Section XX

HISTORY OF THE MINNESOTA SUPREME COURT

BY

Russell O. Gunderson
Clerk of Supreme Court

Two recent changes have occurred on the bench. Justice I. M. Olsen retired because of failing health, his resignation being effective December 15, 1936. Coincidently Attorney General Harry H. Peterson resigned his office to accept an appointment from Governor Hjalmar Petersen to the vacant justiceship. The other change followed in mid January, this year, upon Chief Justice Devaney's resignation, at which time Governor Benson appointed Henry M. Gallagher to the chief justiceship, the appointment being effective February 15, 1937.

Justice Harry H. Peterson was born and raised in St. Paul, attended the public schools, and later entered the University of Minnesota, working his way through the College of Law from which he was graduated in 1912.

He has served as assistant county attorney and county attorney of Ramsey county, and has been generally active in civic and county affairs.

In 1932 he was elected attorney general of the state, and re-elected in 1934. It was during this time that he drafted the Minnesota Mortgage Moratorium Law, and then successfully defended it in the supreme court of the United States.

He continued as attorney general until December 15, 1936, when he resigned to accept an appointment from Governor

Petersen to the supreme court bench, filling the vacancy created by the resignation of Justice I. M. Olsen.

In the first six months of his service, Justice Peterson has written 17 opinions and 8 dissents. They are yet to be published in the Minnesota Reports.

Henry M. Gallagher, the recently appointed chief justice, is a native Minnesotan, having been born in Waseca county, September 10, 1885, where he later attended public school while working at home [-1-] on the farm. He was graduated from the Waseca high school in 1905, and shortly afterward entered the Law School of Creighton University, at Omaha, Nebraska. While there a substantial part of his expenses were met by waiting on table in a restaurant.

Following his graduation from Creighton, May 1, 1910, he returned home and on July 18, 1910, was admitted to practice before the supreme court. He opened practice at once at Waseca where, aside from those times when holding public office, he has since continued to practice. At the end of his first two years of practice the future chief justice had drawn so wide and so favorable attention that he was selected for municipal judge, and this in spite of the fact that he was then only 27 years old.

He served on the municipal bench for one year, resigning to become county attorney November 1, 1913. He served a full term, returned to private practice, and then was again elected county attorney in the fall of 1918, serving from January 1, 1919,

to January 1, 1922. He was re-elected for the following term, but turned down the office in favor of devoting his time to private matters.

During these years Judge Gallagher, notwithstanding the press of private business, often found time when called upon to serve in other public capacities. At one time he completed an unexpired term which had become vacant on the Waseca school board, and later, from 1926 to 1931, he was a member of the State Board of Law Examiners. He also served as a member of the State Industrial Commission for a year, and while occupied in this service, his work again attracted wide attention.

Judge Gallagher assumed his seat on the supreme court bench February 15, 1937, Justice Holt administering the oath of office. Unlike many of his predecessors, who were inactive for several months following their seating, Chief Justice Gallagher immediately plunged into the duties of his office. As chief justice, with the governor and [-2-] the attorney general, he is a member of the State Pardon Board. These additional duties are extremely arduous and trying, attended only with great labor.

Chief Justice Gallagher's first opinion was filed on April 23, 1937, and to date, July 1, 1937, he has handed down 11 majority opinions and 2 dissents.

On the bench at the present time are the following: Henry M. Gallagher, chief justice, Andrew Holt, Royal A. Stone, Clifford L. Hilton, Charles Loring, Julius J. Olson, and Harry H.

Peterson, associate justices. The court reporter is Ethel Martin; the court marshal, George Higgins. In this, the clerk's office, Mae Sherman is deputy.

We have seen how the court since the territorial days gradually evolved for itself a better form and method of administration; how the number of justices on the bench were increased from time to time to keep pace with the increased amount of litigation coming before it, a type of litigation which since the organization of the court has been growing constantly more complex and involved; and how the types of cases have undergone a change within themselves with the passing years.

As previously pointed out, the number of cases coming before the court have averaged about four to five hundred actions yearly since the number began leveling off from the 1895 peak. This fact is revealed more fully by the following tabulations:

The court calendar for 1917 listed 416 cases; 1918, 333; 1919, 405; 1920, 402; 1921, 414; 1922, 456; 1923, 452; (1924 total not tabulated); 1925, 488; 1926, 527; 1927, 511; 1928, 451; 1929, 431; 1930, 471; 1931, 357.

It will be seen from this that the least number of cases, 333, were reviewed in 1918, and the greatest number, 527, in 1926. From the date of the court's organization to January 1, 1937, this supreme tribunal has handed down the amazing total of more than 31,000 opinions! [-3-]

Section XX

Following the territorial days, the court gradually cloaked itself with more dignity and decorum until it had achieved its present calm imperturbability. Yet even now the conservative and precise routine of this body is occasionally enlivened by an unexpected bit of humor, being in this respect not at all unlike the court of the earlier days.

A recent case was set to be called at eleven o'clock. It so happened that the case coming up just before this one was withdrawn at the last moment, and it was then discovered that one attorney for the eleven o'clock case, which had been moved up in the meantime, was nowhere in sight. The court marshal, after a frantic and fruitless search conducted through all the judges' offices, the clerk's office, and the cigar stand, gave a hurried peak into the washroom. There, before a mirror, shouting dramatically and gesticulating wildly swinging hands and arms, was the lost counsellor...The attorney shuffled along disconsolately behind the marshal and entered the court chamber. Here, perhaps due to the discomfiture caused by his interrupted preparation, in addressing the court he made the shortest and mildest oration of the day.

At the present time the Minnesota supreme court holds one term of court yearly. Each year the term begins on the first Tuesday after the first Monday in January and continues throughout the year, interspersed with such recesses as the court may order.

Section XX

It is stated that the supreme court has original jurisdiction in such remedial cases as may be prescribed by law, and has appellate jurisdiction in all cases both in law and in equity. Appeals may be taken to it from all district courts and from some municipal courts.

In addition to this basic function the supreme court also fulfills other duties. It has granted attorney admissions since its organization; however, prior to 1891, the supreme court shared this [-4-] duty with the district courts. Then, at the date mentioned, the State Board of Law Examiners was created and this board assumed much of the clerical work formerly handled by the court in connection with these admissions, and became the supervisory body of the attorneys in the state. The board receives applications, prepares and gives examinations. Attorneys who pass the examination, and are otherwise eligible to practice, are then formally admitted by the supreme court.

In turn, disbarment proceedings are also heard before the court after such action has been recommended by the board following investigation of the complaint. Naturalizations are no longer granted by the supreme court; this practice having been discontinued, as mentioned before, in 1906.

To pass over without giving a general reference to the United States supreme court and its relation to state supreme courts, while admittedly superfluous and prosaic in itself, would

leave a too confused conclusion on this point to here warrant its omission.

The judicial is, of course, one of the three branches of government, viz: legislative, executive, and judicial. The United States supreme court, as is known, is the highest court in the land, and as such is the court of last resort. But this does not mean that any case may be appealed to it. Certain cases may not be carried higher than a state supreme court, and, of course, for these the state supreme court is the court of last resort.

Today decisions of the United States supreme court have been very much before the public; and particularly the question involving the right of this court to pass upon acts of Congress has become a popular topic of general conversation. While the question has been brought much to the front only recently, it is, in itself, a very old one.

In an address before the Law Department of the University [-5-] of Pennsylvania, April 27, 1906, Chief Justice Walter Clark, of North Carolina, gave an emphatic negative to the question: "Did the framers of the federal constitution intend that the supreme court should pass upon the constitutionality of acts of Congress?" Many other nationally recognized legal minds have long maintained that the nullification of statutes by the federal judiciary is warranted neither by the letter nor by the spirit of the supreme law of the land and is, therefore, rank usurpation.

Section XX

The point is: That the movement designed to strip the courts of their great political functions has slowly been gathering headway for many years. Of course, we are not here concerned with the justification of this proposed severing of this branch of court authority. Rather, we are noting a trend of opinion which has continued to grow yearly, and one which may find expression in causing to be created changes in our United States supreme court; and this opens up new lines of thought as to just what extent these changes if and when made will effect our state supreme courts.

An issue coming before the United States supreme court during Cleveland's term, while not touching upon any point with which we are here concerned, nevertheless offers additional material for thought along this line, aside from its possible interest.

The legal-tender act, the financial policy of the government, was invalidated by one court and then validated by another, after a change in its personnel. Charles A. Beard says: "Then the income tax, which had been held constitutional by the court for a hundred years, was again so held, and then by a sudden change of vote by one judge it was held unconstitutional, nullified, and set at naught, though it had passed by a nearly unanimous vote both Houses of Congress, containing many able lawyers...and had been approved by the President and voiced the will of the people. This was all negatived [-6-] (without any

warrant in the constitution for the court to set aside an act of Congress) by the vote of one judge; and thus $100,000,000 and more of annual taxation was transferred from those most able to bear it and placed upon the backs of those who already carried more than their fair share of the burdens of government.

"Here, under an untrue assumption of authority given by 39 dead men (the previous justices who had ruled the income tax law constitutional) one man nullified the action of Congress and the President and the will of 75,000,000 living people, and in the 13 years following taxed the property and labor of the country, by his sole vote, the staggering sum of $1,300,000,000!"

Another point which may be well emphasized here is that while several states have had many battles arising out of rulings by their supreme courts holding certain state legislation valid but which was later held unconstitutional by the supreme court of the United States, Minnesota has been singularly free from such sharp conflicts. A cited example may clarify: At first the United States supreme court generously exempted from its veto the police power of the several states. But since then it has exercised this power with more or less frequency. Not long ago the United States supreme court proceeded to set aside an act of the legislature of New York restricting excessive hours of labor, which act had been previously sustained by the supreme court of that state. The United States supreme court from time to time has and does exercise this authority over state legislation. [-7-]