

The Judiciary of Meeker County

by

Judge Abner Comstock Smith

Judge Abner Comstock Smith arrived in St. Paul in 1855 and moved to the village of Forest City in Meeker County two years later. In 1874 he moved to Litchfield, the county seat. In these villages he practiced law and pursued other business interests until his death 23 years later.

Judge Smith published a history of Meeker County, Minnesota in 1877. Chapter 13 of his county history is titled “Judiciary” and it follows. Portions were republished in “The Law Comes to Meeker County,” a chapter in Patrick Casey’s *The First 100 Years: A History of Meeker County* (1968), posted on the Minnesota Legal History Project website.

Regrettably but probably inevitably Judge Smith gives us a jocular, whimsical view of the “judiciary” in the first two decades of Meeker County (it was formed by the Legislature on February 23, 1856). For reasons hard to understand, some lawyers who published reminiscences about the “bench and bar” of the territorial era and beginnings of the state repeated humorous stories and tall tales intended to amuse their audience but in the process diminished their credibility and, worse, ignored the hardships in dispensing justice in county courtrooms during these years. In his chapter on the “Judiciary” of Meeker County, Judge Smith joins two other occasional mockers of judges, lawyers, litigants and juries in Minnesota’s formative era—Charles E. Flandrau and Isaac Atwater.

Judge Smith—he was called “Judge” because of a three year stint as a district court judge in Michigan in the early 1850s—was 41 years old

when he moved to Minnesota. In 1879, one year before his death, he published the following biographical sketch in *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men. Minnesota Volume*:

ABNER COMSTOCK SMITH, one of the leading men in Meeker county, Minnesota, was a son of John Smith, a native of Rockingham, Vermont, and a pioneer in Brookfield, Orange county, Vermont, dying in 1863, in his eighty-third year, and of Eunice Davenport, his wife, of Petersham, Massachusetts. The Davenports are a conspicuous family in some parts of the country, and its genealogy is about to be published by Dr. H. V. Davenport, of Boston, Massachusetts.

Abner, who was born on the 14th of February, 1814, received an academic education at Randolph, in his native state; commenced reading law at twenty years of age in the office of Marsh and Swan, of Woodstock, Vermont; finished reading in Washington city with Hon. W. L. Brent, once a member of congress from Louisiana; and on the 14th of February, 1838, was admitted to the bar at a term of the supreme court of the United States, on examination by Chief Justice Taney, and on motion of Hon. Thomas H. Benton, United States senator from Missouri. Before being admitted he was a clerk under Hon. Levi Woodbury, secretary of the treasury for President Van Buren, holding that position three years, resigning in May, 1839, and settling in Mount Clemens, Michigan. There he resided for fifteen years, engaged, the greater part of the time, in journalism and the practice of his profession. He published the Macomb county "Gazette," a weekly paper, four years, and, during most of this time, a monthly called "The Ancient Landmark," a masonic periodical. He was on the bench, serving as a district judge three years, his term expiring about 1854, and a member of the Michigan state senate in 1845 and 1846.

In 1855 Judge Smith removed to Saint Paul, Minnesota, published the daily "Free Press" six months, and then took a thirty-thousand-dollar contract for improving the levee of that city, being engaged in this business a few months, and having, at times, more than a hundred and fifty men working for him. He introduced into Minnesota the first rolling-stock of any kind ever used in the state, consisting of an invoice of gravel cars, purchased in Dubuque, Iowa.

In the spring of 1857 Judge Smith was appointed register of the United States land office at Minneapolis, and went with it to Forest City, Meeker county, the next year; leaving that office in the autumn of 1858, and engaging in the practice of law and general collecting business.

The celebrated Indian outbreak and massacre of 1862 commenced on the 17th of August in the town of Acton, Meeker county, fourteen miles from Forest City, and three days afterward Judge Smith sent the following letter to the governor of the state:

Forest City, August 20, 6 a.m., 1862.

His Excellency Alexander Ramsey, Governor, etc.

Sir,— In advance of the news from the Minnesota river, the Indians have opened on us in Meeker. It is war! A few proposed to make a stand here. Send us, forthwith, some good guns, and ammunition to match.

Yours truly, A. C. Smith.

This missive, taken to Saint Paul by Jesse V. Branham, then sixty years of age, brought forty-four stand of Springfield muskets, and "ammunition to match," to Forest City before noon of the 23d. There were thirteen men and three women on the site of the village to use these forty-four guns. On the 24th a military organization was effected, and the next day more than thirty other men came in and

joined the company. Through all the bloody massacre Judge Smith never retreated an inch from Meeker county.

In 1876, the centennial year, he wrote, by request of President Grant and the recommendation of the two houses of congress, the history of the county; and from it we learn that a report came one day that the Indians were coming into Forest City, when about a dozen men and boys,—all there were in town,—hastily armed themselves as best they could, and, led by the Judge, marched out to meet the enemy. He himself, though captain, had no sword, but armed himself with "a double-barrel bogus stub-and-twist shot-gun, and three butcher knives under the waistbands of his pants." The enemy did not meet him; he had no victory to win, and we believe never boasts of his military exploits.

In 1869, when the Saint Paul and Pacific Railroad came through Meeker county, and the village of Litchfield, the county seat, began to grow, he opened a law and land office here, but did not move his family until 1874.

He is a sound lawyer, a careful business man, strictly honest, and has the unlimited confidence of the community. The Judge was a democrat in politics until the civil war commenced, and has since been quite independent, heartily supporting the government in all war measures, and voting the republican ticket most of the; time for the last fifteen years, though taking very little interest in politics.

He was the father of Masonry in Michigan, and grand secretary and grand lecturer for the order from 1842 until he left the state. At one time he held the office of junior grand warden of the Grand Lodge of Minnesota. He organized and was worshipful master of the first masonic lodge "west of the Big Woods."

The wife of Judge Smith was Miss Elizabeth D. Buck, eldest daughter of Hon. Daniel Azro. Ashley Buck, at one time a member of congress from Vermont, and at the time

of their marriage, May 1, 1839, chief clerk in the Indian Bureau, Washington, District of Columbia. She is the last survivor of this branch of the Buck family, once so conspicuous in the Green Mountain State; her father, mother, and only brother and sister, lying in the congressional burying ground. Mrs. Smith is the mother of four children, three of them yet living. Carrie L. is the wife of Edwin S. Fitch, of Hastings, Minnesota; Ella Belmont is the wife of Laban B. Dixon, of Chicago, and Henry Ledyard is an architect, whose residence is also in Chicago. Mr. and Mrs. Smith are attendants at the Presbyterian church.

The Judge has one of the best residences in Litchfield; he is not wealthy, but lives in easy independence, and in a quiet way is doing all he can to advance the interests of his prairie home. He was one of the foremost men in building the large masonic hall in Litchfield, and has as much public spirit, probably, as any man in the county. He is of a kindly, charitable disposition, and has tested the blessedness of giving.

He has a law and miscellaneous library of about three thousand volumes; contains many valuable works,—among them the Massachusetts and Vermont historical collections, and something like three hundred volumes of executive documents of the United States, embracing the history of the government for nearly thirty years. His history of Meeker county is an interesting little volume of one hundred and sixty pages, rather spicy withal, with an admirable lithographic map of the county, drawn by his son, Henry L. Smith.¹

The Judge died in September 20, 1880, in Litchfield, at age 66. The

¹ *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men. Minnesota Volume* 32-35 (1879). A later county history had a shorter profile of him. *Album of History and Biography of Meeker County* 493-494 (1888).

News Ledger printed a resolution of the Old Settlers' Association, providing in part, "in his death, Meeker County loses one of her best and most enterprising citizens; this association an esteemed officer; the village of Litchfield a respected citizen, and the family a kind and indulgent husband and father." And it quoted a tribute of The Golden Fleece Lodge of the Masonic Fraternity in which he was very active:

In the death of Judge Smith the fraternity recognizes the loss of *a good man*. The church of which he was a member feels its loss of *a good man*, and the community in which he had lived for years, are universal in their verdict of having had *a good man* taken from among them.²

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Source: *Find A Grave*
Photo contributed by Glenn Kiecker

² *News Ledger*, September 30, 1880, at 8 ("Just Tribute —To the Memory of Hon. A. C. Smith").

A
RANDOM HISTORICAL SKETCH.
OF
MEEKER COUNTY, Minnesota.
FROM ITS FIRST SETTLEMENT,

TO
JULY 4th, 1876.

BY A. C. SMITH,
PRESIDENT OF THE BAR
AND OLD SETTLER'S ASSOCIATIONS FOR
SAID COUNTY.

WITH AN ACCURATE MAP BY
HENRY L. SMITH.

LITCHFIELD, MINN.
BELFOY & JOUBERT,
PUBLISHERS.

1877.

CHAPTER XIII.

THE JUDICIARY.

During the early period which our historical reminiscences extend, such a thing as a "Judiciary" or any necessity for law, was unheard of and unknown in the county.

No county was ever settled by a better set of boys, and none submitted to the hardships of a new country one hundred miles from civilization with better grace, and with less complaint than those who first opened up Meeker County, and redeemed her soil from savage rule.

No law was required, the intelligence of the settlers, their quietness and industry, and the necessity which every man was under, to attend to his own business, left their thoughts free from law or necessity for law.

Like our Pilgrim fathers, when landing at Plymouth—they regarded the "Decalogue" as both "law and gospel," from the first discovery of the prairie till the spring of 1858.

The first thing the settlers were considered good for, was to be "taxed"—Law soon followed, and Blackstone & Kent could be found at any man's door, who was willing to pay for it, and it was a little remarkable that among the first cases tried, was one of "woman's right's," and which has been already sufficiently described in chapter ten of this book.

From the spring of 1858, we were blessed with three courts—one presided over by Smith & Evans, under the supervision of Thomas A. Hendricks, then commissioner of the General Land Office, one known as the District Court, presided over by Hon. E. O. Hamlin of St. Cloud,

and thirdly, the one of all others, presided over by Judge Atkinson as J. P.

Early in the summer of 1859 Col. Allen now of the Merchants Hotel, St. Paul—not having much to do at that time, bethought him to make a business strike and came all the way from St. Anthony to Forest City to pre-empt a quarter section of tamarack swamp somewhere in back of St. Anthony

The Col. was able to furnish first class proofs of settlement and improvements, consisting of a “half acre broke”—a dwelling house 12 feet square, one story high made of logs, with double board floor (i. e. one board with a hole bored through it) a double pitch roof (i.e. one board on top of the house, with some tar rubbed on it) one door, (i. e. a place where you could crawl out or in) and one window with glass in it, (i.e. a hole between the logs and a broken junc-bottle placed therein.)

The proofs were excellent, but just here the witness seemed to be tender-toed about swearing to the (then) requisite 30 days residence prior to pre-emption.

The Col. was fully equal to the emergency and promptly produced witness No. 2, consisting of about two-thirds of a demijohn of Medicine, vulgarly termed “brandy,” and as he was quite anxious to propitiate the judges, that the case might the more easily “slide through” and with the same patriotic motion that rail road men furnish free passes to cheap legislators, he made us a present of Demijohn and its unfinished contents.

It is needless to add that the proofs were deemed ample and complete, and the Col. returned to St. Anthony the owner of a "tamarack swamp," and with a somewhat higher opinion of legal technicalities.

The Col. tells us that farm lately changed hands for thirty thousand dollars.

The testimony of witness No. 2, was carefully preserved and filed away in the store room, so as not to tempt "loungers to sudden attacks" — requiring the use of such remedies, and to be brought out only on "state occasions," or when visited by governors, judges, railroad presidents &c.

Had Thomas A. Hendricks been here at the time, he would probably— as in other cases have required ALL the proofs to be sent up.

The first Term of our District Court was to have been held in the fall of 1858—Hon. E. O. Hamlin, Judge 4th Judicial District, but the roads were so bad, the judge could not come to time, and on the appointed day, the legal wisdom of the county met in Judge Smith's back office — then used as a store room—to wit, Wm. Richards County Atty. (not then admitted to practice) T. C. Jewett Sheriff, and Smith & Willie then constituting the Bar Association.

Col. Allen's demijohn stood in an old candle box under the table, when Esquire Richards peremptorily directed the sheriff to open and adjourn the court, pursuant to law.

Jewett was inexperienced—never having done anything of the kind before asked Richards what he should say.

"Say after me, sir," says Richards.

"Proceed sir," says the Sheriff.

"Ere ye 'ere ye 'ere ye," says Co. Atty.

"Ere ye 'ere ye 'ere ye," says the sheriff,—“The District Court for the County of Meeker is now open—all persons having any business in this court must appear and they shall be heard—God save the Queen,” says the county attorney.

"D— d if I'll do it sir” says the sheriff, “this is a free country and you've got an old English form that won't work here.”

At this point in the ceremony Richards looked at Willie, who had discovered the demijohn under the table, —had exploded the cork and elevated “the substance of things hoped for,” and obtained a goodly portion of “the evidence of things unseen,” and had lowered the same to half mast—and at once with offended dignity, which none but those who knew Richards could appreciate—enquired of Willie what he was about.

“Oh! nothing,” says Willie, in his usual style, and stroking his moistened mustache,—“go on with your court, this is only the first informal call of the calendar, and ceremony is entirely unnecessary”—again flourishing the demijohn, as a barber would cut a figure eight with his razor, and in its descent securing another liberal portion of the evidence of things unseen.”

It is needless to add, to those who knew Richards, that he left, in disgust, forgetting to adjourn the court and it is not quite certain that that court has ever been adjourned.

The first District Court held in Meeker county was in October 1859—Hon. E. O. Hamlin Judge, and was held in Judge Smiths office.

The bar consisting spiritually of Messrs Smith & Willie —Materially of Geo. B. Wrights old drawing board 3 feet by 7—and the first case tried was that of John Pfeifer vs Peter Steirne—and as the case was reported

in 'Harpers New Monthly' for Nov. 1861, I give the substance of the report from that work.

"When Meeker County, Minnesota, was new before lawyers found their way out there, two Dutchmen, Pfeifer and Steirne (brothers-in-law), undertook to cheat Uncle Sam by pre-empting two claims with one cabin, each furnishing half the lumber, the cabin to stand on the line between the two claims. Before the claims were pre-empted the brothers fell out. Steirne undertook to carry away his half of the lumber, when Pfeifer shot Steirne. Steirne complains of Pfeifer for an assault with intent to kill, and Pfeifer settles up by giving Steirne a chattel mortgage on two yoke of oxen (all the property either party had in the world except a wife and several children each.)

"When the mortgage came due Steirne takes the cattle and Pfeifer replevied them, on the ground that the mortgage was given to compound a felony and was void.

"Maturing the mortgage, two pettifoggers arrived at the county seat, one Smith, a frontier lawyer and a notorious wag, and Willie, a clever young lawyer from Western Virginia.

"Pfeifer having the actual possession of the oxen, delivers one yoke to Smith for his fee, and Steirne, having the cattle in expectancy, mortgaged one yoke to Willie also to secure his fee.

"The case was tried by His Honor, E. O. Hamlin, then on the bench of the Fourth District, at the October Term, 1859, at Forest City. Being but one spare room in town, the court adjourned to give the use of the room to the jury. About 11 P. M. jury sent for the Court and informed the judge that there was no possibility of an agreement. The judge thereupon instructed the sheriff to take the jury to the tavern and give them a supper and then shut them up again with the case.

“At 4 o'clock A. M. the jury sent for the Court, and gave in a sealed verdict, and were discharged from further attendance on the Court, with the judge's thanks. When the court convened at 9 A. M. the verdict was opened, and read as follows:

"Jury find for plaintiff, three cents damages.
("Signed) Geo. S. Sholes, Foreman."

Atkinson affirms that those supplies have not yet been paid for,

The following is a list of the Jurors in this case. Geo. S. Sholes, Sen, A. B. Hoyt, John C. Scribner, Alexander Lee, T. R. Webb, Thos. Dougherty, A. C. Maddox, Sam'l L. Getchell, Geo. W. Baird, Edward Brown, John Blackwell, Charles Duffy.

At this term of court Wm. Richards Esq. county Attorney “nunc pro tunc”, was admitted to practice as an attorney and counsellor, on his own motion, assuring the court that although an Englishman, he was nevertheless a man of good moral character, attached to the constitution and the principles of a Republican Government, and could prove it by all the boys in Jim's bar-room— and as material was somewhat scarce for lawyers west of the woods, trusted that his application would be favorably considered. The Judge casting a longing eye over the paucity of the Bar, remarked "did you ever" and directed the clerk to "swear him in."

Thus much for the introductory history of the District Court.

Something is due to our “Supreme Court,” presided over at times by Judges Butler, Ritchie, Geo. Frid, Robson, Griswold, Atkinson, Stevens, Walker, Campbell, Hutchins and a host of others. Jurisdiction depended somewhat on who got hold of the case first.

In 1859 a case came before Judge Ritchie of Acton. Mark Piper and Nathan Butler acted as attorneys.

Piper made a motion to "quash the summons" on the ground that the letters, s. s. were not attached to "The State of Minnesota Meeker County."

This was a poser for Butler and his argument therein was not the most lucid, but the motion was overruled and judgment entered for Pl'ff for the value of one "Opossum supper" proved to have been unfortunately eaten on some former occasion in the early history of the county by the defendant.

Subsequently both attorneys enquired of us what connection those magic letters had in the diagnosis of the case.

If we remember rightly we informed them that the s. s. stood for simplicity simplified," referring to the "code" and that no case could be prosecuted without recognizing "the code" by the addition of the s. s. The same summer we had a case before Hutchins, J. P. of Kingston, in which our old friend Fitzgerald appeared as both client and counsel against us, and moved to dismiss on the ground that the justice had never given a bond, and as the justice had quite forgotten whether he had or not, forbade any further proceedings.

Fitzgerald came into court with a club two feet long and size of a sled—stake-hence the sobriquet "Shillala Fitzgerald" which he carried ever after to the end of his days.

In 1862 Jewett sued Hoken Peterson for \$4.00 sheriff's fees in some former case. Hoken came to us to see what we would defend him for, and warrant the case, and after an hours parley, in which we commenced on \$3,000, secured on real estate, we finally struck off the three ciphers and closed a contract and sealed it at \$3.

Jewett found out, by some means how the case stood, and soon after meeting Hoken he offered to settle and pay his own costs for \$2.75. Hoken having an eye to finance, promptly settled, and by not paying his lawyer anything, thereby saved 25 cents. Jewett would have found it a telling business had the suit been before any one else but “Jim” Atkinson, who always regarded the fee bill as the “chief end of law,” and mulched Jewett about six dollars.

J. B. Atkinson, Esq. was chief justice of Meeker county most of the time from 1858 to 1870, usually re-elected at any time, when he saw a majority in his favor—his term of office never expiring when his party was in a minority!

His jurisdiction was extensive—never governed by imaginary or isothermal lines.

His District was bounded East by the big-woods, South by the Minnesota river, West by Big Stone Lake and North by Sitting Bull's camp.

When the summons was disregarded, a warrant was dispatched, and the fellow always came.

The judge was easily fatigued into granting short adjournments, particularly when both parties and all their witnesses were boarding at his hotel. On one occasion two parties, one man and one woman were arrested for an assault and battery. Two days were spent in trying to prove the case against the man while the testimony clearly showed the complainant was the guilty party.

The court, nevertheless, imposed a fine of five dollars on the defendant who was perfectly good, while county orders were worth but 30 cents on the dollar and the court was bound to have pay for his time against a responsible party.

Fine, \$5.00; Costs, \$45.00, taxed up on both sides and included in the judgement.

The next morning the woman appeared in court without counsel whereupon F. Belfoy (who had prior to this time settled in the County,) refused to appear for the prosecution and the woman fought the complainant, flaxed him out, and was discharged.

Once only, in our recollection, did Judge Atkinson find himself at the wrong end of the "judicial nippers."

The circumstance grew out of the Indian War.

Jewett was a member of the organization termed by the Adjutant General "Irregular Volunteer Militia" but at Forest City, for brevity, styled the "Guerrilla Guards."

Jewett had not answered roll call for some days owing evidently to indisposition, inclining that way. Whitcomb was captain and our judge first Lieut. a corporals guard was dis patched for Jewett and he was somewhat unceremoniously led by the collar from his house to company quarters and kept under guard over night.

On the 8th, of October Smith filed his complaint with Judge Griswold, setting forth that Wm. Branham, Geo. W. Waggoner and Cornelius McGraw did on the 7th day of the same month "willfully and without lawful authority" come unbidden into the dwelling house of deponent and seized deponent by the arms and dragged him therefrom."

On this complaint a warrant was issued by Judge Griswold returnable forthwith at the office of A. C. Smith, who appeared as prosecutor, and Judson A. Stanton was appointed to execute the warrant.

The “Guerrilla Guards” consisted of about 35 men and boys, while Capt. Pettit was now stationed here with a full company of U. S. soldiers

Apprehending difficulty in making the arrest at Whitcombs quarters. Judge Griswold had made a call on Capt. Pettit of which the following is a copy.

To Capt. G. F. Pettit:
Co. B. 8th, Regiment, Minn. Vol's.

Sir:—Circumstances are such as to compel me to issue a warrant against, and to deal with, according to law, one Wm. Branham, Geo. W. Waggoner and Cornelius McGraw for a gross breach of the peace, as is alleged.

Circumstances are also such as, to render it more than probable that said warrant cannot be duly served without the aid of the military arm of the State.

You are therefore, directed and required to render to the special officer in charge of the execution of said warrant, such military assistance as he may need for the faithful discharge of his duty.

Respectfully, J. W. Griswold.
Justice Peace, M. C. M.

Stanton thought he could arrest the boys without help by others; it was thought doubtful—the sequel will show that Stanton had made most proficiency in the study of human nature.

He went to Whitcombs quarters and separately whispered to the culprits, that Smith had a basket of apples at his office and would like to treat his friends and had sent him to invite a few of them, following close behind them, as they passed into the office, Stanton coolly locked

the door, drew forth the warrant and in his inimitable stuttering style, respectfully informed them that they were his prisoners.

At this moment Judge Griswold sat at the head of the table “looking more law” than any Lord Coke ever dreamt of— Smith at the foot with the "code" under his arm, and Capt. Pettit with Lieuts. Hollister and Shaw on either side in full uniform, evidently the most dignified tribunal ever assembled in the county.

When Stanton's "ruse" was understood by the company present, order for a time was difficult to be preserved.

For certain reasons, in connection with the rest of Whitcombs boys, Stanton soon had business at Clearwater, and the court assigned the prisoners to the keeping of "Uncle Ike Delamatter," whose age and venerable looks were sure to protect him from insult.

Whitcomb and Atkinson defended the prisoners bravely, but the judge held them to bail for their appearance at the next term of the District Court to answer to an indictment for false imprisonment. The case has not yet been disposed of, and so far as we know, the prisoners are yet in the legal custody of “Uncle Ike.”

Some deny the correctness of this report, and we confess to two strong reasons why it might well be doubted—first the known fact that Judge Atkinson was never before found at the pinching end of the judicial nippers and secondly this was the only occasion known in the history of the county, when Jewett was at all backward, or needed any . help, in getting into a muss !

Legal proceedings in the county could be recounted to most any extent and perhaps with some degree of interest, but the printer reminds us that our book is about large enough, and we will be compelled to

desist. In many of the cases the judicious predominate and while the old saw holds good that,

“A little nonsense now and then,
Is relished by the best of men.”

We are reminded that it is not quite safe to go in for too much of it. Kandiyohi county was attached to Meeker for judicial purposes from 1857 to 1870 and we have a quantity of judicial and other “nuts to crack” at the expense of that county, but we must desist, as we do not like to deprive Kandiyohi of her own future history

The first person ever sentenced to the Penitentiary from this county was a man by the name of Roberts in 1869, for twenty-two months— Judge Vanderburgh presiding—Roberts thanked the Judge cordially for the brevity of the time fixed, and hoped he (the judge) would call and see him if he ever came to Stillwater!

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### Related Article

Patrick J. Casey, “The Law Comes to Meeker County” (MLHP, 2011)  
(published first 1968).

