"CITATIONS"

BY

CHARLES CUDWORTH WILLSON

FOREWORD

BY

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In its December 1894, issue, *The Minnesota Law Journal* carried a letter to the editor suggesting—nay, pleading—that lawyers change their way of identifying the parties in their pleadings and learn to cite cases and statutes properly in their briefs. The letter was from Charles C. Willson, the official reporter of the *Minnesota Reports*.

Willson's letter reveals the haphazard drafting habits of many lawyers at the end of the nineteenth century. They had no uniform system of citing cases, textbooks, treatises and statutes. It seems that many took an "any port in a storm" approach to brief writing—that is, if an authority looked helpful, cite it, someway.

At the time of statehood, trial memoranda did not exist and appellate briefs were handwritten.[1] In the mid-1890s, Willson resorted to correspondence to

[1] In his posthumously published memoir, Loren Collins, who served on the Minnesota Supreme Court from 1887 to 1904, described one of his duties during his year as an apprentice in the offices of Seagrave, Smith & Crosby of Hastings:

> In the fall of 1860 my school money was gone, but I had in the meantime earned enough to live on by doing odd jobs of writing for people in Hastings. In those days the records and briefs for the supreme court were written, not printed, and there had to be three copies for the judges, one for the respondent's counsel, one for the clerk and one for the appellant's counsel. It thus became necessary to make six copies, all written out by hand. My first experience in this line was in the case of North & Carll vs. Lowell, subsequently reported in Volume IV of the Minnesota Reports,

a local law journal to beseech the bar to reform its "loose" brief writing habits. By the end of the next century, every aspect of a brief, from the color of its cover, the size of its type, width of its margins, and number of its words, to the exact place of a section listing citations, was the subject of a rule adopted by court decree. Regrettably, the story of the transformation of the appellate brief from a few pages of handwritten arguments to a highly stylized booklet constructed according to an official blueprint is yet to be written.[2]

Charles C. Willson influenced the development of law in this state but is forgotten today. In 1912, the Minnesota Historical Society printed the following biographical sketch of him:

> WILLSON, CHARLES CUDWORTH, Lawyer, b. in Mansfield, N. Y., Oct. 27, 1829; was admitted to the bar in 1851; first came to Minnesota in 1856; settled at Rochester in 1858, where he has since practiced law, and has also engaged in farming; was reporter of the Minnesota Supreme Court, 1892-5, editing volumes 48-59 of its Reports. [3]

Willson's letter appeared on pages 299-301 of the December, 1894, issue of *The Minnesota Law Journal*. Though reformatted, it is complete. His spelling, emphasis and punctuation are not changed. The title, "Citations," has been added by the MLHP. ■

> page 32. It was very tedious work, but by hard work I finished it in almost four weeks, and received $35 as my compensation. It was easier money than teaching school for $15 a month.

Loren Warren Collins, *The Story of a Minnesotan* 36-37 (n.p. 1913). Attentive readers will note that Justice Collins's cite of his first case—"North & Carll vs. Lowell, subsequently reported in Volume IV of the Minnesota Reports, page 32."—falls a bit short of the citation style preferred by Charles Willson.

[2] For a rare article on this subject, concentrating on the United States Supreme Court and courts in Massachusetts and New York, see R. Kirkland Cozine, "The Emergence of Written Appellate Briefs in the Nineteenth-Century United States," 38 *Am. J. of Legal Hist*. 482 (1994). The author is a lawyer at Dorsey & Whitney in Minneapolis.

[3] Warren Upham & Rose Barteau Dunlap eds., 14 *Minnesota Historical Society Collections: Minnesota Biographies: 1655-1912* 865 (St. Paul: Minnesota Historical Society, 1912).

EDITOR Minnesota Law Journal:

Sir: The given names of parties to an action should be written out in full in the pleadings. The Supreme Court has repeatedly said that the record should disclose the full names of the parties to the action, and that the practice of designating them by initials should not be countenanced. *Knox v. Starks*, 4 Minn. 20. That case was entitled *R. H. Knox et al v. J.A. Starks et al*. The Court said:

"In entitling this case we are compelled to adopt the above inartificial and mutilated form, as there is not a paper in the cause, from the summons to the judgment, that discloses the real names of the parties. We make this statement that it may not be supposed when this opinion becomes a public record, that such a gross disregard of legal accuracy originated in this Court, and for the purpose of announcing that we are not willing any longer, even indirectly, to incur the charge of having sanctioned it by tacitly passing it over."

In *Gardner v. McClure*, 6 Minn. 250, the plaintiff sued by his initial letters and did not disclose his full name. The Court said it was bad practice, and might vitiate a judgment as against a purchaser of land upon which it would otherwise be a lien. If a judgment be taken against a man by his initial letters only, very serious questions might arise as to whether subsequent purchasers would be bound to know that the judgment was against the land of the vendor.

In *Kenyon v. Semon*, 43 Minn. 180, the Court said that the practice of designating the parties, either plaintiff or defendant, by the initials of their Christian names is irregular, and has been more than once disapproved by this Court. The remedy in such a case is, by motion, to require the complaint to be amended or corrected in this respect, and costs should be imposed.

Chief Justice Shaw speaks of this matter in *Sistermans v. Field*, 9 Grey 331,

and the English authorities are cited in the brief for the defendant in that case.

To avoid this loose practice, the editor of the Minnesota Reports is frequently compelled to spend much time searching through the printed record in the hope of finding the given name of one or more of the parties to the action. Sometimes his search is in vain, and the blemish appears in the volume of the reports.

Lawyers sometimes in their briefs cite cases from American Decisions or American Reports, or Lawyers Reports Annotated, or from a collection of railway or corporation cases, or from the reporters instead of citing from the official reports. This occasions much inconvenience. If lawyers in their briefs cite a case by its proper title in the state reports, it can be readily found in these reprints and rivals, as all of them take excellent care, by tables of cases and bluebooks, to enable the reader to find the case in their rival publications. It is not the practice in any reputable State or Federal Court to refer to the cases cited in any other way than from the official state reports. The value of a decision as authority in a subsequent case depends much upon a careful statement of the facts out of which the decision rose and upon the contention of counsel for the parties as exhibited in the briefs. These are given in the official reports. A careful and accurate lawyer uniformly examines these statements and briefs before citing a case in his argument. If all lawyers would observe this rule, they would save those who have to peruse their briefs much needless delay and vexation. No judge in any reputable court in the United States cites cases mentioned in his opinion from any but the official report, if it is accessible. The labor of hunting out the proper citation of his authorities should not and will not be shirked by the careful practitioner.

In citing cases, lawyers should be careful to give the correct names of the parties to the case cited. If the name of the plaintiff is inaccurately given, the case cannot be found in the tables of cases in the textbooks, digests or subsequent reports. I beg to illustrate by an instance. In *Appleby v. St. Paul City Ry. Co.*, 55 N. W. Rep. 1118. The cases are cited thus: *Railway Co. v. Fix*, 88 Ind., 381; *Railroad Co. v. Riley*, (Miss.) 9 South Rep. 443; *Railroad Co. v. Griffin*, 68 Ill., 499. A lawyer employed in a similar case of expulsion of a passenger from a street car would desire to see these cases; and what the text books had to say of them, and to see whether they had been overruled, questioned or modified by later authority. But as the correct name of the

plaintiff is not given in either of these four cases, he could not find either of them in any table of cases cited, overruled modified or in the tables of cases given in text books. When counsel neglect to give the name accurately of the case they cite, the judge who writes the decision in their case may not have the time and patience to hunt it up and cite it correctly, and the labor of doing it falls to the reporter, as in the instance of *Appleby v. St. Paul City Ry. Co.*, 54 Minn. 171. A table of cases cited is an important feature of any well-edited law book, but none can be made where cases are cited in this careless manner.

It is also desirable to have a uniform method of citing statutes. This method should indicate the edition referred to, as well as the chapter and section. Since Minnesota was first organized as a territory there have been two revisions of the general statutes and two compilations, which have won recognition in the courts and in legal literature, viz: the revision of 1851 and 1866, and the compilations of 1858 and 1878. As an example of an inartificial and cumbersome method of citation, the following may be given, viz: "*Subdivision 2 of Section 6, chap. 41 of Gen. Stat. of' 1878*.'' The better method of citation is as follows: "*1878 G. S. ch. 41, § 6, subd. 2*." Unless some such method be adopted and adhered to, it will be difficult, after another twenty-five years has passed, to find the statutes referred to and construed in the decisions.

It is now nearly thirty years since the General Statutes of this State were revised. Innumerable amendments have been made by the Legislature within that time, many of them verbose, inartificial and of doubtful signification when construed in connection with the statute amended. The courts are overcrowded with work settling rights under these discordant provisions. The mass has become a network to trip the unwary. A new revision of the laws cannot be long delayed. Scarcely a State in the Union has suffered her statute law to run so many years without a revision. No abler hand for this work could have been found than that of the Late Chief Justice. But alas, that hand has wrought its last.

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