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HISTORY OF THE MINNESOTA SUPREME COURT

BY

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The supreme court during the first few terms did not publish a printed report of the cases determined. It was not until August 25, 1851, that William Hollinshead, reporter, sent a letter to C. K. Smith, Secretary of the Territory of Minnesota, saying that with the consent of the judges he was sending reports of cases determined at the July term with a view to their publication, as had been the custom in courts of other territories.

In compliance with the request Secretary Smith wrote to James Goodhue, Public Printer, that he was forwarding for publication the report of cases argued and determined by the Territorial supreme court. Secretary Smith trusted the printer would see his way clear to publish them so that the people would have the benefit of the reports. However, in regard to the payment for printing, he admitted he knew of no law authorizing the publishing of the reports but presumed the cost of printing could be paid out of the future appropriations to be granted the territory.

James Goodhue printed the reports. Late in receiving the pay for this and other territorial printing, he took to task Charles K. Smith, the secretary, and dealt with him no less sparingly than with Goodrich and Cooper. Smith was removed in 1851, and as he left Goodhue gave him a parting shot: "He [Smith]

stole into the territory, he stole in the territory, and then he stole out of the territory".

Goodhue in a sense was a forerunner to the modern crusader. He was fiery and partisan. Yet even his bitterest enemies were agreed that he had the best interests of the territory always at heart.

Another sheet, started soon after Goodhue's "Pioneer", [-1-] was the "St. Anthony Express". This was published at St. Anothy [sic] by Isaac Atwater, who later was elected to the supreme court bench. Atwater seldom engaged in any violent controversies. His paper was conservative, and, as was to be expected, carried many articles dealing with the courts and judicial problems of the territory.

Writing in the "Express" April 10, 1852, Atwater drew a sharp comparison between the courts in Minnesota and those in other new territories, pointing out that almost total lawlessness was the then present lot of California, Utah, New Mexico, and Oregon. He emphasized the able judiciary that was Minnesota's from the beginning.

But Atwater did have moments when he enjoyed a "lively discussion". Soon after the first issue of his paper he printed an exchange of letters between himself and a minister. It all came about because Atwater in an early issue had printed a revelation concerning a minister "who not a hundred miles from here ...ordered a communion service...which was to be 'Simon Pure'".

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The reverend, Atwater went on, "had explained how they had been manufactured in Birmingham...in the very bosom of the church".

Among other things in the reverend's first letter, Atwater was told:

"Some two or three years ago, I noticed an advertisement in a New York paper by the firm of Stanford & Swords in which they informed the clergy of the Protestant Episcopal Church that they had imported from London 'sets of private Communion' of a very convenient form.

"I wrote to a Mr. Steele, who was east at the time, to bring out a set to me which he did. When the set came it was ascertained to have been made in Philadelphia, and the only remark I made on the occasion was 'that Stanford & Swords had advertised one article and sent me another'. [-2-] "Soon after a letter came from these gentlemen informing me that they had sent me the pattern of Dr. Odenheimer, because it was a more beautiful article than the one I had ordered, and that now the clergy who had got the real London set regretted they had not waited for the American manufacture".

In regard to the case of the reverend's as set forth by himself, Atwater handed down a crisp decision in true biblical style: "His reverence explaineth how the joke occurreth, and how the Gotham sharpers deceived him".

The clergyman's letter was concluded with the following:

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"I would remark, and the remark may be of use to you in your capacity as editor of the "St. Anthony Express" that a man can seldom get into a ditch and throw filth at the passerbye [sic] with impunity; for perchance, he may bespatter some one of less peaceable temper and profession than I am, and get his head broken for pains".

The judge's amended decision now read: "The reverend concludeth his discourse, and cautioneth us that some other person may be more valiant than he, and hinteth at 'pistols and coffee for two'". Then in seeming afterthought added: "The Editor hereof greatly quaketh in his boots".

Then a few paragraphs farther in his paper he discussed courts and justice. He derided as "culpable negligence" the ease with which Indian prisoners so often escaped from jails.

Occasionally it would happen in the early history of the court, even as it occasionally happens today, that the losing attorney would find fault with the decision of the court. While from time to time such complaints will no doubt always arise, the reasons for such complaints may change. One interesting account of an instance when a vigorous complaint would have seemed in order is preserved by Isaac Atwater, and concerned the outcome of one of [-3-] his own cases.

He relates that at one of the early terms of the Territorial supreme court he had four cases on the docket. The first two were average cases that were liable to go either way, the

third a losing one, and the fourth, an appeal from a judgment, involved no question save the regularity of the record. So sure was Atwater of this fourth case that he gave it no further thought. Sometime afterward the first three cases were all decided in his favor; but the fourth, the sure-fire one, hung in the balance for more than a month before the decision was handed down. And when it was announced, Atwater had lost!

He relates further that he immediately searched for the opinion on what seemed an extraordinary decision; but none was on file -- only an entry stating, "judgment reversed". Soon after he met one of the judges and questioned him concerning the decision. At first the judge couldn't recall the case, and then, according to Atwater:

"Oh yes -- I recollect -- the case of so and so, in which Mr. N-- was opposing attorney?"

"The same".

"Well, I'm not sure about the decision in that case, but my recollection is that it was not one of very much importance, and as Mr. N-- had lost every case he had that term, we thought it would not make much difference to decide that case in his favor".

Atwater says that the explanation was so frank and naive that it entirely disarmed criticism, especially so as it was immediately followed with a genial invitation to visit a friend at the next corner.

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However, in view of all this, it must not be inferred that this was the usual manner of conducting territorial court. Quite [-4-] the reverse was true. Atwater himself goes to great length in stressing that justice nearly always was obtained. Charges of bribery and corruption were almost completely unknown. Of course, some of the methods of the court, as we view them today, were peculiar, and have since become obsolete; but even at the time they were not as prejudicial as one might think.

As might be expected, during the early sessions of the Territorial supreme court dignity and decorum such as was known in the eastern courts was largely dispensed with. Free and easy familiarity was the rule, and conduct was most informal. An attorney entering the court was often greeted by a hearty salutation from the bench. And it was not uncommon for the judge, while waiting for a witness, to descend from the bench, and taking a seat at the bar with his legs cocked up on the table, a cigar in his mouth, join in the jokes, stories, and laughter at the counsel table.

It is told that at one term of the district court, presided over by one of the supreme court justices, and held in a hall over a saloon on upper Third street, a case was being argued by William Hollinshead, who suddenly stopped in the middle of his argument at eleven o'clock and moved that the court take a recess of fifteen minutes. The motion was granted at once, and the object of the recess soon became apparent. The bench, counsel, jury, and

every person in the room bolted for the door, crossed the street to the American House, where, it is said, extensive irrigation immediately followed. The ceremony over, all returned to the court room and business went on in the regular order.

It may be pointed out at this time that as the population increased, and as litigation grew and became more important, the standard of legal ability for a seat on the bench was raised correspondingly. Also with this increase in business there came an increase in court dignity, but the fascinating flourish and flavor [-5-] of territorial times was passing away. And never again did any clerk, who couldn't write the simplest record without instruction and help from the presiding judge, ever become attached to any court.

Disputes about land claims were a common source of litigation during the early 50's. Once a rather important suit lasted for several days before being given to the jury. Then after the jury had retired, the wrangling continued for several more days. Finally George Tew, one of the jurors, jumped out of a two-story window and departed for parts unknown. He was never found. The trial was summarily ended, and nothing further was ever done.

Another incident which happened during a trial at about this time indicates that attorneys even then were quick to avail themselves of the slightest chance to gain the advantage for their client. The attorney in this case was Isaac Atwater, who, as previously mentioned, also published the St. Anthony Express and

was later elected one of the first justices of the supreme court at the time the organization of the state government was approved. In the case under discussion he made a nice point, and by so doing won it.

He was counsel for Pat Strother (later a San Francisco millionaire) who had been arrested and brought before the court on a charge of assault and battery. At first he refused to enter a plea saying: "Well, you see, yer honor, I don't know whether I'm guilty or not. I did knock the fellow down, but he called me a ----, and that's not so".

Atwater induced Pat to plead not guilty. A jury was called, and several witnesses swore to seeing the defendant knock down the complainant. No witnesses were called for the defendant. Atwater addressed the jury, pointing out that none of the witnesses in speaking of the defendant had mentioned any name other than "Strother" and that the real criminal might be some one other than [-6-] the defendant. The jury "caught on" and in five minutes brought in a verdict of not guilty, after which they passed the hat among themselves and collected enough to pay defendant's costs.

Still another incident which happened at this time, the early 50's, was one which clearly presaged the stand Minnesota was later to take on a question which divided the nation. This drift of opinion respected slavery, and was revealed by an anti-slavery convention held in St. Anthony.

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This sentiment finally became so strong in Minneapolis, that only a few years later, at a time when the young city was filled with guests from the south, all of whom had brought their personal body servants, a writ of habeas corpus was obtained releasing one of them. By virtue of the writ, the sheriff took a colored woman, a slave of Colonel Christmas who lived in Mississippi, and brought her before district court. F. R. E. Cornell, later a supreme court justice, appeared for the petitioner. Judge Vanderburgh, also later a supreme court justice, was presiding on the district bench, and he declared the law to be that slavery was a local institution, that a slave brought into Minnesota by its owner became free. Following the decision much excitement prevailed. Friends favorable to the cause gathered around the freed woman and whisked her away. Sympathizers guarded her that night, and the following morning got her started off for Canada.

In the meantime changes were taking place in the courts of Minnesota. Some were quickly dropped, others survived, and it largely became a matter of trial and error. In this connection it must be understood that the judges and lawyers in the territory had been drawn from almost every state in the Union, and each had brought with him certain ideas and practices favored in his native state, and ones which he himself had come to consider as being the most approved. [-7-] Consequently, no two courts in the territory were conducted in exactly the same manner, and likewise

no two attorneys conducted litigation along parallel lines. It might even be said, though of course to a much lesser extent, that various changes were taking places in the courts throughout the country.

In an editorial in the Express of October 1, 1852, Atwater wrote a lengthy exposition on "the Law of Evidence", and pointed out that under the revised statute (Section 51 of Chap. 95) the law of evidence was entirely changed, not only as it had existed in this country but in almost every civilized nation of the world. He called attention to the fact that all the guards were down, all restrictions removed. Protection which the experience of ages had thrown around judicial testimony was suddenly withdrawn. And it was the result of this, Atwater continued, that increased the amount of testimony and made the statements more conflicting. He lamented the large amount of obvious false swearing in so many cases. [-8-]