Territorial Bench of Minnesota

Magazine of Western History
(February 1888)

Part II

By

Isaac Atwater

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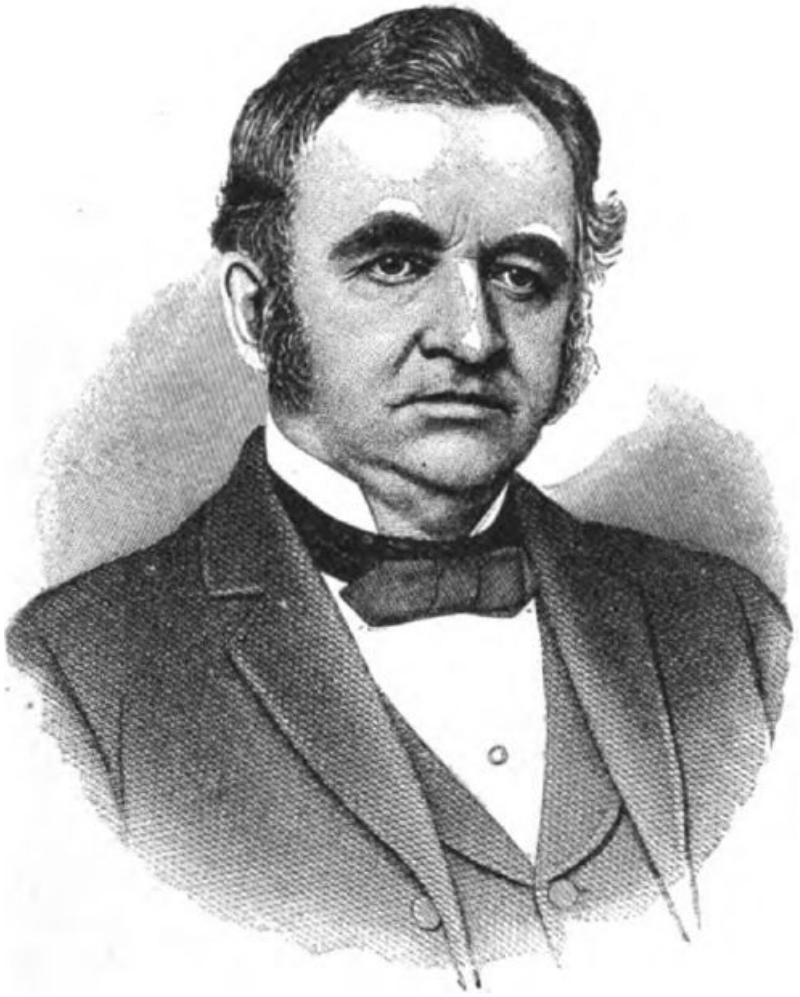
Foreword

By

Douglas A. Hedin
Editor, MLHP



ISAAC ATWATER.

(1892)

Source: Charles B. Elliott, "The Minnesota Supreme Court: Part II"
4 The Green Bag 163 (1892).

Foreword

By

Douglas A. Hedin
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In the second installment of his profiles of members of the territorial court published in the February 1888 issue of *Magazine of Western History*, Isaac Atwater covers Chief Justices Fuller, Hayner and Welch, and Associate Justices Sherburne and Chatfield.

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Because a biographical study of Chief Justice Fuller is already posted on this website, we begin by taking a closer look at Chief Justice Hayner. An examination of his three months and three weeks in office reveals how errors and confusion in early histories creep into later chronicles.

His name was Henry Z. Hayner [1] and his rank was chief justice not associate justice, details Atwater, who served on the supreme court only six years after Hayner, should have recalled.

[1] Hayner's middle initial is "Z" but former Justice Loren Collins recorded it as "T" in his "An Incomplete History of the Establishment of Courts in Minnesota," 4– 5 (n.p., 1912), a copy of which is posted separately on the MLHP. To be fair to Collins, this may have been a typographical error which he would have corrected had he been able to finish this paper before his death on September 27, 1912.

Hayner served as chief justice in Minnesota Territory from October 6, 1852, to April 5, 1853. [2] Several histories report erroneous dates of Hayner's time in office. In his unpublished history of the Minnesota Supreme Court, Russell Gunderson, Clerk of the Supreme Court from 1937-1941, writes, "Hayner was officially chief justice from December 16, 1851, to April 7, 1852, but, never having presided at a regular session, he wrote no opinions."[3] Gunderson was off by one year. He goes on:

> No information is available about Hayner and none could be acquired even by those with whom he associated. The result, as is the case with so many of these figures, is that in later years a tinge of mystery came to envelope Hayner. One authority even questioned that he ever came to Minnesota. [4] However, some

[2] President Fillmore nominated Hayner on August 30, 1852; he was confirmed by the Senate on August 31 and issued his presidential commission that day; he took the oath of office in Minnesota Territory on October 6, 1852, and was "removed" from office by President Pierce's nomination of William Welch as Territorial Chief Justice on April 5, 1853. See Douglas A. Hedin, "Documents Regarding the Terms of the Justices of the Territorial Supreme Court, Part Two–C," at 10-13 (MLHP, 2009-2010).

[3] Russell Gunderson, *History of the Minnesota Supreme Court* (np, 193). It is posted on the website of the State Law Library. Copies of Gunderson's manuscript are on deposit in the rare book room of the University of Minnesota Law Library and the Minnesota Historical Society.

[4] That "one authority" is the entry in Warren Upham & Rose Barteau Dunlap, *Minnesota Biographies, 1655-1912* 313, 14 *Collections of the Minnesota Historical Society* (1912), which reads:

> HAYNER, HENRY Z., was chief justice of Minnesota, 1852-3, but never presided, and was probably never in the territory.

Surprisingly, even the late Kermit L. Hall accepted the myth that Hayner never visited the new territory. Kermit L. Hall, *The Politics of Justice: Lower Federal*

incidents are recorded which may be taken as authentic, and they shed some light on the points in question.

It will help to recall that after Aaron Goodrich, the first chief justice, was removed by President Fillmore, Jerome Fuller was appointed chief justice, came to Minnesota and served from November 13, 1851 to December 16, 1852. In the meantime, and while Fuller sat on the bench serving as chief justice, the debate was going on in the United States senate over his appointment, the one which finally culminated in his rejection by that body. Then Hayner was

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Judicial Selection and the Second Party System, 1829-61 220 n. 68 (Lincoln: University of Nebraska Press, 1979)("Fillmore nominated and the Senate confirmed Henry Z. Hayner of Troy, New York. He was removed by Franklin Pierce before he ever reached Minnesota.").

In his history of the state court system, left incomplete at his death on September 27, 1912, retired Justice Loren W. Collins made the following comments about Hayner:

> There seems to have been a recall for judicial appointments in the early days for after a strenuous career an the bench, Goodrich was removed by President Fillmore and on November, 13, 1851, James Fuller of New York was appointed Chief Justice. The Senate refused to confirm the selection and on December l0th, Henry T. Hayner, also of New York, was appointed to the place. It is asserted that Hayner was never in the Territory but this is erroneous. He came, held at least one term of district [court in the Territory], returned East. He never sat with his associates en banc as a Supreme Court, and on April, 5, 1853, was removed by President Pierce, being succeeded by William H. Welch (who had resided at St. Paul a few months) as Chief Justice, and at the same time A. G. Chatfield of Wisconsin and Moses Sherburne of Main were appointed to succeed Cooper and Meeker.

Collins, note 1, at 4– 5

> appointed and confirmed. But he arrived in St. Paul too late to hold the fall term of court. There being no winter term Justice Hayner's duties were limited to such matters and actions as came before him at chambers.
>
> Before the next regular session of the supreme court was held the Pierce administration came into power and removed all Federal officers then in the territory, so Hayner never presided at a regular session, and from this undoubtedly arises the doubt that he ever came to Minnesota. Yet there can be no doubt that Hayner was in St. Paul that winter, and even though there was no regular session of the court, he must have acted in the full capacity of chief justice in other matters, such as anyone in his position might be called upon to fulfill in those early days. [5]

The historical record disproves Gunderson's comment that "Justice Hayner's duties were limited to such matters and actions as came before him at chambers." In fact, he was very busy. He took the oath of office on October 6, 1852 in Ramsey County, Minnesota Territory.[6] The next month he

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[5] For the history of the political and administrative policies behind the removals of territorial judges by Presidents Fillmore, Pierce and Buchanan, see Douglas A. Hedin, "'Rotation in Office' and the Territorial Supreme Court" (MLHP, 2010).

[6] The *St. Anthony Express* carried a short notice of Hayner's arrival:

> We were happy to meet the Hon. H. Z. Hayner, Chief Justice of Minnesota, in town a few days since. We were gratified to learn that he was very favorably prepossessed with the Territory, from his brief acquaintance with it thus far. Judge Hayner had been

presided over the murder trial of Yu-ha-zèe and after a guilty verdict was returned, sentenced him to death. Here is Edward Duffield Neill's vivid account of the trial and sentencing:

> At the November Term of the United States District Court, for Ramsey county, a Dahkotah, named Yu-ha-zèe, was tried for the murder of a German woman. With others she was travelling above Shokpay, when a party of Indians, of which the prisoner was one, met them; and, gathering about the wagon, were much excited. The prisoner punched the woman first with his gun, and, being threatened by one of the party, loaded and fired, killing the woman and wounding one of the men.
>
> On the day of his trial he was escorted from Fort Snelling by a company of mounted dragoons in full dress. It was an impressive scene to witness the poor Indian half hid in his blanket, in a buggy with the civil officer, surrounded with all the pomp and circumstance of war. The jury found him guilty. On being asked if he had anything to say why sentence should not be passed, he replied, through the interpreter, that the band to which he belonged would remit

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anxiously expected, and will meet a warm welcome from all parties. The next session of the District Court for this District commences the first of Nov. next.

St. Anthony Express, October 8, 1852, at 2.

> annuities if he could be released. To this Judge Hayner replied, that he had no authority to release him; and, ordering him to rise, after some appropriate and impressive remarks, he pronounced the only death ever pronounced by a judicial officer in Minnesota. The prisoner trembled while the judge spoke, and was a piteous spectacle. By the statute of Minnesota, one convicted of murder cannot be executed until twelve months have elapsed, and he was confined until the governor of the territory should by warrant order his execution.[7]

Yu-ha-zy was hanged on Friday, December 29, 1854, after Hayner's term ended, in a spectacle that resembled raucous public executions described in novels by Hugo and Dickens.[8]

In another matter, overlooked by Atwater, Gunderson and others, Hayner invalidated a "liquor law" modelled after the influential "Maine Liquor law." On March 6, 1852, the Third Legislative Assembly passed a liquor law with a

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[7] Edward Duffield Neill, *The History of Minnesota From the Earliest French Explorations to the Present Time* 577-79 (4th ed. 1882).

[8] *Minnesota Pioneer*, January 1, 1855, at 2 ("It was not enough for the fiends incarnate who attended the execution, that the poor fellow should expiate his crime upon the scaffold, but his expiring moments were disturbed by laughs and jeers of the debauched in the crowd, and with words of jest and scoffing, uttered in his own language by persons in the shape of men, who were spectators of the awful scene."); see also J. Fletcher Williams, *A History of the City of Saint Paul and of the County of Ramsey, Minnesota* 355 ("The First Execution in Ramsey County took place on December 29 [1854]. Ya-ha-zee, the Sioux Indian...was after much delays of law, hung in public, on a gallows erected on Saint Anthony Hill. The execution was witnessed by a large crowd, who, according to the journals of the day, looked on it more as a joke than as a solemn act of justice.").

proviso that it would go into effect only if approved in a special election. On April 5, voters approved it, 853 to 662;[9] it went into effect on May 5 and prosecutions soon followed.[10] Alex Coultier was convicted in Justice Court in Ramsey County of violating the law and fined $25. He appealed to district court where it was heard by Hayner on November 23-24, 1852. Three days later Hayner held the liquor law was void because it violated the Organic Act. The Organic Act, which formed the Territory, did not authorize the Assembly to delegate power to approve laws to the voters and consequently it was null and void.[11]

The saga of Judge Hayner and the attempt to curb liquor establishments continued into the Fourth Session of the Legislative Assembly. In February 1853, the Council (the equivalent of the Senate after statehood) asked Chief Justice Hayner for his advisory opinion on the constitutionality of a proposed liquor law that had been introduced into both houses. Hayner advised that the law was unconstitutional on numerous grounds.[12] It was not enacted.

Atwater concluded the paragraph on Hayner: "No sources of information are at hand to afford a more particular

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[9] Edward Duffield Neill, *The History of Minnesota: From the Earliest French Explorations to the Present Time* 572 (1858).

[10] In June, Chief Justice Fuller presided over a trial in district court in Chisago County in which a man was convicted of violating the liquor law. *St. Anthony Express,* June 18, 1852, at 2.

[11] For a description of this litigation, including a newspaper summary of Hayner's ruling, see Douglas A. Hedin. "Advisory Opinions of the Territorial Supreme Court, 1852-1854" 11-17 (2009-2011).

[12] For the background of the Assembly's work and the text of Hayner's advisory ruling, see Douglas A. Hedin. "Advisory Opinions," note 11, at 19-22, 38-40.

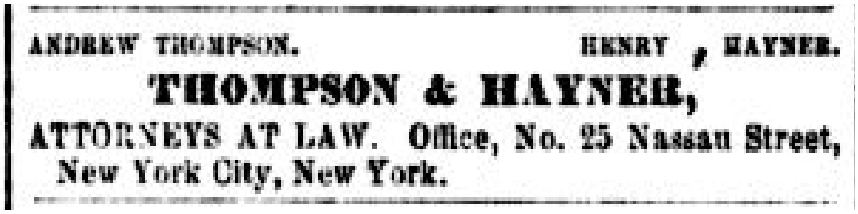
sketch of his life." Obviously, he knew more about Hayner than he let on. And so the question arises as to why he did not mention the murder trial of Ya-hu-ze and Hayner's rulings of the liquor law. One cynical explanation would be that Atwater, a strong temperance advocate, was still smarting from Hayner's invalidation of the liquor Law

Curiously, in 1861 Charles Flandrau, now sitting on the supreme court, cited a ruling by an unidentified judge on the territorial court when he held that a law authorizing a change in the county seat by vote of the county voters violated a provision of the state constitution, which required the legislature to first approve such a change. Flandrau spoke for a divided supreme court, the dissenter being Isaac Atwater:

> Previous to the adoption of our constitution, the legislative power of the territory was vested in the governor and the legislative assembly; Organic Act, §4; and no law could be passed by any other authority. In the year 1853, a law was passed by the legislature of the territory, on the subject of the manufacture and traffic in spirituous liquors, the validity of which was left to be determined by a vote of the people. Laws 1853, pp 7-13, §19. The people in their primary assemblies adopted or ratified the law by a majority vote, and the courts of the territory subsequently declared it void, as having been in effect passed by the people and not the

> legislature. I am unable, however, to find any record or report of the decision, and am not certain that the question was passed upon by the court of last resort. The rule is a familiar one, however, and has thus received the sanction of the courts of other states. *Parker v. The Commonwealth*, 6 Penn. St. 515-16. [13]

A parting comment about Hayner. After he returned to New York and resumed practicing law, he placed the following advertisement in *The Weekly Minnesotian*.[14] He would not have done unless he had fond memories of Minnesota and knew he had many friends there.


ANDREW THOMPSON. HENRY , HAYNER.

THOMPSON & HAYNER,

ATTORNEYS AT LAW. Office, No. 25 Nassau Street, New York City, New York.

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[13] *Roos v. State ex rel. Swenson*, 6 Minn. 428, 434, (Gil. 291, 293 (1861)(Atwater J., dissenting).

Almost forty years later, Flandrau made a cryptic reference to a court opinion similar to Hayner's opinion in his anecdote-laden *History of Minnesota and Tales of the Frontier* 298 (1900):

> I remember one year the legislature, in a spasm of virtue, passed a prohibitory liquor law, which the supreme court, under the influence of a counter spasm, immediately set aside as unconstitutional. Outside of the cities, where the missionaries exerted a strong influence, the contention was usually whisky or no whisky; in fact, there was very little else to fight about.

The liquor law Hayner voided was passed by the assembly not the legislature; and sitting as a district court judge, he declared, it in violation of the Organic Act not the U. S. constitution.

[14] *The Weekly Minnesotian*, July 18, 1857, at 4 (enlarged).

Next Atwater turns his attention to Associate Justices Sherburne and Chatfield. His sketches of these men are different from those of other jurists; they still contain his impressions, always favorable, but also narrate biographical details such as their family histories, schooling, political events and dates in a way that seems like he borrowed them from some other sources—and indeed he did. In the case of Sherburne he based his profile on remarks of Henry Horn at a meeting of the State Bar Association in 1884, and for Chatfield, he turned to his obituary in the *Minneapolis Daily Tribune* on October 5, 1875, and his own remarks at bar memorials proceedings three days later.

Atwater writes, "Judge Chatfield was essentially a self made man"—a compliment frequently pinned on successful businessmen and prominent lawyers in late 19th century America. It doesn't fit Andrew Chatfield at all because in every chapter of his adult life, successes as well as failures, he depended on others. To be admitted to practice in New York county courts in the 1830s, a man had to study in a lawyer's office for three years. Chatfield found the necessary proctor. He was elected (by the voters) to the New York legislature three times, and appointed to important committees by his colleagues. In a frequently told story, President Pierce appointed him to the Territorial Supreme Court on the recommendation of Henry H. Sibley. With other investors he formed a town site company to sell lots in Belle Plaine and lost everything in the Panic of 1857. With the endorsement of the Democratic Party, he ran unsuc-

cessfully for congress in 1862, U.S. Senator in 1863, Chief Justice in 1864, and Attorney General in 1867. Finally, in 1870, he was elected Eighth District Court Judge, a post he held until his death. This record does not support Atwater's claims that Chatfield was "self-made" and that "He never sought office, it was forced upon him..."

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The MLHP has reformatted the following article and enlarged the type size to make it more readable. Atwater's punctuation and spelling have not been altered.

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TERRITORIAL BENCH OF MINNESOTA

II.

During the administration of President Fillmore the Honorable Jerome Fuller was appointed chief-justice and the Honorable Z. Hayner associate justice of the supreme court, both from New York. The latter held the office but a few months, and at the expiration of the term (to fill a vacancy) for which he was appointed returned to New York. He does not appear to have occupied the bench at any term of the supreme court, and the reports contain no opinions written by him. No sources of information are at hand to afford a more particular sketch of his life.

Judge Fuller was from western New York and educated under the old school of practice which there prevailed before the introduction of the code. He was an able lawyer and thoroughly upright judge, and was very highly respected and esteemed by all with whom he came in contact during his comparatively brief residence in the territory. A number of his opinions will be found in the first volume of 'Minnesota Reports,' which evince scholarship and judicial learning of a high order. His retirement from the bench of the territory was much regretted by the bar and citizens generally. He presided at only two terms of the supreme

court, but legal business had then so increased that he probably performed more labor than any judge who had preceded him. After the expiration of his term he returned to Brockport, New York, and a few years later was elected county judge of Monroe county, in which is situated the city of Rochester, where resided some of the ablest lawyers in the state, which city has long been distinguished for the eminence of its bench and bar. The acquaintance of the writer was continued with him in that state, and he has ample evidence of the marked ability with which for many years he filled the position to which he had been elected and the very high esteem with which he was regarded by all classes of the community.

Under the administration of President Pierce the Honorable William H. Welch was appointed chief-justice and A. G. Chatfield and Moses Sherburne associate justices of the supreme court.

At the time of his appointment Judge Welch was a resident of St. Anthony and held the office of justice of the peace. As a lawyer he perhaps would not rank as high as either of his associates. Although of more than average mental ability, he lacked the thorough legal training and subsequent practice needful for the able jurist. This, combined with the fact that he suffered much from ill health, made him less prominent than his associates. Still his published opinions commanded the respect of the bar and are quite equal to the average of those in western territories. During his term he removed to Red Wing, and after the expiration thereof,

a few years later, he died in that city.

The Honorable Moses Sherburne was born January 25, 1808, in the town of Mount Vernon, Kennebec county, state of Maine. He was the oldest son of Samuel Sherburne, of English descent. He was educated in the public schools and in the academy in the town of China, his native state. He commenced the study of law in the office of Nathan Cutler in Franklin county, Maine. After admission to the bar he opened a law office in Phillips, of the same county, in 1831, and soon became prominent in his profession. His strong abilities were soon recognized by the people and he was elected, first, as a member of the house of representatives, and, later, to the senate of Maine. He filled other important offices—that of postmaster, judge of probate of Franklin county and bank commissioner of the state of Maine. He was elected and commissioned as major-general of militia in 1842. The record of his life in his native state is an honorable one and shows the high esteem in which he was held by his fellow-citizens. He received his commission as associate justice of the supreme court of the territory of Minnesota April 6, 1853, and in the following fall came with his family to the territory. He was not unknown to many residents of Minnesota and his appointment gave general satisfaction, and it was not long before the bar of the state learned that it had secured an able and incorruptible jurist. Coming as a stranger to most, he had no friends to reward or enemies to punish. His sole aim was to do absolute justice between man and man. He had no ulterior purposes to subserve. He might have thought of honors, in the future state, and allowed

them sometimes to sway his judgment, but no man, so clean was his record, ever whispered he was influenced by such motives.

His character as a judge was tersely and truthfully summed up in an appreciative paper (to which we are indebted for the main facts in this sketch) read by the Honorable Henry J. Horn before the State Bar association in April, 1884:

"Judge Sherburne was eminently fitted for the bench by his thorough legal education and training, and his varied experience. His mind intuitively sought the merits of a controversy, and his quick and ready perceptive faculties led him soon to a correct decision. His opinions are clear, forcible and scholarly. Judge Sherburne's sense of justice was very keen, and he was scrupulously conscientious in discharging his judicial duties. It is related by an eyewitness that on one occasion, when he was about passing sentence upon a prisoner who had been convicted before him of a criminal offence, the defendant, who was a Mason, handed a letter to the judge which proved to have emanated from a brother Mason, and which the judge construed as an attempt to influence him by reason of this relationship. Judge Sherburne indignantly tore the letter in pieces, and sentenced the offender to the full extent of the law."

After his retirement from the bench, Judge Sherburne resumed the practice of law in St. Paul. He was much sought as a wise counselor, and his sound judgment could always be relied on. Nor was he less prominent as an

advocate before a jury. To quote from the paper above referred to, "he was a very formidable antagonist in a jury case, and largely successful. In his appeals to a jury he rarely affected oratorical display, but was eloquent, nevertheless, and very clear in stating and explaining his case and his positions. He was earnest and frank in the presentation of his case, impressing the jury with the sincerity of his belief in the strength of his client's case. He stood in the front rank of our bar, and was universally esteemed and respected by his professional brethren."

He died, greatly regretted, March 23, 1868.

The Honorable A. G. Chatfield was commissioned associate justice of the supreme court of the territory, April 7, 1853, by President Pierce. This selection was, for the territory, the most fortunate that could have been made. The life of Judge Chatfield was a remarkable one, and deserves more than a passing notice.

He was born in Otsego county, New York, January 10, 1810. His maternal grandfather, Jonathan Starr, was a soldier in the Revolutionary war, and was taken prisoner by the British while defending Danbury, his native place, and which was then burned. His maternal grandmother was of the Ruggles family, whose descendants number some of the most distinguished jurists and public men of New York.

Judge Chatfield was essentially a self made man. His father was a farmer of moderate means and unable to furnish his

sons with the advantages of a collegiate or academic education. But his thirst for knowledge was insatiable. When the day's work was over he was almost invariably found with his books, often studying by fire-light, and in this way fitted himself for entrance to Hamilton academy. By teaching a part of the time he was able to finish a course in that institution. He was thus prepared to commence the study of law, the profession which he chose. At the age of twenty-one he entered the office of Henry T. Cotton, in Steuben county, New York. The requirements for admission to the bar, at that time and under the practice then existing, were much more stringent than at present. Three years' study were required for admission to practice in the county courts—seven for admission to the supreme court. In 1833 Mr. Chatfield was admitted to practice in the county court, and formed a partnership with James Birdsall, esquire, at Addison, Steuben county, New York, and soon secured a good practice.

In June, 1836, Mr. Chatfield was married to Miss Eunice E. Beman of Addison, New York. Mrs. Chatfield, still surviving, is a most estimable, highly-educated and accomplished lady, and since her husband's death has resided at Belle Plaine, in this state.

Mr. Chatfield's large natural ability and untiring industry were soon widely recognized, and in 1836 he was elected to the legislature of New York. By a singular coincidence his brother, the Honorable Levi S. Chatfield, afterward a prominent politician and an eminent lawyer, was a

member of the same legislature. In the capacity of legislator, Mr. Chatfield soon made his mark. His valuable services were recognized not only by the assembly of which he was a member, but by his constituents as well. For three years in succession thereafter, both he and his brother were returned from their respective counties as members of the assembly. The high position he had already attained in that body may be inferred from the fact that he was made chairman of perhaps the most important committee of the session—that for investigating the affairs of the Erie Railroad company, to which the state had loaned three million dollars.

Four years thereafter his constituents again insisted—much against his will—that he should serve them another term, and he was again elected to the assembly in 1845. This was at the time when the anti-rent troubles were at their height. The intense excitement which these occasioned at the time is still well remembered by residents of that state. The most important committee of the session of 1846 was that appointed to consider the difficult question of relief for both landlord and tenant, growing out of the issues presented. Samuel J. Tilden was chairman of that committee and Mr. Chatfield a member of the same. The masterly report made by that committee, and which went far towards finally settling the serious complications which had arisen, was understood to be largely due to Mr. Chatfield's pen. He was elected during the absence of the regular speaker to fill his place for a considerable part of the session.

As another proof of the high regard entertained by the assembly for the eminent ability and integrity of Mr. Chatfield, it may be stated that at the close of the session he was appointed on a committee with the ablest men of the legislature to investigate and report on frauds alleged to have been committed in the enlargement of the Erie canal and other canals in the state. This was an arduous duty, demanding nearly a year's time and for which the compensation was nearly nominal.

Mr. Chatfield had thus given for several years the best portion of his life to the service of the state, and, it is needless to say, without any adequate compensation. He never sought office, it was forced upon him, and while he could ill afford to give so much attention to public interests, there was nothing selfish in his nature, and he sacrificed himself (pecuniarily speaking) to the great good of the public. His true vocation was the law. He was aware of this fact. The writer knows this from statements made by the judge himself. For himself it is doubtless true that he made a mistake in meddling at all in politics. For the state he so faithfully served it was an immense gain, for he served with no unworthy motive, but with an eye single to the interests of his constituents, and he left the halls of legislation much poorer than he would have been had he never entered them. Looking at it in a purely selfish view, his example might serve as a warning to young lawyers. Given an able lawyer of irreproachable integrity, he should never engage in politics, at least until he is ready to abandon the

profession. But should this rule be universally adopted, what would become of the interests of the state? Strongly averse as Mr. Chatfield naturally was to political life, he was not yet through. A constitutional convention had been called in New York in 1846. The constituents whom he had so faithfully served in former years imperatively demanded that he should assist in framing the organic law of the state. Against his own inclinations and interests he yielded, and was elected as a member of the convention. This convention was one of the most important that has been held in that state for a revision of the constitution. Radical changes were made, which need here be only referred to. Suffice it to say that he served on important committees in that body and his influence was felt not less than in the legislature.

This was the last political office held by Judge Chatfield. The large amount of time claimed from [his] profession for the discharge of public duties, at the end of ten years left him nearly as poor as when he commenced practice. Opportunities frequently occur to those occupying legislative positions for the acquisition of money. These, by Judge Chatfield, were never for a moment considered. With him "a public office was a public trust." The unsullied purity of his political life was known and admitted by all. Had he remained in political life, there can be no doubt he would have attained not only the highest honors of his native state but a National reputation as well.

But an honest man cannot live and provide for a family on politics alone, and he felt the importance of devoting

himself entirely to his profession. Wisconsin was then attracting much attention. In 1848 he removed to Kenosha, where he formed a partnership with Volney French, esq., and the firm soon acquired a large and profitable business. In 1850 he was elected judge of Racine county, but resigned after holding the office a few months.

In 1853 he was in Washington in attendance on the supreme court, and then made the acquaintance of our delegate in congress, the Honorable H. H. Sibley. The two men in character and tastes had many things in common, and a warm friendship soon sprung up between them, which continued to the death of Judge Chatfied. Mr. Sibley always had entire faith in the future of Minnesota, and probably was more familiar with its unrivaled advantages than any other man in the territory. He impressed his views so forcibly upon the mind of Judge Chatfield, that the latter decided to make this his future home. Largely through the influence of General Sibley he received the appointment of associate justice of the supreme court, his commission being dated April 7, 1853, and in June following he removed to the territory.

He settled first at Mendota and immediately entered upon the discharge of his duties. How well they were performed during his four years' term, the state reports bear partial witness; but the unanimous testimony of the bar of the state bears still stronger evidence. At that early day, comparatively few cases were appealed to the supreme court. In all that were, Judge Chatfield wrote his full share of

opinions. The student to-day, who peruses them, will seldom find one which has been overruled on any fundamental principle of law. Practice, owing to the code, was in a transitional shape. All courts, not even excepting those of New York, at this time were at sea on practice and pleading. Minnesota at an early day had followed the lead of New York in her code of practice. Judge Chatfield had participated more or less as a member of the constitutional convention, in bringing about that change, consequently when on the bench, he was prepared to consider and weigh the numerous objections raised when points of practice were considered.

But the chief labor of Judge Chatfield was at *nisi prius.* His district was a large one, embracing nearly every county then organized west of the Mississippi river.

His first journey was on horseback, following frequently only an Indian trail. He was equal to every discomfort of frontier life and never murmured, but was always genial and cheerful under all circumstances, and never failed to make warm friends of all with whom he came in contact.

After the expiration of his term as associate justice, in 1857, Judge Chatfield resumed the practice of law. In 1854 he made a claim on the Minnesota river, and laid out a village which he named Belle Plaine. The location was beautiful, and the judge, with his associates, William H. J. Smith and Major Robert H. Rose, expended a considerable amount of money in improvements. The enterprise bade fair to be

successful. But unfortunately, before the company were able to realize anything on their investment, the crisis of 1857 struck them, and, indebted as they were, left them utterly helpless. There was no money in the state, nor could it be had from the east on any terms. In that terrible crash thousands of the best business men in the state were irretrievably ruined. The judge saw the moderate savings of a lifetime vanish almost in a moment, and his future pecuniary hopes blighted. And then, far past the prime of life, in a new country, smitten by the blast of poverty, when very *few* clients were able to pay any adequate compensation for professional services, he had to commence life anew.

But courageously he took up the burden. His ability as a first-class lawyer would always give him a support, but at that day the highest talent could here gain no more. But the people had then learned the high judicial qualities he possessed. With one voice, as it were, with-out distinction of party, they demanded his services as district judge. In 1870 he was elected to that office for the eighth judicial district, which he held to the time of his death.

No terms of eulogy can be too extravagant in speaking of the subject of this sketch as a judge. His success in this position was due chiefly to his mental and moral qualities. With the highest order of intellectual ability was combined the sense of justice and equity, so strong that no sophistical arguments, however strongly and ingeniously marshaled, could obscure his moral vision. He delighted in the

intellectual conflict, for which the arena of the bar gives so wide a scope; but his charges to the jury swept away all sophistry and technicalities, and not seldom left the eloquent advocate feeling that his time had been wasted—that he would have won his case had not the judge had "the last say."

The writer may here repeat the remarks he had occasion to make at the bar meeting of Hennepin county, called to pass resolutions of respect to the memory of Judge Chatfield.

> During the first four years of his official life I saw much of him as a judge, both at *nisi prisi,* and on the supreme bench, and, in both capacities, may safely say that he had no superior, either in the territory or state. He had in a remarkable degree all the qualities of mind befitting the judicial office—dignity, accurate legal knowledge, large experience as a practitioner, impartiality, entire freedom from prejudice, unimpeachable integrity and severe habits of application. It has been my fortune to have known, in their official position, all the judges who have occupied seats upon the supreme bench of the territory and state; and none has been so universally honored and beloved as Judge Chatfield. His uniform kindness, patience and courtesy in listening to arguments, and readiness to accommodate counsel to his own

> personal inconvenience, endeared him to an unusual extent to the younger members of the bar, who loved him with almost filial affection.

Judge Chatfield died October 3, 1875, at the age of sixty-five, at Belle Plaine, Minnesota. If further evidence was required of the high honor and esteem in which he was held by all classes of his fellow-citizens, it was given in the large concourse of distinguished men, from all parts of the state, to do honor to his memory at his funeral. And not these alone, but a still larger number of his neighbors and friends from Scott county, who had known and loved him for his many virtues and noble, manly qualities. Not only in the supreme court, but by nearly every bar association in the state, were resolutions passed, expressive of the high esteem in which the judge was held and of the great loss sustained by the state in his death. His native state he well and nobly served, but the ripest fruits of his high legal abilities and stainless character he gave to Minnesota, his adopted state, which she will ever recognize with profoundest gratitude.

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