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HISTORY OF THE MINNESOTA SUPREME COURT
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When James Buchanan became president, though he was a Democrat succeeding a Democrat, he at once proceeded to remove all territorial officials in Minnesota. One of his first acts was to appoint Rensselaer R. Nelson and Charles Eugene Flandrau associate justices to replace Justices Sherburne and Chatfield, Chief Justice Welch being the only incumbent to remain.

Justice Rensselaer R. Nelson was born at Cooperstown, New York, May 12, 1826, and died at St. Paul October 15, 1904.

In his youth Nelson attended the public schools at Cooperstown, Hartwich Seminary, and a military school. He was graduated from Yale in 1847, and two years later was admitted to the bar. Soon he received the appointment of judge of the United States district court for northern New York. Eastern friends, through General Sibley, advised Nelson to go to Minnesota. He landed in St. Paul May 12, 1850, and began to practice, rejecting a move to make him congressional candidate. However, in 1854 business interests called him to Superior, Wisconsin, and while there he accepted the appointment of district attorney for Douglas county.

He returned to St. Paul in 1855 and resumed practice, continuing until the spring of 1857 when, in April,

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President Buchanan appointed him associate justice of the territorial supreme court. He had served less than a year when the territory became a state, and the newly elected state officers assumed their duties. Following his appointment to the bench only one general term of the supreme court was held -- in January, 1858. The court consisted of William Welch, chief justice, Nelson and Flandrau, associate justices.

Judge Nelson, at the time Minnesota was admitted to the Union in 1858, was appointed United States district judge for [-1-] the district of Minnesota, which position he held for thirty-eight years, until his retirement in 1896.

As one of the territorial supreme court judges, Judge Nelson also acted as one of the district court judges. It was while acting in this capacity that he held the second term of court in the history of Rice county, at Faribault, the first term having been previously held by Judge Chatfield.

During the short time that Nelson served the territorial supreme court he wrote only one opinion and no dissents. However, during this same period he held many terms of district court. The lone supreme court opinion is published in volume 1 of the Minnesota Reports.

The other appointee, Justice Flandrau, was to become one of Minnesota's most noted men. In appearance Flandrau was far from being the typical judge; rather about him there was a debonair air that belongs to the reckless adventurer. But combined with

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this to a surprisingly high degree were the finest judicial traits. Indeed, it has been said of him that throughout his varied, checkered, and colorful career he perceived and advanced the highest purposes of human life.

Flandrau had appeal -- plenty of it. Far more than with most men, and certainly more than with any other supreme court justice, there hovered about Flandrau a spirit of reckless daring -- a Troubadour impulse that gave to him a tinge of romance and breath of adventure. Ever present in his eyes was a look of far-away wistfulness, arising from their struggle to penetrate beyond the curtains of distant frontiers.

Yet, and fortunately for Minnesota, this flair for being always in the vanguard admirably adapted him for the great part he was to play in the formative history of the state. Indeed, with Emmett and [-2-] Atwater at his side, it may be said of him that he hewed out the groundwork upon which rests much of the jurisprudence of the state.

As a boy he was attracted by the mysteries of the sea, and when 13 he went before the mast and for the next three years sailed wherever fancy or whim directed him. Finally parental suasion brought him home, where he studied in private schools and later in his father's law office. In 1853, at the age of 25, he moved to St. Paul and started law practice.

At 26 he was district attorney for Nicollet county; at 27 he was a member of the Territorial council; at 28 he was

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appointed by President Buchanan to the seat of associate justice of the Territorial supreme court. A month later he received another presidential appointment, this time by President Pierce, making him Indian Agent for the Sioux; and later that same year he found time to serve as a member of the Constitutional Convention, which originated the beginning of our organic law. At 28 he was elected associate justice of the first supreme court of the new state. At 29, and while he was associate justice, he was appointed by Governor Sibley to the office of Judge Advocate General.

At 36, an age when most men have become firmly settled, he resigned from the supreme court bench and moved to Carson City in the Territory of Nevada. There he practiced law for about a year, and moved again, this time to St. Louis, Missouri. Still his restless spirit drove him, and a year later found him in Minneapolis practicing law with Isaac Atwater, with whom he had served on the supreme court bench. Later that year the people of Minneapolis elected him City Attorney.

In 1870 the spirit of restlessness having spent itself, he removed to St. Paul and during the next thirty-three years, until his death in 1903, he practiced his chosen profession.

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Many incidents in Flandrau's life come to mind. Once in 1857 and again in 1862, at the battle of New Ulm, two vicious attacks by the Sioux were beaten back mainly by the strategy and courage of Flandrau. At the siege of New Ulm, when

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all seemed lost, some of the bravest were despairing and openly considering desertion of their posts when Flandrau, head back and eyes aflame, passed from man to man and said: "Desert if you will, but if you do Minnesota will eternally damn you!"

During the close of his life much time and labor was spent in compiling historical recollections -- recollections of Minnesota from the early formative days to the late nineties. But for a complete drama of the history of the state, it remained for the writers who followed to properly insert the many missing scenes so essential to the whole -- all those diversified and vital roles so regally enacted by Charles Eugene Flandrau.

It has been pointed out that, generally speaking, the territorial supreme court during its existence was called upon to consider cases of only minor importance. Yet of those important ones that were considered, it may be said they were all cases of first impression. That is to say, the opinions rested upon principle rather than upon authority. Not only were library facilities limited and lacking in the present day accumulation of masses of legal literature, but many of the questions were new in themselves, and the opinions handed down in regard to them established precedent. So wholly new were some of these opinions that a large proportion were handed down without the citation of a single authority.

Everything pertaining to the territory was new and growing. Even then woodsmen were blazing trails in all parts of

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the territory, surveyors were running lines, advance agents of every description were pouring into the territory, fertile prairie land was being turned under, steamboats were beginning to ply the river, [-4-] and railroads were pushing deeper and deeper into the wilderness to the west and north -- all presaging the day when Minnesota would rightly claim her place with the greatest states in the Union.

Throughout the entire territorial period there was no set routine for the court. Cases were withdrawn or set ahead without any immediate formal record being made of the changes. Maybe the appellant on a case set for the following day ran across one of the judges somewhere that evening and informed him he was withdrawing. If it so happened no other case was to be called the next day, this judge didn't show up, and, if he had been unable or had neglected to inform the others interested in the case, they arrived at the court room the following morning and sat around needlessly waiting for the others. Certainly some such occurrence must have happened in the following incident.

George W. Prescott, the last clerk of the territorial court, arrived at the court room bright and early on the morning of January 11, 1858, and proceeded to get everything in readiness for the judges. Finished, he settled down to wait. Presently the clock showed ten, then eleven, and when noon came and still no judges had arrived he sat down to a lone lunch. He threw several fresh chunks of wood into the stove, drew up a chair and

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made himself comfortable. The sun shining through the window caused him to doze a bit. Arousing at four, he glanced about the room, took down the big court minute book and certified: "Neither of the judges of said supreme court has appeared this day to hold said term, and therefore, I do now, at four o'clock in the afternoon, adjourn this Court until tomorrow morning". Prescott closed the book, banked the fire, put on his hat, and musing on the ways of judges, locked up and went home.

At this time Welch was chief justice, and Flandrau and Nelson were associate justices, and these three served on the last term of supreme court every [sic] held in the territory.

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Reference has been made to the early opinions of the court with mention of those missing. The last opinion to be written by the territorial court bears the number 119; those actually handed down as written opinions number 58, and as two of these carry double numbers the total preserved written opinions comprise 56 units, two of which carry dissents by Chief Justice Goodrich. This leaves a total of 61 cases which the territorial court disposed of either without written opinions, or if opinions were written on these 61 cases they were lost or mislaid at an early date.

During the active life of the territorial supreme court, June 14, 1849 to March 13, 1858, the court had under consideration 161 actions and questions, admitted to practice 181

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attorneys and disbarred 1. No naturalizations are recorded. During these nine years three active chief justices and six associate justices served the court. [-6-]