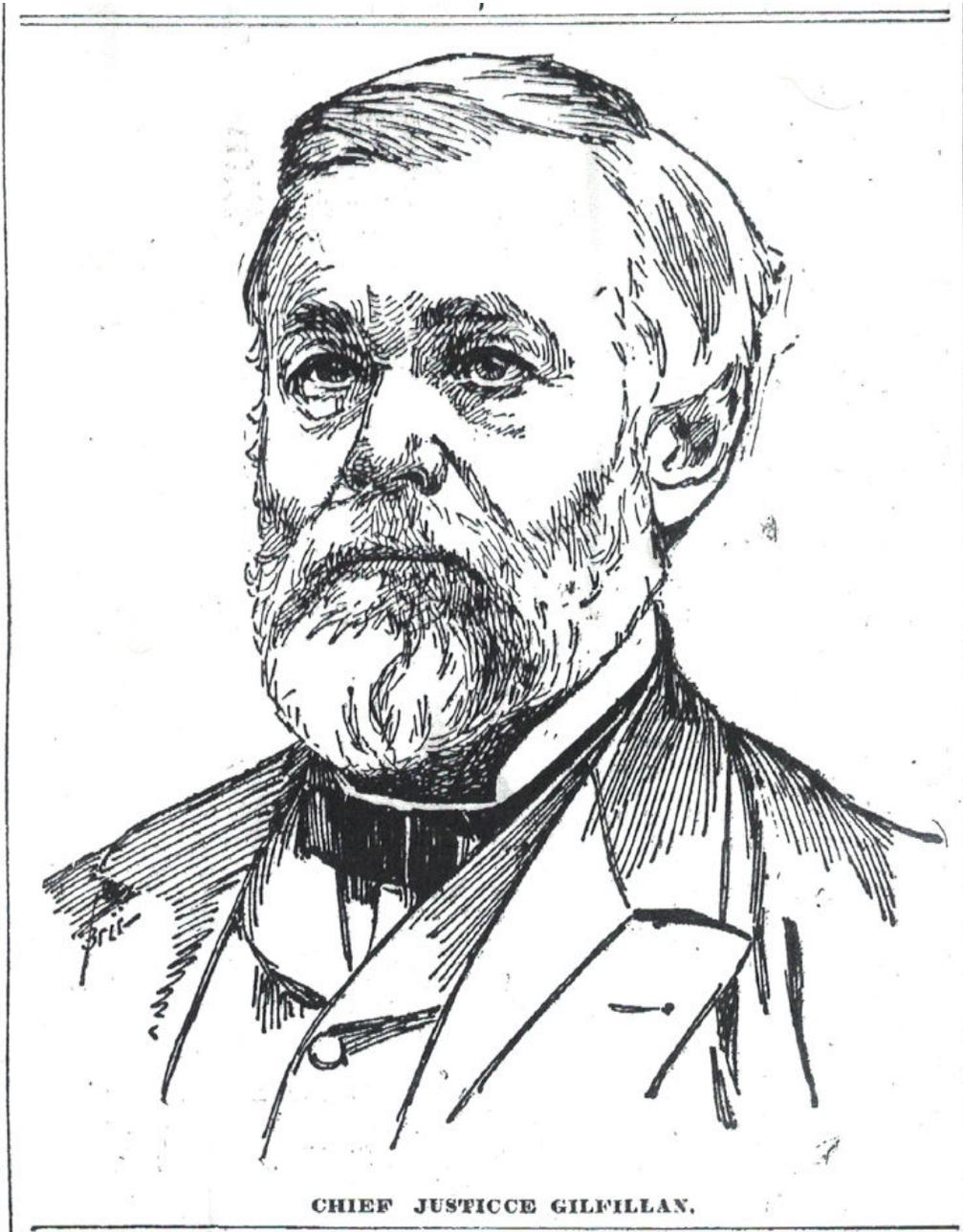


In Memoriam

# Chief Justice James Gilfillan

[ November 9, 1829 – December 16, 1894 ]



Minnesota Legal History Project

It is to be regretted that no mental method of daguerreotype or photography has yet been discovered, by which the characters of men can be reduced to writing and put into grammatical language with an unerring precision of truthful description. How often does the novelist feel, ay, and the historian also, and the biographer, that he has conceived within his mind and accurately depicted on the tablet of his brain the full character and personage of a man, and that nevertheless, when he flies to pen and ink to perpetuate the portrait, his words forsake, elude, disappoint, and play the deuce with him, till at the end of a dozen pages the man described has no more resemblance to the man conceived than the sign-board at the corner of the street has to the Duke of Cambridge?

Anthony Trollope — *Barchester Towers*  
Chapter 20 (1857)

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To William Watts Folwell, “This is perhaps the most celebrated of all cases that have up to this time come before the court and probably will long remain so.”<sup>1</sup> It was a political ruling that ended decades of acrimony over how and when to redeem the railroads bonds of 1858.

It is hard to resist advancing a hypothesis of about the relations between Chief Justice Gilfillan and Associate Justice William Mitchell, who is recognized as being a “great” 19th century jurist.<sup>2</sup>

Mitchell had been a trial judge in the Third Judicial District from 1875 to 1881, when he was elevated to the Supreme Court by Governor Pillsbury. Gilfillan’s Court heard several appeals of Judge Mitchell’s cases. After Mitchell joined the Court, Gilfillan became impressed with his intellect, analytical skills and ability to write superb opinions in novel, difficult and complex cases. He began assigning many of those cases to Mitchell. Over the next fourteen years, Mitchell’s reputation grew. By the end of 1894 William Mitchell’s reputation rested in part on a scaffold erected by James Gilfillan.

“Greatness” comes in many shades. It may be that James Gilfillan was not much of an opinion writer but was a master of the art of making case assignments.

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<sup>1</sup> William Watts Folwell, 3 *A History of Minnesota* 429 (1926) (reprinted 1969). Folwell meticulously describes the lawsuits and the legislation that led to this opinion in Section 9, pages 418-441, entitled “Redemption of the Railroad Bonds of 1858,” which is his history.

<sup>2</sup> These jurists time-bound—that is, they are nineteenth century judges, who occasionally invoked natural law or English common law in their opinions, principles that are not used by judges in the twenty first century.

They served during the early years of the lengthy transition from cases decided by references to common law principles to cases requiring the construction of a statute.

1. Obituary  
*St. Paul Daily Globe*

December 17, 1894

Pages 1-2

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**CHIEF JUSTICE DEAD.**

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The Head of the Supreme  
Court of Minnesota  
Passed Away.

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**EARLY SUNDAY MORNING.**

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Confined to His Home for  
Two Months With Liver  
Complaint.

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**A DISTINGUISHED JURIST.**

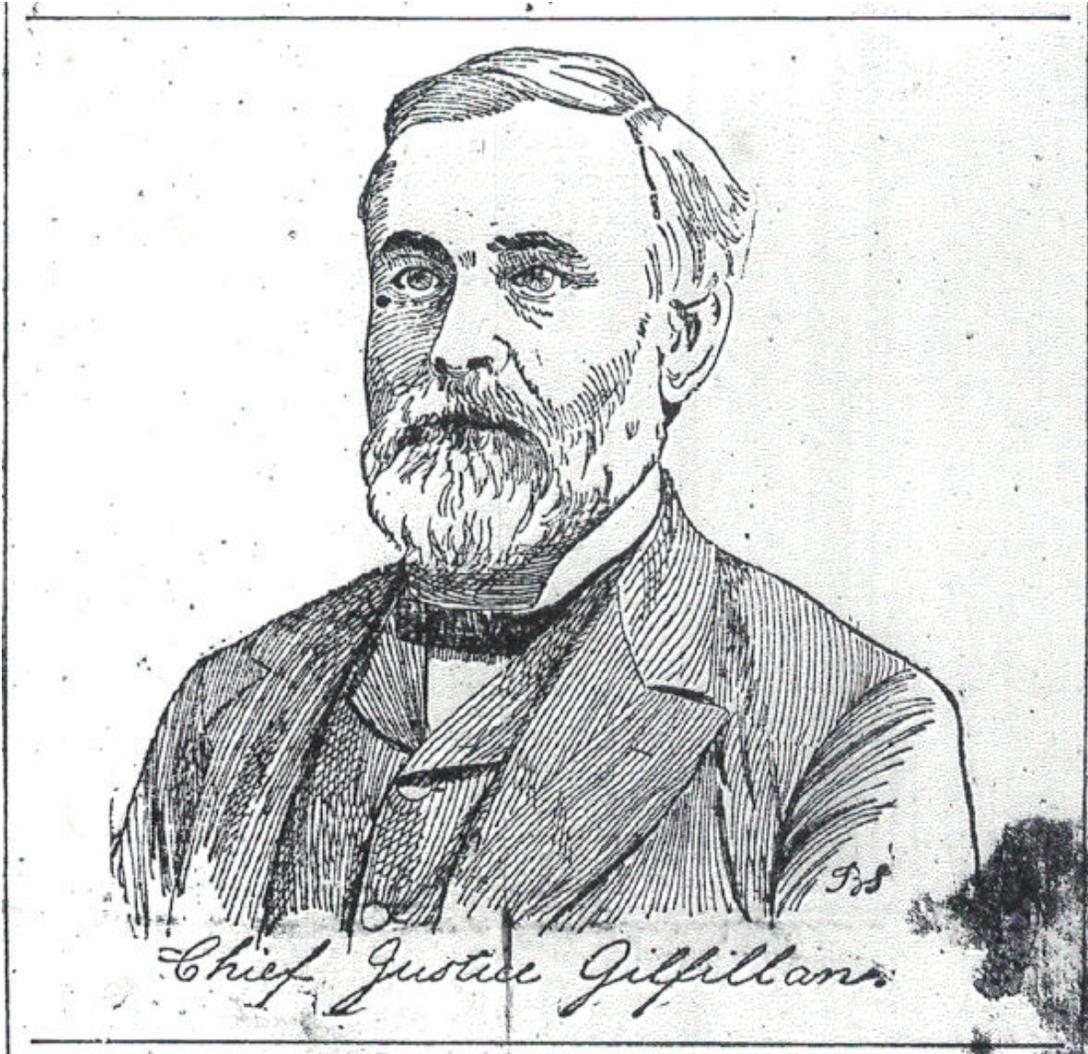
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Served on the Supreme Bench  
Continuously for Nineteen Years.

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Another prominent citizen has followed those that have passed away within the last few months. James Gilfillan, chief justice of the state supreme court, died yesterday morning at 6:04. He was in his sixty-fifth year. He had been confined to his house for about two months. For a long time it was supposed that his indisposition was but temporary, and the result of over work. During the last few weeks, however, a serious disease of the liver became apparent to his physician, Dr. Senkler, the true nature of which seems yet to be a mystery. Although

the justice suffered but little, his strength failed rapidly. The presence of all his family consoled his latter days.



Front page of the *Globe*

Rev. Dr. Andrews will officiate at the obsequies, which will take place tomorrow afternoon at 2 o'clock from Christ church. The pallbearers have not yet been selected, but it is known that the Loyal Legion will attend in a body. The deceased was not alone a member of that organization, but had been its commander from his election in 1891 until his

successor was elected in 1892. The Loyal Legion of Minnesota will attend the funeral in a body.<sup>3</sup>

In all civilized nations the chief of the judiciary has followed the chief executive alone in dignities and honor. This secondary position is the result rather of necessary policy than of essential right; for whatever may be the abilities of an executive leader, it is in the fountain head of justice that conscience and intellect—man's only divine attributes—are indispensable.

A Scotchman, a son of that nation of moralists and philosophers, Chief Justice Gilfillan possessed in unusual development both conscientiousness and mental strength. Even his most noticeable idiosyncrasy, a uniform and sometimes startling indifference to questions of policy and self-interest, but augmented his judicial fitness. Justice—that exquisite balancing of law with equity—was alone his object and care.

His manners were often abrupt. The young lawyer, or the lawyer from the outlying counties, would frequently feel a sense of personal slight. But the oldest leaders of the local bar knew well the impartiality, the good intentions, of their abrupt chief justice. His mind was strikingly cautious, analytic and independent. No decision was arrived at hastily. The most complicated questions became easy. His references to authorities were few, for he realized that a judge who depends upon himself has

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<sup>3</sup> The memorial of the Legion is posted at 76-80.

an invariable standard, while he that is swayed by the decisions of others lies at the mercy of the advocate with the most industry or erudition. His knowledge of the law was notable. Even in his early days the younger lawyers came constantly to one who not only “knew the law, but where to find it.”

All familiar with the chief justice recognized his kindly heart. His ways, however, were so free from art and self-seeking that they brought rather the few friends that remain than the many who flit away. It follows, of course, that such a man was equally devoted as a husband and father.

Justice Gilfillan was born at Bannockburn, Scotland, Nov. 9, 1829. His parents removed with him to New York in 1830, and there he received an academic education. At Buffalo and Ballston Spa his legal studies were conducted, and at Albany, in 1852, he was admitted to the bar. The same year he began the practice of law in Buffalo. In January, 1857, he arrived in St. Paul. His first legal partnership was with his brother, C. D. Gilfillan, who continued in the firm during some eight years.<sup>4</sup>

Meantime, in 1862, Mr. Gilfillan raised Company H, Seventh Minnesota volunteers, and was commissioned captain in August of that year. He

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<sup>4</sup> Their business card was published in the *Daily Minnesotian*:

JAMES GILFILLAN.	C. D. GILFILLAN.
<b>J. &amp; C. D. GILFILLAN,</b>	
ATTORNEYS AT LAW, CORNER OF THIRD AND	
Minnesota Streets, St. Paul, Minnesota.	myl

October 26, 1857, at 1.

accompanied his regiment in the campaigns of the Indian war, and later at the South. Tupelo and Tallahatchee were among his battles. He was made colonel of the Eleventh Minnesota in 1863, and held command of that regiment until mustered out in 1865.

Upon his return from the war he resumed the practice of law. He dissolved [the] partnership with his brother, and continued the practice alone until July 1, 1867, when was founded the firm of Allis, Gilfillan & Williams. He withdrew from this firm in 1869, being then appointed chief justice by Gov. Marshall for the first time. At the end of a year he once more resumed practice with the old firm. In 1871 the firm's style became Gilfillan, Allis & Williams, his partners being Lorenzo Allis and H. L. Williams.<sup>5</sup> So it remained until 1875. Then Mr. Gilfillan was appointed chief justice by Gov. Davis for the second time, and in the same year was duly elected to the high position he has ever since held.

The chief justice was allied to the Episcopal faith by both membership and marriage, he has been a warden of Christ church for fifteen years. He married in 1865 a daughter of the same church's lector in the person of Miss Martha McMasters. Her father, beloved of the old citizens, was in charge of the parish from 1863 until his death in 1875.

Seven children are left—James, Perry and Russell, the last-named being the youngest, and Mrs.

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<sup>5</sup> See a biographical sketch and his bar memorial for the Ramsey County Bar Association see “Lorenzo Allis (1823-1883)” (MLHP, 2018).

Katherine Gilbert, wife of Samuel Gilbert, Caroline, wife of Trevor McClurg, and Misses Mary and Martha.

At the time of his marriage Mr. Gilfillan lived on Iglehart street, just beyond Western avenue, but since 1876 he has occupied the present spacious residence on South Exchange street.

Justice Mitchell, of the supreme court, gave the following appreciative estimate of the deceased jurist's abilities.

#### Justice Mitchell's Eulogy.

Although I have known Judge Gilfillan for some thirty-five years yet my intimate personal acquaintance with him only began about fourteen years ago, when I became a member of the supreme court of this state. Since that time I have been in constant association with him, officially and socially.

In my opinion, he was one of the ablest judges who have sat on any bench in this country during the past quarter of a century. He was a man of unusually vigorous and analytical mind, and of the most fearless courage and independence. In the discharge of his official duties he knew neither persons nor classes among litigants or counsel, his sole aim being to decide a cause according to legal principles as he understood them.

It never once entered into his mind to consider what effect any particular decision might have upon himself. He never did or said a thing for mere effect. There cannot be found in any of his judicial

utterances a word or syllable designed to make a show of learning or to cater to popular taste. Had he been ambitious of fame, in the ordinary sense of the word, a man of his ability might have achieved a much greater degree of success in that direction than he did. But in writing his opinions his sole aim was to do his duty, to decide a cause correctly and to state clearly the grounds upon which the decision rested; and he said nothing that was not necessary for the purpose. In his numerous decisions to be found in over thirty-five volumes of our reports, he has left an enduring monument to his eminent ability as a jurist.

To appreciate him as a man it was necessary to know him intimately. To those who were not personally well acquainted with him his manner sometimes seemed rather cold and reserved, and, at times, even brusque. But those who knew him well soon found that this was a mere matter of external manner. He was, in fact, a man of exceedingly kind heart, although never demonstrative. While, like all men of strong mind, he had positive opinions, and the courage to express them, yet he was modest in his estimate of his own abilities, and always considerate of the opinions of others.

If I were asked the trait most prominent in his character as a man, it would be his strong sense of duty and his sincere desire to perform it faithfully, but not ostentatiously. In his death the state has sustained a great loss, and I certainly have lost not only a most helpful colleague, but also a most valued personal friend.

### H. L. Williams' Opinion.

Henry L. Williams, old-time partner of the judge, after recalling the early incidents of Mr. Gilfillan's career, continued: "He went on the bench at the earnest solicitation of the bar and the business men, and at a pecuniary loss to himself. His mind was peculiarly fitted for the position he held. He was noted for his knowledge of the law. As a justice his reputation was very high in many states besides Minnesota. He was a broad-minded man, quite indifferent to the position or influence of any that come before him—the rich, the poor, the high, the low were equal. As a lawyer he was engaged in many important cases. One of the principal causes was that of the water works tunnel at Minneapolis, where damages were claimed on account of the water breaking through the walls of the tunnel. Another case concerned the foreclosure of the mortgage on the Southern Minnesota Railway company. The road was then bought in, and has since been operated by the Chicago, Milwaukee & St. Paul Railway company.

"As a justice his standing was very high. When there was formerly but one judge in this county the appointment of referees was very common, and Mr. Gilfillan was then the favorite referee of the bar. Personally he was a most kind-hearted man, and was beloved by all the bar."

### Ex-Attorney General Clapp.

said he had known the chief justice professionally during six years, "and my official duties as attorney general naturally brought me into very intimate

personal contact with him, resulting in my forming a very high opinion of him, both as a man and as a lawyer. While he was somewhat difficult to become acquainted with, yet when one came to know him he found him both sociable and companionable. The bar was sometimes disposed to feel that the chief justice was somewhat gruff in his manner, but it was always noticeable that his gruffness was not exhibited toward young and inexperienced members of the bar any more than toward the oldest practitioner and leader. He was a man of most unswerving integrity, and never seemed to consider the effect of his decisions, so far as it influenced, or might influence, his popularity. His methods were characterized by great research, and he possessed a broad and ready grasp of legal principles. His integrity and ability will come to be still more appreciated as those who have, perhaps, at times felt the severity of his manner, forget that trifling defect in the contemplation of his long, honest and laborious career.”

Said Judge Charles E. Flandrau.

"James Gilfillan came to this state in 1857. He entered into the legal business with his brother Charles and attained a good practice. When the court of common pleas was created, at which time the district court had but one judge, Mr. Gilfillan was nominated by the Republican party for the position of judge of the common pleas court. He was defeated, however, by Judge William Sprigg Hall, who held the position until his death. Mr. Gilfillan formed a partnership subsequently with Mr. Allis, and enjoyed a liberal practice. He was engaged in one of the most important litigations the state has ever known, the

foreclosure proceedings of the first division of the St. Paul & Pacific Railroad company, representing the bond holders. In this litigation he was associated with many distinguished New York lawyers, among whom were Evarts, Southmead and Choate. Shortly after the termination of these proceedings he was chosen chief justice of the state, and has been in that position up to the time of his death. He was always considered a wise and able counselor when practicing his profession, and as a strong and just judge when upon the bench.

One of the most remarkable opinions that he wrote while upon the supreme bench was in the case which sustained the law authorizing the payment of the old railroad bonds, issued by the state, without submitting the question to the people. The effect of that decision was to declare a clause in our constitution unconstitutional, because of its conflict with the constitution of the United States. The reasoning that Justice Gilfillan brought to bear upon that decision characterized his mind to be in an eminent degree, logical and judicial. Some lawyers regard a few of his decisions as a little erratic, but upon his whole career as a lawyer and a judge I think he ranks very highly.”

Judge Charles E. Otis.

"He was," said Judge C. E. Otis, "a very able, strong judge, a diligent, faithful and learned lawyer. I think his death a great loss to both the bar and the state at large. Socially, I was not so well acquainted with the justice. He was a man who had many friends and his

qualities were best appreciated by those who knew him best.”

#### Fellow Soldiers' Comment.

H. D. Brown, of Albert Lea, had the following to say of the deceased:

"He was colonel of the Eleventh Minnesota, and I was adjutant. He was promoted from captain in the Seventh Minnesota. While colonel of the Eleventh his service was chiefly as commander of what was called a 'sub district' under Gen. Rosser, who commanded the district of Nashville. His duties were more those of judge than strictly military, and his fitness was very apparent.

"He was conservative in his dealings with citizens. Was not in favor of loosely appropriating. Did not think that any and everything belonged to the victors. Insisted on strict accounting for all public property, and that confiscated property was public rather than private, and did not take into confiscation much.

"His judicial instincts led him to take notice of and report evident looseness in some departments, such as quarter masters. But a way had grown up of putting these departments, such as quartermasters' hospitals and colored soldiers, into separate lines, outside of the immediate subordinate commanders. That is a quartermaster would report direct to his superior quartermaster, and so on up. The natural friendly feeling for each other of those in the same line served to cover up what Col. Gilfillan would have brought to light. When assigned to his sub-district, he

was to assume command of the forces found within his territory. Among these was a partially organized regiment of colored troops. These soldiers seeming to be rendering no service, and hanging around rather loosely, Col. Gilfillan ordered the colonel of this regiment to get his command out to drill, inspection and parades, and to put out guards for his regiment and to detail guards for general duty in connection with details from the other commands. The orders were not obeyed. Col. Gilfillan put the commander under arrest. But using his independent [line], i.e. commander in the colored troop department, the arrested officer got the order of arrest set aside. This way of doing things did not suit Col. Gilfillan. Col. Gilfillan was not much of an officer as far as personal style and equipment were concerned. He did not ride a fast horse, with a troop of staff officers following. He was just suited for the position he held. The characteristics I have referred to did not make him particularly popular. The soldiers thought he was too lenient towards citizen rebels, like his immediate commander, Gen. Rosser.”

Henry J. Horn.

"He had a strong, judicial, analytical mind." was the opinion of Hon. Henry J. Horn, "he showed always a quick and clear apprehension of legal questions. He was one of those judges who have the desirable quality of deciding questions by force of his own reasonings and impressions rather than by relying entirely upon adjudicated cases. He was an enthusiast in his profession, and zealous to raise the

standard of the bar in this state. His habits were most domestic, and he was a devoted father and husband.”

John M. Gilman.

"Mr. Gilfillan was regarded always as the safest judge on the bench, or, at least, as fully the equal of any. His decisions gave as general satisfaction to the profession as those of any man we ever had in that position. He was always a patient, painstaking, earnest man. He rarely cited authorities in support of his propositions, but his propositions were sound and based upon principles well established by judicial authorities. He was a Scotchman, and, like most Scotch men, very decided in his views. He was not a timid man in any sense whatever, and decided cases and all questions as he thought was right, regardless of every other consideration except to declare the law as he understood it."



2. Editorial  
*St. Paul Daily Globe*

December 17, 1894

Page 4

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CHIEF JUSTICE GILFILLAN

James Gilfillan, for nearly nineteen years chief justice of the supreme court of Minnesota, and for thirty-seven years a resident of the state, is dead. A citizen, lawyer, soldier, judge he has borne well his part among men, and dies, while there should be yet

some years of useful life before him, at the age of sixty-five, full of honors.

We spoke recently, on the occasion of the death of one of our men of large affairs, of the men who helped build the state. In a different way from those who aided in the material development of the new state, but in a not less important or enduring way, Mr. Gilfillan was also a state builder. If other men gave their energies and abilities to driving out into the prairies the railroads that made possible their profitable occupation by the thousands who have since made their homes on them, and thus furnished the raw material of a state, it fell to the share of the chief justice to bear a hand in that not less important work of administering the laws, which are the bands that hold the social organization together.

It is a rule of conduct, the task of deciding the rule in the court of last resort is an important and a responsible one. Constitutions are to be defined, legislative acts are to be construed and tested by the constitution, and where the case is one of first impression, the conflicting decisions of other courts are to be weighed in the scales of justice to determine which rule shall be the law of the state. How well the dead judge performed this task, the prominence of the decisions of our court, the respect accorded them by other courts, bear witness. For this work he was singularly well equipped by nature, he brought to it the rugged common sense of the Scotch man and rigid conscientiousness of his Calvinistic ancestors. If he thought he was right, he was uncompromisingly tenacious of judgment. The qualities that aided in making him a strong judge had their drawbacks also. He was always the lawyer and

judge more than the statesman. So, when, as in the famous Chauncey-Wass case, the essence of the question was one of public policy more than of adherence to strict legal precepts and precedents, he overlooked the public policy and followed in the narrow paths of the law.

The same qualities gave him much more the appearance than the actuality of an austerity that, while it added dignity to and increased respect for the judicial office, detracted from his popularity. He had none of the arts or wiles of the politician, and his first appointment to a seat on the bench was due to the high appreciation of his qualifications by Gov. Marshall. The Republican convention that convened soon after did not share this appreciation, and nominated another; but at the next vacancy Gov. Davis restored him to the bench, and the succeeding party conventions felt bound to regard the public esteem in which his judicial abilities were held.

In a few weeks more the harness he has worn so long and labored so effectively in would have been removed, and he would have retired to private life. It is his good fortune to have died in harness. No man should wish for better fortune than to be allowed to be in service, useful to his kind, up to the last moment of his life.



3. Obituary  
*St. Paul Dispatch*

Monday, December 17, 1894

Page 2

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**INTO THE UNKNOWN**

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The spirit of Chief Justice Gilfillan was wafted  
early yesterday morning

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**CLOSING HOURS OF THE JURIST**

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Deceased Had Been Ill Since Last August—Nothing  
Serious Anticipated Until Within the Last Few  
Weeks—Cause of Death Was Cancer of the  
Liver—Review of the Chief Justice's Life—An  
Honorable Record—Action by Various Societies  
and Arrangements for the Funeral.

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Chief Justice James Gilfillan quietly passed away  
early yesterday morning, breathing his lasted at  
6:04.

Saturday afternoon, as reported in the Dispatch,  
the eminent jurist was very low, and the physicians  
and members of the family did not expect he would  
live over Sunday. He was unconscious for some time,  
but just before the end came he opened his eyes and  
took one last look at the dear ones who surrounded  
the bed. Dr. Senkler was in attendance until  
midnight, and when he left he did not expect his

patient would survive the night. Sunday many friends called to give consolation and comfort to the members of the family.

The late Chief Justice had been ill since the early part of August, but his case is not considered dangerous until a short time ago. The trouble of which he died was cancer of the liver.<sup>6</sup> Several physicians were called in for consultation, but no relief could be given.

The surviving members of the family are his wife, James P. Gilfillan, Mrs. Samuel Gilbert, Miss Mary Gilfillan, Mrs. Trevor McClurg, Perry K. Gilfillan, Miss Martha Gilfillan and Russell Gilfillan.

Hon. James Gilfillan, Chief Justice of the supreme court of the state of Minnesota, was a native of Scotland, and possessed those sterling virtues and the sturdy ability which are characteristic of Scotchmen, in greater or less degree. In him they found

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<sup>6</sup> The *Dispatch* was the only newspaper to identify the cause of death. Other papers were equivocal. E.g., *Winona Daily Republican*, December 17, 1894, at 1:

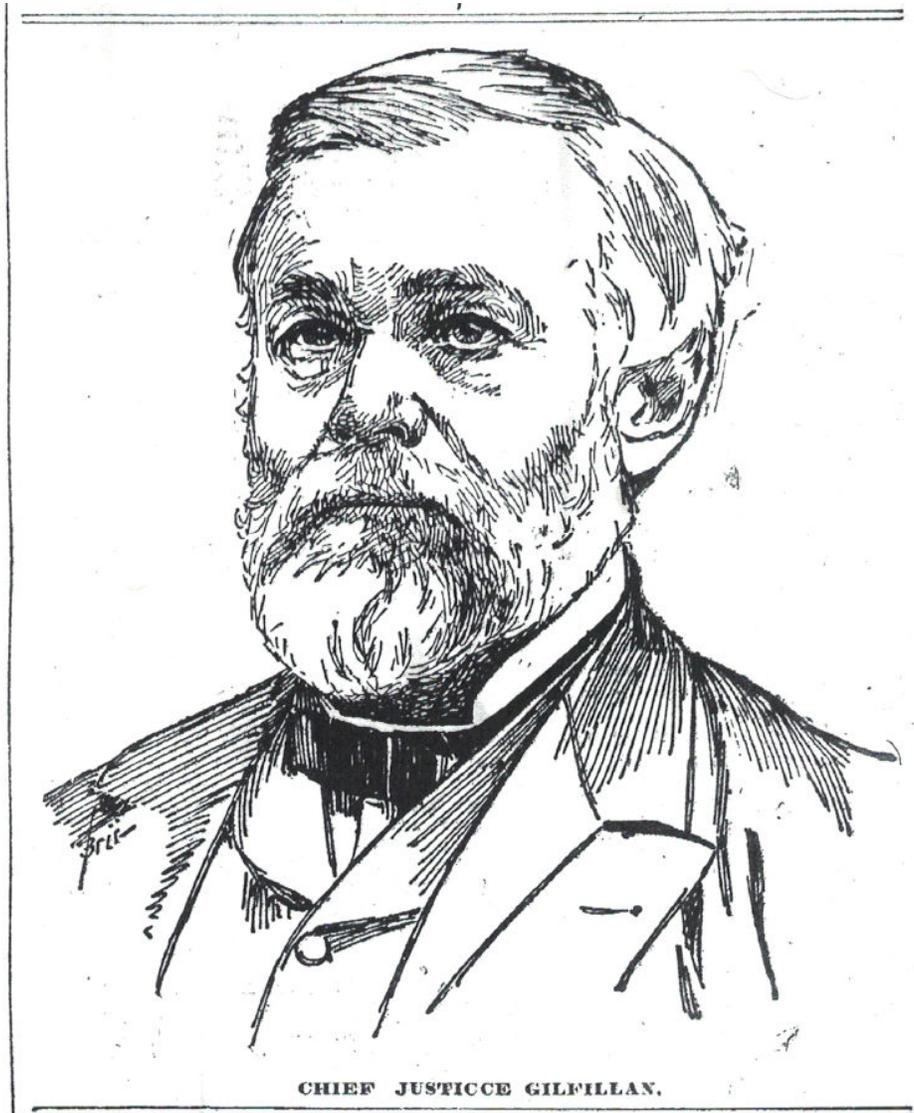
#### GILFILLAN DEAD

Minnesota's Chief Justice Passed Away at St. Paul.

St. Paul, Dec 17.—James Gilfillan, chief justice of the state supreme court, died Sunday morning at 6:04. He was in his 63th year. He had been confined to his house for about two months. For a long time it was supposed that his indisposition was but temporary, and the result of overwork. During the last few weeks, however, a serious disease of the liver became apparent to his physician, the true nature of which seems yet to be a mystery. The presence of all his family consoled his latter days.

Other newspapers named a familiar disease: "His death was caused by Bright's disease of the kidneys." *Wabash County Herald*, December 20, 1894, at 2; reprinted in *Detroit Free Press*, December 21, 1894, at 8.

rich development and led him to the highest positions within the limits of a great state.



(front page of the *Dispatch*)

He was born in Bannockburn, made famous in the story and song for the great victory won by the Scotch over the invading English, and, as was natural, he was proud of his birthplace and was worthy of its renown. The year of his birth was 1829, and in the year following his parents emigrated to

the new world as many of their country have done before and since, and, coming to New York state, made a home on a farm.

As a boy Judge Gilfillan attended the schools which the neighborhood afforded, and when he was 16 years old his ambition prompted him to study law. He pursued his legal studies at Buffalo and Balston Spa, and when he was 21 years old was admitted to the bar at Albany.

As early as 1857, not many years after the first pioneers had placed foot on the soil, he came to St. Paul, and opened a law office. With the opening of the war and the call for volunteers the young lawyer felt this good Scotch blood stir with patriotic promptings, and in 1862 he enlisted the Seventh regiment. The command was ordered on a campaign against the Sioux Indians, at that time engaged in a bloody revolt against the government, and served faithfully in the operations that followed.

After the Indian service he proceeded south with the regiment, and was in the battles of Harrisburg and Paducah. Having acquitted himself as a brave and capable soldier, he was promoted to the captaincy, and in 1864 joined the Eleventh regiment as colonel commanding. In 1865 he was in command of the Third division, of the military district of Middle Tennessee.

In July, 1865, he left the service with an honorable and brilliant record, and devoted himself once more to the law.

In 1869 there was a vacancy on the supreme bench, made by Thomas Wilson, and Gov. Marshall, taking cognizance of his ability, appointed him to the bench. In 1875 he was reappointed to fill another vacancy, and has served ever since on the bench, being reelected several successive terms.

Judge Gilfillan needs no chronicler to write his record as a lawyer and a jurist. It is saying once more what has been said so many times, both in courts of law and other places, that in every state in the United States the decisions of the supreme court of Minnesota are held in high estimation, and they have taken that character through the abilities of Judge Gilfillan, conscientiously exercised and supplemented by the work of his associates. He has given a character and a reputation to the supreme court from the time he took his seat on the bench. He was able, conscientious, persistent, painstaking, industrious. He appeared never to think of himself, as evidenced by the fact that he never thought of taking a rest even after the most exacting laborers.

Judge Gilfillan was never dramatic, he never sought for eulogy and disliked anything approaching notoriety. He was the calm and dignified judge, the quiet, unostentatious gentleman, taking the full measure of satisfaction in his home life and the companionship of his wife, to whom he was tenderly attached. Judge Gilfillan would never expect praise for his decisions in the famous Minnesota railroad bond case. He decided that without reference to praise or blame, as he did every other case that came before him.

The first twenty volumes of the Minnesota supreme court reports bear Judge Gilfillan's name, as he found time to edit them, with all his other duties.

He had a correct taste in literary matters, and for years had read much, both the current literature of the day and the standard authors and philosophical works of the most distinguished authors. Few men in the city were so widely informed as he.

While never familiar, with Judge Gilfillan was pleasant and sociable with his friends, and they became warmly attached to him.

His wife was Miss McMasters, daughter of a famous clergyman of the early days here, rector of Christ Church Parish for many years.

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## PROCLAMATION BY NELSON

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Directing All State Offices to Be  
Closed the Day of Chief Justice's Funeral

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Gov. Nelson this morning issued the following proclamation, announcing the death of the Chief Justice, and directing all state offices to be closed on the day of the funeral. The proclamation sets forth:

“It becomes my sad duty to announce the death of Chief Justice Gilfillan. He was a jurist of marked ability, an able, fearless and just judge, loved and respected by all the people of the state. He was a leading factor in the development of our judicial system. His task is ended, but the memory of his work and all that he wrought for us will abide in the history and annals of our state for all to come.

“As a token of the grief and sorrow felt by us for his loss, I direct that all state offices be closed on the day of his funeral, and that the national flag be displayed on the capital at half mast from now until after his funeral.”

The vacant chair of the chief justice of the supreme court is heavily draped in black.



4. Editorial  
*St. Paul Dispatch*

December 17, 1894

Page 6

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**CHIEF JUSTICE GILFILLAN**

One more of the great men who laid so deep and secure the foundation of the greatness of Minnesota, has been called to his last rest. Chief Justice Gilfillan

will live not only in the judicial history but in the social, political and industrial history of our people.

Seeking eminence only in his chosen profession he lived to fill with high honor the first station to which the people were able to choose him. His discharge of that exalted judicial position recalls in many of its incidents, and in the strong, courageous temper of the man, one of the greatest judicial officers known to American history, Chief Justice Marshall. As sound a lawyer as the great federal judge he has shown within the limits of his position and opportunities the same unyielding regard for what he conceived to be the basic constitutional principles on which American society rests.

The passing away of such men is one of the saddest features of these times. One by one they are been called away from us. They have, in all cases, happily fulfilled the tasks which were given to them to do, and for which they were so richly endowed by their maker.

It was among the greatest advantages which entered into the superb equipment of the deceased jurist for the duties of his station as chief justice of the supreme court, that he understood our laws and institutions from the earliest beginnings; that he was an industrious student, a man of affairs and a lawyer of profound learning. His fame will live as long as our system of jurisprudence, and his decisions and expositions of constitutional law will be read as long as the decisions of our highest court enter in the general great framework of our legal authority.

The place which is vacated on the supreme bench will be difficult to fill as ably as it was filled by him who has just passed away.



5. Obituary  
***SAINT PAUL PIONEER PRESS***

December 17, 1894

Page 1

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**CHIEF JUSTICE  
GILFILLAN DEAD**

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**HE PASSED AWAY AT 6 O'CLOCK  
YESTERDAY MORNING**

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By his death by his death Minnesota by his death  
Minnesota has been deprived of one of the  
ablest, most conscientious and most courag-  
eous juror jurists that ever occupied a seat on  
the Supreme Court spring bench of the state  
the funeral will be held tomorrow tributes and  
justice skillful and's late associate

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After an illness of a little over four months, Chief  
Justice James Gilfillan passed peacefully away at  
6:04 yesterday morning, and Minnesota has been  
deprived of one of the ablest, most conscientious  
and courageous jurists that ever sat on the supreme  
bench of the state. Justice Gilfillan was unconscious  
for some little time before the end came. There was  
no one present when he died but members of the  
family. Dr. Senkler, who attended him throughout his  
illness, was with him until midnight, and was  
convinced when he went away that death would  
come before morning. The news of his death spread

rapidly among the close friends of the family and all day yesterday they kept calling at the residence to extend their consolations to the surviving members of the family and view the remains of their departed friend.

Justice Gilfillan, though ill since early in August, was not considered dangerously so until a few weeks ago. In fact he continued to perform his duties as chief justice for some time after he began feeling sick. When his condition gradually became worse Dr. Senker called Dr. Abbott in to consult with him on the case, but the disease was beyond the power of the physician to cure, and for some time past his death had been looked for daily.

The arrangements for the funeral have not yet been completed, but it will be held at 2 o'clock tomorrow afternoon from Christ church, corner of Fourth and Franklin streets. Justice Gilfillan was an ex-commander of the Loyal Legion of Minnesota, the only society of which he was a member. He could never be induced to join societies, because he felt it might lead to a suspicion that his decisions were influenced by personal ties, though anyone who knew him knew there was no ground for this fear. The commander of the Loyal Legion has issued a call for all the members to participate in the funeral offices.

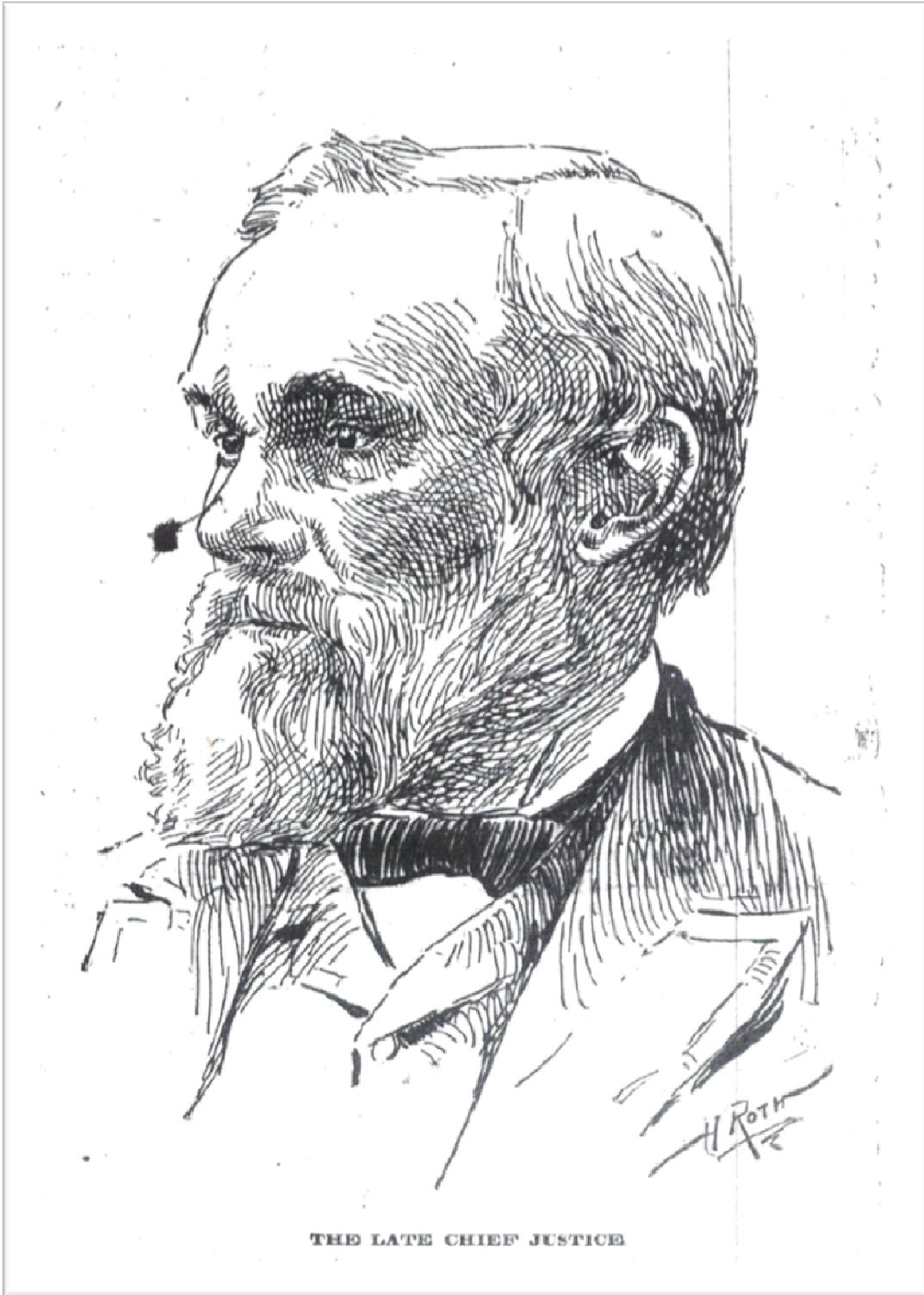
The surviving members of the family are his wife, James P Gilfillan, Mrs. Samuel Gilbert, Ms. Mary Gilfillan, Mrs. Trevor McClurg, Harry K. Gilfillan, Miss Martha M. Gilfillan and Russell Gilfillan.

## A Sketch of His Life.

Justice James Gilfillan was born in Scotland in 1829, and the following year his parents came to this country and settled on a farm in the State of New York. The boy attended a country school for three or four months in the year until he was sixteen years of age. He then began the study of law. He studied at Ballston Spa and Buffalo, and was admitted to the bar at Albany in 1850. In 1857 he came to St. Paul, and immediately began the practice of his profession.

But when the call for volunteers came to defend and preserve the Union, the young lawyer, like many of his brilliant legal associates, laid aside all considerations of his own private affairs and enlisted in the Seventh regiment Minnesota volunteers on Aug. 9, 1862. This was one of the regiments that was ordered out to defend the settlers of the state against the ravages of the Sioux Indians.

He served with his regiment in the campaign against the Indians in the fall of 1862 and summer of 1863, and was in the battles of Wood Lake and Big Mound. He accompanied his regiment to St. Louis and was in action with it at Harrisburg and Paduca. Oct. 8, 1862, he was promoted to captain and on Nov. 1, 1864, he was mustered out of the Seventh regiment. Two days later, Nov. 3, 1864, he joined the Eleventh Minnesota regiment and was commissioned colonel of that regimen, Oct. 13, 1864, having been mustered in as a colonel.



(front page of the *Pioneer Press*)

He was mustered out of the army with an honorable discharge July 16, 1865. During the last year of his service in 1865 he was in command of the third division of the military of Middle Tennessee. His knowledge of law came into service even on the battlefield and he served at some of the most notable courts martial proceedings during the war.

At the close of the war Judge Gilfillan returned to St. Paul and took up the practice of law again. In 1869 he was appointed by Gov. Marshall, chief justice of the state supreme court to fill the unexpected term of Justice Thomas Wilson, and served on the bench until 1870. He was again appointed to fill another vacancy in 1875, and held the position by election ever since.

#### His Career on the Bench.

Too much cannot be said in praise of Justice Gilfillan's record as a jurist. His opinions have always been characterized by his embodiment of a high degree of intellectual intelligence and common sense, as well as a thorough knowledge of law. He was just in his decisions and courageous in the expression of his opinions, and for these traits he was always admired by members of the bar throughout the state, no matter how much certain ones might at times dissent from his judgment in cases in which they were personally interested. As one of his old associates at the bar expressed it the other evening, "No juster judge than James Gilfillan ever sat on a bench anywhere."

The most famous decision handed down by Justice Gilfillan during his career on the bench, and probably the one by which he will be longest remembered as a jurist, is the decision of the state supreme court by which the old state bonds issued to aid in the construction of railroads in the early days were held to be valid and the state compelled to settle for them.

Some \$2,500,000 of these bonds had been issued and sold under the original constitution of the state along early in the sixties. Later on a constitutional amendment was adopted prohibiting the payment of these bond without a vote of the people sanctioning it. Of course the people invariably voted against payment, and so the matter ran along for some twenty years. Finally suit was instituted by the holders to compel payment, and when the case went to the supreme court Justice Gilfillan wrote the opinion, holding that the amendment to the constitution prohibiting the payment of the bonds was itself unconstitutional, because it conflicted with the clause in the United States constitution prohibiting any state from passing a law for the invalidation of a contract. The opinion has always been considered by the leading lawyers of the state is able and just, though naturally not popular with those who would have the state do what no honorable business man would think of doing, repudiate payment on the bonds that it been lawfully issued and sold.

In addition to his duties on the bench, Justice Gilfillan found time to revise and annotate the first twenty volumes of the state reports, which bear his

name. In manner he was quiet and unassuming. In form he was large and always gave evidence of health and strength. He was very industrious, both mentally and physically. An incident in his life related by one of his old associates, bears evidence of the sturdy, energetic spirit of the man:

When the Seventh regiment, of which he was captain, went West with Gen. Sibley's expedition to about the point where Bismarck now stands, Justice Gilfillan refused to ride a single foot of the distance, but tramped every inch of the way there and back.

#### A Tribute From Judge Flandrau.

Among Chief Justice Gilfillan's most intimate friends and acquaintances was on the bar was Judge Charles E. Flandrau, who, in speaking of his judicial career, says:

I remember Judge Gilfillan when he first came to St. Paul. It was, I think, as early as 1857. He soon took a prominent position at the bar and I think was a partner of his brother, C. D. Gilfillan. His progress at the bar was not in any way remarkable, but he advanced in his work and in the estimation of the community rapidly. The first instance of public recognition that I remember of his legal abilities was when the court of common pleas was established for Ramsey county. He was chosen as a candidate for the Republican party for judge of the court, but was defeated by William Sprague Hall, who was nominated by the democracy. Mr. Gilfillan's next very prominent recognition was not a public one, but was in his connection with the foreclosure proceedings

of the first division of the St. Paul and Pacific Railroad company. He was the leading man of the local attorneys in that important litigation, and was associated with very distinguished New York lawyers. His well earned prominence at the bar and his sound and safe characteristics as a man and a lawyer attracted general public attention, and when the appropriate time came he was naturally selected by his party, and I may say by the general consent of the bar, for the position of chief justice. He has, as is well known, held this high position for many years, and has given general satisfaction by the conservative and sound views he has generally expressed. There have been times when he has been disposed to be a little erratic, judged from the standard of a very old-fashioned lawyer, but it is fair to say that he was a wise and just judge, and this is commendation enough for any man.

“As a judge he most distinguished himself in the opinion he wrote in the case of the settlement of the old railroad bonds, the history of which was briefly this: When we adopted our constitution we wisely said that the credit of the state should never be loaned to any person or corporation. After the panic of 1857-8 we foolishly amended it so that we could issue \$5,000,000 bonds to aid in the construction of a system of railroads. When we had issued about half the amount we found we had made a very bad bargain, and we repealed this clause in the constitution and forbade the payment of the bonds already out, unless such payment was sanctioned by a vote of the people, and we became from that moment, repudiators of our just obligations. Of

course all good men wanted them paid, but the majority were not good men, and on several occasions voted them down; finally the legislature passed an act recognizing a settlement without a vote of the people and the question of the validity of the act came before the supreme court, and that court decided that the clause in our constitution which held that the bonds could not be paid without the sanction of the people was unconstitutional as being in conflict with the constitution of the United States, which forbids the states to impair the obligation of contracts. This decision was in all things sound and just, as the reasoning by which Judge Gilfillan sustained it was enough to stamp him as a man of judicial power, and gave him a place among the judges of distinction for all time to come.”

#### Tribute From a Former Partner.

Henry L. Williams, of the law firm of Williams, Goodenow & Stanton, was intimately associated with Justice Gilfillan for many years, both being members of the same firm for eight years. The first firm Justice Gilfillan was connected with was that of J. and C. D. Gilfillan. Afterwards he practiced alone for a time, and then he joined Mr. Williams, the firm been known as Allis, Gilfillan & Williams. After being in this firm for two years he was appointed supreme judge for six months, and then he re-entered the firm, remaining there two years more. During the four following years he was a member the firm of Gilfillan & Williams, so he and Mr. Williams were partners for practically eight consecutive years. Concerning him Mr. Williams says:

**“He was noted for his judicial temperament. He used to be a favorite referee, and decided many important cases in that capacity. He was a pure-minded man. In all the years I knew him I never heard him say a word of which he may be ashamed. He was friendly and a favorite with all the members of the bar. He was the one to whom young men used to come for counsel.**

**“George Otis, the lawyer, brother of Judge Otis, and Justice Gilfillan were very much alike in temperament, and used to go home together at night. I remember a certain justice who used to go to one of these men whenever any difficult question arose before him and asked them for the legal points. The result that was that his decisions of law were generally sustained by the appellate court. One time I went to Justice Gilfillan s office when he was a young lawyer and found him at work studying some legal question. I asked him what he was doing and he replied:**

**“Justice So-and-So stumped me last night as he was going home regarding a question of law, and I was uncertain, but gave my opinion that the appellate court of New York had just decided it, and find here that it has.’ This circumstance showed me some of the excellent qualities of the man as a lawyer.**

**“He always had a kind word for everybody. The most cutting thing I ever heard him say was regarding a young man in the office concerning whom he said that if he paid as much attention to adorning his mind as his body he would be a good lawyer. He was**

kindhearted and genial and I never knew of his having a quarrel with anyone. He was just fitted for the place he held in the supreme court, which he took at a pecuniary loss at the earnest solicitation of the best businessmen of the state. The bench of Ramsey county is held in high regard, due largely to the ability and integrity of Judge Gilfillan and other early lawyers.

“As a lawyer he was powerful before the judges. He was a counselor and in his arguments he was a power. He was also a first rate office man, careful and industrious. You may well imagine I missed him when he left the firm.”

Wow a lawyer with Mr. Williams Justice Gilfillan was engaged in very important litigation, among the most important of which was a foreclosure of the mortgage on the Southern Minnesota railroad and also the litigation growing out of the attempt to improve the water power of Minneapolis by building a tunnel, which broke down, destroying several mills and threatening the destruction of the water power. The government spent much time to save the falls. Justice Gilfillan was one of the attorneys for the parties who constructed the tunnel, in whose favor the case was decided. In the case of the Southern Minnesota Justice Gilfillan was counsel for the mortgagee and succeeded in having the mortgage foreclosed, the property passing into possession of the Milwaukee, which then entered St. Paul. The justice was engaged in other important litigation, and was generally successful. As an evidence of his dogged determination and unremitting labor he

remarked to Mr. Williams during the Southern Minnesota affair that every day during the term (about a month) he had been in court attending some matter growing out of the foreclosure proceedings.

Judge William Mitchell of the supreme court, was associated with Justice Gilfillan on the supreme bench for fourteen years, and knew him as well as anyone. Judge Mitchell says of him: "Our association was exceedingly pleasant. I found him a most agreeable man, and helpful to me, and I regard his death as a great personal, as well as a public loss. To casual acquaintances he seemed a little austere and distant, but to those who got under the crust he was exceedingly kind-hearted and pleasant. He was a man of most thorough integrity and impartiality; a man who never knew classes of clients or litigants; fearless and upright.

"One of his most remarkable traits was his strong analytical mind, and yet he was a man who was exceedingly plain and unostentatious, never saying nor doing anything nor inserting a word in his decisions for effect. He decided everything according to the principles of the law. Taking all things into account, I think he was one of the strongest men who has ever been on the bench of late years, and I think his death is a great loss to the state, and especially to the profession.

"You had to know him somewhat intimately to appreciate his ability and his good character. In the fourteen years of our association there was never the least unpleasantness of any kind."

### Honored the State and Himself.

Judge Thomas Wilson, general counsel of the Omaha, never met Justice Gilfillan on the bench, nor was he closely associated with him, nor even engaged in any litigation with him, but having met him a few times, learned to appreciate his worth. "I will say," Judge Wilson says, "that he has honored the state and himself. He was a man of great ability and integrity. What appeared to be a forbidding disposition was really a mannerism. Young men often thought his manner was brusque, and I have no doubt that this feeling had considerable to do with his defeat in seeking the nomination this last time, but as I said it was only a mannerism, such as good, strong men often have."

### From an Associate Justice.

Another man whose associations with the deceased were about as limited as those of Judge Wilson, and yet who learned to appreciate him as much is Judge Walter H. Sanborn, of the United States Circuit Court. "I belonged to the succeeding generation," the judge says, "and consequently was never thrown into contact with Justice Gilfillan, but I have met him often, and know him to be an able, careful and learned judge. He practically devoted his life to ability to a study of his profession, and no man I know had a sounder judgment or clear understanding of the principles of the law than he."

From Judge Cornish.

“It is unnecessary for me to bear witness to the noble qualities, court,” said Judge Cornish, “save as an act of sincere admiration, for they are known to every lawyer in the state. He was an upright man, and a just judge. That sentence is honor enough for any one to win when it is pronounced by the world, and it will be in the case of Judge Gilfillan. He did his full share in winning the respect for the courts of Minnesota. Unostentatious in every way, he devoted himself to his duty and it has been well done.”



6. Editorial  
***ST. PAUL PIONEER PRESS***

December 17, 1894

Page 4

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**DEATH OF CHIEF JUSTICE  
GILFILLAN**

Death has been sadly busy of late with the old settlers of St. Paul, with the men who have been conspicuous as leaders in its business and professional activities. In taking away Chief Justice Gilfillan it has deprived the state of one of its most distinguished jurists, of one of the men whose learning, abilities and clear common sense have raised the supreme court of the state to the highest rank among the judicial tribunals of the country. He

was a born judge, for he had the judicial temperament. Few surpassed him in knowledge of the law and of its principles; none in the courage and integrity with which he carried his conclusions into his decisions. To the younger members of the bar he sometimes appeared austere and abrupt. For he had little patience with the interminable twaddle of fine-spun sophistries and of irrelevant citations with which some young lawyers, and some older lawyers, weary the courts. But there was no kindlier man than James Gilfillan; none more agreeable in all his social relations; and he was universally admired by the bar for the solid qualities which made him exceptionally strong on the bench. He was as pure in his private life as in his judicial office, and as modest and quiet in his personal demeanor as he was firm and courageous in his judicial conduct. After twenty-five years' service on the supreme bench, the small politicians of his party refused him a re-nomination to the office he had done so much to adorn and dignify. Death has taken him away before the full measure of his term had been filled, but he leaves behind him the reputation and a rank in the judicial annals of the country of which either death or politics can deprive him.



7. Editorial

*Minneapolis Journal*

December 17, 1894

Page 4

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**THE LATE JUDGE GILFILLAN**

The late Chief Justice Gilfillan, in a very eminent and substantial way, served the state of Minnesota as a public man. His decisions through two decades on the supreme bench have almost invariably been recognized as the product of the truly "judicial mind" and as laying the foundations for safe legal procedure in the future.

Aside from his military career, when he promptly responded to his country's call during the war and serve the Union cause faithfully and valiantly, Justice Gilfillan devoted his active life exclusively to his profession. His distinction in civil life has been gained exclusively in his profession, for he never was and never sought to be prominent in politics. His most distinguished decision was in the old railroad bond case, in which the honor and credit of Minnesota were directly concerned. He wrote the decision of the supreme court that the bond tribunal act, passed by the legislature on March 1, 1881, which referred the matter to a special tribunal appointed by the governor, was unconstitutional because it involved the delegation of legislative powers to a judicial body, and that the amendment of 1860 was unconstitutional because it tended to impair them and obligation of contracts by submitting to popular vote the decision whether the state should or should not pay her debts. This decision removed the difficulty which for 20 years had weakened the state's credit, and a settlement was in was effected with the creditors of the state.

Justice Gilfillan was a close student, a most conscientious jurist, separating himself from every association with might give an impression that he was biased in his decisions. Quiet and dignified in his

manner, he was misunderstood by some people who had not the privilege of contact with the kindly and agreeable nature of the man in private life. In all the relations of life off the bench his seeming austerity disappeared. At his charming home and in his church, his influence was pervasively kindly and helpful, and no tribute could have been more heartfelt and appreciative of true worth than that paid to the deceased jurist's memory by Dr. Andrews, rector of Christ church, in St. Paul, in his remarks prefatory of his sermon on Sunday morning, as he looked at the vacant seat, which had never been empty when the judge was able to attend the service.

Truly a righteous man and a just judge had passed away in the death of Judge Gilfillan.



8. Obituary  
*Winona Daily Republican*

December 17, 1894

Page 1

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**GILFILLAN DEAD**

**Minnesota's Chief Justice Passed Away at St. Paul.**

St. Paul, Dec 17.—James Gilfillan, chief justice of the state supreme court, died Sunday morning at 6:04. He was in his 63th year. He had been confined to his house for about two months. For a long time it was supposed that his indisposition was but temporary, and the result of overwork. During the last few

weeks, however, a serious disease of the liver became apparent to his physician, the true nature of which seems yet to be a mystery. The presence of all his family consoled his latter days.

Judge Gilfillan was born in Bannockburn, Scotland, Nov. 9, 1829. His parents removed with him to New York in 1830, and there he received an academic education. In 1852 he was admitted to the bar. The same year he began the practice of law in Buffalo. In January, 1857, he arrived in St. Paul. He has been chief justice since 1875.



9. Editorial  
*Winona Daily Republican*

December 17, 1894

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The death of Chief Justice James Gilfillan at St. Paul, on Sunday, removes from the field of human activity an exceptionally able lawyer and a jurist whose decisions were never swayed or determined by a selfish or unworthy motive. It is truly said of him that he was distinguished among the men who have raised the Supreme Court of this State to the highest rank among the judicial tribunals of the country. The judicial temperament was his in an eminent degree, and to this was added a thorough knowledge of the law and its principles and a high moral courage and conscientiousness which enabled him to declare his conclusions without favor or prejudice. While outwardly austere in his personal relations with other

men, by those who knew him intimately he was recognized as a man of gentle demeanor and kind heart. In his death Minnesota loses a citizen who has shed luster upon her name, and whose memory will long be cherished by coming generations as well as by that which knew him in life.



10. Funeral Services  
*St. Paul Daily Globe*

December 19, 1894

Page 2

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**RETURNED TO EARTH.**

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Impressive Funeral Occasion,  
That of the Late Chief Justice.

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**EPISCOPAL SERVICE READ.**

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Loyal Legion, Bar Associations, State Officials  
And Others Present.

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**CASKET MOST BEAUTIFUL.**

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Bar Associations of Ramsey  
and Hennepin to Pass  
Resolutions.

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From the family mansion on South Exchange street yesterday afternoon at 3 o'clock, the body of James Gilfillan, late chief justice of the Minnesota state supreme court, was conveyed to Christ church, corner Fourth and Franklin streets, where the rector, Rev. C. D. Andrews, read the last sad rites of the Episcopal church over the remains.

When the funeral cortege arrived at the church with the remains, the members of the state supreme court, state officials, Minnesota commandery, Loyal Legion, members of the Ramsey and Hennepin counties' bars and well known citizens and members of the congregation occupied seats in the church to witness the simple but imposing services of the Episcopal faith. At the conclusion of Rev. Andrews' services

#### The Loyal Legion Choir

sang the beautiful hymn, "Lead, Kindly Light." All that remains of the dead jurist was then conveyed to the family lot at Oakland cemetery and placed in Mother Earth.

James C.  
Gilfillan.  
1829.  
1894.

The casket was of cedar, covered with beautiful black cloth, and bore a handsome wreath of evergreens and choice flowers. The floral offerings of friends were elaborate, beautiful and large. A

silver plate on the casket bore the this inscription:  
The active pall bearers were E. A. Jaggard, Horace Bigelow, H. B. Wenzel, John Lane, W. 1H. Yardley and H. W. Lightner. The honorary pall bearers were H. J. Horn, N. P. Langford, Col. John Farrington, John M. Gilman, Justice Mitchell, Judge Greenleaf Clark, J. Q. Adams and A. H. Cathcart.

#### **Loss to the Parish.**

Rev. Andrews, seen last evening, said the death of Judge Gilfillan was a great loss to the parish In every way. The dead judge had been senior warden of the parish, and was a warm supporter of the church. One week ago last Sunday Judge Gilfillan took his last communion.

#### **Bar in Mourning.**

At the court house yesterday morning, in Court Room No. 1, the Ramsey County Bar association and the judges of the district court held a meeting to adopt resolutions of condolence on the demise of Chief Justice Gilfillan. Mr. Ozman stated that at the meeting of the bar association Monday afternoon it had been agreed to allow memorial resolutions to be adopted on the first day of the coming January term of court. The senior judge, Haskell R. Brill,

#### **Declared the Court Adjourned**

for the day, and announced that the judges and members of the bat would meet at 1:30 to attend the funeral. The resolutions would be accepted by the

court at 10 o'clock on the morning of the first day of the January term. H. L. Williams, George B. Young and Gen. John B. Sanborn compose the committee on memorial resolutions.

The Hennepin County Bar association took action similar to their Ramsey county brethren, and Judge J. M. Shaw, Judge M. B. Koon, Hon. Isaac Atwater, Emanuel Cohen and ex-Attorney General W. J. Hahn were appointed a committee to draft resolutions of regret of the death of the chief justice.



11. Obituary

*THE REDWOOD GAZETTE*

December 20, 1894

Page 4

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**JAMES GILFILLAN.**

Chief Justice Gilfillan, of the Supreme Bench of Minnesota, and brother to Hon. C. D. Gilfillan, of this county, has passed into the great beyond. With his departure one of the most, if not the most eminent jurist in Minnesota, departs from the halls of justice. He was a most learned man in law, and the rulings laid down during his extended career on the bench are pointed to by attorneys as being among the most stable in the Union. During his later years Mr. Gilfillan was accused of being severe in his treatment of the younger members of the bar, appearing before him for the first time, and politicians at the last Republican State convention, made that their excuse for defeating his re-nomination. The chagrin of defeat, brought on by such a petty excuse, may have assisted in hastening

his demise. Whatever truth there is in either statement there can be no honors taken away from his proud record as a jurist and as a man. Minnesota needs more like him.



12. Supreme Court Memorial Services  
*St. Paul Daily Globe*

January 8, 1895

Page 8

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**HONORED HIS MEMORY**

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Memorial Services in Honor  
of the Late Chief Justice  
Gilfillan.

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The Attorney General  
Presents the Memorial Ad-  
dress in Behalf of the  
State Bar.

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**CHIEF JUSTICE START.**

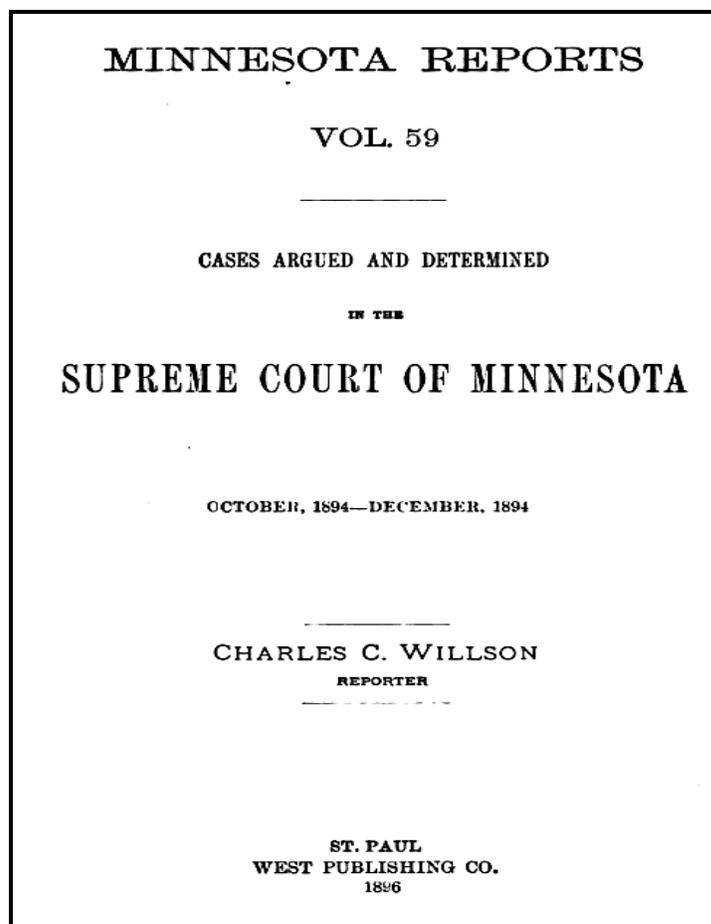
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And Other Able Men Pay Eloquent  
Tributes to the Dead Jurist.

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The supreme court held a special session in the senate chamber at the capitol yesterday morning, to listen to memorial addresses in honor of the late Chief Justice Gilfillan. There were present a number

of district court judges from both cities, the members of the supreme court, the bar association in a body, and many of the state's leading lawyers. The regular session began as usual at 9:30 in the supreme court room, but, owing to want of space, adjourned at 11 o'clock to the senate chamber for the memorial services. Attorney General Childs first presented the formal memorial address, in behalf of the state bar. It was as follows:



The Memorial Services were published in local newspapers and later reprinted in Volume 59 of the Minnesota Reports It is also published in *Testimony: Remembering Minnesota's Supreme Court Justices* 66-79 (Minn. Sup. Ct. Hist. Soc., 2008).

JUSTICES  
OF THE  
SUPREME COURT OF MINNESOTA

DURING THE TIME OF THESE REPORTS.

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HON. JAMES GILFILLAN, CHIEF JUSTICE.  
HON. WILLIAM MITCHELL.  
HON. LOREN W. COLLINS.  
HON. DANIEL BUCK.  
HON. THOMAS CANTY.

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CHARLES P. HOLCOMB, Esq., Clerk.

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ATTORNEY GENERAL,  
HON. HENRY W. CHILDS.

(iii)

# IN MEMORIAM.

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## CHIEF JUSTICE GILFILLAN.

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Memorial services, held January 7th, 1895, commencing at 11 o'clock a. m., in the Supreme Court at the State capitol in honor of the late Chief Justice, Hon. James Gilfillan.

Present: Chief Justice Start, Associate Justices Mitchell, Collins, Buck, and Canty.

### MEMORIAL.

The bar of Minnesota, as an appropriate testimonial of its appreciation of the character of the late James Gilfillan, respectfully request that the deliberations of this Court over which he so long presided as its Chief Justice yield to a brief tribute to his memory.

On the 16th day of December, 1894, James Gilfillan, in the midst of his official duties and before the powers of his mind had been enfeebled by wasting age, was removed by an all-wise Providence from the ranks of the living.

That the deceased was a great jurist the voice of the bar of this country and numerous volumes of the reported decisions of this court bear ample witness. How he adorned his high office by wealth of legal learning, marked powers of analysis, great breadth of mental grasp, quickness of apprehension, unflinching courage, probity and industry, none know so well as those who during the last twenty years have most frequently appeared before him. All who knew him in the private walks of life testify to the purity of his thoughts, the warmth of his affections and the simplicity of his manners.

With what wisdom he wrought and how deep was his influence in shaping the jurisprudence of this State must indeed be left to the final judgment of the future, but tested by the opinions of his cotemporaries, he has by such labor reared an enduring monument to his fame. His own words, fitly spoken on another solemn occasion over the bier of one he loved, are most appropriate now:

"The judge, who, for a considerable time, occupies a place in a court of last resort in a comparatively new country, makes his impress upon the future of the State and society more than almost any other man. True, it is usually done quietly, without display, and almost imperceptibly, as the dew falls or the trees grow. His decisions concern men in all their daily lives and business, and establish their code of business morality. He marks out the path in which those who come after him in the judicial office, or in the profession of the law, must follow."

A veil, impenetrable to mortal vision, has been drawn between him and us. The State has thereby lost one of its most illustrious citizens; the bench, a shining ornament; the bar, its most conspicuous member; a family, a devoted husband and father.

We therefore respectfully request that this memorial, although but feebly expressive of our regard for the memory of the deceased, be entered at length upon the records of the Court, with such other proceedings as may be had in connection therewith, and that a copy thereof be transmitted to the afflicted family.

v.59 M.

(539)

*Address of Hon. Henry W. Childs, Attorney General.*

May it please the Court:—In presenting this memorial, I am prompted to say a few words suggested by the occasion.

A great brain and heart have been stilled by the mystic touch which we call death, and know no more. A bright light which has long illumined our professional pathway and directed the course of the jurisprudence of this State, has been extinguished forever. James Gilfillan who but yesterday presided over the deliberations of this Court, a tribunal which he strove with all his great powers to elevate in the estimation of the bench and bar of this country, will hereafter live only in the hearts of those who knew him, and in that noble work which he has left behind him for the guidance and instruction of this and future generations.

The day is most appropriate for this proceeding. It was to-day, in the ordinary course of official events, that he was to have relinquished his exalted station among you to resume his place in those ranks which twenty years ago, he reluctantly and at great personal sacrifice abandoned in obedience to the call of duty. The ermine which fell upon his shoulders then, now descends unsullied upon the shoulders of his successor.

He was a great judge. Many of the decisions of this Court written by him, bear unmistakable evidence of his masterful abilities. They will be received everywhere as authoritative expressions of the law. They will, moreover, serve as notable examples of judicial writing. Conciseness of expression was his characteristic. Years of careful self discipline and exhaustive research had brought to him a profound and unfailing knowledge of the law. His comprehensive mind grasped instantly what the ordinary mind attains by slow and laborious process. His decisions are models in their paucity of citations. In expounding the law, in applying its principles to a given case, he found slight occasion to fortify his position by reference to authorities. So quick was his perception of the truth, so accurate his power of analysis, that his deductions were rarely at fault. He felt safe upon his ground not because it had the endorsement of some other court or judge, but because he knew by those infallible tests never absent from a powerful and analytic mind, that he was right. In vain will his writings be searched for expressions penned for mere effect. Words with him were vehicles of thought and never the trappings of display. Not always faultless, either in his choice of language or the structure of his sentences, he has, however, rarely failed to dress his thoughts in diction so clear as to leave no doubt as to his meaning.

No man can worthily occupy a seat upon a judicial bench who is not endowed with great fortitude of mind. It is the duty of a court to declare the law. Who has ever yet long presided in a court of justice without hearing the voice of that tempter whose presence is always a profanation of that sacred temple? It comes rarely in the

form of a bribe; but in the more familiar guise of fear, or passion, or prejudice, or ambition; infirmities from which human flesh can never wholly free itself. Few judges, be it said to the great praise of the deceased, have allowed such considerations to influence them less than he. Where weak men have fallen by the wayside, he has maintained the straightforward course, counselled only by that inward monitor which rarely leads astray. Through good report and through ill report, whether the popular clamor was for or against him, whether the fortune of friend or foe was in the balance, that brave and sincere man and just judge was moved neither to the right nor to the left in the discharge of manifest duty. He removed not the landmarks.

What higher praise of a judge than this?

Gradually and imperceptibly the true character of the judge may become masked by an austerity of bearing which wounds and repels. This was to some extent true of the deceased. The generous hearted sympathetic man, had become more or less obscured by the formal judge, schooled to listen while withholding that subtle chord of sympathy which is the life and soul of speech. And thus it has sometimes happened that counsel who saw only the judge upon the bench and knew nothing of the lovable nature of the man, closed his address to the Court with a belief, deep rooted and pernicious, that his cause had been prejudged, his argument unappreciated, and himself ill used. This was more especially true of young men to whom the attentive ear and appreciative kindle of the eye are requisite to any degree of success in argument. But time, association, and truer insight rarely failed to efface the error. A word exchanged in the private chamber, in the library, at the home, or on the street, was a beam of sunshine which melted away the ill-timed frost.

But why these words? The ear of the venerable Justice will not heed them, and the lips of all who participate in this memorial proceeding will, in a few years at best, be as silent as his own.

"Can storied urn, or animated bust,  
Back to its mansion call the fleeting breath?  
Can honor's voice provoke the silent dust,  
Or flattery soothe the dull, cold ear of death?"

We speak to-day not to the dead but to the living. We raise our voices in testimony of the virtues of a great and good man that they may serve to inspire others to emulate him. To the bar of this State, both of to-day and the future generations, we present the life of the late Chief Justice as illustrating the value of industry and integrity in the pursuit of a noble profession.

*Address of Hon. Isaac Atwater.*

May it please the Court:—I doubt not but that every member of the bar in this room, if permitted, would be glad to pay his tribute of honor, love and regard to the memory of the lamented Chief Justice James Gilfillan. I can trespass but for a few moments upon your patience to give expression to the feelings to which this occasion gives rise. But, from my own acquaintance, and I may say somewhat intimate relations with the deceased, I would not willingly keep entirely silent upon this occasion.

It is thirty-seven years since I first made the acquaintance of the deceased, upon his appearance before the first Supreme Court of this State, in the argument of his cases. Even now, his argument in the first case presented, is hardly less vivid than it was at the time. The names of the parties to the case and the decision have passed from my memory, but his clear and concise statement of facts, the application of legal principles thereto, the logical deductions drawn therefrom, his broad grasp of equitable principles, left an abiding impression on my mind of a lawyer of rare legal acumen and ability. Indeed, I am reminded even now, of a remark made by a prominent member of the Hennepin County bar, a few days since upon an occasion such as that upon which we have assembled, of the prediction I then made in regard to the deceased, that, if he lived, he would stand front in the profession in this State; and even then we had men eminent at the bar, such as Hollinshead, and Rice, and Ames, and Brisbin, and Bigelow, and Chatfield, and others I could name, with all of whom he stood easily the peer.

It would take too long to enumerate the eminent qualifications which the deceased enjoyed for the bench which he so long honored—his fearlessness in expressing his honest convictions whenever demanded, even at the sacrifice of personal interest; his broad grasp of equity; and his entire impartiality between suitors, whether persons, corporations or political parties,—you know them all, I need not enumerate them. Indeed, in the presence of those thirty-nine volumes in the adjoining chamber, which form his imperishable record and monument, any eulogy which we could pronounce here would seem tame and common place.

It has been my fortune in over forty years of experience at the bar to have appeared professionally before the twenty judges, if I remember the names correctly, including the Territorial, who went upon that bench; and I may say without disparagement to any among them, he was facile princeps.

But what has been said relates to only one side of his character. Eminent lawyers are not always great men. His broad sympathies were never dwarfed by his devotion to his profession and his judicial duties. He recognized the claims of humanity and christianity to his services and his time so far as possible. The church to which he belonged and which he loved, honored him, and I may say equally

herself, by conferring upon him the highest positions accorded to a layman. For years he was a member of the standing committee, a trustee of the diocese, a delegate to her general councils, and to each and all of these he devoted time so far as he possibly could from the labors of his judicial duties. No man has found a warmer recognition in the church which he so well served.

And in these three relations of which I have spoken, the honest lawyer, the incorruptible judge, the sincere christian, it seems to me all others are comprised.

I know not what impressions may have been formed upon others; they depend upon the point of view at which one looks at his character, the intimacy of acquaintance and its length of continuance. If faults are to be found—as indeed they must be in everything human—they are so insignificant as not to obscure, nor even dim the luster of his greatness. The State which he adopted is the richer for his learning and genius; the community in which he lived has been uplifted by the purity of his life and the savor of his good deeds, and posterity blessed in the ages to come by the rich inheritance which he has left. His life has been a daily benediction upon all that came within its influence. Fortunate and thrice happy he who can leave so noble a record, and an example so worthy to be followed.

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*Address of Hon. Chas. E. Flandrau.*

May it please your Honors:—The prominent position which has been assigned to me in these memorial proceedings arises no doubt, from the fact that I occupied a seat upon this bench, when the first session of this Court convened in the year 1858. It may be a fact worth noticing that every judge of the Court who sat at its first session is still alive and well, and one at least of them in active practice, although thirty-seven years have passed since that interesting event took place.

I think the love of a man for the State of his adoption becomes much stronger than that which he entertains for the State of his nativity. He generally emigrates at the period of early manhood from a State, the institutions of which are practically matured, and have become and will probably remain so without his ability to influence them. He comes to a community, the governmental characteristics of which are, like the commonwealth, in their infancy. His active participation in their formation and growth engenders profound interest and deep sympathy; as they develop they become part of himself, and his pride or sorrow largely depends upon their success or failure.

We all recognize that the judicial arm of the State is the protector of our liberties, the guardian of our property, and the conservator of our happiness.

The temporary aberrations of the legislative branch, growing out of the ill-directed passions of the people, may be regretted, but do not affect the confidence of the citizen in the stability and excellence of republican government, while the fantastic eccentricities of the executive which are sometimes indulged in, only excite the good natured derision of thinking people, as long as they feel assured of the purity, wisdom and courage of the courts.

If your Honors please, my heart swells with patriotic pride, when I can stand in this conspicuous place and proclaim without a shadow of reservation that never since the organization of this our own Supreme Court has it, or any member of it, been charged or even suspected of entertaining in the slightest degree any attribute that would detract from the full and deserved possession of the most exalted title that can be worn by man—a *just judge*. Happy is the State that can say so much; no record can surpass it. The glories of successful war are superb; the triumphs of literature and inventive genius are rich possessions, but the certainty of a pure and just judiciary is a jewel surpassing in value the riches of the world, and approaching those of our promised heaven.

The highest encomium that I can pass upon our deceased Chief Justice is to say that his long presidency of this Court, has done as much, if not more, than that of any other man to create and perpetuate all its admirable traits which I have alluded to. No one can add a word to the well deserved tribute to his life and career which has been presented by the Honorable, the Attorney General.

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*Address of Hon. S. J. R. McMillan.*

Among the elements entering into the early settlement of Minnesota, one of the strongest and most favorable was the influence and power of the lawyers who gave tone and character to the bar of the State. They were men in the vigor of manhood, well equipped and disciplined for their professional labors—men of broad and vigorous intellects, diligent and faithful in their duties, and loyal to the high principles and honorable traditions of our profession. Among such men at the bar of St. Paul, and as one of them, James Gilfillan, upon coming here to live, took his place, and throughout his professional career was regarded as one of the ablest lawyers of the State.

In 1869, upon the resignation of Hon. Thomas Wilson, Chief Justice of the Supreme Court of the State, Mr. Gilfillan was appointed to fill the vacancy, and held the office under this appointment for a short time. Subsequently and on the 5th of March, 1875, he was again appointed to the office of Chief Justice, which he held until his death.

It was my privilege to be associated with Chief Justice Gilfillan during the time he held his office under the first appointment I have

adverted to. His professional life was the basis and the prophesy of his judicial career. His legal knowledge was extensive and profound; his judicial views were broad, comprehensive and clear; his judgment was sound and wise. He was conscientious in all his duties, impartial and upright in his consideration and determination of all matters submitted to him, and the strength of his convictions were equalled only by the courage with which they were declared. He was an able, upright Judge. What higher tribute can be paid to his memory?

By his ability and integrity through his long judicial career, he has rendered high and noble service to the State, in his faithful and efficient labors, in extending and establishing a system of jurisprudence of which every citizen of this State may well be proud.

In the midst of his work he has been called from earth. He laid aside unsullied his judicial robe, and in its stead has put on the spotless robe of the righteousness of the Christ whom he loved and served in his life.

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*Address of Hon. Greenleaf Clark.*

I should not be satisfied to let this occasion pass without a word of personal tribute to the memory of James Gilfillan, nor do I fear that my love and respect for the man will carry me beyond the limit of just encomium.

We have to contemplate a marked and vigorous personality: marked and vigorous both in mental and moral qualities. I cannot hope in the short time I feel at liberty to consume, to cover the ground of an analysis of his mind and character. It would require a commemorative oration. I can only allude to a few salient features which have most impressed me.

If I were called upon to designate the most prominent characteristic of his mind, I should say it was analytic power. He had a gift, the result both of natural endowment and development, to a degree that is possessed by but few men, of seeing through the obscurations and false issues, to the very pith and substance of the matter, not by an intuitional jump, but by a deliberate though rapid analysis.

Most important legal determinations turn upon one or two, scarcely ever more, leading legal principles correctly applied. Judge Gilfillan excelled in the readiness with which, brushing away the extraneous matter, he grasped strongly hold of the principle involved and applied it. Nor was this incisive, logical process, at the expense of breadth or strength. No jurist of his time brought to the consideration of grave constitutional questions or others, involving weighty consequences, broader or more far reaching views. Not as ready as some men to exert his powers, if he erred, it was more likely to be in comparatively trifling cases involving no important prin-

ciples, upon which his powers were scarcely got to operate in their best estate.

If I were called upon to designate the prominent trait of his character, I should answer self-abnegation. This showed itself in his splendid moral courage. No man ever sat on any bench who was more fearless in the discharge of what he deemed his duty than James Gilfillan. No consideration of what popular prejudices might be antagonized, or current theories having some dissemination overthrown, or animosities against him personally aroused, as the effect of a decision, ever had the slightest lodgment in his mind, or effect, perceived or unperceived, on his action. If he satisfied his own mind and conscience, that was enough for him, and it was all. In this respect he was the stuff of which martyrs are made.

It showed itself further, in the direct, simple method of his work. In his written opinions he goes straight to the work. He had literary ability of a high order, and he wrote strong, vigorous English. He had the analytic power to define and set out a legal principle in the abstract so as to make it circulate through the whole realm of jurisprudence clothed in his language. But there never was apparently the slightest effort for any such effect. He seemed to do nothing for his own fame; to all appearances was indifferent to it. And it may be partly due to this that personal contact with the man never failed to produce in one who had that privilege a higher appreciation of his strength of mind and character. He showed it in simple, unostentatious ways.

Take him for all in all, I have no hesitation in saying that Chief Justice Gilfillan was competent for and would have adorned a position upon any bench administering English law.

I will not attempt to speak of him as a soldier, but leave that to those who are more competent.

As a man he was single minded and true; it was yea, yea, and nay, nay. Deception had no place in his make-up. Policy had no more. As a companion he was delightful. The first crust of acquaintance being broken through, he was one of the most genial of men. He had a keen sense of humor, and quite a fund of anecdote collected from his extensive general reading, and he was quite happy when he could have a chat with his friends, letting the conversation drift and take its own course.

A marked man has fallen: one who has done honor to his State and to his race; one of the chiefs among the powerful men of his time. He now rests from his labors, but his memory will live in the record of his work and in the hearts of those that loved him.

*Address of Hon. Geo. B. Young.*

After the high tribute and just presentation of the characteristics of our great Chief Justice, in the memorial which has been read, there is very little, if anything that can be added by me.

It was my good fortune, however, during many years, to be in a sense the "organ" of the Court, in reporting its decisions—including, of course, those of the Chief Justice. In performing those duties, it became necessary for me to make a more exact and thorough study of the cases in which they were delivered than would ordinarily fall to the lot of one simply consulting the reports. As a result, I had early impressed upon my mind the very marked ability which characterized Judge Gilfillan in at once grasping the real point, the real issue, the real merits, of a case, disregarding and brushing aside all extraneous matter, whether of law or of fact.

Another characteristic I noticed was in the expression of his judgment. In many instances it seemed ragged, uncared for, unadorned; yet, the legal principles, and their application to the case in hand, were expressed with singular felicity.

Of the many decisions, by which he made his mark upon the jurisprudence of this State and country, one stands forth preeminent, his decision in the case of the State Railroad bonds. It has always seemed to me that that decision touched the highwater mark of judicial opinion in this generation. I think it will bear comparison with the best constitutional opinion of any court in the land, save possibly the greatest opinion of Chief Justice Marshall.

In Chief Justice Gilfillan we had a judge who would rank with Judge Gibson and the greatest jurists who have adorned the bench in other States of the Union.

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*Address of Hon. Chas. E. Vanderburgh.*

The Governor of the State in his proclamation closing the public offices of the Capitol on the day of his funeral, characterizes the late Chief Justice as a most able, fearless, upright and impartial judge.

That tribute implies a great deal, but it is eminently just and well merited, and it is precisely the tribute which every honest man, who knew him, spontaneously accords to him. There were not many abler jurists in his generation, and certainly none more fearless and upright.

He was eminently qualified for the position of Chief Justice. His perception of correct legal principles was unusually clear and accurate. His strong analytical mind readily grasped the leading points in a case, and he surpassed any man I ever knew in his

ability to separate and state them concisely and clearly. This made him a model chief in the consultation room. The late Justice Berry, whose public services will not soon be forgotten, and whose memory will long be revered, used often to speak of the remarkable power of mental concentration possessed by Chief Justice Gilfillan and the facility with which he was able to dispose of the most difficult cases, and decide them well.

Absolutely truthful and thoroughly honest and independent, he was no respecter of persons. He would turn neither to the right nor to the left to secure personal favor, and doubtless his manner was often misunderstood by those who did not know him well. Yet he was one of the kindest of men, and a most faithful and devoted friend.

He was not only a strong man but a just and good man, a man with a conscience, and of strong convictions of right and duty. His character was grounded on sound morals and religious principles—fundamental qualities of a good judge, which can not safely be undervalued.

The Chief Justice commanded the respect and confidence of his associates on the bench in a remarkable degree. Upon the separation of the members of the Court as formerly constituted a year ago, he remarked with much satisfaction and evident feeling that during all the previous years that the Court, as then constituted, had served together, and even extending back through his whole term of service, there had hardly been an incident to disturb the harmony of feeling and pleasant intercourse among the members of the Court in which he had so long presided.

During that time his contemporaries on the bench in other States, have been Cooley and Campbell of Michigan, Dixon, Ryan and Cole of Wisconsin, Dillon of Iowa, and Brewer of Kansas, and it is safe to say without disparagement to them, that if we consider the full measure of his abilities and judicial qualifications, he stands the peer of any of them.

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*Address of General John B. Sanborn.*

In the fall of our illustrious Chief Justice, example and emphasis is given to the poetic conception that

"Death loves a shining mark, a signal blow,  
A blow which, while it executes, alarms,  
And startles thousands with a single fall."

It was but yesterday that our departed friend was walking on the high places of the earth in "The excellency of dignity and the excellency of power;" his voice was the voice of magistracy and dominion, a sovereign voice, potent and controlling in all the litigations and controversies of fifteen hundred thousand men. To-day all is changed; the voice is silent, power and dominion have departed, and nothing visible remains except what is seen in the

light and hues of immortality. On such occasions and more than on any others, we turn to immortality as the only solution of the problems of human life, the only teacher that deciphers man and explains the mysteries involved in his life and death. With firmness, faithfulness and zeal, our departed friend met and unravelled all the knotty problems of his own life, with patience and undying faith in the great future. Born a Scotchman, educated an American, he possessed the firmness, decision of character, clearness of mental vision and strong reasoning powers of the former, and the activity, zeal and patriotism of the latter. At the bar he at once became conspicuous for his learning, sound judgment and careful practice, never failing to reach a determination of his case on the real merits of the controversy.

His public spirit and patriotism were unbounded. Personal interest and personal security were without power to restrain him, and fatigue, hardships, danger and death, were without power to deter him in the least from the fullest discharge of all his duties as a citizen of our State and country. Although enjoying the sweets of quiet civil life and the practice of his chosen profession, far more than the great majority of men, he at once abandoned all, and cheerfully took his place in the ranks with those who were ready to sacrifice life, health, property, all that men hold dear, for the preservation of the institutions of his country, and the liberty of all men. In the military service of the United States, which he voluntarily entered on the 6th day of August, 1862, a service always most trying to those of sound judgment and independent thought and action, he was governed by one motto and one principle—obedience even unto death of all the lawful orders of his superiors, whether personally entertaining for such superiors respect or contempt. Success in this branch of the public service could not fail to attend him, acting upon such motives and under such a motto. His military service was one of the most arduous and trying character, and of such a nature as could not in the very nature of things bring fame and renown. It is but the slightest impression that is made upon the mind by the statement that the deceased, with the rank of captain, marched on foot at the head of his company from the Mississippi to the Missouri river through Northern Minnesota and Dakota in the summer of 1863. Our minds are so constituted that they do not grasp from such a statement the wearisome march for ninety or more consecutive days in burning suns across alkali deserts and plains, with the air filled with dust and the tongue swollen for want of pure water, or the difference between sleeping in comfortable beds in quiet homes and resting upon the ground in cold and storms, disturbed constantly by savage and wily foes. Language cannot portray the hardships, sufferings and exposures endured by officers and men on such a campaign, and only those who have participated in them can form any just appreciation of such a public service. The public interest required this service in 1863, and it was rendered

by our departed friend with the determination and vigor that characterized all his acts.

Afterwards, at the head of his regiment, on the bloody field of Tupelo, on July 14, 1864, he stood with his command as a rock unmoved amid the varying fortunes of that hardly contested field. After the battles of the summer and autumn of 1864, he was assigned to the important, hazardous, annoying and inglorious service of guarding and protecting the line of communication to the armies at and south of Nashville, where the least failure at any point might result in the greatest possible disaster to the government, and force the withdrawal of troops and the abandonment of the country from Atlanta to points far north of Nashville. This is that kind of military service which oftentimes covers an officer with disgrace, but, even when well performed, never is known to bring to him any glory.

This fatiguing, trying, hazardous military service made serious inroads upon his physical powers, and undoubtedly shortened his days on earth. So great had been the strain and wear that, in the weakness and delirium of his last sickness, although the long period of thirty years had intervened, the exciting, trying scenes of the war seemed again to pass in review before his mind. The tried and trusted veterans of his command, with faces scarred and ranks thinned by battle and disease, again appeared in line waiting his command to hold their positions or move against the foe. He again seemed to see the flag of his country fall high advanced over bleeding and prostrate enemies, and again shared in the excitement of glorious victory.

On account of the character of the military service he was required to perform, it may be that his larger fame will be best preserved, and will most securely rest, on the great service he has rendered the State in the judicial department and as Chief Justice of this Court. Through the long period of twenty years, during which the state has passed from infancy to manhood, the great questions that rise from rapid development, have come before the Court and have been considered and decided, upon sound principles of law and with due regard to precedent. He always recognized and acted upon the fundamental truth that the primary object of every judicial system is to establish justice, and that the only lawyer and only judge who can gain preeminence is he who can so apply remedies and principles as to secure justice in the highest degree. Judged by this standard, the illustrious Judge will always stand preeminent. His views upon all the great questions that have come before this Court for twenty years are expressed in a body of case law that will run through forty volumes of the Minnesota Reports, and constitute an enduring monument to his memory and, at the same time, remain a light and guide to future generations.

"So when a great man dies,  
For years beyond our ken,  
The light he leaves behind him, lies  
Upon the paths of men."

*Address of Hon. Wm. J. Hahn.*

It is eminently fitting when death invades the ranks of our profession and removes one of its honorable and honored members to pause for a moment, give public voice to our sense of loss and register a brief memorial of his worth and public services. We have met for that purpose to-day. Our ranks have again been broken. A noble, modest, pure man; an upright, faithful, distinguished citizen; an eminent, conscientious, leading member of our bar; a great, fearless, spotless judge, has fallen. No eulogy which any of us may be able to pronounce and no memorial which we may enter on the rolls of this Court can add one jot or tittle to the well earned fame which he himself has achieved and left on record here. It is with no such hope; it is with no such purpose that we ask this minute to be made. It is for the living and not for the dead; it is for us, his comrades at the bar, who still remain, we ask this to be done, that thus we may say to those who come after us, we knew, we appreciated, we honored this, our brother.

I have not the ability, neither was my association with Judge Gilfillan intimate enough, to warrant my attempting an analysis of his character. That is more ably done by others than I could hope to do. But I esteem it a privilege to be permitted to lay my poor, though willing, tribute on his tomb. I knew him well enough to say with all my heart that he was "a true and brave and downright honest man," who held faithfulness and sincerity as first principles; that he was a citizen who valued duty more than success, and who esteemed an upright and irreproachable character more highly than distinction; that he was a pure, just, wise and fearless judge who, by his great gifts and noble character, adorned the judicial office, added luster to our profession and materially advanced the cause of good government and of right living.

I would name as one of the distinguishing and most commendable characteristics of Judge Gilfillan, his fearless independence. I think he showed in his entire career that he was a firm believer in the truth of Ben Jonson's epigram that "He that departs with his own honesty for vulgar praise doth it too dearly buy." He cannot and will not be charged with truckling in any way to popular influences or excitements. Fearlessness of opinion deliberately formed, is a *sine qua non* for a judicial position. Judge Gilfillan possessed this in a more than usual degree. He was by nature, by temperament, by character, exalted above popular influences, and therefore, was enabled to serenely administer the noble science of the law. It is such an administration which has heretofore been and will continue to be the sheet anchor of the republic. The judiciary of this country, state and nation has been, is, and must continue to be, if our noble heritage is to be handed down to future generations unimpaired, the great balance wheel in the machinery

of our government, as it must be in the government of every free people who desire to preserve and maintain their freedom. It is, and must continue to be, the compass which steadily, unerringly, constantly points toward the great polar star, so that when storms rage and darkness overshadows us and danger surrounds us, we may confidently look to it to guide and direct us. It is the great dyke whose staunch timbers and solid masonry must protect us if we are to be protected from the storms of passion and the waves of faction which are sure to arise and roll. To maintain this position, to exert this influence, there is no qualification more necessary to be possessed by the men who occupy these exalted positions than this fearless independence. The importance of this trait in the judicial character cannot be, in my judgment, overestimated. Without it, no man, however great he be, either by natural gifts or individual acquirements, can ever attain the ideal conception of the judicial office or discharge the duties of such a position in a way to command the lasting respect of bar and people.

As was well said by a distinguished member of our profession, in concluding a brief review of the life of one of the most eminent men who ever graced the bench of the Supreme Court of the United States (Chief Justice Taney): "Ours is a profession whose labors and talents are expended for the most part upon the controversies of individuals and about transitory affairs. And yet it is of all professions the one most important to good government and to just living. In our favored land, with its great natural advantages and its freedom from arbitrary government, where individual rights are protected even against the government itself by fundamental laws, the administration of the law is that exercise of government which is at once the most frequent and most important. To it we must look for relief from injustice, for the preservation of personal rights and for the protection of property. We may differ about political questions, about the nature of government, about public policy; but for ourselves and our daily lives, what we most need, what is of the highest importance to each one of us, is a pure, just, wise and fearless administration of the law."

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*Address of Hon. Moses E. Clapp.*

The fact that we are prone to eulogize the dead has been regarded as one of the weaknesses of human nature. This is a mistake. It is but one of the many evidences of the wonderful power of the mind to adopt itself to conditions. When bowed in grief for the dead, we naturally turn to a contemplation of their virtues, that in so doing we may at least somewhat dull the keen edge of our sorrow. We do this, not so much to extol the dead, as to lessen our own grief. This is the mainspring from which flows, among the immediate associates of the dead, the recollection and apprecia-

tion of their virtues, carrying out into the world beyond only the recollection of good deeds and exalted character; thus it is that the evil is forgotten and the good remembered.

Fortunate the living if, beyond the mere office of eulogy, they can discover in the life and character of the departed those qualities which enlist respect and admiration, and thus, in a measure, divert the mind from grief. Such is our lot to-day. To do right is but simply duty.

We ask ourselves sometimes why we should extol the mere performance of a plain duty. The fact is that in our willingness to praise and crown with honor the name and memory of one who has been conspicuous for his conscientious discharge of his duty, we may not, perhaps, recognize man's proneness to do wrong, but it is at least a recognition of man's frailty in the light of the temptations which beset him. It is one of those many forces, little thought of in themselves, yet all powerful, as factors in shaping and moulding thought and action.

Those who knew our late Chief Justice recognized in him a man of such sterling qualities that, while they mourn his loss, they can find consolation in paying a tribute to his memory as deserved as it is voluntary; a free-will offering from the heart, freely paid to one who is powerless alike to punish or reward. The law is sought, declared and administered by a profession in touch with the world around them; their lives and associations, social and professional, are interwoven with those of all about them; they lay no exclusive claim to the virtues, nor are they free from the vices incident to human nature, except so far as their character may be moulded by their pursuit.

This is not the time or place to speak at length of our profession or to defend it from the attack of those who hate the law and our profession because they stand the sole unsurmountable barriers to oppression upon the one hand and disorder upon the other; nor from the aspersions of the thoughtless, who overlook the fact that human law must be declared and administered through the agency of fallible men, and cannot overlook their occasional mistakes.

Suffice it to say, that in the law society finds its only safeguard and protection; the order-loving are its votaries, the bench and bar the ministering priesthood; at its shrine every true friend of human rights must worship.

While at times complaints—oft-times just complaints—of our ministrations may be made, yet it is the one universal faith, as perfect in its aims and objects as man's instinctive longing for the right can be; as imperfect in its administration as man's fallible nature falls short of perfection.

While our late Chief Justice was esteemed as a citizen and soldier, yet he will be remembered chiefly as a lawyer and a judge, an honorable member of this profession, wherein, above all others, responsibility finds a parallel only in its attendant duty, and I

know of no higher tribute to pay him than to say that as a lawyer he was as learned as he was honorable; as a judge deaf alike to clamor and applauses—as fearless as he was just.

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*Address of Hon. John M. Gilman.*

May it please your Honors:—I can, of course, add nothing in commemoration of our dear Chief Justice to what has already been said; but in view of my long acquaintance it perhaps is not out of place for me to join with others in moving the adoption of the memorial which has been read.

I came to St. Paul to live the same year as did Mr. Gilfillan—1857. We soon became acquainted, and from that hour to the day of his death we were most intimate and cordial friends.

Mr. Gilfillan came with a mind well stored with a knowledge of the law in all its departments and ramifications. He at once took a leading position at the bar. His abilities were widely recognized, not only by the bench but by the bar from the start.

Mr. Gilfillan was distinguished more for strength, breadth, grasp and force of intellect than for brilliancy, yet he was a very strong man at the bar. His candor, his sincerity, his purity, which shone in his very countenance, his power of analysis, his clearness of statement, his logical reasoning, made him a formidable antagonist before the jury as well as before the court.

He continued in the practice of his profession and was in the full and successful tide of it when the civil war broke out. When volunteers were called to go forth in defense of the Union, Mr. Gilfillan locked the door of his office, shouldered his musket and went into the military service of his country. He served until the close of the war, when he returned home in the fall of 1865, I believe. Receiving his discharge, he again unlocked the door of his office, brushed away the dust which had accumulated upon his books, resumed the practice of his profession, and again took the same position at the bar which he held when he entered the service of his country.

The bar, as I well recollect, had marked him as eminently fitted for the bench, long before he was called to that position, and, in fact, he was exercising the functions of a judge long before he was called to the bench. In those days we had here, in the first place, but one District Judge; afterwards we had a Court of Common Pleas, but those judges could not do all the business that was brought before them. As a result, most of those cases, which are denominated court cases, were tried by referees, and Mr. Gilfillan was, I may say, a standing referee in all cases where he was not an attorney. Such was the confidence that the bar had in him that no one objected to his acting as referee. I have tried many cases before him, and he evinced the same qualities as a referee

that he did as a judge—dispassionate, cool, calm, courteous, kind, clear-headed. He decided many cases, and I do not recollect a single instance where his decision as a referee was reversed.

Continuing in practice up to the time that there was an opening, he was called to the bench, as we all know. Of his career on the bench no encomium is needed from me. There is his record. I may say, however, of the position Mr. Chief Justice Gilfillan will hold in the estimation of the bar of this State, he will be spoken of as is Chief Justice Parsons, of Massachusetts, by the bar of that State, and Chief Justice Gibson, of Pennsylvania, by the bar of that State—"The great Chief Justice."

Now, may it please your Honors, he has gone from us, and when we go into that court room, where he sat for so many years, and miss his manly figure from the seat he so long occupied, we cannot but feel oppressed with a feeling of sadness, especially so when we reflect that we are never to see him occupy that seat again. All we can do is to spread upon the records this memorial, that the future bar of this State may refer back and have before it some evidence of the estimation in which Chief Justice Gilfillan was held by his contemporaries. I therefore join in moving its adoption.

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*Associate Justice Thomas Cnty said:*

I shall delay the proceedings but a few minutes. As one of the members of the bar who was called to the bench, I will just say a few words, as I have been both before and behind "the scenes" a little.

When I was practicing, I felt—as a good many others of the younger members of the bar and some of the older ones felt—that he was just a little contrary sometimes, and a little brusque and curt in his rulings. Sometimes he would "sit down" on me in a way that I did not like.

But I must say that, since I became more intimately associated with him, I formed a different opinion of his character. I found him, on closer association, to be a man of great simplicity of character, absolutely unaffected and unprejudiced.

I found him to be a man of very strong character, of great will power, clear-headed, logical and very analytical. In fact, he paid no attention to subterfuges at all, he simply struck for the central principle, and rested at that.

Generally, in his conferences, I found him to be a man that was easily approached, easily got along with. He and I have had a good many controversies in the short time I have been on the bench, but it never created the least ill feeling; the warmer we got over it the better friends we were before we got through.

I found him to be a very companionable man, and I began to think a great deal of him.

*Associate Justice Daniel Buck said:*

My Associates and Gentlemen of the Bar:—On the 16th day of December, 1894, there died in this city James Gilfillan, the Chief Justice of our State. His chilled form lies pulseless and still, and over his grave have been said the sad words: "Earth to earth, ashes to ashes, dust to dust." There is a vacant chair here, and at his home a grief-stricken household, for the old arm chair has ceased its rocking and a loved one gone over to the other side. He died, not in the season of beautiful flowers, gleaming grain and ripening fruit, but with the judicial harness still upon him he passed away as the dying year was singing its last requiem. "The wheels of weary life stood still," for "God's finger touched him and he died."

When the pall of death falls upon our fellow man, we draw nearer together and keep faith with the usages of the past, while we respect and mourn for one who sleeps beneath the fresh earth and the changeless stars. Over every threshold death sweeps with a resistless force, and there is a vacant chair in nearly every household. We know not the mysteries of this coming and going, this living and dying. We do not know the hour when life's struggles shall be over and the heart cease its beatings, although—

"We know when moons shall wane,  
And summer birds shall cross the sea—  
But who shall tell us when to look for death?"

And it is well that we pay a tribute to the honored dead. Then the shadows of selfishness are stilled, and in the presence of death we forget the jealousies which sometimes mar our better manhood. With the sting of death and the victory of the grave, come the white robes of charity and the balanced scales of a truer justice, and to-day we do well to honor the memory of our great Chief Justice.

It is a great honor to be the Chief Justice of a great State; but it is a greater honor to be fully worthy of it. Chief Justice Gilfillan won that honor, and deserved it, for he won it through merit. He pandered to no partisan spirit; he climbed no mountain peak in search of the tricks of the demagogue; he floated upon no popular wave to win judicial honors. He knew what it was to labor and toil upon the farm in boyhood days. There, amid the fragrance of the clover blossoms, the perfume of a thousand flowers and the development of physical strength, is the best starting point for the battles of after life. The victories of manhood are frequently the result of the struggles of boyhood. With the maturity of his years came the industry and love of labor that marked his early life.

Fearless in the cause of right, he would not turn aside to avoid an enemy, nor bend to grant unjust favors to a friend. He wrote no opinions to obtain notoriety; he made no decisions at the dicta-

tion of wealth or political influence. He could defy the storm because his knees were strong as the "unwedgable and gnarled oak." He would rather go down with colors flying than be silent when justice was endangered.

The judiciary travels no flowery pathway. Selfish greed, partisan malice and criminal violence may hurl their poisoned darts into the judicial forum; but the burning torture must be borne with unflinching silence. Criminals, and sometimes, unfortunately criminal lawyers, would pull down the pillars in the temple of justice that they may revel in the ruins their power has wrought. When liberty is confused with chaos and unbridled license with righteousness; when violence would nullify the law and strike down the constitution—then we need a Gilfillan among our judiciary, stern and brave, but able and just, to proclaim the ban of his disapproval, even though threats and thorns beset his judicial path.

It was not great learning and great intellect, merely, that made him our noble Chief Justice, but because with these elements of character he never flinched from duty nor bowed to unjust popular clamor. At Thermopylæ, he would have been one of the Spartan heroes; at Balaklava, he would have charged with the six hundred; and he would have died at the stake or suffered martyrdom on the cross rather than yield his convictions of human right.

Although born where rise the Grampian Hills and Ben Nevis, in the land of John Knox, Walter Scott and Robert Burns, yet he loved this great American Union, and in its hours of peril he stood ready to offer up his life in behalf of its starry banner. He had a patriot's love, because he knew a patriot's duty.

There are no mists hanging over his life or grave, of clients wronged or public trusts betrayed. There is no hoarded wealth, in home or bank, purchased at the price of dishonor and violated faith. His life's sun, burnished with golden hues, has gone to its western setting to rise, perchance, upon some fairer shore. Silently he sleeps upon the banks of that majestic river whose waters come and go; and if over his grave there shall be no monumental stone, yet in your library there will be the enduring monument of his fidelity and his intellectual greatness.

People of Minnesota, keep fresh and green the memory of your Chief Justice—Gilfillan—for

"Thy stalwart son deserves a Roman's fame,  
For Cato was not more supremely just;  
Augustus was not greater in the state,  
Nor Brutus truer to the public trust."

*Associate Justice William Mitchell said:*

Having, during the past fourteen years, been brought into very intimate relations, personal and official, with our late Chief Justice, I feel that I owe it to myself on this occasion, even at the risk of repetition, to pay my humble tribute to his memory.

One of the chief inducements to my acceptance of a place on this bench, was the rare combination of talents possessed by the three judges then composing this Court. There was Justice Cornell, with his remarkably clear, acute intellect, Justice Berry, with his sound judgment and great fund of practical common sense, and Chief Justice Gilfillan, with his great mental vigor and remarkable power of analysis. A better combination of talent to constitute a safe and able court, is not often found on the same bench at the same time. The peculiar talents of each seemed to be the complement of those of the others. All three fell in the harness at the very height of their intellectual powers,—first, Cornell, then Berry, and last, Gilfillan.

If I were to name what I considered the most marked moral and mental qualities in the character of the late Chief Justice, I would say moral courage and the power of accurate analysis. His single aim was to decide a cause rightly, according to legal principles, and this he did to the best of his ability, regardless of the effect of the decision upon himself or of adverse popular criticism. I never knew a man more impervious to outside pressure than he in the discharge of his official duties. In the consideration of a cause, he knew neither class nor condition among litigants or counsel. This was not the result of mere indifference to public opinion, but of fearless independence and of a profound sense of duty. He never talked about his duty—I never heard him mention it once—but I never knew a man who was actuated by a higher sense of it than he, and he always performed it, as he understood it, regardless of consequences. You will not find in all his opinions a single utterance designed to catch the popular ear, or to trim to the passing popular breeze.

As has been already remarked to-day, he possessed an unusual power of analysis. Many cases are obscured by immaterial issues and inconsequential argument. These his vigorous mental grasp and great power of analysis enabled him to strip off and brush aside with celerity and thus reduce the case down to the real questions upon which its determination depended. And, having done this, his acute and extensive knowledge of legal principles enabled him to decide the case with the clearness and conciseness which always characterized his style. His opinions were usually noted for their brevity. He did not consider it any part of the duty of a judge to write essays on the law, and he never stepped aside to deliver lectures on either law or morals. Above anything like pedantry or affectation of learning, master of his subject and of

the English language, he did not waste pages to express an idea. Having made up his mind as to the principles upon which the decision of a cause turned, he said neither more nor less than was necessary to the decision and to state the grounds upon which it rested. His written language was a transcript of his mind. It was accurate because he accurately understood the principles he discussed. It was readily understood because he understood himself. His clear, pure, terse English is decidedly refreshing amidst so much diffuse rhetoric in this day of type-writers and stenographers. And yet with all his powers, I never knew a more modest man in his estimate of himself. He never thought of display and seemed unconscious that he had the power to make any.

While he was too great to be the slavish follower of mere "case" law, and while he well understood that the law was not a code of cast iron rules, but a system of principles capable of application to new conditions, yet he was a firm believer in strict adherence to established legal principles. He looked upon novelties of decision, in derogation of those principles, as "the plague of the commonwealth," and, with Lord Camden, he believed that "the discretion of the judge is the law of tyrants." Hence, he believed it better to apply established legal principles inflexibly, even if it seemed to work harshly in the particular case, than for the Court to bend them or depart from them to meet a "hard" case.

All of my colleagues will join me in testifying that in the consultation room he was a most helpful counsellor and adviser. His discussion of a case never digressed into immaterial side issues. He never indulged in mere elusive legal platitudes, but went directly to the pith and core of the case. Everything he said was helpful and suggestive, and if we did not always agree with his views on a question, we often found it easier to overrule him than to answer him.

From my mere general acquaintance with Chief Justice Gilfillan, before coming on the bench, I had the impression that he was somewhat cold and reserved in disposition, and blunt and even brusque in manner, which might prevent the forming of warm personal friendships, although his ability and integrity would command the highest respect. But I soon found out my mistake. While never demonstrative, no man ever possessed a warmer heart or was more capable of forming sincere and close personal friendships, and I can truly say that I became attached to him by as warm a personal friendship as to any man with whom I have ever been associated on the bench.

His apparent bluntness or even brusqueness was a mere unconscious mannerism, and was never intentional.

And I think the bar will bear me witness that, even in the exhibition of any such bluntness of manner, he was, as in all other things, strictly impartial. He was as liable to display it towards the oldest and ablest members of the bar as he was to the youngest or most obscure. The only difference was that the former gener-

ally understood and overlooked it, while the latter did not always do so.

The State has lost an able and upright Judge. We, the surviving members of the Court, have lost a most helpful associate, and I, certainly, have lost a most valued personal friend.

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*Chief Justice Charles M. Start said:*

Gentlemen of the Bar:—The Court receives with grateful appreciation your just and merited tribute to the worth and work of Mr. Chief Justice Gilfillan.

The special work, to which he gave long and laborious years of useful service, was the moulding of the jurisprudence of our young State. To this work he brought natural abilities of a high order, the ripe experience of a learned lawyer, a keen sense of justice, an extraordinary command of the resources of reason, perfect integrity and great moral courage.

His judicial opinions in this Court are the rich fruit of that work. They are the landmarks in our jurisprudence, and disclose a lawyer-like penetration to the very heart of the matter in hand, and a clearness of statement which leaves no uncertainty as to the point involved and decided; while his conclusions follow naturally from the underlying reasons and principles upon which the science of jurisprudence is based.

These opinions are a monument to his fame as a jurist. That fame will widen as the years advance.

He administered justice without fear or favor, giving to the weak and the strong, to individuals and corporations, their legal rights. His life was pure and his reputation stainless; neither was ever tarnished by an unmanly or dishonest act. Few men have left behind them stronger claims to public respect and esteem, and none a more undoubted title to the grateful remembrance of the whole people of the State.

It is fitting, then, that your memorial should be recorded in the records of the Court for the day, there to remain a lasting testimonial to the virtues and public services of an honest man and a great judge. It is so ordered.



13. Loyal Legion

**Military Order**  
of the  
**Loyal Legion <sup>of the</sup> United States**  
**Minnesota Commandery**

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IN MEMORIAM.

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Companion

**James Gilfillan,**

Col. 11th Minnesota Infantry,  
U. S. Vols.

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Died at St. Paul, Minn.,  
December 16, 1894.

**MILITARY ORDER**  
**OF THE**  
**LOYAL LEGION OF THE UNITED STATES.**

**HEADQUARTERS COMMANDERY, STATE OF MINNESOTA.**

CIRCULAR No. 2.

SERIES 1895.

ST. PAUL, January 10, 1895.

WHOLE NUMBER 147.

At a stated meeting of this Commandery, held January 8, 1895, the following report of the Committee appointed to prepare a tribute of respect to the memory of our late ex-Commander, Colonel James Gilfillan, 11th Minnesota Infantry, U. S. V., was read and adopted.

BY ORDER OF

CAPT. CHAS. W. HACKETT, U. S. VOLS.,

COMMANDER.

GEORGE Q. WHITE,

BREVET MAJOR, U. S. ARMY,

RECORDER.

**In Memoriam**

**Colonel James Gilfillan,**

Ex-Commander Minnesota Commandery, Military Order of the Loyal Legion of the United States, and Chief Justice of the Supreme Court of Minnesota.

Our deceased companion, Colonel James Gilfillan, was born at Bannockburn, Scotland, on the 9th day of November, A. D. 1829, and died at Saint Paul, Minnesota, on the 16th day of December, A. D. 1894.

Reared and educated from early childhood among our people, and in our common schools, and other institutions of learning, although born on foreign soil, he was, in feeling, sentiment and principle wholly American.

No descendant of a Revolutionary sire imbibed more deeply and quickly than he the national spirit of 1861, or rallied with more promptness and devotion to the support of the national government in response to the first call to arms. For several years prior to the war he had been one of the leading attorneys and practitioners at the bar of Saint Paul, and was rapidly growing and advancing in the line of his chosen profession. Notwithstanding the sacrifice to his personal interest, as early as the 6th of August, 1862, twelve days before the Sioux outbreak at Yellow Medicine, he had enlisted as a volunteer, and was commissioned as Second Lieutenant of the 7th Minnesota Infantry. He was promoted to Captain, October 8, 1862, and was commissioned as Colonel of the 11th Minnesota Infantry on November 1, 1864. While serving as Second Lieutenant, he participated in the campaign up the Minnesota river against the Sioux Indians, and, while holding the rank of

Captain, continued that service during the autumn of 1862; and in the summer of 1863 made the march across the plains to the Missouri river, in the heat of summer, to aid in capturing or driving the Sioux Indians from Minnesota and Dakota. After the termination of that campaign he moved south with the 7th Minnesota Infantry, and was on duty at Jefferson Barracks and St. Louis from October, 1863, to April, 1864, where he rendered arduous and faithful service upon courts martial, and in the discharge of such other duties as are required at such a post in time of war. From April to June, 1864, he was on duty with his regiment at the post of Paducah. From that post he moved to Memphis, and participated in the campaigns in Western Tennessee and Northern Mississippi, against General Forrest's command, as one of the regiments of the Third Brigade, First Division of the old 16th Army Corps, and participated in the Battle of Tupelo, July 14, 1864, and remained on duty on that line of operations until the latter part of October, 1864, and, upon his promotion, proceeded from there to the Louisville and Nashville railroads, north of Nashville, where, with the 11th Regiment, he continued in the discharge of the arduous and disagreeable military service of guarding that line of railroad against cavalry and other raids, until mustered out on July 1, 1865. After January 1, 1865, in addition to his other duties he commanded the Third Sub-division Military District of Middle Tennessee.

If it may be said that his military career exhibits nothing particularly striking or brilliant, it can more truthfully be said that it is remarkable from the fact that it exhibits no blunders, no surprises, no failures, and no stain either upon his own reputation or that of his commands. Here, as in all the other positions that he has filled in life, he was satisfied with the full discharge of his duty in a quiet, unostentatious manner, but with efficiency and success. He was one of the type of men who never say or do anything for effect simply. Successful results, and successful results alone, to him afforded satisfaction, and applying this test, his military career must have been one of perfect satisfaction to himself. It was certainly satisfactory to all his friends.

There was no element of narrowness in his nature. His sympathies were co-extensive with humanity. His religion embodied sincere love of God and man. He imposed no limitations upon his sphere of action by memberships and pledges

to any organizations or societies. He was a member of the Episcopal Church and of the Loyal Legion, apparently representing in his mind God and Country. During life he was not a member of any other organization, and to both of these he gave constant attendance and earnest support, and cheerfully accepted from the Minnesota Commandery the position of Commander on May 12, 1891, and discharged all the duties of that position during his term of office, and derived unlimited pleasure from the associations there cultivated and formed.

A career as distinguished as that of our deceased companion has been since the war demands recognition and mention from our Order, notwithstanding that it is an outgrowth of military service alone. Upon his muster out of the military service our deceased companion proceeded at once to his chosen profession, the law, and practiced, with unwonted success and with constantly increasing reputation, until he was called to the high position of Chief Justice of the Supreme Court of the State of Minnesota. He filled this distinguished and exalted position for more than twenty years, and wrote opinions that will extend through nearly forty volumes of the reports of the opinions of the Supreme Court. Many of these opinions were upon questions as complex and difficult as ever have or ever can engage the attention of a jurist. All his opinions have commanded the respect, and nearly all have received the approval, of the ablest judges and jurists of our day; and if in some few cases there may be those who have not concurred all his views, no one has ever been found to question his integrity, his sincerity and his high purpose to do and establish justice in all matters coming before the exalted tribunal over which he has presided for the long period of twenty years. His labors have been arduous and well performed. His life has been one of great success and usefulness. We recognize in his death the loss of one of our companions whose place cannot be filled. We coadole with the public, which has lost a faithful servant, and extend our deepest sympathies to the widow and family of the deceased.

JOHN B. SANBORN,  
ALEXANDER RAMSEY,  
J. M. SHAW,  
L. W. COLLINS,  
D. A. DICKINSON.



14. Thomas Newson, *Pen Pictures* (1886).

In *Pen Pictures of St. Paul Minnesota*, published in 1886, Thomas M. Newson wrote this about the Chief Justice:

Judge Gilfillan is a large man, who walks very straight, and is naturally very reticent and somewhat reserved, yet he is a good lawyer and has made an excellent Chief Justice. Perhaps I cannot portray his character any better than to say that he is a solid man, solid in looks, solid in movement, solid in thought, solid in his decisions, and, withal, is a solid citizen. He moves in his own individual sphere and keeps his own counsel; is quiet and undemonstrative, and confines himself to his peculiar profession.



15. Eugene Virgil Smalley, *A History of the Republican Party from Its Organization to the Present Time to Which is Added A Political History of Minnesota from a Republican Point of View and Biographical Sketches of Leading Minnesota Republicans* 344-45 (1896).

GILFILLAN, JAMES.—James Gilfillan, chief justice of Minnesota for twenty-five years, was one of the most eminent of Western jurists. He was born in Scotland in 1829, and died in St. Paul in 1894. His parents migrated to America when he was an infant, and settled in Oneida county, New York, where he spent his boyhood. He studied law in Buffalo,

and in 1850 was admitted to the bar at Albany. He came to Minnesota in 1857, established himself in St. Paul, and began the practice of law in partnership with his brother, C. D. Gilfillan. In 1862 he enlisted and was commissioned captain in the Seventh Minnesota Infantry, serving in that regiment in the Indian war and afterwards in the South against the Rebellion. In 1864 he was promoted to the colonelcy of the Eleventh Regiment, and took that regiment into service in Tennessee. Colonel Gilfillan was a zealous and conscientious soldier, but his subsequent great fame as a jurist so obscured his early military reputation that he was rarely addressed by his army title. On his muster out in 1865 he returned to St. Paul and resumed his law practice.

In 1869 he was appointed to the supreme bench of the state by Governor Austin (sic), under an act authorizing the governor to appoint three additional judges (sic). In 1875 he was elected chief justice, and he was twice reelected, serving until his death in 1894. As a judge he led an uneventful life that brought him very little before the public, but many of his opinions became standard authority throughout the country, and he was greatly respected by the bar and his fellow jurists for his ability and his painstaking and faithful service.

One of his notable decisions was that which opened the way to the recognition and settlement of the railroad aid debt of the state. So strong was the public opinion of the time against the payment of the railroad aid bonds that an amendment was

adopted to the constitution providing that no settlement should be made of this debt until the plan had been submitted to a popular vote and ratified at the polls. This was intended to prolong repudiation indefinitely, for every plan of settlement theretofore pro-posed by the legislature had been voted down. The Supreme court, Justice Gilfillan reading the opinion, held that this constitutional amendment was itself unconstitutional, because it attempted to impair the obligation of a contract, which the states are restrained from doing by the constitution of the United States. There was a great outcry at the time over this decision, but Judge Gilfillan lived long after it was upheld by the almost unanimous approval of the people of Minnesota.

Judge Gilfillan was married in 1867 to Martha McMasters, daughter of Rev. S. G. McMasters, rector of Christ's Episcopal Church in St. Paul. Two sons and five daughters survived him. He was a man of earnest, simple character: religious, patriotic, straight forward, and kind-hearted.



16. This is taken from Chapter 11 entitled “Two Eminent Chief Justices of the Supreme Court of Minnesota” in Hiram Stevens, 1 *History of the Bench and Bar of Minnesota* 120-124 (1904). The other Chief Justice profiled was Charles M. Start.

### **James Gilfillan, An Eminent Chief Justice of the Supreme Court of Minnesota**

## **JAMES GILFILLAN.**

**James Gilfillan, one of the most eminent lawyers and jurists in the record of the northwest, and who was for twenty years chief justice of the supreme court of Minnesota, was born at Bannockburn, in Stirlingshire, Scotland, March 9, 1829, and died at St. Paul, Minnesota, December 16, 1894. He was brought to the United States in his infancy, and was reared to young manhood in Oneida county, New York. He studied law in Chenango county, and at the law school of Ballston Spa, and was admitted to the bar at Albany in December, 1850.**

**In 1857, chiefly through the influence of his brother, Charles D. Gilfillan (now deceased), he came to Minnesota, locating in St. Paul. He formed a law partnership with his brother and soon had a lucrative practice. He was not showy or pretentious, but his natural talents, aided by his close application to his work, soon made him known as one of the best lawyers in the state.**

**The war of the rebellion dissolved his law partnership, and he left the court for the camp and abandoned his office for life in the tented field. In August, 1862, he enlisted in the Union army, and September 1, following, he was commissioned captain of Company H, Seventh Minnesota Infantry. The first year of his military experience was spent in service against the Indians in the forces under Gen. H. H. Sibley. He was in the battle of Wood Lake, Minnesota, September 23, 1862, and in all the battles**

of the Sibley expedition into Dakota in 1863. Going south with his regiment in the fall of 1863, he was in active service with the Sixteenth Army Corps in Missouri, Kentucky, Tennessee and Mississippi until early in the fall of 1864. September 7 of the latter year he was commissioned colonel of the Eleventh Minnesota Infantry. He was in command of his regiment in Tennessee from November, 1864, until June 26, 1865, when, the war having closed, he was mustered out with his regiment. He was an excellent officer, not assuming or demonstrative, but always cool and self possessed, intelligent and faithful in the performance of duty, and of calm, sturdy and unshaken courage.

After the close of the war he returned to St. Paul and resumed the practice of his profession. In July, 1869, a vacancy in the chief justiceship having been created by the resignation of Hon. Thomas Wilson, Gov. William Marshall, his former regimental commander in the Seventh Minnesota, appointed Colonel Gilfillan to the position, which he held until January, 1870. Retiring, he resumed his practice at the bar, and so continued until in March, 1875, when Chief Justice S. R. McMillan resigned, having been elected United States senator, and Judge Gilfillan was again appointed to the vacancy, this time by Governor Davis. In November following he was elected by the people, and he served, by re-election, continuously until his death, in December, 1894.

It has been frequently said that Judge Gilfillan was Minnesota's ablest and most distinguished jurist. Certainly he was an expositor of the law of the

highest order, profound in his knowledge of the law and clear in its exposition. His opinions and decisions, voluminous as they are, cover the field of jurisprudence and are regarded not only as fully exhaustive of the subjects upon which they were rendered, but as highly authoritative on the questions decided. Like their author, they are dignified, yet plain; positive, but fair; established by reason, and grounded in justice. One of his intimate friends, himself a former justice of the supreme court, has written this of Judge Gilfillan:

"In the death of Chief Justice James Gilfillan the bench of Minnesota loses its most impressive figure, the state its most distinguished jurist. He was a lawyer of sound and accurate learning, of excellent judgment, of unquestioned probity. His talents were those of a safe adviser and counselor rather than of a successful advocate. Hence he was regarded, by those who knew him best, as specially fitted for the bench, for the duties of which he was thoroughly equipped, both by temperament and experience. He came west in the early migration of young eastern men. who believed in the future of the new world then opening in this quarter. It never occurred to him that wide culture and high character would be out of place in the young and vigorous communities that were to transform the prairie wilderness into splendid commonwealths. He never found books and scholarship alien to the region in which industrial and commercial activity were the chief occupations of a struggling and eager people; nor did he consider a high sense of moral obligations and public duty incompatible with the legal profession.

"Promoted to the supreme bench by Governor Marshall, he served a generation of men ably, wisely, and honestly. Had he survived a few weeks longer, he would have retired from public life by the expiration of his term, leaving a noble record and example for all who shall come after him. Dignified in manner and rigorous in his exactions of duty, Judge Gilfillan was courteous, considerate, and, above all things, just. Neither political nor personal considerations ever influenced his official conduct, nor was he ever swayed by any private inducement in the performance of his public duties. Favoritism was alien to his presence and clamor would have disturbed him less than the passing wind. The presence of this or that attorney in a case was not tantamount to a judgment. He had no personal interests to promote outside his court or by collusion or understanding within it."

The lesson taught by Judge Gilfillan's life is that character is the greatest human achievement. It is a larger fact than genius, and about as rare a phenomenon as greatness; and neither are so common factors in business and professional life as they ought to be. In the best and truest sense Judge Gilfillan was a man of character. What he was he became by the inherent force of his own manhood. It was worthy of every effort to win and leave behind the distinction, the high repute and the fair name left by James Gilfillan.

After the death of the old Whig party Judge Gilfillan was always a republican in politics, but never an active partisan. Personally he was of very quiet and

unassuming manners. The superficial observer might have considered him austere and exclusive. The nobilities of his character were only to be learned by personal contact with him. Those who knew him best esteemed him most. He was a member of the Episcopal church, belonged to the Loyal Legion, and he had a host of personal admirers and his high talents and abilities were respected by everybody.

Judge Gilfillan was married June 4, 1867, to Miss Martha McMasters, daughter of Rev. S. Y. McMasters, an eminent divine and scholar, who was rector of Christ's (Episcopal) church of St. Paul from the close of the civil war until the time of his death in 1875. By this marriage there were seven children, viz., James S.; Katherine, now Mrs. Samuel Gilbert, of New York; Caroline, now Mrs. Trevor McClurg, and Martha, now Mrs. Webster Wheelock, both of St. Paul: Mary, Perry and Russell—the last deceased.



### Related Articles

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