

PROCEEDINGS
IN MEMORY OF
ASSOCIATE JUSTICE FLANDRAU.

On the afternoon of October 6, 1903, in the court room at the State Capitol, Hon. Michael J. Severance, in behalf of the State Bar Association, addressed the Supreme Court, then in session, and read the following

MEMORIAL.

"On the ninth day of September last Charles Eugene Flandrau closed his book of life at the city of Saint Paul and now he rests with his fathers. Though three quarters of a century spanned his life, yet the wheels of time in their ceaseless roll had left no-visible trace on his body or mind. An angry shaft from the quiver of Death smote him whilst he had the tread of a giant, and he fell to rise no more forever. With his death a star fell from the firmament of Minnesota's history, but its lingering luster will continue to illumine the memory of those who loved or admired him. And now the Minnesota State Bar Association, in obedience to a custom hallowed by time and consecrated by gratitude and esteem, directs that this memorial be made to perpetuate an example which, if forgotten, would leave an ellipsis in the history of the birth and development of our state.

"It is not the purpose of this memorial to gild an idol existing only in the caprice of fancy, but to trace with historical accuracy the activities of one whose career exalted his profession and reflected an imperishable honor upon his race, society and state. It is not the gift of a bounteous nature that inspires just panegyric, for disloyalty to that may invoke the unutterable contempt of mankind, but it is the self-wrought nobility of character and action perceiving and advancing the highest purposes of human life that renders the name of any man welcome to the casket of endless memory.

"Charles Eugene Flandrau, the subject of this memorial, was born on the fifteenth day of July, 1828, in the City of New York, and his ancestral line runs back to the Huguenots of France, expatriated by the revocation of the Edict of Nantes. At the age of thirteen, attracted by the mysteries of the sea, he went before the mast on different revenue cutters in the United States service, and on these and some merchant vessels he performed the duties of a common sailor for the period of three years. After the expiration of that period and before he was nineteen years of age he attended private schools in Georgetown and Washington in the District of Columbia for two or three years, where he received his chief preparatory education. At the age of nineteen he went to Whiteboro in Oneida county, in the state of New York, the residence of his father, who was a lawyer of high repute, and studying law in his office, was admitted to the bar in 1851, and remained in practice with his father until he came to Saint Paul in November, 1853, where he entered upon the practice of the law with Horace R. Bigelow, under the firm name of Bigelow & Flandrau. In October, 1854, he removed to Saint Peter and became a deputy clerk of the District Court of Nicollet county, and was afterwards in the same year elected District Attorney for that county, a position he held for more than a year. In 1855 he was a member of the Territorial Council of Minnesota, in which capacity he served for one year and then resigned. On the sixteenth day of August, 1856, President Pierce appointed him United States Indian Agent for the

Sioux of the Mississippi, a position he held for one year and then resigned. In 1857 he was a member of the Constitutional Convention, which reared the fabric of our organic law. In July, 1856, he was appointed by President Buchanan an Associate Justice of the Supreme Court of the Territory of Minnesota, which office he held until the territorial government was superseded by that of the state.

"On the thirteenth day of November, 1857, he was elected Associate Justice of the Supreme Court of the State of Minnesota for the term of seven years, but he resigned his office on the first day of June, 1864. In 1858 and while he was Associate Justice of the Supreme Court of the state, by appointment of Governor Sibley, he held the office of Judge Advocate General of the state, a position he filled during the administration of Governor Sibley. In 1864 he removed to Carson City, in the territory of Nevada, where he practiced his profession for a year. In the spring of 1866 he removed to Saint Louis, in the state of Missouri, and practiced his profession with Richard Musser for a short time. In 1867 he removed to Minnesota and practiced his profession with Isaac Atwater at the city of Minneapolis. In March, 1867, he was elected City Attorney of that city, which office he held for one year. In 1870 he removed to Saint Paul, and associated with Horace R. Bigelow and Greenleaf Clark in the practice of law, under the firm name of Bigelow Flandrau & Clark, and afterwards he was the senior member of the firm of Flandrau, Squires & Cutcheon, in which firm he remained until his failing health required him to lay down his heaviest burdens. After that he practiced his profession alone in the city of Saint Paul as his strength permitted, and doing historical work until he was compelled by his progressive decline to lay his armor aside.

"In the varied life and career of Judge Flandrau many incidents "which embellish his character must be omitted here, as they belong more properly to the domain of general history than to the records of this court. This memorial is more concerned with his achievements as a man, lawyer and judge. Nothing in his eventful life will be overlooked when the story of that is written to be placed in the archives of the state.

"The power of environment in fashioning a plastic mind, endowed by nature with high moral aims, may be easily detected all along the current of his life. There was more than the trace of chivalry in his nature. Perhaps there came throbbing down the arteries of time from the realm of the troubadours an invisible, silent impulse that gave a tinge of romance to his life and made adventure a passion with him. This would easily lead him out into untrodden paths where primitive nature disdained the conventionalities of a ripe civilization. Then it is no wonder that he came in his youth to this virgin land to sit by campfires of those who heard the roar of Saint Anthony's waters before they were enslaved by the mill-wheel, and subjected to the industrial dominion of man. To be a pioneer and lead the vanguard of new discovery and new creations would be the natural trend of his mind. To stand where civilization and barbarism were chafing against each other would be enchantment for him.

"When we look for the sources of his unchallenged manhood that left its impress on every act of his public, professional and judicial career, we may remember the fact that he was schooled in the District of Columbia, the heart of this republic, where the very air was resonant with the utterances of the architects of our greatness. This was the forum of the nation, adorned with the trophies of her victories, where its orators and statesmen spoke for all coming generations under the flag that symbolized our power, and where the Areopagus of America sat expounding national and international law. All this would add dignity to youth only waiting for the toga of manhood. But more potent is the fact that his legal education was had in the office of his father, an acute and celebrated lawyer who mingled in the tutelage of his son lofty

professional pride with ardent parental solicitude. Add to this the radiance of a distinguished family on the maternal side and you behold the influences that crowded upon a receptive mind.

“Without the burnish and scholarly discipline of a college education, he drew from the necessities of his serious practical labors all the elements of learning, until an exact literary taste with all of its graces lent its charm to his manifold accomplishments; and he left behind him a history of his state couched in admirable style and paraphrase, which at once ranks him among the eminent historians of this country.

"Judge Flandrau in every walk of life wore the mantle of courtliness—a courtliness not too rigid or unbending and not bespeaking personal pride or hauteur, but only a conscious gentility everywhere radiating a decorous demeanor. He will be missed in the social circle and at the festive board, where his memory pregnant with reminiscence, gave life and piquancy to idle hours.

"So facile were his talents that he turned from one department of duty to another with all the ease of a universal student, limited by no special education. Civil administration, judicial requirements and military strategy, all fell within the range of his powers. So far reaching was his comprehension of progress that the fetich of an unstable tradition would not prevent him from keeping step with the march of experience in every domain of life.

"As a lawyer Judge Flandrau rose to a full conception of the dignity of his profession; to chafe and wrangle in peevish encounter was foreign to his taste and abhorrent to his view of a duty commissioned only to discover and establish the truth.

"With the sensitive character of a cavalier he bore himself in forensic debate, giving and parrying a thrust without a tinge of personal hostility. It was the good fortune of Judge Flandrau in his whole professional career to be associated with lawyers of eminent attainments, and his dread of inferiority would suffer no relaxation of his powers. He was pre-eminently a trial lawyer, dexterous in the management of a cause, allowing no advantage to escape him, and all the time adhering to his logical diagnosis of the case. Fluent but not redundant and foaming of speech, he was direct and incisive in his diction, disdaining the tawdry floridity of mere rhetoric and scorning the argument ad hominem as an ignoble play upon the chords of prejudice and bias. He would stir the intellect, but he would leave the emotions to play their part in the realm outside of the domain of abstract justice. In his life and in the practice of his profession he observed the golden rules of honor and the sublime ethics of integrity, and this gave him the advantage of an impervious character before courts and juries, where he could consistently assail the lapses of others with nothing to condemn in himself.

"With profit may the Bar of Minnesota heed the lessons of his life, for it will find his footprints all in the path of duty leading up to an honorable distinction. The Bar of this state cannot but deplore the loss of one who so long bore its standard with more than knightly devotion.

Before Charles E. Flandrau arrived at the age of thirty years he became a member of our Territorial Supreme Court, and in a year after a member of this court, and he wore the ermine of a judge with credit to himself, with honor to our territory and state, and laid it aside with no stain of dishonor upon its folds.

"He stood at the helm of our judiciary in the formative period of our legal practice, and with a discernment and maturity of judgment phenomenal in one of his age, he played a conspicuous part in laying the foundation of a system on which has been reared our stately judicial fabric. He hailed with delight the dawn of that day when reason descended in her royal

robes to assume her empire over the human mind, and hurl the ordeal of chance into the abyss of dishonored superstition. He would rear the law on the pedestal of intellectual certitude and crown it with the diadem of eternal justice. A view of his written opinions spread on the records of our courts, perspicuous in phrase, correct in the enunciation of legal principles, and tolerating no compromise with partial justice, will place his name high on the tablet of Minnesota's judicial fame. If untiring application, honesty of purpose and innate love of justice are the chief qualifications of judicial equipment, then all of these abound in Judge Flandrau in an eminent degree, the conspicuous elements of his mental and moral economy.

"Finally, gratitude and humanity demand the recognition of this memorial. For the services that Judge Flandrau rendered in the interest of human life, where savage fury swept the homes of Minnesota with the besom of destruction, his name will be interwoven with the story of every fireside as long as the world shudders at bestial atrocity. In 1857, when the settlers of southwestern Minnesota felt secure in their humble homes, supposing that the Indians had disowned the instincts of the brute, Ink-pa-du-ta, an incarnate fiend, with his band of remorseless demons descended upon scores of happy homes, and the gleam of the scalping knife that for many years had rested in its scabbard again presaged havoc, torture and death, Judge Flandrau, then Indian agent for the Sioux, by an energy of action unsurpassed, stayed the slaughter of the defenseless settlers, after forty-two had fallen before the tomahawk and the rifle. The female captives that survived the riot and carnival of lust, by an adroit diplomacy he rescued from the clutches of their tormentors, and restored them to all there was left of their homes, desolated by barbaric cruelty.

"Again, in 1862, when the Lower Sioux revolted to regain the empire from which they had sullenly retired, he met them in battle array at New Ulm with his bands of volunteers, routed them, and broke the cyclone of savage vengeance that was sweeping down the valley of the Minnesota. History, justice and truth will declare, with due deference to the bravery of others, that to a moral certainty, had it not been for the presence of Judge Flandrau at the battle of New Ulm with his dauntless courage, his knowledge of Indian strategy, his ability to command, his fertility of resource and the inspiration of his example, New Ulm would have fallen, and twelve hundred hapless men, women and children, would have been added to the thousand then rotting on the prairie, and the torrent of blood would have rolled on down the valley.

"When the billows of smoke, lurid with the glare of burning homes, were rolling and breaking around him, when the Alaric of the Dakotas was raging along the tightening circles of the naked, painted, yelling demons, hungry for sack and pillage, urging them to closer and deadlier conflict; when the wail of women and children shrinking from the clutch of savage monsters filled the darkening air with dismal sound; and when to many all seemed to be lost Judge Flandrau, with the withering scowl of utter contempt, repelled every suggestion of retreat. To any who would leave their post in despair of further defense Judge Flandrau said: "Do it if you will, but if you do Minnesota will be eternally too hot for you." Met and baffled by heroism like this, the Indians at last skulked away to the horrid orgies of their distant camp, where a hundred women were praying for the relief of death. And so New Ulm was saved. Chivalry never crowned a head more deserving than that of Charles Eugene Flandrau

"The story of his domestic life is written on the hearts of his home, and this memorial will not invade that sacred precinct.

"And now the Minnesota State Bar Association respectfully asks that this memorial be admitted to the records of this court, and at the same time it will hang its garlands of love upon the tomb it will never be willing or able to forget.

(Signed) A. H. YOUNG,
R. R. NELSON,
JOHN B. SANBORN,
W. E. HALE,
M. J. SEVERANCE,
Committee."

In the absence of HON ISAAC T. ATWATER, the following tribute prepared by him was read by his son, John B. Atwater, Esq.

"To the Supreme Court of the State of Minnesota:

"On the occasion of this memorial meeting in honor of Judge Flandrau I have desired to present some slight tribute to the regard and esteem which I have had for him during his life. As my physical infirmities prevent me from being personally present at this time, I can only send a brief and imperfect testimonial to my departed friend, partner and fellow associate in the Supreme Court of this state.

"I first met Judge Flandrau shortly after his arrival in the territory of Minnesota—in the year 1853, if I recollect right—but my intimate acquaintance with him dates from our association together in the first Supreme Court of this state. Judge Flandrau's early entry into the territory was an important addition to the legal force of the then infant commonwealth. His natural abilities as a lawyer, combined with his attractive presence, his open and frank countenance, and his genial and engaging manners, at once won for him the respect and affection of those with whom he was brought in contact. His influence in the affairs of the territory was soon felt, and in 1856, as I remember, he was appointed by President Buchanan District Judge of the United States Court for the Fourth Judicial District. In this position he displayed those judicial qualities which afterwards won for him an enviable reputation in the wider field of the Supreme Court of this state, and he then laid the foundation for that popularity which later enabled him to gain this high honor. I attended the first court which he held in Minneapolis, at the old Court House on Fourth street, and I can still remember the universal encomiums which were then given to his ability and fairness as a presiding *nisi prius* judge. Although most of the lawyers and litigants who attended that court have now passed away, I have often, at that time and since, heard Judge Flandrau spoken of as being one of the best judges who ever held court in Hennepin county.

"At the election in 1857 Judge Flandrau, together with Lafayette Emmett and myself were elected justices of the first Supreme Court of the state of Minnesota. At this election politics were largely in a transition state. The Whig party was about being dissolved; new parties were being formed; the new Republican party was rapidly coming to the front, but the old Democratic party was the most coherent and best organized. The Democratic party was generally successful in this contest, although long years elapsed before it again succeeded in electing many of its candidates at a state election.

"The early sessions of the first Supreme Court were held in a room in the north wing of the old Capitol Building. There was at that time no law library for the use of the judges, and we were necessarily much hampered in our work by the lack of that facility. Often we would have brief references to decisions which might be of controlling weight upon a case under consideration, but it was impossible for us to obtain any full report of these decisions. Many cases came before us, especially in real estate and railroad law, which were of first impression,

and we were obliged to struggle with the questions presented with practically no aid from the text-books or prior precedents. The court, however, was assisted by a bar, the abilities of which I cannot but feel were the equal of any which have followed it, and perhaps their ingenuity and logical acumen in presenting a case were heightened by the lack of those precedents, the mass of which often seems to overwhelm a modern lawyer in the argument of a legal question. Nearly all the lawyers who in those early days appeared most prominently before us are now out of the active practice of their profession, but their names and fame will live in the reports of cases, often important and quite often very novel, which they so forcibly argued before us. At that time the salary of the Justices of the Supreme Court was \$2,000 each per year, and this was rarely, if ever, paid in cash. If a judge had any pressing need of money he was obliged to sacrifice from ten to twenty per cent of his warrants in order to have them discounted. We had at that time no consultation rooms, and most of the consultation work outside of the Court House was done either at Judge Emmett's house in Saint Paul or at my home in Minneapolis. In our mutual work upon the bench, which brought us very closely together, I have nothing but praise to say of Judge Flandrau. He was quick to grasp and analyze the legal points which were decisive of a litigation, but he always looked to the real equities involved and gave them full consideration in his final determination. He was patient in his weighing of a case, slow to come to a final decision, and, when our opinions differed, was always ready to give full value to the arguments of his colleagues and was open to conviction until the last moment. I do not know just what early advantages he had had in the study of law, but he certainly demonstrated that he was a natural born lawyer, and the high reputation which he won on the Supreme bench is now the fair heritage of his family and his State.

"After several years spent on the Supreme bench both Judge Flandrau and myself resigned, and for a few years practiced law as partners at Carson City, Nevada. For several years thereafter Judge Flandrau and myself were partners in the practice of law at Minneapolis, until Judge Flandrau went to Saint Paul and became a member of the firm of 'Bigelow, Flandrau & Clark.' In our family relations we have always been close friends.

"The tribute which I can now pay to him I feel most inadequate. I can but touch on the relations in which we lived and worked together, and I have not even spoken of the record which he made as a gallant soldier in the war against the Indians, and the undying love which his services in that terrible time won for him in the hearts of the people to whose assistance he came. I have known Judge Flandrau as intimately as any man during my life in Minnesota, and I know him to have been a true man—brave, generous, just and kind. As a father, husband and friend, as a citizen, judge and lawyer, in every position in which he has been placed, he has met the test of honesty, loyalty and worth. In expressing our farewell to him, we can each of us say, without exaggeration or adulation, that we could wish no fairer record than the one which he has left behind him."

HON. R. R. NELSON then addressed the court as follows:

"Your Honors:

"When distinguished judges and lawyers die we take notice of the event before the courts with which they were associated. Judge Flandrau was an honored member of this court at an early day in the history of Minnesota, and, after he left the bench continued as an active and earnest advocate before the court until his health failed. His death was a public loss; it was a

painful wound to me, although at the time not unexpected. It was a personal loss. We emigrated more than a half century since from the state of New York, where we lived in adjoining counties. There was a bond of sympathy between us from the start, and our friendship survived a lifetime. Flandrau was a strong and forceful character, of good executive ability, and a born leader of men. In every enterprise in which he was engaged he always was found at the front. If public services outside of his profession engaged his attention, he discharged the duties honestly and fearlessly." He had great personal courage, was self-reliant to an eminent degree, and possessed no mean military ability. Perhaps his training as a sailor before the mast in the navy contributed to this. In 1857 Mr. Buchanan, then president of the United States, appointed William Welch, of Minnesota, Chief Justice of the Supreme Court of the territory, and John Pettit, of Indiana, and R. R. Nelson, of Minnesota, Associate Justices. For some reason Pettit declined the appointment. At that time Flandrau was agent of the Sioux Indians, located in the valley of the Minnesota River, and on the advice and at the solicitation of friends resigned the office and was appointed in Pettit's place, a position more congenial to his tastes. He served as an Associate Justice during 1857, and until he was elected and qualified a Justice of the Supreme Court of the state. He was unable to sit *in banc* with the other judges at the term of the Territorial Court held in 1857, but you will find in the first Minnesota Report at the end of an opinion I wrote in a case decided at this session, "I concur, Flandrau, J." His name appears for seven years and in the succeeding reports of the Minnesota Supreme Court until he resigned.

"Flandrau was fond of a good story, and inimitable in telling one. When he approved of the opinion just referred to he said it reminded him of the story of a trial before an ignorant justice of the peace in New York. One of the lawyers cited a case, and claimed it was on all fours with the one before the justice. He read the opinion in full, which was signed, "Jones, Judge," and asked for judgment. When he sat down the lawyer on the other side arose and said he was astonished that his learned opponent had attempted to deceive the justice; that the court deciding the case consisted of five judges, and the opinion read was that of one judge, Jones, and if his opponent had finished the citation it would be found that "a majority of the judges conquered" (concurred). And Judge Jones' opinion did not prevail. The justice not appreciating the difference between "concurred" and "conquered" so decided.

"Judge Flandrau lived near Saint Peter, in the Minnesota valley, and before he had official duties to discharge practiced in the Territorial courts and before the United States Land Office. It was not unusual for him to walk across the country from his home to Winona, where the land office was located. He told me that the happiest experiences of his professional life at that time were when the court was held at places where there were no law books, and no musty precedents could be cited. Counsel had to rely upon their knowledge of legal principles and grasp the salient points as the cause progressed. Flandrau was a wise lawyer, and a formidable adversary; he possessed the elements necessary to success. He was intelligent, had a robust constitution and great vitality, was genial and social in disposition, which endeared him to all with whom he came in contact. He was urbane, courteous, and remarkable for good judgment, sound common sense and quick perception, and withal a healthy moral tone pervaded his professional career. He spoke ill of no one. Although of strong convictions he was not opinionated, and I never heard an unkind word against anyone pass his lips. He sustained his views of public policy by logical arguments and did not resort to vituperation of those who disagreed with him. When Indian agent he was confronted with the execution of a very difficult and delicate duty. Among the desperate characters in the Sioux nation at that time none were more lawless and treacherous than Chief Ink-pa-du-ta and his band. This chief made a raid upon

the sparse settlement in Minnesota near Spring Lake, Iowa. Hideous atrocities and massacres were committed, and several female captives were held for ransom. Judge Flandrau undertook their release and succeeded in securing it. A graphic description of this undertaking, written by himself, can be found in the archives of the State Historical Society. In order to procure the ransom he obtained the necessary money by issuing, as he said, the first bond of the commonwealth of Minnesota, pledging the payment of the amount required, and the legislature recognized the obligation and appropriated money to redeem the bond. That he had military ability, the defense of New Ulm during the Indian massacre bears testimony. On the bench Judge Flandrau was calm, patient, courtly and dignified. His decisions are distinguished for practical justice, and conspicuous for the right application of legal principles to the cases presented to the court.

"These occasions, as said by another, 'bring home to us the great truth that we are destined to pass away from the earth, leaving no trace other than the memory retained by those who loved and esteemed us.' Our friend has gone to that 'undiscovered country from whose bourne no traveler returns.' He has crossed the river to the Great Beyond. May we during our lives emulate his virtues, so that when our time comes to pass away from the earth we may leave a name honored and respected."

HON, WILLIAM E. HALE then addressed the court as follows:

"May it please the Court:

"It is said, 'There is nothing innocent or good that dies or is forgotten; that no stream from its source flows seaward, how lonely soever its course, but that some land is gladdened; that no star ever rose and set without influence somewhere; that no life can be pure in its purpose and strong in itself, and all life not be purer and stronger thereby.'

"The life of Judge Flandrau, as he lived it in this city, in this state, and among all its people, now belongs to the bench, to the bar, and to the public. It is a beautiful picture of a long life well spent.

"In 1851, the governor of the then territory of Minnesota, in his message to the second legislative assembly, said: 'That the fertility of our soil, the salubrity of our climate, our forests, our fisheries, our mines, our inexhaustible water-power, furnish elements that will attract hither a large and steady immigration and secure a growth both vigorous and rapid, cannot be doubted.' The population of the territory was then about five thousand. Three years after this general invitation, young Flandrau came to Minnesota, to help in a large way to make it one of the foremost states of the Union. He defended it in war, and contributed much towards shaping and enforcing its laws. Always public spirited, he was ever ready to give his time and his talents to all public questions which concerned the welfare of his state and his city. Had he belonged to that political party which has been in power most of the time since 1861, he could, and probably would, have occupied a place among the highest and most influential of its counsellors. What a dignified, graceful and able representative of his country would he have made at any of the courts of Europe.

"He ranked exceedingly high as a lawyer and a judge, and for thirty years or more he had no superior in this state as a trial lawyer. Fairness, manliness and uprightness characterized the conduct of his cases, and he won the confidence and admiration of both courts and juries. The most complicated entanglement of facts and law was always reduced to harmony and simplicity

under his skilful handling. He was a lover of truth for truth's sake. His ideas of life and of the duties, of a lawyer were exalted. It was impossible for him to stoop to, or in any form countenance, a low or mean act. He was, indeed, a superb character, both in appearance and in action. He was a most genial spirit, affectionate and kind to his friends, and magnanimous to his enemies, writing their injuries and faults on the sand.

"Death comes to us all alike and makes us all equal when it comes; but it is not the good fortune of many to have lived so useful a life to his state and its people as was the lot and opportunity of Judge Flandrau. The history of this state cannot be truthfully written unless his life, his acts, and his deeds are shown to have had a prominent influence upon its formation and development."

HON. C. D. O'BRIEN then addressed the court as follows:

"May it please Your Honors:

"The great poet has said, 'The evil men do lives after them, while the good is oft interred with their bones.' The custom of the bar which we practice today preserves the good done by men whose services in the profession are eminent and whose lives have passed the censorship of their associates at the bar. The life of which we speak today contained no evil; all that was in it, to my observation, was good and exceedingly good. To attempt to add anything to the tributes which have been paid to the memory of Judge Flandrau by such men as Judge Severance, Judge Kelson, his associates and my friends who have preceded me, would be upon my part perhaps exceedingly presumptuous. But a man who has lived his life has the right to summon, even from the humblest ranks, witnesses to the good he did and the virtues which he practiced while among us.

"There are two classes of men at the bar who may be spoken of upon an occasion of this kind: The first are those who, preeminent in their ability and industry, at an early period in their lives rise far above the ordinary practitioner and their names are inscribed upon the tablets of fame, and the work that they do is enduring because of its benefit to the profession. The other class of men are those in general practice who seek no professional advancement, who live their lives in energy, industry, and in the honorable pursuit of their profession, doing that which comes to hand according to their best capacity, and keeping always before them the obligation to their profession, their clients and the courts. Such a man was Charles E. Flandrau. It has been well and truly said that the history of Minnesota, from territorial days down to the present time, would be wanting unless his career was read into each one of its pages.

"His singular attribute was his devotion to duty capable, honorable and truthful he took his duty as it came to him in every capacity of life, without any personal ambition to signalize himself beyond his fellow-citizens merely for ambition's sake. When public duties were presented to him he performed them, and then passed the office to another. His professional duties were executed in the same way. His ear was ever open to the call of the humble and the oppressed; no man's cause was too small and no man's station too humble to receive from Judge Flandrau the very best and most complete consideration. He waited for no corporate retainers; he waited for no engagement in cases which would add to his fame. Always willing, always ready, he did his duty, as I said before, as it was presented to him, and it was complete in each case.

"It has been well said of him by the learned Justice Nelson—and I concur from my own

experience in the expression—that no man ever heard him make an unkind criticism or say an unkind word of any man.

"To my mind Judge Flandrau was the most useful model to the ordinary member of the profession. In his career at the bar as well as upon the bench he always was a model. His opinions rendered in the early territorial days under the circumstances adverted to by Judge Atwater in his memorial, stand to-day as the law of this state, and at the present term of this court they are being cited in the briefs of counsel as the principles of law applicable to cases which are being presented to your Honors.

"When I came to the bar of this state Judge Flandrau was of course a senior member. He was a model then to the young practitioners, and the singular beauty and usefulness of his life were that during his entire career, and to myself since my admission to the bar in 1870, he was a model and I always felt assured that in following his footsteps I was doing my duty to the courts, to my clients and to my profession. May it please your Honors, the rain falls to-day softly and gently upon the grave of a man who all his life was just, and true, and honorable, and who carried out in his daily life and in everything that he did the new and great commandment of our Saviour: Love ye one another.

At the conclusion of these addresses the following responses were made on behalf of the court.

ASSOCIATE JUSTICE LOVELY said:

"At a time when the Twin Cities were outposts on the confines of civilization, and the great river at their feet which carries the commerce of many states upon its waters was the boundary of an unknown land, the subject of this memorial, richly endowed with the best learning of the schools of literature and law of the Empire State, sought the wilderness and here established his permanent home. He left behind him the blandishments of society, the association of cultured men and women among whom he could forecast a successful career, to gratify the independent aspirations of the pioneer, to build upon a new soil under new conditions a new commonwealth where the land of adoption should surpass the land of nativity as the place of liberty, fraternity and equality, protected by the sanctions of justice and law. A half century has passed and the dream of the pioneer has been eclipsed by reality. The wilderness has become a land of plenty, rich in the realization of the brightest hopes of the founders of the state, richer still in the golden opportunities for the future whose limitations no one may yet fix with certainty. It is now in the retrospect the distinctive merit that the subject of this memorial gave his services to secure these results to which his ability, energy and character have largely contributed.

"He chose the vocation of the law for his field of endeavor and was a faithful servant at her altar to the end. He held during the many years of his life various positions of public trust, but his best ideals were professional. Here his position was at once conceded, and easily maintained while on the bench and afterwards during many years at the bar and until a few months before his death, when physical weakness forbade excessive labor which greatly taxed his strength and made his retirement a necessity. He went upon the bench of this court at its organization very early in life, at a time when many lawyers of his years were contending for recognition at the bar, and ably filled the position from 1838 to 1864, when he resigned.

"The superior excellence of his opinions cannot now be questioned. They are a part of

the judicial history of this country, displaying no unnecessary effort at embellishment, are clear, lucid and erudite. At times they displayed a richness of imagination and warmth of feeling that made them eloquent, particularly where the rights of the person and the domestic ties were the subject of consideration.

"Judge Flandrau was to some extent in after years inclined to speak lightly of his early judicial efforts, but a much higher judgment will be placed upon his accomplishments as a jurist by his critics, and without any detraction to his associates it must be said it was fortunate for the highest bench of this state that he was one of its earliest members.

"A careful persual of the decisions of this court while Judge Flandrau was on the bench cannot but excite the pride of the lawyers of the state who have occasion to refer to the precedents then established for future guidance. A new state with a new constitution furnished problems of difficulty that required independence of judgment, exalted ideals of duty permeated by a necessary judicial humility which should inspire the just judge. Judge Flandrau fulfilled these requirements and during this period on the bench exhibited these qualities to an eminent degree. Many of his opinions are still quotable and quoted to illustrate application of constitutional rights to legislative action, and the restriction which the judicial power imposes in the adaptation of a new people to the progressive principles of jurisprudence.

"If Judge Flandrau had not from experience acquired those resources which only long continued study and acquaintance with the authorities will bring, he was to an eminent degree possessed of a genius for judgment, the love of right, the consciousness that law was made for man, and that the men to whom it was to be applied and adapted were around him and devoted to new conditions and aspirations that could not be hampered or controlled by restrictions and limitations that had become effete and inappropriate to modern life.

"When he retired from this court he entered upon a long successful professional career which continued for many years. I first met Judge Flandrau in 1870, when I had occasion to appear in the Federal Court of this district, and formed an acquaintance that continued until his death and was the recipient of many tokens of kindness which were so characteristic of himself and other members of the bar of the Capital City. As a lawyer he possessed a keen analytic mind, a painstaking capacity for research, and as a jury advocate he had no superior.

"His considerate and courteous treatment of his opponents and associates at the bar when engaged in active practice was a part of the very nature and habit of the man, observed and appreciated by all. He was a paragon for imitation in this respect. His sterling integrity, his unblemished honor were not, and could not be questioned. His candor with the court was never affected by his zeal and earnestness as an advocate. He did much to establish the early reputation of the bar of the Capital City for its courteous and kindly treatment of the country lawyer, and his long service as a lawyer full of honor will be remembered with many kindly recollections by many of us who are past the meridian of life.

"I do not think that Judge Flandrau ever said an unkind word of any man. He was firm in his convictions of political and moral duty, but he bestowed that charity upon the opinions and views of those with whom he differed that was characteristic of the great and generous heart which possessed the man and dictated his conduct.

"The members of this bench cannot but feel deeply impressed by this occasion. The declining years of Judge Flandrau with the necessary results of his arduous labors had injured his health and made it necessary for him to retire from active practice two years before his death. The last occasion when he appeared in this court was at the close of an extended argument which he presented to the court; he then paused and said, "This is all I desire to suggest with reference

to this case. I crave the indulgence of the court to refer to another matter. I have now been connected with this court as a member and practitioner at its bar for nearly fifty years, but my physician admonishes me that I must cease my active work in my profession. I have come to the stopping place. This is my last case. I give you my best wishes and bid a kindly good by.'

"It was an affecting occasion, unexpected but decidedly impressive and brought to every member of the court a feeling of deep and sincere regret. He then turned and left the room with that courtly air which always abided with him. We shall treasure his good wishes with unfeigned respect.

"This was but a few short months ago, and now that he has gone to be numbered with the silent majority, we can truthfully say that his record is written in gold, not only upon the history of our court but in the hearts of its members and all good citizens.

"He will surely receive his reward, and blessed be his memory."

ASSOCIATE JUSTICE COLLINS said;

"The territory of Minnesota was noticeably fortunate in its pioneers, and of these, few there were who attained a higher place in the estimation of its citizens than Charles E. Flandrau. Coming to the territory in the year 1853, a young lawyer, well educated in his chosen profession, his intellectual and moral worth and ability were so pronounced that they commanded immediate recognition first in Saint Paul and then in the valley of the Minnesota River, wherein he had subsequently located. He became, at the outset, one of the most prominent lawyers of that section, a representative citizen and a noted political leader. In the fall of 1856 he was designated by the president as agent for the Sioux Indians, a tribe then occupying more or less of the southern half of the territory—a position of great trust and responsibility. May I become reminiscent enough to say that the first time I saw him was soon after this appointment, when with some twenty or more of his Indian wards, mounted on ponies, he rode into the little village in Dakota county in which I then resided. It was a particularly attractive body of men, clad in the rough garments of the frontier, buckskin shirts and leggings, bright colored handkerchiefs about their necks, gaudy sashes about their waists, some wearing slouch hats, but the greater number without head-covering, except that provided by nature (always in abundance among the Indians). I remember that Agent Flandrau was browned by exposure to wind and sun to such an extent that he could hardly be distinguished from others of the party, some of whom had white blood in their veins. But there was the magnificent figure, the intelligent face and the courteous manner, always distinctive and attractive wherever he was placed. It is almost unnecessary to say that he was a very popular official with the Sioux, and that his career as an agent was exceedingly satisfactory to the authorities at Washington.

"But his term of service in this capacity was brief, for on the first Monday in June, 1857, he was elected as a delegate to the constitutional convention, authorized, by congress to meet at Saint Paul in July following. It will be remembered that upon meeting the members of this body separated on political lines, and that two convention were held. In the Democratic Judge Flandrau a prominent factor in committee, in consultation and in debate. These two bodies finally united and submitted but one constitution to the voters, which was adopted at an election held October 13. At the same time he was elected as one of the two associate justices of the Supreme Court for the new state, but pending formal admission of Minnesota into the Union, May 11, 1858, a vacancy occurred in the Territorial Supreme Court and he was appointed to the

place by President Buchanan. As an Associate Justice he presided once or twice in District Court—then a part of the duties of the Justices of the Supreme Court—but if he wrote any of the opinions of the court last mentioned they were not published. All of the work of that tribunal is found in the First Minnesota Report and the last opinion, being in the case of *Foster v. Bailey*, page 310 (436), was written by Associate Justice B. E. Nelson. To it Judge Flandrau added a few words of concurrence, his first and last utterance in that volume. His first opinion was a dissent from the conclusion reached by a majority of the state court in *Minnesota & Pacific Railroad Company v. H. Sibley, Governor*, 2 Minn. 1. It may not be necessary to remind those present that this case grew out of a difference of opinion between Governor Sibley and the railroad companies as to the requirements of the amendment of 1858 to section 10 of article 9 of the Constitution, authorizing the old bond issue. Two of the three Justices then composing the court determined that the deed of trust to the state to secure the payment of bonds to be issued by the companies need not give to it priority of lien upon the roads, lands and franchises of the various companies for which the state became surety, while Justice Flandrau ably and forcibly expressed himself to the contrary, agreeing with the; governor. His last opinion is found in the case of *Sons of Temperance v. Brown*, filed February 6, 1864, and reported in 9 Minn. 141 (151). His style of writing was vigorous and concise, and it is proper to say that the manner in which he performed his work is worthy of imitation, and he expressed his views clearly and lawyerlike, so that his opinions are models in style of composition.

"In estimating his worth as a citizen and a public man, and in assigning to him a place in the history of the territory and of the state, the fact that he was a pioneer in his youth must not be forgotten. The opportunities for all professional men were limited in the early days and the higher standard which has since been reached was impossible. Social functions were of the free and easy style, and the daily life of the early settler was not always above just criticism. There was a tendency to conviviality—usually attractive to the young—and he who escaped contamination when confronted with such influences is to be congratulated and commended. Such a man was the subject of these remarks, and one who passes through years of such a life and emerges without stain or reproach, as did Charles E. Flandrau, must be of good fibre; he must be conscientious, fearless, honestly ambitious and possessed of superior mental faculties. Not many men in the territory stood the test of frontier life as well as he did, and very few were accorded the sincere respect and esteem which were his —the tribute of all classes of men. He possessed the rare faculty of obtaining the good will and great esteem of all who knew him, without yielding to the vices, big and little, which prevailed in nearly all of the small communities then within our borders and which composed a population in the state of less than 173,000 in 1860. He knew how to follow his own line of deportment far separated from that of many men with whom he associated, without giving offense or securing their ill will, and this faculty was his all through life. His course of conduct from the first was of the highest type, independent but never perverse, dignified but always modest, courageous but never combative.

"His literary ability was of a high order, but the demands of a large and successful law practice prevented its development to any great extent. He contributed several valuable papers to the Historical Society pertaining chiefly to his own experiences in Minnesota, and their worth will be the better appreciated as time passes on and with it his associates in laying the foundations of our state. I think his most pretentious work was a history of Minnesota which he dedicated as follows: 'To the Old Settlers of Minnesota, who so wisely laid the foundation of our State upon the broad and enduring basis of freedom and toleration, this history is most gratefully and affectionately dedicated.'

“Not many of those referred to in those dedicatory words are entitled to more credit for their wisdom and work than was the author himself.

“Reference has been made to his military life and service at the time of the Sioux outbreak in 1862. Although not under his command in those days, I personally knew of his courage and resourcefulness, and here record my belief that of all the citizens who took up arms in defense of our frontier Charles E. Flandrau stood pre-eminent. It should also be recorded at this time, as a somewhat remarkable circumstance, that of his two associates in the Territorial Court in 1858—one, the Hon. R. R. Nelson, is still living and with us here today, while the two gentlemen who served with him in the State Supreme Court, from May, 1858, to July, 1864, Chief Justice LaFayette Emmett and Associate Justice Isaac Atwater still survive, the former a resident of New Mexico, the latter of the city of Minneapolis.

"Finally, let me say that a well conducted life, adorned by those deeds which are benefactions in all communities, abounding in honors and blessed to an unusual degree by the great affection and unbounded esteem of our citizens, has come to an end, and there has gone out into the Unknown a beloved citizen, an upright and capable public official, and a gracious and graceful gentleman. We know that the eternal Peace which is assured to God's noblemen is his."

CHIEF JUSTICE START then said;

"Some one has said: 'The worth of a civilization is the worth of the man at its center.' If this be true, and it is, then it is also true that the greatness of a state depends very largely upon the character of her pioneers. Minnesota, in this respect, was exceptionally fortunate. Her pioneers were, as a rule, masterful men who believed and practiced the gospel of self-reliance and honor. They were self-sacrificing and patriotic. They heroically struggled with the savage and the wilderness to build upon broad and enduring foundations a commonwealth dedicated to the cause of liberty and justice for all men. They wisely organized and faithfully fostered the educational and charitable institutions of the state. They sowed the seed that we might reap. Theirs was the toil; ours the fruitage. What manner of men they were you may judge from the venerable few who are still with us, loved and honored by all.

"Judge Flandrau in this great work of building the state bore a conspicuous and honorable part. He was one of the great leaders in the work, and the political, military and judicial history of the state cannot be impartially written without a record of his life and public services. In his death the state he loved and served so well mourns the loss of a well beloved and most illustrious citizen. The court heartily concurs in the memorial and all that has here been said as to the life, character and services of Judge Flandrau, and gladly accedes to your request that the memorial and eulogies be recorded in the records of the court, there to remain a perpetual tribute to his memory.

"It is so ordered: and, further, that the court now adjourn."