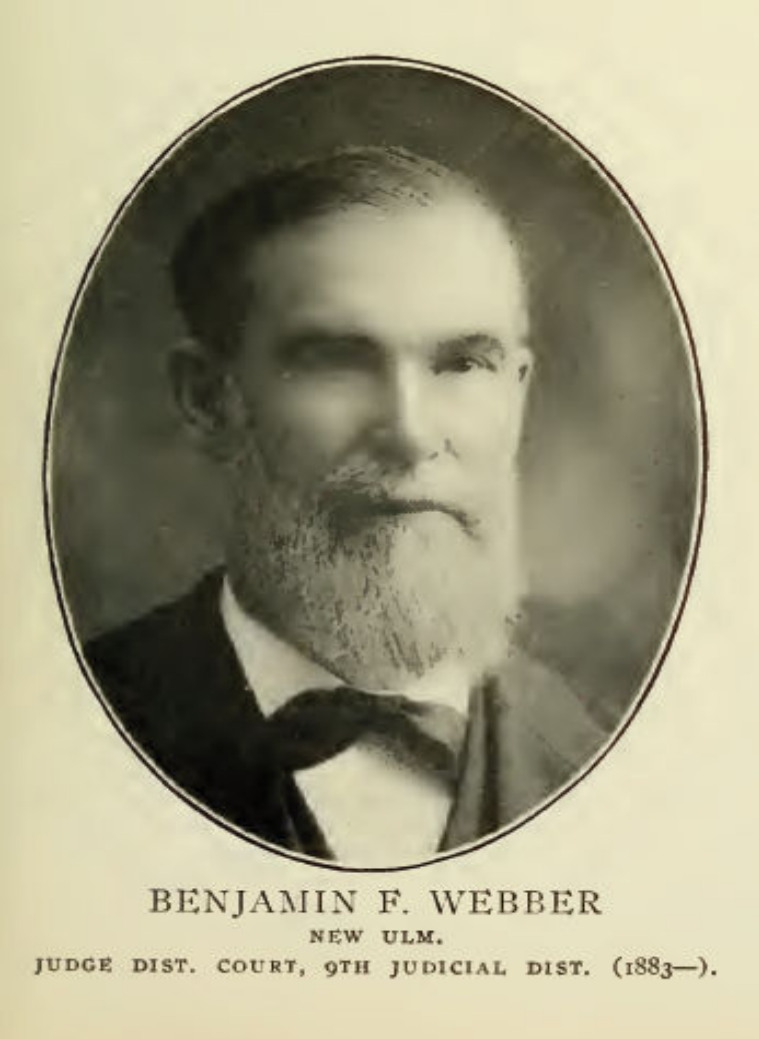
Judge Benjamin F. Webber

• October 4, 1833 • December 4, 1906 •



By

Douglas A. Hedin

Minnesota Legal History Project

• January 2022 •

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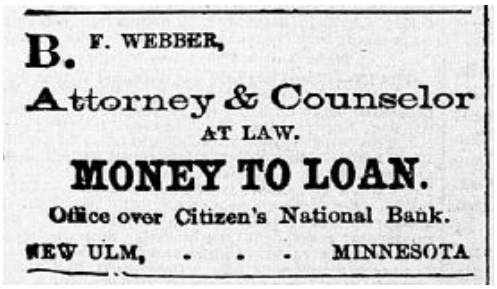
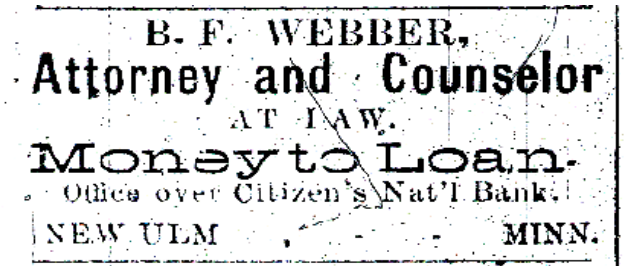
1. The Early Years.

Benjamin F. Webber arrived in Minnesota in 1868 with his family. He first settled in Garden City in Blue Earth County, and worked as a teacher and carpenter while studying in his spare time to become a lawyer.[1] There is no record that he ever served as a clerk or apprentice in a lawyer's office before he was admitted to the bar on March 21, 1872. He was 38 years old.

He then moved to New Ulm, the seat of Brown County, and commenced a life-long career in public service. In 1874 he was elected county attorney and re-elected in 1878. The work of a county attorney was not full-time, permitting him to have a private law practice. Even with that, he needed another business to make ends meet. His business card, published in the local newspapers, listed his work as a lawyer and lender but not his official position as county attorney:[2]


B. F. WEBBER,
Attorney & Counselor
AT LAW.
MONEY TO LOAN.
Office over Citizen's National Bank.
NEW ULM, - - - MINNESOTA


B. F. WEBBER,
Attorney and Counselor
AT LAW.
Money to Loan.
Office over Citizen's Nat'l Bank.
NEW ULM - - MINN.

At this time the officers of the county and city government were published in the local newspaper. In 1882 Webber was listed as the Brown County Attorney: [3]

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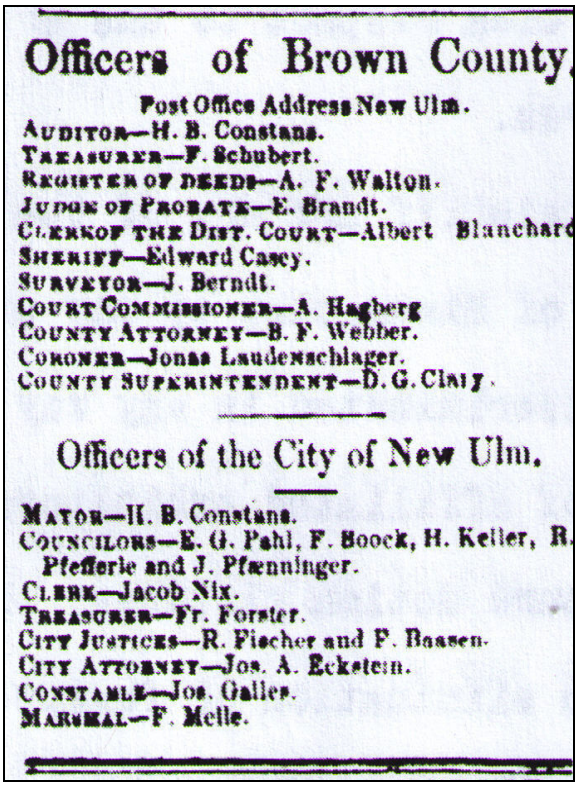
[1] In 1871 he worked as a carpenter on a store in Good Thunder in Blue Earth County. Thomas Hughes, *History of Blue Earth County* 172 (1901) ("The carpenter work was done by Julius (sic) Webber, then a young carpenter at Garden City, but afterwards for many years the honored judge of the Ninth Judicial District, with home at New Ulm.").

[2] Left: *New Ulm Weekly Review*, November 13, 1878, at 1; Right: *New Ulm Weekly Review*, September 27, 1882, at 1. Oddly it was printed for several months the following year after he was serving as a judge: e.g., *New Ulm Review*, March 7, 1883, at 1.

[3] *New Ulm Weekly Review*, November 8, 1882, at 3.



Officers of Brown County.

Post Office Address New Ulm.

AUDITOR—H. B. Constans.
TREASURER—F. Schubert.
REGISTER OF DEEDS—A. F. Walton.
JUDGE OF PROBATE—E. Brandt.
CLERK OF THE DIST. COURT—Albert Blanchard
SHERIFF—Edward Casey.
SURVEYOR—J. Berndt.
COURT COMMISSIONER—A. Hagberg
COUNTY ATTORNEY—B. F. Webber.
CORONER—Jonas Laudenschlager.
COUNTY SUPERINTENDENT—D. G. Clay.

Officers of the City of New Ulm.

MAYOR—H. B. Constans.
COUNCILORS—E. G. Pahl, F. Boock, H. Keller, R. Pfefferle and J. Pfænninger.
CLERK—Jacob Nix.
TREASURER—Fr. Forster.
CITY JUSTICES—R. Fischer and F. Baasen.
CITY ATTORNEY—Jos. A. Eckstein.
CONSTABLE—Jos. Galler.
MARSHAL—F. Melle.

2. The Elections of Judge Webber.

In 1882 Webber sought the nomination of the Republican Party for judge of the Ninth Judicial District. That there was a Republican incumbent, Hial Baldwin, recently appointed by Governor Hubbard, did not matter.[4] The stories of the Republican judicial district conventions and the subsequent election contest are told at length in the Appendix.[5]

In the election on November 7, 1882, he carried five of the six counties in the Ninth District (all except Nicollet), and defeated Melvin G. Hanscome, who was endorsed by the Democrats but ran as an independent, by a majority of 2,421. [6]

Benjamin F. Webber (R).....5,438
Melvin G. Hanscome (Ind-Dem).....3,017

[4] See Douglas A. Hedin, "Judge Hail D. Baldwin (1827-1906)" (MLHP, 2020).
[5] Appendix, at 44-60.
[6] *New Ulm Weekly Review*, November 22, 1882, at 3. These are "official" results. These counties comprised the Ninth: Brown, Lyon, Lincoln, Nicollet, Redwood and Renville.

In his acceptance speech after he won the endorsement of the Republican Judicial District Convention in September 1882, he declared:

> Any judicial officer who would allow political considerations to have the slightest weight in the performance of his official duties, would be wholly unworthy of the trust. Every man, without regard to his political opinions, is entitled to the same protection and owes the same obedience to the law of the land. Let me assure you, gentlemen, that although I am the candidate of a party, if elected, I shall not be the officer of a party but it will be my constant aim to give every man his exact and equal rights according to law. [7]

True to his word in the next three elections he ran as a "non-partisan" candidate. He eschewed party endorsements. This was the last election in which he had an opponent.

The Democrats did not hold a judicial district convention in 1888 because there was wide support for his re-election. As reported in the *Sleepy Eye Herald*:

> There is no present opposition to the renomination of Judge Webber and to avoid the trouble of holding a judicial convention, a circular has been issued by the Democratic county committee of this county, suggesting that the county convention recommend Judge Webber, and have his name on the tickets of both parties without the formal action of a judicial convention. This step is well deserved by the high standing and character of Judge Webber and the universal verdict of approval which he has earned on the bench The circular is as follows:
>
> Dear Sir.—You are doubtless aware that at the present time no judicial organization exists in our district. I am officially advised by the Republican judicial committee that in view of the fact that there is but one sentiment in regard to the present incumbent being renominated by the people, no regular convention will be called by them.

[7] *New Ulm Weekly Review*, September 13, 1882, at 3. The entire acceptance speech is in the Appendix, at 53-54.

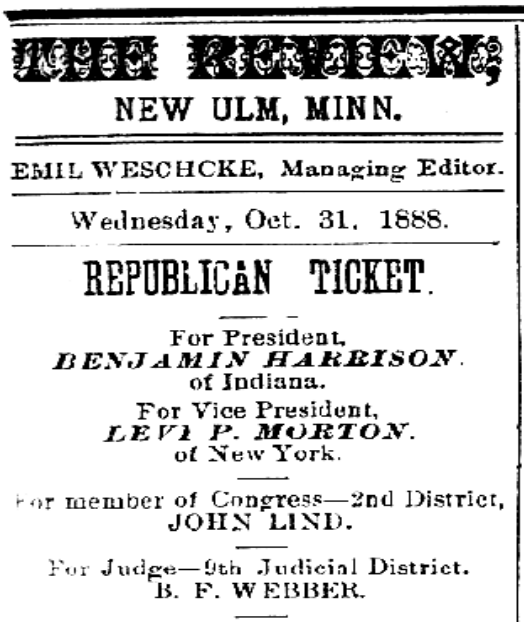
Believing that the people demand that the Bench shall at least be free from partizan politics, the wishes of Lyon, Nicollet, Redwood and Brown county Democrats have been obtained as far as practicable and there seems to be an almost unanimous sentiment that the Hon. B. Webber should be renominated by the people. Understanding that the Democracy of Lyon county have already endorsed Judge Webber, I would suggest as the wish of the Democracy that at your next county convention you bring the matter up, that the Democracy may show the people that we are willing to meet the sentiment at least half way.

Respectfully,

C. W. H. Heidman

Chairman Brown Co. Democratic Committee. [8]

As a result he was listed on the tickets of both parties in the *New Ulm Review*:[9]



NEW ULM, MINN.

EMIL WESCHCKE, Managing Editor.

Wednesday, Oct. 31, 1888.

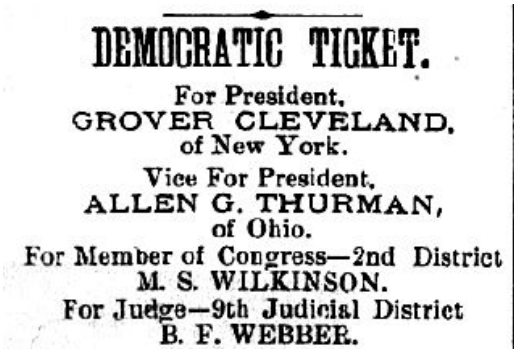
REPUBLICAN TICKET.

For President,
BENJAMIN HARRISON.
of Indiana.

For Vice President,
LEVI P. MORTON.
of New York.

For member of Congress—2nd District,
JOHN LIND.

For Judge—9th Judicial District.
B. F. WEBBER.



DEMOCRATIC TICKET.

For President,
GROVER CLEVELAND,
of New York.

Vice For President,
ALLEN G. THURMAN,
of Ohio.

For Member of Congress—2nd District
M. S. WILKINSON.

For Judge—9th Judicial District
B. F. WEBBER.

The results of the election on November 6, 1888, were:

Benjamin F. Webber (Rep.-Dem).....12,813 [10]

[8] This article was first published in the *Sleepy Eye Herald* and later reprinted in the *New Ulm Weekly Review*, July 18, 1888, at 5.

[9] *New Ulm Weekly Review*, October 31, 1888, at 4 (these are excerpts from the complete party tickets that were published, the Democrat's below the Republican's).

[10] SM66, Roll 1, Images 241-43, Microfilm Room, MHS.

Six years later there were rumblings about replacing Webber. On August 22, 1894, the *New Ulm Review* reported an "attack" on the judge by two newspapers, *The Renville Star Farmer* and the *Sleepy Eye Dispatch*.[11] The *Star Farmer* called for a convention to endorse a candidate for district court judge:

> Let the people of all the political parties in this judicial district select delegates for a nonpartisan convention to be held in Redwood Falls on the 26th of September and let that convention place in nomination either Judge Webber or whosoever they may see fit for the position of judge. This would be a fair and square manner of securing the expression of the wishes of all the people of the 9th judicial district.[12]

A week later *The New Ulm Review* shot down the proposed convention:

> STANDING BY THE JUDGE.
>
> The People of the District Do Not Approve of the Effort to Defeat Him.
>
> The St. Peter Herald and Attorney Seward State the Case Plainly.
>
> The people of all parties throughout the Ninth Judicial District do not approve of the action of M. J. Dowling and H. Hays in delegating to themselves the authority to call a non-partisan judicial convention. They have no objection to non-partisanship in the judiciary, for in that they all agree. But they are not blind enough to overlook that this is merely a scheme to get rid of Webber for a purpose.
>
> The convention is not called for the sake of giving Webber a fair chance with others, but for the sake of getting the people to go to sleep and then allowing few disgruntled politicians to impose upon them. The people do not propose to stand it.
>
> . . .
>
> The conspirators against Judge Webber are biting off more than they can chew. With nine-tenths of the people of the district in favor of the Judge, the calling of a non-partisan

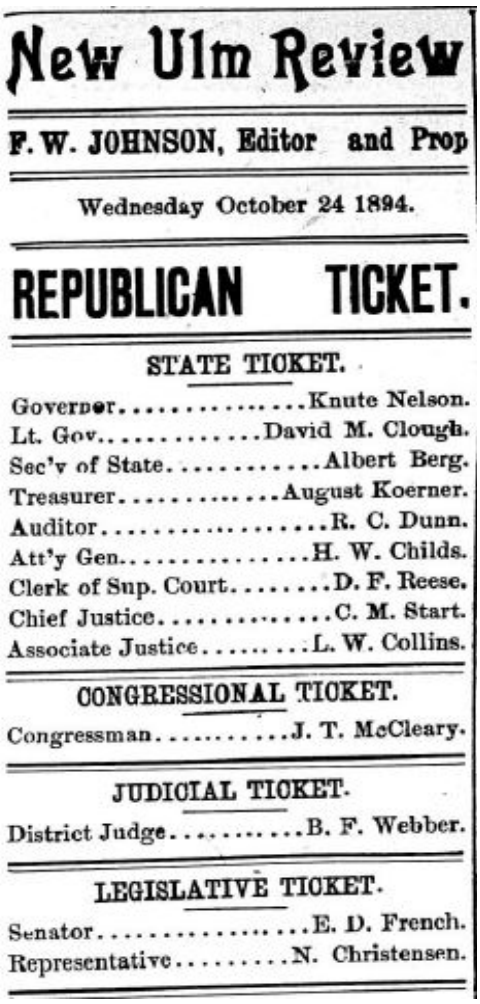
[11] *New Ulm Review*, August 22, 1894, at 5 ("Unjust Attack in Webber").
[12] *Id.*

convention for the sake of defeating him is to all appearances a big political blunder. [13]

The convention, as described in *The New Ulm Review*, was a fiasco:

> The much-heralded judicial convention was a fizzle. Not a delegate appeared from a single county and Judge Webber may not (sic) rest assured that his opposition is confined to a very few men of questionable motives.[14]

He was listed on the Republican ticket that year:



New Ulm Review

F. W. JOHNSON, Editor and Prop

Wednesday October 24 1894.

REPUBLICAN TICKET.

STATE TICKET.

Governor.....Knute Nelson.
Lt. Gov.....David M. Clough.
Sec'y of State.....Albert Berg.
Treasurer.....August Koerner.
Auditor.....R. C. Dunn.
Att'y Gen.....H. W. Childs.
Clerk of Sup. Court.....D. F. Reese.
Chief Justice.....C. M. Start.
Associate Justice.....L. W. Collins.

CONGRESSIONAL TICKET.

Congressman.....J. T. McCleary.

JUDICIAL TICKET.

District Judge.....B. F. Webber.

LEGISLATIVE TICKET.

Senator.....E. D. French.
Representative.....N. Christensen.

He was even endorsed by the Populist Party, at a time when populism was near its peak: [15]

[13] *The New Ulm Review*, August 29, 1894, at 1.
[14] *The New Ulm Review*, October 3, 1894, at 5.

VOTE FOR POPULISTS!

A Strong Ticket, Made up of Good Capable Men Who should receive the Vote of every Honest Citizen.

The HERALD this week speaks of the qualifications of the Populist candidates for office. We desire every voter who gets a copy of the paper to carefully read what is said about each person on the populist ticket. In voting November 6th, place an X opposite each in the manner indicated on the ticket herewith attached. In the same manner vote for all candidates on state ticket that are termed "Peoples."

COUNTY BALLOT.

Put a cross-mark (X) opposite the name of each candidate in the squares indicated by the letter X.

Member of Congress—JAMES T. McCLEARY—Republican.		Vote for one.
Member of Congress—JAMES H. BAKER—Democrat.		
Member of Congress—L. C. LONG—Peoples.	X	
Member of Congress—H S. KELLOM—Prohibition.		
Judge of District Court—BENJAMIN F. WEBBER—Non-Partisan.	X	Vote for one

The sample ballot in 1894 for Redwood County listed him as a candidate without party designation: [16]

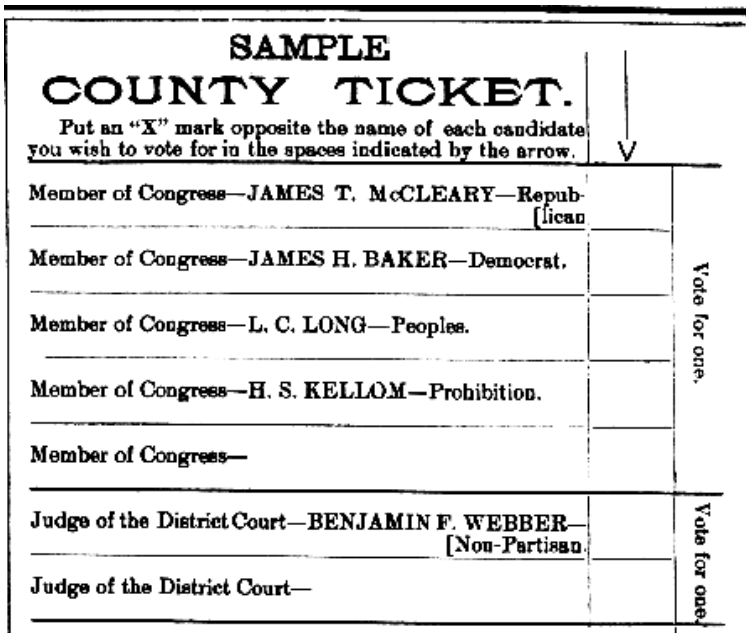
---

[15] *Sleepy Eye Herald*, October 26, 1894, at 1. The Redwood County populist convention on Friday, September 14, 1894, endorsed him:

> Franklin Ensign here gave Judge Webber another boost by securing the passage of the following resolution without a dissenting vote:
>
> Resolved, That it is the sense of this convention that no delegates shall be elected by this body to attend the so-called non-partisan convention called by M. J. Dowling for the purpose of nominating a candidate for Judge of the Ninth Judicial district for the reason that said call is without authority and is intended to work an injury to the candidacy of Judge B. F. Webber for renomination to said office.

Redwood Gazette, September 20, 1894, at 2 ("A Third Ticket. Redwood County Populists Place a Ticket Before the Voters").

[16] *The Redwood Gazette*, October 25, 1894, at 4.



SAMPLE

COUNTY TICKET.

Put an "X" mark opposite the name of each candidate you wish to vote for in the spaces indicated by the arrow.

Member of Congress—JAMES T. McCLEARY—Republican

Member of Congress—JAMES H. BAKER—Democrat.

Member of Congress—L. C. LONG—Peoples.

Member of Congress—H. S. KELLOM—Prohibition.

Member of Congress—

Vote for one.

Judge of the District Court—BENJAMIN F. WEBBER—Non-Partisan

Judge of the District Court—

Vote for one.

He received 11,870 votes in the election on November 6, 1894. [17]

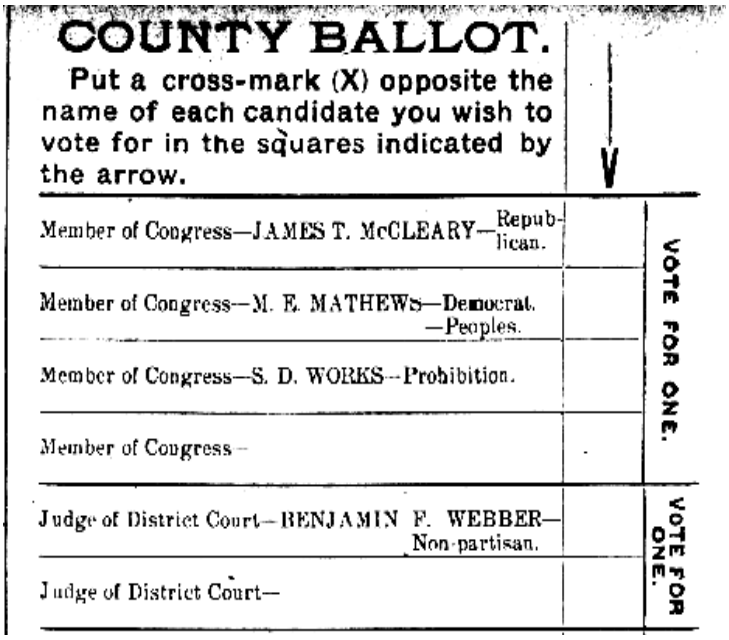
In the spring of 1900 the *Redwood Gazette* endorsed the Judge's re-election:[18]

> RE-ELECT JUDGE WEBBER.
>
> A judge of the district court for the Ninth judicial district of Minnesota, comprising the counties of Nicollet, Brown, Redwood, Lyon and Lincoln is to be elected at the November election, to succeed the Hon. B. F. Webber, term expired.
>
> As yet there is no opposition to Judge Webber. We do not believe that there will be. Judge Webber has been on the bench for 18 years and during all of that time has been a credit to the bench, and has probably fewer reversals charged to him than any other judge in the State, length of service considered. Judge Webber is popular with both bar and the people and from both he receives enconiums.
>
> He should be nominated by petition as a non-partisan candidate, thus retaining a non-partisan bench for this district. When his friends start the petitions in the various counties they will find plenty of signers, and at the polls Judge Webber will receive a practically unanimous vote.

[17] 1895 Blue Book, at 482.

[18] *Redwood Gazette*, May 9, 1900, at 4.

He was listed on the sample ballot for Redwood County as "nonpartisan": [19]



COUNTY BALLOT.

Put a cross-mark (X) opposite the name of each candidate you wish to vote for in the squares indicated by the arrow.

Member of Congress—JAMES T. McCLEARY—Republican.		VOTE FOR ONE.
Member of Congress—M. E. MATHEWS—Democrat. —Peoples.		
Member of Congress—S. D. WORKS—Prohibition.		
Member of Congress—		
Judge of District Court—BENJAMIN F. WEBBER—Non-partisan.		VOTE FOR ONE.
Judge of District Court—		

In the election on November 6, 1900, he received 9,720 votes.[20]

1906 was a re-election year. That year he turned 73. He had served over 23 years on the 9th judicial district court. Few doubted that if he ran he would win. But he was beset by ill health, both physical and mental. He delayed announcing his decision and that encouraged three ambitious lawyers to announce their candidacies. Finally, in early June, he declared he was running again.

JUDGE WEBBER STATES POSITION

———————

Will Ask Voters of the District For Re-election.

———————

Judge Webber has decided to formally ask for the support of thevoters of this district for the nomination of Judge on the

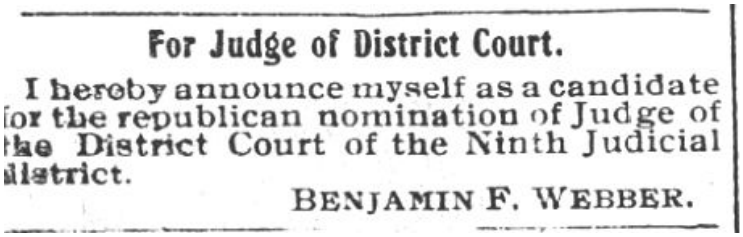
[19] *Redwood Gazette*, October 24, 1900, at 7.
[20] 1901 Blue Book, at 539.

republican ticket and sets forth his position in a short but pointed address to the people. It has been generally stated that in the event of Mr. Webber asking for a reelection there would be little chance for any of the other aspirants for the office. It is certain, however that they will remain in the field and take chances, probably to test their strength with the voters in the event they may care to try for the office at some future time. Judge Webber is very popular with the country people and having been in the office for many years has come in touch with most of the men of the different counties through the regular court channels in such a way that a new man will find it difficult to meet him in open contest for the office. His letter is as follows:

> I have concluded to become a candidate for renomination as Judge of the District Court of the Ninth Judicial District of Minnesota.
>
> Some of my friends have requested me to become a candidate but this is not the true reason for taking this step. The true reason is that its duties are agreeable and I want the office.
>
> I was seventy-one years old the sixth day of last October but my health was never better than it is at the present time and I feel fully able to perform the duties of the office for a term
>
> Twenty-four years of service as district judge have given me a pretty thorough introduction to the people of the district, and the duties of my office will not permit me to make a personal canvass.
>
> The people control the nominations and elections and if they decide to confer the honor upon it will be thankfully accepted and its duties will be performed to the best of my ability. If the people decide to confer the honor upon another, I recognize their perfect right to do so, and shall continue to hold in grateful recollection the favors that I have heretofore received at their hands.
>
> B. F. WEBBER. New Ulm June 14, 1906. [21]

[21] New Ulm Review, June 20, 1906, at 4. The *Minneapolis Journal* reported his decision several weeks earlier. June 5, 1906, at 4.

As expected he did not campaign. But, as was the custom, he placed the announcement of his candidacy in the local paper: [22]

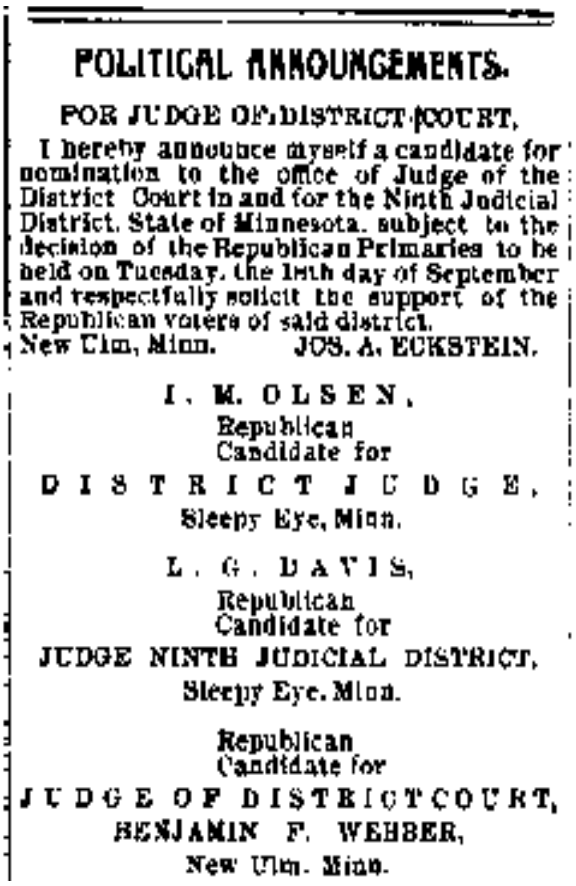


For Judge of District Court.

I hereby announce myself as a candidate for the republican nomination of Judge of the District Court of the Ninth Judicial district.

BENJAMIN F. WEBBER.

There were now four candidates in the Republican primary on September 18, 1906: Ingreval. M. Olsen and L. G. Davis of Sleepy Eye, and Joseph A. Eckstein of New Ulm. [23]



POLITICAL ANNOUNCEMENTS.

FOR JUDGE OF DISTRICT COURT.

I hereby announce myself a candidate for nomination to the office of Judge of the District Court in and for the Ninth Judicial District, State of Minnesota, subject to the decision of the Republican Primaries to be held on Tuesday, the 18th day of September and respectfully solicit the support of the Republican voters of said district.

New Ulm, Minn. JOS. A. ECKSTEIN.

I. M. OLSEN,
Republican
Candidate for
DISTRICT JUDGE,
Sleepy Eye, Minn.

L. G. DAVIS,
Republican
Candidate for
JUDGE NINTH JUDICIAL DISTRICT,
Sleepy Eye, Minn.

Republican
Candidate for
JUDGE OF DISTRICT COURT,
BENJAMIN F. WEBBER,
New Ulm, Minn.

In early September two more joined the contest. Albert Steinhauser, a New Ulm lawyer and a Democrat, announced his candidacy. [24] At the same time,

[22] *New Ulm Review*, August 1, 1906, at 4.
[23] *Redwood Gazette*, September 5, 1906, at 8.
[24] *Redwood Gazette*, September 5, 1906, at 5.

Marvin E. Mathews, a Marshall lawyer and lifelong Democrat, announced his candidacy as an "Independent." [25] Suddenly on Friday, September 7th—to the surprise of many—Judge Webber withdrew his candidacy:

JUDGE IS OUT 0F IT

———————

Venerable Judge Webber, After 24 Years
of Service, Announces His Retirement.

———————

Serious Illness of Mrs. Webber, and
Worry over Situation, Causes
Him to Withdraw.

After 24 years of service on the ninth judicial bench Hon. B. F. Webber has announced that he will retire on Jan. 1st next, and with the announcement he notified all county auditors in this district that it was an order from his court that his name be removed from the primary ballot. The order was 'phoned, and followed up by a written notice.

Inasmuch as the order for the ballots has been placed with the printers of the several counties it was necessary in nearly every case to have a reprint. In this county over 1,000 ballots had been printed when the order came. Nicollet county had the work practically finished. The same is true of Lyon, while in Lincoln county only the work had just commenced. The auditors and printers all got busy and ballots will be ready for delivery to the clerks to-morrow.

As early as last fall it was doubtful whether Judge Webber would again be a candidate. He was extremely reticent on the proposition, and even announced that he was far from a decision. Up to a few days before he filed he was in doubt, and when he made his announcement he also stated that he would not become an active candidate, but would leave it to the voters of the district who knew him so well. Then came the illness of Mrs. Webber, and this brought out the following letter Friday morning [September 7, 1906]:

[25] *New Ulm Review*, September 5, 1906, at 12.

"To the voters of the Ninth judicial district of Minnesota: In consequence of the serious illness of my wife and in justice to the other candidates, and in order that my friends may have an opportunity to express their preference as to the other candidates, I hereby withdraw my name as a candidate for the office of judge of the district court of the Ninth judicial district of Minnesota.

BENJAMIN F. WEBBER."

Judge Webber succeeded H. D. Baldwin in 1883. He is now 72years old, and the severe strain of his wife's illness during the past month, the duties of the office and the contest for renomination, have almost caused the judge to collapse.

The Ninth district comprises Brown, Nicollet, Redwood, Lyon and Lincoln counties.[26]

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[26] *Redwood Gazette*, September 12, 1906, at 1. The *New Ulm Review* also carried the story:

> Where the condition of Mrs. B. F. Webber as she is struggling to maintain her hold on life, is not known there is considerable surprise at the sudden determination of Mr. Webber to withdraw from the race for the office of judge of the ninth judicial district.
>
> His public announcement of the fact that he would no longer be a candidate was made Saturday and it was thought at that time that his name would have to appear on the ticket, as the time for withdrawing as construed by the county auditor, has passed, but a ruling on the question was secured from the attorney general to the effect that the name could be withdrawn legally at any time before the ballots were printed, consequently Mr. Webber's name will not be on the Brown county ballots though it is possible that other counties have not taken such action.
>
> While Mr. Webber has been in the best of health during the past year and has shown a wonderful amount of vitality, the affliction that has fallen to his lot through the unfortunate sickness of his wife for whom there appears to be little hope of recovery, and the worry and care incident to this has told upon him as it would have affected any man, and he has decided that it is for his own as well as the interests of the people of the district that he retire from the race.
>
> There was little reason to believe that he could have been defeated by any of the other three candidates at the primary election and in the general election his success was assured, so that he retires from the contest and with that from the expectation of ever again asking public favor at the hands of the voters of the district with the knowledge that he is sacrificing certain success for the privilege of being near his invalided wife.

Ingerval M. Olsen easily won Republican primary on September 18, 1906: [27]

OLSEN GETS MAJORITY OVER ALL

Official Returns Show Sleepy Eye
Man Was Popular

> If there is any doubt in the minds of the voters as to who of the three republican candidates that were contesting for the nomination of district judge was the most popular it will be entirely removed by the consideration of the returns as they have been returned from the official count they are as follows:

	Olsen	Eckstein	Davis
Nicollet	1,081	321	193
Brown	572	429	475
Redwood	1,273	588	466
Lyon	1,140	519	506
Lincoln	701	373	274
Totals	4,767	2,230	1,914

Olsen's plurality.....2,537
Olsen's majority over both.....623

He also prevailed in the general election on November 6, 1906: [28]

	I. M. Olson	Albert Steinhauser	Marvin E. Mathews
Brown County	1,143	890	1,086
Lincoln County	528	79	581
Lyon County	954	100	1,181
Nicollet County	1,218	384	530
Redwood County	1,168	407	700
Totals:	5,011	1,869	4,078

Four days after the election, Webber resigned and Governor John A. Johnson appointed Ingreval Olsen district court judge.[29]

New Ulm Review, September 12, 1906, at 1 ("Judge Webber Withdraws"). The Attorney General's opinion referred to in this article has not been located. The *Minneapolis Journal* published the story four days before the county weeklies. *Minneapolis Journal*, September 8, 1906, at 4.

[27] *New Ulm Review,* September 26, 1906, at 1.

[28] 1907 Blue Book, at 492.

[29] *Minneapolis Sunday Tribune*, November 11, 1906, at 38 ("Judge Webber Quits").

3. Judge Webber on the Bench

During his 23 years on the bench the Judge presided over 200 hundred terms in the five counties that comprised the Ninth Judicial District. Here was his schedule for 1883:

NINTH JUDICIAL DISTRICT.

Brown county, New Ulm, first Monday in May; first Monday in November. 1883; c. 84; sec. 1.)

Lyon county, Marshall, third Tuesday in June; third Tuesday in December. (1883; c. 84, sec. 1.)

Lincoln county, Lake Benton, second Tuesday in June. (1883; c. 84, sec. 1.)

Nicollet county, St. Peter, fourth Monday in April; fourth Monday in October. (1883; c. 84, sec 1.)

Redwood county, Redwood Falls, first Tuesday in June; first Tuesday in December. (1883; c. 84, sec. 1.)

Renville county, Beaver Falls, first Tuesday after second Monday in May; first Tuesday after second Monday in November. (1883; c. 84, sec 1.)

And here were the terms for 1905:

COUNTIES	TERMS	WHERE HELD	LAWS
Lyon	First Tuesday in June; fourth Tuesday in November.	Marshall.	1905. Ch. 41.
Redwood	Third Tuesday in April; first Wednesday after the first Monday in November.	Redwood Falls.	1903. Ch. 374.
Brown	Third Tuesday in May and second Tuesday in December.	New Ulm.	1903. Ch. 374.
Nicollet	First Tuesday in May; third Tuesday in October.	St. Peter.	1903. Ch. 374.
Lincoln	First Tuesday in October.	Lake Benton.	1903. Ch. 374.

The Ninth was not small—it covered 3,177 square miles.[30] Lawyers never "rode circuit" in Minnesota, even in Territorial days, as Abraham Lincoln and

[30] Brown (618 sq. miles); Lincoln (548); Lyon (722); Nicollet (467); and Redwood (882).

other lawyers followed Judge David Davis around the Eighth Circuit in Illinois in the 1850s. Judge Webber, who lived in New Ulm, traveled to the seats of the other four counties and held court for the spring and fall terms. The local bar and lawyers from other towns in the Ninth handled most cases and occasionally a lawyer "from abroad" (i.e., St. Paul or Minneapolis) would appear in an important case for a client.

Webber did not mellow over the decades and some lawyers found him "brusque and irritable" at times.[31] He was rarely reversed. So high was his reputation that then Governor John Lind, who had nominated him at the

[31] A sketch of Webber by Fred W. Johnson, a prominent New Ulm resident and community leader, was published in the *Brown County Journal* on October 25, 1935. Johnson recalled that Webber had "strict temperate habits." His sketch reflects his fond memories of the late jurist:

> Webber, who was a New Englander by birth, came to Brown county after a four-years' residence in the neighboring county of Blue Earth, part of which was spent in teaching and part in the practice of law. Two years after his arrival here he was elected county attorney, a position which he held until the fall of 1882, when he received the Republican nomination for the office of district judge. As illustrative of the fine ideals of the man, it is interesting to recall that in accepting this nomination, he said, "Any judicial officer, who would allow political considerations to have the slightest weight in the performance of his official duties, would be wholly unworthy of the trust. Let me assure you that, although I am the candidate of a party, if elected I shall not be the officer of a party; but it will be my constant aim to give every man his exact and equal rights according to the law."
>
> In the ensuing election he won out over his Democratic opponent, former Judge Hanscome of St. Peter, by a vote of nearly two to one, and be it said to his everlasting credit that during the term for which he was elected, and for three terms thereafter, he never deviated from the pledge which he made when he first sought the robes and honor of judicial office. A diligent and conscientious student, he seldom erred in his interpretation of the law, and his decisions, therefore, were rarely reversed by the higher courts. It may be, as the lawyers claim, that he was oft times brusque and irritable while sitting in the trial of a case, but who is there to say it was without provocation? My own observation, based on years of intimate acquaintance, was that, if given the opportunity, he was naturally inclined to be kindly and helpful. Taking it all in all his record was one of which any judge might well be proud.

Fred W. Johnson, "County of Brown—District Court History" 30-31 (MLHP, 2009) (published first, 1935).

Republican judicial district convention in 1882, appointed him to try a land dispute between Archbishop Ireland and 45 settlers, one of whose suits was selected to be a test case.[32] It ended in the United States Supreme Court.[33]

County weekly newspapers reported district court proceedings in great detail. The Michael Madigan case over which Webber presided is posted in the Appendix.[34]

a. October 1885 Term: Nicollet County.

Judge Webber presided over the fall term in St. Peter, the seat of Nicollet County, in October 1885. In 1880 the population of the county was 12,333 and by 1890 it had increased to 13,382. The proceedings were reported in the weekly *Saint Peter Herald*: [35]

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[32] From the *Irish Standard*, October 13, 1900, at 5:

> Judge Webber of New Ulm is holding court in the office of Thomas Kneeland in the Oneida block, having been appointed by Governor Lind to hear an important land contest that originated in Big Stone and Traverse counties.
>
> It is an action in ejectment brought by Archbishop Ireland through his secretary, John P. O'Connor, against a large number of homestead settlers in the two counties named. Archbishop Ireland assigned his title to the Minneapolis Trust company, which in turn assigned it to Mr. O'Connor, who brings the present suit. The amount of land involved is about 7,000 acres, worth about $20 an acre.

Webber ruled in favor of O'Connor, as reported in *The Minneapolis Journal*, April 1, 1901, at 4:

> WHEATON— decision of Judge B. F. Webber of New Ulm, who tried the famous Ireland cases, has just been filed. The plaintiff in all of these cases, some forty-five in number, is John P. O'Connor, St. Paul, Archbishop Ireland's private secretary. The decision was rendered in the case of John P. O'Connor against Jacob Gertgens, which was considered as a test. The decision was in favor of O'Connor. The settlers are preparing to appeal the case.

[34] The Minnesota Supreme Court affirmed*, O'Connor v. Gertgens*, 85 Minn. 481, 89 N.W. 866 (1902)(Collins, J.), a decision the U. S. Supreme Court affirmed, 119 U. S. 237 (1903) (Brewer, J.).

[34] Appendix, at 60-88. The Supreme Court's decision is posted in the Appendix, at 89-99.

[35] *Saint Peter Herald*, October 30, 1885, at 4.

DISTIRCT COURT

The district court met in this city on Monday, Judge Webber on the bench. The first business was calling the roll of grand and petit jurors. The grand jurors were sworn and duly charged by the judge and sent to their room to deliberate. Mr. O. Belincke was appointed foreman of the jury.

On Tuesday the grand jury found an indictment against John Raehder for stealing a horse from Geo. H. Noble, on the 22d day of October. They also found an indictment against Alfred Bean for stealing spoons from John Picker.

The old cases of the State vs. Maria L. Bronson for arson, and the State vs. John Edgar for stealing a gun were passed. The case of the State vs. P. Brady was heard and given to the jury; the jury failed to agree and the case and the jury were both discharged.

The grand jurors examined the county records, buildings, etc., and reported everything lovely, and there being no further business for that jury, they were discharged on Wednesday.

John Raehder was brought before the court yesterday and plead guilty to the charge of horse stealing and was sentenced to two years in the penitentiary.

Alfred Bean was brought before the court on an indictment for stealing spoons. Alfred was like Ben Butler, denied the spoon stealing charge, or in other words, plead not guilty and will make a fight.

Lou Miller and Jay Bender, who were put in jail on the 12th day of June charged with highway robbery, were turned loose, because the man who claimed he was robbed, and whose testimony was necessary to convict them, could not be found. Had he been locked up at the time with his chums, he most likely would have been here, but as it was he failed to show up.

The case of A. A. Lamberton vs. B. H. Randall was called on Monday and a motion, on part of defendant's attorney, to strikeout a portion of complaint was made, and the motion argued and taken under consideration.

The case of Fred Ort vs. Sheriff Moll an attachment suit for the McCormick Bros. was tried on Wednesday and judgment

rendered in favor of Ort in the sum of $171.87. The Sheriff says he can pay the 87 cents but the balance the McCormacks (sic) will have to pay.

The case of Mrs. Tessnow vs. Sheriff Moll, an attachment case was heard yesterday, but as we go to press we have not learned the verdict.

The court will probably be in session until Wednesday.

The *Herald* continued its account of the term the following week:[36]

It was generally believed that court would adjourn last week but such was not the case, and those who came in from the country expecting to remain only a few days were badly disappointed.

Alfred Bean, who stole the spoons, was sentenced Friday morning to six months in the penitentiary.

In the case of Maria Tessnow vs. Sheriff Moll the jury rendered judgment for plaintiff in the sum of $474.21.

In the Tessnow and Ort suits the McCormick machine company of Chicago were the real defendants. They have been granted a stay of proceedings for 40 days and will appeal to a higher court.

The case of Lambeton vs. Randall took over four days of steady work and was given to the jury on Thursday. The jury returned a verdict on Thursday night, after being out four or five hours, in favor of Lamberton for $51.97, Randall having admitted that he owed this amount. The full amount for which Mr. Lamberton sued was $1,300, including interest.

The case of State vs. Mueller is now being held.

b. June 1901 Term: Brown County.

In 1900 the town of New Ulm had 5,403 residents and Brown County had 19,787. Only four lawyers placed their business cards in the *New Ulm Review*

[36] *Saint Peter Herald*, November 6, 1885, at 4.

on June 19, 1901: Albert Pfaender, C. A. Hagberg and Hoidale & Somsen. The local bar was larger than this. Some lawyers chose not to advertise.

The names of the jurors who would serve during the June term were printed on the front page of the *New Ulm Review*, May 15, 1901. Proceedings during the first days of the June term were published in the *Review* on June 19.[37]

DISTRICT COURT

The June term of district court convened yesterday at the courthouse, Hon. B. F. Webber presiding. The calendar is unusually long, though it shows but one criminal case. Following is the list.

Jacob Geiger vs Anton Schmising, et al; Somerville & Olsen for plaintiff, L. G. Davis for defendants. Settled.

Arthur Rice vs Jacob Geiger; L. Davis for plaintiff, Somerville & Olsen for defendant. Settled.

Carl Fenscke vs Max Reinhart; C. A. Hagberg for respondent, Einar Hoidale for Appelant. Settled.

A. J. Alwin vs Philip Liesch; Pierce & Harriot for plaintiff, Somerville & Olsen for defendant.

Jacob Geiger vs. Arthur Rice; Somerville & Olsen for plaintiff, L. G. Davis for defendant. Settled.

Carl Fenscke vs Max Reinhart; C. A. Hagberg for respondent, Einar Hoidale for Appelant. Settled.

A. J. Alwin vs Philip Liesch; Pierce & Harriot for plaintiff, Somerville & Olsen for defendant.

Jacob Geiger vs. Arthur Rice; Somerville & Olsen for plaintiff, L. G. Davis for defendant. Settled.

John Torgrimson vs Jens Nelson; Einar Hoidale for respondent, Lind & Somsen and Jos. A. Eckstein for appelant. Jury trial.

Henry Salzbrun vs Adam Junger and Anton Steffen; Hoidale & Somsen for plaintiff, Somerville & Olsen for defendants. Jury trial.

[37] New Ulm Review, June 19, 1901, at 8.

Angus Hay vs A. J. Alwin; Somerville & Olsen for plaintiff, Pierce & Harriott for defendant.

In the Matter of the Adoption of Edna Francis, a minor H. N. Somsen for petitioners. Petition granted.

John E. Wedeen vs Gus Gilbeitson; Seager & Lobben for plaintiff, Einar Hoidale for defendant. Jury trial.

A. L. Ackerly vs John Haenze; Hoidale & Somsen for apnelant, AlbertPfaender. Continued.

Anderson Bros, vs John Johnson; A. Fredenckson for respondents, Geo. T. Olsen for appelant. Dismissed.

Theo. O. Broberg vs Minneapolis & St. Louis Railway Co.; Albert Pfaender for plaintiff, A. E. Clark and C. E. Swan for defendant.

Hallwood Cash Register Co. vs. C. A. Lemke and Rosa; Lempke Hoidale & Somsen for plaintiff, Somerville & Olsen for defendants. Motion for Judgment on Pleadings.

Charles W. Harmon and A. Lent vs George Erl; Geo. T. Olsen for respondents, A. Fredericksen for appellant. Jury trial.

Albert Ring vs Fred Arndt; Einar Hoidale for respondent, H. N. Somsen for appelant. Jury trial.

Marie Portner vs John Wilfahrt et al; Hoidale & Somsen for plaintiff, Jos. A. Eckstein for defendants. Decided in vacation.

C. Arveson vs Henry Salzbrun; L. G. Davis for respondent, Hoidale & Somsen for appellant. Judgment reversed.

Cornish & Company vs The Searles Co-operative Creamery Co., et al; Cannon & Donnelly for plaintiffs, Hoidale & Somsen for defendants. Continued by consent.

Herman Lieber vs Chicago & Northwestern Railway Company; Alb. Pfaender for plaintiff, Brown, Abbott & Somsen for defendant.

Wm. Pfaender vs Chicago & Northwestern Railway Company; Alb. Pfaender for plaintiff. Brown, Abott & Somsen for defendant.

C. H. Hornburg vs Jos. Fesenmeyer; Jos. A. Eckstein for plaintiff, Hoidale & Somsen for defendant.

Christ. Filzen vs Chas. Stuebe; Jos. A. Eckstein for plaintiff; Hoidale & Somsen for defendant. Tried in vacation.

Lambert Lumber Co., vs Walter Jensen; Somerville & Olsen for respondent; L. G. Davis for appellant. Court trial.

P. Christensen & Co. vs Truman Wheeler; Somerville & Olson for plaintiffs, L. G. Davis for defendant. Jury trial.

W. W. Hixon vs L. G. Vogel; Hoidale & Somsen for appellant, Jos. A. Eckstein for respondent. Jury trial.

Fred Watschcke vs Joel P. Thompson, Frank Billington, et al; Robert Christensen for plaintiff; Albert Hauser and Somerville & Olsen for defendants. Demurrer sustained.

L. L. Schade vs Tom Leary and Chi-Chicago & Northwestern Railway Co.; Somerville & Olsen for respondent, Brown, Abbott & Somsen for defendant and appellant.

Einar Hoidale vs David Swank; Hoidale & Somsen for plaintiff, E. M. Card for defendant. Jury trial.

Fred Heimer vs Town of Bumstown; L. G. Davis for appellant, Geo. T. Olsen for respondent. Settled.

William F. Anderson vs Christ August Hanson; Somerville & Olsen for plaintiff, L. G. Davis for defendant. Settled.

John W. Schmidt vs Peter H. Dahl, Amelia Dahl and Mrs. Peter H. Dahl; J. O. Andrews and H. L. & J. W. Schmitt for plaintiff, Hoidale & Somsen for defendants. Stricken from calendar.

The State of Minnesota vs Wm. Buggert; Geo. T. Olsen for plaintiff, Jos. A. Eckstein for defendant. Continued.

The grand jury met and was dismissed not having any work to do. The jail and buildings were inspected and reported in good condition.

The *New Ulm Review* continued is coverage of court proceedings the next week, June 26, 1901:

District Court

District court still slowly drags from one case to another. Attorneys and judge and jury are all weary with the length of the

term and the heat of the days. The cases are uninteresting and mostly trivial.

The case of John Torgnmson vs. Jens Nelson, an appeal from justice court, a verdict for respondent.

C. H, Hornburg vs. Jos. Fesenmeyer, verdict for appellant. The case involves the purchase of a stove.

The case of P. Christensen & Go. vs. Truan Wheeler is today being tried.

In the case of C. H. Hornburg vs. Jos. Fesenmeyer. Albert Pfaender appeared for the first time in district court and he naturally feels very gratified in winning his first case. The case involved questions of law and fact of which he seemed to possess a clear understanding.[38]

After the Judge withdrew his candidacy for re-election in September 1906, he still was scheduled to preside over the fall terms in several counties. Due to ill health, however, he was unable to conduct the October session in Redwood County. The *Redwood Gazette* ran this story:

> The friends of Judge Webber all over the ninth judicial district, and the state, will regret to learn that he has probably served for the last time on the bench of this district, a position which he has so signally honored during the past 24 years, Mrs. Webber is suffering from a paralytic stroke, and the judge is deeply aggrieved over the condition of his wife, and this, together with an attack of insomnia, has made it impossible for him to hold court during the fall term, and he has notified the governor of his position and asks him to assign another judge to the ninth judicial district bench, also implying that he will tender his resignation as soon as I. M. Olsen of Sleepy Eye is elected in November, giving the governor an opportunity to appoint the latter to the bench and take immediate charge of the work.[39]

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[38] *New Ulm Review*, June 26, 1901, at 1.

[39] *Redwood Gazette*, September 26, 1906, at 10 ("Judge Quinn Coming. Will Conduct Court in This City in Place of Judge Webber").

5. The Death of Judge Webber

Around the time he withdrew from the contest for district court judge, Webber's highly structured life began to crumble. His wife had suffered a paralytic stroke in late summer.[40] Any joy he received from his son's marriage in early August was consumed by worries over her health and anxieties about their finances.[41] On November 10, 1906, he resigned.[42] On Tuesday, December 4, 1906, he took his own life.

JUDGE ENDS HIS LIFE

———

B. F. Webber Commits Suicide By
Hanging Tuesday Morning.

———

DEED SHOCKS COMMUNITY

———

Illness of His Wife and Worry Over
Financial Matters Cause of Deed —
Lyon County Adjourns.

———

> Not since the lamentable tragedy enacted in this city two years ago were the people shocked to such an extent as they were Tuesday, when they learned that one of its most highly honored and respected citizens had abruptly ended his brilliant career by his own hands.

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[40] *New Ulm Review*, August 8, 1906, at 5 ("Mrs. B. F. Webber, who has been ill for some time is reported to be sinking very rapidly and it is feared that she will not live but a few days.").

[41] *Redwood Gazette*, August 8, 1906, at 4 ("The New Ulm Review says that cards are out announcing the marriage of Frank Webber, an attorney of Franklin, and son of Judge Webber of this district, to Miss Davis of Minneapolis, the ceremony to take place at the home of the bride's parents to-day.").

[42] *Minneapolis Sunday Tribune*, November 11, 1906, at 38 ("The resignation of Judge B. F. Webber of New Ulm was accepted yesterday by the governor, and I. M. Olsen of Sleepy Eye, appointed to the fill the unexpired term until Jan.1...").

Judge B. F. Webber had committed suicide early Tuesday morning by hanging himself to a rafter in the hayloft of his barn. He was discovered by Chief Adolf Klause, shortly after 9 o'clock, who, at the direction of Dr. O. C. Strickler, the absence of the corner, ordered the body cut down and taken to an undertaking room. The door of the barn was left partly open. The body was found near the hayloft, and the ghastly sight met Chief Klause as soon as he climbed through the small opening.

Arose at Five O'clock.

Judge Webber arose at the unusual early hour of five o'clock and awoke the servant girl, Miss. Theresia Soukop. He shortly thereafter left the house, and as he had not returned at 8 o'clock for breakfast, Mr. M. Mullen was notified, and he in turn notified the police, who immediately instituted a search and found the lifeless body hanging from a rafter. He had used a strap about four feet long which had one end of it rounded and a buckle attached to it. He simply threw the strap around the rafter and got up on a box, and after adjusting the noose jumped therefrom. His feet were about three inches from the floor. He as fully dressed; wore a dark overcoat, felt hat, and his right hand wearing a mitten. Both hands were in his overcoat pocket. Several ropes were found in the loft and one had a regular hangman's noose. He evidently discarded them as not desirable. The ropes were about an inch thick and showed signs of being severed in several places by a sharp knife. The stands had been separated for several feet.

Contrary to his usual custom he left the house Monday evening at eight o'clock and did not return until midnight and no one seems to know where he was during that time. It is supposed that he was aimlessly wandering around as it was impossible for him to sleep.

Was Seen Tuesday Morning.

W. L. Tanley, who is the assistance engineer at the Eagle mill, passed the Webber residence on his way to work at 5:30 o'clock in the morning and noticed a man entering the barn, although he did not recognize him. He met Officer Weissenborn and told him of it and he replied that it was undoubtedly Judge Webber as he always arose at an early hour for a walk or bicycle ride. To satisfy his curiosity, however, Officer Weissenborn, walked to the barn, but failed to hear any stir or noise of any kind, and passed on, never surmising that within there was being enacted a scene that has cast a gloom over the entire community.

Cause of the Deed.

Mrs. B. F. Webber, who is about sixty years old, suffered a paralytic stroke four months ago, and has been in a helpless condition ever since and has required the services of trained nurses. She has been lamed on one side and has lost her power of speech. Mr. Webber had been at her side almost continuously and had labored day and night to alleviate her suffering. The family relations were always of the most pleasant and it was the sole pleasure of the judge to be in her company. His wife was his entire hope and when she became helpless he felt deserted and became despondent. He commenced brooding over his misfortune and had been somewhat unbalanced for some time. He labored under the impression that he was becoming poor and would eventually become a county charge on account of the heavy expenses of the household. This is certainly proof of his unsettled mind as it is claimed that his estate is valued all the way from $75,000 to $100,000. Aside from that he was compelled to refuse to make a run for re-election and resigned several days after the election. He bemoaned the fact that he did not know what to do with

himself. Having been of a very active temperament all his life the enforced idleness was a severe strain.

On several occasions he confided to Mrs. Mullen and Dr. Strickler that he felt disposed to do away with himself. They discouraged him and told to look at the bright side of life and made light of his remarks. They had suggested that some one keep his company continuously, but he discouraged the idea. That he had the appearance of a man who was despondent and brooding over his misfortune no one will deny who has seen him walk around the city. The once stalwart form had become stooped with worry.

Last Sad Words.

Coroner E. W. Bayley arrived here from Sleepy Eye Tuesday afternoon and viewed the remains and was given all the particulars of Judge Webber's death. He decided that no inquest was necessary. In his pocket was found a slip of paper neatly folded on which was written:

"No sleep; no hope; all is despair."

These few words probably better explain his condition of mind than anything that will be further enumerated.

Mrs. Webber was not informed of the awful deed which her husband had resorted to, but was told that he had been stricken with heart disease while out walking and had died shortly thereafter. As the woman is ill beyond recovery it is deemed for the best to tell her the story related. The woman's condition would not permit of her hearing the tragic tale of his end. The shock would have killed her, no doubt. She will always remain in ignorance of how her husband died.

Was a Native of Maine.

Judge Webber was born in the town of Shapleigh, Maine, on Oct., 6, 1834, and was therefore 72 years old. He became a carpenter and while working at his trade also studied in order to become a teacher. In 1867 he was married to Miss Almeda Garvin, his present wife. The following year he came to Minnesota and located at Garden City, where he was chosen principal of the public schools. During his leisure time he studied law and was admitted to practice. In 1872 he came to New Ulm and even then did carpenter work, but abandoned that work entirely shortly thereafter.

He was elected county attorney of Brown county in 1874 and served for eight years, when on Jan. 1, 1883, he assumed his duties as judge of the ninth judicial district, having been elected to succeed H. D. Baldwin, and served continuously for nearly twenty-four years, resigning shortly after the recent election, when Judge-elect I. M. Olsen was named by Gov. Johnson to fill out the remainder of the term. He made an enviable record on the bench. He was fair and impartial at all times, and was considered one of the most brilliant men on the bench of Minnesota. While all mortals err, it can be said that his decisions for many years were rarely ever reversed by the supreme court.

He presided at the first Dr. Koch trial and when the jury disagreed he released Koch on bail, which was wholly unlooked for, on account of his severe arraignment of all men charged with crimes, and it was generally agreed among the people that his mind was not as active as it had been prior to that time. The long strain had told on him. During his career on the bench he tried many notable cases, some of them watched eagerly by people in other states.

Aside from his wife he leaves only one son, B. F. Webber, Jr., of Franklin, Minn., who is a practicing attorney in that town. He

was immediately notified of the death of his father Tuesday morning and arrived here Tuesday afternoon with his wife.

It had been arranged to tender a banquet to Judge Webber and his successor, Judge Olsen, on Monday evening next, by the Brown County Bar association, but this function will not be held.

Last Sad Rites.

The remains of the dead jurist reposed at Buenger's undertaking rooms until Tuesday noon, when they were conveyed to the Webber residence on South Broadway. The body reposed in a state quarter sawed oak casket, richly carved and a gold tablet with the words "At Rest" was affixed. The funeral services were brief and were conducted at the home of Rev. E. F. Wheeler, of the Congregational church, assisted by the choir. Rev. Wheeler spoke feelingly of the many good traits of the departed husband and father.

The honorary pall bearers were Chas. Silverson, Dr. O. C. Strickler, M. Mullen, Rich Pfefferle, Wm. Skinner, A. W. Bingham, S. A. George, and C. W. A. Krook.

Active pallbearers were Albert Pfaender, Wm. B. Mather, L. B. Krook, Adolph Melle, Einar Holdale and H. N. Somsen.

The Lyon County Bar Association sent a beautiful floral wreath, with a cross of red roses in the center. The members of the Masonic ledge contributed a large floral design emblematic of the order and the members of the Congregational church sent a floral pillow with the words "At Rest" richly embedded. Many other handsome floral offerings attested to the high esteem in which the deceased was held. At the time of the funeral a cold wave was sweeping over the city and roadways were covered with a thin sheeting of ice. The inclemency of the weather kept many form attending the funeral. At the grave Rev. Wheeler delivered a short sermon and all that was mortal of the departed

Judge Webber was lowered in to the airtight gray steel vault. Interment was in the city cemetery.

In Honor of His Memory.

The regular November term of the district court was in session at Marshall at the time of Judge Webber's death and on Wednesday afternoon, at 3:45 o'clock during open session. Attorney V. B. Seward addressed the curt and official notice of his death was taken by the court presided over by Judge I. M. Olsen, who was holding his first term of court since his accession to the bench. Mr. Seward, who was always an intimate friend of the deceased judge, spoke as follows:

"It devolves upon me as one of the older members of this bar to make to this court the formal notice of the death of its former presiding officer, Benjamin F. Webber. Judge Webber died at his home in the City of New Ulm yesterday morning. His last end, his passing away was not as Your Honor would like to have it; it was not as any member of this bar would have liked to have had it, and I assure that it was not as Judge Webber, during these many years he has been here, anticipated.

"I think I voice the sentiments of the members of this bar, and also of Your Honor, when I say that if we could have had our way, when the time came for Judge Webber to pass away, it would have been perhaps in the very seat Your Honor now occupies. It was one of his ambitions to 'die in the harness,' and I think I could picture the death of Judge Webber that would have liked to have been his. Perhaps during our summer term, with Judge Webber on the bench, and as the orb of the day was sinking in the west and the hands of the clock pointing to the hour of six, addressing the members of the bar, he would say: "We will take a recess until to-morrow morning a * * * and then before the hour was fixed his spirit had passed to his Maker and he, gently falling back in his chair and you and every member of this bar

springing to his assistance would carry his body, his remains to his home and thence to its final resting place.

"But it was not to be. God's ways are not ours, and the death that Judge Webber met was by his own hand. I do not know whether it was the act of an irresponsible mind caused by the over-working of a tired and wearied brain, or whether it was the premeditated act of a bold and brave and fearless man. I know not. But this I do know that whether that was an act of his own with his full powers of mind or the irrational and irresponsible act of an insane person—I do know this, that Judge Webber to-day is receiving the reward of a good and honest and upright life, and I tell you, my friends, that if we live the life that he did, when we come to that better world, we will meet and clasp his hand again when the Court convenes over there to-morrow morning.

"If Your Honor please, on behalf of the members of this bar, I would suggest that when you adjourn this evening let it be "without day," or at least until some time after the obsequies of Judge Webber."

Judge I. M. Olsen, replying to Mr. Seward said:

"The clerk will please enter on the minutes of the court the motion made. And I would order the words spoken by brother Seward to be spread upon the minutes of the court, and when this pending case is completed and the jury's verdict returns it will give me pleasure to grant the suggestion and motion made and take an adjournment out of respect for the memory of our beloved brother and former judge of this court, until such time as we will give us all an opportunity to attend the funeral as a mark of respect to him. I wish to thank counselor for his remarks at this time."

Shortly thereafter the court was adjourned until January 14, 1907.

6. BAR MEMORIALS

A. Ninth Judicial District Bar.

On Thursday, December 13, [1906], memorial proceedings were held in the Brown County Courthouse in New Ulm. The *Brown County Herald* reported the services on its front page:

HONORED BY THE BAR

———

Memorial Services Held in Honor of
Late Judge Webber.

———

ALL UNANIMOUS IN PRAISE

———

Resolutions Will be Suitable Inscribed
in Permanent Records of the District Court.

———

As a tribute to the memory of the departed Judge B. F. Webber memorial services were held at the court house Thursday afternoon. All of the attorneys of the ninth judicial district, who were able to be present, responded to the invitation. Attorney Joe A. Eckstein, as chairman of the committee on resolutions, addressed the court and offered the following:

IN MEMORIAM.

To the District Court of Brown County, Minnesota:

The undersigned committee of the Bar of the Ninth Judicial District, appointed by this court at the opening of this term to prepare and submit suitable resolutions as a fitting tribute on the demise of the Hon. B. F. Webber, a former Judge of this court, respectfully beg leave to report:-

Whereas, It has pleased the Supreme Architect of the Universe and Judge of the Court of Last Resort, in his inscrutable wisdom, to suddenly call the Hon. B. F. Webber from this earthly career to his eternal and well earned rest, we, the court and members of his former judicial district, composed of the counties of Brown, Nicollet, Redwood, Lyon and Lincoln, deem it proper to take cognizance thereof, and pay a last tribute to the public and private life of the deceased. The members of the bar have reviewed with profound sorrow the announcement of the death of the late Judge B. F. Webber, who was formerly an eminent member of the bar and an able, honest and upright judge for nearly twenty-four years in this judicial district. His well earned reputation as a jurist and his remarkable familiarity with current decisions will long serve as a beacon of light for us to follow in our professional labors.

We have prepared a short synopsis of his life and services which is appended hereto and made a part of our report. We desire to place on the records of this court some expression of our feelings on this occasion and our appreciation of the honest, faithful and zealous services rendered by Judge Webber during the span of life which was allotted to him and we sincerely regret that when he was in the zenith of his fame, he was called to the everlasting repose which is the destiny of us all. It is sweet to be remembered. To pay charitable tribute to the memory of the departed is not only our duty but it perpetuates their virtues and keeps them fresh and green in our memory.

Judge Webber was a typical American citizen. By his death, the bench and bar has lost an able and respected member of the profession, which loss is by us deeply felt and mourned, therefore:

BE IT RESOLVED, That the bench and bar of the ninth judicial district does hereby express its profound sorrow on the death of Judge B. F. Webber, long and eminently distinguished as an able

and upright jurist, and we tender our heartfelt sympathy to the family of the deceased in their sad bereavement.

BE IT FURTHER RESOLVED, That this report be inscribed in the minutes of this court now in session, and that a memorial page therein be set apart, suitably indicated and forever dedicated to the memory of our former judge and associate, as a tribute of our respect and esteem and distinguished services as a jurist.

BE IT FURTHER RESOLVED, That the clerk of this court prepare and deliver to the widow of the deceased a certified copy of the proceedings of this court herein.

Dated New Ulm, Minn., Dec. 13, 1906.

Respectfully submitted,
JOS. A. ECKSTEIN,
of New Ulm, Brown County;
A. A. STONE,
of St. Peter, Nicollet County;
FRANK CLAGUE,
of Lamberton, Redwood County;
M. E. MATHEWS,
of Marshall, Lyon County;
JOHN McKENZIE,
of Lake Benton, Lincoln County.
Committee.

———

Mr. Eckstein then attested to the sterling worth of Judge Webber as a counsel and jurist. It had been his great fortune to become intimately acquainted with the late judge, having begun the study of law in his office during the year 1877. At that time he was a school teacher, the same as the judge had been, and naturally felt that he was the only attorney in the city who could give him the proper training. Since his admission to the bar and the many years of practice before the court presided over by the

late judge he had at all times implicit confidence in his honesty and integrity and that his death was no doubt due to his earnest devotion to duty. The strain of an active mind suddenly becoming idle had no doubt hastened his end.

A. A. Stone, of St. Peter, one of the oldest attorneys in the district, paid a glowing tribute. He enumerated the many good traits of the departed judge. He was followed by Frank Clague, of Lamberton; Einar Holdale, New Ulm; C. T. Howard, Redwood Falls; Rev. E. F. Wheeler, New Ulm; Wm. G. Owens, Walnut Grove; L. G. Davis, Sleepy Eye; Geo. T. Olsen, St. Peter; C. A. Hagberg, New Ulm; Alb. H. Emerson, Lamberton; Dr. O. C. Strickler, New Ulm; H. N. Benson, St. Peter; Albert Hauser, Sleepy Eye; Adolph Frederickson, Springfield; Alb. Pfaensder, New Ulm; Aug. G. Erickson, Springfield; H. N. Somsen, New Ulm; They all recounted some particular commendable act which deserved emulation.

The services came to a close shortly before six o'clock. The attendance was rather small on account of the inclemency of the weather.

Aside from the attorney enumerated above, A. J. Praxel, of Lamberton, and Alb. Steinhauser, of this city, were in attendance.

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THIS PAGE IS DEDICATED TO
THE MEMORY

—of the—

HON. BENJAMIN F. WEBBER,
Late
Judge of the Ninth Judicial
District,
Being Composed of the

Counties of Brown, Nicollet, Redwood, Lyon and Lincoln in Minnesota.

_____

Born at Shapleigh, Maine, on
October 6, 1833.
Died at New Ulm, Minn., on
December 4, 1906.
Age 73 years.

_____

Admitted to the Bar as an Attorney and Counselor at Law in all the Courts of this State, at Madelia, Minnesota on March 21, 1872.

Became a resident of New Ulm, in Brown County in 1873.

January 31st, 1875, became County Attorney of Brown County, which office he held continuously for eight years.

January 1st, 1883, became Judge of the District Court of the Ninth Judicial District, which office he held until a short time before his death, he having resigned the office on account of ill health.

REST IN PEACE.

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B. Minnesota State Bar Association.

At its annual convention in 1907, a committee of the Minnesota State Bar Association presented the following memorial to him:

> Benjamin F. Webber, for twenty-four years Judge of the Ninth Judicial District of this state, died at his home in the city of New Ulm on December 4th, 1906, at the age of seventy-three years.

He was born at Shapleigh, in the county of York, in the state of Maine, on the fourth day of October, 1833. The greater part of his minority he spent on his father's farm, attending the country school when it was in session. After leaving home he worked for a while in a tannery, and also worked at the carpentry trade in and around Boston, to obtain funds to enable him to secure an education. He attended the Maine Wesleyan Seminary as late as 1862, and afterwards taught school in his home county until he was married, in 1865. He then came to Minnesota, and settled at Garden City, in Blue Earth County. There he worked at his trade as a carpenter, and also taught school, spending his leisure time and evenings in the study of law.

He was admitted to practice at Madelia on March twenty-first, 1872, and located at New Ulm, where he resided until his death. In 1875 he was elected county attorney of Brown county, which office he held for eight years. On January first, 1883, having been elected judge of the Ninth District, he assumed the duties to which the remainder of his life, under successive re-elections, was given, until his resignation because of ill health a few weeks before his death.

Judge Webber was a typical American citizen. Without special advantages in early years, and although almost at the meridian of life before beginning his professional career, he yet reached, and until well past the allotted three score years and ten maintained, a position of eminence, was distinguished for the ability and character which he unfailingly displayed in the discharge of the duties of his high office, and left to his family an honored name. [43]

[43] Proceedings, Minnesota State Bar Association 101-2 (1907). The following profile of the Judge was published in a history of Redwood County in 1916:

> Judge Benjamin F. Webber, of New Ulm, was elected judge of the Ninth Judicial district at the fall election of 1882, and assumed the office January 3, 1883, and first presided over a Redwood county term of court at Redwood Falls, convening June 5, 1883. He continued as judge until

7. A Court Reporter Remembers Judge Webber

The *Marshall News Messenger* published the recollections of the Judge by his long time reporter W. T. Eckstein. It was reprinted in the *New Ulm Review* on December 19, 1906:

REMINISCENT OF JUDGE WEBBER

———

Marshall Paper Tells of Close
Relations Between Jurist and
His Reporter.

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The Marshall News Messenger of this week has the following:

The late Judge Webber's confidential relations with his court reporter, W. T. Eckstein, were more marked than the usual official connections of court and employee. And the confidence and dependence placed with Mr. Eckstein was a high tribute to the ability and judgment of that gentleman, who served as court reporter for a period of seventeen years under Judge Webber.

Since the appointment of Mr. Eckstein, he has been admitted to the bar, and with his varied experience during seventeen years, meeting with and being a part of every phase of litigation, he must be a ripe student in the mysteries and intricacies of the profession. After retirement of Judge Webber, and during his perplexities and mental disturbance, he relied more than ever

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October, 1906, when he resigned, though this term would have expired December 31st following. The events following his resignation were quite tragic; having served nearly twenty-four years on the bench of this district and practically without opposition, at the election in the fall of 1906 he again filed as a candidate. The opposition to his election was quite strong and he thereupon withdrew as a candidate and resigned his office; and, after his successor had been appointed and immediately preceding the convening of the fall term of court at New Ulm, his home town, he took his own life, and thus passed one of the oldest judges, both in point of age and service, then upon the bench in the state.

Alfred C. Doliff, "Courts, Cases and Layers of Redwood County" 7 (MLHP, 2008-2919)(published first, 1916).

upon the assistance and judgment of Mr. Eckstein, and scarcely a move did he make in business affairs that he did not summon to his aid his court reporter, his "fidus Achates." If he was worried regarding business affairs, or mentally depressed, the telephone summoned Eckstein, whose explanations, advice and cheerful suggestions for the time brought relief, but frequently would the judge again summon his friend when he had but returned to his place of business.

Exact business methods, absolute correctness to the smallest detail, was (sic) a strong characteristic of the judge. To the fraction of a penny he insisted upon paying all demands against him, and in recorded transactions there might be no omission of word or letter, or deviation from proper positions. As typical of his exacting methods, he would not allow for the trivial payment of the cost of a blank upon which a legal transaction was to be recorded, and neither would he allow for its payment by another party if it should be furnished by himself. Rather than deviate from his fixed principles, he would allow a transaction of magnitude to go in default. In illustration of his exactness, was the filing of his election expense affidavit prior to the last primary election, as required by statue. He called Eckstein to make up the report, which was in detail to the smallest item. When completed the reporter retired. But immediately, for an hour or more, the judge hunted about the city for the reporter, and, when found, demanded that he return and make a correction in the report by inserting an overlooked item of trivial importance, even insisting that the item should be inserted in its proper place according to the date of the same.

The above incident occurred just before Mr. Eckstein left New Ulm for his court duties in Marshall, and doubtless his absence was a cause for increasing the mental disturbance of the judge. Indeed, it is possible that had Mr. Eckstein been at home on the Monday night when the judge was unaccountably absent from home till midnight, the tragedy of the following morning might have been stayed. At all events, there is an incident that will cause no wonderment among the believers in telepathic communication between intimate friends and kindred souls. Contrary to his invariable custom the judge was absent from home Monday evening in unknown wandering till after midnight.

On this same night the mental condition of Mr. Eckstein was so disturbed that he could not sleep, though, as usual, comfortably quartered in his apartment at the Atlantic hotel. Eckstein is a sound sleeper, who retires early, and his slumbers are peaceful and continuous till morning. His restlessness this night was unaccountable to himself, for he was in excellent physical and mental condition, but sleep he could not. He listened to the passing of the midnight trains, and was sleepless till after the arrival and departure of the four o'clock morning passenger train on the Northwestern road. Was there a telepathic communication between the two friends?

Judge Webber was a man of most economic tendencies, severely just in his dealings with his fellowmen, the soul of integrity and fair dealing, neither covetous nor envious of the success of others, yet practicing frugality almost to the verge of penuriousness. Whatever of this characteristic existed was self-confined and in no way obtrusive to others. It was a force of habit from his boyhood and early manhood struggle for livelihood, a simple life demanding only comfortable existence, without luxuries, and effort for gradual accumulation of a competence for old age and those he might leave behind.

Always within and beyond his professional duties he was an intensely active and industrious man, and it was only within the past few years that he permitted himself to annually take a few days of pleasure vacations. These were usually confined to family fishing jaunts at Green Lake in Kandiyohi county, when his companions were the families of C. B. Tyler and A. R. Chase of this city. With these and one or two others families in Marshall there were warm social relations, and the judge found much pleasure during the recess hours of court in this city, visiting the office of Mr. Sullivan, with whom he discussed his business affairs.

It has been stated that the estate of the late judge would amount to from seventy-five to one hundred thousand dollars. Mr. Sullivan thinks these figures too large, and that between fifty and seventy-five thousand dollars is nearest correct. Much of the judge's means was invested in real estate mortgages, and but recently he had nearly forty thousand dollars so in vested in Lyon county. That he was constantly accumulating wealth is evident

> from a statement he recently made to a friend in this city, that the maintenance expense of himself and family was met by one-third of the interest received on his investments, leaving his salary and any other income untouched for such purpose.[44]

8. Summing Up.

Remarkably Benjamin F. Webber was re-elected three times without opposition as a "non-partisan" candidate at a time when judicial selections were controlled by political parties. He was respected by the district bar, admired by the press and revered by the people. He stands in the first rank of district court judges in this state in the late nineteenth and early twentieth centuries.

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APPENDIX

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[44] New Ulm Review, December 19, 1906, at 4.

The Battle for the Judgeship of the Ninth Judicial District in 1882.

A. Melvin G. Hanscome Announces His Candidacy.

E. St. Julien Cox, a well-known St. Peterite, was elected in November 1876 and served from January 1, 1877 until his removal through impeachment proceedings on March 22, 1882. Hail Baldwin was then appointed by Governor Lucius F. Hubbard, which was not popular among the bar and district newspaper.[45] It was apparent to members of the district bar that Baldwin would not receive the Republican Party's endorsement at its judicial district convention.[46] First to announce his candidacy was Melvin G. Hanscome of St. Peter. It seems he wanted desperately to return to the bench. He had years of judicial experience. In 1869 he was appointed to the 6th Judicial District Court by Governor Marshall to fill the vacancy arising from the resignation of Judge Horace Austin to run for Governor on the Republican ticket. He did not receive the Republican endorsement at its judicial district convention and served on the district bench for only three months, from October 1, 1869, to December 31st, 1869. He was appointed by Governor Austin to the newly formed Ninth district on March 11, 1870, won the election in November (defeating E. St. Julian Cox) and served until January 1, 1877, when E. St. Julian Cox, who had defeated him in November 1876, took office. Hanscome announced his candidacy in an open letter printed in the *St. Peter Tribune*, July 26, 1882:

OPEN LETTER FROM JUDGE HANSCOME.

———

He is in the Field for Judge and to Stay.

———

To the voters of the 9th judicial district, Minnesota:

A Judge is to be elected this fall, to hold his office for the term of seven years. There are quite a number of aspirants for

[45] For a biographical sketch see "Judge Hial D. Baldwin (July 6, 1827-October 25, 1906)" (MLHP, 2020).

[46] See generally, Douglas A. Hedin, "Judicial District Conventions in Minnesota: An Introduction" (MLHP, 2020).

the position. To the people, it is of vital importance that some man should be elected who possesses the ability, integrity and impartiality to discharge his official duties fearlessly and with prompt-ness, unbiased by party feelings and uninfluenced by fear or favoritism.

To the individuals who are seeking the place, it is a matter of small importance, personally, whether this or that man is elected or defeated.

The question of locality, of political preference, prejudices or friendship, are of secondary consider-ation, compared with the query: Who, in all respects, is the best qualified to fill the position in the interests of the people?

The question should not be where does the man reside, but, rather, how will he meet and discharge the obligations that his official trusts and duties impose upon him.

But one man can be elected. The people will decide who that man shall be, at the ballot box next November. Every good lawyer in the district has the right to become a candidate for the honors and emoluments incident to the position. In pursuance of that right and at the earnest request and personal solicitation of many friends, I publicly announce myself as a candidate for the judgeship of the 9th judicial district.

I shall urge war with none of the aspirants who are seeking to wear the ermine, nor shall I attempt to strengthen my own cause by villifying or inducing either of them. He that is worthy of the place will resort to no dishonorable means to obtain it.

The various candidates are all personal friends of mine, and I shall have nothing to say against either of them as men or lawyers. I shall rely upon my own merits for support, and not upon criticising or disparaging my opponents.

To all those who conscientiously believe that I possess the qualifications necessary to fill the position, I cordially send greeting; and I announce the fact that I am in the field as a candidate for the judgeship. The voters will decide Nov. next who shall be their judge, but let them not ignore the importance of the election. May the man best fitted for the

position be elected, even though the hopes and aspirations of each and all of us, who are now prominently before the people, shall be blasted like a withered tree, not worth preserving.

Yours Truly,
M. G. Hanscome.[47]

The *Herald* could not resist the temptation to publish a blistering editorial in the same column directly below Hanscome's letter:

The Herald arises to remark that this letter is a curiosity in its way. It is a curiosity in its assurance and no less in its clumsy literary blunders. If he had simply announced in a six line item that he was a candidate, either for the party nomination or as an independent candidate for the suffrages of the people, he would have saved himself considerable just criticism.

In the first place he names the qualifications which a judge should have and then puts himself forward to fill the bill as if he were the only proper person in the district for the office. Of course he is not going to make war on any other candidates, but he does not once admit that a single one of them is fit for the office or possesses the high qualifications which he assumes so pompously himself. Locality, he thinks, should have nothing to do with the choice of a judge. But, in this case, it has much to do. If there equally good in there are equally good men in other counties, (and, by the way, there are several of them) it is a good argument, in their favor to urge that Nicollet county has furnished the judge for 10, these many years, and that it is time for a new deal.

As to the literary blunders mentioned, we call attention to the second paragraph of this letter. "To the individuals, he says, who are seeking the place, it is a matter of small importance, personally, whether this or that man is elected or defeated." Comment on so gross an absurdity is unnecessary.

[47] *St. Peter Tribune*, July 26, 1882, at 3. This letter was republished in *The Sleepy Eye Herald*, July 29, 1882, at 1, the *Lyon County News*, August 4, 1882, at 2, and *New Ulm Weekly Review*, August 9, 1882, at 3.

> Again in speaking of other candidates, he says, "nor shall I attempt to strengthen my own cause by villifying or *inducing* them..." Evidently the judge is better versed in law than he is in the elements and construction of the English language.

The *Lyon County News* also published Hanscome's announcement, and accompanied it with this editorial on the same page:

> Ex-Judge Hanscomb, of St. Peter, takes the judicial bull by the horns, and announces himself a candidate; with a degree of assurance that raises the query whether any convention is necessary. In a peculiar literary production in the St. Peter Tribune, published elsewhere in these columns, he enumerates the exalted qualifications requisite for a judge, and allowing no one else to possess said qualifications, like the circus clown, leaps into the arena, and says: "Here I am, gentlemen, possessing all the eminent requisites for the administration of justice: your conventions can nominate me if they choose, but I shall be a candidate in any event." Verily it is a clownish act; its impudence furnishing some amusement to temper the feeling of contempt, which is provoked.[48]

B. Ninth Judicial District Republican Convention, September 12, 1882.

The Ninth Judicial District Republican Convention was held in New Ulm on September 12, 1882. The following account of the convention from the *New Ulm Weekly Review* is of interest because it quotes John Lind's nominating speech and Benjamin F. Webber's acceptance speech in which he declares that, while he is honored by the Republican Party's nomination, he will serve as a nonpartisan judge. [49]

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[48] *Lyon County News*, August 4, 1882, at 2.

[49] *New Ulm Weekly Review*, September 13, 1882, at 3. The article concluded with a biographical sketch of Webber. *Infra* at 54-55. A delegation from Redwood County favoring Judge Baldwin led by John S. G. Honnor walked out in a dispute with a competing slate from that county. It is likely that he saw that Baldwin's candidacy was doomed.

JUDICIAL CONVENTION.

B. F. Webber, Esq., of New Ulm,
Nominated for Judge on the First Ballot.

The Republicans of the Ninth judicial district, composed of the counties of Brown, Nicollet, Lyon, Lincoln, Renville and Redwood, met in dele gate convention at Turner Hall, New Ulm, on Tuesday, September 12th, 1882, at 12 o'clock m., for the purpose of placing in nomination a candidate for Judge to be voted for in the general election in November.

In the absence of C. F. Case, the chairman of the district committee and all the members, the convention was called to order by Jos. Bobleter, of Brown. The temporary organization was effected by the election of T. F. Demming, of Renville, as chairman, and C. W. Morse, of Lincoln, as secretary.

On motion, the chair appointed the following committee on credentials:

Geo. Bradley, of Lincoln, Hans C. Hanson, of Nicollet, I. S. Gerald, of Renville, Geo. Carlow, of Lyon, Jos. Bobleter, of Brown.

The committee on credentials reported the following delegates entitled to seats in the convention:

BROWN -- A. Blanchard, S. D. Peterson, J. M. Thompson, J. C. Rudolph, Jos. Bobleter, Ole Jorgenson, Geo. Heart, John Neuman, G. W. Harrington and Geo. W. Sommerville. – 10 votes.

NICOLLET--Jacob Stelzer, Christ. Evanson, J. C. Donahauer, Hugo L. Stark, C. R. Davis, Hans C. Hanson, Nels P. Chilgren, Wm. Couplin and Christ. Stolz. – 9 votes.

LINCOLN--Geo, H. Bradley, Knute Rierson, C. M. Morse, Al. Woodford and Col. McPhail. – 5 votes.

RENVILLE -- T. F. Demming, F. L. Puffer, Iver S. Gerald, G. D. Stoddard, Gunerius Peterson, Ole N. Stone, O.S. Reishues, S. Hanna, D. D. Williams. – 9 votes.

LYON --John Lind, Geo. Carlow, Geo. M. Robinson, A. C. Forbes, J. C. Cutler. Geo. E. Johnson. – 6 votes.

Two sets of credentials were presented to the committee from the county of Redwood. One delegation being composed of J. S. G. Honnor, James McMillan, M. E. Powell, T. Tibbetts, J. S. Letford, H. M. Egleston and O. L. Dornberg.

The other was composed of J. L. Bylam, L. S. Crandall, Paul Timm, John Whittel, Swen Peterson, Thos. Sloan, and G. W. Braley.
After hearing representatives of both delegations the committee concluded that neither delegation was entitled to a full representation and, they therefore recommend that each delegation be admitted to the convention with 31/2 votes each. The report was signed by all members of the committee.

Considerable discussion ensued over the adoption of the report of the committee. Mr. Honnor argued that his delegation was entitled to a full representation or none at all. Mr. Thorp, of Walnut Grove, was, on motion, allowed 20 minutes to present the side of the contesting delegation.

On motion, the report of the committee on credentials was adopted by a rising vote. Upon the announcement of the result of the vote on the adoption of the report, Mr. Honnor

announced to the convention that the delegation headed by him would withdraw from the convention, and he thereupon walked out, followed by his colleagues. Recess for five minutes.

On motion, the temporary organization was declared the permanent organization of the convention. Mr. Dona-hauer, in behalf of the Nicollet county delegates, entered a protest against the action of the convention in adopting the report of the committee on credentials.

Mr. Blanchard asked whether the protest was entered with a view of having a pretext to bolt the nominee of the convention. Mr. Donahauer assured Mr. Blanchard that it was not, but only as a matter of precedent.

It was then moved to proceed to the nomination of a Judge.

Hon. John Lind then nominated B. F. Webber, of New Ulm, as follows:

"Gentlemen of the convention: It is with mingled feelings of embarrassment and pleasure that I rise before you, embarrassment, because I feel that here are many members of the profession here, as well as gentlemen that do not follow the study of law who are older, better fit, and more competent to do justice to the time and rightful demands of this body, as well as to the character and ability of the gentleman whose name I will place before you.

"I also assure you that I take pleasure in embracing this opportunity to realize a wish and a hope that I have cherished for years. I assume that it is the greatest reward for his labor and the highest gratification of the ambition of a true lawyer to receive the judicial ermine at the hands of his brethren and a public confident of his ability and integrity.

"When as a mere boy, as still I am, I settled this town and commenced the practice of law, there was one attorney there before me, who, though old enough to be my father, was young enough to be my friend and adviser. Ready to encourage me in my efforts, free to advise and assist, though our interests were conflicting and opposed from the first, I learned to love and esteem him as a true brother in the profession, and when in later years we met in frequent contents in yonder building I learned to respect him as well for his ability.

"Of his private character and standing, the unanimous voice of this city and of the county of Brown is a sufficient guarantee and as I stand here to-day in my old home amid friends and old association, I assure you, gentlemen, I am pleased to say, that as the unanimous choice of my old home us well as my new, for the important and honorable position of Judge of the District Court, I place before you the name of B. F. Webber, this city, and in so doing I feel assured that we are putting up a man who is not only the choice of this convention but of the people of this District. In his nomination and consequent election the people will secure a judge whose ability is second to that of no attorney in the district and whose character as a man and a citizen stands forth unblemished and respected by all classes.

"His highest and only ambition has been to excel in his profession, and though he is not a man of brilliant speech, his sound judgment and understanding of law as well as his earnestness of manner and careful preparation of his cases has made him a powerful opponent before a judge or jury. Although he has arrived at an age when the fullness of ability and intellectual power is fully developed in most men, I am confident, that with his well known habits of industry and unceasing application, he can never fail to progress and keep pace with the most ambitious in his profession Of him it will never be said that he is a rusty Judge

In politics his convictions of equality before the law, of all classes irrespective of race, color, or nationality led him to become a Republican in early life and he has ever remained loyal as you would expect from a man of his earnestness of manner, clear judgment and firmness of character. A farmer's son, he procured scholarly education and has risen to the position he now occupies oil his own exertions. His interests and sympathies therefore naturally affiliate with the class among whom the lot of his early years was cast."

Mr. Rudolph seconded the nomination of Mr. Webber in a few well timed remarks, repeatedly bringing down the convention by his witty remarks.

On motion, the convention proceeded to a ballot for Judge, Mr. J. Thompson and Geo. H. Bradley acting as tellers.

The vote resulted as follows:

B. F. Webber.....33½
Sumner Ladd.....8
Alf. Wallin.....1

On motion of A. E. Woodford the nomination of Mr. Webber was made unanimous.

On motion, the chair appointed a committee of two to wait on Mr. Webber and inform him of his nomination and request his presence at the convention.

On motion, the following district committee was appointed, each delegation naming one man:

A. Blanchard, of Brown, chairman.
G. Peterson, of Renville,
J. Stelzer, of Nicollet,
A. E. Woodford, of Lincoln.

F. S. Brown of Lyon,
G. W. Braley, of Redwood.

Mr. Webber was introduced to the convention by Mr. Sommerville as the next Judge of the Ninth Judicial district. His entry into the hall was greeted with hearty applause. Mr. Webber then accepted the nomination as follows:

"Mr. President and gentlemen of the convention I am informed by your committee that I have been selected by this convention as a candidate for the office of District Judge.

"While this nomination comes from you as Republicans, and while I am proud to be counted a member of that party, which, although not free from errors and mistakes, has left the impress of its grand mission for the elevation of mankind and the advancement of human freedom and intelligence stamped upon the proudest pages of American history. The office to which you have nominated me is one whose duties are wholly independent of party politics, and I am proud to be able to count among my warmest supporters men whose political sentiments are wholly different from my own. Any judicial officer who would allow political considerations to have the slightest weight in the performance of his official duties, would be wholly unworthy of the trust. Every man, without regard to his political opinions, is entitled to the same protection and owes the same obedience to the law of the land. Let me assure you, gentlemen, that although I am the candidate of a party, if elected, I shall not be the officer of a party but it will be my constant aim to give every man his exact and equal rights according to law.

"The duties of the office to which you have nominated me, the construction of the law and its application to particular cases, are among the most important and difficult in the administration of government, and, if I were compelled to rely upon my own unaided wisdom and judgment, I should shrink from assuming so

grave responsibilities. But fortunately the wisdom and judgment of the great jurists of ancient and modern times are accessible in the books, and it will be my highest ambition and pride, if elected, to discover their foot prints and follow in them. Relying upon these, upon my own industry and upon the aid and co-operation of the able bar of the Ninth judicial district, I hope to be reasonably successful in the performance of my official duties.

"With sorrow that my success in securing the nomination must be the defeat of others whom I am proud to call my friends, with gratitude to the members of the convention and the people of the district which I have no words to express, I accept the nomination and, if elected, I pledge you seven years of unceasing toil, in an honest endeavor to do my duty."

The convention thereupon adjourned *sine die*.

Benjamin F. Webber was born October 6, 1834, in Shapleigh, York Co., Maine, where his father and mother are still living. He is a self-made man, having obtained his education wholly by his own exertion, defraying his expenses by working as a mechanic and teaching. He resided for several years in Massachusetts, and removed to Blue Earth county this State in 1868, and to New Ulm in 1872, where he has since resided. Since his residence in New Ulm he has devoted himself wholly to the practice of law and so well did he succeed in his profession, that in the fall of 1874 he became the Republican candidate for county attorney of Brown county. His nomination was ratified by the people at the general election of that year, and he has held the position ever since, his last two elections having been without opposition. He is a close student, devoting his entire time to the calling of his profession. He is thoroughly competent to fill the position to which the Republican party has called him, and, should the nomination be ratified by the people next November, be will

> administer the duties of his office in an intelligent and satisfactory manner. He has a faculty of making friends with all with whom he comes in contact, which may in some degree account for the successful termination of his canvass for the Republican judicial nomination. [50]

Of all the editorials and letters-to-the-editors of district newspapers during the campaign, one stands out. Alfred Wallin wrote a long article for the *Redwood Gazette* comparing Melvin Hanscome and Benjamin Webber: [51]

> THE JUDGESHIP OF PARAMOUNT IMP0RTANCE.
>
> ———
>
> Letter from Alfred Wallen.
>
> ———
>
> Correspondence of the Redwood Gazette.
>
> ———
>
> Through the columns of your paper, I beg leave to invite attention to the fact that the voters of the 9th, Judicial district are soon to vote for a district Judge, whose duty it will be to precide (sic) for seven years in the only court of the six counties embraced within the district which has general jurisdiction both at law and equity.
>
> I hear little talk upon the streets, and almost none at all among the local "practical politicians" (so called) about the judgeship. This may be partially accounted for by the fact that the office of district judge is wholly non-partisan and, more pertinent still, none of the "loaves and fishes" so dear to the heart of the

[50] This biographical sketch concluded the account of the judicial district convention in the *New Ulm Weekly Review*, September 13, 1882, at 3.

[51] Wallin's letter was reprinted in the weekly *New Ulm Review*, October 18, 1882, at 3. His last name was misspelled in the headline.

"practical politician" are within the power of its incumbent to bestow.

Just here, I beg to enter my protest. I object to lifting the smaller above the greater matter; elevating the comparatively unimportant legislative offices to a place above the judicial office, the latter being of paramount importance, and of the very highest public concern. We hear constant harping upon the subject of electing members of the State legislature while the election of a judge is allowed to go by default.

Let who will go to congress, only, a very few persons can in any contingency derive a direct personal advantage from the election of any particular man, while, on the other hand, every man, woman and child in the community are under the shield of the law, and at any moment are liable to come into direct personal relations with the courts. The interests of society and individuals are surrounded and upheld by the law. The courts charge themselves with the duty of protecting life, liberty and property, and from the courts alone have we a right to demand the redress of private grievances, the enforcement of legal obligations, and the punishment of public offenders.

These grave considerations are usually ignored by the practical politicians — for reason above indicated — while the average voter, accustomed as he is to free access to the tribunal of law and the unchallenged enjoyment of civil and political rights, pays them little attention.

While these vital questions are too frequently ignored by the managing politicians, as well as by the unthinking multitude, all the more do they deserve the earnest attention of the enlightened and conscientious citizen. The question who will be our judge for the next seven years, to the people generally, transcends in importance all other local political questions of the year, and this question should be brought to the front in

the pending canvass and kept there at any necessary cost of time and trouble. Surely the people of the Ninth Judicial District have suffered enough already in dollars and cents, and been sufficiently humiliated and scandalized in this past history of the district, to justify extra precautions in choosing a judge for the future.

As a lawyer as well as a citizen, I feel that I have a duty to do in themises (sic) one which it would be cowardly not to perform.

It is now reasonably certain that either B. F. Webber of New Ulm, or Judge Hanscome of St. Peter, will be our next judge. Between these two gentlemen I have a decided preference, a preference based upon long and familiar acquaintance with both, and one not resulting from either ill-will or prejudice. Without wishing to unjustly disparage Judge Hanscome, with whom I have never had a difference in sixteen years of intimate acquaintance, I still think M. Webber is by far the better man for the place.
Some of my reasons for thinking as I do, I will proceed to give:

First, locality is in favor of Mr. Webber. A judge residing in New Ulm will be more accessible to the people of Renville, Redwood, Lyon and Lincoln counties, than one residing at St. Peter.

Second, Judge Hanscome is neither a Democrat nor a Green-backer in his political views, but on the contrary has all his life been a professed Republican, and at the hands of that great party has received all the political honors and emoluments which he has ever had. I submit that it illy becomes such a man to seek to compass the defeat of a Republican candidate so long as he still professes to cherish the principles of the party. I well remember when the Judge was the Republican candidate for the office of district judge, and distinctly recall the fact that he was as such very strenuous concerning the duty of voting the straight party ticket. He was quite right in this respect, but what has

occurred to change this elementary rule of party discipline? It is obvious that Judge Hanscome's attitude in the present canvass is emphatically wrong from a party standpoint and hence should be distinctly repudiated by party men.

Third, while the officer of district judge is wholly non-partisan, I regard Mr. Webber the more favorably as he possesses the advantage of being the duly nominated Republican candidate of the Ninth Judicial District. Qualified for the position as he is, Mr. Webber is clearly entitled to the hearty support of every Republican in this district.

I am fully aware of the fact that the convention which nominated Mr. Webber made an exasperating blunder by excluding the Republican delegates from Redwood county, and by admitting other persons who had not been com-missioned to represent the party. This is all true, but it is not more a fact than Mr. Webber was not in any degree instrumental in either excluding or admitting the contesting delegations. He was placed in such a position with reference to the convention that he could not with any propriety take sides and though urged to do so, steadfastly refused to become a party in the dispute. I suggest that he was clearly right in standing aloof from the controversy. No candidate ought to be required to jeopardize his chance of nomination by appearing before a convention in which he has neither a voice nor a vote, to champion the claims of a contesting delegation. At all events all unprejudiced persons who have taken the trouble to learn the facts, have discovered to their entire satisfaction that Mr. Webber did not choose between the contesting delegations from this county but kept honestly neutral in the matter. Besides, Mr. Webber had a clear majority of all delegates chosen, and consequently the admission or exclusion of the Redwood delegates did not and could not have changed the result. There has not been and will not be but one Republican Judicial convention in this district the present year. Mr. Webber was the unanimous nominee of that

convention, and none the less its nominee, because the convention made a mistake in perfecting its organization.

Fourth, I now come to consider what has been far more weighty in determining my own choice than anything heretofore suggested. I am free to confess that in the matter of judgeship, I should refuse to be bound by a party nomination if the nominee was in my judgment not qualified for the trust. I am, however, by no means willing to admit that the two aspirants for the judgeship stand on equal footing in point of qualifications and fitness, both natural and acquired. I have had ample opportunities to study the two men, and form my opinion from along and intimate acquaintance with both and therefore think I can speak advisedly. Judge Hanscome has quickness of perception united with a command of language seldom equaled besides his adroitness in an emergency serves him in good stead, and often enables him to win verdicts from juries in cases where abler men have failed. Judge Hanscome is an able jury lawyer, and in that sphere he can render set vice to the community, especially as an advocate. But the brilliant qualities of an advocate are not available on the bench. Rhetorical blandishments come with ill-grace from a judge. A sound judge is very apt to be a recluse in his habits, a man given to toil by day and the lamp by night, in fact a book-worm. Habits of close application will alone enable a judge to perform his arduous duties in expounding the law, and applying it to litigated cases. Judge Hanscome does not possess such professional habits. None who are acquainted with Mr. Webber and capable of appreciating his merits as a lawyer, will assert that he has a superior in the district, as a concientous (sic) and tireless student of the books.

During his ten years residence in the district, Mr. Webber has acquired a wide recognition among the able lawyers of the State, as a growing and progressive man and as a counselor who does not rest content with the acquisitions of the past, but is

constantly widening his mental horizon by new conquests upon the hard fought battlefields of his profession. The people of this district will do wisely and honor themselves by calling so able a man into the public service. I beg all thoughtful citizens to study the subject carefully, and put the result of their investigations into their ballots. If this is done, B. F. Webber will be our next district Judge.

ALFRED WALLEN.

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The Madigan Case.

Someday someone will collect newspaper accounts of notable trials over which Judge Webber presided and post them here. Those interested in the history of Minnesota trial practice and procedure will learn a great deal from them. The Madigan case, taken at random, is one such case. Michael Madigan was the Brown County Attorney when he was indicted for forgery, perjury and bribery. He was tried in January 1894 in New Ulm. Among the more interesting items are these: three men who served on the grand jury that indicted Madigan testified at his trial about statements made to the grand jury by witnesses.[52] One ground for Madigan's motion for a new trial was that one juror, Joseph Gag, did not "have knowledge of English," an argument Judge Webber dismissed by taking judicial notice (although he did not use that term) that the state's "population is largely composed of persons of foreign birth, and a large proportion of them have an imperfect knowledge of the English language." [53] This trial took place near the height of Scandinavian immigration to Minnesota. Another juror, Alonzo H. Pickle, was accused of drinking liquor during the trial, an argument the Judge rejected in part on his personal observations during the trial.[54] Finally, four bankers qualified as expert witnesses to compare signatures on two exhibits.[55]

The following account of the Madigan trial is taken from the weekly *The Redwood Gazette*.

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[52] *Infra* at 74, 75.
[53] *Infra* at 85, 87, 99.
[54] *Infra* at 87 ("I did not detect the slightest indication of intoxication"), 88, 98-99.
[55] *Infra* at 76.

From the front page of *The Redwood Gazette*, November 23, 1893:

INDICTED

———

County Attorney Madigan
Indicted on 4 Counts.

———

Perjury, Bribery and 2
Cases of Forgery
Set Forth.

———

TRIAL SET FOR JANUARY 23.

———

Mr. Madigan Confident of Proving
His Innocence-Ditto Attorney Peck.

———

As announced in the extra Gazette last Saturday afternoon the grand jury of Redwood county made a report to the Court at about three o'clock that afternoon, bringing in four indictments against County Attorney Michael M. M. Madigan—one for perjury, one for bribery and two for forgery. These indictments were unknown to all except the jury, the Court, and Clerk of Court Byram until after the extra appeared on the streets, for immediately after they were handed to Judge Webber, and read by him, they were handed to Mr. Byram with orders to file and record the same, and it was then quietly agreed between S. L. Pierce, attorney for the State, Judge Webber and Mr. Madigan that just before the Court adjourned for the evening the indictments should be read.

It was shortly after five o'clock when this memorable scene occurred. The Court room was only partially filled, the large crowd present an hour before evidently concluding that they

would hear nothing sensational that day, and left for their homes.

Mr. Madigan stood before the bar. He never trembled once while the four counts were being read to him. He read each count with the attorney of the State, and as the pointed charge was made not even a flush came to his face, but with almost unparalleled nerve from a man occupying such a high trust, he wore a look of confidence that the counts would be disproved. Asked each time whether he was indicted by his true name his answer was in the affirmative without a tremor. When asked each time whether he plead "Guilty" or "Not Guilty" to the charge he asked until Monday morning to enter his plea, and the request was granted. At about 5:30 the reading was concluded. Bail was fixed at a nominal sum of $300 in each case, and it was agreed that Mr. Madigan should furnish it Monday morning, with full liberty to that time.

It will be noticed from the four indictments, a synopsis of which is given below, that none of them are based on the three charges made by the Board of County Commissioners to Gov. Nelson. It naturally produced excitement in the Court room when this fact became known. Reportorial inquiry into the cause of this, after Mr. Goodman, Mr. Marsh, and others, of the tax title case, had been examined by the grand jury, elicited the information that Mr. Pierce claimed that he had dropped hunting for squirrels because there was a bear in sight.

The first indictment accused Mr. Madigan of forgery—of having offered in evidence in a proceeding authorized by law a document, knowing the same to have been forged, the forgery to have been committed on May 3d, 1892, in the case of John Damman vs. Henry L. Ringle, in which case Mr. Madigan was the attorney for the defendant.

The indictment states that on May 3d, Mr. Madigan made a motion for the continuance of the action until the next general term, and in making the motion he feloniously offered in evidence as genuine a forged affidavit setting forth facts to sustain his motion, and the Court acted upon the facts as true, when they were but willfully and wrongfully forged.

The second indictment accuses Mr. Madigan of the crime of perjury. The case in which this is alleged to have been done was that of Peter A. Ramnes vs. Halvor T. Helgeson and Ole H. Mogen, co-partners as Helgeson & Mogen, doing a mercantile business at Belview up to early this year, when they assigned. It appears that Mr. Madigan induced the partners to sign a note for $500 alleged to have been given to Peter A. Ramnes. This was on April 27,1892. It is alleged that immediately after it was given Mr. Madigan commenced suit on the note to force an assignment. The complaint was drawn up and sworn to before George Houghmaster, Court Commissioner, by Mr. Madigan. The indictment claims that the firm was never indebted to Ramnes; that the note was never delivered to him, and that besides Mr. Madigan knowing that his affidavit to the complaint was false, he was never the attorney for Ramnes.

The third indictment is for forgery in the second degree, accusing Mr. Madigan of having willfully forged and feloniously forged an instrument purporting to be the act of Peter N. Ramnes, F. W. Philbrick and Henry F. Buechner to a bond for a writ of attachment on the stock of Helgeson & Mogen, Belyiew. The bond was for $250, and the name of Ramnes was placed on the same, according to the indictment, without such person knowing of the procedure. This, of course, is the same case on which the second indictment was found.

The fourth indictment is for bribery—probably the gravest charge. The crime is alleged to have been committed on May 2,1892. The case really commenced on Nov. 13, 1891, when

complaint was made to the Municipal Court of the City of Redwood Falls that one Andrew Peterson, residing west of the city, was charged with the crime of criminal assault. Peterson was arranged and held to the grand jury on bail. The bail was furnished. On May 2, 1892, or just before the opening of the May term of court the grand jury accuses Mr. Madigan of asking for and receiving from Peterson a bribe and reward for omitting the performance of his official duties, in prosecuting Andrew Peterson, the understanding being that if the charge of criminal assault should be brought up, he, Mr. Madigan, would use his influence, by reason of said bribe and gratuity, to prevent as far as he could the finding of an indictment. The grand jury accuses Mr. Madigan of having received a bribe of $500 from Peterson for this service, the amounts divided as follows: Forty dollars in cash at that time one note for $160, payable to M. Murphy, or bearer, the note being falsely dated March 24, 1892, and made payable ten days after that date, and another note for $300, falsely dated March 17, 1892, made payable to J. Sampson on or before Nov. 1st, 1892. These notes were delivered to and accepted by Mr. Madigan, and Mr. Peterson was never indicted.

Mr. Madigan has secured ex-Senator H. J. Peck, of Shakopee, one of the most eminent jurists in the State, to conduct his defense in the indictments, and on Monday morning, a telegram was produced from the Senator, asking that the cases be continued until Tuesday morning, before pleas were entered. The continuation was granted by Mr. Pierce.

Tuesday morning H. J. Peck appeared for the defendant. Mr. Peck at once stated that he proposed to enter a plea of "Not Guilty," but would not consent to a trial at this term. Mr. Pierce asked that the cases be tried at an adjourned term, and it was finally agreed to, Judge Webber fixing the date at Tuesday, Jan. 23d, 1894, and asked all regular petit jurors to be present at that time. Judge Peck stated that he would probably ask for a change of venue in the case, and it was agreed that a motion to that

effect would be heard in Chambers. Mr. Pierce says that he is strongly opposed to the change. Mr. Madigan was called to the bar.

"Are you guilty or not guilty of the crimes charged in the indictments," said Judge Webber.

"Not guilty," was the reply of the attorney.

Mr. Madigan gave bonds in the sum of $300 each to each one of the indictments, with A.C. Burmeister and Henry Schleuder as sureties.

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From *The Redwood Gazette*, January 25, 1894, at page 3:

A large number of Redwood county citizens, county officers, etc., left for New Ulm last Tuesday to act as witnesses in the Madigan cases. About 70 witnesses were subpoaened for the defense.

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From the front page of *The Redwood Gazette*, February 1, 1894:

GUILTY!

_____

County Attorney Madigan found
Guilty of Perjury by the Twelve.

_____

The Sentence Three Years and
Three Months at Hard Labor.

_____

The Execution of Sentence Arrested
Pending Motion for New Trial.

———

Mr. Madigan Tenders His Resignation
as County Attorney.

———

Full Synopsis of the Proceedings
of this Memorable Procedure.

———

Special to the Gazette.

NEW ULM, Minn., Jan. 29—At three o'clock this afternoon, in the presence of a not very large, but distinguished crowd, Judge Webber sentenced County Attorney Madigan, of Redwood county, convicted of perjury, to three years and three months in penal servitude at the Stillwater prison. Attorney Peck first made motion for the arrest of judgment on the ground that the indictment was bad, but the motion was quickly overruled, after which the attorney stepped to the bar, and sentence was pronounced. Judge Webber was very much affected over pronouncing sentence on an attorney who has practiced before him for many years, yet he pronounced sentence recognizing no difference in men. A motion for a new trial was then made and will be argued on Feb. 20th, and the execution of sentence will be stayed until that time, and the attorney have liberty on the $5,000 continuous bond.

F. W. JOHNSON,
New Ulm Review.

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MADIGAN RESIGNS.

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Before leaving here last Monday Mr. Madigan formerly tendered his resignation to the Board of County Commissioners, as county

attorney. The commissioners have the vacancy to fill. J. H. Bowers and Frank Clague are candidates for the position. The vacancy will undoubtedly be filled, as it should be, from some member of the bar of this county.

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It was one o'clock Saturday afternoon, when the jury, after being out over 18 hours, announced that they had agreed on a verdict. Mr. Madigan, at the Dakota House, was notified, and immediately left for the court room, but it was nearly half an hour later before Judge Webber and Reporter Eckstein appeared—and that half an hour seemed a whole day to the defendant, as he sat in his chair nervously drawing a star on a piece of paper. There were only a few people present when the jury filed in. The verdict was read in open court, and when the word "Guilty" was announced there was an awful stillness in the court room. The defendant never shivered, or showed any outward signs of disappointment. The jury declared that such was their verdict after which John Lind, in the absence of Senator Peck, appeared for the defendant.

Attorney Pierce moved that sentence be passed, and Judge Webber was about to do so when Mr. Lind asked that sentence be postponed until three o'clock Monday.

This was agreed to, and Mr. Madigan gave a $5,000 bond for his appearance at that time, stating that the case would be appealed, and a request to arrest the judgment of the court for 60 days made, at that time. Court then adjourned.

The verdict was a surprise to everybody—even the State, which only looked for disagreement. Judge Webber was greatly surprised and admitted it.

FIRST DAY.

NEW ULM, Minn., Jan.25.—The dingy old Brown county court room, so soon to be replaced by a magnificent new room, was crowded to its utmost all day yesterday. Three-quarters of the large crowd present were Redwood county people, it being estimated that over 120 citizens of Redwood county were subpoenaed as witnesses to appear in the celebrated cases against County Attorney Madigan. Judge Webber, dignified and pleasant, presides at the bench, and rules with wonderful satisfaction.

The first case called—and it was called yesterday morning—was the case of perjury, wherein the county attorney was accused of swearing falsely to an affidavit which was one of the foundation papers for bringing forth the assignment of Helgeson & Mogen.

The case opened with a determined effort on the part of the defense to quash the indictment on the ground that it did not state an offense. The motion was overruled, an exception noted, and the evidence commenced with Halvor Helgeson on the stand. He gave a full account of the transaction that led to the assignment, and then detailed the assignment proceedings. Attorney Peck, for the defense, cross-examined him sharply, and broke down the direct evidence in spots. Geo. Houghmaster was called, and testified to the taking of Madigan's acknowledgement, and the defense made no attempt to disprove that the acknowledgment had been taken.

Ole H. Mogen, the junior member of the firm, was next called, and his evidence was in about the same line as Helgeson's. On the cross-examination he stated that the firm did not have to make an assignment, although it could only pay 40 cents on the dollar.

Peter N. Ramnes, who has heretofore supposed to have been a myth, was next called, and with' his appearance there was some sensational evidence. He testified that the firm of Helgeson & Mogen, who had made the note of $500 to him, did not owe him anything. He did not give him any authority to attach or use his name to the note, and that he did not receive anything from the estate for doing so.

He never saw Madigan until two weeks before last Christmas. He was not at his office on April 5 last, when the assignment occurred, and has only been in Redwood Falls once since that time, and that was to appear before the grand jury. Helgeson had never told him that he had a note running to him, but had told him that he wanted to give him a note. Ramnes told Helgeson that he did not want anything to do with the case, because he was afraid of trouble. Helgeson assured him that there was no danger, because his lawyer said that it was all right.

On cross-examination he admitted that Helgeson and he were that Helgeson and he were cousins that they frequently visited back and forth, and that Helgeson was at his place on April 5 last. He didn't talk about partnership business, financial troubles, dissolution, or anything else, but asked that I help him out, and here Ramnes confirmed his previous testimony regarding giving the note to Ramnes. Helgeson did not tell him that he had the note with him, and he did not see it.

Q. Did you not understand that it was to bring an action against Helgeson & Mogen?

A. No. sir. Helgeson did not tell me what his debts were, or in what condition he was in financially.

Q. How do you know that it was on the 5th day of April that Helgeson was talking with you?

A. I keep track of the days that I spend seeding—a record in a book that I have at home at the present time.

Here the defense attempted to break down the testimony regarding time, and the witness became badly rattled.

Ramnes was married in July last, and Senator Peck, with a record of marriages in Renville county, stepped forward and asked him whether he remembered having signed the marriage record when he secured his license. He was not sure, couldn't tell, but didn't think that he did. The record was laid on the table, the page turned to, and Ramnes asked whether that was his signature. He very quickly replied in the affirmative.

Q. Are you not some time known by the name of Nels Peterson?

A. No. sir, but my father is sometimes called Nels Peter Ramnes.

Q. N. in your name stands for Nelson, don't it?
A. I suppose so.

Q. You say you never received any money after the assignment?

A. No sir.

Here the defense showed to the witness what purported to be a receipt for $190, signed by "P. Ramnes," and witnessed by several citizens of Redwood Falls, as 40 per cent of his claim against the Helgeson & Mogen estate.

"Is that your signature?" asked Mr. Peck.

“No sir," was the quick reply. "I never received $192, or any money on the 12th day of July, the time that this is dated."

Here the cross-examination rested.

Attorney Pierce, for the State, demanded the seeing of the receipt to examine the witness.

“You can't have it." was the reply. "It is not offered in evidence."

Judge Webber sustained the defense in its refusal, whereupon Mr. Pierce stated that if there was any trick in the case he wanted to know it.

"There is no trick at all," hotly replied Senator Peck. "Everything is a trick that is not done above board," came back from the State.

On re-direct examination Ramnes stated that he could not tell who wrote the receipt. It was not his signature. He never saw it before, or knew anything about it. The State here announced that its evidence was all in, and Senator Peck made a motion to dismiss on the ground that the State failed to prove facts, there being no evidence of the administration of the oaths. The motion was denied, and an exception taken, after Senator Peck opened the case for the defense. He called the prosecution a conspiracy, in which Helgeson, Mogen and Ramnes were but tools. He stated that the defense would show that there was not a word of truth in Ratlines' testimony.

It would prove that on April 5 last Helgeson and Ramnes came to Madigan's office and executed the papers of assignment, and Ramnes employed Madigan as his attorney, before several witnesses. They would prove witnesses. They would prove that on July 12 last the assignee had paid to Peter Ramnes $192, 40 per cent of the $500 note, and that he swore to the receipt before the assignee.

Court then adjourned until Thursday morning.

SECOND DAY.

NEW ULM, Jan. 26.—The defense had its innings Thursday morning, and it so completely tore the State's testimony into threads that for a time a nolle prosequi seemed imminent. Mr. Madigan was first sworn. Helgeson first came to his office on Dec. 12, 1892, and related his partnership troubles. He wanted to get Mogen out. Madigan advised him to settle up the property as much as possible, without trouble, or a receiver or assignee would have to ba appointed. Helgeson had called at his office once or twice before April 5, 1893, when the closing proceedings were commenced, and Helgeson thought that he could get Mogen to consent to Ramnes being appointed the assignee. He spoke about owing Ramnes $500. Later he stated that Mogen would not sign. Two or three days before the assignment the attorney was in Belview. Helgeson came running to him and said that Ramnes would sue on the note.

On April 5 Ramnes came to his office and asked Ramnes for suit to commence in presence of four or five persons, Ramnes stating that the firm was disposing of the property and he might as well get his share. The note was produced, action commenced, he drew the affidavit after dinner, and swore to it before Court Commissioner Hough-master that afternoon.

He then took the papers to the Clerk of Court and had the writ of attachment made—that forced the assignment to A. C. Burmeister. The property was sold and the proceeds of sale distributed among the creditors.

Ramnes was paid his amount, $192, on July 12, about 44 cents on the dollar. He took Ramnes' receipt, which was again exhibited. “The affidavit was made in good faith” said the attorney. “I wouldn't be foolish enough to commit perjury for nothing or any sum of money."

On cross-examination Mr. Madigan said that Ramnes came into his office about 11 o'clock a. m., April 5, and Helgeson a little later. They remained there half an hour or more arranging the details, Ramnes signed the bond, and it was witnessed by himself and Miss Schoregge, although the latter did not see the signing. Asked why he did not have the time to make it out then and [there?] [He replied] Ramnes and Helgeson wanted to go home.

Attorney Pierce here asked a long question as to the length of the stay of the two men, and Senator Peck requested him to delay his argument of the case.

"I am not arguing the case. I know why you intrude this. You are here to help that man out (pointing to Madigan). “God help him he needs it," was the reply, laughed at by the Senator.

The attorney said that he wrote to Ramnes to come and get his money. He filed the proof of claims. He could not state whether he filed Ramnes' claim or not. The original note had been lost. A new and certified note was drawn up, but afterwards the original note was found in the typewriter desk.

Warren Payne was called. He knew Ramnes by sight, and recognized him in Madigan's office on April 5, with Helgeson. They were doing business with Madigan.Mrs. Anna Schoregge-Schneider, stenographer, was next called, and gave testimony that crushed the State, in a great measure. She remembered the Ramnes action well, made every copy of the papers bearing on the case. Ramnes came to the office to commence the action. She thought Helgeson was with him. Ramnes had a promissory note for $500 on which he wanted Madigan to force proceedings. She saw the note then. Identified it when presented in evidence, and remembered Madigan saying that he had lost it. She made copies of the insolvent papers that day.

On cross-examination she said that Ramnes came into the office about 11 o'clock, April 5, and called three weeks later when Madigan was out. Mrs. Schneider only saw Ramnes on those two occasions, she not being in the court room up to the time she took the stand. The State expected to tie her evidence up by asking whether she saw either Helgeson or Ramnes in the court. Quick as lightning she picked out Helgeson. Ramnes had "ducked" his head. He was wearing a dog-skin coat, and a blonde moustache, as were several other persons in that crowd of 150. Leaving the stand, she stepped just outside the railing, looked over the crowd, and in ten seconds she pointed to Ramnes and said, "I think that's the man."

"You've nailed your coon," put in Senator Peck, and an outburst of laughter followed, both as a mark of approval of the young lady's memory, and of Senator Peck's witticism.

The State appeared to fall flat. The witness was excused, and on re-direct Mrs. Schneider stated that Madigan told Ramnes his fees on the collection would be $50.

H. E. Greene and John Lauer attested to the statement that Madigan paid Ramnes $192 on July 12, and verified Ramnes' receipt.

James Larson and Louis Holzuagel were called in turn. They were members of the grand jury that returned the indictments, and stated that they understood Mogen to say that Helgeson placed his name on the note to Ramnes—that Helgeson transacted all the business of the firm. The defense rested, and an adjournment was taken until 2:30, in order to allow the State to get witnesses from Redwood Falls.

Three witnesses who had traveled all of Wednesday night and Thursday forenoon in order to reach New Ulm, saved the State from being completely routed in the Madigan case, and as

Attorney Pierce expresses it, "if it had not been for them I don't know what I would have done." These witnesses were Ole Hornstet, who is employed on Ramnes' farm, Mrs. Ramnes, and Mrs. Helgerson. The first swore that Ramnes was on the farm all day April 5 and July 12. Mrs. Helgeson swore that she did not see him with Madigan on July 12th, while she and Helgeson were Madigan's guests, and Mrs. Ramnes swore that he was at home on July 12th. This assisted the State in recovering from the awful blow dealt by Mrs. Schneider.

Prior to their testimony H. F. Buechner, Donald Stewart and J. W. Carlisle, grand jurors, were called and the first and last stated that Helgesou stated before the grand jury that the $500 note was made out at Redwood Falls, and taken to Belview for Mogen's signature.

Mr. Stewart did not remember much about the testimony. Following them came Ramnes, who swore that he never saw the receipt bearing his name, and that he never signed it. He pulled from his pocket a letter addressed to him containing an order in the assignment, the order typewritten, over Judge Webber's name. The envelope was addressed on a typewriter, and bore no return card.

Two typewriter ribbons had done the job. An attempt to offer it in evidence was overruled. Pierce called Madigan to the stand, and he denied all knowledge of the order, and the State was blocked.

Helgeson was recalled. He admitted that he had forged Peter Ramnes' name to the bond, and said that he left the note for $500 with Madigan. Ramnes was never with him. Madigan, in the latter part of July, told him that he had paid the 44 percent to Ramnes, and later he didn't propose to turn it over without a receipt so as to hold Burmeister liable.

Mogen was recalled and gave the same testimony regarding the money, and said that he had better keep his mouth still or Madigan would fix him plenty.

Here the State attempted to show that there was a difference between the Ramnes signature on the bond and the receipt, and called in witnesses for the purpose. The defense objected, because they were not expert witnesses.

Finally Attorney Pierce called for the Renville county marriage record book showing Ramnes' signature and called witnesses to the stand to prove the difference between Ramnes' signature and the one on the receipt. The defense objected, but the objections were overruled. Then E. G. Koch, Will. Koch, Wm. Seiter, and W. F. Dickinson, all bankers, were called, and each thought that the signatures were by two different men, although no attempt at forgery was shown in the one on the receipt.

Supt. Race was called for the same purpose, but Judge Webber thought him an incompetent witness as to the point in controversy.

The last witness of the night was George Houghmaster, who was called to impeach Hugh Greene's testimony. He said that Greene's reputation for truth and veracity around Redwood Falls was very bad, and that he would not believe him under oath. Senator Peck carried a hot cross-examination on this point, and Mr. Houghmaster receded only so far as to state that his remark seemed to be the sentiment around Redwood.

THIRD DAY.

NEW ULM, Jan. 27—The testimony in the perjury case was all in about eleven o'clock Friday morning, and Attorney Pierce commenced his summing up for the prosecution.

At the opening of the court C. W. H. Heideman was called as an expert witness, and stated that the signatures on the receipt and marriage record were two different signatures, and he thought the two signatures of H. E. Greene were written in different ink and at different times. Mrs. Helgeson was recalled and stated that she was talking to Mrs. Schneider while in Madigan's office on April 5, and when Madigan was talking with her husband in another room. Helgeson was recalled and said that he thought the note was filled out in Redwood—he couldn't tell.

J. L. Byram was asked to produce the proofs of indebtedness. Ramnes' proof, he said, was never filed, or no release of the same in his office. He said that the release had been filed, but Madigan had taken the papers from his office, and on the return of them on Aug. 22d, No. 14, the release of Peter Ramnes was missing. He never told Madigan of this. F. I. Gleason confirmed the statement.

W. D. Martin, Andrew Birum, O. L. Dornberg, C. F. Thompson, E. D. French, Joseph Tyson and S.O. Mason were called to impeach H. E. Greene's testimony. They all swore that his reputation for truth and veracity was very bad, but under a hot cross-examination only one of them, Judge French, mentioned names or people who had told him that he was a bad one.

John B. Lauer was recalled and swore that he saw Ramnes raise his hand in oath on receiving the money on July 12. Mr. Madigan was asked whether he returned all the papers he received from Clerk Byram in the Helgeson & Mogen case, and he emphatically said yes. This closed the evidence.

Judge Webber stated to the attorneys that they would be in contempt, if in summing up they went outside of the evidence, after which Senator Peck made several requests of Judge Webber in charging the jury, and all of them were granted. Mr.

Pierce then commenced his summing up, continuing until three o'clock.

The summing up of the Madigan perjury case by both attorneys was considered as fine as has ever been heard in this section of the State. Mr. Pierce, naturally "rubbed" into Mr. Madigan very hard, and probably gave him, as well as his witnesses, more than he had a right to, but Senator Peck came back on the plan laid down by the golden rule, and therein made a big hit. If Mr. Pierce' attempted to impeach any of the testimony for the defense by calling bad names, and using severe phrases, the Senator pointed out the weakness of the State's evidence, and the strength of his in a manner that was eloquent and appealed to the heart. Mr. Pierce attempted to get around the evidence of Mrs. Schneider and John Lauer by saying they probably did not take any notice of what was going on, or who was in the office at the. time, but Senator Peck came back with such weight that the jury must certainly have felt that they could not impeach the testimony of these two.

Senator Peck made a great hit when he told the jury that if Ramnes had instructed Madigan, through Helgeson, to commence suit, then Madigan only swore to what was true, in the attachment affidavit, and later getting Judge Webber to instruct the jury in precisely the same terms.

Judge Webber's charge was in that spirit of fairness that characterizes the man, and as both attorneys say that there could be no error in it, or exception taken. At just about 5:30 o'clock the case and the records were given to the jury, and they retired for deliberation.

Immediately following the retiring of the jury Attorney Pierce announced that he had annulled the prosecution of the indictment against Madigan for forging Ramnes' name to the bond, and that the next case that would be called was the one of

bribery, wherein the attorney is accused of receiving a bribe for dismissing the case of rape against Andrew Peterson.

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The Redwood Gazette continued its coverage of the trial on February 8, 1894, at page 4:

GOOD WITH THE BAD.

Amid the general accusations and conviction of Michael M. Madigan, the public, as is too often the case, should not lose sight of the good service that he has rendered this county. It is too often the case that when a man is down everybody will step over his form tauntingly, heeding not his good deeds. In the first years of his service as county attorney Mr. Madigan achieved two signal victories that will stand as a monument to his ability on the legal pages of Redwood county's history. His work in the conviction of Holden and Rose, the former of whom Bill Merriam gave a commutation in order to secure political prestige, should not be lost sight of by his constituents. That work he performed with an earnest effort for the right, and it was rewarded. In later years when the desire and greed for gold, came upon him, as it now seems it did, and he used his official trust to enhance his private exchequer, he was partly human—partly beast—human in obtaining the gold, inhuman in his manner of doing so. His punishment is a severe one, and he will have plenty of time for repentance.

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From *The Redwood Gazette*, February 22, 1894, at page 3:

A NEW TRIAL.

A Motion For It Argued at New Ulm Tuesday.

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The motion for a new trial in the case of the State of Minnesota vs. Michael M. Madigan, convicted of perjury, was made before Judge Webber, in chambers at New Ulm last Tuesday, H. J. Peck appearing for the defense, and S. L. Pierce for the State.

The motion of the defendant was based on the ground that the verdict was not warranted by the evidence, and in support of the motion a large number of affidavits were presented.. Some of them pertained to the scene in which Mrs. Schneider picked Ramnes out of the audience in the court room, and Ramnes "ducking" his head as if in hiding, and thereby admitting his guilt, just as the lady stepped down out of the witness stand.

Other affidavits are of a nature showing that H. E. Greene was a competent witness and that the parties signing the affidavits would believe Greene under oath. Still other affidavits came from the jury, according to the defendant. They were of the opinion that the defendant had got Grant, who looks a little like Ramnes, into his office on the day Ramnes is supposed to have been there, aud that Mrs. Schneider, seeing Grant took him for Ramnes.

The jury, it is alleged, heard that Grant had been jailed just before the trial opened, and that consequently he was a man whose word was not to be believed. This, the jury is supposed to have considered along with the evidence which was before it, which it had no right to. Still further, it is understood, by the affidavits, that the jurors were allowed considerable freedom during the night that they were deliberating on the case, and that they were allowed to leave the jury room at random.

The State was considerably surprised at the nature of Mr. Madigan's affidavits, and asked until March 1st to present counter affidavits. The request was granted.

The expense of securing the four indictments at the last session of the grand jury, together with the conviction on the one charge of perjury, has cost Redwood county in the neighborhood of $1,500. The total amount paid to witnesses, jurors, etc., was $728.28, according to a certificate of Clerk George, of the Brown county district court, now on file in the auditor's office. The attorney's fees were $400, but if Mr. Pierce continues to act as county attorney, $300 of this will be returned for the privilege of allowing him to act during the remainder of the year. Then comes the stenographer's fees and other incidental expenses, bringing the amount up to about $1,500. This will be up to last Tuesday when the motion for a new trial was argued. In case the motion is not granted an appeal will probably be taken from the order of the lower to the Supreme Court, involving more expense. It is not likely that the commissioners will press the other two indictments hanging over Madigan.

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From the front page of *The Redwood Gazette*, March 15, 1894:

MADIGAN GOES TO PRISON.

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Owing to a Failure to Secure Bonds
He Surrenders Himself to
the Law.

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Full Text of Judge Webber's Decision
Denying a New
Trial.

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The name of Michael M. Madigan has been entered on the roll at the Stillwater penitentiary. He was taken there last Monday by Sheriff Peterson. of Brown county. The proceeding was caused by a failure of the attorney to secure two bondsmen who could qualify in the sum of $5,000 each, as provided by an order of Judge Webber.

Mr. Madigan left for New Ulm last Friday for the purpose of surrendering himself to the Court, and when the time came for giving the bonds Saturday afternoon, Mr. Madigan announced that he could not furnish them, and was placed in custody.

The prisoner bore up well under the proceedings, and was apparently resigned to the step. The appeal to the Supreme Court will be taken, and in the meantime he will labor under his sentence at Stillwater.

As stated briefly by wire in the last issue of this paper, Judge Webber denied the motion for a new trial in the case of the State vs. Madigan, the latter being represented at the decision by Jos. A. Eckstein and the State by W. L. Pierce. Before the decision was rendered several affidavits were offered by the defense, one of them being from the defendant himself, claiming that on March 5, 1894, he accidentally, while cleaning up his papers, found the release of P. Romnes against the insolvent estate of Helgeson & Mogen, mailed to Romnes on May 6, 1893, and written by Halvor T. Helgeson. He had compared the Homnes signature on the release with the same signature on the Renville county marriage record book, and was certain that it was written by one and the same man. On this discovery he asked for a stay of decision to secure an affidavit from Mrs. Anna B. Schneider relative to the similarity of the signatures. He then presented affidavits from Experts Wm. E. Koch, W. F. Seiter and C. W. H. Heidemann declaring that the two signatures seemed to have been written by one and the same man. C. D. Griffith averred that the body of the release was

written by the same man who signed himself "Halvor T. Helgeson."

Mr. Pierce could not see where the affidavits were material neither could Judge Webber, because, he said, Romnes did not deny that he executed the release. "I think," he continued, "that it was a great mistake on the part of the defendant to offer that receipt or marriage record in evidence. It ought not to have gone in, and had there been objection I would have sustained it. But I will give you every opportunity possible," whereupon Judge Webber dictated the following order:

On this 8th day of March, 1894, before the decision of the motion of the defendant for a new trial in the above entitled action the defendant applied to the court that proceedings herein be stayed and that he be allowed to renew and amend his motion for a new trial by assigning an additional ground and cause, materially affecting his substantial rights to those already made, to-wit: newly discovered evidence material to the defendant herein which he could not with reasonable diligence have discovered and produced at the trial after hearing the argument of Jos. A. Eckstein, of counsel for defendant, in support of said application, and the argument of W. L. Pierce, county attorney of Redwood county, in opposition thereto,

Ordered, that said application of defendant be and the same is hereby denied, not as a matter of discretion, but on the ground that the alleged newly discovered evidence is irrelevant, incompetent and immaterial, and that the issue of the signing of any release was not in any manner raised on the trial of said action."

An exception was noted.

Judge Webber, pulled from his inside coat pocket his decision. He adjusted his glasses, turned to the last of the five pages of

typewritten manuscript, affixed his signature, announced that the motion for a new trial had been denied, and filed the decision.

Mr. Madigan said not a word, showed no signs of disappointment. An appeal was taken to the Supreme Court, the bond was fixed at $5,000 with only two sureties allowed, the defendant being allowed until Saturday afternoon to get the bond. The decision of Judge Webber, except the references, is here given in full:

"The above named defendant having been found guilty of the crime of perjury at the general adjourned term of said court, on the 27th day of January, 1894, the defendant now moves, upon the settled case and certain affidavits, that the verdict of the jury be vacated and set aside and a new trial granted upon the following terms:

First—For errors of law occurring at the trial and excepted to by the defendant.

Second—Because the Verdict is not justified by the evidence and contrary to law.

Third—Because of the misconduct of the jury during the trial of said cause which was contrary to law and prejudicial to the rights of the defendant.

Fourth—For irregularity on the part of the court and jury during said trial, whereby the defendant was prevented from having a fair and impartial trial.

Fifth—Accident and surprise which ordinary prudence could not have guarded against, among others ill this: The preconceived opinion of Juror Alonzo H. Pickle, and not disclosed, and the ignorance of Juror Joseph Gag, of the English language.

It is claimed on the part of the defendant, that the indictment does not state facts sufficient to constitute a public offense, for the reason that it appears from the face of the indictment, that the defendant was not competent to make the affidavit wherein the perjury is alleged to have been committed: (1) for the reason that he was not the attorney of the plaintiff (2) that it is not alleged that the matters deposed to were material (3) that it does not appear that the affidavit was made in any action pending in any court.

In my opinion neither of these points is well taken and not sustained by the authorities cited. It is held in United States vs. Grottkau, 30 Fed. Reporter 672, that an applicant for citizenship is prohibited from being a witness as to his residence and, therefore, his oath cannot be the basis for an indictment for perjury. But, notwithstanding the evidence may be incompetent, if a witness voluntarily testifies falsely to material matter, he may be punished for perjury. Madigan was a competent witness to prove that he was attorney for the plaintiff, and, having proved this fact by his own evidence, he was a competent witness to prove the other fact set forth in the affidavit, and these facts being material, and the affidavit being false, the indictment is not vitiated by reason of alleging such falsity.

The affidavit set forth in the indictment, and the statute prescribes what the affidavit shall contain, and its materiality is, therefore, apparent; and when such materiality appears it need not be averred.

The objection that it does not appear from the indictment that the affidavit was made in an action pending in court, is disposed of by a decision of the Supreme Court of our own State. Crombie vs. Little, 47 Minn. 581, 587. The defendant claims that the jury was misled by the charge of the court.

I am unable to find anything that would tend to mislead the jury, but, upon this point, it is sufficient to say that no exception was taken to that portion of the charge claimed to have been misleading. The only exceptions taken were as follows: "I desire to except to the two main propositions which are covered by the original motion I made in the case." The defendant excepts to the statement of the court in his charge as to what constitutes the first and second material allegations of the indictment, upon the ground that they do not constitute any public offense in this indictment.

These could not possibly be misconstrued as calling the attention of the court to any instructions other than the instruction that the allegations that Madigan was the attorney of the plaintiffs, and that cause of action existed, were material and these are not claimed to have been misleading.

The defendant's counsel is in error in claiming that the attachment bond was received in evidence. When the bond was offered and objection was interposed, it was taken under advisement till the next morning, and immediately before the defendant commenced the introduction of his evidence, the defendant's objection was sustained, as appears from the record.

Whatever may have been the rule in other States, no proposition of law is better settled in this State than the proposition that the affidavits of jurors cannot be received to prove their misconduct or the misconduct of bailiffs during their deliberations, and such affidavits must be excluded. In my opinion the great weight of authority sustains the proposition that a party waives any objection to a juror, constituting a ground of challenge, when he neglects to interpose such challenge. An apparent exception is made to this rule on the ground of partiality of a juror in Williams vs. McGrade 18 Minn., 82 (Gil. 65.) This is based upon the case of Rollins vs. Ames, 2 N. H. 349; 8. C. 9, Am. Dec. 79. The defendant did not bring himself within the rule announced

in the latter case for the reason that the defendant's counsel did not make [an] affidavit that he did not know of the ground of challenge at the trial. Want of knowledge of English is a ground of challenge for general disqualification. In many counties of this State, the population is largely composed of persons of foreign birth, and a large proportion of them have an imperfect knowledge of the English language, and, if a party is not required to interpose any challenge, or in any manner call the attention of the court to disqualification of a juror, there would be little hope of obtaining a verdict that could be sustained, if such disqualification is a ground for new trial as contended by the defendant.

Aside from my own knowledge that no recess was taken after the charge, I think the affidavits of persons in a position to know, clearly shows that such recess was not taken.

The remaining and, in my opinion, the most serious charge of misconduct, is as to the intoxication of jurors. The jurors were remarkably attentive during the trial while in the court room, and I did not detect the slightest indication of intoxication.

There is no doubt that intoxication of a juror while in the performance of his duty, is a ground for a new trial and it is sometimes held that the mere drinking of intoxicating liquors after the retirement of the jury for deliberation is a ground for new trial, but the great weight of authority holds that the mere drinking of intoxicating liquors during the progress of the trial does not constitute such ground unless it is shown that the defendant was thereby prejudiced. The evidence in regard to intoxication is very conflicting as is generally the case but there is no evidence that any juror was intoxicated while in the performance of his duty. There are some strong affidavits on the part of the defendant that the juror, Pickle, was intoxicated in the evening, and equally strong affidavits on the part of the strong affidavits on the part of the State denying this fact. The juror swears that he did not, at any time, drink spirituous liquors,

and this is contradicted. I am of the opinion that the defendant has failed to establish the fact that any juror was intoxicated while in the performance of his duty as such juror.

Ordered that the motion of the defendant, that the verdict of the jury herein be vacated and set aside and a new trial granted, be and the same is hereby denied.

B. F. WEBBER,
Judge of the District Court,
Ninth district.

———

County Attorney Pierce on last Wednesday, before the decision, secured an order admitting the affidavit of Joseph A. Beard, in effect that he in no way attempted to influence any of the jurors, and never saw any of them intoxicated during the trial, or that he treated them.

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ARRIVES IN STILLWATER.

Tuesday afternoon the GAZETTE received the following special telegram from Warden Henry Wolfer, of the Stillwater penitentiary:

STILLWATER, MARCH 13—Madigan received at nine o'clock. He was much affected, but held up bravely. The tears came to his eyes during the interview with the warden. He was then taken to the barber shop where he was smoothly shaved and his hair cut. He will be assigned to labor for the threshing machine company in the pattern shop.

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Madigan appealed Judge Webber's denial of his motion for a new trial.

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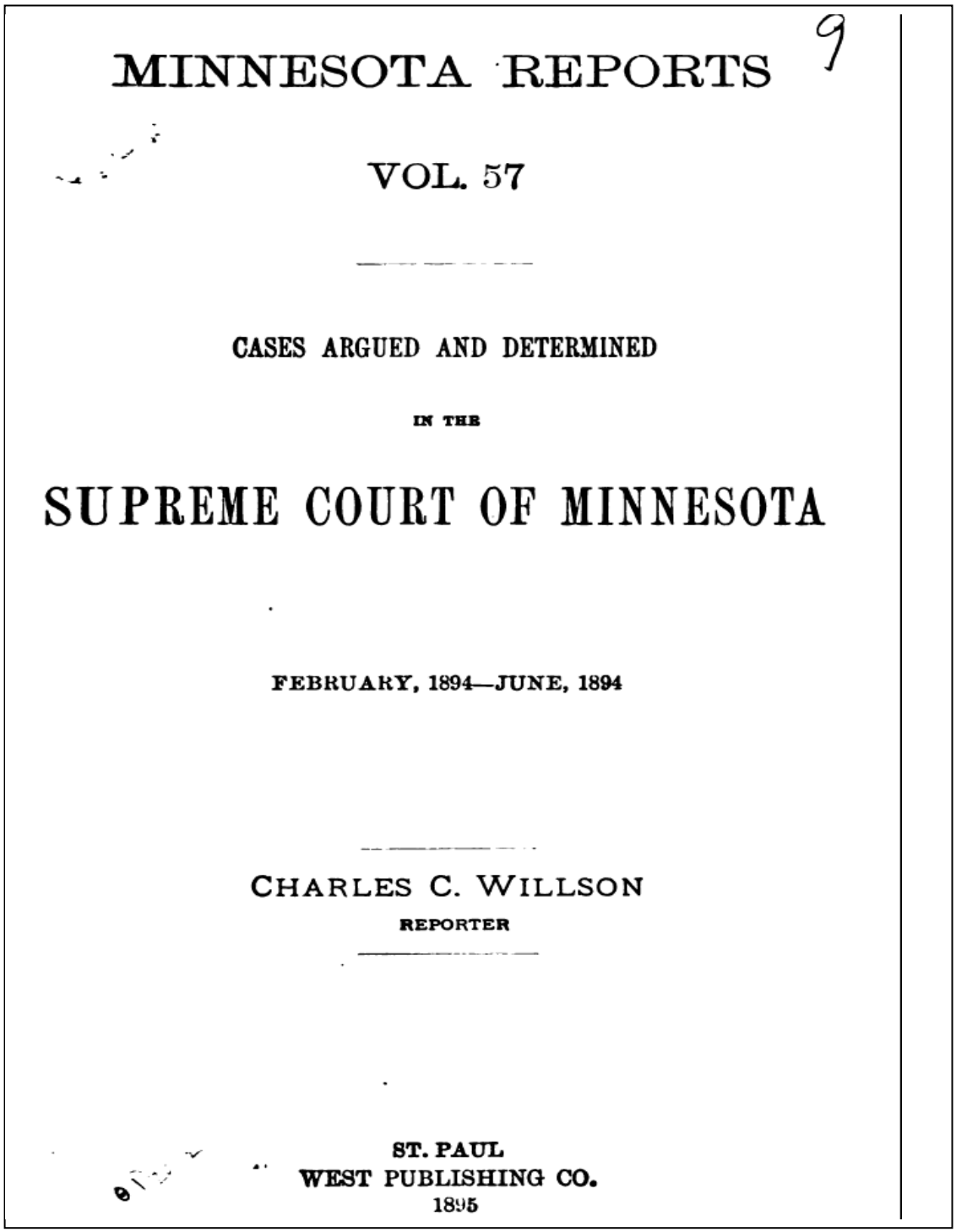
The Minnesota Supreme Court's decision in
State vs. Madigan, 57 Minn. 425 (1894).
(the text is easier to read if the type is enlarged)



MINNESOTA REPORTS

9

VOL. 57

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT OF MINNESOTA

FEBRUARY, 1894—JUNE, 1894

CHARLES C. WILLSON

REPORTER

ST. PAUL
WEST PUBLISHING CO.
1895

JUSTICES

OF THE

SUPREME COURT OF MINNESOTA

DURING THE TIME OF THESE REPORTS.

HON. JAMES GILFILLAN, CHIEF JUSTICE.
HON. WILLIAM MITCHELL.
HON. LOREN W. COLLINS.
HON. DANIEL BUCK.
HON. THOMAS CANTY.

CHARLES P. HOLCOMB, ESQ., Clerk.

ATTORNEY GENERAL,
HON. HENRY W. CHILDS.

STATE OF MINNESOTA *vs.* MICHAEL M. MADIGAN.

Argued May 24, 1894. Affirmed June 11, 1894.

No. 8843.

Perjury in affidavit for an attachment.

Where, in an indictment for perjury, it is assigned as perjury that the accused in an affidavit for attachment swore falsely that he was the attorney for the plaintiff in the attachment suit, *held* it is not necessary to allege in the indictment that the accused was an attorney at law.

Statement that deponent is attorney for the plaintiff is material.

Held, though the statute does not require it to appear in the affidavit for attachment that such person making the affidavit is the attorney for the plaintiff therein, his right to make it must affirmatively appear somewhere in the attachment proceedings before the writ can rightfully issue, and it may properly appear in such affidavit, and is material, and, if knowingly false, perjury may be assigned upon it.

Materiality not averred but shown by facts stated.

Held, it is not necessary to aver in an indictment that matter assigned as perjury is material, when it appears from the facts set out in the indictment that it is material.

Proof that the oath was administered.

Held, the production of an affidavit regular in form, with proof that the accused signed it, and that the officer before whom it purports to be sworn to, signed the jurat and affixed his seal, is sufficient evidence on the trial on such an indictment that the accused actually swore to the affidavit.

Evidence not rendered incompetent.

If the evidence offered tends to prove the commission of the crime charged in the indictment, it is not incompetent because it also tends to prove the commission by the accused of another crime.

Charge to jury correct.

Held, the assignments of error as to the charge are not well taken.

Finding of the trial court on conflicting affidavits, conclusive.

Where the affidavits in support of a motion are contradicted by counter affidavits, the finding of the court below on the disputed facts is conclusive if there is any evidence to sustain it.

Jurors drinking intoxicating liquor on a trial for felony.

Where some of the jurors drank intoxicating liquor during the trial, but before retiring to consider their verdict, *held*, on a motion for a new trial, this raises a presumption against the validity of the verdict, which may be rebutted by showing that in fact such jurors were not intoxicated.

Juror's ignorance of English as a ground for a new trial.

Held, it is not error to deny a motion for a new trial made on the ground that one of the jurors did not understand the English language, when the moving party had an opportunity to ascertain that fact, and challenge the juror for that cause before he was sworn.

Appeal by defendant, Michael M. Madigan, from an order of the District Court of Redwood County, *B. F. Webber*, J., made March 8, 1894, denying his motion for a new trial.

Defendant was indicted by the grand jury on November 18, 1893, for the crime of perjury in swearing before a Notary Public on April 5, 1893, to an affidavit stating that he was attorney for Peter N. Romnes and that Halver T. Helgeson and Ole H. Mogan were indebted to Romnes in the sum of $500. Helgeson and Mogan were partners dealing in merchandize at Belview and were insolvent and applied for advice to Madigan who was an attorney practising at Redwood Falls. He recommended them to make an assignment under Laws 1881, ch. 148, and overlooking laws 1889, ch. 30, amending that statute, had them make a note to Romnes for $500 antedated April 27, 1892, due November 1, 1892, on which he brought suit in Romnes' name April 5, 1893, and made this affidavit for and obtained a writ of attachment. They then assigned. They owed Romnes nothing and he never employed Madigan. The place of trial upon the indictment was on Madigan's motion changed to Brown County and he was on January 27, 1894, found guilty and

sentenced to confinement at hard labor in the State Prison at Stillwater for the term of three years and three months. He afterwards on affidavits and a settled case moved the court for a new trial, but was denied and he appeals.

H. J. Peck and *Jos. A. Eckstein*, for appellant.

The indictment does not allege that the defendant was an attorney at law. It should show that defendant was a person authorized to swear on this particular occasion, and in this particular proceeding. An oath taken by one not authorized to take it is an extra-judicial oath and perjury cannot be assigned upon it. *State* v. *Helle*, 2 Hill (S. C.) 290; *United States* v. *Grottkau*, 30 Fed. Rep. 672; *State* v. *Hamilton*, 7 Mo. 300; *Lamden* v. *State*, 5 Humph. 82.

The statute provides what shall be put into an affidavit for an attachment, but it does not require it to state that it is made by the plaintiff, his agent or attorney. If it is in fact made by one or the other then the law has been complied with. That allegation was immaterial and the court erred in charging the jury it was material. 1 Hawkins P. C. 433, 435; *State* v. *Lawson*, 98 N. Car. 759; *Miller* v. *State*, 15 Fla. 577; *Wood* v. *People*, 59 N. Y. 117; *Pollard* v. *People*, 69 Ill. 148.

There is no evidence that the defendant was actually sworn except the jurat of the notary. The notary was on the witness stand, but was not asked the question. The defendant testified that he presented the affidavit to him and the notary signed it without any other act. The oath was not in fact administered. To constitute perjury the oath should have been administered and the proof should have been clear that the defendant was sworn. *Case* v. *People*, 76 N. Y. 242; *United States* v. *McConaughy*, 33 Fed. Rep. 168.

The court erred in allowing proof that Romnes did not sign the bond for attachment issued in the action and in receiving the bond in evidence. *Hoberg* v. *State*, 3 Minn. 262; *State* v. *Hoyt*, 13 Minn. 132.

The court erred in refusing a new trial on the ground of the misconduct of the jury during the trial. 1st. Because the jury separated after the charge of the court and before they retired to deliberate on their verdict. 2nd. Because of the intoxication of some

of the jurors during the trial. *Peterson* v. *Siglinger*, 3 S. Dak. 255; *State* v. *Bullard*, 16 N. H. 139; *Jones* v. *State*, 13 Tex. 168; *Ryan* v. *Harrow*, 27 Ia. 494; *Green* v. *State*, 59 Miss. 501.

H. W. Childs, Attorney General, *Geo. B. Edgerton*, his assistant, and *S. L. Pierce*, for the state.

The fact that the person making the affidavit for an attachment is agent or attorney for the plaintiff must be made to appear, before the court can order the issuance of the writ. The person making the affidavit is required to state that he is the agent or attorney of the plaintiff in the affidavit, not because expressly required by the statute, but because required by manifest implication. Unless this fact is stated in the affidavit we submit that it is fatally defective. *Wiley* v. *Aultman & Co.*, 53 Wis. 560; *Miller* v. *Chicago, M. & St. P. Ry. Co.*, 58 Wis. 310; *People ex rel.* v. *Sutherland*, 81 N. Y. 1; *Ex parte Bank of Monroe*, 7 Hill, 177; *Ex parte Shumway*, 4 Denio, 258.

The indictment is sufficient if it appear from the facts set forth in it that the matter sworn to and upon which the perjury is assigned was material.

In prosecutions for perjury the jurat is *prima facie* evidence that the officer administered the oath. *King* v. *Morris*, 1 Leach 50; affirmed in 2 Burr. 1189; *Regina* v. *Turner*, 2 Car. & Kir. 735; *Commonwealth* v. *Warden*, 11 Met. 406; *People ex rel.* v. *Sutherland*, 81 N. Y. 1; *O'Reilly* v. *People*, 86 N. Y. 154.

CANTY, J. The defendant was indicted by the grand jury of Redwood county, and charged with the crime of perjury in making an affidavit for attachment in a case entitled "Peter N. Romnes against Halver T. Helgeson and Ole H. Mogan," commenced in the District Court of that county, and in which affidavit it is charged he deposed that he is the attorney of that plaintiff, and that a cause of action exists in favor of plaintiff and against defendants, the amount of which is $500, and the ground of that claim is a promissory note executed and delivered by defendants to plaintiff for that sum, of which note plaintiff is the holder; said indictment further charging

that all of the same is false. The defendant was convicted and sentenced, and appeals to this court.

1. The first point made by appellant is that the indictment does not state facts sufficient to constitute a public offense because it does not allege that he was an attorney at law when he made this affidavit; that no one but the plaintiff, his agent or attorney, is authorized by statute to make such an affidavit; and that, if he was not authorized by statute to make the affidavit, it was not perjury to make it. This amounts to the proposition that the affidavit might be too false to be perjury; that his swearing falsely that he is the attorney of the plaintiff is not perjury, because it might also be a false statement that he is an attorney at all. This is not like the case of *United States* v. *Grottkau*, 30 Fed. Rep. 672, cited by appellant, where it affirmatively appeared on the face of the proceedings in which the affidavit was made that the person making it was prohibited by statute from doing so. Here it was made to appear by the alleged false statement itself, which is a part of the affidavit, that he was authorized to make that affidavit, and nothing appeared to the contrary in the attachment action or proceedings. The point is not well taken.

2. While the statute requires the affidavit for attachment to be made by the plaintiff, his agent or attorney, it does not require the affidavit to state that the person making it is such agent or attorney when made by him. It is contended by appellant that therefore the statement in the affidavit that he was attorney for the plaintiff, Romnes, was immaterial, and perjury cannot be predicated upon it. It does not necessarily follow that this statement was immaterial because not required to be stated in the affidavit. The statement was of a material fact which it was necessary to make appear affirmatively somewhere in the proceedings before a writ of attachment could rightfully issue, and it was proper to make it appear in this affidavit. Even if it appeared elsewhere, it might also appear in the affidavit as corroborative evidence of the fact, and in such case also it would be material.

3. While the indictment alleges that the affidavit is material, there is no formal averment that the parts of the affidavit assigned as perjury as aforesaid are material, and it is contended that for this reason the indictment is bad. Such formal averment is not neces-

sary when it appears from the facts set out in the indictment that the matter assigned as perjury is material. It does so appear in this case. The indictment sets out the affidavit at length, and avers that it was made for the purpose of procuring an order for the issuance of a writ of attachment in that action then and there commenced. From these facts it sufficiently appears that the matter assigned as perjury was material. A writ of attachment would not issue until the things stated in this matter were made to appear.

4. It is contended that it does not sufficiently appear by the evidence that defendant was actually sworn to the affidavit. The notary public before whom the affidavit purports to have been made and sworn to, testified that defendant signed the affidavit, and he signed it and affixed his seal to it as notary, and identified the signatures and seal. The affidavit was then received in evidence. This was sufficient authentication. Besides, the notary was also the court commissioner, and defendant, on his own behalf, testified that he was retained by the plaintiff in that case, and had authority to make the affidavit. He testified: "I went down to the court commissioner's, and presented it there, and had him make his order for attachment, as is shown by the files in this case. I had the affidavit all written out and signed, and everything, and I handed it to him, and I don't remember just exactly what remark I made or he made, but he says, 'That your signature?' And I said, 'Yes,' and he took the affidavit." He further testified that he paid the commissioner his fee, who, as notary, signed the affidavit for attachment, and, as commissioner, signed the order for attachment. "I had the attachment proceedings made out, and I went up to the clerk of court, and filed them there, and had the writ of attachment issued. Q. Now, Mr. Madigan, at the time you made this affidavit, state whether or not you made it in good faith, believing it to be true when you wrote it. A. I certainly did. If I ever did anything in good faith, it was that. I wouldn't be foolish enough to go and commit perjury for nothing at all, nor for any sum of money. I wouldn't do it." It seems to us that this testimony, both expressly and by every implication, admits that this affidavit was actually sworn to.

Neither do we wish to be understood as holding that it was necessary to prove by oral evidence that the affidavit had been sworn to. In *King* v. *Morris*, 1 Leach, 50, reported also in 2 Burrow, 1189, the

defendant was convicted before Lord Mansfield on the mere proof that the signature subscribed to the affidavit was in his handwriting, and that the jurat was subscribed by the officer before whom the affidavit purported to be sworn to, but no further proof was given to identify the defendant as the person sworn, or that any person was so sworn. It was held by the court that the evidence was sufficient. See, also, *Reg.* v. *Turner*, 2 Car. & Kir. 732. It is true that such presumption may be rebutted by affirmative evidence showing that in fact the affidavit was not sworn to. *Case* v. *People*, 76 N. Y. 242. Merely subscribing to the affidavit is not being sworn to it. *O'Reilly* v. *People*, 86 N. Y. 154. But it is well settled that, when the signatures are proved as above stated, it is presumed that it was actually sworn to by the person whose signature is subscribed as affiant.

5. Romnes, the plaintiff in that action, testified, on behalf of the state, that he never retained defendant to commence that action, never authorized it to be commenced, never was in defendant's law office, and never had any business with him until long after the time that action was commenced. Defendant on his own behalf, and some of his witnesses, testified that Romnes was in his office at that time, and also gave evidence tending to prove that Romnes then and there signed the bond for attachment in that action. Defendant testified that he signed the bond as a witness, and took the acknowledgment of Romnes to it, all of which appears by the bond; that he procured the approval by the court commissioner of the bond, and filed it with the clerk of the court as a part of the attachment proceedings.

On rebuttal, Romnes testified that he did not sign the bond, and Helgeson, one of the defendants in that action, testified that he signed the name of Romnes to the bond in defendant's office, and that Romnes was not there. Other evidence was offered that the bond was a forgery, and thereupon it was received in evidence. All of this evidence was received against defendant's objection and exception, and is now assigned as error.

We are of the opinion that this evidence was competent. It certainly was material on the question of whether or not defendant was the attorney of Romnes. If Romnes had signed this bond, it was

a strong circumstance to prove that defendant was his attorney. If he had not signed it, but the bond was a forgery, it was a strong circumstance to prove that defendant was not his attorney. If the evidence tends to prove the commission of the crime charged, it is not incompetent because it also tends to prove the commission of another crime.

6. We find no error in the charge of the court.

7. On the motion for a new trial, affidavits were read, stating that, after the jury were charged, a recess was taken by the court for about ten minutes, and the jury were allowed to and did separate. This is all denied by counter affidavits, and stated by the court below to be untrue, both on the affidavits and of his own knowledge. This finding is conclusive that no such recess was taken, and that the jury did not separate.

8. Misconduct of the jury was one of the grounds of the motion for a new trial, and affidavits were read in support of the motion, stating that two or three of the jurors were intoxicated,—some of them every night during the trial. This is all denied by a number of counter affidavits, and the court finds it is untrue, and that finding is conclusive.

But one of the jurors in his counter affidavit admits that he drank intoxicating liquor during the trial. "Affiant is in the habit of taking a drink of beer or wine when he feels like it, but never drinks spirituous liquors for other than medicinal purposes; that affiant never mixes his drinks; that, during the trial, affiant did not take more than five drinks in any one day, and, when he did drink, there was a long time between drinks; that affiant has never been intoxicated or under the influence of intoxicating liquors with the exception of one occasion, when affiant was in the army."

The question now arises: Is the drinking of intoxicating liquors by a juror during the trial ground *per se* for a new trial? There are a few cases which so hold, but they are contrary to the great weight of authority, which is that such drinking raises more or less of a presumption against the verdict, which may be rebutted by showing that the juror was not in fact intoxicated. The cases of *State* v. *Bullard*, 16 N. H. 139, and *Jones* v. *State*, 13 Tex. 168, cited by appellant, were cases where the jurors procured the liquor after

they had retired to consider their verdict. In the case of *Ryan* v. *Harrow*, 27 Iowa, 494, cited by appellant, the statement of facts in the commencement of the opinion is as follows: "During the progress of the trial, and after the cause was submitted to the jury, and before they had agreed upon a verdict, two or more of the jury drank intoxicating liquors." It seems to us that, where the intoxicating liquor is procured and drunk after the jury have retired to consider their verdict, it is a very different question. It then involves the misconduct of both the jurors and the officer having them in custody, and will easily raise a presumption of positive bad faith. But if the juror is intoxicated while performing his duties in open court, the parties have an opportunity to observe it and bring it to the attention of the judge. It is also a different question if the juror drank at the expense of the prevailing party, or those working in his interest, which was also claimed by the affidavits and denied by the counter affidavits in this case, and found against appellant by the court below. If, as in this case, the court below finds that the juror was not intoxicated, and the moving party is not in fact prejudiced, the verdict should be allowed to stand. This position is not in conflict with the case of *State* v. *Parrant*, 16 Minn. 178 (Gil. 157), which was a trial for murder in the first degree. In such a case, if the jury are allowed to separate at all during the trial, their conduct while separated is subject to closer scrutiny.

9. That one of the jurors did not understand the English language is also made a ground for a new trial. The affidavits on this question were also conflicting; and for this reason, and also for the reason that it was a ground for challenge, and, by the exercise of reasonable care, the defendant might have discovered the fact, and availed himself of his right to reject the juror when the jury was being impaneled, the point is not well taken.

This disposes of all the questions raised on the appeal, and the order appealed from should be affirmed. So ordered.

BUCK, J., absent, sick, took no part.

(Opinion published 59 N. W. 490.)

Related Articles.

This article on Judge Benjamin F. Webber is one more in a series of studies of district court judges in the nineteenth and early twentieth centuries posted on the Minnesota Legal History Project website.

Some words about style: I am not aware of any other series of biographical portraits of state trial judges in the late nineteenth and early twentieth centuries. An account of the public life of a state trial judge during this period differs from that of an appellate judge, whose writings are readily available for examination. Newspapers are critical first-hand sources for these short biographies. Studies of these judges, at least here, are packed with newspaper articles that are at times tedious to read and, worse, leave an impression that they are superficially researched. Here press stories are selected to describe cases on his calendar, trials, contests for party endorsement, election campaigns and results, all aimed at documenting important events in the official life of a state trial judge. Missing are the drama and suspense of the jury trials the judge presided over.

Credit.

The photograph on the first page is from *Men of Minnesota* (1902).

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