

# *The Supreme Court of Minnesota*

BY *GEORGE F. LONGSDORF*

*Of the St. Paul Bar.*



## Foreword

BY

**Douglas A. Hedin**

Editor, MLHP

In June 1912, an article on the Minnesota Supreme Court by George Foster Longsdorf appeared in *Case and Comment*, a popular journal for lawyers published by The Lawyers Co-operative Publishing Company. Each issue of *Case and Comment* contained notes of recent decisions, lists of new books, doggerel, jokes, short fiction, obituaries, tributes to judges and lawyers, serious articles on a wide range of subjects, and much else. Photographs and drawings illustrated many articles. It was both educational and entertaining.

Longsdorf covered the supreme court's first fifty years. He relied on previously published accounts of early courts, memorials of deceased justices and biographies of recent jurists. He does not use footnotes but gives case citations in the text. Most interesting are the photographs of the justices' conference room and four lunettes illustrating the history of law for the courtroom by John LaFarge, a prominent painter and muralist of public buildings and churches in the late nineteenth century.

George Foster Longsdorf was admitted to the Minnesota bar on April 7, 1915. His office was 510 Schubert Building in St. Paul. He practiced previously in Nebraska for 21 years.<sup>1</sup> He died on July 29, 1965, in Alameda California, at age ninety-four.

He co-authored, edited or annotated many books, some published by the Lawyers Co-operative: *The Cyclopedic Law*



*Dictionary, Cyclopedia of Federal Procedure, Civil and Criminal, Notes on the Ohio and Ohio State Reports, Remington's Revised Statutes of Washington and A Complete Encyclopedia of New Law* (two volumes), among others. Several went through multiple editions.

He also wrote "An Appreciative Sketch of Frank B. Kellogg" for the February 1912 issue of *Case and Comment*. It is posted separately on the MLHP.

This drawing of Uncle Sam is next to the first paragraph on the first page of the original. It has no obvious relevance to the subject of the article and seems inserted for illustrative purposes only.

Longsdorf's article, which took up eight double-columned pages in the magazine, has been reformatted. The photographs have been repositioned and one lengthy quotation indented. Footnotes are by the MLHP.

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<sup>1</sup> 1 *Roll of Attorneys: Supreme Court, State of Minnesota, 1858-1970* 138 (State Law Library, 2011).

# CASE AND COMMENT

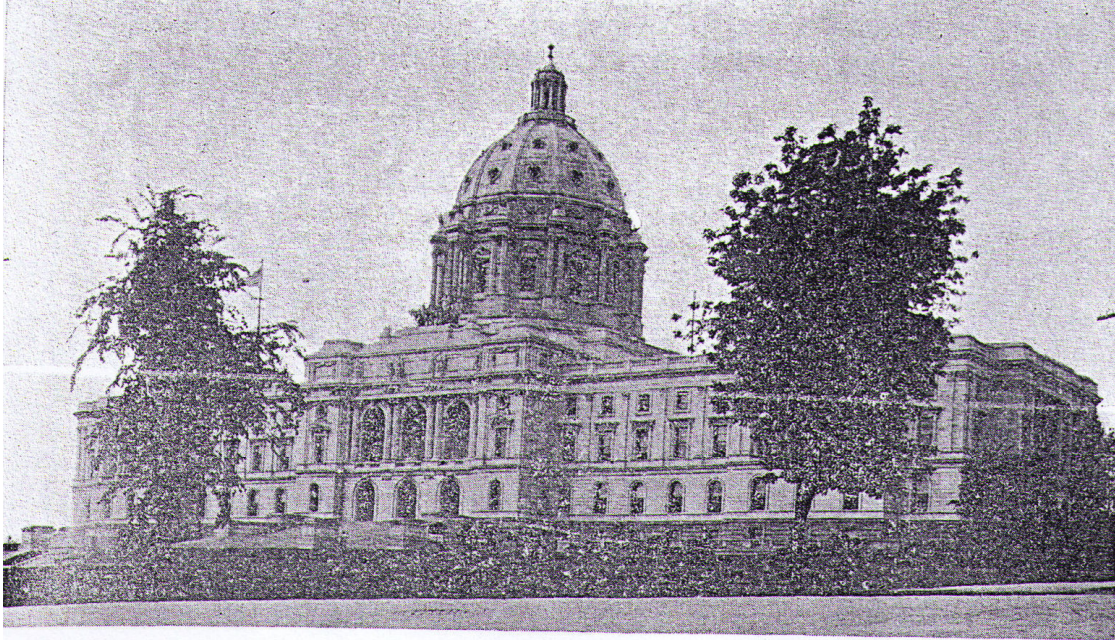
## THE LAWYER'S MAGAZINE

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AID THE LAWYER IN HIS DAILY  
WORK AND TO DO IT  
ENTERTAININGLY

### VOLUME XIX

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THE STATE CAPITOL, MINNESOTA

# *The Supreme Court of Minnesota*

BY GEORGE F. LONGSDORF  
*Of the St. Paul Bar.*

**THE** judicial history of the supreme court of Minnesota begins with the following entry on the journal book of the court:

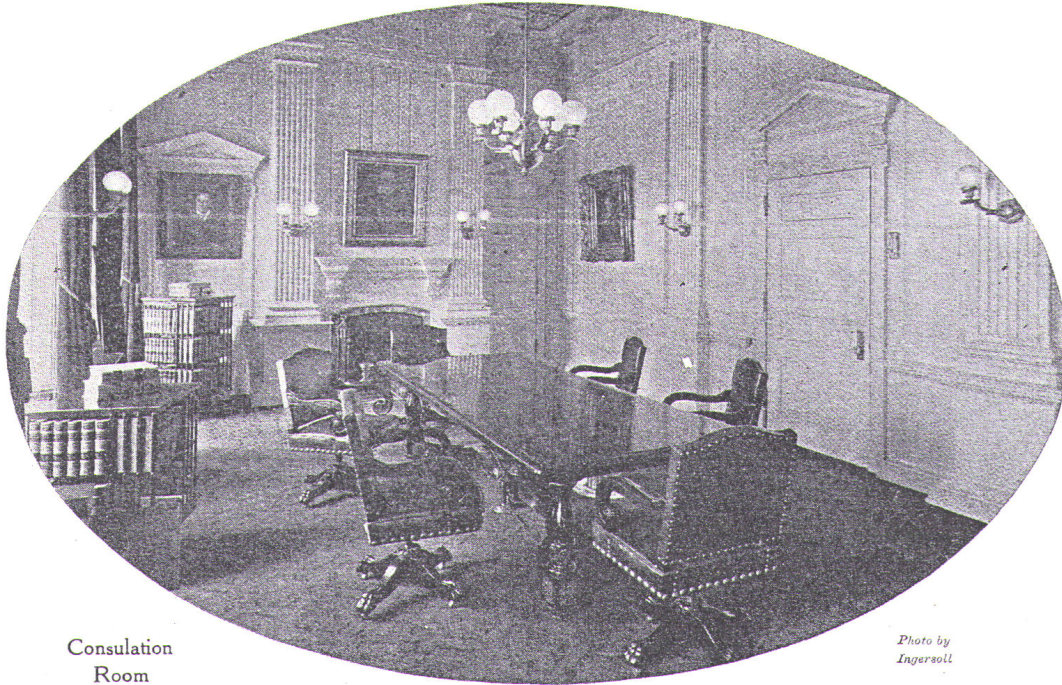
**“United States of America, Territory of Minnesota.—  
Be it remembered that at a term of the supreme court  
for the territory of Minnesota begun and held at the  
American House in the town of St. Paul (there being  
no courthouse at the capital of the territory), county  
of Ramsey, and territory of Minnesota, on the second  
Monday of January in the year of our Lord eighteen  
hundred and fifty, it being the fourteenth day of the  
month and in the year of the independence of the  
United States of America the seventy-third, it being  
the first term of the said court for said territory:**

**Present and presiding—**

The Honorable Aaron Goodrich, Chief Justice,  
The Honorable David Cooper, Associate Justice,  
Henry L. Moss, United States District Attorney,  
Lorenzo A. Babcock, Attorney General,  
Henry L. Tilden, United States Deputy Marshal,  
James K. Humphrey, Clerk,  
Cornelius P. V. Lull, Sheriff."

The only proceedings had at this term were the admission of attorneys and the promulgation of rules for the "supreme, district and chancery courts" of the territory. The next term was convened on the 7th of July, 1851, at the Methodist Episcopal Church in the town of St. Paul, and the third term at the same place, there still being no courthouse available at the capital. Finally at the fourth term the town of St. Paul had grown to that civic dignity whereto pertains a courthouse. That term was held at the "courthouse in St. Paul," and the court was no longer dependent on a borrowed habitation.

When the first term was held there were in Minnesota 6,000 people. Sixty years later there were more than 2,000,000. There are lawyers now living in Minnesota whose manhood years span all that time, and who have seen and read every decision of the court while it was fresh in print. All of the decisions of the court were reported in six small volumes when the present chief justice came to join the bar of the state, and there are now one hundred and fourteen volumes. The significance of this is not merely statistical, for there are other states like it in this respect. It signifies a body of law derived from the safe and sure experience afforded by the precedents, and yet so rapidly developed that there is almost a conscious molding of it into a



Consultation  
Room

*Photo by  
Ingersoll*

systematic whole. The decisions were made in the light of the full experience of the older commonwealths; the conditions that should in future affect and be affected by the decisions were foreseen at closer range, they were fitted to the times better than those that spread over a long period of time; the judges who composed the court came from various states, and lent to their work the tempering equations of their native communities. The influence of New York was doubtless the greatest of all the states on the forming of the judicial doctrines and institutions of Minnesota, and that of Massachusetts was next; but neither of these influences was altogether direct. They were transmitted through Michigan, Wisconsin, and, to some extent, Iowa. Other states, too, had their share. So that Minnesota case law is a composite of the best in the older states, and the same is true of other western states whose courts were contemporaneous with that of Minnesota.

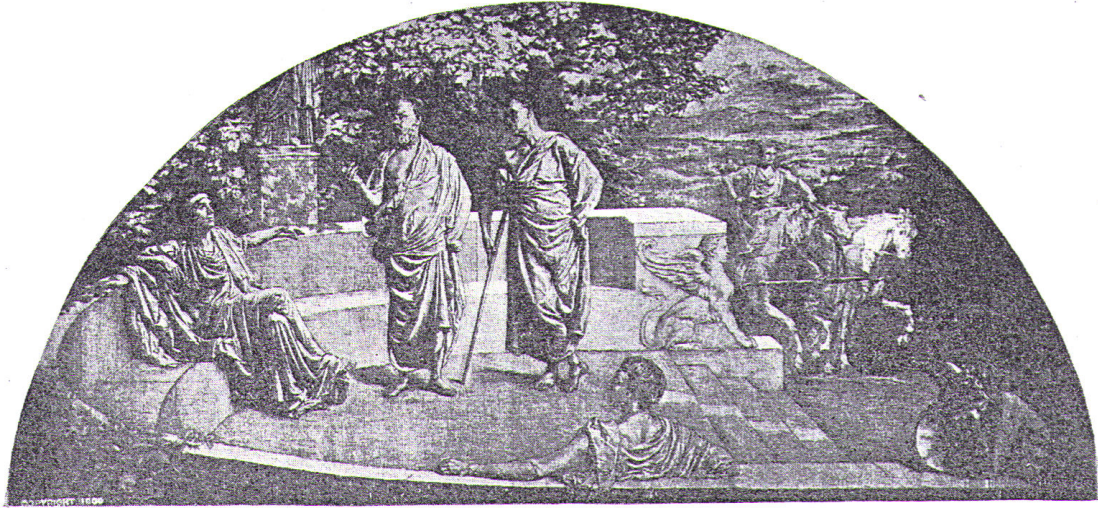
The first case of any kind before the court was *Gervais v. Powers*, on a motion to dismiss a writ of error. It was overruled, and the case was saved to be decided on the merits, though that availed the plaintiff in error nothing, because a judgment of affirmance followed (1 Minn. 45, Gil. 30) [1851]. The first reported case is *Desnoyer v. L'Hereux*, 1 Minn. 1, Gil. 1 [1851], and it also was the first one heard by the court. The frequency with which French names are met in the early reports, and Scandinavian and German ones in the later, tells something of the settlement of the state. Very early preparations were made for reporting the decisions. William Hollinshead was appointed reporter by an order dated July 7th, 1851, and the publication of the reports was ordered on July 26th of the next year. On the journal of the court for January 23d and 24th, 1853, appear the orders admitting to practise in the courts of the territory Aaron Goodrich and David Cooper, who were the justices of the first court. It is not apparent why this was necessary, unless it was to get their names on the roll of attorneys, which seems at this day to have been a rather useless formality.

The first session of the state supreme court was held in the court room at the capitol in St. Paul on July 5th, 1858. It is now housed in the east wing of the new capitol, in a room of classic architecture, sparingly decorated except for a series of mural paintings by the late John LaFarge. These paintings are symbolical of the growth and science of the law. They depict moral and divine law, represented by Moses receiving the Decalogue on Sinia; the recording of precedents, represented by Confucius and his disciples; the relation of the individual to the state, represented by Socrates and the sons of Cephalus; and the adjustment of controversies, represented by Count Raymond of Toulouse and the Cardinal. Back of the court room is the consultation room of the court, a copy of the signers' room in Independence Hall. On the right is the library of the supreme

court, commonly referred to as the “state library,” and on the left are ranged the chambers of the justices and the clerk’s office. Two terms are held in each year, April and October.

The subjects of litigation in Minnesota cover a very unusual diversity. Within the state are great forests and mines, large agricultural regions, great centers of rail and water commerce, thousands of lakes and many water powers. There are swamp areas making difficult questions of drainage. A few cases may properly be mentioned as illustrative, also because they have been of more than local importance. One of the early cases was *Schurmeier v. St. Paul & P. R. Co.* 10 Minn. 82, Gil. 59, 88 Am. Dec. 59 [1865]. This held that the patentee of a government fraction bounding on a meandered navigable river took to the channel, including islands, and subject only to the public right of navigation, and that the meander line was not the limit. This affirmed in [*Railroad Co. v. Schumeier*, 74 U. S. 272,] 7 Wall. 272, 19 L. ed. 74 [1868], and is a leading case. Another leading case often cited is *Cahill v. Eastman*, 18 Minn. 324, Gil. 292, 10 Am. Rep. 184 [1872]. A water power tunnel having been driven under the bed of St. Anthony Falls developed more water power than even solid rock could withstand, for the water broke through into the tunnel prematurely and was carried down under plaintiff’s land breaking it up and undermining it. The constructor of the tunnel was held liable, though he had taken all possible care, and could not have foreseen the result. This case followed the great English case of *Rylands v. Fletcher*, L. R. 3 H. L. 330, 1 Eng. Rul. Cas. 235, 37 L. J. Exch. N. S. 161; 19 L. T. N. S. 220, 6 Mor. Mm. Rep. 129, only a few years and worked out the same doctrine. A little later the court rendered the celebrated Turntable Case (*Keffe v. Milwaukee & St. P. R. Co.* 21 Minn. 207, 18 Am. Rep. 393 [1875]), one of the first on this subject. It is a leading case cited many times and of unabated force as a rule of decision, notwithstanding several disapprovals





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#### RELATION OF THE INDIVIDUAL TO THE STATE

have been expressed, seemingly in misapprehension of its meaning. It was decided on the assumed fact as pleaded that the turntable was an insufficiently guarded "dangerous thing attractive to children." There was no decision that it was in law a dangerous attractive thing which there was a duty to guard. One of the very important cases decided by the court was the State Railroad Bond Case (*State ex rel. Hahn v. Young*, 29 Minn. 474, 9 N. W. 737 [1881]). This was argued by a number of the leading members of the bar of Minnesota. It arose out of the fact that certain railroad aid bonds were delivered without the road having been built or completed. The legislature submitted an amendment to the Constitution of the state, by which the levy of taxes to pay the obligations of the state was commanded, but no tax for the payment of principal or interest on the state railroad bonds, was to take effect till it had been submitted to and ratified by the voters. This was assailed as impairing the obligation of the contract contained in the bonds. Chief Justice Gilfillan wrote the opinion establishing the rule that a contract by the state has a legal obligation protected against impairment

though it is not enforceable by any judicial remedy; and accordingly the amendment was void. This opinion was declared by another and earlier member of the court to “stand forth pre-eminent” from the decisions of American courts, and to rank in ability and force with the great constitutional opinions of Marshall. Another associate, William Mitchell, said that the presence of Chief Justice Gilfillan on the bench was “one of the chief inducements” which led him to accept an appointment to that bench.<sup>2</sup>

Still another case is deserving of mention because it is the product of a local difficulty not unknown in other parts of the nation. That is the case of *Sheehan v. Flynn*, 59 Minn. 436, 61 N. W. 462, 26 L.R.A. 632 [1894]. Herein was reaffirmed the law of the state as laid down in the earlier decisions, rejecting both the common-law rule and the civil-law rule as to surface waters, and adopting a rule that the owner draining off surface water must not unnecessarily injure another. Like other innovations, this was attacked and was said to work towards confusion. Nevertheless the rule has stuck, and it is doubtful whether any other would work at all in Minnesota. The trust fund doctrine as to corporate assets was under consideration in *Hospes v. Northwestern Mfg. & Car Co.*, 48 Minn. 174, 31 Am. St. Rep. 637, 50 N. W. 1117, 15 L.R.A. 470 [1892], and was criticized and greatly restricted in an able and characteristic opinion pointing out fraud as the basis of the rule. This opinion was by Judge Mitchell, who also wrote the opinion in the case of *Bohn Mfg. Co. v. Hollis* (*Bohn Mfg. Co. v. Northwestern Lumbermen's Assn.*) 54 Minn. 223, 40 Am. St. Rep. 319, 55 N. W. 1119, 21 L.R.A. 337 [1893]. In the latter case the legality of a trade agreement among retailers not to deal with a wholesaler who sold at retail in competition with them was sustained; and it was said “this

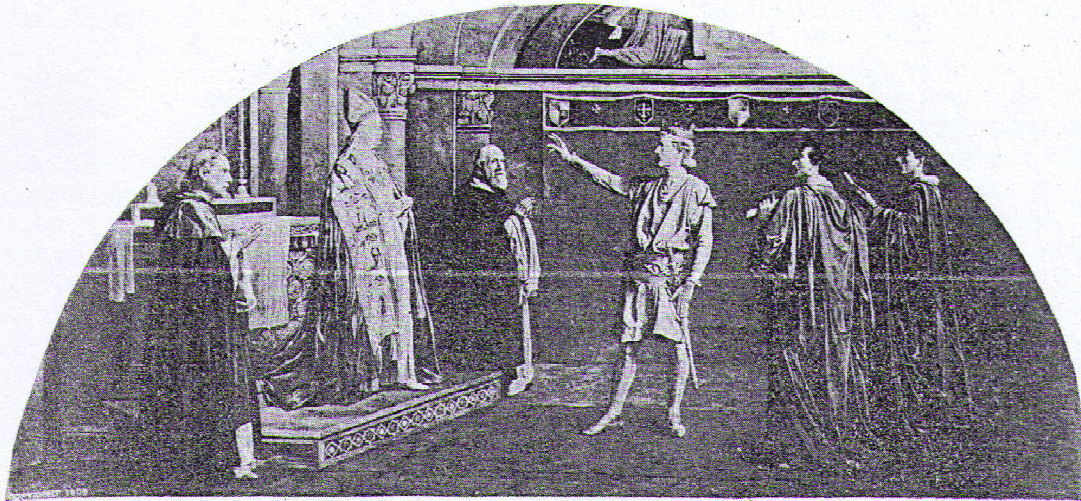
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<sup>2</sup> Remarks of Mitchell at memorial services for Gilfillan on January 7, 1895, published at 59 Minn. 558 (1896).

subject is likely to be one of the most difficult and important which will confront the courts during the next quarter of a century." But the writer wisely proceeded to decide the case presented, without venturing into "whatever doubts and difficulties may arise in other cases." A late case arising in the iron-mining region of the State brought up the question whether the making of a lease, of the right to mine iron on state lands was invalid under the state Constitution, which forbids the sale of such lands otherwise than at public sale. In an opinion (*State v. Evans*, 99 Minn. 220, 108 N. W. 958, 9 A. & E. Ann. Cas. 520) [1906], by Chief Justice Start, it was held that a mining lease, neither in present practice nor in legal history, has any of the qualities of a sale of land, and for that reason was not within the prohibition. It has been supposed that the royalties to the state arising from leases of this kind will ultimately amount to \$100,000,000.

One more case having to do with natural resources may be cited. In the state are vast water powers. It was proposed to condemn by right of eminent domain the right to establish a dam and to divert water on the Rainy river, and a corporation was formed to sell power "from the wheels" of the plant. In this case, *Minnesota Canal & Power Co. v. Koochiching Co.*, 97 Minn. 429, 107 N. W. 405, 5 L.R.A. (N.S.) 638, 7 A. & E. Ann. Cas. 1182 [1906], the sale of power from the wheels was held not to be a public use, because the physical restrictions on the distribution of the power limited the benefits to too few users to be public. The generation of electric power, on the other hand, was said to be a public use, if for general sale, because of the physical adaptability of it to general distribution.

Many other equally typical cases might be cited, but that would be trenching on the field of the digester or the annotator. And



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ADJUSTMENT OF CONFLICTING INTERESTS  
(Count Raymond of Toulouse and the Cardinal)

the reports have been recently digested and also elaborately "extra annotated" with citation notes, to which publications the curious and the incredulous are referred for full information.<sup>3</sup>

The library of the supreme court, already referred to, is very full and complete. It comprises at the present somewhat over 65,000 law and documentary works. All the American, English, Canadian, Scotch, Irish, and Australian reports are on the shelves, except a very few reports of minor courts. The documentary library comprises public documents of the United States, of the several states, and of the Dominion of Canada, with many other

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<sup>3</sup> This likely is a reference to the five volume *Notes on the Minnesota Reports*. Each volume is subtitled "Including the citations of each case as a precedent (1) by any court of last resort in any jurisdiction of this country; (2) by the extensive and thorough annotations of the leading annotated reports; (3) by all important modern text-books." The set was published in 1911 by The Lawyers Co-operative Publishing Co., which also published *Case and Comment*.

miscellaneous publications properly belonging to such a library. The collection of Session Laws of the various states is notably good and the text-book library includes every treatise of any importance in America, as well as most of the English works which have been circulated in this country. The library is supported by legislative appropriation, and is rapidly outgrowing its quarters, though they were not many years since provided in the new capitol. It has been suggested that a new building be erected adjacent to the capitol, to be used as a supreme court building, and the suggestion is not unlikely to be followed out by the legislature at no distant time.

In its sixty years of existence, the court has had many men of notable ability upon the bench. In the territorial court, which first sat in 1849, there were during the life of the court ten justices. Four of these occupied the chief justice's chair. One of the justices, R. R. Nelson, afterwards became United States' district judge for Minnesota and served for many years as such. Another justice, Charles E. Flandrau, became a member of the first bench of the Supreme Court of the state of Minnesota, and after his retirement, in 1864, was for many years one of the leaders of the Minnesota bar.

Of the state supreme court there have been six incumbents of the office of chief justice and twenty-four of that of associate justice. The chief justices were Lafayette Emmett, Thomas Wilson, James Gilfillan, Christopher G. Ripley, S. J. R. McMillan, and Charles M. Start. Among the associates who sat on this bench, William Mitchell was unquestionably the most renowned. Opinions written by him have been cited by every court, and opinions by him may be found on most of the questions of law that ordinarily would arise. Within the time of his service 8,930 cases were on the calendar of the court, and he must have written over 1,600 judicial opinions; one every three



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RECORDING OF PRECEDENTS  
(Confucius and his Disciples)

working days during the time of his service. Yet such was the quality of his work that an eminent jurist wrote of him that he was the peer of any lawyer on any American bench. By the vicissitudes of politics, or rather the littleness of politicians, he failed of re-election in his latter days, but his defeat was in no way to the discredit of those who were chosen for the bench. Of the opinions mentioned herein, he wrote *Sheehan v. Flynn*, *Hospes v. Northwestern Mfg. & Car Co.* and *Bohn Mfg. Co. v. Hollis*.<sup>4</sup>

Judge Mitchell was born of Scotch parents, in Canada, was educated at Washington and Jefferson College, in Pennsylvania, studied law and was admitted in Virginia, and lived in Minnesota. Neither of these racial and geographical facts was a necessary factor in his greatness, but probably each of them was influential in his life. Before his elevation to the supreme bench, he was a *nisi prius* judge; and as such he served with

<sup>4</sup> Complete citations to these three cases are on page 10.

ability and note, and from which experience much of his very practical ability as a reviewing judge was drawn. As lawyer and judge he served in Minnesota from 1857 to 1900. Of him it was written by Justice Jaggard, later of the same court: "He was free from the inertia of accepted theories; he was subject to neither bucolic nor metropolitan predispositions. . . . In consequence his decisions were the result of the most thorough investigation of the law of all the states. . . . They register a deliberate and conscious effort to bring about, as far as could be, a uniformity of decisions between the various states." <sup>5</sup>

A predecessor on the bench, a neighbor in Winona, and an intimate friend of Judge Mitchell, was Chief Justice Thomas Wilson. His service on the supreme bench was five years, after which he returned to active practice, and continued therein till 1910, when he died. But a few months before his death he appeared as general counsel for one of the great railroads in the court of which he had been the chief over forty years before.<sup>6</sup>

James Gilfillan, colleague and peer of Mitchell, was another of the justices who had a long service on the bench, distinguished by eminent ability and abundant labors. His service was approximately twenty years. It was exceeded in length by that of John M. Berry, his contemporary, who served for twenty-three years.

All of these judges served through the formative period of the jurisprudence of the state, and helped to bring it to that uniformity and accord with the best authorities of which Justice Jaggard wrote in eulogy of Justice Mitchell. What was there written might truly have been written of the court. It had all of

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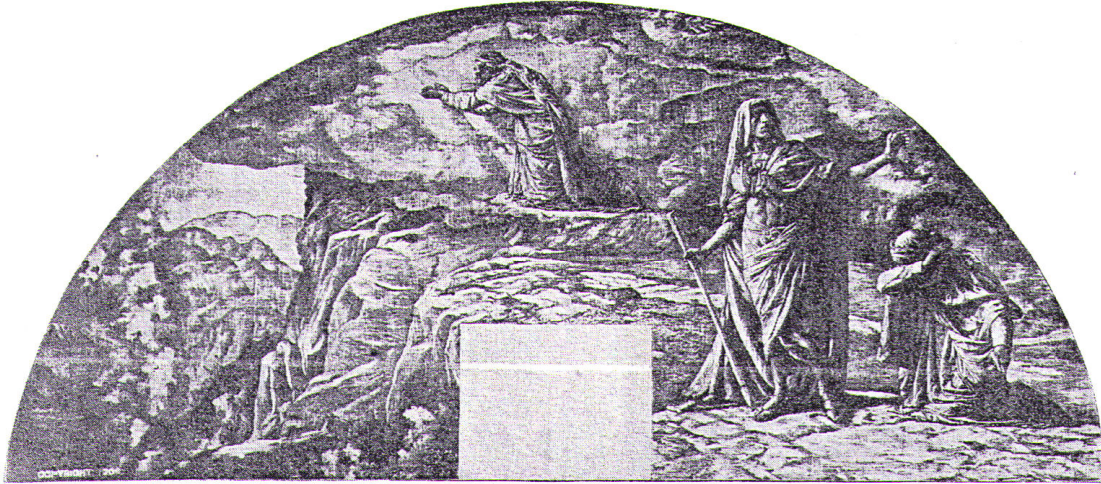
<sup>5</sup> Edwin Ames Jaggard, "William Mitchell" 13 (MLHP, 2008) (published first, 1909).

<sup>6</sup> Thomas Wilson appeared before the supreme court in the case of *Floody v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 109 Minn. 228, 123 N.W. 815 (December 10, 1909)(O'Brien J.). He died in St. Paul on April 3, 1910.

the experience and all the precedents of the older states and England to guide it in forming the doctrines that should prevail in the new state. It had foresight. In fact the West was built by people who had the foresight of great commonwealths in the Mississippi valley. Many of them, like these judges, lived to see in reality and accomplished the vision that drew them here. They lived to shape as they had planned, and so did these judges. And they turned over complete in one generation all the substantial fabric of a complete and law perfect state. The different, and not less difficult, work of applying the settled laws, has fallen upon the present court and its immediate predecessors. It, too, has novel questions, but of a class not different from older states, not formative so much as definitive questions. Witness the cases of *State v. Evans* [99 Minn. 220, 108 N.W. 958 (1906)] and *Minnesota Canal & Power Co. v. Koochiching Co.* [97Minn. 429, 107 N.W. 405 (1906)]. The court at the time this is written is composed of Chief Justice Start and Associate Justices Brown, Lewis, Simpson, and Bunn. In 1912 Justice Philip E. Brown is to assume a seat on the bench.

The chief justice, who is also the dean of the court by years of service, is Charles M. Start. Native to Vermont, he came to Minnesota in 1863 after service as an officer in the Union army. From that time he has been lawyer and judge in this state. He had a long practical experience as county attorney, as attorney general, and as district judge before he went on the bench of the supreme court in 1895. Contemporary with the founders and formers of the law of the state, and successor on the district bench to Justice Mitchell, he brings their spirit and traditions to the application of the law in the questions of to-day. His knowledge and memory of the case law of the court is very intimate, and questions from the bench to the counsel are apt to occur if there is any inaccuracy in citation of authorities. The chief justice is much beloved by those who know him best, and





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MORAL AND DIVINE LAW  
(Moses Receiving Decalogue on Sinai)

has had the generous and almost filial regard of his associates and the officers of the court. To hear him spoken of as "The Chief" is of daily occurrence about the capitol, but it is always in a tone of respect and esteem. He resides at Rochester.

Associate Justice Calvin L. Brown, native of New Hampshire, has resided nearly all of his life in Minnesota and was admitted to the bar in 1876. He was a district judge from 1887 to 1900, when he was appointed, to his present position. He resides at Morris.

Associate Justice Charles L. Lewis, native of Illinois and resident of Duluth at the present time, came to Minnesota in 1880, was district judge from 1893 to 1895 and from then to the present time has held his judgeship on the supreme bench, from which he will retire in January, 1912. He was educated at Oberlin and University of Chicago.<sup>7</sup>

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<sup>7</sup> Charles L. Lewis was elected in November 1898 to a six year term beginning January 1900; he was re-elected in 1904 for a second term beginning January 1906; he did not run for a third term, and left office in January 1912.

Associate Justice David F. Simpson, of Minneapolis, is a native of Wisconsin, and a graduate of the University of Wisconsin and of the Columbia Law School. He was sometime city attorney of Minneapolis, and has been in judicial service on the district bench since 1896, till his elevation to the supreme bench in 1911. He has recently resigned.<sup>8</sup>

Associate Justice George L. Bunn, of St. Paul, is the only democratic member of the bench. He is a citizen of St Paul, where he was on the district bench from 1897 until his appointment to succeed the late Justice Edwin A. Jaggard, in the fore part of 1911. This appointment was by a republican governor, and was strongly approved by many citizens who desire a return to the former bipartisan composition of the court, as in the time of Justice Mitchell. An obituary of Justice Jaggard, who preceded Justice Bunn, appeared in CASE and COMMENT of April, 1911.<sup>9</sup> Justice Bunn is a graduate of Wisconsin and a native of that state.

Associate Justice Philip E. Brown, of Luverne, is also a native of Wisconsin, and graduate of the University of Wisconsin and Of the Albany Law School. He has been a district judge since 1891, and will assume the seat on the supreme bench, to be vacated by Justice Lewis in January, 1912.

Associate Justice Andrew Holt, of Minneapolis, will assume the seat vacated by Justice Simpson, on the latter's resignation, recently tendered. Justice Holt is a native of Minnesota and a graduate of the University of Minnesota. He has been eighteen years in judicial service in Minneapolis, latterly as one of the district judges.

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<sup>8</sup> David F. Simpson was elected in November 1910 to a six year term beginning January 1911; he served one year, resigning effective January 1912.

<sup>9</sup> "Two Tributes to Justice Jaggard" (MLHP, 2011)(published first 1911). Jaggard died on February 13, 1911, at age fifty-one.

By the Constitution of Minnesota the membership of the court is limited to five. The calendar at each of the two terms will average near 240 cases, and the annual allotment of opinions to each member of the court to about one hundred. Realizing that this is a very great burden and larger than should be borne, there has been some discussion among the lawyers of the state, looking towards either an increase in the number of justices or a restriction of the right of appeal. One or the other must be done at some not very distant in the future.

It may be unnecessary or even presumptuous to lay praise on a court, for it is supposed to be insensible alike to flattery and to scolding, but since a court is subject to fair criticism it is entitled to fair credit; and this court has earned these credits. It has judged faithfully, and wisely and efficiently. It is a courteous bench. It is industrious. It is prompt in decision. It is seldom criticized or scolded. It possesses the general confidence of the state. Moreover, to quote one of its members, "Our record is there in the books, and we must stand on that."

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Posted MLHP: September 6, 2015.