

“JUDGE ISAAC ATWATER”

by

CHARLES E. FLANDRAU

FOREWORD

by

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The following profile was published in *Magazine of Western History* in July, 1888. The subject was Isaac Atwater, the author, Charles E. Flandrau. This article was one of a series on Minnesota courts, the bench and bars of several Minnesota counties, and individual lawyers and judges that appeared in this magazine in 1887, 1888 and 1889. Indeed Atwater had written a profile of Flandrau that appeared only three months earlier.

Isaac Atwater is of interest to us today primarily because he served on the supreme court for six years following state-hood. Curiously, however, Flandrau devotes over half of his article to Atwater's youth, struggles to gain an education, and early success at the New York bar. He spends only one paragraph on Atwater's service as an associate justice from 1858 to 1864. The rest of the article describes Atwater's professional life, explains his decision to resign from the court, and lists his numerous civic activities thereafter.

Flandrau's service on the court overlapped Atwater's. They later worked together as law partners. It is not surprising, therefore, that Flandrau's profile of his friend is very flattering. Nevertheless, we can get insights into the state of the legal profession in mid-nineteenth century from articles such as this. Flandrau's observation about Atwater's life—that “[i]t proves that where there is capacity, accompanied by unconquerable will, no disabilities of birth, station or poverty are insurmountable in this land of freedom and equality of rights”—has a Jacksonian ring to it. Lest we think, however, that

anyone could become a lawyer in that age, Flandrau takes care to point out that when Atwater passed the New York bar examination, two-thirds of his fellow applicants failed. His explanation of Atwater's decision to resign from the court in 1864 to satisfy certain financial obligations reveals the long-term consequences, for Atwater at least, of the speculative frenzy preceding the Panic of 1857. And Flandrau notes that Atwater had many business interests outside the practice of law. This was not unusual. It was the norm for lawyers in Minnesota in the 1850s, 1860s, 1870s, and even later to engage in other economic pursuits —land speculation being one — to make a living.

Flandrau mentions John W. North as being a co-founder, with Atwater, of the University of Minnesota. In a longer biography of Atwater, North would occupy more space. John Wesley North was the reason Atwater settled in Minnesota. The two had known each other when they apprenticed in New York City. North and his family arrived in Minnesota in 1849. North had political ambitions, and wanted a partner to maintain his law practice while he ran for the legislature. He offered Atwater a partnership. After visiting Minnesota, Atwater agreed and arrived in 1850. He and his wife stayed in North's home, which created considerable tension between the families. North wrote Dr. George S. Loomis about Atwater: "I formed a partnership a few weeks ago with a friend of mine from New York by the name of Atwater. He is a graduate of Yale College, a good lawyer, a man of literary taste and talent, and speaks the French language fluently." Preoccupied with politics, North did not see that Atwater had his own ambitions. As North's biographer writes:

With his generous disposition, North did not realize that such a well-trained lawyer might set up for himself and take over the mill company business, that a man of literary taste might get into newspaper publishing on the wrong side of the political line, and that a French-speaking lawyer would naturally gravitate toward the fur company. Had he been aware of the coming rivalry, he would have been less eager to give a third of the profits of the firm to Isaac Atwater.

Merlin Stonehouse, *John Wesley North and the Reform Frontier* 53 (Minneapolis: 1965). The firm of North & Atwater, not surprisingly, was short-lived. Professor Stonehouse describes its demise: "By the Fourth of July 1851 it was clear that Atwater was less a partner than a competitor of North. Atwater was the orator of the day. The partnership ended that summer, after nine months' association." *Id.* at 59.

Flandrau concludes his profile by listing Atwater's many civic activities. Writing in 1888, he was not able to include one of Atwater's lasting achievements: he edited and wrote large portions of a massive, two volume *History of the City of Minneapolis, Minnesota* (New York: 1893), a work that still is a valuable source for historians of this state (The chapter in that book on the "Bench and Bar of Minneapolis" is posted separately on the MLHP). Not to be out done, a few years later Flandrau published the 497 page *Encyclopedia of Biography of Minnesota* (Chicago: 1900) (which contains a short sketch of Atwater), and a 408 page *The History of Minnesota and Tales of the Frontier* (St. Paul: 1900).

Isaac Atwater died on December 22, 1906. On April 3, 1907, the Minnesota Supreme Court held a memorial service for him and Justice George Brooks Young, who had died on December 30, 1906. See *Proceedings in Memory of Justices Atwater and Young*, 99 Minnesota Reports xvi-xxxi (1907). In his eulogy, Justice Charles Elliott noted that Atwater "was the last survivor of the original supreme court."

Flandrau's profile of Isaac Atwater article appeared on pages 254 through 260 of the July, 1888, issue of *Magazine of Western History*. The MLHP has reformatted this article. The original page breaks have been added. The article that follows is complete. The author's punctuation and spelling have not been altered. □

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JUDGE ISAAC ATWATER.

The career of Judge Atwater of Minneapolis, which we are about to record, presents many features which are deeply pathetic, awakening our sympathy for struggling youth and poverty, and many also approaching the heroic, which excite our admiration at the success attending upon a reasonable ambition, supported by an indomitable will and determination to prevail over all possible difficulties in the path of the aspirant. This life and its accomplishments presents to every American youth a standard of emulation. It proves that where there is capacity, accompanied by unconquerable will, no disabilities of birth, station or poverty are insurmountable in this land of freedom and equality of rights. No country in the world offers such rewards to its worthy youth as our own, and it is gratifying to be able to say, that in no country are the proffered advantages more frequently improved than here, as it is a conceded fact that a very large proportion of our distinguished men have sprung from the ranks of the people, and are indebted to no one but themselves for their success in life. The life of Judge Atwater presents a remarkable and interesting example of this almost exclusively American product.

He was born May 3, 1818, at Homer, Courtland county, New York. His parents were Ezra and Esther Atwater, who emigrated in the early part of the present century from New England to central New York, where they purchased a tract of three hundred acres, then an unbroken forest. Here they settled, and underwent all the toil and hardship incident to subduing the primitive wilderness and reducing it to cultivation. The rich and beautiful region of the present day, where these pioneers cast their lot so many years ago, gives no suggestion of the long years of severe labor and privation endured by its early settlers. What were stern facts, and of almost universal experience in the early settlement of New York, have in this age of immense progression become only vague traditions, and can in their

intensity be only realized by the few who have survived that heroic era.

Our subject was the ninth of a family of eleven children. He was raised upon his father's farm, and it was expected that farming would be his life vocation. The paternal acres had been reduced to less than one hundred by provision made for the elder brothers, which estate was expected to gratify the expectations and am-**[255]**-bitions of the younger. He remained on the farm until he arrived at the age of sixteen, performing the usual duties of boys similarly situated ; but while engaged in his rustic labors, his mind was elsewhere; undefined longings for more extended fields of higher intellectuality took possession of him, and developed an ever increasing hunger for knowledge. At the age of sixteen he had conquered all that could be obtained from a three months' winter term at the public school of the neighborhood, and by his individual efforts, had made considerable progress in Latin and algebra, besides carefully reading and digesting many works of history that fortunately were accessible to him. At the age of sixteen, in the year 1834, the progress he had made in mental culture through the very limited means at his command, stimulated by his craving for knowledge, decided his course of life. He knew that farming was not his vocation, and he determined to acquire an education if that end was attainable by the exertion of all the forces at his command, which aim would, no doubt, to some have appeared, under the circumstances, as difficult as clearing up a timbered farm. His father was utterly unable to extend to him any assistance in his new endeavors, and did all he could to dissuade him; but both were fixed in their ideas, and so they parted. The next day, after a protracted discussion of the subject, the boy, with his scanty apparel and five dollars as his entire wealth, left the homestead for Auburn to seek his fortune in his own way. His point of destination was thirty miles distant, and he joyously undertook the journey on foot and arrived the same evening. He was not wholly a stranger in Auburn, having a cousin there, who, like himself, was struggling for an education, and had promised to aid him in the way of instruction, but was unable to do more. On making a statement of his pecuniary ability, they arranged for a vacant room in the seminary utterly destitute of furniture, the fitting up of which, so as to render it habitable, exhausted the funds of the young student, save enough to purchase

a very frugal breakfast for the morrow. At this point the desperate necessities of the situation confronted him, and must be met. He was equal to the emergency, sought work, found it of the most simple but honest character, but ample to relieve the pressure of the hour. He sustained himself by about four hours' work a day, and had the rest of the time to devote to study. His industry was soon observed, and rewarded by one of the professors of the seminary offering him the position of gardener for his grounds at the salary of five dollars per week. With this munificent income all doubts of the future disappeared, and young Atwater felt more solidly settled than he has at any subsequent period of his life, when his resources enabled him to contribute thousands to worthy objects of need. The labors of this employment gave him ample time for study, which he abundantly improved. At the end of six months he found himself quite advanced in his work and the possessor of fifteen or twenty dollars of surplus.

That winter he obtained a situation of teacher in a district school. His extreme youth and delicate physique excited doubts as to his ability to maintain this position with success, owing to the rough and unruly character of the boys who composed [256] the school; but his pluck was equal to the occasion, and he asked but a trial, feeling confident of his ability to succeed. It was not long before his nerve was put to the test by a mutiny among some of the larger boys, in which our young teacher came out triumphant and settled his status firmly for the future.

When spring arrived his hopes of resuming his studies were destroyed by sickness in his father's family, which necessitated his return to the farm and the assumption of its conduct for a whole year; but he never for a moment relinquished the idea of thoroughly educating himself. As soon as he was again released he started on a new pilgrimage in quest of learning, with no better financial equipment than on his first venture, but with a large fund of dearly acquired experience, much more valuable than money. He entered the Academy of Cazenovia, where he struggled through the summer under privations which would discourage most boys of this golden age, but which in no way retarded his intellectual progress. In the winter he again obtained a school, and this method was continued from year to year up to 1840, when finding himself thoroughly

prepared to enter college, he selected Yale, although aware of its being more expensive than other colleges, because he was advised that the advantages of this institution were superior to others in an educational point of view, and being determined to enjoy the best. He never doubted for a moment his ability to work his way through, which he did triumphantly, as the sequel will disclose. He at once found employment as private tutor to others, the remuneration for which, small though it was, proved ample for his simple wants. The following winter he took a select school about five miles from New Haven, walking to the college, and back every Saturday in order to keep up with his class. He passed into his sophomore year with high honors and was made librarian of the Linonian society, which for a service of not over an hour a day supplied him with means for all his wants. With similar resources he continued his studies until 1844, when he graduated, standing well up in the first quarter of his class in scholarship. In his senior year he was elected one of the editors of the Yale Literary Magazine, a distinction accorded only to the five possessing the highest literary attainments.

There may be nothing very exceptional in this account of young Atwater's struggles to obtain an education; no doubt many similar examples exist; our excuse for such a detailed history of this particular instance is the hope that it may strengthen some of the youth of coming generations in their endeavors to attain the same results.

There is nothing in the life of any man that so surely leads to success as a training of this rugged character. Obstacles which seem appalling to the man whose youth has been passed in luxury, vanish before the experience we have described. In fact, very few difficulties ever present themselves in actual life that are more formidable than those which have formed the daily routine of such a self-reliant youth. He meets them undismayed and conquers them unhesitatingly.

In 1844, being launched upon life, Mr. Atwater took charge of an academy in [257] Macon, Georgia, which he taught for a year. He then returned to New Haven and entered the Yale Law school, from which he graduated in 1847, and at once went to New York city and entered the law office of Robert Benner, esq., who had graduated at Yale in 1842. He was admitted to the bar of New York after the

searching examination which prevailed in those days, being one of seven who were admitted out of a class of twenty-one. Being entitled to practice, he opened an office in Nassau street, and his success from the start was phenomenal for an adventurer in that great city. A handsome income rewarded his efforts, and in August, 1849, he married Permelia A. Sanborn of Onondaga county, New York.

In 1850, while in the enjoyment of a gratified ambition, he developed symptoms of consumption which were traceable to his ancestry, and he was ordered by his physician to leave the Atlantic coast and seek a different climate, the wisdom of which command he acquiesced in, although it compelled him to abandon the theatre of his first professional success. In 1849 the territory of Minnesota had been organized by congress and had gained the reputation of being the great sanitarium of the continent and especially favorable to the relief of pulmonary difficulties. In September, 1850, he visited the Falls of St. Anthony, then a lumbering settlement of two or three hundred people, where he met John W. North, a former school-mate, who had opened a law office and who offered him a partnership, which he accepted, and in October of the same year he was duly located at this then remote point with his family, and once more engaged in the line of his profession. At that time the journey from Chicago to St. Anthony occupied six days, being made from Elgin, Illinois, by stage and steamboat. The style of living was primitive and rough, but the climate fully realized the hopes of the invalid and a vigorous appetite condoned for all short-comings in the *menu*. Mr. Atwater rapidly regained his health, which he has enjoyed to the present time.

The legislature which convened in 1850 located the State university at St. Anthony, which result was largely due to the efforts of John W. North, who was a member of that body, and Isaac Atwater was elected by the same legislature a member of the board of regents of the university, and was by the board made its secretary and treasurer, in which capacity he labored unceasingly for many years in the interests of this important educational institution, and was largely instrumental in securing for it its present desirable and beautiful site, and in resisting the vigorous efforts that were made to remove the institution from St. Anthony. In the varying fortunes of

the state university, Mr. Atwater was ever at the front as one of its strongest defenders and most industrious and intelligent promoters. A clause in the state constitution of 1857 settled the question of its permanent location and ensured its success.

Like all aspiring western towns, St. Anthony, in the spring of 1851, concluded that it must have a newspaper. An enterprising citizen, Mr. Elmer Tyler, offered to supply the plant if an editor could be found to conduct the literary work, and Mr. Atwater was induced to undertake [258] that department temporarily, until someone in that line of work could be found. The paper was launched under the name of the *St. Anthony Express*. The enterprise was wholly one for the public benefit, no one connected with it expecting to receive anything but such indirect reward as might result to the community. The editor did not allow his new duties to interfere with his legal work, but being once involved, he felt the responsibility, and found it more difficult to cease his connection with the paper than he had anticipated, and it was not until he had expended quite a large sum of money in keeping the enterprise afloat, and his election to the supreme bench of the state in 1857, that he was enabled to sever his connection with the paper.

It 1852 Mr. Atwater was appointed by Governor Ramsey reporter of the supreme court of the territory, and in 1853 he was elected district attorney of the county of Hennepin. Prior to 1854 he had acted with the Whig party and given his support to its heresy of a high protective tariff, but experience had convinced him of his error, and the Whig party becoming merged in the growing Free-soil element of the day, he found refuge politically in the Democratic party, where he has ever since remained. While he deplored the existence of slavery as much as anyone, he could not lend himself to any but constitutional methods for its suppression.

In 1857, at the first state election under the Constitution, he was chosen associate justice of the supreme court, and entered upon the discharge of the duties of the office early in 1858, and occupied that responsible position until June, 1864 when he resigned for reasons which will be hereafter stated and which reflect great credit upon his character for punctilious honor.

The supreme bench of the state consisted of a chief-justice and two associate justices. The state was new; the administration of justice was in rather a chaotic condition, and many of the important constitutional questions that came before the court for decision had to be determined upon first impression and without guiding precedent, which rendered the duties of the judges difficult and unusually important. To this work the judge brought a well-trained mind, thorough conscientiousness and great industry. His judicial record is found in volumes two to nine of the 'Reports of the State,' and has stood the scrutiny of the bar and bench for a quarter of a century without detriment from comparison or otherwise.

Previous to his elevation to the bench he had in the course of business loaned many thousands of dollars for eastern parties on landed security, and generally at the enormous interest of two and a half per cent. per month, which was the current rate of that day. In 1857 a financial crash destroyed all values in the state, reduced the people to poverty and rendered the payment of debts an impossibility. Although Judge Atwater was in no sense responsible to these creditors, having never guaranteed their claims, and only exercised his judgment for them in placing the loans, they became clamorous for their money, and rather than have even his judgment impugned, he offered to allow them to select from his private securities [259] amounts equal to their claims, or to give them his note in exchange for them bearing one per cent. per month. They all accepted the latter, which left him with very large outstanding obligations, which he was compelled to meet to save his credit.

About that time the new territory of Nevada held out especial promise of large returns for professional services, and the judge had friends there who were very strong in their solicitations for him to emigrate to that country. Solely with the view of availing himself of this opportunity of making some ready money to meet his self-assumed obligations, he resigned his seat on the bench and went to Nevada and located at Carson City. He met with immediate success, and induced the writer of this article, who was then his associate on the supreme bench, to resign and join him in Nevada. In two years and a half he realized all his hopes and paid every dollar of his indebtedness, principal and interest. He never contemplated a permanent departure from this state, and when his

cherished object was achieved, he returned to Minnesota better satisfied than with any venture of his life. After his return he continued in the practice of his profession in Minneapolis, where the writer joined him, and was his partner for four years, under the firm name of Atwater & Flandrau. Since the dissolution of that firm the judge has devoted himself largely to public affairs of a municipal and educational character. He was for several years a member of the common council of his city, and for two years president of that body. He was also a member of the board of education, and president of that body. He has been honored by being chosen for two terms president of the board of trade of his city. He has taken an influential and active part in the development of the railroad system of Minneapolis, and held many offices of trust in such enterprises. His many active business duties have not in any way interfered with his constant devotion to the interests of the Protestant Episcopal church, to which organization he has ever been a liberal contributor and zealous member, having filled the office of warden of Gethsemane church for upwards of twenty years, and represented the church for over thirty years in its diocesan council and its triennial conventions. For the past four years he has been president of the board of trustees of St. Barnabas' hospital, one of the oldest and most successful benevolent institutions of his city. It will be seen from the above narrative that Judge Atwater has lived a life of great labor and activity. We have mentioned only his professional and public achievements, but it is a satisfaction to his biographer and friend to add, that amid the multiplicity of matters which have engaged his attention, he has been wise enough not to forget himself, and has by judicious investment and a prudent economy amassed a very comfortable fortune, which his many friends hope he may live long to enjoy.

Some four years ago he was compelled by the pressure of his private interests to relinquish his professional business, in which he has largely been succeeded by his son, John B. Atwater, also a graduate of Yale and its law school, and a young man of great promise, who stands, if not [260] at, very near the head of the bar of Hennepin county.

Recognizing the ability of the judge's son the regents of the State university have recently appointed him lecturer on real estate in the

law department of that now flourishing institution, where no doubt he will take great interest and pleasure in planting the seeds of learning in the field so thoroughly fertilized by his sire in past generations.

Chas. E. Flandrau.



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