

# “The Bench and Bar of Minneapolis” (1923)

## Foreword

By

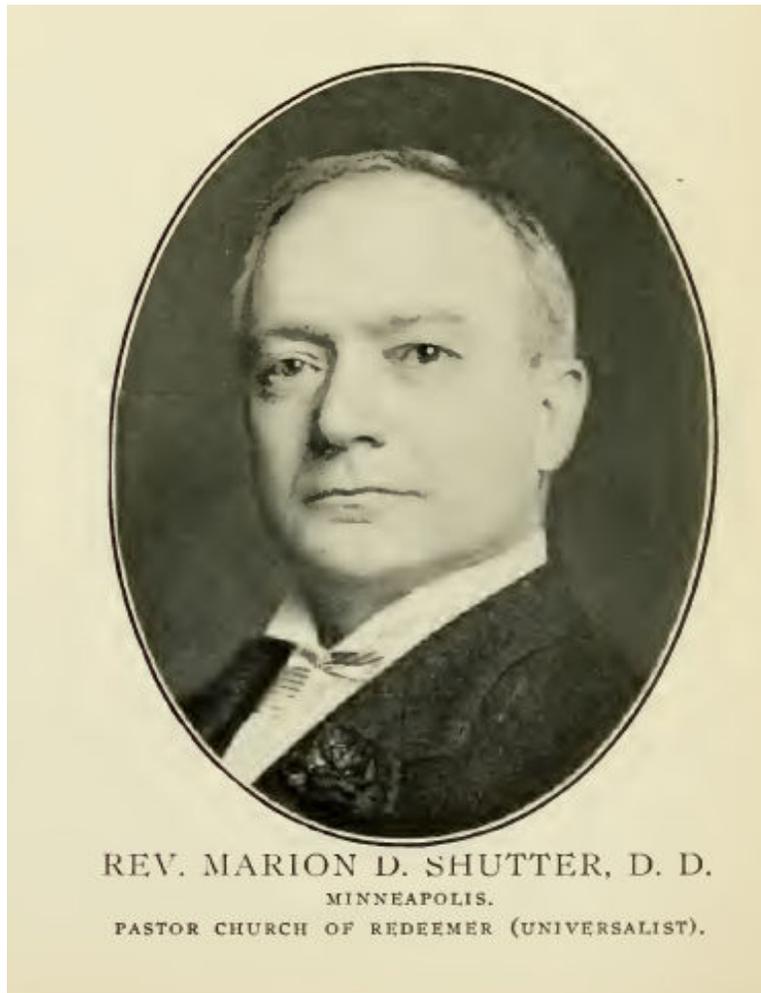
Douglas A. Hedin

In 1923 the three volume *History of Minneapolis: Gateway to the Northwest*, edited by Rev. Marion Daniel Shutter, was published. Like many local histories published from the 1890s to the 1920s, it included a chapter on the “Bench and Bar.” It is an odd assortment of observations on the territorial era, lists of judges of various courts after statehood, a few sentences on a few lawyers, an account of the Eliza Winston case and several apocryphal tall tales. Parts are taken from earlier books. In short, there is nothing new here.

Besides being a practicing clergyman, Rev. Shutter was an author who had an avid interest in Minnesota history. He was, for example, one of the co-compilers of *Progressive Men of Minnesota* (1897). The following sketch appeared in his *History of Minneapolis*:

Rev. Marion Daniel Shutter. . . came to Minneapolis in 1881 as pastor of the Olivet Baptist Church, but five years later was made assistant pastor of the Church of the Redeemer, a Universalist society. He succeeded to the pastorate in 1902. . . . He is the author of a number of books, the most important of which are the “Life of James Harvey Tuttle,” pastor of the Church of the Redeemer from 1866 to 1891; “Applied Evolution,” an interpretation of modern thought in terms of religion which has won words of commendation from a number of scientific authorities, among whom may be mentioned the late John Fiske and David Starr Jordan, of Leland Stanford University; “Wit and Humor of the Bible,” “How the Preachers Pray,” “Justice and Mercy,” “A Child of

Nature” and some others, besides contributions to magazines.



*Men of Minnesota (1902)*

The chapter on the “Bench and Bar” from Rev. Shutter’s *History of Minneapolis* follows. An index, page breaks and footnotes have been added.

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**HISTORY**  
OF  
**MINNEAPOLIS**  
*GATEWAY TO THE NORTHWEST*

EDITED BY  
REV. MARION DANIEL SHUTTER, D.D., LL.D.

VOLUME I

ILLUSTRATED

Chicago - Minneapolis  
The S. J. Clarke Publishing Company  
1923

## CHAPTER XX

### THE BENCH AND BAR

HENRY H. SIBLEY AS THE FIRST MAGISTRATE—TERRITORIAL COURTS—JUDGE BRADLEY B. MEEKER—HENNEPIN DISTRICT COURT—COURT OF COMMON PLEAS—EARLY JUDGES—DISTRICT COURT JUDGES FROM 1858 TO 1923 —COURT OF PROBATE—MUNICIPAL COURT—THE MINNEAPOLIS BAR—PERSONAL MENTION OF EARLY ATTORNEYS—BAR ASSOCIATIONS—CASES AND INCIDENTS — ELIZA WINSTON CASE—CHEEVER'S EXCUSE—UNITED STATES DISTRICT COURT.

Prior to the organization of the Territory of Minnesota under the act of Congress, approved on March 3, 1849, all that part of the state east of the Mississippi River had been subject successively to the jurisdiction of the territories of Indiana, Illinois, Michigan and Wisconsin. A territorial judge of Wisconsin held two terms of court at Stillwater, but the few settlers about the Falls of St. Anthony, having no disputes to settle, were not represented at either of those sessions.

West of the Mississippi Iowa exercised jurisdiction. Henry H. Sibley came to the American Fur Company's post at the mouth of the Minnesota the fall of 1834 as chief factor for the territory now comprising the state of Minnesota. A few months after his arrival the governor of Iowa commissioned him a justice of the peace and he was the first civil magistrate west of the river. His jurisdiction extended from a point opposite Prairie du Chien to the Canada line and his power seems to have been much greater than that of the justice of the peace in 1823. The condition on the frontier then were such that the magistrate had to be guided more by common sense than by precedent or a knowledge of the law. Many of the inhabitants were French Canadians or half-breeds employed by the fur companies. They

were illiterate and often of turbulent disposition. After a few of them had been brought before Justice Sibley they began to regard him as a power to be respected and during the years he held the office there is no record to show that appeals were taken to the higher authorities.

## TERRITORIAL COURTS

By the organic act of March 3, 1849, it was provided that the judicial power of the Territory of Minnesota should be vested in a Supreme Court, district courts, probate courts and justices of the peace. Soon after the passage of the act President Zachary Taylor appointed Aaron Goodrich, [470] of Tennessee, chief justice; David Cooper, of Pennsylvania, and Bradley B. Meeker, of Kentucky, associate justices. One of the first official acts of Gov. Alexander Ramsey was to divide the territory into three districts and assign one of the justices to each district.<sup>1</sup> The First District included the region between the Mississippi and St. Croix rivers, to which Chief Justice Goodrich was assigned. The Second District embraced all that part territory west of the Mississippi and north of the Minnesota River and was presided over by Judge Meeker. Judge Cooper was assigned to the Third District, which included that part of the territory south of the Minnesota River. Each justice presided over the District Court of his district and the three sitting together constituted the Supreme Court.

The first term of court in Minneapolis was held by Judge Meeker on Saturday, August 25, 1849. A grand jury was impaneled with Franklin Steele as foreman, but the names of the other grand jurors have not been handed down, probably for the reason that no clerk was present and no written record of the proceedings was preserved. James M. Goodhue, editor of the Minnesota Pioneer was another member of the grand jury, as in his issue of August 30th he says:

“We had the pleasure of attending at the opening and final

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<sup>1</sup> Proclamation of Governor Ramsey, June 11, 1849 (MLHP, 2011).

adjournment of Judge Meeker's court at St. Anthony, and have the satisfaction of having served on the first grand jury ever impaneled in the Second Judicial District of Minnesota. Mr. Bean provided an excellent dinner last Saturday, embracing a very great variety of good things, for the people at court. His Honor dismissed the jury with a very few handsome remarks. The crier adjourned the court and the people took their departure. It was a day and an occasion which will long live in the memory of us all."

The court was held in the house of Reuben Bean, the Government miller. Among those who partook of the "excellent dinner" mentioned by Mr. Goodhue were: Henry L. Tilden, United States marshal, a few attorneys from St. Paul and the members of the grand jury. As there were no cases for trial, the session lasted only about an hour. Mr. Goodhue's statement that the court was held in St. Anthony is hardly correct, as the miller's dwelling, where the court met, was on the west side of the Mississippi.

Judge Bradley B. Meeker, who presided over this first court, became a resident of St. Anthony soon after receiving his appointment. It is not generally known that at the time he held court in August, 1849, his appointment had not been confirmed by the United States Senate. When appointed he claimed to be a Whig, but a certain element in that party disliked him and succeeded in holding up his confirmation until September, 1850.<sup>2</sup> Nevertheless, he continued to perform his judicial duties he became quite popular in Minnesota. He acquired a considerable tract of land, part of which is now within the city limits of Minneapolis and very valuable.<sup>3</sup> Unfortunately Judge Meeker did not live to reap the full reward of his investment. He died at

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<sup>2</sup> This is nonsense. In fact the Senate confirmed Meeker's nomination on March 19, 1849. See Douglas A. Hedin, "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART TWO-B (Justice Meeker)" (MLHP, 2009-2010); also "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART ONE (Introduction)" 17-18, 26-28 (MLHP, 2009-2010).

<sup>3</sup> See Henry Titus Welles, "The Meeker Dam," (MLHP, 2008-2011) (published first, 1899).

Milwaukee, Wisconsin, February 20, 1873.<sup>4</sup> [471]

It does not appear that another term of the District Court was held for several years after the one held by Judge Meeker in 1849. What little litigation there was among the citizens was adjusted in the court of Lardner Bostwick, who was elected justice of the peace in 1850. He held his court in a small frame building at the corner of Main Street and Second Avenue Northeast. Although not profoundly versed in the law, "Judge" Bostwick possessed common sense and his decisions were rarely questioned.

### HENNEPIN DISTRICT COURT

By the act of March 6, 1852, creating Hennepin County, the new county was attached to Ramsey for judicial purposes.<sup>5</sup> No session of the District Court was held in Hennepin County during the first year of its existence, but on March 5, 1853, the governor approved an act of the Legislature providing that two terms of court must be held each year in Minneapolis. Under this act Judge Meeker held a session of the District Court on April 4, 1853. Hennepin County then had no courthouse and the county commissioners secured the use of three rooms in the residence of Anson Northrup, on First Street near Fourth Avenue South. Warren Bristol, the county attorney, was the only lawyer from Hennepin County present at this term, the others all living in St. Anthony or St. Paul. Sweet W. Case was clerk of the court and Dr. Alfred E. Ames was foreman of the grand jury. This grand jury returned two or three indictments for malicious injury to property and selling liquor to the Indians. The cases were all disposed of in two days and the court adjourned.

Soon after his inauguration in 1853, President Franklin Pierce

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<sup>4</sup> In fact Meeker died on February 19, 1873. For his obituary in the *Winona Herald* and memorial proceedings in the Supreme Court, see "Bradley Meeker (1813-1873)" (MLHP, 2012). For a biographical sketch, see John Fletcher Williams, "Memoir of Judge B. B. Meeker," (MLHP, 2009-2012).

<sup>5</sup> Laws 1852, c. 32, § 2, at 51 (March 6, 1852).

appointed Judge E. (sic) G. Chatfield to succeed Judge Meeker.<sup>6</sup> He remained on the bench until 1857 and held court regularly in a frame building on Bridge Square. Hennepin County's first courthouse was completed in 1857 and the first term of court in the new structure was presided over by Judge Charles E. Flandrau, who had been appointed by President Buchanan. Judge Flandrau held but one term of the District Court in Minneapolis, for in the fall of 1857 he was elected one of the associate justices of the State Supreme Court.<sup>7</sup>

Upon the admission of Minnesota into the Union as a state, in May, 1858, James Hall became judge of the Fourth Judicial District, which included fourteen counties, one of which was Hennepin. He retired from the bench on October 1, 1858, and was succeeded by Edward O. Hamlin, who served until January 1, 1859. Judge Hamlin was from Pennsylvania. He was a good lawyer and an impartial judge. During his brief term on the bench he made many friends. Failing health compelled him to decline further judicial honors and he was succeeded by Judge Charles E. Vanderburgh.<sup>8</sup>

Judge Vanderburgh was the first resident of Minneapolis to be elected to a place on the bench of the District Court. He was born in Saratoga County, New York, December 2, 1829, graduated at Yale College in 1852, and was admitted to the bar in 1855. The next year he came to Minneap-[472]-olis and

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<sup>6</sup> In fact the President *nominated* Andrew G. Chatfield on April 5, 1853 and the Senate confirmed him the next day. See Douglas A. Hedin, "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART TWO-D (Chief Justice Welsh and Associate Justice Chatfield)" (MLHP, 2009-2010). For a biographical sketch, see John Fletcher Williams, "Memoir of Judge Andrew G. Chatfield," (MLHP, 2009-2010) (published first, 1947).

<sup>7</sup> For the dates of Flandrau's service on the Territorial Court, see Douglas A. Hedin, "Documents regarding the terms of the justices of the Supreme Court of Minnesota Territory, 1849-1858: PART TWO-F (Associate Justice Flandrau and John Pettit's Commission)" (MLHP, 2009-2010). For the results of Flandrau's election in October 1857 to the state Supreme Court, see "Results of the Elections of Justices to the Minnesota Supreme Court" (MLHP 2010-).

<sup>8</sup> Not true. In fact Judge Hamlin lost to Vanderburgh in the election for the district court judgeship on October 11, 1859.

formed a partnership with Francis R. E. Cornell for the practice of law. In 1858 (sic) he was elected judge of the Fourth Judicial District, took his office on January 1, 1859, and was retained in that position by successive reëlections until 1881, when he was elected to a vacancy on the bench of the Supreme Court caused by the death of his former partner, Judge Cornell.<sup>9</sup> He served as justice of the Supreme Court until 1894, when he retired from active professional work. He died in March, 1898.

## COURT OF COMMON PLEAS

When Hennepin County was created in 1852, the population was not much over five thousand. Twenty years later the number of inhabitants had increased to about twenty thousand. More people meant more litigation and in 1872 the District Court docket was crowded, with the necessary delay in the trial of cases. To relieve this condition, the Legislature of that year passed an act establishing a Court of Common Pleas in and for the County of Hennepin.<sup>10</sup> Under the provisions of the act the governor appointed Austin H. Young as judge of the new court and he entered upon the duties of the office on April 1, 1872.

Austin H. Young, the only man who ever held the office of common pleas judge in Hennepin County, was born at Fredonia, New York, December 8, 1830. His father died in 1836 and his mother, with her five sons, removed to Dupage County, Illinois. There she married again and with her second husband and her children removed to Chicago. Austin was educated in the common schools and at Waukegan Academy, after which he studied law and in 1860 was admitted to the bar. Early in 1866 he located in Minneapolis and formed a partnership with

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<sup>9</sup> This chronology is wrong. In fact Daniel Dickinson (not Charles Vanderburgh) was appointed by the Governor to fill the vacancy caused by the death on May 23, 1881, of Justice F. R. E. Cornell. In a contest for the nomination of the Republican Party at its convention in September 1881, Vanderburgh defeated incumbent Associate Justice Greenleaf Clark, who nevertheless remained on the ballot after being nominated by the Democrats. Vanderburgh was elected in a top-three election in November 1881, and thereafter resigned from the District Court.

<sup>10</sup> 1872 Sp. Laws, c. 176, at 558-562 (March 4, 1872).

W. D. Webb which lasted until 1870. Then the law firm of Young & Lowry was established, Thomas Lowry becoming the junior member. This partnership continued until Mr. Young was appointed common pleas judge in the spring of 1872.

In November, 1872, Judge Young was elected for a full term of years. By an act of the Legislature in 1877 the Court of Common Pleas was abolished.<sup>11</sup> Judge Young was then transferred to the District Court and given concurrent jurisdiction with Judge Vanderburgh. He was afterward twice reelected, his last term expiring in January, 1891.<sup>12</sup> Upon retiring from the bench he resumed the practice of his profession as the senior member of the firm of Young & Nye, his partner being Frank M. Nye, who was afterward elected district judge.

The business of the District Court continued to increase and the Legislature of 1881 passed an act authorizing the appointment of a third judge.<sup>13</sup> Governor Pillsbury appointed William Lochren as the additional judge. He took his seat upon the bench on November 19, 1881, and served until May, 1893. Judge Lochren was born in County Tyrone, Ireland, April 3, 1832. His father died the following year and in 1834 his mother came with some relatives to America and settled in Vermont. He was educated in the common schools and worked on farms and in mills, until he reached [473] age of twenty-one. Then he took up the study of law and in 1856 he was admitted to the bar.<sup>14</sup> In August of that year he came to Minnesota and for about three years was employed in various law offices in St. Anthony. In the spring of 1857 he formed a partnership with James R. Lawrence, Jr., which lasted until a few months before the breaking out of the Civil war.

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<sup>11</sup> 1877 Laws, c. 103, at 194-195 (February 26, 1877).

<sup>12</sup> Austin Hill Young was defeated in the election on November 4, 1890, for the Fourth Judicial District Court. He came in sixth in a field of seven for four seats on the court. For his obituary and bar memorial, see "Austin H. Young (1830-1905)" (MLHP, 2008-2010).

<sup>13</sup> 1881 Laws (extra sess.), c. 84, at 84-85 (November 19, 1881).

<sup>14</sup> He was admitted to practice by the Territorial Supreme Court on January 13, 1857. See Minutes of the Territorial Supreme Court, January 13, 1857, at 126 (MLHP, 2019).

When the call for volunteers came in the spring of 1861, Mr. Lochren's fighting Irish spirit was aroused. He enlisted as a private in Company E, First Minnesota Infantry, and by successive promotions became first lieutenant of his company. On account of the failure of his health he was honorably discharged in December, 1863. He returned to St Anthony and resumed the practice of law. In 1868 he was elected state senator and the next spring the law firm of Lochren & McNair was formed, with William W. McNair as the junior partner. In 1871 John B. Gilfillan entered the firm, which then took the name of Lochren, McNair & Gilfillan. In 1877 Mr. Lochren was elected city attorney and held the office for two years. After his appointment as district judge in 1881 he was twice elected to that office. Few district judges have served as long as did Judges Vanderburgh, Young and Lochren.

#### DISTRICT COURT JUDGES

When Minnesota was admitted into the Union as a state in May, 1858, the Fourth Judicial District was given one judge. As the population increased litigation grew correspondingly and additional court facilities became necessary. Instead of creating new courts, additional judges were provided for from time to time. Following is a list of the judges of the Fourth District, with the date when each assumed the duties of the office: James Hall, May 24, 1858; Edward O. Hamlin, October 1, 1858; Charles E. Vanderburgh, January 1, 1859; Austin H. Young, January, 1877; William Lochren, November, 1881; John M. Shaw, January, 1882; Martin B. Koon, January, 1884; John P. Rea, May, 1886; Henry G. Hicks, March, 1887; Frederick Hooker, March, 1889; Seagrave Smith, March, 1889; Charles M. Pond, November, 1890; Thomas Canty, January, 1891; Robert D. Russell, May, 1893; Robert Jamison, September, 1893; Charles B. Elliott, January, 1894; Henry C. Belden, January, 1895; David F. Simpson, January, 1897; Edward M. Johnson, May, 1897; John F. McGee, October, 1897; William A. Lancaster, December, 1897; Alexander M. Harrison, May, 1898; Charles M. Pond, January, 1899; Frank O. Brooks, January, 1899; Willard R. Cray, November, 1902; Andrew Holt,

January, 1905; Horace D. Dickinson, January, 1905; John D. Smith, January, 1905; Frederick V. Brown, October, 1905; William H. Donahue, January, 1909; Wilbur F. Booth, May, 1909; William E. Hale, November, 1909; Edward F. Waite, April, 1911; Charles S. Jelley, December, 1911; William C. Leary, January, 1913; Daniel Fish, January, 1915; Joseph L. Molyneaux, January, 1915; Chelsea J. Rockwood, April, 1917; Winfield W. Bardwell, January, 1919; Frank M. Nye, January, 1921; Edmund A. Montgomery, [474] January, 1921; Charles D. Gould, July, 1921; George W. Buffington, February, 1922; Mathias Baldwin, December, 1922; Thomas H. Salmon, January, 1923. At the beginning of the year 1923 there were ten district judges, viz.: Horace D. Dickinson, Edward F. Waite, William C. Leary, Joseph L. Molyneaux, Winfield W. Bardwell, Frank M. Nye, Edmund A. Montgomery, George W. Buffington, Mathias Baldwin and Thomas H. Salmon.

## COURT OF PROBATE

The Court of Probate, or as it is generally called, the Probate Court, was established in 1852.<sup>15</sup> Its jurisdiction extends to the care and settlement of decedents' estates, looking after the guardianship of minor heirs, and the performance of such other duties as usually come within the scope of courts of this character. Following is a list of the probate judges in Hennepin County, with the year in which each was elected or entered upon the duties of the office, each serving until his successor was elected and qualified, except in case of death or resignation: Joel B. Bassett, 1852; Dr. Alfred E. Ames, 1854; Edwin S. Jones, 1856; Lardner Bostwick, 1860; Norton H. Hemiup, 1861; Franklin Beebe, 1870; E. A. Gove, 1875 (for the unexpired term of Judge Beebe resigned); P. M. Babcock, 1876; John P. Rea, 1878; A. Ueland, 1882; F. Von Schlegel, 1886 (died in April, 1890, and Francis B. Bailey was appointed for the unexpired term); J. R.

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<sup>15</sup> 1852 Laws, c. 32, § 2, at 51 (March 6, 1852). This law established Hennepin County and authorized its qualified voters to elect such other county officers as other organized counties may elect.

Corrigan, 1890; John H. Steele, 1892; Frederick C. Harvey, 1896; George R. Smith, 1906; John A. Dahl, 1912.

## MUNICIPAL COURT

Under the act of February 6, 1867, incorporating the City of Minneapolis, two justices of the peace, styled city justices, were to be elected and hold their office for two years.<sup>16</sup> Their jurisdiction was the same as other justices of the peace, with the addition to hear and try all complaints for violation of the city charter or ordinances. When the two cities were consolidated in 1872 one city justice was to be elected for the east side and two for the west side.

By an act approved on February 18, 1874, a Municipal Court was established for the City of Minneapolis, the judge of which was given largely increased jurisdiction of that of the city justices.<sup>17</sup> He was given power to hear and determine civil actions at law, where the amount in controversy did not exceed \$200 (afterward increased to \$500), and was to hold office for three years at an annual salary of \$2,500. Provision was made for the election of a special judge by the act of February 26, 1877, with the same powers and duties as the regular judge.<sup>18</sup>

Grove B. Cooley was the first judge of the Municipal Court. He took office in April, 1874, and served for nine years. Under the act of 1877 Reuben Reynolds was appointed special judge, serving until June, 1879, when he resigned. Francis B. Bailey was appointed to the vacancy and [475] held the office until April, 1883, when he was elected regular judge. He retired from the municipal bench in 1889. Stephen B. Mahoney was elected special judge in April, 1883, and remained in office until 1896. George P. Emery was elected to succeed Judge Bailey, his term beginning January 1, 1889. Two years later he resigned and Charles B. Elliott appointed for the unexpired term. In 1892 he

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<sup>16</sup> 1867 Sp. Laws, Part 3, c. 19, §§ 10-13, at 55-57 (February 6, 1867).

<sup>17</sup> 1874 Sp. Laws, c. 141, at 362-372 (February 18, 1874).

<sup>18</sup> 1877 Sp. Laws, c. 178, at 240-241 (February 26, 1877).

was elected for a full term, but resigned on January 4, 1894, to accept a place on the bench of the district Court and Andrew Holt was appointed his successor. In 1896 William A. Kerr was elected special judge to succeed Judge Mahoney. He succeeded by Horace P. Dickinson in 1901. Judges Holt and Dickinson were both elevated to the District Court in 1905 and C. L. Smith and Edward F. Waite were appointed to the unexpired terms. At the election in the fall of 1906 Judge Waite was elected regular judge and Judge Smith special judge for full terms.

In 1909 a third judge was added and William C. Leary was chosen the position. At the same time the special judge was discontinued, Smith becoming a regular judge, along with Waite and Leary. In April, 1, Judge Waite entered upon his duties as one of the district judges and Edmund A. Montgomery was appointed to the vacancy in the Municipal Court. Winfield W. Bardwell succeeded Judge Leary in January, 1913, the latter going to the District Court.

No further changes were made in the Municipal Court until in April, 1917. A fourth judge was then added and Thomas H. Salmon took his place upon the bench. Judge Bardwell was elected district judge for the term beginning in January, 1919, and his place was filled in the Municipal Court by the appointment of Mathias Baldwin. Two years later Judge Montgomery went to the District Court and was succeeded by Frank E. Reed. Gunnar H. Nordbye was made municipal judge in December, 1922, take the place of Judge Baldwin, who was then elevated to the District Court. In January, 1923, Judge Salmon went to the District Court and the same time Levi M. Hall became municipal judge. The Municipal Court was then composed of Judges C. L. Smith, Frank E Reed, Gunnar Nordbye and Levi M. Hall.

## THE MINNEAPOLIS BAR

In 1849 Ellis G Whitall, a brother in law of Henry M. Rice, came to St. Anthony and opened a law office near the old St Charles

Hotel, afterward destroyed by fire. He was a Virginian and had been admitted to the bar in Richmond before coming to Minnesota. Mr. Whitall is credited with having been the first attorney to locate within the limits of the present City of Minneapolis. He remained in St. Anthony about two years and then went to Missouri. During the Civil War he served in the Confederate army. After the war he went to Galveston, Texas, where he died in 1867.

Early in the year 1850 John W. North came from New York and began the practice of law in St. Anthony. His office was in a frame building [476] on Main Street, near where the Pillsbury mill was afterward built, but his residence was a log house on Nicollet Island. Mr. North was a graduate of the Wesleyan University at Middletown, Connecticut, and had practiced law in Syracuse, New York, before he decided to go West. He was a good lawyer, a man of broad views, and from the time of his arrival in 1850 he took an active part in legal and political affairs. After a residence of about four years in Minneapolis he removed to Rice County and founded the Town of Northfield. He was a delegate from that county to the Minnesota constitutional convention in 1857. In 1863 he was appointed chief justice of the Territory of Nevada by President Lincoln. He died in California about 1889 or 1890.<sup>19</sup>

Isaac Atwater arrived in October, 1850, and formed a partnership with John W. North. The firm of North & Atwater was the first law firm in Hennepin County. Judge Atwater has been further mentioned in the preceding chapter.

When the first term of the District Court was held in Hennepin Court in April, 1853, the lawyers present were: Isaac Atwater, Warren Bristol, A. R. Dodge, James H. Fridley, E. L. Hall, John W. North, George Prescott, David A. Secombe and A. D. Shaw. All these were residents of St. Anthony except Mr. Bristol, who was the county attorney of Hennepin County. During the next five

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<sup>19</sup> North (1815-1890) is the subject of a biography by Merlin Stonehouse, *John Wesley North and the Reform Frontier* (University of Minnesota Press, 1965).

years a number of new lawyers located in the city. The most prominent members of the Minneapolis Bar at time Minnesota was admitted into the Union in 1858 were: Isaac Atwater, Henry D. Beman, Francis R. E. Cornell, H. W. Cowles, George E. H. Day, H. B. Hancock, Norton H. Hemiup, J. S. Johnson, Edwin S. Jones, R. L. Joyce, James R. Lawrence, William Lochren, William W. McNair, H. L. Mann, George A. Nourse, L. M. Stewart, Charles B. Vanderburgh and Eugene M. Wilson. Among those who came a little later and achieved distinction in their profession were: Reuben C. Benton, John B. Gilfillan, Henry G. Hicks, James R. Lawrence, Sampson A. Reed, John M. Shaw and Seagrave Smith.

James R. Lawrence came to Minneapolis in 1856 and the next year was elected prosecuting attorney of Hennepin County. He was then in partnership with William Lochren until 1860, when he went to Chicago. When the Civil war began in 1861, he entered the army and died in the service. His son, James W. Lawrence, was ten years old when the family came from New York to Minneapolis in 1856. A few years later he returned to New York for his education and in 1867 graduated at Hamilton College, in his native City of Syracuse. He then studied law with Sheldon & Brown, of New York City, and in 1869 was admitted to the bar. Returning to Minneapolis, he formed a partnership with Eugene M. Wilson which lasted until the death of the latter.

Mr. Lawrence served as county attorney of Hennepin County from 1872 to 1876 and made a good record as a prosecutor. He and his partner were both Democrats and it is a coincidence that, when Mr. Wilson was the candidate of that party for governor in 1888, Mr. Lawrence was chair of the Democratic state central committee, which managed the campaign. [477]

Edwin S. Jones was born in Windham County, Connecticut, June 3, 1828, of Welsh ancestry. He was educated and married in his native state and in 1854 settled in St. Anthony. Prior to that time he had made some preparations for entering the legal profession. After coming to St. Anthony he completed his studies

in the office of Isaac Atwater and at the April term of the District Court in 1855 he was admitted to the bar—the first lawyer to be admitted in Hennepin County. In 1856 he was elected judge of probate and held the office for four years. In 1861 he entered the army, was made commissary of subsistence with the rank of captain and was assigned to the Department of the Gulf. For meritorious service he was brevetted major.

“Judge” Jones, as he was commonly called, was better known as a banker and philanthropist than as a lawyer. While on military duty in the South he learned the educational needs of the people of that section. His contributions to a kindergarten for colored children in Atlanta, Georgia, were such that the school was named the Jones Kindergarten. Near King’s Mountain, North Carolina, he established the Jones Seminary for young women, where girls could be taught not only the subjects in the textbooks, but also cooking, sewing and domestic economy. His benefactions were not confined to the South, however. He rendered material aid to the Western Minnesota Academy at Montevideo (now Windom Institute), Carleton College at Northfield, and the Chicago Theological Seminary. He also gave the site of the Jones-Harrison Home on the shore of Cedar Lake, near Minneapolis.

In 1870 he was one of the organizers of the Hennepin County Savings Bank and was elected the first president of that institution. The same financial ability that distinguished him while commissary of subsistence during the war, he now brought to the management of the bank, of which he remained the executive head until his death on January 26, 1890.

Francis R. E. Cornell, who came to Minneapolis in 1854, was born in Chenango County, New York, November 17, 1821. He was a member of the graduating class of Union College (Schenectady) in 1842, then studied law and was admitted to the bar by the New York Supreme Court in 1846. For the next eight years he practiced at Addison, New York, and in 1852-53 was a member of the state senate. Upon coming to Minneapolis in 1854 he at

once became interested in municipal and political affairs. He was one of the three school trustees elected in 1855; was elected as a Republican to the Legislature in 1861, 1862 and 1865; was a member of the first city council when Minneapolis was incorporated in 1867; was again elected alderman in 1871, and from January, 1868, to January, 1874, he held the office of attorney-general of the state. In November, 1874, he was elected an associate justice of the State Supreme Court and remained on the bench until his death on May 23, 1881.<sup>20</sup>

William W. McNair, who practiced law in Minneapolis for more than a quarter of a century, was born in Livingston County, New York, January 4, 1836, and was of Scotch-Irish extraction. At the age of nineteen he left the home of his parents and went to Racine, Wisconsin, where he [478] studied law with J. R. Doolittle. In 1857 he came to Minneapolis and before the close of that year was admitted to the bar. About a year later the law firm of Beman & McNair was formed. Henry D. Beman, the senior partner, was a Southerner and when the war broke out he left Minnesota to return to his southern home. Mr. McNair then formed a partnership with Eugene M. Wilson. During the next five years the firm of Wilson & McNair was engaged in many important cases. When Mr. Wilson was elected to Congress in 1868, Mr. McNair practiced alone until 1870, when the firm of Lochren & McNair (later Lochren, McNair & Gilfillan) was formed.

During the next decade the firm of Lochren, McNair & Gilfillan built up a large practice. Among the clients of the firm were the Chicago, Milwaukee & St. Paul, the Chicago, St. Paul, Minneapolis & Omaha, and the Minneapolis Eastern railway companies. In probate and equity practice the firm was

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<sup>20</sup> For the political background of Cornell's election to the Supreme Court in 1874, see Douglas A. Hedin, "George B. Young v. Francis R. E. Cornell: The Contest for the Republican Nomination for Associate Justice of the Minnesota Supreme Court, 1874" (MLHP, 2019).

represented in some notable cases, among which were the contested will cases of Stephen Emerson, Ovid Pinney and Gov. C. C. Washburn. After Mr. Lochren was appointed district judge in November, 1881, the firm of McNair & Gilfillan continued for about three years. Mr. Gilfillan was elected to Congress in 1884 and Mr. McNair retired from active practice.

Mr. McNair was frequently successful in “settling cases out of court.” By a frank, dispassionate discussion of the questions at issue he could show the prospective litigants where each was at fault and effect a compromise. Such cases gave him more pleasure than those tried before a judge and jury. Although primarily a lawyer, he found time to engage in other business enterprises and mingle in local politics. He was one of the organizers, of the Minneapolis Gas Light Company; was a stockholder in the first street railway company and several railroad companies, and was interested in a lumber company. In May, 1862, he was elected county attorney and served for one year, and in 1869-70 he was mayor of St. Anthony. His death occurred on September 15, 1885.<sup>21</sup>

John B. Gilfillan, the junior member of the firm of Lochren, McNair & Gilfillan, was born at Barnet, Vermont, February 11, 1835. His ancestors came from Scotland soon after the close of the Revolutionary war. He was reared on a farm, attended the Caledonia Academy, and at age of seventeen began teaching school, intending to use the money thus obtained to pay his way through Dartmouth College. In the fall of 1855 he came to St. Anthony to visit his brother-in-law, Capt. John Martin, through whose influence he found a position as teacher. While teaching he began the study of law, first with Nourse & Winthrop, then with Lawrence & Lochren, and in 1860 was admitted to the bar of Hennepin County. In May, 1863, he was elected county attorney and held the office four years. Twice after that—in 1869 and 1873—he was again elected county attorney, serving two years each term. In 1876 he was elected to the state senate and

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<sup>21</sup> For his obituary and bar memorial, see “William W. McNair (1836-1888).” (MLHP, 2018).  
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remained a member of that body until 1884, when he resigned to accept a nomination for representative in Congress as a Republican. In 1880 he was appointed regent of the State University by [479] Governor Pillsbury and continued a member of the board for eight years. As a lawyer, Mr. Gilfillan was noted for the great care with which he prepared his cases. Before a jury he was always earnest and convincing. His career as a member of the firm of Lochren, McNair & Gilfillan has already been sufficiently referred to, showing that he was one of the successful attorneys of Minneapolis for many years.

In 1865 two men came to Minneapolis who afterward won distinction as members of the bar. They were Henry G. Hicks and John M. Shaw. Mr. Hicks was born at Sheldon, New York, January 26, 1838; was educated in the common schools; entered Oberlin College in the fall of 1860; enlisted as a private in Company A, Second Illinois Volunteer Cavalry, in July, 1861, and served through the war. In April, 1865, he came to Minneapolis. He was appointed sheriff of Hennepin County in 1867 and the next year was elected to that office. From 1871 to 1874 he was one of the city justices. While holding this office he studied law and in 1875 was admitted to the bar. He was four times elected to the lower house of the State Legislature; was a prominent member of the Grand Army of the Republic; was influential in securing the establishment of the Minnesota Soldiers' Home, and in 1869 was appointed a trustee of that institution. In March, 1887, he was appointed district judge and in 1888 was elected to that office for a full term.

John M. Shaw was a native of Maine and was about thirty-two years when he came to Minneapolis in the fall of 1865. He had previously studied law at Galena, Illinois, and had been engaged in practice at Platteville, Wisconsin. There he enlisted in the Twenty-fifth Wisconsin Volunteer Infantry and served with General Sherman's army until the close of war. In 1868 he formed a partnership with Franklin Beebe, which lasted until 1875, when Judge Beebe removed to California. Mr. Shaw then formed a partnership with A. L. Levi. A few years later Willard

R. Cray came into the firm, which then took the name of Shaw, Levi & Cray. In January, 1882, Mr. Shaw was appointed one of the judges of District Court and in the fall of that year was elected for a full term. He resigned in February, 1883, and resumed practice as the senior member of Shaw & Cray. Judge John I. Best, an Indianan, was a member of firm for a time.

Judge Shaw had visited the Falls of St. Anthony in 1852, before settling at Galena. After becoming a resident of Minneapolis he attended an old settlers' meeting and in a brief address referred to this visit in a way that showed his sense of humor. Among other things he said:

“Although I cannot now claim the honor of being an old resident of Minneapolis, I may, in a manner, boast of being almost contemporaneous with Colonel Stevens and Hiawatha; for I remember in 1852 of standing on the east bank of the river and contemplating with swimming eyes the romantic expanse of hazel brush, which then adorned the site of our glorious metropolis, ‘where the wild fox dug his hole unscared,’ and the fragrant polecat peddled his perfumery without a license. Those were the halcyon days, when there were no whisky limits, when the skies were bright and ye [480] pensive and untutored savages skived about promiscuous, clad in the innocent habiliments of nature, and the most casual observer might without difficulty discern the difference between ‘a fixed star and a Sioux Indian.’ These things are now sadly changed, particularly with regard to the fox and the polecat; whisky is no longer unlimited, and the festive red man having retired from the scene no fellow can now find out the conundrum.”

Seagrave Smith, for many years a prominent figure in the courts of Minneapolis, was born at Stafford, Connecticut, September 16, 1828. His ancestors came from Wales and were among the early settlers of New England. In 1848 he graduated at the Connecticut Literary Institute, at Suffield, and afterward read law with Alvin P. Hyde in his native Town of Stafford. He was

admitted to the bar in August, 1852, and for the next five years practiced at Colchester, Connecticut, holding during that time the offices of town clerk, state senator and clerk of the probate court.

Deciding to seek his fortune in the West, in 1857 he located at Hastings, Minnesota, where he entered into partnership with J. W. De Silva, under the firm name of Smith & De Silva. He continued to reside at Hastings for twenty years, taking a prominent part in local politics and holding the offices of county attorney, state senator, county commissioner and judge of probate. In 1877 he removed to Minneapolis and formed a partnership with W. E. Hale. This partnership was dissolved about three years later and in 1883 Mr. Smith became a partner with S. A. Reed. This firm existed until March, 1889, when Mr. Smith was appointed judge of the District Court. He was elected in 1890 and again in 1896, serving upon the bench until his death in May, 1898.<sup>22</sup>

The lawyers and judges mentioned in the foregoing pages were by no means all who were prominent in their profession. The Minneapolis City Directory for 1922 contains a list of nearly seven hundred attorneys. No doubt many of the lawyers of the present day are as able and eminent as were those of the former generation. In this connection it may be said that the bench and bar of Minneapolis—past and present—will compare very favorably with those of other western cities. Minneapolis lawyers have been called to the bench of the Supreme Court of Minnesota and other states. Some of them helped to frame the state constitution; others have served with honor in both branches of the State Legislature and the Congress of the United States; locally they have discharged faithfully the duties of

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<sup>22</sup> Smith (1828-1898), a Democrat, ran frequently for public office. In 1864, running for Judge of the First Judicial District, he lost to Charles McClure. In 1869, running for Attorney General, he lost to Frank Cornell. In 1884, he lost to Austin H. Young for a seat on the Fourth Judicial District. In 1888 running for Chief Justice of the Minnesota Supreme Court, he lost to James Gilfillan. In 1894, again running for Chief Justice, he lost to Charles M. Start. He was successful in elections for Judge of the Fourth Judicial District in 1890 and 1896.

mayor, aldermen, district and municipal judges, members of the various municipal boards, and in many other ways have demonstrated their willingness to work for the advancement of city, state and nation.

## BAR ASSOCIATIONS

The Minneapolis Bar Association was incorporated on February 20, 1883, with the following officers: Eugene M. Wilson, president; Martin B. Koon, vice president; Arthur M. Keith, secretary; William E. Hale, treasurer; William W. McNair, Willard R. Cray, P. M. Babcock, W. J. Hahn [481] and John G. Woolley, executive committee. The articles of incorporation declared the objects of the association to be: "To establish and conduct a legal society, to maintain the honor and integrity of the legal profession, and to create and maintain a law library in the City of Minneapolis, in the County of Hennepin, State of Minnesota."

For the purpose of building up the library a capital stock of \$30,000 authorized, divided into shares of fifty dollars each. At first the members allowed to pay for stock by contributing books, the value of which to be determined by an appraisal committee. Forty-six lawyers signed the articles of incorporation and in May, 1883, the association opened its library in a room on the second floor of a building on Nicollet Avenue adjoining the First National Bank. In August it was removed to the Academy of Music building, where all books and records were destroyed the fire of December 25, 1884. The insurance of \$15,000 was promptly adjusted and the association began the work of rebuilding the library. On May 1, 1885, the new library was opened in the Boston block. About a year later this library was also burned and with the insurance of \$20,000 the third one was established in Temple Court. When the new courthouse and city hall was completed the library was given a permanent home in that building.

The officers of the association, elected on February 24, 1923,

were as follows: M. A. Jordan, president; H. D. Irwin, vice president; S. D. Klapp, secretary; Thomas F. Wallace, treasurer. The association now numbers several hundred members and the law library is one of the best in the Northwest.

In 1896 the Hennepin County Bar Association was organized "in recognition of a demand for an association which shall include all reputable members of the profession in Hennepin County, and for the purpose of advancing the science of jurisprudence, promoting the administration of justice and upholding the honor of the law."

Many of the Minneapolis attorneys are members of both these associations. The Hennepin County Bar Association has no regular time and place of holding meetings, but is called together from time to time as occasion may require. At a meeting on March 9, 1923, at the Radisson Hotel, the president, Frederick H. Stinchfield, recommended that the association undertake "to give advice and support to the younger lawyers" and a committee of fifteen was appointed to confer with young men as they are admitted to the bar.

## CASES AND INCIDENTS

During the territorial period and the early days of statehood, more business was done before justices of the peace than in the District Court. These justices were rarely "learned in the law" and their manner of dispensing justice did not always follow the precedents established by the higher tribunals. A story is told of the method by which one of these pioneer magistrates arrived at his decisions. It was noticed on several occasions that, after hearing the evidence, he would adjourn court for a short time and take a walk through a neighboring corn field. He would then reconvene the court and hand down his opinion.

One day near the close of a trial a settler, fired with a curiosity to find out the reason for the squire's walks, quietly left the court

room and concealed himself in the corn field, where, like Uncle Remus' Brer Fox, "he lay low to see what de news gwine to be." He had not long to wait, the justice soon appeared. Casting an anxious glance around to see if he was likely to be observed, the squire took a chip from his pocket, spat up one side of it and, schoolboy fashion, tossed it up, exclaiming: "Wet for the plaintiff; dry for the defendant." The chip landed with the wet up. The justice looked at it, muttered "The plaintiff has it," then went back to his court room and rendered his decision accordingly. The settler who acted the part of the spy afterward told the story and vouched for truthfulness.<sup>23</sup>

Not all the cases were decided in his haphazard fashion. Some of the early justices—in fact most of them—were men of good common sense and endowed with a love of fair play. Although they knew but little law, this love of fair play helped them to render decisions from which few appeals were taken. The territorial judges, often appointed as a reward for some service to a political party, were not always noted for their legal acumen. Judge Atwater, in his "History of Minneapolis," mentions one instance in which the Territorial Supreme Court decided four cases in a manner almost as questionable as that of the squire's wet and dry chip. At one term of the court Atwater was the attorney in four cases, in all of which he was opposed by John W. North, his former partner.

"Three of them," says he, "were fairly doubtful cases, but of one I felt perfectly sure, as the authorities were unanimous in favor of my client. In due time the three questionable cases were decided in my favor. Some time later the other was decided and, to my astonishment, for my opponent. Meeting the chief justice shortly afterwards I ventured to ask him the grounds of the decision, as no reasons were on file with the same, and how

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<sup>23</sup> An apocryphal tale. It likely would take an experienced folklorist only a few hours to find similar stories in histories of other midwest and western states in the nineteenth century. Regrettably—but not surprisingly—this tall tale was repeated by Isaac Atwater in an address to Yale Law School: "Practical Suggestions to Students and Young Lawyers," 2 *Yale Law Journal* 131, 135 (March 1893).

the court disposed of the authorities cited. He had utterly forgotten the case, nor could I refresh his memory in regard to it. Finally he said: 'Well, perhaps a mistake might have been made, but as Mr. North had lost every case that term, we thought we would give him one, as it did not seem to be of much importance any way.' The answer was of course conclusive."<sup>24</sup>

But such cases were exceptional and were by no means an index to the character of the early courts. Old lawyers who practiced in Minnesota while it was a territory were practically unanimous in asserting that courts of that period were of greater average ability than those of most western territories. Much of the early litigation grew out of the land claims on the Fort Snelling reservation. Disputes over land titles, occasional suit to collect a debt, or the trial of some one for an infraction of the criminal code, constituted the greater portion of the business of the courts. At intervals a capital crime would be committed. Such cases [483] created more than ordinary interest and drew a crowd to the court room during the trials. After the Civil war the rapid settlement of the Northwest, the building of railroads and the greater complexity of business interests were productive of a

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<sup>24</sup> The anecdote reveals Atwater's bad judgment and lack of self-awareness. He published it three times during his lifetime: 1) "Territorial Bench of Minnesota: Part 1," *7 Magazine of Western History* 207 (December 1887); 2) *1 History of Minneapolis, Minnesota* 426 (1893); and 3) "Practical Suggestions to Students and Young Lawyers," *2 Yale Law Journal* 131, 135 (March 1893). Worse, the anecdote is repeated in Hiram F. Stevens, *1 History of the Bench and Bar of Minnesota* 15-16 (1904), and Robert J. Sheran & Timothy J. Baland, "The Law, Courts, and Lawyers in the Frontier Days of Minnesota: An Informal legal History of the Years 1835-1865," *2 William Mitchell L. Rev.* 1, 33 (1976).

Atwater believed and wanted his readers to believe that the Territorial Supreme Court acted capriciously by ruling against him for frivolous reasons in a case he should have won. But he misconstrued the Chief Justice's answers. He did not disclose the internal deliberations of his Court—no judge would ever tell that to a lawyer for a party in a case. Instead, backed awkwardly into an corner by Atwater, who never grasped how improper his demands for an explanation were, the Chief Justice extricated himself by saying, first, he forgot the case (which is how most judges would reply in such a situation) and, second, by giving a patently absurd reason that Atwater took literally (while a judge occasionally has sympathy for a litigant, she never decides a case because she felt sorry for the lawyer). The Chief Justice and his Court depart this anecdote with their integrity intact. Not so Isaac Atwater.

more varied litigation. The lawsuits growing out of the changed conditions were largely of a routine character, hence, the courts of Minneapolis have had but few cases that awakened a national interest.

### ELIZA WINSTON CASE <sup>25</sup>

There was one case, however, tried before Judge Vanderburgh in 1860, which attracted the attention of lawyers in all sections of the country and was freely commented on by the press of all the principal cities. In the records of the District Court it appears as "The case of Eliza Winston, a slave." In order that the reasons for the action may be better understood, it will be necessary to refer briefly to another famous lawsuit which had its origin at Fort Snelling.

When Maj. Lawrence Taliaferro came to the fort as Indian agent from Fredericksburg, Virginia, he brought with him several slaves. As he had no use for the slaves himself, he was accustomed to hire them to officers of the garrison for servants. One of his slave girls, named Harriet Robinson, he sold to Dr. John Emerson, the post surgeon. Emerson also owned a colored man whom he had purchased from the Scott family at St. Louis and was known as Dred Scott. In 1836 Dred and Harriet were married. Two years later Surgeon Emerson was transferred back to Jefferson Barracks, at St. Louis, and took his slaves with him.

In 1852, influenced by certain prominent anti-slavery advocates, Dred Scot brought suit in the St. Louis District Court for his freedom, basing his claim that he and his family were entitled thereto because they had lived in two free districts—Fort Armstrong and Fort Snelling—in both of which slavery was

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<sup>25</sup> For two accounts of the case by Professor William D. Green, see "Eliza Winston and the Politics of Freedom in Minnesota, 1854-60," 57 *Minnesota History* 107 (2000), and "The Summer Christmas Came to Minnesota: The Case of Eliza Winston, a Slave," 8 *Law & Inequality: A Journal of Theory and Practice* 151 (1990). It also is at the center of chapter 6 of his book, *A Peculiar Imbalance: The Fall and Rise of Racial Equality in Early Minnesota* (Minn. Hist. Soc. Press, 2007).

prohibited. The district judge decided the case in his favor, but the Missouri Supreme Court reversed the decision and remanded Scott and his family back to slavery. Without following the fortunes of the Scott family through all their movements of the next few years, another suit was brought in the United States Circuit Court, which in May, 1854, decided that Scott, his wife and children were slaves, although the children had been born in free territory. This decision was upheld by the United States Supreme Court in March, 1857.

Eliza Winston, a colored woman about thirty years of age, came to Minneapolis about the beginning of June, 1860, with her master's family. She was the widow of a free negro who had died in Liberia while on a mission to that country. He had been the owner of a house and lot in Memphis, Tennessee, as permitted by the laws of that state, but his widow and could not own property. The house and lot therefore became the property of her former master. Eliza had been mortgaged to a Colonel Christmas, a wealthy planter of Mississippi, to secure a loan and became his property through foreclosure of the mortgage. It was with the family of Colonel Christmas that she came to Minneapolis. Mrs. [484] Christmas was an invalid and her husband hoped that her health might be improved by spending the summer in the North. Eliza was brought along as a house servant, a maid for her mistress and a nurse for the one child of the couple. Her lot was not a hard one, she was much attached to her master and mistress and her only cause for discontent was that she could not collect the rent upon the house in Memphis, the property of former husband, though she admitted that if she received it she "might spend it foolishly."

The Christmas family occupied a summer cottage on the shore of Lake Harriet and in the course of a few weeks Eliza formed an acquaintance with a few of the colored people then living in Minneapolis. One day about the beginning of August, she asked the wife of a colored barber if there were not white men in the city who would assist her in securing her freedom, in order that

she might claim her husband's property. This was the beginning of the trouble.

In the political campaign of 1860 the slavery question was freely discussed. One of the cardinal principles of the newly organized Republican party was that there should be no further extension of slavery into free territory. The barber's wife told Eliza's story to a white woman, who in turn related it to W. D. Babbitt, one of the pioneer citizens and an enthusiastic abolitionist. Mr. Babbitt enlisted the cooperation of William S. King and F. R. E. Cornell. King was the editor of the Minnesota Atlas, a radical Republican newspaper and never lost an opportunity to assail the institution of slavery. Cornell was one of the leading attorneys, a former Democrat and a recent convert to Republicanism. All three were pronounced anti-slavery men. After a consultation they decided upon a course of action.

On August 18, 1860, the three men went before Judge Vanderburgh and obtained a writ of habeas corpus, which was given to a deputy sheriff to serve at the Christmas cottage at Lake Harriet. Colonel Christmas been warned that a movement was on foot to take Eliza away from him, but he took no steps to prevent the action of the court, except to tell Eliza that the abolitionists were after her. "If you see any suspicious looking persons coming toward the house," said he, "and you want to escape them, run out to that patch of brush back of the house and hide yourself until they have gone away."

Eliza followed her master's advice and dodged the deputy two or three times by secreting herself in the hazel thicket. A rumor then became current that she was being concealed by Colonel Christmas and the abolitionist flames burned higher. Says Major Holcombe: "About twenty men made an ostentatious and ridiculous display of their zeal in 'the cause of freedom' by arming themselves with shotguns and revolvers and riding with the deputy sheriff, as a self-appointed posse, when he went out to Lake Harriet in another effort to serve the warrant. At the time Colonel Christmas was in Minneapolis and the garrison of his

cottage was composed of the invalid Mrs. Christmas, her little, child and her maid Eliza. Against this array the stout-hearted posse was not dismayed, but boldly went forward.” [485]

Again Eliza endeavored to reach the hazel thicket, but this time she was discovered by the deputy and his posse and apprehended. She was taken immediately before Judge Vanderburgh, the posse cheering and shouting on the way. The commotion attracted general attention and the court room was quickly filled with curious spectators. Mr. Cornell appeared for the petitioners for the writ of habeas corpus and a lawyer named Freeman, a Mississippian and at the time a guest of the Winslow House, represented Colonel Christmas. It was expected that Mr. Cornell would make an argument that would “throw hot shot” into the institution of slavery, but he contented himself with merely reading the Minnesota statute forbidding slavery and took his seat. Mr. Freeman argued that under the Dred Scott decision a precedent had been established; that Eliza Winston was only temporarily in free territory; that a temporary residence did not entitle her to absolute freedom, and that she should therefore be returned to her owner. A current newspaper account of the trial says:

“Judge Vanderburgh decided the case very promptly. In a few sentences he told Eliza that under Minnesota law she was not a slave, but was free to go where and with whom she pleased. There was much excitement when the decision was rendered. Colonel Christmas was the calmest man in the court room. He spoke kindly to Eliza and asked her if she would not like to go back to the home at Lake Harriet and take care of her mistress until the latter got well, adding, ‘You may go if you want to.’ ‘You don’t need to go if you don’t want to,’ called out one of her rescuers. Then Eliza answered: ‘Yes, I’ll go back, but not today; I’ll come out tomorrow.’ The Colonel rejoined: ‘All right, come when you please, or don’t come at all if you don’t want to.’ He then handed her ten dollars and remarked that if she needed more money she knew where to get it. He then bade her good-bye and walked nonchalantly away. A southern

friend called out: 'Well, Colonel, you have lost your nigger,' and the philosophic Colonel replied: 'Yes, I reckon so; but I have plenty more of them and it's all right.'"

Atwater says that during the excitement following the decision, "Colonel King paced the hall, brandishing a huge cane and denouncing in unmeasured terms all who aided or abetted in holding a slave in Minnesota." Quite a number of citizens, among them several Republicans, opposed the entire proceedings. They argued that Eliza was the slave of a humane master and was well treated; that the officious meddling would create bad feeling and keep away from Minneapolis many wealthy southern tourists who came to the city and spent their money freely. The hotel keepers were especially indignant. Others in the town who profited financially through the presence of Southerners in Minneapolis joined with the hotel men in denouncing "the pernicious activities of the abolitionists." This free expression of opinion so alarmed Colonel King and his associates that they armed themselves and stood guard over the Atlas office during the night following the trial, though no mob appeared. The "cohorts of slavery" were sleeping quietly in their beds.

Immediately after Judge Vanderburgh rendered his decision, Eliza was [486] hustled into a carriage and driven to the home of W. D. Babbitt, "she would be safe." Late that evening a crowd of boys and young men surrounded Mr. Babbitt's house and kept shouting: "Nigger lovers! Nigger lovers! Let that nigger alone; she wants to go home." Babbitt and some of his friends who were guarding Eliza got frightened at the demonstration and managed to conduct the woman to another refuge. The poor slave begged the men to turn her loose and let her go back to her mistress but they assured her that she would be killed by pro-slavery men because she had dared to ask for her freedom. A few days later she was sent to Canada. Just why she was sent there, after Judge Vanderburgh had declared she was free, was never explained. A few weeks later she wrote to her abolitionist friends in Minneapolis asking for her "free papers"

and money enough to take her to Memphis, where she said she could get possession of the house and lot left by her husband, and also a good position as a servant with a white family. It is said that her Minneapolis friends were disgusted with the letter and refused to send her the money. A few months later Eliza returned to Colonel Christmas and was afterward freed by the Emancipation Proclamation of President Lincoln.

### CHEEVER'S EXCUSE

While the quality of justice dealt out by the early courts was no doubt equal to that of the present day, their affairs were not always conducted with the same dignity and formality. In the fall of 1858 William A. Cheever was summoned to appear as a witness in a criminal case. Cheever lived near the site of the University of Minnesota, was something of a joker. The Volstead amendment to the Federal Constitution had not then been adopted and it was easy to get whisky in Minneapolis. It seems that Cheever got on a spree and forgot all about the subpoena. Judge Hamlin sent the sheriff to bring him in. When brought before the judge he was asked what he had to say as to why he should not be punished for contempt. Cheever, slightly inebriated, put on a solemn face and offered the following explanation as the reason for not appearing in response to the summons:

“Well, the fact is, Your Honor, I tried my best to get here. The sheriff would pay me no fees upon the subpoena and just before he came I had spent the last dime I had in the world for bread for my family. I started to come here with all the speed I could make, but when I got to the suspension bridge Captain Tapper refused to let me cross because I had no money to pay toll. I tried to borrow five cents from everybody I knew but they either had not the money or were afraid to trust me. I thought of swimming the river, but concluded that I was too old, and that the water was too cold and the current too swift. In short, I made every possible effort to get here, but in vain, so what

could I do but wait until the sheriff came after me?”

Everybody recognized the excuse as one of Cheever’s “fairy [487] but its ingenuity raised a general laugh, in which Judge Hamlin joined, and the charge of contempt was not pressed.

## UNITED STATES DISTRICT COURT

At the time Minnesota was admitted in 1858 the state was made a judicial district of the United States. Sessions of the United States Court were at first held in St. Paul, which city was then as now the capital of the state, and this fact had the effect of attracting many prominent attorneys to Paul. In 1890 Congress provided by suitable legislation that stated terms of the United States District Court should be held in Minneapolis. In 1896 William Lochren, who had long served upon the bench of the District Court of Hennepin County, was appointed United States district judge—the first Minneapolis attorney to be so honored. Since the division of the district and the holding of regular terms of the United States Court in Minneapolis, greater credit has been reflected upon the local bench and bar. ■

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