

“ Bench and Bar of Duluth ”

by

Consul Willshire Butterfield

FOREWORD

by

Douglas A. Hedin
Editor, MLHP

The following article appeared in the March, 1889, issue of the *Magazine of Western History*. It was one of a series of articles in this magazine on lawyers and jurists in nineteenth century Minnesota.

It was written by Consul Willshire Butterfield, a respected historian of that era. Unlike Isaac Atwater and Charles Flandrau, who wrote most of the earlier articles, Butterfield did not have personal knowledge of the events he writes about. The three biographical profiles in his article are based on interviews, not personal memories.

Butterfield was born in Colosee, New York, in 1824.¹ In 1834, his parents moved to Seneca County, Ohio. Butterfield wrote a history of that county which appeared in 1848, the first of dozens of articles and books he would publish in the next fifty years. In 1849, he traveled to California, where he began studying law; he returned to Ohio in 1851, finished his studies, and began practice in 1855. He stopped in 1875, and spent the rest of his life writing history. He edited two volumes of correspondence between George Washington and officers serving under him during the Revolutionary War, wrote histories of the state of Wisconsin and the University of Wisconsin, and published studies of explorers John Nicollet and Stephen Brule, among

¹ This sketch of Butterfield's life is based on W. H. Hunter, "Consul Willshire Butterfield—Historian," 9 *Ohio History* 177-188 (October, 1900).

other books. He served as editor of several journals in the early 1880s, and from 1886 through 1889, he was on the staff of the *Magazine of Western History*, writing biographical sketches and history articles. The article that follows is one of the last he wrote for that journal. He died in Omaha, Nebraska, in September, 1899.

A tribute to Butterfield, published the year after his death, described his work ethic and standards of research:

While not so graphic in style as Parkman, he was always accurate. He never printed as a fact in history any incident or statement until he had examined every authority to ascertain the truth. His style was direct; he never employed a superfluous word and his work was always comprehensive.

A profound historical scholar, an indefatigable worker, he left as his monument numerous books invaluable to the student and the reader. Mr. Butterfield was a genius; he never worked for money. The word money seldom came to his mind; his achievement was not the accumulation of wealth. His masterful efforts directed along other lines of human endeavor would have procured a fortune, as the world understands fortune. But he wrote history as a patriot performs a service for his country, without pay, as the world understands pay. He devoted his life to work that few men could perform. Working night and day, he accomplished much, and the world of letters is richer because he lived. He was one of those sweet souls whose devotion to patriotic duty was a sacrifice of pleasure, as the world knows pleasure. He never made money, for his works were not of the popular-novel character demanded by the mass of those who read history. Indeed it took much of his time to correct the errors set forth by men who wrote history for the money results.²

Butterfield deviated from these habits when writing the following article—it certainly is not a “comprehensive” history of the Duluth bar and bench. It consists largely of profiles of one judge and two lawyers.

Butterfield begins with a short, disorganized history of the St. Louis County

² *Id.* at 178-79.

District Court in which he quotes entries from the first journals of the clerks of the district courts in 1858 and 1859. This is one of the few times in the series of articles on Minnesota's legal history in the *Magazine of Western History* where an author cites original sources. Butterfield views these early proceedings as curiosities—he calls them a “hotch-potch”—and then moves abruptly to quoting reminiscences of Judge Ozora P. Stearns, who was appointed to the bench by Governor Cushman Davis in 1874. In a striking acknowledgment of the limitations of lawyers practicing in northern Minnesota in the early 1870s, Stearns admitted:

"When I went on the bench of the Eleventh district," said Judge Stearns, recently, "there was not a full set of 'Minnesota Reports' west of Duluth, and there was not a court-house in the district. We held court where we could— in churches, in stores, school-houses, and sometimes in places not quite so respected. I remember at Detroit once we used a saloon, a sort of double-barrelled saloon that had the liquors in the front room and another room back. We took hold and moved the liquors into the back room and held court in the front—close by—a very convenient arrangement for some of the attorneys. As we had no libraries or books, only what we carried in our hands, it was a rough kind of justice we dispensed, but I am glad to say, looking back over the short space that has shown so marvelous a development, that it was, I believe, a fair justice that we administered. When we had no law we simply did the best we could and relied on our hearts and our heads to do the right and just thing, and to reach just equity between man and man. Mr. Comstock used to say that there was no lawyer among us who knew enough to take an appeal, and therefore ours was a court of last resort."

In contrast, at this very time, lawyers in Minneapolis and St. Paul were advancing sophisticated arguments, grounded on foreign case law, in their appeals to the state supreme court. For example, both sides in *Cahill v. Eastman*, 18 Minn. 324 (Gil. 292) (1872), where the Minnesota Supreme Court adopted the strict liability principles of *Rylands v. Fletcher*, cited numerous rulings of courts in other jurisdictions.³

³ *Fletcher v. Rylands*, 3 H. & C. 774 (Exch. 1865), *rev'd*, L. R. 1 Exch. 265 (Exch.Ch.

According to Stearns, in 1874, when he was appointed a judge, there was not even a complete set of the Minnesota Reports “west of Duluth” in the Eleventh Judicial District. At that very moment, lawyers in St. Paul and Minneapolis were building sizeable law libraries. Take, for example, William Lochren, one of the lawyers for the respondents in *Cahill v. Eastman*. It was not uncommon for Lochren to write publishers on the east coast ordering numerous law books at a time, including multi-volume treatises.⁴ Fifteen years after statehood, the resources available to lawyers and judges in different sections of the state were markedly uneven.

Most of Butterfield’s article consists of sketches of the lives of Judge Stearns, Daniel G. Cash, and Josiah Davis Ensign. He obviously interviewed these men, and his profiles resemble oral histories in which the subjects recall old adventures.

There are long passages about Stearns’ youth, a trip to California during the gold rush, his struggles to get an education, battles during the Civil War, but almost nothing about how he practiced law and held court in post-bellum Minnesota. None of this is surprising. It is something that repeats itself in every generation, over decades, centuries, millennia—old men telling stories about the adventures of their youth. Those who served during the Civil War like Stearns and Cash—or any war for that matter—were transformed by their experiences. And recollections of the battlefield are

1866), *rev’d*, L. R. 3 H. L. 330 (1868). According to Dean Pound, Minnesota was the second state to follow *Rylands v. Fletcher*. Roscoe Pound, *Interpretations of Legal History* 108 (New York: The Macmillan Co., 1923). Massachusetts was the first.

In the 1870s, authorities cited in the briefs of the parties were listed in the Minnesota Reports preceding the court’s decision. Representing the appellants, David A. Secombe and James Gilfillan cited one decision of the Minnesota Supreme Court and seven foreign authorities while William Lochren and William W. McNair, representing the respondents, cited over twenty foreign cases including “*Fletcher vs. Rylands*, 1 Law Rep. Exch. 265; *Rylands vs. Fletcher*, 3 Law Rep. Exch. 352,” three treatises, but not a single Minnesota case. See 18 Minn. 326. In his opinion for the court, Chief Justice Ripley exhibited a familiarity and ease with English case law, often mentioning an English jurist by name (i.e., Lord Cranworth, Baron Bramwell, Vice-chancellor Wood, etc.)

⁴ E.g., letter from William Lochren to William Gould, a New York publisher, dated April 22, 1867, in Lochren Papers, Box 1, Minnesota Historical Society, St. Paul, Minnesota. By this letter, Lochren ordered *New York Reports* (vols. 28-34), *Abbott’s Digest* (7 vols.), *Caines’ Cases* (2 vols.), *Caines’ Reports* (3 vols.), *Coleman & Caines’ Cases*, *Johnson’s Cases* (3 vols.), and *Parsons on Partnership*.

usually more interesting than those of the courthouse.

It is part of human nature that we look back on our lives for signs of what we eventually become, and so Butterfield quotes Stearns as announcing when he is about twelve years old, "I will have a liberal education and be a lawyer." Stearns directed Butterfield to episodes in his military career, which he may have believed were omens of his future as a jurist. "In his command the colonel had civil as well as military law to administer," Butterfield wrote, adding that a man once complained to Colonel Stearns that a "minister refused to pay a gambling debt, and wanted him to enforce it. He said he thought a minister ought to pay such debts."

Butterfield wrote that Stearns "graduated from the law department of the university [of Michigan] in 1860. During the whole time, from 1848, when he started for himself, he never rested from study or work more than ten days at any one time, and he did not average five days' rest a year." There must be some exaggeration in Stearns' claim that he worked without a break for such long spells, but probably not much. When reading the autobiographies of lawyers who began practicing in Minnesota from the 1850s to the 1880s, what is striking is how hard they worked to become lawyers. They endured physical hardships and were deprived of the comforts later generations of law students and members of the bar take for granted.

In his article on the "Territorial Bench of Minnesota" in the December, 1887, issue of *Magazine of Western History*, Isaac Atwater noted that a judge in territorial days was barred from engaging in politics.⁵ Yet there

⁵ Isaac Atwater, "Territorial Bench of Minnesota," 7 *Magazine of Western History* 207 (December, 1887). After he left the bench in 1891, Stearns became reengaged in politics. After his death, *The Penny Press*, an organ of the free silver movement published in Minneapolis, referred to his work for the cause: "The friends of the free coinage cause in Minnesota remember him as a first member of the Minnesota bench to espouse their cause. It was his influence with that of Senator Morgan on the platform committee of the Republican convention in 1894, that committed that platform so strongly to silver, that the gold press of the state repudiated it. It was in large measure the influence of his sterling integrity and sound judgment, that built up in Duluth and the Sixth congressional district that strong free coinage sentiment which has enabled Congressman Towne to take his courageous stand and in doing it retain the support of his district. The country loses seriously in the death of Judge Stearns." *The Penny Press*, June 3, 1896, at 4.

was no similar barrier to a judge from engaging in outside commercial activities. While serving as a judge, Stearns held directorships in five business corporations in Duluth as well as the Masonic Temple.⁶ Butterfield seems impressed by this as he concluded his sketch with the comment that “Judge Stearns has been reasonably successful in business.”⁷

In 1891, two years after Butterfield’s article appeared, Stearns suffered a stroke, forcing him to retire. In the fall of 1895, he moved to San Diego, California. There he died of pneumonia on June 2, 1896. The *Duluth Evening Herald* reported the news on its front page:

NO MORE

**Judge Ozora P. Stearns Died
In California This
Morning.**

**No Particulars Received but
It was Probably Rather
Sudden.**

**Sketch of His Eventful
Career—Court Adjourned
Out of Respect.**

⁶ In other respects Stearns avoided appearances of partiality. A flattering profile, published in 1879, concludes, “He is a Master Mason, but since going on the bench has ceased to be an active member of the fraternity, lest his relations to some, as a brother Mason, might seem in some degree to interfere with preserving strict impartiality as a judge.” “Hon. Ozora P. Stearns,” in *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men: Minnesota Volume 120*, 122-23 (New York: American Biographical Publishing Company, 1879).

⁷ One of Stearns’ business investments was in the Hoquiam Water Company, which was formed to deliver water to the town of Hoquiam, in the state of Washington. One of the principals in this company was Chester A. Congdon, a prominent and very wealthy Duluth lawyer. Roy O. Hoover, *A Lake Superior Lawyer: A Biography of Chester Adgate Congdon* 38-39 (Duluth: Superior Partners, 1997). Some of Stearns’ investments went sour. An article in the *Minneapolis Journal* reporting Stearns’ death concluded, “During the later days of altitudinous real estate the judge made a great deal of money in Duluth property, part of which has since been lost in some unfortunate outside acreage speculations.” *Minneapolis Journal*, June 2, 1896, at 2.

At 11 o'clock this morning Victor Stearns received a telegram announcing the death of his father Judge Ozora P. Stearns in California, at his place a few miles from San Diego. The dispatch contained no news of the manner of his death, but it was probably rather sudden. Judge Stearns has never been a well man since he was afflicted with a stroke of paralysis while holding court in the fall of 1891. He seemed to recover to a certain extent, but it left him anything but strong. He had spent a winter in Florida and two in California. He enjoyed better health in the latter place and determined to remove there, which he did last fall. Early this year it was plain that his health was failing and he had several bad attacks. A few weeks ago grave fears were felt, but he seemed to recover. A letter received a few days ago brought the intelligence that he was confined to his bed. Nothing further was heard until the telegram came this morning.

Judge Stearns was not only an old resident of Duluth, but of Minnesota, and no man ever held a greater measure of public respect. In manners he was plain and outspoken, in his business life he was the embodiment of honesty and integrity, and his judicial career was marked for ability and learning. His life has been a busy one, and eventful one, and he has been the servant of the people for many years. Its close finds him with a circle of friends as wide, as true, and as strong as it was ever the lost of any one man to possess.⁸

The article went on to describe the judge's service during the Civil War, and his postwar career. Only one paragraph referred to his two decades on the bench: "In 1872, he removed to Duluth, and in 1874 was appointed judge of the Eleventh judicial district, to which office he was three times elected without opposition."⁹ An editorial in the *Duluth Evening Herald* on June 3, 1896, mentioned Stearns' judgeship, but expressed more appreciation for his business and civic activities:

Although his time was largely occupied with his duties on the judicial bench of this district, Judge Stearns took an active part in all matters pertaining to Duluth's advancement and was

⁸ *Duluth Evening Herald*, June 2, 1896, at 1.

⁹ *Id.* at 3.

interested in numerous enterprises which added to the city's business and population. The people of this county would have been glad to send him to congress from the old Fifth district, but the western end of the district always opposed recognition of Duluth's claims.¹⁰

On June 3, 1896, the *Duluth News Tribune* carried a long editorial eulogizing Stearns:

JUDGE OZORA P. STEARNS

The death of Judge Ozora P. Stearns yesterday at San Diego, Cal., truly marks the passing away of one, who up to three years ago, was Duluth's foremost citizen. At that time unfortunately stricken with paralysis, of necessity, he was compelled to quit work. With characteristic energy, in his last days, he sought California to see if restoration could not be had, but indecorous death has claimed him as his own. What true or faithful history of the city of Duluth, its more recent rise and progress could be written with the name and efforts of Judge Stearns left out? He was a man of primal force and power. Born in New York 65 years ago, a farmer lad, he early learned that character, success and manly independence are best founded and take root in virtue. How typified in him and his manly, brave, eventful life, are the true Yankee characteristics. It is said he taught school, split rails, earned money to take him to California, mined and after varied vicissitudes, graduated from the literary department of Michigan University at 27 and two years later in its law department. Here then in panoramic view is the picture from which one can see the explanation of his lusty life.

Then came he to Minnesota. War quickly followed. Such a heroic nature could no more be confined, during such a contest, amid the cobwebs of a country law office, than can America's best citizen, an emigrated Yankee, be confined to one particular locality, but must know all and what is going on in the world. He raised a company of volunteers. Here again we see the man. He was at Manassas, in the dreary Wilderness

¹⁰ *Duluth Evening Herald*, June 3, 1896, at 4.

campaign, “whether it took all summer” or not, and at Fort Fisher. Wherever duty called him, there was this soldier and lawyer in embryo.

In such scenes as these, were knit the qualities of the man, such qualities as go to make great communities. He came out of the war a colonel. In 1866 he was for a second time chosen county attorney of Olmstead county and it was residing there he formed a partnership with the now Chief Justice Start. In 1867 he was a register in bankruptcy, and, in 1868, came near the nomination for congress. In 1871 he was chosen a United States senator for an unexpired term. In 1872, he came to Duluth and early saw her future. In 1874, he was appointed district judge, a position he held for nearly 20 years, being thrice elected. In this last position he won prominence which extended far beyond the confines of his district and he was always looked upon as one of the strongest and most virile judges on the bench of the district court. In every laudable enterprise for Duluth’s upbuilding was found Judge Stearns. He liked to be in evidence. To him it was the true wine of life. Men of the caliber of Judge Stearns have hastened Minnesota’s importance in the constellation of states. They saw with clear vision into the future and hastened it by their efforts with characteristic energy and force. To that clear, strong sagacious mind, what pain and regret must have come when it saw that the physical machinery of life had given out and that it must rest. And truly regretful is it to his many friends in this community, where he lived so many years of strong, vigorous life, that it should close, so far away from the scenes of so many labors, rather than in his dying hours, as his home—the shining waters of the Lake Superior region.¹¹

Turning to Daniel Cash, Butterfield describes a hair raising adventure of the Cash family on Lake Superior in 1847, when Daniel Cash was only four years old and, later, his exploits during the Civil War. One paragraph

¹¹ *Duluth News Tribune*, June 3, 1896, at 2. For another obituary, see, “Ozora Pierson Stearns,” 14 *Minnesota Historical Society Collections* 736-37 (St. Paul: Minnesota Historical Society, 1912).

is devoted to Cash's legal career in Duluth. Similarly, when Cash died on June 30, 1930, the *Duluth Herald* had little to say about his life as lawyer. The lead article on the obituary page emphasized his civic and business activities:

PIONEER ENDS UNIQUE CAREER

Daniel G. Cash, Active Nearly Sixty Years, Succumbs.

Daniel G. Cash, aged 87, pioneer Duluthian and the second or third attorney to open law offices in the city died while sleeping at his home here yesterday afternoon.

Mr. Cash was affiliated in the early days with virtually every business enterprise organized in Duluth. At one time he owned a fourth interest in the *Duluth Herald* and had held interest in all original Duluth companies.

Active in City's Progress

He came to Duluth sixty-one years ago and from that time was prominently identified with the growth and the progress of Duluth. He was at one time a partner of the late Judge Ensign, who held a district court judgeship for many years. Mr. Cash retired five years ago. He was a Civil War veteran, having served with the Twenty-seventh Michigan company as major.

Mr. Cash's father, the late Daniel S. Cash, came to Duluth in the '40s, but left as filing for homesteads had not been started in this territory. He took a homestead at Ontonagon, Mich., but returned to Duluth at a later date. He filed for a homestead, obtaining property a mile square in the center of what is now the Duluth business district. The property comprised the sites of the present government buildings, the Soo Line station, the Holland, Lenox, Spalding and McKay hotels.¹²

¹² *Duluth Herald*, July 1, 1930, at 6.

Butterfield's profile of Josiah Ensign, who did not serve in the war, is the shortest, and the driest. It is a chronology of events in Ensign's family and professional life, interrupted by a colorful description of Duluth's streets in mid-1869. It concludes with flattering remarks about Ensign's success as a trial lawyer.¹³

The month after Butterfield's article appeared, Ensign was appointed a judge of the Eleventh Judicial District. He served for the next thirty-two years. His death on November 24, 1923, resulted in a front page article in the *Duluth Herald*:

**JUDGE J. D. ENSIGN,
RETIRED JURIST,
DIES AT HIS HOME**

Death claimed Josiah Davis Ensign, judge emeritus of the Duluth bench of the Eleventh judicial district, at his home, 2244 Woodland avenue, shortly after 1 o'clock this afternoon. He was judge of district court from April 10, 1889, to Jan. 1, 1921.

Judge Ensign, who would be 90 years of age at his next birthday, has been in private life, retiring Jan. 1, 1921, for three years, and of late has been in poor health, but his death came rather unexpectedly. He is survived by his widow and two daughters, Mrs. Warren E. Greene and Miss. Julia Ensign, and grandchildren, Mrs. A.S. Dunning or Duluth, Mrs. Everett Mitchell of Washington, Conn., Josiah Ensign Greene, Duty Greene and Kenyon Greene of Duluth.

Funeral arrangements will be announced later. It is likely that the bench and bar of the city and county will take measures for proper participation in the last rites of the dead jurist.

Judge Ensign was born in Erie county, New York, May 14, 1833. In 1839, he moved with his parents to Ashtabula county, Ohio, where he received a common school and academic education.

¹³ For a later profile, see "Josiah D. Ensign" in Hiram F. Stevens, *I Bench and Bar of Minnesota* 162-64 (Minneapolis and St. Paul: Legal Engraving Co. 1904)

Following his graduation from the academy he began the study of law and was admitted to the bar in 1857, in Ashtabula county, Ohio. The same year he was elected clerk of court for the county, and served a six-year term.

Believing that the Northwest offered a greater field of opportunity for a young lawyer, Judge Ensign in 1869, moved to Minnesota and settled in Duluth in February, 1870. He was engaged in the active practice here until his appointment to the district court bench on April 16, 1889.

Judge Ensign has held successively the offices of county attorney, member of the city council, mayor of the city of Duluth, and member of the board of education.

Besides work on the district court bench, Judge Ensign also had charge over the Juvenile court of St. Louis county from 1905 to his retirement.¹⁴

A few days later, the *Duluth Herald* carried a short editorial eulogizing Judge Ensign. In this piece, it emphasized his judicial accomplishments.

JUDGE ENSIGN

There are many things that linked Judge Ensign, who passed away Saturday at the age of ninety, to the interest and affections of his fellow citizens.

He was a pioneer Duluthian, coming here in 1870 and living here constantly ever since. He was one of the earliest of Duluth's lawyers. He held a number of offices—alderman, mayor, county attorney and member of the board of education—before he became a judge of the district court, a position which he graced for thirty-two years until his retirement in 1921.

He was always a good citizen, always a kind friend and always a wise and faithful adviser to the many who sought his counsel. His familiar attitude on the bench for many, many

¹⁴ *Duluth Herald*, November 24, 1923, at 1.

years was that of a wise and kindly father whose friendly interest, often manifested in gently chiding, embraced not only the attorneys who appeared before him but their clients. His was a gentle, noble career. He had many opportunities to make himself a sound influence for good, and he overlooked none of them. He lived to a ripe old age, after serving far more than the usual length of time upon the bench. And now he rests in the kindly regard, respect and affection of the community which in his lifetime grew from a straggling hamlet to a flourishing city.¹⁵

Butterfield's article on the "Bench and Bar of Duluth" appeared on pages 634 to 653 of the March, 1889, issue of *Magazine of Western History*. The MLHP has reformatted this article. The original page breaks have been added. The author's punctuation and spelling have not been altered.

Butterfield's article should be read together with others posted on the Minnesota Legal History Project: "'Firsts' in the History of the Bench and Bar of Duluth and St. Louis County" (1921), and "Bench and Bar of Duluth and St. Louis County," taken from the second volume of the *History of Duluth and St. Louis County*, edited by Dwight E. Woodbridge and John S. Pardee, and published in 1910. It carries the story of the Duluth bench and bar into the first decade of the twentieth century. Judge Ensign surely influenced the writing of this chapter. The title page states that the editors have had the "co-operation and assistance of Judge J. D. Ensign" among others. The first four pages of this chapter rely heavily on Butterfield's article, even quoting long passages without attribution. □

¹⁵ *Duluth Herald*, November 26, 1923, at 12.

Magazine of Western History

Vol. IX.

MARCH, 1889.

No. 5.

BENCH AND BAR OF DULUTH

On the first day of March, 1856, St. Louis county, taken from Itasca, was declared to be an organized county by the territorial legislature of Minnesota and attached to Benton county for judicial purposes. On the nineteenth of May, 1857, "that fractional portion of Minnesota Point lying at the northern extremity of the same, in township forty-eight and township fifty north of range fourteen west," was created a "town corporate and politic, by the name and style of Duluth."

The county-seat was first established at Portland, now a part of Duluth, and by an act approved August 2, 1858, the board of county supervisors were authorized to issue bonds of the county for the sum of ten thousand dollars for the purpose of erecting county buildings in St. Louis county, and also for building bridges and opening and improving roads therein.

The first court in Duluth was held in a little unfinished room next to what now is one of the express offices. Then court was holden two or three terms in a school-house; then a brick building was rented known as the Ray block, in the east portion of the city, the lower part being used for offices, the upper part for a court-room. It was used as the court-house for three or four years, when the upper part of the Banning block was hired for that purpose, where the courts were held until the year 1883, when the present court-house was erected at a cost, in round numbers, of twenty thousand dollars.

The first entry in the journal of the first district court of Duluth is as follows: [635]

“District Court, } Saint Louis Co., Minn.
 First District, }

"Monday, August 1st, 1859, 9 o'clock A. M. In the absence of

the Honorable Judge S. J. R. McMillan, the court was adjourned by the clerk to Tuesday, August 2nd, at 9 [o'clock] A. M."

" Tuesday, August 2nd, 1859, 9 [o'clock] A. M. Court met pursuant to adjournment. Present, Judge S. J. R. McMillan. There being no business ready, adjourned until 2 o'clock P. M.

" Two o'clock P. M. Court met pursuant to adjournment. Present, Judge S. J. R. McMillan. Ordered by the court that the Honorable Samuel Badger, jr., for the time being, perform the duties of district attorney.

"The United States }
 vs. }
Louis Droz. }

"The defendant, Louis Droz, and his bail, Nirber and Posey, each being called three times and not appearing, their recognizance was forfeited. Ordered, that the forfeiture of the recognizance of the defendant and his bail be taken off upon the defendant entering into a new recognizance with one or more sureties to be approved by the clerk of this court, in the sum of \$500, condition for appearance at the next term of this court. Court adjourned *sine die*."

What particular crime against the peace and dignity of the United States "the said Louis Droz " was charged with, does not appear. Three days after adjournment of the court, Judge McMillan ordered that a scrawl with the words "Seal District Court, St. Louis Co., Minn.," included therein, "be used as the seal of the district court for St. Louis county, Minnesota, for the time being and until a seal shall be furnished and provided according to law."

The clerk of the court at this time was J. B. Culver; the sheriff was Andrew J. Ellis. The first suit began in the district, so far as appears from any papers on file, was that of Lewis M. Dickens against William G. Cowell. It was an action on a promissory note; and, as the plaintiff was "inclined " to believe the defendant was then a non-resident of the state, an attachment was

issued against "all the property of the said defendant" in St. Louis county.

Duluth (and of course St. Louis county) was, first, in the First judicial district of Minnesota; afterward, in the Seventh, which was created on the fifth of March, 1870, and took in the counties of Stearns, Sherburne, Benton, Morrison, Crow Wing, Aiken, Cass, Douglas, Todd, Mille Lacs, Polk, Stevens, Traverse, Pembina, Clay, Wilkin, Grant, Otter Tail, Wadena, Becker, Pope, Saint Louis, Carlton, Itasca and Lake, then in the Eleventh, in which it still continues. The second judge who sat upon the Duluth bench was James M. McKelvy. He held his last court in the place in the first half of August, 1874, the act creating the Eleventh district having been passed on the fifth of March preceding; it included the counties of Crow Wing, Aitkin, Cass, Polk, Pembina, Clay, Wadena, Becker, Saint Louis, Carlton, Itasca, Beltrami, Lake and Traverse, which territory constituted nearly the half of the state—the north half. A district judge, O. P. Stearns, was appointed under this act to hold office until the next general election, when he was elected to succeed himself. [636] He is still upon the bench of St. Louis county; but the district now includes only the counties of St. Louis and Carlton, with Lake and Cook counties attached to the former for judicial purposes. Judge become citizens, until finally the "Court to the Record," as it is called, is reached, Judge Stearns holds annually three terms of court in St. Louis county, and two in Carlton county.

The first journal of the district court for St. Louis county is a curiosity. It begins with a record of liens filed "for materials furnished and work done" by various individuals in the building of certain houses. Then appears a number of marriage certificates recorded by the clerk of St. Louis county. Of these the first one reads as follows:

“Grand Portage, 8 Mo., 4 th, 1858.

“Has been married by myself at Grand Portage on the 5th of August last, Abraham Bonneau and Elizabeth Nadau, both of Monroe, Michigan.

“D. D. Rarquet, Missionary.”

After this there follows two declarations of persons whose intentions were to become citizens of the United States. The journal proper then begins. But occupies less than two pages of the book, and contains the record of the opening of the district court of the First district as before mentioned.

Succeeding this is a "summons for relief" in the district court, 1st judicial district, Manomin county." Immediately after this entry is the finding of the judge in a case which went by default in the same county of "Manomin." This record is signed "S. J. R. McMillan, judge" at Stillwater, January 19, 1860. There are other cases decided: one in Washington county and another in Dakota county. Then comes in regular order certificates of intentions to become citizens, until finally the "Court Record," as it is called, is reached.

But the "Record" is a small affair although purporting to be that of the district court of the Seventh Judicial district, of which James M. McKelvy was judge. There is but one finding by the court (November 5, 1869), and the "Record" terminates, to be supplanted by the naturalization of sundry persons whose names are given.

This is the next entry :

"State of Minnesota }
County of St. Louis. }

"We, the undersigned, master and wardens of Palestine lodge, No. 79, of Ancient, Free and Accepted Masons, in conformity with an act of the legislative assembly of the Territory of Minnesota, entitled 'An act to incorporate the Grand lodge of Ancient, Free and Accepted Masons of Minnesota' approved March 5, 1853, do hereby certify that the name of said lodge is 'Palestine Lodge, No. 79, of Ancient, Free and Accepted Masons'; that it is located at and meets in the village of Duluth, in the county of St. Louis and state of Minnesota.

"Given under our hands and the seal of said lodge, this twenty-eighth day of February, A. D. 1881." [Here follow the names of the officers of the lodge.]

To make the " hotch-potch " complete, the journal then contains a brief list of judgment debtors and creditors, with date of judgments rendered at various times, dates of docketing the causes and amount of judgments rendered, copies of marriage certificates, another record of [637] causes that have been tried at various dates, intentions of various persons to become citizens of the United States. The "Record" ends with the statement

that George R. Stuntz is the creditor, to the amount of one hundred and fifty dollars, of one Theodore Miller, on the thirty-first of August, 1863, "for surveying, exploring and examining a certain tract of land and exposing former knowledge of the same," and demands judgment for the amount. The papers in the case show that he took judgment by default. There is no light thrown upon the plaintiff's words, "exposing former knowledge of the same," so far as appears in the record of the case; however, it is fair to be presumed that they helped materially in making up his claim.

"When I went on the bench of the Eleventh district," said Judge Stearns, recently, "there was not a full set of 'Minnesota Reports' west of Duluth, and there was not a court-house in the district. We held court where we could—in churches, in stores, school-houses, and sometimes in places not quite so respected. I remember at Detroit once we used a saloon, a sort of double-barrelled saloon that had the liquors in the front room and another room back. We took hold and moved the liquors into the back room and held court in the front—close by—a very convenient arrangement for some of the attorneys. As we had no libraries or books, only what we carried in our hands, it was a rough kind of justice we dispensed, but I am glad to say, looking back over the short space that has shown so marvelous a development, that it was, I believe, a fair justice that we administered. When we had no law we simply did the best we could and relied on our hearts and our heads to do the right and just thing, and to reach just equity between man and man. Mr. Comstock used to say that there was no lawyer among us who knew enough to take an appeal, and therefore ours was a court of last resort."

"I remember once," continues the judge, "in trying a criminal case, the jury was charged and sent out, occupying for its deliberations an old room that had a crack in it, through which we, waiting in the court, could overhear all of their discussions. Finally they struck a point in the charge, and we heard one juror proclaim—"The judge says so and so, and Comstock [one of the counsel] says so and so; now, how the devil are we to know who is right?" Of course I had to recall them and impress on them that as between judge and counsel they had to take the judge for it. Once over in Becker county there was a juror who was determined to go to sleep. After awhile the clerk called my attention to the juror continuously asleep, and I called the counsel up and asked if we should stop and wake the juror. Counsel said

no, let him sleep. When I came to charge the jury I charged the eleven and to the sleeper said: ' You have slept all the while and haven't heard the evidence. But you can go out with them, and if you can manage to find the same verdict as the other eleven, why well and good.' This he managed to do."

Judge Stearns, in speaking of the great growth of this region, says that on the spot where the city of Crookston, Polk [638] County, now flourishes, he organized the first court in 1874. There were present Judge Reynolds, Mr. Ball and himself. Scattered about were six houses, among logs, trees and stumps, but no room where court could be held. But as there was a motion to argue, Judge Stearns took a stump, Reynolds a log and Ball a stump, and there was held the first court in Polk county. It must be clear to the mind of the reader that the history of the bench and bar of Duluth would be imperfect should there be no reference to the life-career of the judge just mentioned, and equally wanting without mention being made, biographically, of some of the leading attorneys who are practicing in that city.

CONSUL WILLSHIRE BUTTERFIELD.

OZORA PIERSON STEARNS.

The subject of this sketch was born January 15, 1831, at Dekalb, St. Lawrence county, New York, the tenth of a family of eleven children. When about a year and a half old a fire had been built in the yard to heat water in a caldron kettle. The kettle had been removed from over the fire and set beside a bed of coals which were soon covered with a film of ashes. The child went to play with the water in the kettle and walked barefooted into the bed of coals. He hadn't judgment enough to get out and danced in the coals till his screams attracted the attention of the family, when he was taken out with his feet thoroughly cooked. Saving his life was almost a miracle. He was carried three weeks in the arms of his parents and others with his feet higher than his head. His feet still show the effects of that burning.

In 1833 Ozora's father moved to Madison, Lake county, Ohio. When his father got settled in Ohio he was practically without means, but was

recognized as an honest, industrious man. He had little desire for money and little business capacity for obtaining it. He was a great reader and a sound reasoner. He had a judicial turn of mind, and had he been bred to the law would have made a success. For four years, from 1831 to 1834 inclusive, he lived in a small rented house in Madison, on the banks of Grand river, as poor as need be.

The father held liberal religious views and the mother was a strict Baptist. It was about this time that Charles G. Finney was getting up his great revivals. One day Ozora's father came home driving a yoke of cattle and found Finney on horseback in front of the house, telling the mother and the children that they, the children, were going straight to hell, and had them all groaning, praying and crying. The father was so incensed that he used his ox-whip on Finney's head and shoulders and soon cleared the decks and put a stop to the groaning and weeping.



O. P. Stearns

Ozora was thoroughly instructed by his mother in all the essential doctrines of orthodoxy and was religiously inclined. An anecdote is told of him that

occurred when he was four or five years old. A [639] neighboring woman had in some way offended him. He said: "I hate Marm Hill." His mother said : "Why, that is wrong. The Bible says you must love everybody." He replied : "Well, I love her soul but I hate her body."

In 1837 the boy's father rented a farm near by on which they lived one year. Ozora assisted during the summer as best he could and attended school in the winter. The next year another farm was rented near by and the boy went through a similar experience.

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In 1839 an uncle of his bought a farm of thirty acres in a back-woods settlement on the lake shore in Perry, Lake county, Ohio, and gave the use of it to the father. They moved there in the spring of 1839. It was a pretty rough settlement. Most of the boys went sailing as soon as they were old enough, and spending their winters at home the younger boys caught their sailor manners and were pretty wild. Ozora wasn't behind the rest, and for some years was a very ragged and very saucy boy, working on his father's and neighbor's farm during the summer and attending district school winters. He was an apt student and always kept well up with and ahead of his classes.

Very little was thought in those days in that settlement of any education beyond that furnished by the common school. One older brother and two older sisters, however, attended academies and select schools and fitted themselves for teachers. The family, because of their desire to obtain more learning than could be had at home, were thought to be of aristocratic tendencies, of which the children were often reminded by other children.

As near as the time can be fixed, it was when the boy was about twelve or fourteen years old that he stood for a long time one day looking at the fire in the old-fashioned fire-place, revolving in his mind the great problems of life, and at the end of his reverie he said aloud and with energy: "I will have a liberal education and be a lawyer," the main features of which determination he ever afterwards adhered to through all sorts of difficulties and discouragements.

In the spring of 1848 the young man's father gave him his time, and he started out in the world without a dollar ; and he has never had a dollar since from any source that he has not honestly earned. He hired out to work on a farm at ten dollars a month, half store pay. He was small of his age and not physically strong, and it was very hard for him to do a full man's work. He got along, however, very well, working with others, till after harvest, when he was put to work alone, hauling out manure. This gave him a chance to think, and while thus cogitating, he determined to attend a term of school at Madison seminary that fall and teach the following winter. He made known his determination to his father, who tried to dissuade him, thinking he had better wait another year, but the young man was determined, and the father finally assented.

By boarding himself and practicing economy, he made his earnings of the summer carry him through. He passed his examination, got his certificate and took a small district school at twelve dollars a month and "board round." Being small of his age and boyish, the fact that he was to be a *school-master* created [640] great merriment among the people in his neighborhood. Indeed, but for the high reputation as teachers enjoyed by his older brother and sisters, he would hardly have been able to secure employment. He, however, got through with his school passably well and thoroughly enjoyed the opportunity which *boarding round* gave him to study human nature.

In the spring of 1849 a neighbor for whom the young man had often worked by spells, making rails, hauling charcoal and farming, removed to Northern Illinois. Ozora felt a lively impulse to go west. He wanted to go to California, but could not raise the money. So he did the next best thing—drove his neighbor's team as far as Chicago, and made his way partly with teams going in that direction, and partly on foot, to Monroe, Wisconsin, where he had a brother living, secretly hoping that he might find some way to get from there to California. Failing in this, he concluded to try his luck in the lead mines. He spent the season prospecting, except that he worked on a farm in haying and harvesting; and as winter approached he found himself dead-broke. He abandoned mining and taught a district school at fifteen dollars a month *boarding round*.

In the spring of 1850 he learned his father had the ague, and he immediately started for home, walking from Monroe to Milwaukee, and taking steerage

passage from Milwaukee to Fairport, Ohio, walking from there home. He worked his father's little farm that summer; and in the fall, his father having recovered, he attended a select school at Unionville, Ohio, and in the winter taught a district school in Madison. He had about sixty-five scholars, and taught all branches from the alphabet to algebra.

In that part of the country a great many were in the habit of fitting out grafting teams that went all over the older portions of the United States grafting fruit-trees. In the spring of 1851 he hired out on one of these teams and learned the trade. He again worked in haying and harvest and attended the fall term of school at Kirtland, Ohio, taught in Perry in the winter, and in the spring of 1852, with a partner, ran a grafting team in Pennsylvania and Maryland on their own account. After this he again worked in haying and harvest, and attended the fall term of Grand River institute at Austinburg, Ohio, and made all arrangements to attend the winter term; but during the vacation he again got the California fever, and in December, 1852, started for the gold-mines via New York and the Isthmus of Panama.

From New York to Aspinwall the young man had the usual experiences, of a steerage passenger on a stormy passage. He was fearfully seasick for four days. Then the sea calmed and he was fearfully hungry, but could not "stomach" to eat the fare furnished in the steerage dining-room. He finally succeeded, with a bottle of brandy a friend had given him, and a little money, in bribing one of the colored cabin waiters to bring him food from the cabin, and the latter came regularly, like an angel of mercy in a cloud of darkness, till the end of the voyage.

Young Stearns was detained at Panama some ten days. He took the Panama fever and came near dying on the passage to San Francisco. He arrived at Diamond Springs, California, on January 15, 1853, being then twenty-two years old, and commenced digging for gold. He remained there a few weeks, earning wages in surface diggings, and then bought an interest in some deep diggings at Coon Hill, near Placerville. He worked in these until August, 1853, and then sold out and found he had about one thousand dollars net. He immediately determined to return to the states and prosecute his studies. He returned and again entered Grand River institute at Austinburg, Ohio, and remained there till the middle of the winter of 1853-4. About that time there was to be an address in the village near by, by some person high in Odd fellowship. With quite a number of other students he

attended the lecture. The school authorities claimed it was in violation of the rules of the school and required all students who had attended to make public acknowledgment before the school that they had done wrong and express sorrow for it. But young Stearns claimed that they had violated no known rule and refused to comply with their demand. They then requested him to withdraw without stating the reason, and they would pay the expenses of removal to another school.

This the young man refused to do ; stated that he would withdraw, reserving to himself the right to tell the true reason of his withdrawal.

After he had withdrawn, the young man remained in town to take lessons in penmanship, when the president began to treat him as an expelled student, forbidding the students to associate with him. This aroused Ozora's anger and that of the great body of the students, and a lively war broke out. The authorities to fortify their position went through the form of a public expulsion. The students still refused to obey the order not to associate with the young man. One student was expelled for this refusal. Then there was open revolt in the school, which was only quelled by the resignation and withdrawal of the president.

From Austinburg, in the spring of 1854, Mr. Stearns went to Oberlin. After he had been there one term, the authorities at Austinburg sought to prevent his entering a second term on the ground that he was an expelled student. But during the term that he had been there, he had made too many friends among the professors, and they failed.

At Oberlin, under the preaching of Mr. Finney, he gave his first real serious thought to religious and theological subjects. He somehow had come to hold in a vague and indefinite way something of the opinions of the liberal Christians of today. He didn't know that any good man of learning and ability ever held such opinions. He had always heard skeptics spoken of as bad men, and supposed they were. The powerful preaching of Mr. Finney alarmed him lest he might be on the road to everlasting perdition. He well remembers one sermon of his in which he painted the torments of the damned forever boiling up in agony, ever dying and never dead, while the redeemed looked over the battlements of heaven and added to their joy by contemplating the dreadful fate they had escaped. He was powerfully affected by conflicting emotions about this time. He chanced, however,

[642] to get hold of some of Theodore Parkin's works. They came like healing balm to a wounded soul. From that time he unhesitatingly and without fear or doubt has held and advocated the doctrines of liberal Christianity, advancing in his views with the advance of light and knowledge.

He remained in Oberlin—teaching, during the winter vacation, at Camden, near by—until the fall of 1855, when he spent a two months selling fruit and ornamental trees in southern Ohio. In January, 1856, he entered Michigan university at Ann Arbor. In the fall of 1856 he made a few stump speeches in Ohio and Michigan for Fremont and Dayton. As a stump speaker, where great issues were at stake, he was, from the first, a decided success. He had a deep, strong, rich voice, a keen, bright, sometimes called wicked, eye, and his earnestness and zeal and sledge-hammer logic took the place of literary polish and graceful gestures, and held the close attention of audiences to the last.

In 1858 Mr. Stearns graduated from the literary department of Michigan university. He then came near giving up the study of law and devoting himself to medicine. He had imbibed the foolish notion sometimes prevalent that it is dishonest for a lawyer to advocate whichever side of a controversy he is paid to advocate, and he wanted to be an honest man. A friend disabused his mind of this notion, and he commenced the study of the law in the office of James B. Gott of Ann Arbor, and graduated from the law department of the university in 1860. During the whole time, from 1848, when he started for himself, he never rested from study or work more than ten days at any one time, and he did not average five days' rest a year.

While in Michigan university Miss Sarah Burger, with others whom she had induced to join her, made application for admission to the institution. This caused a great deal, of discussion, private and public. Mr. Stearns earnestly advocated their admission. Through this an acquaintance sprang up between Miss Burger and himself which resulted in their marriage.

After graduating in the law, the subject of this sketch started west to seek a location. On the first day of May, 1860, he found himself at Rochester, Minnesota, with but twenty cents in his pocket, and concluded he might as well remain there. He opened an office for the practice of law. Times were dull, and but for one client who had quarrelled with every other attorney in town, it is thought the young lawyer would have starved out.

Early in the campaign of 1860 Mr. Cogswell of Owatonna made a Democratic speech in town. He stated a number of points which he said Republicans would never discuss, and called upon anyone in the audience to reply to him then and there. No one replied, but when he was through Mr. Stearns arose and offered to meet him in public debate on those very points, at any time and place he would name. Mr. Cogswell was an able man and a fine stump speaker, and it was not easy to understand why he declined the challenge. However, the Republicans of Rochester appointed a meeting at which Mr. Stearns was to answer Cogswell's speech. The result was to the satisfaction of the Republicans. [643]

It was the speaker's first stump speech in Minnesota. After that he stumped the county. His mind was so much taken up with the political issues of that time that he made but small progress in the knowledge or practice of the law. Nevertheless he was, in the fall of 1861, without any effort on his part, nominated and elected county attorney of Olmsted county.

In August, 1862, Mr. Stearns accepted a commission as second lieutenant and recruiting officer and recruited a company which became Company F, Ninth Minnesota Volunteer infantry. He was made first lieutenant of the company, yielding the captaincy for the sake of harmony. His company was mustered in at Fort Snelling about the time of the Sioux Indian outbreak, and soon after was stationed on the frontier, first at Glencoe, afterwards at Hutchinson, and finally at Fort Ridgely. Lieutenant Stearns was adjutant of the post at Fort Ridgely during the winter of 1862-3.

Lieutenant Stearns was then (and he is now) a very poor penman. While adjutant of the post he had to report to Colonel Miller, commanding at Mankato. He had a sergeant-major who was a fine penman, and he made out all the reports in his own handwriting, signing the lieutenant's name. In the spring of 1863, Colonel Miller was placed in command of the district of Minnesota, headquarters at St. Paul, and he immediately detailed Lieutenant Stearns as one of his staff. The young officer at once reported, and after a few days was set for duty to work recording papers in a large fine book. The lieutenant was a soldier and bound to obey orders. He recorded one paper and stepped out of the office to give the colonel a chance to inspect it. Then returning he stepped up to the book to go on with the work. The colonel said he guessed he needn't do any more recording, and explained why he supposed the lieutenant was a fine penman. The

latter thereupon offered to return to his company, but he said no, that he would find something else for him to do; and he remained on his staff during the summer.

In the fall of 1863 his regiment was ordered to Missouri and his company was stationed at Jefferson City. Until the spring of 1864 he was most of the time detailed as judge-advocate on courts-martial and military commissions.

In April, 1864, he was commissioned colonel of the Thirty-ninth regiment United States colored troops, a regiment raised in Baltimore, Maryland. He joined his regiment at Manassas three days before the battle of the Wilderness; his command brought up the rear of the army and went into the battle of the Wilderness on the last day of the fight. He was with the Army of the Potomac through the campaign of 1864.

At the mine explosion in front of Petersburg July 30, Colonel Stearns' regiment was the last to go into the fight after the rebels had rallied and formed a cordon of fire along the whole front. As they were passing the crater, moving by the flank, a cannon-ball took off the head of one of his men near the front of his regiment, and threw the head of the column into some confusion. The air was full of grape canister-shells and minie-balls. The colonel mounted a chunk of clay about three feet [644] high, and drew his sword and shouted to his regiment with a voice that could be heard above the din of battle, and it immediately came into line and filed past him in excellent order. Those were, he declares, the happiest moments of his life.

When the rebels made their final charge, after nearly the whole line had given way, Colonel Stearns rallied a few men and was holding a short piece of the line just at the right of the crater, when a shell burst, seemingly right in his face, which stunned him for a moment. When he recovered he was alone—all others had fallen or fled. There were some still fighting in the crater. He went into it to see what could be done. He saw it was impossible to hold it. This was just after the Forest massacre. He thought, if captured, he would be hung. He concluded to try and reach the Union lines, one hundred and fifty yards away. As he started, several started with him. They had gone but a few yards when every man that started with him had fallen. In his mind he gave up all hope and said: "Well, you've got me now, and you'll shoot me in the back, but you shan't shoot me running." He then

stopped running, took out his sword and walked slowly, clipping weeds. He reached the old line of works, leaped over them, and commenced preparing for an expected assault on that line. Just then another shell burst, seemingly in his face. Against his right shoulder was a cavalry soldier and against his left a colored soldier. The shell tore off the shoulder of the cavalry soldier so he could see the beating of his lung, and tore away the chin of the colored soldier. The colonel was unharmed. He lost in this engagement ten officers and one hundred and eighty-five men killed and wounded. His colors had thirteen ball holes through them. His color-bearer, at his request, was voted by congress a medal of honor for bravery in this battle.

Colonel Stearns accompanied General Butler on his Fort Fisher expedition. He also went with General Terry and was present at the capture of Fort Fisher, and remained in North Carolina till the close of the war. His regiment was the first to enter Wilmington. Thousands of colored people met them. When he announced to them that they were free, the expressions of joy by words and acts were such as words are inadequate to describe. A beautiful young German lady brought out a small American flag and waved it, saying she had kept it concealed a long time, but now she could wave it. She seemed as much excited as the colored people.

After the war was practically ended Colonel Stearns was in command of the forts at the mouth of the Cape Fear river, headquarters at Smithville. One day he attended church. There had lately been a fine steamer wrecked near Fort Fisher, scattering all kinds of goods along the coast. The minister, after referring to the great sufferings the southern people had endured, said: "But, my brethren, God has not forsaken us, only see what a splendid wreck he has lately sent us."

In his command the colonel had civil as well as military law to administer. A few days after, a man came to him complaining that the same minister refused to pay [645] a gambling debt, and wanted him to enforce it. He said he thought a minister ought to pay such debts.

In December, 1865, the colonel was mustered out at Baltimore and returned to Rochester. He had been again elected county attorney of Olmsted county. In the spring of 1866 he was elected mayor of Rochester and held the position two years. In the fall following Olmsted county gave him a complimentary vote in convention for congress, and in 1868 made a

determined effort for his nomination, which was not successful. In 1867 he was appointed register in bankruptcy for his congressional district.

In 1866 Colonel Stearns formed a law partnership with Charles M. Start, now district judge. They soon had a large practice, so much so that he overworked and temporarily impaired his health.

In January, 1871, the legislature elected the colonel to the United States senate to fill the unexpired term of Honorable D. S. Norton, then deceased. During his short term he was successful in getting through several bills for the relief of Minnesota soldiers. His bearing in the senate was such as to secure the good-will of all the senators, and he got bills through that old senators declared no other senator on the floor could have gotten through.

In the spring of 1872 he formed a law partnership with J. D. Ensign, and removed to Duluth. They soon had a large practice and were employed in several suits brought by the secretary of war and the state of Wisconsin to prevent the making and maintaining the Duluth ship-canal.

Mr. Stearns was, on several occasions, sent by the governor of Minnesota, the chamber of commerce of Duluth and a water-ways convention held at St. Paul, to Washington to look after appropriations for Duluth and the great northern water-way, and met with general success.

In 1873, on the failure of Jay Cook, Duluth became bankrupt, with an enormous debt hanging over her. Property became worthless, and people almost ceased to pay taxes. It was then Mr. Stearns devised a scheme for compromising the debts of the county and city which was satisfactory to the most of the bondholders, and having secured from the legislature the necessary legislation, he visited eastern bondholders and induced them to come into the arrangement, and succeeded in so reducing the debts as to make it possible to build a city there.

When prosperity returned, it became necessary to negotiate the city bonds again to build school-houses. The name "Duluth" was then enough to condemn any bond. However, Mr. Stearns went boldly into Wall street and by perseverance under the most discouraging circumstances succeeded in placing a block of six per cent, bonds at par. From that time the credit of Duluth was firmly reestablished.

In 1874 the subject of this sketch was appointed by Governor Davis judge of the Eleventh judicial district of Minnesota. In the fall of the year he was elected without opposition to the same office for a term of seven years. In the fall of 1881 Judge Stearns was again elected without opposition for a term of six years, and again in the fall of 1886, without opposi[646]tion, for a term of six years, commencing January 1, 1888. He is president and treasurer of the Lakeside Land company, a director in the West Duluth Land company, the Duluth Electric Light and Power company, the Masonic Temple association, the Duluth Building and Loan association and the Duluth Union National bank.

No one has ever questioned the honesty or ability with which Judge Stearns had performed the duties imposed upon him. He has been active, liberal and unselfish in the promotion of public interests. He is a zealous Unitarian of the liberal kind, and has taken a lively interest in establishing and maintaining the first Unitarian society of Duluth.

His marriage, already spoken of, to Sarah Burger, was at Detroit, Michigan, on the eighteenth of February, 1863. So long as the war lasted, Mrs. Stearns labored in behalf of the sanitary commission by public addresses and personal effort. Since coming to Minnesota she has been an energetic worker in benevolent enterprises and temperance work. She is a firm believer in the equal rights and responsibilities of women. She is president of the Home Society of Duluth, and it has been mainly through her efforts that the society has built and furnished and now maintains at Duluth a temporary home for needy women and children. She never allowed her public labors to interfere with her domestic duties.

There are three children of the family: Susan M., Victor and Stella—all children of whom any parents might well feel proud.

Judge Stearns has been reasonably successful in business and has a liberal competency.

DANIEL G. CASH.

Any attempt to show, in a proper light, the character as to integrity and capability of the bench and bar of Duluth would surely be defective without a reference to Daniel G. Cash, one of that city's most prominent attorneys.



A handwritten signature in cursive script, reading "Daniel G. Cash". The signature is written in black ink and is positioned below the portrait. It features a prominent, sweeping underline.

The father of Mr. Cash was born in Bradford county, Pennsylvania, on the eighth day of April, 1806. The maiden name of his mother was Fanny Tooker, whose native place was Peru, Huron county, Ohio, where she was born on the nineteenth of April, 1819. It was in March, 1840, that their marriage took place. The eldest child of this union—Agnes F.—is now the wife of Porter A. Hitchcock of Pontiac, Michigan.

Daniel G. Cash was born on the eleventh of February, 1843, at Cleveland, Ohio. His father, two years subsequent to this, went and made a preëmption claim on the west bank of the Ontonagon river, the largest stream entering into that lake on its south shore. In addition to the typical preëmption log-cabin, he built a large two-story house of hewn timber, and in the falloff 1847 removed his family, consisting of the mother, sister and son, to his new home.

At that time there was no canal at the [647] Sault Ste. Marie, and boats from the lower lakes discharged their freight for Lake Superior ports at that place. It was then taken across the portage where the present canal is located, and there reloaded onto the Lake Superior boats, which had themselves been hauled across this same portage and launched in the Sault river above the rapids. The family made the passage from Cleveland to the Sault on the steamer *Sam Ward*, and after crossing the portage reëmbarked on the last boat of the season, the *Julia Palmer*, a small side-wheel steamer of about two hundred tons' burthen.

They left the Sault on the twenty-fourth day of October, 1847, and were just three weeks making the passage from the Sault to the Ontonagon river. Fierce winds, accompanied by blinding snow-storms, prevailed during most of the trip, and once they were driven clear across the lake and attempted to make a lee to the north of Isle Royale, but when they reached the vicinity of that rocky, uninhabited island it was late at night in a heavy snow-storm, with the wind blowing a gale. The captain determined that their only safety lay in putting the steamer about and letting her go with the wind. All the passengers were ordered into the ladies' cabin on the main deck, which theretofore had been occupied by the Cash family alone, as the captain, Samuel Moody, who was a thorough saltwater sailor, was afraid the gale would carry away the upper works when she came around broadside to the wind. There was a door in the center of each side of the cabin, and as the steamer came round the seas washed through these doors till the water in the cabin was knee-deep, first on one side and then on the other, as the boat rolled.

A large portion of the boat's cargo was jettisoned, or used up for fuel; the machinery broke down; pumps gave out, and fires were drowned. All gave up for lost, but the steamer finally drifted in behind Slate island, a small island near the north shore of the lake, where they remained nearly a week.

Daniel's father, who was a skillful machinist, repaired the machinery and pumps, and it was largely owing to his efforts on that occasion that he was enabled with his family to reach their destination.

After leaving Slate island the steamer made for Copper Harbor. The vicinity of that port was reached at night, during another snow-storm. There were no light-houses on the lake during those days, and the settlers, who had been keeping up a large fire on the beach for more than a week to guide them on their expected arrival, had given them up for lost and had built no fire that night. It was a bleak, rocky shore, and while the captain was feeling his way along and trying to attract the attention of those on shore the [648] steamer suddenly grated on a reef, slewed around and floated into the still water of the harbor, stern foremost.

Finally, the mouth of the Ontonagon river was reached, on the fourteenth of November, during another snowstorm; and it was left to Mrs. Cash to say whether she would attempt to go ashore in a bateau or remain on board until the storm went down. She decided to take the chances of getting once more on dry land. It was a hazardous attempt; the little boat shipped water at every sea; the surf was running so high on the bar at the mouth of the river that they could not run inside; and it was determined to beach the boat, which was done. One of the gentlemen assisted Mrs. Cash, while Mr. Cash took his daughter under one arm and his son under the other and carried them ashore. As soon as the family reached a point of safety the officers of the steamer fired the boat's cannon, as they had promised to do if they ever saw Mrs. Cash safe on land after that three weeks' trip.

Young Daniel was seasick during nearly all of the trip; but that cured him for all time, as he has never had that sickness since, although he has ridden through many heavy seas on both fresh and salt water.

The new home of the family was on the bank of the river, one mile from the lake. The land was heavily timbered, but the soil was fertile, and in a few years the father had a very beautiful farm extending for over a mile along the banks of the stream, which was there about forty rods wide. The mother had, by persistent and untiring efforts, succeeded in beautifying the five acres immediately surrounding their house with an orchard, flower gardens, trees and shrubbery that would have been a credit to a far more southern clime.

During the first ten years of their residence at Ontonagon, the father engaged principally in mercantile business and in transporting freights and copper on the Ontonagon river from the copper mines on the ranges south of Ontonagon; and, in such business, used large keel-boats of his own make and a small steamboat which he had built in Cleveland. This would tow several of the keel-boats at a time as far as the rapids in the river and from there on to the landings of the different mines; they were poled up the rapids by crews of ten or twelve men.

Up to the time that the son reached eight years of age his parents taught him and his sister at home, and they were then sent to attend school in Cleveland. Daniel remained there two years, living with Captain B. G. Sweet and wife, a great-aunt and uncle on his mother's side. During that time he attended the Vermont Street school, a small one-story brick building, and afterwards went to the Pearl Street Grammar school when that building was finished. At the end of two years his parents came to Cleveland and remained there three years and then they all returned to Ontonagon, which now afforded some school privileges.

Daniel remained at home working on the farm and in the garden and going to school until he was eighteen, when he went to An Arbor, Michigan, and at[649]tended one year in the Union school, preparing to take a literary course in the Michigan university. At the close of the term, in the spring of 1862, he returned home, expecting to go back and be examined for admission to the university at the opening of the next term.

Living, as he always had, close to the water, the young man was an expert swimmer, and excelled in rowing, fishing, hunting and other athletic sports.

On the fourth of August, 1862, the subject of this sketch enlisted with Captain Daniel Plummer, who was raising a company in Ontonagon county, which company was assigned to the Twenty-seventh regiment, Michigan Volunteer infantry, and rendezvoused at Port Huron. The regiment filled up slowly, and another regiment, located at Ypsilanti, was consolidated with it and moved to Ypsilanti. Young Cash was commissioned as second lieutenant of Company A on the tenth of October, 1862. His regiment left the state for the front in April, 1863, and was assigned to the Ninth Army corps, then in Kentucky. They stayed in that state till along in June, 1863, when they were ordered to Vicksburg. After the surrender of that place

they went to Jackson, Mississippi, then returned to Kentucky and crossed through Cumberland Gap into East Tennessee. There they remained during the siege of Knoxville and winter campaign of East Tennessee, and in the spring went east and joined the Army of the Potomac when General Grant took command.

Lieutenant Cash was slightly wounded in his left hand at the battle of the Wilderness and took part in the battle of Spottsylvania Court-House. He had his horse shot under him at North Anna river, and was struck on the plate of his sword-belt at Cold Harbor on June 3, 1864. He then thought his hour had surely come. He was carried off the field, but revived. He took part in the siege before Petersburg and at the mine explosion, and was in command of his regiment and taken prisoner at Reams Station, Virginia, on the twenty-first of August, 1864. He spent six weeks in Libby prison and two weeks in Salisbury, North Carolina, but escaped by breaking out of a car and jumping off train while being taken from the latter place to Danville, Virginia. This took place October 19, 1864.

In company with George W. Huff of the One Hundred and Seventh Pennsylvania regiment, who escaped at the same time, the lieutenant made his way to near Mount Airy, Virginia, where they were recaptured by a squad of cavalry. They had changed clothes with some darkies, and were sent back under guard as spies. They escaped from their guards the next day, and struck a Union settlement they had heard of the day before, where they stayed a week and had a good time. They then made their way across the mountains, and struck the Union lines at Gauly Bridge, Virginia, November 18, 1864.

Lieutenant Cash went to Washington and got leave of absence, and started for home, but the boats had stopped running, and he had to take the stage route overland from Green Bay, Wisconsin, a distance of over two hundred miles. It was a hard trip. There was no snow. He went with the mail-carrier. They had two [650] bags of oats laid crosswise of one bob sleigh, two more bags of oats laid across these and three mail-bags on top of the whole. The driver and Lieutenant Cash sat on the mail-bags and even then frequently had to hold their legs out straight to keep their feet from going into the mud. They made eighteen miles the first day from four o'clock in the morning till midnight, but he was bound to eat his Christmas dinner at home, as he and Huff had solemnly promised each other they should the night they escaped, and he did.

Lieutenant Cash returned to his regiment, and participated in the final movements before Petersburg, which resulted in the capture of that city and the surrender of Lee. His regiment on the final charge captured the eastern wing of Fort Mahone, and the lieutenant was again slightly wounded, this time in the right side. He was commissioned first lieutenant of Company F, May 1, 1863; adjutant, December 24, 1863; captain, May 5, 1864; brevet major of the United States volunteers, April 2, 1865; major, May 15, 1865, and was mustered out and honorably discharged August 7, 1865.

Immediately thereafter Major Cash, with other members of his regiment who hailed from Ontonagon, embarked for home on the steamer *Meteor*, which on the way up collided with and sunk the ill-fated steamer *Pewabic* in Lake Huron, and the next day herself took fire just as she was leaving the Sault, and was scuttled and sunk in the canal basin, and the veterans of many battles began to think the fates were conspiring to prevent their happy reunion with families and friends.

After a brief visit home, Mr. Cash commenced his law studies at the University of Michigan, and after finishing the course there, studied two years in the office of Newberry & Pond, Detroit, Michigan. Upon the election of Governor Henry P. Baldwin to his first term as governor of Michigan, in 1868, he received the appointment as his private secretary, but before entering upon the duties of the office was called to New York by the serious illness of his father, who was then east on business. Finding there was no hope of his recovery, he gave up his position and wrote home, and steamboat navigation having closed, his sister made the trip overland by stage and came to where he was, and both remained with their father until his death in January, 1869.

In the spring of 1870 Major Cash came to Duluth, where he was city attorney for two years and county attorney for six years. In 1874 he entered into partnership with J. D. Ensign, and they remained together until 1886 as Ensign & Cash, when they associated with them John G. Williams, and changed the firm name to Ensign, Cash & Williams; and the firm still continues as such.

In addition to himself and his sister Agnes, Mr. Cash has brothers living, as follows: Dr. William P. Cash, now of San Diego, California, who was the first white child born at Ontonagon; James Cash and Charles P. Cash, both

of Duluth. He had another sister, Olive, who died in childhood, and a brother, John F., who was burned to death by the explosion of a powder-house when he was five years old. Mr. Cash was married at Pittsburgh, Penn[651]sylvania, October 1, 1872, to Alice B. Scott, youngest daughter of Dr. John Scott and Margaret Scott of Pittsburgh. They have one child, a son, Scott Cash, who was born June 27, 1875.

CONSUL WILLSHIRE BUTTERFIELD.

JOSIAH DAVIS ENSIGN.

In the front rank of the attorneys practicing at the bar of Duluth is the subject of this sketch—Josiah Davis Ensign. His grandfather and family were reared in the state of New York ; and in Erie county, that state, his father—Reuben Sackett Ensign—was born, and was married in the same county, in 1829, to Mary Griffin.

Mr. Ensign is the younger of two children born of this union ; the elder is a sister— Angeline H.—now the wife of Freeman Skinner of Geneva, Ohio. The first-mentioned child (the one of whom we write) was born at Boston, Erie county, New York, on the fourteenth day of May, 1833. His place of nativity is Boston, Erie county, New York. When the son was five or six years of age, his parents removed to Farmington, Trumbull county, Ohio; then to Ashtabula county, in the same state, where he lived with his parents so long as he resided at home.

Until eleven years of age he was educated in the common schools; he then went to Farmington academy, Trumbull county, where he remained over two years for most of the time. In Farmington the young man, when not in school, worked on the farm of an uncle. At the age of sixteen he began teaching in Geauga county, Ohio. From that time until he was twenty-two years of age, he taught winters and part of the time the year round. He then went to Jefferson, Ashtabula county, Ohio, where he commenced

reading law in the office of Chaffee & Woodbury. In the spring of 1856 the auditor of the county resigned, and he was appointed to fill the unexpired term—a little less than a year.

In September of 1857 Mr. Ensign was admitted to the bar at Jefferson, and in October, 1857, was elected clerk of the court of common pleas, serving two terms of three years each. He was then (as now) a Republican. It may be said that he almost breathed the anti-slavery air with his first breath; and he retains, as he claims, the political status of his youth. In 1858 he was married to Kate A. Jones, daughter of Colonel Lynds Jones of Jefferson.



J. D. Ensign

After the expiration of his term of office, Mr. Ensign went into the practice of the law in Jefferson, forming a co-partnership with his old school-mate and friend, Stephen A. Northway. The firm continued until 1869. His wife died on the fourth day of September, 1868,

leaving two girls, one six, the other eight years of age — both of whom are now living. The youngest is the wife of James C. Hunter of Duluth. In the spring following, his home being broken up by death, he made up his mind to go west. He offered his partner to ship their books to any one of six places (naming them) and the two [652] would go together. St. Paul, Minneapolis, Des Moines, Duluth, Omaha and one other were the places named; but his partner, feeling timid in the matter, declined, when Mr. Ensign sold his interest in the firm to him; and, in the spring of 1869, went with his two daughters to Rochester, Minnesota, where their mother's brother resided. Here the two girls were left and the father traveled through Minnesota pretty generally, finally reaching Duluth over the old stage road from the end of St. Paul & Duluth railroad, about sixty-five miles out from St. Paul. A mud-hole was struck about three-fourths of a mile from where he left the railroad; and he found a succession of mud-holes from there to Superior, Wisconsin—each one worse than the preceding one. He was three days going ninety miles with from four to six horses pulling the stage.

Mr. Ensign took a ferry from Superior over to Duluth in the midst of a northeast storm (this was early in September, 1869), and he was met on landing by his friend, Mr. J. D. Ray, who took him to his house. He remained in Duluth three weeks, most of the time a northeast storm raging. Duluth was just then being surveyed. The trees had but a short time previous been cut out of Superior street and the stumps and a good many of the logs were still there. It was muddy and water was everywhere. The principal settlement was down on Minnesota Point. Mr. Ensign was delighted with the people but thoroughly disgusted with the town, and was very glad his old law partner had not come on with him — at least to Duluth, where he stayed three weeks. He then took a steamer to Marquette, Michigan, and went thence by rail to Rochester, Minnesota.

Soon after this he returned to Ohio with his children and remained there until February, 1870, when he went again to Rochester, Minnesota, and what is strange, in ten days again started for Duluth—arriving there on the twenty-fourth of February, in company with General Sprague, who went there to take the management of the North Pacific railroad, the construction of which had just been commenced.

Mr. Ensign had a pecuniary interest in the Portland division of Duluth, and it was resolved by those concerned to change its plat to better conform to the rest of the town. In order to do this it was necessary that all the owners convey their interest to one person and the latter re-convey to the others according to the new plat. Mr. Ensign was chosen to take that trust. He accepted, supposing he could finish the business in six months, but it took him a year. Meanwhile he began the practice of the law and got interested in various matters of business, and concluded to remain in Duluth.

In the spring of 1870, Edward C. Wade (a nephew of Ben. Wade) came to Duluth, and Mr. Ensign took him in partnership, but the roughness of the country was too much for him. He got homesick and returned to Ohio in June.

Mr. Ensign continued his business alone until 1872, when O. P. Stearns came to Duluth from Rochester, Minnesota, when the firm of "Ensign & Stearns" was formed, which lasted until the latter was appointed judge.

After Judge Stearns went upon the [653] bench, Mr. Ensign continued his law practice alone until 1874, when he formed a partnership with Daniel G. Cash, under the firm name of "Ensign & Cash." Afterward, the firm was increased by adding, January 1, 1886, John G. Williams, and the firm name was "Ensign, Cash & Williams," which still continues and is one of the leading firms of Duluth.

On the nineteenth of November, 1872, Mr. Ensign was married to his second wife—Rose Watrous of Bay City, Michigan. There is one child of this marriage —Kate W., born August 28, 1879.

The subject of this sketch has several times held office. He served one term in Ashtabula county, Ohio, as prosecuting attorney, and one term in Duluth. He has been mayor of Duluth two terms, and one term president of the city council. He has also served upon the school board of the city: He was a candidate in 1880 for the state senate, but was defeated by a small majority. His parents—his father being a physician—are living and are still residents of Ashtabula county, Ohio.

Mr. Ensign, as a lawyer, ranks high in his profession. He owes this largely to the thoroughness with which he studies every case entrusted to his management. He is never satisfied until he has thoroughly examined and studied every question of law that can possibly arise in a case and collected and collated all the evidence to be had bearing on the facts. The result is, that when he tries a case he tries it for all there is in it. In addressing a jury his manner is pleasing, and he always impresses a jury as being honest and candid, which gives additional weight with them to his arguments. With these qualifications, he has maintained a standing among the most successful members of the bar where he has practiced, and the firm of which he is the senior member is now doing a very large and lucrative business.



Posted MLHP: January, 2008;
reformatted February 24, 2012.