Section V

HISTORY OF THE MINNESOTA SUPREME COURT

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The first term of the territorial district court was held in the new court house in Stillwater in 1849. It was presided over by Chief Justice Goodrich and lasted one week. Thirty-five cases were on the calendar. Of these the jury returned ten indictments; one for assault with intent to maim, one for perjury, four for selling liquor to Indians, and four for keeping gambling houses. Only one of these indictments was tried at this term, the prisoner being a prominent member of the bar and the first district attorney of Ramsey county, William D. Phillips.

During the trial, as the law was at that time, the prisoner was not permitted to testify in his own behalf. Later, on leaving the court room with some friends, he indignantly explained to them that he had been out electioneering for Rice against Sibley, and owing to the uncertainty of his getting meals in such unsettled country, he carried crackers and cheese in the same pocket with his pistol. A crumb must have lodged in the muzzle, he reasoned, and it was this the witness had seen and mistaken for a load.

But the court hadn't heard this story, or considered the possibility. Phillips had been found guilty and fined $25!

Many other anecdotes are told of this same Phillips. On one occasion during a trial while he and an attorney fresh from

the east were discussing a certain point of law, the eastern attorney made some classical allusion in which Cicero or Demosthenes was mentioned. Phillips became highly excited and began beating upon the table. "This man", he cried, "may be a classical scholar. He may be as eloquent as Demosthenes, and he has probably ripped with old Euripides, socked with old Socrates, and canted with old Cantharides; [-1-] but gentlemen of the jury, what the hell does he know about Minnesota law?"

Phillips left the country, reportedly to accept an appointment, at the time General Franklin Pierce was elected president, and never returned.

The supreme court held two sessions a year during which time they reviewed cases appealed from district courts. Each judge having sat as a district court, the result was that they were in the position of reviewing cases appealed from their own decisions. During the nearly three years that Goodrich, Meeker, and Cooper served on the supreme court they wrote only 17 reported opinions, but of course this does not give a correct idea of the amount of legal business transacted. A number of decisions were handed down in which no opinions was [sic] written; and of those which were written it is known that a few were lost.

The first decision filed by the Territorial supreme court, though not the first one to be considered, was in the case of "Desnoyer vs. L'Heraux" an appeal from the decision of Goodrich, who had sat as district judge in the lower court. The action

involved an appeal from a judgment of $50. The supreme court reversed the judgment, Chief Justice Goodrich dissenting. The opinion bears the number 8. However, two other opinions are on file, both bearing the number 7, which must have preceded this case in being considered by the judges. These two cases are "Snow, et al. vs. Johnson" and, as stated, both bear the opinion number 7. Opinions 1 to 6 are missing, and either the decisions were handed down without written opinion or they were mislaid soon after.

Following the removal of Chief Justice Goodrich, Jerome Fuller of New York was appointed to the vacant seat on the supreme court bench. Fuller, upon receiving his appointment, left for St. Paul at once, and immediately took up his duties. [-2-]

Little is known of Jerome Fuller's early life, and no account has been left of his death. He came to the territorial supreme court from Brockport, New York, during the administration of President Fillmore. After arriving in St. Paul he sat on the high court bench for the first time at the July term in 1852, and continued to serve for the balance of the year.

In the meantime word came to St. Paul, via steamboat, that the United States senate had rejected President Fillmore's appointment of Fuller to the territorial chief justiceship. This was months later, long after the rejection had been known in the east.

Even though his service was brief, newspaper accounts at the time gave Fuller credit for conducting his court in

a highly successful manner. His term on the bench cut short, he returned to Brockport, New York, where a few years later he was elected county judge of Monroe county. He then made his home in Rochester, at that time one of the centers where resided many of the great eastern attorneys. No later accounts of his life are available.

In the short time that Fuller served the court he wrote 3 opinions and no dissents. They are preserved in volume 1 of the Minnesota Reports.

At the time Fuller arrived and took over Chief Justice Goodrich's place on the bench, he also presided at the district court terms in the First Judicial District. Presiding over this district court on May 7, 1852, Chief Justice Fuller found 57 cases on the calendar. And not one was ready for trial! The attorneys offered as excuse for postponement that it was unheard of in Minnesota courts for cases to be tried on the first day of opening court. They were sharply told by Judge Fuller that hereafter when cases were called the parties must be prepared to have them tried or suffer the consequences, including the assessment of costs.

The rejection by the United States senate of the appointment of Fuller for chief justice of the territory furnished [-3-] Isaac Atwater with an opportunity to point out in his paper the unhappy extent to which party politics were carried in our country. No man, Atwater maintained, had ever sat on the bench

with more general acceptableness than had Fuller during his brief service. He praised Fuller for conducting his court in a highly satisfactory manner, and suggested that all courts in Minnesota be conducted likewise.

He credited Fuller with having given unstintingly of his time when called upon to make public addresses and lectures. Then in a later issue of his paper Atwater attributed the refusal of the senate to approve Fuller's appointment to Senator Fish of New York. Fish, so Atwater suggested, may have been resentful of the time that Fuller had exposed in the senate the undesirability of some legislation being sponsored by the Senator.

Following the rejection, President Fillmore thereupon appointed Hon. Henry Z. Hayner, of New York, chief justice for the territory, and the nomination was promptly confirmed by the senate.

No information is available about Hayner and none could be acquired even by those with whom he associated. The result, as is the case with so many of these figures, is that in later years a tinge of mystery came to envelope Hayner. One authority even questioned that he ever came to Minnesota. However, some incidents are recorded which may be taken as authentic, and they shed some light on the points in question.

It will help to recall that after Aaron Goodrich, the first chief justice, was removed by President Fillmore, Jerome Fuller was appointed chief justice, came to Minnesota and served

from November 13, 1851 to December 16, 1852. In the meantime, and while Fuller sat on the bench serving as chief justice, the de- [-4-] bate was going on in the United States senate over his appointment, the one which finally culminated in his rejection by that body. Then Hayner was appointed and confirmed. But he arrived in St. Paul too late to hold the fall term of court. There being no winter term Justice Hayner's duties were limited to such matters and actions as came before him at chambers.

Before the next regular session of the supreme court was held the Pierce administration came into power and removed all Federal officers then in the territory, so Hayner never presided at a regular session, and from this undoubtedly arises the doubt that he ever came to Minnesota. Yet there can be no doubt that Hayner was in St. Paul that winter, and even though there was no regular session of the court, he must have acted in the full capacity of chief justice in other matters, such as anyone in his position might be called upon to fulfill in those early days.

Hayner was officially chief justice from December 16, 1851 to April 7, 1852, but, never having presided at a regular session, he wrote no opinions. Of his later life nothing is known. Rumor at the time had it that he returned to New York to accept an appointment to the state bench there.

A case of considerable local interest reached the supreme court and was decided at about this time. It had to do with the large garrison maintained at Fort Snelling under the

command of Colonel Francis Lee. Certain soldiers, desiring to be released from service, conceived and carried out the idea of applying to Henry A. Lambert, Ramsey county judge of Probate, for writs of habeas corpus discharging them from their enlistment. The idea spread quickly, and it became obvious to Colonel Lee that if the practice were to continue the fort would be soon depopulated. (Some settlers even said that the night fires of the Indians were beginning to move in closer.) [-5-]

Acting without loss of time Colonel Lee made application by petition to the supreme court for a writ of prohibition to restrain the probate judge from proceeding in the writ of habeas corpus. The petition was granted immediately, Colonel Lee heaved a sigh, and once again the fort went back to its more or less routine existence. The opinion setting forth the decision is number 16, and was written by Justice Cooper.

Other cases reaching the supreme court during the first few years touched on many questions having to do with the formative problems arising from the newness of the territory. A number of actions growing out of promissory notes, a few of which were trivial, were tried by the court. [-6-]