

HISTORY OF THE MINNESOTA SUPREME COURT
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An interesting opinion handed down by the supreme court in 1888, in which the action was for an injury caused by the defendant negligently driving his buggy against plaintiff, contained much humor viewing it from present time.

The case (36 Minn. 485) involved a passenger on a horse-drawn Minneapolis street car who, finding he was on the wrong car, left it while it was going rapidly. In leaving the car he dropped some articles and at once went back, walking along the track and picking up the dropped articles without looking behind him. The defendant, who was in his buggy and driving rapidly along the street toward the plaintiff, drove so the buggy wheel struck plaintiff's leg and broke it.

The court below held that to walk in the street in the manner plaintiff had done, without looking to see if any vehicle might be approaching, was so clearly negligent that there was no question for the jury to pass upon.

But the supreme court ruled otherwise! It held:

"It cannot be laid down as a rule that in all cases, without regard to the extent to which the street is usually traveled, it is negligence for one on foot to cross it, or walk in it, without looking in each direction to see if a vehicle may be approaching. To do so upon a crowded city street, where vehicles,

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driven rapidly, pass each other every instant, and where the crowd of vehicles prevent the drivers from seeing a person on foot in a part of the street other than the crossings, and where, consequently, danger is nearly always present...would be negligence ...while it would be otherwise if the street were but littled frequented. In the latter case it might or might not be negligence". And on this the order of the lower court was reversed. [-1-]

Today, seeing the crowded streets, automobiles, and electrically driven street cars in downtown Minneapolis, those same judges, if living, would be amazed. Indeed, even in the country, they would find it necessary to look carefully both ways before crossing a paved highway late in the afternoon on a summer or hunting season week-end.

A year later, November 18, 1889, in a somewhat similar case (42 Minn. 42), the supreme court ruled that it was not negligence for a person to get on or off a street car, drawn by horses, while it was in motion.

During the previous spring, a lower court conviction against a defendant for practicing medicine without a license was upheld by this court; and was the first case (41 Minn. 69) of its kind to be reviewed by this court.

A feature of an Enoch Arden-like case considered about this time disclosed that a husband and his wife had separated and later, after five years, during which time neither had heard

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from the other, each had re-married without the knowledge of the other. These facts were brought out in an estate controversy (41 Minn. 201).

The death of Justice Berry occurred November 8, 1887. He was the second justice to have died in service, Cornell being the first. Loren W. Collins now assumed Berry's seat.

Judge Collins was born at Lowell, Massachusetts, August 7, 1838 and died at his home in Minneapolis, September 27, 1912.

Collins moved to the territory of Minnesota when sixteen with his father, who settled on some unsurveyed land near Eden Prairie. Previously young Collins had gone to such public schools as were afforded by small manufacturing towns in New England. In the fall of 1858 he taught a four-month term of school near Cannon Falls, for which he received \$60. With this as his sole asset he commenced the study of law in the office of a legal firm at Hastings. The firm was [-2-] soon dissolved, and in August, 1862, he entered the army and was promoted shortly to rank of Second Lieutenant, and as such participated in the Sibley campaign. During the Civil War he saw service in the South, and was breveted Captain for gallant service. Receiving his discharge in August, 1865, he spent the next six months in Alabama as a treasury agent.

He started law practice at St. Cloud in May, 1866 and continued until April, 1883, when he was appointed to the

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district bench. He later served four terms as mayor of St. Cloud, and eight years as county attorney. From 1881 to 1883 he was a member of the state legislature.

On November 16, 1887, while serving as judge of the Seventh judicial district, he was appointed an associate justice of the supreme court by Governor McGill to fill the vacancy created by the death of Justice Berry. The following year he was elected, and re-elected in 1894 and 1900. He resigned April 1, 1904 to become a candidate for governor, an office he failed to win. Then at the age of sixty-six he resumed private practice in Minneapolis, becoming a member of Collins & Eaton.

During his sixteen years of service on the supreme court bench Justice Collins wrote 1318 opinions and 38 dissents. They are recorded in volumes 37 to 91 of the Minnesota Reports.

A case which did not reach the supreme court until the beginning of 1890, and was decided January 2, 1891, will be mentioned now as it properly belongs in the period under discussion, the circumstances surrounding it occurring in the 80's. On inspection several disclosures are revealed which parallel present times. They show that even fifty years ago a business concern in moving to a new locality selected that which offered the greatest material inducements.

Chamber of Commerce bodies are today wide awake in the efforts to secure new business establishments for their cities, and [-3-] often lend much assistance and give many inducements as

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reward to these companies for opening or maintaining either branch or central manufacturing plants in their localities; but in the old days the companies themselves took the bull by the horns and forced the creation of these advantages.

About the first of January, 1886, the Bohn Manufacturing Company, then engaged locally at its business in Winona, but later to become nationally known as manufacturers of ice boxes, suggested to the citizens of St. Paul that it would remove its manufacturing plant to the 17 acres of land it owned in St. Paul and establish there suitable buildings and machinery and a force of not less than 250 men, agreeing to have same in operation by the first of September, 1886, provided that the corporation should receive in cash or the obligations of responsible persons the sum of \$35,000, as a contribution toward the expense of such removal.

The company later sued, in Ramsey county district court, a citizen who had subscribed \$500.00 but had not paid it, on the ground the company had failed to have its plant in operation at the time specified. The company lost the action, and, being denied a new trial, appealed to the supreme court. The decision of this court in an opinion written by Justice Vanderburgh upheld the findings of the lower court.

The gay 90's, for the nation as a whole, may have been a time of playing, but for the judges sitting on the supreme court bench this period proved to be just a headache.

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Descending upon the judges was a veritable avalanche of cases, and during the ten years following the court became swamped with work of every description. But somehow the judges managed to take care of everything. Too, it was during this time the court was called upon to grant a greater number of naturalizations than had been granted in any like period. And more attorneys were being admitted. As to the [-4-] increasing number of cases coming before the court, the high water mark was reached in 1895 when 695 of them passed in review.

From 1890 to 1900 nine judges saw service on the bench. John M. Berry had terminated his long years of service November 8, 1887, and, as has been mentioned, his place on the bench had been taken by Justice Loren W. Collins. Comprising the court at the beginning of 1890 were the following justices: James Gilfillan, chief justice, D. A. Dickinson, William Mitchell, C. E. Vanderburgh, and Loren Collins, associate justices.

Chief Justice Gilfillan, who took his seat March 10, 1875, continued to serve until December 15, 1894, when Charles M. Start assumed the chief justiceship and held that position until 1913.

Judge Start was born at Bakersfield, Vermont, October 4, 1839, and after a life of eighty years, the greater part of which was spent in public service, died at his home in St. Paul, December 19, 1919.

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His early life was that of a New England farmer's son. His vacations, when attending Barre Academy, were spent in earning funds to keep him in school. Leaving the Academy he entered the law office of Judge Wilson of Vermont.

In 1862 he enlisted as a private in the Union army, and the following month was commissioned a lieutenant. Disability soon forced his resignation, and in 1863 he moved to Rochester, Minnesota, entering law practice. He was city attorney of Rochester for several years, prosecuting attorney for Olmsted county for eight years, attorney general of Minnesota for one year, judge of the Third judicial district for fourteen years, and chief justice of the state supreme court for eighteen years.

In March, 1881, when Judge William Mitchell of the Third district was appointed associate justice, Governor Pillsbury [-5-] appointed Start judge of the district court to succeed Mitchell. Judge Start by successive re-elections continued to hold this office until January 7, 1895 at which date he ascended the supreme court bench, having been elected the preceding November. He served as chief justice from January 7, 1895 until January 6, 1913, the expiration of the term, at which date he voluntarily retired.

The opinions of Justice Start are recorded in sixty-one volumes of the Minnesota Reports, 60 to 120, and number 1401 written opinions expressing the majority verdict of the court, and 46 dissents.

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Two new associate justices preceded Start on the bench, Buck and Canty. Judge Buck was born at Boonville, New York, September 28, 1829, and more than seventy-five years later died at Mankato, Minnesota, on May 21, 1905.

Daniel Buck received an academic education in his native state, and in 1857 moved to Mankato, Minnesota, where he practiced law. Later he was elected county attorney of Blue Earth county, an office he held for four years. In 1866 he was a member of the House, and in 1881 a member of the Senate. While a member of the House he procured the passage of the law establishing the Normal school at Mankato.

He was elected an associate justice of the supreme court for a term of six years, commencing January 1, 1894. He resigned November 14, 1899 because of the mortal illness of his wife.

During his life Judge Buck had few outside interests his time being devoted to his office and home.

The work of Justice Buck while on the high court bench includes 395 written opinions and 30 dissents. They are contained in volumes 55 to 78 of the Minnesota Reports.

The other justice who came to the bench at this time was Thomas Canty. He was born in London, England, April 25, 1854. [-6-] In 1856 he parents moved to this country, settling in Detroit. Subsequently the elder Canty moved to Lodi, Wisconsin, then to Clayton county, Iowa. Meanwhile young Thomas Canty picked

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up what education he could at the public schools wherever his parents happened to be. When only fifteen he passed a teacher's examination in Clayton county and received a teacher's certificate permitting him to teach, but due to his extreme youth was unable to secure a position. Later, however, he taught school for four years in Texas.

In the spring of 1880 he went to the territory of Dakota for the purpose of engaging in practice at Grand Forks, but on arriving did not like the situation and doubled back to Minneapolis, where he entered a law office and the following February gained admission to the bar.

Judge Canty, a Republican before the passage of the McKinley high tariff bill in 1890, created a sensation that summer when he publicly renounced that party. In the fall of 1891 the Democratic party in Minneapolis nominated him for district court judge, and he was elected for a term of six years.

Justice Canty took his seat on the supreme court bench January 1, 1894 and served until the end of the term, December 31, 1899, and during this time he wrote 575 opinions and 58 dissents. They occur in volumes 56 to 78 of the Minnesota Reports. [-7-]