

**“The First Lawsuit in Birch Cooley Township” \***

IN

**THE HISTORY**

OF

**RENVILLE COUNTY  
MINNESOTA**

COMPILED BY

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UNDER THE DIRECTION AND SUPERVISION OF**

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HON. DAVID BENSON and  
COL. CHARLES H. HOPKINS,  
Renville County Pioneer Association Committee.**

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*ILLUSTRATED*

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**\* MLHP editor: This story appeared on pages 1353-1354 of this two volume history of Renville County. Though reformatted, it is complete. A page break has been added. The spelling and punctuation have not been changed.**

**The first lawsuit in Birch Cooley**, and without doubt the first lawsuit in Renville county. While the early settlers of Renville county were, as a rule, peaceable and friendly, one with the other, it was only natural that occasional difference of opinions would arise over different subjects, or caused by the advent of "John Barleycorn" upon occasions. But in the spring of 1868 town meetings were held in the several towns in the county, at which were elected peace officers as well as other officials for the townships, which was important, in that it no longer demanded [1354] physical efforts to settle personal controversies as in the years that had passed. But the strong arm of the law was prepared to lay heavy hands upon any and all malefactors.

The early settlers of Birch Cooley township were mostly Irish and American, few of other nationalities were among the first in that township, and no effort will be made to record the semi-occasional combats engaged in by the denizens of this Birch Cooley township, while upon their various visits to New Ulm, Redwood Falls, Beaver Falls or other places where spirituous, vinous or malt liquor was dished out, prior to the establishment of law, by the election of Willard Drury as justice of the peace for the township of Birch Cooley.

The people of this township, in 1868, were not over-burdened with worldly goods. It might be said that their means were about as limited as they well could be, one who possessed a yoke of oxen was some capitalist, and those who had two yoke of oxen (there were no horses), with other stock, swine, poultry, sheep for the winter socks, etc., seemed possessors of great wealth and were few in number. But among this latter number were John Tracy and Terrence Brazil, Sr. Tracy was a quiet and industrious man, said very little, but did a lot of thinking. He brought in some stock and started to open up a farm near the Birch Cooley timber. Brazil had land that ran into the timber near Tracy's. He also had considerable stock, was an active, energetic man with a growing family coming up around him; he was inclined to be some quick tempered, and rather more outspoken than Tracy, but a man with generous impulses and kind at heart.

Tracy and Brazil were neighbors, but they didn't hit it off well. Tracy's stock would roam over Brazil's land and Brazil's stock would break into Tracy's field, and other things, as often happens with near neighbors. The breach widened until finally Brazil had Tracy hailed before Justice Drury on a criminal charge of cutting or mangling Brazil's cattle when they strayed over on Tracy's premises.

The case was tried at Justice Drury's house, in the north part of the township. E. T. Tillotson, later clerk of court, and a character, was attorney for plaintiff, or state, Brazil the complaining witness. Col. Sam McPhail, of Redwood Falls, another peculiar character if there ever was one, his voice always pitched in a high key, appeared for the defendant, Tracy. A jury trial was demanded and a court officer was sent out into the highways and tall grasses to bring in the men for a jury. Six men were all he could round up for the purpose, and it was decided to go on with the case, so the six men were sworn in as jurors and the case presented by Tillotson, as attorney for the state. Witnesses were sworn; the attorneys were active in ragging witnesses, almost coming to blows themselves at times. They insisted on telling Drury what evidence to admit, and the court had its hands full keeping order, but kept the rampant lawyers from each other's throats, insisting on preserving the dignity of the court. The attorneys addressed the jury at great length, and finally the case went to the jury, who were directed to retire in charge of a bailiff to deliberate on their verdict, but there was no place to go to. The house was small, hovel for cattle near by unfit, so as a last resort the jury of six men, or boys, were herded into a chicken coop so small that they had to stoop low to get in, and the odor and surroundings were some fierce, but you may be sure that jury was impressed with its responsibility. They fully believed if they said guilty it would send John Tracy to prison, away from his wife and family, and it was a solemn duty for them. They thought maybe Tracy had been a little hasty in firing axes, pitchforks, etc., at Brazil's cattle, even though he had some cause for wrath, but "guilty," standing out alone by itself, they could not pronounce, so the jury brought in a verdict, pronouncing Tracy guilty and imposing a fine of \$40. When this verdict was read there was an explosion in the improvised court room. Col. McPhail, in his high-keyed voice, claimed the court had been insulted by the jury trying to fine the prisoner, thus assuming a prerogative

of the court. The court must have had some such idea also from the way he expressed his surprise at the dense ignorance of law manifested by that six-man jury. He ordered them to return from whence they came, the coop, and bring in a verdict of simply guilty or not guilty, and as they were bound not to send John Tracy from his family and away to prison, the verdict was “not guilty.”

Then Tillitson, who didn't say much at the other verdict, set up a howl, but no use, “the first lawsuit” was ended. (By Darwin S. Hall.)



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