

**“BENCH AND BAR OF WABASHA COUNTY”
(1884)**

AND

**“EARLY COURTS AND LAWYERS OF WABASHA COUNTY”
(1920)**

FOREWORD

BY

**DOUGLAS A. HEDIN
Editor, MLHP**

The first of the following two articles on the legal history of Wabasha County was published in 1884 as a chapter in *History of Wabasha County*. Entitled “Bench and Bar,” it reviews early terms of the district courts, recounts amusing anecdotes about Alexis Bailly and J. A. Criswell, the county’s first and second justices of the peace, describes the “Hicks, Sacks and Farrell” murder trial—“one of the most exciting trials ever held in the county”—and concludes with an account of the county-seat battle between Lake City and Wabasha.

The second article is taken almost entirely from earlier county histories, including the article from the 1884 *History of Wabasha County* reprinted below. Indeed, it reprints entire passages from that book without attribution. Entitled “Early Courts and Lawyers,” it appeared in *History of Wabasha County, Minnesota*, published in 1920, and edited by Franklyn Curtiss-Wedge. □

“BENCH AND BAR OF WABASHA COUNTY” *

IN

HISTORY

OF

WABASHA COUNTY,

TOGETHER WITH

BIOGRAPHICAL MATTER, STATISTICS, ETC.

GATHERED FROM MATTER FURNISHED BY INTERVIEWS WITH OLD SETTLERS,
COUNTY, TOWNSHIP AND OTHER RECORDS, AND EXTRACTS FROM
FILES OF PAPERS, PAMPHLETS, AND SUCH OTHER
SOURCES AS HAVE BEEN
AVAILABLE.

ALSO A

HISTORY OF WINONA COUNTY.

CHICAGO;
H. H. HILL & COMPANY, PUBLISHERS.
1884.

* MLHP editor: This chapter appeared on pages 692 to 699 of this history of Wabasha County. It has been reformatted. Page breaks have been added. The author's spelling and punctuation have not been changed.

CHAPTER LX.

BENCH AND BAR.

Minnesota was organized as a territory in March, 1849. By the organic act the judicial power of the territory was vested in a supreme court, district courts, probate courts and courts of justice of the peace.

The territory was divided into three judicial districts, and one of the supreme judges assigned to each district, and the three acting together formed the supreme court of the state.

The judges appointed by the president, and comprising the supreme court in 1856 were William H. Welch, chief justice; Moses Sherburne and A. J. Chatfield, associate justices.

Wabasha county formed part of the first judicial district, and the Hon. William H. Welch, residing at Red Wing, was assigned to the first district, and held the position of district judge for said district until superseded by the election of the Hon. Thomas Wilson as district judge under the state constitution in 1858.

Although Wabasha county is one of the oldest counties in the state, it was not organized for judicial purposes until the winter of 1856; prior to that time it was attached first to Washington as then to Goodhue counties for judicial purposes.

In the winter of 1854 the village of Wabasha was designated by legislative enactment, as the county seat of Wabasha county. Alexis Bailly was chosen the first justice of the peace of the county, and an effort made to establish law and order.

It is related that Augustine Rocque, an old half-breed Indian trader, then residing at Wabasha, learning of the appointment of Alex Bailly as justice of the peace, called his numerous progeny around him and admonished them that it now stood them in hand to be on their good behavior, "for," said he, "the law has come and Alexis Bailly is the law."

The first term of the district court for the county was held in what was

known as H. S. Allen & Co's warehouse, in the spring of 1856, Hon. William H. Welch presiding; S. L. Campbell, clerk; Blois S. Hurd, sheriff; and Thomas Wilson, of Winona, district attorney. No business of importance was transacted. The bar of [694] the county was John McKee, J. W. Tyson and S. L. Campbell. No grand or petit jurors were in attendance, and after hearing a few motions and granting a few naturalization papers, court adjourned. At the next term of the district court there was a full attendance of jurors. Seventeen indictments were found, all of which were dismissed for irregularity, much to the disgust of the then district attorney, Samuel Cole, and J. W. Tyson, acting as county attorney.

Alexis Bailly applied for admission to the bar as a qualified attorney, but failed to pass an examination. He was subsequently admitted at St. Paul. Being asked by one of the attorneys of the county how he managed to pass an examination, he replied that he had a bottle of champagne under each arm and two in his pockets, and nary question asked by the committee.

J. A. Criswell succeeded Alexis Bailly in the administration of law, and was the principal judicial officer of the county, until it was organized for judicial purposes. Although his education was limited, he was an excellent judge of the law, having held the office of justice of the peace in Michigan and Minnesota for over twenty years. Seldom was one of his decisions reversed. He was a man of iron will and strong physical ability, which well fitted him for a frontier justice of the peace. The following incident will illustrate his manner of administering justice. At one time one of the leading physicians was before him, charged with an assault and battery upon one John Murray. During the trial the contestants engaged in a fisticuff, in which the learned justice immediately took a hand, sending each of the combatants to his respective corner. Saying as he did so, "I fine you twenty dollars each for fighting in my court, and you will pay it before you leave the room, or I will lick hell out of you." The doctor soon produced the twenty dollars, but Murray could only find ten dollars. Criswell very generously remitted the balance, saying, "The fine goes to the poor, and I would like to see any one poorer than I am," as he chinked the money into his pocket.

The first attorneys to settle in the county and open offices were Frank Clark and John McKee, men whose characters were diametrically the opposite of each other. John McKee was open, frank, and generous to a fault; the other

was shrewd, cunning and dishonest. He was arrested in the winter of 1855 for stealing and mutilating the county records, but succeeded in escaping from the officer who had him in charge, and fled the state. He subsequently [694] abandoned the profession and opened up a doctor shop in Chicago as a specialist of bad repute.

In 1858, Minnesota, having adopted a constitution, was admitted as a state, and the Hon. Thomas Wilson of Winona, was elected district judge, and held the position until he was appointed chief justice of the supreme court of the state in 1864.

The first term of the district court for Wabasha county, under the state organization, was held in what was then known as Hurd's Hall, in Wabasha, in the fall of 1858, Hon Thos. Wilson, presiding; S. A. Kemp, clerk, John W. Tyson, district attorney, R. M. Piner, sheriff; Wm. J. Jacobs, foreman of the grand jury. There was quite a strong bar present: John N. Murdoch, John McKee, John W. Tyson and S. L. Campbell, resident attorneys of the county, with quite a number of foreign attorneys in attendance. Among most noted of these were Hon. William Windom (late United States senator) and Gen. Berry, of Winona, J. W. Brisbin, of St. Paul. Quite a number of civil causes were tried,—none of note, however. Seventeen indictments were found by the grand jury, all of which were quashed on motion for informalities in the drawing of the indictments, much to the chagrin and disgust of the county attorney, J. W. Tyson. Judge Wilson, on being elected to the supreme bench, was succeeded by the Hon. Lloyd Barber, of Rochester, who held the position for one term (being succeeded by Hon. O. Waterman in the fall of 1872), and died February 18, 1873. He held two terms of court in Wabasha county, and presided at trial of Hicks, Stacks and Farrell for the murder of one Elliott. This was one of the most exciting trials ever held in the county, and lasted for and during thirty-two days. W. W. Scott, of Lake City, then county attorney, assisted by the Hon. Thomas Wilson, of Winona, prosecuted these cases, and the Hon. S. L. Campbell, of Wabasha, conducted the defenses, assisted in the case of Stacks by Gov. Gorman, of St. Paul, on the trial of Hicks by L. S. Flint, Esq., of St. Paul, and on the trial of Farrell by the John Stewart, of Wabasha. Strenuous efforts were made by the prosecution to obtain a verdict with the penalty of death attached, while the defense put forth their utmost endeavors to save the parties from hanging. The result of these trials was the finding of Stacks and Hicks guilty of murder in the first degree

without the death penalty being attached, while in the case of Farrell it was guilty with the death penalty attached. The former two were duly sentenced [695] to the state's prison for life, and sentence of "death" was passed on the latter, but by the efforts of his counsel and others, his sentence was afterward commuted to imprisonment for life by Gov. Austin. The following is a brief summary of the facts attending the murder as appeared upon the trial. On the day of the murder one William Fitzgerald had drawn, as back pay and bounty money for services as volunteer soldier in the late rebellion, about seven hundred dollars. This he, during the day, had unguardedly exhibited in the saloons, especially to Patrick Stacks, who was a boon companion and was drinking with him. Stacks conceived the idea and laid his plans to rob Fitzgerald that night, and persuaded Hicks and Farrell join him in his nefarious enterprise. Their plan was to visit the use in which Fitzgerald boarded, and which was occupied by one Nicholas Wagner, being situated directly opposite the cemetery between Wabasha and Read's Landing. Stacks was to spy out the location and situation, Hicks was to enter Fitzgerald's bedroom after he had retired and abstract the money, while Farrell was to stand on guard, and if need be to play the bully and bruiser. One Edward Elliott, a thin, spare man, in feeble health, boarded at the same house with Fitzgerald. Between one and two o'clock that night, he had occasion to step outdoors and was seized by Stacks, who put a pistol his head, caught him by the throat and threw him on the ground, when one of the three jumped upon him. Another called out, it is not our man, do not hurt him. Another said, dead men tell no tales. Supposing Elliott to be dead, they carried him across the road and threw him into the cemetery. Reviving, he crawled on his hands and knees to a house about a quarter of a mile distant, and was able to arouse the inmates, and was by them taken in and cared for. He survived his injuries about three days, giving the facts, as to what took place at the time of the assault, in his dying declarations, although he was unable to recognize any one of his assailants. The inhabitants of Wabasha and Read's Landing were highly incensed at the crime, and strong efforts were made, and large rewards offered, by the county for the arrest of the murderers. Geo. Young, then marshall of Read's Landing, was successful in striking the trail; and, by ingratiating himself into Farrell's good opinion, whom he found in jail in La Crosse, Wisconsin, and assisting him to regain his liberty, was able to get a statement of the facts in the matter from him, and to Young is due the credit of bringing all three of the murderers to justice. [696]

Patrick Stacks was one of the most noted desperadoes of the upper Mississippi valley. On his way from Wabasha to the state's prison, in charge of the sheriff and deputies, and handcuffed to his mate, besides being heavily ironed, they jumped from the deck of a steamboat, while it was in motion, into the Mississippi river, and succeeded in swimming to an island, on which they were several days afterward recaptured in a half-famished condition, being unable to separate themselves or remove their irons without tools, or escape to the mainland by swimming, until they were removed. He afterward made several attempts to escape from the state's prison, in one of which he was successful, being again retaken after reaching the mountains in Nebraska, through the betrayal of his identity by an associate for the reward offered for him. Again he was incarcerated in the prison, and soon afterward put an end to his miserable existence by poison mysteriously procured. Before he died, but while on his deathbed, he made a declaration in which he stated that Farrell did all he could to save Elliott from harm. Influenced by Stack's confession and by the good record of Farrell while in state's prison, through the exertions of S. L. Campbell, of Wabasha, and others, Gov. Hubbard was induced to extend to him pardon after eleven years' imprisonment. Since his release he has conducted himself in an upright manner and is well liked by his employers. Hicks still remains in prison. Nothing shows the fallibility of juries and human tribunals more than the result of these trials. During their progress, and from the time of the arrest until final judgment it was the almost universal opinion that Farrell was the most guilty of the three. At the present time it is unanimously conceded that Farrell not only was not guilty of the murder, but that he did all he could to prevent it.

The Hon. John VanDyke, of Wabasha, was appointed district judge to fill the vacancy occasioned by the death of the Hon. C. N. Waterman, and held the position until the next general election, when the Hon. William Mitchell was unanimously chosen by the people to fill the position and held the same until 1881, when he was appointed to the supreme bench of the State of Minnesota, and the Hon. C. N. Start, of Rochester, was appointed in his place, and now performs the duties of the office to the entire satisfaction of the bar and people, having been unanimously elected in November, 1881, for a full term.

Wabasha and the village of Reads are both situated near the [697] the mouth of the Chippewa river, where its waters help to swell the tide of the

“Father of Waters.” Large quantities of lumber are annually floated in small rafts down the Chippewa river and along the banks of the Mississippi, near the mouth of the Chippewa are coupled or joined into larger rafts for floating down the Mississippi to St. Louis and other points. Consequently a large number of “floating population” congregated at these points in former years seeking employment in transporting lumber, as heretofore designated. Very many of this class of men were persons of bad repute—thieves, gamblers and drunkards; hence there has been a vast amount of criminal business in the county, and only a few years ago Wabasha had the unenviable reputation of having had more murders committed within its borders than any other county in the state ; but of late years the lumber has been towed by tugs or steamboats and required but few raftsmen, that class having greatly diminished, and in fact have almost entirely disappeared, and with them the criminal calendar.

Another source of litigation in former years was caused by the fact that nearly the entire Sioux half-breed reservation is located within the county and located with Sioux half-breed scrip, much of which belonged to minors. Titles to land could in such cases only be obtained through the uncertainties of a probate court, the practice in which was formerly quite unsettled; but while there has been frequent and persistent attempts to disturb the titles to such lands in the county, courts and juries have almost invariably ignored technicalities and sustained the titles.

For a number of years quite a strife existed between Lake City and Wabasha for the county seat of Wabasha county. In the winter of 1860 an act was passed to remove the county seat from Wabasha to Lake City, provided such removal should be sustained by a vote of the people. A vote was taken and the returns showed a majority against such removal. Lake City not being satisfied with the returns commenced proceedings to test the legality of the vote in the courts. Hon. Thomas Wilson, then district judge, declared the law under which it was taken to be unconstitutional, and this ended the matter for that time.

Lake City still being dissatisfied, a bill was introduced and passed the legislature in 1868, again submitting the same question to a vote of the people. This time the blood of both places was up (as one may say) and they used their utmost endeavors to win. [698]

Every town in the county was thoroughly canvassed pro and con, and rivalry was at white heat. The returns again showed a majority in favor of Wabasha. Lake City again appealed to the courts, and after a protracted investigation in the district court, before the Hon. Lloyd Barbour, he rendered a decision in favor of Lake City. Wabasha appealed to the supreme court and the district court was reversed wholly on technical grounds. One remarkable feature of this investigation was, that while the census showed that Lake City and Wabasha each had a population of about two thousand people, the returns showed that Lake City had cast two thousand and thirteen votes; the City of Wabasha, four thousand and fifty-two votes. Judge Barbour, at the next term of the district court for this county, instructed the grand jury that the statute made it their duty to inquire into all irregularities and violations in and of the election laws, and if there was fraudulent voting it was their duty to indict all parties guilty thereof. For, said he, "On the purity of the ballot-box rests the foundation of our republic." The grand jury failed to bring indictments, and on his admonishing them that they must have failed in their duty, was coolly informed by the foreman that Wabasha county could not afford to send half of her best citizens to the penitentiary.

S. L. Campbell was appointed in January, 1856, the first clerk of the district court of Wabasha county, and held the office until the admission of the state into the Union. In October, 1857, S. A. Kemp was elected clerk under the new organization, and held the office till 1861. N. F. Webb was his successor, and held the office for one term. Charles J. Stauff was elected in 1869, and is the present efficient clerk, and likely to hold the position so long as he may desire to do so, as he has been twice re-elected by the almost unanimous vote of the people, and discharges his duties to the entire satisfaction of bench and bar.

JUDGES OF PROBATE.

H. P. Wilson was elected probate judge in 1856; his successor was George F. Childs, elected in 1857, and held the office one year, when B. C. Baldwin, of Lake City, was elected and held the office for two years. A. Z. Putnam was his successor, elected in the fall of 1859, and held the office for four years. G. C. Dawley held the office in 1864-5. E. Lathrop was elected in 1866. M. A. Fuller was his successor, and held the office for four years. A. Z. Putnam was again elected as his successor, and held the office

one term. J. F. [699] Pope was elected in 1874, and held for two terms ; he was succeeded by F. J. Collier, of Wabasha, who held the office for one term and was succeeded by A. Z. Putnam, who was for the fourth time elected to the office in 1879. F. J. Collier was again elected in the now the present incumbent.

DISTRICT AND COUNTY ATTORNEYS.

The Hon. Thomas Wilson was district attorney in 1856, succeeded by Thomas Cole, of Winona county, who held the office until the organization of the state. In the fall of 1857 John W. Tyson was elected county attorney, and was succeeded by S. L. Campbell, who held the office one term and resigned; he was succeeded by John B. Davis, who held the office for two years and was again elected in 1865. J. D. Jacquith was elected in 1863, holding the office till 1865. W. W. Scott was elected county attorney in the fall of 1866, and held the position for one term. John B. Davis was again elected in 1870 for one term, and was succeeded by J. H. Hahn ; elected in the fall of 1872, holding the office three terms. George H. Matchin was elected in 1878, C. H. Benedict in 1880, and John McGovern in 1882, and is the present incumbent.

SHERIFFS.

At the first election held in Wabasha county, at the residence of Augustine Rocque, in what is now the city of Wabasha, on the 11th day of October, 1853, Levi Murphy was elected sheriff. He having failed to qualify, the board of county commissioners, on the 13th of March, 1854, appointed Dr. F. H. Milligan sheriff of the county, and he gave bonds and entered upon the duties of his office. In the fall of that year Amos Wheeler was elected sheriff of the county; he was succeeded in 1856 by Blois S. Hurd, who resigned his office and R. M. Piner was appointed to fill the vacancy, and was elected at the next general election and held the office till January, 1860. H. W. Butts was his successor, holding the office for one term. Wm. B. Lutz was sheriff in 1862-3; his successor was H. H. Slayton, who held the office for two terms. S. H. Smith succeeded him and held the office two terms. William Box was elected in the fall of 1867, his successor was L. M. Gregg, who held the office for two terms, and was succeeded by the present incumbent, Henry Burkhardt, who was elected in 1881 and re-elected in 1883. □

“EARLY COURTS AND LAWYERS OF WABASHA COUNTY” *

IN

**HISTORY OF
WABASHA COUNTY**

MINNESOTA

COMPILED BY

**FRANKLYN CURTISS-WEDGE
AND OTHERS**

ILLUSTRATED

WINONA, MINN.

H. C. COOPER, JR., & CO.

1920

* MLHP ed.: this chapter appeared first on pages 53-54 of this history of Wabasha County. It has been reformatted. A page break has been added. The author's spelling and punctuation have not been changed.

CHAPTER IX.

EARLY COURTS AND LAWYERS.

Alexander Ramsey, first territorial governor of Minnesota, arrived in St. Paul, May 27, 1849. June 1, of the same year, by proclamation, he declared the territory fully organized. June 11, he issued another proclamation, dividing the territory into three temporary judicial districts.

The first supreme court of the territory, appointed by the president, consisted of Aaron Goodrich, chief justice; and David Cooper and Bradley M. Meeker, associate justices. Each of these supreme court judges was to sit as district judges in one of the three judicial districts into which the territory had been divided.

David Cooper was assigned to the bench of the Third District. This district had rather vague outlines, but in general took in all of the southern part of the state, its southern boundary being the northern boundary of Iowa; its eastern and northern boundary being the Minnesota river; and the Mississippi river from the mouth of the Minnesota to the Iowa state line; and its western boundary being the western boundary of the territory.

Judge Cooper held the first court for the Third District at Mendota, August 27, 1849. Henry H. Sibley, afterward governor, was foreman of the grand jury. Judge Cooper, a gentleman of the old school, then but 28 years of age, delivered a most scholarly and finished charge, which for many years was quoted as an authority on the duties of jurors. He also delivered an address of a more personal nature to the lawyers assembled. No business was transacted by this court. It is said that of the members of the jury, only three could write their names, and that eleven could not understand the English language. The court was held in a large stone warehouse belonging to the fur company.

Before further terms of the court were held, the first territorial legislature convened. On October 27, 1849, the territory was divided into nine counties. Accordingly the judicial districts were arranged to conform to the new county divisions. Under the new arrangement the First District was made up of the counties of Washington, Wabasha and Itasca, these counties then embracing the eastern border of the territory. Judge Cooper was assigned to this district.

Under this division Judge Cooper held this second court at Stillwater in February, 1850. At this court the first murder trial in the territory was held, a thirteen year old boy being sentenced to ninety days in the guardhouse at Ft. Snelling for shooting a companion, the charge being manslaughter.

Aaron Goodrich was succeeded as chief justice by Jerome Fuller, who served from November 13, 1851, to December 16, 1852. Henry Z. Hayner, who served as chief justice from December 16, 1852, to April 7, 1853, never presided at a term of the supreme court.

April 7, 1853, William H. Welch was appointed chief justice, and Moses G. Sherburne and Andrew G. Chatfield, associate justices. Andrew G. Chatfield was assigned to the district south of the Minnesota and west of the Mississippi.

February 7, 1854, Goodhue (to which Wabasha County was attached for judicial purposes), Fillmore, Washington and Chisago Counties were constituted the First Judicial District, and assigned to Chief Justice W. H. Welch. Judge Welch served as chief justice of the supreme court, and as judge of the district embracing this county until May 24, 1858.

Since the admission of the state, May 11, 1858, Wabasha County has been in the Third Judicial District. The district originally included Houston, Olmstead, Wabasha and Winona counties. Since January 1, 1873, the district included Winona, Wabasha and Olmsted counties.

Thomas Wilson took his seat on the bench May 24, 1858. July 1, 1864, having been appointed to the supreme court, he resigned, and Lloyd Barber was [54] assigned to fill the vacancy. Judge Barber served until January 1, 1872, when he was succeeded by C. N. Waterman. Judge Waterman died February 18, 1873, after a brief interval, in which F. M. Crosby of the First District was on the bench, John Van Dyke was appointed to fill the vacancy. William Mitchell took office January 8, 1874. The session of the legislature of 1881 increased the number of supreme court judges in this state from three to five and Justice Mitchell was appointed to fill one of the judgeships this created. Charles M. Start was accordingly appointed to the bench of the third district. He served from March 14, 1881, to January 7, 1895. O. B. Gould served from January 7, 1895, to January 5, 1897. A. H. Snow took office January 5, 1897.

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