



Society Update

The Official Publication of the Michigan Supreme Court Historical Society

Winter 2019

NO REST FOR THE WEARY:

William Asa Fletcher, Michigan's First Chief Justice

By Joseph Gavin



Image of William Asa Fletcher from *Life and Times of Stevens Thomson Mason, The Boy Governor of Michigan*, by Lawton T. Hemans (1920), courtesy of the Bentley Historical Library.

It is the rare individual whose life is marked by both distinction in life and distinction in death. But that is the story of Justice William Fletcher, Michigan's first Chief Justice of the Supreme Court.

William Asa Fletcher was born in 1788 in Plymouth, New Hampshire. He studied law in New York. In 1821, he moved to Detroit in what was then the Territory of Michigan. There, he was admitted to the bar and established a law practice.

Justice Fletcher was not content simply to sustain a law practice, however, and it was not long before he made a name for himself.

By 1823, Justice Fletcher had been appointed chief justice of the County Court of Wayne County by the territorial governor, Lewis Cass. He thereafter continued to find himself present, though advertence or otherwise, at pivotal moments in the history of the nascent Michigan.

As a territory from 1805 through 1837, the laws of Michigan were not compiled or published with any degree of regularity or uniformity.¹ Efforts were intermittently undertaken during this period to compile and publish the laws of the territory, and in 1821 with the support of Congress, a compilation was published. The public received this well and

[a]t the same session resolutions were adopted reciting that it was highly important that the public acts of the territory be revised and a plain and simple code of laws formed acceptable to the people of the territory and calculated to promote their interest and protect their rights.

Justice Fletcher was appointed in 1825 to a five member commission to do just that. Two years later, the commission recommended and thereafter the legislative council published a revised volume of laws, which volume made "a much more complete and systematic collection of laws than had theretofore existed" in the territory.²

At around this same time, Justice Fletcher became attorney general of the Territory of Michigan. In that capacity, he prosecuted cases on behalf of the United States.³

In 1833, the Michigan county court system was abolished in the Lower Peninsula, except for Wayne County,

with the remainder being formed into a single circuit.⁴ Justice Fletcher was appointed judge of this multi-county circuit, which forced him to relocate to Ann Arbor, where he ended up living the remainder of his life. While serving as a judge in that capacity, Justice Fletcher rode the circuit across thirteen counties in the Lower Peninsula.

By 1835, Michigan had adopted its first constitution, claiming statehood.⁵ In November that year, Michigan's first governor was elected, Stevens T. Mason. In 1836, Governor Mason appointed Justice Fletcher Chief Justice of the newly constituted Michigan Supreme Court. This appointment was in addition to Justice Fletcher's existing duties as a circuit judge, which continued, owing to the fact that members of the Supreme Court "were to act singly as presiding judges in the circuit courts of the various counties and jointly as the highest court of review."⁶

Governor Mason also that year recommended and the legislature appointed another commission "to prepare and arrange a code of laws for the state."⁷ As if concluding that a circuit judgeship and leadership of the new Supreme Court was for him not enough, the Governor appointed Justice Fletcher to lead the law revision commission. Justice Fletcher's charge was to prepare, digest, and arrange a code of laws for the State of Michigan. But it ended up being more than that:

This act was more than a revision or condensation; it was an attempt really to codify the law of the state, and the result was for the first time a unified treatment of the entire subject, with an entire recasting of language. The work was divided into four parts, treating respectively of the Internal Administration of the State, Private Right, Administration of Civil Justice, and Administration of Criminal Justice.⁸

The Revised Statutes of the State of Michigan were adopted at the adjourned session of 1837 and regular session of 1838. It is perhaps not too much a stretch to credit Justice Fletcher with helping to establish a coherent system of laws in the newly-established State of Michigan.⁹

Justice Fletcher ultimately served as Chief Justice of the Michigan Supreme Court from 1836 to 1842. Although serving for six years, few of his opinions, or for that matter, any from the Court, were published from that period.¹⁰ This was perhaps partly due to the fact that opinion publication was not emphasized "during the thirty-one years Michigan had territorial status."¹¹ But it was likely more a consequence of the burden of presiding over multiple courts, which as Justice Fletcher himself once lamented, deprived the Justices of the time "to do that which we think the interest of the public requires, to draw up with care, opinions in the great variety of cases which are presented, many of them involving new and important principles, and which opinions are to become written law."¹² In any case, before his departure from the Supreme Court in 1842, Justice Fletcher wrote nineteen opinions that survive, though he likely authored others.¹³ The rest, it appears, were announced orally from the bench.¹⁴ Justice Fletcher's opinions that survive address myriad issues, including issues of statutory interpretation,¹⁵ evidentiary questions,¹⁶ procedural questions,¹⁷ and constitutional issues.¹⁸

After his departure from the Court, Justice Fletcher served as a Regent of the University of Michigan from 1842 through 1846. He also served as a justice of the peace in Ann Arbor, until his death. He passed away on September 18, 1852, in Ann Arbor, at the age of sixty-four.

Justice Fletcher's life was marked by one of public service, one from which it seems he received little rest. His death, however, was marked by distinction in much the same way as his life.

Following his death, Justice Fletcher was buried in a cemetery adjacent to his farm, in Ann Arbor. In 1857, when the cemetery ran out of space, a new one was opened, Forest Hill Cemetery. Justice Fletcher's grave had not been adequately marked originally and, when the old cemetery's occupants were disinterred and reburied, Justice Fletcher was not moved with them.

In 1897, the City of Ann Arbor was installing water pipes underground when workers discovered an iron casket. At the time of Justice Fletcher's death, caskets featured glass windows over the face of the corpse.

Titus Hutzel was the Ann Arbor superintendent of water works, and his mother, Sophie Hutzel, recalled Justice Fletcher being buried in an iron casket, at a well-attended funeral in Ann Arbor, similar to the casket that had been unearthed. A consensus was reached that the discovered corpse was Justice Fletcher. The City workers reinterred the casket where it had been buried, but this time marked the grave as belonging to Justice Fletcher.

In 1916, the Michigan Historical Society and the State Bar of Michigan undertook to provide a more appropriate gravesite for Michigan's first Chief Justice. Justice Fletcher's casket was again disinterred and, this time, moved to Forest Hill Cemetery, where it remained marked by a boulder for 17 years. In 1935, a headstone was donated and a formal ceremony placing the stone was conducted, in recognition of Justice Fletcher's life and accomplishments. Finally, then, Michigan's first Chief Justice was properly laid to rest.

Until 1966.

On June 6, 1966, during an excavation for an expansion of the University of Michigan School of Dentistry, workers unearthed an iron casket with the inscription, "William A. Fletcher, died Sept. 19, 1852, aged 64 years."¹⁹ This left no doubt that inside the casket was Justice Fletcher. His remains were promptly moved to Forest Hill Cemetery, and were buried alongside the first iron casket mistakenly thought to be him. To this day, the identity of the individual interred with Justice Fletcher at Forest Hill remains unknown.

In any case, a little over a century after his death, Michigan's first Chief Justice was finally laid to rest. One can only hope that, after a life of contribution to the foundations of Michigan statehood, that rest can finally be both permanent and peaceful, if not unaccompanied.

ENDNOTES

¹ Jenks, *History of Michigan Constitutional Provision Prohibiting a General Revision of the Laws*, 19 Mich L Rev 615, 616 (1921) (noting that by 1815 – two years after Detroit had been reclaimed from the British after the War of 1812 – “it was too plain to admit denial that the existence of one hundred twenty statutes unprinted, and of necessity generally unknown, was a gross injustice to the people” of the Territory of Michigan).

² *Id.* at 620.

³ E.g., *United States v. Sheldon*, 5 Bl Sup Ct Trans 337 (Mich, 1829).

⁴ *Gen Revision of the Laws*, 19 Mich L Rev at 622.

⁵ Michigan would not be admitted as a state in the Union until January 1837.

⁶ Norton, *Unreported Michigan Supreme Court Opinions, 1836–1843*, 42 Mich L Rev 87, 88 (1943).

⁷ 1838 RS, Advertisement p. 1.

⁸ *Gen Revision of the Laws*, 19 Mich L Rev at 621.

⁹ It is worth noting that some have since questioned the overall completeness and coherence of the revised statutes.

¹⁰ *Unreported Opinions*, 42 Mich L Rev at 87.

¹¹ *Id.* at 88.

¹² Documents of the House of Representatives of the State of Michigan, 1842, No. 21, p. 88.

¹³ *Unreported Opinions*, 42 Mich L Rev at 98–99.

¹⁴ *Id.* at 109.

¹⁵ *McCall v. Hough*, Blume Unreported Op 136 (1842).

¹⁶ *Rose v. Sibley*, Blume Unreported Op 30 (1839); *Roosevelt v. Gantt*, Blume Unreported Op 65 (1841).

¹⁷ *Simons v. Peck*, Blume Unreported Op 146 (1842).

¹⁸ See *Henretty v. City of Detroit*, Blume Unreported Op 36 (1839) (Whipple, J., dissenting).

¹⁹ *Workmen At 'U' Unearth Casket And A Mystery Along With It*, Ann Arbor News (June 6, 1966); *What Will We Find This Time?*, Fall 2018 DentalUM at 6–7, available at <http://media.dent.umich.edu/publications/DentAlum-Fall2018/html5>.

ABOUT THE AUTHOR

Joseph J. Gavin is an attorney with the law firm of Miller Johnson in Grand Rapids. He is a member of the firm's healthcare reimbursement practice group. A former prehearing research attorney with the Michigan Court of Appeals, Gavin has been practicing law since 2005. He has been a member of the Society's Advocates Guild since 2016.

Are you interested in writing for the *Society Update*? Please contact Carrie Sampson at carriesampson@micourthistory.org or by phone at (517) 373-7589 to discuss it.





A postcard from the Detroit Publishing Company showing 18th US President Ulysses S. Grant's Tomb in New York City, circa 1901, via the Library of Congress.

Who's buried in Fletcher's tomb?

Both Michigan's first Chief Justice and the man who appointed him, Governor Stevens T. Mason, have had disrupted final resting places. Mason, known as the Boy Governor, was named Secretary of the Michigan Territory at age 19 and elected to serve as the first governor of the new state when he was 24. Mason died in New York in 1842 at the age of 31. In 1905, his remains were brought back to Detroit to be buried. He was again moved in 1955 and then once more in 2010, at which point he was brought to Lansing to lie in state at the Capitol.

Historian Michael Kammen writes in *Digging Up the Dead: A History of Notable American Reburials*, that it was not uncommon well into the nineteenth century for even notable people to be buried without a marker, or for their graves to be left untended, making them difficult to locate with certainty. And yet "the quality of a civilization is revealed in the way it reveres its dead."



Michigan Legal Milestone No. 5: Michigan's First Chief Justice

The State Bar of Michigan and the Washtenaw County Bar Association dedicated a plaque commemorating Michigan's first Chief Justice of the Michigan Supreme Court, William A. Fletcher, in Felch Park (at the intersection of Fletcher and Washington streets in Ann Arbor) on September 9, 1987.



Timeline of Wm Fletcher's Life & Death

1788 - born June 26 in Plymouth, NH

1821 - moved to Detroit

1823 - appointed to Wayne County's criminal court by Gov. Lewis Cass

1825 - became attorney general of the Territory of Michigan

1833-1836 - rode circuit across thirteen counties in lower Michigan

1836 - appointed Chief Justice of the Michigan Supreme Court by Governor Stevens T. Mason

1837 - his *Revised Statutes of the State of Michigan* adopted by the Legislature

1842-1846 - served as regent of the University of Michigan

1852 - died Sept 18 in Ann Arbor

1857 - Forest Hill Cemetery opens

1897 - iron casket discovered

1916 - grave moved to Forest Hill

1935 - headstone donated

1966 - real casket discovered

1987 - Michigan Legal Milestone #5 dedicated at Felch Park



The Old Supreme Court Chambers, where the Michigan Supreme Court met from 1879 to 1970, is located on the third floor of the Michigan State Capitol. This photo from 1961 is courtesy of the Michigan State Capitol Commission.



Have YOU seen this portrait? It's been missing from the collection for over 130 years! #findfletcher

Besides having his grave lost, Michigan's first Chief Justice William Fletcher's portrait has also been lost to time. After the portrait dedication of Randolph Manning in 1889, Justice James V. Campbell -- one of the Big Four -- told the *Detroit Free Press* that the portrait of Fletcher had been missing for many years.

“ It is desired by many persons to procure a complete set of portraits of former judges to be preserved in the Capitol at Lansing...”

What is known about the portrait of William Fletcher is limited to what was published by the *Detroit Free Press* on April 5, 1889. The portrait was painted by Alvah Bradish. Bradish served as a professor in the fine arts department at the University of Michigan from 1852–1863, several years after Fletcher served as a regent. We also know from the article that the portrait was, at one time, owned by a resident of Detroit.

It is not known when Fletcher's portrait was painted. Fletcher was 48 years old when he was appointed to the Michigan Supreme Court by Governor Stevens T. Mason in 1836, and 64 years old when he died in 1852. The only known image of Fletcher is from Lawton T. Hemans' book *Life and Times of Stevens Thomson Mason*, published in the early twentieth century by the Michigan Historical Commission, and seen above. It is not clear whether that image is of the official portrait or not.

The Society has undertaken a search for Fletcher's portrait. This has taken us to the Bentley Historical Library at the University of Michigan and back to the Capitol. Our latest hunch was that the dealer who procured Campbell's duplicate portrait (made for the University of Michigan Law School and identical to the one at the Supreme Court) may have encountered Fletcher's too. Unfortunately, too much time has passed since then and the antique dealer is no longer available to tell us.

Can you help? Have you seen this portrait in a museum or private collection somewhere? When you visit antique stores or estate sales (particularly in the Detroit or Ann Arbor areas) can you keep a lookout?

Bridget McCormack Elected Chief Justice



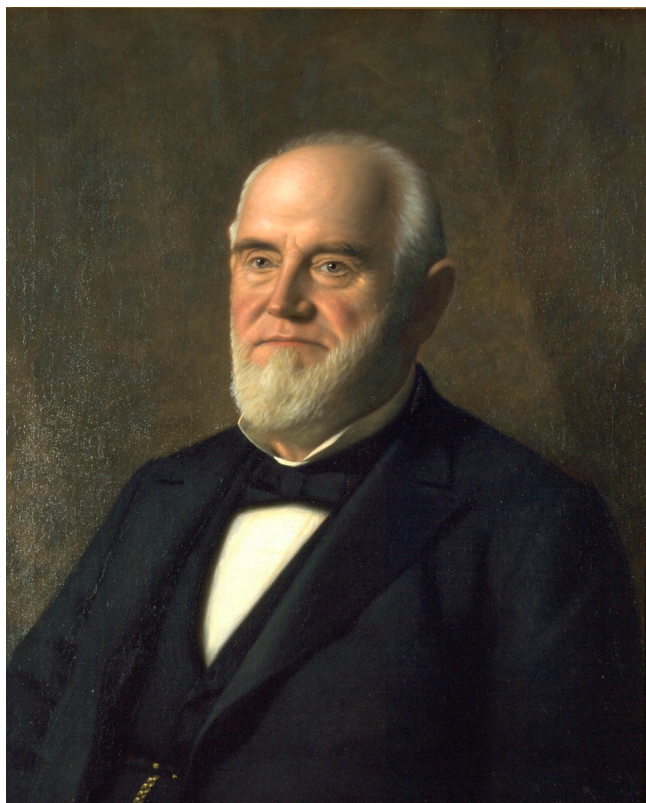
Chief Justice Bridget McCormack is the 108th justice on the Michigan Supreme Court, the ninth woman, and the sixth woman to serve as Chief Justice. Society founder Dorothy Comstock Riley's portrait can be seen in the background of this photo outside the courtroom of the Michigan Supreme Court.

Justice Bridget McCormack was elected Chief Justice of the Michigan Supreme Court on January 9, 2019. McCormack was first elected to the Michigan Supreme Court in 2012. Prior to her election, she had been part of the faculty at the University of Michigan Law School since 1998 and had founded the Michigan Innocence Clinic there in 2008.

Upon her election, Chief Justice McCormack named Justice David Viviano as Chief Justice Pro Tem, a new position for the Court. Justice Viviano, appointed to the Court on February 27, 2013, will oversee developments in court technology and administrative reforms. As chief judge of the Macomb County Circuit Court, Viviano spearheaded the court's e-filing project and other technological innovations.

This is the first time in Michigan's history that the governor, secretary of state, attorney general, and chief justice have all been women.

THOMAS RUSSELL SHERWOOD 27th Michigan Supreme Court Justice



Sherwood's portrait was painted by Lewis T. Ives, one of the most prolific artists of 19th century justices

Thomas Russell Sherwood was born and died on March 28. His birth, in 1827, was in Pleasant Valley, New York, where he spent summers on a farm. He eventually read law and was admitted to the bar in Rochester, New York, in 1851. The next year, he moved to Kalamazoo, Michigan. Sherwood served in private practice until April 1883 when he ran for the remainder of Isaac Marston's term as a candidate of the combined Democratic and Greenback Parties. His victory, and that of John Champlin, were shocking as they represented the first Republican losses in a statewide election since 1856. In April 1889, he lost to Republican and Civil War veteran Claudius Grant. He returned to his law practice and died on March 28, 1896, in Chicago, Illinois.

Sherwood's term on the Michigan Supreme Court overlapped with two of the Big Four justices: Thomas M. Cooley and James V. Campbell. One of the notable opinions in which he was involved was the famous cow case, *Sherwood v Walker* (although no relation to the justice).

Society Presents Law Prize to University of Michigan Law Winners



2017 Winner Don Blevins (L) shakes hands with John Fedynsky of the Society's Board of Directors



2018 Winner Adam Kennedy is seen above.

The Society presented its 2017 and 2018 Law Student Prizes for the University of Michigan Law School in December. The 2017 prize was awarded to Don Blevins for his paper "Where Do You Hail from and Where Are You Bound? Transformations in American Law and Society." The paper was written for Professor Bill Novak's Early American Legal History class, taken in Blevin's last semester at the law school in 2016. Since graduating, Blevins has worked for Honigman LLP, clerked for US Court of Appeals for the Sixth Circuit Judge Eric L. Clay, and is now practicing at BSJZ Law in Detroit, where he lives with his wife Jayme. Kennedy is a member of the summer starter class of 2017 at the University of Michigan Law School, with whom he graduated last December. For Professor Novak's class, Kennedy wrote a paper analyzing the evolving conception of American liberalism throughout American history. Since graduating, he has moved to Chicago where he practices law at Ropes & Gray LLP, in the Litigation and Enforcement group.

2019 Society Member Contribution Form

Please use this form to renew your annual membership or make an additional financial contribution.

TOTAL PAYMENT \$ _____

Name _____

Address _____

City _____ State _____ ZIP _____

Phone _____ Email _____

Individual membership \$150.00

Advocates Guild membership \$200.00

Corporate/Law Firm membership \$1,000.00

Check Enclosed [☐] Credit Card [☐]

Circle one: Visa MasterCard American Express

Name on card _____

Account Number _____

Exp. Date _____ CVV Code _____

Please detach this form and mail to:

Michigan Supreme Court Historical Society, 1st Floor Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915.



MICHIGAN SUPREME COURT
HISTORICAL SOCIETY

1st Floor, Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Annual Membership Luncheon

Thursday, April 18, 2019 * *Detroit Athletic Club*

Mission Statement

The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves, and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of the history of Michigan's courts, and seeks to increase public awareness of Michigan's legal heritage. The Society sponsors and conducts historical research, provides speakers and educational materials for students, and sponsors and provides publications, portraits and memorials, special events, and projects consistent with its mission.

Founder:

Dorothy Comstock Riley

Officers:

Carl W. Herstein, *President*

Lawrence P. Nolan, *Vice President*

Susan E. Fairchild, *Secretary*

John P. Jacobs, *Treasurer*

Directors:

Hon. Fred L. Borchard

Lori A. Buiteweg

Hon. Alfred M. Butzbaugh

Hon. Avern L. Cohn

Bruce A. Courtade

Gregory J. DeMars

Peter H. Ellsworth

Susan E. Fairchild

John G. Fedynsky

Julie I. Fershtman

Matthew C. Herstein

Hon. Mary Beth Kelly

Mary Massaron

Hon. Denise Langford Morris

Shenique A. Moss

Richard D. Reed

Charles R. Rutherford

Hon. James L. Ryan

Stephen K. Valentine, Jr.

Janet K. Welch

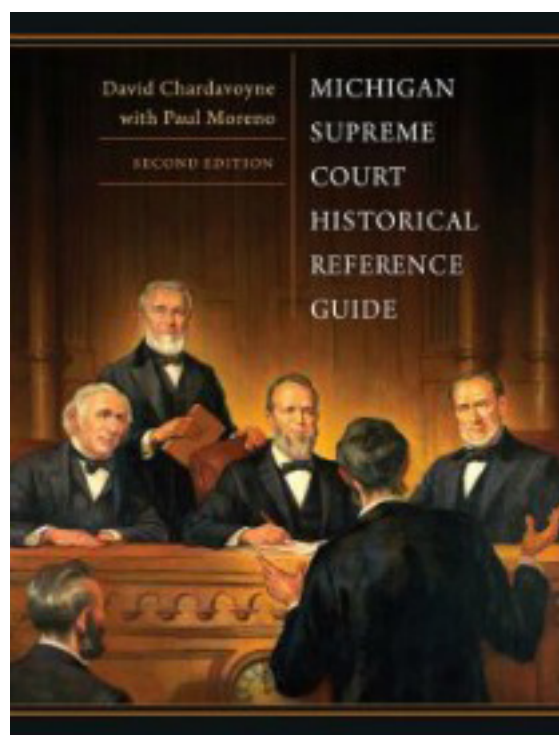
Jill M. Wheaton

Executive Director:

Carrie Sampson

Society Update is published quarterly by the Michigan Supreme Court Historical Society. Writing submissions, article ideas, news, and announcements are encouraged. Contact the Society at: 1st Floor Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915 Phone: (517) 373-7589 Fax: (517) 373-7592

E-mail CARRIESAMPSON@MICOURTHISTORY.ORG Website: WWW.MICOURTHISTORY.ORG



Learn more about the historic justices of the Michigan Supreme Court and their most important cases in our book, *found wherever books are sold*.