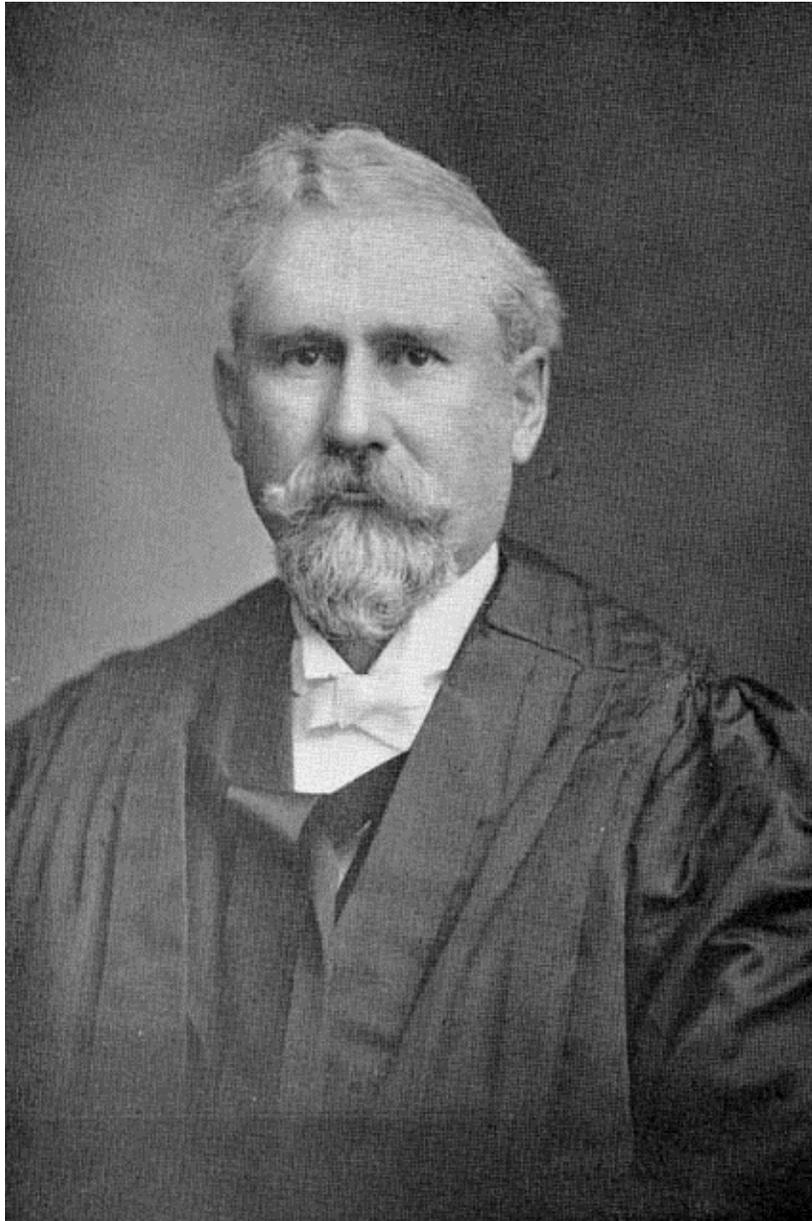


# WALTER HENRY SANBORN

(1845 – 1928)



Walter Henry Sanborn served on the Eighth Circuit Court of Appeals from 1892 to 1928, when he died at age 82. In his history of the Eighth Circuit, Professor Jeffrey Brandon Morris profiled the judge:

Benjamin Harrison's second appointee, Walter Henry Sanborn (1892-1928), was among the most able judges to have sat on the Court for the Eighth Circuit. Sanborn was born on October 19, 1845, in Epsom, New Hampshire, "in the same farm house that was the birthplace father, grandfather and great grandfather." After graduating from Dartmouth College as valedictorian of his class, Sanborn taught school for three years and served as principal of the Milford High School before moving in 1870 to St. Paul. Sanborn studied law in New Hampshire in the law office of Bainbridge Wadleigh, later U. S. senator, and in Minnesota with his uncle John B. Sanborn. John Sanborn had been a general in the Civil War. After the war, he served on the Peace Commission created to negotiate with Native American tribes. "Black Whiskers" Sanborn was one of the few commissioners the Native Americans trusted.

After being admitted to the Minnesota bar, Walter Sanborn practiced law with his uncle. In two decades of practice, Sanborn was involved in more than four thousand cases. While he was practicing law, Sanborn was a member of the St. Paul City Council and Republican county chairman. Active in the Minnesota State Bar Association, Sanborn was elected its President in 1890. The first Minnesotan to be appointed to the federal bench since 1858, Sanborn took his seat on May 2, 1892 and remained on the Court of Appeals until his death in 1928. With a commanding presence, piercing eyes, Van Dyke beard, and barrel chest, Sanborn was a dominating figure in conference and open court. In his distinguished thirty-six year career, Sanborn wrote 1,300 opinions. Perhaps his most important came in the antitrust prosecution of Standard Oil.

Sanborn and his Eighth Circuit colleagues, William C. Hook, Willis Van Devanter, were rivals for appointment to the Supreme Court which seems to have

strained relations for a time at least between Sanborn and Van Devanter. Theodore Roosevelt worried about the breadth of Sanborn's views regarding the Commerce Clause in 1906 when he chose William Moody. Taft passed over Sanborn in 1910 because of age, fixing on Van Devanter.

Sanborn remained on the court until his death in 1928. At the memorial proceedings, his colleagues wrote of Sanborn: "His opinions are masterpieces in legal literature, containing no subterfuge, leaving no opposing contention unanswered, showing upon their face the wide scope of his investigation, the thoroughness of his study, and the soundness of his reasoning." Four years after Walter Sanborn's death, his cousin John B. Sanborn Jr., then U.S. district judge for the District of Minnesota, was elevated to the Court of Appeals. He would serve until 1964 with great distinction.<sup>1</sup>

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<sup>1</sup> Jeffrey Brandon Morris, *Establishing Justice in Middle America: A History of the United States Court of Appeals for the Eighth Circuit* 67-8 (University of Minnesota Press, 2007) (citations omitted).

An earlier history of the court carried the following sketch of Sanborn:

Walter H. Sanborn sat on the Eighth Circuit court for over 35 years. He had doubtless one of the best minds of his generation, and his many opinions are thorough, clear, and forceful.

Sanborn was born in New Hampshire in 1845, where his ancestors had settled in 1638. He graduated from Dartmouth in 1867 and taught school in New Hampshire for three years. In 1870 he moved to St. Paul, Minnesota, where he studied law in the office of his uncle, Civil War General John B. Sanborn. When he was admitted to the bar in 1871, he joined his uncle in a partnership. He continued to practice law until 1892 while also serving on the St. Paul City Council for intermittent periods from 1878 to 1892. He also served Republican county chairman in 1890.

Sanborn received wide support for the additional circuit judgeship in 1891 from lawyers and public figures in Minnesota, New Hampshire, Nebraska, North Dakota, and South Dakota. Justice Samuel Miller wrote a letter in his support shortly before he died. President Harrison appointed him to the post in early 1892.

On the circuit court of appeals, Sanborn quickly became a leading

On the evening of Friday, April 8, 1927, the St. Louis Bar Association sponsored a testimonial dinner for Judge Sanborn to honor his thirty-five years of service. The proceedings were transcribed and published that year in a 180 page hardbound book that also included a short biographical “sketch” and a 35 page list of cases in which he had “rendered written opinions.”<sup>2</sup>

Invitations had been sent to prominent judges and lawyers throughout the country but not all could attend, and many declinations were published in the book. Each member of the U. S. Supreme Court declined and their letters or notes reflected to some degree their personalities. Chief Justice Taft wrote the longest letter, asserting that “every opinion rendered by Judge Sanborn manifests enormous industry and the most conscientious care in the examination of the law as it has been declared in the authorities and as it should be developed in new occasions for its application.” Justice Van Devanter wrote briefly but effusively in praise of his former colleague, as did Justices Sutherland, McReynolds, and Sanford. Pierce Butler, who must have appeared before Sanborn many times, wrote that “the work of the court accumulating at the end of the term makes it impossible for me to spare the necessary time.” Harlan Fiske Stone complained, “I doubt whether members of the Bar realize the great amount of work which the members of the court have to do and how extremely difficult it is for them to be absent. The time consumed in a trip to St. Louis and in the preparation of a suitable address,

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figure. The first case he heard (with Caldwell and District Judge Oliver P. Shiras of Iowa) was the Omaha Bridge case, which opinion was authored by Judge Sanborn for a unanimous court [51 F. 309 (1892), *aff’d*. 163 U. S. 564 (1896)]. He wrote about 1,300 opinions following that one in his years on the bench. The testimony of lawyers and judges at a dinner honoring Judge Sanborn in 1927 indicates that many of those opinions were authoritative in areas of corporate law, personal injury, contributory negligence, naturalization, and several other fields. When Sanborn died on May 10, 1928, eulogies and testimonials came from throughout the nation, including President Coolidge and Chief Justice Taft.

*A History of the United States Court of Appeals for the Eighth Circuit* 16-7 (Judicial Conference of the United States, Bicentennial Committee, 1977) (citations omitted). See also, Thomas H. Boyd, “Walter Sanborn and the Eighth Circuit,” 26 *Ramsey County History* 22 (Summer 1991).

<sup>2</sup> *Walter Henry Sanborn: A Testimonial Volume* (St. Louis Bar Assn., 1927)

taken from the current work of the court, would prevent my completing the work of the term, which I always think is unfortunate for the court and litigants.” Ever austere Justice Brandeis replied simply: “Judicial duties prevent acceptance of the invitation so courteously transmitted by you.” Justice Holmes wrote elegantly even when refusing a dinner invitation:

Alas! the time has gone by when it was possible for me to attend public dinners, and also to attend to my work, so I must decline your kind invitation for April 8, although it would have given unusual pleasure to meet the Bar Association of St. Louis and to add my appreciation of Judge Sanborn’s long and very able service to that which so many others will express.

Very sincerely yours,  
O. W. HOLMES.

Dozens of tributes were printed, including the following “Message from Judge Sanborn’s Home City,” delivered by George W. Morgan, a partner in Davis, Severance and Morgan:

Mr. Toastmaster, Judge Sanborn, ladies and gentlemen: Although there many of the Bar of St. Paul who are more worthy than I to pay tribute on behalf of that half to our distinguished guest this evening, I thank the Committee for the opportunity of expressing my sentiments and of also what I know, although not chosen as their official spokesman, are the sentiments of the Bar of Minnesota and of St. Paul.

Judge Sanborn has been a resident of our city for upwards of fifty years, taking into account the winters that he has spent in your fair city. And I take it that those were more a compliment to the salubrious climate of St. Louis than a reflection upon the delightful winter climate of his residence. Before he went upon the bench he had spent a distinguished period in the practice of law and as one of the leading citizens of the city, and all of us look with gratitude upon his work in the building of the city, in public office as well as in private life.

When I first came to the bar in St. Paul, some nineteen years ago, Judge Sanborn had long attained a national eminence. I heard his name spoken with honor and respect, at the very outset of my practice, by Mr. Kellogg and Mr. Severance, in whose office I was then employed, and by other older members of the bar; and when I came myself to practice before his court I was impressed with the fact, as must be everyone who practices at that bar, that I was now in the presence of one of America's greatest jurists.

One of the outstanding qualities of Judge Sanborn as a judge, which impresses a young lawyer, is the quality which has already been spoken of here, of patience, of hearing fully both sides of the case. As Lord Bacon said, "patience and fullness of hearing are an essential part of justice;" and I do not know anyone who more fully exemplifies that perfect characteristic of a judge than does Judge Sanborn.

His capacity for work has been referred to, and it is interesting to supplement the figures to which Judge [Kimbrough] Stone referred. In the period of thirty-five years during which he has served upon the bench he has rendered published written opinions in upwards of fourteen hundred and fifty cases. And I may add that that is an average of over forty opinions a year, and is nearly twice the average rendered by the Federal Judges throughout the United States. In fact, Judge Sanborn's opinions comprise, I am told by the publishers, one-fiftieth of the total volume of the Federal Reporters during the period covered, although there are now 170 Federal Judges, and at the time of his appointment there were 84.

It is interesting to note that his appetite for work is increasing, because last year he wrote fifty-four published opinions. And this in addition to the arduous duties of administration to which reference has been made.

Judge Sanborn's independence and originality of thought have manifested themselves in decisions which are known to us all. There is scarcely a field of law in which his opinions are not important. They are not only controlling in this Circuit but influential in every court in the country. It is impossible at this time to refer to them in detail. But I wish to make passing reference by way of illustration to one of his earliest and most famous opinions rendered in the case of the *United States v. Trans-Missouri Freight Association* decided October 2, 1893. At that time the United States Supreme Court had not passed upon or construed the Sherman Anti-Trust law and Judge Sanborn was there called upon to interpret it. In an exhaustive and convincing opinion he reached the conclusion that the Act adopted for the field of federal law the common law rules upon the subject of combinations in restraint of trade and that therefore the Act condemned only contracts and combinations which resulted in undue or unreasonable restraints. The Supreme Court upon appeal, in its majority opinion in a five to four decision seemed to adopt the contrary view that every restraint, whether unreasonable or not, violated the Act. That was in 1896. But in 1911 the United States Supreme Court, without overruling its earlier decision upon the facts, in the Standard Oil Company case affirmed the decision of the Court of Appeals written by Judge Sanborn, and adopted the "rule of reason" in accordance with the views originally expressed by him. I have spoken of that decision because it seems to me a striking instance of the independence of thought I have mentioned and of the way in which Judge Sanborn has always been keenly alive to present day realities in applying principles of law.

Yet with all his originality and power of thought, he has been characterized by a fidelity to the principles of law as developed by the precedents. To quote Lord Bacon again,

“Cursed, saith the law, is he that removeth the landmark”

In these days of changing ideas and loosened moorings, a nation is fortunate indeed to possess men of the character of Judge Sanborn, a character built upon enduring foundations. He is not a remover of landmarks, but one who wisely applies tried and established principles to new conditions.

Mr. [Henry] McAllister referred to the old adage, that a prophet is seldom without honor save in his own country. We of the Eighth Circuit and of St. Paul honor and respect Judge Sanborn. And may I add, sir, on behalf of those who practice at the bar of your court in St. Paul, without overstepping the boundary of respect, that we regard you with warm affection as a beloved fellow townsman and friend. I thank you.

In response, the guest of honor was equal to the occasion. After thanking the Bar Association, he lavished praise on the work of the legal profession and the judiciary, and brought the audience to its feet in sustained applause when he concluded:

Where in all the broad field of human endeavor are there such opportunities and duties as here to aid and protect the ignorant and helpless, to foster honor and honesty, to repress wrong and injustice and wisely and well to advise and direct the affairs of mankind in all the walks of life from that of the humblest citizen to that of the Chief Justice of the United States?

I never think seriously of these duties and responsibilities of the members of our profession that that majestic passage in Webster’s eulogy of Mr. Justice Story does not come to my mind:

“Justice, sir,” said Webster, “is the great interest of man on earth. It is the ligament which holds civilized beings and civilized

nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society.”

The testimonial volume also included the following “sketch” of Judge Sanborn by Luther Ely Smith, a St. Louis lawyer who chaired the committee in charge of the event. For the family history, Smith seems to have relied upon a profile of the judge that appeared in Charles Flandrau’s *Encyclopedia of Biography of Minnesota* published in 1900.

JUDGE WALTER HENRY SANBORN  
A brief account of his ancestry and life

By  
LUTHER ELY SMITH  
of the St. Louis Bar

Walter Henry Sanborn, son of Henry F. and Eunice Davis Sanborn, was born October 19, 1845, on “Sanborn’s Hill” at Epsom, Merrimack County, New Hampshire, on the ancestral homestead where his father, grandfather and great-grandfather before him were born. The family was of English descent and the name was originally spelled “Sambourne.”

William Sambourne, the first of that name to come to the New World, was born in England in 1622, the son of William and Anne Bachiler Sambourne. On June 3, 1632, with his maternal grandfather, Stephen Bachiler,

the lad William landed at Boston, and in 1638 they settled at Hampton on the Coast of New Hampshire, where William Sambourne grew to manhood, served in King Philip's War, and was elected a selectman in 1660, 1661, 1677 and 1683. His son Josiah, who was born in 1664, also lived in the town of Hampton, which he represented in the Legislature in 1695. He died in 1728.

During this period the name was changed to its present form, and Reuben, the son of Josiah, who was born April 10, 1699, at Hampton, was known as Reuben "Sanborn." In 1750 he bought 300 acres of land in the town of Epsom, moved upon it, and built the first Sanborn house, which he occupied until his death. This farm is on the side of McCoy's Mountain, and was known as "Sanborn's Hill." It is located in the South Central region of New Hampshire and commands an excellent view of Mt. Washington. It has been under cultivation and has descended to the eldest son of each generation from 1750 to the present time.

Eliphalet Sanborn, son of Reuben, was born in Hampton July 28, 1730, and removed with his father to Epsom in 1750. He took an active and prominent part in both civil and military affairs, serving with the Colonial troops under Wolfe in 1758 in the French and Indian War. On September 3, 1776, he enlisted in the Continental Army and served throughout the Revolution. During the years 1773, 1775, 1776 and 1777 he held the position of Town Clerk of Epsom, an office of great responsibility and influence even in times of peace in a commonwealth governed as New Hampshire was, largely through the pure democracy of the "town meeting." In 1772 Eliphalet Sanborn was elected a selectman of his town, and he was re-elected in 1773 and 1774. He died from the lingering effects of wounds received in the Revolutionary War.

Josiah Sanborn, the great-grandfather of Judge

Sanborn, eldest son of Eliphalet, was born on the old homestead in Epsom, October 4, 1763, and died there on June 14, 1842. In the year 1794 he removed the first house and erected the house of 16 rooms, which with three large barns, is still standing upon the estate and constitutes Judge Sanborn's summer home. He served as selectman of the town of Epsom for twenty years, as representative in the Legislature for eight terms, and as a member of the State Senate for three terms.

Frederick Sanborn, the son of Josiah, was born on the old homestead October 27, 1789, and died there on May 9, 1881. On March 20, 1816, he married Lucy L. Sargent, the daughter of Reverend Benjamin Sargent of Pittsfield, New Hampshire. During a large portion of his life Frederick Sanborn was a Deacon in the Congregational Church at Epsom. He left two sons, Henry F. Sanborn, born on February 26, 1819, and John B. Sanborn, later of St. Paul, Minnesota, born on December 15, 1826, some particulars of whose life will be found on page 122. Benjamin Sargent, the father of Judge Sanborn's grandmother, Lucy Sargent Sanborn, wife of Frederick Sanborn, entered the Continental Army as a drummer boy at the age of fifteen and served until the close of the Revolutionary War. He then became a Baptist minister and preached at Pittsfield, New Hampshire, until his death, which occurred at an advanced age, while he was in the pulpit reading a hymn.

Henry F. Sanborn, father of Judge Sanborn entered Dartmouth College, but typhoid fever and failing health compelled him to abandon hope of a professional career, and he devoted his life to education and farming. He was elected selectman of Epsom for six terms, a member of the New Hampshire House of Representatives in 1855, and a member of the State Senate in 1866 and again in 1867, when that body consisted of only twelve members. In 1843 he married Eunice Davis of Princeton, Massachusetts.

Thomas Davis, great-grandfather of Judge Sanborn on his mother's side, descended from a family which came from Kent, England, in 1634. He served in the Continental Army throughout the Revolutionary War. When hostilities broke out, he walked from Holden to Boston, and fought under Prescott at the Battle of Bunker Hill. He participated in the battle of White Plains, was a member of the victorious army which compelled and witnessed the surrender of Burgoyne at Saratoga, and was one of the little band of survivors of the Revolutionary War that sat upon the platform at the laying of the cornerstone of the Bunker Hill Monument in 1825, to whom Webster turned and addressed his famous peroration: "Venerable men, you have come down to us from a former generation \* \* \* !"

Judge Sanborn's maternal grandfather, Rufus Davis, the son of Thomas Davis, was a successful farmer and dealer in stock, cattle and horses in Princeton, Massachusetts, a town which includes Mt. Wachusett. He accumulated a very substantial estate, held various local offices, and was an influential man in his town and state. He died in Princeton at the age of ninety-one years.

Walter Henry Sanborn, the subject of this sketch, was the oldest child of Henry F. and Eunice Davis Sanborn, and was born in Epsom October 19, 1845. He spent his boyhood on his father's farm, attending the common school of the town, and he was a student during the winter term for two years in the neighboring academy. In the spring and summer, and at other times when he was able, he helped his father with the crops.

In the summer of 1863, after the hay crop had been gathered, Judge Sanborn's father and Mr. Cate, father of Ahlmon F. Cate, a crony of young Walter's, told the two boys that they might go to a fitting school to prepare themselves for admission to Dartmouth. They

went to Meriden, New Hampshire, and interviewed the principal of a school there, who informed them that in view of their scanty scholastic attainments, at least two years more would be required to fit them for college. This further delay did not appeal to the boys. They left their trunks at Meriden, walked seven miles to the nearest railroad station, went to Dartmouth and requested an immediate examination for admission. Largely through the kindness of Professor Patterson, afterwards United States Senator from New Hampshire, they were permitted to enter college on condition that within the first year they make up the work in which they were deficient, in addition to doing their regular work. The boys accepted these terms, and during their freshman year passed all their entrance conditions, which included the reading of three books of Homer.

In July, 1867, Judge Sanborn graduated with the degree of Bachelor of Arts. Taking the course as a whole he led his class for the entire period, and by virtue of that achievement became, under the rules of the Faculty, Valedictorian of his class. He was elected to Phi Beta Kappa, the national scholarship society, and was also a member of the Zeta Chapter of the Psi Upsilon fraternity. In 1866 he was chosen by vote of the student body as one of the two representatives in the college debate, the outstanding feature of the annual oratorical exhibition at Dartmouth. At the commencement exercises he delivered both the Greek oration and the valedictory address.

In order to secure funds to help with his education, he taught during the winter term of about three months, beginning in December, in the village school at Princeton, Massachusetts, in 1862; at Deerfield, New Hampshire, in 1863; at West Westminster, Vermont, in 1864; at West Boylston, Massachusetts, in 1865; and at Stratford, Vermont, in 1866. Just as he returned to college from Stratford, in the winter that he taught

there, the chairman of the school board at Milford, New Hampshire, came to Dartmouth College and asked the president if there was not someone in the senior class whom he could get to take the high school at Milford. The president recommended "Sanborn, '67," who took the position of principal and taught there three months, returning to Dartmouth in time for graduation with his class.

Upon leaving Dartmouth he resumed the principalship of the Milford High School, a position which he held until 1870. At the same time he read law in the office of Hon. Bainbridge Wadleigh of Milford, afterwards United States Senator from New Hampshire. In 1870 Dartmouth conferred upon him the degree of Master of Arts.

In February, 1870, declining an increase in salary, he resigned his position as principal of the Milford High School and went to St. Paul, Minnesota. On January 28, 1871, he was admitted to the Bar of the Supreme Court of Minnesota.

On May 1, 1871, he formed a law partnership with his uncle, General John B. Sanborn. General Sanborn had established the firm of Sanborn & French in St. Paul in 1855, and successfully practiced there until the Civil War began. At that time he was serving as Adjutant General and Acting Quartermaster General of the State, and as such he equipped the first troops raised in Minnesota. He was then commissioned Colonel and assigned to the Fourth Minnesota Volunteers, whom he commanded in the operations that culminated in the fall of Vicksburg. He served as regimental, brigade and division commander with such distinction that upon the personal recommendation of General Grant he was promoted to Brigadier General and later to Brevet Major General.

From October, 1863, to the close of the war General

Sanborn commanded the District of Southwest Missouri, his duties requiring him, from time to time, to visit St Louis. Governor Fletcher of Missouri publicly praised his action in re-establishing the authority of the civil law immediately upon the cessation of hostilities.

During the three years following the war, he was engaged, together with three other Civil War generals, in making treaties with the hostile Indian tribes. Subsequently he returned to St. Paul, and in 1871 established the firm of John B. and W. H. Sanborn, which was joined later by Edward P. Sanborn, the younger brother of W. H. Sanborn. The firm so constituted continued the practice of law until 1892, when W. H. Sanborn was appointed U. S. Circuit Judge. Edward P. Sanborn still continues this law practice in St. Paul. General Sanborn was several times elected representative and senator in the legislature of the State of Minnesota. His son, John B. Sanborn, is now United States District Judge for the District of Minnesota.

In 1893 Dartmouth conferred upon Judge Sanborn the degree of Doctor of Laws, and in 1910 he was elected President of the General Alumni Association of the College.

During the very active practice which he enjoyed from 1871 to 1892 he participated in more than four thousand cases and took a leading part in many of the famous trials in his State. He was counsel for Judge E. St. Julien Cox in 1881 when Judge Cox was placed on trial in impeachment proceedings before the Minnesota State Senate. He was attorney for the prosecution in the quo warranto proceedings<sup>3</sup> which grew out of the discovery that the statute under which Murray, then City Attorney of St. Paul, had been elected, was unconstitutional, and he instituted and successfully

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<sup>3</sup> State v. Murray, 41 Minn. 123.

prosecuted the ouster proceedings which resulted in unseating the incumbent, Murray, and seating Holman, who was Judge Sanborn's client.

Judge Sanborn attacked the constitutionality of the "Dressed Beef" Act when that measure was pending before the Minnesota Legislature, and after it became a law he filed habeas corpus proceedings to test the validity of the Act, in the Federal Circuit Court, which upheld his contention that the law violated the commerce clause of the Federal Constitution.<sup>4</sup> The United States Supreme Court affirmed this decision.<sup>5</sup>

Judge Sanborn, until his appointment to the bench, took an active part in the public affairs of his city. In May, 1878, he was elected a member of the City Council for a term of two years, being then its youngest member. In 1880 he became a resident of St. Anthony Hill, considered the most influential ward of St. Paul. The new home which he built at 143 Virginia avenue in this section of St. Paul, is surrounded by ample grounds and is shaded by a score of ancient oaks. It is still his family residence. In 1885 he was elected from the St. Anthony Hill ward and was repeatedly re-elected as member of the Council until his appointment to the bench in 1892. During his period of service in the Council, he was its Vice-President and was active on the more important committees of that body, including the committee that prepared and secured the adoption of the comprehensive and far-reaching street railway ordinance under which the electric and cable railway systems of the city were established and operated. He also secured the adoption and construction of a complete system of sidewalks, streets and boulevards for the St. Anthony Hill district. This section, which was without any pavement when he entered the Council, became, as the result of his

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<sup>4</sup> In re Barber, 39 Fed. 41.

<sup>5</sup> Barber v. Minnesota, 136 U.S. 313.

labors, one of the most beautifully boulevarded and paved urban districts in the entire country.

Judge Sanborn was signally honored by the Masonic Fraternity. He was three times elected (1886, 1887 and 1888) Eminent Commander of Damascus Commandery, No. 1, of St. Paul, the senior Commandery of Minnesota, and one of the best known in the United States. In 1889 he was elected Grand Commander of the Knights Templar of Minnesota, and in the same year he served as Marshal of the Eleventh Division, comprising the Knights Templar of ten States, at the Triennial Conclave in Washington.

Judge Sanborn is a Republican in national politics, and while he was at the Bar in Minnesota he took an active interest in the affairs of his party and participated in every political contest of importance, city, state and national. In 1890 he served as Chairman of the Republican County Convention of Ramsey County, and the same year he was President of the Union League Club.

In the organization work in his profession Judge Sanborn took a keen interest. He served as Treasurer of the State Bar Association of Minnesota from 1885 to 1892, and in 1890 he was elected President of the Bar Association of the city of St. Paul.

On November 10, 1874, Judge Sanborn was married to Emily F. Bruce of Milford, New Hampshire. Four children were born to them—Grace, wife of C. G. Hartin of St. Paul; Marian, wife of Grant Van Sant of St. Paul; Bruce W., a member of the law firm of Sanborn, Graves & Andre of St. Paul; and Henry F., General Agent of the St. Louis-San Francisco Railroad at Chicago.

On March 3, 1891, President Benjamin Harrison

signed the Circuit Court of Appeals Act,<sup>6</sup> which besides creating a Federal appellate tribunal in each of the nine Circuits, made provision for the appointment of an additional Circuit Judge in each Circuit.

On February 10, 1892, the name of Walter H. Sanborn of St. Paul to be United States Circuit Judge for the Eighth Circuit was sent to the Senate, and on March 17, 1892, the nomination was confirmed and the Commission signed. Of the nine Circuit Judges appointed under the Act of March 3, 1891, only three are now upon the bench. Judge Sanborn and Judge William B. Gilbert of Portland, Oregon (who is Judge Sanborn's junior in commission by one day), remain in active service as Presiding Judges of the United States Circuit Court of Appeals for the Eighth and Ninth Circuits respectively, and Judge Taft is Chief Justice of the Supreme Court of the United States.

The newly-created Circuit Court of Appeals was organized in the Eighth Circuit at St. Louis on June 16, 1891, by Circuit Justice David J. Brewer of the United States Supreme Court and Circuit Judge Henry C. Caldwell of Little Rock. The first case heard by the Court was argued in St. Louis before Circuit Judge Caldwell and District Judges Amos M. Thayer of St. Louis and Moses Hallett of Denver, on October 12, 1891.

Judge Sanborn took his seat upon the bench at the opening of the May session of the October term in St. Louis on May 2, 1892. Circuit Judge Caldwell, who presided, and District Judge Oliver P. Shiras of the Northern District of Iowa, were the other members of the Court. The first case argued before the new court at this session was the Omaha Bridge case.<sup>7</sup> John M.

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<sup>6</sup> 26 Stat. 826, Chap. 517.

<sup>7</sup> Union Pacific Ry. Co. v. Chicago, R. I. & P. Ry. Co., 51 Fed. 309, 2 C. C. A. 174, 10 U. S. App. 98.

Thurston and A. L. Williams (John F. Dillon of counsel) appeared for appellants, and Thomas F. Withrow and J. M. Woolworth (A. J. Poppleton, M. A. Low, John W. Cary and John T. Fish of counsel) for appellees. The case was exhaustively briefed and most ably argued upon both sides.

The opinion of the Court was rendered by Judge Sanborn, Judges Caldwell and Shiras concurring.

“This case,” says an eminent biographer of Judge Sanborn,<sup>8</sup> himself a former Judge of the Supreme Court of Minnesota, “involved great interests, and presented nice distinctions of law, that were pressed upon the court by most able and persistent counsel. The Union Pacific Railway Company had made contracts with the Chicago, Rock Island Railway Company and the Chicago, Milwaukee & St. Paul Railway Company by which it leased to each of these companies for the term of 999 years the joint and equal possession and use of its tracks over its bridge across the Missouri River at Omaha. After these contracts were partially executed the Union Pacific Company refused to perform and undertook to repudiate them. The Rock Island Company and the St. Paul Company brought suits and obtained decrees for their specific performance. The Union Pacific Company appealed from these decrees, and insisted that specific performance thereof could not be enforced in equity because the acts to be performed under them were so numerous and complicated, and because the contracts were unfair. The opinion of Judge Sanborn was exhaustive, but so clear, vigorous and convincing that it challenged the attention of the Bar and placed him at once upon a high plane of superiority, from which he has steadily risen as his work has progressed. It

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<sup>8</sup> Chas. E. Flandrau: 1 Ency. Biogr. of Minn. 172 [Century Publishing and Engraving Co, 1900].

opened with a concise statement of the limits of the powers of corporations created under legislative grants. It then reviewed the decisions of the Supreme Court upon the powers of such corporations, and carefully analyzed the contracts and demonstrated that it was not beyond the ordinary powers of a railroad corporation to let to another the use of its lines so long as it was not thereby disabled from the full performance of its duties to the State and the public. The acts of Congress relative to the construction and use of railroad bridges over the great rivers were examined and shown to have fairly empowered the Pacific Company to make its contracts of lease. Each of the questions presented in these cases was treated in the most masterly manner. The decrees below were affirmed, and the opinion of Judge Sanborn has since been reviewed and affirmed by the Supreme Court.”<sup>9</sup>

This decision was but a forecast of the long line of outstanding opinions which Judge Sanborn has rendered in the years he has been on the bench.

On June 3, 1903, upon the resignation of Judge Henry C. Caldwell, Judge Sanborn became, by virtue of the seniority of his Commission as Circuit Judge, Presiding Judge of the Court, and since that date he has met and discharged with promptness and distinction the full burden of the duties of that important post. The thirteen States comprising the Eighth Circuit, namely, Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah and Wyoming, include eighteen Districts and twenty-five District Judges. It is the largest Circuit in population in the United States, and, with possibly one exception, the largest in volume of business. It extends more than 1,000 miles from east to west and more than 1,000 miles from north to south. Its area, the largest within the continuous

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<sup>9</sup> Union Pacific Ry. v. Chicago, etc. Railway Co., 163 U. S. 564.

boundaries of the United States, is exceeded by that of the Ninth Circuit only because the jurisdiction of the latter includes Alaska and Hawaii. The duties devolving upon the presiding judge are most exacting, require instant attention and frequently involve decisions of far-reaching consequences. Judge Sanborn has discharged these duties to the complete satisfaction of the profession and the public. In addition to his other duties, he has been charged with the responsibility of administering railroad receiverships of unusual magnitude. He has conducted the receiverships of the Union Pacific Ry. Co., the Chicago Great Western Ry. Co., the Missouri, Kansas & Texas Ry. Co., the St. Louis & San Francisco R. R. Co., and (with Judge Lewis) the Denver & Rio Grande R. R. Co., foreclosed the mortgages, reorganized the corporations and sold the properties of the mortgagor corporations to their respective successors.

When Judge Sanborn came upon the bench, there was but one other Circuit Judge in the Eighth Federal Circuit. There are now five others. Since he came upon the bench, Judge Caldwell, his senior in commission, has died, and five other Circuit Judges who were thereafter appointed have died, namely, Judges Amos M. Thayer and Elmer B. Adams of St. Louis, Walter I. Smith of Council Bluffs, Iowa, William C. Hook of Leavenworth, Kansas, and John E. Carland of Sioux Falls, South Dakota. Judge Willis Van Devanter, who served as Circuit Judge with Judge Sanborn, is now a member of the United States Supreme Court. None of the thirteen District Judges who were on the bench in the Eighth Circuit when Judge Sanborn was appointed is now alive. Upon the death of Judge Don A. Pardee of the Fifth Circuit, September 26, 1919, Judge Sanborn became senior Circuit Judge of the United States. With the exception of Circuit Judge Joseph Buffington of Pittsburgh, who served a short time as District Judge before his appointment to the Circuit bench, Judge Sanborn has had a longer continuous

service as United States Judge than any other man now on the Federal bench.

The character of the opinions handed down by Judge Sanborn, the importance of the cases he has participated in, the volume of work he has done, the vast properties and heavy responsibilities involved in the receiverships that he has administered, have been described by the speakers at the testimonial dinner, and for that reason no attempt is made in this sketch to add to the tributes so earnestly and spontaneously rendered on that delightful occasion.

The following "chronology" of the major events in Judge Sanborn's life appeared after Smith's biographical sketch.

#### CHRONOLOGY OF WALTER HENRY SANBORN

- Oct. 19, 1845.....Born at Sanborn's Hill, Epsom, Merrimack County, New Hampshire.
- 1862-1867.....Taught the winter term in the common school in various New England towns; Principal, Milford (N. H.) High School.
- 1863.....Entered Dartmouth College, Hanover, New Hampshire.
- 1866.....Elected by the student body as one of the two representatives in the Annual College Debate.
- 1867.....Delivered the Greek Oration and Valedictory Address at Dartmouth graduation exercises and received the degree of Bachelor of Arts. Led his class. Member of Phi Beta Kappa and Psi Upsilon.
- 1867-1870.....Principal of Milford High School, Milford, New Hampshire.
- Feb. 1870.....Removed from Milford, New Hampshire, to St. Paul, Minnesota.
- 1870.....Received degree of Master of Arts from Dartmouth.

Jan. 28, 1871.....Admitted to the Bar of the Supreme Court of Minnesota.

May 1, 1871-.....Practiced law in St. Paul in partnership  
 Mar. 16, 1892 with his uncle, John B. Sanborn, under the firm name of John B. & W. H. Sanborn.

Nov. 10, 1874.....Married to Emily F. Bruce of Milford, New Hampshire.

May 1878 - .....Member of City Council of St. Paul.  
 May 1880

1885-1892.....Treasurer, Bar Association of Minnesota.

1885-1892.....Member of City Council of St. Paul.

1886-1888.....Eminent Commander, Damascus Commandery, No. 1, of Knights Templar of St. Paul.

1889-1890.....Grand Commander, Knights Templar of Minnesota.

1889.....Marshal of the Eleventh Division (10 States) Knights Templar, Triennial Conclave, Washington, D. C.

1890.....Chairman, Ramsey County Republican Convention.

1890-1891.....President, Union League Club of St. Paul.

1890-1891.....President, St. Paul Bar Association.

Mar. 17, 1892.....Commissioned Circuit Judge of the United States.

June, 1893.....Received degree of Doctor of Laws from Dartmouth.

June 4, 1903.....Became Presiding Judge of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Sept. 26, 1919.....Became senior Circuit Judge of the United States. □

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Judge Sanborn died in St. Paul on May 10, 1928. On March 30th of the following year, the Ramsey County Bar Association presented the following memorial to him in district court:

Memorial to Honorable Walter Henry Sanborn,  
presented before the  
District Court of Ramsey County,  
Minnesota, on  
Saturday, March 30, 1929.

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MAY IT PLEASE THE COURT:

On behalf of the Bar of Ramsey County the following memorial to the Honorable Walter Henry Sanborn is respectfully submitted.

Walter Henry Sanborn was born October 19, 1845, at Epsom, Merrimack County, New Hampshire. During his boyhood he attended an academy near Epsom, assisting on his father's farm during the vacation periods and at such other times at his academic duties permitted.

In the year 1863 he was admitted to Dartmouth college, graduating therefrom in 1867. His record at Dartmouth was at such excellence that he led his class, was a member of Phi Beta Kappa, and was chosen to deliver the Greet Oration and Valedictory address at the time of his graduation.

From 1867 until 1870 he was the principal of the Wilford (New Hampshire) High School and during this period read law in the office of Honorable Bainbridge Wadleigh, who afterwards became United States Senator from New Hampshire.

In February 1870, he resigned his position as principal of the Wilford High School and came to St. Paul where he continued the

study of law in the office of his uncle, General John B. Sanborn.

Of his experiences during this period of his life he said — “There were no typewriters, no stenographers in use in the law offices and courts of St. Paul at that time; the pleadings and the evidence were written in longhand. No law school was within reach and we attended none. We learned how to commence law suits by commencing and conducting them as directed by our employers and from our observation of the actual trial of these law suits which we had helped to commence and conduct, by such lawyers as Cushman K. Davis, James Gilfillan, Horace R. Bigelow, Morris Lamphrey, General John B. Sanborn, Charles F. Flandrau. We learned something about the trial of law suits. After all it was not the most despicable legal seminary.”

On January 28, 1871, Judge Sanborn was admitted to the Bar of the State of Minnesota and on May first following he formed a law partnership with General Sanborn, and from that time until 1892 was actively engaged in the practice of his profession.

On November 10, 1874, he married Emily F. Bruce, of Milford, New Hampshire. Four children were born to them, Grace, Marion, Bruce, a member of this Bar, and Henry.

He took an active part in public and civic affairs during this period in spite of many demands made upon his time, and served as a member of the Council of the City of St. Paul from the year 1885 until the year 1892.

On March 11, 1892, he was commissioned by President Benjamin Harrison, Circuit Judge at the United States for the Eighth circuit, under the provisions of the Federal Court of Appeals Law, then recently enacted, and on May 2, 1892, took his seat upon the bench of that Court, then sitting at St. Louis.

From June 3, 1903, as the senior member at this Court, he served as presiding Judge, and from that time until his death discharged all of the administrative duties of that office. It was the largest Circuit in population in the United States and, with possibly one exception, the largest in extent of business.

The extent of the influence which his work had upon the development of this country cannot well be comprehended, but that it must have been tremendous can well be appreciated, when we consider that his Circuit extended one thousand miles from east to west and more than one thousand miles from north to south, and that he wrote 1492 opinions.

His span of service, from his elevation to the bench until his death, at St. Paul, on May 10, 1928, covered a time of unprecedented development. Things not dreamed of when he wrote his first opinion were the subjects of frequent controversy when he wrote his last. Changes in public opinion due to legislation, wars, expansion of business, trade and invention, crowded new problems upon his attention.

In contemplating the service which he rendered through his clear, logical mind, which enabled him to lay down precedents of far-reaching effect as guides to the development of business affairs and the orderly conduct of government, there comes to mind the service of John Marshall.

He was thoroughly human, had a fine sense of humor, and greatly enjoyed exchanging anecdotes and experiences with friends and associates. Especially did he seem interested in young men.

His erect bearing, his firm step, his animated expression, gave no indication of the fullness of his years and indicated in themselves how thoroughly he had mastered the arduous task which he performed.

It is impossible to speak of outstanding qualities which Judge Sanborn possessed, or particulars of his splendid service, which have not been long recognized and often referred to, but it was not after his work had ceased that its value was discovered, □ he left us knowing that he was regarded with respect and affection. Expressions of both during his life were spontaneous and frequent.

In the fall of 1927 this Bar met in his honor and we are glad to know, that, with all of the honors paid him by leaders of the bench

and bar throughout this country, the gathering of his former associates, of his friends and neighbors, of those who knew him the longest and best, coming as it did at the time when his labors were drawing to a close, touched him greatly and was often present in his mind and added to his happiness.

Whatever might be said on this occasion, would be far too brief to express all that might be said, but we here give public expression of our respect for his wisdom, our admiration for his industry, our appreciation of his impartiality, and our affection for himself.

Respectfully submitted,

Frederick N. Dickson

Frederick G. Ingersoll

Thomas D. O'Brien

A. E. Horn

George W. Morgan

Charles Bunn

Charles E. Elmquist

William G. Graves

J. C. Otis

(Chairman)

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## RELATED ARTICLES

For a related article published after Sanborn joined the appellate court, see George Thomson, "Biographical Sketch of Walter Henry Sanborn (1892)" (MLHP, 2012).

For a recent biographical sketch, see Thomas H. Boyd, "Walter Sanborn and the Eighth Circuit Court," 26 *Ramsey County History* 22-27 (Summer 1991) (MLHP, 2019).

Memorials to other members of the Sanborn family firm are also posted on the MLHP: “Edward Peyson Sanborn (1853-1934)” (MLHP, 2010), and “Memorial Proceedings for John B. Sanborn, Jr. (1964)” (MLHP, 2012).



Posted MLHP: November 27, 2011;  
revised and expanded, January 17, 2012  
and April 21, 2012..