

“LAW BEING AT A DISCOUNT”

BY

OSCAR F. PERKINS

FOREWORD

BY

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In the spring of 1855, twenty-five year old Oscar F. Perkins, fresh from Vermont, arrived in the village of Faribault, Minnesota Territory, eager to practice law. He was utterly unprepared for what he found. He quickly learned that he could not make a living as a lawyer. He became a vegetable farmer, broke ground with an axe, and grew potatoes, which, though neglected, he sold for \$35. He tried to grow corn but failed. He turned from law to theology, helped found a Bible Society and gave a fire and brimstone speech in true Calvinist style. He appeared in one court case, as a prosecutor in justice court, but it had no jurisdiction. That winter he went back east, got his wife, returned to Minnesota and lived there for many decades.

Twenty years later, Perkins attended a meeting of “old settlers” and described his first two years in Minnesota Territory. His remarks were condensed, polished and published in a county history in 1882. They follow.

Perkins came from New England. The popular historian Stewart Holbrook has traced the home states of migrants to Minnesota in the territorial and early statehood years, and found that many were from Vermont, Connecticut, New Hampshire, Maine and Massachusetts. He writes:

The Yankee exodus to all parts of the American West, and occasionally into the South, is the most influential movement our country has known. The Yankees began to leave New England even before the Revolution, at a time when Maine, Vermont, and to a lesser degree New Hampshire contained unknown thousands of acres of howling wilderness. But at that time the movement away was neither large nor continuous; the great migrations had to wait until the fighting was over.

Their leaving has been explained in generalizations about poor lands, differing religious opinions, heavy taxes—or any taxes—and dislike of the climate. Easier than such generalizations, and probably nearer the truth, would be another sweeping statement—that Yankees were born with an uncommon urge to see, with their own eyes, if the grass on the other side of the mountain really was greener. Certainly, it was some such curiosity and little else that prompted many a well fixed New Englander to leave a prosperous vocation or a productive farm and head for the wilderness of western New York and Pennsylvania, of Ohio, and even of what is now Mississippi, there to hang out his shingle amid smoldering stumps, or to grow corn where mean Indians lurked around the clearings.¹

This helps explain how Perkins “fell in,” as he put it, “with the great western bound flood tide of emigration.” Moving west seems to have been the thing to do for many of Perkins’s generation.² He soon met

¹ Stuart H. Holbrook, *The Yankee Exodus: An Account of the Migration from New England 11-12* (Seattle: University of Washington Press, 1968)(1950). Holbrook devoted an entire chapter to New England pioneers in Minnesota. Id. at 166-186. He noted that many migrants from Vermont—“Green Mountain people” — played large roles in the early development of Faribault. Id. at 179.

² Oscar was joined by his younger brother, C. C. Perkins, who was born in Stowe, Vermont in 1833, and settled in Faribault in 1855. Other members may be George D. Perkins, born in Stowe in 1831, and settled in St. Anthony in 1852; and

other young, restless, energetic and curious lawyers looking for a place to settle. Among them were George Washington Batchelder and John McDonough Berry, with whom he boarded for several months “in a little board shanty” in Faribault. The arrival of the footloose Batchelder and Berry was also described in the 1882 county history:

Hon. G. W. Batchelder arrived and planted himself here in the spring of 1855, coming on foot with Judge Berry, who was not a judge then, except of a good thing when he saw it. They had traveled around prospecting, visiting St. Paul, Shakopee, Mankato, Cannon Falls, Zumbrota, and finally here, where, enchanted with the country, they resolved to halt. John Cooper was here at the time and there was talk about his jumping the townsite, but his claim proved a good one and became Cooper’s addition. At first Berry and Batchelder boarded with Truman Nutting at \$4 a week, and afterwards with Moses Cole at the “Ox Head Tavern.”

To understand the mid-nineteenth century bar in the new territory, it is necessary to visualize their physical world. Batchelder and Berry walked from town to village looking for the right place to start their practices. Even if they owned law books, they could not have carried many with them, yet law books are commonly thought to be the tools of the lawyer’s trade. On the frontier, however, the essentials tools for many practitioners were a pen, ink and paper, which they used to draft promissory notes, assignments of land claims, deeds, and occasional pleadings. Land transactions were their bread and butter. They brought or imported to Minnesota Territory a view or understanding of how law was practiced during their apprenticeships back east, yet conditions on the Rice County frontier bore little resemblance to what they had left behind. St. Paul was far away. Distances were not measured, as today, in units of time. Lawyers walked at first; later they bought a horse. The news, by the time it reached a rural

Ellet P. Perkins, born in Stowe in 1836, and moved to Minnesota in 1855. See their profiles in Warren Upham and Rose Barteau Dunlap, *Minnesota Biographies, 1655-1912* 588 (St. Paul: Minnesota Historical Society, 1912).

settlement, was usually days if not weeks old. We wonder, for instance, how long it took for lawyers in the village of Faribault to get the full texts of the decisions of the Territorial Supreme Court—and whether those rulings made a whit of difference in how they practiced.

Many early settlers, lawyers included, did not adapt to their new environment. A few returned to New England, others continued westward. Many died young as a result of illness, accident or, later, in the civil war.

But some stayed and succeeded. Among them were George W. Batchelder and John M. Berry. Batchelder lived, practiced law and engaged in community service in Faribault his entire adult life. When he died on January 9, 1910, the *Faribault Journal* reported his passing on its front page under the headline, “ONE OF FARIBAULT’S MOST PROMINENT AND OLDEST CITIZENS PASSES AWAY.”³ Berry went into politics, gained a statewide prominence, and served as an associate justice of the state supreme court from 1865 to 1887.⁴

Unfortunately we do not have as much information about Oscar Perkins. The semi-official collection of biographies published by the state historical society has the following entry on him:

PERKINS, OSCAR F., lawyer, b. in Stowe, Vt., Jan. 4, 1830; was admitted to the bar in 1854; came to Minnesota the

³ *Faribault Journal*, January 12, 1910, at 1. For sketch of Batchelder, see Upham & Dunlap, *supra* note 2, at 38.

⁴ For biographical sketches of John M. Berry, who was not related to Charles H. Berry, the state’s first attorney general, see Upham & Barteau, *supra* note 2, at 53; and Russell O. Gunderson, *History of the Minnesota Supreme Court* §10 (n. p. n. d.) (“Judge Berry was a member of the territorial legislature in 1856 and 1857, and chairman of the judiciary committee of the House, and in 1863 and 1864 was chairman of the same committee of the Senate. During 1860 and 1861 he was a member of the board of regents of the University. In 1864 he was elected an associate justice of the supreme court, qualified and took his seat January 10, 1865. He remained a justice by virtue of successive re-elections until his death [in Minneapolis on November 8, 1887.]”).

same year, and in 1855 settled in Faribault; removed in 1876 to Northfield; was a state senator, 1867-8.⁵

We do not know when or where he died. But he has left us with a vivid picture of what a young lawyer's life was like in 1854 and 1855.

Perkins's recollections appeared on pages of 274-275 of Edward D. Neill's *History of Rice County* published in 1882. Though reformatted, they are complete. Punctuation, spelling and grammar have not been changed. The title of the piece, "Law Being at a Discount," has been added by the MLHP.

Almost forty years after Oscar Perkins regaled the old settlers with tales of his first two years in Minnesota, Kate Davis Batchelder, the widow of George W. Batchelder, was interviewed for what became a classic anthology of frontier stories by settlers in Minnesota Territory: *Old Rail Fence Corners: Frontier Tales Told by Minnesota Pioneers*. Edited by Lucy Leavenworth Wilder Morris, it was published by the Minnesota Historical Society in 1914, followed by a second edition in 1915, and reprinted in 1976. An excerpt from her recollections appears in an Appendix. It too has been reformatted. ■

⁵ Upham & Barteau, *supra* note 2, at 589.

HISTORY
OF
RICE COUNTY,
INCLUDING
EXPLORERS AND PIONEERS OF MINNESOTA,
AND
OUTLINE HISTORY OF THE STATE OF MINNESOTA
BY REV. EDWARD D. NEILL;
ALSO
SIOUX MASSACRE OF 1862,
AND
STATE EDUCATION,
BY CHARLES S. BRYANT.

MINNEAPOLIS:
MINNESOTA HISTORICAL COMPANY,
1882.

“LAW BEING AT A DISCOUNT”

BY

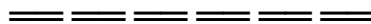
OSCAR F. PERKINS

At the meeting of the old settlers in March, 1875, Hon. O. F. Perkins related his experience, an abstract of which is here given. He left Vermont in 1854, fell in with the great western bound flood tide of emigration, and traveled by rail to the western terminus of the railroad, at Galena, Illinois, and there took passage for St. Paul, on the Alhambra, which was two weeks making the trip. St. Paul then claimed 4,000 inhabitants. He went to St. Anthony and Minneapolis, spending the winter there. He had no business, but was invited to deliver an address on the Maine liquor law, which he then thought would be most admirable for this new country, which he did with such success that he supposed the whole community was converted to his views. About that time the first suspension bridge across the Mississippi, at Minneapolis, was completed, and Mr. Perkins, at the celebration and banquet which followed this event, was called upon for a speech, and although all the public men there were intensely democratic, he introduced his anti-slavery views, which, had he been a little older he might have been a little more cautious in doing in such a presence. This, however, proved to be a turning point in his career, for the Hon. J. W. North, hearing of the incident, invited him to go with him to Faribault, where just such daring men were wanted, and he accepted the invitation and rode out in a sleigh with him, being two days on the road. It was bitter cold, and arriving here, the scene was in striking contrast with what would greet a visitor now. He remained a few days in mortal fear of having his scalp lifted, came back the following spring and opened a law office and studied up the claim business, boarded with Mr. Crump, and had his office up stairs. He afterwards moved into a blacksmith shop, but as business did not open up, he went to farming. He bought a bushel of potatoes for \$2.50, and carried them to a spot of ground he had procured north of D. W. Humphrey's house, and planted them with an axe; did nothing more with them until fall, when the crop was sold to Dr. Charles Jewett for

\$35. He also planted some corn on the bluff near the stone quarry; it came up two or three times, by the aid of the gophers, but finally got ready to grow, and in due time it was harvested by the cattle, and he concluded that raising corn was not his *forte*, that potatoes were his “best holt.” Law being at a discount, he tried his hand at theology, and preached the first sermon, as far as he knew, in this region, from a book loaned him by Truman Nutting, and it was pure, unadulterated Calvinism, without any “sugar coating.” He also assisted in the formation of the first Bible Society; he was the Secretary, and Frank Nutting local agent. According to his recollection, E. J. Crump, Esq., was the first Justice of the Peace, and the first case before him was a replevin case for a gun worth \$2.50. Mr. Perkins was the prosecuting attorney, but the case was sworn out of the jurisdiction of the court. When at work as a horny-handed yeoman, carrying his potatoes to plant, he met John M. Berry and C. W. Batchelder, and with his brother they all went to living together in a little board shanty.

That 4th of July was duly celebrated in Faribault; Dr. Charles Jewett delivered the oration, and Frank Nutting sung one of Ossian B. Dodge’s songs, “The Unfortunate Man.”

In October, 1855, there was a severe snowstorm, but it soon melted, and November was a fine month. In the winter Berry, Batchelder, and the Perkins brothers kept a bachelor’s hall, dividing the housework, and the devices resorted to, to get rid of washing the dishes, were often original and ingenious. Mr. Perkins went east and got his wife, and returned to remain in the county ever since. ■



APPENDIX

MLHP: The following is an excerpt from Kate Davis Batchelder’s recollections of some of the events described by Oscar Perkins. They were published first on pages 291-292 of *Old Rail Fence Corners: Frontier Tales Told by Minnesota Pioneers*:

Mr. Berry, afterward a Judge on the Supreme Bench, started out on foot from Janesville, Wisconsin with Mr. Batchelder and after prospecting around and visiting St. Paul, Shakopee, Mankato, Cannon Falls and Zumbrota, they finally walked in here. Fifty years afterwards Mr. Batchelder went out to Cannon Lake and walked into town over the same road that he had come over as a young man, and he said that while, of course, the buildings had changed things somewhat, on the whole it looked surprisingly as it had the first time he passed over it. Mr. Berry and Mr. Batchelder opened a law office in a little one story building in the back of which they slept. While coming into town, they had met O. F. Perkins, who had opened a law office, and business not being very brisk, he had turned a rather unskillful hand to raising potatoes. At \$2.50 a bushel he managed to do well enough and eked out his scanty income from the law. It was while he was carrying the potatoes to plant that he met Mr. Berry and Mr. Batchelder and having become friends, they all, together with Mr. Perkins' brother, started bachelor's hall back of Mr. Perkins' office, where they took turns washing dishes. I have heard Mr. Batchelder say that "hasty pudding" or what we call corn meal mush, was his specialty and I believe, partly in recollection of those old days when lack of materials as well as unskillful cooks compelled the frequent appearance of this questionable dainty, partly perhaps, because he had learned to like it, "hasty pudding" was served Monday on his table for all the later years of his life. ■



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