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HISTORY OF THE MINNESOTA SUPREME COURT

BY

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Justice Daniel A. Dickinson left the supreme court bench in 1894, his seat being taken by Thomas Canty, who in turn left early in 1900. William Mitchell, the prolific writer of opinions, had ascended the bench in 1881 and remained there until the beginning of 1899. Justice Charles E. Vanderburgh served from 1882 until early 1894 when Daniel Buck became a member of the court. Loren W. Collins, it so happened, was the only justice on the bench at the beginning of 1890 who served uninterruptedly throughout the ten year period under review. It will be noted, however, that Justice Mitchell left in 1899, after serving from 1881.

During this time the office of clerk of supreme court was served by three men. J. D. Jones, from April 1887 to January 5, 1891. C. P. Holcomb, from January 6, 1891 to January 4, 1895. Darius F. Reese, from January 7, 1895 to January 4, 1903.

Concerning the naturalizations previously mentioned, it is evident from the records that almost everyone who was not a citizen chose this time to apply for his naturalization. On October 27, 1897, 155 naturalizations were entered in the court minutes; on November 3, 86; on November 8, 98; on November 10, 64; on November 12, 6; on November 15, 43; on November 17, 47; and on November 19, 7 -- totalling 506 naturalizations granted within a

single month. While no statistical study of the court minutes has been attempted, his average of more than 16 a day is undoubtedly greater than that of any like period.

Attorney admissions were on the increase, too. On June 2, 1893, 73 were admitted to practice, and on June 8, 1894, 82 were admitted. [-1-]

Still another practice threatened to slow up the work of the court. During the early nineties, when stenographers and typewriters became so common that the size of transcripts offered in court grew bigger and bigger, the judges found it necessary at times to take a hand in curbing this practice. In determining an application for taxation of costs in a particular case (46 Minn. 552), following Judge Mitchell's written opinion, there appeared an appended order by the court in which it was stated: "The practice of including in the paper book [transcript] a crude and undigested mass of irrelevant and immaterial matter has become so common in this day of stenographers and typewriters as to become a positive abuse, which adds greatly to the labors of this court".

Prior to 1890 only a very few perjury cases had reached the court, but now they began to appear more frequently. Among the cases coming before the court at this time was one touching upon an activity which was more or less common. Briefly, it involved the following:

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In the 90's stock companies traveling and playing on the road often went broke and were stranded. One such company finding its resources running low began paying its members half-week salaries. Shortly afterwards a bulletin was posted thanking those who had acquiesced graciously, but naming two members of the company who had acted "ungentlemanly and discourteous".

It seems the publication of this so blackened these two professionally that it was improbable booking agents would longer continue to find them employment. A libel suit (42 Minn. 393) was instituted against the author of the bulletin, and a verdict for the plaintiff was later upheld by the supreme court.

Many cases were now being appealed to the high court by various railroad companies from judgments granted in lower courts to plaintiffs who had recovered damages traceable to the blowing of locomo- [-2-] tive whistles. The noise had often frightened horses, causing them to run away, with resultant harm and injury to either plaintiff or property. The railroads were also appealing many actions wherein plaintiff had been granted recovery for property destroyed by fire set by flying sparks from locomotives.

A decision was handed down by the high court at about this time determining that the time of sale under foreclosure by advertisement must be held at the time stated in the published notice of sale. In the case in question (45 Minn. 208) the notice of foreclosure sale set the time of sale at 11 o'clock. Actually

the sale was held 15 minutes before 11 o'clock, and a lower court ruling that it was void was upheld by the supreme court.

A suit to recover $7.25 was decided by the court on June 8, 1891. It was "Seward D. Allen vs. Duluth Gas & Water Company" (40 Minn. 290), and was in the nature of a test case. Of interest, however, are some facts which should be of some comfort to those who complain about present day water rates. The opinion, written by Justice Collins, discloses the following:

That plaintiff had paid $10, the water rate for one-quarter year, and then brought suit in the municipal court of Duluth to recover $7.25 of the amount paid. He appealed from an order refusing a new trial after a trial by the lower court had given him a judgment for 95 cents and costs.

The plaintiff's residence contained eight rooms, and was fitted with two sinks, with stationary wash-tubs, and with the usual number of pipes and faucets. There were two self-closing water-closets and two water basins. The defendant demanded and compelled the plaintiff to pay at the rate of $40 per annum, itemized thus: Residence, $12; bath, $5; for each water-closet, $5; for each basin, $4; and for the heating apparatus, a hot water heater, $5. These charges were sustained by the court below as permissible under the [-3-] ordinance, except as to the charge for the heater, which was reduced to $1.18 a year.

The plaintiff contended that the entire charge was covered by the residence rate, while the water company insisted it

was entitled to the various additional amounts set forth as being reasonable compensation for the extra amount of water used.

"It is also fair to presume", the opinion went on, "that if the occupant of a private house chose to fit it up with articles which but a few years since were real luxuries, now denominated "modern conveniences", thereby greatly increasing the consumption of water, it was the intention to compel him to pay somewhat more than his neighbor who went without". And on this interpretation the order of the lower court was affirmed.

The origin of some American sayings such as "coming out of a clear sky" and speaking of a gain or accumulation as "not having grown on trees", may have arisen, according to information offered before the supreme court in a libel case (47 Minn. 278), from the commonly used German phrase "for it comes not out of the air".

Speaking of $700 an employee had used, a third party suggested to the employer "for it comes not out of the air" and thus became the object of a libel suit. Not coming out of the air, the remark was held to hold the suggestion that the $700, by devious means, had come out of the cash register; and was so interpreted by the supreme court.

Several months later, in a railroad case decided January 18, 1892, the word "scalper" was used by the supreme court in exactly the same sense as used nowadays to refer to those who

buy various kinds of tickets and then sell them at an increased price, thus gaining a profit.

Today among the various artifices known as "trade stimulators" are to be found some which differ little from those used forty [-4-] or fifty years ago. In the early nineties a certain Minneapolis tailor conceived the idea of forming "clubs" of forty with each member paying in a dollar and receiving a coupon which entitled him to apply it on payment for "merchant tailoring" in addition to the chance it gave holder at weekly drawings to receive a $40 suit of clothes for the cost of the coupon. This tailor later found himself appealing from a judgment of the municipal court of Minneapolis finding him guilty of conducting a lottery. The conviction was upheld on March 8, 1892 by the supreme court (48 Minn. 555).

The last case to reach the supreme court involving capital punishment in Minnesota, and one which created a great deal of discussion in the state -- indeed, to a degree, even in the nation -- was that of Harry T. Hayward. Hayward was convicted in Minneapolis on March 8, 1895 of murder in the first degree, and three days later was sentenced to the county jail for three months after which, at a time to be fixed by the governor, he was to be hanged. In the warrant subsequently issued on May 20, 1895, by Governor Clough, the time of execution was set for June 21, 1895. Two days before time of execution, defendant appealed to the Minnesota supreme court from an order denying his motion for a new

trial. The high court granted a stay of thirty days, Justice Canty filing a vigorous protest in which he pointed out that the defense had had several months in which to apply to the court for a stay but had waited until the last minute to do so.

The lower court indictment charged that Hayward had induced one Claus Blixt to murder one Catherine Ging, and that he had aided Blixt in so doing. The evidence disclosed that Catherine Ging was a young unmarried woman engaged in dressmaking in Minneapolis, and that she resided with her niece in the Ozark Flats, an apartment building owned by the father of the defendant. Hayward, his father and mother, and his brother Adry Hayward, also occupied an apartment [-5-] in the same building. Claus Blixt was the engineer.

Miss Ging's body was found lying on a well traveled road on the outskirts of Minneapolis the evening of December 3, 1894, with a bullet hole in her head. About a week prior to this Miss Ging had made over to defendant her promissory notes for $7,000 and in return had assigned to him insurance policies on her life for $10,000 which he had just assisted her in procuring.

Immediately following the discovery of Miss Ging's body, Hayward, his brother Adry, and Claus Blixt were all arrested on suspicion. Blixt confessed, and implicated Hayward.

A long and involved trial followed. The conviction was appealed to the supreme court where it was affirmed, Justice Canty writing the opinion.

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As the work of the court in the territorial and early state period had reflected the formative days of the state, so, too, did the work of the court during the nineties reflect the industrial, commercial, and political growth of the state since that date. However, it should be emphasized that during this latter period the work of the court did not involve the considering of new types of cases as much as it was concerned with the gradual changes taking place within those already established.

During the nineties there was a great increase in railroad cases with a corresponding falling off in steamboat litigation, a dozen or more libel cases, many more insurance cases, an increase in company and corporation controversies, more actions growing out of logging and lumbering operations, the attendant litigation ensuing from the rise and widened operations of the Iron Range companies, the repeated upholding of the so-called Homestead Law, an increasing number of estate cases, more cases arising from tax assessments, and a consideration of more cases carried up from the lower courts involving criminal prosecution. [-6-]

It has been mentioned that on November 14, 1899, Associate Justice Daniel Buck resigned because of the mortal illness of his wife, whereupon Calvin L. Brown followed him on the bench.

Judge Brown was born at Goshen, New Hampshire, April 26, 1854, and died at the age of sixty-seven at his home in Minneapolis, September 24, 1923. He was but one year old when his

parents moved to the territory of Minnesota, locating at Shakopee, where they lived for fifteen years and then moved on to Willmar. Meanwhile young Calvin attended what public schools he could. As he grew older he made ventures into several fields, interesting himself in such activities as an ambitious young man in a frontier state might be expected to do; but he soon settled down and seriously took up the study of law.

He was admitted to the bar on February 22, 1876, and began practice in Willmar in partnership with his brother. In 1878 he moved to Morris, where he served as county attorney from 1883 until Governor McGill appointed him on March 10, 1887 judge of the Sixteenth district.

He held this position for eleven years, and then in 1898 was elected associate justice of the state supreme court for the term beginning January 1, 1900. However, before Judge Brown's term began, Justice Buck who was sitting on the supreme court bench resigned, and Governor Lind on November 20, 1899 appointed the newly elected Brown to fill the vacancy.

Brown remained associate justice until 1912, when Chief Justice Start refused to accept a re-election, at which time Justice Brown was elected chief justice, and continued to serve in that position until his death.

During the period of Justice Brown's service on the bench, spanning more than twenty-four years, he wrote 1433 majority

opinions and 85 dissents. They are recorded in the Minnesota Reports, Volumes 78 to 156. [-7-]