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HISTORY OF THE MINNESOTA SUPREME COURT

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At the opening of 1900 two new justices came to the court, Charles L. Lewis and John A. Lovely.

Charles L. Lewis was another of the many supreme court justices who was born in a farming community, his place of birth being near Ottawa, Illinois, and the date sometime in March 1851.

He attended district school in Illinois until sixteen years old, when he entered the Ottawa high school. Then followed Oberlin College, from which he was graduated in 1876. He then spent two years in a Chicago office, and in 1879 opened an office of his own in Fergus Falls, Minnesota, and soon after served for a time as prosecuting attorney. He moved to Duluth in 1891, and two years later was appointed district court judge, a position he resigned several years later to enter a partnership with J. L. Washburn.

He was elected justice of the supreme court in 1898, and ascended the bench January 1, 1900. He was re-elected in 1906, and ended his service January 1, 1912.

Leaving the bench Judge Lewis again went to Duluth, resumed practice, and on becoming ill went to Wisconsin where he stayed for three years with his son. From Wisconsin he moved to California in hope of improving his continued ill-health. Yet

within a year he moved to Kingman, Arizona, re-establishing a business and a home as his health improved. He was admitted to the bar in Arizona and practiced there until 1922, when he again returned to Los Angeles and formed a partnership with Don Lehman, a former Minneapolis man, with whom he continued in partnership until his death.

In the twelve years that Judge Lewis sat on the Minnesota supreme court bench he wrote 823 opinions and 52 dissents. They are preserved in volumes 78 to 116 of the Minnesota Reports. [-1-]

The other justice who took his seat at this time was John A. Lovely. He was born at Burlington, Vermont, November 18, 1843, and died at Albert Lea, Minnesota, January 28, 1908.

Lovely came west when twenty years old, and a year later, in 1864, was admitted to the bar at Milwaukee, Wisconsin. He practiced at Watertown, Wisconsin, until 1867 when he moved to Albert Lea, Minnesota, where he continued to reside until his death.

Judge Lovely was elected to the supreme court bench at the general election in 1898, and served from January 1900 until October 1906, when he resigned to resume private practice. His temperament was forensic rather than judicial, and back once more among his clients, he derived great pleasure from identifying himself closely with their cause.

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Not much is recorded of Judge Lovely's early life, and his later years were largely spent in quiet practice. Such was his nature that he never projected himself actively into politics or public affairs. His opinions are found in volumes 79 to 96 of the Minnesota Reports and total 347; his dissents number only 2.

At the opening of 1900 the following justices were on the bench: Charles M. Start, chief justice, and Loren W. Collins, Calvin L. Brown, Charles L. Lewis, and John A. Lovely, associate justices. Darius F. Reese was clerk.

Of these it will be recalled that Justice Collins also sat on the bench throughout the nineties, in fact since he had been appointed, in 1887, to the vacancy created by the death of Justice Berry. Thereafter Collins had been re-elected successively until he resigned on April 1, 1904, to become a candidate for governor. After his defeat he resumed his law practice, and to his vacant seat was appointed Wallace Douglas.

Douglas was born near Leyden, New York, September 21, 1852, and seventy-eight years later died at Ferndale, Washington. In [-2-] his youth he attended the public schools in New York state, and later those in Illinois. While in New York he worked for a time as assistant agent of a railroad company, then later studied for a year in Cazenovia Seminary. Following he returned home and worked for a year at the local bank. With the money thus earned he entered the law department of the University

of Michigan, receiving a law degree in 1875. The same year he was admitted to the bar and began to practice in Chicago.

In 1883 he came to Minnesota and located at Moorhead, continuing his practice. While there he served as city attorney, member of the board of education, county attorney of Clay county, and was active in many civic affairs. He was elected to the office of attorney general in 1898, and re-elected in 1900 and 1902.

On March 31, 1904 he resigned and on the same day was appointed by Governor Van Sant associate justice of the supreme court, continuing to serve in that capacity until January 1, 1905, at which time he retired to private practice in St. Paul as head of the firm of Douglas, Kennedy & Kennedy. Later failing health caused his removal to Ferndale, Washington.

For more than twenty years Judge Douglas served as a member of the state forestry board. It was largely due to his efforts, while a member of this body, that Itasca State Park came to be preserved. In the park is a state owned summer resort known as Douglas Lodge. Douglas will be remembered as one of the first and strongest advocates of laws aimed to perpetuate the state's wild life.

In the nine months that Justice Douglas was a member of the high court he wrote 51 opinions and 4 dissents. They occur in the Minnesota reports, volumes 92 to 94.

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Another judge now on the bench who was a member of the court during the nineties was Calvin L. Brown. And, as has been mentioned, Brown served during 1898 and continued as associate justice [-3-] until 1913 when he was elevated to the chief justiceship, serving in this latter capacity until his death in Minneapolis, September 24, 1923.

Of the remaining members who were now on the bench, the only other who had served the court during any part of the nineties was Charles M. Start. Some of the high lights of his career have been given, yet it might well be added that in the history of the court Justice Start will always remain a dominant figure. During his term on the bench, it was later said of him, he adjudicated individual rights with a determination to be just unsurpassed by any other judge. This ability to suppress the human tendency of prejudice carried him to the pinnacle of juridical integrity.

Start became a member of the court during the time when the business of the court had reached its high water mark. The court calendar for April, 1895, listed 330 cases, and the calendar for the following October listed 365.

That Chief Justice Start was a firm believer in progressive legislation was disclosed beyond any doubt by a memorandum found among his private papers after his death. It read: "A reform movement ought not to be sent straight to the mark, like a cannon ball, without regard to the wreck and ruin

which may follow. It should be strenuous, but fair; persistent, but deliberate; it should be based upon justice and controlled reason, for no permanent reform can, or ought to be, secured in any other way".

And few men have attained his deliberate thoughtfulness. He once said; "Perhaps some statement which we make while smarting under the discourtesy of a practitioner, may in future years cause grief or embarrassment to some innocent child".

Start was a member of the court at the time the application of the St. Paul College of Law for a certificate of approval, in accordance with the act entitled "An Act relating to the admission [-4-] to the bar of attorneys and counsellors at law", which was approved March 28, 1901, was applied for by Dean Hiram F. Stevens. The certificate of approval was issued by the court on April 4, 1901.

Soon after Douglas had taken his seat on the bench it became necessary on October 5, 1904, for the first time since the organization of the court, for a governor to issue an order appointing three district court judges to sit in a certain case before the supreme court from which a like number of the regular supreme court justices were disqualified from hearing.

The case arose over the petition of Frank A. Day on which an order was issued from the supreme court requiring the secretary of state to show cause why a writ of mandamus should not issue requiring him to place upon the official state ballot, after

the name of Calvin L. Brown as candidate for justice of the supreme court, the word "Democrat" in addition to the word "Republican", thus indicating that both political parties had endorsed and nominated him for that office.

Justices Brown, Lovely, and Lewis did not sit in considering this matter, having been candidates for re-election. To their seats were appointed H. R. Brill, Frank C. Brooks, and W. A. Cant, district judges, to serve as special judges sitting with Chief Justice Start and Associate Justice Wallace B. Douglas.

A conclusion, reached immediately, and issued from the court as an order, granted the petitioner the relief asked for, by ordering that the secretary of state place after the name Calvin L. Brown on the state ballots for the next general election the words "Republican-Democrat".

It was not until three months later that the opinion of the court, written by Special Judge Brill, was filed. This opinion set forth at great length the ground upon which the above conclusion had been based. It cited with much elaboration provisions of the Laws [-5-] of 1893, 1895, 1901, and 1903, in addition to citing numerous cases. The opinion further considered the validity and invalidity of numerous provisions, amendments, and revised provisions within these laws. The closing remarks contained in the opinion follow:

"...political parties exercise their undoubted common right to nominate any qualified person, and frequently the

candidate of one party was nominated by another party. Chapter 136, p. 287, Laws of 1895, recognized this right and practice, and provided, by necessary implication, that the fact of such nomination by different parties could be indicated on the official ballot. The act of 1901 makes no mention of the laws of 1895. The law of 1895 was re-enacted in 1903, only four days prior to the re-enactment of the law of 1901. The situation fairly raises an inference that the legislators acted unadvisedly in the enactment of the provision in question, and that they were not informed of the subject of the provision by the title of the act.

"We hold that this provision violates the mandate of section 27, article 4, of the constitution, and is invalid".

With all this Justice Wallace B. Douglas strongly dissented; and joining him in the dissent was Special Judge Cant. The dissenting opinion began by stating: "As far as here material the act reads as follows:

"And in no case shall the candidate of any political party be entitled to be designated upon the official ballot as the candidate of more than one political party, and shall be designated upon the official ballot in accordance with the certificate of nomination first filed with the proper officers".

The dissenting opinion further maintained: "Every statute duly passed by the state legislature is presumably valid, unless it appears to be in conflict with some provision of the federal or state constitution; and in order to justify a court in

pronouncing [-6-] it invalid...its repugnancy must be so 'clear, plain, and palpable' as to leave no reasonable doubt or hesitation upon the judicial mind".

Justice Douglas, with Cant concurring, maintained that the subject matter of the act, which the majority opinion had held incongruous with the title embraced, was entirely appropriate. "In our opinion", they concluded, "Therefore, the provision (chapter 312, p. 524, Laws 1901) was a valid exercise of the legislative will, and the writ prayed for should have been denied".

Douglas was a man of very strong convictions, and he often found himself standing alone. Throughout his life, certain it is, no one ever accused him of compromising with these convictions.

Before he became associate justice, while attorney general, he conducted many important cases for the state. One, which assumed special importance, was a suit brought by the State of Minnesota in the Supreme Court of the United States to restrain the consolidation of two great railroads through the Northern Securities Company, which consolidation was deemed to be contrary to the best interests of the people of the state.

Justice Douglas was always frank and direct; his statements often pointed and blunt. On page 77 of volume 94 of the Minnesota Reports, Justice Douglas had, in writing the opinion of the court, reversed the lower court's decision and granted a new trial. Upon reargument he said:

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"A re-examination of this case upon reargument convinces us that the court misapprehended the force and effect of the instruction which was the basis of reversal in the decision heretofore filed". [-7-]