Multi-Judge Panels in the District Courts of Minnesota, 1875 – 1977

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Foreword.

In 1977 the Legislature repealed a law that had been in force in one form or another since 1875. That law authorized a district court judge to invite other judges in the same district to join him in presiding over a trial or to hear it without a jury. This article describes changes in the law permitting multi-judge panels over the decades and offers explanations of why this law was enacted and administered by the courts.

Part One.

The antecedent of laws authorizing two-judge panels was enacted by the first Legislative Assembly in February 1849. Curiously it pertained only to unlawful detainer actions in Justice Court. The law required such suits be tried to a jury with two Justices of the Peace presiding.[1] It was in effect only a year or so. When the Statutes of 1851 were collated, this provision was replaced by one vesting authority in unlawful detainer actions in a single JP. [2] But it was in effect long

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[1] Article 17, titled "of Forcible Entry and Detainer," in chapter 6 on Justices of the Peace requires two Justices in unlawful detainer actions:

> Any two justices of the peace shall have authority to inquire, by jury, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements and detain the same, as against those who have a lawful or peaceable entry into lands and tenements, and who, by force, the same; and if it be found, upon such inquiry, that in the unlawful and forcible entry hath been made, and that the said lands and tenements are held and detained by force, or that the same, after lawful entry, are held unlawfully and with force, then such justices shall cause the party complain to have restitution therefor.

1849 Laws, c. 6, Article 17, §1, at 34-35 (approved November 1, 1849).

[2] Territorial Stat. c. 87, §2, at 440 (1851), provides:

> Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same as against those who, having lawful and peaceful

enough for a "UD" case to be heard in justice court in July 1851 and appealed. The case of *Lewis v. Steele and Godfrey* over which JPs Bushrod W. Lott and Orlando Simons were scheduled to preside was set for trial on July 15, 1851, but because Simons was absent that day, Lott continued it until the 22nd. Lewis lost and appealed to the district court which affirmed the order of the justices. He then appealed to the Territorial Supreme Court. It was heard during the July 1852 term. Lewis contended that Lott's order violated the two-justice law, an argument Justice Bradley Meeker found persuasive:

> It is in substance, that the adjournment by one Justice, in the absence of the other, to the 22d, when a jury was impaneled, was wholly unauthorized and void. In ordinary matters of trust and confidence, and, as between individuals merrily, a power and special authority conferred upon two or more cannot be executed by a less number than the whole. *Coke's Litt*. 113 . *Powell on Devices*, 294, 304, and authorities there cited. But here is a class of cases that one Justice of the Peace is empowered to try, but the law reposes that trust and confidence in *two*, by constituting them a Court to issue process, to lay the matter of complaint before the jury, to render judgment, and to issue execution thereon. How much more important that the rule of law above cited shall apply where, as in this case, judicial power affecting the rights and property of many, as delegated to, and vested in the direction of *two* officers of limited jurisdiction! Lewis having been summoned, therefore, to appear before the Justices on the 15th, to defend at the inquest, but one Justice being then in attendance, with no authority to do an act which the law were required two do,

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> entry into lands, tenements, and other possessions, unlawfully detain the same; and if it be found, upon such inquiry that an unlawful or forcible entry hath been made, and that the said lands, tenements or other possessions, are unlawfully held, or are detained by force and strong hand, or that the same, after a lawful entry, are held unlawfully, then such justice shall cause the complaining party to have restitution therefor.

> the process of that day *spent*, and the trial on the 22d null and void.
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> The case is therefore reversed with costs, but without prejudice to proceedings *de novo*.[3]

One wonders whether Orlando Simons remembered this case twenty-two years later when he was on the Court of Common Pleas for Ramsey County and served with Judge Hascal Brill in the trial of George Lautenschlager. Brill was absent a portion of the trial, Simons at other times. After his conviction the case was certified to the Supreme Court where Lautenschlager argued that the absence of one judge violated the law authorizing two judge panels. Justice F. R. E. Cornell dismissed this argument out of hand.[4]

Part Two.

The 9th Legislature established the Court of Common Pleas for Ramsey County in 1867. [5] Five years later a Court of Common Pleas was created for Hennepin County. [6] Neither of these laws authorized judges to meet in a "joint session." The first authorization of a multi-judge panel appeared in 1875 legislation transforming the Court of Common Pleas in Ramsey County. It is an oddity, differing from later laws on the subject. While it permitted the two judges on this court to preside over trials, included a mechanism for breaking a tie and it mandated that all motions for a new trial be heard by the two judges sitting together:

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[3] *Lewis v. Steele and Godfrey*, 1 Minn. 88, 91 (1852).

[4] See infra, at 5-7.

[5] 1867 Special Laws, c. 84, at 272-275 (effective March 9, 1867). At its next session, the Legislature amended laws on the Ramsey County Court of Common Pleas in several respects. 1868 Special Laws, c. 98, at 140-141 (effective February 27, 1868)(setting terms and transfer of cases to and from district court); c. 101, at 388 (effective March 6, 1868)(common pleas and district courts have the same powers).

[6] 1872 Special Laws, c. 179, at 558-562 (effective March 4, 1872).

> Sec. 2. The said judge shalt have the like jurisdiction, authority and powers in all actions and proceedings, and perform the same duties in said court of common pleas as the present judge of said courts and receive the same compensation, payable in like manner, and either one of said judges may hold said court. The business in said court may be divided between the said judges and otherwise regulated by joint rules, and the judges of said court may separately try court and jury cases during the same term or at the same time, and separately transact all other business in said court except as hereinafter provided. *Motions for new trials shall be made before the said judges jointly, and the said judges may, together, by their joint consent, hear and determine any motions and try and decide any actions except jury cases, and when they so act jointly the judge senior in office, or if neither judge is senior in office, the judge senior in age shall preside, and in case of a division of opinion between the judges, his opinion shall prevail.* No order or judgment granted by one of said judges shall be set aside or vacated by the other of said judges, except in case of absence, sickness, or inability, to act of the judge who granted such order or judgment, or except when said judges are in joint session acting in manner aforesaid.[7]

In all probability this law was copied from the laws of a nearby state as the Minnesota Legislature rarely devised novel laws on its own at this time.

The first case tried under this law was *State v. George Lautenschlager*. He was charged with murdering John Lick on November 1, 1874. Jury selection began on March 17, 1875, only twelve days after the law went into effect. Judges Brill and Simons presided. [8] Lautenschlager was found guilty (as were his two co-defendants) and sentenced to death; he then filed a motion for a new trial and the trial

[7] 1875 Laws, c. 69, §2, at 95 (effective March 5, 1875)(emphasis added).
[8] *Minneapolis Daily Tribune*, March 18, 1875, at 3 ("The Murderer. George Lautenschlager Up Before the Court of Common Pleas").

court certified the case to the Supreme Court. He challenged the constitutionality of the 1875 law authorizing two judges to preside over a case. He pointed to the following:

> During the trial, and while testimony was being given, Brill, J., was absent from the court on one occasion about twenty minutes, Simons, J., presiding alone, and adjourning the court during such absence. At the time the jury rendered their verdict, Simons, J., was not present, and Brill, J., alone presided.

Justice F. R. E. Cornell drew the assignment and quickly disposed of this claim:

> The fact that both the judges sat together during the principal part of the trial, and cooperated in conducting it, does not render the trial void, as claimed by appellant. Both possess equal and like jurisdiction, authority and power in all actions and proceedings in said court, save that in cases when they act jointly, and differ in opinion, that of the senior judge shall prevail. Both are authorized, except in motions for new trials, which must be heard jointly, separately to try court and jury cases during the same term and at the same time, to divide between them the business of the court, and otherwise to regulate the same, as they may jointly deem best. Laws 1875, ch. 69. The fact that both concurred in the doing of an act that each had the power to do did not render the act invalid. Either was competent to hold the court and conduct the trial alone, and, there being no prohibition in the statute, the cooperation of the other did not deprive the court of its jurisdiction in the matter. The implied prohibition in the clause permitting them "by their joint consent to hear and determine any motions, and to try and decide any actions except jury cases," does not prevent their sitting together and conducting the trial in jury cases, but simply recognizes their inability to deprive a party of a jury trial in a case where that right is secured by the constitution.

> The organization of the court is complete, and its jurisdiction the same, whether held by one or both of the judges; and when, during a trial which is being conducted in the presence of both, one of them is temporarily absent, this will not affect the validity of the proceeding, especially when, as was the fact in this case, no objection is made at the time. [9]

As the law required, the two judges heard Lautenschlager's motion for a new trial on the ground of newly-discovered evidence; their order denying that motion was appealed and affirmed again by Justice Cornell. [10]

Four years later Lautenschlager brought another motion for a new trial on the same grounds which was heard by Judges Wilkin, Brill and Simons. Judge Wilkin wrote the order denying the motion, concluding:

> Thus again Lautenschlager is denied a new trial and the probability that his life sentence for the murder of Mrs. Lick will be spun out during his mortal existence.[11]

Lautenschlager and his co-defendants did not hang. Governor John S. Pillsbury commuted their death sentences to life imprisonment and Governor Lucius F. Hubbard granted pardons to the three after they had served about 13 years in prison. [12]

Part Three.

When the 18th Legislature merged the Court of Common Pleas into the District Court of Ramsey County in 1876, it added a separate provision authorizing multi-judge district court panels:

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[9] *State v. George Lautenschlager*, 22 Minn. 514, 519-520 (1876)(Gilfillan, C.J., concurring).
[10] *State v. George Lautenschlager*, 23 Minn. 290 (1877).
[11] *St. Paul Daily Globe*, March 25, 1879, at 4. This article reprints Wilkin's complete decision.
[12] *Stillwater Messenger*, October 8, 1887, at 4.

> Sec. 19. The said judges, or a majority of them, may act in joint session, for the trial or determination of any matter before the court, including the trial of jury cases, and when so acting the judge senior in office, or, if neither be senior in office, the judge senior in age shall preside, and the decision of the majority shall be the decision of the court. If, however, only two of said judges are so acting and there be a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of any one of the said judges. [13]

The law provided that a "majority" of judges could act in "joint session" because at the time of the merger there were two judges on the Court of Common Pleas and one on the district court. In March 1875, 51 year old Orlando Simons was appointed to the Common Pleas Court by Governor Davis. He was justice of the peace from 1850 to 1854, when he was elected City Justice. Hascal R. Brill, aged 30, was appointed to the Court of Common Pleas in February 1875, previously serving two years as Probate Judge. He succeeded William Sprigg Hall, who was first elected in 1867. Wescott Wilkin, aged 52, was District Court Judge when the courts were consolidated in 1876. He was elected in 1864 and re-elected in 1871. Wilkin and Simons were Democrats while Brill was a Republican.

The following year, 1877, the Legislature consolidated the Court of Common Pleas with the District Court in Hennepin County and authorized two-judge panels:

> Sec. 2. The said judges may act in joint session for the trial or determination of any matter before the court,

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[13] 1876 Special Laws, c. 209, §2, at 288 (effective March 2, 1876), codified, Stat, c. 64, Title 1, §19, at 635 (1878).

In 1887 the 25th Legislature increased the number of district court judges in Ramsey County from 3 to 4, and it amended the first sentence in the law regarding panels by replacing "majority of judges" with "any number of judges." 1887 Laws, c. 104, §2, at 188 (effective February 25, 1887). By 1891 there were 6 judges; the 1887 law was codified, Stat. Title 1, c. 64, §4452, at 153 (1891), and three years later, Stat. c. 64, Title 1 (1), §4857, at 1284 (1894).

> including the trial of jury cases, and when so acting the judge senior in office, or, if neither be senior in office, the judge senior in age shall preside, his decision shall be the decision of the court, and the decision of the majority shall be the decision of the court. Process may be tested in the name of either of the said judges. [14]

At this time the Court of Common Pleas had one judge, 47 year old Arthur H. Young, who had served since its creation in 1872. The sole district court judge was 48 year old Charles E. Vanderburgh, first elected in 1859. In 1881, the Legislature increased the judges in the Fourth Judicial District from two to three, and changed the law on multi-judge panels accordingly.[15] William Lochren, a 49 year old Democrat, was appointed by Governor Pillsbury to fill the new slot.

That year the Legislature also increased the number of judges in the First Judicial from one to two, and they were granted the option of holding two judge panels. [16] William M. McCluer, a 50 year old Republican, was appointed by Governor Pillsbury to the court.

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[14] Laws 1877, c. 103, §2, at 194 (effective February 26, 1877), codified Stat. c. 64, Title 1, §28, at 637 (1878). Before the merger each court had one judge, and so afterward there were two judges who could sit in a joint session.

[15] The amended law provided:

> The said judges, or a majority of them, may act in joint session, for the trial or determination of any matter before the court, including the trial of jury cases, and when so acting the judge senior in office, or, if neither be senior in office, the judge senior in age shall preside, and the decision of the majority shall be the decision of the court. If, however, only two of said judges are so acting, and there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of any one of the said judges.

1881 Laws, Special Session, c. 84, §3, at 84 (effective November 19, 1881), codified Stat. Title 1, c. 64, §128, at 74 (1883 Supplement). The amendment inserted "or a majority of them," "and the decision of the majority shall be the decision of the court." This language is the same as the 1876 law regarding multi-judge panels in Ramsey County.

[16] 1881 Laws, Special Session, c. 85, §2, at 85 (effective November 19, 1881), provided:

In 1885 the 24th Legislature enlarged the Seventh and Eleventh Judicial Districts from a single judge to two [17] The judges in each district were authorized to act in "joint session."

In 1891 the six judges in the Second Judicial District were empowered to hold a "joint session" as were the six judges in the Fourth Judicial District and the two judges in the Seventh and Eleventh. [18]

> May act in joint session process. The said judges may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases; and when so acting the judge senior in office, or, if neither be senior in office, the judge senior in age shall preside; if there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either of the said judges

It was later codified as Stat. Title 1, c. 64, §17*b*, at 73 (1883 Supplement); Stat., c. 64. Title 1, §4449, at 152 (1891); and Stat. c. 64, Title 1, §4869, at 1286-87 (1894).

[17] Seventh Judicial District: Laws 1885, c. 141, §2, at 131 (effective February 26, 1885), codified Stat, c. 64, §36*b*, at 552 (1888 Supplement), and Stat. Title 1, c. 64. §4466, at 155 (1891); and Stat., c. 64. Title 1, §4449, at 152 (1891); Stat. c. 64, Title 1, §4879, at 1288 (1894). The language is the same as the 1881 law regarding the First Judicial District. See note 4.

Eleventh Judicial District: 1885 Laws, c. 140, §6, at 130 (effective February 17, 1885), codified Stat., c. 64, §36*e*, at 552 (1888 Supplement), 1889 Laws c. 151, §2, at 256 (effective April 13, 1889), and Stat. Title 1, c. 64. §4477, at 157 (1891); and Stat., c. 64. Title 1, §4449, at 152 (1891); Stat. c. 64, Title 1, §4882, at 1289 (1894).

[18] Stat. c. 64, §4452, at 153 (1891), authorized multi-judge panels in the Second Judicial District:

> SEC. 4452. Act in joint session - Process.— The said judges, or any number of them, may act in joint session, for the trial or determination of any matter before the court, including the trial of jury cases; and when so acting, the judge senior in office, or, if neither be senior in office, the judge senior in age, shall preside, and the decision of the majority shall be the decision of the court. If, however, only two of the said judges are so acting, and there is a division of opinion, the opinion of tile presiding judge shall prevail. Process may be tested in the name of any one of the said judges.

Stat. c. 64, §4459, at 154 (1891), authorized multi-judge panels in the Fourth Judicial District; §4466, at 155 (Seventh Judicial District; §4473, at 157 (Eleventh Judicial District).

In 1893 three judges were allotted the Eleventh Judicial District, and they retained the right to convene a "joint session." [19] In 1894, when the general statutes were being compiled, the judges in four judicial districts, each having more than one judge, were granted the option of holding a "joint session." [20]

The 1905 General Statutes authorized several judges to preside over a case but deleted the phrase "joint session":

> Several judges—Division of business, etc.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. [21]

That year there were 18 judicial districts, eight of which had two or more judges.[22]

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[19] 1893 Laws, c. 137, at 259-260 (effective March 8, 1893). Section 3 provided: "The said judges, or a majority of them, may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases, and, when so acting, the judge senior in office, or if neither be senior in office, the judge senior in age shall preside, and the decision of the majority shall be the decision of the court. If, however, only two of the said judges are so acting, and there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either one of the said judges."

[20] Stat. Vol. 2, c. 64, Title 1 (2) §4854, at 1283 (1894) (First Jud, Dist.); §4857, at 1284 (Second Jud. Dist.); §4869, at 1286-1287 (Fourth Jud. Dist.); §4879, at 1288 (Seventh Jud. Dist.); §4882, at 1289 (Eleventh Jud. Dist.).

[21] Stat. c. 5, §105, at 19 (1905), codified Stat. c. 5, §168, at 41 (1913), and Stat. c. 5, §183, at 28 (1923); Stat. c. 5, §183, at 43 (Mason's Statutes 1927); Stat. c. 5, §183, at 22 (Mason's 1931 Statutes Supplement). It was amended in 1931.

[22] 1905 Blue Book, at 639-647. The districts which had two or more judges were the First (2 judges), Second (6), Fourth (6), Seventh (2), Eleventh (3), Twelfth (2), Fourteenth (2), and Fifteenth (2).

In 1909 the 36th Legislature increased the number of judges in the Eleventh Judicial District from three to four, and authorized them to form multi-judge panels:

> To act in joint session.—Sec. 14. The said judges or any two or more of them, may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases, and when so acting the judge senior in office, or, if neither be senior in office, the judge senior in age shall preside, and the decision of the majority shall be the decision of the court.
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> If, however, the judges so acting together shall be evenly divided in opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of any one of the said judges. [23]

In 1927 there were 19 judicial districts, ten of which had two or more judges.[24] The law on multi-judge panels remained unchanged.[25] In 1931 the Legislature amended this law by adding a lengthy provision authorizing the chief judge of districts of not less than 10 counties to assign judges to hold court in certain counties. Under this provision, a judge who wanted another judge to preside with him over a case would first seek permission from the chief judge.

> Several judges—division of business.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The

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[23] 1909 laws c. 126, §14, at 119 (effective March 29, 1909); codified Stat. c. 5, §§105-2, at 22-23 (1909 Supplement); this provision was re-enacted by the 37 th Legislature. See 1911 Laws, c. 368, §13, at 512 (effective May 15, 1911).

The provision in the 1905 General Statutes regarding "joint sessions" in districts having more than one judge was re-codified eight years later: Stat. c. 5, §168, at 41 (1913) (district courts in general); Stat. c. 5, §188, at 45 (1913) (eleventh judicial district).

[24] 1927 Blue Book, at 462-470. First (2 judges); Second (9); Third (2); Fourth (11); Fifth (1); Sixth (1); Seventh (3); Eighth (1); Ninth (2); Tenth (1); Eleventh (6); Twelfth (2); Thirteen (1); Fourteenth (2); Fifteenth (3 (Sixteenth (1); Seventeenth (1); Sixteenth (1); and Nineteenth (1).

[25] Stat. c. 5, §183, at 43 (1927).

> business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. *In districts composed of not less than ten counties, the senior judge, at least 30 days before the time appointed by law for the holding of a general term of the court in each county, by order filed in the office of the clerk of the court in that county, shall designate and assign one or more of the judges of such district to preside at the term so appointed, and the clerk forthwith shall mail a copy of such order to each judge of the district. If any judge assigned to hold a term of court as herein provided is incapacitated by illness or otherwise to preside at such term, another judge shall be designated and assigned in like manner to take his place. The same judge shall not be designated or assigned to hold two consecutive general terms in the same county.*[26]

By 1957 the Legislature still micro-managed the district courts, although it left the option of having multi-judge panels intact:

> Presiding judge's duties; court business regulated and divided.
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> Subdivision 1. In all districts the judges shall meet annually and elect one of their number to be presiding judge, who shall be designated as the chief judge thereof and who shall preside at all meetings of the judges of such district. He shall attend all meetings of the presiding

[26] 1931 Laws, c. 51, at 49 (effective March 9, 1931); codified Stat. c. 5, §183, at 25 (Mason's 1931 Statutes Supplement); Stat. c. 5, §183, at 34-5 (Mason's 1936 Statutes Supplement); Stat. c. 5, §183, at 45 (Mason's 1938 Statutes Supplement); Stat. c. 5, §183, at 70 (Mason's 1940 Statutes Supplement); Stat. c. 484, §484.34, at 3494-95 (1945); Stat. c. 484, §484.34, at 3532-33 (1949); Stat. c. 484, §484.34, at 3665-66 (1953).

> judges of the state which may be called by the chief justice pursuant to Section 5 of this act, and generally shall be responsible for the coordinating of the business of the court in such district. The business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. In districts composed of more than one county, the presiding judge, at least 80 days before the time appointed by law for holding of a general term of the court in each county, by order filed in the office of the clerk of the court in that county, shall designate and assign one or more of the judges of such district to preside at the term so appointed, and the clerk forthwith shall mail a copy of such order to each judge of the district. If any judge assigned to hold a term of court, as herein provided, is incapacitated by illness or otherwise to preside at such term, another judge shall be designated and assigned in like manner to take his place. The same judge shall not be designated or assigned to hold two consecutive general terms in the same county unless the presiding judge or the judges of the district by order or rule otherwise direct. [27]

This law remained unchanged until it was repealed by the 70th Legislature in 1977. [28] The era of the multi-judge district court panels had come to an end—unless one considers an odd footnote to this history. That very Legislature, the 70th, authorized panels of three district court judges to hear appeals from municipal and county

[27] 1957 Laws, Special Session, c. 14, §6, at 1832 (effective July 1, 1957), codified Stat. c. 484, §484.34, at 3936 (1957), Stat. c. 484, §484.34, at 4169 (1961), Stat. c. 484, §484.34, at 4544 (1965); Stat. c. 484, §484.34, at 5879 (1976).
[28] 1977 Laws, c. 432, §49, at 1168 (effective July 1, 1977).

courts.[29] This experiment did not last long. Three judge appeals courts were abolished in 1983.[30]

Part Four.

The Legislature did not force the law authorizing multi-judge panels upon an unwilling judiciary. This legislation was enacted in 1875 and re-enacted over the following decades because judges wanted it. Why? One means of answering that question is to examine the cases in which the law was invoked.

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[29] The following is the appeal procedure:

> 484.63. Appeal. Subdivision 1. An aggrieved party may appeal to the district court from a determination of a county court or a county municipal court as provided in section 487.39. The appeal shall be heard by a panel of three judges in the district in which the action was first adjudicated. The judges shall be assigned by the chief judge of the judicial district. Upon request by the chief judge of the judicial district the supreme court may temporarily assign a judge from another district to serve on an appellate panel pursuant to section 2.724, subdivision 1.
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> Sec. 2. The chief judge of the judicial district may schedule appellate terms for the hearing of appeals from lower courts. He shall give three weeks' written notice of every appellate term to the clerks of the district court in the counties in which the appeals arose.
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> Sec. 3. Pleading, practice, procedure and forms an appellate actions shall be governed by rules of procedure adopted by the supreme court for appeal from county to district court. On appeal to the district court briefs shall be acceptable if reproduced from a typewritten page by any means which produces a clear black on white copy.

1977 Laws, c. 432, §13, at 1155, §28, at 1161-1162, and §30, at 1162 (effective July 1, 1977), codified Stat. c. 484, §484,63, at 6169 (1978); Stat. c. 484, §484,63, at 8234 (1982).

[30] 1983 Laws, c. 247, §219 (effective June 1, 1983)(repealing the law authorizing three judge appeals panels)

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The cases over which two judges presided were either trials over divisive, controversial public issues—what might be called "hot potato" cases—or those presenting difficult legal questions.

Each "hot potato" case splintered the community into factions because it raised legal questions about taxes, politics or some other public issue. Assigned to a controversial lawsuit, a judge might call in another judge in their district to share the responsibility for the ruling or verdict. An example is a suit over the highly charged question of whether to build a new courthouse for Blue Earth County in 1886. A county historian describes the court hearing:

> After the public meeting the faction opposed to the Court House met in conference with their attorney, Lorin Cray, of Lake Crystal, and determined to take the matter into court. Accordingly an injunction suit was brought in the name of E. D. Cornish against the County Commissioners to restrain them from building the Court House. The papers were served May 3, 1886, and the next day the County Board retained Daniel Buck and E. P. Freeman to assist the County Attorney, A. R. Pfau, in defending them in the suit. At this meeting O. Martinson and C. H. Piper were added to the building committee. *At the hearing of the injunction proceeding on May 10, 1886, Judge C. M. Start* [Republican]*, at the request of Judge Severance* [Democrat] *joined him upon the bench.* On May 14, they filed their decision holding that the Commissioners were justified in proceeding to build a new Court House, that they could contract for $23,000 of work that year, but they were restrained from going beyond that figure at present; they were permitted, however, to levy a tax thereafter from year to year, not exceeding the five mill limit. It was really a victory for the County Commissioners.[31]

[31] Thomas Hughes, *History Blue Earth County and Biographies of Its Leading Citizens* 201-202 (1909)(emphasis added).

Another example is the Democrat's court challenge in 1892 to how the Republican Secretary of State listed presidential electors on the ballot. The Democrats and People's Party had endorsed a fusion ticket that year. Fearing that the ballot would confuse their voters, the Democrats brought a mandamus action in Ramsey County District Court to compel the Secretary to redesign the ballot. It was assigned to Judges Hascal Brill, a Republican, who asked Charles E. Otis, a fellow judge on the District Court and a Democrat, to hear the case with him. In so acting Brill took advantage of the state law authorizing multi-judge panels in district court cases. He saw that any ruling in this politically charged case would be more palatable to the public if it was by two judges, each with different a political affiliation. One day after oral argument, Judge Brill, with Judge Otis concurring, dismissed the Democrat's suit because decisions of the Minnesota Supreme Court deprived it of jurisdiction over disputes about the Secretary of State's configuration of the official ballot. [32]

A third example is the contentious annexation of a large tract of land known as "Range 44" by Otter Tail County from contiguous Wilkin County in 1872. Over twenty years later a lawsuit was brought in Otter Tail County District Court challenging the constitutionality of the legislation that authorized only voters in Otter Tail County (not Wilkin) to approve the acquisition of Range 44. Seventh Judicial District Judges Luther L. Baxter, a Democrat, and Dolson B. Searle., a Republican, ruled the law was constitutional and certified the case to the Supreme Court, which affirmed their decision.[33]

It might be said that underlying each "hot potato" case was electoral politics, and in some instances this was true. The dominance of

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[32] For a discussion of this case, see Douglas A. Hedin, "Now on the Ballot for Candidates for the Minnesota Supreme Court: 'Calvin L. Brown (Republican-Democrat)' - The Story of *In re Day* (1904)" 13-15, 79-110 (MLHP, 2017).

[33] *State of Minnesota v. Lars O. Honerud*, 66 Minn. 32, 68 N.W. 323 (1896) (Start, C. J.). For the background of this case, see the memoir of Ebenezer E. Corliss, "Reminiscences of the Early History of Otter Tail County," 22-31, 44-52 (MLHP, 2012)(first published, 1916).

political parties in the selection of candidates for judgeships in the late nineteenth century and first decade of the twentieth must never be underestimated. A single judge presiding over a headline producing lawsuit that has divided the community or district may foresee that an opposition candidate might use that case to unseat him.[34] One response to this dilemma was to recruit another judge in the district to jointly act in the case, thereby sharing the credit or blame for the result. This was one way district court judges tactically used the law authorizing multi-judge panels. [35] Strategically a panel endeavored to craft a decision the public would accept and respect, a ruling dictated by the impartial application of settled legal principles, regardless of the identities of the judges.

New or difficult questions of law were sometimes heard by a panel. In 1882 Judges William Lochren and Austin H. Young issued an order preventing a fraud on city taxpayers. The issue in the case was novel but not difficult; they likely heard it together because of the prominence of the parties—the mayor was in one corner, the school board in another.

Tousley Salary Swindle Bursted.

> In the [Hennepin County] district court yesterday decision was rendered in the case of Mayor A. A. Ames vs. The Members of the Board of Education and Comptroller Hill, in which was asked that a permanent injunction be issued which should forever restrain the defendants from paying to O. V. Tousley $1,300 salary for services as

[34] This happened to Ninth Judicial District Judge Benjamin Webber after he made a controversial ruling in a county seat contest in Renville County. From the *Renville Star Farmer*, quoted in *New Ulm Review*, August 22, 1894, at 5:

> Some of our exchanges, notably the Sacred Heart Bladet, have found fault with the judge for having issued the injunction in the Renville county seat contest and have threatened him with revenge therefore. Of course the Star Farmer don't endorse any such tactics.

[35] Single judges serving in judicial districts where this law was inapplicable would likely say that these rare "hot potato" cases were just part of the job of judging.

> teacher and superintendent of the schools of Minneapolis during the year while he is occupying the office of consulorship to Frieste, Austria, and absent, necessarily, from Minneapolis, and consequently unable to perform the duties incumbent upon a superintendent or teacher of the Minneapolis schools, granting the prayer of the plaintiff.
>
> This decision was rendered by Judges Lochren and Young after careful consideration, and establishes the fact that the action of the board of education in donating the $1,300 from the peoples money was illegal. The decision was received with approbation by the people of Minneapolis, and the schools may now have the full and direct benefit of all the money appropriated for it.[36]

In 1885 Hennepin County District Court Judges Austin H. Young and Martin B. Koon tried the famous cases of Caroline and William King vs. Philo Remington, which raised novel legal questions within a complex factual background—what the *Minneapolis Tribune* called "the most important private case ever tried in the northwest."[37] After a lengthy trial, the panel ruled in favor of the plaintiffs, and the Supreme Court affirmed. [38]

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[36] *St. Paul Daily Globe*, October 14, 1882, at 7.

[37] *Minneapolis Tribune*, August 4, 1885, at 4.

[38] *King v. Remington*, 36 Minn. 15, 29 N. W. 352 (1886). On June 15, 1875, William and Caroline King, who were deeply in debt, conveyed large tracts of land they owned in Hennepin and Meeker Counties to Philo Remington. Simultaneously, William King and Remington signed a separate, confidential agreement providing that these transfers were security for advances Remington had made and would make to King to enable him to get out of debt and repay Remington and other creditors; this agreement, which was not recorded, gave Remington considerable authority to dispose of the lands and use the proceeds to pay Kings' debts. The Kings continued to manage the lands until 1878 when Robert S. Innes took control due to King's failing health. Innes was aware of the 1875 side agreement. In November 1877, King filed bankruptcy and listed as assets the lands previously deeded to Remington. The following year, the bankruptcy register sold the scheduled assets to Remington for $25. In 1882, Remington sold sections to a partnership of Innes and Louis Menage and his wife for $492,000. Thereupon the Kings filed two lawsuits that were "tried together by Judges Young and Koon, without a jury." They ruled that the transfers to

In 1890 the *Minneapolis Tribune* reported a case raising a novel question that was primarily of interest to the bar:

> QUESTION OF COSTS.
>
> New Law Point Raised Before District Court Bench.
>
> Judges Hicks, Russell and Jamison sat in joint session yesterday to decide a point of some importance as to the practice in assignment and receivership cases.
>
> The case in point was the petition of Geo. R. Fletcher, original assignee of the State Bank, for an allowance of costs and expenses out of the estate, growing out of an appeal taken by him to the supreme court in the matter of the litigation in which his claim as assignee was cut down in the district court.
>
> Attorney Flannery argued for Mr. Fletcher, showing some authorities which the court thought were not in point. Attorney Arctander argued that the appeal was taken by Fletcher purely for his own benefit and as a consequence the court would hardly be justified in granting it.
>
> After the argument the court held that it did not see how from principle or precedent, the costs could be allowed. Fletcher asked for $404, of which $77 was for the defendant's costs. An item of $7 was allowed.[39]

Remington in the bankruptcy proceeding and from Remington to the partnership were void, rulings the supreme court affirmed.

Chief Justice Gilfillan held that the June 15, 1875, side agreement imposed fiduciary duties upon Remington, that he was a trustee not a mortgagee. "We think," Gilfillan wrote, "there has seldom come before any court a case in which one man reposed in another so entire, absolute, and implicit confidence and trust as King reposed in Remington, with a view to the settlement of his affairs, the relieving himself from his pecuniary embarrassments, and the saving of much of his property as could be saved after payment of his debts." And in an unusual ruling, he held that the state court had jurisdiction to determine the nature of King's interest in the realty listed as assets in the bankruptcy. "The bankrupt court determines that the bankrupt's lands shall be sold, but it does not assume to determine that his interest in the land maybe."

[39] *Minneapolis Tribune*, June 16, 1894, at 4.

In 1932 the State of Minnesota sued Oliver Iron Mining Company and fourteen subsidiaries to recover unpaid taxes levied on 43 mines in St. Louis County. The issue in each case was the proper valuation of the mine. The cases were consolidated and tried before five of the six judges of the Eleventh Judicial District. Four of the judges concurred in the findings of fact, and issued judgments against the mining companies. On appeal a majority of the Supreme Court largely affirmed the panel.[40] The district judges likely met together for three reasons: first, these were closely watched cases raising difficult issues of importance for the economy of northern Minnesota; second, they did not want separate trials which would result in contradictory valuation methodologies and findings of fact; and third, they wanted to present a united front to the Supreme Court in the inevitable appeals.

Over time judges put the law to use in ways the Legislature did not envision in 1875 when it passed the first law authorizing multi-judge panels in Ramsey County. Judges with prior judicial experience served at that time. [41] When the court of common pleas was merged into the district court in Hennepin County in 1877 both judges had years of experience on the bench.[42] Soon men with no prior judicial experience were appointed to the district court.[43]

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[40] *State of Minnesota v, Oliver Mining Co*., 198 Minn. 385, 270 N.W. 609 (1936). Associate Justice Julius J. Olson wrote for the majority, which included Royal A. Stone, Clifford L. Hilton and Charles Loring. Chief Justice John P. Devaney dissented.

This case was the inspiration for Margaret Culkin Banning's *The Iron Will* (Harper & Brothers Pub., 1936), reviewed by Dr. Zabelle Stodola (MLHP, 2018).

[41] See supra, at 8.

[42] See note 15.

[43] To get acclimated the newcomers sometimes accompanied experienced judges to their assignments. As reported in the *Minneapolis Tribune*, William D. Cornish, appointed to the Ramsey County District Court by Governor Merriam on December 4, 1890, followed other judges on their assignments two days later:

> W. D. Cornish, the newly appointed judge, sat with Judge Brill in the special term cases yesterday, and later with Judge Kelly in the Horton murder trial.

Judges Frederick Hooker and William Lochren presided over Ignatius Donnelly's celebrated libel suit against the *St. Paul Pioneer Press* in Hennepin County in October 1891. Initially it was assigned to 44 year old Hooker, who had been on the bench only two years. Having never presided over a trial such as this, he asked Judge Lochren to join him. Each issued rulings during the trial. Spectators clapped during Cyrus Wellington's summation, bringing a warning from Judge Lochren to cease or he would clear the courtroom. Judge Hooker delivered the lengthy instructions to the jury, which the two must have prepared together. [44]

Conclusion.

Cases tried or decided by a panel of district court judges between 1875 and 1977 made up a miniscule percentage of cases on the calendars of the clerks of court of the districts where these panels were authorized. A volume of *Minnesota Reports* seldom included a decision of the Supreme Court in an appeal of a case where two or more judges

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Minneapolis Morning Tribune, December 7, 1890, at 15. The appointment of Cornish, a Republican, to fill the seat of the late Orlando Simons, a Democrat, was condemned by Democrats because it breached a custom of maintaining a political balance on the district bench. *St. Paul Daily Globe*, December 5, 1890, at 2.

[44] *St. Paul Sunday Globe*, October 25, 1891, at 1 ("Judge Flandrau's arguments were next taken up and dissected as only Mr. Wellington could do it. Mr. Flandrau had asked 'What is an independent man?' Mr. Wellington answered with a perfect climax. He gave a definition by pointing with fervor and burning eloquence to the career of the most famous men in the world's history, and ended by ranking Mr. Donnelly with them. The applause ran through the court room, and Judge Lochren admonished the audience that they must observe decorum or leave the room.").

According to the front page story in *St. Paul Sunday Pioneer Press*, October 25, 1891, on the lawyers' summations, the jury instructions and the $1 verdict:

> The trial of the case on the part of Judges Hooker and Lochren, who sat together throughout the trial, was a model of fairness and impartiality. In all their rulings upon many points of law raised by the talented counsel during the progress of the trial, the spirit of even-handed justice was invariably paramount, and no favor was shown either side.

served, but when one appeared it invariably was important. This article is an attempt to decipher why and in what cases district court judges used the law authorizing multi-judge panels. It is one chapter in the history of Minnesota courts.

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