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HISTORY OF THE MINNESOTA SUPREME COURT

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For some time following the organization of the state government, Minnesota was confronted by all the difficulties arising from diverse factions and opposing local interests, along with the problem of sparse population. Every opinion handed down by the supreme court was eagerly awaited; it meant the clarification of some new point arising out of the early activities of the state, or some question, entirely new, which would establish, by the decision, a safe course to be followed in the future.

Such rulings took vision, and one free from any touch of the over-enthusiasm which was bubbling up in every community of the young state. In all their judicial and civic activities these early supreme court justices built strongly the frame which was to support the Jack-In-The-Beanstalk-like growth of the state. Many principles, now so familiar and indisputable, were determined upon principle alone. This was the direct result of the embryonic condition of the laws and of everything pertaining to the formative days of Minnesota. So it can be well reiterated that foremost among those who foresaw this growth were the early supreme court justices. And to them must go full credit for providing a just basis for the jurisprudence of this state for all time to come.

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The opinions handed down by these justices were to illustrate the development of all the material, industrial, commercial, and political interests of the state. They concerned men in their daily life, aided in establishing their code of business, and blazed out the path in which those who were to come must follow.

Association of this date with national history gives occasion to realize how young indeed was the entire nation. It was [-1-] during this period that Judge Emmett's brother, as author of both words and music, directed in St. Paul for the first time the singing of a song that has since become nationally beloved -- "Dixie".

The first opinion of Chief Justice Emmett was "Minnesota & Pacific Ry. vs. Sibley" granting an application to the court for a writ of mandamus requiring the governor to issue state bonds in aid of the railroads. The beginning of this historical litigation received the sanction of a bare majority of the court. The last was "Armstrong vs. Hinds", seven years later. The court as then constituted prepared opinions in the following numbers: Chief Justice Emmett, 125; Justice Flandrau, 214; and Justice Atwater, 161.

In comparison to this, the work of the territorial court was meager. Yet even these 500 opinions of the first three state supreme court justices gave no indication of what was to come. It is interesting in this connection to glance ahead and

note the later growth of the work of the supreme court. Its maximum was reached in 1895, when the number of cases reached the amazing total of 695 for that year -- 139 to each judge! The cases so increased that Justice Mitchell, during his nineteen years of service, 1881-1899, wrote 1500 opinions, an average of 80 a year. Thus it can been seen that Justice Mitchell wrote about as many opinions in a year and half as Chief Justice Emmett wrote in seven.

The first case arising out of early day logging, a type of litigation that was later much before Minnesota courts, was that of "Short vs. McRea & Register", decided in 1860. The plaintiff, during 1857 and 1858, was occupied in rafting pine logs on St. Croix Lake under a contract with owners. The defendants had logs intermingled with the logs belonging to the party for whom plaintiff was rafting. About the first of June, so plaintiff alleged, the defendants agreed with plaintiff that if he would collect and raft their logs along with [-2-] the others, they would pay him what it was reasonably worth, taking their proportion out of the general mass so collected and rafted, rather than attempting to sort out their own particular logs. The defendants denied this, maintained they told Short not to meddle with their logs unless he wished to buy them, as were, at the rate of eight dollars per thousand feet. Under this authority alone, defendants alleged, Short went ahead and collected an appropriated a large number of their logs. They demanded judgment against him for this loss. A jury in lower court found a verdict for plaintiff. A new trial was

granted defendants, and plaintiff appealed. The order granting a new trial was reversed by the supreme court.

Some of the cases coming before the supreme court at this time might be mistaken, surprisingly, for some of those reaching the court today. But a glance at the others would suffice to identify them with the early activity of the court.

One example bearing out the first assertion is the case of "Board of Supervisors of Ramsey county vs. Heenan" (2 Minn.281) disclosing the fact that even in these early times land and real estate were occasionally sold for taxes. And during the first year of the state court's existence a dozen bank cases were considered. Also there was considerable litigation growing out of promissory notes. Too, in scanning the list of American business firms in litigation in the supreme court during this time, there are to be found many who are in business today, some of them now grown to a size which places them among the largest firms in the nation. Among the better known ones are: Aetna Life Insurance Co., Phoenix Life Insurance Co., Metropolitan Life Insurance Co., American Express Company, Minneapolis & St. Louis Railroad, and the St. Paul Fire and Marine Insurance Company.

Cases which definitely associate themselves with the early period of the court are, of course, more numerous. One such [-3-] which comes to mind could almost be taken as belonging to very early English history. It is that of "State vs. Bilansky" (3 Minn. 169) in which, perhaps for the first time in any court in the

United States a prisoner claimed benefit under the old English provision of "benefit of the clergy and petit treason". In the opinion written by Justice Flandrau are to be found the following remarks:

"It is quite remarkable that a court in this country at this day should be called upon to investigate and decide questions of the benefit of the clergy and petit treason; yet the peculiar provisions of our statute render it necessary.

"These subjects have so long been looked upon by lawyers and courts as practically obsolete, that we enter upon an examination of them more in the spirit of curious research than of useful application... The prisoner [she] was indicted for murder... the murdered party, her husband... The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished (1851) and the last named offense shall be prosecuted and punished as murder in the second degree.

"The privilegium clericale, benefit of clergy, had its origin in the pious regard paid by Christian princes to the church in its infant state... At first it was confined in its operation to those persons who were actually in the service of the church... but it gradually extended until it comprehended all persons who could read, that being in those days of ignorance and superstition, a mark of great learning, and the person enjoying this accomplishment was called a clerk, or clericus. The probable reason of this exemption being accorded learned persons, was their

supposed beneficial influence upon the progress of the realm in civilization and religion, as much as any sanctity with which the persons of the clergy were invested...

"The privilege was soon perverted to the worst purposes, [-4-] and the arrogance of the privileged class soon led them to claim... this favor... to be theirs by right of the highest nature... This privilege was curtailed in England by legislation from time to time... a distinction was made between laymen and clerks...subjecting the former to a light punishment, and restricting the enjoyment of the clerical privilege to one offense. The distinction was abolished and restored several times...underwent various mutations.

"In the reign of George IV the absurd provision was abolished entirely... So it seems as the science of jurisprudence advanced...instead of being a reason for exculpating a criminal it tended rather to aggravate the offense. This privilege of clergy was diminished from being a full acquittal of the offender to a mitigation merely of the punishment, and by this means, what was originally an instrument of fraud upon society, was rendered a salutary check in administering...the rigorous criminal code of England".

Then follows an example wherein this plea was made and allowed, in which case after a verdict of guilty, the prisoner was asked by the court if he had anything to say. The prisoner thereupon prayed his clergy; this was generally done on bended

knees. Afterwards he was tested by an ordinary, who handed him a psalm to read, and the prisoner read the first verse. The judge then questioned the ordinary, "Legit vel non?", who answered, "Legit". The prisoner was then branded in the hand.

"This plea", continues Flandrau's opinion, "has never had any practical operation in the United States, and had it been claimed as a common law right in any state it would have been denied... The organic act of the territory of Minnesota kept in force the laws of the territory of Wisconsin, which were in force at the date of admission of the state of Wisconsin... By the laws then in force... all willful killing was murder, and punishable by hanging". [-5-]

In this case Anne Bilansky strongly contended that a section of the Revised Statutes (p.523) was intended to abolish capital punishment in cases of female offenders. Flandrau held otherwise and, after a lengthy dissertation affirmed the order denying a new trial and remanded the case to the district court of Ramsey county.

Another case which would be immediately identified with the early decisions of the court is "St.Paul vs. Laider" (2 Minn. 165). In the opinion is to be found the following: "It will be observed by a reference to the ordinance that it provides that no person shall sell fresh meat by retail -- less than a carcass or quarter -- except in the stalls of a public market, without a license."

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Still another example is "Nutting vs. The Steamboat War Eagle". Here for the first time under the revised statutes "for the collection of demands against boats and vessels" the supreme court was called upon to give a construction to this act. "Irvine vs. Steamboat Hamburg" followed a little later, and was based upon agreement defendant had contracted to deliver to plaintiff at St. Paul 3 barrels of pork and 2 barrels of flour. (3 Minn. 126).

A practice of the lower courts more or less common during this period was the acceptance of majority verdicts. Some cases are on record where in lower courts the contesting parties consented to take such a verdict after the jury had remained split for so long that it appeared an unanimous agreement was impossible. The first case reaching the supreme court involving this question was quickly disposed of. The high court ruled such a majority verdict could not be upheld even when the defeated party consented to it, if the other party knew, but he (the defeated party) did not, that a majority of the jury were against him.

In scanning the early history of the court other facts come to light. It is evident that some of the old-timers, not unlike [-6-] some people today, either had an obsession for deliberately taking all their troubles to court or in the natural course of events they eventually found themselves there. One such party, William Banning, in three years, 1859-1862, was involved in no less than ten separate cases reaching the supreme court. And

there were others involved in cases only slightly less numerous. The business of the court was now definitely on the increase. [-7-]