

“COUNTY OF BROWN — DISTRICT COURT HISTORY”

BY

FRED W. JOHNSON

INTRODUCTION

BY

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MLHP, Editor

I.

From September 25, 1935, to January 3, 1936, the *Brown County Journal*, a weekly newspaper published on Fridays in New Ulm, ran a series of twelve articles by Fred W. Johnson on the history of Brown County government. The first five installments, each headlined “County of Brown—District Court History,” are reproduced below.¹

Johnson was not a lawyer and usually did not write in the tight, stylized manner of lawyers. An article in the *New Ulm Journal* on November 29, 1935, characterized his writing as “virulent.” It would be more accurate to say that he wrote in an engaging manner. He wrote with an ease and familiarity about the men who appear in his articles because he had known many of them.

In his articles, Johnson introduced readers of the *New Ulm Journal* who were struggling in the midst of the Great Depression to the lawyers and judges who had built the court system over the previous eight decades.

¹ Johnson probably used “County of Brown” in his titles rather than “Brown County” because the former phrase has been used in the captions of pleadings, affidavits and other legal documents.

He did not forget sheriffs, clerks of court or court reporters. Of the dozens of histories of the “bench and bar” of counties in this state, Johnson’s is the only one to devote a section to court reporters. He not only gives their names, but also describes the laws governing this important post.

One indicia of the success of a book or article on history is whether it suggests subjects for further research. By this marker, Johnson’s articles are successful. For example, he noted the rapid turnover in the office of Brown County attorney from the late 1850s and to the mid-1870s:

Occasionally laymen, with no experience or training in the practice of law, were drafted for the work [of county attorney], but with much the same results. In fact, it was not until B. F. Webber became a candidate in 1874, that there was anything like regularity in the election of incumbents for this highly important position in the conduct of the county’s affairs. Webber was the first of the elected county attorneys to serve out a full term, and he was also the first to be chosen by the people for more than two consecutive years.

This pattern of behavior appeared in many counties in the post-bellum period. Johnson concluded that “there seemed to be no incentive to hold onto the job for any longer period than suited the lawyer’s convenience.” But the reasons are more complex. In these times, lawyers did not yet have deep roots in their communities, and it was relatively easy to establish or reestablish a law practice and so lawyers relocated frequently. Still, even though communities were small and lawyers few, some may have viewed public office as a way to gain name recognition and build a clientele.² In any event, the reasons why lawyers during this

² There may also have been present a slight, almost imperceptible remnant of public expectations created by the Jacksonian policy of “rotation of office”—the expectation being that government workers have short tenures. A patronage system—wholesale dismissal of government workers who would be replaced by party faithful after a presidential election—was born in the administration of Andrew Jackson; it evolved (or descended) into a “spoils system” that would be replaced by

period lacked a careerist mentality—a disinterest in making a career of this type of government service—and the conditions that changed their attitudes warrant further research.³

the civil service system. In Jackson’s administration, according to historian Richard R. John:

Party leaders rationalized their patronage policy by invoking the time-honored doctrine of rotation in office, which Jackson announced in his first annual message in December 1829. Rotation in office had long been urged by political theorists as a precaution against the evils that might ensue should ambitious and grasping men monopolize the most powerful and prestigious public offices such as the presidency. The Jacksonians’ innovation was to extend the doctrine to almost every office in the government, including thousands of minor positions—such as village postmasterships—that involved little administrative discretion. Rotation superseded—and in large measure, overturned—the public trust doctrine that McLean had articulated during his tenure as postmaster general. McLean’s public trust doctrine had established the presumption that officeholders had the right to remain in office *unless* they had been guilty of a dereliction of duty. Rotation of office nullified this presumption.

Richard R. John, “The Executive Departments, the Election of 1832, and the Making of the Democratic Party,” in Meg Jacobs, William J. Novak & Julian E. Zelizer, *The Democratic Experiment: New Directions in American Political History* 50, 63-4 (Princeton: Princeton University Press, 2003)(citing sources; emphasis in original).

County attorneys in Minnesota were elected, though at times in the formative years of Brown County, for example, they were appointed by the county board. If a county attorney left office it usually was because he did not run for reelection. Despite these differences, rotation practice may have created a climate of belief or expectation that public officials, even at the county level, hold office for several terms at most.

³ To illustrate the casual attitude some took to public service, Johnson cannot resist telling the story of the hapless Alfred Wallin, who was elected county attorney in 1872.

In the jubilation attendant upon such a triumph, Wallin forgot to qualify at the usual time in January, and the county board being of the opinion that a vacancy existed and influenced perhaps by its past experiences with newcomers, gave the office to the defeated candidate, [Charles F.] Clothier.

About lawyers arriving in the county in the 1870s, Johnson writes:

Numbered among those were some of the most remarkable characters who have ever practiced in our courts; some of them brilliant as advocates, although not particularly grounded in the law; some with fine legal minds, but with none of the arts of the pleader; others, again like [John] Lind and [George] Somerville, singularly endowed with the gifts of both and without the deficiencies of either.

....

Lind and Somerville easily led the group from the standpoint of all-around ability, and it was seldom, in all their years of practice, that they were not pitted against each other in the trial of the more important cases. To see them in action was a treat which the writer of this article can never forget.

This is an almost irresistible invitation to revisit those old courtroom battles. We wonder: what were the subjects of litigation, who was the better cross-examiner, who gave the superior summation, and what were the results of the trials?

About two other lawyers, he is more cryptic:

The reception [in 1858 and 1859] accorded the newcomers, [D. S.] Griffin and [Charles] Brewster, judging from the sentiments expressed by the *New Ulm Pioneer*, was none too cordial, but they managed to eke out an existence for a couple of years and did not leave town until shortly before the Sioux uprising in 1862.

The *New Ulm Pioneer* was a German-language newspaper, which inhibits our ability to understand its bias against these two “American” lawyers, as Johnson calls them. He suggests the paper may have favored Daniel G. Shillock, a “German” lawyer.

II.

Born in St. Peter in 1870, Fred Johnson moved in 1889 to New Ulm, where he worked as a journalist and newspaper editor for the next decade. In 1899, at the age of twenty-nine he was appointed state librarian, a position now known as state law librarian, by Governor John Lind. He held that post from January 24, 1899, to January 29, 1901.⁴

To serve as state librarian, Johnson moved to St. Paul. We can surmise that when his term ended in 1901, he had opportunities to work for one of the many newspapers in St. Paul and Minneapolis. But if he paused, it was not for long; that year he returned to New Ulm and lived there without interruption until his death in 1948.

Johnson knew that he would be returning to a city where his older brother was a prominent public figure with an increasing statewide and national reputation. John A. Johnson was the outspoken editor of the *New Ulm Herald*; he was elected state senator from Brown County in 1898, but lost a bid for reelection in 1902; he was elected governor in 1904, reelected in 1906, and again in 1908. In 1908, he sought the Democratic nomination for president but lost to William Jennings Bryan. He died on September 21, 1909, after intestinal surgery.⁵

The life that Fred Johnson led after his return to New Ulm was never overshadowed by his brother's fame and political accomplishments.

⁴ *Minnesota Legislative Manual* 96 (1903). He was the twelfth person to hold this position.

That Fred Johnson's appointment by Governor John Lind was due in part to his brother, future governor John A. Johnson, is suggested by Lind's biographer: "Fred W. Johnson of New Ulm, a Silver Republican and brother of John A. Johnson, who was an intimate friend of Lind and one of the incorporators of his gubernatorial boom, was made state librarian." George M. Stephenson, *John Lind of Minnesota* 162 (Port Washington, N. Y.: Kennikat Press, 1971)(1935). Needless to say, Fred Johnson was an "ardent supporter" of Lind. Winifred G. Helmes, *John A. Johnson: The People's Governor* 93 (Minneapolis: University of Minnesota Press, 1949).

⁵ Helmes, *supra* note 4, at 305. Fred Johnson was at the Mayo Clinic when his brother died. *Id.* Curiously Fred Johnson is cited only eight times in the index to Helmes's biography of Governor Johnson. *Id.* at 317.

Outside of his family, it seems that his life was devoted to one cause—the betterment of New Ulm. For reasons that are not clear—perhaps even as a reaction to his brother’s meteoric political career—he never held or sought elected office. In fact, the only government job he ever held was that of state librarian. He was that rare visionary who saw his proposals for municipal improvement actually built.

Johnson was interested in the history of the county and region and, typically, he did something about it. He collected photographs of many New Ulm residents, tracked down and copied documents relating to the history of the region, and helped establish the county historical society. Fittingly, a framed portrait of him hangs today on the wall of the Research Library of the Brown County Historical Society in New Ulm.⁶

Fred Johnson died on August 12, 1948. The *Journal* carried his obituary:

BROWN COUNTY JOURNAL

New Ulm, Brown County, Minnesota

Thursday, August 12, 1948

City, State
Mourn Long
Time Leader

Friends May Call at
Funeral Home Friday;
Request No Flowers

Fred W. Johnson, beloved and distinguished resident of New Ulm, prominent in the growth of the community and the

⁶ It is a portrait in pencil drawn by Peter Koehler in 1938.

state, died at 9:25 a. m. today at a hospital here after an illness since July 28. He was 77 years old.

....

Fred W. Johnson, son of Gustav and Caroline Johnson, was born November 18, 1870, in St. Peter. He was a younger brother of John A. Johnson, who in 1904 became governor.

As a youth Fred worked in the office of the St. Peter Herald and came to New Ulm in May, 1889, to edit the New Ulm Review for the owners, Brandt and Weddendorf. Subsequently he became a part owner of the paper and continued in that capacity for almost a decade.

Fred W. Johnson and Miss Emma H. Seiter, daughter of Mr. and Mrs. Adolph Seiter, founders of the Dakotah hotel, were married Dec. 14, 1893, the ceremony being performed in the hotel by the veteran justice of the peace and clerk of court, Albert Blancherd. In 1899 Mr. and Mrs. Johnson moved to St. Paul, Mr. Johnson having been appointed state librarian. After two years they returned to New Ulm and became identified with the management of the Dakota hotel. Following the death of Mrs. Johnson's mother in 1906, they purchased the property and personally supervised its operation. About 22 years ago the management of the property was turned over to the two sons, Russell L. Johnson and Norman L. Johnson, and Mr. Johnson devoted his time to his various civic activities. Norman Johnson later turned over the management of the hotel to his brother, Russell Johnson.

From the earliest time Mr. Johnson devoted much of his time to various hobbies and civic activity. During his early years as a resident of New Ulm he was greatly interested in politics. Each campaign found him out on the hustings making political speeches in rural school houses and other places in the county. He was a forceful speaker for Democratic party principles until after the first World War.

Since that time although he generally voted the GOP ticket, he did not enter into active political campaigns.

He was an ardent booster for all civic activities but he never served this city as member of the council or mayor. Although mentioned many times as a suitable candidate for mayor, he refused to let his name be used in that connection. He was spoken of several times as a suitable candidate for governor.

Late in the last century and the beginning of the present, Mr. Johnson was manager of Turner theater, and for a period of about 15 years New Ulm theater-goers were given the best the nation offered in stage shows.

Some years ago Mr. Johnson became an autographed-photograph collector of famous world figures. This consuming interest was aroused when, while attending a meeting in St. Paul, he was bantered to see if he could secure the autographed photograph of a famous national political personage. He was successful and this started him off on one of the greatest roundups of autographed photograph collections in the world. He was tireless in the collection of autographed pictures of famous individuals and the collection now numbers thousands. Several years ago it was moved to the New Ulm Museum for safe keeping.

Shortly after he turned the conduct of the hotel over to his sons, Mr. Johnson was instrumental in organizing the New Ulm Park association. Fired by the beauty of parks and other areas in Madison, Wis., noted upon his many visits there, when his son, Russell, was attending the Wisconsin university, he decided that the creation of parks and their beautification in New Ulm would be an outlet for his energies. After the association was founded he set at once to transform the topography of the city in suitable parks and their beautification.

In 1930 Mr. Johnson became president of the newly organized Brown County Historical society, and this furnished another outlet for his energies. He commenced to collect historical data of Brown county and its citizens from the earliest settlement period in 1854, and today Brown county has one of the finest collections of any county in the nation. There is not an event in the annals of the county, data of which cannot be found at a moment's notice in the Museum in the Library building. Another hobby was the collection of photographs of Brown county residents, no matter in what walk of life they were found. There is no doubt but that this collection is the largest of any county in Minnesota.

Nearly 20 years ago Mr. Johnson and several other citizens promoted the New Ulm Heating company to finance the laying of heating mains in the down-town part of the city and using the exhaust steam from the municipal plant, which had for years been dissipated in the air. Within a few years the cost had been liquidated and the system was turned over to the city, debt free. This has since been greatly extended, and is one of the most efficient central heating systems in the Northwest. The pattern set by New Ulm has been adopted by a number of other municipalities in this part of the state.

Another of the pet projects of Mr. Johnson was the New Ulm Library and Museum building. It was principally through his influence that the present site was acquired from the heirs of the late Mr. and Mrs. N. Henningsten and the building was erected by the city. The cost was financed from the receipts of the of the heating fund, which had accumulated considerably from the time the city took over this public utility from the Heating company, until the Library and Museum building was built.

Even before the building was completed he had through donations acquired several thousand volumes to be placed in the library and sufficient funds to finance the purchase of shelving in both the Library and Museum. The cost of operations and the purchase of new books is financed from the heating fund and not by taxation.

Mr. Johnson spent years in gathering historical data of events from the earliest settlement period in New Ulm and Brown county down to the present time. This was a painstaking effort and required long hours of arduous work. He collected hundred of articles depicting the days of the early settlement period. Explanatory notes have been written for all of them. In a series of filing cabinets, he has mounted on cardboard the complete history of New Ulm and Brown county in all its many aspects. He had the records of the community in all the wars since the founding in 1854. Kept on loose sheets, Mr. Johnson's many-faceted history can be added to without trouble, and it is kept constantly up to date.

Brown county, Mr. Johnson reminded the seeker of information, started out with a vast area extending south and including Sioux City, Iowa, and west to the Missouri river in South Dakota. Its history is varied and cultured. Art, music, and the theater got attention from the first. Famed artist Wanda Gag was born here. She was the daughter of Anton Gag, who decorated the Holy Trinity Catholic church, Turner hall and who painted the Battle of New Ulm, which hangs in the court house. Lenore Ulric, noted actress, was born here.

III.

Philip Liesch and H. H. Walter were the editors and publishers of the *Brown County Journal* when Johnson's series appeared in 1935-1936, and it is to their credit that so much space of this newspaper was given

over to his historical articles.⁷ They may have been motivated by a slight degree of professional courtesy, for Johnson once edited another newspaper, the *New Ulm Review*.

Johnson wrote a total of twelve articles. Five are posted below; the other seven are:

November 8, 1935: “The County Officials.” (First complete compilation of officials of Brown County government).

November 15, 1935: “County Board Members.” (First installment of a description of members of the Brown County Board of Commissioners).

November 22, 1935: “County Board Members.” (Second installment).

November 29, 1935: “Congressional Representation.” (Profiles of those who represented Brown County in U. S. Congress).

December 6, 1935: “Legislative Representation.” (Profiles of all those who represented Brown County in the Minnesota Legislature).

December 13, 1935: “President and Governor Votes.” (Tabulation of votes for President of the United States and Governor of Minnesota).

January 3, 1936. “Notorious Jaques Family.” (Account of a criminal gang that operated in Brown County. At a future date this will be posted on the MLHP).

⁷ The maiden issue of the *Brown County Journal* appeared on October 15, 1898. Its last issue was published on July 29, 1937. Renamed the *New Ulm Daily Journal*, it became a daily, the first issue appearing on August 2, 1937. Its name was shortened to *New Ulm Journal* in the issue on Sunday, November 17, 1974.

The five articles that follow are complete though reformatted. Because Johnson referred to several contested judicial elections, the MLHP has noted their results in footnotes. Johnson's spelling and punctuation have not been changed. On November 29, 1935, the *Journal* carried a profile of Johnson, and it is reprinted in an Appendix. All six articles are posted with the permission of Bruce Fenske, publisher of the *New Ulm Journal*, successor to the *Brown County Journal*.

Johnson's articles may be read in conjunction with "Bench and Bar of Brown County," a chapter in the first volume of *History of Brown County, Minnesota*, published in 1916, and previously posted on the MLHP. In addition several of the lawyers and judges who appear in Johnson's articles are mentioned in histories of the "bench and bar" of other counties already posted on the MLHP. ■

BROWN COUNTY JOURNAL

New Ulm, Brown County, Minnesota

Friday, September 27, 1935

COUNTY OF BROWN — DISTRICT COURT HISTORY

(Historian Fred W. Johnson this week writes interestingly of the early District Court history in Brown County. — Editor's Note)

Under the organic act creating the Territory of Minnesota, the judicial power was vested in a supreme court, district courts, probate courts, and justices of the peace.

The Territory was divided into three judicial districts, and a District Court was to be held in each of said districts by one of the justices of the Supreme Court as such time and place as might be prescribed by law. Pending action by the Legislative Assembly, the governor of the Territory was authorized to define the limits of the judicial districts and make assignments for the justices. The judges, after their appointments, were to reside in the districts to which they might be assigned.

When Brown county was officially organized by the Legislative Assembly on February 11, 1856, it became a part of the Third judicial district, in which at that time, Associate Justice Andrew G. Chatfield was the presiding judge. Chatfield had been appointed in 1853 and his term of office expired April 23rd, 1857, several months before a term of the District Court was held in Brown County. It was in his capacity as district judge, however, that he became the trustee for the German Land Association of Minneapolis of the lands preempted by Frederick Beinhorn and Ernst Dietrich in 1856 for the purpose of the original town site of New Ulm.

Major Charles E. Flandrau, the brilliant young Traverse des Sioux lawyer, who only a year previously had been made government agent on the Sioux reservation, was named by President Buchanan as Chatfield's successor, and early in September the new justice sent notice to the Board of County Commissioners that a term of the District Court, in and for the County of Brown, would be held at New Ulm on the 22nd of the month.

The term, which was held at the appointed time, in the Friedrich Behnke building on North Minnesota street, and which was the first and only known to have been convened in the county in territorial times, lasted only two days, the grand jury being discharged the first afternoon and the petit jury the following morning. No indictments were returned, no cases were tried, and practically the only business transacted, according to the official record, was the granting of naturalization papers to Daniel L. Williams and August Hellmann. Henry Behnke acted as clerk, Frederick Rehfeld did the honors as "crier," Albert Tuttle was foreman of the grand jury, and Lewis Branson, a Mankato lawyer, officiated, by appointment, as prosecuting attorney for the period of the term. The gentlemen who had the distinction of serving as members of the first grand jury were: William Winkelmann, Albert Tuttle, John Brandt, Quirin Schaible, Louis Fay, Alois Palmer, Henry Hamann, Ernst Dietrich, John Ips, Joseph Gebhard, Fr. Roebbecke, Jacob Brust, Peyton Nichols, W. Bauer, Ferdinand Pingel, John Manderfeld, Benedict Drexler, John Graff, Joseph Dambach and F. A. Hebard.

On October 13th, 1857, the constitution which was to serve for the government of the proposed new State, was adopted by a vote of 30,055 to 571. According to the terms of this act, the State was divided, until such time as the legislature might otherwise provide otherwise provide, into six judicial districts, Brown county being assigned to the Sixth, along with Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville, and all other counties of the State not specifically included in the other districts.

Changes occurred in the district from time to time, through the addition of newly created counties and the detachment of old ones, but Brown county remained with the Sixth until 1870, when, by an act of the legislature approved March 5th, it was made part of a new district, the Ninth, composed of the counties of Brown, Nicollet, Redwood, Renville, Chippewa, Lac qui Parle, Big Stone, Meeker, Lyon, Lincoln, Monongalia and Kandiyohi.

During the time that the county was a part of the Sixth district, the judges were Lewis Branson, Horace Austin, and M. G. Hanscome. Branson served from May 24, 1858, until January 1st, 1865; Austin until October 1st, 1869, and Hanscome, who was appointed to succeed Austin, when the latter resigned to become a candidate for governor, until he was made the presiding judge of the newly created Ninth district in 1870.

The Ninth District Judges.

Judge Hanscome, who was a St. Peter lawyer, as was also Austin, took the oath of office as judge of the Ninth district on March 11th, 1870, and served until January 1st, 1877. E. St. Julien Cox, another well-known St. Peterite, was his successor in that capacity, continuing until his removal through impeachment proceedings in 1882. On April 4th of that year, H. D. Baldwin, a Redwood Falls attorney, appointed by Governor Hubbard, was sworn in as judge, but served only until the following January, when B. F. Webber of New Ulm began that long and enviable career on the bench which ended only with his resignation in 1906. Prior to the general election of that year, Judge Webber had, on account of failing health, announced his decision not to become a candidate for re-election, and Ingerval M. Olsen, then a practicing attorney at Sleepy Eye, was chosen for the six year term beginning in January, 1907. Shortly after the election, Judge Webber tendered his resignation, thus necessitating a gubernatorial appointment to fill out the unexpired term. Governor Johnson promptly appointed the newly elected judge, Mr. Olsen, and he entered upon his duties November 15th, 1906.

Re-elected in 1912, Olsen voluntarily retired at the end of his second term, giving way to Senator Frank Clague of Redwood Falls, who served, however, for only a brief spell, resigning early in 1920 in order to become a candidate for Congress. At the earnest solicitation of the lawyers of the district, Judge Olsen was persuaded at this time to accept an appointment from Gov. Burnquist to his old position, thus inaugurating, on February 1st, 1920, another long period of district judicial service which was to culminate eventually in his elevation to a place on the Supreme bench of the State.

In 1923, the district at that time being composed of the counties of Brown, Nicollet, Redwood, Lyon and Lincoln, the state legislature saw fit to lighten the steadily increasing burdens of the judicial office by the creation of an additional judgeship, and Arne B. Gislason of Minnesota, backed by the unanimous endorsement of the District Bar Association, was named by Gov. Preus without delay to fill the new position. At the next general election, held in 1924, Gislason was chosen, without opposition, for the regular six year term, but in February of the following year he found it advisable, for business reasons, to tender his resignation, Albert H. Enersen, a Lamberton lawyer whose parents were among the first settlers in Bashaw township, Brown county, being appointed by Gov. Christianson to fill the vacancy. In November of the same year, Judge Enersen was elected to succeed himself for a full term of six years and again in 1932, each time without anyone offering to oppose him.

In the meantime, the senior judge Mr. Olsen, who had been elected for a six year term in 1920, immediately following his appointment by Gov. Burnquist, and again in 1926, resigned on October 1st, 1927, to accept a call from the Supreme Court of the State to act as one of its commissioners. Former Judge Gislason, then engaged in private practice at Marshall, was immediately importuned by his colleagues throughout the district to once more assume the judicial honors, and, having given his consent, a formal recommendation was made to the governor by the District Bar Association to have him named as Olsen's successor. The appointment was made by Gov. Christianson on October 7th. In November of the following year the people endorsed the action of the bar association and the governor by unanimously electing his for the full

term beginning January 1st, 1929. In 1934, they duplicated their action of 1928.

The Brown County Clerks.

In territorial days the office of the county clerk of court was filled by appointment from the United States District Court, the Supreme Court judge assigned to a particular district appointing a district clerk, and he in turn, appointing deputies for the various counties composing the district. Henry Behnke of New Ulm was the first person to be so appointed for Brown county, the appointment having been made by District Clerk Robert A. Irwin, and approved by Justice Andrew G. Chatfield, on February 7th, 1857. At the election held in October of that year on the adoption of the Constitution, which had been prepared in anticipation of Minnesota's admission to statehood, candidates were also voted upon for all offices provided for in the said constitution. Behnke was the only candidate to enter the lists for the position of Clerk of Court and was elected by a practically unanimous vote. His successor, Henry Knieff, elected in 1861, left the county during the Indian uprising in 1862 and never returned. The vacancy thus created was temporarily filled by the appointment of August Westphal by the district judge. At the election of 1862, Julius Panse, editor and publisher of the New Ulm Pioneer, was chosen for a two-year term, but he also removed from the county after a year of service and was succeeded by Charles Roos, his deputy. Following Roos came Albert Blanchard in 1875, Capt. S. A. George in 1887, John Larson in 1895, and Carl P. Manderfeld in 1906. Thus it will be seen that there have been fewer incumbents of this responsible position than of any other office in the county, only nine in a period of almost eighty years.

The Court Reporters.

The employment of stenographic or shorthand reporters in the district courts of this State came into vogue as early as 1874. In February of that year the legislature passed an act under the terms of which the judges of the districts named in the act were authorized to appoint such reporters, whenever asked to do so by the commissioners of any of the judicial

counties within their respective districts, and to fix the per diem compensation, of such reporters within the limits prescribed by the law. The payment of the reporters' compensation, of course, was to be borne by the county receiving the service.

In the Ninth district, while presided over by Judge Hanscome, Cox and Baldwin, no advantage was taken of this act, but with Judge Webber's elevation to the bench in 1883, John J. Dobson of St. Paul was appointed official court reporter for Brown and other counties and served until January 1st, 1889. On March 25th, 1890, W. T. Eckstein of New Ulm, who had substituted during the interim in an unofficial capacity, was regularly appointed as Dobson's successor, and continued to serve, under three judges, until he was selected by the county commissioners, in January, 1920, to fill a vacancy of county attorney.

It was during Mr. Eckstein's tenure of the position that a new law was passed, making the office a district, rather than a county post, and requiring that the salary which was to be annual instead of per diem, should be apportioned among the several counties according to the actual time spent in the trial of causes in each. This was in 1899.

When Mr. Eckstein resigned to become county attorney, he was succeeded as reporter by Charles G. Murray, who served from January 1st, 1921, until March 15th, 1924. On April 1st, following Mr. Eckstein, at Judge Olsen's request, gave up his position as county attorney and returned to his old place on the staff of the district judge.

As the law enacted in 1899 provided that each district judge should have the appointment of this own reporter, the creation of an additional judgeship in the Ninth district in 1923 necessarily implied the appointment of an additional reporter. This appointment was given Judge Gislason to Walter White of Marshall, who was promptly reappointed, on the occasion of the Judge's voluntary retirement in 1926, by Gislason's successor, Judge Albert H. Enersen. In like manner, Judge Gislason, when he returned to the bench as Judge Olsen's successor in 1927, promptly reappointed Mr. Eckstein.



BROWN COUNTY JOURNAL

New Ulm, Brown County, Minnesota

Friday, October 4, 1935

COUNTY OF BROWN — DISTRICT COURT HISTORY

(Editor's Note—The following article is a continuation of the one which appeared in last week's Journal. Next week, the author will endeavor to deal, in a reminiscent way, with the development of the Brown County bar.)

No review of the county's court history would hardly be considered complete if it did not include some reference to the office of county attorney and sheriff, both of which are as much a part of the district court machinery as they are of the county government itself.

The County Attorneys.

The list of men who have held the office of legal adviser to the county is a long and peculiar one. In the early days there were few elections to the position, and, in making temporary appointment, the county board seldom made them for more than a year, and oftentimes for the court term only. Frequently, too, the board found it necessary or advisable to go outside of the county limits for talent, an ever-present difficulty presenting itself apparently in the unwillingness of anyone to stick to the job for more than a few months at a time. Branson, Cox, Freeman, Cowan and Buell were all outside attorneys. Branson and Freeman lived at Mankato, Cox and Buell at St. Peter, and Cowan at Traverse des Sioux. Cox at one time, in 1860, was picked for the office by popular vote, notwithstanding it was known by all that his legal residence was in another county.

Occasionally laymen, with no experience or training in the practice of law, were drafted for the work, but with much the same results. In fact, it was not until B. F. Webber became a candidate in 1874, that there was anything like regularity in the election of incumbents for this highly important position in the conduct of the county's affairs. Webber was the first of the elected county attorneys to serve out a full term, and he was also the first to be chosen by the people for more than two consecutive years.

Certainly it was not the salary that was at fault. On the contrary, considering the work and ability required in those early days, the remuneration was fairly attractive. Francis Brazen, a New Ulm lawyer, received \$100 per month in 1867, E. St. Julien Cox drew \$50 per month in 1870. Bassford and Clothier, in 1873 and 1874, were paid at the rate of \$500 per year, and Webber started with an annual stipend of \$550. Still there seemed to be no incentive to hold onto the job for any longer period than suited the lawyer's convenience. The roster of incumbencies, therefore, from 1857 to 1874, tells a rather unusual story.

In 1857, the year of the first term of court held in the county, Lewis Branson, afterwards judge, was appointed as a prosecuting attorney for the court term only. In 1858, Henry Kompe, editor of the New Ulm Pioneer and with no experience as a legal practitioner in this country, received the same kind of appointment from the county board. In March, 1859, D. S. Griffin, the first American lawyer to hang out his shingle in the town of New Ulm, was named by the county commissioners as legal advisor of the county for continuous service, but, for some reason or other, was discharged in June. E. St. Julien Cox of St. Peter and John A. Willard of Mankato looked after the county's interests at the general term of the court in 1860, receiving a fee of \$50 for their work, and at the general election in the fall of that year the brilliant St. Peterite was overwhelmingly chosen for a two year term over Daniel G. Shillock, a home candidate of recognized ability but by no means the "mixer" that Cox was. Cox resigned, however, in September, 1861, to accept a position elsewhere. In 1862, Thomas Cowan, a Traverse des Sioux lawyer, who had been the county's representative in the State senate in 1858, was appointed for the court term only, and succeeding

him came J. J. Thornton a new-comer in the county, who was elected in the fall of 1862 for the regular two-year term beginning in January, 1863. He, too, tired of his job and resigned in August of the first year. Friedrich Forster, a layman whose profession was that of school teaching, being appointed by the county commissioners to serve out the balance of the year, a contract which he accepted and performed for the munificent fee of \$25.

During the next three years E. P. Freeman, a Mankato lawyer, served from time to time under successive appointments, and in January, 1867, Francis Baasen was appointed for a year. This was the year that marked the beginning of the famous "Christmas murder" trials, and in May Baasen resigned in order to join the ranks of counsel for the defense. Major Salmon A. Buell, a well-known St. Peter attorney, was appointed to fill the vacancy and represented the county at the Brown county term of the District Court, which by special order of Judge Austin, was held at Redwood Falls and at which the indictments were returned against many New Ulm citizens for complicity in the lynching of the trappers Campbell and Liscom. He served only to the end of the year, William Pfaender, a New Ulm layman, having been elected in November for the regular term beginning in January, 1868. Pfaender, in turn, resigned after less than six months of service, and Buell was once more appointed to take charge of the county's legal business until January 1st, 1869.

At the general election in 1868, John M. Dormann, a comparatively new accession to the Brown County bar, was given the approval of the voters for a two-year term, but after a trial lasting over a period of almost twelve months, during which the incumbent was given every consideration, the county board found it necessary to oust him for failure to perform the duties of his office, owing chiefly, it was openly asserted, to his predilection for strong drink. Early in 1870, E. St. Julien Cox, at that time a resident of New Ulm, was once more appointed to fill the breach and did so until the election of a successor in the person of Wm. S. Bassford, another newcomer, who entered upon his duties in January, 1871. Bassford and Cox formed a bitter dislike for each other, and it was during the former's incumbency of the office that Cox was indicted by the grand jury for assault upon his enemy with intent to kill. Alfred

Wallin, a well-known St. Peter advocate who had only a short time before formed a partnership with Bassford, was employed by the county commissioners to take charge of the prosecution and his fee was fixed at \$250, provided he would prosecute the case to the limit. Cox took charge of his own defense when the case came up for trial and succeeded in securing a continuance or two, during the last of which Bassford was obliging enough to die while on a visit to his old home in New York in the summer of 1872, thus putting an end, rather unexpectedly, to all of the prosecution proceedings.

C. F. Clothier of New Ulm was appointed to fill the vacancy caused by Bassford's death, and at the election in November, he became an active candidate to succeed himself for a full term. In this contest he was opposed by Bassford's partner, Alfred Wallin, who, to the surprise of everybody, won out by a narrow margin of eight votes. In the jubilation attendant upon such a triumph, Wallin forgot to qualify at the usual time in January, and the county board being of the opinion that a vacancy existed and influenced perhaps by its past experiences with newcomers, gave the office to the defeated candidate, Clothier. Later Wallin presented his bond and offered to qualify, but the commissioners declined to recede from the positions they had taken in January. Wallin then instituted mandamus proceedings in the hearing of which E. St. Julien Cox was employed to represent the county. Nothing came of the proceeding, and Clothier continued to hold the position until the time of his death, which occurred in April, 1874. The balance of his term was filled by George Kuhlmann, a lawyer of fine ability, who had located in New Ulm in the fall of 1873. Following Kuhlmann came B. F. Webber in 1875, Francis Baasen in 1883, Geo. W. Somerville in 1885, M. C. Robertson in 1891, L. G. Davis in 1895, Albert Steinhauser in 1897, Geo. T. Olsen in 1899, Emar Hoidale in 1903, Aug. G. Erickson in 1907, Adolph Frederickson in 1913, W. T. Eckstein in 1920, and T. O. Sueissguth in 1924.

The Sheriffs.

Brown County's first sheriff was Jacob Brust. He was among those appointed by the governor at the time of the county's organization in

1856 and served until the end of the year, when he became a member of the first elected board of county commissioners, evidently preferring a job close to home to one involving police duty over a county stretching west as far as the Missouri. His successor was Henry Meyerding, a pioneer of the Chicago colony, who held the office for two terms and then gave way in 1861 to Charles Roos, who had the honor of administering the post during the perilous times of the Indian uprising in 1862. Following Roos came George Jacobs with a period of four years of service, the last week of which was made notable by the notorious moblynching affair which occurred just outside the jail walls on Christmas day, 1866. The sheriff was among those indicted by a grand jury at Redwood Falls for complicity in the unfortunate happening, but managed to escape that by absenting himself from the state for a period of years during the pendency of the court proceedings which were finally quashed as to all of the accused in 1872.

Major Fred A. Brandt, who was elected over John Spenner as Jacobs' successor in 1866, resigned in March 1868, and was superseded, through appointment of the county board, by William Gieseke, who served continuously, by virtue of repeated elections, until January 1st, 1875. The next incumbent, George Bickelhaupt of Stark Township, by resigning during his second term, created another vacancy which the board filled in 1878 by the appointment of John Manderfeld of Cottonwood. Manderfeld, after serving one full term, was defeated for reelection by Edward Casey, who held the office throughout the four years ending with 1884. Following Casey, came John B. Schmid for three terms and Louis Schmelz, who was elected in the fall of 1899. Schmelz committed suicide by drowning during the second year of his term, and the county commissioners appointed Nels Anderson of the Springfield district to succeed him. Anderson held down the job for three full terms after his appointment, relinquishing it in January, 1899, to Aug. L. Matter of Sleepy Eye, who held the reins until the end of 1902. Then it was that Wm. J. Julius, a New Ulm policeman of pioneer stock, began his record-breaking career for long-time service in the sheriff's office, which ended only with his death in 1928. On April 22nd of that year, John Reitter of Sleepy Eye, the present incumbent, was chosen by the county board out of a string of six candidates to be his successor.

During the life of the first jail, the one in German Park, the sheriffs were Meyerding and Roos, for the period when the bastille was a part of the first county office building on the Courthouse Square, they were Jacobs, Brandt and Gieseke, Bickelhaupt, Mandefeld, Casey, Schmid, Schmelz, Anderson, Matter and Julius. Only two of the fifteen incumbents, Julius and Reitter, have had the privilege of presiding over the stately and up-to-date jail building erected by the county in 1904.



BROWN COUNTY JOURNAL

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COUNTY OF BROWN — DISTRICT COURT HISTORY

Barring the “cause celebres,” of which there were not many, there is no phase of Brown county court history any more interesting than that which has to do with members of the bar, especially those of the earlier days, when natural ability and resourcefulness counted for so much, and more technical legal knowledge for so little. Numbered among those were some of the most remarkable characters who have ever practiced in our courts; some of them brilliant as advocates, although not particularly grounded in the law; some with fine legal minds, but with none of the arts of the pleader; others, again like Lind and Somerville, singularly endowed with the gifts of both and without the deficiencies of either.

First of the early ones to arrive, of course, was Francis Baasen, a young Wisconsin attorney, who came to the frontier to practice his profession even before the county was actually organized. It is doubtful if Baasen really opened an office in the very first years of his residence in Brown

county, but the mere fact that he was a lawyer gave him prestige in other directions, and as a political leader, acting as the lieutenant of veterans like Sibley and Brown, he must have cut quite a swath. Active in the preliminary steps to organize the county politically, he served for a time as one of its more important officers, and later became one of its representatives in the territorial Legislative Assembly, as well as one of the delegates to the Constitutional convention. To cap the climax, he was elected in 1857, to become Minnesota's first secretary of state. Returning to New Ulm in 1860, he immediately established himself in the law business and continued in its practice, almost uninterruptedly, for a period of nearly forty years, or until he was appointed adjutant general by his former colleague, Governor Lind, in 1899.

It was during Baasen's absence from the county, while holding the position of secretary of state in St. Paul, that New Ulm, then an organized town under a regime which regarded both priests and lawyers as taboo, had the rather unique experience of being invaded by three attorneys within the period of a single year. Two of these, D. S. Griffin and Charles Brewster, were Americans, who opened their offices in the latter part of 1858, Griffin, being the first of the two. The third was a German, Daniel G. Shillock, who came in the summer of 1859. These, with Mr. Baasen, constituted the sole members of the Brown county bar prior to the Indian war.

The reception accorded the newcomers, Griffin and Brewster, judging from the sentiments expressed by the New Ulm Pioneer, was none too cordial, but they managed to eke out an existence for a couple of years and did not leave town until shortly before the Sioux uprising in 1862. Shillock, on the other hand, grew in favor and patronage from the very start. He was an able lawyer, if not a brilliant one, and a man with high regard for conscientious service in all his undertakings. As an evidence of the high esteem in which he came to be held by his neighbors and fellow citizens, generally, it is only necessary to state that he was twice elected to the senate and once as the county's representative in the lower house of the state legislature, each time by overwhelming majorities. He served with real distinction in both positions, retiring in 1867 to enter

what he probably considered a wider sphere of usefulness, the practice of law in Minneapolis.

During the Civil war there was a period of almost three years when Shillock had the law field in the county to himself, Mr. Baasen having enlisted in 1862 in the First Minnesota for service in the South. Upon his return to New Ulm, toward the end of 1864, Baasen formed a partnership with Charles T. Clothier, a Wisconsin lawyer and a war veteran like himself, under the firm name Baasen & Clothier. This partnership continued until Senator Shillock's removal to Minneapolis in 1867, when Clothier decided to go it alone, a resolution to which he adhered until his death in 1874. Clothier rated high, for those days, both as a counselor and advocate, and had it not been for the unfortunate habit to which he was addicted, and which he was never able to overcome, he might easily have built for himself an enviable niche in the annals of the district bar. His most conspicuous work, of course, was that which he rendered as one of the principal attorneys for the defense in the cases growing out of the Campbell and Liscom lynchings in 1866.

The ten-year stretch following the retirement of Shillock, and which was practically contemporaneous, with Clothier's career, probably marks the introduction of more new faces to the Brown county bar than any similar period in the subsequent history of the organization. Included in the list of entries were, John M. Dorman, E. St. Julien Cox, W. H. Sigler, William S. Bassford, Albert Wallin, Judas Newhart, George Kuhlmann, W. F. Smith, B. F. Webber and M. E. Matthews.

Dorman came to the county from St. Peter in 1867, locating, of course, at the county-seat. Little is known of his talents as a lawyer, or of his achievements while a member of the Brown county bar, but the records do show that in 1868 he was elected as county attorney and that within less than a year the county board found it necessary to demand his resignation, the reason apparently being that he couldn't find time between drinks to attend to the more important duties of his office. Soon there afterwards, probably in the early part of 1870, he removed from the county and established himself in Beaver Falls.

Of those who came after him, the outstanding personality, by all odds, was E. St. Julien Cox. Cox, while a resident of St. Peter, had been a prominent figure in all of the early terms of the Brown county court, but it was not until 1868 that he decided to maintain an office in New Ulm and give it a great deal of his personal attention. For the greater part of the first year he was associated with Coil. Baasen, but after that, until 1871, he conducted his New Ulm business alone, his office being in the old Popp building next to the Dakota hotel. In 1876 he again opened an office at he old stand, this time in company with Charles R. Davis of St. Peter. The next year, he became the Democratic candidate for district judge, and was elected in November, over his old St. Peter and New Ulm colleague, Alfred Wallin, then a resident of Redwood Falls. In 1881, he was impeached by the House of Representatives for "crimes and misdemeanors in office," and in March, 1882, after a long and expensive trial, was found guilty of the charges by the Senate and barred from holding the office of judge or any other judicial position in the State, for a period of three years. This included, of course, the right to practice in the Minnesota courts.

In the face of a sentence like this, it would be unprofitable indeed, to think of altering the judgment which history has formed regarding this brilliant and many-sided man. Nevertheless, the writer, biased it may be, by boyhood impressions and a life-time residence among the stately St. Julien's old neighbors and friends, cannot help but to feel that the august Senate was unduly harsh in its findings and equally severe in its penalties. Crimes and misdemeanors! These are cruel words, when used in the terms of the law. Disbarment from practice in the courts of the state in which the accused was a pioneer! It would be hard to conceive of amore terrible and humiliating punishment. Did he really merit either? That there were lapses on his part from the dignity which doth hedge about the bench; that he was guilty on many occasions of conduct unbecoming a judge; that he said things in court, while under the influence of intoxicants, which he would not have thought of saying if sober, as for example, when he called a tedious and interminably slow-moving lawyer to the bench, and said, "Sam Miller, if Pontius Pilate had been as slow in the prosecution of Jesus Christ as you have been in the conduct of this case, the world would not have had the benefit of the

Christian religion today;" none of these things can be denied. But nowhere in the mass of testimony given at the Senate trial was there the slightest evidence tending to impeach his integrity as a judge, and none to show that anyone had suffered from his moral lapses, other than himself. Only recently, as good a lawyer as Geo. W. Somerville, who practiced before Cox during all the years that he was on the bench, and who was one of the witnesses used to substantiate the intoxication charges at the impeachment trial, told the writer that, in his opinion, Cox was a better judge, even when slightly under the influence, than many sober ones before whom he had tried cases in later years.

Mere removal from office, it would seem, should have sufficed as punishment for his offenses, without the added indignity of practical exile from home and former friends. It matters not that the legislature, some nine years later, voted to expunge from the legislative records all reference to the impeachment proceedings. The damage to Cox's reputation had already been planted deep in the minds of the people, and it is doubtful if he profited in the least by the legislature's belated atonement.

(To Be Continued.)



BROWN COUNTY JOURNAL

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COUNTY OF BROWN —

DISTRICT COURT HISTORY

(Editors Note—The following is a continuation of Mr. Johnson's article in last week's Journal, dealing with the members of the Brown County bar.)

In striking contrast to the career of Judge Cox was that of his old St. Peter rival, Alfred Wallin. Wallin came to New Ulm from the Nicollet county metropolis in 1871 to enter a partnership with Wm. S. Bassord, a New York lawyer who had located in the New Ulm community the previous year. He was a man of fine gifts, both mentally and of the heart, but, like Cox, and so many other brilliant men of the period, he was possessed of one great weakness, so much so in fact that his life up to this time may be set down as almost a failure. After Mr. Bassord's unexpected death in 1872, and his own election to the office of county attorney in the fall of the same year, he went all to pieces, a wreck of fine talents and brilliant prospects from which it seemed unlikely that he would ever recover. It was at this critical juncture that an old friend, Major Gould of the Winona bar, came to the rescue. Gould had never lost confidence in Wallin's power to retrace his lost ground if given proper encouragement, and taking him to his own home in 1873 he succeeded in a few months in helping the talented derelict to pull himself completely together. A little later the new Wallin established himself in Redwood Falls, where he remained, a useful and honored member of his profession, for a period of ten years. Not even the disappointment which he experienced in his defeat for the district judgeship by his old rival, E. St. Julien Cox in 1877 was sufficient to jar him loose from the resolution which had altered his habits in 1873. In 1883 he moved to Fargo, North Dakota, where, in 1889, he became a member of the new state's first supreme court. This position he held with signal distinction until his voluntary retirement in 1902.

About the same time that Wallin arrived in New Ulm there came also Judas Newhart, a young Mantorville lawyer who for two years prior to his arrival in Brown county had been associated with S. L. Pierce in St. Paul. Newhart never made much of a pretense at court practice, but in probate work and the business of loans and collections he enjoyed an unusual measure of success and confidence during a stretch of almost

thirty years. He also served the county as judge of probate for a term of two years in 1873 and 1874.

In 1872 the names of George Kuhlmann and Benjamin F. Webber were added to the list of practitioners at the county-seat, these still being the sole members of the legal profession in the entire county. There was nothing spectacular or especially brilliant about either of these newcomers, but both were good lawyers and, what is more, both were men of strict temperate habits, a thing quite new, it must be admitted to the early-day personnel of the Brown county bar.

Kuhlmann, in addition to enjoying a fine private practice, acted as legal adviser to the borough and city authorities of the county-seat during all but a few months of his residence there, and for a brief period also he held the position of county attorney. It was not until after his wife's death that he decided, in 1881, to leave New Ulm and seek a location elsewhere. He died at St. Paul in 1885.

Webber, who was a New Englander by birth, came to Brown county after a four-years' residence in the neighboring county of Blue Earth, part of which was spent in teaching and part in the practice of law. Two years after his arrival here he was elected county attorney, a position which he held until the fall of 1882, when he received the Republican nomination for the office of district judge. As illustrative of the fine ideals of the man, it is interesting to recall that in accepting this nomination, he said, "Any judicial officer, who would allow political considerations to have the slightest weight in the performance of his official duties, would be wholly unworthy of the trust. Let me assure you that, although I am the candidate of a party, if elected I shall not be the officer of a party; but it will be my constant aim to give every man his exact and equal rights according to the law."

In the ensuing election he won out over his Democratic opponent, former Judge Hanscome of St. Peter, by a vote of nearly two to one, and be it said to his everlasting credit that during the term for which he was elected, and for three terms thereafter, he never deviated from the pledge which he made when he first sought the robes and honor of judicial

office. A diligent and conscientious student, he seldom erred in his interpretation of the law, and his decisions, therefore, were rarely reversed by the higher courts. It may be, as the lawyers claim, that he was oft times brusque and irritable while sitting in the trial of a case, but who is there to say it was without provocation? My own observation, based on years of intimate acquaintance, was that, if given the opportunity, he was naturally inclined to be kindly and helpful. Taking it all in all his record was one of which any judge might well be proud.

Of the remaining members of the group, which practiced in the county during the ten-year period beginning in 1867, only one can be said to have achieved anything more than a moderate degree of success. This was M. E. Mathews. Raised on a farm in Olmstead county he studied law for a time in Rochester and then came to Brown county in 1872 to accept a position as teacher in the New Ulm public schools. During off hours, while holding this position, he continued his law studies in the office of George Kuhlmann and towards the end of 1873 was admitted to the bar. The following year he opened an office in New Ulm and maintained it until 1876, when he removed to Marshall, there to become, in the course of time, one of the ablest and most distinguished lawyers of the southwestern part of the state. A man of fine appearance and dignified bearing, coupled with unique mannerisms and exceptional habits of dress, he was a striking figure whenever he appeared in court or elsewhere.

W. F. Smith, on the other hand, was a failure. He was the first lawyer to locate in the new town of Sleepy Eye, and the success which first met his efforts, particularly as a loan and collection agent, was more than he could stand. He got to appropriating the money of his clients to his own use and even went so far as to forge their names as endorsers, to promissory notes in order to raise the wherewith to help him out of his most pressing difficulties. Finally, in 1878, he took French leave of the town and was never heard from thereafter.

With the admission of John Lind to practice in 1877 there was inaugurated an era in the history of the bar remarkable in more ways than one. Not only was it responsible for the introduction of a group of

remarkably fine lawyers, but it also marked the inception of the transition period from the old school of practice to the highly specialized system we have today, as well as the beginning of the end of the loose regulations, so long in vogue, governing admissions to the bar. Taking all things into consideration the change, undoubtedly, has been for the better. But looking back over the roster of attorneys of that particular period, with the eye of one who knew all of them intimately, it is difficult to see just wherein lies the improvement. Starting with Lind in 1877, there came in quick succession J. M. Thompson of Sleepy Eye in 1878, Geo. W. Somerville of the same town in 1879, M. C. Robertson of Springfield and Jos. A. Eckstein of New Ulm in 1881, Frank L. Randall and C. A. Hagberg of New Ulm in 1882, and L. G. Davis of Sleepy Eye in 1884, some of them abler than others, but “rattling” good lawyers in their particular lines, all of them. Lind and Somerville easily led the group from the standpoint of all-around ability, and it was seldom, in all their years of practice, that they were not pitted against each other in the trial of the more important cases. To see them in action was a treat which the writer of this article can never forget.

Randall, who was a student in the office of Lind and later his tutor’s partner, remained in New Ulm for only two years after his admission, then moving to Winona to form an association with former Congressman Tawney. Thompson concluded his splendid career at Sleepy Eye and throughout the county by removing to California in 1892, while Robertson of Springfield returned a few years later to his old home in Indiana. Lind continued to practice in New Ulm until his election as governor in 1898, and Somerville remained in active work at Sleepy Eye until his sudden decision in 1910 to spend the rest of his days in sunny California. Both Hagberg and Eckstein died in the harness, the former in 1908 and the latter, after thirty-five years of active practice, in 1915. L. G. Davis, the sole survivor of the famous group, still carries on at the old stand in Sleepy Eye, apparently as hale and hearty as ever.

With the exception of Davis and Capt. Albert Steinhauser of New Ulm, all of the lawyers who have practiced in Brown county in recent years were admitted subsequent to 1890. Steinhauser was the last of the fraternity to be admitted under the old rule permitting the district judge

to issue a certificate after an examination in open court conducted by a committee of lawyers appointed by the court.



BROWN COUNTY JOURNAL

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COUNTY OF BROWN — DISTRICT COURT HISTORY

(Editors Note—Last week's installment of Mr. Johnson's interesting review of the Brown County bar concluded with the statement that Albert Steinhauser was the last of the attorneys to be admitted under the old rule permitting of cursory examinations conducted in open court by a committee of lawyers appointed by the district judge. From this point the review continues as follows:)

Mr. Steinhauser, while still a teacher in the New Ulm public schools, began the reading of law with Judge Webber as far back as 1888. Then came the new regulation requiring that an applicant for admission must have had at least two years of actual experience in a law office, and the would-be lawyer immediately arranged to complete his studies with the firm of Lind & Hagberg. Admitted at the fall term of court in 1890, he resigned his position as teacher the following summer and soon after opened an office in his home town of New Ulm. At the outset of his legal career he found time, in 1893 and 1894, to hold the position of

county superintendent of schools, and in 1896 he was fortunate enough to be elected for a two-year term as county attorney. During the later part of this period he served as a captain in the Twelfth Minnesota in the Spanish-American war and in August, 1899, enlisted as a volunteer officer for service in the Philippines, where, in an engagement with the insurrectionists, in May, 1900, he received a very serious leg wound which kept him in the hospitals for months. Resuming his practice in 1901 he has kept at it with more or less activity from that day to this. For a decade or more newspaper work has absorbed the greater part of his energies, but he still keeps the old sign on the door, ready to accept legal business whenever it happens to come his way. With one exception he is the oldest attorney, in point of practice, now residing in the county.

In 1891, three months after Steinhauser's admission, the legislature passed a law creating a state board of examiners in law and establishing a successful examination before this board, or a diploma of the University law school, as prerequisites for admission to the bar. Incidentally, it is interesting to know that the first Brown county lawyer to receive a certificate under this law was Ingerval M. Olsen, now a distinguished member of the state's Supreme Court. Olsen, like Steinhauser, had been a student in the office of Lind & Hagberg and passed his examination in December, 1893. Immediately thereafter he established himself as a practitioner at Redwood Falls, but only for a period of a few months, the veteran Somerville having invited him into a partnership for the practice of law at Sleepy Eye. The combination proved an eminently successful one, and Olsen's reputation as a sound and capable counselor spread rapidly throughout the district. In 1906, with Judge Webber's definite announcement of retirement, he decided to enter the lists with those who were eager to become the judge's successor. In the race which followed his chief opponent was M. E. Mathews of Marshall, but Olsen won by a comfortable margin.⁸ Six years alter, when a candidate for re-election he was again opposed by the Marshall man in one of the fiercest contests ever waged in the Ninth

⁸ 1906 Election: I. M. Olsen: 5,011
M. E. Mathews: 4,078
Albert Steinhauser: 1,869

Minnesota Legislative Manual 492 (1907).

Judicial district.⁹ The result was close, so much so that a contest was instituted, the first one in the district's history, which did not end until a decision was rendered in Olsen's favor by the highest court in the state.¹⁰

Judge Olsen's career on the district bench was interrupted for a short time at the conclusion of his second term, when he voluntarily retired to go back into private practice as a partner of Alfred W. Mueller of New Ulm. The interim, however, lasted for little more than a year. His successor on the bench, Judge Clague, resigned early in 1920, and at the urgent request of the attorneys of the district, Judge Olsen consented to accept an appointment to his old position. In November of that year he was elected by a decisive majority over Albert Pfaender for a full term of six years, and in 1926 he was re-elected without opposition. In 1927 the Supreme Court appointed him as one of its commissioners, and in 1930, following the adoption of a constitutional amendment providing for the enlargement of the court, he was named by Governor Christianson as one of the new associate justices. For a six-year term in this position he was endorsed by the electors of the state in 1932, an endorsement richly merited, it is safe to say, according to all the standards by which we are wont to measure the capacities of the judiciary.

George T. Olsen, a Nicollet county product like his brother, Ingerval, came to Brown county for the purpose of practicing law the same year that his brother established himself with Somerville at Sleepy Eye. Locating at Springfield, George formed a partnership with M. C. Robertson and continued under that arrangement until the latter's removal to Indiana. In 1898 he was elected as county attorney and

⁹ 1912 Election: I. M. Olsen: 6,483
M. E. Mathews: 6,379

Minnesota Legislative Manual 514 (1913).

¹⁰ *Heilman v. Olsen*, 121 Minn. 463 (1913). Robert Heilman, a "legal voter of Lyon County," challenged Olsen's election on the ground that the Brown County auditor erred in not rotating the name of Olsen and Mathews upon the ballots. In an opinion by Commissioner Homer B. Dibell, the Supreme Court held that there was no error and affirmed the ruling of District Court Judge Qvale that Olsen's election was proper. However, in dictum, Dibell remarked, "It would have been proper to rotate the names in Brown county, indeed the auditors of the other four counties [Lyon, Redwood, Nicollet and Lincoln] in the district did rotate."

served creditably in that capacity for four years, or until the end of 1902. Three months later he removed to St. Peter to become associated as a partner with the well-known lawyer and politician, Charles R. Davis. More than thirty years have elapsed since he took up residence in St. Peter, but during all that time he has succeeded in maintaining a leading position in the ranks of the Nicollet county bar.

Another Springfield lawyer, who joined the legal profession of the county about the same time that Olsen did, was Adolph Frederickson. Starting as a farm boy in Prairieville township, Adolph received his early education in the public schools of Sleepy Eye and later took a course in the law school of the State University, from which he graduated in 1896. Immediately after his admission he located at Springfield and there practiced his profession with more than average success for almost twenty years. In 1912 he was elected as county attorney, a position which he continued to hold until the time of his death in January, 1920. It was shortly after his re-election for a third term that Mr. Frederickson, in what he deemed to be a move in the interests of his constituents, decided to change his residence from Springfield to the county-seat. Speaking of him at memorial services held in his honor several years after his death, Henry Flor, a former colleague, said, "All he did was done by him in the most sincere and honorable manner. His ethics in the practice of his profession might profitably be copied and followed by all."

The same year that brought Frederickson into the legal arena in the county introduced also Henry N. Somsen, a young man destined to hold a unique position in the bar as one of the ablest and most successful practitioners in its entire history. Somsen graduated from the University college of law as early as 1894, when he was only nineteen years of age, but he did not seek admission until two years later. Instead, he entered the office of Lind & Hagberg as clerk and stenographer, and when that firm dissolved partnership in 1896 he elected to remain with Mr. Lind. When the later was elected as governor of the state in 1898 the two formed a partnership association which lasted until the senior member decided, at the conclusion of his term as governor, to establish his permanent residence in Minneapolis. Then Somsen linked up with Einar

Hoidale, a young lawyer like himself, who, fresh from the law school, had located in New Ulm in the summer of 1898. This arrangement continued for six years, during which time Hoidale was twice elected to the office of county attorney. In January, 1907, the partnership was brought to an unexpected end, Hoidale removing to Minneapolis, there to achieve high distinction both in the law and politics; Somsen remaining at the old stand, constantly surrounding himself with able aides and gradually building up a law establishment second to none outside the very large cities.

Three remains but one other lawyer who entered the Brown county field prior to 1900, namely Albert Hauser of Sleepy Eye. Mr. Hauser's early training in the law was obtained in the office A. V. Ricke of Fairfax. There he studied for three years and was finally admitted in 1898. The next year he opened an office in the village of Morgan and remained there until 1906, when he succeeded the newly-elected Judge Olsen as a partner of Senator Somerville of Sleepy Eye, an association successful in everyway but unexpectedly terminated in 1912 by Mr. Somerville's decision to take a much-needed rest and his consequent removal to California. From that time on Mr. Hauser made his way alone, a hard-working and conscientious practitioner to the end. His death occurred in 1930.

Since the turn of the century additions to the bar of the county have been numerous, of course, but, in view of the fact that most of them are still active, and to all appearances far from the culmination of their professional careers, it would hardly seem proper, in a review of this character, to make more than a brief mention of any of them.

First on the list for the period, as far as the records show, were W. T. Eckstein and Albert Pfaender, both of whom passed the bar examinations and were admitted in June, 1900. Eckstein never engaged in actual practice except during the brief period from 1920 to 1924 when he held the office of county attorney. Pfaender, on the other hand, immediately opened an office in New Ulm and has been a leader at the bar ever since. Associated with him at various times during his long career have been Albert D. Flor and George D. Erickson of New Ulm in

1901 and 1902; Edward J. Fernholz and Aug. G. Erickson of Springfield; Alvin Berg of Sleepy Eye, and F. A. Alexander who came to the county from Kasson in 1904 and conducted an office at the county-seat for two or three years. Fernholz graduated from the University law college in 1902 and immediately thereafter formed a partnership with Geo. T. Olsen. When the latter removed to St. Peter, he joined up for a year with Aug. G. Erickson, after which, until his death in 1932, he practiced alone. Mr. Berg was admitted in 1903 and first practiced at Wabasso. Since 1912 he has been associated with L. G. Davis in his old home town. Mr. Erickson began his legal career after a successful bar examination in 1904. For three terms, from 1907 to 1912, he held the office of county attorney, but soon acquired a newspaper in Springfield which took up a great deal of his time and naturally interfered with his legal work. In 1921 he removed to St. Cloud, where he remained for three years in an unsuccessful effort to practice law and conduct a magazine at one and the same time. Returning to Springfield in 1924 he abandoned the legal profession entirely and has since been engaged, perhaps more to his liking and it may be more lucratively, as one of the publishers of the Springfield Advance-Press.

The next five years brought in a new aspirant for business and honors almost every year. In 1907 Henry Flor, a native New Ulmite came back to his home town, after an absence of three or more years in the study of law in St. Paul, and entered a partnership with the veteran attorney, Jos. A. Eckstein. This partnership lasted just a year, when Flor decided to return to St. Paul to form a similar arrangement with his former employer, A. E. Boyeson, his place in the Eckstein office being filled in May, 1908, by Gilbert W. Funk, a young St. Paul practitioner, who remained here several years. In 1919 Flor once more returned to New Ulm, this time to join the firm of Somsen & Dempsey. This firm had been established early in 1910, a few months after Wm. H. Dempsey, a recent graduate of the Minnesota law college, had come to New Ulm from his home in Wisconsin to take the place of J. C. Lewis, a lawyer who had been employed to assist Mr. Somsen during the interim following the removal of Mr. Hoidale to Minneapolis. Flor remained with the firm until 1934, while Dempsey still carries on. Both have come

to be recognized as outstanding figures in the bar circles of the district and elsewhere throughout the state.

In the fifteen-year period following 1910 we find such new names added to the rolls as Alfred W. Mueller, Albert D. Flor, Geo. D. Erickson, Alexander Seifert, Burton French, Albert G. Loomis, T. O. Streissguth, Jos. A. Morrison and Linus C. Glotzbach.

Mueller was admitted in 1911 and started his Brown county career as a member of the firm of Somsen, Dermpsey & Mueller in 1912. Later he was associated with Judge Olsen in 1919 and 1920; with T. O. Streissguth from 1921 to 1923; and finally with Geo. D. Erickson from 1923 to 1932. He died in August of the latter year.

Albert D. Flor also dates his admission from 1911. For the first year he was employed in the office of Albert Pfaender, but in 1912 the two formed a partnership which lasted until 1916. Since then Mr. Flor has practiced alone.

George D. Erickson, a Nicollet county product, came to New Ulm in 1914, shortly after his graduation from the law school of the University of Wisconsin. Following his admission to the bar of this state he became identified as a business associate, first with Albert Steinhauser, and a year later with Albert Pfaender, Burton French succeeding him for a year as the partner of Mr. Steinhauser. In 1923 he formed an association with Alfred W. Mueller which lasted until early in 1932. Then he became a member of the new firm of Erickson & Graff.

In December, 1916, Alexander Seifert, a former New Ulmite, decided to open an office in Springfield, prompted no doubt by the decision of Adolph Frederickson to change his residence to New Ulm. Albert G. Loomis, another Brown county boy, followed suit in 1917, and these two, with B. W. Frank, who located there in 1933, constitute the bar of Springfield at the present time.

T. O. Streissguth, a Gaylord lawyer, followed Judge Olsen as an associate of Alfred W. Mueller in 1921, and two years later opened an

office of his own. Since 1924 he has also held the office of county attorney. Associated with him from 1927 until September of this year was his brother-in-law, John Fordyce of Butternut, Wisconsin.

Linus Glotzbach who is the junior member of the firm Pfaender & Glotzbach, is a graduate of the law department of the University of Notre Dame. After passing the Minnesota bar examination in 1923 he came to New Ulm and entered the employ of the firm of Pfaender & Erickson, and a few months later, after the dissolution of the firm, he became Mr. Erickson's successor.

In New Ulm the more recent additions to the bar personnel have been Victor P. Reim, John W. Graff, Russell L. Johnson, Henry N. Somsen, Jr., and James H. Gislason. Reim graduated from the University law school in 1927 and was admitted the same year. Early in 1928 he took up work with the firm of Somsen, Dempsey & Flor and continued as their assistant until the formation by Henry Flor and himself of a new law firm in 1934. Graff, prior to his admission, attended the law schools of both Minnesota and Wisconsin. Upon receiving his certificate from the State Board of Law Examiners in December, 1930, he immediately opened an office in New Ulm and two months later formed a partnership with Geo. D. Erickson, Russell Johnson and Henry Somsen, Jr., simultaneously became members of the firm of Somsen & Dempsey in April, 1935, the new organization being known as Somsen, Dempsey, Johnson & Somsen. Johnson graduated from the Wisconsin law school in 1919, while his younger colleague completed the law courses at the University school of this state as recently as 1934. James H. Gislason hails from Minnesota and is a nephew of the present district judge. He entered the office of T. O. Streissguth, as a prospective associate, in September, 1935.

In Sleepy Eye there have been four attorneys who have established themselves since 1930. Thomas Hodgson came in 1930 and remained until 1932. E. A. Hauser, a son of the former well-known lawyer, opened an office in April, 1931, and is still practicing. L. J. Kilbride had his shingle out for a little more than a year in 1932 and 1933, the empty niche being filled by R. F. Mack in the early part of the present year.

Some day, we hope, more complete histories may be written of many of them.



APPENDIX

BROWN COUNTY JOURNAL

New Ulm, Brown County, Minnesota
Friday, November 29, 1935

*Fred W. Johnson Recognized
As An Outstanding Historian*

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Unstintingly Devotes Time and Effort to Gathering and Catalog-
ing Inestimably Valuable Collections of Material.

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At the risk of being roundly reprimanded (for we are fully aware of his modesty), and yet firmly believing in the axiom, "Roses for the Living," we will attempt to tell our readers, this week, something about the work of our esteemed fellow-townsmen, Fred W. Johnson, as president and historian of the Brown County Historical society.

Before going into this subject, however, it is not amiss to refer briefly to Mr. Johnson's most commendable activity, in connection with the beautification of New Ulm, its parks, playgrounds, and other public places.

This activity covered a period of years, and the result of his untiring, masterfully-directed efforts is a beautiful, lasting memorial to his public-spiritedness.

As president of the Historical society, Mr. Johnson has accomplished—and, for that matter, is still accomplishing—a herculean feat, probably unequaled in any county of the state: the gathering and systematic cataloging of an inestimably valuable collection of historical material, consisting of old public documents, photographs, letters and newspaper clippings, for posterity.

No one, who has not seen the result of Mr. Johnson's work, can contemplate its real value. The collection includes thousands of items, all carefully mounted, identified, and filed away in a systematic manner that makes them easily accessible. All material on a given subject is assembled, in chronological sequence, for ready reference, providing a reliable source for the seeker of historical information.

It required countless hours of tedious work to thus catalog the available historical material, to say nothing of the sacrifice of time, effort, and private funds, on the part of Mr. Johnson, in gathering the data. Many trips to St. Paul and elsewhere were made, to secure authentic information on numerous subjects vital to the success of his commendable undertaking.

Not satisfied with rumors and vague stories, Brown county's outstanding historian traced them down to the root, if possible, and he has established the fallacy of many popular accounts of early historic occurrences, by means of official documents and dependable data on the pioneer days in this section. Many photographs, believed non-existent, are included in the fine collection.

Except for the satisfaction of having done, and doing, worthwhile work for his fellow-citizens, and for the recognition, which this very creditable work has brought him, Mr. Johnson has received no compensation. The task, self-assigned, was undertaken, without thought of monetary gain or

remuneration; rather as a service to posterity, which few, if any, other residents of Brown county would be capable of rendering.

Not only for Brown county has Mr. Johnson's work been of incalculable value. For, so interminably is its history interwoven with that of its neighbors (especially since Brown county originally embraced a vast section comprising present parts of southwestern Minnesota, southeastern South Dakota, and northwestern Iowa), that much of the data gathered by the tireless historian, is also of interest to those political divisions, which formerly were a part of Brown county.

This is evidenced by the fact that many of Mr. Johnson's splendid articles on Brown county history, appearing serially in the Journal, are read with great interest by our subscribers, not only in this county, but throughout this section. The virulent style, in which the material is presented, accounts for much of this interest, as the writer has the knack of preparing the historical material in a manner that catches and holds the reader's attention, from beginning to end.

Because of the fact that most of the historical material, which Mr. Johnson has gathered and cataloged, could not be replaced, were it destroyed, he has been an indefatigable champion of the Public Library and Historical Museum project here, for which he has done infinitely more than any other individual. The beautiful building now in course of construction, will provide a safe place to store and display the large collection of historical material, assembled by him. ■

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Posted MLHP: January 2009.