

“TERRITORIAL BENCH OF MINNESOTA”

PART III

IN

Magazine of Western History
(April 1888)

BY

Isaac Atwater and Seelye A. Willson

FOREWORD

BY

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Foreword

The third part of the history of the bench of Minnesota Territory published in the *Magazine of Western History* in 1888 consisted of profiles of two judges and one general: Judges Rensselaer R. Nelson and Charles E. Flandrau, and General John B. Sanborn. Isaac Atwater wrote the first two, Seelye A. Willson, the third.

These three portraits are much longer and more detailed than those in Parts I and II. It is hard not to conclude that the subjects themselves contributed a great deal to the final published versions. General Sanborn's profile emphasizes his military accomplishments and is more military history than legal biography. The inflation of Charles E. Flandrau's military prowess in the defense of New Ulm during the Dakota-U. S. War of 1862 is obvious. It may be noted that three months after Atwater's portrait of Flandrau was published, Flandrau reciprocated by publishing a flattering sketch of Atwater in *Magazine of Western History*.¹

Two years later lengthy biographical sketches of Judge Flandrau and General Sanborn were published in a chapter on the "The Bench and Bar of St. Paul" by Hiram F. Stevens in C. C. Andrews's *History of St. Paul, Minn.*² They are based upon the sketches that follow although they are not identical.

"Part III" of "Territorial Bench of Minnesota," was published on pages 650-675 of the April 1888 issue of *Magazine of Western History*. It has been reformatted and the type size enlarged to make it more readable. It is complete. The authors' punctuation and spelling have not been altered. Original footnotes are designated by an asterisk; numbered footnotes are by the MLHP.



¹ Charles E. Flandrau, "Judge Isaac Atwater," 8 *Magazine of Western History* 254, 258-259 (July 1888). It is posted separately on the MLHP.

² This chapter is posted separately in the "Ramsey County/St. Paul" category in the Archives of this website.

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TERRITORIAL BENCH OF MINNESOTA

III

BY

Isaac Atwater and Seelye A. Willson.

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III

Rensselaer R. Nelson

Among the first acts of President Buchanan's administration was the appointment of Rensselaer R. Nelson and Charles E. Flandrau as associate justices of the supreme court of the territory, in place of Justices Sherburne and Chatfield, whose terms had expired. Although they served in that position for a comparatively brief period, yet their names have become so prominently identified with the history of the territory and state, that a more than passing notice of their lives is due, not less to them than to the public at large.

Judge Nelson was born May 12, 1826, in Cooperstown, New York. His ancestors on the paternal side were of Scotch and Irish descent, and on the maternal, of Irish and English. His father, Honorable Samuel Nelson, was for many years one of the most eminent judges of the supreme court of the state of New York, and later acquired a National reputation as associate justice of the supreme court of the United States. In both capacities it is universally conceded that he occupied the highest rank as a jurist, and probably he had no superior on the bench. His opinions are models of strength, clearness and terseness, brushing away all sophisms and technicalities, and aiming straight to the root of the matter at issue.

The early life of Mr. Nelson was spent in his native place, and was marked by no incidents requiring special notice. His preparation for college was mainly at Hartwick seminary and in a military school in Cooperstown, and to some extent under a private tutor. He entered Yale college in 1842. The writer of this sketch (then being in the same college two years in advance) there first made his acquaintance. In scholarship he ranked above the average, though he never was

ambitious for the highest honors of scholarship. The maxim of “mens sana in sano corpore” seemed to him of importance;³ and he did not make the mistake which too many do, of sacrificing health in striving for the empty honor of valedictorian. Boating had not then gained the prominence it has since attained. Football was the great game which absorbed the energies of college athletes. And there were giants in those days. Those who have witnessed the magnificent displays of such men as Kendrick and Moody, when pitted against each other, will readily admit that modern playing seems tame in comparison. It is said that both these champions have been known to send the ball clean over the old state-house on the city green. Mr. Nelson entered into these contests with peculiar zest, and they no doubt tended to develop the physical vigor for which he is noted.

In the same class with Mr. Nelson were Governor Harrison, ex-Congressman Kellogg of Connecticut and the Honorable J. B. Brisbin, known as one of the ablest and most brilliant lawyers in the state. He came to Minnesota at about the same time and has since resided in St. Paul. Another college-mate was Richard Taylor, son of President Taylor, who won high distinction in the Confederate army and rose to the rank of major-general.

Mr. Nelson graduated in 1846, and soon after entered the law office of James R. Whiting in New York city. Mr. Whiting was a very prominent and able lawyer, and for some time district attorney. He received the sobriquet of “Little Bitter,” from his keen sarcasm in the famous Colt and Monroe Edwards trials, which were defended by the brilliant Tom Marshall and Senator Crittenden.

His preparation for admission to the bar was finished in the office of Honorable George A. Starkweather, in Cooperstown, in 1849. The same year he went to Buffalo with the intention of opening an office and commencing practice in that city. Here, however, his plans for

³ The maxim is usually translated as “a healthy mind in a healthy body.”

location were unexpectedly changed. He there met the Honorable Nathan K. Hall, ex-member of congress and then partner of President Fillmore. Later he was appointed judge of the United States district court for the northern district of New York. Judge Hall, while in congress, had become acquainted with General Sibley, and largely through information derived from him, had become strongly impressed with the future importance of the northwest. He himself was desirous of removing to the newly formed territory of Minnesota, and was an applicant for appointment as governor. There is no doubt but that he would have received the appointment had it not been discovered that he was ineligible in consequence of having voted in congress for the admission of the territory.

Judge Hall strongly advised Mr. Nelson to make Minnesota his future home. At that time it required much faith and courage for a young man, dependent only on his brains for his fortune, to accept this advice, for the territory was almost wholly undeveloped, the population only a handful and the future unknown. Fortunately for Mr. Nelson, he possessed a good share of both these qualities, and he soon decided to make the venture. He abandoned the idea of commencing practice in Buffalo; but as the season was then too far advanced to make the journey without incurring some risk and much hardship, his removal was deferred until the following spring. He landed in St. Paul in the early morning of May 12, 1850. He climbed the steep bluff from the steamboat landing by a long pair of rickety wooden stairs. The aspect that met his view was not particularly inviting. A few cheap frame and log houses, with plenty of stumps and rocks in the ungraded streets, indicated the future metropolis.

The genial Jacob W. Bass was then postmaster, and kept his office in a seven by nine room, near the top of the bluff.⁴ Mr. Nelson wanted his mail— and he wanted it right off. Early as the hour was, he

⁴ Jacob Wales Bass (1815-1889) settled in St. Paul in 1847, was Postmaster from 1849 to 1853, operated The St. Paul House hotel and other businesses and around 1870 began farming in Watonwan County.

disturbed the postmaster in his morning nap. To this, doubtless, was due the fact that the worthy official for a moment forgot his accustomed suavity, and caused a chilling frost to fall upon the sanguine anticipations of the young tenderfoot. Learning from a brief interview that the young man had come to St. Paul to practice law, the bowels of compassion in the heart of Mr. Bass were deeply moved for the unfortunate young man. He said: "My dear young friend, I sincerely pity you. We have a population of six hundred, and fifty of them are lawyers, the most of them starving. I advise you to take the next boat east, because you have no chance here. We have too much trouble with the lawyers here already." From our present standpoint the advice seems ludicrous, but from that occupied by Mr. Bass at that day, it cannot be doubted it was given in entire good faith.⁵ Mr. Bass (although he has since become a millionaire from his investments in St. Paul) at that time knew as little of its future as a native of Japan.

Fortunately for himself and the future commonwealth as well, Mr. Nelson did not act on this advice. He immediately opened an office and entered upon the practice of his profession, which he prosecuted till the year 1854 with as large a measure of success as could be anticipated from the limited business and eager competition which then existed in the territory. So favorably had he become known in 1853, that his friends strongly urged him to permit them to use his name as a candidate for nomination for delegate to congress. For so young a man the temptation was a flattering one, and probably most in his position would have yielded to it. But he had little taste for the uncertainties and unsatisfactory results of political life. Mature reflection convinced him that his true vocation was the law, and he

⁵ Bass made these comments in jest—the hardy frontiersman was pulling the leg of the tenderfoot. This anecdote is dissected in Douglas A. Hedin, "Lawyers and 'Booster Literature' in the Early Territorial Days," p. 19-20 n. 53 (MLHP, 2008).

Regrettably the story has been reprinted by journalists as an accurate description of the precarious existence of lawyers on the Minnesota frontier. See Jessica Thompson, "Minnesota's Legal Hall of Fame: The Most Influential Attorneys in State History," *Minnesota Law & Politics* 18, 39 (August/September 2007).

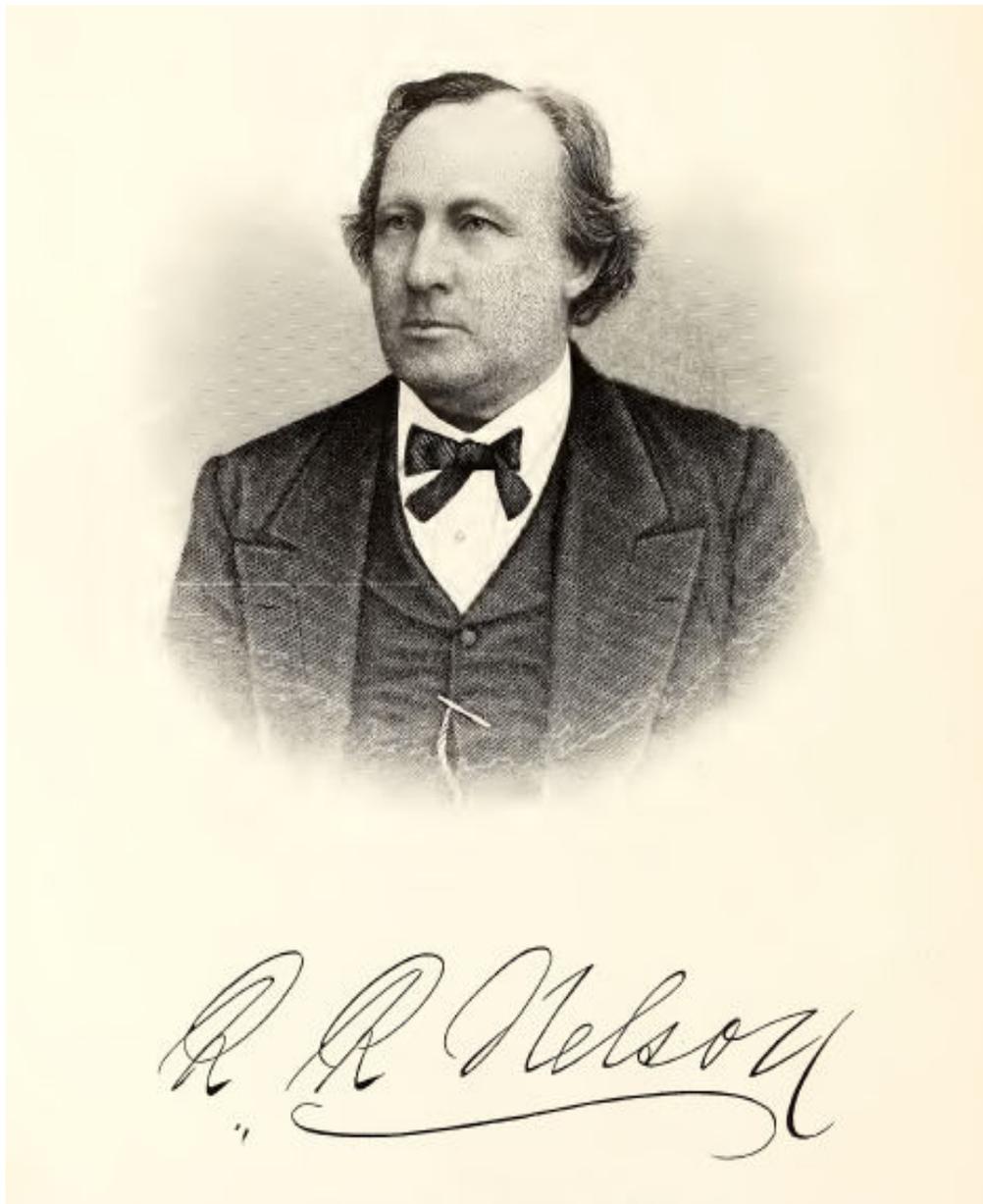
declined to permit the use of his name for that position. And since, he has never entertained the idea of striving for or accepting any political office or honors whatever. The honored position he has so long acceptably filled is far more to his taste and the natural bent of his mind than could be the highest political preferments. His political views were always clear and decided on National questions, and generally in accord with those held by the Democratic party. But he has always studiously avoided making them prominently public, and in his long judicial career no one has ever whispered that they have affected in the slightest degree his decisions on the bench.

In 1854 certain business interests called Mr. Nelson to the town of Superior, at the head of the lake in Wisconsin. ⁶While there Governor Barstow appointed him district attorney of Douglas county, Wisconsin, which was the first civil appointment he ever held. During the time he was there, he was largely instrumental in organizing and naming this county in honor of his warm friend, Senator Stephen A. Douglas.

The business interests of Superior not then being sufficient to justify a longer settlement in the town, Mr. Nelson returned to St. Paul in the fall of 1855, and resumed the practice of his profession. He continued the same without interruption until the spring of the year 1857. In April of that year he was appointed by President Buchanan associate justice of the supreme court of the territory, and immediately qualified and entered upon the discharge of his duties.⁷

⁶ As noted in the text Nelson had other business interests besides law. Like Isaac Atwater and John Wesley North, for example, he became an insurance agent. He may have been Aetna Insurance Company's first agent in the new territory. See advertisement *Minnesota Democrat*, August 18, 1852 ("Is Your Property Insured?").

⁷ The President made a recess appointment of Nelson to the Territorial Supreme Court on April 27, 1857. On May 6, 1858, he nominated Nelson for this office but the Senate tabled it due to the imminence of Minnesota's statehood. See Douglas A. Hedin, Documents Regarding the Terms of the Justices of the Minnesota Territorial Supreme Court: Part Two—F," 7-14 (MLHP, 2009-2012).



Judge Nelson held this position a little less than a year. In 1857 a state constitution was adopted and state officers elected, who entered upon the discharge of their duties in January following. The territory that year was in a transitional state, which to some extent affected the business of the courts. After the appointment of Judge Nelson but one general term of the supreme court of the territory was held (so far as the reports show), viz., in January, 1858. The court then consisted of William H. Welch, chief-justice, and R. R. Nelson and Charles E. Flandrau, associate justices. Two opinions written by Judge Nelson,

in cases argued at that term, appear in the first volume of “Minnesota Reports.” This, however, does not indicate the amount of judicial work done by him during his brief term of service. A quite large amount of chamber work then devolved upon him as the judge of the district court, then residing in St. Paul. Indeed, in that capacity he made the decision in one case, which may properly be termed a “cause celebre” of the territory.

Many Minnesotans are still living who remember the intense excitement caused by the passage of a bill by the legislature in 1856, removing the capital from St. Paul to St. Peter.⁸ It was one of those singular freaks of legislative action, difficult to account for, but of which history furnishes not a few examples. In due time Judge Nelson was applied to for a mandamus to compel all territorial officers to remove their offices to the new capital. The matter was elaborately argued by Judge A. G. Chatfield in favor of issuing the writ, and General L. Emmett opposed. Very great interest was felt in the decision of the question. Judge Nelson wrote a somewhat elaborate opinion denying the application. Being an opinion delivered in chambers, it does not appear in the published reports, but may be seen in the records of the State Historical society. It is curious as probably being the only existing record of what was one of the most exciting episodes in the history of the territory, and of which perhaps a large majority of the present inhabitants of the state are entirely ignorant. It is needless to say that this decision effectually settled the question, and the scheme was not again heard of. The decision was based upon the ground that the legislature had exhausted its power and authority to locate the seat of government by previous legislation, and the power was not in the nature of a continuing trust.

On the eleventh of May, 1858, President Buchanan nominated Judge

⁸ 1857 Laws, c. 1, at 3-7 (March 5, 1857). The bill was “enacted” in the Eighth Legislative Session in 1857 not in 1856. To become effective bills were routinely signed by John B. Brisbin, the President of the Council, but he refused to endorse this bill and listed 7 reasons. His refusal is dated March 4, 1857. Governor Gorman signed the bill the next day.

Nelson United States district judge for the district of Minnesota. He was at once confirmed by the senate, without the reference of his name to a committee.⁹

Soon thereafter Judge Nelson qualified and entered upon the performance of his duties, and has continued in the discharge of the same ever since. The business of the court has year by year steadily increased, so that the labors of the district judge have become arduous, requiring nearly all his time in their performance. Many cases of great importance, involving difficult and intricate questions of law, are accumulating. The bar practicing in that court, for ability and high standing, will not suffer by comparison with that of any other in the west. Judge Nelson is yet scarcely past the prime of life, with a vigorous constitution and unimpaired health, with a reasonable prospect of many years of active labor before him.¹⁰ It is, therefore, perhaps too early to attempt to give any complete estimate of his character and qualities of, mind as a judge. Nevertheless, a few leading traits may be here noted.

Less than three years after his appointment the War of the Rebellion broke out. His devoted attachment and unswerving loyalty to the Union are evidenced by some of his charges, in the first years of the war, to the grand juries. No suspicion of sympathy with any phase or object of the Rebellion ever attached to his name. And this, not alone that he would keep the judicial ermine unsmirched by any contact with political life, but mainly because every instinct of his loyal nature was abhorrent to the idea of any dismemberment of the Union.

After the adoption of the amendments to the Constitution, on one or two questions arising under the Civil Rights bill, he was overruled by

⁹ Actually the President nominated Nelson on May 20, 1858 and issued a commission to him that very day. The Senate confirmed him on May 30. For documents regarding this curious series of events—and an explanation—see Douglas A. Hedin, “Documents Regarding the Terms of the Justices of the Territorial Supreme Court: Part Two—E,” 10-14 (2009-2010).

¹⁰ Judge Nelson was 62 years old at the time Atwater’s article was published. He resigned from the federal bench in 1898, and died on October 15, 1904, at age 78.

the United States supreme court. This certainly is not to be wondered at, considering the wide diversity of sentiment that has existed, even in the supreme court itself, on some of these amendments, and the further fact that there were no precedents to guide the judicial mind; and in this connection it may be stated, that it may well be doubted whether any judge has occupied the bench as long as Judge Nelson and had as few decisions overruled.

In his preparation for the bar, Judge Nelson had become versed in the complicated system of pleading and practice which had grown up in New York in the course of centuries, previous to the introduction of the code. This proved of great advantage to him when he commenced practice in Minnesota, where the code had been adopted, and not less in the discharge of his duties when he was called to the bench, for the old system of pleading was adhered to in the United States courts, although in matters of practice and construction of statutes, the decisions of the state supreme court were usually followed, when not conflicting with decisions of the United States courts. The idea of the framers of the code was so to simplify pleadings and practice that "every man might be his own lawyer." It is needless to state that the idea was chimerical. The only immediate result was, that the new system, for many years, became an inextricable muddle of incongruities, imposing greatly increased labor on the judiciary and from which it has not yet been wholly rescued.

Perhaps characteristic of Judge Nelson as a judiciary officer is his strong common sense, united with a keen, innate perception of equity, which enables him at once to grasp the merits of a controversy and disentangle them from the sophisms and technicalities which ingenious pleaders and advocates may seek to throw around them. This quality is not less important in court than jury cases. In his charges to the jury, they are not left in doubt as to the facts they are to find nor as to the law governing the cause. In case of error in the latter, counsel can always rely on being granted the full benefit of their exceptions. And so the rights of both parties are strictly

guarded, and justice rarely fails. To such litigants as do not desire justice (of which there are always some in every court), these qualities in a judicial officer may not seem desirable. To the great mass, however, of clients and attorneys, they are those which are most indispensable in a judge.

Dignified and yet always courteous on the bench, in private life Judge Nelson is one of the most genial, open-hearted and interesting of companions, and lives in the enjoyment of a large circle of warm friends, who esteem him not less for his high abilities than his lovable social qualities. He has devoted thirty years of the best portion of his life to the service of his adopted state. With his ripe experience, if his life is spared, still greater benefit to the state, with attendant honors to himself, may be expected in the future than have been realized in the past.

CHARLES E. FLANDRAU.

Charles Eugene Flandrdu was born July 15, 1828, in New York city. His life has been filled with stirring incidents, many of them verging on the romantic. On his father's side he was of Huguenot descent. Thomas Hunt Flandrau, his father, was born at New Rochelle, Westchester county, New York. His ancestors resided at La Rochelle in France. His mother's maiden name was Elizabeth Macomb. She was the daughter of Alexander Macomb, who was born in Belfast, Ireland, July 27, 1750, and came to America in 1760. He married Catiche Navarre at Detroit, Michigan, May 4, 1773. She died November 17, 1789, leaving ten children. Her husband again married, in July, 1791, Jane Rucker in New York city. He was for many years a leading merchant in New York, and died in Georgetown, District of Columbia, at the age of eighty-four years.

Mr. Flandrau's grandmother on his mother's side was born in Nassau, New Providence, August 27, 1761, and was named Janet Marshall.

She first married John Peter Rucker, and had one son. In July, 1791, as above stated, she married Alexander Macomb. The issue of this marriage was three sons and four daughters. She was the step-mother of General Alexander Macomb, who was commander-in-chief of the United States army immediately preceding General Win-field Scott. She died in Georgetown, District of Columbia, March 3, 1849, in the eighty-eighth year of her age.

The emigration of a considerable body of Huguenots to America, about the time of the revocation of the edict of Nantes, is a matter of history. Some settled north and some south. Their strong qualities of honesty, loyalty and patriotism and religious sentiment have impressed themselves not only on their descendants but on the different communities where they settled. The colony which located in New York purchased a large tract of land in Westchester county, and located a town which they named New Rochelle. It is to-day one of the most beautiful of the numerous thriving villages on the north shore of Long Island sound.

From thence, when quite young, Mr. Flandrau's father emigrated as far west as Utica, New York, and studied law in the office of Nathan Williams, an eminent lawyer of that village. Soon after being admitted to practice, he formed a law partnership with Colonel Aaron Burr formerly vice-president of the United States, and went to the city of New York, where he practiced with Colonel Burr for several years. He married Elizabeth Macomb in 1824 or 1825, and shortly afterwards returned to Oneida county, New York, where he continued in the practice of his profession until his death, which occurred January 2, 1855. He was a graduate of Hamilton college, New York.

The youthful education of the subject of our sketch was carried on at Georgetown, District of Columbia. The memory of that time seems to be clouded in a haze of obscurity. History does not record that the boy took high prizes in scholarship, deportment, or recitations in the catechism. Diligent search has also failed to establish the fact that lie

stood at the head of his class in the youthful pranks characteristic of all active minded boys. That he was not entirely unaccomplished in these early essentials of youthful education, may be to some extent inferred from subsequent characteristics, later developed. We have not, however, deemed it essential to pry too closely into his youthful history.

At thirteen years of age his mind was so mature that he felt qualified to decide on his future vocation in life. He would enter the navy and become a commodore or rear admiral. To this end, he applied to Badger of North Carolina, then secretary of the navy, for a midshipman's warrant. He did not lack influence to procure the appointment, but his age was against him—he was one year too young. Nowise discouraged, he immediately shipped before the mast in the United States revenue cutter Forward, and served in that capacity for one year. At the expiration of that time he again shipped in the revenue cutter Van Buren, and served on her for another year. He then made several coasting voyages in merchantmen, continuing in this occupation in all for some three years. Whether [657] it was thathardtack and junk beef had, by this time, lost their charms for him, or that he found the road to promotion too slow, history saith not. Suffice it to say that at this time he decided to abandon a seafaring life, and returned to Georgetown to school. But having once tasted the sweets of freedom, the restrictions of school life were in the highest degree irk-some to one of his mercurial temperament, and he soon left for New York, to" seek his fortune."

Here he decided to learn the business of mahogany sawing, and for that purpose entered the employ of Mahlon Bunnell, who had a large establishment at the corner of Pike and Cherry streets. In this business he continued for three years and became proficient in all branches of the trade. But still he was dissatisfied and felt that he had not yet found his proper life vocation. He went to Whitesboro, New York, entered his father's office and commenced the study of law. Here he diligently prosecuted his studies till January 7, 1851, when he

was admitted to the bar in Oneida county. He had at length truly found his life's work. He entered into partnership with his father, under the firm name of F. H. & C. E. Flandrau, in Whitesboro, Oneida county, and so continued until the fall of 1853.

Whether the famous slogan of Greeley, "Go west, young man," had then been uttered I do not know; suffice it to say that many of the brightest and most enterprising young men of New York and the east were eagerly alive to the advantages of the great northwest. Minnesota being the latest admitted territory naturally received a large part of this emigration. In the latter part of November of 1853, Mr. Flandrau, in company with Horace R. Bigelow, landed in St. Paul. They immediately opened an office for the practice of law on Third street, near where Dawson's bank formerly stood, under the firm name of "Bigelow & Flandrau."

At that early day the practice of law in Minnesota was neither arduous nor specially remunerative. Some business was furnished by the United States land offices. But commerce was in its infancy, and the immense and profitable business since furnished to the profession by railroads was then wholly unknown. Consequently most lawyers found themselves with more or less spare time on their hands. It so happened that during the winter of 1853-4 certain capitalists in St. Paul engaged the services of Mr. Flandrau to make explorations in the Minnesota valley and negotiate for the purchase of property connected therewith, and especially of the Captain Dodd claim at Rock Bend, now St. Peter. His report was favorable to the purchase; and he was so impressed with the prospective advantages of the country that he decided to locate in the valley himself. St. Peter was then unknown. Traverse des Sioux was the only settlement in the vicinity, and consisted of a few Indian traders and their attaches and a number of missionaries. Here he located. He here met Stewart B. Garvie, a Scotchman, who had just been appointed clerk of the district court of Nicollet county by Judge Chatfield, and occupied an office with him. As may well be imagined, law business was exceedingly limited. The

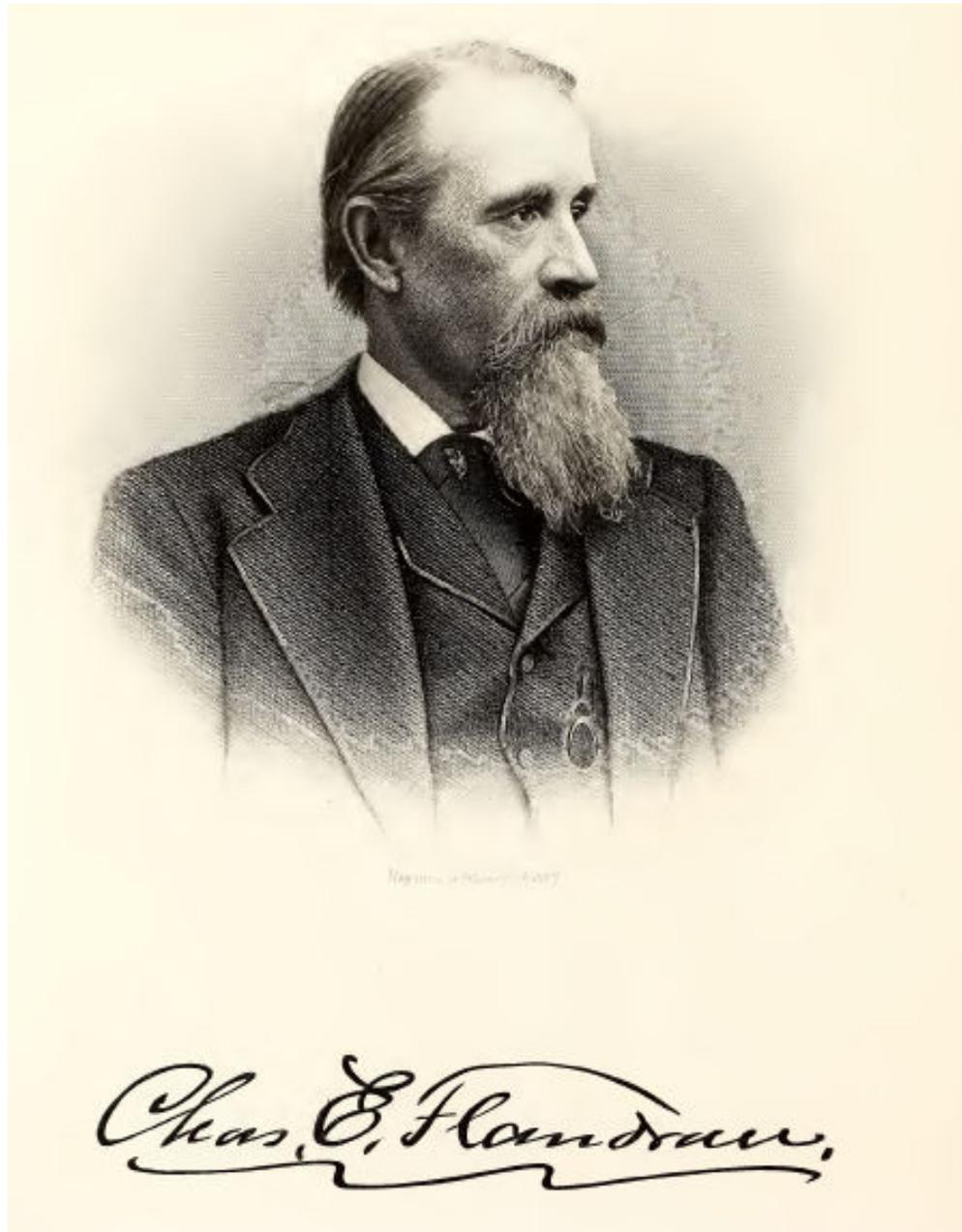
young men were frequently at their wit's end for devices to "keep the wolf from the door." Nay, they did not wish to keep him from the door. Instead of an enemy, he became a friend, thus reversing the aforesaid saying. They placed a dead pony within easy rifle shot of the back window of their office, which proved an attraction to these prairie rovers, and every night many of these brutes fell victims to the unerring aim of these young lawyers, and each pelt added seventy-five cents to their meagre exchequer. History does not record whether they were reduced to the extremity of using their flesh as food. It is to be hoped not.

But this state of things was not to last.

With the opening of the season of 1854 immigration began to pour into the Minnesota valley: In June of that year the first house was built in St. Peter, and thereafter for the next few years the progress of the settlement was rapid. Judge Flandrau continued to reside at Traverse des Sioux until 1864 and to practice until called to the bench, as will hereafter appear. In this connection it may be stated that Mr. Flandrau was admitted to the bar of Illinois in October, 1853, on his way to Minnesota, and to the bar of the state last named soon after his arrival in St. Paul. In 1854 he held the offices of notary public, deputy clerk and, latter, district attorney of Nicollet county. Of course a young man possessed of the active intellect, indomitable energy and perseverance and acknowledged ability of Mr. Flandrau, could not, in a new country where some of these qualities are more rare than in the east, long remain in obscurity.

With his enthusiastic temperament, and at that time, it is not strange that political life had some attractions for Mr. Flandrau. Not that he ever seriously entertained the thought of abandoning his legal practice and entering into politics as a profession, but rather as a temporary pastime. In 1856 his friends persuaded him to allow the use of his name for member of the territorial council. He was elected in the fall of that year, the term being for two years. He served as an

active and influential member on several important committees for one year. He resigned in 1856, owing to the pressure of other important duties, the discharge of which were incompatible with that position.



On the sixteenth of August, 1856, he was appointed by President Pierce United States agent for the Sioux Indians of the, Mississippi. The position was one of great responsibility, involving, for the faithful

discharge of its duties, much arduous and disagreeable labor. He accepted the office and for more than a year discharged its duties to the entire satisfaction of the government. The duties of this position, however, proved irksome in the extreme to one of his cultivated tastes, in addition, to the fact that the future offered little opportunity for advancement. He accordingly resigned the position in the spring or summer of 1857. In the same year his former constituents again demanded his services in a legislative capacity. He was elected a member of the constitutional convention and served in that branch of the same presided over by the Honorable H. H. Sibley. It is needless to state that he took an active part in the interesting debates and was largely instrumental in shaping many of the important features of the Organic law.

July 17, 1857, Mr. Flandrau was appointed by President Buchanan associate justice of the supreme court of the territory of Minnesota.¹¹ But one general term of that court was held, at which he occupied a seat on the bench, viz., in January, 1858. The business of that term was small, for reasons heretofore explained, and no opinions are on and in the brief time during which he presided in that capacity, he was written by Judge Flandrau at that session. He, however, held several noted for rapid and correct dispatch of business, and became very file terms of the district court, in various counties in his district, popular with the bar and the communities with which he came in contact in the discharge of his duties. To accommodate attorneys, jurors or suitors, he not infrequently held court till late at night, and never allowed his personal convenience to interfere with the public interest. By this course much time and money were saved to the counties—an important consideration in those early days.

¹¹ The President made a recess appointment of Flandrau on July 17, 1857; on May 6, 1858, he nominated Flandrau to the same office but the Senate tabled action because of the imminence of statehood. See Douglas A. Hedin, Documents Regarding the Terms of the Justices of the Minnesota Territorial Supreme Court: Part Two—F," 11-14 (MLHP, 2009-2012).

On the twenty-fifth day of October, 1858, he was appointed by Governor H. H. Sibley judge-advocate general of the state of Minnesota. This office he held during the administration of Governor Sibley.

At the convention of the Democratic party held in 1857 for the nomination of state officers, under the constitution which had been framed the same year, he was nominated as associate justice of the supreme court for the term of seven years. The whole ticket was elected, and on the ratification of the constitution by congress, early in 1858, he qualified and entered upon the discharge of the duties of the office. For nearly seven years thereafter his whole time and attention were unremittingly devoted to the performance of the new duties which he had undertaken. And these involved no small amount of responsibility.

It is to be considered, as before remarked, that pleadings and practice at that time were in a transitional state. The code had but recently been adopted. Lawyers were here from nearly every state in the Union. Each of the older states had its own precedents and line of decisions. These were often conflicting. Minnesota had as yet uniformly followed none of them. The first supreme court of the state had not the benefit of a systematic line of decisions of the territorial bench. A beginning was to be made. In the conflicting decisions in different states on commercial and real estate law, the court was forced to select certain principles which should govern it in its rulings. In many cases it was of more importance that the law be definitely settled than the principles adopted in settling it. And it naturally occurred, that as both the associate justices received their legal training and education in New York, the decisions of the courts of that state were usually followed when applicable. The construction of a large number of statutes was also to be determined for the first time. From these causes, more than ordinary labor was imposed on the court compared with the number of cases on the calendar.

The record of Judge Flandrau's ability as a jurist is found in the first nine volumes of "Minnesota Reports." His opinions speak for themselves. While the decisions are those of the court, the expression of them is in his own language in the cases assigned to him. It will be generally conceded that this language is uniformly terse, clear Anglo-Saxon, leaving nothing in doubt and obscurity. Having a clear idea in his own mind of the points decided, he had the somewhat rare faculty of making his ideas clear to others, with the reasons for them. The rapidity with which his work was done was remarkable, and his industry untiring. To this is due the fact, that at almost every term he wrote more than his equal share of opinions. As one helping largely to lay the foundations of the system of jurisprudence of the state, both in the constitutional convention and on the bench, he has received the unanimous commendation of the people and can look back on an enviable record. And how firmly the judicial foundations were laid may be judged from the fact, that in nearly twenty-five years that have elapsed since the expiration of the term of the first supreme court judges, a less number of their decisions have been overruled than of the court of appeals of the state of New York during the same time.

On the tenth day of August, 1859, Judge Flandrau was married to Isabella Ramsay Dinsmore, daughter of Colonel James Dinsmore of Boone county, Kentucky. The issue of this marriage was two daughters, both of whom are living. His wife died on the thirtieth day of June, 1867. She was one of the most accomplished and beautiful ladies in Minnesota, and her early death was deeply regretted by a large circle of friends.

Subsequently, on the twenty-eighth day of February, 1871, he married Mrs. Rebecca Blair Riddle, daughter of Judge William McClure of Pittsburgh, Pennsylvania. The issue of this marriage is two sons.

It was in the summer of 1862 that the most exciting and absorbing event in the life of Judge Flandrau and of the history of the state

occurred. On the eighteenth of August of that year, without warning> like a thunderbolt from clear sky, the news was flashed over the state that the whole tribe of Sioux Indians were on the warpath, and indiscriminately massacring men, women and children on the frontier. The news of the outbreak reached Judge Flandrau at his residence in Traverse des Sioux, at four o'clock in the morning of the nineteenth of August, by a carrier who had been sent from New Ulm, a German town distant about thirty-two miles from Traverse. Appreciating the situation instantly, he put all his women and children into a wagon, and instructed them to fly to the Mississippi river at St. Paul or Minneapolis, which were about ninety miles distant, and there await events. The next day they safely reached the house of the writer in Minneapolis, in a very exhausted and demoralized condition:

As soon as the judge was relieved of his domestic impediments, he proceeded to St. Peter, a mile away. A company of about one hundred and fifteen men was at once raised, armed and equipped as best it could be done under the circumstances.

Wagons, horses, arms, ammunition, provisions, in fact, everything that was needed was either furnished by the people or impressed into the service. So rapid was the preparation that the little band was ready to move to the front by noon and arrived within sight of New Ulm by nine the same evening. They were none too early, as the town was being attacked by about one hundred Indians, and a considerable portion of it was on fire. The command advanced upon the town, drove out the Indians, extinguished the fires and calmed the excitement of the people. The timely arrival of these citizen troops undoubtedly saved New Ulm from destruction and the people from massacre.

On the formation of this company, Judge Flandrau was chosen its captain, and led it to the rescue of the exposed frontier settlement of New Ulm.

Preparations for defence were instantly made. Judge Flandrau was unanimously elected commander-in-chief of all the forces. He hastened to place the men under his command under the best discipline attainable, and spent the time between the day of his arrival and the next Saturday, being the twenty-third of August, in strengthening the defenses of the town. On the morning of the twenty-third, the Indians who had been besieging Fort Ridgley abandoned their attempt on that post and attacked New Ulm in full force. They had about six hundred and fifty men, all well armed with rifles, while the defenders of New Ulm did not muster more than three hundred men, the large majority of whom were armed with shotguns.

Ample notice of their approach was given by columns of smoke, as they destroyed every house and stack in their line of march. An effort was made to check their advance by a line of battle on the open prairie, which, owing to the inferior arms of the whites, was unsuccessful. What followed can best be told in the graphic language of Judge Flandrau himself in his official report to the governor of the battle, as the same is quoted in Heard's *History of the Sioux War and Massacre*:

“At nearly ten o'clock A. M. the body of Indians began to move toward us, first slowly, and then with considerable rapidity. Their advance upon the sloping prairie in the bright sunlight was a very fine spectacle, and, to such inexperienced soldiers as we all were, intensely exciting. When within about one mile and a half of us the mass began to expand like a fan and increase in the velocity of its approach, and continued this movement until within about double rifle shot, when it had covered our entire front.

“Then the savages gave a terrific yell and came down upon us like the wind. I had stationed myself at a point in the rear where communications could be had with me easily,

and waited the first discharge with great anxiety, as it seemed to me that to yield was certain destruction, as the enemy would rush into the town and drive all before them. The yell unsettled the men a little, and just as the rifles began to crack, they fell back along the whole line, and committed the error of passing the outer houses without taking possession of them—a mistake which the Indians immediately took advantage of by themselves occupying them in squads of two and three, and up to ten.

“They poured into us a sharp and rapid fire as we fell back, and opened from houses in every direction. Several of us rode up the hill endeavoring to rally the men, and with good effect, as they gave three cheers and sallied out of various houses they had retreated to, and checked the advance effectually. The firing from both sides then became general, sharp and rapid, and it got to be a regular Indian skirmish in which every man did his own work after his own fashion.

“The Indians had spread out until they had got into our rear and on all sides, having the very decided advantage of the houses on the bluff, which commanded the interior of the town with the exception of the wind-mill, which was occupied by about twenty of the Le Sueur tigers, who held them at long range.

“The wind was from the lower part of the town, and this fact directed the larger part of the enemy to that point, where they promptly commenced firing the houses and advancing behind the smoke. The conflagration became general in the lower part of the town on both sides of the street, and the bullets flew very thickly both from the bluff and up the street. I thought it prudent to dismount and conduct the defence on foot. Just at this point Captain

Dodd of St. Peter, and someone else whose name I do not know, charged down the street to ascertain whether some horsemen seen in the extreme lower town were not our friends coming in, and were met about three blocks down with a heavy volley from behind a house, five bullets passing through Captain Dodd's body and several through that of his horse. The horsemen both turned and the captain got sufficiently near to be received by his friends before he fell. He died about five hours after being hit. Too much cannot be said of his personal bravery and general desire to perform his duty manfully. Captain Saunders of the Le Sueur company was shot through the body shortly after, and retired, placing his rifle in effective hands, and encouraging the men. The fight was going on all around the town during the whole forenoon and part of the afternoon, sometimes with slight advantage to us, and again to the Indians ; but the difficulty which stared us in the face was their gradual but certain approach up the main street behind the burning buildings, which promised our destruction.

“We frequently sallied out and took buildings in advance; but the risk of being picked off from the bluff was unequal to the advantage gained, and the duty was performed with some reluctance by the men. In the lower part of the town I had some of the best men in the state, both as shots and for coolness and determination. It will be sufficient to mention two as types of the class of the best fighting men—Asa White and Newell Houghton—known to all old settlers.

“They did very effective service in checking the advance, both by their unerring rifles and the good example their steadiness placed before the younger men. We discovered a concentration of Indians on the side of the street toward

the river and at the rear of the buildings, and expected a rush upon the town from that position, the result of which I feared more than anything else, as the boys had proved unequal to it in the morning; and we were not disappointed, for in a few moments they came on, on ponies and on foot, furiously, about sixty in number, charging around the point of a little grove of oaks.

“This was the critical point of the day, but four or five hours under fire had brought the boys up to the fighting temperature and they stood firmly and advanced with a cheer, routing the rascals like sheep. They received us with a very hot fire, killing Houghton and an elderly gentleman whose name I did not know. As they fled in a crowd, at a very short range, we gave them a volley that was very effective and settled the fortunes of the day in our favor, for they did not dare to try it over. I think after once repulsing them in a fair fight we could have successfully resisted them had they returned a second time,-as the necessary confidence had been gained. White men fight under a great disadvantage the first time they engage with Indians ; there is something so fiendish in their yells and terrifying in their appearance when in battle, that it takes a good deal of time to overcome the unpleasant sensation it inspires. There is a snake-like stealth in all their movements that excites distrust and uncertainty and which unsteadies the nerves at first.

“After this repulse the battle raged until dark, without sufficient advantage on one side or the other to merit mention in detail, when the savages drew off, firing only an occasional shot from under close cover. After dark we decreased the extent of our lines of barricades, and I deemed it prudent to order all the buildings outside to be burned, in order to prevent them from affording protection

to the savages while they advanced to annoy us. We were compelled to consume about forty valuable buildings, but as it was a military necessity, the inhabitants did not demur but themselves applied the torch cheerfully. In a short time we had a fair field before us of open prairie, with the exception of a large brick building which we held and had loop-holed in all the stories on all sides and which commanded a large portion of our front toward the bluff. We also dug a system of rifle-pits on that front outside the barricades, about four rods apart, which completed our defences.

“That night we slept very little, every man being at the barricades all night, each third man being allowed to sleep at intervals. In the morning the attack was renewed, but not with much vigor, and subsided about noon. “

Omitting some further incidents, the report continues as follows:

“I held a council of officers and we determined to attempt an evacuation of the town, carrying off all the inhabitants, women, children, sick and wounded, to the number of about two thousand. This movement was a very perilous one to undertake with the force at our command, but the confused state of the town was rapidly producing disease among the women and children, who were huddled in cellars or in close rooms, like sheep in a cattle car, and we were fast becoming short of ammunitions and provisions. I feared the result of another attack by a larger force, and all the people decided that they would abandon the town at the first opportunity, as residence there was impossible under the circumstances.

“At daylight next morning the barricades were broken and the wagons taken out and put in motion. The scene was

one of indescribable confusion and destruction. The poor people, naturally desirous of carrying off all they could, filled their wagons with boxes and baggage to the exclusion (as we found before the train was complete) of many of the women and wounded. I was, therefore, compelled to order all articles of a bulky nature to be tumbled out and their places supplied with more valuable freight. It was hard, but necessary, and the inhabitants yielded with less reluctance than I had anticipated.

“About 9 A. M. we moved from New Ulm with one hundred and fifty-three wagon-loads of women, children, sick and wounded, and a large company on foot. Captain Cox took the general disposition of the escort, and the various commands were posted so as best to protect the whole in case of an attack. It was a melancholy spectacle to see two thousand people who, a few days before, had been prosperous and happy, reduced to utter beggary, starting upon a journey of thirty miles, through a hostile country, every inch of which we expected to be called upon to defend from an attack, the issue of which was life or horrid butchery. Beggary, starvation and probable destruction were at one end of the road, a doubtful escape from the latter at the other. We took the latter alternative and, under Providence, got through.”

This was undoubtedly as gallant a defence as the records of Indian warfare disclose. The loss of life was less than might have been expected, being, on the part of the whites, ten killed and fifty wounded; on the part of the Indians, supposed to be equal if not greater, though the casualties on their side can never be known, as they removed all the wounded and as many of the dead as possible. Still, ten of their dead were left on the field after their retreat.

Judge Flandrau continued in the service for some time after this battle. On the twenty-ninth of August of the same year Governor Ramsey commissioned him, as he deemed best for the defence of the frontier, to raise troops, appoint officers and generally do whatever was necessary. It was a broad commission and could only be granted to one in whom great confidence was reposed-Under this commission he acted, raised many men, which were posted from New Ulm to the Iowa line. Later, and on the third of September, 1862, he received a commission from Governor Ramsey of colonel of state militia, under which he also acted, together with a letter of authority from General John Pope of the United States army, of date of September 4, 1862. When the state and United States forces were fully organized and in command of the situation, Judge Flandrau turned over his command to Colonel M. Montgomery of the Twenty-fifth regiment of Wisconsin volunteers and resumed the discharge of his judicial duties.

On turning his command over to General Montgomery, Colonel Flandrau issued the following valedictory order, which describes the situation :

ORDER NO. 203.

Headquarters Ind. Ex., Southern Frontier,
South Bend, October 5, 1862.

*To the soldiers and citizens who have been, and are now,
engaged in the defence of the southern frontier:*

“On the eighteenth of August last your frontier was invaded by the Indians. You promptly rallied for its defence. You checked the advance of the enemy and defeated him in two severe battles at New Ulm. You have held a line of frontier posts extending over a distance of one hundred miles. You have erected six substantial fortifications and other

defensive works of less magnitude. You have dispersed marauding bands of savages that have hung upon your lines. You have been uniformly brave, vigilant and obedient to orders. By your efforts the war has been confined to the border; without them, it would have penetrated into the heart of the state.

“Major-General Pope has assumed the command of the northwest, and will control future operations. He promises a vigorous prosecution of the war. Five companies of the Twenty-fifth Wisconsin regiment and five hundred cavalry from Iowa are ordered into the region now held by you, and will supply the places of those whose term of enlistment shortly expires. The department of the southern frontier, which I have had the honor to command, will, from the date of this order, be under the command of Colonel M. Montgomery of the Twenty-fifth Wisconsin, whom I take pleasure in introducing to the troops and citizens of that department, as a soldier and a man to whom they may confide their interests and the safety of their country, with every assurance that they will be protected and defended.

“Pressing public duties, of a civil nature, demand my absence temporarily from the border. The intimate and agreeable relations we have sustained toward each other, our union in danger and adventure, cause me regret in leaving you, but will hasten my return.

Chas. E. Flandrau,
Col. Comd'g Southern Frontier.”

In the spring of 1864 he resigned the position of associate justice and went to Nevada to join Judge Atwater, as partner in the practice of law in Carson and Virginia City. Here he remained for about a year. He then went to Washington to attend to the business of the firm before the departments. He intended to return, as the business was

remunerative and satisfactory. Owing to the fact, however, that his family were unwilling to accept the trials and hardships of a new frontier life, he abandoned the plan, and having received a favorable offer of partnership in St. Louis from Colonel Musser, he accepted it and engaged in the practice of his profession in that city in 1865.

But an experience of less than a year in that staid, slow-going old city, satisfied him that he could not be content with such surroundings. The active, stirring life of Minnesota was far more in accord with his tastes; there, too, were hosts of early and warmly attached friends. Meanwhile, in the latter part of 1866, Judge Atwater had returned to Minneapolis and resumed the practice of his profession. He invited Judge Flandrau to join him in a partnership, which the latter accepted, and returned to Minnesota in the early part of 1867. During the same year he was a candidate of the Democratic party for governor, running against William R. Marshall, but was defeated.¹² He was again the candidate of the same party in 1869, for the office of chief-justice of the state, against Judge Ripley, and was again defeated.¹³ It is needless to state that neither of these nominations were sought by Judge Flandrau—on the contrary, he was strongly averse to the use of his name for either of them. But he was intensely loyal to his party, and as that party had stood by him in the days of its prosperity, he would not refuse to be its standard-bearer now that it was in a hopeless minority.

In 1867 he was elected city attorney of Minneapolis, and in 1868 the first president of the board of trade of that city under its first organization.

¹² The results of the election for governor on November 5, 1867:

William R. Marshall (Republican).....34,874
Charles E. Flandrau (Democrat).....29,502

¹³ The results of the election for chief justice on November 2, 1869:

Christopher G. Ripley (Republican).....25,899
Charles E. Flandrau (Democrat)..... 22,206
Edward O. Hamlin (Temperance Party).....1,440

In 1870, having received a favorable proposition from the firm of Messrs. Bigelow & Clark of St. Paul to form a partnership with them in the practice of law, he accepted the same and soon after " removed to that city, where he has since resided. The firm has always enjoyed a large and lucrative practice, and although there have been some changes in its membership (the present firm being Flandrau, Squires & Cutcheon), it has always been ranked among the leading firms in St. Paul. Judge Flandrau is president of the Bar Association of Ramsey county, and (in length of practice), if we are not mistaken, the oldest attorney in active practice at the bar of the state of Minnesota. But he is yet in the full vigor of his intellectual and physical strength, and to all human observation, is good for twenty years more of as hard work as he has ever yet performed.

In this brief sketch of the life of Judge Flandrau, two or three striking traits of character cannot fail to have impressed themselves on the mind of the reader. And first the remarkable versatility of mind and talent displayed. This is evident from the number of different occupations in which from early youth he has been engaged, and the numerous and varied offices he has held. And in all these he has acquitted himself as though each had been the sole occupation of his life. Though in fact, after arriving at adult years, each has been subsidiary to his main profession, yet, in politics, as Indian agent, as a military leader, as a popular speaker, he has demonstrated that had he selected either as a specialty, he would as easily have taken a front rank as in that of jurist.

Another striking characteristic is his grasp of mind, quickness of perception and power of concentration, united with great physical endurance and habits of industry, enabling him to accomplish an amount of labor, within a given time, which but few could achieve. These qualities were largely inherited, for in youth he had not the advantage of that thorough mental training which so largely conduces to success.

Judge Flandrau has always been universally and deservedly popular with all classes with which he has come in contact. The reason is not far to seek. He is naturally gifted with unusual conversational powers and a sunny, genial disposition. He is also an attractive extempore-speaker, which makes his services sought on numerous public occasions. But more than all this, his readiness to assume the laboring oar in all enterprises in which he is called to act, thus relieving his associates often of much hard work without pecuniary advantage to himself, have secured him the friendship of large numbers who dislike the labor usually imposed as a condition of success. And in view of what has been remarked, it is needless to say that Judge Flandrau is not less a success in social than in public life. He is or has been connected with all the social and business clubs in St. Paul. From qualities before adverted to, he is almost always requested to assist at public dinners. He is not only the originator of wit himself, but the creator of it in others. With such characteristics most men would jump at the conclusion, uttered by Daniel Webster in speaking of the profession, as applicable to Judge Flandrau, viz.: "that lawyers work hard, live well and die poor." The first two parts of the proposition in his case are true—fortunately the last, not, so far as at present appears; On the contrary, Judge Flandrau, from the : emoluments of his profession and judicious investments in real estate in the cities of Minneapolis and St. Paul, has accumulated, if not a fortune (as the word now goes), at least an ample competence, which relieves him from dependence on his profession for support and provision, for his family in the future. And if it be true that "republics are ungrateful" to those who depend on them for support, it is not true that the citizens of republics are slow to recognize deserving merit.

Isaac Atwater.

JOHN B. SANBORN.

The historian who seeks to portray the life and advancement of a people, or the subjugation of a wilderness to the uses of civilization and the domination of man, must, no matter how far he may be under the control of theories pointing otherwise, come at last to the individual and seek his true relation in the lives and records of those by whom the works he would describe have been performed. Thus biography becomes not merely a sidelight to history but the very essence and vitality of history itself. In the story of the leader, you tell that of his times as well.

Viewed thus, it does not need to be said that the true story of the great Northwest cannot be told, as we are from time to time trying to tell it in these pages, without more than a passing reference to the soldier, jurist, orator and high-minded and liberal-spirited citizen whose name may be found above. While his works have largely been performed in behalf of the section to which he belongs, his fame is National, and those who know and appreciate his worth may be found in every corner of the land. The events of his busy and useful life have two reasons for relation—they illustrate the days in which' he has lived, and they form a powerful incentive ; to the grand army of "youth who aspire to walk also in the path of honor to reach the goal of success.

The qualities of courage, determination and industry that have made General John B. Sanborn of St. Paul, Minnesota, what he is, were not accidental gifts of nature, but came to him by natural heirship from a brave and self-reliant race who "carved their history upon the granite rocks of their native state." The characteristics of his ancestry have ever been a sturdy self-reliance, an earnest acquisition of knowledge, advancement in various departments of industry and an intense love of country. The family descent in this country alone may be traced back through over two centuries, and to a period over a century before the territory now comprising the state of Vermont was

detached from the New Hampshire grant, as it was then known, when Reuben Sanborn moved from Hampton and settled in that mountainous region where is now located the town of Epsom. The line may be traced back still farther into the original home of the family in England, but such quest is not material to the purpose of this sketch.

John B. Sanborn was born in the town of Epsom, Merrimack county, New Hampshire, December 5, 1826, upon a farm which has been in the family possession for seven generations. * His boyhood years were passed in the quiet of home, where his physical frame was undergoing proper development by work on the farm and temperate living, while his mind was being strengthened and his heart kept pure by the high precepts and worthy examples of the simple and honest lives about him. It was the expectation of the boy up to the time he was sixteen years of age, that he should remain upon the farm and care for his parents through their old age, but the failure of health of his brother while in college changed that plan. The brother came home, and, under the necessity of an out-door life, took the place of the younger son, and allowed the latter to go forth and seek his proper sphere. He went to work to seek an education with the energy and industry that have marked his career, and after a proper preparation in Pembroke and Thetford academies, entered Dartmouth college in 1851, where he remained one term, and then decided to enter directly upon the study of law.

He entered the office of Asa Fowler at Concord, New Hampshire, where he continued until his admission to the bar in July, 1854. He commenced practice at Concord, but impelled by the advantages to

* Mr. Sanborn has related this somewhat remarkable fact, in the following words: "The family homestead in Epsom, New Hampshire, has descended by primogeniture from generation to generation, since 1750, until it reached the children of Henry F. Sanborn, my only brother. At this time it is owned one-half by myself, and the other half by my brother and his son, and still remains in the Sanborn name. Rather a rare instance in this country of a homestead remaining in the same family from one hundred and thirty to one hundred and fifty years."

be derived from settling in a newer and less crowded field, and led by the chances offered young men of his stamp of mind and character in the then opening northwest, an examination of the field led him to the fortunate choice of Minnesota and St. Paul, and accompanied by Theodore French, a young lawyer friend whom he had met in Concord, he set forth to seek his fortune in the pioneer lands of the distant west. The account of that trip has been tersely placed upon record by Mr. Sanborn himself, in these words:

“About the last of November, 1854, French and myself started from Concord and went to Boston and bought four hundred dollars worth of law books and shipped them direct to Galena, Illinois, the terminus then of the railroad, and followed on by rail, stopping a day or two in New York and Chicago and Galena and Dubuque. We reached Dubuque the fifth day of December, 1854, and attempted to get passage for ourselves and baggage to St. Paul upon M. O. Walker & Co.'s stage line, then carrying the mail between the two points by a road on the west side of the river, running through Elliota, Preston, Rochester, Cannon Falls, etc. The fare charged us was one hundred and twenty dollars apiece. We brought our Yankee wits to bear upon the situation, and concluded that we would buy an entire outfit, a pair of horses, harness, wagon, robes, etc., and put in our baggage and drive up more cheaply. We did so, and soon found that we had all the passengers that we could take care of to come through with us, and we reached St. Paul on the evening of the twenty-first of December, 1854, having more money in our pockets when we had settled with the passengers we had brought through, than when we started, and sold our horses, wagon and harness at a profit of about three hundred dollars.”

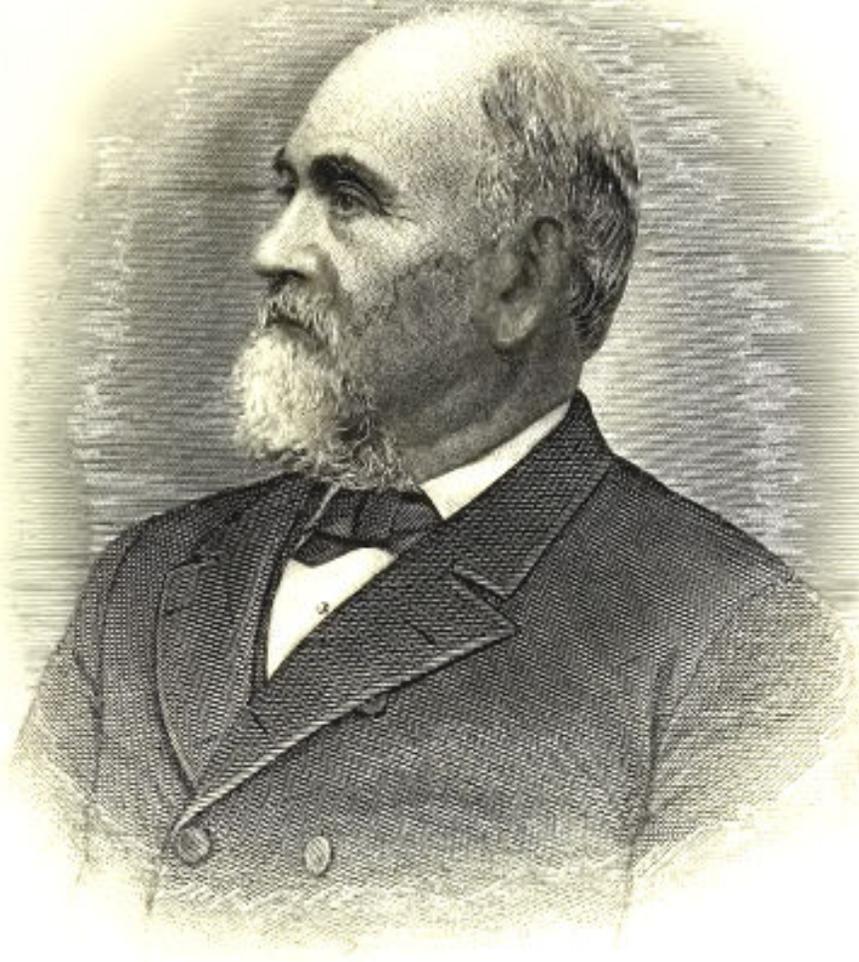


PHOTO-DUPLICATION SERVICE

Truly Yours,
John B. Sanborn.

There was no question about the future to two young men of that sort. The partnership of Sanborn & French was formed on January 1, 1855, and a successful practice followed as a matter of course. Two years later, Charles C. Lund became a member of the firm, the name of which was changed to Sanborn, French & Lund. Upon the death of Mr. French in February, 1860, the name was again changed to Sanborn & Lund, which so continued until January 1, 1862, after the senior member had entered upon the service of his country in the Union army. These successive firms occupied a high position in the legal world, achieving a large practice in the state and National courts and a reputation nowhere excelled for ability, honesty and success.

Mr. Sanborn occupied a position in the Minnesota legislature in 1859-60, ¹⁴ consenting to a nomination and an election thereto in order that he might aid in placing the laws of the state in better shape, as many of them, especially in those passed at an early date and relating to township and county organizations, with some relating to the general government of the state, were quite defective in their operation. Placed at the head of the judiciary committee of the house, and possessing legal knowledge and ability of the highest order, he soon became a recognized force in all the proceedings, and was instrumental in formulating and aiding in the enactment of a system of laws, which corrected many of the evils above mentioned and restored financial order and strength to the treasury of the state. He rendered such able service in this capacity, that at the end of his term he was promptly elected to the senate, and was entering upon a career of enlarged usefulness and influence when the storm of the Rebellion broke over the land, and he gave his service to his country in another and more active field.

¹⁴ In 1859 the future General was elected as a Republican to the House of Representatives of the Minnesota Legislature. Over forty years later, he delivered an address to the Executive Council of the Minnesota Historical Society on this legislative session. See John Benjamin Sanborn, "The Work of the Second Minnesota Legislative Session, 1859-60." (MLHP, 2019).

In April, 1861, Mr. Sanborn was requested by Governor Ramsey to accept the position of adjutant-general and acting quartermaster-general of the state— a position full of responsibility and labor, and in which he showed great executive ability and the highest efficiency in equipping the Minnesota regiments and getting them into the field. But he could not consent to remain at home while others were marching to and he was given command of all the troops along the frontier of the state. He remained in this capacity and location during the winter, and the front, and in December he accepted a commission as colonel of the Fourth Minnesota infantry. His headquarters were at Fort Snelling, in the spring of 1862 his regiment was ordered into active service in the south, and became a part of the army at Pittsburgh Landing, reaching that point in season to be assigned a position in the forces then advancing toward Corinth. Colonel Sanborn's command was extended to a semi-brigade, consisting of a battery and three regiments. He bravely and successfully held his position until the surrender of the works at Corinth, when he was assigned to the command of the first brigade, forming a portion of the Seventh division of the Army of the Mississippi, and which subsequently became the Seventeenth Army corps.

While the soldierly qualities of Colonel Sanborn were recognized and often displayed in minor engagements and the control of his men, it was at the battle of Luka, on September 19, 1862, that he was given an opportunity for that display of gallantry which won him, his stars. In that fiercely fought battle his command was composed of only twenty-two hundred men, and such was the position of danger in which they were placed, and so gallant was the fight they made with the foe, that in one hour and a half nearly one-third of his men were swept away; but they never faltered or wavered, standing their ground heroically, and pressing forward with such gallantry that the day was won. The promotion of their brave leader to a brigadier-generalship followed as a matter of course, and it was the verdict of all that the honor was most honorably won.

In the battles of Port Gibson, Raymond, Jackson, Champion Hills and at the siege of Vicksburg, General Sanborn exhibited upon many occasions and under many trying circumstances that courage, firmness and excellent judgment which had advanced him so rapidly forward in the road of promotion. He shared danger and privation with the common soldier, and bound his men to him by ties stronger than those of authority. At the siege of Vicksburg he was in command of a division for a portion of the time, so conducting himself as to receive the thanks of Grant himself, and the congratulations of his equals in command.

After the fall of Vicksburg, General Sanborn was transferred to the command of the military district of southwest Missouri, which he assumed on October 20, 1863, and operated against the»army under General Price, in the autumn of 1864. Such was his success in that campaign that, on the recommendation of General Rosecrans, he was promoted to the rank of brevet major-general. Among the more conspicuous features of his operations in Missouri were those at Jefferson City, California, Boonville, Independence, Little Blue and Big Blue rivers, on the Osage, Marias des Cygnes, Mine Run, Newtonia, and at other points where conflicts of lesser note occurred. It is needless to say that he bore an honorable and conspicuous part in all these operations, and sustained the high reputation already won. He remained in command of that department until June 7, 1865, and found abundant labor in addition to the active service above enumerated. His principal duties were the maintaining of discipline and improving the efficiency of his own command, protecting the country and the people from the incursions and ravages of the bands and organizations of rebel bushwhackers that constantly infested it, resisting the advance of the Rebel army of the southwest, attacking and defeating that army again and again, at the places above named, and in the restoration of the functions of the civil law, and the protection of persons and property there-under. Upon his immediate duties following the close of the war, General Sanborn has himself commented in the following words:

“The surrender of the large Rebel armies on the Atlantic coast was immediately followed by the surrender of the Rebel forces in southern Missouri and northern Arkansas, and as southwest Missouri was de jure in a loyal state, it opened a field for the reconstruction of society under the civil law immediately. To that end general orders No. 35 were issued by me on the eighth day of May, 1865, the substance of which was to relinquish martial law, and the refusal longer to control and govern the country thereby, and applying it only to two classes of offences, viz.: Efforts and attempts to intimidate judges, jurors, sheriffs, justices of the peace, etc., and any refusal of these officers to act at once upon the proper complaint or information of any citizen. At the same time I placed the whole Federal force in the district at the command of these officers of the peace. This gave confidence to these officers immediately, and the energy with which they commenced to enforce the statute and civil law struck terror into offenders, and order and general security to person and property was very speedily restored, and that in a community and over a large scope of country where martial law had held sole and exclusive sway for four years, and where the people had come to feel that there was no security or safety in any other system of law or government, and that to cast it off for the old system was not desirable.” *

The wisdom and efficiency of General Sanborn's course in this difficult position is vouched for by Governor Thomas C. Fletcher of Missouri, who, on June 1, 1865, addressed him a warm letter of commendation, in which he said:

* From a report to the adjutant-general of the army, made on July 30, 1872.

“The order is most admirably conceived, clearly expressed, and has throughout the right tone, and in it I recognize and gratefully acknowledge the most effective assistance I have yet received towards the re-establishment of order in Missouri. Be assured that when peace and the arts of industry shall once more have assumed their legitimate sway in the state which you have done so much to save, your name will be cherished with increasing reverence as our prosperity flows on in an uninterrupted tide.”

The above is but a mere outline of General Sanborn's services during the War of the Rebellion, made of necessity brief because of the space at command. He was made member of several important courts-martial, and performed other special services needless to detail here. A volume could be filled with the personal events and incidents of his army career, gleaned from the lips of those who were with him, or modestly told by himself when camp-fire meetings, or other reunions of the boys in blue, set the train of memory in motion. But all that must be foregone, and space only taken for a few lines at the close of an address of anecdote and reminiscence, delivered by General Sanborn, at a meeting of the department of American history of the Minnesota Historical society, in October, 1877:¹⁵

“Reminiscences of this kind of the campaign (against Vicksburg) do not afford a glimpse even of the great struggle, the gigantic efforts, the unutterable sufferings and sacrifices made by the army of the Tennessee to maintain the supremacy of the Federal power, by reducing this stronghold and gaining the undisputed mastery over the Mississippi river. Were all the official reports of all the officers of the army read here to-night (and these reports

¹⁵ For the complete address, see General John B. Sanborn, “Reminiscences of the Campaign Against Vicksburg” (MLHP, 2019)(delivered first, 1879).

fill volumes), but a faint idea would be obtained. The great motive power of this effort was pure love of country and sincere devotion to the welfare of organized society. In the failure of this effort the leading spirits of that army thought that they saw, or feared that they saw, the overthrow of this government, and in its overthrow they clearly saw the failure of the last great Republican government on earth ; society disorganized and reduced to chaos; intelligence and virtue overwhelmed in a sea of ignorance and brutality, and religion and purity superseded by bacchanalian revelry and superstitious degradation. Hence, in the estimation of these men, the struggle was to save the government and all the blessings that upon it depended. Institutions of learning and religion, the liberty of the masses and civilization itself were at stake upon the decision of the issues of that hour, and their full appreciation by the army nerved it to strike such blows as would and did overwhelm all opposing forces.”

The war ended, active service of another character was in store for General Sanborn. In June, 1865, he was ordered by General Dodge, then in command of the department of Missouri, to proceed to the plains, take command of the district of the Upper Arkansas, with headquarters at Fort Riley, and make a campaign against the Comanche, Kiowa, Cheyenne and Arrapahoe and Apache Indians. He assumed such command on July 12, and found two thousand infantry and five thousand cavalry under his control. The men were wretchedly supplied, and two weeks were spent in getting them in moving order. The cavalry was put in forward motion on August 1, and before long word was received from the Indians that they did not want war and never had, with a request that General Sanborn should meet them in council. Such conference was held on August 18, and the gratifying result was a pledge on the part of the Indians to cease all acts of violence or injury to the frontier settlements and travelers on any lines of travel, and to meet commissioners on behalf of the United

States on October 4, and agree upon terms of perpetual peace. The quiet and security of the southern plains was at once restored, without interruption, during the two following years.

General Sanborn was designated as one of these commissioners on part of the United States, the other members being General Harney, Kit Carson, William Bent and Judge Brown. A treaty was successfully arranged, after which General Sanborn, in November of the same year, was ordered by the President to visit the Indian territory and settle the differences between the several tribes, and restore amicable relations between the late slaves and their former masters, and at the same time settle the disturbances existing in the regions of Fort Smith and Fort Gibson. Arriving in the territory early in December, he found a highly disturbed condition of affairs, but, with characteristic energy and vigor, he succeeded by four months of hard labor in restoring order and establishing a reconciliation among the tribes. As this labor was in a field of events hardly noticed in the excitement attendant upon the close of the war and reconstruction, and as the settlement of these new relations between the Indians and their former slaves forms a new and unique page in American history, an interesting extract from the report of General Sanborn already referred to, is given as follows:

“My first step was to publish in form of a circular the instructions received from the interior department, which set forth fully the object of my mission and the end sought by the government. This circular was distributed to all the government officials and the leading men of the respective tribes of Indians. I followed this up with consultations and councils with the representative men of the respective tribes. No difficulty whatever was experienced in securing absolute freedom and every right from the Creek and - .Seminole natives to their former slaves. These tribes at once recognized them as a band, and allowed them a chief with a seat and vote in their councils, and at once entered

into contracts with them for their labor. Order and good feeling prevailed in these tribes.

“With the Choctaws, Chickasaws and Cherokees the case was different. Each of the tribes protested against their former slaves remaining with them or in their country. But when satisfied that it was the determined purpose of the government to protect these freedmen, either in certain sections of the reservations of the respective tribes that might be especially set apart for them, or wherever they should live on these reservations, their prejudices, though strong, yielded to discretion, and in two months after my arrival in the territory, all seemed to have concluded to sustain the government fully in whatever course it should adopt as to the freedmen of these tribes. Their old slave codes, which were among the greatest obstacles that I had to overcome, as they felt that what was lawful might and ought to be done with impunity, were soon repealed; contracts in writing were made by nearly all who employed Negro labor, or with whom these freedmen lived, and the heart-burnings, bitterness and strife that existed between the two races on my arrival, making the person and property of both insecure, disappeared under the policy of the government in the short space of four months, and the freedom of the black race and the harmony and happiness of both races in that territory was secured.”

Early in April, 1866, General Sanborn had the pleasure of informing the secretary of the interior that he had fully performed the duties and accomplished the mission for which he had been sent into the Indian territory; that satisfactory relations existed between the freedmen and their former masters in that country, and that all further services required by the government could be as well performed by the Indian agents and superintendents as by officers of the army. He was

directed to proceed to Washington, where, on April 30, he was honorably mustered out of a military service of exceptional value, and in which he had shown the possession of all the qualities needed to fit him for any form of authority or responsibility in military life.

General Sanborn immediately returned to the practice of law, reopening his office at St. Paul, and at the same time becoming the senior member of the newly established firm of Sanborn & King, at Washington, D. C. In July, 1878, he retired from the last-named connection. On January 1, 1871, he associated a nephew with him in his practice at St. Paul, the firm's name becoming John B. & W. H. Sanborn, to which, in 1881, another nephew, Ed. P. Sanborn, was added, with no change in the firm's name. That connection has since remained without change.¹⁶

Although busy in his extensive law practice and other material connections, General Sanborn had proved himself too valuable a servant of the public to be long allowed the quiet of private life. In 1867 he was appointed one of the peace commissioners to treat with the hostile tribes of Indians, including the Cheyennes, Comanches, Kiowas, Navajoes, Shoshones, northern Arrapahoes, Crows, and the numerous bands composing the Sioux nation. He was associated in this service with General Sherman, General Harney, General Terry and Senator John B. Henderson. They made a thorough investigation of

¹⁶ Walter H. Sanborn served on the Eighth Circuit Court of Appeals from 1892 to 1928. The earliest biographical sketch of him is George Thomson's "Biographical Sketch of Walter Henry Sanborn" (1892) (MLHP, 2012). For speeches at a testimonial dinner for the Judge by the St. Louis Bar Association in 1927, and a Memorial to him by the Ramsey County Bar Association, see "Walter Henry Sanborn (1845-1928)" (MLHP, 2011-12). The most recent biographical sketch is Thomas H. Boyd, "Walter Sanborn and the Eighth Circuit," 26 *Ramsey County History* 22 (Summer 1991) (MLHP, 2019)

For the memorial to the Judge's nephew by the Ramsey County Bar Association, see "Edward Peyson Sanborn (1853-1934)" (MLHP, 2010).

Judge Walter H. Sanborn's cousin, John B. Sanborn, Jr., served on the Eighth Circuit from 1932 to 1959. For a study of his life and years on the court see, Thomas H. Boyd, "The Life and Career of the Honorable John B. Sanborn, Jr.," 23 *William Mitchell Law Review* 206-310 (1997) (MLHP, 2019). See also "Memorial Proceedings for John B. Sanborn, Jr. (1964)" (MLHP, 2012).

the needs and demands of these tribes, and fixed upon a policy to be pursued by the government towards them, which resulted in a comparative success, because it was economical and at the same time secured reasonable safety to the settlers on the frontier. Out of his knowledge of the red men, as brought forth by experience and viewed under the lens of his abundant common sense and penetrating judgment, General Sanborn early reached conclusions regarding the treatment of the Indian that the Nation would have done well to heed, "all humanity, all economy, all sound policy," said he in a public address, * "require that at this most favorable opportunity the government shall designate certain territories wherein it will gather the Indians and throw around them the strong arm of its power. Here let the government dispense its charity, and always be provided with means to relieve want and starvation. Let the legislative department appropriate a sufficient amount to collect and subsist the Indians on these reservations and make proper improvements thereon. . . . Of all policies towards the Indians, that of war is the most objectionable. Our annual loss of life while at war with them is not less than five hundred, while they lose not over one hundred, and we expend from twenty-five to forty millions of dollars. . . . For less than one-sixth of the expense of war, all the Indians needing subsistence could be supplied; and no rule pertaining to them is so general as that, when well fed, they are always friendly, and when starved, they are always dangerous and hostile. . . . Why cannot a policy so sound and so economical be adopted? Would it not have been better for the government to have had twenty thousand dollars in subsistence supplies at Redwood in 1862, than to have had our fair frontier all desolated, and had forty millions expended in fruitless war? Would it not have been better for the government to have had the treaty made at Laramie in 1851, with the western Dakota and other tribes, giving them an annuity of seventy thousand dollars for forty years ratified, than to have had it cut down to ten years, and at the end of that time

* From an address delivered before the Young Men's Christian association, at Winona, in January, 1869, on "Indians and Our Indian Relations."

compelled to expend twenty-five millions and lose a thousand valuable lives? Would it not have been better for us when the princely territory of the Cheyennes was overrun by the gold-seekers, to have spent two millions in feeding and providing them a home elsewhere, than ten millions in hopeless war, with the loss of eight hundred lives? . . . Let these slaughters cease, or let the government cease to be responsible for them. Let that policy be adopted, and let that department have control of these affairs that will give protection to red, and consequent security to white men. Let our courts be opened to hear and redress their grievances, and the privileges of our naturalization and preemption laws be extended to them. Let them be localized, educated and Christianized. Those Indians who survive the existence of their nations will mingle in the great ocean of European life that is now rolling and surging around them. But little can be hoped for them as a distinct people. The sun of their day is fast sinking in the western sky. It will soon go down in a night of oblivion that shall know no morning. As we remember what they have been and contemplate their early doom, a feeling of subdued sadness steals over us, like that produced" by the fading and falling leaves of autumn, intensified by the knowledge that no spring-time shall renew their fading glory, and no future knows their fame."

General Sanborn has, also, served the public in capacities other than those enumerated above. He has always been a prominent leader in political affairs of his state. In 1872 he was elected to the legislature of Minnesota. On one occasion he came within two votes in the caucus of an election to the United States senate. Again, in 1882, he served once more in the legislature, which position he mainly accepted that he might assist in restoring the credit of the state and placing it upon a sound financial basis, and it was at that session that the \$2,500,000 of state bonds, which had been issued under an act passed in 1858, and stood repudiated from that time, were taken up and canceled and the stain of repudiation removed.

In this connection it will be pertinent to mention the fact that, upon

the resignation of Judge McCreary as circuit judge of the eighth district of the United States circuit court, the name of General Sanborn was so strongly and highly recommended for appointment to that responsible position that President Arthur acknowledged these endorsements to be by far the best, as coming from the bar of that judicial district, but geographical position determined the appointment, and as Kansas was the most central, Judge Brewer of that state was given the position. The recommendations of General Sanborn were unsolicited by him, and were a spontaneous tribute to his personal worth and legal abilities.

In 1881 he was elected president of the St Paul chamber of commerce, which responsible position he so ably filled that he was continued therein by successive elections until 1886. He has been vice-president and trustee of the Bankers' Life Assurance association, and is president of the St. Paul Roller Mill company, for flouring wheat. He is a member of the executive council of the State Historical society, and was commander of the Minnesota commander of the Loyal Legion in 1885. Well, indeed, has it been said that he has "conferred honor upon all of these positions of trust, and has seen the expansion of his adopted city from a moderate frontier village to the splendid proportions of one of the leading commercial and manufacturing centres in the Valley of the Mississippi, with magnificent public buildings, elegant stores, great flouring-mills and warehouses, fine hotels and churches, an admirable system of public schools, and the conveniences of metropolitan life, embraced in street railways, water supply, gas-works and improved streets, through which St. Paul challenges comparison with any other city of its population upon the continent. To all of these enterprises General Sanborn has liberally contributed his energy and capital, and is, therefore, a part of the broad and generous enterprise with which he is surrounded."

In addition to his qualities as a jurist, a law-maker and a soldier, General Sanborn is a thinker and writer who, in many public addresses and otherwise, has shown a literary capacity of superior

order, and to eloquence has added a soundness of judgment and grace of expression that give to his papers and addresses a double value. He is a close student of books, his law and general library constituting a collection of rare value. His life has been one devoted not merely to himself but largely to the good of others, and, while generous and ready with his means in all worthy causes, he has, by industry and keen business sense, amassed an ample fortune which he worthily enjoys. With professional honor of the highest order, he unites many graces of character that have won for him the respect and admiration of the community in which he lives. No better heritage can any man leave for those who shall come after him than may be found in the honorable name that John B. Sanborn will bequeath to his children when his long and useful life shall be brought to an end.

Seelye A. Willson

