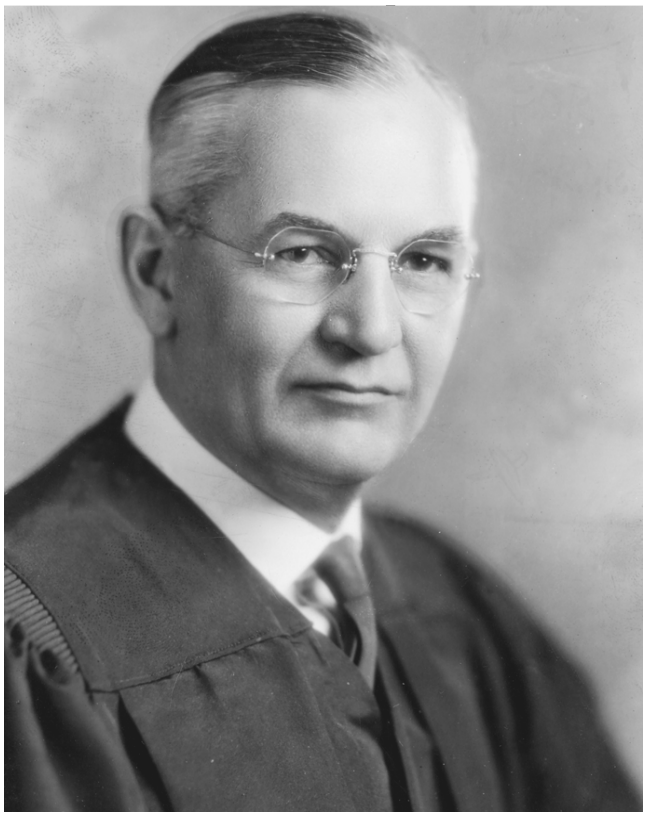
HISTORICAL REVIEW
OF THE
JUDICIAL SYSTEM OF MINNESOTA

Charles Loring
Chief Justice, Minnesota Supreme Court

Charles Loring was appointed Commissioner of the Minnesota Supreme Court in August 1930. In November he was appointed an Associate Justice. He was elected to a full six year term in 1932 and re-elected in 1938. In January 1944, he was appointed Chief Justice. He was re-elected in 1944 and again in 1950. He retired in July 1953, four months shy of his eightieth year. He died on March 7, 1961.

In 1947, Loring's "Historical Review of the Judicial System of Minnesota" was published on pages 53-70 of Volume 27 Minnesota Statutes Annotated (West). It follows.



Charles Loring (1945)
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By Hon. Charles Loring
Chief Justice of the Supreme Court of Minnesota

THE JUDICIAL SYSTEM PRIOR TO TERRITORIAL DAYS

Prior to the creation of the Territory of Minnesota the area comprising it had an interesting and varied history. Up to 1763, France claimed substantially all of what is now this state, though in 1670 the charter of Charles II to "The Governor and Company of Adventurers of England trading into Hudson's Bay" in terms covered the Red River Valley [1] and constituted a claim to sovereignty which was not finally extinguished until 1818. There is no evidence that France recognized this claim. In fact, French fur traders were constantly challenging it. With that rather tenuous exception, the laws of France were in force here, and the jurisdiction of French courts covered this territory until Canada was ceded to the British and Louisiana to Spain at the conclusion of the French and Indian War.

MINNESOTA EAST OF THE MISSISSIPPI

After the cessions noted in the previous paragraph, there remained the claims of various colonies to rights based on their charters or, as in the case of New York, on a treaty with Indians. These were extinguished after the Revolution and after the English had reluctantly yielded to the new nation their sovereignty over the territory north and west of the Ohio River. There still remained the Indian title which was acquired by treaties from time to time.

The comparatively small part of Minnesota east of the Mississippi was a part of the "Old Northwest", which, by "An Ordinance

1. Geographically, the charter covered "all lands watered by streams flowing into Hudson's Bay." It conferred upon the company "complete lordship" and entire legislative, judicial, and executive power.

for the Government of the Territory of the United States northwest of the river Ohio" was organized for the purposes of temporary government into one district and became commonly known as the Northwest Territory. The Ordinance was enacted July 13, 1787, while Congress was functioning under the Articles of Confederation. It was confirmed August 7, 1789, and adapted to the Constitution by the first Congress acting under that instrument.[2] It authorized a court of three judges which should have a common-law jurisdiction and whose judges should hold office during good behavior. Any two of them could form a court. To qualify, the judges each had to own a freehold in 500 acres of land in the district.[3] This court became known as the General Court to distinguish it from courts created by the temporary territorial government, namely, the county courts of common pleas with civil jurisdiction, probate and orphans' courts, the justices of the peace, and the "courts of quarter sessions of the peace" held four times a year by three to five justices of the peace specially commissioned for that court whose jurisdiction was confined to criminal matters arising in its county.[4]

The three judges of the General Court and the governor constituted the legislature until the time when there should be 5000 free male inhabitants of voting age within the district. When that time came, a house of representatives was to be elected by a limited class of male freeholders, and a council was to be named by Congress (after 1789 by the President) from a panel submitted by the house of representatives of the territory. The council and house, with the governor, were to constitute the legislature. After its organization, the governor was to have absolute veto power over acts of the legislature so created. In the meantime, the temporary legislature, subject to the disapproval of Congress, was authorized to adopt such laws of the original states as "might be necessary and best suited to the circumstances of the district." Under this power, the governor and judges adopted laws for the government of the territory, including what was ultimately published as the Maxwell Code, although Governor St. Clair severely

2. 1 Stats. at Large, 50.

3. How very important the ownership of land and consequent status as a taxpayer was regarded in the days of the pioneers is evidenced by the requirement that in order to qualify for his office the governor of the district was required to be a resident and freeholder of 1000 acres; each of the judges of the General Court, 500 acres; each member of the house of representatives (when it came into existence) 200 acres; and each elector of such representatives, 50 acres. Ownership of land may probably have been regarded as an assurance of stability of judgment and as so attaching the owner's interest to the district that he would exercise his judgment with its best interests in mind. In the later acts creating territories the condition was abandoned.

4. Vol. XVII, Illinois Historical Collections, 4 et seq.

criticized the arrangement under which, during the temporary government, he had no veto power and the judges could outvote him in their legislative capacity and then interpret the law they had adopted. He characterized it as the "very definition of tyranny."[5] Evidently, he was a thorough believer in the division of governmental powers.

It seems to have been assumed in Indiana, Illinois, and Michigan territories, at least, that, acting as a legislature, the governor and judges could confer chancery jurisdiction upon trial courts subject to review by the general court. However, in the creation of subsequent territories, Congress specifically conferred chancery as well as common-law jurisdiction upon the courts.

Much has been written about the Northwest Ordinance as the Great Charter of the Northwest Territory, containing a bill of rights and the prohibition of slavery. Without question it was a most enlightened framework of territorial government. It formed a pattern for the territorial governments subsequently set up within the original boundaries of the Northwest Territory.

The rights, protected by the provisions of the Ordinance and the subsequent acts creating new territories, became fundamental in the constitutions of the various states which were carved out of the Old Northwest and the District of Louisiana. Judge Thomas M. Cooley said that the passage of the Ordinance was one of the great events which ranked with the adoption of the Federal Constitution and the Louisiana Purchase in affecting most profoundly the history of the United States.[6] Theodore Roosevelt in his "Winning of the West" commended it in the highest terms. Dr. William Anderson in his "History of the Constitution of Minnesota"[7] said:

> "The ordinance was, therefore, the first American charter of local government for eastern Minnesota. So fundamental and acceptable were the principles of the ordinance that it was inconceivable that they should be circumscribed in their application to a limited area. It is significant that its terms, with the exception of the prohibition of slavery, were soon after extended to a new area, but it was far more important and basic that to every freedom-loving pioneer who labored to extend the American civilization deeper and deeper into the remote west, its principles were among the most priceless of treasures."

5. Vol. XXX, Ohio Arch. & Hist.Pub., 23.
6. Vol. II, Publications of the Indiana Historical Society, 65.
7. Anderson, W. "A History of the Constitution of Minnesota", 9.

The Ordinance is, perhaps, the most persuasive evidence that, aside from the federal structure, the fundamental principles of our Constitution were not first conceived by the framers of that document. These principles developed as the fruit of long experience in parliamentary and colonial government. They matured in the minds of statesmen who were seeking means for the prevention of tyranny.

By act approved May 7, 1800,[8] the Northwest Territory was divided into two territories. That west of a line from the mouth of the Kentucky River to Fort Recovery and thence due north to the Canadian boundary was designated as the Territory of Indiana. That east of the line retained the original territorial government and name until the state of Ohio was admitted to the Union, when all the rest of the eastern district was attached to the Territory of Indiana.[9]

From the original Northwest Territory were carved, from time to time, the state of Ohio [10] and successively the territories of Indiana,[11] Michigan,[12] Illinois,[13] and Wisconsin,[14] all of which territories, when first created or subsequently as in the case of Michigan,[15] included Minnesota east of the Mississippi, which was, in consequence, successively subject to the laws of the various territorial legislatures and to the jurisdiction of the respective territorial courts. When, in May 1848, the state of Wisconsin was admitted to the Union with its present boundaries, that part of Minnesota east of the river apparently continued to be the Territory of Wisconsin, at least, during the short interval, until the Territory of Minnesota was created in 1849. In this interval, Henry H. Sibley was received in Congress as a delegate from Wisconsin Territory upon the theory that the territorial government still existed.

MINNESOTA WEST OF THE MISSISSIPPI

All that part of Minnesota west of the Mississippi, except the Red River Valley, as above noted, was part of French Louisiana until the termination of the French and Indian War in 1763 and was subject to the jurisdiction of the Superior Council at New Orleans, which administered law according to the Custom of Paris, as modified by edicts of the French king.[16] In outlying districts, local judges were appointed whose decisions were subject to appeal to or review by the Superior Council, whose decisions

8. 2 Stats. at Large, 58.
9. 2 Stats. at Large, 173, 174.
10. 2 Stats. at Large, 201.
11. 2 Stats. at Large, 58.
12. 2 Stats. at Large, 300.
13. 2 Stats. at Large, 514.
14. 5 Stats. at Large, 10.
15. 3 Stats. at Large, 428, 431.
16. Vol. 22, Reports of Louisiana Bar Association, 21 et seq.

were, in turn, in certain cases subject to review by the Council of State at Versailles. The procedure in the French courts was very simple, but, unfortunately for the French inhabitants, when Louisiana was ceded to Spain after the French and Indian War, the Spanish governor, O'Reilly, promulgated a code which was, in substance, the Spanish colonial code and which transferred the appellate jurisdiction to Havana. This transfer to Spain, though theoretically made at the end of the war, was not actually effective until 1769.

In 1800, by the secret Treaty of San Ildefonso, Napoleon reacquired Louisiana for France and in April 1803 transferred it to the United States by the Treaty of Paris. Congress, by its act of October 31, 1803, authorized the President to vest in such persons as he might direct, "all the military, civil and judicial powers, exercised by the officers of the existing government" until the establishment of a temporary government by Congress. By an act, approved March 26, 1804, Congress erected that part of Louisiana north of latitude 33° (the southern boundary of the present state of Missouri) as a district to be administered under the governor and judges of Indiana Territory, who had power to enact laws and establish inferior courts.[17] This brought all of present Minnesota with the exception of the Red River Valley under one territorial government until July 4, 1805, when Louisiana was set up as a territory with a government similar to that established by the Ordinance of 1787, except that slavery was not mentioned and that the three judges having legislative powers held office for terms of four years instead of during good behavior.[18] June 4, 1812, less than two months after the state of Louisiana had been admitted to the Union,[19] the Territory of Louisiana was organized as the Territory of Missouri,[20] and in 1821, the state of Missouri was admitted to the Union, after which the Territory of Missouri north and west of the state was left to shift for itself without any government actually functioning until 1834, when that part east of the Missouri and White Earth rivers was attached to the Territory of Michigan,[21] which theretofore extended only to the Mississippi River.[22] That congressional action again brought the territory east and west of the Mississippi under one jurisdiction.

In 1836 the Territory of Wisconsin was organized. It included within its boundaries all of the area comprising the present state of Minnesota.[23]

17. 2 Stats. at Large, 283–287.
18. 2 Stats. at Large, 331.
19. 2 Stats. at Large, 701.
20. 2 Stats. at Large, 743.
21. 4 Stats. at Large, 701.
22. 3 Stats. at Large, 431.
23. 5 Stats. at Large, 10.

The act creating the territory provided for a supreme court consisting of a chief justice and two associate justices, each of whom was required to hold a district court in one of the three districts to which he was assigned. Provision was also made for probate courts and justices of the peace, with jurisdiction to be prescribed by law. In 1838, the Territory of Iowa was organized, with a judiciary similar to that which had been provided for Wisconsin, to include all of Wisconsin Territory west of the Mississippi.[24] Then, what is now Minnesota west of the Mississippi became part of Clayton County, Iowa.[25]

THE JUDICIARY UNDER THE TERRITORIAL GOVERNMENT OF MINNESOTA

Under the Organic Act, passed by Congress March 3, 1849, establishing a temporary government for the Territory of Minnesota, the laws of the Territory of Wisconsin were, by section 12, continued in force in the Territory of Minnesota until altered, modified, or repealed by the governor and legislative assembly of the territory established. No legislative powers were conferred upon the governor and judges, such as those temporarily conferred upon the governor and judges by the Ordinance of 1787 and the acts creating Indiana, Michigan, and Illinois territories. The population of Minnesota was ready to elect a legislature, and Congress permitted the direct popular election of members of both the council and the house. No property qualification was

24. 5 Stats. at Large, 235.

25. An interesting incident is related on pages 5 and 6, Vol. I, Stevens' "History of the Bench and Bar of Minnesota." It happened while Minnesota east of the Mississippi River was part of Crawford County, Wisconsin. In September 1839, one Edward Phelan, in a dispute over a land claim, killed his partner, a man named Hays. The homicide was committed in that part of the present limits of St. Paul which lies to the north of the Mississippi River and, therefore, within what was then Crawford County.

The evidence of murder was apparently very clear, and, notwithstanding that, Justice of the Peace Henry Sibley who was then an officer of Clayton County, Iowa, having his residence and office at Mendota, issued a warrant for Phelan's arrest and gave him a preliminary examination which resulted in his being bound over to the grand jury at Prairie du Chien, Wisconsin. In those days territorial jurisdiction was evidently not taken very seriously, and no one sought Phelan's release under a writ of habeas corpus. He was held by the authorities at Prairie du Chien for some six months until the next meeting of the grand jury. When no witnesses appeared before it, Phelan was discharged. He brazenly returned to St. Paul and made a claim to the land which he and Hays had quarreled over. His claim was successfully resisted because of his more than six months' absence, but he occupied and sold four other claims, all within the present limits of St. Paul. One of these was on the lake which still bears his name. (Spelling changed).

In 1850, he was indicted by the first grand jury in Ramsey County for perjury. He fled the country, started for California in a wagon train across the plains, and for some misdeed his fellow travelers hanged him.

prescribed for voters, and for the first election the right of suffrage was extended to all free white male inhabitants who had been such at the passage of the Organic Act, had attained the age of 21 years and were citizens of the United States, or had declared their intention to become such.

The judicial power of the territory was, by section 9 of the act, vested in a supreme court, district courts, probate courts, and in justices of the peace. The Northwest had outgrown courts of common pleas and courts of quarter sessions. The supreme court was to consist of a chief justice and two associate justices holding their offices for a period of four years. A district court was to be held in each of the three judicial districts, which were to be created by law, by one of the justices of the supreme court, each of whom was required to reside in the district assigned to him. Thus, each justice of the supreme court presided as a judge of the district court and sat with his colleagues in review of his own decisions if appeals were taken.[26]

The supreme and district courts were vested with chancery as well as common-law jurisdiction. The supreme court had such original jurisdiction as might be limited by law, and appellate jurisdiction by writ of error, bill of exceptions, or appeal over the final decisions of the district courts. By writ of error or appeal, review of the decisions of the supreme court by the United States Supreme Court was provided for in the same manner as from the circuit courts of the United States where the amount in controversy exceeded a thousand dollars. All members of the supreme court were to receive an annual salary of $1800.

All proceedings in the courts of the Territory of Wisconsin within the limits of the Territory of Minnesota were transferred to the new courts created by the act or under its authority. In September 1849, the legislature met in its first session after the creation of the territory. It enacted a code of practice for justices of the peace,[27] and prescribed the jurisdiction of supreme, district, and probate courts.[28] It vested chancery jurisdiction in the district courts [29] and prescribed a code of practice for those courts when exercising that jurisdiction, requiring the rules in chancery to be in conformity with the known usages of courts of

26. The first supreme court of the Territory consisted of Aaron Goodrich of Tennessee, chief justice; David Cooper of Pennsylvania, and Bradley B. Meeker of Kentucky, associate justices. Chief Justice Goodrich was assigned by Governor Ramsey to the First District having its seat of justice at Stillwater; Justice Meeker to the Second District at the Falls of St. Anthony; and Justice Cooper to the Third District at Mendota. The first term of the supreme court was held at the American House "in the town of St. Paul", Monday, January 14, 1850. Letter of Aaron Goodrich to the Historical Society, March 4, 1851.
27. L.1849, c. VI. (6)
28. L.1849, c. XX. (20)
29. L.1849, c. XX.

equity. The code of practice in the chancery courts appears as Revised Statutes 1851, c. 94, with the 1852 amendments. However, in the Revision of 1851, c. 70, the legislature abolished common-law forms of actions at law and later abolished courts of chancery and committed equitable relief to civil actions in the district courts.[30] It is significant that the older members of the bar were much opposed to the adoption of the New York Code of pleading and practice and made at least two attempts to have the legislature require the courts to return to the common-law forms. Our profession is undoubtedly one of the most conservative of professions and is reluctant to adjust itself to reforms in law or procedure.

The Organic Act creating the territory did not, like the later constitution, give the territorial legislature authority to create inferior courts other than those specifically mentioned.

THE JUDICIARY UNDER THE STATE CONSTITUTION

A. THE SUPREME COURT

Article VI of the Minnesota constitution, adopted by the people of the territory on October 13, 1857, under which the state was admitted to the Union May 11, 1858, and which is still in force substantially as originally adopted, vested the judicial power of the state in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature might from time to time establish by a two-thirds vote. The justices of the supreme court and the judges of the district courts were given a tenure of seven years, later reduced to six years when annual elections were changed to biennial ones.[31] Again, the supreme court was to consist of a chief justice and two associate justices, with a provision that the number of associate justices might be increased to four by a two-thirds vote of the legislature when it should be deemed necessary.[32] However, the justices are not required to hold terms of the district courts as in territorial days, though by a two-thirds vote the legislature may require the supreme court to sit in each or any judicial district once a year.

The original jurisdiction of the supreme court is in such remedial cases as may be prescribed by law, but, as in the territorial supreme court, there is to be no trial by jury in the supreme court. It has appellate jurisdiction in all cases both in law and equity and may issue to all inferior courts, to corporations and to

30. L.1853, c. 9.
31. L.1883, c. 3.
32. The number of associate justices was increased to four by L.1881, c. 141, and to six by constitutional amendment in November 1930.

individuals writs of error, certiorari, mandamus, prohibition, quo warranto, and all other writs and processes necessary to the execution of the laws and the furtherance of justice. The establishment of administrative bodies with quasi-judicial powers, such as the industrial commission, the board of tax appeals, and others, whose decisions may be reviewed directly by the supreme court on certiorari or appeal, has added greatly to its labors. Direct review by the supreme court serves to expedite final determination of a cause. It is to be commended for that reason, and should such direct review from lower courts, boards, and commissions unduly overburden that court, the people can increase the number of justices and permit them to sit in divisions in cases of minor importance. One serious fault in the present constitution is the lack of a provision permitting district judges to be called to sit in the supreme court when a justice of that court is disqualified or incapacitated. As the constitution now stands, a majority of the justices must be incapacitated or disqualified before district judges may be called in.[33] The supreme court can be reduced to four justices without relief from the district bench. Those four may be equally divided on a decision, as they were in Feder v. Modern Woodmen of America, 212 Minn. 609, 3 N.W.2d 673, and still no relief can be had. Even if but one justice is disqualified, the remaining six may be equally divided, as they were in Sig Ellingson & Co. v. Polk County State Bank, 186 Minn. 48, 242 N.W. 626. These situations result in affirmance because of such division—a most unsatisfactory conclusion. The United States Circuit Court of Appeals constantly calls in United States district judges to assist with its labors without criticism for so doing. Certainly, district judges should be available for service in the state supreme court in case one or more justices are disqualified or incapacitated.

By L.1939, c. 442, M.S.A. §§ 482.01–482.06, the supreme court appoints the revisor of statutes and supervises his work. It is also charged with the supervision of the management of the library under the provisions of M.S.A. § 480.09. Minnesota is one of the very few states that imposes upon its chief justice a membership on the pardon board in addition to his judicial and administrative labors.

B. INTERMEDIATE APPELLATE COURTS

Except in the few instances where appeals are permitted on the record from some municipal courts to judges of the district court acting strictly as an appellate court, Minnesota has not suf-

33. Art. VI, § 3.

fered from the establishment of intermediate appellate courts. It is true that appeals are taken from probate and justice courts and some municipal courts to district courts, but on such appeals trials are had de novo. The legislature has very wisely taken the position that more expeditious justice can be attained by a single direct appeal to the supreme court than by establishing intermediate appellate courts. It accordingly enlarged the membership of the supreme court to the extent permitted by the constitution in order to take care of its increased work, and when the court again became overworked it submitted to the people an amendment to the constitution enlarging the court to seven members, pending the adoption of which it provided commissioners to be appointed by the court to assist with its work.[34] These commissioners sat with the court, took part in conferences, and wrote opinions in every respect the same as the justices, except that in the final disposition of a cause their votes did not count.

C. DISTRICT COURTS

In establishing the district courts, Art. VI, § 4, of the constitution provided for division of the state into six judicial districts, which were required to be composed of contiguous territory bounded by county lines and to contain a population as nearly equal as practicable, a provision since given a very elastic construction. The district courts are the general trial courts. Their jurisdiction extends both to law and equity in all civil cases where the amount in controversy exceeds $100 and to all criminal cases where the punishment may exceed three months' imprisonment or a fine of more than $100. The constitution also authorizes the district courts to be vested with such appellate jurisdiction as the legislature may prescribe. Consequently, they have become the courts to which all appeals from justice, probate, and some municipal courts must be taken. They are also charged with review of the decisions of some administrative instrumentalities exercising quasi-judicial powers, such as the railroad and warehouse commission. A division of the district court has jurisdiction of juvenile delinquents in counties having a population of over 100,000.[35] The importance of this work is evidenced by the large percentage of criminal careers that start with juvenile delinquency.

Because of the fact that Art. VI, § 4, as originally adopted, provided for but one judge in each district, single judges in the counties of Ramsey and Hennepin found themselves overburdened with work. This led the legislature, acting under its constitutional authority, to create courts inferior to the supreme court, to

34. L.1913, c. 62.

35. L.1945, c. 517. See M.S.A. § 260.02 et seq.

establish in those counties additional trial courts, which, for convenience, were designated "courts of common pleas",[36] although they had criminal as well as civil jurisdiction the same as that of the district courts.[37] Laws 1875, c. 69, created an additional judgeship in the court of common pleas in Ramsey County, with what seems to have been a wise provision that motions for new trial in that court should be heard before both of the judges thereof, and, in case of disagreement, the decision of the senior judge should prevail.[38] After amendment of Art. VI, § 4, in 1875, lifting the restriction on the number of districts and on the number of judges which the legislature might authorize in any district, the court of common pleas of Ramsey County was merged with the district court, and the judges thereof became judges of the district court.[39] Laws 1877, c. 103, in like manner merged the court of common pleas of Hennepin County with the district court in that district and repealed the special law creating it. There are now 51 judges in the 19 districts.

D. PROBATE COURTS

By the constitution, Art. VI, § 7, a probate court is established in each county of the state with jurisdiction over the estates of deceased persons and persons under guardianship. No better or more concise discussion of the history of these courts and their relation to the judicial system of the state can be found than that of Mr. Justice Mitchell in State ex rel. Martin v. Ueland, 30 Minn. 277, 281, 15 N.W. 245, where he discussed that jurisdiction as related to the equity jurisdiction of the district courts, as follows:

> "In England—formerly, at least—the settlement of the estates of deceased persons was an important branch of the jurisdiction of courts of equity, a large proportion of the suits in chancery being administration suits. As then administered in that country, the jurisdiction of equity courts included nearly everything pertaining to the settlement of decedents' estates, except the probate of wills and the issue of letters testamentary and letters of administration, and, as incident thereto, the enforcement of the payment of legacies of personal property, of which the ecclesiastical courts had jurisdiction. The court of chancery or the chancellor,

36. The court of common pleas as originally so designated in England had jurisdiction of actions between private parties and under Magna Carta was held at a place certain, originally Westminster, in contrast with the King's traveling courts. Vol. 2, Selected Essays in Anglo-American Legal History, p. 210.

37. L.1867, c. LXXXIV (84) for Ramsey County and Sp.L.1872, c. 177, for Hennepin County; see, Lane v. Innes, 43 Minn. 137, 140, 45 N.W. 4.

38. See, State v. Lautenschlager, 22 Minn. 514.

39. Pursuant to constitution, Art. VI, § 4, as amended, and Sp.L.1876, c. 209.

as the general delegate of the authority of the king as parens patriae, had exclusive jurisdiction over the persons and estates of infants, lunatics, and all persons under guardianship. All guardians were appointed by that court, and it alone had power to commit the person and property of all such persons to the custody of guardians. Persons under guardianship were the wards of that court. But in most of the American states, courts called probate, surrogate, or orphans' courts were established at an early day for the settlement of the estates of decedents, and the determination of all questions arising in the course of administration, to the practical exclusion of equity jurisdiction over such matters. In many of the states jurisdiction was given to these probate courts over the persons and estates of all persons under guardianship, with power to appoint and remove guardians, and to control the persons and estates of the wards. Thus an important branch of equity jurisdiction, as formerly administered, was transferred to these courts. In some states, theoretically, courts of equity retained concurrent jurisdiction over these matters, although in practice they would not, in the absence of some distinctive equitable principle, assume to exercise it, but leave the matter to the special probate tribunals. In other states, the jurisdiction thus conferred upon the probate courts was held to be exclusive. The latter was the doctrine which prevailed in this territory and in the states from which it borrowed its probate system; and the provisions of the constitution defining the jurisdiction of the district court and probate court must be understood and construed with reference to this state of things then existing. To hold that the equity jurisdiction given by the constitution to the district court extends to everything which pertained to equity jurisdiction as formerly administered in England, would be utterly inconsistent with the grant of jurisdiction to the probate court. Such a construction would limit the judicial power of the latter court over the estates of deceased persons to the mere probate of wills and the issuing of letters testamentary and of administration, and would deprive it entirely of all jurisdiction over the persons or estates of persons under guardianship.

"It was clearly the intention of the constitution to give the probate courts the entire and exclusive jurisdiction over the estates of deceased persons and persons under guardianship, in the same manner and to the same extent that it gives to the district court jurisdiction over civil cases in law and equity arising out of other matters of contract or tort. It also seems clear to us that the grant of jurisdiction to the district

court in all cases in law and equity must be understood as having reference to equity jurisdiction and equity jurisprudence as then existing and administered, and not to a system which formerly obtained in England, but which had never prevailed in this state. Of course, many suits may arise out of pending administrations and existing guardianships, of which the district courts, and not the probate courts, would have jurisdiction. Suits by an administrator or a guardian against a stranger, to recover the assets of the decedent or the property of the ward, would be cases of this class. Neither do we mean to decide that there may not be cases where the district court would have concurrent jurisdiction with the probate court, where they involve some additional equitable feature, such as trust or fraud or the like, which of itself, independent of the administration or guardianship, would be sufficient ground for the interference of a court of equity. * * *

"The jurisdiction of the probate courts over the estates of deceased persons includes the power in the first instance to construe a will, whenever such construction is involved in the settlement and distribution of the estate of the testator. Its jurisdiction over the estates of persons under guardianship includes not only the appointment of guardians and the control over their official actions, but the care and protection of the estates of the wards, formerly vested in the court of chancery."

The provision for but one judge of probate in each county works a severe hardship on those judges in the populous counties similar to that created by the original constitutional provision for only one district judge in each district. One of the matters that would need consideration if a constitutional convention should ever be called is a provision permitting the legislature to provide a bench of two or more probate judges in counties where the work requires it, or the giving of probate jurisdiction to a probate division of the district court in such counties where the legislature already has the power to enlarge the district bench with adequate personnel. The latter course would do away with intermediate appeals from the probate court to the district court where, as now provided, the cases are tried de novo. It would also permit the disposition in the court where an estate or guardianship is being administered of all litigation connected with the administration. Perhaps, consideration should also be given to a constitutional provision that in other counties where matters of importance arise in probate courts they could be certified to the district court for original disposition so as to avoid the possibility of a trial de novo on appeal. As the state grows in wealth, no

doubt the work of probate courts will increase in importance, and some plan should be devised to relieve the congestion in counties where the probate work is exceptionally heavy, but so long as laymen are constitutionally permitted to hold the office of probate judge in all counties, no matter how populous, it will probably be necessary to have appeals from that court to the district court and trials de novo on such appeals.

By L.1935, c. 72, M.S.A. § 525.01 et seq., the legislature adopted a comprehensive probate code, drafted by experts in that field, which probably went as far toward improvement of procedure as was possible within present constitutional boundaries. Necessary amendments have been few.

It should also be noted that by L.1945, c. 517, § 1, M.S.A. § 260.02, the probate courts in counties of less than 100,000 population function as juvenile courts by the exercise of their constitutional authority over guardianships.

E. MUNICIPAL COURTS

Numerous municipal courts have been established in the state whose process runs throughout the county or counties in which the municipality lies. The earlier courts, such as those in St. Paul, Minneapolis, Duluth, and Stillwater, were established by special act, while many later ones were created under general law. There are now more than 80 municipal courts in the state.[40] In some, the practice conforms to that in the district courts; in others, to that in justice courts. At least, one municipal court (Bemidji) conforms to the district court practice in civil cases and to justice court practice in criminal matters. In some courts practice was prescribed by the act creating the court. Some have a civil jurisdiction up to $500, some to $1000. In some, the judges are compensated by salary, in others by fees, as in justice court. Obviously, uniformity of practice and jurisdiction and elimination of compensation by fees would further the administration of justice. These courts are given no jurisdiction of cases involving title to real estate, except as it may be involved in forcible entry and unlawful detainer cases; nor may they take jurisdiction of suits for divorce, false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, breach of promise of marriage, or of any case where equitable relief is sought; nor may they entertain suits against executors or administrators as such, or against their municipality or county. They may not issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition, or injunction.

40. See List of Municipal Courts in Minnesota set out under chapter 488 in this volume. See, also, the Municipal Court Acts of Minneapolis, St. Paul and Duluth set out in Appendixes 1, 3 and 5 following chapter 488 in this volume.

Notwithstanding the restrictions upon their jurisdiction, the municipal courts perform an important function in the administration of justice in this state. They supply a tribunal which promptly disposes of smaller cases which otherwise would be delayed if they had to await trial in the district courts. They are courts of record where decisions may (where the legislature so provides) be reviewed directly by the supreme court on appeal, and they give competent hearing to many cases that would otherwise be heard in justice courts. These courts have demonstrated what a county court of like jurisdiction could accomplish throughout the state.

Wherever a municipal court is presided over by a judge learned in the law, a direct appeal to the supreme court might well be permitted, as in cases tried in the municipal courts of St. Paul, Minneapolis, Duluth, and some other cities. Unfortunately, under present constitutional provisions, a layman may, if elected or appointed, hold any judgeship in the state except on the supreme or district courts.[41]

An example of the efficiency and desirability of a court with the jurisdiction usually conferred on a municipal court, when presided over by a competent judge learned in the law, is that at St. Cloud, where the city lies in three counties and consequently the municipal court's process runs in all three. With a jurisdiction up to $500, the court has been resorted to by most litigants in those counties whose grievances fall within its jurisdiction, thus expediting justice and relieving the district courts of many cases, as well as absorbing most of the justice court work in those counties.

F. CONCILIATION COURTS[42]

Conciliation courts have been created in some of the larger cities of the state as divisions of the municipal courts for the inexpensive adjustment of small controversies without the employment of lawyers.

G. JUSTICES OF THE PEACE

The constitution requires the legislature to provide by law for the election of "a sufficient number" of justices of the peace in each county.[43] It denies them jurisdiction of cases involving title to real estate and places limits of $100 on the civil jurisdiction and

41. State ex rel. Boedigheimer v. Welter, 208 Minn. 338, 293 N.W. 914.

42. The Conciliation Court Acts of Minneapolis, St. Paul and Duluth are set out in Appendixes 2, 4 and 6 following Chapter 488 in this volume. It is interesting to note that, under the Maxwell Code in the Northwest Territory, cases involving less than five dollars could be tried finally without right of appeal by justices of the peace. Doubtless, this was a forerunner of our conciliation courts.

43. Art. VI, § 8.

90 days' imprisonment or $100 fine on the criminal jurisdiction which may be conferred upon them. Since this is a limitation upon and not a grant of jurisdiction, the legislature is apparently free to deprive the justices of such part of their jurisdiction as it sees fit. It has done so by denying them jurisdiction in certain classes of civil actions and of criminal offenses in cities and villages having a municipal court and providing that their process shall not run in some municipalities.

The legislature has provided for the election of two justices in every election district,[44] and that each town, each village, and each city ward shall constitute at least one election district. Consequently, the possible number of justices in the state is multitudinous. In rural Hennepin County alone there are over forty. Since they have county-wide jurisdiction [45] and are compensated by fees, they compete for business with the other justices in the county, with obvious consequences. The percentage of judgments against defendants runs much higher than in courts where the judges' compensation is not based on fees. In criminal trials in justice court, the right of a trial de novo on appeal is often abused to thwart justice. In civil cases the defendant, realizing the heavy percentage of judgments for the plaintiff in those courts, frequently merely uses the trial before the justice as a preliminary disclosure of plaintiff's evidence, and, having filed an answer, appeals to the district court.

Clearly, justice courts were adapted to primitive conditions and were only justified when travel was slow and difficult. In England they succeeded to the duties of conservators and guardians of the peace and were originally merely committing magistrates for breaches of the King's peace.[46]

When they act as traffic courts or hear cases involving offenses against the game laws, justice courts are the only courts with

44. M.S.A. § 382.28.

45. Justices in villages or cities lying in more than one county have jurisdiction in those counties.

46. There is some disagreement among legal historians about whether justices of the peace were first created by statute during the reign of Edward III or during that of Edward I. Apparently, Lord Coke leaned to the latter view, though he appears to be in the minority. At any rate, Stat. 36, Edward III, created the court of quarter sessions in each county, consisting of six justices—two knights, two men of the law, and two laymen of the "best quality" required to sit four times a year. They had a much broader function than modern justices in inquiring into breaches of the peace and trial of accused persons, though in cases of difficulty they were to call in one of the justices of the assize. The number commissioned in each county evidently increased greatly, because in William Nelson's sixth edition of Henry Care's work on English Liberties, published in 1774, it is said at page 241 that "these magistrates have been so unsuitably appointed, that a country justice is made a jest in comedies, and his character the subject of buffoonry [sic] and laughter."

which most people come in contact. From them the public gets its impressions of the quality of justice administered in this country. Quite obviously, the small constituencies from which justices are elected have not the resources adequate to compensate competent judicial talent. The situation suggests the need for fewer judges compensated by salary who serve larger units and noncompetitively dispense justice of a higher quality. The state of Virginia has apparently solved the problem by establishing a trial justice system which provides for a single-salaried trial justice in each county (or in some cases in more than one county), with an exclusive original jurisdiction of actions at law involving not to exceed $200 and concurrent jurisdiction with the circuit court in cases involving from $200 to $1000. The trial justice is appointed by the judge of the circuit court and sits at the times and places designated by him.[47]

The Virginia system not only provides a competent tribunal to replace the justices of the peace but also gives the state a county court with jurisdiction similar to that of municipal courts in our larger cities. It has reduced the work of the circuit courts very materially.

CONCLUSION

Much of the loyalty which we feel toward our form of government is founded upon our confidence in the fairness and impartiality of our judiciary, and every effort should be made to strengthen that confidence and to preserve the courts as a major institution of government. Our Constitution was formulated around and upon the theory that a division of governmental powers among three independent branches was the best insurance against tyranny. Over a century and a half of experience has confirmed the soundness of that theory. Every departure from it has resulted only in further confirmation. The trend toward administrative adjustment of disputes by boards and commissions without the right of final resort to the courts is a definite departure from that principle. But, if that trend is to be arrested, court structure and procedure must be adjusted to the tempo of a fast-moving age. That it now takes a year or more for a case to reach final disposition, if an appeal to the supreme court is taken, is a reflection upon our procedure. Much of the delay is usually due to transcribing the reporter's minutes of the testimony and to printing records and briefs upon appeal. We may expect American inventive genius to supply a solution of these mechanical problems, but there must be a determination on the part of bar and bench

47. Virginia Code, 1942, Title 42, 199, et seq.

to eliminate the delays due to procedure. We must look to the people and to the legislature, guided by suggestions from the bar, to reform the structure of the judicial branch in order that we may further expedite the judicial processes without impairing the quality of the justice dispensed. The best professional talent should be made available to the bench, which must be completely freed from political and economic pressure in order to achieve the best possible results. Much may be expected from the Judicial Council created by L.1937, c. 467, M.S.A. §§ 483.01–483.04, "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state" and of all matters relating thereto.

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