Section XII

HISTORY OF THE MINNESOTA SUPREME COURT

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During the 70's, sessions of the supreme court, according to the minute books, were opened by proclamation. This undoubtedly referred to the few words which formally opened the session, and chances are were no different from those spoken some years previously by the "Crier".

As has been noted from the time of the organization of the court until the date under discussion, the beginning of 1880, the supreme court consisted of one chief justice and two associate justices. For some time previous to this the work of the court had been so increased that it became apparent that to expedite the handling of cases by the court additional justices would be necessary. The Laws of 1881 provided that the number of associate justices sitting on the bench be increased to four. Governor Pillsbury immediately filled these two new seats by the appointment of Greenleaf Clark and William Mitchell.

Judge Clark was born at Plaistow, New Hampshire, August 23, 1835. In his youth he attended Atkinson Academy, New Hampshire, and later entered Dartmouth College from which he was graduated in June, 1855. For the next few months he studied law in an office at Portsmouth, New Hampshire, then entered the Harvard Law School, graduating in 1857 whereupon he was immediately admitted to the bar at Suffolk. The following fall he moved to St.

Paul, Minnesota, where he continued to live until his death on December 7, 1904.

Soon after arriving in St. Paul, Clark became a clerk in the law office of Michael Ames, and shortly after entered into partnership with his employer and former Judge Sherburne. This firm was dissolved in 1860, whereupon he and Bond formed the partnership of Bond & Clark. Two years later Bond went to Washington, and Clark [-1-] continued to practice alone until 1865, when he entered the partnership of Bigelow & Clark. In 1870 the firm was enlarged to include Bigelow, Flandrau & Clark. Clark held this membership until March 1881 when he accepted an appointment by Governor Pillsbury to the Supreme court bench, filling one of the two seats created by the laws of 1881 which increased the number of associate justices from two to four.

The elevation of Democratic Clark to the bench by Republican Pillsbury failed of endorsement by the Republican convention which met later that same year, and consequently the appointee's term of office terminated January 12, 1882.

In the nine months that Justice Clark sat on the bench he wrote 33 opinions and no dissents. Volume 28 of the Minnesota Reports contains all but three of them; these are reported in volume 27.

William Mitchell, the other justice appointed at this time, was the son of a Canadian farmer of Scotch parentage. He was born at Stamford, Ontario, November 19, 1832, and, after

spending the greater part of his sixty-eight years in public service, died August 21, 1900 at his home in Winona.

In his youth he attended Jefferson College at Cannonsburg, Pennsylvania, was graduated in 1853, and later taught for two years at Morgantown Academy, West Virginia. In 1857 he was admitted to the bar, and soon after moved to Winona, Minnesota, where he began private practice.

In Winona he found time to engage in many public spirited enterprises. He was an ardent sportsman, being very fond of fishing. He was intensely interested in horticulture, his home grounds at Winona in summer being a continual riot of bloom, many of the rare plants, bulbs, and seeds having been imported from the far corners of the earth. [-2-]

Judge Mitchell was a member of the second legislature of Minnesota for 1859 and 1860. He served one term as county attorney for Winona county. In 1874 he was elected judge of the Third judicial district, and re-elected in 1880. The following year he received from Governor Pillsbury an appointment to the supreme court bench. Here he remained a dominant figure for the following nineteen years, his place being taken by another in January, 1900, when Minnesota departed from the policy of a nonpartisan judiciary, a policy which was instituted by Governor Pillsbury.

Mitchell, long a Republican, became an independent Democrat in 1867. He enjoyed exceptionally high standing in his

field and a national reputation as a judge. He had always had the hearty endorsement of both parties, and consequently had been elected on a nonpartisan ticket. However in 1900, as stated, when judges were nominated on party tickets, Mitchell lost. The St. Paul Pioneer Press (Republican) in commenting on Mitchell's unmerited defeat, said: "Without disparagement to other judges on the bench, it is safe to say, there is none of Judge Mitchell's associates on the bench, and none who have been nominated on either ticket, who could not be far better spared than he." The Republican state convention had failed to nominate Mitchell, and to this, of course, his loss may be ascribed.

The high national regard accorded Mitchell is shown by an excerpt from a letter Professor Thayer of the Harvard Law School sent to a friend in Minnesota just previous to Mitchell's defeat, expressing amazement that there was any doubt about Mitchell's re-election. Professor Thayer stated: "There is no occasion for making an exception of the supreme court of the United States. On no court in the country today is there a judge who would not find his peer in Judge Mitchell".

The written opinions of Judge Mitchell first appear in volume 27 of the Minnesota Reports, and end in volume 78. These total [-3-] 1515 majority opinions and 52 dissents -- a number greater than that written by any other Minnesota supreme court justice, and, at least up to that time, a number greater than had been prepared by any of the justices of the United States supreme

court. In Minnesota jurisprudence the work of Judge Mitchell has been of profound significance.

Following the death of Justice Cornell, Daniel A. Dickinson was appointed by Governor Pillsbury associate justice of the supreme court.

Judge Dickinson was born in Hartford, Vermont, October 28, 1839, where shortly after birth he lost both his parents and was reared under the guardianship of his grandfather at Mendon. In 1860 he was graduated from Dartmouth College and immediately entered a law office at Plattsburg, New York. On May 15, 1863 he entered the naval service of the United States as assistant paymaster, and resigned January 28, 1865.

Having been admitted to the bar in New York, he returned to Plattsburg and practiced law until 1868 when he moved to Mankato, Minnesota. Here he continued his practice until January, 1875 at which time he was elected Judge of the Sixth Judicial district. He held this office until June 3, 1881, when he was appointed by Governor Pillsbury associate justice of the supreme court to fill the vacancy created by the death of Justice Cornell, which position he held by virtue of two successive elections until October, 1893. He then resume private practice in Duluth, becoming a member of the firm of Billson, Congdon & Dickinson, and continued active practice until his death on February 12, 1902.

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Judge Dickinson's written opinions are contained in volumes 28 to 54 of the Minnesota Reports, and number 769. He wrote in addition 13 dissents.

On March 1, 1881 while the legislature was in session [-4-] and just before Clark, Dickinson, and Mitchell took their seats on the supreme court bench, the old state capitol burned. Two days later the judges then on the bench, Gilfillan, Berry, and Cornell, held a session in the Municipal Court Room in the St. Paul Market House, and the supreme court continued to meet there until another capitol (now the so-called old one, as the act for the building of the present capitol wasn't passed until April 7, 1893) was built upon the site of the one destroyed.

At the beginning of 1882 Clark was replaced on the bench by Vanderburgh. Charles E. Vanderburgh was born in Saratoga County, New York, in 1829. He early attended Courtland Academy, and later in 1852 was graduated from Yale. Soon after he commenced studying law in the office Henry R. Mygatt, and was admitted to the bar in 1855. Early in 1856 he came to Minnesota, settling in Minneapolis where he made his home until his death on March 3, 1898.

Soon after arriving in Minneapolis he formed a partnership with F. R. E. Cornell, which partnership continued until Cornell was elevated to the supreme court bench. In 1859 Vanderburgh was elected judge of the Fourth judicial district, and successively re-elected in 1866, 1873, and 1880, and while serving

on the district bench was elected associate justice of the supreme court in the fall of 1881. He was re-elected in 1886 and served until the beginning of 1894, when he resumed private practice.

Judge Vanderburgh's work while on the supreme court bench is reflected in volumes 29 to 56 of the Minnesota Reports, which contain the majority opinions written by him in 791 cases, plus 7 dissents.

A decision on a horse-drawn street car case was handed down by the supreme court in "Smith vs. St. Paul City Railway" (32 Minn. 1), April 2, 1884, in which it was pointed out in the opinion written [-5-] by Justice Vanderburgh that so severe, even then, was the rule which enjoins upon the carrier such extraordinary care and diligence that very frequently the rule could be stated in the term "that negligence on the part of the carrier may be presumed <u>from the mere happening of the accident</u>". On the bench at the time were James Gilfillan, chief justice, and Berry, Mitchell, Dickinson, and Vanderburgh, associate justices.

In 1885 the statute relating to absolute divorces, and that relating to limited divorces, were two separate acts; yet in the decision in "Wagner vs. Wagner" (36 Minn. 239) the opinion written by Justice Mitchell pointed out that the proceedings under both were to be commenced and conducted in the same manner.

From time to time as various laws were passed by the legislature the supreme court was called upon to construe them. These rulings were closely followed by the people of the state,

individuals, small business men, and large concerns alike all having an interest in them. Some examples which give an idea of the range and scope of these questions coming before the supreme court follow.

A provision of the Laws of 1885 permitted shopkeepers (not pharmacists) whose places of business were more than one mile from a drugstore, to sell the commonly used medicines and poisons provided they were put up by a registered pharmacist. However, all shopkeepers could and did sell much patent medicine. The first case to reach the supreme court arising over these questions was "State vs. Donaldson" (41 Minn. 74). It involved two actions appealed from the municipal court of Minneapolis wherein judgment for one hundred dollars each on each action had been rendered. Mitchell in handing down the decision of the court wholly reversed the first judgment, and modified the second by deducting one-half, $50.

Another opinion handed down by the court on November [-6-] 12, 1886 involved the act passed by the legislature in 1881 entitled "An act to regulate the traffic in oleomargarine". This butter substitute had been manufactured and offered for sale for years, yet, from time to time, as more legislation was enacted to regulate the manufacture and sale of this product, litigation and test cases were commonly before the courts throughout the country. The act passed by the Minnesota legislature was interpreted by this court as being aimed at substitutes which could be offered and sold

as butter, and not against articles bearing so little resemblance to butter that they could not be substituted for it as an article of commerce.

Queer quirks sometimes came to light in cases having to do with leases. A proceeding (36 Minn. 102) instituted to recover premises held under a lease for failure to keep premises clean and orderly, and including the provision that premises were not to be used for saloon purposes or for a meat market, was based upon the claim such lease and agreement had been broken by defendant who occupied and maintained the premises as an undertaking establishment. The decision of the lower court, which had ruled the terms of the lease had not been broken, was reversed by the Minnesota supreme court in an opinion written by Justice Dickinson.

On the supreme court bench at this time were James Gilfillan, chief justice, and John M. Berry, William Mitchell, Daniel A. Dickinson, and Charles E. Vanderburgh, associate justices. Sam Nichols was clerk, and continued in that office until the end of 1886 when his duties were taken over by J. D. Jones, who in turn relinquished the office to Charles P. Holcomb at the beginning of 1891. [-7-]