Section X

HISTORY OF THE MINNESOTA SUPREME COURT

BY

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The increased litigation now coming before the court was of a mixed type. And, again, much of it was of first impression.

Logging operations were now spreading out, and particularly the Rum river district was the scene of much activity. From 1859 to 1861 much litigation arising from these operations was reaching the high court.

The first action involving libel to come before the supreme court was "Hemphill vs. Holley" (4 Minn. 166). It was a case of minor importance, wherein Hemphill, the plaintiff, had a lower court verdict against Holley. The defendant moved for arrest of judgment and a new trial, stating the facts did not constitute a cause of action. The court below sustained the motion, whereupon plaintiff appealed to the supreme court.

The libel complained of was set forth as follows: "Sorry to hear it. We learn that the doors of a prominent Democrat at Chatfield have been shut against Father Hemphill, editor of the Chatfield Democrat." The cause was the assertion that a few spoons, and articles from the clothes line, had been taken.

Justice Isaac Atwater, who wrote the opinion, concurred in the finding that the statement was libelous. The order granting a new trial was reversed by the supreme court, and

the cause was remanded for entry of judgment in accordance with the verdict.

A decision was handed down on April 8, 1861 touching upon gubernatorial powers. In an application by Selah Chamberlain (4 Minn. 228) for a writ of peremptory mandamus to compel defendant, Governor Henry H. Sibley, to deliver to petitioner $25,000 in Minnesota state railroad bonds, the court pointed out that the supreme [-1-] court cannot compel the governor, by writ or otherwise, to perform any act or duty devolving upon him as chief executive of the state...that he is independent of the judiciary in this respect, and can be reached only by impeachment.

And now let's look at another type of case. Where two contestants each claim the right to hold the same office at the same time and each attempts to administer the duties of that office without interference from the other, a bad mix-up is bound to follow. That's what happened in "Parker vs. The Board of Supervisors of Dakota County" (4 Minn. 30). True, such mix-ups are not uncommon today, but it is surprising to run across the incident so soon after Minnesota had become a state.

Ed Parker was elected district attorney for Dakota county for 1858 and 1859. Claiming to have been elected to the same office, and backing his claim with a certificate of election, was Seagrave Smith. The latter entered upon the office and performed its duties until ousted by a judgment; yet salary was paid him for the time he served. Parker then presented his claim

for salary for services during the same period. The Board of Supervisors turned it down, and on appeal to the district court judgment was rendered against him.

Plaintiff's stipulation declared "Parker acted as district attorney whenever called upon during the years 1858 and 1859". Yet the Board had paid Smith for so acting during the same time. In the opinion written by Flandrau, it was pointed out that where there is but one office, there can be but one in possession of it. Flandrau called attention to the fact that it appeared the Board did not know of anyone except Smith claiming and holding the office. The opinion upheld the verdict of the district court.

The Minnesota supreme court entered the Civil War period undisturbed by any litigation directly growing out of incidents leading to the war. There were no Dred Scott cases. Throughout the [-2-] period the court, as Gray might say, continued along the even tenor of its way.

But how different it was with the United States supreme court. The commencement of the December term of that high court was opened with proceedings which included a sad address by Edward Bates, Attorney General of the United States, in which he said, "...for the laws are silent amidst arms..."

The tabulation of the census taken in 1860 was released at this time, and it showed a considerable increase over the count made in 1849. Ramsey county now had a population of 12,150 whites, 70 free colored, 1 blind, and 1 insane. Hennepin

county had 12,849 whites, 13 free colored, 1 of mixed Indian blood, 4 deaf and dumb, and 2 blind. St. Louis county, 406 whites and 144 of mixed Indian blood. Fillmore, the most populous county at this time, boasted a population of 13,542, all whites; while Aitkin county had only one family consisting of 2 persons.

Increased litigation arising over promissory notes, much of it of very minor significance, was crowding before the court. One such action (42 Minn. 13) arose over a small promissory note given in partial payment for a suit of clothes.

Also during this period controversies having to do with the steamboats, which were now plying both the Mississippi and Minnesota rivers engaging in passenger and freight traffic, were on the increase.

Toward the close of the period when Emmett, Flandrau, and Atwater were sitting on the bench railroad cases were becoming more frequent, as were those of insurance companies. Shortly before the middle 60's more cases having to do with mining and logging were reaching the supreme court. Many of the counties were being established during this time and the attendant controversies arising from [-3-] their organization and administration were carried to the high court by Boards of County Commissioners.

Too, during this same period, a few bank cases were appearing; and small manufacturing concerns were beginning to appeal cases to the supreme court. Many towns and cities in their

expansion programs were running into trouble over paving, lighting, street assessments, damage awards, titles, and taxes, many of the problems remaining unsolved until threshed out by the supreme court.

Suddenly, the supreme court was called upon to pass opinion on an entirely unexpected question. Or rather this body was asked to consider the startling and unique claim that the territorial judges in session in January 1858 were not in fact a court -- that their acts lacked jurisdiction. The case involving the action upon which the claim was based was taken up for hearing and argument upon a motion to place the case on the calendar for trial. And here, the records disclose, is as far as the contention ever got. No ruling on it seems to have been handed down, so we may safely assume that the matter was dropped. We do know, however, that the territorial judges while in session did constitute a court, and that their acts did have jurisdiction.

In the summer of 1864 both Flandrau and Atwater resigned, with Emmett continuing on the bench and serving his full term which ended in 1865. Especially in real estate and railroad law, cases coming before these three justices were of first impression. At that time there were no consultation rooms and much of the consultation work was done either at Judge Emmett's house in St. Paul or at Judge Atwater's in Minneapolis. They received a salary of $2,000 a year, but this was rarely, if ever, paid in cash, the usual tender being pay-warrants which were discounted ten

to twenty percent. Together these first three justices during their epochal period of service [-4-] wrote a total of an even 500 opinions, establishing a comprehensive base of precedents which was to frequently guide the justices who came after them.

Following the resignations of Flandrau and Atwater, Governor Swift appointed Thomas Wilson and Samuel J. R. McMillan associate justices, both of whom were later to become chief justices.

Judge Thomas Wilson was born in County Tyrone, Ireland, May 16, 1827, and died in St. Paul, April 3, 1910.

When twelve years old young Thomas emigrated with his parents to this country, settling in Pennsylvania, and there attending the common schools and working on his father's farm until he was twenty. He was graduated from Allegheny College in 1852, and commenced his law studies in Meadville, Pennsylvania, gaining admission to the bar in 1855.

Two months later he came to the territory of Minnesota and started practice in Winona. He later served as a member of the Constitutional Convention of 1857, and that fall became district judge of the Third district, an office he held for six years.

In 1863 Wilson was appointed by Governor Swift an associate justice of the supreme court, and in the fall of 1864 was elected chief justice. This latter office he held for four and a half years, resigning in July, 1869, to resume private practice.

Judge Wilson served as a member of the House in 1880 and 1881 and of the Senate from 1883 to 1885. In 1886 he was elected to Congress where he served one term. In 1890 he was the candidate of the Democratic party for governor, but was defeated. Throughout his long life Judge Wilson was active in civic and public affairs.

He was, of course, the second chief justice of the court, succeeding as he did Lafayette Emmett who was the first. The opinions of Judge Wilson appear in volumes 9 to 14 of the Minnesota [-5-] Reports, and number 126 majority opinions and 3 dissents.

Samuel J. R. McMillan was born in Born in Brownsville, Pennsylvania, February 22, 1826, and died in 1897. He was graduated from Western University of Pennsylvania in 1846, studied law and was admitted to the bar in 1849. Three years later he came to Minnesota Territory, settling in Stillwater. Upon the admission of Minnesota as a state he was chosen judge of the first judicial district, continuing in that office until 1864, meanwhile gaining an enviable reputation as a district judge.

He was appointed from the district bench to the supreme court in 1864 to fill one of the vacancies created by the resignations of Judges Flandrau and Atwater. Then in the fall of 1864, and again in 1871, he was re-elected to the same office. Following Chief Justice Ripley's resignation in 1874 Governor Davis appointed Justice McMillan chief justice.

He resigned from the chief justiceship in March, 1875, having won a United States senatorial election the previous fall. In 1881 he was again elected senator, and continued as such until March 1887. During his career he was a trustee of the State Reform School for many years. From 1887 until his death he practiced law.

The opinions of Judge McMillan begin in volume 9 of the Minnesota Reports and end in volume 21, numbering 230, in which he wrote the decision of the court, and 3 in which he stated his reasons for disagreeing with the majority verdict.

Meanwhile changes occurred in the office of clerk of the supreme court. Noah, who became clerk following the organization of the supreme court, served until 1861, when he was followed by A.J. Van Vorhes, who in 1864 was succeeded by George F. Potter. Potter, after having served three years, was replaced by Sherwood Hugh, who held the office until 1876. [-6-]

Wilson, who had been serving as associate justice by appointment of Governor Swift, and had been elected in the fall of 1864 chief justice, took over Emmett's seat January 10, 1865, upon the expiration of the latter's term. At the same election John M. Berry had been elected to the seat now made vacant by Wilson. The bench was now composed of the following: Thomas Wilson, chief justice, and Samuel J. R. McMillan and John M. Berry, associate justices. George F. Potter was clerk.

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Justice Berry was the first member of the court to serve over a long period of years. He was born at Pittsfield, New Hampshire, September 18, 1827, and died at his home in Minneapolis, November 8, 1887, at the age of sixty-one and in the twenty-third year of continuous service on the Minnesota supreme court bench. He was the second justice to die in service.

As a youth Judge Berry attended Phillips Academy, later entering Yale and graduating in 1847. He was admitted to the bar in July 1850, and began practice at Alton, New Hampshire. In 1853, after spending two years at Janesville, Wisconsin, he moved to Faribault, Minnesota, and in 1879 to Minneapolis, where he continued to reside until his death.

Judge Berry was a member of the territorial legislature in 1856 and 1857, and chairman of the judiciary committee of the House, and in 1863 and 1864 was chairman of the same committee of the Senate. During 1860 and 1861 he was a member of the board of regents of the University. In 1864 he was elected an associate justice of the supreme court, qualified and took his seat January 10, 1865. He remained a justice by virtue of successive re-elections until his death.

In the twenty-three years that Judge Berry served the high court he wrote a total of 925 opinions expressing the verdict of the court, and 17 dissenting opinions in which he stated his reasons for not agreeing with the majority findings. [-7-]