

# **CHARLES EDWIN VANDERBURGH**

*Magazine of Western History*  
(June 1888)

BY

**Isaac Atwater**

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## **FOREWORD**

BY

**Douglas A. Hedin**  
Editor, MLHP

I.

**Charles E. Vanderburgh arrived in Minnesota Territory in 1856, one year after being admitted to the bar in New York. He was twenty-seven years old. In 1859 he was elected judge of the Fourth Judicial District. He was re-elected in 1866, 1873 and 1880. In 1881, he was elected to the state supreme court to fill a vacancy caused by the death of his old law partner, Francis R. E. Cornell. He was re-elected in 1886. He was defeated in the election of 1892, and left office in January 1894. He died in Minneapolis on March 3, 1898 at age sixty-eight.**

**The following profile of Vanderburgh is the last of a four-part series titled the "Territorial Bench of Minnesota" published in *Magazine of Western History* in 1887-1888. Vanderburgh, however, never served on a territorial court. The *Magazine's* editor is responsible for the blunder.**

**The profile is also unusual because it does not mention one of his most famous rulings, made only a few months after he became a judge. He served as a trial judge on the district court for 22 years, and issued thousands of ruling, and as an associate justice on the supreme court for 13 years, wrote almost 800 decisions;<sup>1</sup> yet, in one of those many ironies that seem to permeate court histories, he may be remembered most for a decision that he never reduced to writing, that exhibited courage, that was, at bottom, a controversial political decree—the liberation of a slave on the eve of the Civil War. Here is Hiram Stevens’s account of this extraordinary case:**

**But with the progress and development of the discussion over the slavery question during the decade from 1850 to 1860 abolitionists were made in Minnesota, and some of them were zealous and strenuous in their belief. The troubles in Kansas from 1854, the Dred Scott decision in 1857 and the John Brown raid on Harper’s Ferry in 1859 stimulated them to stronger faith in their notions, and the presidential canvass of 1860 made some of them fairly fanatical.**

**In August, 1860, in the full tide of the political campaign, and when the Winslow house, in Minneapolis, was well filled with guests—many of them from the south, accompanied by their black bond-servants—a few of the radical anti-slavery men of the town determined to make “a**

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<sup>1</sup> Russel O. Gunderson, *History of the Minnesota Supreme Court* §XII (nd)(“Judge Vanderburgh’s work while on the supreme court bench is reflected in volumes 29 to 56 of the Minnesota Reports, which contain the majority opinions written by him in 791 cases, plus 7 dissents.”).

**demonstration for the cause of freedom” and inform the sojourning black people of their legal rights. The plan was originated and partially executed by W. D. Babbitt, Wm. S. King, and F. R. E. Cornell.**

**A slave woman about thirty years of age, named Eliza Winston, the widow of a free negro who had died in Liberia, had passed from her original owner, one McLemore, to a Mr. Gholson, of Memphis, Tennessee, who had “pawned” her (as she expressed it) to Col. R. Christmas for a loan. Eventually she became the property of Col. Christmas, who owned an extensive plantation in Mississippi, on which were a large number of slaves. She was made exclusively a house servant, a maid for her mistress and a nurse for a child, and her lot was not a hard one. She was much attached to her mistress, who was an invalid, and who had been brought to the cooling lakes and balmy and salubrious air of Minnesota to escape the heated term in the south. Her only discontent was that her husband had owned a house and lot in Memphis which upon his death, had she been free, would have descended to her in fee simple. But under the laws a slave could not own property per se in fee. His belongings were the property of his master. But somehow, perhaps under a particular law of Tennessee, Colonel Christmas claimed the property in Memphis formerly owned by Eliza’s husband and collected the rents, and this she did not like. She wanted the money herself.**

**When in August, 1860, the Christmas family, with Eliza, had been sojourning in Minneapolis and in their summer cottage at Lake Harriet for some weeks, the bond-woman made complaint of her condition. She asked a negro barber's wife if there were not white men in the place who would assist her in securing her freedom. The barber's wife consulted a white woman, and very soon Babbitt, King and their associates were up in arms to "deliver their fellow creature from bondage." A writ of habeas corpus was sworn out about August 21st by Mr. Babbitt and issued by Judge Vanderburgh, then of the Hennepin district court, and given to a deputy sheriff to serve upon Eliza at the Christmas summer home at Lake Harriet.**

**About twenty men made an ostentatious and ridiculous display of their zeal in the cause of freedom by arming themselves with shotguns and revolvers and riding with the deputy sheriff as a self-appointed posse when he went out to the lake to serve the warrant. At the time the only inmates of the Christmas cottage were the invalid Mrs. Christmas, her little child, and Eliza, Colonel Christmas being in Minneapolis. The other cottages in the neighborhood were similarly tenanted. It was impossible to offer any resistance to the authorities had such a thing ever been contemplated.**

**Colonel Christmas and his family had been warned that a movement was on foot to take his slave woman from him, but the only efforts he made to thwart it were to tell Eliza that the 'abolitionists' were after her, and that when she**

**saw some suspicious looking men coming toward the cottage she must go to a patch of brush near the house and secrete herself until they went away. Two or three times she had done this, and she was on her way to the thicket when the deputy sheriff and his formidable posse apprehended her.**

**The rescued woman was taken back to the town and into Judge Vanderburgh's court in great triumph. Mr. Cornell, who has been termed "the most brilliant lawyer that ever practiced at the Hennepin county bar," appeared for the petitioners for the writ and the slave woman, and a lawyer named Freeman, from Mississippi, represented Colonel Christmas. There was a large and excited crowd in the court room, and it is said that the calmest man in the room was Colonel Christmas, "who," even King's radical and denunciatory Atlas newspaper said, "behaved like a perfect gentleman all through the proceedings."**

**Mr. Cornell, in behalf of the slave woman, was expected to make an effort of his life in arguing for her release, but he contented himself with reading the territorial statute that there should be no slavery in Minnesota. Mr. Freeman spoke for the restoration of the woman to her master, arguing that under the Dred Scott decision she was but temporarily in free territory and therefore not entitled to her absolute liberty. Judge Vanderburgh decided the case very readily. In a few sentences he informed Eliza that she was not a slave, but free to go where and**

**with whom she pleased. It is to be regretted that the judge made no written record of his decision.**

**Much excitement prevailed among the bystanders when the decision was rendered. Colonel Christmas spoke to Eliza and asked her if she would not like to go back home and take care of her mistress until she got well, “and then you may go if you wish to,” said the colonel. Eliza answered: “Yes, I’ll go back, but not to-day; I’ll come out to-morrow.” The colonel said: “All right; come when you please—or don’t come at all if you don’t want to.” He then handed her ten dollars, saying that if she wanted any more money she knew where she could always get it. He then bade her good-bye and walked nonchalantly away. A southern friend said: “Well, colonel, you have lost your n--- ---;” and the philosophic colonel replied: “Yes, I reckon so; but I have plenty more of them and it’s all right.”**

**The petitioners and their friends gathered around Eliza and escorted her to a carriage, in which she was driven to Mr. Babbitt’s residence.<sup>2</sup>**

**There are differing accounts as to what happened to Eliza Winston next. According to one, she was “sent” to Canada but after a short while, she wrote to her “Minneapolis**

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<sup>2</sup> Hiram F. Stevens, ed., *1 History of the Bench and Bar of Minnesota*, 30-36 (1904). For other accounts of this trial, see “Charles Edwin Vanderburgh” in Marion D. Shutter & J. S. McLain eds., *Progressive Men of Minnesota* 342 (1897); Return I. Holcombe & William H. Bingham, *1 Compendium of History and Biography of Carver and Hennepin Counties, Minnesota* 33, 78 (1915); William Watts Folwell, *2 A History of Minnesota* 69-70 (Minn. Hist. Soc., 1956) (published first, 1921); Marion Daniel Shutter ed., *1 History of Minneapolis: Gateway to the Northwest* 483-86 (1923); Joseph W. Zalusky, “Eliza Winston: Slave Woman in Minnesota,” *Hennepin County History* 17-18 (Summer 1964).

friends” asking for money to buy a home, but they “were disgusted with the letter and refused to send the money. A few months later [she] returned to Colonel Christmas and was afterward freed by the Emancipation Proclamation of President Lincoln.”<sup>3</sup> In contrast, William D. Green, a professional historian who meticulously examined contemporary newspaper accounts of the case as well as the burgeoning literature about the lives of freed slaves in the antebellum North, concluded that the subsequent events in Winston’s life cannot be “definitely” chronicled and “remain unknown.”<sup>4</sup>

## 2.

Another profile, published in 1944, was written by Nellie E. Hardy, the daughter of a close friend of Vanderburgh. It reveals more about his life outside the law. He experienced great sadness in his family life: his first wife died after less than six years of marriage and both of his daughters predeceased him. He may have found consolation in religion for he was very active in the affairs of the Presbyterian Church. Here is Hardy’s tribute:

**Charles E. Vanderburgh was born at Clifton Park, Saratoga County, New York of Dutch ancestry. His grandfather stood for the defense of this country in the Revolution. He fitted for college in Courtland Academy, Homer, New York, graduating from Yale in 1852. For a time he was principal of an academy at Oxford, New York,**

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<sup>3</sup> Marion Daniel Shutter ed., 1 *History of Minneapolis: Gateway to the Northwest* 486 (1923). Joseph Zalusky accepts this version of Winston’s afterlife, note 2, at 18.

<sup>4</sup> William D. Green, “Eliza Winston and the Politics of Freedom in Minnesota, 1854-1860,” 57 *Minnesota History* 116, 119-120 (Fall 2000); “The Summer Christmas Came to Minnesota: The Case of Eliza Winston, a Slave,” 8 *Law & Inequality: A Journal of Theory and Practice* 151 (1990); see also Green’s *A Peculiar Balance: The Fall and Rise of Racial Equality in Early Minnesota* 97-101 (Minn. Hist. Soc. Press, 2007).

**while he pursued his legal studies. In 1858 he was admitted to the bar, and the following year came to the young town of Minneapolis.**

**He entered partnership with F. R. E. Cornell. The following year in 1860 he married Julia M. Mygatt of Oxford, New York. His superior attainments and ability were recognized by the community when in 1859 he was elected Judge of the Fourth Judicial District. He was the friend of the farmer and working man, valuing the esteem and friendship of the common people above that of the wealthy.**

**Shortly before the Civil War, the Falls of St. Anthony was a favorite resort for Southern families, who came with their slaves to summer at the Winslow House, which stood on the site of the Exposition Building, now torn down. The action of Judge Vanderburgh in freeing a slave woman, Eliza Winston, the property of a wealthy visitor, at the Winslow House in the face of intense opposition, proved his sympathy for the lowly, and his fearlessness in the discharge of what he felt to be his duty.**

**In 1863 Mrs. Vanderburgh died, leaving two children, William Henry and Julia M. (both deceased). This young daughter met her death under very distressing circumstances falling through a trap door in the floor that led to a cistern which the maid had carelessly left open.**

**Judge Vanderburgh united with the Westminster church in 1862 and at that time, was baptized by**

**the Rev. Ashabel Green. For several years he was Superintendent of the Sabbath School and taught the young men's Bible class. The field that was his especial care was the Franklin Avenue Presbyterian Church which he helped organize in the Lutheran Theological Seminary (now called Augsburg). This was a mission of Westminister.**

**In 1873 he was married to Anna Culbert of Fulton County, New York. The only child of this union was a very beautiful daughter Isabella. Her death in 1893 at the age of eighteen was a crushing blow to Judge and Mrs. Vanderburgh who went abroad shortly after. I have letters the Judge wrote my father describing the beautiful natural scenery of the Emerald Island, which was my fathers native land. In 1881 he was elected to the Supreme bench of the State. His sympathy and benevolence was for the feebler churches. He was a large contributor to Macalester College also Albert Lea college. He was absolutely incorruptible and no Corporation nor King could hope for any favoritism at his hands and his Godly life and good deeds will live on in the hearts of all who remember him.<sup>5</sup>**

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<sup>5</sup> Nellie E. Hardy, "Biographical Sketch of Charles E. Vanderburgh," 4 *Hennepin County History* 6 (April 1944). Other biographical profiles of Vanderburgh appear in Clark Bell, "Minnesota Supreme Court," 19 *The Medico-Legal Journal* (MLHP, 2010)(published first, 1899); Marion D. Shutter & J. S. McLean eds. *Progressive Men of Minnesota* 342-3 (1897); Charles E. Flandrau, I *Encyclopedia of Biography of Minnesota* 198-9 (1900). For his bar memorial, see *Proceedings in Memory of Associate Justice Vanderburgh*, 71 Minn. xxi (1899), reproduced in *Testimony: Remembering Minnesota's Supreme Court Justices* 124-131 (Minn. Sup. Ct. Hist. Soc., 2008).

### 3.

**The article that follows was printed on pages 169 and 170 in the June 1888, issue of *Magazine of Western History*. The etching of Vanderburgh is in the original (he was an associate justice of the supreme court at the time). The MLHP has reformatted this article, enlarged the type size to make it more readable and corrected the title on the first page. A page break is added. The author's punctuation and spelling are not altered. Otherwise it is complete.**

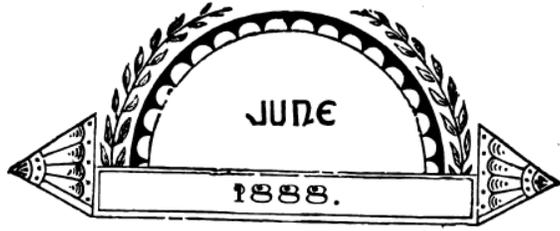
**The author of the article is not listed in the article, though it was written most certainly by Isaac Atwater, who wrote the first two installments and most of the third.**

**A profile of Vanderburgh in the first volume of *History of Minneapolis, Minnesota*, edited by Isaac Atwater, published in 1893, is posted in the Appendix. ■**

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*Cha. F. Chandler*

**8 Magazine of Western History (June 1888)**

*THE TERRITORIAL BENCH OF MINNESOTA—VANDERBURGH.*

THE TERRITORIAL BENCH OF MINNESOTA.

IV.

CHARLES EDWIN VANDERBURGH.

The position of prominence held for so many years by this well-known and high-minded jurist, and the influence for good he has long wielded in a community with which his lot was so long ago cast, have not been the results of accident or some happy chance, but are the legitimate rewards of useful labor, innate integrity and an ability which was one of the legacies he received from an honorable and patriotic ancestry. The family into which he directly traces his ancestral line came from Amsterdam, Holland, and settled in Dutchess county, New York, more than a generation before the old French war. One member of that family, the grandfather of the subject of this sketch, was a soldier of the patriot army in the War of the Revolution, and at its close removed to Saratoga county, New York, where a son was born to him in 1800. That son, Stephen Vanderburgh, was wedded to Maria Calkins, and to them, on December 2, 1829, at Clifton Park, Saratoga county, New York, was born the subject of this sketch. In 1836, when the boy was but seven years of age, the family removed to Marcellus, Onondaga county, in the same state.

The early days of the youth were passed much after the fashion of the average American boy in those days. He

**worked a portion of the time upon his father's farm, attending the district school in winter, until he was seventeen years of age, when he commenced school teaching, in which he was engaged during the two succeeding winters. Meanwhile, he pursued his studies industriously at home, for the purpose of fitting himself for college. From 1846 to 1849 a portion of his time was spent at Cortland academy, at Homer, New York, in still further preparation. In the fall of the year last named he entered the sophomore class of Yale, from which college he graduated in 1852.**

**In the year following, Mr. Vanderburgh became principal of Oxford academy, at Oxford, New York. In the same year, having long since determined to devote himself to the profession of the law, he commenced study in the office of Henry R. Mygatt, esq., one of the foremost lawyers of the state. He was admitted to the bar in January, 1855, but remained in the office of Mr. Mygatt until the following autumn, when he went to Chicago, where he spent the winter. His impressions of the west were such, and he discerned so clearly that a great and immediate season of growth and prosperity was before it, that he was confirmed in his already formed purpose to make some portion of it his permanent home and field of life labor. In April, 1856, he went to Min[170]nesota in quest of a suitable location, and unhesitatingly decided in its favor, in preference to any place he had visited. He settled in Minneapolis, and during his first three weeks of his residence there was employed in the office of the register of deeds, for which labor he was paid forty dollars, which was the first money he ever earned in the state, and which came very acceptable at that time. At the conclusion of that period of time he formed a partnership with Judge Cornell, and entered upon the practice of the profession in which he has won such fame and honor. A large and successful business rewarded the labors of**

**the new firm, both in the courts and before the United States land office. This firm continued in existence until the fall of 1859. In that year the qualities and abilities of Mr. Vanderburgh had become so well known that he was elected to the office of district judge. His district at that time extended north and northwest of Fort Snelling to the boundary of the state; out of it several districts have since been apportioned.**

**Judge Vanderburgh continued upon the bench of the district court until November, 1881, when he was elevated to the high office of associate justice of the state supreme court, which position he still retains.<sup>6</sup> The simple fact of his being continued on the bench for so long a period is a high compliment to his judicial qualifications, and renders comment superfluous. The leading members of the Minnesota bar speak in the highest terms of his ability and good judgment, especially in cases of equity, and of the happy faculty with which he commands such language in his**

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<sup>6</sup> **Results of election for Associate Justice on November 8, 1881 (top 3):**

**William Mitchell (inc).....102,373  
 Daniel A. Dickinson (inc).....101,413  
 Charles E. Vanderburgh.....65,015  
 Greenleaf Clark (inc.).....38,582  
 Write-in.....117**

**Results of election for Associate Justice on November 2, 1886 (top 3):**

**William Mitchell (inc).....195,540  
 Daniel A. Dickinson (inc).....193,945  
 Charles E. Vanderburgh (inc).....185,938  
 C. E. Shannon.....8,927  
 J. McKnight.....8,873  
 J. W. Cochran.....8,863  
 Write-in.....58**

**Results of election for Associate Justice on November 8, 1892 (top 3):**

**William Mitchell (R, D. & Pro, inc).....165,541  
 Daniel Buck (D & Peoples').....113,194  
 Thomas Canty (D & Peoples').....109,166  
 Daniel A. Dickinson (R & Pro, inc).....101,148  
 Charles E. Vanderburgh (R & Pro, inc)..100,064  
 William N. Davidson (Peoples').....42,084**

**decisions as render them clear, concise and easily understood. Many of his legal opinions on important questions have been republished in leading law journals of the country. In politics, Judge Vanderburgh is a Republican, and was elevated as such, but he takes no active part in politics and pays little attention thereto.**

**Judge Vanderburgh was married in Oxford, New York, on September 2, 1857, to Julia Mygatt, the daughter of William and Caroline Mygatt. She died on April 23, 1863, leaving two children, a son, William Henry, born in 1858, and Julia M., born in 1861. The latter was accidentally drowned at Minneapolis, in the fall of 1871, while the judge was absent at court. The son, a graduate from Princeton college, is a member of the Minneapolis bar. On April 15, 1873, Judge Vanderburgh was again married, to Miss Anna Culbert, daughter of the late John Culbert of Fulton county, New York. They have one child, a daughter, born in 1874.**

**Judge Vanderburgh has long been recognized as one of the leading church and Sunday-school workers of the city. He has been a member of the Presbyterian church since 1862, as an elder in that church, and has been for many years a superintendent and teacher in the Sabbath-school, a work near to his heart, and in which he is at present very active and deeply interested. In many other ways he has made himself useful to the community with which he has been so long identified. ▪**



## Appendix

Five years after this sketch appeared in the *Magazine of Western History*, another was published in the first volume of *History of Minneapolis, Minnesota*, edited by Isaac Atwater. Here it is:

**CHARLES E. VANDERBURGH.** The first resident of this city elected to a seat on the bench of the district court was Charles E. Vanderburgh in 1859. Judge Vanderburgh was born December 2nd, 1829, in Saratoga county, New York. Later his parents removed to Onondaga county in the same state. He was brought up on a farm, laboring in the summer and attending district school in the winter, until he entered upon his preparation for college. He fitted at Cortland Academy, Homer, New York. This academy, at the time he studied there, was known as among the first, if not the first, as a preparatory school for fitting men for college, and was noted for its thorough instruction. Mr. Vanderburgh entered at Yale College in 1849, sophomore year, and graduated in 1852.

The next year he was chosen principal of Oxford Academy, at Oxford, New York. The same year he commenced the study of law in the office of Henry R. Mygatt, one of the ablest lawyers in the state. He was admitted to the bar in 1855. The next year he came to Minneapolis.

Soon after his arrival he formed a partnership with F. R. E. Cornell, Esq., who had arrived here a year or two previously, and was afterwards a Justice of the supreme court. From the first the

**firm took a leading part in all the important litigation in the county, as well as considerable in adjoining counties. For commanding legal ability and integrity it is not too much to say that no firm in the state ever stood higher.**

**At the annual election in 1859, Mr. Vanderburgh was elected judge of the Fourth Judicial District, of which Hennepin county formed a part. This position (by successive re-elections) he held for over twenty years. It was during the time when the law was to a considerable extent unsettled (by decisions of the supreme court of the state), not only on questions of practice, but on fundamental questions of law, where there was a wide difference in the decisions of different states. Here his thorough legal training, close investigations and discrimination in the application of principles, especially in equitable law, almost invariably led him to sound conclusions, and his decisions were seldom reversed. The strongest proof of the ability with which he discharged the duties of the office he so long held is found in the fact that in 1881, when a vacancy occurred in the supreme court by the death of Judge Cornell, he was elected to fill that [432] honorable position. He is still a member of that court, and still hardly past the prime of life, has a reasonable prospect of many years of usefulness before him. His whole judicial career has been characterized by untiring industry, impartiality, integrity and unusually clear conception of the application of legal principles and authorities, and especially those pertaining to equity cases.**

**Judge Vanderburgh has been married twice — first in September, 1857, to Julia M. Mygatt, of Oxford, New York. She died in 1863, leaving two children, a son, William Henry, and a daughter, Julia M. The latter was most sadly and unfortunately drowned in Minneapolis in 1871. His son graduated from Princeton College and is a member of the Minneapolis bar.<sup>7</sup> In April, 1873, Judge Vanderburgh married Miss Anna Culbert, daughter of John Culbert, Esq., of Fulton County, New York. They have a daughter born in 1874.**

**While Judge Vanderburgh, for more than thirty years, has been mainly and closely devoted to the discharge of his duties, he has always manifested a deep interest in all measures tending to the moral, educational and material advancement of the city of Minneapolis. He has always been a consistent Republican, though not of the narrow and machine order, nor farther than he can see his party promoting the good of the greatest number. Of course his position has removed him from active interference in political contests.**

**For many years he has been an Elder in the Presbyterian church, and also Superintendent and teacher in the Sabbath school, in which he has taken a deep interest and done most efficient work. He has made important benefactions to educational and religious institutions, and to deserving young men, needing assistance in acquiring an education, he is ever ready to give**

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<sup>7</sup> The judge's son, William Henry Vanderburgh (1858-1938), ran unsuccessfully for a seat on the Minnesota Supreme court in each of the ten elections from 1918 to 1936. See Douglas A. Hedin, "Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2018," 46-55 (MLHP, 2019).

**advice and material aid. Removed as he has been by reason of his position from the active business life of the city, his silent influence for good has been felt in almost every department thereof. ▪**

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**Posted MLHP: September 1, 2020.**