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1. The Compromise of 1850.

“Every man in this House” ought to resign, [Linn] Boyd [of Kentucky] blasted, and let the people “send here Representatives better disposed to do their duty and to save the Union.”

So, for the next several days, the struggle continued amid “great confusion” in the chamber and “constant disorder.” There were repeated demands for a roll call—eleven, to be exact—but the Speaker [of the House, Howell Cobb] managed to ward them off and keep control. President Fillmore met privately with Whig members and used what influence he had with them to win their support for the compromise. Clay, too, pressed his friends to help. “It was an exciting time,” reported the New York Herald on September 7, “and much confusion prevailed.” Members left their desks a circulated around the chamber, talking up the compromise or denouncing it according to their commitment.

Finally, on September 6, the engrossment of the “little omnibus” came up for a final vote. As the roll call proceeded, members crowded around the clerk’s desk to see which way the vote was going. The count ended and Cobb rapped his gavel to announce the result.

“Ayes 107,” he cried. Then, he halted when he saw a late comer enter the chamber and record his vote.


The House exploded with cheers, shouts, whistles, and foot stamping. For all intents and purposes the Union was saved. The Compromise of 1850 had passed.¹

¹ Robert V. Remini, At the Edge of the Precipice: Henry Clay and the Compromise that Saved the Union 150 (Basic Books, 2010) (citations omitted).
The Compromise of 1850 was a series of individual settlements of five interdependent controversies: public slave markets in the District of Columbia were abolished; a tough Fugitive Slave Act requiring the return of runaway slaves was enacted; California was admitted to the Union as a free state; the territories of Utah and New Mexico were organized with popular sovereignty provisions (that is, slavery could be banned or introduced at the option of their settlers); and a dispute over the Texas-New Mexico boundary was resolved when the federal government assumed debts of Texas.

While all political and sectional factions in Congress were torn by these controversies, the two dozen or so Northern Whigs in the House of Representatives were particularly buffeted. Most had vowed to not permit slavery to be extended to a new territory, yet they were under pressure from party leaders, senators and the Fillmore administration to compromise with Southerners to preserve the Union. Among them was John Van Dyke, a prominent lawyer and former mayor of New Brunswick, New Jersey, who was serving his second term when the bills embodying the various compromises were debated and voted upon.

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2 Michael F. Holt, a master historian of the ante-bellum period, writes:

   From the [Fillmore] administration’s viewpoint, acceptance of the Compromise as a settlement of the four year old quarrel over the territories was necessary for the good of the nation and the survival of the Whig party.

   Across the North, however, most Whigs viewed endorsement of the Compromise as a betrayal of principles and a prescription for electoral disaster. It flouted commitments they had made to northern voters, and, they believe, it nullified their significant advantage over northern Democrats by aping Democrats’ pro-Compromise posture.


3 A contemporary congressional directory gives the results of his elections:

   Van Dyke, John, . . . was elected a representative from New Jersey in the Thirtieth Congress as a Whig, receiving 6,340 votes against 5,173 votes for Kirkpatrick, Democrat; was re-elected to the Thirty-first Congress, receiving 7,282 votes against 6,023 votes for Hilliaid, Democrat, serving from December 6, 1847, to March 3, 1851 . . .

Van Dyke’s major contribution to the debates leading to the Compromise occurred on March 4, 1850, when he delivered a lengthy address on the House floor ostensibly on the question of the “Admission of California” but really countering Southerners’ allegations that Northerners were insulting and acting aggressively toward slaveholders. He combined the techniques of a trial lawyer’s closing argument with a politician’s rich rhetoric — facts, history, sarcasm, hyperbole, more facts, flattery, ridicule, poetry and still more facts — to demolish Southern claims.

Six months later, when the various bills came for a final vote, Van Dyke and other Northern Whigs faced the predicament of trying to abide by their anti-slavery vows while preserving their party and the Union. On September 6, 1850, he voted against the bill setting the Texas border and organizing the New Mexico Territory with a popular sovereignty clause. The next day, he voted to admit California as a state, but against organizing the Utah Territory, probably

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Van Dyke’s entry in the online *The Biographical Directory of the United States Congress* has several errors: he was born in 1805, not 1807; he served in the Minnesota House in 1872, not the Senate; and he was a district court judge from March 1873 through the end of that year, not to 1878:

VAN DYKE, John, a Representative from New Jersey; born in Lamington, Somerset County, N.J., April 3, 1807; completed preparatory studies; studied law; was admitted to the bar in 1836 and commenced practice in New Brunswick, N.J.; prosecuting attorney of Middlesex County in 1841; mayor of New Brunswick in 1846 and 1847; president of the Bank of New Jersey at New Brunswick; elected as a Whig to the Thirtieth and Thirty-first Congresses (March 4, 1847-March 3, 1851); declined to be a candidate for renomination in 1850; resumed the practice of law; delegate to the Republican National Convention in 1856; judge of the New Jersey Supreme Court 1859-1866; moved to Minnesota in 1868 and settled in Wabasha, Wabasha County; member of the State senate in 1872 and 1873; judge of the third judicial district of Minnesota 1873-1878; died in Wabasha, Minn., December 24, 1878; interment in Riverview Cemetery.

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4 Congressional Globe, 31st Cong., 1st sess., Appendix, at 321-27 (March 4, 1850). His address is posted in Section 8, pages 32-40 below.
because it also contained a popular sovereignty provision. On September 12, the Fugitive Slave Act was passed while he abstained. And on September 17, the bill suppressing the slave trade in the nation’s capitol was approved, but curiously he abstained or, more likely, was absent for a personal reason. To Michael Holt, the voting behavior of individual Northern Whigs can be explained by their “succumb[ing] to pressure from the administration and northern Democratic senators” on some measures and by abstaining on others, such as the Utah Territorial bill and the Fugitive Slave Act, because they knew they could kill them if they joined the majority of their colleagues in voting against them. Van Dyke, it seems, voted his conscience only when it would not jeopardize passage of the Compromise, a pact that he supposed would save the Union.

He did not seek re-election. Back in private practice, he maintained an interest in politics. By mid-1855 the Whig party had disintegrated, and he became a Republican. In 1859, he was appointed to the state Supreme Court, where he earned a reputation for independence. His term expired in 1866, and again he

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11 The aftermath of the Compromise of 1850 was weighed by the inestimable David Potter:

Hindsight has long since shown that the Compromise of 1850 did not bring either the security for the Union which many hoped for or the security for slavery which others feared. But at the time, this was not yet evident. Realistic men like Douglas and Chase knew that North and South had not really acted in accord and that the arrangements for Utah and New Mexico did not really answer the territorial question. But if the measures were not themselves a compromise, might they yet become a compromise? [New York Senator] Daniel S. Dickinson hoped so, and he remarked that “neither the Committee of Thirteen, nor any other committee, nor Congress have settled these questions. They were settled by the healthy influence of public opinion.” At the very least, this Congress, through the leadership of Henry Clay, Daniel Webster, Millard Fillmore, and Stephen A. Douglas, had averted a crisis, and it had reached a settlement of issues which four preceding sessions of Congress had been unable to handle. It remained to be seen whether the American people, North and South, would, by their sanction, convert this settlement into a compromise.

returned to private practice. He was sixty-one years old. Two years later, he moved with most of his family to Wabasha, Minnesota.

This sketch, albeit unbalanced, enables us to understand what happened next—how John Van Dyke came to play an unexpected but small and important part in the legal history of his adopted state.

2. Wabasha, Minnesota.

Why Wabasha? He reportedly moved to Minnesota because he thought its healthful climate would benefit his family. He may have learned this from his son, Theodore S. Van Dyke, who lived and practiced law in Wabasha. The Lake City Leader carried the business card of T. S. Van Dyke:

The firm never became Van Dyke & Van Dyke, and John Van Dyke’s business card never appeared in local newspapers. He occasionally consulted with local lawyers about their cases.

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12 Two sons, Theodore and Robert, practiced law in Wabasha, while another found his calling in academia. John Charles Van Dyke (1856-1932) grew up in Wabasha, attended Columbia Law School, was admitted to the bar but never practiced. About the time of his father’s death, he moved back to New Brunswick, where he became the first professor of art history at Rutgers University, publishing studies of old world masters, and a controversial monograph on Rembrandt. He became the model for a character in Edith Wharton’s House of Mirth. See “John C. Van Dyke” in Lee Sorensen, ed. Dictionary of Art Historians Website (2000).

13 His entry in Warren Upham & Rose Barteau Dunlap’s semi-official Minnesota Biographies, 1655-1912 806 (14 Collections of the Minn. Hist. Soc., 1912), provides:

Van Dyke, T. S., lawyer, b. in New Jersey in 1842; came to Minnesota in 1867; settled in Wabasha; was a representative in the legislature in 1873.

14 Lake City Leader, July 17, 1873, at 3. A few years later, Robert Van Dyke published his card in the Wabasha Herald. See, e.g., issue of February 26, 1879, at 1.
Running as a Republican in November 1871, he was elected by a wide margin to the state House from District 15, which covered Wabasha County:

- John Van Dyke (Republican) ...................... 455
- A. T. Sharpe (Democrat) ........................... 273

He was assigned to the Federal Relations Committee, and to the Judiciary and Joint Judicial District Committees, which he chaired. He did not seek re-election. His son, T. S. Van Dyke, received the Republican party’s endorsement and was elected in November 1872 to House seat 15.  

He served one term.

3. Appointment, Nomination & Confirmation.

An elected official’s ability to place a political supporter in a government job benefits the patron in obvious ways, but it may also leave bitterness in those not selected and their supporters. With considerable finesse, Governor Horace Austin reconciled the credit and debit sides of patronage when he filled a vacancy on the Third Judicial District Court caused by the death of Judge Chauncey

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15 *Lake City Leader*, November 17, 1871, at 1. Unabashedly partisan, The *Leader* wrote that the District “honored itself in the triumphant election of Judge Van Dyke.” *Lake City Leader*, Friday, November 10, 1871, at 1.

16 He was endorsed by the *Lake City Leader*:

In this district, the Republicans have placed in nomination Theo. S. Van Dyke, of Wabasha. He is the son of the esteemed Judge Van Dyke, and is a practicing attorney in that city. His personal friends and acquaintances speak in high terms of praise of his abilities and qualifications. He will undoubtedly contest the district with Mr. Kepler very closely.

*The Lake City Leader*, November 1, 1872, at 4. In the election on November 5th, he received 54% of the vote:

- T. S. Van Dyke .................. 389
- S. S. Kepler ..................... 331

*Lake City Leader*, November 15, 1872, page 1.
Waterman on February 18, 1873. Even before Waterman was buried, rumors floated about his successor. On March 1st, the Rochester Post reported that each county in the Third Judicial District had its own contender:

The Judgeship of this District, made vacant by the death of Hon. C. N. Waterman, is to be filled by appointment by the Governor. The appointee will hold till January, when the office will be filled for a term of seven years by some one to be chosen at the general election next fall. As the individual who may get the appointment form the Governor is most likely to be nominated and elected in the fall, the commission is a considered quite worth having. Hon. C. M. Start, Esq., has the recommendation of the bar of this County; Hon. Thos. Simpson that of Winona, and W. W. Scott, Esq., of Wabasha County. It is about as easy to foretell whom the Governor will select, as it is to prophesy where lightening will strike, but he could not do better than to appoint Mr. Start.

Realizing that his support in two counties, especially among the bar, would be eroded if he selected a candidate from the third, Austin shrewdly appointed a lawyer who had a lengthy record of public service but no ambitions for a career on the bench, who agreed to serve until “the people” elected his successor in November: John Van Dyke of Wabasha.

Van Dyke had a background in law and politics that must have impressed Austin. He had been a successful lawyer and respected judge in New Jersey, a two-term Congressman who had served with the Great Triumvirate, Webster, Clay and Calhoun, and been a delegate to the first Republican convention in Philadelphia in 1856. Austin might even have heard the story of how Van Dyke had voted nearly two decades earlier —on March 3, 1849, to be exact, the last day of the

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17 Horace Austin (1831-1905) served on the Sixth Judicial District, 1865-1869. He was elected governor by a narrow margin in November 1869, and re-elected with 60% of the vote in 1871.

18 Rochester Post, Saturday, March 1, 1873, at 2. Austin appointed Van Dyke on February 28, but news of this reached the Post after it went to press.
Thirtieth Congress — to organize the Territory of Minnesota.\textsuperscript{19} And he had supported the governor during his recent term in the state House of Representatives. But what led Van Dyke to accept an offer of a short term judicial post that required him to travel and be away from his family? The answer could be that he was bored in retirement, and thought that ten months on the bench would be invigorating.\textsuperscript{20}

Austin’s deft exercise of the prized power of patronage was not received favorably by the local press. The Winona \textit{Daily Republican} reported the rumor that Van Dyke had agreed to serve only through the end of the year:

The Governor, it will observed, has filled the vacancy in the office of Judge of the Third Judicial District by the appointment of Hon. John Van Dyke, of Wabasha, to that position. Mr. Van Dyke was formerly one of the nine judges of the Supreme Court of New Jersey, and he also represented that State in Congress for one or two terms. He is thereof not lacking in experience, although the appointment of a younger and more vigorous man, and one more intimately acquainted with law practiced in this State, would have proved more satisfactory to all classes of persons having business in the Courts of the district. It is understood however, that the appointee does not intend to become a candidate before the people nest Fall, and that he will hold the office only as a temporary expedient until the election and qualification of a successor.\textsuperscript{21}

The \textit{Winona Herald} was not impressed by the “pleasant old” appointee, and recalled his opposition to the grant of a ferry charter across the Mississippi when he served in the legislature:

\textsuperscript{20} By this time, he had been out of public office for a year. The Fourteenth Legislature was in session from January 1, 1872, to March 2, 1872.
\textsuperscript{21} \textit{Winona Republican}, Saturday, March 1, 1873, at 2.
APPOINTMENT OF A JUDGE

Hon. John Van Dyke of Wabasha, has received the appointment of Judge of this District vice C. N. Waterman deceased. Mr. Van Dyke was formerly Judge of the Supreme Court of New Jersey, also a member of Congress from that State. He was a member of the House of Representatives in Minnesota in 1872, and opposed a bill granting a charter for a ferry across the Mississippi River, which was passed, but in consequence of the Governor’s veto, did not become law. Mr. Van Dyke is a pleasant old gentleman in his manners, but somewhat antiquated in his ideas, but for all that may make an impartial and exemplary judge.

It is rumored that the appointment has been made with the understanding that he is not to be a candidate at the coming fall election. What the Governor of this State won’t do there isn’t any body who will know, until the opportunity is presented.22

The Rochester Post expressed disbelief that the “old gentleman” would not seek election to a full term that Fall:

The Governor filled the vacancy in the judgeship of this District last week, by the appointment of Hon. John Van Dyke, of Wabasha, an old gentleman whose age and experience on the bench give respectability to the appointment. It is reported that the appointment was accepted with the understanding that the Judge will not be in the way of the other candidates next fall, but we do not believe that the Governor would make or the Judge accept so undignified a bargain.23

His appointment was followed by an odd gubernatorial act. He was appointed on Friday, February 28, and on Monday, March 3rd, the first day of the Spring term, held court in Rochester. There he presided the rest of the week. On Friday, March 7, Austin submitted fourteen nominees, including Van Dyke, to the Senate

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22 *The Winona Herald*, Friday, March 7, 1873, at 2 (emphasis in original).

23 *Rochester Post*, March 8, 1873, at 2. Van Dyke’s first session of the district court was reported in this issue. See Section 4 (a) below, at 16-18.
for its advice and consent. In executive session that day, the Senate unanimously confirmed him and the others. But Article VI, §10, of the state Constitution grants the governor exclusive authority to fill a vacancy:

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24 The Governor’s nominations were recorded in the Senate Journal:

STATE of MINNESOTA,
EXECUTIVE DEPARTMENT,
ST. PAUL, March 7, 1873.

Hon. Wm. H. Yale, President of the Senate:

SIR:—I have the honor to submit for the consideration of the Senate, the following nominations:

For Railroad Commissioner, A. J. Edgerton, of Dodge county, re-appointment.

For Superintendent of Public Instruction, H. B. Wilson, of Goodhue county, re-appointment.

For Judge of District Court, Third Judicial District, John Van Dyke, of Wabasha county, vice C. N. Waterman, deceased.

For Regents of State University, H. H. Sibley, of Ramsey county, and Chas. S. Bryant, of Nicollet county, re-appointments.

For Inspector of State Prison, E. G. Butts, of Washington county, re-appointment.

For Director of Deaf and Dumb, and Blind Institute, R. A. Mott, of Rice county, re-appointment.

For Member of Board of Managers of State Reform School, S. J. R. McMillian, of Ramsey, re-appointment.

For State Normal School Directors, Rev. S. Y. McMasters, of Ramsey county; D. L. Kiehle, of Fillmore county; Sanford Niles, of Olmsted county; Thomas Simpson, of Winona county; Daniel Buck, of Blue Earth county, and J. G. Smith, of Stearns county.

Very respectfully,
Your obedient servant,

Horace Austin,
Governor.

On motion, the Senate advised with and consented to the nominations by the Governor of the several persons named in the foregoing communication.

No further business appearing, the executive session rose.

A. A. Harwood,
Secretary of the Senate.

Journal of the Senate, Appendix, March 7, 1873, at 461-62.
In case the office of any judge become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

The most likely explanation for this blunder is human error or, more precisely, clerical error.\(^{25}\) A secretary of the governor probably added Van Dyke’s name to the list of names by mistake, unaware that this was not necessary or permitted.

In making the surprise appointment of Van Dyke, Horace Austin may have had the immediate purpose of avoiding a potential loss of political support, but he may also have been moved by a keen insight—or foresight—into the politics of judicial elections. He foresaw that if he selected one of the favorite sons of the three county bars, one or both of the men passed over would challenge his appointee for the Republican party endorsement and, possibly, in the November election. His appointee would have an insecure tenure, to his detriment and to the judicial system as well. He surely recalled that Chauncey Waterman, who failed to get the Republican party’s endorsement in 1864, defeated Judge Lloyd Barber for that endorsement in the Fall of 1871, bringing Barber’s seven-year judicial career to an end. And he could not have forgotten Francis M. Crosby’s controversial defeat of incumbent Charles McClure for the party’s endorsement for judge of the First Judicial District after 112 ballots in September 1871. He may have hoped or anticipated that the bars of the three counties would coalesce around the candidate selected at the Republican Judicial Convention in the autumn of 1873. But he could not have envisioned that during the interlude of Van Dyke’s judgeship, all political parties and the bar would unite behind one lawyer, a

\(^{25}\) For an example of repeated clerical errors in the placement of a territorial judge, see the three mistakes in Presidents Taylor’s and Fillmore’s commissions to Associate Justice Bradley B. Meeker in 1849 and 1850, discussed in Douglas A. Hedin, “Documents Regarding the Terms of the Justices of the Supreme Court of Minnesota Territory: Part One: Introduction” 17-18, 26-28 (MLHP, 2009-2012), and “Documents Regarding the Terms of the Justices of the Supreme Court of Minnesota Territory: Part Two-B: Associate Justice Bradley B. Meeker” (MLHP, 2009-2010).
Democrat no less, who would run without opposition for the Third Judicial District Court in November 1873. Re-elected in 1880, again without opposition, he would become the state’s greatest jurist: William Mitchell of Winona.\(^{26}\)

4. Van Dyke on the Bench.

Van Dyke served from February 28, 1873 to January 8, 1874. At this time, the legislature set the dates of the spring and fall terms of the district court in each county.\(^{27}\) While this schedule required him to travel to Rochester, Winona, and Wabasha, he was not followed by an entourage of lawyers who lodged in each town during the term. In Minnesota, even in territorial days, trial judges did not “ride circuit” as, for example, Judge David Davis famously traversed Illinois’

\(^{26}\) On November 8, 1873, Mitchell received a total of 7,857 votes from the three counties. *Journal of the House of Representatives*, January 8, 1874, at 19.

On November 2, 1880, he received 12,705 votes. *Journal of the House of Representatives*, January 5, 1881, at 10-11.

\(^{27}\) The law entitled “An act fixing the time for holding the general terms of the District Courts in the Third Judicial District” provided:

**SECTION 1.** The general terms of the district court in and for the several counties of the third judicial district of this state shall be held as follows, viz.:

- In the county of Olmsted on the first Monday in March and the second Monday in September in each year.
- In the county of Winona on the first Monday in April and the second Monday in October of each year.
- In the county of Wabasha, on the second Monday in May and the second Monday in November of each year.

**SEC. 2.** All writs, process, bonds, recognizances, continuances, appeals, notices, and proceedings had, issued, read or returnable to the terms of court in and for each of said counties as fixed by law prior to the passage of this act shall be deemed and construed as made, taken and returnable to the terms of court in and for said counties respectively as fixed by this act.

**SEC. 3.** All acts and parts of acts inconsistent with this act are hereby repealed.

**SEC. 4.** This act shall take effect and be in force from and after its passage.

Approved January 23, 1873.

1873 Laws, ch. 74, at 194.
Eighth Judicial Circuit in the early 1850s, accompanied by Abraham Lincoln and other lawyers looking for work. 28 Nevertheless, lawyers from St. Paul, Minneapolis and “abroad” frequently represented clients in the Third Judicial Circuit.

In keeping with journalistic practices of the day, local newspapers published detailed accounts of the proceedings in Van Dyke’s court. A random sample of articles in newspapers in Rochester, Winona and Wabasha follows. They reveal much about the day-to-day work of a trial court and the trial bar in the 1870s.

Van Dyke had the assistance of a clerk of court but not a court reporter. His successor, however, did. The legislature authorized the judge in the Third Judicial District to hire, “in his discretion,” a “stenographic or short-hand reporter” on February 19, 1874. 29

Civil cases dominated his calendar, a pattern typical of the time. 30 Most trials in the nineteenth century took about a day. But not all cases were tried, and in the disposition of many civil disputes, lawyers performed one of their most important functions—they worked out settlements. Plea bargaining, however, was rare. He heard applications for citizenship and petitions for bar admission; noticeably absent from his docket are personal injury, divorce and statutory actions. A decade later, suits against railroads by injured employees would dot the calendar.

In sessions in Rochester and Winona, Van Dyke “assigned” lawyers to represent defendants in several criminal cases. The law regulating the appointment of counsel in effect in 1873 provided:

> Whenever a defendant shall be arraigned upon an indictment for any criminal offense punishable by death or by imprisonment in the state prison, and shall request the court wherein the indictment is pending, to appoint counsel to assist him in his defense, and shall

29 1874 Laws, ch. 88, at 231-33 (February 19, 1874).
30 This pattern appears on the calendars of other district courts about this time. For example, in Faribault County in 1872, there were 39 civil and only 2 criminal cases on the calendar, and in 1873, there were 40 civil and 4 criminal cases J. A. Kiester, “The Bench and Bar of Faribault County” 4-5, 34, 42 (MLHP, 2011)(published first, 1894).
satisfy the said court by his own oath or such proof as the said
court shall require that he is unable by reason of poverty to procure
counsel, the court shall appoint counsel for said defendant, not
exceeding two, to be paid by the county wherein the indictment was
found, by order of said court. The amount of compensation of such
counsel shall be fixed by the said court in each case, and shall not
exceed ten dollars per day for each counsel, and shall be confined to
the time in which such counsel shall have been actually employed in
court upon the trial of such indictment.  

Perhaps a few lawyers undertook these assignments because of a sense of pro-
fessional responsibility but most did because they needed the income.

Frequently he “referred” a civil case to a local lawyer —i. e., “S. H. Humason vs.
Claus Oleson. H. C. Butler for plff., Stearns & Start for deft. Referred to R. H.
Gove, Esq.” These orders were made under a specific statute governing trials by
Referees.  

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31 1869 Laws, ch. 72, at 86 (effective March 5, 1869); codified as Stat., Supplement, ch. 53,
§12, at 978-79 (1873)
32 It provided:

**TRIAL BY REFEREES.**

SEC. 228. Upon the agreement of the parties to a civil action, or a
proceeding of a civil nature, filed with the clerk or entered upon the minutes,
a reference may be ordered:

*First.* To try any of all the issues in such action or proceeding, whether of
fact or law, (except an action for divorce,) and to report a judgment thereon;

*Second.* To ascertain and report any fact in such action, or special
proceeding or to take and report the evidence therein.

SEC. 229. When the parties do not consent, the court may, upon the
application of either, or of its own motion, direct a reference in the following
cases:

*First.* When the trial of an issue of fact requires the examination of a long
account on either side, in which case the referee may be directed to hear, and
decide the whole issue, or to report upon any specific question of fact involved
therein;

*Second.* When the taking of an account is necessary for the information of
the court, before judgment, or for carrying a judgment or order into effect;
tempting to conclude that they were petty commercial disputes or squabbles over small sums, which were quickly decided by the “referral” lawyer after he had heard both sides. A trial by a Referee resembled an arbitration, with the same result.  

Third. When a question of fact other than upon the pleadings arises, upon motion or otherwise, in any stage of the action; or,

Fourth. When it is necessary for the information of the court in a special proceeding of a civil nature.

SEC. 230. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties, or if the parties do not agree, the court or judge shall appoint one or more persons, not exceeding three, residents of any county in this state, and having the qualification of electors.

SEC. 231. The trial by referees shall be conducted in the same manner and on similar notice as a trial by the court. They shall have the same power to grant adjournments and to allow amendments to any pleadings, as the court upon such trial, upon the same terms and with like effect. They shall have the same power to administer oaths and enforce the attendance of witnesses as is possessed by the court. They shall state the facts found and the conclusions of law separately, and their decision shall be given and may be excepted to and reviewed in like manner, but not otherwise, and they may in like manner settle a case or exceptions. The report of referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

SEC. 232. When there are three referees, all shall meet, but two of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons, it may be exercised by a majority upon the meeting of all, unless expressly otherwise provided by statute.

Stat., ch. 66, Title 18, §§228-232, at 482-83 (1866).

33 The Arbitration Act in effect in 1873 required the agreement to be in writing and imposed other requirements to safeguard the fairness and integrity of the process. Stat., ch. 89, at 586-588 (1866); re-codified as Stat., Supplement, ch. 46, at 935-938 (1873). The last sentence of §19 of the statute provided: “Nothing in this chapter contained shall preclude the submission and arbitrament of controversies, according to common law.” It is clear that Van Dyke was not enforcing arbitration agreements drafted according to the requirements of this statute in the cases he “referred” to lawyers.
In his court—and probably in most state trial courts in the mid-nineteenth century—lawyers had considerable control over the proceedings or, put another way, he paid considerable deference to the lawyers’ needs and wishes. He granted every motion for a continuance, which is not surprising because it seems no such motion was ever opposed. He was aware of the practical difficulties facing lawyers in his court and accommodated them. The first day of the November term in Wabasha ended quickly:

Case No’s. 14 and 15 were continued by consent. No. 18 continued.
Then followed the second call of the Calendar. There being no case ready for trial, Court, after a few more motions, adjourned until Tuesday morning at 9 A.M.

Over time and for a multitude of reasons, judicial deference to the trial bar, a conspicuous practice of Van Dyke, declined as the bench asserted greater and greater control over matters of pleading, motion practice and the preparation and trial of cases.

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a. Monday - Friday, March 3-7, 1873.
Rochester.

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THE DISTRICT COURT

The March term of the District Court of this county, commenced its session on Monday. Hon John Van Dyke presided as Judge, and C. T. Benedict, Esq., Clerk.

The business this week has been quite light and there have been no trial of any particular interest. The following is the disposition of cases on the Civil Calendar:

Zelic Raymond vs. E. K. Bell. C. C. Willson for plff. James George for deft. Dismissed without costs to either party.

Adrian Webster vs. Lucius Cutting. H. C. Butler for plff., L. Barber for deft. Dismissed without costs to either party.

J. V. Daniels vs. James Crawford. C. C. Willson for plff., Pierce
& Taylor for deft. Judgment for plaintiff by consent.

S. H. Humason vs. Claus Oleson. H. C. Butler for plff., Stearns
& Start for deft. Referred to R. H. Gove, Esq.

E. Beckworth vs. E. P. Lesuer. H. C. Butler for plff., James
Bucklin for deft. An action by Dr. Beckworth for services as a
physician, at the rate of $1.50 per visit. It is claimed in defense that
a contract had been made for $1.00 a visit and, also, offsets were set
up. The case was tried by a jury who gave a verdict for the
defendant.

Charles Mulig vs. Mariah Mateson. C. S. Andrews for plff. S.
W. Graham appointed guardian ad litem of minor defendants.

School District No. 69 vs. F. M. Pierson. T. H. Armstrong for
plff, S. W. Graham for deft. Action dismissed by consent without
costs to either party.

H. C. Nisson vs. J. Dooley. E. A. McMahon for plff., C. C.
Willson for deft. Suit for wages. Trial by jury. Verdict for plaintiff
for $38.90.

Sarah A. Ketchum vs. Lucy J. Taylor. L. Barber for plff,
Mitchell & Yale for deft. Referred to E. A. McMahon.

E. M. Bennett vs. F. Holmes. H. C. Butler for plff., P. M. Tolbert

Caroline Mott vs. F. H. Barnes. Tolbert & George for plff.,
Parker & Hoyt for deft. Jury trial. By consent of attorneys, a
verdict of $150 was rendered by the jury without leaving their seats.

The case of H. T. Horton vs. A. K. Williams was on trial when
we went to press. Stearns & Start for plff., L. Barber for deft.

The criminal calendar has been one of the lightest in years.
The Grand Jury was charged by the court on Monday
afternoon, and Mr. J. B. Clark, of this city, was appointed foreman.
The jury was in session till Thursday at noon, when they were
discharged. They found three indictments.

Andrew R. Thompson has been indicted for larceny in stealing
wheat from E. B. Jordan near this city. P. M. Tolbert was assigned
by the Court as his counsel. He has not yet been tried.
Isaac Grover has been indicted for assault on his wife with a dangerous weapon, and P. M. Tolbert was assigned by the Court as his counsel. He has plead not guilty, but has not yet been tried.

In the case of F. M. Pierson, who was bound over to answer to a charge of illegal action as treasurer of a school district, the Grand Jury voted to find no indictment.

In the case of State against Wm. Ober and John Scott who had been bound over to answer to a charge of assault against Kinmore, the barber near Chatfield some time ago, the recognizances were ordered to be satisfied and canceled and the parties and their bail released on the payment of $100.

It is expected that the court will be in session nearly all next week.\(^{34}\)

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b. Wednesday, October 15, 1873.

Winona.

DISTRICT COURT
Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

*Wednesday’s Proceedings.*—Court opened at the usual hour.

The application of Thos. McCauley for admission to citizenship was granted.

The case of Caroline Buswitz vs. Fred W. Kempe, for assault was brought to trial. Indictments having been found against John Crooks and Cornelius Sullivan for larceny, they were arraigned and by their attorney, Wm. Mitchell, plead not guilty.

At this juncture the case of Buswitz vs. Kempe, was amicably settled, and the court proceeded to call the calendar for new business.\(^{35}\)

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\(^{34}\) *Rochester Post*, Saturday, March 8, 1873, at 3.

\(^{35}\) *Winona Daily Republican*, Wednesday, October 15, 1873, at 3.
c. Thursday, Friday & Saturday, October 16-18, 1873.

Winona.

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DISTRICT COURT
Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

_Thursday’s proceedings._—The jury in the case of E. Ball & Co. _vs._ H. W. Barlow, brought in a verdict on Wednesday afternoon in favor of the defendant, assessing his damages at $417.15.

H. S. Youmans _vs._ Township of Austin; defendant not appearing, judgment given, for the plaintiff in the sum of $283.40.

A special session of the Court was held on Thursday evening for the examination of applicants for admission to the bar. Messrs. Dennis H. Flynn, David Barclay, John C. Noe, of Winona, and John P. Pope, of Whitewater, were examined.

_Friday’s proceedings._—On hearing the report of the Committee on Examinations, due motion having been made, it was ordered that the applicants above named be admitted.

The cases of the State _vs._ Luetke and the State _vs._ Kercine and Wachtel were dismissed on motion of the County Attorney, who stated that it would be for the interest of peace between the parties offended against and the offenders and for their neighborhood.

The Grand Jury came into Court, and, having finished their business, were discharged.

In the afternoon the prisoners against whom indictments had been found were arraigned.

Ransom Smith, charged with an assault upon James Gorden, in the town of New Hartford, appeared by his attorney, Hon. Thomas Wilson, and asked time to plead.

John Quinn and Michael Cauley were accused of assaulting Wesley Arrasmith in August last. J. Dyckson appeared, as their attorney and asked the usual time to plead.

Michael Hennigan was accused of larceny, committed in the town of Homer, on the 23d of September, from John McCulloob,
stealing $135 in money. Hon. Thomas Wilson was appointed by the Court as counsel for the prisoner. The usual time was asked to plead.

Thomas Wilson (not a lawyer) was arraigned for taking a bolt of cloth from the store of J. W. Thomas & Co. He plead guilty to the charge, said it was his first offense, and threw himself on the mercy of the Court.

Henry Gorham was charged with stealing several watches and money from Fred Grapenthein, in the town of Hart, on the 9th day of August. The Court appointed Hon. Thos. Wilson as counsel and, the usual time was given to plead.

S. W. Smith, arraigned on the charge of larceny on the 1st day of July, in the town Dresbach, having taken eleven dollars from one Robillard. Wm. Gale, Esq., was appointed to defend the prisoner and asked the usual time to plead.

On motion of Wm. Mitchell, Esq., John Baldwin was discharged from trial, having been under bond to appear at the District Court and no indictment having been found against him.

John Heffernan was likewise discharge, on motion of Hon. Thomas Wilson.

John H. Roth was discharged for a similar reason, on motion of J. W. Dyckson, Esq.

John King, of St. Charles, was also discharged.

The Court then proceeded with the civil cases.

It is expected that the trial of Isaac Page for shooting Frank, Eaton, in the town of Homer, will be called on Tuesday next.

Saturday’s Proceedings.—Henry Gorham plead guilty to the charge of larceny in stealing several watches, etc., in the town of Hart, and was sentenced to one year in the State prison.

The trial of Hennegan for stealing $135 in Pleasant Valley was taken up, and at noon the Court adjourned until Monday afternoon.\(^\text{36}\)

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\(^{36}\) Winona Daily Republican, Saturday, October 18, 1873, at 3 (italics in original).
Tuesday & Wednesday, October 21-22, 1873.
Winona.

DISTRICT COURT
Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

Tuesday’s proceeding.— Continued.—The trial of Isaac Page for shooting Frank Eaton in the town of Homer, last Spring, was called on for trial, on Tuesday afternoon. Norman Buck, Esq., assisted by A. H. Snow, Esq; appeared for the prosecution; Messrs. Thomas Simpson, Wm. Mitchell and J. W. Dyckson for the defense. The defendant came into court looking rather pale from his long confinement but nevertheless in good health. Although a man sixty-five of age, he walked with a firm step to his seat near his attorneys. After the Prosecuting Attorney had moved the cause, Mr. Mitchell indicated a desire on the part of the defense to have a full panel of Jurors before the case was taken up, and suggested the propriety of waiting until the jury already out in the Hennegan case was in. It appearing that there were only six other jurors remaining, the Court issued a special venire for thirty-six jurors, intimating to the Sheriff that it would be desirable to summon the jurors from those parts of the county where they would be least likely to have any acquaintance with the case or the parties concerned in it. The Court then adjourned, at about 4 o’clock, until 10 o’clock on Wednesday.

Sheriff Martin immediately proceeded to the work of getting the new jurors. The time was short and admitted at no delay, but by calling the telegraph to his aid, the business was rapidly dispatched. Deputy Sheriff Crippen was telegraphed to at St. Charles to summon a list of thirteen jurors from the towns of St. Charles, Saratoga and Elba. A list of seven in Utica was sent to Captain Allred at Lewistown. The combined delegation of twenty arrived

promptly on the morning accommodation. Meanwhile Deputy Sheriff Bogart had taken a list of sixteen scattered about the towns of Rollingstone, Hilledale and Mount Vernon, which completed the list.

**Wednesday’s proceedings.**—At a late hour on Tuesday afternoon, the jury in the case of Hennegan, charged with stealing money from McCulloch, in Pleasant valley, returned a verdict of not guilty.

One Sullivan indicted for stealing timber in the town of St. Charles, appeared by his attorney, Wm. Mitchell, Esq., and asked leave to withdraw his former plea of not guilty and enter a plea of guilty of larceny to an amount of property not exceeding eighty dollars. He was sentenced to six months in the State prison.

The prisoners, Quinn and Cauley, who engaged in the Arrasmith stabbing affray, appeared by their attorney, J. W. Dyckson, Esq., and entered a plea of not guilty.

Hon. Thos. Wilson intimated the desire of the attorneys to have the adjourned term placed for the fourth Monday in January.

The Page trial was again taken up, but owing to the non-arrival of some of the jurors in an adjournment was taken until half past 3 o’clock.  

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e. Monday, Tuesday & Wednesday, 

November 10-12, 1873. 

Wabasha

DISTRICT COURT—

NOVEMBER TERM

Monday.

38 *Winona Daily Republican*, Wednesday, October 22, 1873, at 3. Newspaper accounts of the Page trial will be posted at a later date on the MLHP.
The District Court of the Third Judicial District, Wabasha county, opened on Monday, November 10th, at 2 P. M., the Hon. John Van Dyke presiding. The following list of Grand Jurors was then called:

.... [names omitted] ....

Eighteen being found present the Court proceeded with its charge to them, occupying half an hour in a very clear and able charge. H. N. Smith was then sworn as an officer to have charge of said Jury during their sitting. The list of the Petit Jurors was then called as follows:

.... [names omitted] ....

Seventeen of whom were present. The case of Fish Bros. vs. Black was then continued by consent.

Case No. 18, Lamb vs. Lamb, was referred to Mr. Jacobs of Lake City. The balance of the day was spent in an informal call of the Calendar. On Motion Mr. Chas. Allen in case of Dana vs. Chas. Allen, No. 12, filed a supplemental answer in said case.

Case No. 13, Quian vs. Bennett referred to W. J. Hahn, of Lake City.

Case No’s. 14 and 15 were continued by consent. No. 18 continued. Then followed the second call of the Calendar. There being no case ready for trial, Court, after a few more motions, adjourned until Tuesday morning at 9 A.M.

Among the attorneys from abroad in attendance on Court on Monday, we noticed the following gentlemen: Messrs. Office, of St. Paul, Minn.; Stocker, of the firm of Brown & Stocker, of Lake City, W. J. Hahn and W. W. Scott, compromising the firm of Scott & Hahn, Lake City, John A. Murdoch, of Ottawa, Kansas, Frank Wilson, of the firm of Kinney & Wilson, Chas. Allen, of Minneapolis, and Hon Thos. Wilson, of Winona.³⁹

³⁹ For their obituaries, see “John N. Murdoch (1831-1898)” (MLHP, 2012), and “Wesley Kinney (1837-1926)” (MLHP, 2012).
Mr. R. E. Arnold, of St. Paul, and Geo. Berry, of Oakwood, are acting as assistants for Sheriff Box, in the Court room during this term.

Tuesday, Morning Session.

Court called at 9 A. M., and after a few motions, case No. 6, Phebe F. Hunt vs. Eddy, Seymour and Hall settled.

Case No. 8, Bengston vs. Powers, was referred to Stewart for trial.

Case of Phebe F. Hunt vs. Wm. Box, was then called on the peremptory call of the Calendar, and was rested and passed.

The case of Luther Dana vs. Chas. Allen was then called and the argument of the motion to file a supplemental answer continued from yesterday morning, Judge Wilson for Plaintiff, Allen and Campbell for Defendant. The case was then continued on motion for the Defendant.

The case of Emma Stahman, et al, vs. Christian Theilman was then called and a motion to make Wm. Stahman a co-Defendant was made by the Defendants and granted. S. L. Campbell & Son for Plaintiffs and Hon Thos. Wilson, John N. Murphy and T. S. Van Dyke for Defendants, Case held till 2 P. M. 40

Case of Carl Selitz vs. Henry Beyer was then moved, T. S. Van Dyke for Plaintiff, S. L. Campbell & Son for Defendant. Motion for judgment of returns by Plaintiff. Time granted to Defendant to decide whether he will oppose motion. Court then adjourned till half past two P. M.

Afternoon Session.

The criminal case of the State of Minnesota vs. Wm. Wilson was called up and a motion was made by Mr. Murdoch for continuance of the same for want of witnesses and was granted by the Court.

Case of Emma Stahman et al, vs. Christian Theilman, mentioned this morning was then called and a jury impanelled in the

40 For his bar memorial, see “Samuel Lewis Campbell (1824-1910)” (MLHP, 2012).
same, occupying the balance of the afternoon until 5 P. M., when a motion was made by Mr. Hahn and also by Hon. Wm. Wilson, of Rochester. Court then adjourned until half past nine A. M., Wednesday.

Besides the gentlemen from abroad in attendance on Court Monday, are Judge Putnam, of Minneiska, and Hon. Wm. Wilson, of Rochester.

Wednesday—Morning Session.

In the case of Dana vs. Allen, an attachment for contempt of Court was issued as the Defendant.

Case of A. B. Hanscom vs. M. Herrick and Sarah Herrick, his wife, John H. Brown for Plaintiff, and Brown & Stocker for Defendant, was then moved, and a motion for trial by Court or Referee was then argued by the different counsel, for and against. Motion granted. Exception taken.

John Burrick was discharged from custody, no bill being found against him.

Case of Emma Stahman, et al, vs. Chris Theilman continued until half past twelve. Court then adjourned till half past two P. M.

John H. Brown Esq., a prominent attorney from Willmar, Minn., made his appearance in our Court this morning. 41

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5. Obituary

John Van Dyke died on December 24, 1878, in Wabasha, at age seventy-four. The Winona Daily Republican carried the story:

41 The Wabasha Herald, Thursday, November 13, 1873, at 4.

John Harrison Brown was a judge on the Twelfth Judicial District from 1875 to his death in 1890. See “John Harrison Brown (1824-1890)” (MLHP, 2008).
Judge Van Dyke, of Wabasha, died on Tuesday morning, the 24th inst. The Herald says it has been noticed that ever since the death of his wife, some three years ago, he had seemed to lose his interest in life and to be gradually failing. Since his return from his Kansas farm last Fall it has been noticed that he was enfeebled to an extraordinary degree, but up to that fatal morning he had been confined but little to his bed, and even some of his nearest relatives refuse to believe that there was any danger of immediate death. He dropped away peacefully and without pain. It seemed more of a simple yielding up of life than of death by disease. He was in the 74th year of his age.\textsuperscript{42}

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6. Memorials

On December 26, 1878, John N. Murdoch, a prominent member of the county bar, delivered the funeral oration. It was reprinted in the \textit{Wabasha Herald} and accompanied by an article from a New Brunswick newspaper:\textsuperscript{43}

\textbf{OBITUARY ADDRESS.}

\begin{flushright}
\textit{Delivered by J. N. Murdoch, Esq., at the Funeral Of Hon. John Van Dyke, at Wabasha, Minn., December 26, 1878.}
\end{flushright}

We “come to bury Caesar, not to praise him.”

I do not favor the custom, “to my mind more honored in the breach than in the observance,” of delivering eulogies over the dead bodies of our friends. In ordinary cases it is better far to commit them to mother earth tenderly, reverentially and with due religious ceremony, but simply and without ostentation; but when as now, we gather around this coffin of an old man who had died full of

\textsuperscript{42} \textit{Winona Daily Republican}, Friday, December 27, 1878, at 2.

\textsuperscript{43} \textit{Wabasha Herald}, Wednesday, January 1, 1879, at 3.
years and honors, it is surely fitting for us to cast at least a glance backward and learn a lesson from the life which has passed away from among us.

John Van Dyke was born in Hunterdon county, New Jersey, April 3, 1805. His father was a farmer immoderate circumstances, and upon the farm he worked faithfully through all the years of youth to early manhood. His early education was gained only in the winter school of his native district, and though eager to acquire knowledge and determined upon professional life, he did not desert his childhood’s home at twenty-one but gave two years of manhood to his father’s service. At twenty-three he entered an academy of a high grade for a few months and then spent a year in teaching, and at the age of twenty-five entered the office of a leading lawyer in New Brunswick, N. J., as a student. Four years of hard study and regular attendance at terms of court fitted him not only for admission to the bar, but to commence the practice of his profession, able to cope with lawyers of unquestioned ability and long experience.

He began his life work late, as we count years, but the simple life and hard labor on the farm had given him physical strength and vigor, and four years of study had so cultivated and enriched his mind that he was ready to step at once into the front ranks of his profession. He commenced practice in New Brunswick and for over thirty years was the leading lawyer of that city and was recognized by all as not only an able lawyer but also a man to be trusted at all times and everywhere. Though he never sought office, his services were almost constantly required by his fellow citizens. Though fully occupied by his large and increasing practice he found or made time during the first ten years of his professional life to fill with honor to himself and to the satisfaction of all, the offices of alderman, recorder and mayor of New Brunswick, holding the latter office more than once. Though no partisan, Mr. Van Dyke was yet a politician in the best sense of that much-abused word, an
eager Whig, he took an active part in the conventions of his party, and in 1846 he reluctantly consented to accept a nomination for representative in Congress and was triumphantly elected, serving out the term honorably and creditably, was re-elected in 1848. At the expiration of his second term he peremptorily declined to be a candidate again and returned to the active practice of his profession.

During his second term the excitement ran high on the slavery question, and it was a dangerous matter to question the divinity of the “peculiar institution” on the floor of the House, but Judge Van Dyke was an earnest anti-slavery man and knew no fear when in the path of duty and so he rose in his place, when in his judgment the time had come for him to speak, and calmly, dispassionately but fearlessly discussed the slavery question, but mindful of the fate of Sumner, he kept on his desk before him a half-drawn sword cane and the chivalry did not see fit to molest him. The little incident is eminently characteristic of the man.

Shortly after resuming practice he was appointed receiver of a broken bank in New Brunswick and in this position developed business qualities of a rare order. The affairs of the bank were in desperate condition but he managed them so prudently and skillfully that every debt was paid in full with interest and a large amount of the stock was saved; so well were the stockholders pleased with his management that they reorganized the bank, replaced the stock and elected Judge Van Dyke its president, a position which he held nine years, during which time he raised the stock form $50,000 to $300,000. In 1860 (sic) he was appointed by the governor of New Jersey one of the judges of the supreme court and accepted the position. An able lawyer at the meridian of life Judge Van Dyke was speedily recognized as an ornament to the bench of his native State. His reported decisions are models of judicial style. During his term the Camden & Amboy railroad, which for many years controlled the State of New Jersey, was
interested in many cases, which came before Judge Van Dyke for
decision, and his perfect independence and impartiality made the
managers of that corporation bitterly hostile to him, and at their
demand he was very much to his credit, retired at the expiration of
his term and again returned to the practice of his profession, but
the increasing ill-health of several members of his family caused
him to seek a new home, and in the spring of 1868 he removed to
Wabasha with his family.

As a lawyer his active life closed when he left his native State,
though he was consulted and accepted retainers and rendered
valuable service in several important cases here. He was elected
representative to our State legislature by a large majority in a
Democratic district, though an earnest Republican. He was also
judge of the district court for the third district for nearly a year,
having been appointed by Gov. Austin to fill the vacancy caused by
the death of Judge Waterman.

In the ten years of his life here Judge Van Dyke was regarded as an
able, high-minded gentleman, dignified but eminently social and
ready to devote both time and money in aid of every worthy
enterprise. We learned to prize his friendship and to value his
counsel and advice; but as the great lawyer, the leading
businessman, the far-seeing politician and statesman he was best
known in the State where he was born and the city where his active
life was passd, and though not a few of the friends and associates of
his early life and mature manhood have passed away before him,
yet in his old home many, when the tidings of his death reaches
them, will drop a tear in the memory of a great and good man gone
from earth.

Eminently happy in his domestic relations, home was to him a true
resting place from the cares of active life.

The death of his beloved wife, which occurred nearly four years
since, gave a shock to his system, from which he never fully
recovered. The brightness seemed to be taken from his life and although in comfortable health, till within the past year, he seemed to be only waiting to join her on the other side of the dark river.

He has left to his sons the noble legacy of a pure, honorable and useful life.

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The Judge at His Former Home.

The papers of New Brunswick, New Jersey, the former home of Judge Van Dyke, contain lengthy obituary notices of one who was held there in the highest esteem. We only have space to give the following from the “New Brunswick Fredonian:”

EX-JUDGE JOHN VAN DYKE.

An eminent jurist at the New Jersey Bar, born at Lamington, N. J. April 3, 1805, died at Wabasha, Minn. Dec. 24, 1878.

To many people of our city the name of Van Dyke will strike familiarly on the ear and mingle with the recollections of New Brunswick twenty years ago, at which time the subject of our notice was at the height of his prosperity. None of the incidents of his youth come to our ears now, nor are they of interest to our readers in this short sketch. Our first remembrance of Judge Van Dyke is that of a student presenting himself for admission at the law office of Judge Nevins, and disregarding the Judge, a kindly advice to “go back and work on the farm,” asking but for a trial. It was granted by that one man out of a thousand who was willing to try “the rugged metal of the mine.” In three years, he was a partner, and we next find him crowding on the public gaze in the celebrated trial of Peter Robinson for the murder of Abram Graham, the criminal lawyer. The memory of the case is too fresh in the minds of the people, and our dear friend’s laurels, well worn, are still too green to admit of useless repetition here.
He soon became Mayor of this City, and rose in fame as a jurist by his masterly trial of several important cases, among which was the Goodyear Rubber case.

In 1847 he was elected to Congress by the Whig party, serving two terms, and declining the nomination for a third —while there distinguishing himself by his bitter opposition to slavery.

His crowning success came in 1859 when appointed one of the judges of the Supreme Court. It was then he proved to his friends how easy it was to transform the shepherd’s crook—borne in his hand—to the judicial rod which he swayed with so much credit to himself and justice to all litigants.

When holding this position he removed to Trenton, and from thence, in 1868, urged by the failing health of certain members of his family and a desire on his own part for retirement, he removed to Minnesota. His reputation soon followed him and he was soon called back to public life and served in the Legislature of that State, and was afterwards specially appointed Judge of the Third Judicial District of Minnesota, in place of Judge Waterman, deceased.

Physically he was a noble looking man, of commanding figure, penetrating eye, and of complexion so dark that many of our townsmen will him better a “Blackhawk,” a soubriquet bestowed on him by the Democratic party. Mentally he ranked among the first jurists of his day, and morally he was peer to any in this land.

He died of no well defined disease, but rather of a gradual “break up” of the system. Since the death of Mrs. Van Dyke, three years ago, he has never been entirely well, and a slow dissolution dates from that time, until at last, without a word, look or sign to denote other than pleasure, he passed away.

He leaves five sons—three in Minnesota, one in California, and one at present residing in this city.

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In his speech to the House on March 4, 1850, Van Dyke aimed to rebut Southerners’ charges that the North was committing acts of “aggression”:

My object in rising, sir, is to vindicate the North, so far as I am able, against the gross and unjustifiable charges made against it, with little or no discrimination, by the South. Scarcely a southern gentleman rises to speak upon this subject, but accuses the North, in the bitterest terms of reproach, of oppression, aggression, and outrage upon the rights of the South; and there is scarcely a newspaper published on the southerly side of the line, that does not assert the same thing. If the South is to be believed, the North, as a people and as States, are a set of Goths and Huns—Alarics and Attilas—robbers, cut-throats, and constitution breakers, whose great object is to free the slaves, burn the dwellings, cut the throats of the masters, and dishonor the wives and daughters of the South. If, indeed, the North be guilty of all these sins, both actual and intended, then, to be sure, we are greatly in the wrong, and our brethren of the South do not complain without cause. But, sir, I deny these charges utterly. It is not true that the North has been guilty of any aggressions upon the South. It is the mere creature of the imagination—“the baseless fabric of a vision.” I hold myself ready to prove the position which I take; and I invite your attention, sir, and that of the committee, to those stubborn things, called facts, to sustain me in what I say.

These long festering accusations were inflamed by a speech by John C. Calhoun at a Congress of Southerners in February 1849, suggesting that secession was a realistic possibility. At the time, Calhoun made few converts, but in the

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following months, the legislatures of Florida, Missouri, and South Carolina agreed to cooperate for a common defense. More militants in Mississippi called for a convention, described by the late Robert Remini:

So Mississippi stepped in to undertake the task. A convention held in that state on October 1, 1849, passed a resolution that included a statement avowing devotion to the Union. But it went on to condemn the idea that Congress had the right to prohibit slavery in the territories, abolish slavery in the District of Columbia, or agitate for the emancipation of slaves. The time had arrived, read the resolution, when the South should come together and decide on what action to take. The resolution further stated that a convention of the slaveholding states should be held at Nashville, Tennessee, on the first Monday in June, next, to devise and adopt some method of resistance to northern aggression. Several months later, the Mississippi state legislature added its endorsement for convening the Nashville meeting. The call quickly gained approval from all the southern states, and the most extreme of those who eventually attended the convention planned to initiate secession.

This is the background of Van Dyke’s speech. To read it is to be transported back to a time when slavery was a vibrant institution, defended by some, abhorred by others, a time when the Union lay on the precipice of Disunion.

litany of supposed northern aggressions against slaveholders’ rights, starting with the adoption of the Missouri Compromise line in 1820. To right these wrongs, he demanded that slaveholders be given equal access with Northerners to the Mexican Cession. Far more ominously, he warned that northern aggressions were leading inevitably to the social cataclysm of abolition and to Southerners would be justified in using any method of resistance to avoid that horror. In short, he hinted that Southerners might secede unless the North retreated.”).

45 David M. Potter, supra note 11, at 88-89.
46 Robert V. Remini, supra note 1, at 56.
Mr. Van Dyke rose and said: Mr. Chairman: I have but a single object in view, that of expressing sentiments in regard to the admission of California into the Union, and I am ready to vote for it.

Mr. Chairman: I have but a single object in view, that of expressing sentiments in regard to the admission of California into the Union, and I am ready to vote for it. I do not intend to go into any of the objections that may be urged against it. I am not prepared to answer to any objections that may be urged against it.
Admission of California—Mr. Van Dyke.

Mr. CHIEF JUSTICE.] 31st CONG., 1st Sess.

Mr. CHIEF JUSTICE: I am not precisely certain whether I should class the State from which I come among the southern or among the states of the South. If I were to take my seat in the Senate, I would take it among the states of the South. District of Columbia, which, with that part of the States of New York and Pennsylvania, forms a parallel with the States of the South. District of Columbia, which, with that part of the States of New York and Pennsylvania, forms a parallel with the States of the South. The States of the South have been admitted, and the States of the South have been admitted.
APPENDIX TO THE CONGRESSIONAL GLOBE.

Admission of California—Mr. Van Dyke.

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Ohio, Indiana, and Illinois put together, and nearly large enough to embrace Michigan also—Texas having three-fifths and a half of all the boundless plains, 150,000 square miles, and the other States (exclusive of Missouri, Illinois, Indiana, and Ohio) have past 200,000 square miles in addition to that. This is the true measure of the country as it is now, and it is the true measure of the country as it is likely to be, that is, if it is not divided amongst the States, and if it is not taken for the South. The more we acquire, the more we shall have to divide, and the more we shall have to divide, the more we shall have to divide. Therefore, if we acquire Missouri, we shall have to divide it amongst the States, and if we acquire Illinois, we shall have to divide it amongst the States. But suppose the gentleman from Maryland (Mr. McHenry) be correct in his views—suppose the North did not assert its own free choice, and without force or pressure, agree to obtain this vast country, and to surrender every foot of it to the South, in self-defense, in peace, and enable it to propagate as a State, and toContents of the Globe of the United States, 1850.

Mr. Chairma. I have not overlooked the fact that, in the resolution and in the treaty with Texas, a trap was set, which perhaps caught some northern guile, under the pretense that the portion of territory lying north of the 36th parallel was to be ceded. Yes, sir, such an idea was supposed to be contained in the resolutions, and the South are now looking very seriously and anxiously at us, for so being so silly as to be caught by any such bait. The truth is, that the part lying north of the line will never make inhabitants enough to make a State, and until it becomes a State, it is not to be considered as lying in the resolutions, itself. When that consent will be given, you who are Yankees can probably guess. But in the meantime, the slave constitution and slave laws of Texas never ever for a moment thought of the North, and so will continue, until the South, as well as Texas, agree with the North.

Some time ago, I heard a Senator from Alabama—has said that, Oregon was an allusion to Texas, but certainly not more so than the rest of the wild territory lying north of the 36th parallel. Our title to Oregon was not acquired when we settled the boundary line between England and the United States, but it was determined by the treaty with Great Britain, and by the several acts of Congress. Our title to Oregon was not acquired when we settled the boundary line between England and the United States, but it was determined by the treaty with Great Britain, and by the several acts of Congress. Oregon was, in fact, a part of the territory of the United States, and was never claimed by England, and was never claimed by any other nation.

And here allow me to express my view of the Representative from Pennsylvania. I think the people have no right to control the territory, nor any right to control the people, in any such remote region. The question is, not what the Senate or the House of Representatives, or the South wants in California; but the great question, under proper restrictions, is, what kind of laws does the territory require and need, which the people desire slavery within its limits, and if it be a "blessing to the slave, a blessing to the master," it would be a blessing to the South.

But, Mr. Chairman, I every day hear it asserted, and read on this floor, that the territories in question were acquired by the common treaty and the common consent of the Union, and that, therefore, the people of all the States have an equal right to designate those territories, and to carry with them the principles of government in which they are to be protected in it. This is true in a certain extent; but the people of the States have an equal right to designate those territories, and to carry with them the principles of government in which they are to be protected in the same manner, and in the same manner, as the people of the States have an equal right to be represented in the Congress, and to have their voices heard in the laws, and in the laws, and in the laws, of the United States.
Admission of California—Mr. Van Dyke.

Ho. of Reps.

Mr. VANABLE. Did not the gentlemen, when the Freedmen's Bureau Act was pending, vote against my proposition to refer the subject to the Committee on Territories? Did he not vote for the resolution of the member from Wisconsin [Mr. Durye] to take that bill out from the Committee of the Whole, and refer it to the Committee on Territories, with parliamentary instructions to bring in a bill under the previous question? It was that that I understood, and the Senate restored all the means which parliamentary rules afforded.

Mr. VAN Dyke. Mr. Chairman, I do not distinctly remember the vote in the Senate. I do not remember upon what subject, and I am not surprised that you should not, for I did not vote to continue that child's play long after the usual hour for adjournment.

Mr. Chairman, what of all this? What difference did it make what particular committee had the bill? What does it matter whether we got the bill, or not, after all, the only thing before us on the subject of revenue in Session 1873, was to provide revenue to carry on the war? We felt himself and his section disfranchised, it must have been by the simple fact that he did not perceive that the disfranchised, if any, must attach to those whom he understood as I understood him; and, if any, must attach to those whom I did not understand, and it is not, not to those who vote against it—such as the gentleman and his friends, if they vote against the scorecrow provision to them; but as that was laid on the table, by a majoriety, and as the gentleman from Alabama [Mr. Israel] insists that that provision is dead, and he having pronounced a formal sentence over it, I do not see what there is left for excitement and discussion to feed upon.

But the gentleman from North Carolina [Mr. Vermeil] says we are trying to disfranchise them; that this is a thing never attempted before; that we understand his view, with great vehemence, that he would rather die—I have forgotten how many deaths than submit to disfranchise; and I understood him to say, that he would rather far rather that the little Yealdes in North Carolina should share the same fate, than that they should submit to disfranchise. These are brave words, and they were bravely spoken. The gentleman also told us that he should be the last to hold this House, if he could help it; that every man should "face the music" and yet that gentleman, but the day before, from midnight all through the night, did nothing but stink and dole out questions before the house. He was famous among the fables in calling the yells and says on every transgression question that could be made to avoid a direct vote on the pending question. Why, sir, if in an expiring moment of returning, found the clerk calling the yells and says I required anxiously what the question was; and was informed that the gentleman from North Carolina [Mr. Yealdes]: asked what he to face the music regularly, the gentlemen promptly voting; and this is what he calls "facing the music."
Admission of California—Mr. Van Duyce.

Ho. or Res.

31st Cong., 1st Sess.

APPENDIX TO THE CONGRESSIONAL GLOBE.

Admission of California—Mr. Van Duyce.

Mr. Van Duyce. This irregularly got-up constitution will be entirely free from dilator on that score.

But, Mr. Chairman, I have been led somewhat from the main object of my remarks, which was to repel the charge of aggression made against the free States by the South. I have not done with the subject, but return to it again, as it is one worthy of your attention, the good effect, if any, should fully understand.

Another cause of complaint and charge of aggression is, the alleged interference of the North with the question of slavery in the District of Columbia.Sir, there has never been a doubt—in the North at least—that Congress has full power over the question here, at any time, and in any way, to abolish both slavery and the slave-trade; and it is equally clear in the South that time and again the number of free have been carried in by persons of different nations. This infamous traffic, I say, in its most offensive forms, is, down to the last quarter, permitted to be carried on in certain places between the citizens of our country, and the States of the Union, with perfect regard to the sanctity of the constitution, and the laws of Congress,
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APPENDIX TO THE CONGRESSAL GLOBE.

March 4, 1851.

No. 656.

Mr. Van Dyke, in the Chair.

Mr.住宅... 1st sess.

orators, were offered in the Senate, and indignantly
referred to a committee; but a few days after, resolu-
tions of the Legislature, on the same subject, but of course on
the other side of the question, and which two voices, with
out distinction, was accused of "maliciousness and
deliberate dishonesty;" but these resolutions were
read, and to the second class of legislative agitations, viz., their action on
the subject of runaway slaves. Although the Constitu-
tion of the United States nowhere confer the rights
of the slave or of the master, it does contain the fol-
lowing clause:

"No person held to service or labor in one State, under
the laws thereof being enacted into another, shall, in

which quarter of any law or regulation therein, be distinguished from
the character of such or of such party, of which the master or laborer may
be a part of.

This clause, although it does not give slaves, it has always been understood to
apply directly to them, and was understood to be enough to guard against
them. It will be perceived, however, that it only confers the right of capture on
the master, but does not prevent the mode with which carrying it out is to be
worn. Well, sir, on the 12th of February,
1851, the States being nearly all slave States, and the South having everything
quite as much their own way, the Congress of the nation
passed an act in aid of this constitutional provision, in
which it is made the crime of the person who has
practiced the peculiar mode established for negroes, by
which such runaway slaves were to be claimed and
upon. The same act also provided for the appointment of five hundred
dollars upon any person who shall rescue such slave or
possess information respecting such slave. The Supreme
Court of the United States, in the celebrated case of
the

The Legislature of North Carolina, to which the act aforesaid was
annexed, said that the little State of Delaware had lost $120,000 worth of
slaves in the space of a year. I am bound to sup-
pose that the gentlemen who have good authority for
this marvelous story; but it seems to me that, if it
were true, Delaware would have been much more
affected and less affected; but in any case, why

not. But where, I ask, do these complaints about
runaway slaves come from? The gentleman from
North Carolina (Mr. V. A. Garnett) said that the
enactment of California—Mr. Van Dyke.

full effect on the runaways, and even where many some of those States that run
loser slaves in this way—th. .

ment of the Mexican territory; the law of 1837 has re-
mained unaltered on the statute-book to its present
time, and has been deemed satisfactory, while no
real attempt even has been ever made to alter it.

Mr. Chairman, I fear that I see the cause of all
these complaints and charges sociability somewhere.
Mr. Speaker, the first news that we have heard of a
stray slave, or any negro-born among us, is that of
the gentlemen from Mississippi, [Mr. Bovard] we have made up our minds to have
the right to set up no other law than that of the South;
and we will not be satisfied until we have
such a law in the Union, that we may be able to
get our negroes out. And it is not true, and it is not true the secret, that
our southern friends are determined to have a prov-
ing of the free territory obtained from Mexico
as an additional slave market: and it is not true that
they have been trumping up this long list of
imaginary grievances against us, with a view to
harrass us over our dull and stupid brains, until, to escape the serious and in-
convenience, we will simply yield the one point and
make them their market? But, gentlemen of the
South, if you have made up your minds to dictate to
the Nation on this point, you must understand: for
I repeat it to you, that you are asking too much.
But, says the gentleman from Mississippi, [Mr. Bovard] we have made up our minds to have
our rights in slavery. We will get it by our
voices here, or if we cannot, we will take it by
force of arms and passion. Well, sir, it might be interesting to a study of a martial spirit to
see all the armies that Mississippi can furnish, with all her " abolitionists" as their
head, sailing around Cape Horn, or taking the overland route,
offering themselves as an army, if a State of
Maryland be interested in recovering their slaves by force. Well, sir, the
people of the North, as the South, sometimes misbehave themselves. We
have sometimes held the people of the North, in the last ten years, in a
manner that has caused many in the North, as the
attempts to break up such a coalition, and to put such a

itself. I will not pursue this pre-

ous States is destined to change its quarter of any law or regulation therein, be distinguished from
the character of such or of such party, of which the master or laborer may
be a part of.

in case of complaint on both sides. A few in the North refuse to aid in the
surrender of any negro slave, while some in the
South refuse to surrender northern freemen.
Here at home, as gentlemen tell us they are; and let me
ask again, why this particular grievance has
been thus selected, as the law of the Mexican
territory; the law of 1837 has re-
mained unaltered on the statute-book to its present
time, and has been deemed satisfactory, while no
real attempt even has been ever made to alter it.

Another cause of complaint is, and it is made a
ground of resistance to the admission of California;
freedom, the Northern territory; and she has been
w bere, and is not the law she is claimed by every one of
us masters, in this case. We are all

the right and power of a State legislature to carry out its
laws, and so to make the law unconstitutional, and utterly void.
It took the broad ground, and if it is a constitutional
provision, it was a matter for the General Government to act; but, in the
meanwhile, the States were to be left in peace, and they were
not to be disturbed.

Again, the Southern Addressers charge our north-
eren with abstaining from them in restraining their fugitive slaves. That charge, like most of the others, is made without any one being able to
furnish a single example to prove it. I know of
no such thing, and have never heard of an in-
stance; but I do know of an instance, within the last six or eight years, in the State of New York, where the
thing was done. The case was tried by a jury, which found in favor of
the negroes. The case was tried by a jury, which found in favor of
Maryland without interruption. So much, then, for
appearances by the northern courts.

But it is said, again, that the South is obstructed
in recovering their slaves by force. Well, sir, the
people of the North, as the South, sometimes misbehave themselves. We
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manner that has caused many in the North, as the
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APPENDIX TO THE CONGRESSIONAL GLOBE.

31st CONG., 1st Sess.

The Slave Question—Mr. Morse.

of Rep.

In Committee of the Whole on the state of the Union, on the President's Message transmitting the Compendium of California.

Mr. MORSE said: Mr. Chair—The importance of the question of the future of slavery, and, therefore, the only apology I shall offer for asking a share of the attention of the House, is the necessity that the Union shall be preserved, the perpetuation of our institutions, and the moral and physical security of all the people, of the Southern states, and of the Union itself.

The whole history of this California question shows how closely it is connected with, or even one with, the question of the future of slavery, and it is only from this view or fiction that we can draw any parallel. Where, in the mythological story of Minerva, sprouting from the head of Jove himself, do we find anything to illustrate her present position?—where was the State as large as the old "American," with nine hundred miles of sea-coast, her two Senators, and two Representatives to this branch, with their constitution in their hands, stepping from the brain of a brigadier-general of the United States army, into this Union of confederated sovereigns?

But you did provide her with the decent will of a short territorial government at the last session of Congress, March 1, 1859. The people of California did not wish to be excluded from the Union, and they have prevented her from being admitted under the operation of your "prejudicial" question, "but when it has been so far and so extensively announced upon this floor, and by the resolutions of a large number of State Legislatures, as the settled and as fixed policy that henceforth and forever, from this time onward, the slave territory shall be incorporated into this Union, the question assumes an air of grave importance, and it becomes every statesman to look narrowly and carefully into it, and to see whether, in fact, if that be the settled policy, as avowed by some gentlemen, boldly, meanly, and hopelessly entrenched, and by nearly every Representative from the States North of Missouri and Illinois, the line, it does not become the duty of the people of that section to see how far their interests are endangered and their principles compromised, under this modern recklessness and majoriprivilege interpretation of the Constitution. I am not of that class of men who are desirous to put off until to-morrow the business of today. I propose, then, as a brief to examine the question of the issue of the slavery principle, as it now stands, with the views of the present being North and South, and whether the South are guilty of aggression upon the rights of the North, or whether the North has or has not entrenched upon the South—to look upon the remedy proposed by the Southern States to examine coolly and dispassionately the relative advantages of the Union. I am not to be seduced from the even tenor of my way by the stern songs of homesickness to the Union, nor to be led by the yelpings and howlings of those whochoose to call me agitator or disuniter.

When we first framed this Constitution, they declared, that, "as the people of the United States, in order to secure a more perfect Union, to establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain," &c., &c.

But all and all of that policy have not only the right, but their duty to those who come after them requires that they should know whether this compact is faithfully kept; and a man cannot speak is a fool, who will not speak is a bigot, and who is afraid to speak is a slave.

It shall come, however, to that portion of my argument (if any time allows) last.

Before I begin, I desire to remember this question from all extraneous matter—to set some gentlemen right upon the subject, by deepening once for all, that slavery is an evil, and that nobody has any right to remedy it as such. This most mischiefful error has grown up from the sentiments of Mr. Jefferson, and many other southern statesmen, hastily and imprudently expressed as an early period of our country, also from the obsessions stated to slavery by some of the southern States. Whatever might have been the sentiment of the people of these states, it has undergone a great change. We have seen our country first under this system—a tropical climate and soil (where the white man cannot cultivate the earth, without incurring more or less risk of health or life) considered in a territorial and civil point of view, the people of the South are fully their equals, and being completely satisfied with all our institutions, we do not desire, or intend, any change in any one of them.

I say, Mr. Chair—Is it not true that the people of one-half of these States have discussed seriously, and in every respect as to their interest, it seems to me, for the benefit of the people. The people of these States have been brought up under this system—a tropical climate and soil, where the white man cannot cultivate the earth, without incurring more or less risk of health or life. We have seen grow up with this institution a noble spirit of self-respect, and we have always advocated, and (without meaning to be at all offensive) will continue to advocate, the advantage of this world, and of this country, an influence fully equal to our numerical strength.

Without intending to spare, I would say, in the least degree, our brethren of any portion of this great nation, I do not believe there is any that in the peaceful walks of civil life—where the stirring events of war—in everything that can adorn the character, as it were, and to which the people of the South are fully their equals, and being completely satisfied with all our institutions, we do not desire, or intend, any change in any one of them.

I agree with my friend from Georgia, Mr. Tooke, that up to 1850 there was no great cause of complaint. The people of those States lived like a band of brothers, and the streets and highways free, and the laws secure. It is so now! I will not weaken the argument of the Senator from South Carolina, Mr. Claiborne, in regard to the separation of the church, North and South. When, I ask, was it ever before, that Christianity cannot know by the same altar, and worship together that God, who commands us to love our neighbor as ourselves—when before you had before you the resolutions of our State having been sent back in conventions, because they contained insulting and offensive matter. Our children are educated as formerly, in the northern colleges—traveling has greatly diminished—its influence will not, it is true, the yelpings and howlings of those who choose to call me agitator or disuniter.

When, Mr. Chair, in the history of the last thirty years, has it ever been remarked, that the Colossus of California and Whatever has been raised, has it not been from the same quarter, and when we have heard the voice of the slave said, that his master was not his master, and that he is not his master. It is said, I am told to me by the yelpings and howlings of those who choose to call me agitator or disuniter.

When we first framed this Constitution, they declared, that, "as the people of the United States, in order to secure a more perfect Union, to establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain," &c., &c.

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8. AFTERWORD

The heart of this study of John Van Dyke is Governor Austin’s decision to appoint him to the bench. I have portrayed Austin as consciously weighing competing interests, public and private, while reaching his decision. But he may not have acted this way at all. The vacancy on the Third Judicial District came in the hectic closing days of the Fifteenth Legislature. Bombarded with demands from prominent lawyers and groups in each of the counties, Austin might have reacted with exasperation — a “plague on all three of your houses” — and impulsively offered the post to Van Dyke to quell the distraction. I think, however, that my vision of Austin is more accurate. He was a successful politician, twice elected governor, and a former trial judge. From these experiences, particularly dealing with the legislature, he must have learned the benefits of cold calculation and calm deliberation, not rashness. Nevertheless, we do not know for sure, and that is the larger and more important point: that we must recognize our ignorance of the characters in our narratives, and the incompleteness and uncertainties of the historical record.

Because of these uncertainties, writers fall back on qualifying phrases such as “almost certainly,” “likely,” “perhaps” or probably,” among others, to explain a motive, describe an action, or make some other point. But these words—what I think of as the “language of tentativeness”—do not come easily to lawyers or retired lawyers who attempt to write on the myriad subjects of legal history. From their first days in law school, lawyers are taught to represent their clients zealously, to argue, to persuade. The advocate is definite, bold and opinionated—

48 Cf. Andrew R. L. Cayton’s description of certain limitations of his fellow historians:

In general, we think about the past more than we empathize with dead people. We argue about economies, politics, and ideologies; we rarely consider irrationality, impulse, or ignorance. Seeking to fit everything into neat interpretative categories, we construct narratives that bring order to the whole in ways that would make no sense to the people whose lives we arrange into patterns,

Why? Because the facts and the law are clear—and there will be all sorts of dire consequences if the opposition’s version of those very facts and the law is believed. This is not how professionally trained historians think or write. There is, in other words, a difference between the brief writer who seeks and finds clarity and certainty, and the legal historian who sees ambiguity in a fragmentary trail of evidence. My personal view is that, aside from the occasional biography, practicing lawyers and retired lawyers cannot write legal history that meets professional, scholarly standards, that is anything more than mildly and momentarily interesting.

This article is one of a series about district court judges who served in the late nineteenth and early twentieth centuries in Minnesota that will be posted on the Minnesota Legal History Project. The sources of these studies are public records—newspapers, government publications, compendia of biographical profiles, county and regional histories and the like. Few judges in this period donated their private papers to the Historical Society. They usually did not issue written orders. As a result we know almost nothing about how they viewed “the law,” how they reasoned, how they conducted themselves with clients, witnesses, other lawyers, let alone in private. One of the many pleasures of fiction is seeing the author flesh out a character by describing his or her physiognomy, tone of voice, sense of humor, habits and quirks, but we lack this information about these judges. As a consequence, in these studies, they are faceless, colorless, remote, and even absent at times.

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Posted MLHP: June 17, 2013.