

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICES ATWATER AND YOUNG

On the afternoon of April 3, 1907, in the court room at the State ; Capitol, HON. DANIEL FISH, in behalf of the Minnesota State Bar Association, addressed the Supreme Court, then in session, and said:

May it please the Court:

The thirteenth day of October next will be the fiftieth anniversary of the election whereby the people of Minnesota Territory adopted constitution preparatory to admission into the Union. On the same day they chose from their number three eminent citizens to constitute the first supreme court of the new commonwealth. Today, near the close of a half century of statehood, the bar of that court presents, for incorporation in its records, a brief commemorative notice of one of those pioneer justices, the last to pass from earth of a distinguished triumvirate. But three and a half years have elapsed since a like service was performed for the first of them, Judge Flandrau, when an eloquent tribute to his memory was read at this bar from the pen of the last survivor, whose death we now deplore. In the meantime Lafayette Emmett, the first chief justice, departed this life and he, with Justices Clark and Buck, of later times, and Judge Nelson, the first occupant of our federal bench, have all been commemorated here. And now George B. Young, once a member of this court and but yesterday the peerless leader of our bar, has passed away. Of the six former, chief justices but one survives, Thomas Wilson, still in full practice. Of fourteen associate justices (not counting Judge Wilson who served in both capacities) but four remain and they of the more recent. All the territorial justices are gone and nearly all of the earlier practitioners.

Fifty years are but few in the life of a state, yet already the age of tradition is upon us; the story of our bench and bar begins to take on the soft haze of antiquity.

I am asked to read the following inadequate sketch of Judge Atwater's career and to move that it be entered in the minutes of the court:

ISAAC ATWATER

May 3, 1818—December 22, 1906

Born at Homer, Cortland County, New York, Isaac Atwater, son of Ezra and Esther (Learning) Atwater, grew up amid the wholesome conditions of a farmer's life. Both parents were natives of Connecticut, the father certainly, and probably the mother also, being of English extraction. The rural schools of the neighborhood until the age of sixteen, afterward a seminary at Cazenovia and the academy at Homer, prepared their son for college. Entering Yale at twenty-two, and supporting himself there mainly by his own efforts, he was graduated in 1844.

After a year of teaching and eighteen months of study in the Law School at Yale, he went to New York. There, pursuing a further course of preparation, he was admitted to the bar, beginning his practice in that city in 1848. The following year he was married to Permelia A. Sanborn, of Geddes, New York, and with her removed soon after to St. Anthony, now a part of Minneapolis, settling there in October, 1850. His wife and three of the four children born of the marriage preceded him to the grave. John B. Atwater, Esq., of the Hennepin bar, is the surviving son.

Judge Atwater was very prominent from the beginning, not only in professional life, but in all that concerned the interests of his adopted home. He edited, and for a time owned, the "St Anthony Express," the first newspaper of his town and the first to be issued in the territory outside of St. Paul. As member and secretary of its first board of regents, he helped to establish the University of Minnesota. He delivered the first Independence Day oration, lectured in the early courses given by the Library Association, and was the first initiate member of the local Masonic lodge. In 1852 he was an incorporator of the company which erected the first bridge that ever spanned the Mississippi, and later joined in the formation and management of the Minneapolis & St. Louis Railroad Company. He was among the first to acquire land west of the river, where the main city of Minneapolis now stands, and was one of the first aldermen of that city and a member of its first board of education. He reported the decisions of the territorial supreme court rendered in 1852, and in 1853 was elected prosecuting attorney of his county. For many years he was president of the local board of trade and always was a leader in the affairs of the Episcopal church, in whose faith he lived and died. Thus in all the activities of those formative days, Isaac Atwater discharged to the full every duty of citizenship.

It was but natural that a trained and successful lawyer, who had evinced also great capacity and zeal in public affairs, should be chosen by the people, at their first opportunity, to high judicial office. A self-governing community is best studied in its laws and in the character of the men selected to construe and apply them. Minnesota was most fortunate in that the foundations of her jurisprudence were laid by such men as Emmett, Flandrau and Atwater—men of the people, familiar with their struggles, in sympathy with their aspirations, yet instructed in the mistakes of the past and in the principles whereby like errors may be shunned. For more than six years, viz: from May 34, 1858, to July 6, 1864, Judge Atwater sat in this honored tribunal, meagerly compensated, money wise, excluded from the activities so alluring to one of his ardent nature, often misunderstood, of course, yet patiently, justly, and wisely fulfilling the exalted duties of an appellate judge in a new commonwealth destined to have a large part in the nation's history.

The opinions written by him, 158 in number, appear in volumes 2 to 9, inclusive, of the *Minnesota Reports*, the last in *Martin v. Hurl* but, 9 Minn. 133 (142). Most of these were cases of first impression and nearly all have been cited many times. They exhibit easy command of legal principles, remarkable facility and dignity of expression, sound judicial reasoning, and a keen sense of justice. The bar of today can with difficulty appreciate the careful labor which settled the practice and procedure now so familiar, the thoroughness of that pioneer work which enables the present court to dispatch its vastly increased business; nor, indeed, do we of tea realize how completely in this jurisdiction the reproach of "the law's delay" is obviated.

Impelled by the need of ampler incomes, the two associate justices resigned their seats in July, 1864, to resume the practice. For a short while they were partners at Carson City, Nevada, but Judge Atwater did not remove his family thither nor give up his residence here. Both returned in the fall of 1866 and continued their partnership in Minneapolis. Upon the removal of Judge Flandrau to St. Paul in 1871, the senior remained and, with associates and alone,

conducted for many years a lucrative practice. Gradually his private concerns and his unceasing interest in the public welfare came to afford him sufficient employment. Fortunately he was able to retire, seasonably, from exacting professional labors. But he was never idle. Hours which to other men would have been hours of leisure were devoted by him to the preparation of a full history of his town and county; volumes; which no one else could have written, source-books for later annalists. Advancing age brought on the inevitable infirmities. His last years were years of bodily weakness, but his mind was alert to the end. Bereaved of wife and children, he yet remained genial, interested, hopeful; bent by the weight of nearly ninety years, he peacefully laid down a life filled with good works.

This scant memorial but faintly suggests the value of such a life, or our sense of loss in its passing. We can only hope that in future times some appreciative eye scanning the page on which it is inscribed may discern therein more than is formally set down.

Daniel Fish.
Henry G. Hicks.
Harvey Officer.

HON. HARVEY OFFICER then said:

May it please the Court:

I am glad of the privilege of seconding the motion to spread the Memorial on the minutes of the court, and I am glad to join in the memorial on behalf of Judge Atwater, not only as a representative of the State Bar Association and one of its committee, but also as a member of the bar of Ramsey county. For in the time between 1855 and 1858, and before Judge Atwater was elevated to this bench, his was a familiar figure as well in the territorial supreme court as in the district court of Ramsey county. In fact his circuit might be said to extend from St. Cloud on the north to Winona on the south, throughout the then central part of the territory.

While he was on the bench it was the duty of the reporter of this court to prepare the syllabi of its decisions, but those syllabi, before they went to print, were always submitted to the judge who wrote the opinion for his correction and revision, to the end that they might reflect in as few words as possible the gist of the decision. This duty was always performed by Judge Atwater with the greatest care, and that work established between the members of the court and its officer, the reporter, that personal relation which necessarily must exist between the court and its reporter.

After Judge Atwater returned from Nevada and resumed practice in this state he was well known in this court and in the lower courts of that state. There are two cases in particular, to which I might call attention, that reflect his ability as a lawyer. I refer to the two cases of *Atwater v. Russell*, reported in the Forty-ninth, the one involving the construction of the will of Mr. Martin, the old-time friend and client of Judge Atwater, and the other involving the construction of a trust deed executed by Mr. Martin, both of which documents, as I understand, were the professional work of Judge Atwater. Both involved the construction of devises and legacies for charitable purposes, and a grant under the deed of trust for similar purposes, and in that connection the construction of the then somewhat crude law of the state on the subject of uses and trusts. If the court will notice those two cases of *Atwater v. Russell* it will find that there were very few notations of cases in the supreme court of this state. There are only five or six cases noted, among them the case of *Simpson v. Cook*, but the inspiration of the attorneys

involved in the discussion of it and of the court was necessarily derived from the decisions of the English Court of Chancery and from the decisions of the courts of New York and Massachusetts and the older states. Therefore those two cases may be called the initial cases involving the construction of charitable gifts under deed or will for charitable purposes in this state, and in cases of that class which have arisen since they have generally been quoted and referred to with approval, notably in the recent case of *Watkins v. Bigelow*, reported in the Ninety-third.

Judge Atwater as a lawyer, as well on this bench as in the district in which he practised, and in Ramsey largely, always commanded the confidence and the respect of the court, and his genial manner endeared him to his associates at the bar.

For ten or twelve years prior to his death I was closely associated with him in certain classes of church work. For several years past that work was necessarily done at his office, where he had to be carried in a push-cart. We met him at his office when he was able to be there, or if he possibly could not be there by reason of his physical infirmity, we met him at the bedside in his hotel. He was always present at an appointment of that kind, always alert, active, and intelligent in the discharge of his duties.

While acting with him I became aware of the generous gifts that he made in a most unostentatious way, not only to the church of his choice but to other benevolent associations and corporations, and to individuals in the city where he lived. Very few knew of the nature and the extent or the generosity of his benefactions in that direction.

His was an inestimable character worthy of emulation as a lawyer by all the bar, and as a high-minded, noble gentleman. I second the motion.

CHIEF JUSTICE START then said:

Associate Justice Elliott will reply in behalf of the court.

ASSOCIATE JUSTICE ELLIOTT then said:

The Memorial which has been presented by your committee expresses in appropriate form the virtues, abilities and traits of character of Judge Atwater which entitle him to the respect of the bench, bar and people of this state, and they will be spread upon the records of the court in which he served with honor to himself and to the state. Although but recently deceased, Judge Atwater belonged to a generation which has about passed into history, a generation that founded the commonwealth of Minnesota. It is fitting and proper that we should honor in all appropriate ways these pioneers in jurisprudence and state building. Their work was well done and will endure while the records of history are preserved. I think it is generally conceded that Minnesota was fortunate in the character of its early judges. They were, without exception, men of character, ability and adequate learning in the law. May we always, and on every proper occasion, acknowledge the debt we owe to the men who laid the safe foundations upon which their successors have erected the great state of the present time.

Judge Atwater was the last survivor of the original supreme court of the state. He left the bench of that court in 1864 and retired from active life nearly a generation ago. I doubt whether he was personally known to any of the present members of the court, but his judicial record is well known and appreciated. It is found in Volumes 2 to the Reports, and compares creditably with that of his associates and successors. In the building of the Temple of Law Judge Atwater had an honorable part. His work bears the stamp of industry and care, and is marked by an

evident desire to do justice between the litigants. He took his high duties seriously and sought to fulfill them in the spirit of the just judge of whom it was said: "When he goeth up to the judgment seat, he putteth on righteousness as a glorious and beautiful robe to render his tribunal a fit emblem of that eternal throne of which justice and mercy are the habitation."

The memorial will be spread upon the minutes of the court.