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ST. LOUIS BAR HONORS JUDGE SANBORN

By C. S. Potts*

On Friday evening, April 8, 1927, at the Chase Hotel, the St. Louis Bar Association gave a dinner in honor of the Honorable Walter H. Sanborn, Presiding Judge of the Circuit Court of Appeals of the Eighth Circuit, upon the completion of the thirty-fifth year of his service on this court. Among the three hundred guests at the dinner were representatives of the Bench and Bar from St. Paul on the north to Little Rock on the south, and from as far west as Denver and Cheyenne. Lack of space forbids the reproduction here of the complete program of the messages read and the addresses delivered, but sufficient extracts from them are given to put before the reader the salient features of Judge Sanborn's long and useful career on the bench and the great respect and esteem in which he is held by the members of the judiciary and of the legal profession throughout his circuit.

Before presenting the first speaker, the toastmaster, Mr. Earnest A. Green, introduced Judge Thomas Bond, who read a number of letters and telegrams from members of the United States Supreme Court and others. The letter from Chief Justice Taft was as follows:

I am very sorry indeed that I can not be present at the dinner to be given by the Bar Association of St. Louis to Judge Sanborn. This is a most deserved tribute to thirty-five years of the hardest kind of judicial service within a jurisdiction that covers thirteen states and in territory certainly a very large fraction of the whole Union. That service has been of the most valuable character in establishing the Federal and general law of the 8th Circuit of the United States. Every opinion rendered by Judge Sanborn manifests enormous industry and the most conscientious care in the examination of the law as it has been declared in the authorities and as it should be developed in new occasions for its application. The number of opinions written and announced by Judge Sanborn is not I think equaled in the history of this country. The respect and weight attributed to them by the Bench and Bar of this country are, I am sure, a sufficient reward to the Judge for the life's work he has given them. The confidence that he has won in the vast territory over which he exercises jurisdiction is the subject of most frequent comment whenever the members of the Bar from the 8th Circuit are met.

Those of us who have had the privilege of personal relations with the Judge for many years know those intellectual and moral

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qualities of his that have enabled him to render to his country the inestimable benefit of his service, and appreciate that with such qualities is united a charm and loyalty that endear him to everyone who comes within the range of his friendship. I hope that he may continue many years to head that Federal Bench of the 8th Circuit.

I take great pride in the fact that I came onto the Bench and began my service in Cincinnati in the 6th Circuit, when he began his services in St. Paul in the 8th Circuit. While I wandered from the path of devotion to the judicial ideals, Judge Sanborn was true to them, and his record shines out in the judicial history of his country.

I hope that you will present to him my most affectionate congratulations on the evidence which he receives at this banquet of the remarkable place that he has made for himself in the judicial history of this country.

Associate Justice Willis Van Devanter, who served on the Circuit Court of Appeals with Judge Sanborn for eight years, wrote in part as follows:

No one could be more deserving of such a manifestation of appreciation than Judge Sanborn is. For thirty-five years he has been a distinguished Circuit Judge; his ability, learning and industry have been universally acknowledged by the Bench and Bar, and his opinions have placed him among the great American jurists. I not only share in this appraisal of him and his work, but it was my good fortune to serve with him for eight years in the Circuit Court of Appeals and through that intimate association to be inspired by his exalted personal and judicial characteristics.

No one ever has been more devoted to a right discharge of duty than Judge Sanborn. He has loved the law, has regarded its impartial administration as the greatest of all human means of advancing and protecting the general weal, and has employed all his moral, intellectual and physical powers to make the Circuit Court of Appeals of the Eighth Circuit a great and just tribunal. All who have observed the work of that Court during the thirty-five years of its existence recognize that this is true, but none have appreciated it so thoroughly as those who have served with him.

From Justice Harlan F. Stone's letter we get an idea of how great the pressure of work is on the members of the Supreme Court:

I am honored by this invitation and wish very much that I could accept, for I admire greatly the distinguished service of Judge Sanborn and think that nothing could be more fitting than the recognition of it by your Bar Association. As I have just written to my friend Luther E. Smith of your Bar, at some length, there are two rather serious obstacles to my coming. One is the fact that I made a peremptory sort of engagement here in Washington

for the evening of April 8th. The other is the heavy burden of work which rests upon all of us at this time of the year. I doubt whether members of the Bar realize the great amount of work which the members of the Court have to do and how extremely difficult it is for them to be absent. The time consumed in a trip to St. Louis and in the preparation of a suitable address, taken from the current work of the Court, would prevent my completing the work of the term, which I always think is unfortunate for the Court and litigants.

Justice George Sutherland is unstinted in his praise of Judge Sanborn's service. Among other things he wrote:

Judge Sanborn has rendered judicial service of the highest possible character. His opinions, covering the widest range of subjects, are uniformly thorough and scholarly. My acquaintance with him reaches back almost to the time of his appointment, and it is a matter of real regret that I am obliged to deny myself the pleasure of joining with you in doing him honor.

The Nestor of the Supreme Court, the venerable Oliver Wendell Holmes, still carrying a full man's work at eighty-six, writes:

Alas! the time has gone by when it was possible for me to attend public dinners, and also to attend to my work, so I must decline your kind invitation for April 8, although it would have given unusual pleasure to meet the Bar Association of St. Louis and to add my appreciation of Judge Sanborn's long and very able service to that which so many others will express.

After the reading of the letters and telegrams, the Toastmaster presented Mr. Lon O. Hocker, who has since been elected President of the St. Louis Bar Association, and who, in presenting Judge Sanborn with an appropriate testimonial of the Bar Association's appreciation, spoke in part as follows:

When I came to this city thirty-two years ago, I recall with what veneration I looked upon the leaders of the Bench and Bar. How large and columnar they stood in the landscape! I remember my first visit to the State Courts, then to the District and Circuit Courts of the United States, and when at last I paused at the threshold of the court room of the United States Circuit Court of Appeals, then, indeed, I unloosed the sandals from my feet, and, with awe and reverence, entered the sacred portals. There on the bench, afar off, in the clouds almost, as I saw them, in their black robes of dignity, sat that great triumvirate of Judges, Sanborn, Caldwell and Thayer.

And when at last my reverent eyes rested upon the noble brow and the calm, majestic countenance of him who is tonight our honored guest, I felt, to paraphrase an expression of Portia's, that

earthly power did there *seem likest God's*. It is one thing to represent the dignity and the majesty of the law—this do all Judges. It is another thing to embody and to visualize them. "He looked," as Milton said of John Bradshaw, "like a consul from whom the fasces are not to depart within the year; so that not on the tribunal only, but throughout his life, you would regard him as sitting in judgment upon kings."

But, Judge Sanborn, it is not given me tonight to dwell long or eloquently upon your qualities and virtues. To others has been assigned that very grateful task. Nevertheless, mine is one also fraught with pleasure and pride.

The bar of St. Louis tonight pays to you the tribute of its appreciation, its respect and its gratitude for the many years you have devoted to the cause of legal justice, and yet not so much for the years as for the tremendous service you have rendered during those years in expounding and illuminating the law and making it react to the will of justice. That you may long remember this feeling, which is by far the greatest gift we can make you, and that you may be reminded from time to time of this day, I am commissioned by my brethern of the Bar to present you with this silver service tray as a token of the respect and esteem they bear you.

At this point Judge Sanborn was introduced and spoke as follows :

The highest reward, aside from the approval of his Heavenly Father and his own conscience, vouchsafed to man in this mortal existence is the approval of his course and acts by those of his fellow citizens whose character, knowledge and wisdom qualify them to judge his course and acts. You have that character, knowledge and wisdom and by your presence and the statements of your president and Mr. Hocker, you have graciously granted me that reward. Nothing could so inspire worthy endeavor, nothing could bring such satisfaction and comfort. By your gracious presence, by your kind acts and words of commendation, you have conferred upon me the highest honor and made this the most memorable day of my life. I fully appreciate and shall never cease to be grateful to you for them. I thank you with all my grateful heart for your esteem, confidence, friendship and goodwill, for your high estimate of my ability and service, for the great honor you have conferred upon me, for this elegantly appointed banquet, for this unique, magnificent and indescribable token of all your acts and words of friendship and goodwill—this silver tray, this thing of beauty, which is to my wife, and myself, and will be to our descendants, a joy forever.

I have spent 21 winters in St. Paul and 35 winters in St. Louis. Nowhere have I found people more cordial and hospitable, companions more delightful, or friends more genial

and steadfast than in your own generous and magnificent city.

The United States Circuit Court of Appeals of this Eighth Circuit, to the high standing of which this great honor you are conferring upon me is really due, is composed of six judges: Honorable Kimbrough Stone of Missouri, Honorable Robert E. Lewis of Colorado, Honorable William S. Kenyon of Iowa, Honorable Arba S. Van Valkenburgh of Missouri, and Honorable Wilbur F. Booth and myself of Minnesota. This court has jurisdiction to review the decisions and judgments of the federal trial judges of 13 states which have a population of more than 19 millions of people and cover an area 1000 miles from north to south and 1000 miles from east to west.

If in my service in this court, I sometimes have been able correctly to state the law and justly to decide the issues presented to me, that is chiefly due to the surpassing intellectual powers, the profound learning and persistent diligence and study of the brilliant lawyers of this Circuit and to the marvellous knowledge and sound judgment of the great jurists: Brewer and Van Devanter of the Supreme Court, and Circuit Judges Caldwell, Thayer, Adams, Hook, Carland, Smith and those who have followed them, who have been or are my associates upon the bench of this court.

When I was a farmer's boy about 15 years of age, my father told me that he would give me a college education, and I made up my mind that if I could be admitted to the bar I would practice law if I could earn enough thereby to pay for my board and clothes. When I was appointed to this court the late lamented Honorable John F. Philips, patriot, lawyer, statesman, United States District Judge, orator, told me that an appointment to the bench of a federal appellate court was a sentence to imprisonment for life at hard labor. But I accepted the appointment and I have never regretted either decision.

It is true that the work in our profession of its efficient and useful members, whether at the bar or on the bench is hard persistent labor. But it is work worth doing, it is work for a worthy purpose, work to promote justice and to prevent injustice and wrong.

The foundation and basic reason for the existence and maintenance of good government is to secure just decisions of the controversies and disputes of men and to enforce those decisions by compelling power, and any nation or people which does not maintain tribunals for that purpose and enforce their judgments is an easy prey to brawls, mobs, vengeful reprisals and anarchy.

The education, the work and the lives of the ambitious, energetic and efficient members of our profession, whether at the bar or at the bench, are and must be devoted to the hard labor

of promoting justice and the maintenance of good government, or they would depart to other scenes. And what opportunities, what duties and responsibilities this work presents! It brings association with those of our fellowmen to whom men and women by common consent entrust their dearest interests, the protection of their lives, liberties, their business and their property, the management and care of the estates of the deceased, of minors, of the infirm and the insane, as well as of the vast interests of the great corporations and of the nation itself. For to them more than to any other class of men are the maintenance and operations of good government entrusted.

Take the government of the United States. It is divided into three great departments—the legislative, the executive and the judicial. A large majority of the house of representatives and a large majority of the senators are members of our profession and all the members of the judiciary committee of each house, of the committees which in the first instance determine the constitutionality of proposed laws and their form and effect are lawyers. No other class of legislators has any such influence in determining what proposed laws shall be enacted and what rejected as the members of our profession.

The head of the executive department, the President, is generally a lawyer. There have been 29 presidents of the United States, 19 of them have been members of our profession and 2 more were admitted to the bar but never practiced—Jefferson, John Adams, Madison, Jackson, Lincoln, Garfield, Grover Cleveland, Benjamin Harrison, Wm. H. Taft, Calvin Coolidge—and, when the President has been a layman, the Attorney General of the United States has advised, aided and assisted him and largely directed his course.

And the members of the judicial department of our government, of the appellate courts and the trial courts, all the men who finally determine in the federal courts the rights of persons to life and liberty, and the rights of individuals, corporations and nations to property are and must be members of our profession.

Where in all the broad field of human endeavor are there such opportunities and duties as here to aid and protect the ignorant and helpless, to foster honor and honesty, to repress wrong and injustice and wisely and well to advise and direct the affairs of mankind in all the walks of life from that of the humblest citizen to that of the Chief Justice of the United States.

I never think seriously of these duties and responsibilities of the members of our profession that that majestic passage in Webster's eulogy of Mr. Justice Story does not come to my mind:

"Justice, sir," said Webster, "is the great interest of man on earth. It is the ligament which holds civilized beings and

civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society."

Mr. Isaac H. Lionberger, who represented the St. Louis Bar Association, spoke in part as follows:

It is said of Sir Thomas More that when a successful litigant before him presented to him a glove which was filled with golden guineas, he poured out the gold and returned it, saying "The glove, my friend, is a token of amity as well as enmity, and therefore I shall cherish it; but as for the gold, it is but a thing indifferent."

The Bar in the present instance has resorted to a piece of silver not because the baser metal of which it is composed is worthy of your acceptancy, Judge Sanborn, but because they wish to confer upon you, sir, a less perishable reminder of the esteem in which you are held than the words uttered upon this occasion. We mean to do you such honor as will not only add to the happiness of your old age but to the just pride of those who shall come after you. Such a tribute I think should afford a peculiar pleasure to you, sir, and to them.

Judge Sanborn has been on the bench during an era of experiment, public excitement and innovation, when the sanctity of the old cases has been relaxed and the old paths could be no longer followed. Innumerable cases involving charters as contracts, the Sherman Anti-Trust Act, laws relating to wages, hours of work, rents of dwellings, the segregation of classes, buying and selling by common agent, the delegation of public authority to commissions and bureaus, inter- and intra-state commerce, the valuation and rates of public utilities, special and confiscatory taxes, rights to flowing waters as between states, the taxation of incomes, conscription and the war powers of the Executive Department, most of which were novel and all perplexing, have had to be disposed of.

And, in addition to these things, he has had to restrain the fanatical outbursts of passion which from time to time swept over this country during war, and to reconcile the tyrannies and vexations, the searches and seizures resulting from the Volstead Act, with the rights, privileges and immunities granted to us by our federal Bill of Rights.

We only realize the enormous responsibility resting upon a federal judge. The provisions of the federal Constitution are after all nothing but words,—still, dead, ineffectual. Of

themselves they can do nothing. The Constitution confers judicial power briefly and in general terms. What was intended by judicial power was not at first defined. Several Chief Justices of the Supreme Court resigned because they thought they lacked authority under it.

That since Marshall's time the Constitution has become a real bulwark of private right and liberty, our aegis in time of stress, our refuge and our hope, has been the work of the federal judges. It is not too much to say that to them rather than to the Constitution itself we owe the protection we have enjoyed, not only against those in authority, but even against ourselves. To them we owe in greater degree even than to our own judges, the pleasant confidence in which we live, security for our lives, liberties and properties, and, in large measure, that splendid freedom which has enabled one hundred millions of people to dwell together in peace and harmony, fearing none, the only successful democracy in the world.

The executive departments of government, wise and upright as they may be, are always prone to encroachment upon private rights. Their operations are hurried and summary. They have nothing to do with the validity of enactments. Their duty is to execute, to enforce; and in their hurry and zeal they are apt to commit many wrongs. To the federal judiciary we have had to look for the protection intended to be afforded to us by fundamental law, and for more than a century that protection has been vouchsafed to us. To them we resorted when threatened, without them we could not have been free, our rights would have been frittered away and this government, founded upon the notion that all states exist for the benefit of their citizens, should have lost its character and become tyrannous and afflicting.

In recent years we have needed their interpretative intervention as never before. The old principles had become relaxed; an easy acquiescence in the whims and gusts of passion that swept over us has been the natural inclination of those unaffected by the wrongs done. We have been tempted to let the fanatic and the reformer have his way, forgetting that by our fundamental law certain powers and no others were granted to those in authority, and all the rest reserved to the people. That in such an era of pestering intervention judges have as a rule inclined to lend us a protecting hand against the intrusions of those in authority, and preserved in their integrity some of the rights, privileges and immunities intended to be secured to us by fundamental law, is our only consolation.

Judge Sanborn has played his part in this great service. He is a jurist as well as a lawyer, a lover of liberty, familiar with the series of events which provoked the Revolution. He has understood the meaning and intent of the Constitution. He has always inclined to protect us. When he has

decided against us, he has given us reasons which we could understand, and reconciled us to defeat by the clarity and civility of his judgments. We have never had occasion to doubt his impartiality.

Tonight, all together, with one heart, one voice and one motive,—the wish to add to the happiness of one who has so long, so patiently and so wisely discharged the responsibility of his great office,—we tender to him the assurance of our gratitude and esteem. We wish him a longer life, and a serene old age; and, because we do, we have arranged this ceremony to do him honor.

He has earned the benediction of the prophet of old:

“Blessed is the man that is found without blemish,
Whose soul hath not gone after gold;
Wonderful things hath he done among us.
He has been tried, and not found wanting;
Let him have the glory who had the power to transgress,
And hath not transgressed;
To do evil, and hath not done it.
Let his name be established,
And let the congregation declare his praise.”

Mr. Henry McAllister, of the Denver Bar, spoke in part as follows:

Some twenty-eight years ago in this city, and as a novitiate of the Colorado bar, I first had the honor of appearing before that illustrious court, unexcelled in the judicial annals of the nation: Caldwell, Sanborn and Thayer. If any of us is now so fortunate as to find a decision of that court which he believes to be in his favor, he is certain of victory—unless he finds the one fly in the ointment, that one of those great judges dissented. I was warned in advance of the proclivity of Judge Caldwell to interrupt the argument at a critical period, and to put his finger upon the sore spot of the case. I had hardly begun my argument before I saw him bending forward upon the bench and pointing an ominous finger at me. Thoroughly frightened, I disregarded the approaching torpedo and drove full speed ahead; and I was upon another branch of the case before Judge Caldwell could propound his question.

After a few futile efforts of like character, the Judge leaned back in his chair with a sigh of resignation; and Judge Sanborn, a quiet gleam in his eye, smiled at me encouragingly. I was soon to find that with judges, no less than with juries, appearances are deceptive, for Judge Caldwell wrote the opinion of the Court in my favor, and Judge Sanborn dissented. But as he was in the minority I readily forgave his error, in the recollection of his great assistance to me in my hour of travail.

I have often thought that this characteristic sympathy ex-

tended to a young practitioner at that time, represented one of Judge Sanborn's outstanding qualities as a great Judge. If our case was weak, we feared him; if it was strong, we welcomed his presence; but in weakness or in strength, in professional sunshine or in shadow, we have always known that he would give to every lawyer and every cause coming before him that patience, courtesy, industry and learning which have marked his judicial career. I believe it was Edmund Burke who once extolled "the cold neutrality of an impartial judge." That phrase would more fittingly apply to Judge Sanborn, and more appropriately express the ideal, if the word "warm" was substituted for "cold."

Our regret that he is not in that position to which his eminent abilities and character entitled him is tempered by the knowledge that he has been with us—always our own guide, philosopher and friend

Judge Kimbrough Stone, Judge Sanborn's associate on the Circuit Court of Appeals, in his address called attention to two important phases of Judge Sanborn's work that never get represented in the reports of decided cases—his fine business judgment in handling receiverships and his tact and ability as presiding judge. On these points he said:

Judge Sanborn has handled more important receiverships, so far as I know or have been able to ascertain, than any Federal Judge who ever sat in the history of the country. Now, something more than mere legal knowledge, than mere judicial ability, is required in a receivership. Receiverships are largely matters of business readjustment, and when a court takes into its possession the property of a great railroad company, for instance, in a receivership it means that that court must work out the business problems of that railroad. It requires a high order of executive ability to do that. Judge Sanborn has displayed such in every single one of these receiverships; he has taken a half dozen great railroad systems one after the other, some of them gasping for their financial breath, and in a few years has turned them out fine, strong, vigorous, vital business organizations, able to earn profits for those investing in them, and able to serve the public contributory to them.

Again, in the last twenty-five years, or almost that, Judge Sanborn has been the presiding judge. That entailed certain duties which never appear in the reports; which never appear anywhere; which no one ever really appreciates except the members of his own court who see it and know it. As the presiding judge under the law he is the administrative head of the Circuit. That means that he is the executive head of the Court of Appeals, and must see that it runs smoothly.

But it means more; it means that he is the executive head of eighteen judicial districts in thirteen sovereign states wherein there are twenty odd District Judges; that it is his duty to take care of all those districts, to see that those courts are going, that when there is a break somewhere through sickness or otherwise, it is at once supplied. And so well has he done this very arduous and sometimes very delicate duty, so smoothly have the wheels been kept moving, that only those of us who were close to it were conscious that it had happened at all.

Now those two really arduous tasks, of receiverships and administration, he has carried on through these years in addition to all of the regular work which the rest of us have done.

In concluding his remarks Judge Stone took occasion to call attention to the close personal relations existing among the judges of the court and their families. In that connection he paid a very high tribute to Mrs. Sanborn, saying:

The other judges and their families feel deeply indebted to the cultured mind and the sweet, gentle graciousness and the courteous hospitality of Mrs. Sanborn. And while, Judge Sanborn, as lawyers and citizens, we appreciate your wonderful work as it has been done and as, please God, it will be done for many years to come, and while we of your official family appreciate your kindness and your courtesies, I really think we are more indebted to you for Mrs. Sanborn than for all the rest.

Another colleague on the Circuit Court of Appeals, Judge Arba S. Van Valkenburgh, spoke of Judge Sanborn's "unflagging industry and unflinching regard for the demands of justice." By way of illustration, he said:

I came upon him one day in his chambers deep in the reading of what appeared to me upon casual inspection to be a formidable compilation. Upon question, he said, "I think I have a comprehensive grasp of this case, the facts and the principles of law applicable thereto. I do not think it possible that I can be deflected from an administration of the established rules which must condition and control the decision in this case; but I have here a brief of more than one hundred pages to the contrary. I must read it, because I must make sure that nothing has been overlooked."

I once asked an eminent member of the bar of this Circuit and of many others whether, in his extended experience and practice he had ever met with greater indulgence and invitation to full and complete hearing in argument than that accorded by the Presiding Judge of this Circuit. His reply was, "No one ever has, and no one ever will."

Hon. T. Blake Kennedy, of Cheyenne, in bringing "the love, the profound respect and the best wishes of the Bench and Bar of the State of Wyoming," said:

Happily, I think, the prohibition in regard to the expenditure of Government funds for Federal Judges in traveling does not apply to their own personal pocketbooks, else I might not have been here this evening. I was told today by one member of the Committee that I would take the prize for the greatest distance in having travelled to attend this occasion. It seems to me hardly possible, because as we in the West view distances, they are always magnificently great. I consider, however, that no time spent and no distance travelled could be too great to permit one to attend this function this evening in honor of the distinguished guest.

Mr. Thomas F. Doran, of Topeka, said:

So far, Judge Sanborn and I score one hundred percent in our concurring opinions. You may, therefore, infer that I am a biased and prejudiced advocate.

One time, when arguing a case before this distinguished jurist in St. Paul, he said, "Mr. Doran, isn't that the same argument you made at Kansas City a couple of weeks ago?"

I said, "Yes, your Honor, it is the same argument. I was of the opinion then that it was a good argument, and I am still of the same opinion. You did not pay any attention to it down at Kansas City, and if you will indulge me, I would like to make the argument over again."

"Oh," he said, "if that is the way you feel about it, go ahead."

After I had finished that eloquent and able argument, he wrote one of the most profound, wise and just opinions that I have ever seen; but do you know, ladies and gentlemen, that we had to get the concurring opinion of nine Justices of the Supreme Court of the United States to convince our opponents that Judge Sanborn and I were right?

Judge Sanborn's opinions permeate hundreds of volumes, they stand out like monuments on a plain. We lawyers who practice in the Federal courts search the decisions of the nine Circuits, and if we can find one from the Eighth, we do not go any farther; particularly if the opinion is by Judge Sanborn.

Now, there are other members of this Court sitting even at this festal board to whom I would like to pay tribute. But pending litigation would make it improper; and then again I might be met with an embarrassing situation afterwards. I might be compelled to reverse my present opinion; and I do not like to reverse opinions.

Mr. George B. Rose, of Little Rock, declared Judge Sanborn to be "the greatest *nisi prius* judge since Lord Mansfield." By way of sub-

stantiating this statement, he gave the following account of a great criminal case tried by Judge Sanborn in Little Rock many years ago:

He very seldom has occasion to try a jury case; but in our court, when he first came upon the bench, he presided at the trial of the president who had broken our largest bank. The defendant had two very able and astute lawyers, who knew that Judge Sanborn had had no practice in the criminal law, and thought that he was ignorant of that branch of jurisprudence; and they laid every possible snare for him. For two weeks that trial went on with all the complicated testimony incident to the books of account of a large institution. Yet when these ingenious gentlemen got through they had not one exception. Every point Judge Sanborn had ruled on instantly, and he had ruled upon it so perfectly that with all their devices they absolutely failed to get even the semblance an error; and they made no attempt to appeal, though their client was sent to the penitentiary for five years. When it came to summing up the evidence in that case, in all my years of experience at the bar I have never seen anything so able or so conclusive, making a perfect presentation of the case, such as everybody could understand, and also making it plain beyond all controversy that this very wicked man was guilty; and yet as fair a charge as was ever listened to.

Mr. George W. Morgan, of the St. Paul Bar, gave some figures showing the volume of Judge Sanborn's work:

His capacity for work has been referred to, and it is interesting to supplement the figures to which Judge Stone referred. In the period of thirty-five years during which he has served upon the bench he has rendered published written opinions in upwards of fourteen hundred and fifty cases. And I may add that that is an average of over forty opinions a year, and is nearly twice the average rendered by the Federal judges throughout the United States. In fact, Judge Sanborn's opinions comprise, I am told by the publishers, one fiftieth of the total volume of the Federal Reporters during the period covered, although there are now 170 Federal judges, and at the time of his appointment there were 84.

It is interesting to note that his appetite for work is increasing, because last year he wrote fifty-four published opinions. And this in addition to the arduous duties of administration to which reference has been made.

Judge Sanborn's independence and originality of thought have manifested themselves in decisions which are known to us all. There is scarcely a field of law in which his opinions are not important. They are not only controlling in this Circuit but influential in every court in the country. It is impossible at this time to refer to them in detail. But I wish to make

passing reference by way of illustration to one of his earliest and most famous opinions rendered in the case of the *United States v. Trans-Missouri Freight Association* decided October 2, 1893. At that time the United States Supreme Court had not passed upon or construed the Sherman Anti-Trust law and Judge Sanborn was there called upon to interpret it. In an exhaustive and convincing opinion he reached the conclusion that the Act adopted for the field of federal law the common law rules upon the subject of combinations in restraint of trade and that therefore the Act condemned only contracts and combinations which resulted in undue or unreasonable restraints. The Supreme Court upon appeal, in its majority opinion in a five to four decision seemed to adopt the contrary view that every restraint, whether unreasonable or not, violated the Act. That was in 1896. But in 1911 the United States Supreme Court, without overruling its earlier decision upon the facts, in the Standard Oil Company case affirmed the decision of the Court of Appeals, written by Judge Sanborn, and adopted the "rule of reason" in accordance with the views originally expressed by him.

The program of the evening was brought to a close in the following happy fashion by Mr. Xenophen P. Wilfley, of the St. Louis bar:

It is a matter of personal disappointment that I must forego delivery of one of the best studied speeches that I have ever prepared. There are three reasons for this; first, I am not un-mindful of the proprieties imposed by the lateness of the hour; second, this my carefully prepared speech, has been delivered piece-meal by the distinguished speakers who have preceded me; and, third, the limitation imposed upon me by the Committee in assigning my subject, they have limited me to "a word in conclusion."

Preliminary to my speech, I want to say on behalf of the entire Bar of the Eighth Circuit, in response to all the fine things said about Judge Sanborn and the beautiful and appropriate things said about Mrs. Sanborn by the eloquent speakers on this program, I deliver my speech under the limitations imposed by your Program Committee: AMEN.