

“COURTS AND OFFICERS OF THE COURTS  
OF WINONA COUNTY”  
(1883)

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FOREWORD

BY

DOUGLAS A. HEDIN  
EDITOR, MLHP

*History of Winona County* was produced in 1883. It is a collective work, written by a “corps of writers,” each assigned to a chapter or topic. In a Preface, the editors appear both proud and defensive about the final product:

In presenting the history of the County of Winona to the public, the editors and publishers have had in view the preservation of certain valuable historical facts and a vast fund of information which without concentrated effort could never have been obtained, but, with the passing away of the old pioneers, the failure of memory, and the loss of public records and private diaries, would soon have been lost. This locality being comparatively new, we flatter ourselves that, with the zeal and industry displayed by our general and local historians, we have succeeded in rescuing from the fading years almost every scrap of history worthy of preservation. Doubtless the work is, in some respects, imperfect; we do not present it as a model literary effort, but in that which goes to make up a valuable book of reference for the present reader and future historian, we assure our patrons that neither money nor time has been spared in the accomplishment of the work. Perhaps some errors will be found. With treacherous memories, personal, political and sectarian prejudices and preferences to contend against, it would be almost a miracle if no mistakes were made. We hope that even these defects, which

may be found to exist, may be made available in so far as they may provoke discussion and call attention to corrections and additions necessary to perfect history.

Today, no one would agree with the editors' self-assessment that they "succeeded in rescuing from the fading years almost every scrap of history worthy of preservation." The subtitle of the book declares what they were good at collecting: "Biographical Matter, Statistics, Etc." They accumulated facts, data, statistics, and more facts in the futile ambition of making a "perfect history." The editors characterize the final product as "valuable book of reference." It is a reference book, as is an almanac.

"Courts and Officers of the Courts" typifies this mode of producing history (which was not unique to Winona County historians). Covering a period from the 1850s to the book's publication, it lists the district court judges and their terms, the clerks of court and their terms, the county attorneys and their terms, the sheriffs and their terms, and concludes with the probate judges and their terms. Practicing lawyers are absent from this chronology.

The following article appeared first as Chapter XII, pages 119 to 127, in *History of Winona County* published in 1883. Though reformatted, it is complete. The author's spelling and punctuation are not changed. Page breaks have been added.

It may be read together with "Bench and Bar," a chapter written and edited by Arthur J. Snow for *The History of Winona County, Minnesota*, compiled by Franklyn Curtiss-Wedge and William Jay Whipple, and published in 1913. ■

“COURTS AND OFFICERS OF THE COURTS”

IN

HISTORY

OF

WINONA 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.

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1883.

## CHAPTER XII.

### COURTS AND OFFICERS OF THE COURTS.

THE territorial courts of record were organized under the act of congress passed March 3, 1849, called the "Organic act," supplemented by acts passed from time to time by the territorial legislature. By the organic act three judges were provided for, which were appointed by the president, "by and with the advice and consent of the senate." One was styled "chief-justice," the other two "associate-justices." These together constituted the supreme court, one term of which was required to be held annually at the seat of government of the territory. It was also provided that the territory should "be divided into three judicial districts," in each of which a district court was required to be held by one of the justices of the supreme court, at such times and places as the territorial legislature might prescribe, and that "the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned them." Each district court, or the judge thereof, was by such act empowered to appoint its own clerk, which clerk was to hold his office at the pleasure of the court. The supreme court and district courts were invested with chancery as well as common law jurisdiction. The extent of this jurisdiction of these courts was substantially the same as like courts under the present constitution of the state; that of the several district courts was general. By [120] act of the territorial legislature the territory now included within the limits of Winona county was made a part of the first judicial district, and so remained until the adoption of the constitution. Previous to February 23, 1854, what is now Winona county was a part of the county of Fillmore. On the day last above named Winona county was formed and organized for judicial and other purposes. Up to this time the writer is not aware that any term of the district court was held in Fillmore county, though all other county business affecting this section, such as filing plats of town sites, recording deeds and the levy of taxes, was done at the county seat of Fillmore county, thou located at Chatfield.

At the date of our county organization Hon. Wm. H. Welch was chief-justice of the territory, to whom was assigned the first judicial

district. He was therefore the first judge of the district court in and for this county. He resided at Red Wing, in the county of Goodhue. He continued to fill that office until January 1, 1858, when the territorial judicial officers were superseded by judges elected under the state constitution adopted at the fall election in 1857. Much of the good order of our judicial affairs in territorial times, and the ease and regularity with which our state courts were organized and went into effect, were due to this judge. While he was not a man of great learning or superior ability, as the world recognizes learning and ability, yet he had the rare quality in a judge of commanding universal confidence, a feeling among all that the judicial authority was reposed in proper hands. Judge Welch died at his home in Red Wing.

At the fall election in 1857 Hon. Thomas Wilson was chosen as judge of the third judicial district of the state, comprising the counties of Houston, Fillmore, Olmsted, Wabasha and Winona. With the beginning of the year 1858, pursuant to a provision of the state constitution, but before the formal admission of the state by congress Judge Wilson entered upon his duties as judge, and continued to hold until 1864, when, having been appointed to the supreme court, he resigned the office of district judge, and Hon. Lloyd Barber, of Olmsted county, was appointed to fill the vacancy so made. He was elected at the fall election in 1864, for the full term of seven years, and held the office until succeeded by Hon. O. N. Waterman, January 4, 1872. Judge Waterman held the office until his death, which occurred February 18, 1873, and was succeeded by Hon. John Van Dyke, who was appointed for the [121] remainder of the year 1873. At the fall election of that year Hon. Wm. Mitchell was elected for the full term of seven years, from the beginning of 1874. He discharged the duties during this term, and in 1880 was re-elected for another term, to commence with the ensuing year. At the session of the legislature of 1881 the number of judges composing the supreme court was increased to five. This made it necessary that two judges should be appointed to the supreme court until after the next ensuing general election. Judge Mitchell was selected as one of the new judges, and Hon. C. M. Start, then attorney-general of the state; but residing in the third judicial district, at Rochester, Olmsted county, was appointed

district judge, to succeed Judge Mitchell. At the general election in November, 1881, Judge Start was elected for a full term, commencing with the year 1882. At this writing, January 1, 1883, Judge Start is in the discharge of his official duties.

Of the seven judges who have presided in our district courts, three, Judge Welch, Judge Waterman and Judge Van Dyke, are dead. All the others are still living within the district, and engaged in the duties of their profession

*Clerks.*—As before stated, during our territorial existence clerks of district courts held by appointment of the judge and during his pleasure. The first clerk of the district court in and for Winona county was Martin Wheeler Sargeant. He was appointed by Judge Welch in 1854, and held until superseded by the appointment of John Keyes, on or about July 14, 1856. The record of Mr. Keyes' appointment cannot be found, but his first official act as clerk bears date on that day. Mr. Keyes continued to hold the office until after the admission of the state to the Union under the state organization, his last official act as clerk bearing date May 25, 1858. Under the constitution the office of clerk was made elective, and at the general election in October, 1857, Henry C. Lester was elected clerk, and entered on the discharge of his duties on the retirement of Mr. Keyes. He held the office until April 27, 1861. He resigned to enter the volunteer service of the United States in the war of the rebellion. He was succeeded by E. A. Gerdtzen, who was appointed in place of Col. Lester until the next general election, at which he was elected, and by subsequent elections held without interruption for nearly seventeen years. In November, 1877, John M. Sheardown was elected, has been re-elected, and still holds the office. [122]

Of the five persons who have held the office, two, Mr. Sargeant and Mr. Keyes, are deceased; Col. Lester has removed from the state, while Messrs. Gerdtzen and Sheardown still reside at the city of Winona.

*District and County Attorneys.*—Under the territorial organization, the United States attorney, as he was called, usually attended at

the sessions of the district courts, and performed most of the duties now devolving upon county attorneys. An officer called a district attorney was also provided for by territorial statute, and was elected in each of the organized counties. In the act organizing the county of Winona, approved February 23, 1854, such officer was to be elected at an election to be held in April of that year. The election was duly held, and C. F. Buck, Esq., then residing at Minneowa, was elected. We may say in passing that the village of Minneowa was a rival of Winona for metropolitan honors, and stood on the Mississippi river, about one mile above the present village of Homer. The curious in such matters may still find some traces of it on the river bank, and especially in the office of the register of deeds, where the plat was recorded. Its proprietors were Isaac Van Etten, William L. Ames, brother of Oakes Ames, of *credit mobilier* and Union Pacific railroad fame, Governor Willis A. Gorman, and S. R. Babcock, all of St. Paul. The fact is noteworthy as showing the confidence of shrewd and far-seeing men in the then future existence of the city of southern Minnesota at or near this point. Their selection was probably made more from an examination of the territorial map than of the respective sites of Minneowa and Winona. If not, time has demonstrated that, however close they shot to the mark in this their judgment was slightly at fault. But to return to the district attorney. Mr. Buck held the office until the beginning of 1856. Edwin M. Bierce had been elected in the fall of 1855, and held the office during the years 1856 and 1857. By the constitution adopted in that year it was provided that "each judicial district might elect one prosecuting attorney for the district." Under this provision Sam Cole, Esq., was elected "prosecuting attorney" for the third judicial district, comprising the counties of Houston, Fillmore, Olmsted, Wabasha and Winona. Although this office was wholly unknown to territorial laws, continued in force by the constitution, and no state legislation had been had to supply the deficiency, still Mr. Cole, as [125] an officer of the courts, qualified with the judges at the beginning of the year 1858. As no legislation was ever had upon the subject of the duties of this office, we shall probably continue in ignorance as to what they were. Practically Mr. Cole did about what the United States attorney had done in territorial times, and which comprised about all that was required under the statutes of

the district attorney. The effect of it was in a large degree to supersede the last-named officer, and for two years no. district attorney was elected in Winona county. In this county at least the constitution operated as an extinguishment of the office.

By act of February 6, 1860, the office of county attorney as now existing was created. Under this act the board of supervisors of Winona county, on the 15th day of March, 1860, appointed one A. S. Seaton county attorney, who held the office until the 1st of January, 1861.

At the general election in 1860 Hon. William H. Yale was elected, and held the office one term of two years. On the 1st of January, 1863, he was succeeded by Hon. William Mitchell, who was county attorney during the years 1863 and 1864. Mr. Yale, in the fall of 1864, was re-elected, and held during the years 1865 and 1866. He was succeeded at the beginning of 1867 by Hon. George P. Wilson who, by re-election was continued in office until the beginning of 1871, when he was succeeded by Norman Buck. Mr. Buck held during the years 1873 and 1874, and was succeeded by A. H. Snow, Esq., who by re-election held from the beginning of 1875 to the 1st of January, 1879. Mr. A. N. Bentley then succeeded for one term, followed by Mr. M. B. Webber, one term, closing with 1882. At the fall election in 1882 Mr. Patrick Fitzpatrick was elected, and now holds the office. Of the twelve persons who have held these offices, only one (Mr. Cole) is known to have died. Both A. S. Seaton and E. M. Bierce left this county about 1860, since which little or nothing seems to be known of either. Mr. Buck is now associate justice of the territory of Idaho. Hon. George P. Wilson is following his profession at Fargo, Dakota Territory. All others still reside in the city of Winona.

*Sheriffs.* The first sheriff of the county was John James. He was elected on the first Tuesday in April, 1854. He was succeeded by Charles Eaton, who was elected in the fall of 1855, and held the office for two years. At the election in 1857 Mr. F. E. Whiton was elected, and held during the years 1858 and 1859. At the fall elec-[126]-tion in 1859 Messrs. L. R. King and E. D. Williams were opposing candidates for this office. The canvass was close and



spirited, and the register of deeds, whose duty it was "to canvass the votes," was unable to determine which had been the successful candidate. The greatest number of votes cast at the election for one office was 2,023. As allowed by the register, the whole number of votes cast for both candidates for sheriff was 1,970. In reaching this result votes were rejected as irregular, and the conclusion was arrived at that each candidate had received 985, making it "a tie." It thus became necessary to decide "by lot" which of the candidates was elected. Various stories were told as to how this "casting of lots" was performed—one to the effect that a game of "euchre" was played between two persons, each representing one of the opposing candidates. The writer cannot affirm that such was the fact, though the circumstantiality of the account, other things considered, gives it some weight. But, however the lot was cast, Mr. King was declared elected, and to him was awarded the certificate. The case was then taken by appeal to the district court, Judge Wilson presiding. After a long and patient hearing the decision of the canvassing officer was affirmed, and Mr. King was declared sheriff. By re-election from term to term he held the office without interruption for eight years. J. F. Martin was his successor, beginning with the year 1868. Mr. Martin was twice re-elected and held for six years, and was succeeded at the close of 1873 by Wm. H. Dill. Mr. Dill was re-elected three times in succession, and held the office in all eight years, ending with the year 1881. Mr. E. V. Bogart succeeded and is now (1883) in office. Ex-Sheriffs James, Whiton and King are deceased.

*Probate Courts.*—By the act of congress organizing the territory probate courts were established. A special election, to be held in April, 1854, was authorized for the election of county officers by act organizing the county of Winona. A judge of probate was one of the officers to be elected. Andrew Cole was elected. He held the office until January 1, 1855, when he was succeeded by Alfred P. Foster. Mr. Foster filled the office until October 10, 1856, when it was made vacant by the removal of Judge Foster from the territory, and on that date Sam Cole was appointed to fill the vacancy. E. H. Murray succeeded by election, and held during the years 1857 and 1858, followed by Warren Powers, who was

elected in the fall of 1858. By re-election Judge Powers held until his death, which occurred in June, 1865. He was succeeded by Mr. Norman Buck, [127] who was appointed to fill the vacancy in July of that year. In the fall of 18(35 Judge Buck was elected. He held the office until the fall of 1867, when he resigned, and was succeeded for the remainder of the year by appointment of C. N. Wakefield. At the general election in the fall of 1868 Jacob Story was elected to the office. Judge Story has been re-elected at the expiration of each succeeding term, and is still the incumbent of the office. Aside from Mr. E. A. Gerdtzen's tenure of the office of clerk of the district court, which was about seventeen years, Judge Story has enjoyed a longer official term than any other officer of Winona county. ■