

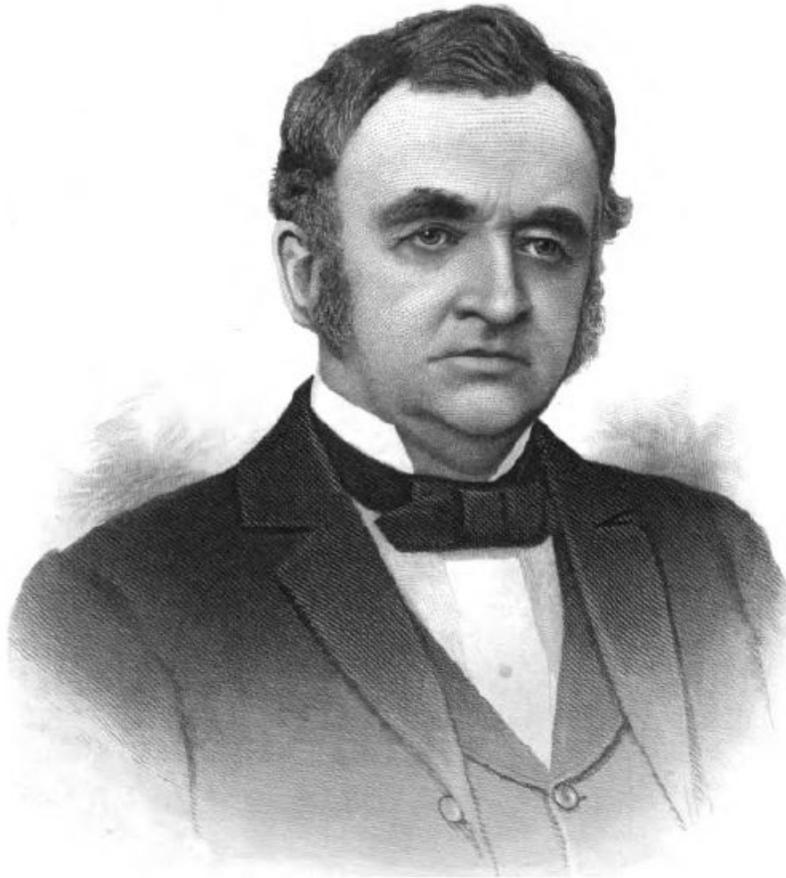
# THE BAR AND BENCH OF MINNEAPOLIS

(1893)

By

Isaac Atwater

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*Isaac Atwater*

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# Foreword

By

Douglas A. Hedin  
Editor, MLHP

The following article on the “Bench and Bar of Minneapolis” is from the first volume of Isaac Atwater’s *History of the Minneapolis, Minnesota* published in 1893. It is similar to chapters in other local histories published by subscription in this state in the late nineteenth century in that it consists of biographical sketches of judges and prominent lawyers, anecdotes, and a few paragraphs on the city’s bar association; however, it differs from others by the length of the sketches and Atwater’s occasional insightful observations about the practice of law.

In 1851 Minnesota became the sixth jurisdiction to adopt a version of the Field Code.<sup>1</sup> Lawyers and judges who came to Minnesota from New York and other New England code states knew how to practice under them but lawyers who had been trained in other jurisdictions to use the highly technical common law forms of actions were befuddled. The code caused defensive pleading by the bar, which Atwater alludes to in a description of practice before territorial Justice Moses Sherburne:

The practice code, new at that time, had unsettled the precedents, and gave rise to demurrers and motions innumerable, which were resorted to the more as liberal costs, required to be promptly paid, were allowed.<sup>2</sup>

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<sup>1</sup> Stat. c. 70, §1, at 330 (1851) (“The distinction between the forms of action at law, heretofore existing, are abolished; and there shall be in this territory hereafter, but one form of action at law, to be called a civil action, for the enforcement or protection of private rights, and the redress of private wrongs; except as otherwise provided by statute.”).

<sup>2</sup> The bar’s excessively cautious pleading and motion practice under the code is noted in Douglas A. Hedin, “*Holcombe vs. McKusick* and the U. S. Supreme Court’s Reaction to the Codification Movement in the 1850s” 19-20 (MLHP, 2011).

This confusion did not disappear quickly. About Martin B. Koon, who arrived in Minnesota in 1878, Atwater writes, “He was not in love with the ‘Code,’ having been educated under a different system of pleading, but has adapted himself to it, as one must do to the inevitable.” Atwater also noted Koon’s commitment to the profession: “He has escaped the seductions of real estate speculation, to which so many bright young men yield, but has not been unaware that his surplus earnings could nowhere be more safely invested than in Minneapolis real estate.” Here Atwater wrote from personal experience. In the territorial era, he was a land agent for Eastern investors and later personally invested in land within the city that became valuable.<sup>3</sup>

In the profiles we see changes in the profession, especially the rise of the railroad specialist. Reuben Clark Benton, for example, defended personal injury claims against the roads:

Col. Benton, representing in the chief city on its line, one of the great railroad corporations of the Northwest, has been called upon to investigate a vast number of claims for injuries to persons and property. His services have been more than professional. In a quasi judicial character, he has brought about settlements in most cases. When he has been convinced that a claim is fraudulent or unjust, he has brought all the resources of legal knowledge and professional skill to resist it; so that few adverse verdicts have been rendered against his company. Suave and genial in his bearing, he is dignified at the bar, but uncompromising and persistent in maintaining his position.

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<sup>3</sup> And this led to litigation such as *Wass v. Atwater*, 33 Minn. 83, 22 N.W. 8 (1885). Atwater hired John Wass to sell 26 acres of land and pay a commission of any sum over \$1,200 per acre; Wass sold the land for \$1,300 an acre, but Atwater refused to pay, claiming that Bradford, whom Wass asked to help find a buyer, waived the fee. A jury trial before Judge Koon resulted in a plaintiff’s verdict of \$2,690.73. The supreme court, in an opinion by Justice Dickinson, affirmed. Atwater represented himself and was aided by Charles E. Flandrau. Wass was represented by Worrall & Jordan.

For Atwater’s representation of Eastern investors and speculators in Minnesota Territory, see Douglas A. Hedin, “Lawyers and ‘Booster Literature’ in the Early Territorial Period” 29-32 (MLHP, 2008).

No department of legal practice requires so close discrimination as that pertaining to railroad litigation. The railroad attorney is often called on to argue before the Court the nice application of legal principles, and almost always faces a jury sympathizing with his opponent. Col. Benton, by his candor, dignity, and learning, has been able to retain the confidence of the Bench, while his diplomatic skill has not seldom won verdicts from reluctant juries.

His description of Eugene Wilson, whom he admires, begins: “In the midst of the daily struggle for wealth and social position....” Not many lawyers and probably not Wilson himself would describe their law practice this way.

For a few anecdotes, Atwater adopted the practice of Charles E. Flandrau, who cannibalized his previous writings to form new articles.<sup>4</sup> Atwater had previously published his anecdote about Chief Justice Welch’s explanation of the Territorial Supreme Court’s ruling in favor of John Wesley North in an appeal he expected to win.<sup>5</sup> This thrice told tale makes the territorial

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<sup>4</sup> On January 13, 1896, Flandrau delivered an address on “Lawyers and Courts of Minnesota Prior to and During Its Territorial Period” to the annual meeting of the Minnesota Historical Society which published it in its *Collections* series two years later. 8 *Minnesota Historical Society Collections* 89-101 (Minn. Hist. Soc., 1898). Before the Society’s volume came out, Flandrau resubmitted his address to the *Minnesota Law Journal*, which published it with a few revisions in its March 1897 issue. 5 *The Minnesota Law Journal* 42-48 (March 1897) (This article is posted on the MLHP as “Charles E. Flandrau, ‘Lawyers and Courts of Minnesota Prior to and During Its Territorial Period.’ (1897)”). The speech was a condensed version of two earlier writings: (1) his two-part article published in *Magazine of Western History* in 1888 (They are posted on the MLHP as “Charles E. Flandrau: ‘History of the Bench and Bar of Ramsey County: Parts I & II.’ (1888)”), and (2) his chapter in Rev. Edward D. Neill, *History of Ramsey County and the City of St. Paul, Including the Explorers and Pioneers of Minnesota*, and J. Fletcher Williams, *Outlines of the History of Minnesota* 234-251 (1881) (It is posted on the MLHP as “Charles E. Flandrau, ‘The Bar and Courts of Ramsey County’ (1881)”). For a summary of Flandrau’s cannibalization of his previous writings, see Douglas A. Hedin, “Foreword” to “The Bar and Courts of Ramsey County” 6-7 (MLHP, ) in the Neil-Williams *History*.

<sup>5</sup> He published it three times during his lifetime: 1) “Territorial Bench of Minnesota: Part 1,” 7 *Magazine of Western History* 207 (December 1887); 2) 1 *History of Minneapolis, Minnesota* 426 (1893); and 3) “Practical Suggestions to Students and Young Lawyers,” 2 *Yale Law Journal* 131, 135 (March 1893). Worse, the anecdote

justices look incompetent. Because Atwater so obviously misinterpreted the Chief Justice, one wonders why he kept repeating the story—did no one over the years tell him that Welch did not disclose the internal deliberations of his court, that he was just pulling Atwater’s leg, that he had made up an absurd story to extract himself from an awkward situation?

Atwater was seventy-five years old when his *History* was published. He was assisted by other writers. In his history of *Minneapolis: Gateway to the Northwest* published in 1923, Rev. Shutter writes about Atwater:

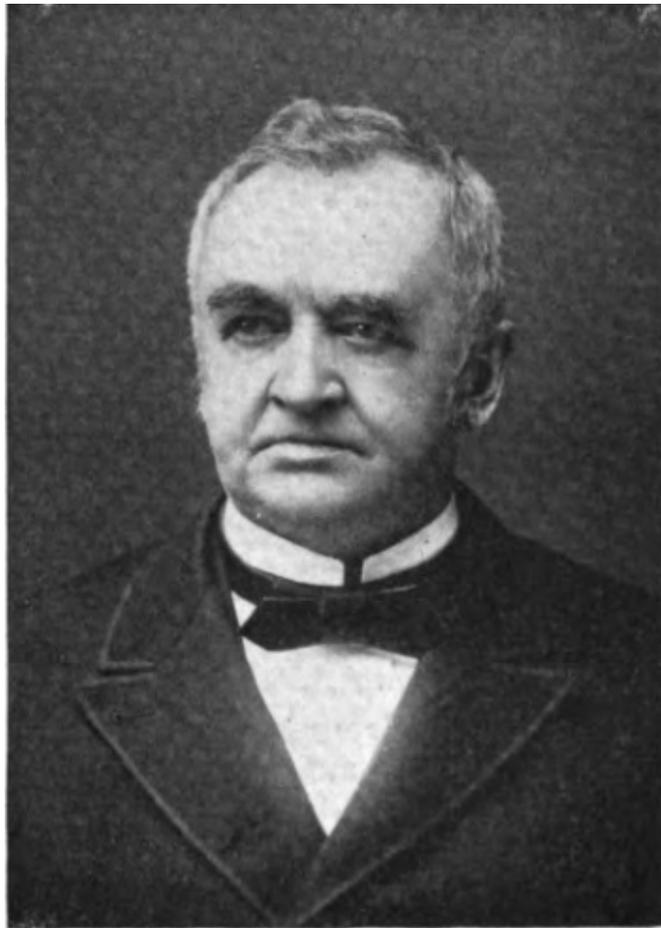
Isaac Atwater, the second lawyer to locate in Minneapolis and first editor of the St. Anthony Express, was for many years intimately identified with Minneapolis and her people. He was a member of the first board regents of the University of Minnesota when that institution was established in 1851; was elected one of the first justices of the Minnesota Supreme Court in 1857; served as a member of the first city council after St. Anthony and Minneapolis were consolidated in 1872; was for several years a member of the school board; was at one time president of the Minneapolis Board of Trade, and was otherwise interested in local and political affairs. In his law practice and his political associations he acquired a wide knowledge of Minneapolis, and this knowledge he utilized to compile a history of the city, which was published in 1893. In this work he was assisted by Rufus J. Baldwin, James P. Wyman and others, some of whom wrote the chapters pertaining to certain subjects. Mrs. Atwater was the author “Pioneer Life

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is repeated in Hiram F. Stevens, 1 *History of the Bench and Bar of Minnesota* 15-16 (1904), and Robert J. Sheran & Timothy J. Baland, “The Law, Courts, and Lawyers in the Frontier Days of Minnesota: An Informal legal History of the Years 1835-1865,” 2 *William Mitchell L. Rev.* 1, 33 (1976).

from a Woman's Standpoint," which was published in 1894.<sup>6</sup>

The following appeared first as Chapter 18 on pages of 423-484f in the first volume of Atwater's *History of the City of Minneapolis, Minnesota* published by Munsell & Company of New York. It is complete though reformatted. Page breaks have been added. The spelling of several words have been corrected or modernized. Asterisked (\*) footnotes appeared in the original book; numbered footnotes are by the MLHP. Photographs have been added by the MLHP.



HON. ISAAC ATWATER.

(1899).

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<sup>6</sup> Marion Daniel Shutter, *History of Minneapolis: Gateway to the Northwest* 453 (S. J. Clarke Pub. Co., 1923).

HISTORY  
OF THE CITY OF  
MINNEAPOLIS  
MINNESOTA



Part I.

ISAAC ATWATER,  
EDITOR.

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NEW YORK:  
MUNSELL & COMPANY, PUBLISHERS,  
1891.

## THE BAR AND BENCH OF MINNEAPOLIS.

BY THE EDITOR.

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Minneapolis, without claiming special pre-eminence has contributed her full share of able men to the legal profession, who have been prominent at the bar and on the bench of the state. In early days the location was not as attractive to the profession as St. Paul, on account of the advantage enjoyed by that city in the location there of the Capitol and United States Court, which of themselves tend to draw legal business. This advantage, however, grows yearly less, as the facilities for rapid communication between the cities increase, and a United States Court is now held here, and would entirely disappear should the Capitol be located midway between the two cities.

Ellis G. Whitall was the first attorney who settled within the limits of what is now Minneapolis—then St. Anthony Falls. He was the brother in law of Senator H. M. Rice, of St. Paul. He read law and was admitted to practice in Richmond, Virginia. He came to St. Anthony in 1849. His office was near the old St. Charles hotel, since destroyed by fire.

He practiced for nearly two years in St. Anthony, and then continued the same a Missouri, till the breaking out of the war. He was a Virginian by birth, and engaged in the Confederate service, in which he continued until the surrender of General Lee. He afterward removed to Galveston, Texas, and engaged in the cotton trade. He died in that city in 1867, of yellow fever.

The next attorney to make a permanent settlement in St. Anthony was John W. North, Esq., who came early in 1850.<sup>7</sup> He was a native of Onondaga County, N. Y., and a graduate of Wesleyan

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<sup>7</sup> For more about North and his law practice in the territorial period, see Merlin Stonehouse, *John Wesley North and the Reform Frontier* (Univ. of Minn. Press, 1965).

University, Middletown, Conn. He had practiced law in Syracuse, N. V., previous to coming to Minnesota. He was a man of much intellect, of strong convictions on the moral questions agitating the public forty years ago, and took a prominent part in the temperance and free soil movements, which were prominent before 1850. For a year after his arrival here he occupied, with his family, a log house, on a beautiful rise of ground on Nicollet Island, surrounded by a forest of native maples, which have long since quite disappeared, giving place to large blocks of fine buildings. His office was a frame building on Main street nearly in front of where the Pillsbury mill now stands. [424]

In those days Mr. North was a prominent attorney, taking part on one side or the other of all the principal litigation in Hennepin County, previous to year 1857.

Mr. North's life has been a very active and eventful one. He was elected in 1850 a member of the House of Representatives of the territory for its second annual session. It was in a large degree owing to his efforts that the University of Minnesota was located here. In 1854-5 he located and founded the town of Northfield, now one of the most beautiful and flourishing inland villages of the state. Owing to the unfortunate financial panic of 1857, which ruined so many business enterprises in the territory and elsewhere, he largely lost the pecuniary benefit, which his foresight and energy merited, in founding the town, and which others have reaped.

In 1857 he was elected a member of the (Republican branch) convention to form a Constitution of the State of Minnesota from Rice County. He took an active part in the debates of that body. Under Lincoln he was appointed surveyor general of the Territory of Nevada, and afterwards, in 1863, was appointed associate justice of the Supreme Court of the same territory.

After the close of the war Mr. North established an iron foundry in Tennessee. The time, however, was not ripe for the enterprise, and it did not prove a financial success. Mr. North afterwards settled in California. He was, if not the founder, yet

largely promotive of the growth of Riverside, one of the most flourishing towns in Southern California. The same may be said of the town of Fresno. His perceptions of the natural advantages for town sites was unsurpassed, though he has not reaped the pecuniary advantages, from the locations he made to which he was justly entitled. He died in California about three years ago.

In October, 1850, the writer hereof settled in St. Anthony and formed a partnership with Mr. North, which was continued for about a year. In 1851 he was elected a member of the Board of Regents of the University of Minnesota, which office he held until his resignation in 1856, and was secretary of the board. In 1857 he was elected associate justice of the supreme court, which office he held until 1864, when he resigned and went to Nevada, and engaged in the practice of his profession for two years and a half.<sup>8</sup> At that time the mining and real estate litigation was large and remunerative, but the country itself offered no attractions for a permanent residence. On his return to Minneapolis in the latter part of 1866 the writer resumed the practice of his profession in partnership with Judge C. E. Flandrau. In 1882, owing to the demands of his private business, he relinquished the practice to his son, John B. Atwater, who has since successfully conducted the business.\*

The three above named were the only attorneys who settled in St. Anthony for the practice of law previous to the spring of 1851. But there had been a steady, though not rapid, increase in the population and considerable building, and the opening of the season, in 1851, brought a marked access to the population, among which were several lawyers. In that year arrived D. A. Secombe, Esq., a residence of the city, and a leading member of the bar until his lamented death which occurred in March, 1892.

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<sup>8</sup> According to Charles E. Flandrau, Atwater "resigned and went to Nevada" to raise money to satisfy creditors. See "Judge Isaac Atwater" 10-11 (MLHP, 2008) (published first in 8 *Magazine of Western History* 254-260 (July, 1888)).

\* Those desirous (sic) of further particulars of the life of the writer can consult an article, written by Judge C. E. Flandrau published in July number of the Magazine of Western History for 1888.

William H. Welch, afterwards chief justice of the supreme court of the territory, arrived the latter part of the year. He was elected justice of the peace, which office [425] he held at the time he was appointed to the bench of the supreme court. Ira Kingsley also served as justice of the peace the same year, having his office on Hennepin Island, nearly opposite the falls.

In the year 1852-3 we find the following names added to the list of attorneys in St. Anthony, viz: E. L. Hall, William H. Hubbard, St. Matthew & Richardson, S. M. Tracy, J. J. Morrell, Parsons & Morgan, Warren Bristol, N. H. Hemiup, Hancock & Thomas, A. R. Dodge, J. C. Moulton, A. F. Shaw, North & Prescott and D. M. Hanson. Of these only H. B. Hancock and N. H. Hemiup are now residents of the city. Lardner Bostwick, an old settler, arrived here in 1850. In 1852 he was elected justice of the peace, which office he held until 1860, and many cases of considerable importance were tried before him. In 1862 he was appointed United States assessor for part of the collection district comprising Hennepin county, in which capacity he served for several years. He still resides here in the enjoyment of a competence and retired from active business. He used to hold his office in a small one story frame building, corner of Main street and Second avenue north. He was admitted to the bar of Hennepin county in 1856.

In this connection it may be stated that several leading lawyers in St. Paul enjoyed a considerable practice up to this time from business originating in Hennepin county. Among these were Rice, Hollinshead & Becker, M. E. Ames, L. A. Babcock and H. L. Moss. This practice, however, enjoyed by our neighboring city, gradually diminished with the increase in numbers and ability of resident attorneys, until it had almost entirely ceased at the time of our admission as a state. But the St. Paul bar is still to some extent represented here at almost every term of court. In the years 1854-5-6 still larger accessions were made to the ranks of attorneys. Among those most prominent were William Lochren, James R. Lawrence, George E. H. Day, J. S. and D. M. Demmon, J. B. Gilfillan, H. W. Cowles, R. L. Joyce, Partridge & Heath, F. R. E. Cornell, C. E. Vanderburgh, George A. Nourse, E. S. Jones, W.

D. Washburn, R. J. Baldwin, H. L. Mann, H. Hall, H. D. Beman, J. S. Johnson, Cushman & Woods, David Heaton, W. W. McNair, L. M. Stewart and E. M. Wilson. The names of all these appear more or less prominently in the records of the early litigation of Hennepin county while Minnesota was still a territory. After her admission as a state annually increasing accessions were made to the list of members of the bar until the present time, when the number amounts to between three and four hundred. The scope of this article, however, does not admit of individual notices except as they have become prominent as members of the bar or of the judiciary.

During the years of territorial organization, litigation was limited, and confined mostly to cases of minor importance. More business was therefore done in courts of Justices of the Peace than in the District Courts. The men elected were seldom possessed of a legal education, but were commonly selected for their probity, sound common sense, and equitable instincts. In those early days they, on the whole, administered the law in a fairly satisfactory manner, and the ends of justice in the main were attained. The methods, however, by which the result was arrived at were perhaps sometimes open to question. For example, an old settler vouches to having been an eye witness of the manner in which a worthy magistrate, in one instance at least, arrived at the decision. He had [426] observed the justice on several occasions after a trial, repair to a neighboring corn held, insomuch that quite a trodden path was made through a part of the field. His curiosity was aroused to ascertain the cause. One day near the close of a trial, he slipped away unobserved and concealed himself near the path. Not long after, as expected, the magistrate appeared, and pacing back and forth some minutes in deep thought, he drew a chip from his pocket, spat on it, and flipping it up, exclaimed, "wet for plaintiff, dry for defendant," and picking it up said, "plaintiff has it."<sup>9</sup>

In those early days, even in the Supreme Court, it is possible decisions were sometimes arrived at in a hardly less question-

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<sup>9</sup> The story is fiction. A trained folklorist could find similar tall tales in settler's colorful reminiscences of life in the far west in the 19th century.

able manner. At one term the writer had four cases, in all of which his opponent was Mr. North. Three of them were fairly doubtful cases, but of one I felt perfectly sure, as the authorities were unanimous in favor of my client. In due time the three questionable cases were decided in my favor. Some time later the other was decided, and to my astonishment, for my opponent. Meeting the chief justice shortly afterwards I ventured to ask him the grounds of the decision, as no reasons were on file with the same, and how the court disposed of the authorities cited. He had utterly forgotten the case, nor could I refresh his memory in regard to it. Finally he said; "Well, perhaps a mistake might have been made, but as Mr. N. had lost every case that term, we thought we would give him one, as it did not seem to be of much importance any way." The answer was of course conclusive.<sup>10</sup>

Such cases, of course, were exceptional, and no one will infer that they furnish an index of the average administration of justice in the courts of those days. On the contrary the different courts of the territory, according to my own experience and observation, and supplemented by that of others, were of greater average ability than those of most western states in territorial days.

One or two other cases, in which the writer was engaged as attorney, may be cited as illustrative of the manner of administering justice in the early '50s.

Disputes about land claims on the reserve were a prolific source of litigation in an early day. In an important claim suit between Joel B. Bassett and David Bickford after a tedious trial of two or three days the case was given to the jury, who retired to

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<sup>10</sup> By his impertinent question Atwater had placed the Chief Justice in an awkward situation. Some judges would have responded, "Counsel, this is not the sort of question you should be asking!" But Welch took the route most judges would have taken in this social setting, away from the courthouse: first he said he could not recall the case. But Atwater persisted. Then Welch, relenting, concocted an absurd explanation—we took pity on North—to end the ordeal. Atwater believed that the Chief Justice had just revealed the real reason the Supreme Court ruled against him. Of course, Welch did no such thing. (Has anyone ever heard of an appellate court ruling in favor of a litigant because it felt sorry for his lawyer?).

consider their verdict. After wrangling over it for more than a day George W. Tew, one of the jurors, jumped out of a two story window of the room where they were confined and departed for parts unknown. The officer sent for him was unsuccessful, and the trial was summarily ended, and nothing further was ever done in the matter.

Another characteristic incident occurred in a trial before Squire Bostwick. One Pet Strother, one of the “boys” of that time (now a millionaire in San Francisco), was arrested and brought before the court on a charge of assault and battery. The complaint was read to him and he was told to plead guilty or not guilty. “Well, your honor, I don’t know whether I am guilty or not. I did knock the fellow down, but he called me first a son of a—, and that is not true.”

But you must plead one way or the other,” said the court.

“But,” replied the prisoner, “I don’t know. I’m sorter guilty and sorter not guilty.”

The writer (who was his counsel) finally induced him, for form sake, to plead not guilty. A jury was called and several witnesses swore point blank to seeing the defendant knock down the complainant, but admitted the latter had first used the opprobrious epithet above men-[427]-tioned. No witnesses were called for the defendant; but his counsel in the argument to the jury, insisted that none of the witnesses in speaking of the defendant had mentioned any other name than “Strother,” and that for all that appeared the real criminal might be some one other than the defendant. The jury “caught on” and in five minutes returned a verdict of acquittal, and supplemented it by making up a purse among themselves to pay the defendant’s costs.

**BENCH OF MINNEAPOLIS.** The first Court ever held on the site of the present city of Minneapolis was presided over by the Hon. B. B. Meeker, associate justice of the Supreme Court of the territory, appointed by President Fillmore, and was held in July,

1849, in the old government building erected in 1822. The location was near the corner of what now is the intersection of Second street and Eighth avenue south, and near the old government mill.<sup>11</sup>

Franklin Steele, Esq., was foreman of the grand jury. The records of the court have unfortunately been lost (if any were kept), but it can be stated, that no indictments were found, nor any cases tried, nor any fees pocketed by attorneys. But tradition records that “suitable refreshments” were furnished by the sheriff, and were liberally partaken of by bench, bar and jury, and it was unanimously adjudged and decreed, that they had had a “royal good time.”

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<sup>11</sup> This paragraph was corrected in a 1914 history of Minneapolis and Hennepin County, edited by Return I. Holcombe and William H. Bingham:

In the first volume (p. 427) of the Atwater history, Judge Atwater records that the court was held “in the old Government building erected in 1822.” By “building” is probably meant the miller’s dwelling, for the writer says it was located “near the old Government mill”—not in the mill, but “near” it. This location is now the intersection of Second Street and Eighth Avenue South. Thus Atwater corroborates Gen. Johnson as to the identity of the building where the “court” was held.

But the learned and well informed jurist, by an apparent lapse of memory, makes a singular but gross mistake as to the county in which the old mill stood at the time. He says: “At the time of holding the first court, as above stated, the present site of Minneapolis was in the County of La Pointe, which extended from Lake Superior to the Minnesota River.”

Now, La Pointe County did not comprise a foot of land in Southern Minnesota after 1840, in which year St. Croix County (Wisconsin) was created and assigned to Crawford for judicial purposes. But in 1847 St. Croix became independent of Crawford in judicial respects and had a court of its own at Stillwater, with Joseph B. Brown as clerk. Also, in that year St. Croix, Crawford, Chippewa, and La Pointe Counties constituted a Legislative district; and at the fall election Henry Jackson, the first merchant of St. Paul, was elected to represent it in the Legislature, and was the last Representative in that body from what is now Minnesota. The St. Anthony settlement was in St. Croix County.

*Compendium of History and Biography of Minneapolis and Hennepin County, Minnesota* 85 (1914).

Judge Meeker, was a resident of St. Anthony and Minneapolis from the time of his arrival in the territory, and from a very early day was an enthusiastic believer in and proclaimer of the future greatness of Minneapolis. He acquired quite a large tract of land on the high ground east of the city (now lying partly in Minneapolis and partly in St. Paul), at a small price per acre, which has since become extremely valuable.<sup>12</sup> Judge Meeker was a bachelor, and inherited some of the peculiarities of that persuasion. Unfortunately he did not live to enjoy the full fruits of his foresight, having died in Milwaukee Feb. 20th, 1873.<sup>13</sup>

At the time of holding the first court as above stated, the present site of Minneapolis was in the County of La Pointe, which extended from Lake Superior to the Minnesota river.

March 6, 1852, an act of the Legislature was passed organizing Hennepin County, and by the terms of the act it was annexed to Ramsey County for judicial purposes. By an act passed March 5th, 1858, two terms of court each year were ordered to be held in Hennepin County. The first district court, held pursuant to the provisions of the act, convened April 4th, 1853, Judge Meeker presiding. No Court House had been built, and the County Commissioners secured a parlor for the court and two bed rooms for the jury in the house of Anson Northrup, fronting on First street near the site of the Crown Roller mill.

The lawyers present at that term of court were John W. North, Isaac Atwater, D. A. Secombe, E. L. Hall, A. R. Dodge, Geo. W. Prescott, Jas. H. Fridley and A. D. Shaw, who all resided in St.

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<sup>12</sup> Meeker's attempt to erect a dam across the river was foiled by other citizens. See Henry Titus Welles, "The Meeker Dam" (MLHP, 2008) (published first, 1899).

<sup>13</sup> On Meeker's appointment and dates of service, see "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART ONE (Introduction)" 17-18, 26-29 (MLHP, 2009-2010), "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART TWO-B (Justice Meeker)" (MLHO, 2009-2010), and "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART THREE" 24-33 (MLHP, 2009-2010); see also John Fletcher Williams, "Memoir of Judge B. B. Meeker" (MLHP, 2009). For the politics behind his appointment and termination, see Douglas A. Hedin, "'Rotation of Office' and the Territorial Supreme Court" 20-23, 46-48 (MLHP, 2010).

Anthony. Warren Bristol, county attorney, was the only lawyer then present who resided in Hennepin County. Sweet W. Case was clerk and Dr. A. E. Ames was foreman of the grand jury. The only business transacted of any moment was the finding of two or three indictments for malicious injury to property and selling liquor to Indians. The whole business before the court was dispatched within two days. From this humble beginning has the business increased to such an extent as to require the services of six judges, who are holding courts almost constantly the year round. [428]

Judge Chatfield, who was appointed under the administration of President Pierce, continued to hold the terms of the District Court in a frame building on Bridge Square, until the erection of the present Court House. In 1857, he was succeeded by Judge Flandrau, who was appointed under the administration of President Buchanan. He held one term of court in Hennepin County, and in 1857, was elected associate justice of the Supreme Court.<sup>14</sup>

In 1857 Hon. Edward O. Hamlin, of Sauk Rapids, was elected judge of the Fourth Judicial District, of which Hennepin county was a part. He was a good lawyer and an able and impartial judge. He was from Pennsylvania, and his health failing before the expiration of his term he declined a re-election.<sup>15</sup>

He was succeeded in 1859 by the Hon. Charles Vanderburgh, who held the office continuously (by re-election) until 1881, when he was elected to the bench of the supreme court. A sketch of his life will be found succeeding.

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<sup>14</sup> The election for Associate Justice on October 13, 1857 was a “top two” election:

Isaac Atwater.....	18,199 *
Charles E. Flandrau.....	18,110 *
John M. Berry.....	17,052
Harrison A. Billings.....	17,026

Douglas A. Hedin, “Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2018” 16-17 (MLHP, 2019)(citing sources).

<sup>15</sup> This is incorrect. In 1859 Hamlin ran as a Democrat for re-election but was defeated by Charles Vanderburgh. In 1861 he ran for governor but was defeated by Republican Alexander Ramsey.

Meantime, the business of the court constantly increasing, another judge was absolutely necessary to dispatch the business accumulating. In 1872 an act was passed by the legislature establishing a court of Common Pleas for Hennepin county,<sup>16</sup> and under the provisions of this act the governor appointed Austin H. Young as judge, who entered upon the discharge of his duties in April of that year. The following November he was elected judge of that court to serve five years, from the first of January, 1873. In 1877 this court was abolished, and two judges were provided for in the district court, and Judge Young was elected the same year as one of said judges. Mention of other judges who have filled the position will be found later in this article.

The names of the clerks of the district court in the order of their service are as follows, viz: Sweet W. Case, the first clerk, was elected in 1852 and held the office till 1858. He was succeeded by the following persons in the order named, viz: H. A. Partridge, H. O. Hanilin, J. P. Plummer, George W. Chowen, D. W. Albaugh, L. Jerome, J. A. Wolverton, E. J. Davenport and C. B. Tirrell, the present incumbent. \*

In the list of attorneys heretofore named, who arrived previous to 1856, it is a matter of surprise that not one is now in active practice at the bar, with the exception of J. B. Gilfillan. Many have died, a few removed and several have retired from practice. A single generation has made an entire change in the bar of this city.

And in this connection it may be said that the courts and bar of Hennepin county will compare most favorably, not only with the courts and bar of any other county in the state, but with that of any other western state during the same period. From the ranks of members of the bar of this county have been drawn several judges of the supreme court of this state and other states and

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<sup>16</sup> 1872 Special Laws, c. 177, at 558. Effective March 4, 1872.

\* Mr. Tirrell's lamented death occurred March 7, 1892, in this city of consumption. His son, George G. Tirrell, was appointed in his place.

territories, a United States senator and several members of congress, members of the constitutional convention, many state senators and representatives in the legislature, United States district and state attorneys, mayors, aldermen, members of the board of education, park board, the enumeration of which, individually, would require too much space. In short the bar of this city has been prominent in official positions, in all departments, and in all enterprises, having in view the advancement of state and municipal interests. If any one objects that none have attained a national reputation as lawyers, it must be remembered that no man of ability could come [429] to Minnesota at an early day and confine himself exclusively to the practice of law.<sup>17</sup> The cases were rare in those days of sufficient importance to justify an appeal to the United States Supreme Court. Besides the pressure was so great obtain competent men to fill legislative and other political offices, and for which usually lawyers were considered most eligible and best fitted, that it was almost impossible for a lawyer (whatever might be his personal inclinations) to refuse a nomination without giving grave offense to his friends and clients. In addition to this it is to be considered that legal services were then of small pecuniary value, and the same talent employed in politics or in real estate operations, received a much larger remuneration. Added to which the “human necessity of daily bread” always stared the professional man in the face, for without exception lawyers in early days came here poor. And hence, while we may reasonably conclude that the territorial bar of this county (and for several years later) embraced fully as much talent and legal ability as any frontier county in the West, the reason it has not produced lawyers of national reputation is easily counted for.

In the large list of attorneys practising at the Hennepin county bar, may be mentioned as follows, viz:

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<sup>17</sup> Atwater’s recollection is correct. In the territorial period, lawyers by necessity pursued other lines of work. Atwater, for example, was an insurance agent, newspaper publisher, money lender, land agent and practicing lawyer. See Douglas A. Hedin, “Lawyers and ‘Booster Literature’ in the Early Territorial Period” 15 n. 38, 18 n. 50, 29-32 (MLHP, 2008).

Shaw & Cray, Gilfillan Belden & Willard, Koon Whelan & Bennett, Benton Roberts & Brown, Jackson & Atwater, Kitchell Cohen & Shaw, Rea & Hubachek, Woods & Kingman, Wilson & Van Derlip, Welch Botkin & Welch, Jelley & Hull, Young Nye & Taylor, Cross Carlton & Cross, Brooks & Hendrix, Hart & Brewer, Ueland Shores & Holt, Hale & Peck, Flannery & Cooke, Truesdale & Pierce, Spooner & Taylor, Keith Evans Thompson & Fairchild, Boardman & Boutelle, Odell & McMahan, Arctander & Arctander, Penney & Jamisson, Ripley Brennan & Booth, Merrick & Merrick, Emery Hall & Fletcher, Taylor & Woodward, Gilger & Harrison, Babcock & Garrigues, Wilkinson & Traxler, Little & Nunn, Ferguson & Kneeland, Roberts & Baxter, Davis & Farnam, Cobb & Wheelwright, Grethen & McHugh, Hunt & Morrill, Kellogg & Stratton, Ankeny & Irwin, Eustis & Morgan, Hahn & Hawley, Paige & Paige, Gray & Pulliam, Fletcher, Rockwood & Dawson, Johnson & Brady, Longbrake & Hanley, Noyes & McGee, Polk & Gilman, Randall & Merrill, Steele & Rees, Stocker & Matchen, Sutherland & Van Wert, Stryker & Campbell, A. P. Abell, W. E. Akers, L. M. Stewart, James W. Lawrence, George R. Robinson, Eli Torrance, Daniel Fish, R. D. Russell, L. R. Thian, C. J. Bartleson, E. C. Gale, W. H. Norris, James I. Best, M. P. Hayne, Frank D. Larrabee, E. C. Chatfield, B. B. Clay, A. B. Darelus, J. L. Dobbin, Fred B. Dodge, W. H. Donahue, C. B. Holmes, M. H. Sessions, H. W. Young, Selden Bacon, J. O. Pierce, John J. McHale, William R. Morris, E. A. Sumner, George M. Bennett, Daniel B. Byrnes, T. E. Byrnes, F. G. Burke, Hector Baxter, J. H. Bradish, Francis B. Bailey, J. R. Corrigan, J. Frank Collom, Benjamin Davenport, C. B. Elliott, M. Gallagher, G. S. Grimes, J. W. Griffin, S. B. Howard, B. F. Johnson, E. M. Johnson, R. W. Laing, Freeman P. Lane, Joseph B. McArthur, W. P. Morgan, Hazen M. Parker, John B. Quinn, L. A. Reed, Albert M. Scott, Albee Smith, George H. Spry, W. H. Tripp, I. Parker Veazey, James F. Williamson, Charles M. Wilkinson.

The foregoing list includes less than half of the practicing attorneys in Minneapolis, and by no means all of those who have attained more or less promin-[430]-ence in the profession. The older firms are mentioned, and individual names with whom the writer has happened to have some acquaintance; many omitted

enjoy a good practice, though perhaps not as prominent in court as the most of those named in the above list. It is true here as elsewhere, that many lawyers, having large incomes, seldom appear in court. For the encouragement of young lawyers, looking towards Minneapolis as a field for professional work, the writer can state, that after an experience and observation of more than forty years in Minneapolis (including the time before it became a city) he has never known an instance in which a lawyer, who was competent and attended strictly to his business, did not eventually achieve as large a measure of success as he could reasonably expect.

**MINNEAPOLIS BAR ASSOCIATION.\*** The Minneapolis Bar Association is an important factor in aid of the profession in this city, and has already accomplished much good. It was incorporated February 20th, 1883. The capital stock was thirty thousand dollars, divided into six hundred shares of fifty dollars each. In the Articles of Incorporation the general purpose of the association is said to be, “to establish and conduct a legal society, and maintain the honor and integrity of the legal profession, and to create and maintain a law library in the City of Minneapolis, in the County of Hennepin, State of Minnesota.”

The first officers of the association were as follows, viz:

Eugene M. Wilson, president; M. B. Koon, vice-president; Arthur M. Keith, secretary; W. E. Hale, treasurer.

Executive committee, W. W. McNair, W. R. Crary, W. J. Hahn, P. M. Babcock, John G. Wooley.

Members were at first allowed to pay for stock by contributing books at a price fixed by an appraisal committee. The original library was contributed largely by such contribution, and was then completed by purchases. The first location of the library was in a rear room on the second floor of the building on Nicollet avenue just adjoining the First National Bank. These quarters were first occupied in May, 1883. In August, 1883, the library was removed to permanent quarters generously donated

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\* We are indebted to Messrs. S. R. Kitchel and J. T. Baxter for most of the facts herein stated.

by Messrs. Lowry and Herrick, on the top floor of the old Academy of Music Building, corner of Hennepin and Washington avenues. On Christmas day, 1884, the Academy of Music burned and the Bar Association library was totally destroyed. The insurance, amounting to about \$15,000, was quickly adjusted and a larger library was immediately purchased, and was opened May 1st, 1885, in the Boston Block. About one year later this second library was totally destroyed by fire. Insurance of \$20,000 was at once adjusted and paid, and the present library was purchased and again opened within 60 days after the fire in its present location on the seventh floor of Temple Court. The library now contains over 7,000 volumes, and is the most complete law library in the Northwest with the possible exception of state libraries. The placing of law libraries in the Guaranty Loan Building and the New York Life Building has caused a decrease in the membership of the association to some extent. The present membership is about 150. The value of the library is something over \$30,000. An especially valuable feature of the library is a complete set of briefs in the Supreme Court of Minnesota, commencing with volume 26 of the reports. Generous accessions have been made from time to time by private gifts. The free use of the [431] library has been extended to and is enjoyed by the law students of the University of Minnesota. It is hoped that this library may be eventually located in the new court house, and arrangements then made to throw it open as a public library. The present officers of the association are as follows:

Robert D. Russell, president; John R. Van Derlip, vice-president; John T. Baxter, secretary; Francis B. Bailey, treasurer; E. S. Waters, librarian.

The Executive Committee: Arthur M. Keith, chairman; Frank Healy, Ralph Whelan, Edward Savage, James V. McHugh.

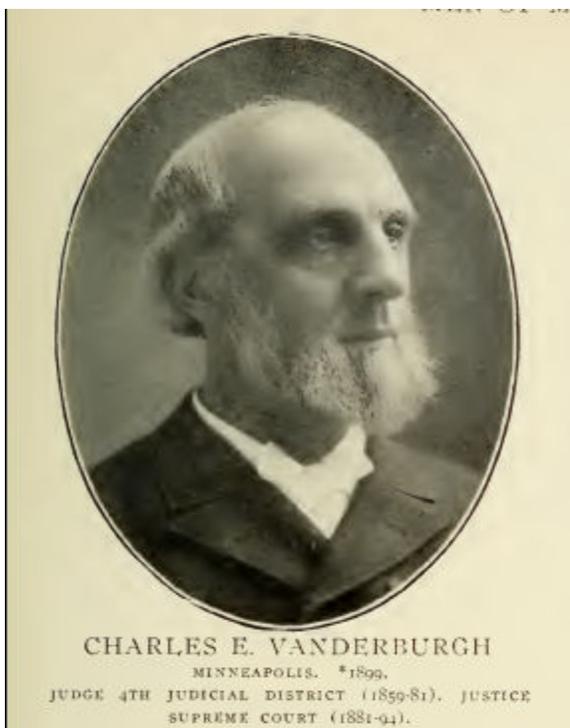
The Library Committee: Stanley R. Kitchel, chairman; J. B. Phelps, James O. Pierce.

Discipline Committee: D. F. Simpson, A. B. Choate, C. C. Joslyn.

There has been some talk on the part of a number of the members that the association ought to be enlarged so as to include social and club features, but no steps have yet been taken toward introducing such new features.

We turn now to a brief sketch of the lives of members of the bench and some prominent attorneys of an early day.

**CHARLES E. VANDERBURGH.** The first resident of this city elected to a seat on the bench of the district court was Charles E. Vanderburgh in 1859. Judge Vanderburgh was born December 2nd, 1829, in Saratoga county, New York. Later his parents



removed to Onondaga county in the same state. He was brought up on a farm, laboring in the summer and attending district school in the winter, until he entered upon his preparation for college. He fitted at Cortland Academy, Homer, New York. This academy, at the time he studied there, was known as among the first, if not the first, as a preparatory school for fitting men for college, and was noted for its thorough instruction. Mr. Vanderburgh entered at Yale College in 1849, sophomore year, and graduated in 1852.

The next year he was chosen principal of Oxford Academy, at Oxford, New York. The same year he commenced the study of law in the office of Henry R. Mygatt, one of the ablest lawyers in the state. He was admitted to the bar in 1855. The next year he came to Minneapolis.

Soon after his arrival he formed a partnership with F. R. E. Cornell, Esq., who had arrived here a year or two previously, and

was afterwards a Justice of the supreme court. From the first the firm took a leading part in all the important litigation in the county, as well as considerable in adjoining counties. For commanding legal ability and integrity it is not too much to say that no firm in the state ever stood higher.

At the annual election in 1859, Mr. Vanderburgh was elected judge of the Fourth Judicial District, of which Hennepin county formed a part. This position (by successive re-elections) he held for over twenty years. It was during the time when the law was to a considerable extent unsettled (by decisions of the supreme court of the state), not only on questions of practice, but on fundamental questions of law, where there was a wide difference in the decisions of different states. Here his thorough legal training, close investigations and discrimination in the application of principles, especially in equitable law, almost invariably led him to sound conclusions, and his decisions were seldom reversed. The strongest proof of the ability with which he discharged the duties of the office he so long held is found in the fact that in 1881, when a vacancy occurred in the supreme court by the death of Judge Cornell, he was elected to fill that [432] honorable position.<sup>18</sup> He is still a member of that court, and still hardly past the prime of life, has a reasonable prospect of many years of usefulness before him.<sup>19</sup> His whole judicial career has been characterized by untiring industry, impartiality, integrity and unusually clear conception of the application of legal

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<sup>18</sup> The election in November 1881, was a “top three” election:

William Mitchell (inc.).....	102,373 *
Daniel A. Dickinson (inc.).....	101,413 *
Charles E. Vanderburgh.....	65,015 *
Greenleaf Clark (inc.).....	38,582
Write-in.....	117

Douglas A. Hedin, “Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2018-” 23-24 (MLHP, 2019) (citing sources).

<sup>19</sup> Judge Vanderburgh died on March 3, 1898. He was defeated when he ran for re-election in the 1894 election.

A photograph of the exterior of the Judge’s home in Minneapolis is in “Photographs of Residences of Minnesota Lawyers and Judges” 14 (MLHP, 2020).

principles and authorities, and especially those pertaining to equity cases.

Judge Vanderburgh has been married twice — first in September, 1857, to Julia M. Mygatt, of Oxford, New York. She died in 1863, leaving two children, a son, William Henry, and a daughter, Julia M. The latter was most sadly and unfortunately drowned in Minneapolis in 1871. His son graduated from Princeton College and is a member of the Minneapolis bar.<sup>20</sup> In April, 1873, Judge Vanderburgh married Miss Anna Culbert, daughter of John Culbert, Esq., of Fulton County, New York. They have a daughter born in 1874.

While Judge Vanderburgh, for more than thirty years, has been mainly and closely devoted to the discharge of his duties, he has always manifested a deep interest in all measures tending to the moral, educational and material advancement of the city of Minneapolis. He has always been a consistent Republican, though not of the narrow and machine order, nor farther than he can see his party promoting the good of the greatest number. Of course his position has removed him from active interference in political contests. For many years he has been an Elder in the Presbyterian church, and also Superintendent and teacher in the Sabbath school, in which he has taken a deep interest and done most efficient work. He has made important benefactions to educational and religious institutions, and to deserving young men, needing assistance in acquiring an education, he is ever ready to give advice and material aid. Removed as he has been by reason of his position from the active business life of the city, his silent influence for good has been felt in almost every department thereof.

**A. H. YOUNG.**<sup>21</sup> Austin Hill Young was born at Fredonia, Chattauqua County, N. V., December 8th, 1830. His parents were

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<sup>20</sup> The judge's son, William Henry Vanderburgh (1858-1938), ran unsuccessfully for a seat on the Minnesota Supreme Court in each of the ten elections from 1918-1936. See Douglas A. Hedin, "Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2018," 46-55 (MLHP, 2019).

<sup>21</sup> For more on Young, see "Austin H. Young (1830-1905)" (MLHP, 2008-2010). He is recalled today, in part, for his ruling on October 4, 1876, denying the application

natives of New England, having removed from Rutland County, Vt., to Fredonia. When the subject of this sketch was but six years old, his father died, leaving a widow and five boys, the oldest but sixteen years of age. Believing that the new West would be preferable to the East as a place to rear and educate her boys, Mrs. Young with her family of five boys, removed to Illinois, locating temporarily in Dupage County. Two years later Mrs. Young married, and with her family removed to Cook County, where upon on of the prairie farms of Illinois her boys grew to manhood. Mr. Young speaks of his mother as a woman of great energy, an earnest Christian, and to whose guidance and training in early life he is indebted for the best elements of his character.

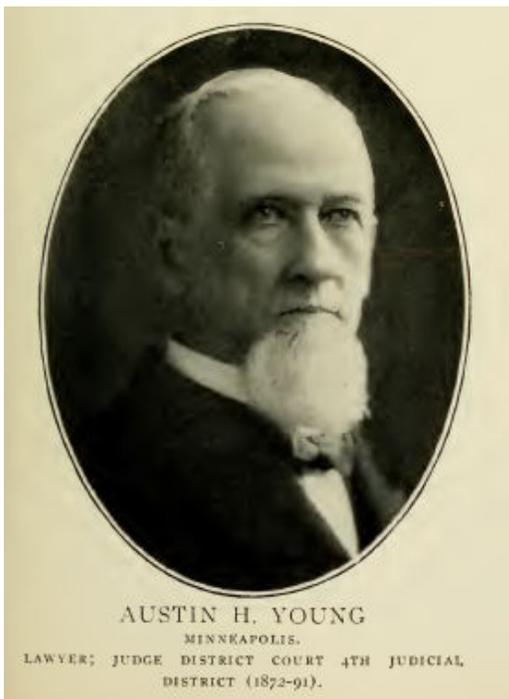
Until seventeen years old, Austin attended the district school in the winter, working upon the farm in the summer. Having mastered the branches taught in the district school he took a course in the Waukegan Academy, at that time one of the best schools of its kind in the West. This, with the experience of six terms of school teaching, comprised his literary education. After leaving the Academy he began the study of law with Ferry & Clark at Waukegan, Ill.

In 1854 he married Miss Martha Martin and removed to Prescott, Wis., where, after a brief mercantile experience, he was elected clerk of the Circuit Court, which office he held for several years. In 1860 he was admitted to the [433] bar, and formed a co-partnership for the practice of his profession with M. H. Fitch, now of Pueblo, Col. Soon after his admission to the bar Mr. Young was elected district attorney for his county, which office he held until the fall of 1863, when he was elected to the State Senate of Wisconsin. Early in 1866 Mr. Young removed to Minneapolis and commenced the practice of his profession in connection with W. D. Webb, under the firm name of Young &

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of Martha Angle Dorsett to be admitted to the bar, a decision not mentioned by Atwater. Thereafter, Dorsett and her husband successfully lobbied the legislature to change the admission law, and on January 11, 1878, she became the first woman admitted to the bar of this state. See "The Dorsett Case" (MLHP, 2008-2009). Young's decision denying Dorsett's application appears on pages 3-6 of this article.

Webb. In the spring 1870 Mr. Young and Thomas Lowry entered into partnership as Young & Lowry, which continued until June 1st, 1872, when Mr. Young was appointed Judge of the Court of Common Pleas, a court which had recently been established by the Legislature.



In November, 1872, Judge Young was elected to the same office for a term of five years. In 1877 the District Court and the Court of Common Pleas were by act of the Legislature united, and Judge Young was transferred to the District bench. Judge Young was twice elected to the same position, his last term expiring in 1890.<sup>22</sup>

In April, 1872, Judge Young married Miss Leonore Martin, of Williamstown, Vt., his present wife. He has two children living, Edgar A., who is married and resides in Minneapolis, and Alice M., a young

lady who resides with her father.

In politics Judge Young is a Republican, but since going upon the bench has taken no active part in politics. He is a member of Plymouth Church, in which he has been a deacon for many years.

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<sup>22</sup> Young's term ended in January 1891 because he was defeated in the November 4, 1890 election. It was a "top four" election:

Thomas Canty.....	21,368 *
Alexander T. Ankeny.....	18,785
Charles M. Pond (inc.).....	20,101 *
Seagrave Smith (inc.).....	36,300 *
Austin H. Young.....	17,608
Frederick Hooker (inc.).....	19,075 *
Robert D. Russell.....	16,639

1891 Blue Book, at 572-73. At this time, the Fourth Judicial District included Anoka, Hennepin, Isanti and Wright Counties.

As a lawyer Judge Young had won an enviable reputation at the bar before taking his seat on the bench. He was studious, exhaustive in the examination and preparation of his cases, and forcible in the presentation of them to the court and jury. As a counsellor he was eminently sound and conservative, conscientious, never seeking the encouragement of litigation where it could reasonably be avoided, and sought the true interests of his clients, regardless of his own in a professional point of view. His integrity and honor was unquestioned, and his word in regard to a stipulation in a case was held as binding as though reduced to writing. He never sought to influence a court or jury by statements which he did not believe strictly true, and thus carried a moral weight in the trial of causes, which is often of more importance than the highest legal or forensic ability.

Some of the qualities above mentioned are not less desirable in a judge than in a practicing lawyer. On the bench Judge Young has a record of impartiality, clear apprehension of legal principles, as applicable to the case in hand, and a patient thorough examination of the cases submitted to him, which always carried weight. It has been said that he sometimes reached a decision on a point before the same had been fully discussed. In an experience of over twelve years before him as a practitioner, I think the criticism is not well founded. It is true that when an attorney appeared before him in a case, entirely unprepared, as unfortunately was too frequently the case, he did not propose to waste the valuable time of the court on interminable discussions, on self evident propositions. He did not think courts were established to instruct attorneys in the science or practice of law. And in this, unquestionably, he was right.

But, if sometimes he might err from the course above stated, on the other hand he possessed a quality, which is of the highest importance in a *nisi prius* judge, that of giving the party deeming himself aggrieved the fullest benefit of his exceptions in the settlement of a case. He never sought to evade the effect of his rulings by any after concealment or modification of the facts under which they were made. The importance of this is evident to the experienced lawyer. The omission of a sentence,

the change of a few words in the settlement of a case, may deprive a party of all benefit of an appeal. Every judge is liable to err, but the exercise of his judicial power in such a manner as practically to prevent the correction of errors is to the last degree most reprehensible. Judge Young has never been subject to such charge. His conscientiousness, native sense of justice and equity and fair play, aside from the question of professional ethics, would revolt against any misuse of his power in this direction.

Judge Young has resumed the practice of his profession in Minneapolis, in partnership with Frank M. Nye, the firm name being Young & Nye.<sup>23</sup> Having served on the bench for more than eighteen consecutive years, it is almost like commencing practice anew, but he is yet hardly past the prime of life, and may reasonably anticipate many years of active and useful professional life in the future.

**JOHN P. REA.** The subject of this sketch was born in lower Oxford township, Chester county, Pennsylvania, on October, 13th, 1840. His ancestors on both sides had settled in that state more than a century before his birth. His father, Samuel A. Rea, was born in Lancaster county on a farm conveyed to his grandfather by William Penn. His grandmother, on his father's side, was Mary Patterson, a first cousin of General Robert Patterson, of Philadelphia. His mother's maiden name was Light. She was born in Lebaron county in the same state. She was a daughter of Samuel Light, one of the first iron manufacturers of that region. Her grandfather, Jacob Light, emigrated from Pennsylvania to the Northwestern territory, and settled on what is now the site of Cincinnati in 1791; her father, then a young man, remaining in Pennsylvania. Mr. Rea's father was a woolen manufacturer his entire life. He died in 1876.

Mr. Rea attended the common schools in his neighborhood while a boy, and also had four terms at the Hopewell Academy in

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<sup>23</sup> Young died on February 13, 1905, aged seventy-four. His law partner Frank Mellon Nye (1852-1935) was Hennepin County Attorney, 1893-1897, Republican congressman for Fifth District, 1907-1913, and Judge of the Fourth Judicial District, 1921-1932.

Chester County. At the age of twenty he went to Piqua, Miami County, Ohio, and there taught school from October, 1860, to April, 1861. In the month last named he enlisted for three months as a private in Company B, Eleventh Ohio Infantry. In July of the same year he was offered by the Secretary of War a commission as Second Lieutenant in the Eighteenth Regiment, United States Infantry, then being recruited at Columbus, Ohio. At the same time he was elected Lieutenant of Company I, First Ohio Cavalry, which position he accepted. He served in this capacity until March 12th, 1862, when he was commissioned First Lieutenant, and served as such until April 1st, 1863, when he was promoted to Captain, and continued in service with that rank until November 23rd, 1864, when he was mustered out as Senior Captain of the regiment.

During his entire service Captain Rea was only absent from his regiment eight days, and during that time was a prisoner in the hands of the Confederates in Lincoln County, Tennessee. It is doubtful if any other officer of the war can show a more faithful record of attendance. He was in all the engagements of the army of the Cumberland and Ohio during that period. He was detailed by General Thomas to command his escort immediately after the battle of Shiloh, but his deep solicitude for and interest in the company which he commanded, led him to urge permission to remain with [435] it, which was granted. He was breveted major for gallantry in action at Cleveland Tennessee, November 23rd, 1863.

He entered the Ohio Wesleyan University at Delaware, Ohio, January, 1865, graduated therefrom in the class of 1867. He was the prize essayist of his class in college as well as in the academy which he attended before the war.

In the summer college vacation of 1866, he returned to Pennsylvania and took the stump for General Geary, the Republican candidate for governor. He stumped the state successfully every year thereafter for the same party to, and including the year 1875. In 1866 he entered, as a law student, the office of Hon. O. J. Dickey, the associate in practice and

successor in Congress of Hon. Thaddeus Stevens of Lancaster, Pennsylvania, and was admitted to the bar in that city in 1868. In April, 1869, he was commissioned by President Grant Assessor of Internal Revenues for the Ninth District, Pennsylvania, and held that office until it was abolished in 1873. He resumed the practice of law at Lancaster, and continued the same till January, 1876, when he removed to Minneapolis.



On his arrival in this city, Captain Rea took editorial charge of the *Tribune*. He was in full accord with the politics of the paper, as he had always been in accord with the principles of the Republican party. His home in his boyhood was within four miles of the Maryland line, and the numerous infractions of personal liberties on the part of slave owners, which he had witnessed, imbued him with sentiments strongly hostile to the institution of slavery. Even before he was seventeen years of age he made

anti-slavery speeches in his own locality, where no anti-slavery speaker from abroad could open his mouth.

Captain Rea was a member of the first Department Encampment of the G. A. R. of Ohio, which met in January, 1867. He was also active in that organization in Pennsylvania while residing there, holding official position nearly all the time.

October 26th, 1869, he was married at Delaware Ohio, to Emma M. Gould, of that city, a great granddaughter of Colonel Drake, one of the pioneers and Indian lighters of historical fame in Ohio.

He was elected Judge of Probate of Hennepin county in 1877, and re-elected in 1879. He was appointed Judge of the District

Court of Fourth Judicial District May 1st, 1886, and elected to the same office the following fall. He resigned his judgeship May 14, 1890. He was Department Commander of the G. A. R. in 1883; Senior Vice-Commander-in-Chief in 1885, and Commander-in-chief 1887-8. He was descended from military stock. His paternal grand-father and great grandfather served through the Revolutionary war with distinction in the same company.

From the foregoing brief sketch it will be seen that Judge Rea has led an unusually varied and busy life. In all his various occupations he has acquitted himself well. The large amount of time, which in early life he felt it his duty to devote to stirring political questions, and the discharge of the arduous military duties imposed upon him, have interfered with that close application to legal studies, which if not indispensable are certainly desirable in a judicial officer. But in this regard his native quick perception, and strong natural sense of justice have stood him in good stead. His integrity has never been questioned, nor has it ever been charged that his decisions have been swayed by political bias. By whatever method he reached his conclusions they were uniformly in consonance with justice and [436] equity. Those advocates who rely on the technicalities of law or the sophistries of argument to win their cases, might object to their trial before Judge Rea. But those conscious of having a meritorious case would desire no more impartial tribunal for a hearing.

In private life Judge Rea is of exceedingly affable and engaging manners, and possessed of a most kindly and genial nature. Hence he has hosts of friends, irrespective of party, who are strongly attached to him, and it may well be doubted whether he has a single enemy. His native goodness of heart impresses itself upon the most casual observer. In the army all those under his command were devotedly attached to him, as well as all those with whom he came in contact. This is conclusively shown by the highest honor in the gift of the G. A. R. bestowed on him while comparatively a young man. Judge Rea is yet in the prime of life, and may reasonably look forward to many years of usefulness in the service of the public. He is now in the practice

of his profession in the city of Minneapolis under the firm name of Rea & Hubachek.

**JOHN M. SHAW.** Among the leading lawyers of the Minneapolis bar for many years stands the name of John M. Shaw. He was born December 18th, 1833, in Exeter, Penobscot County, Maine. He was brought up on a farm, his facilities for education being limited to the district school, with a few months at an academy in an adjoining town. But those who have known him in later life feel assured that he availed himself to the utmost of such advantages as were afforded.

His father was a country merchant and farmer, managing, with such small gains as the country afforded, to support comfortably a family of nine persons, giving them such reasonable education as was ordinarily afforded in New England at that day. But he did not accumulate property in addition. Few at that time did or could in similar circumstances. The legacy left to their country, by most, was a frugal, industrious and self reliant family. And so, the subject of this sketch, when at nineteen years of age his father died, found himself the eldest, with others looking to him for support. It was not a question for him of what profession he should choose, but “the human necessity of daily bread” for himself and others dear to him, that confronted him. He had dreamed of a college life and the university. But they were only dreams, and the cherished hope was soon to be relinquished. In 1853, with his family, he came to and settled in Galena, Ill. But even before that—in 1852—he had come to the Falls of St. Anthony, and had looked upon the fair, but then wilderness land, on the west side of the river. Little did he then dream it was to be the scene of his future triumphs and fortune. In speaking later of this visit at an old settlers meeting Mr. Shaw said:

“Although I can not claim the honor of being an old resident of Minneapolis, I may, in a manner, boast of being almost contemporaneous with Colonel Stevens<sup>24</sup> and Hiawatha; for I remember

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<sup>24</sup> Here is Warren Upham and Rose Barteau Dunlap’s profile of “Colonel Stevens”:

STEVENS, JOHN HARERINGTON, pioneer, b. in Canada, June 13, 1820; d. in Minneapolis, May 28, 1900. He served in the army during

in 1852 of standing on the east bank of the river and contemplating with swimming eyes the romantic expanse of hazelbrush, which then adorned the present site of our glorious metropolis, 'where the wild fox dug his hole unscared,' and the fragrant polecat peddled his perfumery without a license. Those were the halcyon days, when there were no whiskey limits, when the skies were bright and ye pensive and untutored 'savages' skived around 'promiscuous' clad in the innocent habiliments of nature, and [437] the most casual observer might without difficulty discern the difference between 'a fixed star and a Sioux Indian.' These things are now sadly changed, particularly with regard to the *fox* and the *polecat*; whiskey is no longer unlimited, and the festive red man having retired from the scene no fellow can now find out the conundrum."

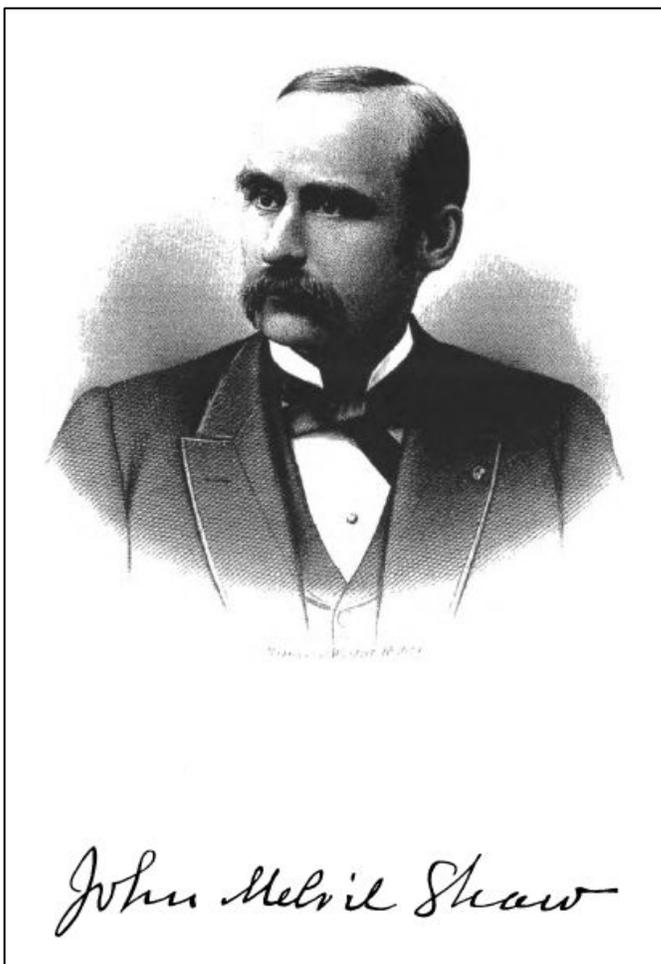
On the settling of the family in Galena, Mr. Shaw obtained a situation at bookkeeping, at which occupation he labored assiduously for the support of the family until 1860. Meantime he had never abandoned the idea of acquiring a legal education, and all his spare time was devoted to reading elementary law books. In 1860 he was able to enter a law office in Galena, and in about a year was admitted to practice. In 1861 he removed to Plattsville, Wis., and opened an office. Before, however, he had fairly established a practice in that town, his patriotic feeling led him to obey the call of his country, and he enlisted in the 25th Wisconsin Regiment, and served with distinction under Sherman until the close of the war, being mustered out with his regiment in the summer of 1865, holding at that time the rank of captain.

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the Mexican war, attaining the rank of captain in the Quartermaster Department, and was commonly called colonel; settled in Minnesota in 1849, building the first dwelling west of the Mississippi on the site of Minneapolis. He was a farmer, merchant, editor, and historian; was a representative in the legislature in 1857-8 and 1876, and a State senator, 1859-60; author of "Personal Recollections of Minnesota and its People, and Early History of Minneapolis," 432 pages, 1890; edited the "History of Hennepin County," 497 pages, published with Atwater's "History of Minneapolis," in 1895. During many years he was president of the State Agricultural Society.

*Minnesota Biographies, 1655-1912* 742 (14 Collections of the Minnesota Historical Society) (Minn. Hist. Soc., 1912).

His next objective point was Minneapolis. Here almost immediately he achieved a more distinguished victory than any that attended his efforts on the field of Mars, in capturing the affections of Miss Ellen A. Elliot, who surrendered unconditionally. There is the best reason to believe the prisoner was treated hospitably, as the parties are still living in amity and have raised a family of two girls and one boy, all of whom are now living.



Mr. Shaw settled in Minneapolis in the fall of 1865, but did not open an office for the practice of his profession until February 1st, 1866. In 1868 he formed a partnership with the Hon. F. Beebe, under the firm name of Beebe & Shaw, which continued until 1875, when Judge Beebe removed to California. During these years Mr. Shaw was becoming known and gradually taking his place among the leading lawyers in Minneapolis. This place he won, not less from native ability than from untiring industry, thorough preparation of his cases, integrity and strict fidelity

to the interests of his clients. Soon after the dissolution of his partnership with Judge Beebe he formed a partnership with A. L. Levi, under the firm name of Shaw & Levi, which continued for several years, when Willard R. Cray was received as a member, and the firm became Shaw, Levi & Cray. In 1882 Mr. Shaw was appointed by the governor, Judge of the Fourth Judicial District, and entered upon the discharge of the duties of the office. In the

fall of the same year, he was, together with Judge Lochren, elected to the same office for the full term of seven years.

Several months experience, however, satisfied Judge Shaw that the close confinement of the court room, without sufficient exercise, was beginning to tell seriously on his health. The same experience had also satisfied him that the discharge of the duties of the office were less congenial than the practice of his profession. Accordingly in February, 1883, he resigned as judge and resumed practice — first in partnership with Mr. Cray, and later Judge J. I. Best, of Indiana, was admitted to the firm under the name of Shaw, Best & Cray. Since Judge Best's retirement the firm name has been Shaw & Cray.

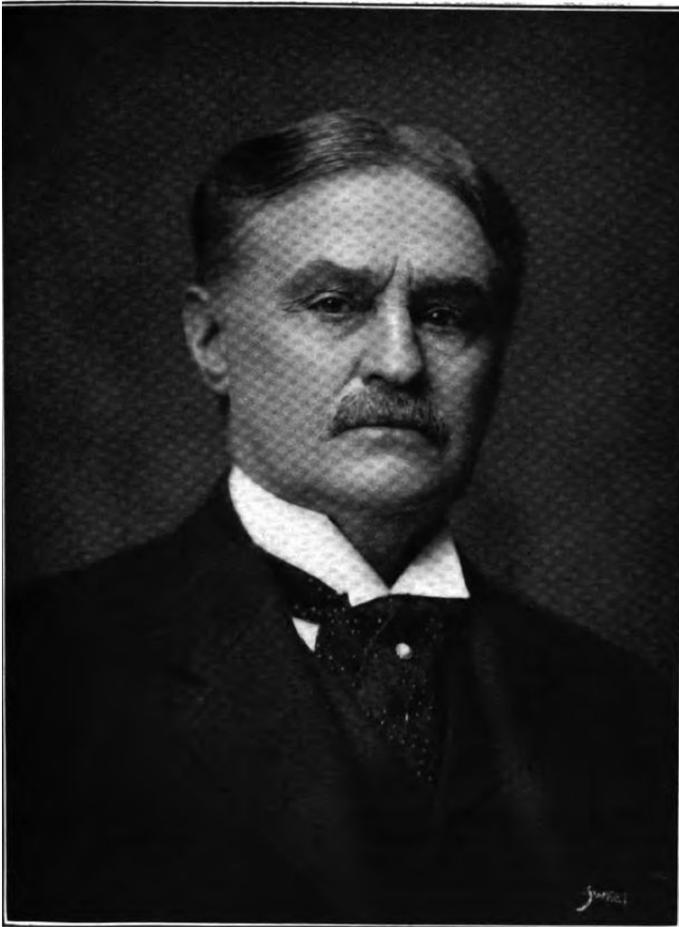
Judge Shaw is noted for intense application to his profession, thorough preparation of his cases, and a keen discrimination in the application of legal principles and authorities. While he is perhaps more earnest in addressing his [438] arguments to the court, yet he is a most convincing advocate before a jury, and in that line he has few if any equals. His practice is extensive and lucrative and limited only by the extent of his physical endurance.<sup>25</sup>

M. B. KOON, the subject of this sketch, was born January 22d, 1841, at Altay, Schuyler County, New York. His father, Alanson Koon, although born in the United States, was of German stock, while his mother, *nee* Manila Wells, was a "dyed in the wool" Connecticut Yankee. And thus it appears that their son inherits the indomitable perseverance, cautious deductions and staying powers of the German, combined with the restless energy, quick perceptions, and adaptation to all circumstances of the Yankee race. He was not born to fortune, but entirely through his own exertions has gained the enviable position he now holds in the profession.

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<sup>25</sup> John Melvil Shaw died on December 6, 1897, twelve days short of his sixty-fourth year. A photograph of the exterior of the Judge's home in Minneapolis is in "Photographs of Residences of Minnesota Lawyers and Judges" 25 (MLHP, 2020).

Mr. Koon was one of a family of six boys and two girls. His father found the sleepy little village where he resided offered few opportunities for remunerative occupation for himself and Mr. Koon was one of a family of six boys and two girls. His father found the sleepy little village where he resided offered few opportunities for remunerative occupation for himself and growing family, and wisely decided to go West. He accordingly exchanged his property in New York for land in Hillsdale County,



*Martin B. Koon*

Michigan. Here himself and family found ample opportunity for the employment of all their energies in clearing up the forests and the cultivation of the farm on which he had settled. Here the parents resided until their death — the father in 1867, and the mother in 1873. Of the sturdy, devoted, consistent Christian character of his parents Mr. Koon is wont to speak with the most profound reverence and affection. They spared no pains to instill into the minds of their children principles of honesty, industry, sobriety and morality; and doubtless to the example, and faithful teaching of his parents is

he largely indebted for the possession of those virtues which his life has illustrated.

Until sixteen Mr. Koon was engaged in the usual employments of farm life, attending school summer and winter in childhood, but only during winter in the last few years of this period. At seventeen he entered Hillsdale College, at Hillsdale, Michigan, the fall and spring terms, teaching school in the winter, and in this way he completed his college course in 1863.

Meantime the severe mental and physical effort entailed by the effort for prosecution of his studies and self support had seriously impaired his health. This had become so serious in 1864 that a change of climate had become imperatively necessary, and he was advised to try California. This he did, making the trip by way of the Isthmus. The change was beneficial. He remained there two years, engaged in teaching, and returned to Michigan in 1866 with health completely restored:

In that year he proceeded to carry out a long cherished idea of fitting himself for the practice of law, by entering the law office of his brother, the Hon. B. L. Koon, of Hillsdale. This was his first experience in a lawyer's office, but not by any means his first reading of law. Under his brother's advice and encouragement, and in accordance with his own inclinations, he had for a long time previous devoted his spare hours to the reading of Blackstone, Kent and other elementary law writers. He was in 1867 admitted to the bar in Hillsdale, Mich., and soon after entered into partnership with his brother, which continued till the spring of 1878, when he removed to Minnesota. Meantime, although often solicited, he had persistently refused to accept any political office. He did, indeed, hold the office of prosecuting at-[439]-torney for Hillsdale county from 1870 to 1874, but as that was directly in the line of his profession it can hardly be called a political office.

In 1873 Mr. Koon spent four months of travel in Europe, and in November of the same year, was married to Miss Josephine Vandermark.

In 1878 the ambition of Mr. Koon reached far beyond the sleepy town of Hillsdale, and having heard from friends of the future

importance of Minneapolis he decided to locate here. He came in April, 1878, and entered into partnership with E. A. Merrill in the practice of law. Mr. Merrill was an old acquaintance, having been a student in Koon Bros. office in Hillsdale.

Since his arrival in Minneapolis Mr. Koon has devoted himself assiduously to the practice of his profession. He was not in love with the "Code," having been educated under a different system of pleading, but has adapted himself to it, as one must do to the inevitable. He has escaped the seductions of real estate speculation, to which so many bright young men yield, but has not been unaware that his surplus earnings could nowhere be more safely invested than in Minneapolis real estate. Nor have any tempting offers of political preferment severed him from the strict pursuit of his profession. He has safely escaped this fatal rock, on which so many talented lawyers have been wrecked.

Some two years after his arrival in Minneapolis Mr. A. M. Keith was admitted as a partner, and the firm name was changed to Koon, Merrill & Keith. The firm enjoyed a good business from the start, and in the fall of 1881 Mr. Koon was taken down with typhoid fever, brought on largely from overwork in important cases of which he had charge. On his partial recovery he was advised to spend the following winter in California, which he did, and returned with restored health.

Early in 1883, Judge Shaw having resigned as judge of the district court, Gov. Hubbard appointed Mr. Koon in his place. It was with much reluctance and misgiving that he accepted the position; not feeling sure that his training and temperament were entirely adapted to the discharge of judicial duties. However, he entered upon the discharge of the duties of the office, and so acceptably continued, that in the following fall, (1883) he was unanimously elected for a term of seven years.

But subsequent experience on the bench served to confirm his previous impressions and misgivings, that he had not found his true life vocation. He relaxed, however, none of his efforts in the faithful discharge of his duties, though not in accord with his tastes, and fully intended to serve out his term. But these duties

finally became so irksome and disagreeable, that he felt that both in justice to the profession and himself it was his duty to resign, which he did May 1st, 1886. He was further moved to this from the fact, that his modesty had led him to believe, that his place could be readily filled by some one to whom the duties of the office would be congenial.

It is needless to state that his resignation was received with universal regret. In the few years during which he had filled the office he had established the reputation of an able and upright judge, and the loss of his services on the bench was deplored not only by the entire profession but the community at large. His brief term was filled with hard labor. Several of the most important suits which have been tried in this county occupied his attention. Among these may be mentioned the Washburn Will case<sup>26</sup>; the St. Anthony Falls Water Power cases<sup>27</sup>; the [440] King-Remington cases<sup>28</sup>; the Cantienny murder case,<sup>29</sup> and others

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<sup>26</sup> *Putnam v. Pitney* (In re Washburn's Estate), 45 Minn. 242, 47 N. W. 790 (1891). A Maine creditor of the Washburn estate, which was being probated in New Jersey, petitioned the Probate Court of Hennepin County to probate the will. It refused, and in an appeal to the district court, Judge Austin Young also declined, an order affirmed by the supreme court. For the court, Justice Mitchell wrote that ancillary administration in Minnesota would be "so subversive to all rules of comity between states as to be wholly unjustified." After dismissing the usual justification for comity in such cases as being "very narrow and provincial," he summarized the more compelling rationale of "modern decisions" on the subject. It was typical of Mitchell to re-examine the rule of law he applied.

In his opinion, Mitchell made sweeping declarations: "the universal rule is that the succession and distribution of personal property, wherever situated, is governed by the law of the domicile of the deceased..."; [i]t is a settled principle of universal jurisprudence in all civilized countries that..."; [i]t is also true that the universal doctrine of the decisions is that..."; [t]he modern decisions...hold almost universally that...." When using this style of opinion writing, he was not referring to natural law principles. It was a style that Roscoe Pound criticized in a famous article, "Mechanical Jurisprudence," 8 *Columbia Law Review* 614, 622 n. 69 (1908) (MLHP, 1914).

Ferguson & Kneeland represented Putnam, the creditor of the Washburn estate, which was represented by Shaw & Cray.

<sup>27</sup> *St. Anthony Falls Water-Power Co. v. Merriam*, 35 Minn. 42, 27 N. W. 199 (1886).

<sup>28</sup> *King v. Remington*, 36 Minn. 15, 29 N. W. 352 (1886). On June 15, 1875, William and Caroline King, who were deeply in debt, conveyed large tracts of land they owned in Hennepin and Meeker Counties to Philo Remington. Simultaneously, William King and Remington signed a separate, confidential agreement providing that these transfers were security for advances Remington had made and would make to King to enable him to get out of debt and repay Remington and other

of scarcely less importance. The study and mastery of these cases involved a very large amount of severe labor, which Judge Koon conscientiously performed. Since his retirement from the bench Judge Koon has been unremittingly engaged in the prac-

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creditors; this agreement, which was not recorded, gave Remington considerable authority to dispose of the lands and use the proceeds to pay Kings' debts. The Kings continued to manage the lands until 1878 when Robert S. Innes took control due to King's failing health. Innes was aware of the 1875 side agreement. In November 1877, King filed bankruptcy and listed as assets the lands previously deeded to Remington. The following year, the bankruptcy register sold the scheduled assets to Remington for \$25. In 1882, Remington sold sections to a partnership of Innes and Louis Menage and his wife for \$492,000. Two lawsuits resulted; they were consolidated and "tried together by Judges Young and Koon, without a jury." They ruled that the transfers to Remington in the bankruptcy proceeding and from Remington to the partnership were void, rulings the supreme court affirmed.

Chief Justice Gilfillan held that the June 15, 1875, side agreement imposed fiduciary duties upon Remington, that he was a trustee not a mortgagee. "We think," Gilfillan wrote, "there has seldom come before any court a case in which one man reposed in another so entire, absolute, and implicit confidence and trust as King reposed in Remington, with a view to the settlement of his affairs, the relieving himself from his pecuniary embarrassments, and the saving of much of his property as could be saved after payment of his debts." And in an unusual ruling, he held that the state court had jurisdiction to determine the nature of King's interest in the realty listed as assets in the bankruptcy. "The bankrupt court determines that the bankrupt's lands shall be sold, but it does not assume to determine hat his interest in the land maybe."

Many of the brightest lights of the bar participated in this highly-publicized case. Wilson & Lawrence, Ripley & Morrison, John B. Atwater and John Van Voorhis were counsel for the Kings. Shaw & Cray represented the defendants; former governor Cushman K. Davis and Julius E. Miner represented R. S. Innes; Francis Kernan represented Philo Remington; and former attorney general Gordon E. Cole represented L. Menage and wife. It was, Gilfillan wrote, "voluminously (and exhaustively) argued," adding wryly, "Both in the briefs and on the oral argument many questions that we do not think affect or are necessarily involved in the case were discussed at great length and with great ability, on both sides. We do not attempt to decide those questions, but content ourselves with deciding those that dispose of the case." Vintage Gilfillan.

<sup>29</sup> *State v. Cantieny*, 34 Minn. 1, 24 N.W. 458 (1885). In the early morning of July 26, 1884, Antoney Cantieny was arrested by Robert Laughlin, a Minneapolis police officer, for disorderly conduct, but escaped. As Laughlin pursued him, Cantieny turned and shot him. Two days later, after being given the last rites, Laughlin signed a statement about what had happened, and died that evening. Cantieny was convicted of second degree manslaughter and appealed. For the court, Justice Daniel Dickinson held that Judge Koon properly admitted a city ordinance barring public drunkenness and other activities, as well as Laughlin's statement as a dying declaration. Attorney General William J. Hahn and F. F. Davis represented the State and Woolley & Reed represented Cantieny.

tice of his profession in Minneapolis. He has given special attention to the law of corporations, and has acted as counsel and attorney for several of the most important corporations doing business in this city. He has been for some years counsel and attorney for the Street Railway Company.<sup>30</sup>

FREDERICK HOOKER was born April 14, 1845, at French Creek, Chatauqua County, New York; a son of Marvin Hooker and Caroline Moore Hooker, a niece of Dr. Mahan, formerly president of Oberlin College. His father was a farmer and he remained on the farm with his father until about 1863, when he removed to Northwestern Pennsylvania, and for several years resided at Warren in that state, and while a resident of Warren was admitted and engaged in the practice of the law.

He is a married man and his family consists of his wife, Mary Wells Hooker, a daughter of the late Obed Wells, of Spring Crawford County, Penn., and two daughters, Nora L., born in Pennsylvania, and Clara A., born in Minneapolis. He removed to Minneapolis in the spring of 1876, and has resided in this city ever since. He commenced the practice of law on his arrival here, and successfully continued the same until March, 1889, when he was appointed by Gov. Merriam a Judge of the District Court of the Fourth Judicial District. In 1890, he was nominated on the Republican ticket for the position he then held by appointment, and was elected, although the Democrats carried the district on their general ticket by quite large majorities.<sup>31</sup> Since his first appointment as above stated, he has devoted himself unremittingly to the discharge of the duties of that position, to the general acceptance of the bar of Hennepin County. Although among the youngest members of the bench, his quiet dignity of manner, patience, judicial impartiality and unwearied diligence in the study of cases brought before him for trial, early demonstrated the wisdom of his choice for the position.

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<sup>30</sup> Martin B. Koon died on August 20, 1912, aged seventy-two. For his bar memorial, see *Proceedings of the Minnesota State Bar Association* 211 (1915).

<sup>31</sup> For the 1890 district court election results, see note 22.

Judge Hooker has always been a steadfast Republican in politics, and while in the profession, frequently took an active part in political campaigns. He thoroughly believed in the policy and measures of his party, and had the courage of his convictions. But it has never been intimated that political considerations have ever been permitted to influence in any degree his decisions on the bench. His integrity and impartiality commands the respect and confidence of all parties.

Judge Hooker is an active and influential member of the Methodist Episcopal Church, and in many ways has identified himself with church and benevolent work. He was for several years the successful superintendent of one of the largest Sunday schools in the city.<sup>32</sup>

**HENRY G. HICKS.** Among the later judges of the Fourth Judicial District Court is to be numbered the subject of this sketch. For the earlier part of his life we quote substantially from the *Legislative Manual* of the State of Minnesota for 1889:

“Henry George Hicks, eldest son of George A. and Sophia Hicks, was born at Varysburgh, in the town of Sheldon, Wyoming County, New York, January, 26th, 1838. At the age of 15 he taught a district school in his native town. Thereafter until 1861 he taught school [441] each winter, farming or attending school in the summers. In August, 1860, he entered Oberlin College, after three years study in its preparatory department. In July, 1861, he enlisted as a private in Company A, Second Illinois-Volunteer Cavalry; was made sergeant of that company and sergeant major and adjutant of the regiment, with a detachment of which he took part in the battle of Ft. Donaldson. Mustered out June, 1862, with all other adjutants and quartermasters of cavalry and artillery regiments, he was the following month appointed Adjutant of the 71st Illinois Infantry (a three months regiment). In November, following, he was appointed Adjutant of the 93rd regiment Illinois Volunteer Infantry with which he served in the battles of Jackson and Champion’s Hill during the

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<sup>32</sup> Hooker died on September 11, 1893. For a tribute published in the September 1893 issue of *The Minnesota Law Journal*, see “Frederick Hooker (1845-1893)” (MLHP, 2008).

siege of Vicksburg, and at Missionary Ridge, in which last named battle he was severely wounded by a musket ball through the face. In May, 1864, he married Mary Adelaide Beede, of Freeport, Ill., and in April, 1865, removed to Minneapolis, where he has since resided. His first wife died in 1870, and in 1873 he married Susannah R. Pox, now his wife. In 1867 he was appointed Sheriff of Hennepin County, and in 1868 was elected to the same office. From 1871 to 1874 he was City Justice of the City of Minneapolis. In 1875, at the age of thirty-seven, he was admitted to the bar and thereafter continued in active practice until appointed District Judge. He was elected a member of the Legislature (H. of R.) in 1877 and re-elected in 1878, 1880 and 1882. During his last two terms (three sessions) he was Chairman of the House Judiciary Committee," and in the extra session of 1881 he was appointed chairman of the Board of Managers that successfully conducted the impeachment trial of Judge Cox. He has been prominently connected with the Grand Army of Minnesota since the year 1867, having served as Departmental Commander in 1868. In 1869, having been active in urging the establishment of the Minnesota Soldiers' Home, he was appointed a member of the Board of Trustees of that institution, upon which he served for thirteen years, during the last ten years of which he was President of the Board. On March 15th, 1887, he was appointed District Judge of the Fourth Judicial District, and in November, 1888, was elected to the same office.<sup>33</sup> In politics Judge Hicks has always acted with the Republican party, and is a Unitarian in religion."

From the foregoing it will be seen that Judge Hicks is in the true sense of the term a self-made man, and the architect of his own fortune. By his own unaided efforts he has gradually risen from one position to another, until he has attained the honorable and responsible one which he now fills. In his early years his

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<sup>33</sup> The results of the election on November 6, 1888, were:

Henry G. Hicks.....	25,743 *
William Lochren.....	46,169 *
Charles M. Pond.....	20,407

1899 Blue Book, at 530. This was a top-two contest in which Lochren and Hicks were elected.

opportunities for the study of the law were limited. His experience as Judge of the City Court was of much value in making him familiar with the practice under the code; which was further perfected by several years active practice as a member of the prominent firm of Cross, Hicks & Canton.



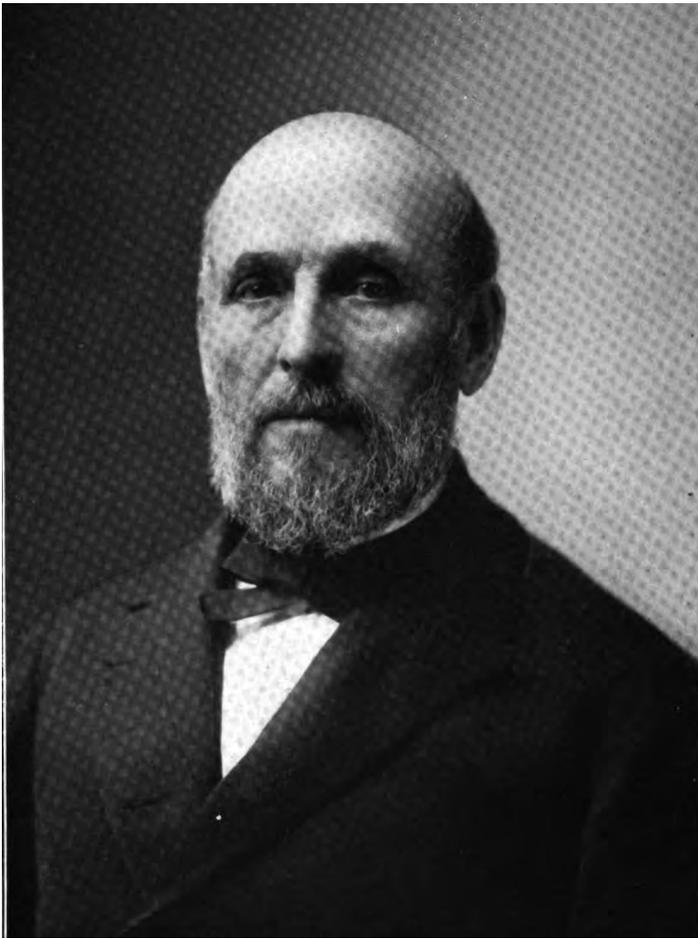
Since his election his faithful and conscientious devotion to the duties of his office has made him many friends in the profession. It is the general feeling that his steadfast purpose is to divest his mind of all prejudice in the trial of causes before him and give each party the full benefit of all their legal rights, and in difficult and complicated cases he devotes himself unsparingly to the examination of legal principles and authorities to reach a just

conclusion, in which he seldom fails. His practical business experience is of great service to him, in enabling him to dispatch business with un-[442]-usual promptitude, resulting in a large saving in the administration of justice.

**SEAGRAVE SMITH** was born at Stafford Village in the town of Stafford, Tolland County, Connecticut, on the 16th day of September, 1828. The names of his parents were Hiram and Mary A. Smith; he was their only child. His paternal ancestors were Welch, and were among the early settlers of Scituate, Massachusetts; his maternal ancestors were English and settled at a later period at Uxbridge, Massachusetts. His mother was the daughter of Caleb Seagrave, and he takes the name of his mother as well as that of his father. His father was a farmer and

also engaged in dealing in horses and cattle in connection with his farming operations.

Young Smith worked upon his father's farm, attending the summer and winter terms of the public schools until he was fifteen years of age; then he was placed under the tuition of the Rev. George W. Pendleton, a Baptist clergyman, of whose church his father and mother were members, and pursued the studies of the higher branches of mathematics, Latin and Greek for three years or more, and then entered the Connecticut Literary Institution at Suffield, Connecticut, and continued his studies



until he graduated from there in 1848. After completing his studies at Suffield he desired to enter upon the study of law and prepare himself for the legal profession, to which his father was very much opposed. His father insisted that he had given him a good education and he ought to have something to say as to what he should do in the future. He desired him to engage in business with him, and offered to transfer to him one half of his property and take him in as an equal co-partner in the business.

But young Smith had no taste for that kind of business and was determined to pursue the study of law. His determination so incensed his father that he declined to render him any further financial assistance, although well able to do so, and informed

him if he would not comply with his wishes and went to reading law he must rely upon his own resources.

Young Smith was not at all discouraged by this turn of affairs, but obtained a school and went to teaching. Thereby he obtained means to clothe and support himself for a while. On the 19th day of September, 1849, he registered himself as a student in the law office of Alvin P. Hyde, Esq., at Stafford, his native town. Soon after Mr. Hyde married the daughter of the late Hon. Loren P. Waldo, of Tolland, and entered into a co-partnership with him in the law business. Mr. Smith continued his studies with that firm until he was admitted to practice in the courts of that state, on the 13th day of August, 1852. To procure means to support himself he taught school in the winters of 1849, 1850 and 1851.

In the spring of 1851 he was appointed Clerk of the Probate Court for the Stafford district, which position he held until he removed to Colchester, Conn., in October, 1852. He had half the emoluments of the office for doing the clerical work, which took a small part of his time, and furnished him with means more than sufficient to pay his way. Soon after he was admitted to practice he made up his mind to go West and enter upon the work of his profession. But an affectionate mother, disliking to be so far removed from her only child, dissuaded him from that determination, and at the same time persuaded his father to let him have \$1,000 with which to purchase a law library, if he would not go West, but settle in that state. This influenced Mr. Smith, and [443] he removed to Colchester, New London County, Conn., about the first of October, 1852, opened an office and entered upon the practice of his profession, where he continued to reside and practice until he removed to the Territory of Minnesota in the Spring of 1857. His business at first was very light, but continued to increase until it became a good paying business before he left. In the fall of 1854 he was elected Town Clerk of the town, which office he held one year. The town clerk's duties among others were at of Register of Deeds for the town. In the spring of 1855, he was elected as Democrat to the State Senate from the Eighth Senatorial District. After that he was appointed Clerk of the Probate Court of the Colchester District, which

position he held up to the time of his departure for the West in the spring of 1857.

In July, 1856, Mr. Smith started for the West on a tour of inspection; visited Kansas, which was then bleeding to free itself from slavery, and not being pleased, either with the country or people, left there for St. Paul, Minnesota. There he found things more in keeping with his ideas of western life. It was all activity and life, real estate booming, money plenty, business good and people social and friendly. After staying a few weeks he returned East fully determined to make Minnesota his future home. Settling up his business that winter as far as possible he returned to Minnesota early in the spring of 1857, and settled at Hastings, in Dakota County, bringing his family (then consisting of a wife and two children), the same season.

Soon after his arrival at Hastings he entered into a co-partnership with J. W. Silva, a young attorney, and opened law office, and commenced business under the firm name of Smith and De Silva. He after that devoted his whole time to the business of his profession at that place until he removed to the city of Minneapolis in 1877. While residing there he was a member of the following named law firms, besides that of Smith & De Silva, which was of short duration: L. & S. Smith; Smith, Smith & Crosby; Smith & Montgomery; Smith & Babcock; Smith, Huddleston & Babcock; Smith & Van Slyke, and Smith & Parlamen. During which time he was attorney for the following named railway companies: The Hastings & Dakota; the St. Paul & Chicago; the Minnesota Railway Construction Company, and the Chicago, Milwaukee and St. Paul Railway Company. Mr. Smith, while he lived in Dakota county, took quite an active part in politics and was considered one of the leaders of the Democratic party in that county. He held many important official positions during his residence there. In the fall of 1857 he was elected County Attorney and held that office for two years. In the spring of 1860 he was elected one of the county commissioners, and was Chairman of the Board for two years. In the fall of 1861 he was elected Judge of Probate, re-elected in 1863 and in 1865, holding the office six years. In the fall of 1867 he was elected to the State Senate for a term of two years.

In the fall of 1873 he was again elected County Attorney and held that office two years. In 1875 he ran as an independent candidate against the Hon. Ignatius Donnelly, the Democratic nominee, for the State Senate, and was defeated by a small majority. Mr. Smith during his residence in Hastings took much interest in the public schools, was one of the inspectors for a number of years, and assisted at an early date to establish graded schools in that city. In the spring of 1877 he removed with his family from Hastings to the City of Min-[444]-neapolis, where he has since resided. When he first came to Minneapolis he entered into a partnership with W. E. Hale, Esq., under the firm name of Smith & Hale, which continued until the spring of 1880. From that time until the spring of 1883 he conducted his law business by himself. In the spring of 1883 he entered into a co-partnership in the law business with S. A. Reed, under the firm name of Smith & Reed, which continued up to the time he was appointed Judge of the District Court for the Fourth Judicial District, which was in March, 1889, which position he now holds.<sup>34</sup>

During his residence in Minneapolis he has held no official position except that of City Attorney, to which office he was

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<sup>34</sup> The election for the Fourth Judicial District Court on November 4, 1890, was a "top four" election:

Thomas Canty.....	21,368 *
Alexander T. Ankeny.....	18,785
Charles M. Pond (inc.).....	20,101 *
Seagrave Smith (inc.).....	36,300 *
Austin H. Young.....	17,608
Frederick Hooker (inc.).....	19,075 *
Robert D. Russell.....	6,639

1891 Blue Book, at 572-73.

He was re-elected six years later. The election on November 3, 1896, was a "top two" election:

J. H. Steele.....	25,156
David F. Simpson (inc.).....	27,160 *
Charles M. Pond (inc.).....	24,438
Seagrave Smith Inc.).....	28,209 *

1897 Blue Book, at 492.

elected by the City Council in the spring of 1887, and continued therein until the first day of January, 1889. During all the time he has been a resident of Minnesota he has devoted himself exclusively to his professional business, connecting with it no other business of importance. It was a business which he loved and took great interest in, and in which he has been successful.

Since his residence in Minnesota he has been supported by his party (which has been a minority party in the state since 1857) for several important district and state offices.

In 1864 he was nominated on the Democratic ticket for Judge of the District Court for the First Judicial District, but was defeated by the Hon. Charles McClure.<sup>35</sup> In 1869 he was nominated and supported by the Democrats for Attorney General of the State.<sup>36</sup> In 1871 he was again nominated by the Democrats for Judge of the District Court for the First Judicial District, but declined the nomination, which was then given to the late Hon. W. W. Phelps, of Red Wing, who was defeated by Mr. Smith's former partner, Judge F. M. Crosby, now judge of that district. In 1884 he was nominated by the Democrats and supported for District Judge of the Fourth Judicial District, and was defeated by the Hon. A. H. Young, then one of the judges of that district. In 1888 he was nominated and supported by the Democrats as a candidate for Chief Justice of the Supreme Court, and was defeated by the present incumbent, the Hon James Gilfillan.<sup>37</sup>

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<sup>35</sup> The results of the election on November 8, 1864, were:

Seagrave Smith .....	2,460
Charles McClure.....	4,115

Microfilm Roll SAM 66, Roll 1, Image 42 (Microfilm Room, MHS).

<sup>36</sup> In the election for attorney general on November 2, 1869, he lost to the incumbent:

Francis R. E. Cornell (inc.).....	29,300
Seagrave Smith.....	23,812
J. Ham. Davidson.....	1,348
Scattering.....	49

Journal of the House of Rep., January 5, 1870, at 12.

<sup>37</sup> In the election for chief justice in November 1888, he lost to the incumbent:

It will be observed that the offices held by Mr. Smith have all been, excepting that of senator, in the line of his profession, and in no way interfered with the prosecution of his professional business. Mr. Smith is not a member of any church, but at lends and contributes toward the support of the Baptist Church, the church in which he was brought up.

The brief time during which Judge Smith has been on the bench has demonstrated the peculiar fitness of the appointment. Of his legal qualification there was no doubt. The only question which could arise was whether the active part he had taken in political questions would in any respect unfit him for the impartial discharge of judicial duties. This consideration could indeed scarcely give rise to a doubt, for so strong was the confidence in his native integrity and honesty of purpose that many of his strong political opponents were foremost in urging his appointment to the position he so worthily fills. He has those rare judicial qualities of mind, which enable him to divest himself of any possible bias or prejudice in regard to parties in any case on trial before him. He goes at once to the merits of the cause, and his close legal training enables him to disentangle knotty points from any amount of voluminous or obscure pleadings and apply the correct legal principles to the proved facts. His appointment was eminently satisfactory to the [445] bar of Hennepin County, which lost by his promotion one of its ablest and most esteemed members.

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James Gilfillan (inc.).....	144,962
Seagrave Smith.....	105,795
F. L. Claffey.....	735
Write-in.....	71

In the election for chief justice in November 1894, he lost by a wider margin:

Charles M. Start (R.).....	152,508
Seagrave Smith (D.).....	72,741
Sumner Ladd (Peoples' Party).....	59,942

“Results of the Elections of Justices to the Minnesota Supreme Court, 1857- 2018”  
27-28, 30-31 (MLHP, 2019).

At the November election in 1890, four judges were elected.<sup>38</sup> The Democratic and Republican parties made, for the first time, partisan nominations, with one exception—Judge Smith was nominated on both tickets, and polled nearly the full vote of both parties. It was a well deserved tribute to his merits, which is not often bestowed in times of heated political controversy.<sup>39</sup>

**JUDGE CHARLES MERRILLS POND.** Judge Pond has been upon the bench of the District Court of the Fourth Judicial District of Minnesota since the 19th of November, 1890. He first held the position by appointment of Gov. Merriam, made after he had been elected to the same position, the elective term not commencing until January 1st, 1891. He had been the Democratic nominee for the position two years before, being beaten at that election by Judge H. G. Hicks, now one of his associates upon the District Court bench.<sup>40</sup> Judicial appointments in Minnesota have ordinarily been nonpartisan. Through some political acrimony, engendered by appointments made to fill vacancies upon the District bench in 1888, the Democratic party declined to unite with the Republicans in making judicial nominations. They failed to elect their candidate in 1888, but at the next election succeeded in placing two lawyers of their political faith upon the bench. Those two were Judges Pond and Canty. No politics enter into the administration of the law. When the ermine is assumed, all previous partisan uniforms are thrown aside. These political aspects are only referred to as matters of current history.

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<sup>38</sup> There were four seats and seven candidates on the ballot—that is, a “top four election.” The results of the election on November 4, 1890, were:

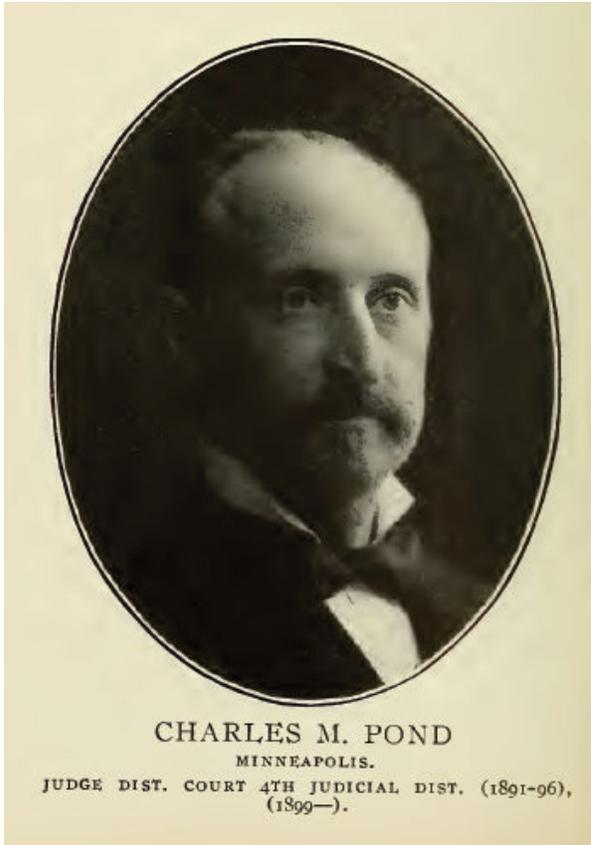
Thomas Canty.....	21,368 *
A. T. Ankeny.....	18,785
Charles M. Pond.....	20,101 *
Seagrave Smith.....	36,300 *
Austin H. Young.....	17,608
Frederick Hooker.....	19,075 *
Robert D. Russell.....	16,639

1891 Blue Book, at 572. At this time, the Fourth Judicial District encompassed the counties of Anoka, Hennepin, Isanti and Wright.

<sup>39</sup> Seagrave Smith died on May 13, 1898, at age sixty-nine.

<sup>40</sup> See election results at note 33.

Judge Pond has been a resident of Minneapolis since October 5th, 1875, and a practitioner at the Hennepin county bar since about the same time. He has been associated in partnership, at different times, with J. H. Bradish, W. E. Hale and A. B. Jackson, and has, during a part of the time, had no associate. His practice has been at all times lucrative, and in connection with Messrs. Hale and Jackson was very large. He had gained the confidence of the community, as well as the respect of the bar, and has been



often mentioned as possessing eminent judicial qualities. His short experience upon the bench has already justified the good opinions which had been formed of his learning, fairness and industry.

Before coming to Minneapolis the subject of this sketch had been in practice at Green Bay, Wis., in partnership with Mr. Orlo B. Graves, for about one year. His legal education was obtained at Columbia Law School, in New York City, where he graduated in 1874, having taken the two years course in one year, and at the same time taught a private

school for three hours each day. The indefatigable industry which enabled him to endure this amount of work, was the earnest that has led to his professional success, and also enabled him to acquire a considerable property.

Mr. Pond received his education in letters at Ripon College, Wis., where he graduated after a full four years course, in 1873. He also spent two years at the same place in preparation for college. These years of study were diversified by working upon the farm during vacations; to which he was compelled by the necessity of earning his own living. His father was a laborious

farmer, with a large family, upon a not very productive farm in Fond du Lac County, Wis., and could do little to assist his son in obtaining his education. Indeed, until his twentieth year he lived at home, and assisted his father in the work of the farm, [446] an education in practical affairs which has been the early lot of many young men who have afterwards become leaders in professional life. In this manner of life is obtained a store of physical energy, and habits of industry and economy which are the first essentials of success in every serious life work, and so it proved in the case of this farmer's boy.

Mr. Pond was born February 28th, 1846, in Walworth County, Wis. His father was Amos Pond, who was a native of Vermont, but settled in Essex County, New York, whence he removed about fifty years ago, and settled upon a farm in Walworth County, Wis., when that part of Wisconsin was almost a wilderness. From there he removed to Fond du Lac County, while his son was in his infancy. The family are descended from Daniel Pond, who settled in Dedham, Mass., in 1652. His ancestor is supposed to be one of two brothers who came from England in the same ship with Governor Winthrop, in 1630. To the same family belong the brothers, Samuel W. and Gideon H. Pond, who were the pioneer Protestant missionaries in Minnesota.

The mother of Charles M. Pond was Hannah, a daughter of Robert Duntley, also an old New England family of English descent.

Judge Pond was married September 15th, 1880, to Miss Carrie A. Drew, daughter of the late Wm. S. Drew, of Winona, Minn. His family consists of two daughters, of the ages of eight and three and a half years.<sup>41</sup>

**JUDGE THOMAS CANTY.**<sup>42</sup> Judge Canty is the youngest in years and service of the six District Court judges of the Fourth Judicial

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<sup>41</sup> Judge Pond died on February 5, 1934, in Prescott, Wisconsin, three weeks short of his 88th year.

<sup>42</sup> Thomas Canty (1854-1920) was a district court judge in Hennepin County from 1891 to 1893. Elected to the supreme court in 1892, he served from January 1894,

District. He was a candidate of the Democratic party at the election in November, 1890, and was elected over Judge A. H. Young, who had been upon the bench for twenty years. His official term commenced January 1st, 1891. Though brief, his official life has been long enough to assure the bar that they have in him a judge of keen appreciation, firmness, deliberation and sound legal learning. The early years of his life were full of privation, struggles, and hard work. Both his education and professional standing have been gained under peculiarly adverse conditions, and are solely due to his own energy of character, industry and courage.

His parents were natives of County Kerry, Ireland, but were living in London at their marriage, where Thomas was born, in



1854. They emigrated to America when he was an infant of two years. His father was a laborer, and lived at Detroit, Mich., near Lodi, Wis., in Clayton County, Iowa, and finally purchased a small farm near Monona, Iowa, where he died when his eldest son Thomas was twenty, leaving a widow and seven children. At this time Thomas was in Texas, where he had gone to teach school.

From the beginning of his school age until he was nine years old he attended the district school with regularity. From that time until he was fifteen he attended the common school through the three winter months, and worked upon the farm the rest of the time. Every leisure moment was devoted to study, but without a teacher. At thirteen he had mastered Ray's Higher Arithmetic, and then took up the higher

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to January 1900. He died on June 28, 1920, in Brazil, at age sixty-six. For more on him, see James S. Simonson, "Thomas Canty," in *Testimony: Remembering Minnesota's Supreme Court Justices* 142-3 (Minn. Sup. Ct. Hist. Soc., 2008).

mathematics. At sixteen he secured a first grade certificate to teach school, and taught a district school during the winters, while the summers were given to the farm. At eighteen he went to Texas, where he taught for four and a half years, studying the while the branches of the usual collegiate curriculum. Soon after the death of [447] his father he was called home to carry on the farm and aid in the support of the family. During this time he worked in the field six or eight hours a day and studied law as many. Failure of crops for two successive years brought losses, so that he found himself burdened with a debt of \$2,000. He then secured an appointment as principal of the High School of Lawler, Ia., and at the end of nine months, by economy and hard work, he was enabled to pay off half the debt. In the spring of 1880 he went to Grand Forks, Dakota, to practice law, and remained there all summer. In the fall he came to Minneapolis and entered the law office of Seagrave Smith, where he finished his legal studies, and was admitted to the bar of Hennepin County in February, 1881.

Without the aid of friends, at a bar already crowded with competitors, and burdened with a debt, he opened an office and sought to secure his share of professional engagements. The first two or three years necessitated close economy, to the degree, during the first year, of making one room serve as both office and home, for he boarded himself. At the end of three years the last dollar of the debt was paid off. His first case was a triumph. It involved the title to forty acres of land near Minnetonka. The case had been once tried, and, in the hands of one of the older firms of attorneys, had been lost. The case was placed in his charge by the discouraged client, a new trial was applied for and obtained, and a favorable decision was had, which on appeal to the Supreme Court was affirmed.<sup>43</sup> During the ten years at which Mr. Canty has been at the bar, his practice has been varied and successful. It has extended to almost all branches of the law. Though he was for the appellant in four-fifths of the fifty-four cases he tried in the Supreme Court, he gained thirty six and lost only nineteen at the time of his election to the judgeship. He was a bold practitioner, firm in

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<sup>43</sup> *Babcock v. Latterner*, 30 Minn. 417, 15 N.W. 689 (1883) (Berry, J.).

maintaining his position, but courteous to his adversaries and respectful towards the Court.

At the time of a strike among the employes of the Street Railway Company, when many prisoners were prosecuted before the Municipal Court, and summarily convicted, he obtained writs of habeas corpus and succeeded in securing the discharge of his clients. Upon appeal his positions were sustained by the Supreme Court.<sup>44</sup> No doubt the efficiency with which these cases was prosecuted, contributed in no small measure in securing the popularity which gave to his candidacy for the bench so large a majority — some 4,500.<sup>45</sup>

Besides his professional and judicial labors Judge Canty has indulged in some literary work. He has been invited on several occasions to lecture, and has treated a subject of which he has a most intimate personal knowledge—Self-made Men.<sup>46</sup>

He has never married.

**JOHN BACHOP GILFILLAN.** The able and distinguished lawyer, the representative of a portion of the City of Minneapolis for almost a decade in the Senate, and for one term in the Congress of the United States. John B. Gilfillan has lived from early manhood in the city of his adoption.

He was born in the town of Barnet, Caledonia County, Vt., February 11th, 1835. The parents of his father, Robert Gilfillan, emigrated from Balfron, Sterling, Scotland, in 1794, and of his mother, Janet (Bachop) Gilfillan, from Glasgow in 1795, and took farms in the then newly settled county of Caledonia, which as its name indicates was appropriated by Scotchmen. The tenacity of purpose, and solid intellectual qualities, charac-[448]-teristic of

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<sup>44</sup> *State of Minnesota ex rel. Ole Johnson v. John West*, 42 Minn. 147, 43 N.W. 845 (1889)(Mitchell).

<sup>45</sup> For the results of the election on November 4, 1890 see note 34.

<sup>46</sup> This is a reference to *A Plain Unvarnished Tale of a Self-Made Man*, a campaign brochure Canty wrote and distributed when he ran for the state supreme court in 1892. It will be posted on the MLHP in the near future.

the descendants of Robert Bruce, have been transmitted to the subject of this sketch.

In the labors of the rugged farm, his boyhood was passed, with attendance at the district school in the winter season. His parents removed to the neighboring town of Peacham when he was twelve years old, and being the youngest of the family of five children he was favored with attendance at the Caledonia Academy, located in that town. There he prepared himself for entrance at Dartmouth College, but not without the necessity of self help, for at seventeen years of age he engaged as teacher of district schools, continuing the occupation for three successive



winter terms. His brother-in-law, Captain John Martin, having settled in St. Anthony he came in October, 1855 to pay him a visit, and if the opportunity offered, to obtain a school, expecting to return and enter college. The school was obtained in the embryo city of St. Anthony, and faithfully taught, but the purpose to return was changed by the attractions which the place offered to a young man ambitious to enter upon a career. His leisure time was occupied in reading law books, and when the school closed he entered the law office of Nourse & Winthrop, and afterwards of Lawrence &

Lochren, as student and clerk, and in 1860 was admitted to the bar of Hennepin County, and immediately formed a partnership with James R. Lawrence, which continued until the war took his partner into the military service. He continued the practice of law alone until 1871, when he joined the law firm of Lochren & McNair, and came to the west side of the river, the style of the

new firm being Lochren, McNair & Gilfillan. This firm, the most prominent and best patronized law firm in the city, continued until the appointment of Judge Lochren to the bench, and the association with Mr. McNair continued until near the time of his death. The present law firm of Gilfillan, Belden & Willard was formed 1885.

Soon after his admission to the bar Mr. Gilfillan was elected City Attorney of St. Anthony, serving at different periods for four years. He was also elected County Attorney of Hennepin County for four terms, serving in that capacity from 1863 to 1867, and again from 1869 to 1871, and from 1873 to 1875. His long experience as prosecuting officer made him familiar with all phases of criminal practice. He was careful in his preparation of proofs, correct in comprehension of legal points, and persistent in pushing his cases to trial, and usually to conviction. His addresses to juries were logical and thorough, appealing rather to the judgment than to the emotions.

The law practice, especially that of Lochren, McNair & Gilfillan, was general, though in some lines the firm was pre-eminent. Its gifted members combined almost all qualities commanding forensic success. The senior was sound and judicial. Mr. McNair had few equals in quickness of perception and intuitive tact, making him an expert examiner and persuasive advocate, while Mr. Gilfillan shared in all these qualities, and was especially thorough and orderly in preparation, and doggedly persistent in the prosecution of his cases. In the examination of titles, and opinions upon real estate law the firm was pre-eminent. Their probate and equity practice had some notable cases, and was signalized by judicial triumphs of no small importance. The contested will cases of Stephen Emerson, Ovid Pinney, and Gov. C. C. Washburn will be remembered as leading ones at the bar, and in each the position [449] assumed by Mr. Gilfillan was sustained, the last having arisen after Judge Lochren had retired from the firm.

The firm were also the attorneys of the Milwaukee and St. Paul, Chicago and Omaha, and Minneapolis Eastern railway com-

panies, and in those employments transacted a vast amount of important and laborious business, the larger share of which was conducted by Mr. Gilfillan, and with almost unfailing success His extensive law practice was at times interrupted by official engagements; and when elected to Congress and for some years after the conclusion of his term, while engaged in foreign travel, was suspended. As a member of firm with which he is now connected Mr. Gilfillan has resumed his full share of active work, and enjoys the honors and large emoluments of his labor as a lawyer.

Mr. Gilfillan's fidelity as a teacher, and his interest in education, led him into intimate connection with the public schools, and with the higher education of the State University, in both of which he has rendered efficient and permanent service.

As early as 1859 he was engaged in organizing a Mechanics Institute in St. Anthony for literary culture, and was one of its officers. About the same time he drew up a bill for the organization of a School Board in St. Anthony, under which the system of graded schools was introduced. This bill was the model upon which the incomparable school system of Minneapolis has grown up and been administered The bill having been approved and enacted by the Legislature Mr. Gilfillan was chosen as one of the school directors under the new system, and continued in service for nearly decade, until the system was thoroughly established.

He was appointed in 1880, by Gov. Pillsbury as regent of the State University, continuing in that position for eight years. Being at the same time a member of the State Legislature, his services were especially valuable to that institution in securing needed appropriations for its support, and for new buildings and appliances to accommodate its rapidly enlarging patron-age. These services in connection with education were gratuitous, but were nevertheless faithfully discharged. They necessarily consumed much time as well as thought, which to a practicing lawyer is money. If the endowment of a school or chair in an

institution of learning entitles the donor to honor, how much more, the faithful officer, who puts into it so much of his life?

The eminent qualifications of Mr. Gilfillan, together with the devotion which he has evinced to the public interests, pointed him out as a fit representative of the people, and in 1876 he was called upon to take a seat in the State Senate. His district comprised that part of the City of Minneapolis east of the Mississippi river, with the counties of Anoka, Isanti and Sherburne. He was the candidate of the Republican party, but after the first contested election was largely supported by political opponents. This position was held for nine consecutive years, and was at last resigned to take the higher position of Representative in Congress. He brought to the duties of Senator the sterling qualities which had earned him professional success. He was cool and deliberate, ready to hear and weigh opinions, slow in arriving at conclusions, but inflexible in holding and urging them. He was loyal to his constituency, but took in a wider scope — the general interests of the people and the State. He became soon an influential senator, and a leader in shaping measures, and carrying them into effect. In the earlier years he was chairman of the [450] committee on taxes and tax laws, and raised these laws into a code, which remains as the chief body of the efficient revenue system of the state. He was from the first a member of the judiciary committee, and for the last five years its chairman. The chairmanship of the finance committee was for a time assigned to him, as also that of the university and university lands.

These leading positions involved and imposed vast labor and no little responsibility, and the fidelity with which they were served deserves, as it receives when the facts are known, recognition.

In the legislation which constitutes the crowning glory of Gov. Pillsbury's administration, the adjustment of the state railroad bonds, he performed a leading part. At a critical period, when the concerted measures seemed likely to fail to receive the sanction of the Senate, amendments were adopted more fully securing the finality of the settlement, which were suggested by

Senator Gilfillan, and which secured his approval of the measures and assured their passage.<sup>47</sup>

In the summer of 1884 the Republican nominating convention of the Congressional District, including the cities of St. Paul and Minneapolis, after many ballotings failed to agree upon a candidate. Both leading candidates were dropped at the suggestion of Senator Gilfillan's name, and both sides united in his nomination. His election followed in the fall and he took his seat in the Forty-ninth Congress in December, 1885.<sup>48</sup> Except the Senate, the government was controlled by the Democratic party. Grover Cleveland was President and Carlisle was Speaker of the House. Under these influences a Republican member, though learned and gifted, had little opportunity for promotion. Mr. Gilfillan, however, had plenty of occupation in attending to the interests of his district and of his constituents, to which he was attentive and faithful.

At the expiration of his congressional term Mr. Gilfillan took the opportunity for a vacation, and taking his children, embarked for Europe. The children, having been installed at Dresden in school, he made excursions to all parts of Europe, visiting first and last every country except Portugal, even the North Cape, and extending his visits to Egypt and the Holy Land. Many interesting events passed under his view. At the Queen's jubilee in 1887 he occupied a seat in Westminster Abbey, and was a witness of the Kaiser's funeral at Berlin in 1888. Nearly two and a half years were occupied in this excursion, at the conclusion of which he returned to Minneapolis and resumed his desk in the busy law office.

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<sup>47</sup> See generally, "Redemption of the Railroad Bonds of 1858," in William Watts Folwell, 3 *A History of Minnesota* 418-441 (Appendix 9) (Minn. Hist. Soc., 1956) (first edition, 1921).

<sup>48</sup> The results of the November 1884, election for the Fourth Congressional seat were:

John B. Gilfillan.....	28,930
Orlando C. Merriam.....	24,496
John M. Douglas.....	978

Bruce M. White, et al, *Minnesota Votes 77* (Minn. Hist. Soc. Press., 1977).

Mr. Gilfillan married in 1870 Miss Rebecca C. Oliphant, a most gifted and beautiful lady, who was a relative of Hon. E. M. Wilson and of the wife of W. W. McNair. Five children have come to the household, of whom four survive, three boys and a daughter. The mother passed away March 25, 1884. The daughter is now (1892) eleven and the boys respectively thirteen, sixteen and nineteen years of age.<sup>49</sup>

**JUDGE F. R. E. CORNELL.** No sketch of the bar of Minneapolis would be complete without some account of one of its brightest ornaments—Judge F. R. E. Cornell. As an advocate, a counselor, a Judge of the Supreme Court,—in each relation he had no superior.

He was born in Coventry, Chenango County, New York, November 17, 1821. He was graduated from Union College in 1842, and was admitted to the bar in the Supreme Court at Albany in 1846, and began the practice of the law at Addison, Steuben County, where he remained until 1854. He was a member [451] the State Senate of New York for 1852 and 1853. In the year 1854 he removed to Minneapolis, which was his home until his death.

He was a member of the State Legislature in 1861, 1862 and 1865, and Attorney General from January 10, 1868, to January 9, 1874.<sup>50</sup> In November, 1874, he was elected Associate Justice of

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<sup>49</sup> James B. Gilfillan died on August 19, 1924, at age eighty-nine. A photograph of the exterior of Gilfillan’s home in Minneapolis is in “Photographs of Residences of Minnesota Lawyers and Judges” 22 (MLHP, 2020).

<sup>50</sup> The results of the election on November 5, 1867, were:

Francis R. E. Cornell.....	34,657
Andrew G. Chatfield.....	28,918
John Friedrichs.....	408
Emil Munch.....	393
Write-ins.....	13

Journal of the House of Rep., January 8, 1868, at 12.

The results of the election on November 2, 1869, were:

Francis R. E. Cornell (inc.).....	29,300
Seagrave Smith.....	23,812

the Supreme Court and qualified and took his seat on the eleventh of the same month.<sup>51</sup> He died in Minneapolis on the 23rd day of May, 1881.

As a lawyer, Judge Cornell stood by unanimous consent in the front rank of the profession, both as an advocate before a jury, and in arguing cases before the *nisi prius* and Supreme Court. His close study of human nature, and his entire mastery of the facts of his case, enabled him, with rare exceptions, to carry the jury with him. He rarely appealed to the passions, but almost invariably addressed himself to the judgment and sound reason of jurymen. While a convincing and persuasive speaker, he never resorted to the artifices of oratory or sophistry.

But it was in legal arguments before the bench that his fullest strength was developed. His acute dis-criminating mind seemed as by intuition to discern the legal principles applicable to the

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J. Ham. Davidson.....	1,348
Scattering.....	49

Journal of the House of Rep., January 5, 1870, at 12; SAM 66, Roll 1, Image 69 (vote totals, however, are indecipherable on the microfilm).

The results of the election on November 7, 1871, were:

F. R. E. Cornell (inc).....	46,560
J. L. Macdonald.....	30,233
U. F. Sargent.....	131

Journal of the House of Rep., January 3, 1872, at 16.

<sup>51</sup> The votes for associate justice on November 3, 1874, were:

Francis R. E. Cornell.....	50,977
William Lochren.....	41,720
Write-in.....	12

“Results of the Elections of Justices to the Minnesota Supreme Court, 1857- 2018” 21-22 (MLHP, 2019) (citing sources).

To get the critical endorsement of the Republican Party for associate justice, Cornell bested George B. Young, who had been appointed to the court by Governor Davis. For an analysis of Young’s appointment, Cornell’s endorsement and the subsequent campaign, see Douglas A. Hedin, “George B. Young vs. Francis R. E. Cornell: The Contest for the Republican Nomination for Associate Justice of the Minnesota Supreme Court, 1874” (MLHP, 2019).

case in hand, and detect and point out any misapplication of them by his opponent. And his opinions on the bench as published in the reports, are models of clear statement of facts, and conclusions of law following the same.

Judge Cornell always took a deep interest in the municipal and educational affairs of the city. He served as a member of the City Council and Board of Education for several years. His judgment



F. R. E. CORNELL.

was always sought and prized on matters of public interest, and in his death Minneapolis lost one of its most honored and public spirited citizens.

Judge Cornell, after his removal to Minnesota, was always in entire sympathy with the principles of the Republican party, and steadfastly adhered to them through life. He had much political experience, was a close student of history, courteous and conservative in his views, and his advice was always eagerly sought by and carried great weight

with his party associates. He opposed the issue of the old state railroad bonds in 1857, believing the measure would prove disastrous to the best interests of the State. But when they had once been fastened on us, his high sense of justice, honor and state pride recoiled at the idea of repudiation, and none labored more earnestly than he to effect a settlement of the troublesome question which should be reasonably satisfactory to the bondholders and consistent with the honor and dignity of the State.

Judge Cornell was peculiarly happy in his family and social relations. He was married to Eliza O. Burgess, Nov. 12, 1845.

There were three children born to them, Frank B., Mary R. and Carrie R. Frank is in business in this city; Mary died in 1855, and Carrie was married to Robert C. Kalkoff and resides in the city, as also Mrs. Cornell. Judge Cornell never made the accumulation of property a leading object of life, yet by prudent investments at an early day he left his family in comfortable if not independent circumstances. In social life he was most genial and companionable, and left a large circle of devoted friends to deeply lament his death, when but little past the meridian of life.

On the tenth day of June, 1881, at a fully attended meeting of the bar of the State, at the Capitol in St. Paul, a mem-[452]-orial resolution was adopted, and the Hon. Gordon E. Cole, chairman of the meeting was instructed to present the same to the Supreme Court.

On the same day Mr. Cole presented to the court, then in session, the memorial of the bar, and moved that it be entered in the records of the court.<sup>52</sup>

### MEMORIAL.

We, the members of the bar of the State of Minnesota, deem it appropriate that we should place upon record an expression of our sense of the great loss to our State and its Judiciary, and to our profession, caused by the death of Hon. Francis R. E. Cornell, one of the justices of the Supreme Court of our State, which occurred on the twenty-third day of May last.

More than twenty-five years of his rigorous manhood were passed among us in the constant and successful practice of our profession. Endowed with quickness of perception and clearness of judgment to a degree rarely united in the same person, with his thorough training and close application, he excelled in all

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<sup>52</sup> The complete memorial is also published in "F.R.E. Cornell" *in Testimony: Remembering Minnesota's Supreme Court Justices* 89-95 (Minn. Sup. Ct. Hist. Soc., 2008), and 27 Minn. iv-xv (1881).

branches of the profession, and stood foremost at the bar of the State, his career being marked no less by eminent ability and strict integrity, than by that uniform kindness and courtesy toward his brethren, which won for him the especial regard of the younger members of the bar, to whom he was the model of professional excellence.

His fitness for the highest professional honors was recognized by his brethren at the bar, and by the people of the State. After discharging the duties of Attorney General for repeated terms with signal ability, he was elevated to the bench of the Supreme Court, and has left a judicial record without a blemish and above criticism, which will remain an imperishable testimony to his learning and ability after his fame at the bar shall have faded in the shadows of tradition. Deeply deploring our loss, which has taken from our State one of its most gifted and estimable citizens, from the bench one of the ablest of justices, and from our profession a brother loved and revered by us all, we can contemplate with satisfaction his useful and blameless life, and rejoice that so much of his is left to us in the records of the State and of the Supreme Court; and we respectfully ask that this Court permit this brief expression of our regard for the memory of our honored brother to be entered upon its records.

Gen. Cole followed the presentation of the memorial with a feeling eulogy of the deceased. Judge I. Atwater, Judge William Lochren, Judge R. R. Nelson, the United States District Court for Minnesota; Gen. John B. Sanborn, Hon. M. J. Severance, Messrs. E. M. Wilson, William McCluer, and John M. Shaw, also addressed the court on the occasion. Judge Lochren's remarks were as follows:

*May it Please Your Honors:* It is difficult, in the brief time that can be taken at such a meeting. to say anything at all commensurate with what is fitting, or to

what is felt by every one respecting the loss of such a man as Judge Cornell.

I was with him, at the bar of our county, since my coming to Minnesota, twenty-five years ago; have been frequently associated with him and often opposed to him in the trial of causes and came to know him intimately. In my judgment he was the ablest lawyer who has ever practiced at that bar, and second to none in the State. He excelled in every branch of the profession—equally as a counsellor, as a pleader, in the examination of witnesses, as an advocate before juries, and in the argument of questions of law to courts. It is seldom that one man possesses such varied ability; and whenever it occurs in our profession it cannot fail to place the possessor in the foremost rank.

He loved his profession and its work, and never permitted anything to divert or withdraw him from it. Trained to it from youth, he was familiar with the underlying principles of jurisprudence, and, with his natural powers of perception and accurate judgment he seemed to reach correct conclusions with the rapidity of intuition. But he never relied too much upon his natural powers, and was familiar with leading authors and decisions, to which he could refer with readiness whenever necessary to enforce his argument.

A noted characteristic was his unfailing courtesy and consideration for others, especially his brethren at the bar. He was always ready to assist and encourage young men starting in the profession, and many such will greatly remember his acts of professional kindness and friendly assistance.

Although his practice was large, he seemed to work more for love of his profession than for gain, and was

proverbially careless about securing compensation for his labor. Without being a politician in the ordinary sense of that term, he took a lively interest in everything affecting the material prosperity of the state and of the city in which he lived, and on such matters his counsel was always sought and his influence great.

Reaching at last the goal of a laudable professional ambition—a seat upon the bench of this honored court—I shall not speak of how well he performed the duties of that high station. That is too well known and recent to call for more than reference. Had he lived beyond his term of office nearly closed at the time of his death, he would have been chosen without opposition to continue in the place for which all felt he was so well fitted. But the judicial honors by him worn so worthily have been laid down with his life. His labors are ended, and our brief testimony to his worth closes the record.

Chief Justice Gilfillan, in accepting the memorial on behalf of the Court, and ordering the same entered in the records, expressed in feeling and eloquent words the great loss sustained by the Court, bar and the community at large, in the death of Judge Cornell. No such universal and sincere feeling of sorrow has been witnessed at the decease of any member of the bench or bar in this state.

**WILLIAM WOODBRIDGE MCNAIR.** The lamented death of W. W. McNair, which occurred September 15, 1885, removed from Minneapolis one who was a most enthusiastic and efficient participant in public enterprises, a leader at the bar, and above all, one whose vivacity of disposition, honorable life, and genial companionship, had endeared him to all who knew him.

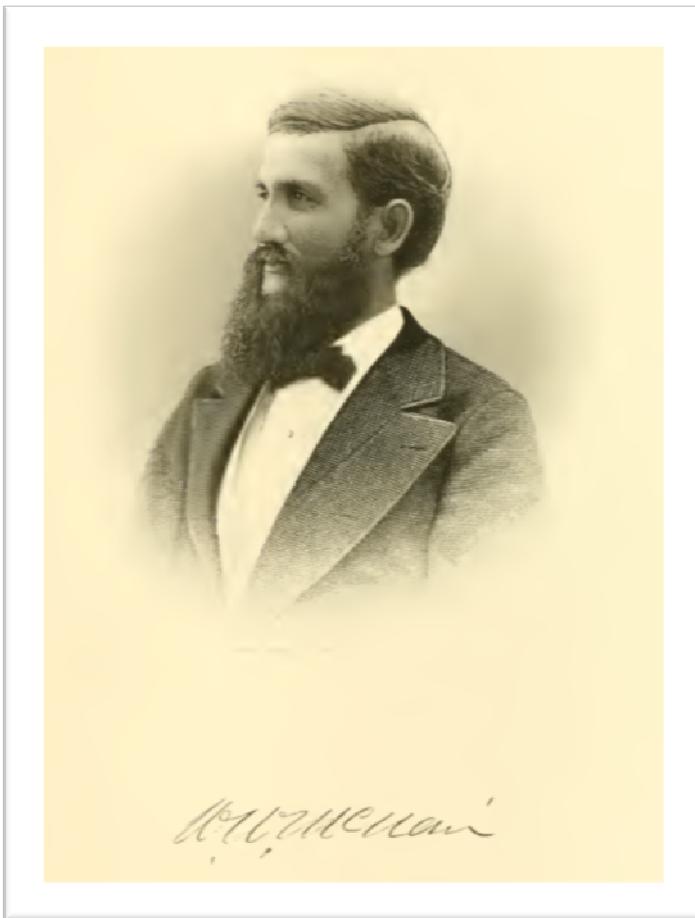
He was born at Groveland, Livingston County, New York, on the fourth day of January, 1836, and was the eldest son of William Wilson McNair, whose family of Scotch-Irish descent removed

from Eastern Pennsylvania before the beginning of the present century. His mother, Sarah Pierrepont, was of English lineage, a descendant of Rev. James Pierrepont, one of the founders of Yale College, a family which traced its ancestry in a direct line from Robert de Pierrepont, who accompanied William, the Conqueror, from Normandy in the invasion of A. D. 1066. He attended the academies of Genesee and Canandaigua, and added to the acquisitions of the schools by careful and well directed reading. The home was a devotedly Christian one, and in early boy-hood he united with the Presbyterian Church, and remained through his busy life an earnest and devout member of that church.

At the age of nineteen he left the home of his youth and entered the law office of Hon. J. R. Doolittle, at Racine, Wis., where for two years he was a careful student of the law, which he had decided to make his profession. Looking westward for a location, he was so charmed with the beauty of Minnesota, and so prepossessed by the advantages offered at the Falls of St. Anthony, that in 1857 he took up his residence in Minneapolis, and continuing his studies, was admitted to the bar during the same year. Two years later he formed a partnership with Henry D. Beman, an accomplished gentleman and able lawyer of southern origin. At the breaking out of the war of the rebellion, his partner returned to his southern home, and Mr. McNair associated himself with the late Eugene M. Wilson. The new firm had a large practice but was broken up by Mr. Wilson's election to Congress in 1868. The firm of Lochren and McNair was then formed, to which J. B. Gilfillan was afterwards admitted, and continued the leading law office of the city until Mr. Lochren's appointment as Judge of the District Court in 1881. The business was continued by McNair and Gilfillan until the election of the latter to Congress in 1884, when, through impaired health and the pressure of outside business connections, he retired from law practice.

Mr. McNair practiced in the courts of Minnesota for twenty-seven years. For four years prior to 1863 he was County Attorney of Hennepin County. While efficient as a practicing attorney, his in-

clination and adaptation were rather for [454] the defense than the prosecution. No member of the bar during the period of his practice appeared in as many trials as he. At every term of court he was incessantly engaged in contested cases, sometimes appearing in nearly every trial. It was a subject of wonder how one, not especially vigorous, could sustain so constant a strain upon his physical powers, and endure such intense tension of mind. But he always came up fresh to every new encounter. He



was almost invariably successful. His tact and resources were exhaustless. He seemed to have an intuitive perception of the mental state of witness or juror. His memory was tenacious, and he seemed to know the history and idiosyncrasy of every one coming in contact with him. His skill in the examination of witnesses was faultless, and in his addresses to the jury he seemed to know at once the secret of conviction. He was logical, humorous, accurate, and at times truly eloquent. In

his relations to the bar he was uniformly courteous, and if he differed from the court he would almost seem to put the court in the wrong. His forensic labors were too constant and exacting to leave much time for the study of books, but his early preparation was thorough, his memory retentive, and all his fund of knowledge at quick command. When occasion required the preparation of a brief or written opinion the work was done thoroughly and exhaustively, but he preferred to let his solid

partners make the briefs and draw the pleadings. His forte was the *nisi prius* trial, and in this he was without a peer at the bar where he practiced, especially after the retirement of the late Judge Cornell. Mr. McNair was greatly sought for counsel in varied domestic and private difficulties, and delighted in making settlements without litigation. He seemed to be able to harmonize opposing feelings, and unify discordant elements. And he was accessible to all. The poor man, with no prospect of a fee, found himself as well served as the richest client. Mr. McNair was no specialist in legal practice. In equity jurisdiction, probate, real estate titles, damage suits, contracts, prosecution or defense of prisoners, the long and tedious examination of accounts — in any and all branches of the law he seemed equally at home. But these incessant and exhausting labors, together with the growing burden of a private estate, which was one of the largest ever left by a professional man here, and a multitude of private trusts, were steadily sapping his stock of vitality, and when the law was abandoned in 1884 his physical power was well nigh exhausted, but his vivacity and exuberance of spirits survived until the end.

The activities of Mr. McNair's life were not confined to the practice of the law. He had rare fitness for a public career, though he did not seek its honors, but rather accepted them as a call to duty. Thus as early as 1868 he was elected as one of the school directors of the City of St. Anthony, and served in that useful, though not conspicuous, office.

In 1869 he was elected Mayor of the City of St. Anthony, and so satisfactory was his administration of municipal affairs that he was re-elected in 1870, and continued at the head of the city government until its consolidation with Minneapolis in 1872.

In later years he affiliated with the Democratic party, though it seemed in a hopeless minority in the city, the congressional district and the state. He was one of the trusted leaders of the party in council. At the congressional election in the fall of 1876 the nomination of the party for member of congress [455] was tendered him, and against his desire he made the run. As was

anticipated he was not elected, but the canvass was spirited and he received the compliment of reducing largely the adverse majority. Again in 1883 the nomination for governor of the state was tendered him, but he positively declined it, thinking his party duty fully performed by the congressional race.

In business enterprises of a *quasi* public character, his co-operation was sought and often obtained. These were not always profitable, but they introduced new industries and improvements and helped to build up the city. Thus he was for many years a director of the State National Bank, and of its successor, the Security Bank. To the administration of the latter institution he gave much time, serving on its discount committee, and it was largely due to his inconspicuous, though powerful influence, that the bank attained the financial leadership in the city.

With nine associates Mr. McNair participated in organizing the Minneapolis Gas Light Company, which built an extensive plant, and introduced illuminating gas into the city. Likewise he joined with a few other enterprising citizens in incorporating the Minneapolis Street Railway Company, which laid the first line of rail and operated the first cars in the city. The enterprise was not at first a financial success, but it was the nucleus from which has grown the unequalled rapid transit system of the city.

He also gave much thought to the improvement of the transportation facilities of the city. It was felt that direct communications with Lake Superior, and with the Minnesota Valley were essential. For this purpose the Minneapolis and Duluth, and afterwards the Minneapolis and St. Louis railroad companies were organized. Mr. McNair was an original stock-holder in both, as well as a prominent member of their Boards of Directors. He took great interest in the construction of these lines, which have proved to be the key to the commercial interests of the city.

He was also connected with several business enterprises, prominent among which was a lumber company, which purchased large tracts of pine timbered land in the northeasterly

part of the state, and built and operated a saw mill, and took large contracts for the supply of timber and lumber along the line of the Northern Pacific railroad. He was also interested for many years in the manufacture of the hard yellow brick, so characteristic of the city, and from which so many of its buildings were made in the earlier days. He had much business sagacity, his undertakings and investments being successful and profitable. He was so strongly impressed with the destiny of the city that he was continually acquiring lands in its vicinity, so that at his death he was the owner of more than a thousand acres of land in the environs of the city, much of which is now laid out and occupied.

August 21st, 1862, he was united in marriage with Miss Louise Wilson, daughter of Hon. Edgar C. Wilson, of Virginia, and sister of Hon. Eugene M. Wilson, his law partner. His marriage was a most happy one, and from all the toils and cares of his active life, he turned to the perfect enjoyment of his home. His family and his children were his joy and delight. There were two daughters, Agnes O. and Louise P. McNair who, with his wife, survive him.

Mr. and Mrs. McNair soon after marriage made their home in a modest house on the east side, which they continued to occupy until just before his death. For several years he had been erecting a beautiful stone mansion. This house is the [456] residence of the family, and is an enduring memento of the elegant taste and liberal spirit of its proprietor.<sup>53</sup>

Mr. McNair was fond of the rod and the gun. It was his delight to escape from professional labor and business care for a few days' vacation in the woods or beside the sparkling brooks. He was an expert with both implements, and seldom returned with empty bag or creel. Among the valued accessions of his house was always to be found a well trained pointer or sagacious setter dog, faithful companions upon these rural excursions. He

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<sup>53</sup> A photograph of the exterior of the McNair house, built in a Romanesque style, on 1301 Linden Avenue is in "Photographs of Residences of Minnesota Lawyers and Judges" 11 (MLHP, 2020).

enjoyed traveling, though forced by the press of business to limit the indulgence of the taste to occasional trips.

As health began to decline he indulged a native taste for rural life. On an elevated point upon his lands overlooking the city he built a farm house and capacious barns. There were gathered horses of the best blood, and sleek cattle. A conservatory and flower garden furnished bloom and fragrance, and he spent many hours in his fields and among his herds. But it was too late to arrest the progress of his maladies. The years of professional labor and business anxiety had too much taxed his vital force. The bow was unbent, but had lost its elasticity. His final release from all earthy care and struggle was on September 15, 1885.<sup>54</sup>

No citizen of Minneapolis was ever more deplored. Not alone professional brethren, associates in business, companions in social life, but all classes and ranks of people joined in lamenting his demise. They felt a personal loss; that a friend had departed.

Though cut short at its meridian, his life was a memorable one. He had brilliant qualities, which made him an inspiration in social life. He was the soul of honor in his dealings with others, though acute and prudent. He was devout in spiritual life, dominated by thoroughly religious conviction, but without sanctimoniousness or bigotry. He was acquisitive, but generous, and charitable without ostentation. He was ambitious, but mounted only through manly and honorable paths. He was public spirited and patriotic. He was kind and loving in domestic life. The tall shaft at Lakewood which rises over his resting place but signalizes the commanding eminence which he held in life among the active and restless citizens of Minneapolis.

**EUGENE M. WILSON.** \* At the age of twenty-four years, or in the fall of 1857, Eugene M. Wilson cast his fortunes with those of the people of the comparatively new village of Minneapolis. From

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<sup>54</sup> For his obituary and bar memorial, see "William W. McNair (1836-1885)" (MLHP, 2018).

\* Written by Frank J. Mead

that time until the day of his death he ranked as one of the most notably influential citizens of this community.

Mr. Wilson sprang from Scotch-Irish stock, the same blood that gave Andrew Jackson and John C. Calhoun to American statecraft. His father was Edgar C. Wilson, prominent in Virginia politics, and his grandfather, Thomas Wilson. Both father and grandfather were members of Congress from Virginia, the father serving in the National house from 1833 to 1835, and his grandfather from 1811 to 1813. His ancestry on both the maternal and paternal side were patriots and soldiers during the Revolutionary struggle, and also during the war of 1812.

Mr. Wilson was born in Morgantown, Va., Dec. 25, 1833, and began his education at home and in the schools of his native village. Before he was fifteen years of age he entered Jefferson College, graduating from that institution at the early age of eighteen. After completing his academic studies he entered his father's law office as a student, and at the [457] age of twenty-one was admitted to the practice. In the year 1856 he left Virginia and came to Minnesota, first settling in the practice of law at Winona, where he formed a partnership with William Mitchell, afterwards Judge of the State Supreme Court, the firm name being Wilson & Mitchell. Here he soon demonstrated his ability as a lawyer in legal contests with such shining lights of the bar as William Windom, afterwards member of Congress, United States Senator, and twice Secretary of the Treasury; D. S. Norton, afterward United States Senator; Thomas Wilson, afterward Chief Justice of the Supreme Court, and Charles Berry, afterward Attorney General.<sup>55</sup>

In 1857 President Buchanan appointed Mr. Wilson to the office of United States District Attorney, a position he filled with marked credit and ability until the admission of the State into the Union in 1858. On receiving his commission as District Attorney he

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<sup>55</sup> Daniel S. Norton (1829-1870) served in the U. S. Senate from 1866 to his death; Thomas Wilson (1827-1910) served as Associate Justice in 1864-64 and Chief Justice from 1865 to 1869; and Charles H. Berry (1823-1900) served as the state's first Attorney General from May 1858 through 1859.

removed from Winona to Minneapolis, thereafter finding his home in this city for the remainder of his life.

After the admission of the State into the Union Mr. Wilson continued the practice of his profession in this city. In 1861 he formed a law partnership with W. W. McNair, a gentleman who later became his brother-in-law. In 1862 he entered the military service of the nation, being commissioned captain of Company "A" of the First Minnesota Regiment of Cavalry, or the "Mounted Rangers," as it was locally known. In this position he served for one year, being mustered out at the close of his term of service. His military experience did not extend to the battlefields of the South, as the organization to which he belonged was retained in the State for service on the frontier against the Indians. On entering again into civil life he resumed the practice of his profession, taking position in the ranks thereof among the foremost lawyers of the Northwest.

On the 6th day of September, 1865, Mr. Wilson was married to Elizabeth Kimball, only daughter of Col. William M. Kimball, of St. Anthony (East Minneapolis). There were born of this union five children, three daughters still surviving.

In 1868, after one of the most heated campaigns ever known in the political history of the State, Mr. Wilson was elected on the Democratic ticket to a seat in the Forty-first Congress from the Third Congressional District. The district was overwhelmingly Republican, and had been represented by Hon. Ignatius Donnelly. During the campaign of that year occurred the historical split in the Republican party; Mr. Donnelly receiving a nomination from one faction and Hon. C. C. Andrews that of the other. Mr. Wilson was the unanimous choice of the Democratic convention, and was elected, receiving 13,506 votes to 11,229 for Mr. Donnelly and 8,595 for Mr. Andrews. His service in Congress was of the most useful and brilliant character, notwithstanding the fact that his party was everywhere in the minority. Mr. Wilson was especially fitted, both by inherent qualities and education, for success in public life. He was of the most genial temperament, and without effort could draw men to him.

Possessed of a handsome and magnetic personality and fine social qualities, he was wherever known a universal favorite. Only to the fact that his party was hopelessly in the minority in the district represented by him is to be attributed his retirement in 1870. To his honor be it said that he returned to his profession, after a two years term in Congress, poorer than he left it.

It was during his term in Congress that the Northern Pacific railway land [458] grant was secured; Mr. Wilson was member of both the Pacific Railroad and Public Lands committees of the House, and was thus in a position to wield a most potent influence on the fortunes of the struggling corporation. At the time of Mr. Wilson's advent on the floor of Congress it was regarded as a matter of most vital importance to the State that the Northern Pacific railroad should be chartered and endowed. Both on the floor and in committee, by public speech and tireless industry he strove to compass this great work, and was successful.<sup>56</sup> To his eternal honor be it said, that in the midst of the most unblushing corruption Mr. Wilson kept his hands and his conscience clear, and that his most malignant political enemy (he never had a personal one) never dared to hint that he had supported any public measure from unworthy motives. During his congressional career he also secured the passage of a bill granting lands to the University of Minnesota; advocated the policy (since then adopted as the settled policy of the government) of allotment of lands in severalty to Indians; championed liberal appropriations for the advancement of agricultural interests, and gave cheerfully of his time and energies for the passage of every just bill before Congress.

Returning to Minneapolis after the close of his congressional term, he formed a partnership with James W. Lawrence, a business connection which remained unbroken down to the day

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<sup>56</sup> Here the text is misleading. The original Northern Pacific land grant was signed by President Lincoln on July 2, 1864, over four years before Wilson was elected to congress. See 13 Stat. C. 217, at 365 (1864). That grant was modified – actually enlarged – by a Joint Resolution of the Forty-first Congress on May 31, 1870, granting the Northern Pacific additional lands and allowed it to sell mortgage bonds. See 16 Stat., Joint. Res. 67, at 378-79 (1870). Wilson, it appears, was instrumental in the passage of this resolution.

of his death. The firm of which he was the senior member at once took a leading position at the bar of the county and state, and there were few important cases tried in Minneapolis during the ensuing twenty years with which the firm of Wilson & Lawrence was not in some way connected. Mr. Wilson was the leading counsel of Col. W. S. King in the famous King-Remington suit, which involved real estate in Minneapolis valued at over \$2,000,000. He prepared the case for trial, personally drew all the papers during its trial and the briefs in appeal, and finally fought it to a successful issue for his client — the most noted case and involving larger interests than any ever before brought before the courts of the Northwest.<sup>57</sup>

In 1872 the two cities of St. Anthony and Minneapolis were united under one municipal government, and notwithstanding the fact that the city was at that time Republican by an overwhelming majority, Mr. Wilson was elected the first mayor of the new city. Of his career as the chief executive officer of this large and growing city, it is scarcely necessary to give more than a passing word. Here, as everywhere, his course was guided and marked by the strictest integrity and the most tireless energy in the upbuilding of the public interest. Again in 1874 he was chosen mayor and served with honor and credit for another term, refusing a re-nomination by his party equivalent to an election. In 1878 and again in 1890 he was elected State Senator and served the people of Hennepin County faithfully in the State Legislature. On the establishment of the park system for the city Mr. Wilson was appointed a member of the Park Board — his last public position, and one he held until his death. The last ten years of his life were devoted to the active discharge of the duties of his profession and to social and domestic enjoyment. Possessed of a beautiful home and abundant wealth, surrounded by a most charming family, he was the centre of a most select circle of friends who were always welcome to the hospitalities of his fireside. He continued in the discharge of the duties of his profession until the early winter of 1889, when his health began to fail. His condition was not [459] considered at all dangerous, but his physician advised a

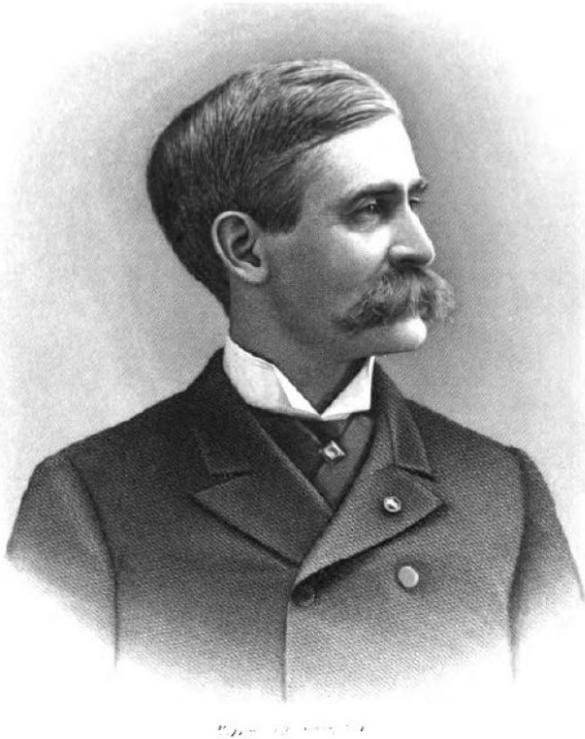
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<sup>57</sup> *King v. Remington*, 36 Minn. 15, 29 N. W. 352 (1886), is summarized in note 28.

cessation of work and the enjoyment of a period of perfect rest. Accompanied by his wife and daughters and by Hon. Thomas Wilson and wife, of Winona, he sailed for Nassau, New Providence, in the Bahamas, hoping that the genial climate of that locality would restore him to health and vigor. But such was not to be. Afflicted by no particular disease, it seemed that the vital forces were simply worn out. He died at Nassau on the 10th day of April, 1890. Almost, if not quite, his last labor was one of love, in preparing a history of the Mounted Rangers, for publication in the military history of the State.

Mr. Wilson was, a man of unimpeachable integrity, perfectly honest in every motive, the last person to suspect a wrong in others, and this unswerving confidence in mankind was returned to him by all classes in a marked degree. Springing from old and distinguished colonial stock, he was the most democratic of men. His best friends, and those whose loyalty never failed him, were the working classes — the men and women of the city who toiled with their hands. To these he was guide, philosopher, counsellor and friend, and to their interests and for their advancement he gave without money and without price the best days of his manly and useful life. His friends of every station in life did not fully appreciate the value of this man until death had removed him. In the midst of the daily struggle for wealth and social position his perfect self-poise, entire unselfishness and inherent sense of all that was gentle, quietly courageous and manly, were overlooked. To speak of the public services rendered and high positions held by a man like Eugene M. Wilson, seems only a mockery to those who were acquainted with the man, and could measure the strength of the quiet, unseen forces which made every hour of his sincere and ingenuous life a benediction to his fellows. Of no one in all the range of the writer's acquaintance could the words applied to Bayard — “Sans peur et sans reproche”—“without fear and without reproach,” be more honestly and truthfully applied. In the midst of corruption he was incorruptible; surrounded by selfishness and greed he was forever generous, liberal, magnanimous.

In 1888 he was duly nominated by the Democratic party as their Gubernatorial leader. There were three candidates, receiving the following vote: Merriam, 134,355; Wilson, 110,251; Harrison, 17,026.



*Eugene M. Wilson*

Mr. Wilson would probably under no accident of environment have been recorded a great statesman. His undoubted ability was supplemented by industry and energy, while his fine social qualities gave assurance always of personal popularity. If his fortunes had been cast in a community controlled by the Democratic party, he would doubtless have spent the major portion of his life in public employment, and he would doubtless have been more widely known. But, after all, the chief strength and charm of Mr. Wilson was found rather in his heart than his head. His intellectual

qualities, though strong and pronounced, were not of that overshadowing character which constitute a Cromwell or force to the front a Webster or Lincoln.

His influence on Minneapolis and its development was great and lasting — and always beneficent. The force of his good works will persist when his monument is dust and his name forgotten. His chief element of strength was found in that mightiest bulwark against wrong everywhere — a high and beneficent character.

Other men might stoop [460] to do unclean or unworthy things, but what Eugene Wilson did was always in accord with his conception of the strictest principles of entire justice and the most perfect rectitude. He never for one moment laid aside the safeguard of right thought; and so when temptations came to him he was armed against vice. His life bore constant testimony to his birth and breeding. Behind him was an ancestry — not overwhelmingly great or exalted, perhaps, but one that had always consisted of men of high sense of honor. The shades of his ancestors were never stained by any act of his.

Probably no man that ever was called away from his place by death was more universally missed and mourned than Mr. Wilson. The numerous testimonials offered by his fellow citizens at the shrine of his grave all bear witness to the exalted esteem of his fellow citizens. All classes and conditions of men and women joined to do honor to the perfect citizen, the constant friend, the tireless advocate, the honest man.<sup>58</sup>

**JAMES WETHERBY LAWRENCE.** Mr. Lawrence came of a line of lawyers, and occupies a position at the bar which does no discredit to his distinguished predecessors. His grandfather, James R. Lawrence, was a lawyer, and United States Attorney General of the district of New York. He was of an old Connecticut family. His father, James R. Lawrence, Jr., came to Minneapolis in 1856, and was elected Prosecuting Attorney of Hennepin County the following year, and was a partner of William Lochren, one of the present judges of the District Court. He removed to Chicago in 1860, and at the outbreak of the Civil War entered the military service of the government and died while in the service. Colonel Stevens, who knew him well, in his "Personal Recollections" says of him, "He was one of the most eloquent speakers that ever addressed a Minnesota audience. With his great talent and popularity, had his life been spared, he would unquestionably long ere this have occupied the highest trusts in the gift of the people." The name Wetherby is the family name of his mother. It was a prominent family in central New York.

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<sup>58</sup> For his obituary and bar memorial, see "Eugene M. Wilson (1833-1890)" (MLHP, 2008-2016).

**James W. Lawrence was born in Syracuse, New York, August 9, 1846; he was therefore ten years old when his family first became residents of Minneapolis. He returned to New York for his education, and having prepared for college in the public**



**JAMES W. LAWRENCE.**  
Photograph by BRUSH.

**schools of Syracuse, entered Hamilton College, from which he graduated at the early age of twenty-one. During his college life he had for roommate Frank Rice, now serving for the second time as Secretary of State of New York. He studied law in New York City with Sheldon & Brown, of that city, and was admitted to the bar in that state in 1869. The death of his father had left him without means. A part of the expenses of his education were earned, and a part were defrayed from a loan which was paid off with his first professional earnings.**

**Returning to Minneapolis he formed a law partnership with Eugene M. Wilson, which continued until the death of Mr. Wilson. The firm had a large and profitable practice. The senior was for many years the leader at the bar, as he was president of the Bar Association. He was an active politician of the Democratic party, serving for a term in Congress, and also in the State Senate, and having been the candidate of his party for Governor of the State. These interruptions threw upon the junior partner a large responsibility, which he carried with ability and efficiency. The firm was connected with much of the most [461] important litigation which has been contested before the local courts, notably the King-Remington case, in which their clients recovered property of the value of nearly two million dollars, and his attorneys received the largest fee ever paid in the county, and probably in the state.**

**Mr. Lawrence served as County Attorney of Hennepin County from 1872 to 1876, a position occupied by his father fifteen years before. A number of convictions for capital offenses attest his efficiency as prosecuting attorney.**

The confidence reposed in his partner by Mr. Wilson extended beyond the scope of professional association. When Mr. Wilson was a candidate for governor Mr. Lawrence was chairman of the Democratic State Central Committee, and had charge of the canvass. The result, though disastrous to the Democratic candidates, was creditable to the management, which was vigorous and efficient. Mr. Lawrence still serves upon the State Central Committee and is a member of its executive committee.

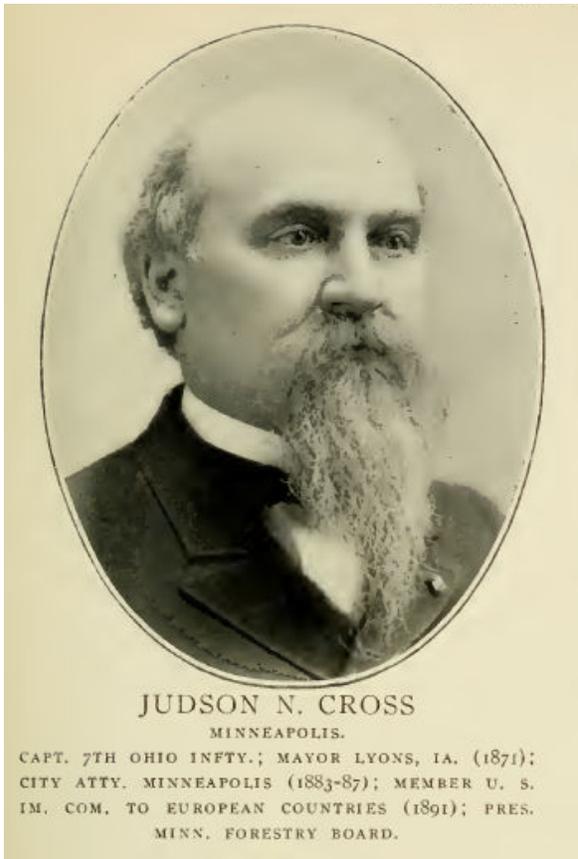
Mr. Lawrence is of a cheerful and social disposition, and attracts and holds hosts of friends. As a lawyer he is well read, industrious and persistent. He makes little pretense of oratory, but has a faculty of perspicuous statement and clever analysis, which is quite as persuasive before court and jury. The large measure, of success which has attended his law practice, both before and since the death of his partner, is the best proof of his ability.

Mr. Lawrence married in 1873 Miss Mary A., daughter of the late Jacob K. Sidle, long president of the First National Bank of Minneapolis. They have always occupied a leading social position. They have a family of four boys, the eldest now seventeen and the youngest nine.

**JUDSON NEWELL CROSS.** Heredity is a prime factor in human life. To be well born may not be to be born in wealth and reared in ease and luxury. Neither is it to come into life in abject poverty, amid squalor and want. The conditions of good birth are rather found in that medium condition, where neither wealth tempts to dissipation, nor poverty drives to despair, where necessity spurs to exertion, and the want of many things inculcates economy. It is often found on a secluded farm, or in a rural village, where nature instills her gentle lessons, and the mind is free from the excitements which drive to premature development. It is most compatible with a parentage exempted from the fierce competitions of commerce, and free from the mad strifes of forensic and political life, yet regular in its methods and laborious in its habits. Above all, where high education stimulates the mind, and moral example and

instruction softens and cultivates the heart, where the domestic virtues are in active exercise, and the home is an abiding place of love and sweet charity.

Such an ideal nursery of childhood is often found in the home of a rural clergyman. Better is the blessing of a patriarch than the inheritance of the rich, and a richer endowment, the nurture of a Christian home than social rank.



Judson N. Cross came into the world amid such favorable conditions, coming from Puritan and Pilgrim ancestors. His father, Rev. Gorham Cross was a Congregational minister in the rural village of Richville, St. Lawrence County, New York. Judson was born on the 16th day of January, 1838, at Philadelphia, Jefferson County, N. Y. In his boyhood he enjoyed the careful training of the home—his mother, Sophia Cross, possessing every Christian virtue — and the best advantages of the local schools. At the age of seventeen he went to Oberlin, Ohio, [462] for the purpose of taking the

advantages which that quiet collegiate town afforded to the ambitious student who was constrained to practice the strictest economy in expenditure. It was a college started and conducted by men of decided evangelical faith, and in its early history had a reputation for radical views, which were then not widely popular. Its success has been almost phenomenal. Its graduates have been among the foremost champions of liberty and Christianity in the land. Here six years were passed, in preparation for college, and in the college, with intervals of teaching in the common schools of Ohio.

Before the time for graduation had arrived the tocsin of war sounded through the land, and invaded the quiet precincts of the college. It was an appeal which had especial force at Oberlin, where abolitionism had been a fundamental faith, and colored students were received on equal terms with white. The college classes were depleted and the student community almost broken up. A military company was organized among the undergraduates in the latter part of April, 1861, and young Cross was chosen its First Lieutenant. The student company (C. Co. 7th Ohio Infantry) was mustered into service and sent to West Virginia where it was soon in an active campaign, under General McClellan. At the battle of Cross Lanes Aug. 26, 1861, Lieutenant Cross was severely wounded, and fell into the hands of the enemy. He was re-captured by Major, afterwards President R. B. Hayes, who was on the staff of General Rosecranes within a month, at the battle of Carnifa Ferry, and in November of the same year he was promoted to the captaincy of Co. K. of the same regiment from Cleveland, Ohio. A pleasant incident which grew out of this capture illustrates how cordially the animosities of the war have softened into the brotherhood of a common citizenship. Lieutenant Cross' wounds were dressed by Dr. S. C. Gleaves, of Wytheville, Va., at the time serving as surgeon general of the Confederate forces in West Virginia. He took from his pocket a silk handkerchief and used it in the dressing. This Lieutenant Cross preserved; and after peace was established returned it to the family of the surgeon, who received it with the warmest sentiments of gratification.

Capt. Cross served during the war as Adjutant General of the military district of Indiana, and during the last year was upon the staff of the military governor of Washington; his last service being mustering for pay the 18,000 returned prisoners from Andersonville.

During the last year of the war Captain Cross suggested to General Grant, in a letter, the destruction of the forts around Pittsburg and Richmond, by dropping powder and nitroglycerine on them from balloons, a principle of warfare which is likely to be tried during the next war in Europe.

His graduation was not in letters but in arms. He did not return to college, but entered Columbia College Law School in New York City, and graduated in law at the Albany, N. Y., Law School in 1866, having been married Sept. 11th, 1862, to Miss Clara Steele Norton, a graduate of Oberlin College, by whom he has had five children. In 1866 Captain Cross went to Lyons, Iowa, to practice his profession. Here he had fair success at the bar, and gained such confidence of the community that he was elected mayor of the city five years after taking up his residence there.

He removed to Minneapolis in 1875 and formed a law partnership with Col. H. G. Hicks, now one of the judges of the District Court, who had been his [463] classmate at Oberlin. The firm attracted a goodly number of clients, and enjoyed large and profitable practice. After some years Frank H. Carleton was admitted a partner, and in 1889 his son, Norton M. Cross, became a partner, and since then the firm has been Cross, Carleton & Cross. Captain Cross was chosen city Attorney in 1883, and filled the position for four years, including the mayoralty of Hon. Geo. A. Pillsbury. During his time he represented the city in a very important litigation with several the railroad companies, involving the duty of bridging the street crossings of the railroads. The cases were contested with great pertinacity by the companies, who were represented by the ablest members of the bar. The question at issue, which was novel as well as important, was argued in the Supreme Court by Capt. Cross in behalf of the city, who prepared and submitted a very elaborate brief, in which every case in the courts bearing upon the question at issue was cited, and carefully discriminated. The decision was in favor of the city, the contentions made by her attorney being fully sustained.<sup>59</sup>

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<sup>59</sup> *St. Paul, Minneapolis & Manitoba Railway Co. v. City of Minneapolis*, 35 Minn. 141, 27 N.W. 500 (1886). When the city council took steps to open a street across tracks that the railway owned, used for "a public purpose" and planned to expand because of heavy rail traffic, the railway brought an action to enjoin it. The railway's demurrer to the city's answer was overruled by Judges Young and Lochren, who heard the case together, on the ground that the complaint did not state facts sufficient to constitute a cause of action. Affirming that ruling on appeal, Justice Vanderburgh cited "[t]he general rule...that the power to extend streets across the right of way and tracks of a railway company is implied in the

An equally important service was rendered the city in his official capacity, in devising and drawing up what has become known as the “Patrol Limits Ordinance.” Beyond the scope of the advocate, it called out a high quality of constructive statesmanship. In its working has proved a valuable protection to public morals and a strong preservative of men. Its leading and distinctive feature was the designation of a central portion of the city, actively patrolled by the police, within which licenses for the retail of liquors might be granted, while eluding them from all other parts of the city. Under the administration of a conservative city government, this ordinance, while allowing saloons to be maintained in the business part of the city, has rigidly excluded them from the residence portion. The legality of the ordinance was questioned, and it was hotly assailed in the courts by eminent counsel, but its author had the satisfaction of having it fully sustained by the court of last resort.<sup>60</sup>

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general authority conferred by city charters for such purpose, without express legislative provisions upon the subject...and we think there is nothing in this case to take it out of the operation of such general rule.”

Benton & Roberts and R. B Galusha represented the railroad and Judson N. Cross represented the city.

<sup>60</sup> *In re Wilson*, 32 Minn. 145, 19 N. W. 723 (1884). In April 1884, the city council passed an ordinance requiring a vendor to obtain a license before selling intoxicating liquors; it also barred any licensee from selling liquor outside of “active patrol districts” which the mayor could designate “as he deems best”; and his designation was then submitted to the council for approval. C. H. Wilson, a city resident, was denied a license to sell liquor in an area outside an “active patrol district,” and brought an action to have a writ of *certiorari* issued to the mayor and council to review the legality of the ordinance. The supreme court denied the writ.

For the court, Justice Mitchell held that “a writ of *certiorari* will not lie in this action.” Noting English and American practices, he concluded that “[t]he authorities are almost uniform in holding that mere legislative or ministerial acts, as such, of municipal officers cannot be reviewed on *certiorari*; that only those which are *judicial* can be thus reviewed.” Sensitive to the practical implications of the case, he wrote, “[t]o hold that any mere legislative act of a municipal corporation could be thus directly reviewed on *certiorari* would not only be a radical departure from all precedent, but extremely onerous upon the courts and vexatious to municipal officers.” It was a typical Mitchell opinion, except for one curious feature: in their briefs and oral argument, the parties’ lawyers had clamored for a ruling on the legality of the ordinance. Seeing “serious public evils and embarrassments that might result” if there remained “doubt” about this question, Mitchell answered in lengthy dicta but without citing any authority: the section in the ordinance (§9) granting authority to the mayor to designate patrol districts was invalid. “[T]his power to regulate is vested in the city council. It is a power which they cannot delegate to any person or officer. It is a legislative act which they

As an advocate Capt Cross makes no claim of being an orator, but as a lawyer he has a sound judgment, a discriminating mind, great tenacity of purpose and indefatigable industry. These qualities have given him success at the bar, while his kindly nature, social grace and personal interest in all good objects, have given the esteem of all who know him. He has been more than a professional toiler. Much of his life has, been given to political, social and literary labor.

In 1879, in the Minneapolis editorials of the *Pioneer Press*, which he wrote for Col. King, while he ran his great Interstate fair, he proposed, and developed a general Northwestern sentiment for, a railroad from Minneapolis and St Paul to the East, north of Lake Michigan, to free us from Chicago's grip on our commerce, maintained by her system of railroads south and west of these

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must perform themselves..." Recognizing that it was unusual to address the merits of the case while denying the petition to review to it, Mitchell declared: "We will not, however, be disposed to follow our action in this case as precedent."

Judson N. Cross and Frank H. Carlton represented the city, and former attorney general Gordon E. Cole, former congressman Eugene M. Wilson, P. M. Babcock and Charles A. Ebert represented Wilson.

The supreme court issued its decision in *Wilson* on June 3, 1884, and the next day, the city council took action to amend §9 to eliminate the mayor's authority and to define the territorial limits of the "patrol districts" where liquor could only be sold by licensees. Two test cases were promptly brought and tried to juries in Municipal Court, Judge Francis B. Bailey presiding. In the first, George Kantler appealed his conviction of selling liquor without a license in violation of the ordinance. His principal argument was that the invalidity of the original §9 also rendered the rest of the ordinance void. Justice Daniel Dickinson, however, held that the remaining provisions were not entwined with §9 and were enforceable, as was the amendment. *State v. Kantler*, 33 Minn. 69, 21 N. W. 856 (1885). "Under the ordinance as amended," he wrote, "the defendant was properly charged and convicted of the offense of selling without a license. The restriction of the business to defined districts within the city is a proper regulation of the traffic, (*In re Wilson*, 32 Minn. 145,) which all licensees may be required to observe."

In the second case, Gustav Deusting was convicted of "disposing" of liquor without a license even though he gave one bottle of beer away and received no compensation for it. The supreme court approved Judge Bailey's jury instruction that the ordinance barred disposal of liquor by gift as well as by sale or barter. *State v. Deusting*, 33 Minn. 102, 22 N. W. 442 (1885). Justice Vanderburgh wrote, "In its scope and purpose the ordinance is intended to restrain such unlicensed traffic in any form."

Judson N. Cross and Frank H. Carleton represented the city and state in both cases, and Charles E. Ebert and John H. Long represented Kantler and Deusting.

cities, first likened by Capt. Cross to the arms of a “Devil fish,” in their power on our trade and traffic.

Mr. Cross was appointed by the Legislature, in 1883, a member of the first Board of Park Commissioners of Minneapolis, and it was on his motion the first action was taken for the boulevards around our beautiful lakes, as well as for establishing Powder Horn Park by the board.

During much of the past year he has been in various countries in Europe, under appointment by the President of the United States, as member of a commission to investigate the subject of emigra-[464]-tion. The report of the committee has been made to the government, but has not yet been published. From intimations which have been given out, it is thought to be a valuable addition to our knowledge of the varied aspects of the intricate subject.

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“There’s a divinity that shapes our ends,  
Rough-hew them how we will.”<sup>61</sup>

**WILLIAM HENRY EUSTIS.** The career of Mr. Eustis is a conspicuous illustration of this aphorism. The son of a mechanic, reared in limited circumstances’ and destined by his father for a mechanical trade. A severe affliction which brought great suffering for many years and resulted in a permanent lameness, barred him from following a trade and turned his thoughts to obtain an education, and ultimately placed him in the ranks of successful lawyers.

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<sup>61</sup> Hamlet, Act 5, Scene 2.

He is a native of the state of New York, born July 17, 1845, at the little village of Oxbow, near the boundary line separating Jefferson from St. Lawrence County. His father, Tobias Eustis, was born at Truro in Cornwall, England, and emigrated to America while a young man, and learned and followed the trade of wheelwright. His ancestors were sturdy miners of Cornwall. His mother was Mary Markwick, also of English descent. William Henry was the second born of a family of eleven children. The



boy was a robust scion of laborious and healthy parents, who had the ambition to make him a blacksmith. At an early age he assisted his father and picked up such jobs of work as the neighbors offered, chief of which was grinding bark in a village tannery. At the age of fifteen, while pursuing some daring diversion, an accident produced an affection of the hip, which laid him aside from outdoor life, and nearly cost him his life. For seven years he was a great sufferer, going about only with the aid of crutches. His recovery, deemed almost miraculous, was due to a naturally strong

constitution, a resolute will, and careful treatment, which his own study and, thought taught him to apply to himself. Having attended, during a few of the winter months, a district school, he found his way to Gouverneur, St. Lawrence County, where he entered a seminary. His parents thought at this time that he might be able to follow shoemaking, or possibly become a harness-maker, but he had other aspirations. He applied himself to learn book-keeping and telegraphy, while beginning studies preparatory to a more complete literary education. Besides his physical infirmity, he was without means, and could only hope to

pursue a higher education through his own earnings. He left the seminary, and for several winters taught a common school. Among other studies he took up physiology, and carefully applied the science to his own treatment.

He now obtained a situation in the seminary to teach book-keeping and telegraphy, and with some practice in soliciting for life insurance, earned enough money to pay his way at the seminary, and through a preparation for college. In 1871 he entered the sophomore class of Wesleyan University at Middletown, Conn., and keeping up with the class which he entered, while absenting himself winters to teach school, and recruit his finances, graduated with the class in which he entered college in 1873. He went immediately to New York and entered the Columbia Law School, at which he graduated in the spring of 1874, having done the work of two years in one. He was now master of a profession, but without practice, and in debt \$1,000. He, therefore, as the best expedient that offered took a position as teacher in one of the grammar schools [465] of New York City. Having been brought up in the school of privation, he had learned the lesson of economy, so that he was able at the close of the year to pay off the debt incurred in obtaining his education, and had money enough to buy a railroad ticket to Saratoga Springs, a new suit of clothes, and a surplus of fifteen dollars, with which to commence the professional work of his life.

Now occurred one of those circumstances which devout men are wont to call providences, but others accidents, upon which the course of a life sometimes turns. While at Saratoga Springs in attendance upon a college regatta, at which a younger brother held the captaincy of the Wesleyan University crew, he made the acquaintance of John R. Putnam, a practicing lawyer of that place, who was deeply interested in the boat races. Mindful of his new acquaintance, Mr. Putnam wrote him at New York, offering a partnership in his law practice, which was accepted, and he soon was installed in the office at Saratoga, with plenty of work to keep him busy. This was in 1875. He remained at Saratoga and with Judge Putnam for six years.

These were busy years. The practice of the office was large and lucrative.

The competition at the bar was such as to stimulate the best powers of the practitioners. The eloquent Henry Smith, the acute Esek Cowen, and the erudite William A. Beach, were in active practice and often met at the Saratoga bar.

In the spring of 1881 Mr. Eustis was at Washington at the inauguration of President Garfield, and soon sailed for Europe, intending to spend two years in travel and rest. The assassination of the President made such an impression upon him that he cut short his trip, and returned to America. It may not be easy to explain the psychological connection in the events. Mr. Eustis was an ardent Republican, and had been enthusiastically engaged in the campaign which gave New York to the Republicans, and placed Garfield in the presidential chair. We know that the assassination shocked the country, and awoke strong solicitude as to our political destiny. We may not wonder that a patriotic American, in a foreign land, should become heart sick.

The keen perception of a successful lawyer had not failed to discern the signs that political supremacy in the nation was fast tending westward. He decided to follow the star of destiny, and set out for the West. After visiting Kansas City, St. Louis, Dubuque, and other ambitious western cities, he came to Minneapolis early in October and was favorably impressed with its appearance. Returning to Chicago he ordered his baggage checked for the place which has since been his home, and the scene of his great professional and financial success. He arrived on the 23d of October, 1881, and at once entered an office with an old acquaintance, Dr. Camp; was admitted to the bar of the state and commenced the practice of the law. With the exception of two years he has had no professional associate. His legal practice has been fair. He brought with him the savings of his earlier years, which constituted a fair capital. By judicious investments he was gradually drawn into business enterprises, which soon occupied much of his time, and yielded large financial results. He built the block on Sixth street and Hennepin

avenue, which became headquarters of the Union League. The fine brick office building opposite the Chamber of Commerce — the Corn Exchange—was erected in 1885, and now a more stately office building is going up under his direction upon another corner in the same locality, [466] to be the Flour Exchange. He was a director and member of the building committee of the Masonic Temple Company, which has erected upon Hennepin avenue one of the stateliest structures in the city.

Mr. Eustis was one of the original corporators of the Minneapolis, Sault Ste. Marie and Atlantic Railway, and was upon its Board of Directors. He was also largely interested in the Land and Town Site Company, organized in connection with that great enterprise. He was also one of the originators of the North American Telegraph Company, and was a director and secretary of the company. This Minneapolis enterprise, having telegraphic connections from the Atlantic to the Pacific coast, is one which the great Western Union Telegraph Company has been unable to absorb or crush, and gives to the commercial world a recourse from an otherwise overwhelming monopoly.

The physical infirmities of his early life have given place to a condition of robust health. He is a fine example of bodily perfection. His manners are cordial, his temper enthusiastic and his bearing almost courtly. His conversation is most entertaining, sparkling with humor, apt illustration, and solid learning. He has an artistic taste, and a manner of expression enriched with grace imbibed by familiarity with the treasures of literature.

No one of our public spirited citizens has entered with greater resolution, into projects for building up the city, than he. When discredit was attempted to be cast upon the accuracy of our census enumeration in 1890 by a rival city, his spirit was aroused; and although the charges urged with persistency, brought a recount in both cities, Minneapolis preserved in the final result her relative supremacy.

Mr. Eustis is an ardent Republican politician, though never an applicant for office. He believes in republicanism with all that the

name implies. He has been a most enthusiastic admirer of Mr. James G. Blaine, and it would have been the greatest joy of his life to see him occupy the presidential chair. At this writing it seems conceded that he will be chosen to represent his party in the approaching Republican convention, to be held in Minneapolis in June, 1892.<sup>62</sup>

A cordial and conscientious biographer must notice in this imperfect sketch of one of our leading citizens, the chief defect which his life has as yet disclosed. He has arrived at mature age and has never married.<sup>63</sup>

**EDWARD MORRILL JOHNSON.** Mr. Johnson was born in Fisherville, Merrimack County, N. H., on the 24th day of November, 1850. His parents brought him to St. Anthony when he was a child four years of age. He has, therefore, grown to maturity, and received the impressions which have formed his character, within sight of the Falls of St. Anthony. The child and the town have grown up together. The former to a vigorous manhood, a commanding intellect, and an influential position; and the latter to a position among the great cities of our country. In a community whose eldest born has not yet passed middle life, it is especially gratifying to find among its foremost citizens those who have been reared upon the spot.

The parents of Mr. Johnson settled in St. Anthony in the spring of 1854. His father, Luther G. Johnson, is well known to all the pioneers as a manufacturer and merchant. His place of business was on Main street. He was a member of the firm of Kimball,

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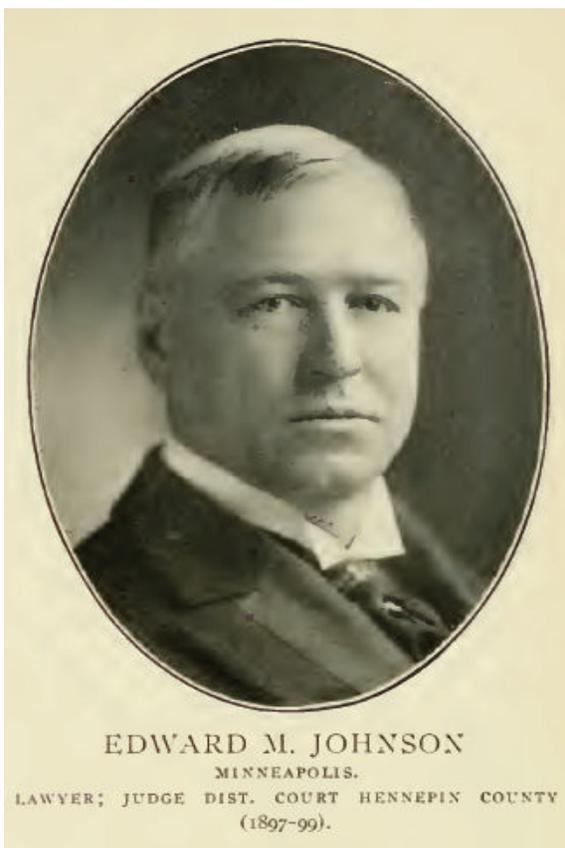
<sup>62</sup> In 1892, Eustis was elected Mayor of Minneapolis, serving 1893-1895. He ran unsuccessfully for Governor in 1898, losing to John Lind. The results of that election were:

William H. Eustis (Republican).....	111,796
John Lind (Democrat-Peoples').....	131,980 *
George W. Higgins (Prohibition).....	5,299
W. B. Hammond (Socialist).....	1,685
L. C. Long (Midroad-Populist ).....	1,802

<sup>63</sup> Eustis died in 1928. His autobiography, *The Autobiography of William Henry Eustis* (James T. White & Co., 1936), was posthumously published. Copies are in the libraries of the Minnesota Historical Society and the University of Minnesota.

Johnson & Co. and of L. G. Johnson & Co. The Johnson's were an old New England family of English origin, while the Morrill's, who [467] were the maternal branch of the family, were of Welch decent. Mr. Johnson's grandfathers upon both paternal and maternal side occupied positions of trust and responsibility in New Hampshire.

The boy was sent to the pioneer school, then occupying a small frame building in St. Anthony, on what is now known as University avenue, between second and Third avenues southeast.



Passing through this he entered the first High School, established at the Falls about 1863. The school year, 1866 and 1867 was spent at the Pennsylvania military Academy at Chester. In the fall of the year 1867 the State University was re-opened, and Mr. Johnson continued his academical training there for a period of four years, but ceased to attend regularly before any class was graduated. After leaving the university he spent much of his time until 1873 in his father's store obtaining a practical business education. In the fall of 1871 he passed some time in travel in the South. In January, 1873, Mr. Johnson went to Europe where he lived

nearly three years. Several months of this time were spent in travel, but most of it was devoted to study at the universities of Heidelberg and Berlin. During his residence in Germany he acquired an accurate knowledge of the German language, and also studied French. At the universities mentioned he attended lectures on International law by Professor Bluntschli; on Roman law by Professors Windschei and Bruns; on Literature by Fischer; on Modern History and Politics by Professor Treitschki;

on Political Economy by Wagner; on English Law by Gneist; on German Law by Brunner; on Modern Art by Herbert Grimm, and on Grecian Art by Curtius.

Returning to Minneapolis about Christmas, 1875, he entered the law office of Shaw & Levi, studying and doing clerical work the greater part of a year, after which he entered the Law School of the Iowa State University at Iowa City, from which institution he graduated with the law class of 1877. Soon afterwards he opened a law office in Minneapolis in partnership with Mr. B. C. Chatfield. This partnership being dissolved, he continued the practice alone for the next six years. January 1, 1882, Mr. Claude B. Leonard united in partnership with Mr. Johnson. The partnership thus formed still continues, though Mr. Alex. McCune has recently been added to the firm. Mr. Johnson's legal practice has been more that of counsel than advocate. He has been almost constantly connected with corporations, both municipal and financial, and to the laws governing and affecting such bodies, and to the law of real property he has especially directed his attention.

Mr. Johnson's professional life has been largely connected with official trusts, and in this his skill has admirably supplemented the integrity which he brought to these positions. His connection with the Board of Education as its clerk and attorney for ten years led to an intimate acquaintance with the many intricate but important questions involved in the administration of that branch of the city government. His connection as attorney with the largest savings bank in the city, a relationship which begun in 1883, and still continued, gave the occasion for, and the ability necessary to, a careful investigation of titles and a thorough knowledge of investments. As a member of the City Council he gave to the duties of alderman the same careful consideration and legal scrutiny that he accorded his other affairs. He was elected to this body in 1883 from the populous and wealthy Second Ward, in which he had grown from boyhood, and represented it continuously until his resignation in 1890. During that period he was for two years President of the Council and served upon its most important committees. His pro-

professional opinions and advice were as much relied upon by his colleagues as were those of the official attorney. Indeed, it is not too much to say, that during this important period in the history of the city's growth, the views of Mr. Johnson were controlling in the city government.

The valuable concession secured from the Street Railway Company in giving transfers so that a continuous trip can be made from one extremity of the system to its opposite, for a single fare, was secured by his firmness and tact. So, too, the replacement of the narrow suspension bridge, by the broad and solid steel arch bridge, was due to his efforts.

As a member of the standing committee on Public Grounds and Buildings of the City Council, he became ex-officio a member of the Board of Park Commissioners, and gave intelligent and interested attention to the important work of that department.

One of the most valuable acts of the city's legislation passed in recent years, the Permanent Improvement Revolving Fund, originated with Mr. Johnson, and was passed by means of his untiring labors. By the operation of this act the city was enabled to beautify and improve its streets, and yet allow the burden upon the property owners to be divided into five equal annual portions. Since its adoption here the same principle has been incorporated in the laws of some of our surrounding states — the result of its successful operation here, and an especially gratifying compliment to Mr. Johnson.

The Public Library is probably the most valuable fruit of his public labors. If he did not originate the idea, he at least was chiefly instrumental in giving it organic life. He drew the act establishing the library, and made the intricate arrangement under which the Athenæum was incorporated with the library, and its large and growing trust fund was preserved for the perpetual increase of the books of the library. Having secured the passage of the library act, he was named as one of the directors of the Library Board, and was one of the most efficient of the board in planning the building, in carefully watching over

the work of its construction, and in launching the library on its prosperous and beneficent career.

A kindred institution, the Society of Fine Arts, has also shared in his enthusiastic labor, he being not only an active member, but also one of the directors.

Not the least of the responsibilities laid upon Mr. Johnson, in behalf of the public interests, has been that of one of the commissioners for building the new Court House and City Hall. He was appointed upon the board in 1887, and is at the present time its vice-president and chairman of the financial committee. As the position, like most of the others which he has held, is without salary or other pecuniary consideration, the time and labor devoted to the public interests are raised above sordid motives to the level of patriotic service.

Although thus deeply engrossed in law business and public affairs, Mr. Johnson has found time for other matters of private nature and public importance.

He is a director in the Business Men's Union and through his efforts have been established two of the prosperous manufacturing enterprises of Minneapolis, The Northwestern Casket Co. and The Minneapolis Office & School Furnishing Co., in both of which he is a large stockholder and president of the Board of Directors of each company.

Mr. Johnson married, in 1880, Miss [469] Effie S. Richards, daughter of Dr. W. O. Richards, of Waterloo, Iowa. Mr. Johnson's home is on Fourth street, at the corner of Tenth avenue southeast, in the same part of the city in which his parents located in 1854. One instance, at least, that a prophet has honor in his own country, and in his own house.

Up to the present time the destinies of Minneapolis have been shaped by men, born and trained without her limits. Soon they must pass into the control of her own sons. The success and usefulness of this son of a pioneer, trained from childhood in her own primitive institutions, is a happy earnest for her future,

when it shall be altogether in the hands of those to “manner-born.”<sup>64</sup>

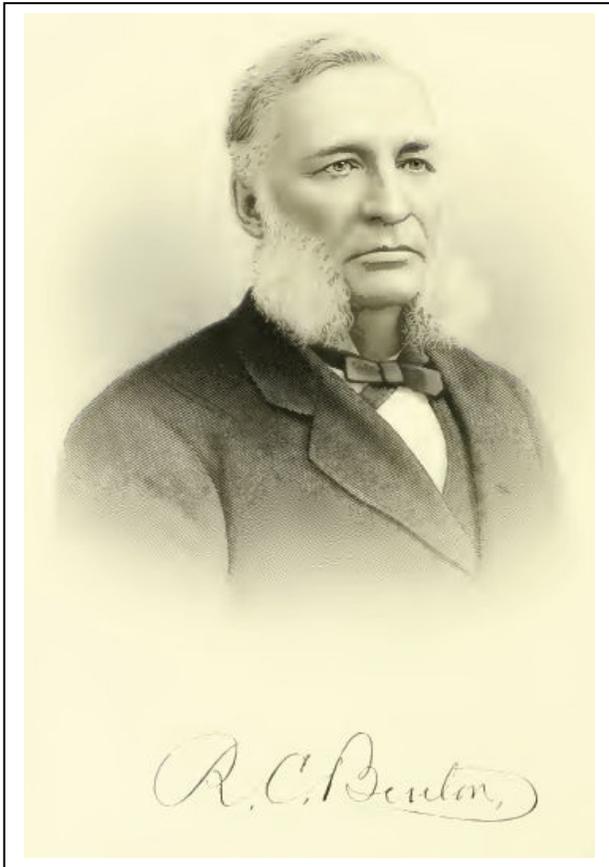
**REUBEN CLARK BENTON.** Since his settlement in Minneapolis, in 1875, Col. Benton has been one of the most prominent figures at the bar. The solidity of his character, his attainments as a lawyer, and not least, his genial temper and courteous manner, have made him a leader of the bar. A practice of twenty years in his native state had already driven him ripe experience and thorough acquaintance with all the varied features of his profession; while a boyhood passed upon a ragged farm had infused into a robust frame, the vigor which comes from an active life, and a few years of active and not inglorious military service, in early manhood, had steadied and natured his character.

To go no further back in his ancestry to seek the English origin of the family, tinged with Celtic blood, his great grandfather, Jacob Benton, was an officer in the Continental line from Connecticut. The family preserves as an heirloom, an autograph order given by Gen. George Washington to Captain Benton, detailing him for service upon the picket line at Valley Forge. His father bore the same name given to this, his eldest son. He had settled in Waterford, Caledonia County, Vermont, in early life, where he owned a farm. He was prominent in public affairs, holding many local offices as well as representing his town in the State Legislature, and in later life drifted into the practice of law. His mother was Almira Fletcher, allied with the prominent families of that name in Vermont, and connected with the Fletchers of Minneapolis.

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<sup>64</sup> Edward Morrill Johnson served as judge of the Fourth Judicial District, 1897-1899. He died on June 19, 1909, at age fifty-eight.

R. C. Benton was born in Waterford, May 13, 1830, but removed with his father's family to Essex County, in the same state, when he was eleven years old. He had an early desire to receive a collegiate education, which was not seconded by his father, and he remained upon the paternal farm until his majority, in the meantime seeking a preparation for college as best he could, and devoting some time to reading law with an uncle, Jacob



Benton, of Lancaster, N. H., and also with William Heywood, of Guildhall, Vt. Within ten days after reaching his majority, he entered the University of Vermont, at Burlington, in the third term of the freshman year, where he completed the college course and graduated in 1854. Like most farmers' boys of the period, he had a debt for his education, which must be discharged before entering upon a profession, and he spent the following two years in teaching a grammar school in Lamoille County, Vt. He was admitted to the bar in 1855, and commenced practice the following year at Johnson,

Lamoille County, Vt. After two years he removed to Hyde Park, in the same county, forming a partnership with John A. Child, of that place.

The growing law business of the young lawyers was interrupted by the clarion of war, which, resounding among the mountains, summoned the [470] sons of the Green Mountain boys of the Revolution, as it had their ancestors, to leave the plow in the furrow and the brief unread, and hasten to the defense of their country's flag. Mr. Benton joined a company of volunteers, of

which he was commissioned captain in the Fifth Regiment of Vermont Infantry, and then marched to the front. This regiment was actively engaged during the whole of the first peninsular campaign. At the battle of Savage Station he received a buckshot wound in the arm. A year later he was promoted to the lieutenant colonelcy of the Eleventh Vermont Infantry, which afterwards became the First Vermont Artillery. After his promotion his command was stationed on the defenses of Washington. On the 13th of May, 1864, the regiment was ordered to the front, serving as three battalions of infantry, and joining Grant's army at Fredericksburg. It shared the dangers and glories of the flanking campaign carried on in the approach to Richmond. At the sharp action of Cold Harbor, Col. Benton was actively engaged, and during the exposures which followed that action, contracted a malarial fever, which obliged him to resign his command. Returning to Vermont, he found his partner had died, his law business had been broken up, and the expenses of a family left behind had dissipated his slender accumulations. While he was endeavoring to gather up the scattered threads of his affairs, he was summoned by the governor of his state to aid in repelling the raid organized by rebel refugees in Canada on St. Albans. After two months in this service, he again returned to his law.

In 1867 he removed to St. Albans and became associated with W. D. Wilson, and afterwards with A. P. Cross. There he was busily employed for seven years, and until his removal to the West. The practice extended into Franklin, Orleans and Lamoille Counties. It was of a general character, such as the country districts of New England furnished at that day — fuller of labor than profit, but giving a wide experience at *nisi prius* as well as in bank.

Mr. Benton had married in 1856, about the time of entering his professional life, Miss Sara Maria Leland, of Johnson, Vermont. Of four children born of the union, two had died in infancy and the health of two growing daughters was injuriously affected by the severe climate of that mountainous region. In the hope of benefiting the health of his family, he determined to move to a

more inland region, and came to Minneapolis in 1875. The hope seemed to be realized for a time. The eldest daughter married Mr. R. M. Douglas, an accomplished young engineer, but in the winter and spring of 1882, both daughters succumbed to the malarial influences which so fatally prevailed at that period.

Col. Benton, on coming to Minneapolis, formed a law partnership with his younger brother, C. H. Benton, which continued until 1881.

In 1879 Col. Benton was appointed City Attorney, of Minneapolis, holding the office until December, 1881, when he resigned. It was a period of rapid development in the city and the city attorneyship assumed peculiar importance. Many claims for damages for personal injuries were made against the city, but not a single judgment was obtained. The first controversy with a railroad company respecting the bridging of the tracks arose at this time, and was settled satisfactorily to the interests of the city. Upon his resignation, Col. Benton was appointed local attorney of the St. Paul, Minneapolis & Manitoba Railroad Company, upon an annual salary, but with liberty to engage in other practice. Upon [471] the merging of that company in the Great Northern Railway Corporation, his employment was continued, and still exists. The labors of the position are varied and onerous, and have withdrawn him in a great measure from general practice. During the whole of this time the crossings controversy has been in progress, and has occupied the attention of the District and Supreme Courts of the state, and has been taken by appeal to the United States Supreme Court.<sup>65</sup> Early in the controversy the Manitoba company, under the judicious advice of their local attorney, came to a substantial agreement with the authorities of the city; but the interests and

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<sup>65</sup> *St. Paul, Minneapolis & Manitoba Railroad Co. v. City of Minneapolis*, 35 Minn. 141, 27 N.W. 500 (188 ).

*State ex rel. St. Paul, Minneapolis & Manitoba Railroad Co. v. District Court of Hennepin County*, 35 Minn. 461, 29 N. W. 60 (1886);

*State ex rel. St. Paul, Minneapolis & Manitoba Railroad Co. v. District Court of Hennepin County*, 42 Minn. 247, 44 N. W. 7 (188 );

*St. Paul, Minneapolis, Manitoba Railroad Co. v. City of Minneapolis*, 44 Minn.149, 46 N. W., 324 (1890),

obstructions of other companies prevented a settlement until recently. The whole matter, so far as the West side is concerned, is now satisfactorily arranged, and the improvements so long delayed are in progress. The question as to the East Side crossings is still open, but negotiations for an adjustment are in satisfactory progress.

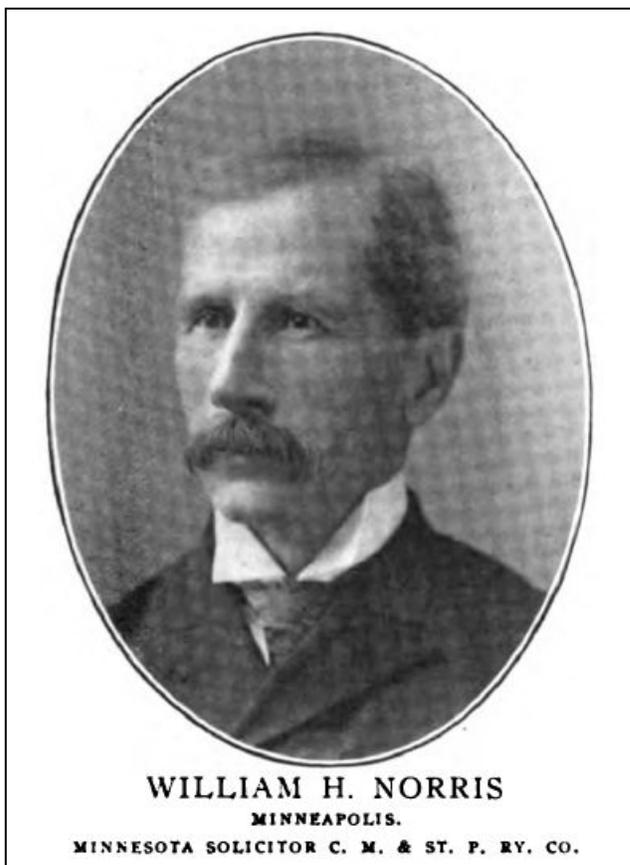
Col. Benton, representing in the chief city on its line, one of the great railroad corporations of the Northwest, has been called upon to investigate a vast number of claims for injuries to persons and property. His services have been more than professional. In a quasi judicial character, he has brought about settlements in most cases. When he has been convinced that a claim is fraudulent or unjust, he has brought all the resources of legal knowledge and professional skill to resist it; so that few adverse verdicts have been rendered against his company. Suave and genial in his bearing, he is dignified at the bar, but uncompromising and persistent in maintaining his position. No department of legal practice requires so close discrimination as that pertaining to railroad litigation. The railroad attorney is often called on to argue before the Court the nice application of legal principles, and almost always faces a jury sympathizing with his opponent. Col. Benton, by his candor, dignity, and learning, has been able to retain the confidence of the Bench, while his diplomatic skill has not seldom won verdicts from reluctant juries.

But it is not alone as a lawyer that he has been distinguished. Colonel Benton has always, since he became identified with Minneapolis, been one of her most public spirited citizens. He has served upon the Board of Trade, and in various representative and consultative capacities. He is a pleasant and persuasive public speaker, and is ever ready to aid all movements for the good of the community, or in aid of the unfortunate. He has a pleasant home at No. 1815 Hawthorn Avenue, where are enjoyed the quiet but refined associations of domestic and social life.<sup>66</sup>

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<sup>66</sup> Col. Benton died on January 5, 1895, aged sixty-four.

**WILLIAM HENRY NORRIS.** The family from which Mr. Norris comes has been settled in northern New England since about 1690. James Norris, the original American ancestor, was an emigrant from Ireland. They have been tillers of the soil, and indulge a just pride in an industrious, honorable and patriotic ancestry.



The father of William H. Norris gave to his eldest son his own name. In youth learning a mechanical trade and receiving but a limited education, he was converted in a revival in the Methodist church, and thenceforth gave himself to the service of that church. At first becoming a circuit preacher, he was afterwards a missionary to the Spanish American countries, a city pastor and presiding elder. He was a man of strong character, of great devotion and rare success in the ministry. In an obituary notice he is characterized as “a devout man, one that

feared God with all [472] heart, and gave alms to the people, and prayed to God always.” His wife was Sarah Mahan, of Portland, Maine.

William H. Norris, Jr., was the eldest of three children and was born at Hallowell, Maine, July 24, 1832. In infancy and youth he shared the lot of the family of an itinerant minister, living for periods of two years or more in Brooklyn, N. Y., New Haven, Conn., Montevideo and Buenos Ayres, South America. At the capital of the Argentine Confederation he spent five years, returning thence to Brooklyn when he was fifteen years of age. His early education was entirely received in the family, both father and mother giving careful attention to his introduction into letters. At

the age of fifteen he was sent to the Dwight High School in Brooklyn, N. Y., where he prepared to enter college. In 1850 he was matriculated in Yale College, graduating after a full term of four years. He carried off the highest honor, being the valedictorian of his class—a class numbering among other good scholars, S. C. Gale, of this city. After leaving college he spent a year in teaching at Marmaroneck, N. Y., while deliberating upon the choice of a profession. His inclinations favoring the law, he entered the law school of Harvard College, and after a year in that seat of learning, came west and located in Green Bay, Wis. Here he entered the law office of James H. Howe, now the general counsel of the Omaha Railroad Co., and after another year of study was admitted to the Wisconsin bar, in 1857, but remained associated with Mr. Howe until 1862, when the association was broken up by his partner entering the military service of the government. For the next ten years he carried on law practice at Green Bay alone, when he became associated with Thomas B. Chynoweth for six years, and afterwards for a short, time with E. H. Ellis, late Circuit judge. Twenty-three years were passed in practicing law at Green Bay, During twelve years of this time Mr. Norris was the local attorney of the Chicago & Northwestern Railroad Company, and for six years he was attorney of the Green Bay & Minnesota R. R. Co., now the Green Bay, Winona & St. Paul Railroad Company. These employments led him into making a specialty of railroad law. Other retainers made him familiar with the collateral branches of the law of corporations. This practice, with a goodly number of foreclosures and collections, made the years full of labor and experience.

Removing to Minneapolis in 1880, Mr. Norris opened a law office for general practice, but after a year and a half he was selected by the Chicago, Milwaukee & St. Paul Railway Company, as its state solicitor—a salaried office, which debarred him from receiving other professional retainers. Since that appointment he has appeared in State and Federal courts, wherever in the Northwest the interests of the Milwaukee road were in litigation. He is an expert in railroad law. In the trial of claims of damages for personal injuries, he has been unusually successful,

probably because meritorious cases have been settled before coming into court, and only the doubtful or unfounded claims resisted. In several cases his company was advised to resist an act of the Legislature as unconstitutional, and the point was in each case ruled in its favor by the courts. The general public greatly errs when it regards brilliancy and dash as the highest qualifications of the lawyer. However, it may be in those rare cases where misfortune or abuse furnish occasion to appeal to the sympathies of jurors, it is the sound judgment, the acute discrimination and the breadth and accuracy of learning that win success.

Mr. Norris [473] has no claim to be classed with the rhetoricians of the legal profession. He is naturally reticent in speech, but when his interest is aroused, is apt in illustration and copious in expression. He knows the law, and knows it thoroughly. He has the faculty of nice discrimination, and is tenacious of his opinion when it is once deliberately formed. His legal arguments are compact, discriminating and logical. The court listens attentively to his argument and weighs it carefully, and is led by an irresistible chain of sound reasoning to his conclusion. His success is not founded upon an ephemeral brilliancy, but upon accurate learning and solid judgment.

Mr. Norris does not allow the law to absorb the entire energy of his life. Parental example and precept bore early fruit in a professed Christian life, though in another denomination of the church. He is an active worker in evangelical and reformatory work. While living at Green Bay, he was for a time superintendent of schools, and in Minneapolis has been for a long time the leader of a Mission Sunday School. He is also prominent in other social organizations, having attained the highest degree but one in the Masonic brotherhood, and served as an officer in Lodge and Chapter.

He was married at Green Bay in 1859 to Miss Hannah B. Harriman, daughter of Jacob Harriman, a shipbuilder of Waterville, Maine. His family consists of one son and two daughters,

the eldest of whom is the wife of A. D. Rider, of Kansas City, Mo.<sup>67</sup>

### MUNICIPAL COURT.<sup>68</sup>

The act to incorporate the city of Minneapolis approved February 6th, 1867, provided for the election of two justices of the peace who should hold their offices for two years, and were styled city justices.<sup>69</sup> Their jurisdiction was the same as that of justices of the peace in Hennepin county, and in addition thereto, jurisdiction to hear and try all complaints for violation of any provision of the city charter or any ordinance, by law, rule or regulation made or adopted under or by virtue thereof, and of cases cognizable before a justice of the peace in which the city is a party, and of prosecutions to recover a fine, forfeiture or penalty under any ordinance or by-law or regulation of the city, and cases of offenses committed against the same. The justices were elective officers.

Among those who served as city justices were Charles H. Woods, F. L. Himes and H. G. Hicks (now judge of the District Court, Fourth Judicial District.)

The act of consolidation of the cities, approved February 28, 1872, provided for one city justice to be elected on the east side of the river and two on the west side.<sup>70</sup> The jurisdiction of the court was not materially changed.

By an act approved February 18 (sic), 1874, a municipal court was established in the City of Minneapolis with largely increased jurisdiction over that granted to city justices.<sup>71</sup> It is made a court of record with power to try and determine civil actions at law where the amount in controversy does not exceed two hundred dollars (since increased to five hundred dollars.) By the terms of

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<sup>67</sup> Norris died on November 9, 1919, at age eighty-seven.

<sup>68</sup> The names and service dates of all judges of the Minneapolis Municipal Court are listed on the Minnesota Election Trends website: [electiontrendsproject.org](http://electiontrendsproject.org).

<sup>69</sup> 1867 Special Laws, c. 19, at 43-85 (effective February 6, 1867).

<sup>70</sup> 1872 Special Laws, c. 10, at 56-91 (effective February 28, 1872).

<sup>71</sup> 1874 Special Laws, c. 141, at 362 (effective February 13, 1874).

the act it has no jurisdiction to try cases involving title to real estate, divorce, or where the relief demanded is purely equitable in its nature. A judge to be elected, to hold his office three years, to be called municipal judge, with a salary of \$2,500 a year. The judge appoints the clerk of said court, by and with the advice and consent of the city council.

By an act approved February 26, 1877, it was provided that a special judge of the municipal court should be [473] elected, whose term of office powers and duties should be the same as those of the municipal judge, except as otherwise provided in the act.<sup>72</sup>

Under the acts above referred to, the court has been maintained to the present time, save with certain amendments to the same, not material to be mentioned.

The judges of said court from its organization to the present time, are as follows, viz:

Grove B. Cooley, from April, 1874, to April, 1883.

Reuben Reynolds, appointed special judge under the act of 1877; resigned June, 1879.

Francis B. Bailey, appointed special judge June, 1879; held the office to April, 1883.

Francis B. Bailey, elected regular judge April, 1883; held to January 1, 1889.

Stephen Mahoney, elected special judge April, 1883; still holds the office.

Charles B. Elliott, appointed judge April 15, 1891; still holds the office.

The clerks have been as follows, viz:

Edward J. Davenport, from organization of the court in 1874, to April 15, 1878.

L. A. Dunn, from April 15, 1878, to April 15, 1879.

T. C. Wilson, from April 15, 1879, to July, 1879.

L. A. Dunn, from July, 1879, to March 31, 1881.

Ed. A. Stevens, from April 1, 1881, to May 15, 1883.

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<sup>72</sup> 1877 Special Laws, c. 178, at 240 (effective February 26, 1877).

L. A. Dunn, from May 15, 1883, to May 18, 1888.  
R. A. Daly, from May 18, 1889, to Dec. 31, 1889.  
Henry J. Altnow, from last date, present incumbent.

The quarters for the municipal court have always been cramped and inconvenient for the transaction of its business, and, the transfer to the new City Hall building when completed will be welcomed by none more warmly than the officials, suitors and employes who are in any way connected with business in the municipal court.

**ROBERT DONOUGH RUSSELL.** The accomplished gentleman and thorough lawyer, who is president of the Minneapolis Bar Association, and is now serving his second term as City Attorney of Minneapolis, has been a resident of the city since 1883.

He was born at St. Louis, Missouri, on the 9th of March, 1857. Both his paternal and maternal grand parents were of European birth, the former in England and the latter in Holland. His father was Charles E. Russell, who was a native of the State of New Jersey, but who removed to the West and settled in Missouri in 1837. He was a mechanic of sober and industrious habits, but a man of intelligence and of pronounced radical views, especially upon the subject of slavery, which was one of the burning questions of the day. His mother was Louisa Mathews. She was a lady of no ordinary character and attainment. When the Rebellion broke out she engaged in the work of the Sanitary Commission, and followed the Union army to the Southwest, where she personally ministered to the wants of the sick in the field and in hospitals and was present, a ministering angel, at some of the severest battles in the campaign.

From this humble but altogether worthy parentage, the son inherited a robust constitution, habits of industry, a genial disposition, and thoroughly benevolent sympathies. In early manhood he consecrated himself to a Christian life, and while zealous and enthusiastic in his profession he has been an active worker [474] in the fields of Christian and benevolent effort.

There were eight boys in the family, of whom five grew to manhood and became more than ordinarily conspicuous. The elder brother, after learning and practicing the printer's trade, entered college and graduated, and became a prominent minister in the "Christian" Church, and was elected president of Berean College, Jacksonville, Ills., before he reached his thirtieth year. Sol Smith Russell, the celebrated comedian, is a brother. The four brothers all bore arms in the Rebellion, three of them in Union army and one in that of the Confederacy, in which he served as Adjutant General on the staff of Major General Ewell, and at the close of the war was private secretary of Gen. John C. Breckenridge.

Robert D. was too young to take part the war. The family removed to Jacksonville, Ill., in 1860. At nine years of age he commenced learning his father's trade, that of tinner, and worked the bench until he was eighteen. During these years he was privileged to attend the common school during half of each year. Preparation was made for college at a private school, and he entered the Sophomore class of Illinois college in 1868, graduating in due course in 1871, with the highest honor of the class, the valedictorian. He had earned his expenses while at the preparatory schools and college by his own labor. His health having been impaired, by labor and study, he spent the succeeding year traveling, earning money during the time with which to take up the of his profession, and then settled to study law, entering for this purpose the law office of Isaac L. Morrison, of Jacksonville. In September, 1874, he was, after an oral examination before the Supreme Court, admitted to the Illinois bar. At the same time he received the degree of Master of Arts from his *alma mater*. Again through the course of legal studies he had earned his own way. Though a prophet is not without honor, save in his own city, a palpable exception to the rule was made in the ease of young Russell; for although for nearly fifteen years, as boy and young man he had lived at Jacksonville, he was at once appointed City Attorney, and held the position for three terms. He was also admitted as junior partner in the old firm of practicing attorneys of Dummer & Brown, and upon the death of Judge Dummer, in 1868, continued with Mr. Brown until his removal to Minneapolis. Jacksonville is one of the most

considerable towns in Central Illinois. The law practice of the firm was general and extensive, and Mr. Russell was plunged at once into the thicket of the legal contests. The firm was the legal advisor of several railroad companies, and had in addition a



HON. ROBERT D. RUSSELL,

Judge District Court, Fourth District.

large and important clientele. At that time General Collom, since so conspicuous in Congress in connection with the Interstate Commerce law, was governor of Illinois, and he had likewise been prominent in the legislature. The questions of state control of railroads, and the right to prescribe rates, were then comparatively new. In the extensive litigation which followed the assertion of those powers, the firm of Dummer, Brown & Russell was prominent. Another subject of contested state authority arose over the acts to prevent Texas cattle from being

transported through the state at certain seasons of the year. Upon these questions Mr. Russell assisted in the preparation of elaborate briefs. In 1881 he visited Washington, where the firm had important cases pending in the United States Supreme Court, to which he was then admitted to practice. [476]

The brothers, Sol Smith and Robert D. Russell, were attracted to Minneapolis to make their homes as a place offering superior advantages for business and social life.

Soon after his arrival R. D. Russell formed the law partnership of Russell, Emory and Reed. Upon the appointment of Judge Emory to the Municipal Court bench his place in the firm was filled by Mr. W. J. Calhoun, and the firm continued as Russell, Calhoun &

Reed. They have enjoyed a good practice from the start. A notable case known as the Hosford Will case, in which the validity of an anti-nuptial contract was assailed, and the authenticity of a pretended instrument of revocation was challenged. After a long litigation involving intricate and disputed facts of family history, the position which Mr. Russell had taken was fully sustained.<sup>73</sup>

Mr. Russell was appointed City Attorney of Minneapolis Jan. 1st, 1889, for two years, and was re-appointed in 1891, and now

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<sup>73</sup> *Hosford v. Rowe* (Hosford v. Hosford), 41 Minn. 245, 42 N.W. 1018 (1889). Reading this case brings to mind Trollope's famous law novel, *Orley Farm* (1862), in which a young widow forges her elderly husband's signature to a codicil granting their minor son a manor, at the expense of a stepson, who still inherits a sizeable estate. She testifies at a probate hearing that the signature is genuine and prevails. Two decades later, a disgruntled tenant uncovers evidence of the crime and gives it to the stepson who prosecutes her for committing perjury at the probate proceeding and to recover the land. The jury's verdict resolved one issue, leaving open several others, including the efficacy of the adversarial system (a frequently satirized subplot in Trollope's novels) and the possibility of redemption.

The plot in the "Hansford Will Case" began when Carrie signed an ante-nuptial agreement by which she would receive one-seventh of the estate of John Hosford, who was much older and already had six daughters (one of whom was Fear B. Rowe, who appears in the caption in the Minnesota Reports). He died one year after they married. In probate court, Carrie testified that two months before his death, John destroyed the agreement (it was never found), and at the same time, dictated documents confirming the destruction and annulling the agreement, which she typed and which they both signed (these were produced). As a result, Carrie claimed one third of John's estate under the statute. The probate court agreed, and the daughters appealed to the district court, contending that the signature on the so-called annulment was not their father's. At the trial, presided over by Judge Austin Young, the jury completed a special verdict form, finding: 1) the ante-nuptial agreement had been executed; 2) John did not destroy it; and 3) John did not sign documents annulling the ante-nuptial agreement. After trial, Carrie located a witness who signed an affidavit recounting a conversation with John a month before his death in which he said, "I burned the papers we had written before our marriage." Carrie moved for a new trial on the basis of newly-discovered evidence. Judge Young granted her motion, and the daughters appealed to the supreme court. For the court, Justice Daniel Dickinson affirmed the order for a new trial, and noted that in any retrial, "the burden of proof was upon [Carrie] to show that the signature of the deceased to [the alleged annulment] was genuine, and not upon these appellants [the daughters] to prove that it was not his signature."

Carrie Hosford was represented by Russell, Calhoun & Reed, D. B. Snow and Duncan McDougall, while the daughters were represented by Benton, Plumley & Healy, and Martin B. Koon.

(1892) holds the responsible and exacting position. At the time he assumed the office a dispute of long standing between the city and several railroad companies, relative to the bridging of crossings of streets over the tracks was in litigation, and had reached the Supreme Court of the United States. The new city attorney made a motion to dismiss the writ of error in the Supreme Court. The motion was taken under advisement to await a hearing on the main case. Meanwhile he took advantage of some favorable conditions, and after a long and persistent effort succeeded in arriving at a compromise which was acceptable to the railroad companies and more advantageous to the city than the judgment appealed from, and which enabled the work of bridging to go forward and reach an early completion, much to the benefit of the public.

An attempt to bar the city from the use of water in the supply of its east side water works, by one of the great water power companies of the city, was litigated through the courts, involving a consideration of difficult questions of construction and of rights, and the claim of the city was fully established.

The three annual reports made by the city attorney, to the council, during his official terms show that the office is one of great labor, and not a little responsibility. They also demonstrate that it has been conducted with great ability. During the first year twenty personal injury cases were presented against the city, claiming damages to the amount of \$116,404. In these there was only one recovery and that for but \$500. Five hundred and sixty-six cases were tried in the Municipal Court, and five hundred and thirty-three convictions obtained. During the same time twenty seven street opening appeals were disposed of. The reports for the other two years make an equally good showing.

Besides his engrossing professional labor Mr. Russell has not been unmindful of other duties in business and social life. He has served as a director in the Business Men's Union, an organization of great practical benefit in attracting and organizing manufacturing and business enterprises. Five years ago he was

elected a trustee of Illinois College, where he earned his degrees.

In the autumn of 1891 he was nominated without personal solicitation, as Republican candidate for Judge of the District Court of the Fourth Judicial District of the State of Minnesota, but as the opposite party succeeded at the election, he was not withdrawn from the bar.<sup>74</sup> The local bar testified their appreciation of his personal and professional [477] by electing him president of Bar Association at the beginning of year 1892.

Mr. Russell was married Sept. 7, 1876, to Miss Lillian M. Brooks, of Danville, Ill. She is the daughter of an eminent minister of the Presbyterian Church. Of five children but two, an infant daughter and a little girl of five years, survive.<sup>75</sup>

#### JUDGES AND CLERKS OF PROBATE COURT.

The Probate Court, being a county court, does not properly come within the scope of this article. But inasmuch as nearly all the judges and clerks have been members of the bar of this city, and the main part of the business transacted therein originates in Minneapolis, the names of the incumbents of the offices of judge and clerk may properly here be mentioned.

The earlier records of this court, in territorial times, are somewhat imperfect. The business at first was very small. The constitution provided that the Judge of Probate might appoint a clerk, but the Legislature, until 1878, failed to fix any salary, and if a clerk was employed the judge must pay him out of his own pocket. In that year the salary of clerk was fixed at \$500. In 1881 it was increased to \$900 with fees in addition. In 1885 it was increased to \$1,500 with fees for certified copies of records and an additional sum for extra clerk hire. In 1891 the Legislature in-

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<sup>74</sup> For the results of this election, see note 22. He was appointed to the District Court by Governor Nelson in 1893, and elected to a full term on November 6, 1894. He resigned in 1898, and returned to private practice.

<sup>75</sup> Russell died in Minneapolis on February 13, 1901, three weeks shy of his fiftieth year.

creased the amount for extra clerk hire to \$1,200, by means of which two deputy clerks are now employed in the office.

The act of the Territorial Legislature of March 6, 1852, establishing the County of Hennepin, attached the same for judicial purposes to Ramsey county; but provided that at the next general election such county and other officers as the organized counties were entitled to, might then be elected.<sup>76</sup> At the election in the fall of 1852, Joel B. Bassett was elected the first Judge of Probate of Hennepin county. He served for two years, but the records do not show that any estates were administered upon during that time and, indeed, only one person died leaving any property requiring the care of the court. Judge Bassett informs us that the receipts of the office for the two years he served were of such an infinitesimal amount that it would require a microscopical view to determine the same. On the other hand, the care of the widows and orphans which were then the only perquisites attached to the office, required of the judge an expenditure entirely incommensurate with the honor conferred by the position, and at the end of his term the Judge preferred to perform those duties in a private rather than public capacity.

He was succeeded in the office by Dr. A. E. Ames, who served as judge during the years 1855 and 1856. He was admitted to the bar in the year last named, rather as an honor than with any view of entering on the profession, as the practice of medicine was never relinquished — indeed, the position of judge at that time interfered little, if any, with his regular practice.

E. S. Jones was the first practicing lawyer, elected to the office, which was in the fall of 1856. He held it for three years until January, 1860. He was succeeded by Lardner Bostwick, whose term included the years 1860 and 1861.

Norton H. Hemiup was elected judge in the fall of 1861, and held the office by continued re-elections until and including the year 1870, making a longer term of service than any other one who has held the position.

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<sup>76</sup> Laws 1852, c. 33, at 51-2. (effective March 6, 1852).

Franklin Beebe was elected judge in fall of 1870, and held the office by re-elections until October, 1875. In that [478] month he resigned, and the balance of his unexpired term was filled by the appointment of B. A. Gove.

P. M. Babcock was elected judge in the fall of 1875, and held the office during the years 1876 and 1877. He was succeeded by John P. Rea, who was elected in the fall of 1877 and held the office continuously until 1882.

A. Ueland was elected judge in 1881; his term commencing in January, 1882. He held the office continuously until January, 1887. In 1886 F. Von Schlegel was elected judge, and re-elected in the fall of 1888, and served until April, 1890, when upon his death Francis B. Bailey was appointed to serve out his unexpired term.

In the fall of 1890 J. R. Corrigan was elected judge and is the present incumbent of the office.

For many years after the establishment of the court (for reasons before mentioned) the records do not disclose any regular clerk. Clerical assistance was more or less required before the legislature fixed a salary for that officer, but it was fitful and irregular, and no one individual held the position for any considerable time. Thomas Wilson was acting as clerk in 1875, and he was afterward succeeded by Claude B. Leonard, who was appointed by Judge Rea.

Upon the election of Judge Ueland he appointed Albert M. Scott clerk, who served until June, 1888, when he was succeeded by Charles B. Holmes, appointed by Judge Von Schlegel, and who served until his death. Judge Bailey appointed D. W. Knowlton, who served until 1891. Upon the election of Judge Corrigan he appointed Geo. M. Bleeker clerk, and who is the present incumbent.

**FRANCIS BROWN BAILEY.** Judge Bailey, at present senior member of the law firm of Bailey and Knowlton, is best known in

Minneapolis as Judge of the Municipal Court, over which he presided for nearly a decade.

His residence in Minneapolis dates from 1877. Entering the law office of Lochren, McNair and Gilfillan, he remained with them until the appointment of Judge Lochren to the bench of the District Court. He was then admitted as partner in the practice of McNair and Gilfillan, and shared in the labors, triumphs, and rare defeats of that celebrated firm of lawyers.

In 1878 Mr. Bailey received the appointment of associate judge of the Municipal Court of the City of Minneapolis, Judge G. B. Cooley holding the position of judge. At the ensuing election he was elected to the position. On the retirement of Judge Cooley in 1883 he was elected to succeed him as judge of the court, and presided in that tribunal for six years. The jurisdiction of the Municipal Court is exclusive as to all offenses against city ordinances, and in minor criminal complaints; and it has civil jurisdiction in personal controversies involving \$500 and less. Its procedure in most criminal complaints is summary. In civil cases the trials are as formal, and scarcely less difficult than those of the District Courts. Judge Bailey's administration was dignified, firm, discriminating, and in proper cases merciful. He had the respect of the bar and the full confidence of the public.

Upon the death of Judge Von Sehlegel, in 1890, Governor Merriam appointed Judge Bailey to the vacancy, and he assumed and administered the important functions of the Probate Court during the residue of the term.

Judge Bailey is a sturdy son of Maine, born at Portland June 22d, 1839. His father was Libbews Bailey, descended from an early settler of Massachusetts of Pilgrim stock and English ancestry. [479] His mother was Marietta Monroe Clapp, both parents being connected and allied with the most highly respected and honored families of New England. He was but six years old at his father's death. His mother found herself a widow, with eleven children, and but slender means of support. The child, from tender years, was impelled by necessity, as well as a sense of

duty, to rely upon himself, and to contribute from the earnings of his labor to the support of the family. Nevertheless he sought every opportunity for study, and at the age of seventeen graduated from the High School of Portland. The following years



were full of labor and struggle. The law was his ambition, but the study had to be pursued with many interruptions. He declined no honest labor. During these years he held a number of offices of trust his native state, and was for a time deputy collector of the Port of Passemquaddy. At last in 1870 the long desired admission to the bar occurred in Washington County, and he formed a law partnership at Calais with the Hon. Charles R. Whidden, an old practitioner in the courts of Maine, which continued until Mr. Whidden's death in 1876.

Meanwhile, in 1875, he formed a life partnership in marriage with Miss Annie Moor, daughter of Wyman B. S. Moor Waterville, a versatile and gifted lawyer, who had been United States senator from the state of Maine. Miss Moor was a highly accomplished lady, who had received a thorough education at Notre Dame in Montreal. They have had five children, of whom but two survive — Seavey, aged twelve and Paul Thorndyke, aged five years

Judge Bailey is now in the maturity his powers. He has a strong compact frame, capable of prolonged labor, robust health, and a calm, logical mind. He has withal a fine literary and artistic taste. His sound qualities make him a genial companion. He is a valued member of the Minneapolis Club. At the bar he holds a prominent

position, being treasurer of the Bar Association, and in the community he has hosts of attached friends and no enemies.<sup>77</sup>

### INTERESTING REMIMISCENCES OF EARLY PRACTICE AND PRACTITIONERS. \*

In complying with a request for a brief sketch of the district court in Hennepin County the writer must rely on memory, without time for inquiry or search, and may therefore fail in accuracy as to earlier dates. The first session of the district court of this county was held by Judge Bradley B. Meeker, in 1851 or 1852, in the government mill building, at the west side of the Falls of St. Anthony.<sup>78</sup> There is no tradition of any case of importance then tried. Isaac Atwater and David A. Secombe are the only attorneys remaining at our bar who were then in practice here. Judge Atwater had then, and up to the time of his election in 1857 as Judge of the Supreme Court, the largest practice in the county. Mr. Secombe had also a large practice for those days, and exhibited the same skill in the examination of witnesses, and the same power in terse, forcible argument to court and juries which has always distinguished him, together with his characteristic asperity and aggressiveness toward whoever he disliked, a trait which has measurably passed away under the softening influence of years.

Judge Moses Sherburne was next assigned to this district, but held no general term in this county, and the court practice was confined to such matters as could be disposed of at special

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<sup>77</sup> Bailey died in Minneapolis on September 29, 1896, at age fifty-seven.

\* An interesting article was prepared by Judge William Lochren ran some three years since, relating to the early practice and practitioners in courts of this county. The article was published in the Tribune of this city, but probably was seen by a limited number of those now residing here, and is deemed of sufficient interest for preservation in a more permanent form. A considerable number of the persons mentioned have died, but perhaps a majority still survive.

<sup>78</sup> Justice Meeker presided over the first session of the district court in Hennepin County on April 4, 1853, which was after his term as justice expired. For an account of those proceedings in the *St. Anthony Express* on April 8th, see "The First Court Session in Hennepin County" (MLHP, 2012).

terms and in the chambers at St. Paul. The practice code, new at that time, had unsettled the precedents, and gave rise to demurrers and motions innumerable, which were resorted to the more as liberal costs, required to be promptly paid, were allowed. Judge Sherburne was a man of learning and fine presence, and was much respected.

For some cause, not now remembered, no general term of the district court was holden in this county, after the one mentioned, until 1857, and only causes in justices' courts could be finally disposed of where issues of fact triable by jury were raised. St. Anthony became a city in the spring of 1855, and Lardner Bostwick was elected city justice and held that office many years. He was a man of unusual mental power, good literary attainments, and a fair knowledge of the law, and withal of spotless integrity and commanding dignity in court, while very genial and companionable in his ordinary intercourse with members of the bar and others. He was a most efficient magistrate, at a time when, owing to the rough manners of a pioneer community, such a man was needed to preserve order and respect for law.

The love of fun and practical jokes among the boys gave rise to many ludicrous scenes in this court. As an instance. One Dr. Jodon was for some reason not a favorite with the boys, who upon some pretext treated him one night to a charivari, with the usual tin-horn and cow-bell accompaniment. The doctor was very angry and sought to discover the offenders, threatening legal prosecution. Finally Al Stone, under pledge that he would not be accused, gave the doctor to understand that certain persons whom he named were the guilty parties. The doctor thereupon made complaint before Judge Bostwick, charging Alvaren Allen, then mayor of the city; Dr. J. H. Murphy, and several of the most reputable citizens, with the offense, and they were accordingly arrested, and naturally were very angry. Allen, whose right to the mayoralty had been questioned in proceedings instituted by Mr. Secombe, notwithstanding personal unfriendliness, retained the latter in his defense, enjoining upon him, with his slight stammer and characteristic humor, which

even his anger could not wholly repress, that he should handle the prosecution as roughly as possible.

“Be as mean as you know how to be. In short, be p-p-perfectly natural.”

At the trial the witnesses called knew nothing of the matter; and the baffled prosecutor at last called Al Stone, who was an amused spectator, but who knew no more than the others when sworn; and all soon realized that perchance the defendants were equally victims of one of Al’s practical jokes. In closing this digressive reference to Judge Bostwick’s court it is proper to say that he was held in such high regard as to be the candidate of his party for judge of the district court at the first state election.<sup>79</sup>

The court house in Minneapolis was built in the summer of 1856, and completed in the ensuing winter. In the spring of 1857 Rensselaer R. Nelson and Charles R. Flandrau became associate justices of the territorial courts. Judge Flandrau lived at Traverse des Sioux, and this county was in his district, though much of the special term and chamber business was transacted before Judge Nelson at St. Paul. The first general term of any importance was held by Judge Flandrau in the court house in the fall of 1857. The calendar was large, containing the accumulated litigation of years; and the bar fairly numerous and able. Atwater & Joice, D. A. Secombe, Cornell & Vanderburgh, Lawrence & Lochren, Heaton & Mathews, Geo. A. [481] Nourse, N. H. Hemiup, J. S. & D. M. Demmon and many other attorneys had numerous cases. While friendly feeling between attorneys was general, there was little of that professional courtesy that has since distinguished this bar. All available advantages in practice were taken and no one granted or expected any favor. The calendar was not divided nor causes assigned for special days, but the entire calendar was under preemptory call all the time. Every attorney had to be in constant readiness, against any

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<sup>79</sup> Bostwick was defeated by James Hall (1824-1868) in the election for Fourth Judicial District Court judge in 1857. Bostwick died on April 13, 1897, aged eighty-one.

unexpected ending of the cause on trial, which might bring on a dismissal of causes not ready, till one was reached in which both parties were prepared. Judge Flandrau was in every way a model judge, of admirable temper, unfailing courtesy, prompt and decisive in his readings, and alert in the dispatch of his business. His long service on the bench of the Supreme Court, and his recognized existence at the bar renders superfluous to any reference to his legal attainments.

The state constitution was formed in the summer of 1857 and was ratified at the fall election of that year. State officers were then elected, who did not assume official functions until the state was admitted into the Union. In May of the following year, James Hall of Little Falls, was elected judge of this district; which comprised the counties of Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lacs, Itasca, Pembina, Todd, and Cass. Before holding any term in his county, Judge Hall resigned, Oct. 1, 1858, and Edwin O. Hamlin, of St. Cloud, was appointed in his place by Gov. Sibley, and held the office until after the election in 1859, holding two terms in this county at which the calendars were pretty large.

The bar was large and able, Francis R. E. Cornell and James R. Lawrence, Jr., being perhaps the leaders. Money was scarce, and the chances of the younger lawyers for fees not very promising, but good feeling and love of fun prevailed generally. One Stewart Harvey had a cause for trial, and being without money quarreled with his attorney, so that he was apparently helpless when his cause was called. But a half-dozen of the younger attorneys took hold, without asking, and helped him through the ease, resulting in disagreement of the jury. Harvey was a man of phenomenal vanity, and could be imposed upon to any extent, if the imposition included flattery. At the close of his trial he inquired of one of his young assistants if he might not himself be admitted to the bar, and was informed that nothing would be easier; that the examining committee had a routine set of questions, which a little study would enable him to master, and he would pass triumphantly.

Harvey begged him to write out for him this list of questions with the answers, which he consented to; and nearly the entire bar participated in preparing about 50 questions with ludicrous answers to each. Harvey committed the whole to memory in a few days and applied for examination, which was had one evening in the Nicollet House parlor, before a crowded audience, including Judge Hamlin. Two young men volunteered as candidates to keep up the deception; the examiner having a list of Harvey's questions to ask as his turn came, and to which the prompt answers kept the audience in a roar of merriment, while the examiner by running comment on the answers of the other candidates kept Harvey in the belief that all the laughter was at their expense. Two or three questions and answers will serve as samples of Harvey's examination:

Question. What is an escrow? Answer. An [482] escrow is an incorporated hereditament. It is the right which a man hath to set up a scarecrow up on another man's land to scare the crows from his own corn.

Question. What is a mandamus? Answer. A mandamus is an oath administered by the sheriff to a convict when passing him through the inner door of the state prison, and is in these words: "Damn you, stay there, till you have undergone the penalty of the law, or are legally discharged.

Question. What is the first action of ejectionment of which we have any record? Answer. That in which the seven devils were cast out of Mary Magdalen.

Harvey went through the whole list without a break and with evident elation at his apparent success, softened by some commiseration for the other two candidates, whose failure had, as he thought, caused such uproarious mirth. He ordered the landlord to bring liquid refreshment for all present, and left with the certainty that the next morning he would be admitted a member of the bar. The committee, however, delayed, and evaded his importunities, and after awhile, by the counsel and with the aid of his young advisers, he prepared and presented to

the judge a petition stating the fact of his examination and of having supplied the committee with the potables to which by custom they were entitled, and charging that, through the instigation of the devil and of their own mere malice, they would not report. And he prayed that a guillotine might issue forthwith to compel performance of their duty.

Poor Harvey was long in finding out that he had been victimized. When he did, he began the study of law in earnest, and after a very creditable examination was admitted by the Supreme Court two or three years later, and soon after went East.<sup>80</sup>

Judge Hamlin was an able and courteous judge and popular with the bar. He was very small in stature and a trifle sensitive about it. William A. Cheever, who lived near the University, and was somewhat noted for humor, as well as hard drinking, was one day arrested and brought before the judge to answer for contempt in not obeying a subpoena as witness in a criminal case.

When brought in by the sheriff he was considerably inebriated and on the judge asking what he had to say why he should not be punished for the contempt, peered over the desk and around each side as if looking for the person who addressed him. At length rising on tip toe and stretching his neck, he said in a low tone but distinct to be heard by all:

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<sup>80</sup> This anecdote is also posted separately in the “Humor” category of the MLHP. See William Lochren, “The Bar Examination of Stewart Harvey” (MLHP, 2008).

Aside from the humor, the story is interesting because it discloses the types and forms of questions asked of bar applicants in the mid 19th century in this state. They were asked definitional questions. At this time, when there were no law schools, young men worked and studied law for one, two or three years in the offices of established lawyers. During their apprenticeship, they drafted documents, handwrote briefs, read books and memorized common law rules and maxims—it was largely learning by rote. He then came before an examining committee, appointed by the district court, which “tested” the applicant’s knowledge of the law, and recommended that he be admitted by the court (reports of failures are hard to find). The committee’s questions mirrored the learning process.

“I wish Your Honor would get upon a sheet of paper so that I can see you.”

This convulsed the audience; and the judge evidently disconcerted, repeated the question.

“Well, the fact is, Your Honor,” said Cheever, “the sheriff would pay me no fees upon the subpoena, and just before he came I had spent the last dime I had in the world for bread for my family. I started to come here with all the speed I could make, but when I reached the suspension bridge Capt. Tapper would not let me cross because I had no money to pay the toll. I tried to borrow five cents of everybody I knew, and no one would lend it to me. I thought of swimming the river, but concluded that I was too old, and that the water was too cold and swift. In short, I made every possible effort to get here, but in vain, and I had to wait till the sheriff came after me.”

The judge could not avoid joining in the laughter that greeted this ingenious excuse, and Cheever escaped punishment.

While perfect good feeling existed among the members of the bar, the practice of taking every advantage of each others laches still obtained. Every one had to watch his cases unceasingly and was only laughed at if caught at a disadvantage. One day McNair was for plaintiff and Beebe for defendant in a cause next to be called after the one on trial, and both waited patiently till very near the hour for adjournment, when, as it appeared to them that the case on trial would not only last the day out but consume considerable of the next day, Beebe accepted McNair’s invitation to ride up town with him. Beebe waited it the steps for McNair to drive around, and as he was coming, Beebe’s clerk came to him with the statement that the cause on trial had suddenly ended, and his case would be called. Beebe asked McNair to wait for him a moment, and hurried back, as their case was called, moved and secured its dismissal because of McNair’s absence, and then went down where McNair was patiently waiting for him, and accepted a ride

with him to their offices, telling him, as a good joke, at parting, of his achievement.

If McNair felt any resentment he gave no sign, but got his cause reinstated the next day on payment of costs. He and Beebe continued as friendly as before, frequently laughing together at the advantage that Beebe had taken, and it was some time before Mac had a chance to get even. But the chance came, and of course was not allowed to pass.

The inconvenience of having the judge sixty miles away may have affected the chances of Hamlin's election, though nominated by his party. At the election of 1859, Charles E. Vanderburgh was elected judge of this district and continued on the bench until he became a justice of the Supreme Court in January, 1882, so that he will soon reach thirty years of continuous judicial service. The impetus given to litigation by the crisis of 1857,<sup>81</sup> had measurably subsided, and the two general terms per year rarely lasted more than three weeks each. The old court house (new then) with its single court room, and no private chambers for the judge, with one jury room, and a sheriff's room all on the second floor, was considered ample. The clerk had a small room below adjoining the register's office. But the judge had a large range of outside counties to attend to. There were no railroads, and he generally went on horseback, getting often but a share of a bed in country towns, which court sessions would always crowd. Any sketch of these early days, and of the lawyers who then composed the bar, many of whom have passed where technicalities are disregarded, and of the occasionally notable litigation would constitute interesting reading, but would pass far beyond the purpose limits of this article. And Judge Vanderburgh, and those who have come to the bench since his accession, are too well known at the present time in this community to justify more than naming them.

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<sup>81</sup> This is a reference to the Panic of 1857 that almost ruined Atwater. He lamented to a friend, "I cannot get money enough to buy provisions for my family." Merlin Stonehouse, *John Wesley North and the Reform Frontier* 118 (Univ. of Minn. Press, 1965) (quoting letter from Atwater to John Stevens dated October 31, 1857).

With the solid, healthy growth of our city, which began at the close of the war, and the rapid increase of business enterprises of all kinds, litigation increased correspondingly. But relief to the judge came for a while in cutting off outside counties as new districts were formed until only Wright, Anoka and Isanti remained with Hennepin. At the session of the Legislature in 1872, as the work became too great for our judge and the constitution permitted but one in any judicial district, the court of common pleas was established, with a jurisdiction concurrent with the district court, and Austin H. Young was by Gov. Austin appointed judge of that court, and was elected for a full term at the next election. In 1876, the constitution having been amended so as to allow plurality of judges of the district courts, the common pleas was merged into the district court and Judge Young, by repeated elections, continues on the bench,<sup>82</sup> and [484] will complete 17 years of service to-day, June 1, 1889. At the special session of 1881 the Legislature provided for an additional judge of this court, and William Lochren was appointed by Gov. Pillsbury, Nov. 19, 1881, and remains upon the bench, having been twice elected. At the fall election of 1881, Hon. Charles E. Vanderburgh was chosen one of the justices of the supreme court of the state and assumed the functions of that office January 12, 1882, and John M. Shaw was appointed by Gov. Pillsbury judge of the district court in his place, and was elected for a full term in the fall of that year. He continued on the bench until January 8, 1884, when, upon his resignation, Mart B. Koon was appointed by Gov. Hubbard to succeed him. Judge Koon was elected in the fall of 1884 for a full term, but resigned, and John P. Rea was on May 1, 1886, appointed in his place by Gov. Hubbard, and being elected in the fall of the same year continues upon the bench. The Legislature of 1887 gave a fourth judge, and Henry G. Hicks was on March 16, 1887, appointed by Gov. McGill, and elected in the fall of 1888. The last Legislature gave two more judges, and Seagrave Smith and Frederick Hooker were appointed by Gov. Merriam March 5, 1889.

The court has now six judges constantly employed in its work. With three general terms each year, its business has grown until

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<sup>82</sup> Judge Young was defeated for re-election in 1891. See note 22.

the number of civil causes on the last September term exceeded 1,400, and for the last two years there has been a practically continuous session of general term from the 10th of September until the middle of July. During the period since 1872, when the present senior judge came to the bench, there has been much litigation of an important character in this court. All the railroads but two which now enter this City have been constructed within that time involving litigation not only in condemnation proceedings, but in contests between competing railroads. Important questions relating to water powers, riparian rights and corporations have been litigated and determined, and perhaps no court in the country has had as large a number of suits for personal injuries brought against the city, and railroad and manufacturing corporations and individuals. The lumbering business centering here and other kinds of manufactures has produced a good deal of litigation, and the large amount of building fills calendars with suits to enforce mechanics' liens. Divorce cases, far too many, and libel suits, not a few, have come up for trial, while the criminal business has grown to such extent as to occupy one judge nearly all the time at every general term.

Additions have been sparingly made to the old court house, until there are now four rooms for the trial of causes, and one or two judges have to hear causes in their chambers. Every Saturday is devoted mainly to special term business, when motions, demurrers and default cases are heard and disposed of. There is little respite for any of the judges, but with the late increase perhaps more time can be given to the proper consideration of important cases than was possible before. The need of the new court house is apparent to every one who has to do business in the present illy managed and inadequate rooms. The arrangement of court rooms in the new building so as to be convenient and easy of access, one from the others, is a matter of importance, which it is hoped will not be overlooked by the commission, or by whoever they may consult with reference to that part of the building. [484a]

**CHARLES HENRY WOODS.** Though admitted to the bar in his native State in 1862, a term of service in the army, and official engagements at the South, prevented Judge Woods from entering upon the practice of his profession until after he had taken up his residence in Minneapolis. His arrival here was July 5th, 1866. He entered the law office of Cornell & Bradley, and spent some months in study, familiarizing himself with the statutes and code practice. Afterwards he spent some time with Judge Atwater, and with the firm of Atwater & Flandrau. While associated with them, the City of Minneapolis, which had previously had only a town government, was incorporated, and Mr. Woods was elected City Justice. The municipal court had not then been established, and the City Justice exercised the civil and criminal jurisdiction which was afterwards conferred on the city court. It was an important and dignified office, and by common consent conferred upon its chief officer the title of Judge, by which he has ever since been known in the community, superseding the military title of Captain, to which he was entitled by military service.

At the expiration of his term, in 1869, judge Woods opened a law office in the building at the corner of Washington and Hennepin avenues, which he has occupied to the present time — a period of twenty-three years.

At the outset he had no associate in business, but in subsequent years has been associated with E. A. Merrill, Judge P. M. Babcock, Attorney General Hahn, and at the present time with Joseph R. Kingman. He has devoted himself to civil practice, and especially to real estate and probate law. He has been diligent and attentive to his professional work, confining his ambition strictly within professional lines. His assiduity, with the reputation of strictest integrity, has brought merited success, so that Judge Woods has long been recognized as one of the leaders of the Hennepin County Bar. His practice is large and fairly remunerative. It has been stimulated by no adventitious arts. He makes no pretension to oratory, making his appeal to reason and judgment rather than to passion and feeling. The

preparation of his cases is thorough, and his brief exposition of the subject solid and vigorous.

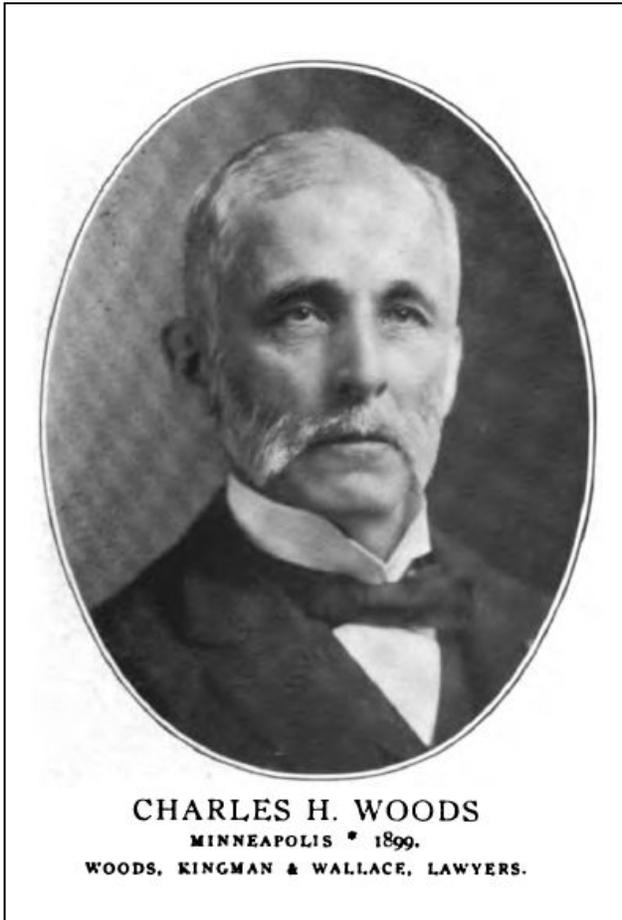
The line of American descent commences with John Woods, the emigrant ancestor who settled in Sudbury, Mass., in 1638, and whose descendants to the sixth generation lived in Sudbury and the adjacent towns of Marlboro and Southboro. In 1784, Jonas Woods, the grandfather of Charles, removed to Fitzwilliam, N. H.

Mr. Woods is a native of the rural village of Newport, Sullivan county, New Hampshire. He was born October 8th, 1836. His father, Rev. John Woods, was a Congregational minister of strong character, considerable ability and ardent piety. He possessed a small farm in the parish where he officiated in spiritual things. He had a family of ten children, of whom Charles H. was the youngest; only four of the ten living to adult age. With a small salary and meager income, the father was compelled to the closest economy of expenditure, and the children were inured from infancy to such labor as suited their years, with little expectation of aid in obtaining an education, and only self-reliance in entering upon independent lives. Charles was enabled to enter the Kimball Union Academy at Meriden, N. H., when he reached the age of seventeen years, where, during a course of three years, he finished preparation to enter college. He then entered Williams' College, but was compelled to [484*b*] relinquish the course in the Sophomore year for want of means to continue the same. He then applied himself to teaching school for several terms, until his meager earnings enabled him to take up the study of the law, to which, in spite of parental desire, he had decided to devote himself. He entered the office of Hon. Tappan Wentworth, at Lowell, Mass., where an older brother was in business, and finished his readings with Messrs. Burke & Wait, in his native village. He was admitted to the bar in Newport in 1862.

At that time the war had been in progress for more than a year, and in a period of gloom and discouragement a call came for additional volunteers. Mr. Woods determined, to postpone entering upon civil practice, and betook himself to the camp. He

enlisted on the first of September, 1862, in the Sixteenth Regiment of New Hampshire Infantry, and was commissioned Captain of Company F. The enlistment was for a nine months' term.

Before leaving for the seat of war, on the 22d of September, 1862, he consummated an engagement, which the exigencies of war might otherwise not permit, by marriage with Miss Carrie C. Rice, of Brookfield, Vt. Happily, after a little over a year of separation, they were enabled to take up the role of wedded life, which has continued without interruption to the present time, and which has brought to Minneapolis one of the most highly esteemed of her circle of charming ladies.



Captain Woods' regiment was assigned to the Department of the Gulf, where, under the command of General Banks, it performed an irksome service, exposed to the malaria of the bayous and swamps rather than to the guns of the enemy. Having captured a fortification at Butte a la Rose, the regiment was left to guard it during several months of the summer of 1863, until its members were decimated by fever, and Capt. Woods, prostrated by the disease, was sent to New Orleans, where he was confined by a course of malarial fever for several weeks. When able to rejoin his regiment, he was present at the surrender of Port

Hudson, and soon after the expiration of his enlistment was returned to his home.

The company, composed of ninety-eight stalwart New Hampshire men, after an absence of a little over, a year, returned to their native mountains only thirty-seven strong; sixty-one having succumbed to the exigencies of their arduous service. Capt. Woods was then appointed to a clerkship in the War Department at Washington, and after a little less than a year was sent to North Carolina as a special agent of the U. S. Treasury Department. He was stationed at first at Newbern, where he acted as deputy of Hon. David Heaton, who, at the commencement of the war, resided at St. Anthony, and represented that district in the State Senate at the sessions of 1858 to 1862. While at Newbern an epidemic of yellow fever prevailed with such fatality that fifteen hundred deaths occurred out of a white population of forty-five hundred, within the space of two months. Capt. Woods remained at his post of duty during this frightful period, and his life was providentially spared. After a short furlough he was again sent South and stationed at Raleigh, N. C., in connection with treasury work, where he remained until after the close of the war, returning to New Hampshire in October, 1865.

In his intercourse with Mr. Heaton, Captain Woods had become so impressed with the advantages of Minneapolis that he determined to visit it, and soon took up his residence here. [484c]

While he has given close application the work of his profession, he has been prominent in social life and much interested in benevolent and religious work. He became connected with Plymouth Congregational church, and has at times been an acceptable teacher in Bible classes. He is a member of John A. Rawlins Post of the Grand Army of the Republic, and at the present he is Junior Commander of the Loyal Legion in Minnesota.

Mr. and Mrs. Woods have a pleasant home on Tenth street, where they extend refined and generous hospitality to their many friends, and to strangers coming within their doors.<sup>83</sup>

**JOHN DAY SMITH.** Though a resident Minneapolis only since 1885, the position which Mr. Smith has attained at bar, and, his influence in public affairs, show how ready the people of Minneapolis are to appreciate true merit, and to accord to it due consideration and honor, though accompanied by no adventitious aids of political influence or official prestige. He was drawn to settle here by admiration of the city and its people, when on a chance visit. He had no acquaintance in the city, and sought no influential association. Bringing his family he opened a law office, at No. 42 Third street. Some business was entrusted to him which was carefully attended to. He had no specialty, but engaged in a general law business. A personal injury case was put into his hands; in a trial in the United States Circuit court, his client obtained a verdict against a railroad company for the large sum of \$13,500, and the lawyer won as well the respect of the court, and of the opposing attorneys. The conduct of the case showed careful preparation, skillful presentation of the testimony, and a rare power as an advocate.

The fame of such a victory brought more clients, and an increased business. It was not long before the new comer was recognized as among the best equipped and most successful at the bar.

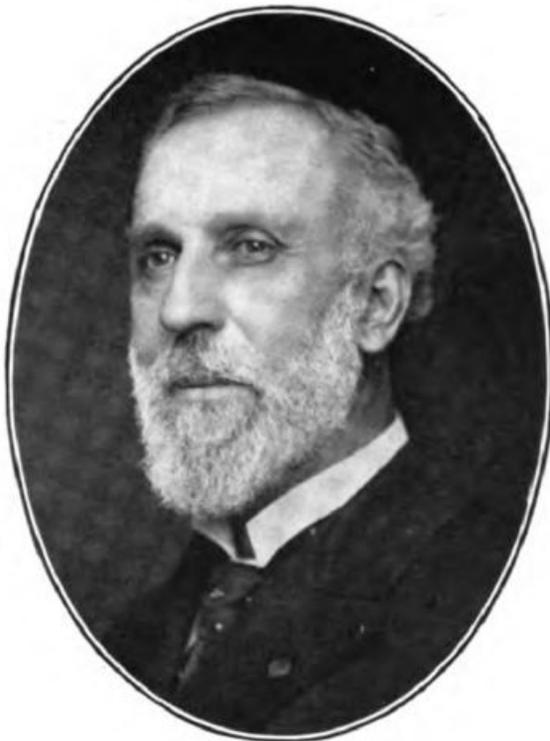
Not only did professional success come but political influence as well. Having shown himself to be conversant with public questions, and a persuasive and impressive public speaker, he was nominated as a Republican candidate for the lower house of the legislature, in 1888. He was elected and took his seat at the session commencing the following January.<sup>84</sup> So carefully did

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<sup>83</sup> Charles H. Woods died on April 16, 1899, aged sixty-two. For his obituary and bar memorial see "Judge Charles Henry Woods (1836-1899)" (MLHP, 2018),

<sup>84</sup> During this session, Smith sponsored legislation to abolish public executions. The law, dubbed "the midnight assignation law" by newspapers because it required executions to be conducted before dawn and restricted public attendance, passed and went into effect April 24, 1889. 1889 Laws, C. 20, p. 66;

he guard the interests of his constituency, and so powerfully did he impress himself upon the body for judicial ability and forensic power, that at the following election he was nominated and elected to the upper house, serving in the State Senate at the session of 1891. He was made a member of the Judiciary Committee, and also of the University Committee. The session was a memorable one for the reason that for the first time in the history of the state, the Republican party was in a minority in both houses of the legislature. His colleagues from Hennepin



JOHN DAY SMITH  
MINNEAPOLIS.  
LAWYER.

County were all of the opposite party. Assaults were made upon the city charter, and upon the “patrol limits” feature of the city policy, which had been established under Republican auspices. The senator from Minneapolis was involved in a ceaseless struggle, but so ably did he conduct the debate, and so skillfully apply legislative strategy, that the most radical measures were defeated, and no serious changes made. The result of the session was to leave Mr. Smith with an enviable reputation for ability as a legislator.<sup>85</sup>

A sketch of his previous life will show that the honors which Mr. Smith received, and the rapid success which he gained in Minneapolis, were not fortui-

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Stat. §6881, p. 622 (1891). It was held constitutional in *Holden v. Minnesota*, 137 U. S. 483 (1890). For more about Smith and the “John Day Smith Law” as it was also known, see John D. Bessler, *Legal Violence: Lynch Mobs and Executions in Minnesota* 113-140 (Univ. of Minn. Press, 2003), and *Death in the Dark: Midnight Executions in America* 56-60, 86-89, 98-129 (Northwestern Univ. Press, 1997);

<sup>85</sup> The city’s “patrol limits” policy was reflected in an ordinance requiring liquor establishments to be licensed and confining them to a defined territory within the city. Court challenges to the ordinance were not successful. See note 60.

[484*d*]-tous, but were the result of contact with practical affairs in early life, of the vicissitudes of the camp, of thorough scholastic training, and of patient and long continued labor in professional life through years of heroic struggle.

He is a son of Edward G. and Elizabeth (Lord) Smith of the town of Litchfield, Kennebec County, Maine, born Feb. 25, 1845. His paternal great grandfather was an emigrant from York County, England, who settled in Maine in 1762. James Lord, the grandfather of his mother, was an officer of the Revolutionary war, commanding a company at the battle of Bunker Hill, and was afterwards seriously wounded in the battle of Long Island. For three generations the ancestors had won their subsistence from a small and not very productive farm, where they were enured to labor, and practiced the virtues of prudence and economy. They were pious people attached to the Baptist Church. The son shared in the labors of the farm, and had such school advantages as the district school afforded through its sessions in the winter months, until he had passed his seventeenth year.

For more than a year the war of the rebellion had been in progress. From week to week bulletins from the seat of hostilities brought intelligence of the stirring events of the camp and the field, and appeals came from president and governor to the young men to join the standard of the nation. The lad, neither in appearance or years a man, offered himself and was accepted, and was enrolled in Company "F" of the 19th Regiment of Maine Volunteer Infantry, on the 26th of June, 1862. The regiment, after reaching the seat of war, was incorporated in the First Brigade of the Second Division of the Second Army Corps, serving under all the generals who successively commanded the Army of the Potomac. The drillings and fortifications, the weary marches and countermarches; the life of the camp, the bivouac and the battle which this army experienced until the recruits fresh from the hills, became veteran soldiers, are matters recorded in the war history of the time. Young Smith shared them all. He passed unscathed through Fredericksburg, Chancellorsville and Gettysburg. At the

latter on the fateful 3d of July, 1863, his regiment was brigaded with what survived of our own gallant Minnesota First, after its memorable charge on the previous day. Young Smith was on the skirmish line when the magnificent army under Pickett, of fifteen thousand men, emerging from the wood, formed its line of battle on Seminary Ridge, and amid a cannonade from both sides, unequalled in the war, precipitated itself with impetuous fury on the steady line of Hancock's Corps of about equal numbers. It advanced through the decimating fire of our batteries, and charged the line with leveled bayonet and blazing guns. The contest was short but decisive. The attacking army was annihilated. Some fugitives escaped, but as an organized force it no longer existed. The Nineteenth Maine Infantry lost about one-half its men in the battle, but a kind Providence shielded the young private from harm, though in the hottest of the fight, so filling up the vacancies caused by the losses in this battle, he was promoted to Corporal. Resuming the battles in which he participated, followed, Bristoe Station, Mine Run, Wilderness, Spottsylvania (where his corps at the "Bloody Angle" captured three thousand prisoners), Po River, North Anna, Totopotomay, Cold Harbor, Petersberg and Jerusalem Plank Road.

The latter engagement put an end to his active military life. He was one of six non-commissioned officers detailed as [484e] color guard, all of whom were put *hors do* combat. Corporal Smith received a musket ball in the face, passing through the mouth, knocking out the teeth on the upper right side, shattering the jaw and passing out under the ear. He lay on field through the night, suffering excruciating pain and weak from loss of blood. The next day he was placed in an army wagon with other wounded and carried to a field hospital at City Point, a distance from the field of quite fifteen miles. Before he was taken out two dead bodies were removed, and he was more dead than alive. The surgeons had no hope of his life. But a strong constitution, temperate habits and with a resolute will, with the kindly care of the blessed nurses of the Christian and Sanitary commissions, carried him through, and he slowly convalesced. When strong enough to be removed he was transferred to a hospital at Washington, and then to Augusta, Maine, where he was given a final

discharge April 10, 1865. He was weak and quite unable to undergo bodily labor, though resolute in purpose.

He now entered the Waterville Classical Institute in preparation for college. A little money remained from the scanty pay of a common soldier. With and his own earnings in teaching school, the expenses of his education were paid, without a dollar from home. He entered Brown University, R. I., in 1868, and completed the course in due time, though often compelled to be absent to earn money, but making up the studies of the class in 1872.

His scholarship is attested by an election to the Phi Beta Kappa society, which is conferred only upon those of superior standing. He received the degree of Master of Arts in due course. He then accepted an appointment as Principal of the Academy at Worcester, Mass., at a salary of \$2,000 per year, with which he paid the arrears of his collegiate course and assisted a younger brother in obtaining an education.

He remained at Worcester for three years, when, broken down in health with an attack of hemorrhage of the lungs, he was compelled to relinquish his agreeable position and seek recuperation in the South. Stopping at Washington, he was prevailed on by Senator Hoar, whose friendship he enjoyed, to accept an appointment in the Interior Department of the government. Placing himself in the care of the best surgeons, after two years his health rallied and he went into the Columbian Law School and took a course of instruction in law, under such teachers as Judges William Strong and Cox. The degrees of L. L. B. and L. L. M. were conferred on him by that institution in 1879 and 1881 respectively. He remained in Washington for nine years, during which he discharged the duties of law clerk and chief of a division in one of the bureaus of the Interior Department. For three years he was lecturer in Howard University on the Law of Evidence and Torts.

In the year 1881, while visiting Des Moines on financial business, he extended his trip to Minneapolis, where, without any

acquaintances, he was so impressed with the place and its opportunities that on his return he told his wife that their future home would be in that beautiful city, to which they soon removed.

Mr. Smith married July 20, 1872, Miss Mary H. Chadbourne, daughter of Humphrey Chadbourne, of Waltham, Mass. She died May 3d, 1874, leaving an infant daughter, Mary Chadbourne Smith, who is now in the Freshman class of the University of Minnesota. September 16th, 1879, he married Miss Laura Bean, daughter of M. C. Bean, of Delaware, Ohio. They have three [484f] children, Elizabeth Lord, born February 4th, 1881, Mabel Edna, born August 14th, 1884, and Edward Day, born April 18th, 1891. Besides his professional practice, Mr. Smith is lecturer in the Law Department of the University of Minnesota on Constitutional Law and the Law of Torts.

His ecclesiastical connection is with the Baptist church, having been Superintendent of the Sunday School of the First Baptist church. At present he is a member of the Cavalry church, which is in the vicinity of his residence on Pillsbury avenue.

In social relations he has been Commander of Bryant Post G. A. R., and is now Senior Vice-commander of the Department of Minnesota. He belongs to the Masonic fraternity, being Past Master of Ark Lodge, No. 176, a member of Darius Commandery No. 7, and of Zurah Temple.<sup>86</sup>



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<sup>86</sup> John Day Smith was elected to the Hennepin County bench in November 1904, and was re-elected in 1910. He retired in 1913. Judge Smith died on March 5, 1933, at age eighty-eight.

## Related Articles

George E. Warner & Charles M. Foote, “The Territorial Bar of Hennepin County” (MLHP, 2013) (published first, 1881).

“Courts and Counsel During Twenty-Five Years” (MLHP, 20a5)(published first, 1903).

“The Courts and Bar of Hennepin County” (MLHP, 2015) (published first, 1891).

Horace B. Hudson, “Courts and Lawyers of Minneapolis” (MLHP, 2013-2015) (published first, 1908).

For other articles on the author see Penny A. Petersen, “Isaac Atwater” (MLHP, 2014), Charles Flandrau’s “Judge Isaac Atwater” (MLHP, 2008), an article published first in *The Magazine of Western History* in July 1888, and “Isaac Atwater (1818-1906)” (MLHP, 2008), a collection of obituaries following his death on December 22, 1906, including a memorial service for him and Justice George Brooks Young, who died on December 30, 1906. See *Proceedings in Memory of Justices Atwater and Young*, 99 Minnesota Reports xvi-xxxi (1907). Aspects of Atwater’s early career in Douglas A. Hedin, “Lawyers and ‘Booster Literature’ in the Early Territorial Period” 15 n. 38, 18 n. 50, 29-32 (MLHP, 2008).

## Credits

The photograph of Atwater on the first page is from the first volume of his history of Minneapolis, that on the third page is from Volume 1 *Proceedings and Address of the Second Annual Mid-Winter Reunion of the Minnesota Territorial Pioneers’ Association* 26 (1899).

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