

Moses Sherburne /

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MOSES SHERBURNE.*

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This sketch is not designed to be an elaborate biography of Moses Sherburne, nor a recital of the part he played in the history of Minnesota. Knowledge of his active participation in the events of Territorial days and in the development of the State from the date of its admission to the Union until his death in 1868, must be gleaned from court files, newspapers, and the recollections of his contemporaries. The narrative which follows is devoted mainly to his career before his emigration from the East to St. Paul, the subsequent events of his life being referred to very briefly. The facts related have been culled from original documents in the possession of the writer's family, and are believed to be more nearly complete than those hitherto recorded concerning him.

Moses Sherburne, United States territorial judge of the Territory of Minnesota, was a conspicuous figure in the early days of Minnesota, and was largely instrumental in guiding the Territory into statehood. He was the son of Samuel Sherburne and Lucy Carson, residents of Maine, both of English descent. The oldest of five children, he was born on January 25, 1808, at Mount Vernon, Kennebec county, Maine, where he passed his boyhood days. His general education was obtained at the public schools of Mount Vernon, and at the Academy of the town of China, Maine, an institution of local celebrity in the first half of the nineteenth century. Even in his childhood and youth he attracted attention as

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a receptive and thorough student, and gave evidence of the mental qualities that were distinguishing features of his matured life. 55

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After his graduation from the Academy at China, he chose the legal profession as his vocation, and entered the law office of Hon. Nathan Cutler, of Farmington, Maine, where he was for two years until his admission to the bar of his native state. In 1831 he took up his residence and began the practice of law at Phillips, then in Somerset county, but later in Franklin county, Maine, where he continued to reside until his removal to Minnesota in April, 1853. In 1832 he married Sophia Dyar Whitney, daughter of Joel Whitney of Phillips, who was afterward a well known citizen of St. Paul, Minn., and one of the proprietors of Whitney and Smith's Addition to St. Paul.

Sherburne was a successful lawyer from the beginning of his practice. His absolute integrity, imposing presence, accurate learning, and oratorical endowments, drew clients from neighboring counties, and brought him almost immediately into prominence. Although never an office-seeker, his popularity and the general respect felt for his ability made him a recipient of public offices during the greater portion of his professional life. On September 13, 1837, when twenty-nine years of age, he was appointed postmaster of Phillips, and on April 8, 1838, less than seven months later, Governor Kent appointed him county attorney of Franklin county.

By this time he had fairly entered the political field, and soon afterward was elected to the Lower House in the Maine Legislature, where he served one term, after which he was chosen State Senator for two successive terms. His attention to politics was accompanied by active interest in the militia, and on August 12, 1840, Governor Fairfield commissioned him Division Inspector with the rank of Lieutenant Colonel of the Eighth Division, Maine Militia, a rank held by him until March 29, 1842, when he was promoted by Governor Fairfield to be Major General of the same Division.

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Meanwhile he had received a judicial appointment, the first of many which retained him continuously on the bench both of his native state and of Minnesota until 1857. On the first day of October, 1840, Governor Fairfield nominated him as Officer for Administration of Oaths and Justice of the Peace and of the Quorum for Franklin county for a term of seven years. His services in this minor judicial office were so satisfactory that on June 30, 1845, he was raised by Governor Anderson to the position of 865 Judge of Probate for the county of Franklin for a term of seven years. In those days in New England the office of Probate Judge was deemed to be of high dignity, and its duties were performed by Judge Sherburne in a manner that greatly enhanced his reputation.

On June 24, 1847, Governor Dana appointed him Justice of the Peace and of the Quorum for the entire State of Maine.

In 1850 he filled the office of Bank Commissioner under an appointment by Governor Hubbard of Maine.

About this time Judge Sherburne was nominated for Congress by the Democratic party of his Congressional district; but, although running ahead of his associates on the Democratic ticket, he was defeated, the district being strongly Whig.

The eloquent and able speeches of Judge Sherburne during the political canvass following his nomination for Congress had widely extended his reputation, and had brought him to the notice of Franklin Pierce. The acquaintance thus formed ripened into a friendship, and when Mr. Pierce became President of the United States, he appointed Moses Sherburne Associate Justice of the Supreme Court of the newly formed Territory of Minnesota. In speaking of this appointment, the Eastern Argus of Portland, Maine, of April 18, 1853, said, "The President could hardly have selected a man better suited to this honorable and responsible position."

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In April, 1853, Moses Sherburne came to Minnesota to fill his new judicial office, and he occupied the bench until 1857, when he resigned to resume private practice of the law, in which he was engaged until the time of his death.

When the Territory of Minnesota applied for admission to the Union as a state, Judge Sherburne took a prominent part in the deliberations which resulted in the adoption of the State Constitution, and his remarks during the Constitutional Convention are among the valuable original sources to which the future historian of Minnesota will apply for an insight into the problems and motives of the Fathers of the North Star State.

Judge Sherburne was an enthusiastic Mason. On August 6, 1840, he founded the Blue Mountain Lodge of Masons in Phillips, Maine. He was second Grand Master of the Grand Lodge of Masons of the Territory of Minnesota, and a member of the Ancient Landmark Lodge of St. Paul.

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During his residence in Minnesota, he was deeply interested in the development of the young Territory and State. He was a joint proprietor of Ashton and Sherburne's Addition to St. Paul, and his name was given to Sherburne avenue, St. Paul, and to Sherburne county, Minnesota.

Judge Sherburne died on March 29, 1868, at Orono, in Sherburne county, whither he had gone a short time previous to practice law and to engage in various business enterprises.

He left several children, of whom three now survive, namely, Sarah Sherburne Brisbane, of St. Paul, widow of the late Doctor Albert G. Brisbane, and Moses Thaxter Sherburne and James Chapman Sherburne, of Des Moines, Iowa.

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Moses Sherburne was a man of commanding stature and intellect. His manners were courtly, his nature genial. He had an open, benevolent countenance, regular yet strongly marked features, and keen, deep blue eyes.

His demeanor on the bench was dignified and becoming a judicial position. As a lawyer and judge he was in the first rank. His *orbiter dicta* always carried weight and were regarded almost as law, and his decisions are authoritative. After leaving the bench, up to the day of his death, he was constantly in demand as senior counsel, and his learning and skill in court were everywhere respected.

Judge Sherburne had unusual gifts as an orator. His language was chaste, vigorous, and idiomatic, and his reasoning logical and conclusive. He usually appealed to the understanding rather than to the emotions; but on proper occasions his impassioned eloquence, bursting forth from a cold, unornamented background, produced an overwhelming effect.