

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICE VANDERBURGH.

On the afternoon of Monday, January 9, 1899, in the supreme court room at the state capitol, Hon. Henry W. Childs in the unavoidable absence of Hon. Moses E. Clapp, president of the State Bar Association, presented to the supreme court, then in session, the following memorial of Associate Justice Vanderburgh, and moved that the same be spread upon the records of the court:

MEMORIAL.

The members of the bar of the state deem it appropriate that we should present to the court an expression of our sorrow and sense of loss to the profession and to the community, occasioned by the death of the Honorable Charles E. Vanderburgh, for many years one of the justices of this court, which occurred at his home in the city of Minneapolis on the third day of March, 1898.

After a service of more than twenty years upon the bench of the Fourth Judicial District, Judge Vanderburgh was, in the year 1881 elected an Associate Justice of this Court, and continued to serve in that capacity with great acceptability until the beginning of the year 1894. It will thus be seen that more than thirty years of his vigorous manhood were passed in the judicial office, the latter twelve of which were in this court. This long continuance in the public service, by repeated re-elections, fully attests how well his fitness for these high professional honors was recognized by his brethren at the bar, and by the people at large.

Judge Vanderburgh brought to his high office a wealth of legal learning, and genuine love for the service, which made him a most able and acceptable jurist. Endowed with a keen sense of honor and of right, he was ever alert to see that substantial justice should prevail. Brushing aside, therefore, technicalities and false issues he would seek to grasp the real merits of the case. Fidelity to duty and strict integrity were his marked characteristics, no less than his uniform kindness and courtesy to all; he therefore commanded the love and confidence of all. He was a devoted Christian, a sincere friend, a true man.

Deeply deploring our loss, which has taken from our profession a brother loved and revered by us all, we contemplate with satisfaction his useful and blameless life, and respectfully ask that the court permit this brief expression of our regard for the memory of our honored brother to be entered upon its record

Hon. John B. Gilfillan then addressed the court as follows:

"Our profession has again been invaded, and one of distinguished standing at the bar and on the bench has been removed from among us. Reverence for his high character and exemplary life has brought us together to-day to pay suitable tribute to his memory. To me, presumably

because of my early and long-continued acquaintance and friendship with our brother, has been assigned the honor of adding a few words to the testimonial already presented by the bar.

"Charles E. Vanderburgh was born in Saratoga County, New York, in 1829, was fitted for college at Cortland Academy in Homer, and graduated from Yale in 1852. Soon after taking his degree, he commenced the study of law in the office of Henry E. Mygatt, a lawyer of great prominence and ability, and was admitted to the bar in 1855. In the springtime of the following year he came to Minnesota and located in the then sparsely-settled village of Minneapolis, which was from that time his home. Very soon after coming to the territory he formed a partnership with the late Justice Cornell, which continued until his elevation to the bench in 1859. In the fall of the latter year he was elected Judge of the Fourth Judicial District, and successively re-elected in 1866, 1873 and 1880, and while still serving in that capacity was, in the fall of 1881, elected Associate Justice of this court and re-elected in 1886 and served until the beginning of the year 1894. He then resumed the practice of law. It will thus be seen that nearly the whole of the active life of Judge Vanderburgh was passed upon the bench.

"When first he commenced his judicial office his district embraced a wide circuit, including the counties of Hennepin, Carver, Wright, Meeker, Stearns, Mille Lacs, Benton, Morrison, Crow Wing, Cass, Itasca, Todd and Pembina, covering an area of nearly one-half the state, and stretching from Fort Snelling to the British boundary, and from the Red River of the North nearly to the Great Lakes. This area was of course rapidly curtailed as the newer portions became more populated, and new counties and new districts were created, and boundaries readjusted.

"My personal acquaintance with Judge Vanderburgh commenced while he was still at the bar, and while my own law studies were being pursued in a neighboring office to that of Cornell & Vanderburgh. Even at that early period he had acquired an enviable reputation for skill, accuracy and neatness in the drafting of pleadings and other papers, and in the careful preparation of cases for trial. From the time of my coming to the bar in the year 1860, it was my lot to see much of Judge Vanderburgh, both as an observer and practitioner in his court, at home and on the circuit, and I came to know him well. The memory of those days is a pleasant one, and it is a gratification now to speak of his sterling qualities; as a man, and as one fitly chosen for the administering of law and justice. He brought to his high office a thorough scholarship in the law, a love of right and a studious and painstaking habit that inspired and impelled him to a true and just solution of all matters coming before him for adjudication. What is the right of this matter was ever his guiding thought. He was kind and considerate to all, whether counsel or litigant, court officer or plain citizen, and yet his lover of truth and justice was so strong that anything which savored of deception or unfairness was sure to kindle his righteous indignation, and meet his merited rebuke. No one with good cause ever feared to come into his court. If mistakes were made, as must need be at time, the right of review was fully and fairly preserved in the record. His love of substantial justice, regardless of technicalities, made him a close student of the principles of equity, and, long before his elevation to this court, he had won fair fame as a jurist in equity cases. In this court practitioners well remember how carefully and closely he followed the arguments of counsel, and with what painstaking care he elaborated his opinions. His value in the consultation room can better be attested by you, his associates.

"But his labors were not confined to the bench or the bar, nor circumscribed by any six-day limit, for the seventh seemed the busiest of all. His life was full of good works, for he was ever active in the interests of literature, of education, the church, the mission, the Sabbath school, charity, in fact in everything that makes for good in a young and developing community. As a

citizen he was the peer of any man. Whether considered as a man, a citizen or a jurist, the mainsprings of his life and character seemed to be steadfast fidelity to duty, sincere convictions of what he believed to be right, and fearlessness and courage in expressing those convictions. These qualities surely distinguished his whole life work. The words of Judge Vanderburgh upon an occasion similar to this are so eminently fitting to himself that I may be permitted to quote them here:

" 'Absolutely truthful and thoroughly honest and independent, he was no respecter of persons. He would turn neither to the right nor to the left to secure personal favor, and doubtless his manner was often misunderstood by those who did not know him well. Yet he was one of the kindest of men, and a most faithful and devoted friend. He was not only a strong man but a just and good man, a man with a conscience, and of strong convictions of right and duty. His character was grounded on sound morals and religious principles—fundamental qualities of a good judge, which cannot safely be undervalued.'¹

"These words of Judge Vanderburgh were a sober tribute to real worth, and that is what we would give to him to-day.

"The people of this commonwealth owe much, very much to a long life of public service like that of our honored friend, and to the lives of others who have preceded him from this tribunal to a higher service, whose memory will ever be revered by those of us who knew them here. How much he and they have done for us and for the future, in establishing a safe and exalted system of jurisprudence, is beyond our powers to estimate. Judge Vanderburgh has passed on to receive his reward. 'It is appointed unto men once to die.' He approached the end with an unflinching trust. He had lived in active usefulness almost the allotted span of three score years and ten. He was spared the torture of racking pain or the glow inroads of wasting disease. The call came to him while in the rigor of life physically and mentally; the final trial was short and he rested from his labors. In all this there is much to console; and the example of his life work remains with us as a benediction, inspiring us to emulate his virtues, holding in reverent honor the profession that was his and is ours. The veil which separates this life from that to which he has gone is impenetrable to the natural eye; but to the eye of faith and hope there opens a field of view that goes far to reconcile us to the death of the just who, having borne the last supreme trial of mortality, have been admitted to the life of the mysterious future."

Hon. A. H. Young then addressed the court as follows:

"May it please the Court:

"In the strife and contentions of active life, we are quite as prone to criticize as to praise those who are called to public service, and hence it is no idle form when one, faithful to the public trust, closes his account and submits for review the record of a long life, that those who are left behind shall for a brief time turn aside from business engagements, and take note of those qualities of character and that service which have contributed to the betterment of the world.

"The record of the life of Judge Vanderburgh will bear the closest scrutiny and will elicit naught but words of commendation and approval, for he was a noble man and a just judge. In laying down the work of a lifetime in large part spent upon the bench, he has left to the world

¹ See 59 Minn. 548 [Reporter]

and to posterity the record of a service not excelled in fairness or ability. In him were found the qualities of Christian manhood. He has left the impress of his life upon the community in which he lived, and it will be to our profit as well as our pleasure that we gather up in our memory those qualities of " that life which in their abiding influence upon the world will never lose their power.

"I first became acquainted with Judge Vanderburgh nearly thirty three years ago. He had then been upon the bench of the Fourth Judicial District of this state more than six years. He was elected to the office of District Judge at a time when the practice in the state was quite unsettled and crude, and needed for adjustment wise and patient administration. The newly elected judge was but a young man, barely thirty years of age, but though comparatively young in practice as well as in years, he was able to bring to the work to which he was called qualities of mind, and a legal preparation, which eminently fitted him for the position. He was first of all a noble man, the prime element in judicial fitness. No man ever esteemed more highly than did he, integrity, truth and virtue. All these qualities he possessed in good measure. He had a thorough classical education, was well read in the law, and possessed in general a judicial mind. When I first knew Judge Vanderburgh, though still a comparatively young man, he was mature in all that contributed to make him an able judge. After six years of practice before him at the bar, I was called to be his associate in the work and from thence came to know more of his personal worth and the controlling principles of his private and public life. He had then been upon the bench more than twelve years, and was in term of service the senior judge upon the district bench in the state. His long experience, his acquaintance with the practice, and his mature judgment gave him a high place in the esteem of the bar as a judicial officer. The memory of ten years of association with this distinguished and able jurist is very dear to me. Our limited accommodations for the transaction of business brought us very near together, and in some respects inconveniently so, and our relations were from necessity both close and intimate. The district was large in extent, and that feature of the service which brought him into contact with the common people was to him peculiarly agreeable. Without any patronizing on his part or letting down of official dignity, he was able to meet these people, to take an interest in those things that interested them, and so win their esteem and regard. The experience of those twenty-two years during which Judge Vanderburgh served upon the bench of the Fourth Judicial District of the state can never be repeated, and can only be recalled and understood by those who in service helped to make the history of those years. The bar of the district, as of the entire state, was composed in large part of young men, of fair legal ability, ambitious for success, vigorous and active in the practice of their profession. No small measure of responsibility rested upon the judiciary to give such direction to this element of power as to secure the best ultimate results. In this respect Judge Vanderburgh, by a conscientious discharge of his official duties, and by his personal influence, did his full part. He was especially popular with the younger members of the bar. In 1882 he was called to serve upon the Supreme bench, and John M. Shaw, Esq., was appointed his successor in office. And he too had, from my first arrival in the state, been my near and dear friend. And these two men, universally beloved and respected, within a few weeks of each other were called to another service, the character of which we do not know, but we feel confident that it is one every way worthy their character and fitness. For thirty-four years, the best half of a long and useful life, did Judge Vanderburgh serve the people of this state as judicial officer.

"But his service in that behalf is ended. We speak of him as dead. But he is not dead. He lives as truly in the hearts and affections of the people, in the influence of his private life, and in the record and value of his judicial service, as he did when he walked with us the streets of the

city, and sought in his daily life and in the administration of the law to exalt justice and bless the world. Those who knew him most intimately will remember Judge Vanderburgh as a friend and neighbor. We shall recall more frequently his exalted Christian character and his kindly spirit, his devotion to the service of the Master. But those not so intimately associated with him in his daily life will remember him as a just and impartial judge, the record of whose work will remain for all time as a part of the judicial history of the state."

Hon. William E. Hale then addressed the court as follows:

"May it please the Court:

"Richard Grant White, in his essay upon Shakespeare's Hamlet, has said,

“That a man may have kindness, and grace, and accomplishment, high thoughts and good impulses, and even a will that can stand firmly up against attack (as it were, leaning against opposition), and yet if he have not strong, urgent, exclusive desire which compels him * * * to seek one single object; if indeed he be not ballasted with principle and impelled by purpose, he will be blown about by every flaw of fortune and be sucked down into the quicksand of irresolution.'"

"It has also been said that no man ever became a truly great lawyer or a great judge who was not thoroughly honest; that his star might for a while shine with brilliancy, but sooner or later it would go out in darkness and leave its light in ashes.

"Judge Vanderburgh came into the race of life well equipped for success. He graduated, as has been said, at one of the first universities of this country, and studied law under Mr. Mygatt of New York, an able lawyer and a very honorable man, and I have often heard him speak of the good influence exerted over him by this association. Coming west, he associated himself with another great lawyer, and I have sometimes thought, and without any reflection upon any other member of the bar, the greatest lawyer in the northwest—F. R. E. Cornell. Not only was he a great lawyer but he was in every sense a manly man, and the association with him was certainly of great advantage. With these advantages, with a strong, active intellect, with high thoughts and good impulses, with the law as his single purpose in life, and always well ballasted with principle, he entered upon the more honorable and responsible duties of administering the law as judge of the District Court of the Fourth Judicial District. At that time, and for a long time afterwards, his territory included the greater part of the northwestern part of this state. There were then no railroads and the mode of getting about the country, in all kinds of weather, was by conveyances, stages and wagons, and oftentimes with his own horse and buggy. The means for administering justice were decidedly crude. For a long time hardly a county, except Hennepin, could boast of a court house, and he was often obliged to hold his court in some public hall or in the dining room of some hotel. But wherever he held court, and under whatever discouraging circumstances, he administered justice always alike and equally to all. It mattered not with him who was engaged in the trial of the case, whether upon the one side was his friend and a leading lawyer at the bar, and upon the other a young and inexperienced lawyer, the friendship and the ability of the one were never permitted to override the case or to prevent justice being done. His court was the people's court, in which they had the utmost confidence, firmly believing that under his administration, all litigants, no matter whether rich or poor, or what their position in life might be, would have an equal and fair chance. He did much to create in the minds of the

masses of the people the greatest respect for law and its administration. In those early days when the history of the state was being formed, titles to land being settled and new laws made which needed interpretation and application, the people needed just such a man to preside in their courts. Although he was not aggressive, and rather retiring in disposition and manner, yet he nevertheless had great courage, and never was known to shrink from performing a responsible duty; and no matter what the circumstances might be to influence his mind and action, he was never known to swerve a hair's breadth from what he conscientiously believed to be his duty. This made him the great, strong equity judge that he was.

"He was constantly progressing and kept abreast of the age in which he lived, so that, as the litigation increased, not only in amount but in importance, he was always found to be equal to the occasion. No man was ever loved or respected more by the masses of the people than was Judge Vanderburgh. He came to the Supreme Court of the state ripe in experience and full of knowledge. He had grown up with the state, was familiar with its laws and new the necessities and circumstances of their creation, and hence was well prepared to adopt and apply them in cases in this court. Because of his love for justice, he was one of the strongest equity lawyers that ever sat upon this bench. His death was a great loss to the people of this state, but his life and its beneficial influence upon the people will always remain.

"Men build monuments out of the most lasting and enduring materials to perpetuate the names of great men, great deeds and great events, but time and the elements of nature soon crumble them into dust and the wind picks it up and scatters it over the face of the earth. But it is not so with character. That lives on and on forever. It becomes a part of the elements entering into the evolution of the human race, always rising higher and higher.

"Judge Vanderburgh, at the time of his death, was in the full possession of all his intellectual powers, and when he wrapped the mantle of his couch about him and laid down to pleasant dreams, it might well have been said, that he was at that period of his intellectual growth all that he could possibly be; that his powers at that period of his existence could not have been more unfolded than they were; that he was conscious of an inward energy that had its root and ground in a qualification that had always been permanent and progressive."

Hon. Daniel A. Dickinson then addressed the court as follows:

"May it please your Honors:

"For more than a third of a century—a period exceeding a whole generation, as we count the ages of our race—Judge Vanderburgh was an honored justice in the court of general jurisdiction of this state, and in this court of last resort. It is fitting that upon the death of one who had so long and so honorably served the state, in the exercise of the most exalted governmental duties, there should be entered in the records of these tribunals an expression of the esteem in which he was held by his contemporaries, who knew, not merely the magistrate, but the man.

"The setting apart by your Honors of this day as one for the commemoration of the deceased jurist, and this responsive assemblage of the bar of the state, constitute in themselves, though we were silent, a tribute of respect and just appreciation, which spoken words can but inadequately express. No man's life or character can be reproduced in speech. It is lived, not recited. The life is the substance, what may be said of it is at best but an imperfect shadow or picture.

"In the records of this court, and published to the world, there stands the enduring

memorial which Judge Vanderburgh himself fashioned, in the faithful and honorable discharge of the duties of his judicial office. But to other generations, and even to those now living who did not enjoy an intimate acquaintance with him, these judicial utterances cannot bring to mind the personal qualities which linger in our memories, and import to his words a color, life and character which must be wanting to strangers. What others may contemplate in the decisions rendered by him will be as a lifeless statue, however faultless. We have known the living man; and we associate with the preserved record of his life-work the admirable qualities which belong to him as a man.

"The ability and learning, which he possessed in a high degree, are manifest in his opinions, published in the reports of this court. Of uniform excellence, they show his worthiness to exercise the high vocation to which he was many times recalled by the approving voice of the people of that district of the state where he spent his life, and afterwards by the citizens of the whole state. They bear the stamp, not merely of legal learning and sound judicial discretion, but of the study, thought and care which he was impelled to bestow, from a professional sense of duty and a just appreciation of the responsibility resting upon one who sits in judgment, to determine the sacred rights of his fellow men. The fidelity and painstaking care with which he discharged judicial duties may be likened to that which a sculptor bestows in chiseling the face and form of a statue, anxious always that no fault or flaw should be revealed in the finished work.

"His strong, keen sense of natural justice led him to delight in the study and application of the principles of equity jurisprudence, and it was in this field of the broad domain of law that his learning and wise judgment were most conspicuous.

"But not alone do the opinions of this court which bear his name measure or indicate the extent of his labor and influence in its adjudications. As one of his associates on this bench I desire to acknowledge the wise counsel and helpful assistance rendered by him to us who sat with him here. How far his learning, counsel, judgment, may have influenced or shaped the decisions of the court, it is impossible to express or even to estimate; but it may be said that they largely contributed, and lent an immeasurable influence, to the determination of all the thousands of causes adjudicated here, during the twelve years of his service on this bench.

"His private life and character, as well as that which was public and official, were stainless and far above reproach. During twelve years of intimate and almost daily association with him, I never heard him express a word or thought unworthy of a judge or of a gentleman. Integrity, purity, piety belonged to him as really and as constantly as did his form, his features, his voice. Self-denying, he was beneficent without ostentation. In brief, the motive inspiring all his life was duty—duty to God and to his fellow men. He rendered unto Caesar the things that are Caesar's, and unto God the things that are God's."

Hon. John B. Sanborn then addressed the court as follows:

"May it please your Honors:

"An occasion like the present more than any other fills us with reminiscences of the past, and brings before the mind at a single glance the events in the life and the habits of thought and character of the deceased.

"More than forty years have passed since he first appeared at the bar of an adjoining county, and entered upon the practice of his chosen profession. It required but a short acquaintance to become impressed with some of his leading characteristics; that he was by

nature, as well as by education, a man of perfect integrity, of high purposes and aims, and possessed of a clear analytical mind and devoted to the pursuits of his profession, while recognizing at the same time the great obligations resting upon him as a citizen of his adopted state and of the United States, and with a high and clear sense of his duties to the church, to the schools, and to all the institutions of his country. As a practitioner at the bar he was a lawyer who sought little if any advantage from the technical points of practice, and ordinarily stood upon the merits of the cases which he brought before courts and juries, with clearness and force. He became a successful attorney, far beyond the average, and gained the attention and respect of the bar to such an extent at a very early day that he was, as the result of a sentiment almost unanimous, selected as the District Judge of the Fourth Judicial District, at that time extending over nearly all the northern portion of the state. Over this large and rapidly-developing district, composed of many counties and courts, he tried all cases for a great number of years. The cases tried grew out of large lumber traffic, great commercial interests, rapid railroad development, pre-emption and homestead settlements, and all those other interests which occupy the population on a rapidly-developing frontier.

"All these duties were so performed, and all his numerous cases were so decided, that animosities were avoided, universal satisfaction was maintained and his reputation as a jurist was constantly advanced till at last the attention of the whole state was drawn to it and to his character and attainments, and he was wisely selected to the high position of an Associate Justice of this court. In this last exalted position the respect and confidence which he had gained while presiding on the district bench was more than maintained, it was increased and strengthened during every year that he served on this bench, and in the arduous services performed by him during the long period of more than thirty years, devoted to the determination of controversies in the exercise of the judicial powers of the state, it is not known that he ever made an enemy, or sent a suitor away from his court with the feeling that he had been deprived of his natural or legal rights to an extent not warranted by the constitution and the laws. This is a record of which any jurist should be proud and indicates not only a well-balanced mind but great study and research, and a preparation almost perfect for the discharge of judicial duties so various and so grave, and entitles the deceased even under the maxim of 'de mortuis nil nisi bonum' to the highest meed of praise.

"During an acquaintance of more than forty years, at times intimate, he impressed me as having some very peculiar traits. He seemed to be possessed of a sunny, mirthful disposition. Others may have seen him in a grave or morose mood. I never did. He was always cheerful, mirthful and buoyant. In all business transactions he was perfectly upright. In society and in his church the most generous and faithful and one of the most sincere of worshippers. He dealt justly, loved mercy and walked humbly, and thus fulfilled all the requirements of the most perfect man.

"It is a habit of the mind, on an occasion like the present, to reflect somewhat upon the vast changes that have taken place in the society in which he lived during the period of the life of the deceased. He entered upon his duties on the bench when there was not a mile of railroad in Minnesota, when the population of the state was less than two hundred thousand, when there was no such mechanical power as electricity and no such light known, and was called upon to apply and construe the abstract principles of law to the great variety of questions growing out of the use of these marvelous powers in the daily occupations of men, and he aided as much as any man in establishing those just principles of law and equity which secure the same rights to the humblest subject that are secured to the greatest monopoly and most powerful money king. This

is the true glory of the law and the highest achievement of the bench, and for this our deceased friend is entitled certainly to his share of glory and to grateful remembrance. Peace to his ashes."

At the conclusion of these addresses the following responses were made upon behalf of the court:

ASSOCIATE JUSTICE MITCHELL then said:

"My acquaintance with Judge Vanderburgh began over forty years ago, but as we resided in different parts of the state, our intimate personal association with each other only commenced when he took a seat on this bench seventeen years ago.

"Our almost daily intercourse for the twelve years during which we were associate members of this court necessarily resulted in our very intimate acquaintance. On my part it resulted in a very warm: personal friendship for Judge Vanderburgh—a feeling which I have reason to believe was reciprocated on his part. "It is not my purpose to indulge on this occasion in an overdrawn eulogy of the deceased. I know that nothing would be more distasteful to himself, if he were present, with us to-day. Neither shall I enter upon any extended consideration of his talents as a judge and jurist. The results of his labors as a member of this court are recorded in twenty-eight volumes of our reports and are familiar to the bar of the state and speak for themselves.

"It is more particularly to the memory of Judge Vanderburgh as a man and a friend that I wish at this time to pay my humble tribute of respect. As indicative of his character as a man I may, however, say that I never knew any one who was more conscientious in the performance of his judicial duties. He was peculiarly cautious and careful to see to it that, if possible, no mistake should be made in the decision of any case however small or unimportant. As indicating the natural bent of his mind I might state that he took especial pleasure in the study and application of what are usually termed equitable, as distinguished from legal, doctrines and principles, as being more nearly consonant with the principles of natural justice and less hampered by technical and inflexible rules. He was remarkably familiar with the chancery reports of New York, which probably constitute the most valuable body of equity law in this country, especially the decisions rendered by Chancellor Kent.

"Judge Vanderburgh was a man of unsullied purity, not only of action, but also of thought and speech. Nothing was more distasteful to him than anything bordering on the coarse or impure,

"He was always on the side of every cause which he thought would elevate the intellectual, moral or religious condition of the world. Without becoming what is sometimes called a 'hobbyist,' he always gave his support to every charitable, educational and religious movement which he thought was calculated to benefit his fellow men. The extent or amount of his benefactions in these directions will never be fully known, because they were always bestowed quietly and unostentatiously.

"He was a profoundly religious man, adhering strictly to those standards of faith and practice which obtained more generally in the past than at present, especially in the observance of Sunday, and yet he was a man of the broadest catholicity of spirit. He never obtruded his religious views upon others, but conceded to every one the same liberty of individual opinion and action which he claimed for himself."

CHIEF JUSTICE START then said:

"Gentlemen of the Bar:

"Your memorial expresses our own estimate of the life, character and services of Judge Vanderburgh. His life was pure; his character sturdy; his perception of justice keen. He was an honest man; a generous and public-spirited citizen; an able and fair-minded judge, who honorably and faithfully served the state for a generation.

"As a tribute to his memory it is ordered that your memorial be entered upon the records of the court for the day and that the court now adjourn."