Section I

HISTORY OF THE MINNESOTA SUPREME COURT

BY
Russell O. Gunderson
Clerk of Supreme Court

A cluster of nondescript log buildings, the tall ones with their pretentious false fronts staring grimly down on low sprawling ones displaying "General Merchant", "Blacksmith", "Lawyer", and such mixed trade banners, gave the appearance of slowly sinking deeper and deeper into the mud surrounding them; zig-zagging in and out were even muddier trails made deep-rutted by huge ox-drawn carts; and nearby moccasined and buckskin-clothed loiterers were leaning back on upturned nail kegs doing a serious job of whittling while occasionally gazing out with lazy eye to the Mississippi half expectant of seeing a new face debark from one of the rafts being poled in; a certain hustle and bustle going on about the American House (where, rumor had it, was soon to be held the first meeting of the high judges!) -- this was St. Paul in 1849, the year in which was created the Territorial supreme court.

Yet law, and even order after a fashion, had not been entirely unknown in this territory since the first pioneer had paused in his westward journey and unloaded his belongings here. At that remote time this section of the country wasn't even a territory -- it was only part of something else. And like most dependents it was a good deal kicked around!

In part this explains why Minnesota had such a mixed origin. Its mothers, to use the words of Flandrau, were the Northwest Territory and Louisiana. The first gave us what lies

east of the Mississippi, and the last what we embrace west of that stream; and before this area became Minnesota, it was, what is not so generally known, on the west side of the river, first Louisiana, then Missouri, then Michigan, then Wisconsin, and then Iowa. [-1-]

On the east side of the Mississippi it was first a part of the Northwest Territory, which belonged to Virginia and was ceded by that state to the United States; later it was a part of Indiana, and afterwards of Wisconsin.

When Wisconsin was a territory, its part lying west of the St. Croix river was in St. Croix county, which included St. Anthony (Minneapolis), Stillwater, Point Douglas, and St. Paul, and here were the homes of a good many men who were to play so important a part in the rise and growth of Minnesota.

The admission of Wisconsin into the Union in 1848, with the St. Croix river for its western boundary, left all the country west of that stream without any government, and the lawyers without any courts, leaving their business prospects rather up in the air. But, lawyer-like, they rose to the occasion nobly. They claimed, it is recorded, that the remnant abandoned by Wisconsin, as a state, was still Wisconsin as a territory.

A mass convention was held at Stillwater, August 26, 1848, in the interest of organizing Minnesota territory. These same lawyers then induced John Catlin, the secretary of the Territory of Wisconsin, to remove from Madison to Stillwater. Catlin arrived about the middle of September, that same year, and

brought with him the great seal of the territory of Wisconsin, and, as ex-officio governor, immediately proclaimed the existence of the territory and called for a general election to be held that November for the election of a delegate to Congress. The election was held, and after the most spirited campaign ever to occur in Minnesota, Sibley was elected over Henry M. Rice. Sibley went to Washington, and after many trials, took his seat as a delegate from Wisconsin territory. He proceeded at once to put through the act for the organization of the territory of Minnesota.

Sibley was a lawyer, but he never practiced the [-2-] profession. He lived at Mendota, then called St. Peter's, and it was here that he acted in the capacity of the first judicial officer who ever exercised the functions of a court in Minnesota. He was commissioned a justice of the peace in 1835 or 1836 by Governor Chambers of Iowa, with a jurisdiction extending from twenty miles south of Prairie du Chien to the hazy British boundary on the north, to the White river on the west, and to the Mississippi on the east.

Within this vast domain, defined with only dimly indicated boundary lines, Sibley's court ruled supreme. At the time it was jokingly pointed out, as a parallel to the assertion that the sun never set on British soil, that neither did it ever set on the writs of Sibley's court, the writs often extending into Wisconsin, Iowa, and other jurisdictions.

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One case offers an illustration: According to an account by Flandrau, a man named Phalen was charged with having murdered a sergeant of the United States army in Wisconsin. Phalen was arrested under a warrant from Sibley's court, examined, found guilty, and committed to the prison at Prairie du Chien, and no questions were asked. Incidentally, Phalen lake, near St. Paul, was named after this prisoner.

Sibley conducted his court throughout its existence with no fear of being overruled by superior courts. At that time he never dreamed that he was to be the future first governor of a new state, or that he was to command a large part of the forces in the Indian war of 1862 -- a war which for a time threatened the very existence of the state that had been so determinedly wrested from a wilderness.

An ill-fated attempt was made in 1842 to hold a court in St. Croix county by Judge Irwin, then one of the territorial judges of Wisconsin. According to an account, again by Flandrau, it came about this way: [-3-]

There was an enterprising settler, one Joseph Brown, who had come to Fort Snelling with the regiment which laid the corner-stone of the fort in 1819, and was discharged from the army in 1826.

Later, in 1842, Brown was clerk of courts in St. Croix county. Judge Irwin came to hold court and upon arriving at Fort Snelling found himself in a country which, to him, all too

plainly indicated that disputes were more frequently settled with the tomahawk than by the principles of law.

The officers of the fort could give him no information, but fortunately he discovered Norman Kittson, a trader, near the Falls of Minnehaha. Now it so happened Kittson knew of Brown, the clerk, who then lived on the St. Croix, and directed the judge to him, pointing out the proper trails. A horse was furnished, and his honor struck out across country and found his clerk. But alas! the clerk had either forgotten all about the court or possibly had never heard of it. It is said that the disgusted judge took the first chance down the river, an angry, disillusioned man.

Five years after this futile attempt, in June 1847, the first court was held in Stillwater by Judge Dunn, then Chief Justice of Wisconsin. It was the first term of court ever held in what is now Minnesota. During this term, too, the first jury trial occurred -- one in which an Indian chief named "Wind" was acquitted of murder.

During these early days considerable real estate was changing hands. The legal descriptions used in transferring these parcels were so loose and involved that later much litigation arose over them. David Faribault sold to A. L. Larpenteur on May 27, 1847, "a piece 22 yards fronting on the back of Jackson's fence, and adjoining La Roche on the north and D. Faribault on the south, running back to the middle of the ravine from Hartshorn's claim,

being 22 [-4-] yards front and 21 yards back, containing one acre more or less". Although loose descriptions were given, they were very careful to get in plenty of legal verbiage; and in this case Larpenteur got "all the appurtenances, reversions, remainders, rents, issues, and profits thereof".

However, as might be surmised, such statements proved of little assistance in untangling disputes which later arose over such property and which were carried to the supreme court.

As before mentioned, at this time all disputes were tried before justice of the peace courts, and the practice of the attorneys in the territory was necessarily limited to such courts. David Lambert, from Madison, Wisconsin, is credited with being the first practicing attorney in St. Paul. By 1851, according to reliable accounts, there were thirty lawyers in the Territory of Minnesota. A rather common practice then in vogue was the swearing in, or admitting to practice, of an attorney just previous to his pleading a case, regardless of whether or not he had been previously admitted.

During the territorial days litigation was limited and confined to cases of minor importance, which accounts for most of it being tried in courts of the justices of the peace. These men seldom possessed legal education, but were selected for their common sense. The law on the whole was satisfactorily administered by them. Occasionally, however, the methods by which the result

was arrived at were very open to question. Atwater relates a story which was passed on to him by an old settler who vouched to having been an eye-witness.

This settler, so the story goes, had noticed a particular justice, on several occasions after a trial, make his way over a well trodden path deep into a cornfield. The settler's curiosity aroused, one day toward the end of a trial, he slipped away [-5-] unseen and concealed himself in the cornfield, near the path. Soon the magistrate appeared and, pacing back and forth as if in deep thought, drew a coin from his pocket, spat on it, and tossing it high in the air exclaimed: "Wet for plaintiff, dry for defendant". The coin fell, the justice picked it up and was overheard to remark: "Plaintiff has it".

These justice courts were held at any place convenient for the justice of the peace. Even after courthouses became more common the justices continued to hold hearings in their homes and in the back rooms of stores.

The first court house to be erected in Minnesota was built at Stillwater in 1847, about two years previous to the organization of the territory, and $12,000 of the total cost was raised by public subscription. Several sessions of the first territorial supreme court were held in it, and Flandrau states he held one session there as late as 1857. [-6-]