

**Documents Regarding the Nominations, Confirmations,  
Recess Appointments, Commissions, Oaths of Office,  
Removals, and Terms of the Ten Justices who  
Served on the Supreme Court of  
Minnesota Territory,  
1849-1858**

**PART TWO - F**

**DOCUMENTS RE:**

**ASSOCIATE JUSTICE  
CHARLES E. FLANDRAU**

**and**

**JOHN PETTIT'S COMMISSION**

**Compiled**

**by**

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**2009–2010**

**PART TWO-F**  
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## JOHN PETTIT

**Appointed: April 21, 1857**

**Declined appointment: June 22, 1857**

**While John Pettit never served on the territorial court, his experience provides an insight into the politics of territorial judicial appointments as sectional tensions over slavery escalated in the late 1850s.<sup>1</sup>**

**Pettit was Senator from Indiana from 1853 to 1855.<sup>2</sup> He supported James Buchanan over Senator Stephen A. Douglas during the**

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<sup>1</sup> In a speech to the Hennepin County Bar Association in 1911, former supreme court justice Loren W. Collins unearthed the story of John Pettit:

I believe that if I should now ask you the question, Did you ever hear of the appointment of a territorial Judge by the name of John Pettit, not one would answer in the affirmative. His name has never been mentioned by our historians, but if you will turn to the chapter in question, you will find that Chief Justice Welch was thereby assigned to the 1st District, R. R. Nelson to the second, while to the third, John Pettit, (observe the wording) "Or such person as may hereafter be appointed Associate Justice of the Territory", was assigned to preside. I made diligent inquiry in the State concerning Pettit but could learn nothing, but, through the assistance of Senator Nelson, ascertained that soon after the sine die adjournment of the 34th Congress, on the 14th day of March 1, 1857, the term of Judge Chatfield expired and thereupon John Pettit of Indiana was given a recess appointment by President Buchanan, his commission bearing date, April, 21, 1857. He declined the appointment, as appears from a communication from President Buchanan of date May 6, 1858, to the Senate, nominating Chas. E. Flandreau for the place. It is evident that Pettit never came to the Territory.

Collins's address, which he was revising at the time of his death in 1912, is posted on the MLHP as "An Incomplete History of the Establishment of Courts in Minnesota."

<sup>2</sup> The *Biographical Directory of the United States Congress* has the following entry on Pettit:

PETTIT, John, a Representative and a Senator from Indiana; born in Sackets Harbor, N.Y., June 24, 1807; completed preparatory studies; admitted to the bar in 1831; moved to LaFayette, Tippecanoe County, Ind., where he commenced practice in 1838; member, State house of representatives 1838-1839; United States district attorney 1839-1843; elected as a Democrat to the Twenty-eighth, Twenty-ninth, and

presidential campaign of 1856.<sup>3</sup> After his inauguration, President Buchanan received the following handwritten letter from Pettit:

Lafayette, Ind.<sup>4</sup>  
April 3, 1857.

My Dear Sir:

I congratulate you and the country upon the happy inauguration & auspicious opening of your administration. I think you have a cabinet in which the whole country ought to & will have the fullest confidence.

I feel that I am treading upon very delicate grounds when I say that I would like to go to Kansas or Minnesota as Chief Justice should it be compatible with your sense of public duty to send me in that capacity.

Respectfully,  
Your off. Servt.  
John Pettit

The President  
of the U. States

On April 21, 1857, Buchanan made a recess appointment of Pettit to be associate justice on the Minnesota Territorial Supreme Court. Pettit's commission is dated April 21, 1867:<sup>5</sup>

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Thirtieth Congresses (March 4, 1843-March 3, 1849); unsuccessful candidate for renomination in 1848; delegate to the State constitutional convention in 1850; presidential elector on the Democratic ticket in 1852; elected as a Democrat to the United States Senate to fill the vacancy caused by the death of James Whitcomb and served from January 18, 1853, to March 3, 1855; unsuccessful candidate for reelection in 1854; chairman, Committee on Private Land Claims (Thirty-third Congress); chief justice of the United States courts in the Territory of Kansas 1859-1861; judge of the supreme court of Indiana 1870-1877; died in LaFayette, Ind., January 17, 1877; interment in Greenbush Cemetery.

<sup>3</sup> Robert W. Johannsen, *Stephen A. Douglas* 521 (New York: Oxford Univ. Press, 1973)(quoting a letter from Pettit to Douglas, written probably in 1856: "My heart was with Douglas, but my head was with Buchanan, or in other words I preferred you for President but him for a candidate.").

<sup>4</sup> Pettit to Buchanan, April 3, 1857, Roll 7, at 1562.

<sup>5</sup> A copy can be found on Roll 8 of the microfilm copies of U. S. Territorial Papers. Territory of Minnesota Records: Justice Department records in the Ronald M. Hubbs Microfilm Room of the Minnesota Historical Society.

*James Buchanan,*  
PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of  
*John Pettit, of Indiana,*

I DO APPOINT him to be Associate Justice of the  
Supreme Court of Minnesota Territory;

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD** the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said *John Pettit*, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my hand, at the city of Washington, the *twenty first* day  
of *April*, in the year of our Lord one thousand  
eight hundred and *fifty seven*, and, of the Independence  
of the United States of America, the *eighty first*.

*James Buchanan*

By the President:

*Lewis Cass*

Secretary of State.

**The *Daily Pioneer & Democrat*, the organ of the Democratic party, reported Buchanan's appointments to the court with enthusiasm:**

### Minnesota Appointments.

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**We have reliable news of the appointment of R. R. NELSON, Esq., of this city, and HON. JOHN PETTIT, of Indiana, as Associate Justices of the District Court of this Territory, in the places of Judges SHERBURNE and CHATFIELD, whose terms of office had expired. Also of the re-appointment of Chief Justice WELCH.**

**We believe these appointments will give general satisfaction to the profession and the public. Mr. NELSON, during a long residence here, has gained and maintained a high reputation as a lawyer, which, with his superior social qualities, will render him a popular as well as capable office. He will be fortunate, though, even with his acknowledged ability, if he fills the place of his predecessor.**

**The HON. JOHN PETTIT has a long time occupied a prominent position in Indiana. He was, for a short term, Senator from that State to Congress.**

**The present Chief Justice is too well known in this Territory to need any special notice or commendation.<sup>6</sup>**

**In contrast, the *St. Anthony Republican* reported Pettit's appointment with dripping contempt:**

**APPOINTMENTS.—President Buchanan has appointed W. H. Welch Chief Justice of Minnesota, with R. R. Nelson of St. Paul and John Pettit of Indiana, as the Associate Judges. Judge Nelson is son of Justice Nelson of the U. S. Federal Court, and is a good lawyer. Judge Pettit is that eminently eminent American who, on the floor of the U. S. Senate, pronounced the proposition that "all men are created free**

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<sup>6</sup> *Daily Pioneer & Democrat*, April 30, 1857, at 2.

and equal” to be “*a self-evident lie.*” He is the same John Pettit who was complimented by Senator Benton “as a dirty dog, sir, a dirty dog.” His appointment by Mr. Buchanan, like that of Capt. Rynders, is appropriate as an illustration of what modern “Democracy” means.

We must bear it all until a State Government gives us the election or appointment of our own Judiciary and then—possibly we shall do worse.<sup>7</sup>

After the President’s recess appointment, rumors began to float that Pettit might decline the honor. Henry Rice, the territorial delegate, seeing that his candidate, Charles Flandrau, might still have a chance, wrote Attorney General Jeremiah Black on May 13, 1857:

St. Paul Minnesota  
May 13th 1857

Dear Sir

Messrs. Nelson & Welch have received their commissions, Should Mr. Pettit decline the appt—I sincerely trust that Mr Flandrau may be appointed (Charles E. Flandrau) I find a strong feeling here against importations and a universal feeling in favor of Mr. Flandrau’s appt. The appointments of Nelson & Welch are popular beyond my expectations.

Very Respectfully  
& truly your friend,  
Henry M. Rice<sup>8</sup>

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<sup>7</sup> *Minnesota Republican*, April 30, 1857, at 3 (emphasis in original).

The quote from “Senator Benton” and the likeness of Pettit to “Capt. Rynders” show how territorial appointments had become entwined with the issue of slavery. Senator Thomas Hart Benton, aka “Old Bullion” Benton, was a Jacksonian Democrat who served as Senator from Missouri from 1821 to 1851, and from 1853 to 1855. Isaiah Rynders was “a notorious politician, with an evil reputation of many years’ standing, and his appointment” by Buchanan to be a federal marshal in New York in 1857 “was gleefully derided by the opposition press.” Carl Russell Fish, *The Civil Service and the Patronage* 168 (New York: Longman, Green & Co., 1905). Part of Rynders’ notoriety steamed from an incident in 1851, when he led a mob that broke up an abolitionist meeting in New York. Allan Nevins, *Ordeal of the Union: A House Dividing, 1852-1857* 154 (Charles Scribner’s Sons, 1947).

<sup>8</sup> Rice to Black, May 13, 1857 (underlining in original); Roll 7 at 1030.

Accepting the rumors as fact, on May 21st, the *Minnesota Republican* prematurely cheered Pettit's refusal:

Good!—John Petit, Ex-Senator from Indiana, declined to accept a Judgeship in Minnesota from Mr. Buchanan. As we take it for granted, no worse appointment is hardly possible, and a better one is probable, this news is really gratifying.<sup>9</sup>

Pettit declined the appointment a month later in a letter to the President:

Lafayette, Ind.<sup>10</sup>  
June 22, 1857.

My Dear Sir:

I duly received your commission dated 21st day of April last appointing me Associate Justice of the Supreme Court Minnesota Territory &, after mature deliberation assisted by various letters from this Territory, I have come to the conclusion that I cannot accept the appointment. I confess I do this with some reluctance, as I am desirous of a permanent judgeship or something that lead to one, & am I dislike to seem to reject anything you may have willing to offer me, but as I am satisfied it would not better my condition, I deem this course due to my self and my family.

I tender you my thanks conferred [word crossed through in original] for the honor conferred, and I beg you to accept full assurance of my constant & sincere esteem & good wishes, personally & officially.

John Pettit

There are several reasons why Pettit declined the appointment. In his letter of refusal, he noted that he desired “a permanent judgeship or something that lead to one,” thereby acknowledging his awareness that the territorial court would exist until statehood, which was a year or so away. Moreover, the President appointed him an Associate Justice, not Chief Justice, the post that he had requested in his letter of April 3rd.<sup>11</sup> His reference to his “family” suggests that it would have been a hardship for them to relocate to Minnesota Territory for a brief period.

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<sup>9</sup> *Minnesota Republican*, May 21, 1857, at 3.

<sup>10</sup> Pettit to Buchanan, June 22, 1857; Roll 7, at 1566-7.

<sup>11</sup> Pettit to Buchanan, April 3, 1857, Roll 7, at 1562, quoted above at 4.



He was a seasoned politician, who saw that Rensselaer Nelson's appointment to the territorial court meant that he was the frontrunner for the lifetime post of judge of U. S. District Court when Minnesota became a state. Finally, in his letter to the President, Pettit stated that he was "assisted" in reaching his decision by "various letters from this Territory." It is highly likely that a few of those letters enclosed a copy of the *St. Anthony Republican's* editorial belittling him<sup>12</sup>—there was, he understood, opposition to him within the territory. Pettit's withdrawal is more evidence of the increasingly influential role local conditions and local opinion played in the selection process.<sup>13</sup>

Two years passed. On March 5, 1859, Buchanan nominated Pettit to be Chief Justice of the Supreme Court of the Territory of Kansas,<sup>14</sup> and the Senate confirmed him four days later.<sup>15</sup> But Pettit paid a price for this post — judicial independence. Buchanan appointed territorial judges who were committed to his administration's policy, and this included Pettit. Kermit Hall writes:

Buchanan secured an equally sound administration adherent in John Pettit of Indiana, a former United States senator and representative, a state circuit court judge, and a Buchanan delegate to the Cincinnati convention. .... The president struck a bargain: Pettit pledged "not to repeal by judicial action ... the existing laws effecting Kansas"; Buchanan promised to nominate Pettit district judge when Kansas entered the Union.<sup>16</sup>

On January 29, 1861, Kansas became the 34th state and two days later, Buchanan kept his word by nominating Pettit to be judge of the federal district court of Kansas.<sup>17</sup> But this occurred at a moment when Pettit could not win confirmation. January 1861 was in the middle of the Great Secessionist Winter; six states had seceded, and twelve senators

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<sup>12</sup> *Minnesota Republican*, April 30, 1857, at 3, quoted above at 6-7.

<sup>13</sup> See generally, Douglas A. Hedin, "Rotation in Office' and the Territorial Supreme Court" (MLHP, 2010).

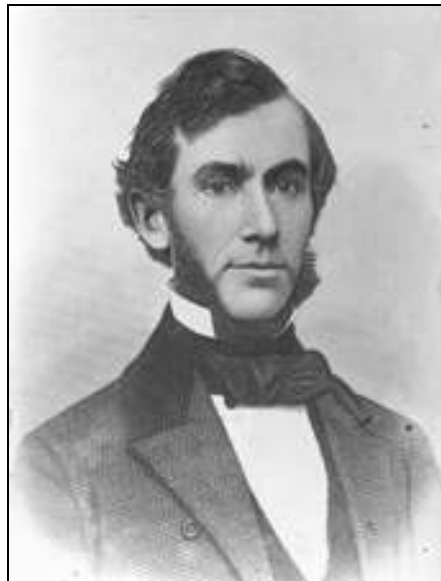
<sup>14</sup> *Executive Journal*, 36th Congress, First Session, Saturday, March 5, 1859, at 73.

<sup>15</sup> *Executive Journal*, 36th Congress, First Session, Wednesday, March 9, 1859, at 93 (the vote was 29 in favor, 13 opposed).

<sup>16</sup> Kermit Hall, *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System, 1829-61* 140 (Lincoln: University of Nebraska Press, 1979).

<sup>17</sup> *Executive Journal*, 36th Congress, First Session, Thursday, February 12, 1861, at 262.

who would have supported Pettit had resigned to join the Confederacy.<sup>18</sup> To complicate matters, on February 5, Buchanan nominated Attorney General Jeremiah Sullivan Black to fill an opening on the Supreme Court.<sup>19</sup> Both men were opposed by many senators who felt they were not sufficiently nationalist or unionist. Thus Pettit's nomination became entwined with Black's. On February 21, 1861, both nominations came before the Senate. By a vote of 27 to 24, the Senate declined to consider the nomination of Pettit and, immediately thereafter, by a vote of 26 to 25, Black met a similar fate.<sup>20</sup> On February 28, the Senate adjourned, and on Tuesday, March 5th, the next Congress convened in special session. The first message it received from the new President conveyed the names of his nominations for his cabinet.<sup>21</sup>



**John Pettit**  
(1807–1877)

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<sup>18</sup> In order of secession, the six states were: South Carolina, Mississippi, Florida, Alabama, Georgia, and Louisiana. Texas followed on February 1st.

<sup>19</sup> *Executive Journal*, 36th Congress, Second Session, Wednesday, February 6, 1861, at 258.

<sup>20</sup> *Executive Journal*, 36th Congress, Second Session, Thursday, February 21, 1861, at 258; see also Carl Brent Swisher, *The Taney Period, 1836-64* 736 (Macmillan, 1974)(describing newspaper opposition to Black); and Hall, *supra* note 15, at 148 (quoting a *New York Times* report that during the Senate debate “Messrs. Black and Pettit were handled without gloves.”).

<sup>21</sup> *Executive Journal*, 37th Congress, Special Session, Tuesday, March 5, 1861, at 289.

CHARLES E. FLANDRAU

Term: July 17, 1857 to May 24, 1858.  
Served: August 8, 1857, to May 24, 1858.

1. July 17, 1857: President Buchanan made a recess appointment of Charles E. Flandrau.

/s/ James Buchanan

PRESIDENT OF THE UNITED STATES OF AMERICA.

**To all who shall see these Presents, Greeting:**

**KNOW YE**, *That reposing trust and confidence in the wisdom, uprightness, and learning, of Charles E. Flandrau of Minnesota Territory,*

I DO APPOINT him, to be Associate Justice of the Supreme Court of said Territory;

*and do authorize and empower him to execute, and fulfil the duties of that office, according to the Constitution and Laws of the said United States, AND TO HAVE AND TO HOLD, the said Office, with all the powers and privileges, and emoluments to the same right appertaining, unto him, the said Charles E. Flandrau, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.*

*In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.*

**GIVEN** *under my Hand, at the City of Washington, the 17th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America, the 82nd.*

By the President, /s/ James Buchanan

/s/ Lewis Cass, Secretary of State.

*James Buchanan*

PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightnes, and learning, of *Charles E. Flan-draw of Minnes-ota Territory,*

*I* DO APPOINT him, to be Associate Justice of the Supreme Court of said Territory

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD** the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said *Charles E. Flan-draw* during the pleasure of the President of the United States for the time being and until the end of the next Session of the Senate of the United States and no longer.

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my hand, at the city of Washington, the *19<sup>th</sup>* day of *July*, in the year of our Lord one thousand eight hundred and *52*, and, of the Independence of the United States of America, the *82<sup>nd</sup>*.



*James Buchanan*

By the President:

*Lewis Cass*

Secretary of State.

President Buchanan’s recess appointment of Flandrau was made when the Senate was not in session. The First Special Session of the 35th Congress lasted from March 4, 1857, to March 14, 1857; it then was in recess from March 14 to December 6, 1857, during which Buchanan made Flandrau’s recess appointment; Congress’s First Regular Session lasted December 7, 1857, to June 14, 1858. See sessions of Congress in *Journal of the Executive Proceedings of the Senate of the United States of America*, 35th Congress (1857-1859), note 28, Pt. One.

**2. August 8, 1857: Flandrau took oath of office before Charles S. Chase.**

Territory of Minnesota} SS.  
County of Ramsey }

I Charles E. Flandrau

Having been duly appointed Associate Justice of the Supreme Court of the Territory of Minnesota do solemnly swear that I will support the Constitution of the United States, and faithfully discharge the duties of said office.

Sworn and Subscribed }  
before me this 8th day }  
of August 1857. }  
Charles S. Chase }  
Sec. Min Ter }

Chas. E. Flandrau

Flandrau’s oath is filed in a folder marked “Territorial Secretary: Bonds and Oaths—Territorial Offices” in the box of “Territorial Records of the Territorial Secretary” at the Minnesota Historical Society.

**3. May 6, 1858: President Buchanan sent the nomination of Flandrau to the Senate.**

I nominate Charles E. Flandrau, of Minnesota T., to be associate justice of the Supreme Court for said Territory, the same having been appointed by me during the recess of the Senate, vice John Pettit, declining commission, appointed vice A. G. Chatfield, whose commission had expired.

JAMES BUCHANAN.

May 6, 1858.

*Journal of the Executive Proceedings of the Senate of the United States of America*, 35th Congress, First Session, Monday, May 10, 1858, at p. 402.

In this message to the Senate, the President noted that John Pettit had been appointed but did not accept the commission to be associate justice of the territorial supreme court. This language originated in *Marbury v. Madison*, where the Chief Justice wrote:

When a person appointed to any office refuses to accept that office, the successor is nominated in the place of the person who has declined to accept, and not in the place of the person who had been previously in office and had created the original vacancy.

*Marbury v. Madison*, 5 U. S. (1 Cranch) 137, 161-62 (1803). President Buchanan signed the recess commission of John Pettit on April 21, 1857. On June 22, Pettit declined the appointment. See his letter to the President, quoted above at p. 8.

### **3. May 15, 1858: the Senate tabled a vote on confirming Flandrau.**

Mr. Pugh, from the Committee on the Judiciary, to whom were referred the nominations of William B. Gere, W. H. H. Tison, William H. Welch, Charles E. Flandrau, and Rennsaleer R. Nelson, reported.

On motion by Mr. Pugh,

Ordered, That the nominations of William H. Welsh, Charles E. Flandrau, and Rennsaleer R. Nelson lie on the table.

*Journal of the Executive Proceedings of the Senate of the United States of America*, 35th Congress, First Session, Saturday, May 15, 1858, at p. 415.

### **4. May 11, 1858: Flandrau's term ended with statehood.**

The term of a recess appointee expires on the last day the Senate is in session. For Flandrau, that normally would have been June 14, 1858, but for the intervening statehood of Minnesota on May 11, 1858 (The new state government was not formed until May 24th). ■



Posted MLHP: December 28, 2009.  
Revised March 12, April 23, May 27, & August 7, 2010.  
December 27, 2011; reformatted: August 18, 2012.