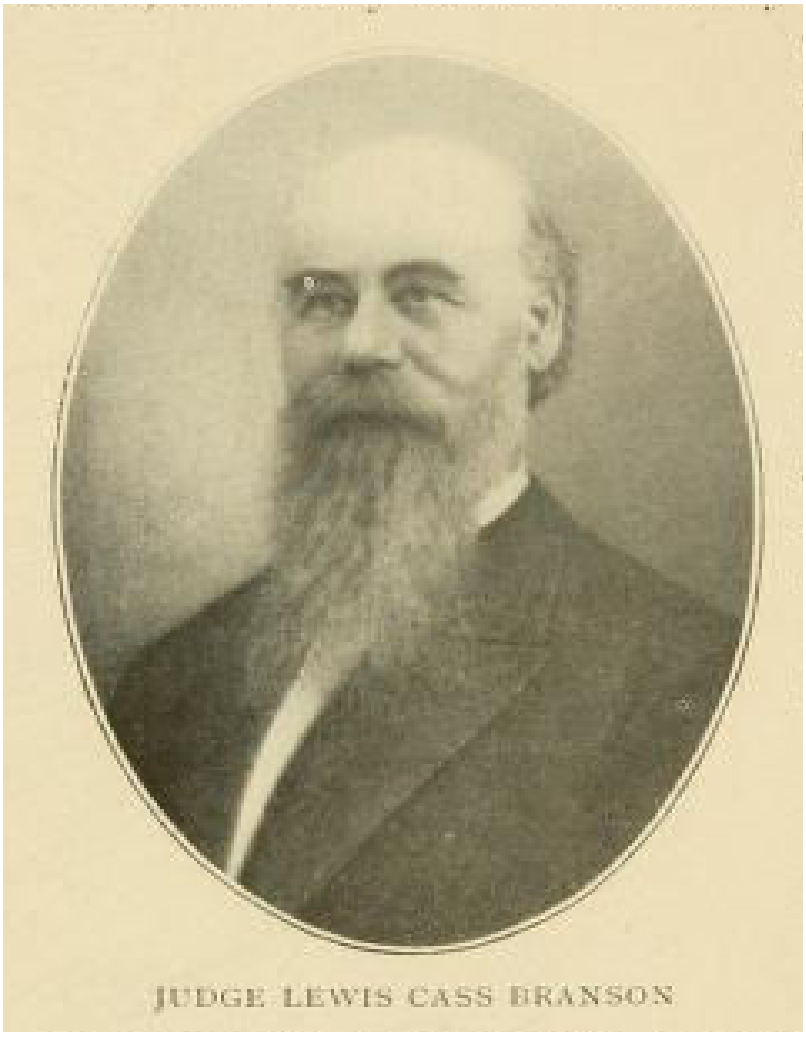
Judge Lewis Cass Branson
(1825 - 1905)


JUDGE LEWIS CASS BRANSON

By

Douglas A. Hedin

[June 2019]

Table of Contents

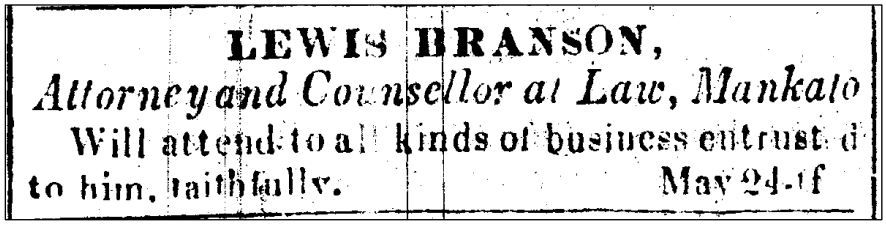
Appendix

1. Beginnings in Mankato - 1854

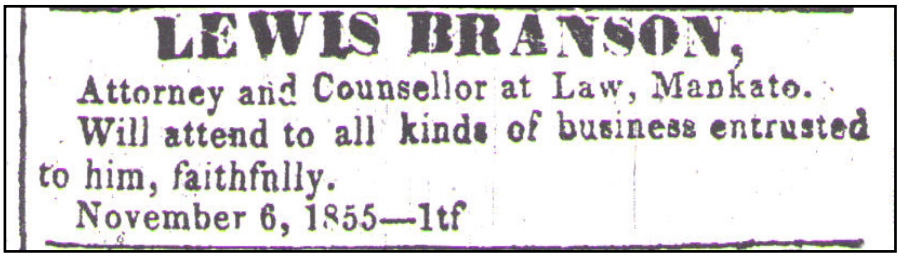
Lewis Cass Branson lived only twelve years in Minnesota. Over half that time he was a judge—the first judge of the Sixth Judicial District. It is for that service that he is recalled today.

Born on March 16, 1825, in Ohio, he was twenty-nine years old when he arrived in Mankato in April 1854, with his wife, two children and two dollars and fifty cents.[1] Already a member of the Indiana bar, he was admitted to the Minnesota bar by the Territorial Supreme Court on January 12, 1855.[2]

Over the next two years he placed his business card in newspapers in Mankato and near-by towns. This was published in the *Saint Peter's Courier* a year after he arrived: [3]


LEWIS BRANSON,
Attorney and Counsellor at Law, Mankato
Will attend to all kinds of business entrusted
to him, faithfully. May 24-tf

This one appeared in the *St. Peter's Courier* a year later: [4]


LEWIS BRANSON,
Attorney and Counsellor at Law, Mankato.
Will attend to all kinds of business entrusted
to him, faithfully.
November 6, 1855—1tf

---

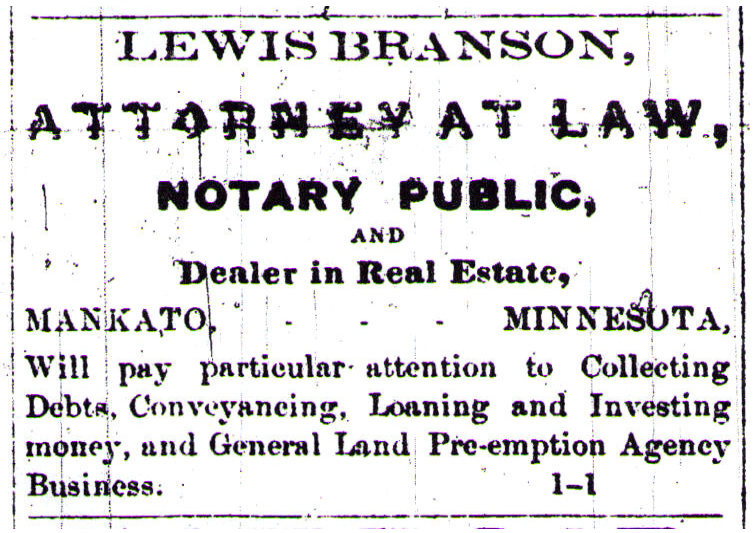
[1] *Mankato—Its First Fifty Years, 1852-1902* 184 (1903). Posted in the Appendix, at 24-25. He probably was named after Lewis Cass (1782-1866), a Democrat, who served as Governor of Michigan Territory, 1813-1831; Secretary of War under Andrew Jackson, 1831-1836; U. S. Senator from Michigan, 1845 to 1848, when he resigned to run for President as a Democrat, losing to Whig Zachary Taylor; served again as Senator from Michigan, 1849-1857; and Secretary of State under James Buchanan, 1857 to 1860.

[2] Minutes of the Territorial Supreme Court, January 12, 1855, at 77. Posted in the Appendix, at 21.

[3] *Saint Peter's Courier* (Nicollet County), June 7, 1855, at 3 (enlarged).

[4] *Saint Peter's Courier*, June 4, 1856, at 3 (enlarged).

It was difficult to support his family on earnings from his law practice, particularly during the Panic of 1857, and so he turned, as many lawyers did, to other work. [5] This ad in *The Weekly Independent*, a Mankato newspaper, on June 6, 1857, announced that he is a "dealer" in real estate: [6]


LEWIS BRANSON,

ATTORNEY AT LAW,

NOTARY PUBLIC,

AND

Dealer in Real Estate,

MANKATO, - - - MINNESOTA,

Will pay particular attention to Collecting Debts, Conveyancing, Loaning and Investing money, and General Land Pre-emption Agency Business. 1-1

2. Election for District Court Judge – October 1857

Branson was active in the Democratic Party. He was chairman of the Joint-committee for Blue Earth and Le Sueur Counties, which met in mid-September 1857 to select Democratic candidates for the state legislature.[7] Thereafter he received his party's nomination for judge of district court.[8] Surely the harsh economic conditions were one reason he sought an office with a salary of $2,000 a year.[9] He was opposed by Republican Luther L. Baxter.

The Sixth Judicial District encompassed eight counties: Nicollet, Blue Earth, Brown, Faribault, Le Sueur, Sibley,

---

[5] For an account of the hardships of a young lawyer who began practice in 1855 in Faribault (and turned to raising and selling potatoes), see Oscar F. Perkins, "Law Being at a Discount" (MLHP, 2008) (published first, 1882).

[6] *The Weekly Independent* (Mankato), June 6, 1857, at 3 (enlarged).

[7] *The Weekly Independent* (Mankato), September 12, 1857, at 3.

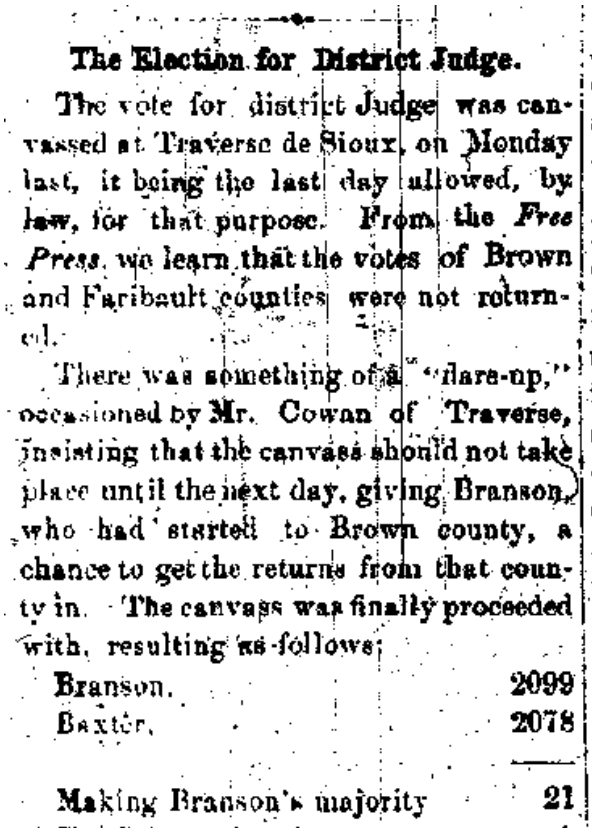
[8] The Democratic Ticket for Blue Earth County for the election on October 13, 1857, is posted in the Appendix, at 22.

[9] 1858 Laws, c. 89, §2, at 285. It remained at this level throughout his term.

McLeod and Renville.[10] The vote on October 13, 1857, was exceptionally close:

> Lewis Branson (Democratic).....2,099
> Luther L. Baxter (Republican).....2,078 [11]

The *Mankato Weekly Independent* broke down the voting:[12]

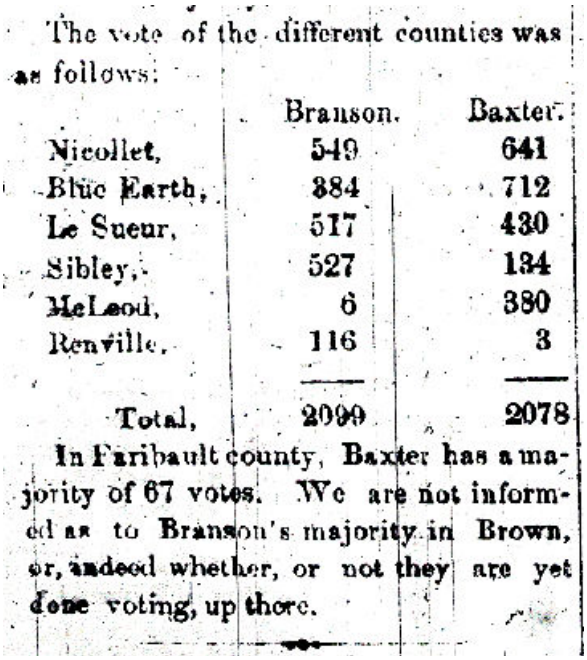


The Election for District Judge.

The vote for district Judge was canvassed at Traverse de Sioux, on Monday last, it being the last day allowed, by law, for that purpose. From the *Free Press*, we learn that the votes of Brown and Faribault counties were not returned.

There was something of a "flare-up," occasioned by Mr. Cowan of Traverse, insisting that the canvass should not take place until the next day, giving Branson, who had started to Brown county, a chance to get the returns from that county in. The canvass was finally proceeded with, resulting as follows:

Branson,	2099
Baxter,	2078
Making Branson's majority	21



The vote of the different counties was as follows:

	Branson.	Baxter.
Nicollet,	549	641
Blue Earth,	884	712
Le Sueur,	517	430
Sibley,	527	134
McLeod,	6	380
Renville,	116	3
Total,	2099	2078

In Faribault county, Baxter has a majority of 67 votes. We are not informed as to Branson's majority in Brown, or, indeed whether, or not they are yet done voting, up there.

Branson was thirty-three years old when he assumed office. Sometime later, likely after Minnesota became a state, Baxter commenced a *quo warranto* proceeding in Le Sueur County

---

[10] Minnesota Constitution, Schedule §14 (1857). It also included "all other counties that are not included within the other districts."

[11] *Mankato Weekly Independent*, November 7, 1857, at 2 (as noted, the votes of Brown and Faribault Counties are not included).

The profile of Branson in *Mankato—Its First Fifty Years* states that he was "elected" on May 24, 1858 (Appendix, at 25-26). This is incorrect. He was elected on October 13, 1857, and took office on May 24, 1858.

[12] *Mankato Weekly Independent*, November 7, 1857, at 2.

challenging Branson's election.[13] The Attorney General represented Baxter.[14] For four years the cloud of this lawsuit hung over Branson's courtroom. Finally, on May 5, 1862, it was lifted by order of Judge Charles E. Vanderburgh of the Fourth Judicial District sitting in Minneapolis where the case had been transferred:[15]

> This Action having been commenced and venue laid in the County of Le Sueur, 6th Judicial District State of Minnesota and issue joined therein, and the venue having been changed from Said County of Le Sueur to the above named County of Hennepin and Said action having been placed upon the calendar and brought on for trial at a regular term of this court, Held in and for said County of Hennepin at the Court House in Minneapolis on the 5th day of May A.D. 1862, and on an order of this court having been duly entered upon the stipulation of Gordon E Cole, attorney general on behalf of the Plaintiffs duly filed: that Judgment be entered for the Defendant as prayed for in his answer without costs to either party, and it appearing to the Satisfaction of this Court that the Defendant is entitled to the judgment prayed for his answer,
>
> Now therefore emotional Messrs. Smith & Gilman attorneys for the Defendant, in open court, it is ordered adjudged and Decreed by the court that the defendant Lewis Bronson was at the general Election held in and for the Sixth Judicial District of

---

[13] A *quo warranto* ("by what right") is an extraordinary writ that challenges an officeholder's status or agency's official actions. For a legal and political history of this proceeding, see Jason Taylor Fitzgerald, "The Writ of Quo Warranto in Minnesota's Legal and Political History: A Study of Its Origins, Development and Use to Achieve Personal, Economic, Political and Legal Ends" (MLHP, 2015).

[14] Annual Report of the Attorney General to Governor Alexander Ramsey for the Year Ending December 31, 1860 (1861) ("Action in nature of a quo-waranto to contest the election of the defendant to the office of Judge of the District Court of the Sixth District.").

[15] Le Sueur County, District Court Records, Judgment Book A, 1854-1884, May 6, 1862, at 65. A copy of the Clerk of Court's docket entry of Judge Vanderburgh's order is posted in the Appendix, at 23.

Minnesota on the thirteenth day of October A.D. 1857, duly elected and chosen to the office of Judge of the District Court in and for the Sixth Judicial District of the State of Minnesota and was and is rightfully and Lawfully entitled to the said office and to hold the same and use and exercise possess and enjoy the powers duties liberties privileges franchises and emoluments belonging and appertaining thereto.

Done in open court at a general term Thereof on this fifth day of May, A.D. 1882

Chas. E Vanderburgh
Judge 4th District [16]

While the case was pending Baxter joined the Union Army and served in 1861-1862, and 1864-1865, with a leave absence in 1862-1864 for illness.[17] **After the War he relocated to Otter Tail County, where he practiced law and served as a Judge of the Seventh Judicial District from 1885 to 1911. Meanwhile Branson maintained a social life in Mankato and fulfilled his duties on the bench.**[18]

3. Branson on the Bench.

The eight counties of the Sixth Judicial District covered 5,022 square miles, which is more than twice the size of the state of Delaware and 90% of the size of Connecticut. [19] **The legislature**

---

[16] Underlining in original. Clerk's punctuation (or lack thereof) is unchanged.

[17] *Fergus Falls Daily Journal*, May 22, 1915, at 4 (obituary). Interestingly, Baxter brought another *quo warranto* proceeding in 1876 to secure the judgeship of the Eighth Judicial District to which he was elected on November 2, 1875, defeating incumbent Luther M. Brown, who had been appointed by Governor Cushman Davis. The Supreme Court held that Brown was entitled to remain in office and that Baxter's election was "void." *State of Minnesota ex rel. Luther L. Baxter v. Luther M. Brown*, 22 Minn. 482 (1876) (Berry, J.).

[18] At the regular meeting of the Mankato Lodge of the Masons on December 12, 1858, Branson was elected "Worshipful Master." *Mankato Weekly Independent*, January 6, 1859, at 2.

[19] The 2009-2010 Minnesota Legislative Manual lists the square miles of each county: Blue Earth (737); Brown (610); Faribault (711); Le Sueur (467); McLeod (503); Nicollet (403); Renville (979) and Sibley (583). Total: 5,022.

Delaware covers 1,982 square miles and Connecticut has 5,567 square miles.

mandated two court sessions in each county a year (excepting Renville County which was part of Nicollet County for judicial purposes until 1862).[20] This required Branson to travel considerable distances by stage coach or donkey during his largely pre-railroad term.

In a memorial proceeding for Sixth Judicial District judges in 1907, Judge Loren Cray painted an indelible picture of Branson making his journey around the district on a donkey. [21]

> **Judge Cray said he had seen Judge Branson once, in 1860, at Winnebago City, as he rode his donkey from Blue Earth City to Mankato. He had ridden into Winnebago for breakfast, and said he would take dinner in Mankato. He had a hardy little animal.**

In June 1861, Branson presided over the spring term of district court in St. Peter, the seat of Nicollet County.[22] At this time,

---

[20] 1858 Laws, c. 67, at 157. The act establishing this schedule is posted in the Appendix, at 24-25. It was changed frequently by the legislature.

[21] *Mankato Free Press*, November 14, 1907, at 3; posted in the Appendix, at 26-28. For the complete memorial proceedings, as reported in the Free Press, see "Memorials to Judges of the Sixth Judicial District" (MLHP, 2014). It can be found in the "Judges" category in the Archives of the MLHP.

[22] It was called to order but postponed so as not to create a conflict with federal court proceedings in Mankato. The account in the *Saint Peter Tribune*, June 5, 1861, at 3, reflects the high emotions of the time (Confederates fired upon Fort Sumter only two months earlier):

> The District Court for this County met at the Court House on Monday last and after a brief but comprehensive charge by his honor Judge Branson to the grand jury, and arraigning Christian Herkelrath on an indictment for perjury found by the last Grand Jury adjourned over this morning; as Judge B. evidently considering, we presume, that it would not be loyal to run opposition of the Federal court held by Judge [Rensselaer] Nelson which met at Mankato at the same time.
>
> Judge Nelson, we are informed, gave the U. S. Grand Jury a charge that made the few infamous traitors among us, too cowardly to go South and fight manfully against the Government, and to mean to live among decent people at the North, shake their boots.
>
> Let them be cautious —their treasonable slang and villainous course have been treated with indifference long enough.
>
> The jury are pursuing their deliberations.

newspapers devoted columns to court proceedings. Articles about lawsuits were popular and filled space in the paper besides. They listed names of jurors and grand jurors who were called to serve, sometimes told what the case was about, summarized the dispositions of most cases and named the lawyers on either side. The *Saint Peter Journal* carried such a story about this term.

Of the 17 cases on the calendar, only one was tried to a jury. The others raised legal not fact questions that were decided by Branson. The local bar handled most cases. Because lawyers did not "ride circuit" only a few from other parts of the state made appearances, such as St. Paul lawyers Smith & Gilman (James Smith, Jr., and John M. Gilman) and Horace R. Bigelow. Of the 17 cases, Thomas Cowan represented a party in 7 cases, Andrew G. Chatfield, a former Territorial Supreme Court Justice, and the firm of Chatfield & Buell represented 6, C. S. Bryant represented 5 and Horace Austin, the next district court judge and future governor, teamed with several lawyers to represent 11 parties, including former Territorial Governor Willis A. Gorman, a defendant in one case.[23] While these

---

A week later, the newspaper reported the conclusion of the federal court:

> Mankato – the Independent says that the people of the place were much dissatisfied at the sudden termination of the term of the U.S. District Court recently held at that place.— Some six or eight civil cases, the extent of the calendar, were disposed of and the business prepared by the Grand Jury, left untouched. This latter business was a great local importance, — the parties and witnesses being nearly all residents of the county.
>
> We are informed by George Hezlip, Esq., of this place, who was foreman of the Grand Jury, that he did not even get a chance to present the bills found. The business will therefore have to be delayed six months and transferred to St. Paul, involving great expense and inconvenience to parties having business before the Court.

Saint Peter Tribune, June 12, 1861, at 3.

[23] The business cards of Austin & Warner, Chatfield & Buell and C. S. Bryant were published in the weekly *Saint Peter Journal* in the early 1860s. Henry R.

statistics are of interest, probably the two cases that will last longest in the memories of readers are the jury award of one penny to Richard Raney in his suit against John Lux & Company, and *Herman v. Shalk & Fenske*, where a party was ordered to resubmit his pleadings in English (they likely were handwritten in German). Here is the *Saint Peter Journal's* account of Judge Branson's spring 1861 term: [24]

The District Court

> **The June Term of the Court was adjourned on Monday evening [June 10, 1861], having made a final disposition of every case on the calendar, with one or two exceptions.**
>
> **The calendar was not a *large* one, but nearly every case was for trial. The following are some of the cases disposed of:**
>
> ***The State vs. C. Herkelrath*** **—Indictment demurred to for the reasons that the Grand Jury before whom the offence was alleged to have been committed, had no jurisdiction over the subject under investigation at the time of the alleged offense, and that the indictment did not negative the trust of the statements alleged to be false; demurer sustained and prisoner discharged. Prosecuting Attorney for the State and Tho's Cowan for defendant.**
>
> **The immortal case of *Dodd vs. Ames et als*, went over on a motion of defendant's counsel for judgment on the pleadings, as they show the pendancy (sic) of the former action; a conditional order made by the Court that the judgment for costs in the former action be paid in twenty days, and in default thereof**

Warner, Austin's partner, did not appear in court. As a result Austin was sole trial counsel in 4 cases, and co-counsel with other lawyers in 7 cases.

[24] ***Saint Peter Tribune*, June 12, 1861, at 3 (italics in original).**

the present action to abate. Smith & Gilman, and H. Austin, attorneys for plaintiff, and H. R. Bigelow for the defendants.

***Wm. B. Dodd vs. The St. Peter Company*; This was an action for money judgment; am't claimed, $5,000; action dismissed on motion of defense counsel. Chatfield & Buell for the plaintiff, Austin & Bryant for the defendant.**

***John Murdoch vs. S. D. Wilson* – Certiorai from Justice Court. Writ dismissed. M. G. Hanscome for plaintiff, Paulding & Austin for defendant.**

***Charles A. Johnson vs. O. R. Ellis*— Appeal from Justice of the Peace. Judgment confirmed by consent. Tho's Cowan for plaintiff, Paulding & Austin for defendant.**

***George W. Piper vs. John Johnson et als*— Defendants allowed to serve amended answer, and cause thrown over the term [i.e., continued to the fall term]. Paulding & Austin for plaintiff, Cowan & Cox for defendant.**

***St. Peter Company vs. Wm. B. Dodd, Fred. Leavenworth and others* – This suit involves the question of the proprietorship of the town site of St. Peter and the execution of the trust under the Act of Congress providing for the entry of town sites. The Court declined to hear the cause on the ground of having a disqualifying interest in the result of the suit.— Chatfield and Buell for Plff; C. S. Bryant and H. Austin for Defts.**

***Adam Worley & another vs. Alexander Naylor & others*—suit to set aside a mortgage foreclosure under the statute, facts agreed upon and the law argue to the court. No decision. Thos. Cowan for Plffs.; H Austin for Deft.**

Monro vs. Piper—Referred to Geo. Hezlep as sole referee.—Chatfield and Buell for Plff.; Paulding and Austin for Deft.

T. C. Foot and others vs. Thos. Daly and others— Not represented.

Corriston vs. Adams —Parties allowed time to amend their pleadings after several motions on which either side seemed equally in fault. Chatfield and Scott for Plff.; Cox and Bryant for Deft.

Richard Raney vs. John Lux & Co. —Appeal from Justice Scott where Plff. recovered over $50.00; verdict for Plff. Damages assessed at $00.01. Thos. Cowan for Plff. H. Austin for Deft.

Chas. C. Brewster vs. B. F. Pratt —Change of venue from Ramsey— cause not moved. Smith and Gilman for Plff.; Cox and Bryant for Deft.

The State vs. George Moser et als— Action for assault and battery, cause dismissed for want of prosecution. Cowan and Cox for Plffs.; H. Austin for Dfts.

St. Peter Company vs. Willis A. Gorman —Issues of law, five demurrers argued, no other made. Chatfield & Buell for Plffs.; H. Austin for Defts.

Herman et als vs. Shalk & Fenske—Pleadings ordered amended to be written in English; D. S. Griffin for Plff; Shillock, Cox & Bryant for Defts.

Bass and others vs. Aug. Rhiem —Motion to perfect judgment. No appearance for the Deft. Cox & Bryant for Plff.

Joseph Moody vs. George Rathburn – Motion for order to perfect judgment, stricken from the calendar. A. G. Chatfield for Plff.; Thos. Cowan for Deft.

In another column in the same issue, it had this account of a criminal case that is a reminder of the importance of reputation in a small town:

> **MALICIOUS PROSECUTION—Our community was somewhat indignant last week upon hearing that the Grand Jury had found a bill against Geo. W. Piper for stealing an ox. It seemed that Mr. Piper took a drove of oxen to Lake Superior, and in the drove was an ox which very much resembled one that Mr. Piper owned, but which Peter Brady has laid claim to. After waiting a year or more, Brady, having got offended at Mr. Piper, for some cause, comes before the Grand Jury, and succeeds in getting them to find a bill. This matter was dismissed from the District Court, on account of an objection to one of the Jury men, and Brady then brought the matter before Justice McLeod, when it was changed to Justice Scott, who, after a hearing, decided that there was no cause for action.**
>
> **There is probably not a person in this community who for a moment supposes that Mr. Piper would knowingly take another man's ox; and it seems strange to us that the Grand Jury should have been so willing to allow even a suspicion cast upon a good citizen. It strikes us that it would be better to use every endeavor to protect the man's good name rather than allow it to suffer what appears to be a very trifling cause.**

Four months later, the Judge presided over or, shall we say, was confronted with the first case tried in Martin County District Court. The story was told by William H. Budd in his 1897 history of the county: [25]

---

[25] William H. Budd, *History of Martin County. A detailed and True Account of Its Early Settlement by Wm. H. Budd, One of the Oldest Settlers* 19-23 (1897).

Philo Morse, as Budd recounts, was also the defendant in the first lawsuit in Justice Court in Martin County:

July 3d, 1861, the commissioners met in session, with C. C. Hinkle, chairman, J. W. Sleepier, J. C. Hudson, commissioners; J. B. Swearingen auditor. The object of the meeting was to select grand and petit jurors for the court to be held in October. This was the first term of district court held and was called for the purpose trying a criminal action against Philo Morse, charged with burning a barn, cow and some other personal property belonging to John W. Sleepier. At this meeting A. W. Young was appointed clerk of court of Martin County, Willard Harrison, sheriff. Below are the names of the jurors selected by the commissioners.

> **. . . Lists of 17 grand jurors, 18 petit jurors and 3 witnesses omitted . . .**

The commissioners, the reader may see by the list, had seventeen grand jurors and eighteen names for petit jurors.

This was all they drew and was evidently for the reason that they knew of no more settlers in the county at the time, and were not able to do as the State Canvassing board did, to increase a vote of 17 to 1,700. The commissioners in September met and appointed J. W. Goodrich county auditor in place of J. B. Swearingen, resigned. Notice for a special term of court had to be published in a newspaper if there was one in the district where the judge resided. This judicial district then consisted of all the territory south of Nicollet and Le Sueur counties and west of

---

> **In 1861, occurred the first lawsuit to disturb the county, in which H. H. Fowler was plaintiff and Philo Morse defendant. The case was heard before F. Pratt, Justice of the Peace. This Philo Morse made himself conspicuous in several lawsuits later, being the cause of more litigation in the early days of the county than all the other settlers together.**

Id. at 19.

Waseca and Freeborn counties to the state line. The clerk of court, not finding the number of names selected by the commissioners for petit and grand jurors to be sufficient to fill the requirements of law as to the number, added some so as to make the grand jury consist of twenty-two persons and the petit jury also of twenty-two persons. The first district court held in Martin County was called October 21st, 1861, at Fairmont.

. . .

B. C. Hinkle and W. H. Budd built a room for the grand jury on the west end of the log building on the town site of the village of Fairmont. This was the only house then on the town site. The lumber of which this room was built was hauled from Shelbyville, Blue Earth county. There was a little log building that was occupied by the Court and petit jury. The size of the court room was about 14 x 16.

The night before the court was held there was a large prairie fire which came from the south, and the settlers were obliged to work hard all night to save their homes. In the morning the wind changed to the northwest and brought another fire from that direction. The judge with some of the witnesses, jurors and attorneys were caught in this fire, and their teams becoming stampeded and fearing to go through the blaze, they were badly scorched, their faces and whiskers burned somewhat, and when the judge reached Fairmont and called court [he] was a little vexed and inclined to fine some of the jurors and witnesses who had not arrived in time.

The judge presiding was Judge Branson from Mankato. A. C. Dunn of Winnebago City represented the State. The only case for trial was the State vs. Morse, J. W. Goodrich attorney for Morse. The grand jury was sworn, and the law as to the case given to them. As usual the Court made a special charge as to liquor being sold to Indians. The jury

> **commenced their investigations and had called several witnesses before them in relation to the sale of whiskey to Indians, when they were called into court and discharged for the following reasons: J. W. Goodrich, attorney for Philo Morse, defendant, objected to the panel on the grounds that it was not drawn according to law, for the reasons, as we have before stated, that the list returned by the clerk of court was not selected from the list as made by the Board of County Commissioners, the clerk of court having added other names. The Court sustained the objection discharged both grand and petit jurors and adjourned the term. This ended our first term of district court, lasting not longer than a half day. Defendant Morse, who had been in custody at Mankato, was discharged by order of the Court, and the benefit received from the term was the payment of the expenses by the county, and Mr. Morse was set at liberty to be tried for other offenses later.**
>
> **This term of court was a matter of considerable excitement and interest to the people of the county and occasioned a great deal of talk.**

District Court judges at this time had other duties besides deciding cases and controversies. They admitted lawyers to practice, granted citizenship and had the responsibility of issuing deeds in town sites.

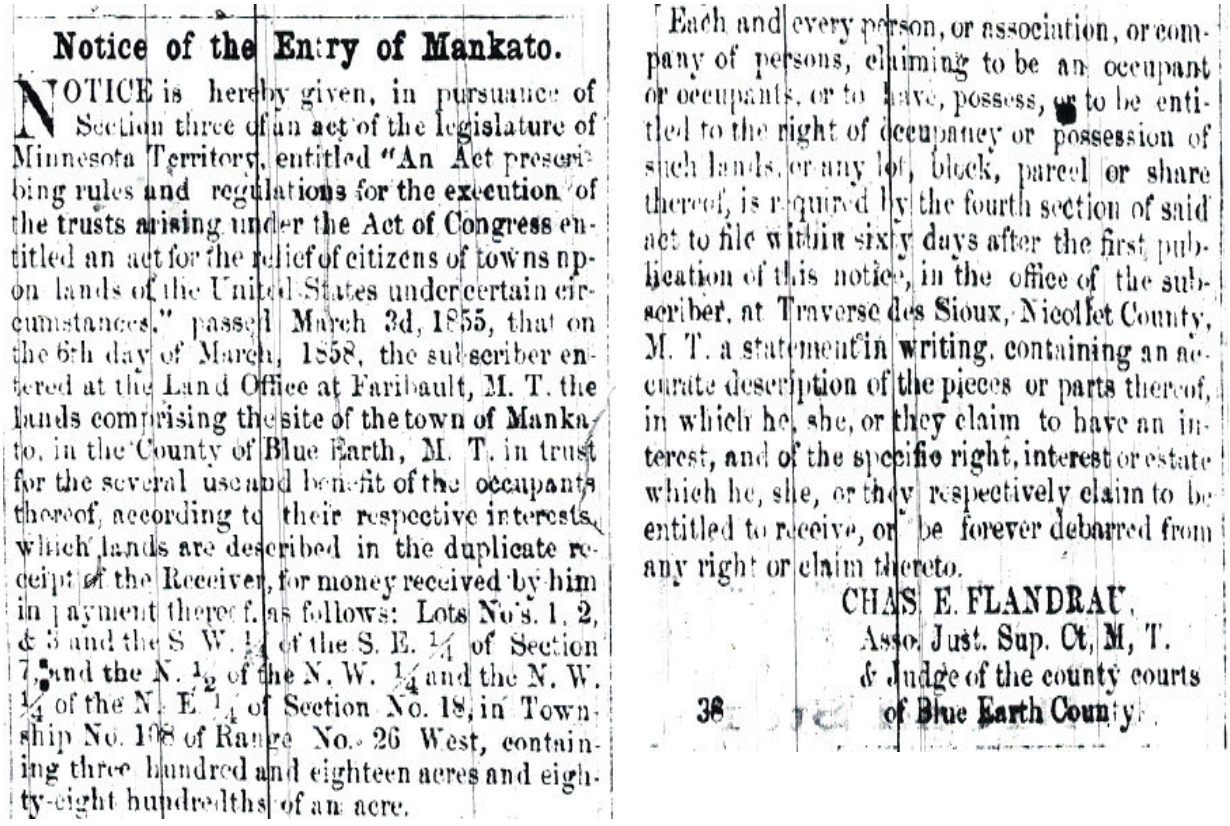
4. Town Site Trustee

By the Town Site Act of 1844, Congress established a process by which residents of unincorporated towns were permitted to acquire title to the parcels of land they occupied.[26] In an early example of the federal government enlisting state or local officials to carry out federal policy—here land settlement

[26] **The federal Town Site Act and the Minnesota Law establishing procedures for its implementation are posted in "The Town Site Act of 1844" (MLHP, 2019).**

.

policy—it authorized the judge of the court of the county in which the unincorporated town was situated to enter the land in trust in the local federal Land Office, but the "rules and regulations" for the sale and transfer of title to town site residents were left to the state or territory in which the land was situated. The Minnesota Territorial Legislature enacted a law on May 3, 1855, that established procedures for the implementation of the federal Town Site Act.[27] It required the county court judge to place notices in three successive issues of the local newspaper of the entry of the town site in the Land Office. For the town of Mankato in Blue Earth County this occurred in March 1855, when Minnesota was still a territory. The following notice in the *Mankato Weekly Independent* was placed by Judge Charles E. Flandrau: [28]



Notice of the Entry of Mankato.

NOTICE is hereby given, in pursuance of Section three of an act of the legislature of Minnesota Territory, entitled "An Act prescribing rules and regulations for the execution of the trusts arising under the Act of Congress entitled an act for the relief of citizens of towns upon lands of the United States under certain circumstances," passed March 3d, 1855, that on the 6th day of March, 1858, the subscriber entered at the Land Office at Faribault, M. T. the lands comprising the site of the town of Mankato, in the County of Blue Earth, M. T. in trust for the several use and benefit of the occupants thereof, according to their respective interests, which lands are described in the duplicate receipt of the Receiver, for money received by him in payment therefor, as follows: Lots No's. 1, 2, & 3 and the S. W. ¼ of the S. E. ¼ of Section 7, and the N. ½ of the N. W. ¼ and the N. W. ¼ of the N. E. ¼ of Section No. 18, in Township No. 108 of Range No. 26 West, containing three hundred and eighteen acres and eighty-eight hundredths of an acre.

Each and every person, or association, or company of persons, claiming to be an occupant or occupants, or to have, possess, or to be entitled to the right of occupancy or possession of such lands, or any lot, block, parcel or share thereof, is required by the fourth section of said act to file within sixty days after the first publication of this notice, in the office of the subscriber, at Traverse des Sioux, Nicollet County, M. T. a statement in writing, containing an accurate description of the pieces or parts thereof, in which he, she, or they claim to have an interest, and of the specific right, interest or estate which he, she, or they respectively claim to be entitled to receive, or be forever debarred from any right or claim thereto.

CHAS. E. FLANDRAU,
Asso. Just. Sup. Ct. M. T.
& Judge of the county courts
of Blue Earth County.

38

This occurred two months before Minnesota became a state and before Branson was inducted into office. It became his

---

[27] 1855 Laws, c. 7, at 28-34 (1855), included in "The Town Site Act of 1844" (MLHP, 2019).

[28] *Mankato Weekly Independent*, March 13, 1855, at 3.

responsibility as trustee of land in the unincorporated town of Mankato to issue deeds to its occupants. According to a 1903 county history:

> **It was during his incumbency that nearly all of the Judges' deeds were obtained by the settlers, of the lots in the original town site of this city, at the conclusion of the long litigation touching titles between the settlers and the town site proprietors.[29]**

In the litigation that resulted, Branson was a nominal defendant. One such case was *Coy v. Coy*, 15 Minn. 119 (1870), decided four years after he left the state.[30]

5. Leaving Minnesota.

For several reasons, he did not run for reelection in November 1864.[31] He needed a larger income to maintain his family and may have thought that it would be difficult for a Democrat to win an election in Minnesota that year. Oddly—at least by later standards of judicial conduct—while serving on the bench, he continued working for the Democratic Party. He was "one of the vice presidents" assisting H. M. Richardson, the "permanent president" of the Democratic State Convention in St. Paul in September 1864.[32]

---

[29] ***Mankato – Its First Fifty Years*, *1852-1902*, note 1, at 184. Posted in the Appendix, at 25-26.**

[30] **The opinion of Chief Justice Ripley is posted in the Appendix, at 36-48.**

[31] **In the election on November 8, 1864, Republican Horace Austin narrowly defeated Democrat Daniel Buck, 3,117 votes to 3,040. See Journal of the House of Representatives, January 5, 1865, at 17-18.**

Thomas Hughes erroneously states that Branson was the Democratic candidate in *History of Blue Earth County and Biographies of Its Leading Citizens* 148 (1909) ("The political situation in the fall of 1864 was as interesting as usual. There was a warm contest in the Republican primaries over the nomination for District Judge between Sherman Finch of Mankato and Horace Austin of St. Peter. The convention was held at St. Peter and Mr. Austin won by one vote, and was elected that fall over Judge Branson, the Democratic nominee. . . .").

[32] ***Mankato Weekly Record*, September 10, 1864, at 2 ("Judge Branson, of this county, was one of the vice presidents.").**

In late 1866, forty-one year old Lewis Branson and his family headed west. He was restless and moved around. For a while he practiced in Nevada, Colorado, California [33] and eventually made his way to Tacoma in Washington Territory around 1888. There he lived and practiced law for about seven years, built a small fortune and a reputation for eccentricity that culminated in an "insanity trial" in 1895. A jury found him insane and he spent the rest of his life in a state hospital. He died in mid-1905 at age eighty. His death was not reported in Minnesota newspapers.

His Last Will and Testament, reflecting a keen judgment and jaundiced view of his heirs, was described in the local newspaper.[34] The Will had specific directions for the inscription on his headstone:

> **Hon, Lewis Cass Branson**
> **A. D., 1825, A. D. 190__.**
> **He lived a harmless life**
> **with charity to all.**

And so shall he be remembered.

[33] Samuel F. Black, 1 *San Diego County, California: A Record of Settlement, Organization, Progress and Achievement* 215 (1913) ("Lewis Branson had some of the most important land cases at New San Diego. He had been a judge in Wisconsin. He left before the boom and went to Washington Territory.").

[34] *The Daily Leader* (Tacoma, Washington), July 14, 1905, at 8 ("Unique Will Is Filed In Court For Probate"). It is posted in the Appendix, at 34.

APPENDIX

Table of Contents

Item **Pages**

1. Minutes of the Territorial Supreme Court, January 12, 1855, admitting Lewis Branson to practice law.

77

now, on motion of the Respondents Counsel, it is
Ordered, that the said Order of the
Court below, to this Court appealed from,
be in all things affirmed, and that the
said Respondent have judgment against
the said appellant for his costs

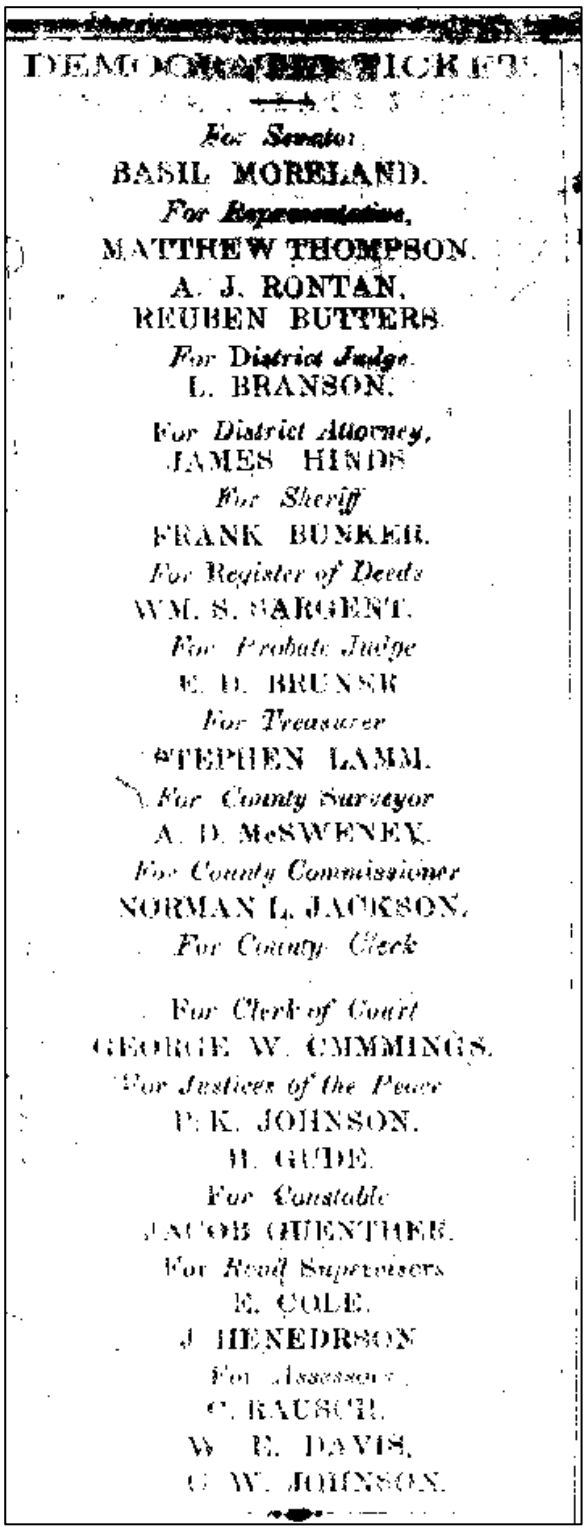
Whereupon it was Ordered, That this
Court stand adjourned until to-morrow
morning at ten o'clock.
George W. Prescott, Clerk.

Friday morning, January 12, 1855.

Court met pursuant to adjournment.

This day appeared in Court James B.
Wakefield and Lewis Branson and severally
made application for admission to practice as
Attorneys &c in the Courts of this Territory:
And satisfactory evidence of qualifications
having been produced to the Court, it was,
on motion of Wm Hollinshead Esq
Ordered, that James B.
Wakefield be sworn and admitted to prac-
tice as an Attorney and Counselor at Law
and Solicitor in Chancery in all the Courts
of this Territory. Which was so done.
Ordered, that Lewis Branson
be sworn and admitted to practice as
an Attorney and Counselor at Law and
Solicitor in Chancery in all the Courts
of this Territory. Which was so done.
M. E. Ames Esq from the Committee on the
Examination of Applicants for admission to the bar,
submitted a report recommending the admission
of Andrew C. Dennis. Whereupon it was

2. Democratic Ticket, Blue Earth County, 1857.



DEMOCRATIC TICKET.

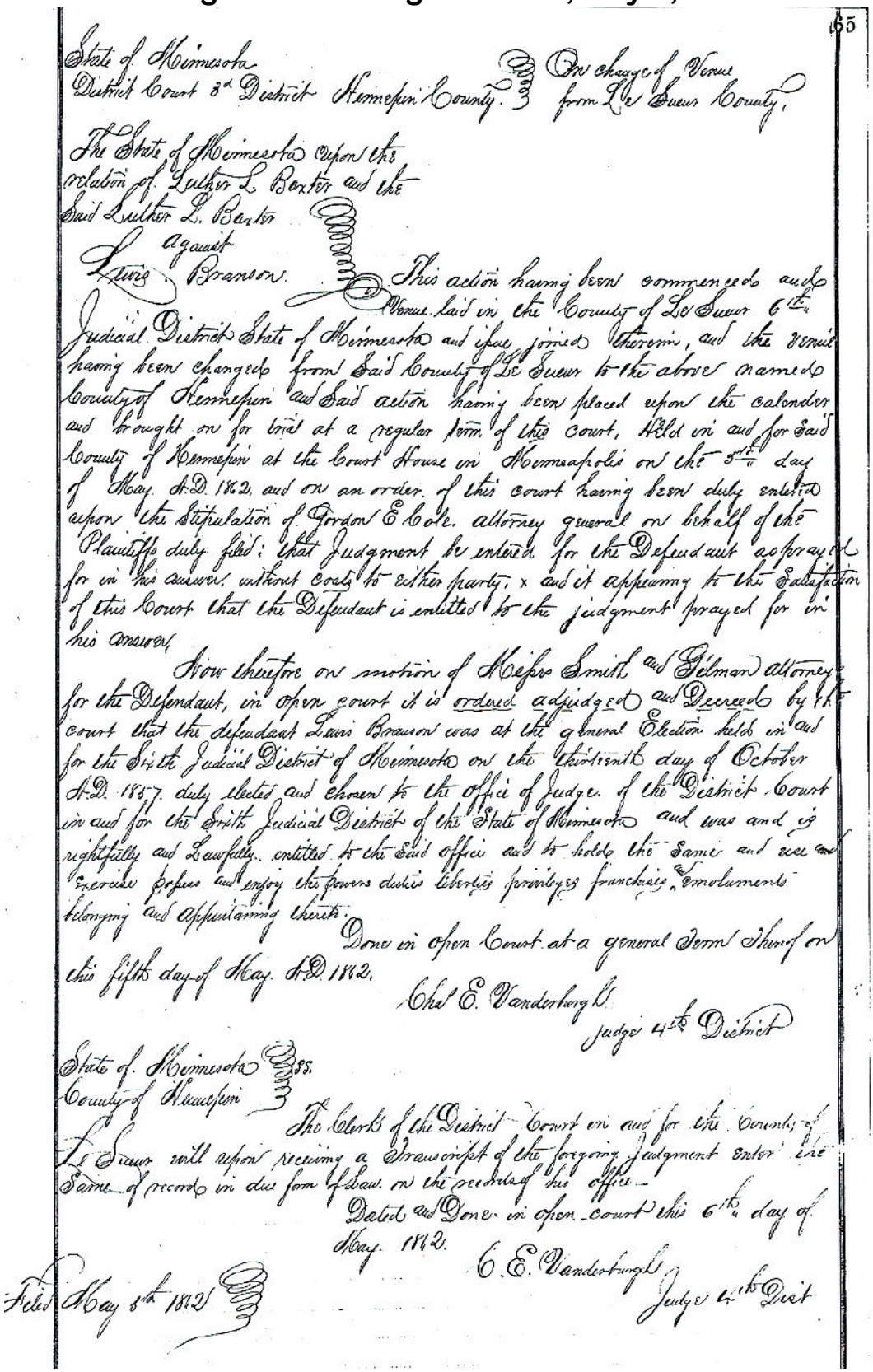
For Senator
BASIL MORRILAND.
For Representative,
MATTHEW THOMPSON.
A. J. RONTAN.
REUBEN BUTTERS.
For District Judge.
L. BRANSON.
For District Attorney,
JAMES HINDS
For Sheriff
FRANK BUNKER.
For Register of Deeds
WM. S. SARGENT.
For Probate Judge
E. D. BRUNSR
For Treasurer
STEPHEN LAMM.
For County Surveyor
A. D. McSWENEY.
For County Commissioner
NORMAN L. JACKSON.
For County Clerk

For Clerk of Court
GEORGE W. CUMMINGS.
For Justices of the Peace
P. K. JOHNSON.
H. GUDE.
For Constable
JACOB QUENTHER.
For Road Supervisors
E. COLE.
J. HENEDRSON
For Assessors
C. RAUSCH.
W. E. DAVIS.
G. W. JOHNSON.

The Mankato Weekly Independent,
October 3, 1857, at 3.

This election was for officials to serve after statehood in early 1858. The offices to be filled — the constable, road supervisor, and assessors — show an excess of democracy.

3. Judge Vanderburgh's Order, May 5, 1862.



65

State of Minnesota
District Court 6th District Hennepin County. } On change of Venue from Le Sueur County.

The State of Minnesota upon the relation of Luther L. Baxter and the said Luther L. Baxter
against
Lewis Branson.

This action having been commenced and Venue laid in the County of Le Sueur 6th Judicial District State of Minnesota and issue joined thereon, and the Venue having been changed from said County of Le Sueur to the above named County of Hennepin and said action having been placed upon the calender and brought on for trial at a regular term of this Court, Held in and for said County of Hennepin at the Court House in Minneapolis on the 5th day of May A.D. 1862. and on an order of this court having been duly entered upon the Stipulation of Gordon E Cole. attorney general on behalf of the Plaintiffs duly filed: that Judgment be entered for the Defendant as prayed for in his answer, without costs to either party, x and it appearing to the Satisfaction of this Court that the Defendant is entitled to the judgment prayed for in his answer.

Now therefore on motion of Heipe Smith and Gilman attorneys for the Defendant, in open court it is ordered adjudged and Decreed by the court that the defendant Lewis Branson was at the general Election held in and for the Sixth Judicial District of Minnesota on the thirteenth day of October A.D. 1857. duly elected and chosen to the office of Judge of the District Court in and for the Sixth Judicial District of the State of Minnesota and was and is rightfully and Lawfully entitled to the said office and to hold the same and use and exercise duties and enjoy the powers duties liberties privileges franchises & emoluments belonging and appertaining thereto.

Done in open Court at a general Term thereof on this fifth day of May A.D. 1862.

Chas E. Vanderburgh
Judge 6th District

State of Minnesota } ss.
County of Hennepin }

The Clerk of the District Court in and for the County of Le Sueur will upon receiving a Transcript of the foregoing judgment enter the same of record in due form of Law. on the receiving thereof.

Dated and Done in open court this 6th day of May. 1862.

C. E. Vanderburgh
Judge 6th Dist

Filed May 8th 1862

4. The initial schedule of sessions of the Sixth Judicial District Court was set by the First Legislature in 1858.

> **6. In the Sixth Judicial District—**
>
> **In the County of McLeod, on the fourth Monday of February in each year.**
>
> **In the County of Sibley on the first Monday of March and September in each year,**
>
> **In the County of LeSueur, on the third Mondays of March and September in each year.**
>
> **In the County of Nicollet, on the first Monday of June and the third Monday of November in each year.**
>
> **In the County of Blue Earth, on the third Mondays of June and December in each year.**
>
> **In the County of Faribault, on the first Monday of April in each year.**
>
> **In the County of Brown, on the third Monday of April of each year, and the Judge of this District is hereby empowered to hold further terms of Court, in and for any other county attached to, and made a part of, this District, whenever in his discretion any such term may be expedient and may be required to promote the ends of public justice; but in such case, due notice of any such term shall be given by publication of the same in all the newspapers published in this District, at least once a week, for four successive weeks previous to the opening of any such term.[35]**

The Legislature constantly tinkered with this schedule. In 1862 this was added:

> **Section 1.That the county of Renville be and the same is hereby detached from the county of Nicollet for judicial purposes.**
>
> **....**

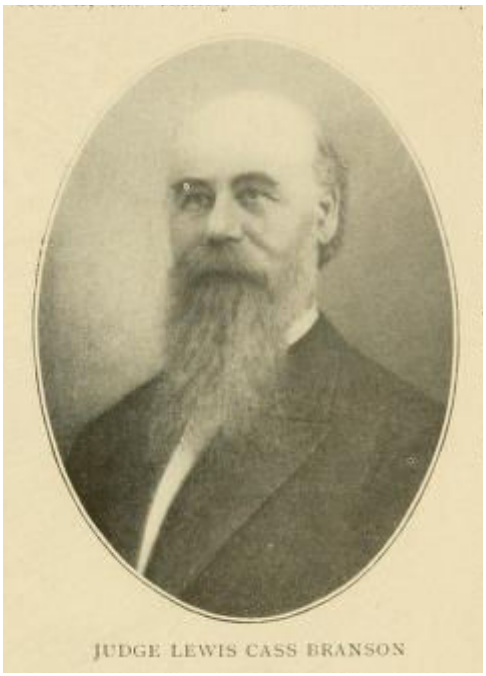
[35] **1858 Laws, c. 67, §1 (6), at 157 (effective August 12, 1858).**

Sec. 5. A term of the district court shall be held in the county of Renville in the sixth judicial district on the second Monday of October in each year. [36]

5. Two biographical Sketches of Judge Branson.

a. From *Mankato: Its First Fifty Years—1852-1902* (1903).

BRANSON, LEWIS C.— The first district judge of the Sixth Judicial District was born March 16, 1825, near Flushing, Belmont County, Ohio. He was of Quaker ancestry. At the age of eleven, the family moved to



JUDGE LEWIS CASS BRANSON

Henry County, Indiana, where he was self educated, and studying law, was admitted to the bar. He opened his first law office in Wabash, Ind. But wearing of the swamps and miasmatic conditions there, he took his wife and two children, April, 1854, and came direct to Mankato, arriving there with but two dollars and fifty cents in his pocket. Here he buried two children; the first dying very soon after the Judge's arrival, was the first death among the white people at Mankato. May 24, 1858 (sic), he was elected Judge of the Sixth Judicial District, and served the term of seven years, being the first Judge of this district

[36] 1862 Laws, c. 52, §§1, 5, at 109 (effective March 5, 1862).

under the State Constitution. It was during his incumbency that nearly all of the Judges' deeds were obtained by the settlers, of the lots in the original town site of this city, at the conclusion of the long litigation touching titles between the settlers and the town site proprietors.

In October 1866 he gathered up his belongings and taking his family, removed to the Far West, settling in San Francisco, early in 1867, where he remained till 1875, practicing his profession. Health failing, he removed to Virginia City, Nevada, but the "boom" ceasing, in 1880, he again removed, finding home and practice in Leadville, Colorado. In 1885, he made a final removal to Seattle, Washington, near where he yet lives. He had accumulated quite an independence. But the crash of 1893, swept it nearly away.

b. From Memorial Services for Sixth Judicial District Court Judges (1907).

On November 13, 1907, a special session of the District Court was held in Mankato to honor judges of the Sixth Judicial District. The services were reprinted in the *Mankato Free Press* on November 14, 1907. These recollections began with Lewis Branson.

The memorial services would begin with the first judge, Lewis C. Branson.

A. C. Dunn of Winnebago read a short biographical sketch of Judge Branson, who was still living somewhere in the distant west. Judge Branson was of Quaker ancestry and self educated. He was an early arrival in Mankato, where two of his children died. The death of one was the first death of a white person in Mankato. While he was judge, most of the settlers obtained their judge's deeds. He moved to

San Francisco in 1866, and when his health failed he went to Virginia City, Nev., and when the boom there collapsed went to Seattle Wash, near which place he still resides. He had accumulated considerable property, but nearly all of it was swept away in the financial panic of 1893.

Mr. Dunn said that he had begun the practice of law in this state in 1854, most of the time in this district. The sixth judicial was organized in 1857, including all of southwestern Minnesota. Branson was elected judge although a young lawyer. The salary was meager, $2,500 (sic) a year. He magnified and dignified the office. He assumed his duties in 1858, after the state had been admitted to the union. The admission of the state was delayed nearly a year because of the slavery oligarchy in the United States Senate, because the people would not bow down to slavery. Most of those who took part in the first term of court held in Faribault county are dead. The term was held in a barn fitted up for the occasion. He addressed the grand jury for nearly two hours, and one or two indictment were returned. Judge Branson was judge during the period of the civil war and the Indian uprising, when the country was unsettled.

He wore the judicial urmine (sic) unsullied, and no breath of scandal was ever whispered about him. Nothing could sway him from what was just and right. He always invited the bar to a grand feast at his home at every term of court, and his wife was very hospitable. Modes of travel were primitive. He traveled the district on a mule. The mule was a crackerjack, and the judge's feet just missed the ground when he rode. Mr. Dunn was quite reminiscent in his remarks.

Judge Cray said he had seen Judge Branson once, in 1860, at Winnebago City, as he rode his donkey from Blue Earth City to Mankato. He had ridden into Winnebago for breakfast, and said he would take dinner in Mankato. He had a hardy little animal. He was an upright man, and had his ups and downs. No other member of the bar now in the district knew him. [37]

6. Divorce suit and "Insanity Trial" of Judge Branson (1895).

The following are four reports on Branson's divorce suit and insanity trial published in *The Seattle Post-Intelligencer* in November 1895.

—•—

a. November 12, 1895: The Divorce.

—•—

A HENPECKED OLD MAN.

Lewis Cass Branson, of Tacoma, Sues for Divorce.

Tacoma, Nov. 12.—Special.—A lis pendens was filed in the county auditor's office to day by Lewis Cass Branson, covering the entire property of himself and wife, Mary E. Branson, all of which stands in the latter's name.

[37] For the complete memorial proceedings, as reported in the Free Press, see "Memorials to Judges of the Sixth Judicial District" (MLHP, 2014). It can be found in the "Judges" category in the Archives of the MLHP.

The filing of the instrument is only the commencement of what will likely be the most sensational divorce suit ever brought in Pierce county. It recites that the plaintiff in the action of Branson vs. Branson will demand decree of divorce, a division of the community property now held by the wife, und a judgment for damages sustained by reason of alleged personal indignities and the ruin of his health for life, all of which the husband claims to have suffered at the hands of his wife. The papers in the divorce proceedings will be filed tomorrow.

Judge Branson's life reads like a romance. He came to Tacoma seven years ago from Leadville, Colo., and since his residence here has amassed a fortune estimated at from $125,000 to $200,000. He has practiced law during this time, and is one of the most familiar characters about the courthouse. He is upward of the Scriptural three score years and ten, although he has been able to attend to every detail of his law practice. The judge was a very prominent man in the early statehood of Minnesota, being elected a district judge when the territory became a state. He afterward lived at Virginia City, Nev., where he made and lost a fortune. He started in again at Leadville, Colo., from which city he came here.

If all Judge Branson claims is true, his wedded life from the nuptial morn. August 27, 1889, has been a remarkably unhappy one. To the Post-Intelligencer correspondent the judge tonight told the story of his troubles with his wife. He said he met her in Virginia City, Nev., when she was Mrs. Jones, the wife of an ex-United States army officer. She secured a divorce from her husband, and Judge Branson married her clandestinely at Salt Lake, Utah, in 1882. He says the marriage was secret so as to enable the wife to continue teaching school in Virginia City. Judge Branson, continuing the narrative, said that when he came to Tacoma he sent for his wife and they were remarried, this time the ceremony being public, August 27, 1889.

Judge Branson says all his troubles date from the last marriage. He says he deeded his wife $40,000 worth of property on his wedding day but not satisfied with this, she

wanted him to immediately deed her the balance of his property. In March, Judge Branson was taken with cancer of the stomach, which nearly ended his life. He says his wife persistently endeavored to persuade him to disinherit his children by a former marriage, and finally he deeded her what property remained in his name. From this time on, the husband claims, his life was made wretched, and wife ruled the household with a rod of iron.

He alleges that his spouse has not allowed him sufficient funds to carry on the practice of his profession, and he has be compelled to pawn various valuable articles of jewelry and keepsakes to obtain money to travel where his practice called him and to buy food and medicine.

He said that she has allowed her former husband to occupy a house on their property and has entertained various relatives at their home on South Yakima avenue from time to time. The judge further avers that he has been compelled to do the drudgery of the kitchen, and that he has been driven ill by the nature of the surroundings.

Judge Branson, however, makes no aspersions on the moral character of his wife, but intimates that his life has been in danger.

Both the husband and wife are well known here and are regarded as intellectual people The lis pendens covers property on Pacific avenue In the business center of the city, three lots on Yakima avenue, several blocks the Wing's, Oakes', Carroll, Hannah's and Branson's additions, lots in street below Twenty-fifth, and the homestead at American Lake. The lots in Carroll & Hannah's addition front on Center. The rest at 809 South Yakima avenue.[38]

—•—

[38] *The Seattle Post-Intelligencer*, November 13, 1895, at 2

b. November 25: The Charges.

—•—

Branson Charged With Insanity

Tacoma, Nov. 25.—Special.—Lewis Cass Branson, the aged attorney who caused a mild sensation by filing suit for divorce against his wife, in which a claim for $10,000 for personal indignities was made, was today arrested on the charge of insanity. Charles M. Norton, a nephew of Mrs. Branson, swore to the complaint.

Judge Branson was brought before Judge Parker and his examination set for tomorrow. It is probable a jury will be summoned to decide the case. Judge Branson's complaint in his divorce suit was perhaps the most remarkable document ever filed in the clerk's office. It was extremely long and contained many strange statements and a mass of irrelevant matter. Other actions of the judge have caused those who know him to fear that he was not wholly himself. Judge Branson was not confined in jail, but was allowed the privilege of a guard. [39]

—•—

c. November 26: The Trial.

—•—

THE BRANSON INSANITY TRIAL.

Effort to Send the Aged Tacoma Lawyer to an Asylum.

[39] The Seattle Post-*Intelligencer*, November 26, 1895, at 2.

Tacoma, Nov. 26.—Special.—Lewis Cass Branson's trial on the charge of insanity was begun in Judge Parker's court today before a jury, and Drs. Smith and Dewey, attorneys Thomas Carroll and James Ross appeared for him, and County Attorney Coiner for the prosecution.

Charles M. Norton, the half-nephew of Mrs. Branson, was the first witness, and told how the judge had always been more or less odd and peculiar, but of late and especially since the 18th of November, he had been much worse. He described how he would promenade in front of the house with a revolver In his hand, and also carried it when he went for water. He would lock himself in his room and refuse to take food his wife would bring to him or to let her clean up his room. The judge, he said, would go out on the street and pickup old worthless cans and bring them to his room. His room was like a junk shop. Old cans, oil, shoes, axes, saws, bits, pipes, grindstones and old tea kettles and stew-pans kept company with his books and papers.

Mrs. Branson told the jury that her husband had forbade her from speaking to him, and had persistency refused food and other attentions from her. She said she feared for her life on account of his strange actions.

The witness read several long and rambling letters from her husband written while they were occupying adjoining rooms in their home on Yakima avenue. He would open the door and throw a letter into the hall for her to pick up and read and answer. The husband had choked and knocked her down on one occasion, and swore repeatedly at her in the most violent fashion.

In one letter he told her their property would be worth $3,000,000 in twelve years. The letters were all written since November. Several neighbors testified to the old man's peculiar actions, and one, Mrs. Lillian Reidmaster, said he told her he would some day regain his property, reap in a few million by the sale of a wonderful invention of his, get a divorce and marry her.

Dr. T. F. Smith, for a long time Judge Branson's physician, testified that he suffered from senile dementia and was subject to acute attacks, during which he was dangerous. The aged defendant sat at his attorney's table and participated in the examination of witnesses. The trial was continued till tomorrow.[40]

—•—

d. November 27: The Verdict.

—•—

Lewis Cass Branson Judged Insane.

Tacoma, Nov 27.—Special.—Lewis Cass Branson was today adjudged insane by a jury, and on order of Judge Parker committed to the asylum at Stellacoom. The aged attorney was on the witness and in his own behalf several hours today, and, though his testimony was rambling and irrelevant at times, he made a pretty good witness. At the close of the trial Judge Branson thanked the court and Jury and shook hands with the Jurymen. Just before he was taken to the asylum he was searched, and a murderous looking dirk, recently sharpened, was taken from the inside of his vest. [41]

—•—

7. The Death of Judge Branson— 1905.

Lewis Branson died in the Western Washington hospital in June or early July 1905, at age eighty. The exact date is not known as the deaths of patients were usually not mentioned in the local newspaper or were a matter of public record.[42] **However, when his Last Will and Testament was filed with the probate court on July 13, 1905, it caught the attention of *The Daily Leade*r, a Tacoma newspaper:** [43]

---

[40] *The Seattle Post-Intelligencer*, November 27, 1895, at 2..
[41] *The Seattle Post-Intelligencer*, November 28, 1895, at 3.
[42] E-mail from Ilona Perry, Northwest Room, Special Collections, Tacoma Library, May 15, 2019, on file at the MLHP.
[43] *The Daily Leader* (Tacoma), July 14, 1905, at 8. Article and e-mail from Eileen Price, Washington State Historical Society, May 14, 2019, on file at the MLHP.

UNIQUE WILL IS FILED IN COURT FOR PROBATE

Lewis Cass Branson, Who Died Recently at Fort Steilacoom, Owned "Grand, Good Watch."

Yesterday the last will and testament of Lewis Cass Branson, an inmate of the Western Washington hospital for the insane, who died at the Fort Steilacoom institution recently, was filed for probate at the county clerk's office. It has been placed on record along with an affidavit of Samuel Woodruff, steward at the asylum. Mr. Woodruff, under the terms of the will, is made executor. In the affidavit filed with the will, he relinquishes all rights to such position and states that the party to the will was insane and could not draw an instrument that would be valid. He questioned the validity of the document and asked to be released from any responsibility. He also asked that the widow of the deceased be appointed administrator of the estate.

The will is unique and will probably enjoy a place in the archives of the county clerk's office such as is enjoyed by few other documents of a like nature. By the terms of the will a daughter of Branson, residing at Los Angeles, would receive one dime and to the widow living at Spokane, is bequeathed decedent's Lewis Centennial picture and his historical works on the city of Mankato, Minn., and all the letters and presents therein, but nothing else. To a grandchild, named George W. Harminel, of Los Angeles, Branson's bequest is as follows: "Said George W. Harminel to receive all my jewelry, also my grand good watch, the best timepiece I ever saw; also my very large and fine meerchaum pipe, expressing a hope that he may never use tobacco."

In conclusion decedent asks that he be buried in some cemetery near Tacoma and that a monument be erected to his memory bearing the following inscription:

"Hon. Lewis Cass Branson, A. D., 1825, A. D. 190—. He lived a harmless life with charity to all."

8. *Coy v. Coy*, 15 Minn. 119 (1870)

Coy et al. v. Coy et al.

. . . .

WILLIAM A. COY, et al.,

vs.

JULIA A. COY, et al.

Prior to the 21st March, 1856, the date of the application to enter the town site of Mankato, A had become an occupant of lot 1, block 10, in said town, within the meaning of the act of congress of May 23d, 1844, entitled "An act for the relief of citizens of towns upon lands of the United States under certain circumstances," and so continued to occupy till May 29th, 1856, when she sold the same to plaintiffs' father, and executed and delivered to him a quit claim deed thereof, who entered thereon and occupied it with his family till his death, intestate, on the 28th May,

1857, leaving a widow, the defendant Julia A. Coy, and the plaintiffs, his children, with two others, since deceased; said widow and children continued to live on the premises till 1860, up to which time all said children were minors. The statement required by the territorial act of March 3d, 1855, sec. 4, was not filed by plaintiffs, or any one for them, but Mrs. Coy seasonably filed a statement by which she claimed to be entitled to receive from the trustee under the act of congress, a conveyance of the title in fee of said lot. Said trustee, on Sept. 17th, 1858, executed and delivered to her a deed, purporting to convey said lot to her in fee, and in execution of the trust upon which he held the same under said act, and defendants Branson and Heinze, claim through sundry mesne conveyances from her to own said premises, for which they paid a valuable consideration in the belief that their title under said deed to her, was perfect. *Held*, that on the issuance of the patent to the trustee, he became seized of the legal title to said lot in trust for the heirs of said Coy, and that those claiming under Mrs. Coy took with constructive notice of the plaintiffs' rights as such heirs, and are in equity, trustees for them of the legal title, according to their respective interests. *Held also*, that a reasonable construction of said territorial act requires the general words of section 4 to be so limited and restrained, as not to include minors, and that they are not therefore debarred from maintaining this action, by reason of their failure to file such statement. Judgment reversed, and a judgment directed for conveyance by defendants Branson and Heinze to plaintiffs of their respective interests.

This action was commenced in the district court for Blue Earth county by William A. Coy, James B. Coy, Amelia R. Coy, and Florence Coy, against Julia A. Coy, Lewis Branson, Christiana Heinze, and Charles Heinze her husband, Z. Paddock, and William A. Boynton. The plaintiffs' complaint is as follows:

"1. The complaint of the plaintiffs shows that one Peter Frenzel first settled upon and improved lot one, in block ten, in Mankato, according to Folsom's and also Bruner's plats thereof, situate in the county of Blue Earth, and State of Minnesota, some time in the year 1853, and continued the occupancy thereof until the 29th day of May, 1856, at which time he sold said lot, and executed a deed thereof, to

Ariel Coy, who thereafter occupied said lot until his death, which occurred on the 28th day of May, 1857.

2. That he died intestate, and left the defendant Julia A. Coy, his widow, and the plaintiffs William A. Coy, James B. Coy, Amelia R. Coy and Florence Coy, his children, all of whom were then minors, and under the age of twenty-one years. He also left Charles Coy and Frank Coy, also his children, who died the spring of the year 1859, and who at the time of their death were minors and were unmarried, and left no other children.

3. That in the month of May, 1855, the public lands comprising the town site of Mankato, of which said lot one forms a part, were surveyed into governmental subdivisions, and on the 21st day of March, in the year 1856, the judge of the county courts of the county of Blue Earth in this State, made the proper proofs and application to the land officers of the United States, for the entry and purchase of said town site lands, and that on the 10th day of June, 1858, a patent of said land was issued by the government of the United States, to the said judge, in trust for the occupants of said town site, as provided by the act of Congress entitled "An act for the relief of citizens of towns upon lands of the United States under certain circumstances," passed May 23d, 1844. That in the month of March, or April, 1858, the said judge published a notice of the entry of the lands comprising said town site, and containing a description thereof by posting a copy of said notice in three public places in said town and village of Mankato, and also by publishing a copy of said notice once in each week for three successive weeks in a newspaper printed and published in the county of Blue Earth.

4. The said Julia Coy filed a statement in writing with the said judge claiming to be the occupant and owner of

said lot in her individual right; and that the plaintiffs, William A. Coy, James B. Coy, Amelia R. Coy, and Florence Coy, were minors during the whole period when such statement was required by law to be filed by the claimants of said lot.

5. That on the 18th day of September, 1858, Lewis Branson then being judge of the county courts of Blue Earth, and holding said lot in trust, wrongfully conveyed the same to the said Julia A. Coy.

6. The said Julia A. Coy afterwards executed a deed of said lot to the defendant Zachariah Paddock, and he executed a deed thereof to the defendant William N. Boynton, and he executed a deed thereof to the defendant, Lewis Branson, and he executed a deed of the north-east one-third thereof to Christiana Heinze, who is the wife of the defendant, Charles Heinze.

7. The plaintiffs, William A. Coy, James B. Coy, Amelia R. Coy and Florence Coy, have never parted with, or released in any manner, any portion of their interest in said lot."

The plaintiffs demanded, that by the judgment of said court, the said lot should be declared to belong to them, &c., &c.

Issue was joined, and the cause was tried before the court, without a jury, who found as matters of fact:

"*First.* That all the facts in the plaintiffs' complaint are true.

Second. That the defendants Paddock, Boynton, Branson, and Heinze, were severally purchasers in good faith, and for a good and adequate consideration.

Third. That none of the plaintiffs ever made, signed or executed any statement in writing containing any description of the lot in question, or any part thereof, or of any in-

terest or estate therein, and delivered the same to the judge holding the same in trust, nor did they, or either of them, ever cause or authorize such statement to be so made, signed or delivered, as required by *Section four* (4), *Chapter* 42, *of the General Statutes of Minnesota.*

Fourth. That all other issues in the case are not sustained by the evidence, and therefore false and untrue, not including any facts admitted by the pleadings."

Judgment was ordered and entered for the defendants, dismissing the action, and for costs. The plaintiffs appeal from the judgment. All other matters, commented upon by the court, and not appearing in the foregoing statement, are sufficiently stated in the opinion.

FRANKLIN H. WAITE for Appellant.

JAMES BROWN, DANIEL BUCK, and WILKINSON & WOLFOLK, for Respondents.

By the Court—RIPLEY, CH. J.—The lands comprising the township of Mankato were entered on the 6th of March, 1858, and the patent therefor issued on the 10th of June, 1858. The entry was made on application and proof submitted March 21st, 1856, and the entry related back to that time, and the judge to whom the patent was issued, became thereby seized of said town site in trust for the then occupants thereof within the meaning of the act of Congress of May 23d, 1844, to their several use, according to their respective interests, their heirs or assigns. *Davis vs. Murphy*, 3 *Minn.* 119. *Leach vs. Rauch*, 3 *Minn.*, 448. *Castner vs. Gunther*, 6 *Minn.*, 119. *Weisberger vs. Tenny*, 8 *Minn.*, 456. The execution of which trust was by said act, as to the disposal of the lots in said town, and the proceeds of sales

thereof, to be conducted under such rules and regulations as the Territorial Legislature might prescribe.

The Territorial Act of March 3d, 1855, passed under this authority, required the trustee, within 30 days after the entry, to give three weeks public notice thereof. In the case at bar this is said to have been done in March or April, 1858. By section 2, he is required, by a good and sufficient deed of conveyance, to grant and convey the title to each and every block, lot, share, or parcel of the land, to the persons having the right of possession or occupancy thereof, according to their respective interests as they existed at the time of the entry, or their heirs or assigns.

By section 4, claimants are required, within sixty days from the first publication of such notice, in person, or by a duly authorized agent or attorney, to sign and deliver to the trustee a statement in writing of the nature and extent of their claims, and all persons failing to do so within such time, "shall be forever barred the right of claiming, or recovering such land, or any interest or estate therein, or in any part, parcel, or share thereof, in any court of law or equity." *By the Gen. Stat. ch.* 42, *sec.* 4, the words "as against adverse claimants," are inserted after "shall," which, however, leaves the provision the same, in principle; and if otherwise, plaintiffs' rights must be determined with reference to the act then in force. After the expiration of the sixty days, the trustee, on request and payment or tender by the claimants entitled to any lot, or share, of the proportionable share of his charges falling thereto, shall execute and deliver to such claimant a deed of conveyance thereof, as prescribed in the 2d section, and according to said statement. Peter Frenzel, being on said 21st March, 1856, such occupant as is contemplated by the act of Congress of lot one in block ten in said Mankato, continued so to occupy

till May 29th, 1856, when he sold the same for $250 to Ariel Coy, and executed and delivered a quit claim deed thereof to him, who entered thereon, and occupied it with his family till his death intestate, on the 28th May, 1857, leaving a widow, the defendant, Julia A. Coy, and the plaintiffs, his children, with two others deceased since 1859. The widow and children continued to live on the premises till September, 1860, up to which time, all said children were minors, and of those since deceased one was two and a half years, and one three months old, at their father's death. If Frenzel had not sold to Coy, the trustee would have been seized of said lot in trust for him, as, but for Coy's decease, he would have been for the latter. Coy's interest descended to his heirs, and the patent vested the title in the trustee in trust for them. See cases cited above.

The required statement was not filed by plaintiffs, or by any one for them, but Mrs. Coy on the 27th April, 1858, filed a statement by which she claimed to be entitled to receive a conveyance of the title in fee of said lot.

Defendant Branson then judge of the county court of the county of Blue Earth, on the 18th September, 1858, executed and delivered to her a deed purporting to convey said lot to her in fee, and in execution of the trust upon which he held the same as such judge. Mrs. Coy on the 23d April, 1859, executed and delivered a warranty deed thereof to defendant Paddock. He on the 30th of October, 1859, executed and delivered a warranty deed thereof to defendant Boynton, who on the 7th January, 1865 executed and delivered a warranty deed thereof to said Branson, who on the 13th October, 1865, executed and delivered a warranty deed of the northwest third thereof to defendant Heinze. Mrs. Coy's occupation was not adverse to plaintiffs, but if it were, she had acquired thereby no title

to the lot, as it commenced subsequent to March 21st, 1856. *Leach vs. Rauch*, 3 *Minn.*, 449. *Castner vs. Gunther*, 6 *Minn.*, 119.

As widow of the *cestui que trust*, she had an equitable claim to dower, but her filing in so far as it claimed the fee, was simply an assertion of a groundless claim. Branson's deed to her was therefore in contravention of the trust upon which he held the lot. Her filing did not change his duties in this respect. The law required him to convey to the person entitled, (Act March 3d, 1855, sec. 2,) and though by section 11, the deed is to be "according to the statement" filed, there is nothing whatever in the statute that makes the statement conclusive on the trustee, or that warrants the inference, that after the expiration of sixty days he is at liberty to convey to any person who may have filed on the land, notwithstanding such person may have no right to it.

And there is nothing in the act of March 3d, 1855, to prevent the trustee from conveying to the person entitled, after the expiration of the sixty days, (there being no adverse claimant,) though such person might not have filed within the time.

As all are presumed to know the law, Branson, and all claiming under him, must be deemed to have known, at the time of the several conveyances in question, that the trust upon which he held the land, as expressed in the patent, was for the person having the title by occupancy on the 21st March, 1856, his heirs or assigns. Having express notice of this fact, they were bound to inquire who that person was, and Frenzel's occupancy of the land on the date referred to, was, as it were, his title deed, to which the law referred all persons whatsoever.

In this view, it is immaterial whether or not the defen-

dants, or any of them had any actual notice of Frenzel's, or Coy's, or plaintiff's occupancy, or of Frenzel's deed, or of the effect of that deed as constructive notice.

To say that purchasers from Mrs. Coy, were at liberty to rely on the recitals in Branson's deed to her, (to the effect, that she had been duly determined to be the person entitled,) or on her filing, or on the fact, that she lived on the lot at the time of the filing, and were not bound to enquire who the occupant was, on the 21st March, 1856, is as unreasonable as to say, that a recital that the vendor in a deed is unmarried, will bar his widow from claiming dower as against a purchaser who bought, relying upon such recital, and in ignorance of her existence. That the description of the land in the patent is by government sub-divisions, and not by lots, is immaterial. The prerequsite of the entry is, that the land has been settled upon and occupied as a town site, and when so entered, it is in trust for the several use and benefit of the occupants, according to their respective interests, and though actual platting may not be a prerequisite to the entry, the act of congress contemplates that the land has been divided into lots, and the patent, as in this case, specifies that the entry is for the several use and benefit of the occupants of the town of Mankato, according to their respective interests therein, and all concerned are therefore affected with notice, and bound to inquire what those interests are.

In the case of *Leach vs. Rauch*, 3 *Minn.* 449, it is held that persons settling upon another lot in this town subsequent to March 21st 1856, were affected with notice of a previous occupation thereof, by the fact of the entry of the town site, upon proof made, at that date, as the proof must have shown that the land applied for was not vacant, and that application had been made in accordance with the law.

This not only disposes of the objection last alluded to, but it is not perceived why, on principle, the same facts should not be deemed notice of the rights of Frenzel, and those claiming under him.

It is also insisted that the deed from Frenzel to Coy is void for uncertainty.

Its effect as constructive notice to third parties need not be considered, but no reason appears why it did not pass Frenzel's interest to Coy. There is no ambiguity or uncertainty on the face of the instrument, and there is no evidence that there was not then a recorded plat of Mankato, in which the lot was described as it is in the deed. It appears to be the correct description of the lot, as the town site is actually sub-divided and occupied, and the answers refer to the lot, and claim title in it, by that description, and it does not appear, that it is otherwise described in any of the deeds.

If there was a plat then on record, so describing it, the presumption is, that Frenzel referred to it; and to pass the title it was not necessary that the plat should be legal, or legally recorded, but only that the land should thereby be in fact capable of identification.

Those claiming under Mrs. Coy therefore took with constructive notice of plaintiffs' rights, and are in equity trustees of the legal title for them, according to their respective interests.

But it is insisted that plaintiffs' failure to file the above mentioned statement, debars them, according to the provisions of section 4, aforesaid, from maintaining this, or any action for relief. Taken literally these provisions include minors as well as adults. There are cases however in which the law implies an exception to general words in a statute. In *Beckford vs. Wade*, 17 *Ves. Jr.* 87, the true rule on this

subject is said to have been laid down by Sir Eardley Wilmot in his opinion in the House of Lords, in the case of *Buckinghamshire vs. Drury*, as follows: "Many cases have been put where the law implies an exception, and takes infants out of general words, by what is called a virtual exception. I have looked through all the cases, and the only rule to be drawn from them is, that when the words of a law in their common and ordinary signification are sufficient to include infants, the virtual exception must be drawn from the intention of the legislature, manifested by other parts of the law, from the general purpose and design of the law, and from the subject matter of it." In the same case (*Beckford vs. Wade*) Sir W. Grant says: "General words in a statute must receive a general construction, unless you can find in the statute itself some grounds for limiting and restraining their meaning by reasonable construction, and not by arbitrary addition or retrenchment."

In the present case, we think, following the rules above cited, that there is, upon a reasonable construction of this statute, ground for so limiting and restraining the meaning of the general words used in section 4, as not to include infants. In the first place, it is not to be presumed, considering what the authority was, which by the act of Congress was vested in the Legislature, viz: to prescribe rules for the execution of an existing trust for the benefit of occupants, that that body intended, in this section, to prescribe a rule the practical operation of which, would in any case destroy rights which had become vested before such regulations could take effect. *Leach vs. Rauch*, 3 *Minn.*, 448. Yet, the facts in the present case are sufficient to show, that such, in many cases, must be its practical operation, if it be held to apply to infants. It would close on the rights of the heirs of Ariel Coy, not only while they were all minors, but

while several were incapable, by reason of their youth, of understanding what they were, if indeed, any of them knew of their existence.

The practical injustice of such construction here appears in a very strong light, since thereby an infant three months old, in actual possession, whose rights, through ignorance, probably, not by design, had been disregarded by its mother, to her own benefit, would be debarred of all remedy. The filing is for the information of the trustee as to the claimants of the respective lots, and though expedient, as conducing to a more speedy execution of the trust, we know of nothing in the past or present condition of the country, making it necessary that a failure to file on the part of an infant, should be attended with such results. But that infants were not intended to be included, is we think fairly to be inferred from section 4, itself, for it requires the doing by the claimant of acts, of all of which an infant is not by law presumed to be capable. In point of fact the vast majority of minors are not of sufficient discretion to sign and file in person, or to appoint an agent, or attorney to sign and file the required statement. And this want of discretion the law imputes to all. And it is very noticeable, that no authority is given to any guardian, or executor, or administrator, to whom the law intrusts the interests of infant heirs at various stages, to make or file any such statement for them. Such an omission is unaccountable, if we suppose that this section was intended to apply to them. Again, it is plain the provisions in section 5, and subsequent sections, for settling disputes in case of adverse claims to the same lot, all refer to a person of full age, and *sui juris;* for an infant could not bind himself by any agreement such as these contemplated, nor by a submission to arbitration, nor himself bring or defend the actions, or take part in the proceedings which are there

provided for, and this being so, it is reasonably to be inferred, that the statements to be given in evidence by such adverse claimants were also meant to be required only of persons of full age. We might refer to other parts of the statute in this connection, but we think that what has been already cited sufficiently justifies our opinion, that a reasonable construction of this act requires the general words of section 4, to be so limited as to except infants from their operation. The plaintiffs may therefore maintain this action, notwithstanding its provisions, nor, since the defendants have not demurred to the complaint for want of parties, is the fact that the present judge of the county court is not made a party, a bar to relief as against them; nor is he indeed a necessary party. Holding as we do, that the defendants Branson and Heinze are trustees of the legal title for the plaintiffs, to the extent of the respective interests of the latter, adequate and complete relief can be given as the case now stands, by judgment of the district court, that said defendants convey to plaintiffs accordingly, that is, as we understand it, to each of the plaintiffs, seven undivided thirtieths of the lot, subject to the dower therein of Mrs. Coy, or in default of such conveyances, that the same title pass by the judgment.

The judgment of the district court is reversed, and the judgment above mentioned will be entered in that court.