

“ The Bench and Bar of Faribault County ”

BY

J. A. Kiester

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A. Foreword.

BY

Douglas A. Hedin

Editor, MLHP

1. The Raconteur.

Anyone who has ever attended the social hour of a meeting of an organization of lawyers will recognize this picture: around the room are small circles of lawyers. In each, one talks, the others listen, some leaning forward to hear better. Suddenly, the spell in a group breaks, they smile, a few laugh out loud. They were listening to a lawyer tell a story.

Lawyers telling stories to other lawyers is more than a custom of the bar; rather, it seems to be an innate characteristic of the profession. Lawyers have been regaling each other with stories – usually humorous and many with themselves as the object of the tale – for centuries.

At any gathering of lawyers in Faribault County from the late 1850s through the end of the century, this scene would be replayed, and Jacob Armel Kiester would be the one telling stories – one after another.

J. A. Kiester revered the law and he loved practicing law. He liked other lawyers. He had an irrepressible sense of humor. And he loved to tell stories. He was, in short, a great raconteur.

2. The Organization of Kiester's County History.

A. Style and Content.

In the 1890s, Kiester began compiling material for a history of Faribault County. A 687 page volume, covering events to 1879,

was published in 1896. He had almost completed the second volume at the time of his death in December 1904.

Of the chapters on lawyers and courts – usually titled “bench and bar” – in the dozens of county histories published between the 1880s and the First World War, not one reveals the personality of its author or editor more than Kiester’s. Using official records and newspapers, he described semi-annual court sessions and provided short sketches of judges, lawyers, and clerks, who served in the five decades after the county was formed in 1855. But what are dry lists in other local histories are enlivened by his stories, observations about the bar and, most noticeably, humor. Clearly, he had a grand time writing his history.

His sense of humor – he just could not resist or suppress it – compelled him to add a humorous story after each description of the sessions of the district court. These anecdotes, which usually exceeded in length his accounts of the sessions themselves, did not arise in Faribault County, but were taken, probably, from the numerous anthologies of humorous stories about lawyers published in the nineteenth century.

His accounts of the court sessions, though brief, tell a great deal about the size of a docket of a district court in a rural county in this state in the second half of the nineteenth century. In 1862 and 1864, the session was one day; by 1869, it was eight days; in 1879, an eleven day summer session was followed by a four day special fall term; the June 1903 term lasted most of the month. With few exceptions, civil cases out-numbered criminal prosecutions by a multiple of ten or even twenty. In 1872, there were thirty-nine civil and only two criminal cases on the calendar; the next year, there were forty civil and four criminal cases; the two terms in 1888 listed fifty-eight civil and only five criminal; ten years later, the civil side outnumbered the criminal sixty-seven to three. 1879 was the exception: “The calendar exhibited twenty-four criminal and twenty-one civil cases. This was the first time in our history that the criminal exceeded the civil calendar.” The

gross pre-dominance of civil litigation is found in other studies of trial courts operating in this period. ¹

He suggests that Faribault County's finances influenced when trials were held. During some early sessions, no trials were held. In 1873, a special session scheduled for July 15 was not held "at the request of the board of county commissioners." About 1883, Kiester writes, "The June term commenced on the 5th, and the calendar presented three criminal and nineteen civil cases. There were no cases tried at either term, of historic interest, which was all the better for the finances of the county." Here he alludes to such court expenses as jurors' fees, which were the responsibility of the county. In 1883, each juror was entitled to a fee of \$2 a day plus mileage. ² One wonders whether, at times, subtle pressure

¹ E.g., Francis W. Laurent, *The Business of a Trial Court: 100 Years of Cases* (Univ. of Wis. Press, 1959). Laurent meticulously inventoried the docket of the Circuit Court of Chippewa County, Wisconsin, from 1855 to 1954. Civil cases predominated in Chippewa County just as in Faribault:

Period	Criminal	Civil
1855-1864	31	291
1865-1874	144	980
1875-1884	236	1981
1885-1894	201	1543
1895-1904	101	1138

Taken from Table 20 and Tables 74 and 84, *id.*, at 102, 155, 161. Unlike Laurent, Kiester did not categorize the civil litigation, but this is understandable given his ambition to write a general local history.

² Jurors' fees were established by Stat. Ch. 70, §30, at 782 (1878):

§30. Grand and petit jurors—before coroners, justices, etc. Each grand and petit juror shall be entitled to two dollars for each day's attendance upon any district court, and ten cents for each mile travelled in going to and returning from the said court, the distance to be computed by the usual travelled route, and paid out of the county treasury of the county in which the service was rendered. The clerk of the district court shall deliver to each juror a certificate for the number of days' attendance, and miles travelled, for which he is entitled to receive compensation.

was put on the judge and lawyers to settle or postpone certain cases so that the county could avoid paying the fees of a panel of jurors who waited several days to be called to serve.

Alternate jurors were not used in criminal cases in the state in the nineteenth century.³ The most probable reason was not the expense, which would have been minimal, but because most cases were tried in one day, and it was unlikely that during such a brief period a juror would become suddenly indisposed or disqualified from continuing to serve. Some trials took longer. One was the successful prosecution of Bert Ronk for second degree murder. In June 1903, after a twelve member jury was empanelled, several witnesses testified for the prosecution. Suddenly one juror, Allen, became ill. The trial was recessed. The

Each juror sworn before any coroner, on any inquest taken by him, is entitled to one dollar for each day's attendance on such inquest.

Each juror sworn in any action pending in a justice court, or before any sheriff on a writ of inquiry, is entitled to fifty cents, to be paid in the first instance by the party requiring such juror.

(This law was cited in *Wilcox v. County of Sibley*, 34 Minn. 214, 25 N. W. 351 (1885), where Justice Mitchell ruled against a clerk of court who billed the county 24 cents of each oath administered to a juror before issuing a certificate for his *per diem* fees and mileage, rather than the statutory 15 cents for issuing such a certificate.)

³ It was not until 1975 when the Rules of Criminal Procedure were adopted that a trial court was authorized to impanel alternates. The current version of Rule 26.02, subd. 9 provides:

Alternate Jurors. The court may impanel alternate jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider its verdict. If a juror becomes unable to serve, an alternate juror must replace that juror. Alternate jurors replace jurors in the order the alternates were drawn. No additional peremptory challenges are allowed for alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial must be declared unless the parties agree under Rule 26.01, subd. 1(4) that the jury consist of a lesser number than that selected for the trial.

next day, when it was obvious that Allen could not continue, Judge Quinn ordered an adjournment and, with the supposed consent of Ronk, called a new venire. The first venireman was struck, but the next, Sandon, was selected and sworn. The eleven jurors in the original panel were not re-sworn.⁴ With twelve jurors, the trial started anew. The prosecution recalled its witnesses, and the trial proceeded to a verdict – guilty. Ronk appealed, claiming that he never consented to the process by which Sandon replaced Allen, and pointed to the clerk’s minutes, supplemented by affidavits, to support his argument. However, the supreme court concluded that it could not accept ex parte affidavits but must accept the accuracy of the record certified by the trial judge. It affirmed the verdict.

This controversy would have been avoided had there been an alternate juror. At that time, however, there was a statute for replacing a juror in the midst of a civil trial but not a criminal trial. Judge Quinn applied the remedy of the civil statute but avoided committing reversible error because Ronk acquiesced in the process by which Allen was replaced.⁵

Kiester was prone to exaggeration. About the 1859 term, he writes:

⁴ Kiester wrote that the original jurors were “re-sworn” but according to the supreme court they were not. Compare text on page 80, below, with *State v. Ronk*, 91 Minn. 419, 423 (1904) (“The eleven jurors originally accepted were not resworn...”).

⁵ For the court, Justice Lovely wrote:

We have no doubt, under the authorities, that the proper course to have been pursued by the court, if compelled to act upon its own motion in the exigency thus presented, would have been to have discharged the entire panel, and to have summoned a new jury at the same or a succeeding term, when the defendant would undoubtedly be entitled to his challenges to each of the jurors when called. . . . But it appears that the court did not of its own motion enforce the civil statute as its rule of action, for the defendant expressly consented to the discharge of the sick juror, and the acceptance of a new juror in his place...

91 Minn. at 427-8 (citations omitted).

No more respectable Grand Jury than this first one has ever assembled in this county.

. . . .

And many very respectable petit juries have sat in this county since that day and pronounced their verdicts, but none more able, intelligent or conscientious than the first. They were "good and lawful men."

Of course, it is not possible to compare the worthiness of the twenty juries that served from 1859 through 1879, but Kiester touts those initial jurors anyway, probably to impress his readers that the county pioneers were truly extraordinary men.

He was a shameless booster. In his account of the year 1879, he extols the virtues of his colleagues:

The Bar of this county, in learning and ability, and the reputation of its members for integrity and efficiency, compares favorably with the best average Bars of the State.

He notes that there was no effort to form a bar association during these early decades. In 1872, a majority of the county bar adopted a "uniform fee bill" – what became known as a minimum fee schedule – but it apparently was difficult to enforce.

The ranks of the bar grew slowly. In 1859, seven attorneys had clients on the trial calendar. Twenty years later, the bar had grown to sixteen. In 1901, the number of registered attorneys in the county was twenty-five, but "four or five" did not practice.

But as much as Kiester revered the legal profession, he saw that it needed reform. After his account of events of 1872, he inserted "The Legal Profession," which may have been delivered first as a speech. He begins with a long tribute to the part lawyers play in society, but then changes tone:

And now another phase of the subject. It must be admitted that the profession has in some localities perhaps in many to some extent, fallen into considerable disrepute, as above intimated.

He thereupon lists unethical practices of “pettifoggers, shysters, scalpers, razorbacks and sharks, [who] often end their career in the perpetration of crimes.” He adds, “There are thousands of men in the legal profession who have no natural adaptation for it, and sooner or later fail as lawyers and drift into clerkships and small agency business...” He proposes better legal education and tougher admission standards:

The great remedy for the evils us above referred to, is the exercise of more care in entering young men on the study of the law, the requirement of a much higher standard of qualifications, that is, more thorough and extended learning, better instruction as to the morals and dignity and honor of the profession and the requirement of passing, satisfactorily, a more rigid examination before admission to the bar.

Here Kiestler, writing in 1872, expresses a view of his contemporaries that some of us in the early twentieth-first century suspect – that lawyering at that time was frequently shoddy, that “reading law” was an inadequate education, that many who entered the field – they could hardly be called professionals – could not make a living, and left for other trades.

J. A. Kiestler embodies two notable strains of the legal profession: its humor and its capacity for self-examination. More than any of the ancient professions – medicine, the clergy, the military – lawyers possess a willingness to laugh at themselves. While they take the law seriously, they also see occasional humor in what they do, and they are quick to share those “war stories” with each other. The profession also engages in constant self-criticism, which leads to reform. This capacity for critical self-examination

is one of its greatest strengths. It is on public display in Kiester's essay.⁶

B. The Manuscript of Volume Two.

At the time of his death, Kiester was completing the second volume of his history. The executor of his estate attempted to raise funds through subscriptions to publish it in hardback form, as was the first, but was not successful. Today the manuscript is available at the Minnesota Historical Society. The first two pages are an open letter from the Executor explaining why the second volume was not published:

TO THE CITIZENS OF FARIBAULT COUNTY:

Jacob A. Kiester, the author of the first volume of this History of Faribault County, died on the 13th day of December 1904. It was Judger Kiester's earnest desire to prepare, complete and publish a second volume of his History. The first volume included the first twenty-five years of the history of Faribault County and the second was to comprise the succeeding quarter century. The manuscript was about completed at the time of his death and since that time been prepared for publication by his administrator. The cost of publication has been ascertained; the prospectus of the work issued; advertisements published in all the papers of the county; personal solicitations made by a number of representative men of the several municipalities but the subscriptions were not what the administrator had hope for. If the second volume were issued and no more sales were made the subscription than might be reasonably anticipated, the estate of Judge Kiester

⁶ There is a bright line between constructive self-criticism which leads to change and self-loathing which ends in cynicism. Kiester does not cross that line. For a political criticism of the bar two decades later, see the blistering speech by "I. D." on page 77, below. Kiester's readers would have known that "I. D." was Ignatius Donnelly.

would have suffered financially to too large an extent to warrant the administrator in making the outlay. Judge Kiester made no profit on his first volume and the administrator did not anticipate any profit on the second volume but he naturally expected that it should pay expenses.

Judge Kiester's work in searching out and compiling the vast amount of information which is found in the first volume, and also in the manuscript of the second volume, was done absolutely gratuitously and done for the good of the people of Faribault County, whom he loved so well. Not only for the good of the people who now inhabit the fertile prairies on which the Indian hunted when Judge Kiester first entered the county, but also for the benefit of the many generations to come hereafter and to whom the history of the struggle of the early pioneers in this land of promise ought to be of deep interest. That the services of Judge Kiester in compiling this second volume shall not be entirely lost to the future the administrator has determined to donate one copy of the manuscript to the State Historical Society at St. Paul, where it will be kept on file for the inspection of all persons interested. Another copy will be donated to the Blue Earth Public Library to be kept by them in the Library building at Blue Earth, where it will be convenient for reference to those who would be most interested.

/s/ A. M. Schoncke
Administrator of the estate of
Jacob A. Kiester, deceased.

Elmora, Minn.

June 1st, 1906.⁷

⁷ In keeping with Kiester's unbridled habit of inserting humorous stories in his chronicle, it seems appropriate to quote a passage from Oliver Goldsmith's *The Vicar of Wakefield* satirizing the subscription process. In this scene, a son of the vicar meets a man who describes how he persuades the upper crust to subscribe to never-to-be-published vanity books:

The manuscript of this volume has been typed on legal-size paper. Like the first, it gives year-by-year accounts, interrupted by jokes but also with occasional tributes to dead pioneers. Kiester did not forget his friends.

3. Kiester Township.

Many pioneer-lawyers who worked tirelessly for their communities in the state in the nineteenth century have been forgotten. But not J. A. Kiester. He is recalled because of his history and because he is an eponym. In January 1859, the county supervisors named a township after him. He had resided in the county only twenty months when he received this honor. The site was an uninhabited prairie, with two Indian mounds, and a small stream. Kiester writes, "Owing to the want of native timber in this town, and the further fact that much of the land was owned by speculators, this was among the last towns in the county to be settled." In fact, the first settlers of the township, did not stake out claims until November 1865.

As I was meditating one day in a coffee-house..., a little man, happening to enter the room, placed himself in the box before me, and after some preliminary discourse, finding me to be a scholar, drew out a bundle of proposals, begging me to subscribe to a new edition he was going to give to the world of Propertius, with Notes. . . . 'Look at these proposals,—upon these very proposals I have subsisted very comfortably for twelve years. The moment a nobleman returns from his travels, a Creolian arrives from Jamaica, or a dowager from her country seat, I strike for a subscription. I first besiege their hearts with flattery, and then pour in my proposals at the breach. If they subscribe readily the first time, I renew my request to beg a dedication fee. If they let me have that, I smite them once more for engraving their coat-of-arms at the top. Thus,' continued he, 'I live by vanity, and laugh at it. But, between ourselves, I am now too well known; I should be glad to borrow your face a bit.'

***The Vicar of Wakefield*, ch. XX (1766). The son declined to participate in the scheme.**



**Jacob Armel Kiester
(1832 – 1904)**

In a chapter on the township, Kiester begins with a lengthy description of its topography and geology, repeats the official explanation for its name, and follows with a self-sketch:

This town was named “Lake” by the special commissioners in 1858, under the erroneous impression that it contained a number of lakes. There are, however, no lakes in the town.

It appearing subsequently that there was another town in the State of this name, the State Auditor directed the name to be changed, and accordingly on the fourth day of January, 1859, the board of county supervisors named the town “Kiester,” after one J. A. Kiester, of Blue Earth City, whose name appears occasionally in this history of the county.

Mr. Kiester was born in Pennsylvania in 1832. He received his education in the common schools and at

Mount Pleasant and Dickinson colleges, in that state. He served an apprenticeship of four years in learning the mercantile business and book-keeping. He subsequently studied law, and was admitted to the bar in 1855.

In 1856 he came west to Wisconsin, where he remained some months. In April, 1857, he located at Blue Earth City, where he has ever since resided. He was married in December, 1859, to Miss Caroline Billings, of this county. They have had six children, one of whom died in infancy. Since coming to this county, Mr. Kiester has been county surveyor, register of deeds, member of the lower House of our state legislature in 1865, county attorney, judge of probate court over twenty-one years, and state senator four years.⁸ He is a Mason, and a member of Blue Earth City lodge, of which he was twice W. Master, and he was subsequently chosen twice Grand Master of Masons in Minnesota.

Mr. Kiester has always been a republican in politics, and he and his family are members of the Protestant Episcopal Church at Blue Earth City, of which he has been a lay reader for some years.

He was the writer of this history of the county.

Some readers may suspect that behind this explanation of the commissioners' decision to rename an uninhabited section of prairie after a new arrival, lurks one of Kiester's stories. If so, it remains untold.

⁸ **Kiester served one term, 1891-1895. In the election held on November 4, 1890, he received 66% of the vote:**

J. A. Kiester, Republican.....	1,893
C. S. Dunbar, Alliance.....	744
G. E. Francisco, Independent.....	113
D. H. Morse, Democrat.....	41

1891 Blue Book, at 560.

4. The Passing of J. A. Kiester.

Kiester's death on December 13, 1904, was reported in the *Faribault County Register* beneath a large photo:⁹

Faribault County Register
Thursday, December 15, 1904 4

JUDGE J. A. KIESTER DEAD.

**One of the Old Pioneers of Faribault County
Passed Away at His Residence in This
City Tuesday Morning.**

Jacob A. Kiester, one of the pioneer residents of this county, died at his home, corner of Moore and South streets, in this city, last Tuesday morning, Dec. 13, at 6:30 o'clock, of disease of the kidneys, aged 72 years and 8 months, having been sick but 9 days.

Mr. Kiester only survived the death of his beloved wife since last spring.

The late Mr. Kiester was a native of Pennsylvania, where he was born on April, 1832.

He came to the village of Blue Earth when there were but a few, log cabins.

He received his education in the common schools and at Mount Pleasant and Dickinson colleges, in Pennsylvania. Mr. Kiester, in his early youth, served an apprenticeship of four years in learning the mercantile business and bookkeeping. He subsequently studied

⁹ *Faribault County Register*, December 15, 1904, at 4. A day earlier, the *Faribault Daily Journal* printed a short obituary on its front page under the headline, "Judge J. A. Kiester Dead. Member of Minnesota House in 1865 and Senator Four Years."

law and was admitted to the bar in 1855, at the city of Madison, Ind., where he resided for several years, and was admitted to the bar in Faribault county in 1859, at the first term of court held in the county.

In 1856 he came to Wisconsin, where he remained some months, in the employment of a county surveyor, as an assistant; his purpose, however, was to settle finally in Minnesota, to which state (then a territory) he proceeded in the spring of 1857. He first designed locating in St. Paul and engage in the law and real estate agency business, but the capital removal bill had passed removing the capital to St. Peter, to which village he proceeded, but on arrival found that the removal bill was a failure. He remained a short time at St. Peter but did not like the prospects there.

Having heard much of the beauty and fertility of the Blue Earth valley, he visited that region, and on the third day of April, 1857, located at Blue Earth as above stated, and where he has ever since resided.

He was married in 1859, to Miss Caroline Billings, of this county. They have had six children, one of whom died in infancy.

Since residing in Faribault county he has held various county offices and was a member of, the lower house of our state legislature, in 1865. He was judge of the probate court a number of terms, and state senator four years, 1890–1895. He was the plaintiff attorney in the first law suit tried in the county, and delivered the address at the first Fourth of July celebration held in the county, 1858. He was elected worthy chief of the first Independent Order of Good Templars, organized in Faribault county in 1860. He was for some years also a member of the board of education of Blue Earth City, and was president of the board two years. He has always taken an active interest in all public

enterprises calculated to advance the interests of the county and especially of Blue Earth, and he gives to all religious, educational and fraternal institutions his hearty support. Mr. Kiester is one of the veteran Masons of the county, and was twice Master of Blue Earth City Lodge, No. 57, and was twice grand master of Masons in Minnesota. He has always been a Republican in politics. He was the writer of the history of the county (published in 1896), a large volume, embracing the annals of the first quarter century of county — the story of the pioneers. If he had lived until Dec. 31 he would have completed the second volume of this history. It has not yet been decided whether the history will be published or not.

He and all his family were members of the Protestant Episcopal church. At the close of his senatorial term, 1895, he retired from all official positions and business affairs, and he and his wife have lived comfortably in the old homestead in Blue Earth, where they have resided for over forty years.

Judge Kiester was highly respected by all who knew him, as a kind, benevolent and loyal citizen. He had a pleasant, affable manner, which won him many friends during his long life, and his passing away will cause a loss to our community hard to fill. The REGISTER extends sympathy to the sorrowing relatives. We feel that another good man as gone to his last home.

....

But not forgotten.

5. Sources.

The following article consists of excerpts from the first volume of Kiester's *History of Faribault County* published in 1896, and the typewritten manuscript of the second volume. As noted earlier,

Kiester composed his history in the style of an almanac, giving year-by-year accounts of public events such as government activities, election results, weather and crop conditions, and court proceedings. The following passages describe a few court sessions during each decade from the late 1850s into the early 1900s, with jokes added to relieve the tedium. Most years have been omitted from this article.

The excerpts have been reformatted; several photographs have been omitted; otherwise the passages are complete. The original punctuation has been occasionally modified and several misspellings have been corrected (i.e., Kiester misspelled de Tocqueville).

The title of the following article — “The Bench and Bar of Faribault County” — has been added by the MLHP as are the footnotes. □

“The Bench and Bar of Faribault County”

—IN—

THE HISTORY

—OF—

FARIBAULT COUNTY

MINNESOTA,

From its First Settlement to the Close of the Year 1879.

IN THREE PARTS.

FIRST PART.

The Annals of the County.

PART SECOND.

Historical Sketches of the Several Townships.

PART THIRD.

**Historical Sketch of the Government of the County,
and of the Several County Offices.**

TILE STORY OF THE PIONEERS

BY

J. A. KIESTER,

Attorney at Law.

**“Let me speak to the yet unknowing world,
How these things came about.” *Shakespeare.***

**MINNEAPOLIS, MINN
HARRISON & SMITH, PRINTERS
1896**

1. 1856.

A. THE FIRST HOMICIDE — A MYSTERY.

**"Blood has been shed ere now i' the olden time,
Ere human statute purged the general weal;
Ay, and since too murders have been performed
Too terrible for the ear." — Shakespeare.**

During the month of April, 1856, three young men came to Blue Earth City, remained a short time at the Elkhorn, and then proceeded, by way of H. T. Stoddard's, in Verona, a settler of the preceding year, where they remained several days, to the vicinity of Mapleton.

Their names were J. C. Ackley, a young merchant from Connecticut, who had come west to Caledonia, in Houston county, in this state, and Frederick Fisher, who had been a clerk in a store at Caledonia for several years, and E. C. Young, a farmer and resident of Houston county for some years. They were looking for land, desiring to take claims. Ackley took a claim somewhere on the Maple river and went to work. Fisher and Young concluded to look further, and, finally, returned to the house of Mr. Stoddard.

After prospecting several days, Young took up a claim about a mile south of Stoddard's, and Fisher found a tract to suit him, about two-and a half miles northwest of Stoddard's, in town one hundred and four, of Range twenty-eight (now Winnebago City township).

They boarded with Stoddard, and worked on their claims together, until Young accidentally sprained his right knee, very seriously, and was confined to the house for a week or more. During this time Fisher worked on his claim alone.

On Friday, the day preceding the date of the death of Fisher, while Stoddard's family, including Young and Fisher, were at dinner, a

number of Indians came to the house. The company comprised a few Sioux, several Winnebagos and a half-breed of bad repute. It appears that these Indians, with quite a number of others, had a large camp near Fisher's claim.

While the Indians were staring in at the door and window, during the dinner, Fisher jokingly made a remark to one of the Indians, which greatly insulted him, but he did not, at the time, seem to specially resent the insult. Fisher went to work on his claim after dinner. About noon of the same day, three white men, named respectively Benson, Humphrey and Sinclair, also came to Stoddard's, looking for land. They went away in the evening, going as they alleged to their boarding place, Tobias Miller's, just over the line in Blue Earth County, but returned the next Wednesday to Stoddard's, when Stoddard hired Benson and Humphrey, and Young hired Sinclair to work. During the afternoon the Indians returned to their camp.

Fisher returned home in the evening as usual. The next morning, Saturday, May 10th, Fisher, accompanied by one Brace, a boarder at Stoddard's and a claim holder, who was going in the same direction, some distance, started for his claim to split rails, taking his dinner, axe and wedges with him. Fisher did not return in the evening as usual, and after waiting until quite late, Stoddard and H. R. Walker on foot, and Young on horseback, went to Fisher's claim, in search of him, but found no traces of him.

On Sunday morning, they with several others, went out again but found nothing of him, except the beetle and wedges. No rails had been split. It was then evident that Fisher had given up his intention of splitting rails, or that something had happened to him on Saturday morning. It was suggested that he might have gone to Ackley's for clean clothes, where he and Young had left their clothing. But Fisher not returning on Monday, Young sent his hired man, Sinclair, to Ackley's place, to see if Fisher had been, or was then there. It appeared that he had not been at Ackley's and Ackley returned with the messenger to Stoddard's, when another search was made for Fisher, but no further trace of him was found.

The disappearance was unaccountable and foul play began to be suspected. The question arose, naturally, did he have any money with him? It was known that he had a gold watch. Some persons alleged that he had considerable money, as much as three thousand dollars in gold.

It was even said by some, that he had as much gold as would fill a shot bag. But others, who had the best opportunity of knowing, said he did not have more than five dollars, if so much, and that Ackley had loaned him some money, at Austin, on their way coming west. Some days passed, but no tidings came of the missing man.

The man Benson then took Fisher's claim, on condition, that if Fisher appeared, the claim would be given up to him.

Ten days residence on the land was required by law, at that time, and certain improvements, before title could be perfected.

Benson completed the improvements and Fisher still not being heard from, Benson, Ackley and Young proceeded to the United States Land Office, then located at Brownsville, Houston County, in this state, and "proved up" on their several claims. Young advanced the means to pay the Government for Benson's claim. Benson, after proving up, sold the land to Young for fifty dollars advance on the cost.

Young remained in Houston county until the last of August, when he returned to Stoddard's and he became a permanent resident of the county. In the meantime, and about the 10th day of June, or perhaps a little later, Fisher's body was found in a small ravine, on his claim, by Patrick H. Allen. Fisher had been murdered. It was plainly evident how it had been done. He had been stabbed twice in the neck — once in the side and once behind — and was thrown into the ravine and covered with dirt and leaves, lightly, and several small willow withes, sharpened at the ends, were bent over him, in the form of a bow, the ends being stuck into the ground.

Mr. Allen immediately reported the finding of the body, when a small burial party, consisting of Mr. Allen, A. D. Mason, H. H. Bigelow, J. Roberts, T. Maxson, N. Dewey, H. T. Stoddard, H. R. Walker, J. M. Stow, the Rev. J. G. Whitford, most of whom were new settlers in the vicinity, repaired to the locality of the body, and buried the remains near by.

It may be stated as a singular fact, that the gold watch, which Fisher owned, was still on his person, but his boots and hat were gone. Col. Samuel McPhail, of Caledonia, was subsequently appointed administrator of the estate of Fisher, and the watch which had been placed in Stoddard's care, was, by order of the administrator, delivered to Young and was sent to Fisher's brother, residing in Rochester, N. Y.

Suspicion attached to several persons, as the perpetrators of this foul murder, but the most careful and impartial investigation but proved that the suspicions could not be correct, and were but the suggestions of mistake or malice. Within four months after the homicide, a committee of citizens carefully investigated the affair, and some four years afterwards, the grand jury of the county formally inquired into the case, through all the obtainable witnesses to the facts known, but neither the committee nor the grand jury could learn anything as to the murderer, or any accessory to, or instigator of the crime.

Many circumstances connected with this sad affair, indicated that an Indian did the deed, probably the one offended by Fisher. Nearly a score of years have parsed away, but notwithstanding the old adage that, "murder will out," yet no further light has ever been thrown upon the horrible crime and the perpetrator will probably never be known, until the great books shall be opened in the last day. The details of this case, have been given, as they were learned from those who knew most about it.

In the spring of 1874, being some years after the above article was written, a statement appeared in the *Mankato Review*, which was copied into the *Blue Earth City Post*, that a rumor was cur-

rent to the effect that a short time before that date, a man had died, in Colorado, who, just before his death, confessed that he and another person had committed the murder of Fisher, at the instigation of a person whom he did not name. Several weeks after the above statement was made, the Review said that it had learned that the person who was alleged to have made the confession and died — Tobias Miller — was alive and well and that "the whole thing proves to be only a sensational story."

In justice to Mr. Miller, it must be said, that there were never any suspicions, in the early days, that he had anything whatever to do with the crime, and no evidence that he was implicated in it has ever appeared since that time.

The incidents attending this great crime are given so fully here, because it was the first known homicide occurring in the county and has always been a great mystery and, lastly, because at least two lives, besides that of poor Fisher, have been wrecked by aspersions growing out of the event.

. . .

B. SECOND HOMICIDE.

Samuel V. Hibler, the register of deeds of the county and one of the original town proprietors, was holding the southwest quarter of section seventeen in township one hundred and two, range twenty- seven, adjoining the town-site of Blue Earth City, as a claim under the pre-emption laws. He had erected a small log cabin and made some other improvements on the land. Not probably living up to the strict letter of the law as to residence upon the land and the land then being deemed quite valuable, one Theophius Bowen "jumped the claim," as it was called in those days and determined to contest Hibler's right and ordered trial at the local land office, than located at Chatfield, Minnesota. In Hibler's absence Bowen had gone upon the land and taken possession of the building. The jumping of claims was in those days, very unpopular and was viewed as a gross infringement of

private rights, which warranted extreme measures. Many persons in those early days lost their lives in this territory because of claim jumping. In many places on the frontier, law and order in the first settlement of the country is not well established, and but little respected and persons considering themselves trespassed upon, often seek to right their wrongs "by the strong and bloody hand."

Hibler returned and on the fifteenth day of October [1856], taking several friends with him, proceeded to the house on his claim and ordered Bowen off of the premises. A young man named Alfonso Brooks, was in the house at the time with Bowen. High words followed between Hibler and Bowen, and they got into a scuffle, when Brooks interfered and Hibler, who had a stout cane in his hand, struck Brooks over the head. Brooks stooped down to pick up a piece of brick from a small pile in the corner and as he arose, Hibler struck him again on the head several times. Brooks fell and died in about an hour. His skull was broken. Mr. Brooks was buried in the graveyard at Blue Earth City, the Rev. J. G. Whitford preaching his funeral sermon. It was indeed a sad affair. A young man of good habits, intelligent, of inoffensive character and not one of the principal parties to the quarrel, stricken down in the prime of life.

Bowen immediately went to Mankato, in Blue Earth county, to which this county had been attached for judicial purposes, and made complaint against Hibler and some others, whom he considered implicated. The complaint was made before a justice of the peace, who forthwith issued a warrant for the arrest of Hibler and the others. They were arrested and taken before the justice for examination. Thomas J. Galbraith, an able lawyer of Shakopee, and James Dow, an attorney residing at Red Wing, were retained as counsel by Hibler and his friends, and Lewis Branson, of Mankato, who afterwards became judge of the sixth district, appeared as prosecuting attorney. When the case was called, Mr. Galbraith moved the court to discharge the prisoners on the ground that the justice had no jurisdiction over the territory (in the county) where the offence had been committed, the statute

of the time enacting that the jurisdiction of a justice of the peace should be "Co-extensive with the limits of his county and no other or greater." They were discharged. Mr. Hibler never returned to this county. He went to Shakopee where he remained a short time, and then returned to Pennsylvania, his native state. The others, being no more than mere spectators of the homicide, came home. Bowen subsequently pre-empted the land in dispute, the larger part of which, in after years, was laid out in additions to Blue Earth City. The current opinion of the time was, that the killing of Brooks was mainly an accident and that Hibler was not seriously to blame under the circumstances.

2. 1859.

THE DISTRICT COURT.

The first term of the District Court held in this county commenced its session on the 4th day of April of this year. The officers of the court were Hon. Lewis Branson, Judge; Geo. B. Kingsley, Clerk, and Geo. H. Goodnow, Sheriff. There were seven civil and two criminal cases on the calendar. The attendance on the court was large, many coming out of curiosity, and the term was a very respectable one. A more full account of this term is given elsewhere. It is sufficient to say here, that the law was now established in the county, and its supremacy acknowledged. There was a tribunal in the county where wrongs could be righted and rights enforced — the time when every man was "a law unto himself," had passed away and another step forward in the progress of the county had been taken. The Bill of Rights declares that "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property' or character; he ought to obtain justice freely and without purchase; completely and without denial; promptly and without delay; conformably to the laws." Constitution.

The names on the calendar of the attorneys appearing in the several cases were J. B. Wakefield, A. C. Dunn, Simeon Smith, W. W. Knapp, J. A. Kiester and Messrs. Wilkinson and Burt. The Grand

Jury sworn and charged, being the first ever convened in this county, was composed of the following gentlemen: Dr. W. N. Towndrow, Foreman; E. Crosby, Wm. Phillips, T. Bally, J. S. Latimer, G. A. Weir, S. L. Rugg, Jas. Sherlock, B. Gray, A. Morris, A. J. Barber, E. B. Kendall, G. D. McArthur, John Beidle, W. W. Sleepier, O. G. Hill, H. A. Faunce, W. Seely, Jas. Decker, S. A. Safford, H. L. Young, S. B. Hamilton and T. Bowen.

No more respectable Grand Jury than this first one has ever assembled in this county.

The first Petit Jury sworn was composed of the following named gentlemen: Aaron J. Rose, Aaron Mudge, Dr. R. P. Jenness, Dr. J. P. Humes, Martin Sailor, O. Webster, W. Ladd, James Prior, Jas. L. McCrery, J. Edwards, H. Chesley and J. Burk. And many very respectable petit juries have sat in this county since that day and pronounced their verdicts, but none more able, intelligent or conscientious than the first. They were "good and lawful men."

The writer is sorry to have to record the fact that the first verdict rendered in this county was that short and terrible word "guilty."

The term lasted five days and the business disposed of was considerable.

Courts are usually conducted with much solemnity and dignity, but some very amusing incidents occur occasionally, and here is one.

Our pronouns are apt to get mixed, as the following, which is reported from the Pacific slope. A policeman was being examined as a witness against an Irishman whom he had brought before the local court. After the officer had told his story, the judge inquired.—

"What did the man say when you arrested him?"

"He said he was drunk."

"I want his precise words, just as he uttered them. He did not use the pronoun he, did he?"

"Oh yes, he did. He said he was drunk. He acknowledged the corn."

"You don't understand me at all. I want the words as he uttered them. Did he say, '/ was drunk?' "

"Oh no, your Honor, he didn't say you was drunk. I wouldn't allow any man to charge that upon you in my presence!"

"A fledgling lawyer, occupying a seat in court, here desired to air his powers, and said, "Pshaw! you don't comprehend at all. His Honor means, did the prisoner say to you, '/ was drunk?' "

"Waal, he might have said you was drunk, but I didn't hear him."

"What the court desires," said another lawyer, "is to have you state the prisoner's own words, preserving the precise form of the pronoun he made use of in the reply. Was it in the first person *I*; second person *thou* or *you*; or in the third person *he*, *she* or *it*?' Now then, sir, did not the prisoner say, '/ was drunk?'"

"No, he didn't say you was drunk, neither. D'yer supposes the poor fellow charged the whole court with being drunk?"

3. 1860.

THE COURT.

In passing it may be well to state that the second term of the District Court commenced its session on the second day of April, Hon. L. Branson, presiding. A pretty lengthy calendar was disposed of, but none of the cases tried were of public importance. In the summary of the events of a year, the sessions of our District Court, may, to a superficial observer, appear to be an unimportant item. But such is not the fact. Besides the important consideration that this court — the highest in the county — affords the means of

the final adjustment of innumerable legal difficulties and the trial of offenders against the laws of the land, for which purposes it was established, it exercises a wholesome educational and restraining influence upon the public. It is, too, the occasion of the assembling of many people from all parts of the county, either as parties having some interest in the causes to be tried, or as jurors or spectators. All become more or less instructed in the laws of the land and impressed with the power of the laws and the dignity and decorum of the courts of justice.

4. 1861.

THE COURT.

The District Court held its regular annual session April 3d. Hon. Lewis Branson presiding. The term lasted but one day. There was no business for the grand jury, and but one case for the petit jury. This speaks well for the people.

5. 1862.

JUDICIAL.

The district court this year had a session of only one day. The preceding year a session of but one day was held. The little business required to be done by the courts in this county, during many of the first years, while it might not indicate that this county was a very favorable locality for lawyers, did indicate the non-litigious character of the people and that they were a quiet, orderly class of inhabitants, disposed to do justice toward each other, voluntarily, which was the fact and which was certainly a high recommendation to them. During many of the earlier years of the county, the lawyers as a rule, discouraged litigation, and often put themselves to considerable trouble, without fee or reward, to assist their neighbors in settling their disputes amicably if possible and this was very creditable to the lawyers.

In the words of Shakespeare, frequently

**“It pleases time and fortune to lie heavy
Upon him * * * who, in hot blood,
Hath stepp’d into the law, which is past depth
To those that, without heed, plunge into it.”**

6. 1863.

THE JUDICIARY.

The District Court commenced its annual session [Monday] May 18th. The session lasted, until Saturday evening following [May 23], being by far the longest term yet held in the county and although much business was done, there was none of special importance or of public interest.

Some attorney who reads the above item, may be hard up for an authority on some point and may thank the writer for the suggestion contained in the following anecdote taken from a newspaper.

“Some years ago at the trial of a cause before a justice of the peace in one of the southern States, a decided novel legal authority was cited by one of the learned members of the bar, which wrought some slight confusion in the courtroom.

“The court will please observe,” remarked this acute counsel, with much deliberation and in a most ponderous manner, “that in the case of Shylock vs. Antonio, although judgment was rendered in favor of the plaintiff, yet circumstances prevented the execution which had issued from being carried into effect, in spite of that fact.”

“To what case,” inquired the justice, with a face overspread with perplexity, “did the court understand the gentleman to refer?”

“Shylock vs. Antonio, 2d Shakespeare, page 235, Johnson’s edition,” returned the counsel solemnly. “The court will there find the case reported in full.”

7. 1864.

OYER! OYER! OYER!

The district court held a session of one day, at the usual time in May. This was the last term in this county at which the Hon. Lewis Branson presided, his term of office expiring January 1st following. He had presided at all our courts from the first organization of the county to this time. A number of distinguished lawyers from abroad were present at this term, among whom was Hon. C. G. Ripley, afterwards chief justice of our supreme court.

A COURT CRIER.¹⁰

A lawyer, living on Walnut Hills, has a son about seven years old, and a daughter about three times that age. The boy has been around the court room a good deal, and the girl has a solid beau. The other evening the gentleman passed the house, and the young lady wanted to see him.

“Johnny,” said she to the kid: “won’t you please call Mr. Mann.”

Johnny knew the state of affairs, and with a ready “of course,” he flew to the front door and called out in the usual loud monotone of a crier:

“John Henry Mann, John Henry Mann, John Henry Mann, come into court.”

Mr. Mann came in, and Johnny withdrew to a safe place.

¹⁰ **The “crier” was the court officer who performed many of the functions that a bailiff handles today.**

8. 1866.

THE COURT.

The district court held its annual term in June. The officers of the court were:

Hon. Horace Austin, Judge presiding.

John K. Pratt, Clerk.

Charles Chaple, Sheriff.

The term lasted four days, and much important business was done.

As Blackstone long ago intimated, in that admirable poem, “The Lawyer’s Farewell to his Muse,” there is in court proceedings but little of poetry, and less of romance. And there is also but little of historic interest, usually.

“The wrangling courts and stubborn law

*** * * * ***

**The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall.”¹¹**

Rarely, in this county at least, have furnished any incidents worthy of historic record; and hence some few amusing and other incidents which have occurred in courts other than our own, and illustrative of the proceedings of the courts and the practice of the law, for they are much the same everywhere, are incorporated here occasionally.

A famous writer has embalmed in a book, and we may do the same, the Irish Court Criers, Call, who desired to break the tedious monotony of the form of opening court, by adding to the usual dull sing-song words, “Hear Ye, Hear Ye, Hear Ye, the court

¹¹ The complete poem can be found in David Kader & Michael Stanford, *Poetry of the Law from Chaucer to the Present* 36-9 (Univ. of Iowa Press, 2010).

is now open,” the following expressive command, “And all ye blaggards that are not lawyers lave the building.”

9. 1869.

JUSTICE.

The annual term of the District Court commenced June 1st. The term lasted eight days. This was the last term of court held by Judge Austin, in this county, he having been, as will be seen hereafter, elected Governor of the State.

MISERIES OF JURY DUTY.

“I’ll never serve on another jury as long as I live.” Said one of the jurors, to a friend.

“Yes it must be very tiresome,” replied the friend.

“It is. Indeed, but that is not what I’m complaining about.”

“The loss of time is not repaid by the per diem and mileage.”

“I didn’t mind the loss of time so much. It was not the loss of time that galled me.”

“What was it that exasperated you so much?”

“Well when we were impaneled, some young sprouts of the law, looked us over, as if we were a pen of sheep. I heard a lawyer whisper to another, ‘well I guess we can handle that bunch of mullets,’ the other replied, giggling, ‘I guess they have not formed any opinions by reading the newspapers, from appearances,’ and a newspaper next day, describing the jury, referred to me, as being, apparently, a beef-headed young man with ears that could be pinned together above my head. ‘I’ll plug that editor, when I see him, you bet-your-life.’ — From an Arkansaw Paper.

10. 1872.

A. THE DAY OF JUDGMENT.

At the January term of the district court for this year, but little business of importance was transacted, there being no cases attracting public attention. There were thirty-nine civil and but two criminal cases on the calendar. Hon. F. H. Waite, presided.

At a meeting of the bar of the county, held during this, term of court, the attorneys of the county adopted a uniform fee bill. It did not prove of much service, and this was the first united action taken by the bar of this county on any matter.

Among the queer cases which sometimes occur in courts of justice, the following is told as a veritable one. It could hardly have happened in any but an "Arkansaw" court.

A FELLOW FEELING.

A gentleman was arraigned before an Arkansas Justice on a charge of obtaining money under false pretenses. He had entered a store, pretending to be a customer, but proved to be a thief.

"Your name is Jim Likmore?" said the justice.

"Yes, sir."

"And you are charged with a crime that merits a long term in the penitentiary?"

"Yes, sir."

"And you are guilty of the crime?"

"I am."

"And you ask for no mercy?"

"No, sir."

“You have had a great deal of trouble within the last two years?”

“Yes, sir, I have.”

“You have often wished that you were dead?”

“I have, please your honor.”

“You wanted to steal money enough to take you away from Arkansas?”

“You are right, judge.”

“If a man had stepped up and shot you just as you entered the store you would have said, ‘thank you sir?’”

“Yes, sir, I would. But, judge, how did you find out so much about me?”

“Some time ago,” said the judge, with a solemn air, “I was divorced from my wife. Shortly afterwards you married her. The result is conclusive. I discharge you. Here, take this \$50 bill. You have suffered enough.”

B. THE LEGAL PROFESSION.

As a member of the legal profession — though a very humble one indeed — the writer may be excused for some remarks here on the subject, which heads this brief article. It is a subject in which every one is more or less interested.

Lawyers, as such, and the legal profession in general, are the subjects of a good deal of abuse, suspicion, invidious witticisms and sometimes of denunciation. A great deal of this is not merited, except by a few individuals.

The profession and lawyers generally, are suspicioned and maligned because of the inefficiency — say incompetency, or the bad character of a small proportion of those who belong to the profession. The truth is that the members of the profession, generally,

are entitled to respect and confidence. However, it is difficult to find a class of men or profession, who care less about abuse, or are better able to stand it, than lawyers. They are not very sensitive.

The legal profession is one of the most noble in its great scope and in its intellectual requirements, and one of the most necessary to the welfare of society of any of the secular occupations.

Its importance, in all countries, whether monarchical, or republican, or whether its members have been backed by wealth, or titles, or high places, or not, has been admitted.

The legal profession, in itself, is a great republic as “The Republic of Letters,” in which real talent, large attainments, practical capacity, constitute the only gauge of rank. Lawyers in all countries and all times, or those who answer to that title, have always ranked in importance with the best classes of citizens.

No civilized country can do without lawyers. Where laws exist, there must be those who know what the laws are, and who can give counsel as to what they are, and who can assist people in the maintenance of their rights under the laws. The knowledge of lawyers is also of the highest importance in the making of the laws themselves. A large per centum of the members of all constitutional conventions, of National and State legislatures, and also of the highest official government incumbencies, are lawyers, and the judicial departments of all governments is their exclusive domain.

But it is generally the fact that it is only when a man gets into serious personal difficulties, that he begins to appreciate the value of the services of an able and honorable lawyer. Lawyers hold in their hands much of the happiness and success of the community and state, for these are in a great measure dependent on the proper administration of wise laws.

And considering the nature of their profession, lawyers are necessarily entrusted with much important business, and great confidences — secrets of the most important character, relating to families, people's personal, private and business affairs, by all classes of persons, and it may be affirmed that, considering the power they possess in this respect, to extort money, or take other advantages, the legal profession is a remarkably honor-able and faithful one. The great majority of lawyers are true to their clients, under all circumstances. It may be added here, notwithstanding the adverse suggestions heard sometimes, that a man may be a lawyer and yet a man of the highest honor and integrity. He may be a Christian man in the true sense of that name. There have always been, and now are many lawyers who are Christian men.

De Tocqueville says that lawyers are attached to public order beyond every other consideration, and further, that he “cannot believe a republic could subsist at the present time, if the influence of lawyers in public business did not increase in proportion to the power of the people.”

The profession of the lawyer is one which, for its successful conduct and broadest usefulness and honor requires the largest ability, the best training and widest extent of learning. There is no branch of human knowledge, which may not be of use to a lawyer. This may be true largely of most professions, or vocations, but it is peculiarly and emphatically so of this.

That prince of American lawyers, David Dudley Field, says that “Above all others, this science (that of the law) so vast, so comprehensive and varied in its details, needs to be served with all the aids which institutions, professors and libraries can furnish.” While a much lower grade of qualifications than is here indicated, may certainly serve to equip a lawyer for ordinary practice, yet the supposition that a year, or two years, desultory reading in a law office, or even a course of study for one or two years in a law school, and the passing of a superficial examination for admission to the bar, will rank a lawyer competent to take into his hands the important business or other interests of

men, and meet successfully opposing counsel, is one of the great absurdities of the age. But there are many lawyers at the bar, at this day, who have been “gotten up” in this way. The idea that it is well to admit applicants to the bar whatever their qualification, and depend upon subsequent practice and study for efficiency, now appears to be passing out.

The work of a lawyer in full practice is very laborious and exacting. Constant thought, close attention, investigation of principles and authorities, study of every phase of his, cases, and the evidence connected therewith, are his daily task, and to a large extent, nightly also.

The lawyers’ work is quite different in many respects from that of other professions or occupations, in the fact that any opinion he or every move he makes, is the subject of inspection and perhaps opposition He therefore must always be well grounded and always ready. The doctor may doctor and the preacher may preach, for years making perhaps many mistakes, and no fault may be found with them, but the lawyer must face inquiry and opposition at once and constantly in his business, and his errors or weaknesses are taken advantage of by his opponent.

A great deal more is expected of lawyers in America than perhaps in any other country. In most countries lawyers devote their time to only one title, or branch of the law or practice only in certain kinds of courts as the Law Courts, the Chancery Courts, the Criminal Courts, the Admiralty Courts.

In England, for example, the profession is divided into attorneys, solicitors, common law lawyers, proctors, counsellors, and perhaps some other designations, but in America a lawyer is expected to be proficient in all the titles and departments of the law, and to practice in any or all of the courts.

When Judah P. Benjamin, after the fall of the confederacy went to England to engage in the practice of the law, he was asked by an English lawyer, in what division, or department of the law and

courts he intended to practice, and greatly surprised the inquirer, when he answered, in any of the courts where his services should be desired, and he did, and that with great success. In the larger cities of this country there are, however, lawyers who devote their time to practice in some particular courts, or branch of the law. Daniel Webster once said of eminent American lawyers, that “they work hard, live well, and die poor.”

And now another phase of the subject. It must be admitted that the profession has in some localities perhaps in many to some extent, fallen into considerable disrepute, as above intimated.

This is not because of the real character of the legal profession itself, but because of the incompetent and dishonest persons who have gotten into it, and their evil practices, as has already been suggested. But a further word needs to be said. It is charged against the profession, that what was once known as legal ethics and honor, are largely unknown at this day.

It is said that legal ethics taught that it was dishonorable for a lawyer to take contingent fee — that a lawyer who had heard a case in the capacity of a court and rendered a decision therein should not on appeal to a higher court, act as the attorney of either party — that a lawyer should not hear a case, as a Judge in which he had at any time been an attorney, even if no objection is made, or even if consent of parties is given — that an attorney engaged in a case should not counsel or conspire with the attorney of the other side — that a Judge should not give counsel to either party or instruct or hear one party, or his attorney, as to the merits of a case in the absence of the party and his attorney on the other side — that an attorney who has given an opinion or is employed on one side of a case, should not hear, or be employed on the other side at any time — that no attorney should be guilty of barratry, maintenance, or champerty, whether the law permits either of them, or not.

Yet it is claimed that these things are done, quite commonly. It is also alleged, that it is a violation of legal ethics and honor for a

lawyer, in the employment of a corporation, company, or individual, to permit himself to be elected to a state legislature, or congress, for the purpose of promoting, or protecting the interests of his employer, thus ignoring his oath and dishonoring his office of a legislator, and instead of representing the people — his constituents, represents a client for pay, so far, at least, as his client's interests are involved, and whatever the interests of his constituents may be. And this, it is alleged in many places, is getting to be quite common in both our state and national legislatures. And it is doubtless true, that in congress and in many state legislatures, attorneys of great corporations and moneyed interests appear as members.

It is said also, that there is a class of lawyers who dishonor the profession by living on, what may be termed, legal garbage, carrion — those who take doubtful personal injury suits, on speculation, or contingent fees — those who rummage the records of courts and titles, for the purpose of taking advantage of people's errors or oversights, to rob them of their property, or to extort money from them — those who institute suits without merit, for the purpose of getting fees, or making something by compromise — those who institute, or threaten to institute suits for the purpose of levying blackmail — those who hang about saloons and police courts and police officers, for the purpose of getting business, and finally, those who can be hired to do any kind of dirty work which no honorable man would do for himself.

Undoubtedly there are such lawyers, and they are generally known in the profession, and at large, as pettifoggers, shysters, scalpers, razorbacks and sharks, and often end their career in the perpetration of crimes. These fellows are usually practitioners of very large pretensions, and they constitute the class of lawyers who bring odium upon the profession. A community where many of them, or any of them, in fact, are to be found, is to be pitied. What produces them? Want of capacity sufficient to warrant success in honorable practice or want of moral principle, profligate or evil lives, by which they forfeit the confidence of the public, are usually the causes. The lawyer who has reached the

sage conclusion that it is better for his business, as a lawyer, to have the reputation of being a shrewd knave, rather than that of being an honorable man, has traveled a long way on the road to failure and the devil. Many young men are placed in the professions who are not by their natural talents or tastes fitted for them, or for the one they enter.

The question of a young man's adaptability, his natural capacity and taste for an occupation, is a serious one and should be well considered before he enters upon it. It is a bad thing to spoil a good farmer, mechanic or merchant, to make a poor lawyer, doctor or preacher. There are thousands of men in the legal profession who have no natural adaptation for it, and sooner or later fail as lawyers and drift into clerkships and small agency business, all very well in themselves, and useful, but they are not — the practice of the law, technically speaking.

The great remedy for the evils above referred to, is the exercise of more care in entering young men on the study of the law, the requirement of a much higher standard of qualifications, that is, more thorough and extended learning, better instruction as to the morals and dignity and honor of the profession and the requirement of passing, satisfactorily, a more rigid examination before admission to the bar.

Our great law schools, the American Bar Association and the various State Bar Associations, are doing much toward elevating the standards of the legal profession.

The relevancy of the preceding remarks on the subject of the legal profession, to our history will become more apparent when we reach the closing year of this history, in which will be found some observations relating to the Bar of this county.

11. 1873.

The first day of January was very mild and pleasant. The new year

was ushered in under very favorable weather auspices, but if this fact was taken as predictive of a pleasant winter, a favorable spring or a prosperous year, the horoscope was not well read.

The seventh day of January, 1873, was an eventful one in this county.

**“Your plea is good, but still I say, Beware;
Laws are explained by men; so have a care” — *Pope.***

And first, on this day the district court commenced its winter term, Hon. F. H. Waite, judge. There were forty civil and four criminal cases on the calendar. There was a very large attendance of attorneys and of the people of the county, at this term. It was the first term of court held in the new court house. It was also the only term of this court, held in the county, during the year. The June term, owing to the sickness of the judge, was not held. A special session was called for July 15th, but this term, also, at the request of the board of county commissioners, was dispensed with.

12. 1874.

“THE HIGH COURT.”

The district court held its regular general term, commencing on the sixth day of January. Hon. F. H. Waite, presiding. There were twelve criminal and fifty-one civil cases stated on the calendar, one of the largest ever had in the county.

The following instance is not the only one in which jurors have been greatly puzzled.

“Gen. R. W. Judson tells a good story. It was of a case in the United States district court at Albany many years ago. A patent right suit was on before Judge Nelson. William H. Seward was counsel on one side. In summing up he occupied a whole day. Peter Cagger came in while he was talking, and after listening an

hour turned to a learned lawyer and inquired: 'What the deuce is Seward talking about?' The counsel on the other side made a long speech, and the judge charged. After the jury had been out about two hours they came into the court, and the foreman said: 'Your honor, the jury would like to ask a question?' Judge: 'You can proceed.' Foreman; 'Well, your honor, we would like to know what this suit is about?' "

. . . .

THE JUDICIARY.

The June general term of the district court commenced its session on the first Tuesday in June.

Hon. F. H. Waite, judge; H. J. Neal, clerk; J.H. Sprout, county attorney; A. B. Davis, sheriff.

There were six criminal and twenty-three civil cases on the calendar. Here is a little joke which occurred in the Court of King's Bench, which should not be lost. If there is any place in which dignity, decorum and good manners should prevail it is in our courts of justice, and lawyers should set the example.

Sir Fletcher Norton, whose want of courtesy was notorious, happened, while pleading before Lord Mansfield on some question of manorial right to say: "My lord, I can illustrate the point in an instant in my own person. I, myself, have two little manors." "We all know it, Sir Fletcher," the judge interposed, with one of his blindest smiles.

This was Judge Waite's last regular term in this county, he having resigned his office.

13. 1875.

THE COURTS.

The district court commenced its winter term January 5th. Hon. A. C. Woolfolk, of Mankato, having been appointed by the governor of the state to fill the vacancy occasioned by the resignation of Hon. F. H. Waite, presided at this term, the judge elect, Hon. D. A. Dickinson, not having yet qualified. The calendar contained seven criminal and thirty-six civil cases.

The progress of business was interrupted somewhat by the illness of the judge during the session. At the June term, Hon. D. A. Dickinson presided, being his first term in this county. There were four criminal and thirty-eight civil cases on the calendar.

Among the "levities of the law," we find the following incident, which is entirely too good to go into the waste basket. It is well known that there is a class of lawyers who take great delight in trying to confuse and browbeat witnesses, and make them testify to that they do not wish, or contradict their own statements. Here a witness, however, who "turned the tables."

"Do you know the prisoner well?" asked the attorney.

"Never knew him sick," replied the witness.

"No levity," said the lawyer sternly.

"Now, sir, did you ever see the prisoner at the bar?"

"Took many a drink with him at the bar."

"Answer my question, sir," yelled the lawyer. "How long have you known the prisoner?"

"From two feet up to five feet ten inches."

"Will the court make the —"

“I have, Jedge,” said the witness, anticipating the lawyer. “I have answered the question. I knowed the prisoner when he was a boy two feet long to a man five feet ten.”

“Your Honor —“

“It’s fact, Jedge; I’m under oath,” persisted the witness.

The lawyer arose, placed both hands on the table in front of him, spread his legs apart, leaned his body over the table, and said:

“Will you tell the court what you know about this case?”

“That ain’t his name,” replied the witness.

“What ain’t his name””

“Case.”

“Who said it was?”

“You did. You wanted to know what I knew about this Case. His name’s Smith.”

“Your Honor,” howled the attorney, plucking his beard out by the roots, “Will you make this man answer?”

“Witness,” said the Judge, “you must answer the questions put to you.”

“Lynd o’ Goshen, Jedge, hain’t I been doin’ it? Let the blamed cuss fire away, I’m all ready.”

“Then,” said the lawyer, “don’t beat about the bush any more. You and the prisoner have been friends?”

“Never,” promptly responded the witness.

“What! Wasn’t you summoned here as a friend?”

“No, sir; I was summoned here as a Presbyterian. Nary one of us was ever Friends. He’s an old-line Baptist, without a drop of Quaker in him.”

“Stand down,” yelled the lawyer in disgust.

“Hay?”

“Can’t do it. I’ll sit down or stand up—”

“Sheriff, remove that man from the box.”

Witness retires, muttering “Well, if he ain’t the thick-headedest cuss I ever laid eyes on.” — *Uttica Observer*.

14. 1879.

THE COURT AND THE BAR.

The summer term of the district court commenced June 3d. The calendar exhibited twenty-four criminal and twenty-one civil cases. This was the first time in our history that the criminal exceeded the civil calendar. But this fact must not be taken as indicating the increase of crime in our midst. None of these cases were capital, and most of them were of petty importance. The term continued eleven days. A special term was also held this year, in October, of four days.

The following statements as to the constitution of the court, the names of the members of the Faribault County Bar, and a few remarks in reference thereto, may interest some reader of the history of the last year of this volume.

THE DISTRICT COURT OF FARIBAULT COUNTY, MINN. JUNE TERM, 1879.

Presiding—Hon. D. A. Dickinson, judge.

Officers of Court—M. W. Greene, county attorney; H. B. Neal, clerk; M. B. Pratt, sheriff; H. A. Chase and Q. J. Adams, bailiffs.

Faribault County Bar — Abbott, S. J., Winnebago City; Buswell, Geo. W., Blue Earth City; Dunn, A. O., Winnebago City; Goodrich D.

F., Blue Earth City; Graham, S. W., Blue Earth City; Greene, M. W., Wells; Keister, J. A., Blue Earth City; Kingsley, Geo. B., Blue Earth City; Mell, J. V., Winnebago City; Reynolds, Benj. G, Winnebago City; Radford, C. H., Winnebago City; Sprout, J. H., Blue Earth City; West, J. P., Wells; Watson, P. B., Wells; Wakefield, J. B., Blue Earth City; Wilkinson, M. S., Wells.

Terms of Court — First Tuesday in January, first Tuesday in June.

No Bar association has ever been formed in this county and the nearest approach to any concerted or associate action of the members of the Bar, occurred in 1872, when a fee bill was agreed upon by a majority of the attorneys in practice at the time. The Bar of this county, in learning and ability, and the reputation of its members for integrity and efficiency, compares favorably with the best average Bars of the State. Nor have the members of our Bar been wanting in public official honors, and we are a little proud to set forth here, though briefly, this very honorable record:

One has been a county superintendent of schools, and later a member of the lower house of our legislature. Another has been once assistant and twice chief clerk of the lower house of the legislature. Another has been thrice chief clerk of the lower house of the legislature, and once secretary of the State senate, county attorney and once a member of the lower house. Another, twice State senator and president *pro tempore* of the senate. Another, a member of the lower house of the State legislature. Another, who was twice county attorney. Another, who was register of deeds, county attorney, judge of probate and member of the lower house of our legislature, and four years State senator. Another, who was member of the lower house and clerk of the district court for four years.

Another, who was a Judge of probate court in the state of Ohio. Another, who subsequent to this year, became county attorney for two terms. Another, who was four times successively county attorney. Another, who was three times a member of the lower house of the legislature and once State senator, and afterwards

deputy public Examiner. Another, who was several times a member of the lower house of the legislature, once speaker of the House, twice State senator, twice lieutenant governor and president of the senate, and afterwards member of congress for two terms. Another, who has been a number of times a member of each House of our State legislature, member of congress, and United States senator for six years.

The writer ventures the assertion that there is not another Bar in the State, outside of the cities, which can make a better showing of official honors than ours.

15. THE JUDGES AND CLERKS OF THE DISTRICT COURT.

A. The Judges.

The district court is a court of general common law jurisdiction in civil and criminal cases, and has a clerk and seal. It is presided over by one judge.

When the county was organized, it was attached to Blue Earth county for judicial purposes, but was by act of the legislature, of 1857, detached from that county, and became entitled to terms of court within the county.

By act approved May 23d, of the same year, it was placed in the third judicial district, comprising a number of counties and the judge was authorized to appoint a clerk of court in each county.¹²

Subsequently, by the constitution of the State, this county was placed in the sixth judicial district, where it still remains.¹³ By act

¹² **The Legislature, however, misspelled the name of the county. 1857 Laws (special sess.) Ch. 83, §6, at 310 (“The Counties of Mower, Farribault and Freeborn are hereby made a part of the 3d Judicial District...”). Effective May 3, 1857.**

¹³ **Constitution, Schedule §14 (1857).**

passed August 12th, 1858, the county was given one term of court annually, to be held on the first Monday of April of each year. ¹⁴

By act approved March 5th, 1870, the county was allowed two terms annually, commencing the first Tuesday of January and the first Tuesday of June. ¹⁵

The principal duties of the office of the clerk of the district court are to keep accurate minutes of the proceedings of each term of court — to enter up all judgments, decrees and orders of the court — to keep a docket in which the name of each, party to a judgment is entered alphabetically, with the amount and time of entry of judgment, to file and preserve all papers pertaining to each case. There are other duties also pertaining to the office.

Marriage licenses are issued by the clerk, and a record of marriage certificates kept by him, and the births and deaths in the county are annually reported to the clerk, and a record kept thereof, and he has now very important duties to perform in relation to the public taxes.

The clerk is paid for his services by fees prescribed by law. His term of office is four years, and he is required to take an official oath and give an approved official bond for the faithful performance of his duties. He may appoint deputies.

The first term of the district court of this county was held in April, 1859, for a full account of which the reader is referred to the history of that year.

Let us now say something in reference to the office of judge of the district court and the judges.

The office of judge of the district court is a very important and honorable one, and the question as to who shall be placed in the

¹⁴ 1858 Laws Ch. 67, §1 (6), at 157. Effective August 12, 1858.

¹⁵ 1870 Laws Ch. 83, §1, at 152-3. Effective March 5, 1870.

office is a matter of perhaps greater concern to the people than any other which they are called upon to determine by their votes. As is the judge, so will this highest local tribunal be. To fill this high office efficiently, in all respects, requires talent and learning of a high order, combined with great firmness, independence, prudence, good sense and incorruptible integrity. It is a position of hard, and often perplexing labor, and of grave responsibility.

The importance of this office to the people may be shown by a very simple illustration. The laws may be violated, our private rights trampled upon, our property illegally taken from us, or we may be injured in person, or reputation, but we have no place to resort to but the courts, to vindicate or enforce our rights, or right our wrongs. But if the courts are weak, or corrupt, the tools of sharpers, shysters and villains, if justice is obtained, not freely, but by purchase, not completely and without delay, but after harassing and expensive waiting, if at all, what then? We may answer simply in the homely phrase, which all can understand, "the bottom of everything has fallen out." It is only in the confidence and assurance of the supremacy of the laws and their enforcement by able and incorruptible courts, that civilized society lives and moves and has a being. Take this away, and anarchy, mob law and the rule of the strong and bloody hand appear.

The people do well, when called upon to elect their judges, to weigh deliberately, the vote they are about to cast. And here, at least, party affiliations merely, church or social relations, are not to be considered, and political intriguing and trading are wholly out of place. Interests, too grave to be thus influenced, are at stake. Better make a mistake in any other office than in this. Chief Justice John Marshall said:

"The judicial department comes home in its effects to every man's fireside. It passes on his property, his reputation, his life, his all. Is it not to the last degree important that he (a Judge), should be rendered perfectly and completely independent with nothing to

control him but God and his conscience? The greatest scourge * * ever inflicted upon * * * a people, was an ignorant, corrupt or dependent judiciary.”¹⁶

At best, human justice, as applied to the infliction of penalties in punishment for the perpetration of offenses against the laws, is always, in some degree, injustice, because of man’s incapacity to apportion and exactly, the punishment to the offense, in any given case. For man cannot accurately weigh motives, influences, education, provocations, and mental conditions. God alone can perfectly do that. Hence it is apparent that our judges should be our wisest, most conscientious, discerning, independent and incorruptible men, for they are best qualified to administer exact justice, according to legal intent.

It is with unfeigned pleasure that the writer bears testimony to the fact that our judicial district has always been highly favored in the ability and high character of its judges. Hon. Lewis Branson, of Mankato, Minn., was the first judge who presided at our terms of court, which office he held until the close of the year, 1864. Judge Branson resided at Mankato, where he was engaged in the practice of the law until his election to the judgeship. Some time after the expiration of his term of office, he removed to California. The writer has been unable to obtain any farther facts of Judge Branson’s personal history.

i. Horace Austin.

Hon. Horace Austin, of St. Peter, Minn., was our next judge. He was elected to the office in November, 1864, and resigned September 30th, 1869.

Gov. Austin was born in the State of Connecticut, in the year 1831. His father was a blacksmith and taught his trade to his son

¹⁶ **Remarks by Chief Justice Marshall, speaking as a delegate, in a debate over the judiciary during the Virginia Constitutional Convention in 1829. Albert J. Beveridge, 4 *The Life of John Marshall* 493 (Houghton Mifflin Co., 1919).**

Horace. Horace received his education in the common schools and at an academy, and he became a school teacher. He studied law four years with Messrs. Bradbury and Morrill, of Augusta, Maine. In 1854 he came to the great west, and reached Minnesota in 1856, and In March, 1857, located at St. Peter, and engaged in the practice of the law. He served as captain of a company of cavalry, in Gen. Sibley's expedition against the Indians, in 1863. In 1864 he was elected judge of this district, as we have seen above, and served in that capacity until his resignation. He was elected Governor of the State in 1869, and was re-elected Governor In 1872, for a second term, which he served, after which he retired to private life, engaging in agricultural pursuits and milling, at Minnesota Falls.

Since the above sketch was written, Gov. Austin has engaged in business in Minneapolis.

Hon. M. G. Hanscomb, of St. Peter, was appointed to fill the vacancy arising from the resignation of Judge Austin, and was judge of the district from October 1st, 1869, to December 31st, 1869.

ii. Franklin H. Waite.

Hon. Franklin H. Waite was elected judge in 1869, and presided over our courts for the next five years, when, owing to ill health and advancing age, he resigned, after the June term of 1874.

Judge Waite was born in Windham county, Vermont, in February, 1813. When a boy he removed with his parents to Jamestown, New York. He, early in life, showed a great preference for the profession of law, and, after sufficient study, was, at the age of twenty-three years, admitted to practice by the supreme court of the state of New York. Five years later he was appointed in that state, judge of the court of common pleas, which position he held until that office was abolished. During President Polk's administration, he was postmaster at Jamestown, N. Y. Afterwards he came west and located at Fond-du-lac, Wisconsin, and engaged in the practice of his profession, In 1860 he came to

Minnesota and located at Mankato, pursuing his profession. He was elected to the State senate of Minnesota in 1861, and in 1869 was elected judge of this district as above stated.

Judge Waite's political affiliations were with the democratic party, and during the war of the rebellion, he was a strong Union man. He was an earnest anti-monopolist, and a strong opponent of the national banking law. He died at Mankato, March 4th, 1884, at the age of seventy-one years.

Hon. A. C. Woolfolk, of Mankato, was appointed to fill the vacancy occasioned by the resignation of Judge Waite. He presided at the January term in 1875.

iii. Daniel A. Dickinson.

Daniel A. Dickinson, of Mankato, was elected our district judge at the general election of 1874, and presided from the commencement of his term, except at the January session of 1875, until the June term, 1881, when he was appointed by the governor of the State, one of the associate justices of the supreme court of the State. At the general election of 1881 he was elected by the people to that high office.¹⁷

Mr. Dickinson was born October 28th, 1839, at, Hartford, Vermont. His father was a farmer and merchant. When Daniel was about six years old his father and family removed to Boston, Massachusetts. Daniel's parents dying when he was yet quite young, he spent his youth under the guardianship of his grandfather, at West Lebanon, New Hampshire. He entered Dartmouth college in 1856, and graduated In 1860. He read law at Plattsburgh, New York, and was admitted to the bar in 1862, but before commencing practice he enlisted in the naval service of the United States as acting paymaster, and served until 1865. He returned to Plattsburgh

¹⁷ **Daniel A. Dickinson (1839-1902) served on the court from 1881 to October 1893, when he resigned. He was defeated for reelection in 1892. A memorial proceeding was held for him in the supreme court on June 20, 1902. *Proceedings in Memory of Associate Justice Dickinson*, 76 Minn. xxv (1903).**

where he engaged in the practice of his profession until 1868. On June 11th, 1867, he was married to Miss Mary E. Weed, of Plattsburgh, New York. In 1868 he came to Mankato, in this State, and engaged in practice until elected judge, as above stated. On his promotion to the supreme court, he removed to St. Paul, the capital, where he now resides. Judge Dickinson was re-elected associate justice of the supreme court In 1886. He was not re-elected in 1892, and has since been engaged in practice.

iv. Martin J. Severance.

Hon. Martin J. Severance succeeded Judge Dickinson, being appointed to the office in 1881.¹⁸ At the general election of 1881, he was elected judge.

Mr. Severance was born December 24th, 1820, in Franklin county, Massachusetts. He received an academical education in his native county, and commenced the study of the law in 1849, and was admitted to the bar in 1853. He practiced law in Chicopee, Massachusetts, several years, and then left his native state, coming to Minnesota, and locating at Henderson, Sibley county, where he was engaged in practice from 1850 to 1862, most of the time as county attorney. He enlisted, in the summer of 1862, as a private soldier, in the military service of the United States, and, after twenty months' service, was elected and commissioned captain of his company, and served three years, and was mustered out, with his regiment, August 18th, 1865. Returning home, Mr. Severance located at Le Sueur, this State, and practiced there until 1870, when he removed to Mankato. Judge Severance was married June 16th, 1858, to Miss Elizabeth P. Van Horn, of Chicopee, Massachusetts, and they have three children. He was a member of the House of Representatives, of Minnesota, in 1859 and 1862. He was re-elected judge in 1880, and again in 1892.

¹⁸ Martin J. Severance (1826-1907) served in the Sixth Judicial District from 1881 to 1900. He was so respected that a memorial proceeding was held for him in the state supreme court on October 7, 1907. *Proceedings in Memory of Hon. Martin J. Severance*, 102 Minn. xvii (1908).

B. The Clerks.

The first clerk of the district court of this county, was John M. Jackson, Jr., of Blue Earth City, who was elected to the office October 13th, 1857, and he was also appointed to the office by the district judge, March 28th, 1858. He appointed Geo. B. Kingsley deputy, October 18th, 1858. He resigned the office January 3d, 1860.

Mr. Jackson came to this county in the spring of 1857, and “made a claim” near Blue Earth City. While a resident here, he was, for a while, engaged in the mercantile business, and was deputy postmaster for some time. He was a democrat in politics. He left the county at an early day, returning to his former home, Peru, Indiana.

On the resignation of the office by Mr. Jackson, January 3d, 1860, Geo. B. Kingsley, on the same day, was appointed clerk by the county board. At the next general election, held in November, 1860, Mr. Kingsley was elected clerk, and served the full term; he appointed Wm. Dustin, deputy clerk.

i. George B. Kingsley.

George B. Kingsley was born in Delaware county, state of New York, on March 21st, 1831.

His father, Israel O. Kingsley, was an old resident of Delaware county, and engaged, for many years, in the trade of carriage and wagon maker. He had a family of eight children.

George B. received his education in the common district schools. He learned the trade of his father, commencing when quite young, and followed it for a number of years in his native state, and also in Minnesota.

He came to the West In 1854, and located at St. Paul in this State, where he remained until the next summer, when he removed to

Shakopee, Scott county, in this State. Here he remained some three months, when he concluded to return to New York state, but stopped at Red Wing with relatives during several months. Here a town site company was formed to go up into the Lake Superior region, which he joined, but finally gave up this project. He then bought an Interest In the town site of Carver, in this state, and went there with the intention of staying, but finally sold out his interest in March, 1856, he met James B. Wakefield, and concluded to unite with him and others in the project of laying out Blue Earth City, and he came to this county in that month, and subsequently purchased a one-eighth Interest in the town site.

Mr. Kingsley was the first justice of the peace and the first postmaster in the county. In 1851 he was elected a member of the House of representatives of the first State legislature. In 1860 he became clerk of the court, as we have seen before.

On the twenty-third day of October, 1862, he was married to Miss A. B. Nichols. They have had one child, a son, who is now dead.

Mr. Kingsley, in partnership with H. J. Neal, engaged for some years in the manufacture and sale of household furniture at Blue Earth City.

Having turned his attention to the law, Mr. Kingsley was admitted to the bar June 13th, 1870, and engaged, for some years, in the practice of law at Blue Earth City.

After the completion of the railroad to Blue Earth City, Mr. Kingsley, in company with several other persons, engaged In the warehouse and wheat buying business.

Mr. Kingsley has frequently been justice of the peace, town clerk, member of the board of town supervisors a number of terms chairman of the board, a member of the city council, president of the council and a member of the board of education, of Blue Earth City independent district.

Mr. Kingsley and wife are members of the Presbyterian church. His political relations were with the democratic party for many years, but afterwards with the prohibition party. His name appears frequently in this history in connection with public events.

Mrs. Kingsley, who has for some years been somewhat interested in literary pursuits, published, in 1887, an instructive and well written volume, entitled "Heart or Purse," which has been very kindly received and much commended,

Mr. Kingsley died at Blue Earth City January 8th, 1894.

ii. John K. Pratt.

John K. Pratt, of Blue Earth City, elected in November, 1864, next assumed the duties of the office in January, 1865, and held the office until his death. On his demise, James C. Pratt, of Blue Earth City, was appointed clerk by Judge Austin, in April, 1868.

John K. Pratt was a native of Ohio, born in 1887, and emigrated with his father to Wisconsin in 1844. He was married in 1857, and came to this county in 1858. He died in March, 1868.

His brother, James C. Pratt, was a Vermonter, born in that state April 23d, 1833. He emigrated with his father to Wisconsin in 1844, and came to this county in March, 1860. He was married to Miss Harriette Catlin, of Wisconsin, in August, 1861, and returned to this county the same year. Here he engaged in farming for some years, and subsequently removed to Blue Earth City and engaged in merchandising, which has been his business ever since.

iii. Henry J. Neal.

Mr. J. C. Pratt appointed as his deputy, Henry J. Neal, of Blue Earth City, April 13th, 1888, who performed the duties of the office as deputy, until after the next general election, held in November, 1898, when he was elected clerk.

Mr. Neal was re-elected, in the years 1872, 1870 and 1880. He was not a candidate for re-election in 1884. He served as clerk nearly seventeen years.

Mr. Neal was born in the old Granite State (N. H.), at Wolfborough, on the seventeenth day of May, 1834. His father, Harry Neal, was a farmer and land surveyor by occupation. He emigrated to Canada, where he remained a year or so, engaged in school teaching, and then removed to Niagara county, state of New York, where he died, when Henry was about eight years old.

Henry received his education in the common schools and learned the trade of wheelwright. He emigrated to Wisconsin in 1849, and engaged there somewhat in the lumber business.

He was married in 1856 to Miss Esther B. Silliman. Mrs. Neal died February, 1889. Mr. Neal came to this county in April, 1858, and settled at Blue Earth City, where he continued to reside until his death.

He enlisted in October 1862, in the regiment of the Minnesota Mounted Rangers, and was with Gen. Sibley in the expedition against the Indians. In August, 1864, he again enlisted in Company "C," Eleventh (II) Regiment Minn. Infantry, and became first lieutenant of the company. He went south and served until the close of the war, being mustered out with his regiment in July, 1865.

On his return home he engaged in the manufacture and sale of household furniture, for some years. He was chairman of the board of town supervisors, held the office of justice of the peace for some time, and was a member of the board or county corn commissioners nearly two terms, of which board he was chairman in the years 1887 and 1868, and was clerk of the district court as above stated. After leaving the office of clerk, he engaged in the insurance and real estate business until May, 1891, when falling health required his retirement. He died January 27th, 1896, at Jacksonville, Florida, where he had resorted for several winters

on account of the mildness of the climate. Mr. Neal was a member of the Masonic fraternity for many years, and was always a republican in political sentiment. He was for four years chairman of the Republican Congressional Committee of the second district.

16. THE PROBATE COURT AND THE JUDGES.

There is established, in each organized county in this State, a probate court, which is a court of record, having a seal. The probate court has exclusive jurisdiction, is the first instance, to take the proof of wills, to grant and revoke letters, testamentary and of administration; to direct and control the conduct, and settle the accounts of administrators and executors; to enforce the payment of debts and legacies, and the distribution of the estates of intestates; to order the sale, and dispose of the personal and real property of deceased persons; to appoint and remove guardians, and direct and control their conduct and settle their accounts, and to take the care and custody of the persons and estates of insane persons, habitual drunkards and spendthrifts, on proper application. The court is invested by law with ample powers to execute its duties. This court is open at all times for the transaction of business, but a stated, or regular session, is held the first Monday of each month. Full and complete records of all the proceedings, orders and decrees of the court, are required to be kept. The judge of probate court holds his office for two years, and he is required to take an oath of office, and give an approved bond for the faithful performance of his duties. He is authorized to appoint a clerk of court. The judges were formerly paid by fees for their services, by the persons interested in estates, but, by act of legislature, passed in 1875, it was made a salaried office. The judge of probate is also invested with the jurisdiction to hear informations, or complaints, as to insane persons, residing in the county, to direct their examination and commitment, if found to be insane, to the hospitals for the insane. And this is a most delicate, difficult, important, and, withal, a very unhappy official duty, and requires the utmost care and circumspection, that no errors may occur, and no wrong may be done to any one. Summarizing briefly,

it is sufficient to indicate the importance of this office, and the interest we each have in it, to say that our business and estates, whether much or little, are left, and often left very suddenly, and in much confusion, mainly, for final settlement and disposition, when we cannot personally be present to explain our affairs or protect our rights, or the rights of those who survive us, to the ability, integrity and sound judgment of the judge of the probate court.

Jas. B. Wakefield, of Blue Earth City, was the first judge of probate of this county. He was appointed by the county board, April 6th, 1857, and was elected judge at the general election held in October of the same year. He resigned the office on the fourth day of November, 1857, and the office became vacant.

The first estate brought before the court was that of one Alphonso Brooks, who was killed in a quarrel about a claim in October, 1856, a more full account of which will be found in the history of that year.

It was provided by the law in force in 1858, that “in case the judge of probate is unable to act, or if the office be vacant, then the said court must be held by the district attorney of the county.”

W. W. Knapp, appointed district (now county) attorney, April 5th, 1858, performed the duties of judge of probate, until the next general election.

At the general election held in October, 1858, Guy K. Cleveland, of Winnebago City, was elected judge. He resigned the office January 2d, 1860.

Mr. Cleveland came to this county in 1857, or early in 1858. He was a lawyer by profession. He was elected representative in the State legislature for this district in 1859, and State senator in 1860, for two years. He subsequently removed to Mankato, where he became the proprietor and editor of a weekly newspaper, which he controlled for many years. He is now dead.

Wm. J. C. Robertson, of Verona, appointed by the county board January 2d, 1860, succeeded Judge Cleveland.

Mr. Robertson was born in Albany, state of New York, December 12th, 1806. His father was a mason by trade. He died when William was but four years old. When about sixteen years old, William was apprenticed to learn the blacksmith's trade, and he followed this occupation some thirty-five years. His education was obtained in the common schools of the county.

He accompanied his mother and family on their removal to Green county, N. Y., and from thence, in 1817, to Delaware county in that state. While here he was married to Miss Martha P. Maxson. He removed to Chemung, N. Y, and In 1844 he emigrated with his family to Fond du Lac county, Wisconsin, and remained there until 1857, in the spring of which year, he came to this county and settled on a farm in the town of Verona. He had, however, visited the county in the autumn of 1856, and looked out his location. Here he engaged in farming, until in December, 1862, when he removed to Blue Earth City, where he has resided ever since.

While in Wisconsin, Mr. Robertson was a town and county supervisor, and a justice of the peace, some thirteen years, and for a time postmaster at Rock River. He has been a town and county supervisor, in this county, (in 1850 and 1860), judge of probate in 1860, as we have seen above, and sheriff of the county in 1864 and 1865.

Mr. and Mrs. Robertson have been for nearly half a century, members of the M. E. Church. Mr. R. was, in the early part of life, a democrat, and his first vote for president was cast for Andrew Jackson. He became a whig, after Mr. Van Buren's election, and when the republican party arose, he became a republican.

Mr. and Mrs. Robertson have had eight children, all of whom are living but two. Mr. Robertson died at Blue Earth City In 1887.

Amos Preston, of Elmore, elected in November, 1850, was our next judge of probate. Heretofore the business of the probate court had been very limited, owing the sparse settlement of the county, but it now began to increase and became considerable, during the incumbency of Mr. Preston. Judge Preston was re-elected for a second term in November, 1862. At the general election in November, 1864, George Hart, of Delavan, (then Guthrie) was elected judge, but declined to accept the office, and Judge Preston held over until the next general election, November, 1865, when he was again elected and served until the close of 1867.

Mr. Preston was a New Yorker. He was born in Oneida county, March 16th, 1810. His father was a farmer. Amos was raised on a farm, and he was engaged in business as a farmer during life, though he was for some five years engaged quite extensively in lumbering in his native county, in connection with his farming interests. His education was such as could be obtained in the common schools of the time. At twenty-one years of age he struck out into the world for himself. He was married in 1834 to Miss Maria Wilson. They have had nine children, three of whom are now dead. In 1852, the great California gold fever being at its height, Mr. Preston concluded to try his fortunes in that distant land and went there by sea. Here he remained about three years, and then returned home and emigrated from thence to Delaware county, Iowa, where he tarried about a year, and in 1857 came to this county. Here he took a claim, broke up some land and bought some timber during the summer, and in the fall he brought in his family, and remained here since. Mr. Preston was originally a whig, but was a republican since the organization of that party. Mrs. Preston died in 1881. Mr. Preston never connected himself with the church, but his wife was a member of the Presbyterian church and four of his children are church members. Mr. Preston has frequently held town offices and was for a number of years, a member of the county board of which he was chairman in 1875. He sold out his property interests in this county in 1886, and went to California. He subsequently returned to Minnesota and resided

with his son-in-law, Harrison Pratt, at Minneapolis, until his death, which occurred in 1888.

A. F. De La Vergne, of Winnebago City, elected in November, 1867, succeeded Judge Preston. He held the office until July, 1869, when he resigned, and removed to the state of Iowa, where he has since died.

Judge De La Vergne was born in France, about the year 1816. He came to America when a child, to the state of New York. He came to Minnesota and settled at Le Sueur, Minn., in territorial times. He was a shoemaker by trade and subsequently a lawyer by profession, and practiced at Le Sueur. He was a member of the Lower House, seventh session, (representing the tenth district in the territorial legislature, which assembled January 2d, 1856. He became a resident of this county about 1864, locating at Winnebago City. He was justice of the peace of Winnebago City some four years. He was elected court commissioner of this county in 1867 and qualified. Judge De La Vergne was a married man, but his wife did not reside with him while he lived in this county.

After the resignation of Judge De La Vergne, J. A. Kiester, of Blue Earth City, was, on the second day of August, 1869, appointed judge by Guy Marshall. Heretofore no permanent records in books, such as the law requires, had been kept of the proceedings of the court. The business and papers during the course of years, had greatly accumulated, and were in much confusion and disorder when the matter being called to the attention of the county commissioners, the following resolution was adopted September 7th, 1869.

***Resolved,* That J. A. Kiester, Judge of the Probate Court, be and is hereby employed and authorized by this board to arrange and file the papers pertaining to the several cases in said court, in proper order, and write up the minutes of the proceedings of said court, make the records required by law at the appointment of**

executors, administrators and guardians, in suitable books to be provided by the county, and that for such services he shall receive such reasonable compensation from the county as hereafter be allowed by this board.”

By virtue of this resolution, and the provisions of the statute authorizing judges to complete all unfinished business of the court, the duties assigned in the above resolution were performed.

At the ensuing general election, held in November, 1869, Mr. Kiester was elected judge, and was re-elected in the years 1871, 1873, 1875, 1877, 1879, 1881, 1883, 1886 and 1888.

A brief biographical notice of Mr. Kiester will be found in another part of this work.¹⁹

17. THE COURT COMMISSIONERS.

Someone who appears to have been a little irritated at the action of a court commissioner, writes in a paper:

“He was reduced to the ludicrous necessity of applying for his writ to that anomalous officer—a sort of mysterious fifth wheel of our Judicial System—a court commissioner, for his writ. What a court commissioner is for, probably no one ever knew before, No one ever heard before of a court commissioner doing anything. The office is indeed created by statute. But no salary is attached to it, and it is usually filled by some obscure fledgling of an attorney who is learned in the law only by a courteous professional fiction. The very existence of such an office is unknown to the great majority of people, except as they are reminded of it once every three years by seeing it figure on the printed tickets over the name of some one that nobody knows, as a

¹⁹ His “brief biographical notice” is part of his history of Kiester Township. See pages 13-14, above.

candidate for its obscure and empty honors. It has been a popular mystery what was the use or functions of a court commissioner. It now turns out that his chief use is to do things in the judicial line which no court could be persuaded to undertake; to assume powers which the superior courts have uniformly decided to be beyond their province, 'For fools rush in where angels fear to tread.' ”

By the statutes, “court commissioners shall be men learned in the law, and shall have and. may exercise the judicial powers of a judge of the district court at chambers.” More definitely stated, a court commissioner may grant writs of attachment, writs of injunction, writs of habeas corpus, approve bail bonds, recognizances, and appeal bonds in certain cases, and various other duties which need not be named here. He has also power to administer oaths and take acknowledgements. His term of office was, formerly, three years, and he is required to take an oath of office and give an approved bond in the sum of \$2,000. He is required to keep a record of all proceedings had before him. By the act of August 4th, 1858, the powers of court commissioner were conferred upon the judges of probate. The law was soon changed, however, and the office was made a separate one. Yet from the fact that the two offices had been previously combined, the practice grew up in this, as in many other counties, of electing the judges of probate, as court commissioners. A very correct view of the true character of this office is stated in the following quotation:

“It is well known that the perquisites afforded by the position are inconsiderable—amounting, practically, to nothing at all, hence, on that ground, no one could desire to hold the office, but it is nevertheless, one of much responsibility, and requires special fitness in the incumbent. The duties are co-extensive with those of a District Judge — sitting at chambers, or in vacation, for the hearing and determining of applications and motions, and for the issuance of writs and orders —

hence it will be seen that even though the place is not a lucrative one, the honor which it confers, and the responsibility which it devolves, are very considerable.”

At the general election held in November, 1860, J. A. Kiester was elected court commissioner, and on the third day of September, 1862, resigned the office. Geo. D. McArthur was elected to the office in November, 1862, but did not qualify. Amos Preston was elected in 1863, and George Hart was elected in 1864, and Reuben Waite, in 1868, neither of whom qualified, and the office remained vacant. At the general election of 1867, A. F. De La Vergne, of Winnebago City, was elected and qualified. Up to this time no business had ever been transacted by the commissioner, and there was but one transaction during the term of Mr. De La Vergne. The office soon became vacant again by the resignation of Mr. De La Vergne. At the general election of 1869, J. A. Kiester was again elected to the office, and as the public convenience had come to require that some one should hold the office and perform its duties, he accepted it. He was re-elected in the years 1872 and 1875, 1879 and 1882, and resigned the office in March, 1886, having held it over fifteen consecutive years. The court commissioner is paid by fees prescribed by law, and have amounted from 0, to as great a sum, in some years, as forty dollars.

18. THE COUNTY ATTORNEYS.

A. Duties

The county attorney is the law officer of the county, as the attorney general of the State, and the attorney general of the United States are the law officers of the State and general governments. His general duties, as prescribed by statute, are to appear as attorney in all cases where the county is a party, to give opinions and advice to the county officers upon all matters in ‘which the county is interested; to attend all terms of the district court and other courts of criminal jurisdiction, and attend all preliminary

examinations of criminals, when the magistrate so requests him, and furnishes him with a copy of the complaint; to attend before the grand jury and give them advice; draw presentments and indictments, examine witnesses, and issue process for witnesses; prosecute all presentments and indictments, and attend all coroner's inquests, when requested.

He is required to take an oath of office, and give bond to the board of commissioners. He is paid for his services by salary fixed by the county board. His term of office is two years.

Prior to the admission of the State into the Union, the county attorney was named district attorney.

It may be well to observe that the supposition that "any lawyer is good enough for county attorney" is a stupid mistake. A negligent, dishonest or incapable attorney may involve the county in great expense and fruitless lawsuits, and, in the administration of criminal justice, may betray the county and the public, or utterly fail in the prosecution of offenders, to the great disparagement of the public peace and good order.

B. The Attorneys.

The first county attorney of this county was, probably, James B. Wakefield, who may have been, and very probably was appointed to that office, but no record evidence of the fact can now be found.

i. William W. Knapp.

Wm. W. Knapp, of Blue Earth City, was appointed to the office by the county board, April 5th, 1858, and duly qualified, and acted in that capacity a short time.

Mr. Knapp was a New Yorker by birth, and came to this county in 1857. He dealt somewhat in land, and was a school teacher, surveyor and attorney. After remaining for several years he went

to Missouri, thence to Pike's Peak, and from thence to Idaho, and finally returned to the state of New York, to his old home, where he married, and then returned to Minnesota, and located at Faribault, Rice county, where he engaged in the hardware trade. From thence he removed, after some years, (in 1870) to Mason City, Iowa, where he resided at the time of his death.

He died January 29th, 1890.

The office soon becoming vacant, we find that Jo. L. Weir, of Winnebago City, was appointed attorney January 4th, 1859, and assumed the duties of the office.

Jo. L. Weir was born in Robertson county, Tennessee, in 1821. He received his education in the common schools and at the Franklin college, Tennessee, which he attended for some time, but did not graduate. He studied law in his native county and was there admitted to the bar, and practiced his profession a short time. In 1857, in company with his brothers, George and Daniel, he came to this county and settled near Winnebago City, where they took lands under the pre-emption law. Mr. Weir engaged to some extent in the practice of the law in this county, but gave his attention principally to farming. During the "school examiner" system in this county, he held that office for some time in his commissioner district. Mr. Weir never married. In 1867 he returned to Tennessee, where he now resides.

On the fifth day of March, 1860, the county board declared the office again vacant, and by resolution authorized the county officers to employ attorneys when necessary.

Mr. Wakefield now re-appears as the law officer of the county, having been elected attorney in November, 1860, and qualified November 17th. Norman B. Hyatt, of Blue Earth City, editor of the *Blue Earth City News*, elected to the office in October, 1861, succeeded Mr. Wakefield.

Mr. Hyatt, it is believed, came to this county early in 1861. He engaged in the practice of law at Blue Earth City, and subsequently became interested in the *Blue Earth City News*, of which paper he was the editor for some time. He afterwards enlisted in the military service of the United States, and became the captain of his company. After retiring from the service, he finally located it Webster City, Iowa, where he engaged in the practice of his profession.

ii. Andrew C. Dunn.

The office becoming vacant by the enlistment of Mr. Hyatt, the county board, on the twenty-eighth day of May, 1863, appointed Andrew C. Dunn, of Winnebago City, to fill the vacancy. At the next general election held November 3d, 1863, Mr. Dunn was elected for a full term which he served.

Mr. Dunn was born in New York City, October 9th, 1834. He received his education mainly from his father, Nathaniel Dunn, who was for many years a noted educator, at one time principal of Wilbraham Academy, Mass., and for many years professor of chemistry in Rutger's Female College, N. Y.

Andrew commenced reading law under the direction of Edward Standford, Esq., of New York City, at the early age of fifteen years. He came to Minnesota in April, 1854, and was admitted to the bar by the Territorial Supreme Court, practiced a short time at Sauk Rapids, and then located at St. Paul.

He came to this county in 1856, and he, with several others, founded the village of Winnebago City, being one of the original town site proprietors, and built the first house in that village. In 1858 Mr. Dunn was one of the special Commissioners, appointed by the governor, to divide this county into towns and name them. On New Year's day, 1859, he was united in marriage to Miss D. J. Smith, of Blue Earth county, in this State. Seven children have come to them, but only three of whom are now living.

Mr. Dunn, since his first location in this county, has made the practice of the law his chief business and life work, and he is the oldest resident practicing lawyer at the bar of this county.

He was secretary of the first State Senate of this State, (which convened in December, 1871). In 1863 he was one of the commissioners appointed to take the vote of the soldiers then in active service at the south.

Mr. Dunn was chief clerk of the House of Representatives of this State in the years 1864, 1865 and 1866, and was elected representative of this legislative district in 1880, and attended the memorable sessions of 1881, and was one of the counsel on the part of the House in the impeachment proceedings had against Judge E. St. J. Cox. He has, from time to time, held various local offices, and has always taken a large interest in the public affairs of the State, and especially of the county.

Mr. Dunn was a democrat in early life and during the rebellion was a union democrat and has since affiliated with the republican party. He and his family are members of the Methodist Episcopal Church, and for many years Mr. Dunn has been superintendent of the Methodist Episcopal Sunday school at Winnebago City.

At the general election of 1865, Mr. Wakefield was again elected attorney, and also representative for the twentieth district, in the State legislature. He accepted the latter office, and the former became again vacant.

On the third day of January, 1866, J. A. Kiester, of Blue Earth City, was appointed attorney by the county board, and was re-appointed on the nineteenth of March following, and served until the next January. In the meantime, Mr. Wakefield, elected attorney in November, 1860, appears for the fourth and last time in this particular branch of the public service, but having been also elected State senator, at the same election, he accepted the latter office, leaving the attorneyship to be otherwise provided for. A bio-

graphical notice of Mr. Wakefield will be found elsewhere in this work.

On the third day of January, 1867, Mr. Kiester resigned the office, and it became again vacant. A brief biographical sketch of Mr. Kiester will be found in another part of this book.

On the resignation of Mr. Kiester, John H. Sprout, of Blue Earth City, was appointed (January 3d, 1867) attorney, and immediately qualified.

At the next general election, held in November, 1867, he was elected for a full term, and was re-elected in the years 1870, 1871, and 1878, and held office during nine consecutive years.

iii. John H. Sprout.

Mr. Sprout was a native of Attica, Wyoming county, New York, where ho was born December 16th, 1836.

His father, Col. Hosea B. Sprout, a resident of Attica for fifty years, was a farmer by occupation. John H. obtained his education in the common schools and at Warsaw Academy, and Genessee Wyoming Seminary. He subsequently engaged in school teaching in his native county.

In 1857 he emigrated to Dodge county, Minnesota, and engaged in farming for awhile. In the fall of 1857 he went to Columbia county, Wisconsin, where he read law with Hon. O. C. Howe, until the next spring, when he returned to Minnesota again, and engaged somewhat in farming. In the autumn of 1859 he returned to Wisconsin, and engaged in school teaching for about three years, after which he came to Minnesota, and engaged in farming for about a year and a half, and then went to Juneau, Wisconsin, where he resumed the study of law under the direction of Messrs. Billingham, Lewis and Friebert, and then attended, for some time, Michigan University law school. He was married, in 1861, to Miss Caliste L. Nichols, of Dodge county, Wisconsin. He was admitted

to the bar in the last named county, where he commenced the practice of law, and in the latter part of the year came to this county, locating at Blue Earth City, where he has since resided, engaged all the time in the practice of his profession. He was county attorney, as above stated, and has been justice of the peace a number of years, twice president of the council of Blue Earth City, and, also, president and member of the board of education at Blue Earth City, a number of terms.

For several years he was postmaster at Blue Earth City. Mr. Sprout is a member of the Methodist Episcopal church, and he is a republican in politics.

M. W. Green, of Wells, elected in 1875, succeeded Mr. Sprout. Mr. Green was elected in 1877 for a second term, which he served.

Mr. Green, after the expiration of his term of office, removed to Fargo, N. D., where he has continued in the practice of the law.

iv. Morton S. Wilkinson.

Morton S. Wilkinson, of Wells, elected in November, 1879, was our next county attorney. He held the office one term.

Mr. Wilkinson was born at Skaneateles, N. Y., on the twenty-second of January, 1819. He received an academic education, and taught school some six months. He read law at Skaneateles, and was admitted to the bar in 1842. He came west and settled at Eaton Rapids, Mich., where he practiced law till 1847, and then came to Stillwater, Minn. Mr. Wilkinson was twice married. His first wife died in Michigan, his second in Minnesota.

He was elected to the first territorial legislature, which assembled in the fall of the year, 1849. He made St. Paul his home from that time, engaged in the practice of the law, until 1851, when he moved to Mankato, Minn. About this time he was appointed, with others, to draft and report a code of laws for the State, which work he did in 1859.

The legislature of 1859 elected Mr. Wilkinson United States senator for the State of Minnesota for six year, which term he served. After the expiration of his term in the senate he was (in 1868) elected representative in congress and served one term. Subsequently he represented Blue Earth county, in the State senate, in the years 1874, 1875, 1876 and 1877.

Senator Wilkinson came to this county in 1878, and located on a farm near Wells, but has all along continued in the practice of the law, appearing occasionally in our district courts, and also, lately, before the supreme court of the United States, at Washington, D. C., in a number of Important suits.

He was a republican in politics until late in his career, when he affiliated with the democrats. He died at Wells, February 4th, 1894.

C. EXCERPTS FROM THE UNPUBLISHED SECOND VOLUME.

1. 1883.

It would not be doing justice to the truthfulness of history, to omit the fact, that the District Court commenced its term January 2d, and closed January 9th. Hon. M. J. Severance, Judge; C. N. Andrews, County Attorney, H. J. Neal, Clerk, and A. Cummings, Sheriff.

The printed calendar showed six criminal, and sixteen civil cases. The June term commenced on the 5th, and the calendar presented three criminal and nineteen civil cases. There were no cases tried at either term, of historic interest, which was all the better for the finances of the county. The above statements as to our courts, may be items of history, but they contain nothing of much interest, or value, and we will, therefore, add an anecdote for jurors: —

Numerous instances are given of the power that Mr. Rufus Choate possessed over a jury, concealing it even at the time he was exercising it with the most potent effect. Mr. E. P. Whipple instances two notable cases of this kind:-

One resolute Jurymen said to another, as he entered the "box": "Now, mind you, there is one man in the crowd who will not give a verdict for the client of that man Choate. Why, sir, he is the great corrupter of juries. I know all his arts. He is engaged by fellows who wish to subvert justice between man and man. I hate him!"

When the verdict was given for Choate's client, with hardly a discussion in the jury-room, the wonder was expressed that this obstinate member of the conclave agreed so readily with the rest. "Oh," he said, "the case was a plain one. Choate was right this time, and you now it would have been scandalous for me to violate justice because I had a prejudice against the person who supported it. Let him appear before us in a case where is palpably wrong, and I will show you that I'm all right. He can never humbug me!"

On another occasion a hard-headed, strong-hearted, well educated farmer was one of a jury that gave five verdicts in succession to Choate's clients. He said, - "I did not think much of his flights to fancy, but I considered him a very lucky lawyer, for there was not one of those five cases that came before us where he wasn't on the right side."

2. 1888.

The District Court opened Tuesday, January 3d, and adjourned on Wednesday.

**Hon. M. J. Severance, Judge
Smith T. Barnes, Clerk.
Benj. G. Reynolds, Attorney.
Allen Cummings, Sheriff.**

But three unimportant criminal cases on the calendar, and twenty-one civil cases, – but no case was tried at this term. At the June term Judge Webber, of the 9th District presided for some days. There were but two criminal, and thirty-seven civil cases, on the printed calendar and the term was quite an important one.

3. 1890.

The first Tuesday of January is always an important day in this country.

The District Court commenced its session, January 7th – Hon. M. J. Severance, Judge; W. B. Silliman, Clerk; James H. Quinn, County Attorney; and T. W. Donovan, Sheriff. There were ten criminal and forty-eight civil cases entered on the printed calendar. The June term commenced June 3d and there appears eight criminal and thirty-three civil cases name on the calendar. No cases were tried, of interest at this day.

4. 1893.

Our new court house having been completed, the various County officers moved into the rooms provided for them, early in January, of this year. Here the District Courts and the County Officers will find a home and their place of business for many years to come. When the corner stone of the great building was laid, and all the ceremonies had been completed six young girls clothed in white, the daughters of our citizens, in imitation of a custom in like cases, dating back to the best days of Greece and Rome and still usual, advanced to the corner stone, each bearing a bouquet or wreath of flowers, and lay the same upon the corner stone, – as the share of the young in these proceedings, when the master of ceremonies said, “By these beautiful offerings of wreaths and garlands of flowers, presented as tribute of youth in its purity and innocence to crown this corner stone and complete our work, the structure here to be erected may well be deserved forever consecrated to honorable public service, and this act may

symbolize to us that purity and faithfulness of official life, which should ever characterize the services of those whom the people shall choose to fill out public offices, and that even handed, impartial justice, “granted freely and without purchase, completely and without denial, promptly and without delay”²⁰ to be administered by our courts, within these walls, in the years to come.

. . . .

The District Court commended its term January 3rd, – Hon. M. J. Severance, presiding.

All accounted for.

Years ago the courts in western New York found it a matter of great difficulty to collect juries for the trial of a case. Not many of the men of the region took enough interest in the carrying on of courts of justice to be willing to leave their daily work to answer even an imperative summons to the jury-box. One case of considerable importance was adjourned from day to day, so the story runs, on account of the mysterious disappearance every morning of some of the twelve men who had been drawn and sworn on the jury; there were never more than eight of these unwilling victims to be found at one and the same time. One morning, however, when the judge’s patience had entirely departed, the sheriff came bursting into the court room, his face flushed with the excitement of victory.

“ It’s all right now, your Honor! ” he cried joyfully. “You can try the case today, for we’ll have the jury by twelve o’clock sure. It aint but ten o’clock now, and I’ve got eleven of ‘em locked up in my barn, and we’re running the twelfth man with dogs, your Honor! ”

. . . .

The June term of the District Court was held at Blue Earth City, commencing June 6th. The calendar showed six criminal and

²⁰ The quoted language is from Article 1, §8, of the Minnesota Constitution, guaranteeing each person the right to “a certain remedy in the laws for all injuries or wrongs.” He also quoted this section in his description of events in 1859. See page 26, above.

fifty-nine civil cases, many of them of considerable importance, but many of the cases were continued over from the January term. A dramatic opinion of lawyers expressed by one who was himself a lawyer. Does he speak from personal experience?

But some will say,— you were a lawyer once yourself. Yes, but I was caught young.

Personally there are good fellows: brilliant, talented, jovial; good husbands; good fathers; splendid chaps for a fishing excursion at a tea party; agreeable conversationalists, literary critics, and all that. How can you make a statesman out of one who has been trained, from his youth upward, to defend wickedness as vigorously as he does virtue; whose whole genius and mental powers are at the entire service of whoever will hire him; who will rejoice to turn the red-handed robber and murders loose unpunished, if he is paid for it; and whose greatness consists in his capacity to defeat justice and thwart the laws of his country?

Of course, there are exceptions to this — noble, heroic, honest souls, who rise superior to the limitations of their profession — who refuse to defend wrong; who stand like bulwarks in defense of the people's rights. These men loom up like lighted watch-towers above the darkness and baseness of their age: — Sir Matthew Hale, Sir John More, Lord Bacon, Lord Mansfield, Thomas Jefferson, Andrew Jackson, Abraham Lincoln are examples that dignify the human race. But the Lord has not permitted anything to exist on this earth meaner and nastier than a low-flung, petti-fogging, shyster lawyer. They combine the characteristics of the fox, the wolf, the tiger, the glutton, the buzzard, the snake, and the pole-cat. May the good Lord keep that kind of vermin out of the People's Party, and prevent them from any longer governing mankind.

I. D. ²¹

²¹ This diatribe may be understood when the identity of its author is revealed as Ignatius Donnelly (1831-1901), a lawyer, three-term congressman, fabulist, and one of the founders of the People's Party. The People's party was formed in the early 1890s as an alternative to the Republican and Democratic parties. The two major parties, Congress, the state legislatures which elected U. S.

We have among other events to record the sad fact that a murder was committed about a mile west of Blue Earth City, on Sunday, July 9th. A. L. Geherke shot Fred Shultz, on the farm of Mr.

Senators, the courts and newspapers were perceived by farmers and small businesses in the South and Midwest to be corrupt and controlled by powerful business interests, especially the railroads, which were represented by prominent lawyers. For a speech given by Donnelly to the People's party convention held in St. Louis in February 1892, expressing these sentiments, see Martin Ridge, *Ignatius Donnelly: The Portrait of a Politician* 295-6 (Univ. of Chicago Press, 1962). For the grievances of the populists, see generally, John D. Hicks, *The Populist Revolt: A History of the Farmers' Alliance and the People's Party* 54-95 (Univ. of Minn. Press, 1931); Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* 349 ("Indeed, by definition, all Populists were 'mid-roaders,' since the idea of navigating between both sectional parties [in North and South] and enlisting the 'plain people' in each was the underlying concept of the People's Party.").

The People's Party, as a political organization, was short-lived. In 1892, it endorsed Daniel Buck, Thomas Canty and William N. Davidson for associate justice of the state supreme court, and Buck and Canty won. Two years later, it endorsed Sumner Ladd for Chief Justice and John W. Willis for associate justice but both lost to Republican-endorsed Charles M. Start, who was elected chief justice, and Loren W. Collins, re-elected associate justice. See "Results of Elections of the Justices to the Minnesota Supreme Court, 1857-2010" 29-31 (MLHP, 2010). By 1896, the People's Party had ceased to exist, its supporters having joined the Prohibitionist Party, Socialist, other third parties, or the Democratic Party, led by the stalwart William Jennings Bryan.

Kiester inserts Donnelly's speech in his account of events of 1893, a year when the country fell into a steep recession, still another factor motivating the populists, many of whom like Donnelly were prone to conspiracy thinking.

Kiester did not share the political beliefs of Donnelly. In 1893, he was a sitting state senator, elected as a Republican. Why then did he quote Donnelly's denunciation of the legal profession? In 1903-4, when Kiester was working on the second volume, the People's Party was long-forgotten, Samuel R. Van Sant, a Republican, was Governor, Theodore Roosevelt was President, and the Progressive Movement was gathering steam. One wonders whether his preface ---- "A dramatic opinion of lawyers expressed by one who was himself a lawyer. Does he speak from personal experience?" ---- was an ironic dismissal of an old foe. But, in his 1872 paper on "The Legal Profession," Kiester condemned a segment of the bar in language almost as shrill as the Sage of Nininger's. Compare text at 39-41, above. It may have been that Kiester, now retired from the political wars, just admired Donnelly's rhetoric and could not resist quoting it.

Debner. Geherke was subsequently convicted and sent to State prison.

**“First envy, eldest born of Hell, imbued
Her hands in blood, and taught the sons of men
To make a death which Nature never made,
And God abhorred; with violence rude to break
The thread of life ere half its length was run,
And rob a wretched brother of his being.”**

Bishop Porteus.²²

. . . .

Again we have to chronicle the killing of a human being in our County. This occurred at Wells, where in September Allen Corr, killed H. E. Ringer. Mr. Corr was tried at a subsequent term of the court, and acquitted, it appearing that the killing was not intentional.

5. 1894.

In turning back to my notes and memoranda of the events of the year 1894 the first fact that presents itself is, – the January term of the District Court. The calendar exhibits twelve criminal and sixty-five civil cases. Hon. M. J. Severance was the judge; James H. Quinn, County Attorney; John P. Mundale, Clerk; and Oliver H. Dolan, Sheriff. The term commenced January second, and was a very busy term as maybe inferred from the number of cases tried. The trial of Geherke, for murder in the second degree, occurred at this term and also that of Allen Corr, for the killing of Ringer, – both cases were referred to in the history of 1893.

6. 1898.

The District Court commenced its term January 11th, being the second Tuesday of January. Heretofore, the winter term commenced on the first Tuesday of January, but the act constituting

²² This is the opening stanza from “Envy,” a poem by Bishop Beilby Porteus (1731-1809).

the new district changed the time to the second Tuesday. The officers of the Court were J. H. Quinn, Judge; ²³ J. F. Mundale, Clerk; F. E. Putnam, County Attorney; and Sandy McDonald, Sheriff. There appear to be three criminal cases on the calendar and sixty-seven civil cases.

7. 1901.

The June term of the District court, commencing June 4th, was a very short one,— one of the shortest we have ever had. The printed calendar exhibited two criminal and thirty-six civil cases. There appears the names of twenty-five attorneys are members of the Faribault County Bar at this time, but some four or five of them were not engaged in active practice. But three of those named were members of the bar at the first term of court in 1859. The Grand Jury was not called. As the record is very brief, — hardly enough of a record to show due respect for our highest local tribunal, the writer may be excused for adding a little joke, and here it is:—

“Postmaster General Payne was describing an old-time Milwaukee judge who had been noted for his kind heart. “I attended one day,” said Mr. Payne, “a session of the court at which this judge presided. The Court crier was a very old man; he had served with fidelity for many year, but age was beginning now to tell on him. He fell asleep while I was in the Court room, and in a little while he was snoring. His snores, of course, disturbed the proceedings of the court. The judge displayed great tact in interrupting them without embarrassing the crier. “Crier Jones,” he said in a loud voice. “Crier Jones, some one is snoring.” The crier awoke. He started to his feet. “Silence!” he exclaimed. “There must be no snoring in the court room,” and he glared ferociously abut him.” — Boston Post.

²³ James H. Quinn (1857-1930) served on the district court from 1897 to 1916, when he was elected associate justice of the supreme court. There he served until 1928, when he resigned. On March 22, 1930, a memorial service was held for him in the supreme court. *Proceedings in Memory of Associate Justice James H. Quinn*, 179 Minn. xxxi (1930).

8. 1903.

The District Court commenced its session, June 2nd.

**Hon. J. H. Quinn, Judge;
J. F. Mundale, Clerk;
H. L. Bullis, County Attorney;
Geo. Freer, Sheriff'
W. L. Nichols, Court Reporter.**

A very full attendance of the Bar and spectators, marked the opening of the Court. There were three criminal, and twenty-five civil cases named on the printed calendar. This was a somewhat peculiar term of court. Several indictments by the Grand Jury were found, — the principal one being that against Bert Ronk, a case referred to heretofore. He was indicted for murder in the second degree. On trial, self defense was pleaded by the defendant. During the trial, and when much progress had been made in the examination of witnesses, one of the jurors fell sick. Having waited a day, and the juror feeling better, the trial was resumed, but it soon became evident that the juror could not continue, and he was discharged. A new juror was selected and the entire jury re-sworn, and the trial began again, and was completed on the 29th when the jury retired to consider the case. On the morning of the 30th the jury returned their verdict: "manslaughter in the first degree." The penalty fixed by law in such case in imprisonment in the State prison, at hard labor, for from five to twenty years. The prisoner was sentenced to twenty years imprisonment at hard labor. On motion for new trial, twenty-two days were given for the hearing, but subsequently the date of the hearing was set for August 18th, an adjourned term, when the hearing was again adjourned to the 25th. The motion for a new trial was denied. An appeal was taken to the Supreme Court of the State, which found the conviction regular. ²⁴

²⁴ *State v. Ronk*, 91 Minn. 419, 98 N.W. 334 (1904) (Lovely, J.), discussed on pages 6-7, above.

On the 9th of July an adjourned term was held by Judge Cadwell, to hear a divorce case, in which Judge Quinn had been interested as an attorney. ²⁵ The Court was again called on the 21st when one Ryan, who had been indicted for larceny, was tried and acquitted. ■

²⁵ **In its first session after statehood, the legislature provided for the recusal of a judge from a case in which he once had an “interest.” 1858 Laws Ch. 67, §3, at 158, provided:**

SEC. 3. That whenever a Judge of the District Court shall be interested as counsel, or otherwise, in the event of any cause or matters pending before said Court, in any county of his District, it shall be the duty of the other District Judges, or one of them, when thereunto requested by said Judge so interested as aforesaid, to attend and hold the Court wherein such cause or matter is pending, for the trial of the same, and it shall be the duty of the Judge of any District to discharge the duties of the Judge of any other District not his own, when convenient or the public interest requires it.

