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HISTORY OF THE MINNESOTA SUPREME COURT

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The supreme court, on appeal by Alexander Faribault January 16, 1865, reviewed proceedings in the district court of Rice county having to do with the erection of mills and mill dams, the case being followed with considerable interest by the people of that district. In the opinion written by Justice McMillan the petition for a writ of certiorari applied for by Faribault was granted (10 Minn. 15). Incidentally, the town of Faribault was named after this same man.

Very little has been recorded about it, but for a brief time during this period Minnesota was the scene of a miniature gold rush. A sample of ore, assaying high gold content, was purportedly found on the range. Hope soared, but the bubble soon burst. The New York and Minnesota Gold Mining Company in 1868, after having been incorporated for several years, brought suit in the Minnesota supreme court on an appeal vs. Martin and others. It was stated the company was capitalized at a million dollars, and the object of the corporation was the mining and smelting of gold and other ores; a portion of the business was to be conducted near Lake Vermillion, in St. Louis county. The complaint against Martin and the others was that they were liable for stock subscription. In reversing a lower court ruling, the supreme court favored the defendants.

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A new chief justice now came to the bench, James Gilfillan. He was born at Bannockburn, Scotland, March 9, 1829, and died at St. Paul, Minnesota, December 16, 1894. Early in his youth his parents moved to Chenango county, New York state. Here he studied law in an office and attended a law school at Balston Spa. In 1850 he was admitted to the bar, moved to Buffalo and remained there for the next seven years. [-1-]

In the spring of 1857 he moved to Minnesota, became a leading lawyer here, and continued in practice until the outbreak of the Civil War. He entered the Union army August 6, 1862, fought against the Sioux, and later with the Union army saw service in the south, serving with the rank of captain until the close of the war. Returning to St. Paul, he again resumed practice.

In 1869, upon the resignation of Chief Justice Wilson, Governor Horace Austin appointed Gilfillan chief justice, in which position he served only a short time, from July 14, 1869 to January 7, 1870. Five years later, on March 5, 1875, he was again appointed chief justice, and thereafter held the position by virtue of successive re-elections until his death.

During the nineteen years that Chief Justice Gilfillan sat on the supreme court bench he wrote 1289 opinions and 43 dissents. Of these, 15 opinions and 1 dissent are reported in volume 14 of the Minnesota Reports, and 1 opinion is in volume 15, representing his work while serving out the remainder of Wilson's

term. All the others are contained successively in volumes 21 to 59.

We turn aside here for a moment to consider a bit of judicial political jockeying which occurred at this time. When Chief Justice Wilson resigned in 1869, James Gilfillan was appointed with the tacit understanding he was to be his party's candidate at the next general election. But the Republican party, meeting the following September, nominated a comparatively unknown man for the position. Prior to this the higher judicial officers, by consent of all parties, had refrained from becoming involved in judicial political jockeying.

Christopher G. Ripley, who had been unexpectedly named instead of Gilfillan, owed his nomination to political trading in the convention. Much dissatisfaction arose throughout the state, and Ripley at once became the object of bitter attacks. Yet, even against [-2-] this rising bitterness, he was elected by a large majority. During his term as chief justice he served with general satisfaction; however he was in constant ill-health, and resigned in 1874.

Not a great deal is known of Ripley's life. He was born in Waltham, Massachusetts, September 6, 1822, where his father was a Unitarian minister. He died at Concord, Massachusetts, October 15, 1881.

Early in life Judge Ripley attended Harvard, graduating from there in 1841. After another year in the Harvard

Law School, he entered the law office of the celebrated lawyer Franklin Dexter, at Boston. In 1855 he came to the territory of Minnesota, locating at Brownsville; but a year later removed to Chatfield where he practiced at his profession.

He was elected chief justice in 1869 for the term beginning in January 1870. However, as mentioned, ill health compelled his resignation. During his brief tenure on the bench he wrote 133 opinions, and not a single dissenting one. They begin to appear in volume 15 of the Minnesota Reports and end in volume 20.

On October 1, 1872 the supreme court appointed William Grube court marshal, with an allowance of two dollars per day for attendance upon the court.

Among some of the cases reaching the court at this time is to be found an interesting connection bearing on the present day reforestation movement. It is now maintained, and perhaps rightly so, that if the timber which once covered the upper Mississippi basin were standing today it would greatly lessen the sharp converging of seasonal waters into that river, thus tending to permit naturally stored waters to be gradually carried away, and such occurrences as high spring floods would become very rare indeed. [-3-]

Yet, while admitting the essential truth of this, the facts are that high spring floods did occur even in the early days when Minnesota's great timber resources remained as yet untouched. Cases are on record which prove this.

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During the period of which we are speaking, the banks of the Mississippi between St. Anthony Falls and Lake Pepin were dotted with sawmills of varying sizes; and between these points much rafting of logs occurred. Occasionally a freshet or high spring flood would occur and boomed logs above the falls would be washed apart and carried over the falls, to be scattered helter-skelter from St. Paul to Lake Pepin. Sometimes millions of feet of logs would be so carried away and indiscriminately mixed with others. Very often this led to litigation which finally reached the supreme court. "Mississippi Rafting Company vs. Ankeny et al" (18 Minn. 17) is a specific case.

It is interesting to note that taxation of court costs in this case amounted to $104.80, while in a more recent timber case "Wallace vs. Pine Tree Lumber Company" (150 Minn. 386), an action based on suit to recover for damages caused by interference with waters of the Mississippi by certain dams which interfered with a log drive, court costs totaled $1,748.20.

From time to time sessions of the supreme court were interrupted by unexpected incidents. On the first day of session of the general October term, 1873, because of the illness of Chief Justice Ripley and the unfitness of the court room, it was decided that all cases up for hearing and all other matters pending were to be continued until the next regular term of court.

It will be recalled that Samuel J. R. McMillan succeeded Ripley as chief justice. McMillan served from April 7,

1874 to March 10, 1875, when he was elected United States senator. At the time McMillan moved up the chief justiceship the vacancy created was filled by the appointment of George B. Young. [-4-]

Judge Young was born July 25, 1840 at Boston, Massachusetts, and died December 30, 1906 at St. Paul. He was graduated from Harvard in 1860, and the same fall entered the law office of Henry A. Scudder at Boston, where he remained for a year, and then entered the Harvard Law School, from which he was graduated two years later. In 1864 he went to New York City and in November of that year was admitted to the bar. Thereafter, until his removal west, he engaged in independent practice in the east.

He arrived in Minneapolis in 1870, was admitted to the bar of this state, and continued to practice until 1874, at which time he was appointed by Governor Davis as associate justice of the supreme court. The term expired in 1875, and he resumed private practice, this time in St. Paul, where he remained until his death.

Judge Young was supreme court reporter from 1875 to 1892, compiling twenty-seven volumes of the court's reports, 21 to 47 inclusive. He lectured for a number of years on "Conflict of Laws" at the University of Minnesota. An illustration of Judge Young's keenness was his work in the preparation of the General Statutes of 1878 which merited and received much favorable comment. He included a certain section which had been carried over from the laws of 1877 and which was generally understood to have been

repealed by Chapter 1 of the Laws of 1878. The supreme court later held that this section had not been repealed.

In the eight months Judge Young sat on the bench he wrote 26 majority opinions and no dissents.

At the November election following Judge Young's appointment F. R. E. Cornell was elected associate justice. Cornell was born at Coventry, New York, November 17, 1821, and died at his home in Minneapolis May 23, 1881, being the first supreme court justice to die in service.

He graduated from Union College in 1842, was admitted [-5-] to the bar in the supreme court at Albany, New York, in 1846. He began practice immediately at Addison, New York, and remained there until 1854. During 1852 and 1853 he was a new York state senator. In 1854 he moved to Minneapolis and continued to reside there until his death. He was a member of the Minnesota legislature in 1861, 1862, and 1865, and later served as attorney general from January 10, 1868 to January 9, 1874. In November, 1874, he was elected associate justice of the supreme court, qualified and took his seat January 11, 1875. He left the bench May 23, 1881.

During the time he served the supreme court Judge Cornell wrote 218 opinions expressing court decisions, and 1 dissenting opinion.

Occasionally a story is told by an old-timer which might lead us to believe that in the old days one might vote at the

same election as many times as one chose or thought necessary. Yet, judging from the records of this court the statement would seem to contain more color than fact, at least as far as concerned elections in Minnesota, because here known offenders were dealt with summarily. A defendant who was tried in lower court and found guilty of voting more than once at the municipal election held in Stillwater, April 1, 1873, on appeal to the supreme court pleaded intoxication, stating that he did not remember voting more than once (21 Minn. 22). This was held to be no defense, and the supreme court directed, in an opinion written by Justice Young, that the district court's sentence of six months at hard labor in the state prison be carried out.

Shortly after disposing of this case the supreme court upheld the validity of city ordinances forbidding the sale of liquors at all bars on Sundays and requiring that these places be closed on that day.

From 1870 to 1875 much litigation arose over what was called "The Duluth Harbor case". Several separate actions were [-6-] involved, but the original one was a complaint by Wisconsin against the city of Duluth for proposing the cutting of a canal across Minnesota Point, which act, they maintained, would divert the waters of the St. Louis river as to destroy the harbor of Superior. Many aspects of this litigation were reviewed before the United States supreme court. Duluth eventually built a breakwater

across the bay of Superior and the government took an increased interest in the improvement of these harbors.

The first case of its kind to be appealed to the supreme court was that of "Getchell vs. Hill and another" (22 Minn. 464) wherein two surgeons were sued for damages for alleged malpractice in their treatment of plaintiff's broken arm. A feature of the case was the mass of expert testimony offered.

The case of "Domestic Sewing Machine Company vs. Anton Anderson" (23 Minn. 57) heard by the supreme court May 22, 1876 reveals that sewing machines were even then sold on the installment plan. The machine in litigation sold for $75.00, and while $45.00 was collected as the down payment, the terms of $5 monthly arranged for the payment of the balance compare closely with the present day easy-payment plan.

Reference has been made to the steady growth of the towns and cities throughout the state, and how litigation arising from this expansion helped to swell the work of the supreme court. Particularly in St. Paul and Minneapolis this was so, and suits over damage awards were numerous. As a cited example, the location of the present day drive around Lake Phalen, St. Paul, was provided for in a special law in 1878; and two years later litigation growing out of damage awards for property acquired reached the supreme court. [-7-]