

REMINISCENCES OF THE EARLY HISTORY OF OTTER TAIL COUNTY

BY

EBEN E. CORLISS

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INTRODUCTION

BY

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EBENEZER EZEKIAL CORLISS was admitted to the bar in the spring of 1870, and arrived in Otter Tail City in July, eager to hang a shingle: “E. E. Corliss, Attorney and Counsellor at Law.” But there he found only a trading post, a saw-mill, and a “number of Indian wigwams.” His potential clientele numbered about a half dozen, excluding the “numerous children” of “two old Scotsmen.” Though Otter Tail City was the county seat, he later recalled, there “was not a sign of a court house, [and] not a county official lived here.” He would rectify matters.

Forty-six years later, Corliss wrote "Reminiscences of the Early History of Otter Tail County" for a two volume county history published in 1916. The editor of the history was John W. Mason, a fellow lawyer, who set up shop in Fergus Falls in 1871.¹ The publication of local histories such as this were financed by "subscribers" whose biographical sketches were included in the printed volumes. The subscribers themselves usually wrote or assisted in the preparation of the sketches. The first volume of Mason's history contained chapters on various aspects of the county history while the second contained subscribers' profiles. Corliss' "Reminiscences" appeared in the first, the following profile in the second:

EBEN E. CORLISS.

Pioneer citizens of Otter Tail county who are now living remember very well Eben E. Corliss, who is also a pioneer of this section, now living in St. Paul, where he has been custodian of the capitol building since 1911.

Eben E. Corliss was born on September 1, 1841, and is a native of Washington county, Vermont. He is the son of Timothy B. and Elvira (Hutchins) Corliss, both of whom were natives of New Hampshire. The father was a farmer and a lumberman and moved to Winona county, Minnesota, in 1856, settling in Saratoga township, where he pre-empted one hundred and sixty acres of land. He improved his farm and remained there until after the close of the Civil War. Timothy E. and Elvira Corliss were the parents of eight children. The mother died in Saratoga township, Winona county, December 6, 1860.

Eben E. Corliss remained at home in his native state, receiving his education in the common schools. His early training was received while still living with his

¹ See "John W. Mason, 1846-1927" (MLHP, 2012).

parents upon the old home farm. At the breaking out of the Civil War, he enlisted in Company K, First Regiment, Minnesota Volunteer Infantry, and, after a period, enlisted in Company A, Second Regiment, Minnesota Volunteer Infantry, serving for three years. Mr. Corliss passed through a very trying period of service. He was wounded in the battle of Chickamauga, being struck by a bullet in the back of the head and, for two months, was confined in the hospital, known as No. 5, at Nashville, Tennessee. On May 26, 1864, he was discharged from the service and in April, 1865, enlisted in Company A, Ninth Regiment, United States Veteran Volunteers, serving as sergeant until the close of the war. Mr. Corliss was in a great many severe engagements. Among them may be named the following: Mill Springs, Kentucky; Pittsburg Landing, Siege of Corinth, Perryville, Chickamauga and others of lesser importance. He was, for a time, with Sherman before Atlanta and, for forty days, was engaged in weary marching toward that city, being under fire the greater part of the time. After returning from the war, he settled in Saratoga township, Winona county, Minnesota, where he remained on the farm for one year. From Saratoga township, he moved to Chatfield, Fillmore county, Minnesota, where he studied law with Judge Ripley. In 1870 he was admitted to the bar.

After coming to Otter Tail county Eben E. Corliss settled at Battle Lake, Minnesota, where he built the first frame house in the county. Its dimensions were sixteen by twenty feet, with twelve foot posts. He settled on three hundred and twenty acres of land, one-half of which was preempted and the other half homesteaded. He continued on the farm, improving it until 1874, at which time he moved to Fergus Falls and opened a law office, engaging actively in the practice of his profession. Mr. Corliss's property interests in the city of Fergus Falls consist of several houses, much business property besides his fine residence with all

modern improvements situated on Lincoln avenue. He also has a summer residence at Clitherall lake.

Mr. Corliss has held many offices of trust and responsibility within the gift of the people of Otter Tail county. He was elected county attorney in 1870 and held that office during the greater part of the time until 1884, serving ten years in all. For one year he served as a member of the lower house of the state Legislature in 1872. He was a member of the state capitol commission. He has also served as deputy register of deeds, as deputy treasure of Otter Tail county and as superintendent of the county schools, filling out the unexpired term occasioned by his brother's death. The brother, William M. Corliss, was the first superintendent of schools in Otter Tail County.

In 1864 Eben E. Corliss was married to Elizabeth Tucker, the daughter of John Tucker of Saratoga township, Winona county, Minnesota. Six children were born to them, as follows: Charles W., who is an attorney at law, who was married in 1887 to Alice Stanton, of Fergus Falls; John H. a graduated of Rush Medical College and now a resident of Sumner, Washington; Florence, Jennie, Mary and Roy J.

In politics, Mr. Corliss defends the principles propounded by the Republican party. He has attained considerable prominence in the councils of the Republican party and is one of the leaders of the party in Otter Tail county. He was one of the organizers of the Citizens Bank. Fraternally, he is a member of the Masonic lodge, the Grand Army of the Republic, and Independent Order of Odd Fellows.²

² John W. Mason, II *History of Otter Tail County, Minnesota* 198-200 (B. F. Bowen & Co., 1916)

Corliss was proctored by Christopher G. Ripley, who later served as Chief Justice of the Minnesota Supreme Court from 1870 to 1874, when he resigned.³

Though he practiced for decades, Corliss barely mentions his law practice in his “Reminiscences.” He appears not to have built as lucrative a practice as Mason, who was a trial and appellate lawyer for the Great Northern Railroad for twenty-seven years. In contrast, Corliss was the county attorney for much of the 1870s and early 1880s. Yet he impressed Mason:

Mr. Corliss held the office of county attorney for a good many terms. I think it stands to his record that he secured more convictions after actual trial than any other man who served for a like length of time in the county. He was a most vigorous prosecutor, always partisan and imbued with the spirit of justice in the cause he represented, and declared that he never prosecuted an innocent man or defended a guilty one. Those who know him best believe that he states what he thinks to be true. ⁴

Corliss reports that he and five other lawyers appeared at the first term of the district court in November 1871—thirteen years after the county was formed. Fifty-five years later, Mason listed twenty-two current members of the bar.⁵

He describes a “ludicrous” preliminary hearing before Justice of the Peace Jesse Burdock, in which he and Mason acted as co-counsel for John Campbell, who was charged with domestic assault. Corliss recalled, “Mr. Mason, as usual, put up a strong fight for the defendant. He would raise one strong point after another, and, after setting forth the arguments in favor of each

³ “Christopher G. Ripley” in *Testimony: Remembering Minnesota’s Supreme Court Justices* 80-82 (Minnesota Supreme Court Historical Society, 2008).

⁴ John W. Mason, I *History of Otter Tail County, Minnesota* 605 (B. F. Bowen & Co., 1916).

⁵ Mason, “The Otter Tail County Bar,” *supra* note 4, at 351-2 (It is posted separately on the MLHP). Corliss was on Mason’s list though by 1916 he had relocated to St. Paul to assume the position of Capitol Custodian. Mason lists himself though he retired about 1916. John O. Barke is listed twice. There seem to have been about twenty active lawyers.

point, his honor, the justice, went out behind the barn and engaged in prayer. Each time on resuming his judicial chair he decided the point in favor of the state.” This may not have been unusual. In most criminal cases, then and now, evidentiary rulings favor the prosecution or, put another way, most objections by the defense to exclude evidence or limit testimony are denied. Moreover, if Burdick, who lacked legal training, prayed, it was for strength and guidance rather than divine revelation.⁶

He also describes the success of a grist-mill built and run by James G. Craigie, who drowned with two others (including Corliss’ client) in a boating accident on Otter Tail Lake. His death precipitated a court battle over his estate between his brother and Annie McArthur, who claimed to be Craigie’s daughter, “begotten” in Scotland, and later legitimized by the marriage of her parents. Juries returned verdicts in favor of McArthur but Corliss is not persuaded (“I feel sure that not one of these twenty-four men for a moment believed that she was.”). Like countless other heirs, McArthur let her inheritance go to ruin. Corliss concludes his account of the Craigie saga:

[T]oday there is not left a single actor in the Craigie mill drama (even the mill itself has totally disappeared) to tell its history except myself, and I only do it in order to preserve the true history of the case for future generations.

John Mason must have laughed when he read this line. In his own “Reminiscences,” which appeared a few dozen pages after Corliss’, Mason provided a lengthy account of the proceedings, quoted trial exhibits, and noted that the state supreme court had affirmed the award to McArthur, a detail Corliss omits.⁷ It is safe to assume

⁶ The story borders on apocrypha as there are other strikingly similar tales about justice court. See for, example, Marion D. Shutter’s story about an unnamed justice in Minneapolis who decided a case only after retiring to a corn field where he tossed a “chip” in “Bench and Bar of Minneapolis,” a chapter from his *History of Minneapolis: Gateway to the Northwest* (1923), posted separately on the MLHP.

⁷ For Mason’s account of the drama, which he titles “A Romance and a Tragedy,” see *supra* note 4, at 606-609 (it is included his “The Otter Tail County Bar” (MLHP, 2012)). The full text of the Minnesota Supreme Court’s ruling in *McArthur v. Craigie*, 22 Minn. 351 (1876), is posted in the Appendix to Mason’s article.

that Corliss and Mason argued about the Craigie saga for many hours over many years.

The county was formed by the legislature on March 18, 1858, but when Corliss arrived in July 1870, county government did not exist. He was elected the first county attorney that fall, and with other newly-elected officials, began the work of establishing such basic institutions as townships, school districts, and other county offices. He writes:

In fact, all county, town and school officers were without precedents or any books or forms to guide them and nearly all were serving their first term as such officials; so that the county attorney was very near to all of them and had more or less to do in guiding and advising them. Few of today can realize the amount of detail this involved.

His insider's description of "starting in motion the machinery of the county [government]" is the most important part of his memoir. He writes that in the early 1870s, "four-fifths of the minutes of each [board] meeting cover just two subject—roads and schools." Yet, as they struggled to address these pressing, mundane problems, they also faced a serious challenge to the very existence of the county itself. In early 1871, the legislature proposed to divide the county, detach parts to form a new county, and move the county seat from Otter Tail City to Tordenskjold. This proposition failed in the fall election, at which Corliss was elected to the state House of Representatives.

The actions of the Fourteenth Legislature, which convened in January 1872, proved critical for the county and, unexpectedly, for Corliss himself. The coming of the railroads compounded the "momentous" issues of whether the county should remain intact and whether the county seat should be removed from the "pretentious village of Otter Tail City," as Corliss called it. The Northern Pacific had already bypassed Otter Tail City, and the St. Paul & Pacific had recently secured a federal waiver permitting it to build its lines through Fergus Falls, again bypassing Otter Tail City. Corliss and many of his constituents saw that the county

seat must be located where there was a railroad terminal. To avoid dividing the county while moving the county seat, Corliss and his allies came up with ingenious solutions: the legislature would authorize the residents of Otter Tail County to vote on whether to enlarge their county by annexing a section of land (Range 44) from contiguous Wilkin County and attaching it to theirs, and to move the county seat to Fergus Falls (If enlarged, Fergus Falls would then be nearer the county's geographic center, the natural site for the seat of government). Sponsored by Corliss, the legislation passed on February 28, 1872,⁸ and the changes

⁸ The act (1872 Laws, c. 87, at p. 158) changing the county lines provided:

SECTION 1. Townships 131, 132, 133, 134, 135, and 136, in range 44 west, are hereby detached from the county of Wilkins (sic) and the same are hereby attached to and made a part of Otter Tail county as hereinafter provided.

SEC. 2. At the time of giving notice of the next general election it shall be the duty of the officers in Otter Tail county whose duties are to give notice of general elections to give notice in like manner that at said election a vote will be taken upon the question as to whether this law shall take effect.

At said election the voters, in said county in favor of the adoption of this law shall have distinctly written or printed or partly written and partly printed upon their ballots, "for change of county lines," and those opposed to the provision of this act, "against the change of county lines." The votes upon said question shall be canvassed in the same manner and returned to the same officer by the judges of election, as votes "for county officers.

SEC. 3. The county officer to whom the returns are made shall canvass the votes upon said question in the same manner and at the same time as votes for county officers, and shall forthwith certify the result of such canvass to the governor, who, if it appear that a majority of the legal voters in said county have voted in favor of said law, shall make proclamation thereof as he may deem advisable..

SEC. 4. All acts and parts of acts inconsistent with this [act] are hereby repealed.

SEC. 5. Section one of this act shall take effect and be in force from and after the ratification thereof as aforesaid, and the other sections shall take effect and be in force from and after its [their] passage.

Approved February 28, 1872.

The act (1872 Sp. Laws, c. 83, at p. 411) relocating the county seat provided:

SECTION 1. The county seat of Otter Tail County is hereby removed from Otter Tail City, to the Village of Fergus Falls in said county, and the same is hereby located upon section three (3) township one hundred and thirty-two (132,) range forty-three, (43,) [as]

were ratified in the November election. The measures had such lasting significance that forty-five years later the *Fergus Falls Daily Journal* headlined Corliss' obituary with references to them.⁹ They were, however, highly divisive, rendering him *persona non grata* in much of the county, especially Otter Tail City. In 1874, to pursue his profession—though perhaps for personal reasons as well—he relocated from his farm on Lake Clitherall to Fergus Falls, where he reestablished his law practice. Like many memoirists, Corliss is nostalgic, yet he saw the necessity of change, which brought him to challenge later generations:

hereinafter provided.

SEC. 2. At the time of giving notice of the general election, it shall be the duty of the officers in said county, required by law, to give notice in like manner, that at said election the question will be submitted to the electors of said country, as to whether this law shall be adopted.

SEC. 3. At said election, the electors of said county in favor of the adoption of this law, shall have distinctly written or printed, or partly written and partly printed on their ballots, "For removal of the county seat." Those opposed to such adoption, the words: "Against the removal of county seat." Such votes shall be received and canvassed at the same time, in the same manner, and returned to the same officers by the judges of election as votes for county officers.

SEC. 4. The county canvassing board of said county to whom the returns of election are made, shall canvass the returns upon said question in the same manner and at the same time as returns for county officers, and the abstracts thereof shall be made out on one sheet, and signed and certified in the same manner as in the case of abstract votes for said officers, and shall be deposited in the county auditor's office immediately thereafter and a copy thereof duly certified by the said auditor, forwarded by him to the secretary of state, and the governor shall thereupon forthwith, if this law is adopted, make proclamation to that effect in such manner as he shall deem advisable, and within sixty (60) days thereafter all the officers who are required by law to hold their offices at the county seat of said county shall, remove to and hold their office at said Village of Fergus Falls.

SEC. 5. All acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 6. Section one of this act shall take effect and be in force from and after the ratification hereof as aforesaid, and the other sections of this act shall take effect and be in force from and after its passage.

Approved February 28, 1872.

⁹ See obituary, at page 37 below.

It is for you who follow in our footsteps to so conduct yourselves and the affairs of the county that old Otter Tail, the greatest of Minnesota's counties, will continue to be the best place in the world.

One exemplary rule of conduct was to tolerate religious and ethnic differences. "The early pioneers of the county comprised nearly a score of tongues," he recalled, "but they went to work in peace and harmony to till the soil and establish homes in this paradise of the state. No one questioned them as to their nativity." Here, Corliss almost expresses a foreboding of the intolerance, persecution and curtailment of civil liberties that would sweep the state during the world war.

Corliss concludes his memoir with a tribute to Edmund A. Everts, who compiled a remarkable war record. Enlisting in the union army in 1861, Everts fought in more than twenty battles, marched under General Sherman through Georgia to the sea, and then headed north through the Carolinas and Virginia to Washington, D. C. He was at Appomattox and was discharged in July 1865, at age twenty-four. He never suffered a scratch, unlike Corliss who was severely wounded by a bullet to the back of the head during the battle of Chickamauga in September 1863. It may be assumed that these veterans spent many hours over many years sharing memories of the war.¹⁰

In 1911, at age seventy, Corliss was appointed capitol custodian, and he relocated to St. Paul. The capitol custodian administered or headed of the Department of Public Property.¹¹ He held this

¹⁰ Corliss' concluding sketch of Edmund Everts does not fit into his narrative of the county's early days. He states several times that he was writing "Reminiscences" forty-six years after his arrival—that is, he was revising it about 1916. See pages 12 & 21 below. After Everts died on March 9, 1915, he must have been moved to quickly compose this tribute and add it to the manuscript just before publication of the county history the next year.

¹¹ It was a sizeable department. In 1915, it had a staff of 58 while an additional 9 worked at the "Old Capitol." 1915 *Blue Book* at 333-4. (legislative manuals in this era not only listed the names and positions of each employee but also their legal residence ("postoffice" and county) and state or nation where they were born.).

position when he died on Saturday, July 21, 1917.¹² The following Tuesday, the *Fergus Falls Daily Journal* carried a lengthy tribute to him. It reprinted extended excerpts from his “Reminiscences.” □



Ebenezer Ezekial Corliss
(ca. 1889)

* * *

¹² *Fergus Falls Daily Journal*, July 21, 1917, at 5 (“A telegram to the Journal from St. Paul announces the death of Hon. E. E. Corliss, state capitol custodian, which occurred there at noon today, Saturday, after a two weeks’ illness. Mr. Corliss was one of the first citizens of Otter Tail county and was very prominent in county affairs for years.”).

REMINISCENCES OF THE EARLY HISTORY OF OTTER TAIL COUNTY

By E. E. Corliss

Some of my friends and the publishers of this volume have urged me to contribute to it an article on the early history of the county. It gives me great pleasure to comply with their request, although with misgivings as to the general value of the story I shall tell. I may fail to instruct or even interest my readers, but one feature of the article may redeem it—I shall take pains to make every statement true. As to much of the history narrated, I may well say in the words of Caesar: "All of this I saw, and a great part of which I was;" at least, I shall strive to present only the facts as I saw them and can now recall them. Further than this the deponet sayeth not.

Having been admitted to the bar of the district court of Fillmore county, Minnesota, in the spring term of 1870, I was anxious to try my chances in some new county. I wanted to grow up with the county and be a part and parcel of it,—but the question was, where should I locate? I had heard flattering reports of what nature had done for Otter Tail county and I finally decided that I would cast my lot with that county. Accordingly, I packed my few belongings into my "prairie schooner," hitched my two faithful horses to it, and, with my wife, three small children and a young girl, Rosa Wallace, who was then living with us, climbed into the wagon and started for our new home. I had not the slightest idea where I would locate, once I reached the county, although I had dimly planned to hang out my shingle in Otter Tail City. Our wagon was to be our day coach as well as our sleeper, our diner as well as our observation car—and such it was for the two weeks which it took to make the trip from Chatfield, Fillmore county, to St. Olaf in Otter Tail county.

I cannot digress to tell of the journey. Each day found us nearer to the promised land and, as the weather was very delightful, we thoroughly enjoyed the trip. On the evening of July 3, 1870, we

finally arrived at the home of my brother-in-law, William H. Beardsley, who had located in the county the previous year. I might say in passing that a great majority of the early settlers of Otter Tail county came here in similar conveyances, although a majority of them drove oxen.

The following day, the Fourth of July, we drove over the Leaf mountains, through Eagle Lake township to the place of my brother, William M. Corliss, who had located on the west of the Clitherall settlement. We arrived just in time to participate in the festivities of the day. My brother had a log house, standing in a clump of beautiful white oak trees. We stayed here for several weeks, sleeping in our covered wagon box the meantime, while I was out prospecting, getting located and building a house.

On the 5th of July my brother and I drove to Otter Tail City, a distance of sixteen miles, for it was in that "city" I intended to erect a tablet or sign "E. E. Corliss, Attorney and Counsellor at Law." I had dreamed that I should add fame to that romantic city, which Gen. John Pope had visited in September, 1849, and left such a beautiful tribute to the fertility and grandeur of this section of the state among the records of the war department at Washington, D. C. . . . General Pope got his view of the territory surrounding Otter Tail lake from his canoe, but had he seen it as I did, from my wagon on the top of Leaf mountain, his description would have been even more flattering to the country. As I am writing this forty-six years after my first view of the lake my mind pictures still the impression it then made on me. Truly, Otter Tail lake is the center of the park region of Minnesota; its placid waters, its tree-girt shores, its banks, level here and precipitous there, render it one of the most beautiful bodies of water to be found anywhere. This region of the state, with its innumerable clear lakes, fringed with the noble oak and other trees; its prairies, covered with the beautiful little prairie rose; its hills, in some instances approaching the dignity of mountains, rising here and there against the blue sky; all this comes back to me as I recall that 5th of July, 1870, when I first beheld Otter Tail City nestling on the shores of Otter Tail lake. Amidst all this fascinating scenery I almost forgot about my law office in Otter Tail City.

And how did Otter Tail City look to me on that day in July, 1870? As we drove down the streets of the “city,” my efforts were directed toward making a survey of the general prosperity of the place, its inhabitants, and the advisability of hanging out the insignia of my profession. Briefly stated, this is what I saw: C. H. Peake, who was running an Indian trading post, was the only merchant. There were two old Scotchmen, Donald McDonald and James McDougall, both of whom had Indian wives and numerous children. Both of these Scotchmen had settled here very early, and as far as I know, were the only settlers in the county in 1870 who had lived here prior to 1862. If there was another to return after 1862, it was John Bishop, who probably lived in Otter Tail City in 1860. It is certain that he was living on a farm between Balmoral and Otter Tail City in 1870 and even several years after that. In addition to the three men with their families above mentioned, there was R. L. Frazee, who had just put up a steam saw-mill. His head sawyer was Byron Lent, and there were also two other men working in the mill. With the exception of the saw-mill and a number of Indian wigwams, Otter Tail City looked just as it did in 1858 when Marble sketched it. . . . With these people whom I have just enumerated for my clients, my dreams of retainers faded. Here was a county seat town and not a sign of a court house, not a county official lived here, and this was the place about which I had dreamed. A wise man has said that dreams are made of strange things, and I am sure that on that never-to-be-forgotten day, of July, 1870, I could most heartily have given utterance to this aphorism.

Beautiful scenery is all right to look at and it is what has drawn thousands of people to this county, but my family demanded something more substantial—it satisfied the eye but not the stomach. It was not sufficiently sustaining to make it a daily article of diet. It was evident to me that legal profession was not going to be very lucrative for sometime to come. Fortunately, I had taken a lot of lessons before the Civil War in farming in Winona county, Minnesota. Naturally, with circumstances such as I found them, my mind turned from the legal to the agricultural profession, and the next day I proceeded to file a preemption claim on a quarter section of land, (northeast quarter ten, one

hundred and thirty-two, forty) two miles west of the Clitherall settlement and went to farming. I broke twenty acres of ground, but did not put out my first crop until 1871. I built the first frame house in the county from lumber sawed in Frazee's mill in Otter Tail City, albeit I had to sell my horses and wagon to indulge in this extravagance. I built a log stable, dug a well, filled my cellar with rutabagas which I pulled on the shares and bought half of my brother's potatoes in the field.

One day in October I took the oxen, went to the field and dug and picked up twenty bushels of potatoes. I loaded my potatoes, hitched up my oxen and started for the house, tired and thirsty. I stopped at the house of my brother on the way home to get a drink of water. When I came out all I could see of my potatoes was the hind wheels of the wagon going over a steep bank of thirty feet. The next instant found me traveling at a rapid pace down the road in the general direction of the potatoes; I might live throughout the winter without the oxen and the wagon, but the potatoes I must have. When I reached the bank of the lake and looked down into its cooling depths, there was my wagon upside down, my potatoes in the water, and my oxen peacefully drinking in the lake. There was only one thing to do. I righted the wagon, patiently picked every potato out of the waters hitched up my oxen and went on my way rejoicing. I think my wife was rather pleased with the near catastrophe—the potatoes were all well washed.

Clitherall was the first settlement in the county after the Indian trouble of 1862. It was settled in 1865 by about twenty families of Latter Day Saints, or Mormons, as they are usually called. These people were all members of the original Joseph Smith church. After the murder of Smith by a mob at Nauvoo, Illinois, some of the original Mormons refused Brigham Young's leadership and his advocacy of polygamy. Those who rejected the polygamous doctrine of Young separated from him and chose as their leader one Cutler, and after his death, Chauncey Whiting. These leaders, in the eyes of their followers at least, had all the singular powers of St. Peter himself. These people were very zealous in their belief, and thought they were the only church in the world with

divine authority in all ecclesiastical matters. Most of them were Americans, and all of them were honest, law-abiding people, good neighbors and patriotic citizens, firmly believing that the Mormon Bible and the Christian Bible were both inspired.

The Mormons claimed to have been directed to Clitherall by a dream which one of their elders had of a land between two lakes, with an abundance of prairie and timber, and convenient bands of Indians whom they were to convert to the Mormon faith, and thus civilize and save them from their paganism. Accordingly, a small band of these good people made the long overland trip through Illinois and Minnesota to Otter Tail county. They brought with them their cattle, sheep, horses and all kinds of tools. The men were nearly all farmers, although there were a number of skilled artisans among them. Edward Fletcher was a good blacksmith; Marcus Shaw was a stone mason and plasterer; Chauncey Whiting, their priest and prophet, was a fine mechanic and could make all kinds of furniture, but gave most of his attention to wagon making; "Uncle Al" Whiting was a chair maker; "Uncle Vet" Whiting was the storekeeper, postmaster and a famous hunter.

By 1870, when I first came to the county, there were about fifteen men with their families in this settlement. Their names as I recall them were as follow: Mr. and Mrs. Chauncey Whiting, Lewis Whiting and Sylvester Whiting—a year or two later another brother, Almon Whiting, his wife and children joined them; Hiram and Lyman Murdock; John, Albert and Edward Fletcher, three brothers and their families, all large families with children grown to manhood and womanhood and some of them married; Isaac, the oldest son of Chauncey Whiting, Warren Whiting, Rueben Oaks, Sr., and James Oaks, his son; Marcus Shaw, Jeremiah Anderson, Jesse Burdock, and a full-blooded New York Indian by the name of Dana, with his white wife; Thomas Mason and a Mrs. Mason, widow, and her daughter; Charles Taylor and the two McIntire brothers, Joseph and Sylvester.

I always understood that there were twenty-five families, but I cannot make out but about sixteen married couples and four bachelors, making twenty households besides the children. Then

there were a few families belonging to the church, which, as I recall it, came up to Clitherall with those just enumerated and later settled at Detroit. The settlers in Otter Tail county took up as homesteads about all the land between Clitherall and Battle lake. Much of this land taken by them lay in a strip about one mile in width; that is, they took a strip four forties wide from the north shore of Clitherall lake to the south shore of Battle lake. They opened up a road along the north shore of Clitherall lake and built their houses, barns, etc., along this road, so that the whole settlement was in a compact group. They erected a log church with a secret chamber in which they worshipped for more than fifty years. In recent years they have erected a fine little church and razed the old building which had served them so many years. In the early seventies the community a sort of commune, or, as they called it, "The Oneness." All property was to be turned into the church. All grain and provisions were to be placed in the church granary and issued to members by the storekeeper. When they adopted this rule the members of the community, although not wealthy, were very prosperous; but under the new system all or nearly all they had laid up was soon exhausted and little or no property was left in the store or in the hands of the members. So they broke up the "Oneness" and returned to their original, mode of life and were soon again prosperous.

The community, as a Mormon church, has scattered. Many have joined the Joseph Smith, Jr., branch; others have left the church or moved away. Now there remains only a small number of the faithful who are struggling to maintain the Cutlerite branch of the church, and keep the divine authority at Old Clitherall. These faithful old settlers had built beautiful homes on this tract of land. Old Clitherall, like Otter Tail City, once the commercial, political and religious center of the county, is today beautiful only in death.

I cannot dismiss this historical settlement without mentioning one ludicrous incident. John W. Mason and I tried a criminal case before Jesse Burdock, a local justice of the peace in the Clitherall community. The case was the State of Minnesota vs. John Campbell. Campbell was arrested on complaint of his wife, charged with assault with intent to kill. I remember Mr. Mason, as

usual, put up a strong fight for the defendant. He would raise one strong point after another, and, after setting forth the arguments in favor of each point, his honor, the justice, went out behind the barn and engaged in prayer. Each time on resuming his judicial chair he decided the point in favor of the state. Campbell was bound over, and the court allowed him to go north to get bond. He went to Canada and was never again seen in the county.

During the summer of 1871 James McNaughton and a boy held up and robbed the stage running between Alexandria and Otter Tail City, at that time driven by one Pattin. The holdup occurred about two miles west of Craigie's mill between Otter Tail lake and the Everts prairie. This stage line was owned by the Minnesota Stage Company and carried the United States mail, passengers and express. The robbers ordered the driver to throw off the express box, an iron box, which he promptly did. There was only one passenger on the stage and during the excitement incident to the throwing off of the express he escaped and started in the direction of Clitherall as fast as he could go. The robbers took the express box, forced it open and took all of the money—about thirty dollars. The stage driver, on being allowed to resume his journey, lost no time in getting to Otter Tail City to tell the news of his robbery. It was not long before all the settlers far and near had heard of the holdup. A posse was formed near Battle Lake and when they saw the passenger trying to escape they seized him as the robber, and, so I was told, they actually had a rope around his neck before he, in his double fright, could explain himself. I at once sent word in every direction and notified the authorities at Alexandria of the robbery. I sent out a sheriff with a warrant to Alexandria as we were pretty certain they went that way. Before he reached there the sheriff of Douglas county had arrested both of the robbers, but Mr. Randolph, their county attorney, refused to give them up to our sheriff. The Douglas county attorney arraigned and committed them to jail pending the October term of court, claiming that Otter Tail county was still attached to Douglas or something of that kind. As Otter Tail county had no jail, and there was none nearer than St. Cloud, I made no further efforts to obtain custody of the robbers. The boy later escaped, but McNaughton was too badly shot at the time of his arrest to

make an escape. Douglas county finally sent McNaughton to St. Cloud, in Stearns county, for safe keeping and later that county turned in a bill of two hundred dollars to Douglas county for boarding the said McNaughton. Knute Nelson, Douglas county's next attorney, by direction of the county board, sued Otter Tail county for this board bill. Judge McKelvey sustained my demurrer to their complaint.

I must tell a little incident connected with this robbery case. I saw our district judge and he assured me that he would order McNaughton turned over to the sheriff of Otter Tail county whenever I sent for him. I sent for McNaughton just before our November term of court. It happened that I was getting ready for winter by plastering my house. I had Marcus Shaw, the county treasurer, doing the plastering, and I was his office boy. In other words, it was my duty to mix the "mort" and carry it up to Shaw. I had on my second best clothes and they, including my hat and shoes, were as well covered, plastered I should say, with lime as a novice could get them. While I was thus attired the general manager of the Minnesota Stage Company drove up to my place in a top buggy and inquired for Mr. Corliss. I informed him that I was the man in question. "But," said he, "I want to see the county attorney." I, while admitting I was not dressed with dignity becoming to that office, was nevertheless and notwithstanding the county attorney of Otter Tail county. He vouchsafed me one more glance and, with his nose and heels in the air, turned and left me without further inquiry.¹³

¹³ John W. Mason, who must have heard this story many times from Corliss, elaborated on this scene in a section of his "Reminiscences" he titles "The Stage Robber":

After a few days the real highwayman was captured. By this time excitement had abated sufficiently to permit the law to take its course. The officials of the stage company were naturally anxious to secure the conviction of the prisoner. So, along in the fall, some time before court set, they sent an agent to Otter Tail City, then the county seat, to interview the county attorney in relation to the coming trial. E. E. Corliss was then the incumbent of that office, the first position which Mr. Corliss held in the county, although by no means the last.

At Otter Tail City the agent of the stage company was informed that the

The first and only general term of the district court for Otter Tail county was held in Otter Tail City in November, 1871, with Hon. James M. McKelvey, district judge presiding. The members of the bar present, besides myself as the county attorney, included Hon. John W. Mason and Newton H. Chittenden, of Fergus Falls; Judge R. Reynolds and W. F. Ball, of Otter Tail City, and J. W. Mower, of Alexandria; William M. Corliss was clerk of the court and W. H. Beardsley was sheriff. I shall never forget the ministerial appearance of Mr. Chittenden as he appeared in his Prince Albert coat, his dignified poise, with a large navy revolver strapped about his waist and a set of long Mexican spurs on his boots. He surely attracted the attention of the whole court. At this time there were only a few small civil cases, most of them being appeals from justice of the peace courts. There were two or three minor criminal cases. James McNaughton was indicted for robbery, tried and convicted. Judge Reynolds defended him. I have forgotten how long he was in prison, but he died there before his term was up. The indictment of McNaughton was the first returned in Otter Tail county. At the time of this court Otter Tail City was by far the largest settlement in the county.

CRAIGIE'S MILL.

James G. Craigie, his wife, and Annie Faulkner, daughter of Mrs. Craigie and step-daughter of Mr. Craigie, came to the United States

county attorney was out at his farm near Clitherall. So, he turned about and started for the shades of that peaceful retreat on the shores of the lake, long afterwards famous as the location of "Camp Corliss." The county attorney in those days was industrious and on this occasion was busy attending the mason who was plastering his house. The express agent drove up to the place and inquired of a tall, red-headed man in shirt sleeves and bare feet, if he knew where he, the agent, could find Mr. Corliss. "Yes," said this individual, "I'm Corliss." "What," cried the agent, "are you county attorney of this county." "Well, I should smile," said Corliss. "What do you want?" "Well, I did want to convict that robber," said the agent, "but I think we might as well let him go." Mr. Corliss closed one eye, investigated the agent with the other and said: "My friend, you just have your witnesses there, and I'll do the rest." When the case was tried and the prisoner convicted, you may be sure that the agent changed his opinion of the prosecuting attorney of Otter Tail county.

Mason, *supra* note 4, at 604-5.

from Aberdeen, Scotland, and settled on the east shore of Otter Tail lake in 1868 or 1869. He built a grist-mill on the outlet of Crane, Clitherall, East Battle, West Battle, Blanche, Minnie and Battle lakes. He put his dam across the outlet a few rods from the shore of Otter Tail lake. He was not able to get much waterfall, but in those days there was a good flow of water, ample to run a two- or three-stone flour and feed grist-mill.

This mill was completed in the fall of 1870 and settlers came from a radius of twenty or thirty miles with grists. This was the first grist-mill north of Alexandria. It was much needed and in a very short time was overrun with grists, becoming a fortunate investment for its owner. Soon Mr. Craigie was out of debt and had money to make further improvements.

Craigie wrote a letter to some magazine in Aberdeen, praising this new country and advising his friends to come here. John Cromb saw this letter and wrote Craigie. Finally Cromb, and a woman, whom he claimed to be his wife, came to Craigie's mill (now known as Balmoral). They stopped with the Craigies for about a year and then moved to Detroit in Becker county.

In the summer of 1872 Cromb's lawful wife came from Scotland. She claimed that Cromb had left her in Scotland and that he and the woman he represented as wife had come to America together. She wrote to me about Cromb and I advised her to come here and sue for a divorce. I met her at Craigie's on Tuesday. We had arranged to go to Detroit on Friday of the same to commence proceedings.

Before Friday came, however, she, Craigie and his wife, went out sailing in a small boat on Otter Tail lake. The boat, being weighted heavily with stones for ballast, swamped and sank to the bottom in about ten feet of water.

Craigie had no children. His reputed daughter, Anna Faulkner, ran away from her mother and married a half-breed Indian named Archie McArthur. He testified in court, at Otter Tail City, a few weeks before the drowning, in a suit she brought against James G.

Craigie, that she was not Craigie's daughter. But after his death she claimed to be his daughter and heir, and two juries in Otter Tail county said by their verdicts that she was. I feel sure that not one of these twenty-four men for a moment believed that she was. She won this mill and all of Craigie's property as a result of the suit being decided in her favor. She and her husband let the mill run down until it became worthless and it was finally shut down and later sold. After losing all their property wrongfully given her by the jury, McArthur and his wife went on to the Indian reservation at White Earth. She soon died and later, I understand, McArthur died. Cromb moved to Crookston and became receiver of the land office, and was prominent in the business and political circles. He and his wife also died and today there is not left a single actor in the Craigie mill drama (even the mill itself has totally disappeared) to tell its history except myself, and I only do it in order to preserve the true history of the case for future generations.

At the annual meeting of the old settlers' association of Otter Tail county held in Battle Lake in July, 1910, I read a paper recalling some of the important events in our early history. I cannot do better than give the substance of this article, bringing it down to date, to conclude my contribution to this volume.

I came to the county July 3, 1870, and in the fall of the same year was elected county attorney. I had a good deal to do with all the early history of the county, especially the legal part of the organization of townships and school districts and the establishing of roads. In fact, all county, town and school officers were without precedents or any books or forms to guide them and nearly all were serving their first term as such officials; so that the county attorney was very near to all of them and had more or less to do in guiding and advising them. Few of today can realize the amount of detail this involved. When I look back over the history of this county for the last forty-six years and note its progress and what it is now with its present system of records in all the offices, county, town and school, I cannot but admire the great progress which has been made all along the line. While they were doubtless many irregularities in the books and records of

these early officers, I am glad to say there were very few criminal acts committed by them.

ORGANIZATION OF THE COUNTY.

The first act of the Legislature of 1858, which was the first Legislature under the state after its admission, was the act establishing Otter Tail City as the county seat, which was approved March 18, 1858. By chapter 94, of the Special Laws of 1870, the Legislature attempted to locate the county seat on the southwest quarter, section 32 (at Hoff's Mills) in the township of Tordenskjold, without submitting the question to the voters, however. By chapter 85, of the Special Laws of 1871, the act of 1870, establishing the county seat at Tordenskjold, was repealed, as the act itself explains that this act was unconstitutional in not submitting the question to the voters of the county.

I was never able to learn who got this act through, removing, or attempting to remove the county seat from Otter Tail City to Tordenskjold. Otter Tail county was then (1870) in a legislative district represented by H. C. Wait, of St. Cloud, in the Senate; and by Isaac Thorson, of Pope county, and John L. Wilson, of St. Cloud, in the House. Tordenskjold as a county seat had a short life; the county commissioners did, however, hold one meeting there in January, 1871. It was here I qualified as the first county attorney, the other county officers having all been elected in 1869; viz., Ole Jorgens, county auditor; M. Shaw, county treasurer; J. H. Saunders, register of deeds; William M. Corliss, clerk of court. They also appointed a county superintendent of schools. The county commissioners were Martin Fiedler, of Marion Lake; Aleck Johnson, of St. Olaf, and Hans Juelson, of Sverdrup.

ATTEMPTED ORGANIZATION OF HOLCOMB COUNTY.

The Legislature of 1871, by chapter 99 of the General Laws, approved March 6, 1871, provided for the establishment of Holcomb county, by taking in range 44 of Wilkin county, or what was popularly known as a part of that county, and ranges 41, 42 and 43 of Otter Tail county. The name was given in honor of Hon. William Holcomb, of Stillwater, who was the first lieutenant-

governor of the state, "Father of the Normal School system," etc., and who had died in the fall of 1870. The act provided that the question of establishing this county was to be submitted to the voters of Wilkin and Otter Tail counties at the general election to be held in November, 1871, which was done.

This question of a division of Otter Tail county brought on a warm contest in Otter Tail county, and was defeated here by a good majority, but Wilkin county, which had no organization, nor any right to vote upon the question, as was subsequently decided by the supreme court (66 Minn., p. 32, in the range 44 case),¹⁴ had some election precincts established and they gave a large majority (as compared with the vote on other questions) for the formation of Holcomb county. Especially was this true in the precincts including Norwegian Grove, Trondhjem and Oscar as now organized. Nearly every settler in these precincts favored the formation of Holcomb county. The act for the organization of the new county provided that a majority of the voters in each county could vote for the proposition in order to effect its adoption. Wilkin county gave the required majority, but Otter Tail did not, and so the proposition failed. The act providing for the organization of this county established its county seat at Fergus Falls. I went with others into the precincts above named to oppose this formation, and we were told by nearly everyone we saw that it was in every way more convenient for them to come to Fergus Falls to do their county business than to go to Breckenridge; that in fact they would be obliged to go by the way of Fergus Falls to get to Breckenridge as they were unable to cross the big slough west of the settlement. Relying upon these statements made to me, and upon the vote of these people to come to Fergus Falls as their county seat, I felt that it was safe to attach this range to Otter Tail county the next year so far as they were concerned.

ACQUISITION OF RANGE 44.

In the fall of 1871 I was elected to the Legislature, and then the guessing began. The Northern Pacific railroad, which was

¹⁴ *State v. Honerud*, 66 Minn. 32, 68 N.W. 323 (1896)(Start, C. J.). The full text is posted in the Appendix, pages 44-52 below.

supposed to go via Otter Tail City, had been built via Niganoma, the first station north of Rush Lake, which was a little east of where Perham now is situated, where the best and only hotel was a large tent in which we slept with forty below zero weather during the winter of 1872. The St. Vincent branch of the St. Paul & Pacific railroad whose grant apparently compelled the building of its line via Otter Tail lake, had secured a ruling by the secretary of the interior that the company could build its railroad via Fergus Falls, and still comply with the provisions of the land grant. The railroad company changed its route from Otter Tail City to the present line by way of Fergus Falls. So Otter Tail City was left out as a railroad possibility. It was claimed at the time that the Northern Pacific would have gone into Otter Tail City but that the owner, one Thomas Cathcart, of Crow Wing, would not give the company any part of the land.

When I went to St. Paul to take my seat in the Legislature, in January 1872, the conditions were these: There was a small settlement at Parkers Prairie; also one around Rush Lake; and quite a pretentious village at Otter Tail City, the county seat, which seemed to have no chance of railroad. The principal settlements at that time were in and around Clitherall, Eagle Lake, Maine, Tordenskjold, St. Olaf, Tumuli, Dane Prairie, Aurdal, Buse and Fergus Falls town and village. In the Pelican valley then were Elizabeth, Erhards Grove and Pelican Rapids. The majority of the settlers were in the middle and southern part of the county. Wilkin county had voted to add range 44 to Holcomb county. Otter Tail county had voted against the proposition to divide itself and attach three ranges to make the proposed Holcomb county, with Fergus Falls as its county seat.

No one could even then claim that we could hold the county seat at Otter Tail City without a railroad; no one thought at the time that we could prevent a division of the county. In fact, Otter Tail City men advised me to introduce a bill to divide the county and give Fergus Falls the county seat of the west half; but this did not solve the question about Otter Tail City as the county seat of the east half; nor was there a clear way to determine what we could do about a county seat there. It must either be Otter Tail City,

Niganoma, Parkers Prairie, or perhaps at Clitherall, which by the way, had the largest settlement at that time.

In 1872 there were very few settlers north of the Northern Pacific railroad or east of Otter Tail City. I had not up to this time located in any village, but was still living on my homestead on Lake Clitherall, waiting to see where the new county seat was going to be located. I must confess that I was feeling sad to see the chances of Otter Tail City gradually but none the less surely fading. I was hardly on speaking terms with the people at Fergus Falls, as I had opposed the formation of Holcomb county at the last election. Thus matters stood when I went to St. Paul in January, 1872, to attend to my duties as a legislator. After getting there I felt that the responsibility of deciding the momentous question was too much for me, so I concluded to return home and have a conference with my friends who had fought against the formation of Holcomb county.

I got all the leaders in that fight together and candidly laid the whole situation before them and asked them their advice as how to proceed— whether it was best or not to agree to a division of the county. I was very much opposed to a division at that time, owing to conditions in the eastern half of the county. Clitherall, the largest settlement, was in the extreme western part of the east half and also far to the south; Parkers Prairie was a flourishing village, but it, too, was badly located for a county seat; Perham in the north half, offered the same objections. There seemed to be but one alternative if division were to be avoided—to move the county seat to Fergus Falls and at the same time attach range 44 to the county. My friends and I agreed that this was the most feasible plan, and I went back to St. Paul with my mind made up as to just how to proceed. ¹⁵

¹⁵ Ole Jorgens, another pioneer, had a slightly different recollection of these events:

During this unsettled state of affairs, I approached E. E. Corliss with my enlarging plan, the central idea of which was the removal of the county seat from Otter Tail City to Fergus Falls. A person has to know Mr. Corliss and his strong personal character in order to comprehend how he flayed me for my audacity in proposing so wicked a scheme to him, and especially in view of the fact that all of his property was on the

It might be well right here to give a little history of Wilkin county, as the plan finally adopted had so much to do with that county. The first Legislature after Minnesota became a state divided all

eastern side of the Leaf mountains. We did not discuss the plan much this; we parted in a serious mood. I suggested reflection on his part. The next time we met we painfully discussed the situation, but we agreed on only point—the county should not be divided.

The question was, where should the county seat be located? It was very patent that it was going to be taken away from Otter Tail City, if not by the Legislature of 1872, at least within the next few years. At the beginning of the session of 1872 it was known that the Northern Pacific, could live up to its charter by going through Fergus Falls instead of Otter Tail City, and the county seat without a railroad did not have much chance of existence. Meanwhile the citizens of the county were discussing in the summer and fall of 1871 a new location for the county seat. Clitherall was mentioned, Battle Lake had its followers, a few property holders at Otter Tail City loudly asserted that it should remain in their village, but it seemed to be the general consensus of the people of the county that Fergus Fall was the most eligible size. It had the best water facilities and it seemed to have the best prospects for a railroad of any of the suggested sites. I was convinced that it was by far the only place for the county seat. With this idea in mind I went to my friend Corliss and laid the proposition before him. We discussed the matter long and seriously and finally he yielded to my view sadly and reluctantly; not only to the proposition of moving county seat from Otter Tail City to Fergus Falls, but also the addition range 44 to the county. It seemed to me, and I convinced him, of the soundness of my reasoning, that this double plan of action was the most feasible and at the same time the most advisable thing to be done.

As for my own efforts in favor of Fergus Falls, I have no apology offer—call it selfishness if you like. When the time came for final action in the Legislature of 1872, my friend Corliss, as representative from this county in the lower House of the Legislature, succeeded in getting all the necessary legislation passed to add range 44 and make Fergus Falls county seat. Both acts were, passed on the same day (February 28, 1872) and they were both later ratified by the citizens of Otter Tail county.

Thus ends the story of the struggle which Otter Tail county went through to get its present boundary limits and the permanent location of its county seat. I played my part as my best judgment directed me and I trust that future generations will credit me with using my best endeavor for the welfare of the best county in the state of Minnesota.

Ole Jorgens, "Reminiscences of Otter Tail County" in Mason, *supra* note 4, at 536, 542-3.

the hitherto unorganized portions of the state into counties, section 223, of chapter 1, of the General Statutes of 1858, established Toombs county and defined its boundary as "Beginning at the junction of the Bois de Sioux river with the Red river of the North (which would be at Breckenridge), thence down the Red river of the North fifteen miles (this would be near McCauleyville), thence east to the Pelican river (which would be through the township of Erhards Grove), thence down the Pelican river to where it intersects the Red river of the North, thence due south to the Chippewa river (this is an impossible line, as it would never strike that river), thence in a direct line to the mouth of late Traverse, and thence down the main channel of the Bois de Sioux on the west boundary line of the state to the place of beginning."

It will be seen that this included a part of range 43 in Otter Tail county and leaves out Norwegian Grove, Trondhjem and a part of Oscar in range 44, and all of northern Wilkin county, and probably included the northern part of Traverse county as well as a part of Grant county. But to add to the confusion created by this act, no surveyor could possibly follow its lines and described. When Bob Toombs became a rebel, the patriotic state of Minnesota promptly changed the name of Toombs to that of Andy Johnson and at the same time attempted to correct its boundary by making the north line of the county the present north line, and the line between ranges 43 and 44 its eastern boundary; and at the same time leaving out the north end of Traverse county, but including the township of Lawrence in Grant county.

President Andrew Johnson, for whom the county was renamed, having by a change in his political policy, offended the radical Republican Legislature of Minnesota, was responsible for having the county christened a third time. The Legislature in 1868 changed the name of the erstwhile Andy Johnson county to that of Wilkin, in honor of Major Alexander Wilkin. Major Wilkin was in the Second Minnesota and afterward colonel of the Tenth Minnesota. He was killed in the battle of Tupelo, Mississippi, July 14, 1864. The Legislature took no more chances on living men, but forestalled any possible contingency by naming the county after a dead hero. And thus was Wilkin county in 1872.

WILKIN COUNTY IN 1872.

In 1872 there were a very few small settlements in Wilkin county; a small group of settlers at Breckenridge, a few settlers and squatters the Red river, but the largest number were to be found in range 44. There was no county organization, no county seat, and all that I knew about the county at all, was what I heard from the settlers in range 44. A committee of three Breckenridge and McCauleyville men came to St. Paul to see me about organizing the county and locating the county seat. Of course, they wanted the county seat at Breckenridge at the terminus of the new railroad. I told the committee that I had promised to attach range 44 to Otter Tail county; that the settlers on that range claimed that they could not get from the settlement in Norwegian Grove to Breckenridge without going through or near Fergus Falls; that Otter Tail county did not want any of their territory without their consent and to accommodate the people, and would not take it. As I recall, this committee consisted of J. R. Harris, Ruke Messer, and a man from Breckenridge whose name I do not now remember. I told the committee to return home and talk the matter over with the settlers of Wilkin county and see what they wanted; that I would carry out their wishes as soon as I heard from them. In a day or two the committee came back to St. Paul to see me again and informed me that they had agreed to have the county organized, leaving out range 44, and making Breckenridge the county seat. Therefore, as may be seen, range 44 was attached to Otter Tail county with the consent of the leaders in Wilkin county from which it was detached.

RANGE 44 ATTACHED AND FERGUS FALLS MADE THE COUNTY SEAT.

I then introduced a bill to attach range 44 to Otter Tail county, the act providing for the submissal of the question to the voters of Otter Tail county at the next general election, November, 1872. Wilkin county was not authorized to vote on the question. I then introduced a bill to remove the county seat from Otter Tail City to Fergus Falls. This second act was to be ratified by the qualified voters of the county before it went into operation, and this was done by a substantial majority at the election in the fall of 1872.

OTTER TAIL CITY PARTISANS INDIGNANT.

These radical legislative measures of course engendered “war along the line” and I need not tell you that my friends and I came in for severe criticism, at times amounting almost to personal abuse. There is perhaps nothing which stirs up quite as hot a fight as a county seat removal and, next to that, a division of a county, and Otter Tail county had a taste of both at one time. Otter Tail City was naturally furious at what I had done. When I returned from St. Paul after the session I came through the town and stayed there over night. The people did not kill any fatted calf for me; in fact, they treated me very coolly. I heard no exclamations from its good citizens of “Well, done, thou good and faithful servant.” As could have been expected the northeast part of the county was solid against both measures in general and against Corliss in particular. The eastern and middle parts of the county were divided, but all the small politicians especially were up in arms to condemn all I had done. Those who were satisfied said but little, but voted for the measures.

REMOVING THE COUNTY SEAT AND RECORDS.

At the general election in November, 1872, the people voted to annex range 44 to Otter Tail county, and on the same day voted to remove the county seat from Otter Tail City to Fergus Falls. I have often heard it claimed that Ole Jorgens and myself went to Otter Tail City in the night and unlawfully carried away—stole them, so our enemies said—all the county records, a statement which is maliciously false. I know that I was not there at all. I do not know whether Jorgens was or not, but I presume that he was since his office was there. I am sure, however, that the moving of the county records was done in full accordance with the law and not in any surreptitious manner as has been so frequently alleged in the past by some people. They were removed under the direction of the county commissioners, Martin Fiedler, of Marion Lake, Hans Juelson, of Sverdrup, and Alex Johnson, of St. Olaf. Mike Anderson, as I recall, the newly elected sheriff, had immediate charge of the removal.

ALL'S WELL THAT ENDS WELL.

After very many years of observation and experience I think it is a fact that these legislative acts and the approval the people gave them during the formative period of this county have had more to do with the county's development, its present wealth and influence, than all the subsequent legislation of more than forty years since that time. I think that those acts were decisive of the county's present condition and promising future. I do not think that the old settlers, the, most of whom favored the proposition, believe now that it would have been better in 1872 to have left off range 44 nor do I think that they would leave the county seat at Otter Tail City with the prospect of having the county later divided into three or more small and poor counties. I do not claim that all our present prosperity and greatness is due to the acts of the early settlers or that there has not been since that time vital and needed legislation for the county. But I do claim that the acts of the early pioneers made it possible for this county to become great, wealthy and influential.

LEGISLATIVE CHANGES.

It might be noted that our present ninth congressional comprises only a part of our then legislative (the 41st) district. All of northwestern Minnesota was included in it, and yet at that time we had only one senator and two members of the lower house of the Legislature. In the same territory we now have six senators and thirteen representatives, and this same section of the state is now demanding additional representation in the state Legislature.

PIONEER COUNTY OFFICIALS.

As I have previously stated, the county board of commissioners which met in January, 1871, was composed of Martin Fiedler, Alex Johnson and Hans Juelson, all faithful and intelligent men. To them should be given the credit for starting in motion the machinery of the county. Under their efforts the following townships were organized in. the years 1870, 1871 and 1872:

Parkers Prairie, Dane Prairie, Fergus Falls, Eagle Lake, Elizabeth, Otter Tail, Pelican, Erhards Grove, Buse, Rush Lake, Aastad, Hobart, Scambler, Maine, Nidaros, Perham, Effington, Norwegian Grove, Western, Deer Creek, Oscar, Trondhjem and Gorman. Five townships had been organized in 1868 and 1869: Clitherall, Saint Olaf, Tumuli, Tordenskjold and Aurdal.

They also organized many school districts in those years, besides laying out and opening up numerous roads over this broad county. Highways were badly needed to connect the widely scattered settlements and the records of the commissioners during the first few years are more than half taken up with petitions for roads. On an average it may be said that four-fifths of the minutes of each meeting cover just two subjects—roads and schools. Besides this work the commissioners had to provide temporary offices for the county officials, and between 1872 and 1874, they had to provide everything from pens and ink to a court house and jail. All their acts have become history and their friends may look back with pride at their official careers.

SOME EARLY SETTLEMENTS AND SETTLERS.

The little settlement which began at Clitherall in 1865 and at Rush Lake in 1867, Mormon and Catholic, respectively, and both dissenters from the mother church, are today practically extinct; both have been swallowed up by other and stronger churches.

Parkers Prairie was really the first to be settled by nonpartisan religious settlers and there were found representatives of several of the religious denominations found in the county today. The real farmer settlers commenced to settle there in 1868, when G. A. Lindquist, Henry Asseln, J. G. Nelson and other men of sterling character staked out their farms on the prairie. Lindquist afterward became county treasurer and commissioner; Asseln was the first merchant of the village and one of the wealthiest men of the county at the time of his death; J. G. Nelson was a county commissioner and later a state senator and one of the strongest politicians of the early days. Then there were such men as Ben Pease, Ed. Livernash, Jacob Saunders and Charles Swenson,

the latter coming direct from Sweden. And they came from many other countries from across the sea.

From the Fatherland came the sturdy German; the staunch and reliable vikings from Norway were early on hands; there were the descendants of the Puritan Yankees of New England; and everywhere the professional empire builders of the middle west. The early pioneers of the county comprised nearly a score of tongues, but they went to work in peace and harmony to till the soil and establish homes in this paradise of the state. No one questioned them as to their nativity—whether Yankee, Norwegian, Swede, Irish, German, French, Canadian, or Finnish. All mingled together in the various sports and social affairs common to those days. Everyone was welcome in every other home in the community, whether we said “yes,” “ja,” or made use of any other language in expressing what we had to say. We worked together as one large family; all were intent on one thing, and that was the establishing of homes in this fair county for ourselves, our children and our children’s children. How well we succeeded you of today may see. You who are enjoying these broad and well-cultivated acres today should be reminded once in a while of the struggles of your fathers and mothers on these same farms during the early seventies and even for several years afterwards.

The friendships formed in those days have borne fruit in the intermarriages of the pretty “Norsk jenters” to their neighbor’s Yankee “Bill,” the German “Hans,” the Irish “Pat” or to anyone of a half dozen other nationalities. A few generations will produce a strong and virile type of men and women in this county—men and women whose blood will have the best characteristics of all these many peoples. The Norwegian, the Swede, the Dane, the Irish, the German, the Pole, the Finn, the French, the English, and native American will have mingled their blood to make a race of people who will carry the torch of civilization forward to future generations—and all loyal citizens of the Stars and Stripes. Truly, Otter Tail county well exemplifies the oft-repeated statement that America is the “melting pot” of the world.

I may be pardoned for saying a word regarding myself in this connection, since I take it, I know more about myself than any other person. I have lived in Otter Tail county all the time since 1870, and in Fergus Falls since it was the county seat, and during all of these years have been a practitioner before the local bar. I was county attorney from 1870 to 1875, and from 1879 to 1887, but since that time have not been in politics for myself. However I have helped my friends in ways politically as the occasion arose and have no regrets on this score. I was on the committee which located the state hospital at Fergus Falls and contributed my share to the fixing of the site at our home city. I was also in Washington, D. C., in time to get the postoffice changed from Hoyt's corner to the Nangle corner, and later made a second trip with John W. Mason to Washington for the purpose of preventing Congressman Frank Eddy and Elmer E. Adams from getting it relocated at the Hoyt corner. While they did not succeed in having their way, yet, by a masterly stroke of diplomacy, they got the assistant secretary of the treasury, Horace Taylor, to go back on his pledge and compromise on the "Johnny Schei chicken lot." I never quite forgave either of them for this move until I saw the completed building. I think I prefer the coffin store on the Nangle corner to the present location, but, of course, opinions may differ. I am simply stating my own.

I have lived in Otter Tail county long enough to see it change from the most beautiful country by nature to a wonderful county of well cultivated farms, comfortable homes everywhere, with scores of flourishing villages and cities, with fine highways threading the county; I have seen the broad prairie of wild grass give way to equally extensive fields of waving grain. The few hundreds of settlers in 1870 have grown to fifty thousand and the county has plenty of room for that many more within its limits. Today we travel in our automobiles over the same roads on which our fathers drove their patient ox teams. I suppose that fifty more years will see our children flitting from one corner of the county to the other in their flying machines. Yet, when I think back to that day in July, 1870, I wonder whether future generations will enjoy life any better than we, the pioneers of the seventies.

A half century will soon have passed away since the first permanent settlers came to this county. We old settlers are fast leaving for a newer country; day by day our ranks are growing thinner; the old order changeth. So it has always been and so will it always be. It is so ordered in this world and we would not change it if we could. It is for you who follow in our footsteps to so conduct yourselves and the affairs of the county that old Otter Tail, the greatest of Minnesota's counties, will continue to be the best place in the world.

EDMUND A. EVERTS.

One of my most intimate friends in Otter Tail county was the late Edmund A. Everts and I want to take this opportunity of setting down for future generations some of the main facts of his life. Born in Carroll county, Illinois, November 12, 1840, he removed with his parents, Rezin and Sophronia (Preston) Everts, to Winona county, Minnesota, in 1855, where he was living when the Civil War opened.

I first met Comrade Everts in 1856 at Fremont, Minnesota, when he was sixteen years of age, and knew him intimately from that time until his death. I knew him as a pioneer boy of the early pioneers of the territory of Minnesota, as a volunteer soldier in the Civil War, as a citizen soldier after the war, as an early pioneer of Otter Tail county, and finally as a business man in the village of Battle Lake. In all this time I never knew him to do a crooked or unmanly act.

On June 26, 1861, he enlisted in Company A, Second Minnesota Volunteer Infantry, for a period of three years; re-enlisted as a veteran on December 15, 1863; discharged as a sergeant on July 11, 1865. During the summer of 1861 he was stationed at Ft. Ripley with his company guarding our frontier forts. In October, 1861, he left Ft. Snelling with his regiment for Washington, D. C. At Pittsburg orders were countermanded and the regiment sent direct to Louisville; Kentucky.

He was in the campaign to Mill Springs, then back to Louisville,

thence via Nashville to Pittsburg Landing. Thence he went to Corinth, thence east to Tusculumbia, and from there back north into Tennessee and down into Georgia. From there he was transferred back to Louisville, following Bragg's rail toward that city. He was at the battles of Perryville, Nashville, Murfreesborough and Tallahoma. Later he went through Alabama and Tennessee to Chickamauga. He was in the famous march through Georgia to the sea with Sherman, and then north through the Carolinas and Virginia to Washington, D. C.

I never knew him to be sick or on detached duty a single day, or miss a battle or a duty in all this long service. Few, indeed, have such a record. He was in more than twenty battles, and this does not take into consideration the scores of skirmishes in which the old Second regiment was engaged during its march to the sea. In none of these battles or skirmishes did he receive a scratch; I always thought he had a charmed life.

Mr. Everts was one of the first to enlist and he stayed until the last Rebel threw down his gun against the government, was present at the surrender of Lee and proudly marched up the broad streets of Washington with his great commander on that grand and glorious day in May, 1865. On that memorable occasion he was the, same modest, painstaking soldier, as he ever was a citizen. He was a brave soldier, a true friend, and absolutely an honorable man in all his dealings and actions from the cradle to the grave.

I learned to know him as a messmate and chum, where the cant, hypocrisy and restraint of society were unknown; where men were known for what they really were. It was there I learned to know, admire and trust one of the noblest, truest, and most unselfish men I have ever known. I am proud to have always been his friend; he had no enemies. In fact, his fully rounded life was a success, but the greatest asset he has left his family and friends is his honorable life.

Mr. Everts settled in Otter Tail county in the spring of 1871 with his wife, Rosella, and settled on a homestead in section 27, in the town of Everts, lying between the northwest end of Battle take

and Silver lake. In this immediate vicinity he finally acquired nearly a section of land. He farmed for ten years with great success, but after the building of the Fergus Falls branch of the Northern Pacific railroad he rented his farm and moved to Battle Lake, where he lived the rest of his life.

He went into the lumber, flour and feed business in Battle Lake and carried it on very successfully until his death, on March.9, 1915. He was interested in the old Winslow bank in Battle Lake, and never failed to lend a helping hand to all worthy enterprises in the village. Shortly before his death he took his son, Frederick, into business with him. He left his widow, one daughter, Maie, the wife of W. J. Sernblad, the clerk of the district court of Douglas county. □

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OBITUARY

FERGUS FALLS DAILY JOURNAL

Tuesday, July 24, 1917

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E. E. CORLISS

Sketch of Career of Noted Citizen,
Long Prominent in Otter Tail
County Affairs

**Was Author of Bill Which Changed
County Seat from Otter Tail City
to Fergus Falls**

**Also Detached Range 44 from Wilkin
and Attached it to Otter Tail
County**

**Fought Throughout War, and Served
on Capitol Commission and as
Capitol Custodian**

The remains of Hon. E. E. Corliss were brought up here from St. Paul Monday night on the Winnipeg train and were taken to the home of Dr. and Mrs. Cole, where short services for the immediate family were held at 2 o'clock today. The remains were then taken in charge by the Masonic Lodge of which he was a charter member and escorted to Mr. Faith cemetery where the ritualistic services were being held.

The remains were accompanied form St. Paul by Mrs. Corliss, Miss Ione Corliss, C. B. Kinney, Mr. and Mrs. Dresser and Mrs. Myra Gray. His daughter, Mrs. Kimball, arrived from Seattle and joined then here, and Roy Corliss and family came in form Clitherall. Mr. and Mrs. C. C. Houpt and Col. and Mrs. A. G. Kinney came down form Pelican Rapids to attended the funeral.

Ebenezer Ezekial Corliss was born in Vermont, Sept. 1, 1841 and would have been 76 years old in September of this year. He came to Minnesota in 1856 and served as a member of the second Minnesota infantry throughout the Civil War. He came to Otter Tail County in 1870, and was prominent in county affairs

for more than forty years. He planned to settle in Otter Tail city, which was then the county seat, and to practice law there, but as the place was too small, he took a homestead near Clitherall and began farming.

His legal ability and natural bent for public affairs brought him into the limelight immediately. In 1871, a proposal was made to divide Otter Tail county, the plan being to form a new county, out of Range 44, then a part of Wilkin county, and Ranges 43, 42 and 41, of Otter Tail county. Range 44 consists of the town of Norwegian Grove, Oscar, Trondhjem, Carlisle, Orwell and Western. Range 43 includes Fergus Falls town and the tier of townships to the north and south of it. The plan was to make Fergus Falls, which was then developing into a village, the county seat of the new county. The legislature passed a bill authorizing its formation, subject to a vote of the people of Otter Tail county and Wilkin from which the new county was to be formed. A hot fight followed in which Mr. Corliss took a prominent part, and the proposition was defeated.

In 1872, Mr. Corliss was elected to the legislature from this county. Fergus Falls had by this time distanced Otter Tail City and what was more, it was certain to secure a railway. There was talk of making it the county seat, and it was easily the logical location, aside from the fact that it was on the extreme western boundary of the county. This could be practically remedied by attaching some of the territory to the westward. The people of Range 44 preferred Fergus to Breckenridge as their county seat, as it was much closer to them. Mr. Corliss, after consulting leading men from all parts of the county, finally introduced a bill making Fergus Falls the county seat of Otter Tail county and at the same time detaching the six townships in Range 44 from Wilkin and attaching them to Otter Tail county. This plan was ratified by the people in November of that year.

On his return from the legislature, he received a very chilly welcome in Otter Tail City, but was warmly welcomed in Fergus Falls. Wilkin county made occasional efforts to recover Range 44, but never succeeded.

Mr. Corliss soon moved to this city [Fergus Falls] and engaged in the practice of law here. He was elected county attorney of Otter Tail county, and served in that capacity for ten years. He practiced law in this city for the greater part of forty years.

When the new state capitol was planned, Mr. Corliss was made a member of the State Capitol Commission, and as such, assisted in supervising the construction of that magnificent building. He later became its custodian which position he held up to the time of his death.

He moved to St. Paul on being appointed custodian of the capitol, but always regarded Fergus Falls as his home and he still own his residence on Lincoln avenue west, and also the building known as the Corliss block, now occupied by the Williams Produce Co.

In all his long career, he enjoyed the respect and esteem of his fellow citizens. He was a natural born fighter of the type that always fought fair, and those who happened to be against him in any matter of public policy respected him quite as much as those who were with him. He was a man of happy disposition, with an abounding sense of humor, and his sayings have become proverbs among his fellow citizens. Few men in the state will be more generally missed.

When the Civil War broke out, Mr. Corliss was one of the first to enlist, and no braver soldier ever shouldered a musket. He enlisted April 2, 1861, and

served until April 1, 1866. He was a member of Company C, Second Minnesota, and was severely wounded at the battle of Chattanooga, carrying a bullet [in the neck] received there to the day of his death.

He was with Sherman in the march to the sea, and his term of enlistment expiring at that time, he was mustered out of service and came home and was married, the wedding taking place at St. Charles, Minn. He then re-enlisted and served until the end of the war.

He is survived by his wife and four children: Dr. Harry Corliss, of Sumner Wash., Mrs. Kimball, formerly Miss Jennie Corliss of Seattle, Roy Corliss of Clitherall, and Florence Corliss, who is at home.

“Having been admitted to the bar of the district court of Fillmore county Minnesota, in the spring term of 1870, I was anxious to try my chances in some new county. I had heard flattering reports of what nature had done for Otter Tail county and I finally decided that I would cast my lot there. Accordingly, I packed my few belongings into a “Prairie Schooner,” hitched my two faithful horses to it, and, with my wife, three small children and a young girl, Rosa Wallace, started for our new home. I had not the slightest idea where I would locate, once I reached the county, although I had dimly planned to hang out my shingle in Otter Tail City. Our wagon was to be our day coach, diner and sleeper during the two weeks trip from Fillmore county, to Otter Tail county.

The weather conditions were delightful, and on the evening of July 3, 1870, we finally arrived at the home of my brother-in-law, William H. Beardsley, who had located in the county the previous year. I might say in passing that a great majority of the early settlers of Otter Tail county came in similar conveyances, but most of them drove ox teams.

“On July 5, my brother and I drove to Otter Tail City, a distance of 16 miles, where I intended to erect a tablet or sign “E. E. Corliss, Attorney and Chancellor at Law.” As I am writing this, forty six years after, my mind still pictures the impression my first view of Otter Tail lake made upon me. Its placid waters, its tree grown shores, its banks, its level prairie, make it one of the most beautiful bodies of water to be found any where.

“And how did Otter Tail “City” look? Briefly, this is what I saw: C. H. Peake, who was running an Indian trading post, was the only merchant. There were two old Scotchman, both of whom had Indian wives and numerous children. Both had settled very early and were the only white settlers in the county in 1870 who had been there in 1862. In addition to the three men mentioned and their families, there was R. L. Frazee, who had just put in a steam sawmill. His head sawyer was Byron Lent, and there were also two other men working in the mill. With the exception of the sawmill and Indian wigwams, Otter Tail City looked just it did in 1858. My dreams of retainers faded. Here was a county seat town, with no sign of a courthouse, and no county officials living in it.

“Beautiful scenery was all right but my family demanded something more substantial. Under the circumstances, and with the training I had had before the Civil War, my mind turned from the legal profession to farming. I filed on a preemption two miles west of Clitherall, and with lumber from Frazee’s mill, built the first frame house erected in the county, albeit I had to sell my horses and wagon to indulge in the extravagance. I bought half of my brother’s crop of potatoes.

Mr. Corliss at this point gives an amusing account of digging the potatoes which he had bought from his brother, and loading twenty bushels onto a wagon. He

had disposed of his horses and bought a team of oxen at this time. He left the oxen for a few minutes and turned around Justin time to see team and wagon disappear over a bank and plunge into the lake. It was an intensely hot day and the oxen wanted a drink and had no objections to a swim. Potatoes then as now were a precious article, and Mr. Corliss picked the twenty bushels carefully out of the lake again, loaded them onto the wagon, and made his way home. He says that his wife was very pleased to find them so nicely washed and continues:

“Clitherall was the first settlement in the county after the Indian massacre of 1862. It was settled in 1865 by about twenty families of Mormons or Latter Day Saints. These people were all members of the original Joseph Smith church. After the murder of Smith by a mob at Nauwoe, Ill., some of the original Mormons refused to follow the leadership of Brigham Young and his advocacy of polygamy, chose as their leader one Cuttler and later Chauncy Whitting. They were all honest, law-abiding people, good neighbors and firm believers in the Mormon bible and the Christian bible.

“The Mormons claimed to have been directed to Clitherall by a dream of one of their leaders of a land between two lakes. In 1870 when I first came to this county, there were about fifteen men with their families in this settlement. Their names as I recall them were Chauncy, Almon, Lewis and Sylvester Whitting, Hiram and Lyman Murdock, John Albert and Sylvester Fletcher, Thomas Mason, Chas. Taylor and two McIntyre brothers.” □

* * *

APPENDIX

STATE OF MINNESOTA v. LARS O. HONERUD.

66 Minn. 32, 68 N.W. 323

September 18, 1896.

Nos. 9530—(59).

Constitution—Change of County Lines.

Laws 1872, C. 87, entitled "An act to change the county lines of Otter Tail county," is constitutional; and townships 131 to 136, both inclusive, of range 44 W., are legally a part of the corporate territory of such county.

Case certified from the district court for Otter Tail county, Baxter and Searle, JJ., after findings and order for judgment in favor of plaintiff. Affirmed.

M. J. Daly and Houpt & Baxter, for plaintiff.

Lyman B. Everdell, Robert J Wells, and Henry G. Wyvell, for defendant.

START, C. J. In the list of delinquent taxes in and for the county of Otter Tail for the year 1893, which was duly filed in the office of clerk of the district court of that county, there was included certain land in section 6, township 134 N., of range 44 W. The owner thereof, the defendant herein, appeared, and, for answer to the application for judgment against his land for such taxes, denied the jurisdiction of the court on the ground that the land was not within the territorial limits of the county of Otter Tail, but was a part of Wilkin county. The district court found that the land was a part of Otter Tail county, and ordered judgment for the taxes, and, on the application of the defendant, certified the matter to this court.

1. Townships 131 to 136, both inclusive, of range 44 W., were by revisions of Laws 1872, c. 87, detached from Wilkin county, and made a part of the county of Otter Tail. The defendant's contention is that this law is unconstitutional, because it was never submitted to the electors of Wilkin county for adoption, as

required by section 1 of article 11 of the constitution, His claim is that Wilkin county was at that time an organized county, and his land legally a part its territory.

It seems to be conceded by counsel on both sides that the question whether the defendant's land is de jure a part of the territory of Otter Tail county can be raised by him in this proceeding by the state to enforce a tax against his land. This is a matter of first importance to the public, and we are unwilling by our silence indirectly to assent to the proposition that the question can be so raised. It would seem that where, as in the case at bar, territory by virtue of an act of the legislature has become de facto a part of a particular county, which has exercised jurisdiction over it for years, and the state has continuously recognized the territory as a part of such county, a citizen or taxpayer residing or owning property within the limits of such territory, when called upon to pay taxes, serve as a juror, or to discharge any other public duty or burden, ought not to be allowed to question the legality of the incorporation of the county, or the integrity of its publicly recognized corporate boundaries, by asserting the unconstitutionality of the legislative act. Considerations of sound public policy forbid it, and suggest that the question ought to be considered as a public one, to be raised only by the state itself by quo warranto or other direct proceeding. To permit private individuals to raise the question in collateral proceedings would manifestly result in serious consequences to public and private interests.

It is settled, upon principle and authority, that where a municipal corporation is acting under color of law, and its corporate existence is not questioned by the state, it cannot be collaterally drawn in question by private parties. The legal validity of a de facto municipal corporation will not be inquired into in a tax case. 1 Dillon, Mun. Corp. §43; Cooley, Const. Lim. (6th Ed.) 309, 310; Cooley, Taxn. 768; People v. Maynard, 15 Mich. 463; Coe v. Gregory, 53 Mich. 19, 18 N. W. 541; Town of Geneva v. Cole, 61 Ill. 397; Rumsey v. People, 19 N. Y. 41. Why then, in this case, should the defendant be permitted to draw in question the legality of the de facto corporate boundaries of Otter Tail county, after they have

been recognized and acquiesced in by all of the departments of the state government for nearly a quarter of a century?

As at present advised, we have little or no doubt as to the answer which ought to be given to this question; but in view of the public importance of this case, and the fact that we permitted counsel to argue and submit it on the merits, we deem it advisable to place our decision of the case upon the merits, and leave the question we have here suggested open for further consideration, should it ever arise.

2. The question of the constitutionality of the act of 1872, whereby township 134 of range 44 (of which the defendant's land is a part), with other towns, was detached from Wilkin, and made a part of Otter Tail, county, hinges on the further question whether Wilkin was at that time an organized county, within the meaning of the constitution. A solution of this last question involves a consideration of the previous legislation relating to Wilkin and adjoining counties, the undisputed evidence, and the findings of the trial court in this case as to the nonexistence in fact of any form of county government in such counties at the time such legislation was enacted.

On March 18, 1858, an act of the legislature entitled "An act to establish the boundaries of certain counties and provide for their organization," was approved. Sp. Laws 1858, c. 34. This law established and authorized the organization of the counties of Otter Tail, Breckenridge, and Becker, and fixed the boundaries of each. On the same day an act entitled "An act to establish the county of Toombs" was also approved. Sp. Laws 1858, c. 64. This law fixed the boundaries of the county, and provided for the appointment of county commissioners for the county, with power to appoint all other county officers. By these acts the counties of Breckenridge and Toombs became organized counties, so far as the legislature could organize them. *Thomas v. Hanson*, 59 Minn. 274, 61 N. W. 135. The defendant's land was included within the boundaries of the county of Breckenridge, as established by Sp. Laws 1858, c. 34. Sp. Laws 1860, c. 33, approved March 10, 1860, provided for a change in the boundaries of the counties of Toombs, Breck-

enridge, Otter Tail, and Becker, whereby the defendant's land would fall within the new boundaries of Toombs county. The act, however, expressly provided that it should take effect on and after its adoption by a majority of the electors of the several counties. It is recited and affirmed in Sp. Laws 1862, a. 32, that the act of March 10, 1860, was adopted by the electors in the manner required; but the trial court found—and the finding is sustained by the evidence—that no election was ever held under this act. Such being the fact, this act never became a law; and the land in question remained a part of Breckenridge county certainly until March 8, 1862, if not for a longer time.

On March 6, 1862, the name of Breckenridge county was changed to Clay. Sp. Laws 1862, c. 33. March 3, 1862, the legislature passed an act (senate file No. 47) changing the name of Toombs county to Andy Johnson; but the bill was lost before it reached the governor, and was never approved. See Senate Journal 1862, and Sp. Laws 1863, c. 13. The legislature, evidently assuming that senate file No. 47 had become a law, passed an act, approved March 8, 1862, entitled "An act to define the boundaries of the counties of Clay and Andy Johnson." Sp. Laws 1862, c. 25. This act purports to change the boundaries of the two counties so as to exclude the defendant's land from the territory of Clay, and include it within the limits of Andy Johnson, county. On March 6, 1863, by an act approved on that day, the name of Toombs county was changed to Andy Johnson, and by the second section thereof its boundaries, as fixed by the act of 1862, were reenacted. Sp. Laws 1863, c. 13. Neither this last act, nor the act of 1862, was submitted to the electors of either of the counties for adoption; but both acts, by their terms, were made to take effect on and after their passage. Assuming that these counties, or either of them, at the time of the passage of the acts referred to, were in fact organized, it would seem that both acts were unconstitutional, and the disputed territory remained a part of Clay county. However this may be, the question is here immaterial, in view of subsequent events and legislation. In 1868 the name of Andy Johnson county was changed to Wilkin. Laws 1868, c. 115. We shall therefore, as we proceed, refer to Breckenridge county as Clay, and Toombs as Wilkin, county.

As a result of the Indian massacre of 1862, each of these counties was entirely depopulated, and every vestige of a county organization or government in fact was extinguished. It appears from the undisputed evidence that the commandant of Fort Abercrombie issued an order that all of the inhabitants of the two counties should be brought into the fort, whether they were willing to come or not, and sent out a military force to enforce the order, and all of the people were brought in, except three men, who were afterwards killed at Breckenridge. These counties remained practically without people until the year 1867, and absolutely without any county organization or government in fact until the year 1872, when, for the organization of each of them, Laws 1872, cc. 80, 83, were enacted.

In the meantime the legislature treated these counties as unorganized counties, in accordance with the then existing fact. Accordingly they were attached to Stearns county, for judicial and other purposes, by Laws 1864, c. 67, and in 1866 the laws providing for their organization, and fixing their boundaries (Sp. Laws 1868, cc. 34, 64; Sp. Laws 1862, c. 25; and Sp. Laws 1863, c. 13, §2), were expressly repealed by G. S. 1866, c. 122. The boundaries of Wilkin (then Andy Johnson) and Clay counties were established by G. S. 1866, c. 5, §§ 3, 15. So that townships 131 to 136, both inclusive, of range 44 (which include the defendant's land), were within the territorial limits of Wilkin county; and both counties were, by G. S. 1866, c. 64, §33, attached to Crow Wing county for judicial and other purposes, and by Laws 1867, c. 113, they were attached to the county of Douglas.

By an act entitled "An act to change the county lines of Otter Tail county," approved February 28, 1872 (Laws 1872, c. 87), the tier of townships above mentioned were detached from the county of Wilkin, and attached to, and made a part of, Otter Tail county, to take effect after ratification by the electors of Otter Tail county only. This act was duly ratified and adopted by such electors at the then next general election, and such townships have been ever since, in fact, a part of the territory of Otter Tail county. The legislature, by an act entitled "An act to provide for the organization of the county of Wilkin and to define the boundary

thereof," approved 4, 1872 (Laws 1872, c. 83), established the boundaries of the county so as to exclude from its territory the disputed townships, which were made a part of Otter Tail county by the act of February 28, 1872.

It is obvious that if the legislation whereby the laws providing for organization of the counties of Clay and Wilkin were repealed, and the counties attached to other counties for all judicial and other governmental purposes, is valid, they were not thereafter organized counties, either in law or fact, prior to the time of their organization in 1872. It is claimed, however, by the defendant, that such legislation is unconstitutional; basing his claim upon article 11, § 1, of the constitution, which reads as follows:

"The legislature may, from time to time, establish and organize counties; but no new county shall contain less than four hundred square miles, nor shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing bounty seats, shall, before taking effect, be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged but not reduced below four hundred square miles."

This section was construed in the case of *State v. McFadden*, 23 Minn. 40; and it was held by this court that legislative power over counties is supreme, except as restrained by the constitution, and that the restraints imposed on such power by the constitution did not prohibit the legislature from reducing an organized county to an unorganized or established one by repealing the act providing for its organization, and attaching it to an organized county for judicial or other governmental purposes. This conclusion was based upon proposition that the constitution made a clear distinction between an established (that is, an unorganized) and an organized county, and that as to the latter its boundary lines cannot be changed at all, except by a vote of the majority of the electors of the county or counties to be affected thereby; but as to

the former (an unorganized county) the only constitutional restriction is that against reducing its territorial area below 400 square miles,—or, in other words, that the whole purport and effect of the limitations upon legislative power imposed by the section under consideration is to prohibit the legislature from reducing the area of any county, organized or unorganized, below the standard fixed by the constitution; also from removing county seats, and from changing the boundaries of any organized counties, without the consent of the people to be affected thereby.

If this construction of the constitution is correct, and the case of State v. McFadden is to be adhered to, it logically follows that the legislation here in question is valid, for the reason that the effect of such legislation was to undo whatever organization, if any, which once existed in Wilkin county, and reduce it to an unorganized county, so that the legislature could change its boundaries without a vote of the electors of such county. See Thomas v. Hanson, 59 Minn. 274, 61 N. W. 135. But, in the case of State v. McFadden, while Chief Justice Gilfillan conceded that the constitution makes a clear distinction between organized and unorganized counties, and that as to the latter there is no restriction upon the power of the legislature, except that they shall not be reduced in area below 400 square miles, and that, subject to this restriction, the legislature may at its pleasure absolutely change the boundaries of unorganized counties, yet, in an opinion of great vigor and logical force, he dissented from the proposition that the legislature can repeal the act under which a county has become in fact organized, and thereby place it in the class of unorganized counties. He said in this connection: *

“If the legislature may reduce a county from the condition of an organized to that of an established county, all that is needed, to allow the legislature to do what the constitution prohibits, is to abolish the organization of the counties with respect to which it may desire to exercise the power to change.”

*** 23 Minn. 46**

It is unnecessary for us here to decide whether so much of the rule declared by a majority of the court in the case to which we have referred, to the effect that the legislature may, by repealing the act authorizing its organization, reduce a county which is in fact and in law duly organized to the condition of an unorganized county, ought, either upon principle or the doctrine of stare decisis, to be followed in its entirety. The legislation now under consideration can be sustained without going to this extreme.

An "organized county," as the term is used in our constitution, is a county which is organized in fact, and has its lawful officers, legal machinery, and means of carrying out the powers and performing the duties pertaining to it as a quasi municipal corporation. An act of the legislature declaring a county to be organized, and providing for the appointment of the necessary officers to institute a county government, does not make it an organized county. There must be people in the county, and the executive department of the state must act, before it is organized in fact. Whenever, by reason of war or other cause, there are no people in what was at one time an organized county, and there is no semblance of a county government within its limits, it is not, within the meaning of the constitution, an organized county. In such a case there are no rights or interests, public or private, which the restrictions of the constitution were intended to protect. When such a county has become by the logic of events disorganized in fact, the law providing for its organization remains, in effect, an enabling act, authorizing the executive department, perhaps, to reorganize the county; but the legislature could, in any view of the case, repeal the law at any time before the county was actually reorganized, just as it might have repealed the act at any time before the county was originally organized by virtue thereof.

The counties of Clay and Wilkin being unorganized in fact at the time of the repeal of the laws under which they were originally organized, it follows that the repealing acts, and the statutes attaching the counties to an organized county for judicial and other purposes, were constitutional, and thereafter such counties became and continued to be established or unorganized counties until the legislature provided for their organization in the year

1872. The county Wilkin being an unorganized county, the legislature could change its boundaries, subject to the limitation that its area could not be reduced below 400 square miles, as it pleased, without submitting the matter to the electors of the county. Therefore the act of February 28, 1872, detaching the townships here in controversy from such county, and making them a part of Otter Tail county, and submitting the question of the adoption of the act to the electors of the latter county alone, was constitutional.

3. It is further claimed that this act is unconstitutional for the reason that its subject is not expressed in its title, which is, "An act to change the boundaries of Otter Tail county." The precise point made is that there is nothing in this title to indicate that the boundaries of the county of Wilkin are to be changed. But a change in the boundaries of one county cannot be made without making a corresponding change in the boundaries of one or more adjoining counties. The subject of this act is expressed in its title, within the meaning of the constitution. *City of Winona v. School Dist. No. 82*, 40 Minn. 13, 41 N. W. 539; *State v. Gallagher*, 42 Minn. 449, 44 N. W. 529.

The law whereby townships 131 to 136, both inclusive, of range 44, were made a part of Otter Tail county, being valid, it follows that the defendant's land is subject to taxation in that county, and that the order for judgment for the taxes against it must be affirmed. So ordered. ■

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