“Application of Sioux Indians to Become Citizens”

(June 1861)

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Preface

In June 1861 Judge Lewis Branson held a hearing in District Court, Blue Earth County, Mankato, Minnesota, on applications for citizenship of nine residents of the Hazelwood Republic. This is the story of those proceedings.

Some of "the People" Ratify the Minnesota Constitution

On August 29, 1857, a constitutional convention in St. Paul adopted a constitution for the new State of Minnesota that had been drafted by a committee of delegates from the Republican and Democratic wings of the convention. The "Schedule" of the proposed constitution required it to be submitted to a vote of "the people" for acceptance or rejection at an election only 45 days later— on October 13 1857.[1] It also defined "the people" who could vote:

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[1] The Schedule came at the end of the proposed constitution and provided for the transition of the territory to statehood (i.e., territorial laws remained in effect until replaced by the legislature of the new state). Here are Sections 8 and 16 of the Schedule requiring submission of the proposed constitution to "the people":

> **Sec. 8. The President of this Convention shall, immediately after the adjournment thereof, cause this Constitution to be deposited in the Office of the Governor of the Territory, and if after the submission of the same to a vote of the people herein after provided it shall appear that it had been adopted by *a vote of the people of the State*, then the Governor shall forward a certified copy of the same together with an abstract of the votes polled for and against said Constitution to the President of the United States, to be by him laid before the Congress of the United States.**
>
> **Sec. 16. Upon the Second Tuesday the 13th day of October 1857 an Election shall be held for members of the House of Representatives of the United States, Governor, Lieutenant Governor, Supreme and District Judges and members of the Legislature and all other officers designated in this Constitution**

> **Sec. 17. Upon the day so designated as aforesaid every free white male inhabitant over the age of 21 years who shall have resided within the limits of the State for ten days previous to the day of said election may vote for all officers to be elected under this Constitution at such election and also for or against the adoption of this Constitution.**

Section 17 is unusual in three respects: First, its eligibility criteria bar persons who will qualify for the franchise under Article 7, §1, of the proposed constitution. Second, it is part of a proposed constitution but is written to be in full force and effect *before* the vote on whether to adopt or reject that charter. Finally, it disregards laws on voter eligibility currently in use in the territory. [2]

During the forty-five days between August 29 and October 13, the text of the proposed constitution was printed in newspapers.[3] **At**

> **and also for the *submission of this Constitution to the people for their adoption or rejection.* (italics added)**

[2] **Section 5 of the Organic Act, which established the Territory of Minnesota in 1849, provided:**

> **Sec. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United**

[3] **The convention ordered the constitution translated into German, French, Swedish and Norwegian for distribution among immigrants but there is no evidence that this was done. Although 15,000 copies of the proposed constitution were ordered printed (of which 5,000 were printed in German, 2,000 in Swedish and 2,000 in French), there are no copies at the Historical**

the same time, both political parties campaigned for the election of their candidates for congress and state wide office. The proposed constitution permitted only one ballot on which both the partisan candidates and the referendum on the constitution were printed.[4]

Society. It is not likely that any were actually printed. The constitution was, however, printed in local newspapers.

[4] Section 18 of the Schedule provided:

> **In voting for or against the adoption of this Constitution the words "For Constitution" or "Against Constitution" may be written or printed on the Ticket of Each voter but no voter shall vote for or against this Constitution on a separate ballot from that cast by him for officers to be elected at said election under this Constitution and if upon the canvass of the votes so polled it shall appear that there was a greater number of votes polled for than against said Constitution then this Constitution shall be deemed to be adopted as the Constitution of the State of Minnesota and all the provisions and obligations of this Constitution and of the Schedule thereunto attached shall thereafter be valid to all intents and purposes as the Constitution of said State.**

Of §18, William Anderson writes:

> **This clause alone assured practically a unanimous vote. In those days candidates and groups of candidates printed their own ballots to be distributed among the voters. The campaign was on before the constitutional conventions had adjourned. Both Republican and Democratic organizations were determined to carry the state in this first election. How utterly ruinous to all chances of party success it would have been for either party or for any group of candidates to have printed a ballot at the head of which were printed the words "againist constitution" and upon which appeared the names of men running for office under the constitution! . . . Naturally, no such ballots would be printed. Consequently, every voter who voted for officers under the constitution either had to vote "for constitution" or strike out the words "for constitution" printed upon his ballot, and write in the words "against constitution." This would put the voter in an absurd position and probably very few resorted to this device. The simple fact is that there was no separate clear-cut expression of popular approval or disapproval of the constitution. Under the circum-stances no such expression was possible.**

The constitution was adopted, 30,055 votes for and 571 against.[5] At this time there were about 150,000 white residents of Minnesota.[6] Because women and children were ineligible, only about one-fifth of the total white population voted on October 13, 1857.

Voters also elected a governor, attorney general, supreme court justices, other state-wide officers, members of the state legislature, district court judges and various county officials.[7] For the most part, the slates of the Democrats prevailed over those of a young, energized Republican Party; however, the final results, particularly for governor where Henry Sibley defeated Alexander Ramsey by 240 votes out of 35,340, were tainted by charges of fraud.[8] Partisan newspapers denounced the opposition party for acts of voter intimidation, forgery and ballot stuffing.[9]

William Anderson & Albert Lobb, *A History of the Constitution of Minnesota* 134 (1921). This book is posted separately in the "Constitution" category in the Archives of the MLHP.

[5] These are the returns of the canvass, required by §18. The results of precinct returns differed: 36,240 affirmative and only 700 negative. Anderson, note 4, at 133.

[6] Theodore C. Blegen, *Minnesota: A History of the State* 173 (1963) ("the official count in the pre-state census of 1857 was 150,037 (the census authorities later revised the total to 150,092").

[7] On May 24, 1858, the government of the state was formed when the newly-elected officials were sworn and took office.

[8] Rhoda R. Gilman, *Henry Hastings Sibley: Divided heart* 153 (2005) ("Charges of fraud, already flying on both sides, grew more serious and reached a crescendo in early November after the returns from Pembina were received — 316 for Sibley, none for Ramsey.").

[9] William Watts Folwell, 2 *A History of Minnesota* 3-4 (1961) (published first, 1924) ("Both before and after the canvass [of votes] allegations of frauds were bandied by party newspapers.").

Article 7, §1 (4) of the Constitution

Under Article 1, §2, of the Bill of Rights of the new constitution, "citizens" of the state had the right to vote. [10] **Article 7, §1, lists four categories of persons qualified to vote.** [11] **An ability speak a "language of civilization" was a qualification for voting by full blood Indians in Subsection 4 of Section 1 of that Article:**

> **Fourth. Persons of Indian blood residing in this state who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.**

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[10] "Sec. 2. Rights and privileges. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."
[11] Article 7, §1, on "the Elective Franchise":

> **Section 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year, and in this state for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are, or hereafter may be, elective by the people.**
>
> ***First*. White citizens of the United States.**
>
> ***Second*. White persons of foreign birth, who shall have declared their intentions to become citizens, conformably to the laws of the United States upon the subject of naturalization.**
>
> ***Third*. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.**
>
> ***Fourth*. Persons of Indian blood residing in this state who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.**

Article 7 is posted in its entirety in the Appendix, at 40-42.

This subsection was taken verbatim from that approved by the Democratic wing of the convention on August 12, 1857, after a debate over whether the stringent qualifications for voting by "Indians of full blood" should also apply to those of "mixed blood" and what court (a federal circuit court or a state district or probate court) should conduct the examination of "full bloods" to determine if they were "civilized." [12] The explicit language requirement did not cause dissension, although a few delegates questioned why "foreigners" were not also required to know English.

For present purposes, it is of interest that on August 12, 1857, Charles E. Flandrau, a delegate from Nicollet County who was than an Associate Justice on the Territorial Supreme Court and a former Indian Agent, read a "petition" to the Democratic caucus from twelve residents of the Hazelwood Republic attesting to steps they had taken to become "civilized." It concluded:

> **Your petitioners therefore desire that all who are civilized and educated among the Indians, whether part or full blood, may be recognized by the Constitution as citizens of the State of Minnesota, and be entitled to all the immunities and privileges of the same.[13]**

The petition did not sway the delegates, who adopted the article requiring Indians to "have adopted the language, customs and habits of civilization" before qualifying for the franchise, reflecting the prevailing belief of white society that unassimilated Indians

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[12] Francis H. Smith, *The Debates and Proceedings of the Minnesota Constitutional Convention* (The Democratic debates), 428-437 (1857). The complete debates of both caucuses are posted in the "Constitution" category in the Archives of the MLHP. Excerpts from the debates are in Appendix , at 31-37.
[13] Id, at 430-431. Flandrau (1828-1903) served on the Territorial Supreme Court in 1857-1858; he was elected to the Supreme Court on October 13, and served from May 1858, when the new state was organized, to July 1864 when he resigned. The entire petition is posted in Appendix, at 33-34.

were "barbarians." [14] **It is certain that this petition was drafted by Rev. Stephen Return Riggs, a prominent missionary in Minnesota, who helped found the Hazelwood Republic, a utopian community in Blue Earth County.** [15] **He lobbied both caucuses to adopt less restrictive citizenship requirements for pure blood Indians. During the debates of the Republican caucus he persuaded Amos Coggswell, a delegate from Steele County, to propose that full blooded Indians qualify for the franchise if they "can write their own names and read this Constitution either *in their own* or the English language, and who shall take an oath to support the**

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[14] The extent to which a full blood native had become "civilized" or assimilated was of great concern to delegates during debates on the franchise at the constitutional convention. While debates in both caucuses are replete with stereotypical descriptions of Indians as "barbarians," delegates also recognized that some Indians had become assimilated. Here is Henry H. Sibley, the President of the Democratic caucus and delegate from Dakota County, during the debate on the franchise:

> **Mr. SIBLEY. Indians, we all know, in their natural state, are barbarians. They do not come within the same category as foreigners at all. They should not be entitled to the privileges of American citizens, while they continue in their savage condition. But, sir, the gentleman proposes, by his amendment, that when an Indian has left his barbarous state and become part and parcel of the community in which we live, when he has been pronounced by the proper tribunal to be capable of appreciating the privileges of an American citizen, he shall be admitted to the rights of citizenship. But, sir, the idea of placing Indians in their wild and barbarous state, in the same category with foreigners, is preposterous.**

Francis H. Smith, (The Democratic debates), note 12, at 428.

[15] The Hazelwood Republic was a separate colony of Dakota families in Blue Earth County founded in 1856 by Stephen Riggs and others. They encouraged the Indian residents to abandon their nomadic way of life and learn to live like white settlers.

The most thorough account of the beginnings of the Hazelwood Republic is the "Historical Introduction" of Carrie Reber Zeman & Kathryn Zabelle Derounian-Stodola to the reissuance of Mary Butler Renville's 1863 memoir, *A Thrilling Narrative of Indian Captivity* 16-20 (Univ. of Neb. Press, 2012)(citing the MLHP, at 251 n. 42). See also Douglas A. Hedin, "Foreword" to Stephen Return Riggs, *The Minnesota Constitution in the Language of the Dakota* 13-20 (MLHP, revised 2017).

same."[16] Here is evidence that even before the new constitution was drafted in final form or ratified by the voters Riggs planned to translate it into Dakota and use that to enable his charges at the Hazelwood Republic become citizens of Minnesota.[17]

The Winnebago Vote Frauds
— October 13, 1857

Blue Earth County in south central Minnesota was one site of alleged voter fraud that outraged Republicans. The county encompassed a large settlement of Winnebago Indians. In an election in June 1857, only 28 votes were counted in the precinct on the Reservation; but in the October election the Democrats had a majority of 98. The *Independent*, a Mankato newspaper, uncovered the reason for the increase in voters:

> **"Rice Lake Precinct**
> **96 Democratic Majority!"**
>
> **So say the returns from the precinct. This would indicate an unprecedented increase of population since last June, when the total vote was 28! And when we reflect that this precinct is located on the Winnebago Reservation, where the land is not open to settlement, the marvel increases! But, how think you, reader, the thing was done? The easiest thing in the world, when you consider that his ex-excellency, W. A. Gorman (of fourteen-horses-shot-from-under-memory) is a candidate for the U. S. Senate, — provided his party succeed in electing a majority of the two branches of the State**

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[16] T. F. Andrews, *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* (Republican Debates), August 7, 1857, at 379-381 (1858) (emphasis added). The remarks of Amos Coggswell are posted in the Appendix, at 37-40.

[17] For his translation of the constitution, see Stephen R. Riggs, *The Minnesota Constitution in the Language of the Dakota* (MLHP, 2017) (published first, 1858).

Legislature, — and his been up this way 'fixing the ropes.'

It is a notorious fact that some 75 Indians, glorying in paint and dirt-breech cloth, blankets, leggings and all, — were marched up to the polls, and 'put through' according to the most approved Gorman standard.

Messers. A. W. Bratt and F. L. Ayer, of this place, who were at the polls in that precinct, during the day, are our authority for the statement. They inform us that these Indians, came to the polls, were furnished tickets by General Fletcher, the Agent, which they straight-way deposited, an *interpreter calling out the name of each Indian as he deposited his vote*.

This is certainly an outrage upon the elective franchise which should not be tolerated. There is not a shadow of authority for any such procedure. The provisions in the Constitution and the Territorial law, under which it is rather feebly claimed that they had the right to vote are as follows:

The Constitution says that "every free white male inhabitant over the age of 21 years, who shall have resided within the limits of the Territory for ten days" shall have the right to vote a *State Ticket*.

The statute Territorial provision is as follows:

After prescribing the qualifications of 'free white' voters, it is provided:

"That nothing in this chapter shall be so construed, as to prohibit all persons of *mixed white and Indian blood, who have adopted the habits and customs of civilization* from voting."

Now, we admit that it might be rather difficult to prove that these Indians had not a slight admixture of Caucassian blood in their veins; and it might be equally difficult to prove that they had. They were to all

appearances, full blood Indians—dressed, so far as they dressed at all, in Indian costume. They carried with them to the polls their bows and arrows, and war clubs, —they were bedaubed with paint, and were unable to speak their own names, interpreters being on hand for that purpose.

Now, by what possible construction of the statute provision quoted above can the votes of these *savages* be admitted? Does a proper construction of that provision include such bare-legged vagabonds as we daily see on our streets?

No one possessed of three grains of common sense, but will unhesitatingly answer in the negative.

The whole procedure was a fraud, and as such should not be regarded in the slightest degree.

We do not speak thus, upon party grounds, by any means. We would unhesitatingly denounce such rascality in any party. We feel it not to be a duty we owe to an outraged community to characterize in fitting terms all such outrages upon the purity of the ballot-box.

The election, we understand, will be contested, when the whole matter will receive thorough investigation.[18]

On October 19th, the *Falls Evening News* and the *Minnesota Republican* published a letter to the editor from Charles D. Gilfillan, a prominent Republican lawyer and businessman:[19]

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[18] *The Independent* (Mankato), October 17, 1857, at 2 (italics in original).

[19] Gilfillan (1831-1902) was one of the founders of the Republican Party in Minnesota. In a paper about this period delivered to the Historical Society in 1898, he recalled, "In 1857 the Democrats had the control of the election machinery and the canvassing board. It was unanimously believed by the Republicans, and by many of the Democrats, that Governor Sibley was not elected, but only counted in." Gilfillan, "The Early Political History of Minnesota" 19 (MLHP, 2013)(published first, 1902).

Mankato, Oct. 14, 1857.

> **Sir: We sent two men to the Winnebago Indian agency, on the morning of the election to watch the moves.**
>
> **There were 110 votes cast at the Agency, and these men report that these voters were men or devils, as you please, who could not be picked out, or selected by customs, habits, manners or looks, from the *full blood Indians*, (or but very few of them) and their names were told or spoken by interpreters. They came to the polls *dressed in blankets, leggings, and breech-clouts*, carrying arms and war-clubs, and with their faces painted, (from 50 to 60 Indians,) to all appearances having no claims to the rights of suffrage.**
>
> **The person appointed to take the census for that precinct has reported only 49 legal voters on the Reservation. [20]**

The fear that if Indians had the right to vote they would become pawns of politicians, who would dictate how they voted and influence the outcome of an election, infected state politics for years.

The Mission of Rev. Stephen R. Riggs

Rev. Riggs was a shrewd participant in Minnesota politics. After statehood he worked both sides of the aisle to ease the path to state citizenship for male residents of the Hazelwood Republic.

The Second Minnesota Legislature convened on December 7, 1859. The following day, the House and Senate met in joint convention to receive a message from Governor Henry H. Sibley. In it he mentioned a talk with Riggs while recommending that the legislature establish judicial procedures for "civilized Indians" to

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[20] *The Falls Evening News* (St. Anthony Falls), October 19, 1857, at 2; *The Minnesota Republican*, October 19, 1857, at 2 (italics in original).

become citizens of the state. [21] **While this legislature did not act, Riggs's conversion of the governor to support a law effectuating Article 7, §1 (4), was a critical step in his campaign. When Alexander Ramsey became governor, Riggs continued his lobbying efforts.** [22] **In his annual message to the Third Legislature, Ramsey declared "that the time had fully come for the passage of such a law, by the Legislature, as is needed to carry out the provisions of the Constitution in regard to these original inhabitants of our soil."**[23] **On March 11, 1861, the legislature responded by passing**

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[21] **Journal of the House of Representatives, December 8, 1859, at 26. The excerpt is posted in the Appendix, at 42-43.**

[22] **In a letter to his brother, Riggs wrote:**

> **If I have the opportunity of going down next week, I expect to start for St. Paul. My object is to secure, if possible, the passage of an act making our civilized men citizens. . . . I do not think there is any hope that the thing will be done without my going down, as of course it is among the uncertainties, if I do go.**

Stephen R. Riggs to Alfred Riggs November 27, 1860. Oahe Mission Collection, the Center for Western Studies at Augustana College, Sioux Falls, S.D.

Two weeks later he described a meeting with the governor in a letter to his mother:

> **Today I obtained an audience from Governor Ramsey . . . He promises to recommend strongly the passage of a law for the naturalization of our civilized Indians but he seems not to have much faith in its succeeding. He thinks the refusal of New York State to give more extended suffrage to their colored people may be against present success of the Indian question.**

Stephen R. Riggs to Alfred Riggs December 12, 1860. Oahe Mission Collection, the Center for Western Studies at Augustana College, Sioux Falls, S.D. (copies of both Riggs's letters transcribed by Carrie Reber Zeman and made available to MLHP).

[23] **Journal of the House of Representatives, January 9, 1861, at 33. The governor made an oblique reference to Riggs's community in his speech:**

> **In the formation of the Constitution, provision has been made for encouraging our aboriginal population to attain the status of civilized men. Previous to that time, for almost a quarter of a century, individuals, acting under the direction of benevolent associations in our own land [i.e., Hazelwood Republic], had been**

over token opposition "An Act Granting the Privileges of Citizenship Under Certain Restrictions to the Civilized Indians of this State":

> **Section 1. Any male person of Indian blood, over twenty-one years of age, who shall desire to become a citizen of this State, shall appear before a district court of the State, in regular term, and shall establish by at least two witnesses, one of whom shall be a white man, that he is possessed of the following qualifications:**
>
> ***First*, A just idea of the nature of an oath.**
>
> ***Second*, A fixed residence in a house, as distinguished from a teepee or wigwam.**
>
> ***Third*, That he has been, for at least two years immediately preceding his application to said court, engaged in cultivation of the soil, or in the trades or in any other strictly civilized pursuit.**
>
> ***Fourth*, That he has during said term of two years, assumed the habits and worn the dress of civilization.**
>
> ***Fifth*, That he is a man of correct general demeanor, possessed of good moral character.**
>
> **Sec. 2. The district court by which such facts shall be found, shall cause to be entered in a book to be kept for that purpose, a certificate that such Indian has made application to have the right of citizenship extended to him, and that satisfactory evidence of the facts hereinbefore enumerated has been produced, and that such court has found him possessed of such qualifications. The court shall thereupon give to said Indian, under the seal of such court, a copy of such certificate, and such Indian shall and thereafter be deemed to all intents and purposes, a full citizen of this State, with the right to sue and be sued in any of the courts of this State in like manner and with the same effect as other inhabitants**

> **sowing the seeds of civilization which have been springing up and ripening into fruit.**

An excerpt of Ramsey's address is posted in the Appendix, at 43-44.

> **thereof, and shall be entitled to the same civil rights as other citizens.**
>
> ***Provided*, that nothing in this Act shall be so construed as to deprive such Indians of the right to any annuities now due them or which may hereafter become due them from this State, or from the United States.** [24]

Significantly the 1861 law did not have a language requirement although an ability to speak a "language of civilization" was a qualification for citizenship of full blood Indians in the state constitution. They differed in the degree of assimilation into white culture that must be proved by a pure blood Indian to become a citizen ("Persons of mixed white and Indian blood" had a lower standard). Their requirements for native citizenship had both racial and cultural components.[25] The challenge to Riggs was to persuade a district court judge to apply the lessor cultural standard to citizenship petitions by full blood Indians.

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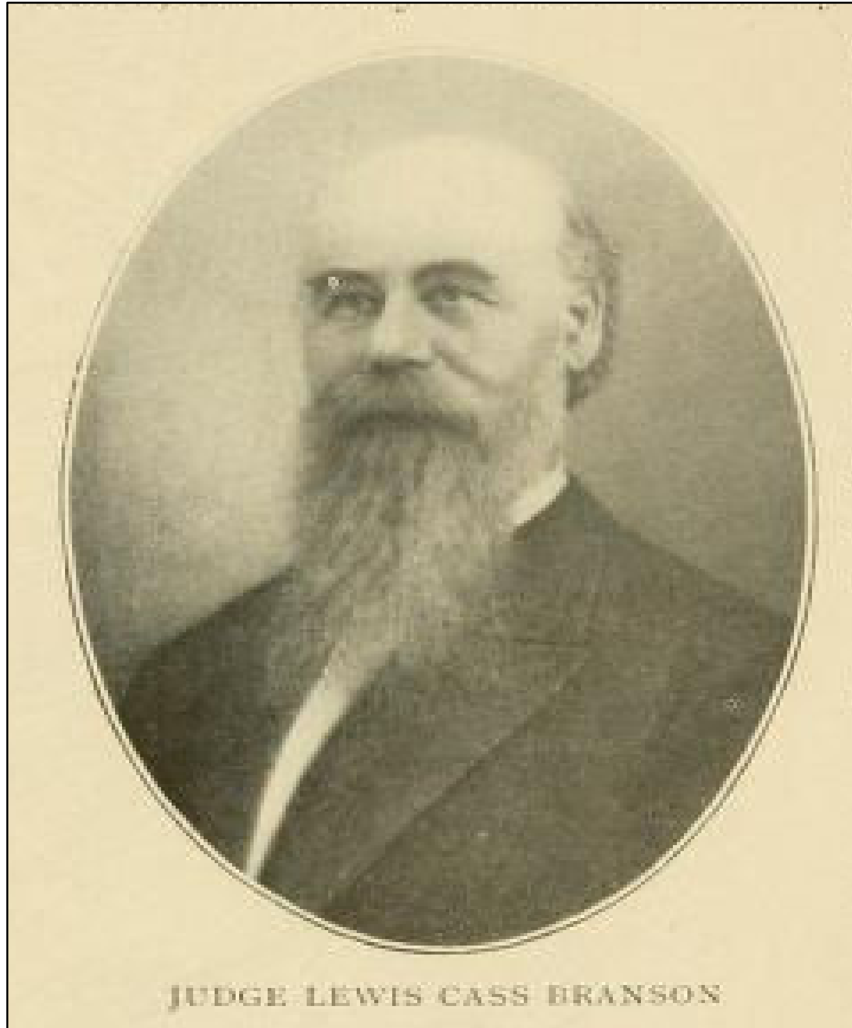
[24] 1861 Laws, c. 48, at 171 (effective April 30, 1861). It passed the Senate 16 – 2. Journal of the Senate, February 27, 1861, at 258. Dissenting were Archibald M. Hayes, who represented the Seventh District (Dakota County), and Joel K. Reiner, who represented the Second District (Chisago, Kanabec, Pine and Washington Counties). It passed the House of Representatives 23 – 0. Journal of the House, March 7, 1861, at 392.

[25] In her meticulous dissection of the constitutional debates, legal historian Deborah A. Rosen noted that there was among delegates in both caucuses "a common understanding regarding Indians [that] assessing the whiteness of individual Indians required a cultural judgment as well as a racial one." To some delegates a pure blood Indian who was completely assimilated was considered "white." But a constitutional provision that included such an amorphous concept was difficult to draft and the effort abandoned. *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* 137-140 (2007).



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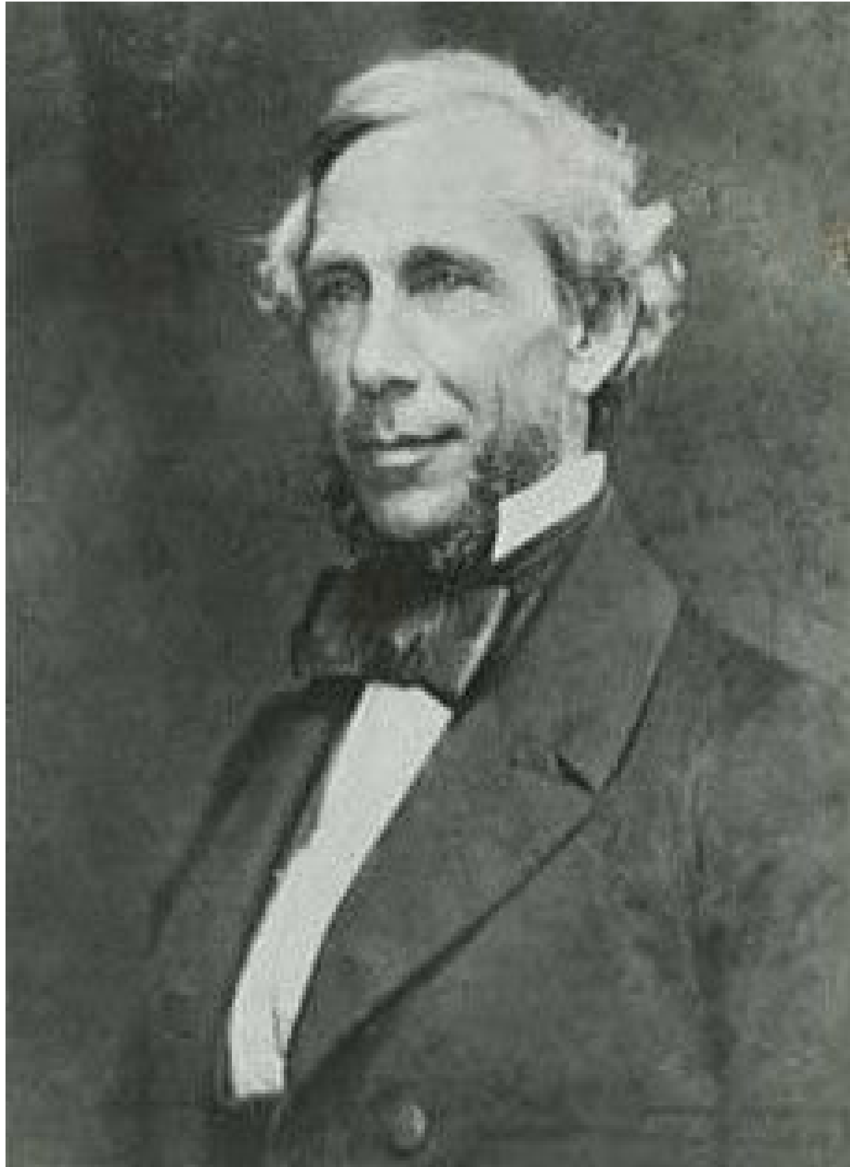

Rev. Stephen Return Riggs

Hearings in District Court on Indians' Citizenship Applications

Encouraged by Rev. Riggs, male Indian residents of the Hazelwood Republic began plans to petition the District Court in Mankato to become citizens of Minnesota under the new law. Mankato was the county seat of Blue Earth County. [26] Rumors about the Indians' intentions swept the small community and nearby tribes from which the Hazelwood residents had left. Opposition grew. James Hinds, a local lawyer, later recalled, "They were discouraged by white men, and threatened by Indians. The consequence was that some who intended to go down [to court], thought it prudent to postpone." [27] Only nine applied. [28]

Blue Earth County was a part of the Sixth Judicial District over which forty-one year old Judge Lewis C. Branson presided.[29] Branson heard the applications on Wednesday, June 12, 1861, the last day of the June term, and took them under advisement.[30] On

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[26] According to the 1860 census, the white population of the county was 4,827, and Mankato's 1,561. Thomas Hughes, *History of Blue Earth County* 104 (1909).

[27] Letter by "J. H." dated June 15, 1861, to the editor of the *Saint Peter Tribune*, published July 10, 1861, at 1. The author almost certainly was James Hinds, a St. Peter lawyer, whose business card was published for years in the local press. The complete text of his letter is posted in the Appendix, at 44-48.

[28] It is reasonable to suppose that the nine applicants also signed the petition to the Democratic caucus that was drafted by Rev. Riggs. See Appendix, at 33-34.

[29] For a biographical sketch, see Douglas A. Hedin, "Judge Lewis Cass Branson (1825-1905)" (MLHP, 2019).

[30] The district court held two terms in Blue Earth County: the first commenced on the 3rd Monday of June, the second on the first Monday in January. 1861 Laws, c. 30, at 141-2 (effective January 13, 1861).

Court was held in a local hall in Mankato. Although the county was formed March 5, 1853, its first court house was not built until 1867. Hughes, note 21, at 198 ("This was the first court room the county had ever owned. Heretofore, court had met in halls such as the county could find for hire. The old City Hall,

the morning of June 20th he issued an order denying eight applications, and granting one.[31] An account of the proceedings appeared in the *Mankato Semi-Weekly Record* on June 21st:

> **Application of Sioux Indians**
> **to become Citizens.**
>
> **On Wednesday last, nine full blooded Sioux Indians and members of the Hazelwood Republic, made application to our District Court, to be admitted to the rights and privileges of the citizens of Minnesota. Each applicant was closely examined by the Court and the attorneys present, and their cause was ably advocated by Rev. Mr. Riggs, through whose untiring and praise-worthy efforts they have been advanced to their present state of civilization. But one of the applicants possessed a knowledge of the English language, though all answered promptly and seemed to understand the questions propounded when interpreted in their native language. They were dressed as white men, presenting quite a neat appearance.**

Concert Hall, Masonic Hall, Higgins Hall and Shoemaker's Hall had each in its turn been the abode of the blind goddess...").

[31] Branson's order has not been found at the Historical Society. It is not filed in the usual depositories: the case files of the district court for the June Term 1861 in Blue Earth County; the Judgment Book of the clerk of court; the Minute Book of the District Court for the period 1854-1868 has the Court's order declaring Lorenzo Lawrence a "full citizen of the State" but no orders denying the applications of the other Indians; it is not in the papers of Lorenzo Lawrence, which include his original citizenship order on a preprinted form and a handwritten certificate on commercial stationery by the clerk of court now residing in South Dakota (evidently Lawrence lost the original certificate); it is not in the bound volumes of the Riggs's papers; the microfilm of the immigration and naturalizations applications in Blue Earth County for 1861 has Lorenzo Lawrence's affidavit but no other Indian's; the annual Report of the American Board of Commissioners for Foreign Missions for 1861 has a copy of the newspaper article on the Indians' applications for citizenship (printed above) but not Branson's order. Someday it will turn up and be inserted in this article.

The Judge held the applications under consideration until Thursday morning, when he delivered a lengthy decision, granting the application of Mr. Lawrence, who possessed a knowledge of and spoke freely the English language, and refusing the other eight. The decision of the Court was too lengthy to admit of our publishing even a satisfactory synopsis.

The constitutional clause requires that all full blooded Indians applying for the rights of citizenship, shall have adopted the language, customs and habits of civilization. It was claimed by Mr. Riggs that the Dakota or Sioux language was not a barbarous language, as it has been reduced to a system and was capable of use in the printing of books, in writing, and for all other practicable purposes. That the adoption of the habits, customs, and pursuits of civilization by these Indians, and their living together in a community separate and distinct from the remainder of the tribe, even though they retained their native language, came within the requirements of the constitutional clause; that then it ceased to be the language of a barbarous nation, but was that of a community, living in every respect as white or civilized people. This position was dissented from by Messrs. Chatfield, Dow, Cowan, and other members of the bar.

In his decision, the Judge held that the Sioux was a barbarous language; and the State constitution evidently considered it as such. That theirs was not a language or literature by which these people could gain a knowledge of our system of government; and that he considered the adoption of a civilized language, by this class of persons, as of paramount importance. The Judge considered the Indians conforming to the customs and habits of white men, and not holding tribal relations, were protected in all their rights of property and person by the courts of our State; and that the certificate of citizenship only conferred the additional

> right of the elective franchise, an intelligent exercise of which required a knowledge of a civilized language.
>
> The Judge believed that the utmost care should be exercised in conferring the elective franchise upon persons of full Indian blood, and that a loose interpretation of the law would lead to great abuse. He complimented and appreciated fully the efforts of Mr. Riggs, and urged him to impress upon the applicants a necessity of acquiring a knowledge of the English language.
>
> The clerk was instructed to enter an order and issue a certificate conferring rights of citizenship upon Mr. Lawrence.
>
> The remaining applicants were somewhat disappointed in their rejection, but as the decision is undoubtedly correct, we hope they will continue their efforts to acquire the requisite qualification. [32]

These were the first petitions filed under the new law. Their novelty may have led the Branson to depart in two ways from the usual procedures of a district court when hearing citizenship applications. First, he permitted Rev. Riggs not only to be a character witness for the applicants but also to argue their case—they became his clients, though he was not a lawyer. [33] Riggs's participation was irregular but necessary, as Branson realized. The petitioners could not represent themselves, no local lawyer would,

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[32] *Mankato Semi-Weekly Record*, Friday, June 21, 1861, at 2. Probably because newspapers did not have reporters in the field at this time, they commonly republished excerpts from articles and even entire articles from other newspapers. This is what happened to the *Mankato Record's* report of the court proceedings. It was republished by the *Saint Paul Press*, June 28, 1861, at 2 (crediting the story to the *Wabashaw Record*), and by *The Winona Republican* on Wednesday, July 3, 1861, at 2 (without crediting any source).

[33] The first section of the 1861 law required that two witnesses testify that the applicant satisfied the conditions of citizenship, one of whom was a white man. Riggs probably asked one applicant to vouch for the others.

and he did not know Dakota, which prevented him from giving them some guidance, as he might have with a pro se litigant in a contested trial. If he did not permit Riggs to represent the Indians, the proceedings would become a farce, a mockery of what the legislature intended. And so he bent the rules of procedure to give the petitioners a fair hearing.

Eight of the Sioux applicants either had only a partial knowledge of English or could not speak it at all. It may be assumed that Riggs testified that each applicant was "a man of correct general demeanor, possessed of good moral character" and met the other requirements of the new law; he then translated their responses to questions from the judge and the bar, and ended up arguing the merits of their claims.

From the newspaper account of the proceeding, we can reconstruct his arguments. He did not get very far when he relied upon statute's omission of a language requirement. In a letter to an ally following the hearing he wrote, "The art[icle] of the Legislature was not not [sic] regarded by the Court as an exponent of the Constitution."[34] He had to address the constitutional requirement that full blood Indians residents have "adopted the language, customs and habits of civilization" as a prerequisite to citizenship. He did so by imaginatively drawing upon his experiences as a missionary, linguist, lexicographer and philologist, who had translated the Minnesota Constitution into the Dakota language in 1858. Aside from Samuel and Gideon Pond, no white Minnesotan had a greater knowledge of and appreciation for the sophistication of the Dakota language than Riggs. He argued that Dakota was a civilized language. Though the newspaper account does not state that he offered his translation of the constitution to the judge, we

[34] Stephen R. Riggs to Thomas J. Galbraith, no date [ca. June 20, 1861]; Clark W. Thompson Papers, MHS. The complete letter is posted in footnote 37 below.

must assume that he did. After all, as historian Linda M. Clemmons writes, that was one aim of translating the constitution—to prove "that the Dakota language could adequately express abstract concepts, such as the rights of citizenship, just as well as in English."[35] We can imagine Riggs's forceful, impassioned speech about the life and language of the residents of the Hazelwood Republic, in which he had such pride; and we can also imagine the skeptical questions of Judge Branson, the local barristers shaking their heads, and murmurings in the crowded courtroom as he went along.

Even more irregularly, Branson let several lawyers, who were anxious to be heard, question the petitioners. It must be remembered that this was a novel citizenship hearing. They also responded to Riggs's claim that his clients met the statutory and constitutional requirements of citizenship. The newspaper reported that "[his] position was dissented from by Messrs. Chatfield, Dow, Cowan, and other members of the bar"[36]—again something unusual in a district court hearing at that time but not unlike the present day practice of a court's acceptance of an amicus curiae brief on legal questions pending before it.

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[35] Linda M. Clemmons, *Conflicted Mission: Faith, Disputes, and Deception on the Dakota Frontier* 173 (2014).

[36] On Chatfield, see John Fletcher Williams, "Memoir of Andrew G. Chatfield" (MLHP, 2010); "Justice Chatfield's First Court Session" (MLHP, 2008); and "Documents Regarding the Terms of the Justices of the Territorial Supreme Court: Part Two-D: Chief Justice Welch and Associate Justice Andrew G. Chatfield 8-13 (MLHP, 2009-2010).

"Dow," the second lawyer, was probably James C. Dow, a lawyer in Dakota County, who served one term in the state House of Representatives, in 1858. See Francis M. Crosby, "Bench and Bar of Dakota County" 11 (MLHP, 2008) (published first, 1910).

The third, Thomas Cowan (1821?-1863), settled in Nicollet County in the 1850s, and was admitted to the bar in 1858; he practiced with E. St. Julian Cox as Cowan & Cox in St. Peter and Traverse des Sioux. Their firm's business card was published in the *Saint Peter Free Press*, May 11, 1859, at 1. He was misidentified as William Cox in "The Bench and Bar of Nicollet County" 4 (MLHP, 2008-2012) (published first, 1916).

The judge let the barristers intervene even though he may already have researched the constitutional question and reached a decision. Or, though not probable, he was unsure of his analysis of the law and wanted to hear the opinions of the bar, especially those of Andrew Chatfield, who had served as Associate Justice of the Territorial Supreme Court from 1853 to 1857. Moreover, he had been elected to office and, to use a metaphor that seems fitting, he likely kept his ear to the ground—that is, he was very conscious of public opinion on the question of Indian citizenship. When he predicted that "a loose interpretation of the law would lead to great abuse," he likely had in mind the allegations of fraudulent voting by Winnebagos in the general election on October 13, 1857. Emphasizing the importance of the constitutional requirement at the end of his ruling, Branson "complimented and appreciated fully the efforts of Mr. Riggs, and urged him to impress upon the applicants a necessity of acquiring a knowledge of the English language."

Judge Branson's final order did not buck public opinion or the views of the bar. To the newspaper reporter and to most of its readers, his order was "undoubtedly correct." Given the requirements of Article 7 and the pernicious stereotypes of Indians at that time it is hard to see how he could have reached any other conclusion. Riggs, not surprisingly, disagreed with it. [37] **Yet he did**

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[37] **In a letter to Thomas J. Galbraith, a politician who was a member of the state constitutional convention, Riggs wrote:**

> **Hon. T. J. Galbraith**
> **My Dear Sir,**
> **I have been into court with the Indians that came down with me. The object has succeeded only as far as Lorenzo Lawrence. I feel disappointed of course. They feel worse. The art[icle] of the Legislature was not not [sic] regarded by the Court as an exponent of the Constitution. The remainder were refused because they cannot talk English.**
> **I will give you a fuller account of the thing when I have a better pen and more time or when I see you.**

not abandon his campaign to pass legislation easing Indians path to citizenship.

The petition of Lorenzo Lawrence, who spoke English, was granted. On June 20, a Declaration of Citizenship was issued by the Clerk of Court to him. Interestingly, the Declaration was a preprinted form for use in the Sixth Judicial District; it had spaces or blanks to be completed by hand by the Clerk. It specifically noted that he had applied for state citizenship "in accordance with the provision of

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> **I have paid to each one of them $2 and told them that it would be deducted from their annuity — but I wont say if you can take it out of the civilization fund instead as they are disappointed.**
>
> **Judge Monson [Branson] said this morning that we can take and appeal the question to the Supreme Court. Won't you like to do it!**
>
> **Napeshni is the only one from the Lower Sioux along with me.**
>
> **The names of the others I will give you before the upper payment.**
>
> **In great haste,**
>
> **Yours in haste,**
>
> **S. R. Riggs**

Stephen R. Riggs to Thomas J. Galbraith, no date [ca. June 20, 1861]; Clark W. Thompson Papers, MHS.

In his memoir published almost twenty years later, Riggs recalled this attempt to gain citizenship for a few of the residents of Hazelwood:

> **A few years after the organization of this civilized community, I took eight or ten of the men to meet the court at Mankato, but the court deciding that a knowledge of English was necessary to comply with the laws of the State, only one of my men was passed into citizenship.**

Stephen R. Riggs, *Mary and I. – Forty Years With the Sioux* 133 (1880). Riggs published a shorter version of these events in his article, "The Dakota Mission," 3 *Collections of the Minnesota Historical Society* 115, 124 (1880).

An account that reverses the usual chronology by placing the citizenship hearing before the establishment of the Hazelwood Republic was written by Doane Robinson, Secretary of the South Dakota Department of History, "A Comprehensive History of the Dakota or Sioux Indians," II *South Dakota Historical Collections* 1, 232 (South Dakota Historical Society, 1904).

the Constitution, Article VII, *and* an act of the Legislature, entitled 'An act granting the privileges of citizenship under certain restrictions, to the civilized Indians of the State,' approved March 11, 1861." [38]

Conclusion

The brief proceedings in Judge Lewis Cass Branson's courtroom in Mankato, Minnesota, in June 1861 are not important events in histories of Indian citizenship and suffrage in this country. Realistically his rulings changed nothing. The nine petitioners returned to the Hazelwood Republic and continued to live, work and study under the directions of Rev. Riggs. But, like the characters in an English novel set in 1913, we know their future: war came the next year, followed by expulsion of entire tribes from Minnesota and swift occupation of their lands by white settlers. Hardships lay ahead, citizenship in the distant future. [39]

[38] Declaration of Citizenship in the Lorenzo Lawrence Papers at the MHS (emphasis added). Two versions of Lawrence's Declaration are posted in the Appendix, at 29-30: a faint, difficult-to-read scanned copy of the original and a retyped version.

[39] Most Indians became citizens of the United States through various federal laws passed in the late 19th century and early 20th; the remainder became citizens in 1924 when the Indian Citizenship Act was enacted.

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Declaration of Citizenship of Lorenzo Lawrence

STATE OF MINNESOTA, } ss.
COUNTY OF Blue Earth

DISTRICT COURT, SIXTH JUDICIAL DISTRICT.

It is Hereby Certified, *That on this* Twentieth *day of* June *A. D. 1861*, Lorenzo Lawrence *an Indian of the* Dakota or Sioux Tribe, *appeared in the District Court of the Sixth Judicial District of the State of Minnesota, and for the County aforesaid, and made application to the Court to become a* Citizen of the State of Minnesota, *in accordance with the provision of the Constitution, Article* VII., *and an act of the Legislature, entitled "An act granting the privileges of citizenship, under certain restrictions, to the civilized Indians of the State," approved March 11, 1861.*

And the said Lorenzo Lawrence, *having been examined by the said Court in regard to his qualifications as required by the Constitution and said act, viz: As to his understanding the nature of an oath; his living in a house, cultivating the soil and wearing the dress of white men; and the same being of good moral character and over twenty-one years of age—these facts being established to the satisfaction of the Court by witnesses of the character required by law.*

It is Hereby Ordered by the Court, *That the said* Lorenzo Lawrence *be and he is hereby declared to be a full citizen of the State to all intents and purposes, with the right to sue and be sued in any of the Courts of this State in a like manner and with the same effect as other inhabitants thereof, and he shall be entitled to the same civil rights as other citizens.*

State of Minnesota, } ss.
County of Blue Earth

I hereby certify that the foregoing is a true copy of the original order declaring Lorenzo Lawrence *a citizen of the State of Minnesota, and this day filed in my office.*

In Testimony Whereof, *I have hereunto subscribed my name, and affixed the Seal of the Court aforesaid, this* Twentieth *day of* June *A. D. 186*1.

J. D. Williams

Clerk of said Court.

Declaration of Citizenship of Lorenzo Lawrence

STATE OF MINNESOTA }
COUNTY OF Blue Earth }

DISTRICT COURT SIXTH JUDICIAL DISTRICT

It is Hereby Certified, That on this twentieth day of June A.D. 1861, Lorenzo Lawrence an Indian of the Dakota or Sioux tribe, appeared in the District Court of the Sixth Judicial District of the State of Minnesota and for the county aforesaid, and made application to the Court to become a Citizen of the State of Minnesota, in accordance with the provision of the Constitution, Article VII, and an act of the Legislature entitled "An act granting the privileges of citizenship, under certain restrictions, to the civilized Indians of the State," approved March 11, 1861.

And the said Lorenzo Lawrence, having been examined by the said Court in regard to his qualifications as required by the Constitution and said act, *viz*: As to his understanding the nature of an oath; his living in a house, cultivating the soil and wearing the dress of a white men; and the same being of good moral character and over twenty-one years of age — these facts being established to the satisfaction of the Court by witnesses of the character required by law.

It is Hereby Ordered by the Court, That the said Lorenzo Lawrence be and is hereby declared to be a full citizen of the State to all intents and purposes, with the right to sue and be sued in any of the Courts of this State in a like manner and with the same effect as other inhabitants thereof, and shall be entitled to the same civil rights as other citizens.

—•—

State of Minnesota }
County of Blue Earth }

I hereby certify that the foregoing is a true copy of the original order declaring Lorenzo Lawrence a citizen of the State of Minnesota, and this day filed in my office.

In Testimony Whereof, I have subscribed my name, and affixed the seal of the Court aforesaid this twentieth day of June A.D. 1861.

/s/ J. T. Williams

Clerk of said Court.

Excerpts from the Democratic Debates at the Constitutional Convention Wednesday, August 12, 1857.

> **Note: A report of the Committee on the Elective Franchise was presented to the Democratic wing of the convention. Afterward, it was debated and amendments offered, including two regarding the suffrage rights of mixed bloods and full blood Indians.[40]**

Mr. BROWN. I move to strike out of the third clause of the section, the words "of Indian blood and persons,'' so the clause will read:

> **"Third. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization."**

I do it for the purpose of offering subsequently another clause providing for persons of Indian blood, when they have passed through the ordeal which I shall propose.

Mr. CURTIS, I hope the gentleman will explain himself more fully before this clause is stricken out.

Mr. BROWN. I will read the clause I shall propose respecting Indians. It is as follows :

> **"Fourth. Persons of Indian blood residing in this State, who have adopted the language, customs and habits of civilization, after an examination before a District Court of the State, in such manner as may be provided by law, and shall have been pronounced by said Court capable of enjoying the rights of citizenship within the State."**

Mr. CURTIS. I am opposed to the gentleman's amendment. I think that persons of mixed white and Indian blood, and those of pure Indian blood, should be placed upon precisely the same footing. I ask by what rule you are to ascertain whether an Indian has white blood in him. I see no reason why an Indian who has adopted the habits and customs of civilization, should not be allowed to

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[40] **Francis H. Smith, *The Debates and Proceedings of the Minnesota Constitutional Convention* 428-434 (1857).**

vote on the same terms as a person of mixed blood. The gentleman has also inserted in his proposition a provision in regard to language. Now, sir, if that requirement is to be applied to the Indians, you may just as well provide that persons of foreign blood shall be required to speak the English language.

Mr. SIBLEY. Indians, we all know, in their natural state, are barbarians. They do not come within the same category as foreigners at all. They should not be entitled to the privileges of American citizens, while they continue in their savage condition. But, sir, the gentleman proposes, by his amendment, that when an Indian has left his barbarous state and become part and parcel of the community in which we live, when he has been pronounced by the proper tribunal to be capable of appreciating the privileges of an American citizen, he shall be admitted to the rights of citizenship. But, sir, the idea of placing Indians in their wild and barbarous state, in the same category with foreigners, is preposterous.

Mr. CURTIS. Only in regard to language.

Mr. SIBLEY. Those of us who favor the amendment of the gentleman from Sibley, (Mr. Brown) are just as much in favor of benefitting the Indians as the gentleman who has just spoken. We are willing to give Indians all the rights of citizenship when they have been declared by a proper tribunal to be capable of enjoying them — that is, when they have learned to speak our language, and have adopted the habits and customs of civilization.

Mr. BROWN. I would inquire of the gentleman from Washington whether he would propose to allow every Indian in the country to vote from the mere fact that he could hoe a hill of corn and wear a pair of pantaloons.

Mr. CURTIS. I answer the gentleman that hoeing a hill of corn and wearing pantaloons do not constitute all the habits and customs of civilization. Now, Sir, the gentleman has argued here that it is necessary to have a tribunal who shall ascertain whether these barbarians have become civilized. The same argument would apply to half-breeds and persons of mixed white and Indian blood. Otherwise why did you prescribe here in the same section that this latter class of persons shall conform to the customs and habits of civilization? It presupposes that they have not so conformed, or else will retain the requirement ? Now, Sir, I do not care whether the word "language" is inserted or not. All I ask is that Indians and mixed bloods shall be placed on the same ground precisely. If the requirement of language is made in one case, it ought to be made in both. As a matter of fact, persons of half Indian blood are in as great a state of barbarism as persons of full Indian blood. It does not follow because a person has white and Indian blood that he is a half-breed. He may have but a slight particle of white blood in him. A half-breed, if you please, may be married to an Indian. Their children may marry Indians, and so on, ad infinitum. Still, if there is a drop of white blood remaining, under the clause

you distinguish the person as belonging to a separate class, and he is to be admitted to the rights of citizenship under regulations different from those you apply to Indians. All I ask is that the same restrictions applied to one shall be applied to the other.

Mr. BECKER. I should, have supposed from the arguments I heard the other day that I was in the camp of the Republicans at the other end of the Capitol, or in Connecticut or Massachusetts, instead of being here in the hall where the Democratic Constitutional Convention has assembled. I have heard every kind of distrust expressed against the ballot-box. I should not have been surprised to have heard such sentiments coming from the old tory ranks, or from the Know-Nothing ranks, but never have I seen such distrust of the American people and of foreigners who have become citizens amongst us, as has been manifested by the delegates to this Convention. It is not enough that we must restrict those coming from abroad, but gentlemen will also apply unnecessary restrictions to those who have been born here upon our own soil. Why, Sir, I am told by my honorable friend on the other side that we are to make a distinction in this Constitution between those half-breeds living with us and settlers from abroad in the right of elective franchise. Sir, when I have seen the Indian half-breed baring his bosom for the protection of the white man; when I recollect that from the earliest days of our settlement we have found our strongest protection in this class of people, and that the captives taken by hostile Indians have been rescued and returned by those half-breeds, I say that to make a distinction against them in respect to the rights of citizenship, is monstrous. No discrimination whatever should be made against these men and our own white citizens, and I am also in favor of allowing Indians of full blood the same rights and privileges whenever they shall have adopted the customs and habits of civilization.

Mr. FLANDRAU. I think the gentleman from Washington, (Mr. Curtis,) in his argument upon this subject, has gone further astray than upon any other, which has undoubtedly arisen from the fact that his residence is in a locality where he has had comparatively few opportunities of observing the progress of the Indians in civilization. Now, Sir, I have a memorial to this Convention upon the subject of Indian suffrage, from the Indians, or a portion of them, who have become civilized in this Territory, signed in their own handwriting, and a very interesting memorial it is. I shall ask at the proper time that it may be received and entered upon the Journal of this Convention. It is as follows :

> **To the Honorable , the Members of the Convention:**
>
> **The undersigned, your petitioners, would respectfully represent,**
>
> **1st. That they are living on the Dakota Reservation, within the bounds of the proposed State of Minnesota.**

2d. That they are composed of half-bloods of the Dakota nation, who, by the Organic Act of the Territory, are constituted citizens; and full-blood Dakotas who have not, by that instrument, been thus invested.

3d. That their Republic has been formed on the principles of education and labor; in other words, they have learned to read and write their own language, and some of them have obtained a partial knowledge of the English language, and they have adopted the dress and habits of civilized men.

4th. That they have organized themselves into a civilized band for the purpose of fixing and extending civilization, education and the religion of the Bible among their people.

Your petitioners therefore desire that all who are civilized and educated among the Indians, whether part or full blood, may be recognized by the Constitution as citizens of the State of Minnesota, and be entitled to all the immunities and privileges of the same.

PAUL MA-ZA-KU-TE-MA-NI,
HENOCK MAR-PI-YA-H-DI-NA-PI,
ENOS WA-SU-HO-WAX-TE,
SIMON ANA-WAG-MA-NI.
LORENZO LAURENCE,
ELI WAKI-YA-HDI.
AMOS EE-TO-KI-YA,
MICHEL RENVILL,
ANTOINE RENVILL,
ISAAC RENVILL,
JOSEPH KA-WAN-KI,
ROBERT CHASKE.

Hazelwood, M. T., July 4, 1857.

Now, Sir, I do not believe that any gentleman desires that men in their savage state shall be entitled to participate in the right of suffrage with citizens of this Territory. But, Sir, it is the policy of the Government, and ever has been, to civilize these Indians if possible. A great deal of time, money and labor has been expended for that purpose, and although no very great progress has been made, yet some progress has been made. I can testify from my own observation the progress with the most promising results of the Indians belonging to the community who have memorialized this Convention. I know, personally, every one of them. They have separated themselves from their tribes, and have adopted a system of government with a written Constitution. They govern themselves, elect their own officers, and transact their business with as much formality and regularity, and with as good judgment in relation to their governmental matters and internal police as any community in the

Territory. They have learned to read and write. They have erected a very handsome little Church, and they are men of intelligence, possessing knowledge of all the lesser branches of education. Now, Sir, when Indians like these desire to become civilized, it seems to me the least we can do is to give them all the encouragement we can with safety to ourselves. But while it is just and right that we should accord them these privileges, we should take care not to jeopardize our own rights, and I am in favor of surrounding those rights by ample safeguards. Now if the fact of their having adopted the habits and customs of civilization is left to be determined by the Judges of Election, in the remote frontier settlements all a man has got to do who wishes to manufacture votes is to take a wild Indian, dress him up, bring him in and pass him off as having adopted the habits and customs of civilized life, and then strip off his clothes and let him return to his tribe. I submit that we ought to guard ourselves against the perpetration of such frauds. When an Indian has really become civilized, and desires to possess the privileges and immunities of the citizen, let him present himself to some tribunal in which the people have confidence, which will protect the rights of the citizen, and let them extend to him the same rights, if he is capable of enjoying them.

An Indian who desires to become civilized, and who has made sufficient progress in civilization, is as much entitled to vote as any other man. They were the original possessors of our soil. They have suffered at our hands, and if we can extend to them any suffrage as compensation for what we have taken from them, and it can be done without danger to ourselves of introducing an element into our politics which may give rise to corruption and fraud, I trust it will be done. I trust gentlemen are not so prejudiced against the Indians as to prevent them from receiving justice at our hands.

Mr. SIBLEY. The gentleman from Washington has referred to the fact that the paragraph now under consideration, places persons of pure and mixed Indian blood upon different basis. Now, sir, we all know that these mixed bloods as a class occupy in ninety-nine cases out of one hundred entirely different positions in respect to civilization from the Indians.

Mr. CURTIS. The language of the paragraph pre-supposes that these mixed bloods are not civilized.

Mr. SIBLEY. The reason why that phraseology was used lies in the fact that there is a certain portion — a very small portion — of persons of mixed white and Indian blood who reside among the Indians, and have not adopted the customs of civilized life.

Now sir, the gentleman should recollect that we have already provided that those persons who are civilized, shall be entitled to the same right of suffrage as ourselves. I concur entirely in the views of the gentleman who has just taken his seat. There are sundry of us among the older residents of the

Territory, who have been trying to get some medium, some safe ground on which we may allow Indians who have abandoned their former mode of life, and have become to all intents and purposes civilized men, to enjoy the rights and privileges of citizenship. I hope the gentleman will be satisfied when he comes to examine the matter a little more thoroughly that the course proposed by the gentleman from Sibley is the best we can adopt.

The amendment was adopted.

Mr. BROWN moved further to amend the Section by adding thereto the following clause:

> **4th. Persons of Indian blood residing in this State, who have adopted the language, customs, and habits of civilization, after an examination before a Circuit Court of the State, in such manner as may be provided by law, and shall have been pronounced by said Court capable of enjoying the rights of citizenship within the State.**

Mr. CURTIS. I move to amend the amendment by striking out the words " Circuit Court," and inserting, " Probate Court."

I think the amendment should be made for the reason that the Circuit Court is only in Session at certain periods during the year. The matter should be referred to a Court always in Session, the same as in the case of foreigners who wish to declare their intention to become citizens. If, however, gentlemen object to the particular Court I have named, I will so modify my amendment as to make it read, "any Court of record."

Mr. FLANDRAU. There will be a District Court in Session, in some portion of the Territory almost every two weeks during the year. I would suggest to the gentleman that the words, "District Court," should be substituted for " Circuit Court." We shall probably have no such Court as a Circuit Court recognized under our Constitution. There will be a Circuit Court, but it will be a Court of the United States. The only object to be attained is that the Court to which this matter is referred, shall be one of acknowledged respectability and learning. Now sir, if the matter is referred to Probate Courts established in our frontier counties, you do not provide that protection which ought to be thrown around the rights of our citizens. The first thing we shall know some Probate Judge, in order to carry a party measure, will admit hundreds of wild Indians to the right of suffrage. When Indians are allowed to vote, that right should be given them by some tribunal of high. respectability.

Mr. CURTIS. It has been urged here that those gentlemen who have had association with the Indians, and have been long among them understand their character, and are far better able to judge of these matters than those of

us who have had less intercourse with them. Now sir, the statement of the gentleman has furnished us with the strongest possible argument against his own position. According to the gentleman's own view, these very frontier men are better qualified to determine these matters, than Judges of the Circuit or District Court, who have never seen an Indian in their life time. These very frontier men are far the best qualified to deter mine, whether Indians have changed their savage life and become civilized, and therefore, are the best judges as to when this miraculous change has occurred. And although these men may not be learned in the law, still they are learned enough in common sense to be able to distinguish between au Indian in his savage state, and one who has adopted the habits of civilization.

Mr. BROWN. I will venture to say, and I think the gentleman who has just spoken will agree with me, that in the frontier counties at this time, there is not a Judge of Probate who knows as much about Indian character as the gentleman himself. As has been remarked, in the frontier counties there are very few persons qualified for the office of Probate Judge who will accept that office. It is one of a great deal of trouble and very little profit, and very few who accept it understand what its duties are. I will modify my amendment in accordance with the suggestion of the gentleman from Nicollet, by substituting the words "District Court," for "Circuit Court."

The amendment to the amendment was not agreed to.
The amendment was then adopted.

Excerpts from the Republican Debates at the Constitutional Convention Wednesday, August 7, 1857.

Note: The delegates at the Republican convention debated at length on whether the word “white” should be used as a voter qualification and whether a separate referendum should be held on October 13, 1857, on whether “negro men” should have the franchise. The following speech by Amos Coggswell, a delegate from Steele County, is important because it reveals that Rev. Stephen Riggs planned to translate the new state constitution into Dakota even before it was adopted by the convention and ratified by the people, and then use that translation to qualify full blood Indian men for the franchise. Riggs’s proposed voter qualifications do not have a language requirement.

Mr. COGGSWELL. I have been remarkably quiet for me, to say the least of it during this discussion, (laughter,) and you must give me credit to that extent, (a voice, "you shall have it.") And what I have to say now will be very short, certainly. I think we can dispose of this question of the Elective Franchise this afternoon, and do it understandingly. I had supposed before this report was brought before the Convention, that there was a general understanding that we would insert the word "white" here, and then submit to the people the question whether negroes should vote, and if a majority of the votes was in favor of it, then that negroes should be permitted to vote; and if a majority of the voters were opposed to it, then they should not have that right. I understood that that was the general prevailing sentiment among the members of this Convention. But it appears that I was mistaken in regard to that matter.

Now so far as I am concerned individually, I stand in this position: I came here as a member of this Convention for the purpose of aiding and assisting in drafting certain propositions to be submitted to the people, and that none of those propositions shall have any binding force or efficacy until they have been ratified by the people; and so far as I am concerned individually, I would like, provided it could be done conveniently, to have every single article which will be incorporated into our Constitution, submitted to the people separately. But that cannot be done conveniently, and hence I am in favor of having the main portion of the Constitution submitted to the people as one whole thing, and certain other matters separately. When this separate proposition is submitted to the people, and I go home to my constituents, I apprehend that I shall be just as much in favor of the rights of colored persons in this Territory as my friend from Rice County, (Mr. North) or my friends from any other county; and I will tell the people that, in my judgment, the colored population of this Territory, over twenty-one years of age, who aid and assist in bearing the burdens of taxation, should have a voice in the enactment of the laws which govern and control their action.

But so far as the manner of submitting this question is concerned, I am decidedly in favor of having it submitted as a separate proposition, as to who shall and who shall not vote.

I say that I am in favor of giving to every male citizen of the United States, who is over twenty-one years of age, who has been a resident of this State six months, and a resident of the county ten days, the right to vote.

In the next place I am in favor of every white male inhabitant, over and above that age, and who is of foreign birth, who is a resident of the Territory at the time of the adoption of this Constitution, having the right to vote. Then I am in favor also of giving the right to vote to every male inhabitant of foreign birth over twenty-one years of age, &c., after he has been here two years—a time sufficient to acquaint himself with the general machinery of government. Now I want that expressed in as plain and definite language as it possibly can be. And here I wish to say, that in looking over this report of the committee, my judgment is, that they have not chosen as good language as I think they

might have chosen, and which would have conveyed more distinctly and definitely the rights and privileges of persons therein named.

Besides all that, I am opposed to the latter part and portion of that substitute, and in favor of substituting something like what I hold in my hand, and which I shall offer at the proper time, either in the shape of an amendment or substitute. It is in this language following:

> **"Every male person of the age of twenty-one years and upwards, belonging to either of the following classes, and who shall have resided in this State for the period of six months, and in the town, precinct, or ward ten days, next preceding any election, shall be deemed a qualified elector, and have the right to vote for all offices elective by the people—**
>
> **"First — Citizens of the United States.**
>
> **"Second — White persons of foreign birth who shall have declared their intention to become citizens of the United States, in conformity to the laws of Congress on the subject of naturalization, and who are residents of this State at the time of the adoption of this Constitution.**
>
> **"Third — White persons of foreign birth who shall have declared their intentions to become citizens of the United States in conformity to the laws of Congress on the subject of naturalization, and who have been residents of the United States for the period of two years.**
>
> **"Fourth — All male persons of mixed Indian blood, and all full blooded Indians who have adopted the habits and customs of civilized life, of the age of twenty-one years and upwards who can write their own names and read this Constitution either in their own or the English language, and who shall take an oath to support the same, and who are not members of any tribe and do not receive the annuities from the United States, and who shall have resided in the said county, town, ward, or precinct, the same length of time required of other voters, shall have the right to vote at any and all elections. *Provided*, however, that no such person shall be entitled to the elective franchise, unless he shall have obtained a certificate from some judge of the circuit or supreme court showing that upon a thorough examination he possesses the above qualifications. And it shall be the duty of the Legislature from time to time to provide for the manner in which said examination shall be conducted."**

Now that expresses my views in regard to the elective franchise pretty clearly. And here let me say, that the fourth clause which I have introduced, is introduced upon the request of Mr. Riggs, Indian Missionary among the Indians upon the Sioux reservation. The clause he desired me to introduce was a little different from this, but upon showing it to him, he said it would answer better than nothing, and would throw restrictions around this matter of fraud committed under color of the right of these mixed, and full blooded Indians to vote. It will put an end to this matter of dressing up Indians, giving them an appearance of civilization, leading them up to the polls to vote, and

then leading them away, stripping off their clothes, and putting them upon other Indians for the same purpose. We claim that that thing shall not be done.

But as I am satisfied that there are certain mixed blood Indians as well qualified to exercise the elective franchise as many of those who will undoubtedly exercise it, I am decidedly in favor of extending it to them under these restrictions.

Now I hope this thing will be put in a nut shell, and in such language as cannot be misconstrued, which all will understand. If the language I have proposed is any better than the language made use of by the mover of the substitute, or by the mover of the amendment, or by the committee, I should like to see it adopted; and I would like to see the same principle incorporated into the article upon the elective Franchise. I certainly am opposed to have the right of the negro to vote incorporated into the Constitution and made a part and parcel of it. I am opposed to making the fate of the Constitution depend upon that. But I am in favor of having it submitted to the people separately, and if the people desire that negroes shall vote, let them vote. So far as the people of Steele county are concerned, they will show as good a vote for it, as the votes of Rice county, taking into consideration their population.[41]

As adopted, Article VII of the Constitution provides:

ARTICLE VII.
Elective Franchise.

> **Section 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year and in this State for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have**

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[41] **T. F. Andrews, *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* (Republican Debates), August 7, 1857, at 379-381 (1858)**

been for ten days a resident, for all officers that now are or hereafter may be elective by the people:

First. White citizens of the United States.

Second. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

Third. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Fourth. Persons of Indian blood residing in this State, who have adopted the language, customs and habits of civilization, after an examination before any District Court of the State, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the State.

Sec. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights; and no person under guardianship, or who may be non compos mentis or insane, shall be entitled or permitted to vote at any ' election in this State.

Sec 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this State or of the United States; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum; nor while confined in any public prison.

Sec. 4. No soldier, seaman, or marine in the army or navy of the United States, shall be deemed a resident of

this State in consequence of being stationed within the same.

Sec. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

Sec. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

Sec. 7. Every person who, by the provisions of this article shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election; except as otherwise provided in this Constitution, or the Constitution and Laws of the United States.

Governor Henry H. Sibley's message to a joint session of the Legislature on December 8, 1859:

The clause in the constitution prescribing the conditions upon which civilized Indians may exercise the election franchise, has thus far remained inoperative, in consequence of the failure of the last Legislature to regulate the mode of examination of applicants by the District Courts. I am informed by the Rev. Mr. Riggs, highly respected missionary among the Dakota or Sioux Indians, that there are individual members of that tribe who are possessed of the requisite qualifications for citizenship, and if so, they and all others similarly qualified, have a constitutional right to ask from the

Legislature such facilities as will enable them to present themselves before the proper tribunal for examination, while it would be proper to place around any enactment for that object, every safeguard to prevent abuses. If the State authorities can give encouragement to the red man who is striving to raise himself in the intellectual and political scale, it is surely incumbent on them to do so, promptly and cheerfully, especially as our constitution has thrown over him its broad shield of protection. I recommend the subject to your special attention. [42]

Governor Alexander Ramsey's message to a joint session of the Legislature on January 9, 1861:

In the formation of the Constitution, provision has been made for encouraging our aboriginal population to attain the status of civilized men. Previous to that time, for almost a quarter of a century, individuals, acting under the direction of benevolent associations in our own land, had been sowing the seeds of civilization which have been springing up and ripening into fruit.

The Government, also, within a few years past, have directed their attention and efforts, under the various treaties, to civilizing and elevating the red men within our State. The results are very gratifying. Many among the Dacotahs, and other tribes, have adopted the habits and customs of white people, and are very desirous of being recognized as men and citizens.

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[42] Journal of the House of Representatives, December 8, 1859, at 26.

In our age of progress, with a general disposition on the part of our people to do what may be done for the benefit of those whose lands we have acquired, it would seem that the time had fully come for the passage of such a law, by the Legislature, as is needed to carry out the provisions of the Constitution in regard to these original inhabitants of our soil.

This is desired, with such guards and provisions as, while securing the rights of citizenship to such red men as may be capable of enjoying and exercising them, will afford sufficient guarantee against abuse. It is believed that thereby no detriment can occur to the interests of the white man, while it will operate as a strong motive to elevate and civilize the Indian, and be a just acknowledgment of sympathy with the improving Indian and his benevolent, self-sacrificing instructors.[43]

The following letter was published on the front page of the *St. Peter Tribune*, July 10, 1861. The author, identified only by his initials, almost certainly was James Hinds, a St. Peter lawyer, whose business card was published in the local press.

Indian Citizens

Correspondence of the Tribune

PAHJUTAZEE, June 25, 1861

[43] Journal of the House of Representatives, January 9, 1861, at 33.

MESSRS. EDITORS: — It is doubtless known to many of your readers that a number of Sioux Indians made application to the Court, at its late session at Mankato, for the privilege of citizenship, and that with a single exception, their application was unsuccessful. The object of this letter is to give some idea of the feelings of these men, and to awaken a deeper interest in them among their more favored brothers.

Persons unacquainted with the Indians can have little idea of the kind and degree of opposition these men have encountered for forsaking the habits of their own people, and adopting those of civilized life. When they read of one hundred, or two hundred Indians walking up and "being sheared," it sounds very well, and they think things are going on swimmingly.

I would by no means speak lightly of this, for even that much is gained, but it is one thing to yield to the tempting offer of a suit of broadcloth free, with the choice of a yoke of oxen, and *quite another* to really forsake not only their dress, but their habits and manner of life — habits which have come to be a part of their being — and begin, and *continue* to live by labor. The former was comparatively easy, and was done in the summer of 1859, and by some afterwards, but the storm of persecution which arose in the following winter, together with the wearing of their pantaloons, caused the large part of them to return to the blanket and clout. A few were firm and endured the storm. Their lives were often threatened, and that solely in consequence of their efforts to become civilized. They were looked upon with jealousy, because they received more assistance from the government than the blanket Indians. They were also looked upon with contempt because they descended to a woman's work, such as

raising corn, chopping wood, &c. Yet they were expected to feed all visitors; and these were by no means few. Some of them were obliged to give away probably more food in this way, than was consumed in the same time by their own families. Notwithstanding these difficulties a few "held out faithful." They came out victorious through an ordeal that would have withered some of our home-born citizens.

It is also worthy to remark, that a majority of these who appeared before the Court, adopted the dress and habits of civilization long before there were any inducements held out by the Government. They dropped the blanket many years ago, and went to work; fenced fields and built houses. Two of them put up frame houses with some assistance from the mission; but as I know, with none from the Government. Several others built log houses. Most of them can read in their own language — having considerable intelligence, and are honorable and upright men.

Others began later, but with proper encouragement promise well. They all need sympathy, and it must come from white men. While they are not recognized as men, and equals by either nation, how can they feel that manly independence and self-respect which every man has a right to feel?

In view of these facts, their friends, as well as themselves, were pleased to see a prospect of their being admitted as citizens of our State.

However, when the time drew near when they were to appear in court, much opposition was manifested in various quarters.

They were discouraged by white men, and threatened by Indians. The consequence was that some who intended to go down, thought it prudent to post-

pone it for the present, but nine, I believe, made their appearance at Court. Only one of them was naturalized. The others were rejected because they could not speak English, and returned home disappointed and ashamed. They are particularly sensitive to anything of that kind, and feel disgrace far more keenly that white men would under similar circumstances.

One of them called on me to-day, and almost the first thing he said was, "They did not make us citizens, and we came home very much ashamed."

Said I, "I am very sorry, but I hope you will yet succeed."

He replied, "No, I am an old man now, and I will never be made a citizen. We were bitterly opposed down there. One man made me feel very angry. He said that 'men with colored skin should never be naturalized — that they could not be made 'white men.'" Then growing very indignant, he continued: "What if the skin is white? If the actions are wicked the soul is *black*; and though the skin is black, if God cleanse the soul, it is white. God made all men of one blood, and though a man have dark skin, he is a man. They treat us like dogs and I do not like it. I am greatly ashamed ever since I returned."

Can any one read this man's protest and not feel that he has reason to complain?

Here is a people whom we have deprived of their hunting grounds, and consequently of their livelihood. The annuities will do but little toward supporting them, and we ask them to abandon their mode of life and adopt ours, and yet refuse to admit them as part of our people, except on terms which the adult portion of them cannot comply with. We thus cut them off and by so doing, in a measure cut off their children, it not being at

all reasonable to suppose they will take the same interest in having them educated in the language and customs of a foreign people that they would in their own.

We do not believe it will always be thus. We believe that our State is large-hearted enough, to take into its embrace these less fortunate brothers, and warm them up into a new life of civilization and enlightenment.

J. H.

Related Articles

Stephen R. Riggs, *The Minnesota Constitution in the Language of the Dakota* (MLHP, 2017) (published first, 1858).

Douglas A. Hedin, "Judge Lewis Cass Branson (1825-1905)" (MLHP, 2019).

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