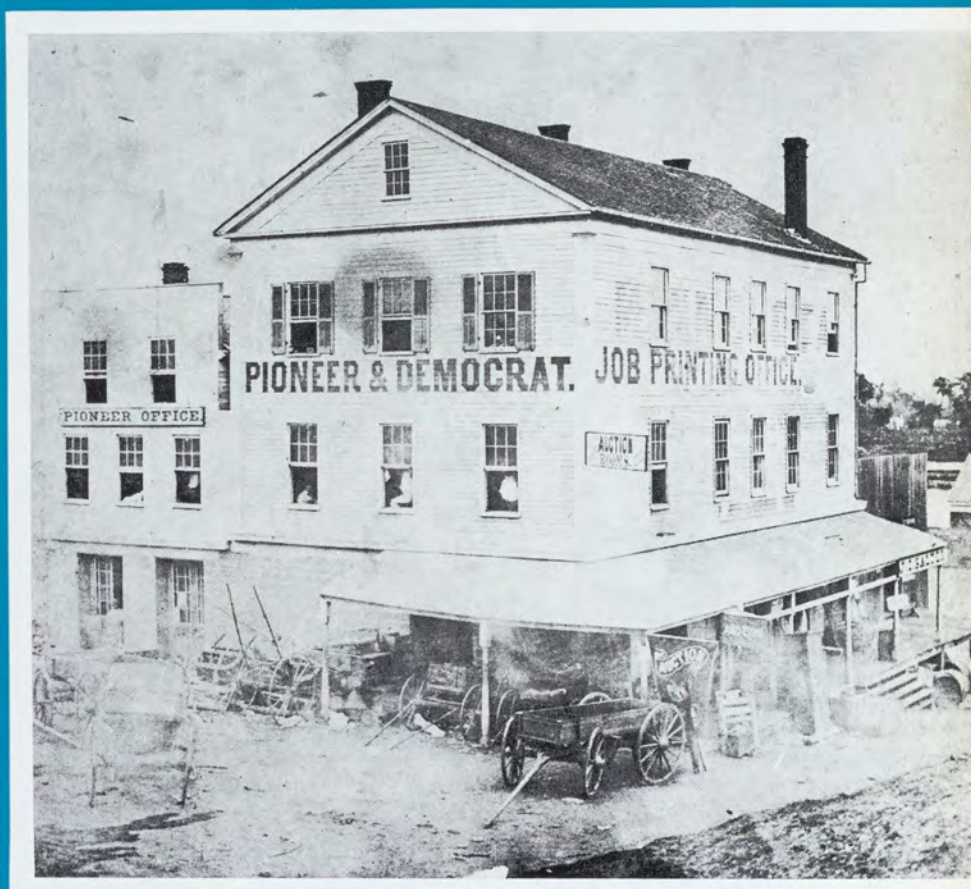


# RAMSEY COUNTY HISTORY



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# Ramsey County History

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ON THE COVER: *The Pioneer and Democrat* office, as it looked between 1854 and 1857. It stood on the corner of Third and Jackson Streets.

ACKNOWLEDGEMENTS: *Barbara Owen and Paul Trautman, Macalester College students, for preparing the basic material for the stories on pages 16 and 18, winter interim projects; Nancy L. Woolworth, for additional research, annotation and writing; Dorothy A. Smith, for editing and production help; the Minnesota Historical Society Picture Department for all pictures except those with Mr. Bull's story.*

# Minnesota's Early Libel Laws

By Henry H. Cowie, Jr

FROM THE HISTORIC trial of John Peter Zenger in 1735 to the case of Linus Pauling against the *National Review* decided just a few weeks ago, American courts have created and preserved the right of the press to comment critically upon the activities of officials and public figures. Legal protection for such statements has been found in the overriding interest of promoting public welfare.

There are certain qualifications to this doctrine. Our law does not sanction the malicious publication of false material charging a public official with crimes or misconduct in office. The purple prose employed by early Minnesota editors no longer appears in our newspapers, and one of the principal reasons for its largely unmourned passing undoubtedly lies in the development of the law of libel in Minnesota.

For example, gamey epithets such as those applied by James M. Goodhue in 1851 to describe Judge Cooper's judicial behavior later became not only unpopular but dangerous for a Minnesota editor to use. In 1874, the Minnesota Supreme Court held it slanderous for one to openly characterize the orderly workings of the judicial process as resulting in "the god-damnedest erroneous decision I ever saw a justice give."<sup>1</sup>

OUR COURTS generally have agreed with Shakespeare's observation in *Richard II* that "the purest treasure mortal times afford is spotless reputation." Newspapers have been held liable in damages for the malicious publication of false and defamatory matter which injures the repu-

tation of a person, exposes him to contempt, or degrades him in society.

Early libel cases in Minnesota taught editors of that day that a newspaper could not, with impunity and without foundation, call an alderman "a member of the city hall ring which plunders the city treasury";<sup>2</sup> print that a man was beaten up with ample justification by an irate husband;<sup>3</sup> accuse a candidate for office of getting delegates drunk;<sup>4</sup> call a man a horse thief,<sup>5</sup> or state that someone a) went to Chicago and b) killed a man.<sup>6</sup> It was slanderous then (and presumably now) to publically say of an ordained clergyman that "I wouldn't touch him with a ten foot pole."<sup>7</sup>

In the course of research for this article, the writer was gratified to learn that, since 1884, a lawyer in Minnesota has not had to put up with being called a shyster—at least by the newspapers!<sup>8</sup>

Historically, one of the surest ways for anyone—and this doesn't only include editors—to find himself on the receiving end of a defamation case has been to publically and falsely hint that a lady's morals are loose. A man named Post discovered this the hard way in 1897, when the Minnesota Supreme Court upheld a verdict against him for remarking about the proprietress of the local hotel, "I am going to paint my building red and go into competition with her."<sup>9</sup>

LANGUAGE employed in a newspaper is not libelous if it is so obscure that its meaning is not clear, or if it seems innocent to most persons. However, if the ordinary reader of average intelligence unfolds his morning paper, straightens up at the breakfast table and says to his wife, "Wow, honey, listen to this.....", the clear meaning test probably is satisfied.

An example can be found in a Minnesota case years ago when a newspaper in Bemidji was sued for falsely reporting that a respectable woman had been found

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guilty of running a bawdy house. Counsel for the newspaper tried to defend the indefensible by suggesting rather lamely that the article really wasn't so bad because "A woman may keep a house of prostitution and yet be a chaste woman herself." Chief Justice Start laid *that* argument to rest by dryly observing: "It is possible that such a woman might be esteemed chaste in a community in which the keeping of a house of prostitution is regarded merely as a breach of etiquette, but not in Minnesota."<sup>10</sup>

Of course, newspapers often had more to talk about in defense of libel actions than did the unfortunate lawyer from Bemidji. In 1887, the Minnesota Legislature passed a retraction law designed to afford newspapers a partial defense where the article complained of was printed in good faith and under a mistake of the facts involved.<sup>11</sup> Many times, editors claimed they should be free of the harassment of libel suits in order to promote community reform by publicizing deplorable social conditions. The background of some of these cases is enlightening.

In 1891, a Mrs. Oleson sued the Journal Printing Company of Minneapolis for publishing a long article charging her with detailed instances of aggravated physical cruelty to her stepchildren. The piece was entitled "The Horse is Ahead," and it quoted an agent of the Society for the Prevention of Cruelty to Animals as saying, "It is a pity our laws are so weak. If a dumb animal had been treated one-quarter so basely, I could have had the guilty persons put in jail and heavily fined. But our law does not touch cruelty to children."

The newspaper defended itself by saying it had published the article in the hope it might induce the legislature, then in session in St. Paul, to pass a law providing for the punishment of parents who abused and beat their children. The court held that in that particular case the newspaper's end did not justify its means.<sup>12</sup>

Three legal developments in Minnesota libel law before the turn of the century undoubtedly led to lowering reader interest in the editorial pages by raising the standard of their contents. The first was accomplished by two free-swinging pioneer editors themselves. In the earliest

libel case reported in the state, (1860) the Minnesota Supreme Court held that the editor of the *Chatfield Republican* had libeled the editor of the *Chatfield Democrat* by accusing him in print of stooping low (or reaching high) enough to "steal children's diapers from the clothes line".<sup>13</sup> This must have helped tone things down.

IN THE SECOND, Judge Flandrau was called upon to decide the then (1864) novel question of whether a newspaper corporation could be sued for libel as though it were an individual owner-publisher. He adopted what was urged as the "modern" view that, since the stage-coaches, rail cars and steamboats were mostly owned by corporations which could be sued, there was no reason to treat a newspaper differently.<sup>14</sup>

Finally, in the penal code authorized by the legislature in 1885, Minnesota enacted a statute on criminal libel. Thereafter, a newspaper not only ran the risk of having to pay damages for libel; its editor or publisher became subject to criminal prosecution by the state. Although the statute excused publications "for good motives and for justifiable ends", it is probably fair to conclude that this law was a powerful inducement to end what Professor Emery has aptly called "the colorful era of personal journalism in Minnesota".

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#### THE GIBBS HOUSE

*Headquarters of the Ramsey County Historical Society, 2097 Larpenteur Avenue W., St. Paul, Minn.*

THE Ramsey County Historical Society was founded in 1949. During the following years the Society, believing that a sense of history is of great importance in giving a new, mobile generation a knowledge of its roots in the past, acquired the 100-year-old farm home which had belonged to Heman R. Gibbs. The Society restored the Gibbs House and in 1954 opened it to the public as a museum which would depict the way of life of an early Minnesota settler.

In 1958 the Society erected a barn, behind the house, which is maintained as an agricultural museum to display the tools and other implements used by the men who broke up the prairie soil and farmed with horse and oxen.

Today, in addition to maintaining the Gibbs property, the Ramsey County Historical Society is active in the preservation of historic sites in Ramsey county, conducts tours, prepares pamphlets and other publications, organizes demonstrations of pioneer crafts and maintains a Speakers' Bureau for schools and organizations. It is the Society's hope that through its work the rich heritage of the sturdy men and women who were the pioneers of Ramsey County will be preserved for future generations.