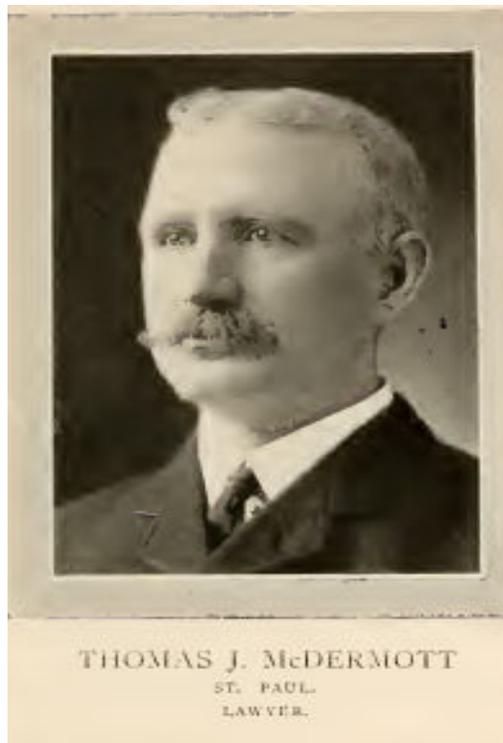


THOMAS JEFFERSON McDERMOTT¹

(November 17, 1861 - November 17, 1939)



Occasionally we read a magazine profile or biography of an individual and for some reason remember an anecdote or odd detail that we know is insignificant when placed against that person's whole life, yet we cannot shake it. And so it may be that Thomas Jefferson McDermott will be recalled by some not only for his eventful legal and political life but also because he was admitted to the bar and practiced three years *before* he graduated from law school.²

After reading law in the offices of Eugene M. Wilson and William Lochren, two of the most prominent lawyers in the state, he was admitted

¹ The photograph on this page is from *Men of Minnesota* (1915).

He should not be confused with Thomas Ignatius McDermott, a lawyer who also practiced in St. Paul. See "Thomas I. McDermott (1876-1927)" (MLHP, 2011-2013).

² For another example of a lawyer who attended law school after being admitted to the Minnesota bar, see "Harry Lee Buck (1861-1952)" (MLHP, 2013). Buck attended one year at the University of Wisconsin Law School right after his admission to the Minnesota bar.

to the bar on April 6, 1892.³ He then entered the University of Minnesota Law Department and was awarded a LL.B. in 1895 and a LL.M. in 1897.⁴ He probably saw the inadequacies of a short clerkship, and concluded that further, formal education was necessary to practice law at this time. Nevertheless, while attending law, he “had an active practice” and even argued two appeals to the state supreme court in 1896, the year after his graduation.

He was, by his own account, a successful trial lawyer from the start. In 1904, Hiram F. Steven’s *History of the Bench and Bar of Minnesota* included his autobiographical sketch. He listed seven of his cases; two were criminal cases resulting in acquittals, the others were civil cases, four of which his clients lost on appeal. One loss, which must have rankled, was a libel suit he brought against a credit company that had rated him “slow in the payment of his bills.” Initially a majority of the supreme court held that this was libel per se, but after granting a motion for reconsideration, it reversed itself and held that the label “slow” was not libelous. Both opinions were written by Justice Mitchell and are posted in the Appendix. Here is his profile:

Thomas Jefferson McDermott is a product of the state of Minnesota, having been ushered into life November 17, 1861, in Kasota, Le Sueur county, his parents being Paul A. and Rose (McMamee) McDermott. After receiving a good common school education he was given the advantage of a good business training in a commercial school at Minneapolis, supplementing this with a course in the law school of the state university, from which he graduated, taking both bachelor and master degrees. He also had practical training in the office of Eugene M. Wilson, and under the direction of

³ 1 *Roll of Attorneys: Supreme Court, State of Minnesota, 1858-1970* 27 (State Law Library, 2011).

⁴ Alumni of the College of Law, 1899-1915, at 252 (online). His entry provides:

Thomas Jefferson McDermott,
LL. B., 95; LL.M., 97; Lawyer; chmn. State
Central Comm. Dem. party, 2 yrs.; Supreme
rep. to internatl. meeting of I. O. F. for 15
yrs. last past; delegate to World's Court Cong.,
15; mem. St. Paul Athletic and Automobile
Clubs. 714 N. Y. Life Bldg. and 942 Summit
Ave., St. Paul, Minn.

Judge William Lochren, of Minneapolis, and was admitted to practice before the supreme court of Minnesota in April, 1892, and the supreme court of the United States March 4, 1895.

Preferring to stand or fall on his own merits, Mr. McDermott opened an office in St. Paul, and, more fortunate than many young professional men, met with prompt recognition among the fraternity by reason of his vigor and energy. That he has been a very successful man during the ten years of his practice is seen by a casual glance at the records, which show him to have been the counsel in the following cases, which were of paramount importance: State of Minnesota vs. Charles A. Hawkes; same vs. John Adler, who was indicted for murder and owes his acquittal to the untiring zeal, shrewdness and unanswerable eloquence of Mr. McDermott; Hebner vs. Great Northern Railway (a blacklisting case); McDermott vs. Union Credit Co. (libel case); LeRocque vs. Chappie (sic) (cost for foreclosure of a mortgage); Singer Manufacturing Co. vs. Flynn (power of an agent); Lamotte et al. vs. Mohr (power of trustee or referee).⁵ He has been for some time the special attorney of the Singer Manufacturing Company, the Western Supply Company, assistant general attorney of the Chicago Great Western Railway for three years, and other companies.

Probably few men are more widely and pleasantly known through out Minnesota than Thomas Jefferson McDermott,

⁵ The last five were appealed to the state supreme court:

Hebner v. Great Northern Railway, 78 Minn. 289, 80 N.W.1128 (1899) (Collins, J.) (libel case which McDermott's client, who was dismissed and blacklisted, lost);

McDermott v. Union Credit Co., 76 Minn. 84, 78 N. W. 967, on reconsideration, 79 N.W. 673 (1899) (Mitchell, J.; Collins and Buck J., dissenting) (libel case in which the trial court's overruling a demurrer was reversed) (it is posted in the Appendix at pages 8-14 below);

Larocque vs. Chapel, 63 Minn. 517, 65 N. W. 941 (1896) (Mitchell, J.) (McDermott's client's suit to recover costs of mortgage foreclosure because Sheriff Chapel did not file affidavit on time dismissed) (the sheriff's last name was misspelled in the book);

Singer Manufacturing Company vs. Flynn, 63 Minn. 475, 65 N. W. 923 (1896) (Canty, J.; Collins, J. dissenting) (Singer, represented by McDermott, was bound by contract made by employee for sale of machines; judgment for Flynn, the buyer);

La Motte et al. vs. Mohr, 78 Minn. 127, 80 N. W. 850 (1899) (Mitchell, J.) (statute on partition of land does not require each parcel to be of the same average quality; McDermott's client prevails).

who is a prominent and influential leader of the democratic party of his state and is ex-chairman of the state central committee. He has served on the executive committee for four years and has been an important factor in strengthening and harmonizing the party with which he affiliates. His genial and companionable ways have made him a universal favorite among all classes, and his influence is potent and far reaching, always exerted in sustaining the cause of the masses and bettering their condition. Mr. McDermott was married in 1887, in Marysburg, Minnesota, to Miss Caroline T. Doran, with whom he has five children, four sons and one daughter, Sylvester, Paul, John and George and Helen Grace McDermott.

He is a member of the Independent Order of Foresters, and was their international representative from Minnesota in 1901-2 at Toronto, Canada. He is an earnest Catholic. Few men are more closely wedded to their business than is Mr. McDermott, and he enjoys a large and lucrative practice from the masses of the people, with whom he is in close touch and sympathy. We cannot find a more fitting close to this sketch than his own words: "I love the profession and enjoy the work. I have been in active practice since my admission, and I expect to live in the state all my life and follow the law for a calling while I survive."⁶

Active in local and state politics, he was, as implied by his middle name, an ardent Democrat. In 1904, he ran against Edward T. Young for state attorney general. The seat was open because William J. Donahower chose not to run. The Republican party was weakened because it had undergone a bitter battle between former Supreme Court Justice Loren W. Collins and ex-state Auditor Robert C. Dunn for the gubernatorial nomination, with the latter prevailing.⁷ The Democrats had turned to John A. Johnson, a newspaper editor from St. Peter. There was a large voter turnout because this was a presidential election year in which the redoubtable Theodore Roosevelt was opposed by Alton B. Parker. In the election on November 8, 1904, Johnson won narrowly, while Roosevelt

⁶ Hiram F. Stevens, II *History of the Bench and Bar of Minnesota* 79-80 (1904).

⁷ This intraparty battle was described by Harlan P. Hall in his political memoir, *Observations* 317-344 (1904). It will be posted on the MLHP at a later date.

received almost four times more votes than Parker in Minnesota.⁸ Young defeated McDermott handily. The results were:

Edward T. Young (Republican).....	180,346
Thomas J. McDermott (Democrat).....	87,528 ⁹

Two years later, William Hennessey published *Past and Present of St. Paul, Minnesota*, which contained sketches of many prominent professional men of the city, including another of McDermott. Because the subjects themselves wrote, edited or contributed the information that formed the sketch, they inevitably were flattering; indeed they were a not-so-subtle form of advertising. Thus it was disingenuous for McDermott to claim, "He adheres to the old views of professional ethics which discountenance all manner of advertising and self-adulation." This self-portrait, which included most of the earlier one, also contained new material that was vainglorious even by the standards of these local histories:

Thomas Jefferson McDermott, whose careful preparation, deep interest in his profession and fidelity to the interests of his clients has made him one of the most able of the younger members of the St. Paul bar, was born in Kasota, LeSeuer county, Minnesota, November 17, 1861, his parents being Paul A. and Rose (McNamee) McDermott. After acquiring a

⁸ The votes for governor were:

Robert C. Dunn (Republican).....	140,130
John A. Johnson (Democrat).....	147,992
Charles W. Dorsett (Prohibitionist).....	7,577
J. E. Nash (Public ownership).....	5,810
A. W. M. Anderson (Socialist-Labor).....	2,293

The votes for president were:

Theodore Roosevelt (Republican).....	216,651
Alton B. Parker (Democrat).....	55,187
Thomas Watson (Peoples).....	2,103
Eugene V. Debs (Public ownership).....	11,692
Silas C. Swallow (Prohibition).....	6,253
Charles H. Corregan (Socialist-Labor).....	974

1905 Blue Book, at 506-7, 532.

⁹ Douglas A. Hedin, "Results of the Elections of Attorneys General, 1857-2014" 35 (MLHP, 2013 -), citing 1905 Blue Book, at 508-9.

good common-school education he was given the advantage of business training in a commercial school in Minneapolis and supplemented it with a course in the law school of the State University, from which he was graduated, winning both the Bachelor and Master degrees. He was also a student in the office of Eugene M. Wilson and likewise of Judge William Lochren, of Minneapolis, now United States judge, and thus gained practical knowledge of the tasks which are necessities to the capable practice of law. He was admitted to practice before the supreme court of Minnesota in April, 1892, and the supreme court of the United States, March 4, 1895.

Entering upon the active work of the profession, Mr. McDermott met with prompt recognition by reason of his vigor and energy. No dreary novitiate awaited him. Almost immediately he gained a large clientage that has constantly brought him legal business of much importance. His devotion to his clients' interests is proverbial and that he has been very successful during the ten years of his practice is seen by a casual glance at the records, which show him to have been the counsel in the following cases, which were of paramount importance: State of Minnesota vs. Charles A. Hawkes; same vs. John Adler, who was indicted for murder and owes his acquittal to the untiring zeal, shrewdness and unanswerable eloquence of Mr. McDermott; Hebner vs. Great Northern Railway (a blacklisting case); McDermott vs. Union Credit Company (libel case); LaRocque vs. Chapple (sic) (cost for foreclosure of a mortgage); Singer Manufacturing Company vs. Flynn (power of an agent); Lamotte et al. vs. Mohr (power of trustee or referee). He has been for some time the special attorney of the Singer Manufacturing Company, the Western Supply Company, assistant general attorney of the Chicago Great Western Railway Company for three years, and other companies.

Mr. McDermott was married in 1887, in Marysburg, Minnesota, to Miss Caroline T. Doran, and to them have been born five children, four sons and a daughter: Sylvester, Paul, John, George and Helen Grace McDermott. A prominent member of the Independent Order of Foresters, he was

international representative from Minnesota at Toronto, Canada, in 1901-2 and at Atlantic City, New Jersey, in 1904-5, while in the recent state convention he was nominated and unanimously elected high counsel for the order in Minnesota, which position he is holding at this writing, in 1906. He belongs to the Catholic church and gives his political allegiance to the democracy.

In 1904 he received the nomination of his party to the office of attorney general of Minnesota and with one or two exceptions ran several thousand votes ahead of every candidate on the ticket – a fact which indicates his personal popularity and the confidence which is uniformly reposed in him by those who know him. He has a wide and favorable acquaintance throughout Minnesota and is recognized as a prominent and influential leader of the democracy. He has been chairman of the state central committee, has served on the executive committee for four years and has been an important factor in harmonizing the party with which he affiliates. His genial and companion-able ways have made him a universal favorite among all classes and his influence, which is potent and far-reaching, is always exerted in sustaining the cause of the masses and bettering their condition. He adheres to the old views of professional ethics which discountenance all manner of advertising and self-adulation. He is a public-spirited citizen, always ready to support real reforms of existing abuses of law or its administration and to encourage and support institutions calculated to aid his fellow men. His home, his profession and the questions of the day, covering a wide range of study, absorb him, and in these he finds his greatest enjoyment. Few men have a more intimate knowledge of the history of the country or its public men or have devoted more time to the study of the social and economic questions of the times.

He has sought no office outside of the direct path of his profession, to which he is thoroughly devoted. He takes high rank as an able and successful lawyer and is known as the champion of the interests of the people. In the preparation of his cases he is very thorough and pain-staking and displays

keen analytical power, logical reasoning and careful deductions. Few men are his equal as a brilliant and effective speaker, which fact has been demonstrated times without number in the presentation of his cause to the jury. His use of argument, of humor and of pathos are equally effective. Many times he has brought tears to the eyes of his auditors by the realistic and touching manner in which he has presented the cause of a client. His oratorical power enables him to "play upon the harpstrings of human emotion." He carries his hearers with him in thought and is justly regarded as one of the most able and eloquent speakers of today at the bar.¹⁰

He continued to practice law and politics in St. Paul for the next thirty years. His death on November 17, 1939, was reported by the *St. Paul Dispatch*:

T. J. McDermott, Dem Leader, Dies

Tomas Jefferson McDermott, long a prominent Minnesota Democrat and St. Paul attorney, died Friday night, at his home, 942 Summit avenue, just two days short of his 78th birthday anniversary.

Mr. McDermott was a friend of Minnesota's famed Governor John A. Johnson, ran for attorney general on the Democratic state ticket in 1904 and had previously served as chairman of the Democratic state central committee.

He was born in Kasota, Minn., November 19, 1861, son of Paul A. and Rose McNamee McDermott, pioneer residents of the region. His parents fled the 1862 Indian outbreak with him.

After a country schooling, supplemented by a business college course, he read law and was admitted to the bar in 1892. He attended the University of Minnesota college of law, graduating in 1895.

¹⁰ William B. Hennessy, *Past and Present of St. Paul, Minnesota* 470-71 (1906).

His active career as an attorney here included, among many activities, three years as assistant general attorney for the Chicago Great Western Railway.

Mr. McDermott was a delegate to several national Democratic conventions and had served more than once as presidential elector.¹¹

On March 23, 1940, the following memorial was delivered at the annual memorial proceedings of the Ramsey County Bar Association:¹²

Mr. [Pierce] BUTLER [Jr., President of the County Bar Association]: If Your Honors please, a committee for whom Mr. Donald Doty will speak, has prepared a memorial of Thomas J. McDermott, lately of this bar.

Thomas Jefferson McDermott was born November 17, 1861, on a farm in LeSueur County not far from St. Peter, Minnesota, the son of Paul A. and Rose McNamee McDermott, who formerly lived in the State of Pennsylvania near Pittsburgh and came to Minnesota in the year 1849 locating in what was then the Village of St. Paul. When the southern part of Minnesota was opened up for settlement after the Treaty was made between the Government and the Sioux Indians at Traverse de Sioux, Mr. McDermott's parents moved from St. Paul and settled on land which was to remain their homestead for many years. His father died when he was only seven years of age and consequently it was necessary for him to become self-reliant very early in youth.

He acquired his early education in the public schools in his community, and later attended a commercial school in the city of Minneapolis. As a young man he taught school for several years near his boyhood home in LeSueur County. He was a boyhood friend of John A. Johnson, and frequently participated with him in the social and literary life of the young folks in and about St. Peter. Mr. McDermott at that

¹¹ *St. Paul Dispatch*, Saturday, November 18, 1939, at 3 (funeral details omitted).

¹² For the complete transcript of these proceedings see, "Ramsey County Bar Memorials-1940)" (MLHP, 2017).

time was a great admirer of John A. Johnson, and later on did much in behalf of the cause of the political advancement of his friend Johnson. In fact they both ran for state offices on the Democratic ticket in 1904.

Mr. McDermott as a young man worked in the United States Mail Service and at one time came near being selected as the Railway Mail Service Superintendent in the 10th division, and although he was disappointed at the time in not receiving this appointment he later thought it fortunate for him and his family that he decided to devote his life to the study and practice of law for it was in the practice of the law that he found his true life's work.

On September 13, 1887 he was married to Caroline T. Doran who lived in the adjoining County of Blue Earth whom he had known from the time they were both very young people. Like so many young folks who then lived in the rural communities, Mr. McDermott and his wife decided to move to the Twin Cities, and for a number of years they lived in the City of Minneapolis. He studied law in the office of Hon. Eugene M. Wilson and Judge William Lochren of Minneapolis, and later attended the Law School of the University of Minnesota, from which institution he received the Degrees of Bachelor of Law and Master of Law. Mr. McDermott was admitted to practice before the Supreme Court of Minnesota in April, 1892, and continued to practice until shortly before his death. When he commenced to practice law in St. Paul he associated for several years with Mr. George Nelson who was a well known lawyer in St. Paul at that time. Later on Mr. McDermott officed with former Lieutenant Governor Gideon S. Ives for a number of years.

Mr. McDermott always espoused the cause and principles of the Democratic Party from the time of his young manhood and played a very active part in many state and national political campaigns. In 1894 he was selected as Chairman of the Democratic State Central Committee, and he attended the Democratic National Convention in 1896, and practically

every National Convention of the Democratic Party from that time until recent years.

He was always interested in political and historical figures in the history of the state and nation, and came to know personally many distinguished and able leaders. He was personally acquainted with Grover Cleveland, and visited him in Washington on various occasions. Mr. McDermott was personally acquainted with nearly every Governor of the State of Minnesota. He ran for Attorney General of the State of Minnesota in 1904 on the ticket with John A. Johnson, and carried on an active political campaign with Johnson in all parts of the state, and he always was proud of the part he played in the advancement of John A. Johnson of whom he was very fond. He was a close friend of William Jennings Bryan and traveled with him in 1896 hundreds miles when Bryan was the great champion of the Democratic Party, and again campaigned with Bryan in 1900. Mr. McDermott played a very important part in the political campaign of 1898 which resulted in the election of John A. Lind as Governor of Minnesota.

Later on when the Democratic Party staged a recovery in Minnesota he was very active in espousing the candidacy of Winfield Scott Hammond who became Governor of Minnesota and who was a great personal friend of Mr. McDermott's. Governor Hammond frequently spent his vacations in the summer time at Mr. McDermott's summer home at Madison Lake, near Mankato.

As a young man he played an active part in fraternal organizations, particularly the International Order of Foresters and represented that organization from Minnesota several times at their International conventions.

Mr. McDermott was fortunate in being personally acquainted with many of the distinguished national figures of the last generation, and although he was an active Democrat, nevertheless he had many friends in the ranks of other major political parties. He had the pleasure of entertaining both

William Jennings Bryan and William Howard Taft his home in St. Paul, as well as many other distinguished men such as Josephus Daniels, former Secretary of the Navy and several United States Senators.

Mr. McDermott was always willing to spend time and effort to bring distinguished speakers to St. Paul to further the cause of the Democratic Party and the principles which it stood, and St. Paul enjoyed scholarly addresses by many Democratic national figures as a result of Mr. McDermott's personal efforts.

He enjoyed a large law practice for many years and always made a great effort on behalf of his client's cause. In his younger years, as a lawyer, he was successful in a number of well known criminal cases, some of the better known being State vs. Hawkes and State vs. Adler, although in later years Mr. McDermott confined his legal practice largely to civil matters. He was a splendid speaker and had great analytical powers, and ability to present legal problems in a concise, clear and forceful manner.

In addition to his legal practice Mr. McDermott was always willing to give of his time and ability in presenting matters of general interest to public gatherings, and many times throughout his long career was called upon to deliver lectures or to speak before political and civic organizations. He had an interesting and effective ability to present facts and he had occasion to use that ability many times before public gatherings in various parts of the state. One of the well known occasions in which Mr. McDermott proved his powers of effective persuasion was at a Council meeting held in the City of St. Paul at the time the question was to be decided as to where the new City and County Court House was to be located. Mr. McDermott made a remarkable argument in behalf of locating the new Court House on the site upon which it now stands, and many of those who were present on that occasion expressed great admiration for the excellent argument which Mr. McDermott made and the forceful manner in which he presented his views.

He was very fond of history both Minnesota and American. He was a member of the Minnesota Historical Society for years, and took an active part in its many gatherings throughout the State. Mr. McDermott presented and wrote a number of historical papers about the early history of the life and men of Minnesota, and was well qualified to do this for he was personally acquainted with many of the men of whom, and the events of which he spoke.

He was a public spirited citizen always ready to support institutions calculated to aid his fellow men and causes from which he believed the public generally would benefit. Although Mr. McDermott's prime interest in life was his home, family, and his professional work, nevertheless, he found time to participate in outdoor life, and was very fond of re-visiting the community and the people among whom he was raised; he also enjoyed hunting in the fall of the year, particularly in the County he knew as a boy. Up until very late years of his life he was known as an expert shot, and frequently brought in the limit whenever he went after ducks. Mr. McDermott was an office partner for many years of Gideon S. Ives, formerly Referee in Bankruptcy of this City, and they were very fond of going out on hunting trips together. Another gentleman well known to citizens of St. Paul, and who was a great personal friend and frequently went hunting with Mr. McDermott was Winn Powers a former Mayor of St. Paul. Together they visited most of the favorite hunting spots in southern Minnesota.

One of Mr. McDermott's noteworthy characteristics was that he was always willing to help his friends and former friends, and treasured the memory of old friends and acquaintances by his willingness to help them and those close to them. Mr. McDermott was largely responsible for the placing in the State Capitol of a bust of the late Governor Hammond by a well known sculptor, Mr. P. Bryant Baker. The bust of Governor Hammond was presented to the State at memorial exercises in the State Capitol, and Mr. McDermott took the leading part in seeing to it that these exercises were carried

on in a manner worthy of the memory of his old friend and associate, Governor Hammond, whom he greatly admired.

Mr. McDermott's political philosophies were based largely on those of his distinguished namesake, Thomas Jefferson, the study of whose life Mr. McDermott was fond of pursuing; and at the time a national campaign was carried on to purchase Jefferson's home in Monticello to commemorate the memory of Thomas Jefferson, Mr. McDermott was the National representative for this work in the state of Minnesota, and did much to secure funds in the state of Minnesota on behalf of this national historic shrine.

He had an unusually wide acquaintance throughout the state and among all classes of people, and there were few men, no matter how distinguished their rank or lowly their position in life with whom Mr. McDermott was not equally cordial and sincerely friendly.

He was optimistic by nature and expressed his optimism by his readiness to exchange a few friendly words or greetings whenever perchance he met anyone of his many acquaintances. Mr. McDermott was inclined to look upon bright side of life, and was frequently able to radiate his cheerful point of view to the many with whom he came in contact in his daily duties.

He was an active member of the Catholic Church all of his life and was buried from St. Luke's Catholic Church in St. Paul, in which Parish he lived. He was buried in St. Peter, Minnesota, beside his father and mother, in the community in which he was raised and in which he had very many friends. He is survived by his wife, two daughters and four sons. Two of his sons are living in the City of St. Paul; one son, Paul I. McDermott is engaged in the real estate and insurance business, while another, Geo. Thomas McDermott, who was associated with his father for a number of prior to his death, is a member of our Ramsey County Bar Association.

By a strange coincidence Mr. McDermott died on his birthday, November 17, 1939, and was on that day seventy-eight years of age.

Respectfully submitted,

DONALD S. DOTY, Chairman,
W. P. WESTFALL,
L. J. DOBNER.

_____M_____

APPENDIX

In both biographical profiles, McDermott listed his libel suit against the Union Credit Company as being “of paramount importance.” To his complaint, the credit company filed a “demurrer.” This pleading is no longer used; however, it is similar to a motion today by the defendant to dismiss a complaint because it does not state a viable claim as a matter of law—in other words, even if what the plaintiff says in his complaint is true, he is not entitled to any damages, and his case should be dismissed by the court and not submitted to a jury. A treatise on common law pleading used in the 1890s describes when a party should “demur”:

If, as a matter of law, the statement of the cause of action in the declaration is on its face insufficient in substance to support the action, or is defective in form, the defendant should demur.

A demurrer will also lie by the plaintiff to the pleadings of the defendant, or by the defendant to pleadings of the plaintiff, subsequent to the declarations, for insufficiency in substance or form.¹³

In McDermott’s case, the trial judge, George L. Bunn, denied or, in the parlance of the day, “overruled” Credit Union’s demurrer, and it appealed his order. Such an appeal—called an “interlocutory appeal” because it

¹³ Benjamin J. Shipman, *Hand-Book of Common-Law Pleading* 156 (West Pub. Co., 1895) (2d ed.).

occurs in the midst of a case, before a final judgment is entered—is not permitted today, except in extraordinary situations.

Associate Justice William Mitchell wrote the majority opinions, which are reproduced below. Although he had been defeated in the 1898 election, his term would not end until January 1900.¹⁴ This case was, therefore, one of his last. His explanations of the public policies underlying rules on defamation actions—particularly in his “reconsidered” ruling—are vintage Mitchell. That he changed his mind will not surprise anyone familiar with his judicial reasoning.¹⁵

Particularly attentive readers will note that Mitchell does not cite any court cases or treatises in his opinions — no authorities at all. He paraphrases a “sarcastic definition of libel” by Jeremy Bentham but does not cite its source. This is an example of the “citationless” opinion the state supreme court issued occasionally in the late nineteenth century. An article explaining this style of opinion writing will be posted on the MLHP in the near future.

THOMAS J. McDERMOTT

v.

UNION CREDIT COMPANY

76 Minn. 84, 78 N.W. 967,
on reargument, 79 N. W. 673

April 26, 1899

Action in the district court of Ramsey county to recover \$5,000 damages for libel. From an order, Bunn, J., overruling a demurrer to the complaint, defendant appealed. Reversed on reargument.

¹⁴ “Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2012” 31-33 (MLHP, 2010-). For an explanation of the “puzzle” why Mitchell’s term was extended to 1900, see *Id.*, at 8-10.

¹⁵ See, e.g., Douglas A. Hedin, “When Justice Mitchell Changed His Mind—Twice” (MLHP, 2009).

Larimore & Marvin, for appellant. *S. L. Pierce, John H. Ives* and *Thos. J. McDermott*, for respondent.

MITCHELL J.

This is an action for libel. Plaintiff alleges that he is an attorney at law, and as such engaged in the practice of his profession, and the complaint was evidently framed upon the theory that the alleged defamatory publication affected him in his profession or occupation as a lawyer. It appears from the complaint that the defendant was a commercial agency engaged in publishing and circulating among its subscribers, who are retail merchants, a book which purports to be

“a compilation of the actual experiences of business men in St. Paul respecting the worthiness of individuals to credit, based solely on the manner in which they pay their bills.”

The book contained about 33,000 names. It contained a key to the letters used to indicate the report or rating of each individual as to the payment of his bills. This key is as follows:

“B, prompt weekly; C, prompt monthly; D, pays on demand; E, slow; F, pays when pushed; G, promises not kept; H, refused payment; I, note protested; K, left for collection; L, judgment taken; N, unrecommended credit; O, disputed bills.”

The alleged libel consisted of defendant, in this book, reporting or rating the plaintiff “E,” which, according to the key, meant that he was slow in payment of his bills. No extrinsic facts were alleged to enlarge the meaning of the words. This was attempted by innuendo, but it is a familiar rule of the law of libel and slander that the sense of words cannot be enlarged by mere innuendo. Neither were any facts alleged tending to show special damages. The publication is alleged to have been made falsely and maliciously, but there is no allegation that the words were published of and concerning the plaintiff in his profession as an attorney. And when it is considered that the “key,” taken as a whole, impliedly negatives any charge that the plaintiff is either dishonest or insolvent, there is nothing in the publication that would necessarily or directly affect him in relation to his profession as a lawyer. As a publication addressed to retail dealers, it presumably, if not necessarily, referred to his habit in the matter of paying his personal bills. The head and front of the publication is that plaintiff is slow in the payment of his bills, but not to the extent that his promises are not kept, or that it is necessary to place a

claim in the hands of a collector, or to put it into judgment, in order to secure payment, or that he ever disputes his bills. An attorney, like any other man, may for various reasons be slow, to the extent of not paying his personal bills promptly, weekly or monthly, or on demand, and yet be not only honest and solvent, but also entirely prompt in the performance of his professional duties, and in accounting for and paying over all property or money of his clients which may come into his hands. It is possible that anything published in disparagement, however slight, of a person as an individual may incidentally affect him somewhat in his business or profession; but it does not necessarily follow that the words are actionable, per se, as published of and concerning him in relation to his profession or business. Any such rule would open the door for a flood of vexatious litigation. To be actionable on that ground alone, the publication must be such as would naturally and directly affect him prejudicially in his profession or business. Hence our opinion is that if the publication in this case is, per se, actionable under the allegations of the complaint, it must be because it is actionable, per se, when published of a person as an individual, without reference to profession or business. It is familiar law that printed or written words may be actionable, which, if merely spoken, would not be actionable. And, generally stated, the law of libel is that any written or printed words are actionable which tend to blacken the memory of one who is dead, or to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt, or ridicule, degrade him in society, lessen him in public esteem, or even lower him in the confidence of the community, even although the words do not impute to him criminality or immorality. It is sometimes difficult to determine upon which side of the line a publication falls. It is impossible, as well as impolitic, to lay down any more definite rule than the general statement of the law already given, and then make a common-sense application of it to the facts of each case as it arises. On the one hand, it will not do to hold that everything published in disparagement of a person is actionable, or to adopt Bentham's sarcastic definition of libel as "anything of which any one thinks proper to complain." But, on the other hand, everything falsely and maliciously published on another, which necessarily or naturally tends to injure his standing and good name in the community or lower him in the confidence and respect of his neighbors, ought to be held actionable. The case is a border one, and the question not free from doubt, but, applying this test, we think that, in this age and country, a charge that a man is not prompt, but habitually slow, in the payment of his personal bills, — especially those contracted with his

grocer, butcher, and other retail dealers, for his personal and family expenses – would naturally and almost inevitably injure his standing in the community, and lower him in the esteem and respect of his neighbors. We therefore hold that the words complained of were actionable per se, although published of the plaintiff as an individual, and not in relation to his business as an attorney.

Order affirmed.

COLLINS, J.

I concur in the result, but do not feel quite prepared to say that printed matter in which a practicing attorney is charged with being slow in the payment of his debts does not tend to injure him in his professional standing, and lower him in that confidence of the community which every attorney must have to succeed. My impression is decidedly to the contrary.

On Reargument.

June 28, 1899.

MITCHELL, J.

Upon the original argument we considered it a very close and doubtful question, as was indicated in the opinion filed, whether the publication complained of was' actionable per se. It was this doubt, increased by subsequent reflection, which induced us to grant a reargument. After examining the additional arguments, and giving the subject all the consideration of which we are capable, we have come to the conclusion that we ought to recede from our former views, and hold that the publication is not per se actionable at all.

While general definitions of defamatory language may be given, yet, from the very nature of the subject, it is impossible to mark out the exact line of cleavage between what is and what is not actionable language in every case. Moreover, in determining whether language, either written or spoken, is actionable, the courts have two opposite evils or inconveniences to guard against. The first is the danger of encouraging a spirit of vexatious litigation by affording too great a facility for this species of action; the second is the danger of refusing legal redress to those who have been appreciably injured by the wrongful acts of others. Any discommendatory language used of and concerning a person is liable to do

him injury, although such injury is often inappreciable in law. But nothing is better settled than that much discommendatory language, whether written or spoken, is not actionable per se, because not calculated to do the person of whom it is published any injury appreciable or cognizable by the law. The courts have, for practical reasons and considerations of public policy, to draw the line somewhere, and this has often to be done by a gradual process of exclusion and inclusion, depending upon the particular facts of each case as it arises.

In order to determine what the word "slow" means in the book published by the defendant, we must consider the whole key, in order to ascertain what the word asserts as well as what it negatives by implication. Thus considered, it by clear implication asserts that the plaintiff does pay all his bills, and that he does this without being "pushed," and without the necessity of leaving the claim in the hands of some one for collection or taking judgment against him; that he does not dispute his bills, refuse payment, or break his promises to pay; neither does he let his note, when he gives one, go to protest, nor is his credit unrecommended; but, on the other hand, he does not pay promptly weekly or monthly, or always on demand.

Our final conclusion is that, thus construed and limited, there is nothing in the word "slow" that tends per se appreciably to injure a man's credit or his reputation for integrity and honesty, or affect his standing in the community in the esteem and respect of his neighbors. It is a matter of common knowledge that, on account either of limited means, lack of ready money, or of mere inattention, the same thing might be truthfully said of a great many people in every community who stand very high in the esteem and respect of their neighbors, and whose credit and reputation for honesty and integrity are unquestioned. Moreover, to hold such language actionable per se would open the door for a flood of merely vexatious litigation.

The order contained in the former opinion affirming the order appealed from is vacated, and the order appealed from is hereby reversed.

COLLINS, J. (dissenting).

I remain quite decidedly of the impression that the publication in question tended prejudicially to affect plaintiff professionally, and for that reason was libellous, and actionable per se.

BUCK, J.

I agree with COLLINS, J. ■

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