

Memorial addresses in honor of Judge Charles E. Flandrau, at the monthly Council meeting of the Minnesota Historical Society, in the State Capitol, St. Paul, Minn., Monday evening, November 9, 1903.

Char E Flandrau Minnesota Historical Society, Vol. X. Plate XIX.

MEMORIAL ADDRESSES IN HONOR OF JUDGE CHARLES E. FLANDRAU, AT THE MONTHLY COUNCIL MEETING OF THE MINNESOTA HISTORICAL SOCIETY, IN THE STATE CAPITOL, ST. PAUL, MINN., MONDAY EVENING, NOVEMBER 9, 1903. 49

INTRODUCTORY ADDRESS.

BY THE PRESIDENT, GEN. JOHN B. SANBORN.

Ladies and Gentlemen: The Executive Council of this Society has directed that the remaining portion of this evening shall be devoted to memorial addresses upon the life and services of our deceased councilor, friend, and brother, Hon. Charles E. Flandrau. These addresses must impress us with the great obligations that the citizens of the State and society generally owe to a few of the leading citizens of the generation that has passed or is rapidly passing away.

An organized State, containing two millions of people, with all its institutions of learning, of benevolence, and charity, dispensing knowledge, health, and happiness to all classes, that has grown up within the short period of fifty-four years, is not the result of mere chance and natural development. There must have been foresight, wisdom, energy, constantly applied to its organization, development, and establishment. The wisdom has been that of the ablest and best minds, and the energy that of the most vigorous and strong men, while

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the beneficial results come to all citizens of the State, and to all falling within its sphere of influence.

In looking back over the fifty-four years since the organization of Minnesota Territory, and scanning the names of those who have been most prominent and influential in promoting the growth of the State and the happiness of its people, we observe none who have wrought more constantly or zealously for the public welfare than our departed brother. It was his privilege to stand at the head of the stream from and through which have flowed all those great results which we are permitted to witness and enjoy. His hand is visible in nearly every provision of our 770 state constitution, and in the construction and application of those provisions to the real necessities and conditions of Minnesota life; in the enactment and interpretation of the laws passed by our legislature; and in the general policies of the state, which now affect all its citizens, and which will continue to affect all subsequent generations.

This Historical Society, as much as any branch of the state government, has been placed under especial obligations to our deceased brother. He has formulated more of the early history of the state than any other member of our Society, or than any citizen of the State, unless it be the Rev. E. D. Neill. He has been a regular attendant of the monthly meetings of the Society for more than twenty years, and it is altogether appropriate that here, above all other places, his memory should be kept green, and the traits of his character, among which are benevolence and beneficence to an extraordinary degree, should be preserved as ensamples to all.

I have the pleasure of introducing to you Hon. Greenleaf Clark, who was for many years a law partner of Judge Flandrau, who is most familiar with all phases of his character, who will now address you.

THE LIFE AND INFLUENCE OF JUDGE FLANDRAU.

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BY HON. GREENLEAF CLARK.

It is the pious duty of this Society, our privilege, and our consolation, to set forth in connected outline a notable career. It would be strange, indeed, if this Society should not redeem its office of preserving the materials of history and biography, and of portraying "the very pith and marrow of the times," by the preservation of the record of the life and character of one who had so great a share in making history, and who did so much in the counsels of the society to preserve it. It would be stranger still, when the public press, and varied associations and bodies of men, are bearing tribute and homage to the memory of Charles Eugene Flandrau, if we should not bring a few affectionate and grateful leaves to set in the garland with which they are binding his brow.

He died on the 9th day of September, 1903, a member of our Executive Council, after nearly twenty-two years of consecutive service therein, during which he was constant in attendance on its meetings, contributed to its stores many valuable writings, sketches, episodes, books, relics, and mementoes, engaged in its free discussions, and was interested, devoted, and helpful in all its work. He contributed, it is thought, to the Society, in one way and another, more of the materials of history than any other one man, save only the Rev. Dr. Edward D. Neill.

Charles E. Flandrau was no ordinary man. He was not of the ordinary type of man. He was original, unique, picturesque, versatile, adventurous; and his career is illuminated by the light of an heroic spirit. He was born in New York, July 15th, 1828. He was descended on his father's side from the Huguenots, that wonderful people, who by the abiding power of earnest 772 conviction, through marvelous vicissitudes of toleration and persecution, of peace and woe, kept alive in France the spirit of constitutional and religious liberty, from the middle of the sixteenth century to the close of the eighteenth; the forerunners of the French Republic. The blood ran true on the line of personal and religious freedom. Judge Flandrau was absolutely tolerant of all sects and creeds, and had little sympathy with the sectarian disputes and contentions of the day, and still less for the warring religious

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factions revealed in history as “fighting like devils for conciliation, and hating each other for the love of God.”

In his boyhood he was put to school in Georgetown, District of Columbia. At the age of thirteen he left school, and shipped as a common seaman on a United States revenue cutter, in which service, and a few voyages on merchant vessels, he continued for more than two years. So early appeared the restless spirit of adventure. It was a turning away from the trite and ordinary, to the strange, new, and majestic; a turning away from the narrow and uneventful confines of a schoolroom, to know and feel the spell and power of the mighty deep. It was the same spirit that took Henry M. Rice and Henry H. Sibley to the wilds of Minnesota. He then returned to his book in Georgetown, but only for a short time; after which he worked three years with his hands, at the trade of sawing mahogany veneers for cabinet making.

After these two exploits, he settled down to the earnest study of the law in his father's office in Whitesboro, New York; and, after his admission to the bar, he practiced for two years in association with his father, and then left in company with his lifelong friend, the late Horace R. Bigelow, for the west; and the two reached St. Paul on the 2nd day of November, 1853, and formed a partnership for the practice of the law. Business did not flow in upon them very fast; indeed, there was not very much to flow anywhere; and Bigelow went to teaching school in St. Paul, while Flandrau, true to his star, started for the border.

Such was the start of two men, who, afterwards, became eminent in the law.

Mr. Flandrau travelled extensively through the virgin forests and majestic prairies, dotted with lakes set in the landscape like gems, and by the rivers whose sweet waters flowed through banks 773 of pristine form and beauty, far away to swell the tide of the mighty ocean, upon whose restless billows he had sailed, to see what nature had wrought in this his adopted land; and finally he settled down, among the settlers at the little hamlet of

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Traverse des Sioux, on the banks of the beautiful Minnesota river, where he afterwards built a dwelling for his border home, and commenced again the practice of the law. The courts, land offices, and justices, in, and before whom, he practiced, were widely scattered, and some of them at long distances from his home; and he would travel on foot in summer and winter to attend them. He had a strong, wiry physique, in which muscle predominated, and legs like an antelope. He would walk to Winona, a distance of one hundred and fifty miles, in three days, to attend to the adjustment of the rights of his neighbor settlers before the land office there, and would go on foot from his home near St. Peter to St. Paul, a distance of about seventy-five miles, stopping over only at Shakopee. Up to two years before he died he would walk a dozen miles for recreation. In this border life he soon became known throughout the Minnesota valley, and acquired a commanding influence upon its people. They respected, believed in, relied upon, trusted him, and looked to him for leadership and guidance, aye! and for help, too, in time of trouble. They sent him to represent them in the Territorial Council, and in the Constitutional Convention which framed the constitution under which the State was admitted to the Union. This trust and confidence enabled him to do mighty things for them on a subsequent fateful day.

In 1856 he was appointed by President Pierce as Indian Agent for the Sioux nation, and continued in that service till he was appointed, in 1857, Associate Justice of the Supreme Court of the Territory. The former position brought him in close contact with the Indians, and he learned something of their language, and much of their character, capacity, and habits of life; and he came to have more respect for them than was entertained by those who knew them less.

Here let it be said that the men who were brought in closest contact with the Indians who occupied Minnesota, and knew them best, placed the highest estimate on their mental endowments and traits of character; and I instance Rice, Sibley, Bishop Whipple, 774 and Flandrau. General Sibley, pleading in the halls of Congress for the amelioration of their condition, characterized them as “a noble race, gifted with a high degree of intellect, and an aptitude for acquiring knowledge fully equal to that possessed by white men.” Judge

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Flandrau, in his History of Minnesota, designates the Sioux and Ojibways as “splendid races of aboriginal men.” Bishop Whipple, in a communication to the authorities at Washington, says: “The Indian is superior to any savage race on earth. In all the features of his character he is like our own Saxon race, before the cross had changed the heathen Saxon to a manly Christian.” And as respects skill in warfare, I may add the testimony of army officers to the sagacity of their operations, notably the remarkable retreat of Chief Joseph from the southern part of the country to the British line, a retreat comparable to that of the “Ten Thousand.”

The Indian massacres are all traceable, in the last analysis, to the encroachments upon their hunting grounds, their birthright, as they considered them, and to the means by which they were deprived of them, or forced to give them up; not that the Government or its agents meant to be unjust, but because such compensation as they got for these lands, by a treaty system of questionable wisdom, was dissipated by their own improvidence, or filched from them by the selfish greed and cupidity of white men, from both of which they should have been protected. The lordly Sioux, who had for centuries held it as his right to receive his sustenance from the open hand of nature, by the pursuit and capture of wild animals, birds and fishes, and the gathering of the berries, nuts, and wild rice, and who, by the roving blood of centuries in his veins, disdained to settle down on a little plot of ground, and tease from reluctant nature the means of subsistence for a compensation of toil, must needs give up his noble heritage to open the way for the new civilization. It was cruel at best; and his wrongs in the process added to the cruelty. No wonder that his untutored mind was, now and then, driven to the distraction of savage vengeance. Whatever others may have thought, or now think, such in epitome, was the view of these men, and obedience to the truth requires that their combined testimony should be stated.

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The first serious Indian massacre in Minnesota, or in the country northwest of the Mississippi to the Rocky mountains,—the so-called Spirit Lake massacre,—occurred

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during Flandrau's agency in 1857; and an incident of it illustrates saving traits of Indian character, as well as the sagacity and efficiency of the Indian agent.

A small roving and predatory band of Sioux, not treaty Indians, under the leadership of Chief Inkpaduta, fell upon Spirit Lake and Springfield, two small settlements pushed to the extreme border, and killed all their inhabitants to the number of forty-two, save four women whom they carried into captivity. While Flandrau was trying to devise means for their rescue, well knowing that any demonstration of force would cause their murder, two of his agency Indians, brothers, who had been under the influence of the well known Rev. Stephen R. Riggs and other missionaries at the agency, while on a hunting party, ran across Inkpaduta's band, learned of his captives, bought one of them, giving for her all they had, and brought her to the missionaries, who turned her over to the agent. This solved the problem. Judge Flandrau gave the brothers who brought in the captive a large reward, \$1,000, of which \$500 was in cash contributed by himself and the post traders, and \$500 in an obligation of the Territory of Minnesota, signed in its behalf by himself and the Rev. Mr. Riggs, which, though unauthorized, was promptly paid; the first bond, as Judge Flandrau naively said, ever issued by Minnesota. He then called for volunteer Indians to go and find Inkpaduta and purchase the other captives; and, stimulated by the hope of a like reward, there were plenty of volunteers, from whom he selected three and dispatched them, with an outfit of such things as tempt the savage, to find Inkpaduta and buy the remaining captives. They found two of them had been slain, but they bought and brought to the agency the other, for which they were abundantly rewarded. The full details of this massacre, and the military operations consequent upon it,—which were without results save the killing of a son of Chief Inkpaduta,—are now matters of history, made such by Judge Flandrau's pen.

At the first State election he was elected, at the age of twenty-nine years, Associate Justice of the Supreme Court on the Democratic ticket, headed by Henry H. Sibley for governor; and it is 776 interesting to know that upon the opposing ticket, headed by Alexander Ramsey for governor, was his friend and companion, Horace R. Bigelow, as a

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candidate for Chief Justice of the same Court. The Sibley ticket was declared elected, and with it Judge Flandrau, who thus became a judge of the first Supreme Court of the State; but the doubt that hung over the decision of that contest has never been dissolved, but rather intensified by time. He resigned from the bench in 1866, before his term expired, and went to Carson City, in the Territory of Nevada. It was a change from the green prairies of Minnesota to dwell, for a time, under the brightest of skies, looking down upon a vast, tumultuous, rock-ribbed expanse of silent, arid, awe-inspiring desolation; a change from the new civilization which he had helped to usher in in Minnesota, to the rough, adventurous, lawless, desperate, and unformed community of an isolated mining town, to practice law in courts where weapons were sometimes exhibited, and tolerated, too, for intimidation or protection; still cavalier of the border, as he has been fitly designated.

After a few years' experience of this life, he returned to Minnesota, his adopted home, which I doubt if he ever intended to leave permanently, practiced law for a while in Minneapolis in association with Judge Isaac Atwater, his erstwhile associate on the bench, and, in 1870, settled down for good to the practice of the law in St. Paul, as a member of the firm of Bigelow, Flandrau & Clark. He was thus again brought into business association with his old friend and companion, Horace R. Bigelow, who back in 1853 had first essayed with him the practice of the law in Minnesota; and the relation continued until the retirement of Mr. Bigelow from practice. There was a strong tie between these two men, though they were contrasts. Mr. Bigelow was a rare man, endowed with clear perception, solid learning, professional courage, a spirit of patient investigation, and a devotion to duty that knew no bounds. He had few peers and no superiors in the Northwest. Judge Flandrau was impulsive and spontaneous. His first impressions were intuitions of legal truth, and he was always ready for the fray. Bigelow was a legal conscience, Flandrau a legal knight-errant, *sans peur et sans reproche*.

Of Judge Flandrau as a lawyer and a jurist I shall only add, that there was such appreciation of him as a judge, that he was 777 again made a candidate for Chief Justice of the Supreme Court, but was not elected,—his party being in a minority,—and the

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expression of an opinion that his gifts were better adapted to the trial court than the bench; and that, in fact, the arena and the forum were more congenial and grateful to him than the seclusion of the consultation room; and with this I leave the exhibition and characterization of his professional and judicial career in the competent hands of another.

He had marked and famous contemporaries with and among whom he wrought. In the law, I have already spoken of Mr. Bigelow; and there was James Gilfillan, the great Chief Justice, a giant of jurisprudence anywhere; and Francis R. E. Cornell, keen, penetrating and incisive, the Bradley of the Minnesota bench; and John M. Gilman, whose logic cuts like a knife, and who is sometimes seen renewing the attempt to "cut blocks with a razor;" and Cushman K. Davis, classical and scholarly, whose brilliant rhetoric carried with it the power to persuade as well as to charm. In civic affairs there were, naming them in the order in which they appeared on the scene, Henry H. Sibley, Henry M. Rice, and Alexander Ramsey, the State builders.

I come now to speak of a service of an episodal nature, outside of the then smooth current of his life, splendidly illustrative of his spontaneity, intrepidity and unconquerable spirit, for which I am constrained to think that he never received the full and ample plaudits that heroic deeds inspire and justify; probably for the reason that they were done at a time when people's minds were diverted to striking and absorbing events on larger fields, but not more heroic or memorable. It is the privilege of this society to accord to Flandrau, dead, the meed of praise to which he was entitled when living. While Judge Flandrau, then a judge of the Supreme Court, was quietly spending his vacation at his country home in Traverse des Sioux, a courier arrived at his house at four o'clock in the morning of the 19th of August, 1862, and told him that the Indians were killing the people in all directions, and that New Ulm was threatened. About noon of the same day he left St. Peter, which was near his home, in command of an improvised company of one hundred and sixteen men, and arrived at New Ulm about eight o'clock of the same day, after a march of thirty-two miles through a drenching rain. Reinforcements 778 of brave men came into the town from

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other places; and Judge Flandrau was, by general acclaim, made commander in chief of all the forces.

It is not my purpose to relate the history of that desperate struggle. This is in more competent hands; and it will be given by the favor of one who was present all the time, was near to Flandrau as an officer of his staff, and who shared with him the glories of the struggle, Major Salmon A. Buell. I shall only mention some of the general features of this memorable service, so as to give it a proper setting in this picture of his life which I am attempting. He made the disposition of his forces behind the improvised barricades, and exhorted the men, by all that life held for them, to stand against the insidious attacks of the red-handed demons, who were thirsting for their blood. He shared the peril, and set them an example of superb courage and unconquerable determination. He devised and led the desperate offensive movement which drove the Indians from the cover of the buildings they had taken, and saved the day. He burned, before the faces of their owners, 125 houses and stores, from the cover of which the Indians had been driven, in order that they might be compelled to attack the barricades in the open. He transferred the entire population of New Ulm, consisting of from twelve to fifteen hundred men, women, and children, to Mankato, leaving behind them their property, their homes, and their household gods, in order that they might be saved alive. No despot ever exercised more absolute power, or was more implicitly obeyed. He told me, with great glee, that a staid old German, who did gallant service in the struggle, seriously proposed to him to try two men at drum head court martial, and to hang them, for some irregularity or neglect of duty. And yet he took all this responsibility without a scratch of a pen, without even a verbal order by way of authority.

As Ethan Allen, when asked by the British general by what authority he demanded the surrender of Ticonderoga, answered, "In the name of the great Jehovah and the continental congress;" so Flandrau, if interrogated as to his authority, might well have answered, by the authority of the great Jehovah and the people of the Minnesota valley.

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Governor Ramsey addressed him as “Hon. Charles E. Flandrau,” up to September 4th, he having been commissioned a colonel about that date.

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Again, in talking with military men I have never met with one who did not say that the battle of New Ulm was ably conducted from a military point of view, though Flandrau was without military education or experience. On the 5th day of October he resigned his commission, and went quietly back to his duties as judge. If Flandrau had not been at New Ulm, what would have been its fate? Would the whole population have gone down in one maelstrom of wretched destruction? Who can tell? Would the besom of savage desolation have been pushed on down the valley? Who knows? It is useless to speculate. But the people of New Ulm and the valley had abundant reason to thank God for Flandrau in those fateful days. If one blast upon the bugle horn of Roderick Dhu was worth a thousand men, so the inspiration, intrepidity, and magnificent leadership of Flandrau in those desperate extremities were worth a host. The people of New Ulm always recognized the debt of gratitude. His presence there was known and felt as that of no other man was known and felt. He was received with a general acclaim that no other man was received with. And he had a warm spot in his heart for them. A community of peril had made them akin. When he died, they sent, not a delegation to attend the funeral, for that would be too cold and formal,—not words, for they had lost the power of adequate expression,—but New Ulm, not a personal friend or a few friends in New Ulm, but New Ulm sent to the sorrowing family a wreath of flowers, which was buried with him in the grave. Go, assemble the records of chivalry; point out the most memorable deeds recorded there, and those that surpass in heroism the deeds of Flandrau at New Ulm will be found to be few indeed. I hope that at no distant day a lofty pedestal will be erected in New Ulm, or on the grounds of the capitol, which shall be surmounted by his statue and shall bear the inscription, “Charles Eugene Flandrau, defender of New Ulm.”

Among the gentle traits that characterized Judge Flandrau were remarkable evenness and sweetness of temper and disposition. In ten years of close association with him I

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never saw him perturbed, much less thrown off his base, by anger. He was kind and considerate, and, under all circumstances, a gentleman. In the most strenuous law suit he was courteous to the Court, the opposing counsel, and the witnesses. He was not vituperative of 780 others, even under great provocation, but was generous and charitable to their faults and frailties. If he left an enemy when he died, I know him not. Like every strong and high-minded man, he was deferential to women.

His published writings comprise a condensed history of Minnesota, published in 1900, as a preface to an Encyclopedia of Biography of Minnesota, and later as a separate book; articles published in the magazines of the day; and many papers scattered through the publications of this Society. He was one of a board of six commissioners who prepared and published, by authority of the Legislature, the military history known as "Minnesota in the Civil and Indians Wars, 1861-1865," for which he wrote the part pertaining to the Indian War. Most, if not all, of these writings were historical, biographical, or episodic in their nature. He rescued from oblivion interesting episodes of the early days, some of which changed the course of events of some importance, as, for example, the unique if not creditable way in which the almost accomplished removal of the capitol to St. Peter was defeated, though he had no hand in it.

His style was flowing, and in plain, unadorned narration, destitute of metaphor and of classic allusion. His early education in the schools was, as already appears, defective; but, as far as possible in a busy life, the defects in his early education were repaired by extensive reading and observation. His schools were a large miscellaneous library, kept for convenient use, not for ornament, and the great, ever changing kaleidoscope of the world. In speech he was easy and fluent, and always ready. I never knew a readier man. He had all his knowledge and all his faculties subject to call. In a great variety of discourse he always said something that held the attention of his audience.

Judge Flandrau was near to the people, and knew what in their lives concerned them most, and their way of thinking about things. This gave him power to reason with them and

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persuade them, and made him a most forceful and effective man in his addresses to the jury, a most dangerous adversary. Not the scholarly and classic Davis, nor any others, had advantage of him in this field.

In his social life he was genial, cordial and kind to all. The 781 lowly friend got the same cheery greeting on the street as the man of high degree. In his hospitable home, ever presided over by a graceful, accomplished and refined helpmeet, there was good cheer for the body, and charming entertainment for the mind. He was an easy and ready conversationalist, and as a *raconteur* he had few equals. A versatile life had enriched his mind with an ample supply of anecdote and episode. He was the life of many a small gathering, and he and his were always leaders in the enlarged social life. No social affair, whether of a formal character, or for free social enjoyment, was complete without them. He left his business in his office, and the rest of the day was given to his family, to his library, and to society. His buoyancy of spirits was perennial. Grief never presented itself to his fellow men in the shape of Judge Flandrau.

I should say he was the best known man in the State after the death of Governor Ramsey. He had made political addresses in all parts of the State. He was a candidate for Governor on the Democratic ticket, the leader of a forlorn hope, but he entered upon the campaign with the same spirit and intrepidity as though there was a probability of his election, and expounded to the people, without abuse of his opponents, principles and policies, of the truth of which he had a profound conviction. He yielded to pressure, though very busy in his profession, and spoke in other campaigns, almost to the close of his life. In passing I wish to say, that, though he was a strong partisan, he was a patriot first. In a recent presidential campaign, he openly joined a minority faction of his party, and so aided in its defeat, because it had promulgated policies which he deemed prejudicial to the public welfare,—the same policies for which his party had deserted President Cleveland.

His fame was further spread by his professional reputation and labors in the courts, and by his addresses on many occasions and on varied subjects, and especially by

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the glory of New Ulm. The older citizens remembered it, and handed down to the new comers the fame of his glorious deeds in its defense. Minnesota owned Flandrau. They called upon him for addresses upon all sorts of occasions, whether to act as toastmaster or make a speech at a banquet, to celebrate an important historical event, to grace a reception, to make a memorial address, to preside at a convention, 782 or to open a fair, anything and everything; and it seemed to be expected that he would comply, as indeed he did, whenever he could. The people respected, honored, and were proud of him. His responsive, brilliant, dashing qualities charmed them. He was a natural leader of men, and was recognized and called upon as such. I say it with the utmost assurance, that, if his political party had been in the ascendancy, there is no public position within the gift of the people of the State, to which he might not have successfully aspired.

Judge Flandrau was adapted by nature to a frontier life. It was grateful to him, gave scope to his adventurous spirit, enlarged his understanding, and broadened his sympathies. Minnesota will never have another Flandrau; for if a man of like gifts should arise, there would be no environment in which to set him.

In this epitome of his life and character I have had no occasion to draw upon any supposed license of panegyric. My only task has been to make the picture true to the life. The name and fame of Charles E. Flandrau are interwoven with the upbuilding of Minnesota, and will be perpetuated to future generations so long as history shall endure and heroic deeds shall receive the veneration of mankind.

S. A. Buell Minnesota Historical Society, Vol. X. Plate XX.

JUDGE FLANDRAU IN THE DEFENSE OF NEW ULM DURING THE SIOUX OUTBREAK OF 1862.

BY MAJOR SALMON A. BUELL.

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The writer has been honored by an invitation from the Minnesota Historical Society, through a letter from its secretary, as stated therein, "because we associate you with Judge Flandrau as his adjutant at New Ulm," to write an article "on the services of Hon. Charles E. Flandrau in the Defense of New Ulm. ...Our Publication Committee desire you to write as fully as may be agreeable to you, all to be used for our printing": hence the following article.

This narrative will necessarily be somewhat confined to those matters of which the writer had knowledge, either by observation or otherwise; though much will be related which came to him from the report of others, at the time. So many years have passed, that memory may fail him as to specific details, particularly names of persons; and should omission or mistake occur, which is more than possible, no one will be more disappointed or grieved by it than the writer himself.

Late in the fall of 1857, the writer became a resident of the town of St. Peter, in Nicollet county, Minnesota, and in the following winter or spring made the acquaintance of Hon. Charles E. Flandrau. He was then, and for some years before, a resident of Traverse des Sioux, situated in the same county, but about a mile farther down upon the Minnesota river. That acquaintance soon became a warm friendship, never interrupted, even through years of separation.

On the date of the admission of Minnesota into the Union (May 11, 1858), Judge Flandrau had been for some time the Federal Judge of that District of the Territory, and had already been elected one of the three judges of the Supreme Court of the new State. 50

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At the time of the Indian Outbreak, August, 1862, he was still residing at Traverse des Sioux, and had been, before his first judgeship, the agent of the Sioux Indians who took the principal part in that movement. He was generally known as "Major" (then the title by

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custom of an Indian agent) or “Judge” Flandrau; and was often referred to, but always with respect or affection, as “Charlie” Flandrau.

FIRST NEWS OF THE OUTBREAK.

Late on Monday, August 18, 1862, report was rife in St. Peter that, early in the morning of that day, the Indians had “broken out” and killed several whites, at the Lower or Redwood Sioux Agency, about sixty miles northwest of St. Peter, and beyond the Minnesota river. Early the next morning Judge Flandrau came to St. Peter from Traverse and informed the citizens that about four o'clock that morning he had received a message from New Ulm, brought to him by Henry Behnke, one of the leading citizens of that town, to the effect that on the day previous (Monday), and at a place only a short distance west of New Ulm, some white men had been attacked by Indians, several of the whites being killed; that refugees, flying from Indians, were coming into New Ulm from every westerly direction; and that a general Indian attack upon the white settlers along the whole western frontier was believed, there, to have taken place. Judge Flandrau stated that he had forwarded the message into Le Sueur county and down the Minnesota valley, and that he now desired to raise, at once, as large an armed force as possible for the protection of New Ulm and the frontier west of it.

Note here that this message was for Charles E. Flandrau, and from a community thirty miles distant, in which he was not so frequent a visitor as many other leading men of the Minnesota valley. The shock of the Indian attack had almost paralyzed the people, and they turned at once to him for help.

His response was instant, and, sending his wife and infant daughter (one year old) to a place of safety, he took steps immediately to arouse the whole community thereabout, and down the river, to the danger, and to raise troops in Traverse, St. Peter, and Le Sueur county. Men of all classes rushed to his standard, 785 and he was made captain of over one hundred men, from Nicollet and Le Sueur counties.

ORGANIZATION OF VOLUNTEERS FOR DEFENSE.

In "Minnesota in the Civil and Indian Wars," Volume I, page 731, Judge Flandrau, writing in 1890 as one of the commissioners appointed by the State, said of this organization:

Volunteers were called for, and in a very short time about one hundred and sixteen men were enlisted for any duty that might present itself. An organization was formed by the selection of myself as captain, William B. Dodd as first lieutenant, and Wolf H. Meyer as second lieutenant. I do not think we had time or inclination to complete the organization by sergeants and corporals. Immense labor was performed in the next few hours in the way of outfit.

His first marching order was, that eighteen men, who could immediately raise arms and horses, should hasten to New Ulm, as an advance guard, to report his coming with the main body, as well as to bring word of the situation there back to him, and to give all aid in their power. He well knew that a few armed men might count for much in such a crisis, both as aid and in giving encouragement. Henry A. Swift, who was afterward Governor, and William G. Hayden, both of St. Peter, were the first to obey this order, soon followed by sixteen men, commanded by one of their number, L. M. Boardman, sheriff of Nicollet county; the others being J. B. Trogdon, Horace Austin (afterwards Judge and Governor), P. M. Bean, James Horner, Jacob Stelzer, Philip Stelzer, William Wilkinson, Lewis Patch, Henry Snyder, Joseph K. Moore (postmaster at St. Peter), a Mr. Tomlinson, S. A. Buell, and three men whose names the writer cannot now recall with certainty, but thinks they were I. Birdsal, John Dorrington, and L. Martindale. All were, as he recollects, from Nicollet county, or from and about St. Peter.

In his first report from New Ulm to Governor Ramsey, dated August 20, 1862 (see the same work, Vol. II, page 165), Colonel Flandrau wrote: "We immediately on hearing of it [the Indian outbreak] raised 90 men and started for this point, where we arrived last night, between 9 and 10 o'clock." This number evidently was not intended to include this

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“advance guard of 786 [eighteen] horsemen, sent out by us,” who were also mentioned by him in this report.

Boardman's command rode as swiftly as a prospective trip of thirty miles made prudent, but, when within about ten miles of New Ulm, stopped at an unoccupied farm house to escape a most terrific rain storm, and to rest their jaded horses. Cessation of the rain, and a short rest for their horses, sent them hurriedly onward.

Swift had already reached New Ulm, and as soon as he could inform himself, reported in an open note to Captain Flandrau, by Evan Bowen, of Nicollet county, a volunteer messenger, the situation and the necessity of haste; in effect, that an attack was then being made upon the town by over a hundred Indians.

THE FIRST ATTACK AT NEW ULM.

Boardman met the messenger, read the message, hurried both on to Captain Flandrau, made all possible speed with his own party towards New Ulm, and in a short time, from some high ground passed over for the purpose, could see the town across the Minnesota river, still however a few miles distant. Over and back of its upper part (by the river) was a dense black cloud, against which, as a background, could be plainly seen the flash of guns, fired in either attack or defense, and burning stacks or buildings. The smoke and sparks were blown upon the town by the prevailing wind, its direction having probably dictated the point of attack, which seemed wholly confined to such upper part.

There were then two rope ferries across the Minnesota river, by which New Ulm could be reached, one abreast the town, the other at Redstone, about two miles below. Upon consultation with his party, Boardman determined to use the latter, with the hope, warranted by the appearance of the attack then going on, that the lower end of the town was not surrounded by the Indians. He proceeded to the Redstone ferry, but found that the ferry boat was on the other or New Ulm side, with no means of reaching it save by

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swimming. One of the party, whose name the writer cannot now recall, volunteered for the purpose and brought the boat over, the river being about fifty yards wide.

On the Nicollet county side the ground was high and commanding, 787 but on the New Ulm side it was very low; and the narrow road from the ferry passed for about one-fourth of a mile over this low ground through a kind of coarse wild grass so dense and high as to almost conceal a passing horse and his rider. The swimmer was covered by the guns of the party, but a small number of Indians, ambushed in that grass, could, as all the party well knew, prevent the crossing; the most probable method being to allow the empty boat to be taken over, and then to fire upon the party while crossing and nearing the New Ulm shore. Beyond the grass, the road continued upon open ground, but so much lower than the plateau on which the town stood, as to hide the approaching party from the view of those in or about the town, until within a comparatively short distance of it.

The Boardman party crossed the ferry, and, aided by the conditions just described, dashed into the town at its lower end, without attack, but not without discovery, by the Indians; some of whom, in a very short time, passed down back of the town and held command of that lower ferry road. This was between 4 and 5 o'clock in the afternoon.

The occupants of the town were principally engaged in defending it against the attack at the upper end. Where they had already built a barricade across Minnesota street, the principal one of the town, and running about parallel with the general course of the river. Some parties, however, under the superintendence of Samuel Coffin, of Swan Lake, Nicollet county, were building another barricade across the same street lower down, so as to include the most densely built portion between the two.

Upon consultation by Henry A. Swift and some of the leading citizens of the place, as D. G. Shillock, John C. Rudolph, Charles Wagner, Peter Sherer, Captain Nix, John Hauenstein. and others equally prominent, but whose names the writer cannot now recall, with the Boardman party, it was deemed advisable to send another messenger to Captain

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Flandrau. L. M. Boardman had the best horse and then in best condition, and volunteered for this dangerous service. The only route left was by the upper ferry, abreast the town, but about half a mile distant over low ground. He started at once, and some Indians could be seen running from the lower end of the town, across this low ground, toward the ferry which he was trying to reach, and firing occasionally 788 at him. Luckily, however, as they had to keep out of gunshot of the town, they could not reach him, and he crossed the ferry in safety.

A wounded refugee had been left in a house in the extreme lower end of the town. At the request of D. G. Shillock, of New Ulm, one of the Boardman party, mounted, raised a squad of volunteer footmen, and accompanied Shillock to bring the wounded man within the barricade. This man, though badly wounded about the body, was able to walk slowly, with the help of Shillock and another. The Indians fired on this party several times, but at too long distance for execution, being kept down behind a ridge of ground by the counter fire of the whites. The wounded man was brought in safely. This was a short time before sunset.

Just before this party reached the lower barricade, a horseman was seen coming at full speed over the prairie ridge just back of the town, the Indians firing at him from behind it. His horse was hit and killed, but he escaped. As the writer recollects, he was Ralph Thomas, and was one of a party of seven refugees trying to enter the town. The Indians shot and killed all the others, save one whose hip was broken. He could not be seen from the town, and with his broken hip lay upon the prairie all night. He was brought in next morning, conscious, and said that he had dragged himself, during the night, up to a cow and with her milk had kept up his strength. He lived but a little while longer. The writer cannot recall the name of any other of the party. Ralph Thomas reported that there were over a hundred Indians in the body which fired upon his party.

About sunset (Tuesday), the Indians, repulsed at every point, so far as the town was concerned, discontinued the attack and retired.

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Of this advance guard, Judge Flandrau, in the work before cited, Vol. I, page 732, wrote as follows: "Our advance guard reached New Ulm about 4 or 5 o'clock p. m.—just in time to aid the inhabitants in repelling an attack of about one hundred Indians upon the town. They succeeded in driving the enemy off, several citizens being killed, and about five or six houses in the upper part of the town being fired and destroyed."

I. V. D. Heard, on Gen. Sibley's staff, wrote in 1863, in 789 his work entitled, "History of the Sioux War and Massacres of 1862 and 1863," page 80, of this advance guard: "It is conceded that these men saved the town."

Governor Swift's message reached Captain Flandrau promptly, and settled in his mind that New Ulm, not Fort Ridgely, should be his destination. About ten o'clock that night, he, with the rest of his command in wagons, reached New Ulm. He immediately posted sufficient guards, and the town felt secure.

FLANDRAU AS COMMANDER AND HIS STAFF.

On Wednesday morning, August 20th, Captain Flandrau was, by general consent, chosen commander of the forces in New Ulm and of the town, with the rank of Colonel, and was given power to make such organization, and appoint such officers to carry it into effect, as he might deem best. He appointed a second in command, a provost marshal, chief of staff, quartermaster and commissary, and an aid, and a most competent medical staff. A provost guard was organized; and assistant quartermasters and commissaries were designated and put to work at once.

Order was established; houses, with the least possible inconvenience to their owners, were appropriated and numbered, and bedding, etc., was provided and put into them; commissary and ordnance stores were secured or arranged for; and, before night, provision was made for the troops present and to come, as well as for the constantly arriving refugees from the frontier.

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In the work before cited, Vol. 1, page 732, Judge Flandrau wrote of this organization:

It soon became apparent that to maintain any discipline or order some one man must be in command of all the forces. The officers of the various organizations assembled and chose a commander; the selection fell to me. A provost guard was at once established and order inaugurated. The defenses were strengthened and we awaited results. Captain William B. Dodd, my first lieutenant, was made second in command, and S. A. Buell, provost marshal, chief of staff, and general manager. He had been a naval officer, and was a good organizer. Captain S. A. George, a young man, who had been for a short time in some eastern regiment, who joined us at St. Peter, was made an aid, and proved very efficient in reducing matters to a manageable condition.

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The officers referred to in this quotation, as the writer now recollects, were Captain Charles Roos, then sheriff of Brown county, Captain Lewis Buggert, and Captain John Belm, all connected with the organized militia of Brown county; A. M. Bean, captain of a small company from Swan Lake, who were the first men from Nicollet county to reach New Ulm on Tuesday, August 19th; and perhaps Captain William Bierbauer, of Mankato; and also their lieutenants and those of Captain Flandrau's company. Their choice of Flandrau as commander was confirmed by other leading citizens of New Ulm, and in fact by all participating.

Afterwards, when he received his own commission from Governor Ramsey, Colonel Flandrau issued commissions, dated September 30, 1862, to Buell and George, the former with the rank of captain, and the latter of lieutenant, such rank in each case to date from August 19th, the day of their several appointments. These commissions were recognized by the State authorities. As Captain Dodd was killed in battle on August 23rd, no commission, the writer thinks, was ever issued in his case.

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The position of “general manager” was deemed by Colonel Flandrau to include the duties of commissary and quartermaster. Accordingly, the chief of staff made certain appointments to assist him in his duties as provost marshal, commissary, and quartermaster. These assistants were Henry A. Swift and William G. Hayden, of St. Peter; John C. Rudolph and D. G. Shillock, of New Ulm; and several others of its influential citizens, whose names the writer is unable to recall with certainty, but thinks that among them were George Doehne, Jacob Pfenninger, and H. J. Vajen. Suffice it to say that all who were so called upon to assist most willingly complied with the request, and by their ability and energy made possible and effectual the organization and its results just mentioned. These preparations met the demand of the whole stay at New Ulm, and no one suffered for what they were to supply, so far as known at the time.

The preparation for defense, under the immediate supervision of Captain Dodd, was constantly going on, and this was the more energetically attended to because it was believed that the Winnebago Indians, about four hundred vigorous, well armed men, would join the Sioux in the outbreak.

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NEW ULM AS A STRATEGIC POINT.

Colonel Flandrau saw and thoroughly appreciated the fact, that New Ulm was the proper place to hold as an advance-post. It was the nearest to the frontier, except Fort Ridgely, which was unfortified, scantily garrisoned, on the wrong side of the Minnesota river for the fleeing refugees, and unable to supply them, even if they reached it, with food and shelter. Mankato, thirty miles further off, was too distant, as was also St. Peter, besides that the latter was on the other side of the river; and these two towns were, next to New Ulm, the nearest to the frontier, where it was possible to furnish food and quarters to the refugees. Furthermore, to hold New Ulm was to defend the towns and country east of it,

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and to give the state and federal authorities time to mobilize on the frontier sufficient force for its protection.

On Monday morning the outbreak commenced; by that afternoon the Indians had nearly reached New Ulm; on Tuesday morning, Flandrau, thirty miles away, first heard of it; by ten o'clock that night he had organized a large force, sent forward part of it in time to help save the town from an attack then being made upon it by the Indians, and had placed his whole force in it; and now, by Wednesday night, he had organized and established an advance-post of defense to the towns and country in its rear, and a most accessible haven of refuge to the frontier settlers, including many sick and wounded, who were fleeing from Indian atrocities.

Yet he had no commission of authority, and not one man in his command had ever signed enlistment or sworn obedience; still, discipline was complete, as the result of his personal character and influence, acting upon a brave people, eager to aid the suffering, and recognizing his ability to lead and direct them.

SCOUTING EXPEDITIONS.

On Thursday, August 21st, Colonel Flandrau sent a small detachment about eight or ten miles westward to scout for Indians, and to bury any dead whites, bring in any wounded, and aid any 792 in need, who might be found. They buried some dead, and returned that night, bringing no news of Indians.

During that evening a reliable report came to Colonel Flandrau, that some thirteen persons were concealed for safety in a slough about fifteen miles west of New Ulm.

On Friday, August 22nd, early in the day, he sent out another expedition of about a hundred and fifty men, one-third mounted in charge of the writer, and the remainder in wagons, all under command of Captain George M. Tousley, to bring in these concealed refugees, and to bury any dead whites to be found. This force buried many dead, and

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rescued the thirteen refugees, one of whom was badly wounded and died a day or two afterward.

This expedition at times during the afternoon heard heavy firing in the direction of Fort Ridgely, yet saw no Indians. However, late in the afternoon, while on the return march, Indian signals, as claimed by experienced frontiersmen present, were observed towards New Ulm on or about the route of march during the forenoon from it; which, in their judgment, indicated the possibility of an ambush by the Indians, if return should be attempted by the same road. Captain Tousley very wisely held a consultation with men of judgment in his command, particularly some whose experience had given them a knowledge of the Indians. Among these men was Dr. Asa W. Daniels, of St. Peter, one of the medical staff, who had been some years earlier the Government surgeon at the Agency of these very Indians. No one consulted gave opinion more regarded and acted upon.

As a result of the consultation, Captain Tousley very properly determined to return to New Ulm with all possible haste, but by another and more northerly road, to reach which he would have to march several miles across the open prairie, thus extending the time originally allotted to such return by several hours. A good guide was in the party, and the march from one road to the other was made after dark. The mounted men were kept well out in front and rear, and on each flank, in order to give opportunity in case of attack to make a corral with the wagons (the team horses being drawn inside), within which the mounted men (and even their horses, if found advisable) could be brought, thus forming a barrier from behind which the footmen and dismounted horsemen could be most efficient in defense. All the time Indian night-signals, as claimed by men of experience in such matters, 793 were seen along or near the route of march in the morning from New Ulm. This was a most trying responsibility and service for Captain Tousley, made more so because he was far from well. He knew that Colonel Flandrau expected his return without fail that night, for the absence of such a large force greatly weakened the defense of the town; and he, Captain Tousley, was determined to obey the order. Yet a march at night

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across a trackless prairie, necessarily resulting in some confusion, and the possibility that these night-signals were to a body of Indians upon the very road he was seeking, presented problems difficult for even trained troops to solve, let alone an improvised body such as his command.

As stated, Captain Tousley was not at all well; yet he remained on horseback and in command longer, possibly, than a due regard to himself required; but in the latter part of the evening he was compelled by physical disability to dismount, get into a wagon, and relinquish the command to a junior.

The expedition arrived safely at New Ulm about midnight, much to the joy of Colonel Flandrau, who felt all the time the very great risk he was taking in so greatly depleting the defensive force of the town to save those thirteen persons; but it would not have been prudent to send out a smaller expedition. That Friday was, as Colonel Flandrau afterward said, the most trying day he had ever, to that time, experienced; but he could not harbor for a moment the thought of abandoning those thirteen unfortunate refugees to their fate, although military necessity might have justified such a course, in the mind of some commanders.

At this time, late Friday night, the defenders, including the returned Tousley expedition, numbered about 325; the majority were poorly armed, a few mounted, the remainder footmen. To be protected by these, there were in the town, as estimated, over 1,500 women, children, and defenseless men.

BEGINNING OF THE BATTLE ON SATURDAY.

On Saturday, August 23rd, early in a clear, beautiful morning, there could be seen, evidently on the other side of the Minnesota river, upon the upland, a series of fires, burning stacks or buildings, commencing towards Fort Ridgely and nearing New Ulm.

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Soon an aggregation of them appeared about north, which 794 proved to be the burning of a small hamlet, called Lafayette, a few miles from New Ulm.

Colonel Flandrau supposed Fort Ridgely had fallen, and that the Indians were approaching on the other side of the river, and probably also on this side, to join forces at New Ulm. He deemed it prudent to send a detachment, large enough to reconnoiter in force on the other side of the river, and, if possible, to check the advancing Indians in case of contact with them. Lieutenant William Huey volunteered to perform this duty, and was sent with about seventy-five men as well armed as any in the command, for the purpose, but with additional instructions to reconnoiter well at and about the ferry before crossing, and to guard securely the approach to it in his rear after so doing. It was expected that he would return in a few hours, at most, if successful; but at once, should he meet a superior force. This detachment crossed the river at the upper ferry in front of the town, but about half a mile distant from it; was met almost immediately by a superior force of Indians, cut off from crossing back upon the ferry, and compelled to retreat, away from the river, into Nicollet county, with a loss of twenty-one missing and two killed or wounded. Lieutenant Huey, by this retreat, saved about fifty of the best men of his command; whilst otherwise he would probably have been surrounded at the ferry, and every man massacred.

This misfortune left only about 250 armed men to defend the town; and soon the magnitude of it was severely felt, for a large party of Indians began to appear in the rear of the town, all in plain view. With a good field glass, which was placed on the top of a high building in the center of town, Colonel Flandrau could watch every movement of the enemy; as could anyone, from any commanding point, with the naked eye.

Immediately in the rear of the town was a prairie, slightly rising for about one-third of a mile in a direction away from the river, and then descending for about two-thirds of a mile farther to a slough, which lay along the foot of a high wooded bluff, and extended, about parallel with the river's course, from below the lower nearly to the upper end of the town; but out beyond the upper end of the slough the bluff was not wooded. Crossing

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this slough, nearly in the center between the upper and lower ends 795 of the town, was a causeway road. The Indians came in crowds over this causeway road, a part turning to their right and a part to their left, the latter soon being joined by another crowd that came down over the prairie bluff and above the end of the slough. As yet, they made no movement toward the town, evidently waiting for the rest of their party, which continued to come by the same routes.

Colonel Flandrau directed some mounted skirmishers to be thrown out on the prairie toward the slough, and Captain Dodd placed them well down the incline and so close to the Indians that the latter began firing upon them, and there was a lively exchange of shots between the skirmishers and the Indians. The horse of one skirmisher was severely wounded by this Indian fire, and, taking the bit between his teeth, ran at full speed down the hill towards the Indians, carrying his rider with him. Luckily, the horse's strength gave out and he made a staggering fall, lessening his speed thereby, when still about a hundred yards from the Indians, who had ceased firing at them, evidently feeling sure the horse would bring his rider into their lines. The rider was unhurt by the fall, sprang to his feet, ran up the hill, and escaped with his arms and ammunition, though while running a large number of shots were fired at him by the Indians. He obtained another saddled horse in a short time, and went to the front again, seemingly more worried about the loss of his horse, with the saddle and bridle, than by his own danger. The writer knew at the time, but cannot now remember, the name of this skirmisher.

For some reason not understood by Colonel Flandrau, or anyone else, so far as expressed, the Indians delayed for more than an hour making any general movement, after all seen coming down the bluff had joined the main body on the town side of the slough. They may have been feeling the strength of the defense by this skirmishing fire, or waiting for some movement, or signal of it, on the river side of the town, where Lieutenant Huey and his force had been cut off. The latter seemed to be the opinion of Colonel Flandrau at the time. But whatever it was, it enabled him to have Captain Dodd form the main line of defenders behind these mounted skirmishers in such a position that, on

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account of the nature of the ground, it could not be seen by the Indians 796 until they had come away from the slough and a long distance up the incline, and of course much nearer the town.

NUMBER OF THE SIOUX ENGAGED IN THE ATTACK.

During the time of this approach and delay of the Indians, they were counted by a number of persons, either through the field glass on the high building mentioned, or by the unaided eye from commanding points, being thereby estimated at from 650 to 800. Colonel Flandrau himself, however, made the smaller estimate of about 350. In making these estimates, no account was taken of the Indians across the river in the timber, who had attacked Huey; they were two miles or more from the slough, and on the other side of the town. They could not possibly have joined the body at the slough, since their attack upon Huey, without being seen, and they were not seen.

In Judge Flandrau's account of the battle of New Ulm (same work, Vol. I, page 732), he wrote: "As I have learned since, from educated half-breeds who were among the attacking party, the enemy comprised about six hundred and fifty fighting men, all well armed and many mounted."

Louis Robert, then of St. Paul, was at Fort Ridgely during the attack upon it by the Indians on Wednesday, August 20th, and took part in the defense. He was an old Indian trader, familiar with the Sioux, understood their language, and had often seen them in large bodies at treaties, payments of annuities, etc. On Friday, he started from Fort Ridgely to go to New Ulm, about sixteen miles distant, "but had not gone over two or three miles before he found himself surrounded by a large number of Indians, who were marching to the attack of the fort. He hastily concealed himself in the grass, in a slough, where he remained till night, when he again essayed to go on, but had scarcely left his place of concealment before he was discovered, and again beat a hasty retreat to the slough, where he remained, standing in the water, holding his gun above his head, the remainder

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of the night. While in this position, but a few rods from the road, he thinks not less than one thousand warriors passed him in the early dawn of Saturday, on the way to New Ulm." (Bryant and Murch, "Indian Massacre in Minnesota," page 203.) Charles S Bryant, A. M., one of the authors, was a scholarly man, living in St. 797 Peter at the time, and had every opportunity, which he well improved, to get at the facts in regard to the Indian outbreak of 1862.

It is the writer's belief that the plan of Little Crow, who commanded the Indians, and of his advisers, was to make the attack upon the rear of the town, with the hope that the defenders, supposing that the front next the river with its ferry, was open for their retreat, would make less resistance, and thus be the more easily driven to the open bottom between the town and river. When at the ferry, they would find themselves confronted by the party concealed there, and be massacred between the two bodies of Indians. But, if this were the plan, it was disclosed by the Huey reconnaissance, and, however disastrous that seemed, it may have been a blessing; for white men, surrounded by attacking Indians, fight hard, with no thought of surrender.

LATER PART OF THE BATTLE.

About ten o'clock on Saturday forenoon, the Indians at the slough, having formed a strong line with its flanks curved as if to envelop the town, advanced slowly up the prairie slope, firing from different points of their line and thereby driving in the mounted skirmishers. When this advancing line came into view of the main line of the defenders, now increased by the dismounted skirmishers, the Indians, still holding their formation, rushed, with a yell never forgotten by one who heard it, upon the town, firing generally when within ordinary gun-shot. This fire was entirely too heavy for the defenders, and, after returning it until a few of them were hit, their line gave way, and they retreated upon the town and into the outskirts of it.

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Here the Indians made an irreparable error; they occupied some buildings passed by the retreating defenders, which broke the effect of the Indian attack; it was no longer united. Otherwise, while they had the defenders on the run, they might possibly have driven them through the town, and down onto the open bottom. But the writer believes, and then believed, that the vigorous and probably effective fire of some of the better armed defenders drove these Indians into the buildings, and thus broke their line of attack; thereby enabling Colonel Flandrau and others 798 to rally the defenders against the remaining Indian line, compelling those forming it to take cover, and giving time for all the defenders to get into buildings themselves.

At this time, Colonel Flandrau was applied to for authority to burn all the buildings outside those occupied by the defenders, so far as might be possible. He was loth to destroy the property of this stricken people, but as a military necessity ordered it. Volunteers, covered by the guns of the defenders in the buildings behind them, went hastily and crouchingly over open ground and fired some buildings and stacks between the two lines. This, wherever possible and done, made an open space, leaving no cover for the Indians from which to make a closer attack. The misfortune was, that this was not possible everywhere along the defenders' line. The fight soon became a driving by the Indians, and a burning by the whites as driven back out of the buildings by superior force, which appeared on every side. The Indians burned buildings also, but generally, it seemed, in order to take advantage of the wind and fire the town inside the defenders' line.

A little after noon, Captain Dodd, second in command, was misled by a ruse of mounted Indians, on the lower-ferry road just where it rises to the plateau on which, at some distance, the town stands. He believed it was a party of whites coming to relieve the town, but in doubt about entering it, and, in order to encourage them to enter, he called upon some footmen who were near to follow him, and rapidly rode outside the lines of defense about seventy-five yards. There he was fired at by some Indians in ambush. He wheeled his horse around, rode back about sixty yards, and then fell heavily to the ground. The

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horse keeping on got inside the lines of defense, and fell dead soon after. The footmen following him had at once retreated within the lines.

An officer and three other defenders rushed out to Captain Dodd, as he was struggling ineffectually to get onto his feet, and brought him inside the defenses. All that could be done for him then was to place a long board with a stick of wood under each end of it, thus making a spring board, lay him upon it, with a coat folded under his head, and give him a drink of water. This was done in the lower story of a house on the very line of defense, while the defenders were shooting from the upper story. He was perfectly conscious, said he was mortally wounded, and gave 799 orders for all to leave him and go up stairs to the defense of the building. His only request was that, should the building be abandoned, he be first carried out of it, so that the Indians would not get him or his body. As the officer who had helped carry him in was (by his order) leaving him, Captain Dodd took his hand in his own, pressed it, and said, "I've felt hard against you, but I see I was wrong; forgive me." He died some hours afterward, yet not until he had been carried to another house, laid upon a comfortable lounge, and a surgeon brought to him. He gave his life for his neighbor; what more can any brave man do?

His fall seemed to encourage the Indians, and, as the wind blew upon that part of the town, the vigor of the attack at that point greatly increased, and they began to appear in large numbers there. This was reported to Colonel Flandrau, and gathering all the men to be spared from the other parts of the town, making a party of defenders at that point of about sixty, he made a sally with this force, on foot, and drove a body of Indians more than double his own number, who were then almost within the defenses, completely outside, and scattered them, but with a loss of two whites killed and several wounded. George Le Blanc, a half-breed, and a leader among the Indians, was also killed and left just within the line of defense.

In this sally Colonel Flandrau showed not only bravery of a high order, but presence of mind and quickness of thought, in a way that indicated military instinct.

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The defenders' line here formed a right angle. One side was a large frame house in a lot fronting on the main street and running back to a point where the ground fell off quite abruptly over fifteen feet to a lower plateau. The other side was a smaller house in a fenced lot, fronting on a cross street, and running back along the top of this bluff to a point within about fifty feet of the rear part of the other lot. It had been ascertained that the Indians, in large numbers, were crawling up under this bluff toward this angle, being entirely safe from the fire of the defenders in the large house, and comparatively so from that of those in the smaller one. In the vacant space between the two lots there lay quite a number of saw-logs. Here the Indians began to gather, and the only course left for the defenders was to come out of the houses and by a sally in the open drive them away. 51
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For this purpose Colonel Flandrau gathered his sallying force, taking all the defenders out of the large house, who first fired it well inside with straw taken from beds and saturated with kerosene oil. Because of the prevailing wind, the smoke poured out of the windows in the side of this house toward the inside of the defenders' line, and his party was hidden by this smoke from the view of the Indians in the vacant space between the two lots; but *he* could see part of the front of the fenced lot on the cross street. A defender, evidently from this smaller house, was seen to rush through the gate into the street, and almost immediately fall, shot by Indians hidden under the bluff, showing that some of them had passed from the rear to the front of the lot by crawling along close under the bluff. Instantly Colonel Flandrau, as he afterwards expressed himself, saw that to make a feint toward the front of that lot would give him and his party an advantage in the real attack at its rear. He ordered an officer present to take three more defenders and rescue that fallen man, who seemed still alive.

These four defenders rushed out of the smoke toward the front of the fenced lot, and immediately came in view of the Indians at its rear, who evidently supposed the attack of the defenders was being made at that point, and turned their attention to the aid of their

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comrades who had gone under the bluff to the front of the lot. Colonel Flandrau followed this feint by rushing with his whole party out of the smoke to the rear of the lot, taking the Indians there, as it were, in their rear and flank. This he always believed gave him and his party the advantage and got the Indians on the run at once, from which they never recovered.

The four defenders making the feint brought in the wounded man, but one of their number was shot through the shoulder, the Indians being only a few yards off under the bluff. The necessity, however, for their rushing at once to the rear of the lot, to aid in meeting the real attack by Colonel Flandrau, probably saved the lives of all four making this feint.

This practically ended the fight for that day; the fire of the Indians being gradually slackened until sundown, when it ceased, leaving the defenders with a loss of nine killed, and about fifty wounded so severely as to be unable to fight. The remainder were worn, and glad to rest and eat. Lunch carried to the points of defense had been the method of refreshment since breakfast.

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INSTANCES OF BRAVERY.

When the first break in the defenders' line took place, Captain Saunders got a portion of his men into an unfinished brick building near, and by holding it checked the advance of the Indians at that point. He was, however, very soon wounded, compelled to retire, and had to be supported into the hospital. His men continued to hold the position, unaware that the defenders' line to their right had been driven much farther in, thereby exposing them to the imminent danger of being cut off from the town.

Henry A. Swift, who was fighting on foot in the line, a short distance off, saw this situation at once, and by his coolness, courage, and example, enabled a mounted officer to form and hold a line of about forty footmen, which closed this gap, forced the Indians, who were rushing into it, to take cover in some buildings, and gave time for the officer to ride out and

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get Captain Saunders' men from their exposed position into another building farther in. That building they successfully held, and did good execution from it, until ordered out in the evening, when it became necessary to shorten the line of defense.

During the movement just described, Mr. Swift, as he had done a short time before on another part of the line for Colonel Flandrau (hereafter related), saved the life of the writer, as he has ever since believed, by warning him when he was unwittingly riding into an ambush of about fifteen Indians. This warning enabled him in good time to check and wheel his horse to the left, at the same moment placing his own body as low as possible along the left side of the horse; so that only one shot of the Indian fire took effect, by slightly clipping the horse's right ear.

The men forming the line just mentioned were then ordered into buildings. Swift took about twenty of them, seized a square brick building in the back part of the town, and, port-holing it, held the position until the end of the fight on Sunday. This building was the advance-post of defense in that part of the town, and the fire of its garrison commanded open ground on each side of it, as well as in front. Most excellent work was done by this fire, and it covered a long portion of that part of the line of defense.

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D. G. Shillock noticed a party of about fifteen Indians seizing a house, which, if held by them, would be a great menace to that part of the defenders' line. He gathered a party of defenders, less in number, led them into the house and drove the Indians from it. As the writer recollects, Shillock was then or soon afterward, unluckily for himself and the defenders, badly wounded. Though he recovered and lived for years afterward, he carried the ball in his leg, at times a most painful reminder of the battle of New Ulm.

During the whole of Saturday's fight the streets whose course was toward the river were to a great extent covered by the fire of Indians located on the high prairie ridge just back of the town. Several of the wounded among the defenders, and possibly some of

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the killed, were hit while attempting to cross these streets within the lines of defense. After they had become a little used to the Indian fire, some instances occurred, when it became necessary for a party of defenders to cross such a street, in which one defender volunteered to start first and draw the fire of the Indians, so as to lessen the danger of crossing to the rest of the party following him. Of course, such crossing could only be successfully made at the swiftest possible run.

At one time that day, some men with good guns were needed in the lower part of the town. An officer went up into the central part to find such, and was followed back by two volunteers, John Hauenstein and George Spenner, each of whom possessed a Turner rifle, a most excellent and far-reaching weapon. They had been firing from behind chimneys on the tops of houses, but could be spared for the other work, to reach which they risked their lives in crossing the streets just mentioned, and afterward in the lower town did good work indeed. There were too few of such weapons among the defenders that day.

The foregoing instances have been given as those most clearly retained in the writer's memory; but where all did so well, it seems almost wrong to specialize in any case.

Colonel Flandrau, during the latter part of the day and in the evening, caused a barricade to be constructed around the central part of the town, across exposed open spaces, by which, in connection with buildings, the line of defense was greatly shortened, and so of course made much more easy to hold. All the defenders were ordered within it, and all the buildings outside that 803 could probably be used as cover for attack by the Indians were burned. This preparation was made for the morrow, as it was known that the Indians still surrounded the town, though withdrawn out of gun-shot. It was believed by Colonel Flandrau, as well as by many others of good judgment, that the Winnebagoes would join the Sioux in the attack next day; for all the reports with regard to those Indians reaching New Ulm during that week, and they were many, fully warranted such belief.

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Just before sundown, Colonel Flandrau made a personal inspection of the defenses, and, so far as safe, a reconnaissance outside of them. He had had three narrow escapes that day.

First, while rallying the broken line in the forenoon, he rode into a position within short gunshot of quite a party of Indians in cover. Henry A. Swift, who was near and in cover himself, had just seen the Indians rush there, and hailing the colonel warned him of his danger. He immediately turned back, and, although shot at, seemingly by the whole party, neither himself nor the horse were hit. It was supposed that the Indians were waiting for him to come nearer and onto higher ground, and that his sudden turn disturbed their aim, or they overshot him.

Second, in the afternoon, while leading the sally spoken of, the breech of his gun, just then in front of his body, was struck by a large ball, which glanced off, but the force with which the gun-breech was driven against his body almost disabled him. This shot was fired at close range, and probably at him, for he was well known to many of the Indians.

Third, while upon the reconnaissance near sunset, he was very tired, and in order to rest seated himself upon the end of a saw-log, while looking out over the prairie. One of his officers present, who knew the danger of the locality, warned him of it. The colonel sprang to his feet and away, just before several balls struck the log where he had been seated.

A NIGHT OF ANXIETY.

In the evening some citizens got their teams, put their families and some supplies in the wagons, and were about leaving the town by the lower ferry road. Colonel Flandrau heard of it in time, and by his personal influence, joined with that of others whom he called to his aid, he stopped their going, although he 804 was prepared and intended to use force, if necessary. They put out their teams and returned to the houses. This movement would have been simply suicide for them, and the colonel so convinced the party; but it might

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also have brought on a fight that would have menaced the town, in an effort to save them. One man tried this, unknown to anyone else, that night, and was found the next day only a little distance outside the lines of defense, on that road, scalped, decapitated, and otherwise horribly mutilated.

The men lay on their arms at the barricade the whole of that Saturday night. Colonel Flandrau, his officers, and some others whom he called upon as aids, did not sleep at all; but spent the night in making rounds of the barricade, keeping about every third man awake, alternating them to give all a chance to rest. About midnight a sound was heard back of the town, where the Indian camp was supposed to be located, like a large body of men marching. The colonel and some of his officers and aids heard it, and believed it to be the Winnebagoes coming to help the Sioux. But by his order this belief was suppressed, and the report was given out that the Indians, in part at least, were marching off.

During the latter part of the night the writer had several private interviews with Col. Flandrau, by his order. The colonel was heavily burdened with the responsibility upon him. Too well he knew, from the history of the preceding week even, what would be the result of Indian success; to the men, old women, and children, the scalping knife and a horrible death; but to the younger women, a fate, in comparison with which death instead was a boon to be prayed for; and upon him, as commandant, was the responsibility for their safety. The means for its discharge were those defenses and about 190 poorly armed men, the remnant of that insufficient few with which he had gone into battle the day before, brave still, but worn, and possibly much disheartened; while the enemy, at first nearly, if not quite, thrice his own number, and better armed, were now in all probability reinforced by half as many more, all presumably eager for battle and its anticipated successes, so prized by the Indian fiend.

In one of these interviews, Colonel Flandrau said: "If those Indians get these women and children and defenseless men, anyone in responsibility here who escapes, cannot live in this community." In his youth he had served his Government at sea, and was thoroughly

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805 imbued with the ethics of that profession, requiring a commander to go down with his ship in defeat, if duty and honor demand.

What must have been his sensations! Just thirty-four years old; among the leaders of his profession (the law) in the State; one of its three Supreme Judges; independent pecuniarily; in a home, one of the best in the valley of the Minnesota, planned by himself, and built upon a spot, among many offered, of his own choosing; blessed with a lovely, accomplished wife, and a charming little daughter; respected and beloved by his neighbours, in fact by the whole community; how bright the future had seemed to him! What hopes it had presented! But now,—was he, in a few hours probably, to lay these hopes with life itself upon the altar of the present duty, and there sacrifice all, in what he feared would be an unsuccessful effort to aid those of whom most were within a week past to him utter strangers, his only consolation being that his beloved wife and child were in safety?

He spent the hours till daylight, in planning (every preparation possible was already made) how best he might, with the men and material at his command, meet the blow that he felt sure would then come, and which he had little hope of resisting successfully. Yet, in confident voice and manner he expressed an assurance of victory on the morrow.

THE BATTLE CONTINUED ON SUNDAY.

When that morrow, August 24th, had come, and brought no attack at daylight, the favorite time of the Indians for it; and when, a little later, the attack was made by a lessened number of Indians; all felt assured that no Winnebagoes had come to assist the Sioux, but that a very considerable number of the latter had marched off in the night; and none of the defenders were more relieved than the commandant.

It was evident that this Sunday morning attack was made by less than half the number of Indians engaged the day before, and that it was intended simply to hold the defenders within the town, while the Indians picked up everything desirable to them and plundered

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and burned the outlying buildings, beyond the battle ground of Saturday. The point of attack was shifted to the immediate river front, and toward the upper end of the town.

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Within a block or so of the main street, running parallel with the river, the ground fell off suddenly quite a number of feet, into the low bottom that extended to the river. Along the top of this bluff, about and above the center of the town, stood some frame buildings which it had not been necessary to burn the day before. From behind these the attack came, and, though comparatively light, it was threatening because so close. Colonel Flandrau ordered these buildings to be fired, which was done with comparative safety because the Indians, in order to avoid exposing themselves to the shots of the defenders, were compelled to fire from behind the outside corners of these buildings.

One Indian, who was incautious in that respect, was shot, and fell forward in full view at the end of the building, and his comrades dared not attempt to get him away, a thing usually done by them, it is said. This Indian was only wounded, but could not rise to his feet. As the building burned and the heat of it reached him, he used all his strength to get away, but could only roll himself first away from it and then back toward it. Several of the men, who witnessed this wounded Indian thus burning to death, forgot all enmity, and would, in sympathy for his evident sufferings, have rushed out to relieve him by carrying him away from the burning building; but they were forbidden because of the great danger to them, in so doing, from the fire of the Indians beyond the buildings.

During this attack, an order was received from Colonel Flandrau to burn an occupied building, a large hotel, in that part of the town, as the Indians were pressing very hard upon it, and its possession by them would be disastrous to the defense. All persons were ordered out of it, and preparations were made, with straw and oil, to fire it. But the officer in charge of the work personally went into the rooms above the street floor to see that no person asleep was being left in them, before starting the fire. In one he found a child, probably about two years old, asleep, which had been forgotten. This child had been cut

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about the head by the Indians with a tomahawk, when they had attacked and killed several of its relatives at their home in the country, in the previous week. Wrapping the child in a blanket, and carrying it, he started down the stairs, and was met by an aged female relative of the child, shrieking that it had been forgotten. The delay thus caused saved the hotel, for an order just then came 807 not to burn it, as the necessity therefor had passed. In this attack, one defender was killed, and perhaps one or two wounded. Very soon the Indians had secured their plunder and started off, all disappearing to the west and northwest, back of the town.

ARRIVAL OF REINFORCEMENTS.

Some little time later, the head of a column of men came into view where the road from the lower ferry rises out of the low land to the plateau upon which the town is built. This same thing, the day before, then a ruse of the Indians, had cost the life of Captain Dodd; and another ruse was suspected in this case. Colonel Flandrau ordered one of his officers to ride out and reconnoiter, who did so, and discovered and reported that it was a body of over a hundred armed white men. A part were volunteers from Nicollet, Sibley, and Le Sueur counties, under Captain E. St. Julien Cox, of St. Peter, sent the day before by Colonel Sibley to report to Colonel Flandrau; and the rest, Lieutenant Huey's remnant.

Then men who had borne up under the severe strain of the past thirty-six hours broke down with joy, at the thought that their trials were at last ended; and Captain Cox and Lieutenant Huey, with their men, were welcomed heartily.

James Cleary, then of Le Sueur county, now of St. Paul, was a lieutenant of Captain Cox's company, and has since informed the writer that about half the company, being without private arms, had been furnished by Colonel Sibley with Austrian or Belgian muskets, the best in his power to supply, but which were practically worthless; that the company had started from St. Peter the day before, Saturday, the 23rd, and had camped for the night at Nicollet, about fourteen miles from New Ulm; had marched early Sunday morning

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to the Redstone ferry; had found the ferry boat luckily on the Nicollet county side, but unfortunately a long distance below the road by which alone wagons could approach the ferry; had necessarily consumed much time in getting the boat up the river to the ferry and ready for operation; and that the crossing was made successfully and without opposition from any source.

When the night of Saturday had come, and the battle for that day was over, the Indians had command of the upper and 808 lower ferries across the Minnesota river, the only means by which a relieving force from St. Peter, where alone such force was gathering, could reach New Ulm within less than two days. Captain Cox camped at Nicollet, about fourteen miles off, on that night. The Indians, by their scouts, knew, most probably, all the movements of any considerable force of the whites, and the exact position of that force at that time. They knew, also, that by destroying the ferry boats at these ferries any time that Saturday night, they would make it impossible for Captain Cox to cross at either; and that, for the whole of Sunday, and possibly part of Monday, they could, in that case, continue their attack upon New Ulm without interruption from him, or from any other possible relief party.

Yet they did not destroy the ferry boats. They only cut loose the Redstone or lower ferry boat, which floated down the river a long distance below the ferry road; for they well knew, as events proved, that, should Capt. Cox use that ferry, this would cause enough delay in his crossing to give them sufficient time to make the attack on Sunday morning, thereby keeping the defenders within the town until they (the Indians) could collect their plunder and get away, which they did, before the arrival of Captain Cox. And this was probably done by less than half their number. Had Captain Cox attempted to use the upper ferry, at the time he did use the lower one, the Indians would have known it when he was miles away, and could have easily done the same thing there.

The repulse of the Indians by Colonel Flandrau, on Saturday, had been so complete and decisive that they evidently determined to make no further efforts then to advance into

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the settlements, and more than half their force marched away about twelve o'clock on Saturday night, leaving the remainder to execute the work just stated. The Indians never afterwards appeared in force as far east as New Ulm.

CARE OF THE SICK AND WOUNDED.

During the time spent at New Ulm, nothing gave Colonel Flandrau more relief than his medical staff. His confidence in their ability was unlimited; and their excellent care and treatment 809 of the sick and wounded, whose sufferings worried him greatly, evidenced their high personal and professional character, and were his greatest comfort.

The writer thinks this medical staff was composed of Dr. Carl Weschcke, then in practice at New Ulm, and now and for many years last past its mayor; Dr. Asa W. Daniels, of St. Peter; Dr. Mahon (or McMahan), of Mankato; and Drs. Mayo and Otis Ayer, of Le Sueur. If there were other members of it, the writer has forgotten them.

EVACUATION OF NEW ULM.

Upon consultation with his forces and with the people of the town, during the afternoon and evening of Sunday, it was determined by Colonel Flandrau that, because of threatened sickness and growing scarcity of provisions, the town should be evacuated the next day, Monday; the citizens and refugees to march in a column, protected by the armed men, to Mankato, situated on the same side of the Minnesota river. Notice was given and preparation made, the best for the sick and wounded, many of both these classes being found among the refugees. Because of the scarcity of transportation, Colonel Flandrau, much to his regret, was compelled to limit the amount a man possessing the means of it should take of his own goods, the space being needed for those who were without. Some complained of this at first, but the order was necessary, imperative, and not varied from. Upon second thought such owners of the means of transportation admitted the justness, and certainly the mercy, of this order.

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Early on Monday, August 25th, the barricades are broken, and soon the saddest caravan ever seen in Minnesota—over 1,500 people, many sick, about eighty wounded, besides the armed men who guard it on flank and rear—is moving towards the southeast. Many have left or lost all, except the little carried with them; even their nearest and dearest ones, butchered by the Indians, lie buried, without coffin, book, or bell, where they died, with naught to mark the spot; some are mourning and fearing a worse fate for their friends, captured by the savages; and all such are going where? God knows,—anywhere away from Indians!

Colonel Flandrau guarded that column about sixteen miles, 810 then hurried it, with part of the guard, on to Mankato, about fourteen miles farther; and he, with the remainder of the troops, camped through Monday night at Crisp's farm, to guard the rear. In the work before cited, Vol. I, page 733, he wrote of this exodus, as follows:

On Monday, the 25th, provisions and ammunition becoming scarce, and pestilence being feared from stench and exposure, we decided to evacuate the town and try to reach Mankato. This destination was chosen to avoid crossing the Minnesota river, which we deemed impracticable, the only obstacle between us and Mankato being the Big Cottonwood river, and that was fordable. We made up a train of one-hundred and fifty-three wagons, loaded them with women, children and about eighty wounded men, and started. A more heart-rending procession was never witnessed in America. The disposition of the guard was confided to Captain Cox. The march was successful; no Indians were encountered. We reached Crisp's farm toward evening, which was about half-way between New Ulm and Mankato. I pushed the main column on, fearing danger from various sources, but camped at this point with about one hundred and fifty men, intending to return to New Ulm, or hold this point as a defensive measure for the exposed settlements.

While we were in camp at Crisp's farm Monday night, a woman, with a child, about two years old, came from outside the guard-line, and approaching one of the sentries discovered herself just in time to prevent her being shot by him. A bullet, fired by an Indian

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on the preceding Monday, the first day of the outbreak, had passed through the muscles of her back, but without injury to the spine, and had struck her child's hand, at that moment over its mother's shoulder. This had occurred west of New Ulm, where the bodies were buried by the Tousley expedition on Friday, the 22nd, and many miles distant from Crisp's farm. She had subsisted on berries, roots, and grain, during the week, carrying her child most of the time. The Indians had chased her several times, and even put dogs upon her track, to elude which she had laid herself down on her back in the water in streams and sloughs, holding her child above her; and she expressed her belief that the wound in her back, which she could not reach to dress, had been, during that hot weather, greatly benefited thereby. Her principal effort on such occasions was to hush the crying of her child (in which she always succeeded), so as not to attract her pursuers. The poor little thing made up 811 for its lost privileges in that way, after it was safe in camp that Monday night.

Both mother and child were taken on to St. Peter, and were placed in an improvised hospital there, where they were found by the husband and father, who had been working for some weeks at a point on the Mississippi river. Both mother and child recovered. How that husband and father must have loved the Sioux Indians afterwards!

Neither Indians, nor signs of them, were apparent that night, though ample watch was kept for them.

On the morning of Tuesday, the 26th of August, Colonel Flandrau, having placed all the refugees in safety from the Indians, decided to return to New Ulm, for the purpose of still holding at as an advance-post of defense to the settlements east and southeast of it, and made a strenuous effort to that end. As to this and its result, the writer again quotes Judge Flandrau, from the same work, Vol. I, page 733:

On the morning of the 26th we broke camp, and I endeavored to make the command return to New Ulm or remain where they were; my object, of course, being to keep a

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force between the Indians and the settlements. The men had not heard a word from their families for more than a week, and declined to return or remain. I did not blame them. They had demonstrated their willingness to fight when necessary, but held the protection of their families as paramount to mere military possibilities. I would not do justice to history did I not record that when I called for volunteers to return, Captain Cox and his whole squad of forty or fifty men stepped to the front, ready to go where commanded. Although I had not heard of Captain Marsh's disaster, I declined to allow so small a command to attempt the reoccupation of New Ulm. My staff stood by me in this effort, and a gentleman from Le Sueur county (Mr. Freeman Talbott) made an eloquent and impressive speech to the men to induce them to return.

The most of those offering to return had but recently left their homes, and had not been in any of the battles at New Ulm.

Later on Tuesday, August 26th, in his march from Crisp's farm, Colonel Flandrau reached Mankato, and there disbanded his original force, allowing the men to go to their homes, or with their families. They had done the fighting which had saved the refugees and placed them in safety, and deserved such release from further duty. Captain Cox, with his command, was ordered to report to Colonel Sibley at St. Peter.

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COMPARISON OF THE BATTLES OF THIS INDIAN WAR.

The writer believes it due to Judge Flandrau's memory, in estimating his services in defense of New Ulm, that a fair comparison should be made between the battle of August 23rd and 24th at New Ulm and the other battles with the Indians during that season, on that part of the frontier.

In this two-days' battle at New Ulm, the defenders fought, of course, for their own lives, for even surrender to the foe surrounding them would bring certain death, preceded by terrible torture. The resident defenders had the additional incentive of saving their families

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or relatives. But the writer believes, and then believed, that the large number of women, children, and defenseless old men, to be saved from the merciless savage, greatly incited all the defenders to think first, last, and always, only of resistance; and it will be difficult, if possible, to find in the Indian wars of this country a case where whites, so situated, fought more determinedly and persistently.

From the facts herein shown, it is fairly inferable that the attacking force of Indians in that New Ulm fight numbered at least 650, and probably even 1,000 or more. It was known that these Sioux had thirty or more good army rifles, with ample supply of ammunition proper therefor, and some good private arms; and that each of them possessed a heavy double-barreled shotgun, number ten or twelve bore, with very strongly reinforced barrel toward the breech, so as to shoot balls, with dangerous accuracy and great force, at least three hundred yards. The Government had provided these shotguns for the Indians, some years before, to enable them to shoot and kill large game, including buffalo. These guns could be used also, at a somewhat shorter range, for shooting smaller balls that would chamber in them three at a time, with great force and effect. Some instances were reliably reported that men were hit, at long range, with these guns using a single ball, which passed entirely through the body. Even the walls of the frame houses, used by the defenders during the battle of Saturday and Sunday, were not a sufficient protection against these Indian guns; and hence, on each side of the openings from which the defenders fired, bed-mattresses and the like were necessary and used to complete the partial defense made by the walls. The Indians were 813 seen to load these guns running at full speed. While Indian agent, Colonel Flandrau had purchased one of these very guns, and he used it in the fight at New Ulm. In all their fights that year, the Indians seemed to have an ample supply of ammunition, taken probably from the agency stores and other sources.

The muster rolls of different companies at New Ulm, which rolls were made or perfected, as now of record, long afterward, show a large number of men there during the week of the trouble. Captain E. C. Saunders, and Captain William Dellaughter, both of Le Sueur, and Captain William Bierbauer, of Mankato, each brought a body of fairly-armed men

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there, and were personally in the battle of Saturday and Sunday, August 23rd and 24th. But many of the men in some of the armed organizations at New Ulm were constrained to return to their own localities to defend their homes. Reports came to them, during the week, of threatened trouble in other places by the Sioux and Winnebagoes, with urgent messages for such return. The writer, as adjutant, took part with Colonel Flandrau, at his request, in urging the position taken by him, that to defend New Ulm was to defend these homes in its rear. But all had to admit that, if the Winnebagoes should “break out” around their own reservation, and not come to aid the Sioux at New Ulm, and if other bands of Sioux were to attack in other places, in its rear, such homes would be in great danger, and would need for their defense all the men belonging there; and Colonel Flandrau, admitting the necessity, gave permission for yielding to it. Hence it was the highest prudence for every man who, having come to New Ulm during that week, left it and returned home for such purpose, to act as he did. But this very necessity, acted upon, greatly depleted the force defending New Ulm, by noon on Friday, August 22nd.

It has been before stated that the number of defenders actually going into the battle of Saturday, August 23rd, was about 250. The writer desires to make some quotation from official reports of the time, as to the correctness of this statement. On August 22nd, at 3 p. m., Colonel Flandrau sent by a special messenger a written communication to “Ex-Governor Sibley,” expected to reach him on his march from Belle Plaine to St. Peter, in which he wrote: “I have about 200 men here, but very poorly armed;” and again, “I have large expeditions out all day, which 814 weakens me” (Minnesota in the Civil and Indian Wars, Vol. 2, pages 197 and 198). The Tousley expedition was, at that hour, several miles west of New Ulm.

On August 27th, from St. Peter, Colonel Flandrau made his report, to Governor Ramsey, of the battle of Saturday and Sunday. In this report he wrote: “I detailed 75 men with him [Lieutenant Huey], and they crossed at the ferry opposite the town about 9 o'clock a. m.” As before shown, this force could not return to New Ulm until the next day (Sunday), after the Indians had retreated, and they took no part in the battle on the New Ulm side

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of the river. In the same report, Colonel Flandrau further wrote: "At nearly 10 a. m. the body [of Indians in rear of the town] began to move toward us....We had in all about 250 guns." (Same work, Vol. 2, page 204.)

The loss among the 250 defenders at New Ulm was 10 killed and 51 wounded, the most of which loss was suffered on Saturday, the first day of the battle. As before stated, the noncombatants, women, children, and old men, were about 1,500.

The defenders at Fort Ridgely on Friday, August 22nd, the day of the greatest fight there, numbered 180 men, in part well armed troops, infantry and skilled artillery; the remainder, footmen, recruits, and citizens, were fairly armed. The non-combatants to be defended were about 300. (See the narrative of Gen. L. F. Hubbard [written in 1892], in the same work, Vol. 2, page 182.) The number of the attacking force of Indians is not given or estimated in the reports of Lieut. T. J. Sheehan, Fifth Minnesota Infantry, who commanded, and Ordnance Sergeant J. Jones, U. S. Army, who had charge of the artillery; both reports were made August 26th, 1862. But the former, in his report, wrote: "This post was assaulted by a large force of Sioux Indians on the 20th instant;" and again: "On the 22nd they returned with a much larger force and attacked us on all sides." And the latter, in his report, wrote: "On the 22nd of August, 1862, a still more determined attack was made about 2:30 p.m. by a very large force of Indians." The defenders' loss was three killed and thirteen wounded. (See the same work, Vol. 2, pages 171–173.) But in the narrative of General Hubbard (on page 186), the attacking force is estimated at 1,200 815 to 1,500. In a note to this narrative (on page 173), it is stated that "the events...connected with...the defense of Fort Ridgely are related by Lieutenant T. P. Gere of Company B," Fifth Minnesota Infantry, who was present in that fight.

It would seem that the attacking force at Fort Ridgely, less their killed and wounded, were, in all probability, in the attack at New Ulm the next morning, as indicated by Louis Robert's statement before given. But the Indians seen by Robert marching down the valley of the Minnesota river (Fort Ridgely was about sixteen miles above and northwest of New

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Ulm) could not have been the same Indians that were doing the burning on the upland road from Fort Ridgely to Lafayette, as seen from New Ulm early Saturday morning. The Indians whom Robert saw would cross the Minnesota river back of the position from which they appeared at the rear of the town; and the Indians doing the burning were in all probability the body that attacked Huey.

In the fight by Captain Marsh at the Redwood Agency ferry on Monday, August 18th, the whites numbered fifty-five, trained and well-armed soldiers. The attacking force of Indians was about 425. There were no non-combatants. Of the whites twenty-four were killed, including the commanding officer, and five wounded. (See the same work, Vol. 2, pages 167-171; report of sergeant, afterwards first lieutenant, John F. Bishop, who succeeded to the command and brought it off the field.)

At Birch Coulie on Tuesday, September 2nd, the attacking force of Indians was about 400; the defenders only about 150. During Tuesday night the Indians were reinforced by about 500; but the determined resistance of the day before, and the approach of relieving parties, prevented any serious attack after such reinforcement. There were no non-combatants. The whites lost twenty-three killed and forty-five wounded. (See the report of Captain Hiram P. Grant, who commanded in that battle, and the statement of James J. Egan, a participant; in Vol. 2, pages 215–223.)

At Wood Lake, September 23rd, the attacking party of Indians was “nearly 500,” as stated in Colonel Sibley's report of September 27th (Vol. 2, page 254.) His command numbered at least 1,000 men, infantry, cavalry, and artillery; and the attack 52 816 was made upon the camp early in the morning. There were no non-combatants. The loss of the whites was five killed, and thirty-one wounded. (See the reports of Surgeons Greeley and Wharton, in the same work, Vol. 2, pages 243–4.)

At Redwood Agency ferry, and at Birch Coulie, the whites were surprised, and, though they were well armed and organized, in each case it is a wonder that a single white man

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escaped. That anyone did escape, and so many in the latter case, redounds to the credit, and warrants the highest praise, of those who commanded and participated; and too much has never been written, nor can ever be, in commendation of the skill and bravery displayed in the defense of Fort Ridgely.

The writer suggests that the foregoing facts clearly show that Colonel Flandrau's successful defense of New Ulm, considering and comparing the numbers engaged, character of arms, kind of organization, number of non-combatants to be defended, duration of the fighting, and sacrifice at which the victory was obtained, at least equaled in importance any of the battles named.

ADVANTAGES GAINED BY THE DEFENSE OF NEW ULM.

Did Judge Flandrau, by his defense of New Ulm, render any *other* service than that of placing those 1,500 or more refugees in safety? It has been already claimed in this article, that by night on Wednesday, August 20th, he had made New Ulm an advancepost of defense for the towns and country in its rear, Mankato, St. Peter, and vicinity. While he held New Ulm, no body of Indians made a raid east and southeast of it; and very few outrages by individual parties, if any, occurred there.

On Tuesday, August 19th, Governor Ramsey heard at St. Paul the news of the outbreak, and "hastened to Mendota, and requested the Hon. H. H. Sibley to take command, with the rank of colonel, of an expedition to move up the Minnesota Valley. He at once accepted." (See Heard's "History of the Sioux War and Massacres of 1862 and 1863," page 117. The author was on Colonel Sibley's staff, and wrote in 1863.) This shows that the scene of Judge Flandrau's labors was the place to be defended first, and most vigorously; and that on the same day that Judge Flandrau, at Traverse, very early in the morning, 817 heard of the outbreak, Governor Ramsey heard of it in St. Paul, seventy-five miles farther from the scene of action.

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On the evening of Thursday, August 21st, Colonel Sibley was at Belle Plaine, fifty-seven miles from St. Paul, with 225 men, having used a steamer to Shakopee, over half the way, (See "Minnesota in the Civil and Indian Wars," Vol. 2, pages 193–5.) The next day he dated a report to Governor Ramsey, "Headquarters Indian Expedition, St. Peter," and had three companies with him (page 196). Heard, on page 118 of his History, wrote:

On Sunday this force was increased....which swelled Sibley's command to some 1,400 men....The mounted men [about 300] had no experience in war and were only partially armed, and that only with pistols and sabers, about whose use they knew nothing. A portion of the guns of the infantry were worthless, and for the good guns there were no cartridges that would fit. The foe was experienced in war, well armed, confident of victory, and wrought up to desperation by the necessity of success.

On Tuesday, August 26th, Colonel Sibley reported to Governor Ramsey from St. Peter that he should move that morning ("Minnesota in the Civil and Indian Wars," Vol. 2, page 199). He did so, and camped that night six miles from St. Peter on the upper road to Fort Ridgely, where Colonel Flandrau and the writer saw him. Some refugees from New Ulm, marching from there with Colonel Flandrau, had reached St. Peter, by way of Mankato, before Colonel Sibley moved at all.

It must be presumed that Colonel Sibley did move the moment he was ready; that he had done all he could; and that during his stay at St. Peter he was awaiting reinforcements and supplies of food and ammunition from St. Paul, until Monday evening,, August 25th, or the next morning. On Saturday, August 23rd, he had sent forward the expedition commanded by Captain Cox, but it was composed of volunteers from Sibley, Le Sueur and Nicollet counties. The State authorities had been doing all in their power to help Colonel Sibley, with the result stated, that he was six miles west of St. Peter towards Fort Ridgely, still thirty-nine miles distant, on Tuesday night, August 26th.

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Even as late as Monday, August 25th, was Colonel Sibley, while thus insufficiently supplied with ammunition, in condition 818 to resist successfully an attack by a large body of Indians? Would he not, if assailed, have been compelled to fall back, down the Minnesota valley, towards his coming ammunition supply, the possession of which was absolutely necessary to render his force effective for any purpose whatever, even its own defense?

Then, did Judge Flandrau's maintenance of that advance-post of New Ulm, from Tuesday, August 19th, until Monday, the 25th, together with his repulse of the Indians on Saturday and Sunday, the 23rd and 24th, aid the State authorities in placing Colonel Sibley's expedition where it camped on Tuesday night, August 26th?

Suppose that Judge Flandrau had not done so, but had failed, and that New Ulm had fallen in the week preceding or on Sunday morning, the 24th, placing those 1,500 refugees, mostly women and children, cut off from flight eastward by the Minnesota river, at the mercy of those Indians. Imagine the scene of blood and rapine, and then its effect. The whole community eastward, from town, hamlet, and farm, would have been rushing by every means obtainable, uncontrollably, down the Minnesota valley for safety; and the simple word, "Indians," could have been used to conjure fright with even on the streets of St. Paul.

Sometime—it should be soon—Minnesota, in gratitude and for the admiration and instruction of future generations, will cast in bronze, or carve in stone, the form and features of Charles E. Flandrau; but no art, however high, can make the hard material of commemoration fully show the firm will, the bright mind, the loving heart, the genial smile, and the winning manner, which have made him so respected and beloved through life, and now so mourned in death.

JUDGE FLANDRAU AS A CITIZEN AND JURIST.

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BY WILLIAM H. LIGHTNER.

Charles Eugene Flandrau, who died in the City of St. Paul on September 9th, 1903, would have completed in November of this year a residence of fifty years in Minnesota. At all times during his long citizenship in our state he took an active and leading part in public affairs and his complete biography will be a history of our state. His lifelong friends, Judge Greenleaf Clark and Major Salmon A. Buell, have reviewed before you his early career, and his great services to his adopted state, in laying the foundations of our civil government, and in his participation in the Indian war which threatened the prosperity of the state and caused so great a loss of life and property. A brief review of the career of Judge Flandrau, particularly as lawyer and judge, may supplement what has already been presented to you.

The son of a lawyer, who was a graduate of Hamilton College, and a gentleman of culture and many acquirements, and who practised many years with Aaron Burr, Judge Flandrau had advantages in early life which were unusual in the early history of our country. These advantages were of great benefit, and, although he lacked a thorough school training when he came to Minnesota in 1853, he was not merely trained sufficiently as a lawyer to successfully undertake the practice of his profession in a western state, but he had acquired much of the literary taste, culture, and refinement, which adorned his life.

In 1853 he began the practice of his profession in St. Paul in partnership with the late Horace R. Bigelow, with whom he had left the State of New York to begin his life career. He shortly afterwards in the winter of 1853 and 1854, went to what 820 is now St. Peter, and resided in that locality till April, 1857, when he was appointed by President Buchanan associate justice of the Supreme Court of the Territory of Minnesota. In the following year, upon the admission of the State, he was elected one of the justices of the Supreme Court, which position he continued to occupy until July 5, 1864, when he resigned his office. This completed his judicial experience. After a brief residence in Carson and Virginia City, Nevada, where he and Judge Atwater, his former associate on the bench of the Supreme

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Court, engaged in the practice of law, and a brief residence in St. Louis, he returned to this state, and, with Judge Atwater, began the practice of law in Minneapolis. In 1870, he removed to St. Paul, and there resided until his death. During his entire residence in St. Paul he was actively engaged in the practice of his profession, being successively a member of the firms of Bigelow, Flandrau, and Clark; Bigelow, Flandrau, and Squires; and Flandrau, Squires, and Cutcheon.

His practice was extensive and lucrative. He and his firms were for many years leaders at the bar in this state. An examination of the reported cases in this state will show that a very large proportion of the important litigation was entrusted to their care and was successfully conducted.

Judge Flandrau was pre-eminently a good citizen. Thoroughly conversant with the duties of citizenship, he shirked none of them. Never a seeker of public office, his services were in frequent demand, and he was repeatedly called upon to fill official positions. These, whether high or low, he filled well, serving his constituents with ability and diligence.

In 1854 he was deputy clerk of the district court for Nicollet county, and later attorney for the same county. In 1856 he was appointed agent for the Sioux Indians. In the same year he was chosen for a term of two years a member of the Territorial Council, the upper house of the Territorial Legislature. In 1857 he served as a member of the "Democratic branch" of the Constitutional Convention, which, in conjunction with the "Republican branch," framed our present State Constitution. As already stated, from 1857 to 1864, he was associate justice of our Supreme Court. In 1867 he was elected city attorney of Minneapolis, and in 1868 was chosen first president of the Board of Trade of that city.

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In politics, Judge Flandrau was a Democrat, and to his party he was a conscientious and lifelong adherent. When the preponderance of the Republican party in this state was so great that the election of its candidates by large majorities was assured, Judge

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Flandrau did not hesitate, upon the demands of his party, to stand as their candidate, in 1867, for governor, and in 1869 for chief justice of the Supreme Court. Nor did Judge Flandrau hesitate, when he believed that his party had in any manner departed from what he believed to be an honest political principle, to openly oppose its candidates, as he did in the presidential election of 1896.

In 1899, towards the close of a long life, when abundantly entitled to rest and freedom from the care of public business, Judge Flandrau responded to the demands of his fellow citizens and became a member of the Charter Commission which framed the present charter of the city of St. Paul. Of this commission he was chairman till his death. This position, the duties of which were arduous, could add little to his reputation or standing in the community, and the acceptance thereof must have been prompted by that nice sense of the duties of citizenship which characterized Judge Flandrau throughout his life.

In all matters that related to the well-being, prosperity, and improvement of his fellow citizens, Judge Flandrau was ever active. Identified with all those larger commercial, social, educational, and charitable institutions which make for the best interest of mankind, yet he seemed to take a greater pleasure or interest in individual improvement and particularly in those persons having limited advantages. To such he was ever ready to lend his aid and encouragement.

While his many personal friends and contemporaries will long cherish recollections of the many fine traits in the character of Judge Flandrau, still his most enduring fame will doubtless rest upon his work while justice of our Supreme Court. Appointed to this court at the age of twenty-nine, he entered upon the discharge of his duties with ardor and much devotion to his work. His seven years upon the bench doubtless covered the most important period in the development of our jurisprudence, being the formative period of a new state.

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Under our system of government, in which each state is, with certain limitations, a sovereign state having exclusive control 822 of its domestic institutions and policies, the first few years of statehood are of controlling importance. Each new state takes its place among its sister states with equal rights, but without experience. Its laws are to be framed; its policies and principles of government are to be adopted; and, perhaps more important than all else, its courts are called upon to establish and lay down the principles of common law which are to be supreme within the new state. It is true that each new state adopts in its general principles the common law as it prevails generally in the United States and England, but the common law as applied in different jurisdictions varies greatly. Errors in adopting and applying the common law in any new state lead to much injustice, much uncertainty in the decisions of the courts, and occasion much unnecessary litigation and legislation. No greater benefit can be conferred upon a new state than to give it a Supreme Court which during its early history adopts and lays down correctly the rules of the common law, selecting, where these rules conflict, those which experience has shown to be sound and those which are best suited to the people of the state. The power and duty thus resting upon the Supreme Court in a new state is well understood by judges and lawyers, though perhaps imperfectly appreciated by the average citizen.

Judge Flandrau and his two associates, Judges Emmett and Atwater, upon the bench of our Supreme Court performed their duty well, and our state is greatly indebted to them for the valuable services rendered. It is no disparagement to his two associates to say that the greater part of this work was performed by Judge Flandrau. The decisions of our state Supreme Court during the six years when he was a member thereof are reported in volumes two to nine of the Minnesota reports. These reported decisions numbered 495, and of these Judge Flandrau wrote the opinions in 227 cases, or nearly half of all the cases reported while he was on the bench. These opinions evince much care and research. The history of the law is carefully examined and stated. The precedents and authorities in other jurisdictions are ably analyzed. Technicalities were abhorrent to Judge Flandrau, who brushed them aside where inconsistent with justice. The opinions are

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models of good English and, we think, show a greater degree of care in their preparation than is found in his later 823 writings. The sentences are terse, the facts and the principles of law are plainly and simply stated without repetition and not at unnecessary length. It is superfluous to say that Judge Flandrau was a fearless and upright judge. He was by nature a gentleman, and his fearlessness and uprightness were innate and needed no training or education for their full development. His opinions reflect his character.

Perhaps the most important, certainly the most notable, of Judge Flandrau's opinions, was his dissenting opinion in the case of *Minnesota & Pacific Railroad Company vs. H. H. Sibley, Governor* (2 Minn., 1). If his opinion had prevailed instead of that of the two other judges, the state might have been spared the discredit of the repudiation of the Railroad Aid bonds. The case in brief was as follows:

By an amendment to the State Constitution adopted April 15th, 1858, provision was made for the issue of bonds of the state, in an amount not exceeding \$5,000,000, to several railroad companies to aid in the construction of their roads. It was provided that, before the bonds were issued, the railroad companies should give to the state certain securities, including "an amount of first mortgage bonds on the roads, lands and franchises of the respective companies corresponding to the State bonds issued." The Minnesota & Pacific Railroad Company, claiming to have complied with the amendment of the Constitution, demanded of Governor Sibley that he issue to it certain State bonds. He refused to do so for the reason that the bonds of the railroad company tendered as security were not such "first mortgage bonds" as the Constitution contemplated. Thereupon the company applied to the Supreme Court for a writ of mandamus requiring the governor to issue the State bonds, and the writ was issued, two of the judges holding with the railroad company, and Judge Flandrau dissenting and sustaining the position taken by Governor Sibley. When the amendment to the Constitution was adopted, the railroad company had not issued any "first mortgage bonds." Subsequently it made a first mortgage upon its property to secure an issue of \$23,000,000 of bonds, and the bonds which it tendered to the State were a small part of this issue. The State contended that it was entitled to first mortgage bonds

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which should be a prior lien upon the railroad superior to that of 824 all other bonds, and Judge Flandrau forcibly demonstrated the soundness of this position.

At this date it seems clear that Judge Flandrau was correct, and that, at this time, the decision of the court would be contrary to the majority opinion. It is certainly a very inadequate protection to the State to provide that its debtor shall give it first mortgage bonds, and then leave it to the debtor to determine how large the total issue shall be of which such first mortgage bonds are to be part. It is possible that if Judge Flandrau's views had been followed, the State bonds might not have been issued, or, if issued, they might have been adequately secured, in either of which events the credit of the State would doubtless have remained unimpaired.

It is interesting to note further, in reference to this case, that the Supreme Court ought not to have been taken cognizance of the case at all, for the reason, as has since been repeatedly held in the same court, that the judiciary has no power to control the acts of the chief executive of the State in a case of this kind.

That Judge Flandrau appreciated the opportunities and duties of the court as to settling the common law, is shown by the following statement contained in his opinion in the case of *Selby vs. Stanley* (4 Minn., 34).

In a new state like our own, we enjoy the advantage of all the light which has been thrown upon questions, without being tied down by precedents which are admitted to be founded in error; and, therefore, we are free to select, as the basis of our decisions, whatever may appear to be founded on principle and reason, rejecting what is spurious and unsound, even if dignified by age and the forced recognition of more learned and able judges.

In *State vs. Bilansky* (3 Minn., 169), the defendant was convicted of the murder of her husband and sought to escape punishment by pleading the ancient common-law privilege of clergy. The opinion by Judge Flandrau is particularly interesting by reason of his learned

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account of the origin and purpose of this ancient privilege. The opinion held that the defendant was not entitled to the privilege, and she paid the penalty of the law.

In another murder case, *Bonfanti vs. State* (2 Minn., 99), Judge Flandrau, speaking of a statute which authorized the commitment 825 to an insane asylum of one acquitted of crime on the ground of insanity if manifestly dangerous, says that “the statute very sensibly declares that when a jury is called upon to acquit a prisoner of a crime on the ground that he was insane, they shall not acquit him of the one without convicting him of the other.” Unfortunately many juries and courts fail to follow Judge Flandrau's opinion and to see to it that one so acquitted should be put in an insane asylum.

In *True vs. True* , (6 Minn., 315), which was an action for divorce, we find the importance and sanctity of the marriage relation upheld by Judge Flandrau in the following eloquent and forceful language:

The contract of marriage differs from all other contracts, in being indissoluble by the action of the parties to it, and of perpetually binding obligation until discharged by a competent court. It is the most important of the social relations. It is sanctioned by Divine authority, and recognized by all Christian nations as the palladium of virtue, morality, social order, and the permanent happiness of the human race. To its auspicious influence may be traced the great advances made in civilization, through the elevation of woman to social equality, the education of children, the refinement of manners, the improved sense of justice, the enlightened cultivation of the arts, and the physical development of man; and, above all, is it valuable as awakening in the human heart those chaste and exalted conceptions of virtue, which, in spiritualizing the mind, and subduing the grosser passions of men, give moral character and grandeur to the state. It is the only lawful relation for the continuance of the species, and the perpetuity of the choicest benefits permitted by Providence to the enjoyment of man, and as such should engage the most profound solicitude of the legislator and the courts, to preserve it unsullied in its purity, and transmit it to posterity with its integrity unimpaired.

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It were well if our divorce courts paid more attention to this noble and just statement of the law as to marriage.

It is impossible to quote at length from the many able opinions delivered by Judge Flandrau, but it may be proper to notice a few of interest to the legal profession. In *Gates vs. Smith* (2 Minn., 21) is an able exposition of the method of pleading as provided by the Code, then quite new, as a substitute for the common-law methods. In *Grimes vs. Bryne* , (2 Minn., 72) we find an exhaustive investigation into the power of the 826 legislature under the Constitution of the United States, to exempt a fair and limited amount of property from seizure under execution for debts created prior to the exemption. In *McComb vs. Thompson* (2 Minn., 114) is laid down the salutary rule which has ever since prevailed in this state, that a party signing a note upon the back at its inception, is to be treated as a maker. In *Steele vs. Fish* (2 Minn, 129), is found probably the first decision under our statute relating to actions to determine adverse claims, and which did much to simplify and make effective the purpose of this valuable statute in quieting the title to real estate.

In *Selby vs. Stanley* (4 Minn., 34), limiting vendor's liens, and *Gardner vs. McClure* (6 Minn., 167), repudiating common-law mortgages by deposit of the title deeds, we find exhaustive and able opinions relieving this state of unsound and dangerous principles which had prevailed in many common-law jurisdictions.

That Judge Flandrau never favored harsh or unequal taxation is shown by his opinions in *McComb vs. Bell* (2 Minn., 256), *City of St. Paul vs. Seitz* (3 Minn., 205), *Foster vs. Commissioners* (7 Minn., 84), and *Board vs. Parker* (7 Minn., 207). His hostility to excessive interest is found in *Mason vs. Callender* (2 Minn., 302), where the holder of a note was held not entitled to interest after the maturity of the note as stipulated therein at the rate of five per cent per month.

An important opinion is that of *Regents vs. Hart* (7 Minn., 45), determining the status and rights of the State University and its regents.

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Among many other valuable opinions, we may mention *State vs. Batchelder* (5 Minn., 178), relating to the passing of the title of land from the general government; *Heyward vs. Judd* (4 Minn., 375), relating to an attempt by the legislature to violate contract rights by enlarging the period of redemption from foreclosure; *Filley vs. Register* (4 Minn., 296), as to fraudulent conveyances; *Butler vs. Paine* (8 Minn., 284), as to a note payable in "currency;" and *Arnold vs. Wainwright* (6 Minn., 241), on the subject of partnership.

In closing this brief review of Judge Flandrau's opinions, we shall quote from *Roos vs. State* (6 Minn., 291), and *Supervisors vs. Heenan* (2 Minn., 281), his statement as to methods 827 which prevailed in our territorial legislature and which cast a side-light on our territorial history. In the latter case was involved the constitutional provision requiring the subject of an act to be stated in the title, and the opinion says:

A knowledge of the character of the legislation which preceded the forming of a state constitution, will show that a very vicious system prevailed of inserting matter in acts, which was entirely foreign to that expressed in the title, and by this means securing the passage of laws which would never have received the sanction of the legislature, had the members known the contents of the act...[The constitutional provision] means to secure to the people fair and intelligible legislation, free from all the tricks and *finesse* which have heretofore disgraced it.

In the former case, relating to change of county lines, Judge Flandrau says:

During the territorial existence of Minnesota, a very great evil had grown up in the legislation of the country, consequent upon the feverish excitement that prevailed for the creation of towns and cities, and the speculation in lots and lands. It was the constant practice of the legislature to change county lines, and the county seats of counties from one town to another, at the solicitation of interested parties, without a full understanding of the wishes and interests of the people of the counties affected. Instances even occurred where such removals were carried through the legislature without the knowledge of that

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body, by inserting clauses in bills, surreptitiously, the title of which indicated entirely another purpose.

This society has had frequent occasion of late years to bear testimony to the fine character and notable services of many of its deceased members, who have made so creditable the history of this state. It has not been called upon to record its appreciation of a nobler character than that of Judge Flandrau. His integrity and honesty in purpose and act could never be questioned. Indirection or evasion were foreign to his character and his instincts.

He was intensely human, in the sense that he felt the brotherhood of mankind. Kindly in disposition, he ever sympathized with and aided his less fortunate fellow men. Well do I remember his kindly interest and companionship with the poor and rather turbulent population in the vicinity of his home in St. Paul. With these people he was a friend, and where most men 828 would have found only disturbing and disagreeable neighbors, he found only devoted friends.

He had, as might have been expected in such a gentleman, a natural and inborn courteous manner. His manners were not the mere result of training and polish, and hence he could never be intentionally unkind or discourteous. This trait in Judge Flandrau's character, added to his legal ability, made him a strong advocate. No lawyer at the bar was a more dangerous opponent before a jury.

His hospitality was unlimited, and his friends were without number. With a charming and brilliant wife, surrounded by his children, his home in St. Paul has for many years been a center in social life. He will long be held in remembrance in the community, and he has left to his sorrowing wife and children the inestimable heritage of a good name and an unsullied character.

ADDRESS.

BY HON. JOSEPH A. ECKSTEIN, CITY ATTORNEY OF NEW ULM.

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Mr. President: The City of New Ulm desires to join with you in these fitting eulogies on the life and character of Judge Charles E. Flandrau, so ably pronounced by the speakers of the evening. The Mayor of our city received an invitation for himself, city officers, and citizens, from the secretary of your society, to be present at this memorial meeting. The city council appointed a committee of four of its members to represent that body at these exercises, and they are present with me here tonight. The Mayor, the Hon. Dr. C. Weschcke, made all preparations to come, but found that the state of his health would not permit him to do so. He has, however, commissioned me to represent him, and to say a few words for him on behalf of the city, should occasion present itself.

I will ask your indulgence for a few moments, and, as the hour is late, I purpose to be brief in my remarks.

In August, 1862, New Ulm was a mere hamlet on the western frontier of this state; the prairies of southwestern Minnesota were swarming with the bloodthirsty Sioux; and New Ulm was the objective point on which they intended to wreak their vengeance for real or imaginary wrongs suffered at the hands of the whites. At that time most of the young and able-bodied men of New Ulm were at the front in the south fighting for the flag of liberty. Those remaining at home were poorly armed and not fitted to withstand the fierce onslaught of a treacherous and inhuman foe. It was in the nick of time that Judge Flandrau arrived on the scene with his force to relieve the endangered place. I believe that I am correct in making the assertion that, if the Sioux had succeeded in annihilating the little town of New Ulm, our neighbors to the east might have shared the same fate.

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New Ulm, now a city of over 6,000 inhabitants, remembers with gratitude the gallant services of Judge Flandrau and his men, rendered in the hour of their greatest need. The lines of the defenders of that place are getting thin, and a large number of the associates of Judge Flandrau, in the defense of New Ulm, have preceded their gallant commander to their last resting place. It will not be many years before the few remaining eye witnesses

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of that memorable struggle will have passed away. Then, Mr. President, the records of your society will stand as the faithful witness to give true testimony to the future historian of what happened on the frontier of Minnesota in the early days.

Some years ago, the State of Minnesota erected a shaft with a memorial tablet in the City of New Ulm to commemorate the battle there with the Sioux Indians. It is located in a prominent place in the city, near the corner of what we call Schoolhouse Square. On it the name of Charles E. Flandrau stands out in bold relief, as a silent tutor to the youth passing on his way to school, to inspire in him a spirit of gallantry and patriotism should the hour of need and occasion for its exercise ever arrive.

The record of the life and actions of Judge Flandrau is closed, but it stands forth as a shining example of the highest type, safely to be followed by any enterprising youth of this state for generations to come.