

# **George B. Young v. Francis R. E. Cornell**

**The Contest for the Republican Nomination for  
Associate Justice of the Minnesota Supreme Court,  
1874.**

**By**

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**Chapter One.**  
**By one vote.**

**Our story begins on July 16, 1873, in the Opera House in St. Paul where 304 or more delegates gathered for the Republican State Convention. At stake was the governorship. The leading contenders were William D. Washburn, a lawyer, state legislator, surveyor, newspaper owner and wealthy businessman from Minneapolis, and Cushman Kellogg Davis, a civil war veteran, orator, legislator and St. Paul lawyer. Washburn was nominated by Attorney General Frank R. E. Cornell; Davis by former Governor Marshall; also nominated were Thomas H. Armstrong of Mower County and Governor Horace Austin, though he had announced that he would not seek a third term. After the nominations, Cornell spoke again, affirmed what had been said of the other candidates and defended Washburn from the charge that he was a "railroad man." The evening session was moved to Ingersoll Hall and began at 8:20 P.M.**

**Under the convention rules the candidate receiving votes from a majority of delegates would be endorsed, but problems arose when the number of votes cast exceeded the number of delegates. There were four "formal" ballots and Davis increased his votes in each round. In the first, of the 305 votes cast, Washburn received 128 to 78 for Davis, 98 for Armstrong and Austin and 1 called "scattering" or a write-in vote. In the second, of 308 votes cast, Washburn received 144 to 106 for Davis and 58 divided between the others. In the third, of 307 ballots cast (meaning 154 would be the majority), 153 were for Washburn, 149 for Davis, 1 for Austin and 4 "scattering." Objections that there were fewer than 307 delegates were brushed aside. In the fourth ballot, of 307 votes cast, Washburn received 152 and Davis 155, giving Davis a majority by 1 vote. Immediately, however, objections were raised by the Hennepin County delegation, which argued that there may**

be only 304 bona fide delegates, thus suggesting that the nomination should have gone to Washburn in the third ballot. General Sanborn of St. Paul countered that it was too late to cry fraud. The convention secretary then reported there were 308 delegates entitled to vote. A motion declaring Davis the nominee was unanimously carried with loud cheering. A committee of five, which included Cornell, was appointed to advise Davis of his selection. He responded with a ringing acceptance speech, the theme of which was that "the distinguishing characteristic of our organization is its struggle with monopolies of various kinds." But suspicions of fraud remained. The *Minneapolis Tribune* headlined its report of the convention, "Mr. Washburn Defeated by Treachery."<sup>1</sup>

## Chapter Two. A vacancy on the Court.

Our story resumes on October 7, 1873, when the Minnesota Supreme Court cancelled its October Term due to the "sudden illness" of Chief Justice Christopher Ripley.<sup>2</sup> When he learned of this, Davis, on the campaign trail, realized that he likely would have the opportunity—and the responsibility—to appoint a new chief justice soon after he took office.

Despite the Panic of 1873, Davis and the entire Republican ticket for state-wide offices were elected on November 4, 1873,<sup>3</sup> and inducted into office in January 1874. In his inaugural address, Davis advocated increasing the number

<sup>1</sup> *Minneapolis Tribune*, July 17, 1873, at 4. Accounts of the convention were also published in the *St. Paul Dispatch*, July 16, 1873, at 1 and July 17, 1873, at 2. The *Tribune* endorsed Davis the next day. July 18, 1873, at 1 ("Our candidate for Governor, C. K. Davis, is essentially a representative of Young Minnesota.")

<sup>2</sup> Minutes of the Minnesota Supreme Court, October 7, 1873, at 378.

<sup>3</sup> The results of the general election are posted in Appendix, Part 2, at 81-82.

Cushman K. Davis (Republican).....	40,741	-	52.90%
Ara Barton (Democrat).....	35,245	-	47.56%
Samuel Mayall (Prohibition).....	1,036	-	1.35%

of justices on the Supreme Court to handle the heavy work load, an early indication that he had a particular interest in the composition of the Court.<sup>4</sup>

On March 16, 1874, Chief Justice Ripley resigned effective April 1st.<sup>5</sup> The state constitution required that his replacement run for election in November 1874, but first he had to win the endorsement of the Party Convention.<sup>6</sup> Because all state-wide officers had just been elected, a Republican State Convention in 1874 had only to endorse a candidate for the Court. Thus the usual vote swapping that occurred in many political conventions when there were several candidates for several offices ("I'll vote for your candidate for this office if you vote for my candidate for that office") could not take place. The 1874 general election was the

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<sup>4</sup> He delivered his inaugural address to the Legislature on January 9, 1874. He said, in part:

[I]n regard to our Courts, I deem it my duty to call your attention to the fact that, as one of the results of our wonderful growth and wealth and population, the volume of business which is poured upon the Supreme Court has so increased from year to year that it can not be disposed of rapidly enough by three Justices. The duties which now devolve upon that tribunal are so exacting that notwithstanding the most devoted fidelity of the Judges their decisions are frequently unavoidably delayed and the promptitude which justice loves becomes a law's delay. It is well known that the eminent citizens who compose the Supreme bench have labored with such continuous zeal that the health of two of the Judges has been temporarily impaired. All will rejoice in the fact that this illness of such valued public servants has passed away. There is no hope that the business of the court will diminish. It is certain, on the contrary, that it will continue to increase. The constitution guarantees to the citizen a certain remedy in the laws promptly and without delay, and it is the clearest of duties that the Legislature should make this constitutional right of substantive one.

*Minneapolis Daily Tribune*, January 10, 1874, at 2.

<sup>5</sup> Letter from Chief Justice Ripley to "His Excellency C. K. Davis," dated "Chatfield, March 16, 1874." Governor Davis Papers, Box 16, File #340 ("Resignations-1874, Jan.-Dec."). This left Associate Justices Samuel J. R. McMillan and John M. Berry.

<sup>6</sup> Constitution, Article 6, Sec. 10 ("In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified, and such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.").

**only one in the state's history where only candidates for the Supreme Court were on the ballot.**

**The electorate was very small in the 1870s. Women could not vote; few Native Americans qualified for the franchise under Article 7, §1 (4) of the state constitution<sup>7</sup>; and many recent immigrants, some unable to read English, must have been bewildered by the complexities of state politics. More important, the Republican Party was so dominant at the time that its slate of candidates always prevailed in the general election, which meant that the relatively few delegates who attended and endorsed candidates at the Party's State Convention had already selected the winners in the November election.**

### **Chapter Three. Speculation about the appointment of a Chief Justice.**

**The Governor knew he had to act quickly. Obviously the Court needed to be brought to full strength to handle the backlog of cases. He also knew that delay would permit the building of a campaign by Party members and the Party press to pressure him to choose their favorite, a man he was not keen on anointing.<sup>8</sup>**

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<sup>7</sup> Article 7, §1 (4) established certain qualifications for a full-blood Indian to vote:

**Fourth. Persons of Indian blood residing in this state who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.**

<sup>8</sup> At this time it was customary for candidates for appointment to a vacant position in state government or a district court judgeship to solicit letters of recommendation from individuals or petitions signed by many citizens to the governor. Davis received letters and two lengthy petitions on legal-size paper regarding the Chief Justiceship in March and April 1874. They are filed in Gov. Davis Papers, Box 15, File #336 ("Miscellaneous Correspondence, March 1874"); most are posted in Appendix 4, at 96-112. One petition was mentioned by George B. Young in an interview with a reporter for the *Minneapolis Tribune* published on April 9, 1874. The article is posted in Appendix 7, at 126-130.

Here we pause to discuss an attribute of lawyers that is rarely mentioned in the literature. More than any other profession lawyers are called upon to assess or size up individuals they encounter at work—opposing lawyers, regulators, witnesses, clients, judges, partners, jurors and on and on the list goes. This is what Davis had been doing off and on since he learned of Ripley's serious illness the previous autumn. As he surveyed the landscape of potential appointees, each with an established reputation, most from Minneapolis, he was not impressed.

For newspapers it was an irresistible subject, involving a high office, speculation about well-known jurists and lawyers, an inscrutable chief executive and plenty of gossip. It also permitted metropolitan papers to indulge once more in a favorite sport—arguing with each other. On April 1st, the *St. Paul Press* published an article listing nine possible appointees and objections to each: lawyers James Gilfillan and Horace Bigelow of St. Paul, Martin J. Severance of Mankato, State Senator Thomas Buckham of Faribault, former Attorney Generals Gordon E. Cole and Frank R. E. Cornell, former Governor and Judge Horace Austin, and current District Court Judges Wescott Wilkin of St. Paul and William Mitchell of Winona. Without citing sources, it alleged there was some opposition to Cornell because he was rumored to be a "railroad lawyer." This drew a heated rejoinder from the *Minneapolis Tribune* the next morning. "General Cornell," it disclosed, "has never owned a dollar's worth of stock in any railroad in his life. He has never taken a general retainer from a railroad....He was a member of the platform committee in the Republican State Convention, and helped to draw up the resolution concerning railroad monopolies on which Gov. Davis was elected." It concluded that the *Press* instigated rumors about Cornell's railroad ties to sabotage his chances because "he is from Minneapolis!"<sup>9</sup> Back came the

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<sup>9</sup> Few Republicans were surprised by the *Tribune's* strong defense of Cornell and, in the coming weeks, its advocacy for his nomination by the Party at its

***Press*: “If the power of appointment were vested in the *Press* it would, with its present information, clothe Mr. Cornell with the judicial ermine without hesitation.” However, it assured its readers, the decision was the Governor’s and “whatever decision he comes to—and whatever appoint-ment he makes—will be the result of a patient, candid, and dispassionate consideration of representations *pro* and *con* from all parts of the State, and with a view to arrive at the result likely to be most satisfactory to the people at large.”<sup>10</sup>**

**As he read this exchange between two Republican newspapers, each supporting Cornell for Chief Justice, the Governor realized that his selection of the former Attorney General would be greeted with approval by Party members and Republican newspapers but also that his choice of anyone else would be met with disapproval by many Party regulars who might revolt and endorse Cornell at the state convention.**

**Others must have reached the same conclusion. As posited by the *St. Paul Press*, “Judge Gilfillan, one of the**

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convention. Many recalled that on the eve of the State Convention in September 1869, the paper announced that Cornell would challenge Chief Justice Gilfillan for the Party’s nomination. *Minneapolis Daily Tribune*, August 27, 1869, at 1. But Cornell wavered, then withdrew and ran for re-election as Attorney General. The episode is described in Douglas A. Hedin, “James Gilfillan vs. Christopher G. Ripley: The Contest for the Republican Nomination for Chief Justice of the Minnesota Supreme Court, 1869” 11-14 (MLHP, 2018).

<sup>10</sup> The articles in the *St. Paul Press* and the *Minneapolis Tribune* are posted in Appendix 3, at 82-96. Other newspapers weighed in on potential candidates. From *The Grange Advance* (Red Wing), March 25, 1874:

Chief Justice Ripley has resigned his place on the Supreme Bench of Minnesota on account of failing health. Judge Wilkin and Judge Gilfillan, both of St. Paul, and Hon. F. R. E. Cornell, of Minneapolis, are mentioned as possible successors. We know of no more capable or worthy man for that position than the Hon. F. M. Crosby, Judge of the First Judicial District.

We do not, however, desire to be understood as urging his appointment, because we have no desire to lose his services in this District. It has fallen to the lot of but few men to make such a general reputation as an able judge in so short a period as has been accorded to Judge Crosby.

**finest judicial minds in the State, and Horace Bigelow, another...would not accept appointment. They can't afford to give up the lucrative practice each enjoys for the meagre salary of a judge." Perhaps, but each also recalled what happened to Gilfillan in 1869, when he was appointed Chief Justice by Governor Marshall only to lose the Party's endorsement to Ripley. Gilfillan would not risk another such humiliation in 1874.**

**On April 7, the Governor announced two appointments, not one: Associate Justice Samuel J. R. McMillan to be Chief Justice and George B. Young to be Associate Justice. They took their oaths of office on April 20.<sup>11</sup>**

**Chapter Four.**  
**Speculation on why the Governor**  
**appointed George B. Young to the**  
**Supreme Court.**

**The appointments raise several questions: Why promote McMillan? Why not appoint Cornell? And why appoint Young? To answer them, we must look closely at the appointor himself and speculate about his motives—a subjective exercise that often leads to unconvincing conclusions, especially when, as here, documentary evidence is absent. Making it even more difficult is that Davis did not consult others for advice; he kept his own counsel; it was generally understood that the stratagem to place Young on the Court was his own creation.**

**Critical to Davis's scheme was the participation of Justice S. J. R. McMillan. Davis realized that Young's age and brief residency in the state barred him from being chief justice but by promoting McMillan he created a vacancy in the associate justice ranks that could be filled by Young.**

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<sup>11</sup> Minutes of the Minnesota Supreme Court, April 20, 1874. Appendix 9, at 139-140.

McMillan was forty-eight years old, had served on the Court since 1864, was widely respected, even by Davis, and had the additional advantage of living in Stillwater before moving to St. Paul.<sup>12</sup> There would be no dissent to his elevation to the helm of the state judiciary. But he would first have to resign from his post as associate justice to which he had been re-elected to a seven year term in 1871, before becoming chief justice, and that would require him to undergo the ordeal and risk of the election in November 1874.<sup>13</sup> He resigned on April 7th.<sup>14</sup>

There was no more original thinker in the Minnesota bar in the 1870s than Cushman K. Davis. A successful trial lawyer, he became famous by giving a speech around the state called "Modern Feudalism" in which he criticized the growing influence of railroads.<sup>15</sup> He was a voracious reader who quoted from memory reams of poetry and lines from

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<sup>12</sup> McMillan was born on February 22, 1826. Associate Justice John M. Berry, born September 18, 1827, was forty-six years old.

<sup>13</sup> McMillan's actual risk was insignificant. E.g., *St. Paul Daily Press*, April 8, 1874, at 2 ("But in this case the sacrifice of a sure position for one dependent for its permanence on popular approval, can hardly be said to involve any risk: for there can be no doubt that the Governor's appreciative designation of Judge McMillan to the senior post will be ratified by the overwhelming verdict of the people."). This editorial of the *Press* is posted in Appendix 6, at 114-117.

<sup>14</sup> His handwritten resignation dated April 7, 1874, is posted in Appendix 5, at 113.

<sup>15</sup> He believed this speech won him the governorship. Kent Kreuter & Gretchen Kreuter, "The Presidency or Nothing: Cushman K. Davis and the Campaign of 1896," 41 *Minnesota History* 301, 304 (Fall 1969) ("Davis had good reason to believe in the power of a good speech, for his political career had been launched in Minnesota in 1870 by such a performance. 'Modern Feudalism,' an attack upon the growing power of the corporation in American life, had been so well received that Davis was convinced the address had been chiefly responsible for election as governor in 1874.") (citing sources). Cf., "Letter from Regional Correspondent" in *St. Cloud Journal*, September 11, 1873, at 2 ("The *Detroit Tribune* recently highly complimented Hon. C. K. Davis, Republican candidate for Governor of Minnesota. Capt. Davis is not unknown in Michigan, having graduated with honor at the State University at Ann Arbor in 1857. Levi T. Griffin and Ervin Palmer, prominent members of the Detroit bar were among his classmates. At present I do not trouble myself about politics, yet I believe the farmers of Minnesota have real grievances against the corporations which Cpt. Davis aimed his arrows at in his lecture on "Modern Feudalism," and therefore I think, without regard to partisan politics, that Capt. Davis will make a safe Governor for the people of the North Star State."). A handwritten copy of "Modern Feudalism," over 100 pages long, is in the Davis Papers at the Minnesota Historical Society.



Shakespeare.<sup>16</sup> In 1883 he would publish a study of the law in Shakespeare and years later, when serving in the U. S. Senate, gave lectures on the law of foreign relations that were posthumously published.<sup>17</sup> He was as comfortable in the world of ideas as he was in the courtroom.

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<sup>16</sup> Thomas Beer painted an indelible portrait of Davis in his biography of Mark Hanna published in 1929:

The Senator from Minnesota thunderously told the Senate that this notion [a proposal about dismembering the United States by a German diplomat] was less civilized than the political ideas of Confucius, and then was found by reporters in his office reading an unknown work named *The New Spirit*, by Havelock Ellis. He drawled that Dr. Ellis was a sort of improved Emerson and told the journalists where they could read the ideas of Confucius. The prose of *Moby Dick* moved him, but so did the rhythm of Tennyson's moral poems. He read constantly, slumped on a couch beside a box of violent cigars, and dallied with essays on Madame Roland and the law in the plays of Shakspeare. He thought of a volume on musical instruments, described a history of prostitution in America that ought to be written by somebody else, and collected Napoleonana.

Thomas Beer, *Hanna* 209-10 (Alfred A. Knopf, 1929)(Beer's spelling is unchanged). Massachusetts Senator Henry Cabot Lodge also remarked on the importance of serious literature to Davis in his eulogy in the Senate in 1901:

In its highest expression literature is the greatest art of which the human race has shown itself capable....It must exist for its own sake and be its own self-sufficient excuse for being. This was the literature which Senator Davis knew and rejoiced in and admired. This is what he read so widely in all languages, especially his own. This was what he loved purely for its own sake.

"Address of Mr. Lodge, of Massachusetts," in *Memorial Addresses on the Life and Character of Cushman Kellogg Davis (Late Senator from Minnesota) Delivered in the Senate and House of Representatives, Fifty-Sixth Congress, Second Session* 43-44 (1901). The complete Memorial Session is posted separately in the "Politics" category in the Archives of the MLHP.

<sup>17</sup> Cushman Kellogg Davis *The Law in Shakespeare* (Washington Law Book Co., 1883). The text is posted in the "Literature" category in the Archives of the MLHP. In October, 1897, Davis delivered a series of four lectures at the University of Minnesota which were published as an 80 page pamphlet, *Lectures on International Law by Cushman K. Davis Before the Faculty and Students of the University of Minnesota* (n. p. October, 1897). These lectures were enlarged, revised and published posthumously with an introduction by Senator Lodge as *A Treatise on International Law including Diplomacy* (Keefe-Davidson Law Book Co., 1901)(Reprint, Fred R. Rothman & Co., 1982). The entire book is posted in the "Treatises/textbooks" category in the Archives of the MLHP.

Though he thrived on public service, Davis was not interested in a judgeship. His political ambitions, it turns out, were focused on being elected U. S. Senator by the state legislature in January 1875.<sup>18</sup> To gain an advantage in that contest he should have made Cornell Chief Justice but he did not. And so the question arises: did he have some other objective, a higher purpose, in mind?

Francis Russell Edward Cornell was fifty-two years old in April 1874. He had spent the previous fifteen years in public office, while also practicing law in Minneapolis. He was a formidable trial lawyer<sup>19</sup> and a consummate politician, who never lost an election. He was elected to the state House of Representatives in 1860 and re-elected in 1861 and 1864; in 1867, he was elected to the first of three terms as Attorney General.<sup>20</sup> At a time of fierce anti-railroad sentiment, he won the public's gratitude for his successful defense of an 1871 Minnesota law regulating freight and passenger rates of the roads, one of the Granger laws the U. S. Supreme Court upheld in 1877.<sup>21</sup> He

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<sup>18</sup> United States Constitution Article I, section 3, ("The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof for six Years; and each Senator shall have one Vote."). It was replaced by the Seventeenth Amendment, adopted in 1913, which provided for the direct election of Senators "by the people [of each state.]".

<sup>19</sup> In his most famous case he won the freedom of Eliza Winston, a slave who came to Minnesota in 1860 with her owner, a wealthy Mississippi planter. Cornell had a writ of habeas corpus issued by Judge Charles Vanderburgh, his former law partner, now a District Court Judge, who after a brief hearing ordered her released from bondage. For two accounts of the case by Professor William D. Green, see "Eliza Winston and the Politics of Freedom in Minnesota, 1854-60," 57 *Minnesota History* 107 (2000), and "The Summer Christmas Came to Minnesota: The Case of Eliza Winston, a Slave," 8 *Law & Inequality: A Journal of Theory and Practice* 151 (1990). Curiously this case is never mentioned in newspaper articles about Cornell's campaign for the endorsement of the Republican Party for Associate Justice in 1874.

<sup>20</sup> For the results of these elections, see Douglas A. Hedin, compiler, "Results of Elections of Attorneys General, 1857-2014" 15-16 (MLHP, 2013-).

<sup>21</sup> *Minnesota v. Winona and St. Peter Railroad Co.*, 19 Minn. 434 (1872)(Ripley, C. J.). Interestingly James Gilfillan, the former Chief Justice, is listed as co-counsel for the State in this appeal. A companion case, *Blake v. Winona & St. Peter Railroad Co.*, 19 Minn. 418 (1872) (Ripley, C.J.) was one of six so-called "Granger Cases" which involved the constitutionality of state laws regulating common carriers that arose in state courts in the Middle West and appealed to the U. S.

left office in January 1874 just as the seat on the Court opened. His political ambitions centered on the Minnesota Supreme Court not a federal office such as Senator. In 1869, he expressed interest in challenging Chief Justice James Gilfillan but quickly withdrew, leaving the path open for Christopher Ripley.<sup>22</sup> Having run for state-wide office three times, he knew almost everyone, had numerous friendships in the bar and was very popular among Party regulars in all sections of the state.<sup>23</sup>

But there was something about Cornell—or something missing—that must have bothered Davis. Perhaps it was his rumored affiliation with the roads, likely something else. He surely remembered that Cornell was the floor manager for Washburn’s candidacy at the Party Convention in 1873 but this probably did not determine his decision. As we try to reconstruct Davis’s mindset, it is important to understand that he was appraising Cornell next to George B. Young, not alone. The list of areas of interest that Cornell and Davis had in common was short: they were lawyers and Republicans. The mutual interests

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Supreme Court. In *Blake* the Minnesota Supreme Court held the state’s railroad regulatory law was constitutional, a decision affirmed by the U. S. Supreme Court in *Winona & St. Peter Railroad Co. v. Blake*, 94 U. S. 180 (1877). The most famous of the Granger Cases is *Munn v. Illinois*, 94 U. S. 113 (1877). They are the subjects of a vast literature. For starters see Charles Fairman, *7 History of the Supreme Court of the United States: Reconstruction and Reunion, 1864-88* (Part Two) 290-371 (Macmillan, 1988) (Fairman spends over three pages on the briefing and oral arguments in the *Blake* case and includes a sketch of thirty year old William P. Clough, who represented Blake); see also Harry N. Scheiber, “The Road to Munn: Eminent Domain and the Concept of Public Purpose in the State Courts” in Donald Fleming & Bernard Bailyn eds., *Law in American History* 329-402 (Little Brown, and Co., 1977).

<sup>22</sup> See Douglas A. Hedin, note 9, at 10-17.

<sup>23</sup> For one friendship, see reminiscences of Hanford L. Gordon, a colorful St. Cloud lawyer, in 1911 to a friend about criminal trials in the 1870s in which the Attorney General was prosecutor and he was defense counsel. “Frank Cornell—dear, dead Frank Cornell! I liked him and admired him. He was an opponent worthy of the best steel. He was a sharp lawyer and a ‘square’ man. When I was in Minneapolis last year I went out to the cemetery and—pardon my infirmity—I dropped a tear or two at his grave. He got to like me and I got to like him” “H. L. Gordon Recalls Trials in the 1860s and 1870s” 10 (MLHP, 2018) (letter dated September 18, 1911).

of Davis and Young were many. Moreover, they were of the same generation; Davis was thirty-five years old in April 1874 while Young was thirty-three.<sup>24</sup> This was important because there had been an undercurrent of feeling in the 1873 State Convention that it was time for younger men to take leadership positions in the Party.<sup>25</sup>

George Brooks Young relocated from New York to Minneapolis in 1870, when he was thirty years old. He was a graduate of Harvard Law School, and had studied under William Curtis Noyes, later with David Dudley Field. The Governor had always practiced under Minnesota's version of the Field Code, adopted in 1851,<sup>26</sup> whereas Young had been an associate of the men who had actually drafted that Code.<sup>27</sup> He practiced mainly in federal court and that is where Davis, then United States Attorney, met him in the early 1870s. Davis surely pumped him for stories about his mentors. He had no political ambitions and was so quiet about his political beliefs that after his appointment there was confusion as to which party he belonged to

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<sup>24</sup> Davis was born June 16, 1838, Young on July 25, 1840.

<sup>25</sup> Eugene Virgil Smalley, *A History of the Republican Party from Its Organization to the Present Time to Which is Added A Political History of Minnesota from a Republican Point of View and Biographical Sketches of Leading Minnesota Republicans* 195 (1896) ("Mr. Davis's candidacy before the convention of 1873 was the result, not only of his attitude towards corporations, but also of a general feeling among the younger men of the Republican party that they had not been given a fair showing in the management of party affairs."). The text of Smalley's book is posted in the "Politics" category in the archives of the MLHP.

<sup>26</sup> Minn. Terr. Rev. Stat. c. 70, at 329 (1851). Further revisions to the Code were made in the 1852 legislative session. Minnesota was the sixth jurisdiction to adopt a variation of the Field Code. Charles M. Hepburn, *The Historical Development of Code Pleading in England and America* 98-99 (1897)(republished, Law Book Exchange, 2004).

For a study of a U. S. Supreme Court's ruling on an appeal from the Minnesota Territorial Supreme Court of a case brought under the Code, see Douglas A. Hedin, "*Holcombe vs. McKusick* and the U. S. Supreme Court's Reaction to the Codification Movement of the 1850s" (MLHP, 2011).

<sup>27</sup> In 1857 the New York Legislature established a Code Commission consisting of Field (1895-1894), Noyes (1805-1864) and Alexander W. Bradford (1815-1867), who divided the task of writing preliminary reports: "Mr. Noyes undertaking to prepare the Analysis for the Penal Code, and Mr. Field the Analysis for the Political and Civil Codes." Henry M Field, *The Life of David Dudley Field* 78 (Fred Rothman & Co., 1995)(published first, 1898).

**(he was a Republican). An introvert, he spent his leisure time reading and studying (no one ever said that Frank Cornell spent his idle hours in his library or even that he had a library). Some of what Davis saw in Young can be gleaned from memorials delivered after Young's death on December 30, 1906. From the memorial of the Minnesota State Bar Association:**

**He [Young] was always a student and a lover of books. Gifted with a remarkably retentive memory, a clear and analytical mind and unusual habits of industry and thoroughness, he acquired a vast knowledge not only of the law but of history, literature and general information. This knowledge was always at his command and he easily became a leader of the bar and enjoyed a national reputation.<sup>28</sup>**

**From the remarks of Henry Hale at memorial proceedings at the Minnesota Supreme Court on April 3, 1907:**

**He [Young] was a ripe scholar and a profound thinker. His reading covered a wide range, both in the law and general literature, so that his mind was stored with valuable knowledge, systematically arranged and classified, to be used, when need required, with great force and effect upon any question of law presented to him for consideration. His study of the history of the law had been particularly confined to noting and analyzing its changes and growth as it adapted itself to advancing civilization. He took a connected view of the past and the present,—the old and the new,—never confused or losing his way, but travelling in his orbit symmetrically, with no meteoric flashes, onward, until he**

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<sup>28</sup> Proceedings, Minnesota State Bar Association 102-104 (1907).

reached that point in his planetary system attained only by a few of his profession.<sup>29</sup>

The law and the library were at the center of his life.

What did Davis see in Young? He saw himself or, rather, certain aspects of himself. He saw a thoughtful lawyer, his age, who studied the history of law and read serious literature for pleasure. He saw a learned practitioner who would bring intellectual rigor to the Court, a quality that Cornell lacked and was missing from Justice John Berry as well.

It is hard to see how Davis helped his personal political ambitions by this appointment. It is easier to see, as he must have, that the addition of Young, with his deep intellect, strengthened the Court.

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<sup>29</sup> Proceedings in Memory of Associate Justices Atwater and Young, 99 Minn. xvi, xxii-xxxi (1907); reprinted in *Testimony: Remembering Minnesota's Supreme Court Justices* 83-88 (Minn. Sup. Ct. Hist. Soc., 2008).

It is interesting to compare this description of Young's pattern of thinking to Cornell's. In memorial proceedings in the Supreme Court after his death on May 23, 1881, three eulogists describe Cornell as reaching conclusions by "intuition." Gordon E. Cole ("The salient feature of Judge Cornell's character as a lawyer was the unerring certainty with which his mind glided from premise to conclusion. I have often had occasion to note and admire the rapidity with which, with almost the precision of intuition, he would arrive at the correct solution of a difficult legal problem then first submitted to his attention, the comprehensive glance with which he would instantly sweep the entire subject and take it in with all its qualifications and limitations."); William Lochren ("[H]e was familiar with the underlying principles of jurisprudence, and with his natural powers of perception and accurate judgment he seemed to reach correct conclusions with the rapidity of intuition."); and Chief Justice Gilfillan ("In his mental operations were united two characteristics not often found together—quick, intuitive perception and careful, patient reasoning."). Proceedings in Memory of Associate Justice F. R. E. Cornell, 27 Minn. xv-xxvii (1881); reprinted in *Testimony: Remembering Minnesota's Supreme Court Justices* 89-95 (Minn. Sup. Ct. Hist. Soc., 2008).

**Chapter Five.**  
**Responses of the bar and**  
**press to the appointments.**

**What now follows are the reactions of the Party press and the bar to the appointments. All were surprised, some deferential to the Governor, others hostile.<sup>30</sup> But in the**

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<sup>30</sup> Young himself was "surprised" by his appointment and had not even seen Davis since his election five months earlier. *Minneapolis Daily Tribune*, April 9, 1874, at 4 (interview of Young on April 8). The entire article is posted in Appendix 7, at 126-130.

On April 14, the *Minneapolis Tribune* published short quotes from newspapers around the state in an article headlined "The appointment of Justice Young":

These appointments were an astonishment for the newspapers and politicians, who had arranged it somewhat differently.—*Wright Co. Times*.

He (Young) is a young man of only about four years residence in Minnesota, but is said to possess qualities for the exalted position.—*Preston Republican*.

Mr. Young is comparatively unknown. He is said, however, to have a good legal mind, though a practicing lawyer in the State for only four years. *Western Times*.

In Judge McMillan's place, Geo. B. Young of Minneapolis, has been appointed. He is not much known. Both appointments will give satisfaction to the public. —*Red Wing Republican*.

Mr. Young has only resided in this State about four years, and his practice has been chiefly confined to the U. S. Courts. He is a native of Massachusetts, a graduate of Harvard University.— *Austin Register*.

The Minneapolitans are indignant that a young man and comparatively new comer to the State, who is scarcely known outside of the city, should have been appointed over some old settlers and able lawyers as Frank Cornell, and we guess they are pretty nearly correct in their appreciation of the Governor.—*Mankato Record*.

To most of the people in the State Mr. Young is an entire stranger. There is, therefore, somewhat of a hesitancy in expressing approval of the appointment; yet as Governor Davis is himself a lawyer, and his appointments thus far—though some of them have occasioned much surprise—have been very judicious. It is to be believed that this one will not be an exception and that the Governor thoroughly understood the capabilities of the man whom he selected for this high position.—*St. Cloud Journal*.

**hullabaloo that followed, there was not a single accusation that Davis had succumbed to outside influences. It was understood that these were his decisions and his alone.**

**The morning after the appointments, the *Minneapolis Daily Tribune* issued a broadside against the Governor, dripping with sarcasm:**

### **ON CORNELL'S SUBSTITUTE.**

**It never rains but it pours. Sorrows seldom come singly. Minneapolis asked Gov. Davis unanimously for the appointment of Gen. F. R. E. Cornell as Chief Justice of the State Supreme Court, and he responds to the request by promoting Judge McMillan to the post of honor, and appointing to the vacancy—whom do you think, “gentle reader”—guess fifty times and you would not get within a mile of it—George B. Young, Esq., of this city!**

**We do not know but Mr. Young will fill the bill creditably. He is young, and little known but he is a bright and assiduous student, and a clear-headed thinker, with a particularly judicial turn of mind. Moreover, he is not to blame for being appointed, or for accepting the office, or for being youthful.**

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**Gov. Davis has given very general offence to the legal fraternity and to old citizens generally, by appointing one Geo. B. Young, of Minneapolis, a young lawyer but recently arrived in the State from New York, to a judgeship on the Supreme Bench of the State. The vacancy occasioned by Chief Justice Ripley's resignation was aided by promoting his associate, Hon. S. J. R. McMillan, to the vacancy, and Mr. Young was then appointed to the position vacated by McMillan. The appointment excites surprises and disgust, in that it ignores the claims of very many old citizens and abler men.—*Rochester Record and Union*.**

***Minneapolis Morning Tribune*, April 14, 1874, at 2 (this is an excerpt as the final paragraph of this article on microfilm at the Historical Society is torn).**



**We must add, however, that, so far as we have heard opinions expressed, this appointment is almost unanimously repudiated in this city and vicinity as an ostentatious insult to Minneapolis. And with this conclusion, the question of the appointee's personal fitness has very little to do.**

**There was probably not a man in Minneapolis who would not eagerly have signed a petition for Gen. Cornell's appointment and for this favorite of ours to be flung aside in this summary manner, and for the act to be emphasized by calling from our midst a man not before thought of by anybody for that office or any other, seems no less than a grave political affront.**

**We have examined the dictionary, and we find there no words suitable to convey the disgust of our people in view of this whole transaction. We speak plainly. Gov. Davis has committed an enormous blunder, or else he is a prophet and the people of Hennepin county are fools. So incredible seemed the announcement, that it was with great difficulty that the telegraph could induce our people to believe it last evening.<sup>31</sup>**

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<sup>31</sup> *Minneapolis Daily Tribune*, April 8, 1874, at 1 (excerpt). On page 4 of the same edition, it had another article captioned "OUR NEW JUDGE!" It began:

**Great was the amazement of a good many people of this city last evening, when a dispatch from St. Paul came to the *Tribune* office, announcing that Gov. Davis had refused to appoint Gen. Cornell to the Supreme Bench, but had taken Geo. B. Young, Esq., instead. Some prominent men inquired, "Who is he?" Others knew the lucky candidate as a studious young man, a first-rate scholar, with a mind of his own.**

**"Guess who is the new Associate Judge?" the comers in were asked. And they would guess, "Minneapolis man?" "Yes." "Cornell?" "No." "Judge Young?" "No." "Gilfillan?" "No." "Secombe." "No." "Shaw?" "No." "Hancock." "No." Almost everybody was mentioned except Geo. B. Young; for he, although he has some sterling qualities, is comparatively little known to the bar.**

**The article concluded with a favorable biographical sketch of Young furnished by "a friend and old school mate."**

The next morning the *Tribune*, which relished nothing more than jousting with St. Paul newspapers, took issue with some comments in the *St. Paul Evening Dispatch*:

### **THE APPOINTMENT.**

#### **What Governor Davis's Organ Thinks of Gov. Davis's Appointment.**

*From the St. Paul Dispatch, April 8.*

The *Dispatch* hazards nothing in saying that the Governor's action will cause general dissatisfaction. The appointment of Supreme Judge is not a mere matter of compliment, and the public are not disposed to accept the Governor's judgment as to the qualifications of an unknown man and a comparative stranger in preference to all the leading members of the bar, long citizens of the State, and of acknowledged and undisputed ability. It is very singular, indeed, that a few appearances in the United States courts should have disclosed such transcendent abilities in Mr. Young to the Judges and officers of the Court, of whom Mr. Davis was within so short a period one, while he remained perfectly unknown to the people of the State. "Promising law students" are not wanted for Supreme Judges; a regiment of them might be imported and not a judicial mind found among them. The people have the right to a Supreme Judge whom they themselves know, and do not deserve to be ignored in so serious a matter. They do not sympathise with the personal contentious and ambitious projects of politicians. Flank movements are not admissible.

Mr. Young's appointment is not justifiable on any ground. He is unknown; he is a stranger in the State; two or three casual appearances in the United States Court by no possible means could

furnish data on which to estimate his qualifications; he may be a law student and able to get up brief and yet not a sound lawyer or qualified to be a judge.

There is something more required than a memory crammed with law. He should possess the highest qualities of manhood, sterling integrity and high character, hard common sense and a thorough knowledge of law, independence and fearlessness in the discharge of duty. Such men, old citizens who have aided in laying the foundations of the young commonwealth of Minnesota, framed its laws and organized its judicial system, of honorable lives and acknowledged ability at the bar and in private life, might have been found. These have all been ignored and passed by and a man appointed whom no one knows or ever would have known but for the notoriety given him by this official blunder.<sup>32</sup>

An unusually penetrating editorial was published in the *St. Paul Daily Press* on April 8, 1874. It noted that the Governor "recognized" Young "as one of the ablest and best educated lawyers in the State" and was convinced

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<sup>32</sup> *Minneapolis Morning Tribune*, April 9, 1874, at 2. At this time the *Winona Daily Republican* called for a truce in the newspapers' war of words:

The Governor has appointed and commissioned Hon. S. J. R. McMillan, Chief Justice of the Supreme Court of Minnesota, *vice* Ripley resigned. The vacancy occasioned by the promotion of Judge McMillan, Associate Justice, has been filled by the appointment of Geo. B. Young, Esq., of Minneapolis. The promotion of Judge McMillan will be regarded with very general satisfaction by the bar of the State. . . . Mr. Young is a comparatively obscure attorney of Minneapolis, but the *Tribune* of that place—which resents the appointment as a "political affront to the people of Minneapolis," who had very generally united in asking the appointment of ex-Attorney General Cornell as Chief Justice—speaks of him as "a bright and assiduous "student, and a clear-headed thinker, with "a particularly judicial turn of mind."—This being conceded, we see no occasion for anybody's lashing himself into a fury over Mr. Young's appointment.

*Winona Daily Republican*, April 8, 1874, at 2.

**“of his eminent fitness for the position as displayed in the course of professional business.”<sup>33</sup>**

**In the second week of April, three remarkable collections of interviews about Young’s appointment were published, one in the *St. Paul Daily Press* and two in the *Minneapolis Daily Tribune*. On April 9, 1874, the *Tribune* published interviews of Minneapolis Mayor George A. Brackett, Frank Cornell, Samuel C. Gale and a stupefied George B. Young himself.<sup>34</sup> That day, April 9, 1874, a cub reporter for the *St. Paul Daily Press* interviewed leading members of the Minneapolis bar for their reactions to the appointment. The lawyers were unusually frank and one, a self-pitying Frank Cornell, immediately regretted his candor and demanded a retraction. The article was published the next day, followed by a “retraction” of sorts.<sup>35</sup> On Sunday, April 12, the *Tribune* published observations of Federal District Court Judge Rensselaer R. Nelson, Bankruptcy Judge Albert Edgerton, and Clerks of Court William A. Spencer and Horatio E. Mann, each attesting to Young’s fitness for the Court.<sup>36</sup>**

**The *St. Paul Evening Dispatch*, which had pushed hard for the nomination and election of Governor Davis in 1873, blasted him for politicizing the Court:**

**In the appointment of Mr. Young, Gov. Davis assumed the sole responsibility. Wise or unwise, Mr. Davis is alone responsible. And although the members of the bar may look with leniency on the appointment, we venture to assert that seven-eighths and a large majority of the people condemn and depreciate as a precedent the**

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<sup>33</sup> *St. Paul Daily Press*, April 8, 1874, at 2. The complete editorial is posted in Appendix 6, at 114-117.

<sup>34</sup> *Minneapolis Daily Tribune*, April 9, 1874, at 4; posted in Appendix 7, at 126-130.

<sup>35</sup> *St. Paul Daily Press*, April 10, 1874, at 1; posted in Appendix 7, at 118-126.

<sup>36</sup> *Minneapolis Sunday Tribune*, April 12, 1874, at 4; posted in Appendix 7, at 130-133.

**action or “policy” . . . of the Governor in throwing two Judgeships of the Supreme Court into the cesspool of party politics next fall to be squabbled over by political rings and combinations.<sup>37</sup>**

**The *Weekly St. Paul Pioneer* noted ominously that the new Justice’s fate would be determined in the fall election:**

**The Governor has appointed and commissioned Hon. S. J. R. McMillan, Chief Justice of the Supreme Court of Minnesota, *vice* Ripley resigned. The vacancy occasioned by the promotion**

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<sup>37</sup> *St. Paul Evening Dispatch*, April 14, 1874, at 4. The editorial, of which this is an excerpt, is a reply to a letter to the editor. The *Dispatch’s* charge was unfair because, as noted in the text above (pages 6-7), the only statewide offices on the ballot in the 1874 general election were the two Court judgeships and that meant political “rings” would not form at the Party Convention to trade or exchange votes for different candidates for other statewide offices. And this is what happened: McMillan and Cornell were endorsed swiftly and unanimously.

Several days later, the *Dispatch* carried another long editorial renewing its odd charge that the very obscurity of Young meant that his appointment was driven by partisanship:

**This action of the Governor of the State is without precedent and will be severely criticized. It is true that very little can be said against Mr. Young personally or politically—because nothing is known, but it will be easy for those hostile to the Governor to attribute the appointment to that very fact—a very unworthy motive to influence a judicial appointment. The popularity of Mr. Davis, or, what is more substantial, his election, was due to his supposed liberal political views. Mr. Davis will not meet public expectations or justify popular confidence by a partisan adherence to party. Mr. Davis owes very little to Grantism for his election as Governor, but was he under greater obligations he should not permit personal or political considerations to influence the appointment of Judge of the Supreme Court.**

***St. Paul Evening Dispatch*, April 19, 1874, at 4 (excerpt).**

**Other newspapers noted that Davis seemed impervious to political pressure:**

**But the power of appointing is given to the governor, for the benefit of the whole state, and the question of fitness and expediency being left, by the Constitution, entirely to him, it is not likely to appear to one outside of Minneapolis why he should be under any greater obligation to make his appointment at the dictation of politicians or lawyers of Minneapolis than of other politicians or lawyers; and we do not believe the people will think any the less of him for having made it entirely independent of all politicians and lawyers.**

***The Rochester Post*, April 18, 1874, at 2.**

of Judge McMillan, Associate Justice, has been filled by the appointment of Geo. B. Young, Esq., of Minneapolis. The promotion of Judge McMillan is regarded with satisfaction by the members of the bar. Mr. Young is not Judge Young of the Hennepin County Common Pleas Court, but a gentleman comparatively unknown to the legal fraternity or to the general public, but nevertheless he may deserve to be ranked with Taney or a Chase.

These appointments hold only until the vacancies created by the resignation of Judge Ripley and the promotion of Judge McMillan, shall have been filled by the people at the next general election in November.<sup>38</sup>

The new justice, however, had more immediate matters on his mind. On Monday morning, April 20, after he was sworn into office, he heard oral arguments in his first cases, *Treasurer of Mille Lacs County v. Dike* and *Wright v. S. P. Jennison, Secretary of State*. In its account of this proceeding, the *St. Paul Evening Dispatch* could not help commenting on his age: He "looked to be young in fact as well as in name. . . . On the bench his youthful appearance is remarkable, and except for faint lines around the eyes it would be doubted whether he was really as old in years as

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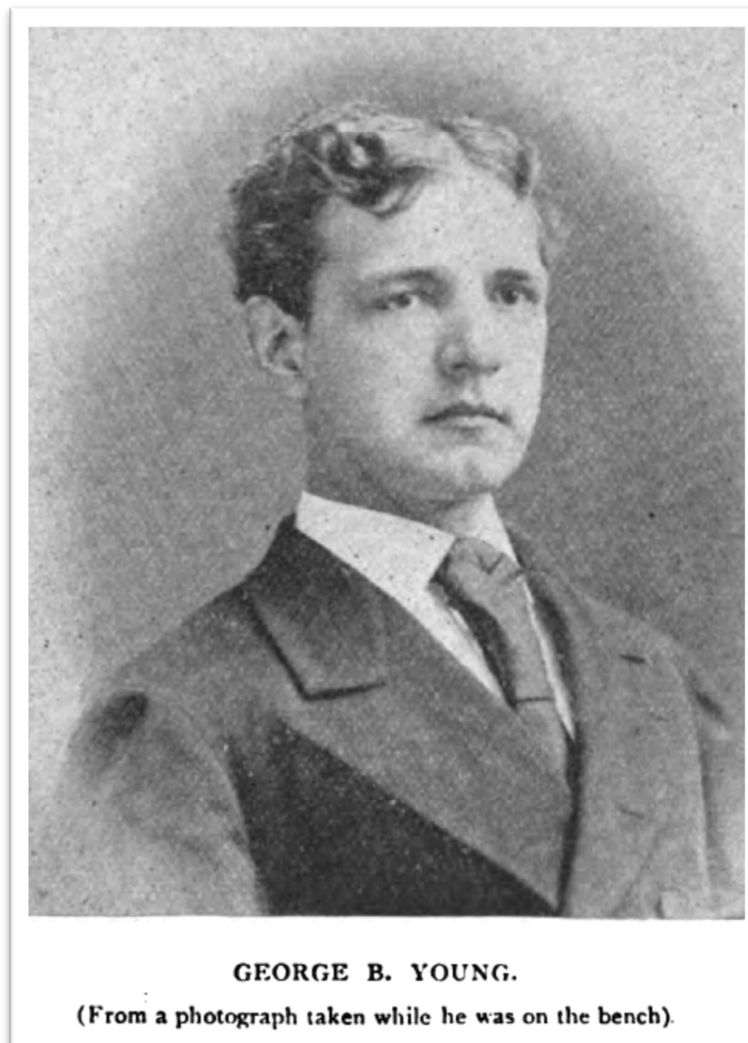
<sup>38</sup> *Weekly St. Paul Pioneer*, April 10, 1874, at 4 (the editorial also appeared in the daily edition). After quoting the *Pioneer's* editorial, the *Chatfield Democrat* attributed the Governor's actions to his political ambitions:

It is very evident that Gov. Davis, in appointing this man Young – a lawyer of no fame or notoriety in the State – is setting his pins for U. S. Senator. Hennepin county is a power in the Republican Party that must be secured.

Judges McMillan and Young will both be good deal older men than they are now before they are elected by the people to fill the positions they now hold by appointment. We think Gov. Davis has missed his mark by at least forty rows of apple trees.

*Chatfield Democrat*, April 11, 1874, at 2.

he is said to be."<sup>39</sup> He was assigned to write the opinion of the Court and released it less than three weeks later.<sup>40</sup>



George Brooks Young (1840-1906) was Associate Justice, 1874-1875.  
Source: Charles B. Elliott, "The Minnesota Supreme Court: Part II"  
4 The Green Bag 168 (1892).

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<sup>39</sup> *St. Paul Evening Dispatch*, April 20, 1874, at 4. The article is posted in Appendix 10, at 141-142.

<sup>40</sup> *Treasurer of Mille Lacs County v. Dike and Wright v. S. P. Jennison, Secretary of State*, 20 Minn. 363 (1874), was reprinted in the *Minneapolis Morning Tribune*, May 7, 1874, at 2. The opinion is posted in Appendix 10, at 143-147. In these consolidated cases, a unanimous Court held that it lacked jurisdiction to impose duties upon officers of the executive branch by construing several acts of the legislature and, therefore, dismissed both appeals. One case Justice Young cited as precedent was *In the Matter of the Application of the Senate*, 10 Minn. 78 (1865), written by then Associate Justice McMillan, who must have alerted Young to his opinion. This case is discussed in Douglas A. Hedin, "Advisory Opinions of the Territorial Supreme Court, 1852-1854" 32-34, 62-65 (MLHP, 2009-2011).



**Samuel James Renwick McMillan (1826-1897)  
served as Associate Justice from 1864 to 1874,  
Chief Justice in 1874-1875, and U. S. Senator, 1875-1887.  
This photograph was taken during Indian War about 1862.  
Source: Brady-Handy Photograph Collection, Library of Congress.**





**Cushman Kellogg Davis (1838-1900)  
was Governor Of Minnesota, 1875-1877,  
and U. S. Senator from 1887 to 1900.**

**This photograph is from the U. S. Senate Historical Office  
and appears in the online Biographical Directory of the U. S. Congress.  
It was taken at some time during his Senate career.**

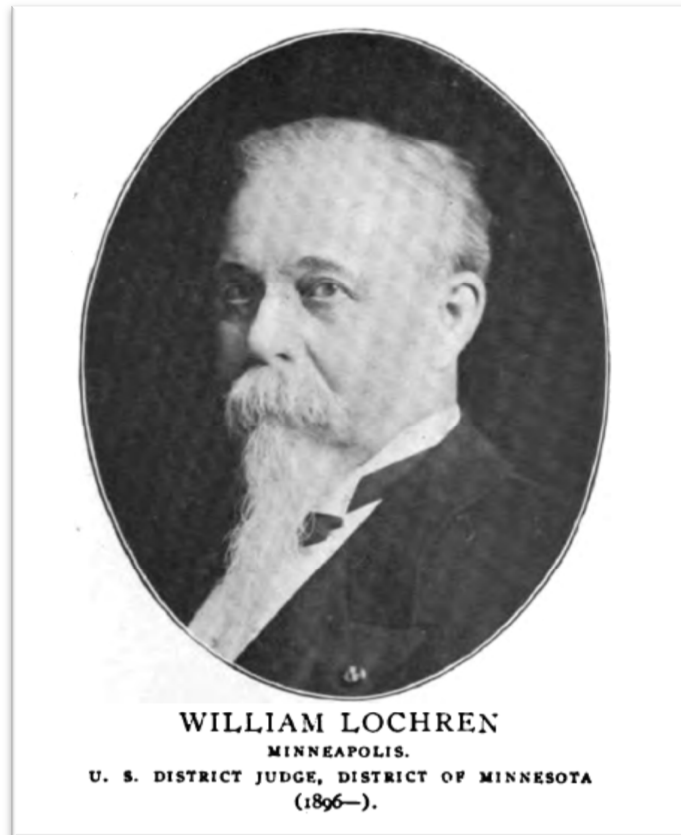


**F. R. E. CORNELL.**

**Francis Russell Edward Cornell (1821-1881)  
served most of one term on the Court, 1875-1881.  
Source: Charles B. Elliott, "The Minnesota Supreme Court: Part II"  
4 The Green Bag 169 (1892).**



**Wescott Wilkin (1824-1894) served as Judge,  
Second Judicial District, from 1865 to 1891.  
C. C. Andrews, ed., *History of St. Paul, Minn.* (1890).**



**William Lochren (1832-1912) was  
Judge of the Fourth Judicial District Court from 1881 to 1892  
and Federal District Court Judge from 1896 to 1908.  
This photograph is from *Men of Minnesota* (1902)**

**In the nineteenth century, selections and elections of candidates for the Supreme Court were enmeshed in party politics but the justices themselves usually remained aloof from the process.<sup>41</sup> It was not the custom for incumbent**

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<sup>41</sup> The influence of partisanship in judicial selections was frequently criticized by newspapers, of which the following editorial from the *Dispatch* is an example:

**It was to develop and amplify this doctrine [“the separation of the judicial from the legislative and executive departments”] that the people of the United States took from the appointing power of Governors and from the suffrages of legislatures the election of Judges and conferred it on the people. It is a question whether the change has been productive of more good than evil. The principle is correct beyond cavil. Evil has resulted from the fact that politics have been allowed to control judicial elections. Politicians have been rewarded with the ermine without regard to qualifications. Through-**

justices to give stump speeches, attend county political conventions or barter delegates. And so George Young, absorbed by his official duties, did not campaign for the Party's endorsement.<sup>42</sup> Friends seem to have made some effort at canvassing delegates before the Republican State Convention on September 9, but they were not successful. He was not active in the Party, and was by temperament ill-suited to corral delegates at a political convention. His reputation as a smart whippersnapper recently arrived from New York did not help.

Before tendering the appointment, the Governor did not warn Young that Cornell might seek the Party's endorsement at its state convention. For reasons that invite speculation, the Governor did not openly intercede on

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out the country men without experience and the wisdom which experience gives, without ability or a thorough knowledge of the law have been put on the bench. Law decisions are muddled nonsense, a string of contradictions. The symmetry of the science had been destroyed. Special pleadings and followed by special decisions, isolated, disconnected and contradictory. . . . An opportunity is presented this Fall of reorganizing the Supreme Court of the State. It is not to be expected that political elements can be harmonized on one candidate. It is not necessary that it should be done. But it is possible, and it is the duty of each party to nominate for the high office of the Supreme Judge the ablest, wisest, and most incorruptible man in the party. One ignorant of the law, however honest, is liable to make a wrong decision. Pettifoggers should be banished the bench, from the highest to the lowest seat. An able judiciary is the honor of the State. It is a refuge from wrong, inspiring confidence and hope. Minnesota is rapidly increasing in population and wealth. The field of legal inquiry is extending, embracing the most abstruse and complex questions of law. There can be no more sure safe-guarding the future than a wise, able and honest judiciary.

*St. Paul Evening Dispatch*, August 20, 1874, at 4. While the *Dispatch* does not give names of unqualified political candidates in this editorial, it is to be noted that after Cornell was endorsed by the State Convention three weeks later, it called him "a soured, bigoted railroad pettifogger with but one idol, and that is self, and with but one country, one universe, one God, and that is Minneapolis." *Dispatch*, September 10, 1874, at 4.

<sup>42</sup> Young's silence was noted in a column of political gossip in the *St. Paul Evening Dispatch*, August 6, 1874, at 4 ("In all the gabble about Supreme Judges we don't hear anything about Judge Young. He appears to have died young.").

Young's behalf before the convention.<sup>43</sup> He seems to have concluded that once he appointed Young, his responsibilities ended, and it was Young's job to land the Party's endorsement and his alone. He did not publically defend or explain his reasons for appointing Young despite the barrage of critical newspaper editorials. There are three plausible explanations for his behavior. The first emerges when we recall the reason he selected Young in the first place: to strengthen the Court. He knew the Court's integrity and independence would be weakened if he, as Governor, became embroiled in a bitter, intra-Party battle for his appointee's endorsement. The second is tied to his ambition to be elected United States Senator by the state legislature in early 1875. He may have thought that his candidacy would be weakened by lobbying convention delegates who were also members of the legislature to vote for Young (and not the more popular Cornell). It was not in his interests to jump into this battle. Finally, as time passed, he realized that Young's chances of being endorsed were about zero. It would have been futile for him to intervene and in the end he did not even attend the state convention.<sup>44</sup>

During the summer months the Governor was preoccupied with the grasshopper plague which devastated farms in southern and western Minnesota.<sup>45</sup> Then a political scandal burst and for a time crowded articles on the Beecher-Tilton adultery scandal that had filled pages of state newspapers for several years.<sup>46</sup> Former State Auditor Charles McIlrath

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<sup>43</sup> The official papers of the Governor and his personal papers at the MHS do not have copies of letters from the Governor urging the endorsement of Young or about the 1874 Party Convention.

<sup>44</sup> Lieutenant Governor Alphonso Barto and former Governor Horace Austin did attend.

<sup>45</sup> William E. Lass, *Minnesota: A History* 138-139 (W. W. Norton & Co., 1977). The Sixteenth Legislature, which met from January 6 to March 6, adjourned a month before the Court appointments.

<sup>46</sup> The Beecher-Tilton Scandal arose in 1872 when Henry Ward Beecher, a famous clergyman and abolitionist, was accused of having a sexual relationship with Elizabeth Tilton, the wife of a former associate. Eventually Tilton's husband sued

was accused of embezzling proceeds of sales of timber on state lands. A legislative committee investigated and some newspapers found him guilty. Because of the length and complexity of the case, the Governor advised the Attorney General to retain special counsel to conduct the prosecution. William Lochren of Minneapolis, considered one of the best in the state, was hired. He was also a Democrat and a few weeks later would become that Party's nominee for Associate Justice.<sup>47</sup> Later, in 1875, Wescott Wilkin, the Ramsey County District Court Judge assigned to the case and, besides, the Democratic Party's unsuccessful candidate for Chief Justice in the November 1874 election, appointed a Referee to take testimony in the case; in August 1876, the Referee issued his report recommending that all charges against McIlrath be dismissed, and they were.<sup>48</sup>

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Beecher for adultery and the trial in early 1875 became one of the most famous in the nation's history. It ended in a hung jury. Pages of Minnesota newspapers in 1874 and 1875 were filled with analysis of the scandal and lengthy quotations from the trial transcript.

<sup>47</sup> The appointment of Lochren was politically shrewd and praised by the press. It meant that the Governor and Attorney General would not be accused of a "whitewash." E.g., *St. Paul Evening Dispatch*, September 18, 1874, at 4 ("Attorney General Wilson has associated Hon. William Lochren of Minneapolis with him in the prosecution of ex-Auditor McIlrath. Mr. Lochren is one of the ablest lawyers in the state, and as he belongs to the Democratic Party his selection shows that the Attorney General will not shrink from the full discharge of his duty or allow Mr. McIlrath to be whitewashed, even though the history of his (McIlrath's) administration is substantially that of the Republican party of the State."). The Republican State Convention adopted the following resolution:

*Resolved*, That we heartily approve of the action of Governor Davis in relation to the prosecution of the person charged by the report of the Senate Committee with defrauding the school fund.

Davis took credit for Lochren's hiring and the suit against McIlrath in his Annual Message on January 8, 1875. *Executive Documents of the State of Minnesota for the Year 1874*, 9 (1875).

<sup>48</sup> William Watts Folwell, 3 *A History of Minnesota* 88-89 (Minn. Hist. Soc. Press, 1969) (published first, 1926).



Meanwhile, almost out of sight, Frank Cornell and his supporters were hunting delegates.<sup>49</sup> Through newspaper reports a perception arose that there was a groundswell of support for Cornell.

The Hennepin County and Ramsey County Republican Conventions met on August 3, and each passed resolutions favoring McMillan for Chief Justice but said nothing about the Associate Justiceship contest.<sup>50</sup> Nevertheless news-

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<sup>49</sup> Like many politicians, Cornell maintained the illusion that he lacked ambition for public office, that he reluctantly was pulled into public life. For example he told the reporter for the *St. Paul Daily Press*, "I have not sought the appointment. I have never relished public life. I have been driven into it by circumstances. I prefer to earn my living by my own exertions, to being supported by the people." *St. Paul Daily Press*, April 10, 1874, at 1 (Appendix 7, at 123-124). Later, when accepting the Party's nomination, he claimed, "I can but appreciate with feelings of gratitude, the complement implied by your choice, bestowed as it has been without any action or solicitation on my part." *Minneapolis Daily Tribune*, September 10, 1874, at 3 (text, at 46-47). These remarks are disingenuous. Cornell's fierce ambitions are revealed in the recollections of H. L. Gordon, who in 1867 was touted for Attorney General, the very office Cornell hungered for. "When Cornell was a candidate for nomination for Attorney General of Minnesota, my friends were pushing me for the position at the Republican state convention. . . . I could and would have been nominated but Frank Cornell came to me at the Merchants Hotel in St. Paul just before the convention assembled, and begged me as a friend—and because he needed it—to help him to the nomination. Right then and there I told Frank that I didn't want the nomination and that I would turn all my friends that I could to him—which I did. He was nominated and elected and the Republican convention could not have made a better selection." "H. L. Gordon Recalls Trials in the 1860s and 1870s," note 23, at 11.

<sup>50</sup> The Hennepin County Convention passed these resolutions:

Resolved. That Hon. S. J. R. McMillan, who for years has adorned the Supreme bench of this State, and stood conspicuously for his legal learning, his unimpeachable integrity, and his hearty sympathy with the rights of the people, is entitled to the confidence of the voters of this State.

Resolved. That our delegates to the State Convention be instructed to present and urge the name of Judge McMillan as the nominee for Chief Justice of the Supreme Court.

*St. Paul Daily Pioneer*, August 4, 1874, at 4.

The Ramsey County Convention resolved "That our delegates to the State Convention be instructed to present and urge the name of Judge McMillan, as the nominee for Chief Justice of the Supreme Court." *St. Paul Evening Dispatch*, August 4, 1874, at 2.

Both conventions also supported incumbent Gen. John T. Averill to continue to represent the Third Congressional District but at the Republican Third District



**papers around the state erroneously reported that the Hennepin County delegation was under orders to vote for Cornell. This from the *Windom Reporter*:**

**Hennepin county has instructed her delegates to the State Convention to support Gen. Cornell for Supreme Judge. Mr. Cornell is an able attorney, and, if nominated will be elected and make an excellent Judge.<sup>51</sup>**

**On August 6, the *St. Paul Dispatch* reported Cornell was a candidate for the Court:**

**And now Cornell announces that he is ready to seize the Chief Justiceship from S. J. R. McMillan, of Washington county. After all this plotting and counter-plotting, what if the Opposition should carry the State?<sup>52</sup>**

**The *Rochester Post*, however, saw Young as being more vulnerable to a challenge by Cornell:**

**But now the papers tell us that Mr. Cornell is a candidate for either the Chief or Associate Justiceship—which means simply that the Minneapolis politicians propose to appeal from the Governor to the Convention.**

**Though Mr. Cornell is represented as being willing, to take either place on the ticket, it is to**

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Convention on September 10 Col. William S. King of Minneapolis was nominated and elected in November.

<sup>51</sup> *Windom Reporter* (Cottonwood County), August 6, 1874, at 2 (reprinted in the *Minneapolis Daily Tribune*, August 12, 1874, at 2).

The *Tribune* also quoted favorable commentary on Cornell in the *Willmar Republican*: "These (Cornell and King) are both good men, and the indications are that the people of the Third District are pretty well convinced of this fact. To say nothing of Cornell, it now seems to be a foregone conclusion that W. S. King will be nominated and elected by a large majority." *Minneapolis Daily Tribune*, August 7, 1874, at 2.

<sup>52</sup> *St. Paul Evening Dispatch*, August 6, 1874, at 4.

be expected that the contest for the nomination will be between him and Mr. Young for the Associate Justiceship.<sup>53</sup>

Now out in the open, Cornell became the subject of a nasty libel in the *Chatfield Democrat*, which the *Tribune* was quick to smack down on September 4th:

#### **ANOTHER CAMPAIGN LIE.**

Should Gen. Cornell, of Minneapolis, be a candidate for Chief Justice at the coming election on the republican ticket, the Grangers will please remember the following: At a Republican County Convention recently held in Hennepin county, a proposition was made to instruct the delegates to the State Convention, to go for Cornell for Chief Justice. Cornell being present remarked, that he "would like the nomination if there were not so many Grangers in the southern part of the State, but he did not want the nomination to be beat." Washburn took the floor and said Gen. Cornell could not be beat by any such narrow-minded class. The railroads would see him through, cost what it might, as they were not unmindful of his services while he was Attorney-General. With that assurance from Gov. Washburn, Mr. Cornell consented to be the candidate.

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<sup>53</sup> *Rochester Post*, August 15, 1874, at 2 (excerpt from lengthy editorial on "The State Judicial Nomination.")

**These remarks are from a report of the proceedings published in the St. Paul Dispatch—[Chatfield Democrat].**

**We copy the above only for the purpose of illustrating the truth of what we have so frequently alluded to heretofore as the "indecencies of modern journalism." With that view let us dissect the above. First, at no convention, at no meeting of any kind or character, or upon any occasion did Gen. Cornell ever make any such remark as stated above. Secondly, at no convention or meeting of any kind or character did Gen. Washburn ever make any such remark as attributed to him in the above. Nor have either Gen. Cornell or Gen. Washburn at any time or upon any occasion, made any statement which could possibly be construed into such sentiments as above charged upon them. The whole statement is an invention "out of whole cloth," without one shred of truth in its composition, a lie of the most vile and indecent character, which we are surprised to see copied by any paper making the slightest pretensions to respectability or decency.**

**It was originally written as a lie, printed as a lie, copied by the *Chatfield Democrat* as a lie and though it will probably travel on through this State, during the coming campaign, it will still be a lie wherever it goes and by whom ever uttered. It will travel from one liar to some other liar, will breakfast with a liar and dine with the liar, will supper with a liar and at night will roost by the bed-side of a liar. In short this lie will keep close company with liars, and at the end will probably follow a large cloud crowd by its friends and**

kindred to the home and dwelling place of the  
"father of *all* liars."<sup>54</sup>

As the convention approached, the delegates were under increasing pressure to make a choice: they could defer to the judgment of the Governor, who had the power of appointment under the Constitution, and ratify his selections, or they could nominate someone the Governor had passed over, a Party stalwart, an able lawyer who served three terms as Attorney General and was a friend of many. These options existed because Governor Davis, the titular head of the Party, could not impose discipline on the convention. He was not the first governor—recall that Chief Justice Gilfillan, appointed by Governor Marshall, was rejected by the 1869 convention—nor the last, to recognize his limitations of power.

Editorials in two Southern Minnesota Party newspapers laid out the delegates' alternatives. The *Mower County Transcript* called for the nomination of both incumbents. From its August 20 issue:

It is well known that the state convention to be held at Minneapolis, Sept. 9, prox., has to nominate only two candidates, viz.: one for the office of Chief Justice of the Supreme Court, and one for the office of Associate Justice. . . .

The present Chief Justice is a gentleman of acknowledged purity of character and rare legal attainments, and it is all-important that he be retained....That he will be nominated and elected, is conceded by all parties.

Judge Young is not generally known. Governor Davis had met him frequently in the Courts of the State, and knew him to be a lawyer of emi-

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<sup>54</sup> *Minneapolis Daily Tribune*, September 4, 1874, at 1 (italics in original), quoting an editorial in the *Chatfield Democrat*, August 29, 1874, at 2.

nent ability and culture; possessing those peculiar qualities of mind which tend to the formation of correct conclusions. Accordingly, a place upon the Supreme Bench was tendered to him, and accepted. His colleagues and attorneys who have been in court since its reorganization, speak of him in terms of high commendation, and it seems probable that the same good judgment displayed by the Governor in making the appointments will characterize the action of the Convention soon to meet, and that the recent appointees will be confirmed by the voice of the people.<sup>55</sup>

The *Mankato Weekly Record* took a different turn, urging the nomination of Cornell. From its August 22nd issue:

The State Convention for the nomination of Supreme Judges is at hand and thus far, but little has been said in the public journals of the State in reference to the candidates to be supported for the positions. Judge McMillan will undoubtedly be nominated to fill one of the vacancies. He is an able jurist, has proved himself not only competent, but thoroughly reliable and his renomination will without doubt be cordially endorsed by a very large majority of the people of the State. For the other, there is no man we would prefer to see in the position, to F. R. E. Cornell, one of the very ablest lawyers in the State, one whose integrity is beyond suspicion and whose nomination would be as credible to the nominating convention, as it would be honorable to its nominee. We have long hoped that Mr. Cornell would receive the nomination in the convention, as we believe he should have received the appointment when the vacancy was created. His

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<sup>55</sup> *Mower County Transcript* (Austin), August 20, 1874, at 2.

services as Attorney General during the period he held that position, were of great value to the State, and deserves recognition in preference to the present incumbent who was scarcely known outside of his own ward in Minneapolis, when appointed.<sup>56</sup>

What should be the climax of our story—a close contest in the convention between Justice Young and General Cornell—was not to be.

Chapter Six.  
**The Republican state convention  
and the reaction of the press  
to the nominations.**

**156 delegates met at the Academy of Music in Minneapolis at 12 o'clock on Wednesday, September 9, 1874, for the Republican State Convention.<sup>57</sup> The *St. Paul Daily Pioneer***

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<sup>56</sup> *Mankato Weekly Record*, August 22, 1874, at 2. A week later, it repeated its endorsement of Cornell:

We hope the people will not forget the county convention to elect delegates to the state convention. The nomination of judges of the Supreme Court is a good deal of importance to the people, and the best man should be sent to the convention. We have heard only three men mentioned in connection with these offices. We presume there will be little if any opposition to the re-nomination of Judge McMillan, the strife will be between Mr. Young and General Cornell. And it seems to us though there could be little hesitation in the minds of men who have known Mr. Cornell ever since the organization of our state as one of the ablest lawyers, a true man to its interests, and a faithful officer in every position is filled, how they could go between him and a man who however worthy he may be, is a stranger to the people outside of Minneapolis. Cornell is worthy the place and we think will get it.

*Mankato Weekly Record*, August 29, 1874, at 3. This editorial was reprinted in the *Minneapolis Tribune*, September 1, 1874, at 2.

<sup>57</sup> *Minneapolis Daily Tribune*, September 10, 1874, at 3. At this time some metropolitan newspapers printed the names of all delegates to political conventions. In the list in the *Tribune*, Big Stone, Carlton, Chisago, Cottonwood, Houston, Martin, Murray, Nobles, Renville, Sherburne, Swift, Waseca, Watonwan Counties did not

**described the cold calculations made by Young's advisors that morning in a story headlined "The Judicial Hash of Judge Young and The Press Candidate Settled in Advance":**

**It became evident yesterday morning to the gentleman from St. Paul, and the few from the city and elsewhere, who are opposing the nomination of Hon. F. R. E. Cornell with Hon. George B. Young or any other man, that they were wasting their sweetness on the desert air, and as the morning advanced the opposition of Cornell gradually disappeared until it became evident that he was to go into the convention without a rival to dispute his right of way. The city was full of politicians, the prominent wire pullers, and men who love the dear people in all parts of the State, being present and exchanging button holes.**

**At about 11 a. m. Judge Young's friends decided to withdraw his name, as they did, thus leaving the field open for Cornell.<sup>58</sup>**

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**report any delegates. A motion to permit the delegates from Rock County to cast the vote of Pipestone was defeated.**

**Delegates were allotted each county according to this formula: "one delegate for each organized county and one for every 400 Republican votes, and major fractions thereof, based on the average vote for State Ticket in the last election." See list of counties and their delegates in Appendix 11, at 148.**

**<sup>58</sup> *St. Paul Daily Pioneer*, September 10, 1874 at 3. In an audacious editorial on the morning of the convention, the *Tribune* congratulated delegates on their imminent selection of F. R. E. Cornell for a seat on the Court:**

**It is exceedingly gratifying to the residents of Hennepin county to witness the unanimity with which the State at large has received the nomination of F. R. E. Cornell, of this city, in connection with the nomination for a seat on the Supreme Bench. His name will be presented to the State convention which meets in this city to-day. While there are two places on the Supreme Bench to be filled—that of Chief Justice and of Associate Justice—either one of which would be most honorably filled by Mr. Cornell, Hennepin county does not assume to say which one shall be assigned to him, but simply placing his name before the convention, leaves to the wisdom of that body the assignment to one or the other, as shall be deemed best to conserve the interests of the people.**

After seating delegates and adopting a platform,<sup>59</sup> the Convention turned to the task of endorsing candidates for the Court. The voting was described in the *Minneapolis Morning Tribune*:<sup>60</sup>

**A HARMONIOUS AND SATISFACTORY  
SESSION YESTERDAY.**

**HON. S. J. R. McMillan Nominated  
For Chief Justice of the  
Supreme Court.**

**And Hon. F. R. E. Cornell for  
Associate Justice.  
Ringing Speeches by Messrs. Cornell,  
Ramsey, Windom  
and Austin.**

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The name of Mr. Cornell is familiar to almost every resident of the State, and most favorably so. For many years a resident of this county, he has achieved a reputation as a lawyer second to no other in the State for ability and clear-sightedness.

His recognized ability has naturally given him considerable prominence in the political field, having been elected for several terms as a member of the Legislature, and subsequently being chosen for two successive terms as Attorney General.

In these positions he won the respect and esteem of all with whom he came in contact, for the integrity of purpose and uprightness of character which he displayed on all occasions. Mr. Cornell is a man whom all our citizens delight to honor, and Hennepin county is a unit in presenting his name to the Convention today. While there have been other aspirants, from different parts of the State in the field, it is gratifying to notice that all have conceded the eminent fitness of Mr. Cornell for the position, and most of the delegates to the convention are instructed to vote for him. To either place to which the convention may seem fit to nominate him, Mr. Cornell will bring great ability, conferring honor and dignity upon the position, and reflecting great credit upon the State. In thus yielding to the unanimous wish of Hennepin county for the nomination of Mc Cornell, the Republicans of the State have laid us under an obligation which we shall not soon forget.

*The Minneapolis Tribune*, September 9, 1874, at 2.

<sup>59</sup> The Republican Platform is posted in Appendix 12, at 149-151.

<sup>60</sup> *Minneapolis Morning Tribune*, September 10, 1874, at 3.



**The Republican State Convention, which met in the Academy of Music, in this city, yesterday, was a full and harmonious one. Its object was to nominate candidates for Chief Justice and Associate Justice of the Supreme Court, the positions now held by Hon. S. J. R. McMillan of St. Paul and Hon. Geo. B. Young, of this city. The candidates were Messrs. McMillan, Young and F. R. E. Cornell of the city, but before the Convention met, Mr. Young's friends withdrew his name, having seen that the tide of popular favor had set towards Gen. Cornell. . . .**

#### **Chief Justice.**

**Dr. D. Day moved that Hon. S. J. R. McMillan be nominated for Chief Justice of the Supreme Court.**

**Dr. Butler, of Hennepin, seconded the motion and moved that the vote be taken by acclamation. The motion was carried unanimously.**

#### **Associate Justice.**

**Gen. Washburn presented the name of on F. R. E. Cornell of this city, as a candidate for Associate Justice. He said that his name was presented by the united Republican party; that Mr. Cornell had lived here twenty years; and that as a lawyer he had few peers and no superior. His private character had no blemish upon it, and was with pride that his friends brought him forward.**

**Mr. Pierce, of Ramsey, said that he been requested by the Ramsey county delegation to second the nomination of Gen. Cornell, and moved that he be nominated by acclamation.**

**The motion was carried and Gen. Cornell was declared nominated amid loud applause.**

### **Committee to Wait on Cornell.**

**Mr. Douglass, of Winona, moved that the Chair appoint a committee of three to wait on Mr. Cornell and bring him before the Convention.**

**Gen. Washburn moved to amend that the committee bring also Senators Ramsey and Windom and Gov. Austin. The motion as amended was adopted. The chair appointed John Douglass Winona, A. Barto of Stearns, and Levi Nutting of Rice. . . .**

### **Gen. Cornell's remarks.**

**The committee soon returned with Gen. Cornell and Senators Ramsey and Windom, who were greeted with applause. Mr. Cornell then came forward and spoke about as follows:**

**Mr. President and Gentlemen of the Convention:—In response to the nomination so unanimously tendered me I return you my sincere thanks.**

**Recognizing, as the humblest member of my profession must, that purity of character and integrity of purpose, a conscientious fidelity to convictions honestly formed, an earnest sympathy with popular habits, a just interpretation of the popular will as found clearly expressed and embodied in law, an impartiality of judgment in the discharge of duty that knows no party, no interest and no obligation save to duty and right – recognizing, I say, these as among the essential elements in the formation of a just judicial character, I can but appreciate with feelings of gratitude, the complement implied by your choice, bestowed as it has been without any action or solicitation on my part, as one that**

ought, as it does to satisfy the measure of my ambition.

It is now some twenty years since, in pursuit of health for my family, my eyes were first gladdened by the sight of the beautiful spot, when I fully determined to make this State my future home. Since then I have participated more or less in the struggles connected with the growth and development, and witnessed the prosperity and adversity of our beloved State, and I have so conducted myself that I am deemed worthy to-day by so intelligent a representative body as this to be designated for so important a position, stirs my feelings of gratitude beyond expression. Although fully conscious of my inability to follow except with unequal steps my predecessors in the judicial paths they have so clearly marked out, yet should your action be approved by the people, I trust by patient toil, honest endeavor, and strict application to prove myself not wholly unworthy the confidence of my friends and the partiality of the Convention.

The properties surrounding the position in which your action has placed me, of course, if ratified by the people, will preclude any further active participation on my part in future political contests. But be assured my action and sympathies will always go out to the great and noble party of which I have so long been a member so long as it remains true to its early memories and the inspirations that gave it birth.<sup>61</sup>

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<sup>61</sup> *Minneapolis Morning Tribune*, September 10, 1874, at 3. The convention closed with this peroration about the candidates from former Governor Horace Austin:

Ex.-Gov. Austin was next introduced. He was not ashamed to be a high private [in the Civil War army]. He referred to Judge McMillan as a gentleman who had adorned the Supreme Court of the State for the past sixteen years and predicts that it is not in the gift of any other party to name a man who will come within ten thousand of beating

**As expected the *Minneapolis Daily Tribune* extolled the nominees:**

**Our Candidates.**

**Hon. S. J. R. McMillan, was yesterday nominated by the State Convention for Chief Justice, is too well known to need commendation at our hands, not as a politician, but as a sterling lawyer, an able, upright judge, and a man of the strictest integrity. There is probably not a man in the State of Minnesota so eminently fitted, by legal attainments and personal qualifications, for the position of Chief Justice of the State. Having already served for sixteen years as Associate Justice of the Supreme Court, he brings to his new position a large experience and perfect familiarity with his duties. There is no man in the entire legal profession of this State who is his superior in legal ability or personal worth. His election is beyond question.**

**Hon F. R. E. Cornell, of this city, who was nominated for Associate Justice, we have heretofore spoken of at length. The nomination by acclamation accorded him was a deserved tribute to his ability and to his standing in the**

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him. Referring to Hon. F.R.E. Cornell, Gov. Austin spoke of him in the highest terms. – as a man and a jurist. He had been honored for two terms (sic) with the office of Attorney General of the State, four years of that time during the speaker's administration, and the Governor had thus in his official intercourse been able to thoroughly know and appreciate the man. He knows Mr. Cornell to be thorough, cautious, honest and never failing in the discharge of every duty, and is filled with the faith that among all the eminent lawyers of the State not one is the peer of General Cornell. He reminded the delegates that they had been instrumental in placing these candidate before the people, and must not leave them to suffer defeat, and he counselled them and Republicans generally to wake up, take their coats off, roll up a good old fashioned majority of 10,000 or 15,000 for the ticket. The Governor then proceeded to set the Republican Party up in both alleys, and run the opposition into the ground, after which the convention adjourned.

***Saint Paul Daily Pioneer*, September 10, 1874, at 3.**

community. He has been a resident of the State and a leading practitioner at the bar for twenty years, has served several terms in the Legislature, and six years Attorney General. He bears a spotless reputation for honesty and integrity, while for ability he is the peer of any man in his profession in this State. Gov. Austin yesterday bore testimony to his valuable services to Minnesota during the four years he was associated with him in official life. With McMillan and Cornell on the Supreme Bench of the State, Minnesota will take rank with the highest Judiciary of the land.

We cannot forbear, in this connection bearing testimony to the sterling worth and professional ability of Hon. Geo. B. Young, who has so ably filled the position of Associate Justice, by appointment for the past six or eight months. Mr. Young is a young lawyer of unquestioned ability who has acquitted himself with great credit during his brief term of office. The profession accord to him the highest praise for the able manner in which he has acquitted himself upon the bench. It is no discredit to him whatever that the convention preferred an older and better known lawyer for the position. Had Mr. Young been widely known as Gen. Cornell, he would have found no difficulty, with his ability, in having secured the nomination. But he was scarcely known outside of Minneapolis, while Mr. Cornell's name is familiar to every resident of the State. Mr. Young can well afford to step aside for a season, and wait, with the assurance that his merits are recognized and the service he has rendered fully appreciated. He is too able a man to remain long in the ranks.<sup>62</sup>

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<sup>62</sup> *Minneapolis Daily Tribune*, September 10, 1874, at 2.

**Justice McMillan was thought so well qualified that the *Saint Paul Daily Pioneer* encouraged the Democrats to also nominate him. From a September 10th editorial:**

**Judge McMillan has earned his title to the chief judicial ermine by a long career of usefulness and honor, and his decisions in the railroad cases which have come before him will commend him to the warm regard, if not the active support, of the Anti-Monopolists throughout the State. Indeed, we believe no more graceful or sensible thing could be done by the opposition, than to ratify this excellent nomination. The time is rapidly going by when candidates for judicial place are required to make partisan zeal the test of popular favor. In any event, the opposition will be put to their metal to secure a candidate who can worthily contest claims with Judge McMillan. Any other sort of candidate will find it a superfluous expense to pay for ballots embodying his name.**

**Mr. Cornell, although a lawyer of rare ability and a gentleman of unexceptional honesty, is without the judicial experience of his associate, and has yet made no record entitling him to the special favor of the Anti-Monopolists. But his election will be regarded as a calamity by no fair-minded man, and therefore the people may be congratulated upon the fact that if both the gentleman nominated by yesterday's Convention should be elected, the Supreme Bench of the State will continue to be honestly and ably tenanted.<sup>63</sup>**

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<sup>63</sup> *Saint Paul Daily Pioneer*, September 10, 1874, at 2. The *Winona Daily Republican* was more defensive about Cornell:

**The nominations of the Republican State Judicial Convention at Minneapolis, on Wednesday, will, we have no doubt, be generally approved by the people of Minnesota. Judge McMillan, the present**

**The Democratic press was not enamored with Cornell. The *St. Paul Dispatch* did not mince words in an editorial on September 10th:**

**Chief Justice McMillan is a man of honor, an incorruptible judge, a citizen of the very highest virtue, and a lawyer to lawyer, if not of transcendent abilities, of thorough good sound sense, and a clear understanding of the principles of justice and equity. He has not an enemy in the world and is too good to provoke antagonisms, and too brave not to meet those who trust.**

**His associate on the ticket, Cornell, is a soured, bigoted railroad pettifogger with the one title, and that is self, and with but one country, one universe, one God, and that is Minneapolis. In accepting the nomination for Associate Justice of the Supreme Court of Minnesota, he displayed his innate depravity, want of any pretense to delicate sensibility, and his utter unworthiness for the**

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**incumbent of the chair of Chief Justice by appointment of Gov. Davis last Winter, is a man whose purity of character, and judicial ability are unquestioned. His record as a citizen, a lawyer and a judge, is simply unassailable.**

**Hon. F. R. E. Cornell, the nominee for Associate Justice, is well and favorably known throughout the State as an able, clear-headed lawyer and an upright man. His six years of service as Attorney General, added to his previous experience as a member of the Legislature for several terms have made the public so familiar with his character and ability that commendation seems hardly necessary. The only objection which the opposition can bring against him is the flimsy one that he has sometimes been employed to do legal work by Railroad Companies. If this be counted as a disqualification for the office of Judge, it would deprive the bench of the services of the most eminent lawyers and best men in the State. It is enough to know that Mr. Cornell as an advocate before the courts has never betrayed the cause of justice; that he is not an officer nor a stockholder of any railroad company; and that he has no interest whatever that can be affected by a decision of the legal questions now pending, or that are likely to be brought before the Supreme Court, for judgment. We have no doubt that the Judicial ticket will be triumphantly elected.**

***Winona Daily Republican*, September 10, 1874, at 2.**

judicial character, by a panegyric on party, thus, at the outset, assuming the rule of a political partisan. The people of Minnesota did not want on the bench of the Supreme Court a politician neither Republican nor Democrat, and what is more, will not have one. Mr. Cornell may not play the flattering unction to his soul that Minneapolis can elect him – his position is one of privacy, and when the *Dispatch* shall have presented to the State his biography, as it is the intention to do so, there will not be a dissenting voice.<sup>64</sup>

Chapter Seven.  
The Democratic state convention  
and the reaction of the press  
to the nominations.

The Democrats convened in the Music Hall in St. Paul at noon on Thursday, September 23, 1874. In an attempt to broaden the Party's support, it was called the "Democratic

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<sup>64</sup> *St. Paul Evening Dispatch*, September 10, 1874 at 4 (paragraph on congressional nomination omitted). In the same issue, the *Dispatch* carried a short, sarcastic description of the Convention:

The Republican State convention at Minneapolis on the 9th was a harmonious body. It was almost entirely composed of the inns, and there was no occasion for quarreling, as everybody was already supplied. The withdrawal of Judge Young from the contest for Associate Justice left the field open for the paid railroad attorney, F.R.E. Cornell, and he was loaded on alacrity.

The platform has the merit of brevity. In fact it was so short that it embraced no resolution of thanks to the noble and honest Republicans on the Senate committee who aided in exposing McIlrath's peculations. The convention was evidently content to stand upon the record that "The history of McIlrath's administration is substantially that of the Republican Party of the State." And so it is. There is no one of desire should take issue on that point. . . .

So much interest was felt in the coming District Convention that there was little or no interest in the State gathering, and the whole affair was one of the tamest political assemblages on record.

*Id.* Parts of the *Dispatch's* editorial were quoted in the *Chatfield Democrat* under the headline "Railroad Attorney for Justice of the Supreme Court." *Chatfield Democrat*, September 19, 1874, at 2.



**-Liberal Republican Convention” and sometimes included Anti-Monopolists.<sup>65</sup>**

**After delegates were seated, the convention adopted a “platform of interests”, which according to the *St. Paul***

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<sup>65</sup> An “Anti-Monopolist County Convention” was held in Wayzata, Hennepin County, on September 16, 1874. It nominated delegates to the Democratic State Convention held a week later. Among the delegates was Eugene M. Wilson of Minneapolis, who chaired the resolutions committee. It adopted four resolutions, two of which criticized monopolies:

*Resolved*, that we reaffirm the principles upon which we entered into the political fight a year since, against inefficiency and corruption in office, and the unjust discrimination of monopolies against the people.

....

*Resolved*, that we will support none but honest men for State and national offices; those whom we can depend upon without doubt to stand by the interests of the people against the power of wealthy monopolies, and the corrupting influences of shameless lobbies.

*St. Paul Evening Dispatch*, September 16, 1874 at 5. The early anti-monopolists crossed party lines, according to Professor Steve L. Piott:

People who thought about the sundry economic happenings gradually acquired a name for themselves. They were “anti-monopolists.” The label covered a multitude of urges and longings. It applied to those who resisted the process of monopolization itself, the ever-increasing size and numbers of economic concentrations and exclusiveness of control over goods and services. And those who worried about the implications of the monopolistic trend—the elimination of competition, economic opportunity, and authentic republican government—were also called anti-monopolists. Their ranks included people of many tendencies. While it is probably fair to describe some of them as “disaffected modernists” and others as “nostalgic traditionalists,” they shared a common presumption: they did not like the tilt of the “new” America. Who were they? There are mainly producer-oriented groups of farmers, workers, or merchants. Though they were united in the common belief that their economic independence had been stolen, their perceptions of that independence differed. Some basically accepted this economic system and longed for the continued opportunity to compete equally in it. Others tended to reject the new conditions that had turned them into either wage slaves or debtors, and they sought to return economic circumstances to an earlier time. Both groups had a common enemy, monopoly, and for twenty years their anti-monopoly movement sought solutions within a dominant inducer-oriented framework.

Steven L. Piott, *The Anti-Monopoly Persuasion: Popular Resistance to the Rise of Big Business in the Midwest* 12-13 (Greenwood Press, 1985).

***Press* was “mainly a copy of the New York Democratic platform.”<sup>66</sup> It exposed one reason why Democrats were a minority in the state for most of the post-bellum period—they could not slip from the noose of the War. The platform began by declaring that “the special occasion which brought the Republican party into being has long since ceased to exist....” That phrase “special occasion” is a euphemism for the institution of slavery. The first plank of the platform affirmed Minnesota Democrats’ support for Southern States, still occupied by federal troops:**

**Believing the present disastrous condition of the Southern States to be largely due to the corrupt rule of carpet-bag politicians, who have plundered and impoverished the people, intensified the prejudices of race, and driving the communities to the verge of civil war; knowing that this state of affairs has been developed during the administration of President Grant and been fostered by the Republican party and despairing of relief except through a radical change of policy—we demand the maintenance of a just and impartial policy towards the people of the South whereby both races will be protected in all their rights, the expulsion of the thieves, and perfect equality before the law for all persons without regard to race, color, or political opinion.**

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<sup>66</sup> *St. Paul Daily Press*, September 24, 1894, at 4. The *Press* could not resist satirizing the convention delegates:

**The same sprinkling of dead bodies was observed which has given the sepulchral air to other conventions which have preceded this one. The same gray-haired and genial veterans who come to St. Paul to pass Democratic resolutions and then go home to get beautifully licked, were on hand, smiling, cheerful and constitutionally hopeful. Nothing but final dissolution can ever hope to change the character of these delegations to the Democratic State conventions, and some of them will undoubtedly kick the screws out of their coffin lids after they are comfortably buried.**

**The Democratic Platform is posted in Appendix 12, at 151-154.**

**This resolution likely was inspired by federal attempts to subdue a violent insurrection to restore white supremacy in Louisiana in 1873-1874.<sup>67</sup> It must have offended many Minnesota voters and could not have attracted them to "the Democracy" as it called itself. The *St. Paul Daily Press* was struck by the sheer hypocrisy of the platform:**

**The Democratic platform adopted yesterday by the state convention is sounding brass and tinkling cymbal. There is not a distinctive Democratic principle in it. It is simply a dying echo among the hills of declarations of principle which the Republican Party has for years been embodying in the legislation and policies of the country. It is a faint effort to pass off the Democratic party as an eligible successor to the boots of the Republican Party, when it has done kicking. Still it must have cost the Bourbons who run the machine a painful degree of self-abnegation not to spit out red-hot fire on the platform which the policy required them to adopt, declaring for "a just and impartial policy towards the people of the South, whereby both races will be protected in all of their rights," in face of the efforts of their Democratic brethren in the South**

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<sup>67</sup> When the *Minneapolis Daily Tribune* published the Democratic platform it inserted several headings or captions to let the readers know the subjects of particular resolutions. Before the first resolution, *Tribune* editors inserted the phrase "THE LOUISIANA REBELLION UPHELD."

For an account of the "rebellion" in Louisiana in 1873-1874, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* 550-551 (Harper & Row, 1988) ("The situation worsened in 1874 with the formation of the White League, openly dedicated to the violent restoration of white supremacy....In Red River Parish, the campaign degenerated into a violent reign of terror, which culminated in August [1874] in the cold-blooded murder of six Republican officials.").

Minnesota newspapers printed articles on these racial revolts. E.g., *Minneapolis Daily Tribune*, October 1, 1874, at 2 ("White Leagues and Southern Democracy"); *Dodge County Republican*, October 3, 1874, at 2 ("The Southern Rebellion—Its Extent and Consequences"); *Minneapolis Sunday Tribune*, October 25, 1874, at 1 ("Louisiana....Arrests for Violation of the Enforcement Act of Shreveport—St. Mary's Parish Coalition").

to deprive one of the races of any rights. It was hard for them to swallow the declaration in favor of "equal and exact justice to all men," in face of the antecedents of the Democratic party which are identified with a perpetual war on that principle for the last forty odd years.<sup>68</sup>

The editors of the *Minneapolis Tribune* were likewise struck by the backwardness of the party, which it likened to the "old pro-slavery Democratic camp."<sup>69</sup>

The convention continued. After adopting the platform, the delegates quickly and without debate nominated candidates for the Court. From the *Dispatch*:

On motion of W. J. Whipple, Winona, the convention then proceeded to vote for a candidate for Chief Justice.

Judge McDonald inquired at this point if Hon. M. J. Severance would accept the nomination. Being answered in the negative he nominated Judge Wescott Wilkin, St. Paul. Judge Wilkin was made the nominee without a dissenting voice.

The nomination of Associate Justice was then taken up. Hon. J. N. Castle, Washington, nominated Hon. William Lochren, Hennepin, whose nomination like that of Judge Wilkin, was carried by unanimous vote.

The nominations made, calls were made for Judge Lochren and Hon. Ignatius Donnelly. The former not being present, Mr. Donnelly responded and made a short but most telling speech of what

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<sup>68</sup> *St. Paul Daily Press*, September 24, 1874, at 1 (the remainder of the editorial about the alleged embezzlement of school funds by former State Auditor McIlrath is omitted).

<sup>69</sup> *Minneapolis Daily Tribune*, September 24, 1874, at 2. The complete article is posted in Appendix 12, a 154-156t.

**which we can give but the following brief synopsis:**

**He said he was not prepared to speak and had not expected to have been called on; he been laboriously engaged for some weeks passed in editing a newspaper which was published solely to advance the interests of the cause they represented. He congratulated them upon the ticket they had nominated; spoke of Judge Wilkin in the highest terms and referred to the fact that Hon. Wm. Lochren had entered the Army during the war as a private soldier, and had risen to the rank of Captain. No man could doubt his fidelity to his country; and none who know him could doubt his ability and fairness and fitness for the place of Judge. He referred to the Platform and was glad to see that it placed this movement before the people, not as a partisan affair, but in the broad light of an appeal to the whole people without regard to old party distinctions. The issue really was: could the American people forget everything else but the dangers which threaten their prosperity and their liberties and unite in an earnest, thorough effort for reform. He appealed to them to stand by the candidates, and have nothing and leave nothing undone. A spirit is abroad among the people which insurors triumph if we are only true to ourselves....**

**Hon. C. E. Flandrau moved that Hon. E. M. Wilson be appointed a committee of one to inform Judge Lochren of his nomination and Hon. Wm. Lee of St. Paul a like committee, to inform Judge Wilkin.<sup>70</sup>**

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<sup>70</sup> *St. Paul Evening Dispatch*, September 24, 1874, at 8. Neither Wilkin or Lochren attended the convention.

**The *St. Paul Evening Dispatch* issued a lengthy editorial supporting the Democratic nominees for the Court:**

### **THE CONVENTION YESTERDAY.**

**The platform adopted is good, and the nominations made yesterday are in every sense of unexceptionable. To the former not even the Republicans are able to file an objection, and to the latter there is a unanimous response of approval. . . .**

**It would be a work of supererogation here, where he is so well known, to pass an encomium or to attempt to add to the high character and well-established reputation of Judge Wescott Wilkin. Eminently distinguished for these high and rare requisites which constitute the judicial character, deeply imbued with a love of the good and the right, thoroughly versed in the principles of equity and justice, familiar with the rules and forms of law, of ripe experience and of conscientiousness delicate as the sensitive flower, loved both in private and public life by all who know him for the shining qualities that adorn human nature, no words of ours can brighten the fame or render dearer the name of Wescott Wilkin. He is particularly the favorite of Ramsey county, but the wisdom of his decisions, the impartiality of his charges, the dignity, ability and fame of his judicial career have gone forth into all the State and far beyond its borders. And if any man in Minnesota deserved promotion and recognition that man is Judge Wescott Wilkin.**

**Hon. William Lochren, the nominee for Associate Justice, is one of the ablest, purest and most conscientious lawyers in Minnesota. In private life, he ranks as a citizen of the highest virtue. As a soldier, senator, lawyer, and as a man, he has**

distinguished himself for private and public worth. He is far superior to Cornell, ex-Attorney General, and railroad attorney. . . . Cornell is a bitter partisan, not neglecting in his speech accepting the judicial nomination, to utter a disgusting political tirade. What else could be expected of a hired railroad attorney, of a man who deliberately prostituted the office of Attorney General of Minnesota to secure the escape of a defaulting State Treasurer because that State Treasurer was a member of his own party.<sup>71</sup>

On the other hand, the *St. Paul Daily Press* was unsparing in its dismissal of William Lochren:

The Democratic State Convention yesterday nominated Judge Wescott Wilkin, of this city, for Chief Justice, and William Lochren, of Minneapolis, for Associate Justice. These are very respectable nomination; but they are objectionable. As for Judge Wilkin, the people of Ramsey county think too highly of him and need his services too much in the judicial office which he has so long filled with credit to himself and advantage to the public interests, to spare him for another position already filled by a most estimable gentlemen to the great satisfaction of of the people of the whole State.

As to Mr. Lochren we know nothing of his qualifications for the position for which he has been named. The only professional achievement with which his name is identified in our recollection being the remarkable advice he is reputed to have given Hoy and Keegan that Gordon's bail-

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<sup>71</sup> *St. Paul Evening Dispatch*, September 24, 1874, at 4 (paragraph regarding a defective indictment issued against the former state treasurer and final self-congratulatory paragraph are omitted).

piece constituted a sufficient warrant for his arrest wherever he might be found, in pursuance of which professional advice they and others found themselves uncomfortably lodged in a British Bastille, from which they were only extricated with a great deal of expense and difficulty.

These gentlemen have plenty of leisure behind the iron bars of their fort Gary prison to mediate on the judicial qualification of their learned counsel, and we gladly leave the question to their determination.<sup>72</sup>

This editorial spotlights a potential weakness in the candidacy of any trial lawyer running for public office: actions taken while representing a client in a single case are used to besmirch his qualifications and reputation earned over many years at the bar. In this instance, however, William Lochren survived the editorial assaults during the 1874 campaign and went on to enjoy a lengthy career on the bench.

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<sup>72</sup> *St. Paul Daily Press*, September 24, 1874, at 2 ("The Democratic Judicial Nominations"). The *Mower County Transcript* also remembered Lochren's participation in the Lord Gordon fiasco:

The Hotch Potch convention met at St. Paul yesterday, and nominated Judge Wescott Wilkin, of St. Paul for Chief Justice, and Wm. Lochren of Minneapolis for Associate. Judge Wilkin is well known and appreciated at home, while Lochren gained considerable notoriety as the attorney who informed Hoy and Keegan that Lord Gordon's bail piece was a sufficient warrant upon which to arrest that worthy. Acting upon his advice they got into a British prison, and Fletcher,—into a "hell of a fix." Maybe he would make a safe Judge, but we prefer to trust Cornell. The platform is only a reiteration of republican principles, which have been enforced and illustrated by the party during the last decade.

*Mower County Transcript*, September 24, 1874, at 2. For the saga of the imposter Lord Gordon Gordon, see William Watts Folwell, note 48, at 362-388.



## Chapter Eight. The campaign.

Our story now turns to the campaign. While the only state-wide candidates were for the Supreme Court, there were also Congressional and county seats at stake. The parties enlisted prominent men to deliver speeches around for their ticket; those speakers surely touted their judicial candidates who did not actively campaign.

The following speakers' list is from the *Minneapolis Sunday Tribune*, October 18. Governor Davis is missing.

**THE CAMPAIGN.**

**Engagements of Public Speakers.**

**HON. WILLIAM WINDOM.**

Friday, October 23d, at St. Paul.  
 Saturday, October 24th, at Minneapolis.  
 Monday, October 26th, at Stillwater.  
 Tuesday, October 27th, at Anoka.  
 Wednesday, October 28th, at 2 P. M., at Elk River.  
 Wednesday, October 28th, at Monticello.  
 Thursday, October 29th, at St. Cloud.  
 Friday, October 30th, at Richfield.

**HON. WM. WINDOM, HON. C. COMERFORD AND J. B. A. PARADIS.**

Saturday, October 24th, at 2 P. M., at Osceola.

**HON. J. C. COMERFORD.**

Friday, October 23d, at Dayton.  
 Monday, October 26th, at Rush City.  
 Wednesday, October 27th, at North Branch.  
 Thursday, October 29th, at Hinckley.

**GEN. F. A. HUSHER.**

Monday, October 19th, at Lake Park.  
 Tuesday, October 20th, at Otter Tail City.  
 Wednesday, October 21st, at Fergus Falls.  
 Thursday, October 22d, at Tordensfold.  
 Friday, October 23d, at Alexandria.  
 Saturday, October 24th, at Glenwood.  
 Monday, October 26th, at Anderson.  
 Tuesday, October 27th, at Morris.  
 Wednesday, October 28th, at Breckenridge.  
 Thursday, October 29th, at Herman.  
 Friday, October 30th, at St. Paul.  
 Saturday, October 31st, at Minneapolis.

**GEN. LEVI NUTTING**

Will speak at New Ulm, Tuesday, October 20th.  
 Fort Ridgley, Wednesday, October 21st.  
 Birch Cooley, Thursday, October 22d.  
 Redwood Falls, Friday, October 23d.

**HON. W. W. BILLSON.**

Medford, Tuesday, October 20th, 7 P. M.  
 Byron, Wednesday, October 21st, 7 P. M.  
 St. Charles, Thursday, October 22d, 7 P. M.  
 Saratoga, Friday, October 23d, 7 P. M.

**EX-GOV. HORACE AUSTIN.**

Farlington, Monday, October 19th.  
 Cannon Falls, Tuesday, October 20th.

**HON. MARK H. DUNNELL.**

Mankato, Monday, October 19th, 7 P. M.  
 Madelia, Tuesday, October 20th, 7 P. M.  
 Lake Crystal, Wednesday, October 21st, 2 P. M.  
 Garden City, Wednesday, October 21st, 7 P. M.

**A. C. HICKMAN, ESQ., AND M. W. GREEN, ESQ.**

Alma City, Tuesday, October 20th, 7 P. M.  
 Wilton, Wednesday, October 21st, 7 P. M.  
 Claremont, Thursday, October 22d, 7 P. M.  
 Rice Lake, Friday, October 23d, 7 P. M.

All these meetings will be held in the evening, and the local committees will make necessary arrangements.

C. H. PETTIT,  
Ch'n Rep. State Cen. Com.

The Democrats had a smaller stable of speakers. From the *St. Paul Dispatch*, October 29:

**EVENING DISPATCH, OCT. 29, 1874.**

**GRAND RALLY**

**At the Opera House Saturday Night.**

Hon. Eugene M. Wilson, next M. C. from the Third District. Hon. Ignatius Donnelly and others will speak at the St. Paul Opera House next Saturday night.

The parties' slates for the Court, Congress and sundry county offices were published in partisan newspapers. From the *Worthington Advance*, October 10:

**Republican Ticket.**  
**STATETICKET.**  
*For Chief Justice of the Supreme Court,*  
S. J. R. McMILLEN.  
*For Associate Justice of the Supreme Court,*  
F. R. E. CORNELL.  
*For Congress.*  
MARK H. DUNNELL.  
Of Steele County.  
**LEGISLATIVE TICKET.**  
*For Representative.*  
CHAS. F. CROSBY, of Rock.  
**COUNTY TICKET.**  
*For County Attorney.*  
M. B. SOULE.  
*For Commissioner—Third District.*  
I. P. DURFEE

Rarely a party paper printed the slate of the opposition. This from the *Worthington Advance*, a Republican paper,



on October 24th, was accompanied with a warning to its loyal readers:

### ***THE DEMOCRATIC TICKET.***

Below we give the Democratic ticket so that our readers may know who are the candidates. There will no doubt be split tickets in the field. Look at your tickets before voting and see that no Democratic names are smuggled in among the names of the Republican candidates:

*For Chief Justice.*

**WESCOTT WILKIN, of Ramsey.**

*For Associate Justice.*

**WILLIAM LOCHREN, of Hennepin.**

*For District Judge.*

**DANIEL BUCK, of Blue Earth.**

*For Member of Congress.*

**FRANKLIN H. WAITE, of Blue Earth.**

*For Representative.*

**LEONARD ALDRICH, of Murray.**

*For County Attorney.*

**BURTON N. CARRIER.**

*For County Commissioner—3d District.*

**LUCIAN B. BENNETT.**

Attention is called to an article from the *St. Paul Press* showing the magnitude of the interests at stake in the coming election. A Republican triumph in Minnesota is necessary to the development of the State.

The home counties of candidates were usually but not always listed. From the *Mankato Weekly Review*, October 13th (left) and the *Mower County Transcript*, October 22nd (right):

**THE REVIEW.**  
**MANKATO TUESDAY, OCT. 13, 1874.**

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For Representative in Congress—First District.  
**FRANKLIN H. WAITE,**  
 Of Blue Earth County.

For Chief Justice,  
**HON. WESCOTT WILKIN,**  
 Of Ramsey County.

For Associate Justice,  
**HON. WILLIAM LOCHREN,**  
 of Hennepin County.

For Judge of the Sixth Judicial District.  
**DANIEL BUCK,**  
 of Blue Earth County.

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FOR LEGISLATIVE REPRESENTATIVES,  
**D. W. BURLESON,**  
**CHAS. F. WARNER,**  
**ROBERT H. HUGHES,**  
**LYSANDER COOK,**  
**E. L. CHAMPLIN.**

FOR COUNTY AUDITOR,  
**S. W. GLEASON.**

FOR COUNTY ATTORNEY,  
**A. R. PFAU.**

FOR JUDGE OF PROBATE,  
**JEROME E. PORTER.**

FOR COURT COMMISSIONER,  
**WM. B. TORREY.**

FOR COUNTY COMMISSIONER—1st DISTRICT,  
**HENRY RUEGG.**

**THE TRANSCRIPT**  
**OFFICIAL PAPER OF THE COUNTY.**

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A. A. HARWOOD, Editor & Proprietor.

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—AUSTIN, MINN.—  
 THURSDAY MORNING, OCT. 22, 1874

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**State Ticket.**

For Chief Justice—  
**S. J. R. McMILLAN.**

For Associate Justice—  
**F. R. E. CORNELL.**

For Congress, First District—  
**M. H. DUNNELL.**

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**County Ticket.**

For Representatives—  
**C. F. GREENING,**  
 Of Grand Meadow,  
**JOHN S. IRGENS,**  
 Of Adams.

For Sheriff—  
**R. O. HALL.**

For Auditor—  
**P. T. MCINTYRE.**

For Register of Deeds—  
**WM. M. HOWE.**

For County Attorney—  
**LAFAYETTE FRENCH.**

For Judge of Probate—  
**SAMUEL HARTER.**

For Commissioners—  
**A. J. FRENCH,**  
 District No. 4.  
**WM. RICHARDS,**  
 District No. 5.

For County Surveyor—  
**G. H. ALLEN.**

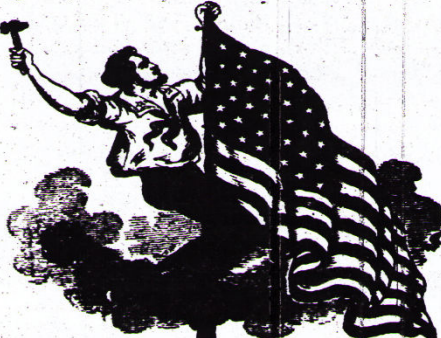
For Coroner—  
**C. B. THRALL.**



At times, the Democratic Party was given a different name. From *The Mankato Review*, November 3, 1874 (left), and the *Minneapolis Sunday Tribune*, October 18 (right):

**THE REVIEW.**  
MANKATO, TUESDAY, NOV. 3, 1874.

**Farmers' and Work-  
ingmen's Ticket.**



For Chief Justice of Supreme Court,  
**WESCOTT WILKIN.**  
For Associate Justice,  
**WM. LOCHREN.**  
For Congress, First District,  
**FRANKLIN H. WAITE.**  
For Judge, Sixth Judicial District,  
**DANIEL BUCK.**  
For Legislative Representatives,  
**DANIEL W. BURLESON,  
CHARLES F. WARNER,  
ROBERT H. HUGHES,  
LYSANDER COOK,  
E. T. CHAMPLIN.**  
For County Auditor,  
**S. W. GLEASON.**  
For County Attorney,  
**A. R. PFAU.**  
For Judge Probate,  
**JEROME E. PORTER.**  
For Court Commissioner,  
**WM. B. TORREY.**

**ANTI-MONOPOLY NOMINATIONS.**

**STATE TICKET.**  
For Chief Justice of the Supreme Court—**WESCOTT WILKIN.**  
For Associate Justice of the Supreme Court—**WILLIAM LOCHREN.**  
For Congress, Third District—**EUGENE M. WILSON.**

**COUNTY TICKET.**  
For County Auditor—**MAHLON BLACK.**  
For Register of Deeds—**THOMAS S. KING.**  
For Sheriff—**WM. E. EVANS.**  
For County Attorney—**JAMES W. LAWRENCE.**  
For County Surveyor—**B. F. CHRISTLEIB.**  
For County Coroner—**P. O. CHILSTEOM.**  
For Court Commissioner—**C. F. PILLSBURY.**  
For County Commissioner at-Large—**MARTIN CONZENT.**  
For County Commissioners—1st Dist., **M. W. GETCHELL**; 2d Dist., **Geo. E. HUX**; 4th Dist., **J. G. McFARLANE**; 5th Dist., **SAMUEL LYDIARD.**

**LEGISLATIVE TICKET—25TH DISTRICT.**  
For Senator—**JOHN S. PILLSBURY.**  
For Representatives—**W. HAMMONS, A. B. ODELL.**

**26TH DISTRICT.**  
For Representatives—**W. E. JONES, EDWARD MURPHY, R. P. RUSSELL, WM. FINCH.**

**27TH DISTRICT.**  
For Senator—**JOHN VANDER HORCK.**  
For Representatives—**FRANK L. MORSE, DANIEL BASSETT GORDON JACKINS.**

The Democrats were given different names even by Democratic-leaning papers. From the *Chatfield Democrat*, October 24, (left), and the *St. Paul Evening Dispatch*, October 28, 1874 (right):

**CHATFIELD DEMOCRAT.**  
**J. H. McKENNY & SON, Editors.**  
**CHATFIELD, MINNESOTA**  
 Saturday Morning, October 24, 1874.

**Democratic Liberal Republican Nominations.**

**State Ticket.**  
 For Chief Justice of Minnesota,  
**WESCOTT WILKIN**, of Ramsey County.  
 For Associate Justice,  
**WILLIAM LOCHREN**, of Hennepin county.

**District Ticket,**  
 For Congress--First District,  
**Hon. FRANKLIN H. WAITE**,  
 Of Mankato.  
 For State Senator--Third District,  
**Hon. J. N. GRALING.**  
 For Representative--Second District,  
**Hon. ROBERT L. FLEMING.**  
 For Representative--Third District,  
**MARTIN QUINN.**

**County Ticket**  
 For County Auditor, **WILLIAM BARTON.**  
 For Sheriff, **T. G. MOORE.**  
 For Co. Attorney, **J. R. JONES**  
 For Co. Surveyor, **O. H. CASE.**

**POLITICAL.**  
**Democratic-Republican Ticket.**

**State.**  
 FOR CHIEF JUSTICE.  
**WESCOTT WILKIN**, of Ramsey County.  
 FOR ASSOCIATE JUSTICE.  
**WILLIAM LOCHREN**, of Hennepin County.

**Congressional.**  
 FIRST DISTRICT.  
**FRANKLIN H. WAITE**, of Blue Earth County.  
 SECOND DISTRICT.  
**E. ST. JULIEN COX**, of Nicollet County.  
 THIRD DISTRICT.  
**EUGENE M. WILSON**, of Hennepin County.

**Ramsey County Ticket.**  
 For Auditor--**S. LEE DAVIS.**  
 For Judge of Probate--**OSCAR STEPHENSON.**

**COUNTY COMMISSIONERS.**  
 City Districts--**E. S. BLASDEL** and **WILLIAM LEE.**  
 Country Districts--**H. J. BRAINARD.**

**Senatorial and Representative Ticket.**  
 FOR SENATOR--23D DISTRICT.  
**WM. P. MURRAY.**  
 FOR REPRESENTATIVES.  
 First and Second Wards --**WM. CROOKS.**  
 Third Ward--**HUBERT H. MILLER.**  
 Fourth Ward--**JOHN X. DAVIDSON.**  
 Fifth Ward--**F. E. BELANO.**  
 Country Precincts--**LORENZO HOYT.**

On October 2nd, the *St. Paul Weekly Pioneer*, a Democratic paper, printed flattering sketches of the Party's two candidates, but disclosed nothing about their abilities to be appellate jurists:

**THE CANDIDATES FOR JUDGES.**

**Hon. Wescott Wilkin.**

**Hon. Wescott Wilkin, St. Paul, candidate for Chief Justice of the Supreme Court, is a native of Orange County, New York. He was graduated at Princeton College, New Jersey, and studied law with his father, Hon. William Samuel J. Wilkin, a distinguished lawyer, and member of Congress. He commenced practice in Sullivan County, and held the position of County Judge for four years. He came to St. Paul in 1856, the solicitation of his brother, the late Col. Alexander Wilkin, who was killed at the battle of Tupelo, and practiced his profession until 1864, when he was elected Judge of the District Court of this county, a position requiring eminent judicial attainments, and untiring application. How well the duties were discharged, and the estimate of the bar and people of his capacity and personal character, may be inferred from the fact, that in 1871, he became a candidate for reelection at the unanimous request for the members of the bar, which request was ratified at the polls by the unanimous vote of the people of the county.**

**Hon. William Lochren.**

**Hon. William Lochren, Minneapolis candidate for Associate Justice of the Supreme Court, was born in Ireland, but came to Vermont when very young with his parents, where he acquired a liberal education. In 1856 he settled in St. Anthony, and practiced his profession until the breakout of the rebellion, when he enlisted as a private in Company E of the First Minnesota Regiment, and carried his musket until just after the battle of Antietam, where he was promoted to a Second Lieutenancy. On the eve of the terrible battle of Gettysburg, he was made First Lieutenant. He was in every battle in which his regiment was**



engaged, and at the close of the war was honorably mustered out, and resumed the practice of the law. In 1868 he was elected State Senator and served in the Legislatures of 1869 and 1870. Lochren has held the position of City Attorney, and has been elected several times to the City Council. In 1866 he was the nominee of his party for Attorney General of the State. He is in the prime of life, full of mental and physical vigor, and is justly regarded as standing in the front rank of his profession.<sup>73</sup>

Three weeks before the election, the *St. Paul Weekly Pioneer* returned to the fray with an unusual editorial advocating a vote for Lochren for Associate Justice because of his war record. Military service was a factor in a governor's appointment of some district court judges in the post-bellum period but rarely did a newspaper rest its endorsement so openly on a judicial candidate's military service. From its October 16th issue:

Southern Minnesota papers of all parties, regard the nomination of F. R. E. Cornell for Associate Justice, as most unfortunate. They can be relieved from all embarrassment by supporting Hon. William Lochren for that position, who is just as good a lawyer, and fought in every battle in which the old Minnesota First was engaged. Such men are entitled to some recognition. Everybody promised it, at the time Mr. Lochren threw aside his law-books and shouldered his musket at the call of duty. It being admitted that in all essentials he is at least the equal of Mr. Cornell, would it not be well to redeem the obligations of the war, in such a case as this?<sup>74</sup>

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<sup>73</sup> *St. Paul Weekly Pioneer*, October 2, 1874, at 2.

<sup>74</sup> *St. Paul Weekly Pioneer*, October 16, 1874, at 4.



In a pre-convention editorial the *Dispatch* called Cornell "a soured, bigoted railroad pettifogger."<sup>75</sup> In mid-October, its torrent of vituperation, a staple of nineteenth century political journalism, continued:

There is not a member of the bar in Minnesota with the requisite ability, less qualified by qualities of mind, habits of thought, business inefficiency, bigoted and jaundiced opinions, interested complications with public questions, party prejudice and political animosities than F. R. E. Cornell. He is a bitter political partisan in the interest of only certain public schemes, and this fact alone, together with the additional purpose of harmonizing conflicting elements in the Republican Party, secured him the nomination. He is utterly unfit for the position and unworthy of the responsibilities and duties of the office.<sup>76</sup>

The *St. Paul Pioneer* joined the attack on Cornell:

In offering Mr. F. R. E. Cornell as one of its candidates for a position on the Supreme Judicial Bench of the State, the Republican party has deliberately insulted the masses of the people of Minnesota.

They probably could not have found a man who is more unworthy or undeserving of this honor, or whose election would be more dangerous to the interests of the laboring masses; supercilious, dogmatic and vain to an unusual degree, utterly destitute of sympathy with or for the common people; shallow and pretentious, and

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<sup>75</sup> *St. Paul Evening Dispatch*, note 64.

<sup>76</sup> *St. Paul Evening Dispatch*, October 17, 1874, at 4. The editorial continued with a discussion of the merits of the candidates for Chief Justice, concluding that both were qualified. A biography of Cornell in the *Dispatch* on October 16th is not on microfilm at the MHS; probably there were several editions of the paper that day and the one preserved on film does not have his caricature.

**so thoroughly trained in the role of a railroad attorney as to be wholly blind to any-thing else than the welfare of these corporations, his election would be a calamity indeed.**

**Then look at the record he has made while acting as Attorney General! In nearly every instance where his opinion has been called for to guide the co-ordinate branches of the government in the discharge of their duties, it has been antagonistic to the popular welfare and dictated by pride and supremely selfish considerations. The Seegar defalcations might have been avoided had he not neglected to do his duty as the law officer of the State. He permitted Mr. McIlrath to fill the office of State Auditor one entire term without giving any bonds as required by law, and thereby deprived the State of all chances to recover anything for his official speculation and defalcations which certainly amount to \$100,000, and perhaps \$500,000. It will not do to say that he did not know of the omission, for it was his place to see that no such omission occurred.**

**He was instrumental, we believe, in inducing Gov. Marshal to disregard Section 9 of Article 4 of the State Constitution, and appoint Mark H. Dunnell, who was thereby made ineligible, to the office of State Superintendent of Instruction, and is, therefore, justly chargeable with the latter's maladministration of the affairs of that office, and with his putting the State to an unnecessary cost of some \$150,000 for school books. In fact, Mr. Cornell's entire record proves him anything else than a fitting man for the position for which he is selected, and in nominating him, we repeat, the Republican party convention deliberately insulted the people of the State. He is a born monopolist, more fit for a railroad attorneyship than for any-**

thing else, and he should be suffered to remain in that congenial employment.<sup>77</sup>

As the election neared, the *Chatfield Democrat* aimed another volley at Cornell:

Don't vote for F. R. E. Cornell, the Republican nominee for Justice of the Supreme Court. He is one of the corrupt political ring that has ruled this State for years. It was he, as Attorney General, that cursed the State with Dunnellism, *contrary to the constitution*. It was he who saved Segar and Munch, the thieving State Treasurer's from indictment and legal prosecution.

It was he who kept mum when he knew ex-Auditor McIlrath had filed no bond as the law requires. It was he who refused to let the question of Judge Page's election go to the courts, but arbitrarily declared him legally elected, contrary to the positive prohibition of the State Constitution.

He has, for many years, been a salaried Railroad Attorney. He has sneered at and severely criticised all legislation restricting railroad companies in their extortions upon the people. He is a dangerous man to place in a position from whose decisions there is no appeal.<sup>78</sup>

It was difficult for the Republican press to attack the Democratic candidates.<sup>79</sup> William Lochren was now

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<sup>77</sup> *Chatfield Democrat*, October 24, 1874, at 4. This editorial was published first in the *St. Paul Pioneer* but the date of that issue has not been located.

<sup>78</sup> *Chatfield Democrat*, October 31, 1874, at 2 (italics in original).

<sup>79</sup> The *Winona Daily Republican* gave faint praise to the Democratic candidates after their nominations:

The Democratic Judicial Convention on Wednesday nominated Judge Wilkin, of the Second district, for Chief Justice, and William Lochren, of the law firm of Lochren & McNair, of Minneapolis, for Associate Justice. The candidates are men of fair ability and good reputation as

assisting Republican Attorney General George Wilson in the prosecution of ex-Auditor McIlrath while Judge Wilkin had bipartisan support from the bar in Ramsey County (he was unopposed when he ran for re-election in November 1871<sup>80</sup>). At least for the judicial candidates the Republican press was on the defensive, an uncharacteristic posture for it at this time. Defending Cornell from a "batch of lies" by the *Dispatch*, which it called "this common libeller," the *Tribune* resorted to quoting endorsements by former Governors Marshall and Austin and a resolution commending Cornell adopted by the recent convention though quickly adding that although Cornell himself was a member of the resolution committee he was unaware of the resolution.<sup>81</sup>

On the eve of the election, the *Dispatch* reprinted an article from the *Chicago Times* headlined "The Campaign of Corruption" predicting a close election:

The candidates for associate judge of the Supreme Court are undergoing the scathing ordeal of public criticism, although not nearly so severely as the Congressional nominees. F. R. E. Cornell, the Republican nominee, is denounced as a paid railroad attorney, and for his inefficiency and non-attendance to duty while in office. Wm. Lochrane (sic) of the opposition, is a man of tried legal attainments and great ability, being one of the best-read lawyers in the State. The fight here will be close, with the odds in favor of Lochrane (sic). The battle on the minor candidates wages with accustomed fierceness among

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lawyers, but there is nothing in their legal or political record that can be brought forward as an inducement for any citizen to support them in preferences to the Republican candidates for the same positions.

*Winona Daily Republican*, September 24, 1874, at 2.

<sup>80</sup> Journal of the House of Representatives, January 3, 1872, at 16.

<sup>81</sup> *Minneapolis Sunday Tribune*, October 17, 1874, at 1.

local politicians, but the decay and rottenness of the Republican party, especially in the administration of this State, is so glaring and abhorring, that the opposition will doubtless carry the day.<sup>82</sup>

Yet again the “opposition” fell short.

## Chapter Nine. The election.

The results of the election on November 3, 1874: <sup>83</sup>

### For Chief Justice

Samuel J. R. McMillan (Republican).....	51,506
Wescott Wilkin (Democrat).....	41,120
Write-in.....	130

McMillan received 55.5% of the vote, and Wilkin received 44.3%.

### For Associate Justice

Francis R. E. Cornell (Republican).....	50,977
William Lochren (Democrat).....	41,720
Write-in.....	12

Cornell received 55% of the vote and Lochren received 45%.

The editors of the *Tribune* celebrated the election results:

It is a subject for general congratulation that amid all the excitement of the election in this State yesterday—an election which involved

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<sup>82</sup> *St. Paul Daily Dispatch*, November 2, 1874, at 6. The author of this article was “O. Boydikins.”

<sup>83</sup> *Journal of the House of Representatives*, January 7, 1875, at 19-20; see also *1875 Blue Book* at 154-6.

National, State and local issues—the people kept steadily before them the importance of securing able, trustworthy and experienced officers to fill the vacancies upon the bench of the Supreme Court. Judge S. J. R. McMillan, who has occupied a seat upon the Supreme Bench for many years, and who has discharged the duties of Associate Justice in a manner which has won for him the respect and esteem of the entire bar of the State, and of all who have been brought in contact with him, was nominated by the Republicans and has been honored by the people of the State, with a vote which elects him to the office of Chief Justice by a majority which must be very flattering to him.

Hon. F. R. E. Cornell, of this city, the Republican candidate for Associate Justice, has also been elected by a large majority. This is a compliment to an honest, efficient, and trustworthy officer—one who, in the various positions of trust to which he has been called, has filled the measure of expectation—must be appreciated by him to the fullest extent. It is gratifying in the extreme to know that in the heat of a political contest of more than ordinary interest the people have had a just appreciation of the necessity of securing for the Supreme Bench the best talent, the greatest amount of experience, and the highest type of manhood to be found in the State, to occupy the highest judicial positions in their gift.<sup>84</sup>

On this note of triumph by the Republican establishment our tale ends.

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<sup>84</sup> *Minneapolis Daily Tribune*, November 4, 1874, at 2 (“The Judiciary”).

## **Chapter Ten. Conclusions.**

**Our final thoughts fall onto four familiar subjects: the Party, the Voters, the Court and George B. Young.**

**In the 1870s and beyond, the Republican Party was a loose gathering of men who shared certain political goals but resisted taking directions on judicial candidates from the Governor. Incumbents were vulnerable from challengers within the Party in these decades.<sup>85</sup> After a Party judicial district convention endorsed a candidate for the district court or the State Convention endorsed a candidate for the Supreme Court, the Party coalesced behind those nominees who most always were victorious.**

**The influence of the fractious Party press on building support for a favorite candidate within the Party before the State Convention, as in the case of Frank Cornell in 1874, and the entire ticket afterwards is discernable but impossible to measure.**

**The Party was still committed to the rule that each member of the Court should represent a different section**

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<sup>85</sup> Before 1912 when a non-partisan judiciary was instituted, a candidate for the Supreme Court or the District Court who was endorsed the Republican Party would be elected or re-elected. A century later, a judge who was an incumbent would be elected or re-elected. The determining factor in a judicial election in the nineteenth century was Republican Party endorsement and in the late twentieth and twenty-first centuries it was the status of incumbency. While county bars and bar associations have endorsed judicial candidates from the nineteenth century to the present time, those endorsements do not seem to have influenced elections as much as these other factors. In other words, since 1912 incumbency has replaced party support as the determining factor in judicial elections.

Incumbents are created by the Governor through his power of appointment because most vacancies on the bench are created by resignations. Although today Governors may occasionally appoint a political crony, they usually follow a strict evaluation process before selecting judges for the trial and appellate courts. Judicial elections in the late twentieth and twenty-first centuries, therefore, are determined by the Governor not by the preference of a political party as in the nineteenth. In other words, the wisdom of the Governor has replaced the preference of the Republican Party.

of the state. John Berry was from Southern Minnesota, McMillan from St. Paul, and the third seat was now occupied by a resident of Minneapolis.

Next, newspaper articles and editorials published before the Party Convention and during the campaign tell nothing about a candidate's ability to be a successful appellate judge—that is, to create a collegial environment, reason, research, write lucid opinions and so on. For example, George B. Young's youth and brief residency in Minnesota are cited time and again while William Lochren's military record is emphasized by the Democrats. The little voters knew about judicial candidates came from talks with neighbors and friends and from partisan newspapers. The candidates themselves did not give speeches. It is an undisputed fact that then and now voters know nothing—absolutely nothing—about the judges they elect.<sup>86</sup>

Third, with the elections of Samuel J. R. McMillan and Frank R. E. Cornell a period of unusual instability on the Court neared an end. Between July 1864 and May 1875, there were six Chief Justices: Lafayette Emmett (1858-1865); Samuel Wilson (1865-1869); James Gilfillan (1869-1870); Christopher Ripley (1870-1874); S. J. R. McMillan (1874-1875) and James Gilfillan again (1875-1894). There were five Associate Justices during this period—Samuel Wilson, S. J. R. McMillan, John Berry, George B. Young and F. R. E. Cornell—and two of them were promoted to be Chief Justice. Eight different men served on the three-member Court during this decade.

What influence did this "compositional turmoil" have on the operations of the Court? Perhaps not as much as it did in the early twentieth-first century when there was also rapid turnover on the Court. In the early twentieth-first century it takes a new member some time to acclimate

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<sup>86</sup> Except their names and whether they are incumbents.



herself to the Court, which has larger administrative responsibilities than it had in the 1870s. The Court that Frank Cornell joined on January 11, 1875, was one he knew well but it would quickly change. In a few weeks, Samuel J. R. McMillan would depart for the U. S. Senate and be replaced by James Gilfillan. Nevertheless, we may assume that Cornell had no difficulty in donning the "judicial ermine," to borrow a phrase of the day.

Finally, Republican Party delegates and the Party press did not, could not, see why Governor Davis appointed George B. Young to the Court. It would be injudicious to assert that the Party made a mistake when it preferred Frank Cornell over Young, but that suspicion may linger in the minds of a few students of the history of the Court.

## **Chapter Eleven. Epilogue.**

**What happened to the main characters in our story?**

Elected to a seven year term, S. J. R. McMillan served only a few weeks. On February 19, 1875, he was elected United States Senator by the legislature. He was a compromise who emerged after a many rounds of votes divided among Alexander Ramsey, Ignatius Donnelly, Governor Davis and others.<sup>87</sup> He was re-elected in 1881 and served until his term expired on March 4, 1887. He died on October 3, 1897, at age seventy-one. To replace him on the Court, Davis appointed James Gilfillan Chief Justice.

Francis R. E. Cornell served six years and five months. He died in office on May 23, 1881, at age fifty-nine. To replace him Governor Pillsbury appointed Daniel A. Dickinson Associate Justice.

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<sup>87</sup> The balloting is described by William Watts Folwell, note 48, at 85-87.

**George B. Young continued hearing and deciding cases to the end of his term. On January 11, 1875, he released his opinion in a famous personal injury case brought on behalf of a boy who was injured while playing around a railroad "turntable." *Keefe v. Milwaukee & St. Paul Railway Co.*, 21 Minn. 207 (1875). After leaving the Court, he maintained a private practice in St. Paul for the next three decades. He represented James J. Hill in several important railroad matters. He also served as Reporter for the Supreme Court from 1875 to 1892. He died on December 30, 1906, at age sixty-six.**

**Wescott Wilkin, one of the grand figures in the history of the Ramsey County bench, served until retirement in 1891. He died on May 12, 1894, at age seventy.**

**William Lochren practiced law in Minneapolis until 1881, when he was appointed Hennepin County District Court Judge; in 1893, President Cleveland appointed him Commissioner of Pensions. In 1896 he was nominated United States District Court Judge and, after confirmation, served until retirement in 1908. He died on January 27, 1912, at age seventy-nine.**

**Cushman Kellogg Davis, in some respects the central figure of our story, served one term as governor. He ran unsuccessfully for United States Senator in 1875.<sup>88</sup> It took him a decade after that defeat to regain stature and power within the Party. Elected United States Senator in 1887, he was re-elected in 1893 and 1899. He died on November 27, 1900, at age sixty-two.**

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<sup>88</sup> The decision of Governor Davis, only a year in office, to run for U.S. Senator is considered by historians a political blunder. Two decades later, another overly ambitious Governor succeeded at this gambit. On November 6, 1894, Governor Knute Nelson was re-elected but a few months later challenged incumbent U. S. Senator William D. Washburn. Nelson was elected to the Senate by the state legislature and resigned as governor. See Elmer E. Adams, "The Washburn-Nelson Senatorial Campaign of 1894-1895" (MLHP, 2016) (published first 1924).

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**Part 1.  
Introduction.**

**Electronic or website publishing encourages innovation, breaking from the rigid confines of print publications such as law reviews. It permits the author to reproduce primary and secondary source documents that would be relegated to a line in a footnote in a print publication, and this promotes the educational mission of his article. And so, for example, Supreme Court minutes and several newspaper articles and editorials about the Young-Cornell contest are posted in this Appendix. They may interest some viewers, others not at all.**

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**Part 2.  
Results of the General Election on  
November 4, 1873.**

**Cushman K. Davis was elected Governor of Minnesota in this election. The entire Republican slate was also elected.**

**Governor:**

<b>Cushman K. Davis (Republican).....</b>	<b>40,741</b>	<b>- 52.90%</b>
<b>Ara Barton (Democrat).....</b>	<b>35,245</b>	<b>- 47.56%</b>
<b>Samuel Mayall (Prohibition).....</b>	<b>1,036</b>	<b>- 1.35%</b>
<b>Scattering.....</b>	<b>35</b>	

**Lieutenant Governor:**

<b>Ferdinand Barto (Republican).....</b>	<b>41,352</b>
<b>Ebenezer Ayres (Democrat).....</b>	<b>35,639</b>
<b>Scattering.....</b>	<b>117</b>

**Secretary of State:**

<b>S. P. Johnson (Republican).....</b>	<b>38,654</b>
<b>J. H. Stevens (Democrat).....</b>	<b>38,094</b>
<b>Scattering.....</b>	<b>115</b>

**State Treasurer:**

Edwin W. Dike (Republican).....	39,642
Mons Grinager (Democrat).....	38,403
J. N. Sater.....	579
Scattering.....	305

**Attorney General:**

George P. Wilson (Republican).....	40,751
William P. Clough (Democrat).....	35,757
Scattering.....	302

Source: Journal of the House of Representatives, January 8, 1874, at 19.

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**Part 3.**

**IS CORNELL A "RAILROAD LAWYER"?**

On April 1-4, 1874, a few days before the Governor made his selection, the *St. Paul Daily Press* and the *Minneapolis Morning Tribune* traded editorial insults over potential appointees for Chief Justice. It began with an odd article in the *Press* on April 1st speculating why certain lawyers and judges would not be interested in or even qualify for the post. Its repetition of gossip that F. R. E. Cornell "had come to be popularly considered as a railroad lawyer" infuriated the *Tribune*, one of his long-time champions, which responded by accusing its down-river rival of opposing Cornell because he was from Minneapolis. *The Press* lamely replied that it too hoped that Cornell would receive the appointment. The three editorials follow.

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***St. Paul Daily Press,***  
**April 2, 1874, at 2. <sup>89</sup>**

## **The Chief Justiceship**

**It is not given to us to know the interior workings of the executive mind on this question, but we can conjecture as well as another; and we conjecture that the Governor is in a very unpleasant dilemma. What that dilemma is anyone can readily discover by supposing that he was Governor and was required to appoint a Chief Justice of the Supreme Court from the Republican lawyers of Minnesota.**

**"No difficulty at all," say the members of the St. Paul bar, "there is Judge Gilfillan, one of the finest judicial minds in the State, and Horace Bigelow, another."**

**"Hold, there are two reasons why they are not available. First, they would not accept appointment. They can't afford to give up the lucrative practice each enjoys for the meagre salary of a judge. Besides –**

**"Enough. Then there is Judge Wilkin, a most fit and excellent man for the place."**

**There are three reasons why he is not available. First he resides at St. Paul, which has one of the judges already [McMillan], who transferred himself from Stillwater to this city. He is ruled out by the imperious law of geographical distribution. A**

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<sup>89</sup> This article was published in the *Press* on April 1 and reprinted on April 2. The April 1st edition on microfilm at the MHS does not have this article.

**St. Paul man is out of the question. Besides he is a Democrat.**

**"Well then," say the members of the St. Paul bar unanimously, "Ex-Attorney General Cornell of Minneapolis, is just the man. He is an acute lawyer, of wide and varied experience in his profession; a Republican and the only Republican we know outside of St. Paul who can afford to accept it who will fill the bill." The Minneapolis lawyers and the bar of the State generally, with few exceptions, are said to agree to this.**

**But suppose it is strenuously objected to Mr. Cornell that he would not be acceptable to the people in their present mood of hostility to railroads. Suppose it was urged that, from having been employed as counsel for railroad companies in several cases, he had come to be popularly considered as a railroad lawyer. We will admit that the imputation as an unfounded and unjust one, that it was by Mr. Cornell's efforts and arguments as Attorney General the State won the case against the Winona & St. Peter Railroad Company in the Supreme Court resulting in the decision that that road was subject to legislative control as to the tolls for freight and passengers. But suppose that it is, or is represented to be a widely prevalent popular belief that his views are not in sympathy with the decision he helped to procure. It would be false; but what of that? The result might be that Mr. Cornell would fail to receive the Republican nomination and that the contest might result in the nomination of some unfit man, or if nominated he might be defeated by some Democratic demagogue of a fifth class pettifogger. We are supposing that objections of this kind were urged. What should the Governor do in the premises? Should he or should he not**



**ignore such objections, and look solely to the conceded professional fitness and high character of the candidate for? The members of the bar of St. Paul and Minneapolis to not look at this side of the question; but the Governor must consider not the predilections of the bar of these two cities, or even the State at large, nor even his own personal preferences, but what is best and most practicable under all the circumstances, and looking at the question with reference to the general public sentiment — which is to settle the question finally — what Republican lawyer is there in any portion of the State who would fill the bill.**

**Mr. Buckham, of Faribault, has been frequently suggested as an eminently fit man, but the objection to him is that Judge [John] Berry is also from Faribault—and is excluded by the geographical rule. Ditto Ex-Attorney General Cole.**

**Is there anybody else? Name your man gentleman!**

**The bar hereabout have no other name to give. Their case is closed.**

**Well, what is the objection to Horace Austin, late Governor of Minnesota, formally Judge of what was loosely known as the Minnesota Valley District.**

**Though his judicial administration was very satisfactory to the bar and people of his District, his elevation to the highest judicial office in the State is not generally favored by the bar. It is urged by those who oppose his appointment that his legal erudition and experience are unequal to the requirements of the position. Other objections**

originating apparently in the prejudices engendered by his political opponents during his Gubernatorial administration are made; but those which are based on a distrust of his ability are singularly erroneous. Judge Austin is unquestionably a man of very superior abilities. He is, in fact, self-made man, who has conquered his way from an obscure position into the highest office in the State by the force of his natural abilities alone in spite of many disadvantages, including a want of early education. His mind is rather acute than broad, but his best qualities are just those which would be called into play by a high judicial position.

But probably the most strenuous objection to the point would come for Mr. Austin himself, who is said not to desire it for a variety of personal reasons, among which are the state of his health and the inadequacy of the salary.

And if not Gilfillan, or Bigelow, or Cornell, or Cole, Buckham, Austin, then who? And that is a question which bothers the quidnuncs.

Name one other Republican lawyer who would be generally acceptable to the bar.

No one occurs to you. Probably not. What then? And when this point is reached some adventurous speculator on the possibilities is apt to throw in the horrible suggestion that, after all, when you come to think of it, Republican partisanship is not an indispensable qualification for judicial office, the party lines have been for years habitually ignored in this county in judicial nominations or elections, and that this example was recently followed in the Third Judicial District, without any

detriment to the interests of justice or the character of the court. And then, upon its startling hypothesis that the Governor should step over party lines in a search for the right man, the range of choices is not much enlarged

We have heard, in fact, but two names mentioned as likely to be acceptable even in the revolutionary contingencies supposed. One of these is Judge Wm. Mitchell of Winona, a first-class lawyer, universally esteemed for his high character, as was shown by his recent unanimous election to the office of District Judge. His politics, though conservative, partake of the judicial equipoise of his mind, so say his friends. But Judge Mitchell it is said would not accept it, if offered him, being quite content with his present position as Judge of the Winona District, and possibly moved also by the consideration that a bird in hand is worth two in the bush.

Then there is Mr. Severance of Mankato, a broad-minded, cultivated lawyer, as well read in the science of law, perhaps, as any man in the State, though wanting experience of a large city practice. He, too, used to be a sort of Republican, in war times; but since then has gradually slid back to a mild sort of Democracy; a non-partisan by nature; a man of judicial breadth and stout mental thews, they say.

What say you to Severance?

We give the talk of the corner, knowing nothing of the drift of the gubernatorial mine; but judging only from the conflict of views outside that mind aforesaid must be in a state of dubious perplexity.

Meanwhile there are numerous highly interested gentlemen of the bar who are quite eager, it is said, to relieve His Excellency of his embarrassment; but at last accounts their overtures had not conduced to a practical solution of the difficulty.

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***Minneapolis Daily Tribune***  
April 3, 1874, at 2.

### **THE STATE CHIEF-JUSTICE.**

The *Press* indulges in an editorial resume of the merits and eligibility of different gentlemen, mentioned and not mentioned, for Chief Justice of the State Supreme Court. This is ostensibly a fair article, but it seems to be really a covert attack on Gen. F. R. E. Cornell, the gentleman who has thus far been most widely and warmly mentioned for the position. The *Press* thinks "the Governor is in a very unpleasant dilemma," and it has, among other things, the following curious paragraph:

"Well then," say the members of the St. Paul bar unanimously "Ex-Attorney General Cornell of Minneapolis, is just the man. He is an acute lawyer, of wide and varied experience in his profession, a Republican and the only Republican outside of St. Paul who can afford to accept it who will fill the bill." The Minneapolis lawyers and the bar of the State generally, with few exceptions, are said to agree thus. But suppose it is strenuously objected to Mr. Cornell that he would not be acceptable to the people in their present mood of hostility to railroads. Suppose it was

urged that, from having been employed as counsel for railroad companies in several cases, he had come to be popularly considered as a railroad lawyer. We will admit that the imputation as an unfounded and unjust one, that it was by Mr. Cornell's efforts and arguments as Attorney General of the State won the case against the Winona & St. Peter Railroad Company in the Supreme Court resulting in the decision that that road was subject to legislative control as to the tolls for freight and passengers. But suppose that it is, or is represented to be a widely prevalent popular belief that his views are not in sympathy with the decision he helped to procure. It would be false but what of that? The result might be that Mr. Cornell would fail to receive the Republican nomination, and that the contest might result in the nomination of some unfit man, or if nominated he might be defeated by some Democratic demagogue or a fifth-class pettifogger. We are supposing that objections of this kind were urged. What should the Governor do in the premises?"

Why does not the *Press* suppose that Gen. Cornell might be charged with burglary, rape, highway robbery or horse-stealing, while it is in the hypothesis business?

"It would be false but what of it?" asks the *Press*. "What should the Governor do in the premises?" We answer the questions in the admirable and vigorous language of the *Press*:

"We are sure that we shall be sustained by the unanimous voice of the public when we

**say that the slanderers who are engaged in this dirty business, are miscreants too vile to live on the face of the earth. It would serve them right if they were taken by the scruff of the neck and flung into the first available airhole in the Mississippi, and we should be half inclined to advocate that summary disposition of the reptiles, if we did not fear such consequent pollution of the waters of the river as to breed a pestilence from St. Paul to the Gulf."**

**The *Press* thus repelled the vile slanderers in its issue of April 1. It did not propose to sacrifice the victim, but to kill the liars. To be sure, it was then defending a St. Paul man, Prof. Taylor, but we have no doubt it will consent to extend the mantle of its charity over the late Attorney General.**

**But the *Press* knows that no such current opinion of Gen. Cornell exists. The *Press* knows perfectly well that it is not "urged that he has come to be popularly considered a railroad lawyer," unless by those who have some selfish end to serve by such utterance.**

**We will, however, enlighten the *Press* on some other points with which it is perhaps not familiar:**

**General Cornell has never owned a dollar's worth of stock in any railroad in his life. He has never taken a general retainer from a railroad. During his six years of service of the State as its Attorney General, he has never accepted a retainer or fee of any kind from any railroad company in the State. He was a member of the platform committee in the Republican State**

Convention, and helped to draw up the resolution concerning railroad monopolies on which Gov. Davis was elected. While Attorney General he represented the State against the railroads, and made several decisions which were acquiesced in by the roads and which saved to the State thousands and tens of thousands of dollars. In every controversy that has ever taken place in the State, between the people and the Railroad Companies, Gen. Cornell has invariably been found standing as a representative of the people, from the time of the Five Million Loan folly to the present, and it is as unreasonable to call him a railroad partisan as to call the *Press* a champion of the Democratic party.

But where were the sensitive creatures whom the *Press* "may have" discovered, when Gov. Marshall was appointed Railroad Commissioner? Was he not President of the projected road from Dubuque to St. Paul? Did he not lobby in the Legislature to get town bonuses for it? Yet the insidious friends of scandal slumbered when his name was mentioned and the *Press* did not air the "strenuous objections" to his being a Railroad Commissioner.

Gov. Davis himself, we believe, last year took a heavy retainer from the Northern Pacific road in the Shepherd case. Indeed, is not Mr. Severance, the Mankato Democrat, whom the *Press* nominates for the position, the attorney of the Sioux City Road and the *Press* exclaims "What say you to Severance?"

None of these things are against the gentleman named, for there is no first-rate lawyer in the State whose skill is not sometimes paid for by

**railroads but they are a complete answer to the *Press's* sinister "supposes."**

**The Northern part of the State ought to have a member on the Supreme Bench. St. Paul has one and the Southern section is represented by Judge Berry. Gen. Cornell is the choice of the upper half of the State, including the bar of St. Paul. He stands in the front rank of lawyers and of citizens.**

**"If the Governor hears lies about Gen. Cornell, what shall he do?" asks the *Press*? We answer for the people in the language which the *Press* employed on April 1 to answer for the School Board (in the Taylor case):**

**"We believe that they will reject with indignant scorn any malicious web of petty scandal woven from threads and thorns plucked from every hole and corner in and out of the city, and that if they have a spark of manhood in them they will appoint a special kicking committee to kick the sneaks who offer it."**

**That is good language. We cannot better it. It expresses our feelings. "Kick the sneaks" is good. The *Press* knows that if General Cornell is not appointed Chief Justice it will be on account of one long-standing, all-pervading disqualification: HE LIVES IN MINNEAPOLIS.**

**=====**

**Naturally the *Press* could not let these slurs go unrebutted.**



***St. Paul Daily Press***  
April 4, 1874, at 2.  
(emphasis in original)

## **Cornell**

The Minneapolis *Tribune* replies with much spirit to the reference made by the *Press* to the political objections urged against Mr. Cornell's appointment to the Chief Justiceship, and even discovers in our allusion to the matter "a covert attack on Mr. Cornell." It further avers that "the *Press* knows that no such current opinion exists" as that supposed as an objection to his appointment, and that "the *Press* knows perfectly well that it is *not* urged that he has come to be popularly considered a railroad lawyer, unless by those who have some selfish end to serve by it."

The *Tribune* is, no doubt, competent to tell what it knows; when it undertakes to tell what the *Press* knows, a considerably overrates its powers. The *Press* knows in fact that the objection has been urged, and does not know anything about the motives of those urging it. The *Press* is fully persuaded, as it said when it referred to it before, that the imputation is a grossly "unjust and unfounded" one, and our own belief is now confirmed by the following statement by the *Tribune* of Mr. Cornell's antecedents and position on the railroad question, which, we think might have been made even stronger, without exceeding the truth:

"General Cornell has never owned a dollar's worth of stock in any railroad in his life. Ho

has never taken a general retainer from a railroad. During his six years of service of the State as its Attorney General, he has never accepted a retainer or fee of any kind from any railroad company in the State. He was a member of the platform committee in the Republican State Convention, and helped to draw up the resolution concerning railroad monopolies on which Gov. Davis was elected. While Attorney General he represented the State against the railroads, and made several decisions which were acquiesced in by the roads and which saved to the State thousands and tens of thousands of dollars. In every controversy that has ever taken place in the State, between the people and the Railroad Companies, Gen. Cornell has invariably been found standing as a representative of the people, from the time of the Five Million Loan folly to the present, and it is as unreasonable to call him a railroad partisan as to call the *Press* a champion of the Democratic party."

This is certainly a very conclusive answer to the objection a General Cornell is "a railroad lawyer."

But it is one thing to show that there is no just warrant for any such impression and another thing to show that the impression does not exist. We, indeed, have no personal knowledge that it does exist. We affirm nothing but the busy, buzzing *on dit* of the rural politicians, as to the existence of any popular prejudice on this score against Mr. Cornell

That it ought not to exist as agreed. But if it does exist on a scale sufficient to hazard his prospect of a nomination, ought a political fact of this kind to be ignored when the question is one of availability of an elective office? Groundless prejudices are the most difficult of all things to deal with. They have been fatal to many highly meritorious candidates for public office.

The *Tribune* seems to think we are arguing the case against Mr. Cornell. That is just where it is mistaken. If the power of appointment were vested in the *Press* it would, with its present information, clothe Mr. Cornell with the judicial ermine without hesitation. He is our choice, as the case presents itself to our view, first, last and all the time, not only on the grounds of pre-eminent fitness but on general expediency. We should be quite willing to take the risks of his nomination and election and would know have no doubt that the people would sustain the appointment. If the Republican party chose to reject him or the people to defeat him, we should at least have the satisfaction of knowing that we had done our duty in selecting the fittest man we know. But the *Press* is not the appointing power, and would probably exercise no influence in the determination of the question one way or the other. But it *is* a public journal, and as such is bound to present arguments of both sides, and what is said *pro* and *con* in the general popular discussion of the question. Meanwhile the *Tribune* and the public may rest assured that if the Governor should not appoint Mr. Cornell it will not be because he does not fully appreciate the gentleman's eminent qualification for the position, or for the childish reason petulantly alleged by the *Tribune* that he was a "Minneapolis man;"

**and that whatever decision he comes to – and whatever appointment he makes—will be the result of a patient, candid, and dispassionate consideration of representations *pro* and *con* from all parts of the State, and with a view to arrive at the result likely to be most satisfactory to the people at large.**

**=====•=====**

**Part 4.  
Petitions and letters to the Governor  
recommending appointments to the Court,  
March & April 1874.**

**It was customary for party regulars, public officials, businessmen and lawyers to write the Governor recommending he appoint an individual to a vacant post, including a judgeship. At times multi-page petitions with many signatories were sent to the Governor.<sup>90</sup> In late March two petitions recommending F. R. E. Cornell were circulated among members of the bar and sent to the Governor. Ironically George B. Young and William Lochren signed one petition and both ended up opposing Cornell for the position.**

**Most writers endorsed Cornell, two suggested Judge William Mitchell, another Judge Wescott Wilkin. Roswell Judson, a lawyer in Farmington, recommended former Chief Justice Gilfillan. The article in the *St. Paul Press* on April 2nd, posted above, provoked J. C. Braden, a Receiver in the federal Land Office in Litchfield, to recommend Cornell and Martin J. Severance as an alternative. L. M. Brown wrote that he would accept the appointment himself under certain circumstances.**

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<sup>90</sup> This was also the customary means of lobbying the president that was followed in the territorial period. See Douglas A. Hedin, "'Rotation in Office' and the Territorial Supreme Court" 17-18 (MLHP, 2010-2011).

**Petition  
from  
Hennepin  
County  
lawyers  
supporting  
Cornell,  
signed by  
George B.  
Young and  
William  
Lochren,  
among  
others.**

Filed by  
John C. Clark & Son,  
225 State Street,  
Minneapolis.

To His Excellency The Governor of The State of  
Minnesota

The undersigned Members of the Bar  
of the County of Hennepin respectfully present to  
your Excellency the name of Hon. F. R. E. Cornell  
of Minneapolis for appointment as Chief Justice of  
the State of Minnesota to fill the vacancy occa-  
sioned by the resignation of Hon. C. G. Ripley.

J. M. Shaw  
A. N. Young  
N. T. Osburn  
Thomas Lowry  
H. P. Duke  
Albert C. Davis  
W. R. Morgan  
Geo. Bradley  
Geo. B. Young  
Robert S. Bryant  
Chas. Houston  
E. M. Wilson  
Samuel R. Thayer  
Wm. Lochren  
J. H. Gillfillan  
W. W. McLean  
Isaac A. Hunter  
R. B. Babcock  
H. B. Hancock  
Alfred Smith  
C. J. Bartleson  
James H. Lawrence  
Edw. B. Cooley  
L. W. H. Armstrong

J. J. Himes  
J. A. Phipps  
S. C. Bales  
D. B. Fugner  
W. E. Hale  
Lehas H. Woods  
L. M. Stewart

Three page  
petition  
supporting  
F. R. E. Cornell

(ca. March 20)

Page 1

To His Excellency the Governor of  
the State of Minnesota

The undersigned citizens of the  
County of Hennepin in the State of  
Minnesota respectfully present  
the Hon. F. R. E. Cornell, for the  
appointment to the office of Chief  
Justice of the Sup. Court of said  
State, and request that your Ex-  
cellency appoint him to that office  
March 20, 1874

Geo. A. Prescott

Lynd Keith

Reid

Wm. Mack

M. Matz

L. P. Hammer

George A. Savoy

J. L. Dashiell

J. H. Williams

B. P. Shuler

A. H. Peyton

J. C. Whittier

E. H. Hammon

Frank H. Coburn

J. G. O'Brien

Amos M. Anderson

Ellis J. J. J.

J. S. Pillsbury

W. A. Crockett

N. T. Wells

J. M. Wilson

W. B. Nash

A. G. Wilcox

Daniel Bassett

John E. Bell

P. E. Sparks

J. R. Buxton

Orin Laraway

John Vanderhorch

John Gould

N. B. J. J.

Geo. W. Knittle

Geo. H. Hall

Thos. Chambers



John A. Armstrong	Rebel Alliance
D. J. Jones	J. J. Linn
N. H. Roberts	Geo. W. Chouan
A. W. Mayhew	S. W. Montford
W. J. Middle	Geo. E. Higgins
G. G. Mills	Chas. A. Eaton
Wm. W. Parkins	Geo. H. Rust
C. E. Rogers	N. M. Mule
W. D. Stafford	A. M. Blou
Milton Lindley	Geo. B. Hight
Chas. T. Mangford	M. W. Wolf
Thos. A. Skiles	C. M. Cashman
R. N. Newton	D. W. Albaugh
Capt. Pemberton	H. B. Heyman
Chas. A. Miller	C. G. Moors
L. H. Simpson	M. P. Hawkins
Langdon Moore	A. H. Brol
Ed. J. Jones	J. W. Power
J. C. Price	Amos Robinson
Wm. M. Elliot	L. A. Patterson
A. J. Elliot	<u>E. Neilsen</u>
P. Herzog	D. W. Cutler
H. F. Lillibridge	H. B. Brockley
E. D. Scott	Boon & Bass
W. H. Marchant	Petriguer
John Mayhew	A. H. Actley
Lucy Young	R. L. Warrington
C. E. Pugh	John P. Rath
Amos Devering	W. Newton
B. J. Bull	W. B. King
H. K. Cartmell	L. W. Baird
Albert A. Keith	John H. Stearns
John P. Nash	Thos. Cartmell
John West	Geo. R. Lyman

Petition,  
page 3

H. K. R. Astwell John H. Stearns  
Albert A. Keich. Mr. Garrison  
John P. Nash  
John West Fe. R. Lyman  
J. H. Lathrop Allen K. Connor  
E. C. Holliman  
A. L. Parnaman  
O. D. Brackett Chas. W. Johnson  
C. H. Blaken  
J. S. Williams Franklin Cook  
Robt. Hale





THOS. SIMPSON Pres.

MARK WILLSON J. Cash.

J.A. PRENTISS Cash.

## Second National Bank of Winona

Winona, Minn. Nov 21<sup>st</sup> 1874

Your Excellency

Gov C. K. Davis  
St Paul

My dear Sir

I wish to respectfully suggest Hon Wm Mitchell. of our Dist for the position of Chief Justice Sup Court. I am aware that in the distribution of your appointments, you have already done more than justice to Winona, but Judge Mitchell's eminent fitness for the position and the assurance that his appointment more than any other man in the state would secure the endorsement of both faction and of the people next fall, are strong reasons for his selection. There are reasons why we here would rather he would not accept the appointment tendered him. We do not wish to spare him from the Dist. In filling his place here you would in justice to locality be under obligation I think to appoint his successor from some other locality than Winona. But because of his ability and of that kind of ability too he could get the endorsement of the bar in this Dist <sup>unopposedly</sup> Yours truly Thos Simpson

Merchants Hotel Mar. 23 1874

Gov. Davis:

My Dear Sir:

In the course of  
our conversation to day I remarked that  
some one ought to be appointed Chief Justice  
~~who~~ could and would be nominated and  
elected at the fall election. But on further  
reflection I have thought that if some one  
was appointed who would not desire an  
election, that perhaps that would be the  
best way under all of the circumstances.  
Please consider this suggestion, and should  
you favor the idea. If you do not find  
any other, I would tell the appointing  
with that understanding, though of course

I should wish to have the matter considered  
thoroughly private

Respectfully yours  
S. M. Brown

Two page letter compressed into one page.

F. 70.

# ~~West Wisconsin Railway~~

Memphis Station, Dec 23, 1874

His Excellency

C. H. Davis,

Dear Sir

Permit me

to write in the request for the  
appointment of Hon F R S  
Cannell for Ch Justice. I am

sure the bar and people of  
the 4<sup>th</sup> Dist<sup>at Corp</sup> are as unani-

mous and cordial in this

desire as are the bar and

people of Hennepin Co.

Yrs Respy

C. E. Vandenberg



**Office** Gordon E. Cole,  
Attorney and Counselor at Law,

Fairbault, Minn., March 24 1874

His Excellency -

E. R. Davis

Very Dear Governor

I see -  
by the papers that Gen. Cornell  
is being pressed for the necessary  
assurances by the resignation of  
Judge Ripley - & by a letter received  
this morning from Mr. Clark I am  
glad to learn that the very se-  
rious have ~~been~~ all local  
jealousies & are far from all.  
I need not point out to you  
who know him well the abundant  
justifications of Mr. C. - for the place  
I do not think that for a legal  
man - however - he was a superior  
in the State. His appreciation of the  
duties of the judicial office is

Cole letter, Page 1.

Donard - White, serving as an advocate  
an active practice the time being  
to the bench ~~that~~ an attempt which  
it has always lacked & you will  
I think. You will see how sad  
- by nature -  
- It seems to me that an appointment  
- must which should have the  
nearly endorsement of the bar &  
the bench - cannot fail to be  
- earned by the people while with  
- over that an appointment to  
however gratifying to an individual  
could popular feeling of <sup>the</sup> ~~the~~ <sup>more</sup>  
- real - would be likely to be of lasting  
permanent approval -  
- but pardon me I don't know when  
- was - but saw & cordially rejoice  
for a - a first-class court in  
voluntarily & favors all classes  
of society - can emphatically say -  
Very respectfully yours -  
Gordon E. Cole

Cole letter, Page 2.

Gordon Earl Cole (1833-1890) served three terms as Attorney General of Minnesota, 1860 to 1866.

3  
2  
Office of William H. Yale,  
Attorney and Counselor at Law.

Winona, Minn. March 21 1874

Hon. C. K. Davis

Dear Senator

I saw by yesterday's paper that Judge Ripley has sent in his resignation. It may not be impertinent to suggest the name of Hon. Wm. Washburn as a suitable person to fill the vacancy or in case one of the associates be permitted to fill that place. I know of no name which would give greater satisfaction to all parties. If appointed I think he would be elected this fall without opposition while we should exceedingly regret to lose him from the Senate Bench. I think his appointment would take the war entirely out of the political arena which on some accounts would be very desirable. The only objection that would be urged against him

on this judicial verdict would be  
an account of the loss we would sustain  
on replacing them in the western front

Yours very truly  
W. H. Yale

Your appointment of RR commissioners for  
this city gives me much satisfaction to all  
parties, and I am very glad from my  
knowledge of his great judgment and  
disseminating powers that I know  
of no better person for that position  
W. H. Yale

Yale letter, Page 2.

William Hall Yale (1831-1917) served two terms as Lieutenant Governor, 1870 to 1874, three terms in the state Senate and one term in the state House.



Reply of

MERRICK & MORRISON,  
ATTORNEYS AT LAW,  
CITY HALL.

Minneapolis, Minn., *March 12* 1874.

To Letter of

Dated, \_\_\_\_\_ 1874.

Sir, C. K. Davis

Very  
My Dear Sir -

I have just learned  
that a vacancy exists for Chief Justice  
I want to urge upon you in the strongest  
manner the claims of P. R. C. Cornell.  
It seems to me that it would be best  
appointment to be made for many reasons.  
First, his own qualifications - and secondly  
that we feel him a little that we have been  
ignored somewhat and the appointment would  
therefore be very fitting and appropriate.

Respectfully  
Yours  
H. C. Morrison





STATE OF MINNESOTA  
EXECUTIVE DEPARTMENT.

Saint Paul, Mar. 20, 1874

Hon: C. L. Davis -

Dear Sir: The undersigned  
on behalf of themselves and other mem-  
bers of the bar call on this Hon. to  
submit some suggestions as to the  
appointment of Judge Wislin for  
the Chief Justice ship, but finding  
you are soon to be desirous of doing  
so some time to-morrow.

Respectfully  
Henry F. Horn

W. S. Heard

Stanford Newell  
others

# United States Land Office,

J. M. WALDRON,  
Register.

J. C. BRADEN,  
Receiver.

Litchfield, Minn., 2 Sept, 1874

Hon. C. K. Davis

St Paul

Dear Governor,

It may be presumptuous in me to say anything about the appointment of Chief Justice, but the Pros article of this morning constrains <sup>me</sup> to say - that Cornell if appointed would be acceptable to this section, if another be appointed and he be a candidate he would unquestionably carry this County.

But of all the names mentioned none would give me personally greater pleasure <sup>personally</sup> than the appointment of Mr Swinburne, and I am sure it would give pleasure to many others, and as against any other than Cornell ~~than~~ he would carry this County. Yours truly

J. C. Braden

Hannington Minn. April 3/74  
Hon. C. K. Davis Governor  
My Dear Sir  
Having practiced in the legal profes-  
sion for forty years and being about  
to retire from the duties of the  
legal profession & practice, I  
still feel the necessity & importance  
of having competent men learned  
in the law on the bench of our  
Supreme Court in whom the  
people have confidence and are  
willing to abide their decisions  
and bow in submission; as a  
suggestion, I think the best man  
in the State to preside as Chief  
Justice of our Supreme Court  
is Ex Judge James Gilfillan of  
Saint Paul, so much for the  
opinion of one man, I have  
seen in the papers several persons  
named as candidates



Judson Letter, page 1.

neither of which would hardly  
bear a proper examination for  
associate judge. ~~As~~

Please accept a tender of my  
kind regards & best wishes for your  
health & prosperity through not  
only your official term as Gov-  
ernor of this trailing rough State  
but through a long life of usefulness

Your ob. servt  
Roswell Judson

P.S. I am like the old deacon in  
Connecticut who prayed for rain,  
he told the Lord he did not wish  
to dictate him but merely advise  
Judson

Judson letter, Page 2.

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Part 5.  
Associate Justice McMillan's letter of resignation,  
April 7, 1874.<sup>91</sup>

To become Chief Justice, S. J. R. McMillan had to resign as Associate Justice.

St Paul April 7<sup>th</sup> 1874  
Governor, C. H. Davis  
I hereby resign my position  
as Associate Justice of the Supreme Court  
of Minnesota.  
Very respectfully  
Yours for Law,  
S. J. R. McMillan

====●=====

<sup>91</sup> Governor Davis Papers, Box 16, File #340 ("Resignations—1874, Jan.—Dec.").

**Part 6.**  
**Editorial on Governor's appointments,**  
***St. Paul Daily Press*, April 8, 1874.**

**Of the many editorials in newspapers around the state reacting to the Governor's appointment, the following is the most insightful. While others expressed disappointment or bafflement, the *Press* advances a subtle explanation of why the Governor selected George Young for the Court.**

***St. Paul Daily Press***  
**April 8, 1874, at 2.<sup>92</sup>**

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**TWO JUDICIAL APPOINTMENTS  
INSTEAD OF ONE.**

**The governor has reached a solution of the vexed question which sets at naught the speculation of the quidnuncs, but which cannot fail to be universally satisfactory. Judge J. R. McMillan has been promoted to the seat of the Chief Justice while the place of Associate Justice thus made vacant has been filled by the appointment of George B. Young, Esq., of Minneapolis.**

**The elevation of Judge McMillan to the Chief Justiceship is a well-deserved complement to the oldest Judge on the Supreme Bench. He was Judge of the St. Croix Valley District when in 1865 he was elected Associate Judge of the Supreme Court with Messrs. Wilson and Berry as his colleagues on the Bench. He was re-elected in 1872 and is now serving the second year of his second term when, at the solicitation of Gov.**

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<sup>92</sup> This editorial was reprinted in the *Rochester Post*, April 11, 1974, at 2.

**Davis, he consents to surrender the position to which he has been elected, to take the nominally higher one by executive appointment, but whose increase of dignity, not of emolument (sic), would generally be deemed more than counter-balanced by the necessity of going before the people for re-election. But in this case the sacrifice of a sure position for one dependent for its permanence on popular approval, can hardly be said to involve any risk: for there can be no doubt that the Governor's appreciative designation of Judge McMillan to the senior post will be ratified by the overwhelming verdict of the people.**

**Judge McMillan's initial career is honorably identified with the entire system of jurisprudence in this State. He has been so clear in his great office, has won so high and stainless a reputation for ability and conscientiousness, and is so firmly established in the esteem and confidence of the bar and the people, that his promotion will be hailed with universal satisfaction, and will be ratified by the general suffrages of the people as the fit in gracefully meed of long and faithful labors, in a branch of the public service whose chief rewards are the consciousness of duty well done and very poorly paid. We are happy to add that Judge McMillan's health which was much impaired last summer by his arduous labors, has been fully restored by his winter vacation among the pines and orange groves of Florida.**

**To the great majority of our readers the name of Mr. George B. Young will have been first heard in connection with the announcement which summons him to a seat on the Bench of our highest State Court. But though but little known in this State, outside of Minneapolis, except to the judges and officers of the U. S. Courts, and to the**

lawyers practicing in these courts, those who know him best bear testimony that the Governor's choice could not have fallen on a fitter person.

Mr. Young owes his appointment to the fact that he is recognized by the Governor and those most capable of judging as one of the ablest and best educated lawyers in the State. A native of Massachusetts, a graduate of Harvard University, where he was regarded as one of the most promising young man of his class; a graduate of Harvard Law School, he went from there to New York City to serve his apprenticeship in the practice of law in the office of William Curtis Noyes, where he remained for several years. On the death of that eminent lawyer he went into the office of David Dudley Field, and after this splendid tuition by the great masters of legal science he practiced for some time in the city of New York. To a gentleman of this city William Curtis Noyes has often spoken with pride of Mr. Young as one of the most promising young men he knew at the bar.

Mr. Young has only resided in this State about four years and as his practice has been chiefly confined to the U. S. Courts he is but little known to the bar outside of the comparative small circle of lawyers who practice in that court. As his tastes are those of a scholar and his habits those of a laborious student, without the slightest ambition for political distinction, he has mingled not at all in the political squabbles of Minneapolis, and is probably but little known even to the generality of the people of that city.

But in his practice in the United States courts he drew from the Judges expressions of high appreciation of his abilities as a lawyer and of the acumen, research and power displayed in his



legal arguments. It was here that his abilities and professional culture became known to Governor Davis, then U. S. District Attorney.

We understand that he has been recommended by no influence of any other kind from any quarter, but that the Governor has appointed him solely on his own judgment and from his convictions of his eminent fitness for the position as displayed in the course of professional business.

The appointment will satisfy the jealous local feeling of Minneapolis, if not in the preferred at least in an unobjectionable form, and if Judge Young shall vindicate the high esteem which has been placed upon his abilities, will commend itself to the general approval of the bar and the people.

====•=====

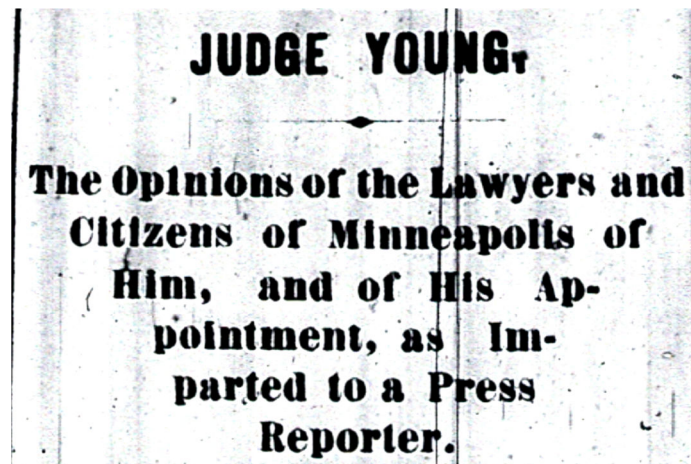
#### Part 7. Interviews of the Bar and Bench.

Immediately after the appointments were announced, reporters for the *St. Paul Daily Press* and the *Minneapolis Daily Tribune* interviewed leading members of the bar. The *Tribune* even got George Young himself to open up. Several days later, interviews of W. A. Spencer, Clerk of the Federal District Court, Federal District Court Judge Rensselaer R. Nelson, Bankruptcy Judge Edgerton and H. E. Mann, Clerk of the Federal Circuit Court, were published in the *Minneapolis Sunday Tribune*.

The first interviews were by a cub reporter for the *Press*. He spoke with Frank Cornell who was unusually candid about his feelings of betrayal, but quickly realizing his

error demanded a retraction from the *Press*. The three sets of interviews follow.

***St. Paul Daily Press***  
April 10, 1874, at 1.



**Special Dispatch to the St. Paul Press.**

Minneapolis, April 9. Your reporter called to-day upon such leading members of the bar as he could find, and obtained their opinions with regard to the appointment made by Gov. Davis of G. B. Young as Associate Justice of the Supreme Court. He first called upon [Probate] Judge [Franklin] Beebe, when the following conversation ensued:

**Reporter.** Mr. Beebe, what do you think of the appointment of George B. Young to the Associate Judgeship?

**Judge Beebe.** I do not think much of it. I think that it is an insult to the members of the legal fraternity.

**Rep.** What you think about Mr. Young's ability?

**Judge Beebe. I don't think anything about it. I think that Mr. Young is altogether too youthful a man to be placed in so important a position. To be sure he is a youth of great promise, but what the legal men and the people of the State generally want is a man of known integrity and eminent worth, and one whose capabilities have been thoroughly tested by time.**

**Rep. Do you think that Mr. Young will fill the position acceptably?**

**Judge Beebe. Time alone can solve the question. He may prove just the man, but our choice has been for F. R. E. Cornell, and the Governor should have honored it.**

**Your interrogation point next called upon W. W. McNair, with the following result.**

**Rep. Mr. McNair, you were not one of the slain in the recent election, and consequently have animation enough left to speak calmly of the issues. Will you tell me your opinion of the course which Gov. Davis has taken relative to Geo. B. Young and Mr. Cornell?**

**Mr. McNair. I am not at all pleased with the appointment. Mr. Young may have native ability, probably has, but he certainly has not yet a record to which he can point for qualifications. I think that Gov. Davis has hurt himself irreparably by the course he has taken.**

**Rep. What do you suppose his motive to have been in doing as he did?**

**Mr. McNair. I cannot surmise. I presume, however, that some underhand current has been at**

**work which I do not understand. It looks very much as if Sam. Thayer had a hand in it.**

**Rep. What you suppose induced Gov. Davis to go outside of his party to make the appointment?**

**Mr. McNair. That's where the rub comes. If he insisted to take a Democrat, why did he not pick out a man of more years of experience? There are plenty of them in the State. I am very much afraid that he has sadly wronged his cause.**

**Chancing to meet the ex-Mayor in the street, he expressed it as his belief that the appointment in the end would be a good one. He said he had been a very strong believer in the worth of Mr. Young, and that he believed that in time he would be all that he could be asked. He had even remarked to a friend, that he had as soon expected to be struck by lightning as to hear Mr. Young's appointment, that George B. Young was the coming man, the youth of great promise. The principal feeling seemed, he thought, to be that the appointment was made in direct opposition to the expressed wishes of the entire community.**

**Judge G. B. Cooley was next interviewed as follows:**

**Rep. Judge, what you think of the recent appointment to the supreme bench?**

**Judge Cooley. I think it is all right.**

**Rep. But, Judge is not Mr. Young a rather youthful person for such a position?**

**Judge Cooley. He is 35 years old, the same age as Franklin Pierce when he was elected President of the United States.**

**Rep. To be sure Judge, but do you not think that the Governor has shown poor policy in acting as he has done?**

**Judge C. That's another question. There is no doubt that it is most unfortunate that it has been made, so as to cause so much feeling. Mr. Young I believe to be a worthy, talented young man, who is bound to rise in the world. Undoubtedly the majority preferred Cornell, but the Governor merely exercised prerogative, and I do not propose to question it.**

**C. F. Pillsbury said he would rather not state his feeling; that he was very much disappointed and chagrined at the appointment. He thought it a most unfortunate affair.**

**Mr. S. Thayer expressed himself about as follows:**

**Rep. Mr. Thayer, what you suppose led Mr. Davis to exalt George B. Young to so important a position?**

**Sam. Thayer. Of course I don't know anything about it. It is a very strange piece of business.**

**Rep. What made you hurry down to St. Paul on Monday? Did you go to see the Governor?**

**Sam. Thayer. Oh I merely went on business, as I am liable to at most any time. I merely went on my own business.**

**Rep. Did you ever make any statements to the Governor which would lead him to make the appointment?**

**Sam. Thayer. While in conversation with Mr. Davis one day, I casually stated that I thought Mr. Young to be a very promising attorney. He then asked me what were his qualifications, to which I replied in as favorable a manner as possible, not knowing at the time of the proposed appointment.**

**J. M. Shaw, Esq., next underwent the following category:**

**Rep. Mr. Shaw will you please tell me just how you think the legal fraternity stands in reference to the Young matter?**

**Mr. Shaw. I think they feel most deeply insulted. Their wishes have been overlooked and ignored. The unanimous sentiment of the bar was to have General Cornell appointed to the position. He has a most unexceptional record, having been a successful practitioner, and a conscientious gentleman. To think that a young man who has hardly a dozen intimate acquaintances among the fraternity in the State being chosen before an old and tried attorney, is certainly most galling to the whole community.**

**Rep. But, Mr. Shaw, do you not think that Mr. Young will readily adapt himself to the new position?**

**Mr. Shaw. That of course, I can't tell. He certainly has ability, and if he perseveres will make a brilliant man, but is youthful. Some men are older**

at 25 than others at 40. Experience and not years makes the age in legal knowledge. Personally I am, as are all the rest of the members of the bar, a warm friend of Mr. Young's, but I regard Mr. Cornell above all others as one who should have received the appointment.

Mr. H. C. Burton, being asked his opinion in the matter, said that he considered it an infernal outrage; that the position was a most important one, and should not be given to a boy. The Supreme Court is a court of last resort, and care must be used in filling the judicial chair.

Hon. F. R. E. Cornell was found busily engaged in his office, but not so much so as not to find time to speak a kind word to a friend. Your reporter felt reassured at his winning smile, and commenced his business at once.

Rep. Mr. Cornell, do not things look a little queerly in regard to the recent appointment?

Mr. Cornell. Indeed they do. I am sure I cannot understand how the Governor could have chosen so young a man.

Rep. How do you feel personally? Did you seek the office?

Mr. Cornell. No sir. The first intimation that I had of the office was that on the morning after the announcement of the resignation of Mr. Ripley, Mr. R. J. Baldwin and Judge Young came into my office and asked if I would consent to have my name used as a candidate for the vacancy. I replied that if they thought it advisable I would do so. About the same time I received a

communication from a leading member of the bar of St. Paul, of a similar import. To this I also replied in the affirmative. I have not sought the appointment. I have never relished public life. I have been driven into it by circumstances. I prefer to earn my living by my own exertions, to being supported by the people. At the same time, if I think I can aid my fellow-men in a public character, and it is their desire that I should do so, I should not hesitate to do my duty.

Rep. Do you think that the Governor has acted in the right?

Mr. Cornell. I do not. I think that he has acted in a most strange manner. I cannot deny that I felt slighted, and that my feelings are wounded by this strange neglect. I consider that the Governor has deserted me, one of his own party, and do not understand it.

Rep. But what about the railroad ring?

Mr. Cornell. That is all nonsense. Merely because I have exercised my privilege as a lawyer to practice for whom I chose, and have defended a few railroad cases, I am decried as a railroad corruptionist. It is folly. I have no more interest in railroad matters than any other attorney. Personally I am very much pleased with Mr. Young, but I consider that his appointment has been a most unfortunate blow to the legal fraternity. However now that the appointment is made, I hope that Mr. Young will fill the position acceptably with credit to his profession.

Embarrassed by his indiscretion, Cornell demanded a retraction from *The Press*. It obliged the next day but in a



way that emphasized his expressions of self-pity. From *The Press*, April 11, 1874, at 2:

#### **A DISCLAIMER FROM MR. CORNELL.**

Hon F. R. E. Cornell was profoundly chagrined and mortified at what he says was an entire misrepresentation in yesterday's *Press*, of the spirit and purport of his conversation with the Minneapolis reporter of the *Press*, on the subject of Judge Young's appointment. He chatted in a free and informal manner with the young gentleman for a long while answering his questions without the slightest suspicion that he was seeking matter for publication. The young gentleman took no notes of what was said and when he afterwards tried to write up what he recollected of the loose, rambling conversation he put a great deal into the mouth of the ex-Attorney General which he never uttered or thought of uttering. For instance he did not say as reported: "I cannot understand how the Governor could have chosen so young a man." Nor did he say that "the Governor has acted in the most strange manner," or use the words "I cannot deny that I feel slighted and that my feelings were wounded by the strange neglect," or the words "I consider that the Governor has deserted me, one of his own party, and do not understand it." He not only did not say this, but said nothing of like purport. He uttered no complaint whatever on his own account. Nor did he say that "Mr. Young's appointment was an unfortunate blow to the legal fraternity." He spoke of one sense only in which he feared it might prove an unfortunate appointment. In general Mr. Cornell complains that the reporter

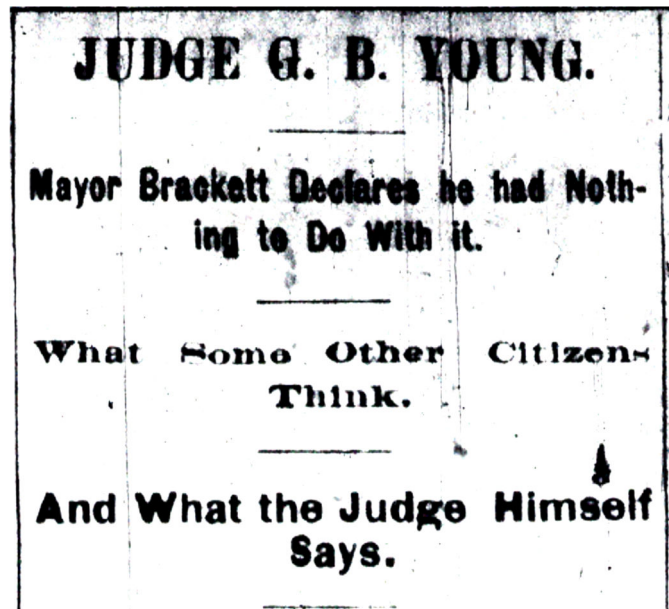
substituted his own sentiments for his (Cornell's), and put into his mouth a mass of stuff which he would have been ashamed to utter even in the confidence of what he supposed was a private interview, and much more so if he had supposed he was talking to the public.

And this leads us to remark for the benefit of all reporters of the *Press*, and of all other journals, that it is a violation of every principle of journalistic propriety to report conversations deemed private for newspaper publication. It is sometimes proper to seek the opinions of leading citizens on matters of public interest for publication, but every obligation of honor and decency requires that they be informed that the views thus obtained are for publication, and no one has any more right to spread the unreserved confidences of a private conversation, even on a public matter, before the public, than one has to steal the contents of a private letter and publish it to the world.

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***Minneapolis Daily Tribune***  
April 9, 1874, at 4.

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The astonishment caused by the announcement of the appointment of George B Young, Esq., to the Supreme Bench, does not seem to diminish, but rather to grow by aggregations as the news spreads. It was the principal topic of conversation yesterday in the city. If the man who anticipated, (in the *Press*,) that the appointment would "satisfy the local jealousy of Minneapolis" had been around, he would have taken notes with surprise and avidity.

#### Interview with the Mayor.

In order to show fair play, a reporter at the *Tribune* called on Mayor Brackett and "went through him" thus:

Reporter – Mr. Brackett, you see the *Tribune* goes for you?

Mr. Brackett – yes, I see. It hints that I secured or helped secure Young's appointment. The fact is I never heard one word of it till I heard that he was appointed.

**Rep. – What time was that?**

**Mr. B. – About seven or eight o'clock last evening. Sam. Thayer and I met on the stairs in my building, and he said he had just seen a dispatch at the *Tribune* office saying that Young had been put on the Supreme Bench. "I didn't know the Judge was a candidate," said I, "and I'm sorry, for Cornell ought to have been appointed." It isn't the Judge," he answered, "but George B. Young." I again expressed my regret.**

**Rep. – You recommend Cornell?**

**Mr. B. – I did, and would have done anything to get him appointed. I should have gone down and appealed to the Governor in person, but I knew my motives would be misunderstood and misrepresented. I know George B. Young well. There is no young man in our community of greater ability, I think. But I regard his appointment as a most unfortunate one under the circumstances.**

**Rep. – How about the Davis party?**

**Mr. B. – I don't know. I don't remember to have joined it, if there is one. I've never exchanged a word with Davis on the subject of politics. There is but one man in Minneapolis who has ever proposed to me to help "start a Davis party," here. That is the one who is now howling about me as in "a Davis Conspiracy" — Charles W. Johnson. Johnson came to me a while ago and said he would like to see Davis's strength increased in this city, and he wished something could be done. I did not encourage him.**

**Thinking he had struck bed-rock, the reporter then withdrew and called on**

### **Gen. Cornell.**

**The General felt that it was barely possible the Governor had not consulted the wish of Minneapolis people altogether, but was averse to talking on this point much. He thinks his position has been misrepresented in St. Paul, but he does not complain. Of the new appointee as Associate Justice, he said, substantially: "He is a young man of many estimable qualities, of undoubted integrity, rare culture, fine legal attainment and possessed of an evenly balanced and nicely discriminating mind. Neither railroad companies, the people, nor the bar need have any apprehension so far as he concerned, of our highest court, usurping the exercise of Legislative powers. I have no doubt he will administer the law as he finds it and understand it, uninfluenced alike by private interests on the one hand and public clamor and prejudice on the other."**

### **S. C. Gale.**

**Mr. [Samuel Chester] Gale, being inquired of, said he had never knew a word of it, or heard it hinted at until he saw it in the *Tribune*. Was surprised. Very much regretted that Cornell was not made Chief Justice. But, he said, "if George B. Young accepts the position, and is retained on the bench, he will become the equal of any judge in this or any state."**

### **What his Honor Says.**

**A representative of the *Tribune* called at the office of His Honor, George B. Young, and found him engaged in receiving the congratulations of his friends. Gentlemen from all parties and in every branch of business called on him during**

yesterday and extended to him their warm congratulations. After some of his admirers had dispersed, the newspaper man approached the presence, and added his congratulations to the large pile already served up. He then ventured the inquiry if the appointment was going to be accepted. Mr. Young said he did not yet fully made up his mind about that. He had received his commission yesterday and knew it was genuine. He should take some time to consult his friends before he should give his decision, but the probability was that he would accept it. He said the appointment had been a great surprise to him, and that he felt very much complemented and flattered by it. He regretted that General Cornell had not received the appointment for Chief Justice. He had signed the petition for Cornell and thought he ought to have had it.

The news-gatherer suggested that Mr. Young reveal what he knew about Cush. Davis and his policy towards the city. Mr. Young said he knew nothing about it. That he had not seen Gov. Davis since he was elected and had no idea who he was going to appoint until he heard the news. He knew nothing about Cush's policy whatever.

Having received a cordial shake from the judicial hand, the report reporter bowed himself out.

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***Minneapolis Sunday Tribune***  
April 12, 1874, at 4

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## **JUDGE G. B. YOUNG.**

**What Prominent Legal Gentlemen in St.  
Paul Say About Him—His Ability and  
Attainments.**

A reporter of the *St. Paul Press* has been interviewing several prominent legal gentlemen in that city concerning the appointment of Hon. George B. Young, of this city, as Associate Justice of the Supreme Court. A synopsis of what they said is given below:

Mr. W. A. Spencer, Clerk of the United States District Court gave it as his opinion that "Judge Young's opinions on the bench will stand the tests of the most unfriendly scrutiny, and he is not the man to shirk any work devolving upon him. He will do his full share at all times, as he is emphatically a student and a worker. Frank Cornell, who was my candidate for that position, has often expressed the highest opinion of Judge Young. But outside of Cornell and William Lochren, there is not a lawyer in Hennepin County who possesses equal qualification for the Supreme Bench.

Judge Nelson, the U. S. District Court, spoke as follows concerning Mr. Young:

"So far as I have known of him he is a good lawyer, very careful and thorough in his preparation of cases in the Federal Courts. I think the objections to his youth, the only ones which have been urged thus far, are not worthy of

consideration. Some of the most eminent Judges in the country have been placed upon the bench at a comparatively early age, and they have acquitted themselves most credibly. I do not think that a good reason for opposing the appointment. Why, Judge Dillon was a young man when he was elevated to the Supreme bench of Iowa, and there are any number of similar instances recorded. I consider Judge Young a thoroughly educated lawyer, of excellent legal attainments, and he aids the courts mightily in the presentation of his cases. He is thorough — none more so—and being in vigorous mental and bodily health, I think the appointment a good one. Of course there were other able men mentioned in that connection, but I believe Judge Young will prove himself capable and useful in the position to which he has been called.

Having obtained the opinion of Judge Nelson, which will be accepted as a valuable and impartial judgment, Judge Edgerton, of the Court of Bankruptcy, was asked for his impressions of Judge Young — the latter having made a specialty of bankruptcy cases and proceedings. The substance of Judge Edgerton's remarks are given briefly. He said:

"I consider Judge Young a man of good judicial mind—cool and deliberate—and looking ahead very carefully to see how he is coming out. I have known him about three years and my impressions of him are extremely favorable. He is a very modest, unassuming man, and I venture to say he never thought of this favor. He has had a good deal to do in this court, and in all litigation he is shown himself to the best possible advantage. His papers are always right. He is one



**of the few assignees who thoroughly understands his business. The appointment is a good one in every respect, and Gov. Davis has possessed unusual opportunities for studying his character and legal knowledge and ability. He knew his ability as a reasoner better than I did, but I have no hesitation in saying that the appointment is one of the best that could be made under the circumstances."**

**H. E. Mann, Esq., Clerk of the U. S. Circuit Court, said: "I do not know of any young lawyer whose ability, integrity and good judgment have more forcibly impressed me. I don't think anybody in St. Paul knows him better than Mr. Spencer and myself, and we only know to honor and respect him. All my knowledge leads to the belief that he is very well qualified for the position to which he has been called by the Governor's choice. I have often said before the appointment that he was the best bankruptcy lawyer in the State, and attention to other branches will soon make him equally eminent. Have judged him in other respects and have never known him to be engaged in any matter of law wherein he was not well and thoroughly posted. He has had bankruptcy cases involving important chancery questions, and he has acquitted himself handsomely in every instance. He is a modest man, and I don't believe "George" would accept any position which he cannot fill with favor to himself and profit to the people. I may speak with partiality because I am his friend, but I know he is one of the most industrious men in existence, and I have never known a man who could accomplish as much work in the same time — and it is all well done. When he presents papers in court, they are always ready for the**

accomplishment of his purpose. He is a man of scholarly tastes, and when he presents a case in court, there is not much use in looking further for authorities.

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Part 8.  
Letter to the Editor of the *Dispatch* and the  
Reply of the *Dispatch*

The *Dispatch* published the following lengthy Letter to the Editor from "R" (i.e., Reader) who obviously was a lawyer.

*St. Paul Evening Dispatch*  
April 11, 1874, at 6  
(italics in original).

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The Supreme Court Question—  
Gov. Davis Defended.

*Editor of the Evening Dispatch:*

I suppose one of the features of "independent journalism" is, to give a voice through your columns even to do them who may not agree with you, hence this communication.

The constitution of Minnesota gives the Governor the right to fill vacancies that may occur in our Supreme Court Bench. It gives it to the Governor *alone*, not to him *and* advisers. It nowhere intimates that the Governor must seek,

much less be controlled, by the opinions of others. It takes for granted that every Governor will have a due regard for the public weal and public opinion, as so not to nominate improper persons. When we hear that the appointment of Mr. Young to be an Associate Justice of our Supreme Court is an "outrage," &c. one is tempted to re-study the constitution, and see if the concurrence of prominent lawyers or political managers be not a necessity.

Mr. Young, a Democrat! Grant that, (and no one seems to know whether it be true or not), certainly Gov. Davis did not select him *because* he is a Democrat. The short of it is, he appointed a man without any reference to his partizan opinions. At first blush that would seem to be right. There were days in the past when the political opinions of judges deserved attention. President Lincoln would have sinned had he nominated for Chief Justice of the United States, one whom he knew was politically opposed to the great principles of Republicanism. But can you, can any man tell me the difference between a patriotic Democrat and an honest Republican? Is there any such difference of views as to unfit the former for the judicial office? Surely I can see none. If not, the objector must contend that it was the duty of Gov. Davis to select from the Republican party, though he were entirely sure he could lay his hands on an abler man just beyond the party line. If the Governor was wrong were not the hundreds of Republicans who requested Judge W. Sprague Hall, to be a candidate for re-election also wrong? Yet I remember that our papers spoke of that as a large step in the direction of an independent judiciary. A Democratic judge appointed by Republican Governor will have much more of the *prestige* of impartiality

then a partizan judge nominated by a partizan Governor. Disappointed politicians may censor Governor Davis for his nomination of a Democrat (if that be Mr. Young's political status,) but the people will judge him simply by the new judge's competency and faithfulness.

Another head of Governor Davis, offending is that he did not consult the leaders of the bar and of politics. He was under no obligation to do so. A timidly prudent Governor would have done so. Had he appointed Mr. Cornell, one of the really able men of the State, his responsibility would be reduced to a minimum. Mr. Cornell might become corrupt, incompetent never, but no one could then censure Gov. Davis, for he would simply stand as one among tens of thousands of victims of misplaced confidence.

I pity Minneapolis. She not only claimed the office, but is "outraged" and her "members of the legal fraternity," &c., because she was not allowed to select her own man. Cornell was that man. Now Cornell may not be a "railroad lawyer," but for years he has conducted railroad cases, and does any one believe he could go into the Supreme Court with any favorable learning towards the popular view of the relations of corporations to the law? Certainly not. Would it not have been extremely difficult for Gov. Davis to select any prominent Minnesota lawyer of middle age who fully represented that popular view, unless it was some one who had espoused it for the sake of office?

The great question of today is, what are the *real rights and obligations of corporations?* and Governor Davis would have been false to his trust, false to the hopes of any anxious people, if he had placed any man in the Supreme Court who was, consciously or unconsciously, out of har-

mony with the popular views of that question. If a President believes in the constitutionality of legal tenders, and knows that the vast majority of the people concur with him, he has no right to appoint as Justice of the Supreme Court one who will construe the law against popular opinion. So, as Gov. Davis, with a large majority of the people of Minnesota, believes that the State has a right to impose certain conditions upon railroads, it is his duty to see that the Supreme Court, by no action of his, is placed in opposition to the public opinion and desires.

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The youth of Judge Young should not tell against him. Every day will help to remedy that defect. John Marshall was young when he was made Chief Justice of the United States, and Minnesota thought that C. K. Davis, but one year the senior of Judge Young, was old enough to become the *maker* of judges.

Judge Young is said to have brilliancy of mind, a quality in a Judge of not very great importance; but it is also said of him that it is mind of a "judicial turn." *That*, with purity and application, will make him a success. Great knowledge of the law is not half so valuable in a Judge as the "judicial turn of mind." The opposing counsel will furnish the law, the precedents—the province of the Judge is to weigh and decide. Age and experience will fill his mind with legal lore, but the "judicial turn" is Nature's gift.

As one of the young men, I am in favor of giving the young appointee of the young Governor a fair show. R.

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Provoked by this Letter, the editors of the *Dispatch* responded with the following editorial in the same issue, April 11, 1874, at 4: <sup>93</sup>

Neither the age nor the politics of Mr. Associate Justice Young are of such overwhelming moment as to occasion any serious loss of sleep to the people of the State. It is not a crime to be a young man nor is it an offense punishable under the law to be a Grant Republican. It is a singular hallucination on the part of his admirers that they should deem a personal defense of Mr. Young necessary on these points. The endorsement of Mr. Young by the two clerks and one of the judges of the United States Courts may be just, and the *Dispatch* is not even disposed to call in question the delicacy involved in a public expression of their opinions inasmuch as those opinions are *favorable* to the appointee, but simply remarks, however that, as a custom, it would be more honored in the breach than in observance.

The public will also be greatly indebted to a correspondent in another column for the information that the Governor has the constitutional power to fill vacancies in the Supreme Court. But for this opportune announcement the tenure of Mr. Young's office might together with his age,

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<sup>93</sup> This editorial caught the attention of *The Chatfield Democrat*, which reprinted it with this introduction:

Though the St. Paul *Dispatch* was the first paper in Minnesota to hoist the name of "Cush" Davis for Governor, and rendered that gentleman valuable aid in his election, it cannot wink at the late act of that public functionary in appointing an unknown and untried man Judge of the Supreme Court. The criticisms of the *Dispatch* have been more extended and severe upon the Governor for this mysterious appointment than any other State paper.

*Chatfield Democrat*, April 18, 1874, at 2.

politics and habits, become involved in the discussion. There are few persons however who will agree with the legal correspondent's conclusion, substantially, that Mr. Davis, if so minded, might have imported from Michigan a former law partner and made him Judge of the Supreme Court. The people, in electing a Governor, do not surrender all their rights and opinions either into executive keeping or into the hands of Federal office-holders.

Mr. Young is 35 years of age, he is a Republican and voted for Grant, he has only been a citizen of the State for about four years, he is a stranger and unknown even in Minneapolis, his legal reputation is limited to a few proceedings in bankruptcy in which he startled the dignified Register by his brilliancy and, as we are informed, puzzled the Judge by his legal acumen, and it is repeated here that Mr. Young is not to blame for his own appointment and that it would not be human nature for him to refuse.

The Governor is alone responsible. He disappointed public expectation in ignoring the bar of the State, in passing by all the leading lawyers and distinguished citizens, the founders of the commonwealth, the framers of its laws, the authors of its judicial system, the compilers and expounders of its statutes. He went out of his way to pick up, amid a political squabble and contrary to the wishes and recommendations of the locality, an unknown young man, a recent comer to the state whose only distinction is that he amazed the Register in bankruptcy and excited the admiration of Nelson, on the bench. Nay—more. Gov. Davis went farther. He himself created the vacancy in order to fill it with Mr. Young. The honor of the Supreme Justiceship was due to some one of the many eminent lawyers and

**jurists who have so long by their talents adorned the profession of law and illustrated in their lives the highest qualities of private worth. The *Dispatch* submits the question to public opinion and to the jury of the people.**

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**Part 9.**

**Chief Justice McMillan and Associate Justice Young are sworn into office.<sup>94</sup>**

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<sup>94</sup> **Minutes of the Minnesota Supreme Court, April 20, 1874 (reduced).**



# State of Minnesota. Supreme Court.

General April Term A.D. 1874.

Monday Morning 10 o'clock April 20<sup>th</sup> A.D. 1874  
Court convened pursuant to adjournment.  
Present Hon. John W. Berry, Associate Justice

Honorable Samuel J. R. McMillan having been duly appointed and commissioned by the Governor of the State of Minnesota, as Chief Justice of the Supreme Court of the State of Minnesota, in the place of Honorable C. F. Ripley, resigned, and having taken the oath prescribed by law and duly filed the same in the Office of the Secretary of State, he, the said Samuel J. R. McMillan appeared and took his seat upon the Bench as Chief Justice of the Supreme Court of the State of Minnesota.

Honorable George B. Young having been duly appointed and commissioned by the Governor of the State of Minnesota, as Associate Justice of the Supreme Court of the State of Minnesota, in the place of Honorable S. J. R. McMillan, appointed Chief Justice, and having taken the oath prescribed by law and duly filed the same in the Office of the Secretary of State, he, the said George B. Young appeared and took his seat upon the Bench as Associate Justice of the Supreme Court aforesaid.

Heodor Furber et al.	Respondents.	On reading and filing the
vs. 1565.		Stipulation of Attorneys for
Harsh W. Furber.	Appellant.	the respective parties herein
		it is Ordered that the Appeal
		herein, be, and the same is
		hereby dismissed without costs to either party.

Lori Leighton.	Respondents.	This cause came on to be heard
vs. 1578.		this day upon the return to the
Grant McQuinn & Co.	Appellants.	Appeal herein.
		Whereupon the same was
		submitted by Counsel for the
		respective parties upon Paper Book & Briefs heretofore filed
		herein, and taken under advisement by the Court.

**Part 10.**  
**Justice Young's First Case.**

Immediately after Justices McMillan and Young took their oaths, the Court heard oral arguments in several appeals. That day the *St. Paul Evening Dispatch* published this account of the oral argument in Justice Young's first case.<sup>95</sup>

***St. Paul Evening Dispatch***  
**April 20, 1874, at 4.**

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**THE SUPREME COURT.**

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**The New Judge — The Press Printing  
Company's Suit Against the State  
Commissioner of Printing.**

The adjourned term of the Supreme Court was opened this morning, with a full bench. The newly appointed Justice occupied the seat at the left of Chief Justice McMillan and looked to be young in fact as well as in name. On the bench his youthful appearance is remarkable, and except for faint lines and shades upon the smooth face and around the eyes it would be doubted whether he was really as old in years as he is said to be. He is considerably smaller of stature than the other judges and the outlines of his body are more youthful than his facial lines. His head would be

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<sup>95</sup> The Court dismissed the case (and a companion case against the Treasurer of Mille Lacs County) because it lacked jurisdiction over officials in the executive branch of government. *County Treasurer of Mille Lacs County v. Dike*, 20 Minn. 363 (1874). This was a time when the judiciary was subservient to the legislature and followed an extreme separation of powers dogma. The history of the Court's implementation and eventual abandonment of this doctrine has yet to be written.

called a very good one by a phrenologist, while his square pointed chin would be taken to indicate considerable firmness. His hair is nicely trained to illustrate the supposed equipoise of the scales of justice, by being neatly parted in the middle. The young Justice appeared to be listening to the statements of attorneys with as much attention and as ready comprehension as his seniors on the bench.

The cause on trial was *The State ex rel. Norman Wright vs. S. P. Jennison, Secretary of State and Printing Commissioner*; an application on the part of the State Printer (Press Printing Co.) for a writ of mandamus directing allowance of a certain claim for brochure covering in excess of the amount to be allowed according to the construction put on the law by the Senate printing committee of last winter. The attorney for the relators stated the mount directly involved in the suit to be about \$160, while the attorney for the respondent stated that about \$2,600 was indirectly involved, in that the decision of this suit would settle the question whether that much of a rejected claim on the printing of last year should be allowed and paid. It appears that the law fixing maximum rates for the printing prescribes one cent for each stitching, binding and covering pamphlets while another clause allowing eight cents each for brochure (construed to be another name for pamphlet) covering. As to which clause should govern, is a nice question for the Court to determine. Missrs. Bigelow, Flandrau & Clark appear for the relator, Mr. Flandrau conducting the case and Attorney General Wilson and M. S. Wilkinson for the respondent, the latter conducting the case,—probably because he was prominent in bringing it on by the his action in the Senate last winter.



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County Treasurer of Mille Lacs County v. Dike.

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THE STATE OF MINNESOTA, *ex rel.* THE COUNTY TREASURER OF  
MILLE LACS COUNTY,

*vs.*

E. W. DIKE, TREASURER OF THE STATE OF MINNESOTA.

THE STATE OF MINNESOTA, *ex rel.* NORMAN WRIGHT,

*vs.*

S. P. JENNISON, SECRETARY OF STATE OF THE STATE OF MIN-  
NESOTA.

Under the constitution of this state, the courts have no jurisdiction to control the officers of the executive department of the government in the performance of their official duties, and cannot acquire jurisdiction by consent of such officers.

The duties imposed on the secretary of state by sec. 15 of chapter 46 of the Laws of 1868, are his official duties as an executive officer, notwithstanding that the legislature might have imposed them on some other person.

In mandamus against the secretary of state, the court, having no jurisdiction of the proceeding, declines to comply with the joint request of the relator and the respondent for its opinion upon the true construction of an act of the legislature.

*In the matter of the application of the Senate, (10 Minn. 78), and Rice vs. Austin, (19 Minn. 103,) followed.*

Original. The cases are stated in the opinion.

LOCHREN, McNAIR & GILFILLAN, for Relator in the first case.

GEO. P. WILSON, Attorney General, for the Respondent.

BIGELOW, FLANDRAU & CLARK, for Relator, in second case.

M. S. WILKINSON, for Respondent.

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County Treasurer of Mille Lacs County v. Dike.

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*By the Court.*—YOUNG, J.—These are two alternative writs of mandamus, directed to the state treasurer and to the secretary of state, respectively.

In the first case, upon the return of the writ, the attorney general, appearing in behalf of the respondent, objected to the jurisdiction of the court to compel the state treasurer by mandamus, to the performance of any official act. The objection is well taken.

The third article of the constitution provides as follows: "The powers of the government shall be divided into three distinct departments, legislative, executive and judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution." The fifth article provides as follows: "Section 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state."

In the recent case of *Rice vs. Austin*, 19 Minn. 103, (an application for a mandamus to the governor,) after much consideration, and a careful examination of the authorities, it was held that the executive and judicial departments being made distinct and independent by the third article of the constitution, and neither being responsible to the other for the performance of its duties, so neither can enforce the performance of even ministerial duties by the other. As the state treasurer is, equally with the governor, an officer of the executive department, the case of *Rice vs. Austin*, which we are satisfied was decided correctly on principle and authority, is conclusive against the jurisdiction of the court, and the proceeding against the treasurer must be dismissed.

In the proceeding against the secretary of state the relator



County Treasurer of Mille Lacs County v. Dike.

seeks to compel the respondent to audit certain accounts for public printing, performed by the relator for the state, under a contract with the commissioners of public printing, pursuant to chapter 46, of the Laws of 1868.

By that act it is provided as follows: "Section 1. The secretary of state, state treasurer, and state auditor shall be *ex officio* commissioners of public printing during the term of office respectively."

It is argued by the relator's counsel, that the duties imposed on the respondent by this statute are imposed on him, not as secretary of state, but as a member of the board of commissioners, created by the section quoted; that therefore the duty of auditing these accounts is not the duty of the secretary, as an executive officer; and that, for this reason, the case is distinguishable from *Rice vs. Austin*, and a mandamus may properly be directed to the respondent, not in his character of secretary, but as a commissioner of public printing.

The act, however, provides, (section fifteen,) that "the secretary of state \* \* \* shall audit all accounts for printing and binding executed under the provisions of this chapter." The duty is cast upon the secretary *eo nomine*, and is thus made his official duty, as an executive officer, according to the rule laid down in *Dennett, petitioner*, 32 Maine, 508, and adopted and followed in *Rice vs. Austin*.

The distinction taken in *Chamberlain vs. Sibley*, 4 Minn. 312, between the different kinds of acts required by law to be done by executive officers, was not necessary to the decision of that case, and is in conflict with the decision in *Rice vs. Austin*.

The secretary of state has appeared in open court, has expressly waived the benefit of his constitutional exemption, and has offered to submit to the jurisdiction. It is contended that in such case the secretary's consent gives the court jurisdiction, at least so far as to authorize us to determine the



## County Treasurer of Mille Lacs County v. Dike.

merits of the controversy between the relator and the respondent, and we are referred to the cases of *People vs. Bissell*, 19 Ill. 229; *People vs. Mattison*, 17 Ill. 167; *Pacific R. R. vs. The Governor*, 23 Mo. 353.

The supreme court of Missouri, in the case last cited, while holding that an alternative writ of mandamus may issue to the governor, and reserving the question of jurisdiction until the final hearing upon the return of the writ, says (at p. 359): "If, by the law of the land, a writ of mandamus cannot issue to the chief magistrate of the state, we do not maintain that he can waive this exemption. The rule, '*quilibet potest renunciare juri pro se introducto*,' is not applicable to this case." In this we concur.

The exemption of the secretary of state from coercion by the courts is not a personal privilege of the incumbent of the office, created for his benefit, and to be asserted or waived at his pleasure. An executive officer cannot surrender the defenses which, not for his, but for the public good, the constitution has placed around his office. Still less can his consent authorize this court to transgress the constitutional limitation of its powers, and assume a jurisdiction, which, by the fundamental law, it is expressly forbidden to exercise.

It is conceded that if, after a hearing upon the merits, the court should direct a peremptory mandamus to issue, the respondent will not be bound by his submission already made, and cannot be compelled to obey the commands of the writ.

As we cannot assume jurisdiction of this proceeding as of a controversy between parties, neither are we at liberty to comply with the joint request of the relator and respondent, that we express our opinion on the construction of those sections of chapter 46, of the laws of 1868, upon which, it is stated, the duties of the relator toward the respondent depend. The circumstance that the relator joins with the



respondent in this application, and that it is made in the form of a judicial proceeding, of which we have no jurisdiction, is not sufficient to distinguish the case, in principle, from a similar application by the respondent alone, which we should be obliged to refuse for the reasons stated in 10 Minn. 78, (*In the matter of the application of the Senate,*) and approved in *Rice vs. Austin, supra*.

The proceedings in both cases must therefore be dismissed.

Thereafter the dispute was submitted to Attorney General Wilson who issued his official opinion on July 16, 1874. See *Opinions of the Attorneys General of Minnesota* 304-305 (1884) (posted in the Attorney General category in the archives of the MLHP). It was reported in the *St. Paul Evening Dispatch*, August 1, 1874, at 2:

**The Attorney General Sustains Senator Wilkinson's Construction of the Old Printing Law.**

During the session of last winter Senator Wilkinson and the Senate committee on printing of which he was a member, advised the Commissioners of Printing that certain charges for brochure binding made by the Press Printing company, were not in accordance with that company's contract for State printing, and were in excess of the maximum allowed by law. The amount involved was some \$2,500. The commissioners having accordingly refused to audit these excessive charges, a friendly case was made up for the Supreme Court, and Senator Wilkinson, as the principal author of the dispute, was retained to appear for the Commissioners. But the Court held that it had no jurisdiction in the case, and

had no jurisdiction in the case, and that there was no right of appeal from the decision of the Commissioners, and, although both parties were agreed to waive the question of jurisdiction, the Court declined to pass upon the question of construction of the law. Since then, by consent we understand of both the Commissioners and printers, the matter was referred to Attorney-General Wilson, who has decided against the *Press* claim, and substantially agrees with the construction put upon the law and contract by the Senate Committee on Printing—that is, that the so-called brochure covering was included in the terms describing pamphlet binding, as used in both law and contract.



Part 11.  
County delegate  
allotment at State  
Convention on  
September 9,  
1874.

From the  
*Minneapolis Tribune*,  
September 1, 1874,  
at 2.

**Republican State Convention.**

A Republican State Convention will be held at the Academy of Music in Minneapolis, on Wednesday, the 9th day of September, 1874 at 12 o'clock M., for the purpose of nominating one candidate for Chief Justice, and one for Associate Justice of the Supreme Court of this State.

The number of delegates entitled to sit in the Convention will be as follows:

Aitkin .....	1	Mille Lacs .....	1
Anoka .....	2	Morrison .....	1
Becker .....	2	Mower .....	3
Benton .....	1	Murray .....	1
Big Stone .....	1	Nicollet .....	3
Blue Earth .....	4	Nobles .....	2
Brown .....	2	Olmsted .....	4
Carlton .....	1	Otter Tail .....	3
Carver .....	2	Pembina .....	1
Cass .....	1	Pine .....	2
Chippewa .....	3	Polk .....	1
Chicago .....	3	Pope .....	2
Clay .....	2	Ramsey .....	7
Cottonwood .....	2	Redwood .....	2
Crow Wing .....	2	Redville .....	2
Dakota .....	3	Rice .....	4
Dodge .....	2	Rock .....	2
Douglas .....	2	St. Louis .....	3
Faribault .....	4	Scott .....	2
Fillmore .....	4	Sherburne .....	2
Freeborn .....	4	Sibley .....	2
Goodhue .....	4	Stearns .....	3
Grant .....	1	Steele .....	3
Hennepin .....	5	Stevens .....	1
Houston .....	4	Swift .....	1
Isanti .....	2	Todd .....	2
Jackson .....	3	Wabasha .....	4
Kanabec .....	1	Wadena .....	1
Kandiyohi .....	2	Waseca .....	3
Lac qui Parle .....	2	Washington .....	4
Lake .....	1	Watonwan .....	3
La Sueur .....	2	Wilkin .....	1
Lyon .....	2	Winona .....	5
McLeod .....	2	Wright .....	3
Martin .....	2	Yellow Medicine .....	1
Meeker .....	3		

The apportionment, as fixed by resolution of the State Convention, is one delegate for each organized county, and one for every 400 Republican votes, and major fractions thereof, based upon the average vote for State Ticket in the late election.

C. H. Pettit,  
C. Stebbins,  
Levi Nutting,  
O. A. Gilman,  
Wm. Bichel,  
L. G. Stevenson,

W. L. Wilson,  
D. Sinclair,  
E. P. Freeman,  
Jacob Frankenhof,  
C. A. Conroy,

State Central Committee.

**Part 12.**  
**Party Platforms.**

**Both party platforms were short. Both refer to corruption charges against former Republican officials, condemn recent legislation raising the salaries of members of Congress and advocate more control over corporations. Both also refer to economic and monetary issues that would lead to the Populist Movement in the next two decades. The most striking difference is the Democrat's indifference to the effects of violent insurrections in several former Confederate states.**

**Republican Party Platform**

**The following platform of the Republican Party was adopted at its convention on Wednesday, September 9, and reported in the *St. Paul Daily Pioneer* the next day:**

***St. Paul Daily Pioneer***  
**September 10, 1874, at 3.**

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**Mr. H. A. Castle, from the committee on resolutions, reported the following:**

**PLATFORM.**

**We, the Republican Party of Minnesota, in state convention assembled, do hereby adopt and declare the following:**

**Resolved, That while reaffirming the principles and renewing the pledges annunciated and given by the Republican party in the last State and National Conventions, and recognizing the ability and general fidelity which marked both State and national administrations in the discharge of the**

public trusts respectively committed to them, we can point with special pride to the firm maintenance of our foreign relations upon the basis of justice and right, and such as has secured respect and friendship abroad and peace and confidence at home; the judicious enforcement of all laws having their object the protection of all classes of our citizens both North and South in their just civil and political rights, and the whole country against the perils of insurrection and a new rebellion, the preservation of the public faith and the constant improvement of the public credit; the reduction of the public debt and the consequent removal of the burdens of taxation; the preservation of a sound currency against any ruinous inflation inspired by speculative interests, which may be hailed as a sure guarantee of the earliest possible return to specie payment consistent with the just rights of both the debtor and creditor classes of our people; and above all the constant vigilance manifested in hunting out and exposing to the public condemnation delinquent officials and corruption in offices wherever and whenever found, regardless of supposed party interests and party relations, and the correction of all abuses as fast as discovered; its prompt response to the popular demand by the repeal of the Congressional salary bill and other of obnoxious legislation, and its readiness to grapple with new issues growing out of the relations of corporate power and productive industry by the inauguration of measures looking to the protection of the latter against all unjust encroachments of the former, and by the opening up of new and cheaper channels of communication by water between the granaries of the West and the markets of the East as such guarantees that the grand old party that saved the country is

still true to the principles that gave it birth, in hearty sympathy with the popular will, able and willing to administer the government in the interests of an enlightened economy and a just regard to the public welfare, and is worthy the continued confidence in support of the people.

Resolved, that we hardly approve of the action of Gov. Davis in relation to the prosecution of the person is charged by the report of the Senate committee with defrauding the school fund.

The above resolutions were unanimously adopted.

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### **Democratic Platform**

The Democrat's Platform was reprinted in the *Minneapolis Daily Tribune*, which inserted captions or headings before several sections (i.e., "The Louisiana Rebellion Upheld").

*Minneapolis Daily Tribune,*  
September 24, 1874, at 3.

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### **THE MIXED PLATFORM.**

The following platform was adopted by the convention:

Whereas, The special occasion which brought the Republican party into power has long since ceased to exist and there is not now and has not been for years any central animating principle or

**purpose in that party except the cohesive principle of public plunder, and a settled purpose to retain power by any means and at all hazards; and**

**Whereas, To perpetuate its hold upon office that party has formed an alliance with the capital and organized monopolies of the country, and together they propose to run the Federal and State governments in the interests of favored classes, by exempting them from all burdens and restraints and casting the whole crushing weight of onerous taxation upon the masses of the people,**

***Therefore, We, the representatives of the people of the State of Minnesota, who demand a reform in the administration of our State and Federal government having assembled without regard to former, partisan distinctions, hereby proclaim the following platform of principles:***

#### **THE LOUISIANA REBELLION UPHELD.**

**1—Believing the present disastrous condition of the Southern States to be largely due to the corrupt rule of carpet-bag politicians, who have plundered and impoverished the people, intensified the prejudices of race, and driven the communities to the verge of civil war. Knowing that this state of affairs has been developed during the administration of President Grant and been fostered by the Republican party; and despairing of relief except through a radical change of policy, we demand the maintenance of a just and impartial policy towards the people of the South whereby both races will be protected in all their rights, the expulsion of the thieves, and**

**perfect equality before the law for all persons without regard to race, color, or political opinion.**  
**2—A return to gold and silver as bases of the currency of the country, and an assumption of specie payment as soon as public interest will allow.**

### **TARIFF.**

**3—A tariff for revenue only—consistent with an honest administration of the government. No government partnership with protected monopolies.**

**4—Home rule to limit and to localise, most jealously, the few powers intrusted to public servants, municipal, State and Federal, and no centralization.**

**5—Equal and exact justice to all men; no partial legislation, and no partial taxation.**

**6— A free press - but no gag laws.**

**7—Free men; uniform, excise laws, but no sumptuary laws.**

**8—Official accountability, enforced by better civil and criminal remedies; no private use of the public funds by public officers.**

**9—Chartered corporations always supervisable by the State in the interest of the people.**

**10—The party in power responsible for the administration of the government while in power.**

### **DUNNELL.**

***Resolved,* That the nomination by the Republicans of a noted salary grabber in the First Congressional District [Mark H. Dunnell]—of an apologist**

and defender of that outrage in the Second [Horace B. Strait]—and one of the most unscrupulous Congressional lobbyists in the Third [William B. King] show the utter hollowness of all Republican promises of reform.

### **STARTLING.**

*Resolved*, That the startling exposures of corruption in the offices of State Treasurer and Auditor, concealed through many years of Republican administration, cause just alarm to all good citizens and demonstrate anew the impossibility of reform within the Republican organization.

The words "no sumptuary laws" were not stricken as Mr. Wheaton desired.

Mr. Ayres moved the following amendment, which was adopted amid pleasant applause:

*Resolved* further, That we agree with the leading Republican organ this State thus:

"That the history of the State Auditor is substantially the history of the party of this State."

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In an editorial that day, the *Tribune* excoriated the Democrats.

*Minneapolis Daily Tribune,*  
September 24, 1874, at 2.

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### **THE LIBERAL CONVENTION.**

The hybrid State Convention, variously denominated Anti-Monopolists, Liberals and Democrats, assembled at St. Paul yesterday. The proceedings

ring with the old flavor of ante-bellum Democracy, from the opening speech of the chairman down to the platform and resolutions.

They would have done credit to the White Leaguers of Louisiana or the old Ku Klux of South Carolina. If there be any among the so-called Liberal-Republicans who have heretofore had a doubt as to the position they held in politics, or of their relation to national issues, they can doubt no longer. They have been carried, body, bones and breeches, into the old pro-slavery Democratic camp. This has been the tendency all along. There were those, in the Greeley days, who foolishly believed that they could "touch pitch and not be defiled" that they could raise up the malodorous political carcass of Democracy to their level instead of being dragged down by it. But the result has proved as was then predicted. The convention of yesterday demonstrated conclusively where that mongrel party stands, and if there be yet left those who still retain any regard whatever for the government under which we live, or for themselves they will from this time forth repudiate all affiliation with this pronounced ultra pro-slavery party.

The speech of the chairman [Henry M. Burchard of Winona] commences by denouncing the government, goes on to sympathise with the Southern opponents of reconstruction, to denounce Congress for having conferred political rights upon the freedmen, and to encourage those whose ambition it is to "kill a n----r" in their recent rebellion in Louisiana.<sup>96</sup>

The committee which drafted the platform evidently took their cue from the chairman, and incorporated in that document the sentiments

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<sup>96</sup> Text in profanity.



expressed by him. . . . After having thus boldly proclaimed the thorough Democracy of the party, and given vent to their rebellious sympathies, the convention was evidently a little alarmed at the position in which it found itself, and hastened to sugar the pill it had prepared by placing in nomination two gentlemen for the offices of Chief Justice and Associate Justice whose high standing they hoped would compensate for the incendiary tone of the resolutions.

Judge Wilkin, of St. Paul, and William Lochren, Esq., of this city, are gentlemen of good legal ability, whose personal characters are above reproach. They are possessed of fair legal abilities, but neither has achieved that pre-eminent distinction in his profession which entitles him to the exalted position for which he is named. They are not to be compared in general fitness in legal ability or in judicial experience to the Republican candidates, Judge McMillan and Hon. F. R. E. Cornell. These gentlemen have been prominently before the people for fifteen or twenty years, have filled high offices of trust, and have acquitted themselves with honor to the State and to themselves on all occasions. And furthermore, they stand square upon the platform of that party which is loyal to the country, and which is pledged to preserve it from the hands of rebels.

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#### Part 13.

Chief Justice McMillan and Associate Justice Cornell  
are sworn into office.<sup>97</sup>

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<sup>97</sup> Minutes of the Minnesota Supreme Court, January 11, 1875 (reduced).

State of Minnesota. Supreme Court.

General October Term. A. D. 1874. - To-wit,

Monday Morning 10 o'clock, January 11<sup>th</sup> A. D. 1875  
Court Convened pursuant to Adjournment.

Present. Honorable John W. Berry, Associate Justice.  
Hon. Samuel J. R. McMillan, having been duly elected  
as Chief Justice of the Supreme Court of the State of Minnesota,  
and having taken the oath prescribed by law, and duly filed  
the same in the Office of the Secretary of State, he the said  
Samuel J. R. McMillan appeared and took his seat upon  
the Bench, as Chief Justice of the Supreme Court of the  
State of Minnesota.

Honorable Francis R. E. Cornell, having been duly  
elected as Associate Justice of the Supreme Court of the  
State of Minnesota, in the place of Hon. George B. Young,  
and having taken the oath prescribed by law, and duly filed  
the same in the Office of the Secretary of the State, he the  
said Francis R. E. Cornell appeared and took his seat  
upon the Bench, as Associate Justice of the Supreme Court  
of the State of Minnesota aforesaid.

Beaure & Kelly, Respondents  
vs.  
The Pacific & Atlantic Telegraph  
Company. Appellants.

This cause came on to  
be heard this day upon  
Motion of Respondents  
Attorneys for a re-argument  
of this cause, and the  
same was argued on the part of the Respondents, and  
submitted without argument by Attorney for Appellant  
and taken under advisement by the Court.

Ordered that this Court stand adjourned  
until to-morrow morning, at 10 o'clock.

A true record. Attest: Samuel Hough,  
Clerk.

## Acknowledgments

Much of this article is based on articles and editorials in nineteenth century Minnesota newspapers found on microfilm in the Hubbs Room of the Minnesota Historical Society Research Library. In recent years a few of these newspapers have been posted online by the MHS, making research in these secondary sources easier. The addition of the *Minneapolis Tribune* to the Minnesota Digital Newspaper Hub was of immense help in researching this article. Many times over the years I have used the online Winona Newspaper Database of the Darrell W. Krueger Library at Winona State University not only for editorials of the *Winona Daily Republican* but also to find dates of events that I then use to locate stories in other newspapers at the MHS. For this particular article I used the Library of Congress's Chronicling America less than usual.

The librarians in the MHS Research Library are courteous, knowledgeable and helpful, to say the least. I will relate an anecdote to illustrate this. In the official files of Governor Davis is a handwritten letter by J. C. Braden dated April 2, 1874, stating that an article in a certain newspaper "this morning constrains" him to write and recommend Cornell for the Court (Appendix, page 110). I could not make out the name of that newspaper and took Braden's letter to a librarian to "translate" it. She explained that handwriting style at this time required that when the same two letters appeared together in a word (i.e., ss) the first letter was capitalized—thus the name of the newspaper was PreSs. I thereupon tracked down the article in the April 2nd issue of the *St. Paul Press* that prompted Braden to write; it is posted on pages 83-88 of this Appendix, followed by the *Tribune's* sarcastic rejoinder. This is just one of many times I have been helped by MHS librarians as I researched articles for the MLHP the past eleven years.

## Related Articles

**This is the third in a series of articles on Supreme Court elections in the nineteenth and early twentieth centuries.**

**The first: Douglas A. Hedin, "Now on the Ballot for Candidates for the Minnesota Supreme Court: 'Calvin L. Brown (Republican-Democrat)' — The Story of *In re Day* (1904)." (MLHP, 2017).**

**The second: Douglas A. Hedin, "James Gilfillan vs. Christopher G. Ripley—The Contest for the Republican Nomination for Chief Justice of the Minnesota Supreme Court, 1869." (MLHP, 2018).**



**Posted MLHP: January 1, 2019.**