1960

# A Tribute to Judge John B. Sanborn

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John B. Sanborn, son of General John B. Sanborn and Rachel Rice Sanborn, was born in St. Paul, Minnesota, on November 9, 1883. He was graduated from the University of Minnesota in 1905 with a degree of A.B., and from the St. Paul College of Law in 1907 cum laude. On May 18, 1907, he married Helen Clarke, who died October 23, 1957. He was admitted to the Minnesota Bar in 1907 and began the practice of law in St. Paul. He was a member of the law firm of Markham and Sanborn from 1910–12, and a member of the law firm of Butler and Mitchell from 1912–14. From 1913–15 he was a member of the Minnesota House of Representatives. During 1914–16 he was an attorney and trust officer of the Capital Trust and Savings Bank of St. Paul, and from 1917 to July, 1920, he served as Commissioner of Insurance for the State of Minnesota. He enlisted and served as a private in the United States Infantry from August 12, 1918, to December 3, 1918. And he rendered additional public service as a member of the Minnesota Tax Commission in 1920 and 1921.

His judicial career began as a Judge of the District Court of Ramsey County, Minnesota, on March 6, 1922, and he served on that court until March 18, 1925, when he was appointed a United States Judge for the District of Minnesota. He served in that capacity until January 23, 1932, when he was appointed to the United States Court of Appeals for the Eighth Circuit. His service on that court continued until June 30, 1959, when he retired from regular active service, assuming the status of a Senior Circuit Judge, which permits him to serve under assignment. His tenure as a federal judge spans a period of some thirty-four years, more than a third of a century.

For many years he was closely associated with the St. Paul College of Law, serving as a member of the Board of Trustees, Vice President, and then President from March 1, 1949, to July 2, 1956, when the St. Paul College of Law consolidated with the Minneapolis College of Law and became the William Mitchell College

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of Law, and of that institution he was a member of the Board of Trustees and Vice President from July 2, 1956, to April 1, 1959, when he resigned.

Since 1942, Judge Sanborn has been a member of the Committee on Bankruptcy Administration of the Judicial Conference of the United States and has served with marked distinction in that capacity. He received the "Outstanding Achievement Award" from the University of Minnesota on May 25, 1956. And on June 16, 1959, he received an honorary degree of Doctor of Laws from the William Mitchell College of Law at St. Paul.

Judge Sanborn's decisions as a circuit judge are to be found in Volumes 55 to 269 of the Federal Reporter, Second Series. They number some 736 opinions, including concurrences and dissents. His dissents are very few. During his long tenure, his opinions cover the entire gamut of federal litigation. Among the many contributions he has made to that field, however, it is interesting to note that, as a former trial judge, he always has recognized the wide discretion which must necessarily rest with the trial court. When he began his career as a United States judge, the Eighth Circuit consisted of the states presently within the circuit, together with Wyoming, Utah, Colorado, Kansas, Oklahoma and New Mexico. His duties consisted not only of the heavy burden imposed upon the Minnesota federal judges during the prohibition era, but he was frequently called to sit on the court of appeals over which his cousin, the late Honorable Walter H. Sanborn, presided. When he came to the court of appeals in 1932, he was a seasoned trial judge. He fully recognized and appreciated the many daily problems which come across the trial court's threshhold, and with which the trial judge has to cope. He recognized that wide discretion must rest at the trial court level in order to insure efficient and orderly administration of the many fields of litigation in the federal trial courts. His views in this regard may be found in many of his decisions and are graphically demonstrated. In *Pendergrass v. New York Life Ins. Co.*, he found

> no warrant for the belief that we can retry doubtful issues of fact upon a cold record, and substitute our judgment for that of the trial court with respect to such issues, or that a district court, in nonjury cases, is to act as a sort of special master for this Court, to report testimony, to make advisory findings, and to enter an advisory judgment.[1]

And again in the same case, he said, "The entire responsibility for deciding doubtful fact questions in a nonjury case should be, and we think it is, that of the district court."[2] Particularly striking was

1. 181 F.2d 136, 138 (8th Cir. 1950).
2. *Ibid.*

his statement that "The power of a trial court to decide doubtful issues of fact is not limited to deciding them correctly."[3]

And since *Erie R.R. v. Tompkins*,[4] when the trial court has to interpret state law, Judge Sanborn has reiterated that "If a federal district judge has reached a permissible conclusion upon a question of local law, we will not reverse, even though we may think the law should be otherwise."[5]

In *Russell v. Turner*, he stated that

> All that this court reasonably can be expected to do in reviewing cases governed by state law is to see that the determination of the trial court is not induced by a clear misconception or misapplication of the law.[6]

He was even more emphatic in *Homolla v. Gluck*, when he summarized his views by stating that "this Court has consistently refused to attempt to outpredict, outforecast or outguess a trial judge with respect to a doubtful question of the law of his State."[7]

However, Judge Sanborn's indulgence in granting to the trial court wide discretion in determining controverted questions of fact is not found where complaints have been summarily dismissed, or summary judgments hastily granted, by the trial judge. For instance, in *Leimer v. State Mut. Life Assur. Co.* he said:

> [W]e think there is no justification for dismissing a complaint for insufficiency of statement, except where it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim.[8]

And where the trial judge granted a summary judgment because he concluded that the plaintiff would not prevail at the trial, Judge Sanborn made it clear in *Union Transfer Co. v. Riss & Co.* that

> [A] surmise, no matter how reasonable, that a party "is unlikely to prevail upon a trial, is not a sufficient basis for refusing him his day in court with respect to issues which are not shown to be sham, frivolous, or so unsubstantial that it would obviously be futile to try them."[9]

But he always recognizes the broad discretion that a trial court has with reference to the extent and scope of the cross-examination of a witness, particularly as to collateral matters. And in *Davis v. United States*,[10] he quoted with approval Mr. Justice Sutherland's remarks made when the latter was sitting as a circuit judge in the case of *United States v. Manton*:

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3. *Id.* at 137.
4. 304 U.S. 64 (1938).
5. Western Cas. & Sur. Co. v. Coleman, 186 F.2d 40, 43 (8th Cir. 1950).
6. 148 F.2d 562, 564 (8th Cir. 1945).
7. 248 F.2d 731, 733 (8th Cir. 1957).
8. 108 F.2d 302, 306 (8th Cir. 1940).
9. 218 F.2d 553, 554 (8th Cir. 1955), quoting Sprague v. Vogt, 150 F.2d 795, 801 (8th Cir. 1945).
10. 229 F.2d 181, 186 (8th Cir. 1956).

> The office of cross-examination is to test the truth of the statements of the witness made on direct; and to this end it may be exerted directly to break down the testimony in chief, to affect the credibility of the witness, or to show intent. The extent to which cross-examination upon collateral matters shall go is a matter peculiarly within the discretion of the trial judge. And his action will not be interfered with unless there has been upon his part a plain abuse of discretion.[11]

And where evidence had been erroneously admitted by the trial court, Judge Sanborn stated in *Dolan v. United States*:

> The general rule is that where evidence is erroneously admitted the subsequent striking of it from the case, accompanied by a clear and positive instruction to the jury to disregard the evidence, cures the error. But if the evidence is of such an exceptionally prejudicial character that its withdrawal from the consideration of the jury cannot remove the harmful effect caused by its admission, a new trial will be granted.[12]

In reading Judge Sanborn's many opinions, one is impressed by his sound logic and his practical grasp of the problems presented. His decisions are neither colored by any attempt to exhibit literary erudition nor beclouded by ponderous abstruseness. They are clear, concise and impregnated with common sense. He possesses an abundance of judicial temperament which enables him to listen with patience and forbearance to assure every litigant that he will have his day in court.

Judge Sanborn's career as a trial and appellate judge has been an inspiration to all the trial judges in the Eighth Circuit. He is benign and gracious to all who come before him. We have tried to emulate him. He is our mentor and our ideal judge. If the trial judges in Minnesota are entitled to any credit for the manner in which the judicial business in this district is dispatched, then thanks must be bestowed upon the one with whom we all have felt free to consult for his wise counsel and comforting advice. We are immensely thankful that his retirement does not mean that he will no longer be active and that we are assured of his attentive ear and good counsel as to the many administrative and other problems which so often confront the trial court.

Judge John C. Knox, one of the best known and most loved judges of the Southern District of New York, has stated in summing up the qualities of a good judge that they are as follows:

> Independence, common sense, patience; a firm sense of dignity, but at the same time a sense of humor; an affection for people and an understanding of them and their endless hopes, dreams, ambitions, religions, social beliefs, economic pursuits; vigilance, and a will of iron if need be; and complete detachment. He must never allow his personal opinion of the law he is

11. 107 F.2d 834, 845 (2d Cir. 1935).
12. 218 F.2d 454, 460 (8th Cir. 1955).

> administering to control his decision, but at the same time he must work to change the law, if he thinks it a bad one. He must have a broad capacity for understanding men, and he must never be arrogant, but always studious to keep abreast of the ever-advancing law. . . .

Judge Sanborn possesses these qualities fully and has always applied them justly and wisely in the discharge of his responsibilities as a judge. He has conducted himself in the performance of his judicial duties with unaffected humility and devotion.

An eminent Canadian jurist once said that when a judge finally lays aside his robes that "above all things he would hope that his fellow-Judges, that smaller Brotherhood within the Brotherhood of the Bar, the men best qualified to express an opinion in the matter, would set their seal of approval on his work. He would also hope that the members of his Bar would agree with such a judgment." That seal of approval had been fully attained by Judge Sanborn long before he announced his retirement. As a Senior Judge, may he have many, many more years of good health in which to continue with his illustrious career before he decides to break the tie permanently with that "smaller Brotherhood" who so greatly love, revere and admire him.