

“EARLY LITIGATION IN LINCOLN COUNTY”

BY

GILBERT I. LARSON

FOREWORD

BY

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After Gilbert I. Larson received his law degree from the University of Michigan Law Department, as law schools were then known, he set up shop in Marshfield, Minnesota, about the time Lincoln County was officially organized in 1873.¹ He was the first attorney in the county. He practiced law there until about 1884, when he was forced to quit due to health problems which plagued him for the rest of his life. In the following years, he operated a hardware store, published a newspaper, and served as clerk of court.

It was Lincoln County's great fortune that Larson was in good health during its formative years. No one was more active in county government during its first decade than he. He held many

¹ Originally part of Lyon County, Lincoln County was detached and established as a separate county effective March 6, 1873.

posts, oftentimes receiving little remuneration. As he later recalled:

The first year [1877] the writer held the office of clerk of court his fees amounted to a few dollars. The writer held the office of court commissioner for three years and his entire emoluments for the term amounted to 75 cents.

Not every post was law-related: in 1878, he was clerk of court and county superintendent of schools. He must have received enormous satisfaction from public service because he kept accepting more assignments and responsibilities. In 1879, he may have set a state record for the most county offices held simultaneously by one person:

During that year [1879] the writer was county auditor, clerk of court, court commissioner, acting county treasurer, clerk of probate court and justice of the peace. A. J. Cram was county treasurer, but for the convenience of the public he left the books with the auditor. I collected the taxes, made the settlements, merely taking the settlement sheets up for him to sign. Mr. Cram lived in Shaokatan township on the farm now occupied by his son, Virgil Cram. Mr. Cram resigned his office October 1, 1879, and R. A. Bigham, then of Marshall, later of Russell, was appointed to fill the vacancy.

He became the first chairman of the Benton Bar Association in March 1882.² After retiring as clerk of court he became the first historian of the county.

Gilbert Larson died on April 29, 1910. The *Lake Benton News* carried the story:

THE LAKE BENTON NEWS.

LAKE BENTON, MINNESOTA, MAY 4, 1910.

G. I. LARSON PASSES AWAY

After a Lingerinɡ Illness His Sufferings
Are Ended. A Lincoln County Pioneer

No surprise was evidenced when the news came last Friday afternoon that G. I. Larson had passed away, as he had been for some time past, so low that the end was looked for at any time. Mr. Larson has been a sufferer for years. In 1908 he was compelled to go to the hospital and undergo prostatectomy, after which he rallied for a time. However, other complications soon after set in and he was taken to the Hot Springs Sanatorium, South Dakota for treatment, deriving only temporary relief. From that time till his demise he has been an almost constant sufferer, the pain being at times almost unindurable, and then again seeming to

² "Benton Bar Association," *Lake Benton News*, March 21, 1882, posted separately on the MLHP.

pass away, but only for a short period. He bore his suffering with the utmost fortitude, looking forward to the end with a calmness that betokened a desire for that relief which he knew could only come with death.

Gilbert Ingabert Larson was born at Adrian, Michigan, November 21st, 1844, died April 29, 1910, being 65 years, 5 months and 8 days of age. In boyhood he moved with his parents to Marquette, Wisconsin where he grew to manhood. He secured his education at Mount Pleasant, Iowa, Ripon College, Wisconsin and Ann Arbor, Michigan, graduating from the law department of the latter institution. He came to Minnesota in the early 70's and located a Marshfield, which became the county seat of Lincoln county in 1875, he being the first county attorney after its organization. Since that time until 1907 he was closely identified with the political affairs of the county, having perhaps served his county in an official capacity more than any other one individual during its history up to the present time. He was county attorney from 1875 to 1876, superintendent of schools from 1875 to 1878, county auditor from 1879 to 1884, court commissioner from 1879 to 1885, clerk of court from 1877 to 1881 and from 1901 to 1907. He was also at one time assessor for the whole county, making his trip throughout the county with an ox team. In his political affiliations he was fearless and upright, ever ready to stand firmly for right principles even tho he might know that by so doing he would jeopardize his own political interests.

He taught school in an early day, having taught at Wood Lake in Yellow Medicine county, and was also superintendent of the Tyler schools in 1905.

He was united in marriage to Mrs. Nancy Bigham Huddleston, September 1, 1879 at Marshfield. From this union five children were born: George, Walter, Charley and Nellie of Lake Benton and Mrs. Chas. Wubbens of Baudette, Minn., all living except George, who preceded his father to the Great Beyond, having died in January, 1898.

In the spring of 1884 he formed a law partnership in Lake Benton with C. W. Andrews but owing to serious eye trouble was compelled to give up his practice, removing to Tyler, where he engaged in the hardware business for about five years. Later he purchased the Tyler Journal which he edited for about three years. In 1905 he was made historian of the Lincoln County Pioneers Association and wrote a history of the county which he published in one of the Ivanhoe newspapers. After retiring from the office of the clerk of court in 1907 he again took up practice of law in this village but after a short time was compelled to forego same on account the sickness which ultimately resulted in his death. During all the years of his suffering his faithful wife was ever present at his bedside, administering those loving attentions that only a faithful wife knows how to administer. Whenever his suffering became so intense as to be most beyond endurance it was her hand that soothed his fevered brow.

The funeral services were held in the Congregational church at this place at 9:30 o'clock Sunday morning, May 1st, and the remains taken to Tyler on the noon passenger and laid to rest in the family lot in the cemetery at that place. A number of friends went from here to accompany the remains to their last resting place. Those who attended the funeral from out of town were: Dr. and Mrs. Cox, Mrs. Mannerud, Mr. and Mrs. T. J. Bigham of Tyler, Wm. Huddleston of Cottonwood, R. A. Bigham of Russell, F. J. Bigham of Willmar, Arthur Larson of Brookings, V. V. Vine of Seaforth, Mrs. P. O. Vine and Oakley Vine of Porter, R. H. Sisson and a number of others from Ivanhoe.

His sorrowing wife and family have the heartfelt sympathy of the community together with the NEWS.

Portions of this obituary were reproduced in a profile of him in the 1936 anthology, *Early History of Lincoln County*:

GILBERT INGABERT LARSON, one of the writers in the chronicling of the history of Lincoln county, was born at Adrian, Michigan November 21st, 1844, and died April 29, 1910, being past 65 years of age. In boyhood he moved with his parents to Marquette, Wisconsin, where he grew to manhood. He secured his education at Mount Pleasant, Iowa, Ripon College, in Wisconsin, and at Ann Arbor, Michigan, being a graduate of the law department of the latter institution.

He came to Minnesota in the early 70's and located at Marshfield, which became the county seat of Lincoln County in 1875, he being the first county attorney after

its organization. From that time until 1907 he was closely identified with the political affairs of the county, having perhaps served his county in an official capacity more than any other one individual during its history to that time. He was county attorney from 1875 to 1876, superintendent of schools from 1875 to 1878, county auditor from 1879 to 1885, court commissioner from 1879 to 1885, clerk of court from 1877 to 1881 and from 1901 to 1907. He was a one-time assessor for the whole county, making his trip throughout the county with an ox team. In his political affiliations he was fearless and upright, ever ready to stand firmly for right principles, even though he might know that by so doing he would jeopardize his own political interests.

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which he published in one of the Ivanhoe newspapers. After retiring from the office of clerk of court in 1907 he again took up the practice of law in Lake Benton but after a short time was compelled to forego the same on account of the sickness which ultimately resulted in his death.

After Larson became the historian of the County Pioneers Association, he wrote "History of Lincoln County." Written in an informal style, it contains his personal recollections and opinions of people and events in the early years of the county. It was later included in an anthology, *Early History of Lincoln County*, first published in 1936, and reprinted in 1973. Three excerpts from Larson's "History" are reproduced below: "First Person Admitted to Bar in Lincoln County," "Early Legal Litigation," and "First Term of District Court." Though reformatted, the excerpts are complete. Page breaks have been omitted. Larson's grammar, spelling and punctuation are unchanged (the ellipsis in "Early Legal Litigation" were probably the work of A. B. Tasker, the editor of the 1936 anthology). The overall title, "Early Litigation in Lincoln County," has been supplied by the MLHP. ■

Excerpts from
"History of Lincoln County"

BY

GILBERT I. LARSON

IN

EARLY HISTORY

of

LINCOLN COUNTY

From the Early Writings of Old Pioneers, Historians
and Later Writers

Compiled by

A. B. TASKER

*Together with a Collection of Biographical Sketches
of Early Lincoln County Pioneers Sketches*

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The LAKE BENTON NEWS PRINT

1936

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First Person Admitted To Bar in Lincoln County

The first resident of Lincoln county to apply for and be admitted to the bar was W. E. Dean, who then lived on a claim in Lake Stay township. I think he was admitted in Lyon county.

The second resident to apply for admission to the bar was John L. Cass, well known to many of the old settlers. I was present at a term of court in Lyon county when he first applied for admission. The judge appointed John Lind, Judge Weymouth and another lawyer, whose name I have forgotten, a committee to examine him regarding his knowledge of law. Evidently John Lind did not loom very large on the horizon as a legal luminary, for when the examination was concluded and the committee retired for consultation, it developed that while there was no difference of opinion respecting his qualifications, still a majority of the committee were in favor of making a favorable report, for the reason, as one of the committee put it (I think it was Weymouth), "Oh, well," or some other word with a similar termination, "we might as well admit him, he will not get any business anyway." But Lind was obdurate and the committee finally concluded to let him have his way. Lind went before the Court and made the following report: "Your Honor, we have examined this young man, and while we find that he is probably qualified to act as justice of the peace or notary public in a small town, we think he ought to continue his studies somewhat farther before being admitted to the bar."

Later Cass found a more obliging committee—I hardly think he knew any more about law—and was admitted. He distinguished himself afterwards by rendering an opinion as justice of the peace and appealing from it as a lawyer.

....

Early Legal Litigation

The first litigation of any kind in Lincoln county was a justice court case in which the State was plaintiff and M. S. Phillips, defendant. This was sometime in the fall of 1874. The case was tried before J. B. Wood, justice of the peace, and a jury. George H. Bradley was constable. Wm. Ross, then sheriff, also figured in the case. At any rate they both presented claims for services rendered. Bradley's claim for services as constable in the case amounted to \$8.95, while the sheriff asked for \$3.00. The charge against Phillips was assault and battery. He was acquitted on the grounds of self defense.

The first member of the bar to settle in Lincoln county was the writer, and for a time I was the leading lawyer of the county. The first case in which I took part was the State vs. Garret Taylor for assault on one George Hill. Lyman Turner appeared for the State. J. B. Wood was the justice; he was quite an old man and evidently became confused by the legal propositions put before him and suggested that someone make a motion to adjourn. I think Charley Goodsell made a motion as a joke, I seconded it, everybody voted and all went home. That was one criminal case that did not cost the county a cent. Gar., as we called the defendant, paid me in cordwood. I will take the liberty, also, to mention the case of N. F. Berry, plaintiff vs. Frank Randall, defendant. The defendant, as you will recollect, was an industrious accumulator of surplus timber and had a small pasture fenced with rails. His neighbor, Berry, when he came to thrash, having no granary, borrowed Randall's rails, or some of them, to build a bin for his wheat, lining the sides with straw. This would have been all right, but Berry was a very slow man and when the time came in the spring for Randall to rebuild his fence Berry had not returned the rails, so Randall went over one

day when Berry was away, and took his rails, doing, as he claimed, as little damage as possible. Berry came to me and stated that he wished to bring an action for damages, claiming that his wheat had been damaged by rain to the amount of ten dollars. Of course, I tried to dissuade him from doing so, . . . but he was determined, so the action was brought and came duly on for trial in Judge Worden's court at Marshfield, before a jury of six good men and true. Berry had brought John W. Cooley as a witness in his behalf, but when I asked him privately what he knew or thought about the case, he replied with some reference to a place with a uniform temperature, that Berry had not suffered any damage. So, on the whole, I concluded that it was not best to put him on the stand. So the case went to the jury with only the testimony of the litigants. Berry swore that he had been damaged to the extent of five dollars and Randall that he had not been damaged at all. The jury returned a verdict of eight dollars in favor of Berry.

Begging the reader's pardon, I will refer to just one more justice case. I have forgotten who the litigants were or what the case was about, but I recall that after the case was over, and while we were waiting for the mail to come from Marshall, a lot of us gathered around a dry goods box on the prairie in front of "Doc" Seals' store; it was summer and we engaged in a game of cards. It was understood that the winner was to invest the proceeds in something for the benefit of the crowd. I have forgotten what they called it, but anyway during the progress of the game the accumulated cash capital of the players was in a jack pot. I have forgotten who won the pot, but I think it was "Doc" Burdick. Just at this juncture one of the players, later a prominent citizen of Lake Benton, was taken with a severe stomach ache and requested Burdick to buy a bottle of Prairie Herb Tonic, which he said was awful good for stomach ache; but Burdick only had some 65 cents

and the tonic was a dollar a bottle. I think the sufferer did offer to pay the balance at some other time, but Burdick seemed not to hear him and invested the proceeds of the pot in apples. I have forgotten how the sufferer became rid of his stomach ache, but I do recollect that we all thought that the prominent citizen ate more than his share of the apples.

....

First Term of District Court

The first term of the District Court to be held in Lincoln county was a special term held by request of the county commissioners of the county, at Lake Benton, September 22nd, 1881, adjourning without delay September 23rd.³ E. St. Julian Cox was judge, W.

³ Here Larson may have misstated the year because earlier in his "History," he gave a slightly different account of the first special term of the district court:

The first term of district court was a special term, held September 22nd, 1880 at Lake Benton in a small hall over a building on the east side of the street, then occupied by J. W. Cooley as a general store. E. St. Julian Cox was then judge, W. W. Ramsey, sheriff and the writer, clerk. The sheriff was allowed one deputy, Ackerson was his name, I think. The only service the writer has a distinct recollection of seeing either the sheriff or his deputy perform during that memorable first term, was when they unitedly assisted the Court in crossing the street from Dan Warn's saloon to his seat in the court room. In this instance their services were truly necessary, as otherwise there might have been a scene that would have proven disgraceful to the bench. The Court fined nearly everybody in sight, but later, during an interval of sobriety, remitted the fines.

W. Ramsey. sheriff and the writer, clerk. A. O. Chapman acted as county attorney, residing at Lake Benton. Thomas George, also of Lake Benton, was foreman of the first grand jury of the twenty-three persons summoned to act as grand jurors at that term, but two were living at the time of writing, William Elliott and John Taylor, both of Lake Benton.

The case of John L. Cass vs. Fred Stricker was the only one tried at this term. Of the twelve men empaneled on the first petit jury, three were still living in the county at the time of writing. Henry Enke, Andrew Strong and Daniel McArthur. Both Enke and Elliott, with others, were fined during the term. In some cases the judge remitted the fine, and in other cases he evidently forgot all about the matter, at any rate, no fines were paid.

The first regular term of District Court was to have convened at Marshfield June 12, 1881, but the judge not being present, court was adjourned by the clerk until June 15th. On that day, the judge having arrived, by order of the Court, an adjournment was taken to Tyler. At this time Cox was judge, W. W. Ramsey, sheriff and Charles Marsh, clerk. Court was held in the lower part of what was then known as the Dean building, later occupied by Hans Olson & Co. as a grocery store.

Of the twelve men empaneled on the first petit jury at a regular term, three were living in the county at the time of writing: Thomas Miller of Lake Benton township; Lem Marcellus and J. G. D. Whipple of Diamond Lake township. The first indictment made by a grand jury was at this term, by which George H. Chapman, who then lived on section 22, Limestone township, was charged with assault and an otherwise statutory crime. Col. McPhail, a colonel in battle and not by brevet, was then county attorney. M. E. Matthews of Marshall, appeared for the defendant.

The jury found Chapman guilty of assault, but not as charged in the indictment. Matthews asked that the verdict be set aside on the grounds that the defendant had not been given an opportunity to plead to the indictment. Upon investigation, the Court finding that such was the fact, the verdict was set aside and a new trial ordered. The defendant then pleaded guilty to the crime of simple assault, and the Court fined him ten dollars and costs, and in default of payment to stand committed to the Hennepin county jail for not to exceed six months. I am of the opinion that the fine was paid. Isaac Starr of Tyler, and Ed Hodgman, Sr., of Lake Benton were the only persons living in the county at the time of writing, that sat on this case.

The court adjourned without delay June 21, 1881. This term of court became somewhat notorious because of the fact that a grand jury presented to the Court a strong-worded resolution, charging him, Judge Cox, with drunkenness and conduct unbecoming a Judge. This led to impeachment proceedings, when the state legislature convened and the trial was held before the Senate in February, 1882. Many of the citizens of this county were summoned as witnesses. The testimony related principally to what took place one night during this term, in the Judge's room, which was in the northeast corner, second floor, immediately over the office in Hodgman's hotel, which then stood where the First State Bank of Tyler building now stands. Colonel McPhail had retired quite early in the evening, but later as the fun grew fast and furious, some of the revelers brought him into the judge's room. The Colonel was standing with his back to the wall, arms outstretched and dressed only in his night clothes. He stated afterwards that they intended to crucify him. When being examined as a witness before the State Senate on the impeachment proceedings, McPhail was asked what they had to drink that evening. He replied that he did not know what it was,

that they called it bug juice. In answer to the question by one of the senators, how the company, or the people assembled in the judge's room on that eventful evening, conducted themselves, he replied with a wave of the hands, "Oh, about as you gentlemen do here."

Judge Cox, while his habits unfitted him for the Bench, had qualities that made him many friends. The Senate, knowing this, and fearing that he might be re-elected, in addition to removing him from office, made him ineligible until after the next general election.

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