

“ SUPREME COURT OF MINNESOTA ”

(1902)

On Sunday, March 2, 1902, the *St. Paul Globe* devoted an entire page to the Minnesota Supreme Court—how it functions, its current membership, lists of its members going back to the territorial era and long excerpts from previously published recollections of the territorial court by Henry L. Moss and Charles Flandrau, prominent practitioners in St Paul who would be dead by the end of the year.¹

Flandrau dismisses Chief Justice Hayner as follows: “There seems to be no record of his ever presiding at any court. He may have done so, but I have been unable to find anything that shows it, and tradition has never affirmed it to my knowledge.” That “tradition” did not include the recollections and experiences of retired Federal District Court Judge Rensselaer R. Nelson, who promptly sent a “Letter to the Editor” of the *Globe*, correcting Flandrau’s error. It is posted in the Appendix.

Although the piece lacks a byline it obviously was written by the reporter who was assigned to cover the Court for the paper. Viewers interested in the Court’s history will enjoy the journalist’s colorful impressions of how current members — Chief Justice Start and Associate Justices Collins, Lovely, Lewis and Brown — participate in oral argument.

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¹ Moss died on July 20, 1902 and Flandrau died on September 9, 1902.

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SUPREME COURT OF MINNESOTA

To the general public the supreme court is a vague and mysterious agency whose works are made manifest in the form of long and ponderous decisions—impressive by reason of their incomprehensibility—whose every utterance is law; but with which there is associated no personality.

There is no branch of the state government of which there is so little known. In the mind of the average person the supreme court is merely an unknown something which has powers of final adjudication and from which laws emanate. Even in the practice of law the supreme court is a comosite (sic) entity and is sufficiently identified as the supreme court of Minnesota or the supreme court of Massachusetts, or Illinois, as the case may be. Its individual members rarely if evet appear in public life clothed in their own personality.

Separated into its integral members the supreme court of the state of Minnesota at present consists of Hon. Charles M. Start, Rochester, chief justice, and the Hons. L. W. Collins. St. Cloud; John A. Lovely, Albert Lea; Calvin L. Brown, Morris, and Charles L. Lewis, Duluth, associate justices. The justices of this court are elected by the people at general election[s] for terms of six years each, and in case a vacancy should occur through the

death of a member it is supplied by appointment of the governor. The salary of a justice of the supreme court of this state is fixed by the law at \$5,000 a year.

The other officers of the court are a clerk, a deputy clerk and two assistants, an official reporter and a marshal. The clerk is elected for four years and the other officers being appointed by the court. The present incumbent of the clerk's office is Dar F. Reese, who is now serving his second term, and his deputy is J. L. Helm, of whom it may almost be said that he has been in that position so long that the mind of man runneth not to the contrary. Upon Mr. Helm devolves a greater portion of the routine work of the office, and his knowledge of the detail of the work of the court is remarkable.

On the second floor of the capitol extending across the south wing are the five little rooms which serve as chambers for the justices of the court, and closely adjacent is the court room. This apartment is not, as might be supposed from the purposes to which it is devoted, a place of magnificent dimensions, but in all of its appointments from the stained glass windows to the severely plain furniture and appointments it is characterized by an atmosphere of dignity which is impressive.

Dignity, formality and severe decorum are characteristic of the supreme court and all that pertains to it, and it appears highly fitting that it should be so. The justices, although in private life of genial and sociable habit, are, when on the bench, severely dignified and decorous, and the proceedings of this tribunal are so

marked by formality as to be almost oppressive to the layman and cause him to constantly fear that he will unconsciously violate the rigid customs of the place.

No Mock Dignity.

While this is true, at the same time it is not that artificial and sham dignity which is carried to extremes in the old country and becomes ridiculous and offensive. There is no personal element in it. There is no air of "I am a judge, therefore do me homage." It is rather that dignity of responsibility due to the high official position they occupy as the representatives of the dignity of the state and its greatest interests. There is nothing unnatural about it. It is unconsciously recognized by all who enter the temple of justice. No person would, even inadvertently, give himself to levity in the court room. However, in the court room, as elsewhere, many amusing incidents occur and the judges are always the first to take advantage of these opportunities for breaking the formality of the proceedings. It is no uncommon thing to see the members of the bench indulge in a quiet laugh when occasion offers.

While there is no body in the country less open to prejudice or more careful to guard its leaning in a case from public scrutiny, the judges are only human, and lawyers who practice before the court a great deal often are able to "size up" the court's opinion from the manner in which the judges receive the arguments. The day after the arguments in the celebrated board of control case were submitted a well known lawyer wrote out upon

a slip of paper the way in which the court would divide upon the question and sealed it. Several months later when the decision was filed this slip was found to be absolutely correct, although the decision was a surprise to the general public.

A greater proportion of the cases are submitted to the supreme court in printed form and without argument, the paper book, as it is called, containing all of the data in the case, including the record of the lower court. Motions are argued, and in rare instances an issue is taken direct to the supreme court without having passed through any of the lower courts, and in such cases also arguments are heard.

When the court has determined upon its decision in a case one of the justices writes the opinion in conformity with the views of the court. In many cases the entire court cannot come to an agreement, and then dissenting opinions are filed. Cases have been known in which there were three various opinions filed.

Judge Start Keeps Things Going.

Justice Start, being chief justice, acts, so to speak, as "stage manager" of the proceedings, and in this capacity is of great help to the court and the attorneys. He is most business-like and systematic. He is impatient of useless delay, and very strict in keeping the lawyers to the point at issue. When a lawyer shoots off on a side issue, Justice Start immediately reminds him that he is not discussing the question before the court. While this is so, he is most kindly in his attitude towards attorneys, and by

questions and suggestions very often helps an embarrassed lawyer over a hard place.

While there is not a more sympathetic man upon the bench than Justice Start, he is always noticeably disinclined to listen to arguments upon "general principles," "righteous propositions," "question of justice," or "humanitarian reasons." In other words, he realizes that the court has only to do with the legal phase of the question, regardless of how unjustly the law may be in any particular case. He is like the late Justice Mitchell in this respect, and his decisions are clear-cut legal documents, not given much to side reflections.

From the questions asked by the court, it is often possible to perceive in which direction the members lean. Justice Collins is the hardest member of the court to "size up." He seems wholly unimpressionable, and it is seldom that a lawyer can perceive a favorable symptom or draw a crumb of comfort from anything he says or does. He says little, betrays no undue interest in the case and gives no inkling of how the arguments strike him. Judge Collins is an unusually rapid worker, and his opinions bear the impress of spontaneity.

Justice Lovely is the humorist of the bench. He can never resist the temptation to get a quiet simile out of any incongruity in the arguments, and many a time when he asks a question there is a twinkle in his eye which strongly impresses one that he is having some sly fun with the unsuspecting lawyer. He is exceedingly

patient with dull and tedious argument, and the lawyers get much encouragement from his contagious good nature.

Judge Lewis gives very close attention to all arguments and follows the proceedings diligently. His demeanor throughout the case is generally very serious, and he impresses one as being an exceedingly careful and judicious thinker. Off the bench he is, though quiet, a most companionable gentleman.

Justice Brown is never in a hurry. He tilts back in his chair with his arms swinging at his side as unconcerned apparently as if waiting for a train. He asks fewer questions than the other members and refers to the books very seldom. He acts in a very leisurely sort of a way, but is an unusually hard worker and considered one of the clearest thinkers on the bench.

The supreme court of Minnesota has never been composed of a more genial, companionable lot of men than the present judges.

People who do not know very often say, "What a snap the judges have." On the contrary no public official works harder than a supreme court justice. Some of the arguments they are forced to listen to would not be endured by many men for any money compensation. It is no unusual thing to hear a young lawyer harangue the court on some petty question, as if the fate of the nation and the integrity of the constitution depended upon his burning logic.

Then there are the numerous briefs to be read and considered in each case, the vital points of law to be decided and promulgated in decisions which will effect (sic) future jurisprudence. The great responsibility imposed and the possible results make the writing of these decisions a hard, arduous task, imposing patience, calm judgment, careful thought and thorough investigation. No other class of men have so little leisure time at their disposal.

MINNESOTA SUPREME COURT.

Territorial

Chief Justices—

Aaron Goodrich—1849-1851.

Jerome Fuller—1851-1852.

Henry Z. Hayner—1852-1853.

William H. Welch—1853-1858.

Associate Justices—

David Cooper—1849-1853.

Bradley B. Meeker—1849-1853.

Andrew G. Chatfield—1853-1857.

Moses Sherburne—1853-1857.

R. R. Nelson—1857-1858.

C. E. Flandrau—1857-1858

State.

Chief Justices—

Lafayette Emmett—1858-1865.

Thomas Wilson—1865-1869.

James Gilfillan—1869-1870.

Christopher G. Ripley—1870-1874.

S. J. R. McMillan—1874-1875.

James Gilfillan—1875-1894.

Charles M. Start—1895-1907.

Associate Justices—

Charles E. Flandrau—1858-1864.

Isaac Atwater—1858-1864.

S. J. R. McMillan—1864-1874.

Thomas Wilson—1864-1865.

John M. Berry —1865-1887.

George B. Young—1874-1875.

F. R. E. Cornell—1876-1881.

D. A. Dickinson—1881-1894.

Greenleaf Clark —1881-1882.

William Mitchell—1881-1900

C. E. Vanderburgh—1882-1894.

Leron (sic) W. Collins—1887-1907.

Thomas Canty—1894-1900.

Daniel Buck—1894-1900.

John A. Lovely—1900-1906.

C. L. Brown—1900-1906.

C. L. Lewis—1900-1907.

The First Court.

In 1849 upon the organization of the territory of Minnesota, President Taylor appointed Aaron Goodrich, of Tennessee, chief justice of the supreme court; David Cooper, of Pennsylvania, and Bradley B. Meeker, of Kentucky, associate justices.

The first territorial court was held in 1849 in the court house at Stillwater. Many of the first lawyers of Minnesota were admitted to the bar at that term of court. The first one to take the oath was Hon. Morton S. Wilkinson, then practicing at Stillwater, and afterwards famous in the senate and house of the United States congress. Others were Henry L. Moss, Edmund Rice, Alexander Wilkin, Lorenzo A. Babcock, David and Henry Lambert, James Wakefield, Alexander Mitchell, E. G. Whitall, B. W. Lott, and John S. Goodrich. Henry L. Moss, first attorney general of the state, and still living, speaks as follows of the early territorial court:

"In a subsequent proclamation issued after coming here Gov. Ramsey assigned the judges to different portions of the territory for the performance of their duties. The proclamation assigned Chief Justice Goodrich to administer justice over the civilized portion of the territory, which embraced the entire country lying west of the St. Croix river and east of the Mississippi, extending to the British possessions. It banished Judge Cooper to the uncivilized and Indian country west of the Mississippi and south of the St. Peter river, with headquarters at Mendota. It sent Judge Meeker into exile in the wilderness, that terra incognita lying west

of the Mississippi and north of the St. Peter river, a land where lay the beautiful Lake Minnetonka, with its charming and picturesque shores, yet undiscovered. His headquarters were in an old dilapidated mill on the west bank of the river at St. Anthony falls.

"The second term of the court held in the territory was by Judge Cooper in Stillwater in the month of February 1850. This term is noted for having the first criminal trial for murder under Minnesota laws. It was a case of a boy about thirteen years of age, by the name of Snow, killed by a companion of about the same age, on Third street, near the corner of Franklin street. The prosecution was conducted by Morton S. Wilkinson and Putnam Bishop; the defense by Michael E. Ames and myself. The firing was from the southerly side of the street, with an ordinary shotgun, directly across the street where stood the Snow boy, both looking at each other. A single small bird shot penetrated the eye and brain of the Snow boy. The jury convicted the boy of manslaughter, holding that, even in the absence of malicious intent, the firing of a gun across a public highway where people were passing was an unlawful act. Judge Cooper, in pronouncing sentence, there being no penitentiary in the territory, committed him to the guard house at Fort Snelling for ninety days, during the first two of which, and the last one, he was to be kept in close confinement and fed on bread and water. James M. Goodhue, of the Pioneer, commenting on the decision of Judge Cooper, said it was a specimen of dispensing justice in homeopathic doses.

Judge Goodrich Opposed.

"There are gentlemen still living who were of a self-constituted committee who in the early spring of 1851 went to Washington and called on Daniel Webster, secretary of state, to secure the removal of Chief Justice Goodrich, and at the same time called on James Collamar, postmaster general, to secure the removal of Franklin Steele, the postmaster at Fort Snelling. This committee met with no success. The secretary of state, after hearing their complaints decidedly and positively declined to give the matter any consideration. Gen. Collamar turned their application over to Henry Fitz Warren, the first assistant postmaster general, who, unfortunately for their purpose, was personally well acquainted with Mr. Steele; and their application for his removal was not entertained.

"The opponents of Judge Goodrich did not cease in their efforts to secure his removal. There were not wanting other causes of complaint against him during the year 1851, and early in January, 1852; and a letter to President Fillmore was formulated, containing specifications of incompetency and unfitness as a judge and of improprieties on and off the bench. The letter was signed by a number of prominent attorneys, and was sent to a gentleman now living, who at that time was stopping in Washington, with a request that he make a personal presentation of the same to the president. Whether or not he did as requested, I never knew. The opposition and charges against the judge were sufficient, and in a short time thereafter, in January, 1852, he was removed by

President Fillmore, and Jerome Fuller, of New York, was appointed chief justice of the territory.

"The opposition to Judge Cooper arose from entirely different causes. He was considered a good lawyer; technical and precise, but he was so positive in his convictions that he could not endure opposition to them, and frequently exhibited irritation, and sometimes anger to those who differed from him. His refinement in manner and dress was the occasion of ridicule among the hardy and robust lumbermen with whom he came in contact. As early as the winter of 1851 Mr. Goodhue's editorials were over bearing and unmerciful toward him. Friends made an effort to have these attacks upon him cease. It was of no avail. Joseph Cooper, residing at Stillwater, a brother of the judge, took up the matter, and made it a personal affair. Rumors of threats and personal attacks were in the air. Each had prepared himself for an emergency. On a February morning they met face to face on the sidewalk a short distance above where now stands the Metropolitan hotel, and the conflict came. I am not aware that it is known which of them made the first attack. A shot from the pistol in Goodhue's hand struck Cooper over the left groin, inflicting a wound which, though not fatal, made him an invalid for life. The knife in Cooper's hand made a deep slash across Goodhue's abdomen. This tragedy occurred directly in front of the building where the territorial legislature was then in session.["]

Judge Charles E. Flandreau [sic], who sat upon the supreme court bench of both the territory and the state, gives the following description of the first supreme court:

Personality of Early Judges.

"When the territory was organized its judicial power was vested in' a supreme court, district courts, probate courts and justices of the peace. Three judges were allowed it, a chief justice and two associates. The judges held the trials individually and assembled "in banc" to sit as a supreme court of appeals. This allowed a judge to sit in review of his own decision, which is not to be commended, but did not produce any noticeable disturbance in the administration of justice that I remember.

"The first chief justice was Aaron Goodrich. I think he came from Tennessee. He was quite an eccentric person, and not particularly eminent as a lawyer. When his successor, Jerome Fuller, was appointed, he refused to yield, claiming that, as his office was judicial and federal, his term lasted during good behavior; but his contention, of course, did not prevail. At one time, Judge Goodrich, Judge Chatfield and William Hollinshead were appointed to compile the statutes from 1849 to 1859. Goodrich got up a code of his own which was unique. It was not a compilation at all, but an original code. I remember one provision which was a cure-all for matters unprovided for; it was about as follows: 'If any question shall arise, civil or criminal, which is not provided for in this revision, the ancient statutes shall prevail in regard to it.' It got into print but no further.

"David Cooper was one of the first two associate justices. He was from Pennsylvania, and a very peculiar man for the position. We always called him a gentleman of the old school. It was not on

account of his age because he was quite a young man, but arose from his manners and dress He was a very social man and liked good things, and when exhilarated the more punctilious and ceremonious he became in his deportment. He always wore shirts with cambric frills down the front, and lace dangling from each cuff, in the manner that French courtiers decorated their hands in the days of Louis Quatorze.

"Bradley B. Meeker was the other associate justice on the organization of the territory. He was a queer genius in his way, and became the owner of a considerable tract of land between St. Paul and St. Anthony, which included the famous Meeker's Island in the Mississippi. He died suddenly at a hotel in Milwaukee, having started on a journey to pass through that city.

"The next territorial bench consisted of Jerome Fuller, chief justice, and Andrew G. Chatfield and Moses Sherburne, associates. Fuller only remained a short time, and I find no record of his making. Chatfield was from New York originally, but was appointed from Wisconsin. Sherburne was from Maine. These two latter gentlemen were good lawyers, and made good judges. They served from April 7, 1853, to April 23, 1857.

"After these came Henry Z. Hayner, as chief justice. There seems to be no record of his ever presiding at any court. He may have done so, but I have been unable to find anything that shows it, and tradition has never affirmed it to my knowledge. He was succeeded as chief justice by William H. Welch, with whom were associated Rensselaer R. Nelson and myself. We all served from

April 13, 1857, to May 24, 1858. The state was admitted on May 11, 1858.

Judge Welch was from Michigan, but was living in the territory of Minnesota when appointed. Nelson and I were from New York, but both were appointed from the territory.

Early Practice Somewhat Mixed.

"It can readily be seen that the practice in the courts in those days must have been just a little mixed. The New York code was invented in 1849, and being such a radical departure from the common law and chancery practice, the older lawyers were reluctant to learn its ways, even in its home in New York but when administered by judges from Tennessee, Pennsylvania, Michigan, Maine and Kentucky, all of whom were wedded to their own way of doing things and thought they could not be improved upon the jumble was of course rather amusing. As in everything else however, we all got through—people usually do—and the territory flourished. "

Col. Newson has left these pen pictures of other territorial justices:

"Judge Chatfield was a straight, splendidly built man, with a florid complexion and an elegant address indeed one might say he was 'a fine American gentleman of all the olden time.' He was a judge of the finest purity of character, very careful and very honest; very sincere and very conscientious in his

convictions of right. He removed to Belle Plaine many years ago, and there he died, universally mourned by the whole bar of the state.

"Judge Sherburne was a man of fine proportions, with large towering forehead, and immense eyes, and he was an excellent judge. His decisions have never been overruled. The latter part of his life was spent in Sherburne county, named after him, and he went down to the grave in the full vigor of manhood.

"The first chief justice of the state supreme court was Lafayette Emmett, who is said to have been a most distinguished looking man. He was very generally esteemed for his ability as a lawyer, and for many amiable traits of character which adorned the man. He was of a retiring disposition, quiet, unassuming, undemonstrative.

"The supreme court has honored, and been honored, by men of learning, ability and noble traits of character. Many of the judges were famous in other directions, several of them being members of congress. The late Justice William Mitchell was known throughout the United States as a man of exceptional legal keenness and his opinions were read far and wide for their lucidity, depth of thought and thoroughness."

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APPENDIX

The St. Paul Globe

Tuesday, March 4, 1902

Page 4

AN ERROR CORRECTED.

To the Editor of the Globe.

I am surprised at an intimation, or qualified statement, in the "Review of the Supreme Court of Minnesota," published in your issue of March 2, 1902, that the Hon. Henry Z. Hayner, third chief justice of the supreme court of the territory of Minnesota, never presided at any court during his term of office. This is an error. Chief Justice Hayner presided at the November term, 1852, of the Ramsey county district court and tried the celebrated murder case of U.S. vs. Yue-ah-hase, a Sioux Indian, indicted and convicted of shooting Mrs. Keatnor. At that time, by the law, twelve months' imprisonment was imposed before execution. The Indian was fattened during his term in jail, and at the appointed time was dragged to the gallows with a rope around him by the sheriff and a posse and almost tortured before he was hung up.

Among other cases heard by Judge Hayner at this term was an appeal in the prohibitory "Maine Liquor" law, so called.

The previous legislature had submitted the enactment of a prohibitory liquor law to the people of the territory and the vote was in favor of prohibition by a small majority. It caused great excitement and the attempted enforcement of the law in St. Paul resulted in breaches of the peace and broken heads. In the case

before the court the validity of the law was the question presented. I was employed in the case, and contended that an attempt had been made to confer legislative power upon the people contrary to the terms of the act organizing the territory. Judge Hayner in a lucid opinion sustained this view and upset the law.

Chief Justice Hayner resided in Troy, N. V., when appointed. His predecessor, Fuller, also was a native of New York, and a politician of influence, and affiliated with that faction of the old Whig party denominated "Silver Grays" in opposition to the Radicals led by Gov. Seward.

Mr. Fillmore was president of the United States in 1851 and, recognized in New York as a "Silver Gray," Judge Fuller was appointed by him, but Mr. Seward, who was in the senate, opposed and defeated his confirmation, and Hayner succeeded him. He was a good lawyer, somewhat opinionated and irascible, but gave satisfaction during his official term. He practiced law after leaving the bench a short time in St. Paul and returned to New York.

The "review" published by you being a part of the "History of Minnesota," is my only excuse for this intrusion.

—R. R. Nelson.
St. Paul, March 3, 1902.

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