be readily observable, the court could not declare, in view of the testimony of the plaintiff as to his actual want of knowledge of the danger, that he had assumed the hazard incident to the actual situation * * * Knowledge of the increased hazard resulting from the dangerous proximity of the scale box to the north rail of track No. 2 could not be imputed to the plaintiff simply because he was aware of the existence and general location of the scale box. It was for the jury to determine, from a consideration of all the facts and circumstances in evidence, whether plaintiff had actual knowledge of the danger."

The general rule throughout the states accords with these opinions. Many of them will be found well arranged in 31 Am. & Eng. Ry. Cas. (N. S.) 548, note. And see Louisville v. Hall, 115 Ky. 567, 74 S. W. 280. The rule in this state accords. Flanders v. Chicago, St. P. M. & O. Ry. Co., 51 Minn. 193, 53 N. W. 544; Johnson v. St Paul, M. & M. Ry. Co., 43 Minn. 53, 44 N. W. 884; Robel v. Chicago, M. & St. P. Ry. Co., 35 Minn. 84, 27 N. W. 305; Campbell v. Railway Transfer Co., 95 Minn. 375, 104 N. W. 547. Chief Justice Ryan, in Dorsey v. Phillips, 42 Wis. 583, with characteristic clearness and force stated the reason for this rule "The safety of railroad trains depends largely upon the exclusive attention of those operating them to the track and to the trains themselves. It is not for the interest of railroad companies, or of the public—with like, if not equal, concern in the safety of trains—that persons so employed should be charged with any duty or necessity to divert their attention. And it appears to us very doubtful whether persons operating railroad trains, and passing adjacent objects in rapid motion, with their attention fixed upon their duties, ought, without express proof of knowledge, to be charged with notice of the precise relation of such objects to the track. And, even with actual notice of the dangerous proximity of adjacent objects [10] it may well be doubted whether it would be reasonable to expect them, while engaged in their duties, to retain constantly in their minds an accurate profile of the route of their employment and of collateral places and things, so as to be always chargeable, as well by night as by day, with notice of the precise relation of the train to adjacent objects. In the case of objects so near the track as to be possibly dangerous, such a course might well divert their attention from their duty on the train to their own safety in performing it." This view of the law accords better with the opinions of the supreme court of the United States, supra, delivered in 1903 and 1904, respectively, than the later and more or less inconsistent decisions of the supreme court of Wisconsin. See Pahlan v. Detroit, 122 Mich. 232, 81 N. W. 104, and Scidmore v. Milwaukee, 89 Wis. 188, 61 N. W. 765 (rendered, respectively, in 1899 and 1894).

The application of these principles to the case at bar permits no doubt that the instructions of the trial court were as favorable to the defendants as could reasonably have been. The court fully and fairly charged that the

plaintiff assumed the ordinary, but not the extraordinary, hazards and risks of his employment; that if an order was given, and the plaintiff had knowledge or notice that to execute the order would expose him to unusual or extraordinary danger, he would assume the risk and danger incident thereto, and he might not recover for injuries so sustained. Plaintiff denied actual knowledge. It must be assumed that the jury believed him. Within the views thus expressed, the court was clearly right in submitting to the jury the question of notice to him. Plaintiff, a minor, had had no experience in this line of duty, except two months' service as a freight brakeman. He had passed by and had stopped at Lyle only four or six times. For part of this time he had been on this branch of the road, and claimed that his "work had been performed in another part of the yard." He had a right, in the performance of his duties, which occupied his attention in giving and receiving signals, watching the loading and unloading of freight at depots, and the like, to assume, especially in view of the direction of his superior officer, that the master had not been guilty of negligence, and was not required by law to make a detailed and exact study of the facilities his master had provided. [11]

3. The third question on the merits is whether plaintiff was precluded from recovery because he had violated defendant's rules, with which he was familiar. Of these, rule 28 is as follows: "Engines or cars must not be detached from a train while the train is moving." The court construed this rule as if "it refers to the movement of the train, and I do not think, taking the rules as a whole, that it was intended to apply, or that it does apply, to a brakeman who is engaged in switching on a side track." The general rules and special instructions in the return bear out this construction. It is provided, for example, that "in switching passenger train equipment cars must not be detached from the train while in motion." Inferentially, in cutting or switching freight train equipment, cars may be cut off while in motion. It is evident from the rules as a whole, that the term "train," as here used, did not refer to an engine and cars used in switching operations, but to the movements on the main line of a train from one station to another in the due course of transportation. Rule 2 is as follows "You are forbidden to work on the side of cars or trains where there are buildings, sheds, cattle chutes, or other projecting structures. Always work on that side where there are no buildings or structures, and in getting on or off, or in riding on the

side of moving cars, do so only at places where there are no obstructions alongside the track, such as buildings, structures, lumber piles, etc., that will make such work hazardous." The court charged the jury that "if the plaintiff had notice or knowledge of the fact that this platform existed there * * * and that it was a dangerous platform * * * he cannot recover in this action, because in that event * * * he was riding at a place on the car in violation of his contract and the rule of the company." This was a proper question of fact under the evidence; hence plaintiff could not properly have been held, as a matter of law, to have violated this rule.

In this connection plaintiff introduced some evidence tending to show that the rules had been habitually disregarded. We refer to that evidence only because its admission has been assigned as error. It was certainly competent for the plaintiff to show the abandonment of the rules. Alabama v. Bonner (Ala.) 39 South. 619. A recent and able summary of the law in this regard will be found in St. Louis v. Caraway, 77 Ark. 405, 91 S. W. 749. The only question here on this point [12] is whether there was evidence enough of this kind to make out a case in this regard. The conclusion reached is the more convincing, in view of another consideration. Defendant's candor has compelled it to admit that it is a matter of common understanding that in switching yards cars are commonly uncoupled while in motion for the purpose of "kicking" them down the track unaccompanied by the engine. The universality of this custom is attested by scores of reported cases adjudicating the rights of parties to such casualties. The jury in this case believed that plaintiff had been directed to do so by the conductor. It is clear, in view of the previous discussion of the applicable rules, that plaintiff was not, as a matter of law, precluded from recovery because he acted, not only with the conductor's knowledge and acquiescence, but also reasonably in pursuance of the master's special command. Tullis v. Lake Erie & W. R. Co., 105 Fed. 554, 44 C. C. A. 597, at page 601.

4. The defendant insists that the verdict, being against the defendant rail-road company only, exonerated Bennett, the conductor, and thereby exonerated this defendant likewise, and that the court, therefore, erred in not granting defendant's motion for judgment notwithstanding the verdict. The argument is that the company had warned the plaintiff generally as to

structures like the platform in question, that this was all it could do in the way of giving warning, that the breach of duty to warn was Bennett's, and that, if Bennett were not liable, the company could not be liable, for any failure to warn. In this connection reference has been made to many cases which show that, if the only negligence to warn was that of Bennett, the failure of the jury to return a verdict against Bennett entitled the defendant to a directed verdict. In this particular case, however, the court submitted the question to the jury "whether it was the duty of the defendant Bennett" "that he inform the plaintiff of this platform or of its relation to the side track." It further charged that he [Bennett] was "simply required to exercise ordinary care in regard to that. * * * In passing upon the question of his negligence, you have a right to consider what knowledge he may have had in regard to the plaintiff's previous experience as a freight brakeman, and especially in regard to his service on this particular line of road." The submission of this issue to the jury in this manner was not made the [13] subject of specific objection, exception, or assignment of error. In view of Bennett's testimony as to his knowledge of plaintiff's experience, and of the absence of evidence that it was Bennett's especial duty to warn plaintiff, it is clear that defendant was not entitled on this to a directed verdict. See Clark v. City of Austin, 38 Minn. 487, 489, 38 N. W. 615; Thompson v Chicago, St. P. & K. C. Ry. Co., 71 Minn. 89, 73 N W 707.

5. The next question on the merits concerns the abatement of the action. Defendant insists that the verdict should have been set aside and a new trial awarded under section 4503, R. L. 1905. That section is part of the local Lord Campbell's act. The particular proviso is: "Provided, that if an action for such injury shall have been commenced by such decedent, and not finally determined during his life, it may be continued by his personal representative for the benefit of the same persons and for recovery of the same damages as herein provided, and the court on motion may make an order allowing such continuance, and directing pleadings to be made and issues framed conformably to the practice in actions begun under this section." This proviso did not mean that the personal representative of the deceased may be substituted in the action commenced by the intestate, and prosecute his cause of action for damages for the benefit of the widow and next of kin which would otherwise die with him. It authorizes the personal representative of the deceased, where the evidence warrants it, to be

substituted as plaintiff in the original action brought by him, and to convert the action, by amendment of the pleadings, into an action for the benefit of the widow and next of kin. It does not authorize any such substitution for the purpose of prosecuting the original cause of action which accrued to the deceased in his lifetime. Anderson v. Fielding, 92 Minn. 42, 99 N. W. 357, 104 Am. St. 665. Where, however, the cause of action which accrued to the injured person during his lifetime has been made the basis of an action to recover damages, and a verdict for the damages has been awarded therein, the effect of the death of the plaintiff is not governed by section 4503, but by the general sections governing ordinary civil actions. Under section 4064 it is provided, inter alia, that after the verdict, decision, or report of a referee fixing the amount of damages for a wrong, such action shall not abate by the death of any party thereto. Section [14] 4503 applies where the plaintiff dies before verdict, and where the damages are unliquidated and unascertained, as in Anderson v. Fielding, 92 Minn. 42, 99 N. W. 357, 104 Am. St. 665. Section 4064 applies where damages have been liquidated and ascertained by the verdict. The verdict becomes property and passes to the representatives, the same as though it had been reduced to judgment. Cooper v. St. Paul City Ry. Co., 55 Minn. 134, 56 N. W. 588; Kent v. Chapel, 67 Minn. 420, 70 N. W. 2. The substitution in this case of the mother of the minor did not abate the action nor justify vacating the verdict.

6. Defendant also insists that the verdict of $35,000 is so excessive as to indicate passion or prejudice. There is no dispute that plaintiff's injuries resulted in indescribable anguish and in death. They were as serious as they could possibly have been. That they were necessarily fatal, or that only $5,000 could have been recovered by his administrator for the next of kin, does not constitute any reason whatever for holding the verdict improper. It has never been the law in this court that, the worse a servant is hurt by his master's negligence, the less he can recover. The fact that death was likely to result does not diminish the extent of the proper recovery. Plaintiff, surviving the casualty, had a cause of action totally different from that of his administrator on his death. See Mageau v. Great Northern Ry. Co., 103 Minn. 290, 115 N. W. 651. For his injury he was entitled to compensation. The greater the injury, the larger should the verdict be. In the present case, calculations of the value of the verdict, intelligently invested, show that the

verdict was not unreasonable upon a strictly pecuniary basis. We know of no reason or authority for disturbing the verdict of this jury which the trial court refused to set aside. See Hall v. Chicago, B. & N. R. Co., 46 Minn. 439, 49 N. W. 239; Texas v. Kelly, 34 Tex. Civ. App. 21, 80 S. W. 1073; Gulf v. Shelton, 30 Tex. Civ. App. 72, 69 S. W. 653; Morhard v. Richmond, Ill. App. Div. 353, 98 N. Y. Supp. 124; Smith v. Whittier, 95 Cal. 279, 30 Pac. 529; Huggard v. Glucose, 132 Iowa, 724, 109 N. W. 475; Retan v. Lake Shore, 94 Mich. 146, 53 N. W. 1094.

7. Because of the inconvenience, if not the impossibility, on account of plaintiff's physical condition, of having him in court at the trial, the judge, jury, and counsel repaired to his home and there took his testimony. At its close, despite defendant's objection, his [15] body was uncovered and exposed to the jury. Defendant argues that the purpose of this view was not to instruct the jury as to the charter of the injuries which they could not see, but to excite their sympathies. Even in this aspect, no prejudicial error appears; for the damages are not excessive. The objection, moreover, was not to taking the testimony of the witness at his house. In course of the testimony there was as much propriety in permitting defendant to exhibit his body as there would have been in the ordinary case in open court.

8. A number of other assignments of error call for no extended discussion. The admission of evidence to show the feasibility of cutting doors in the end of the depot, so as to dispense with the platform; the instruction of the court as to statutory platforms, and its refusal to charge, as defendants requested on this point, practically that he could not recover because of proximity of platform, if error at all, which we doubt, was error without prejudice. The court repeatedly charged that the basis of actionable neglect was the proximity of the box car to the side of the platform and the failure to warn. That the platform was built in the wrong place was not the basis of defendant's negligence. So also if the court submitted to the jury some questions which it should have decided as of law, no prejudice appears. These and other assignments of error have been considered and found not constitute reversible error. Affirmed. ■

•‡•‡•‡• •‡•‡•‡• •‡•‡•‡• •‡•‡•‡•

Posted MLHP: February 27, 2010.