Russell Sage v. Village of Reads — A "Comedy of Errors"

BY

John W. Murdoch

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Preface

By

Douglas A. Hedin
Editor, MLHP

John W. Murdoch was a titan of the Wabasha County trial bar from the 1890s to his retirement in 1942. He later moved a few miles down river to Lake City. In the early 1950s, he published recollections of two of his cases in local newspapers. His account of the *Russell Sage v. Reads Landing* case was published in *The Lake City Graphic* on February 14, 1952. About this case he wrote, "Among all the cases which, in more than 50 years of practice, have come under my observation, this case possesses more striking novel and humorous aspects than any other."

It is posted here. It has been reformatted; case names and titles of books italicized; the photograph of Murdoch on page 5 was in the original newspaper article but all other photos and the numbered footnotes are by the MLHP. The article's title is by the MLHP (it was originally headlined "Pioneer Attorney of County Relates Interesting Story of Reads Landing 'Comedy of Errors.'").

Murdoch's account of "The Wabasha Doctors' Murder Trial," published in the *Wabasha County Herald* on February 17, 1954, is posted separately on the MLHP.

Viewers are encouraged to read the profiles of John W. Murdoch and John F. McGovern in the "Wabasha County" category in the Archives of the MLHP.

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Russell Sage v. Village of Reads —

A "Comedy of Errors" *

By

John W Murdoch

This is a tale which is long-awaited telling: a comedy of errors involving a village which for some years was absolutely dead and didn't know it; a suit brought in judgment rendered against a corpse; a contest between a tiny Minnesota municipality and a great New York capitalist; the loss and recovery of a cemetery, and a final judgment of United States court of equity, the result of which was enough to make angels weep.

This comedy centers about two litigants grotesquely matched as to importance and financial standing, the one being Russell Sage, the great New York financier, and the other the little Village of Reads Landing, tucked away at the foot of the towering bluffs on the Minnesota shore of the menaces of the river, only a few hundred yards below and on the opposite side of the mouth of the Chippewa, – a contest between David and Goliath. And now a few words concerning these ill matched contestants:

Charles Edward Russell in his book "A-rafting on the Mississippi" says, (page 21) "Reads Landing, – that busy, thriving confident little city, more than 2000 inhabitants when I knew it. Twenty steamboats at a time have lain between its water front waiting for the tardy ice to move out of Lake Pepin. Lines of stages used to start from it for St. Paul and Mankato when the navigation was interrupted. Famed for its hotels it was, in those days, its inhabitants proclaiming that in proportion to its population it had more than any other city in the country.

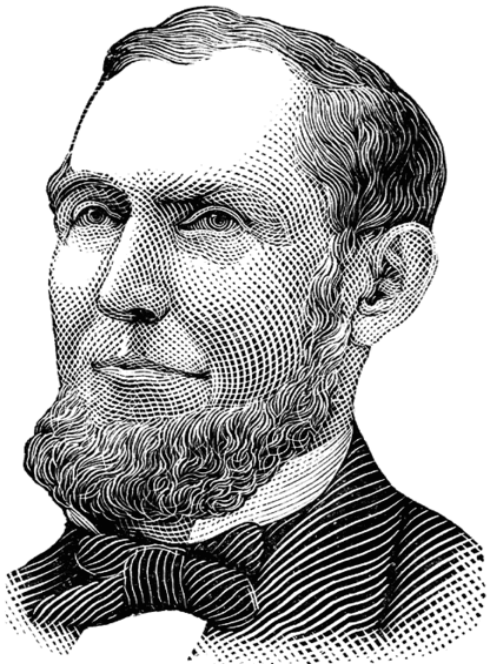
*** Two or three years ago Mr. John W Murdoch, attorney, let us read a manuscript dealing with early history of Reads Landing. Since that time we have frequently asked permission to publish the story. Permission has now been granted and the Graphic is happy to print an interesting bit of County history – the publishers.**

Loggers Add "Color"

"They might have been right, for more than twenty fully equipped caravansaries were in operation. The loggers used to come down with their great log drives and then tarry for days or a week in an attempt to add color to the local landscape, usually succeeding beyond anyone's fondest dreams. No place on the river was more famous, – Reads Landing – it used to issue bonds for local improvements that were actually made. Once it deemed itself a rival of St. Paul and would have thought scorned to be compared with St. Anthony Falls, now and now I am told it has a population of ninety-three souls and grass is mown in the streets that used to echo with drays in stages. The river flows past as before, out of the mystery above to the mystery below; the old posts to which the steamboats used to tie up are not are still shown to the curious; and a row of old houses are the ghosts of the dead and gone traffic".

Success Story

And now as to Russell Sage: the tale of his life reads like that not unfamiliar American success story. He was born in Anita, New York in 1816 and lived to be 90. He began his business life as a clerk in his brother's store, entering the retail grocery business on his own account in 1837, and from 1839 to 1857 was a wholesale grocer in Troy, New York. He was a Whig member of Congress from 1853 to 1857.



In 1863 he removed to the city of New York and shortly began large operations in railroad and other securities. He was a business associate of Jay Gould and accumulated one of the largest fortunes in America.

Perhaps no man in this country in his day attracted more of envy or inspired more cordial hatred. He was of the exact pattern which delete president, Theodore Roosevelt, had

in mind when he referred to "malefactors of great wealth" and "economic royalists".

The story of the old days of Reads or "Reads Landing", to give it its original name, has been told by many writers and by none better than the late Capt. Bill, but the story of the Russell Sage case has never had its historian and this comedy of errors should not be lost to future generations. As the present writer is the only individual now living who was a participant in this case, and has personal knowledge of the facts concerning it, he has concluded to set them down in this account and preserve them in this publication.

Quote from Dickens

In Charles Dickens' *Bleak House* there is a character known as "Mr. Bumble". On been confronted by a certain legal proposition he remarked, "If that is what the law says, than the laws is an ass". Many another observer since his time in scanning some of our judicial decisions, has echoed that same sentiment, and it strikes me that no case which has come under my observation more readily suggest this quotation than the Russell Sage case. I say this with courage born of the knowledge that all of the judges connect with this case have been gathered to their fathers and I am in no danger of being cited before them to answer to a charge of contempt of court.

John W. Murdoch

In fact, I feel no contempt for the final decision. It aptly illustrates one of the blind spots in our judicial system. Our courts admit or administer what is known as "law" and "equity". There is a popular idea which I've often heard expressed, that "law is nothing but justice", and what justice really is in any given case may be readily understood by any man on the street, – there should be no mystery or uncertainty about it.

As a matter of fact or law, the actual situation is not quite as simple as that.

System Was Certain

Originally the English courts, from which we get our great body of the common law, were strictly LAW courts, clothed with the duty of administering statute and common law. There was one thing to be said in favor of the system – it was certain.

If you executed and delivered a promissory note for $500 for a valid consideration and did not pay it when due, the owner of the note could be very certain that the court would give him judgment against you for the full amount of the principle of the note plus interest and costs.

But there might well be some reason why, in equity and justice, you should not pay that note. The note may have been procured by the grossest of frauds, you may never have realized that you were signing a promissory note when you affixed your name to the document, and a judgment against you would be a travesty upon justice.

Out of situations like this was born the Court of Equity, whose chancellor was supposed to be the keeper of the King's conscience. This court was not bound by the strict, harsh and unyielding rule of the law courts, but could administer justice in the particular case as it appeared to the equity judge.

That was a much needed improvement on the old system, but it had two disadvantages. The first was that there was a large element of uncertainty introduced into the judicial system. Law was no longer to be found in the books. A considerable part of it was buried in the bosom of the particular judge who tried the case. Judges being human, some surprising judgments were spread upon the records of the courts.

The second difficulty was that, as time went on by, these decisions of equity courts being published, a large body of "equity law" came into being. The lower courts were obliged to follow the decisions of their superior courts.

Judges Hampered

Very frequently the equity judge who wish to render what seemed to him to be an equitable decision, found himself hampered and circumscribed by a former decision of a superior court which compelled him to do less than what he considered justice in the particular case at bar.

So in time, justice, which had long since escaped the fetters of the "law courts", found itself in the grip of the "equity court" from which it was impossible to escape. Something of this sort is what happened in the Russell Sage case. Without further digression, I proceed to a discussion of the facts and the surrounding circumstances, grouping them, as far as possible, in a chronological order so that they may be readily understood.

The original charter of the village of Reads was granted by the Minnesota legislature by the special laws of 1868 and this law definitely fixed the boundaries of the newly established village and set up a complete system of government. The territory of the village was taken from the boundaries of the Township of Pepin and the city of Wabasha, the greater part, about 87%, been taken from Pepin and the balance from Wabasha. The territory taken from Wabasha included the west half of section 30, township 111, range 10, and this tract included Riverview cemetery, located in this west half of section 30 just east of Brewery Creek.

Charter Given

The city of Wabasha was given a charter by the Minnesota Legislature by the special laws of 1869 (sic), and by the terms of this act all of the west half of section 30 lying east and south of Brewery Creek was transferred to Wabasha, so that Riverview cemetery, the protestant cemetery of the town, was restored to the Wabasha where it, of right, belonged.[1]

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[1] 1868 Special Laws, Ch. 34, at 261 (effective March 5, 1868), is posted in the Appendix at 40-50.

The issuance of the bonds sued upon in the Russell Sage case was authorized by two other special acts which were passed in 1868 and 1869.

Pursuant to the provisions of these acts an election was held in the village on the question of the issuance of the securities; the bonds carried by a very large majority. They were issued in aid of the building of the Chicago & St. Paul Railway in the amount of $5,500.00.

Reason for Incorporation

The fact that the building of this railway and the incorporation of the village occurred at practically the same point of time readily suggest that the principal reason for the incorporation at this particular juncture was the purpose of having a village at the spot which could issue was bonds in the aid of the road, and that the attorneys for the railway company were active in procuring the special acts of the legislature. Just why the village should make the railway company a donation in aid of its road is not too clear. The road could not possibly by-pass the village; it could not climb a 500 foot hill; and it could not build in the river. There was no escape from its building exactly where it did, following along the bank of the river and at the foot of the tall bluff to the south.

This election and the issuance of these bonds must have scarcely been noticed by the busy citizens of Wabasha and the few farmers who were then tilling the soil on Pepin Hill, and it cannot have occurred to any of them that either they or their children would on a day twenty-five years distant, be vitally concerned with these events.

In the year 1891 someone, and no one at this date seems to know who that someone was, conceived the idea that it would be a fine thing to have the boundaries of the village of this village extended eastward into Wabasha far enough to include Riverview cemetery which lay in the city of Wabasha adjoining the east bank of Brewery Creek. That idea ripened into fruitage and resulted in an amendment of the village charter accomplished by the passage of another special act of the legislature in 1891. By the terms of this act eastern

boundaries of the village of Reads was extended into Wabasha far enough to include the cemetery. (This was the first joker in this comedy.) This special act was a practical duplicate of the original charter except as to the eastern boundary of the village territory.[2]

Rivalry Was Hot

There was then a considerable feeling of rivalry and jealousy between the citizens of Wabasha and Reads as soon as the protestant population of Waukesha discovered that from henceforth they would have to be buried in Reads they became highly excited. The Hon. William Foreman, lived near Wabasha, then represented the county in the legislature, and he was at once importuned to secure the passage of another act repealing the act of 1891. This he accomplished by chapter 390 of the laws of 1895.[3] (This was the second joker).

From then on for a few years all was quiet along this portion of the waters of the Mississippi until the year 1899. A year or two before that the peace of the village of been slightly disturbed by an election contest. The then sitting officers the village were Albert Gauger, J. G. Brockhoff, C. W. Hornbogen, John F. Brass and Gottlieb Burkhardt. At the election in question F. Schulenberg, J. E. McLeod and James Oliver, among others, claimed to have been legally elected and entitled to displace the sitting officers. The latter refused to budge and refuse to permit the contestants to occupy the village hall or to use a council table, the chairs and spittoon which are part of the furniture of the room. Justly indignant and conscience of the regularity of their election, these contestants went to the Supreme Court and secured from that body a writ of quo warranto calling upon the sitting officers to show cause why they still assume to act as officers of the village and why they refuse to surrender possession of the table, chairs and spittoon to the contestants.[4]

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[2] 1891 Special Laws, Ch. 51, at 551 (effective January 29, 1891), is posted in the Appendix at 50-58.

[3] 1901 Laws, Ch. 201, at 279 (effective April 10, 1901), is posted in the Appendix at 59-60.

[4] On quo warranto proceedings in Minnesota, see Jason Taylor Fitzgerald, "The Writ of Quo Warranto in Minnesota's Legal and Political History: A Study of its

The contestants, or "realtors", to use the technical term, were represented by W. B. Douglas, the Attorney General, and George H. Selover.[5] The sitting officers, or "respondents" in the case in the Supreme Court, were represented by the Wabasha law firm of Campbell & Campbell. The case was carefully briefed and thoroughly argued.

Decision Given

In due time the Supreme Court rendered its decision, on April 21, 1899, which will be found under the name of the *State ex rel Wallace B. Douglas vs. Village of Reads and others*, 76 Minnesota Reports, page 69.[6]

In this decision the court in effect told the respective parties that they all could go home and forget all about the election, for there was no Village of Reads and had been none since the repeal act of 1895. That the amending act of 1891 was a complete substitute for the original charter, and that when the act of 1891 was repealed by the act of 1895 there is nothing left and the village had been a municipal corpse since the date of the act took effect. (Joker number three).

And now I must go back a little to properly introduce onto the stage the villain of the cast, Russell Sage, and shall show how he came to have the spotlight turned on him.

Road Sells Bonds

When the bonds of the village had been issued pursuant to the election first above referred to, they were turned over to the railway company, and they in turn sold them to this same Russell Sage who was then very much immersed in railroad construction and railway

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Origins, Development and Use to Achieve Personal, Economic, Political and Legal Ends." (MLHP, 2015).

[5] George H. Selover (1869-1927) later moved to Minneapolis, where he practiced law and continued advocacy for conservation measures. He was President of the Isaac Walton League and the Minnesota Conservation Council. He died on October 21, 1927, at age fifty-eight. *Minneapolis Journal*, October 2, 1927, at 1.

[6] The Supreme Court's ruling in *State ex rel. Wallace B. Douglas v. Village of Reads and Others*, 76 Minn. 69 (1899), is posted in the Appendix at 19-20.

bonds. The bonds were payable, both principal and interest, at First National Bank of St. Paul, and for a few years following the issuance of the bonds, the coupons were forwarded by Mr. Sage of the St. Paul bank and duly paid.

In a succeeding year the village authorities sent to the same bank the interest money but no interest coupons were forwarded then or ever, and due course to bank returned the interest to the village treasury.

By some mischance these bonds were lost or miss mislaid and accumulated dust probably, in some vault owned by Sage, for a period of nearly a quarter of a century. (Joker number four).

Enter Selover

Shortly after the beginning of the twentieth century there came down from Minneapolis to Wisconsin to practice law a somewhat needy but very able and astute man, George H. Selover, whose name is already been mentioned. It is not im-possible that something of the history of this bond issue and the loss of the bonds may have come to his ears, and that he may have instituted some inquiry, but be that as it may, certain it is that the location of these bonds was discovered and that in 1898 Russell Sage brought suit in federal court against the Village of Reads to recover the amount of his bonds, principal and interest. None of the bonds were due until July 1, 1892, so the statue limitations was not a defense except, perhaps, in part. Sage's attorneys in this suit were George H. Selover of Wabasha and Owen Morris of St. Paul. As a result of this action judgments rendered against the village in favor of the plaintiff or the full amount due on the bonds with interest to date.

On the face of it, Mr. Sage was sitting pretty, for he had in his favor a very formidable looking document under the hand and seal of the United States Court requiring the Village of Reads to forthwith pay

him out of its treasury a very substantial sum of money. But alas, before Mr. Sage could unlimber his artillery for the purpose of compelling payment of his judgment, along came the decision of the Supreme Court of Minnesota above referred to of date April 21, 1899, and Sage woke to the fact that for some time before he began his action his defendant not only was a corpse but should long since have been decently interred. (Joker number five).

Sage "Recovers"

And now what to do? What Sage, with the aid of his astute attorneys did, was aplenty. As soon as he had recovered from the shock he began an action on the equity side of the United States Circuit Court, which sat in St. Paul, against the City of Wabasha and the Township of Pepin.

In his complaint, or "bill in equity" as it is called in equity proceedings, he told the court, in effect about as follows:

"I am Russell Sage, residing in the state of New York; the defendants are Minnesota municipalities and our citizenship being diverse, I have a right in this court of equity.[7]

I am the owner of certain bonds (describing them) duly issued by the Village of Reads in 1869. My security was all the property of said Village, real and personal. The Village of Reads was carved out of the territory of the City Wabasha and the Township of Pepin; the charter of the village was repealed by the legislature of Minnesota in 1895 with no provision made in the repealing act as to where this territory should go. This being true, this territory by operation of law, reverted to the sources from which it came, namely, Wabasha and Pepin. These municipalities now have my security and they must take this recently reacquired territory 'cum onere' [8] and must pay my bonds and proportion of the value of such territory received by each of them."

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[7] Under Article III, §2, of the U. S. Constitution, federal courts have jurisdiction over suits between parties that are citizens of different states. It is commonly called "diversity jurisdiction."

[8] Latin for "with the burden" – meaning that Wabasha and Pepin took the property constituting the Village of Reads subject to obligation to pay his bonds.

Couldn't See Trains

Wabasha and Pepin promptly secured counsel to oppose the proposition and employed in their in their behalf, John F. McGovern,[9] John W. Murdoch and Michael Marx[10] all of Wabasha. It was apparent on the face of it, that however inequitable and unjust to Wabasha and Pepin this proposition might be, it was nevertheless formidable. It may be noted that neither Wabasha nor Pepin had anything to do with original incorporation of the roads. Its territory was taken from them without their consent, and if it was now returned to them that was done without their consent. No citizen of either municipality had a right to vote at the bond election. The greater part of Pepin was 500 feet above the river and the inhabitants did not even see the trains go by, and yet they were asked to pay these bonds. The attorneys for Wabasha and Pepin pondered the situation long and diligently and turned over many law books in their recent search, and finally a bright idea and a strategic move occurred to them. They said to each other, "that old man, Sage, had no business to have his security sweetened by adding to it all the assets of Wabasha and Pepin. All that he is entitled is to have the tax sufficient to pay the debt included on the territory that was Reads. Wabasha and Pepin will have no objection to using their taxing machinery for the purpose of levying such a tax on that territory."


MICHAEL MARX
WABASHA.
LAWYER, COUNTY ATTORNEY WABASHA COUNTY

That seemed plausible, but before that could be accomplished some more legislation was needed. By this time Minnesota adopted a constitutional amendment prohibiting special legislation so any act that was passed had to be drawn so that no matter what its special purpose might be, it would appear to be general in its effect. Such a

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[9] For his memorial by the Wabasha County Bar Association, see "John F. McGovern (1860-1905)." (MLHP, 2012).

[10] For his memorial by the Wabasha County Bar Association, see "Michael Marx (1871-1922"). (MLHP, 2012-2015).

law was drafted and in it no mention was made of Reads, Wabasha or Pepin, but the act in effect provided that if when such a situation as above-described existed in the State then any municipality having territory thus thrust on it, encumbered by a burden of debt, should not itself be required to pay the debt, but should merely use its taxing machinery for the purpose of levying on its unwelcome and newly acquired territory the amount of a sufficient tax to pay the debt. This was a very well appearing law and read beautifully – it is found as chapter 201 (sic) of the laws of 1901.[11] (This act proved to be joker number six).

Lochren Hears Case

The attorneys for Wabasha and Pepin answered this bill of equity and admitted that Sage was entitled to his money but not either in law or equity from their clients, only from the territory which was formally his security, and they offered on behalf of their clients to afford them all aid in securing the levy of a tax against the old Reads territory for the purpose for paying his bonds. They stood on the equity of their proposition and on the legal effect of the act of 1901


WILLIAM LOCHREN
MINNEAPOLIS.
U. S. DISTRICT JUDGE, DISTRICT OF MINNESOTA
(1896—).

The case was heard by Judge Lochren of United States Circuit Court.[12] Judge Lochren was a venerable judge with a long beard, who always, when not on the bench, smoked a long meerschaum pipe. He was a very able judge who had a practice of always deciding a case which was before him immediately on the conclusion of the arguments.

Just how I, the writer this monograph, came to make the final argument before Judge Lochren, I do not know. Mr. McGovern was a senior counsel and would naturally have closed the case and he was, I think, the ablest trial lawyer who has ever practice in

[11] **1901 Laws, Ch. 202, at 280 (effective April 10, 1901), is posted in the Appendix at 59-60.**
[12] **William Lochren (1832-1912) served on Minnesota's Fourth Judicial District, Court, 1881-1893, and was United States District Court Judge, 1896-1907.**

Wabasha. Be that as it may, I did make the final argument. Judge Lochren had before him a pad of paper on which he was taking notes and on every point advanced on the argument in favor of Wabasha and Reads he made a note on the pad in front of him, at the same time acknowledging the force of the argument by an asserting nod of his head. All this was immensely encouraging to the young lawyer who was addressing him and who was, himself, profoundly convinced of the soundness of his argument.

Favors Sage

At the conclusion Judge Lochren cleared his throat, pushed his notes aside and, turning to the stenographer, proceeded to dictate a decision. It was in favor of Sage and against Wabasha and Pepin on every point on which they had relied. He included his decision holding that the act of 1901, however plausibly general it may appear, was nothing more or less than special legislation and not worth the paper on which written. (Joker number seven).


JOHN E. STRYKER
ST. PAUL.
LAWYER; SPECIAL COUNSEL U. S. (1894—).

And now this comedy proceeds rapidly to the final curtain with the innocent victims impaled by the judgment of the appellate court and the villain of the piece tri-umphantly occupying the center of the stage.

Wabasha and Pepin appealed from this judgment to the Circuit Court of Appeals. On this appeal the appellants, in addition to their Wabasha attorneys, employed John E. Stryker of St. Paul.[13] As I recall it the case was finally argued in the appellate court in Kansas City. The court at that time was

[13] John E. Stryker (1862-1940) was a St. Paul lawyer for over a half century. He wrote a study of Justice William Mitchell published in Hiram Fairchild Stevens, 1 *History of the Bench and Bar of Minnesota* 65-71 (1902).

composed of Judges Sanborn,[14] Thayer[15] and Van Devanter,[16] three exceedingly able judges of long experience and in high esteem among the profession.

The appellate court completely sustained Judge Lochren, and in its decision more than suggested that act of 1901 was drawn to fit this particular case. The case is entitled *Pepin Township versus Russell Sage* and is found in Volume 129, Federal Reporter, page 658.[17]

Wabasha and Pepin paid up, the share of Wabasha being $2,089.05, and that a Pepin $13,771.45. The principal of the outstanding bonds with $5000 (one of them had been paid) and the total paid at the end of about twenty-five years was more than three times the amount. Interest compounded works while you sleep.

Final Blow

This was the final blow and it is safe to say that the man on the street in Wabasha and the man on the farm in Pepin were equally unable to appreciate the justice of the decision.

Was it good equity law when the decision is rendered? Was the decision a just one so far as Wabasha and Pepin were concerned?

There was authority for the holding of this appellate court in the former decisions of the United States Supreme Court. It had been held that the legislature may change boundaries of municipal corporations at will; may annex one to another and make any provision sees fit respecting the payment of outstanding debts. The one thing it may not do is to "impair the obligation of a contract."[18]

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[14] Walter Henry Sanborn served on the Eighth Circuit Court of Appeals from 1892 to death on 1928, at age 82. See George Thomson, "Biographical Sketch of Walter Henry Sanborn (1892)." (MLHP, 2012); and excerpts from a testimonial dinner in his honor in 1927, "Walter Henry Sanborn (1845-1928)." (MLHP, 2011-2012).

[15] Amos Madden Thayer (1841-1905) served as U. S. District Court Judge in Missouri, 1887to 1894, when he was nominated and confirmed for a seat on the Eighth Circuit, where he served until death in 1905.

[16] Willis Van Devanter (1855-1941) served on the Eighth Circuit from 1903 to December 1910, when he was nominated and confirmed for a seat on the U. S. Supreme Court, where he served until 1937.

[17] It is posted in the Appendix at 21-39.

[18] Article I, §10, of the Constitution prohibits a state from passing any "Law impairing the obligation of contracts."

This is the sacred cow of the constitution and must not be harmed. Sage's remedy must be preserved.

I think it's very doubtful whether this same court would today reach the same result. The court cannot be criticized for holding the act of 1901 to be special legislation and void, but that does not dispose of the equitable principle contained in that act. Judge Dillon, in his authoritative work on municipal corporations, Volume 1, Paragraph 173, Third edition, lays down the law on a situation like this as follows: "equity will assume jurisdiction, treating the property to taxation as a fund out of which the creditor is entitled to payment and will order the office of the new organizations, within which such property is situated, to levy there on the necessary taxes to pay the creditors."[19]

Says Judge Cooley, – "No greater tyranny can exist than to tax a people to pay a debt they never made and had no voice in the making." Cooley, Cons. Limitations, paragraph 24.[20]

In the process of time strict contract rates have had to defer to some degree to the equities of the debtor. If the court had adopted our theory Sage would still have had his original securities, the property the old Village of Reads, and Wabasha and Pepin would cheerfully have levied upon this property whatever tax was necessary to pay the debt. Manifestly the decision did not accomplish justice so far as a citizen of Wabasha and Pepin were concerned, and no refinement of reason can obscure that glaring fact.

There might well be some historian who could much more adequately cover this case than I have done, but this is my apology.

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[19] John F. Dillon (1831-1914) served on the Iowa Supreme Court, 1862-1868, and on the Eighth Circuit, 1869-1879. See "Judge Dillon's Farewell." (MLHP, 2014) (published first, 1879). His two-volume *The Law of Municipal Corporations*, published in 1872, went through five editions. See generally, Clyde E. Jacobs, *Law Writers and the Court: The Influence of Thomas M. Cooley, Christopher G. Tiedman, and John F. Dillon upon American Constitutional Law* (1954).

[20] This is a reference to *Treatise on Constitutional Limitations Which Rest upon the Legislative Powers of the States of the American Union* (1868) by Thomas M. Cooley (1824-1898), a law professor and Michigan Supreme Court Justice. The literature on Cooley and his influential writings is voluminous. For starters, see Paul D. Carrington, *Stewards of Democracy: Law as a Public Profession* 55-81 (Westview, 1999).

The men who voted the bonds are all gone. The contestants who went to the Supreme Court and the respondents who resisted their attempt, have all been gathered to their fathers. The same is true of all members of the Supreme Court who heard the case. The attorneys in the Russell Sage case, [Owen] Morris[21] and Selover for Sage, and Stryker, McGovern and Marx for Wabasha and Pepin are no more. Judge Lochren is dead. The three judges of the Circuit Court of Appeals who heard the case have passed on to the great tribunal. Of these participants I alone remain.

Humor in Case

Among all the cases which, in more than 50 years of practice, have come under my observation, this case possesses more striking novel and humorous aspects than any other. For those who came on the stage after all these busy actors have left it, I have felt a little short of a duty to preserve the main facts which I have passed in review covering, as they do, a part of the history of this region for more than seventy-five years.

To those readers whose interest and patience have led them to the final paragraph, with very sincere thanks, I subscribe myself,

Respectfully Yours,
John W. Murdoch

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[21] For his memorial for the Ramsey County Bar Association, see "Owen Morris (1858-1930)." (MLHP, 2011-2015).

APPENDIX

STATE ex rel. WALLACE B. DOUGLAS

v.

VILLAGE OF READS and OTHERS.

76 Minn. 69, 78 N.W. 969
April 21, 1899.
Nos. 11,649–(26).

Repeal of Statute—Village of Reads.

The express repeal of the then existing charter of the village of Reads (Sp. Laws 1891, c. 51) by Laws 1895, c. 390, did not revive the village charter originally enacted by Sp. Laws 1868, c. 34. The act of 1895 took effect February 6, 1896, and on that day the village of Reads ceased to exist.


WALLACE B. DOUGLAS
MOORHEAD.
ATTORNEY GENERAL (1899—).

Writ of quo warranto issued from the supreme court against the village of Reads, Albert Gauger and others, requiring respondents to show by what right they claimed to exercise the franchises and rights of such municipal corporation and the rights, duties of the offices of trustees of said village, and why they should not be decreed to have usurped said franchises and offices, and why said corporation should not be annulled.

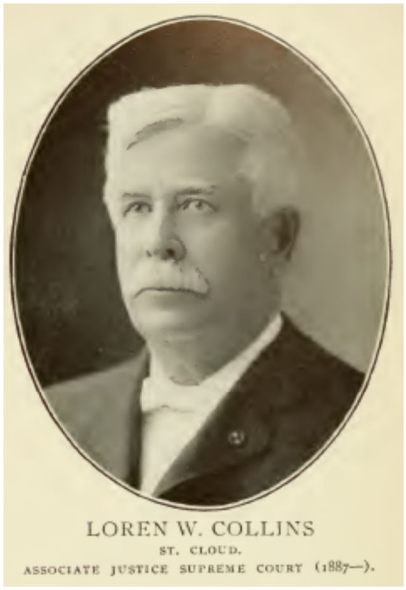
Judgment of Ouster.

***W. B. Douglas*, Attorney General, and *Geo. H. Selover*, for relator.**

***Campbell & Campbell*, for respondents.**

COLLINS, J. Writ of quo warranto, issued upon the relation of the attorney general, against the village of Reads, and several persons alleged to be acting as village trustees, to obtain a decree declaring

and adjudging that said village has ceased to exist, and, as a consequence, that there are no trustees thereof. The question involved was attempted to be presented in *Trautmann v. McLeod*, 74 Minn. 110, 76 N.W. 964, and is referred to in the third subdivision of the opinion. The original charter of the village of Reads is Sp. Laws 1868, c. 34. Slight amendments, of no consequence here, were made at different legislative sessions thereafter. Later, an act to amend the charter was passed (Sp. Laws 1891, c. 51), the first section of which provided that the 1868 statute incorporating the village, and the several acts amendatory thereof, should be amended "so as to read as follows." Then followed a full and complete village charter, somewhat different in form, but not materially differing from the one then existing. All acts or parts of acts inconsistent with its provisions were expressly repealed, but all ordinances, resolutions, and by-laws of the village then in existence were continued in force. The boundaries of the village were extended, and a change was made as to the day on which the village election was to be held, but there were no noticeable departures from the 1868 act. It is evident that this charter was designed to and did wholly supersede the original act of incorporation as amended. By Laws 1895, c. 390, the act of 1891 was repealed in express terms, the only reservation being that the repealing statute was not to take effect until February 6, 1896, two days after the day fixed for the next ensuing village election; so that corporate entity and corporate powers were continued until the expiration of the year for which village officers had already been elected. The charter as it stood in 1891 was, by implication, repealed by the legislation of that year, and the repeal in 1895 of this legislative act did not revive such charter. G. S. 1894, § 258. The village of Reads ceased to exist February 6, 1895.


LOREN W. COLLINS
ST. CLOUD.
ASSOCIATE JUSTICE SUPREME COURT (1887—).

Let judgment be entered in conformity with this opinion.

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PEPIN TOWNSHIP et al. v. SAGE.

Circuit Court of Appeals, Eighth Circuit
129 Federal Reporter 657
(April 14, 1904)
No. 1,887.

1. Municipal Corporations—Effect of Dissolution—Laws of Minnesota.

Sections 33, 34, ingrafted on article 4 of the Constitution of Minnesota by way of amendment in 1892, prohibit the passage of any local or special law regulating the affairs of, or incorporating, erecting, or changing the lines of, any county, city, village, township, ward, or school district, but provide that the Legislature may repeal any existing special or local law, and that it shall provide general laws for the transaction of any business so prohibited. Gen. St. Minn. 1894, § 258, provides that whenever a law is repealed which repealed a former law the former law shall not thereby be revived unless it is so specially provided. In 1868 a village was created by a special act from territory lying partly within a city and partly within a township previously created. The act creating the village made no reference to the city or township, their boundaries, or the statutes defining them. In 1895 the special act creating the village was repealed. *Held*, that the constitutional and statutory provisions cited had no application to such repealing act; that the statutes creating the city and township and defining their boundaries were not repealed by the act creating the village, the effect of which was to except the territory covered by it from the city and township, and from the operation of the statutes creating them, which exception ended when such act was repealed, leaving the territory within the city and township as before its enactment

2. Same.

The express authority for the repeal of any existing special or local law conferred by the proviso to the constitutional amendment is a limitation upon the inhibition against the passage of special or local laws, and withdraws such repealing acts, as well as the changes necessarily wrought in existing conditions, by giving them their ordinary legal effect, from the operation of that inhibition; and

hence the act repealing the law creating the village is not to be construed as one changing the boundary lines of the city and township, but merely as releasing the territory previously excepted from their jurisdiction by the act repealed, upon which it again came within their jurisdiction by virtue of the valid and subsisting statutes creating them and defining their boundaries.

3. Statutes—Effect of Repeal.

Gen. St. Minn. 1894, § 258, providing that the repeal of a law repealing a former law shall not revive the former law unless so expressly provided, applies only to cases of absolute repeal, and not to cases where the law repealed merely ingrafted an exception on a prior law, leaving it in force. In such cases the repeal leaves the former law to be applied without the exception.

4. Municipal Corporations—Dissolution—Apportionment of Indebtedness.

In the absence of constitutional limitation it is wholly within the power of a Legislature on the dissolution of a municipal corporation and the transfer of its territory to others to apportion its indebtedness between such others, and to determine what proportion shall be borne by each; but in the absence of such apportionment they will be severally liable in proportion to the value of the taxable property of the dissolved corporation which falls within their boundaries respectively, and the power of taxation to be exercised to pay such debts will extend to all the taxable property within their respective jurisdictions.

5. Statutes—Constitutionality—Special Legislation.

Const. Minn. art. 4, §33, which prohibits the enactment of special laws where a general law can be made applicable, has in numerous decisions been construed by the Supreme Court of the state, which has uniformly held that a law based on a classification purely arbitrary and not justified by some apparent natural reason, was within the prohibition. Act April 10, 1901 (Laws 1901, p. 279, c. 201), provides, in effect, that where a municipality created by special act, and having outstanding bonds or other written obligations, has been or shall be dissolved by the repeal of the act

creating it, the effect of which is to attach its territory to one or more existing municipalities, such indebtedness shall be enforceable solely against the territory which was responsible for its payment at the time of the repeal. *Held*, that under the rule of the Supreme Court such act is special legislation, and void, there being no natural reason why a distinction should be made between municipal corporations created by special act and dissolved by its repeal and those created and dissolved under the general laws of the state, which have long existed, and provide both for the creation and dissolution of such corporations; nor between "bonds or other written obligations" and other forms of indebtedness in respect to the property which shall be charged with payment on dissolution.

6. Equity—Laches.

An owner of bonds issued by a village, who commenced an action thereon before the expiration of the period of limitation, and obtained a judgment against the village, which was afterward adjudged in quo warranto proceedings to have been dissolved by a prior act of the Legislature, and who, within two years after obtaining his judgment, and within one year after the judgment of ouster, commenced a new suit in equity against the successors of the village, based on his judgment, was not chargeable with laches.

Appeal from the Circuit Court of the United States for the District of Minnesota.

John E. Stryker **(*J. F. McGovern*, *John W. Murdoch*, and *Michael Marx*, on the brief), for appellants.**

George H. Selover **(*Owen Morris*, on the brief), for appellee.**

Before SANBORN, THAYER, and VAN DEVANTER, Circuit Judges.

VAN DEVANTER, Circuit Judge. This is an appeal from a decree charging the township of Pepin and the city of Wabasha, in the state of Minnesota, as the successors of the late village of Reads, in that state, with the payment of bonds issued by the village during its corporate existence, and apportioning the debt between the succeeding municipalities in the proportion that the taxable value of the property falling within each by reason of the dissolution of the

village bears to the taxable value of the entire property within the village at the time of its dissolution. The facts are, briefly, as follows: The village of Reads was created by a special act approved March 5, 1868 (Sp. Laws 1868, p. 261, c. 34), out of territory partly within the township of Pepin and partly within the city of Wabasha. The bonds were issued by that village under authority of special acts approved March 6, 1868 (Sp. Laws 1868, p. 29, c. 16), and March 5, 1869 (Sp. Laws 1869, p. 211, c. 37), by the first of which it is provided that the faith of the village "or the municipal corporation which may succeed it" shall be pledged for the payment of the principal and interest of the bonds, and that to make such payment taxes shall be levied and

collected upon the taxable property of the village in the same manner as other taxes are levied and collected in the village "or the municipal corporation which shall succeed it." Before the actual issuance of the bonds, but after their issuance was authorized by statute and by a vote of the electors of the village, a special act, approved March 5, 1869, again placed in the city of Wabasha the portion of the village which had been taken from the city when the village was created. A special act approved January 29, 1891 (Sp. Laws 1891, p. 551, c. 51), returned to the village the territory originally taken from the city, and from then until its dissolution the village covered the identical territory over which it was first erected. The charter or special law under which the village was created was repealed and the village dissolved by an act approved April 22, 1895 (Laws 1895, p. 798, c. 390), and taking effect February 6, 1896. Acting under the belief, generally shared by all, that this statute did not dissolve or disorganize the village, its inhabitants continued to elect officers, and through them to transact the business oi the village and to govern its territory and people as theretofore until in 1899, when in proceedings in the nature of quo warranto prosecuted by the state a judgment of ouster was rendered against the village and those acting as its officers. *State ex rel. v. Village of Reads*, 76 Minn. 69, 78 N. W. 883. In 1897 appellee

commenced an action in the court below against the village to recover the unpaid principal and interest of all of the bonds, excepting one not then due. The action was defended on behalf of the village by the persons claiming to be and acting as its officers, and July 12, 1898, resulted in a judgment for appellee and against the village for the amount due upon the matured bonds. There were seven of the bonds. One matured each year beginning July 1, 1892.

The present suit was commenced April 24, 1900. Three questions are presented:

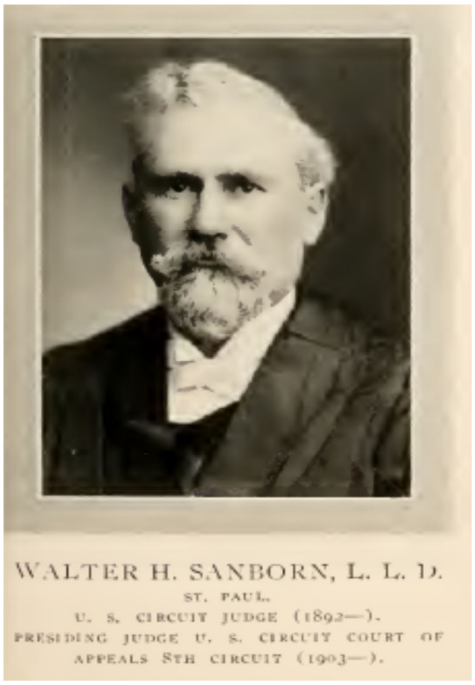
(1) Did the territory of the village, upon its dissolution, fall within the township of Pepin and the city of Wabasha, and make them the successors of the village, each to the extent that it received the territory of the village?

(2) Is the act of April 10, 1901 (Laws Minn. 1901, p. 279, c. 201), entitled "An act providing a method for the payment of the debts of dissolved municipalities," a valid law under sections 33 and 34 of article 4 of the Constitution of the state, and does it restrict the enforcement of the debt in question to the territory which was responsible for its payment at the time of the dissolution of the village?

(3) Is part of appellee's claim barred by laches? It is not questioned that appellee's remedy is in equity.

The present suit strongly resembles and has closely followed the one shown in *Mount Pleasant v. Beckwith*, 100 U. S. 514, 25 L. Ed. 699, where it was determined, in the absence of constitutional restrictions: (1) The creation, division, and dissolution of municipal corporations, and the powers to be exercised by them, are subject to the legislative control of the state creating them. (2) Where one municipality is legislated out of existence, and its territory is annexed to other municipal corporations, it belongs wholly to the Legislature to apportion between them the debts of the dissolved municipality, and to determine what proportion shall be borne by each; but in the absence of such legislation the municipal corporations receiving the territory of the one dissolved will be severally liable for its then subsisting legal debts in the proportion

that the taxable property within it falls within them respectively, and the power of taxation to be exercised to pay such debts will extend to all the taxable property within their respective jurisdictions, and will not be restricted to the property and persons within the territory annexed. Other cases of similar import are *Broughton v. Pensacola*, 93 U. S. 266, 23 L. Ed. 896; *Meriwether v. Garrett*, 102 U. S. 472, 26 L. Ed. 197; *Mobile v. Watson*, 116 U. S. 289, 6 Sup. Ct. 398, 29 L. Ed. 620; *United States ex rel. v. Port of Mobile* (C. C.) 12 Fed. 768; *Brewis v. Duluth* (C. C.) 13 Fed. 334; *Laird v. De Soto* (C. C.) 22 Fed. 421. The principles announced and applied in *Mount Pleasant v. Beckwith* are in full accord with the decisions of the Supreme Court of the state of Minnesota, so far as that court has spoken upon the subject. *State v. City of Lake City*, 25 Minn. 404, 414; *City of Winona v. School District*, 40 Minn. 13, 16, 41 N. W. 539, 3 L. R. A. 46, 12 Am. St. Rep. 687. Counsel for appellants practically concede that the law is as just stated, and they rely upon certain provisions of the Constitution and statutes of Minnesota as controlling in the present case.



WALTER H. SANBORN, L. L. D.
ST. PAUL.
U. S. CIRCUIT JUDGE (1892—).
PRESIDING JUDGE U. S. CIRCUIT COURT OF APPEALS 8TH CIRCUIT (1903—).

Their first contention is that the territory within the village of Reads did not, upon its dissolution, fall within or become part of the township of Pepin and the city of Wabasha, and therefore the township and city are not the successors of the village, and are not charged with the payment of its debts. To support the contention they cite sections 33 and 34, ingrafted upon article 4 of the state Constitution by way of amendment in November, 1892, and section 258, Gn. St. 1894. So far as material, these are as follows:

> **"Sec. 33. In all cases when a general law can be made applicable no special law shall be enacted; and whether a general law could have been made applicable in any case Is hereby declared a judicial question, and as such shall be Judicially determined without regard to any legislative**

assertion on that subject. The Legislature shall pass no local or special law regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward or school district. * * * Provided, however, that the inhibition of local or special laws In this section shall not be construed to prevent the passage of general laws on any of the subjects enumerated. The Legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same.

"Sec. 34. The Legislature shall provide general laws for the transaction of any business that may be prohibited by section one of this amendment [Sec. 33], and all such laws shall be uniform in their operation throughout the state."

"Sec. 258. Whenever a law is repealed which repealed a former law, the former law shall not thereby be revived, unless it is so specially provided."

We think these provisions are not applicable to the act dissolving the village. Originally the township and city included the territory in question, and the special acts which placed it within the village contain no reference whatever to the township or city, or to their boundary lines, or to the statutes defining them. The statutes creating the township and the city were not at any time repealed, but were left in force. The township and the city were not at any time extinguished, but remained in existence under the operation of those statutes. The effect of the special acts creating the village and defining its boundaries was to except the territory covered by it from the township and the city and from the operation of the statutes creating them. Subject to that exception, the legislative will, as at all

AMOS M. THAYER,

JUDGE, UNITED STATES CIRCUIT COURT OF APPEALS.

times registered and expressed in living, operative, and valid statutes—not enactments entirely repealed, either expressly or by implication—placed this territory in the township and city. When the special acts which by implication put that exception upon these statutes were repealed, the exception was at an end. These statutes and their definition of the boundaries of the township and city were then operative as if there had been no exception. They did not need to be revived because they had not been repealed. Nor was any amendment, extension, or modification of them necessary to give them effective operation over the territory of the extinguished village. While carefully prohibiting the passage of local or special laws, including those changing the boundary lines of any city, village, or township, the amendment to the Constitution expressly permits the repeal of existing laws of that character, and impliedly, but not less certainly, permits the repeal to have the usual or ordinary effect of such a statute. This repealing act is confined to a direct annulment of the charter or special law creating the village and makes no attempt at any affirmative legislation or to give to the repeal any other than the usual or ordinary effect.

In respect of the constitutional provisions cited, our opinion may be stated in this manner: The express authority for the repeal of "any existing special or local law" is a limitation upon the inhibition against the passage of special or local laws, and withdraws such repealing acts from the operation of that inhibition. The act repealing the charter or law creating the village of Reads is within the express authorization, and is to be given the usual or ordinary legal effect of such an act. The changes wrought in existing conditions by giving this effect to an authorized repealing act are also within the express authorization, and not within the inhibition. Upon the dissolution of the village the territory embraced therein became part of the township of Pepin and the city of Wabasha, not because the repealing act changed the boundary lines of the township or city, but because it released that territory from the excepting effect of the charter or law creating the village; and when this was done that territory came within the boundaries of the township and city as theretofore lawfully defined, by valid statutes still subsisting, and therefore became part of the township and city, and was brought within their jurisdiction. In other

words, while this territory was released from the effect of the village charter by the repealing act, it resumed its place in the township and city by reason of the statutes creating them and defining their boundaries. Of course, this result would not have followed if these statutes had been repealed in the meantime, or if the act repealing the village charter had provided—if it could do so without violating the inhibition against special or local laws—that the territory and inhabitants within the limits and jurisdiction of the village should be resolved into the body of the state, and be subjected to its immediate control.

What has been said seems in principle to also dispose of the contention in respect of the effect of section 258, Gen. St. 1894, before quoted, but it may be well to notice the construction uniformly given to similar statutes prescribing a rule for determining the effect of a repealing act. Perhaps the first of the cases is *Brown v. Barry*, 3 Dall. 365, 1 L. Ed. 638. An act of Virginia adopted in 1792 expressly repealed a prior act. A third act declared that the operation of the repealing statute should be suspended for the time being. In 1789 a statute like section 258 had been adopted, and the contention was that it prevented the repealed statute from being revived by the suspension of the repealing act. The court, speaking through the chief justice, said:

> **"The act suspending the repealing act of November, 1792, is not within the act of 1789, which declares that the repeal of a repealing act shall not revive the act first repealed. The suspension of an act for a limited time is not a repeal of it; and the act of 1789, being in derogation of the common law, is to be taken strictly."**

***Smith v. Hoyt*, 14 Wis. 273, presented the question in this way: A general statute required the defendant in civil actions to answer in 20 days. An act adopted in 1858 (Laws 1858, p. 134, c. 113) gave the defendant in foreclosure suits six months in which to answer. This was repealed by a still later act. The contention was that the first statute was repealed by the act of 1858 as to foreclosure suits, and that upon the repeal of that act a statute like section 258 prevented the revival of the statute first named. The court held the**

contention untenable, and, after declaring that the act of 1858 did not strictly repeal the first or general statute but merely excepted a class of cases from its operation, said (page 277):

> **"That being so, where the statute creating the exception is repealed, the general statute which was in force all the time would then be applicable to all cases according to its terms. And this would be no violation of the rule of construction before referred to, that the repeal of a repealing act should not revive the act repealed. The act of 1858 was equivalent to a proviso attached to the general rule that it should not be applicable to foreclosure defendants. But if a proviso creating an exception to the general terms of a statute should be repealed, courts would be afterwards bound to give effect to it according to those general terms, as though the proviso had never existed. And this could not be said to revive a repealed statute. The rule against this relates to cases of absolute repeal, and not to cases where a statute is left in force, and all that is done in the way of repeal is to except certain cases from its operation. In such cases the statute does not need to be revived, for it remains in force, and the exception being taken away, the statute is afterwards to be applied without the exception."**

West Virginia has such a statutory provision respecting the effect of the repeal of a repealing act. In holding it inapplicable to the repealing act then under consideration, it was said by the Supreme Court of Appeals of that state in *State v. Mines*, 38 W. Va. 125, 131, 18 S. E. 470, 472:

> **"Now, as I remarked above, section 20 of chapter 35 of the Code was broad and comprehensive, applying every statute of limitation against the state. The act of 1875 [Acts 1875, p. 118, c. 55] only changed or modified it to a certain extent—that is, prevented its operation as to judgments and claims of the state, leaving it in all other respects operative—simply made an exception to the generality of the operation of the statute; and when that**

> **act was Itself repealed, and the exception or limitation was no longer In force, said section 20 operates free of that exception. It was only a partial abrogation of section 20. It would have been different, had It been a total abrogation."**

Other decisions to the same effect are *State v. Sawell*, 107 Wis. 300, 83 N. W. 296; *Edworthy v. Savings Ass'n*, 114 Iowa, 220, 223, 86 N. W. 315; *Glaholm v. Barker*, L. R. 1 Ch. App. 223; *Mount v. Taylor*, L. R. 3 C. P. 645. It is clear that, within the meaning of section 258, the statutes creating the township and city and defining their boundaries were not repealed by the charter or law creating the village, and that the repeal of the latter presents no occasion or opportunity to apply the rule stated in that section.

We are of opinion that the territory of the village, upon its dissolution, fell within the township and city, and made them the successors of the village. But it is urged upon us that this results in transferring the debts of one community to other communities which had 110 voice in the creation of the debts or in their transfer. In one sense that is true, but the result of a ruling to the contrary would be distressing to contemplate. It would amount to a declaration that the state extinguished one of its municipalities under circumstances which make proceedings for the collection and payment of the municipal debts impossible. A result which imputes to a state such an indifference to the claims of justice and to the lawful engagements of the municipalities under its control is not permissible where another is possible under the law. The circumstances of this case do not permit such an imputation. The answer to the present insistence is given in *Mount Pleasant v. Beckwith*, *supra*, where the court said (pages 529, 531, 100 U. S., 25 L. Ed. 699):

> **"But in all these cases, if the extinguished municipality owes outstanding debts, it will be presumed in every such case that the Legislature intended that the liabilities as well as the rights of property of the corporation which thereby ceases to exist shall accompany the territory and property into the jurisdiction to which the territory is annexed. * * * Power exists here in the Legislature not**

only to fix the boundaries of such a municipality when incorporated, but to enlarge or diminish the same subsequently, without the consent of the residents, by annexation or set-off, unless restrained by the Constitution, even against the remonstrance of every property holder and voter within the limits of the original municipality. Property set off or annexed may be benefited or burdened by the change, and the liability of the residents to taxation may be increased or diminished; but the question in every case is entirely within the control of the Legislature, and, if no provision is made, every one must submit to the will of the state, as expressed through the legislative department inconvenience will be suffered by some, while others will be greatly benefited In that regard by the change. Nor is it any objection to the exercise of the power that the property annexed or 6et off will be subjected to increased taxation, or that the town from which it is taken or to which it is annexed will be benefited or prejudiced, unless the Constitution prohibits the change, since it is a matter, in the absence of constitutional restriction, which belongs wholly to the Legislature to determine."

April 10, 1901, the Legislature of the state enacted a statute entitled "an act providing a method for the payment of the debts of dissolved municipalities (Laws 1901, p. 279, c. 201)" which is as follows:

"Section 1. That in all cases In which the Legislature of the state of Minnesota has repealed, or may hereinafter repeal the charter of any city, village, borough, or other municipality, or the special law under which the same is, or was, organized, or created, against which municipality there are outstanding bonds or other written obligations which are, at the time of such repeal, a legal and enforceable claim against the municipality affected by such repeal, without making, or having made, any provision for the payment of such indebtedness, and the effect of such repeal is to attach the territory of the municipality so dissolved to one or more municipalities

existing at the time of such repeal, said indebtedness shall be and continue to be enforceable solely against the territory which was responsible for the payment of the same at the time of said repeal, and it shall be the duties of the proper officers of the municipality, or municipalities, which acquire the territory of the dissolved municipality, to levy such tax or taxes upon the property and territory coming within its or their jurisdiction, by reason of such repeal for the payment or discharge of such outstanding indebtedness, and to collect, receive and apply the same in such payment of such indebtedness in practically the same manner as would have been the duty of the proper officers of the dissolved municipality to levy taxes for the payment of said indebtedness, and to collect, receive and disburse the same, had there been no repeal of said charter or special law. And the territory so attached to such municipality or municipalities shall not be liable for any of the debts of such municipality or municipalities existing at the time of the repeal of said charter or special law, but all such debts shall continue a demand solely against the municipality or territory which was liable for the payment of the same at the time of said repeal.

"Sec. 2. This act shall apply to all cases falling within its provisions in which judgment has not already been recovered by the owner or holder of such bonds, or other forms of indebtedness as are described in section one of this act, against the municipality or municipalities acquiring the territory of the dissolved municipality."

The second contention of counsel for appellants rests upon this act, and is that the enforcement of the debt in question should be restricted to the territory which was responsible for its payment at the time of the dissolution of the village, and that the decree against the succeeding municipalities should be limited to requiring "the assessment, levy and collection of a tax upon the property situate within the boundaries of the dissolved municipality for the purpose of paying the amount which appellee is entitled to recover." Counsel

for appellee challenge the validity of this act under the provisions of sections 33 and 34 of article 4 of the state Constitution, before quoted. The claim is that it is not a general law, and does not have uniform operation throughout the state. This act has not been considered by the Supreme Court of the state, but the principles by which its validity is to be tested are well settled by the decisions of that court, among which are *Nichols v. Walter*, 37 Minn. 264, 33 N. W. 800; *State ex rel. v. Cooley*, 56 Minn. 540, 58 N. W. 150; *State ex rel. v. Ritt*, 76 Minn. 531, 79 N. W. 535; *Murray v. Commissioners*, 81 Minn. 359, 84 N. W. 103, 51 L. R. A. 828, 83 Am. St. Rep. 379; *Duluth Banking Co. v. Koon*, 81 Minn. 486, 84 N. W. 335; *Hetland v. Commissioners* (Minn.) 95 N. W. 305; *State ex rel. v. Justus* (Minn.) 97 N. W. 124; *Thomas v. St. Cloud* (Minn.) 97 N. W. 125. In *Nichols v. Walter*, an act regulating the removal of county seats was held not general, or of uniform operation, because the terms of the act were such that in any county which had located its county seat by a vote of its electors at any time before the passage of the act removal could be effected only by a vote of three-fifths of the electors, while in other counties removal could be had upon a majority vote. The court was of opinion that the basis of the classification was arbitrary, and that the application of different rules to the two classes of counties was not grounded in necessity or propriety. Referring to the constitutional limitation, it was said (page 271, 37 Minn., page 802, 33 N. W.):

> **"A law is general and uniform In its operation which operates equally upon all the subjects within the class of subjects for which the rule is adopted; but, as we have said, the Legislature cannot adopt a mere arbitrary classification, even though the law be made to operate equally upon each subject of each of the classes adopted. An illustration and example of that we take from *State v. Hammer*, 42 N. J. Law, 435, 440: 'Thus a law enacting that in every city in the state in which there are ten churches there should be three commissioners of the water department, with certain prescribed duties,' would present a specimen of such a law. So in the matter we have supposed, of granting powers and privileges to incorporated villages, if those situated on rivers were**

placed in a class for the purpose of conferring on them special powers and privileges not referring to nor suggested by the peculiarity of their situation—as, for instance, for the purpose of maintaining high schools—the classification would be merely arbitrary. The principle adopted by the Supreme Court of New Jersey comes more nearly to what we regard the true principle of classification than that stated by any other court. We quote again from *State v. Hammer*: 'But the true principle requires something more than mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis for classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislature. There must be a substantial distinction, having reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree at least, account for or justify the restriction of the legislation.' Or, to state it differently, though not so well, the true practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason—some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them."

In *State ex rel. v. Cooley*, the court declared its adherence to what had been stated in *Nichols v. Walter*, and then said (page 551, 56 Minn., page 153, 58 N. W.):

"By 'necessity' is meant 'practical,' and not 'absolute,' necessity. But the characteristics which will serve as a basis of classification must be substantial, and not slight or illusory. For example, distinctions due merely to pre-existing repealable special legislation would not, of

themselves, constitute a proper basis of classification, for that would tend to perpetuate the very peculiarities which the Constitution was designed ultimately to remove."

In *State ex rel. v. Ritt*, an act was likewise held not general or of uniform operation which provided for one assessor for the entire county in each county of not less than 100,000 and not over 185,000 inhabitants, and left in force in all counties of less than 100,000 or over 185,000 inhabitants the existing law providing for an assessor for each township, city, and village. In support of the act it was contended that there was necessity or propriety in having the property in very populous counties assessed by or under the supervision of one officer as a means of attaining greater uniformity in valuation. Without acceding to the contention, the court said (page 535, 76 Minn., page 536, 79 N. W.):

> **"But, the more populous the county, the stronger this reason would apply. If it applies to counties whose population is between 100,000 and 185,000, it applies with still greater force to counties containing more than 185,000. There is no apparent reason suggested by necessity, or by the difference in the situation or circumstances of counties having a population of not less than 100,000 and not over 185,000 and counties having a population of over 185,000, why the county assessor system should be applied to the former, and the latter left under the local assessor system in the same class with counties having a population of less than 100,000. The attempted classification is therefore arbitrary and incomplete, for the reason that it does not include all the members of the same class, but excludes some whose conditions and wants render such legislation equally necessary and appropriate to them as a part of the same class."**

In *Murray v. Commissioners* an act was likewise declared invalid which provided for the treatment, at the expense of the county of their residence, of a limited number of indigent habitual drunkards in counties having a population of 50,000 or more. The court, after observing that drunkenness was not confined to counties having

more than 50,000 population, based its decision upon a statement that a classification cannot be sustained unless it embraces all, and excludes none, whose condition and wants render the legislation necessary or appropriate to them as a class, and that, to be valid, legislation limited in its relation to particular subdivisions of the state must rest on some characteristic or peculiarity plainly distinguishing the places included from those excluded. *Hetland v. Commissioners* involved an act which authorized the issuance of bonds to provide money to complete courthouses in counties having a population of 100,000 or less, which had entered into a contract for the erection of a courthouse, and had expended $7,000 or more towards its erection. The act was held invalid as establishing an unwarranted classification, and as being general in form, but special in operation. *State ex rel. v. Justus* presented the question of the validity of an act requiring journeymen plumbers to take an examination and procure a certificate of competency as a condition to their employment in cities or towns having a system of sewer or water works. The court was of opinion that faulty plumbing was injurious and pernicious whether done by a journeyman plumber or by a master plumber, and whether done in a city or town without a system of sewer or water works, or in a city or town where such a system exists. The act was declared invalid as making an arbitrary and unreasonable distinction in the places and persons to which it applied. *Thomas v. St. Cloud* involved an act authorizing the issuance of bonds with which to purchase waterworks in cities which have owned waterworks and have sold them with a reserved right to repurchase them. The act was adjudged special and invalid, because "the basis of the classification used is so narrow, restricted, and peculiar that the inference is unavoidable that it was not intended as a general law, but to meet the requirements of a special situation."

By its terms the act under consideration makes the presence of the following conditions requisite to its operation: (1) The indebtedness must be that of a municipality organized or created under a charter or special law. (2) The dissolution of the municipality must have occurred through the direct legislative repeal of such charter or special law. (3) The indebtedness must be outstanding bonds or other written obligations. (4) The effect of the repeal must have been to attach the territory of the municipality so dissolved to one or

more municipalities existing at the time. In Minnesota there has long existed a system of general laws providing for the creation, division, and dissolution of villages and other municipal corporations, and for detaching territory therefrom and attaching territory thereto. Municipalities existing under these general laws incur debts substantially in the same way and for the same purposes as do those existing under special laws. Both classes contract debts by implication as well as through bonds or other written obligations, and both may incur liabilities through tortious acts of their officers and servants. The engagements and liabilities of both classes stand upon the same footing, and the creditors of both are entitled to the same consideration. Both classes are subject to dissolution, and the necessity or propriety of providing for the payment of their debts in that event is the same whether the municipality owes its existence to a special law or to the general laws, and whether it be dissolved by direct act of the Legislature or by the action of its inhabitants had under the general laws. Nothing in the special or general character of the laws by or under which municipalities are created or dissolved suggests that it should be made the basis of a distinction or difference in those who succeed to the obligation to pay the debts of dissolved municipalities, or in the property from which the money to pay these debts shall be raised by-taxation or in the character of the debts to be paid, whether evidenced by written obligations or otherwise. The subject is one which in its nature, and with justice to all concerned, can be reasonably covered by a general law operating uniformly in all cases. To make the repealable special charters of municipalities owing their existence to that character of legislation the basis of a classification, when no necessity or reason for a difference in remedies, liability, or legislative treatment inheres in that fact, is special legislation. A statute establishing such a classification does not include all objects which, in their nature, are of the same class, but excludes some whose conditions and wants render such legislation equally necessary and appropriate to them as members of the class.

Tested by the rules announced and applied by the Supreme Court of the state, the act of April 10, 1901, is violative of the constitutional restriction upon special legislation, and is void. It may, as is asserted by counsel, propose an equitable and just plan of adjusting

and discharging the debts of the dissolved municipality or municipalities to which it applies, but this does not satisfy the imperative constitutional require-ment that, to be valid, the act proposing and establishing the plan must not be special, but general, and of uniform operation throughout the state. Wanting in this essential, it falls within the inhibition against special legislation, no matter what its merits in other respects. It is of significance that the act declares that it shall apply to cases in court falling within its provisions which, at the time of its passage had not proceeded to judgment. The present suit was commenced April 24, 1900, and had not passed to a decree when the act was passed, April 10, 1901. There is no claim that any other suit of this character was then pending, or even contemplated. The conditions existing at the time and the terms of the act make the inference unavoidable that it was not intended to be a general law of uniform operation, but to meet the supposed requirements of a particular situation. The act is clearly void, and does not affect the rights, remedies, or liabilities of any one.

We think the contention that part of appellee's claim is barred by laches is without merit. The period of limitation within which actions could be commenced upon the village bonds is fixed at six years by the state statute. As to one bond, that period expired July 1, 1898, as to another, it expired July 1, 1899, and as to the others, it had not expired when the present suit was commenced. Appellee's action at law against the village, upon the two bonds with others, was commenced before the expiration of the period of limitation, and was prosecuted to a judgment in his favor before the judgment of ouster in the proceeding in quo warranto; and the present suit, which is rested in part upon the judgment in the action at law, was commenced within less than one year after the dissolution of the village had been so judicially pronounced. The record does not disclose such delay on the part of appellee as requires or permits the application of the doctrine of laches.

The decree is affirmed.

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Laws Special 1868, Chapter 34, pages 261-270.

CHAPTER XXXIV.

An Act to incorporate the Village of Reads.

March 5, 1868.

SECTION 1. What to constitute the Village of Reads—incorporation of said Village—constituted a school district—who to be officers of said school district.

2. In whom management of said Village vested — terms of office—to take oath conditioned for faithful performance of duties.

3. Election of Village Justice—term of office—jurisdiction of said Justice—compensation — to execute a bond—for what purpose.

4. When annual election to be held—how conducted.

5. Who to be inspectors of the first election.

6. What Village officers entitled to compensation.

7. What to constitute a quorum of Board of Trustees—duties of Marshal.

8. Any person refusing to deliver to successor in office all property, books, &c., shall forfeit and pay to the village $100.

9. Powers of Board of Trustees.

10. Authorized to purchase fire engines and other fire apparatus —to appoint a Chief Engineer of Fire Department.

11. Members of the Fire Department exempt from serving on juries, &c.

12. Trustees to appoint special constables on extraordinary occasions—who to be Chief of Police.

13. Expense of surveying streets, alleys, &c., and repairing same, how paid.

14. May be constituted one or more road districts.

15. Trustees to appoint one Overseer of each road—duties of Overseers.

16. All work to be let to the lowest bidder—exceptions.

17. What property subject to taxation.

18. Disposition of funds arising from the sale of licenses for the sale of intoxicating liquors.

19. Trustees to report to County Auditor—what report to contain—duty of County Auditor.

20. All damages sustained by reason of laying out and opening streets, &c., shall be levied as a tax on the village at large.

21. How actions brought to recover penalties or damages.

22. Before whom such actions may be brought—qualifications of judges, justices, &c.—how punished for non-payment of penalties.

24. Deemed a public act—when act to take effect.

2. Repeal of inconsistent acts.

25. When act to take effect.

Be it enacted by the Legislature of the State of Minnesota:

SECTI0N 1. That all of lots one, two, three and four, the north half of the south west quarter and the south west quarter of the south east quarter of section twenty-four, town one hundred and eleven north, range eleven west, and the whole of fractional section nineteen, and the west half of section thirty, town one hundred and eleven north, range ten west shall be known as the village of Reads, and as such corporation, shall possess and enjoy all the powers and privileges that can now or hereafter be possessed or enjoyed by any municipal corporations, and by the name may sue, and be sued,

make contracts, purchase, take and hold real and personal property, and convey the same, and may have a corporate seal, alterable at pleasure. Every grant or devise of land, or right or transfer of property which has or may be made for the benefit the inhabitants shall have the effect as if made to the village by name. The territory described in this act as the village of Reads, shall be and constitute but one school district, and the trustee, of said village shall be the trustees of such school district, and shall be subject to the same regulations, and possess the same powers and authorities under the general laws of this state, as trustees of other school districts possess and enjoy; *Provided*, That the clerk of said village shall be clerk of said school district, and the treasurer of such village shall be treasurer of such district. *Provided*, That so much of this section as relates to schools shall have no force or effect until a majority of the trustees of said village shall at a regular meeting of the board vote to accept and be governed by the provisions of this section relating to common schools of said village

SEC. 2. The management of its municipal concerns shall be vested in five trustees, one of whom shall be elected by them as president, a clerk, a treasurer and marshal, and, as many other officers as the trustees may create and appoint. The term of all officers shall commence on the first Wednesday in April, and shall continue, for one year, (unless elected or appointed to fill a vacancy,) and until their successors are elected and qualified. All officers shall be residents of the village, and the trustees, and treasurer, must be freeholders thereof, and all officers shall before entering upon the discharge of the duties of their respective offices, each take and subscribe an oath to faithfully and honestly discharge the duties of their office, which said oath shall be filed with the clerk of said village.

SEC. 3. There shall also, at the first election of officers under this act, be elected by the legal voters of said village and biennially there after, one village justice, who shall hold his office for the term of two years and until his successor is elected and qualified, and shall have the exclusive jurisdiction of all the judicial powers granted the said corporation by this act, except as hereinafter provided. Such village justice shall at the time of his election, and during his term of office

be a resident of said village, and shall keep his office therein, and shall have and exercise all the powers and jurisdiction of, and when acting as such receive the same compensation as justices of the peace elected under the general laws of this state. Such justice shall execute a bond for the faithful discharge of the duties of his office, which bond shall be affirmed by said trustees and filed with the clerk of said village, he shall take the same oath of office as is required of the other village officers by this act.

SEC. 4. There shall be an annual election held on the third Tuesday of March, of each year, at which the electors of said village qualified to vote at town elections, may elect by ballot, and by plurality of votes, the trustees, clerk, treasurer, and marshal. The trustees shall give ten days notice of the time and place of holding such election, by posting up written notices thereof in three public places in such village. *Provided*, That the first election of officers in said village shall be held on the twenty-sixth day of March, eighteen hundred and sixty-eight. The elections shall be held and conducted in the same manner as town elections, and the laws of this state applicable to elections generally shall apply as far as consistency will admit, and the oath of a voter shall be the same as at town meetings, and false swearing shall be perjury.

SEC. 5. That for the purpose of the first election under this act, William C. Piers, James Pauley and Henry Pauley and Henry Duene, shall be inspectors of election, and also the board of canvassers of such election, and shall perform all the duties and possess all the powers as inspectors of election, and board of canvassers prescribed by this act. They shall appoint the place of holding the polls of such election, and post or publish notice thereof ten days before the same. At said election all the officers provided for by this act be elected. *Provided*, In case any of the foregoing board of canvassers should not be present or should fail to act as such inspectors, then and in that case it shall and may be lawful for the bystanders to fill any such vacancy as may occur in said board.

SEC. 6. No officer shall receive compensation except the clerk, treasurer, village justice and marshal, and such other officers as

shall be created and appointed by trustees, and in cases such compensation shall be fixed by the bylaws.

SEC. 7. The. majority of the trustees shall be a quorum for business, and may remove the other officers at pleasure, and fill vacancies by appointment; and may by by-law prescribe the kind of security and the mode of giving the same, for the other officers, and may prescribe the duties of all officers. The marshal shall have the same powers and his duties shall be the same aa a constable's elected in a town, and shall have the same fees for the same service.

SEC. 8. Any person having been an officer of the village who shall not, within six days after requested by his successor, deliver all books and paper property or effects, in his hands, pertaining to such office, or belonging to the village, shall forfeit to the use of the village one hundred dollars, and shall be also liable for all damages caused by such refusal or neglect, and such successor may recover possession of such books, papers, property or effects, in the manner prescribed by the laws of this state for other officers.

SEC. 9. The trustees may enact ordinances and by-laws for all purposes contemplated by this act, and may fix penalties for violating the same, and they shall have the force of law. Before they shall become laws they shall be signed by the president and published ten days, by three written notices posted in three public places in said village, and proof of such publication shall be filed and recorded by the clerk. They shall have exclusive power-

***First*—To license common showmen, or any public exhibition, billiard tables, bowling saloons, and all persons to vend and deal in spirituous, vinous, fermented, mixed, intoxicating or any kind of liquors or drinks, to be used or sold in the village of Reads.**

***Second*—To restrain the running at large of hogs, cattle or other animals.**

***Third*—To describe what shall constitute nuisances, and provide for the removal or abatement thereof, either under the ordinances or at common or statute law.**

***Fourth*—To repress or restrain disorderly houses, or groceries, or saloons, or tippling or gambling saloons and houses, and to authorize the destruction of all instruments used for the purpose of gaming.**

***Fifth*—To direct the location or management of slaughter houses, markets, tanneries, the storage or keeping of powder or other combustible materials.**

***Sixth*—To compel the occupant or owner of any cellar, tallow chandler's shop, soap factory, tannery, stable, barn, privy, sewers or any unwholesome nauseous house or place, to cleanse, remove or abate the same.**

***Seventh*—To prevent the encumbering of streets, sidewalks, lanes, public grounds and alleys, and to define the same.**

***Eighth*—To prosecute immoderate riding or driving in the streets, and riding or driving on the sidewalks, and to regulate the places of bathing or swimming.**

***Ninth*—To prevent any damage to the sidewalks, cross walks, fences, buildings, shade or ornamental trees, or any public improvements, or property in the village.**

***Ten*—To establish and create pounds, pumps, water cisterns, reservoirs, drains or ditches.**

***Eleventh*—To lay out, alter, open, widen, extend, establish, guide, repair, or otherwise improve or keep in repair, streets, avenues, lanes, alleys, commons, paths, sidewalks, culverts and public grounds, and they may establish and record with the clerk, grades of streets, or walks to which buildings and erections shall conform.**

***Twelve*—To prescribe the limits within which limits wooden buildings or other buildings of other materials and not deemed to be fire proof, may or may not be erected, placed and repaired.**

***Thirteenth*—To prevent the dangerous construction, placing, or construction, placing, or continuance of chimneys, fire places, hearthstones or stove pipes, or any pipes or instruments for the conducting of fire, heat or smoke, ovens, boilers, or appurtenances,**

and to cause the same to be made secure, or removed, and to prosecute the deposit of ashes in any unsafe place, and to regulate or prove it the carrying on of manufactories dangerous in causing or promoting fires.

***Fourteen*—The trustees shall have power to enact any other by-law or to do any other act necessary and proper to perform the duties contemplated by this act.**

***Fifteen*—They may erect suitable buildings for village purposes.**

SEC. 10. They shall have power to purchase fire engines, and other fire apparatus, to organize fire, hose, hook and ladder companies, and provide for the support and regulation thereof, and to order such companies to be discharged, and apparatus to be delivered up, and they may appoint a chief engineer to take charge of the fire department, fire wardens to inspect chimneys and all places dangerous on account of fire, and to perform such duties as may be prescribed by by-law, foremen and other officers of said companies, and they shall have power to compel citizens to work at fires.

Sec. 11. Members of all hook and ladder, hose, engines, and fire companies accepted by and under the control of said trustees, shall be exempt from serving on juries, and from doing highway labor except on property tax, so long as they shall continue active members of such fire company.

SEC. 12. They may appoint any number of special constables for extraordinary occasions, and they shall constitute a village police, and shall have the usual powers, and shall be under the immediate control of the marshal, who shall be the chief of police, and the whole shall be under the control of and subject to said trustees

SEC. 13. The costs and expenses of surveying the street, lands, alleys, sidewalks, sewers, public grounds, reservoirs, cisterns and drains, and the erection of buildings for village purposes, and the cleansing and repairing the same, and construing and repairing reservoirs, and sewers, street crossings, and, cross walks, may be paid out of the general fund, or reservoirs may be built by districts designated by the trustees, but the expense of opening, grading,

graveling, paving, or repairing streets or alleys to the centre thereof, and also of sidewalks shall be chargeable to the lots fronting on said improvements. The trustees shall not improve streets or walks, except by a petition in writing signed by two-thuds of the owners, and occupants that are living opposite said improvement, sewers may be built, and the expenses apportioned by the trustees, among the lots and parcels of land benefited thereby. All resolutions, or orders directing such improvements shall be filed and recorded by the clerk.

SEC. 14. The village of Reads may be constituted one or more road districts to be defined by the trustees, and the highway labor, and taxes shall belong to the general fund, but shall be expended in the road district where same is levied and raised.

SEC. 15. The trustees shall appoint one overseer of each road district, and they shall issue a warrant to him, containing the whole amount of highway labor and taxes, assessed and levied in his district, which said warrant shalt be returned by him to the clerk of said village. The laws of the state shall apply to warning, working, sueing for, and collecting highway taxes, and returning delinquent taxes, and in all respects, except as herein expressly provided. The trustees shall have full power to direct the overseer when, where, and how to expend same labor and tax, and to remove him, and may direct him to expend the labor in the manner to be directed by them at any points beyond the limits of the village. The trustees shall perform the duties imposed by law upon the supervisors of towns, in levying highway taxes, and shall be governed and restricted in the amount so levied by the same laws applicable to the supervisors of said towns, in levying highway labor and taxes.

SEC. 16. All work by the village, except the highway taxes, shall be let by contract to the lowest bidder, and the trustees may require a bond with sureties for the faithful performance of the contract. Not less than ten days notice shall be given of the letting of the contract by the posting of notices by the clerk, in two public places in the village, to be signed by the president, and also filing said notice with the said clerk at the same time.

SEC. 17. All property, real and personal, in the village except such as may be exempt by the laws of the state, or is village property, shall be subject to a taxation to an amount not exceeding the sum of one thousand dollars in each year for general purposes; except for the purchase of fire engines or a cemetery, which is not limited, such property shall also be liable for such special taxes as the trustees shall levy. Property exempt from taxation shall be liable to assessment for building and repairing sidewalks.

SEC. 18. All taxes arising in any way from the sale of licenses for the sale of spirituous, vinous and intoxicating liquors, shall be appropriated to, and paid into the common school fund, for the use of schools in said village.

SEC. 19. Trustees shall report to the auditor of Wabasha county the amount of general taxes levied on the village, and the amount of special taxes levied upon any of the lots or portions of said village, and shall certify to him the lots or portions of the property upon which such special tax is so levied, and it shall be the duty of the county auditor to insert so much of such taxes in the assessment roll of the village of Reads as is levied on property in said village, and the same shall be collected by the county treasurer or returned by him as delinquent, and all proceedings in relation thereto, including the selling, conveying and redeeming property, shall be same as in proceedings on account of other taxes. The village shall be a town so far as the collection of taxes is concerned. All residents of the village shall pay a village tax on their personal property proportionately with their real estate tax.

SEC. 20. The damages sustained by reason of laying by out, opening or altering any road, street or alley, may be agreed on in the same manner as in a town under the laws of the state, and the state laws shall apply in all respects in relation to the release of damages. The filing thereof, or the assessing thereof by the trustees, and appealing therefrom to the county commissioners, except the village clerk, is substituted for the town clerk, and the trustees for supervisors. All such damages and repairs shall be levied as a tax on the village at large.

SEC. 21. In any action brought to recover any penalty or damages under this act, or the by-laws made by thetrustees, it shall be proper to complain that the defendant is indebted for the amount of such penalty or damages, and to refer to the act or by-law under which said penalty is claimed, and to give the special matter in evidence under it, and all civil cases shall be under the direction and control of the trustees, and they shall have power to settle, compromise or prosecute all such actions, on the part of the village, when said village shall be a party or interested in such action.

SEC. 22. Such action shall be commenced before said village justice, unless he is from some cause disqualified, or unable to try the same, in which case such action be commenced in the district court, or before any justice of the peace of the county of Wabasha, and no person shall be an incompetent judge, justice or juror by reason of being an inhabitant of such village, in an action to which the village shall be a party. Every execution issued upon any judgment recovered therein for any penalty, may contain a clause directing in event of the non-payment of the judgment, the imprisonment of the defendant in the county jail for thirty days if the damages, recovered by such judgment shall be ten dollars or less, and sixty days if such damages exceed that sum, and for that purpose the village shall have the use of the jail of the county of Wabasha, and persons thereto committed shall be under the charge of the sheriff of said county. All penalties and judgments shall be paid into the village treasury.

SEC. 23. This act shall be considered a public act, and be in force from and after its passage; Provided, That if twenty-five of the legal voters of the district in first section of this act described as the village of Reads, shall petition the canvassers in this act named, in writing; on or before the fifth day of March, eighteen hundred and sixty-eight, for an election to determine whether the people of said district desire this act of incorporation, the said canvassers shall appoint and fix the day for said election, which shall not be after the sixteenth day of March, eighteen hundred and sixty-eight, and shall give due notice thereof, which notice shall be substantially the same as is required by section four of this act for annual elections. Those

voting at such election shall possess the same qualifications, and be subject to the same penalties for illegal voting or false swearing as is provided for, and required by this act for annual elections. The ballots used at such ejection shall be written or printed on paper, as follows "or village charter" or "Against village charter" as the case may be. The votes at said election shall be canvassed by said canvassers, and the result thereof declared and published by them. If said canvassers shall declare and publish, that a majority of the votes cast at such election for "village charter," or if the petition in this section referred to, and provided for should not be presented to said canvassers as provided herein, then in such case this act shall be and remain in full force and effect, the same as would have been the case had not this proviso been inserted in this act. But if a majority of said votes should be "Against village charter," then in such case, all rights, privileges and powers by this act granted, shall be forfeited, and no further election or action under or by virtue of it, shall be taken or be valid. No irregularity in conducting the proceedings or election in this proviso provided for, shall effect or default this act. The polls of the election in this section provided for, shall be opened at nine o'clock in the forenoon, of the day fixed for said election, and closed at four o'clock in the afternoon of said day.

SEC. 24. All acts or parts of acts inconsistent with this act, are hereby repealed.

SEC. 25. This act shall take effect and be in force from and after its passage.

APPPROVED March 5, 1868.

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1891 Special Laws, Chapter 51, pages 551-557

AN ACT TO AMEND THE CHARTER OF THE VILLAGE OF READS.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That the act entitled an act to incorporate the village of Reads, approved March 5, 1868, and the several acts amendatory thereof, be amended so as to read as follows:

CHAPTER I

SECTION 1. That all of lots one (1), two (2), three (8) and four (4), the north half (½) of the south west quarter (1) and the southwest quarter (¼) of the southeast quarter (¼) of section twenty-four (24), town one hundred and eleven (111) north, range eleven (11) west, and the whole of fractional section nineteen (19), and the west half (½) of section thirty (30), town one hundred and eleven (11) north, range ten (10) west, shall be known as the village of Reads, and as such corporation shall possess and enjoy all the power and privileges that can now or hereafter be possessed or enjoyed by any municipal corporation of like grade, and by and in its corporate name may sue and be sued, make contracts, purchase, take and hold real and personal property and convey the same, and shall have a corporate seal, alterable at pleasure.

Every grant or devise of lands or right or transfer of property which has been or may be made for the benefit of the inhabitants shall have the same effect as if made to the village by name.

The territory described in this act as the village of Reads shall be and constitute but one school district, and the trustees of said village shall constitute the board of education of such school district and be the trustees thereof, and shall be subject to the same regulations and possess the same power and authority under the general laws of this state as the trustees of other school districts possess and enjoy; Provided, that the clerk of said village shall be clerk of said school district and the treasurer of said village shall be treasurer of such district.

SEC. 2. The government of said corporation and the management of all its municipal concerns shall be vested in a board of five trustees, one (1) of whom shall be elected by them as president of

the board, a clerk, treasurer, marshal, two (2) constables, two (2) justices of the peace and one (1) assessor.

The trustees, treasurer, clerk, assessor, constables and justices of the peace shall be duly elected by the qualified electors of said village, and shall each be residents and qualified electors thereof. The treasurer and justices of the peace of said village shall hold their respective offices for two (2) years from the time of their being elected and qualified, and until their successors shall be duly elected and qualified. Vacancies which may occur in any of the offices shall be filled, by the board of trustees for the unexpired terms.

All officers, before entering upon the discharge of their respective offices, shall take and subscribe an oath to faithfully and honestly discharge the duties of their respective offices, which oath shall be in writing and shall be filed with the clerk of said village.

An appeal shall lie from all judgments of the justices of the peace of said village to the district court of said county in all cases where an appeal is allowed by the general statutes of this state from judgments of justices of the peace, and shall be taken in the same manner as is provided for appeals from justices of the peace, by the laws of Minnesota.

The said treasurer and justices of the peace, as well as said marshal and constables, shall each execute a good and sufficient bond to the trustees of the village, conditioned for the faithful discharge of their duties as such officers, which bonds shall be filed with the clerk of said village.

SEC. 3. There shall be an annual election held on the first (1st) Tuesday of February in each year at which the electors of said village, qualified to vote at town elections, may elect by ballot and by plurality of votes the trustees, clerk, treasurer, justices of the peace and constables as aforesaid. The trustees shall cause the clerk to give ten (10) days' notice of the time and place of holding such elections, by posting up written or printed notices thereof in three (3) public places in such village.

The said elections shall he held and conducted in the same manner as town elections, and the laws of this state applicable to

elections generally shall apply to such village election as far as consistency will admit. The oath of a voter shall be the same as that at town meetings, and false swearing shall be punished as perjury.

SEC. 4. No officer of said village shall be entitled to receive any compensation for his official services, except the clerk, treasurer, village justices, constables and marshal, and such other officers as may be appointed to fill offices hereafter created, by the trustees, and in such case such compensation shall be fixed by the by laws of said village.

SEC. 5. The majority of the board of trustees shall constitute a quorum for the transaction of business and may remove the other elective officers for cause, after giving thein an opportunity to be heard in their own defense. They may fill all vacancies by appointment, and may adopt by-laws prescribing the duties of all officers, the kind of securities and the mode of giving the same, and shall approve all official bonds required by this act.

The village marshal shall have the same powers and duties as a town constable, and shall be entitled to the same fees as such constable for like services.

SEC. 6. Any officer of said village whose official, term has expired and who shall not, within six (6) days after having been requested by his successor, deliver all books and property or effects in his hands pertaining to his office or belonging to the village, shall forfeit and pay to the use of said village the sum of one hundred dollars ($100), and shall be also liable for all damages caused to the village by such neglect or refusal, and such successor may recover possession of such books, papers or property in the manner prescribed by the laws of this state in like cases.

SEC. 7. The board of trustees of said village shall have full power and authority to enact, adopt, modify, enforce, and from time to time repeal or amend, all such ordinances, rules and by-laws as they shall deem expedient for the following purposes, viz.:

First—To regulate the mode of and establish rules for their proceedings.

Second—To adopt a corporate seal and alter the same at pleasure.

Third—To receive, purchase and hold for the use of the village any estate, real and personal, and to sell and convey the same.

Fourth—To limit and define the duties and powers of officers and agents of the village, fix their compensation and fill vacancies when no other provision is made by law; to call special elections, and to designate trustees to act as judges of elections.

Fifth—To procure the books and records herein to be kept by village officers, and such other furniture, property, stationery and printing as shall be necessary for village purposes.

Sixth—To provide for the prosecution or defense of all actions or proceedings in which the village is interested and employ legal counsel therefor.

Seventh—To appoint a, village attorney, a poundmaster, one or more sextons or keepers of cemeteries, one or more fire wardens, and one or more street commissioners, whenever they deem necessary.

Every street commissioner, when by resolution the village board shall require it, shall take and file his oath of office and execute a bond, conditioned for the faithful discharge of his duties and for the proper application and payment of all moneys that may come into his hands by virtue of his office.

Eighth—To control and protect the public buildings, property and records, and insure the same.

Ninth—To renumber the lots and blocks of the village or any part thereof, when they may deem it necessary, and to cause a revised and consolidated plat of the same to be recorded in the office of the register of deeds of the county.

Tenth—To establish a fire department; to appoint, the officers and members thereof, and to prescribe and regulate their duties; to provide protection from fire by the purchase of fire engines and all necessary apparatus for the extinguishment of fires, and by time erection or construction of pumps, water mains, reservoirs or other

waterworks; to erect engine houses; to compel the inhabitants of the village to aid in the extinguishment of fires, and to pull down and raze such buildings in the vicinity of the fire as shall be directed by said trustees or any two of them who may be at the fire, for the purpose of preventing its communication to other buildings; to establish fire limits, or the limits within which wooden or other combustible buildings shall not be erected; to require the owners and occupants of buildings to provide and keep suitable ladders and fire buckets, which shall be appurtenances to the realty and exempt from attachment or execution, and after reasonable notice to such owner or occupant and refusal or neglect by him, to procure and deliver the same to him, and in default of payment therefor, to levy the cost thereof as a special tax upon such real estate to be assessed and collected as other taxes in such village, to regulate the storage of gunpowder and other dangerous materials, to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stove pipes and the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks and firearms in the village, or any part thereof; to authorize fire wardens, at all reasonable times, to enter into and examine all dwelling houses, lots, yards, inclosures and buildings of every description in order to discover whether any of them are in dangerous condition, and to cause such as may be dangerous to be put in safe condition; and generally, to establish such necessary measures for the prevention or extinguishment of fires as may be necessary and proper.

Eleventh—To lay out, open, change, widen or extend lanes, alleys, sewers, parks, squares or other public grounds, and to grade, pave, improve, repair, or discontinue the same or any part thereof, or to establish and open drains, canals, or sewers, or to alter, widen, or straighten water courses; to make, alter, widen, or otherwise improve, keep in repair, vacate or discontinue sidewalks and crosswalks, to prevent the incumbering of streets, sidewalks and alleys with carriages, carts, wagons sleighs, sleds, buggies, railway cars, engines, boxes, lumber, firewood or other substances or materials; to prevent horse racing or immoderate riding or driving in the streets of the village; to prevent the riding or driving of animals or the driving of vehicles of any kind, on the sidewalks of the village or the doing of damage in any way to such sidewalks; and to require

the owners or occupants of buildings to remove snow, ice, dirt or rubbish from the sidewalks adjacent thereto, and in default thereof to authorize the removal of the same at the expense of such owner or occupant.

Twelfth—To restrain the running at large of cattle, horses, males, sheep, swine, poultry and other animals, and to authorize the distraining, impounding and sale of the same, to establish pounds and regulate and protect the same, to require the owners or drivers of horses, oxen or other animals, attached to vehicles or otherwise, to fasten the same while in the streets or alleys of said village, to prohibit the hitching of horses, teams or animals to any fence, tree or pump, and to prevent injury to the same; to regulate and control the running of engines and cars through the village and the rate of speed of the same; to prevent the running at large of dogs, and authorize the destruction of the same in a summary manner when at large contrary to the ordinances; to license public porters, solicitors or runners, cartmen, hack men, omnibus drivers and guides, and to establish rules and regulations in regard to their conduct as such, and to prevent' any unnecessary noise or disturbance daring the arrival and departure of persons in public conveyances.

Thirteenth—To establish and regulate markets and restrain sales in the streets.

Fourteenth—To purchase and hold cemetery grounds within or without the village limits, inclose, lay out and ornament the same, and to sell and convey lath therein by deed; to establish public walks and parks, inclose, improve and ornament the same and prevent the incumbering or obstruction thereof, and to provide for and regulate the setting out of shade and ornamental trees in the streets and in and around the cemeteries and public parks and walks of the village, and for the protection thereof.

Fifteenth—To prevent or license and regulate the exhibition of caravans, circuses, theatrical performances or shows of any kind; to prevent or license and regulate the keeping of billiard tables, pigeon hole tables and bowling saloons; to suppress and restrain or license and regulate mountebanks and auctioneers; and in all such cases they may fix the price of such license and prescribe the term of its

continuance and may revoke the same at pleasure; but the term of no such license shall extend beyond the annual election of officers next after the granting thereof.

Sixteenth—To provide for the planting and protection of shade trees and monuments in said village.

Seventeenth—To restrain and prohibit gift enterprises, all description of gaming, and all playing of cards, dice and other games of chance for the purpose of gaming, and to license or restrain and prohibit any person from selling, bartering, disposing of or dealing in spirituous, malt, fermented, vinous or mixed intoxicating liquors of any kind, and to punish any violation of law or of the village ordinances relating thereto, and to revoke for any cause any license for the sale of intoxicating liquors granted by the village board whenever, after a hearing of the case, they shall deem proper.

Eighteenth—To choose a village marshal and to remove him at will; to prescribe his duties and to fix his compensation for his services.

Nineteenth—To establish and maintain public libraries and reading-rooms, purchase books, papers and magazines therefor, and make all needful rules and regulations for the safe keeping and handling of the same.

Twentieth—To appoint a street commissioner, regular and special policemen and a chief of police, and to fix their compensation and prescribe their duties.

Twenty-first—To remove any officer appointed or elected by such board, whenever in their judgment the public welfare will be thereby promoted.

Twenty-second—To purchase, build or lease and maintain and regulate a watchhouse or place for the confinement of offenders against the ordinances and by-laws and for temporary detention of suspected persons.

Twenty-third—To appoint a board of health, which shall have all the powers of such boards under the general laws of the state; to

provide hospitals and regulate the burial of the dead, and return bills of mortality; to declare what are nuisances and to prevent or abate the same; to require the owner or occupant of any grocery, cellar, tallow-chandler's shop, factory, tannery, stable, barn, privy, sewer, or other unwholesome or nauseous house, building or place, to remove or abate the same or to cleanse it as often as they may deem necessary for the public health or comfort; to direct the location and management of slaughter houses and to prevent the erection, use or occupation of the same except as authorized by them; to prevent any person or persons from bringing, depositing or leaving within the village any putrid carcass or other unwholesome substance; to require the owners or occupants of lands to remove dead animals, stagnant water or other unwholesome substances from their premises, and to provide for the cleaning and removal of obstructions from any river, stream, slough or water-coarse within the limits of the village, and to, prevent the obstruction or retarding of the flow of water therein or the putting of anything into the same which may be prejudicial to the health of the village.

Twenty-fourth—To make and regulate the use of public wells, sisterns and reservoirs.

Twenty-fifth—To erect lamp posts and lamps, and provide for lighting any portion of the village or streets thereof by gas, electricity, or otherwise.

Twenty-sixth—To establish harbor and dock limits, and to regulate the location and construction and use of all piers, docks, wharves and boat hues on any navigable waters, and fix rates of wharfage.

Twenty-seventh—To levy and provide for the collection of taxes, including poll tax and assessments, audit claims and demands against the village and direct orders therefor in the manner prescribed, by law, to refund any tax or special assessment paid or any part thereof when satisfied that the same was unjust or illegal; to authorize bonds of the village to be issued in the cases provided by law, and generally manage the financial concerns of the village; and they shall cause to be prepared and read, at each annual village election, a true, detailed and itemized statement by them of the

finances of the village, showing the amount in the treasury at the commencement of the year, when and from what sources all money paid into the treasury during the preceding year were derived and the whole amount thereof, and when and to whom and for what purpose all money paid from the treasury during the same period was paid and the whole amount thereof, with the balance then in the treasury, which statement shall forthwith be recorded in the minute book and filed and preserved in the clerk's office.

Twenty-eighth—To ordain and establish all such ordinances and by-laws for the government and good order of the village, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of trade and commerce arid the promotion of health, not inconsistent with the constitution and laws of the United States or of this state, as they shall deem expedient, and to determine and establish by ordinance the mode of procedure and what it shall be sufficient to allege and in order to make out a prima facie case of violation of any ordinance.

Twenty-ninth—To prescribe penalties for the violation of any ordinance or by-law, to be not less than one (1) dollar nor more than one hundred (100) dollars in any case, beside the cost of suit in all cases; and, in default of payment, provide for committing the person convicted to the watchhouse or place of confinement in the village, or to the county jail, until payment be made, but not to exceed ninety (90) days in all for any one case, and to modify, amend or repeal any ordinance, resolution, by-law or other former determination of the board.

SEC. 8. In all matters not herein especially provided for the village shall be governed and its affairs administered according to the general laws now or hereafter to be in force in relation to villages in this state.

SEC. 9. All acts and parts of acts Inconsistent with this act are hereby repealed; but all ordinances, resolutions and by-laws heretofore made and established by the trustees of the village and not inconsistent with this act shall remain in force until amended, altered and repealed by them, and the board of trustees may, from time to

time, provide for the compilation and publication of the ordinances of the village and such resolutions as they may designate.

SEC. 10. When any suit or action shall be commenced against the village, service thereof may be made by leaving with the president of the board a copy, of the process by the proper officer, and it shall be the duty of the president to forthwith notify the board and the village attorney (if there be one appointed) thereof, and to take such further proceeding as the board may direct by ordinance or resolution.

SEC. 11. Notwithstanding the supersedure or repeal by this act of the act incorporating the village of Reads and acts amendatory thereof, it is not intended that any rights vested shall be lost hereby, but in all cases affecting past taxes not yet collected, liens for the same, rules of evidence, claims against the village, right of eminent domain, mode of levying, assessing and collecting taxes, mode of procedure in actions brought to recover any penalty or damages, the time of opening and closing the polls at elections, the laying out, opening widening, extending, repairing, grading and improving streets, and all rights of every kind inchoate or perfected, the provisions of such acts as are hereby suspended or repealed, and of all ordinances heretofore passed by the trustees of said village shall be deemed to continue in force unless specifically altered or repealed by this act.

SEC. 12. This village charter shall be a public act, and need not be pleaded in any case or action or proceeding in any of the courts of this state.

SEC. 13. This act shall take effect and be in force from and after its passage.

Approved January 29, 1891.

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1895 Laws, Chapter 390, page 798.

An act to repeal chapter fifty-one (51) special laws of eighteen hundred and ninety-one (1891).

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. That chapter fifty-one (51) of the special laws of eighteen hundred and ninety-one (1891), entitled "An act to amend the charter of the village of Reads, approved January twenty-ninth (29th) eighteen hundred and ninety-one (1891), be, and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after the sixth (6th) day of February eighteen hundred and ninety six (1896).

Approved April 22nd, 1895.

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1901 Laws, Chapter 201, pages 279-280.

An act providing a method for the payment of the debts of dissolved municipalities.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That in all cases in which the legislature of the State of Minnesota has repealed, or may hereafter repeal the charter of any city, village, borough, or other municipality, or the special law under which the same is, or was, organized or created, against which municipality there are outstanding bonds or other written obligations which are, at the time of such repeal, a legal and enforceable claim against the municipality affected by such repeal, without making, or having made, any provision for the payment of such indebtedness, and the effect of such repeal is to attach the

territory of the municipality so dissolved to one or more municipalities existing at the time of such repeal, said indebtedness shall be and continue to be enforceable solely against the territory which was responsible for the payment of the same at the time of said repeal, and it shall be the duties of the proper officers of the municipality, or municipalities, which acquire the territory of the dissolved municipality, to levy such tax or taxes upon the property and territory coming within its or their jurisdiction, by reason of such repeal for the payment or discharge of such outstanding indebtedness, and to collect, receive and apply the same in such payment of such indebtedness in practically the same manner as would have been the duty of the proper officers of the dissolved municipality to levy taxes for the payment of said indebtedness, and to collect, receive and disburse the same, had there been no repeal of said charter or special law. And the territory so attached to such municipality or municipalities shall not be liable for any of the debts of such municipality or municipalities existing at the time of the repeal of said charter or special law, but all such debts shall continue a demand solely against the municipality or territory which was liable for the payment of the same at the time of said repeal.

SEC. 2. This act shill apply to all cases falling within its provisions in which judgment has not already been recovered by the owner or holder of such bonds, or other forms of indebtedness as are described in section one of this act, against the municipality or, municipalities acquiring the territory of the dissolved municipality.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved April 10th, 1901.

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Further Research

An earlier case brought by Russell Sage in Minnesota courts is sometimes known as "the attempted rape on the court." It was described by Justice Edwin Jaggard in his study of Justice William Mitchell published in 1909:

> **The earliest stage, one of Russell Sage's eccentric lawsuits, was brought up before Calvin L. Brown, then on the District Court, now on the Supreme Court of Minnesota, upon stipulated facts. In *Sage vs. Swenson*, [64 Minnesota Reports, 517] Judge Mitchell affirmed the ruling of Judge Brown, and applied to the facts in that case the rule, that while a railroad company after a grant of land has no vested right by a mere executive withdrawal from entry and settlement of lands within either its "place" or "indemnity limits," yet so long as the withdrawal continues in force, the lands are not subject to entry and settlement and no lawful settlement on them can be acquired. An appeal from this decision was immediately taken to the Supreme Court of the United States. Meanwhile the multitude of settlers whose interests it injuriously affected began to inquire into the facts of the case. As a result when it came before the Supreme Court at Washington, the attorney-general was directed by that court to investigate the good faith of the litigation; and on his report the cause was stricken from the calendar and was never argued. The facts were that Swenson had no knowledge of ever having been sued, and that he had never employed an attorney to defend the action. Its sole purpose was to establish a rule of law favorable to Russell Sage in a case in which his counsel appeared for both sides, on a distorted state of facts. The attempted "rape on the Court" did not succeed.[22]**

Someday, it is hoped, a history of the "attempted rape on the court" (with the Attorney General's investigative report) will be posted on the MLHP website.

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[22] Edwin Ames Jaggard, "William Mitchell (1832-1900)" *in* William Draper Lewis ed., 8 *Great American Lawyers* 401-402 (MLHP, 2008)(published first, 1909).

(In 2010, I send a Freedom of Information Act request to the Department of Justice seeking a copy of the Attorney General's report of his investigation into this case, but did not receive a reply. - dah).

ACKNOWLEDGMENTS

Anyone who has engaged in serious archival research— whether a professional historian or genealogist — has spent hours, days, at times even months or years searching in vain for a document, some evidence, when, suddenly and to that searchers' amazement and joy, there it is, staring him in the face — the missing piece.

In August 2012, I posted a lengthy profile of John Murdoch on the Minnesota Legal History Project. It consisted of sketches of him in books published in 1915 and 1920, his obituary in the *Wabasha County Herald* on April 12, 1962, and a bar memorial delivered on May 21, 1962, by Lawrence R. Lunde. At the end of Lunde's memorial, he remarked that Murdoch had written an article on his most interesting and challenging lawsuit — what he called the "Reads Landing case." This was exactly the type of long-forgotten case-memoir that I wanted to post on the MLHP when I "launched" it in 2008. I set out to find Murdoch's article.

But where was it? A Wabasha newspaper for sure, but what year? Many searches of the internet turned up nothing. Once I emailed the district court judge whose jurisdiction included Wabasha County and asked if he had ever heard of it. He referred me to the clerk of court. One day I telephoned the Wabasha County Historical Society and a member took down my request, but I never heard back. When I posted Murdoch's profile on the MLHP, I added a request to viewers for information about this case. No response. I turned to other research projects. Several years went by when one afternoon, unexpectedly and to my amazement . . . .

On February 26, 2016, I received a large envelope in the mail from my sister, who lives in Eau Claire, Wisconsin, with her husband, a retired physician. It was a birthday present (#74). It contained two fragile, brown newspaper articles by John Murdoch—one on the Sage-Reads dispute, the other about a murder trial of two Wabasha doctors that I had never heard of. I telephoned my sister and told her they were the best birthday presents I had received in years. She in turn told me their history.

Sometime after John Murdoch retired in 1942, he moved with his second wife to Lake City, and bought a house across the street from that of Dr. Covell and Ruth Bayley, whose son would marry my sister years later. The families became close friends. One of the Bayley's cut out and saved Murdoch's articles when they appeared in local newspapers in 1952 and 1954 (or perhaps he gave them copies). In 1969 Dr. Bayley died and after his wife died in 1998 the family records were dispersed among their children. Again years passed. In early 2016, my sister began surveying the Bayley family files that had descended to her husband, and found a folder with two newspaper articles by John Murdoch. She mailed them to me, unaware that I had searched in vain for one of them.

And so, with my archival search at an end, I dedicate this article to the memories of Dr. Covell and Ruth Bayley.

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Posted April 10, 2016.