Pioneer Days of the District Court

By

William Pitt Murray

On November 9, 1902, the *St. Paul Sunday Globe* published the recollections of William Pitt Murray of a term of the territorial district court in Benton County in June 1851 that concluded with a travelogue of three lawyers, Henry L. Moss, Rensselaer R. Nelson and Murray, canoeing down the Mississippi River to St. Paul.

Judge Bradley B. Meeker presided. Henry L. Moss was the prosecuting attorney while several young lawyers, including William Pitt Murray and Rensselaer R. Nelson, were there looking for work. Criminal charges were brought against several local settlers who were accused of selling liquor to Indians. It became clear that a jury of white men would never convict a fellow settler of such a crime, and Moss reluctantly dismissed charges against other defendants.

According to Murray's recollections of a half century Morton S. Wilkinson moved to dismiss an action because the laws of 1851, under which it was brought, had not been published and were, therefore, not in force (The statutes provided that no general law shall take effect until published). Judge Meeker granted the motion.[1] However, a newspaper account of these

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[1] In later recollections of the territorial era, William Pitt Murray recalled this ruling by Judge Meeker:

> Judge Meeker made himself famous as a judge of great learning and research by reason of a decision he made at a term of the District Court held at Sauk Rapids, where a demurrer had been interposed to an indictment, on the ground that the law under which it had been found had never been published. Notwithstanding the fact that the law had been published in the newspapers and distributed in unbound copies in book form, the judge held that, to make a legal

proceedings does not mention Wilkinson's motion or Meeker's ruling.[2] In 1851 the Minnesota Legislative Assembly enacted a version of the Field Code and repealed earlier laws. Thereafter, on November 10, 1851, Meeker again held court in Benton County but because the new code was not available, he adjourned the court. A contemporary account of his decision was published in the *Minnesota Democrat* on November, 18, 1851:

> **The so-called new code had not yet been published in an authentic and reliable form. The laws formerly in force in this Territory had been repealed by the action of the last Legislative Assembly. The new law, except in fragmentary parts, of which as Judge, he could take no notice, were not published; very reluctantly, and contrary to his expectations, he could therefore, decline acting until properly informed as to the law by which he was to be governed.[3]**

Wilkinson most likely brought his motion at the November session, not in June.

The three lawyers' canoe trip from Sauk Rapids to St. Paul makes up the final third of the article. Although it was uneventful, it brings to mind the mishaps suffered by the three young men in Jerome K. Jerome's comic novel, *Three Men in a Boat (To Say Nothing of the Dog)* (1889). Murray's pleasure in recalling this trip is obvious.

Murray's "remembrance" of a few "pioneer days" in court and on the River follows. It is complete though reformatted.

> **publication, the law not only had to be printed but published in bound volumes. In justice to his memory, I must say that he did not insist upon their being bound in calf.**

William Pitt Murray, "Recollections of Early Territorial Days and Legislation" 12 *Minnesota Historical Society Collections* 103, 108 (1908).

[2] "Proceedings in the District Courts – 1851" 18-25 (MLHP, 2016).

[3] Id. at 36.

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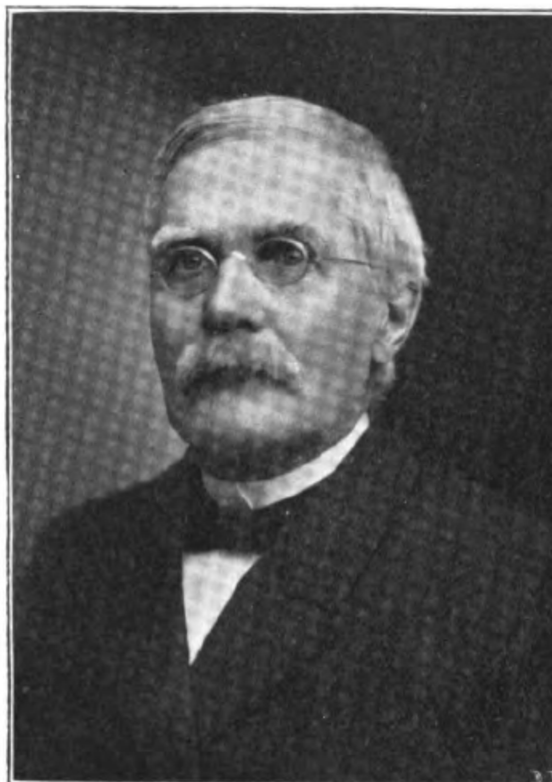
PIONEER DAYS OF THE DISTRICT COURT

The recent death of Henry L. Moss, the first district attorney of the United States for the territory of Minnesota, the Nestor of the bar of Minnesota, calls to remembrance the first term of the district court for the Third district of the territory of Minnesota, held at Sauk Rapids, Benton county, in June, 1851.

Bradley B. Meeker, judge; Henry L. Moss, district attorney for the United States; R. R. Nelson, a young attorney from New York, afterwards a judge of the district court of the United States for the district of Minnesota, now retired, and myself, the two latter without much practice and very little income, concluded we would go up to Sauk Rapids and pick up any little fees that might be found lying around loose.



HON. WILLIAM PITT MURRAY.

In those days there were no railroads, stages, or public conveyances. We hired a Frenchman, who, with a pair of Indian ponies and a light wagon, agreed to take us to Sauk Rapids in two days for $5 each, we paying all expenses, which, perhaps, included drinks. We

reached Sauk Rapids on Monday without any mishap, taking quarters at the Russell house, the only tavern of note in the village, where never more than twenty-two were expected to sleep in the same room, or more than two under the same buffalo robe.

Usual Caution to Grand Jury.

Tuesday morning, when court convened, Judge Meeker, as some of our judges do in later times, perhaps with a wink in his eye, impressed upon the grand jury that without fear or favor that it was their duty to inquire into every violation of the law, and especially in regard to the sale of liquors to the Indians.

R. R. Nelson, Morton S. Wilkinson, afterwards a United States senator and a member of congress, who had reached Sauk Rapids Tuesday morning, and myself, having nothing to do for the time being except to eat our stewed venison, pork and beans and dried apple pie, smoke our clay pipes or poor cigars, and now and then take a drink of Indian whisky, were quietly waiting for any business and fees that might turn up from the action of the grand jury.

On the afternoon of the second day of the term the grand jury returned some six indictments for selling liquor to the Indians. Among the number were two Frenchmen, whom a friend persuaded to retain me for the defense. After one of them had stated his case, I could conceive of no possible defense, as he frankly admitted selling to an Indian whenever he had the money to pay for it. He knew the people better than I.

"Why," he exclaimed, "there will be no trouble. Everybody up here sells liquor to the Indians."

I decided to take my chances and try the case.

Nothing but Indian Testimony.

Mr. Nelson, who had been retained in some two or three of the cases, was the attorney for the defense in the first indictment tried for selling liquor to the Indians. While the proof was positive, it was Indian testimony. Mr. Nelson, after complimenting the jury upon their intelligence and desire to have the laws of the territory enforced, claimed that it would be in violation of the constitution of the United States and the laws of the territory to convict a white man on the testimony of an Indian, and that there was no precedent to be found in the books from the time of the landing of the Pilgrim fathers down to the present time where such testimony was regarded competent.

After instructions from the court to the jury, in which he indicated that in one view of the case Indian testimony seemed competent, and in another there might be some doubt in regard to it, but it was a question to be left to the jury, the jury, in less than five minutes, acquitted the prisoner

After the verdict had been handed to the court and the jury discharged from further consideration of the case, at least two-thirds of the jury, with the defendant, rushed over to where Mr. Nelson was sitting to shake hands with him and congratulate him on his speech, saying that his views in regard to Indian testimony were just like theirs, that it was no good, and that if they ever had any legal business, he was the lawyer they would employ. Then at least a majority insisted upon Mr. Nelson going out and having a drink with them. Whether he went or not I do not know, and if he did, after fifty years, I would not be the informer.

Bound to Acquit.

The next case called was that of one of my clients. After the disposition of the first case I knew I had plain sailing, adopting the Nelsonian theory that no white man ought to be convicted on Indian testimony, and no white man having had the courage to testify that he had ever seen a white man, blind pigger, or a negro sell a drop, of whisky to an Indian, the case was soon disposed of with a verdict of acquital.

On the morning of the third day of the term, M. S. Wilkinson made a motion to dismiss an action then pending before the court, for the reason, as he claimed, that the laws of 1851, under which the action was brought, were not in force. The statutes provided that no general law shall take effect until published.

It was admitted that the laws had been printed and generally distributed to members of the bar, and such county officers who had called for them, stitched and in pamphlet form, but not bound. After argument the court held that the laws had not been published as provided for in the statutes, as it appeared they had never been bound. He perhaps ought to have added in “calf.”

Other Cases Dismissed.

Mr. Moss, disgusted with the decision and satisfied that there could be no conviction for selling liquor to the Indians, arose, and, with the consent of the court, dismissed all of his pending indictments for selling liquor to the Indians. There being no further business the judge adjourned the court without day.

Court being over, our Frenchman having returned to St. Paul, the question was how we were to get home. Nelson, who had read James Fenimore Cooper's tales about Indians and birch bark canoes, suggested we buy a birch bark canoe and take a run down the Mississippi river. There seemed to be poetry and fun in the suggestion. We at once agreed to the proposition. We sent the landlord out to buy us one, which he did.

The next morning we bid adieu to Sauk Rapids, went to the river and stored ourselves away in our canoe. The river being unusually low, and the wind up stream, the canoe sometimes went down and the again up.

Had to Paddle Their Canoe.

If we ever reached St. Anthony, some work had to be done, and by common consent the trio alternated and paddled the canoe, until their hands were blistered and raw. Where the city of St. Cloud now stands there was not a house. In the evening, near dark, we reached Big Bend, where White and Marks had a trading post. Putting our boat ashore, we went into the little trading post and inquired if there was any show to get something to eat.

Marks was a bachelor. White was married to an Indian woman. With Western hospitality, the answer was "Yes, come in." After a little while we were told supper was ready. Sitting down before a large wooden bowl of something, with biscuit at the side, tin plates for our food and tin cups for our tea, Nelson, with a critical eye, looking at the bowl, said: "What is that, dog?"

"No," said Moss, "muskrat.”

"Not being an expert in Indian dishes, I expressed no opinion, yet I want to say that we young fellows (you must remember that this was over fifty years ago) never ate a meal in our lives that we relished more than we did that. We were hungry. Col. Allen's dinners for the old settlers, where he orders his "chef" to give the old fellows the best in the house, have never tasted as well.

Early Day Hospitality.

After supper and a smoke, we went down to the river and piled into our canoe, and started on our voyage down the river. About 11 o'clock we reached a little home near where the town of Anoka now stands. After a good deal of noise, we succeeded in arousing the family. A gentleman came to the door, and on being told that there were three young men who wanted floor room, for a bed until morning, replied:

“Come in; we will try and do better than give you the soft side of a pine floor for a bed."

Whether they had more than one bed in the house, I do not know. Yet a straw tick (perhaps it was wild hay), wheat was not then grown in Minnesota to make straw, was spread upon the floor, with a blanket for a covering, and we slept the sleep of the just.

In the morning the wife gave us for breakfast a good cup of coffee, some excellent griddle cakes, and broiled venison. After breakfast we opened up negotiations with our host, whose name I regret I have forgotten. After some conversation he agreed to paddle us down to St. Anthony and take the canoe in payment. Late in the afternoon we reached St. Anthony, and wended our way to the St. Charles hotel, and soon after we took passage in one of

Willougby & Powers' coaches for St. Paul, where we arrived about supper time. Driving up to the old Central house, on Bench street, Mr. Nelson, as he tumbled out of the coach, said:

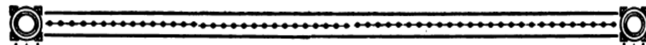
"Gentlemen, this has been a trip of a lifetime."

Mr. Moss, stepping out more carefully and cautious, said: "Well, well, I should remark."

I, being a commoner, and not so high-toned as my fellow pilgrims, as I struck the ground (sidewalks has not yet been introduced into St. Paul), yelled out,

"Home again; d—n it, let us go in and see if old Kennedy has anything for us to eat—I am hungry!"

—William Pitt Murray.



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