

Documents Regarding the Nominations, Confirmations,
Recess Appointments, Commissions, Oaths of Office,
Removals, and Terms of the Ten Justices who
Served on the Supreme Court of
Minnesota Territory,
1849-1858

PART TWO-D

DOCUMENTS RE:

CHIEF JUSTICE
WILLIAM H. WELCH
and
ASSOCIATE JUSTICE
ANDREW G. CHATFIELD

Compiled

by

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WILLIAM H. WELCH

First Term: April 6, 1853, to April 5, 1857.

Served: April 25, 1853, to April 5, 1857.

Second Term: April 21, 1857 to May 24, 1858.

1. April 5, 1853: President Pierce sent the nomination of William H. Welch to the Senate.

The following messages were received from the President of the United States, by Mr. Webster, his secretary:

. . . .

To the Senate of the United States:

I nominate William H. Welch to be chief justice of the United States for the Territory of Minnesota, in place of Henry Z. Hayner, removed.

I nominate Andrew G. Chatfield to be associate justice of the United States for the Territory of Minnesota, in place of David Cooper, whose commission has expired.

I nominate Moses Sherburne to be an associate justice of the United States for the Territory of Minnesota, in place of Bradley B. Meeker, removed.

FRANKLIN PIERCE.

Washington, *April 5*, 1853.

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Session, Tuesday, April 5, 1853, at p. 147.

2. April 6, 1853: Senate confirmed Welch.

Mr. Stuart, from the Committee on the Judiciary, to whom were referred, the 5th instant, the nominations of William H. Welch, Andrew G. Chatfield, and Moses Sherburne, reported.

Whereupon

Resolved, That the Senate advise and consent to the appointment of the said persons, agreeably to their nominations respectively.

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Session, Wednesday, April 6, 1853, at p. 149.

3. April 6, 1853: President Pierce signed Welch's commission.

This commission was recorded from the confirmation, the commission having been sent off by my predecessor without having been recorded. /s/ S. Heim (?)

/s/ Franklin Pierce

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETINGS:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of William H. Welch, I have nominated and, by and with the advice and consent of the Senate,*

Do appoint him to be Chief Justice of the Supreme Court of the United States for the Territory of Minnesota;

*and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said William H. Welch, for the term of four years from the day of the date hereof.*

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN *under my Hand, at the City of Washington, the sixth day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America, the seventy-seventh.*

By the President, /s/ Franklin Pierce

/s/ William S. Marcy, Secretary of State.

*This Commission was received from the Commission, the 12th
Commission having been sent off by my predecessor without
Franklin Pierce) having been received S. Hill*

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of William H. Welch; I have nominated, and, by and with the advice and consent of the Senate;

Do appoint him to be Chief Justice of the United States for the territory of Minnesota.

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said William H. Welch, for the term of four years from the day of the date hereof.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my Hand, at the City of Washington, the *seventh* day of *April*, in the year of our Lord one thousand eight hundred and *fifty-three*, and of the Independence of the United States of America, the *seventy-seventh*.

By the President.

Franklin Pierce

William L. Marcy, Secretary of State.

The identity of the writer who made the handwritten notation at the top of the Commission is not known. That this Commission was recorded after it was sent to William Welch did not affect its validity. As the Chief Justice wrote in *Marbury*:

When all the requisites have been performed which authorize a recording officer to record any instrument whatever, and the order for that purpose has been given, the instrument is in law considered as recorded, although the manual labour of inserting it in a book kept for that purpose may not have been performed.

In the case of commissions, the law orders the Secretary of State to record them. When, therefore, they are signed and sealed, the order for their being recorded is given, and, whether inserted in the book or not, they are in law recorded.

Marbury v. Madison, 5 U. S. (1 Cranch) 137, 161 (1803).

4. April 25, 1853: Welch took the oath of office before Orlando Simons, a Justice of the Peace.

I William H. Welch

Do solemnly swear that I will support the Constitution of the United States and that I will faithfully discharge the duties of the office of Chief Justice of the Territory of Minnesota.

Sworn and Subscribed before me (Signed) William H. Welch
at St. Paul, Minn. Ter. this }
25th day of April 1853. }

(Signed) Orlando Simons

Justice of the Peace

Welch's oath is filed in a folder marked "Territorial Secretary: Bonds and Oaths—Territorial Offices" in the box of "Territorial Records of the Territorial Secretary" at the Minnesota Historical Society.

5. April 5, 1857: Welch's four year term expired.

5. On April 21, 1857, President Buchanan made a recess appointment of Welch to continue in office.

/s/ James Buchanan

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETINGS:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightnes, and learning, of William H. Welch,*

I **Do appoint him** to be Chief Justice of the Supreme Court of the United States for the Territory of Minnesota;

*and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said William H. Welch, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.*

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN *under my Hand, at the City of Washington, the* twenty-first *day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America, the* eighty-first.

/s/ James Buchanan

By the President:

/s/ Lewis Cass, Secretary of State.

James Buchanan,
PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of

William C. Welch,

I DO APPOINT him to be Chief Justice of the Supreme Court of Minnesota Territory;

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD** the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said *William C. Welch,* during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

S. J.

GIVEN under my hand, at the city of Washington, the *Twenty first* day of *April*, in the year of our Lord one thousand eight hundred and *fifty seven*, and, of the Independence of the United States of America, the *Eighty first*.

James Buchanan

By the President:

Lewis Cass Secretary of State

Roll 8 of the microfilm copies of U. S. Territorial Papers. Territory of Minnesota Records: Justice Department records in the Microfilm Room of the Minnesota Historical Society. Welch's first term had expired on April 5, but his recess appointment was not issued until April 21, 1857, leaving a sixteen day period when the court not only lacked a

chief justice but both associate justices as well. President Buchanan made recess appointments of Welch, Rensselaer Nelson and John Pettit on April 21st.

The First Special Session of the 35th Congress was held from March 4, 1857, to March 14, 1857; it then was in recess from March 14 to December 6, 1857, during which Buchanan made Welch's recess appointment. See *Journal of the Executive Proceedings of the Senate of the United States of America*, 35th Congress (1857-1859), note 28, Pt. One.

6. May 6, 1858: President Buchanan sent his nomination of Welch to the Senate.

To the Senate of the United States:

. . . .

I nominate William H. Welch, of Minnesota, T., to be chief justice of the supreme court of said Territory, the same having been reappointed by me during the recess of the Senate, his former commission having expired.

JAMES BUCHANAN.

May 6, 1858.

Journal of the Executive Proceedings of the Senate of the United States of America, 35th Congress, First Session, Monday, May 10, 1858, at p. 400.

7. On May 15, 1858, Senate postponed a vote on confirming Welch.

Mr. Pugh, from the Committee on the Judiciary, to whom were referred the nominations of William B. Gere, W. H. H. Tison, William H. Welch, Charles E. Flandrau, and Rennsaleer R. Nelson, reported.

On motion by Mr. Pugh,

Ordered, That the nominations of William H. Welsh, Charles E. Flandrau, and Rennsaleer R. Nelson lie on the table.

Journal of the Executive Proceedings of the Senate of the United States of America, 35th Congress, First Session, Saturday, May 15, 1858, at 415.

The reason the Senate declined to act is readily apparent. On May 11, 1858, Congress had voted to make Minnesota state. It saw that in a matter of days, the new state government would be convened, and it would be foolish to confirm someone who would hold office for such a brief period. And that is what happened: on May 24, 1858, Minnesota became a state.

8. May 24, 1858: Welch's term expired with statehood.

The term of a recess appointee expires on the last day the Senate is in session. However, for Welch, the intervening event of statehood of Minnesota on May 24, 1858, concluded his term.

ANDREW G. CHATFIELD

Term: April 6, 1853, to April 5, 1857.
Served: May 31, 1853, to April 5, 1857.

1. April 5, 1853: President Pierce sent the nomination of Andrew G. Chatfield to the Senate.

The following messages were received from the President of the United States, by Mr. Webster, his secretary:

.....

To the Senate of the United States:

I nominate William H. Welch to be chief justice of the United States for the Territory of Minnesota, in place of Henry Z. Hayner, removed.

I nominate Andrew G. Chatfield to be associate justice of the United States for the Territory of Minnesota, in place of David Cooper, whose commission has expired.

I nominate Moses Sherburne to be an associate justice of the United States for the Territory of Minnesota, in place of Bradley B. Meeker, removed.

FRANKLIN PIERCE.

Washington, *April 5, 1853.*

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Session, Tuesday, April 5, 1853, at 147.

2. April 6, 1853: Senate confirmed Chatfield.

Mr. Stuart, from the Committee on the Judiciary, to whom were referred, the 5th instant, the nominations of William H. Welch, Andrew G. Chatfield, and Moses Sherburne, reported.

Whereupon

Resolved, That the Senate advise and consent to the appointment of the said persons, agreeably to their nominations respectively.

Journal of the Executive Proceedings of the Senate of the United States of America, 33rd Congress, Special Session, Wednesday, April 6, 1853, at 149.

3. April 6, 1853: President Pierce signed Chatfield's commission.

This commission was recorded from the confirmation,
the commission having been sent off by my predecessor
without having been recorded. /s/ s Heim (?)

/s/ Franklin Pierce

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETINGS:

KNOW YE, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Andrew G. Chatfield, I have nominated, and, by and with the advice and consent of the Senate,*

Do appoint him to be an Associate Justice of the Supreme Court of the United States for the Territory of Minnesota;

and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, AND TO HAVE AND TO HOLD, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said Andrew G. Chatfield, for the term of four years from the day of the date hereof.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN *under my Hand, at the City of Washington, the sixth day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America, the seventy-seventh.*

By the President, /s/ Franklin Pierce

/s/ William S. Marcy, Secretary of State.

*This commission was recorded from the Commission, 1856.
The commission having been sent off by my predecessor without
Franklin Pierce, having been signed.*

PRESIDENT OF THE UNITED STATES OF AMERICA.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of Andrew G. Chaffield, I have nominated, and, by and with the advice and consent of the Senate,

Do appoint him to be an Associate Justice of the United States for the territory of Minnesota,

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD**, the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Andrew G. Chaffield, for the term of four years from the day of the date hereof.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my Hand, at the City of Washington, the *sixth* day of *April*, in the year of our Lord one thousand eight hundred and *fifty-three* and of the Independence of the United States of America, the *seventy-seventh*.

By the President,

Franklin Pierce

William L. Marcy Secretary of State.

Vol. 1, Book of Commission of Judges (Jan. 26, 1837-Dec, 11, 1856), Record Group 59, Stack Area 250, Row 48, Compartment 3, Shelf 3, National Archives (Archives II Reference Section), College Park, Maryland.

The author of the handwritten note at the top of the Commission is not known. That this Commission was recorded after it was sent to Andrew Chatfield did not affect its validity. As the Chief Justice wrote in *Marbury*:

When all the requisites have been performed which authorize a recording officer to record any instrument whatever, and the order for that purpose has been given, the instrument is in law considered as recorded, although the manual labour of inserting it in a book kept for that purpose may not have been performed.

In the case of commissions, the law orders the Secretary of State to record them. When, therefore, they are signed and sealed, the order for their being recorded is given, and, whether inserted in the book or not, they are in law recorded.

Marbury v. Madison, 5 U. S. (1 Cranch) 137, 161 (1803).

4. May 31, 1853: Chatfield took oath of office before Chief Justice Welch.

United States of America

Territory of Minnesota ss: I Andrew G. Chatfield do solemnly swear that I will support the Constitution of the United States and that I will faithfully discharge the duties of the Office of Associate Justice of the Territory of Minnesota.

Subscribed and Sworn this 31st
day of May A.D. 1853

Andrew G. Chatfield

W. H. Welch
Chief Justice

I William H. Welch Chief of
Minnesota do hereby certify that on this day personally appeared before
me at the City of St. Paul, in said Territory Andrew G. Chatfield and
Subscribed and took before me the foregoing oath of office as associate
Justice of the Territory of Minnesota.

Given under my hand at Saint Paul this 31st day of May AD. 1853
W. H. Welch

Chatfield's oath is filed in a folder marked "Territorial Secretary: Bonds and Oaths—
Territorial Offices" in the box of "Territorial Records of the Territorial Secretary" at the
Minnesota Historical Society.

5. April 5, 1857: Chatfield's four year term expired.

Posted MLHP: December 28, 2009.
Revised March 12 & April 23, 2010.