

“TERRITORIAL BAR”

BY

PATRICK CUDMORE

FOREWORD

BY

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Patrick Cudmore ends his “sketch” of the territorial bars of Rice, Steel and Waseca Counties on a note of pathos:

Many of the members of the [territorial] bar were young men, full of vigor and ambition. Soon they will all pass away, and there will be no one of them left then to write their history, which should go down to posterity.

Cudmore intended to preserve “their history” and in this respect he was not unlike Charles E. Flandrau and Isaac Atwater, who also wrote about this state’s first generation of lawyers and judges.¹ We can easily imagine that he would appreciate the distribution of his article today, via the Minnesota Legal History Project, to many multiples of the subscribers of *The Faribault Republican* in September, 1897.

The first lawyer Cudmore describes is James Shields, who seems to have spent little time in the court room, far more in land development,

¹ See Charles E. Flandrau, “The Bench and Bar of Ramsey County, Minnesota (Part I),” 7 *Magazine of Western History* 254-260 (January, 1888), and “The Bench and Bar of Ramsey County, Minnesota (Part II),” 8 *Magazine of Western History* 58, 66-69 (May, 1888); and Isaac Atwater’s four-part series on “The Territorial Bench of Minnesota” that ran in the December, 1887, February, 1888, April, 1888, and July, 1888, issues of *Magazine of Western History*, all posted separately on the MLHP.

banking and public office. He was an adventurer and a secessionist—of Mexican secession, that is. As told by Cudmore, Shields’ plot to have the United States annex several northern Mexican states was “frustrated” by our war over secession, one in which he served “with distinction” as a general officer in the union army.² Shields seems to prove the rule that the incidence of irony in the lives of lawyers (and their cases) is far greater than in other members of the community.

Cudmore is not as expansive about other members of the bar, but some of his pithy comments make us wish that he had been. About Thomas Buckham, he writes, “He ought to be Judge of the Supreme Court.” Gordon Cole “was more of a lawyer than a politician.”³ When we read of John H. Case — “He could be seen daily going from his dwelling to the courthouse, the post office and his law office — no where else except on business. He is dead” — we recognize the type immediately. Case was

² Folwell has a slightly different view of General Shields’ historical significance:

General Shields was a senator from Minnesota for less than a year and thereafter maintained but a brief residence in the state. He served with no little distinction as a brigadier general of volunteers in the Civil War between the states. Later for a few years after his resignation from army service in March, 1863, he resided in California, where he held the office of railroad commissioner. His closing years were spent in Missouri. In 1874 and 1875 he was a member of the Missouri legislature and in 1878 he was elected to serve out an unexpired term in the United States Senate occasioned by a death. He died in private life in 1879. This long and varied series of public employments, civil and military, would be sufficient to make General Shields a notable personage; but it is not for these alone that his name will survive on the historian’s page. He will be known in the distant future as the absurd and irascible Irish politician who challenged Abraham Lincoln to mortal combat in a duel. The latter, to protect a lady, had assumed the authorship of a bit of metrical lampoon. Lincoln, as was his privilege, chose cavalry broadswords for weapons and a point opposite Alton, Illinois, beyond the Mississippi, as the place of combat. The intervention of judicious friends persuaded Shields to withdraw and Lincoln to explain his part in the public ridicule. Lincoln in later life did not encourage inquiry into this episode, in which he took no pride.

William Watts Folwell, II *A History of Minnesota* 8-9 (St. Paul: Minnesota Historical Society Press, 1961)(Rev. ed.)(1921). For a more detailed description of the Shields-Lincoln quarrel, see David Herbert Donald, *Lincoln* 90-93 (New York: Simon & Schuster, 1995). For a more favorable sketch of Shields, see Charles E. Flandrau, “A Unique Political Career,” in his *The History of Minnesota and Tales of the Frontier* 340-344 (St. Paul: E. W. Porter, 1900).

³ For a longer biographical sketch of Cole, see Charles E. Flandrau, “The Bench and Bar of Ramsey County, Minnesota (Pt. II),” *8 Magazine of Western History* 58, 66-69 (May, 1888), posted separately on the MLHP.

consumed by the law, a slave to the routine of practice. An unhealthy percentage of the legal profession follows the footsteps of the late John H. Case.

From Cudmore's sketch of himself, we see a man of wide-ranging interests and accomplishments. He devotes one sentence to his service in the union army during the Civil War. In a short *Autobiography*, published in 1896, Cudmore relates an anecdote about his war experiences that reveals his intellectual ambitions: while convalescing in a military hospital in Memphis, he was put on picket duty and "studied English history and *Plutarch's Lives*." ⁴ Anyone who has attempted to read a serious book while on military maneuvers can identify with Cudmore's challenge.

In his self-sketch, Cudmore wrote with pride of his literary accomplishments: "He is the author of six works, including poetry and history." Writing history requires scrupulous attention to detail, and poetry the *right* word. Neither of these talents was on display when Cudmore's death on February 14, 1916, was reported in the next day's newspapers. Inexplicably—carelessly—his last name was misspelled. The *Minneapolis Morning Tribune* noticed the event deep inside its pages on Tuesday, February 15, 1916:

**Soldiers Lose
Their Arbiter;
P. Cutmore Dead**

Patrick Cutmore, Writer of His-
tory, Answers Final
Summons.

The Soldier's home has lost its veteran arbiter of historic wrangles. Given an aggregation of old soldiers, scores of them, with little to do but keep their pipes fuming 40 horse

⁴ Patrick Cudmore, *Autobiography* 4 (New York: P. J. Kennedy, 1896).

power tobacco smoke, and they will talk. When they talk they reminisce and reminiscence always provokes argument.

Well, when they grew tired of arguing a point, they went to Patrick Cutmore to settle it. Mr. Cutmore's ex-cathedra decision was never appealed from because he had written a history of the United States and none dared dispute his authority to speak on any historical topic relating to the United States.

Now they will have to dig up the old books to settle the wrangles because Patrick Cutmore is dead. He died yesterday at the age of 84 years. He came to the home from Faribault, where for a time he was associated with Martin M. Shields in the publication of the Faribault Pilot. He came to the state in 1857. He was born in Ireland and settled in this country first in Wisconsin. He served for three years in Company H, Eighth Minnesota regiment, in the Civil war. After the war he wrote his history of the United States. His son, Daniel Cutmore, a blacksmith at Rochester, Minn., is the sole survivor.⁵

Compounding the error, the afternoon *Minneapolis Journal* headlined its obituary: *Veterans Mourn Death of Nestor — Patrick Cutmore, 84, Historian, Arbiter at Soldiers' Home, Buried in Rochester.*⁶

Cudmore's article appeared first on page 4 of *The Faribault Republican* on September 15, 1897. It is complete. It has been reformatted. The author's spelling and punctuation are not changed.

Several members of the "territorial bar" were living when Cudmore wrote his article for the local newspaper. He concluded his sketches of them with the sentence, "Still he lives." It seems appropriate, therefore, to end this introduction to the internet edition of Cudmore's article by paraphrasing that very sentence:

Still Cudmore's words live.....

⁵ *Minneapolis Morning Tribune*, February 15, 1916, at 10.

⁶ *Minneapolis Journal*, February 15, 1916, at 11.

THE FARIBAULT REPUBLICAN

FARIBAULT, MINN., WEDNESDAY, SEPTEMBER 15, 1897.

TERRITORIAL BAR.

A Sketch of the Territorial Bar of
Rice County, Steele County,
and Waseca County.

General James Shields came to Faribault in 1854. He was one of the original proprietors of the original town of Faribault and made an Irish colony at Shieldsville. He was elected United States senator in 1858. He was partner in the banking firm of Shields and McCutchen, and took an active part in organizing the railroad companies of this state. He was a general in the Mexican War; Judge of the Circuit Court and Supreme Court of the State of Illinois. He was United States Senator from the States of Illinois, Minnesota, and Missouri. He served with distinction as a general in the war of the rebellion. Before the war of the rebellion he and some southern capitalists and politicians were engaged in silver mining at Mazatlan, in the State of Sualoa, Mexico. General Shields and others had matured a plan for annexing to the United States the Mexican States bordering on our southern frontier, including the States bordering on the Gulf of California. The plan of annexation was frustrated by the war of the rebellion and the establishment of Maximilian's Mexican Empire. The Mexican land owners of these States had favored the plan of annexation, as it would enhance the value of their real estate, and promote capital and immigration from the United States. General James Shields died at Carrollton, Carroll county, Missouri.

John W. North, a prominent lawyer and politician, was one of the town proprietors of the original Town of Faribault. He was the original proprietor of the Town of Northfield. He took an active part in organizing

the railroad companies of Minnesota. He was a delegate to the constitutional convention in 1857. He is dead.

George W. Batchelder came to Faribault in May, 1855, where he has practiced law with success ever since. He graduated from the University of Vermont in 1851. He practiced law at Janesville, Wisconsin, and traveled across that state with John M. Berry in 1855, who became his law partner. Mr. Batchelder was State Senator and Mayor of the city of Faribault. He was nominated for Congress, in 1868, on the Democratic ticket. He ran for Judge of the Supreme Court, in 1888, on the Democratic ticket. The whole Democratic ticket was defeated each time. Still he lives.

John M. Berry was a graduate of Yale University. He practiced law in Janesville, Wisconsin. He came to Faribault with Mr. Batchelder, in 1855, and was Mr. Batchelder's law partner, and afterwards a partner of the firm of Berry, Perkins and Perkins. He was a member of the Legislature, and a Judge of the Supreme Court. He is dead.

Thomas S. Buckham graduated from the University of Vermont, in 1855. He came to Faribault, in 1856. He became Mr. Batchelder's law partner, in 1858. He was County Attorney, Superintendent of Public Schools, and Mayor of Faribault, State Senator, and District Judge. He ought to be Judge of the Supreme Court.

H. C. Lowell practiced law in Rockland, Maine. He was one of the prominent lawyers of New England. He came to Faribault, in 1854. He ran on the Democratic ticket, in 1857, for District Judge. The Republican ticket was elected in his district that year. He opened a law office in Faribault in 1857, where he had an extensive practice until his death, in 1862. It was conceded that Judge Lowell and Judge Chatfield were in the front rank of the Minnesota bar. Both are dead. H. C. Lowell died at Le Sueur, while attending court, in 1862. He said many times that he would die among his books. He was a great student of law, and for many years was preparing a treatise on equity law. It is to be regretted that he did not publish such a great work, as he belonged to the class of lawyers who practiced common law and equity pleadings before the New York Code was adopted; when the least slip in pleadings threw the party out of court, regardless of the merits of the case.

G. L. Lowell practiced law at Rockland and Thomas town, Maine. He came to Faribault in 1855. He was an attorney for Town proprietors of Wilton, Waseca county, in 1857, where he practiced law. He became the law partner of his father, H. C. Lowell, in 1858, and so continued until the death of his father, in 1862. He was afterwards the law partner of R. A. Mott. He was City Recorder for many years, and Mayor of Faribault for two terms. He is still at the old stand. Still he lives.

P. Cudmore came to Steele county, Minnesota, in the spring of 1856, and settled in the Township of Merton, three miles from Owatonna. He practiced law, and was elected the first Town Clerk of Merton, in 1858, at the time of the organization of that Town and the State of Minnesota. He ran for County Attorney of Steele county, in 1858, on the Democratic ticket. He was Justice of the Peace in Cross Plains, Dane county, Wisconsin, where he practiced law from 1853 until he moved to Steele county in 1856. He moved to Faribault, May 14th, 1859, and entered the law office of H. C. Lowell and his son C. L. Lowell. In 1862 he and Dennis Cavanaugh and Dennis McCarthy raised a company (Co. H. 10th Regt. Minn. Inf. Vols.) and served as a volunteer until the war was over, in 1865. After the war of the Rebellion, he traveled through the Southern States. He settled in Le Sueur, in 1866, and was elected County attorney, in 1868. He moved back to Faribault, in 1868. He is the author of six works, including poetry and history. He has spent many years writing for the newspapers, and writing and publishing books. He was admitted to practice in the Department of the Interior, land office, patent office, pension office and the Treasury Department at Washington, D. C. Still he lives.

Oscar F. Perkins came to Faribault in 1855. He was a delegate to the Constitutional Convention, in 1857. He was a member of the State Senate and County Attorney. He was a partner in the law firm of Berry, Perkins and Perkins. He moved to Northfield, where he died.

C. C. Perkins came to Faribault with his brother, Oscar F. Perkins. He was a partner of the law firm of Berry, Perkins and Perkins. He was Justice of the Peace and Clerk of the District Court. He is dead.

Gordon E. Cole came to Minnesota in 1856. He came to Faribault, in 1857, where he practiced law till the time of his death. He was elected Attorney General, in 1859. Williams was his first law partner, and,

afterwards, Raymond, and John H. Case. He was State Senator, and Mayor of Faribault. He was more of a lawyer than a politician. He had a large and lucrative practice at the time of his death.

R. A. Mott came to Faribault, in 1856. He was Justice of the Peace, Superintendent of Public Schools, County Attorney for two terms. He is now Judge of Probate. He was a Member of the Legislature. He has taken an active part in promoting the State Institutions at Faribault. He has been for many years Trustee of the Deaf, Dumb, Blind and Imbecile Institutions. He has taken a deep interest in education, public and ecclesiastical.

John B. Onstine came to Minnesota about 1854, but went back again. He pleaded one of the first law suits in Owatonna. He came to Faribault, in 1857, and practiced law until he left the State, in 1860. He is dead.

John H. Case graduated at Yale University, in 1854. He was law partner of the firm of Cole and Case, and well known in this Judicial district and the adjoining districts. He was County Attorney, and State Senator. He was a studious man and died among his law books. He was modest and retiring and did not mingle in fashionable society. He could be seen daily going from his dwelling to the courthouse, the post office and his law office—no where else except on business. He is dead.

Davis and Tanner came to Faribault, in 1856, and practiced law under the name Davis and Tanner until they left Faribault in 1863. Davis was County Attorney. Both are dead.

Julius Starks was another old settler of Cannon City. He was Judge of Probate. He is dead.

STEELE COUNTY BAR.

Amos Cogswell came to Steele county, in 1856, and located on a farm in the Township of Aurora. He was an able and eloquent lawyer and prominent politician. He was a delegate to the Constitutional Convention, in 1857. He was a Member of the Legislature, and Speaker of the House of Representatives. He was postmaster of Owatonna at the time of his death.

G. W. Green came to Owatonna, in 1853. He was one of the Town proprietors. He was elected County Attorney, in 1856. He moved to Clinton Falls, Steele county, where he owned a farm and a grist mill. He was a very sharp lawyer. He was a Member of the Legislature, and Quarter-master of the 10th Regt. Minn. Inf. Vols. until he resigned at St. Louis, March 23, 1864. He moved to California. He died at Salinas, California.

N. M. Donaldson came to Owatonna as an old settler. He was elected District Judge, in 1857, and served two terms. He died Feb. 7, 1879.

A. B. Cornell came to Owatonna, in 1853. He was one of the original Town proprietors. He was one of the first County Commissioners of Steele County, in 1855. He is reported dead.

M. A. Dailey was one of the old settlers of Steele county. He was post master of Owatonna, Register of Deeds and State Senator. He is dead.

W. R. Kinyon came to Owatonna in May, 1858. He is an able lawyer. He was a Member of the Legislature, and Speaker of the House of Representatives. He is now a prosperous banker at Owatonna. Still he lives.

R. W. Lincoln was one of the old settlers of Steele county. He lived in Medford. He was eight years Judge of Probate. He is dead.

S. M. Yearly was an old settler of Steele county. He was elected County Attorney, in 1857 and 1858. He left Owatonna. He is reported dead.

WASECA COUNTY BAR.

In Territorial times, Waseca was a part of Steele county. The lawyers were C. L. Lowell, John Bradish, Buel Welch, James E. Childs, E. Brink, Enos and Hial D. Baldwin.

Welch and Enos are dead.

Childs is the editor of the Waseca Herald. He is one of the oldest settlers of Waseca county. He came in 1855. He was elected County Attorney, in 1857. He has been a prominent politician. He was a Member of the

Legislature, and Superintendent of Public Schools. Still he lives in Waseca.

John Bradish, one of the oldest settlers of Waseca county, came in 1856. He was County Attorney, Justice of the Peace, for many years, and insurance agent. He died January 10, 1897.

Hial D. Baldwin was an old settle. He was Judge of Probate and banker. He now lives at Redwood Falls, Minnesota.

Of the Territorial bar of Owatonna, only one member survives there, W. R. Kinyon.

Only James E. Childs in Waseca, and Geo. W. Batchelder, Thomas S. Buckham, C. L. Lowell, R. A. Mott and P. Cudmore are the survivors of the Territorial bar of Rice county, Minnesota. And they are marching on to the end of their journey.

The members of the Minnesota bar in Territorial days were principally from New York, New England, Illinois and Wisconsin. They gave tone and character to the bar and bench of the State. Many of the members of the bar were young men, full of vigor and ambition. Soon they will all pass away, and there will be no one of them left then to write their history, which should go down to posterity.

**P. Cudmore, B. H.,
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The newspapers of Steele, Rice and Waseca counties will please copy the above communication.

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