

JURY SEQUESTRATION IN 1850

The Minnesota Pioneer
February 20 & 27, 1850

FOREWORD

BY

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In *A History of the City of Saint Paul, and of the County of Ramsey, Minnesota*, published in 1876, J. Fletcher Williams recounted the murder of Heman Snow in September, 1849, and the subsequent trial of Isaiah McMillan in February, 1850:

HOMICIDE.

On the 12th of September, a lad named ISAIAH McMILLAN, accidentally or carelessly shot another lad, named HEMAN SNOW, near the corner of Third and Franklin streets, with a gun loaded with shot. The charge entered the head of the unfortunate boy, and he soon after died. McMILLAN was tried for homicide, at the February term of the first District Court, held by Judge COOPER, at Stillwater. There not having been proved any malice aforethought in the act, the jury returned a verdict of manslaughter, with a recommendation to mercy. The boy was sentenced to one year's imprisonment, but, as there was no county jail, he was sent to Fort Snelling for confinement, where he was kept as a prisoner for a year, though not closely confined. He appeared to be half-willed, or partially idiotic. This was the first trial for murder in Minnesota, whose soil has so often since been stained with human blood by the crime of CAIN.¹

¹ J. Fletcher Williams, *A History of the City of Saint Paul, and of the County of Ramsey, Minnesota*, 236 (St. Paul: Minnesota Historical Society, 1908).

Like other historians, Williams was interested in “firsts,” but to James M. Goodhue, the editor of *The Minnesota Pioneer*, there was something else about the trial of McMellan, as he spelled the defendant’s name, that warranted the public’s notice. Goodhue wrote two short articles on the trial; the first, describing Judge Cooper’s sentence, appeared in the February 20th issue, the second, a week later, described the jurors as “miserable prisoners” because they were sequestered or, as he put it, “imprisoned” overnight in a “chamber” in Stillwater. We can only speculate, but it seems reasonable to suppose that after the first article appeared, one or more jurors complained to Goodhue about their treatment, and he could not resist the opportunity to air their grievances.

In the second article, Goodhue reports the plight of the jurors so colorfully that, while Judge Cooper is not mentioned by name, it is clear that Goodhue thinks his decision to sequester the jurors was a bad one. On a time line, this squib would be near the beginning of Goodhue’s infamous vendetta against Cooper. Beginning in early 1850, Goodhue threw a few random haymakers against the judge in the pages of *The Minnesota Pioneer*; editorial attacks escalated over the next year; and they culminated in a lengthy smear in an edition dated January 16, 1851, that was described by Goodhue’s biographer as written “in language that for pure venom could hardly be matched.”² Appearing two days before its regular publication date, the paper aroused considerable excitement in the community. On January 15, seeking to defend his brother’s name, Joseph Cooper confronted Goodhue on a street in St. Paul. They fought. Cooper stabbed Goodhue with a “dirk knife,” while Goodhue shot Cooper with a “Derringer pistol.” Both men survived what became the most famous altercation in the state’s history.³

² Mary Wheelhouse Bethel, *The Life and Times of James M Goodhue* 63 (St. Paul: Minnesota Historical Society Press, 1948) (citations omitted). The editorial appeared in *The Minnesota Pioneer* in its issue dated January 16, 1851, at; and is quoted in Bethel at 63-66.

³ *Chronicle and Register*, January 20, 1851. Accounts in the secondary literature vary: see Berthel, *supra* note 2, at 66-67 (citing sources); Lucius F. Hubbard & Return I. Holcombe eds., *2 Minnesota in Three Centuries* 450 (The Publishing Society of Minnesota, 1908); George S. Hage, *Newspapers on the Minnesota Frontier, 1849-1860* 37 (St. Paul: Minnesota Historical Society Press, 1967)(citations omitted); for an affidavit of an eyewitness describing the fight, see Daniel S. B. Johnston, “Minnesota Journalism in the Territorial Period,” 10 (Pt.I) *Collections of the Minnesota Historical Society* 247, 251-52 (St. Paul: Minnesota Historical Society Press, 1905).

In most of the nineteenth century, trials were speedy and juries even speedier. Memoirs and county histories of this period do not tell of local trials in which the juries deliberated a week or even several days. For a jury to be sequestered in this period was highly unusual. Jurors are sequestered today, particularly during deliberations, to isolate them from outside influences such as news accounts of the trial and opinions of others. Judge Cooper surely was motivated by a similar consideration when he ordered the twelve jurors confined overnight during the McMillan trial. Cooper, by all accounts, ran a tight courtroom, and he may have felt there was a risk that some jurors would abandon their posts and go home before rendering a verdict in a “first” criminal case, but it seems more likely that he was concerned about a particular outside influence, unlike those that worry trial judges today: drink. In the literature of the frontier, liquor is an ever-present source of both merriment and misfortune. By his sequestration order, Cooper may have prevented the jurors from getting drunk, fighting, and compromising the proceedings.⁴

In 1850, there were no tax rolls and no voting lists to identify potential jurors. The McMillan jurors, who must have heard of the death of Heman Snow before the trial, were likely dragooned into service from the community. Were they sworn en masse? Were they examined individually for prejudice? Could a lawyer “strike” a potential juror for cause in territorial days? Were jurors paid? How often did they serve? Where did the trial judge get his jury instructions? What effect did the jury’s “recommendation to mercy” have on the trial judge? And so on. Like almost every other chapter on Minnesota’s legal history, the story of how juries operated in this state in the mid-nineteenth century waits an author.

The following articles appeared on the second pages of the February 20 and 27, 1850, issues of *The Minnesota Pioneer*. They have been reformatted but are complete. Goodhue’s spelling and punctuation are not changed. ■

⁴ If this conjecture is true, it would be ironical because Goodhue charged Cooper in his editorial in *The Minnesota Pioneer* on January 16, 1851, of being a chronic inebriate.

THE MINNESOTA PIONEER

ST. PAUL, MINNESOTA,

Wednesday Morning, February 20, 1850.

HOMÆOPATHIC.

Judge Cooper has sentenced Isaiah McMellan, who killed Heman Snow, to the penitentiary for one year and twenty days of solitude, in broken doses of ten days each.

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THE MINNESOTA PIONEER

ST. PAUL, MINNESOTA,

Wednesday Morning, February 27, 1850.

The 12 jurymen who tried the boy McMellan for murder, at Stillwater, were locked up together one whole night in a chamber, miserable prisoners; their experience of imprisonment must have had a powerful influence in modifying the verdict. Two of them were clergyman.



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